



State of Idaho

DEPARTMENT OF WATER RESOURCES

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December 15, 2010

Robert Maynard
PERKINS COIE
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P.O. Box 737
Boise, Idaho 83701-0737

Dear Mr. Maynard:

I would like to thank you and all the parties for attending the conference on November 29, 2010 to discuss the City of Boise's Second Stipulated Agreement for Settlement in Part of Petition and Stay of Further Proceedings ("agreement"). I believe the discussion provided a better understanding of the intent of the parties and helped to address the Department's questions and concerns. The purpose of this letter is to summarize the results of the discussion from the Department's perspective and seek feedback from the parties if further clarification of the issues is necessary.

I have attached the issue statements that were discussed at the conference and will summarize the results of each in the order presented.

Issue #1 listed the Department's understanding of the order of annual events anticipated in the agreement. The third item listed was '[b]efore March 30th, IDWR makes a "preliminary" determination about the proposed upcoming City production increases according to Section II.6.b, and Table II.7.b.' It is now the Department's understanding that the agreement does not expect the Department to make any preliminary determination before March 30 or at the meeting with the Department as described in the fourth item. The order of annual events can be modified by striking item three and modifying item 4 to simply state that "by March 30th, IDWR meets with the City of Boise and other parties to discuss the proposed increase in the City production limits."

The fifth item listed in the order of annual events can be modified by striking the word "final." The nature of the Department's determination or decision is discussed further under Issue #2.

Issue #2 refers to the finality of the Department's determination regarding authorization of an increase in the City production limits. The parties clarified that the Department's annual determination under the agreement is not intended to be a final decision regarding the City's permit or what may ultimately be licensed. The parties anticipate that any disagreement with the Department's determination can be worked out through continued discussion and exchange of information. The Department may choose to issue the determination as an interlocutory order.

Issue #3 asked for clarification of the parties' intent regarding the basis for the Department's annual determination for each proposed increase in the City production limits. The parties clarified their expectation that the Department would consider the prior year's monitoring data, the City's annual production and injection data and any other information available to the Department, provided by the parties or from other sources. The parties do not expect the Department to make a determination based on the IWRRRI Project aquifer model or to expend funds to update or run the model; however, the parties may, on their own, recalibrate or otherwise update and run the model and provide the results to the Department or the Department may request that the parties recalibrate or otherwise update and run the model if it is deemed necessary to make a determination. If the Department requests that the parties update the model, responsibility for costs to update the model would be determined pursuant to the agreement.

Issue #4 discusses use of the IWRRRI Project aquifer model to make the annual determination of the City production limits. See discussion results under Item #3 above.

Issue #5 asks about the ability of the City's injection well to receive a significantly higher rate of fluids. This was not discussed at the conference, but it is the Department's understanding that the City believes the required injection rates can be accomplished either through the existing well, with possible modifications, or through addition of another injection well.

Issue #6 asks for confirmation by the parties regarding their understanding of how injury can be addressed by the Department. The parties acknowledged that the Department has authority to take action to reduce pumping to prevent injury. Part II.9 of the agreement preserves the provision for IDWR review and remedial action as described in Part II.F of the 2002 Stipulated Agreement for Settlement in Part and Stay of Proceedings Regarding Remainder of Petition.

With the clarifications discussed in this letter, the Department is prepared to issue an order accepting the settlement and stay of further proceedings within the next few weeks. If any party wishes to provide comments or clarify any of these issues, please do so within the next couple of weeks for consideration prior Department action.

Sincerely,


Jeff Peppersack
Chief, Water Allocation Bureau

Enclosure

cc: parties

Review of City of Boise's 2nd Stipulated Agreement for Settlement

Issue #1: IDWR has reviewed the 2nd Stipulated Agreement for Settlement. After studying Section II "Terms and Conditions", IDWR determined that the proposed order of annual events is as follows:

1. By February 15th, the City of Boise provides IDWR (and the other parties) with a report that covers the last two water years for their system.
2. By February 15th, IDWR publishes and distributes its annual report (which has been historically titled "Review of Boise Front Geothermal Monitoring Data for Water Year 20XX (October 1, 20XX – September 30, 20XX)).
3. Before March 30th, IDWR makes a "preliminary" determination about the proposed upcoming City production increases according to Section II.6.b, and Table II.7.b.
4. By March 30th, IDWR meets with the City of Boise and the other parties and presents its preliminary determination. The City and the other parties provide feedback to the determination.
5. By May 30th, IDWR issues a "final" determination (or decision) in writing for the upcoming water year.

IDWR's Request: Please confirm that this is consistent with the parties' understanding of the order of annual events.

Issue #2: Sections II.6 and II.8 discuss IDWR's "determination" regarding the City's increases. These seem to be two different determinations.

IDWR's Questions: Should Section II.6 refer to a "preliminary" determination? Should Section II.8 refer to a "final" determination or decision. Is it the parties' intent that the final determination be considered a final decision by IDWR subject to appeal?

Issue #3: Section II.6.b, says, "IDWR determines...that increasing the City production **will not** 1) deplete or otherwise... "

IDWR Comment: The Boise Front moratorium order requires that further development of additional use is prohibited until the permit holder shows to the satisfaction of the Director that further development can be accomplished without injuring other existing users. What do the parties anticipate will be the basis for IDWR's determination for each proposed increase?

Issue #4: There is no discussion of the existing Boise Front geothermal model and using the model to make determinations outlined in the stipulation.

IDWR Comment: According to the stipulations in Section II.7.b, IDWR calculated that the City production could increase almost 60 million gallons in two successive water years in the near future. IDWR would like to discuss the effectiveness of using the existing model, or an updated version to determine the predicted effect under these and other potential future scenarios, and how these predictions could be useful in making the determinations discussed in Section II.6.b.

If it is determined that additional modeling could be beneficial, IDWR would like to discuss the logistics and responsibilities for this modeling.

Issue #5: Under the 2002 Stipulated Agreement, IDWR anticipates that there will be a significantly higher rate of injection of fluids by the injection well.

IDWR Question: What is the ability of the injection well to receive the significantly higher rate of fluids? Ken Neely has received two email responses from Kent Johnson. The 2nd email, just received today (Nov 1) states that a short term flow rate of up to 2,300 gpm "fits comfortably within the long term injection well capacity shown in Table 4-4 of the injection well report". Ken has asked Kent for one final clarification regarding the issue.

Issue #6: As IDWR reads the agreement, if IDWR makes a final determination that the increase in pumping will not deplete or otherwise adversely affect the aquifer per Section II.6.b, but then subsequent evidence arises showing that pumping is having a negative effect on the aquifer and is causing injury to the senior water users, IDWR still has the authority to require a reduction in pumping to prevent injury.

IDWR Request: Please confirm that this is consistent with the parties' understanding of how injury can be addressed by IDWR.