

Thomas A. Banducci (ISB 2453)
Jennifer Reinhardt-Tessmer (ISB 7432)

KIRTON MCCONKIE

11th & Idaho Building
1100 W. Idaho St., Ste. 930
Telephone: (208) 370-3325
Facsimile: (208) 370-3324
tbanducci@kmclaw.com
jtessmer@kmclaw.com

RAÚL R. LABRADOR
ATTORNEY GENERAL

SCOTT L. CAMPBELL
Chief of Energy and Natural Resources Division

GARRICK L. BAXTER (ISB 6301)
MEGHAN M. CARTER (ISB 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 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

**DECLARATION OF JENNIFER
REINHARDT-TESSMER IN
SUPPORT OF DEFENDANT'S THIRD
MOTION TO AMEND SCHEDULING
ORDER**

STATE OF IDAHO)

: ss.

County of Ada)

Jennifer Reinhardt-Tessmer, being first duly sworn upon oath, deposes and says:

1. I am an attorney with Kirton McConkie, counsel of record for Defendant, Idaho Water Resource Board. I am over the age of 18 and base this declaration on my personal knowledge.

2. On December 8, 2023, I had a phone conference with opposing counsel in which I relayed that unstable infrastructure and space limitations would prevent our expert's windhammer surface testing, which now could not occur until sometime in February when apron repairs were estimated to be complete. In that conversation, I stated Strider's coring testing could proceed in December or wait until February; however, IWRB did not believe the coring testing was reliable for the purposes of the case.

3. In the same December 8, 2023 conversation I requested an extension of the trial date and related deadlines to accommodate our expert's February testing, explaining that I had reviewed the case deadlines and given how condensed the deadlines were between now and trial, I did not see a way to otherwise modify the trial calendar.

4. My December 8, 2023 conversation with opposing counsel was confirmed by email attached hereto as **Exhibit A**.

5. I provided additional details regarding the unanticipated discovery of the extent of a large void IWRB asserts was created by Strider and resulting instability of the dam infrastructure to opposing counsel on December 14, 2023 via email correspondence attached hereto as **Exhibit B**.

6. On December 11, 2023, Strider's counsel responded that it intended to proceed with its concrete coring testing in December and would oppose any modification to the trial date. A copy of that correspondence is attached hereto as **Exhibit C**.

7. On December 14 and 15, I exchanged further correspondence with Strider's counsel explaining the extent of the anticipated void would require IWRB's new contractor, Northbank, to assess the extent of the void and compose a repair plan, which it estimates to complete by the third week in January. The repair plan will have estimated dates for completion of repairs to the void and apron. That correspondence is attached hereto as **Exhibit D.**

DATED this 15th day of December 2023.

KIRTON MCCONKIE

/s/ Jennifer Reinhardt-Tessmer
Jennifer Reinhardt-Tessmer
Attorney for Defendant

EXHIBIT A

From: [Jennifer Reinhardt-Tessmer](#)
To: [Nicholas Korst](#); [Lindsay Watkins](#); [Joe Meuleman](#)
Cc: [Thomas Banducci](#); [Carter, Meghan](#); [Madison Hyland](#)
Subject: Strider v. IWRB - Upcoming evidence inspection and trial dates
Date: Friday, December 8, 2023 12:56:00 PM
Attachments: [image001.png](#)

Nick,

To confirm our discussion today, I am still waiting to hear back on our respective testing plans from dam safety, but as of now, I am planning on proceeding on 12/20 with our geophysics testing. As we discussed, we recently learned that the current contractor, in trying to correct and stabilize the infrastructure, and correct issues in a timely manner, has utilized space as sediment retention area, which will prevent us from conducting our windhammer surface testing of the concrete until February, when the apron work is completed. While your concrete coring testing can proceed in Dec. as originally planned (assuming your plan is approved), we do not believe this is a reliable test for our purposes, and as such, we will need to wait until February to conduct our test. Given the impending disclosure deadlines, and our need for our expert to conduct the testing to inform his opinions, I am seeking a stipulation to extend the trial and all related deadlines (including expert deadlines) by 8 weeks. Please advise if you will so stipulate. Thank you.

Jennifer



Boise Office
1100 W. Idaho St., Ste. 930
Boise, ID 83702
kirtonmccconkie.com

Jennifer Reinhardt-Tessmer
Shareholder

d 208.370.3323
m [208.957.3939](tel:208.957.3939)
jtessmer@kmclaw.com


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EXHIBIT B

From: [Jennifer Reinhardt-Tessmer](#)
To: [Nicholas Korst](#); [Lindsay Watkins](#); [Joe Meuleman](#)
Cc: [Thomas Banducci](#); [Carter, Meghan](#); [Madison Hyland](#)
Subject: RE: Strider v. IWRB - Upcoming evidence inspection and trial dates
Date: Thursday, December 14, 2023 6:52:00 AM
Attachments: [image002.png](#)
[image003.png](#)

Nick,

I obtained additional information as to the state of unstable infrastructure referenced below. I am told the suspected void beneath the dam was discovered to be larger than anticipated (as our experts will see when they are there next week). Such a large void sacrifices the stability of the dam and prevents our expert from conducting his surface strength concrete testing until they complete repairs. Those repairs are estimated to take place in late Feb.


Jennifer Reinhardt-Tessmer
Shareholder
d 208.370.3323
m 208.957.3939

From: Jennifer Reinhardt-Tessmer
Sent: Friday, December 8, 2023 12:56 PM
To: Nicholas Korst <nicholas.korst@acslawyers.com>; Lindsay Watkins <lindsay.watkins@acslawyers.com>; Joe Meuleman <jmeuleman@meulemanlaw.com>
Cc: Thomas Banducci <tbanducci@kmclaw.com>; Carter, Meghan <Meghan.Carter@idwr.idaho.gov>; Madison Hyland <mhyland@kmclaw.com>
Subject: Strider v. IWRB - Upcoming evidence inspection and trial dates

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 | **Jennifer Reinhardt-Tessmer**

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kirtonmccconkie.com

Shareholder

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m [208.957.3939](tel:208.957.3939)
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EXHIBIT C

From: [Jennifer Reinhardt-Tessmer](#)
To: [Nicholas Korst](#); [Lindsay Watkins](#); [Joe Meuleman](#)
Cc: [Thomas Banducci](#); [Carter, Meghan](#); [Madison Hyland](#)
Subject: RE: Strider v. IWRB - Upcoming evidence inspection and trial dates
Date: Monday, December 11, 2023 5:36:00 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)

Nick –

I will let you know as soon as I hear back on your proposed plan – I did follow up today and it's in the process of being reviewed. I did review the case deadlines to determine if modification was possible without pushing the trial date, but as I relayed in our conversation, we are up too close against the trial date as it is with pending deadlines to allow a reasonable modification without continuance of the trial date. If you have a specific proposal that would allow the February testing while preserving the trial date that I'm not considering, please let me know.

Jennifer


Jennifer Reinhardt-Tessmer
Shareholder
d 208.370.3323
m 208.957.3939

From: Nicholas Korst <nicholas.korst@acslawyers.com>
Sent: Monday, December 11, 2023 3:43 PM
To: Jennifer Reinhardt-Tessmer <jtessmer@kmclaw.com>; Lindsay Watkins <lindsay.watkins@acslawyers.com>; Joe Meuleman <jmeuleman@meulemanlaw.com>
Cc: Thomas Banducci <tbanducci@kmclaw.com>; Carter, Meghan <Meghan.Carter@idwr.idaho.gov>; Madison Hyland <mhyland@kmclaw.com>
Subject: RE: Strider v. IWRB - Upcoming evidence inspection and trial dates

CAUTION: EXTERNAL

Jennifer,

As discussed on the call, Strider intends to proceed with its GPR and coring on December 20-21. Please provide confirmation as soon as possible from Dam Safety, as several people on behalf of Strider have made travel arrangements to be present for this work/inspection. With regard to your request to continuing the trial date again for inspection purposes, Strider will not stipulate and will oppose any such motion. Trial is scheduled to start on June 17, 2024 and discovery cutoff is not until May 6, 2024. Performing a probe test (Strider disagrees such a test is more reliable than an analysis of core samples) in late February does not necessitate yet another trial continuance. Strider is willing to discuss a reasonable modification to certain case schedule deadlines if warranted, but not a continuance of the trial date.

Thanks.



Nick Korst

nicholas.korst@acslawyers.com

AHLERS CRESSMAN & SLEIGHT PLLC

Direct: 206.388.1855 | Cell: 206.618.3944 | Conference: 888.827.9225 Passcode: 324595

1325 4th Ave Suite 1850

Seattle WA 98101

www.acslawyers.com

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From: Jennifer Reinhardt-Tessmer <jtessmer@kmclaw.com>

Sent: Friday, December 8, 2023 11:56 AM

To: Nicholas Korst <nicholas.korst@acslawyers.com>; Lindsay Watkins <lindsay.watkins@acslawyers.com>; Joe Meuleman <jmeuleman@meulemanlaw.com>

Cc: Thomas Banducci <tbanducci@kmclaw.com>; Carter, Meghan <Meghan.Carter@idwr.idaho.gov>; Madison Hyland <mhyland@kmclaw.com>

Subject: Strider v. IWRB - Upcoming evidence inspection and trial dates

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kirtonmccconkie.com

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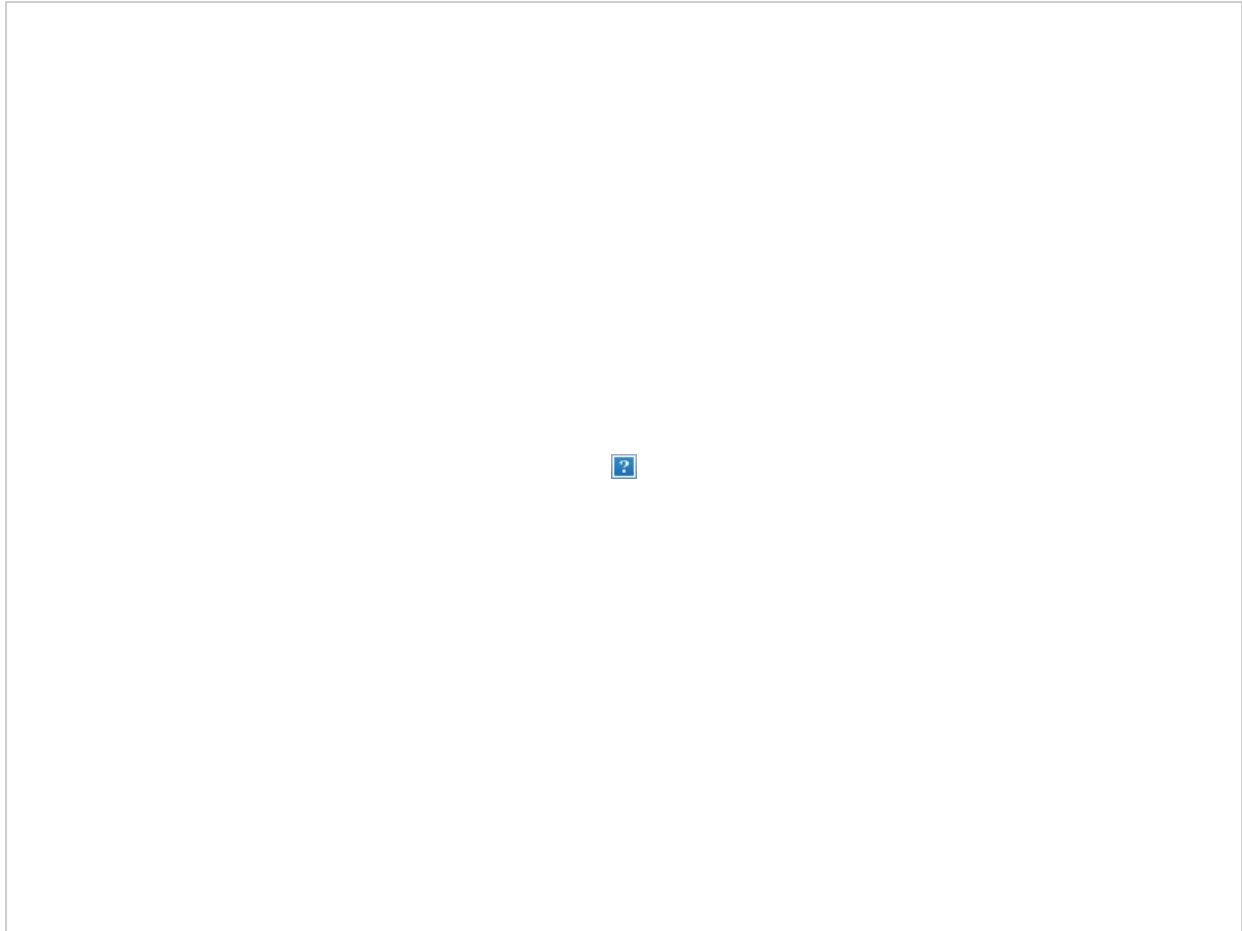
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EXHIBIT D

From: [Jennifer Reinhardt-Tessmer](#)
To: [Nicholas Korst](#); [Lindsay Watkins](#); [Joe Meuleman](#)
Cc: [Thomas Banducci](#); [Carter, Meghan](#); [Madison Hyland](#)
Subject: RE: Strider v. IWRB - Upcoming evidence inspection and trial dates
Date: Friday, December 15, 2023 10:21:00 AM
Attachments: [image005.png](#)
[image007.png](#)
[image008.png](#)
[image009.png](#)

Nick –

Northbank discovered the void is larger than anticipated. They can run tape 10-15 feet at the corner before they lose their tape and measurement perpendicular to the slap/joint length is approximately 6 feet.



A person in a hard hat measuring rocks Description automatically generated

Our expert will be bringing a camera to further assess next week. Because of the extent of the void, Northbank is going to need time to assess the full impacts and put together a repair plan for IWRB, which it anticipates completing the third week in January. The hope is the plan can be implemented and repairs can be complete by the end of February to stabilize the dam in order to permit our expert to conduct his concrete testing. However, without knowing the full extent of the void, and the corresponding repair plan, I can't say for certain whether the concrete testing can proceed in Feb. or whether it will be later. Given this, I cannot agree to simply delay reports until the end of March, particularly given other impending deadlines it will impact including a 5/6 cutoff for depositions. IWRB will be significantly prejudiced if it is not afforded an opportunity to fully evaluate the damage and cost of repair for this mess Strider created, and given this development, it's going to take time for the contractor and our expert to do so. As such, I don't see any other way than to wait for the repair plan in Jan. and then we'll know with more clarity when we can get in for our inspection and set dates accordingly.

Jennifer

Jennifer Reinhardt-Tessmer

Shareholder

d 208.370.3323

m 208.957.3939

From: Nicholas Korst <nicholas.korst@acslawyers.com>

Sent: Thursday, December 14, 2023 2:03 PM

To: Jennifer Reinhardt-Tessmer <jtessmer@kmclaw.com>; Lindsay Watkins <lindsay.watkins@acslawyers.com>; Joe Meuleman <jmeuleman@meulemanlaw.com>

Cc: Thomas Banducci <tbanducci@kmclaw.com>; Carter, Meghan <Meghan.Carter@idwr.idaho.gov>; Madison Hyland <mhyland@kmclaw.com>

Subject: RE: Strider v. IWRB - Upcoming evidence inspection and trial dates

CAUTION: EXTERNAL

Jennifer,

Can you provide any additional information as to your contention the void is larger than anticipated? Who discovered? How was it discovered? Was it documented? Any evidence to confirm the size of void?

With regard to IWRB's planned February inspection, we previously agreed on a mutual exchange of expert reports to support affirmative claims, followed by a mutual exchange of rebuttal expert reports to take place two weeks later (see emails of August 16, 2023). Under the previous agreement, the expert reports were to be provided approximately 2.5 months prior to the previously scheduled February trial. We propose a nearly identical agreement now, which would accommodate IWRB's February Windsor probe inspection. We propose the following exchange of expert reports:

March 29, 2024: Expert reports to support affirmative claims.

April 12, 2024: Rebuttal expert reports.

May 6, 2024: Deadline to take expert depositions.

These agreed dates would not impact the overall schedule, and any related deadlines to experts could easily be revised accordingly. The proposed dates accommodate IWRB's requested inspection while also avoiding delaying the trial, which would further prejudice Strider.

Thanks.



Nick Korst

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From: Jennifer Reinhardt-Tessmer <jtessmer@kmclaw.com>

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