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August 25, 2003

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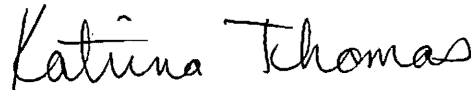
Re: United Water Idaho Inc.—IMAP
Our File No. 30-71

Dear Debbie:

Enclosed for filing in the IMAP matter please find the original and one copy of UWID's Opposition to Pioneer and Settlers' Motion for Costs and Attorney Fees. Please conform the copy and 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 Response to Pioneer & Settler Mtn for Costs.DOC

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Counsel for Applicant United Water Idaho Inc.

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Department of Water Resources

**BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES**

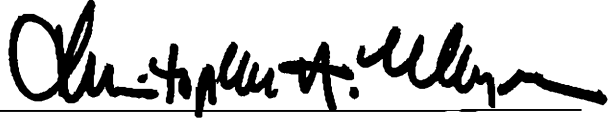
IN THE MATTER OF INTEGRATED
MUNICIPAL APPLICATION PACKAGE
("IMAP") OF UNITED WATER IDAHO
INC., BEING A COLLECTION OF
INDIVIDUAL APPLICATIONS FOR
TRANSFERS OF WATER RIGHTS AND
APPLICATIONS FOR AMENDMENT OF
PERMITS

**UWID'S OPPOSITION TO PIONEER
AND SETTLERS' MOTION FOR COSTS
AND ATTORNEY FEES**

On August 20, 2003, Pioneer Irrigation District and Settlers Irrigation District filed their joint *Motion for Costs and Attorney Fees and Memorandum in Support*. United Water Idaho Inc. ("United Water") opposes that motion. In the interest of avoiding further costs and fees, United Water suggests that, if the Hearing Officer desires any further response and discussion, it be provided in the form of oral argument at the time of the next status conference.

DATED this 25th day of August 2003.

GIVENS PURSLEY LLP

By: 
Christopher H. Meyer

Attorneys for Applicant
United Water Idaho Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 25th 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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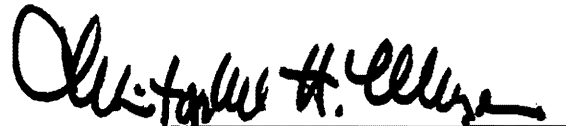
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August 22, 2003

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

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

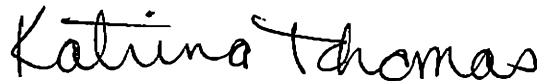
Dear Debbie:

Enclosed for filing in the IMAP matter please find the original and one copy of each of the following documents:

1. Joint Petition for Expedited Consideration of Motion for Stay;
2. Boise City's Notice of Joinder in UWID's Consolidated Reply Regarding Proposal for Partial Stay;
- ✕ 3. UWID's Notice of Service of UWID's Responses to Pioneer Irrigation District and Settlers Irrigation District's Third Set of Discovery Requests to United Water Idaho Inc.;
- ✕ 4. UWID's Notice of Service of UWID's General Supplemental Discovery Response #1; and
- ✕ 5. UWID's Notice of Service of UWID's First Supplemental Response to Protestant Bureau of Reclamation's First Set of Discovery Requests to United Water Idaho.

Please conform the copy of each document and return them to our office in the enclosed self-addressed, stamped envelope. Thank you for your assistance with this matter. If you have any questions or require any additional information please call.

Sincerely,



Katrina Thomas
Legal Secretary

Enclosures

:kdt S:\CLIENTS\30\71\KT Lit to IDWR re Filing Joint Petition & NOS.DOC

✕ See Discovery File

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*Licensed in Kentucky only

Prepared and Submitted Jointly
By Undersigned Counsel

RECEIVED
AUG 25 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.

**JOINT PETITION FOR EXPEDITED
CONSIDERATION OF MOTION FOR
STAY**

JOINT PETITION

This *Joint Petition* is submitted by the Applicant United Water Idaho Inc. and Protestants Pioneer Irrigation District, Settlers Irrigation District, Boise Project Board of Control, Wilder Irrigation District, Big Bend Irrigation District, Boise-Kuna Irrigation District, City of Meridian, City of Caldwell, Nampa & Meridian Irrigation District, the Terteling Entities, City of Eagle, City of Kuna, City of Middleton, City of Star, the Star Sewer & Water District, City of Boise and the U.S. Bureau of Reclamation.

A *Motion for Stay and Memorandum in Support* (dated March 28, 2003) filed jointly by various Protestants is now pending before the Hearing Officer. As indicated by their respective pleadings, some of the parties favor a complete stay of all proceedings. Others support a partial stay, but oppose a full stay. All parties agree that some sort of stay is appropriate at this time.

The parties to this *Joint Petition* believe that an expedited decision on the *Motion for Stay* would materially benefit the orderly disposition of this matter and potentially reduce or eliminate

the expenditure of legal expenses and costs by the parties in intensive, pending discovery.

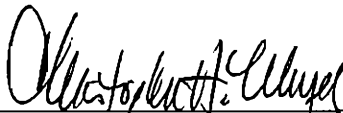
Accordingly, the parties to this *Joint Petition* respectfully request that the Hearing Officer issue a decision on the *Motion for Stay* as soon as possible.

If the decision issued by the Hearing Officer makes such action appropriate, the parties also request review of the deadlines and dates set forth in the June 20, 2003 Third Prehearing Order and Notice of Prehearing Conference for any modifications deemed appropriate by the Hearing Officer.

Given the urgency of the matter, the parties waive oral argument.

Respectfully submitted this 22nd day of August 2003.

GIVENS PURSLEY LLP

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John M. Marshall

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United Water Idaho Inc.

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FIELDS, CHTD.

By: 
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City of Kuna
City of Middleton
City of Star
Star Sewer & Water District

CITY OF BOISE

By: Matthew K. Wilde / cm
Matthew K. Wilde

Attorney for Protestant
City of Boise

U.S. BUREAU OF RECLAMATION

By: Kathleen Marion Carr / cm
Kathleen Marion Carr

Attorney for Protestant
U.S. Bureau of Reclamation

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd 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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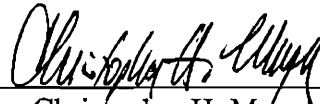
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Attorneys for Protestant

RECEIVED
AUG 25 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.

**BOISE CITY'S NOTICE OF JOINDER IN
UWID'S CONSOLIDATED REPLY
REGARDING PROPOSAL FOR PARTIAL
STAY**

COMES NOW Protestant City of Boise, by and through its attorney, Matthew K. Wilde, and files this Notice of Joinder in UWID's Consolidated Reply Regarding Proposal for Partial Stay. The City of Boise concurs with United Water Idaho's position that resolution of the issues in the IMAP pertaining to the 1996 Municipal Water Rights Act are of great importance to all parties, including the City of Boise and should be decided now. These issues are distinct from issues pertaining to the elements of United Water's water rights, and any stay pending review by the Snake River Basin Adjudication should not preclude resolution of the 1996 Act issues.

DATED this 22nd day of August 2003

OFFICE OF THE BOISE CITY ATTORNEY

By: 
Matthew K. Wilde
Attorney for Protestant

CERTIFICATE OF SERVICE

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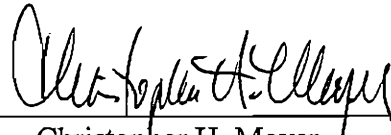
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Christopher H. Meyer

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Department of Water Resources

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and Settlers Irrigation District
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**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

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

**MOTION FOR COSTS AND ATTORNEY FEES
AND MEMORANDUM IN SUPPORT**

Pioneer Irrigation District and Settlers Irrigation District ("Districts"), by and through their counsel of record Moffatt, Thomas, Barrett, Rock & Fields, Chtd., and hereby move the Hearing Officer for an order awarding costs and attorney fees to the Districts. The costs and fees which the Districts seek are those which they incurred in responding to the Motion for Protective Order filed on or about August 8, 2003, by UWID in the above-captioned matter. The Motion for Costs and Attorney Fees is predicated upon the fact that UWID's Motion was premature and unreasonable, and based upon a misreading of the plain language of the pertinent deposition notices as well as unfounded assumptions.

On or about August 8, 2003, UWID filed a motion for protective order (with supporting documents), which asked the Hearing Officer to issue a protective order providing that:

the subpoena is quashed as to, and United Water need not produce, the requested materials in numbers 3, 4, 5, 7, 8 and 9 of the subpoena because such topics are irrelevant to this lawsuit and would be overly burdensome to produce; . . .

Motion for Protective Order, p. 2. In response, the Districts noted the clear language of the pertinent notice (Exhibit A to the Affidavit of Scott L. Campbell) was much more narrow than UWID represented. The notice did not require a production of documents, but instead only required that UWID present someone who was prepared to testify as to the matters listed in the notice. Pioneer Irrigation District and Settlers Irrigation District's Response Regarding UWID's Motion for Protective Order, p. 6. Thus, the Motion itself was predicated upon a plain misreading of the notice, and premature, unfounded assumptions.

The Deposition of Greg Wyatt took place on Monday, August 18, 2003. UWID's own perception was that "the scope of the questions at the deposition was not as intrusive as indicated in the deposition notice, ..." Notice of Withdrawal, p. 1. Counsel for the Districts' notes that UWID raised very few objections to the questions posed to Mr. Wyatt. Second Affidavit of Scott L. Campbell, ¶ 2. Therefore, UWID clearly acted far too early in filing its Motion for Protective Order. In addition, UWID states that "Pioneer and Settlers did not press for documents in the 'duces tecum' notice, ..." Notice of Withdrawal, p. 1. The Districts had already indicated that they were not seeking documents, at least prior to Mr. Wyatt's deposition. Again, UWID acted prematurely and rashly in filing its Motion for Protective Order. UWID would have saved considerable costs if it had waited until Mr. Wyatt's deposition and found out exactly what questions the Districts would ask, and then seek a protective order if necessary.

More importantly for purposes of this Motion for Costs and Attorneys Fees, the Districts could not let the Motion for Protective Order loom without responding, due to the requests and assertions UWID made therein. The Districts incurred significant and necessary costs and fees in responding to the unfounded, unnecessary Motion for Protective Order, and are entitled to recover the same.

Therefore, the Districts respectfully request that the Hearing Officer grant their Motion for Costs and Attorney Fees.

DATED this 20th day of August 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 20th day of August 2003, I caused a true and correct copy of the foregoing **MOTION FOR COSTS AND ATTORNEY FEES AND MEMORANDUM IN SUPPORT** to be served by the method indicated below, and addressed to the following:

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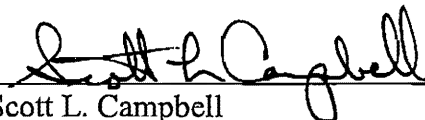
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By 
Scott L. Campbell

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Department of Water Resources

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

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

**SECOND AFFIDAVIT OF SCOTT L.
CAMPBELL**

State of IDAHO)
) ss.
County of ADA)

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

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

During that deposition, I asked questions on a variety of topics which I believe to be germane to the IMAP proceeding. UWID's counsel interposed very few objections.

By Scott L. Campbell
Scott L. Campbell



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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26th day of August 2003, I caused a true and correct copy of the foregoing **SECOND AFFIDAVIT OF SCOTT** to be served by the method indicated below, and addressed to the following:

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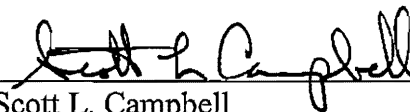
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By 
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AUG 20 2003

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TAX CONSULTANT

*Licensed in Kentucky only

August 20, 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
Our File No. 30-71

Dear Debbie:

Enclosed for filing in the IMAP matter, please find the original and one copy of UWID's Reply Brief on Motion to Compel Responses from Pioneer and Settlers and Response to Motion for Protective Order.

Please conform the copy and return them to our office in the enclosed self-addressed, stamped envelope. Thank you for your assistance with this matter. If you have any questions or require any additional information please call.

Sincerely,



Lauren Paul
Assistant to John Marshall

Enclosure

/lp

S:\CLIENTS\30\71\LP ltr to Gibson re filing Notice of Withdrawal of Protective Order.DOC

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Counsel for Applicant United Water Idaho Inc.

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Department of Water Resources

**BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES**

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

**UWID'S REPLY BRIEF ON MOTION TO
COMPEL RESPONSES FROM PIONEER
AND SETTLERS AND RESPONSE TO
MOTION FOR PROTECTIVE ORDER**

INTRODUCTION

On August 7, 2003 United Water filed a *Motion to Compel Responses to UWID's First Set of Discovery Requests to Pioneer Irrigation District and Settlers Irrigation District ("Motion to Compel")*. Pioneer and Settlers (the "Districts") responded on August 15, 2002, arguing that it should not be compelled to answer and asking for a protective order. *Pioneer Irrigation District and Settlers Irrigation Districts' Response to UWID's Motion to Compel and Memorandum in Support for a Protective Order ("Districts' Response")*. This is United Water's reply.

REPLY

I. “HYDROLOGIC IMPACT” – INTERROGATORY NO. 10

The Districts argue they should not have to describe and quantify the hydrologic impact of the IMAP on their water rights. They say this information is irrelevant because they do not have the burden of proving injury. *Districts’ Response* at 7.

United Water does not disagree that it, not the Districts, carries the ultimate burden of persuasion in this case. However, the burden of proof has little to no bearing on whether protestants can withhold information (or the fact that it does not have information) on an issue that is central to the protestants’ defense.¹ As noted in the *Motion*, the Districts allege the IMAP will injure other water rights including their own. The hydrologic effect to the Districts’ water rights if the IMAP were approved clearly is “of consequence” to the issue of injury and therefore relevant in this action. Idaho Rule of Evidence 401 (discussing relevance). The Districts should be made to answer Interrogatory No. 10.

II. CONSERVATION AND RESIDENTIAL LAWN IRRIGATION – INTERROGATORY NOS. 12 TO 14 AND 19 TO 23.

The Districts’ argue they can avoid questions about the quantity of water they supply for residential lawn irrigation and other uses, its plans for expanding delivery of water for residential lawn irrigation and its conservation programs. Meanwhile, the Districts argue that it is “contrary to the conservation of Idaho’s water resources to use a precious commodity (potable water) to irrigate lawns and landscaping.” *Pioneer Irrigation District and Settlers Irrigation District’s Response Regarding UWID’s Motion for Protective Order* at 9. Several other protestants have

¹ A word about the Districts’ contention that they are “hampered in their ability” to assess impacts “due to UWID’s continuing refusal to provide information.” Beginning in February 2003 United Water has offered on several occasions to make its employees and counsel available for meetings to discuss information requested by the Districts. The Districts for the first time accepted this offer on August 18, 2003. The Districts’ inability to answer requests because of lack of information from United Water is a problem of their own making.

made similar claims. *See Boise Project's Statement of Issues*. In other words, the Districts assert that as a matter of policy the IMAP should not be approved because the Districts and not United Water should supply irrigation water to United Water's customers, but any inquiry into whether they are qualified for the task is off limits.

To evaluate the Districts' broad policy claims about conservation, both in the pre-hearing preparation stage and at hearing, it certainly is relevant to know whether:

- 1) the Districts themselves serve water for lawn irrigation,
- 2) the Districts have water available and/or plans to supply residential lawn and landscape irrigation in areas served by United Water;
- 3) whether this water is "potable water,"
- 4) the per capita rate of water supplied by the Districts for residential lawn irrigation.

This is the information United Water seeks in the above-captioned discovery requests. The requested information is "of consequence" to the proceedings and reasonably calculated to lead to the discovery of admissible (in this instance relevant) evidence with regard to the Districts' conservation and public interest claims. Indeed, the information is critical to the evaluation of these claims.

III. FORFEITURE AND FUTURE NEEDS ANALYSIS – INTERROGATORY NOS. 15 AND 16.

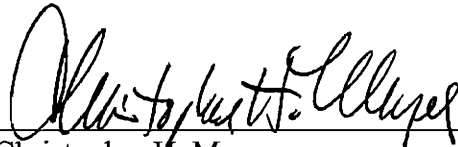
In response to United Water's motion to compel, the Districts have now provided answers to these two interrogatories.

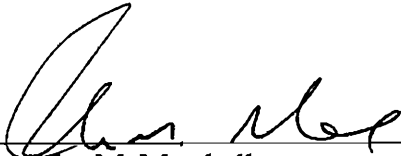
CONCLUSION

The Districts' continued refusal to respond to discovery is hampering United Water's ability to prepare for hearing and respond to the Districts' assertions. The Districts should be compelled to answer Interrogatory Nos. 10, 12, 14, 19, 20, 21, 22 and 23.

Respectfully submitted this 20th day of August 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 20th 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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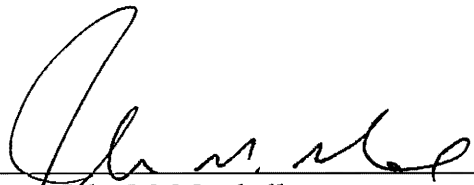
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*Licensed in Kentucky only

August 19, 2003

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Idaho Department of Water Resources
1301 N. Orchard St.
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Re: United Water Idaho Inc.—IMAP
Our File No. 30-71

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Assistant to John Marshall

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Counsel for Applicant United Water Idaho Inc.

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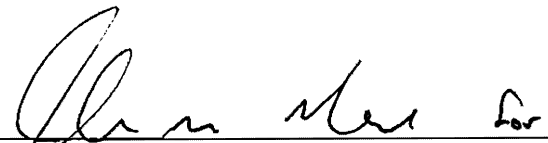
**UWID'S NOTICE OF WITHDRAWAL OF
MOTION FOR PROTECTIVE ORDER**

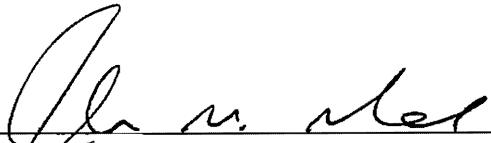
NOTICE

On August 12, 2003 United Water filed a *Motion for Protective Order* ("Motion"). The *Motion* concerned the scope of the Rule 30(b)(6) deposition notice Pioneer and Settlers served on United Water. In light of the facts that the 30(b)(6) deposition of Gregory Wyatt has occurred prior to the Hearing Officer's ruling on the *Motion*, the scope of the questions at the deposition was not as intrusive as indicated in the deposition notice, and Pioneer and Settlers did not press for documents in the "duces tecum" notice, the *Motion* is moot. United Water hereby withdraws the *Motion*.

Respectfully submitted this 19th day of August 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 19th 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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Boise, ID 83720-0098

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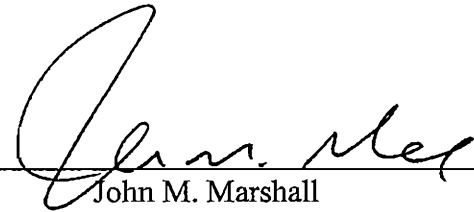
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Attorneys for Boise Project Board of Control,
Boise-Kuna Irrigation District,
Wilder Irrigation District, and
Big Bend Irrigation District

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF 99)
APPLICATIONS FOR TRANSFER)
AND 13 APPLICATIONS FOR)
AMENDMENT OF PERMITS, KNOWN)
AS THE INTEGRATED MUNICIPAL)
APPLICATION PACKAGE (IMAP) BY)
APPLICANT UNITED WATER IDAHO,)
INC.)
_____)

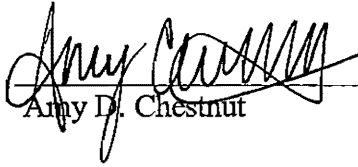
**NOTICE OF JOINDER IN
RESPONSE TO UWID'S
MOTION FOR PROTECTIVE
ORDER**

The Boise Project Board of Control and its member districts, Boise-Kuna Irrigation
District, Wilder Irrigation District, and Big Bend Irrigation District, by and through their counsel

of record, hereby join in the response filed by Pioneer Irrigation District and Settlers Irrigation District entitled Pioneer Irrigation District and Settlers Irrigation District's Response Regarding UWID's Motion for Protective Order. The Motion for Protective Order should be denied. The issues of inquiry are clearly relevant and even central to this proceeding.

DATED this 18th day of August 2003.

BARKER ROSHOLT & SIMPSON LLP


Amy D. Chestnut

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of August, 2003, I caused a true and correct copy of the foregoing **NOTICE OF JOINDER IN RESPONSE TO UWID'S MOTION FOR PROTECTIVE ORDER**, served by the method indicated below, and addressed to the following individuals:

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

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Ringert Clark Chartered
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Cities of Eagle, Kuna, Middleton
& Star and Star Sewer District

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Pioneer & Settlers Irrigation Districts
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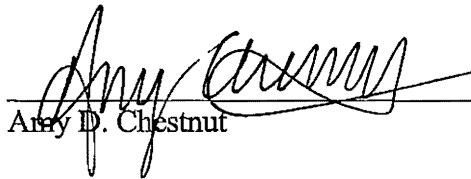
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Amy D. Chestnut

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Counsel for Applicant United Water Idaho Inc.

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AUG 19 2003

Department of Water Resources

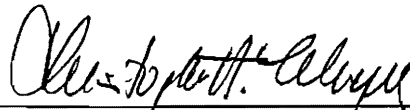
**BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES**

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

NOTICE OF CHANGE OF ADDRESS

You will please take notice that the physical address for Givens Pursley LLP has changed to 601 West Bannock Street, Boise, Idaho 83702. Givens Pursley remains in the same physical location, however due to the recent building renovation the mailing address has changed.

Dated this 18th day of August 2003.



Christopher H. Meyer

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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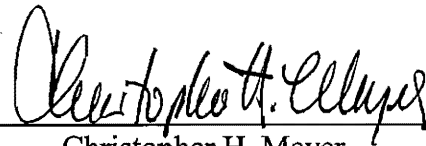
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AUG 19 2003

Department of Water Resources

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Raymond D. Givens
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John A. Miller, LL.M. *
TAX CONSULTANT

*Licensed in Kentucky only

August 18, 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
Our File No. 30-71

Dear Debbie:

Enclosed for filing in the IMAP matter please find the original and one of the Notice of Change of Address. Please conform the copy and return it to our office in the enclosed self-addressed, stamped envelope. Also enclosed please find copies of the amended notices of deposition for the Pioneer Irrigation District and Settlers Irrigation District.

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(7)\KT Ltr to IDWR re Filing Notice of Change of Address.DOC

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AUG 18 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.

**UWID'S CONSOLIDATED REPLY
REGARDING PROPOSAL FOR PARTIAL
STAY**

INTRODUCTION

On July 29, 2003 United Water filed its *Supplemental Response to Motion to Stay, Proposing a Partial Stay* ("Supplemental Response"). United Water submits this reply to the responses received.

It has recently become apparent that the convergence of the SRBA and the IMAP proceedings is unavoidable. Consequently, United Water believes it is in everyone's best interest to stay those portions of the IMAP over which the SRBA has jurisdiction (Category One issues). United Water also supports a stay of those issues over which the SRBA does not have jurisdiction but may nonetheless be affected by the SRBA's determinations (Category Three issues). On the other hand, Category Two issues (the quantification of United Water's future

needs, or determining the size of the “beaker”) should be considered now. Category Two issues are not dependent on the outcome of the SRBA and will provide critical guidance to water providers, local governments, planning entities, and other water users throughout Idaho.

The Cities of Eagle *et al.* describe this as a “sudden change of heart” and allege that United Water therefore must be “jockeying for some tactical advantage,” which they do not describe. Their criticism is misplaced. When the parties proposed a stay because of a potential jurisdictional overlap with the SRBA, far from opposing the stay, United Water suggested that any decision on the stay should await word from the Department as to timing of the Director’s Report on the IMAP.¹ Subsequently, the Department announced that it will not retain jurisdiction over the pending applications by delaying the Director’s Report on the IMAP. Consequently, a jurisdictional overlap, which easily could have been avoided, now seems inevitable. United Water does not control these events and certainly gains no “tactical advantage” from them. From the outset United Water has advocated a path that avoids duplicative litigation, and continues to do so.

The various responses confirm that no party opposes a stay to avoid overlapping jurisdiction by the SRBA and Department.² The only area of dispute is United Water’s proposal that the Hearing Officer not stay “Category Two” issues. We respond to those arguments below.

¹ When United Water filed the IMAP application over two years ago, it reasonably anticipated that an administrative decision would have been rendered prior to SRBA recommendations. United Water continues to believe, as explained in its *Response to Motion to Stay*, that the Department could avoid procedural complications and make more informed SRBA recommendations by withholding recommendations until after the IMAP proceeding is concluded. However, the Director disagrees, and United Water accepts this. Nampa & Meridian *et al.* argue that United Water’s position effectively is an admission that the entire IMAP should be stayed. United Water has made no such admission. The fact that United Water is on record as believing SRBA recommendations would be better served by awaiting the IMAP’s consideration of the integrated whole is no justification for staying 1996 Act issues that are separable from consideration of the elements of interrelated water rights.

² Pioneer Response at 2-3; Nampa & Meridian Response at 3; City of Eagle Response at 1-2. Pioneer Irrigation District and Settlers Irrigation District jointly filed a *Response of Pioneer Irrigation District and Settlers Irrigation District to UWID’s Supplemental Response to Motion to Stay “Pioneer Response”* advocating a complete

ARGUMENT

I. UNDER UNITED WATER'S PROPOSAL, THE ELEMENTS OF ALL WATER RIGHTS IN THE IMAP WOULD AWAIT DETERMINATION BY THE SRBA.

Pioneer and Settlers contend that if Category Two issues are not stayed, there will be overlapping jurisdiction and possible inconsistencies between the Department and the SRBA court. *Pioneer Response* at 2-3. This reflects a misunderstanding of United Water's proposal. United Water proposes a stay of the determination of the elements of *all* water rights in the IMAP, even those over which the SRBA has no jurisdiction, until after the SRBA proceedings are complete. United Water agrees that unnecessary inconsistencies could occur if the Department considered elements of non-SRBA rights while the SRBA considered the same elements of other rights. This is why United Water identified Category Three issues and proposed them for stay.

To clarify, under United Water's proposed partial stay, consideration of the IMAP's requested changes to the point of diversion, place of use, nature of use and season of use (including requested adjustment to volume restrictions), and the allegations of forfeiture would not proceed for any rights until after SRBA partial decrees for United Water's rights. Only Category Two issues would proceed at this time.

II. A QUANTIFICATION OF THE SIZE OF THE "BEAKER" IS ENTIRELY INDEPENDENT OF A DETERMINATION OF THE RIGHTS THAT MAY FILL THAT BEAKER.

In contrast to Category One and Three issues, Category Two issues will not be affected by the SRBA and do not in any way depend on the outcome of the SRBA's review and adjudication of United Water's portfolio of rights. Consequently, there is no reason to delay the

stay. Nampa & Meridian Irrigation District, the cities of Meridian and Caldwell and the Terteling entities also filed a joint "*Response to United Water's Supplemental Response, Proposing a Partial Stay, and Request for Expedited Hearing*" ("*Nampa & Meridian Response*"). Finally, the cities of Eagle, Kuna, Middleton Star and the Star Sewer and Water District filed *Reply to United Water's Supplemental Response to Motion to Stay and Proposing a Partial Stay* ("*City of Eagle Response*").

resolution of Category Two issues. To the contrary, Category Two presents issues of great public weight whose resolution is vital to ongoing planning efforts by United Water. The impact, however, reaches far beyond this company. A multi-year delay in grappling with these issues may also hamper nascent efforts at inter-governmental cooperation on water issues throughout the Valley and would chill the development and implementation of the 1996 Act throughout the State. Protestants have offered no good reason why this should be allowed to occur.

Instead, the proponents of a complete stay argue that it is simply not possible to separate Category Two issues from those over which the SRBA will have jurisdiction. Thus, they say, everything must be stayed.³ They are mistaken. Category Two issues can and should be determined independent of the SRBA.

As explained in United Water's *Supplemental Response*, Category Two issues arise under the 1996 Act and are not before the SRBA. No protestant contests this point.⁴

Pursuant to the 1996 Act, United Water, as a "municipal provider," established a "planning horizon" of 50 years and quantified its "reasonably anticipated future needs" at approximately 416 cfs. Idaho Code § 42-203(3), (4) and (5). In other words, United Water contends that its 50-year planning "beaker" holds 416 cfs. Protestants contest this conclusion. Category Two is simply the contest over this "beaker." Simply put, the size of the beaker may

³ *Pioneer Response* at 2 ("it is virtually impossible to separate out portions of the water rights from others"); *Nampa & Meridian Response* at 3 ("water rights that United Water which [sic] are subject to the IMAP are intricately interrelated to the entirety of the IMAP"); *City of Eagle Response* at 1 ("issues falling within United Water's Category Two are not justiciable because the planning horizon issues are not ripe and any decision rendered would be an advisory opinion").

⁴ Some Protestants take issue with language used by United Water's to describe the various issues. The exact description of the issues is not important. Regardless of how one describes the issues, what matters is that everything in the IMAP will be stayed expect 1996 Act issues.

be determined now, independent of a determination of the validity of water rights that partially fill that beaker.

For example, the determination of whether United Water is entitled to a 50-year planning horizon and a 416 cfs cap for reasonably anticipated future needs is unaffected by whether particular rights have been lost or reduced. The same is true when looking at all the IMAP rights as part of an interrelated portfolio. If United Water's existing portfolio of rights as a whole has been reduced from approximately 300 cfs to, for example, approximately, 250 cfs, United Water still would claim a 50-year planning horizon and 416 cfs of future need. The future needs analysis is unaffected by the size and composition of United Water's current portfolio. If the SRBA court were to declare some part of United Water's portfolio to be forfeited, then United Water will somehow have to acquire that much more to replace it. But the long-term needs of the provider are unchanged. And there is no reason not to get on with the task of determining what those long term needs are.

Likewise, the IMAP's proposal for integrated points of diversion ("IPD") is separable from the 1996 Act issues and may be stayed as well. The success or failure of the IPD claim has no bearing on the proposed planning horizon or the community's reasonably anticipated future needs.

An added benefit to the bifurcation proposed by United Water is a simplification of the process many of the Protestants have been calling for. For example, in Pioneer and Settlers' joint protest, they state: "The establishment of UWID's reasonably anticipated future needs, planning horizon, and service area are a necessary predicate to the transfers and amendment, at

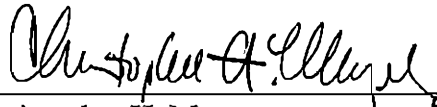
least in part, and should be taken up separately from the transfers and amendments.” This is precisely what United Water proposes with the partial stay.⁵

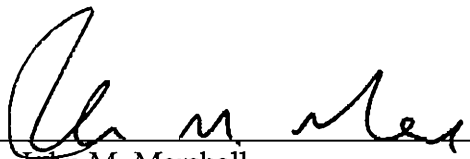
CONCLUSION

In sum, the 1996 Act issues (the Category Two issues) are easily separated from the analysis of United Water’s portfolio of rights. The Hearing Officer should proceed to consider and resolve these vital issues without delay.

Respectfully submitted this 18th day of August 2003.

GIVENS PURSLEY LLP

By: 
Christopher H. Meyer

By: 
John M. Marshall

Attorneys for Applicant
United Water Idaho Inc.

⁵ Pioneer and Settlers reiterated this point in the List of Additional Issues on February 27, 2003. The Cities of Eagle *et al.* likewise have made it known they believe the all-in-one proposal in the IMAP is too complicated. The proposal to take the 1996 Act issues up separately will alleviate some of their confusion.

CERTIFICATE OF SERVICE

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

Idaho Department of Water Resources
State Office
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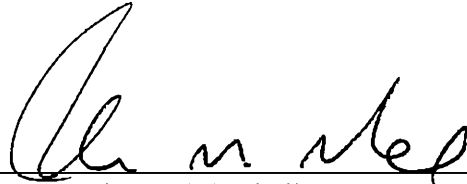
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AUG 15 2003

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.

MOTION FOR PROTECTIVE ORDER

Pioneer Irrigation District and Settlers Irrigation District ("Districts"), by and through their counsel of record Moffatt, Thomas, Barrett, Rock & Fields, Chtd., and in accordance with the Idaho Department of Water Resources Rule of Procedure 520 and Idaho Rule of Civil Procedure 26(c), hereby move the Hearing Officer for a Protective Order in the above-captioned matter. This Motion is supported by Pioneer Irrigation District and Settlers Irrigation District's Memorandum in Response to UWID's Motion to Compel and Memorandum in Support of Motion for Protective Order, filed concurrently herewith.

The Districts specifically request that to the extent the Hearing Office denies UWID's Motion to Compel, that he also issue a protective order preventing UWID from

inquiring into the topics upon which the Hearing Officer has denied the Motion to Compel. For example, Interrogatory Number 14 asks the Districts to

Please provide a quantification of water use by each user group served by the District for which the District keeps separate records. For example, if the District keeps records based on agricultural, commercial or domestic users, please provide a breakdown showing the total quantity of use for each group.

The Districts' request that if the Hearing Officer deny the Motion to Compel, that he also issue a protective order preventing UWID from attempting to obtain information regarding the discovery requests for which I sought to compel answers. Using Interrogatory Number 14 as an example, the protective order would bar UWID from seeking information about the "quantification of water use by each user group served by the District" by means such as additional discovery or depositions. Thus, the Districts seek a protective order preventing UWID from inquiring further into those areas covered by Interrogatories 10, 12, 13, 14, 19, 20, 21, 22, and 23.

For the reasons set forth herein, and in the Memorandum in Support, the Districts respectfully request that the Hearing Office grant the Districts' Motion for Protective Order.

DATED this 14th day of August 2003.

Moffatt, Thomas, Barrett, Rock & Fields,
Chartered

By Angela Schaefer Kaufmann for
Scott L. Campbell – Of the Firm

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14th day of August, 2003, I caused a true and correct copy of the foregoing **MOTION FOR PROTECTIVE ORDER** to be served by the method indicated below, and addressed to the following:

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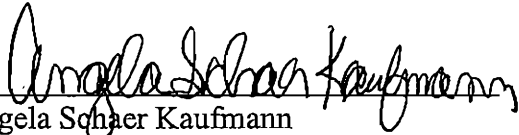
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**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

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

**PIONEER IRRIGATION DISTRICT AND
SETTLERS IRRIGATION DISTRICTS'
RESPONSE TO UWID'S MOTION TO COMPEL
AND MEMORANDUM IN SUPPORT OF
MOTION FOR PROTECTIVE ORDER**

Pioneer Irrigation District and Settlers Irrigation District ("Districts"), by and through their counsel of record Moffatt, Thomas, Barrett, Rock & Fields, Chtd., and in accordance with the Idaho Department of Water Resources Rules of Procedure 520 -524 (IDAPA 37.01.01.520 -0524) and Idaho Rules of Civil Procedure 26 through 37, hereby responds to United Water Idaho's ("UWID") Motion to Compel Responses to UWID's First Set of Discovery Requests to Pioneer Irrigation District and Settlers Irrigation District ("Motion to Compel"). This response is predicated upon the fact that the discovery for which UWID seeks responses is irrelevant to this matter, and not reasonably calculated to lead to the discovery of

admissible evidence. This memorandum also serves to support the Districts' Motion for Protective Order, filed concurrently herewith.

I. LEGAL PRINCIPLES

A. Idaho Rules Of Civil Procedure

The Idaho Department of Water Resources Rules of Procedure (IDAPA 37.01.01) incorporate by reference the Idaho Rules of Civil Procedure relating to discovery. In particular, Rule 520.02 provides that the Idaho Rules of Civil Procedure will govern the scope of discovery. IDAPA 37.01.01.520.02. In addition, Rule 524 references the Idaho Rules of Civil Procedure regarding propounding and answering interrogatories, requests for production, and requests for admission. IDAPA 37.01.01.524.

The guiding principle behind discovery is set forth in Idaho Rule of Civil Procedure 26(b)(1):

Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows: (1) parties may obtain discovery regarding any matter, not privileged, *which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party*, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

I.R.C.P. 26(b)(1) (emphasis added). Thus, information sought via the discovery process must be relevant to the subject matter, and if the information sought is not itself admissible, it must at least be reasonably calculated to lead to the discovery of admissible evidence.

Counsel was unable to find Idaho Supreme Court cases which provide additional analysis of Rule 26(b)(1). However, if one uses the Idaho Rules of Evidence for guidance, Idaho Rule of Evidence 401 provides that “ ‘Relevant Evidence’ means evidence having any tendency to make the existence of any fact *that is of consequence to the determination of the action* more probable or less probable than it would be without the evidence.” I.R.E. 401 (emphasis added). Only relevant evidence is admissible, and even that may be excluded if other Rules of Evidence provide that it is inadmissible. I.R.E. 402. Therefore, the information sought by discovery requests must make the existence of a fact *that is of consequence* more or less probable, or the information sought must be reasonably calculated to lead to the discovery of admissible evidence.

A party may file a motion to compel discovery responses, using the procedure as follows:

If . . . a party fails to answer an interrogatory submitted under Rule 33, . . . the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. . . .

If the court denies a motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to Rule 26(c)

I.R.C.P. 37(a). Rule 26(c), in turn, provides in relevant part that

Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending . . . may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters. . . .

I.R.C.P. 26(c). The Districts respectfully request that the Hearing Officer deny UWID's Motion to Compel and grant the Districts' Motion for Protective Order, as further described herein.

B. Relevant Provisions Of The Idaho Code

In the context of an application for permit or an application for transfer, the facts which are of consequence are those which address the Section 42-203A and/or Section 42-222 criteria. Section 42-203A provides that when the director of IDWR is presented with an application for permit:

In all applications whether protested or not protested, where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or speculative purposes, or (d) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) that it will conflict with the local public interests, where the local public interest is defined as the affairs of the people in the area directly affected by the proposed use, or (f) that it is contrary to the conservation of water resources within the state of Idaho; the director may [approve or reject the application, in whole or in part].

I.C. § 42-203A (bracketed material added)¹. Idaho Code section 42-222 is similar in its requirements:

The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-203A(5),

¹ These criteria are relevant because Idaho Code section 42-211 pertains to permit amendments, incorporates I.C. § 42-203A when the application for amendment of permit has been protested. I.C. § 42-211. *See also Hardy v. Higgingson*, 123 Idaho 485, 849 P.2d 946 (1993).

Idaho Code, and the new use is a beneficial use, which in the case of a municipal provider shall be satisfied if the water right is necessary to serve reasonably anticipated future needs as provided in this chapter.

I.C. § 42-222.

IDWR does not have administrative rules governing transfers. However, IDWR's Water Appropriation Rules clearly provide that it is the applicant, not the protestant, which has the burden of going forward and the burden of persuasion as to every criteria except the local public interest requirement. *See* IDAPA 37.03.08.040.04. As to the local public interest criteria, the applicant and the protestant(s) must each come forward with evidence regarding the local public interest of which each is cognizant.

II. ANALYSIS

UWID attached the Districts' discovery responses to the Affidavit of John Marshall, filed concurrently with UWID's Motion to Compel. Therefore, the Districts have not provided their own copy of the same. For purposes of the requests at issue in this Motion to Compel and the Districts' Motion for Protective Order, the Districts' respective answers to the relevant discovery were identical.

A. UWID's Motion To Compel Should Be Denied

UWID has requested that the Hearing Officer compel the Districts to answer Interrogatories Number 10, 12, 13, 14, 19, 20, 21, 22, and 23. The Motion to Compel should be denied.

At the outset, UWID's position is fundamentally flawed: UWID assumes that because a protestant raises one or more of the Section 42-203A or 42-222, as the Protestant must in order to participate in a proceeding, a full-scale inquiry into the validity of the Protestants'

water rights and water use practices is thus not only invited but condoned. That is simply not the case. There is nothing in the Idaho Code nor IDWR's rules which supports such a position. When a party files a water right application, that party must affirmatively show that he or she meets the criteria set forth in Section 42-203A or Section 42-222. Inquiry into the applicant's water use, both current and projected, is required by the Idaho Code. However, the same is not true for a protestant.

One can only assume that UWID is attempting to use some sort of "pot calling the kettle black" theory, and will attempt to argue that because an irrigation district does or does not do certain things, UWID is entitled to use the same practices. However, that is not Idaho law, and the focus of the IMAP is on UWID, not on the Districts.

1. Interrogatory Number 10

This interrogatory asks the districts to "Please describe and quantify the hydrologic impact on the District's water rights which is likely to result if the Application were approved." UWID contends that the Districts raised this issue because they stated (in the same discovery responses), that "the Application will injure other water rights due to their contemplated incorporation and use of the integrated points of diversion system." The Districts did provide that answer, but it does not invite this irrelevant discovery request. Asking the districts to quantify the "hydrologic impact" is different than injury, and is different than the "impact on existing rights" criteria of Section 42-203A.

As described in IDWR's own Water Appropriation Rules, the Department considers injury and impact on existing rights to be similar:

A proposed use will be determined to reduce the quantity of water under an existing water right (i.e., injure another water right) if:

i. The amount of water available under an existing water right will be reduced below the amount recorded by permit, license, decree or valid claim or the historical amount beneficially used by the water right holder under such recorded rights, whichever is less.

ii. The holder of an existing water right will be forced to an unreasonable effort or expense to divert his existing water right. Protection of existing groundwater rights are subject to reasonable pumping level provisions of Section 42-226, Idaho Code; or

iii. The quality of the water available to the holder of an existing water right is made unusable for the purposes of the existing user's right, and the water cannot be restored to usable quality without unreasonable effort or expense.

IDAPA 37.03.08.045. There is no requirement in the Idaho Code nor in the Department's own rules which requires a *protestant* to describe and quantify the "hydrologic impact." In addition, UWID will have the burden to provide that it will not injure existing water rights. It is not the burden of the Districts to quantify the hydrologic impacts.

The Districts also note that they have been hampered in their ability to adequately assess any impacts of the IMAP due to UWID's continuing refusal to provide information requested for more than nine months, beginning with the Districts' informal information requests.

2. Interrogatories 12 and 13

Interrogatory Number 12 asks the Districts to:

Please state whether the District has a water conservation program in effect today. Please describe in full the District's water conservation efforts or program. Please include a discussion of the history and development of the efforts or the program.²

Interrogatory Number 13, in turn, asks the Districts to:

² The Districts note that this interrogatory is also objectionable because it is compound, and, in reality, constitutes three interrogatories.

Please identify, describe and summarize the results of all studies, by the Districts or others, assessing or evaluating the success of the District's water conservation efforts.

UWID contends that because the Boise Project Board of Control raised the issue of *UWID's* water conservation efforts, and because the Districts have denied that the IMAP is consistent with the conservation of water resources, the door is now wide open for UWID to inquire into the Districts' respective water conservation practices. In fact, UWID argues that "conservation is a relevant issue in this proceeding and the Districts must be made to answer United Water's questions on the subject." Motion to Compel, p. 3.

The Districts do not dispute that water conservation is a relevant subject. However, it is *UWID's* water conservation practices that are relevant. In addition, water conservation is relevant in *every* application for permit or application for transfer proceeding, because the Idaho Legislature has clearly stated that it is one of the criteria to be evaluated in determining whether to approve such applications. But, the Legislature did not mandate, nor did it even suggest, that the water conservation practices of *protestants* would then be relevant as well. The Districts' water rights and practices are not at issue in this matter, and it would indeed be a strange set of events if a Protestant were made to defend his or her water rights and water use practices merely because he or she chooses to enter the process delineated by the Legislature.

Stated differently, UWID must prove that it needs the water which it seeks (either now or in the future) via the IMAP. It also must prove that the proposals set forth in the IMAP, as to UWID's need for and proposed use of water, are consistent with the conservation of Idaho's water resources. The Districts' respective water conservation practices have nothing to do with UWID's water conservation practices. UWID will gain nothing toward meeting its burden of going forward and burden of persuasion by a wasteful foray into the Districts'

practices. Moreover, the fact that another party (in this case, the Boise Project Board of Control) might have raised water conservation does not allow inquiry into every other Protestants' conservation.

Inquiry into the Districts' water conservation efforts is not relevant, nor is such inquiry reasonably calculated to lead to the discovery of admissible evidence. The Districts respectfully request that UWID's motion to compel a response to Interrogatories 12 and 13 be denied.

3. Interrogatory Number 14

Interrogatory Number 14 requests that the Districts:

Please provide a quantification of water use by each user group served by the District for which the District keeps separate records. For example, if the District keeps records based on agricultural, commercial or domestic users, please provide a breakdown showing the total quantity of use for each group.

The Districts' water use is not relevant to the IMAP. It is true that the Districts have expressed the concern that the IMAP is not in the local public interest, because it may have the effect of tying up the public water resource. The public water resource (*i.e.*, unappropriated waters of the State of Idaho) is quite different than the Districts' existing water rights, which are not unappropriated and are not, in that way, part of the "public water resource."

Moreover, to the extent that the Districts' water rights are at all relevant in this matter, the Districts have provided UWID with the water right numbers for their respective water rights. From that, UWID can determine the Districts' relative entitlement to water in terms of quantity, and in terms of priority. UWID can also determine the purposes for which the Districts have appropriated water.

Interrogatory Number 14 seeks information which is irrelevant to the IMAP proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. Therefore, UWID's motion to compel a response to Interrogatory Number 14 should be denied.

4. Interrogatory Number 19

Interrogatory Number 19 asks "what plans does the District have to annex new lands?" UWID contends that this is relevant once again, because the Boise Project raised the issue that "irrigation districts should be providing water for irrigation in the areas United Water claims it will irrigate, including retrofit of areas currently supplied by United Water." UWID contends that it must know whether irrigation districts have annexation plans.

The true issue is actually the opposite: does UWID intend to expand into areas which are currently served by water from irrigation districts? UWID and irrigation district water service areas overlap at the current time at any rate. In addition, UWID has alleged that it will be expanding its service area, and it is UWID's plans, not those of the Districts, which are relevant to determining the reasonableness of UWID's planning area, planning horizon, and reasonably anticipated future needs. The Motion to Compel an answer to Interrogatory Number 19 should be denied.

5. Interrogatories Number 20 through 22

Interrogatory Number 20 asks "how many pressurized, residential irrigation systems or hookups does the District serve?" Interrogatory Number 21 asks the Districts to "[p]lease explain how you quantify and track residential irrigation water use?" In turn, interrogatory number 22 asks "[w]hat is the average annual per capita usage in volume of water per irrigated acre and per customer for your members who use water for residential irrigation?" UWID provides very little argument in support of its assertion that it is entitled to have answers

to those interrogatories compelled, but states that the “irrigation issue” allows UWID to inquire into the residential irrigation water supplied by the Districts. That argument is simply unavailing.

UWID also argues that “the requests are further relevant to claims that the IMAP will tie up the public water resource by exploring whether the Districts and others have sufficient water rights to supply the irrigation uses within their systems.” Again, the Districts have provided UWID with the numbers for their water rights, as well as informing UWID that the Districts have contracts with the United States Department of Interior, Bureau of Reclamation. Armed with that information, UWID can obtain information about the nature and extent of the Districts’ water rights from IDWR. Moreover, whether the Districts can provide water to waterusers within their boundaries is not an issue in the IMAP, the issues are UWID’s water uses and projections, not those of the Districts.

The Districts respectfully request that the Hearing Officer deny UWID’s Motion to Compel responses to Interrogatories Number 20, 21, and 22.

6. Interrogatory Number 23

This interrogatory asks:

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

UWID asserts that this information is relevant because the Districts have “challenge[d] the planning process undertaken by United Water.” UWID then asserts that it is entitled to know whether the Districts have undertaken planning because “[t]he Districts have challenged United Water’s proposed planning horizon and its planning area, arguing the horizon is too long and the area too large.” It would be more accurate to state that the Districts have instead inquired how

UWID determined its service area. The Districts believe that the planning horizon is too long, and have told UWID, via discovery responses, why they believe that to be the case. It has nothing to do with the Districts' planning efforts.

7. Interrogatory Numbers 15 and 16

The Motion to Compel as to these interrogatories is not only premature, but baseless. Moreover, UWID's argument on this point mischaracterizes the Districts' responses. Interrogatory Number 15 and its response are as follows:

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

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

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

United Water contends that it is entitled to whatever information the Districts currently have. First, as the Districts stated in their respective discovery responses, their analysis is ongoing and has not been completed. Perhaps the Districts should have been more clear for UWID's sake: the Districts have not yet determined what water rights have been forfeited. There is no information, at this time, to provide. Second, UWID is *not* entitled to the work product of the Districts' counsel, and at this time, that is all there is. When the Districts have

information that is responsive to this request, they will provide it. However, the Districts will not “make up” information or provide information protected by the attorney-client privilege and the work product doctrine.

The same is true of the Districts’ response to Interrogatory Number 16. Whatever information the Districts have at this time is merely attorney work product, and privileged material. As the Districts stated, they have not yet reached conclusions regarding Mr. Church’s methodology and conclusions. There is nothing to provide at this time. The Districts note that Mr. Church’s deposition has been scheduled for August 14 and 15, 2003; after that deposition (including time for analysis), the Districts may be in a better position to render definitive conclusions regarding Mr. Church’s conclusions.

B. The Districts’ Motion For Protective Order Should Be Granted

The Districts have filed a motion, concurrently with this memorandum, requesting that to the extent the Hearing Officer denies UWID’s Motion to Compel that he also issue a protective order. Specifically, the Districts seek to prevent UWID from using the discovery process in whatever fashion (including depositions) to inquire into those areas which the Hearing Officer agrees are irrelevant. For example, if the Hearing Officer denies UWID’s motion to compel regarding Interrogatory Number 19, which inquires about the Districts’ plans to annex new lands, the Districts would respectfully request that the Hearing Officer issue a protective order barring UWID from attempting to seek that information via additional written discovery or the deposition process.

Therefore, the Districts respectfully request that the Hearing Officer issue a protective order preventing UWID from inquiring further into those areas covered by Interrogatories 10,12, 13, 14, 19, 20, 21, 22, and 23.

III.
THE DISTRICTS ARE ENTITLED TO THEIR ATTORNEY FEES

Idaho Rules of Civil Procedure 26(c) and 37(a)(4) provide that costs and attorney fees shall be awarded to the prevailing party, "unless the court finds that the opposition to the motion[or support for the motion] was substantially justified or that other circumstances make an award of expenses unjust." I.R.C.P. 37(a)(4) (incorporated by reference into Idaho Rule of Civil Procedure 26(c)).

UWID brought and pursued its motion to compel without substantial justification, which caused the Districts to incur significant costs and attorney fees. Therefore, the Districts respectfully request that the Hearing Officer award the Districts their costs and fees incurred in defending against the Motion to Compel and in supporting their Motion for Protective Order.

DATED this 14th day of August 2003.

Moffatt, Thomas, Barrett, Rock & Fields,
Chartered

By Angela Schaer Kaufmann
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 14th day of August, 2003, I caused a true and correct copy of the foregoing **PIONEER AND SETTLERS IRRIGATION DISTRICTS' RESPONSE TO UWID'S MOTION TO COMPEL AND MEMORANDUM IN SUPPORT OF MOTION FOR PROTECTIVE ORDER** to be served by the method indicated below, and addressed to the following:

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1301 N. Orchard Street
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Boise, ID 83720
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Peter Anderson, Hearing Officer
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Gary L. Spackman, Regional Manager
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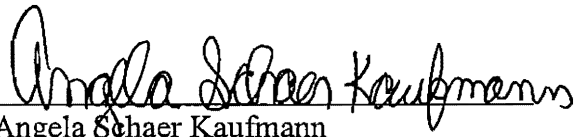
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AUG 15 2003

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.

**PIONEER IRRIGATION DISTRICT AND
SETTLERS IRRIGATION DISTRICT'S
RESPONSE REGARDING UWID'S MOTION
FOR PROTECTIVE ORDER**

Pioneer Irrigation District and Settlers Irrigation District (the "Districts"), by and through their counsel of record Moffatt, Thomas, Barrett, Rock & Fields, Chtd., and in accordance with the Idaho Department of Water Resources Rules 520 through 524 and Idaho Rules of Civil Procedure 26 through 37, hereby respond to United Water Idaho, Inc.'s ("UWID") Motion for Protective Order. The Motion for Protective Order should be denied, because the information which the Districts seek via the Depositions Duces Tecum which the Districts intend to inquire of UWID pursuant to Idaho Rule of Civil Procedure 30(b)(6) is well within the scope of permissible discovery.

I.
LEGAL BACKGROUND

The Districts have served a Notice of Taking Deposition of United Water Idaho, Inc. (Duces Tecum) pursuant to Idaho Rule of Civil Procedure 30(b)(6). Exhibit A to Affidavit of Scott L. Campbell, filed concurrently herewith. UWID has objected to six of the nine types of information which the Districts have requested UWID to provide, and moved for a protective order regarding that information. For the reasons set forth in the remainder of this memorandum, that motion is baseless and should be denied.

Idaho Rule of Civil Procedure 30(b)(6) provides:

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

I.R.C.P. 30(b)(6). UWID has designated Greg Wyatt and Scott Rhead as those persons who will testify pursuant to that rule. Campbell Aff., ¶ 3. Their depositions are set forth August 18, 2003, and August 20, 2003, respectively, and will be conducted in accordance with Idaho Rule of Civil Procedure 30(b)(6) and other applicable Rules of Civil Procedure. Campbell Aff., ¶ 3 and Exhibits B and C thereto.

The Idaho Department of Water Resources Rules of Procedure (IDAPA 37.01.01) incorporate by reference the Idaho Rules of Civil Procedure. Specifically, IDWR Rule of Procedure 520.02 provides that "[u]nless otherwise provided by statute, rule, order or notice, the scope of discovery, other than statutory inspection, examination, investigation, etc., is governed

by the Idaho Rules of Civil Procedure (see Idaho Rule of Civil Procedure 26(b)).” IDAPA 37.01.01.520.02. Similarly, Rule 524 provides that “[p]roduction requests or written interrogatories and requests for admission may be taken in accordance with the Idaho Rules of Civil Procedure for any purpose allowed by statute, the Idaho Rules of Civil Procedure, or rule or order of the agency.” IDAPA 37.01.01.524.

Idaho Rule of Civil Procedure 26(b)(1) governs the scope of discovery:

Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows: (1) Parties may obtain discovery regarding any matter, not privileged, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

I.R.C.P. 26(b)(1). Thus, the scope of discovery is broad, and allows inquiry into matters which concern the claim or defense of a party. As the Districts will show in this memorandum, the information which they seek from UWID is directly related to its claim in this matter, or in other words, to the elements it must prove before the IMAP can be approved.

For that reason, it is important to consider the criteria set forth in the Idaho Code for approval of an application for permit or an application for transfer, as well as those provisions which apply to municipalities or municipal providers. The Districts note that the IMAP consists, in part, of an application for transfer of scores of water rights, as well as an application for amendment of permit. Idaho Code section 42-211, pertaining to applications for amendment of permit, provides that

Protests to the application for amendment may be filed with and heard by the director in the same manner as provided by section

42-203 [42-203A], Idaho Code, for protests to an application for permit.

I.C. § 42-211. Therefore, if an application for amendment of permit is protested, the IDWR director must apply the section 42-203A criteria. This conclusion is bolstered by the Idaho Supreme Court's decision in *Hardy v. Higginson*, 123 Idaho 485, 849 P.2d 946 (1993), where the Court held that the local public interest criteria to an application for amendment of permit. *Id.* at 489,849 P.2d at 950. The Court also cited with approval IDWR's position that:

The IDWR, on the other hand, maintains that if the Director, in his discretion under paragraph one of I.C. § 42-211, deems it appropriate to publish notice, then such notice shall be published in the manner provided in paragraph three of I.C. § 42-211. The third paragraph of I.C. § 42-211 states that protests may be filed against the application for amendment and heard by the Director in the same manner as provided in I.C. § 42-203A, which allows for consideration of the local public interest. The IDWR argues that this is the most reasonable construction of I.C. § 42-211 because this construction is consistent with the statutory scheme announced by the legislature.

Id. Given the plain reading of Idaho Code section 42-211, as well as the *Hardy* case, the criteria of Idaho Code section 42-203A should apply to protested applications for amendment of permit.

Idaho Code section 42-203A provides that when one is seeking a permit to appropriate water:

In all applications ***whether protested or not protested***, where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or speculative purposes, or (d) ***that the applicant has not sufficient financial resources with which to complete the work involved therein***, or (e) that it will conflict with the local public interest. . . . or (f) that it is contrary to the conservation of water resources within the state of Idaho; the director of the department of water resources may reject such application and refuse issuance of a permit therefor, or may partially approve and grant a permit

for smaller quantity of water than applied for, or may grant a permit upon conditions.

I.C. § 42-203A. As that section plainly states, those criteria must be considered by IDWR even if no one protests.

Similarly, Idaho Code section 42-222 provides that when one applies for a transfer:

The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest. . . , and the new use is a beneficial use, which in the case of a municipal provider shall be satisfied if the water right is necessary to serve reasonably anticipated future needs as provided in this chapter.

I.C. § 42-222. Section 42-222 contains other provisions which apply specifically to municipal providers:

When the nature of use of the water right is to be changed to municipal purposes and some or all of the right will be held by a municipal provider to serve reasonably anticipated future needs, the municipal provider shall provide to the department sufficient information and documentation to establish that the applicant qualifies as a municipal provider and that the reasonably anticipated future needs, the service area and the planning horizon are consistent with the definitions and requirements specified in this chapter. The service area need not be described by legal description nor by description of every intended use in detail, but the area must be described with sufficient information to identify the general location where the water under the water right is to be used and the types and quantity of uses that generally will be made.

Id.

II.
UWID'S MOTION FOR PROTECTIVE
ORDER SHOULD BE DENIED

UWID contends that it should not be required to produce the materials requested in Requests 3, 4, 5, 7, 8 and 9 of the Districts' Notice of Taking Deposition of United Water Idaho (Duces Tecum). However, the Notice is much more narrowly tailored than UWID would have the Hearing Officer believe. The notice provides, in pertinent part:

You are required to designate one or more officers, directors, or managing agents *to be examined and testify under oath* regarding the following matters:

3. The financial condition of UWID, including audited financial statements from 1980 to the present.
4. The rate base of UWID and any corporate communications concerning future projections and past history of its rate base.
5. Profit-loss and net income data of UWID.
- ...
7. The corporate decisions regarding sizing of UWID's water delivery infrastructure and cost variations between such infrastructure costs within developing areas receiving water serve from non-potable pressurized irrigation system and areas which do not receive such service.
8. The UWID rate income differences between areas served by UWID receiving water service from non-potable pressurized irrigation and areas which do not receive non-potable pressurized irrigation water service.
9. Any and all matters, whether past or present, before the Idaho Public Utilities Commission in which UWID was a party.

Exhibit A to Affidavit of Counsel (emphasis added). A plain reading of that notice shows that the Districts have not, at this time, requested that UWID provide those documents at the time of the depositions of Mr. Rhead and Mr. Wyatt. While their depositions are duces tecum, a review

of Exhibits B and C to the Campbell Affidavit shows that the two gentlemen have only been asked to bring:

any and all documents related to the IMAP proceeding or the Municipal Water Rights Act of 1996. This production includes, but [is] not limited to communications with the Idaho State Department of Water Resources and its employees, and any documents describing such communications.

Exhibits B and C to Campbell Affidavit. Therefore, while Mr. Rhead and Mr. Wyatt have been asked to bring some documents in connection with their depositions pursuant to Idaho Rule of Civil Procedure 26(b), 30(b)(5) and 34, they have not been asked to bring documents in connection with the Rule 30(b)(6) component of their deposition. Instead, they must just be prepared to answer questions on the topics set forth in their Rule 30(b)(6) deposition.

Depending upon the answers provided to the nine topic areas set forth in the deposition notice (Exhibit A), counsel may request certain documents or at least the location of the documents. However, the documents need not be produced at the deposition at this time. Campbell Aff., ¶ 4. Therefore, UWID's contentions that it will be subjected to undue burden and expense are not well taken, and in fact are quite baseless. UWID's Motion for Protective Order should be denied on that basis.

Second, UWID contends that inquiry regarding its financial condition is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. UWID's reference to the various statements of issues filed in this matter is unavailing. First, pursuant to the Idaho Code, a parties' financial condition is always relevant and must be considered by IDWR, when considering an application for permit (I.C. § 42-203A) or an application to amend an application for permit. Idaho Code section 42-211 requires IDWR to examine a permit and determine whether the amendment seeks to divert and use more water than originally permitted, or if the amendment will adversely impact the rights of others. I.C. § 42-211. That section goes

on to provide, however, that “[p]rotests to the application for amendment may be filed with and heard by the director in the same manner as provided by section 42-203 [42-203A], Idaho Code, for protests to an application for a permit.” *Id.* Section 42-203A, in turn, sets forth the criteria which IDWR must consider in connection with an application for permit; one of those criteria is whether the applicant possesses sufficient financial resources . I.C. § 42-203A(5)(d). Lest there be any doubt that the criteria of Section 42-203A(5) apply when an application for amendment of permit is protested, the Idaho Supreme Court held that the local public interest criterion, found in Idaho Code section 42-203A, is also applicable to an application filed under Section 42-211.¹ *See supra*, pp. 3-4 and statutes and cases cited therein. Therefore, the inquiry is quite relevant.

Third, the inquiry regarding UWID’s financial condition, rate base, profit-loss and net income data are relevant to the conservation of water resources criteria, which is found not only in Idaho Code section 42-203A(5) (incorporated by reference to protested applications for amendment of permit under Idaho Code section 42-211) but in Idaho Code section 42-222. In addition, UWID cannot dispute that UWID’s conservation of resources has been raised by the Districts. *See*, Pioneer and Settlers’ List of Additional Issues, p. 3 (dated February 27, 2003). UWID’s financial information is relevant because the Districts are entitled to know how UWID

¹ The Court also noted that the local public interest criteria is included in Section 42-222. While it is true that Section 42-222, related to transfers, does not contain a “financial condition” criteria, there is no indication that the Court intended that some, but not all of the 42-203A criteria be applied when considering a protested application for amendment in permit. In fact, the Court cited with approval the Idaho Department of Water Resources’ argument that:

The third paragraph of I.C. § 42-211 states that protests may be filed against the application for amendment and heard by the Director in the same manner as provided in I.C. § 42-203A, which allows for consideration of the local public interest.

Hardy v. Higginson, 123 Idaho 485, 489, 849 P.2d 946, 950 (1993).

makes money or increases its profits: does it do so based upon the amount of water used by its consumers? If so, it seems that UWID will have little or no incentive to engage in and encourage water conservation practices. Similarly, the information the Districts seek regarding UWID's rates in areas using non-potable irrigation water versus those which use potable irrigation water is also relevant. It is contrary to the conservation of Idaho's water resources to use a precious commodity (potable water) to irrigate lawns and landscaping. If UWID's rates are higher in those areas which receive potable water for irrigation, once again, it will have little incentive to conserve Idaho's water resources.

The information the Districts seek regarding sizing of UWID's infrastructure and cost variations (Item 7) is similarly relevant to the conservation of water resources. For example, does UWID increase its profits by building infrastructure to deliver potable water for irrigation into areas which already have a non-potable source? If so, UWID's practices are contrary to the conservation of water resources. Because the size of UWID's service area and the size and characteristics of its infrastructure are determined by the IPUC, inquiry into UWID's past, present and future appearances before IPUC is similarly relevant to the conservation of water resources. In short, UWID is a for-profit company, unlike irrigation districts, canal companies, and municipalities. If it can increase its revenues by encouraging the use of more water, and by building infrastructures and rate systems designed to encourage the use of potable water for irrigation, such inquiries are relevant to the conservation of water resources criteria.

Therefore, the Districts respectfully request that the Hearing Officer deny UWID's Motion for Protective Order, and Order UWID to comply with the Rule 30(b)(6) subpoena duces tecum (Exhibit A to Campbell Affidavit) in its entirety.

III.
UWID IS NOT ENTITLED TO COSTS AND ATTORNEY FEES
REGARDING THIS MOTION, BUT THE DISTRICTS
ARE ENTITLED TO THEIRS

UWID contends that if the Hearing Officer grants its Motion for Protective Order, it is entitled to its costs and attorney fees incurred in bringing the Motion. Idaho Rule of Civil Procedure 26(c) provides that “[t]he provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.” I.R.C.P. 26(c). Rule 37, in turn, provides that:

If the motion is granted the court, shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay the moving party the reasonable expenses incurred in obtaining the order, including attorney’s fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the court shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney’s fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

I.R.C.P. 37(a)(4). If the Hearing Officer grants the motion for protective order in part and denies it in part, under the circumstances particular to this motion, the *reasonable* costs and fees of each party will likely be similar, thus leading to no award of attorney fees on either side. However, even if the Hearing Officer grants the motion for protective order, UWID is not entitled to its costs and attorney fees, because the Districts’ opposition to the Motion was substantially justified. The Districts served the Rule 30(b)(6) deposition notice in good faith, believing that the information sought was relevant to not only the financial resources criteria of Idaho Code

section 42-203A, but the conservation of water resources criteria of Sections 42-203A and 42-222. Therefore, the Districts' opposition to the Motion for Protective Order was substantially justified, and no costs and attorney fees should be awarded to UWID, if UWID prevails on its motion in its entirety.

If the Hearing Officer denies the Motion for Protective Order, the Districts are entitled to recover costs and attorney fees. UWID objected to the Rule 30(b)(6) Notice of Deposition on the basis that it required a production of voluminous documents. However, if UWID had carefully read the Notice, it would see that the Notice does no such thing. Moreover, UWID's financial condition is clearly relevant under Idaho Code section 42-203A (incorporated by reference into Idaho Code section 42-211), and UWID's means for maximizing profitability are relevant to the conservation of water resources criteria. Again, the information which the Districts seek need not be directly relevant itself, but may instead be reasonably calculated to lead to the discovery of admissible evidence. The Districts' Rule 30(b)(6) notice complies with that criteria, and the Districts are entitled to their costs and attorney fees incurred in fighting this motion.

A word is also in order about the contact between counsel for UWID and the Districts regarding the Rule 30(b)(6) deposition. UWID sent an e-mail to Andy Waldera, one of the attorneys for the Districts on August 6, 2003, indicating their objection to the District's notice. Exhibit C to Motion to Compel. However, due to time constraints, with the depositions fast approaching, counsel for the Districts felt that it was critical to serve the notice as soon as possible. Campbell Aff., ¶ 5. This is particularly true given that there was no guarantee that a discussion between respective counsel would have resolved the issue, and precious time in the tight discovery schedule would have been lost. *Id.* Therefore, no bad motives can be ascribed to

counsel for the Districts in this matter, particularly since only one day lapsed between the time UWID was served with the Rule 30(b)(6) notice and the time it filed its Motion for Protective Order.

IV. CONCLUSION

In summary, UWID should not be allowed to erect artificial barriers to legitimate discovery procedures fully authorized by the Idaho Rules of Civil Procedure and the Idaho Department of Water Resources Rules of Procedure. UWID complains of undue burden, expense and other resource limitations. These protestations ring hollow in light of the massive quantities of complicated documentation which the Districts and other protestants have had to digest merely to understand the implications of the IMAP. If UWID intends to pursue this novel, complicated proceeding, it must be forced to disgorge the information requested. UWID cannot hide behind a wall of its own construction.

DATED this 14th day of August 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 14th day of August 2003, I caused a true and correct copy of the foregoing **PIONEER IRRIGATION DISTRICT AND SETTLERS IRRIGATION DISTRICT'S RESPONSE REGARDING UWID'S MOTION FOR PROTECTIVE ORDER** to be served by the method indicated below, and addressed to the following:

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

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

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Ringert Clark
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Fax: 342-4657

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PO Box 500
Boise, ID 83701-0500
Fax: 384-4454

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

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

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

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

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

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Matt J. Howard
PO Box 190012
Boise, ID 83719
Fax: 333-8409

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

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

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

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

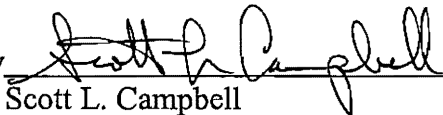
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Robert W. Talboy
Ellsworth Kallas Talboy, PLLC
2402 W. Jefferson Street
Boise, ID 83702
Fax: 345-8945

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

☒ U.S. Mail, Postage Prepaid
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By 
Scott L. Campbell

Attorneys for Pioneer Irrigation District
and Settlers Irrigation District

Scott L. Campbell, ISB No. 2251
Angela Schaer Kaufmann, ISB No. 5436
MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED
101 S. Capitol Boulevard, 10th Floor
Post Office Box 829
Boise, Idaho 83701
Telephone: (208) 345-2000
Facsimile: (208) 385-5384
18946.26

RECEIVED

AUG 15 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.

AFFIDAVIT OF SCOTT L. CAMPBELL
(RESPONSE TO MOTION FOR PROTECTIVE
ORDER)

STATE OF IDAHO)
) ss.
County of Ada)

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

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

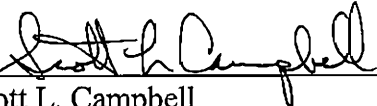
2. Appended hereto as Exhibit A is a true and correct copy of the Notice of Taking Deposition of United Water Idaho (Duces Tecum), which I caused to be served in the above-captioned matter on August 6, 2003, pursuant to Idaho Rule of Civil Procedure 30(b)(6).

3. UWID designated Greg Wyatt and Scott Rhead as the persons who will testify pursuant to Idaho Rule of Civil Procedure 30(b)(6). Mr. Wyatt's deposition has been noticed for August 18, 2003. Appended hereto as Exhibit B is a true and correct copy of the notice of Mr. Wyatt's deposition. Mr. Rhead's deposition has been noticed for August 20, 2003. Appended hereto as Exhibit C is a true and correct copy of the notice of Mr. Rhead's deposition.

4. By serving Exhibit A, I do not require UWID to bring all documents which might pertain to the matters set forth therein to Mr. Rhead and Mr. Wyatt's deposition. Instead, I intend to inquire into those areas, and determine whether there are any documents I might need to review, as well as the documents' location. I then intend to make arrangements with UWID's counsel to review those documents.

5. Given the short time frame for discovery in this matter, I felt that it was critical to serve the Rule 30(b)(6) notice of deposition as soon as possible, even if there were disputes with opposing counsel regarding the appropriate scope. My concern was that given my busy schedule, and what I am sure is opposing counsel's busy schedule, we might be unable to reach each other in a timely manner to attempt to resolve our differences regarding the notice, if they were resolvable at all. Therefore, I served the notice on August 6, 2003, which was apparently received by UWID's counsel on August 7, 2003. This is particularly the case since UWID's counsel took more than two weeks to provide our office with available dates for the depositions of Mr. Rhead, Mr. Wyatt, and Mr. Church, and only then after repeated requests.

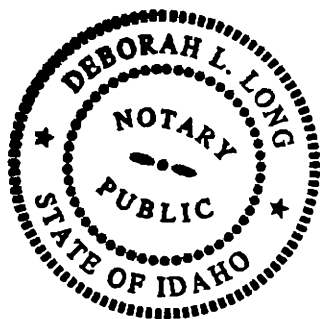
DATED this 14th day of August 2003.

By 
Scott L. Campbell

STATE OF IDAHO)
) ss.
County of Ada)

On this 14th day of August 2003, before me, the undersigned notary public, personally appeared SCOTT L. CAMPBELL, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

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




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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14th day of August 2003, I caused a true and correct copy of the foregoing **AFFIDAVIT OF SCOTT L. CAMPBELL (RESPONSE TO MOTION FOR PROTECTIVE ORDER)** to be served by the method indicated below, and addressed to the following:

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

☒ U.S. Mail, Postage Prepaid
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☐ Facsimile

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

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Gary L. Spackman, Regional Manager
Idaho Department of Water Resources
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2735 Airport Way
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Boise, ID 83706-1234
Fax: 378-5019

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

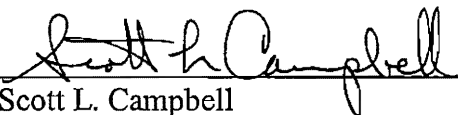
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Mr. Michael Chase
70 W. Floating Feather Road
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By 
Scott L. Campbell

Scott L. Campbell, ISB No. 2251
Angela Schaer Kaufmann, ISB No. 5436
Andrew J. Waldera, ISB No. 6608
MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED
101 S. Capitol Boulevard, 10th Floor
Post Office Box 829
Boise, Idaho 83701
Telephone: (208) 345-2000
Facsimile: (208) 385-5384
18946.26

Attorneys for Pioneer Irrigation District
and Settlers Irrigation District

**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 TAKING DEPOSITION OF
UNITED WATER IDAHO, INC.
(DUCES TECUM)**

TO: UNITED WATER IDAHO

Please take notice that Pioneer Irrigation District and Settlers Irrigation District, by and through their counsel of record, MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD., will take the deposition upon oral examination of United Water Idaho, Inc. ("UWID"), pursuant to Rule 30(b)(6) and other applicable rules of the Idaho Rules of Civil Procedure. You are required to designate one or more officers, directors, or managing agents to be examined and testify under oath regarding the following matters:

1. The corporate decision to proceed with the IMAP.
2. The corporate structure of UWID and its subsidiary or parent entities.
3. The financial condition of UWID, including audited financial statements from 1980 to present.
4. The rate base of UWID and any corporate communications concerning future projections and past history of its rate base. --
5. Profit-loss and net income data of UWID.
6. Corporate policy and communications of UWID concerning expansion of its service area and/or certificated area of service.
7. The corporate decisions regarding sizing of UWID's water delivery infrastructure and cost variations between such infrastructure costs within developing areas receiving water service from non-potable pressurized irrigation system and areas which do not receive such service.
8. The UWID rate income differences between areas served by UWID receiving water service from non-potable pressurized irrigation and areas which do not receive non-potable pressurized irrigation water service.
9. Any and all matters, whether past, present or future, before the Idaho Public Utilities Commission in which UWID was a party.

The deposition will commence at 9:00 A.M. on August 18, 2003, and also at 9:00 A.M. on August 20, 2003, at the offices of MOFFATT THOMAS BARRETT ROCK & FIELDS, Chtd., 101 South Capitol Boulevard, 10th Floor, Boise, Idaho, before a certified court reporter or some other officer authorized to administer oaths, and will continue until completed.

DATED this 6th day of August 2003.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6th day of August 2003, I caused a true and correct copy of the foregoing **NOTICE OF TAKING DEPOSITION OF UNITED WATER IDAHO (DUCES TECUM)** to be served by the method indicated below, and addressed to the following:

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

☒ U.S. Mail, Postage Prepaid
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☐ Facsimile

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

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

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

☒ U.S. Mail, Postage Prepaid
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☐ Facsimile

Nampa & Meridian Irrigation District,
City of Meridian, City of Caldwell, Terteling Company, and
Terteling Trust No. 7
Charles L. Honsinger
Ringert Clark
455 South 3rd Street
PO Box 2773
Boise, ID 83701-2773
Fax: 342-4657

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Boise Public Works Department
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Environmental Programs Coordinator
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Fax: 384-3905

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Boise Project Board of Control
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Barker Rosholt & Simpson
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Estate of Eleanor I. Chase
Matt J. Howard
PO Box 190012
Boise, ID 83719
Fax: 333-8409

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

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City of Meridian Public Works
Gary D. Smith
660 E. Watertower
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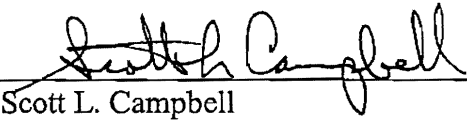
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Mr. Michael Chase
70 W. Floating Feather Road
Eagle, ID 83616-3802

☒ U.S. Mail, Postage Prepaid
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M&M Court Reporting Service
421 West Franklin
Boise, ID 83702

☒ U.S. Mail, Postage Prepaid
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Scott L. Campbell

Scott L. Campbell, ISB No. 2251
Angela Schaer Kaufmann, ISB No. 5436
Andrew J. Waldera, ISB No. 6608
MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED
101 S. Capitol Boulevard, 10th Floor
Post Office Box 829
Boise, Idaho 83701
Telephone: (208) 345-2000
Facsimile: (208) 385-5384
18946.26

Attorneys for Pioneer Irrigation District
and Settlers Irrigation District

**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 TAKING DEPOSITION OF GREG
WYATT (DUCES TECUM)**

TO: GREG WYATT

Please take notice that Pioneer Irrigation District and Settlers Irrigation District,
by and through its counsel of record Moffatt Thomas Barrett Rock & Fields, Chtd., will take the
deposition upon oral examination of Greg Wyatt, pursuant to Rule 30 and other applicable rules
of the Idaho Rules of Civil Procedure.

The deposition will commence at 9:00 A.M. on August 18, 2003, at the offices of
MOFFATT THOMAS BARRETT ROCK & FIELDS, Chtd., 101 South Capitol Boulevard, 10th

Floor, Boise, Idaho, before a certified court reporter or some other officer authorized to administer oaths, and will continue until completed.

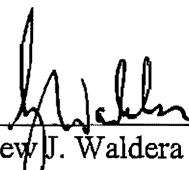
Notice of Duces Tecum/Production of Documents

Consistent with Idaho Rules of Civil Procedure 26, 30(b)(5) and 34, the Deponent is further instructed to bring to said deposition any and all documents related to the IMAP proceeding or the Municipal Water Rights Act of 1996. This production includes, but not limited to communications with the Idaho State Department of Water Resources and its employees, and any documents describing such communications.

DATED this 22 day of July, 2003.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By: _____


Andrew J. Waldera - Of the Firm
Attorneys for Pioneer Irrigation District and
Settlers Irrigation District

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22 day of July 2003, I caused a true and correct copy of the foregoing NOTICE OF TAKING DEPOSITION OF JOHN CHURCH (DUCES TECUM) to be served by the method indicated below, and addressed to the following:

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

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Peter Anderson, Hearing Officer
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PO Box 2720
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Fax: 388-1300

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Nampa & Meridian Irrigation District,
City of Meridian, City of Caldwell, Terteling
Company, and Terteling Trust No. 7
Charles L. Honsinger
Ringert Clark
455 South 3rd Street
PO Box 2773
Boise, ID 83701-2773
Fax: 342-4657

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Boise Project Board of Control
Albert P. Barker
Barker Rosholt & Simpson
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Kathleen M. Carr
U.S. Department of the Interior
Office of the Solicitor
Pacific Northwest Region , Boise Field Office
550 West Fort Street, MSC 020
Boise, ID 83724-0020
Fax: 334-1378

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Estate of Eleanor I. Chase
Matt J. Howard
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Cities of Eagle, Kuna, Middleton & Star and
Star Sewer District
Bruce M. Smith
Tammy A. Zokan
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225 N. 9th Street, Suite 420
Boise, ID 83702
Fax: 331-1202

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

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

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

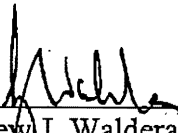
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Fax: 345-8945

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

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Andrew J. Waldera

Scott L. Campbell, ISB No. 2251
Angela Schaer Kaufmann, ISB No. 5436
Andrew J. Waldera, ISB No. 6608
MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED
101 S. Capitol Boulevard, 10th Floor
Post Office Box 829
Boise, Idaho 83701
Telephone: (208) 345-2000
Facsimile: (208) 385-5384
18946.26

Attorneys for Pioneer Irrigation District
and Settlers Irrigation District

**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 TAKING DEPOSITION OF
SCOTT RHEAD (DUCES TECUM)**

TO: SCOTT RHEAD

Please take notice that Pioneer Irrigation District and Settlers Irrigation District, by and through its counsel of record Moffatt Thomas Barrett Rock & Fields, Chtd., will take the deposition upon oral examination of Scott Rhead, pursuant to Rule 30 and other applicable rules of the Idaho Rules of Civil Procedure.

The deposition will commence at 9:00 A.M. on August 20, 2003, at the offices of MOFFATT THOMAS BARRETT ROCK & FIELDS, Chtd., 101 South Capitol Boulevard, 10th

**NOTICE OF TAKING DEPOSITION OF
SCOTT RHEAD (DUCES TECUM) - 1**

BOI_MT2:517598.1

Floor, Boise, Idaho, before a certified court reporter or some other officer authorized to administer oaths, and will continue until completed.

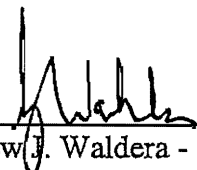
Notice of Duces Tecum/Production of Documents

Consistent with Idaho Rules of Civil Procedure 26, 30(b)(5) and 34, the Deponent is further instructed to bring to said deposition any and all documents related to the IMAP proceeding or the Municipal Water Rights Act of 1996. This production includes, but not limited to communications with the Idaho State Department of Water Resources and its employees, and any documents describing such communications.

DATED this 22 day of July 2003.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By: _____


Andrew J. Waldera - Of the Firm
Attorneys for Pioneer Irrigation District and
Settlers Irrigation District

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22 day of July 2003, I caused a true and correct copy of the foregoing **NOTICE OF TAKING DEPOSITION OF JOHN CHURCH (DUCES TECUM)** to be served by the method indicated below, and addressed to the following:

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

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

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

☒ U.S. Mail, Postage Prepaid
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☐ Facsimile

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

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

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

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Nampa & Meridian Irrigation District,
City of Meridian, City of Caldwell, Terteling
Company, and Terteling Trust No. 7
Charles L. Honsinger
Ringert Clark
455 South 3rd Street
PO Box 2773
Boise, ID 83701-2773
Fax: 342-4657

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

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

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

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

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Pacific Northwest Region , Boise Field Office
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Cities of Eagle, Kuna, Middleton & Star and
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Bruce M. Smith
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225 N. 9th Street, Suite 420
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Fax: 331-1202

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City of Meridian Public Works
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City of Caldwell Engineering Department
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☐ Facsimile

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

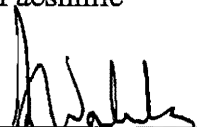
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Robert W. Talboy
Ellsworth Kallas Talboy, PLLC
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Fax: 345-8945

☒ U.S. Mail, Postage Prepaid
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Mr. Michael Chase
70 W. Floating Feather Road
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☐ Facsimile



Andrew J. Waldera

DANIEL V. STEENSON (ISB #4332)
CHARLES L. HONSINGER (ISB #5240)
RINGERT CLARK CHARTERED
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Facsimile: (208) 342-4657

RECEIVED

AUG 15 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

_____	)	
IN THE MATTER OF INTEGRATED	)	RESPONSE TO UNITED WATER'S
MUNICIPAL APPLICATION PACKAGE	)	SUPPLEMENTAL RESPONSE,
(CONSISTING OF 99 APPLICATIONS FOR	)	PROPOSING A PARTIAL STAY, AND
TRANSFERS OF WATER RIGHTS, AND	)	REQUEST FOR EXPEDITED HEARING
_____	)	

COMES NOW, protestants Nampa & Meridian Irrigation District, the cities of Meridian and Caldwell, and the Terteling entities (hereinafter "Protestants"), by and through their counsel of record Ringert Clark, Chartered, and hereby submit this response to United Water Idaho's ("UWID") *Supplemental Response to Motion to Stay, Proposing a Partial Stay*, together with a request that the hearing on the pending *Motion to Stay* be held as soon as possible.

FACTS

On March 28, 2003, Pioneer Irrigation District, Settlers Irrigation District, and the Boise Project Board of Control, together with the Protestants filed a *Motion to Stay* the IMAP proceedings based upon the assertion that the "nature and extent" of UWID's water rights would be more properly determined in the SRBA. In its April 14, 2003 Response to Motion to Stay, UWID opposed

the requested stay, suggesting that IDWR should be given an opportunity to state whether it would delay the SRBA recommendations of UWID's water rights until IMAP proceedings were complete. In response to the Hearing Officer's April 25, 2003 *Request for Staff Memorandum*, IDWR filed its May 9, 2003 *Staff Memorandum* stating that it does not plan to file its recommendations of United Water's IMAP claims separately from other claims in Basin 63, Part 2. On June 20, 2003, the Hearing Officer issued his Third Prehearing Order and Notice of Prehearing Conference which, in relevant part, required "any party alleging that any of United Water Idaho's water rights involved in this matter have been forfeited" to file "a list of the water right [sic] alleged to be forfeited and the factual basis for such forfeiture." Finally, on July 29, 2003, United Water filed its *Supplemental Response to Motion to Stay, Proposing a Partial Stay* in which it stipulates that the nature and extent of the water rights subject to IMAP that are claimed in the SRBA should be determined in the SRBA and that a stay in the IMAP proceedings is appropriate as to those and other, related issues. However, United Water also proposes that issues it designates collectively under the heading "Evaluation of Future Needs Analysis by IDWR" should not be stayed in the IMAP proceeding.

ARGUMENT

Protestants appreciate United Water's recognition that the nature and extent of the water rights it has claimed in the SRBA should be determined in that proceeding rather than in the IMAP proceeding. However, Protestants do not agree that only a partial stay should be issued in this proceeding. Moreover, Protestants do not agree with United Water's characterization and grouping of the issues..

The Hearing Officer has already telegraphed his intent regarding a stay in the IMAP proceedings. In his *Third Prehearing Order*, the only information that the Hearing Officer stated that

he needed to rule on the *Motion to Stay* was information regarding allegations of forfeiture. Presumably, although he did not so state, the Hearing Officer desired to ensure that the allegations of forfeiture raised by Protestants were based in fact prior to issuing a stay in the IMAP proceeding which would allow the nature and extent of United Water's water rights to be determined in the SRBA. Because United Water has now stipulated that the elements of its water rights should be determined in the SRBA, the Hearing Officer's concerns regarding a valid basis for the allegations of forfeiture are now moot, and a stay in the IMAP proceedings should simply be issued as quickly as possible.

The issues that United Water listed in its Supplementa Response do not correspond with tthe issues defined by the Hearing Officer. In fact, United Water has characterized, created and grouped issues to serve its purpose of attempting to have a portion of its IMAP move forward in this proceeding. The Hearing Officer should ignore United Water's characterization and grouping, and instead rely upon his own listing of issues.

The Hearing Officer should also ignore United Water's proposal to only partially stay the IMAP proceedings. The water rights that United Water which are subject to the IMAP are intricately interrelated to the entirety of IMAP. United Water implied the same when it addressed the *Motion to Stay*, and stated that "[a]waiting IMAP completion also allows the Director to incorporate the requirements and protections of the Municipal Water Rights Act of 1996 (the "1996 Act" or the "Act"), and any other conditions in his recommendations. UWID's *Response to Motion to Stay*, at p. 6 (April 14, 2003). Obviously, if the issues raised by IMAP were not interrelated, United Water would not have suggested that "the requirements and protections of the Municipal Water Rights Act of 1996" and "any other conditions" resulting from the IMAP proceeding be included in the

Director's SRBA recommendations.

The most simple reason for staying the entire IMAP proceeding is that United Water would be unable to initiate the transfers and permit amendments to which it is attempting to "attach" the protections of the 1996 Act without consideration of the water rights themselves. It makes no sense to stay one portion of the proceedings and go forward with another.

Similarly, it makes no sense to force the parties to participate in two separate proceedings regarding the same water rights. Discovery processes and issues may overlap. The dual proceedings may likewise result in determinations by two different adjudicatory bodies on the same issue. The Hearing Officer should avoid this potential, and simply issue an order staying the IMAP proceedings pending the outcome of the SRBA.

REQUEST FOR EXPEDITED HEARING

The Protestants in IMAP currently have the obligation, pursuant to the Third Prehearing Order, to provide to the Hearing Officer a list of water rights they allege are forfeited in whole or in part, together with the basis for the alleged forfeiture. Protestants are currently in the process of discovery and analysis in order to obtain and provide the requested information. However, as discussed above, the reason for Protestants' obligation to provide this information is now moot. Additionally, Protestants are engaged in discovery, including the attendance of numerous depositions scheduled over the next three weeks. If the Hearing Officer is going to issue a stay anyway, the discovery in which the parties are currently engaged is unproductive. Accordingly, Protestants hereby request that the Hearing Officer either immediately issue a stay, or alternatively, immediately schedule a hearing on the Motion to Stay as quickly as possible. Resolution of the Motion to Stay as soon as possible will avoid the unnecessary expenditure of time and money by all of the parties.

CONCLUSION

Based upon the arguments above, Protestants respectfully request that the Hearing Officer issue an immediate stay in the IMAP proceedings, or, at a bare minimum, issue a temporary stay pending resolution of the Motion to Stay at a hearing scheduled as soon as possible.

Dated this 14th day of August, 2003

RINGERT CLARK, CHARTERED

By Charles L. Honsinger
Charles L. Honsinger

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of August, 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
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E. Gail McGarry PN-3100
Bureau of Reclamation
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Boise, Idaho 83706-1234

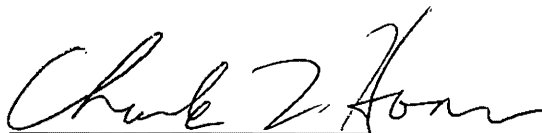
Bruce Smith
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US Dept. of Interior
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Albert Barker
Barker Rosholt & Simpson
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Matt Wilde
City of Boise
P.O. Box 500
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Charles L. Honsinger



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

August 13, 2003

PETER ANDERSON
HEARING OFFICER
729 W BRAEMERE RD
BOISE ID 83702

Re: IMAP Documents

Dear Mr. Anderson:

Western Region has been served with a large number of documents related to the IMAP filing. Some of the documents are quite voluminous. Many of the documents are related to discovery. I specifically call attention to some notices of deposition duces tecum, totaling over 90 pages, that were faxed as a group to this office.

I question the need for service of all IMAP documents at Western Region. Unless you feel there is a need for a duplicate filing of the documents, I ask that you direct the parties to discontinue sending documents to this office. Western Region would like to receive copies of determinative documents you send out, however. Perhaps we could remain on the service list maintained by Debra Gibson.

Thank you for consideration of this request.

Sincerely,

Gary Spackman

CC:

UNITED WATER ID, JOHN MARSHALL
BOISE PROJECT BOARD OF CONTROL, AL BARKER
BUREAU OF RECLAMATION, GAIL MCGARRY & KATHLEEN CARR
NAMPA & MERIDIAN IRRIG DIST, CHARLES HONSINGER
CITIES OF EAGLE, KUNA, MIDDLETON &
STAR AND STAR SEWER DIST, BRUCE SMITH & TAMMY ZOKAN
CITY OF BOISE, MATT WILDE
PIONEER & SETTLERS IRRIG DIST, SCOTT CAMPBELL
ED SQUIRES, HYDRO LOGIC
JOSEPHINE P BEEMAN
ROBERT W TALBOY

AUG 12 2003

Department of Water Resources

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277 North 6th Street, Suite 200
PO Box 2720, Boise, Idaho 83701
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Christopher J. Beeson
Jessica M. Borup
William C. Cole
Michael C. Creamer
Thomas E. Dvorak
Roy Lewis Eiguren
Timothy P. Fearnside
Jeffrey C. Fereday
Steven J. Hippler
Karl T. Klein
Debora K. Kristensen
Anne C. Kunkel
Franklin G. Lee
David R. Lombardi

D. David Lorello, Jr.
Emily A. MacMaster
Kimberly D. Maloney
John M. Marshall
Kenneth R. McClure
Kelly Greene McConnell
Cynthia A. Melillo
Christopher H. Meyer
Kendall L. Miller
L. Edward Miller
Patrick J. Miller
Judson B. Montgomery
Angela K. Nelson
Deborah E. Nelson
W. Hugh O'Riordan

Michael C. Orr
Kenneth L. Pursley
Bradley V. Sneed
H. Barton Thomas
Conley E. Ward
Robert B. White

Raymond D. Givens
James A. McClure
Stephanie C. Westermeyer
OF COUNSEL

John A. Miller, LL.M. *
TAX CONSULTANT

*Licensed in Kentucky only

August 8, 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
Our File No. 30-71

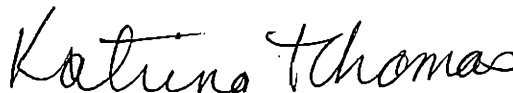
Dear Debbie:

Enclosed for filing in the IMAP matter please find the original and one copy of each of the following documents:

1. Motion for Protective Order;
2. Memorandum in Support of Motion for Protective Order; and
3. Motion to Shorten Time (re: Motion for Protective Order).

Please conform the copy of each document and return them to our office in the enclosed self-addressed, stamped envelope. Thank you for your assistance with this matter. If you have any questions or require any additional information please call.

Sincerely,



Katrina Thomas
Legal Secretary

Enclosures

:kdt S:\CLIENTS\30\71\KT Ltr to IDWR re Filing Mtn for Protective Order.DOC

Christopher H. Meyer, Esq. (Idaho State Bar No. 4461)
John M. Marshall, Esq. (Idaho State Bar No. 5628)
Deborah E. Nelson, Esq. (Idaho State Bar No. 5711)
GIVENS PURSLEY LLP
277 North 6th Street, Suite 200
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Boise, Idaho 83701-2720
Office: (208) 388-1200
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Email: chrismeyer@givenspursley.com; jmm@givenspursley.com
www.givenspursley.com
Counsel for Applicant United Water Idaho Inc.

RECEIVED

AUG 12 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

MOTION FOR PROTECTIVE ORDER

Protestants Pioneer Irrigation District and Settlers Irrigation District have subpoenaed Applicant United Water Idaho Inc.'s ("United Water") representative(s) under Idaho Rule of Civil Procedure 30(b)(6) to depositions on August 18, 2003 and August 20, 2003. A copy of the *Notice of Taking Deposition of United Water Idaho[] Inc. (Duces Tecum)* ("subpoena") is attached as Exhibit A to the memorandum filed contemporaneously herewith.

The subpoena commands United Water to testify regarding nine broad categories—six of which are irrelevant to this lawsuit. Further, the subpoena is unreasonable and oppressive and subjects United Water to undue burden, harassment and expense. United Water therefore moves

the Hearing Officer, pursuant to Idaho Rule of Civil Procedure 26(c), for a protective order as follows:

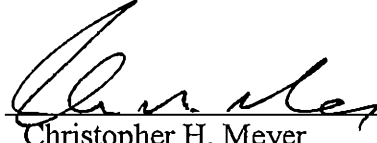
- A. That the subpoena is quashed as to, and United Water need not produce, the requested materials in numbers 3, 4, 5, 7, 8, and 9 of the subpoena because such topics are irrelevant to this lawsuit and would be overly burdensome to produce; and
- B. Protestants Pioneer Irrigation District and Settlers Irrigation District shall pay United Water its costs and attorney's fees incurred in seeking the Court's protection because the subpoena is overbroad and seeks information that obviously is outside the discoverable scope of this action.

This motion is based on the record herein and on the supporting memorandum filed contemporaneously herewith. Oral argument is requested.

DATED this 8th day of August 2003.

GIVENS PURSLEY LLP

By



Christopher H. Meyer

John M. Marshall

Attorneys for Applicant United Water

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of August 2003, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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

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Boise, ID 83702

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Gary L. Spackman
Regional Manager
Idaho Department of Water Resources
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Hydro Logic, Inc.
1002 West Franklin St.
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Daniel V. Steenson, Esq.
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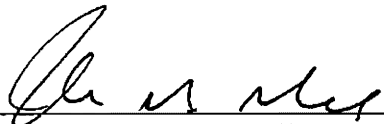
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John M. Marshall

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AUG 12 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

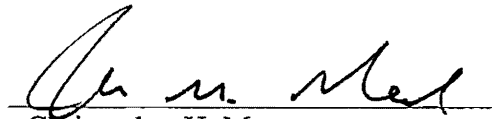
**MOTION TO SHORTEN TIME
(RE. MOTION FOR PROTECTIVE
ORDER)**

Applicant United Water Idaho Inc. ("United Water") moves, pursuant to Rule 6(d) of the Idaho Rules of Civil Procedure and Rule 550 of the Department's Rules of Procedure, for an order to shorten time so that United Water's Motion for Protective Order may be heard prior to the depositions at issue in the Motion for Protective Order, scheduled for August 18, 2003 and August 20, 2003. The grounds for this motion are that there is not sufficient time to give the usual notice of hearing of United Water's Motion for Protective Order, and if United Water's Motion for Protective Order is not heard at the time requested, United Water may suffer irreparable damage in having to spend valuable time and money in gathering materials that are wholly irrelevant to this case.

DATED this 8th day of August 2003.

GIVENS PURSLEY LLP

By

A handwritten signature in cursive script, appearing to read "Ch. H. Meyer", is written over a horizontal line.

Christopher H. Meyer

John M. Marshall

Attorneys for Applicant United Water

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of August 2003, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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State Office
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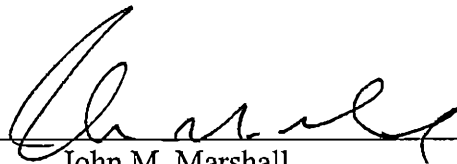
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Counsel for Applicant United Water Idaho Inc.

RECEIVED

AUG 12 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

**MEMORANDUM IN SUPPORT OF
MOTION FOR PROTECTIVE ORDER**

Applicant United Water Idaho Inc. ("United Water") files this memorandum in support of the *Motion for Protective Order* filed contemporaneously herewith.

INTRODUCTION

Protestants Pioneer Irrigation District and Settlers Irrigation District ("Pioneer and Settlers") have subpoenaed United Water's representative(s) under Idaho Rule of Civil Procedure 30(b)(6) to depositions on August 18, 2003 and August 20, 2003. A copy of the *Notice of Taking Deposition of United Water Idaho[] Inc. (Duces Tecum)* ("subpoena") is attached as Exhibit A hereto.

The subpoena commands United Water to testify regarding nine broad categories—six of which are irrelevant to this lawsuit. Further, the subpoena is unreasonable and oppressive and subjects United Water to undue burden and expense to gather such documentation.¹ United Water therefore submits the accompanying *Motion for Protective Order* pursuant to Idaho Rule of Civil Procedure 26(c).

ARGUMENT

I. THE SUBPOENA REQUESTS MATERIAL THAT IS IRRELEVANT AND IS NOT REASONABLY CALCULATED TO LEAD TO THE DISCOVERY OF ADMISSIBLE EVIDENCE.

Under Rule 26(c) of the Idaho Rules of Civil Procedure, a party from whom discovery is sought, and for good cause shown, may move a court for an order to protect themselves from annoyance, embarrassment, oppression or undue burden or expense, including, but not limited to, an order that the requested discovery not be had. I.R.C.P. 26(c)(1). If the motion is granted, the court shall, after affording an opportunity to be heard, require the party whose conduct necessitated the motion, and/or the attorney advising such conduct, to pay to the moving party the reasonable expenses incurred in making the motion, including attorney's fees. I.R.C.P. 26(c); 37(a)(4).

Good cause exists for the Hearing Officer's entry of an order prohibiting Pioneer and Settlers from obtaining the information and/or documents sought in items 3, 4, 5, 7, 8, and 9 of the subpoena. Idaho Rule of Civil Procedure 26(b)(1) limits the scope of discovery to matters that are "relevant to the subject matter involved in the pending action...." The requested information has no relevance to any party's claims or defenses in this case and serves only to

¹ Although labeled "Duces Tecum," the subpoena does not actually request documentation regarding these categories to be produced. This inconsistency appears to be a drafting oversight. Regardless, gathering the documentation would be necessary before representatives of United Water could accurately testify regarding these matters.

harass the Applicant, to obtain sensitive business information for improper purposes, and to drive up attorneys' fees and costs for all parties.

For example, items 3, 4, 5, 7 and 8 seek information regarding the financial condition and other financial data of United Water, and item 9 seeks documentation regarding all matters (even *future* matters) in which UWID was a party before the Idaho Public Utilities Commission ("PUC"). This requested information does not relate, even indirectly, to the issues raised by any party in this case about United Water's water rights.

There can be no question as to what the issues are in this case, because Pioneer and Settlers themselves have enumerated such issues. In response to an order of the Hearing Officer, the parties have filed statements of all issues raised in this matter. *See UWID's Submission of Issues (Without Comments)* (February 3, 2003); [*Pioneer Irrigation District and Settlers Irrigation District's*] *Statement of the Issues* (Jan. 31, 2003); *Pioneer Irrigation District and Settlers Irrigation District's Response to UWID's Summary of the Issues* (Jan. 31, 2003); *Pioneer and Settlers' List of Additional Issues* (Feb. 27, 2003) attached as Exhibit B. These statements reveal that the issues in this case include the following: the form of the applicant's notice; the form and content of the application; the applicant's contact with IDWR; whether legislative approval is necessary; conformance with the Municipal Water Rights Act of 1996; whether the application would cause an enlargement of the rights; whether the applicant's water rights have been forfeited; the relationship between this proceeding and the SRBA; and whether the IMAP violates the Constitution. This exhaustive list of issues does not relate in any way to the Applicant's financial condition, profitability, competitive positioning, or any of the myriad regulatory issues presented from time to time before the PUC.

Pioneer and Settlers' request cannot reasonably lead to the discovery of admissible evidence when the information sought clearly lies outside the broad range of issues presented by any party in the matter. Pioneer and Settlers are merely on a fishing expedition that can serve no other purpose than to harass United Water and needlessly increase the cost of this litigation. It is incumbent upon the Hearing Officer to stop this unnecessary departure from the issues presented in this case. *See Avila v. Wahlquist*, 126 Idaho 745, 749, 890 P.2d 331, 335 (1995) ("Control of discovery is within the discretion of the trial court"). We urge the Hearing Officer to do so by granting United Water's motion for protective order and awarding United Water the costs and fees incurred in bringing this motion.

II. THE SUBPOENA IS UNREASONABLE AND OPPRESSIVE AND SUBJECTS UNITED WATER TO UNDUE BURDEN AND EXPENSE.

The requested documentation is extensive and would take considerable allocation of United Water's staff and resources to pull together all the materials. The burden is especially excessive given that United Water is in the midst of its busiest time of year—the summer peak—when demand for water skyrockets, the system is pushed to its limit, and United Water's staff is stretched thin. In addition to United Water's own staff time, providing the requested documents would also require attorney review, at considerable expense to United Water. It would be grossly inequitable to force a municipal provider—and its ratepayers—to shoulder such a financial and administrative burden to gather materials patently irrelevant to this case.

Moreover, the Protestants have aimed their broad inquires at sensitive, competitive, strategic, business information whose sole value to the Protestants would be for strategic purposes unrelated to this proceeding. Subjecting municipal providers to this sort of costly exercise has the potential to chill interest in the use of the 1996 Act, and thus undermine its utility.

III. THE HEARING OFFICER SHOULD AWARD UNITED WATER ITS FEES AND COSTS IN OBTAINING A PROTECTIVE ORDER.

To the extent the Hearing Officer grants United Water's motion for protective order, United Water requests that the Hearing Officer order Pioneer and Settlers to pay the expenses and fees that United Water incurred to obtain the order. Rule 26(c), pertaining to protective orders, provides that "the provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion." Rule 37(a)(4) provides, in pertinent part:

If the motion is granted, the court shall, after opportunity for hearing, require the party ... whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorneys' fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

Further, Rule 26(f) permits a court to sanction any discovery request not made in conformance with the discovery provisions. *Aeschliman v. State*, 132 Idaho 397, 973 P.2d 749, 753 (Ct. App. 1999). Rule 26(f) provides in pertinent part:

(1) ... The signature of the attorney or party constitutes a certification that the signer has read the request, response, or objection, and that to the best of the signer's knowledge, information, and belief formed after a reasonable inquiry it is: (A) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (B) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (C) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation. ...

(2) If a certification is made in violation of the rule, the court, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including reasonable attorney's fees.

(Emphasis added).

The instant motion was necessitated by the conduct of Pioneer and Settlers and their attorneys. On August 5, 2003, counsel for Pioneer and Settlers emailed a draft of the deposition notice and subpoena at issue in this motion to counsel for UWID. Exhibit C. On August 6, 2003, counsel for United Water responded that the subpoena unreasonably sought undiscoverable information and suggested the counsel meet to discuss a reasonable scope for the deposition. *Id.* On August 7, United Water received service of the subpoena, unchanged. Counsel for Pioneer and Settlers never responded to United Water's suggestion of meeting to discuss the issue further.

Despite United Water's prior objection to the scope of the subpoena and its attempt to resolve the issue amongst the parties, Pioneer and Settlers nevertheless decided to push forward with the overly broad subpoena and forced United Water to seek a protective order from the Hearing Officer. Given these circumstances and the requests' clear violation of the discovery rules' permissible scope, awarding United Water its fees and costs is appropriate.

CONCLUSION

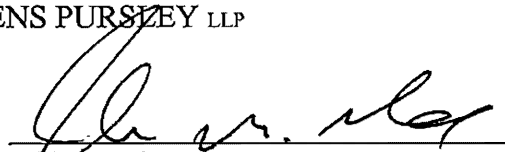
From the outset of this proceeding, the Applicant has sought to expedite and facilitate the exchange of relevant information through informal discovery based on collegiate discussions and exchange of information. The Applicant has repeatedly extended offers to these Protestants to make witnesses, staff and others available to explain any and all aspects of the IMA. These Protestants have repeatedly declined to take advantage of such opportunities. Instead, they have pressed for formal discovery. The reasons are now apparent. The information they seek has no bearing on any of the issues they identified in their own filings as relevant to this proceeding. Instead, they seek to use discovery tools for purposes of delay, harassment, oppression and

improper strategic gain. This abuse of process should not be tolerated in Departmental proceedings.

DATED this 8th day of August 2003.

GIVENS PURSLEY LLP

By

A handwritten signature in black ink, appearing to read "Ch. H. Meyer", is written over a horizontal line.

Christopher H. Meyer

John M. Marshall

Deborah E. Nelson

Attorneys for Applicant United Water

CERTIFICATE OF SERVICE

I hereby certify that on this 8th 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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Gary L. Spackman
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Western Regional Office
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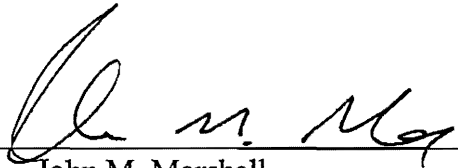
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John M. Marshall

EXHIBIT A

RECEIVED

AUG 07 2003

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Attorneys for Pioneer Irrigation District
and Settlers Irrigation District

**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 TAKING DEPOSITION OF
UNITED WATER IDAHO, INC.
(DUCES TECUM)

TO: UNITED WATER IDAHO

Please take notice that Pioneer Irrigation District and Settlers Irrigation District, by and through their counsel of record, MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD., will take the deposition upon oral examination of United Water Idaho, Inc. ("UWID"), pursuant to Rule 30(b)(6) and other applicable rules of the Idaho Rules of Civil Procedure. You are required to designate one or more officers, directors, or managing agents to be examined and testify under oath regarding the following matters:

1. The corporate decision to proceed with the IMAP.
2. The corporate structure of UWID and its subsidiary or parent entities.
3. The financial condition of UWID, including audited financial statements from 1980 to present.
4. The rate base of UWID and any corporate communications concerning future projections and past history of its rate base.
5. Profit-loss and net income data of UWID.
6. Corporate policy and communications of UWID concerning expansion of its service area and/or certificated area of service.
7. The corporate decisions regarding sizing of UWID's water delivery infrastructure and cost variations between such infrastructure costs within developing areas receiving water service from non-potable pressurized irrigation system and areas which do not receive such service.
8. The UWID rate income differences between areas served by UWID receiving water service from non-potable pressurized irrigation and areas which do not receive non-potable pressurized irrigation water service.
9. Any and all matters, whether past, present or future, before the Idaho Public Utilities Commission in which UWID was a party.

The deposition will commence at 9:00 A.M. on August 18, 2003, and also at 9:00 A.M. on August 20, 2003, at the offices of MOFFATT THOMAS BARRETT ROCK & FIELDS, Chtd., 101 South Capitol Boulevard, 10th Floor, Boise, Idaho, before a certified court reporter or some other officer authorized to administer oaths, and will continue until completed.

DATED this 6th day of August 2003.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6th day of August 2003, I caused a true and correct copy of the foregoing NOTICE OF TAKING DEPOSITION OF UNITED WATER IDAHO (DUCES TECUM) to be served by the method indicated below, and addressed to the following:

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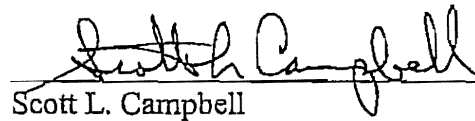
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Scott L. Campbell

EXHIBIT B

RECEIVED

FEB 03 2003

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
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.

STATEMENT OF THE ISSUES

Pioneer Irrigation District ("Pioneer") and Settlers Irrigation District ("Settlers"), by and through their counsel of record Moffatt, Thomas, Barrett, Rock & Fields, Chtd., and in accordance with the Hearing Officer's PreHearing Order, hereby provide a neutral statement of the issues.

I.

PRELIMINARY MATTERS

Pioneer and Settlers are providing this neutral statement of the issues because they are not certain whether the Applicant United Water Idaho will provide a neutral statement. UWID

provided a statement of the issues to Pioneer and Settlers on or about January 17, 2003, as required by the Hearing Officer's PreHearing Order. However, Pioneer and Settlers do not view that statement of the issues as neutral, because it included UWID's view of the issues. Pioneer and Settlers conveyed those concerns to UWID's counsel, but received no response. Therefore, Pioneer and Settlers are providing this Statement of the Issues.

UWID also provided that non-neutral statement of the issues (titled "Summary of the Issues") to the Hearing Officer as an attachment to UWID's Response to the Irrigation Entities' Motion to Compel. Pioneer and Settlers are not certain when they will have the opportunity to provide their response to UWID's view of the issues, if not now. Therefore, by separate document filed concurrently, Pioneer and Settlers will respond to the views set forth in UWID's Summary of the Issues.

Pioneer and Settlers are taking the steps just described in order to avoid waiving any issues or rights they may have. Further, Pioneer and Settlers reserve the right to provide further analysis and argument regarding the issues, as allowed by the Hearing Officer.

II.

STATEMENT OF THE ISSUES

This statement of the issues was provided to counsel for UWID on or about December 20, 2002, with oral explanation provided at that time. Additional explanation of some of the issues was provided by counsel for Pioneer and Settlers in writing at a later date. The issues set forth herein remain issues as of the date this document is filed.¹

¹ Pioneer and Settlers have removed one quotation of an Idaho Code section. It was provided for purposes of explanation to UWID's counsel, but has been removed here in an effort to make this statement of the issues as neutral as possible.

- Issue 1** The notice in this matter did not comport with the requirements of Idaho Code section 42-203A.
- Issue 2** The water rights described in IMAP involve quantities greater than 50 cfs. Legislative approval, as required by I.C. section 42-108 appears to be a pre-condition to processing of the IMAP application.
- Issue 3** The IMAP was not submitted "upon forms furnished by the Department;" that failure constitutes a procedural due process defect which invalidates the IMAP process.
- Issue 4** I.C. section 42-222 can not be used when the municipal provider is *not* changing the nature of use to municipal. In other words, the statute does not allow a municipal provider to bring existing water rights under the umbrella of the municipal water rights act, when the current nature of use of the water rights is municipal.
- Issue 5** The IMAP application does not provide a sufficient description of the service area "to identify the general location where the water right is to be used and the types and quantity of uses that generally will be made."
- Issue 6** The length of time, geographical area, population projections and other planning data for calculating reasonably anticipated future needs are limited to the comprehensive plans and planning horizons of cities within the service area. The IMAP exceeds these statutory parameters and fails to satisfy the mandates of I.C. section 42-202B(5).
- Issue 7** The IMAP expansion of place of use and service area for the water rights, will cause expansion of the consumptive use component of the water rights due to lawn and landscape irrigation. This would constitute an improper enlargement in use of the original rights in violation of I.C. section 42-222(1).
- Issue 8** An application to amend a permit can not be considered under the Municipal Water Rights Act. No statutory provision allows this approach. Therefore, the permit amendment portion of IMAP should be separated and proceed as a distinct proceeding.
- Issue 9** As a matter of procedure, the validity of these proceedings due to the potentially inappropriate contact with the IDWR Director should be decided before any other issues are considered.
- Issue 10** Forfeiture — Municipal water rights can be forfeited. Some of the IMAP water rights have been forfeited.

- (1) The right associated with a particular well should be deemed forfeited when that well is abandoned, and the right was not transferred to another point of diversion.
- (2) Is the “stepwise function” an appropriate way to determine whether municipal water rights have been forfeited?
- (3) If the “stepwise function” is not an appropriate way to determine whether and when municipal water rights have been forfeited, should a “point by point” system be used?

Issue 11 What is the appropriate length of time for reviewing and reevaluating the accuracy of the planning horizon and projected water needs (i.e., at the end of the planning horizon, every five years, every three years, etc.).

Issue 12 The “integrated points of diversion” approach in IMAP does not comport with Idaho law, specifically the prior appropriation doctrine.

- a. Senior water rights will not be protected from interference and injury under the approach outlined by UWID.
- b. The integrated points of diversion approach in IMAP does not adequately protect senior water rights (whether ground or surface water, and not just from well interference).
- c. Phrased differently, the integrated points of diversion approach in IMAP violates the prior appropriation doctrine and conjunctive administration of water rights.

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

Issue 14 If the IMAP proceeding is completed before the water rights included within the IMAP reach the SRBA, review of the water rights in the SRBA may be precluded. This conflicts with the requirements of the SRBA statute.

Issue 15 United Water Idaho violated the procedural and substantive due process rights of our clients by its extensive ex parte contacts with the Idaho Department of Water Resources Director and senior management officials concerning the legal and factual issues involving IMAP and interpretations of the statutory language of the Municipal Water Rights Act of 1996 and other provisions of Idaho law. Such actions resulted in pre-decisional interpretations or rulings by the Director and other senior management officials which directly impact the IMAP proceeding. In essence, United Water Idaho conducted an ex parte declaratory proceeding before

the Department in violation of the Department's rules and our clients' constitutional and statutory rights.

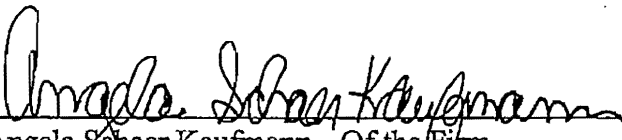
Issue 16

All factual issues can not be stated at this time because UWID has not provided all of the information requested by Pioneer and Settlers in the informal information exchange process and because discovery has not yet been authorized.

DATED this 31st day of January 2003.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By 
Scott L. Campbell - Of the Firm

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 31st day of January 2003, I caused a true and correct copy of the foregoing STATEMENT OF THE ISSUES to be served by the method indicated below, and addressed to the following:

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

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Peter Anderson, Hearing Officer
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Gary L. Spackman, Regional Manager
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☐ Facsimile

Nampa & Meridian Irrigation District,
City of Meridian, City of Caldwell, Terteling
Company, and Terteling Trust No. 7
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Ringert Clark
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Boise, ID 83701-2773
Fax: 342-4657

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City of Boise
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Beth K. Baird
Environmental Programs Coordinator
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Fax: 384-3905

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Boise Project Board of Control
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Barker Rosholt & Simpson
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Boise, ID 83701-2139
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Bureau of Reclamation
E. Gail McGarry, PN-3100
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Boise, ID 83706-1234

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☐ Facsimile

Kathleen M. Carr
U.S. Department of the Interior
Office of the Solicitor
Pacific Northwest Region , Boise Field Office
550 West Fort Street, MSC 020
Boise, ID 83724-0020

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988 S. Longmont Avenue, Suite 100
Boise, ID 83706

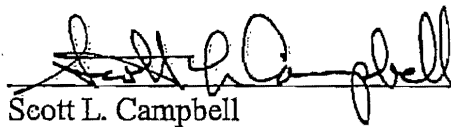
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Mr. Michael Chase
70 W. Floating Feather Road
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Scott L. Campbell



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Email: chm@givenspursley.com; jmm@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.

UWID's SUBMISSION OF SUMMARY OF
ISSUES (WITHOUT COMMENTS)

SUBMISSION OF SUMMARY OF ISSUES

United Water Idaho Inc. ("UWID" or "United Water") hereby submits its *Summary of Issues Identified by Protestants (without Comments)*.

An earlier version, containing an identical list of issues accompanied by UWID comments, was submitted to the Parties on January 17, 2003 in accordance with the Hearing Officer's Prehearing Order. This *Summary* was provided to the Hearing Officer in conjunction with UWID's *Response to Irrigation Protestants' Motion to Compel and Alternative Motion to Authorize Discovery* dated January 20, 2003.

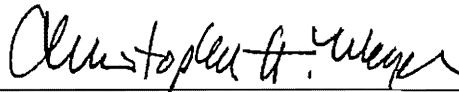
We had hoped (and continue to hope) that the inclusion of comments responding to the issues will facilitate further discussion and better understanding among the Parties. However,

some of the Protestants raised the objection last week that the *Summary* was not neutral. Responding to those concerns, UWID prepared a revised version of the *Summary*, omitting its comments. This was made available to the objecting Protestants last Friday, with copies to all other Parties.

A copy of the revised *Summary* (without comments) is attached hereto as Appendix A. As noted, the original version (with comments) was previously submitted to the Hearing Officer. For the convenience of all, another copy is included here as Appendix B.

DATED this 3rd day of February, 2003.

GIVENS PURSLEY LLP



By: Christopher H. Meyer

Attorneys for Applicant
United Water Idaho Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of February, 2003, I caused to be served a true and correct copy of the foregoing, together with Appendices A and B, 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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☐ Facsimile
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Hearing Officer
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Gary L. Spackman
Regional Manager
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Western Regional Office
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Boise, ID 83705

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☐ Overnight Mail

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U.S. Bureau of Reclamation
Pacific Northwest Region
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Ringert Clark, Chart
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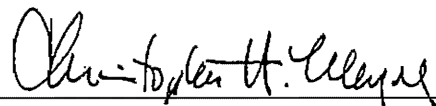
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Mr. Michael Chase
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☐ Overnight Mail



Christopher H. Meyer

APPENDICES

Tab A. UWID's Summary of Issues without Comments (January 31, 2003)

Tab B. UWID's Summary of Issues with Comments (January 17, 2003)

MEMORANDUM

TO: Protestants

FROM: Christopher H. Meyer *all*
John M. Marshall

RE: UWID - IMAP
Our File No. 30-71

DATE: January 31, 2003 (excerpted from January 17, 2003 memo)

SUMMARY OF ISSUES IDENTIFIED BY PROTESTANTS (WITHOUT COMMENTS)

The outline below has been prepared by counsel for United Water Idaho Inc. in compliance with the Hearing Officer's instruction to provide a summary of issues to all Protestants. This outline is based on a summary of issues, and supplementary explanation, both of which were prepared by Angela Schaer Kaufmann on behalf of Pioneer and Settlers Irrigation Districts. Quotations below are from those documents. The issues are presented in the same order as appears there.

This summary also reflects conversations with counsel for these and each of the other Protestants over the course of the past few months.

References to "Protestants" are generic and are not meant to identify the particular Protestant that may have raised the point or taken that position.

I. THE NOTICE OF THE IMAP PROCEEDING DID NOT COMPLY WITH IDAHO CODE SECTIONS 42-222 AND 42-203A.

A. UWID had "significant input into drafting of the notice."

Summary of issue

Protestants contend that the UWID had "significant input into the drafting of the notice" and that the "notice was changed after it had been sent for publication." This, they contend, violates Idaho Code section 42-203A (which is referenced by section 42-222), in that the statute requires that "the department of water resources shall prepare a notice in such form as the department may prescribe"

B. Other defects may be discovered later.

Summary of issue

Protestants also state that "it may become apparent that certain aspects of the notice were inaccurate."

II. THE WATER RIGHTS DESCRIBED IN THE IMAP INVOLVE QUANTITIES GREATER THAN 50 CFS, REQUIRING LEGISLATIVE APPROVAL.

Summary of issue

Protestants contend that the IMAP violates Idaho Code section 42-108, which requires prior legislative approval of water right transfers exceeding 50 cfs.

III. THE IMAP WAS NOT SUBMITTED ON FORMS FURNISHED BY THE DEPARTMENT.

Summary of issue

Idaho Code sections 42-222 and 42-221 require that applications be submitted on forms furnished by the Department. Protestants contend that the IMAP submission was not on such forms. Moreover, Protestants contend that the IMAP did not contain all of the information required by those forms.

IV. THE 1996 ACT DOES NOT ALLOW A MUNICIPAL PROVIDER TO BRING EXISTING WATER RIGHTS ALREADY WITHIN ITS PORTFOLIO WITHIN THE COVERAGE OF THE ACT.

Summary of issue

The 1996 Municipal Water Rights Act applies only to new appropriations and to changes in water rights. It does not apply to water rights that already serve municipal purposes.

V. THE IMAP DOES NOT PROVIDE A SUFFICIENT DESCRIPTION OF THE PROPOSED SERVICE AREA.

Summary of issue

Protestants contend that the IMAP does not provide a sufficient description of the proposed service area.

VI. THE IMAP IS NOT CONSISTENT WITH PLANNING LIMITATIONS IN THE COMPREHENSIVE PLANS OF THE VARIOUS MUNICIPALITIES TO BE SERVED.

Summary of issue

The length of time, geographical area, population projections and other planning data for calculating reasonably anticipated future needs are limited to the comprehensive plans and planning horizons of cities within the service area. The IMAP exceeds these statutory parameters and fails to satisfy the mandates of Idaho Code section 42-202B(5).

VII. THE IMAP WILL AUTHORIZE AN EXPANSION OF CONSUMPTIVE USE.

Summary of issue

The IMAP would change the place of use for UWID's water rights to the "expanding service area" authorized by the 1996 Act. This expansion will result in an increase in consumptive use, as defined in Idaho Code section 42-202B(1).

VIII. THE 1996 ACT DOES NOT ALLOW AMENDMENTS OF PERMITS.

Summary of issue

An application to amend a permit cannot be considered under the 1996 Act. No statutory provision allows this approach.

IX. PROTESTANTS' DUE PROCESS CHALLENGE SHOULD BE RESOLVED AT THE OUTSET.

Summary of issue

The due process issue (see Section XV below) should be decided by the Hearing Officer before any others.

X. UWID HAS PARTIALLY FORFEITED ITS WATER RIGHTS.

Summary of issue

Protestants contend that the "right associated with a particular well should be deemed forfeited when that well is abandoned, and the right was not transferred to another point of diversion."

XI. IF APPROVED, THE FORCAST OF FUTURE NEEDS SHOULD BE PERIODICALLY REEVALUATED.

Summary of issue

Protestants have inquired as to "[w]hat is the appropriate length of time for reviewing and reevaluating the accuracy of the planning horizon and projected water needs (i.e., at the end of the planning horizon, every five years, every three years, etc.)."

XII. UWID'S REQUEST FOR INTEGRATED POINTS OF DIVERSION ("IPD") IS UNLAWFUL.

Summary of issue

Protestants state: "During our meeting on December 20, 2002, you [UWID] inquired whether our concerns on this issue remained if the proposed conditions were taken into account. First, as you are aware, the conditions have not yet been approved by the Districts, and will likely take a great deal of work and revision if they are to be adopted. Second, the Districts have significant concerns about the effect of the integrated points of diversion system in relation to the conjunctive administration of ground and surface rights. It is not only rights in the immediate vicinity which might be affected, but those further away as well."

XIII. MUNICIPAL PROVIDERS ARE NOT ENTITLED TO OBTAIN WATER RIGHTS BASED ON THE CAPACITY OF A WELL.

Summary of issue

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

XIV. APPROVAL OF THE IMAP MIGHT PRECLUDE SRBA REVIEW.

Summary of issue

"If the IMAP proceeding is completed before the water rights included within the IMAP reach the SRBA, review of the water rights in the SRBA may be precluded. This conflicts with the requirements of the SRBA statute."

**XV. UWID'S CONTACTS WITH THE DEPARTMENT PRIOR TO THE INITIATION OF THIS
CONTESTED CASE CONSTITUTE A VIOLATION OF DUE PROCESS.**

Summary of issue

"United Water Idaho violated the procedural and substantive due process rights of our clients by its extensive ex parte contacts with the Idaho Department of Water Resources Director and senior management officials concerning the legal and factual issues involving the IMAP and interpretations of the statutory language of the Municipal Water Rights Act of 1996 and other provisions of Idaho law. Such actions resulted in predecisional interpretations or rulings by the Director and other senior management officials which directly impact the IMAP proceeding. In essence, United Water Idaho conducted an ex parte declaratory proceeding before the Department in violation of the Department's rules and our clients' constitutional and statutory rights."

CHM:kdtd

MEMORANDUM

TO: Protestants

FROM: Christopher H. Meyer *CHM*
John M. Marshall

RE: UWID - IMAP
Our File No. 30-71

DATE: January 17, 2003

SUMMARY OF ISSUES IDENTIFIED BY PROTESTANTS

The outline below has been prepared by counsel for United Water Idaho Inc. in compliance with the Hearing Officer's instruction to provide a summary of issues to all Protestants. This outline is based on a summary of issues, and supplementary explanation, both of which were prepared by Angela Schaer Kaufmann on behalf of Pioneer and Settlers Irrigation Districts. Quotations below are from those documents. The issues are presented in the same order as appears there.

This summary also reflects conversations with counsel for these and each of the other Protestants over the course of the past few months.

References to "Protestants" are generic and are not meant to identify the particular Protestant that may have raised the point or taken that position.

In the hope of advancing the discussion as efficiently as possible, we have included a brief response to each of the issues identified. In doing so, we hope to persuade as many of the Protestants as possible that the issue should be dropped. To the extent any Protestant continues to believe that the issue should be presented to the Hearing Officer, we invite each Protestant to use their submission to explain why they believe our explanation is wrong or inadequate.

I. THE NOTICE OF THE IMAP PROCEEDING DID NOT COMPLY WITH IDAHO CODE SECTIONS 42-222 AND 42-203A.

A. UWID had "significant input into drafting of the notice."

Summary of issue

Protestants contend that the UWID had "significant input into the drafting of the notice" and that the "notice was changed after it had been sent for publication." This, they contend, violates Idaho Code section 42-203A (which is referenced by section 42-222), in that the statute requires that "the department of water resources shall prepare a notice in such form as the department may prescribe"

UWID comment

There is no dispute that UWID had discussions with the Department about the content of the notice prior to publication. This was disclosed and documented in UWID's voluntarily submitted production entitled *Correspondence Dealing with Implementation of the 1996 Municipal Water Rights Act and United Water Idaho's Integrated Municipal Application Package (October 9, 1997 to April 26, 2002)*. See tabs 26 through 37.

It is not apparent to the us why or how such communication violated the notice provisions in the statute. The statute provides that the department prepare the notice. The correspondence shows plainly that it did. The statute does not prohibit applicants from offering a proposed notice (which UWID did not do). It does not prohibit the Department from sharing a proposed notice with the applicant (which did occur). Nor does it prohibit the applicant from offering changes to the proposed draft (which did occur). Nor does it prohibit the Department from accepting those proposed changes (some of which it did; some of which it did not).

Protestants also contend that "notice was changed after it had been sent for publication," but, despite requests for clarification, have offered no explanation of why this has any legal relevance. In any event, the facts are as follows: The Department emailed a draft of the announcement to UWID counsel on March 26, 2002. The following day, IDWR sent the unchanged request for publication to various newspapers. Later that day, UWID offered a few suggestions for wording change, and a change from street address to post office box. Some of these suggested changes were accepted, and others were not.

B. Other defects may be discovered later.

Summary of issue

Protestants also state that "it may become apparent that certain aspects of the notice were inaccurate."

UWID comment

Unless the Protestants can be substantially more specific, UWID would suggest that general reservations of rights such as this do not belong in the list of issues.

II. THE WATER RIGHTS DESCRIBED IN THE IMAP INVOLVE QUANTITIES GREATER THAN 50 CFS, REQUIRING LEGISLATIVE APPROVAL.

Summary of issue

Protestants contend that the IMAP violates Idaho Code section 42-108, which requires prior legislative approval of water right transfers exceeding 50 cfs.

UWID comment

The IMAP plainly states that it is a collection of over a hundred individual transfer and amendment applications, none of which involve water rights in excess of 50 cfs. UWID paid a separate filing fee for each application. These fees totaled over \$10,000. UWID could have submitted separate application packages for each change. Instead its applications were consolidated and organized into a single IMAP in order to avoid pointless repetition and to assist both the Department and the public in understanding what is being sought. Protestants suggestion would stretch the statute to punish those who proceed in such a straightforward manner.

III. THE IMAP WAS NOT SUBMITTED ON FORMS FURNISHED BY THE DEPARTMENT.

Summary of issue

Idaho Code sections 42-222 and 42-221 require that applications be submitted on forms furnished by the Department. Protestants contend that the IMAP submission was not on such forms. Moreover, Protestants contend that the IMAP did not contain all of the information required by those forms.

UWID comment

Tabs H and I of the IMAP contain the forms used by UWID. They are word processing documents modeled on the forms used by the Department. UWID has followed this practice for a number of years without objection from the Department. Inquiries of the Protestants as to exactly what is wrong with the forms, or what information is missing, failed to shed any further light on the issue. At this point, UWID considers this issue too vague to be included in the list of issues before the Hearing Officer.

IV. THE 1996 ACT DOES NOT ALLOW A MUNICIPAL PROVIDER TO BRING EXISTING WATER RIGHTS ALREADY WITHIN ITS PORTFOLIO WITHIN THE COVERAGE OF THE ACT.

Summary of issue

The 1996 Municipal Water Rights Act applies only to new appropriations and to changes in water rights. It does not apply to water rights that already serve municipal purposes.

UWID comment

Protestants are correct that the 1996 Act does not “automatically” apply to a municipal providers’ portfolio of water rights. That is one of the reasons the IMAP was filed. Plainly, the Act does apply to changes in water rights, however.

When the nature of use of the water right is to be changed to municipal purposes and some or all of the right will be held by a municipal provider to serve reasonably anticipated future needs, the municipal provider shall provide to the department sufficient information and documentation to establish that the applicant qualifies as a municipal provider and that the reasonably anticipated future needs, the service area and the planning horizon are consistent with the definitions and requirements specified in this chapter.

Idaho Code § 42-222 (emphasis supplied).

Protestants focus on the language emphasized above, and urge that the entire 1996 Act therefore cannot ever be employed with respect to existing portfolios of water rights by the very municipal entities it was designed to govern, protect and restrict. UWID contends that this violates both the spirit and the intent of the statute, and is inconsistent with the Department’s longstanding interpretation of the law.

The spirit of the 1996 Act is plainly to provide a comprehensive, but incremental, replacement of the common law protections accorded under the Growing Communities Doctrine. By limiting the Act’s application to water rights obtained by appropriation or change, the Legislature allowed a municipal provider to set the pace of transition from common law to statute. It was not intended to permanently create two classes of municipal water rights. Consequently, the reference to change in nature of use to “municipal purposes” should be understood as a change to bring the water right within the new definition of municipal purposes provided for the first time under the 1996 Act, along with the associated and interconnected new definitions of service area, municipal provider, municipality, planning horizon, and reasonably anticipated future needs. Finally, the change applications included in the IMAP entail other changes as well, such as the change in points of diversion and place of use.

V. THE IMAP DOES NOT PROVIDE A SUFFICIENT DESCRIPTION OF THE PROPOSED SERVICE AREA.

Summary of issue

Protestants contend that the IMAP does not provide a sufficient description of the proposed service area.

UWID comment

The 1996 Act does not say much about what an applicant is expected to submit, or in what form. Consequently, UWID sought guidance from the Department on this point in connection with earlier applications. The Department advised UWID that the company should submit a single "global" description of service area for all water rights subject to the 1996 Act, and that the description should be modified and updated from time to time to keep it current.

UWID has submitted two such descriptions, which have been provided to all Protestants. It is not apparent to UWID in what way these descriptions are inadequate. To date, Protestants have offered no specifics. Consequently, UWID suggests that this item be deleted from the list of issues before the Hearing Officer.

VI. THE IMAP IS NOT CONSISTENT WITH PLANNING LIMITATIONS IN THE COMPREHENSIVE PLANS OF THE VARIOUS MUNICIPALITIES TO BE SERVED.

Summary of issue

The length of time, geographical area, population projections and other planning data for calculating reasonably anticipated future needs are limited to the comprehensive plans and planning horizons of cities within the service area. The IMAP exceeds these statutory parameters and fails to satisfy the mandates of Idaho Code section 42-202B(5).

UWID comment

The statute does not require the "population and planning data" to be found in the comprehensive plans. It certainly was not in this case; it was developed independently at considerable cost. Rather, the statute requires that the projections not be inconsistent with, i.e., contradicted by, the comprehensive plans. The IMAP itself contains an entire chapter on the subject of consistency. The Protestants' comment above fails to explain what is wrong with that analysis.

VII. THE IMAP WILL AUTHORIZE AN EXPANSION OF CONSUMPTIVE USE.

Summary of issue

The IMAP would change the place of use for UWID's water rights to the "expanding service area" authorized by the 1996 Act. This expansion will result in an increase in consumptive use, as defined in Idaho Code section 42-202B(1).

UWID comment

Protestants are correct that no change in a water right may result in an increase in consumptive use. Unlike some of the Protestants, UWID has long held to that position. However, nothing in the IMAP would result in an increase in consumptive use.

Most of the rights in UWID's portfolio are already municipal under the common law definition. The 1996 Act codified the existing special treatment accorded to these rights, and thus does not constitute an expansion.

Those few rights in UWID's portfolio which were not created as municipal rights will retain quantity limitations to ensure that no enlargement occurs. The change of a water right originally created with a fixed place of use to an expanding municipal place of use is expressly contemplated and authorized by the 1996 Act. Consequently, it and does not constitute an enlargement in and of itself. Again, however, the quantity of diversion may not be increased. This is the approach the Department has consistently employed. See, for example, the conversion of the City of Eagle's water rights to municipal use.

VIII. THE 1996 ACT DOES NOT ALLOW AMENDMENTS OF PERMITS.

Summary of issue

An application to amend a permit cannot be considered under the 1996 Act. No statutory provision allows this approach.

UWID comment

The 1996 Act expressly contemplates applications for appropriations. Idaho Code § 42-202. An applicant is broadly authorized to amend an application for appropriation either before or after a permit is issued. Idaho Code §§ 42-211. Nothing in the 1996 Act restricts this in any way. The Department has issued guidance expressly concluding that permits may be amended to bring them within the 1996 Act:

Question 1: Can a municipal provider apply the concepts to an existing permit?

An existing permit, held by an entity that qualifies as a municipal provider under Section 42-202B(3) [later amended to (4)], Idaho Code, can be amended to provide for RAFN [reasonably anticipated future needs] over a PH [planning horizon] if the permit was issued prior to the effective date of the municipal provider amendments and proof of beneficial use has not been submitted for the permit. Permits issued after the effective date of the amendments may not be amended because the permit holder had the opportunity to use the provisions when the permit was obtained.

Water Rights for Municipal Use, Memorandum from L. Glen Saxton to Water Allocation Bureau at 2 (Mar. 18, 1998).

It is UWID's position that the guidance memorandum is correct in the main point that a permit may be amended to bring it within the 1996 Act, but is incorrect in purporting to deny the right to amend a permit issued after 1996. Mr. Saxton's observation that the applicant "had the opportunity" but failed to use it, makes no sense. In virtually every application for amendment of a permit, the applicant previously "had the opportunity" to do the thing she now seeks to do. The point of an application to amend is that the applicant has now determined to take advantage of that opportunity. There is no legal basis for preventing an applicant from changing its mind in this way. The guidance memorandum is simply wrong in purporting to prohibit this type of amendment.

IX. PROTESTANTS' DUE PROCESS CHALLENGE SHOULD BE RESOLVED AT THE OUTSET.

Summary of issue

The due process issue (see Section XV below) should be decided by the Hearing Officer before any others.

UWID comment

As noted by the Protestants, this is not really an issue, but a procedural suggestion. UWID has no problem with this approach, if the Protestants insist on pursuing it.

X. UWID HAS PARTIALLY FORFEITED ITS WATER RIGHTS.

Summary of issue

Protestants contend that the "right associated with a particular well should be deemed forfeited when that well is abandoned, and the right was not transferred to another point of diversion."

UWID comment

UWID has not abandoned any of its points of diversion. It may decide to do so in the context of conditions on the IMAP approval.

Protestants are correct that municipal water rights may be forfeited, but only where it can be shown that the municipal provider no longer needs the water right to meet future needs. Municipal water providers in Idaho and throughout the West are afforded special treatment under water law¹ In Idaho, this common law protection is often referred to as the "growing

¹ Janis E. Carpenter, *Water for Growing Communities: Refining Tradition in the Pacific Northwest*, 27 *Env'tl. L.* 127 (1997); Wells A. Hutchins, *The Idaho Law of Water Rights*, 5 *Idaho L. Rev.* 1, 44 n.211 (1968); A.

communities doctrine.”² In a nutshell, it allows and encourages municipal providers to acquire water rights to serve long term needs. So long as there is a reasonable basis for holding such water rights, they are deemed to be beneficially used (and thus not subject to forfeiture). This is so even if they are not pumped for years. The idea is that the very presence of a stable, long term municipal supply is essential to the success of every growing community.

XI. IF APPROVED, THE FORCAST OF FUTURE NEEDS SHOULD BE PERIODICALLY REEVALUATED.

Summary of issue

Protestants have inquired as to “[w]hat is the appropriate length of time for reviewing and reevaluating the accuracy of the planning horizon and projected water needs (i.e., at the end of the planning horizon, every five years, every three years, etc.).”

UWID comment

The statute does not speak to this. UWID agrees that some periodic reevaluation of the company’s long term needs is appropriate, and has agreed to condition the IMAP approval accordingly. Every ten years would seem appropriate to UWID, but this a matter which calls for an exercise of discretion by the Director.

XII. UWID’S REQUEST FOR INTEGRATED POINTS OF DIVERSION (“TPD”) IS UNLAWFUL.

Summary of issue

Protestants state: “During our meeting on December 20, 2002, you [UWID] inquired whether our concerns on this issue remained if the proposed conditions were taken into account. First, as you are aware, the conditions have not yet been approved by the Districts, and will likely take a great deal of work and revision if they are to be adopted. Second, the Districts have significant concerns about the effect of the integrated points of diversion system in relation to the

Lynne Krogh-Hampe, *Injury and Enlargement in Idaho Water Right Transfers*, 27 Idaho L. Rev. 249, 294-95 (1990); Frank J. Trelease, *Preferences to the Use of Water*, 27 Rocky Mtn. L. Rev. 133, 138 (1955); *State of Washington, Dept. of Ecology v. Theodoratus*, 135 Wash.2d 582, 957 P.2d 1241 (1998); *City and County of Denver v. Sheriff*, 96 P.2d 836, 841 (Colo. 1939); *City of Pocatello v. Murray*, 206 F. 72, 80 (D. Idaho 1913), *aff’d*, 214 F. 214 (9th Cir. 1914); *Village of Peck v. Denison*, 92 Idaho 747, 450 P.2d 310 (1969); *Beus v. Soda Springs*, 62 Idaho 1, 107 P.2d 151 (1940).

² We employ the phrase “growing communities doctrine” to capture the essential points of the case law. The phrase has now been picked up by the Washington Supreme Court, *State of Washington, Dept. of Ecology v. Theodoratus*, 135 Wash.2d 582, 957 P.2d 1241 (1998). Although this shorthand description has not yet been employed by the Idaho Supreme Court, we think it captures the idea better than the phrase “great and growing cities doctrine” which originated in Colorado. Whatever it is called, the doctrine plainly applies to all growing communities, large and small, not just to great cities. For instance, in *Village of Peck v. Denison*, 92 Idaho 747, 751, 450 P.2d 310, 314 (1969), the doctrine was applied to a community of 200 inhabitants.

conjunctive administration of ground and surface rights. It is not only rights in the immediate vicinity which might be affected, but those further away as well."

UWID comment

The IPD issue, and associated proposed conditions, is discussed thoroughly in our prior submission entitled *An Overview of United Water's "IMAP" Including an Explanation of the "Integrated Points of Diversion" Issue* (July 15, 2002). Protestants' comment on this issue fails to explain what is wrong with that explanation or where they would differ in the analysis.

In any event, the Department routinely approves integrated points of diversion and is fully capable to enforcing its conditions in those rare instances (during an area-wide curtailment) when they would benefit UWID.

XIII. MUNICIPAL PROVIDERS ARE NOT ENTITLED TO OBTAIN WATER RIGHTS BASED ON THE CAPACITY OF A WELL.

Summary of issue

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

UWID comment

The Department's guidance squarely addresses this point. See *Handbook on Idaho Water Law*. It is not clear whether Protestants are unfamiliar with the Department's policy governing the quantification of municipal water rights, or whether they believe that the Department has been acting illegally for the last century.

XIV. APPROVAL OF THE IMAP MIGHT PRECLUDE SRBA REVIEW.

Summary of issue

"If the IMAP proceeding is completed before the water rights included within the IMAP reach the SRBA, review of the water rights in the SRBA may be precluded. This conflicts with the requirements of the SRBA statute."

UWID comment

How the SRBA court interprets its authority to re-evaluate water transfers approved by the Department is not an issue properly presented in this proceeding.

XV. UWID'S CONTACTS WITH THE DEPARTMENT PRIOR TO THE INITIATION OF THIS
CONTESTED CASE CONSTITUTE A VIOLATION OF DUE PROCESS.

Summary of issue

"United Water Idaho violated the procedural and substantive due process rights of our clients by its extensive ex parte contacts with the Idaho Department of Water Resources Director and senior management officials concerning the legal and factual issues involving the IMAP and interpretations of the statutory language of the Municipal Water Rights Act of 1996 and other provisions of Idaho law. Such actions resulted in predecisional interpretations or rulings by the Director and other senior management officials which directly impact the IMAP proceeding. In essence, United Water Idaho conducted an ex parte declaratory proceeding before the Department in violation of the Department's rules and our clients' constitutional and statutory rights."

UWID comment

UWID has been entirely forthcoming about its communications with the Director. Indeed, we made a public record of them from the start. Some of these have been published as appendices to the *Handbook on Idaho Water Law*, available in the Idaho Supreme Court Library and made available to each of the Protestants. Moreover, as a further courtesy to the Protestants, the various written communications, many of which summarize meetings with the Director and/or his staff, were compiled and made available to the Protestants in a bound volume entitled *Correspondence Dealing with Implementation of the 1996 Municipal Water Rights Act and United Water Idaho's Integrated Municipal Application Package (October 9, 1997 to April 26, 2002)*. This correspondence documents the fruitful collegiate discussions that occurred over a number of years. No promises or commitments were made by the Director or his staff regarding final action on the IMAP.

Ex parte contacts with the hearing officer are barred by statute in formal adjudicatory hearings before state agencies. Idaho Code § 67-5253. IDWR's regulations expressly prohibit such contacts in contested cases. IDAPA 37.01.01.417.

In contrast, *ex parte* contacts with agency staff are not prohibited at the water right application stage. In fact, applicants often make inquiries of staff (including potential decision makers) in the course of developing a water right application. In our experience, it is the better practice to do so. Once an application is protested, however, the rules governing contested cases kick in. From that point forward, no further communications with any potential agency decision-maker should occur on an *ex parte* basis.

UWID has adhered by these rules.

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

**PIONEER IRRIGATION DISTRICT AND
SETTLERS IRRIGATION DISTRICT'S
RESPONSE TO UWID'S SUMMARY OF THE
ISSUES**

Pioneer Irrigation District and Settlers Irrigation District (collectively the
"Districts"), by and through their counsel of record Moffatt, Thomas, Barrett, Rock & Fields,
Chtd., hereby provide this response to United Water Idaho's "Summary of the Issues." As
explained in the Statement of the Issues, filed concurrently herewith, Pioneer and Settlers are
filing this Response because they are concerned that they will lose their opportunity to respond to
the explanations provided in the "Summary of the Issues" if they do not respond at this time.
The Districts also wish to note that the Statement of the Issues from the Districts has been

provided with no additional comment. It is a mere recitation of the Districts' statement of the issues.

The Districts also reiterate that they do not, at this time, intend to waive any issues. The Districts remain open to discussions, but wish to preserve the listed issues at this time. Moreover, they reserve the right to provide additional analysis and argument on these points at an appropriate time, and/or as ordered by the Hearing Officer.

RESPONSE

In this Response, the Districts will simply list the issue, followed by their view of the issue, in response to UWID's "Summary of the Issues."

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

The Districts' concerns include the fact that in their view, the notice does not accurately reflect all of the aspects of the IMAP. Moreover, the Districts' remain concerned about the participation by UWID in drafting the notice.

Issue 2 The water rights described in IMAP involve quantities greater than 50 cfs. Legislative approval, as required by I.C. section 42-108 appears to be a pre-condition to processing of the IMAP application.

*While individual water rights may be involved, the clear intent of the Applicant (and of the IMAP) is to operate its system in an integrated manner, with integrated points of diversion. The very title of the underlying application is the **Integrated Municipal Application Package**. This is one application involving over 100 water rights. The total quantity of the water rights at issue clearly exceeds 50 cfs, and legislative approval is required.*

Issue 3 The IMAP was not submitted "upon forms furnished by the Department;" that failure constitutes a procedural due process defect which invalidates the IMAP process.

Tabs H & I of the IMAP may have been modeled upon Department forms, but a careful review shows that they do not contain all of the information required by the Department forms.

Issue 4

I.C. section 42-222 cannot be used when the municipal provider is not changing the nature of use to municipal. In other words, the statute does not allow a municipal provider to bring existing water rights under the umbrella of the municipal water rights act, when the current nature of use of the water rights is municipal.

Idaho Code section 42-222 provides that:

When the nature of use of the water right is to be changed to municipal purposes and some or all of the right will be held by a municipal provider to serve reasonably anticipated future needs, the municipal provider shall provide to the department sufficient information and documentation to establish that the applicant qualifies as a municipal provider and that the reasonably anticipated future needs, the service area and the planning horizon are consistent with the definition and requirements specified in this chapter.

I.C. § 42-222(1) (emphasis added).

UWID urges that "[t]he spirit of the 1996 Act is plainly to provide a comprehensive, but incremental replacement of the common law protections accorded under the Growing Communities Doctrine." First, the Districts dispute the extent to which the Growing Communities Doctrine, as described by UWID, may have existed in Idaho prior to the 1996 Municipal Water Rights Act. Second, the canons of statutory construction dictate that Section 42-222 be read according to its plain meaning. The plain meaning of Section 42-222 is that in order for the 1996 MWRA to apply, the nature of use of each water right must be undergoing a change to the nature of use.

Issue 5

The IMAP application does not provide a sufficient description of the service area "to identify the general location where the water right is to be used and the types and quantity of uses that generally will be made."

As with many of the issues in this list, UWID suggests that it is the duty of the Districts or other Protestants to point out specific deficiencies. To the contrary, it is the duty of UWID, as the Applicant, to go forward with evidence that it has fully complied with Idaho Law.

Issue 6

The length of time, geographical area, population projections and other planning data for calculating reasonably anticipated future needs are limited to the comprehensive plans and planning horizons of cities within the service area. The IMAP exceeds these statutory parameters and fails to satisfy the mandates of I.C. section 42-202B(5).

The relevant comprehensive plans cover a period of time far less than 50 years, the planning horizon requested by UWID. Therefore, it is difficult to see how the IMAP can be consistent with the relevant comprehensive plans. Additionally, the proposed 50 year service area of UWID extends far beyond the Boise City Area of Impact component of its Comprehensive Land Use Plan.

Issue 7 The IMAP expansion of place of use and service area for the water rights, will cause expansion of the consumptive use component of the water rights due to lawn and landscape irrigation. This would constitute an improper enlargement in use of the original rights in violation of I.C. section 42-222(1).

UWID has not provided comment to this particular issue.

Issue 8 An application to amend a permit can not be considered under the Municipal Water Rights Act. No statutory provision allows this approach. Therefore, the permit amendment portion of IMAP should be separated and proceed as a distinct proceeding.

UWID cites IDWR Guidance in support of its argument that it can amend permits under MWRA. That Guidance is not a duly-promulgated rule, nor is a judicial decision or even a decision made after a contested case with appropriate public notice. Therefore, its precedential value is highly uncertain at best.

Moreover, statutes must be construed according to their plain language. Under the plain reading of the Idaho Code, amendments to permits do not fall within the MWRA.

Issue 9 As a matter of procedure, the validity of these proceedings due to the potentially inappropriate contact with the IDWR Director should be decided before any other issues are considered.

UWID did not object to this approach.

Issue 10 Forfeiture —

- a. Municipal water rights can be forfeited. Some of the IMAP water rights have been forfeited.
 - (1) The right associated with a particular well should be deemed forfeited when that well is abandoned, and the right was not transferred to another point of diversion.
 - (2) Is the “stepwise function” an appropriate way to determine whether municipal water rights have been forfeited?

- (3) If the “stepwise function” is not an appropriate way to determine whether and when municipal water rights have been forfeited, should a “point by point” system be used?

The Districts view this as a central part of the dispute in this matter. UWID has replied to the forfeiture issue in a general way. At this point, the Districts note that the forfeiture doctrine should apply with full force to municipal water rights prior to inclusion into the “reasonable future needs” protective status.

Issue 11 What is the appropriate length of time for reviewing and reevaluating the accuracy of the planning horizon and projected water needs (i.e., at the end of the planning horizon, every five years, every three years, etc.).

UWID does not disagree that a period of review is appropriate, and suggests five years. The Districts believe a shorter period of time would be appropriate.

Issue 12 The “integrated points of diversion” approach in IMAP does not comport with Idaho law, specifically the prior appropriation doctrine.

- a. Senior water rights will not be protected from interference and injury under the approach outlined by UWID.
- b. The integrated points of diversion approach in IMAP does not adequately protect senior water rights (whether ground or surface water, and not just from well interference).
- c. Phrased differently, the integrated points of diversion approach in IMAP violates the prior appropriation doctrine and conjunctive administration of water rights.

In response to these issues, UWID cites to An Overview of United Water’s “IMAP” Including an Explanation of the “Integrated Points of Diversion” Issues (July 15, 2002). While that document may be part of IDWR’s file; it is not part of the official record in this matter.

That issue aside, after reviewing the Overview, the Districts remain concerned about the effect of the integrated points of diversion approach on conjunctively administered water rights, as well as on all water rights throughout Basin 63.

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

In response to this issue, UWID cites its counsel's Handbook on Idaho Water Law, which is not part of the official record in this matter. UWID also cites to the "Department's guidance." That guidance is not a duly-promulgated rule, a duly-adopted statute, a judicial opinion, or even an official IDWR decision made in a contested case after proper public notice. The issue remains to be decided in an appropriate forum.

Issue 14 If the IMAP proceeding is completed before the water rights included within the IMAP reach the SRBA, review of the water rights in the SRBA may be precluded. This conflicts with the requirements of the SRBA statute.

UWID asserts that this issue is not properly presented in this proceeding.

Issue 15 United Water Idaho violated the procedural and substantive due process rights of our clients by its extensive ex parte contacts with the Idaho Department of Water Resources Director and senior management officials concerning the legal and factual issues involving IMAP and interpretations of the statutory language of the Municipal Water Rights Act of 1996 and other provisions of Idaho law. Such actions resulted in pre-decisional interpretations or rulings by the Director and other senior management officials which directly impact the IMAP proceeding. In essence, United Water Idaho conducted an ex parte declaratory proceeding before the Department in violation of the Department's rules and our clients' constitutional and statutory rights.

The Districts remain concerned about this issue. The proper forum to decide it is upon a briefing schedule in accordance with IDWR's Rules of Procedure.

CONCLUSION

Once again, this Response does not represent the Districts' full argument on these issues; many, if not all, of them deserved to be fully brief and argued. The Districts reserve their right to provide additional argument on any or all issues raised herein.

DATED this 31st day of January 2003.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By Scott L. Campbell
Scott L. Campbell - Of the Firm

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 31st day of January 2003, I caused a true and correct copy of the foregoing **PIONEER IRRIGATION DISTRICT AND SETTLERS IRRIGATION DISTRICT'S RESPONSE TO UWID'S SUMMARY OF THE ISSUES** to be served by the method indicated below, and addressed to the following:

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

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

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

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

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

☒ U.S. Mail, Postage Prepaid
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☐ Facsimile

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

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

Nampa & Meridian Irrigation District,
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Pacific Northwest Region , Boise Field Office
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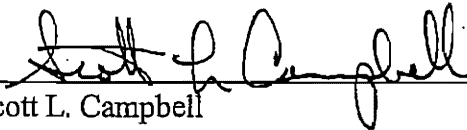
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Scott L. Campbell

○

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FEB 28 2003

Attorneys for Pioneer Irrigation District
and Settlers Irrigation District

Givens Pursley, LLP

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18946.26

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

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

**PIONEER AND SETTLERS' LIST OF
ADDITIONAL ISSUES**

Pioneer Irrigation District and Settlers Irrigation District ("Districts"), by and through their counsel of record Moffatt, Thomas, Barrett, Rock & Fields, Chtd., and in accordance with the Hearing Officer's statements at the February 21, 2003, PreHearing Conference ("February 21 Conference"), hereby file this list of additional issues.

The Districts are filing this list because they want to ensure that the issues they raised in their Protest (filed April 18, 2002) remain at the fore of the issues to be considered in this matter. Upon review, the Districts believe that the issues they raised in the "Statement of the Issues" are reflected in the list of issues the Hearing Officer presented for discussion at the

February 21 Conference. It may be that the Hearing Officer considers the following issues to be encompassed within his list of issues, and if that is the case, the Districts simply need to know that.

Nevertheless, the Districts want to make clear that they still consider the following issues to be central to resolution of this matter.

1. **Failure to Comply with the Requirements of Idaho Code sections 42-202 and 42-202B**

Some of the sub-issues which the Districts raised in the context of this greater issue are listed in the Hearing Officer's list of issues, and won't be repeated here. However, for clarity's sake, the District's state that the following are issues:

- a. Whether the future uses or needs projected by the IMAP are reasonably anticipated future needs.
- b. Whether UWID has met its burden of providing sufficient information and documentation to establish that the reasonably anticipated future needs, the service area, and the planning horizon are consistent with the definition and requirements of Idaho Code Title 42, Chapter 2.

2. **Failure to Comply with the Idaho Constitution and Idaho Code section 42-106**

This issue is whether the permit-amendment and transfer applications request approval of out of priority diversions, in violation of Article 15 of the Idaho Constitution and Idaho Code section 42-106.

Included within that issue is the question of water availability, which is Issue 16 in the Hearing Officer's list of issues. However, the Districts' concerns are broader, and encompass constitutional issues as well as the practical issue of water availability.

3. **Failure to Comply with the Requirements of Idaho Code section 42-211**

The issue is whether the IMAP meets the requirements of Idaho Code section 42-211, in that if the amendments to permits sought in the IMAP are approved as requested, the approval and amendments would result in the use of more water than originally, permitted, and the rights of others will be adversely affected thereby.

4. Failure to Comply with the Requirements of Idaho Code section 42-222

Some of the 42-222 criteria are clearly listed in the Hearing Officer's list of issues. Those which are not so clearly listed are whether the transfers sought in the IMAP, if approved, will result in injury to other water rights, are inconsistent with the conservation of water resources in Idaho, and are contrary to the local public interest.

The injury criteria may very well be encompassed within the issues in the Hearing Officer's list of issues. The list of issues (Issue-20) includes the local public interest, but the issue appears to pertain solely to the City of Boise. It should be expanded.

5. The IMAP is an Improper, Complicated, All-in-One Package, and is Contrary to the Letter and Spirit of the Municipal Water Rights Act of 1996

The issue is as stated in the heading. The issue may, in many ways, be one of practicality as much as legality. Moreover, the Hearing Officer is clearly aware of the issue, as indicated by his comments during the PreHearing Conference. Nevertheless, the Districts simply wish to ensure that the issue is not waived.

The Districts appreciate the opportunity to clarify their list of issues, and to take steps to ensure that no issue is waived early in the process. The IMAP is a significant, complicated, precedent-setting matter, and care must be taken that it is processed with all due consideration.

DATED this 27th day of February 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 27th day of February 2003, I caused a true and correct copy of the foregoing **PIONEER AND SETTLERS' LIST OF ADDITIONAL ISSUES** to be served by the method indicated below, and addressed to the following:

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

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

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

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

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Gary D. Smith
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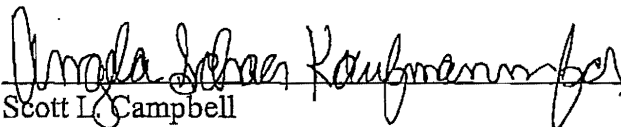

Scott L. Campbell

EXHIBIT C

From: JMM
To: "Andy Waldera" <AJW@moffatt.com>
Cc: CHM; Scott Rhead <scott.rhead@unitedwater.com>
Sent: 8/06/2003 9:15AM
Subject: RE: Re: Deposition dates in IMAP matter

Andy,

We have reviewed the proposed 30(b)(6) notice you sent. You previously have noticed Greg Wyatt and Scott Rhead for depositions. They will be available on these same dates to answer questions regarding the corporate decision to proceed with the IMAP, UWID's corporate structure and its service area. However, UWID will not designate witnesses for deposition regarding UWID's financial condition, rate bases, income data, infrastructure costs, rates or "any and all matters" related to the PUC. These topics are not reasonably related to the IMAP, and we do not believe the Hearing Officer will permit questioning on them.

Hopefully we can agree on a reasonable scope for a 30(b)(6) deposition of United Water. Perhaps the best the way to achieve this is for Scott to call Chris. The Hearing Officer has made it clear in these proceedings that he is not interested in discovery disputes. It would be unfortunate if we have to approach him with this issue. However, we will have to move for a protective order unless we can agree on an amended scope.

Also, I need to notice Don Reading for a deposition today. Do you have his available dates?

- John

--- Original Message---

To:
From: "Andy Waldera"
Sent: 8/05/2003 2:18PM
Subject: Re: Deposition dates in IMAP matter

>> John,

>>

>> Scott is currently at a meeting this afternoon but asked me to inform
>> you that we will provide you with dates and times by the end of today.
>> However, please view the attached 30(b)(6) Notice draft directed to
>> United Water Idaho, Inc. and provide us with available date(s) and
>> time(s) as well.

>>

>> Thank you,

>>

>> Andy Waldera

>>

>> >>> "John M. Marshall" 8/5/2003 9:19:53 AM >>>

>> Andrew,

>>

>> We still have not heard back from you on proposed deposition dates for
>> Pioneer's and Settlers' witnesses. We need to hear from you today.
>> Otherwise, with discovery deadlines fast approaching, we will have to
>> schedule depositions without the benefit of your input.

>>

8/07/2003

>> Thank you,

>>

>> John Marshall

>>

>> *****

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>> (208) 345-2000 (800) 422-2889

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