

BEFORE THE DEPARTMENT OF WATER RESOURCES

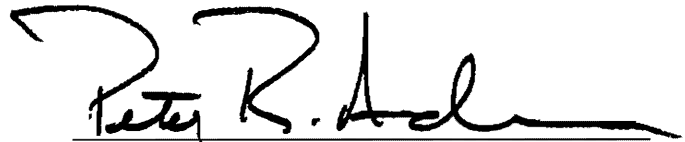
OF THE STATE OF IDAHO

**IN THE MATTER OF APPLICATION)
FOR TRANSFER OF WATER RIGHTS)
IN THE NAME OF UNITED WATER)
IDAHO, INC., INTEGRATED)
MUNICIPAL APPLICATION)
PACKAGE (IMAP))**

ORDER OF RECUSAL

Peter R. Anderson hereby RECUSES himself from any further participation in this matter.

Dated this 22nd day of May, 2006.



Peter R. Anderson
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of May, 2006, 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:

CHRISTOPHER H MEYERS
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TAMMY A ZOKAN
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SCOTT L CAMPBELL
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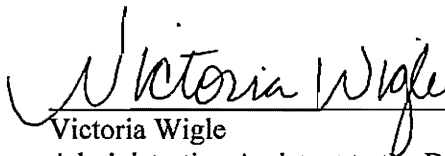
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1002 W FRANKLIN ST
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IDWR - WESTERN REGION MANAGER
2735 AIRPORT WAY
BOISE ID 83705-5082


Victoria Wigle
Administrative Assistant to the Director
Idaho Department of Water Resources

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

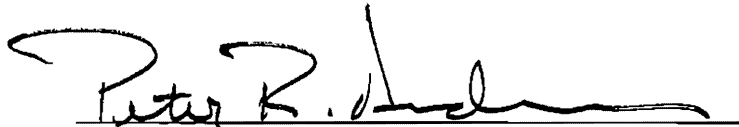
**IN THE MATTER OF APPLICATION)
FOR TRANSFER OF WATER RIGHTS)
IN THE NAME OF UNITED WATER)
IDAHO, INC., INTEGRATED)
MUNICIPAL APPLICATION)
PACKAGE (IMAP))**
_____)

**ORDER RE UNITED WATER'S
MOTION IN LIMINE TO
EXCLUDE DON READING**

The Applicant, United Water Idaho, filed *United Water's Motion In Limine to Exclude Don Reading* on September 29, 2003. The Applicant requested an order excluding the testimony of Don Reading, sponsored by Pioneer and Settlers Irrigation District, from the hearing in this matter. Because both by Pioneer and Settlers Irrigation District are solely restricted to presenting legal argument in this matter pursuant to the *Order re Motion to Dismiss Pioneer's Protest and Preclude Its Participation at Hearing* and *Order re Motion to Dismiss Settlers' Protest and Preclude Its Participation at Hearing*, Don Reading will not be testifying on their behalf.

Based upon the foregoing *United Water's Motion In Limine to Exclude Don Reading* is DENIED, as moot.

DATED this 22nd day of April, 2004.



Peter R. Anderson
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of April, 2004, the above and foregoing, was 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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Victoria Wigle
Administrative Assistant to the Director
Idaho Department of Water Resources

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION)	
FOR TRANSFER OF WATER RIGHTS)	
IN THE NAME OF UNITED WATER)	ORDER RE MOTION TO DISMISS
IDAHO, INC., INTEGRATED)	PIONEER'S PROTEST AND
MUNICIPAL APPLICATION)	PRECLUDE ITS PARTICIPATION
PACKAGE (IMAP))	AT HEARING
_____)	

The Applicant, United Water Idaho, filed *United Water's Motion to Dismiss Pioneer's Protest and Preclude Its Participation at Hearing* (the "Motion to Dismiss") on September 15, 2003. The Applicant requested an order dismissing Pioneer Irrigation District's ("Pioneer's") protest, or other relief as appropriate, on two grounds:

(1) Because the binding statements of Pioneer's 30(B)(6) witness show that the organization has no factual or legal basis for its protest; and

(2) As a sanction for Pioneer failing to attend the noticed 30(B)(6) deposition.

The *Motion to Dismiss* is based upon the responses of Pioneer's designated 30(B)(6) witness, Jeffrey Scott, at Pioneer's deposition on September 3, 2003. A copy of the deposition was attached to the *Motion to Dismiss*.

Pioneer responded to the *Answer of Pioneer & Settlers to UWID's Motion to Dismiss both Districts' Protests and Preclude their Participation at Hearing*. Pioneer also filed the *Affidavit of Scott L. Campbell in Support of Answer of Pioneer and Settlers to UWID's Motion to Dismiss Both Districts' Protests and Preclude their Participation at Hearing* and a *Motion to Strike UWID's Motion to Dismiss Pioneer Irrigation District and Settlers Irrigation District's Protest and Preclude their Participation at Hearing and Memorandum in Support* (the "Motion to Strike").

In response United Water filed *United Water's Reply in Support of its Motion to Dismiss and Preclude Participation at Hearing* and *United Water's Answer in Opposition to Pioneer and Settlers' Motion to Strike*. Subsequently, United Water filed a *Submission of Supplemental Authority and Affidavit of Michael V. Woodhouse in Support of Submission of Supplemental Authority*. Pioneer then filed its *Response to UWID's Supplemental Authority*.

The Idaho Department of Water Resources ("IDWR") has adopted portions of the Idaho Rules of Civil Procedure when it authorizes depositions in an administrative proceeding. IDAPA 37.01.01.523 I.R.C.P. 30. I.R.C.P. 30(b)(6) provides that:

A party may in the party's notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. A subpoena shall advise a nonparty organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision (b)(6) of this rule does not preclude taking a deposition by any other procedure authorized in these rules.

FACTS

On August 18, 2003, United Water served on Pioneer its *Amended Notice of Deposition Duces Tecum of Pioneer Irrigation District* giving notice that United Water would take Pioneer's I.R.C.P 30(b)(6) deposition on September 3, 2003. The *Amended Notice* indicated that Pioneer would be examined regarding:

1. Each and every basis for your [Pioneer's] protest in this matter.
2. The conditions or modifications to the IMAP, if any that would resolve your [Pioneer's] protest.

Pioneer was also directed to produce at the deposition all documents in Pioneer's possession related to its protest. At no time prior to the scheduled deposition did Pioneer object to the description of the matters designated by United Water.

On September 4, 2003, Pioneer appeared for deposition in the person of Jeffrey Scott. Rather than restate Pioneer's answers to United Water's questions during the deposition, a copy of the entire deposition, without exhibits, is attached to this *Order*. To summarize, Pioneer's response at the deposition was that the basis for its protest in this matter can be explained by its attorney or other witnesses. The only factual concern expressed by Pioneer was that new wells in Pioneer's district could harm its existing wells.

DISCUSSION

A. Motion to Dismiss

Based upon Pioneer's answers at its deposition, United Water asserted that Pioneer's protest should be dismissed on two grounds. First, because Pioneer knows of no factual or legal basis for its protest. Second, to sanction Pioneer for failing to attend its deposition. Each of these grounds for dismissal is problematic.

Under the first ground, Pioneer did state at its deposition a basis for its protest—the knowledge of its attorney, Scott Campbell. Mr. Campbell can assert a legal basis—either the failure of IMAP to comply with Idaho law or the failure of United Water to meet its burden to factually support the IMAP. It is not reasonable to expect a witness to testify regarding the legal theories behind a protest, when a deposition is primarily aimed toward factual discovery. See generally Sinclair & Fendrich, *Discovering Corporate Knowledge and Contentions: Rethinking Rule 30(B)(6) and Alternative Mechanisms*, 50 Alabama L. Rev. 651 (Spring 1999). Pioneer testified to under oath at its deposition that it knew of no factual basis for its protest, other than a vague concern that its existing wells may be harmed if new wells were drilled in or near the district. There was no showing that Pioneer committed perjury under I.C. § 18-5401. Pioneer will certainly have to live with its testimony.

Under the second ground, no clear basis is provided in the IDWR rules to sanction Pioneer for failing to attend its deposition. The only IDWR rule explicitly providing for sanctions states:

The agency may impose all sanctions recognized by statute or rules for failure to comply with an order compelling discovery, including but not limited to the sanctions listed in paragraphs (A), (B), and (C) of Rule 37(b)(2) of the Idaho Rules of Civil Procedure.

IDAPA 37.01.01.531. IDWR is not consistent in its use of the phrases “order authorizing discovery” and “order compelling discovery.” IDWR apparently considers them to be two different types of orders in IDAPA 37.01.01.521 and .522. In IDAPA 37.01.01.527 and .528, however, IDWR appears to use the terms interchangeably. It is far from clear in IDAPA 37.01.01.531 whether IDWR intended the phrase “order compelling discovery” to stand interchangeably with the phrase “order authorizing discovery.” In the absence of such clarity, the Hearing Officer is reluctant to sanction a party in the absence of a order compelling discovery as contemplated by I.R.C.P. 37(a).

In light of the foregoing discussion, the Hearing Officer will examine each of Pioneer’s responses in the *Answer of Pioneer & Settlers to UWID’s Motion to Dismiss both Districts’ Protests and Preclude their Participation at Hearing* in turn:

(1) United Water prejudiced Pioneer by not allowing the scope of United Water’s 30(B)(6) deposition be determined in the context of Pioneer’ previously filed motion for protective order.

Pioneer argues that it has been prejudiced because United Water did not attempt to continue Pioneer’s I.R.C.P. 30 (b)(6) deposition, which continuance Pioneer opposed in a *Motion for Protective Order* filed on September 10, 2003. United Water, instead, withdrew its request to continue the deposition and filed its *Motion to Dismiss*. United Waters’ action did not prejudice Pioneer. United Water gave Pioneer exactly what it was asking for in its *Motion for Protective Order*—the deposition was not continued.

(2) Because United Water did not seek an order compelling discovery, pursuant to IDAPA 37.01.01.521, sanctions pursuant to IDAPA 37.01.01.531 are not appropriate.

As discussed above, the Hearing Officer agrees with Pioneer regarding this argument.

(3) Dismissal, as a sanction, is only a last resort and not appropriate in this matter.

Because the Hearing Officer does not believe he has authority under IDWR's rules of procedure to sanction Pioneer, he does not have to reach this issue in the context of sanctions. A protest with a solely legal basis is proper and not subject to dismissal.

(4) United Water improperly attempts to impose Federal practice standards upon proceedings before the Idaho Department of Water Resources.

Pioneer argues that United Water improperly relies upon federal court decisions interpreting the Federal Rules of Civil Procedure in its *Motion to Dismiss*. The Idaho Supreme Court looks to federal court decisions for guidance when the Federal Rules are identical to the Idaho rules in all material respects. *Compton v. Compton*, 101 Idaho 328, 334(1980). With no authoritative Idaho court decisions available to it, IDWR is free to do the same. There was nothing improper in United Water's citation to federal caselaw.

(5) Pioneer's witness, as required, appeared at the time and location specified and answered the questions presented to him.

Pioneer argues that sanctions are improper because Pioneer did designate a witness to appear for it at the time and place specified in the notice and answered the questions presented to him. Pioneer is correct in this assertion to the extent that sanctions are not available. Pioneer is, however, incorrect in its assertion that nothing else was required under I.R.C.P. 30(b)(6). *Answer of Pioneer & Settlers to UWID's Motion to Dismiss both Districts' Protests and Preclude their Participation at Hearing* at 22. The person designated by Pioneer was required to testify as to matters known or reasonably available to Pioneer. The factual basis for Pioneer's protest were certainly reasonably available to Pioneer. In its answers at the deposition Pioneer testified under oath that it did not know the factual basis for its protest. The vague mention of well interference, if the answers in that regard stated all information reasonably available to Pioneer about this concern, cannot be considered a legitimate factual issue at hearing.

(6) United Waters' notice of deposition under 30(B)(6) failed to describe with reasonable particularity the conditions or modifications to the IMAP that would resolve Pioneer's protest upon which examination was requested.

Pioneer concedes that United Water's designation of "[e]ach and every basis for your protest in this matter" was an adequate description of this area of inquiry. *Answer of Pioneer & Settlers to UWID's Motion to Dismiss both Districts' Protests and Preclude their Participation at Hearing* at 24. Pioneer further concedes that the designation of [t]he conditions or modifications to the IMAP, if any, that would resolve your protest" was sufficiently precise. Pioneer was directly asked whether it could speak on any conditions or modifications that would resolve its protest. Pioneer could not.

(7) United Water could not obtain an order compelling discovery because Pioneer' complied with the requirements of IRCP 30(b)(6).

Pioneer' asserts that because its witness complied with the requirements of I.R.C.P. 30(b)(6) United Water would not be able to obtain a order compelling discovery, much less an order imposing sanctions. Because the Hearing Officer does not believe he has authority under IDWR's rules of procedure to sanction Pioneer, he does not have to reach this issue.

(8) In other discovery responses Pioneer has provided the basis for its protest.

Pioneer argues that the factual basis for its protests was disclosed in previous discovery responses or could have been obtained by deposing members of the board of directors.¹ In its deposition Pioneer also testified that other answers might have been available from Ken Brush, Pioneer's chairman. This is the type of "bandying" that I.R.C.P. 30(b)(6) was enacted to prevent. Sinclair & Fendrich, *Discovering Corporate Knowledge and Contentions: Rethinking Rule 30(B)(6) and Alternative Mechanisms*, 50 Alabama L. Rev. 651, 658-659 (Spring 1999). United Water elected to use I.R.C.P. 30(b)(6) and, absent objection, Pioneer was obligated to comply. The availability of other discovery or other witnesses has no bearing.

B. Motion to Strike.

Pioneer filed the *Motion to Strike* because it asserts that the *Motion to Dismiss* improperly refers to conditions that United Water proposed as a way to potentially settle the protests against the IMAP. The conditions referred to are mentioned so vaguely in United Water's *Motion to Dismiss* and related exhibits that including these documents in the record neither violates IDAPA 37.01.01.610 nor prejudices Pioneer.

¹ A review of Pioneer's discovery responses attached to the *Affidavit of Scott L. Campbell in Support of Answer of Pioneer and Settlers to UWID's Motion to Dismiss Both Districts' Protests and Preclude their Participation at Hearing* reveals that it provided very little helpful information to United Water regarding the factual basis for Pioneer' protest.

ORDER

Based upon the foregoing:

1. The *Motion to Dismiss* is DENIED in part and granted in part, as follows:

a. Pioneer's protest will not be dismissed.

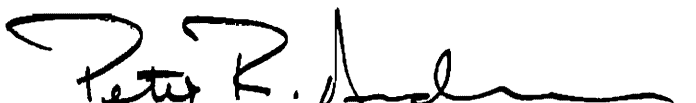
b. Based upon Pioneers' answers at its I.R.C.P. 30(b)(6) deposition Pioneer's participation in this matter shall be restricted solely to making legal argument and cross-examining United Water witnesses to the same extent as allowed other protestants.

2. The *Motion to Strike* is DENIED.

3. United Water's request for attorney fees is DENIED.

It is so ORDERED.

Dated this 22nd day of April, 2004.


Peter R. Anderson
Hearing Officer

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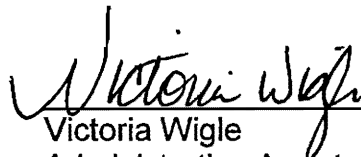
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Victoria Wigle
Administrative Assistant to the Director
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BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES

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)

DEPOSITION OF JEFFREY SCOTT

Boise, Idaho

September 3, 2003

DEPOSITION OF JEFFREY SCOTT, taken at the instance of the Applicant United Water Idaho, at the offices of Givens Pursley, 601 West Bannock Street, in the City of Boise, State of Idaho, commencing at 9:00 a.m., on Wednesday, September 3, 2003, before CONSTANCE S. BUCY, CSR, a Notary Public in and for the State of Idaho, pursuant to Notice and in accordance with the Idaho Rules of Civil Procedure.

APPEARANCES

For the Applicant: GIVENS PURSLEY
by Christopher H. Meyer, Esq.
Post Office Box 2720
Boise, Idaho 83701

For Pioneer MOFFATT THOMAS BARRETT ROCK
Irrigation District: & FIELDS
by Scott L. Campbell, Esq.
Post Office Box 829
Boise, Idaho 83701

For the Cities of MOORE SMITH BUXTON & TURCKE
Eagle, Kuna, by Tammy A. Zokan, Esq.
Middleton & Star: 225 North 9th Street
Boise, Idaho 83702

BOISE, IDAHO, WEDNESDAY, SEPTEMBER 3, 2003, 9:00 A. M.

(Exhibits 1 - 10 were marked for identification before the commencement of the deposition.)

JEFFREY SCOTT,
produced as a witness at the instance of the Applicant United Water Idaho, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. MEYER:

Q Mr. Scott, my name is Chris Meyer. I represent United Water Idaho Inc. and I'll be taking your deposition this morning. Would you state your full name for the record?

A Jeffrey C. Scott.

Q And your residence?

A 1123 Talon Court, Caldwell, Idaho.

Q And you hold a position with Pioneer; is that correct?

A Yes.

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WITNESS	EXAMINATION BY	PAGE
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EXHIBITS

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4 - Statement of the Issues	4
5 - Pioneer and Settlers' List of Additional Issues	4
6 - (Withdrawn)	
7 - Amended Notice of Deposition Duces Tecum of Pioneer Irrigation District	4
8 - (Withdrawn)	
9 - (Withdrawn)	
10 - Proposed IMAP Conditions	4

Q What is that position?

A Superintendent.

Q How long have you held that position?

A As of January 1st, 2003.

Q And what position did you hold at Pioneer before that?

A Assistant superintendent.

Q And how long were you in that position?

A Roughly two years.

Q Have you ever had your deposition taken before?

A Once.

Q Recently?

A It's been about four or five months ago. Would it have been that long?

Q How time flies. Well, I take it you're basically familiar with the format and I'd just like to remind you throughout the proceeding you're under oath. If I ask you a question and you don't understand the question, feel free to ask me to make it more clear. If I or if anyone says anything that can't be transcribed, it's not going to work, so please try to answer audibly with words rather than gestures.

If you want to draw a picture or if we

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1 want to look at a map or something like that, we need
2 to make sure we use some sort of verbal description so
3 that somebody reading the transcript can figure out
4 what we're talking about. If you need to take a break
5 at any point, just let us know and we'll be happy to
6 do that; so you've been altogether with Pioneer for,
7 what did you say, two, three years?

8 A As assistant superintendent, yes. I've
9 been employed --

10 Q But you've held previous positions?

11 A Yes.

12 Q Why don't you run through those for me.

13 A Originally started off as a bull gang
14 guy which is basically a maintenance fix-it man and
15 then was appointed to assistant superintendent and
16 when Lonny retired, they gave me the job as
17 superintendent.

18 Q So you've had three positions
19 altogether, then?

20 A Correct.

21 Q When did you start off initially,
22 roughly?

23 A I'm not too sure. You know, it was --

24 Q Five years ago? Ten years ago?

25 A I would say six, close to seven. I

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1 think it was in June.

2 Q Now, this IMAP has been underway for
3 longer than anybody wishes. It was first filed, I'm
4 looking at the cover of the IMAP itself, on May
5 the 4th, 2001, what position did you hold back then?

6 A Assistant.

7 Q Okay; so throughout the period that the
8 IMAP has been a formal proceeding, you've been in the
9 decision making loop; would that be a fair assumption
10 on my part?

11 A No.

12 Q Well, why don't you describe a little
13 bit to me about the decision making process and the
14 corporate structure at Pioneer and tell me how you fit
15 into that.

16 A As we are today?

17 Q That would be a good place to start.

18 A As we are today, I just basically follow
19 board procedures. If anything big should come up with
20 something that I don't feel comfortable in answering
21 and what have you, I will take it to the board and ask
22 for their advice and how I should handle a particular
23 situation.

24 Q And then who makes the final decision?

25 A The board members. That would be Donny

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1 Sayre, Ken Brush and Alan Newbill.

2 Q Donny Sayre, that's S-a-y-r-e, Ken Brush
3 and what was the third?

4 A Alan Newbill.

5 Q Okay, and according to my notes, Ken
6 Brush is the president; is that still accurate?

7 A Correct.

8 Q And the other two are board members?

9 A Correct.

10 Q Is the board composed only of those
11 three members?

12 A Yes.

13 Q Now, do you have any decision making
14 authority?

15 A In regards to?

16 Q Oh, anything. What is your authority to
17 make decisions?

18 A To make decisions that pertain to our
19 district standards.

20 Q Do you hire and fire, for instance?

21 A Yes.

22 Q Do you make any policy decisions?

23 A I could give some recommendations, but
24 as far as the final outcome, it is ultimately the
25 board's decision.

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1 Q Let me give you a copy of -- I'll give
2 you the original of what has been marked as Exhibit 1
3 and hand out copies to the other people. In fact,
4 I'll give you both No. 1 and, I believe it's, No. 7.

5 I'm handing out to other counsel now
6 No. 7 and No. 1.

7 Have you seen those two documents
8 before?

9 A Yes, I believe I have.

10 Q Would you identify them for the record?

11 A I don't quite understand what you --

12 Q Oh, just explain what the document is,
13 if you're familiar with it.

14 A I'm not too familiar with it.

15 Q Let's take them one at a time. The one
16 that's marked Exhibit No. 1, it's labeled Notice of
17 Deposition Duces Tecum of Pioneer Irrigation District,
18 do you think you've seen that document before?

19 A Yes, I do.

20 Q Okay, and the final sentence on that
21 first page says, "You are required to designate one or
22 more officers, directors or managing agents to be
23 examined regarding," and then on page it lists two
24 items. Do you see that?

25 A Uh-huh.

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1 Q Did you have a discussion before this
2 deposition about what would be expected of you at this
3 deposition?

4 A Yes.

5 Q And did you review those two items?

6 A No.

7 Q Now, the first item says, "Each and
8 every basis for Pioneer Irrigation District's protest
9 in this matter," and what that means, if I can
10 elaborate on that, is simply a list of the reasons why
11 Pioneer filed its protest. Are you prepared to
12 discuss that today?

13 A No, I'm not. There is a list of reasons
14 why we will be protesting those.

15 Q Okay, and you're handing me something
16 that is labeled Statement of the Issues. Just for
17 clarity, I have a copy of that labeled Exhibit No. 4,
18 so why don't we just use that exhibit.

19 MR. CAMPBELL: Counsel, just so we have
20 no misunderstanding, there are two documents in that
21 set of documents. It's not just one.

22 MR. MEYER: Oh, okay.

23 MR. CAMPBELL: So you might want to
24 examine the document before you conclude that
25 Exhibit No. 4 is going to serve that purpose.

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1 MR. MEYER: I thank you for that,
2 Mr. Campbell. Can we go off the record for just a
3 moment?

4 (Off the record.)

5 MR. MEYER: Okay, we're back on the
6 record now. Counsel for Pioneer has provided
7 Mr. Scott with two documents which we've labeled
8 Exhibits 4 and 5.

9 MR. CAMPBELL: I'd like to correct for
10 the record, I did not provide those documents to
11 Mr. Scott. I believe you did. I provided him
12 different documents which were not labeled exhibits
13 just so we have that clear.

14 MR. MEYER: Okay, well, that certainly
15 clarifies the record, but the exhibits that you
16 provided him or the documents you provided him were
17 the same as what we've now labeled Exhibits 4 and 5;
18 is that right?

19 MR. CAMPBELL: They appear to be copies
20 of the same documents.

21 Q BY MR. MEYER: Exhibit No. 4, for the
22 record, is the Statement of the Issues submitted by
23 Pioneer and Settlers Irrigation Districts -- did I say
24 Exhibit No. 4 -- and Exhibit No. 5 is Pioneer and
25 Settlers' List of Additional Issues.

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1 Now, you were in the process of
2 answering my question, Mr. Scott, when we took a break
3 a moment ago and I asked you if you were prepared to
4 discuss the reasons that Pioneer has filed its protest
5 of United Water's application in this case and do you
6 want to continue your response? Before I think you
7 may have said that you were not prepared, but now I'm
8 wondering if you think you are now that you've been
9 given these documents.

10 A I'm not prepared to answer these deals.
11 These are more attorney questions and I don't
12 understand these issues.

13 Q Okay. Now, turning back to Exhibit
14 No. 1, it provides that it's a Rule 30(b)(6)
15 deposition, did your attorney explain to you what that
16 means?

17 A No.

18 Q What explanation, if any, did your
19 attorney provide you to prepare for this deposition?

20 MR. CAMPBELL: I'll object to the
21 question. It inquiries into attorney-client
22 communications and I'll instruct the witness not to
23 answer.

24 Q BY MR. MEYER: Let me ask the question a
25 different way. Did you do anything to prepare for

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1 this deposition?

2 A No.

3 Q Okay, just to complete the record, I had
4 handed you Exhibit No. 1 and also Exhibit No. 7 and
5 just in the interest of speeding things along, if
6 you'll allow me, Mr. Campbell, I'll just identify
7 Exhibit No. 7 is a revised deposition notice which
8 does nothing other than change the date to today's
9 date.

10 I had asked you, Mr. Scott, about the
11 first item on that deposition notice. Turning to the
12 second one on page 2 it says, "The conditions or
13 modifications to the IMAP, if any, that would resolve
14 your protest." Are you prepared to speak to that
15 today?

16 A I am not.

17 Q Did you make any effort at all to learn
18 what conditions or modifications to the IMAP would be
19 sufficient to resolve Pioneer's protest before coming
20 here today?

21 A No.

22 Q Is there someone else at Pioneer
23 Irrigation District that would be in a better position
24 to be giving this deposition today, would be more
25 knowledgeable about those two subjects?

1 A Sure, Ken Brush who is chairman, Donny
2 Sayre or Alan Newbill.
3 Q And why would they be better prepared?
4 A A lot more experience.
5 Q When you received this deposition, did
6 you suggest that maybe someone else might be better
7 prepared to do this than you?
8 A No.
9 Q And why is that?
10 A I couldn't answer that. I don't know.
11 Q Okay. Well, why don't we step back a
12 little bit and maybe you can educate me a little bit
13 about Pioneer Irrigation District and you can fairly
14 assume that I'm a blank slate, I don't have a good
15 grounding in the history of the district and if you
16 could step through a little bit of how it came to be
17 and what its current operating regime is. Let's not
18 focus so much now on people but the physical system.
19 I know that's an awfully broad question. Would you
20 like me to break it down?
21 A Please do.
22 Q Okay, how far back does Pioneer
23 Irrigation District trace its origins?
24 A Early 1900s.
25 Q And how did it come into being?

1 A To my knowledge, I believe it was a
2 bunch of farmers got together and started digging
3 ditch so they would be able to grow crops.
4 Q And what ditch did they dig?
5 A Phyllis Canal, laterals, feeders,
6 numerous ditches.
7 Q How has the entity changed over the
8 years?
9 A I'm not too sure.
10 Q Are you familiar with the water rights
11 that are owned by Pioneer?
12 A Very little.
13 Q Is there somebody else that would be
14 more familiar with those water rights?
15 A Absolutely.
16 Q And would those be the three board
17 members?
18 A Correct.
19 Q Do you know what types of water sources
20 are part of the portfolio that provides water rights
21 for Pioneer; in other words, is it ground water? Is
22 it surface water? Is it storage water? Are you
23 familiar with that?
24 A All three.
25 Q All three?

1 A We've got storage water, we've got
2 ground water. We've got water rights out of drain
3 ditches. I think that covers them all.
4 Q Do you know anything about the history
5 of how those water rights came into your portfolio; in
6 other words, did it start off of with one and then you
7 moved more toward ground water later?
8 A That I'm not too sure.
9 Q Do you know any of the priority dates or
10 even a range that would be associated with any of
11 those rights?
12 A I have that information, but right off
13 the top of my head I wouldn't know. I don't remember
14 them all.
15 Q Would you be able to take an educated
16 guess at the most recent water right that has been
17 acquired by Pioneer?
18 A I believe that's the Ten Mile well.
19 Q Let me get out a map here.
20 Counsel, I wasn't planning on marking
21 this as an exhibit, but rather just using it for
22 illustrative purposes.
23 MR. CAMPBELL: It's your choice.
24 MR. MEYER: If at some point it seems to
25 be necessary, we'll do it, but this is the only copy I

1 have. It's also subject of whatever the Bureau's
2 constraints are with respect to security, so if we can
3 avoid it, I'd rather not get into that issue.
4 Q BY MR. MEYER: Can you tell me where
5 this Ten Mile well is? Take a moment and kind of
6 orient yourself to this map first. Take as long as
7 you like. Have you seen this map before?
8 A Actually, I have. I've seen this in
9 Scott's office.
10 Q Okay. Can you just tell us what this is
11 a map of?
12 A I believe it's a map of all the
13 irrigation districts in the Treasure Valley.
14 Q And do you see Pioneer Irrigation
15 District marked off there?
16 A Yes, I do.
17 Q So far as you know, does that appear to
18 be accurate?
19 A It appears to be accurate, yes, but I'm
20 having a hard time locating that Ten Mile. There's no
21 road, there are no roads.
22 Q Right. Yeah, it shows only very
23 generally the City of Caldwell here, the City of Nampa
24 here, but doesn't show, at least it's not apparent to
25 me, where their boundaries are. Do you have a sense

1 of what part of -- well, first of all --
 2 A [Witness indicating].
 3 Q And you're pointing to what would be the
 4 southeast portion of the Pioneer Irrigation District
 5 service area?
 6 A Correct.
 7 Q What do you call this area? I don't
 8 think you call it a service area, do you? What's the
 9 proper term for that?
 10 A Our district?
 11 Q District boundary?
 12 A Uh-huh.
 13 Q Is there a term for what's within the
 14 district boundary? Do you just call it the district?
 15 A Yeah.
 16 Q So Ten Mile would be somewhere in the
 17 southeast? I see north to the top of the map here.
 18 A Yeah, if this had Can-Ada Road on it,
 19 I'd be able to give you a little bit better idea on
 20 where it's at, but, yeah, roughly it's in that area.
 21 Q How many wells do you have altogether?
 22 A Roughly 42.
 23 Q Forty-two wells, are they all located
 24 within the district boundaries?
 25 A Yes, to my knowledge, they are.

1 Q During what time frame were those wells
 2 acquired?
 3 A That I'm not too sure.
 4 Q Are there plans to build additional
 5 wells?
 6 A Not to my knowledge.
 7 Q Why were those wells brought on line?
 8 A There are some areas in the district
 9 that has high water table and some are supplemental
 10 wells that in drought years we can use them wells to
 11 put into our laterals and be able to supply our
 12 patrons with water.
 13 Q Now, you identified several types of
 14 water source, ground water, storage water, direct --
 15 you have direct flow rights or natural flow rights --
 16 A (The witness nodded his head up and
 17 down.)
 18 Q -- and also recovery of -- how did you
 19 phrase it?
 20 A Feeders, water rights out of Indian
 21 Creek, Mason Creek.
 22 Q And also you pick up some waste water,
 23 is that right, and reuse it?
 24 A Oh, yeah.
 25 Q Okay. Is all of that accomplished

1 within a single physical system? Is it interconnected
 2 or is it discrete parts?
 3 A I don't quite understand.
 4 Q In other words, how is it plumbed
 5 together? For instance, let's take the Ten Mile well,
 6 how does the Ten Mile well fit in with the rest of the
 7 system? How is it plumbed?
 8 A Well, right now it's able to supply an
 9 individual water along with a T-type structure that we
 10 can block off that individual when he doesn't want the
 11 water and we can divert that into the Phyllis Canal.
 12 Q So the ground water goes into the same
 13 canal delivery system as would surface water?
 14 A Yes.
 15 Q And so when the irrigator turns on --
 16 would it be a center pivot, are these commonly center
 17 pivots?
 18 A I believe this guy here just flood
 19 irrigates.
 20 Q Flood irrigates; so when he flood
 21 irrigates, would he know whether he was using ground
 22 water or surface water? Would that be apparent to
 23 him?
 24 A I would guess yes.
 25 Q How would he know?

1 A Just by the clean water.
 2 Q So the ground water is a lot cleaner, so
 3 he would notice that?
 4 A I would imagine, yes.
 5 Q But it comes out of the same physical
 6 structure to him?
 7 A Yes.
 8 Q And would that be the case with all the
 9 other wells? Do all the other wells feed into a
 10 structure that also has surface rights associated with
 11 it?
 12 A Not all, no.
 13 Q So some of the ground water wells are
 14 used in exclusive systems?
 15 A Correct.
 16 Q Do you have an idea of the total
 17 quantity of water rights within the district's
 18 portfolio?
 19 A Off the top of my head, no.
 20 Q Does somebody know that?
 21 A I would imagine, yes.
 22 Q Do you have a sense of the fraction of
 23 ground water versus other water rights; in other
 24 words, is half of your system ground water?
 25 A I don't know. I don't know.

1 Q Somewhere in that ball park?
 2 A Guessing?
 3 Q Yeah.
 4 A Guessing, I would say it would probably
 5 be a quarter.
 6 Q A quarter?
 7 A Maybe a half, somewhere in there.
 8 Q Okay. How much of the district has now
 9 been converted to residential and commercial use? Do
 10 you have a sense of that?
 11 A I do not. As far as acreage, I do not.
 12 Q Would you describe it as substantial?
 13 A Not at this time, no.
 14 Q So the vast majority of your water is
 15 being used in traditional irrigation for farms and
 16 ranches?
 17 A Correct.
 18 Q Do you see that changing over time?
 19 A Absolutely.
 20 Q How quickly do you see that changing?
 21 Is it a ways off before it hits, you know, more than
 22 10 years out? 20 years out? Do you have any sense of
 23 what --
 24 A I would totally be guessing. You know,
 25 it all depends on how the economy goes and if it

1 booms, I imagine that it's going to take a little less
 2 time than if it doesn't.
 3 Q Is this an issue that the board has
 4 grappled with, the potential conversion of district
 5 land?
 6 A Yes.
 7 Q And does the board have a viewpoint or
 8 policy on that?
 9 A As far as converting over into
 10 residential lots?
 11 Q Yes.
 12 A As it is right now, the City of Caldwell
 13 is requiring us to maintain these residential lots.
 14 The City of Nampa is not.
 15 Q Does your board, Pioneer's board, have a
 16 position as to whether it believes that when these
 17 areas are converted to residential and commercial the
 18 irrigation water ought to be maintained on that land?
 19 Do you have a policy position on that?
 20 A Can you rephrase that?
 21 Q Does the board favor the conversion or,
 22 excuse me, does the board favor the retention of water
 23 on land that has been converted to residential and
 24 commercial uses?
 25 A I'm sorry, I still don't quite

1 understand it.
 2 Q Well, I suppose when land is converted
 3 to residential and commercial, you can either
 4 continue, the district can continue, to provide water
 5 service to those or not, does it favor continuing to
 6 serve?
 7 A Oh, absolutely.
 8 Q And is that a crystal clear policy of
 9 the board that it wants to continue that service?
 10 A Yes.
 11 Q So you had mentioned, for instance, that
 12 Nampa doesn't require that, doesn't require that you
 13 continue to provide that service, did I hear that
 14 correctly?
 15 A No, no. As far as operation and
 16 maintenance of them subdivisions, maintaining the
 17 inner lines and what have you, we still supply the
 18 water to Nampa.
 19 Q I see.
 20 A They just run their own pump stations
 21 and they take care of their own systems.
 22 Q I see; so in both cases, both Nampa and
 23 Caldwell, the district provides the water, but the
 24 operational system is very different?
 25 A Correct.

1 Q Just to make sure I understand, can you
 2 step through again and describe how it's done in
 3 Caldwell versus how it's done in Nampa?
 4 A Sure. Nampa, basically we just bring it
 5 to a point of delivery and they run their pumps and
 6 they supply their patrons with water. The City of
 7 Caldwell is requiring us to maintain these systems and
 8 we deliver water to the pump stations. We maintain
 9 the pump stations and all the inner lines, the
 10 infrastructure within the subdivision to a curb stop
 11 that is supplied to each and every one of the lots
 12 within a subdivision.
 13 Q Does the board prefer one versus the
 14 other? Are you just as happy to do it one way or the
 15 other?
 16 A We're still in the learning process.
 17 The more and more these subdivisions come in, I feel
 18 that maybe someday we'll reach a point to where we
 19 can't take on any more subdivisions. Maybe, maybe
 20 not.
 21 Q Is it your experience that when these
 22 conversions take place the new uses, the residential
 23 and commercial uses, use the same amount of water or a
 24 different amount of water as compared to the previous
 25 irrigation?

1 A I would have to say they use a little
2 less.
3 Q A little less? Why do you suppose that
4 is?
5 A You have all the houses that's on that
6 ground, you have all the roadways that's on that
7 ground and they're sprinkler systems and they're not
8 being gravity fed. In my opinion, gravity fed land
9 uses a little bit more water than a sprinkler system
10 does.
11 Q And the majority of your land is gravity
12 fed prior to conversion?
13 A Correct.
14 Q Has the board ever sought to quantify
15 that? Has anybody done a study of that?
16 A Not to my knowledge.
17 Q Does the board have a conservation
18 program that it imposes when one of these areas
19 converts to residential or commercial?
20 MR. CAMPBELL: I'll object to the
21 question. It's the subject of a contested motion to
22 compel and at this time until there's a ruling by the
23 Hearing Officer, I'll instruct the witness not to
24 answer.
25 MR. MEYER: Would you, Mr. Campbell,

1 just so we'll know what the bounds of this are, are
2 you going to object to any question that bears on the
3 conservation plans of the district?
4 MR. CAMPBELL: Yes, and I'll instruct
5 the witness not to answer the questions.
6 Q BY MR. MEYER: Has the district
7 experienced water shortages in the past?
8 A With the exception of drought seasons
9 and, again, I'm fairly new to this, so I really don't
10 know.
11 Q Remind me how many years you've been
12 with the district going all the way back to your first
13 hire.
14 A I would guess six, seven years.
15 Q And during that six, seven years, have
16 you heard stories of instances in which the district
17 has been unable to serve the requirements or meet the
18 requirements of district members?
19 A Yes.
20 Q Are those recent stories or are they
21 long ago stories?
22 A Fairly recent, yes.
23 Q Any during the six or so years that
24 you've been around?
25 A Sure.

1 Q And can you recall the most recent?
2 A I cannot.
3 Q And what happens during those periods
4 when you're unable to meet the full demand? How does
5 the district deal with it?
6 A We just can't supply the water to our
7 patrons and ultimately the ditches are all shut down
8 and they're dried up.
9 Q So there isn't a mechanism for rotating
10 or somehow parceling out the available supply, you
11 just shut the whole thing down?
12 A I've been told years ago that they have
13 rotated the system and I've also been told that with
14 all the subdivisions coming on place and all the
15 patrons that we supply water to is a lot greater than
16 what it used to be, so the board has chosen not to
17 rotate the district due to the subdivisions having
18 water and not having water.
19 Q Well, just for the record, I would at
20 this point like to learn more about the relationship
21 between your conservation programs and your inability
22 to meet demand from time to time, but counsel has made
23 it clear that we're not to get into that and at this
24 point during the deposition, I'm not inclined to call
25 Mr. Anderson.

1 Are you familiar with the service area
2 of United Water Idaho?
3 A No.
4 Q Let me take out a map here. We can go
5 off the record for just a second.
6 (Off the record discussion.)
7 Q BY MR. MEYER: We're back on the
8 record. What we've done here while we were off the
9 record is spread out another map. This other map is
10 the attachment to the IMAP. Mr. Scott, I'm just going
11 to put in front of you here, I haven't labeled it as
12 an exhibit, but this is a copy of what's called the
13 IMAP or the Integrated Municipal Application Package.
14 Have you seen this document before?
15 A Just like this, yes, I mean, as in like
16 this. I've never went through it. I have no idea
17 what's inside it.
18 Q Okay. Well, let me just represent to
19 you that the map that we have put on the table is an
20 appendix to this IMAP and is part of the proceeding in
21 this case and the other map that we have on the table
22 is the one that we took out earlier which shows the
23 boundaries of the various irrigation districts. It
24 also shows all of United Water's wells.
25 Now, were you able to orient yourself so

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1 that you have a sense of where United Water's service
2 area is today with respect to Pioneer Irrigation
3 District's boundaries?
4 A Yes.
5 Q Is there any overlap between them?
6 A Not to my knowledge.
7 Q Has there been -- are there any
8 instances of well interference between wells of the
9 Pioneer Irrigation District and wells of United Water?
10 A Not to my knowledge.
11 Q To your knowledge, has the board ever
12 identified that as a subject of concern?
13 A Yes.
14 Q And what is the basis for that concern?
15 A We're afraid that if more wells are put
16 in our district or relatively close to our district,
17 that potentially would prevent us from supplying
18 adequate water out of our wells.
19 Q So the concern is with new wells?
20 A Correct.
21 Q Are you aware of any concern that the
22 board has expressed with United Water's existing
23 system of wells?
24 A No.
25 Q Now, when I first phrased that question,

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1 I phrased it in terms of well interference. To
2 broaden the question, are you aware of any
3 interference of any type with United Water's system
4 and the Pioneer Irrigation District water rights?
5 That could be well interference or it could be
6 conjunctive use problems, you name it.
7 A At this time, no.
8 Q But you are concerned that that could be
9 a problem in the future?
10 A Yes.
11 Q Under what circumstances would that be a
12 problem?
13 A Can you rephrase that?
14 Q You said it's not a problem today, but
15 it might be a problem in the future, what would cause
16 it to be a problem in the future? I assume that if
17 United Water put in more wells in Pleasant Valley,
18 that wouldn't be a problem, but if it put them in the
19 middle of your irrigation district, that might be a
20 problem. I don't want to put words in your mouth,
21 though. Can you tell me what the fear or concern is
22 of the district with respect to what United Water
23 might be do in the future?
24 MR. CAMPBELL: I'll object to the
25 question. I think it's already been asked and

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1 answered, but if you think you can answer it, go
2 ahead, Jeff.
3 THE WITNESS: Again, we're just afraid
4 that it's going to impact our wells, our existing
5 water rights, ground water. You start pulling water
6 out of the ground, the ground is going to start
7 sucking up more water.
8 Q BY MR. MEYER: So is the concern that
9 any additional well in the Treasure Valley would do
10 that or is it more of a well interference concern,
11 that it has to be close to one of your wells?
12 MR. CAMPBELL: I'll object to the form
13 of the question, it's leading. If you think you can
14 answer it, go ahead.
15 THE WITNESS: I don't think I can answer
16 that.
17 Q BY MR. MEYER: So you don't know what
18 the nature of the concern is?
19 MR. CAMPBELL: Well, I'll object to the
20 question. Again, it's leading and I think --
21 MR. MEYER: It's a hostile witness,
22 Mr. Campbell.
23 MR. CAMPBELL: I can make my objection,
24 Mr. Meyer. You don't need to worry about me
25 instructing him not to answer. I can make my

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1 objection for the record.
2 THE WITNESS: Can you rephrase that
3 question?
4 Q BY MR. MEYER: Well, I'm trying to find
5 out whether the district has any more precise concern
6 about what United Water might do in the future. So
7 far you've just said well, there might be interference
8 in the future or there might be a problem in the
9 future and I'm trying to figure out if you can put a
10 finer point on that, and I gave you two possibilities
11 and I didn't mean to lead you one way or the other
12 because I don't really know what the district is
13 thinking and I'm only laying those out to try to give
14 you an idea of what the question is.
15 I'm not trying to tell you how to answer
16 it, but I'm trying to figure out whether the district
17 is concerned that any new well anywhere in the
18 Treasure Valley is a problem; in other words, any
19 additional straw in the aquifer is a problem, that's
20 one possibility, or maybe the district concern is that
21 United Water is getting closer and closer
22 geographically to Pioneer. Those are two very
23 different kinds of concerns in terms of water rights
24 and I'm wondering if it's one or the other or both or
25 maybe you don't really know.

1 A Yeah, I don't really know.
 2 Q Is there someone at the district that
 3 would be in a better position to answer that question?
 4 A Yes.
 5 Q Would those be the three board members?
 6 A Yes.
 7 Q Any one of them in particular?
 8 A I would say Ken Brush.
 9 Q Remind me, is he the president?
 10 A He's the chairman.
 11 Q The chairman? Does the district have
 12 any policy for when it uses ground water versus
 13 surface water?
 14 A There's wells out there that are solely
 15 supplying irrigators and that's the only way they can
 16 receive water. We've got other wells that are
 17 supplemental wells that when we go on storage with our
 18 storage water, we will turn these wells on to try
 19 saving storage water.
 20 Q Okay; so there's a preference for using
 21 the ground water if both ground and storage are
 22 available?
 23 A (The witness nodded his head up and
 24 down.)
 25 Q I didn't mean to put words in your

1 mouth. I just wanted to make sure that I understood
 2 that.
 3 A Preference using ground water?
 4 Q That's what I thought I heard you say,
 5 that if you have both storage water available and
 6 ground water available and you're allowed to use
 7 either under your water rights, you would use the
 8 ground water.
 9 A Yes, we would use the ground water on
 10 top of the well water. We use both of them.
 11 Q When you say "on top of the well water,"
 12 I'm not sure what you mean. What is the difference
 13 between well water and ground water?
 14 MR. CAMPBELL: I think you meant to say
 15 storage water.
 16 THE WITNESS: Yeah, I meant to say
 17 surface water.
 18 Q BY MR. MEYER: So you would conserve the
 19 storage water?
 20 A Correct.
 21 Q And use the ground water if both were
 22 available?
 23 A Correct.
 24 Q Now, you had indicated, Mr. Scott, that
 25 you have not ever read this document called the IMAP;

1 is that correct?
 2 A Correct.
 3 Q Let me just represent to you there have
 4 been more than one version of this document and I just
 5 want to make sure I understand that when you said you
 6 hadn't read the IMAP, that means you haven't read any
 7 of them; is that correct?
 8 A Correct.
 9 Q Okay. Are you familiar nonetheless with
 10 what United Water is seeking in its IMAP application?
 11 A Very little.
 12 Q What is your understanding?
 13 A My understanding that they are seeking
 14 different locations to drill wells to supply their
 15 patrons with water.
 16 Q And who's told you that?
 17 A Our attorney.
 18 Q And is that the understanding of the
 19 board as well?
 20 A I believe so.
 21 Q Is that the only thing so far as you
 22 know that the IMAP seeks to do? Is that the gist of
 23 it?
 24 A I couldn't tell you.
 25 Q Let me provide you with a copy of what

1 has been marked as Exhibit No. 3. In fact, this is
 2 not a copy, but that's the original. I'll provide
 3 copies to counsel. I'll just represent to you that
 4 that is a copy of the protest that was filed by
 5 Pioneer against United Water.
 6 MR. CAMPBELL: Exhibit 3?
 7 MR. MEYER: That's Exhibit 3, yes.
 8 Q BY MR. MEYER: Mr. Scott, have you seen
 9 this document before? Take your time looking at it
 10 before you answer.
 11 A I believe I have.
 12 Q What is your understanding of what this
 13 document is?
 14 A I'm not too sure.
 15 Q Do you have any -- can you hazard a
 16 guess? Do you have any sense of what this document
 17 is?
 18 A A lot of Idaho Code numbers, no.
 19 Q Have you been in any meetings where this
 20 document was discussed?
 21 A Not to my knowledge.
 22 Q Has the board discussed this document?
 23 A They may have. I don't know.
 24 Q Do you attend board meetings?
 25 A I do.

1 Q Do you attend all of them?
 2 A I've been to seven, eight of them.
 3 Q Is that the last eight?
 4 A Yes.
 5 Q Okay, and how often are board meetings
 6 held?
 7 A Once a month.
 8 Q So you've been there for the last eight
 9 months?
 10 A (The witness nodded his head up and
 11 down.)
 12 Q Has -- have there been discussions of
 13 the protest filed by Pioneer against United Water in
 14 any of those meetings?
 15 A Yes.
 16 Q And what is your understanding of the
 17 reasons that Pioneer filed those protests or filed
 18 that protest?
 19 A I think, like I stated earlier, we're
 20 concerned about the potential loss of water from our
 21 existing wells that may impact them.
 22 Q Okay, let me draw your attention to
 23 page 2 of this Exhibit No. 3. There is a bold caption
 24 that says, "Failure to Comply with the Requirements of
 25 Idaho Code sections 42-202 and 42-202B, and in the

1 first full paragraph underneath that caption, it
 2 identifies three areas in which Pioneer has stated
 3 that United Water, here it's listed as UWID, that's
 4 the same thing, has not met its burden of proof and
 5 they begin on -- just counting down lines, not
 6 sentences, the fourth line down, do you see where it
 7 says "(1) the planning horizon sought by United Water
 8 is unreasonable"?
 9 MR. CAMPBELL: Well, for purposes of the
 10 record, it does not state that. It says "reasonable."
 11 MR. MEYER: Oh, I thank you for that.
 12 Q BY MR. MEYER: The "not" is encompassed
 13 earlier in the sentence, so if we read the whole thing
 14 it would be, "The IMAP fails to meet the standards set
 15 forth in Idaho Code section 42-202B ('Definitions') in
 16 that UWID has not met its burden of proof showing that
 17 (1) the planning horizon sought by UWID is
 18 reasonable."
 19 MR. CAMPBELL: Actually, it doesn't say
 20 "burden of proof." It says "burden."
 21 MR. MEYER: Okay, I think you're right.
 22 Q BY MR. MEYER: In any event, the thrust
 23 of this item No. 1 is that Pioneer is saying that the
 24 planning horizon sought by United Water is not
 25 reasonable, that's the thrust of this statement. Do

1 you agree with that? In other words, I don't want to
 2 tell you what the thrust of it is if you think it has
 3 a different thrust.
 4 A I don't know.
 5 Q Do you know what the term planning
 6 horizon means?
 7 A Future, what you foresee in the future.
 8 Q Do you know how long of a planning
 9 horizon United Water is seeking under its IMAP?
 10 A No.
 11 Q So you wouldn't know if it was 20 years
 12 or 50 years?
 13 A I want to say I've been told that, but I
 14 can't remember.
 15 Q Is there someone -- it sounds like a
 16 broken record here, doesn't it?
 17 A Yeah.
 18 Q Is there someone else who might be in a
 19 better position to be taking this deposition this
 20 morning on this subject?
 21 A Sure.
 22 Q And that would again be the chairman?
 23 A Yeah, Ken Brush.
 24 Q Now, do you have a -- let me back up.
 25 You indicated that you provide advice or share your

1 opinion from time to time with the board; is that
 2 correct?
 3 A Correct.
 4 Q Do you have an opinion as to whether
 5 it's appropriate for United Water to be planning for
 6 the future?
 7 A My opinion, yes.
 8 Q What is that opinion?
 9 A Are you asking me --
 10 Q Should United Water be engaged in a
 11 planning effort to forecast its water right needs into
 12 the future?
 13 A Yes.
 14 Q How far out ought it be looking when it
 15 does that, in your opinion?
 16 A Oh, ten years.
 17 Q If it looked farther than that, would
 18 that be better or worse?
 19 A I don't know. I have a hard time
 20 predicting what it would be like in ten years
 21 personally.
 22 Q But you're providing me your personal
 23 opinion now and not speaking on behalf of the
 24 district; is that right? I take it --
 25 A That's correct.

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1 Q -- from your prior statements that you
2 don't really know what the district's position is on
3 the planning horizon.
4 A Correct.
5 Q The second item listed is the future
6 uses or needs projected by IMAP are reasonably
7 anticipated future needs and the context of that is
8 that United Water hasn't met its burden to show that.
9 Are you familiar with that basis for the protest?
10 A No.
11 Q The third item is that the planning area
12 and service area described in the IMAP comport with
13 the definition of service area set forth in section
14 42-202B. Does that mean anything to you?
15 A No.
16 Q And I take it for all of these questions
17 we really ought to have the chairman of the board
18 here; is that right?
19 A Yes.
20 MR. MEYER: Why don't we go off the
21 record and take a break.
22 (Recess.)
23 Q BY MR. MEYER: Okay, back on the
24 record. Let's take a look at Exhibit No. 4. Do you
25 have that in your stack there?

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1 A Yes.
2 Q Exhibit No. 4 is identified Statement of
3 the Issues and was submitted on behalf of Pioneer in
4 this proceeding; is that accurate?
5 A Correct.
6 Q Are you familiar with the Statement of
7 the Issues?
8 A No, I'm not.
9 Q Have you read this before?
10 A No, I haven't.
11 Q Are you familiar with the district's
12 position on any of these issues? I mean, if I went
13 through issue No. 1, issue No. 2, issue No. 3, would
14 you be able to tell me anything?
15 A No, no.
16 Q And the proper person to have answer
17 those questions is the chairman?
18 A Yes, or Scott Campbell.
19 Q Let's take a look at Exhibit No. 5.
20 That's the one that's labeled Pioneer and Settlers'
21 List of Additional Issues. Have you read this
22 document before?
23 A No.
24 Q And you just told me that you weren't
25 prepared to respond on Exhibit No. 4, would all of

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1 your answers be the same for Exhibit No. 5?
2 A Correct.
3 Q I'd like you to take a look at Exhibit
4 No. 10. I don't think I've handed that one out, have
5 I? There we go. Let me hand out copies of that to
6 counsel.
7 Would you take a moment to look over
8 what I've handed to you as Exhibit No. 10 and tell me
9 if you're able to identify what that document is.
10 Have you seen this document before?
11 A No, I haven't.
12 Q Let me represent to you that this is a
13 set of conditions drafted by United Water that United
14 Water proposed be added by the Department of Water
15 Resources to limit the effect of the IMAP. Were you
16 aware that United Water had proposed any conditions on
17 its IMAP?
18 A No, not to my knowledge.
19 Q You had indicated earlier in your
20 testimony that the primary concern that the board had
21 with the IMAP is that it will allow United Water to
22 drill new wells.
23 MR. CAMPBELL: I'll object to that. It
24 mischaracterizes his testimony.
25 Q BY MR. MEYER: Perhaps you could state

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1 that more accurately.
2 A What was the question again?
3 Q Well, I attempted to characterize your
4 earlier testimony where you described the main concern
5 of the district with respect to the IMAP and
6 Mr. Campbell says I didn't do a very good job. I said
7 your concern was that the IMAP would authorize the
8 construction of new wells, but apparently that wasn't
9 accurate. What is the main concern of the district?
10 A I think that would be another question
11 that Ken Brush would be able to answer a little more
12 accurately.
13 Q What was it you said before?
14 A I believe I said the impact of our
15 existing wells would be unable to pump sufficiently.
16 Q If the IMAP were approved?
17 A If new wells were put in within our
18 district.
19 Q Let me draw your attention to condition
20 No. 1 which is at the top of page 2 of this Exhibit
21 No. 10. Condition No. 1 states, the caption states,
22 "No new water rights created by IMAP," and then under
23 Text it says, "Approval of the IMAP creates no new
24 water rights for UWID nor does it expand the quantity
25 of any water right." Does that come as a surprise to

1 you?
 2 A No.
 3 Q If this condition were imposed on the
 4 IMAP, what would the district's concern be?
 5 A I don't know.
 6 Q You don't know, and you're not familiar
 7 with any of these other conditions, are you?
 8 A No.
 9 Q Does the district -- let me rephrase
 10 that. You had indicated that you're providing, I take
 11 it, lawn irrigation water in Caldwell and Nampa to
 12 areas that have been converted to residential and
 13 commercial; is that accurate?
 14 A Correct.
 15 Q Do you provide any water directly to
 16 those cities or to any other cities or do you provide
 17 it instead to homeowner's associations?
 18 A No homeowner's associations, to my
 19 knowledge.
 20 Q Tell me how that works. It sounds like
 21 I'm trying to --
 22 A We supply water to another irrigation
 23 district which would be Caldwell Lateral District.
 24 Q What about those areas in Caldwell and
 25 Nampa that have been converted to residential areas,

1 what's the arrangement by which you continue to
 2 provide water? For instance, how does the billing
 3 work?
 4 A The billing is set up by the board and
 5 we bill, I believe, three times a year, spring, fall
 6 and summer assessments, and that pays for our
 7 maintenance of the pump station, all the inner lines
 8 to the individual curb stop at each lot and for
 9 employees to maintain it, go out and check out pumps,
 10 take water calls, floods, emergencies, that sort of
 11 thing.
 12 Q Do you bill the individual customer?
 13 A Yes.
 14 Q Are there any instances where you
 15 provide water not to the individual customer but to a
 16 larger entity --
 17 A Yes.
 18 Q -- such as a homeowner's group or --
 19 A The City of Nampa.
 20 Q So you provide it somewhat directly to
 21 the City of Nampa?
 22 A And they maintain their pump station,
 23 they maintain all their inner lines and I have no idea
 24 on how they do their billing.
 25 Q Is that water used solely for lawn

1 irrigation or does it hook into Nampa's --
 2 A I couldn't tell you.
 3 Q Okay. Do you provide any water during
 4 the non-irrigation season to anyone?
 5 A No, not to my knowledge. Once the board
 6 sets a shut-off date, like last year, for example, we
 7 ran out of water on the Phyllis, but we were able to
 8 still pull water out of the Elijah Drain and we were
 9 able to run the Lowline Canal with that water. We
 10 were also able to run the Highline Canal out of water
 11 coming out of the Boise River for a couple, roughly
 12 two weeks longer than what we did on the Phyllis
 13 Canal, but for the most part, we're out of water -- we
 14 start October 15th and we deliver until the water is
 15 basically gone.
 16 MR. CAMPBELL: You said October 15th.
 17 THE WITNESS: Excuse me, April 15th
 18 until the water has been used and in some cases it
 19 could be in the middle of August and in some cases it
 20 could go until the middle of October.
 21 Q BY MR. MEYER: What about your ground
 22 water, are your water rights limited? Are your ground
 23 water rights limited by season?
 24 A I believe so, yes.
 25 Q And so do you basically cut them off

1 just based on what the ground water right says?
 2 A Yes. I think we're only entitled to use
 3 the water from March to November, I believe. I could
 4 be wrong there.
 5 Q But however it's defined, that's what
 6 you go by?
 7 A Yes.
 8 Q And so far as you know -- well, you've
 9 already answered the question that you don't deliver
 10 any water during the non-irrigation season. What is
 11 your rate structure? Is it a flat rate, you charge
 12 everybody the same? How does that work?
 13 A The board sets that rate. Right now I
 14 believe the subdivisions are paying basically \$130 a
 15 year for pressurized irrigation.
 16 Q That's per customer?
 17 A Per lot and gravity fed irrigation is
 18 being charged, I believe, \$34.00 per acre.
 19 Q Now, when you say "gravity," does that
 20 refer to non-residential traditional farming or do you
 21 have some residential that's on a gravity system?
 22 A We do have very little, but yes, we do
 23 have residential lots that are gravity fed.
 24 Q And are they charged the same as a farm
 25 that's gravity fed, the same \$34.00 per acre?

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1 A Correct.
 2 Q It doesn't matter whether they're
 3 residential or anything else?
 4 A If it's an acre or less, they're charged
 5 the \$34.00.
 6 Q And the \$130 per lot, that's for
 7 pressurized; did I understand that right?
 8 A Correct.
 9 Q Okay, and are those prices, these two
 10 prices that you've identified, are they uniform
 11 throughout your district?
 12 A Correct.
 13 Q So if you're in Nampa, you pay the same
 14 as you pay in Caldwell, for instance?
 15 A I believe so, yes.
 16 Q But you also provide some water directly
 17 to the City of Nampa and you must have a different
 18 rate for that, I assume.
 19 A Yes, I believe that is the case.
 20 Q And you don't know what that rate is?
 21 A I don't.
 22 Q Are there any other cities that you
 23 provide water to?
 24 A Just with Caldwell.
 25 Q Now, you had mentioned Nampa, if I

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1 recall correctly, is a city that you actually provide
 2 water to the city itself; did I understand that
 3 correctly?
 4 A Correct.
 5 Q Do you do that to Caldwell?
 6 A Well, Caldwell Lateral District, we
 7 supply water to them. We used to years ago supply
 8 water to the City of Caldwell and to my knowledge,
 9 they wanted to get out of that and that's why Caldwell
 10 Lateral District was formed.
 11 Q I see. Do you have any idea how long
 12 ago that was that the Caldwell Lateral District was
 13 formed?
 14 A I don't know.
 15 Q Are you familiar with United Water's
 16 rate structure?
 17 A I am not.
 18 Q Does the district have a position on
 19 whether the Department of Water Resources has
 20 authority to impose a conservation plan on your
 21 operation? I tried to phrase that question so that I
 22 wouldn't raise an objection.
 23 A One more time, please.
 24 Q Shall I say that again? Does the
 25 Department of Water Resources have the authority to

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1 tell Pioneer Irrigation District to adopt a water
 2 conservation program?
 3 MR. CAMPBELL: I'll object to the
 4 question. It calls for a legal conclusion beyond the
 5 ability of this witness to answer and if you think you
 6 can, you may go ahead and try to answer the question.
 7 THE WITNESS: I don't know.
 8 Q BY MR. MEYER: Do you think the
 9 Department should have that authority?
 10 MR. CAMPBELL: Same objection.
 11 THE WITNESS: I don't know.
 12 Q BY MR. MEYER: And when you say you
 13 don't know, I assume that means you don't know if the
 14 board has a position, is that correct, or were you
 15 speaking for yourself personally?
 16 A Rephrase that again.
 17 Q When you said I don't know, I didn't
 18 know if you were speaking personally or if I can
 19 interpret that to mean that so far as you know, you
 20 don't know whether the board of Pioneer Irrigation
 21 District has a position on that.
 22 A Correct.
 23 MR. MEYER: I don't have any other
 24 questions. I thank you for your patience this
 25 morning.

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1 Tammy, no questions?
 2 MS. ZOKAN: I don't have any questions.
 3 MR. MEYER: Did you have some?
 4 MR. CAMPBELL: I have no questions. The
 5 witness will need to read and sign the transcript.
 6 MR. MEYER: While we're still on the
 7 record, Scott, I'm wondering if you'll stipulate that
 8 you brought the wrong witness to this 30(b)(6)
 9 deposition.
 10 MR. CAMPBELL: No, I won't stipulate to
 11 that.
 12 MR. MEYER: I would anticipate at this
 13 point in light of the numerous questions that this
 14 witness could not answer that we will be filing a
 15 motion for recovery of attorney fees for our cost in
 16 deposing this witness, will you agree to cover our
 17 attorney fees?
 18 MR. CAMPBELL: Absolutely not. That's
 19 ridiculous, no.
 20 MR. MEYER: Okay.
 21 MR. CAMPBELL: This is the witness that
 22 was designated by Pioneer Irrigation District. If he
 23 couldn't answer the questions that you wanted him to
 24 answer, that's a problem that you have. You know, if
 25 you want to pursue that kind of a procedure before the

1 Hearing Officer, I welcome you to that.
 2 MR. MEYER: Okay, I have nothing
 3 further.
 4 (The Deposition concluded at
 5 10:45 a.m.)
 6
 7 (Signature requested.)
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1 REPORTER'S CERTIFICATE
 2
 3 STATE OF IDAHO)
 4) ss.
 5 COUNTY OF CANYON)
 6
 7 I, CONSTANCE S. BUCY, a Notary
 8 Public in and for the State of Idaho, do hereby certify:
 9 That prior to being examined, the
 10 witness named in the foregoing deposition was duly
 11 sworn to testify the truth, the whole truth and
 12 nothing but the truth;
 13 That said deposition was taken down
 14 by me in shorthand at the time and place therein named
 15 and thereafter transcribed by means of computer-aided
 16 transcription, and that the foregoing transcript
 17 contains a full, true and verbatim record of the said
 18 deposition;
 19 I further certify that I have no
 20 interest in the event of the action.
 21 WITNESS my hand and seal this
 22 9th day of September, 2003.
 23
 24 Notary Public in and for the State of
 25 Idaho, residing in Wilder, Idaho.
 My commission expires 8/25/06. CSR #187

1 VERIFICATION
 2
 3 STATE OF)
 4) ss.
 5 COUNTY OF)
 6
 7 I, JEFFREY SCOTT, being first duly sworn
 8 on my oath, depose and say:
 9 That I am the witness named in the
 10 foregoing deposition taken the 3rd day of September,
 11 2003, consisting of pages numbered 1 to 54, inclusive;
 12 that I have read the said deposition and know the
 13 contents thereof; that the questions contained therein
 14 were propounded to me; that the answers to said
 15 questions were given by me, and that the answers as
 16 contained therein (or as corrected by me on the change
 17 sheet) are true and correct.
 18
 19 Signature
 20
 21 Subscribed and sworn to before me this
 22 day of , 2003, at , Idaho.
 23
 24 Notary Public for Idaho
 25 Residing at , Idaho.
 My Commission Expires

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1 number of occasions when you were not able to answer
2 my questions because you didn't have a recollection,
3 has your recollection been refreshed on any of those?

4 A No.

5 MR. MEYER: In that case, I have no
6 further questions. I thank you for your time.

7 Mr. Campbell, do you have questions?

8 MR. CAMPBELL: I have no questions.

9 MR. MEYER: I'd like to note for the
10 record that this deposition will be continued at such
11 a time that we have a proper witness that is able to
12 answer the questions so within the scope of the
13 deposition and such further instructions as we may
14 have from the hearing officer.

15 MR. CAMPBELL: And to that expression on
16 the record, we will object to any continuance of the
17 deposition based upon Mr. Meyer's definition of proper
18 witness. This witness has been designated by the
19 Settlers Irrigation District as the 30(b)(6) deponent
20 and accordingly, Mr. Meyer has conducted the
21 deposition and he's terminated the questioning of
22 Mr. Draper based upon his determination that there's
23 no need to inquire further of Mr. Draper.

24 MR. MEYER: Let me ask while we continue
25 to be on the record, Mr. Campbell, if you will make

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1 definition of the witness able to respond within the
2 "scope of the notice" which we respectfully disagree
3 with his characterization, so with that, unless you
4 have further questions of this witness, I think we can
5 conclude.

6 MR. MEYER: I have no further questions
7 and nothing further to add.

8 (The Deposition concluded at
9 10:55 a.m.)

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11 (Signature requested.)
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1 Mr. Richard Allen available for a 30(b)(6)
2 deposition?

3 MR. CAMPBELL: I won't answer that
4 question.

5 MR. MEYER: Will you make Tom Davis
6 available? Will you make anyone available to continue
7 this deposition?

8 MR. CAMPBELL: I haven't determined
9 whether or not any additional witness would be made
10 available, so I can't answer your question.

11 MR. MEYER: Is that the case as well
12 with respect to yesterday's deposition? We had a
13 discussion off the record in which I thought I
14 understood you to say that you would be looking into
15 times of availability for other board members of
16 Pioneer District, did I misunderstand that as well?

17 MR. CAMPBELL: You misunderstood that
18 completely.

19 MR. MEYER: So I guess the record then
20 will reflect that Mr. Campbell has at this point not
21 agreed to my request for a continuance of either
22 today's or yesterday's deposition in order to provide
23 a witness who is able to answer questions within the
24 scope of the notice.

25 MR. CAMPBELL: Based upon Mr. Meyer's

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1 VERIFICATION

2
3 STATE OF)
4) ss.
5 COUNTY OF)
6

7 I, NATHAN DRAPER, being first duly sworn
8 on my oath, depose and say:

9 That I am the witness named in the
10 foregoing deposition taken the 4th day of September,
11 2003, consisting of pages numbered 1 to 64, inclusive;
12 that I have read the said deposition and know the
13 contents thereof; that the questions contained therein
14 were propounded to me; that the answers to said
15 questions were given by me, and that the answers as
16 contained therein (or as corrected by me on the change
17 sheet) are true and correct.
18

19 Signature

20 Subscribed and sworn to before me this
21 day of , 2003, at , Idaho.
22
23

24 Notary Public for Idaho
25 Residing at , Idaho.
My Commission Expires

REPORTER'S CERTIFICATE

STATE OF IDAHO)
) ss.
 COUNTY OF CANYON)

I, CONSTANCE S. BUCY, a Notary
 Public in and for the State of Idaho, do hereby certify:
 That prior to being examined, the
 witness named in the foregoing deposition was duly
 sworn to testify the truth, the whole truth and
 nothing but the truth;

That said deposition was taken down
 by me in shorthand at the time and place therein named
 and thereafter transcribed by means of computer-aided
 transcription, and that the foregoing transcript
 contains a full, true and verbatim record of the said
 deposition;

I further certify that I have no
 interest in the event of the action.

WITNESS my hand and seal this
 7th day of September, 2003.

Notary Public in and for the State of
 Idaho, residing in Wilder, Idaho.
 My commission expires 8/25/06. CSR #187

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION)	
FOR TRANSFER OF WATER RIGHTS)	
IN THE NAME OF UNITED WATER)	ORDER RE MOTION TO DISMISS
IDAHO, INC., INTEGRATED)	SETTLERS' PROTEST AND
MUNICIPAL APPLICATION)	PRECLUDE ITS PARTICIPATION
PACKAGE (IMAP))	AT HEARING
_____)	

The Applicant, United Water Idaho, filed *United Water's Motion to Dismiss Settlers' Protest and Preclude Its Participation at Hearing* (the "*Motion to Dismiss*") on September 16, 2003. The Applicant requested an order dismissing Settlers Irrigation District's ("Settlers") protest on two grounds:

- (1) Because the binding statements of Settlers' 30(B)(6) witness show that the organization has no factual or legal basis for its protest; and
- (2) As a sanction for Settlers' failing to attend the noticed 30(B)(6) deposition.

The *Motion to Dismiss* is based upon the responses of Settlers' designated 30(B)(6) witness, Nathan Draper, at Settlers' deposition on September 4, 2003. A copy of the deposition was attached to the *Motion to Dismiss*.

Settlers responded with the *Answer of Pioneer & Settlers to UWID's Motion to Dismiss both Districts' Protests and Preclude their Participation at Hearing*. Settlers also filed the *Affidavit of Scott L. Campbell in Support of Answer of Pioneer and Settlers to UWID's Motion to Dismiss Both Districts' Protests and Preclude their Participation at Hearing* and a *Motion to Strike UWID's Motion to Dismiss Pioneer Irrigation District and Settlers Irrigation District's Protest and Preclude their Participation at Hearing and Memorandum in Support* (the "*Motion to Strike*").

In reply United Water filed *United Water's Reply in Support of its Motion to Dismiss and Preclude Participation at Hearing* and *United Water's Answer in Opposition to Pioneer and Settlers' Motion to Strike*. Subsequently, United Water filed a *Submission of Supplemental Authority and Affidavit of Michael V. Woodhouse in Support of Submission of Supplemental Authority*. Settlers then filed its *Response to UWID's Supplemental Authority*.

The Idaho Department of Water Resources ("IDWR") has adopted the Idaho Rules of Civil Procedure when it authorizes depositions in an administrative proceeding. IDAPA 37.01.01.523 I.R.C.P. 30. I.R.C.P. 30(b)(6) provides that:

ORDER RE MOTION TO DISMISS SETTLERS' PROTEST AND PRECLUDE ITS PARTICIPATION AT HEARING -

A party may in the party's notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. A subpoena shall advise a nonparty organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision (b)(6) of this rule does not preclude taking a deposition by any other procedure authorized in these rules.

FACTS

On September 2, 2003¹, United Water served on Settlers its *Second Amended Notice of Deposition Duces Tecum of Settlers Irrigation District* giving notice that United Water would take Settlers' I.R.C.P 30(b)(6) deposition on September 4, 2003. The *Second Amended Notice* indicated that Settlers would be examined regarding:

1. Each and every basis for your [Settlers'] protest in this matter.
2. The conditions or modifications to the IMAP, if any that would resolve your [Settlers'] protest.

Settlers was also directed to produce at the deposition all documents in Settlers possession related to its protest. In a letter dated September 3, 2003, counsel for United Water further clarified to counsel for Settlers that "[i]f you are unclear about the scope of the deposition notice, please use today's deposition as an indication of what we are seeking."² At no time prior to the scheduled deposition did Settlers object to the description of the matters designated by United Water.

On September 4, 2003, Settlers appeared for deposition in the person of Nathan Draper. Rather than restate Settlers' answers to United Water's questions during the deposition, a copy of the entire deposition, without exhibits, is attached to this *Order*. To summarize Settlers' responses at the deposition: the basis for its protest in this matter is contained in the paperwork drafted and filed by its attorney. Settlers produced no documents related to its protest.

¹ The certificate of service on this document indicates that it was served on August 2, 2003. Because the document itself was dated September 2, 2003, the August 2 date was an obvious typographic error.

² The September 3, 2003, deposition was the I.R.C.P. 30(b)(6) deposition of Pioneer Irrigation District which is the subject of a separate motion to dismiss, on similar grounds.

DISCUSSION

A. Motion to Dismiss

Based upon Settlers' answers at its deposition, United Water asserted that Settlers' protest should be dismissed on two grounds. First, because Settlers' knows of no factual or legal basis for its protest. Second, to sanction Settlers for failing to attend its deposition. Each of these grounds for dismissal is problematic.

Under the first ground, Settlers did state at its deposition a basis for its protest—the papers prepared and filed by its attorney. While those papers provide no factual basis for Settlers' protest, they do provide a legal basis—either the failure of IMAP to comply with Idaho law or the failure of United Water to meet its burden to factually support the IMAP. It is not reasonable to expect a witness to testify regarding the legal theories for a protest, when a deposition is primarily aimed toward factual discovery. See generally Sinclair & Fendrich, *Discovering Corporate Knowledge and Contentions: Rethinking Rule 30(B)(6) and Alternative Mechanisms*, 50 Alabama L. Rev. 651 (Spring 1999). Settlers testified to under oath at its deposition that it knows of no factual basis for its protest. There was no showing that Settlers committed perjury under I.C. § 18-5401. Settlers will certainly have to live with its testimony.

Under the second ground, no clear basis is provided in the IDWR rules to sanction Settlers for failing to attend its deposition. The only IDWR rule explicitly providing for sanctions states:

The agency may impose all sanctions recognized by statute or rules for failure to comply with an order compelling discovery, including but not limited to the sanctions listed in paragraphs (A), (B), and (C) of Rule 37(b)(2) of the Idaho Rules of Civil Procedure.

IDAPA 37.01.01.531. IDWR is not consistent in its use of the phrases "order authorizing discovery" and "order compelling discovery." IDWR apparently considers them to be two different types of orders in IDAPA 37.01.01.521 and .522. In IDAPA 37.01.01.527 and .528, however, IDWR appears to use the terms interchangeably. It is far from clear in IDAPA 37.01.01.531 whether IDWR intended the phrase "order compelling discovery" to stand interchangeably with the phrase "order authorizing discovery." In the absence of such clarity, the Hearing Officer is reluctant to sanction a party in the absence of a order compelling discovery as contemplated by I.R.C.P. 37(a).

In light of the foregoing discussion, the Hearing Officer will examine each of Settlers' responses in the *Answer of Pioneer & Settlers to UWID's Motion to Dismiss both Districts' Protests and Preclude their Participation at Hearing* in turn:

(1) United Water prejudiced Settlers by not allowing the scope of United Water's 30(B)(6) deposition be determined in the context of Settlers' previously filed motion for protective order.

Settlers argues that it has been prejudiced because United Water did not attempt to continue Settlers' I.R.C.P. 30 (b)(6) deposition, which continuance Settlers opposed in a *Motion for Protective Order* filed on September 10, 2003. United Water, instead, withdrew its request to continue the deposition and filed its *Motion to Dismiss*. United Waters' action did not prejudice Settlers. United Water gave Settlers exactly what it was asking for in its *Motion for Protective Order*—the deposition was not continued.

(2) Because United Water did not seek an order compelling discovery, pursuant to IDAPA 37.01.01.521, sanctions pursuant to IDAPA 37.01.01.531 are not appropriate.

As discussed above, the Hearing Officer agrees with Settlers regarding this argument.

(3) Dismissal, as a sanction, is only a last resort and not appropriate in this matter.

Because the Hearing Officer does not believe he has authority under IDWR's rules of procedure to sanction Settlers, he does not have to reach this issue. A protest with a solely legal basis is proper and not subject to dismissal.

(4) United Water improperly attempts to impose Federal practice standards upon proceedings before the Idaho Department of Water Resources.

Settlers argues that United Water improperly relies upon federal court decisions interpreting the Federal Rules of Civil Procedure in its *Motion to Dismiss*. The Idaho Supreme Court looks to federal court decisions for guidance when the Federal Rules are identical to the Idaho rules in all material respects. *Compton v. Compton*, 101 Idaho 328, 334(1980). With no authoritative Idaho court decisions available to it, IDWR is free to do the same. There was nothing improper in United Water's citation to federal caselaw.

(5) Settlers' witness, as required, appeared at the time and location specified and answered the questions presented to him.

Settlers argues that sanctions are improper because Settlers did designate a witness to appear for it at the time and place specified in the notice and answered the questions presented to him. Settlers is correct in this assertion to the extent that sanctions are not available. Settlers is, however, incorrect in its assertion that nothing else was required under I.R.C.P. 30(b)(6). *Answer of Pioneer & Settlers to UWID's Motion to Dismiss both Districts' Protests and Preclude their Participation at Hearing* at 22. The person designated by Settlers was required to testify as to matters known or reasonably available to Settlers. The factual basis for, and the documents underlying, Settlers' protest were certainly reasonably available to Settlers. In its answers at the deposition Settler testified under oath that it had no factual basis for its protest and no documents supporting that protest.

(5) United Waters' notice of deposition under 30(B)(6) failed to describe with reasonable particularity the conditions or modifications to the IMAP that would resolve Settler's protest upon which examination was requested.

Settlers concedes that United Water's designation of "[e]ach and every basis for your protest in this matter" was an adequate description of this area of inquiry. *Answer of Pioneer & Settlers to UWID's Motion to Dismiss both Districts' Protests and Preclude their Participation at Hearing* at 24. Settlers asserts, however, that the designation of "[t]he conditions or modifications to the IMAP, if any, that would resolve your protest" was not sufficiently precise to require Settlers to testify regarding a set of conditions proposed by United Water and presented to Settler at the deposition. Settlers is correct. Settler was never directly asked what conditions or modifications would resolve its protest. Settlers may propose conditions or modifications to the IMAP based upon its legal arguments and based upon the case presented by United Water at hearing to IDWR.

(6) United Water could not obtain an order compelling discovery because Settlers' complied with the requirements of IRCP 30(b)(6).

Settlers asserts that because its witness complied with the requirements of I.R.C.P. 30(b)(6) United Water would not be able to obtain a order compelling discovery, much less an order imposing sanctions. Because the Hearing Officer does not believe he has authority under IDWR's rules of procedure to sanction Settlers, he does not have to reach this issue.

(7) In other discovery responses Settlers' has provided the basis for its protest.

Settlers argues that the factual basis for its protests was disclosed in previous discovery responses or could have been obtained by deposing members of the board of directors.³ This is the type of "bandying" that I.R.C.P. 30(b)(6) was enacted to prevent. Sinclair & Fendrich, *Discovering Corporate Knowledge and Contentions: Rethinking Rule 30(B)(6) and Alternative Mechanisms*, 50 Alabama L. Rev. 651, 658-659 (Spring 1999). United Water elected to use I.R.C.P. 30(b)(6) and, absent objection, Settlers was obligated to comply. The availability of other discovery or other witnesses has no bearing.

B. Motion to Strike.

Settlers filed the *Motion to Strike* because it asserts that the *Motion to Dismiss* improperly refers to conditions that United Water proposed as a way to potentially settle

³ A review of Settler's discovery responses attached to the *Affidavit of Scott L. Campbell in Support of Answer of Pioneer and Settlers to UWID's Motion to Dismiss Both Districts' Protests and Preclude their Participation at Hearing* reveals that it provided very little helpful information to United Water regarding the factual basis for Settlers' protest.

the protests against the IMAP. The conditions referred to are mentioned so vaguely in United Water's *Motion to Dismiss* and related exhibits that including these documents in the record neither violates IDAPA 37.01.01.610 nor prejudices Settlers.

ORDER

Based upon the foregoing:

1. The *Motion to Dismiss* is DENIED in part and granted in part, as follows:.

a. Settlers' protest will not be dismissed.

b. Based upon Settlers' answers at its I.R.C.P. 30(b)(6) deposition Settlers' participation in this matter shall be restricted solely to making legal argument and cross-examining the United Water witnesses to the same extent as allowed other protestants. Settlers may propose conditions or modifications to the IMAP based upon its legal arguments and based upon the case presented by United Water at hearing.

2. The *Motion to Strike* is DENIED.

3. United Water's request for attorney fees is DENIED.

It is so ORDERED.

DATED this ~~22nd~~ day of April, 2004.


Peter R. Anderson
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of April, 2004, the above and foregoing, was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

CHRISTOPHER H MEYERS
JOHN M MARSHALL
GIVENS PURSLEY
PO BOX 2720
BOISE ID 83701

E GAIL MC GARRY PN-3100
BUREAU OF RECLAMATION
1150 N CURTIS RD STE 100
BOISE ID 83706-1234

KATHLEEN MARION CARR
OFFICE OF THE FIELD SOLICITOR
US DEPT OF INTERIOR
550 W FORT ST MSC-020
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JOSEPHINE P BEEMAN
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JOHN WESTRA
IDWR-WESTERN
REGION MANAGER
2735 AIRPORT WAY
BOISE ID 83705-5082



Victoria Wigle
Administrative Assistant to the Director
Idaho Department of Water Resources

BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES

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)
)

DEPOSITION OF NATHAN DRAPER

Boise, Idaho

September 4, 2003

DEPOSITION OF NATHAN DRAPER, taken at the instance of the Applicant United Water Idaho, at the office of Burnham, Habel & Associates, 668 North 9th Street, in the City of Boise, State of Idaho, commencing at 9:00 a.m., on Thursday, September 4, 2003, before CONSTANCE S. BUCY, CSR, a Notary Public in and for the State of Idaho, pursuant to Notice and in accordance with the Idaho Rules of Civil Procedure.

A P P E A R A N C E S

For the Applicant: GIVENS PURSLEY
by Christopher H. Meyer, Esq.
Post Office Box 2720
Boise, Idaho 83701

For Settlers: MOFFATT THOMAS BARRETT ROCK
Irrigation District: & FIELDS
by Scott L. Campbell, Esq.
Post Office Box 829
Boise, Idaho 83701

BOISE, IDAHO, THURSDAY, SEPTEMBER 4, 2003, 9:00 A. M.

(Exhibit Nos. 1 - 10 were marked for identification before the commencement of the Deposition.)

NATHAN DRAPER,
produced as a witness at the instance of the Applicant United Water Idaho, having been first duly sworn, was examined and testified as follows:

MR. MEYER: This is a deposition being taken pursuant to a proceeding before the Department of Water Resources. This deposition will be taken pursuant to the Idaho Rules of Civil Procedure. Will you stipulate to that?

MR. CAMPBELL: Sure, and the Department's Rules of Practice.

MR. MEYER: Yes.

I N D E X

WITNESS	EXAMINATION BY	PAGE
NATHAN DRAPER	Mr. Meyers	5

E X H I B I T S

DESCRIPTION	PAGE
1 - Notice of Deposition Duces Tecum of Settlers Irrigation District	4
2 - (Withdrawn)	
3 - Protest	4
4 - Statement of the Issues	4
5 - Pioneer and Settlers' List of Additional Issues	4
6 - (Withdrawn)	
7 - Amended Notice of Deposition Duces Tecum of Settlers Irrigation District	4
8 - (Withdrawn)	
9 - (Withdrawn)	
10 - Proposed IMAP Conditions	4
11 - Second Amended Notice of Deposition Duces Tecum of Settlers Irrigation District	34

E X A M I N A T I O N

BY MR. MEYER:

Q My name is Chris Meyer. I represent United Water as Mr. Campbell told you when we walked in the room. We're here today because United Water has filed an application known as the IMAP, the Integrated Municipal Application Package, for a series of water right changes and those changes have been protested by Settlers Irrigation District that you represent, and that's the reason that we're taking this deposition.

We don't have a hearing date set, but we have been advised that a hearing could occur as early as November and so the main purpose of this deposition is to allow United Water to prepare for that hearing and, in particular, to understand the reasons for Settlers' protest and whether there are any conditions that would be satisfactory to allow that protest to be withdrawn.

Why don't we begin by asking you to state your name for the record.

A My name is Nathan Draper.

Q And would you state your address for the record?

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1 A I reside at 3510 Beverly. It's in
2 Boise.
3 Q Have you been deposed before,
4 Mr. Draper?
5 A No, I have not.
6 Q Let me just kind of run down the
7 procedures with you, then, so that you'll know what to
8 expect. I'm sure your attorney has already told you a
9 little bit about what to expect, but let me just hit
10 some of the high points. As you know, you're under
11 oath and will remain under oath throughout the
12 deposition, so it's just as if you're in a courtroom
13 in that respect.
14 I'll be asking the questions. Once I
15 finish asking questions, your attorney may ask some
16 questions of you as well. If any of us ask a question
17 and you don't hear it, ask us to repeat it and, most
18 importantly, if I ask you a question that you don't
19 understand or you find confusing, please say so.
20 Don't take a guess at what the question is. Ask me to
21 rephrase it or to repeat it until you understand it.
22 Everything that is going to be said in
23 this room today, unless we go off the record, will be
24 taken down by the court reporter, so it's important
25 for all of us to try and respond verbally or to speak

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1 verbally rather than with hand gestures and if there's
2 an occasion to point at something or to identify
3 something on a map, we need to be cognizant of the
4 fact that we need to put some words into the record to
5 make it clear what we're talking about, and as I said,
6 I'll be asking questions as we proceed.
7 At some point your attorney may
8 interpose an objection to that question, just like in
9 a courtroom. The difference between this and a
10 courtroom is that unless your attorney expressly tells
11 you not to answer, that objection just goes on the
12 record and then you go ahead and answer the question.
13 Let's go ahead and begin, then. Can you
14 tell me what you do for a living?
15 A I'm the manager of Settlers Irrigation
16 District.
17 Q Do you -- are you a farmer as well or is
18 that a full-time job for you?
19 A No, that is a full-time job.
20 Q What is your educational background?
21 A I have an associate's degree in farm
22 business management.
23 Q Where is that degree from?
24 A Treasure Valley Community College.
25 Q Have you lived in Idaho your whole life?

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1 A No, I haven't.
2 Q How long have you been in Idaho?
3 A I've been in Idaho for about eight
4 years.
5 Q And the position that you hold at
6 Settlers you said was manager?
7 A Yes.
8 Q Okay, how long have you held that post?
9 A For four-and-a-half years.
10 Q And what did you do before you held that
11 post? Were you with Settlers before that?
12 A Yes, I was.
13 Q What position did you hold before
14 manager?
15 A Ditch rider.
16 Q And how many years were you a ditch
17 rider?
18 A For about a year-and-a-half.
19 Q So altogether you've been with Settlers
20 for about six years?
21 A Six years.
22 Q Okay. Could you describe for me your
23 responsibilities as manager of Settlers?
24 A As manager, I regulate irrigation flows
25 and deliveries as well as the operation and

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1 maintenance of the canal system.
2 Q What decision making responsibility do
3 you have at Settlers?
4 A I'm not sure I understand that question.
5 Q Do you have the authority to hire and
6 fire?
7 A Yes, I do.
8 Q What other authorities do you have
9 without -- that you can take on your own without going
10 to the board?
11 A It varies from situation to situation.
12 Q Does the board establish policies that
13 govern Settlers Irrigation District?
14 A Yes, they do.
15 Q Do you have any authority to establish
16 policies?
17 A I have the authority to enforce the
18 policies.
19 Q But not to establish them?
20 A No, that would be done by the board.
21 Q Okay. What is your role vis-a-vis the
22 board, you're an employee?
23 A Yes.
24 Q Do you attend board meetings?
25 A Yes.

1 Q Do you attend all of them?
 2 A Yes.
 3 Q And so I would assume, then, that you've
 4 attended board meetings for the last four-and-a-half
 5 years; would that be accurate?
 6 A Yes.
 7 Q But not before that?
 8 A Actually, yes, I have attended before
 9 that.
 10 Q When you were a ditch rider?
 11 A Yes.
 12 Q And so you have familiarity with the
 13 board decision making process going back six years?
 14 A Yes.
 15 Q Okay. Were you a regular attendee at
 16 meetings when you were a ditch rider?
 17 A Yes.
 18 Q What is the decision making process for
 19 the board? Are there motions that are formally
 20 presented and debated and adopted, for instance?
 21 A Can you ask that question again?
 22 Q How does the board set policy?
 23 A I'm not sure I understand what your
 24 question is.
 25 Q If the board were to make a decision to

1 A Yes.
 2 Q That are approved at the subsequent
 3 meeting?
 4 A Right.
 5 Q Have the decisions that have affected
 6 the IMAP -- let me pause and ask you if you understand
 7 what I mean when I say "IMAP," are you familiar with
 8 the term IMAP?
 9 A Yes.
 10 Q Okay, are all of the decisions made by
 11 the board with respect to the IMAP, are they recorded
 12 in minutes?
 13 A I don't know.
 14 Q Now, you told me that you have attended
 15 all the board meetings for the last six years.
 16 A Uh-huh.
 17 Q You, I assume, have reviewed the minutes
 18 or been present?
 19 A Yes, I have.
 20 Q When decisions are made regarding issues
 21 touching on the IMAP, I would think you would know
 22 whether they're in the minutes or not.
 23 A I don't remember. I would assume that
 24 they are.
 25 Q Okay; so you don't remember?

1 adopt a policy or to take an action, such as initiate
 2 a lawsuit, how would that decision be made? Is there
 3 a vote?
 4 A There is a vote, yes.
 5 Q And is there something before the vote?
 6 What is the process for that decision making process?
 7 A It would be a motion for a decision to
 8 be made.
 9 Q And would all of those decisions be made
 10 in an open meeting? Maybe I should back up and ask
 11 when the board meets, who attends those meetings?
 12 A The board members, secretary/treasurer,
 13 myself and our attorney.
 14 Q Are those open to members of the
 15 irrigation district?
 16 A Yes, they are.
 17 Q And would they be open to the public?
 18 A As far as I'm aware, yes.
 19 Q But typically members of the public
 20 don't attend?
 21 A Correct.
 22 Q Is there a record kept of the decision
 23 making process?
 24 A Yes.
 25 Q And those would be minutes?

1 A Right.
 2 Q How long has Settlers Irrigation
 3 District been in operation?
 4 A Settlers Irrigation District has been an
 5 irrigation district since 1904.
 6 Q And was that when it was created or did
 7 it operate under some other entity before?
 8 A It operated under a different entity
 9 prior to 1904.
 10 Q What was that?
 11 A It changed names several times, from
 12 Settlers Canal Company to -- I don't recall the other
 13 names, but I know that it was Settlers Canal Company
 14 prior to Settlers Irrigation District.
 15 Q Was that a for profit company, do you
 16 know?
 17 A I don't know.
 18 Q But for roughly 100 years it's operated
 19 as Settlers Irrigation District?
 20 A Yes.
 21 Q Do you know how -- I take it that you're
 22 not familiar with how it came into being if you don't
 23 know if it was a for profit company or not, do you
 24 know anything about the history or origin of the
 25 company or what was first a company and is now a

1 district?
 2 A I don't know.
 3 Q Has the Settlers Irrigation District
 4 evolved since 1904 or is it exactly the same structure
 5 as it was in 1904?
 6 A What do you mean by "structure"?
 7 Q Is it the same corporate entity that it
 8 was in 1904?
 9 A Oh, yes.
 10 Q How many board members serve on the
 11 board?
 12 A Three.
 13 Q And one of those is the chairman?
 14 A Yes.
 15 Q Or is it the president?
 16 A It would be the president.
 17 Q The president?
 18 A Uh-huh.
 19 Q Okay. According to something that I
 20 have that you filed earlier, the board president is
 21 Richard Allen and the other members are Tom Davis and
 22 Ken Aschenbrenner, is that still up to date?
 23 A Yes.
 24 Q Are you familiar with the water rights
 25 that Settlers operates under?

1 A Yes.
 2 Q How much of the portfolio -- if I use
 3 the term "portfolio," I just mean the collection of
 4 all of Settlers' water rights, how much of Settlers'
 5 portfolio is natural flow surface rights?
 6 MR. CAMPBELL: Just a moment. At this
 7 point I'm going to state an objection on the record
 8 and I want it to be a continuing objection as to any
 9 questions that go beyond the scope of the notice
 10 provided for this deposition, the 30(b)(6) notice, and
 11 I'll allow the witness to answer the questions, but
 12 it's a continuing objection as to that basis.
 13 Q BY MR. MEYER: Let me restate the
 14 question. Can you tell me the percentage, roughly, of
 15 Settlers' portfolio of water rights that is natural
 16 flow surface water?
 17 A It varies on the time of the year.
 18 Q Okay, go ahead and explain that to me.
 19 A Okay, natural flow water rights, we
 20 typically use 100 percent of the natural flow rights
 21 until the natural flows tends to drop, meaning that
 22 the natural flows aren't available.
 23 Q And what other water rights do you have
 24 in addition to natural flow?
 25 A We have storage water rights.

1 Q Do you have ground water rights?
 2 A Yes, we do.
 3 Q Now, if the natural flow water rights
 4 are unavailable, you had mentioned that you can use
 5 storage; did I understand that correctly?
 6 A Yes.
 7 Q Do you also have ground water that is
 8 available to supplement or serve the same needs as the
 9 natural flow?
 10 A The ground water rights are supplemental
 11 to the natural flow.
 12 Q Now, tell me a little bit about your
 13 system. I don't know really anything about how your
 14 system is physically plumbed. Is it a series of
 15 separate delivery systems or is it integrated? Do you
 16 understand my question?
 17 A No, I don't.
 18 Q What I'm getting at is one thing that I
 19 can imagine is that you have in one particular area a
 20 ground water well that serves a distinct geographic
 21 area and then you have other parts of the district
 22 that are served by different water rights and
 23 different delivery systems and you couldn't get water
 24 from that one ground water well to just anywhere else,
 25 that it's limited to where it can supply water; is

1 that accurate?
 2 A Yes.
 3 Q So it's composed of distinct components?
 4 A Where ground water rights are concerned,
 5 yes.
 6 Q Now, tell me a little bit more and you
 7 may need to elaborate, it may not be a quick answer,
 8 but tell me a little bit perhaps by way of example of
 9 how some of these units are set up. To what extent do
 10 they integrate ground water, storage water and natural
 11 flow surface water? Do they all integrate, those
 12 three, or do some of them only have access to one or
 13 two?
 14 A When the natural flows are not available
 15 to supply 100 percent of demand, we can then use the
 16 storage water and the ground water rights to
 17 supplement those flows.
 18 Q Now, you had told me, if I understood
 19 correctly, that you have really different, separate
 20 components, physically separate components, of your
 21 system, do each one of those components have access to
 22 all three, that is, ground water, storage water and
 23 natural flow?
 24 A I don't understand that question.
 25 Q Well, you told me that when natural flow

1 is no longer available, you can go to storage water or
2 ground water. Is that true for every single part of
3 the system?

4 A Yes.

5 Q Just by way of example, when we had a
6 deposition with Pioneer yesterday, it was my
7 understanding from that deposition that some of their
8 ground water systems were separate. There were some
9 customers that were served solely by ground water and
10 they couldn't go back and forth and I just want to
11 make certain that I understand in the case of
12 Settlers, that's not the case, that you really have
13 the ability to go from one source to another anywhere
14 on your system.

15 A That's not true with ground water
16 rights, no.

17 Q Then please explain it to me.

18 A We had mentioned that before.

19 Q Well, then I don't understand, so please
20 explain it to me. I'm hearing on the one hand that
21 you can use all three and then maybe that's not the
22 case, so tell me.

23 A With natural flows and reservoir rights,
24 we can use those water flows throughout the entire
25 system. With ground water rights, it's only

1 applicable to certain areas where we have wells.

2 Q Okay, great, I think I'm starting to get
3 the picture.

4 A Okay.

5 Q So let's take -- let me ask you, how
6 many wells do you have?

7 A Two.

8 Q Okay, and those wells -- maybe it would
9 be helpful to get out a map. Sometimes that helps.
10 We're still on the record. Have you ever seen this
11 map before or anything that looks like this map
12 before? I know you haven't seen this one, it's mine.

13 A I've seen one that looks like this map,
14 yes.

15 Q How would you describe this map?

16 A As incorrect.

17 Q Oh, really? Okay, well, tell me more.

18 A Well, for starters, I'm looking at
19 Settlers Irrigation District's boundaries here noted
20 in this purple-looking color here. These boundaries
21 aren't correct.

22 Q Okay, well, I think we probably ought to
23 clarify for the record what we're looking at here.
24 I've unfolded something called United Water IMAP Well
25 Locations and, I'm trying to read upside down, I don't

1 do that very well, in the upper left-hand corner it
2 says "Pacific Northwest Region GIS."

3 Scott, can you read that for me?

4 MR. CAMPBELL: "U.S. Department of the
5 Interior, Bureau of Reclamation."

6 Q BY MR. MEYER: And it's labeled "Draft."
7 This is a map, tell me if you agree with me, that
8 generally displays the boundaries of the various
9 irrigation districts in the Treasure Valley; is that a
10 fair summary?

11 A Yes.

12 Q And you had told me, Mr. Draper, that
13 the boundaries depicted for Settlers don't appear to
14 be accurate.

15 A Yes.

16 Q Can you tell me what is inaccurate about
17 them?

18 A It does not include other areas of
19 Settlers Irrigation District.

20 Q Now, there are some areas that are shown
21 here in purple as Settlers Irrigation District, are
22 all of those part of Settlers Irrigation District does
23 it appear to you?

24 A It does appear to me, but what you have
25 shown as Settlers Irrigation District is part of

1 Settlers Irrigation District.

2 Q And what are the other areas that ought
3 to be shown but are not?

4 A They would be located south of the
5 district boundaries that are shown now.

6 Q Are they depicted on this map as within
7 somebody else's district or are they white areas?

8 A Both.

9 Q I'm curious, how substantial is this
10 discrepancy? Can you give me a sense of how large
11 these areas are that are inaccurately depicted?

12 A I don't know. I can't give you an exact
13 number of the amount of acres that are missing.

14 Q I'm not asking for that. I'm just
15 trying to get a sense of -- why don't you take this
16 pen and just draw in, if you're able, just your sense
17 of where there are other areas. Are you able to do
18 that? I'm not asking for accuracy.

19 A Well, and it would not be accurate. I
20 could point out a few areas that are not included as
21 part of Settlers Irrigation District. This would be
22 this white portion here.

23 Q Okay.

24 A We also have district boundaries in
25 sections 8, 7, 6, 1, 2, 3, 4, 5, 9, 10 and section 6.

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1 Q So all of those areas that fail to
2 appear on this map are south of what is depicted here
3 as Settlers and it looks like a little bit to the
4 west; is that accurate?
5 A Yes.
6 Q Okay, where are the two wells that are
7 operated by Settlers?
8 A The first well is located on McMillan
9 Road.
10 Q Can you point to that on this map?
11 A I believe it would be right along what
12 you have here as the Lemp Canal.
13 Q So that would be roughly in the middle
14 of the district, maybe a little bit to the south?
15 A Yes.
16 Q When did that well -- does that well
17 have a name, by the way?
18 A No, it does not have a name.
19 Q Okay. When did that well go in?
20 A I don't know.
21 Q Do you have a rough idea?
22 A I don't recall.
23 Q Did it come on line during your tenure
24 with Settlers?
25 A Meaning have we operated --

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1 Q Was it drilled during the last six years
2 that you've been with Settlers?
3 A No.
4 Q It's older than that?
5 A It's older than that, yes. Both wells
6 had been constructed since well before I was there.
7 Q Okay, and where is the other well?
8 A The other well is located on Black Cat
9 Road south of Chinden.
10 Q Can you point to where on the map just
11 roughly that would be?
12 A Right in this area somewhere
13 [indicating].
14 Q Okay; so that would be vertically about
15 the middle of your district, but quite a bit to the
16 west?
17 A Right.
18 Q Now, those two wells, why don't you tell
19 me how they are plumbed with the rest of your system.
20 Are they integrated into the rest of your system?
21 A No, they are not. They are -- both of
22 them deliver irrigation water by a lateral, so only
23 the service area within that lateral can patrons use
24 the ground water rights.
25 Q And do those patrons, do they have

Page 24

1 access to any other sources of supply from Settlers?
2 A Surface irrigation.
3 Q So they could take either the ground
4 water or the surface irrigation?
5 A They only have rights to ground water
6 when surface irrigation flows cannot be met at 100
7 percent.
8 Q But I just want to make certain that I
9 understand that their land could physically be
10 irrigated either with the ground water from one of
11 those wells or with surface water?
12 A Yes.
13 Q But it comes from a different delivery
14 system; in other words, does the ground water go into
15 the same lateral?
16 A Yes, it does.
17 Q It does, okay; so when one of those
18 customers takes the water out of the lateral, that
19 customer would take it out the same way whether it's
20 ground water or surface water?
21 A Yes.
22 Q Now, can you put at least rough numbers
23 on the size of the portfolio that's ground water
24 compared to surface water? And by surface water for
25 purposes of that question, we can combine storage and

Page 25

1 natural flow. Obviously, you can quantify that in a
2 lot of different ways, you know, CFS or acres and you
3 pointed out that it varies depending on when it's in
4 priority or when it's available, when it's
5 supplemental and so on, so I understand that's a hard
6 question, but I'm trying to get a sense of how big a
7 component the ground water is compared to the surface
8 water, is there any way you can help me understand
9 that?
10 A As far as the ground water rights are --
11 I guess, what are you looking for?
12 Q I'm trying to get a sense of the
13 magnitude of the ground water compared with the
14 surface water, so you can approach that by acreage or
15 any other way you'd like.
16 A Compared to the surface irrigation
17 rights, it's minimal.
18 Q Now, looking just at the surface side,
19 I'm interested in how big a component the natural flow
20 is compared to the storage. You've already explained
21 that you use your natural flow first before you call
22 in storage, how much of the irrigation season do you
23 find that natural flow is available, roughly
24 speaking? Half of it?
25 A Depending on what supply of natural

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1 flows are, a rough estimate would be half.
 2 Q Are you familiar with the water right
 3 priorities of the rights in your district's portfolio?
 4 A Yes.
 5 Q How many water rights do you have in
 6 your portfolio?
 7 A I don't know, meaning I don't recall the
 8 exact number of water rights that we have.
 9 Q Could you give me just an estimate? Is
 10 it fewer than 20?
 11 A It may be around 20.
 12 Q Okay. Do you know when the earliest
 13 priority date is?
 14 A Yes, I do.
 15 Q What would that be?
 16 A I believe it to be, it would be the
 17 first priority date of 1866.
 18 Q That's natural flow?
 19 A That is natural flow.
 20 Q For your natural flow rights, do you
 21 know what your most junior priority would be in the
 22 portfolio?
 23 A I don't recall.
 24 Q Do you know who would know that?
 25 A I would imagine the Department of Water

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1 Resources would know something like that.
 2 Q Is there -- okay. Do you know the range
 3 of priorities? You've already told me that you don't
 4 know the priority dates of your ground water rights;
 5 is that accurate?
 6 A I don't recall the dates, the priority
 7 dates, on those wells.
 8 Q And so I take it there isn't anything
 9 else that you can tell me about priority dates of any
 10 of your water rights than you've told me already?
 11 Have I exhausted your knowledge on that?
 12 A No, I wouldn't recall what our last
 13 priority date was or our most recent priority date,
 14 rather; however, I do know our first priority date is
 15 that of 1866.
 16 Q Does the district have plans to put in
 17 additional wells?
 18 A I don't know.
 19 Q Do you know of any plans?
 20 A No, I do not.
 21 Q Would you know if there were such plans?
 22 A Yes.
 23 Q Does the district have plans to acquire
 24 any other water rights, either ground water or surface
 25 water or storage?

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1 A Not to my knowledge.
 2 Q Now, you indicated earlier that you
 3 would use your natural flow water first if it was
 4 available; is that correct?
 5 A Yes.
 6 Q When the natural flow water becomes
 7 unavailable, when do you decide whether to use storage
 8 water or ground water? How do you decide that?
 9 A Whether to use storage water or ground
 10 water?
 11 Q Yes. For those areas where ground water
 12 would be physically available, would you use storage
 13 water first or ground water first?
 14 A Typically, we would use the storage
 15 water in conjunction with the ground water, so
 16 together, we would use them together.
 17 Q Okay. When I interviewed or deposed
 18 Pioneer yesterday, it was my understanding from that
 19 deposition that they would use the ground water first
 20 and conserve their storage water. Do you operate
 21 differently than that?
 22 A Apparently.
 23 Q And so you would use them equally during
 24 a time when natural flow was unavailable?
 25 A Yes.

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1 Q Okay, and what is the reason for that?
 2 A Due to the location of the wells being
 3 towards the end of the system, typically you find that
 4 being towards the end of a system, water flows aren't
 5 always there to keep up with demand.
 6 Q So it just wouldn't work any other way?
 7 A Right.
 8 Q Is that the reason those wells were put
 9 in?
 10 A Yes.
 11 Q If those ground water wells were not
 12 available, what would happen to those areas? Would
 13 they -- would their needs not be met or could you call
 14 in more storage water and meet those needs?
 15 A We would have to call in more storage
 16 which would reduce the irrigation season for Settlers.
 17 Q But it would be physically possible to
 18 accomplish it?
 19 A It would be possible to accomplish it,
 20 yes.
 21 Q When Settlers Irrigation District was
 22 established, I assume all of its customers were farm
 23 and ranch irrigators; is that accurate?
 24 A To my knowledge, yes.
 25 Q What's your customer mix today?

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1 A It would be a combination of farmers and
2 residential areas.
3 Q Do you serve any commercial areas as
4 well?
5 A Yes, yes, we do.
6 Q Do you serve any cities directly? The
7 distinction I'm trying to draw there is in some
8 instances, as I understand it, irrigation districts
9 serve residential and commercial customers directly
10 and in some instances irrigation districts actually
11 provide water to a municipality, so they're charging
12 the municipality as a customer, do you understand the
13 distinction I'm drawing?
14 A Somewhat, because I know of a
15 municipality to have lands within our district, such
16 as a park.
17 Q Well, maybe I should just let you try to
18 answer. I take it you serve irrigation needs to
19 residential customers?
20 A Yes.
21 Q How do you -- how does that work? Do
22 you bill them directly?
23 A It's done by either billing them
24 directly or through their homeowner's association.
25 Q Are there any instances in which someone

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1 other than a homeowner or individual user or
2 homeowner's association is served with water; in other
3 words, do you serve any cities with water? I'm not
4 talking about individuals, but the city itself.
5 A The city itself? If they hold lands
6 within Settlers Irrigation District, yes, we do assess
7 and we do deliver water.
8 Q Okay, I feel like maybe we're not
9 completely on the same page here and it's probably
10 just because I'm not doing a good job of explaining
11 what I'm getting at and I apologize, I'll try to make
12 myself more clear. As I understand it so far, all of
13 your customers are individual entities, either
14 homeowners, commercial operators or homeowner's
15 associations and you bill them directly. In some
16 instances, some irrigation districts also serve
17 municipalities by actually delivering water to the
18 municipal water supply system, does Settlers do that?
19 A No.
20 Q In the course of the IMAP proceeding
21 we've used the term "NPI," an acronym to refer to
22 non-potable irrigation, is that an acronym that you're
23 familiar with?
24 A No.
25 Q What do you use to describe the

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1 irrigation water that you serve to residential and
2 commercial customers? Sometimes it's called secondary
3 water or sometimes it's called pressurized
4 irrigation.
5 A Pressurized irrigation or just
6 irrigation, surface irrigation.
7 Q Are all of your customers irrigation
8 customers or do you serve any non-irrigation needs?
9 A It's all irrigation.
10 Q And it would have to be, I assume,
11 because you don't have water rights that operate
12 during the non-irrigation season, do you?
13 A No.
14 Q Has anyone at the district put together
15 the entire portfolio of your water rights to add them
16 up and see how they compare to your needs? Has
17 anybody gone through that exercise?
18 A No.
19 Q What is the district's policy with
20 respect to serving commercial and residential
21 customers in areas that were previously served by --
22 let me rephrase that, in areas where you previously
23 provided irrigation water for farms and ranches?
24 A Can you ask the question one more time?
25 Q What is the policy of Settlers

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1 Irrigation District with regard to serving residential
2 and commercial customers within your district? Is
3 that something that you seek to do?
4 A To continue to deliver irrigation water
5 to residential and commercial properties, yes, we
6 continue to deliver that irrigation water, yes.
7 Q And is that something that the board
8 actively encourages?
9 A Yes.
10 Q Now, do you have areas of your district
11 that is also served by United Water Idaho, do you
12 know?
13 A I would say yes.
14 Q And are there areas of your district
15 where there are, I want to call them, NPI, but you
16 would call them pressurized irrigation, served by
17 Settlers and the domestic supply is served by United
18 Water?
19 A Yes, there are areas where both are
20 present.
21 Q Have there been any discussions between
22 United Water and Settlers on the subject of that
23 arrangement?
24 A Not to my knowledge.
25 Q Is it the view of Settlers that United

1 Water is hostile or opposed to Settlers continuing to
2 provide irrigation water to commercial and residential
3 customers within your district?

4 A I don't know.

5 Q Have you ever heard anyone on the board
6 express that viewpoint?

7 A No.

8 Q Are you aware of any conflict dealing
9 with your provision of that water?

10 A No, I'm not.

11 Q Okay. Let me hand you what has been
12 marked as Exhibit No. 1.

13 Scott, would you like another copy?
14 This is the deposition notice.

15 MR. CAMPBELL: No, that's not
16 necessary.

17 Q BY MR. MEYER: Let me, while we're at
18 it, also give you Exhibit No. 7 which is an amended
19 deposition notice and I thought I had Exhibit No. 11,
20 but I don't see it. Let me go off the record for just
21 a second.

22 (Exhibit No. 11 was marked for
23 identification.)

24 Q BY MR. MEYER: We're back on the
25 record. Mr. Draper, I've given you copies of three

1 Q And how were you told to prepare?

2 MR. CAMPBELL: Well, I'll object to the
3 question. It goes into the attorney-client
4 communications with Mr. Draper and I'll instruct him
5 not to answer.

6 MR. MEYER: Well, I'm not asking
7 particularly for what his attorney told him. I just
8 want to know whether he was instructed to prepare or
9 not.

10 MR. CAMPBELL: That wasn't your
11 question.

12 Q BY MR. MEYER: Okay, let me repeat the
13 question or let me rephrase the question. How did you
14 prepare for today's deposition?

15 A I read over some documentation.

16 Q What did you read over?

17 A This notice, for one.

18 Q Was there anything else that you read?

19 A No.

20 Q Turning to the second page of any one of
21 those, you'll see two items listed with a 1 and a 2 in
22 front of them, those are the two items that describe
23 the scope of this deposition. The first says each and
24 every basis for your protest in this matter, did you
25 understand what that meant?

1 documents. They are labeled Exhibits 1, 7 and 11.

2 A I only have two.

3 Q There's No. 11. Just to orient you, all
4 three of those are deposition notices for this
5 deposition. Why don't you take a look at those just
6 to see if you've seen them before. I think you'll
7 find that the latter two are the same, except for the
8 date since this has been rescheduled a couple of
9 times.

10 A Yes.

11 Q Have you seen those deposition notices
12 before?

13 A Yes, I have.

14 Q Who gave them to you?

15 A Our attorney.

16 Q And was it explained to you that this is
17 a 30(b)(6) deposition?

18 A Not that I recall.

19 Q Okay, was it explained to you that when
20 your deposition would be taken today that you would be
21 speaking on behalf of Settlers?

22 A Yes.

23 Q And was it explained to you what your
24 responsibilities were to prepare for this deposition?

25 A Yes.

1 A Yes.

2 Q And what is your understanding of what
3 that means?

4 A Just what it says, each and every basis
5 for your protest in this matter.

6 Q So that's completely clear to you?

7 A This sentence is, yes.

8 Q And are you prepared to discuss the
9 basis for Settlers' protest?

10 A Well, the basis would be drawn up by our
11 attorney, so that I couldn't answer.

12 Q My question is are you prepared to
13 discuss the basis for the protest?

14 MR. CAMPBELL: I'll object to the
15 question. It's been asked and answered.

16 MR. MEYER: Well, I heard the witness
17 answer no.

18 Q BY MR. MEYER: Is that your testimony,
19 that you're not prepared? Why don't you answer in
20 your own words. Are you prepared to provide each and
21 every basis for the district's protest in this matter?

22 A Am I prepared to do that?

23 Q That's the question.

24 A Well, my question to you, then, is based
25 on what information?

1 Q I'm the one that asks the questions. If
2 you don't understand it --
3 A I don't understand know what you're
4 getting at.
5 Q -- I'll try and rephrase it. My
6 question is are you prepared to discuss the bases for
7 the district's protest in this matter?
8 A As much as I possibly can.
9 Q Let's look at the second item. That
10 reads, "The conditions or modifications to the IMAP,
11 if any, that would resolve your protest." Do you
12 understand what that means?
13 A No, I don't.
14 Q Did anyone offer an explanation of that
15 to you?
16 A I don't know the meaning of or what is
17 meant by "the conditions and modifications to the
18 IMAP." I do not know what that means.
19 Q Now, you told me that you prepared for
20 this deposition by reviewing this document, when you
21 reviewed the document and you didn't understand what
22 that meant, did you ask anyone what that meant?
23 A No.
24 Q Did you tell anyone that you didn't
25 understand what that meant?

1 A No.
2 Q Did you tell anyone that you were
3 prepared for this deposition?
4 A No.
5 Q Did anyone ask you if you were prepared
6 for the deposition?
7 A No.
8 Q Let's look at the final sentence before
9 the date there. It says, "You are further required to
10 provide and to produce at the deposition all documents
11 in your possession related" -- it probably ought to
12 say "to" and then it continues -- "your protest in
13 this matter." Did you understand what that meant?
14 A No.
15 Q Did anyone offer you any explanation of
16 what that meant?
17 A No.
18 Q Did anyone tell you to prepare documents
19 for this deposition?
20 A No.
21 Q You had no discussion on it at all?
22 A No.
23 Q Did you bring any documents with you?
24 A No.
25 Q Do you have access at the district

1 offices to documents that bear on the IMAP?
2 A Yes.
3 Q Would that include minutes of board
4 meetings?
5 A Yes.
6 Q Are there board meetings at which the
7 IMAP has been discussed?
8 A Yes.
9 Q And minutes of those meetings?
10 A Yes.
11 Q Did it occur to you that you ought to
12 bring those to this deposition?
13 MR. CAMPBELL: Counsel, you've already
14 been provided with those documents in our responses to
15 your first set of discovery. You have the documents
16 that are responsive.
17 Q BY MR. MEYER: Did you have any -- are
18 you familiar with what has been provided to United
19 Water in the course of discovery?
20 A No.
21 Q So you wouldn't know whether the
22 documents in your possession have already been
23 provided; is that correct?
24 A No, I wouldn't know.
25 Q Has the district hired any consultants

1 to assist in its protest of the IMAP?
2 A Not that I'm aware of.
3 Q Are you aware of -- do you know of Don
4 Reading?
5 A No.
6 Q So far as you know, he's not been
7 retained by Settlers in this matter?
8 A Not that I'm aware of.
9 MR. MEYER: Now, may I ask you a
10 question, Scott, am I mistaken here, is Don Reading
11 not employed by Settlers?
12 MR. CAMPBELL: Don Reading is not
13 employed by Settlers.
14 MR. MEYER: Well, retained by Settlers.
15 MR. CAMPBELL: He has been retained in
16 this proceeding for Settlers as well as for Pioneer.
17 Q BY MR. MEYER: Now, Mr. Draper, I'm
18 wondering, you just heard your counsel indicate that
19 he is, so that suggests to me that there may be some
20 things that you haven't been informed of or don't
21 recollect, would that appear to be the case with
22 respect to Mr. Reading?
23 A Yes.
24 Q Now, I'm wondering if what that means is
25 that there would be somebody else that would be more

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1 familiar with what consultants have been retained than
2 you.
3 A I don't know.
4 Q Who is it that would authorize someone
5 like Mr. Reading to be hired in connection with this
6 protest, would that be the board?
7 A That would be done by the board of
8 directors.
9 Q So would one of those members of the
10 board be in a better position to be able to tell me
11 who has been retained?
12 A I don't know.
13 Q The document that I have in front of me
14 is entitled "Integrated Municipal Application Package"
15 or IMAP, I'll put that in front of you now, have you
16 seen that document before?
17 A No, I have not.
18 Q Is it possible that you've seen it in a
19 different form, perhaps not in this loose leaf?
20 Perhaps I'll open it up so you can look at the front
21 page.
22 A It may be, yes.
23 Q Why don't you take a few minutes and see
24 if you can refresh your recollection as to what this
25 document is. We can go off the record now.

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1 (Pause in proceedings.)
2 THE WITNESS: I may have seen it. I
3 don't recall.
4 Q BY MR. MEYER: We're back on the record;
5 so you're not certain whether you've seen this
6 document before?
7 A No, I'm not.
8 Q Is that your testimony? Have you read
9 the document before?
10 A No.
11 Q Having taken a few minutes to look at
12 it, do you know what this document is?
13 A I have an understanding of what it is,
14 yes.
15 Q And what is it?
16 A It's the IMAP based on water right
17 issues with United Water of Idaho.
18 Q And what does the IMAP seek?
19 A That I don't know.
20 Q Now, you indicated to me earlier that
21 you were prepared to discuss the district's protest of
22 the IMAP. Frankly, I don't understand how you can
23 discuss the protest if you don't know what the IMAP
24 seeks.
25 A From what I understand, they're seeking

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1 to change water rights or not necessarily change water
2 rights, but -- yeah, I would say change water rights.
3 Q Are you familiar with the 1996 Municipal
4 Water Supply Act?
5 A No.
6 Q Have you ever heard of it before?
7 A Yes, I've heard of it.
8 Q Is it your understanding that the IMAP
9 is premised upon the 1996 Act?
10 A I don't know.
11 Q Do you know what the 1996 Act does?
12 A No.
13 Q Do you know what water rights United
14 Water is seeking to change?
15 A Not the exact water rights, no.
16 Q Do you know what it is seeking to change
17 about those water rights?
18 A Can you repeat the question?
19 Q You just told me that you don't know
20 which water rights are the subject of the IMAP, do you
21 know what the nature of the change is that is being
22 sought?
23 A My understanding of that would be a
24 transfer of irrigation rights or of water rights.
25 Q Transfer from what to what?

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1 A That I don't know.
2 Q Is it your understanding that the IMAP
3 is seeking to change the nature of use?
4 A I don't know.
5 Q Is it your understanding that the IMAP
6 is seeking to change the quantity associated with any
7 of its water rights?
8 A I don't know.
9 Q I could continue asking questions, but I
10 think we've established that you don't really know
11 anything about what's being sought in the IMAP, are
12 you prepared to leave your testimony at that or is
13 there anything that you do understand about the IMAP
14 that you haven't told me already?
15 A We can leave it at that.
16 Q Okay. Who at the district would be
17 familiar with the IMAP?
18 A I don't know.
19 Q Mr. Draper, you've told me that you have
20 attended every single board meeting for the last six
21 years; is that correct?
22 A Yes.
23 Q And you don't know anybody at the
24 district that would be familiar with the IMAP; is that
25 your testimony?

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1 A As familiar with it as I am.
 2 Q No one at the district is more familiar
 3 with the IMAP than you?
 4 A That's not what I said.
 5 Q Then please tell me what your testimony
 6 is. My question to you was --
 7 MR. CAMPBELL: Well, I'm going to object
 8 at this point. You're being abusive to this witness.
 9 Now, if you want to ask questions, ask questions.
 10 You're being belligerent at this point. Ask a
 11 specific question and allow him the opportunity to
 12 respond to the question; otherwise, we'll terminate
 13 this proceeding right now.
 14 MR. MEYER: I beg to differ with you,
 15 Mr. Campbell, but I will repeat the question.
 16 Q BY MR. MEYER: Is there someone at the
 17 district who's familiar with the IMAP?
 18 A I don't know.
 19 Q I'd like to hand you now what has been
 20 marked as Exhibit No. 10. Take a moment to look at
 21 that and tell me if you've seen it before.
 22 A No.
 23 Q Would you identify that document for the
 24 record, please? Just read the caption.
 25 A It's the "Proposed IMAP Conditions."

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1 Q And what does it say on the next two
 2 lines?
 3 A "Discussion Draft Only," gives a date of
 4 "September 19, 2002, Subject to Rule 408."
 5 Q Were you aware that United Water Idaho
 6 had proposed a set of conditions designed to settle
 7 this litigation as long ago as September 19, 2002?
 8 A Can you repeat the question?
 9 Q Were you aware that United Water Idaho
 10 had proposed to Settlers a set of conditions designed
 11 to settle this litigation back in September of 2002?
 12 A No.
 13 Q Has anyone made you aware of any of the
 14 settlement offers made by United Water Idaho?
 15 A I don't recall.
 16 Q Would you be in a position to know if
 17 settlement offers had been conveyed to the district?
 18 A Not necessarily, no.
 19 Q If settlement offers had been conveyed
 20 to the district, would they have been discussed at
 21 board meetings?
 22 A I would believe so, yes.
 23 Q So wouldn't you be in a position to know
 24 whether a settlement offer has been conveyed?
 25 A I don't recall.

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1 Q Well, I want you to pause and think if
 2 there's any information that you have that would
 3 suggest that there has been any communication in which
 4 settlement offers or proposed conditions have been
 5 conveyed to the district, do you have any information
 6 or any recollection of that at all?
 7 A No.
 8 Q Were you made aware of the fact that the
 9 Idaho Water Users Association convened discussions
 10 aimed at settling this litigation?
 11 A Can you repeat the question?
 12 Q Were you aware that the Idaho Water
 13 Users Association informally convened meetings among
 14 the protestants and United Water aimed at resolving
 15 your protest?
 16 A I was not aware of that, no.
 17 Q No one told you -- okay, you've answered
 18 the question. What is the basis for the irrigation
 19 district's protest of the IMAP?
 20 A That would be in the document prepared
 21 by our attorney.
 22 Q Are you familiar with the reasons
 23 provided for the protest?
 24 A Somewhat, yes.
 25 Q Can you state for me what those reasons

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1 are?
 2 A I believe they're in the document.
 3 Q Your attorney has handed you a
 4 document. I have a copy of that, is that the
 5 protest? No, that's called "Statement of Issues."
 6 He's handed you a document, I'll give you the
 7 original -- no, that's the one that we used yesterday
 8 that actually has two documents in it. Would you
 9 remind me what is the second document that's there?
 10 MR. CAMPBELL: It's the supplemental
 11 statement of issues.
 12 Q BY MR. MEYER: I'm going to give you
 13 what has been marked as Exhibit No. 4 and Exhibit
 14 No. 5 and I'll represent to you that those are copies
 15 of the document that your attorney just handed to
 16 you. While we're at it, I will give you a copy of
 17 Exhibit No. 3 which I will represent to you is a copy
 18 of the protest filed by the district in this matter.
 19 A Okay.
 20 Q The only reason that I've given you
 21 those is just to make the record clear which document
 22 we're referring to because those are marked as
 23 exhibits.
 24 A Okay.
 25 Q Would it assist you in your testimony to

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1 step through these documents rather than simply to
2 have you describe the nature of the protest?
3 A I guess. I did not prepare the
4 document.
5 Q Who did?
6 A Our attorney.
7 Q And you're referring to which, all three
8 documents?
9 A Yes.
10 Q Let's take a look now at the one labeled
11 Exhibit No. 3. That is the one which is the protest
12 filed by the district. Who reviewed this document
13 before it was filed?
14 A I don't know.
15 Q Was it presented to the district board
16 before it was filed?
17 A I would believe so, yeah, but I don't
18 know.
19 Q You don't have a recollection of that
20 occurring?
21 A No, I don't.
22 Q Is there anyone on the board that would
23 be in a better position to recollect that?
24 A I don't know.
25 Q Do you have an understanding of what the

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1 thrust of this protest is or do we need to step
2 through it piece by piece?
3 A Piece by piece, I guess.
4 Q Okay, why don't we turn to page 2 of the
5 protest, that's Exhibit No. 3. There is a bold
6 caption that reads "Failure to Comply with the
7 Requirements of Idaho Code sections 42-202 and
8 42-202B." Under that caption is a very long sentence
9 and it contains within that sentence three items.
10 They're marked by the numbers 1, 2 and 3 in
11 parentheses. The first item, No. 1, says "the
12 planning horizon sought by UWID" -- that's United
13 Water -- "is reasonable," and if you read the entire
14 paragraph, it suggests that United Water has failed to
15 meet its burden in demonstrating that. Do you
16 understand what that means?
17 A No, this was written by our attorney.
18 No, I don't.
19 Q Have there been any discussions by the
20 board as to what that means?
21 A I don't know.
22 Q The second item is "the future uses or
23 needs projected by IMAP are reasonably anticipated
24 future needs," and again, the protest suggests that
25 United Water has failed to demonstrate that. Do you

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1 know what that means?
2 A Repeat the question.
3 Q Do you know what item No. 2 means?
4 A Item No. 2 in this paragraph that we've
5 been discussing?
6 Q Yes.
7 A Again, that was written by our
8 attorney. I don't know.
9 Q Do you recall any discussions at the
10 board of what that means?
11 A I don't recall.
12 Q Item No. 3 says, "the 'planning area'
13 and 'service area' described in the IMAP comport with
14 the definition of 'service area' set forth in section
15 42-202B." Do you understand what that means?
16 A No.
17 Q Is there any part of this protest that
18 you understand what it means?
19 A Possibly.
20 Q Take your time.
21 A Possibly.
22 Q Well, why don't we turn to page 3. The
23 first caption says, "Failure to Comply with the
24 Requirements of Idaho Code section 42-211," and the
25 sentence under that reads, "The IMAP fails to meet the

Page 53

1 requirements of Idaho Code section 42-211 in that if
2 the amendments to permit sought in the IMAP are
3 approved as requested, the approval and amendments
4 would result in the use of more water than originally
5 permitted, and the rights of others will be adversely
6 affected thereby." Do you understand what that means?
7 A Somewhat, yes.
8 Q What is the basis for that component of
9 the protest?
10 A That I don't know.
11 Q The next caption reads, "Failure to
12 Comply with the Requirements of Idaho Code section
13 42-222." The first sentence contains several items
14 which your protest alleges would be violations of
15 Idaho water law. The first is that it will result in
16 injury to other water rights. Do you see where I'm
17 reading?
18 A Uh-huh.
19 Q Are you familiar with that reason for
20 the protest?
21 A No, I'm not.
22 Q The second item is that it will
23 contain -- excuse me, that it will constitute an
24 enlargement in the original rights. Are you familiar
25 with that basis of the protest?

1 A No.
2 Q The next is that it is inconsistent with
3 the conservation of water resources in Idaho. Are you
4 familiar with that basis of the protest?
5 A No.
6 Q The next is it is contrary to the local
7 public interest. Are you familiar with the reason
8 that was included in the protest?
9 A No.
10 Q Do you recall any discussion at the
11 board for reasons why this protest was filed?
12 A I do recall discussions concerning IMAP.
13 Q How many times has this come up at the
14 board?
15 A I don't know.
16 Q Roughly?
17 A A few. I don't know.
18 Q What is your recollection of those
19 discussions?
20 A I don't recall exactly.
21 Q Do you recall anything?
22 A Like I said, I recall IMAP. That's what
23 I recall.
24 Q You recall that there was a reference to
25 IMAP, do you recall any of the discussion about the

1 IMAP?
2 MR. CAMPBELL: I'll object to the
3 question. It's been asked and answered at least twice
4 and --
5 MR. MEYER: So long as the testimony is
6 clear that the answer is no, I'm prepared to move on.
7 Is it clear to you, Mr. Campbell?
8 MR. CAMPBELL: I am not testifying. I'm
9 objecting. If you can answer the question again for
10 the third time, go ahead, Nathan.
11 THE WITNESS: Repeat the question.
12 Q BY MR. MEYER: Do you recall any of the
13 discussion within any of the board meetings about the
14 IMAP?
15 A Like I said, I recall the discussions of
16 IMAP. I don't recall the exact discussions.
17 Q My question is not whether you recall
18 the exact discussions. My question is do you recall
19 anything that was discussed about the IMAP? Do you
20 recall anything?
21 A Yes, I recall IMAP.
22 Q Do you recall anything about the IMAP?
23 A No.
24 (Pause in proceedings.)
25 Q BY MR. MEYER: Okay, we're back on the

1 record now after fixing the battery. The next item in
2 this paragraph that we've been looking at on page 3 of
3 the protest says, "Some portions of many of the water
4 rights may have been forfeited because of non-use."
5 Do you understand what that means?
6 A Yes.
7 Q What is the basis for that statement
8 being included in the protest?
9 A This was drafted by our attorney. I
10 don't know.
11 Q And I take it I don't need to ask you
12 again on any of these whether you recall anything at
13 the board, so I'm not going to ask you that question
14 again --
15 A Okay.
16 Q -- but if in discussing these, any of
17 these, something refreshes your recollection and you
18 do recall discussion at the board level, please let me
19 know. Why don't you take a look at the rest of the
20 protest and see if there's anything in there that
21 you're prepared to provide the basis for or explain
22 the basis for. Just feel free to take your time.
23 A No, there's nothing.
24 Q Would the same be true for the statement
25 of issues and the list of additional issues which are

1 marked as Exhibits 4 and 5 or do you need some time to
2 take a look at those before answering?
3 A What is your question again?
4 Q Whether you would be prepared to discuss
5 any of the bases for the protests that are described
6 in either of those documents. I don't mean to rush
7 you.
8 A There's nothing that I could go into
9 detail about.
10 Q Is there anything that you could provide
11 any explanation of?
12 A I believe the explanation would have to
13 be given by our attorney since he is the one that
14 drafted the paperwork.
15 Q He's not doing this deposition. Shall
16 we go through piece by piece? The only reason I'm
17 asking the broader question is it might save some time
18 if your response is going to be the same as it was to
19 the protest.
20 A It will be the same.
21 Q Okay. Are you familiar with the term
22 planning horizon?
23 A No.
24 Q I take it, then, that you couldn't tell
25 me what planning horizon or how many years of a

1 planning horizon is requested in the IMAP?
 2 A No.
 3 Q What can you tell me about the rate
 4 structure of Settlers Irrigation District, what rates
 5 it charges its customers?
 6 A The rates are set by the board of
 7 directors each year.
 8 Q Do you know what they are today?
 9 A I know what they are for 2003.
 10 Q Can you tell me what they are?
 11 A They are \$45.00 an inch.
 12 Q That's a miner's inch?
 13 A That is a miner's inch.
 14 Q How does that work in the case of ground
 15 water? You measure that in miner's inches as well?
 16 A It is measured in miner's inches, yes.
 17 Q So you don't charge on the basis of
 18 acres?
 19 A No.
 20 Q Do you have a different rate structure
 21 for your residential and commercial customers or do
 22 they pay the same \$45.00 an inch?
 23 A It's the same.
 24 Q And that I take it doesn't vary
 25 depending on anything, doesn't vary depending on time

1 of day?
 2 A It's \$45.00 an inch.
 3 Q It's as simple as you made it sound,
 4 okay.
 5 Mr. Campbell, I would like to ask some
 6 questions now about the conservation efforts and
 7 program of the district. Am I going to get an
 8 objection to that?
 9 MR. CAMPBELL: Yes.
 10 MR. MEYER: Will you instruct the
 11 witness not to answer?
 12 MR. CAMPBELL: Yes.
 13 MR. MEYER: Now, you received the letter
 14 that I sent you yesterday; is that correct?
 15 MR. CAMPBELL: I don't know if you have
 16 more than one. I received a letter from you
 17 yesterday.
 18 MR. MEYER: Now, let's just make sure we
 19 have this very clear on the record. I would like to
 20 ask this witness some questions with respect to the
 21 conservation efforts and plans of the district.
 22 Mr. Campbell's position is, as I understand it, that
 23 that is not relevant to this proceeding.
 24 MR. CAMPBELL: It's only not relevant,
 25 it's not calculated to lead to discoverable

1 information.
 2 MR. MEYER: Now, I took this CLE in
 3 Depositions 13 years ago and what I learned then, I
 4 think, is still a law today. The heading is
 5 "Privilege, the only proper ground for instruction
 6 not to answer. The courts have relaxed this strict
 7 rule" -- the strict rule referring to the old rule
 8 that you could never instruct a witness not to
 9 answer -- "allowing an instruction not to answer a
 10 deposition question without a court order in one
 11 circumstance where the question seeks privileged
 12 matter; therefore, the only occasion in which a
 13 presenting attorney may legitimately instruct his
 14 witness not to respond to a deposition question is
 15 when that attorney claims a privilege."
 16 Is a privilege being claimed in this
 17 case, Mr. Campbell?
 18 MR. CAMPBELL: In which case?
 19 MR. MEYER: Are you asserting that there
 20 is a privilege?
 21 MR. CAMPBELL: No, I'm not asserting
 22 there is a privilege. I'm asserting that there is a
 23 pending motion to compel that your firm filed against
 24 Settlers Irrigation District in reaction to our
 25 refusal to provide that information in your written

1 discovery. That motion to compel and our responsive
 2 motion for protective order are still pending.
 3 There's been no resolution of that issue.
 4 Now, at this point, since there's been
 5 no resolution of that issue, I am not allowing you to
 6 inquire into that area of this witness. That's the
 7 basis for the objection and that's the basis for the
 8 instruction to the witness that he will not respond to
 9 your questions.
 10 MR. MEYER: Now, you've conducted a lot
 11 of depositions before and I would imagine you're
 12 familiar with the general rule that you may not
 13 instruct a witness not to answer a question on the
 14 basis of relevance.
 15 MR. CAMPBELL: It's not just on the
 16 basis of relevance, Mr. Meyer.
 17 MR. MEYER: But you have not asserted
 18 any privilege?
 19 MR. CAMPBELL: That's correct.
 20 MR. MEYER: Okay, and you don't have a
 21 protective order prohibiting me from inquiring into
 22 these things today, do you?
 23 MR. CAMPBELL: No.
 24 MR. MEYER: Okay.
 25 Q BY MR. MEYER: Mr. Draper, there were a

Christopher H. Meyer, Esq. (Idaho Bar No. 4461)
John M. Marshall, Esq. (Idaho Bar No. 5628)
GIVENS PURSLEY LLP
601 W. Bannock St
Boise, Idaho 83702
Office: 208-388-1200
Fax: 208-388-1300
Email: chm@givenspursley.com; jmm@givenspursley.com
Counsel for Applicant United Water Idaho Inc.

RECEIVED
MAR 17 2010
DEPARTMENT OF
WATER RESOURCES

**BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES**

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.

**UWID'S NOTICE OF WITHDRAWAL OF
RIGHTS FROM IMAP**

NOTICE

United Water Idaho Inc. ("UWID") provides this notice pursuant to Procedure Rule 305
that it is withdrawing water right numbers 63-7066 and 63-12363 from the IMAP.

Respectfully submitted this 17th day of March, 2010.

GIVENS PURSLEY LLP



By: Christopher H. Meyer

Attorneys for Applicant
United Water Idaho Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of March, 2010, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Kathleen Marion Carr, Esq.
Office of the Field Solicitor
U.S. Department of the Interior
University Plaza
960 Broadway Avenue, Suite 400
Boise, ID 83706

☒ U.S. Mail
☐ Facsimile
☐ Hand Delivery
☐ Overnight Mail

Mr. Edward Squires
Hydro Logic, Inc.
1002 West Franklin St.
Boise, ID 83702-5431

☒ U.S. Mail
☐ Facsimile
☐ Hand Delivery
☐ Overnight Mail

E. Gail McGarry, P.E.
Program Manager
Water Rights & Acquisitions
PN-3100
U.S. Bureau of Reclamation
Pacific Northwest Region
1150 N. Curtis Road
Boise, ID 83706-1234

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Ringert Law
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Moffatt Thomas Barrett Rock & Fields, Chartered
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Travis L. Thompson, Esq.
Barker, Rosholt & Simpson, LLP
1010 W. Jefferson, Suite 102
P.O. Box 2139
Boise, ID 83701-2139

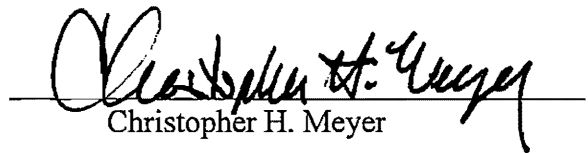
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409 West Jefferson
Boise, ID 83702-6049

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Christopher H. Meyer

Bruce M. Smith, ISB #3425
Susan E. Buxton, ISB #4041
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Attorneys at Law
950 W. Bannock Street, Suite 520
Boise, ID 83702-5716
Telephone: (208) 331-1800
Facsimile: (208) 331-1202

Attorneys for the City of Eagle

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AUG 01 2007

Department of Water Resources

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

IN THE MATTER OF INTEGRATED)	
MUNICIPAL APPLICATION PACKAGE)	
(CONSISTING OF 99 APPLICATIONS)	
FOR TRANSFERS OF WATER RIGHTS,)	
AND 13 APPLICATIONS FOR)	
AMENDMENT OF PERMITS) IN THE)	
NAME OF UNITED WATER)	
IDAHO, INC.)	
_____)	
	CITY OF EAGLE'S WITHDRAW OF IMAP PROTEST

COMES NOW, the City of Eagle, and hereby withdraws its Protest in the above captioned proceeding, and request that the Hearing Officer enter an Order dismissing them as parties to the proceeding but leaving the City on the Certificate of Mailing so that the City receives all filings in this matter.

DATED this 31 day of July, 2007.

MOORE SMITH BUXTON & TURCKE, CHTD.
ATTORNEYS AT LAW

By 

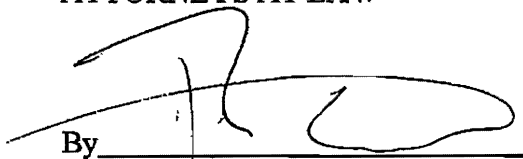
Bruce M. Smith, of the firm
Attorneys for City of Eagle

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the 1 day of ^{July} July, 2007, a true and correct copy of the foregoing document was served by United States first-class, postage prepaid mail to:

Christopher Meyer John Marshall Givens Pursley PO Box 2720 Boise, ID 83701	Josephine P. Beeman Beeman & Associates PC 409 W. Jefferson Boise, ID 83702
E. Gail McGarry PN-3100 Bureau of Reclamation 1150 N. Curtis Road, Suite 100 Boise, ID 83706-1234	Kathleen Marion Carr MSC-020 Office of the Field Solicitor US Department of Interior 550 W. Fort Street, Room 365 Boise, ID 83724
Scott Campbell Moffatt Thomas PO Box 829 Boise, ID 83701-0829	Albert Barker Barker Rosholt & Simpson PO Box 2139 Boise, ID 83701-2139
Matt Wilde City of Boise PO Box 500 Boise, ID 83701	Robert W. Talboy Ellsworth, Kallas & Talboy 2402 W. Jefferson Street Boise, ID 83702

MOORE SMITH BUXTON & TURCKE, CHTD
ATTORNEYS AT LAW

By 

Bruce M. Smith, of the firm
Attorneys for City of Eagle

Gibson, Deborah

From: Boardman, Anne on behalf of IDWR Fax
Sent: Wednesday, August 01, 2007 9:40 AM
To: Gibson, Deborah
Subject: FW: From " 208 331 1202"(Fax Message NO.6135)



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-----Original Message-----

From: idwrfax@idwr.idaho.gov [mailto:dwrfax@idwr.idaho.gov]
Sent: Wednesday, August 01, 2007 8:26 AM
To: IDWR Fax
Subject: From " 208 331 1202"(Fax Message NO.6135)

This E-mail was sent from "State_507_BW" (Aficio 2045e).

Queries to: webmaster@idwr.idaho.gov

Dave?

MOORE SMITH BUXTON & TURCKE, CHARTERED

ATTORNEYS AND COUNSELORS AT LAW
950 W. BANNOCK STREET, SUITE 520; BOISE, ID 83702
TELEPHONE: (208) 331-1800 FAX: (208) 331-1202 www.msbtlaw.com

STEPHANIE J. BONNEY
SUSAN E. BUXTON*
DANIELLE M. DANCHO^h
PAUL J. FITZER
MICHAEL C. MOORE[‡]
BRUCE M. SMITH
PAUL A. TURCKE[°]
CARL J. WITHROE^{°*}
TAMMY A. ZOKAN^{*}

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AUG 02 2007
DEPARTMENT OF
WATER RESOURCES

JOHN J. MCFADDEN^{**}
Of Counsel
√ Also admitted in Arizona
» Also admitted in California
" Also admitted in Colorado
* Also admitted in New Mexico
* Also admitted in Oregon
° Also admitted in South Dakota
‡ Also admitted in Washington

August 1, 2007

VIA FACSIMILE AND US MAIL

Director
Idaho Department of Water Resources
322 E Front Street
Boise, Idaho 83720-0098

Re: City of Eagle Withdraw of IMAP Protest

Dear Sirs/Madam:

Enclosed please find the original and one copy of the City of Eagle's Withdraw of Protest to be filed in the above referenced matter.

Please file the original and provide our office with a conformed copy at your earliest opportunity. For that purpose, I have enclosed a stamped, self-addressed envelope.

Thank you, and if you should have any questions please feel free to contact me.

Sincerely yours,

MOORE SMITH BUXTON & TURCKE, CHTD.



Debbie Smith
Legal Assistant to Bruce M. Smith

/dls
Enclosures

Bruce M. Smith, ISB #3425
Susan E. Buxton, ISB #4041
MOORE SMITH BUXTON & TURCKE, CHARTERED
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Facsimile: (208) 331-1202

Attorneys for the City of Eagle

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AUG 01 2007

Department of Water Resources

*Originally filed
by fax. dg*

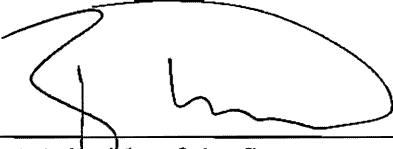
**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF INTEGRATED)	
MUNICIPAL APPLICATION PACKAGE)	
(CONSISTING OF 99 APPLICATIONS)	CITY OF EAGLE'S WITHDRAW
FOR TRANSFERS OF WATER RIGHTS,)	OF IMAP PROTEST
AND 13 APPLICATIONS FOR)	
AMENDMENT OF PERMITS) IN THE)	
NAME OF UNITED WATER)	
IDAHO, INC.)	
_____)	

COMES NOW, the City of Eagle, and hereby withdraws its Protest in the above captioned proceeding, and request that the Hearing Officer enter an Order dismissing them as parties to the proceeding but leaving the City on the Certificate of Mailing so that the City receives all filings in this matter.

DATED this 31 day of July, 2007.

MOORE SMITH BUXTON & TURCKE, CHTD.
ATTORNEYS AT LAW

By 

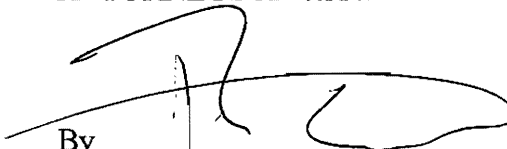
Bruce M. Smith, of the firm
Attorneys for City of Eagle

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the 1 day of ^{July} July, 2007, a true and correct copy of the foregoing document was served by United States first-class, postage prepaid mail to:

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Scott Campbell Moffatt Thomas PO Box 829 Boise, ID 83701-0829	Albert Barker Barker Rosholt & Simpson PO Box 2139 Boise, ID 83701-2139
Matt Wilde City of Boise PO Box 500 Boise, ID 83701	Robert W. Talboy Ellsworth, Kallas & Talboy 2402 W. Jefferson Street Boise, ID 83702

MOORE SMITH BUXTON & TURCKE, CHTD
ATTORNEYS AT LAW

By 
Bruce M. Smith, of the firm
Attorneys for City of Eagle

MEMORANDUM

To: Gary Spackman
From: Peter Anderson *PA*
Re: Final Report—IMAP, Contract # CON 00561
Date: June 8, 2006

STATUS OF CASE

The IMAP contested case is now stayed pursuant to an order of the Director of IDWR. That stay assumes that processing of this contested case will not resume until the water rights that are involved in both IMAP and the SRBA are resolved in the SRBA.

STATUS OF ISSUES

Early on in the IMAP a "master list" of issues was developed and the parties had started working their way through this list. The following is the list and the status of the issue is give in parentheses. Additionally, parties were asked to identify water rights that should be designated as test cases, and a listing of water rights alleged to have been forfeited was required. Forfeiture issues should be resolved in the SRBA.

Issue 1 The notice in this matter did not comport with the requirements of Idaho Code section 42-203A.

Preliminary Matter: Motion to Dismiss
(This issue is resolved)

Issue 2 The water rights described in IMAP involve quantities greater than 50 cfs requiring legislative approval.

Preliminary Matter: Motion to Dismiss
(This issue is resolved)

Issue 3 The IMAP was not submitted "upon forms furnished by the Department."

Preliminary Matter: Motion to Dismiss
(This issue is resolved)

Issue 4 The 1996 Municipal Water Rights Act does not allow a municipal provider to bring existing water rights already within its portfolio within the coverage of the Act.

Summary Judgment: Identify a test case.
(This issue is pending)

Issue 5 The IMAP application does not provide a sufficient description of the service area.

Summary Judgment.
(This issue is pending)

Issue 6 The IMAP is not consistent with planning limitations in the comprehensive plans of the various municipalities to be served as required by I.C. § 42-202B(5).

Summary Judgment.
(This issue is pending)

Issue 7 The IMAP is an improper enlargement in use of the original rights in violation of I.C. § 42-222(1).

Evidentiary hearing.
(This issue is pending)

Issue 8 An application to amend a permit cannot be considered under the Municipal Water Rights Act.

Summary Judgment: Test Case.
(This issue is pending)

Issue 9 Protestants challenge to the contact between the IDWR director and United Water Idaho should be decided at the outset.

Refer to Director pursuant to IDAPA 37.01.01.562. I.C. § 67-5252(4).
(This issue has been resolved)

Issue 10 Some of the IMAP water rights have been forfeited.

Summary Judgment—what information do the Protestant's need?
(This issue is pending)

Issue 11 What is the appropriate length of time for reviewing and reevaluating the accuracy of the planning horizon and projected water needs.

Summary judgment or evidentiary hearing?
(This issue is pending)

Issue 12 The “integrated points of diversion” approach in IMAP is unlawful.

Summary judgment—test case and Evidentiary hearing?
(This issue is pending)

Issue 13 A municipal provider should not be allowed to obtain a water right in the amount of a particular well's capacity, even though that amount of water is not diverted, and perhaps has never been diverted, from that well.

Summary judgment—test case(s)?

(This issue is pending)

Issue 14 Approval of the IMAP might preclude SRBA review.

Concurrent jurisdiction, parties wishes, SRBA Court's view.

(This issue was resolved by the stay)

Issue 15 UWID's contacts with the IDWR director prior to the initiation of this contested case constitute a violation of due process or statutory procedure.

Refer to Director pursuant to IDAPA 37.01.01.562. I.C. § 67-5252(4).

(This issue was resolved)

Issue 16 The quantity of water requested to be transferred pursuant to the IMAP is not available.

Evidentiary hearing.

(This issue is pending)

Issue 17 Portions of UWID's IMAP overlaps with some of the Protestant's (Eagle, Kuna, Middleton, Star, or the Star Sewer and Water District) service areas.

Summary judgment or evidentiary hearing.

(This issue is pending)

Issue 18 UWID has not justified the 50-year planning horizon.

Evidentiary hearing.

(This issue is pending)

Issue 19 The IMAP may injure the water rights of Eagle, Kuna, Middleton, Star, and the Star Sewer and Water District.

Evidentiary hearing.

(This issue is pending)

Issue 20 Considerations of the public interest and the provisions of I.C. §§ 42-202B(5) and (6), 42-219 and 42-222 require conditions be imposed on the IMAP water rights to protect the interest of the City of Boise in those water rights.

Summary judgment or evidentiary hearing.

(This issue is pending)

STATUS OF PARTIES

The interests of the Boise Project Board of Control, Wilder Irrigation District, Big Bend Irrigation District and Boise-Kuna Irrigation District have been consolidated as one protest.

The Estate of Eleanor Chase has withdrawn its protest.

PENDING MOTIONS

The following motions are pending awaiting the lifting of the stay:

In response to UWID's motion to dismiss an order was issued stating that based upon Pioneers and Settlers Irrigation Districts' answers I.R.C.P. 30(b)(6) depositions their participation in this matter is restricted solely to making legal argument and cross-examining United Water witnesses to the same extent as allowed other protestants. There are pending motions to reconsider this order.

There is a pending motion regarding expert witnesses where UWID requested that written expert witness testimony be pre-filed.

There is a pending request to approve a stipulation between UWID and the Cities of Meridian and Caldwell under Rule 612.

There is a pending motion to reconsider the stay issued by the Director.

(Internet)

Page 1 of 6

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. 72036**APPLICATION FOR TRANSFER OF WATER RIGHT****PART 1**Name of applicant United Water Idaho Inc. Phone 362-7358Post Office address Attn: Roger Dittus, 8248 W. Victory Road, P.O. Box 190420, Boise, ID 83719-0420**A. PURPOSE OF TRANSFER**

1. ☐ Change in point of diversion ☒ Add diversion point(s) ☐ Change place of use
☐ Change nature of use ☐ Change period of use ☐ Other _____
2. Describe the reason for the proposed changes The sole purpose of this transfer is to add an existing point of diversion to water right 62-12363. This right currently authorizes diversion of ground water from a point of diversion known as the Cassia # 2 well. After the transfer applicant will be able to divert water right 63-12363 from the Cassia # 2 well and from a well known as the Fisk well.

B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

1. Right Number 63-12363 Priority 9/9/96 Amount (cfs/ac-ft) 4.5 Nature Of Use municipal Period of Use 1/1 to 12/31
 _____ to _____
 _____ to _____
 _____ to _____
2. Total amount of water being transferred 4.5 cubic feet per second and/or _____ acre-feet per annum.
3. Source of water groundwater tributary to _____
4. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
	SW	SE	SE	6	3N	2E	Ada	Fisk well
	NE	NE	SE	16	3N	2E	Ada	Cassia 2 well

5. Lands irrigated or place of use: Within the Service Area of United Water Idaho.

Twp	Rge.	Sec.	NE1/4				NW1/4				SW1/4				SE1/4				Totals
			NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	

Total acres _____

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MAY 18 2005

WATER RESOURCES
WESTERN REGION

6. General Information:

a. Description of diversion system

Municipal supply wellb. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? Yes X No. If yes, please provide a notarized statement from the holder of the Lien, deed of trust, mortgage or contract agreeing to the proposed changes.

c. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer:

N/A

d. Remarks:

Diversions of ground water from the Fisk well currently are authorized under water right 63-11558 at a rate of
2.67 cfs (1,198 gpm). The intent of this transfer is to divert ground water at an increased rate from the
Fisk well. The maximum combined diversion rate from the Fisk well under rights 63-12363 and 63-11558 will not
exceed 5.5 cfs.

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. _____

And said application is hereby _____, subject to the following limitations and conditions:

Witness my hand this _____ day of _____, 20 _____.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. 72036

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. _____ Decreed to _____
in case of _____ vs. _____
dated _____ in _____ county of _____
- b. License No. 63-12363 issued by the Idaho Department of Water Resources.
- c. Claim No. _____ on file with the Idaho Department of Water Resources.
- d. Transfer No. _____ which produced this right.

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other document which show ownership. Label document as attachment A. Check appropriate box below:

☐ Tax Notice ☒ Warranty Deed ☐ Other _____

3. Source of water groundwater tributary to _____4. Date or priority 9/9/96

5. Water is used for the following purpose:

amount 4.5 for municipal purposes from 1/1 to 12/31
(cfs/ac-ft)

amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6. Total amount of water under right 4.5 cubic feet per second and/or _____ acre-feet per annum.

7. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
	NE	NE	SE	16	3N	2E	Ada	Cassia 2 well

8. Lands irrigated or place of use: City limits of Boise and surrounding service area.

Twp.	Rge.	Sec.	NE¼				NW¼				SW¼				SE¼				Totals
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	

Total acres _____

9. Describe any other water rights used for the same purpose as described above United Water Idaho has approximately
one hundred water rights (licenses and permits) that are used to supply the customers in United Water's service area.

PART 2

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use? No. If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED*(If the entire right is to be changed by the applicant, omit part B and C.)*

1. amount _____ for _____ purposes from _____
 (cfs/ac-ft) _____
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft) _____
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft) _____

2. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE¼				NW¼				SW¼				SE¼				Totals
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	

Total acres _____

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT *(omit if there is no change)*

1. amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft) _____
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft) _____
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft) _____

2. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE¼				NW¼				SW¼				SE¼				Totals
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	

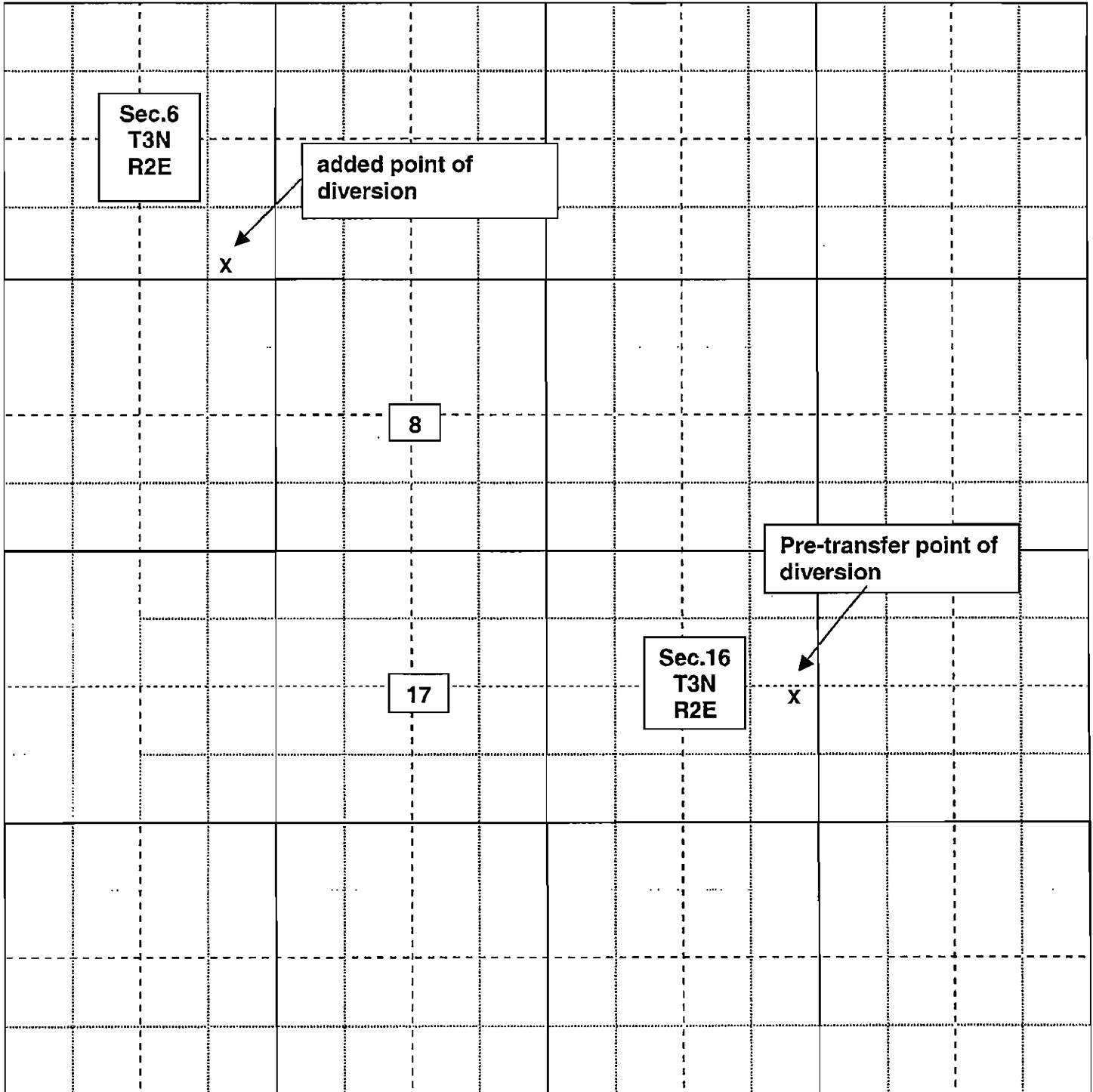
Total acres _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 3

- A. Draw a map or attach a USGS map indicating the new point(s) of diversion and/or the new place of use for rights described in part 1. Clearly depict the land by section, township and range number.



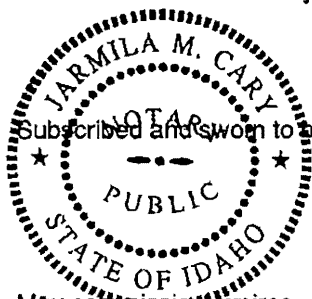
SCALE: 2 inches equal 1 mile, Draw plan in ink.

B. CHANGES IN NATURE OF USE

1. New Nature of Use Amount Hours/days/year Period of Use
(cfs/ac-ft)
- N/A _____ to _____
_____ to _____
2. Quantity and quality of return flows and location of discharge:
N/A _____
3. Describe effects on other water uses resulting from the proposed change:
N/A _____

I hereby assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge.

I understand that any willful misrepresentations made in this application may result in voiding its approval.



My commission expires

07/14/2005

Roger F. Pittman

(Signature of Applicant)

Subscribed and sworn to before me this 18th day of May, 20 05.

Jarmila M. Cary

(Notary Public)

FOR DEPARTMENT USE ONLY

Transfer contains 6 pages and 0 attachments.

Received by DB Date 5-18-05 Protest filed by _____

Prelim. check by SC Fee \$410-

Receipted by DB W032946 Date 5-18-05

Published in _____ Copies of protest forwarded by _____

Pub. dates _____ Hearing held by _____ Date _____

Watermaster recommendation requested on _____ Recommended for ☐ approval ☐ denial

_____ rec'd. _____ by _____

Copy of transfer sent to lien holder _____

PETER R. ANDERSON

**729 W. Braemere Rd
Boise, Idaho 83702
(208) 395-0068**

Facsimile: (208) 395-0222

E-mail: hearingofficer@fiberpipe.net

May 19, 2006

Idaho Department of Water Resources
Attn: Ranae Sanders
322 E. Front St.
Boise, ID 83720-0098

Re: Notice of Termination—Contract # DWR CON00561

Dear Ms. Sanders:

I am writing to give thirty-days NOTICE that pursuant to Section 6 of the above-referenced contract, the Contractor's services under such contract will terminate on June 23, 2006.

I will contact Gary Spackman to determine the form in which he wishes to receive my final report.

Thank you for allowing me to be of service to the Department.

Sincerely,

Peter R. Anderson

cc: Gary Spackman (hand delivery)

RECEIVED

JAN 13 2006

DEPARTMENT OF
WATER RESOURCES

Scott L. Campbell, ISB No. 2251
Angela Schaer Kaufmann, ISB No. 5436
MOFFATT, THOMAS, BARRETT, ROCK &
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101 S. Capitol Blvd., 10th Floor
Post Office Box 829
Boise, Idaho 83701
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Facsimile (208) 385-5384
18946.105

Attorneys for Pioneer Irrigation District

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF TRANSFER
APPLICATION NUMBER 72036 ON
BEHALF OF UNITED WATER IDAHO

REPLY RE: PIONEER'S ANSWER TO
UNITED WATER'S MOTION FOR
DECLARATORY ORDER

Pioneer Irrigation District ("Pioneer"), by and through its counsel of record, MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHTD., hereby replies to United Water Idaho's ("United Water") CORRECTED Reply in Support of Motion for Declaratory Order Respecting It's Right to Proceed ("United Water's Reply"). United Water has failed to adequately address the procedural and substantive defects of its Motion for Declaratory Order.

Pioneer's most pressing concern (a concern that would almost certainly have been shared by the other protestants in the IMAP proceeding, had they been provided notice of the Motion for Declaratory Order) is that United Water is attempting to circumvent the Order Re: Motion for Stay ("Stay Order") issued in the IMAP Proceeding. As Pioneer noted in its Answer

to United Water's Motion for Declaratory Order Respecting Its Right to Proceed ("Answer"), the Stay Order *clearly* provides:

It is therefore hereby ordered that this transfer proceeding shall be stayed *in full* pending the issuance of partial decrees for UWID's water right claims by the SRBA District Court, provided that action may be taken by the IDWR Hearing Officer upon any motions pending on the date of this order.

Stay Order, p. 3 (emphasis added). The Stay Order could not be more clear: the IMAP is stayed in full, meaning consideration of transfer of each and every water right contained therein, until United Water's water rights are considered and decreed by the SRBA District Court. The Stay Order, which was issued *by the Director*, is written in mandatory, not permissive terms, leaving no room to argue that it can be circumvented by a piecemeal transfer process.

United Water also suggests that the Director "has ample reason and discretion to take notice of United Water's need for timely decision—making on its transfer applications." United Water's Reply, p. 2. United Water cites no authority supporting that proposition, because none exists. Rule 602 of the Department's Rules of Procedure provides no support and, in fact, makes it clear that the Department could not take notice of "United Water's need for timely decision-making." From a practical perspective, it is difficult to see how United Water's proclaimed need is any different than that of any other transfer applicant. One could safely assume that every transfer applicant feels that his or her application is important and should be decided in a timely fashion. In other words, United Water is on no different footing than any other applicant, and cannot circumvent the clear orders of the Director.

Pioneer continues to maintain that United Water has disclosed matters discussed in confidential settlement negotiations and attempted to use those matters to Pioneer's disadvantage. The policy behind the confidentiality of settlement negotiations is to encourage

settlement of matters. United Water's disclosures are in clear violation of that policy. Moreover, while United Water asserts that it "has not disclosed any confidences, admissions, or bargaining concessions," Rule 610 is, in fact, far broader. Rule 610 provides:

Settlement negotiations in a contested case are confidential, unless all participants to the negotiation agree to the contrary in writing. Facts disclosed, offers made and all other aspects of negotiation (except agreements reached) in settlement negotiations in a contested case are not part of the record.

IDAPA 37.01.01.610. Thus, *all aspects* of settlement negotiations are to remain confidential, a prohibition which United Water has ignored. The chilling effect on future willingness to engage in settlement discussion should be obvious. Pioneer will continue to maintain the high road and not disclose matters discussed in its settlement negotiations with United Water, until such time as the Director determines that Rule 610 has no application to this matter.

United Water now contends that only the issue of future needs is before the Director in the IMAP. United Water's Reply, p. 2 ("[n]o relief is sought in this transfer application that bears on the issue of future water needs before the Director in the IMAP proceeding.") That statement is incredibly disingenuous. In a section of the Executive Summary to the IMAP, titled "Objectives of this IMAP," United Water stated that it is proposing the following for each of the water rights included in this IMAP:

- ✓ Recognize each well within the interconnected system as an alternate point of diversion for each ground water right.
- ✓ Establish a municipal nature of use for each water right, per the 1996 Act.
- ✓ Establish a consistent place of use description for all its water rights, based on the service area concept in the 1996 Act.
- ✓ Amend the season of use for all ground water rights to consistently reflect full year usage.

- ✓ Adjust diversion quantities for volume limited rights to reflect a continuous flow rate.
- ✓ Designate a portion of the total diversion rate reflected in the portfolio as the planning horizon component ("PHC") under the 1996 Act.

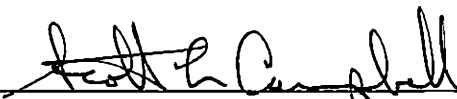
UWID's IMAP, p. 15. The IMAP does far more than seek a ruling on United Water's future water needs.

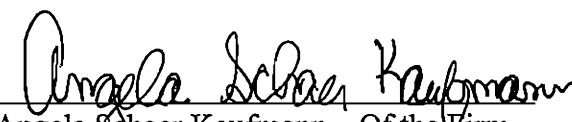
Further, Pioneer does not seek a reopening of the IMAP, as United Water implies. United Water's Reply, p. 2. Pioneer agrees that reopening the IMAP prior to SRBA partial decrees being issued for United Water's rights would be a waste of resources. Pioneer's position, instead, is that United Water cannot circumvent the Director's clear and well-reasoned stay order by filing piecemeal transfers of water rights which are part of the IMAP. Such a tactic is contrary to the letter and the spirit of the Stay Order.

Therefore, for the reasons set forth herein and in Pioneer's Answer to United Water's Motion for Declaratory Order Respecting Its Right to Proceed, Pioneer respectfully requests that the Hearing Officer deny United Water's Motion in its entirety.

DATED this 13th day of January, 2006.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By 
Scott L. Campbell – Of the Firm

By 
Angela Schaefer Kaufmann – Of the Firm
Attorneys for Pioneer Irrigation District

CERTIFICATE OF SERVICE

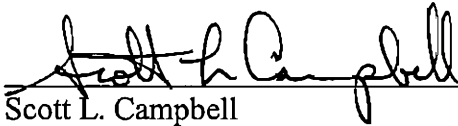
I HEREBY CERTIFY that on this 13th day of January, 2006, I caused a true and correct copy of the foregoing **REPLY RE: PIONEER'S ANSWER TO UNITED WATER'S MOTION FOR DECLARATORY ORDER** to be served by the method indicated below, and addressed to the following:

Director
Idaho Department of Water Resources
PO Box 83720
Boise, ID 83720
Facsimile (208) 327-5400

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Facsimile

John M. Marshall
Christopher H. Meyer
Givens Pursley LLP
601 W. Bannock Street
PO Box 2720
Boise, ID 83701
Facsimile (208) 388-1300

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile



Scott L. Campbell

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of January, 2006, I caused a true and correct **COURTESY** copy of the foregoing **REPLY RE: PIONEER'S ANSWER TO UNITED WATER'S MOTION FOR DECLARATORY ORDER** to be served by the method indicated below, and addressed to the following:

Gary Spackman
Idaho Department of Water Resources
1301 North Orchard
P.O. Box 83720
Boise, ID 83720
Fax: 327-5400

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Charles L. Honsinger
Ringert Clark
455 South 3rd Street
PO Box 2773
Boise, ID 83701-2773
Fax: 342-4657

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☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Matthew Wilde
Boise City Attorney's Office
PO Box 500
Boise, ID 83701-0500
Fax: 384-4454

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☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Josephine P. Beeman
Beeman & Associates P.C.
409 W. Jefferson Street
Boise, ID 83702
Fax: 331-0954

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

City of Boise
Boise Public Works Department
Beth K. Baird
Environmental Programs Coordinator
150 N. Capitol Blvd.
PO Box 500
Boise, ID 83701-0500
Fax: 384-3905

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Albert P. Barker
Barker Rosholt & Simpson
PO Box 2139
Boise, ID 83701-2139
Fax: 342-4657

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Bureau of Reclamation
E. Gail McGarry, PN-3100
1150 N. Curtis Road, Suite 100
Boise, ID 83706-1234
Fax: 378-5019

☒ U.S. Mail, Postage Prepaid
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Kathleen M. Carr
U.S. Department of the Interior
Office of the Solicitor
Pacific Northwest Region , Boise Field Office
550 West Fort Street, MSC 020
Boise, ID 83724-0020
Fax: 334-1378

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Tammy A. Zokan
Moore Smith Buxton & Turcke
225 N. 9th Street, Suite 420
Boise, ID 83702
Fax: 331-1202

☒ U.S. Mail, Postage Prepaid
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☐ Facsimile

City of Meridian Public Works
Gary D. Smith
660 E. Watertower
Meridian, ID 83642
Fax: 887-1297

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

City of Caldwell Engineering Department
Gordon Law
621 E. Cleveland Blvd.
Caldwell, ID 83605
Fax: 455-3003

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Ed Squires
Hydrologic
1002 W. Franklin
Boise, ID 83702-5431
Fax: 342-3100

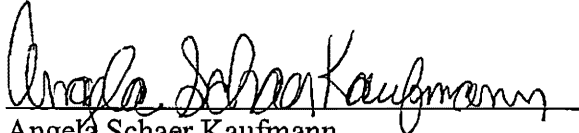
☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Robert W. Talboy
Ellsworth Kallas Talboy, PLLC
2402 W. Jefferson Street
Boise, ID 83702
Fax: 345-8945

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☐ Hand Delivered
☐ Overnight Mail
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Mr. Michael Chase
70 W. Floating Feather Road
Eagle, ID 83616-3802

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile


Angela Schaer Kaufmann

KARL
RECEIVED

JAN 06 2006

DEPARTMENT OF
WATER RESOURCES

John M. Marshall [ISB No. 5628]
Christopher H. Meyer [ISB No. 4461]
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johnmarshall@givenspursley.com
chrismeyer@givenspursley.com
Attorneys for United Water Idaho Inc.

*fax filed 1-5-06
VW*

BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF APPLICATION FOR
TRANSFER NO. 72036 ON BEHALF OF
UNITED WATER IDAHO INC.

**UNITED WATER'S CORRECTED
REPLY IN SUPPORT OF MOTION FOR
DECLARATORY ORDER RESPECTING
ITS RIGHT TO PROCEED**

United Water Idaho Inc. hereby submits this CORRECTED Reply in Support of Motion for Declaratory Order Respecting Its Right to Proceed to correct a typographical error contained in the final sentence. The Corrected Reply and the original Reply are identical in all other aspects.

United Water Idaho Inc. ("United Water") offers the following observations in reply to Pioneer Irrigation District's ("Pioneer") *Answer to United Water's Motion for Declaratory Order Respecting Its Right to Proceed* ("Answer").

United Water is seeking in this transfer application to add the Fisk well as a point of diversion to an existing, post-SRBA water right. The change is critical to the efficient use of United Water's existing rights. Pioneer contends that United Water is obligated to reopen the

entire IMAP proceeding before it may proceed with this simple but important change in operation.¹

United Water fails to see the connection to the IMAP. No relief is sought in this transfer application that bears on the issue of future water needs now before the Director in the IMAP proceeding. That proceeding has been stayed, and the Director has declined to act on United Water's motions to reconsider the stay. United Water believes that reopening the IMAP at this time would be expensive, wasteful, and entirely unnecessary for purposes of the present transfer application. If such action is required, United Water needs to know as soon as possible so that it may act accordingly. This is why the Director's order is sought in this proceeding.

Pioneer complains that United Water has failed to present affidavits documenting the urgency of the need for the Director's timely response. We believe that the Director has ample reason and discretion to take notice of United Water's need for timely decision-making on its transfer applications. However, should the Director desire, we would be pleased to provide supplemental evidence on this or any other matter he thinks pertinent.

Pioneer contends that United Water's motion is defective because it should have filed a motion for declaratory order under IDAPA 37.01.01.400. As we understand it, that rule provides a mechanism for initiating a new proceeding. United Water does not wish to initiate a potentially costly new proceeding and is not seeking a general declaratory order. Rather, United Water is seeking an order pertaining to this transfer application only, an application that has some urgency for the Company. This transfer proceeding has already been noticed.

¹ In the alternative, Pioneer suggests that United Water take actions to remove the water rights at issue in this proceeding from the IMAP. While we do not entirely rule out that approach, we regard it cautiously. United Water does not wish unnecessarily to complicate subsequent IMAP or other proceedings with arguments over what effect such a removal should have on "future needs" analysis under the Municipal Water Rights Act of 1996.

Consequently, there is no need to invoke the additional notice procedures in IDAPA 37.01.01.401 that would be applicable if this were a new proceeding.

Finally, Pioneer contends that United Water improperly disclosed Pioneer's communications with United Water's representative in settlement negotiations. Pioneer does not say what communications it is referring to.

Perhaps it is referring to United Water's statement that "Pioneer has not yet identified any hydrologic (i.e., injury) concerns with the proposed transfer." Motion at 2. If so, that is merely a statement of fact summarizing the proceedings to date.

Perhaps Pioneer has in mind United Water's description of Pioneer's position that this transfer proceeding cannot proceed in light of the stay of the IMAP or that special notice procedures for non-parties must be employed. In so describing the positions Pioneer has taken, United Water has not disclosed any confidences, admissions, or bargaining concessions. Rather, these are simply descriptions of the legal positions that Pioneer stated in public to the Department's representative at the pre-hearing conference. Indeed, United Water has not disclosed even the existence of any private settlement negotiations, much less what was said.

In any event, if Pioneer feels that its positions have been mischaracterized in any way, it has had ample opportunity to correct or clarify its position in its Answer. It appears to United Water, however, that there is no meaningful difference between the position United Water said Pioneer took in the pre-hearing conference and the position it is now taking in its Answer.

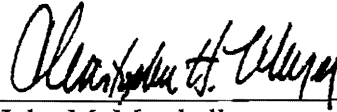
For the reasons outlined above, United Water believes that the procedural points Pioneer has raised have no merit. If, however, the Director agrees with Pioneer that the IMAP needs to be reopened, that special notice procedures need to be employed, or that a new matter seeking a declaratory order needs to be opened, it will be most efficient to establish that at the beginning of

this contested case rather than after it is concluded. Accordingly, United Water respectfully requests the Director's guidance at this time.

Respectfully submitted this 5th day of January, 2006.

GIVENS PURSLEY LLP

By

A handwritten signature in black ink, appearing to read "John M. Marshall", is written over a horizontal line.

John M. Marshall

Christopher H. Meyer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th of January 2006, the foregoing was filed, served, or copied as follows:

Karl J. Dreher
Director
Idaho Department of Water Resources
322 East Front Street
P.O. Box 83720
Boise, ID 83720-0098
Email: karl.dreher@idwr.idaho.gov

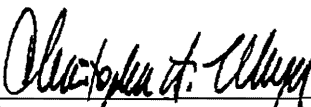
☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☒ Facsimile
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☐ Hand Delivered
☐ Overnight Mail
☒ Facsimile
☐ E-mail



Christopher H. Meyer

JAN 04 2006

DEPARTMENT OF
WATER RESOURCES

John M. Marshall [ISB No. 5628]
Christopher H. Meyer [ISB No. 4461]
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johnmarshall@givenspursley.com
chrismeyer@givenspursley.com
Attorneys for United Water Idaho Inc.

BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF APPLICATION FOR
TRANSFER NO. 72036 ON BEHALF OF
UNITED WATER IDAHO INC.

**UNITED WATER'S REPLY IN SUPPORT
OF MOTION FOR DECLARATORY
ORDER RESPECTING ITS RIGHT TO
PROCEED**

United Water Idaho Inc. ("United Water") offers the following observations in reply to Pioneer Irrigation District's ("Pioneer") *Answer to United Water's Motion for Declaratory Order Respecting Its Right to Proceed* ("Answer").

United Water is seeking in this transfer application to add the Fisk well as a point of diversion to an existing, post-SRBA water right. The change is critical to the efficient use of United Water's existing rights. Pioneer contends that United Water is obligated to reopen the entire IMAP proceeding before it may proceed with this simple but important change in operation.¹

¹ In the alternative, Pioneer suggests that United Water take actions to remove the water rights at issue in this proceeding from the IMAP. While we do not entirely rule out that approach, we regard it cautiously. United Water does not wish unnecessarily to complicate subsequent IMAP or other proceedings with arguments over what effect such a removal should have on "future needs" analysis under the Municipal Water Rights Act of 1996.

United Water fails to see the connection to the IMAP. No relief is sought in this transfer application that bears on the issue of future water needs now before the Director in the IMAP proceeding. That proceeding has been stayed, and the Director has declined to act on United Water's motions to reconsider the stay. United Water believes that reopening the IMAP at this time would be expensive, wasteful, and entirely unnecessary for purposes of the present transfer application. If such action is required, United Water needs to know as soon as possible so that it may act accordingly. This is why the Director's order is sought in this proceeding.

Pioneer complains that United Water has failed to present affidavits documenting the urgency of the need for the Director's timely response. We believe that the Director has ample reason and discretion to take notice of United Water's need for timely decision-making on its transfer applications. However, should the Director desire, we would be pleased to provide supplemental evidence on this or any other matter he thinks pertinent.

Pioneer contends that United Water's motion is defective because it should have filed a motion for declaratory order under IDAPA 37.01.01.400. As we understand it, that rule provides a mechanism for initiating a new proceeding. United Water does not wish to initiate a potentially costly new proceeding and is not seeking a general declaratory order. Rather, United Water is seeking an order pertaining to this transfer application only, an application that has some urgency for the Company. This transfer proceeding has already been noticed. Consequently, there is no need to invoke the additional notice procedures in IDAPA 37.01.01.401 that would be applicable if this were a new proceeding.

Finally, Pioneer contends that United Water improperly disclosed Pioneer's communications with United Water's representative in settlement negotiations. Pioneer does not say what communications it is referring to.

Perhaps it is referring to United Water's statement that "Pioneer has not yet identified any hydrologic (i.e., injury) concerns with the proposed transfer." Motion at 2. If so, that is merely a statement of fact summarizing the proceedings to date.

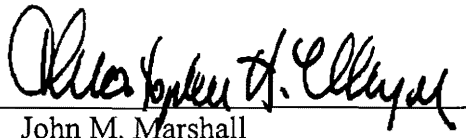
Perhaps Pioneer has in mind United Water's description of Pioneer's position that this transfer proceeding cannot proceed in light of the stay of the IMAP or that special notice procedures for non-parties must be employed. In so describing the positions Pioneer has taken, United Water has not disclosed any confidences, admissions, or bargaining concessions. Rather, these are simply descriptions of the legal positions that Pioneer stated in public to the Department's representative at the prehearing conference. Indeed, United Water has not disclosed even the existence of any private settlement negotiations, much less what was said.

In any event, if Pioneer feels that its positions have been mischaracterized in any way, it has had ample opportunity to correct or clarify its position in its Answer. It appears to United Water, however, that there is no meaningful difference between the position United Water said Pioneer took in the prehearing conference and the position it is now taking in its Answer.

For the reasons outlined above, United Water believes that the procedural points Pioneer has raised have no merit. If, however, the Director agrees with Pioneer that the IMAP needs to be reopened, that special notice procedures need to be employed, or that a new matter seeking a declaratory order needs to be opened, it will be most efficient to establish that at the beginning of this contested case rather than after it is concluded. Accordingly, Pioneer respectfully requests the Director's guidance at this time.

Respectfully submitted this 4th day of January, 2006.

GIVENS PURSLEY LLP

By 
John M. Marshall
Christopher H. Meyer

I HEREBY CERTIFY that on this 4th of January 2006, the foregoing was filed, served, or copied as follows:

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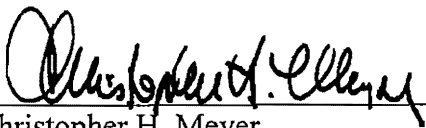
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DEPARTMENT OF
WATER RESOURCES

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DEC 21 2005
Mottet, Thomas, Barrett, Reek and Fildes

COPY

Attorneys for United Water Idaho Inc.

BEFORE THE STATE OF IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF APPLICATION
FOR TRANSFER NO. 72036

UNITED WATER'S MOTION FOR DECLARATORY
ORDER RESPECTING ITS RIGHT TO PROCEED

United Water Idaho Inc. ("United Water") hereby moves for a declaratory order from the Director stating that the administrative proceedings in this matter (concerning Application for Transfer No. 72036) can proceed without delay and without the imposition of special procedures and burdens on United Water.

This motion is precipitated by the position taken in prehearing proceedings by the sole Protestant, Pioneer Irrigation District ("Pioneer"), that the Director's *Order re Motion for Stay* ("Stay Order") in the IMAP¹ proceedings precludes the Department from processing the present application. Pioneer also alleges that the Stay Order somehow implicitly subjects all future applications by United Water to special procedures inconsistent with applicable statutes and rules.

¹ IMAP refers to the Integrated Municipal Application Package, a group of transfer applications submitted by United Water.

Transfer No. 73026 is a relatively simple application. It seeks only to add an existing well as a second point of diversion to water right 63-12363, a post-SRBA licensed right. Although it is a simple application, its approval is vital to United Water, if it is to meet its public duty to serve its expanding customer base reliably and without undue cost. United Water has made capital investments in these wells, the implementation of which is being stymied by the pending protest. United Water needs the Department's timely consideration of this application and resulting guidance in order to maximize the company's efficient use of its water rights.

United Water filed the application on May 8, 2005. Following processing of the application by Department staff, notice was published in the Idaho State Journal on August 4 and 11, 2005. Only Pioneer filed a Protest. Pioneer has not identified any hydrologic (i.e., injury) concerns with the proposed transfer. Nevertheless, Pioneer seeks to block consideration of the transfer application on a procedural issue relating to the Director's stay of the IMAP. Specifically, Pioneer asserts that the Director's Stay Order bars United Water from filing any new transfer applications until the stay is lifted. Alternatively, Pioneer asserts that the Stay Order requires the Department to employ special procedures for the processing of United Water's new transfer applications wherein the Department provides individual notice to all IMAP parties and provides them with a special opportunity to protest even after the statutory deadline for protests has lapsed. The procedures that Pioneer contends must be employed are contrary to those provided in Idaho Code § 42-203A and in the Department's Rules of Procedure.

United Water believes that Pioneer has no basis for either contention, and that the Department should proceed without further delay in its consideration of the pending application. United Water files this motion now in an effort to expedite this administrative proceeding, the

resolution of which is critical to United Water's ability to meet increasing municipal water demands in Boise and surrounding communities. United Water is filing this motion with the Director because no hearing officer has been appointed and because the questions at issue concern the meaning and effect of the Director's own order. Appointing a hearing officer to hear this motion, or similar motions that Pioneer may file, would unnecessarily delay this proceeding, probably for several months. Ultimately this will end up on the Director's desk anyway. There is little reason to believe that a hearing officer's interpretation of the Director's Stay Order will contribute significantly to the Director's understanding of his own order. The Director can save the parties and the Department the time and expense of going through intermediate proceedings by providing a simple declaratory order at this time.

As for the merits of Pioneer's position, we think the matter is straightforward. The Stay Order states: "It is therefore hereby ordered that this transfer proceeding [the IMAP] shall be stayed in full pending the issuance of partial decrees for UWID's water right claims by the SRBA District Court, provided that action may be taken by the IDWR Hearing Officer upon any motions pending on the date of this order." Stay Order at 3. This language is clear on its face: The Director's Stay Order stays the IMAP transfer proceedings, nothing else. Nothing in the Stay Order suggests that it was intended to operate as an injunction against all future transfer applications by United Water, or to impose special procedural rules on such application proceedings.

Nevertheless, the Director's Stay Order is being used by Pioneer to delay this proceeding—and presumably all others like it that might be filed in the future. United Water urgently needs confirmation from the Director that neither the Stay Order nor any other legal consideration prevents United Water from continuing to develop water resources and improve its

delivery system to serve its rapidly expanding customer base, and that applications it files in pursuit of that duty will not be subjected to delays and burdens not shared by other water users.

To the extent there is an underlying legal question behind Pioneer's position, it is simply this: Does a pending administrative application concerning a particular water right or group of water rights prevent a second administrative proceeding on that right? Nothing in the law precludes the second action. On the contrary, Idaho Code § 42-222 obligates the Department to process the application. The statute states the Director has a "duty" to examine the application and publish notice of it, and that he "shall" approve it provided it is consistent with statutory injury requirements. Idaho Code § 42-222(1).

United Water does not here argue that the Director is without legal discretion to delay processing a second application concerning a particular water right where administrative efficiencies counsel against processing dual or competing applications. But in a situation such as the case at hand, where the first administrative action (the IMAP) is stayed indefinitely, there is no reason to delay or otherwise burden the processing of the second application (Transfer No. 72036) which seeks entirely distinct, and very limited, relief. The Director certainly has discretion, and perhaps the obligation, under Idaho Code § 42-222 to proceed on the second application.

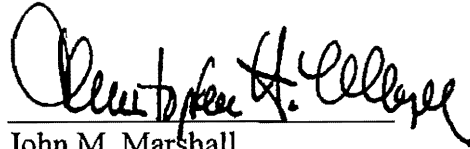
Nor does the Stay Order say anything about additional notice or procedures, beyond the notice required by Idaho Code § 42-203A or the procedures described in the Department's Rules of Procedure. The Department fully complied with the law in its publication of notice of the present application. The public, including parties to the IMAP, were notified of the application and could have protested if they so chose. Nothing in the law or the Stay Order dictates a second round of special notice or retroactive suspension of deadlines for protests.

Last, but by no means least, Pioneer has no standing to complain on behalf of other persons (who have not chosen to participate in this proceeding) that they are entitled to special notice and procedural rules.

Based on all the foregoing, United Water respectfully requests a declaratory order from the Director in this proceeding ruling that the Department has provided adequate notice pursuant to Idaho Code § 42-203A, that the proceeding should continue in accordance with the procedures defined by the Department's Rules of Procedure without further delay, and that the Protestant will not be heard to raise procedural objections on behalf of non-parties.

Dated this 20th day of December 2005.

GIVENS PURSLEY LLP

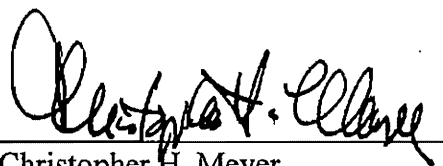
A handwritten signature in black ink, appearing to read "John M. Marshall", written over a horizontal line.

John M. Marshall
Christopher H. Meyer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20th day of December 2005, I caused a true and correct copy of the foregoing to be served by the method indicated below, and addressed to the following.

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Christopher H. Meyer

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Attorneys for Pioneer Irrigation District

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF TRANSFER
APPLICATION NUMBER 72036 ON
BEHALF OF UNITED WATER IDAHO

ANSWER TO UNITED WATER'S MOTION
FOR DECLARATORY ORDER RESPECTING
ITS RIGHT TO PROCEED

Pioneer Irrigation District ("Pioneer"), through its counsel of record, hereby
answers "United Water's Motion for Declaratory Order Respecting Its Right to Proceed."

Initially, Pioneer will address the inappropriate nature of United Water's motion
on procedural grounds. Following that discussion, Pioneer will address the substantive issues
presented by the motion.

I.
PROCEDURAL INAPPROPRIATENESS OF THE MOTION

United Water's motion is procedurally defective on two grounds. First, it seeks a
declaratory ruling from the Director with respect to the Director's "Order Re Motion for Stay in

the IMAP Proceedings.”¹ As such, the motion is not the appropriate vehicle for proceeding with the requested issuance of a declaratory ruling by the Director. IDAPA 37.01.01.400 specifically requires that “any person petitioning for a declaratory ruling on the applicability of a statute, rule or order administered by the agency must substantially comply with this rule.”

Subsections 01.a., b., and c. set forth the minimum requirements for such a petition for declaratory ruling; requirements unsatisfied by United Water’s Motion. Additionally, IDAPA 37.01.01.401 requires that “notice of petition for declaratory ruling may be issued in a manner designed to call its attention to persons likely to be interested in the subject matter of the petition.”

United Water’s motion has been served solely upon Pioneer in the contested case proceeding presently under consideration, yet by its terms, United Water’s motion seeks a declaratory ruling on the applicability of the Director’s Order Re Motion for Stay in the IMAP proceeding. Consequently, since the requested ruling seeks a declaratory determination by the Director with respect to a pending “order administered by the agency,” the requirements of Rule IDAPA 37.01.01.400 and 401 would apply. *See also*, IDAHO CODE § 67-5255(1). Failure to provide notice to the parties of the IMAP proceeding, yet seeking a binding declaratory ruling regarding the impact of the Motion Re Order for Stay, would violate the procedural due process rights of the parties to the IMAP proceeding. United Water, by its actions, believes that protection of these procedural due process rights in the IMAP proceeding is unnecessary. Constitutionally protected procedural due process rights can not be so cavalierly ignored.

¹ IMAP refers to the “Integrated Municipal Application Package” submitted by United Water Idaho.

The second procedural defect in United Water's motion consists of their references to Pioneer's communications with United Water's representative in settlement negotiations. IDAPA 37.01.01.610 specifically mandates that "settlement negotiations in a contested case are confidential, unless all participants to the negotiation agree to the contrary in writing. Facts disclosed, offers made, and all other aspects of negotiation (except agreements reached) in settlement negotiations in a contested case are not part of the record." United Water's blatant disregard of the clear restrictions of Rule 610 render its motion fatally defective.

United Water has provided no evidence, nor could it, that Pioneer has agreed to waive the confidentiality provisions of Rule 610. Consequently, all references to the positions of Pioneer in United Water's motion must be disregarded by the Director. This result is mandated by the second sentence of Rule 610, which requires that "facts disclosed, offers made, and all other aspects of negotiation (except agreements reached) in settlement negotiations in a contested case are not part of the record." Since Pioneer's representations, as described by United Water's motion, clearly fall within this prohibition, the Director is not able to consider such matters because they "are not part of the record." Rule 610. No administrative agency subject to the Idaho Administrative Procedures Act can issue a determination based upon information which is not part of the record. IDAHO CODE § 67-5249(3). Therefore, United Water's motion must be rejected in its totality, to the extent that anything in the motion refers to or relies upon "facts disclosed, offers made and all other aspects of negotiation (except agreements reached) in settlement negotiations"

United Water's brazen disregard of this clear prohibition of disclosure of information regarding settlement negotiations emphatically demonstrates its willingness to ignore the Department's rules of procedure which are designed to protect the rights of all

participants. This attitude is confirmed by United Water's insistence that the Director ignore the need to provide notice to other potentially interested parties of the effort by United Water to obtain a declaratory ruling concerning the applicability of the Director's Order Re Motion for Stay in the IMAP Proceeding.

If the Department's rules of procedure are to have any integrity which can form the basis for reasonable reliance by participants in contested cases, the Director should emphatically reaffirm the clear prohibition against utilizing confidential information disclosed during the course of settlement negotiations. Any contrary determination will send a clear message to all knowledgeable practitioners that settlement negotiation communications are not confidential and anything discussed during such communications will be ammunition which can be used by the opposing party in subsequent "legal warfare." Such a result will not foster settlements. Instead, parties will refuse to discuss settlement options and proceed to litigate each and every point in contention. United Water apparently prefers this approach. Its actions certainly suggest such is the case.

Finally, on this issue, Pioneer will not respond in kind to United Water's tactics. Until the Director determines that the strict requirements of IDAPA 37.01.01.610 no longer apply, in this proceeding or generally, Pioneer will strictly adhere to the requirements of the rule and will not discuss the settlement negotiations which occurred between it and United Water because "all participants in negotiation (have not) agree(d) to the contrary in writing." IDAPA 37.01.01.610. However, Pioneer reserves the right to supplement this answer, following a determination by the Director that the restrictions of IDAPA 37.01.01.610 do not apply to United Water's motion or do not apply generally.

II. UNITED WATER'S SUBSTANTIVE ARGUMENTS ARE LIKEWISE DEFECTIVE

United Water's motion makes a number of unsupported contentions. It claims that "approval is vital to United Water," yet it provides no factual support to prove the "essential" nature of this particular transfer. Motion, p. 2. It also claims that it has made "capital investments in these wells . . . which is being stymied by the pending protest." *Id.* United Water's decision to invest additional capital in facilities before a transfer application has been approved is an indication of poor management, not a justification for ignoring procedural due process rights. United Water likewise raises again its tired canard that it "needs the Department's timely consideration of this application and resulting guidance in order to maximize the company's efficient use of its water rights." These platitudes are totally unsupported by the continuing operations of United Water in its service area and the expansion of its service area by its ongoing acquisitions of independent water delivery systems.²

United Water apparently believes that a single protest is somehow defective when it mentions that "only Pioneer filed a protest." There is nothing in the Idaho Code that diminishes a protest against a transfer application if only one party objects.

Additionally, United Water falsely states that "Pioneer seeks to block consideration of the transfer application on a procedural issue relating to the Director's stay of the IMAP." *Id.* United Water can point to no pleading filed by Pioneer which sets forth this position, because none exists. Furthermore, United Water falsely states that "Pioneer asserts . . . the Director's Stay Order bars United Water from filing any new transfer applications until the

² As recently as last week, *The Idaho Statesman* reported that United Water has completed the acquisition of a small private water system.

stay is lifted.” *Id.* Again, no pleadings have been filed which set forth Pioneer’s position on this issue. Instead, United Water fabricates these statements out of thin air.

United Water also wrongly and completely inaccurately claims that Pioneer “asserts that the Stay Order requires the Department to employ special procedures for the processing of United Water’s new transfer applications” *Id.* United Water, here again, can point to no pleading or statement of Pioneer which supports this wild accusation.

Contrary to United Water’s position, Pioneer has no difficulty with a determination by the Director of the ramifications of the Order Re Motion for Stay in a manner which provides proper notice and opportunity for hearing to the affected parties. In this regard, despite United Water’s hysterical hyperbole that it “files this motion now in an effort to expedite this administrative proceeding, the resolution of which is critical to United Water’s ability to meet increasing municipal water demands in Boise and surrounding communities,” there is *no* proof offered to support its strident lamentation. Motion, pp. 2-3. The credibility of such an assertion with respect to this “relatively simple application” is nonexistent. Motion, p. 2.

In response to United Water’s position with respect to the merits of the Stay Order, the response is obvious. The Stay Order reads, in pertinent part: “It is therefore hereby ordered that this transfer proceeding shall be stayed in full pending the issuance of partial decrees for UWID’s water right claims by the SRBA District Court, provided that action may be taken by the IDWR Hearing Officer upon any motions pending on the date of this order.” Stay Order at 3.

The water rights involved in this transfer proceeding were two of over 100 water rights also involved in the IMAP transfer proceedings. United Water sought in that proceeding to combine the points of diversion and places of use of all of those water rights together. This is

virtually the same approach United Water is taking in this transfer application. If United Water is allowed to peel off individual water rights and proceed with separate transfer applications, notwithstanding the Stay Order, that order has no real validity.

It is important to remember that United Water made the decision to proceed with the comprehensive IMAP, rather than initiating individual transfer applications for discreet water rights. In short, it made its bed and should be required to lie in it. To rule otherwise would be to condone separate, overlapping transfer proceedings for individual water rights, despite the pendency of the comprehensive IMAP proceeding where the same water rights are before the Department with unresolved legal and factual questions to be determined subsequently.

If the current application for transfer is allowed to proceed, despite the restrictions of the Stay Order, at a minimum, the Department should require the amendment of the IMAP proceeding to remove the water rights under transfer application 72036, so there will not be inconsistent rulings with regard to those water rights.

It is also important to point out that United Water has conveniently omitted any discussion of the final sentence of the Stay Order. It provides: "It is further ordered that this is an interlocutory order which may be reviewed by the Director at any time pursuant to the provisions of IDAPA 37.01.01.11." Order, p. 3.

Further, IDAPA 37.01.01.711 states:

Any party or person affected by an interlocutory order may petition the officer issuing the order to review the interlocutory order. The officer issuing an interlocutory order may rescind, alter or amend any interlocutory order on the officer's own motion, but will not on the officer's own motion review any interlocutory order affecting any party's substantive rights without giving all parties notice and an opportunity for written comment.

Id.

By virtue of these provisions and the Stay Order, United Water has a clear vehicle for relief from the “restrictions” of the Stay Order. Instead of following this clear procedural pathway, which would provide for notice and an opportunity for a response by affected parties, United Water has embarked upon this clandestine effort to circumvent the procedural rules of the Department and the Director’s Stay Order.

United Water also apparently believes that unsupported hysteria constitutes a sufficient legal basis for granting relief. It states that it “urgently needs confirmation from the Director that neither the Stay Order nor any other legal consideration prevents United Water from continuing to develop water resources and improve its delivery system” Motion, p. 3. Somehow this particular transfer proceeding has become a critical issue for United Water, which will apparently prevent it from developing water resources or improving its delivery system. United Water has offered no facts to support this “sky is falling” warning.

It needs to be pointed out that Pioneer has taken no position which “prevents United Water from continuing to develop water resources.” *Id.* Pioneer has likewise taken no position which will subject the applications of United Water “to delays and burdens not shared by other water users.” *Id.* Any delays or burdens encountered by United Water have been caused by its own actions by filing the IMAP proceeding and including each and every one of its water rights. United Water has no one to blame but itself.

United Water attempts to characterize Pioneer’s position, but does so inaccurately. Contrary to United Water’s characterization, Pioneer’s position is not: “Does a pending administrative application concerning a particular water right or group of water rights prevent a second administrative proceeding on that right?” United Water Motion, p. 4. Instead, Pioneer believes that a valid order issued by the Director suspending further processing of a

transfer application involving all of United Water's water rights should preclude the "end round" which United Water seeks to achieve in this transfer proceeding.

By its arguments, citing to Idaho Code Section 42-222, United Water apparently believes that any applicant for a transfer of a water right can institute one administrative proceeding involving that water right, encounter an adverse order from the Director of the Department suspending that proceeding,³ yet then subsequently utilize Idaho Code Section 42-222 to file separate, independent transfer proceedings involving each and every water right identified in the initial stalled administrative proceeding. If such an approach is condoned by the Director, there will be no reason for applicants to complete a pending transfer application to its conclusion. Instead, if it encounters protests or procedural difficulties, it need only file a new application for transfer and the Department of Water Resources "must" process the application under United Water's theory. Such an approach would turn administrative agency procedural practice on its head.

Finally, United Water attacks the standing of Pioneer to "complain on behalf of other persons . . . that they are entitled to special notice and procedural rules." Motion, p. 5. United Water can point to no pleading which demonstrates that Pioneer is "complaining on behalf of other persons." *Id.* Pioneer is a participant in the IMAP proceeding, and clearly has standing to assert its procedural due process rights in that proceeding, as well as this proceeding. Pioneer has expended substantial financial resources to assert legal and factual positions in the IMAP proceeding and is entitled to enforcement of the Order Re Motion for Stay to prevent the necessity of expending additional funds to counter the "back door" effort of United Water to avoid the restrictions of the Stay Order.

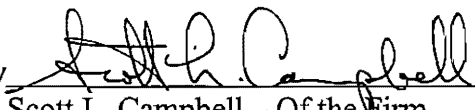
³ United Water opposed the issuance of the Stay Order in the IMAP proceeding.

III. CONCLUSION

United Water's motion is procedurally defective and substantively baseless. United Water has violated the strict prohibition against disclosure of confidential information obtained during settlement negotiations and has deliberately avoided the requirements of filing a petition for declaratory ruling, as required by the Department's Rules of Procedure. Finally, United Water relies upon factually unsupported, hysterical rantings to support its claim that it should be allowed to file multiple transfer applications relating to the same water rights and the same legal principles. Even if these unsupported rantings could be documented with credible evidence, the policy ramifications and the adverse impacts upon parties who have participated in the prior administrative proceedings are significant. The Director should not accept United Water's invitation to walk down such a treacherous path. For all of these reasons, United Water's motion should be denied.

DATED this 29th day of December, 2005.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By 
Scott L. Campbell – Of the Firm
Attorneys for Pioneer Irrigation District

CERTIFICATE OF SERVICE

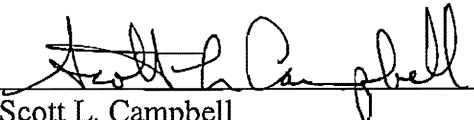
I HEREBY CERTIFY that on this 29th day of December, 2005, I caused a true and correct copy of the foregoing **ANSWER TO UNITED WATER'S MOTION FOR DECLARATORY ORDER RESPECTING ITS RIGHT TO PROCEED** to be served by the method indicated below, and addressed to the following:

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Scott L. Campbell

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I HEREBY CERTIFY that on this 29th day of December, 2005, I caused a true and correct **COURTESY** copy of the foregoing **ANSWER TO UNITED WATER'S MOTION FOR DECLARATORY ORDER RESPECTING ITS RIGHT TO PROCEED** to be served by the method indicated below, and addressed to the following:

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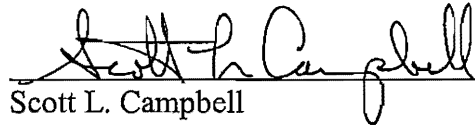
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Scott L. Campbell

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Conley E. Ward
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James A. McClure
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KARL
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DEC 21 2005
DEPARTMENT OF
WATER RESOURCES

Via E-mail and U.S. Mail

December 20, 2005

Mr. Karl J. Dreher
Director
Idaho Department of Water Resources
322 East Front Street
P.O. Box 83720
Boise, ID 83720-0098

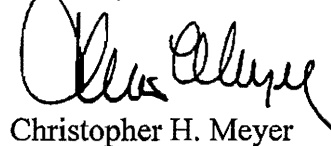
Re: In the Matter of Application for Transfer No. 72036
Our File No. 30-131

Dear Director Dreher:

Enclosed for filing with the Department in the above referenced matter, please find the original and one copy of *United Water's Motion for Declaratory Order Respecting Its Right to Proceed*. Please stamp the copy as received by your office and return it to me in the enclosed self-addressed, stamped envelope.

Thank you for your consideration of this matter. If you have any questions or require any additional information please call.

Sincerely,



Christopher H. Meyer

Enclosures as Stated

CHM:kdt S:\CLIENTS\30\131\CHM Ltr to Dreher re Filing Motion.DOC

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DEC 21 2005

DEPARTMENT OF
WATER RESOURCES

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Christopher H. Meyer (Idaho State Bar No. 4461)
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S:\CLIENTS\30\131\Motion.DOC

Attorneys for United Water Idaho Inc.

BEFORE THE STATE OF IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF APPLICATION
FOR TRANSFER NO. 72036

**UNITED WATER'S MOTION FOR DECLARATORY
ORDER RESPECTING ITS RIGHT TO PROCEED**

United Water Idaho Inc. ("United Water") hereby moves for a declaratory order from the Director stating that the administrative proceedings in this matter (concerning Application for Transfer No. 72036) can proceed without delay and without the imposition of special procedures and burdens on United Water.

This motion is precipitated by the position taken in prehearing proceedings by the sole Protestant, Pioneer Irrigation District ("Pioneer"), that the Director's *Order re Motion for Stay* ("Stay Order") in the IMAP¹ proceedings precludes the Department from processing the present application. Pioneer also alleges that the Stay Order somehow implicitly subjects all future applications by United Water to special procedures inconsistent with applicable statutes and rules.

¹ IMAP refers to the Integrated Municipal Application Package, a group of transfer applications submitted by United Water.

Transfer No. 73026 is a relatively simple application. It seeks only to add an existing well as a second point of diversion to water right 63-12363, a post-SRBA licensed right. Although it is a simple application, its approval is vital to United Water, if it is to meet its public duty to serve its expanding customer base reliably and without undue cost. United Water has made capital investments in these wells, the implementation of which is being stymied by the pending protest. United Water needs the Department's timely consideration of this application and resulting guidance in order to maximize the company's efficient use of its water rights.

United Water filed the application on May 8, 2005. Following processing of the application by Department staff, notice was published in the Idaho Statement on August 4 and 11, 2005. Only Pioneer filed a Protest. Pioneer has not identified any hydrologic (i.e., injury) concerns with the proposed transfer. Nevertheless, Pioneer seeks to block consideration of the transfer application on a procedural issue relating to the Director's stay of the IMAP. Specifically, Pioneer asserts that the Director's Stay Order bars United Water from filing any new transfer applications until the stay is lifted. Alternatively, Pioneer asserts that the Stay Order requires the Department to employ special procedures for the processing of United Water's new transfer applications wherein the Department provides individual notice to all IMAP parties and provides them with a special opportunity to protest even after the statutory deadline for protests has lapsed. The procedures that Pioneer contends must be employed are contrary to those provided in Idaho Code § 42-203A and in the Department's Rules of Procedure.

United Water believes that Pioneer has no basis for either contention, and that the Department should proceed without further delay in its consideration of the pending application. United Water files this motion now in an effort to expedite this administrative proceeding, the

resolution of which is critical to United Water's ability to meet increasing municipal water demands in Boise and surrounding communities. United Water is filing this motion with the Director because no hearing officer has been appointed and because the questions at issue concern the meaning and effect of the Director's own order. Appointing a hearing officer to hear this motion, or similar motions that Pioneer may file, would unnecessarily delay this proceeding, probably for several months. Ultimately this will end up on the Director's desk anyway. There is little reason to believe that a hearing officer's interpretation of the Director's Stay Order will contribute significantly to the Director's understanding of his own order. The Director can save the parties and the Department the time and expense of going through intermediate proceedings by providing a simple declaratory order at this time.

As for the merits of Pioneer's position, we think the matter is straightforward. The Stay Order states: "It is therefore hereby ordered that this transfer proceeding [the IMAP] shall be stayed in full pending the issuance of partial decrees for UWID's water right claims by the SRBA District Court, provided that action may be taken by the IDWR Hearing Officer upon any motions pending on the date of this order." Stay Order at 3. This language is clear on its face: The Director's Stay Order stays the IMAP transfer proceedings, nothing else. Nothing in the Stay Order suggests that it was intended to operate as an injunction against all future transfer applications by United Water, or to impose special procedural rules on such application proceedings.

Nevertheless, the Director's Stay Order is being used by Pioneer to delay this proceeding—and presumably all others like it that might be filed in the future. United Water urgently needs confirmation from the Director that neither the Stay Order nor any other legal consideration prevents United Water from continuing to develop water resources and improve its

delivery system to serve its rapidly expanding customer base, and that applications it files in pursuit of that duty will not be subjected to delays and burdens not shared by other water users.

To the extent there is an underlying legal question behind Pioneer's position, it is simply this: Does a pending administrative application concerning a particular water right or group of water rights prevent a second administrative proceeding on that right? Nothing in the law precludes the second action. On the contrary, Idaho Code § 42-222 obligates the Department to process the application. The statute states the Director has a "duty" to examine the application and publish notice of it, and that he "shall" approve it provided it is consistent with statutory injury requirements. Idaho Code § 42-222(1).

United Water does not here argue that the Director is without legal discretion to delay processing a second application concerning a particular water right where administrative efficiencies counsel against processing dual or competing applications. But in a situation such as the case at hand, where the first administrative action (the IMAP) is stayed indefinitely, there is no reason to delay or otherwise burden the processing of the second application (Transfer No. 72036) which seeks entirely distinct, and very limited, relief. The Director certainly has discretion, and perhaps the obligation, under Idaho Code § 42-222 to proceed on the second application.

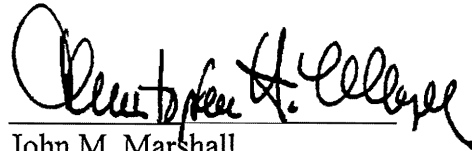
Nor does the Stay Order say anything about additional notice or procedures, beyond the notice required by Idaho Code § 42-203A or the procedures described in the Department's Rules of Procedure. The Department fully complied with the law in its publication of notice of the present application. The public, including parties to the IMAP, were notified of the application and could have protested if they so chose. Nothing in the law or the Stay Order dictates a second round of special notice or retroactive suspension of deadlines for protests.

Last, but by no means least, Pioneer has no standing to complain on behalf of other persons (who have not chosen to participate in this proceeding) that they are entitled to special notice and procedural rules.

Based on all the foregoing, United Water respectfully requests a declaratory order from the Director in this proceeding ruling that the Department has provided adequate notice pursuant to Idaho Code § 42-203A, that the proceeding should continue in accordance with the procedures defined by the Department's Rules of Procedure without further delay, and that the Protestant will not be heard to raise procedural objections on behalf of non-parties.

Dated this 20th day of December 2005.

GIVENS PURSLEY LLP

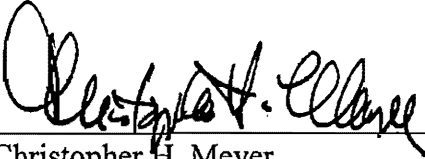
A handwritten signature in black ink, appearing to read "John M. Marshall", is written over a horizontal line.

John M. Marshall
Christopher H. Meyer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20th day of December 2005, I caused a true and correct copy of the foregoing to be served by the method indicated below, and addressed to the following.

Scott L. Campbell, Esq.	<u> x </u>	U.S. Mail
Moffatt Thomas Barrett Rock & Fields,	<u> x </u>	Email
Chartered	<u> </u>	Facsimile
101 S. Capital Blvd., 10th Floor	<u> </u>	Hand Delivery
P.O. Box 829	<u> </u>	Overnight Mail
Boise, ID 83701-0829		



Christopher H. Meyer

DANIEL V. STEENSON (ISB #4332)
CHARLES L. HONSINGER (ISB #5240)
S. BRYCE FARRIS (ISB #5636)
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Attorneys for The Terteling Company and T-7, LLC

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Department of Water Resources

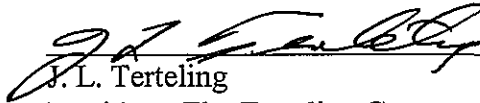
BEFORE THE DEPARTMENT OF WATER RESOURCES OF
THE STATE OF IDAHO

_____	)	
IN THE MATTER OF INTEGRATED	)	
MUNICIPAL APPLICATION PACKAGE	)	
(CONSISTING OF 99 APPLICATIONS FOR	)	
TRANSFERS OF WATER RIGHTS, AND	)	WITHDRAWAL OF PETITION TO
13 APPLICATIONS FOR AMENDMENT OF	)	INTERVENE
PERMITS) IN THE NAME OF UNITED	)	
WATER IDAHO, INC.	)	
_____	)	

COMES NOW, The Terteling Company and T-7, LLC, and hereby WITHDRAW their Petition to Intervene in the above captioned proceeding, and request that the Hearing Officer enter an Order dismissing them as parties to the proceeding.

DATED this 20 day of Oct, 2004.

THE TERTELING COMPANY



J. L. Terteling
President, The Terteling Company

DATED this 20th day of October, 2004.

T-7, LLC



T. E. Terteling
Managing Member, T-7, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of October, 2004, the above and foregoing document was 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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John Marshall
Givens Pursley
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Moore Smith Buxton & Turcke
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E. Gail McGarry PN-3100
Bureau of Reclamation
1150 N. Curtis Rd., Ste. 100
Boise, Idaho 83706-1234

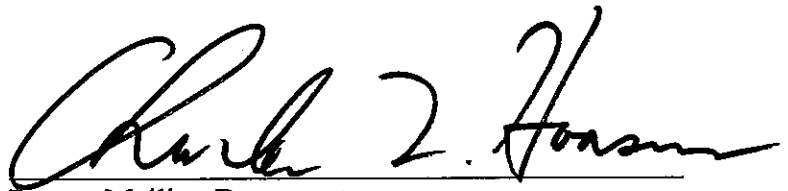
Kathleen Marion Carr MSC-020
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and Settlers Irrigation District

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MAY 20 2004
DEPARTMENT OF
WATER RESOURCES

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

IN THE MATTER OF INTEGRATED
MUNICIPAL APPLICATION PACKAGE
(CONSISTING OF 99 APPLICATIONS FOR
TRANSFERS OF WATER RIGHTS, AND 13
APPLICATIONS FOR AMENDMENT OF
PERMITS) IN THE NAME OF UNITED
WATER IDAHO, INC.

**PIONEER AND SETTLERS' REPLY TO UWID'S
RESPONSE TO PIONEER AND SETTLERS
PETITION FOR RECONSIDERATION**

Pioneer Irrigation District and Settlers Irrigation District (the "Districts") by and through their counsel of record MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHTD., hereby reply to UWID's Response to Pioneer and Settlers' Petition for Reconsideration ("UWID's Response"). This reply is predicated upon the facts that UWID has not filed a petition for reconsideration, and the Districts have provided factual evidence in the form of sworn discovery responses, and the Districts responded to UWID's inquires regarding the bases for their protests in the form of *sworn* discovery responses and materials incorporated therein

I.
UWID HAS NOT FILED A PETITION FOR RECONSIDERATION

Throughout UWID's Response, it hints that the Hearing Officer erred in his April 22, 2004 Orders. *See, e.g.*, UWID's Response, footnotes 4 and 6, and page 4. Such arguments should be disregarded, because UWID has failed to file a petition for reconsideration. The Districts recognized that the appropriate and legally cognizable method to seek reconsideration of the April 22, 2004 Orders was to file a Petition for Reconsideration. That method was equally available to UWID, had it chosen to avail itself of it. It did not do so, and any arguments from UWID requesting dismissal of the Districts from this proceeding must be disregarded.

II.
**THE DISTRICTS PROVIDED SIGNIFICANT FACTUAL
INFORMATION IN ADDITION THEIR 30(b)(6) DEPOSITIONS**

UWID would have the Hearing Officer believe that the only factual testimony and evidence the Districts provided or had the opportunity to provide was in their 30(b)(6) depositions. However, as the Districts carefully noted in their Petition for Reconsideration, they provided significant factual evidence and information to UWID, including supplementation of discovery responses. Petition for Reconsideration, pp. 9-11. Contrary to UWID's unseemly insinuations and false accusations, the Districts are not attempting to hide the ball – they have been as forthcoming as possible with the bases for their protests, and the matters they have considered relevant.

Moreover, those discovery responses constitute the "sworn statements" to which UWID alludes in its reply. Each of the Districts' discovery responses were signed under oath, in accordance with the Idaho Rules of Civil Procedure.

III.
THE 30(b)(6) DEPOSITION NOTICES WERE NARROW, AND THE DISTRICTS
HAVE PROVIDED THE REQUESTED INFORMATION IN OTHER FORMS

As the Districts noted in their Petition for Reconsideration, the 30(b)(6) deposition notices in this matter were very narrowly drawn, and to the extent UWID sought to go beyond the narrow constraints of the deposition notices, such attempts were improper and cannot serve as the basis for sanctions. UWID argues, completely without citation, that “the Districts’ representatives did not take this position.” UWID’s Response, p. 2. That argument disregards a continuing objection lodged by counsel for the Districts. During the deposition of Mr. Nathan Draper, the following exchange occurred:

Q. Are you familiar with the water rights that Settlers operates under?

A. Yes.

Q. How much of the portfolio – if I use the term “portfolio,” I just mean the collection of all of Settlers’ water rights, how much of Settlers’ portfolio of natural flow surface rights?

A. Just a moment. At this point I’m going to state an objection on the record and I want it to be a continuing objection as to any questions that go beyond the scope of the notice provided for this deposition, the 30(b)(6) notice, and I’ll allow the witness to answer the questions, but it’s a continuing objection as to that basis.

Deposition of Nathan Draper, p. 14, L. 24 – p. 15, L. 12 (attached to Hearing Officer’s Order re: Motion To Dismiss Settlers’ Protest and Preclude Its Participation at Hearing). Thus, even if Mr. Draper answered questions that went beyond the scope of the 30(b)(6) notice, questions and answers that exceeded that scope were clearly the subject of a continuing objection. It appears that Mr. Jeff Scott answered questions in his deposition without objection from counsel on the basis that the questions exceeded the scope of the 30(b)(6) deposition notice, but that cannot be taken as a sign that the witness did not take the position that the deposition notices concerned

only the Protests and not the general position of the Districts. It is not the place of a witness to interpose an objection, and the fact that a witness may have answered questions cannot be taken as a sign that the witness felt that the questions asked were properly within the scope of the 30(b)(6) notice.

In addition, the fact that both Districts' witnesses answered questions going *far* beyond the scope of their 30(b)(6) notices illustrates the unfairness of the Hearing Officer's April 22, 2004 Orders. Once again, the 30(b)(6) notices requested that the witness be prepared only to address the following:

1. Each and every basis for [Pioneer or Settlers] Irrigation District's protest in this matter.
2. The conditions or modifications to the IMAP, if any, that would resolve your protest.

Exhibits 1 to [First] Affidavit of Scott L. Campbell, filed September 10, 2003. The fact that each witness's testimony went beyond the scope (albeit under objection, in the case of Mr. Draper) of that notice shows that Pioneer and Settlers were forthcoming with requested information, and under no circumstances should be precluded from presenting any factual evidence at the hearing in this matter.

As the Districts noted in their Petition for Reconsideration, Interrogatory Number 7 specifically inquired about the bases for Pioneer and Settlers' Protests, and a response was provided:

INTERROGATORY NO. 7: Please state each and every basis for Protestant's protest.

RESPONSE TO INTERROGATORY NUMBER 7: Objection. This interrogatory calls for material protected by the attorney-client privilege and work product doctrine. Moreover, the protest speaks for itself. Subject to, and without waiving those objections, Pioneer [or Settlers] refers UWID to its statement of the issues

provided in this matter, as well as its initial response to Requests for Information, contained in correspondence from Scott L. Campbell to Christopher Meyer and John Marshall, dated May 27, 2003.

Pioneer [or Settlers] notes that discovery in this matter is ongoing, as is Pioneer's analysis of the issues and pertinent facts. Pioneer reserves the right to supplement this response in accordance with the Idaho Rules of Civil Procedure.

Exhibits A and B to [First] Campbell Affidavit, filed on or about September 10, 2003.

Significantly, *the Districts' discovery responses were signed under oath*. Those responses incorporated by reference the Districts' responses to UWID's requests for information, sent to UWID in the form of correspondence on or about May 27, 2003. Exhibit 1 to Affidavit of Scott L. Campbell, filed concurrently herewith. As even a cursory review shows, the Districts provided UWID with information regarding the bases for their respective protests.

In addition, the discovery responses also reference Pioneer and Settlers' Statements of the Issues, which have been previously filed with the Department on or about January 31, 2003. That Statement of the Issues lists 16 issues, some with subparts. The issues should serve as a detailed list of the bases for the Districts' protests. The list of issues does not provide a list of the evidence which will be used to support the Districts' position on those issues, but on the other hand, UWID did not request such evidence in the context of its 30(b)(6) request.

On a related note, the Districts and their counsel are offended at UWID's assertion that "[w]hat they say is that they would have provided information had they only been forced to do so: "In fact, had the Hearing Officer denied the Districts' Motion for Protective Order, the Districts would have complied." *Petition* at 12. If that is the Districts' position, the answer is that the Districts gambled with a high-risk, purely obstructive legal strategy that

ultimately did not pay out.” UWID’s Response, p. 4. First, it is unfortunate that the practice of law in Idaho has apparently lost the civility which was its hallmark for so long, and that unfounded accusations and conjecture have such a prominent place in legal pleadings. Second, the Districts filed their Motions for Protective Order because they felt that their position was correct as a matter of fact and law, particularly because the Districts had provided *under oath* and in the form of discovery responses, much of the information sought by UWID. All that the Districts were saying was that if the Hearing Officer disagreed with the matters set forth in their Motion for Protective Order, the Districts would have provided the requested information, again. The Idaho Rules of Civil Procedure clearly provide that a party may file a Motion for Protective Order. *See* I.R.C.P. 26(c). There is nothing wrong with a party filing a Motion for Protective Order when it feels it has a legally and factually defensible position. In fact, the Districts filed a motion for protective order earlier in the IMAP proceedings, a motion which was successful in part.

IV. CONCLUSION

The Hearing Officer’s order was a sanction, one which he ruled he did not have the authority to impose. Moreover, it was the harshest of sanctions, rendered without the balancing test required by the Idaho Supreme Court.

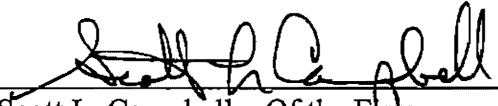
UWID asserts that the Districts should not be allowed to present *any factual evidence* at hearing, because its 30(b)(6) witnesses were unable to testify about the bases for the Districts’ respective protests. However, as the Districts have shown, information regarding the bases for the Districts’ respective protests was provided in the form of discovery responses, which were affirmed under oath by members of each District’s board. Thus, the Districts have provided the requested information under oath. Finally, it bears repeating that UWID did not ask

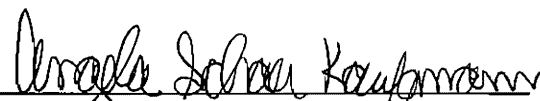
the 30(b)(6) witnesses to be prepared to discuss every bit of factual evidence the Districts intended to present at trial; they were simply to discuss the bases for the Districts' initial pleadings in this matter (*i.e.*, the protests), and to discuss conditions which might resolve the Districts' protests.

The Districts respectfully request that the Hearing Officer reconsider his April 22, 2004, Orders, in the manner described in their Petition for Reconsideration.

DATED this 19th day of May, 2004.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By 
Scott L. Campbell – Of the Firm

By 
Angela Schaer Kaufmann – Of the Firm
Attorneys for Pioneer Irrigation District
and Settlers Irrigation District

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19~~th~~ day of May, 2004, I caused a true and correct copy of the foregoing **PIONEER AND SETTLERS' REPLY TO UWID'S RESPONSE TO PIONEER AND SETTLERS PETITION FOR RECONSIDERATION** to be served by the method indicated below, and addressed to the following:

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Peter Anderson, Hearing Officer
729 W. Braemere Road
Boise, ID 83702

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Gary Spackman
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1002 W. Franklin
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Fax: 342-3100

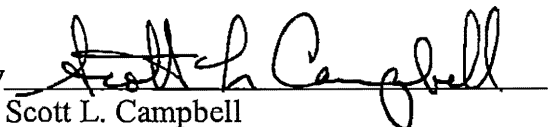
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Mr. Michael Chase
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Eagle, ID 83616-3802

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By 
Scott L. Campbell

Attorneys for Pioneer Irrigation District
and Settlers Irrigation District

Scott L. Campbell, ISB No. 2251
Angela Schaer Kaufmann, ISB No. 5436
MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED
101 S. Capitol Boulevard, 10th Floor
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Telephone: (208) 345-2000
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18946.26

RECEIVED
MAY 20 2004
DEPARTMENT OF
WATER RESOURCES

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

IN THE MATTER OF INTEGRATED
MUNICIPAL APPLICATION PACKAGE
(CONSISTING OF 99 APPLICATIONS FOR
TRANSFERS OF WATER RIGHTS, AND 13
APPLICATIONS FOR AMENDMENT OF
PERMITS) IN THE NAME OF UNITED
WATER IDAHO, INC.

AFFIDAVIT OF SCOTT L. CAMPBELL

State of Idaho)
) ss.
County of Ada)

Scott L. Campbell, being first duly sworn upon oath, deposes and says:

1. I am one of the attorneys of record providing legal representation to Pioneer Irrigation District and Settlers Irrigation District in the above-captioned matter. I have knowledge of the files pertinent to this matter, and I make this affidavit based upon personal knowledge.

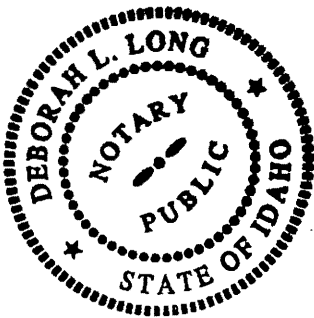
2. Appended hereto as Exhibit 1 is a true and correct copy of the Districts' responses to UWID's requests for information, dated May 27, 2003.

DATED this 19th day of May, 2004.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By Scott L. Campbell
Scott L. Campbell -- Of the Firm
Attorneys for Pioneer Irrigation District
and Settlers Irrigation District

SUBSCRIBED AND SWORN to before me this 19th day of May, 2004.



Deborah Long
NOTARY PUBLIC FOR IDAHO
Residing at Boise, Idaho
My Commission Expires 10/10/07

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14th day of May, 2004, I caused a true and correct copy of the foregoing **AFFIDAVIT OF SCOTT L. CAMPBELL** to be served by the method indicated below, and addressed to the following:

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Idaho Department of Water Resources
1301 N. Orchard Street
PO Box 83720
Boise, ID 83720
Fax: 327-5400

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Peter Anderson, Hearing Officer
729 W. Braemere Road
Boise, ID 83702

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Gary L. Spackman, Regional Manager
Idaho Department of Water Resources
Western Region Office
2735 Airport Way
Boise, ID 83705
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Boise City Attorney's Office
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Boise Public Works Department
Beth K. Baird
Environmental Programs Coordinator
150 N. Capitol Blvd.
PO Box 500
Boise, ID 83701-0500
Fax: 384-3905

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Barker Rosholt & Simpson
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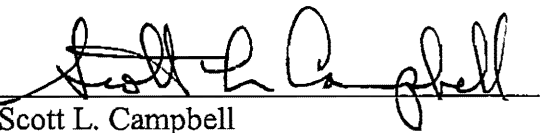
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Mr. Michael Chase
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By 
Scott L. Campbell

Boise
Idaho Falls
Pocatello

Moffatt Thomas

MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD.

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May 27, 2003

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Christopher Meyer
John Marshall
Givens Pursley LLP
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Boise, ID 83701-2720

Re: IMAP - Initial Responses to Requests for Information
MTBR&F File No. 18946.26

Dear Chris and John:

This letter will serve as Pioneer Irrigation District's ("Pioneer") initial response to United Water Idaho's ("UWID") initial requests for information. Pioneer has attempted to be as comprehensive as possible in providing this information. However, Pioneer has been somewhat hampered in that endeavor due to the fact that UWID has yet to fully respond to Pioneer's requests for additional information.

Moreover, research and analysis will be ongoing in this proceeding. Therefore, Pioneer may supplement its answers to these initial requests if there is not a stay in this matter. Pioneer also notes that it reserves and does not waive any objections available under the Idaho Rules of Civil Procedure, the Idaho Rules of Evidence, case law, or the common law. Finally, Pioneer objects to the extent that these requests for information seek a statement of legal positions, rather than factual information. To the extent that Pioneer responds to such requests for legal positions, Pioneer fully reserves the right to change or amend those positions in response to information received or otherwise obtained as this matter proceeds.

Pioneer also notes that many of the items of requested information are simply irrelevant to the IMAP proceedings. It is not Pioneer's water rights which are at issue here, and Pioneer's water rights will be only narrowly relevant. Pioneer can only assume that UWID has one of three (or possibly all three) motivations:

Christopher Meyer
John Marshall
Givens Pursley LLP
May 27, 2003
Page 2

1. To buttress some sort of jurisdictional argument. That argument would be unavailing under Idaho law.
2. To make a "pot calling the kettle black" type of argument. In other words, Pioneer assumes that UWID intends to argue that Pioneer cannot make some of the arguments it has made in this matter because it has engaged in similar conduct. That argument would be unavailing legally, but even more so factually.
3. To obtain information which UWID intends to use in objecting to the Director's Reports for Pioneer's SRBA Claims. Such a tactic is improper.

1. Does Pioneer disagree with the methodology used by Mr. Church and the conclusions he reached in creating the population and water demand projections?

Pioneer's analysis of Mr. Church's methodology and conclusions is ongoing, and Pioneer has not reached any conclusions regarding its view of Mr. Church's methodology and conclusions at this point in time.

2. Have you or Pioneer hired any consultant to review the population and/or demand projections United Water has produced in support of the IMAP? If so, who?

Pioneer objects to this request. It is contrary to Idaho Rule of Civil Procedure 26(b)(4)(B), and invades the attorney client and work product privileges. Subject to and without waiving those objections, as UWID is by now aware, Pioneer has retained the services of Don Reading in this matter.

3. Please identify any concerns Pioneer has regarding the boundary United Water has chosen as its planning area and what would resolve these concerns.

Pioneer believes that the boundary for the planning area is speculative and in conflict with the provisions of the Municipal Water Rights Act of 1996.

4. Does Pioneer believe that a 50-year planning horizon is too long for United Water and explain why?

As should be clear from Pioneer's positions to date, Pioneer believes that the 50 year planning horizon is too long. It far exceeds the planning horizons of Ada County, the City of Boise, the City of Meridian, and the City of Eagle, and the projections made beyond those planning horizons are speculative at best.

Christopher Meyer
John Marshall
Givens Pursley LLP
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Page 3

5. What does Pioneer believe an appropriate planning horizon is for United Water and explain why?

The maximum planning horizon should be 25 years, with a review every 5 years within that 25 years to determine if the planning projections (*i.e.*, population and demand) have been accurately forecasted.

6. Does Pioneer have plans to seek annexation of areas to the south and east of the New York Canal? Please provide all documentation that describes Pioneer's plans for future annexations.

Pioneer's future plans are irrelevant to the IMAP proceeding.

7. How many pressurized, residential irrigation systems or hookups does Pioneer serve?

This question is irrelevant to the IMAP proceeding. The question is also ambiguous. If United Water means to inquire about the number of individual lots or parcels served by Pioneer, this is entirely different than the number of pressurized, residential irrigation systems served. United Water should also explain how the requested information could be relevant to the IMAP proceeding.

8. Please explain how you quantify and track residential irrigation water use? For example, do you have records of use per customer, per irrigated acre, etc.? How is the data collected and recorded? What does Pioneer track?

This question is irrelevant to the IMAP proceeding. Whether and how Pioneer tracks water usage of landowners within its boundaries is not at issue in the IMAP.

9. What is the average annual per capita usage in volume of water per irrigated acre and per customer for your members who use water for residential irrigation?

This question is irrelevant to the IMAP proceeding. Whether and how Pioneer tracks water usage of landowners within its boundaries is not at issue in the IMAP.

10. Does Pioneer have a water conservation program for residential irrigation use? For agricultural irrigation use? Please describe and document each.

This question is irrelevant to the IMAP proceeding.

Christopher Meyer
John Marshall
Givens Pursley LLP
May 27, 2003
Page 4

11. **Has Pioneer evaluated the success of its water conservation efforts? Please provide details.**

See Response to Request for Information Number 10.

12. **Has Pioneer undertaken any planning for projected future water demands? If so, explain what it has done in this regard, who did or is doing the work, what the status of the work is, and what conclusions or tentative conclusions have been reached.**

This question is irrelevant to the IMAP proceedings. Any planning Pioneer may or may not have done for the future is irrelevant. At any rate, like all Idaho water users, Pioneer must beneficially use its water rights.

13. **Please identify each water right held in whole or in part by Pioneer. Please identify with specificity any other interests in water or water service (contractual or otherwise) held by Pioneer. If you have any summary, table or index to some or all of these water rights, please provide. What is the total quantity of water available to Pioneer under these rights and entitlements?**

Pioneer Irrigation District holds water rights (or permits) numbered 63-161BU, 63-166A, 63-167A, 63-179A, 63-224, 63-225, 63-294, 63-295, 63-371, 63-2114, 63-2275, 63-2276, 63-2294, 63-2529, 63-2891, 63-2891A, 63-5199, 63-5200, 63-5219, 63-5237, 63-5255, 63-9109, 63-21706, 63-21713, 63-21714, 63-21731, 63-21739, 63-12349, 63-10169, 63-11622, and 63-21716. Information regarding those water rights can be found on the Idaho Department of Water Resources website. Pioneer also claims an ownership interest, either legal or beneficial, by virtue of its contracts with the United States Bureau of Reclamation for water from Lucky Peak Dam and Reservoir, Anderson Ranch Dam and Reservoir, and Arrowrock Dam and Reservoir. The United States has claimed water rights for those facilities (and Pioneer has filed objections). The claim numbers are 63-03618, 63-03614, and 63-00303, respectively.

14. **Does Pioneer believe a municipality is entitled under the common law to hold water rights in excess of current demands?**

No.

Christopher Meyer
John Marshall
Givens Pursley LLP
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Page 5

15. Which of United Water's water rights does Pioneer contend are forfeited, and on what basis?

Pioneer cannot answer this request at this time, in part due to the fact that at this time, the exact water rights involved in the IMAP proceeding are unknown. Until the parties know exactly which version of the IMAP will be the "official" version, they cannot go forward with any examination regarding forfeiture.

16. Have you or Pioneer reviewed the conditions proposed by United Water for the IMAP?

Pioneer objects to this request to the extent it assumes that the conditions are part of the IMAP as it now stands before the Department of Water Resources.

Without waiving those objections and considerations, the answer to that question is "Yes." Pioneer has reviewed the proposed conditions.

17. If those conditions are adopted, would these proposed conditions alleviate the injury you contend would occur if United Water's proposal for integrated points of diversion proposed in the IMAP were accepted by the Department? If not, explain why.

Pioneer objects to this request to the extent it assumes the conditions are part of the IMAP as it now stands before the Department of Water Resources.

Consequently, even if the conditions were satisfactory, Pioneer would have no assurances they would be adopted by IDWR.

18. In Pioneer's Statement of Issues number 5, it states that the "IMAP application does not provide a sufficient description of the service area." Please identify the information Pioneer believes is missing.

See Pioneer's (and Settlers') Motion to Dismiss, filed on or about March 14, 2003.

19. Please further explain the concern expressed in your client's statement of the issue number 6.

See response to Requests Number 3 and 4.

Christopher Meyer
John Marshall
Givens Pursley LLP
May 27, 2003
Page 6

20. Does Pioneer operate any ground water wells?

Yes.

Has Pioneer stopped using any of its wells?

No.

What has happened to the water rights associated with those wells?

Inapplicable.

21. Describe how Pioneer believes the "stepwise function" (in your Statement of Issues number 10) would operate.

The actual operation of the stepwise function is an issue to be addressed during the IMAP proceedings. The way the stepwise function would operate is as described in Chris Meyer's letter to Norm Young, dated September 21, 1998. Pioneer maintains that the stepwise function should be run on a year by year basis.

22. Explain what Pioneer means by "point by point" system (in your Statement of Issues number 10).

Pioneer means that whether UWID's water right had been forfeited would be determined by looking at any given point in time.

23. What does Pioneer believe is the "appropriate length of time for reviewing and reevaluating the accuracy of the planning horizon and projected water needs for a municipality" (from your Statement of Issues number 10).

The review would be conducted a minimum of every five years, or when a change is made to UWID's "portfolio," whichever comes first.

24. In its Statement of Issues number 16, Pioneer states that the IMAP will affect the ability of water to fill other existing and future appropriations.

Pioneer did not make this statement in its statement of the issues.

Christopher Meyer
John Marshall
Givens Pursley LLP
May 27, 2003
Page 7

25. Has Pioneer ever contacted employees of the Idaho Department of Water Resources prior to making an application.

This request for information is irrelevant. Pioneer's conduct is not at issue in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Scott L. Campbell". The signature is fluid and cursive, with the first name "Scott" and last name "Campbell" clearly distinguishable.

Scott L. Campbell

SLC/dll

Boise
Idaho Falls
Pocatello

Moffatt Thomas

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May 27, 2003

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Boise, ID 83701-2720

Re: IMAP - Initial Responses to Requests for Information
MTBR&F File No. 18955.24

Dear Chris and John:

This letter will serve as Settlers Irrigation District's ("Settlers") initial response to United Water Idaho's ("UWID") initial requests for information. Settlers has attempted to be as comprehensive as possible in providing this information. However, Settlers has been somewhat hampered in that endeavor due to the fact that UWID has yet to fully respond to Settlers' requests for additional information.

Moreover, research and analysis will be ongoing in this proceeding. Therefore, Settlers may supplement its answers to these initial requests if there is not a stay in this matter. Settlers also notes that it reserves and does not waive any objections available under the Idaho Rules of Civil Procedure, the Idaho Rules of Evidence, case law, or the common law. Finally, Settlers objects to the extent that these requests for information seek a statement of legal positions, rather than factual information. To the extent that Settlers responds to such requests for legal positions, Settlers fully reserves the right to change or amend those positions in response to information received or otherwise obtained as this matter proceeds.

Settlers also notes that many of the items of requested information are simply irrelevant to the IMAP proceedings. It is not Settlers' water rights which are at issue here, and Settlers' water rights will be only narrowly relevant. Settlers can only assume that UWID has one of three (or possibly all three) motivations:

FILE COPY
BOI_MT2:505651.1

Christopher Meyer
John Marshall
Givens Pursley LLP
May 27, 2003
Page 2

1. To buttress some sort of jurisdictional argument. That argument would be unavailing under Idaho law.
2. To make a "pot calling the kettle black" type of argument. In other words, Settlers assumes that UWID intends to argue that Settlers cannot make some of the arguments it has made in this matter because it has engaged in similar conduct. That argument would be unavailing legally, but even more so factually.
3. To obtain information which UWID intends to use in objecting to the Director's Reports for Settlers' SRBA Claims. Such a tactic is improper.

1. **Does Settlers disagree with the methodology used by Mr. Church and the conclusions he reached in creating the population and water demand projections?**

Settlers' analysis of Mr. Church's methodology and conclusions is ongoing, and Settlers has not reached any conclusions regarding its view of Mr. Church's methodology and conclusions at this point in time.

2. **Have you or Settlers hired any consultant to review the population and/or demand projections United Water has produced in support of the IMAP? If so, who?**

Settlers objects to this request. It is contrary to Idaho Rule of Civil Procedure 26(b)(4)(B), and invades the attorney client and work product privileges. Subject to and without waiving those objections, as UWID is by now aware, Settlers has retained the services of Don Reading in this matter.

3. **Please identify any concerns Settlers has regarding the boundary United Water has chosen as its planning area and what would resolve these concerns.**

Settlers believes that the boundary for the planning area is speculative and in conflict with the provisions of the Municipal Water Rights Act of 1996.

4. **Does Settlers believe that a 50-year planning horizon is too long for United Water and explain why?**

As should be clear from Settlers' positions to date, Settlers believes that the 50 year planning horizon is too long. It far exceeds the planning horizons of Ada County, the City of Boise, the City of Meridian, and the City of Eagle, and the projections made beyond those planning horizons are speculative at best.

Christopher Meyer
John Marshall
Givens Pursley LLP
May 27, 2003
Page 3

- 5. What does Settlers believe an appropriate planning horizon is for United Water and explain why?**

The maximum planning horizon should be 25 years, with a review every 5 years within that 25 years to determine if the planning projections (i.e., population and demand) have been accurately forecasted.

- 6. Does Settlers have plans to seek annexation of areas to the south and east of the New York Canal? Please provide all documentation that describes Settlers's [sic] plans for future annexations.**

Settlers' future plans are irrelevant to the IMAP proceeding.

- 7. How many pressurized, residential irrigation systems or hookups does Settlers serve?**

This question is irrelevant to the IMAP proceeding. The question is also ambiguous. If United Water means to inquire about the number of individual lots or parcels served by Settlers, this is entirely different than the number of pressurized, residential irrigation systems served. United Water should also explain how the requested information could be relevant to the IMAP proceeding.

- 8. Please explain how you quantify and track residential irrigation water use? For example, do you have records of use per customer, per irrigated acre, etc.? How is the data collected and recorded? What does Settlers track?**

This question is irrelevant to the IMAP proceeding. Whether and how Settlers tracks water usage of landowners within its boundaries is not at issue in the IMAP.

- 9. What is the average annual per capita usage in volume of water per irrigated acre and per customer for your members who use water for residential irrigation?**

This question is irrelevant to the IMAP proceeding. Whether and how Settlers tracks water usage of landowners within its boundaries is not at issue in the IMAP.

- 10. Does Settlers have a water conservation program for residential irrigation use? For agricultural irrigation use? Please describe and document each.**

This question is irrelevant to the IMAP proceeding.

Christopher Meyer
John Marshall
Givens Pursley LLP
May 27, 2003
Page 4

- 11. Has Settlers evaluated the success of its water conservation efforts? Please provide details.**

See Response to Request for Information Number 10.

- 12. Has Settlers undertaken any planning for projected future water demands? If so, explain what it has done in this regard, who did or is doing the work, what the status of the work is, and what conclusions or tentative conclusions have been reached.**

This question is irrelevant to the IMAP proceedings. Any planning Settlers may or may not have done for the future is irrelevant. At any rate, like all Idaho water users, Settlers must beneficially use its water rights.

- 13. Please identify each water right held in whole or in part by Settlers. Please identify with specificity any other interests in water or water service (contractual or otherwise) held by Settlers. If you have any summary, table or index to some or all of these water rights, please provide. What is the total quantity of water available to Settlers under these rights and entitlements?**

Settlers Irrigation District holds water rights (or permits) numbered 63-00230F, 63-00231, 63-02080, 63-03060, and 63-11185. Information regarding those water rights can be found on the Idaho Department of Water Resources website. Settlers also claims an ownership interest, either legal or beneficial, by virtue of its contracts with the United States Bureau of Reclamation for water from Lucky Peak Dam and Reservoir, Anderson Ranch Dam and Reservoir, and Arrowrock Dam and Reservoir. The United States has claimed water rights for those facilities (and Settlers has filed objections). The claim numbers are 63-03618, 63-03614, and 63-00303, respectively.

- 14. Does Settlers believe a municipality is entitled under the common law to hold water rights in excess of current demands?**

No.

Christopher Meyer
John Marshall
Givens Pursley LLP
May 27, 2003
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15. Which of United Water's water rights does Settlers contend are forfeited, and on what basis?

Settlers cannot answer this request at this time, in part due to the fact that at this time, the exact water rights involved in the IMAP proceeding are unknown. Until the parties know exactly which version of the IMAP will be the "official" version, they cannot go forward with any examination regarding forfeiture.

16. Have you or Settlers reviewed the conditions proposed by United Water for the IMAP?

Settlers objects to this request to the extent it assumes that the conditions are part of the IMAP as it now stands before the Department of Water Resources.

Without waiving those objections and considerations, the answer to that question is "Yes." Settlers has reviewed the proposed conditions.

17. If those conditions are adopted, would these proposed conditions alleviate the injury you contend would occur if United Water's proposal for integrated points of diversion proposed in the IMAP were accepted by the Department? If not, explain why.

Settlers objects to this request to the extent it assumes that the conditions are part of the IMAP as it now stands before the Department of Water Resources.

Consequently, even if the conditions were satisfactory, Settlers would have no assurance they could be adopted by IDWR.

18. In Settlers' Statement of Issues number 5, it states that the "IMAP application does not provide a sufficient description of the service area." Please identify the information Settlers believes is missing.

See Settlers' (and Pioneer's) Motion to Dismiss, filed on or about March 14, 2003.

19. Please further explain the concern expressed in your client's statement of the issue number 6.

See response to Requests Number 3 and 4.

Christopher Meyer
John Marshall
Givens Pursley LLP
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Page 6

20. Does Settlers operate any ground water wells?

Yes.

Has Settlers stopped using any of its wells?

No.

What has happened to the water rights associated with those wells?

Inapplicable.

21. Describe how Settlers believes the "stepwise function" (in your Statement of Issues number 10) would operate.

The actual operation of the stepwise function is an issue to be addressed during the IMAP proceedings. The way the stepwise function would operate is as described in Chris Meyer's letter to Norm Young, dated September 21, 1998. Settlers maintains that the stepwise function should be run on a year by year basis.

22. Explain what Settlers means by "point by point" system (in your Statement of Issues number 10).

Settlers means that whether UWID's water right had been forfeited would be determined by looking at any given point in time.

23. What does Settlers believe is the "appropriate length of time for reviewing and reevaluating the accuracy of the planning horizon and projected water needs for a municipality" (from your Statement of Issues number 10).

The review would be conducted a minimum of every five years, or when a change is made to UWID's "portfolio," whichever comes first.

24. In its Statement of Issues number 16, Settlers states that the IMAP will affect the ability of water to fill other existing and future appropriations.

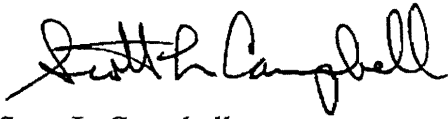
Settlers did not make this statement in its statement of the issues.

Christopher Meyer
John Marshall
Givens Pursley LLP
May 27, 2003
Page 7

25. Has Settlers ever contacted employees of the Idaho Department of Water Resources prior to making an application.

This request for information is irrelevant. Settlers' conduct is not at issue in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Scott L. Campbell". The signature is written in a cursive, flowing style.

Scott L. Campbell

SLC/dll

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Attorneys for Boise Project Board of Control,
Boise-Kuna Irrigation District,
Wilder Irrigation District, and
Big Bend Irrigation District

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

IN THE MATTER OF 99	)	
APPLICATIONS FOR TRANSFER	)	
AND 13 APPLICATIONS FOR	)	
AMENDMENT OF PERMITS, KNOWN	)	
AS THE INTEGRATED MUNICIPAL	)	
APPLICATION PACKAGE (IMAP) BY	)	
APPLICANT UNITED WATER IDAHO,	)	
INC.	)	
_____	)	
	)	RESPONSE TO UNITED WATER IDAHO'S MOTION FOR STATUS CONFERENCE

The Boise Project Board of Control and its member districts, Boise-Kuna Irrigation
District, Wilder Irrigation District, and Big Bend Irrigation District ("Board of Control"), by and

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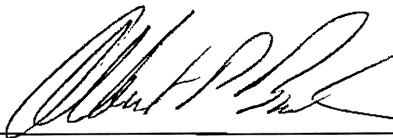
Department of Water Resources

through their counsel of record, hereby respectfully submit this answer to *United Water Idaho's Motion for Status Conference* pursuant to IDAPA 37.01.01.270, Rules of Procedure of the Idaho Department of Water Resources. The Board of Control requests that the Director deny the *Motion for Status Conference*. The Director issued an *Order Re Motion to Stay* specifying that "...this transfer proceeding shall be stayed in full pending the issuance of partial decrees for UWID's water right claims by the SRBA District Court, provided that action may be taken by the IDWR Hearing Officer upon any motions pending on the date of this order." *Order Re Motion to Stay*, at 3 (Dec. 18, 2003). In addition, the proceedings were stayed because "...proceeding simultaneously before the SRBA and IDWR could cause, to some extent, a double expenditure of time and funds." *Id.* at 2. Convening a status conference is unnecessary and would result in additional costs and time expended by the Department as well as the parties in violation of the *Order Re Motion to Stay*.

Subsequent to the *Order Re Motion to Stay*, no other orders have been issued and nothing has occurred to modify or alter the stay of these proceedings. Additionally, the Director's Report for part two, Basin 63, relative to these water right claims is expected in August 2004. The cause for a status conference is not apparent and it is needless at this time. Therefore, the Board of Control respectfully requests that *United Water Idaho's Motion for Status Conference* be denied.

DATED this 12th day of May 2004.

BARKER ROSHOLT & SIMPSON LLP



Albert P. Barker

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of May, 2004, I caused a true and correct copy of the foregoing RESPONSE TO UNITED WATER IDAHO'S MOTION FOR STATUS CONFERENCE, served by the method indicated below, and addressed to the following individuals:

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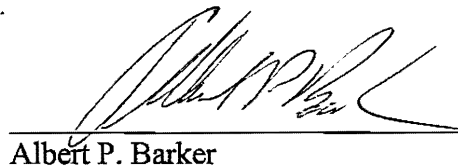
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May 11, 2004

Ms. Victoria Wigle
Idaho Department of Water Resources
1301 N. Orchard St.
P.O. Box 83720
Boise, ID 83720-0098

Re: United Water Idaho Inc.—IMAP
Our File No. 30-71

Dear Victoria:

Enclosed for filing in the IMAP matter please find the original and one copy of *United Water's Reply in Support of Its Motion for Status Conference* and *United Water's Response to Pioneer & Settlers' Petition for Reconsideration*. Please conform the copy of each document and return them to our office in the enclosed self-addressed, stamped envelope.

Thank you for your assistance with this matter. If you have any questions or require any additional information please call.

Sincerely,

Katrina Thomas

Katrina Thomas
Legal Secretary

Enclosures

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Attorneys for Applicant United Water Idaho Inc.

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Department of Water Resources

BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

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.

UNITED WATER'S RESPONSE TO
PIONEER & SETTLERS' PETITION FOR
RECONSIDERATION

This is United Water Idaho Inc.'s ("United Water") response to the *Petition for Reconsideration / Motion for Referral* dated May 5, 2004 ("*Petition*") filed by Pioneer Irrigation District and Settlers Irrigation District ("Pioneer and Settlers" or the "Districts") seeking reconsideration or referral¹ of the three orders issued by the Hearing Officer on April 22, 2004 (the "Orders").

While United Water opposes the petition for reconsideration, it has no objection to referring the Orders to the Director, if the Hearing Officer determines referral is appropriate.²

¹ The Districts' motion for referral relies on IDAPA 37.01.01.720 and 730. *Petition* at 4. It would appear that referral under IDAPA 37.01.01.562 would be more appropriate, if the Hearing Officer determines that referral is advisable. If that were to occur, the Director may then determine whether or not to declare the issue "final and subject to review" under IDAPA 37.01.01.710.

² United Water presumes that if reconsideration or referral is granted, the full range of claims and arguments United Water has presented (including its request for dismissal and recovery of attorney fees) will be

However, if the Orders are referred, provision should be made for a full presentation of the Districts' ongoing pattern of abuse and disrespect for the Department's hearing process. The Districts' deliberate obfuscation and misdirection is not confined to the 30(b)(6) depositions. The Districts argue that sanctions "should be reserved for only the most egregious of circumstances," *Petition* at 6, and that a lesser sanction would suffice. Should the Orders be reconsidered or referred, the Director should be made fully aware of just how egregious the circumstances are in this case.

The Hearing Officer's Orders respond to the binding testimony of Pioneer and Settlers at their respective 30(b)(6) depositions. The Districts swore under oath that they are completely unfamiliar with the IMAP, that they have no idea of the legal or factual bases for their respective protests to the IMAP, and that they have not considered what conditions, if any, would be sufficient to resolve their protests.³ Based on this binding testimony, the Hearing Officer correctly concluded that each District must "live with its testimony" and, as a consequence, is barred from presenting any of its own factual evidence at hearing.⁴

preserved and considered. If reconsideration or referral is granted, this submission should be treated as a cross petition for reconsideration and a cross motion for referral.

³ In the Districts' *Petition*, they attempt to escape the consequences of their binding testimony by arguing a technicality. They argue the deposition notices at issue concerned only the pleading called the Protest, and not the general position of the District. In response to this argument, we simply point out that the testimony of each of the Districts, as memorialized in the deposition transcripts attached to the Hearing Officer's orders, clearly indicate that the Districts' representatives did not take this position.

⁴ The Hearing Officer declined United Water's request to dismiss the Districts. The Hearing Officer ruled that the Districts are entitled to rely on legal counsel for their legal positions, including argument that United Water has not met statutory standards or otherwise met its burden of proof. United Water disagrees and believes the Hearing Officer has been too lenient in his Orders. In fact, a 30(b)(6) deponent is not allowed to hide behind his lawyer, even on legal issues. He may not be expected to know every nuance or authority, but he is required to know the legal position of the entity for which he or she speaks. "Generally, inquiry into an entity's legal position is appropriate in a Rule 30(b)(6) deposition. '[T]he Rule aims to prevent a corporate defendant from thwarting inquiries during discovery, then staging an ambush during a later phase of the case.'" David A. Wollin & Geoffrey W. Millsom, *Everything You Always Wanted To Know About Depositions: But Your Client Could Not Afford To Research*, 50 Rhode Island Bar Journal 5, 35 (2002) (footnotes and citations omitted).

Faced now with these Orders, Pioneer and Settlers do not deny the statements that gave rise to the Hearing Officer's fully appropriate ruling. Instead, they argue vehemently⁵ that they are entitled to yet another chance to cure before suffering the effects of their statements.

The Districts continue to miss the point. They fail to grasp that they themselves were responsible for their own deposition testimony. Neither United Water nor the Hearing Officer put words into their witnesses' mouths. Indeed, United Water went out of its way to provide the Districts a fresh opportunity to provide substitute witnesses with some knowledge of the basis of their protests.

Both Pioneer and Settlers refused and absolutely insisted on standing by their testimony. As a consequence, the Hearing Officer has taken the Districts at their word. He believed their binding statements that they have no factual evidence to offer in opposition to the IMAP.⁶ The Hearing Officer's orders simply reflect the necessary and inevitable result of the Districts' sworn testimony. He has properly managed the case by precluding the presentation of evidence that the Districts conceded they do not have.⁷

It bears emphasis that the Districts have insisted all along that they are not hiding the ball and have been entirely forthcoming.⁸ In other words, they insist that they were not failing to

⁵ The Districts include in their Petition various warnings of appeals, announcing at one point their willingness "to take whatever steps necessary." *Petition* at 5. Needless to say, the Department should not be influenced by the recitation of rights common to all litigants.

⁶ The discovery deadline had already passed by the time of the 30(b)(6) depositions (whose scheduling had been postponed by agreement). So the Districts may not contend that they did not know anything at the time of the depositions, but would have had something to present by the time of the hearing.

⁷ The Hearing Officer has a duty to manage the case and provide for an efficient hearing. Idaho Code § 67-5242(3). Likewise, the Department's rules empower the Hearing Officer to "oversee the orderly presentations of the parties at hearing." IDAPA 37.01.01.413.01(c). Plainly, the Hearing Officer has authority to preclude testimony from a party who states under oath that the party has no factual basis for its protest.

⁸ "Pioneer and Settlers in no way intend to surprise United Water at the hearing in this matter with previously-undisclosed information, the avoidance of which is one of the very purposes of discovery. Pioneer and

disclose the real evidence while putting forward know-nothing witnesses. If that is the case, there is nothing to present. Yet, the Districts' insistence that they have been harmed by the orders precluding them from presenting evidence at hearing can only be understood to mean that they do have something to present. If that is the case, they have deliberately withheld information.

This appears to be what the Districts are really saying, although they do not say it in so many words. What they say is that they would have provided information had they only been forced to do so: "In fact, had the Hearing Officer denied the Districts' Motion for Protective Order, the Districts would have complied." *Petition* at 12. If that is the Districts' position, the answer is that the Districts gambled with a high-risk, purely obstructive legal strategy that ultimately did not pay out. Had they succeeded, they would have made a mockery of Department's hearing process.

The Districts also complain that they have been sanctioned for discovery abuse. Here again the Districts misunderstand the Hearing Officer's orders and the consequences of their own actions. They have not been sanctioned for discovery abuse. Of course, they could have been. The Hearing Officer could have found discovery abuse and applied sanctions under the circumstances. The Districts' conduct constitutes a deliberate violation of the rules of discovery, which the Department has both the authority and the responsibility to correct.⁹ Nevertheless, for

Settlers have been and will continue to be forthcoming with the evidence they intend to use at hearing." *Answer of Pioneer & Settlers to UWID's Motion to Dismiss Both Districts' Protests and Preclude Their Participation at Hearing* (September 29, 2003) at 7-8.

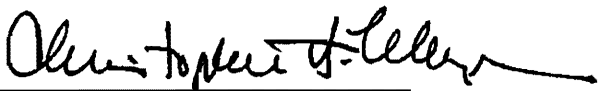
⁹ The Hearing Officer declined to award sanctions in the absence of "clarity" under the Department's rules. We believe the rules are amply clear. IDAPA 37.01.01.531 expressly authorizes sanctions "for failure to comply with an order compelling discovery." The Hearing Officer has issued an order authorizing formal discovery (that is, in accordance with the rules of civil procedure), which the Districts have plainly violated by producing know-nothing witnesses. (This is by no means the only violation of discovery rules by the Districts.)

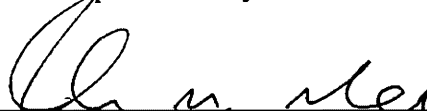
reasons he explained, the Hearing Officer determined not to pursue that course of action. The approach he adopted instead has nothing to do with sanctions.

The Hearing Officer has authority to control his hearing and to bind litigants by their own sworn statements. He has authority not merely to allow parties to “engage” in discovery, but to insist that they abide by the rules of discovery. Exerting control to protect the integrity of the Department’s own hearing processes is not a “last result” to be imposed only after prior warnings. These are the ground rules that all litigants must live by.

RESPECTFULLY SUBMITTED this 11th day of May 2004.

GIVENS PURSLEY LLP

By 
Christopher H. Meyer

By 
John M. Marshall

Attorneys for Applicant United Water Idaho Inc.

The Department’s rules use the terms “order compelling discovery” and “order authorizing discovery” interchangeably. For instance, Rule 537 twice refers to “orders compelling discovery” in a context plainly applicable to the order that first authorized discovery. IDAPA 37.01.01.537. Given this, the prerequisite order had been given. If reconsideration or referral is granted, United Water urges the Department to reconsider the dangerous declaration that it has no authority to control the behavior of litigants before it, outside a very narrow construction of Rule 531.

After all, what would it have accomplished for United Water to file motion to compel? The Districts had already stated in writing they chose to stick with the testimony of their 30(b)(6) deponents. It is not the Hearing Officer’s role to compel them to make a different choice.

This is precisely the reason that I.R.C.P. 37(d) expressly authorizes sanctions (including dismissing the party) without any prior motion to compel when a party produces a know-nothing 30(b)(6) witness. Quite apart from IDAPA 37.01.01.531, the Hearing Officer has full authority to employ those sanctions set out in I.R.C.P. 37(d). Department’s rules provide: “Depositions may be taken in accordance with the Idaho Rules of Civil Procedure” IDAPA 37.01.01.523 (emphasis supplied). Rule 37(d) sanctions are part and parcel of the discovery rules. It may be that IDAPA 37.01.01.531 is the only IDWR rule that explicitly mentions sanctions, but that mention does not limit or override the Department’s authority under other explicit authorities in the Idaho Rules of Civil Procedure that the Department has adopted by reference.

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of May 2004, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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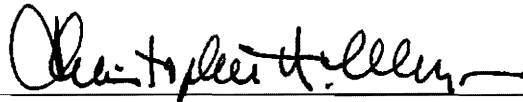
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Attorneys for Applicant United Water Idaho Inc.

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Department of Water Resources

BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

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.

UNITED WATER'S REPLY IN SUPPORT
OF ITS MOTION FOR STATUS
CONFERENCE

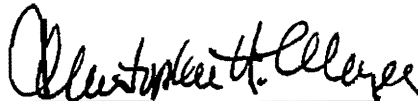
This is United Water Idaho Inc.'s ("United Water") reply to *Pioneer and Settlers'*
Response to UWID's Motion for Status Conference dated May 5, 2004 filed by Pioneer Irrigation
District and Settlers Irrigation District ("Districts").

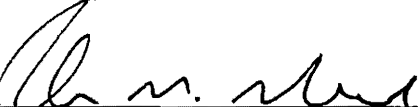
The Districts suggest that this matter cannot be heard in one day because, even though the
Districts are precluded from putting on evidence, other Protestants may do so. United Water
recognizes that other protestants may have some factual evidence to present at hearing.
However, no other Protestant has identified any expert witness on the issue of future needs
quantification for which a limited hearing is sought by United Water. And because the discovery
deadline passed on August 29, 2003, the opportunity to identify additional experts has passed.
Therefore, the only expert witness to testify at a hearing on future needs quantification issues is

John Church.¹ Accordingly, United Water's estimate of a single day appears to be reasonable.

RESPECTFULLY SUBMITTED this 11th day of May 2004.

GIVENS PURSLEY LLP

By 
Christopher H. Meyer

By 
John M. Marshall

Attorneys for Applicant United Water Idaho Inc.

¹ The only other expert identified by any of the Protestants is Ed Squires. His testimony, although still undisclosed, relates solely to hydrology (i.e., injury). Consequently, he would not be a witness at a hearing on future needs.

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of May 2004, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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

IN THE MATTER OF INTEGRATED
MUNICIPAL APPLICATION PACKAGE
(CONSISTING OF 99 APPLICATIONS FOR
TRANSFERS OF WATER RIGHTS, AND 13
APPLICATIONS FOR AMENDMENT OF
PERMITS) IN THE NAME OF UNITED
WATER IDAHO, INC.

**PIONEER AND SETTLERS' RESPONSE TO
UWID'S MOTION FOR STATUS CONFERENCE**

Pioneer Irrigation District and Settlers Irrigation District (collectively, the
"Districts"), by and through their counsel of record, MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHTD., hereby respond to UWID's Motion for Status Conference, filed on or about April
29, 2004. The Districts respectfully request that the Director deny the Motion, for the reasons set
forth herein.

I.
**NO STATUS CONFERENCE CAN BE HELD
UNTIL THE STAY IS LIFTED**

The Director's Order Re: Motion for Stay, issued December 18, 2003 ("Stay Order"), remains in effect. Under the terms of the Stay Order, this matter is "stayed in full pending the issuance of partial decrees for UWID's water right claims by the SRBA District Court." Stay Order, p. 3. Therefore, no status conference can be held until such time as the Director lifts the Stay Order. If the Motion for Status Conference is directed to the Hearing Officer, he has no jurisdiction at this time to consider the Motion. If it is instead directed to the Director, he can take no action regarding a status conference until such time as he lifts the stay. On that basis alone, the Motion for Status Conference cannot be considered, but if it is considered, the Motion must be denied.

II.
THE HEARING OFFICER'S APRIL 22, 2004 ORDERS

UWID references the Hearing Officer's April 22, 2004 Orders pertaining to Settlers Irrigation District and Pioneer Irrigation District as additional support for their contention that the Director should lift his stay order. However, the Districts have filed a Petition for Reconsideration / Motion for Referral regarding those orders. *See* Petition for Reconsideration / Motion for Referral, filed on or about May 5, 2004. The April 22, 2004 Orders significantly impair and impede the Districts' rights. Moreover, the April 22, 2004 Orders impose significant sanctions without the analysis required by Idaho's appellate courts. Therefore, it is by no means certain that the Hearing Officer's order will stand. The Districts consider the April 22, 2004 Orders to be significant enough in their effect that they will take any and all necessary appellate steps to overturn the Orders.

Moreover, UWID assert that because the Districts are currently, under the terms of the April 22, 2004 Orders, precluded from presenting factual evidence, the matter can be heard in a day if UWID is allowed to present its testimony from John Church in written form. While the Districts cannot speak for the other protestants in this matter, UWID seems to have forgotten that those entities have the right to present factual evidence. Therefore, it remains extremely speculative that the hearing could be accomplished in one day.

Finally, as the Districts noted in their Petition for Reconsideration, the Hearing Officer is without jurisdiction to resolve that Motion until such time as the stay is lifted. However, if the stay is lifted, the Petition for Reconsideration should immediately be considered and, if granted, would obviate UWID's argument on this point. In short, the April 22, 2004 Orders should have little or no effect on whether the Director lifts the current stay.

III. UWID'S REMAINING ARGUMENTS SIMPLY REPEAT THOSE PREVIOUSLY SET FORTH

This is not UWID's first Motion for Status Conference. As UWID readily admits, its Joint Petition for Review of Director's Stay Order included a request for status conference. Moreover, other than argument regarding the purported effect of the Hearing Officer's April 22, 2004 Orders, the current Motion for Status Conference contains no new argument, but merely rehashes that set forth in the Joint Petition. The Districts have previously responded to those arguments, and those responses are incorporated herein by reference. *See* Pioneer and Settlers' Response to Joint Petition for Review, dated January 22, 2004. UWID has not shown that the facts and circumstances which supported the Stay Order have changed in such a way that the Stay Order should be lifted.

**IV.
CONCLUSION**

For the reasons set forth herein, the Districts respectfully request that the Motion for Status Conference not be considered until the stay is lifted or that it be summarily denied.

DATED this 5th day of May 2004.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

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By Angela Schaer Kaufmann
Angela Schaer Kaufmann – Of the Firm
Attorneys for Pioneer Irrigation District
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6th day of May 2004, I caused a true and correct copy of the foregoing **PETITION FOR RECONSIDERATION / MOTION FOR REFERRAL** to be served by the method indicated below, and addressed to the following:

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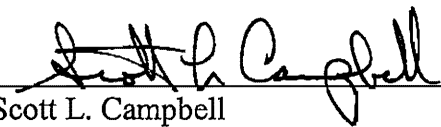
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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF INTEGRATED
MUNICIPAL APPLICATION PACKAGE
(CONSISTING OF 99 APPLICATIONS FOR
TRANSFERS OF WATER RIGHTS, AND 13
APPLICATIONS FOR AMENDMENT OF
PERMITS) IN THE NAME OF UNITED
WATER IDAHO, INC.

**PETITION FOR RECONSIDERATION /
MOTION FOR REFERRAL**

Pioneer Irrigation District and Settlers Irrigation District ("Districts") by and through their counsel of record MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHTD., and in accordance with IDAPA 37.01.01.710, 37.01.01.711, 37.01.01.712, 37.01.01.720, and 37.01.01.730, hereby move for reconsideration of Order Re: Motion to Dismiss Pioneer's Protest and Preclude Its Participation at Hearing; Order Re: Motion to Dismiss Settlers Protest and Preclude Its Participation at Hearing; and Order Re: United Water's Motion in Limine to Exclude Don Reading.

By this Motion, the Districts seek an Order from the Hearing Officer reversing the following aspects of his decision in the above-referenced Orders:

b. Based upon Pioneers' answers at its I.R.C.P. 30(b)(6) deposition Pioneer's participation in this matter shall be restricted solely to making legal argument and cross-examining United Water witnesses to the same extent as allowed other protestants.

Order Re: Motion to Dismiss Pioneer's Protest and Preclude Its Participation at Hearing, p. 6, (April 22, 2004).

b. Based upon Settlers' answers at its I.R.C.P. 30(b)(6) deposition Settlers' participation in this matter shall be restricted solely to making legal argument and cross-examining the United Water witnesses to the same extent as allowed other protestants. Settlers may propose conditions or modifications to the IMAP based upon its legal arguments and based upon the case presented by United Water at hearing.

Order Re: Motion to Dismiss Settlers' Protest and Preclude Its Participation at Hearing, p. 6, (April 22, 2004).

Because both by [sic] Pioneer and Settlers Irrigation District are solely restricted to presenting legal argument in this matter pursuant to the *Order re Motion to Dismiss Pioneer's Protest and Preclude Its Participation at Hearing* and *Order re Motion to Dismiss Settlers Protest and Preclude Its Participation at Hearing*, Don Reading will not be testifying on their behalf.

Order Re: United Water's Motion in Limine to Exclude Don Reading, p. 1, (April 22, 2004).

For purposes of this Motion, the Districts will refer to the Orders collectively as the "April 22 Orders."

I. THE EFFECT OF THE CURRENT STAY ORDER

On December 18, 2003, the Director of IDWR issued an Order Re: Motion for Stay. That Order provided, in pertinent part, that:

IT IS THEREFORE HEREBY ORDERED that this transfer proceeding shall be stayed in full pending the issuance of partial decrees for UWID's water right claims by the SRBA District Court, provided that action may be taken by the IDWR Hearing Officer upon any motions pending on the date of this order.

IT IS FURTHER ORDERED that this is an interlocutory order, which may be reviewed by the Director at any time pursuant to the provisions of IDAPA 37.01.01.711.

Order re Motion for Stay, p. 3.

Given that Order, the Districts recognize that the Hearing Officer likely does not have jurisdiction to hear this Motion until such time as the Director lifts the Stay currently in place. Nevertheless, in order to avoid any argument that the Districts' Motion is untimely, the Districts have chosen to file it now, and request the Hearing Officer's consideration now, if he finds that he has jurisdiction, or at such time as the Stay is lifted.

II. THE IDWR RULES OF PROCEDURE

This matter is governed not only by the Idaho Code, but the Idaho Department of Water Resources Rules of Procedure, IDAPA 37.01.01. Rule 710 governs interlocutory orders, and provides:

Interlocutory orders are orders that do not decide all previously undecided issues presented in a proceeding, except the agency may by order decide some of the issues presented in a proceeding and provide in that order that its decision on those issues is final and subject to review by reconsideration or appeal, but is not final on other issues. Unless an order contains or is accompanied by a document containing one (1) of the paragraphs set forth in Rules 720, 730 or 740 or a paragraph substantially similar, the order is interlocutory. The following orders are always interlocutory: orders initiating complaints or investigation; orders joining, consolidating or separating issues, proceedings, or parties; orders granting or denying intervention; orders scheduling prehearing conferences, discovery, hearing, oral arguments or deadlines for written submissions; and orders compelling or refusing to compel discovery. Interlocutory orders may be reviewed by the officer issuing the order pursuant to Rules 711, 760, or 770.

IDAPA 37.01.01.710. The April 22 Orders do not contain one or more of the paragraphs set forth in Rule 710 and is, therefore, an interlocutory order.

By this Motion, the Districts request one of two actions: 1) that the Hearing Officer review and ultimately reverse his decision in the manner further described below, or 2) that he certify the Order as recommended or preliminary pursuant to Rule 720 or 730, respectively, and refer it to the Director for further consideration. Rule 711 pertains to the review of an order by the issuing officer, and provides:

Any party or person affected by an interlocutory order may petition the officer issuing the order to review the interlocutory order. The officer issuing an interlocutory order may rescind, alter or amend any interlocutory order on the officer's own motion may review any interlocutory order affecting any party's substantive rights without giving all parties notice and an opportunity for written comment.

IDAPA 37.01.01.711.

Rule 720 allows a hearing officer to issue a recommended order, which then becomes final unless:

Within fourteen (14) days after (a) the service date of this recommended order, (b) the service date of a denial of a petition for reconsideration from this recommended order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this recommended order, any party may in writing support or take exceptions to any part of this recommended order and file briefs in support of the party's position with the agency head or designee on any issue in the proceeding. If no party files exceptions to the recommended order with the agency head or designee, the agency head or designee will issue a final order within fifty-six (56) days after:

- i. The last day a timely petition for reconsideration could have been filed with the hearing officer;
- ii. The service date of a denial of a petition for reconsideration by the hearing officer; or
- iii. The failure within twenty-one (21) days to grant or deny a petition for reconsideration by the hearing officer.

IDAPA 37.01.01.720. Similarly, Rule 730 also provides for review of preliminary orders by the agency head. IDAPA 37.01.01.730.

The effect of the Hearing Officer's order has been to prevent the Districts from presenting evidence at the hearing in this matter, a sanction which is very nearly as significant as dismissing the Districts entirely from the IMAP proceeding. The sanctions even raise constitutional due process considerations. Given the serious nature of the sanctions, the Districts are fully prepared to take whatever steps necessary to protect their rights, including judicial review once their administrative remedies have been exhausted.

Therefore, the Districts request that the Hearing Officer either reconsider and reverse his decision as set forth in the April 22 Orders, or deem them preliminary or recommended orders which can be reviewed by the agency head.

III. THE APRIL 22 ORDERS SHOULD BE REVERSED AS DESCRIBED HEREIN

A. The Restrictions Imposed By The Hearing Officer Are Sanctions

In his Order regarding Settlers and his Order regarding the Districts, the Hearing Officer held that he did not have the authority to sanction the Districts. Order Re: Motion to Dismiss Settlers' Protest, p. 3 and Order Re Motion to Dismiss Pioneer's Protest, p. 3. However, precluding the Districts from presenting factual evidence at the hearing in this matter cannot be considered to be anything *other* than a sanction. As discussed in Subsection B, below, Idaho's courts consider the preclusion of the presentation of evidence to be a sanction. In fact, not only is the preclusion of the presentation of evidence a sanction, it is among the most severe of sanctions. Therefore, the Hearing Officer has actually imposed sanctions.

B. Prohibiting The Districts From Presenting Factual Evidence Is Similar In Scope And Effect To Entering Judgment On The Merits Against Pioneer

In the Answer of Pioneer and Settlers to UWID's Motion to Dismiss Both Districts' Protests and Preclude Their Participation at Hearing, the Districts explained that dismissing a party's claims in a particular matter is an action of last resort, to be granted in only the most extreme circumstances. The Hearing Officer correctly denied UWID's request to dismiss the Districts' respective protests and to entirely preclude the Districts from participating in the hearing of this matter, in part.

However, the sanction imposed by the Hearing Officer is very nearly as preclusive as dismissal. By preventing the Districts from presenting factual evidence, the Hearing Officer has significantly limited the ability of the Districts to put on proof to counter that which may be adduced by UWID. Both the Idaho Supreme Court and federal courts have discussed the fact that such a sanction, like outright dismissal, should be reserved for only the most egregious of circumstances.¹

In one case, Mr. Roe failed to serve timely responses to discovery requests which asked for disclosure of witnesses, exhibits, and the facts upon which experts relied. The responses would have been due within two to three weeks of the scheduled trial. As a sanction, the magistrate "precluded Roe from presenting any evidence beyond his own testimony and his examination of court appointed witnesses," a sanction much like that imposed by the Hearing Officer in this matter, although perhaps less severe. *Roe v. Doe*, 129 Idaho 663, 664, 931 P.2d 657, 659 (Ct. App. 1997). The district court reversed, and the Does appealed.

¹ The Districts maintain that a court or a party should first look to Idaho decisions in determining matters regarding discovery in Idaho courts or administrative tribunals. However, the Hearing Officer has held that review of federal decisions is also appropriate. See _____.

In rendering its decision upholding the district court, the Court of Appeals considered several previous decisions. However, it also held as follows:

The sanctions selected by the trial court here, the exclusion of most of Roe's witnesses and other evidence, did not amount to an entry of judgment against Roe, and therefore *Ashby* does not directly govern. The chosen sanction was, however, a severe one.

Precluding a litigant from presenting evidence on crucial issues prevents a thorough examination of the merits at trial and in many circumstances will be tantamount to ordering judgment against the litigant on those issues. We conclude that, although the *Ashby* test does not apply when the sanction is something less than entry of judgment against the offending party, ***some balancing of the equities and some consideration of the efficacy of lesser sanctions must precede a trial court's imposition of a sanction which will significantly impair a party's ability to present its case on the merits at trial.***

Id. at 667-68, 931 P.2d at 661-62 (emphasis added). The Court then set forth the test to be used:

[W]e hold that a trial court, "must balance the equities by comparing the culpability of the disobedient party with the resulting prejudice to the innocent party." [Citation omitted]. Second, a trial court should not impose a sanction that will prevent full adjudication of a case on the merits without having first considered lesser sanctions and having reached a conclusion, supported by the record, that lesser sanctions would be ineffective or inadequate.

Id. at 668, 931 P.3d at 662. The Court of Appeals then analyzed the case before it in light of those rules, and found that the magistrate had not engaged in a balancing of the equities or consideration of lesser sanctions. Moreover, there was no prior order to compel, and there had been no pattern of delay or disobedience of orders exhibited by Roe. Further, "there was no showing of any prejudice to the Does that could not have been alleviated by a short postponement of the trial to allow them the time needed to meet whatever information was disclosed in the belated discovery responses." *Id.* In addition, the court had not considered a lesser sanction.

The same facts and circumstances are present here. First, the Hearing Officer's order does not reflect a balancing of the equities. This may be because the Hearing Officer did not believe that precluding a party from presenting evidence was a sanction. However, as *Roe* makes clear, precluding a party from presenting evidence *is* a sanction, and is among the most severe. The balancing of the equities is discussed below in Subsection C. Second, the Hearing Officer has imposed a sanction that will preclude a full adjudication of the case on the merits, without consideration of the efficacy of lesser sanctions. Again, this may be because the Hearing Officer did not consider the preclusion of evidence to be a sanction. This issue is addressed in Subsection D.

The Idaho Supreme Court did uphold the exclusion of one witness, and found that the lower court had appropriately balanced the equities and considered whether a lesser sanction would be appropriate. *Noble v. Ada County Elections Bd.*, 135 Idaho 495, 20 P.3d 679 (2000). However, in that case, Noble ignored the court's order that the parties complete all discovery by August 8, 2000, and did not disclose his expert witness until August 20, 2000. This was particularly egregious because the matter was set for hearing on August 15, 2000. Therefore, the Supreme Court upheld the district court's decision barring testimony by Noble's late-disclosed expert witness. *Id.* at 500, 20 P.3d at 684. *See also Bramwell v. South Rigby Canal Co.*, 136 Idaho 648, 39 P.3d 588 (2001) (excluding testimony of two witnesses when they were not timely disclosed in accordance with the court's pretrial order); *Clark v. Raty*, 137 Idaho 343, 48 P.3d 672 (Ct. App. 2002) (excluding expert opinion testimony after party failed to disclose testimony by discovery deadline, and further failed to disclose in accordance with court's explicit orders).

C. A Balancing Of The Equities Shows That Precluding The Districts From Presenting Factual Evidence Is An Inappropriate Sanction

When UWID served its 30(b)(6) deposition notices on Pioneer and Settlers, it asked the deponents to be prepared to testify regarding two rather narrow issues: (1) “each and every basis for Pioneer Irrigation District’s protest in this matter”; and (2) “[t]he conditions or modifications to the IMAP, if any, that would resolve your protest.” Exhibits A and B to Second Affidavit of Scott L. Campbell, filed concurrently herewith. There are several points to note about those inquiries.

First, UWID had already asked a very similar question to the first point in its First Set of Discovery Requests, when it asked each District to “Please state each and every basis for the Protestant’s Protest.” Pioneer and Settlers provided responses, signed under oath by their respective board presidents, to those questions. Included in those responses was a right to supplement. See Exhibits A and B to the [First] Affidavit of Scott Campbell, filed on or about September 10, 2003. Those responses also incorporated by reference the Districts’ respective statements of the issues and an initial response to UWID’s Requests for Information. *Id.* Therefore, this is not a situation wherein a party has completely failed to provide the requested information – it was provided, both in the formal discovery and informal contexts. As the *Roe* court held, not only formal discovery “but prior formal disclosure does bear upon the level of prejudice to the adversary that may flow from a delay in the formal responses.” *Roe*, 129 Idaho at 668, 931 P.2d at 662. The Hearing Officer discounted those responses, but they were provided under oath to the best of the Districts’ abilities.

Second, UWID requested the basis for Pioneer’s and Settlers’ protests in its 30(b)(6) notice. It did not require Pioneer and Settlers to provide every fact and piece of evidence it intended to use at the hearing in this matter. However, the Hearing Officer has now

precluded the Districts from introducing any factual evidence at trial, even though that information was not requested in the context of the 30(b)(6) deposition. Therefore, the sanction imposed by the Hearing Officer goes far beyond the scope of the 30(b)(6) depositions.

Third, and on a related note, it would be an unusual case indeed, whether in the administrative or court context, in which a party has developed every fact it will ultimately use at the time it files its initial pleading (*i.e.*, complaint or answer in the judicial context; application and protest in the IDWR administrative context). In other words, there is a fair distinction, particularly if one is a protesting party, between the information one might possess prior to filing a protest and the information one intends to present at trial, after discovery has been completed. In most, if not all, cases it would be impossible for a party to gather all evidence prior to filing an initial pleading, particularly if that initial pleading is an answer or protest, with a relatively short time for filing. UWID asked the 30(b)(6) deponents to be prepared to talk about the basis for their respective organizations' protests, but that issue is wholly separate and apart from other evidence or materials to be introduced at trial.

In fact, learning the evidence or materials to be introduced at trial would really seem to be the more pressing issue. One of the most critical purposes of discovery is to allow a party to prepare for trial and to prevent surprise. In this case, a partial hearing was set for late January and early February 2004. *See* Order Re: Motion for Stay and Scheduling Order. That Order did not set forth deadlines for disclosing fact and expert witnesses or exhibits. However, the Districts had each disclosed fact witnesses and expert witnesses. *See* Exhibits A, B and C to [First] Campbell Affidavit. The Districts had not yet disclosed hearing exhibits, but had not yet determined which exhibits it would use. There was nothing inappropriate about that lack of

disclosure, because the deadline had not been set. Subsequently, of course, the entire IMAP proceeding was stayed.

Addressing the equities regarding the conditions that would resolve the Districts' respective protests is a trickier matter, for two reasons. First, settlement discussions should remain confidential in accordance with Idaho Rule of Evidence 408. Second, an evaluation of settlement proposals necessarily involves attorney work product and communications which are protected by the attorney-client privilege. However, the Districts will say that they have consistently maintained that unless the proposed conditions are part of the IMAP itself, it is difficult to evaluate them. This is particularly true because there is no guarantee that IDWR will accept proposed conditions, even if the parties stipulate that they will accept the same. Second Campbell Aff., ¶ 3. Quite frankly, the Districts fail to see how potential conditions should impact their ability to present evidence in this matter.

D. Whether A Lesser Sanction Would Be Sufficient

The Hearing Officer also failed to consider whether a lesser sanction would be appropriate or sufficient. Again, this may have been because the Hearing Officer did not perceive that he was, in fact, imposing sanctions on the Districts.

There has been no showing that lesser sanctions would not be sufficient. As the Districts noted in their Answer to UWID's Motion to Dismiss, they pro-actively filed a Motion for Protective Order designed to address the propriety of a continued 30(b)(6) deposition. In the April 22 Orders, the Hearing Officer asserts that "United Water gave Pioneer exactly what it was asking for in its *Motion for Protective Order* – the deposition was not continued." Order Re: Motion to Dismiss Pioneer's Protest, p. 3. However, that statement also ignores the fact that the Districts proactively sought the Hearing Officer's guidance regarding additional 30(b)(6) depositions. Given that positive action on the Districts' parts, it is difficult to see how one could

argue that sanctions lesser than those imposed by the Hearing Officer would be insufficient to ensure the Districts' compliance. In fact, had the Hearing Officer denied the Districts' Motion for Protective Order, the Districts would have complied. Instead, UWID essentially led the Districts to believe the issue was at an end, and then filed the Motion that resulted in the severe sanctions now at issue.

In short, there has been no showing that lesser sanctions would be ineffective or insufficient. Far from showing a refusal to obey the Hearing Officer's orders, the Districts fully complied with the Order issued by the Hearing Officer on September 4, 2003, in response to Motion for Protective Order filed by the Districts and the Motion to Compel filed by UWID. Moreover, the Districts filed a Motion for Protective Order regarding the 30(b)(6) depositions, actively seeking the guidance of the Hearing Officer in this matter. Rather than showing an unwillingness to comply with the Hearing Officer's orders, the Districts have shown that they will fully and fairly comply with them. Not only is the sanction imposed by the Hearing Officer in this matter unnecessarily harsh, but the record simply does not support any notion that lesser sanctions would be ineffective.

Consideration of a lesser sanction has constitutional implications as well.

Although rendered in the context of an order dismissing a case with prejudice due to a party's repeated failure to attend her deposition, a court noted that it is necessary that a party seeking sanctions establish prejudice, because "sanctions that interfere with a litigant's claim violate due process when they are imposed merely for punishment of an infraction that did not threaten to interfere with the rightful decision in the case." *Sanchez v. Community Church Retirement Ctr.*, 1993 WL 473661 at *2 (N.D. Cal. 1993).

IV. CONCLUSION

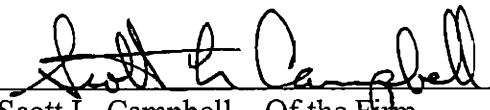
While the Hearing Officer correctly held that he is without the ability to issue sanctions under the facts and circumstances of this matter, prohibiting the Districts from introducing factual evidence at the hearing, including testimony of Don Reading is, in fact, a sanction. Moreover, while it is not outright dismissal, the sanction imposed by the Hearing Officer is among the most harsh, and authority from Idaho appellate courts is clear that before imposing such a sanction, a court or authority imposing the sanction must balance the equities, and must also find that a lesser sanction would be inadequate. Neither of those findings has been made in this case.

As the Districts acknowledged at the outset, under the terms of the Director's Stay Order, the Hearing Officer is likely without jurisdiction to decide the Districts' Petition for Reconsideration at this juncture. However, should the Stay Order be lifted, the Districts respectfully request that the Hearing Officer consider this Petition, and either reverse that part of his decision prohibiting the Districts from introducing factual evidence, or designate the matter as a preliminary or recommended order that would then be reviewed by the agency head.

For the reasons set forth herein, the Districts respectfully request that the Hearing Officer grant their Petition / Motion.

DATED this 5th day of May 2004.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By 
Scott L. Campbell -- Of the Firm

By Angela Schaer Kaufmann
Angela Schaer Kaufmann – Of the Firm
Attorneys for Pioneer Irrigation District
and Settlers Irrigation District

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of May 2004, I caused a true and correct copy of the foregoing PETITION FOR RECONSIDERATION / MOTION FOR REFERRAL to be served by the method indicated below, and addressed to the following:

Director
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Idaho Department of Water Resources
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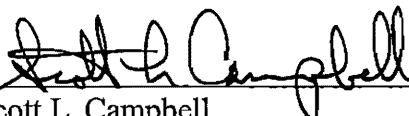
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By 
Scott L. Campbell

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Department of Water Resources

Attorneys for Pioneer Irrigation District
and Settlers Irrigation District

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18946.26

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

IN THE MATTER OF INTEGRATED
MUNICIPAL APPLICATION PACKAGE
(CONSISTING OF 99 APPLICATIONS FOR
TRANSFERS OF WATER RIGHTS, AND 13
APPLICATIONS FOR AMENDMENT OF
PERMITS) IN THE NAME OF UNITED
WATER IDAHO, INC.

**SECOND AFFIDAVIT OF SCOTT L.
CAMPBELL**

STATE OF IDAHO)
) ss.
County of Ada)

Scott L. Campbell, being first duly sworn upon oath, deposes and says:

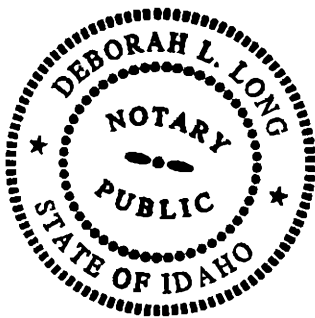
1. I am one of the attorneys of record providing legal representation to Pioneer Irrigation District and Settlers Irrigation District in the above-captioned matter. I have knowledge of the files pertinent to this matter, and I make this affidavit based upon personal knowledge.
2. Appended hereto as Exhibits A and B, respectively, are true and correct copies of the Notices of Deposition of Pioneer Irrigation District and Settlers Irrigation District.

3. Throughout the IMAP proceeding, Pioneer and Settlers have continually maintained the position that unless conditions proposed by UWID are made a part of the IMAP proceeding, they cannot be evaluated. This is particularly the case because it has been Pioneer and Settlers' experience that IDWR will not necessarily approve conditions to which all of the parties agree.

DATED this 5th day of May 2004.

By Scott L. Campbell
Scott L. Campbell

SUBSCRIBED AND SWORN to before me this 5th day of May 2004.



Deborah L. Long
NOTARY PUBLIC FOR IDAHO
Residing at Boise, Idaho
My Commission Expires 10/10/07

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of May 2004, I caused a true and correct copy of the foregoing **SECOND AFFIDAVIT OF SCOTT L. CAMPBELL** to be served by the method indicated below, and addressed to the following:

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By 
Scott L. Campbell

Moffatt Thomas

MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD.

US Bank Plaza Building
101 S Capitol Blvd 10th Fl
PO Box 829
Boise Idaho 83701 0829208 345 2000
208 385 5384 Fax
208 385 5323 Direct**FACSIMILE****From:** Deborah L. Long
Administrative Assistant to Scott L. Campbell**Date:** May 5, 2004**Re:** United Water IMAP**File No.:** 18946.26**Number of pages being transmitted including the cover page: 33**
Please call fax operator at (208) 345-2000 if all pages are not received.

	Name	Organization	Fax No.	Voice No.
To:		Idaho Department of Water Resources	327-7866	

Message:

Please be advised, a filing from Moffatt Thomas (Scott L. Campbell) was hand delivered to the Department at approximately 4:30 on Wednesday, May 5, 2004. The Affidavit of Scott L. Campbell enclosed with that hand delivery was send without the Exhibits. Those exhibits are attached. Please contact this office if you have any questions.

We apologize for any inconvenience this error may have caused.

PLEASE DELIVER IMMEDIATELY

The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If you have received this communication in error, please immediately notify us by telephone to arrange for return of the original document to us. Thank you.

Christopher H. Meyer, Esq. (Idaho State Bar No. 4461)
John M. Marshall, Esq. (Idaho State Bar No. 5628)
GIVENS PURSLEY LLP
277 North 6th Street, Suite 200
P.O. Box 2720
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Office: (208) 388-1200
Fax: (208) 388-1300
Email: chrismeyer@givenspursley.com; jmm@givenspursley.com
www.givenspursley.com
Counsel for Applicant United Water Idaho Inc.

**BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES**

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

**NOTICE OF DEPOSITION DUCES TECUM
OF PIONEER IRRIGATION DISTRICT**

TO: THE ABOVE NAMED PROTESTANT AND ITS ATTORNEY OF RECORD

YOU WILL PLEASE TAKE NOTICE that on the 19th day of August 2003 at the hour of 9:00 a.m. at the offices of Givens Pursley LLP, 277 North 6th Street, Suite 200, Boise, Idaho, the Applicant United Water Idaho Inc. will take the deposition of Pioneer Irrigation District in the above-entitled action upon oral examination pursuant to Rule 30(b)(6) of the Idaho Rules of Civil Procedure, before a Notary Public, or before some other officer authorized by law to administer oaths, and continuing from day to day thereafter, until said deposition is completed. You are required to designate one or more officers, directors or managing agents to be examined regarding:

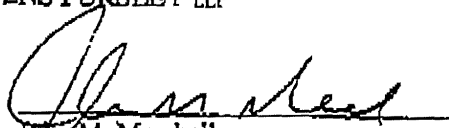
1. Each and every basis for Pioneer Irrigation District's protest in this matter.
2. The conditions or modifications to the IMAP, if any, that would resolve your protest.

You are further required to provide and to produce at the deposition all documents in your possession related your protest in this matter.

DATED this 7th day of August 2003.

GIVENS PURSLEY LLP

By



John M. Marshall

Attorneys for Applicant United Water

AUG. -07' 03(THU) 15:15 GIVEN: MURSE

TEL: 208 385 1300

P. 024

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of August 2003, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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State Office
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Hearing Officer
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Gary L. Spackman
Regional Manager
Idaho Department of Water Resources
Western Regional Office
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Boise, ID 83705

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TEL: 208 385 1300

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P. 026

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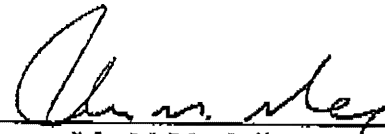
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Office: (208) 388-1200
Fax: (208) 388-1300
Email: chrismeyer@givenspursley.com; jmm@givenspursley.com
www.givenspursley.com
Counsel for Applicant United Water Idaho Inc.

RECEIVED

AUG 19 2003

Moffatt, Thomas, Barnett, Pank and Fajko

**BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES**

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

**AMENDED NOTICE OF DEPOSITION
DUCES TECUM OF PIONEER
IRRIGATION DISTRICT**

TO: THE ABOVE NAMED PROTESTANT AND ITS ATTORNEY OF RECORD

YOU WILL PLEASE TAKE NOTICE that on the 3rd day of September 2003 at the hour of 9:00 a.m. at the offices of Givens Pursley LLP, 601 West Bannock Street, Boise, Idaho, the Applicant United Water Idaho Inc. will take the deposition of Pioneer Irrigation District in the above-entitled action upon oral examination pursuant to Rule 30(b)(6) of the Idaho Rules of Civil Procedure, before a Notary Public, or before some other officer authorized by law to administer oaths, and continuing from day to day thereafter, until said deposition is completed. You are required to designate one or more officers, directors or managing agents to be examined regarding:

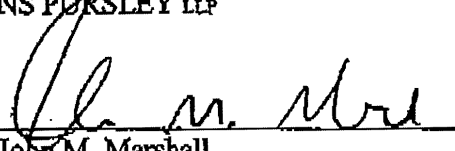
1. Each and every basis for Pioneer Irrigation District's protest in this matter.
2. The conditions or modifications to the IMAP, if any, that would resolve your protest.

You are further required to provide and to produce at the deposition all documents in your possession related your protest in this matter.

DATED this 18th day of August 2003.

GIVENS PURSLEY LLP

By


John M. Marshall
Attorneys for Applicant United Water

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of August 2003, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Idaho Department of Water Resources
State Office
1301 N. Orchard Street
P.O. Box 83720
Boise, ID 83720-0098

☒ U.S. Mail
☐ Facsimile
☐ Hand Delivery
☐ Overnight Mail

Peter R. Anderson, Esq.
Hearing Officer
729 W. Braemere Rd.
Boise, ID 83702

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Gary L. Spackman
Regional Manager
Idaho Department of Water Resources
Western Regional Office
2735 Airport Way
Boise, ID 83705

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U.S. Department of the Interior
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Boise, ID 83724

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Hydro Logic, Inc.
1002 West Franklin St.
Boise, ID 83702-5431

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E. Gail McGarry, P.E.
Program Manager
Water Rights & Acquisitions
PN-3100
U.S. Bureau of Reclamation
Pacific Northwest Region
1150 N. Curtis Road
Boise, ID 83706-1234

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Tammy Zokan, Esq.
Moore, Smith, Buxton & Turcke, Chtd.
225 North 9th St., Ste. 420
Boise, ID 83702

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Assistant City Attorney
Boise City Attorney's Office
150 N. Capitol Blvd.
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Daniel V. Steenson, Esq.
Ringert Clark, Chart
455 S. Third Street
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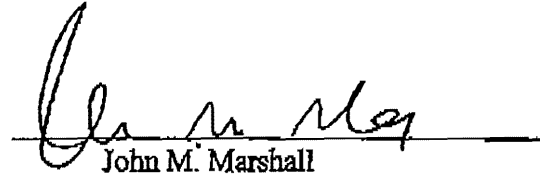
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409 West Jefferson
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John M. Marshall

RECEIVED

SEP 05 2003

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John M. Marshall, Esq. (Idaho State Bar No. 5628)
GIVENS PURSLEY LLP
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P.O. Box 2720
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Fax: (208) 388-1300
Email: chrimeyer@givenspursley.com; jmm@givenspursley.com
www.givenspursley.com
Counsel for Applicant United Water Idaho Inc.

Michael Thomas, Barred Book and Filing

**BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES**

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

**NOTICE OF CONTINUATION OF
DEPOSITION DUCES TECUM OF
PIONEER IRRIGATION DISTRICT**

TO: THE ABOVE NAMED PROTESTANT AND ITS ATTORNEY OF RECORD

YOU WILL PLEASE TAKE NOTICE that on the 12th day of September 2003 at the hour of 9:00 a.m. at the offices of Givens Pursley LLP, 601 West Bannock Street, Boise, Idaho, the Applicant United Water Idaho Inc. will continue taking the deposition of Pioneer Irrigation District in the above-entitled action upon oral examination pursuant to Rule 30(b)(6) of the Idaho Rules of Civil Procedure, before a Notary Public, or before some other officer authorized by law to administer oaths, and continuing from day to day thereafter, until said deposition is completed. You are required to designate one or more officers, directors or managing agents to be examined regarding:

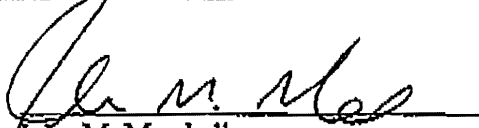
1. Each and every basis for Pioneer Irrigation District's protest in this matter.
2. The conditions or modifications to the IMAP, if any, that would resolve your protest.

You are further required to provide and to produce at the deposition all documents in your possession related your protest in this matter.

DATED this 4th day of September 2003.

GIVENS PURSLEY LLP

By



John M. Marshall

Attorneys for Applicant United Water

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of September 2003, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Kathleen Marion Carr, Esq.
Office of the Field Solicitor
U.S. Department of the Interior
550 West Fort Street
Boise, ID 83724

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☐ Overnight Mail

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Hydro Logic, Inc.
1002 West Franklin St.
Boise, ID 83702-5431

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Program Manager
Water Rights & Acquisitions
PN-3100
U.S. Bureau of Reclamation
Pacific Northwest Region
1150 N. Curtis Road
Boise, ID 83706-1234

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Bruce M. Smith, Esq.
Tammy Zokan, Esq.
Moore, Smith, Buxton & Turcke, Chtd.
225 North 9th St., Ste. 420
Boise, ID 83702

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Assistant City Attorney
Boise City Attorney's Office
150 N. Capitol Blvd.
P.O. Box 500
Boise, ID 83701-0500

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Daniel V. Steenson, Esq.
Ringert Clark, Chart
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P.O. Box 2773
Boise, ID 83701-2773

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Angela Schaer Kaufmann, Esq.
Andrew J. Waldera, Esq.
Moffatt Thomas Barrett Rock & Fields, Chartered
101 S. Capital Blvd., 10th Floor
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Travis L. Thompson, Esq.
Barker, Rosholt & Simpson, LLP
205 North 10th, Suite 520
P.O. Box 2139
Boise, ID 83701-2139

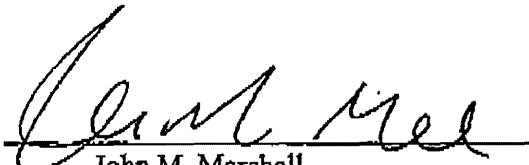
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Beeman & Associates PC
409 West Jefferson
Boise, ID 83702-6049

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☐ Hand Delivery
☐ Overnight Mail


John M. Marshall

AUG. -07' 03(THU) 15:15 GIVENS PURSLEY

TEL: 208 388 1300

P. 027

Christopher H. Meyer, Esq. (Idaho State Bar No. 4461)
John M. Marshall, Esq. (Idaho State Bar No. 5628)
GIVENS PURSLEY LLP
277 North 6th Street, Suite 200
P.O. Box 2720
Boise, Idaho 83701-2720
Office: (208) 388-1200
Fax: (208) 388-1300
Email: chrismeyer@givenspursley.com; jmm@givenspursley.com
www.givenspursley.com
Counsel for Applicant United Water Idaho Inc.

**BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES**

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

**NOTICE OF DEPOSITION DUCES TECUM
OF SETTLERS IRRIGATION DISTRICT**

TO: THE ABOVE NAMED PROTESTANT AND ITS ATTORNEY OF RECORD

YOU WILL PLEASE TAKE NOTICE that on the 21st day of August 2003 at the hour of 9:00 a.m. at the offices of Givens Pursley LLP, 277 North 6th Street, Suite 200, Boise, Idaho, the Applicant United Water Idaho Inc. will take the deposition of Settlers Irrigation District in the above-entitled action upon oral examination pursuant to Rule 30(b)(6) of the Idaho Rules of Civil Procedure, before a Notary Public, or before some other officer authorized by law to administer oaths, and continuing from day to day thereafter, until said deposition is completed. You are required to designate one or more officers, directors or managing agents to be examined regarding:

AUG. -07' 03(THU) 15:16 GIVENS PURSLEY

TEL: 208 385-1300

P.028

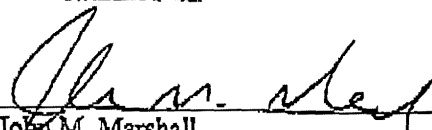
1. Each and every basis for your protest in this matter.
2. The conditions or modifications to the IMAP, if any, that would resolve your protest.

You are further required to provide and to produce at the deposition all documents in your possession related your protest in this matter.

DATED this 7th day of August 2003,

GIVENS PURSLEY LLP

By



John M. Marshall

Attorneys for Applicant United Water

AUG. -07' 03(THU) 15:16 GIVENS, JRSLE

TEL: 208 385-1300

P. 029

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of August 2003, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Idaho Department of Water Resources
State Office
1301 N. Orchard Street
P.O. Box 83720
Boise, ID 83720-0098

☐ U.S. Mail
☒ Facsimile
☐ Hand Delivery
☐ Overnight Mail

Peter R. Anderson, Esq.
Hearing Officer
729 W. Bracmere Rd.
Boise, ID 83702

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Gary L. Spackman
Regional Manager
Idaho Department of Water Resources
Western Regional Office
2735 Airport Way
Boise, ID 83705

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Kathleen Marion Carr, Esq.
Office of the Field Solicitor
U.S. Department of the Interior
550 West Fort Street
Boise, ID 83724

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Mr. Edward Squires
Hydro Logic, Inc.
1002 West Franklin St.
Boise, ID 83702-5431

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☐ Overnight Mail

AUG. -07' 03(THU) 15:16 GIVENS, MURSLE

TEL: 208 385 1300

P. 030

E. Gail McGarry, P.E.
Program Manager
Water Rights & Acquisitions
PN-3100
U.S. Bureau of Reclamation
Pacific Northwest Region
1150 N. Curtis Road
Boise, ID 83706-1234

☐ U.S. Mail
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Bruce M. Smith, Esq.
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Moore, Smith, Buxton & Turcke, Chtd.
225 North 9th St., Ste. 420
Boise, ID 83702

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Matthew K. Wilde, Esq.
Assistant City Attorney
Boise City Attorney's Office
150 N. Capitol Blvd.
P.O. Box 500
Boise, ID 83701-0500

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Charles L. Honsinger, Esq.
Daniel V. Steenson, Esq.
Ringert Clark, Char.
455 S. Third Street
P.O. Box 2773
Boise, ID 83701-2773

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Scott L. Campbell, Esq.
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101 S. Capital Blvd., 10th Floor
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AUG. -07' 03 (THU) 15:16 GIVENS -PHRSLE

TEL: 208 385 1300

P. 031

Albert P. Barker, Esq.
Travis L. Thompson, Esq.
Barker, Rosholt & Simpson, LLP
205 North 10th, Suite 520
P.O. Box 2139
Boise, ID 83701-2139

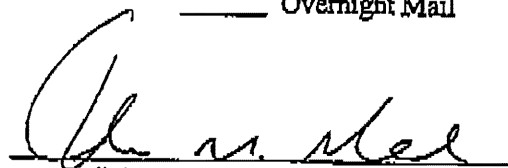
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Josephine P. Beerman, Esq.
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John M. Marshall

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Email: chrismeyer@givenspursley.com; jimm@givenspursley.com
www.givenspursley.com
Counsel for Applicant United Water Idaho Inc.

**BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES**

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
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PERMITS

**AMENDED NOTICE OF DEPOSITION
DUCES TECUM OF SETTLERS
IRRIGATION DISTRICT**

TO: THE ABOVE NAMED PROTESTANT AND ITS ATTORNEY OF RECORD

YOU WILL PLEASE TAKE NOTICE that on the 4th day of September 2003 at the hour of 9:00 a.m. at the offices of Givens Pursley LLP, 601 West Bannock Street, Boise, Idaho, the Applicant United Water Idaho Inc. will take the deposition of Settlers Irrigation District in the above-entitled action upon oral examination pursuant to Rule 30(b)(6) of the Idaho Rules of Civil Procedure, before a Notary Public, or before some other officer authorized by law to administer oaths, and continuing from day to day thereafter, until said deposition is completed. You are required to designate one or more officers, directors or managing agents to be examined regarding:

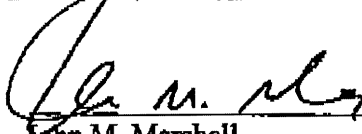
1. Each and every basis for your protest in this matter.
2. The conditions or modifications to the IMAP, if any, that would resolve your protest.

You are further required to provide and to produce at the deposition all documents in your possession related your protest in this matter.

DATED this 18th day of August 2003.

GIVENS PIRSLEY LLP

By



John M. Marshall

Attorneys for Applicant United Water

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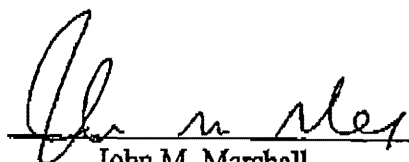
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www.givenspursley.com
Counsel for Applicant United Water Idaho Inc.

RECEIVED

SEP 03 2003

Moffatt, Thomas, Burnham Habel and Fields

**BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES**

IN THE MATTER OF INTEGRATED
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INDIVIDUAL APPLICATIONS FOR
TRANSFERS OF WATER RIGHTS AND
APPLICATIONS FOR AMENDMENT OF
PERMITS

**SECOND AMENDED NOTICE OF
DEPOSITION DUCES TECUM OF
SETTLERS IRRIGATION DISTRICT**

TO: THE ABOVE NAMED PROTESTANT AND ITS ATTORNEY OF RECORD

YOU WILL PLEASE TAKE NOTICE that on the 4th day of September 2003 at the hour of 9:00 a.m. at the offices of Burnham Habel & Associates, Inc., 668 North 9th Street, Boise, Idaho, the Applicant United Water Idaho Inc. will take the deposition of Settlers Irrigation District in the above-entitled action upon oral examination pursuant to Rule 30(b)(6) of the Idaho Rules of Civil Procedure, before a Notary Public, or before some other officer authorized by law to administer oaths, and continuing from day to day thereafter, until said deposition is completed. You are required to designate one or more officers, directors or managing agents to be examined regarding:

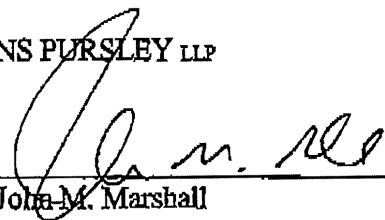
1. Each and every basis for your protest in this matter.
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DATED this 2nd day of September 2003.

GIVENS PURSLEY LLP

By


John M. Marshall
Attorneys for Applicant United Water

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Pacific Northwest Region
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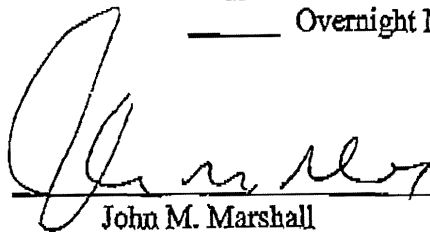
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Counsel for Applicant United Water Idaho Inc.

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Moist, Thomas, Carter Rock 2003

**BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES**

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

**NOTICE OF CONTINUATION OF
DEPOSITION DUCES TECUM OF
SETTLERS IRRIGATION DISTRICT**

TO: THE ABOVE NAMED PROTESTANT AND ITS ATTORNEY OF RECORD

YOU WILL PLEASE TAKE NOTICE that on the 15th day of September 2003 at the hour of 9:00 a.m. at the offices of Givens Pursley LLP, 601 West Bannock Street, Boise, Idaho, the Applicant United Water Idaho Inc. will continue taking the deposition of Settlers Irrigation District in the above-entitled action upon oral examination pursuant to Rule 30(b)(6) of the Idaho Rules of Civil Procedure, before a Notary Public, or before some other officer authorized by law to administer oaths, and continuing from day to day thereafter, until said deposition is completed. You are required to designate one or more officers, directors or managing agents to be examined regarding:

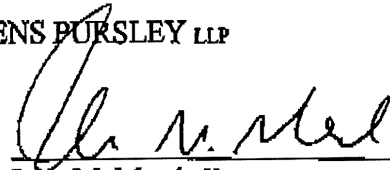
1. Each and every basis for Pioneer Irrigation District's protest in this matter.
2. The conditions or modifications to the IMAP, if any, that would resolve your protest.

You are further required to provide and to produce at the deposition all documents in your possession related your protest in this matter.

DATED this 4th day of September 2003.

GIVENS PURSLEY LLP

By


John M. Marshall
Attorneys for Applicant United Water

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of September 2003, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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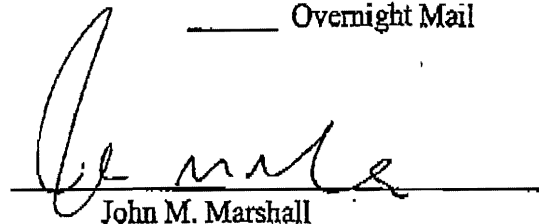
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Department of Water Resources

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Attorneys for Applicant United Water Idaho Inc.

BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF INTEGRATED
MUNICIPAL APPLICATION PACKAGE
("IMAP") OF UNITED WATER IDAHO
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**MOTION FOR STATUS CONFERENCE
BEFORE THE DIRECTOR**

On December 18, 2003 the Director issued his *Order Re Motion for Stay* (the "*Stay Order*"), the effect of which is to halt the entire IMAP proceeding indefinitely pending issuance of partial decrees from the SRBA District Court for United Water Idaho Inc.'s ("United Water") water rights. The *Stay Order* cites the potential for overlapping proceedings with the SRBA and the Department's strained financial resources as primary grounds for the stay.

United Water and Boise City (collectively, "Petitioners") filed their *Joint Petition for Review of Director's Stay Order* ("*Petition*") on January 8, 2004. The *Petition* includes a request for status conference. Parties opposed to the *Petition* filed responses on January 22, 2004, and Petitioners filed a *Joint Reply in Support of Petition for Review of Director's Stay Order* on February 2, 2004.

The *Petition* urges the Director to reconsider the *Stay Order* and amend it to allow the IMAP to proceed to consider only what are termed the "1996 Act Issues"—that is, the proposed

fifty-year planning horizon and the quantification of United Water's reasonably anticipated future needs. These issues do not impinge upon or interact in any way with issues to be submitted to the SRBA Court.

A hearing limited to these "1996 Act Issues," would eliminate the prejudice to Petitioners caused by potentially years of delay and would promote the public policy of encouraging forward looking water planning by municipalities. If the stay remains in place, the Department will further delay critical legal guidance regarding the 1996 Act, without which municipalities are reluctant to engage in the kind of forward-looking planning encouraged by the Act. *See* United Water's *Submission of Letter* dated January 13, 2004 (submitting a letter to the Director from the City of Nampa).

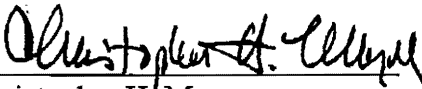
United Water has invested considerable funds taking the lead in implementing the 1996 Act. It is entitled to resolution by the Department of the 1996 Act issues presented in the IMAP in a timely fashion. As pointed out in the *Petition*, the stay may render obsolete or irrelevant the IMAP's contemporary population planning and forecasting data that United Water developed at considerable expense.

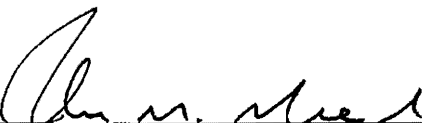
There is now an opportunity to further streamline the hearing. In a series of critical decision issued on April 22, 2004, the Hearing Officer granted (in part) United Water's motions to preclude Pioneer and Settlers from presenting any witnesses at the hearing. If the Hearing Officer grants United Water's pending motion to present the direct testimony of John Church in written format, the hearing in this matter will amount to little more than cross-examination and rehabilitation testimony of John Church. This could be conducted in a single day—thus avoiding any undue burden on the Department's resources.

By this motion, the Petitioners respectfully request that the Director convene a status conference to discuss United Water's pending *Joint Petition for Review of Director's Stay Order*.

RESPECTFULLY SUBMITTED this 27th day of April 2004.

GIVENS PURSLEY LLP

By 
Christopher H. Meyer

By 
John M. Marshall

Attorneys for Applicant United Water Idaho Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of April 2004, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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Idaho Department of Water Resources
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Boise, ID 83720-0098

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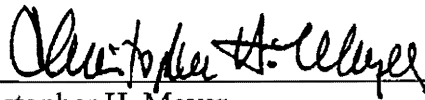
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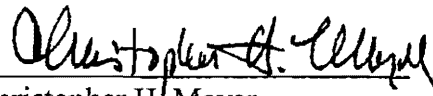
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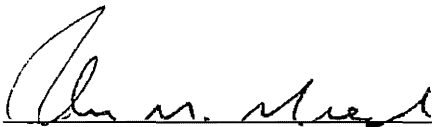
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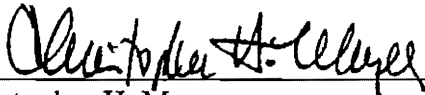
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