

Keen, Shelley

From: Keen, Shelley
Sent: Monday, May 18, 2020 4:22 PM
To: 'Price, Fredric W'; McHugh Bromley; Norman M. Semanko
Cc: Chris Bromley; Hummer, Phill; Hersley, Jean; Scott King
Subject: RE: [EXTERNAL] Re: In the Matter of 67-15333 - Double C & J - Status Conference

Fred, Candice, and Norm,

Thank you for the responses. Since all the parties agree on June 29-30 for the hearing and on advancing the witness/exhibit date to June 15, I'll issue a new scheduling order with those changes. We can forego the status conference.

Regards.

Shelley Keen
Water Allocation Bureau Chief
Idaho Dept. of Water Resources
208-287-4947
shelley.keen@idwr.idaho.gov

From: Price, Fredric W [<mailto:fwprice@blm.gov>]
Sent: Monday, May 18, 2020 3:13 PM
To: McHugh Bromley <cmchugh@mchughbromley.com>; Norman M. Semanko <NSemanko@parsonsbehle.com>
Cc: Keen, Shelley <Shelley.Keen@idwr.idaho.gov>; Chris Bromley <cbromley@mchughbromley.com>; Hummer, Phill <Phill.Hummer@idwr.idaho.gov>; Hersley, Jean <Jean.Hersley@idwr.idaho.gov>; Scott King <SKing@spfwater.com>
Subject: Re: [EXTERNAL] Re: In the Matter of 67-15333 - Double C & J - Status Conference

BLM concurs with the proposal of moving the hearing to June 29-30, and advancing the witness/exhibit date to June 15th.

Fredric W. Price
Water Rights Specialist
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Boise, Idaho 83709-1657
(208) 373-3831
fwprice@blm.gov

From: McHugh Bromley <cmchugh@mchughbromley.com>
Sent: Monday, May 18, 2020 3:11 PM
To: Norman M. Semanko <NSemanko@parsonsbehle.com>
Cc: Price, Fredric W <fwprice@blm.gov>; Keen, Shelley <Shelley.Keen@idwr.idaho.gov>; Chris Bromley <cbromley@mchughbromley.com>; Hummer, Phill <Phill.Hummer@idwr.idaho.gov>; Hersley, Jean

<Jean.Hersley@idwr.idaho.gov>; Scott King <SKing@spfwater.com>

Subject: [EXTERNAL] Re: In the Matter of 67-15333 - Double C & J - Status Conference

I actually meant to make it 14 days just messed up the dates!

Thanks.

Candice M. McHugh

On May 18, 2020, at 2:46 PM, Norman M. Semanko <NSemanko@parsonsbehle.com> wrote:

We are fine with a June 29-30 hearing. Let's please make the witness and exhibits deadline June 15, 14 days before the hearing, however. Please let us know if that works and whether we can forego the need for a status conference.

Thank you.

Norm

From: C McHugh <cmchugh@mchughbromley.com>

Sent: Monday, May 18, 2020 1:53 PM

To: Norman M. Semanko <NSemanko@parsonsbehle.com>; Fredric Price <Fredric.Price@blm.gov>; Keen, Shelley <Shelley.Keen@idwr.idaho.gov>

Cc: Chris Bromley <cbromley@mchughbromley.com>; Hummer, Phill <Phill.Hummer@idwr.idaho.gov>; Hersley, Jean <Jean.Hersley@idwr.idaho.gov>; Scott King <SKing@spfwater.com>

Subject: RE: In the Matter of 67-15333 - Double C & J - Status Conference

Chris and I discussed. We are available the 29-30. I would suggest to then also postpone the witness and exhibit exchange, which gives us all the a better chance to meet in person with our clients prior to that. I think we exchange the witness and exhibits on the 11th.

We really want our clients to be there in person, if possible.

Would that be agreeable? If so, then I think can probably do without the status hearing this week.

From: Norman M. Semanko [mailto:NSemanko@parsonsbehle.com]

Sent: Monday, May 18, 2020 9:31 AM

To: 'C McHugh' <cmchugh@mchughbromley.com>; 'Fredric Price@blm.gov' <Fredric.Price@blm.gov>; Keen, Shelley <Shelley.Keen@idwr.idaho.gov>

Cc: 'Chris Bromley' <cbromley@mchughbromley.com>; Hummer, Phill <Phill.Hummer@idwr.idaho.gov>; Hersley, Jean <Jean.Hersley@idwr.idaho.gov>; Scott King <SKing@spfwater.com>

Subject: RE: In the Matter of 67-15333 - Double C & J - Status Conference

Mr. Hearing Officer,

In further response to your email, I have spoken with my client about this matter. Given the Governor's staged reopening approach and the Director's Plan, as well as the practical need to be in the same room with our client, expert witness and other witnesses, with the ability to speak to one another, pass notes

and otherwise communicate, we strongly prefer rescheduling the June 11-12 hearing to Stage 4 or beyond (Option 2). Both of the bench trials that I had scheduled during May were postponed for these same reasons, rather than being held remotely. We feel that is the fair and prudent course here, as well. Fortunately, this does not need to be a long delay, given that Stage 4 begins the following week. We are available for the hearing on June 15-16 or June 29-30. We will also be prepared to discuss later dates during the status conference, if necessary to accommodate everyone's schedules and allow for an in-person hearing.

Thank you.

Norm

From: Norman M. Semanko <NSemanko@parsonsbehle.com>
Sent: Wednesday, May 13, 2020 3:12 PM
To: 'C McHugh' <cmchugh@mchughbromley.com>; 'Fredric Price@blm.gov' <Fredric.Price@blm.gov>; Keen, Shelley <Shelley.Keen@idwr.idaho.gov>
Cc: 'Chris Bromley' <cbromley@mchughbromley.com>; Hummer, Phill <Phill.Hummer@idwr.idaho.gov>; Hersley, Jean <Jean.Hersley@idwr.idaho.gov>
Subject: Re: In the Matter of 67-15333 - Double C & J - Status Conference

May 22 works best for a status conference. May 21 at 3:00 could also work. I am booked up on the morning of the 21st. Thank you.

Norm



A Professional
Law Corporation

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From: Keen, Shelley <Shelley.Keen@idwr.idaho.gov>
Sent: Wednesday, May 13, 2020 1:49:43 PM
To: Norman M. Semanko <NSemanko@parsonsbehle.com>; 'C McHugh' <cmchugh@mchughbromley.com>; 'Fredric Price@blm.gov' <Fredric.Price@blm.gov>
Cc: 'Chris Bromley' <cbromley@mchughbromley.com>; Hummer, Phill <Phill.Hummer@idwr.idaho.gov>; Hersley, Jean <Jean.Hersley@idwr.idaho.gov>
Subject: In the Matter of 67-15333 - Double C & J - Status Conference

Candice, Norm, and Fred,
I'd like to have a brief status conference by phone to discuss the hearing for Application 67-15333. If Idaho progresses through Governor Little's stages of reopening as hoped, the hearing will be during Stage Three. Yesterday Director Spackman issued a *COVID-19 2020 Return to Work Plan* ("Plan") describing how IDWR will function during each reopening stage. The Stage Three section of the Plan states, "In person, face-to-face meetings will be discouraged. Employees hosting meetings should

schedule teleconferencing. In-person meetings of 10 people or less are permissible in IDWR conference rooms if a six foot separation between participants can be maintained.” The Plan also states, “The document will be amended as Idaho rebounds through each of the four stages.” Therefore, it’s possible that the Stage Three meeting guidance in the Plan could change.

The item I want to discuss with you is when and how your clients want to conduct the hearing. I see our options as follows:

1. Hold the hearing on June 11, 2020, as scheduled. Limit participation, or at least the number of room occupants, to 10 people. The conference rooms are big enough that 10 people can accomplish the recommended physical distancing fairly easily. I was hoping to involve three IDWR staff members, including myself, but I could limit our participation to two, if necessary.
2. Postpone the hearing until Stage Four or beyond. The Plan’s Stage Four guidance allows for meetings of 1-50 people “if a six foot separation between participants can be maintained.” The conference rooms we have reserved could probably be configured to accomplish the recommended physical distancing fairly easily for about 15 people.
3. Hold the hearing by telephone. I’ve not managed an entire hearing by telephone before, but I’m willing to try. An advantage of this option is that it is not dependent on Idaho’s progression to Stage Three. One challenge might be ensuring the quality of the audio recording. Another might my ability to manage the flow of communication when more than one person wants to speak. I’m confident we can overcome those challenges.
4. A hybrid process where some participants, probably witnesses, are on the phone while some of us are in the hearing room. I’ve done this once before. In that case, one of the witnesses testified by telephone, and the recording was audible.
5. Wait until early in June to decide.

Going into the discussion, my preference will be #2 -- postpone the hearing until we can gather in one room and conduct the process more-or-less as we’ve conducted hearings in the past. It presents the fewest technical and procedural challenges and is consistent with the Governor’s direction to limit gatherings of people.

My second preference will be #4 – having some of the participants join us by phone. Having the attorneys in the room and witnesses on the phone will limit the gathering while allowing me to manage the flow of communication.

My suggested times for a status conference are:

1. May 21, 2020, at 10:00 am.
2. May 21, 2020, at 3:00 pm.
3. May 22, 2020, at 10:30 am.

Please email me by the end of business on May 18, 2020, to let me know what time or times work best for you. If your client already prefers one of the options listed above, please include the preference in your response.

Regards,

Shelley Keen

208-287-4947

Shelley.keen@idwr.idaho.gov