MEMORANDUM

TO: Glen Saxton

FROM: Phil Rassier PJR

RE: CSI Agreement - Action on Permits

DATE: October 3, 1988

On July 13, 1988, Judge Hurlbutt approved the order of dismissal in the case of CSI v. IDWR, et al (Twin Falls County Case No. 37298) involving the ground water users within the Twin Falls geothermal aquifer. The order of dismissal is based upon a settlement agreement dated May 19, 1988 between the College of Southern Idaho (CSI) and Professional Investors Life Insurance Company; and upon an agreement dated July 22, 1987 among CSI, the Department and five other defendants in the lawsuit.

1. Complete copies of the documents should be placed in the water right files for Professional Investors (License No. 36-7130) and CSI (Permit No. 47-7606). Two sets of the documents are attached for this purpose.

2. A notice should be placed in the other water right files affected by the agreements: 36-8094, 47-7478, 47-7758, 47-7813, 47-7964, 47-7492, 47-7714, 47-7745, 47-7872, 47-7875, 47-7966, 47-7969, and 36-8137. The notice should caution: BEFORE TAKING ACTION ON THIS FILE PLEASE REFER TO THE "MORATORIUM AGREEMENT" DATED JULY 22, 1987, COPIES OF WHICH HAVE BEEN PLACED IN WATER RIGHT FILES 36-7130, AND 47-7606.

3. License No. 36-7130 in the name of Professional Investors. -- Pursuant to Judge Hurlbutt's July 13, 1988 order approving the May 19, 1988 stipulation between CSI and Professional Investors, the Department should take action to reflect in its records the permanent reduction in the authorized rate of diversion for License No. 36-7130 from 6.0 cfs to 4.5 cfs.

4. Permit No. 47-7758 in the name of J.D. McCollum. -- On March 31, 1987, the permit holder requested an extension of time from June 1, 1987 until June 1, 1991 in which to complete putting the water to beneficial use by completing a second nine holes of golf course. Action may now be taken by the Department on the request for extension of time. Under ¶ 4 of the July 22, 1987 moratorium agreement the permit holder agrees to limit the amount and use of water diverted under this permit. Under ¶ 14 of the agreement the parties agree that the pendency of the CSI v. IDWR

lawsuit shall be considered as an adequate reason for granting equivalent extensions of time for development of the reduced amounts of water in paragraphs 2 through 12 of the agreement. The CSI lawsuit was filed on March 8, 1985 and dismissed on July 13, 1988, a period of 3 years and 4 months. The request for extension may, therefore, be approved in part due to the pending litigation.

5. Permit No. 47-7969 in the name of City of Twin Falls. -- On September 2, 1986, the Department issued an order to the permit holder to show cause why the permit should not be canceled for failure to begin construction within one year from the date of issuance of the permit as required by I.C. § 42-204. The permit holder filed a response to the order to show cause on October 21, 1986. The Department has not taken further action to cancel the permit.

On March 9, 1988, the permit holder filed an application for amendment of permit No. 47-7969 to add an alternative point of diversion. The requested alternative point of diversion is the point of diversion for permit No. 47-7964 in the name of Twin Falls School District No. 411. The proposed amendment is consistent with a lease agreement dated January 19, 1988 between the city and the school district. The amendment is also consistent with ¶ 24 of the July 22, 1987 moratorium agreement. It is appropriate for the Department to take action on the application for amendment providing the permit is determined to still be valid. In addition to the reason provided by the city in its response to the order to show cause the Department may consider the pendency of the CSI lawsuit as possibly providing the city with good cause for not starting construction within one year of the issuance of the permit.

Proof of beneficial use under the permit is due December 1, 1988. The Department should send out its normal proof due notice.

6. Permit No. 47-7478 in the name of the College of Southern Idaho. -- The permit holder has submitted proof of beneficial use. The Department has performed a field exam and should now issue a license.

7. Installation of measuring devices. -- The parties agree in ¶ 22 of the moratorium agreement to the installation of measuring devices approved by IDWR which will provide an instantaneous readout and totalizing head so that the systems can be readily monitored and integrated volumetric measurements of pump out obtained over the period of the order. The Department should issue an order requiring installation of the described measuring devices.

8. Error in ¶ 14 of moratorium agreement. -- The example of how the amount of "Stage Two" development under ¶ 14, page 6, of the moratorium agreement is calculated contains an error. The example shows that Hydrotube and Stone, respectively, would be entitled to develop an additional .0667 cfs and .9333 cfs. The corrected amount for Hydrotube is .0625 cfs (0.1 cfs/1.6 cfs = .0625 x 1 cfs = .0625 cfs). The corrected amount for Stone is .9375 (1.5 cfs/1.6 cfs = .9375 x 1 cfs = .9375 cfs).

Also attached for your convenience is a set of notes you compiled on September 17, 1987 indicating the recommended action to be taken on each of the water rights affected by the moratorium agreement.

Attachments