

Cefalo, James

From: Cefalo, James
Sent: Wednesday, January 14, 2015 10:10 AM
To: 'Vonde, Ann'; 'Rob Harris'
Cc: Bob Loucks (baloucks@centurytel.net); d4ec@centurytel.net; Case, Morgan; 'Bassista, Tom'
Subject: RE: Herbst Application for Permit

Dear Parties,

This email is intended to confirm that the deadline for providing legal briefs has been extended as follows: Initial briefs must be provided on or before Friday, February 6th. Response briefs must be provided on or before Friday, February 20th.

James Cefalo

From: Vonde, Ann [<mailto:ann.vonde@ag.idaho.gov>]
Sent: Wednesday, January 14, 2015 9:37 AM
To: 'Rob Harris'; Cefalo, James
Cc: Bob Loucks (baloucks@centurytel.net); d4ec@centurytel.net; Case, Morgan; 'Bassista, Tom'
Subject: RE: Herbst Application for Permit

Hi James,

Rob has correctly characterized our discussion. IDFG and IWRB would be fine with moving the briefing deadline out a couple more weeks to give us time to discuss this new settlement option. I have cc'd the Lemhi Irrigation District on this email as well.

Thanks,

Ann Vonde

Deputy Attorney General
Natural Resources Division
Office of Attorney General
P.O. Box 83720
Boise ID 83720-0010
(208) 334-4141
fax (208) 854-8072
ann.vonde@ag.idaho.gov

From: Rob Harris [<mailto:rharris@holdenlegal.com>]
Sent: Wednesday, January 14, 2015 9:34 AM
To: Cefalo, James (James.Cefalo@idwr.idaho.gov)
Cc: Vonde, Ann
Subject: Herbst Application for Permit

James:

Ann Vonde and I are continuing to have discussions of outside-the-box ways to resolve the protests associated with the Herbst water right application. Just today I ran by her a conceptually new proposal that she will need time to review and run by her client. In light of those discussions, and my desire to focus efforts on potential resolutions, I proposed to Ann—and she agreed—that it would be OK to move the deadlines for the legal briefing issue back two weeks.

Ann will confirm her agreement with moving the deadlines by email. If you have any concerns with this approach, please let me know.

Thanks,



Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, PLLC
1000 Riverwalk Drive, Suite 200
P.O. Box 50130
Idaho Falls, ID 83405-0130
Phone: (208) 523-0620
Fax: (208) 523-9518
E-Mail: rharris@holdenlegal.com

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Cefalo, James

From: Cefalo, James
Sent: Friday, December 19, 2014 8:39 AM
To: 'Vonde, Ann'; 'Rob Harris'
Cc: Bob Loucks (baloucks@centurytel.net); d4ec@centurytel.net; Case, Morgan; tom.bassista@idfg.idaho.gov
Subject: RE: Herbst Application for Permit

Dear Parties,

Please let this email confirm that the deadlines for providing legal briefs has been extended as described below. Initial briefs must be provided on or before January 20, 2015 (which is a Tuesday). Response briefs must be provided on or before February 3, 2015 (also a Tuesday). Please keep me updated on any other proceedings that may affect this contested case. We can easily set up a telephone conference if something arises that that needs to be discussed as a group. Thanks.

James Cefalo

From: Vonde, Ann [<mailto:ann.vonde@ag.idaho.gov>]
Sent: Thursday, December 18, 2014 5:04 PM
To: 'Rob Harris'; Cefalo, James
Cc: Bob Loucks (baloucks@centurytel.net); d4ec@centurytel.net; Case, Morgan; tom.bassista@idfg.idaho.gov
Subject: RE: Herbst Application for Permit

Hello James,

Rob has correctly characterized our discussion. IDFG and the IWRB would stipulate to delaying the briefing deadlines as he suggests.

Thanks,

Ann Vonde
Deputy Attorney General
Natural Resources Division
Office of Attorney General
P.O. Box 83720
Boise ID 83720-0010
(208) 334-4141
fax (208) 854-8072
ann.vonde@ag.idaho.gov

From: Rob Harris [<mailto:rharris@holdenlegal.com>]
Sent: Thursday, December 18, 2014 4:52 PM
To: Cefalo, James (James.Cefalo@idwr.idaho.gov)
Cc: Vonde, Ann; Bob Loucks (baloucks@centurytel.net); d4ec@centurytel.net
Subject: Herbst Application for Permit

James:

Ann Vonde and I had a conversation about a number of issues surrounding the Herbst application for permit. We decided it would be best to allow the parties more time to discuss potential settlement options, and therefore, we have

agreed to move the briefing deadlines on the general provision question back one month. Based on my review of the calendar (and you are free to change these days if you would like), this would make the opening brief due on January 20th (the 19th is a holiday for state employees), and replies due two weeks later (on February 3rd).

Please confirm that you have received this email, and copy your reply to those on this email.

Thanks,



Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, PLLC
1000 Riverwalk Drive, Suite 200
P.O. Box 50130
Idaho Falls, ID 83405-0130
Phone: (208) 523-0620
Fax: (208) 523-9518
E-Mail: rharris@holdenlegal.com

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Cefalo, James

From: Cefalo, James
Sent: Tuesday, December 16, 2014 3:43 PM
To: 'Vonde, Ann'
Cc: 'Rob Harris'
Subject: Basin 74 Separate Streams Provision

Ann,

I just spoke with Rob Harris about the briefing schedule for the Lynn Herbst application. He mentioned that you were in training today, but are still receiving emails. Rob also mentioned that the Attorney General's Office may initiate an action in front of the SRBA court to set aside or revise the separate streams provision for Basin 74.

I don't think it makes sense for me to forge ahead and interpret the scope of the separate streams provision if there is a chance that the provision will be revised in the near future. As you know, the legal briefing in the Herbst case was intended to better define Mr. Herbst's burden of proof regarding injury to other water rights. The separate streams provision may affect the burdens of proof and could substantially affect the outcome of the case.

I am open to placing a temporary stay on the Herbst case to allow the AG's office to pursue its proposed changes to the separate streams provision. My only concern is what happens with Water District 74 in the interim. I would suggest maintaining the status quo, which would have Herbst irrigating the acres in question, even after his Lemhi River rights are curtailed. If you recall, this scenario only plays out in drought years. So, if 2015 end up being an average or wet year, the delay in processing the Herbst application will be of no consequence.

Because initial briefs are due at the end of the week, we should probably move quickly on the question of staying the Herbst case. Give me a call when you get a chance or are on a break. I am in the office until 5 pm today and will be traveling during most of the day tomorrow.

James Cefalo
(208) 525-7161
(208) 419-6618 (cell)

Cox, Shari
From:
Sent:
To:
Cc:
Subject:
Attachm

Rob Harris [rharris@holdenlegal.com]
Monday, November 17, 2014 3:52 PM
Cefalo, James; Vonde, Ann; baloucks@centurytel.net
tom.bassista@idfg.idaho.gov; Case, Morgan; Cox, Shari
RE: Application for Permit 74-16008 (Herbst) - Question for Legal Briefing
basin_74 general provisions.pdf

James:

Thank you for your email. I tried to call you Friday afternoon to discuss wording of the question, but understand that you were out for the afternoon, and I was not able to call you today prior to your email being sent.

Attached are the general provisions for Basin 74. It states specifically: "Future appropriations of water on the above streams are not considered to be subject to prior downstream rights on the Lemhi River proper." Based on this language, I would frame the question as follows:

the general provisions for Basin 74 decreed in the SRBA provide that "[f]uture appropriations of water on the above streams are not considered to be subject to prior downstream rights on the Lemhi River proper." Does an applicant therefore bear the burden of proof to demonstrate that an application's proposed water use will not reduce the quantity of water available under existing rights as is generally required under Idaho Code section 42-203A(5)?

It is my intent with the question to include the WRB's minimum flow right within the question presented, and I believe it does because the minimum flow right is an existing right."

Thanks,



Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPKO
1000 Riverwalk Drive, Suite 200
P.O. Box 50130
Idaho Falls, ID 83405-0130
Phone: (208) 523-0620
Fax: (208) 523-9518
E-Mail: rharris@holdenlegal.com

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From: Cefalo, James [mailto:James.Cefalo@idwr.idaho.gov]
Sent: Monday, November 17, 2014 2:46 PM
To: Rob Harris; Vonde, Ann; baloucks@centurytel.net
Cc: tom.bassista@idfg.idaho.gov; Case, Morgan; Cox, Shari
Subject: Application for Permit 74-16008 (Herbst) - Question for Legal Briefing

Dear Parties,

I am preparing an order setting a schedule for the submission of legal briefs in the Herbst case. Rob Harris had mentioned that he wanted to propose the question to be addressed in the legal briefing. However, I know he is busy and probably has not had time to prepare a question. I've decided to circulate the following draft question to the parties for consideration.

In an application for permit on a stream tributary to the Lemhi River which is considered separate from the Lemhi River for purposes of water right administration, does an applicant bear the burden of demonstrating that the proposed water use will not reduce the quantity of water under existing water rights on the Lemhi River?

Feel free to provide any comments or feedback. I will issue the order setting forth the final question and the filing deadlines this Friday.

James