

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATION	)	ORDER DENYING
FOR TRANSFER OF WATER RIGHTS	)	MOTION TO DISMISS
IN THE NAME OF UNITED WATER	)	INTEGRATED MUNICIPAL
IDAHO, INC., INTEGRATED	)	APPLICATION PACKAGE
MUNICIPAL APPLICATION	)	(IMAP)
PACKAGE (IMAP)	)	
	)	

Protestants Boise Project Board of Control, Big Bend Irrigation District, Wilder Irrigation District and Boise-Kuna Irrigation District (collectively “Protestants”) filed a *Motion to Dismiss Integrated Municipal Application Package* (“Motion to Dismiss”) on November 14, 2012. United Water Idaho (“United Water”) filed a *United Water’s Answer to Boise Project Parties’ Motion to Dismiss* on November 29, 2012. Protestants filed a *Reply to United Water’s Answer to Boise Project Board of Control, Big Bend Irrigation District, Wilder Irrigation District and Boise-Kuna Irrigation District’s Motion to Dismiss Integrated Municipal Application Package* on December 5, 2012.

Protestants raise two arguments as a basis for the dismissal. Protestants allege the original information provided by the applicant is incorrect and outdated and the recent attempt to update the application is insufficient because it was provided on the wrong forms. Secondly, Protestants argue the application is deficient for the Department to approve a transfer to modify an existing municipal water right to a water right for reasonably anticipated future needs. The Hearing Officer has reviewed the Protestants’ arguments and finds that the arguments are not persuasive and the Motion to Dismiss should be denied.

IMAP Transfer Information from 2003 is Stale and Needs to be Updated

Protestants argue that the information originally filed in 2001 and updated in 2002 and 2003 is incorrect and no longer accurately reflect the changes sought by the United Water in its 2012 update. Protestants characterize the 2012 changes as being “substantial,” requiring that the updated information amending the transfer application be presented to IDWR on new application forms. Protestants cite Water Appropriation Rule 37.03.08.35.04 (“Rule 35.04”) and two IDWR transfer memos in support that the 2012 update information for the IMAP application must be submitted on new forms.

At the July 24, 2012 status conference, Director Spackman requested United Water file an updated report describing the changes it intends to pursue in the 2012 update. The document filed by United Water entitled “*United Water’s Statement Updating and Explaining the IMAP Relaunch*” (“Update Statement”) provided 124 pages of information describing differences with

the 2003 IMAP application and updates for the amended 2012 application. Protestants are correct that some of United Water's changes are significant as contemplated by Rule 35.04 and the applications should be amended.

The Department considers the Update Statement as a guidance document for the transfer application. The recent amendments to the IMAP application do not necessitate that the updated information be submitted on new application forms. Consistent with the specialized approach for IMAP described in the previous hearing officer's order entitled "Order Regarding New IMAP Applications" dated April 2, 2003, the Department will rely on the Update Statement as a guide to amending the transfer application. Because much of the necessary information is obscured by the sheer volume of historical and background information included as a part of the Update Statement, the applicant will need to schedule a meeting with Department staff to identify and explain the 2012 changes. The Department will review the Update Statement with United Water to determine if additional information is needed and may request that the information be further explained, organized, and resubmitted in a manner to expedite processing by the Department. United Water included several water rights with earlier priority dates in the 2012 Update Statement that were not described in the 2002 legal notice that may need to be advertised. Once the review is complete and the changes identified, United Water will deliver copies of the amended IMAP on all parties.

The Department is Authorized in a Transfer Proceeding to Review and Limit United Water's Withdrawals to Meet the Reasonably Anticipated Future Needs within the System.

Protestants contend that the Department lacks authority to review certain comprehensive planning information during the transfer proceeding pertaining to United Water's existing water rights. Protestants argue that I.C. § 42-222 does not allow for United Water to redefine its existing water rights as reasonably anticipated future needs water rights unless a change in the nature of use to municipal use is the exclusive basis for the transfer. Protestants further argue that no transfer or change to the United Water's water rights is sought to be accomplished and United Water wishes to establish its reasonably anticipated future needs in a vacuum.

United Water has filed a system wide transfer application to add alternative points of diversion to its existing water rights to address reasonably anticipated future needs within its system. The updated transfer application pending before the Department seeks to add 89 alternative points of diversion to 106 different water rights currently appurtenant to UW's present service area. Additionally United Water seeks to change the place of use, nature of use and seasons of use on some of its water rights in the IMAP. The changes to the points of diversion, places of use, nature of use and seasons of use to United Water's water rights are the basis for the IMAP transfer proceeding and provide the Department the legal basis and an appropriate opportunity to examine the United Water's comprehensive planning information to determine its reasonably anticipated future needs within its system.

United Water's reasonably anticipated future needs will not be decided in a vacuum as suggested but will be decided as a part of the IMAP transfer application. The Department expects United Water to submit the contemporaneous comprehensive planning information

required for IDWR to process the system wide transfer application for reasonably anticipated future needs. IDWR will examine the planning information to determine if the approval of the new alternative points of diversion and other changes are compatible with the concerns expressed in I.C. § 42-222. I.C. § 42-222 provides:

The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-202B, Idaho Code, the change will not adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates, in the case where the place of use is outside of the watershed or local area where the source of water originates, and the new use is a beneficial use, which in the case of a municipal provider shall be satisfied if the water right is necessary to serve reasonably anticipated future needs as provided in this chapter.

If some or all of the new changes are approved, the Department maintains the legal authority to include a condition limiting withdrawals to meet the reasonably anticipated future needs within the system.

ORDER

IT IS HEREBY ORDERED that:

1. Protestants' request for oral argument is DENIED.
2. Protestants' Motion to Dismiss the Integrated Municipal Application Package (IMAP) is DENIED.

Dated this 11th day of January, 2013.



Gary Spackman
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of January, 2013, the above and foregoing were served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

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A handwritten signature in cursive script, reading "Deborah J. Gibson", is written over a horizontal line.

Deborah Gibson
Administrative Assistant to the Director
Idaho Department of Water Resources