

GIVENS PURSLEY LLP

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Department of Water Resources

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John A. Miller, LL.M. *
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Via U.S. Mail

September 19, 2003

Ms. Debbie Gibson
Idaho Department of Water Resources
1301 N. Orchard St.
P.O. Box 83720
Boise, ID 83720-0098

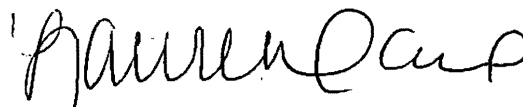
Re: United Water Idaho Inc.—IMAP
30-71

Dear Ms. Gibson:

I am enclosing the original of UWID's Notice of Service of UWID's General Supplemental Discovery Response #4. A copy was sent via US Mail on September 18, 2003 by mistake.

I apologize for any confusion this may have caused. Please let me know if you have questions or require additional information.

Sincerely,



Lauren Paul
Assistant to John Marshall

Enclosure
/lp

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SEP 22 2003

Department of Water Resources

Christopher H. Meyer, Esq. (Idaho Bar No. 4461)
John M. Marshall, Esq. (Idaho Bar No. 5628)
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Counsel for Applicant United Water Idaho Inc.

**BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES**

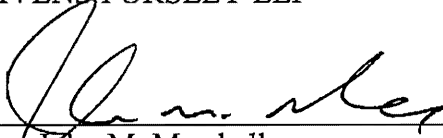
IN THE MATTER OF INTEGRATED
MUNICIPAL APPLICATION PACKAGE
("IMAP") OF UNITED WATER IDAHO
INC., BEING A COLLECTION OF
INDIVIDUAL APPLICATIONS FOR
TRANSFERS OF WATER RIGHTS AND
APPLICATIONS FOR AMENDMENT OF
PERMITS.

**UWID'S NOTICE OF SERVICE OF
UWID'S GENERAL SUPPLEMENTAL
DISCOVERY RESPONSE #4**

On behalf of Applicant United Water Idaho Inc., I, John M. Marshall of the firm Givens Pursley LLP, certify that on this date, I caused to be served upon all Protestants a true and correct copy of UWID's General Supplemental Discovery Response #4 by mailing the same to their counsel of record as indicated on the attached certificate of service.

Respectfully submitted this 18th day of September 2003.

GIVENS PURSLEY LLP


By: John M. Marshall

Attorneys for Applicant
United Water Idaho Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 18th 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:

Idaho Department of Water Resources
State Office
1301 N. Orchard Street
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Travis L. Thompson, Esq.
Barker, Rosholt & Simpson, LLP
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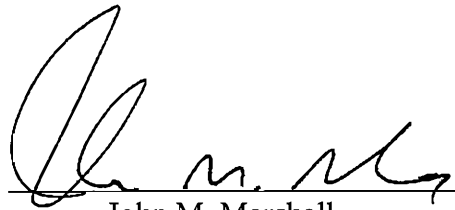
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John M. Marshall

SEP 18 2003

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September 16, 2003

Ms. Debbie Gibson
Idaho Department of Water Resources
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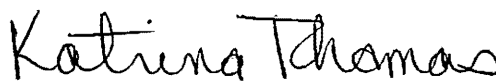
Re: United Water Idaho Inc.—IMAP
Our File No. 30-71

Dear Debbie:

Enclosed for filing in the IMAP matter please find the original and one copy of *United Water's Notice of Errata re Motion to Dismiss Settlers' Protest and Preclude Its Participation at Hearing*. Please conform the copy return it to our office in the enclosed self-addressed, stamped envelope.

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

Sincerely,



Katrina Thomas
Legal Secretary

Enclosures

:kdt S:\CLIENTS\30\71\KT Ltr to IDWR re Filing Notice of Errata.DOC

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SEP 18 2003

Department of Water Resources

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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
("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 NOTICE OF ERRATA
RE MOTION TO DISMISS SETTLERS'
PROTEST AND PRECLUDE ITS
PARTICIPATION AT HEARING.**

On September 15, 2003, United Water Idaho Inc. ("UWID" or "United Water") filed *United Water's Motion to Dismiss Settlers' Protest and Preclude Its Participation at Hearing* ("Motion"). This notice shall serve to correct minor typographical errors in the Motion.

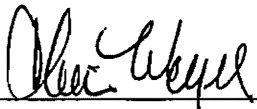
1. Page 4, Second Full Paragraph, Last Sentence – The Motion incorrectly stated the Settlers Deposition transcript was attached as Exhibit F. The reference should be to Exhibit K.
2. Footnote 5, Page 6, First Sentence – The date of Exhibit F was incorrectly identified as being September 5, 2003. The date should be September 4, 2003.

We also corrected the capitalization of "United Water."

A copy of each corrected page is attached. The footer reflects that these are corrected pages.

Respectfully submitted this 16th 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 16th 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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Pacific Northwest Region
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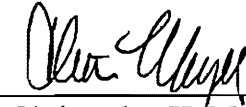
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Christopher H. Meyer

The deposition notices stated as follows:

You are required to designate one or more officers, directors or managing agents to be examined regarding:

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

You are further required to provide and to produce at the deposition all documents in your possession related to your protest in this matter.

The scheduled deposition occurred on September 4, 2003. The prior day, September 3, 2003, United Water wrote a letter to Settlers specifically requesting that Settlers provide a witness with knowledge of the subject matter indicated in the deposition notice. Exhibit D. United Water wrote the letter because it wanted to avoid a repeat performance of the deposition of Pioneer Irrigation District earlier in the day where the designated deponent was unfamiliar with the basis for Pioneer's protest and what it would take to resolve the protest.²

United Water's September 3, 2003 letter also offered a continuance of the deposition, at Settlers' option, if Settlers wished additional time to select or prepare a suitable witness. Counsel for Settlers responded by email that no continuance was necessary. Exhibit E. The deposition took place as scheduled on September 4, 2003, with Settlers' designated witness, Mr. Nathan Draper, appearing on behalf of the District. A copy of the transcript of the deposition of Settlers ("Tr.") is attached as Exhibit K.

During the course of the deposition, United Water inquired as to the basis for Settlers' protest of the IMAP. Settlers' responses show that Settlers does not have any known basis for its protest. Tr. p. 37, ll. 8-11. Rather, Settlers stated that the basis for its protest was only "the

² Counsel for Settlers also represents Pioneer Irrigation District.

In sum, Mr. Draper brought nothing, read nothing and knew nothing about the subject matter of the deposition.⁵ United Water did not wish to bring the matter to the attention of the Hearing Officer before every avenue for resolution was exhausted. Consequently, United Water continued the deposition to provide Settlers another opportunity to provide a designee who could provide information within the scope of the notice. Exhibit F. In accordance with its letter to Settlers, United Water provided a *Notice of Continuation of Deposition*. On September 5, 2003, United Water sought clarification from Settlers as to whether it would or would not supply additional 30(b)(6) witnesses. Exhibit H. Settlers responded by letter of September 5, 2003 (received on September 8, 2003) that Mr. Draper was its chosen designee. Exhibit I. This was confirmed by return correspondence dated September 9, 2003. Exhibit J. On this basis, United Water withdrew its *Notice of Continuation of Deposition* and now files this motion.

EXCERPTS OF TRANSCRIPT

We include here excerpts from the transcript of the Settlers deposition. We apologize for their length. We feel their inclusion is necessary to document the extent to which the witness lacked knowledge and failed to prepare. The relief sought by this motion is substantial. It is premised upon an allegation of knowing disobedience and contempt for the Hearing Officer and the Department. For that reason, it is necessary to fully display the relevant testimony:

36

12 Q BY MR. MEYER: Okay, let me repeat the
13 question or let me rephrase the question. How did you

⁵ United Water said the same thing in its letter of September 4, 2003. Exhibit F at 1. Settlers responded on September 5, 2003, stating: "Obviously, for you to conduct a deposition for two hours eliciting responses from Mr. Draper on a number of subjects points out the intentionally, inaccurate nature of this statement." Exhibit I at 1. It should be noted that the deposition did cover other preliminary subjects. Notably, Mr. Draper had some knowledge of the operation of Settlers' irrigation system that was inquired into at the outset. This information was expected to form the basis for a more technical discussion of how Settlers would be injured by the IMAP. As it turned out, Mr. Draper had no knowledge of the issue of injury. Tr. p. 52 l. 22 to p. 53 l. 21. Consequently, the groundwork laid earlier in the deposition proved useless. United Water stands by its characterization of Mr. Draper's testimony.

Attorneys for Pioneer Irrigation District
and Settlers Irrigation District

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Angela Schaer Kaufmann, ISB No. 5436
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SEP 17 2003
Department of Water Resources

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

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

NOTICE OF SERVICE

I HEREBY CERTIFY that on the 16th day of September 2003, I caused a true
and correct copy of the foregoing **NOTICE OF SERVICE OF 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:

Director
Idaho Department of Water Resources
1301 N. Orchard Street
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Gary L. Spackman, Regional Manager
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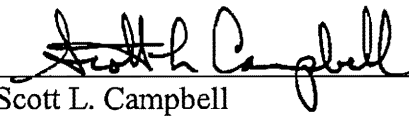
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By 
Scott L. Campbell

Attorneys for Pioneer Irrigation District
and Settlers Irrigation District

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**BEFORE THE DEPARTMENT OF WATER RESOURCES
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APPLICATIONS FOR AMENDMENT OF
PERMITS) IN THE NAME OF UNITED
WATER IDAHO, INC.

NOTICE OF SERVICE

I HEREBY CERTIFY that on the 16th day of September 2003, I caused a true and correct copy of the foregoing **NOTICE OF SERVICE OF 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:

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

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Scott L. Campbell

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Department of Water Resources

Laura E. Burri
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David P. Claiborne
D. Blair Clark
Michael J. Doolittle
S. Bryce Farris
David Hammerquist
Charles L. Honsinger
Joseph B. Jones
James P. Kaufman
Jennifer Reid Mahoney
James G. Reid
Daniel V. Stenson
Allyn L. Sweeney

William F. Ringert, of Counsel
Samuel Kaufman (1921-1986)

September 18, 2003

Debbie Gibson
Idaho Department of Water Resources
1301 Orchard Street
Boise, Idaho 83706

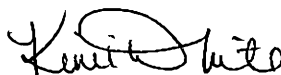
Re: United Water IMAP

Dear Debbie:

As per our conversation today, on September 16, 2003, I filed the Second Affidavit of Charles L. Honsinger Correcting Response to Hearing Officer's Request for Additional Information by facsimile. Unfortunately, I failed to notarize it before filing. Enclosed please find page three of the of the Affidavit, notarized. Please replace this page with your file copy.

Please contact me if you have any questions or comments regarding this matter. Thank you for your assistance in this matter.

Sincerely,



Kimi White
Assistant to Charles L. Honsinger

RECEIVED

SEP 16 2003

RINGERT CLARK CHARTERED
FAX COVER LETTER

Department of Water Resources

From: Daniel V. Steenson
Charles L. Honsinger
S. Bryce Farris
455 South Third Street
Boise, Idaho 83702
ph: (208) 342-4591
fax: (208) 342-4657

Time:

Date: September 16, 2003

PLEASE DELIVER THE FOLLOWING PAGES TO:

NAME: Idaho Department of Water Resources

WITH: Idaho Department of Water Resources

CITY & STATE: Boise, Idaho

TELEPHONE NO.: (208) 327-7900

FAX. NO.: (208) 327-7866

SENDER: Charles L. Honsinger

WE ARE TRANSMITTING 5 PAGES (INCLUDING THIS COVER LETTER)

ADDITIONAL INFORMATION: Please file the attached document. A copy to be conformed will follow via U.S. mail. Thank you, Kimi White.

DANIEL V. STEENSON (ISB #4332)
 CHARLES L. HONSINGER (ISB #5240)
 RINGERT CLARK CHARTERED
 455 S. Third, P. O. Box 2773
 Boise, Idaho 83701-2773
 Telephone: (208) 342-4591
 Facsimile: (208) 342-4657

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SEP 16 2003

Department of Water Resources

Attorneys for Nampa & Meridian Irrigation District,
 City of Caldwell, City of Meridian, and the Terteling entities

BEFORE THE DEPARTMENT OF WATER RESOURCES OF
 THE STATE OF IDAHO

_____	)	SECOND AFFIDAVIT OF CHARLES L.
IN THE MATTER OF INTEGRATED	)	HONSINGER CORRECTING RESPONSE
MUNICIPAL APPLICATION PACKAGE	)	TO HEARING OFFICER'S REQUEST
(CONSISTING OF 99 APPLICATIONS FOR	)	FOR ADDITIONAL INFORMATION
TRANSFERS OF WATER RIGHTS, AND	)	
_____	)	

STATE OF IDAHO)
) ss
 COUNTY OF ADA)

CHARLES L. HONSINGER, being first duly sworn upon his oath, deposes and says that:

1. I am the attorney of record for Nampa & Meridian Irrigation District, the City of Meridian, the City of Caldwell, and the Terteling Entities (hereinafter "Protestants") in the above captioned matter.

2. I make this affidavit based upon my own personal knowledge and belief of the facts contained herein.

3. I am submitting this Affidavit to correct errors contained in the Response to Hearing Officer's Request for Additional Information filed on September 12, 2003.

SECOND AFFIDAVIT OF CHARLES L. HONSINGER CORRECTING RESPONSE TO HEARING
 OFFICER'S REQUEST FOR ADDITIONAL INFORMATION - Page 1

4. The *Response to Hearing Officer's Request for Additional Information* that I filed on behalf of my clients on September 12, 2003, stated that January, 1999 was the last date date shown in UWID's pumping records provided to Protestants. See *Response to Hearing Officer's Request for Additional Information*, p. 2. This statement is inaccurate. UWID has previously provided pumping records containing data from the years 1999 - 2003.

5. The *Response to Hearing Officer's Request for Additional Information* also lists a category of "water right numbers and associated wells for which Applicant has provided no information regarding use of the same to Protestants (other than that which may be contained in the large volume of documents recently obtained by Protestants' counsel - See *Honsinger Affidavit*, ¶¶ 6 - 11)." See *Response to Hearing Officer's Request for Additional Information*, p. 3. In fact, UWID has provided volumetric pumping records dating from 1992 to 2002 for many of the water rights and wells referenced in Category II of the *Response to Hearing Officer's Request for Additional Information*. However, based upon the information provided, Protestants have been unable to determine whether the water rights for which some pumping records have been submitted have been used at their authorized diversion rate for all possible five year periods.

Dated this 16th day of September, 2003.

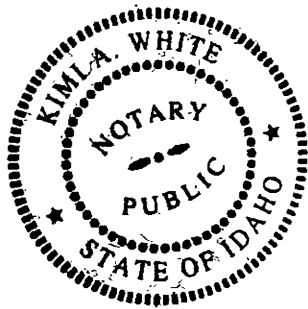
RINGERT CLARK, CHARTERED

By Charles L. Honsinger
Charles L. Honsinger

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

On this 16th day of September, 2003, before me, the undersigned, a Notary Public, in and for said State, personally appeared Charles L. Honsinger, known to me to be the person whose name is subscribed above, and acknowledged to me that he executed this affidavit.

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



Kim A. White
Notary Public for Idaho
Residing at Boise, ID
My Commission Expires: 04/01/04

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of September, 2003, the above and foregoing document was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

Christopher Meyer
John Marshall
Givens Pursley
P.O. Box 2720
Boise, Idaho 83701

Josephine P. Beeman
Beeman & Associates PC
409 W. Jefferson
Boise, Idaho 83702

E. Gail McGarry PN-3100
Bureau of Reclamation
1150 N. Curtis Rd., Ste. 100
Boise, Idaho 83706-1234

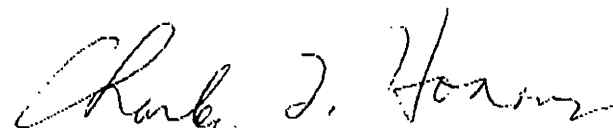
Bruce Smith
Moore Smith Buxton & Turcke
255 N. 9th St., Ste. 420
Boise, Idaho 83702

Kathleen Marion Carr MSC-020
Office of the Field Solicitor
US Dept. of Interior
550 W. Fort Street, Room 365
Boise, Idaho 83724

Scott L. Campbell
Moffatt Thomas
P.O. Box 829
Boise, Idaho 83701-0829

Albert Barker
Barker Rosholt & Simpson
P.O. 2139
Boise, Idaho 83701-2139

Matt Wilde
City of Boise
P.O. Box 500
Boise, Idaho 83701-0500


Charles L. Honsinger

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SEP 16 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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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.

NOTICE WITHDRAWING SETTLERS
IRRIGATION DISTRICT'S MOTION FOR
PROTECTIVE ORDER

On September 10, 2003, Settlers Irrigation District, by and through its attorneys of record, Moffatt, Thomas, Barrett, Rock & Fields, Chtd., filed a Motion for Protective Order (the "Motion") concerning the taking of additional depositions by United Water Idaho ("UWID") under Idaho Rule of Civil Procedure 30(b)(6), which governs the taking of depositions of organizations. The Motion was filed in response to a Notice of Continuation of Deposition Duces Tecum of Settlers Irrigation District ("Notice of Continued Deposition") filed by UWID.

Subsequent to the filing of the Motion, UWID withdrew its Notice of Continued Deposition. Accordingly, Settlers Irrigation District hereby withdraws its Motion in its entirety.

DATED this 15th 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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the ~~15th~~ day of September, 2003, I caused a true and correct copy of the foregoing NOTICE WITHDRAWING SETTLERS IRRIGATION DISTRICT'S MOTION FOR PROTECTIVE ORDER to be served by the method indicated below, and addressed to the following:

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

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

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Gary L. Spackman, Regional Manager
Idaho Department of Water Resources
Western Region Office
2735 Airport Way
Boise, ID 83705
Fax: 334-2348

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Givens Pursley, LLP
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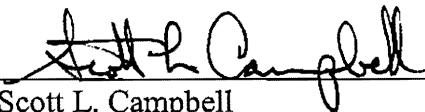
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By 
Scott L. Campbell

Attorneys for Pioneer Irrigation District
and Settlers Irrigation District

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

IN THE MATTER OF INTEGRATED
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(CONSISTING OF 99 APPLICATIONS FOR
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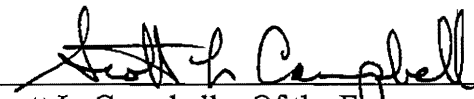
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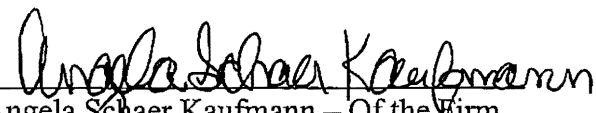
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DATED this 15th day of September, 2003.

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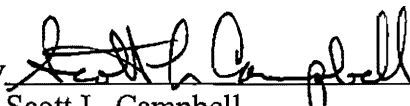
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By 
Scott L. Campbell

Christopher H. Meyer, Esq. (Idaho Bar No. 4461)
John M. Marshall, Esq. (Idaho Bar No. 5628)
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P.O. Box 2720
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Email: chrismeyer@givenspursley.com; jmm@givenspursley.com
Counsel for Applicant United Water Idaho Inc.

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SEP 15 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 MOTION TO DISMISS
SETTLERS' PROTEST AND PRECLUDE
ITS PARTICIPATION AT HEARING**

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MOTION

Pursuant to Idaho Code §§ 42-203A(4), 42-222(1), 42-1701A and 67-5242, Idaho Rules of Civil Procedure 37(b) and (d), IDAPA 37.01.01.260, IDAPA 37.01.01.520.02, and IDAPA 37.01.01.531, United Water Idaho Inc. ("United Water") hereby moves for an order against Settlers Irrigation District ("Settlers" or the "District") dismissing Settlers' protest and precluding Settlers from producing any evidence or otherwise participating in the hearing in this matter. The grounds for this motion are that Settlers is bound by the testimony of its designated witness under Idaho Rule of Civil Procedure 30(b)(6), that its witness testified under oath that Settlers is utterly and completely unfamiliar with the IMAP, that Settlers does not know the factual or legal basis for its protest, that Settlers has not evaluated the conditions for settlement proposed by United Water (and was unaware that any conditions had been offered), and that Settlers has not considered what conditions, if any, would be sufficient to resolve its protest.

In addition to the relief sought herein, United Water moves for such other relief as the Hearing Officer deems appropriate under the circumstances, including an award of costs and attorney fees.

SUMMARY OF FACTS

On September 2, 2003 United Water served Settlers with an *Second Amended Notice of Deposition Duces Tecum of Settlers Irrigation District* stating that United Water would take the deposition of Settlers on September 4, 2003 pursuant to Idaho Rule of Civil Procedure 30(b)(6). Exhibit A.¹

¹ The deposition was originally noticed on August 7, 2003. It was amended to change the date, and amended again to change the location. The parties agreed to extend the discovery deadline to accommodate this re-setting and other scheduling requirements. The original deposition notice is attached as Exhibit B. The second deposition notice is attached as Exhibit C.

The deposition notices stated as follows:

You are required to designate one of more officers, directors or managing agents to be examined regarding:

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

You are further required to provide and to produce at the deposition all documents in your possession related to your protest in this matter.

The scheduled deposition occurred on September 4, 2003. The prior day, September 3, 2003, United Water wrote a letter to Settlers specifically requesting that Settlers provide a witness with knowledge of the subject matter indicated in the deposition notice. Exhibit D. United Water wrote the letter because it wanted to avoid a repeat performance of the deposition of Pioneer Irrigation District earlier in the day where the designated deponent was unfamiliar with the basis for Pioneer's protest and what it would take to resolve the protest.²

United Water's September 3, 2003 letter also offered a continuance of the deposition, at Settlers' option, if Settlers wished additional time to select or prepare a suitable witness. Counsel for Settlers responded by email that no continuance was necessary. Exhibit E. The deposition took place as scheduled on September 4, 2003, with Settlers' designated witness, Mr. Nathan Draper, appearing on behalf of the District. A copy of the transcript of the deposition of Settlers ("Tr.") is attached as Exhibit F.

During the course of the deposition, United Water inquired as to the basis for Settlers' protest of the IMAP. Settlers' responses show that Settlers does not have any known basis for its protest. Tr. p. 37, ll. 8-11. Rather, Settlers stated that the basis for its protest was only "the

² Counsel for Settlers also represents Pioneer Irrigation District.

document [*i.e.*, the Protest] prepared by our attorney.” Tr. p. 48, ll. 18-21. Yet, by its own admission, Settlers does not understand any of the legal or factual arguments presented by its attorney. *Id.*; Tr. p. 51, l. 4 to p. 54, l. 9; Tr. p. 56, l. 7 to p. 58, l. 2.

The deposition notice instructed Settlers “to provide and to produce at the deposition all documents in your possession related to your protest in this matter.”³ Settlers brought no documents to the deposition. Tr. p. 39, ll. 23-24. Nor had Settlers produced any documents or other evidence in the discovery leading up to Mr. Draper’s deposition providing a foundation for Settlers’ protest. Consequently, the appropriate conclusion is that there is no such evidence.⁴ In other words, Settlers’ protest consists solely of unsupported allegations written by counsel—words which Settlers says it does not understand.

When questioned about the particular statements made in Settlers’ protest, Settlers repeatedly answered, “I don’t know.” Tr. p. 50, l. 10 to p. 56, l. 23. Settlers was equally unable to elucidate the basis for its various statements of issues in this case. Tr. p. 56, l. 24 to p. 58, l. 2.

Settlers further testified that it has not read the IMAP and does not know what the IMAP seeks to accomplish. Tr. p. 42, l. 13 to p. 45, l. 15. Further, Settlers does not know the meaning of the phrase “the conditions or modifications to the IMAP, if any, that would resolve your protest” and could provide no information in this regard. Tr. p. 38, ll. 10-13. Settlers did not even know the duration of the planning horizon sought by United Water, much less could it explain why Settlers has protested it. Tr. p. 57, l. 15 to p. 58, l. 2.

³ A 30(b)(6) motion may include a request for production of documents. “You may seek production of documents in the deposition notice, as permitted by Rule 30(b)(5). . . .” Sidney I. Schenkier, *Deposing Corporations and Other Fictive Persons: Some Thoughts on Rule 30(b)(6)*, 29 Litigation 20 (2003).

⁴ The deponent received no instruction or assistance from Settlers respecting compliance with the production requirement. Tr. p. 38, l. 19 to p. 39 l. 22. This reinforces the conclusion that Settlers should be bound by the results.

In sum, Mr. Draper brought nothing, read nothing and knew nothing about the subject matter of the deposition.⁵ United Water did not wish to bring the matter to the attention of the Hearing Officer before every avenue for resolution was exhausted. Consequently, United Water continued the deposition to provide Settlers another opportunity to provide a designee who could provide information within the scope of the notice. Exhibit F. In accordance with its letter to Settlers, United Water provided a *Notice of Continuation of Deposition*. On September 5, 2003, United Water sought clarification from Settlers as to whether it would or would not supply additional 30(b)(6) witnesses. Exhibit H. Settlers responded by letter of September 5, 2003 (received on September 8, 2003) that Mr. Draper was its chosen designee. Exhibit I. This was confirmed by return correspondence dated September 9, 2003. Exhibit J. On this basis, United Water withdrew its *Notice of Continuation of Deposition* and now files this motion.

EXCERPTS OF TRANSCRIPT

We include here excerpts from the transcript of the Settlers deposition. We apologize for their length. We feel their inclusion is necessary to document the extent to which the witness lacked knowledge and failed to prepare. The relief sought by this motion is substantial. It is premised upon an allegation of knowing disobedience and contempt for the Hearing Officer and the Department. For that reason, it is necessary to fully display the relevant testimony:

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12 Q BY MR. MEYER: Okay, let me repeat the
13 question or let me rephrase the question. How did you

⁵ United water said the same thing in its letter of September 5, 2003. Exhibit F at 1. Settlers responded on September 5, 2003, stating: "Obviously, for you to conduct a deposition for two hours eliciting responses from Mr. Draper on a number of subjects points out the intentionally, inaccurate nature of this statement." Exhibit I at 1. It should be noted that the deposition did cover other preliminary subjects. Notably, Mr. Draper had some knowledge of the operation of Settlers' irrigation system that was inquired into at the outset. This information was expected to form the basis for a more technical discussion of how Settlers would be injured by the IMAP. As it turned out, Mr. Draper had no knowledge of the issue of injury. Tr. p. 52 l. 22 to p. 53 l. 21. Consequently, the groundwork laid earlier in the deposition proved useless. United Water stands by its characterization of Mr. Draper's testimony.

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 [the deposition notices], 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?

* * *

38

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?

39

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

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1 offices to documents that bear on the IMAP?
2 A Yes.

* * *

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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.

* * *

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16 Q BY MR. MEYER: Is there someone at the
17 district who's familiar with the IMAP?

18 A I don't know.

* * *

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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.

* * *

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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....

* * *

13 ...and if you read the entire
14 paragraph, it suggests that United Water has failed to

15 meet its burden in demonstrating [the reasonableness of the
Planning Horizon]. 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?

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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.

* * *

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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

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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

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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

58

1 planning horizon is requested in the IMAP?
2 A No.

* * *

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25 Q BY MR. MEYER: Mr. Draper, there were a

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1 number of occasions when you were not able to answer
2 my questions because you didn't have a recollection,
3 has your recollection been refreshed on any of those?
4 A No.
5 MR. MEYER: In that case, I have no
6 further questions. I thank you for your time.
7 Mr. Campbell, do you have questions?
8 MR. CAMPBELL: I have no questions.

ARGUMENT

I. SETTLERS' PROTEST SHOULD BE DISMISSED BECAUSE THE BINDING STATEMENTS OF ITS 30(B)(6) WITNESS SHOW THAT THE ORGANIZATION KNOWS OF NO FACTUAL OR LEGAL BASIS FOR ITS PROTEST.

United Water's deposition notice to Settlers unambiguously required Settlers to testify

under oath pursuant to Idaho Rule of Civil Procedure 30(b)(6) as to the basis for its protest and the conditions that could resolve the protest. Correspondence between opposing counsel show that Settlers was made fully aware of its responsibilities under Rule 30(b)(6) and nonetheless insisted on producing a witness who knew nothing and could serve only to stonewall. Settlers is now bound by its chosen course of action.

During the deposition, Settlers made clear that its protest to the IMAP is not founded on any factual basis known to Settlers. Even though United Water filed the IMAP in May 2001, Settlers has not read the IMAP and does not know what the IMAP seeks to accomplish. Tr. p. 45, ll. 9-15. Settlers is unfamiliar with the protest, and is utterly without knowledge or understanding of the statements drafted by its attorney. *See* Excerpts of Transcript, *passim*. In short, Settlers has no evidence or argument whatsoever to offer in support of its protest.

United Water went out of its way to afford Settlers the opportunity to provide a second witness who could actually testify to the matters described in the deposition notice. See Summary of Facts and associated Exhibits. Settlers refused and even moved the Hearing Officer for a protective order. Settlers made its position clear: Mr. Draper's deposition testimony is the testimony of Settlers.

Settlers cannot now have it the other way. Rule 30(b)(6) provides that when served with a notice under the rule, the organization "shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf" and that the designated individuals "shall testify as to matters known or reasonably available to the organization." Rule 30(b)(6) (emphasis supplied). Thus, the testimony of a 30(b)(6) witness constitutes the testimony of the organization.

Case law confirms that 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.” *United States v. Taylor*, 166 F.R.D. 356, 361 (M.D.N.C. 1996) (internal quotations omitted). Circuit courts agree: “When a corporation or association designates a person to testify on its behalf, the corporation appears vicariously through that agent.” *Resolution Trust Corp. v. Southern Union Co.*, 985 F.2d 196, 197 (5th Cir. 1993).

The organization noticed for deposition under Rule 30(b)(6) is affirmatively obligated to “prepare the designees so that they may give knowledgeable and binding answers for the corporation.” *United States v. Taylor*, 166 F.R.D. at 361 (emphasis supplied). “Thus, the duty to present and prepare a Rule 30(b)(6) designee goes beyond matter personally known to that designee or to matters in which that designee was personally involved.” *Id.*

As the testimony summarized above makes clear, Settlers does not have any evidence or argument to proffer in support of its protest. Consequently, it can offer nothing at hearing to aid the Department’s consideration of the IMAP. Consequently, the Hearing Officer should dismiss the protest.

In an administrative hearing, the Hearing Officer must “regulate the course of the proceedings to assure that there is a full disclosure of all relevant facts and issues, including such cross-examination at hearing.” Idaho Code § 67-5242(3).⁶ To regulate the course of this proceeding, where Settlers has stated through its sole designated witness⁷ that it lacks knowledge of any facts to support its protest, the Hearing Officer should preclude Settlers from participating

⁶ Idaho Code § 42-1701A, the controlling statute for administrative hearings before the Department specifically provides that such hearings are governed by provisions of chapter 52, title 67, Idaho Code.

⁷ Rule 30(b)(6) does not obligate an organization to find a single witness knowledgeable of all issues within the scope of the deposition notice. Multiple witnesses could have been provided. Settlers elected not to do so.

at the hearing and dismiss its protest.

The purpose of a hearing on a protest in a contested hearing is for the Hearing Officer “to make a complete record of the evidence presented and duly received at the hearing.” Idaho Code § 42-1701A. Because Settlers has no evidence to present at hearing concerning the basis for its protest, it has nothing to add to the Department’s consideration of the IMAP and should be fully precluded from all further participation in this matter and its protest dismissed.

II. THE HEARING OFFICER SHOULD DISMISS SETTLERS AS A PARTY TO THE PROCEEDING AS A SANCTION FOR FAILING TO ATTEND THE NOTICED 30(b)(6) DEPOSITION.

Settlers’ protest should be dismissed for the additional reason that dismissal is the appropriate sanction under Rule 37(d).⁸ This rule provides for sanctions if a party “fails to appear” at a properly noticed 30(b)(6) deposition. The case law has established that the presentation of a wholly unprepared witness is the legal equivalent of a failure to appear.

Operating under the identical federal rule 37(d),⁹ federal courts routinely impose sanctions where a party presents an unprepared witness:

Rule 37(d) allows the Court to impose sanctions where a party or person designated under Rule 30(b)(6) fails “to appear before the officer which its to take the deposition, after being served with the proper notice.” Fed.R.Civ.P. 37(d). Producing an unprepared witness is tantamount to a failure to appear.

United States v. Taylor, 166 F.R.D. at 363, citing *Resolution Trust Corp. v. Southern Union*, 985 F.2d at 197 (emphasis supplied).

⁸ Both Settlers’ and Pioneer’s depositions were taken subject to these rules. Settlers Tr. p. 2, ll. 8-9; p. 4, ll. 13-20; Pioneer Tr. p. 2, ll. 8-9. See the discussion in Part V below (Attorney Fees) for an explanation of why these rules are applicable, either directly or by analogy.

⁹ Where a state rule of procedure is “identical in all material respects to the analogous federal rule,” state courts “look to rulings on the scope of the federal rule for additional guidance in interpreting the Idaho rule.” *Compton v. Compton*, 101 Idaho 328, 334, 612 P.2d 1175, 1181 n.1 (1980).

The courts have squarely rejected the argument Settlers has pressed in its correspondence that the mere physical presence of a witness at a noticed 30(b)(6) deposition is all that is required. The law is clear. Showing up with a vacant witness is insufficient compliance and subjects the party to sanctions:

[S]everal courts similarly have read the phrase “fails . . . to appear” in Rule 37(d) pragmatically in light of the purposes of Rule 30(b)(6) and the parties’ obligations thereunder. . . . Thus, we hold that 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).

Black Horse Lane Assoc., L.P. v. Dow Chemical Corp., 228 F.3d 275, 303-04 (2000) (quotations and citations omitted).

In reaching this conclusion, the court observed:

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 but sleeps through it. Indeed, we believe the purpose behind Rule 30(b)(6) undoubtedly is frustrated in the situation in which a corporate party produces a witness who is unable and/or unwilling to provide the necessary factual information on the entity’s behalf.

Black Horse Lane at 304. The court properly observed that anything less would be “tantamount to encouraging dilatory tactics.” *Id.* (citations and quotations omitted).

Thus, it is clear that sanctions may be imposed for producing a wholly unprepared witness. The next question is, what sanctions are appropriate under these circumstances? Rule 37(d) answers that question. It expressly references and incorporates the Rule 37(b)(2) sanctions. Thus, the Hearing Officer may proceed directly to Rule 37(b)(2) sanctions without

finding that the party is in violation of an earlier discovery order.¹⁰

Included among the recommended sanctions in Rule 37(b)(2) is a provision authorizing the Hearing Officer to enter an order “striking out pleadings or parts thereof” or “dismissing the action or proceedings or any part thereof.” Rule 37(b)(2)(C). The Hearing Officer also may refuse to “allow the disobedient party to support or oppose designated claims or defenses,” or the Hearing Officer may prohibit “that party for introducing designated matters in evidence.” Rule 37(b)(2)(B). All of these sanctions are appropriate in this case. Indeed, if they are not appropriate here, it is difficult to imagine when they would be.

In the *Black Horse Lane* case the district court summarized the conduct of the 30(b)(6) witness this way:

[H]e knew he was a 30(b)(6) witness and, notwithstanding the fact that he knew he was a 30(b)(6) witness, he refused to answer questions in an intelligent way. He refused to prepare, as you are required to prepare under 30(b)(6), to intelligently answer questions and just literally thumbed his nose at the defendants and, frankly, the Court.

Id. at 300.

The same can be said here. The presentation of this witness by Settlers was disrespectful not only to the opposing party, but to the Hearing Officer and to the Department. The Hearing Officer should sanction Settlers under Rule 37(d), dismissing its protest.

III. SETTLERS’ LACK OF KNOWLEDGE CONCERNING ITS PROTEST IS CONFIRMED BY THE LACK OF BOARD INVOLVEMENT, AS REFLECTED IN THE ABSENCE OF MINUTES.

The utter lack of familiarity with the basis of the protest demonstrated by Settlers’ 30(b)(6) witness is not entirely surprising, given that the IMAP and Settlers’ protest apparently

¹⁰ In the alternative, Settlers may be deemed in violation of the Hearing Officer’ order of June 20, 2003 authorizing formal discovery, *i.e.*, discovery in accordance with applicable rules of civil procedure.

have received scant, if any, attention by the Board of Directors. The 30(b)(6) deponent could recall no discussion of the merits of the IMAP or the protest by the Board, even though he attends all Board meetings. Tr. p. 9, l. 24 to p. 10, l. 17; Tr. p. 54, l. 10 to p. 55, l. 23.

In prior discovery, Settlers produced all minutes of Board meetings relevant to the IMAP—consisting of a single reference to the IMAP litigation.¹¹ Nothing in any of Settlers' minutes reflects any substantive discussion or evaluation of (1) the merits of the IMAP, (2) the basis of the protest (or, for that matter, any review or approval of the protest), (3) United Water's proposed conditions (or, for that matter, any indication that these have ever been conveyed to the Board), or (4) conditions that might be sufficient to resolve the protest.

Counsel for United Water inquired into this lack of minutes. Exhibit F at 2. Counsel for Settlers replied: "You can conclude whatever you want to concerning the lack of minutes dealing with the IMAP." Exhibit I at 2. It would appear appropriate to conclude that Settlers has no basis for its protest.

IV. THE HEARING OFFICER SHOULD NOT ISSUE A MOTION TO COMPEL GIVING SETTLERS YET ANOTHER OPPORTUNITY TO COMPLY.

United Water seeks whatever relief the Hearing Officer deems appropriate. We hope that will not come in the form of an order to compel further discovery. There is no reason to give Settlers yet another opportunity to meet its plain obligations under the rule. Settlers was amply aware of its responsibilities (and complained when reminded of them). United Water even

¹¹ That minute read, in full: "Scott Rhead with United Water attended the meeting to discuss with the Board the SRBA and how the resulting 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." Settlers' Irrigation District Minutes (Oct. 1, 2002).

noticed up a continued deposition, with an invitation for Settlers to provide a suitable witness of its choice. Settlers declined every opportunity to remedy its situation.

Moreover, further depositions at this time are not likely to change the bottom line. Based on Mr. Draper's deposition, the complete absence of Board level discussion documented in any minutes, and Settlers' failure to produce any document or evidence bearing on the IMAP, it is fair to conclude that there is nothing else to learn. In any event, United Water should not be put to further expense in this regard.

Rather, Settlers should be bound by the consequences of its conduct. Given that conduct, United Water, as well as the Department, are now entitled to conclude that Settlers has no knowledge of any basis for its protest.

V. ATTORNEY FEES SHOULD BE AWARDED

United Water's motion requests an award of costs and attorney fees. The Hearing Officer is authorized to award costs and attorney fees. Rule 520.02 (IDAPA 37.01.01.520.02) provides that the scope of formal discovery in contested cases is governed by the Idaho Rules of Civil Procedure.¹² The Hearing Officer authorized formal discovery in his order of June 20, 2003 at 1. Counsel for Settlers stipulated that the subject deposition was taken pursuant to the Idaho Rules of Civil Procedure and to the Department's rules. Tr. p. 4, ll. 13-20. Idaho Rule of Civil Procedure 37(d) expressly authorizes the award of reasonable expenses including attorney fees.¹³ The rule provides that the award may be assessed against the organization and/or its counsel.

¹² 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.

¹³ As explained in Part II above, Rule 37(d) is applicable because Settler's conduct in producing a vacant witness is the legal equivalent to a failure to attend under the rule.

Indeed, Rule 37(d) provides that such an award “shall” be made, “unless the court finds that the failure was substantially justified or that other circumstances made an award of attorney fees unjust.” No such mitigating circumstances exist here, as amply documented in the Transcript and Exhibits.

Additionally, the Hearing Officer has broad authority to grant all of the relief sought in this motion under his general authority under Idaho Code § 67-5242(3), discussed above.

CONCLUSION

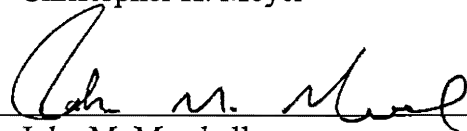
Mr. Draper was presented as a 30(b)(6) witness and spoke as such. He admitted he did nothing to prepare for his deposition (other than to read the deposition notice). He was entirely unfamiliar with the IMAP and had no knowledge of the basis of Settlers’ protest to the IMAP or conditions upon which its protest could be resolved. Because he spoke on behalf of Settlers, it follows that Settlers has no basis for its protest. Consequently, its protest should be dismissed or, at a minimum, Settlers should be precluded from participating in the hearing.

This result may be reached in either of two ways: First, the Hearing Officer may simply deem Settlers to be bound by its own statements in the deposition. On this basis alone, the District should not be allowed to proceed with its protest. Second, the Hearing Officer has ample authority under the sanction provisions of the Idaho Rules of Civil Procedure.

Respectfully submitted this 15th day of September, 2003.

GIVENS PURSLEY LLP

By: 
Christopher H. Meyer

By: 
John M. Marshall

Attorneys for Applicant
United Water Idaho Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of September, 2003, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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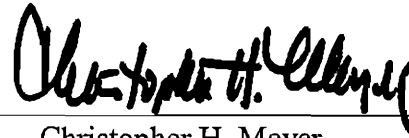
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Christopher H. Meyer

INDEX TO EXHIBITS

- Exhibit A. Second amended notice of Settlers' deposition on September 4, 2003 (Sept. 2, 2003)
- Exhibit B. Original notice of Settlers' deposition on August 21, 2003 (Aug. 7, 2003)
- Exhibit C. First amended notice of Settlers' deposition on September 4, 2003 (Aug. 18, 2003)
- Exhibit D. Letter from Chris Meyer to Scott Campbell (Sept. 3, 2003)
- Exhibit E. Series of email communications between Chris Meyer and Scott Campbell (Sept. 3, 2003).
- Exhibit F. Letter from Chris Meyer to Scott Campbell (Sept. 4, 2003)
- Exhibit G. Letter from Scott Campbell to Chris Meyer (Sept. 4, 2003)
- Exhibit H. Letter from Chris Meyer to Scott Campbell (Sept. 5, 2003)
- Exhibit I. Letter from Scott Campbell to Chris Meyer (Sept. 5, 2003)
- Exhibit J. Letter from Chris Meyer to Scott Campbell (Sept. 9, 2003)
- Exhibit K. Transcript of Deposition of Mr. Nathan Draper (Sept. 4, 2003) (without deposition exhibits)

A

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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

**SECOND AMENDED NOTICE OF
DEPOSITION DUCES TECUM OF
SETTLERS IRRIGATION DISTRICT**

TO: THE ABOVE NAMED PROTESTANT AND ITS ATTORNEY OF RECORD

YOU WILL PLEASE TAKE NOTICE that on the 4th day of September 2003 at the hour of 9:00 a.m. at the offices of Burnham Habel & Associates, Inc., 668 North 9th Street, Boise, Idaho, the Applicant United Water Idaho Inc. will take the deposition of Settlers Irrigation District in the above-entitled action upon oral examination pursuant to Rule 30(b)(6) of the Idaho Rules of Civil Procedure, before a Notary Public, or before some other officer authorized by law to administer oaths, and continuing from day to day thereafter, until said deposition is completed. You are required to designate one or more officers, directors or managing agents to be examined regarding:

**SECOND AMENDED NOTICE OF DEPOSITION
DUCES TECUM OF SETTLERS IRRIGATION DISTRICT - 1**

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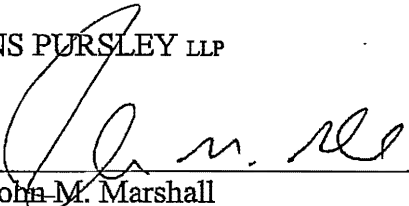
1. Each and every basis for your protest in this matter.
2. The conditions or modifications to the IMAP, if any, that would resolve your protest.

You are further required to provide and to produce at the deposition all documents in your possession related your protest in this matter.

DATED this 2nd day of September 2003.

GIVENS PURSLEY LLP

By


John M. Marshall
Attorneys for Applicant United Water

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of August 2003, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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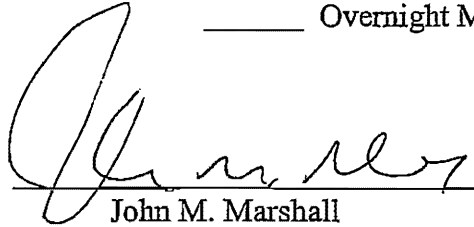
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**BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES**

IN THE MATTER OF INTEGRATED
MUNICIPAL APPLICATION PACKAGE
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INDIVIDUAL APPLICATIONS FOR
TRANSFERS OF WATER RIGHTS AND
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PERMITS

**NOTICE OF DEPOSITION DUCES TECUM
OF SETTLERS IRRIGATION DISTRICT**

TO: THE ABOVE NAMED PROTESTANT AND ITS ATTORNEY OF RECORD

YOU WILL PLEASE TAKE NOTICE that on the 21st day of August 2003 at the hour of 9:00 a.m. at the offices of Givens Pursley LLP, 277 North 6th Street, Suite 200, Boise, Idaho, the Applicant United Water Idaho Inc. will take the deposition of Settlers Irrigation District in the above-entitled action upon oral examination pursuant to Rule 30(b)(6) of the Idaho Rules of Civil Procedure, before a Notary Public, or before some other officer authorized by law to administer oaths, and continuing from day to day thereafter, until said deposition is completed. You are required to designate one or more officers, directors or managing agents to be examined regarding:

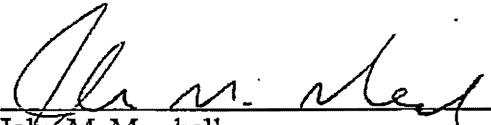
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DATED this 7th day of August 2003.

GIVENS PURSLEY LLP

By


John M. Marshall

Attorneys for Applicant United Water

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I hereby certify that on this 7th day of August 2003, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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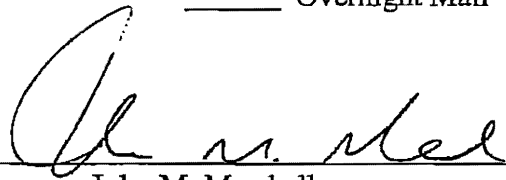
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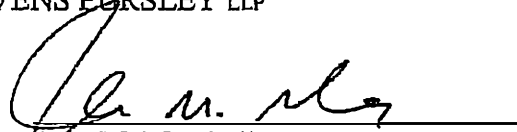
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DATED this 18th day of August 2003.

GIVENS PURSLEY LLP

By



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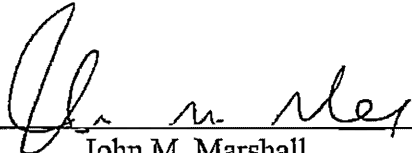
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Via Email, Facsimile and U.S. Mail

September 3, 2003

Scott L. Campbell, Esq.
Moffatt Thomas Barrett Rock & Fields, Chtd.
101 S. Capitol Blvd., 10th Floor
P.O. Box 829
Boise, ID 83701-0829
Email: slc@moffatt.com

Re: United Water Idaho Inc.—IMAP
Our File No. 30-71

Dear Scott:

It is apparent from this morning's deposition of Jeff Scott, that Pioneer Irrigation District has failed to comply with the requirements of Idaho Rule of Civil Procedure 30(b)(6). Your witness was unfamiliar with the substance of the deposition notice, had not been briefed on his responsibilities under the notice, had not prepared for the deposition in any way, was completely unfamiliar with the issues expressly identified in the deposition notice, had made no attempt to become familiar with them, was entirely unfamiliar with the IMAP itself, was equally unfamiliar with Pioneer's protest, could not even identify a single basis for the protest other than the general statement that the IMAP might harm the District's water rights in ways that he could not identify, had never seen or even heard of the proposed conditions which were an expressly identified issue for deposition, and had no idea what conditions would be acceptable to the District.

Moreover, Mr. Scott repeatedly stated that he was not the proper person to be giving this deposition. Mr. Scott stated that any of the three board members would have some knowledge of the issues, but that the best person to provide the information sought was Ken Brush, the Chairman.

I asked you during the break whether you could make Mr. Brush available later today, while the court reporter was still available. You responded that that would not be possible. I request that you immediately provide the earliest possible available dates for Mr. Brush.

Scott L. Campbell, Esq.
September 3, 2003
Page 2

This is not the first instance in which you have provided a witness for a 30(b)(6) deposition with no knowledge of the designated subject matter. This is a plain abuse of the discovery process. My immediate concern is that this not be repeated with tomorrow's 30(b)(6) deposition of Settler's Irrigation District. As counsel for Pioneer and Settlers it is your responsibility to advise the client of its responsibilities under the notice. Although you instructed the witness not to answer in this regard, this apparently has not occurred.

In any event, please make certain that we do not have a repeat of today's experience in tomorrow's deposition. If you are unclear about the scope of the deposition notice, please use today's deposition as an indication of what we are seeking. The witness should be knowledgeable of the subject matter and able to explain the Board's position. He should bring with him all relevant documents bearing on those issues, including, by way of example, minutes of Board meetings discussing these issues. If you need to have a continuance to accomplish that, let me know.

Finally, I am troubled that you instructed the witness today not to respond to questions regarding the District's water conservation efforts. I appreciate that you have a pending motion for protective order. However, that order has not been granted. Moreover, you have not asserted any privilege. Consequently, you may place your objections on the record, but there is no basis for your instructing the witness not to answer.

Your instruction not to answer today was mooted by the fact that you proffered the wrong witness. However, in the upcoming depositions, I trust, that will not be the case. Consequently, you need to either take whatever steps you see fit to get a resolution of your pending motion, or allow the questions to be answered with your objection noted.

I look forward to hearing from you as soon as possible with respect to the above matters.

Sincerely,



Christopher H. Meyer

cc: Client
John Marshall

CHM:kdt C:\mw5\temp\Ltr-0002.DOC

E

9/15/2003

From: "Scott Campbell" <SLC@moffatt.com>
To: <ChrisMeyer@GivensPursley.com>
Cc: "Debby Long" <DLL@moffatt.com>
Sent: 9/03/2003 4:36PM
Subject: RE: Re: Depositions of Pioneer and Settlers

Chris,

Your definition of "a proper 30(b)(6) witness" differs substantially from my definition. I will attend the deposition with a witness designated by my client as the 30(b)(6) witness for Settlers Irrigation District.

Scott

>>> "Christopher Meyer" <ChrisMeyer@GivensPursley.com> 9/3/2003 4:19:32 PM >>>

Scott,

I take it from your response that you do not need additional time in order to present a proper 30(b)(6) witness tomorrow. That being the case, we intend to proceed as scheduled.

-Chris

--- Original Message---

To:
Cc: "Debby Long"
From: "Scott Campbell"
Sent: 9/03/2003 3:40PM
Subject: Re: Depositions of Pioneer and Settlers

>> Chris:

>>

>> I was out of the office on other more important matters until a few
>> minutes ago. I will provide a comprehensive response to the letter
>> attached to your e-mail in due course. If you do not intend to take
the

>> 30 (b)(6) deposition of Settlers Irrigation District tomorrow, I
will

>> contact the witness and tell him not to attend. I will assume that
you

>> will proceed according to your amended notice of deposition unless
you

>> provide a notice of cancellation of the deposition before 5:00 p.m.
>> today.

>>

>> Sincerely,

>>

>> Scott

>>

>> >>> "Christopher Meyer" 9/3/2003

>> 12:48:24 PM >>>
>> Scott,
>> Please see attached letter.
>> When my secretary returns, she will send you a proofed and
corrected
>> copy.
>> -Chris M.
>>

>> Contact information for sender:
>> Christopher H. Meyer, Esq.
>> Givens Pursley LLP
>> 277 N. 6th Street
>> P.O. Box 2720
>> Boise, ID 83701
>> Direct: 208-388-1236
>> Fax: 208-388-1300
>> Cell: 208-407-2792
>> PLEASE NOTE NEW EMAIL ADDRESS:
>> chris Meyer@givenspursley.com
>> www.givenspursley.com
>>

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9/15/2003

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Via Email and U.S. Mail

September 4, 2003

Scott L. Campbell, Esq.
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101 S. Capitol Blvd., 10th Floor
P.O. Box 829
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Email: slc@moffatt.com

Re: United Water Idaho—IMAP
Our File No. 30-71

Dear Scott:

My letter to you yesterday urged that we avoid a repeat of Wednesday's 30(b)(6) deposition of Pioneer Irrigation District. I specifically requested that Settlers produce a 30(b)(6) witness with sufficient knowledge to address the issues within the scope of today's deposition notice.

Instead, Settlers produced Nathan Draper who had not read the IMAP, was unfamiliar with any of the reasons for Settlers' protest, had no substantive recollection of any discussion of the IMAP during his entire six-year tenure at Settlers, and had never seen or heard of the conditions proposed by United Water in aid of settlement.

Moreover, Mr. Draper admitted no one had explained to him what a 30(b)(6) deposition is, and that he did not prepare for the deposition in any way, other than to read the notice, which, he admitted, he did not understand.

Finally, Mr. Draper failed to comply with the instruction in the notice to produce materials relevant to the IMAP. In sum, he brought nothing, read nothing, knew nothing.

Your conduct in what is now a series of failed 30(b)(6) depositions constitutes a continuing violation of your responsibilities under Rule 30(b)(6) and an ongoing abuse of process.

At the conclusion of today's deposition, I asked you whether you would agree to continue the depositions of Pioneer and Settlers and to provide a suitable witness capable of addressing

Scott L. Campbell, Esq.
September 4, 2003
Page 2

the issues within the scope of the notice. You stated on the record that you would not respond to the question.

We are nonetheless submitting today notices of continuation of both depositions. This will provide your clients a final opportunity to meet their responsibilities under the governing rules and law. Because these are 30(b)(6) depositions, we have not identified a particular witness. Based on what we have learned in the last two depositions, however, it would appear that the proper witnesses should be the two board presidents. We expect you to produce these witnesses, or another capable and qualified witness, at the continued deposition.

If you intend to continue to refuse to provide a witness capable and qualified to address the issues described in the deposition notices, please advise me in advance so that we may avoid further wasted expense.

During the deposition, you stated that Settlers has already produced all of the board minutes relevant to the IMAP. I have reviewed the discovery files, and find only one submission of minutes for October 1, 2002. Those minutes contain a one-paragraph reference to a presentation by Scott Rhead of United Water to Settlers. No other minutes have been produced for either Settlers or Pioneer. May I conclude from the absence of minutes dealing with the IMAP that the Board of Directors of these two Districts has never been informed of, considered, or approved the protests filed on their behalf in the IMAP?

Once again, during today's deposition, you instructed the deponent not to answer my questions regarding water conservation efforts undertaken by the District. We have now made a clear record that your instruction not to answer is not premised upon any asserted privilege, and that you have not obtained a protective order. During the deposition, I explained again that your instruction is without any proper legal basis, and read into the record authority to this effect. Despite this, you made it clear that you would continue to instruct this witness and any subsequent deponent not to answer questions on the subject, unless and until the Hearing Officer instructs you otherwise. If you have reconsidered your position subsequent to today's deposition, please let me know. Otherwise, I will assume that the matter is ripe for presentation to the Hearing Officer.

Sincerely,



Christopher H. Meyer

cc: Client
John Marshall

G

Moffatt Thomas

MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD.

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Kirk R. Helvie, 1956-2003

Givens Pursley, LLP

September 4, 2003

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Christopher H. Meyer
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Boise, ID 83701

Re: United Water Idaho, Inc. IMAP
MTBR&F File No. 18946.26

Dear Chris:

I am responding to your correspondence of September 3, 2003.

Your letter sets forth a litany of complaints concerning the lack of knowledge of Jeff Scott, the individual designated by Pioneer Irrigation District as its 30(b)(6) designee to testify on its behalf. The rule specifically provides in pertinent part as follows:

The person so designated shall testify as to matters known or reasonably available to the organization.

Despite your apparent frustrations with Mr. Scott's lack of knowledge concerning the areas of inquiry you delineated in your notice of deposition, he satisfied the requirements of the rule. Had you desired to have him or someone else with Pioneer Irrigation District address the specific items you described in the first paragraph of your correspondence, you certainly could have listed those issues on your notice of deposition. Your failure to do so should not be used as a basis for your complaints about Mr. Scott's lack of knowledge.

Mr. Scott's response to a number of your questions concerning the individuals who would have some knowledge of certain issues matters little. Pioneer Irrigation District designated Mr. Scott as the 30(b)(6) designee. That is all that is required under the rule.

You requested that I "immediately provide the earliest possible available dates for Mr. Brush." Since the discovery deadline has passed, I am not presently inclined to provide available dates for Mr. Brush's deposition unless you can articulate a legitimate basis under the rules or case law for such deposition. This is particularly the case since we identified Mr. Brush as a

Christopher H. Meyer
September 4, 2003
Page 2

potential witness in our initial responses to your written discovery requests which were sent to you on July 17, 2003. You could have easily noticed a deposition for Mr. Brush during the course of the discovery period, but you chose not to do so.

You have made a non-specific reference to an allegedly improper "plain abuse of the discovery process." You stated "this is not the first instance in which you have provided a witness for a 30(b)(6) deposition with no knowledge of the designated subject matter." Your baseless insults are unprofessional and unnecessary. Moreover, your unsolicited instruction concerning my "responsibility" to my clients rises to the level of pomposity.

You have indicated that you are "troubled that [I] instructed the witness today not to respond to questions regarding the District's water conservation efforts." I regret causing you trouble. However, that regret does not override my obligation to provide my client an aggressive defense. Your repeated efforts to inquire into areas which have absolutely no basis for proper inquiry at this stage of the proceeding dictates my objections and instructions to the witness. As soon as the hearing officer resolves this matter, one of us will be forced to accept the results of that decision. Until then, the matter stands in its present status.

Very truly yours,


Scott L. Campbell

SLC/dll

cc: Pioneer Irrigation District

7H

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September 5, 2003

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Email: slc@moffatt.com

Re: United Water Idaho—IMAP
Our File No. 30-71

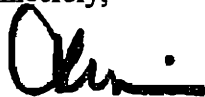
Dear Scott:

I have your letter of September 4, 2003, which appears to have crossed with my letter of September 4, 2003.

With respect to our request to depose Mr. Brush, we are not seeking to depose him personally, but rather as a 30(b)(6) witness. If Pioneer wishes to supply another competent witness, that is your prerogative. However, based on the deposition of Mr. Scott, it would appear that Mr. Brush would be the proper witness.

I take it from your letter, however, that you have no intention of supplying any additional witnesses pursuant to our 30(b)(6) notices, notwithstanding the notices of continuation of depositions that we sent to you yesterday. Please confirm your intentions in this regard at once.

Sincerely,



Christopher H. Meyer

cc: Client
John Marshall

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Moffatt Thomas

MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD.

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SEP 08 2003

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Givens Pursley, LLP

September 5, 2003

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Christopher H. Meyer
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601 W. Bannock Street
PO Box 2720
Boise, ID 83701

Re: **United Water Idaho, Inc. IMAP**
MTBR&F File No. 18946.26

Dear Chris:

It is unfortunate that you are disappointed with the information that you obtained during the deposition of Nathan Draper and during the deposition of Jeff Scott. As I indicated to you in my correspondence of September 4, 2003, Mr. Scott was the designated witness selected by Pioneer Irrigation District. Mr. Nathan Draper was the selected witness designed as the 30(b)(6) representative for Settlers Irrigation District. Simply because neither one of the witnesses were able to answer all of the questions which you presented in your deposition does not make them improper witnesses for purposes of a 30(b)(6) deposition. It may come as some surprise to you that very few people have dedicated as much time and effort to IMAP as you have.

It is interesting to note that you apparently already have a transcript of Mr. Draper's testimony. Otherwise it would be impossible for you to quote from the deposition yesterday morning. Notwithstanding your comments about Mr. Draper and his lack of knowledge and my objections, your characterization of his participation in the deposition is inaccurate, unprofessional, and misleading, at best. This is particularly the case with regard to you pithy remark: "In sum, he brought nothing, read nothing, knew nothing." Obviously, for you to conduct a deposition for two hours eliciting responses from Mr. Draper on a number of subjects points out the intentionally, inaccurate nature of this statement.

Your continued assertions that my conduct "constitutes a continuing violation of [my] responsibilities under Rule 30(b)(6) and an ongoing abuse or process," is starting to irritate me. You may not like my defense of my clients' positions. You may not agree with the objections I present. You may even consider me to be uncooperative, but you are in no position to lecture me about my "responsibilities under 30(b)(6)." Moreover, your suggestion that my actions

Christopher H. Meyer

September 5, 2003

Page 2

constitute "an ongoing abuse of process" are personally insulting and without any basis whatsoever.

I look forward to receipt of your notices of continuation of both depositions. Since the discovery deadline has come and passed, it may not be possible to accommodate your request.

You can conclude whatever you want to concerning the lack of minutes dealing with the IMAP. The relevant documents have been provided to you in responses to your written discovery.

I appreciate your additional clarification at the deposition as to your position with respect to my instruction of my witnesses not to answer any questions concerning water conservation. While I found your explanation of your attendance at a seminar on depositions 13 years ago and your reading from the handouts from that seminar to very entertaining, you cited no authority applicable in the state of Idaho for your proposition that answers must be provided to the questions you intended to propound. If you intend to raise this issue with the Hearing Officer, that is your choice. Frankly, I believe the pending motion to compel and responsive motion for protective order adequately covers this issue. I stated this position very clearly on the record, at Mr. Draper's deposition. Additionally, my correspondence of September 4, 2003, clearly indicated that until the pending motions are resolved by the Hearing Officer, I will continue to maintain the position that inquiries into this area are not appropriate and will not provide responses. If the Hearing Officer rules on either one of the motions in a fashion which resolves the issue, the resolution will be applicable to any questions you may ask in a deposition. If you proceed to file yet another unnecessary motion regarding this issue, we will again seek attorney fees against you and your client.

Very truly yours,



Scott L. Campbell

SLC/dll

cc: Pioneer Irrigation District
Settlers Irrigation District

J

GIVENS PURSLEY LLP

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September 9, 2003

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Boise, ID 83701-0829
Email: slc@moffatt.com

Re: United Water Idaho—IMAP
Our File No. 30-71

Dear Scott:

Your letter of September 5, 2003, arrived yesterday. You state as follows:

Mr. Scott was the designated witness selected by Pioneer Irrigation District. Mr. Nathan Draper was the selected witness designated as the 30(b)(6) representative for Settlers Irrigation District.

Based on your representation that these are your 30(b)(6) witnesses, there is no purpose in our notices of continued deposition. It would be futile and wasteful to depose these gentlemen again. The notices of continued deposition for Pioneer and Settlers are withdrawn.

Sincerely,



Christopher H. Meyer

cc: Service List
Client
John Marshall

CHM:kdt SACLIENTS30171NLf-0005.DOC



7K

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

BURNHAM, HABEL & ASSOCIATES, INC.

Certified Shorthand Reporters

COPY

Prepared for

Mr. Meyer

Reported By

Constance S. Bucy,

Post Office Box 835

CSR

Boise, Idaho 83701

(208) 345-5700 • FAX 345-6374 • 1-800-867-5701

DEPOSITION OF NATHAN DRAPER TAKE 9-4-03

SHEET 1

1 BEFORE THE
2 IDAHO DEPARTMENT OF WATER RESOURCES
3
4 IN THE MATTER OF INTEGRATED)
5 MUNICIPAL APPLICATION PACKAGE)
6 ("IMAP") OF UNITED WATER IDAHO)
7 INC., BEING A COLLECTION OF)
8 INDIVIDUAL APPLICATIONS FOR)
9 TRANSFERS OF WATER RIGHTS AND)
10 APPLICATIONS FOR AMENDMENT OF)
11 PERMITS)
12
13 DEPOSITION OF NATHAN DRAPER
14 Boise, Idaho
15 September 4, 2003
16
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25 1

I N D E X		
1	WITNESS	EXAMINATION BY
2	NATHAN DRAPER	Mr. Meyers
3		PAGE
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5		
6		
7		
8		
9	E X H I B I T S	
10		
11	DESCRIPTION	PAGE
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13	Settlers Irrigation District	
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15	3 - Protest	4
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18	Additional Issues	
19	6 - (Withdrawn)	
20	7 - Amended Notice of Deposition Duces Tecum	4
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22	8 - (Withdrawn)	
23	9 - (Withdrawn)	
24	10 - Proposed IMAP Conditions	4
25	11 - Second Amended Notice of Deposition Duces	34
	Tecum of Settlers Irrigation District	
		3

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.
10
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18
19 A P P E A R A N C E S
20 For the Applicant: GIVENS PURSLEY
21 by Christopher H. Meyer, Esq.
22 Post Office Box 2720
23 Boise, Idaho 83701
24
25 For Settlers MOFFATT THOMAS BARRETT ROCK
Irrigation District: & FIELDS
by Scott L. Campbell, Esq.
Post Office Box 829
Boise, Idaho 83701
2
2

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
24
25 4

EXAMINATION

BY MR. MEYER:

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

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

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

A My name is Nathan Draper.

Q And would you state your address for the record?

5

A I reside at 3510 Beverly. It's in Boise.

Q Have you been deposed before, Mr. Draper?

A No, I have not.

Q Let me just kind of run down the procedures with you, then, so that you'll know what to expect. I'm sure your attorney has already told you a little bit about what to expect, but let me just hit some of the high points. As you know, you're under oath and will remain under oath throughout the deposition, so it's just as if you're in a courtroom in that respect.

I'll be asking the questions. Once I finish asking questions, your attorney may ask some questions of you as well. If any of us ask a question and you don't hear it, ask us to repeat it and, most importantly, if I ask you a question that you don't understand or you find confusing, please say so. Don't take a guess at what the question is. Ask me to rephrase it or to repeat it until you understand it.

Everything that is going to be said in this room today, unless we go off the record, will be taken down by the court reporter, so it's important for all of us to try and respond verbally or to speak

6

verbally rather than with hand gestures and if there's an occasion to point at something or to identify something on a map, we need to be cognizant of the fact that we need to put some words into the record to make it clear what we're talking about, and as I said, I'll be asking questions as we proceed.

At some point your attorney may interpose an objection to that question, just like in a courtroom. The difference between this and a courtroom is that unless your attorney expressly tells you not to answer, that objection just goes on the record and then you go ahead and answer the question.

Let's go ahead and begin, then. Can you tell me what you do for a living?

A I'm the manager of Settlers Irrigation District.

Q Do you -- are you a farmer as well or is that a full-time job for you?

A No, that is a full-time job.

Q What is your educational background?

A I have an associate's degree in farm business management.

Q Where is that degree from?

A Treasure Valley Community College.

Q Have you lived in Idaho your whole life?

7

A No, I haven't.

Q How long have you been in Idaho?

A I've been in Idaho for about eight years.

Q And the position that you hold at Settlers you said was manager?

A Yes.

Q Okay, how long have you held that post?

A For four-and-a-half years.

Q And what did you do before you held that post? Were you with Settlers before that?

A Yes, I was.

Q What position did you hold before manager?

A Ditch rider.

Q And how many years were you a ditch rider?

A For about a year-and-a-half.

Q So altogether you've been with Settlers for about six years?

A Six years.

Q Okay. Could you describe for me your responsibilities as manager of Settlers?

A As manager, I regulate irrigation flows and deliveries as well as the operation and

8

SHEET 2

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.

9

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?

11

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

10

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?

12

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

13

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.

15

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?

14

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

16

SHEET 3

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

17

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

18

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

19

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

20

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.

21

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

23

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 --

22

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

24

SHEET 4

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

25

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?

27

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

26

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.

28

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?

29

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

31

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

- 30

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

32

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

1 documents. They are labeled Exhibits 1, 7 and 11.
2 A I only have two.
3 Q There's No. 11. Just to orient you, all
4 three of those are deposition notices for this
5 deposition. Why don't you take a look at those just
6 to see if you've seen them before. I think you'll
7 find that the latter two are the same, except for the
8 date since this has been rescheduled a couple of
9 times.
10 A Yes.
11 Q Have you seen those deposition notices
12 before?
13 A Yes, I have.
14 Q Who gave them to you?
15 A Our attorney.
16 Q And was it explained to you that this is
17 a 30(b)(6) deposition?
18 A Not that I recall.
19 Q Okay, was it explained to you that when
20 your deposition would be taken today that you would be
21 speaking on behalf of Settlers?
22 A Yes.
23 Q And was it explained to you what your
24 responsibilities were to prepare for this deposition?
25 A Yes.

1 Water is hostile or opposed to Settlers continuing to
2 provide irrigation water to commercial and residential
3 customers within your district?
4 A I don't know.
5 Q Have you ever heard anyone on the board
6 express that viewpoint?
7 A No.
8 Q Are you aware of any conflict dealing
9 with your provision of that water?
10 A No, I'm not.
11 Q Okay. Let me hand you what has been
12 marked as Exhibit No. 1.
13 Scott, would you like another copy?
14 This is the deposition notice.
15 MR. CAMPBELL: No, that's not
16 necessary.
17 Q BY MR. MEYER: Let me, while we're at
18 it, also give you Exhibit No. 7 which is an amended
19 deposition notice and I thought I had Exhibit No. 11,
20 but I don't see it. Let me go off the record for just
21 a second.
22 (Exhibit No. 11 was marked for
23 identification.)
24 Q BY MR. MEYER: We're back on the
25 record. Mr. Draper, I've given you copies of three

1 Q And how were you told to prepare?
2 MR. CAMPBELL: Well, I'll object to the
3 question. It goes into the attorney-client
4 communications with Mr. Draper and I'll instruct him
5 not to answer.
6 MR. MEYER: Well, I'm not asking
7 particularly for what his attorney told him. I just
8 want to know whether he was instructed to prepare or
9 not.
10 MR. CAMPBELL: That wasn't your
11 question.
12 Q BY MR. MEYER: Okay, let me repeat the
13 question or let me rephrase the question. How did you
14 prepare for today's deposition?
15 A I read over some documentation.
16 Q What did you read over?
17 A This notice, for one.
18 Q Was there anything else that you read?
19 A No.
20 Q Turning to the second page of any one of
21 those, you'll see two items listed with a 1 and a 2 in
22 front of them, those are the two items that describe
23 the scope of this deposition. The first says each and
24 every basis for your protest in this matter, did you
25 understand what that meant?

1 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?

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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

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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?

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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

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SHEET 6

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 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 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 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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SHEET 7

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?

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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

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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

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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

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SHEET 8

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

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

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

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

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

17 MR. CAMPBELL: You misunderstood that
18 completely.

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

25 MR. CAMPBELL: Based upon Mr. Meyer's
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1 number of occasions when you were not able to answer
2 my questions because you didn't have a recollection,
3 has your recollection been refreshed on any of those?

4 A No.

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

7 Mr. Campbell, do you have questions?

8 MR. CAMPBELL: I have no questions.

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

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

24 MR. MEYER: Let me ask while we continue
25 to be on the record, Mr. Campbell, if you will make
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1 definition of the witness able to respond within the
2 "scope of the notice" which we respectfully disagree
3 with his characterization, so with that, unless you
4 have further questions of this witness, I think we can
5 conclude.

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

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

10 (Signature requested.)
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SHEET 9

VERIFICATION

STATE OF)

ss.

COUNTY OF)

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

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

Signature

Subscribed and sworn to before me this day of , 2003, at , Idaho.

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

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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

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Department of Water Resources

**BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES**

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

**UNITED WATER'S MOTION TO DISMISS
PIONEER'S PROTEST AND PRECLUDE
ITS PARTICIPATION AT HEARING**

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MOTION

Pursuant to Idaho Code §§ 42-203A(4), 42-222(1), 42-1701A and 67-5242, Idaho Rules of Civil Procedure 37(b) and (d), IDAPA 37.01.01.260, IDAPA 37.01.01.520.02, and IDAPA 37.01.01.531, United Water Idaho Inc. ("United Water") hereby moves for an order against Pioneer Irrigation District ("Pioneer" or the "District") dismissing Pioneer's protest and precluding Pioneer from producing any evidence or otherwise participating in the hearing in this matter. The grounds for this motion are that Pioneer is bound by the testimony of its designated witness under Idaho Rule of Civil Procedure 30(b)(6), that its witness testified under oath that Pioneer is utterly and completely unfamiliar with the IMAP, that Pioneer does not know the factual or legal basis for its protest, that Pioneer has not evaluated the conditions for settlement proposed by United Water (and was unaware that any conditions had been offered), and that Pioneer has not considered what conditions, if any, would be sufficient to resolve its protest.

In addition to the relief sought herein, United Water moves for such other relief as the Hearing Officer deems appropriate under the circumstances, including an award of costs and attorney fees.

SUMMARY OF FACTS

On August 18, 2003 United Water served Pioneer with a *Amended Notice of Deposition Duces Tecum of Pioneer Irrigation District* stating that United Water would take the deposition of Pioneer on September 3, 2003 pursuant to Idaho Rule of Civil Procedure 30(b)(6). A copy is attached as Exhibit A.¹ Pioneer designated Mr. Jeffrey C. Scott as its witness. A copy of the transcript of the deposition of Pioneer is attached as Exhibit C.

¹ This deposition was originally noticed on August 7, 2003. It was amended to change the date. The parties agreed to extend the discovery deadline to accommodate this re-setting and other scheduling requirements. The original deposition notice is attached as Exhibit B.

This deposition preceded by one day the 30(b)(6) deposition of Settlers' Irrigation District ("Settlers"), which is the subject of a parallel motion filed today entitled *United Water's Motion to Dismiss Settlers' Protest and Preclude Its Participation at Hearing*. Although the particular details vary, the two depositions followed identical courses. Pioneer's designated witness had not prepared for the deposition. Tr. p. 13, l. 2. He had not read the IMAP. Tr. p. 36, l. 1. He stated that he was unprepared to explain the bases of the protest. Tr. p. 10, l. 13. He was unprepared to address conditions that would resolve the protest. Tr. p. 13, ll. 16, 21. He was not even aware that United Water had offered a set of conditions. Tr. p. 44, l. 18. He said he could not even explain the gist of the protest.² Tr. p. 36, l. 24. When asked if he could hazard a guess at what the protest was about or had "any sense of what this document is", he responded: "A lot of Idaho Code numbers, no." Tr. p. 37, ll. 15-18. He could not say whether the planning horizon (to which Pioneer has objected as too long) was for 20 years or 50 years. Tr. p. 40, ll. 13-14. Nor did he have any idea of what Pioneer's position was with respect to this. Tr. p. 43, l. 5. He was unfamiliar with Pioneer's Statement of Issues, Tr. p. 43, l. 8, and with Pioneer's List of Additional Issues, Tr. p. 44, l. 2.

Likewise, the correspondence included as exhibits to the parallel motion directed to

² The only thing the witness was able to offer is that Pioneer opposed the IMAP because it would lead to new wells being drilled by United Water. Tr. p. 30, ll. 19-20. He offered no factual support for this statement, instead attributing it to his attorney. Tr. p. 36, l. 17. When asked whether the concern was with well interference or aquifer drawdown, the witness could only say, "Yeah, I don't really know." Tr. p. 34, l. 1. In other words, Pioneer was unable to identify the nature or basis of the injury concern in even the broadest possible terms. It was brought to Pioneer's attention that the IMAP will not, in itself, authorize any new wells to be constructed, and that United Water has offered a condition to that effect. Pioneer was asked if that might address the District's concern. Pioneer's response was "I don't know." Tr. p. 46, l. 5. The ability to recite a single unsupported allegation (it will authorize the construction of new wells), which is plainly inconsistent with the IMAP itself, which lacks even the most rudimentary analysis, which is devoid of any supporting factual basis, does not rise to the level of providing a supporting basis for the protest. Nor may Settlers claim that its duty has been satisfied through other discovery responses containing various supported allegations, such as its list of issues. United Water is entitled to probe the supporting factual basis for each allegation. This 30(b)(6) deposition proves that there is no supporting factual basis.

Settlers addresses and applies equally in the context of Pioneer. Finally, the absence of minutes (or any other documents) substantively addressing the IMAP is identical with respect to both Pioneer and Settlers.³

In lieu of a blow-by-blow repetition of the particular facts surrounding Pioneer's deposition, and related issues, we submit this streamlined brief. In it, we set out a parallel section on "Excerpts of Transcript" which highlights the key testimony upon which United Water relies. As for legal argument and further factual foundation, United Water incorporates by reference and relies upon the facts, exhibits, points and authorities (including discussion of attorney fees) contained in its parallel motion directed to Settlers.

EXCERPTS OF TRANSCRIPT

We include here excerpts from the transcript of the Pioneer deposition. We apologize for their length. We feel their inclusion is necessary to document the extent to which the witness lacked knowledge and failed to prepare. The relief sought by this motion is substantial. It is premised upon an allegation of knowing disobedience and contempt for the Hearing Officer and the Department. For that reason, it is necessary to fully display the relevant testimony:

9

20 Q Okay, and the final sentence [of the deposition notices] 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 [two] it lists two
24 items. Do you see that?
25 A Uh-huh.

³ The board minutes of Pioneer touching on the IMAP consist solely of the following: "Mr. Scott Rhead of United Water had requested a slot on the Board's agenda to inform the Board of 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." Pioneer Irrigation District Minutes (Oct. 7, 2002). "Attorney Campbell advised the Board on the development of matters he is representing the District on." Pioneer Irrigation District Minutes (Jan. 6, 2003). "Attorney Campbell advised the Board of the litigation status of the Thies lawsuit, the United Water transfer, and gave a progress report on the Snake River Basin Adjudication. No action was required." Pioneer Irrigation District Minutes (June 7, 2002).

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.

* * *

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

13

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.

* * *

14

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.

* * *

29

1 Are you familiar with the service area
2 of United Water Idaho?

3 A No.

* * *

25 Now, were you able to orient yourself so

30

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.

* * *

32

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

1 objection for the record.

2 THE WITNESS: Can you rephrase that
3 question?

4 Q BY MR. MEYER: Well, I'm trying to find
5 out whether the district has any more precise concern
6 about what United Water might do in the future. So
7 far you've just said well, there might be interference
8 in the future or there might be a problem in the
9 future and I'm trying to figure out if you can put a
10 finer point on that, and I gave you two possibilities
11 and I didn't mean to lead you one way or the other
12 because I don't really know what the district is
13 thinking and I'm only laying those out to try to give
14 you an idea of what the question is.

15 I'm not trying to tell you how to answer
16 it, but I'm trying to figure out whether the district
17 is concerned that any new well anywhere in the
18 Treasure Valley is a problem; in other words, any
19 additional straw in the aquifer is a problem, that's
20 one possibility, or maybe the district concern is that
21 United Water is getting closer and closer
22 geographically to Pioneer. Those are two very
23 different kinds of concerns in terms of water rights
24 and I'm wondering if it's one or the other or both or
25 maybe you don't really know.

1 A Yeah, I don't really know.

* * *

24 Q Now, you had indicated, Mr. Scott, that
25 you have not ever read this document called the IMAP;

1 is that correct?

2 A Correct.

3 Q Let me just represent to you there have
4 been more than one version of this document and I just
5 want to make sure I understand that when you said you
6 hadn't read the IMAP, that means you haven't read any
7 of them; is that correct?

8 A Correct.

9 Q Okay. Are you familiar nonetheless with

10 what United Water is seeking in its IMAP application?
11 A Very little.
12 Q What is your understanding?
13 A My understanding that they are seeking
14 different locations to drill wells to supply their
15 patrons with water.
16 Q And who's told you that?
17 A Our attorney.
18 Q And is that the understanding of the
19 board as well?
20 A I believe so.
21 Q Is that the only thing so far as you
22 know that the IMAP seeks to do? Is that the gist of
23 it?
24 A I couldn't tell you.

* * *

37

8 Q BY MR. MEYER: Mr. Scott, have you seen
9 this document [Pioneer's protest] 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.

* * *

38

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

39

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"?

* * * [objection and discussion omitted]

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

40

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.

* * *

41

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.

42

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.

* * *

43

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

44

1 your answers be the same for Exhibit No. 5?
2 A Correct.

* * *

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.

* * *

45

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

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.

* * *

52

23 MR. MEYER: I don't have any other
24 questions. I thank you for your patience this
25 morning.

53

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

54

1 Hearing Officer, I welcome you to that.
2 MR. MEYER: Okay, I have nothing
3 further.

CONCLUSION

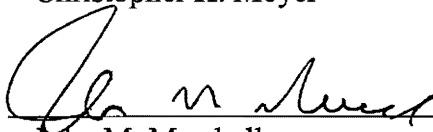
As a practical matter, every material point that was made with respect to Settlers in our parallel motion to dismiss may be said as well with respect to Pioneer. These cases go beyond

mere stonewalling (which itself is sanctionable). The record documents the complete absence of any underpinnings supporting these protests. Consequently, Pioneer's protest, like Settlers', should be dismissed and Pioneer should be precluded from any further participation in this proceeding.

Respectfully submitted this 15th day of September, 2003.

GIVENS PURSLEY LLP

By: 
Christopher H. Meyer

By: 
John M. Marshall

Attorneys for Applicant
United Water Idaho Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 15th 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:

Idaho Department of Water Resources
State Office
1301 N. Orchard Street
P.O. Box 83720
Boise, ID 83720-0098

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Assistant City Attorney
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Christopher H. Meyer

INDEX TO EXHIBITS

- Exhibit A. Amended notice of Pioneer's deposition on September 3, 2003 (Aug. 18, 2003)
- Exhibit B. Original notice of Pioneer's deposition on August 21, 2003 (Aug. 7, 2003)
- Exhibit C. Transcript of Deposition of Mr. Jeffrey C. Scott (Sept. 3, 2003) (without deposition exhibits)

A

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John M. Marshall, Esq. (Idaho State Bar No. 5628)
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www.givenspursley.com
Counsel for Applicant United Water Idaho Inc.

**BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES**

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

**AMENDED NOTICE OF DEPOSITION
DUCES TECUM OF PIONEER
IRRIGATION DISTRICT**

TO: THE ABOVE NAMED PROTESTANT AND ITS ATTORNEY OF RECORD

YOU WILL PLEASE TAKE NOTICE that on the 3rd day of September 2003 at the hour of 9:00 a.m. at the offices of Givens Pursley LLP, 601 West Bannock Street, Boise, Idaho, the Applicant United Water Idaho Inc. will take the deposition of Pioneer Irrigation District in the above-entitled action upon oral examination pursuant to Rule 30(b)(6) of the Idaho Rules of Civil Procedure, before a Notary Public, or before some other officer authorized by law to administer oaths, and continuing from day to day thereafter, until said deposition is completed. You are required to designate one or more officers, directors or managing agents to be examined regarding:

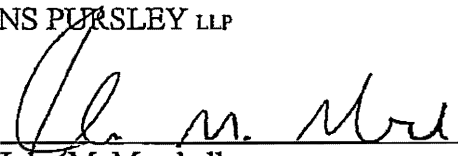
1. Each and every basis for Pioneer Irrigation District's protest in this matter.
2. The conditions or modifications to the IMAP, if any, that would resolve your protest.

You are further required to provide and to produce at the deposition all documents in your possession related your protest in this matter.

DATED this 18th day of August 2003.

GIVENS PURSLEY LLP

By


John M. Marshall
Attorneys for Applicant United Water

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of August 2003, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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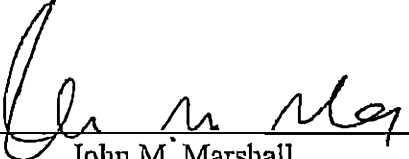
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John M. Marshall



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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
("IMAP") OF UNITED WATER IDAHO
INC., BEING A COLLECTION OF
INDIVIDUAL APPLICATIONS FOR
TRANSFERS OF WATER RIGHTS AND
APPLICATIONS FOR AMENDMENT OF
PERMITS

**NOTICE OF DEPOSITION DUCES TECUM
OF PIONEER IRRIGATION DISTRICT**

TO: THE ABOVE NAMED PROTESTANT AND ITS ATTORNEY OF RECORD

YOU WILL PLEASE TAKE NOTICE that on the 19th day of August 2003 at the hour of 9:00 a.m. at the offices of Givens Pursley LLP, 277 North 6th Street, Suite 200, Boise, Idaho, the Applicant United Water Idaho Inc. will take the deposition of Pioneer Irrigation District in the above-entitled action upon oral examination pursuant to Rule 30(b)(6) of the Idaho Rules of Civil Procedure, before a Notary Public, or before some other officer authorized by law to administer oaths, and continuing from day to day thereafter, until said deposition is completed. You are required to designate one or more officers, directors or managing agents to be examined regarding:

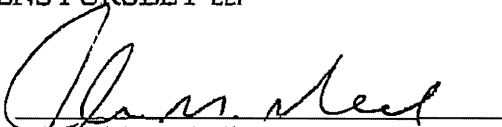
1. Each and every basis for Pioneer Irrigation District's protest in this matter.
2. The conditions or modifications to the IMAP, if any, that would resolve your protest.

You are further required to provide and to produce at the deposition all documents in your possession related your protest in this matter.

DATED this 7th day of August 2003.

GIVENS PURSLEY LLP

By



John M. Marshall

Attorneys for Applicant United Water

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of August 2003, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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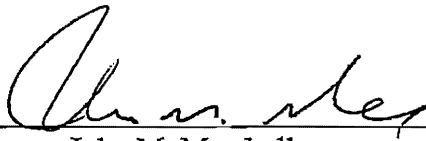
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John M. Marshall

0

8

C

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

BURNHAM, HABEL & ASSOCIATES, INC.

Certified Shorthand Reporters

COPY
Prepared for

Mr. Meyer

Post Office Box 835
Boise, Idaho 83701

Reported By

Constance S. Bucy
CSR

(208) 345-5700 • FAX 345-6374 • 1-800-867-5701

DEPOSITION OF JEFFREY SCOTT TAKEN 9-3-03

SHEET 1

BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF INTEGRATED
MUNICIPAL APPLICATION PACKAGE
("IMAP") OF UNITED WATER IDAHO
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DEPOSITION OF JEFFREY SCOTT

Boise, Idaho

September 3, 2003

1

I N D E X

WITNESS	EXAMINATION BY	PAGE
JEFFREY SCOTT	Mr. Meyers	4

E X H I B I T S

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

3

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

A P P E A R A N C E S

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

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

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

2

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

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

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

EXAMINATION

BY MR. MEYER:

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

A Jeffrey C. Scott.

Q And your residence?

A 1123 Talon Court, Caldwell, Idaho.

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

A Yes.

4

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

5

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 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

6

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.

8

SHEET 2

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.

9

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.

11

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.

10

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

12

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?

13

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?

15

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?

14

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

16

SHEET 3

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
17

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
19

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.
18

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?
20

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.

21

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

23

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

22

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.

24

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?

25

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.

27

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.

MR. MEYER: Would you, Mr. Campbell,

26

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.

28

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

29

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,

30

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

31

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

32

SHEET 5

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.

33

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;

35

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

34

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

36

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 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 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 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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SHEET 6

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.
41

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
43

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?
42

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

2 A What was the question again?

3 Q Well, I attempted to characterize your
4 earlier testimony where you described the main concern
5 of the district with respect to the IMAP and
6 Mr. Campbell says I didn't do a very good job. I said
7 your concern was that the IMAP would authorize the
8 construction of new wells, but apparently that wasn't
9 accurate. What is the main concern of the district?

10 A I think that would be another question
11 that Ken Brush would be able to answer a little more
12 accurately.

13 Q What was it you said before?

14 A I believe I said the impact of our
15 existing wells would be unable to pump sufficiently.

16 Q If the IMAP were approved?

17 A If new wells were put in within our
18 district.

19 Q Let me draw your attention to condition
20 No. 1 which is at the top of page 2 of this Exhibit
21 No. 10. Condition No. 1 states, the caption states,
22 "No new water rights created by IMAP," and then under
23 Text it says, "Approval of the IMAP creates no new
24 water rights for UWID nor does it expand the quantity
25 of any water right." Does that come as a surprise to

45

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 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 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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SHEET 7

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 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 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 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

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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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VERIFICATION

1
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

55

REPORTER'S CERTIFICATE

1
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

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# #187 [1] 56:25 \$ \$130 [2] 49:14 50:6 \$34.00 [3] 49:18,25 50:5 1 1 [15] 3:13 4:4 9:2,4,6,16 12:14 13:4 39:7,17,23 43:13 45:20,21 55:10 10 [5] 4:4 22:22 44:4,8 45:21 10:45 [1] 54:5 1123 [1] 4:22 15th [3] 48:14,16,17 1900s [1] 14:24 1st [1] 5:4 2 2 [4] 13:12 38:23 43:13 45:20 20 [2] 22:22 40:11 2001 [1] 7:5 2003 [5] 2:6 4:1 5:4 55:10 56:21 2720 [1] 2:18 3 3 [7] 2:5 4:1 37:1,6,7 38:23 43:13 30(b)(6) [2] 12:14 53:8 3rd [1] 55:9 4 4 [16] 3:4,13,3,4,5,20,10 10:17,25 11:8,17,21,24 42:24 43:2,25 42 [1] 18:22 42-202 [1] 38:25 42-202b [3] 38:25 39:15 42:14 4th [1] 7:5 5 5 [5] 11:8,17,24 43:19 44:1 50 [1] 40:12 54 [1] 55:10 6 6 [1] 3:19 601 [1] 2:3 7 7 [5] 3:20 9:4,6 13:4,7 8 8/25/06 [1] 56:25 829 [1] 2:21 83702 [1] 2:24 9 9:00 [2] 2:5 4:1 9th [1] 56:21 A a.m. [2] 2:5 54:5 ability [1] 52:5 able [12] 15:3 16:15 18:19 19:11 20:8 29:25 43:14 44:9 45:11 48:7,9,10 absolutely [4] 15:15 22:19 24:7	53:10 accomplished [1] 19:25 accordance [1] 2:8 according [1] 8:5 accurate [5] 8:6 17:18,19 43:4 45:9 46:13 accurately [2] 45:1,12 acquired [2] 16:17 19:2 acre [3] 49:18,25 50:4 acreage [1] 22:11 action [1] 56:19 actually [3] 17:8 39:19 51:1 added [1] 44:14 additional [3] 3:18 11:25 19:4 32:9 33:19 43:21 adequate [1] 30:18 adopt [1] 52:1 advice [2] 7:22 40:25 afraid [2] 30:15 32:3 agents [1] 9:22 ago [5] 5:15 6:24,24 12:3 27:21 28:12 51:7,12 agree [2] 40:1 53:16 ahead [3] 32:2,14 52:6 alan [3] 8:1,4 14:2 allow [2] 13:6 44:21 allowed [1] 35:6 already [2] 31:25 49:9 altogether [3] 6:6,19 18:21 amended [1] 3:20 amendment [1] 1:7 amount [2] 25:23,24 anderson [1] 28:25 another [3] 29:9 45:10 46:22 answer [20] 5:23 12:10,23 14:10 26:24 27:5 32:1,14,15,25 33:15 34:3 37:10 43:16 45:11 52:5,6 53:14,23,24 answered [2] 32:1 49:9 answering [2] 7:20 12:2 answers [3] 44:1 55:13,14 anticipate [1] 53:12 anticipated [1] 42:7 anybody [2] 7:3 26:15 apparent [2] 17:24 20:22 apparently [1] 45:8 appear [2] 11:19 17:17 appears [1] 17:19 appendix [1] 29:20 applicant [3] 2:2,17 4:9 application [3] 12:5 29:13 36:10 applications [2] 1:6,7 appointed [1] 6:15 appropriate [1] 41:5 approval [1] 45:23 approved [1] 45:16 april [1] 48:17 aquifer [1] 33:19 area [9] 18:5,7,8,20 29:1 30:2 42:11,12,13 areas [7] 19:8 23:17 26:18 39:2 46:12,24,25 around [1] 27:24 arrangement [1] 47:1	assessments [1] 47:6 assistant [4] 5:7 6:8,15 7:6 associated [2] 16:10 21:10 associations [2] 46:17,18 assume [4] 14:14 31:16 50:18 52:13 assumption [1] 7:9 attachment [1] 29:10 attempted [1] 45:3 attend [2] 37:24 38:1 attention [2] 38:22 45:19 attorney [6] 12:11,15,19 36:17 53:15,17 attorney-client [1] 12:21 audibly [1] 5:23 august [1] 48:19 authority [5] 8:14,16 51:20,25 52:9 authorize [1] 45:7 available [5] 28:10 34:22 35:5,6,22 avoid [1] 17:3 aware [3] 30:21 31:2 44:16 awfully [1] 14:19 B back [9] 7:5 11:5 12:13 14:11,22 27:12 29:7 40:24 42:23 ball [1] 22:1 bannock [1] 2:3 based [1] 49:1 basically [7] 5:17 6:14 7:18 25:4 48:15,25 49:14 basis [3] 10:8 30:14 42:9 bears [1] 27:2 begin [1] 39:5 behalf [2] 41:23 43:3 believe [17] 9:4,9 11:11 15:1 16:18 17:12 20:18 36:20 37:11 45:14 47:5 48:24 49:3,14,18 50:15,19 believes [1] 23:16 better [7] 13:23 14:3,6 18:19 34:3 40:19 41:18 between [4] 28:21 30:5,8 35:13 beyond [1] 52:4 big [1] 7:19 bill [2] 47:5,12 billing [3] 47:2,4,24 bit [6] 7:13 14:12,16 18:19 26:9 blank [1] 14:14 block [1] 20:10 board [32] 7:19,21,25 8:8,10 15:16 23:3,7,15,15,21,22 24:9 25:13 26:14,17 28:16 30:11,22 34:5 36:19 37:22,24 38:5 41:1 42:17 44:20 47:4 48:5 49:13 52:14,20 board's [1] 8:25 boise [5] 1:14 2:4,24 4:1 48:11 bold [1] 38:23 booms [1] 23:1 both [6] 9:4 24:22,22 33:24 34:21 35:5,10,21	boundaries [4] 17:25 18:24 29:23 30:3 boundary [2] 18:11,14 bounds [1] 27:1 box [2] 2:18,21 break [4] 6:4 12:2 14:20 42:21 bring [1] 25:4 broad [1] 14:19 broaden [1] 31:2 broken [1] 40:16 brought [2] 19:7 53:8 brush [7] 8:1,2,6 14:1 34:8 40:23 45:11 bucy [2] 2:6 56:6 build [1] 19:4 bull [1] 6:13 bunch [1] 15:2 burden [5] 39:4,16,20,20 42:8 bureau's [1] 17:1 C caldwell [16] 4:22 17:23 23:12 24:23 25:3,7 46:11,23,24 50:14,24 51:5,6,8,9,12 call [4] 18:7,8,14 28:24 called [2] 29:12 35:25 calls [2] 47:10 52:4 came [2] 14:16 16:5 campbell [30] 10:19,23 11:2,9,19 12:20 13:6 16:23 26:20,25 27:4 31:24 32:12,19,22,23 35:14 37:6 39:9,19 43:18 44:23 45:6 48:16 52:3,10 53:4,10,18,21 can-ada [1] 18:18 canal [6] 15:5 20:11,13 48:9,10,13 cannot [1] 28:2 canyon [1] 56:4 caption [3] 38:23 39:1 45:21 care [1] 24:21 case [4] 12:5 21:8 29:21 50:19 cases [3] 24:22 48:18,19 cause [1] 31:15 center [2] 20:16,16 certainly [1] 11:14 certificate [1] 56:1 certify [2] 56:7,18 chairman [6] 14:1 34:10,11 40:22 42:17 43:17 change [2] 13:8 55:15 changed [1] 15:7 changing [2] 22:18,20 characterize [1] 45:3 charge [1] 49:11 charged [3] 49:18,24 50:4 check [1] 47:9 choice [1] 16:23 chosen [1] 28:16 chris [1] 4:16 circumstances [1] 31:11 cities [3] 46:16,16 50:22 city [12] 2:4 17:23,23 23:12,14 25:6 47:19,21 50:17 51:1,2,8 civil [1] 2:8
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