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Department of Water Resources
Eastern Region

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

May 24, 2007

Gordon S. Thatcher
Thatcher Law Office, PLLC
P.O. Box 216
116 S. Center St.
Rexburg, ID 83440

Re: SRBA subcase no. 22-628A Browning

Dear Mr. Thatcher:

This will confirm our telephone conversation yesterday afternoon following the conclusion of the hearing on two motions to amend claims in the adjudication of the above-referenced subcase. During the call, I explained that Trent Galbraith, the Idaho Department Water of Resources ("IDWR") agent assigned to this subcase, would begin working on an amended director's report for the amended claim which motion was granted. The Court called it Motion No. 1, and it concerns a priority date of 1917 and 286 acres of place of use. The basis of that amended claim is the Neeley-Browning Decree ("Decree"). As we discussed, because the Decree applies to sections 29 and 32 of the property at issue, and not section 33 of your clients' property, IDWR will not recommend water rights for section 33 based on the Decree in the forthcoming amended director's report. To that end, we also discussed an anticipated motion for late claim, specifically the possibility of seeking a beneficial use right for the 65 acres in section 33 which were originally claimed.

The second motion for amended claim, what the Court called Motion No. 2 and which references priority date of 1905 and 126 acres of place of use, is based on License No. 1505, dated November 15, 1913 ("License"). Because the Decree was subsequent to the License and encompasses the "respective rights and interests in the water rights" of the parties to the Decree, the Decree supersedes the License because they both cover the same ground and source. Therefore, Trent will determine any water rights to which your clients are entitled based on the Decree (acres in sections 29 and 32) in the processing of the amended claim and not in a late claim. As I explained, however, IDWR may recommend, in matters like these, a water right as a beneficial use with a priority

subsequent to the date of entry of the decree. In this subcase, that may mean the earliest priority for the 65 acres in section 33 could be May 22, 1954, the day after the Decree was signed. Trent will consider all evidence you provide as to priority date, though, so he may arrive at an earlier priority date than 1954 based upon evidence submitted. We discussed the above as a sharing of information and not as any promise of water right. It will be up to Trent to determine the elements of any late claim your clients may wish to file.

In addition, we touched on the fees for the above-referenced procedures. Upon receipt of the checks from the SRBA Court, IDWR will determine what additional fee, if any, is owed for the amended claim and will report the same to you. You are welcome to contact Trent if you have additional questions as to the fee for the late claim.

Please contact me immediately if the above summary does not comport with your recollection of our discussion.

Sincerely,


Andrea L. Courtney

cc: Trent Galbraith