

Steven B. Andersen (ISB #2618)
Jennifer Reinhardt-Tessmer (ISB #7432)
KIRTON McCONKIE
11th & Idaho Building
1100 W. Idaho St., Ste. 930
Telephone: (208) 370-3325
Facsimile: (208) 370-3324
sandersen@kmclaw.com
jtessmer@kmclaw.com

RAÚL R. LABRADOR
ATTORNEY GENERAL

SCOTT L. CAMPBELL
Chief of Energy and Natural Resources Division

GARRICK L. BAXTER, ISB No. 6301
MEGHAN M. CARTER, ISB No. 8863
Deputy Attorneys General
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098
Telephone: (208) 287-4800
Facsimile: (208) 287-6700
garrick.baxter@idwr.idaho.gov
meghan.carter@idwr.idaho.gov

Attorneys for Defendant

**IN THE DISTRICT COURT FOR THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

STRIDER CONSTRUCTION CO., INC.,

Plaintiff,

vs.

IDAHO WATER RESOURCE BOARD,

Defendant.

Case No. CV01-22-10932

**MEMORANDUM IN SUPPORT OF
DEFENDANT’S MOTION TO AMEND
SCHEDULING ORDER**

Idaho Water Resource Board (“IWRB”), by and through its counsel of record, Kirton McConkie, hereby submits this Memorandum in support of Defendant’s Motion to Amend

Scheduling Order. For the reasons set forth in further detail below, IWRB respectfully requests the Court enter an order amending the deadlines in the November 16, 2022 Scheduling Order.

Dates for trial and pre-trial conferences contained in scheduling orders “must not be modified except by leave of the court on a showing of good cause.” I.R.C.P. 16(a)(3). Other deadlines described in I.R.C.P. 16(a)(2)(B) (e.g., completing discovery, disclosing expert witnesses) “must not be modified except by leave of the court on a showing of good cause or by stipulation of all the parties and approval of the court.” I.R.C.P. 16(a)(3). Moreover, “the rules are to be liberally construed, and a just result is always the ultimate goal to be accomplished.” *Sines v. Blaser*, 566 P.2d 758, 762, 98 Idaho 435, 439 (1977). Trial courts’ decisions involving application of a “good cause” standard are “discretionary decisions.” *Phillips v. Eastern Idaho Health Services, Inc.*, 166 Idaho 731, 757, 463 P.3d 365, 391(2020).

As described in the attached Declaration of Jennifer Reinhardt-Tessmer, the lead attorney primarily retained by IWRB, has had a serious and unforeseeable medical issue arise. See Declaration of Jennifer Reinhardt-Tessmer in Support of Defendant’s Motion to Amend Scheduling Order (“Reinhardt-Tessmer Dec.”), at ¶ 2. This condition has required immediate treatment and will require ongoing treatment over the next few months. Reinhardt-Tessmer Dec. at ¶ 3. As a result, IWRB seeks a four-month extension of the trial date and other related deadlines in this case.

On June 2, 2023, the undersigned left a voice message for opposing counsel requesting stipulation to a four-month extension of the trial date and related deadlines. Reinhardt-Tessmer Dec. at ¶ 4. On June 5, 2022, the undersigned emailed opposing counsel requesting a response by 3:00 MDT on June 5. Reinhardt-Tessmer Dec. at ¶ 5. As of the filing of this motion, Counsel for Plaintiff has not responded to this request. Reinhardt-Tessmer Dec. at ¶ 5.

Based on the foregoing good cause, Defendant respectfully requests that the proposed Motion to Amend Scheduling Order, extending the trial date, pre-trial conference dates, and all other associated upcoming case deadlines by four months (approx. 120 days), be approved by the Court. Defendant also submits herewith proposed edits to the Court's scheduling order. *See Exhibit A.*

DATED this 5th day of June 2023.

KIRTON MCKONKIE

/s/ Jennifer Reinhardt-Tessmer

Jennifer Reinhardt-Tessmer

Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of June 2023, a true and correct copy of the foregoing was served by the method indicated below, and addressed to the following:

Lindsay (Taft) Watkins
Pro Hae Vice Admission Pending
Kristina Southwell
Pro Hae Vice Admission Pending
AHLERS CRESSMAN & SLEIGHT PLLC
1325 4th Ave., Suite 1850
Seattle, WA 98101
Telephone: (206) 287-9900

- U.S. Mail
- Facsimile: (208) 388-1300
- Hand Delivery
- Overnight Delivery
- iCourt E-File/Serve:
lindsay.watkins@acslawyers.com
kristina.southwell@acslawyers.com

John H. Guin
LAW OFFICE OF JOHN H. GUIN, PLLC
P.O. Box 31210
Spokane, WA 99223
Telephone: (509) 443-0709
Attorneys for Plaintiff Strider Construction Co., Inc.

- U.S. Mail
- Facsimile:
- Hand Delivery
- Overnight Delivery
- iCourt E-File/Serve:
john@guinlaw.com

Garrick L. Baxter
Meghan M. Carter
Deputy Attorneys General
Idaho Water Resource Board
P.O. Box 83720
Boise, Idaho 83720-0098
Telephone: (208) 287-4800
Attorneys for Defendant

- U.S. Mail
- Facsimile:
- Hand Delivery
- Overnight Delivery
- iCourt E-File/Serve:
garrick.baxter@idwr.idaho.gov
meghan.carter@idwr.idaho.gov

/s/ Jennifer Reinhardt-Tessmer
Jennifer Reinhardt-Tessmer

EXHIBIT A

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

STRIDER CONSTRUCTION CO., INC.,

Plaintiff,

vs.

IDAHO WATER RESOURCE BOARD,

Defendant.

Case No. CV01.22.10932

SCHEDULING ORDER

THIS MATTER came before the Court for scheduling of Trial, Pre-trial Conference, and other matters governing further proceedings;

THEREFORE, IT IS HEREBY ORDERED, as follows:

1) The above-entitled matter is set for further proceedings, as follows:

<u>Hearing Type</u>	<u>Date(s)</u>	<u>Time</u>
Pre-trial Status Conference	Tuesday, October 24, 2023 Tuesday, February 20, 2024	4:00 pm
Formal Pre-trial Conference	Tuesday, November 14, 2023 Tuesday, March 12, 2024	4:00 p.m.
Final Status Conference	Monday, November 27, 2023 Monday, March 25, 2024	8:30 a.m.
Trial	Monday, November 27, 2023 Monday, March 25, 2024	9:00 a.m.

2) NOTICE OF INTENT TO RELY ON PANEL OF JUDGES AS ALTERNATES: Due to multiple settings, criminal calendar, and/or cases with higher priority, Judge Hoagland may not be the trial judge in this case. Therefore, notice is hereby given, pursuant to ICRP 40(d)(1)(g) that an alternate judge may be assigned to preside over the trial of this case. The following is a list of potential alternate judges:

Hon. Deborah A. Bail
Hon. Roger Burdick
Hon. Cheri C. Copsey
Hon. Bradley Ford
Hon. Richard Greenwood
Hon. Joel Horton
Hon. Thomas Neville

Hon. Thomas Ryan
Justice Gerald Schroeder
Hon. Darla Williamson
Hon. Ronald Wilper
Hon. Barry Wood
All Sitting Fourth District Judges

Unless a party has previously exercised their right to disqualification without cause under Rule 40(d)(1), each party shall have the right to file one (1) motion for disqualification without cause as to any alternate judge not later than ten (10) days after service of this written notice listing the alternate judge.

3) TRIAL:

- a) This case is scheduled for trial for 12 days, commencing on ~~November 27, 2023~~ **Monday, March 25, 2024** at 9:00 a.m.
- b) A final status conference will be held on ~~November 27, 2023~~ **Monday, March 25, 2024** at 8:30 a.m. to address any final or last minute issues.
- c) The trial will be a jury trial.
- d) No proceedings will be held on Thursdays due to the Court's criminal calendar.
- e) Trials will start at 9:00 a.m. and end at 2:00 p.m. unless otherwise ordered.
- f) The trial date will not be continued except for good cause.
- g) If all parties desire a continuance of the trial date, this Court will only consider a motion to continue if all parties and all counsel sign the motion/stipulation personally.
- h) If a party fails to appear at trial, without good cause, such failure shall be sufficient ground for entry of judgment against such party or dismissal of the action of such party, with prejudice, without further notice.

4) PRE-TRIAL CONFERENCES:

- a) A **Pre-trial Status Conference** will be held on ~~October 24, 2023~~ **Tuesday, February 20, 2024** at 4:00 p.m.
- i) This informal conference will be held off the record in chambers. If counsel is not local, they may appear by phone, upon proper Notice by counsel indicating the phone number to call, or a by written stipulation filed to the court.
- ii) Counsel should be prepared to discuss (1) the likelihood of trial, (2) settlement possibilities, (3) past and future expectations according to the Scheduling Order, and (4) any other matters that could aid in the fair and efficient resolution of the case.
- b) The **Formal Pre-trial Conference** will be held in open court on the record on ~~November 14, 2023~~ **Tuesday, March 12, 2024** at 4:00 p.m.
- i) Failure to Appear. Each party shall appear in person and be represented by trial counsel or an attorney full knowledge of the case and with authority to bind the party by stipulation. If a party fails to appear at the Formal Pre-trial Conference without good cause, such failure shall be sufficient ground for entry of judgment against such party or dismissal of the action of such party, with prejudice, without further notice.
- ii) Attorney Conference. Counsel for Plaintiff shall convene an attorneys' conference not later than one week (7 days) before the Formal Pre-trial Conference to exchange marked exhibits, exchange witness lists, identify any foundational objections to exhibits or witnesses, stipulate to uncontested facts, explore settlement possibilities, and address all matters set forth in IRCP 16(c)(2).
- iii) Topics of Discussion. Counsel shall be prepared to discuss settlement possibilities, and all items set forth in IRCP16(c)(2):
- (1) the status of mediation or ADR;
 - (2) the disposition of any pending motions;
 - (3) the possibility of obtaining admissions of fact;
 - (4) stipulations regarding the authenticity of exhibits;
 - (5) the advisability of any advanced rulings from the court concerning the admissibility of evidence;
 - (6) the avoidance of unnecessary proof and of cumulative evidence;
 - (7) the necessity of amendments to the pleadings pursuant to Rule 15(b);
 - (8) the formulation and simplification of the issues to be presented at trial, including the elimination of abandoned or unsustainable claims and defenses;
 - (9) procedures for the handling of exhibits, in conformance with Idaho Court Administrative Rule 71;
 - (10) jury instructions and jury selection issues;
 - (11) the need for an interpreter for any party or witness;
 - (12) the need for pre-trial briefing, and filing deadlines, if necessary;
 - (13) the availability and use of any technology in the courtroom; and
 - (14) any other matter which would aid in the fair and efficient resolution of the case.
- iv) Trial Briefs: Each party must file a Trial Brief at least seven (7) days before the Formal Pre-trial Conference, that includes the following:
- (1) Elements of Plaintiff's case (Plaintiff¹),
 - (2) Defenses of Defendant's case (Defendant²)

¹ In this Order, "Plaintiff" includes any Plaintiff, Counterclaimant, and Third Party Plaintiff.

² In this Order, "Defendant" includes any Defendant, Counterdefendant, or Third Party Defendant.

- (3) Statement of uncontested, agreed or stipulated facts,
 - (4) Statement of contested facts,
 - (5) Contested issues of law,
 - (6) Evidentiary issues,
 - (7) Itemization of special damages (when appropriate), and
 - (8) Points and Authorities on issues of law
- v) Exhibit & Witness Lists. Each party must file Exhibit lists and Witness lists not later than the date of the Formal Pre-trial Conference. Witness lists shall briefly describe the subject matter of each witness's anticipated testimony.
- vi) Findings of Fact. If this case is a court trial, each party must file proposed findings of fact and conclusions of law not later than the date of the Formal Pre-trial Conference.
- vii) Jury Instructions. If this case is a jury trial, proposed jury instructions must be submitted not later than the date of the Formal Pre-trial Conference. IRCP 51(a). However, contrary to Rule 51(d), if counsel requests standard Idaho Civil Jury Instructions (IDJI) instructions, counsel should only submit a captioned document listing the requested instructions by number. Counsel need not submit the actual instructions with duplicates. If counsel requests modified instructions, counsel should submit only one copy of those requested instructions, as modified, clearly identifying the source upon which counsel relies for the instruction. Requested instructions should also be submitted to the court in digital Word format.

5) MOTION PRACTICE:

- a) The moving party shall contemporaneously file and serve the Motion, Affidavit(s) or other documentary evidence upon which the moving party intends to rely, and a separate Brief/Memorandum containing all the reasons and points and authorities relied upon by the moving party.
- b) Reply affidavits and briefs, and responses thereto, must comply with the deadlines in IRCP 7(b)(3)(B).
- c) Hearings on Motions should be scheduled through Judge Hoagland's Court Clerk via email, before a notice of hearing is filed.
- d) Any party who does not intend to oppose the motion should promptly file a pleading showing non-opposition.
- e) Counsel should comply with local rules, including page limitations in Local Rule 8.
- f) On motions for summary judgment, the alleged undisputed material facts must be documented, excerpted, or cited in the briefing. A separate statement of undisputed material facts is not necessary, but may be helpful in complex cases.
- g) Parties shall also send/deliver an electronic copy in Word format of any memorandum to Judge Hoagland's Staff Attorney at alane@adacounty.id.gov.

6) MOTION DEADLINES

- a) **Non-dispositive motions:**
 - i) 182 days (26 weeks) before trial is the last day to file motions to add additional parties to the lawsuit.
 - ii) 182 days (26 weeks) before trial is the last day to file a motion to amend the claims between existing parties to the lawsuit, including adding a claim for punitive damages.
 - iii) 119 days (17 weeks) before trial is the last day for filing motions for a physical or mental examination.
 - iv) All other non-dispositive motions (including motions *in limine*) must be filed and heard not later than twenty-eight (28) days before trial.
 - v) Exceptions may be granted, but only for good cause shown and in the interests of justice.
- b) **Dispositive motions:**
 - i) All motions for summary judgment or other dispositive motions must be filed at least ninety-eight (98) days (14 weeks) before trial (preferably sooner, if possible).
 - ii) No hearing on any motion for summary judgment will be permitted within sixty (60) days prior to trial.

7) EXPERT WITNESSES DISCLOSURES AND DEADLINES

- a) Plaintiff's experts:
 - i) 154 days (22 weeks) before trial is the last day for plaintiff to disclose each person plaintiff intends to call as an expert witness at trial and shall state the subject matter on which the witness is expected to testify, and shall disclose all information required by Rule 26(b)(4) IRCP regarding expert witnesses.

ii) 119 days (17 weeks) before trial, defendant shall complete any depositions of the plaintiff's initial expert witnesses.

b) Defendant's experts:

i) 119 days (17 weeks) before trial is the last day for defendant to disclose each person defendant intends to call as an expert witness at trial and shall state the subject matter on which the witness is expected to testify, and shall disclose all information required by Rule 26(b)(4) IRCP regarding expert witnesses.

ii) 63 days (9 weeks) before trial, plaintiff shall complete any depositions of the defendant's initial expert witnesses.

c) Plaintiff's rebuttal experts:

i) 63 days (9 weeks) before trial is the last day for plaintiff to disclose each person plaintiff intends to call as an expert witness at trial to rebut new information or issues disclosed or raised by the defendant, and shall disclose all information required by Rule 26(b)(4) IRCP regarding the rebuttal expert witnesses.

ii) 42 days (6 weeks) before trial, defendant shall complete any depositions of the plaintiff's rebuttal expert witnesses.

8) LAY WITNESS DISCLOSURES AND DEADLINES

a) 119 days (17 weeks) before trial is the last day for plaintiff to disclose each person plaintiff intends to call as a lay witness at trial (excluding impeachment witnesses).

b) 91 days (13 weeks) before trial is the last day for defendant to disclose each person defendant intends to call as a lay witness at trial (excluding impeachment witnesses).

c) 63 days (9 weeks) before trial is the last day for plaintiff to disclose each lay witness (excluding impeachment witnesses) plaintiff intends to call at trial to rebut new information or issues disclosed or raised by the defendant.

d) 42 days (6 weeks) before trial, all parties shall complete any depositions of lay witnesses.

9) WRITTEN DISCOVERY DEADLINES

a) 77 days (11 weeks) before trial is the last day to serve written discovery requests (interrogatories, requests for production, requests for admissions, and requests to permit entry upon land or other property).

b) 42 days (6 weeks) before trial, all parties must serve any and all final and supplemental responses to discovery and expert disclosures.

10) EXHIBITS:

a) The original set of pre-marked trial exhibits, plus one paper copy, must be provided to the Court not later than the beginning of trial.

b) Exhibits should be pre-marked prior to opening of court. Unless otherwise indicated, Plaintiff's exhibits should be identified numerically and Defendant's exhibits should be identified alphabetically.

c) All videotape or audiotape presentations must be cued in advance and all equipment tested for sound, picture, etc., prior to presenting evidence contained therein.

d) The parties are responsible for reviewing proposed exhibits for redactions to ensure that objectionable material is not seen by the jury.

e) Electronic pdf or jpg copies of exhibits may be produced to the Court by email attachment, or on CD or flash drive.

11) MEDIATION: If the parties agree to mediation, then such mediation shall begin at least 60 days prior to trial. Unless otherwise agreed in writing between the parties, the cost of mediation shall be equally divided among the parties.

12) AMENDMENTS: The parties may seek amendment hereof by Court order, and to request further hearing or status conference for such purpose, in accordance with IRCP16(a).

13) COMPLIANCE AND SANCTIONS: In the absence of a written stipulation providing otherwise, a party may be excused from strict compliance with any provision of this Order only upon motion showing extraordinary circumstances and good cause, and lack of prejudice to the timely administration of justice. Failure to strictly comply with this Order may subject a party or its attorney to appropriate sanctions under Rule 16, including, but not limited to costs and reasonable attorney fees, exclusion of witnesses, evidence or testimony, or the dismissal of claims or striking of defenses, with prejudice.

IT IS SO ORDERED.



SAMUEL A. HOAGLAND
District Judge

11/15/2022 5:45:08 PM

DATE

CERTIFICATE OF MAILING

I hereby certify that on 11/16/2022 4:38:38 PM, I mailed (served) a true and correct copy of the within instrument

to:

John Guin
Attorney at Law
john@guinlaw.com

Lindsay Watkins
Kristina Southwell
Attorneys at Law
lindsay.watkins@acslawyers.com
kirstina.sourthwell@aclawyers.com

Meghan Carter
Deputy Attorney General
Meghan.carter@idwr.idaho.gov

Steven Anderson
Jennifer Reinhardt-Tessmer
Attorneys at law
sanderson@kmclaw.com
jtessmer@kmclaw.com

PHIL MCGRANE
Clerk of the District Court

By: _____

Deputy Court Clerk

