

Cefalo, James

From: Cefalo, James
Sent: Thursday, June 02, 2016 12:21 PM
To: 'Rob Harris'; Vonde, Ann; Rick Sager; carlellsworth@me.com; Lowell Cerise
Cc: Bassista, Tom (thomas.bassista@idfg.idaho.gov); Clark, Cynthia (Bridge); Cassel, Amy
Subject: RE: 74-16008 Herbst Hearing

Dear Parties:

I don't have any concerns with the proposed settlement conditions. They are identical to or similar to conditions that are included on water rights throughout the state. It appears that IDFG and LID are now prepared to withdraw their protests. IWRB and Herbst will then move forward with a hearing on the limited issue of subordination protection under the USFS Wild and Scenic water right. In her original email, Ann asked about limited discovery prior to hearing. I will address Ann's request for limited discovery in a separate email to Rob and Ann.

Thanks,

James

From: Rob Harris [mailto:rharris@holdenlegal.com]
Sent: Wednesday, June 01, 2016 5:47 PM
To: Vonde, Ann; Rick Sager; carlellsworth@me.com; Lowell Cerise
Cc: Bassista, Tom (thomas.bassista@idfg.idaho.gov); Clark, Cynthia (Bridge); Cassel, Amy; Cefalo, James
Subject: RE: 74-16008 Herbst Hearing

All:

Attached for your review is a draft stipulation on the Herbst matter. In preparing the stipulation, there was a proposed condition that is generally standard, but in the context of this matter, should not be included. It is this condition:

This right, when combined with water rights 74-740, 74-741, 74-742, and 74-7147, shall provide no more than 0.02 cfs per acre nor more than 3.5 afa per acre for irrigation of the place of use.

A condition of this type is often included by IDWR, and my understanding is that it means that at the place of use no more than an inch to the acre (.02) can be used. This is a standard rule in Idaho under Idaho Code Section 42-202(6) and 42-220, unless there are special circumstances requiring a higher rate of diversion. Lynn's existing water rights already allow for 5.76 cfs to be used on 186.2 acres, which is .03 cfs per acre. These "base" rights were decreed in the SRBA because of conveyance losses, so the special circumstances have already been addressed.

Because 74-16008 is now supplemental to the "base" rights, the same rate of diversion per acre must apply. For this reason, I have removed the above condition from the stipulation. 74-16008 and the base rates should have the same rate per acre to avoid any confusion in the future.

If this is a concern to any of you, please let me know. I don't think it should be a concern because we are using the same rate per acre that Lynn already has, but if this is a concern to you, the hearing is still scheduled to be held next month, and you can raise your concern at the hearing.

I should have caught this condition before, but I read into it that the .02 cfs is a limit at the place of use. In reviewing it today, it appears that the condition means that no more than .02 cfs can be diverted at the point of diversion. This is contrary to the other conditions which allow 74-16008 to be exercised only up to the amount of "base" rights that are

not in priority. If that is to occur, the same rate per acre must apply. In order to avoid any confusion on this issue, I think it should be removed.

Email me with any questions or concern.

Otherwise, if the stipulation looks good, please sign it and scan and email the signed copy to me. I will then have Lynn countersign the document.

Thanks,

Rob Harris

From: Vonde, Ann [<mailto:ann.vonde@ag.idaho.gov>]
Sent: Wednesday, June 01, 2016 9:38 AM
To: Cefalo, James (James.Cefalo@idwr.idaho.gov); Rob Harris; Rick Sager; carlellsworth@me.com; Lowell Cerise
Cc: Bassista, Tom (thomas.bassista@idfg.idaho.gov); Cynthia.Clark@idwr.idaho.gov; amy.cassel@idwr.idaho.gov
Subject: FW: 74-16008 Herbst Hearing

FYI. I received the email below from LID. I didn't see you all cc'd on it so I am forwarding for your information.

Ann Vonde

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ann.vonde@ag.idaho.gov

From: RJ Smith [<mailto:horsecents58@gmail.com>]
Sent: Tuesday, May 31, 2016 4:49 PM
To: Vonde, Ann
Subject: Re: 74-16008 Herbst Hearing

Ann,
LID will also withdraw if the other nine conditions are met.

Thank you
R.J. Smith
LID

From: [Vonde, Ann](#)
Sent: Tuesday, May 31, 2016 12:19 PM
To: <mailto:James.Cefalo@idwr.idaho.gov> ; rharris@holdenlegal.com ; [R.J. Smith](#) ; [Rick Sager](#) ; carlellsworth@me.com ; [Lowell Cerise](#)
Cc: <mailto:thomas.bassista@idfg.idaho.gov> ; amy.cassel@idwr.idaho.gov ; Cynthia.Clark@idwr.idaho.gov
Subject: 74-16008 Herbst Hearing

Hello James, Rob, and LDI,

I'm not sure all of you are in the loop, but IWRB has decided to proceed to a hearing on the Wild and Scenic issue. IDFG will withdraw, as long as the other nine conditions are stipulated to prior to the hearing.

I think it might be a good idea to do a small amount of discovery prior to the hearing. I don't think it will be anything too extensive, but some interrogatories etc. would be good. Could we set up a schedule for that?

Also, we will need to stipulate to the other conditions not at issue prior to the hearing. Rob, will you draft that stipulation and circulate it or should I? James, have you had a chance to look at those conditions recently? I just want to make sure they look okay to you before we submit them for approval. Do we need to set a deadline for that?

Thanks,

Ann Vonde

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