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DEPARTMENT OF
WATER RESOURCES

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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF INTEGRATED
MUNICIPAL APPLICATION PACKAGE
("IMAP") OF UNITED WATER IDAHO,
INC. BEING A COLLECTION OF
INDIVIDUAL APPLICATIONS FOR
TRANSFERS OF WATER RIGHTS AND
APPLICATIONS FOR AMENDMENT OF
PERMITS

**PIONEER IRRIGATION DISTRICT'S FIRST
SUPPLEMENTAL STATEMENT OF ISSUES
RE UNITED WATER IDAHO'S IMAP
APPLICATION**

**I.
INTRODUCTION**

Pioneer Irrigation District ("Pioneer") submits this First Supplemental Statement of Issues Re United Water Idaho, Inc.'s IMAP Application ("Supplemental Statement") in response to the Idaho Department of Water Resources' ("Department") Order Setting Schedule for Parties to Respond and Propose Timetables for Discovery and Hearing ("Order"), dated October 19, 2012. Pioneer submits this Supplemental Statement because the Department's most

recent Order seeks information and responses to issues not addressed in Pioneer's prior Statement of Issues Re United Water's IMAP Application ("Statement"), filed October 16, 2012. In submitting this Supplemental Statement, Pioneer hereby refers to, and incorporates by reference herein, the entirety of its prior Statement.

Pioneer addresses the matters contained in the Department's Order in the same order in which the Department presented theirs:

1. Matters Raised At The October 16, 2012 Status Conference

Because the October 16, 2012 Status Conference predominantly involved discussion of the issues raised in Pioneer's underlying Statement, and the Statement of Issues and Request for Clarification of the Boise Project Board of Control, Big Bend Irrigation District, Wilder Irrigation District, and Boise-Kuna Irrigation District (filed October 15, 2012), Pioneer has no further response at this time. To the extent it deems necessary, Pioneer will respond or reply on or before November 14, 2012 or November 21, 2012, respectively, as provided in the Department's Order.

2. Scope Of The Hearing

Pioneer presumes this inquiry is primarily directed at United Water Idaho ("UWID") given the prior discussions regarding whether UWID intends to continue pursuing alternative points of diversion ("APODs") through the IMAP transfer proceeding. UWID's determination of how it intends to proceed with the APOD issue has a direct bearing upon the scope of the hearing in this matter. Withdrawal of the APOD issue would largely leave only the planning horizon/reasonably anticipated future needs ("RAFN") portion of the IMAP Application ripe for hearing. While still a major undertaking, a RAFN-only proceeding would be considerably less burdensome than an APOD and RAFN-based application. However, unless

and until UWID takes some formal action with respect to its existing IMAP Application, both the APOD and RAFN issues remain at issue.

Additionally, and though not raised within its prior Statement, Pioneer reiterates a couple of issues discussed during the July 24, 2012 and October 16, 2012 Status Conferences:

(a) There remains some question regarding whether UWID can proceed under the existing application on file in its current form. As the Department is aware, the Application for Transfer of Water Right form requires various information, including a complete listing of the water rights that are the subject of the application together with descriptions of how the water rights are currently configured pre-transfer, and how the water rights are proposed to look post-transfer. As explained in UWID's Statement Updating and Explaining the IMAP Relaunch ("Relaunch"), filed August 14, 2012, the SRBA adjudication process substantially modified a number of water rights included in UWID's pending IMAP Application.

For example, the SRBA Court split former water right no. 63-02892 into four separate partially decreed water rights: 63-02892, 63-31797, 63-31798, and 63-31879. *See* Relaunch, pp. 7-8. Consequently, and unless Pioneer's understanding is incorrect, UWID's pending IMAP Application (pending since 2003) does not include water right nos. 63-31797, 63-31798, and 63-31879 within it. Moreover, the form of water right no. 63-02892 as it existed in 2003 is far different than that in existence today.

Likewise, and as further explained in UWID's Relaunch document, UWID's water rights contained relatively few APODs when they were first acquired or developed. Relaunch, p. 14. The adjudication added a number of new APODs to several UWID water rights, but not the entire suite of 89 APODs UWID requests under the IMAP. *See, e.g.,*

Relaunch, pp. 14-17. Therefore, the adjudication significantly altered the number of APODs available for several of UWID's water rights, greatly changing the configuration of those rights since they were last identified and described in the 2003 IMAP Application. Consequently, both the universe of water rights subject to the IMAP proceeding and the pre-transfer configuration of those water rights look very different today in comparison to what is contained within the 2003 transfer application.

In light of these various changes, among others, the question becomes whether UWID's Relaunch document is a viable and valid means of amending the 2003 IMAP Application. Idaho Code Section 42-222(1) requires that applications for transfer be made upon "forms furnished by the department." *Id.* The statute continues, requiring that transfer applications "describe the right licensed, claimed or decreed which is to be changed and the changes which are proposed." IDAHO CODE § 42-222(1). The Relaunch document is not a transfer application because it is not a form furnished by the Department. Further, the 2003 application on file does not accurately describe the water rights at issue as they exist today, nor accurately describe the proposed changes because of the significant modifications made to the water rights during the adjudication.

This administrative transfer proceeding is triggered by the underlying application for transfer. The application document defines the nature and scope of the proceeding by providing a detailed description of the water rights at issue. A clear and accurate application is required to create a clear and accurate record of this proceeding going forward. Pioneer is not aware of any authority allowing the use or substitution of the Relaunch document as the operative starting point under Idaho Code Section 42-222. It appears to Pioneer that UWID

should be required to formally amend its existing IMAP Application to provide everyone, including the Department, with a clean and clear starting point for this proceeding.

(b) In addition to the question regarding whether UWID's Relaunch document suffices as a viable vehicle by which to amend its pending IMAP Application, there also remains a question regarding whether municipal providers can transfer existing municipal use water rights into RAFN protection. Pioneer acknowledges that Idaho Code Section 42-222(1) authorizes use of the transfer process to provide RAFN designation for water rights changed to "municipal" purposes from some other purpose during the course of a transfer. However, this nature/purpose of use change is not being made during the course of the IMAP transfer proceeding.

It is Pioneer's understanding that most of UWID's water rights already contained "municipal" use designations pre-transfer, and those that did not were changed to municipal use during the adjudication under the accomplished transfer statute (Idaho Code Section 42-1425). Consequently, the IMAP transfer process does not include any actual transfer of purpose of use to "municipal" use as contemplated within Idaho Code Section 42-222(1). Therefore, it is not clear whether UWID can transfer existing municipal use water rights into RAFN status absent a transfer-facilitated change in the nature of use of the subject water rights.

The answers to the questions posed above have a direct bearing on the scope of the hearing in this matter. If, for example, the UWID's Relaunch document is not a proper vehicle by which to amend the pending IMAP Application, then no hearing is necessary because the current application is insufficient to support further processing. Similarly, if municipal providers cannot transfer preexisting municipal rights into RAFN status under the current incarnation of Idaho Code Section 42-222, then all that is left for hearing under the current

application is a determination concerning UWID's APOD designation request (assuming UWID proceeds forward with the APOD portion of its application).¹

According to Idaho Code Section 42-222, the scope of hearing in any transfer proceeding consists of the proposed water right changes contained within the application on file given the Director's duty to: (1) "examine" the application itself; and (2) "examine all the evidence and available information" regarding the changes proposed in the application. This is why the sufficiency and accuracy of an underlying transfer application is so important.

The transfer application is the operative document framing the issues for consideration and is, therefore, determinative of the administrative analysis going forward. Consequently, Pioneer harbors concerns over the state and accuracy of the pending application, and questions whether the application must be formally amended to provide everyone with a clear and accurate orientation point for this proceeding (notwithstanding the additional orientation provided by UWID's Relaunch document). Because the form and content of the transfer application drives the nature and scope of the transfer proceeding, all proposed water right changes contained in an application must be addressed unless and until an application is amended to add or subtract issues to/from consideration.

3. Scope Of Responsibilities Of The Parties

As discussed within its prior Statement, Pioneer believes the scope of responsibilities of the parties is relatively straightforward: UWID is the applicant, and several others, including Pioneer, are protestants. Admittedly, however, Pioneer is unsure of the duties, rights, and obligations of the other classes of parties in this proceeding (*i.e.*, the "intervenor")

¹ Pioneer refers to the "current incarnation" of Idaho Code Section 42-222 because it understand that amendments to the Municipal Water Rights Act of 1996 will likely be presented to the Legislature during the 2013 session.

and other “interested parties” listed in the Department’s August 8, 2012 Order Affirming Party Status and Notice of Status Conference). Pioneer questions whether the transfer process provides for participants other than “applicants” and “protestants.”

Regardless, transfer applicants bear the initial burden of coming forward with evidence presenting a *prima facie* case on the evaluation criteria found in Idaho Code Section 42-222. Transfer applicants also bear the ultimate burden of persuasion on those criteria as well. Conversely, protestants are charged with presenting rebuttal evidence once an applicant successfully makes its *prima facie* case. UWID, as the applicant, also bears additional informational or evidentiary burdens under the Department’s Transfer Memo No. 24, dated December 21, 2009. A more complete discussion of the parties’ responsibilities in this matter is found at pages 2 through 7 of Pioneer’s Statement, previously incorporated by reference herein.

4. Scope Of Discovery

Determining the scope of discovery is premature at this time. The scope of discovery is tied directly to the ultimate scope of this proceeding, which remains in question for the reasons discussed in Item No. 2, above. *If* UWID’s current (2003) IMAP Application is sufficiently complete to warrant further processing and hearing, *and if* municipal providers can transfer existing municipal-use water rights into RAFN status, then the scope of discovery is going to be driven by UWID’s decision regarding whether it intends to proceed forward with the APOD portion of the application.

If UWID continues to move forward with the APOD portion of its IMAP Application, then a well-by-well review of the APODs must be performed to sufficiently consider the injury criterion alone. If UWID withdraws the APOD portion of its application, then only the RAFN portion remains. Because of the questions surrounding the status (or

sufficiency) of the existing IMAP Application, and questions regarding whether UWID intends to continue forward with the APOD designation, Pioneer reserves further comment regarding the scope of discovery until the November 14, 2012 response, or the November 21, 2012 reply opportunities provided within the Department's Order.

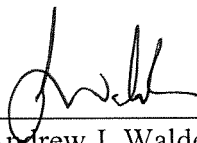
5. Timetable For Discovery And Hearing

As explained in the context of Item No. 4, above, determining discovery and hearing timetables is premature at this time. Pioneer will further respond to this issue after receipt and review of the parties' (including UWID's) opening statements and responses. Hopefully, the parties' respective filings will allow Pioneer to more meaningfully address the Department's scope of discovery and proceeding timetable queries. Pioneer will revisit and comment upon these issues no later than November 21, 2012.

Pioneer will continue to participate in this proceeding in accordance with the Department's October 19, 2012 Order.

DATED this 31st day of October, 2012.

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By 

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of October, 2012, I caused a true and correct copy of the foregoing **PIONEER IRRIGATION DISTRICT'S FIRST SUPPLEMENTAL STATEMENT OF ISSUES RE UNITED WATER IDAHO'S IMAP APPLICATION** to be served by the method indicated below, and addressed to the following:

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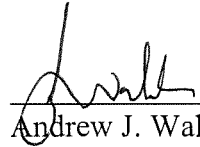
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