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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.

**UNITED WATER'S REPLY IN SUPPORT
OF ITS MOTION TO DISMISS AND
PRECLUDE PARTICIPATION AT
HEARING**

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INTRODUCTION

This is United Water Idaho Inc.'s ("United Water") reply to the *Answer of Pioneer & Settlers to UWID's Motion to Dismiss Both Districts' Protest and Preclude Their Participation at Hearing* ("Answer") filed by Pioneer Irrigation District and Settlers Irrigation District (collectively, "Pioneer and Settlers" or the "Districts").¹

The Districts do not challenge that their designated 30(b)(6) witnesses testified under oath that:

- ☐ They are entirely unfamiliar with the IMAP, never having even read the application.
- ☐ They have no knowledge of any underlying basis or evidence supporting the bare allegations in their protests and statements of issues.
- ☐ They are unable to address why the proposed conditions will not prevent any possible injury.

The Districts apparently believe that, in the absence of a motion and order to compel, their sworn 30(b)(6) statements are not binding on them and are of no particular consequence. In their minds, their performance at deposition was a permissible litigation tactic designed to waste the time and resources of United Water (and of the Hearing Officer) without consequence to the Districts.

Convinced that the "get-an-order-first" requirement in Procedure Rule 531 and I.R.C.P. 37(b) effectively shielded them from sanctions, Pioneer and Settlers deliberately designated

¹ The Districts' *Answer* is a consolidated response to United Water's *Motion to Dismiss Settler's Protest and Preclude Its Participation at Hearing* ("Motion to Dismiss Settlers") and to United Water's *Motion to Dismiss Pioneer's Protest and Preclude Its Participation at Hearing* ("Motion to Dismiss Pioneer"). The *Motion to Dismiss Settlers* and the *Motion to Dismiss Pioneer* collectively are referred to herein as the "Motions to Dismiss."

At the prehearing conference on September 19, 2003, both United Water and the Districts waived oral argument.

30(b)(6) witnesses who were wholly without knowledge of any factual basis supporting the Districts' protests. This is how Pioneer and Settlers have shown their "utmost respect for the Department's processes." *Answer* at 1.

In doing so, the Districts overlooked the most obvious consequence of their actions. The Districts' argue that the pivotal issue is sanctions. It is not. United Water simply asks that Pioneer and Settlers be bound by their own responses. The Districts witnesses have testified that they cannot confirm, explain, document or defend their own protest. Consequently, United Water is entitled to dismissal of those protests. Dismissal is not a sanction but a direct consequence of the Districts' own admissions.

Of course, the Hearing Officer may determine to impose sanctions as well. The plainest authority is I.R.C.P. 37(d), which Pioneer and Settlers acknowledge is applicable here. In contrast to Rule 37(b), Rule 37(d) authorizes the Hearing Officer to impose sanctions (including dismissal, attorney fees, etc.) without going through the pointless exercise of a motion to compel. Rule 37(d) is triggered when a party fails to appear for a 30(b)(6) deposition, or (as is the case here) produces a witness wholly incapable of addressing the subject matter of the deposition. The Districts' entire defense to Rule 37(d) sanctions consists of (1) complaining about the federalization of the rule and (2) reliance on dictum in a readily distinguishable Idaho case.

We wish to underscore that the Rule 37(d) argument (along with the other bases for sanctions) are arguments in the alternative. The main point is that the Districts are bound by the testimony of their designated deponents. The Districts offer nothing in their defense on this key point. Instead, most of their 32-page brief is devoted to proving that sanctions cannot be awarded under Rule 37(b)—an issue that merited no more than a footnote in United Water's opening brief.

ARGUMENT

I. PIONEER & SETTLERS ARE BOUND BY THE TESTIMONY OF THEIR RESPECTIVE 30(B)(6) DESIGNEES, IRRESPECTIVE OF WHETHER SANCTIONS ARE APPLICABLE.

In the words of I.R.C.P. 30(b)(6), a deponent for an organization testifies “on its behalf.”

The rule means what it says:

The testimony elicited at the Rule 30(b)(6) deposition represents the knowledge of the corporation, not of the individual deponents. The designated witness is “speaking for the corporation,” and this testimony must be distinguished from that of a “mere corporate employee” whose deposition is not considered that of the corporation and whose presence must be obtained by subpoena. . . . The corporation appears vicariously through its designee. . . .

. . . Moreover, the designee must not only testify about facts within the corporation’s knowledge, but also its subjective beliefs and opinions. . . . The designee, in essence, represents the corporation just as an individual represents him or herself at a deposition.

United States v. Taylor, 166 F.R.D. 356, 361 (M.D. N.C. 1996).

Taylor is consistent with common understanding of Rule 30(b)(6):

A Rule 30(b)(6) deponent’s testimony represents the knowledge and opinions not just of the individual deponent, but of the governmental or business entity itself. The testimony represents the entity’s “position” on the topics in the Rule 30(b)(6) deposition notice. In effect, the deponent is speaking for the entity, presenting the entity’s position on the listed topics, including for instance the entity’s interpretation of events or documents. 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).

Based on the testimony of their designated 30(b)(6) deponents, the position of Pioneer and Settlers may be paraphrased as follows:

The protest was drafted by our lawyer. We have no idea whether any of these statements are true. In fact, we do not even understand what they mean. In any event, we have not even read the application that is the basis of our protest. Nor can we explain how the application, if granted, would injure us. We are aware of no facts that support our protest. Finally, we have given no thought to any conditions that would resolve our protest. Nevertheless, we are confident that our attorney has good reasons for opposing this application.

This is no exaggeration. It is simply a condensation of what is said in the transcripts.

Having admitted each of these things, the Districts' protests should be dismissed. Again, this has nothing to do with sanctions. This is a simple and direct consequence of the Districts' own sworn statements. The Districts simply have nothing to aid the Hearing Officer's consideration of the IMAP.

The Districts have offered no defense to this argument. Rather, their *Answer* is devoted to addressing unrelated arguments in the alternative explored below.²

² The Districts offer a few other inconsequential arguments. (1) The District's entirely fallacious confidentiality defense, *Answer* at 25, is discussed in United Water's separate *Answer to Motion to Strike*, which we hereby incorporate by reference. (2) The Districts contend that the unprepared state of their witnesses is actually United Water's fault because the witnesses had not yet read the truckload of well production documents that United Water made available in discovery. *Answer* at 29. This hardly explains why the deponents had not, for instance, ever read the IMAP. (3) They complain in a heading that the deposition notices were insufficiently specific but then go on to acknowledge that the notices were consistent with I.R.C.P. 30(b)(6). *Answer* at 24-25. (4) The Districts downplay the significance of the complete lack of reference to the IMAP protest in their minutes. *Answer* at 29-30. This is a side issue that does not merit further debate.

II. THE DISTRICTS MAY NOT FILL THE VOID OF THEIR KNOWLEDGE THOUGH THEIR ATTORNEYS.

The Districts contend that their complete lack of knowledge is of no consequence, because they may count on their attorneys to carry the ball for them. This does not wash. This is how the *Taylor* Court disposed of a similar suggestion:

This suggested procedure assumes that the attorneys can directly represent UCC's interest on their own as opposed to merely being a conduit of the party. This, of course, is not true. If a corporation has knowledge or a position as to a set of alleged facts or an area of inquiry, it is its officers, employees, agents or others who must present the position, give reasons for the position, and, more importantly, stand subject to cross-examination. A party's trial attorney normally does not fit that bill.

United States v. Taylor, 166 F.R.D. at 362.

III. THE DISTRICTS WERE NOT TRICKED INTO PRODUCING VACANT WITNESSES.

The Districts complain that they were outmaneuvered by United Water when United Water decided not to proceed with further 30(b)(6) depositions. *Answer* § III at 9-11. This proves the rule that no good deed goes unpunished.

United Water was under no obligation to give Pioneer and Settlers a second chance, much less a third and fourth chance, as it did. Nevertheless, United Water repeatedly extended invitations to the Districts to remedy their situation by providing more knowledgeable 30(b)(6) witnesses (assuming any exist). *See Exhibits D through H to Motion to Dismiss Settlers*.

The Districts express frustration and disappointment that United Water declined to engage in an unnecessary and expensive motion practice in connection with United Water's re-noticing of its depositions. However, it was the Districts who declined United Water's invitations to provide knowledgeable witnesses, and in so doing mooted their own motion to compel.

At first, the Districts were ambiguous about whether they would provide other witnesses.³ On September 5, however, the Districts stated clearly, for the first time, their absolute unwillingness to provide any further witnesses in response to the 30(b)(6) notice. Letter from Mr. Campbell to Mr. Meyer at 1 (Sept. 5, 2003) (Exhibit I to *Motion to Dismiss Settlers*).

United Water responded (quite reasonably) that the notices of continued deposition were provided solely to enable the Districts to designate more knowledgeable witnesses. United Water did not wish to continue to depose the same witnesses. “It would be futile and wasteful to depose these gentlemen again. The notices of continued deposition for Pioneer and Settlers are withdrawn.” Letter from Mr. Meyer to Mr. Campbell at 1 (Sept. 9, 2003) (Exhibit J to Motion to Dismiss Settlers). (Formal notices of withdrawal were filed the following day.)

Consequently, when the Districts’ *Motion for Protective Order* arrived on September 10, it was already moot, as noted in United Water’s promptly filed *Notice of Mootness*.

In short, United Water went the extra mile by re-noticing the depositions in order to give the Districts another chance to offer knowledgeable witnesses, if they could. United Water withdrew those notices only in response to the Districts’ written statements that they would not produce any new witnesses. For this courtesy, the Districts now complain that they were tricked into withdrawing their *Motion for Protective Order*. The Districts have only themselves to blame for their conduct.

³ “I am not presently inclined to provide available dates for Mr. Brush’s deposition” Letter from Mr. Campbell to Mr. Meyer (Sept. 4, 2003) (Exhibit G to *Motion to Dismiss Settlers*). Mr. Brush was identified by Pioneer’s 30(b)(6) deponent as a more knowledgeable person.

IV. SANCTIONS MAY BE AWARDED UNDER RULE 37(D).

As explained above, the Hearing Officer may dismiss the Districts' protests (or otherwise limit their participation at hearing) without reference to the law of sanctions. The discussion which follows deals with alternative bases for action by the Hearing Officer.

A. No previous order must be obtained for sanctions under Rule 37(d).

The Districts' main defense against sanctions is that United Water did not first obtain an order to compel, thereby giving the Districts an opportunity to avoid sanctions by after-the-fact compliance. This argument is inapplicable to Rule 37(d). "Initially, we point out that unlike subdivision (b) of Rule 37, on its face subdivision (d) does not require the court, prior to imposing sanctions, to have issued an order compelling discovery." *Black Horse Lane Assoc., L.P. v. Dow Chemical Corp.*, 228 F.3d 275, 302 (3rd Cir. 2000).

This is nothing new. It is longstanding black letter law:

Rule 37(d) allows the imposition of sanctions against a party for especially serious disregard of the obligations imposed by the discovery rules even though it has not violated any court order. ...

No court order is required to bring Rule 37(d) into play.

Wright, Miller & Marcus, *Federal Practice and Procedure* § 2291 at 714 (1994).

B. Designation of a patently unknowledgeable witness is the legal equivalent of a "failure to appear" at the deposition.

Rule 37(d) sanctions are available when a party "fails to appear" at a 30(b)(6) deposition.

Federal courts⁴ have made it crystal clear that production of a 30(b)(6) witness who is wholly

⁴ Very few state courts have addressed the question of the unknowledgeable witness. The closest we have come are these: *Doanbuy Lease & Co., Inc. v. Melcher*, 488 P.2d 339 (N.M. 1971) (Holding that New Mexico's identical Rule 37(d) authorizes sanctions without a prior order where the 30(b)(6) deponent engaged in evasions, objections and argument tantamount to a refusal to appear. The proper remedy, said the Court, was dismissal.); *Municipal Subdistrict, Northern Colo. Water Conservancy District v. OXY USA, Inc.*, 990 P.2d 701, 710 (Colo. 1999) (en banc) (holding a trial court may issue sanctions under Col.R.Civ.P. 37(d) when a 30(b)(6) designee appears but is unable to answer questions specified in the notice).

unknowledgeable and unprepared to address the subject matter constitutes a “failure to appear” and triggers Rule 37(d) sanctions. United Water’s *Motion to Dismiss Settlers* provides a thorough analysis.⁵

The cited cases are in the mainstream of legal analysis on the subject:

A governmental or business entity that fails to prepare and present knowledgeable witnesses in response to a Rule 30(b)(6) notice can be sanctioned pursuant to Rule 37(d). “Producing an unprepared witness is tantamount to a failure to appear.” As one court noted pithily, “In reality if a Rule 30(b)(6) witness is unable to give useful information he is no more present for the deposition than would be a deponent who physically appears for the deposition but sleeps through it.” The sanctions for such a failure run the gamut, from a new deposition of a prepared witness and the imposition of attorneys’ fees and costs to preclusion of evidence or the entry of default.

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).

When a witness is designated by a corporate party to speak on its behalf pursuant to Rule 30(b)(6), producing an unprepared witness is tantamount to a failure to appear that is sanctionable under Rule 37(d). The purpose behind Rule 30(b)(6) is frustrated where a corporate party produces a witness who is unable or unwilling to provide the necessary information on the corporation’s behalf.

Jay E. Grenig and Jeffrey S. Kinsler, *Handbook Of Federal Civil Discovery And Disclosure* § 5.21 (2002) (footnote and citations omitted).

The Districts offer two ineffective responses, discussed in turn below.

⁵ The following authorities were discussed in United Water’s opening brief: *United States v. Taylor*, 166 F.R.D. 356, 363 (M.D. N.C. 1996); *Resolution Trust Corp. v. Southern Union Co.*, 985 F.2d 196, 197 (5th Cir. 1993); *Black Horse Lane Assoc., L.P. v. Dow Chemical Corp.*, 228 F.3d 275, 303-04 (3rd Cir. 2000).

C. The Districts' concern about federalizing the Department's practice is a red herring.

Unable to explain away the black letter law under Rule 37(d), the Districts contend that the federal cases and commentary construing the rule simply should be ignored. *Answer* at 20-21. This is incorrect for three reasons.

First, Rule 30(b)(6) on its face provides that witnesses designated under the rule testify for the organization. No judicial interpretation, federal or state, is necessary to understand this. The rule says what it says.

Second, Idaho courts routinely look to federal-court interpretations of federal rules that are identical to state rules. *Compton v. Compton*, 101 Idaho 328, 334, 612 P.2d 1175, 1181 n.1 (1980). *See Motion to Dismiss Settlers* at 16, n.9.

Third, the Districts themselves provide an extensive quotation from the Idaho Supreme Court recognizing the proper role of such federal authorities as *Moore's Federal Practice* and Wright and Miller in interpreting Idaho's I.R.C.P. 37. *Frost v. Hofmeister*, 97 Idaho 757, 761-64, 554 P.2d 935, 939-41 (1976) (quoted in *Answer* at 13-16). In short, the Idaho rule has already been federalized—and has been since our Supreme Court adopted the language of the federal rule without change.

D. The dictum in the *Frost* case involved a far less serious "unproductive" deposition of a natural person.

The Districts' sole substantive defense to Rule 37(d) sanctions is their citation to *Frost v. Hofmeister*, 97 Idaho 757, 761-64, 554 P.2d 935, 939-41 (1976). *Frost*, they say, stands for the proposition that the Idaho Court has adopted a more lenient interpretation of Rule 37(d). They contend that Idaho law departs from federal precedent. In Idaho, the Districts argue, immediate Rule 37(d) sanctions are not available for a "failure to appear" so long as the party appears and is

sworn. This is so, the Districts contend, regardless of how evasive or unknowledgeable the witness is. *Answer* at 14-15 and 21-23.

The Districts are mistaken. *Frost* does no more than track numerous federal cases holding that depositions of individuals, in contrast to depositions of organizations under Rule 30(b)(6), do not come under Rule 37(d) where the individual is evasive.

For example, in *Resolution Trust Corp. v. Southern Union Co.*, 985 F.2d 196, 197 (5th Cir. 1993), the corporate party fighting Rule 37(d) sanctions made the same unsuccessful argument now employed by the Districts. The deposed corporation (which, like the Districts, had produced an unknowledgeable 30(b)(6) deponent) sought to defend itself by citing a federal case dealing with the deposition of a natural person, which held that so long as the individual physically appears, Rule 37(d) sanctions do not apply.⁶ *Resolution Trust Corp.*, 985 F.2d at 197. The court acknowledged that decision, but explained that it was inapplicable to a deposition noticed under Rule 30(b)(6).

Were we here faced with a case involving the deposition of a natural person we might be inclined to agree with the reading of Rule 37(d) by our Second Circuit colleagues. The deposition of a corporation, however, poses a different problem, as reflected by Rule 30(b)(6). Rule 30(b)(6) streamlines the discovery process. It places the burden of identifying responsive witnesses for a corporation on the corporation. Obviously, this presents a potential for abuse which is not extant where the party noticing the deposition specifies the deponent. When a corporation or association designates a person to testify on its behalf, the corporation appears vicariously through that agent. If that agent is not knowledgeable about relevant facts, and the principal has failed to designate an available, knowledgeable, and readily identifiable witness, then the appearance is, for all practical purposes, no appearance at all.

⁶ The case the deponent sought to rely on was *Salahuddin v. Harris*, 782 F.2d 1127 (2nd Cir. 1986).

Resolution Trust Corp., 985 F.2d at 197 (emphasis supplied).

The *Black Horse* case also includes a thoughtful analysis of this distinction between individual and organizational deponents. It urges that Rule 37(d) be read “pragmatically in light of the purposes of Rule 30(b)(6) and the parties obligations thereunder.” In the case of an evasive corporate deponent, strict, stern and immediate sanctions under Rule 37(d) are appropriate. *Black Horse*, 228 F.3d at 303-304. State courts that have addressed the issue agree. See footnote 4.

The *Frost* case is entirely consistent with these decisions. Although not specifically called out, it is quite apparent the depositions involved in the *Frost* case were not Rule 30(b)(6) depositions. “In June, 1975, Hofmeister sought to depose several law enforcement officers who participated in the investigation of June Hofmeister’s death.” *Frost*, 97 Idaho at 759, 554 P.2d at 939. The depositions were of individual, natural persons, not an organization. Thus, the brief discussion of Rule 37(d) sanctions may be characterized as dictum.

In any event, *Frost* and the federal cases agree that Rule 37(d) sanctions are not available when the natural witness is directed not to answer certain questions on the basis of privilege, thus rendering the deposition largely unproductive. If the party taking the deposition of an individual wishes to challenge the asserted privilege (or other evasive behavior), the party must first obtain an order under Rule 37(a).

In sum, these cases draw a clear distinction between “unproductive” individual depositions (particularly those which are unproductive because of an asserted privilege) and those in which the designated corporate witness is wholly without knowledge of the subject matter. The former is sanctionable only under Rule 37(b) (requiring a “warning” order first); the

latter is immediately sanctionable under Rule 37(d).⁷ The Districts cite *Frost*, which is in the first category. The pending motions fall into the second category. Thus, *Frost* is not on point.

V. SANCTIONS MAY ALSO BE AVAILABLE UNDER RULE 37(B) AND PROCEDURE RULE 531.

The Districts' *Answer* is devoted primarily to a lengthy rebuttal of an argument that merited only a footnote in United Water's opening brief.⁸ In that footnote, United Water contends that the Hearing Officer may, as an alternative to Rule 37(d), issue sanctions under Procedure Rule 531 and Idaho Rule of Civil Procedure 37(b) "for failure to comply with an order compelling discovery." While this is a viable argument, as explained below, it is by no means necessary to the success of United Water's motions.

The Districts argue that Procedure Rule 531 is a counterpart to I.R.C.P. 37(b) and that both rules contemplate that sanctions may be issued upon violation of an order to compel discovery. The Districts are correct that in the ordinary litigation context, I.R.C.P. 37(b) requires an independent motion to compel as a prerequisite to sanctions. However, the Department's Rules of Procedure are different. Unlike district court practice, discovery before the Department must be initiated by a discovery order. Procedure Rule 521.

⁷ Compare *Independent Productions Corp. v. Loew's Inc.*, 283 F.2d 730 (2nd Cir. 1960) (unproductive deposition due to privilege assertion not sanctionable) with the cases involving the production of an entirely vacant witness (*United States v. Taylor*, 166 F.R.D. 356, 363 (M.D. N.C. 1996); *Resolution Trust Corp. v. Southern Union Co.*, 985 F.2d 196, 197 (5th Cir. 1993); *Black Horse Lane Assoc., L.P. v. Dow Chemical Corp.*, 228 F.3d 275, 303-04 (3rd Cir. 2000)).

⁸ That footnote reads:

In the alternative, the Hearing Officer may find he has authority to issue sanctions, including attorney fees, under IDAPA 37.01.01.531 and Idaho Rule of Civil Procedure 37(b). These rules authorize sanctions "for failure to comply with an order compelling discovery." The Hearing Officer may deem his Order of June 20, 2003, which authorized formal discovery, to be an order compelling discovery.

Motion to Dismiss Settlers, at 20, n.12.

The Districts draw a careful semantic distinction between orders authorizing discovery and orders compelling discovery. The Districts contend that the Hearing Officer must issue two orders. The first one tells the parties to engage in discovery under the formal rules; the second order says he really means it. However, the Department's own rules do not track the Districts' nice distinction.

For instance, Procedure Rule 527, discussing written discovery, states: "Answers to production requests or written interrogatories and to requests for admission shall be filed or served as provided by the order compelling discovery." IDAPA 37.01.01.527 (emphasis supplied). This statement is made in reference to the Procedure Rule 521 order—the very order that the Districts painstakingly characterize as the order merely authorizing discovery.

The Hearing Officer already has issued the order compelling discovery. *Third Prehearing Order and Notice of Prehearing Conference* at 1 (June 20, 2003, served June 23, 2003). The Districts have failed to comply with this order. Accordingly, Procedure Rule 531 is in play and is a tool the Hearing Officer may use.

In any event, whatever the answer to the Districts' "two-order" argument, it does not affect the other bases for the Hearing Officer's action here.

VI. THE DISTRICTS ARE NOT EXCUSED FROM THEIR 30(B)(6) OBLIGATIONS BECAUSE THEY HAVE PREVIOUSLY LISTED THEIR ISSUES.

The Districts argue no harm no foul on the basis that they provided written responses to United Water's interrogatories asking the basis for their protests. *Answer* § X at 28-30. We offer four brief points in response.

First, the Districts' claim that they have provided other information supporting their protests is grossly overstated. Their written discovery responses regarding the basis for their

protests contain no more than curt references to their respective protests, their previously filed statements of issues and their responses to United Water's informal information requests.⁹

Answer at 4 and 6 (quoting the Districts' respective responses to United Water's Interrogatory No. 7.). These documents, in turn, constitute nothing but hollow, conclusory itemizations of their concerns. They are void of any factual support.¹⁰ Without a factual basis, the Districts' claims are meaningless. Indeed, if their protests are not dismissed altogether, United Water would have no objection to the Districts' conclusory statements being entered into the record in lieu of their further participation in the case.

Second, even if the Districts had previously provided meaningful explanations and supporting facts for their protests (which they have not), they were still obligated under Rule 30(b)(6) to provide witnesses to verify those statements and respond to questions exploring the basis for those contentions. A party may not satisfy its 30(b)(6) obligations by identifying pleadings and discovery previously submitted, and refusing to (or being unable to) answer any further questions. A deposition is designed to probe the other side's allegations. It is a form of cross-examination. A party is entitled to learn not just what, but why, when, who and how. The

⁹ The Hearing Officer can review these documents and judge for himself whether the District have provided any factual basis for their protests. The Districts' *Protest* and *Statement of Issues* are part of the record in this case. Their responses to informal information requests are included as Exhibit I to *United Water's Motion in Limine To Exclude Don Reading*.

¹⁰ The Districts produced full copies of their discovery responses as exhibits 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 ("Campbell Affidavit")*. These responses are clear on their face that the Districts have not provided factual support for their protests. For example, the Districts' *Protests* each complain that the IMAP will constitute an enlargement. When asked to explain the basis of this claim, the Districts sole response is, "the transfers may result in enlargement of the water rights due to the use of the integrated points of diversion system, and the use of individual water rights in excess of the permitted, licensed, or decreed elements of those rights." Response to United Water's Interrogatory No. 8 (attached as Exhibit A to the *Campbell Affidavit*). They have provided no further explanation in any forum.

Districts are not entitled to take a pass on their 30(b)(6) obligations because they have already listed their issues elsewhere.

Third, the Districts lament that their predicament might be avoided if United Water had only used other discovery tools to get at the information the Districts have deliberately withheld here. *Answer* at 8. Suffice it to say, United Water is under so such obligation.

Fourth, and most importantly, the Districts' argument misses the point. They say: "It is difficult to see what more information United Water might want." *Answer* at 7. United Water is not asking for more information. It is asking that the Districts be held to their word, as spoken by their proffered corporate representatives. If the Districts do not know the basis of their protests, then there is no basis for those protests, and they should be dismissed.

VII. DISMISSAL OR PRECLUSION FROM THE HEARING IN THIS MATTER IS THE APPROPRIATE REMEDY UNDER THE CIRCUMSTANCES.

The Districts argue that the Hearing Officer should select a less onerous sanction than dismissal. *Answer* § V at 17-20. However, there is no reason for leniency in this case. Whether relief on the *Motions to Dismiss* is granted by operation of law as a consequence of the Districts' binding deposition testimony, or whether it is granted as a sanction under discovery rules, the only appropriate remedy under the circumstances is complete dismissal or, at a minimum, preclusion of the Districts at hearings. No other relief provides an appropriate remedy where the Districts have testified they have no known basis for their protests.

If the Districts are not, at a minimum, precluded from participating at hearings, United Water potentially will be prejudiced by presentation of evidence the Districts withheld during discovery. Courts facing this situation recognize this cannot be allowed.

Rule 30(b)(6) explicitly requires UCC to have persons testify on its behalf as to all matters known or reasonably available to it and,

therefore, implicitly requires such persons to review all matters known or reasonably available to it in preparation for the Rule 30(b)(6) deposition. This interpretation is necessary in order to make the deposition a meaningful one and to prevent the “sandbagging” of an opponent by conducting a half-hearted inquiry before the deposition but a thorough and vigorous one before the trial. This would totally defeat the purpose of the discovery process.

United States v. Taylor, 166 F.R.D. at 362.

In this case the Districts have disclaimed any corporate knowledge of the IMAP, their protests, or the path to resolution of their protests. This complete lack of knowledge leaves no room for any sanction less than total preclusion at future hearings, which effectively is the same as dismissal. Even if the Hearing Officer chose a lesser sanction, the remedy to address the absolute lack of knowledge professed in this case effectively is dismissal.

Under I.R.C.P. 37(d) (which references rule 37(b)), the Hearing Officer may issue any of the following:

1. An order that designated facts shall be taken to be established for the purposes of the action
2. An order refusing to allow the delinquent party to support or oppose designated claims or defenses.
3. An order prohibiting the delinquent party from introducing designated matters in evidence.
4. An order striking out pleadings or parts thereof.
5. An order staying further proceedings until the party complies with the request for discovery.
6. An order dismissing the action or proceeding or any part thereof.
7. An order rendering a judgment by default against the disobedient party.¹¹

¹¹ The authors go on to discuss awards of costs and attorney fees in lieu of or in addition to the above. Wright, Miller & Marcus, *Federal Practice and Procedure* § 2291 at 735 (1994).

Wright, Miller & Marcus, *Federal Practice and Procedure* § 2291 at 725-31 (1994).

The Hearing Officer could order that all facts testified to by the Districts (including the fact that the Districts have no knowledge) be deemed established. Since the Districts are wholly without knowledge, the effect would be to preclude their further participation. The same is true if the sanction is prohibition of opposition to certain claims or defenses, introducing designated matters into evidence or striking pleadings.

Moreover, the Idaho Supreme Court's admonishment to consider lesser sanctions does not mean the Hearing Officer is required to precede a dismissal order with an order first imposing something less. On the contrary, all the Hearing Officer must do is consider lesser sanctions. If none are effective, or if they amount to a dismissal anyway, the Hearing Officer may dismiss the case without warning through prior sanction. *Kugler v. Drown*, 119 Idaho 687, 809 P.2d 1166 (1991).

In *Kugler*, the plaintiff refused to produce answers to interrogatories and documents. The Idaho Supreme Court upheld the lower court's dismissal of the action: "The court specifically stated that it had considered lesser sanctions and found none would be effective." *Kugler v. Drown*, 119 Idaho at 691. The Court noted that the lower court did impose the sanction of precluding evidence at hearing, but because this preclusion "vitiates [Plaintiff's] cause of action," dismissal was appropriate. *Kugler v. Drown*, 119 Idaho at 691.

Dismissal is further warranted when the disobedient party has been shown to have engaged in a pattern of foot dragging. Wright, Miller & Marcus offer numerous examples of dismissals upheld for conduct similar to that complained of here. Wright, Miller & Marcus, *Federal Practice and Procedure* § 2291, n. 36 at 727-30 (1994). Intentional delay certainly is the case here. See United Water's pending *Motion in Limine To Exclude Don Reading*.

Consider as well the Districts' costly litany of motions which the Hearing Officer already has denied. The bottom line is that the Districts' protests have been exposed as an empty vessel.

The Districts now plead for a chance to reform their abusive behavior (an opportunity they repeatedly passed up before). However, doing so would run counter to the philosophy of Rule 37(d). "Once a motion for sanctions under Rule 37(d) has been made, the delinquent party cannot avoid the sanctions by then making the response to discovery requests that should have been made earlier." Wright, Miller & Marcus, *Federal Practice and Procedure* § 2291 at 722 (1994). The Districts made the affirmative choice to proffer Mr. Draper and Mr. Scott as their sole designees. Dismissal follows as a matter of course.

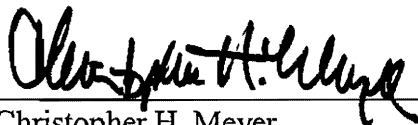
CONCLUSION

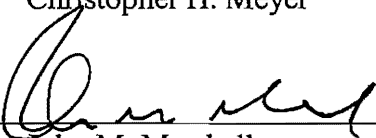
The record of conduct is clear. The Districts engaged in a deliberate strategy of stonewalling in the mistaken belief that no matter how transparently improper their actions are, they are exempt from sanctions (or any other consequences) until they receive and violate a subsequent warning order. They are free, they contend, to play whatever discovery games they choose until the opposing party engages in motion practice to halt the behavior. Then, even if the opposing party prevails, the Districts claim they are entitled to a free pass to start over.

The Hearing Officer should send a clear signal that the Department does not agree and will not allow litigants before it to flout the rules.

Respectfully submitted this 6th day of October, 2003.

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By: 
Christopher H. Meyer

By: 
John M. Marshall

Attorneys for Applicant
United Water Idaho Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of October, 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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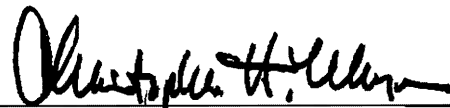
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**BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES**

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 ANSWER IN
OPPOSITION TO PIONEER AND
SETTLERS' MOTION TO STRIKE**

United Water Idaho Inc. ("United Water") hereby submits this answer in opposition to Pioneer Irrigation District and Settlers Irrigation District's (collectively, the "Districts") *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* dated September 29, 2003. This answer is filed pursuant to the Idaho Department of Water Resources' (the "Department") Rules of Procedure (in particular, IDAPA 37.01.01.270.02).

The Districts' motion seeks to dismiss United Water's pending motions to dismiss on the basis that United Water's motions refer to the certain proposed water right conditions offered by

United Water in aid of settlement. The Districts allege that this reference violates the Department's Rule of Procedure 610 (IDAPA 37.01.01.610).

A person reading the Districts' motion might conclude that United Water had disclosed confidential settlement offers made by a Protestant. This did not occur.

United Water said nothing about any condition or other offer made by any Protestant. United Water has not even disclosed whether any such offers have been made. The only thing United Water disclosed is that the 30(b)(6) witnesses proffered by the Districts knew nothing about the conditions offered by United Water and were therefore unable to explain how the IMAP, as conditioned, would injure them. The Districts now seek to hide behind Rule 610 to overcome the binding effect of the statements of their own witnesses.¹

The Districts' theory lacks foundation and defies common sense. The central purpose of Rule 610 (and its counterpart, Rule of Civil Procedure 408) is to encourage settlement discussions by assuring parties that statements or offers they make in the course of negotiation will not later be turned against them.

Since parties may be inhibited in making offers of compromise by the fear that these will be used against them if the compromise efforts fail, the law alleviates that fear and encourages the making of offers of compromise by making them privileged.

Wright and Graham, *Federal Practice and Procedure*, Rule 408, § 5302 at 170.² This rationale was adopted by drafters. "Hence, the Advisory Committee Note embraces McCormack's rationale, making the rule, in the words of the Reporter, a 'species of privilege.'" *Id.* at 173.

¹ At the time the Districts' witnesses made these statements, the Districts' counsel raised no objection based on the confidentiality of settlement discussions. To the extent any privilege would have applied, it has now been waived.

² The Idaho and federal rules are identical. As noted in the motion which the Districts now seek to strike, Idaho courts look to federal authority where the rules are identical.

As a result, the person holding the privilege (that is, the person making the offer of settlement) is free to waive the privilege.

Third, the privilege rationale restricts the scope of the rule by limiting the number of people who can invoke it; anyone can object to irrelevant evidence, but if the party who made the offer is willing to have it introduced, the privilege rationale does not provide any basis for objections by others.

Id. at 174 (emphasis supplied).

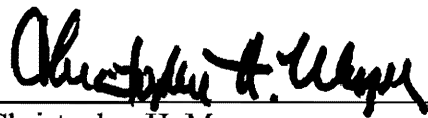
Case law interpreting Idaho Rule 408 also emphasizes that the prohibition is limited to circumstances in which the settlement offer is presented for the purpose of proving liability or invalidity of a claim. *Soria v. Sierra Pacific Airlines*, 111 Idaho 594, 726 P.2d 706 (1986). This underscores the point that the rule is designed to protect the person making the offer, not the one receiving it.

Obviously, the Department's Rule 610 is not identically worded to the Civil Rule 408. The underlying purpose of the two rules, however, appears to be identical. In any event, Rule 610 should be interpreted in the light of common sense. Common sense dictates that United Water can refer to its own proposed conditions any time it chooses.

In conclusion, the Districts' motion is frivolous and should be denied.

Respectfully submitted this 1st day of October, 2003.

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Christopher H. Meyer
John M. Marshall

Attorneys for Applicant
United Water Idaho Inc.

CERTIFICATE OF SERVICE

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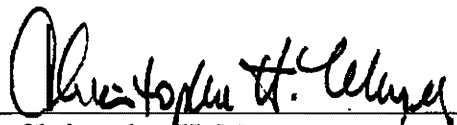
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Counsel for Applicant United Water Idaho Inc.

BEFORE THE

IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF INTEGRATED
MUNICIPAL APPLICATION PACKAGE
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INDIVIDUAL APPLICATIONS FOR
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**NOTICE OF VACATION OF THE
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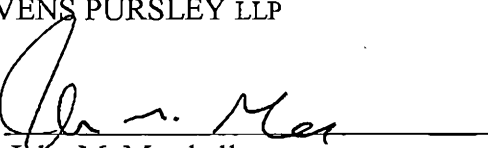
TO: THE ABOVE NAMED PROTESTANT AND ITS ATTORNEY OF RECORD

YOU WILL PLEASE TAKE NOTICE that the deposition of the City of Meridian
scheduled for the 1st day of October 2003 at the hour of 9:00 a.m. has been vacated. United
Water hereby reserves the right to reschedule this deposition for a later date.

DATED this 29th day of September 2003.

GIVENS PURSLEY LLP

By


John M. Marshall

Attorneys for Applicant United Water Idaho Inc.

NOTICE OF VACATION OF THE DEPOSITION DUCES TECUM OF THE NAMPA & MERIDIAN
IRRIGATION DISTRICT - 1

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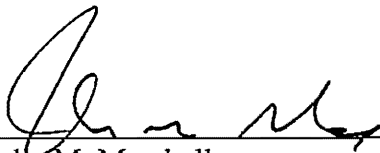
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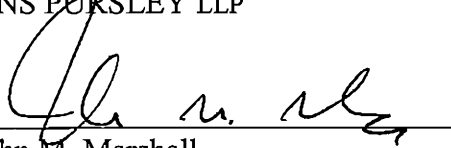
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DATED this 29th day of September 2003.

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By


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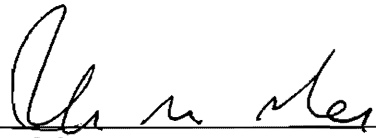
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BEFORE THE DEPARTMENT OF WATER RESOURCES

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.

**ANSWER OF PIONEER & SETTLERS TO
UWID'S MOTION TO DISMISS BOTH
DISTRICTS' PROTESTS AND PRECLUDE
THEIR PARTICIPATION AT HEARING**

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I. INTRODUCTION

On September 15, 2003, United Water Idaho (“United Water”) filed a Motion to Dismiss Pioneer’s Protest and Preclude Its Participation at Hearing and a Motion to Dismiss Settlers’ Protest and Preclude Its Participation at Hearing (collectively referred to as “Motion to Dismiss”). Pioneer Irrigation District (“Pioneer”) and Settlers Irrigation District (“Settlers”) (collectively the “Districts”) hereby provide this Answer to the Motions of United Water which seek to dismiss the Districts’ Protests and preclude their participation at the hearing on this matter. This answer is filed pursuant to IDAPA 37.01.01.270.02.

Pioneer and Settlers are astounded and dismayed by the vituperative bitterness of the statements contained in United Water’s Motions. It is indeed unfortunate that United Water has taken this approach, particularly where it has ignored the Rules of Procedure of the Idaho Department of Water Resources in making its assertions. Moreover, it improperly attempts to impose Federal Rules of Practice upon proceedings before the Department, despite the fact that Idaho State law clearly governs. Pioneer and Settlers have the utmost respect for the Department’s processes, as described in the Department’s Rules of Procedure. It has abided by those, and to the extent applicable, to the Idaho Rules of Civil Procedure.

Notwithstanding United Water’s wild accusations concerning the conduct of Pioneer and Settlers, they will attempt to refrain from responding in kind, because to do so would further demean the integrity of this process. The essence of Pioneer and Settlers’ position in this matter is as follows: in order to be awarded any sanctions under the Department’s Rules of Procedure and by extension the Idaho Rules of Civil Procedure, a party *must* first obtain an order compelling the opposing party to respond to discovery. Next, the opposing party must fail to

comply with the order compelling discovery. Third, the party seeking discovery must then approach the court (or in this case, the Hearing Officer) with a motion for sanctions. Only after the court or hearing officer considers that motion or grants it may the party seeking discovery obtain sanctions.

Even then, as Idaho appellate cases interpreting Idaho Rule of Civil Procedure 37(b) clearly provide, dismissal of a party is a last resort, to be made after an extremely careful weighing of the equities, and only after other sanctions and warnings have failed. There has been no such showing here. *See* Sections IV and V herein below for a discussion of the pertinent cases and analysis.

More practically, United Water had ample opportunity to obtain the information it sought. Pioneer and Settlers provided signed answers to discovery requests, and named potential witnesses, whom United Water could have deposed within the discovery deadlines. United Water simply failed to avail itself of those opportunities, and cannot now be heard to say that Pioneer and Settlers have treated United Water unfairly.

II. PROCEDURAL AND FACTUAL BACKGROUND

The parties to this matter have undergone a significant discovery effort over the course of the past three months. The Hearing Officer first authorized formal discovery on or about June 23, 2003, and set forth a discovery deadline of August 29, 2003. On or about July 2, 2003, United Water served its first set of discovery requests on Pioneer and on Settlers. Pioneer and Settlers each provided their respective responses on or about July 17, 2003. Certain discovery requests and responses are pertinent to United Water's Motion to Dismiss. Pioneer's responses to the pertinent requests were as follows:

INTERROGATORY NO. 1: Please identify yourself (the person responding to these discovery requests) and state your relationship with the District.

RESPONSE TO INTERROGATORY NUMBER 1: Kenneth E. Brush. Mr. Brush is the President of the Board of Directors of Pioneer Irrigation District. Scott L. Campbell and Angela Schaer Kaufmann, counsel for Pioneer, assisted Mr. Brush in preparing these responses.

INTERROGATORY NO. 2: Please identify each and every person with whom you consulted in preparing these responses.

RESPONSE TO INTERROGATORY NUMBER 2: See Response to Interrogatory Number 1.

INTERROGATORY NO. 3: Please identify each and every witness the Protestant intends to call (or may call) at the hearing in this matter. With respect to each of the witnesses so identified, please identify the person as a fact or expert witness, and state the subject matter and general substance of the facts and opinions to which he or she is expected to testify.

RESPONSE TO INTERROGATORY NUMBER 3: Objection. Discovery is still in its early stages, and Pioneer has not yet fully determined who it may call as a witness in this matter. Moreover, the Hearing Officer has not yet set a deadline for disclosure of witnesses. Subject to, and without waiving that objection, and reserving its right to disclose witnesses in accordance with the Hearing Officer's scheduling order(s), Pioneer states that it may call the following individuals as fact witnesses:

Jeff Scott, Superintendent
Pioneer Irrigation District
P.O. Box 426
Caldwell, ID 83606

Kenneth E. Brush, Board President
Pioneer Irrigation District
P.O. Box 426
Caldwell, ID 83606

Alan Newbill, Board Member
Pioneer Irrigation District
P.O. Box 426
Caldwell, ID 83606

Don Sayre, Board Member
Pioneer Irrigation District
P.O. Box 426
Caldwell, ID 83606

Each of the witnesses described above may testify regarding the effect of the IMAP upon Pioneer's water rights, and the effect of the IMAP on the local public interest.

Pioneer may also call the following expert witness: Don Reading of Ben Johnson Associates, Inc., 6070 Hill Road, Boise, ID 83703. Mr. Reading is expected to testify regarding the methodology and validity of the data used and conclusions reached by Mr. John Church.

Pioneer further reserves the right to examine each and every witness, whether fact or expert, who may be called by any other party in the above captioned matter.

...

INTERROGATORY NO. 7: Please state each and every basis for the 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 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 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.

Exhibit A to the Affidavit of Scott L. Campbell ("Campbell Aff."), filed concurrently herewith. The discovery responses were signed under oath by Kenneth Brush, President of the Board of Directors of Pioneer Irrigation District. *Id.*

Similarly, Settlers' pertinent discovery responses were as follows:

INTERROGATORY NO. 1: Please identify yourself (the person responding to these discovery requests) and state your relationship with the District.

RESPONSE TO INTERROGATORY NUMBER 1: Tom Davis. Mr. Davis is the Vice-President of the Board of Directors of Settlers Irrigation District. Scott L. Campbell and Angela Schaefer Kaufmann, counsel for Settlers, assisted Mr. Davis in preparing these responses.

INTERROGATORY NO. 2: Please identify each and every person with whom you consulted in preparing these responses.

RESPONSE TO INTERROGATORY NUMBER 2: See Response to Interrogatory Number 1.

INTERROGATORY NO. 3: Please identify each and every witness the Protestant intends to call (or may call) at the hearing in this matter. With respect to each of the witnesses so identified, please identify the person as a fact or expert witness, and state the subject matter and general substance of the facts and opinions to which he or she is expected to testify.

RESPONSE TO INTERROGATORY NUMBER 3: Objection. Discovery is still in its early stages, and Settlers has not yet fully determined who it may call as a witness in this matter. Moreover, the Hearing Officer has not yet set a deadline for disclosure of witnesses. Subject to, and without waiving that objection, and reserving its right to disclose witnesses in accordance with the Hearing Officer's scheduling order(s), Settlers states that it may call the following individuals as fact witnesses:

Nathan Draper, Manager
Settlers Irrigation District
P.O. Box 7571
Boise, ID 83707

Richard E. Allen, Board President
Settlers Irrigation District
P.O. Box 7571
Boise, ID 83707

Ken Aschenbrenner, Board Member
Settlers Irrigation District
P.O. Box 7571
Boise, ID 83707

Tom Davis, Board Member
Settlers Irrigation District
P.O. Box 7571
Boise, ID 83707

Each of the witnesses described above may testify regarding the effect of the IMAP upon Settlers' water rights, and the effect of the IMAP on the local public interest.

Settlers may also call the following expert witness: Don Reading of Ben Johnson Associates, Inc., 6070 Hill Road, Boise, ID 83703. Mr. Reading is expected to testify regarding the methodology and validity of the data used and conclusions reached by Mr. John Church.

Settlers further reserves the right to examine each and every witness, whether fact or expert, who may be called by any other party in the above captioned matter.

...

INTERROGATORY NO. 7: Please state each and every basis for the 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, 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.

Settlers notes that discovery in this matter is ongoing, as is Settlers' analysis of the issues and pertinent facts. Settlers reserves

the right to supplement this response in accordance with the Idaho Rules of Civil Procedure.

Exhibit B to Campbell Aff. The discovery responses were signed under oath in accordance with the Idaho Rules of Civil Procedure by Mr. Tom Davis, Vice-President of the Board of Directors of Settlers Irrigation District. Pioneer and Settlers' respective responses to Interrogatory Number 8 and Requests for Production 1 and 4 further show that Pioneer and Settlers have provided United Water with the information it seeks. *See* Exhibits A and B to Campbell Aff.

Pioneer and Settlers have also supplemented their discovery responses to provide more information regarding the basis for their protests and their positions in this matter. On September 9, 2003, Pioneer and Settlers supplemented their discovery responses. Those responses provided, *inter alia*, that Mr. Ed Squires might provide information about the hydrology of the Treasure Valley and the potential impacts of the IMAP on other water users, including Pioneer and Settlers. *See* Exhibit C to Campbell Aff. Mr. Squires had previously been disclosed as a witness in this matter, and United Water had ample time to depose him, an opportunity of which it did not take advantage.

Furthermore, Pioneer and Settlers each supplemented their discovery responses a second time on September 16, 2003, in accordance with the Hearing Officer's Order¹, to provide more information on the basis for their position, in terms of hydrologic impact. *See* Exhibits D and E to Campbell Aff. It is difficult to see what more information United Water might want. 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

¹ This shows that Pioneer and Settlers have complied and will continue to comply with the Hearing Officer's orders. To argue, as does United Water, that to file a motion to compel would be fruitless, is simply unsupported.

discovery. Pioneer and Settlers have been and will continue to be forthcoming with the evidence they intend to use at hearing.

On or about August 7, 2003, United Water served notices of deposition duces tecum on each of the Districts under Idaho Rule of Civil Procedure 30(b)(6). As required by the Rule, Pioneer and Settlers each designated a person to testify on their behalf: Jeff Scott for Pioneer, and Nathan Draper for Settlers. As is apparent from its Motion to Dismiss, United Water found itself upset with Mr. Scott and Mr. Draper's answers. Rather than file a motion to compel, United Water simply filed the instant Motion to Dismiss.

Although the Pioneer and Settlers Board members were named as potential witnesses, United Water never noticed the depositions of those people prior to the discovery deadline. Moreover, United Water never noticed the depositions of Mr. Brush and Mr. Davis, who signed the discovery responses, under oath, for Pioneer and Settlers, respectively. *See* Exhibits A and B to Campbell Aff. United Water was aware long before the discovery cutoff that all members of the Pioneer and Settlers Boards of Directors might be called as witnesses at the hearing in this matter particularly as to the effect of IMAP on the Districts' water rights. Also, United Water had the names of those specific members who signed the discovery responses under oath. Nevertheless, United Water did not avail itself of the opportunity to depose those people. It would seem logical that if United Water wished to inquire further into the matters covered in Pioneer and Settlers' discovery responses, it would have specifically noticed the depositions of the board members who signed the discovery responses.

III.
UNITED WATER MISREPRESENTED ITS INTENTIONS TO
THE HEARING OFFICER AND TO PIONEER AND
SETTLERS, TO THEIR PREJUDICE

It is no doubt obvious to the Hearing Officer that United Water on the one hand and Pioneer and Settlers on the other disagreed about what is required for a deposition taken under Idaho Rule of Civil Procedure 30(b)(6). In an effort to help resolve those differences, Pioneer and Settlers each filed a Motion for Protective Order. *See* Pioneer Irrigation District's Motion for Protective Order and Settlers Irrigation District's Motion for Protective Order, filed September 10, 2003. In their respective Motions, which were largely identical, Pioneer and Settlers sought a protective order preventing United Water from taking additional 30(b)(6) depositions. In seeking that order, Pioneer and Settlers sought a ruling from the Hearing Officer that would have resolved the differences Pioneer and Settlers had with United Water over the proper conduct of a Rule 30(b)(6) deposition. Had the Hearing Officer determined that United Water's position was correct, Pioneer and Settlers would have complied with the Hearing Officer's order, under whatever conditions the Hearing Office thought appropriate. They assume that United Water would have as well. However, United Water pre-empted that opportunity to receive a ruling from the Hearing Officer.

On September 11, 2003, UWID filed a "Notice of Mootness," in which it clearly stated that "[b]ecause United Water is not seeking additional discovery of Settlers and Pioneer under Rule 30(b)(6) at this time, the Districts' motions for protective order are moot." Notice of Mootness, p. 1. United Water thus expressed its intent to refrain from seeking discovery, as it could have done under the pertinent Rules. Based upon that representation made on the record and signed by United Water's counsel, Pioneer and Settlers withdrew their motions for protective

order. Stated differently, Pioneer and Settlers took United Water at its word, and reasonably believed that United Water had simply determined that it would not seek additional discovery under Rule 30(b)(6).

Little did Pioneer and Settlers know that United Water would then, in a distasteful and disingenuous manner, file a motion to dismiss, thus short-circuiting the motion for protective order and an opportunity to receive a ruling from the Hearing Officer. Instead, United Water filed the instant Motion to Dismiss without following proper statutory procedures. Pioneer and Settlers find it extremely misleading to state that no further discovery would be conducted, then turn around and move to dismiss parties for failure to comply with discovery that was no longer being sought.

This is particularly true because based upon United Water's representation that it would seek no more discovery under Rule 30(b)(6), Pioneer and Settlers withdrew their respective Motions for Protective Order, which were specifically filed to determine whether United Water could proceed with Rule 30(b)(6) depositions in the matter it contemplated. Once again, had the Hearing Officer denied Pioneer and Settlers' motion to for protective order, they assume that the Hearing Officer would have stated the parameters of a 30(b)(6) deposition. No matter what the Hearing Officer's ruling, Pioneer and Settlers would have complied fully with it. However, their opportunity to do so has been prevented by United Water, who misled Pioneer and Settlers and the Hearing Officer into thinking United Water had simply decided not to seek more discovery under Rule 30(b)(6). How could Pioneer and Settlers know that what United Water meant was "we're going to let you think the matter is at an end, so you withdraw your

motion, and then we're going to request the most onerous of sanctions?" Pioneer and Settlers have been prejudiced by United Water's unfair and unjust conduct in this matter.

**IV.
UNITED WATER IGNORED THE RULES OF PROCEDURE
OF THE IDAHO DEPARTMENT OF WATER RESOURCES**

United Water has expended substantial effort castigating the Districts for their "knowing disobedience and contempt for the Hearing Officer and the Department." *See* Motion to Dismiss, p. 6. This contention totally misrepresents the facts and the law which govern the circumstances described by United Water. The Districts have the highest regard for the Hearing Officer and the Department. They demonstrate that regard by following the Department's Rules of Procedure and the applicable Idaho Rules of Civil Procedure, and by fully participating in the discovery process *authorized* by the Hearing Officer in this matter. Pioneer and Settlers took great care to ensure that any discovery requests they served complied with the timelines set forth in the Hearing Officer's Third PreHearing Order, and further participated in the deposition process. That compliance included designating a witness on behalf of Pioneer and Settlers under Idaho Rule of Civil Procedure 30(b)(6). United Water, unfortunately, conveniently ignores the procedural mandates of the Department's Rules of Procedure, and instead advocates a disregard of the rules which have been carefully promulgated by the Department, and the Idaho Rules of Civil Procedure, which have been approved by the Idaho Supreme Court.

United Water has failed to apply for an order compelling discovery in a manner consistent with Rule 37(a) of the Idaho Rules of Civil Procedure, thereby violating IDAPA 37.01.01.521. In order for a party to seek sanctions for failure to obey an order compelling

discovery under IDAPA 37.01.01.531, a party must first comply with the requirements of IDAPA 37.01.01.521. That rule clearly provides as follows:

521. WHEN DISCOVERY AUTHORIZED (Rule 521).

No party before the agency is entitled to engage in discovery unless the party moves for an order authorizing discovery and the agency issues an order authorizing the requested discovery, or upon agreement of all parties to the discovery that discovery may be conducted. The presiding officer shall provide a schedule for discovery in the order authorizing discovery, but the order authorizing and scheduling discovery need not conform to the time tables of the Idaho Rules of Civil Procedure. *A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery in a manner consistent with provisions of Rule 37(a) of the Idaho Rules of Civil Procedure.* The agency or agency staff may conduct statutory inspection, examination, investigation, etc., at any time without filing a motion to authorize discovery.

IDAPA 37.01.01.521 (emphasis added).

On June 23, 2003, the Hearing Officer issued his Third PreHearing Order and Notice of PreHearing Conference. As part of that Order, the Hearing Officer noted that some parties (but *not* UWID) had filed a Motion to Compel/Alternative Motion for Order Authorizing Discovery.² In his Third PreHearing Order, the Hearing Office *authorized* discovery. He did not *compel* discovery, either requests or responses.

There is no question that United Water did not file an application or a motion for an order compelling discovery as to the 30(b)(6) depositions in a “manner consistent with the provisions of Rule 37(a) of the Idaho Rules of Civil Procedure” or under the mandate of Rule 521 of the Department’s Rules of Procedure. That failure is fatal to any consideration of United Water’s Motions to Dismiss and Preclude Participation.

² The Motion to Compel, filed on or about January 16, 2003, was a motion to compel United Water’s answers to informal requests for information.

This is so, because the *only* authority for imposing sanctions as requested by United Water in this respect stems from IDAPA 37.01.01.531. That rule states as follows:

**531. SANCTIONS FOR FAILURE TO OBEY ORDER
COMPELLING DISCOVERY (Rule 531).**

The agency may impose all sanctions recognized by statutes 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 (emphasis added).

Because United Water has neither sought, nor obtained “an order compelling discovery,” pursuant to Rule 521, no sanctions can be imposed upon Pioneer and Settlers under the restrictions of Rule 531 of the Department’s Rules of Procedure. The process clearly requires sequential actions. First, an order compelling discovery must be sought pursuant to Rule 521. Second, following the procedure of requirements for motions and answers to motions (Rules 260 and 270), a decision is rendered on the requested order compelling discovery. Next, the party against whom the order compelling discovery was sought has an opportunity to comply with the order compelling discovery. *Only if* that party fails to comply with the order compelling discovery, may the Department impose sanctions recognized by statute or rule, presumably after a motion for imposition of sanctions has been filed, with the requisite opportunity to respond.

The Idaho Supreme Court has addressed the issue of predicate steps to the imposition of sanctions under the Idaho Rules of Civil Procedure, and clearly held that a motion to compel must be filed and an order issued and disobeyed, before sanctions can be awarded. In *Frost v. Hofmeister*, 97 Idaho 757, 554 P.2d 935 (1976), the Idaho Supreme Court was faced

with a similar set of circumstances under Idaho Rule Civil Procedure 37. In that case, defendant's counsel sought and obtained an order of sanctions from the district court against plaintiff Thomas Frost, even though the defendant failed to bring a motion to compel discovery pursuant to Idaho Rule of Civil Procedure Rule 37(a). Specifically, during depositions, plaintiff Frost advised several deponents to not answer certain and apparently numerous questions. *Id.* at 759. However, and like the case before the Hearing Officer, "[n]o further action was taken at that time under the provisions of I.R.C.P. 37(a) or otherwise to compel the deponents to answer those questions which were left unanswered." *Id.* Again, like the circumstances presented to the Hearing Officer, defendant Hofmeister moved for a contempt order against plaintiff Frost, and also asked for attorney fees. *Id.* The District Court ordered plaintiff Frost to pay costs and attorney fees. *Id.* at 760.

The Idaho Supreme Court engaged in a thorough discussion of the workings of Idaho Rule of Civil Procedure 37 concerning an award of sanctions for failure to follow an order compelling discovery, and emphatically concluded that such action by the district court was totally improper. *Frost*, 97 Idaho at 760-763. The Court began its analysis by noting that:

The Idaho Rules of Civil Procedure, as amended January 1, 1975, establish a procedure whereby parties themselves accomplish discovery with minimal court intervention; depositions are arranged by merely giving notice to deponents. Rule 26 allows an aggrieved deponent to seek protection from the court if he believes the deposition is in some way wrongful. Similarly, if a deponent refuses to appear for deposition, or improperly refuses to answer questions, *the party seeking discovery may ask the court to intervene by requesting an order to compel discovery*. If the court finds that the deponent refused without justification to answer a question, then it may issue the order to compel discovery. The rules provide penalties *if the deponent again refuses after being ordered to answer by the court*. The court participates in the discovery process only if the parties are unable to work together,

but no sanctions can be imposed until the court has become involved.

Id. at 760-761 (emphasis added).

As to the Rule 37(b) sanctions in particular, the Court stated:

Rule 37(b) provides sanctions after a failure to obey an order to compel discovery. Different sanctions are allowed in different situations, but all have one common denominator: ***no penalty can be imposed under Rule 37(b) unless the court has first denied or issued an order compelling discovery and the deponent has failed to comply.*** Wright & Miller, Federal Practice and Procedure, § 2289 (1970); *Cates v. LTV Aerospace Corp.*, 480 F.2d 620 (5th Cir.1973).

Thus, both Rule 37(a)(4) and Rule 37(b) are inapplicable if there has not been a motion made or an order entered to compel discovery. No such motion or order was ever made in the instant case.

Id. at 761-762 (footnote omitted and emphasis added). In the present case, there is no question that United Water has not pursued a motion for an order compelling discovery as to the 30(b)(6) deposition against the Districts. Accordingly, the requested sanctions cannot be imposed.

In *Frost*, the Supreme Court also applied the factual circumstances of that case to the law and concluded that no violation of Idaho Rules of Civil Procedure 37(d) had occurred. The factual circumstances are similar to the instant case, and show why no sanctions, including costs and fees, can be imposed absent a motion to compel which is granted, with an order issued. The Court began its discussion by noting that sanctions may be assessed against a party without a motion to compel, but only for ***complete failure*** to attend a deposition:

Rule 37(d) allows costs to be assessed against a party or his attorney for failure to attend depositions. Assessment of costs under Rule 37(d) does not require a prior order to compel discovery. Wright and Miller, *supra*. § 2289. ***However, the rule is limited to instances of failure to appear and does not apply if the party appears and is sworn, even though the deposition is***

unproductive because of the deponent's refusal to answer the questions put to him. Wright and Miller, *supra*, § 2291; *Independent Productions Corp. v. Loew's, Inc.*, 283 F.2d 730 (2d Cir.1960); *SEC V. American Beryllium and Oil Corp.*, 303 F. Supp. 912 (S.D.N.Y. 1969). In the instant case, all deponents appeared and were sworn, although they later refused to answer some questions. Sanctions under Rule 37(d) are not appropriate under these circumstances.

...

No section of Rule 37 is applicable to allow assessment of costs absent a motion to compel discovery when a non-party refuses to answer questions at deposition. The proper procedure for Hofmeister to follow would have been to ask for an order to compel discovery, as Judge Towles' initial comments suggested. He did not do this, and cannot now ask for sanctions which would have been proper had he followed the prescribed procedure. Absent the authority of Rule 37, the court was without power to assess costs against Frost.

Id. at 762-763 (footnote omitted and emphasis added). Rather than acknowledge that clear Idaho authority, United Water has instead, as discussed below, jumped directly to the Federal Rules of Civil Procedure and federal authority, authority which is not even applicable under the Department's Rules of Procedure.

United Water has ignored all of the requisite intermediary steps. Apparently, in its haste to vent its frustration, or in a potential effort to short circuit the procedural requirements of due process set forth in the Department's Rules of Procedure, United Water hurls epithets but ignores the Department's rules. Such actions cannot form the basis for the draconian sanctions requested by United Water, particularly where United Water has previously filed a Motion to Compel in this matter against the Districts (*See* Motion to Compel Discovery Responses to UWID's First Set of Discovery Requests to Pioneer Irrigation District and Settlers Irrigation District, filed on or about August 6, 2003). It cannot say it was unaware of the proper

procedures which must be followed; one can only assume that United Water chose to ignore the proper procedures when it became frustrated. However, Rules are in place, in part, to cover just such a circumstance: to ensure that matters proceed in an orderly fashion no matter how heated they may become.

United Water argues that neither Pioneer nor Settlers should be given an opportunity to comply with a motion to compel. However, as they discussed in the preceding section, Pioneer and Settlers attempted to obtain a ruling from the Hearing Officer regarding Rule 30(b)(6) depositions, and would have complied with the Hearing Officer's order, even if the Hearing Officer ruled that Pioneer and Settlers' position was incorrect. United Water short-circuited the process. It is not only speculative, but completely incorrect to argue that Pioneer and Settlers would not comply with an Order from the Hearing Officer. They would hope that United Water would as well.

At any rate, United Water has placed the cart before the horse, ignored the proper procedures, and caused Pioneer and Settlers, as well as the Department, to incur unnecessary costs and expenses in this matter.

**V.
DISMISSAL IS APPROPRIATE AS A
SANCTION ONLY AS A LAST RESORT**

Even if one assumes, for the sake of argument, that a motion to compel is not a necessary precondition, and that Pioneer and Settlers' conduct is somehow sanctionable, Idaho case law makes it quite clear that the sanction of dismissal is a last resort. Indeed, if United Water had researched Idaho case law instead of jumping immediately to federal law, it would have realized that to be the case.

The proper analysis was first set forth in *Ashby v. Western Council, Lumber Production and Indus. Workers*, 117 Idaho 684, 791 P.2d 434 (1990). In that case, employees sued a union, and the union ultimately moved to dismiss the employees' complaint as a sanction because the employees failed to respond to discovery requests. In fact, the employees had never objected to discovery or responded to a motion to compel which had been filed by the union.³

The *Ashby* Court analyzed Idaho Rule of Civil Procedure 37(b), and set forth the following analysis:

The two primary factors are a clear record of delay and ineffective lesser sanctions, which must be bolstered by the presence of at least one "aggravating" factor, including 1) delay resulting from intentional conduct, 2) delay caused by the plaintiff personally, or 3) delay causing prejudice to the defendant. [Citations omitted]. The consideration of these factors must appear in the record in order to facilitate appellate review.⁴

Ashby, 117 Idaho at 686-687, 791 P.2d at 436-37. The Court noted the "clear record of delay," even *after* the district court ordered the employees to respond to the discovery requests. *Id.* at 687, 791 P.2d at 437. Specifically:

[T]he trial court did in fact impose lesser sanctions against appellants at the time it ordered appellants to comply with the

³ It is noted that the union had taken the necessary predicate step of filing a motion to compel.

⁴ In the next section, Pioneer and Settlers discuss the inappropriateness of United Water's attempt to interject federal law into Idaho administrative proceedings. Pioneer and Settlers acknowledge that in *Ashby*, the Court cited to federal law. However, it is very important to note that the Court had previously adopted the analysis from those cases in *Fitzgerald v. Walker*, 113 Idaho 730, 747 P.2d 752 (1987). Here, however, United Water is advocating that the Hearing Officer adopt the reasoning of federal cases, without showing that Idaho appellate courts have adopted the reasoning of those cases. More importantly, as further discussed below, the Department's Rules of Procedure specifically incorporate by reference the Idaho Rules of Civil Procedure. They do not, however, incorporate the Federal Rules of Civil Procedure, and to do so would require amendment of the Rules of Procedure in accordance with IDAPA.

discovery requests. At the August 10, 1987, hearing, the district court ordered appellants to comply with the discovery request within seven days, warned them that a failure to comply would result in dismissal of the case with prejudice, and awarded respondents their attorney's fees, costs and expenses in bringing the Motion to Compel. These lesser sanctions were patently inadequate, as appellants [the employees] subsequently failed to file responsive Answers.

Id. Contrast *Ashby* with this case: United Water has not brought a motion to compel and has not shown that it would prevail on such a motion. By bringing a motion to compel, a party provides the opposing party an opportunity to respond and both parties to receive a decision on the record from an unbiased decision maker. Here, United Water simply assumes that it would have prevailed, which again shows why a motion to compel is a necessary prerequisite.

The *Ashby* court went on to note that the trial court at least implicitly found an "aggravating factor" of prejudice to the defendant union. Specifically, the case was set for trial approximately three weeks after the court issued the motion to dismiss, and "[t]he fact that discovery had not been completed after two years was certainly prejudicial to the defendant who would be forced to answer the plaintiff's evidence in court within two weeks." *Id.* at 687-88, 791 P.2d at 437-38. In this case, United Water seems most concerned about discovering the basis for Pioneer and Settler's respective protests. However, Pioneer and Settlers already provided that information in their discovery responses. See Exhibits A and B to Campbell Aff. United Water cannot say it was prejudiced because it had that information.

Cases following *Ashby* support the conclusion that dismissal is entirely inappropriate in this case. In one case, the Idaho Supreme Court noted a "clear pattern of delay" and "plaintiff's intentional and deliberate failure to produce the answers and documents requested." *Blaser v. Riceci*, 119 Idaho 834, 836, 810 P.2d 1120, 1122 (1991). Thus, the Court

found the first two *Ashby* elements: a clear record of delay and no effect due to lesser sanctions. *Id.* at 836. *See also* *Kleine v. Fred Meyer, Inc.*, 124 Idaho 44, 855 P.2d 811 (Ct. App. 1993); *Roe v. Doe*, 129 Idaho 663, 667, 931 P.2d 657, 661 (Ct. App. 1996) (stating that “a trial court generally should attempt to satisfy the aim of encouragement before applying the more drastic punishment sanction.”). In the *Roe* case, the Court of Appeals also held that:

[A] trial court should not impose a sanction that will prevent a 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.2d at 662. Here, United Water seeks to prevent a full adjudication of the IMAP on the merits, without having shown that lesser sanctions (even if United Water could show, which it cannot, that sanctions are even warranted) would be ineffective or inadequate.

VI.
UNITED WATER IMPROPERLY ATTEMPTS TO IMPOSE
FEDERAL PRACTICE STANDARDS UPON PROCEEDINGS
BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

United Water knows better. This proceeding is governed by Idaho law. The Idaho Department of Water Resources Rules of Procedure clearly reference the Idaho Rules of Civil Procedure, not the Federal Rules of Civil Procedure. *See* Department Rules of Procedure 520.02, 521, and 523. Despite this clear reference to the Idaho Rules of Civil Procedure, United Water relies solely upon federal court decisions interpreting the Federal Rules of Civil Procedure. None of the cited decisions discuss administrative proceedings involving the Idaho Department of Water Resource Rules of Civil Procedure or the Idaho Rules of Procedure, which have been adopted by the Department. While the Idaho Rules of Civil Procedure 30(b)(6) is the same language as the federal rule, federal courts interpreting that rule in the context of litigation in the federal courts is inapplicable to the present circumstances.

United Water has cited no authority involving an interpretation of Idaho Rule of Civil Procedure 30(b)(6) in the context of an administrative agency proceeding. Moreover, United Water has not cited one Idaho appellate court decision in support of its strident claims of indignation. If the Department is to follow the Federal Rules of Civil Procedure and appellate decisions interpreting those rules, it must first amend the Rules of Procedure of the Department so that all parties are aware of the standards under which proceedings will be conducted. Until the Department does so, all references to the Federal Rules of Civil Procedure and federal court interpretations of the those rules are completely irrelevant and inapplicable.

**VII.
DISSATISFACTION WITH THE ANSWERS BY A
RULE 30(b)(6) DESIGNEE DOES NOT CONSTITUTE
SUFFICIENT GROUNDS FOR SANCTIONS**

Without any citation to Idaho Rules of Civil Procedure, Idaho appellate court decisions, or applicable rules of the Department of Water Resources, United Water contends that Pioneer and Settlers should be sanctioned by the Hearing Officer for failure to provide the answers to questions presented by United Water in the 30(b)(6) depositions. Moreover, the sanction which United Water requests is the most draconian available, one which the Idaho appellate courts have made quite clear, as discussed above, should be imposed only as a last resort.

There is nothing in Idaho Rules of Civil Procedure 30(b)(6) or in the Department's Rules of Procedure which impose a specific standard for responses to questions presented during a deposition. Merely because United Water was displeased or frustrated with the answers provided by the 30(b)(6) designee by both Districts does not constitute a basis for sanctions by the Hearing Officer. This presumes that United Water had filed a proper motion for

an order compelling discovery under its perceived standards for responses (which it did not do).

It also presumes that the Hearing Officer would have issued an order compelling discovery responses in the 30(b)(6) depositions along the lines articulated by the standard adopted by United Water. It then further presumes that Pioneer and Settlers would have intentionally refused to comply with the order compelling discovery which imposes the arbitrary standard which United Water attempts to impose in this proceeding. The multiple levels of presumptions and conjecture implicit in this position illustrates the impropriety of United Water's stance.

Idaho Rule of Civil Procedure 30(b)(6) states as follows:

Rule 30(b)(6). Deposition of organization.

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 designed, 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.

I.R.C.P. 30(b)(6).

United Water provided Notices of Deposition under Rule 30(b)(6) for both Pioneer and Settlers. Both Districts provided designated witnesses to appear at the times and locations specified in the notices. Both witnesses answered questions presented to them by United Water. Nothing else is required under the rule.

United Water goes into great detail and expresses a high level of indignation that neither of the 30(b)(6) designees understood or had read the IMAP, the Protests, or the Statement

of Issues and List of Additional Issues filed on behalf of the Districts in this proceeding. It is obviously surprising to United Water that the District's reasonably relied upon the assistance of legal counsel to evaluate the impacts of the IMAP and prepare the necessary pleadings to be filed with the Idaho Department of Water Resources to protect the interests of the Districts.

Throughout the depositions, both designees made consistent references to legal counsel being the source of explanations of the legal issues involved in the Protests and the Statement of Issue documents. *See* Deposition Transcript of Jeff Scott attached as Exhibit F to Campbell Aff. ("Scott Transcript"), p. 36, LL. 13-17, and Deposition Transcript of Nathan Draper attached as Exhibit F to Campbell Aff. ("Draper Transcript"), p. 37, LL. 8-11; p. 48, L. 17 through p. 49, L. 2; p. 51, L. 15 through p. 52, L. 8; p. 56, LL. 7-10; p. 57, LL. 10-14. This is not unusual, and is quite expected, particularly given the high degree of factual complexity, novelty of legal issues, volume of material, and technical nature of the economic information provided in the attachments to the IMAP prepared by John Church.

Additionally, United Water's attempt to impose its own standard for an acceptable level of responses to questions under 30(b)(6) ignores the additional responses to discovery provided by the Districts. *See* Section II, above, and Section X, below. In short, United Water is entitled to utilize the procedures for discovery which have been adopted by the Idaho Department of Water Resources, but no more. United Water is not entitled to invent its own standard for "appropriate" responses to questions.

VIII.
**UNITED WATER'S COMPLAINTS ABOUT LACK OF KNOWLEDGE
OR LACK OF RESPONSIVENESS TO 30(b)(6) QUESTIONS IGNORES
ITS FAILURE TO DESCRIBE WITH REASONABLE PARTICULARITY
THE MATTERS ON WHICH EXAMINATION WAS REQUESTED**

In its short-circuited and circumvented Motion for Protective Order, Pioneer and Settlers discussed the requirement of reasonable particularity in the context of a notice of deposition under Rule 30(b)(6). Unfortunately, the Hearing Officer did not have an opportunity to rule on that issue.

Rule 30(b)(6) of the Idaho Rules of Civil Procedure specifies that the party's notice to a governmental agency "must describe with reasonable particularity the matters on which examination is requested." The notices of 30(b)(6) deposition provided by United Water have two statements describing the "matters on which examination was requested." They are:

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.

Notices of Deposition, p. 2.

The first description was adequate. Pioneer and Settlers 30(b)(6) designees provided responses to this question by referring United Water to the Protests and the Statement of Issues documents. *See generally*, Exhibits F and G to Campbell Aff. In response to inquiries concerning those documents, the designees indicated that since they were prepared by legal counsel, the best explanation of those matters would be provided by counsel for the Districts. The designees attempted to respond to certain questions to the best of their abilities. Scott Transcript, p. 12, LL. 1-12, and Draper Transcript. p. 37, LL. 8-11; p. 48, LL. 17-21; p. 49, L. 25

through p.50, L. 9; p. 51, LL. 4-18; p. 51, L. 22 through p. 52, 8; p. 56, LL. 7-10; p. 57, LL. 10-13.

The second description in United Water's Notices of the matters to be examined is broad, but potentially within the requirements of Rule 30(b)(6). Unfortunately, United Water failed to ask any questions of Jeff Scott, Pioneer's 30(b)(6) designee, in this area. *See generally*, Exhibit F to Campbell Aff. Further, it focused upon settlement documents which were not identified in the Notice of 30(b)(6) Deposition. *See Draper Transcript*, p. 47, L. 13 through p. 48, L. 16. The mere fact that the Districts' designees had not evaluated the documentation presented at the deposition by United Water is completely irrelevant to item number 2 in the Notice of 30(b)(6) Deposition. Had United Water intended to examine into the details of that document, it could easily have specifically identified it in the Notice of Deposition. In fact, the rule anticipates that the requesting party will "describe with reasonable particularity the matters on which examination is requested." United Water has no one to blame but itself for the alleged "non-responsiveness" of the designees concerning this document.

Moreover, as indicated in the Motion to Strike filed concurrently in this matter, Rule 610 of the Department's Rules of Procedure specifically states that "[s]ettlement 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. To the best of Pioneer and Settlers' knowledge, none of the participants to negotiations with United Water have agreed to waive the confidentiality of those negotiations. Pioneer and Settlers certainly have not. United Water's attempt to utilize the settlement

document as a weapon against Pioneer and Settlers in the context of its 30(b)(6) depositions violates Rule 610 and destroys the confidentiality standard which is essential for settlement negotiations. Apparently, United Water has no real interest in settlement. Otherwise, it would not be so blatant in its actions ignoring the requirements of the Rule.

IX.
UNITED WATER COULD NOT SUCCESSFULLY OBTAIN
AN ORDER COMPELLING DISCOVERY UNDER I.R.C.P. 37(a)(2)
OR AN ORDER OF SANCTIONS UNDER I.R.C.P. 37(b)

United Water could not successfully bring a motion for an order compelling discovery under Idaho Rules of Civil Procedure 37(a)(2) even if it elected to do so.

United Water refused to follow the procedural rules of the Idaho Department of Water Resources. (*See* discussions above in Sections IV and V.) Had United Water followed the Department's rules, it could not have successfully obtained an order compelling discovery because it could not satisfy the requirements of Rule 37(a)(2) which are specifically incorporated into the Department's Rule of Procedure 521. Idaho Rule of Civil Procedure 37(a)(2) provides in pertinent part as follows:

A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

...

2) Motion. If a deponent fails to answer a question propounded or submitted under Rules 30 or 31, or a corporation or other entity fails to make a designation under 30(b)(6) or 31(a), . . . the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request.

I.R.C.P. 37(a)(2).

United Water cannot satisfy the material elements of this rule. Neither of the 30(b)(6) designees “failed to answer a question propounded.” Perhaps the designees did not provide the answers United Water hoped for or insisted upon, but answers were provided. *See generally*, Exhibits F and G to Campbell Aff. Additionally, both Districts made “a designation under Rule 30(b)(6)” by providing witnesses to attend and respond to questions propounded by United Water at the depositions in question. *See* Exhibits A, B, and C to Campbell Aff.

Moreover, as discussed above in Section IV, United Water’s failure to even pursue a motion for an order to compel discovery precludes any award of sanctions under the Idaho Supreme Court’s interpretation of Rule 37 of the Idaho Rules of Civil Procedure. In fact, United Water halted a procedure proactively initiated by Pioneer and Settlers to address the propriety of Pioneer and Settlers’ position.

Again, each of the Districts provided a 30(b)(6) designee who was sworn and responded to questions presented by United Water. The witnesses were instructed not to answer questions concerning conservation plans of the Districts because of then pending motions to compel/motions for protective order. *See* Scott Transcript, p. 26, L. 17 through p. 27, L. 5; p. 51, L. 18 through p. 52, L. 6, and Draper Transcript p. 59, LL. 5-12. The deponents were also instructed not to answer questions involving attorney-client communications. *See generally*, Exhibits F and G to Campbell Aff. United Water brought no motion for an order compelling discovery with regard to either area of inquiry, or any other. Clearly, under the facts of this case, sanctions cannot be imposed under Idaho Rule of Civil Procedure 37(d). In short, the Supreme Court has emphatically determined that a disputing party cannot “jump the gun” and seek sanctions against an opposing party under Rule 37 without first filing a motion to compel

discovery, obtaining an order, and refusal of compliance with the order by the opposing party.

Therefore, United Water is not entitled to the relief requested in its Motion to Dismiss.

**X.
PIONEER AND SETTLERS HAVE PROVIDED PREVIOUS
WRITTEN RESPONSES TO DISCOVERY REQUESTS OF
UNITED WATER CONCERNING THE BASIS FOR THE PROTESTS**

At page 6 of the Motion to Dismiss Settlers' Protest and Preclude Participation at Hearing ("Motion to Dismiss"), United Water makes the outrageous statement that its Motion is "premised upon an allegation of knowing disobedience and contempt for the Hearing Officer and the Department." This statement, given the unsupported nature of the Motion to Dismiss, proves just the opposite. In fact, it is United Water which has contempt for the Rules of Procedure of the Idaho Department of Water Resources and it is United Water which has engaged in "knowing disobedience" of the requirements of the Idaho Rules of Civil Procedure. The following discussion will demonstrate the veracity of these statements.

As noted above in Section II, Pioneer and Settlers each responded to an interrogatory which requested the basis for the protests each filed. *See also* Exhibits A and B to Campbell Aff. Therefore, as repeatedly noted throughout this Response, Pioneer and Settlers have provided the information sought.

At page 14 of the Motion to Dismiss, United Water contends that "during the deposition, Settlers made clear that its protest of the IMAP was not founded on any factual basis known to Settlers." In fact, the 30(b)(6) designee for each of Pioneer and Settlers specifically identified the documentation provided in prior filings with the Department and indicated that the basis for the Protests were contained in those documents. *See* Scott Transcript, p. 10, LL. 7-18, and Draper Transcript, p. 48, L. 18 through p. 49, L. 2. United Water then makes the

unsupported statement that “in short, Settlers has no evidence or argument whatsoever to offer in support of its protest.” Motion to Dismiss, p. 14. This statement ignores the written discovery responses filed by Settlers, as well as the Statement of Issues and the Protests filed in this matter.

In addition, Pioneer and Settlers note that United Water first allowed their counsel to examine documents purportedly responsive to Pioneer and Settlers’ discovery responses on August 29, 2003. Campbell Aff., ¶8. The depositions of Jeff Scott and Nathan Draper were held on September 3 and 4, respectively. *Id.*, at ¶¶ 10 and 12. At that time, counsel for Pioneer and Settlers had not even received the documents it requested be copied during its document review, documents which it anticipates it may use to factually support its positions at the hearing in this matter. Therefore, it is ridiculous to suggest that Pioneer and Settlers should have fully developed the pertinent facts, when it had not even received the information it needed to continue its analysis of the IMAP. This is the case despite Pioneer and Settlers’ repeated requests during the informal information exchange and the formal discovery process.

At pages 18 and 19 of the Motion to Dismiss, United Water complains mightily about the lack of minutes of Pioneer and Settlers’ board meetings documenting discussions of the IMAP litigation. United Water fails to acknowledge that Pioneer and Settlers reviewed their records, and produced those minutes which it thought would be responsive. *See* Exhibits A and B to Campbell Affidavit. United Water has failed to identify any authority, either statutory or case law, which places a specific requirement upon irrigation districts to document discussions concerning ongoing litigation in minutes of board meetings. In fact, the Open Meetings Act, I.C. § 67-2340 *et seq.*, which is applicable to irrigation districts (*see* I.C. § 67-2341(4)) specifically provides that “[m]inutes of executive sessions may be limited to material the disclosure of which

is not inconsistent with the provisions of section 67-2345, Idaho Code, but shall contain sufficient detail to convey the general tenor of the meeting.” I.C. § 67-2344(2). Section 67-2345, in turn, provides that an executive session may be held “[t]o consider and advise its legal representatives in pending litigation or where there is a general public awareness of probable litigation.” I.C. § 67-2345(1)(f). Thus, it is entirely appropriate that there would be no detailed minutes discussing the IMAP and Pioneer and Settlers’ responses thereto. The lack of specific minute entries concerning discussions with the Board of Directors on the IMAP litigation is no surprise, and suggests no impropriety.

In addition, to suggest that a party should make public written documentation of the advice it receives from counsel invades among the most sacred of privileges, the attorney-client privilege. It is beyond dispute that in a matter such as the IMAP, which is a legal proceeding in the administrative context, Pioneer and Settlers would each receive advice from their counsel. Such discussions most certainly should remain privileged.

United Water is free to speculate about the lack of such minutes, but it failed to exercise its option to depose members of the board of directors, as identified by Settlers and Pioneer in its written discovery responses as early as July of this year. *See* Exhibits A and B to Campbell Aff. Such failure to exercise its rights under discovery cannot be used as a cudgel to bludgeon the Districts into submission. Had United Water desired to inquire directly of the Board of Directors of the Districts, it had ample opportunity. It simply neglected to exercise its options to do so. It cannot legitimately complain because of its own negligence.

XI. CONCLUSION

United Water short-circuited a process which Pioneer and Settlers pro-actively started in an effort to resolve the difference in opinion as to Rule 30(b)(6) depositions between Pioneer and Settlers. After doing so, it failed to follow the proper procedure of filing a Motion to Compel, and simply jumped right to the sanction stage, requesting the most severe of sanctions. United Water has not yet even obtained an order from the Hearing Officer stating that its position is the correct one, and Pioneer and Settlers have not yet been given an opportunity to comply with the order, assuming (but not conceding) that United Water's position is correct. There is a legitimate dispute between the Districts and United Water, and for United Water to assert that Pioneer and Settlers should be dismissed because they disagree with United Water is nonsensical.

The Motion to Dismiss must be denied. United Water must first seek a Motion to Compel, and *if* it is granted, Pioneer and Settlers must be given an opportunity to comply. Only if United Water prevails on its Motion to Compel, and Pioneer and Settlers fail to comply with the resulting, are any sanctions at all appropriate.

Pioneer and Settlers respectfully request that the Hearing Officer deny United Water's Motion to Dismiss and Preclude Participation at Hearing.

DATED this 29th day of September 2003.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By Angela Schaer Kaufmann for
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 29th day of September 2003, I caused a true and correct copy of the foregoing **ANSWER OF PIONEER & SETTLERS TO UWID'S MOTION TO DISMISS BOTH DISTRICTS' PROTESTS AND PRECLUDE THEIR PARTICIPATION AT HEARING** to be served by the method indicated below, and addressed to the following:

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Idaho Department of Water Resources	☒ Hand Delivered
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Peter Anderson, Hearing Officer	☐ U.S. Mail, Postage Prepaid
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Gary L. Spackman, Regional Manager	☒ U.S. Mail, Postage Prepaid
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**ANSWER OF PIONEER & SETTLERS TO UWID'S
MOTION TO DISMISS BOTH DISTRICTS' PROTESTS AND
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By Angela Schaer Kaufmann
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SEP 29 2003

Department of Water Resources

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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.

**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**

Pioneer Irrigation District and Settlers Irrigation District (collectively the
"Districts") hereby move for an order striking United Water's Motions to Dismiss Pioneer and
Settlers' Protests and Preclude Participation the Hearing ("Motion to Dismiss") and the Motion's
supporting documents. This motion is brought pursuant to IDAPA 37.01.01.260, IDAPA
37.01.01.270 and IDAPA 37.01.01.610.

**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 - 1**

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IDAPA 37.01.01.610 provides as follows:

610. Confidentiality of Settlement Negotiations (Rule 610).

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. (7-1-93).

United Water has made numerous references to confidential settlement negotiations in its Motions to Dismiss including references to “conditions” which UWID has proposed as a way to potentially settle the protests against the IMAP. Rule 610 specifically prohibits such actions. The extensive references to the conditions for settlement proposed by United Water clearly violate the mandates of this Rule. Because those references are interwoven within the Motions to Dismiss and have been improperly made a part of the record in a contested case, in clear contravention of Rule 610, the Motions to Dismiss filed by United Water against Pioneer and Settlers should be stricken from the record. To do otherwise is to render Rule 610 a nullity.

Therefore, Pioneer and Settlers respectfully request that the Hearing Officer strike the Motions to Dismiss and their supporting documents in their entirety. At the least, Pioneer and Settlers request that the Hearing Office strike those portions of the Motions to Dismiss and their supporting documents which reference settlement, negotiations, or matters discussed or proposed as part of those negotiations.

DATED this 29th day of September 2003.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By Angela Schaer Kaufmann for
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 29th day of September 2003, I caused a true and correct copy of the foregoing **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** to be served by the method indicated below, and addressed to the following:

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

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

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
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Beeman & Associates P.C.
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Boise, ID 83702
Fax: 331-0954

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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

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Barker Rosholt & Simpson
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Bureau of Reclamation
E. Gail McGarry, PN-3100
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Boise, ID 83706-1234
Fax: 378-5019

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Kathleen M. Carr
U.S. Department of the Interior
Office of the Solicitor
Pacific Northwest Region , Boise Field Office
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Moore Smith Buxton & Turcke
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Meridian, ID 83642
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Caldwell, ID 83605
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Ed Squires
Hydrologic
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Fax: 342-3100

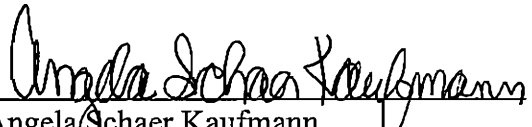
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Fax: 345-8945

☒ U.S. Mail, Postage Prepaid
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Mr. Michael Chase
70 W. Floating Feather Road
Eagle, ID 83616-3802

☒ U.S. Mail, Postage Prepaid
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By 
Angela Schaer Kaufmann

RECEIVED

SEP 29 2003

Department of Water Resources

Attorneys for Pioneer Irrigation District
and Settlers Irrigation District

Scott L. Campbell, ISB No. 2251
Angela Schaer Kaufmann, ISB No. 5436
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FIELDS, CHARTERED
101 S. Capitol Boulevard, 10th Floor
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Boise, Idaho 83701
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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.

**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**

STATE OF IDAHO)
) ss.
County of Ada)

SCOTT L. CAMPBELL, being first duly sworn upon oath, deposes and says:

1. I am an attorney duly licensed to practice law in the State of Idaho and am providing legal representation to Pioneer Irrigation District ("Pioneer") and Settlers Irrigation District ("Settlers") (collectively the "Districts").

2. I have knowledge of the files pertinent to this matter and make this affidavit based upon personal knowledge.

**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 - 1**

BOI_MT2:524549.1

3. Attached hereto as Exhibit A and incorporated herein by this reference is a true and correct copy of Pioneer Irrigation District's Responses to UWID's First Set of Discovery Requests to Pioneer Irrigation District, dated July 17, 2003.

4. Attached hereto as Exhibit B and incorporated herein by this reference is a true and correct copy of Settlers Irrigation District's Responses to UWID's First Set of Discovery Requests to Settlers Irrigation District, dated July 17, 2003.

5. Attached hereto as Exhibit C and incorporated herein by this reference is a true and correct copy of the Supplemental Responses of Pioneer Irrigation District and Settlers Irrigation District to UWID's First Set of Discovery Requests, dated September 9, 2003.

6. Attached hereto as Exhibit D and incorporated herein by this reference is a true and correct copy of Pioneer Irrigation District's Second Supplemental Responses to UWID's First Set of Discovery Requests, dated September 16, 2003.

7. Attached hereto as Exhibit E and incorporated herein by this reference is a true and correct copy of Settlers Irrigation District's Second Supplemental Responses to UWID's First Set of Discovery Requests, dated September 16, 2003.

8. On or about August 29, 2003, the undersigned was served with a copy of United Water's General Supplemental Discovery Response #2.

9. In the General Supplemental Discovery Response #2, the undersigned was advised by counsel for United Water that it would make documents available for inspection and copying at the offices of Givens Pursley.

10. The deposition of Jeff Scott, the 30(b)(6) designee for Pioneer Irrigation District, was held on September 3, 2003.

11. Attached hereto as Exhibit F and incorporated herein by reference is a true and correct copy of the Deposition Transcript of Jeff Scott.

12. The deposition of Nathan Draper, the 30(b)(6) designee for Settlers Irrigation District, was held on September 4, 2003.

13. Attached hereto as Exhibit G and incorporated herein by reference is a true and correct copy of the Deposition Transcript of Nathan Draper.

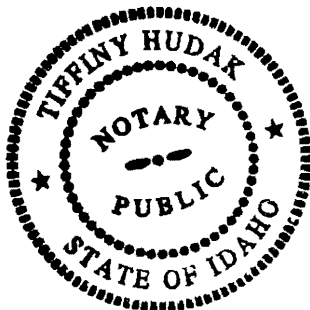
DATED this 26th day of September, 2003.

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 26th day of September, 2003.

Tiffany Hudak
NOTARY PUBLIC FOR IDAHO
Residing at Boise
My Commission Expires 9/16/09



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 29th day of September 2003, I caused a true and correct copy of the foregoing **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** to be served by the method indicated below, and addressed to the following:

Director
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
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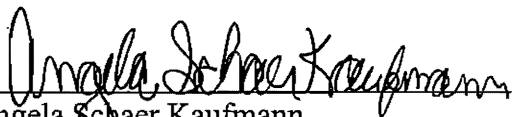
By 
Angela Schaefer Kaufmann

EXHIBIT A

**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**

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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Boise, Idaho 83701
Telephone: (208) 345-2000
Facsimile: (208) 385-5384
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.

PIONEER IRRIGATION DISTRICT'S
RESPONSES TO UWID'S FIRST SET OF
DISCOVERY REQUESTS TO PIONEER
IRRIGATION DISTRICT

Pioneer Irrigation District ("Pioneer") hereby responds to UWID's First Set of
Discovery Requests to Pioneer Irrigation District, pursuant to the Idaho Rules of Civil Procedure,
the Idaho Department of Water Resources' Rules of Procedure, and the Hearing Officer's Third
PreHearing Order.

GENERAL OBJECTIONS

1. Pioneer has not completed its own investigations and/or discovery.

Accordingly, the responses that follow are based upon the best knowledge, information, and

belief of Pioneer at this time. Pioneer reserves the right to make any further responses if it appears that any omission or error has been made in connection with these responses or that more accurate information is or has become available. These responses are made without prejudice to Pioneer's right to use in later discovery or to present at trial, such evidence as may later be discovered or evaluated.

2. Pioneer objects to the definitions and instructions to the extent they purport to require discovery requests beyond that required under the Idaho Rules of Civil Procedure. These responses are provided in accordance with the Idaho Rules of Civil Procedure irrespective of any definitions and instructions that may accompany these discovery requests.

3. These responses are made subject to all objections as to competence, relevance, materiality, and admissibility. These responses are subject to all objections that would require the exclusion of any statement, material, or information herein provided if such interrogatory were asked of or any statement, material, or information provided were made by witnesses present and testifying in court. All such objections are reserved and may be interposed at the time of trial.

4. Pioneer specifically objects to these discovery requests to the extent they seek information protected by the attorney-client privilege, the attorney work product doctrine, and the rules governing the discovery of facts of experts as set forth in Rule 26(b)(4), Idaho Rules of Civil Procedure. This objection is intended to apply to all of the discovery requests that seek such information and will not necessarily be repeated for each request to which it applies. Pioneer has, to the extent possible, construed each request as requesting only information and/or documents not subject to any applicable protection.

5. No incidental or implied admissions are intended. The fact that Pioneer has responded to any discovery request or part thereof should not be taken as an admission that Pioneer accepts that the discovery request or the response or objection thereto constitutes admissible evidence. Similarly, the fact that Pioneer has responded to all or part of an interrogatory is not intended to and shall not be construed to be a waiver by Pioneer of all or part of any objection to other interrogatories. Pioneer's answers to any discovery requests herein do not constitute a waiver of Pioneer's right to object to any future additional, or supplemental discovery requests regarding the same or similar matter.

6. Pioneer further objects to these discovery requests because they appear to attempt to separate out the transfer component of the IMAP from the applications for permit, and from the other significant legal issues involved in the IMAP, including but not limited to the appropriateness of an integrated points of diversion system, the appropriateness of a fifty year planning horizon and the applicability of the forfeiture doctrine to municipal water rights. UWID has consistently maintained that this is an "Integrated Municipal Application Package," and Pioneer maintains that it is impossible to consider the transfers of water rights contained within that package prior to and apart from the significant legal issues (as well as others) just described.

**RESPONSES TO INTERROGATORIES, REQUESTS FOR ADMISSION
AND REQUESTS FOR PRODUCTION OF DOCUMENTS**

INTERROGATORY NO. 1: Please identify yourself (the person responding to these discovery requests) and state your relationship with the District.

RESPONSE TO INTERROGATORY NUMBER 1: Kenneth E. Brush. Mr.

Brush is the President of the Board of Directors of Pioneer Irrigation District. Scott L. Campbell

and Angela Schaer Kaufmann, counsel for Pioneer, assisted Mr. Brush in preparing these responses.

INTERROGATORY NO. 2: Please identify each and every person with whom you consulted in preparing these responses.

RESPONSE TO INTERROGATORY NUMBER 2: See Response to Interrogatory Number 1.

INTERROGATORY NO. 3: Please identify each and every witness the Protestant intends to call (or may call) at the hearing in this matter. With respect to each of the witnesses so identified, please identify the person as a fact or expert witness, and state the subject matter and general substance of the facts and opinions to which he or she is expected to testify.

RESPONSE TO INTERROGATORY NUMBER 3: Objection. Discovery is still in its early stages, and Pioneer has not yet fully determined who it may call as a witness in this matter. Moreover, the Hearing Officer has not yet set a deadline for disclosure of witnesses. Subject to, and without waiving that objection, and reserving its right to disclose witnesses in accordance with the Hearing Officer's scheduling order(s), Pioneer states that it may call the following individuals as fact witnesses:

Jeff Scott, Superintendent
Pioneer Irrigation District
P.O. Box 426
Caldwell, ID 83606

Alan Newbill, Board Member
Pioneer Irrigation District
P.O. Box 426
Caldwell, ID 83606

Kenneth E. Brush, Board President
Pioneer Irrigation District
P.O. Box 426
Caldwell, ID 83606

Don Sayre, Board Member
Pioneer Irrigation District
P.O. Box 426
Caldwell, ID 83606

Each of the witnesses described above may testify regarding the effect of the IMAP upon Pioneer's water rights, and the effect of the IMAP on the local public interest.

Pioneer may also call the following expert witness: Don Reading of Ben Johnson Associates, Inc., 6070 Hill Road, Boise, ID 83703. Mr. Reading is expected to testify regarding the methodology and validity of the data used and conclusions reached by Mr. John Church.

Pioneer further reserves the right to examine each and every witness, whether fact or expert, who may be called by any other party in the above captioned matter.

INTERROGATORY NO. 4: Please identify each and every consultant or expert who has been consulted in connection with this proceeding or who has been employed, retained or engaged by the Protestant in connection with this matter. With respect to each of the persons so identified, please indicate the nature and purpose of their work as it relates to this proceeding, and indicate whether the person is expected to be called as a witness.

RESPONSE TO INTERROGATORY NUMBER 4: Objection. This interrogatory calls for material protected by the attorney-client privilege and the work product doctrine, and is not discoverable under Idaho Rule of Civil Procedure 26(B)(4)(b).

INTERROGATORY NO. 5: Please identify and describe each exhibit which the Protestant intends to introduce or utilize at the time of the hearing on the above action.

RESPONSE TO INTERROGATORY NUMBER 5: Objection. This interrogatory calls for material protected by the attorney-client privilege and work product doctrine. In addition, the Hearing Officer has not yet set a deadline for disclosure of exhibits. Subject to, and without waiving those objections, Pioneer has not yet determined what exhibits it

will introduce at the hearing in this matter. Pioneer will supplement this response in accordance with the Idaho Rules of Civil Procedure and the Hearing Officer's scheduling order(s).

INTERROGATORY NO. 6: Please describe in full, complete and material detail all statements and/or admissions relevant to the issues contested in this proceeding which the Protestant attributes to the Applicant or those speaking for the Applicant or in support of the Applicant's application. For each such statement or admission please state: (a) the substance thereof; (b) the identity of the person making the statement or admission; (c) the date and/or place where said admission was made; and (d) the identity of each and every person who heard, saw or observed each such statement or admission.

RESPONSE TO NO. INTERROGATORY NO. 6: Objection. This interrogatory is vague, ambiguous, overbroad, and compound. Subject to, and without waiving those objections, Pioneer states that it may use any statements or admissions made by UWID, including its counsel, employees, officers, directors, consultants, agents, and any others ("UWID") with actual or apparent authority to speak on behalf of UWID in the following contexts:

- a) the IMAP,
- b) any documents which UWID has disclosed in response to any of the Protestants' informal requests for information,
- c) any written statements UWID has disclosed in response to any of the Protestants' informal requests for information,
- d) any statements made by or on behalf of UWID at any hearing in this matter,

- e) any statements UWID makes in any pleadings filed or discovery responses served in this matter,
- f) any statements UWID makes in any depositions taken in this matter,
- g) any statements made in any correspondence to Pioneer, its counsel, or consultants,
- h) any statements made or reported in any news publication or report, whether written or oral.

Pioneer reserves the right to supplement this response in accordance with the Idaho Rules of Civil Procedure and the Hearing Officer's orders.

INTERROGATORY NO. 7: Please state each and every basis for the 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 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 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.

REQUEST FOR ADMISSION NO. 1: Please admit that the transfers included in the Application will not injure other water rights within the meaning of Idaho Code § 42-222(1).

RESPONSE TO REQUEST FOR ADMISSION NUMBER 1: Denied.

REQUEST FOR ADMISSION NO. 2: Please admit that the transfers included in the Application will not result in enlargement of the water rights proposed for transfer within the meaning of Idaho Code § 42-222(1).

RESPONSE TO REQUEST FOR ADMISSION NUMBER 2: Denied.

REQUEST FOR ADMISSION NO. 3: Please admit that the transfers included in the Application are consistent with the “conservation of water within the state of Idaho” within the meaning of Idaho Code § 42-222(1).

RESPONSE TO REQUEST FOR ADMISSION NUMBER 3: Pioneer is without sufficient knowledge and information to respond to this request for admission and, therefore, denies the same.

REQUEST FOR ADMISSION NO. 4: Please admit that the transfers included in the Application will not “significantly affect the agricultural base of the local area” within the meaning of Idaho Code § 42-222(1).

RESPONSE TO REQUEST FOR ADMISSION NUMBER 4: Denied.

REQUEST FOR ADMISSION NO. 5: Please admit the transfers included in the Application are within the local public interest within the meaning of Idaho Code § 42-222(1).

RESPONSE TO REQUEST FOR ADMISSION NUMBER 5: Denied.

INTERROGATORY NO. 8: If your response to any of the Requests for Admission Numbers 1 through 5 was other than an unqualified admission, then for each such Request for Admission, please state with specificity each and every reason, fact, or opinion of which you are aware that prevents your unqualified admission.

RESPONSE TO INTERROGATORY NUMBER 8: Objection. This

interrogatory is compound and, in reality, constitutes five separate interrogatories. Pioneer further states that neither discovery nor its investigation of this matter is complete. Further, this interrogatory calls for material protected by the attorney-client and work product privileges. Finally, Pioneer objects on the basis that it is UWID's burden to affirmatively prove each and every element of Idaho Code section 42-222(1), and not Pioneer's burden to disprove those elements.

Subject to, and without waiving those objections, Pioneer states as follows:

1. As to Request for Admission Number 1 and its denial of the same, the transfers included in the Application will injure other water rights due to their contemplated incorporation and use of the integrated points of diversion system.
2. As to Request for Admission Number 2 and its denial of the same, the transfers may result in enlargement of the water rights due to the use of the integrated points of diversion system, and use of individual water rights in excess of the permitted, licensed, or decreed elements of those rights.
3. As to Request for Admission Number 3, Pioneer denied the same because it was without sufficient knowledge and information to answer that request for admission.
4. As to Request for Admission Number 4, if UWID is allowed to retain its current water rights, even though it admits that it does not currently use the entire quantity available under those paper water rights, and particularly if UWID is allowed to acquire water rights significantly in excess of current demand or demand projected in the reasonably near future, the agricultural base of the local area may be harmed because those involved in

agriculture may find themselves unable to acquire water rights due to UWID's senior but unused water rights.

5. As to Request for Admission Number 5, the transfers and the IMAP will not be in the local public interest because they will allow UWID to hold water rights in excess of current demand and use, thereby, tying up the public water resource. Further, the integrated points of diversion system will not be in the local public interest because it may lead to increased drawdowns in areas of certain wells, as well as increased impacts to surface water sources.

INTERROGATORY NO. 9: What is the total quantity of water available to the District under its water rights?

RESPONSE TO INTERROGATORY NUMBER 9: Objection. This interrogatory seeks information which is irrelevant to the IMAP proceeding, and this interrogatory furthermore is not reasonably calculated to lead to the discovery of admissible evidence. It is also ambiguous as to the phrase "total quantity of water available."

INTERROGATORY NO. 10: Please describe and quantify the hydrologic impact on the District's water rights which is likely to result if the Application were approved.

RESPONSE TO INTERROGATORY NUMBER 10: Objection. This interrogatory seeks information which is irrelevant to the IMAP proceeding, and this interrogatory furthermore is not reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 11: Please describe and quantify the financial impact on the District which is likely to result if the Application were approved.

RESPONSE TO INTERROGATORY NUMBER 11: Objection. This interrogatory seeks information which is irrelevant to the IMAP proceeding, and this interrogatory furthermore is not reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 12: Please state whether the District has a water conservation program in effect today. Please describe in full the District's water conservation efforts or program. Please include a discussion of the history and development of the efforts or program.

RESPONSE TO INTERROGATORY NUMBER 12: Objection. This interrogatory seeks information which is irrelevant to the IMAP proceeding, and this interrogatory furthermore is not reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 13: Please identify, describe and summarize the results of all studies, by the District or others, assessing or evaluating the success of the District's water conservation efforts.

RESPONSE TO INTERROGATORY NUMBER 13: See Response to Interrogatory Number 12.

INTERROGATORY NO. 14: Please provide a quantification of water use by each user group served by the District for which the District keeps separate records. For example, if the District keeps records based on agricultural, commercial or domestic users, please provide a breakdown showing the total quantity of use for each group.

RESPONSE TO INTERROGATORY NUMBER 14: Objection. This

interrogatory seeks information which is irrelevant to the IMAP proceeding, and this interrogatory furthermore is not reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 15: Please identify which of the Applicant's water rights included in the Application have been forfeited. For each water right identified, please state all the facts upon which you base your contention that the right has been forfeited.

RESPONSE TO INTERROGATORY NUMBER 15: Objection. Pioneer has not been able to fully make this determination because UWID continues to refuse to provide the information which Pioneer first requested in November 2002. Moreover, the Hearing Officer has ordered that the information requested in this interrogatory be disclosed on or before September 12, 2003, after discovery is closed. Subject to, and without waiving that objection, Pioneer's analysis in this regard is ongoing and has not been completed.

Pioneer reserves the right to supplement this response in accordance with the Idaho Rules of Civil Procedure and the Hearing Officer's Third PreHearing Order.

INTERROGATORY NO. 16: Does the District disagree with the methodology used by Mr. Church and the conclusion he reached in creating the population and water demand projections in the Application? Please identify any such disagreements and explain.

RESPONSE TO INTERROGATORY NUMBER 16: Pioneer continues to review and refine its analysis of Mr. Church's methodology and conclusions, and has not yet reached conclusions of its own. Pioneer will supplement this response in accordance with the Idaho Rules of Civil Procedure and the Hearing Officer's Third PreHearing Order.

INTERROGATORY NO. 17: You have stated in responses to informal information requests that the Applicant's planning area is speculative and in conflict with the Municipal Water Rights Act of 1996.

RESPONSE TO INTERROGATORY NUMBER 17: Objection. No question was asked.

INTERROGATORY NO. 18: Explain why the District believes the Applicant should have a planning horizon for a maximum of 25 years.

RESPONSE TO INTERROGATORY NUMBER 18: The *maximum* planning horizon should be 25 years because, upon information and belief, that is the maximum period of time for which cities, counties and local agencies plan. Any period of time beyond 25 years renders projections such as population and water demand speculative and completely unreliable.

INTERROGATORY NO. 19: What plans does the District have to annex new lands?

RESPONSE TO INTERROGATORY NUMBER 19: Objection. This interrogatory seeks information which is irrelevant to the IMAP proceeding, and this interrogatory furthermore is not reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 20: How many pressurized, residential irrigation systems or hook-ups does the District serve? (This interrogatory does not inquire as to the number of individual lots or parcels served by Pioneer [] sic).

RESPONSE TO INTERROGATORY NUMBER 20: Objection. This interrogatory seeks information which is irrelevant to the IMAP proceeding, and this

interrogatory furthermore is not reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 21: Please explain how you quantify and track residential irrigation water use?

RESPONSE TO INTERROGATORY NUMBER 21: Objection. This interrogatory seeks information which is irrelevant to the IMAP proceeding, and this interrogatory furthermore is not reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 22: 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?

RESPONSE TO INTERROGATORY NUMBER 22: Objection. This interrogatory seeks information which is irrelevant to the IMAP proceeding, and this interrogatory furthermore is not reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 23: Has the District 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.

RESPONSE TO INTERROGATORY NUMBER 23: Objection. This interrogatory seeks information which is irrelevant to the IMAP proceeding, and this

interrogatory furthermore is not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST FOR PRODUCTION NO. 1: Please produce any and all documents which bear upon or provide evidence with respect to the decision by the District to file a protest in this matter. This Request for Production seeks production by the District of documents which include, but are not limited to, official minutes of any regular or special meeting of the District Council or its members, and all resolutions, ordinances, policies, directives, or other formal or informal actions of the District with respect to the District's protest of this water right transfer.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1: Objection. Calls for material protected by the attorney-client privilege and work product doctrines. Subject to, and without waiving that objection, see the documents attached hereto.

REQUEST FOR PRODUCTION NO. 2: Please produce all documents displaying the hydrologic impact that the Application would have on the District's water rights if the Application were approved.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2: Pioneer has no such responsive documents at this time. Pioneer reserves the right to supplement this response in accordance with the Idaho Rules of Civil Procedure.

REQUEST FOR PRODUCTION NO. 3: Please produce all documents concerning the District's water conservation efforts or program.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3: See Response to Interrogatory Number 12.

REQUEST FOR PRODUCTION NO. 4: Please produce all documents

concerning the District's evaluation of the Applicant's planning area.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4: Objection. Calls for

material protected by the attorney-client privilege and work product doctrine. Subject to, and without waiving that objection, Pioneer states that the responsive documents are those which have been provided by UWID to Pioneer in response to Pioneer's informal requests for information. Pioneer reserves the right to supplement this response in accordance with the Idaho Rules of Civil Procedure.

REQUEST FOR PRODUCTION NO. 5: Please produce all documents

concerning the District's evaluation of the Applicant's planning horizon.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5: Objection. Calls for

material protected by the attorney-client privilege and work product doctrine. Subject to, and without waiving that objection, Pioneer states that the responsive documents are those which have been provided by UWID to Pioneer in response to Pioneer's informal requests for information. Pioneer reserves the right to supplement this response in accordance with the Idaho Rules of Civil Procedure.

REQUEST FOR PRODUCTION NO. 6: Please produce all documents

concerning the District's evaluation of forfeiture of any of Applicant's water rights.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6: Objection. Calls for

material protected by the attorney-client privilege and work product doctrine. Subject to, and without waiving that objection, Pioneer states that the responsive documents are those which have been provided by UWID to Pioneer in response to Pioneer's informal requests for

information. Pioneer reserves the right to supplement this response in accordance with the Idaho Rules of Civil Procedure.

DATED this 17th day of July 2003.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By Angela Schaer Kaufmann for
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

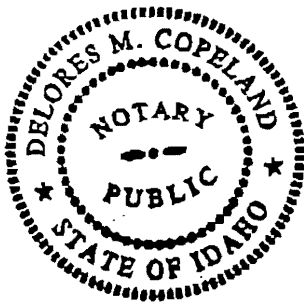
DATED this 16th day of July 2003.

By Kenneth Brush
Kenneth E. Brush, Board President
Pioneer Irrigation District

STATE OF IDAHO)
) ss.
County of Ada)

On this 16th day of July 2003, before me, the undersigned notary public in and for said state, personally appeared **KENNETH E. BRUSH**, President of the Board of Directors of **PIONEER IRRIGATION DISTRICT**, an irrigation district organized and existing under and by virtue of the laws of the State of Idaho, known or identified to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he has the authority to execute and executed the same for the purposes therein contained on behalf of **PIONEER IRRIGATION DISTRICT**.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Delores M. Copeland
NOTARY PUBLIC FOR IDAHO
Residing at 10/21/04 Caldwell, Id.
My Commission Expires 10/21/04

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17th day of July 2003, I caused a true and correct copy of the foregoing **PIONEER IRRIGATION DISTRICT'S RESPONSES TO UWID'S FIRST SET OF DISCOVERY REQUESTS TO PIONEER IRRIGATION DISTRICT** to be served by the method indicated below, and addressed to the following:

Director	☒ U.S. Mail, Postage Prepaid
Idaho Department of Water Resources	☐ Hand Delivered
1301 N. Orchard Street	☐ Overnight Mail
PO Box 83720	☐ Facsimile
Boise, ID 83720	
Fax: 327-5400	

Peter Anderson, Hearing Officer	☒ U.S. Mail, Postage Prepaid
729 W. Braemere Road	☐ Hand Delivered
Boise, ID 83702	☐ Overnight Mail
	☐ Facsimile

Gary L. Spackman, Regional Manager	☒ U.S. Mail, Postage Prepaid
Idaho Department of Water Resources	☐ Hand Delivered
Western Region Office	☐ Overnight Mail
2735 Airport Way	☐ Facsimile
Boise, ID 83705	
Fax: 334-2348	

United Water Idaho Inc.	☐ U.S. Mail, Postage Prepaid
John M. Marshall	☒ Hand Delivered
Givens Pursley, LLP	☐ Overnight Mail
PO Box 2720	☐ Facsimile
Boise, ID 83701	
Fax: 388-1300	

Nampa & Meridian Irrigation District,	☒ U.S. Mail, Postage Prepaid
City of Meridian, City of Caldwell, Terteling	☐ Hand Delivered
Company, and Terteling Trust No. 7	☐ Overnight Mail
Charles L. Honsinger	☐ Facsimile
Ringert Clark	
455 South 3rd Street	
PO Box 2773	
Boise, ID 83701-2773	
Fax: 342-4657	

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

☒ U.S. Mail, Postage Prepaid
☐ 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

Boise Project Board of Control
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
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

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

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

Estate of Eleanor I. Chase
Matt J. Howard
PO Box 190012
Boise, ID 83719
Fax: 333-8409

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

Cities of Eagle, Kuna, Middleton & Star and
Star Sewer District
Bruce M. Smith
Tammy A. Zokan
Moore Smith Buxton & Turcke
225 N. 9th Street, Suite 420
Boise, ID 83702
Fax: 331-1202

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

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

Mr. Michael Chase
70 W. Floating Feather Road
Eagle, ID 83616-3802

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

Angela Schen Kaufmann for
Scott L. Campbell

QUITCLAIM DEEDS: It was moved, seconded and carried to sign a Quitclaim Deed to Raul C. Anguiana and Editha Mejia for property assessed under Account #1762-2, upon payment of \$193.61 to cover all assessments owing on said account.

CROSSING AGREEMENTS: It was moved, seconded and carried to sign the following Standard Crossing Agreements:

IDAHO POWER CO. for crossing the Steven's Lateral four times within Crestwood Estates #2, in road right-of-way, at the location described in their Exhibit A, in order to construct, operate, inspect, maintain and repair a 12.5 KV underground distribution power line;

IDACOMM, Inc. for crossing the 13.3 Lateral and 13.3 East with an underground and aerial fiber optic cable; and

CITY OF CALDWELL for crossing the Phyllis Canal with a 10" sewer main for Southgate Subdivision at Airport Avenue.

CONSTRUCTION, OPERATION AND MAINTENANCE AGREEMENTS: Attorney Campbell has completed the draft for said agreements for Ashton Hills, Black Hawk and Monarch Subdivision. Said drafts have been reviewed and are acceptable with Pioneer. Should the representatives for said subdivisions sign the agreements as written, it was moved, seconded and carried for the President of Pioneer's Board to sign them upon receipt of the same.

ARROWROCK: Letter of Agreement for Repayment of Rehabilitation Costs was sent to Pioneer. It was the consensus of the Board to put this matter on hold until Attorney Campbell has addressed some concerns contained therein with the Bureau of Reclamation.

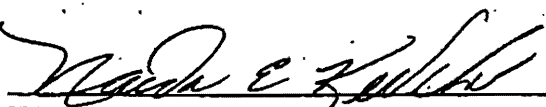
UNITED WATER: Mr. Scott Rhead of United Water had requested a slot on the Board's agenda to inform the Board on the stand which United Water has taken on some issues of concern. The Board granted him his request and listened to what he had to say. No discussion took place nor was any Board action required.

THIES LITIGATION: A letter was sent to Attorney Campbell regarding said litigation from William F. Gigray, III who is representing the Canyon Highway Dist. #4. Said letter stated the Highway District is willing to provide all of the material and bedding for the tiling project on Laster Lane, and the City of Caldwell is willing to perform any necessary engineering and the equipment and labor necessary for the excavation and installation of the tiling of the High Line Canal along Laster Lane. It was stated, however, that the Highway District is not willing to pay the attorney fees Pioneer Irrigation District has expended to defend the District on said litigation. It was the consensus of the Board to not enter into said settlement due to the legal expenses not being covered which were expended on a matter for which the District held no responsibility.

CH2MHill: An agreement with CH2MHill for the Lucky Peak Storage Contract Environmental Assessment was presented to the Board by Mr. Campbell. It was the consensus of the Board to sign said Agreement upon the recommendation of Mr. Campbell. The same was signed and returned to Attorney Campbell this day.

There being no further business appearing before the Board, meeting was adjourned.

ATTEST:


NAIDA E. KELLEHER, Secretary


KENNETH E. BRUSH, President

COULTER BAY, etc. - Continued: Mr. Bailey was informed that a Crossing Agreement would need to be in place prior to the beginning of said work. The gentlemen were informed by Attorney Campbell that they would need to contact the Bureau of Reclamation and perhaps the Corp of Engineers as well as the Department of Water Resources for their plans which involve the Purdam Drain and Mason Creek, and issues which have to do with the Clean Water Act. These issues need to be resolved prior to Pioneer Irrigation District giving approval or signing a crossing agreement. Mr. Amar and Mr. Cox stated they would make the necessary contacts and be in contact with Supt. Jeff Scott and Attorney Campbell.

UNITED WATER: Mr. Scott Reed of United Water appeared before the Board regarding a deep well they wish to drill at Maple Hills and Franklin Road which Pioneer's Attorney has filed a protest against. A test well has been dug and it has been determined the producing zone is 265 feet. United Water has proposed to put a sealed casing down to the 265-foot depth. Mr. Reed presented other arguments as to why this well should not damage Pioneer's water rights. Attorney Campbell has presented to United Water the conditions for which Pioneer would withdraw their protest, but United Water representatives have determined to not comply with those conditions. It was the consensus of the Board to proceed with the District's protest.

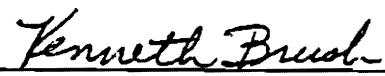
EARL & ASSOC.: Attorney Campbell expressed concern about some of the language contained in the letters the District's engineer has sent out. It was the consensus of the Board to see if Mr. Mason can attend next month's Board meeting.

Attorney Campbell advised the Board on the development of matters he is representing the District on.

There being no further business appearing before the Board, meeting was adjourned.

ATTEST:


NAIDA E. KELLEHER, Secretary


KENNETH E. BRUSH, President

January 7, 2003
Caldwell, Idaho
Reorganization Meeting

The new Board was called to order with the following present: Kenneth E. Brush, Alan Newbill, and newly re-elected Donald F. Sayre. Mr. Sayre was sworn in for a term of three years. It was moved, seconded and carried to re-elect Kenneth E. Brush as President for the coming year.

It was moved, seconded and carried to appoint Jeffrey C. Scott as Superintendent & Naida E. Kelleher as Secretary-Treasurer. Mr. Scott has selected Mark Zirschky to be the District's new Asst. Superintendent.

Per Diem for the Directors was again set at \$75 per meeting, and each Director to continue to receive a \$5.00 per month telephone allowance.

It was the consensus of the Board to continue holding the regularly scheduled meetings of the Board on the 7th of each month unless the 7th falls on a weekend or holiday, on which occasion the Board will meet the following working day.

NAMPA CITY ORDINANCES: It was the consensus of the Board to approve Ordinances #3115 for 1.82 acres and #3117 for 39.97 acres, whereby the City of Nampa annexes land from Pioneer Irrigation District into the Municipal Irrigation District of the City of Nampa for the purpose of distributing irrigation water to said parcels.

GLENN MEADOWS SUB.: A request was received from Attorney Wm. F. Gigray on behalf of Dr. Gilbert Hafen for Pioneer Irrigation District to share in the cost of the construction of the Spruce Street and Georgia Avenue pump site and the new pump to serve said subdivision.

A letter was also received from the City of Caldwell's Engineering Office regarding the City's review of the construction plans for the pressure irrigation for the referenced development. The City's redlined plans stipulate the pressure irrigation system will be owned, operated and maintained by Pioneer Irrigation District with an agreement specifying maintenance responsibility, including surface repair, to be by Pioneer.

It was the consensus of the Board to deny the request for Pioneer to share in the cost of the pump site, and also to deny entering into any agreement which would specify that Pioneer would accept the responsibility for maintaining facilities constructed in public right-of-ways.

MANCHESTER PARK #8: Upon the recommendation of the District's engineering firm to approve and accept the pressure irrigation and distribution system for Phase #8 of Manchester Park, it was the consensus of the Board to accept the same.

MARBLE VALLEY #1 & #2 AND STONEGATE SUBDIVISION #2: The District is in receipt of recommendations from the District's engineering firm to approve and accept into Pioneer's system the pressure irrigation and distribution systems for the above two named subdivisions. Attorney Campbell stated he had not been contacted regarding Construction, Operation and Maintenance Agreements for these two subdivisions. It was the consensus of the Board to table acceptance of the pressure irrigation and distribution systems for the above two named subdivisions until the Construction, Operation and Maintenance Agreements are in place.

WEST WIND DEVELOPMENT submitted a request for permission to tie into the 3" irrigation line on the north side of Ashton Hills Subdivision. It was moved, seconded and carried to approve said request.

FRED C. SCHREFFLER submitted a Claim for Damage or Injury regarding a 4" irrigation line which was on the District's easement, and was run over by a District employee who was spraying weeds. It was the consensus of the Board to deny the claim in the amount of \$100.00.

PERSONNEL: Supt. Freeman submitted to the Board for information purposes the letter he wrote to Ronald R. Burcham, Ditchrider on Ride #1, as was requested by the Board at last month's meeting. Said letter was read by and signed by Mr. Burcham. A summary of the meeting with Mr. Burcham was also given to the Board for informational purposes.

A letter received from the Manchester Park Board of Directors was also given to the Board. Said letter commended Chuck Meyers, Ditchrider #5, for his efforts on behalf of the waterusers in Manchester Park.

BY-LAWS: A copy of the District's By-Laws was given to Director Alan Newbill for his information.

LEGAL MATTERS: Attorney Campbell advised the Board of the litigation status of the Thies lawsuit, the United Water transfer, and gave a progress report of the Snake River Basin Adjudication. No action was required. There being no further business appearing before the Board, meeting was adjourned.

ATTEST:

Maida E. Zwickler

Kennith Brush

EXHIBIT B

**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**

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
Post Office Box 829
Boise, Idaho 83701
Telephone: (208) 345-2000
Facsimile: (208) 385-5384
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.

**SETTLERS IRRIGATION DISTRICT'S
RESPONSES TO UWID'S FIRST SET OF
DISCOVERY REQUESTS TO SETTLERS
IRRIGATION DISTRICT**

Settlers Irrigation District ("Settlers") hereby responds to UWID's First Set of
Discovery Requests to Settlers Irrigation District, pursuant to the Idaho Rules of Civil Procedure,
the Idaho Department of Water Resources' Rules of Procedure, and the Hearing Officer's Third
PreHearing Order.

GENERAL OBJECTIONS

1. Settlers has not completed its own investigations and/or discovery.

Accordingly, the responses that follow are based upon the best knowledge, information, and

belief of Settlers at this time. Settlers reserves the right to make any further responses if it appears that any omission or error has been made in connection with these responses or that more accurate information is or has become available. These responses are made without prejudice to Settlers' right to use in later discovery or to present at trial, such evidence as may later be discovered or evaluated.

2. Settlers objects to the definitions and instructions to the extent they purport to require discovery requests beyond that required under the Idaho Rules of Civil Procedure. These responses are provided in accordance with the Idaho Rules of Civil Procedure irrespective of any definitions and instructions that may accompany these discovery requests.

3. These responses are made subject to all objections as to competence, relevance, materiality, and admissibility. These responses are subject to all objections that would require the exclusion of any statement, material, or information herein provided if such interrogatory were asked of or any statement, material, or information provided were made by witnesses present and testifying in court. All such objections are reserved and may be interposed at the time of trial.

4. Settlers specifically objects to these discovery requests to the extent they seek information protected by the attorney-client privilege, the attorney work product doctrine, and the rules governing the discovery of facts of experts as set forth in Rule 26(b)(4), Idaho Rules of Civil Procedure. This objection is intended to apply to all of the discovery requests that seek such information and will not necessarily be repeated for each request to which it applies. Settlers has, to the extent possible, construed each request as requesting only information and/or documents not subject to any applicable protection.

5. No incidental or implied admissions are intended. The fact that Settlers has responded to any discovery request or part thereof should not be taken as an admission that Settlers accepts that the discovery request or the response or objection thereto constitutes admissible evidence. Similarly, the fact that Settlers has responded to all or part of an interrogatory is not intended to and shall not be construed to be a waiver by Settlers of all or part of any objection to other interrogatories. Settlers' answers to any discovery requests herein do not constitute a waiver of Settlers' right to object to any future additional, or supplemental discovery requests regarding the same or similar matter.

6. Settlers further objects to these discovery requests because they appear to attempt to separate out the transfer component of the IMAP from the applications for permit, and from the other significant legal issues involved in the IMAP, including but not limited to the appropriateness of an integrated points of diversion system, the appropriateness of a fifty year planning horizon and the applicability of the forfeiture doctrine to municipal water rights. UWID has consistently maintained that this is an "Integrated Municipal Application Package," and Settlers maintains that it is impossible to consider the transfers of water rights contained within that package prior to and apart from the significant legal issues (as well as others) just described.

**RESPONSES TO INTERROGATORIES, REQUESTS FOR ADMISSION
AND REQUESTS FOR PRODUCTION OF DOCUMENTS**

INTERROGATORY NO. 1: Please identify yourself (the person responding to these discovery requests) and state your relationship with the District.

RESPONSE TO INTERROGATORY NUMBER 1: Tom Davis. Mr. Davis is the Vice-President of the Board of Directors of Settlers Irrigation District. Scott L. Campbell and Angela Schaer Kaufmann, counsel for Settlers, assisted Mr. Davis in preparing these responses.

INTERROGATORY NO. 2: Please identify each and every person with whom you consulted in preparing these responses.

RESPONSE TO INTERROGATORY NUMBER 2: See Response to Interrogatory Number 1.

INTERROGATORY NO. 3: Please identify each and every witness the Protestant intends to call (or may call) at the hearing in this matter. With respect to each of the witnesses so identified, please identify the person as a fact or expert witness, and state the subject matter and general substance of the facts and opinions to which he or she is expected to testify.

RESPONSE TO INTERROGATORY NUMBER 3: Objection. Discovery is still in its early stages, and Settlers has not yet fully determined who it may call as a witness in this matter. Moreover, the Hearing Officer has not yet set a deadline for disclosure of witnesses. Subject to, and without waiving that objection, and reserving its right to disclose witnesses in accordance with the Hearing Officer's scheduling order(s), Settlers states that it may call the following individuals as fact witnesses:

Nathan Draper, Manager
Settlers Irrigation District
P.O. Box 7571
Boise, ID 83707

Richard E. Allen, Board President
Settlers Irrigation District
P.O. Box 7571
Boise, ID 83707

Ken Aschenbrenner, Board Member
Settlers Irrigation District
P.O. Box 7571
Boise, ID 83707

Tom Davis, Board Member
Settlers Irrigation District
P.O. Box 7571
Boise, ID 83707

Each of the witnesses described above may testify regarding the effect of the IMAP upon Settlers' water rights, and the effect of the IMAP on the local public interest.

Settlers may also call the following expert witness: Don Reading of Ben Johnson Associates, Inc., 6070 Hill Road, Boise, ID 83703. Mr. Reading is expected to testify regarding the methodology and validity of the data used and conclusions reached by Mr. John Church.

Settlers further reserves the right to examine each and every witness, whether fact or expert, who may be called by any other party in the above captioned matter.

INTERROGATORY NO. 4: Please identify each and every consultant or expert who has been consulted in connection with this proceeding or who has been employed, retained or engaged by the Protestant in connection with this matter. With respect to each of the persons so identified, please indicate the nature and purpose of their work as it relates to this proceeding, and indicate whether the person is expected to be called as a witness.

RESPONSE TO INTERROGATORY NUMBER 4: Objection. This interrogatory calls for material protected by the attorney-client privilege and the work product doctrine, and is not discoverable under Idaho Rule of Civil Procedure 26(B)(4)(b).

INTERROGATORY NO. 5: Please identify and describe each exhibit which the Protestant intends to introduce or utilize at the time of the hearing on the above action.

RESPONSE TO INTERROGATORY NUMBER 5: Objection. This interrogatory calls for material protected by the attorney-client privilege and work product doctrine. In addition, the Hearing Officer has not yet set a deadline for disclosure of exhibits. Subject to, and without waiving those objections, Settlers has not yet determined what exhibits it will introduce at the hearing in this matter. Settlers will supplement this response in accordance with the Idaho Rules of Civil Procedure and the Hearing Officer's scheduling order(s).

INTERROGATORY NO. 6: Please describe in full, complete and material detail all statements and/or admissions relevant to the issues contested in this proceeding which the Protestant attributes to the Applicant or those speaking for the Applicant or in support of the Applicant's application. For each such statement or admission please state: (a) the substance thereof; (b) the identity of the person making the statement or admission; (c) the date and/or place where said admission was made; and (d) the identity of each and every person who heard, saw or observed each such statement or admission.

RESPONSE TO NO. INTERROGATORY NO. 6: Objection. This interrogatory is vague, ambiguous, overbroad, and compound. Subject to, and without waiving those objections, Settlers states that it may use any statements or admissions made by UWID, including its counsel, employees, officers, directors, consultants, agents, and any others ("UWID") with actual or apparent authority to speak on behalf of UWID in the following contexts:

- a) the IMAP,
- b) any documents which UWID has disclosed in response to any of the Protestants' informal requests for information,
- c) any written statements UWID has disclosed in response to any of the Protestants' informal requests for information,
- d) any statements made by or on behalf of UWID at any hearing in this matter,
- e) any statements UWID makes in any pleadings filed or discovery responses served in this matter,
- f) any statements UWID makes in any depositions taken in this matter,

- g) any statements made in any correspondence to Settlers, its counsel, or consultants,
- h) any statements made or reported in any news publication or report, whether written or oral.

Settlers reserves the right to supplement this response in accordance with the Idaho Rules of Civil Procedure and the Hearing Officer's orders.

INTERROGATORY NO. 7: Please state each and every basis for the 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, 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.

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

REQUEST FOR ADMISSION NO. 1: Please admit that the transfers included in the Application will not injure other water rights within the meaning of Idaho Code § 42-222(1).

RESPONSE TO REQUEST FOR ADMISSION NUMBER 1: Denied.

REQUEST FOR ADMISSION NO. 2: Please admit that the transfers included in the Application will not result in enlargement of the water rights proposed for transfer within the meaning of Idaho Code § 42-222(1).

RESPONSE TO REQUEST FOR ADMISSION NUMBER 2: Denied.

REQUEST FOR ADMISSION NO. 3: Please admit that the transfers included in the Application are consistent with the “conservation of water within the state of Idaho” within the meaning of Idaho Code § 42-222(1).

RESPONSE TO REQUEST FOR ADMISSION NUMBER 3: Settlers is without sufficient knowledge and information to respond to this request for admission and, therefore, denies the same.

REQUEST FOR ADMISSION NO. 4: Please admit that the transfers included in the Application will not “significantly affect the agricultural base of the local area” within the meaning of Idaho Code § 42-222(1).

RESPONSE TO REQUEST FOR ADMISSION NUMBER 4: Denied.

REQUEST FOR ADMISSION NO. 5: Please admit the transfers included in the Application are within the local public interest within the meaning of Idaho Code § 42-222(1).

RESPONSE TO REQUEST FOR ADMISSION NUMBER 5: Denied.

INTERROGATORY NO. 8: If your response to any of the Requests for Admission Numbers 1 through 5 was other than an unqualified admission, then for each such Request for Admission, please state with specificity each and every reason, fact, or opinion of which you are aware that prevents your unqualified admission.

RESPONSE TO INTERROGATORY NUMBER 8: Objection. This

interrogatory is compound and, in reality, constitutes five separate interrogatories. Settlers further states that neither discovery nor its investigation of this matter is complete. Further, this interrogatory calls for material protected by the attorney-client and work product privileges. Finally, Settlers objects on the basis that it is UWID's burden to affirmatively prove each and every element of Idaho Code section 42-222(1), and not Settlers' burden to disprove those elements.

Subject to, and without waiving those objections, Settlers states as follows:

1. As to Request for Admission Number 1 and its denial of the same, the transfers included in the Application will injure other water rights due to their contemplated incorporation and use of the integrated points of diversion system.
2. As to Request for Admission Number 2 and its denial of the same, the transfers may result in enlargement of the water rights due to the use of the integrated points of diversion system, and use of individual water rights in excess of the permitted, licensed, or decreed elements of those rights.
3. As to Request for Admission Number 3, Settlers denied the same because it was without sufficient knowledge and information to answer that request for admission.
4. As to Request for Admission Number 4, if UWID is allowed to retain its current water rights, even though it admits that it does not currently use the entire quantity available under those paper water rights, and particularly if UWID is allowed to acquire water rights significantly in excess of current demand or demand projected in the reasonably near future, the agricultural base of the local area may be harmed because those involved in

agriculture may find themselves unable to acquire water rights due to UWID's senior but unused water rights.

5. As to Request for Admission Number 5, the transfers and the IMAP will not be in the local public interest because they will allow UWID to hold water rights in excess of current demand and use, thereby, tying up the public water resource. Further, the integrated points of diversion system will not be in the local public interest because it may lead to increased drawdowns in areas of certain wells, as well as increased impacts to surface water sources.

INTERROGATORY NO. 9: What is the total quantity of water available to the District under its water rights?

RESPONSE TO INTERROGATORY NUMBER 9: Objection. This interrogatory seeks information which is irrelevant to the IMAP proceeding, and this interrogatory furthermore is not reasonably calculated to lead to the discovery of admissible evidence. It is also ambiguous as to the phrase "total quantity of water available."

INTERROGATORY NO. 10: Please describe and quantify the hydrologic impact on the District's water rights which is likely to result if the Application were approved.

RESPONSE TO INTERROGATORY NUMBER 10: Objection. This interrogatory seeks information which is irrelevant to the IMAP proceeding, and this interrogatory furthermore is not reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 11: Please describe and quantify the financial impact on the District which is likely to result if the Application were approved.

RESPONSE TO INTERROGATORY NUMBER 11: Objection. This interrogatory seeks information which is irrelevant to the IMAP proceeding, and this interrogatory furthermore is not reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 12: Please state whether the District has a water conservation program in effect today. Please describe in full the District's water conservation efforts or program. Please include a discussion of the history and development of the efforts or program.

RESPONSE TO INTERROGATORY NUMBER 12: Objection. This interrogatory seeks information which is irrelevant to the IMAP proceeding, and this interrogatory furthermore is not reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 13: Please identify, describe and summarize the results of all studies, by the District or others, assessing or evaluating the success of the District's water conservation efforts.

RESPONSE TO INTERROGATORY NUMBER 13: See Response to Interrogatory Number 12.

INTERROGATORY NO. 14: Please provide a quantification of water use by each user group served by the District for which the District keeps separate records. For example, if the District keeps records based on agricultural, commercial or domestic users, please provide a breakdown showing the total quantity of use for each group.

RESPONSE TO INTERROGATORY NUMBER 14: Objection. This interrogatory seeks information which is irrelevant to the IMAP proceeding, and this interrogatory furthermore is not reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 15: Please identify which of the Applicant's water rights included in the Application have been forfeited. For each water right identified, please state all the facts upon which you base your contention that the right has been forfeited.

RESPONSE TO INTERROGATORY NUMBER 15: Objection. Settlers has not been able to fully make this determination because UWID continues to refuse to provide the information which Settlers first requested in November 2002. Moreover, the Hearing Officer has ordered that the information requested in this interrogatory be disclosed on or before September 12, 2003, after discovery is closed. Subject to, and without waiving that objection, Settlers' analysis in this regard is ongoing and has not been completed.

Settlers reserves the right to supplement this response in accordance with the Idaho Rules of Civil Procedure and the Hearing Officer's Third PreHearing Order.

INTERROGATORY NO. 16: Does the District disagree with the methodology used by Mr. Church and the conclusion he reached in creating the population and water demand projections in the Application? Please identify any such disagreements and explain.

RESPONSE TO INTERROGATORY NUMBER 16: Settlers continues to review and refine its analysis of Mr. Church's methodology and conclusions, and has not yet reached conclusions of its own. Settlers will supplement this response in accordance with the Idaho Rules of Civil Procedure and the Hearing Officer's Third PreHearing Order.

INTERROGATORY NO. 17: You have stated in responses to informal information requests that the Applicant's planning area is speculative and in conflict with the Municipal Water Rights Act of 1996.

RESPONSE TO INTERROGATORY NUMBER 17: Objection. No question was asked.

INTERROGATORY NO. 18: Explain why the District believes the Applicant should have a planning horizon for a maximum of 25 years.

RESPONSE TO INTERROGATORY NUMBER 18: The *maximum* planning horizon should be 25 years because, upon information and belief, that is the maximum period of time for which cities, counties and local agencies plan. Any period of time beyond 25 years renders projections such as population and water demand speculative and completely unreliable.

INTERROGATORY NO. 19: What plans does the District have to annex new lands?

RESPONSE TO INTERROGATORY NUMBER 19: Objection. This interrogatory seeks information which is irrelevant to the IMAP proceeding, and this interrogatory furthermore is not reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 20: How many pressurized, residential irrigation systems or hook-ups does the District serve? (This interrogatory does not inquire as to the number of individual lots or parcels served by Settlers [] sic).

RESPONSE TO INTERROGATORY NUMBER 20: Objection. This interrogatory seeks information which is irrelevant to the IMAP proceeding, and this

interrogatory furthermore is not reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 21: Please explain how you quantify and track residential irrigation water use?

RESPONSE TO INTERROGATORY NUMBER 21: Objection. This interrogatory seeks information which is irrelevant to the IMAP proceeding, and this interrogatory furthermore is not reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 22: 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?

RESPONSE TO INTERROGATORY NUMBER 22: Objection. This interrogatory seeks information which is irrelevant to the IMAP proceeding, and this interrogatory furthermore is not reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 23: Has the District 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.

RESPONSE TO INTERROGATORY NUMBER 23: Objection. This interrogatory seeks information which is irrelevant to the IMAP proceeding, and this

interrogatory furthermore is not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST FOR PRODUCTION NO. 1: Please produce any and all documents which bear upon or provide evidence with respect to the decision by the District to file a protest in this matter. This Request for Production seeks production by the District of documents which include, but are not limited to, official minutes of any regular or special meeting of the District Council or its members, and all resolutions, ordinances, policies, directives, or other formal or informal actions of the District with respect to the District's protest of this water right transfer.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1: Objection. Calls for material protected by the attorney-client privilege and work product doctrines. Subject to, and without waiving that objection, see the documents attached hereto.

REQUEST FOR PRODUCTION NO. 2: Please produce all documents displaying the hydrologic impact that the Application would have on the District's water rights if the Application were approved.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2: Settlers has no such responsive documents at this time. Settlers reserves the right to supplement this response in accordance with the Idaho Rules of Civil Procedure.

REQUEST FOR PRODUCTION NO. 3: Please produce all documents concerning the District's water conservation efforts or program.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3: See Response to Interrogatory Number 12.

REQUEST FOR PRODUCTION NO. 4: Please produce all documents concerning the District's evaluation of the Applicant's planning area.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4: Objection. Calls for material protected by the attorney-client privilege and work product doctrine. Subject to, and without waiving that objection, Settlers states that the responsive documents are those which have been provided by UWID to Settlers in response to Settlers' informal requests for information. Settlers reserves the right to supplement this response in accordance with the Idaho Rules of Civil Procedure.

REQUEST FOR PRODUCTION NO. 5: Please produce all documents concerning the District's evaluation of the Applicant's planning horizon.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5: Objection. Calls for material protected by the attorney-client privilege and work product doctrine. Subject to, and without waiving that objection, Settlers states that the responsive documents are those which have been provided by UWID to Settlers in response to Settlers' informal requests for information. Settlers reserves the right to supplement this response in accordance with the Idaho Rules of Civil Procedure.

REQUEST FOR PRODUCTION NO. 6: Please produce all documents concerning the District's evaluation of forfeiture of any of Applicant's water rights.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6: Objection. Calls for material protected by the attorney-client privilege and work product doctrine. Subject to, and without waiving that objection, Settlers states that the responsive documents are those which have been provided by UWID to Settlers in response to Settlers' informal requests for

information. Settlers reserves the right to supplement this response in accordance with the Idaho Rules of Civil Procedure.

DATED this 17th day of July 2003.

**MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED**

By Angela Schaefer Kaufmann
Scott L. Campbell - Of the Firm

By Angela Schaefer Kaufmann
Angela Schaefer Kaufmann - Of the Firm
Attorneys for Pioneer Irrigation District
and Settlers Irrigation District

DATED this 16th day of July 2003.

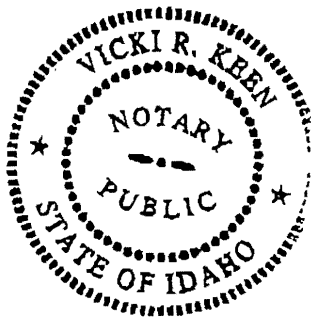
By Tom Davis

Tom Davis, Board Vice-President
Settlers Irrigation District

STATE OF IDAHO)
) ss.
County of Ada)

On this 16th day of July 2003, before me, the undersigned notary public in and for said state, personally appeared TOM DAVIS, Vice-President of the Board of Directors of SETTLERS IRRIGATION DISTRICT, an irrigation district organized and existing under and by virtue of the laws of the State of Idaho, known or identified to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he has the authority to execute and executed the same for the purposes therein contained on behalf of SETTLERS IRRIGATION DISTRICT.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Vicki R. Keen
NOTARY PUBLIC FOR IDAHO
Residing at Boise, Idaho
My Commission Expires 5/21/2005

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17th day of July 2003, I caused a true and correct copy of the foregoing **SETTLERS IRRIGATION DISTRICT'S RESPONSES TO UWID'S FIRST SET OF DISCOVERY REQUESTS TO SETTLERS IRRIGATION DISTRICT** to be served by the method indicated below, and addressed to the following:

Director Idaho Department of Water Resources 1301 N. Orchard Street PO Box 83720 Boise, ID 83720 Fax: 327-5400	☒ U.S. Mail, Postage Prepaid ☐ Hand Delivered ☐ Overnight Mail ☐ Facsimile
Peter Anderson, Hearing Officer 729 W. Braemere Road Boise, ID 83702	☒ U.S. Mail, Postage Prepaid ☐ Hand Delivered ☐ Overnight Mail ☐ Facsimile
Gary L. Spackman, Regional Manager Idaho Department of Water Resources Western Region Office 2735 Airport Way Boise, ID 83705 Fax: 334-2348	☒ U.S. Mail, Postage Prepaid ☐ Hand Delivered ☐ Overnight Mail ☐ Facsimile
United Water Idaho Inc. John M. Marshall Givens Pursley, LLP PO Box 2720 Boise, ID 83701 Fax: 388-1300	☐ U.S. Mail, Postage Prepaid ☒ Hand Delivered ☐ Overnight Mail ☐ Facsimile
Nampa & Meridian Irrigation District, City of Meridian, City of Caldwell, Terteling Company, and Terteling Trust No. 7 Charles L. Honsinger Ringert Clark 455 South 3rd Street PO Box 2773 Boise, ID 83701-2773 Fax: 342-4657	☒ U.S. Mail, Postage Prepaid ☐ Hand Delivered ☐ Overnight Mail ☐ Facsimile

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

☒ U.S. Mail, Postage Prepaid
☐ 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

Boise Project Board of Control
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
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

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

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

Estate of Eleanor I. Chase
Matt J. Howard
PO Box 190012
Boise, ID 83719
Fax: 333-8409

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

Cities of Eagle, Kuna, Middleton & Star and
Star Sewer District
Bruce M. Smith
Tammy A. Zokan
Moore Smith Buxton & Turcke
225 N. 9th Street, Suite 420
Boise, ID 83702
Fax: 331-1202

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

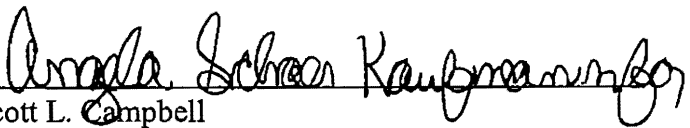
☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

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

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

Mr. Michael Chase
70 W. Floating Feather Road
Eagle, ID 83616-3802

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



Scott L. Campbell

COPY

MINUTES

A regular meeting of Settlers Irrigation District was called to order October 1, 2002 at 1:00 p.m. Those attending were Richard Allen, President; Tom Davis Vice President, Ken Aschenbrenner, Director; Vicki Keen, Secretary/Treasurer; Nathan Draper, Manager; and Scott Campbell, attorney.

The minutes of the September 2002 meeting were read, approved, and signed.

Vicki presented the expenses for September and the Board approved them. Expenses were \$30,484.14 and Income was \$1,310.03.

Nathan presented revised plans for Bridgetower #2. He wants the developers to relocate the White Drain tile to avoid encroachment of the easement by the pressurized irrigation pond. In addition, the proposed pathway through the development will require the Drain to have a 4:1 slope which will make cleaning the Drain difficult. In fact, NMID, who has historically cleaned the drain, will not assume the liability of doing so in the future if the pathway is constructed. Since Settlers' does not have the proper equipment to clean it, Nathan will discuss the problem with Becky.

Connie Wensman, 2273 Ribier Drive, Meridian, Idaho, Lot 2 of Almaden Acres, would like to Annex into the District. She is requesting 4.26 miner's inches of water for the property which would be pumped from the private ditch that runs through the subdivision. She has requested permission from the Almaden Acres Property Owners' Association. The Board approves of the annexation if she can obtain permission from the other water users on the ditch. Vicki will contact her and relay the information. If her request is granted, the legal notice will be published in the Statesman for two weeks and if there is no objection to the annexation, Vicki will prepare the Order to be recorded with the County.

Nathan reported that we have approximately 6,384 acre feet of Lucky Peak water remaining in the reservoir.

Nathan met with Brian Sauer of the Bureau of Reclamation to tour the District and determine how the \$15,000 of matching funds will be used. They decided that replacing flumes is the best use of the money at this time.

Scott met with the Bureau of Reclamation yesterday to discuss the Lucky Peak Contract Renewal. Negotiations are going slowly, but they are working to get the Environmental Assessment completed before the end of the year.

Scott attended a meeting in Washington, D.C. to discuss the Nez Perce issue. Nothing was resolved and the whole process may come to a halt.

Scott Rhead with United Water attended the meeting to discuss with the Board the SRBA and the resulting ^{how} water rights allocation will affect the Boise Valley. He wanted to give assurance that United Water is not trying and will not try to take water rights away from the District. They would like to establish trust and work together to supply the water needs for agriculture and residential. He would like to start a dialogue with the Board to get and give feedback to resolve the issues.

As there was no further business, the meeting was adjourned at 3:00 p.m.

Respectfully submitted,

Vicki R. Keen

Vicki R. Keen, Secretary/Treasurer

Richard E. Allen

Richard Allen, President

EXHIBIT C

**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**

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
Post Office Box 829
Boise, Idaho 83701
Telephone: (208) 345-2000
Facsimile: (208) 385-5384
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.

**SUPPLEMENTAL RESPONSES OF PIONEER
IRRIGATION DISTRICT AND SETTLERS
IRRIGATION DISTRICT TO UWID'S FIRST
SET OF DISCOVERY REQUESTS**

Pioneer Irrigation District ("Pioneer") and Settlers Irrigation District ("Settlers")
(collectively the "Districts") hereby supplement their responses to UWID's First Set of
Discovery Requests, pursuant to the Idaho Rules of Civil Procedure, the Idaho Department of
Water Resources' Rules of Procedure, and the Hearing Officer's Third PreHearing Order.

GENERAL OBJECTIONS

1. The Districts have not completed their own investigations and/or
discovery. Accordingly, the responses that follow are based upon the best knowledge,
information, and belief of the Districts at this time. The Districts reserves the right to make any
further responses if it appears that any omission or error has been made in connection with these

responses or that more accurate information is or has become available. These responses are made without prejudice to the Districts' rights to use in later discovery or to present at trial, such evidence as may later be discovered or evaluated.

2. The Districts object to the definitions and instructions to the extent they purport to require discovery requests beyond that required under the Idaho Rules of Civil Procedure. These responses are provided in accordance with the Idaho Rules of Civil Procedure irrespective of any definitions and instructions that may accompany these discovery requests.

3. These responses are made subject to all objections as to competence, relevance, materiality, and admissibility. These responses are subject to all objections that would require the exclusion of any statement, material, or information herein provided if such interrogatory were asked of or any statement, material, or information provided were made by witnesses present and testifying in court. All such objections are reserved and may be interposed at the time of trial.

4. The Districts specifically object to these discovery requests to the extent they seek information protected by the attorney-client privilege, the attorney work product doctrine, and the rules governing the discovery of facts of experts as set forth in Rule 26(b)(4), Idaho Rules of Civil Procedure. This objection is intended to apply to all of the discovery requests that seek such information and will not necessarily be repeated for each request to which it applies. The Districts have, to the extent possible, construed each request as requesting only information and/or documents not subject to any applicable protection.

5. No incidental or implied admissions are intended. The fact that the Districts have responded to any discovery request or part thereof should not be taken as an admission that the Districts accept that the discovery request or the response or objection thereto

constitutes admissible evidence. Similarly, the fact that the Districts have responded to all or part of an interrogatory is not intended to and shall not be construed to be a waiver by the Districts of all or part of any objection to other interrogatories. The Districts' answers to any discovery requests herein do not constitute a waiver of the Districts' right to object to any future additional, or supplemental discovery requests regarding the same or similar matter.

6. The Districts further object to these discovery requests because they appear to attempt to separate out the transfer component of the IMAP from the applications for permit, and from the other significant legal issues involved in the IMAP, including but not limited to the appropriateness of an integrated points of diversion system, the appropriateness of a fifty year planning horizon and the applicability of the forfeiture doctrine to municipal water rights. UWID has consistently maintained that this is an "Integrated Municipal Application Package," and the Districts maintain that it is impossible to consider the transfers of water rights contained within that package prior to and apart from the significant legal issues (as well as others) just described.

**SUPPLEMENTAL RESPONSES TO INTERROGATORIES,
REQUESTS FOR ADMISSION
AND REQUESTS FOR PRODUCTION OF DOCUMENTS**

INTERROGATORY NO. 3: Please identify each and every witness the Protestant intends to call (or may call) at the hearing in this matter. With respect to each of the witnesses so identified, please identify the person as a fact or expert witness, and state the subject matter and general substance of the facts and opinions to which he or she is expected to testify.

RESPONSE TO INTERROGATORY NUMBER 3: In addition to the responses previously provided by Pioneer and Settlers, they may call the following individuals as fact witnesses:

David R. Tuthill, Jr.
Idaho Department of Water Resources
1301 N. Orchard
P.O. Box 83720
Boise, ID 83720

Phillip J. Rassier
Water Resources
1301 N. Orchard
P.O. Box 83720
Boise, ID 83720-0098

Hal Simmons
Boise City Planning and
Development Services
Boise City Hall
150 N. Capitol Blvd.
Boise, ID 83701

Kathleen Lacey
Boise City Planning and
Development Services
Boise City Hall
150 N. Capitol Blvd.
Boise, ID 83701

Norman Young
ERO Resources Corp.
1106 N. Cole Road, Suite C
Boise, ID 83401-8661

Ed Squires
Hydrologic
1002 W. Franklin
Boise, ID 83702-5431

Mr. Young, Mr. Tuthill and Mr. Rassier are expected to testify regarding conversations involving United Water Idaho representatives and employees of the Idaho Department of Water Resources.

Mr. Simmons and Ms. Lacey are expected to testify regarding the Boise City Comprehensive Plan and related Boise City planning policies and procedures.

Mr. Squires is expected to testify regarding the hydrology of the Treasure Valley and the potential of the IMAP changes to injure the water rights of Pioneer and Settlers Irrigation Districts' or the likelihood of IMAP to reduce the quantity of water available to Pioneer and Settlers' water rights.

REQUEST FOR PRODUCTION NO. 5: Please produce all documents concerning the District's evaluation of the Applicant's planning horizon.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5: In addition to the responses previously provided by Pioneer and Settlers, the Districts have potentially responsive documentation which will be made available for inspection and copying at your expense in the

offices of Moffatt, Thomas, Barrett, Rock & Fields. Please contact Tiffiny Hudak at Moffatt Thomas to make arrangements if you desire such inspection and copying.

DATED this 9th day of September 2003.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By Scott L. Campbell
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

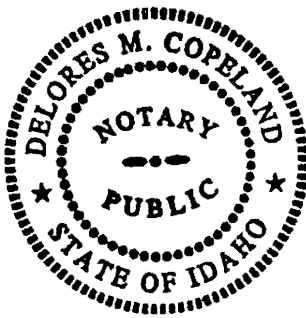
DATED this 8 day of September 2003.

By Kenneth Brush
Kenneth E. Brush, Board President
Pioneer Irrigation District

STATE OF IDAHO)
) ss.
County of Canyon)

On this 8 day of Sept, 2003, before me, the undersigned notary public in and for said state, personally appeared **KENNETH E. BRUSH**, President of the Board of Directors of **PIONEER IRRIGATION DISTRICT**, an irrigation district organized and existing under and by virtue of the laws of the State of Idaho, known or identified to me to be the person whose name is subscribed to the forgoing instrument and acknowledged to me that he has the authority to execute and executed the same for the purposes therein contained on behalf of **PIONEER IRRIGATION DISTRICT**.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Debra M. Copeland
NOTARY PUBLIC FOR IDAHO
Residing at Caldwell, Id.
My Commission Expires 10-21-04

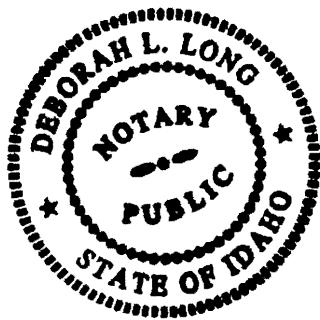
DATED this 2nd day of September 2003.

By Richard E Allen
Richard Allen, Board President
Settlers Irrigation District

STATE OF IDAHO)
County of Ada) ss.

On this 2nd day of September, 2003, before me, the undersigned notary public in and for said state, personally appeared **RICHARD ALLEN**, President of the Board of Directors of **SETTLERS IRRIGATION DISTRICT**, an irrigation district organized and existing under and by virtue of the laws of the State of Idaho, known or identified to me to be the person whose name is subscribed to the forgoing instrument and acknowledged to me that he has the authority to execute and executed the same for the purposes therein contained on behalf of **SETTLERS IRRIGATION DISTRICT**.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



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 9th day of September 2003, I caused a true and correct copy of the foregoing **SUPPLEMENTAL RESPONSES OF PIONEER IRRIGATION DISTRICT AND SETTLERS IRRIGATION DISTRICT TO UWID'S FIRST SET OF DISCOVERY REQUESTS** to be served by the method indicated below, and addressed to the following:

John M. Marshall
Givens Pursley, LLP
PO Box 2720
Boise, ID 83701
Fax: 388-1300

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
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Ringert Clark
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Beeman & Associates P.C.
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Boise, ID 83702
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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

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Fax: 378-5019

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

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

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

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

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Mr. Michael Chase
70 W. Floating Feather Road
Eagle, ID 83616-3802

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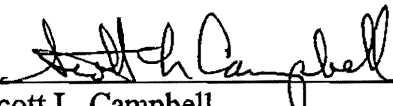
By 
Scott L. Campbell

EXHIBIT D

**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**

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 &
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Post Office Box 829
Boise, Idaho 83701
Telephone: (208) 345-2000
Facsimile: (208) 385-5384
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.

**PIONEER IRRIGATION DISTRICT'S SECOND
SUPPLEMENTAL DISCOVERY RESPONSES
TO UWID'S FIRST SET OF DISCOVERY
REQUESTS**

Pioneer Irrigation District ("Pioneer") hereby responds to UWID's First Set of
Discovery Requests to Pioneer Irrigation District, pursuant to the Idaho Rules of Civil Procedure,
the Idaho Department of Water Resources' Rules of Procedure, and the Hearing Officer's Third
PreHearing Order.

GENERAL OBJECTIONS

1. Pioneer has not completed its own investigations and/or discovery. Accordingly,
the responses that follow are based upon the best knowledge, information, and belief of Pioneer

**PIONEER IRRIGATION DISTRICT'S SECOND
SUPPLEMENTAL DISCOVERY RESPONSES TO
UWID'S FIRST SET OF DISCOVERY REQUESTS - 1**

at this time. Pioneer reserves the right to make any further responses if it appears that any omission or error has been made in connection with these responses or that more accurate information is or has become available. These responses are made without prejudice to Pioneer's right to use in later discovery or to present at trial, such evidence as may later be discovered or evaluated.

2. Pioneer objects to the definitions and instructions to the extent they purport to require discovery requests beyond that required under the Idaho Rules of Civil Procedure. These responses are provided in accordance with the Idaho Rules of Civil Procedure irrespective of any definitions and instructions that may accompany these discovery requests.

3. These responses are made subject to all objections as to competence, relevance, materiality, and admissibility. These responses are subject to all objections that would require the exclusion of any statement, material, or information herein provided if such interrogatory were asked of or any statement, material, or information provided were made by witnesses present and testifying in court. All such objections are reserved and may be interposed at the time of trial.

4. Pioneer specifically objects to these discovery requests to the extent they seek information protected by the attorney-client privilege, the attorney work product doctrine, and the rules governing the discovery of facts of experts as set forth in Rule 26(b)(4), Idaho Rules of Civil Procedure. This objection is intended to apply to all of the discovery requests that seek such information and will not necessarily be repeated for each request to which it applies. Pioneer has, to the extent possible, construed each request as requesting only information and/or documents not subject to any applicable protection.

5. No incidental or implied admissions are intended. The fact that Pioneer has responded to any discovery request or part thereof should not be taken as an admission that Pioneer accepts that the discovery request or the response or objection thereto constitutes admissible evidence. Similarly, the fact that Pioneer has responded to all or part of an interrogatory is not intended to and shall not be construed to be a waiver by Pioneer of all or part of any objection to other interrogatories. Pioneer's answers to any discovery requests herein do not constitute a waiver of Pioneer's right to object to any future additional, or supplemental discovery requests regarding the same or similar matter.

6. Pioneer further objects to these discovery requests because they appear to attempt to separate out the transfer component of the IMAP from the applications for permit, and from the other significant legal issues involved in the IMAP, including but not limited to the appropriateness of an integrated points of diversion system, the appropriateness of a fifty year planning horizon and the applicability of the forfeiture doctrine to municipal water rights. UWID has consistently maintained that this is an "Integrated Municipal Application Package," and Pioneer maintains that it is impossible to consider the transfers of water rights contained within that package prior to and apart from the significant legal issues (as well as others) just described.

**RESPONSES TO INTERROGATORIES, REQUESTS FOR ADMISSION
AND REQUESTS FOR PRODUCTION OF DOCUMENTS**

INTERROGATORY NO. 1: Please identify yourself (the person responding to these discovery requests) and state your relationship with the District.

RESPONSE TO INTERROGATORY NO. 1: Kenneth E. Brush. Mr. Brush is the President of the Board of Directors of Pioneer Irrigation District. Scott L. Campbell and Angela Schaer Kaufmann, counsel for Pioneer, assisted Mr. Brush in preparing these responses.

INTERROGATORY NO. 10: Please describe and quantify the hydrologic impact on the District's water rights which is likely to result of the Application were approved.

RESPONSE TO INTERROGATORY NO. 10: Objection. It is not Pioneer's duty to prove a hydrologic impact or injury to its water rights if the IMAP were approved, but it is instead UWID's obligation to prove that the IMAP, if approved, will not injure existing water rights. Subject to and without waiving that objection, Pioneer states that its water rights may be hydrologically impacted if the IMAP is approved due to the proposed use of an integrated points of diversion system. For example, if UWID diverts water in excess of its licensed rights for which the Ranney collectors located near the Boise River are the point of diversion, Pioneer's Boise River water rights could be adversely impacted. Similarly, if UWID pumps wells from an aquifer which is the same as or connected to an aquifer from which Pioneer pumps, and does so in excess of the licensed amount for a particular point of diversion (i.e., well), Pioneer's groundwater rights could be hydrologically impacted.

The IMAP seeks to remove the volumetric limitation on a number of water rights and convert the season of use to 12 months instead of the irrigation season. The elimination of a volumetric limit will enlarge the water rights because it will allow use of the rights at flow rates over longer time periods than historically has been possible with the existing limits. Converting to a 12 month season of use will enlarge the period of use of the irrigation rights to allow use outside the irrigation season, thereby allowing diversions during the time of year when irrigation canals do not recharge the groundwater systems. Additionally, expanding the period of use will

change the return flow component of these water rights dramatically. Instead of providing recharge to the groundwater system and connected drains, use during the non-irrigation season will mean the non-consumptive portion of the water will return to the Boise River through wastewater treatment plant discharge points. Since that water can not be diverted or stored by Pioneer during the non-irrigation season it will be lost to the hydrologic system as far as their water rights are concerned. This will eliminate use of a substantial portion of these changed rights for the recharge of the groundwater system or beneficial use by owners of water rights on the Boise River or the drains in the Treasure Valley.

In addition, it appears that UWID may be attempting to “recapture” priority dates for water rights which have, in fact, been forfeited or partially forfeited. If such a tactic is allowed, it could hydrologically impact Pioneer’s intervening water rights.

Pioneer has not yet conducted studies or data gathering to determine the quantity of a hydrologic impact. Pioneer reserves the right to supplement this response.

INTERROGATORY NO. 13: Please identify, describe and summarize the results of all studies, by the Districts or others, assessing or evaluating the success of the District’s water conservation efforts.

RESPONSE TO INTERROGATORY NO. 13: Pioneer’s previous response to this interrogatory is withdrawn. Pioneer has undertaken no such studies, and is unaware of the existence of any studies.

INTERROGATORY NO. 23: Has the District 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.

RESPONSE TO INTERROGATORY NO. 23: Pioneer's previous response to this Interrogatory is withdrawn. Pioneer objects on the basis that this interrogatory is compound and, in reality, this interrogatory consists of five separate interrogatories. Subject to, and without waiving that objection, Pioneer states that Pioneer plans for future demand by taking action to ensure that the water rights which it currently holds continue to be put to beneficial use. Therefore, Pioneer has filed the required SRBA claims and been an active participant in administrative matters before the Idaho Department of Water Resources which have the potential to impact Pioneer's water rights. Pioneer has also pursued renewal and/or conversion of its contracts with the Bureau of Reclamation for water from Lucky Peak Dam and Reservoir, Arrowrock Dam and Reservoir, and Anderson Ranch Dam and Reservoir. Pioneer also works with developers of residential projects to ensure that Pioneer will provide non-potable irrigation water to residential subdivisions.

Pioneer does not plan for future water demand by obtaining water rights which it does not currently beneficially use, and which would thus be held for speculative purposes. Instead, Pioneer ensures that it is beneficially using its water rights, and protecting them via legal and legislative means. At this time, Pioneer has no plans to acquire additional water rights beyond those already claimed, licensed, or permitted, unless they are related to existing groundwater rights which may be incorporated into pressurized irrigation systems.

DATED this 16th day of September 2003.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By Scott L. Campbell
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

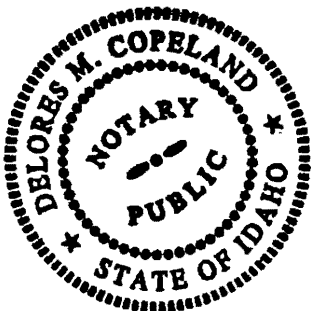
DATED this 15 day of September 2003.

By Kenneth Brush
Kenneth E. Brush, Board President
Pioneer Irrigation District

STATE OF IDAHO)
) ss.
County of Canyon)

On this 15 day of September, 2003, before me, the undersigned notary public in and for said state, personally appeared KENNETH E. BRUSH, President of the Board of Directors of PIONEER IRRIGATION DISTRICT, an irrigation district organized and existing under and by virtue of the laws of the State of Idaho, known or identified to me to be the person whose name is subscribed to the forgoing instrument and acknowledged to me that he has the authority to execute and executed the same for the purposes therein contained on behalf of PIONEER IRRIGATION DISTRICT.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Delores M. Copeland
NOTARY PUBLIC FOR IDAHO
Residing at Caldwell, Id.
My Commission Expires 10/21/2004

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16th day of September 2003, I caused a true and correct copy of the foregoing **PIONEER IRRIGATION DISTRICT'S SECOND SUPPLEMENTAL DISCOVERY RESPONSES TO UWID'S FIRST SET OF DISCOVERY REQUESTS** to be served by the method indicated below, and addressed to the following:

John M. Marshall
Givens Pursley, LLP
PO Box 2720
Boise, ID 83701
Fax: 388-1300

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
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Ringert Clark
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Fax: 342-4657

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

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Josephine P. Beeman
Beeman & Associates P.C.
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City of Boise
Boise Public Works Department
Beth K. Baird
Environmental Programs Coordinator
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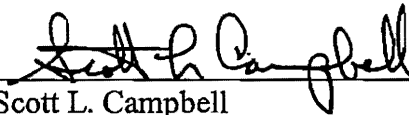
By 
Scott L. Campbell

EXHIBIT E

**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**

Attorneys for Pioneer Irrigation District
and Settlers Irrigation District

Scott L. Campbell, ISB No. 2251
Angela Schaer Kaufmann, ISB No. 5436
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FIELDS, CHARTERED
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Post Office Box 829
Boise, Idaho 83701
Telephone: (208) 345-2000
Facsimile: (208) 385-5384
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.

**SETTLERS IRRIGATION DISTRICT'S SECOND
SUPPLEMENTAL DISCOVERY RESPONSES
TO UWID'S FIRST SET OF DISCOVERY
REQUESTS**

Settlers Irrigation District ("Settlers") hereby responds to UWID's First Set of Discovery Requests to Settlers Irrigation District, pursuant to the Idaho Rules of Civil Procedure, the Idaho Department of Water Resources' Rules of Procedure, and the Hearing Officer's Third PreHearing Order and IMAP – Order Re: Motions to Compel and Motion for Protective Order.

GENERAL OBJECTIONS

1. Settlers has not completed its own investigations and/or discovery. Accordingly, the responses that follow are based upon the best knowledge, information, and belief of Settlers at this time. Settlers reserves the right to make any further responses if it appears that any

omission or error has been made in connection with these responses or that more accurate information is or has become available. These responses are made without prejudice to Settlers' right to use in later discovery or to present at trial, such evidence as may later be discovered or evaluated.

2. Settlers objects to the definitions and instructions to the extent they purport to require discovery requests beyond that required under the Idaho Rules of Civil Procedure. These responses are provided in accordance with the Idaho Rules of Civil Procedure irrespective of any definitions and instructions that may accompany these discovery requests.

3. These responses are made subject to all objections as to competence, relevance, materiality, and admissibility. These responses are subject to all objections that would require the exclusion of any statement, material, or information herein provided if such interrogatory were asked of or any statement, material, or information provided were made by witnesses present and testifying in court. All such objections are reserved and may be interposed at the time of trial.

4. Settlers specifically objects to these discovery requests to the extent they seek information protected by the attorney-client privilege, the attorney work product doctrine, and the rules governing the discovery of facts of experts as set forth in Rule 26(b)(4), Idaho Rules of Civil Procedure. This objection is intended to apply to all of the discovery requests that seek such information and will not necessarily be repeated for each request to which it applies. Settlers has, to the extent possible, construed each request as requesting only information and/or documents not subject to any applicable protection.

5. No incidental or implied admissions are intended. The fact that Settlers has responded to any discovery request or part thereof should not be taken as an admission that

Settlers accepts that the discovery request or the response or objection thereto constitutes admissible evidence. Similarly, the fact that Settlers has responded to all or part of an interrogatory is not intended to and shall not be construed to be a waiver by Settlers of all or part of any objection to other interrogatories. Settlers' answers to any discovery requests herein do not constitute a waiver of Settlers' right to object to any future additional, or supplemental discovery requests regarding the same or similar matter.

6. Settlers further objects to these discovery requests because they appear to attempt to separate out the transfer component of the IMAP from the applications for permit, and from the other significant legal issues involved in the IMAP, including but not limited to the appropriateness of an integrated points of diversion system, the appropriateness of a fifty year planning horizon and the applicability of the forfeiture doctrine to municipal water rights. UWID has consistently maintained that this is an "Integrated Municipal Application Package," and Settlers maintains that it is impossible to consider the transfers of water rights contained within that package prior to and apart from the significant legal issues (as well as others) just described.

**RESPONSES TO INTERROGATORIES, REQUESTS FOR ADMISSION
AND REQUESTS FOR PRODUCTION OF DOCUMENTS**

INTERROGATORY NO. 1: Please identify yourself (the person responding to these discovery requests) and state your relationship with the District.

RESPONSE TO INTERROGATORY NO. 1: Richard Allen. Mr. Allen is the President of the Board of Directors of Settlers Irrigation District. Scott L. Campbell and Angela Schaer Kaufmann, counsel for Settlers, assisted Mr. Allen in preparing these responses.

INTERROGATORY NO. 10: Please describe and quantify the hydrologic impact on the District's water rights which is likely to result of the Application were approved.

RESPONSE TO INTERROGATORY NO. 10: Objection. It is not Settlers' duty

to prove a hydrologic impact or injury to its water rights if the IMAP were approved, but it is instead UWID's obligation to prove that the IMAP, if approved, will not injure existing water rights. Subject to and without waiving that objection, Settlers states that its water rights may be hydrologically impacted if the IMAP is approved due to the proposed use of an integrated points of diversion system. For example, if UWID diverts water in excess of its licensed rights for which the Ranney collectors located near the Boise River are the point of diversion, Settlers' Boise River water rights could be adversely impacted. Similarly, if UWID pumps wells from an aquifer which is the same as or connected to an aquifer from which Settlers pumps, and does so in excess of the licensed amount for a particular point of diversion (i.e., well), Settlers' groundwater rights could be hydrologically impacted.

The IMAP seeks to remove the volumetric limitation on a number of water rights and convert the season of use to 12 months instead of the irrigation season. The elimination of a volumetric limit will enlarge the water rights because it will allow use of the rights at flow rates over longer time periods than historically has been possible with the existing limits. Converting to a 12 month season of use will enlarge the period of use of the irrigation rights to allow use outside the irrigation season, thereby allowing diversions during the time of year when irrigation canals do not recharge the groundwater systems. Additionally, expanding the period of use will change the return flow component of these water rights dramatically. Instead of providing recharge to the groundwater system and connected drains, use during the non-irrigation season will mean the non-consumptive portion of the water will return to the Boise River through wastewater treatment plant discharge points. Since that water can not be diverted or stored by Settlers during the non-irrigation season it will be lost to the hydrologic system as far as their

water rights are concerned. This will eliminate use of a substantial portion of these changed rights for the recharge of the groundwater system or beneficial use by owners of water rights on the Boise River or the drains in the Treasure Valley.

In addition, it appears that UWID may be attempting to “recapture” priority dates for water rights which have, in fact, been forfeited or partially forfeited. If such a tactic is allowed, it could hydrologically as well as legally impact Settlers’ intervening water rights.

Settlers has not yet conducted studies or data gathering to determine the quantity of a hydrologic impact. Settlers reserves the right to supplement this response.

INTERROGATORY NO. 13: Please identify, describe and summarize the results of all studies, by the Districts or others, assessing or evaluating the success of the District’s water conservation efforts.

RESPONSE TO INTERROGATORY NO. 13: Settlers’ previous response to this interrogatory is withdrawn. Settlers has undertaken no such studies, and is unaware of the existence of any studies.

INTERROGATORY NO. 23: Has the District 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.

RESPONSE TO INTERROGATORY NO. 23: Settlers’ previous response to this Interrogatory is withdrawn. Settlers objects on the basis that this interrogatory is compound, and in reality, this interrogatory consists of five separate interrogatories. Subject to and without waiving that objection, Settlers states that Settlers plans for future demand by taking action to ensure that the water rights which it currently holds continue to be put to beneficial use.

Therefore, Settlers has filed the required SRBA claims and been an active participant in administrative matters before the Idaho Department of Water Resources which have the potential to impact Settlers' water rights. Settlers has also pursued renewal and/or conversion of its contracts with the Bureau of Reclamation for water from Lucky Peak Dam and Reservoir, Arrowrock Dam and Reservoir, and Anderson Ranch Dam and Reservoir. Settlers also works with developers of residential projects to ensure that Settlers will provide non-potable irrigation water to residential subdivisions.

Settlers does not plan for future water demand by obtaining water rights which it does not currently beneficially use, and which would thus be held for speculative purposes. Instead, Settlers ensures that it is beneficially using its water rights, and protecting them via legal and legislative means. At this time, Settlers has no plans to acquire additional water rights beyond those already claimed, licensed, or permitted, unless they are related to existing groundwater rights which may be incorporated into pressurized irrigation systems.

DATED this 16th day of September 2003.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By Scott L. Campbell
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

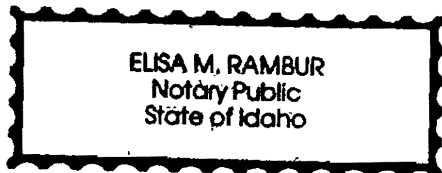
DATED this 15th day of September 2003.

By Richard E. Allen
Richard Allen, Board President
Settlers Irrigation District

STATE OF IDAHO)
County of Ada) ss.

On this 15th day of September, 2003, before me, the undersigned notary public in and for said state, personally appeared **RICHARD ALLEN**, President of the Board of Directors of **SETTLERS IRRIGATION DISTRICT**, an irrigation district organized and existing under and by virtue of the laws of the State of Idaho, known or identified to me to be the person whose name is subscribed to the forgoing instrument and acknowledged to me that he has the authority to execute and executed the same for the purposes therein contained on behalf of **SETTLERS IRRIGATION DISTRICT**.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Elisa M. Rambur
NOTARY PUBLIC FOR IDAHO
Residing at Base Idaho
My Commission Expires ~~My~~ Commission Expires On
April 7, 2009

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16th day of September 2003, I caused a true and correct copy of the foregoing **SETTLERS IRRIGATION DISTRICT'S SECOND SUPPLEMENTAL DISCOVERY RESPONSES TO UWID'S FIRST SET OF DISCOVERY REQUESTS** to be served by the method indicated below, and addressed to the following:

John M. Marshall
Givens Pursley, LLP
PO Box 2720
Boise, ID 83701
Fax: 388-1300

☒ 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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☐ Overnight Mail
☐ Facsimile

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

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

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☐ 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

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

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☐ 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
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

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

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

Matt J. Howard
PO Box 190012
Boise, ID 83719
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☐ Hand Delivered
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Bruce M. Smith
Tammy A. Zokan
Moore Smith Buxton & Turcke
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Fax: 331-1202

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

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

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Ed Squires
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1002 W. Franklin
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Fax: 342-3100

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Robert W. Talboy
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2402 W. Jefferson Street
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Mr. Michael Chase
70 W. Floating Feather Road
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☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

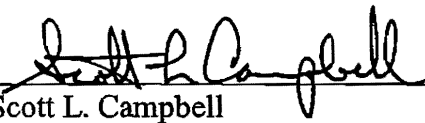
By 
Scott L. Campbell

EXHIBIT F

**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**

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

1 DEPOSITION OF JEFFREY SCOTT, taken at
2 the instance of the Applicant United Water Idaho, at
3 the offices of Givens Pursley, 601 West Bannock
4 Street, in the City of Boise, State of Idaho,
5 commencing at 9:00 a.m., on Wednesday, September 3,
6 2003, before CONSTANCE S. BUCY, CSR, a Notary Public
7 in and for the State of Idaho, pursuant to Notice and
8 in accordance with the Idaho Rules of Civil
9 Procedure.

10
11
12
13
14
15
16 APPEARANCES

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

21 For Pioneer MOFFATT THOMAS BARRETT ROCK
22 Irrigation District: & FIELDS
23 by Scott L. Campbell, Esq.
24 Post Office Box 829
25 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

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

2
3
4 (Exhibits 1 - 10 were marked for
5 identification before the commencement of the
6 deposition.)

7
8 JEFFREY SCOTT,
9 produced as a witness at the instance of the Applicant
10 United Water Idaho, having been first duly sworn, was
11 examined and testified as follows:

12
13 EXAMINATION

14
15 BY MR. MEYER:

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

20 A Jeffrey C. Scott.

21 Q And your residence?

22 A 1123 Talon Court, Caldwell, Idaho.

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

25 A Yes.

1 INDEX

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10 EXHIBITS

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12 1 - Notice of Deposition Duces Tecum of 4
13 Pioneer Irrigation District
14 2 - (Withdrawn)
15 3 - Protest 4
16 4 - Statement of the Issues 4
17 5 - Pioneer and Settlers' List of 4
18 Additional Issues
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20 7 - Amended Notice of Deposition Duces Tecum 4
21 of Pioneer Irrigation District
22 8 - (Withdrawn)
23 9 - (Withdrawn)
24 10 - Proposed IMAP Conditions 4
25

1 Q What is that position?

2 A Superintendent.

3 Q How long have you held that position?

4 A As of January 1st, 2003.

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

7 A Assistant superintendent.

8 Q And how long were you in that position?

9 A Roughly two years.

10 Q Have you ever had your deposition taken
11 before?

12 A Once.

13 Q Recently?

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

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

25 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?

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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?

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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?

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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

Page 17

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

Page 18

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.

Page 19

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

Page 20

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?

Page 21

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.

Page 22

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

Page 23

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

Page 24

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.

Page 25

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?

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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,

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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.

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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.

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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.

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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

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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;

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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

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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.

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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

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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

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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

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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.

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?

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

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

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

Page 46

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,

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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

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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

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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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SS.

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Signature

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21



Debora M. Coselance
Notary Public for Idaho
Residing at Caldwell, Idaho.
My Commission Expires 10-21-04

EXHIBIT G

**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**

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

1 DEPOSITION OF NATHAN DRAPER, taken at
2 the instance of the Applicant United Water Idaho, at
3 the office of Burnham, Habel & Associates, 668 North
4 9th Street, in the City of Boise, State of Idaho,
5 commencing at 9:00 a.m., on Thursday, September 4,
6 2003, before CONSTANCE S. BUCY, CSR, a Notary Public
7 in and for the State of Idaho, pursuant to Notice and
8 in accordance with the Idaho Rules of Civil
9 Procedure.

18 A P P E A R A N C E S

19 For the Applicant: GIVENS PURSLEY
20 by Christopher H. Meyer, Esq.
Post Office Box 2720
Boise, Idaho 83701
21
22 For Settlers MOFFATT THOMAS BARRETT ROCK
Irrigation District: & FIELDS
by Scott L. Campbell, Esq.
23 Post Office Box 829
Boise, Idaho 83701
24
25

1 BOISE, IDAHO, THURSDAY, SEPTEMBER 4, 2003, 9:00 A. M.
2
3
4 (Exhibit Nos. 1 - 10 were marked
5 for identification before the commencement of the
6 Deposition.)
7

8 NATHAN DRAPER,
9 produced as a witness at the instance of the Applicant
10 United Water Idaho, having been first duly sworn, was
11 examined and testified as follows:
12

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

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

20 MR. MEYER: Yes.
21
22
23
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25

1 I N D E X

2
3 WITNESS EXAMINATION BY PAGE
4 NATHAN DRAPER Mr. Meyers 5
5
6
7

9 E X H I B I T S

10 DESCRIPTION PAGE
11 1 - Notice of Deposition Duces Tecum of 4
Settlers Irrigation District
12
13 2 - (Withdrawn)
14
15 3 - Protest 4
16
17 4 - Statement of the Issues 4
18
19 5 - Pioneer and Settlers' List of 4
Additional Issues
20 6 - (Withdrawn)
21 7 - Amended Notice of Deposition Duces Tecum 4
of Settlers Irrigation District
22
23 8 - (Withdrawn)
24 9 - (Withdrawn)
25 10 - Proposed IMAP Conditions 4
11 - Second Amended Notice of Deposition Duces 34
Tecum of Settlers Irrigation District

1 E X A M I N A T I O N

2
3 BY MR. MEYER:

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

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

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

23 A My name is Nathan Draper.

24 Q And would you state your address for the
25 record?

Page 6

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

Page 7

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?

Page 8

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

Page 9

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 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 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 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

Page 14

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?

Page 16

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

Page 15

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.

Page 17

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

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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

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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

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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

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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.

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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?

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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

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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

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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

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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

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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

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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

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

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.)
10
11 (Signature requested.)
12
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25

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

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
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

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

1 VERIFICATION

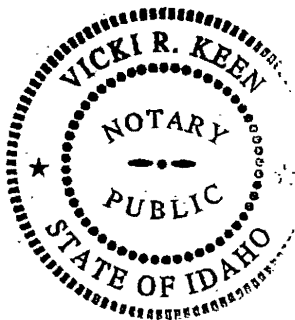
2
3 STATE OF Idaho)
4 COUNTY OF Ada) ss.

5
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7 on my oath, depose and say:

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10 2003, consisting of pages numbered 1 to 64 inclusive;
11 that I have read the said deposition and know the
12 contents thereof; that the questions contained therein
13 were propounded to me; that the answers to said
14 questions were given by me, and that the answers as
15 contained therein (or as corrected by me on the change
16 sheet) are true and correct.

17
18 Nathan Draper
19 Signature

20 Subscribed and sworn to before me this
21 17th day of September, 2003, at Boise, Idaho.



Vicki R. Keen
Notary Public for Idaho
Residing at Boise, Id, Idaho.
My Commission Expires 5/21/2005

Post Office Box 835

-CHANGE SHEET- (Please print in ink or type)

[illegible]

DATE OF DEPO: 9/4/03
DATE OF LETTER: 9/8/03

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Counsel for Applicant United Water Idaho Inc.

RECEIVED

SEP 26 2003

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 SUBMISSION OF
PROPOSED CONDITIONS**

Pursuant to the Idaho Department of Water Resources' (the "Department") Rules of Procedure (IDAPA 37.01.01),¹ United Water Idaho Inc. ("United Water") hereby submits the attached set of proposed conditions for approval of the IMAP. See Exhibit A.

These conditions reflect well over a year of discussions among United Water and other parties to the IMAP proceeding. Various versions have been circulated among the parties, most recently on September 12, 2003.

¹ The Department's rules identify a variety of particular pleadings. IDAPA 37.01.01.210. It is not clear to United Water into which category, if any, this submission falls. United Water petitions the Hearing Officer to treat this submission as it deems just, and to provide guidance on how similar submissions should be handled.

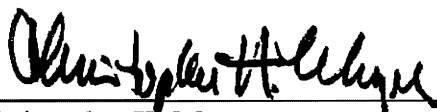
The attached set of proposed conditions reflects United Water's best efforts to understand and address the issues of concern raised by the various Protestants. In some instances, the conditions reflect genuine and substantial concessions made by United Water. In other instances, the conditions merely restate or clarify existing law in order to confirm understandings and provide assurances of the law's applicability. In yet other instances, the conditions delineate issues that will be unaffected by the IMAP decision.

During the course of recent discovery, certain Protestants have noted that these conditions have not been formally submitted and that they do not have confidence that United Water intends to be bound by them. In making this formal submission, United Water states that it is prepared to live with these conditions.

United Water anticipates that these conditions may continue to be explored, refined and clarified, in accordance with ongoing efforts to respond to legitimate questions and concerns raised during this proceeding. The parties should understand that while United Water has committed to the principles reflected in these conditions, the development of final conditions is a dynamic, iterative and interactive process that remains underway. United Water also recognizes that the final decision on what conditions will be imposed is the Department's.

Respectfully submitted this 25th day of September, 2003.

GIVENS PURSLEY LLP

By: 
Christopher H. Meyer
John M. Marshall

Attorneys for Applicant
United Water Idaho Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 25th 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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State Office
1301 N. Orchard Street
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Boise, ID 83720-0098

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☐ Overnight Mail

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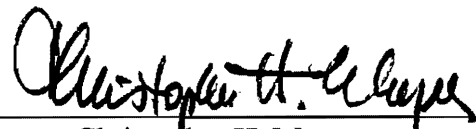
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Christopher H. Meyer

INDEX TO EXHIBITS

Exhibit A. Proposed Conditions

UNITED WATER IDAHO INC.

PROPOSED IMAP CONDITIONS

September 25, 2003

DEFINITIONS

Department: “Department” refers to the Idaho Department of Water Resources.

IMAP: “IMAP” refers to United Water’s Integrated Municipal Application Package filed May 4, 2001, as amended.

IPD authority: “IPD authority” refers to the authority granted by the Department pursuant to approval of the IMAP and Condition No. 4 in which United Water is allowed to pump any ground water right from any of United Water’s points of diversion. United Water’s IPD authority is subject to the restrictions stated in other conditions.

Regional curtailment: “Regional curtailment” (as discussed in Condition No. 4 and Condition No. 5) refers to an order issued by the Department or other proper authority requiring curtailment, mitigation or other limitation, based on priority, applicable to ground water rights whose points of diversion are located within a defined geographic area. A regional curtailment will be based on general hydraulic or hydrogeologic conditions in the affected water body (such as a decline in an aquifer or the impact of aquifer withdrawals on surface supplies). The designated geographic area might be an entire aquifer or a part of an aquifer. It also might apply to ground water rights that are tributary to a river or other surface water supply.

United Water: “United Water” refers to United Water Idaho Inc.

Water rights: “Water right(s)” includes any decreed or licensed water right, any water right permit, any water right claimed or asserted on the basis of beneficial use, or any other entitlement to the use of water based on contract, lease or other legal right.

Well interference: “Well interference” (as discussed in Condition No. 6) deals with the impact of the operation of a particular well on another ground or surface right, in which the well’s operation causes an actionable decline in water available to another water right.

CONDITIONS

Condition No. 1: No new water rights created by IMAP

Text: Approval of the IMAP creates no new water rights for United Water nor does it expand the quantity of any water right.

***Comment:** The IMAP establishes a long term “planning horizon” and quantifies how much water is reasonably anticipated to be required to serve needs during that planning horizon. However, the IMAP itself does not create any new water rights, nor increase the quantity of any current water right. The only changes authorized by the IMAP relate to place of use, nature of use, and points of diversion.*

Condition No. 2: Right to acquire new water rights

Text: Approval of the IMAP authorizes United Water to acquire (by appropriation or transfer) additional water rights for its portfolio up to the quantity limit established as necessary to meet reasonably anticipated future needs within United Water’s planning horizon. The effect of the IMAP approval is to determine that the acquisition of such rights is for a beneficial use and is not speculative. Any such subsequent acquisition would be subject to all the other requirements then mandated by statute and law.

***Comment:** Approval of the IMAP merely authorizes United Water to expand its portfolio in the future up to the quantity shown necessary to meet reasonably anticipated future needs. United Water will be required to satisfy every requirement for the acquisition of a new water right, with one exception: it will not be required to demonstrate (again) that the water is needed. Thus, every future appropriation or transfer will be subject to a determination of injury, availability of water, nonforfeiture of the right to be acquired, and so on, as applicable.*

Condition No. 3: Re-evaluation of Planning Horizon and Anticipated Needs

Text: The Department retains the right to initiate proceedings to re-evaluate the quantification of United Water’s reasonably anticipated future needs when new population and other planning data become available. All interested parties shall be afforded an opportunity to participate in such proceedings, which shall be conducted pursuant to rules for contested cases. In the event the Department finds that changed conditions justify a reduction in the reasonably anticipated future needs, water rights held in excess of such adjusted quantity would then be subject to forfeiture.

***Comment:** The determination of United Water's planning horizon and reasonably anticipated future needs are not cast in stone. If future events and new information demonstrate that United Water has incorrectly estimated its future needs, the Department may make appropriate adjustments (upward or downward). For instance, if areas whose irrigation needs are currently served by United Water were fitted with secondary non-potable pressurized irrigation systems served by irrigation districts (through retrofits or expansions) resulting in a material reduction in demand for municipal water from United Water, this would be a proper basis for such a proceeding.*

In any event, United Water may not profit from any overestimate of its needs by conveying its "excess" rights to other parties. See Idaho Code §§ 42-219(1), 42-222(1).

Condition No. 4: Grant of IPD Authority

Text: United Water is authorized to pump each of its ground water rights from any point of diversion authorized for any of its ground water rights in existence immediately prior to the approval of the IMAP. Points of diversion may be added or changed in the future only through formal transfer proceedings. Such actions would be subject to injury analysis and any other applicable statutory requirements. The IPD authority authorized here is limited by conditions 5, 6, 7 and 10.

***Comment:** It is possible that a regional curtailment of wells could be ordered in the future. The affected area could be as small as a particular sub-aquifer. It could be as large as the entire Treasure Valley (or even larger). Such a regional curtailment could be ordered in response to such circumstances as conjunctive administration requirements, federal endangered species demands, or aquifer-wide (or sub-aquifer-wide) groundwater decline. For example, suppose that all wells in a defined area with water rights of 1985 or later were ordered shut down. In such an event, this condition would allow United Water to pump its pre-1985 ground water rights from any of its wells (subject to the conditions below). Thus, for instance, United Water might choose to continue to operate its newer, more efficient wells by pumping its most senior rights out of them.*

Condition No. 5: Limited Curtailment Area

Text: In the event a curtailment is issued for a smaller region falling at least partially within United Water's service area, United Water is not entitled to circumvent the curtailment order by pumping water rights from point(s) of diversion within the curtailment area which could not be lawfully pumped from

such point(s) of diversion but for United Water's IPD authority.

Comment: *A regional curtailment driven by conjunctive management or endangered species concerns would likely affect a large area. It is also possible that a curtailment area could be narrowly drawn, for instance around a particular sub-aquifer experiencing accelerated drawdown due to its special hydraulic conditions. This condition ensures that United Water would not use its IPD authority to bring in senior rights originally associated with wells outside the curtailment area to circumvent restrictions on wells within the curtailment area. In essence, United Water may only "move water rights around" which are associated with wells within the particular area of curtailment.*

Condition No. 6: Well Interference

Text: Claims that a United Water well is interfering with another ground or surface water right will be evaluated on the basis of the priority of the water right(s) originally associated with that well independent of United Water's IPD authority under this IMAP.

Comment: *Simply stated, the IPD authority does not benefit United Water in the context of well interference. Instead, well interference claims will be evaluated on the basis of the elements of the relevant water right(s) in effect prior to IMAP approval (or as subsequently added or modified). In short, United Water may not use its IPD authority to "move in" a senior right to defeat an interference claim. Well interference is defined in the definition section below.*

Condition No. 7: Diversion Rates May Not Be Exceeded

Text: United Water may not divert from any point of diversion at a rate (or other applicable quantity limitation) in excess of what would otherwise be authorized absent United Water's IPD authority.

Comment: *This condition provides assurance that United Water will not use its IPD authority to "pile up" water rights on to a particular well in order to increase the allowable quantity of diversion.*

Note that this condition is an absolute prohibition on any increase in quantity. It does not require anyone to prove that the increase in quantity is harmful. If United Water wishes to increase the amount pumped out of an existing well, it must obtain a new water right.

Condition No. 8: Conjunctive Management, Re-Capture and Re-Use

Text: Nothing in this IMAP, including United Water's IPD authority, is intended

to change or resolve the applicable law governing conjunctive management or the recapture and reuse of water.

Comment: This condition responds to concerns raised by the Bureau of Reclamation and certain irrigation districts. The concern is that, at some point, claims may be made that ground water rights are interfering with surface or drainage rights claimed by irrigation entities. This condition makes clear that there is no need or intent to resolve these hypothetical issues within the context of this IMAP approval. These issues may be addressed when and if they arise in the future.

Condition No. 9: Secondary Non-Potable Pressurized Irrigation Systems

Text: Approval of the IMAP does not limit the rights of any other irrigation district or entity to supply water through secondary non-potable pressurized irrigation systems for municipal, commercial, domestic or industrial use within United Water's service area or planning area.

Comment: The IMAP takes into account currently operating domestic and commercial secondary non-potable pressurized irrigation systems (referred to as "NPI" in the IMAP). The IMAP projects only modest increases in NPI within its planning boundaries. (If this proves to be materially incorrect, Condition No. 3 may be used to adjust the future needs calculation.) Condition No. 9 clarifies and confirms that nothing in the IMAP may serve to lock in the status quo or impose any barrier against new NPI systems being brought on line within United Water's service territory.

Condition No. 10: Collector Wells To Be Excluded From IPD

Text: The grant of IPD authority under Condition No. 4 does not authorize United Water to use its collector wells (the Marden collectors and the Veterans collectors) as alternative points of diversion for any of United Water's ground water rights. Likewise, the water right associated with the collector wells (No. 63-02892) may be pumped only from the collector wells in accordance with its license and conditions imposed by the Department. The IMAP will not change, expand or confirm this water right or the validity of any of its points of diversion in any way.

Comment: The license for Water Right No. 63-02892 identifies alternate points of diversion: the Marden collectors and the Veterans collectors. The Department has imposed specific mitigation requirements with respect to impacts on surface rights. Given the unique hydrological characteristics of this water right, it is appropriate to exclude it and its associated points of diversion from United Water's IPD authority. Thus, the IMAP will not authorize United Water to pump

any of this 15 cfs water right from any other ground water well. Nor will the IMAP authorize United Water to pump any of its ground water rights from the collector wells.

The Veterans collector wells should not be confused with the separate Veterans well and its associated Water Right No. 63-12310. The latter is an ordinary well and ground water right, which remains part of the IMAP and is included in United Water's IPD authority.