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September 19, 2007

Honorable Gerald F. Schroeder
3216 Mountain View Drive
Boise, Idaho 83704

E-Mail: fcjschroeder@gmail.com

Re: *Status Conference - October 1, 2007 at 10:00 a.m.*
IDWR: Blue Lakes/Clear Springs Delivery Calls Proceedings

Dear Judge Schroeder:

This will respond to your Notice of Status Conference dated September 5, 2007, which indicated that any party desiring to have specific items addressed at the status conference should identify them in a letter sent to the Hearing Officer and copied to the parties of record based upon which an agenda will be developed. The following are items that IGWA requests be included in the agenda:

1. Informal Conference August 28, 2007. Subsequent to the August 28, 2007 hearing on the Spring Users' Motion for Protective Order and IGWA's Motion to Compel Discovery, the parties conducted an informal conference with the Hearing Officer addressing pre-hearing issues, including the role of the Department, the identification and use of Department witnesses, the presentation of expert testimony at the hearing and the applicability of the Department's relaxed evidentiary standard under Rule 600, the assignment of exhibit numbers and the withdrawal of IGWA's Summary Judgment Motion filed June 1, 2007. IGWA's proposed Minute Entry and Order submitted to the Hearing Officer addressed my understanding of what counsel agreed to on each of these matters as item numbers 4 through 8 as follows:

4. The parties shall identify their respective issues and positions in their pretrial briefs. Further, at the next status conference scheduled for October 1, 2007, the parties shall identify those Findings of Fact and

Conclusions of Law in the Director's prior Orders which they intend to challenge.

5. The Department shall make available its employees as witnesses; and, to the extent possible, all former employees involved in the preparation of the Director's Orders and the underlying basis therefor which are the subject matter of the upcoming hearing. It shall be the responsibility of the parties to identify the Department's employees and former employees desired as witnesses. The Scheduling Order establishing deadlines for submitting pre-filed expert testimony and exhibits and rebuttal testimony and exhibits shall not apply to the Department's employees and former employees, but all other scheduling deadlines shall remain applicable.
6. The Department's Rule 600, IDAPA 37.01.01.600, shall apply to the taking and evaluation of evidence.
7. All exhibits shall be consecutively numbered with the initial numbers assigned to each party as follows:
 - 100 - Department
 - 200 - Blue Lakes
 - 300 - Clear Springs
 - 400 - IGWA
 - 500 - Rangen, Inc.
 - 600 - Idaho Dairyman Association
8. IGWA's Summary Judgment Motion filed June 1, 2007, is withdrawn and the Hearing Officer is not inclined to pursue Summary Judgment Motions given the time frame.

These additional items were not set forth or addressed in the Hearing Officer's Order Re Discovery dated September 10, 2007. Accordingly, we would request that these items be again included in the agenda so that the parties can stipulate to the same to the extent they agree and raise objections to the extent they do not agree, with an appropriate record established to guide the parties with respect to further proceedings.

2. Findings of Fact/Conclusions of Law. At the informal conference August 28, you also requested that the parties identify the Findings of Fact and Conclusions of Law in the Director's prior Orders which they intend to challenge. IGWA's Exhibits 400A and 400 B set forth in detail each Finding of Fact and Conclusion of Law which IGWA supports and denies, together with the reasoning therefor.

3. IDWR Record. We desire a commitment by IDWR that a complete and accurate record of all information relied upon in support of the subject Orders of the Director has been produced.


4. Order Clarification. We desire to clarify and confirm that all previous Orders of the Director in the record are considered relevant, but should not have a presumption of validity.

5. Hearing Schedule. The Director's August 1, 2007 Order Approving Stipulation and Joint Motion for Rescheduled Hearing set the hearing to commence November 28, 2007. The order of presentation of witnesses by the Department and the parties should be determined to provide guidance in preparing for the hearing and scheduling witnesses. It also should be clarified and confirmed that the purpose of the hearing and scope of the testimony would be limited to the cross-examination of expert witnesses on their pre-filed direct and rebuttal testimony and exhibits, the cross-examination of lay witnesses who filed pre-filed testimony and exhibits, and direct testimony and cross-examination of lay witnesses who did not pre-file testimony. Accordingly, it is anticipated that all witnesses presenting pre-filed testimony would be called, sworn in, identify their pre-filed testimony and exhibits, provide any corrections, then tendered for cross-examination without additional new live testimony or live summaries of pre-filed testimony. Of course, the purpose of this is to establish a complete record, avoid redundancy and a lengthy hearing.

6. Deposition Scheduling. The parties desire and have been collaborating for the purpose of scheduling multiple depositions within the limited time frames available in the Surface Water Coalition case as well as in this case. The dates, times, places, payment of costs, formal notices of taking depositions duces tecum, and related matters need to be discussed, coordinated and established.

7. Surface Water Coalition Case. Most of the above and other issues to be discussed at the status conference on the Spring Users' delivery call case would be applicable to the Surface Water Coalition case. It is our understanding that a similar status conference may also be conducted on October 1 in the Surface Water Coalition case. Since most of the parties are involved in both cases, efficiency and judicial economy may permit both matters to be conducted simultaneously.

Respectfully submitted,



RANDALL C. BUDGE
Attorney for IGWA

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