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RECEIVED

JAN 03 2007
Department of Water Resources
Eastern Region

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR) NOTICE OF TAKING
PERMIT NO. 74-15613 IN THE NAME OF F.) DEPOSITION OF F. JAMES
JAMES OR PAULA J. WHITTAKER) WHITTAKER (DUCES TECUM)
)
)
)
_____)
TO: F. JAMES WHITTAKER AND HIS ATTORNEY OF RECORD

PLEASE TAKE NOTICE that the Protestant, State of Idaho Department of Fish and Game, through counsel, will take the deposition upon oral examination of F. JAMES WHITTAKER, pursuant to Idaho Rule of Civil Procedure 30 and by Rules 523 and 524 of the Rules of Practice and Procedure of the Idaho Department of Water Resources. IDAPA37.0101.523-524. The deposition will commence at 1:30 p.m. on Friday January 5, 2007, at the offices of HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C., 1000 Riverwalk Dr., Ste. 200, Idaho Falls, ID 83405 (208) 523-0620, before a certified court reporter or some other officer authorized to administer oaths. Additional dates for completion of the deposition may be required depending upon documents to be produced and other factors.

NOTICE OF TAKING DEPOSITION OF
F. JAMES WHITTAKER (DUCES TECUM)

Request for Production of Documents

In accordance with Idaho Rules of Civil Procedure 26, 30(b)(5), and 34 and with Rules 523 and 524 of the Rules of Practice and Procedure of the Idaho Department of Water Resources, the Deponent is further instructed to bring to said deposition all of the materials described in "Attachment A" hereto, in accordance with the definitions and instructions contained therein.

Dated this 28th day of December, 2006.



DAVID J. BARBER
Deputy Attorney General
Natural Resources Section

CERTIFICATE OF SERVICE

I certify that on the 15th day of December 2006, I caused to be served the original and/or copy of this NOTICE OF TAKING DEPOSITION OF F. JAMES WHITTAKER on each of the following persons by the indicated method.

1. Original to:

Idaho Department of Water Resources
900 N. Skyline Dr., Suite A
Idaho Falls, ID 83402-1718

- ☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: _____

2. Copies to

Bureau of Land Management
1206 S Challis St.
Salmon ID 83467

- ☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: _____

Ellsworth Angus Ranch
Carl Ellsworth
PO Box 60
Leadore, ID 83464

- ☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: _____

Lemhi Irrigation District
260 Withington Cr. Rd
Salmon, ID 83467

- ☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: _____

Idaho Department of Fish and Game
PO Box 1336
Salmon, ID 83467

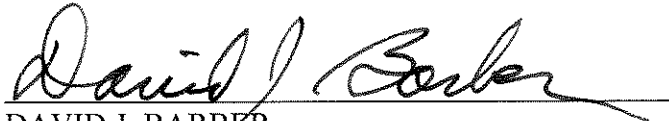
- ☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: _____

Kent W. Foster, Esq.
Attorney for F. James or Paula J.
Whittaker
HOLDEN, KIDWELL, HAHN, &
CRAPO, P.L.L.C.
1000 Riverwalk Dr., Ste. 200
P.O. Box 50130
Idaho Falls, ID 83405

- ☐ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☒ Facsimile: (208) 334-2690

T & T Reporting
525 Park Avenue, Suite 1E
Idaho Falls, ID 83402-3564

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: _____
- ☒ Email: tntreport@ida.net

A handwritten signature in black ink, reading "David J. Barber", written over a horizontal line.

DAVID J. BARBER
Deputy Attorney General

ATTACHMENT A

Definitions

The following definitions shall apply for the purpose of identifying documents and tangible things that fall within the scope of this request:

- A. The term “**applicant**” refers to F. James or Paula J. Whittaker.
- B. The term “**data**,” as used in this document, refers to measurements, estimates, and observations made for the purposes of establishing and quantifying application for permit no. 74-15613. The term “data” includes all files prepared in conjunction with application for permit no. 74-15613.
- C. The term “**Deponent**” refers to F. James Whittaker.
- D. The term “**document**” shall be defined in the broadest possible manner and shall, at a minimum, mean any original or copy of words or information, whether produced in original or copy form by printing, typing, recording, retrieval from electronic storage, manual reproduction, or other process regardless of the form. The term “document” includes, but is not limited to, writings, agreements, communication, correspondence, electronic mail messages, reports, telegrams, memoranda, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, diaries, records, maps, charts, plans, drawings, sketches, photographs, graphs, notes, summaries or records of meetings, conferences or congressional hearings, summaries or reports of investigations or negotiations, opinions or reports of consultants, drafts of any document, phono-records, printouts from electronic storage or other data compilations from which information can be obtained or translated, if necessary, by the respondent through detection devices into

reasonably usable form, marginal comments appearing on any document and all other writing.

- E. The term “**rely**,” “**relies**,” or “**relied**,” when used in a request for all documents relied upon in the preparation of an answer or response, refers not only to documents containing information supporting the answer or response, but also all documents reviewed, obtained, or prepared by the applicant or its employees, agents or contractors in the course of preparing its answer or response.

Instructions

- a. All documents that are produced for inspection shall be produced as they are kept in the usual course of business or shall be organized and labeled in a manner which clearly identifies and indicates that the documents are being produced in response to a particular request.
- b. If any documents or categories of documents called for cannot be produced in full or in part, the Deponent shall state in writing the reasons for the inability to produce all or any portion of the documents or categories of documents called for, and serve those reasons on the State of Idaho at the time required for response.
- c. If any document called for is withheld on the grounds of any privilege, the Deponent withholding such document(s) shall specify the basis of such privilege and provide a complete description of the document, including the date, all addressees, all authors or preparers, all recipients of copies, subject matter, number of pages (including all attachments, appendices, etc.), and other relevant circumstances sufficient to enable the Court to decide whether the privilege has been properly invoked. The Deponent shall nonetheless produce any portion of the document that is not privileged.

- d. The Deponent shall produce all responsive documents in his or her possession, custody and control, whether actual or constructive.

Documents to be Produced

1. Produce all documents upon which the applicant relies in support of application for permit no. 74-15613.
2. Produce all documents related to crop production or livestock grazing on the proposed place of use for application for water right no. 74-15613 during the calendar years of 2004, 2005, and 2006.
3. Produce all documents related to crop production or livestock grazing on the proposed place of use for application for water right no. 74-15613 prior to calendar year 2004.
4. Produce all deeds, easements, or other legal entitlement to transport the water from the proposed point of diversion to the proposed place of use across lands not owned in fee simple by the applicant.
5. Produce all documents in the possession of the Deponent used in preparation for this deposition.