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ORIGINAL

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SEP 05 2006
Department of Water Resources
Eastern Region

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR) MOTION FOR AN ORDER
PERMIT NO. 74-15613 IN THE NAME OF JAMES) AUTHORIZING DISCOVERY
OR PAULA M. WHITTAKER)
)
)
)

COMES NOW, the Idaho Department of Fish and Game, by and through the undersigned deputy attorney general, and moves the Idaho Department of Water Resources for an order authorizing any party to engage in discovery in this administrative matter in accordance with the provisions of Rule 521 of the Rules of Practice and Procedure of the Idaho Department of Water Resources. IDAPA 37.0101.521. The grounds for this motion are as follows:

1. The State of Idaho, Nez Perce Tribe, United States, and various private entities filed a *Joint Status Report on Settlement Efforts and Motion for Stay* with the Snake River Basin Adjudication Court on April 20, 2004, which advised the District Court that the parties had reached agreement on a Term Sheet setting forth the broad parameters of a complete settlement of all water

right claims presented in the Snake River Basin Adjudication by the Nez Perce Tribe and the United States as trustee for the Nez Perce Tribe. This settlement contemplated a number of implementing actions by the parties that are still underway. Those implementing actions include improvements to the aquatic habitat in the Lemhi River Basin for the benefit of anadromous and fluvial species of salmonids listed under the Endangered Species Act, as amended.

2. Protestant Idaho Department of Fish and Game, hereinafter the “IDF&G,” has identified Big Timber Creek as a major potential tributary of the Lemhi River for reconnection to the Lemhi River with surface water for the benefit of anadromous and fluvial species of salmonids listed under the Endangered Species Act, as amended.

3. The development of an adequate factual record is essential for presentation of IDF&G’s case in opposition to the approval of application for permit no. 74-15613. Discovery would facilitate the development of an adequate factual record in this matter. Discovery would also promote a better understanding of the applicant’s proposed irrigation development and may aid in settlement.

PRAYER FOR RELIEF

1. That the Idaho Department of Water Resources authorizes all parties to engage in discovery.

2. That the Idaho Department of Water Resources grants such other or further relief that is deems appropriate and proper.

3. That the IDF&G requests an opportunity for oral argument.

RESPECTFULLY SUBMITTED this 1st day of September 2006.

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division



DAVID J. BARBER
Deputy Attorney General
Natural Resources Division

CERTIFICATE OF SERVICE

I certify that on the 1st day of September 2006, I caused to be served the original and/or copy of this MOTION FOR AN ORDER AUTHORIZING DISCOVERY 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

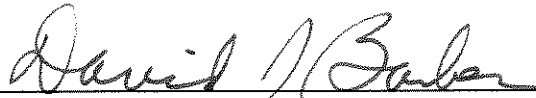
☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: _____

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

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

F. James or Paula Whittaker
PO Box 240
Leadore, ID 83464

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

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

DAVID J. BARBER
Deputy Attorney General