

WHITTAKER TWO DOT RANCH, LLC  
JAMES WHITTAKER  
PO BOX 240  
LEADORE, IDAHO 83464

RECEIVED  
FEB 12 2018  
Department of Water Resources  
Eastern Region

DEPARTMENT OF WATER RESOURCES  
ATTN: JAMES CEFALO  
900 N. SKYLINE DRIVE, SUITE A  
IDAHO FALLS, IDAHO 83402-1718

FEBRUARY 10, 2018

DEAR JAMES:

PRIOR TO THE 1982 ADJUDICATION THERE WERE WATER STUDIES DONE ON THE 27 TRIBUTARIES SEPARATE FROM THE LEMHI RIVER, AS WELL AS THE LEMHI RIVER ITSELF. ACCORDING THE SHERL L. CHAPMAN REPORT, DONE IN 1975, INFORMATION INCLUDED WITHIN THE REPORT SHOWS THAT EVEN THOUGH WATER MAY BE APPLIED TO CROPS IN EXCESS OF THE CONSUMPTIVE IRRIGATION REQUIREMENT THERE IS NO ACTUAL DIMINISHMENT OF WATER SINCE THE EXCESS PERCOLATES DOWNWARD, ENTERS THE GROUND WATER SYSTEM AND MOVES INTO THE LEMHI RIVER AT A LATER DATE, AUGMENTING LOW SUMMER TIME FLOWS. THEREFORE, IT IS ESSENTIALLY THE SAME AS ARTIFICIAL RECHARGE IN THE GROUND WATER SYSTEM.

ADDITIONALLY, E.G. CROSTHWAITE IN HIS OPEN FILE REPORT ON THE WATER RESOURCES OF THE UPPER LEMHI VALLEY STATES THAT "PRACTICALLY ALL THE WATER WHICH PERCOLATES INTO THE GROUND MOVES TOWARD THE RIVER AND REAPPEARS IN NUMEROUS SEEPS AND SPRINGS IN THE FLOOD PLAIN OF THE LEMHI RIVER." IT BECOMES VERY APPARENT THAT THE WATER ENTERING THE ALLUVIAL FANS AND TERRACES ADJACENT TO THE VALLEY FLOOR AND THE WATER ENTERING THROUGH APPLICATION OF IRRIGATION WATER RECHARGES THE GROUND WATER SYSTEM AND THE TWO ARE INSEPARABLY RELATED.

THE FIRST DECREES ON BIG AND LITTLE TIMBER CREEK WERE COMPLETED IN JANUARY OF 1914. WE ASSUME THE OTHER TRIBUTARIES TO BE OF SIMILAR DATES.

THE WATER USERS ON 27 TRIBUTARIES HIRED ATTORNEYS AND GOT THE FOLLOWING GENERAL PROVISIONS IN THE 1982 ADJUDICATION:

- A. THE 3.0 ACRE-FOOT PER ACRE ORIGINALLY RECOMMENDED AS A VOLUME AT THE FIELD HEADGATE HAS ESSENTIALLY BEEN ELIMINATED. THE FINDINGS OF FACT AND CONCLUSIONS OF LAW NOW STATE THAT THE CONSUMPTIVE IRRIGATION REQUIREMENT (THE AMOUNT OF WATER REQUIRED TO RAISE ALFALFA OR WILD HAY IN THE LEMHI RIVER BASIN)

IS 1.45 AF-ACRE. THIS IS FACTUAL INFORMATION AND WILL NOT BE USED TO LIMIT DELIVERY OF WATER UNDER EXISTING RIGHTS AS WAS THE ORIGINAL CONCERN OF OBJECTORS. WATER WILL BE DELIVERED AS HISTORICALLY DONE- BY RATE OF DIVERSION (cfs or miners inch) to which the land is appurtenant.

- B. THE NORMAL IRRIGATION SEASON ORIGINALLY RECOMMENDED AS APRIL 1 TO NOVEMBER 1 HAS BEEN CHANGED TO MARCH 15 TO NOVEMBER 15 OF EACH YEAR WITH THE PROVISION THAT IN SOME CASES WATER HAS BEEN AND CAN BE APPLIED TO A BENEFICIAL USE OUTSIDE THE NORMAL IRRIGATION SEASON.
- C. THE USE OF "FLOOD WATER" or "HIGH WATER" CONCERN HAS BEEN RESOLVED BY ESSENTIALLY CHANGING THE ORIGINAL RECOMMENDATION TO SAY THAT THE EXISTING DECREED STREAMS AS LISTED IN CONCLUSIONS OF LAW #3 IN THE GREEN BOOK CAN OPERATE AS DISTINCT AND SEPARATE STREAMS FROM THE MAINSTREAM LEMHI RIVER PRIORITIES INCLUDING FUTURE APPROPRIATIONS ON THOSE PARTICULAR DECREED STREAMS SHOWN IN CONCLUSION OF LAW #3.

THIRTY YEARS LATER, AND THOUSANDS OF DOLLARS IN ATTORNEY FEES, WE HAD TO FORM LEMHI BASIN WATER USERS IN ORDER TO PROTECT THOSE RIGHTS. THE COURT SAID THE PRACTICE OF DIVERTING HIGH FLOWS IN THE LEMHI BASIN, IN ADDITION TO DIVERTING DECREED AND FUTURE WATER RIGHTS THAT MAY BE ESTABLISHED PURSUANT TO STATUTORY PROCEDURES OF THE STATE OF IDAHO, IS ALLOWED PROVIDED:

- A. THE WATERS SO DIVERTED ARE APPLIED TO BENEFICAL USE
- B. EXISTING DECREED RIGHTS AND FUTURE APPROPRIATIONS OF WATER ARE FIRST SATISFIED.

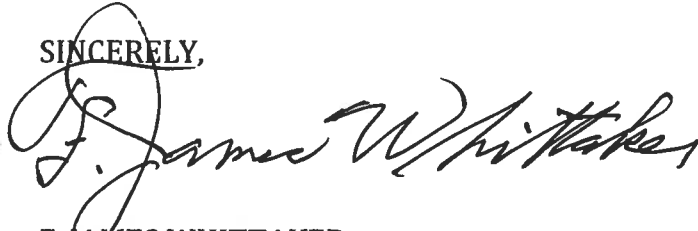
THE FOLLOWING GENERAL PROVISIONS ARE HEREBY DECREED TO BE APPLICABLE TO WATER RIGHTS IN BASIN 74:

- A. THE FOLLOWING WATER RIGHTS FROM THE FOLLOWING SOURCES OF WATER IN BASIN 74 SHALL BE ADMINISTERED SEPARATELY FROM ALL OTHER WATER RIGHTS IN BASIN 74 IN ACCORDANCE WITH THE PRIOR APPROPRIATION DOCTRINE AS ESTABLISHED BY IDAHO LAW.
- B. HIGH FLOWS ARE MEMORIALIZED WITH A GENERAL PROVISION AND DO NOT REQUIRE THE ADJUDICATION OF INDIVIDUALIED CLAIMS. ALTHOUGH HIGH WATER FLOWS ARE NOT CONSIDERED A WATER RIGHT, THEY CAN BE ALLOWED THROUGH A GENERAL PROVISION AS AN ANCILLARY USE TO AN EXISTING WATER RIGHT.

THESE DISTRICTS HAVE OPERATED 100 PLUS YEARS SATISFACTORILY. THEY HOLD RIGHTS TO ALL THE SURFACE WATERS, AND THE GROUND WATER WITHIN THEIR BORDERS COULD BE EASILY INCORPORATED. THEY SHOULD REMAIN SEPARATE FROM THE UMBRELLA DISTRICT 170.

IDAHO DEPARTMENT OF WATER RESOURCES DOES NOT HAVE THE RIGHT TO TAKE OVER A FUNCTIONING WATER DISTRICT AND VIRTUALLY ELIMINATE PREVIOUS JUDGES' ORDERS. TWO SEPARATE JUDGES OVER A THIRTY-FIVE YEAR PERIOD HAVE CONSISTANTLY RULED IN FAVOR OF THE WATER USERS OF BASIN 74, AND THE CREATION OF UMBRELLA DISTRICT 170 WOULD BE IN DIRECT VIOLATION OF THE RIGHTS SET FORTH BY THESE JUDGES.

SINCERELY,

A handwritten signature in black ink that reads "F. James Whittaker". The signature is written in a cursive style with a large, looping initial "F".

F. JAMES WHITTAKER  
WHITTAKER TWO DOT RANCH, LLC