BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER OF WATER RIGHTS IN THE NAME OF UNITED WATER IDAHO, INC., INTEGRATED MUNICIPAL APPLICATION PACKAGE (IMAP)	)	**ORDER DENYING JOINT PETITION FOR EXPEDITED CONSIDERATION OF MOTION FOR STAY**

On March 28, 2003 several protestants in this matter jointly filed a *Motion to Stay and Memorandum in Support* (the "Stay Motion") requesting that the processing of the applications in this matter be stayed. The Applicant, United Water Idaho Inc., filed *UWID's Response to Motion to Stay*, urging caution and arguing that, at most, only those issues that will also be raised in the Snake River Basin Adjudication be stayed in this proceeding. This Hearing Officer in the *Third Prehearing Order and Notice of Prehearing Conference* issued on June 20, 2003, indicated that additional information was needed before a ruling would be made on the Stay Motion, provided a time period for discovery, and directed the parties to provide information related to any alleged forfeiture of water rights to the Idaho Department of Water Resources ("IDWR") on September 12, 2003.

The Applicant has now filed *UWID's Supplemental Response to Motion to Stay, Proposing a Partial Stay* which argues that issues regarding its applications be trifurcated, that two sets of those issues be stayed, and the third set of issues be processed by IDWR. The City of Boise joined with the Applicant. Other parties responding to Applicant's proposal argued that a complete stay of this matter is still appropriate and opposed Applicant's proposed trifurcation of issues. A number of parties filed a *Joint Petition for Expedited Consideration of Motion for Stay* (Petition for Expedited Consideration) requested that a decision on the Stay Motion be issued as soon as possible.

The *Third Prehearing Order* controls the course of these proceedings, unless modified for good cause. IDAPA 37.01.01.513. The Petition for Expedited Consideration requests the Hearing Officer amend the *Third Prehearing Order* and immediately rule on the Stay Motion because (1) all parties now agree that some form of stay is appropriate, (2) a stay would materially benefit the orderly disposition of this matter, and (3) a stay would potentially reduce or eliminate the expenditure of legal expenses and costs by the parties in intensive, pending discovery.

The Applicant is entitled to have the Idaho Department of Water Resources process its applications. *See* Idaho Code §42-222(1) ("Upon the receipt of any protest, accompanied by the

statutory filing fee as provided in section 42-221, Idaho Code, it shall be the duty of the director of the department of water resources to investigate the same and to conduct a hearing thereon.") The Applicant does not, however, have the right to control the form and timing of the Department of Water Resources' investigation and hearing. Conversely, the Applicant may request that the Department of Water Resources hold its applications without processing them, so long as such a complete stay does not affect the fundamental rights of the protestants.

The Applicant has not agreed to a complete stay of this matter. As a result, the *Third Prehearing Order* was designed to assist the Department of Water Resources in determining the manner in which it will hear the applications at issue. That the Applicant now agrees that a portion of this matter should be stayed does not constitute good cause to amend the *Third Prehearing Order*. At the prehearing conference set for September 19, 2003, the parties will discuss how a stay, if any, should be structured.[1]

The Petition for Expedited Consideration asserts that "an expedited decision on the *Motion for Stay* would materially benefit the orderly disposition of this matter...." The *Third Prehearing Order* was designed to allow the parties to complete discovery, submit information to the Hearing Officer, and then discuss the orderly completion of this matter at a prehearing conference. The conclusory assertion that a prompt decision on the Stay Motion will better accomplish this purpose does not constitute good cause to amend the *Third Prehearing Order*.

Finally, the parties assert that a decision on the Stay Motion would potentially reduce or eliminate the expenditure of legal expenses and costs by the parties in intensive, pending discovery. Discovery in this proceeding ends on August 29, 2003. Following that date issues that are not stayed can proceed expeditiously to hearing without further discovery. For issues that are stayed pending trial in the Snake River Basin Adjudication, the parties will be able to utilize the discovery from this proceeding in the Snake River Basin Adjudication. The expenditures of legal expenses and costs by the parties in pending discovery should not be wasted.

Based upon the foregoing the Petition for Expedited Consideration is **DENIED**.

Dated this 26th day of August, 2003.

Peter R. Anderson
Hearing Officer

[1] The parties should be prepared to discuss going to hearing as soon as November, 2003. *See Sagewillow, Inc. v. Idaho Department of Water Resources*, 2202 Opinion No. 44 (April 10, 2003)(Suggesting that IDWR does not necessarily have to investigate forfeiture issues in a transfer proceeding.)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of August, 2003, the above and foregoing document was served on the following by faxing a copy of the same to the noted fax number of the following:

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Deborah J. Gibson

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OF THE STATE OF IDAHO

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

The Idaho Department of Water Resources (IDWR) hearing officer in the above titled matter issued a recommended interlocutory order on June 23, 2003, requiring republication of the notice of the applications for transfer and amendment filed by United Water Idaho, Inc. On July 1, 2003, the cities of Eagle, Kuna, Middleton, Star, and the Star Sewer and Water District, among the protestants in this matter, filed a *Statement in Support of Recommended Order Requiring Republication of Notice.* A recommended order may only become final or effective upon review by the agency head in accordance with Idaho Code § 67-5244. Given the substance of the recommended order, it is important that the Director of IDWR issue an order adopting, amending, or rejecting the recommended interlocutory order before the merits of the contested case are heard.

Idaho Code § 42-222, governing applications for transfer, states that notice of an application for transfer must be published "in the same manner as applications under section 42-203A, Idaho Code." Idaho Code § 42-211, governing applications for amendments of permit, states that "notice shall be published in the same manner as provided by section [42-203A] . . . ." Idaho Code § 42-211 adds that the "director of the department of water resources shall give such notice to other affected water users as he deems appropriate . . . ."

Idaho Code § 42-203A states:

> Upon receipt of an application to appropriate the waters of this state, the department of water resources, shall prepare a notice in such form as the department may prescribe, specifying: (a) the number of the application; (b) the date of filing thereof; (c) the name and post-office address of the applicant; (d) the source of the water supply; (e) the amount of water to be appropriated; (f) in general the nature of the proposed use; (g) the approximate location of the point of diversion; (h) and the point of use. [emphasis added].

There are inherent differences between the respective important components of an application to appropriate water and an application to transfer a water right. These differences

are not recognized by the Idaho Code § 42-222 cross-reference to Idaho Code § 42-203A for a publication standard. However, the language in Idaho Code § 42-203A(1) requiring a notice "in such form as the department may prescribe" does allow for these differences to be accommodated. In a footnote on page one of the recommended order, the hearing officer recognized that the fundamental differences between an application to appropriate water and an application to transfer an existing water right require a measure of flexibility in applying the Idaho Code § 42-203A standard for publication to a notice of application for transfer:

> The "same manner" language in I.C. § 42-222 must mean something different than "exactly the same manner", because a transfer is fundamentally different than a new appropriation. For instance, I.C. § 42-203A(1)(e), requiring that the notice of an application to appropriate water specify "the amount of water to be appropriated" cannot apply to a transfer where additional water cannot be appropriated. Likewise, the date of an application to transfer a water right is irrelevant, whereas it establishes the priority date for a new appropriation.

Applications for transfer or amendment differ from an application to appropriate water in other ways. An application to appropriate water proposes a new diversion of water that, in most cases, has not physically impacted the hydrologic system in the area where the new use is proposed, and the new proposed use has not impacted the local users. An application for transfer or amendment proposes to change the place of use, point of diversion, nature of use, or season of use of an existing water right. An application for transfer and amendment could include a combination of these changes. If the application proposes a change in the point of diversion, the proposed change could physically impact the hydrologic system. Some applications, such as the IMAP, do not propose changes in the points of diversion, but changes to other elements of the water rights. If an application for transfer or amendment does not propose a change in the point of diversion, the wells already exist and presumably have been producing water as authorized by the existing water rights.

If the IMAP applications for transfer and amendment are approved in the future, the approval could result in diversion of more water from a single well than has traditionally been diverted from the well. This could change the impact on the hydrologic system. Nonetheless, the hydrologic effect should already have been partially felt. Furthermore, the United Water wells already exist and the well locations are more evident to interested parties than a proposed well where none has previously existed.

At the time of notice preparation, IDWR consciously considered the level of detail that would be required and the form of the notice that would most clearly describe to the public what was being proposed. Because the IMAP application did not propose the drilling of new wells, IDWR concluded that a general reference to the existing wells of United Water was a sufficient description of the "approximate location" of the points of diversion for these particular

applications for transfer and amendment. IDWR determined that the public would be more likely to read and thus better appreciate the intent of the applications if the notice appeared as a shortened, narrative description of the proposal.

Notice of the applications was published in four newspapers having some of the largest distribution in the state. Notice was published in the Idaho Statesman, the newspaper with the largest circulation in Ada County. For interested persons who wanted additional detail, the legal notice cited an internet address where the individual public land survey descriptions of the points of diversion could be reviewed. Copies of the IMAP applications were placed in each of the four regional offices of IDWR so interested persons could review the information, and people were encouraged to contact the regional offices if they wanted more information. Finally, IDWR issued a press release discussing the intent of the applications and encouraging interested persons to seek more information.

The hearing officer cited authority stating that the "notice must afford an opportunity to a person, by the exercise of reasonable diligence, to determine if his property would be affected . . . ." The IMAP notice, as prescribed and published by IDWR, contained sufficient description of United Water's transfer and permit amendment applications and sufficient direction for obtaining further information to provide adequate legal notice to other potentially affected water right owners.

ORDER

IT IS HEREBY ORDERED that the Recommended Order Requiring Republication of Notice is **REJECTED,** and IDWR therefore will not republish notice as recommended by the hearing officer.

IT IS FURTHER ORDERED that pursuant to IDWR Rule of Procedure 710 this is an interlocutory order that does not decide all previously undecided issues presented in the proceeding and is not subject to review by reconsideration or appeal until a final decision is issued by IDWR. The Director may review this interlocutory order pursuant to Rule 711, IDAPA 37.01.01711.

Dated this 6th day of August, 2003.

Karl J. Dreher
Director

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 7th day of August, 2003, the Interlocutory Order was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

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Deborah J. Gibson

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Water Allocation Bureau

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OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER OF WATER RIGHTS IN THE NAME OF UNITED WATER IDAHO, INC., INTEGRATED MUNICIPAL APPLICATION PACKAGE (IMAP)	)))))))	**THIRD PREHEARING ORDER AND NOTICE OF PREHEARING CONFERENCE**

This *Third Prehearing Order* issues pursuant to IDAPA 37.01.01.513, and shall control the course of these proceedings.

IT IS HEREBY ORDERED that the following shall apply to proceedings in this matter. Documents to be filed with the Department of Water Resources ("IDWR") and served on the parties must be filed and served in accordance with the rules of the IDWR at the central office of IDWR on or before the days listed below.

1. Discovery/Information Disclosure

Several of the Protestants filed a *Motion To Compel/Alternative Motion for Order Authorizing Discovery*, dated January 16, 2003, which requested authority to conduct discovery in this matter. Formal discovery is authorized at this time. No motion to compel will be granted on informal requests for information—such requests are just that, informal. This constitutes a ruling on the January 16, 2003, motion. Discovery shall be completed by **August 29, 2003**. Discovery requests shall be timely served to allow adequate time to comply with this deadline

2. Coordination with the Snake River Basin Adjudication

The following issue was raised in the listing of issues:

Issue 14 Approval of the IMAP might preclude SRBA review.

The Snake River Basin Adjudication (SRBA) District Court indicated on March 24, 2003, that it will not stay its proceedings while this administrative matter proceeds. As a consequence several parties to this matter filed a *Motion to Stay and Memorandum In*

Support on March 31, 2003, requesting a stay of this matter until partial decrees are entered and final in the SRBA, with regard to all of United Water Idaho's SRBA claims.

The Hearing Officer needs additional information before ruling on the *Motion to Stay and Memorandum In Support.* On or before **September 12, 2003**, after discovery has been completed, any party alleging that any of United Water Idaho's water rights involved in this matter have been forfeited shall file with IDWR a list of the water right alleged to be forfeited and the factual basis for such forfeiture, including the time period of non-use and whether all or a part of the right has been forfeited.

3. Motions

Motions may be filed with IDWR at any time pursuant to the rules of IDWR and a copy must be served on the hearing officer at:

Peter R. Anderson
729 W. Braemere Rd.
Boise, ID 83702

The fourteen-day time period set forth in IDAPA 37.01.01.565 applies to all motions.

NOTICE OF PREHEARING CONFERENCE

PLEASE TAKE NOTICE, that an informal Prehearing Conference is set in this matter for **September 19, 2003 starting at 8:30 AM,** in Conference Rooms A&B at the offices of the Idaho Department of Water Resources, State Office, 1301 N. Orchard St., Boise, Idaho. The prehearing conference will be held in accordance with the provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code, and the adopted Rules of Procedure of the department. IDAPA 37.01.01. A copy of the rules may be obtained from the department upon request.

The prehearing conference will be conducted in accordance with the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the department within twenty-four hours prior to the hearing. Inquires about scheduling, hearing facilities, etc., should be directed to Deborah Gibson, Administrative Assistant, Idaho Department of Water Resources, 1301 N. Orchard St., Boise, Idaho 83706-2237, telephone: (208) 327-7953, fax: (208) 327-7866.

Dated this 20th day of June, 2003.

Peter R. Anderson
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of June, 2003, the above and foregoing, was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER OF WATER RIGHTS IN THE NAME OF UNITED WATER IDAHO, INC., INTEGRATED MUNICIPAL APPLICATION PACKAGE (IMAP)	))))))	**NOTICE OF PROPOSED DEFAULT ORDER DISMISSING PROTEST OF BOISE-KUNA IRRIGATION DISTRICT**

On March 31, 2003, United Water Idaho , Inc. ("UWID") filed *UWID's Motion to Dismiss Boise-Kuna Irrigation District's Protest* (UWID's Motion to Dismiss) based upon Boise-Kuna Irrigation Districts failure to participate in this matter. Boise-Kuna Irrigation District did not file a response to the motion with fourteen days as provided in IDAPA 37.01.01.270.02.

Having reviewed UWID's Motion to Dismiss and finding good cause therefor, the Idaho Department of Water Resources ("IDWR") gives the Protestant Boise–Kuna Irrigation District NOTICE that the following default order is proposed to be issued pursuant to IDAPA 37.01.01.700 because of the failure of Boise-Kuna Irrigation District to respond to the written information inquiry contained in the *Prehearing Order* dated October 11,2002, requesting Boise-Kuna Irrigation District's statement of issues.

PROPOSED DEFAULT ORDER

Based upon Protestant Boise-Kuna Irrigation District's failure to respond to the Hearing Officer's written information inquiry contained in October 11, 2002, *Prehearing Order* it is ORDERED that Boise-Kuna Irrigation District's protest is DENIED.

RIGHT TO CHALLENGE

Pursuant to IDAPA 37.01.01.701, Protestant Boise-Kuna Irrigation District has seven (7) days after the serve of this *Notice of Proposed Default Order Dismissing Protest of Boise-Kuna Irrigation District* to file a written petition requesting that the default order not be entered. The petition must state the grounds why the petitioning party believes that default should not be entered.

Dated this 20th day of June, 2003.

Peter R. Anderson
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of June, 2003, the above and foregoing, was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

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STATE OF IDAHO

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The Applicant United Water Idaho, Inc. (UWID) filed *UWID's Notice of Withdrawal of Four Applications for Amendment of Permit from the IMAP and Motion to Amend the IMAP* with the Idaho Department of Water Resources on January 21, 2003. The withdrawal of the four applications was effective fourteen days after filing pursuant to IDAPA 37.01.01.305. No procedural objections were raised regarding the proposed amendments. Parties' expressed a desire to receive a clear indication of how the amendments would change the IMAP, and overarching concerns about publication of notice and the form of the application in this matter, described as preliminary procedural issues in the *Second Prehearing Order.*

In the *Second Prehearing Order* and the *Order Regarding New IMAP Applications* UWID was directed to mark the requested amendments in the IMAP to allow parties to respond to the changes in the context of three preliminary procedural issues. The proposed changes have been indicated on the IMAP. *UWID's Notice of Compliance with Order Regarding New IMAP Applications* dated April 11, 2003

Having disposed of the motions filed on the preliminary procedural issues, and noting that concerns regarding notice would be resolved by the *Recommended Order Requiring Republication of Notice* issued concurrently with this Order, it is hereby ORDERED that the motion to amend in *UWID's Notice of Withdrawal of Four Applications for Amendment of Permit from the IMAP and Motion to Amend the IMAP* is GRANTED.

Dated this 20th day of June, 2003.

PETER R. ANDERSON
HEARING OFFICER

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OF THE STATE OF IDAHO

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

This matter involves a set of applications called the IMAP filed by United Water Idaho Inc. ("UWID") with the Idaho Department of Water Resources ("IDWR") to transfer some of UWID's water rights under I.C. § 42-222, and amend some of UWID's water right permits under I.C. § 42-211. I.C. § 42-222 provides, in pertinent part, that "[u]pon receipt of such application it shall be the duty of the director of the department of water resources ... to provide notice of the proposed change in the same manner as applications under section 42-203A, Idaho Code." (Underlining added). This language suggests that the notice required for a § 42-222 transfers should comply with the provisions of § 42-203A(1), (2) and (3) to the extent possible, considering the differences between a transfer and a new appropriation.[1] Further, I.C. § 42-203A(1) makes clear that the form of the notice is within the discretion of IDWR:

> Upon receipt of an application to appropriate waters of this state, the department of water resources, shall prepare a notice in such form as the department may prescribe, specifying (a) the number of the application; (b) the date of filing thereof; (c) the name and post-office address of the applicant; (d) the source of the water supply; (e) the amount of water to be appropriated; (f) in general the nature of the proposed use; (g) the approximate location of the point of diversion; (h) and the point of use.

[1] The "same manner" language in I.C. § 42-222 must mean something different than "exactly the same manner", because a transfer is fundamentally different than a new appropriation. For instance, I.C. § 42-203A(1)(e), requiring that the notice of an application to appropriate water specify "the amount of water to be appropriated" cannot apply to a transfer where additional water cannot be appropriated. Likewise, the date of an application to transfer a water right is irrelevant, whereas it establishes the priority date for a new appropriation.

(Underlining added). I.C. § 42-211 also provides that manner of notice of an application to amend a permit is within IDWR's discretion: "The director of the department of water resources shall give such notice to other affected water users as he deems appropriate ...." (Underlining added).

The director's discretion is controlled both by statutory language as well as by the requirements of due process. Idaho Const. Art. I, § 13 and U.S. Const. Amend. V & XIV. In the context of water rights decisions, the due process standard for land use decisions appears apt:

> The notice must afford an opportunity to a person, by the exercise of reasonable diligence, to determine if his property would be affected by the determination for which application has been made, and to what extent.

101A C.J.S., Zoning and Land Planning, § 208, at 613 (1979).

Several of the parties to this matter have filed motions challenging the notice that was published in this matter. Although the Hearing Officer denied those motions in the *Order on Preliminary Procedural Issues,* filed concurrently with this order, the examination of the notice during consideration of those motions did reveal a flaw in the notice published in this matter. As a consequence the Hearing Officer issues this interlocutory, recommended order on his own initiative to ensure that this matter is completed under a lawful procedure. *Shokal v. Dunn*, 109 Idaho 330, 334 (1985).

I.C. § 42-203A(1)(g) directs that notice for an application to appropriate water include "the approximate location of the point of diversion." Notice of an application for transfer should provide this information in the same manner because the impacts on persons whose property would be affected by granting a transfer is similar to the impact of a new appropriation. Likewise, notice of an application to amend a permit should provide information regarding the approximate location of the point of diversion. Otherwise, persons or entities diverting water from the same source of water may not be able to assess the impact of the applied for change, and not be on notice to investigate the application further.

An examination of the notice published in this matter reveals that it does not state the approximate location of UWID's existing wells involved in the transfer. A new property owner, a newcomer to the Boise area, or someone who is not intimately aware

of UWID's well sites may not know that an existing UWID well is located nearby. If that was the case, the notice published for the IMAP would not provide them with reasonable notice to investigate whether a change to a UWID water right or permit applicable to that well would affect their property. An example of notice published by IDWR that provides an adequate approximate location of the wells involved in a similar application, was provided by parties in the preliminary procedural issues motions and is attached to this *Order* as Exhibit A.

RECOMMENDED ORDER

Based upon the foregoing it is ORDERED that notice of the IMAP shall be republished to fully state the approximate location of the points of diversion of UWID's existing wells.

PROCEDURAL RIGHTS

This is an interlocutory, recommended order of the Hearing Officer. It will not become final without action of the Director of the Idaho Department of Water Resources. Any party may file a petition for reconsideration of this recommended order with the Hearing Officer within fourteen (14) days of the service date of this order. The Hearing Officer will dispose of any petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. *See* Section 67-5243(3) Idaho Code.

Within fourteen (14) days after (a) the service date of this recommended order, (b) the service date of a denial of a petition for reconsideration from this recommended order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this recommended order, any party may in writing support or take exceptions to any part of this recommended order and file briefs in support of the party's position with the Director or Director's designee. If no party files exceptions to

the recommended order with the Director or Director's designee, the Director or Director's designee will issue a final order within fifty-six (56) days after:

i. The last day a timely petition for reconsideration could have been filed with the hearing officer;

ii. The service date of a denial of a petition for reconsideration by the hearing officer; or

iii. The failure within twenty-one (21) days to grant or deny a petition for reconsideration by the hearing officer.

Written briefs in support of or taking exceptions to this recommended order shall be filed with the Director or Director's designee. Opposing parties shall have fourteen (14) days to respond. The Director or Director's designee may schedule oral argument in the matter before issuing a final order. The Director or Director's designee will issue a final order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless waived by the parties or for good cause shown. The agency may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order.

Dated this 20th day of June, 2003.

Peter R. Anderson
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of June, 2003, the above and foregoing, was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

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

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

KATHLEEN MARION CARR MSC-020
OFFICE OF THE FIELD SOLICITOR
US DEPT OF INTERIOR
550 W FORT ST MSC-020
BOISE ID 83724

ALBERT BARKER
BARKER ROSHOLT & SIMPSON
PO BOX 2139
BOISE ID 83701-2139

CHARLES L HONSINGER
RINGERT CLARK CHARTERED
PO BOX 2773
BOISE ID 83701-2773

BRUCE M SMITH
TAMMY A ZOKAN
MOORE SMITH BUXTON & TURCKE
225 N 9TH ST STE 420
BOISE ID 83702

SCOTT L CAMPBELL
MOFFATT THOMAS
PO BOX 829
BOISE ID 83701-0829

MATT WILDE
CITY OF BOISE
PO BOX 500
BOISE ID 83701-0500

JOSEPHINE P BEEMAN
BEEMAN & ASSOCIATES PC
409 W JEFFERSON
BOISE ID 83702

ROBERT W TALBOY
ELLSWORTH KALLAS & TALBOY
2402 W JEFFERSON ST
BOISE ID 83702

ED SQUIRES
HYDRO LOGIC INC
1002 W FRANKLIN ST
BOISE ID 83702-5431

GARY SPACKMAN
IDWR -WESTERN REGION MANAGER
2735 AIRPORT WAY
BOISE ID 83705-5082

Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

EXHIBIT A

Pub. Feb. 27, Mar. 6, 13, 2003 15808

LEGAL NOTICE
NOTICE OF TRUSTEE'S SALE

On Thursday, the 3rd day of July, 2003, at the hour of 10:00 o'clock a.m. of said day at the law office of Skinner Fawcett, 515 S. 6th St., Boise, in the County of Ada, State of Idaho, Charles W. Fawcett, as Successor Trustee, will sell at public auction, to the highest bidder, for cash, in lawful money of the United States, all payable at the time of sale, the following described real property situated in the County of Ada, State of Idaho, and described as follows, to-wit:

LOT 30 IN BLOCK 2 OF DEERHORN SUBDIVISION NO. 1, ACCORDING TO THE OFFICIAL PLAT THEREOF, FILED IN BOOK 79 OF PLATS AT PAGES 8506 THRU 8508 RECORDS OF ADA COUNTY, IDAHO.

The Successor Trustee has no knowledge of a more particular description of the above-referenced real property, but for purposes of compliance with Section 60-113 Idaho Code, the Successor Trustee has been informed that the street address of 411 W. Trophy Ave., Kuna, Idaho, is sometimes associated with said real property.

Said sale will be made without covenant or warranty regarding title, possession or encumbrances to satisfy the obligation secured by and pursuant to the power of sale conferred in the Deed of Trust executed by SHANE M. ANDERSON and ERIKA A. ANDERSON, Husband and Wife, Grantor, to Charles W. Fawcett, Successor Trustee, for the benefit and security of M&T MORTGAGE CORPORATION, recorded June 16, 2000, as Instrument No. 100047265, and re-recorded on August 14, 2000, as Instrument No. 100064082, Mortgage records of Ada County, Idaho, and assigned to the Idaho Housing and Finance Association by Assignment of Deed of Trust recorded on June 16, 2000, as Instrument No. 100047266, and re-recorded on August 14, 2000, as Instrument No. 100064083, Mortgage records of Ada County, Idaho. THE ABOVE GRANTOR IS NAMED TO COMPLY WITH SECTION 45-1506 (4)(a), IDAHO CODE. NO REPRESENTATION IS MADE THAT THEY ARE, OR ARE NOT, PRESENTLY RESPONSIBLE FOR THIS OBLIGATION.

The default for which this sale is to be made is the failure to pay when due monthly installment payments under the Deed of Trust Note dated June 13, 2000 in the amount of $845.00 each, for the months of October, 2001 through February, 2003, inclusive, and for each and every month thereafter until date of sale or reinstatement. All delinquent payments are now due, plus accumulated late charges, plus any costs or expenses associated with this foreclosure. The accrued interest is at the rate of 7.25% per annum from September 1, 2001. The principal balance owing as of this date on the obligation secured by said Deed of Trust is $95,958.25, plus accrued interest at the rate of 7.26% per annum from September 1, 2001.

DATED This 27th day of February, 2003.
CHARLES W. FAWCETT,
a Member of the Idaho State Bar
SUCCESSOR TRUSTEE

Pub. Mar. 6, 13, 20, 27, 2003 15836

Engineers, Inc. Copies of these documents may be obtained from JUB ENGINEERS, Inc. upon a non-refundable payment of Fifty Dollars ($50.00) for each set. Payment is to be made to JUB ENGINEERS, Inc.

In determining the lowest responsive bid, the Owner will consider all acceptable bids on a basis consistent with the bid package. The Owner will also consider whether the bidder is a responsible bidder.

Before a contract will be awarded for work contemplated herein, the Owner will conduct such investigation as is necessary to determine the performance record and ability of the apparent low bidder to perform the size and type of work specified under this Contract. Upon request, the bidder shall submit such information as deemed necessary by the Owner to evaluate the bidder's qualifications.

All bids must be signed and accompanied by evidence of authority to sign.

Bids must be accompanied by Bid Security in the form of either a bid bond on the enclosed form, certified check, cashiers check or cash in the amount of 5 percent of the amount of the bid proposal. Said bid security shall be forfeited to the City of Glenns Ferry as liquidated damages should the successful bidder fail to enter into contract in accordance with their proposal as specified in the instruction to Bidders.

The City of Glenns Ferry reserves the right to reject any or all proposals, waive any nonmaterial irregularities in the bids received, and to accept the proposal deemed most advantageous to the best interest of the City of Glenns Ferry.

Dated: February 28, 2003.
Glenn Thompson, Mayor
City of Glenns Ferry

Pub. Mar. 6, 13, 20, 27, 2003 15831

LEGAL NOTICE
NOTICE OF PROPOSED CHANGE OF WATER RIGHT TRANSFER NO. 70420

CITY OF COEUR D ALENE WATER DEPARTMENT, 1000 W HUBBARD STE 130, COEUR D ALENE ID 83814, has filed Application No. 70420 for changes to the following water rights within KOOTENAI County:

Right No. 95-2198
Priority 12/13/1966
Total Amount 5.12 CFS
Point(s) of Diversion S12 T50N R04W

Right No. 95-7181
Priority 3/14/1972
Total Amount 5.73 CFS
Point(s) of Diversion S1 T50N R04W

Right No. 95-8647
Priority 3/19/1990
Total Amount 7.30 CFS
Point(s) of Diversion S35 T51N R04W

Right No. 95-8938
Priority 2/8/1996
Total Amount 4.57 CFS
Point(s) of Diversion S36 T51N R04W

Right No. 95-2133
Priority 7/21/1960
Total Amount 2.27 CFS
Point(s) of Diversion S1 T50N R04W

Right No. 95-7142
Priority 5/3/1971
Total Amount 2.45 CFS
Point(s) of Diversion L1 S4 T50N R04W

Right No. 95-8565
Priority 12/7/1987
Total Amount 7.55 CFS
Point(s) of Diversion L1 S4 T50N R04W

Right No. 95-8672
Priority 8/27/1990
Total Amount 3.00 CFS
Point(s) of Diversion S12 T50N R04W

Right No. 95-9007
Priority 1/25/1999
Total Amount 7.80 CFS
Point(s) of Diversion S26 T51N R04W

Right No. 95-2111
Priority 4/20/1955
Total Amount 3.00 CFS
Point(s) of Diversion S12 T50N R04W

Note: The source for all rights is ground water and the use is municipal. Place of use for all of above is within service area of applicant.

The purpose of the transfer is to change a portion of the above rights as follows:

To consolidate the water rights of the City of Coeur d'Alene to allow use of portions of all the rights from any well within the City's system.

The proposed new well will be located within L6 (NESE) S35 T51N R04W, and will be used to provide for diversion capacity redundancy within the system.

THERE WILL BE NO INCREASE IN THE DIVERSION RATE OR THE DIVERSION VOLUME.

Remark: Municipal use is within the service area of applicant.

Protests may be submitted based on the criteria of Sec 42-222, Idaho Code. Any protest against the proposed change must be filed with the Department of Water Resources, Northern Region, 1910 Northwest Blvd, Suite 210, Coeur D' Alene ID 83814 together with a protest fee of $25.00 for each application on or before March 17, 2003. The protestant must also send a copy of the protest to the applicant.

KARL J DREHER, Director

Pub. Feb. 27, Mar. 6, 2003 15769

J.D. Statesman 3-6-03

Thence N 89°45'47" W 975.80 feet to the intersection of said southerly right of way and the easterly right of way of N. Hartman Street;

Thence N 03°56'02" W 50.13 feet to the intersection of the easterly right of way of N. Hartman Street and the northerly right of way of W. Curtisian Avenue;

Along the northerly right of way of W. Curtisian Avenue the following:

Thence S 89°45'47" E 973.55 feet to a point;

Thence S 69°49'05" E 68.89 feet to a point of curvature;

Thence 8.70 feet along a curve to the left, said curve having a radius of 25.00 feet, a central angle of 19°56'42", a tangent of 4.40 feet and a chord of 8.66 feet which bears S 79°47'26" E to a point of tangency;

Thence S 89°45'47" E 205.54 feet to a point of curvature;

Thence 15.75 feet along a curve to the left, said curve having a radius of 10.00 feet, a central angle of 90°15'13", a tangent of 10.04 feet and a chord of 14.17 feet which bears N 45°06'36" E to a point of tangency on the west right of way of Curtis Road;

Thence S 0°01'00" E 62.09 feet to the Real Point of Beginning of this description. This parcel contains 63151 square feet (1.45 acres), more or less. Containing 1.45 acres, more or less. Subject to all Covenants, Rights, Rights of Way and Easements.

The public hearing will be held in the auditorium of the Ada County Highway District, 3318 East 37th Street, Garden City, Idaho on Wednesday, March 12, 2003, at 6:30 p.m., or as soon thereafter as the matter may be heard, at which hearing any person may appear and show cause why the exchange should not be made.

ADA COUNTY HIGHWAY DISTRICT
By: William J. Schweitzer, Director

Pub. Feb. 20, 21, March 6, 2003 15663

Pub. Feb. 14, 21, 28, March 6, 2003 15661

LEGAL NOTICE
NOTIFICATION OF SIX-MONTH REVIEW HEARING

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT IN THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

In the Interest of:
JULIANA CALDERON

A Child Under
Eighteen Years of Age

TO: KELLY ANNE REILLY, the natural mothe of said Juliana Calderon:

YOU AND EACH OF YOU, will hereby tak notice;

That a Petition under the Child Protectiv Act was filed in the above-entitled matter o the 19th day of September, 2000.

That a Six-Month Review Hearing on th Petition has been set for 11:00 a.m. on th 17th day of March, 2003, in the Magistrat Court, Ada County Courthouse, 200 We Front Street, Boise, Idaho 83702. Unles you file a responsive pleading within twent (20) days, a default judgement may b entered against you.

That you have the right to be represente by Counsel of your choosing or upon goo cause shown, providing you are financial needy, the Court may appoint Counsel t act in your behalf.

DATED This 3rd day of March, 2003.
J. DAVID NAVARRO
Clerk of the District Court
Ada County, Idaho Statesman
By: A. Schmidt
Deputy Clerk

Pub. Mar. 6, 13, 2003 158

LEGAL NOTICE
ABANDONED VEHICLE SALE

From March 5, 6, and 7, 2003 between the hours of 8:00 AM and 5:00 PM, bids will accepted for the following described vehicles. The abandoned vehicles described below be sold on an 'AS IS - WHERE IS basis only. Payment terms are by certified check on Viewing of the abandoned vehicles must be done at the location listed.

White 1984 Ford Escort Idaho license 2CP4719 Registered owner Javier Martinez-Garcia Caldwell ID Tow Lien $999.00 Vehicle may be viewed at Country Repair & 24hr Towing 9717 Hwy 45 Nampa ID

Blue 1988 Chrysler Lebaron Idaho license 2CK1324 Registered owner Jose Luis Lopez-Popoco Caldwell ID Tow Lien $1332.00 Vehicle may be viewed at Road Rescue Towing 547 E Stagecoach Way Kuna ID

Gold 1974 Plymouth Fury Oregon license VKR867 Registered owner Elizabeth A Heredia Ontario OR Tow Lien $1050.00 Vehicle may be viewed at 1710 Whitley Fruitland ID

Sealed bids must be received at the Idaho State Police Region 3 Office at 3056 Elder Boise, ID 83705, Telephone (208) 334-3731, no later than 5:00 p.m. on March 7, 20 Amount of bid does not have to equal or surpass the lien amount. The highest bidder will notified on the first working day following the closing date. We reserve the right to reject accept any or all bids. If you have any questions, contact the Idaho State Police at the ab address and/or telephone number.

Captain Stephen Jones
ISP Region 3 Commander

Pub. Feb. 26, March 5, 6, 7, 2003 15

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

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

The *Second Prehearing Order* issued in this matter identified three preliminary procedural issues raised by the parties:

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

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

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

The *Second Prehearing Order* also set forth a schedule for resolution of these issues. In response parties filed the following motions:

Motion regarding Preliminary Procedural Issues dated March 13, 2003, filed by the cities of Eagle, Kuna, Middleton, Star and the Star Sewer and Water District (collectively, "Eagle's Motion").

Boise Project's Motion to Dismiss dated March 14, 2003, filed by the Boise Project Board of Control (the "Boise Project's Motion").

Motion to Require Publication of Notice of Amended Application dated March 14, 2003, filed by the Nampa & Meridian Irrigation District, the cities of Meridian and Caldwell, and the Terteling entities (collectively, the "Nampa & Meridian Publication Motion").

Motion to Require Legislative Approval dated March 14, 2003, filed by the Nampa & Meridian Irrigation District, the cities of Meridian and Caldwell, and the Terteling entities (the "Nampa & Meridian Legislative Approval Motion").

Motion to Dismiss dated March 14, 2003, filed by the Pioneer Irrigation District and Settlers Irrigation District (the "Districts' Motion").

Objection to Continued Amendment/Supplementation of the IMAP dated March 28, 2003, filed by the Pioneer Irrigation District and Settlers Irrigation District (the "District's Objection").

United Water Idaho, Inc. ("UWID") filed a consolidated response to these motions. Replies were filed by Eagle and the District's. UWID did not file a response to the District's Objection. A hearing was held on these preliminary procedural issues on May 21, 2003, pursuant to notice sent to all parties. Each issue shall be considered in turn.

The Hearing Officer notes that on February 28 and March 24, 2003, during the time period scheduled for motions of the three preliminary procedural issues, UWID filed on its own motion a new set of individual applications, with a stand-alone document titled "Information & Documentation in Support of IMAP". These documents were intended to replace the original IMAP application filed May 4, 2001. In an attempt to keep the record clear the Hearing Officer issued an *Order Regarding New IMAP Applications*. That Order directed that the motions on the preliminary procedural issues would proceed under the original IMAP application document, and the February 28 and March 24, 2003, applications would not be filed until after the consideration of these preliminary procedural issues.

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

Regarding issue 1, that the notice of the IMAP did not comport with the requirements of I.C. § 42-203A, Eagle's Motion asserts that notice "must contain adequate information for the public to understand what UWID is asking IDWR to approve." Eagle's Motion at 2. To be adequate Eagle argues that the notice must include not only the information required by I.C. § 42-203A, but eight other pieces of information. Eagle's Motion at 2-3. Eagle argue "[t]he Protestants have an interest in making certain that this process is completed in a lawful manner since the Protestants would be injured if the IMAP process had to be redone." Eagle's Motion at 4.

The Boise Project's Motion requests that the IMAP be dismissed because "[t]he notice violated the statutory requirements and did not provide enough clearly substantive information for adequate analysis of the application." Boise Project's Motion at 2.

The Nampa & Meridian Publication Motion requests that notice be published of the individual applications filed on February 28 (with an addition on March 24, 2003). The concern expressed in the Nampa & Meridian Publication Motion is "the possibility that failure to publish notice may at sometime in the future be raised by those entities not currently parties to this proceeding as a basis for reopening and relitigating this case." Nampa & Meridian Publication Motion at 2-3.

The Districts' Motion requests that the IMAP proceedings be dismissed because "the notice that was published failed to meet the requirements of Idaho Code section 42-203A." Districts' Motion at 1. The Districts' argue that they have due process rights and the failure to provide the notice required by statute violated due process.

UWID responded, first, by arguing that the governmental entities involved in this case—cities, the sewer and water district, the irrigation districts, the board of control--have no due process rights which could be violated by the failure to provide adequate notice because they are not "persons" under either Idaho Const. Art. I, § 13 or U.S. Const. Amend. V & XIV. UWID argued next that none of the parties have identified any harm to themselves that would lead to standing on the issue of notice. Finally, UWID argued that notice in this matter did comport with the requirements of I.C. § 42-203A and due process.

The flaw inherent in all of the motions regarding notice is identifying any harm caused to the parties by any of the alleged flaws in the notice published in this matter. Due process requires that parties receive notice and that they receive an opportunity to participate in a hearing at a meaningful time and meaningful manner. *Castaneda v. Brighton Corp.*, 130 Idaho 923, 927 (1998). It is a common rule that a person or entity who has received actual notice of a matter and fully participates in the hearing on that matter can not then complain about the adequacy of notice. 3 Koch, *Administrative Law and Practice*, § 12.43, at 296 (1997); 7 Rohan, *Zoning and Land Use Controls* § 51.04[5] (1191). The parties in this matter received actual notice of the IMAP; they filed a protest; they have been afforded the opportunity to meet with UWID to fully discuss the IMAP, *see Prehearing Order*; they have been allowed to designate all issues that concern them; they have fully participated in these preliminary procedural issues; they will receive notice of an evidentiary hearing and they will be allowed to fully participate in that hearing. They cannot now be heard to complain that they received inadequate notice. The current parties cannot object on behalf of unknown third parties or the public regarding notice. In that regard,

however, even if the parties should be allowed to raise the concerns of third parties or the public, those concerns are mooted by the *Recommended Order Requiring Republication of Notice* issued concurrently with this Order.

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

Regard issue 2, Eagle's Motion, the Boise Projects' Motion, the Nampa & Meridian Legislative Approval Motion and the District's Motion argue that the IMAP must receive legislative approval before it may be processed by IDWR, pursuant to I.C. § 42-108, which provides, in part:

> Any permanent or temporary change in period or nature of use in or out-of-state for a quantity greater than fifty (50) cfs or for a storage volume greater than five thousand (5,000) acre-feet shall require the approval of the legislature, ..."

Eagle argues that the IMAP, as an "integrated" application seeks to change a quantity of water greater than 50 cfs, and, therefore, legislative approval must be obtained before IDWR may process the IMAP. For this same reason the Districts request that the IMAP proceedings be dismissed. The Boise Project requests dismissal of the IMAP because it asserts that the IMAP sought changes in period of use, place of use, point of diversion and nature of use for more than 50 cfs. Nampa & Meridian request that legislative approval be obtained before there are any further proceedings because UWID is requesting that more than 50 cfs be brought with the Municipal Water Rights Act of 1996.

UWID responds by arguing (1) the sum of the quantities of all rights in the IMAP involving changes from non-municipal to municipal purposes is less than 50 cfs so I.C. § 42-108 does not apply; (2) none of UWID's individual rights exceed 50 cfs and I.C. § 42-

108 applies to individual applications, so it does not apply to the IMAP; (3) legislative approval, even if required, is not required until after IDWR acts upon the IMAP.

The following table summarizes those water rights in the IMAP for which the period or nature of use is to be changed:[1]

Right Number	Amount (cfs)	Right Number	Amount (cfs)
63-02605	0.90	63-07998	0.91
63-02954	0.90	63-08011	0.38
63-02956	0.56	63-08248	1.16
63-02989	1.00	63-08265	2.37
63-03064	1.22	63-08385	0.25
63-03112	1.44	63-08635	0.89
63-03164	1.73	63-09106	0.15
63-03457	1.67	63-09198	2.45
63-04015	2.00	63-09199	3.12
63-04395	0.75	63-09384	0.58
63-07066	5.80	63-10150	0.08
63-07641 63-08405	3.12	63-10391	0.09
63-07896	0.25	63-11990	0.86
63-07979	1.75	**TOTAL**	**36.38**

Even under the conservative assumption that the instantaneous quantities of the individual rights to be changed in the IMAP should be combined together, the total quantity to be changed to municipal use is much less than 50 cfs. No other rights will have either their

1 This table was developed using Table 3, Revised Purpose of Use, on p. 19, Table 4, Revised Period of Use, on p. 20, and Tab L., Spreadsheet 3: Summary of Post-Change Water Rights of the IMAP. In some instances the quantity to be changed is less than the originally licensed quantity.

period or nature of use changed if the IMAP is granted. Municipal rights will remain municipal. The legislative approval provision of I.C. § 42-108 does not apply to the IMAP.

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

Eagle's Motion, the Boise Project's Motion, and the District's Motion all argued that the IMAP was improperly filed because it was not on forms furnished by the department as required by I.C. §§ 42-211 and 42-222. I.C. § 42-211 provides in relevant part:

> Whenever a permit has been issued pursuant to the provisions of this act, and the permit holder desires to change the place, period, or nature of the intended use, or make other substantial changes in the method of diversion or proposed use or uses of the water, he shall file an application for amendment upon forms to be furnished by the department of water resources ....

(Underscoring added). I.C. § 42-222 provides that applications to change water rights "shall be upon forms furnished by the department ..." Eagle requested relief for such failure is the refiling of the IMAP on IDWR forms. The relief requested by the Districts and the Board of Control for such failure is dismissal of this contested case.

UWID responds by arguing that the IMAP was submitted on computer generated documents modeled on IDWR forms. Further, UWID argues that once the IMAP was accepted by IDWR for filing, the forms used by UWID became forms of the Department. Additionally, to forestall even the necessity of having to consider this issue, UWID attempted to re-submit the IMAP on February 28 and March 24, 2003, listing each of the rights involved on an individual, pre-printed form with the supporting information included in

a separate binder. The District's Objection related to this attempt to re-file the IMAP because they were "prejudiced by the ever-changing nature of this massive proceeding."

A comparison of the Application for Transfer of Water Right filed in IMAP, Tab H, with IDWR's electronically available form reveals that UWID filed an Application for Transfer of Water Right in this matter which provides the substantive information requested by IDWR, in the format established by IDWR in its approved form. *See attached form.* The Application for Transfer form specifically contemplates that multiple water rights may be transferred on one form. Further, although only one Part 2 of the form was filed for this transfer, the instructions for the Application for Transfer form indicates that Part 2 must be completed for the application to be accepted by IDWR. Because IDWR accepted UWID's form for filing, the Hearing Officer concludes that Part 2 of the Application for Transfer for was properly completed. IDWR's form further contemplates the submission of attachments. The remainder of the IMAP constitutes attachments to the Application for Transfer. Finally, even if the Application for Transfer form was technically defective, because the Hearing Officer cannot find that the substantial rights of the parties were affected, any such technical defect will be disregarded. IDAPA 37.01.01.305.

A comparison of the Application for Amendment of a Permit filed in IMAP, Tab I, with IDWR's electronically available forms reveals that UWID filed an Application for Transfer of Water Right in this matter which provides the substance of the information requested by IDWR, but not in the format established by IDWR in its approved form. *See attached form.* The Application for Amendment form contemplates the amendment of a single permit on each application. However, none of the parties filing motions with regards

to issue 3, has shown that their substantial rights will be affected by this defect. On the contrary, by its acceptance of the IMAP for filing, IDWR has affirmatively accepted the form of the IMAP as adequate. Because the Hearing Officer cannot find that the substantial rights of the parties were affected, any technical defect will be disregarded. IDAPA 37.01.01.305.

Although it is unclear what additional relief the District's are requesting in the District's Objection, their concern is understandable. The IMAP, including the executive summary and other attachments, is the pleading in this case. *See* IDAPA 37.01.01.210, .220. Every portion of the IMAP, including the executive summary and other attachments, defines this contested case and may only be amended with leave of the presiding officer. IDAPA 37.01.01.305. UWID must insure that the pleading under which this contested case proceeds is complete and understandable. IDAPA 37.03.08.04.d is instructive in this regard.

ORDER

1. Based upon the foregoing Eagle's Motion, the Boise Project's Motion, the Nampa & Meridian Publication Motion and the District's Motion regarding Issue 1 is DENIED.
2. Based upon the foregoing Eagle's Motion, the Boise Project's Motion, the Nampa & Meridian Legislative Approval Motion and the District's Motion regarding Issue 2 is DENIED.
3. Based upon the foregoing Eagle's Motion, the Boise Project's Motion, and the District's Motion regarding Issue 3 is DENIED.

4. This proceeding shall proceed under the IMAP as it is currently filed. UWID will determine by July 3, 2003, whether it wishes to replace the IMAP with the separate Applications delivered to IDWR on February 28 and March 24, 2003. That decision will be evidenced by filing with IDWR on or before July 3, 2003, either a motion to amend the IMAP by re-submission of applications or a notice of withdrawal of re-submitted applications.

Dated this 20th day of June, 2003.

PETER R. ANDERSON
HEARING OFFICER

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 23rd day of June, 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 H MEYERS
JOHN M MARSHALL
GIVENS PURSLEY
PO BOX 2720
BOISE ID 83701

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

KATHLEEN MARION CARR MSC-020
OFFICE OF THE FIELD SOLICITOR
US DEPT OF INTERIOR
550 W FORT ST MSC-020
BOISE ID 83724

ALBERT BARKER
BARKER ROSHOLT & SIMPSON
PO BOX 2139
BOISE ID 83701-2139

CHARLES L HONSINGER
RINGERT CLARK CHARTERED
PO BOX 2773
BOISE ID 83701-2773

BRUCE M SMITH
TAMMY A ZOKAN
MOORE SMITH BUXTON & TURCKE
225 N 9TH ST STE 420
BOISE ID 83702

SCOTT L CAMPBELL
MOFFATT THOMAS
PO BOX 829
BOISE ID 83701-0829

MATT WILDE
CITY OF BOISE
PO BOX 500
BOISE ID 83701-0500

JOSEPHINE P BEEMAN
BEEMAN & ASSOCIATES PC
409 W JEFFERSON
BOISE ID 83702

ROBERT W TALBOY
ELLSWORTH KALLAS & TALBOY
2402 W JEFFERSON ST
BOISE ID 83702

ED SQUIRES
HYDRO LOGIC INC
1002 W FRANKLIN ST
BOISE ID 83702-5431

GARY SPACKMAN
IDWR -WESTERN REGION MANAGER
2735 AIRPORT WAY
BOISE ID 83705-5082

Deborah J. Gibson

Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

Form 222 November 30, 1999

Page _____ of _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. _____

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1

Name of Applicant _____ Phone _____

Post Office address _____

A. PURPOSE OF TRANSFER

1. ☐ Change point of diversion ☐ Add diversion point(s) ☐ Change place of use

   ☐ Change nature of use ☐ Change period of use ☐ Other _____

2. Describe the reason for the proposed changes _____

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

1. Right Number | Priority | Amount (cfs/ac-ft) | Nature of Use | Period of Use

   _____ _____ _____ _____ _____ to _____

   _____ _____ _____ _____ _____ to _____

   _____ _____ _____ _____ _____ to _____

   _____ _____ _____ _____ _____ to _____

2. Total amount of water being transferred _____ cubic feet per second and/or _____ acre-feet per annum.
3. Source of water _____ tributary to _____
4. Point(s) of Diversion:

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

5. Lands irrigated or place of use:

Twp	Rge	Sec	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	

Total Acres _____

PART 1

6. General Information:

   a. Description of diversion system _____

   _____

   _____

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

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

   _____

   _____

   _____

   _____

   d. Remarks:

   _____

   _____

   _____

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

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

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

_____

_____

_____

_____

_____

_____

_____

_____

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

_____

For the Director

Form 223
07/2000

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

INSTRUCTIONS FOR FILING AN APPLICATION FOR TRANSFER OF A WATER RIGHT

Under Section 42-222, **Idaho Code,** any person entitled to the use of water under licensed, decreed or claimed water right(s) on record with the Department of Water Resources who wishes to change the point of diversion, place of use, period of use or nature of use of a water right(s) must apply to the Department for approval of the change.

The application consists of three parts: Part 1 describes the right(s), or portion thereof, as it will exist after the proposed change. This part will reflect any changes made in the four components of a water right listed above. Multiple water rights can be described in this section.

Part 2 describes a water right as it is presently recorded with the state. When the application proposes the transfer of a portion of the recorded right, that portion proposed to be transferred must be set forth in Part 2. For an application for transfer of multiple water rights, a separate Part 2 must be completed for each water right and made a part of the application.

Part 3 includes a grid for drawing a plat map or attaching a copy of a U.S.G.S. map to illustrate the locations for the point(s) of diversion and place(s) of use identified on Part 1. When a transfer proposes a change in the nature of use, this change should be clarified in Part 3.

PART 1

A. PURPOSE OF TRANSFER

1. Check the item or items that identify the purposes of this transfer.

2. Briefly explain why these changes are being requested.

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

1. Write in the water right number, priority date, amount of water in cubic feet per second or acre feet if for storage, nature of use, and period of use (dates inclusive) for each right or portion of right proposed to be changed as a result of this transfer.

   EXAMPLE:

Right Number	Priority	Amount	Nature of Use	Period of Use
35-00199	*Apr. 1, 1956*	*4.0 cfs*	*Irrigation*	*Apr. 1* to *Nov. 1*
		0.5 cfs	*Stockwater*	*Jan. 1* to *Dec. 1*
35-09001	*Sept. 3, 1985*	*1200 acre-feet*	*Storage for irr.*	*Apr. 1* to *Nov. 1*
		1200 acre-feet	*Irr. from storage*	*Apr. 1* to *Nov. 1*

2. Write the total amount of water to be transferred. A water right given in miner's inches should be multiplied by 0.02 for conversion to cubic feet per second.

   EXAMPLE:

   Total amount of water being transferred: a. *4.0* cubic feet per second and/or *1200* acre feet per annum.

3. Write in the name of the source of the water recorded for diversion and beneficial use under the water right(s) being transferred.

4. Write in the legal description for the point(s) of diversion to be used after the change. Location should be described by U.S Government Lot and/or 40-acre tract subdivision, except for springs, the location of which must be described by ten-acre subdivision. The description must also state the county in which the diversion is located. When the diversion is known locally by a specific name, the name of the diversion should be listed.
   EXAMPLE:

Lot	¼	¼	¼	Sec	Twp	Rge	County	Local name for diversion
4	*SW*	*NE*	*NW*	*14*	*10S*	*14E*	*Twin Falls*	*McCormick Ditch*

5. List the place of use of all water uses identified in item 1, Section B, above. The location should show township, range, section and each 40-acre tract where water will be used. To designate irrigation and irrigation storage, show the number of acres irrigated in each 40-acre tract. For uses other than irrigation, identify each use in the 40-acre tract using the symbol shown on the table below.

EXAMPLE:

Twn	Rge	Sec	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
10S	*14E*	*21*	*40*		*4*	*4*					*4*			*40*		*40*	*40*		*172*
10S	*14E*	*21*	*S*													*S*			

Total acres 172

Use Symbols:

Stockwater – S
Industrial – I
Commercial – C
Mining – X
Wildlife – W
Domestic – D
Fish Propagation – H
Fire Protection – F
Aesthetic – J
Heating – G
Cooling – L
Recreation – R
Power – P
Groundwater Recharge – E
Municipal – M

6. a. Describe the complete diversion system giving sizes and/or dimensions of pumps, pipelines, headgates, ditches, dams, impoundments, etc.

   b. If the application proposes a transfer of water rights from lands subject to legal encumbrance, written permission from the encumbrance holder must be submitted in affidavit form with the transfer application.

   c. If the transfer will change the place of use of the original water right(s), provide a brief statement explaining the future use of the land from which the water right(s) is being removed.

   d. The remarks section should be used to relate any pertinent information which might be helpful to the Department in understanding the purpose, benefits and effects of the transfer.

PART 2

A. DESCRIPTION OF RIGHT AS RECORDED

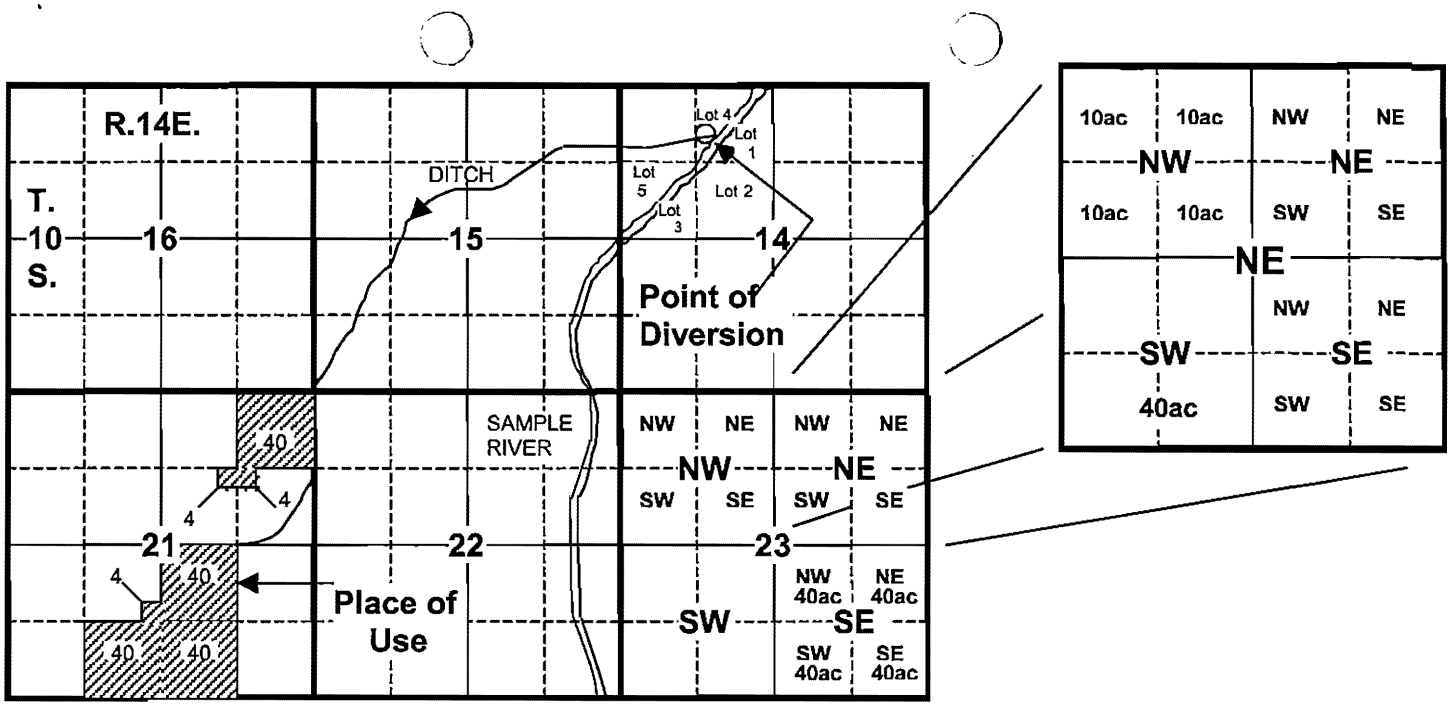
1. Right as evidenced by:

   a. If the right was established by a court decree, show the number of assigned to the right by the Department (if known), the name of the person to whom the right was decreed, the case in which the right was decreed, the date the decree was signed by the judge, the name of the court in which the decree was executed, and the county in which the court was located. (*Example: Decree No.* ***01-0324*** *Decreed to* ***John H. Doe*** *in the case of* ***John J. Doe*** *vs.* ***William R. Smith,*** *dated* ***June 15, 1921,*** *in the* ***4th District Court, County of Cassia.***)

   b. If the right is based on a license obtained through the statutory procedure of the State of Idaho, show the license number.

   c. If the right is based on a "Claim to a Water Right" established by the diversion and beneficial use of water, and is not recorded by a decree of court or license from the Department, indicate the claim number. If no claim has been filed, then a claim must be submitted before filling an Application for Transfer.

   d. If the right was previously transferred through the statutory procedure of the State of Idaho, show the transfer number assigned by the Department.



An aerial photo of the place of use and the point of diversion is always a beneficial addition to an application especially when the section corners have been labeled. An aerial photo, however, is **not** to be considered a substitute for the map.

B. CHANGE IN THE NATURE OF USE

1. When an application is filed intending to change the nature of use of a water right, it is extremely important that the new use be described fully. This description must include the rate at which water will be diverted, and the length of time the diversion will occur. The duration of use must specify how many hours per day the diversion will take place, the number of days the water will be used per year and the month and day when the use will commence and cease.

2. Normally some of the water diverted will return to the hydrologic system either in the form of runoff, seepage, percolation or waste water discharge. Inherent with the change in the nature of use may be a change in the quality of water not consumed. Both the quantity and the quality of return flows should be documented. A legal description of where the return flows are discharged should also be provided.

3. Changing the nature of use for a portion or all of a water right may impact other water users. These effects should be described whether or not they are beneficial or adverse. The application should be signed in the presence of a notary public and submitted to the regional office responsible for administrating water rights in the area where the transfer is proposed. The application must be accompanied by a filing fee, documentation to verify ownership, and, if necessary, authorization for filing the application.

FEE SCHEDULE BASED ON TOTAL QUANTITY TO BE TRANSFERRED

See Fee Schedule

Your application and fee may be submitted to one of the following offices:

Northern Region
Idaho Dept. of Water Resources
1910 Northwest Blvd., Suite 210
Coeur d'Alene, ID 83814
Tel. - 769-1450
FAX - 769-1454

Eastern Region
Idaho Dept.of Water Resources
900 N. Skyline Dr., Suite A
Idaho Falls, ID 83402
Tel. - 525-7161
FAX - 525-7177

Southern Region
Idaho Dept. of Water Resources
1341 Fillmore St., Suite 200
Twin Falls, ID 83301
Tel. - 736-3033
FAX - 736-3037

Western Region
Idaho Dept. of Water Resources
2735 Airport Way
Boise, ID 83705
Tel. - 334-2190
FAX - 334-2348

FEE SCHEDULE

Transfer fees (cfs = cubic feet per second -- AF = Acre feet)

cfs	AF		cfs	AF	
0.00 -- 0.20	0 -- 20	$100.00	11.01 -- 12.00	1101 -- 1200	$690.00
0.21 -- 1.00	21 -- 100	$250.00	12.01 -- 13.00	1201 -- 1300	$730.00
1.01 -- 2.00	101 -- 200	$290.00	13.01 -- 14.00	1301 -- 1400	$770.00
2.01 -- 3.00	201 -- 300	$330.00	14.01 -- 15.00	1401 -- 1500	$810.00
3.01 -- 4.00	301 -- 400	$370.00	15.01 -- 16.00	1501 -- 1600	$850.00
4.01 -- 5.00	401 -- 500	$410.00	16.01 -- 17.00	1601 -- 1700	$890.00
5.01 -- 6.00	501 -- 600	$450.00	17.01 -- 18.00	1701 -- 1800	$930.00
6.01 -- 7.00	601 -- 700	$490.00	18.01 -- 19.00	1801 -- 1900	$970.00
7.01 -- 8.00	701 -- 800	$530.00	19.01 -- 20.00	1901 -- 2000	$1010.00
8.01 -- 9.00	801 -- 900	$570.00	20.01 -- 100.00	2001 -- 10000	*
9.01 -- 10.00	901 -- 1000	$610.00	101.01 -- 500.00	10001 -- 50000	**
10.01 -- 11.00	1001 -- 1100	$650.00	500.01 & over	50001 & over	***

* $1010.00 plus $20.00 for each additional 1.0 cfs or part thereof or 100 acre feet or part thereof over the first 20.0 cfs or 2,000 acre feet.

** $2610.00 plus $10.00 for each additional 1.0 cfs or part thereof or 100 acre feet or part thereof over the first 100.0 cfs or 10,000 acre feet.

*** $6610.00 plus $2.00 for each additional 1.0 cfs or part thereof or 100 acre feet or part thereof over the first 500.0 cfs or 50,000 acre feet.

Form 211 05/03

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Fee_____
Receipt_____
Receipted by_____
Date_____

APPLICATION FOR AMENDMENT OF A PERMIT

Name of Applicant _____ Phone _____

Mailing address _____

I am the owner and the holder of Permit to Appropriate the Public Waters of the State of Idaho No. _____, and request that the permit and permit map be amended and/or changed as follows:

Purpose of Amendment: _____Change point of diversion _____Add point of diversion

_____Change place of use _____Change nature of use _____Change period of use _____Other

1. Point of diversion: _____ ¼ _____ ¼ _____ ¼, Section _____, Township _____, Range _____, B.M., County of _____. Other points of diversion _____

2. Period and nature of use: (irrigation, domestic, stockwatering, industrial, etc.)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per year) (water use) (Begin Month) (End month)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per year) (water use) (Begin Month) (End month)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per year) (water use) (Begin Month) (End month)

3. Place of use or land to be irrigated:

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	

Total number of acres to be irrigated _____

4. a. Who owns the property at the point of diversion? _____

b. Who owns the land to be irrigated or place of use? _____

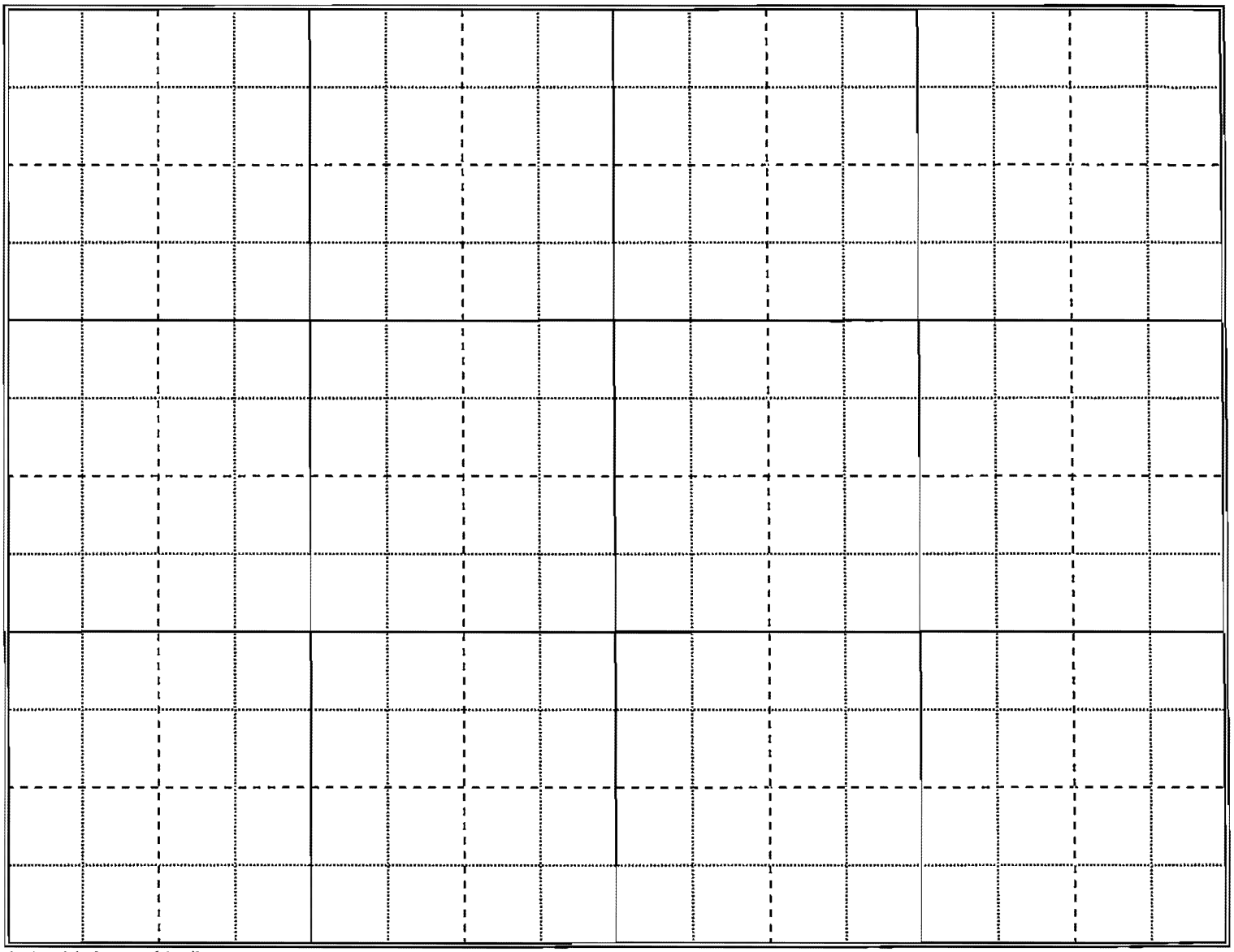
c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing:

_____

_____

_____

Complete the following map by showing land and point of diversion as proposed by this amendment. Show ¼ ¼, section, township, range and ditches. (The smallest subdivision represents 40 acres.)



Scale: 2 inches equal 1 mile

I hereby request approval of this change subject to the fact that no one will be injured by the change, and that the change will be made at my own risk.

Signed this _____ day of _____, 20 _____. _____

Permit Holder Signature (and title, if for a company or organization)

ACTION OF THE DEPARTMENT OF WATER RESOURCES

Preliminary check by _____ Publication prepared by _____ Date_____

Published in _____ Publication dates _____

I, _____, of the Department of Water Resources hereby

_____

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

_____

SIGNATURE

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER OF WATER RIGHTS IN THE NAME OF UNITED WATER IDAHO, INC., INTEGRATED MUNICIPAL APPLICATION PACKAGE (IMAP)	**ORDER DENYING MOTION FOR ORDER AUTHORIZING PRELIMINARY DISCOVERY REGARDING DUE PROCESS**

On September 23, 2002, Pioneer Irrigation District, Settlers Irrigation District, Nampa & Meridian Irrigation District, and the Boise Project Board of Control (hereafter referred to as "Irrigation Protestants") filed a joint *Motion for Order Authorizing Preliminary Discovery* ("*Preliminary Discovery Motion*"). In the motion, the Irrigation Protestants allege that contacts between United Water Idaho, Inc., ("UWID") and the Idaho Department of Water Resources ("IDWR") prior to the filing of UWID's transfer applications violate the Irrigation Protestants' constitutional due process rights. IDWR denies the motion on the grounds that the pre-filing contacts between UWID and IDWR do not violate the Irrigation Protestants' due process rights.

I. FACTS AND PROCEDURAL HISTORY

In 1996, the Idaho Legislature approved and the Governor signed into law Senate Bill No. 1535. 1996 Idaho Sess. Law, ch. 297. This bill, known as the Municipal Water Rights Act of 1996 ("1996 Act"), defines and limits the authority of municipal water providers to develop and hold water rights for reasonably anticipated future needs and allows water to be supplied to an expanding service area. Statement of Purpose, S.B. 1535 (1996 Idaho Sess. Laws, ch. 297). In response to this new legislation, UWID began exploring ways to use the transfer process to bring their expansive portfolio of water rights in line with this statute. Because UWID's transfer

applications would be among the first and the most significant application of the statute to date and the transfers would raise a number of complex processing issues, UWID contacted IDWR to request information from the Department on a handful of issues regarding completing and filing of the transfer applications. In response, the Director, counsel for IDWR, and other staff members of IDWR met with UWID and its counsel at various time. The meetings and associated correspondence took place over a three year time period and focused on issues related to the applications. Through these meetings and correspondence, IDWR provided general guidance on a number of issues ranging from the proper time period for planning horizons to the forfeiture of municipal water rights.

On May 4, 2001, UWID took the first step in bringing its water rights in step with the 1996 Act by filing 93 applications for transfer of a water right and 19 applications for amendment of a permit.[1] Collectively these applications are referred to as the Integrated Municipal Application Package or IMAP.

A number of protests to IMAP were received by IDWR, including protests from each of the Irrigation Protestants. On September 23, 2002, the Irrigation Protestants filed their Preliminary Discovery Motion. The Motion sought authorization for discovery relating to contacts between UWID and IDWR prior to the filing of the transfer applications.

On August 5, 2002, the Director of IDWR appointed Peter R. Anderson as hearing officer and authorized him to hear this matter on behalf of IDWR.

On October 8, 2002, the Irrigation Protestants and UWID stipulated to stay the motion during the informal discovery process. The Irrigation Protestants reactivated their Preliminary

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[1] Since UWID's original filing, six of UWID's permits have been licensed by IDWR. Additionally, UWID has withdrawn four of the applications for permit amendments. There are now 99 applications for transfer of a water right and 9 applications for amendment of a permit.

Discovery Motion on January 6, 2003. Then on January 17, 2003, the Irrigation Protestants filed a *Motion to Compel/Alternative Motion for Order Authorizing Discovery* ("*Motion to Compel*") again raising the issue of the pre-filing contacts. In the *Motion to Compel*, the Irrigation Protestants re-characterized their original *Preliminary Discovery Motion* as a motion for "discovery regarding due process" since discovery had proceeded on the issues not related to due process.

On January 22, 2003, UWID filed its *Preliminary Response to Irrigation Protestants' Motion for Discovery on Due Process Issues*. On February 14, 2003, UWID filed its *Updated Response to Irrigation Entities' Pending Discovery Motions.*

In the *Second Prehearing Order*, signed on February 27, 2003, the hearing officer referred the pre-filing contact issue back to the Director of IDWR.

II. ANALYSIS

United States Constitutional Amendment XIV and Idaho Constitution Article I, § 13, prohibit the State from depriving any person of life, liberty, or property without due process of law. Due process of law requires notice and the opportunity to be heard before an impartial decision maker. *See Yellowstone Pipe Line Co. v. Drummond*, 77 Idaho 36, 41, 287 P.2d 288, 291 (1955) (stating that "[d]ue process of law envisions an opportunity upon reasonable notice for a fair hearing before an impartial tribunal."). In their motion, the Irrigation Protestants suggest that UWID's pre-filing contacts with IDWR have deprived them of the right to be heard before an impartial decision maker. *Preliminary Discovery Motion*, at 4-5. IDWR finds that through the contested case process, the Irrigation Protestants will not be deprived of due process. Consequently, discovery on this issue is not necessary.

A. The Irrigation Protestants Will Have An Unbiased Hearing Officer.

This case is proceeding before IDWR as a contested case under the Idaho Administrative Procedure Act and the Rules of Procedure adopted by IDWR. In a contested case, the Director can either serve as the presiding officer or can appoint a hearing officer to hear the matter. I.C. § 67-5242; IDAPA 37.01.01.410. In this case, the Director of IDWR has appointed a hearing officer and given him the authority to hear the case on behalf of IDWR. *Order Appointing Hearing Officer*, signed August 5, 2002 by Karl J. Dreher, Director of IDWR. Accordingly, it is the hearing officer who will be evaluating the transfer applications and making a recommended decision in this case. The hearing officer is not an employee of IDWR and there have been no allegations regarding the impartiality of the hearing officer. Thus, the Irrigation Protestants will have full opportunity for an impartial hearing officer.

B. The Director's Review of the Hearing Officer's Decision Will Not Be Biased.

Under the Idaho Administrative Procedure Act, the Director will have the opportunity to review the decision of the hearing officer. The Irrigation Protestants imply that because the Director participated in the pre-filing contacts with UWID, he is biased and would not be impartial in his review of the hearing officer's decision and that this deprives them of due process. This is not true.

First, while the Director did offer general policy interpretations relating to questions raised by UWID, this is not improper. This is reasonable given an administrative agency's dual responsibility of providing information to the public it serves and acting in a quasi-judicial

capacity in reviewing applications that come before it.[2] With respect to IMAP, pre-filing discussions provided the applicant with information so that it was able to properly frame the application.

Second, the fact that the Director has stated opinions on certain issues does not mean the Director is biased. The mere formation of an opinion and the expression of that opinion does not disqualify an officer or agency from passing upon the merits of a particular controversy. 2 Am. Jur. 2d *Administrative Law* § 51 (1994). Any informal opinion voiced by the Director is simply that. It is not the equivalent of a duly promulgated rule or an official decision made in a contested case. Thus, it is not binding upon the hearing officer, IDWR, the Director, or the parties to the action. The advice given to UWID is simply the Director's initial opinions relating to this complicated process. If the Irrigation Protestants, UWID, or any other party disagrees with what may be characterized as the Director's opinions, they have the ability to raise any counter interpretations with the hearing officer.

Furthermore, to show that a communication has caused disqualifying prejudgment, a claimant must demonstrate that the mind of the decision maker is "irrevocably closed" on the particular issues being decided. *See Federal Trade Comm'n v. Cement Institute*, 333 U.S. 683, 701, 68 S.Ct. 793, 803, 92 L.Ed. 1010, 1034 (1948). When evaluating the decision maker's mindset, one must start with a presumption that the decision maker is not biased. *See Shobe v. Ada County, Bd. of Com'rs*, 130 Idaho 580, 586, 944 P.2d 715, 721 (1997) (stating that there is a

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[2] The Irrigation Protestants seemingly suggest that there should be a zero contact rule between a member of the public seeking to file an application and IDWR. An administrative agency must not only rule upon applications that come before it, the agency also has the obligation to provide support to the public that it serves. It is both expected and proper that the administrative agency provide the public with general guidance, especially since it is the administrative agency that has expertise in the area and implements the regulations relating to the applications coming before it.

"presumption of honesty and integrity in those serving as adjudicators."). In this matter, the Director is both willing and able to review any analysis contrary to his earlier views. The Director will evaluate any evidence or legal theory with an open mind. Thus, the Irrigation Protestants' due process rights will not be impaired.

C. Additional Protections Ensure that the Irrigation Protestants' Due Process Rights Will Not Be Impaired.

In addition, important protection mechanisms are present to make sure that pre-filing contacts do not improperly influence the decision making process. Under the Idaho Administrative Procedure Act, any findings must be based exclusively on the record created before the hearing officer. I.C. § 67-5248. Furthermore, there must be substantial evidence in the record to support the administrative decision. I.C. § 67-5279. Thus, any decision could not be based upon information from the pre-filing contacts. Moreover, the concerns raised by the Irrigation Protestants relate primarily to legal views expressed by the Director. Legal conclusions are subject to free review by an appellate court. *Riverside Development Co. v. Vandenberg*, 137 Idaho 382, 384, 48 P.3d 1271, 1273 (2002); *see also U.S. v. State*, 137 Idaho 654, 656, 51 P.3d 1110, 1112 (2002). Thus, the Irrigation Protestants would be able to appeal any legal conclusion they disagreed with to the appropriate district court and have free review. These two protections further ensure that there will be no interference with the Irrigation Protestants' due process rights.

Nevertheless, given the unique circumstances involved in these transfers, the Director will further address this issue. UWID has provided each Protestant and IDWR with a compilation of twenty-five written communications titled *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)*. The Director has reviewed

the compilation and finds that it is an accurate representation of the communications between UWID and IDWR. Due to the nature of the issues raised, the Director hereby confirms that the Correspondence compiled and made available to the parties by UWID shall be part of the record in this proceeding.

III. CONCLUSION

Due process is not a technical concept with a fixed content unrelated to time, place and circumstances but is flexible and calls for such procedural protections as the particular situation demands. *City of Boise v. Industrial Com'n*, 129 Idaho 906, 910, 935 P.2d 169, 173 (1997). The facts of this situation suggest that because the Irrigation Protestants will have the opportunity to be heard before an impartial decision maker, the Director has affirmed that he will review any decision by the hearing officer with an open mind, the issues discussed between UWID and IDWR are now part of the record for all parties to review, and the administrative decision will be based on the full record in this matter and cannot be based on prefiling contacts with the Director, there is no need for discovery on the due process issues.

IT IS HEREBY ORDERED that the *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)* is made a part of the record in this matter.

IT IS FURTHER ORDERED that the Irrigation Protestants' *Motion for Order Authorizing Preliminary Discovery* is DENIED.

DATED this 11th day of June, 2003.

Karl J. Dreher
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of June, 2003, the above and foregoing, was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

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Deborah J. Gibson

Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER OF WATER RIGHTS IN THE NAME OF UNITED WATER IDAHO, INC., INTEGRATED MUNICIPAL APPLICATION PACKAGE (IMAP)	))))))	**IDWR'S STAFF MEMORANDUM IN RESPONSE TO REQUEST BY HEARING OFFICER PURSUANT TO IDAPA 37.01.01.600 and IDAPA 37.01.01.602**

Pursuant to the hearing officer's *Request for Staff Memorandum* dated April 25, 2003, IDWR provides this response:

1. The water rights involved in the IMAP are all located in Basin 63 Part 2. The Idaho Department of Water Resources is presently preparing recommendations for claims in this area. We anticipate mailing the preliminary recommendations to claimants in late fall of 2003, and filing the Director's Report with the SRBA Court in early 2004.

2. Experience in the SRBA has demonstrated that filing selected water rights with the Court in advance of the remaining water rights in a basin is inefficient for the Court, the claimants and IDWR. In the case of the United Water Idaho, Inc. claims related to IMAP, the points of diversion are typically surrounded by other water rights that will be recommended in the Director's Report for Basin 63 Part 2. In order to provide for complete review of the interrelationships between water rights within Basin 63 Part 2, IDWR does not plan to file United Water Idaho, Inc. claims related to IMAP separately.

3. In response to this request, IDWR is aware of two SRBA decisions regarding the temporal scope of that court's forfeiture analysis and whether the operation of forfeiture statute is stayed during the pendency of the SRBA. These decisions are: a) SRBA Court *Order on Challenge (Consolidated Issues) of "Facility Volume" Issue and "Additional*

Evidence" Issue re: Subcase Nos. 36-02708, et al. issued by Administrative District Judge and Presiding Judge of the SRBA, Honorable Barry Wood, on December 29, 1999; and b) *Memorandum Decision and Order on Challenge; and Order of Partial Decree re: Subcase No. 65-05663B (Wood v. Troutt)* issued by Administrative District Judge and Presiding Judge of the SRBA, Honorable Roger S. Burdick on May 9, 2002. Copies of these decisions are available on the Internet at the SRBA web address which is: www.srba.state.id.us under the "Presiding Judge Documents" section.

Dated this 9th day of May, 2003.

David R. Tuthill, Jr., Ph.D., P.E.
Bureau Chief Adjudication Section

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of May, 2003, I served a true and correct copy of ***IDWR'S STAFF MEMORANDA IN RESPONSE TO REQUEST BY HEARING OFFICER***, on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

Original to:

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Copies to:

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Becky Harvey
signature of person mailing

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

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

PLEASE TAKE NOTICE that a formal hearing on the following motions:

- Motion regarding Preliminary Procedural Issues dated March 13, 2003.
- Boise Project's Motion to Dismiss dated March 14, 2003.
- Motion to Require Publication of Notice of Amended Application dated March 14, 2003.
- Motion to Require Legislative Approval dated March 14, 2003.
- Motion to Dismiss dated March 14, 2003.
- Objection to Continued Amendment/Supplementation of the IMAP dated March 28, 2003.

is set for **Wednesday, May 21, 2003, beginning at 9:00 a.m. and continuing until 1:00 p.m. (MDST)**. This hearing will be held in Conf. Rm. A&B, at the offices of the Department of Water Resources, 1301 N. Orchard St., Boise, Idaho.

The hearing will be held in accordance with the provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code, and the adopted Rules of Procedure of the department. IDAPA 37.01.01. A copy of the rules may be obtained from the department upon request.

The hearing will be conducted in accordance with the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to

attend, participate in or understand the hearing, please advise the department within five (5) days prior to the hearing. Inquires should be directed to Deborah Gibson, at the Department of Water Resources, 1301 N. Orchard St., Boise, Idaho 83706, telephone: (208)327-7953, fax: (208)327-7866.

Dated this 9th day of May, 2003.

PETER R. ANDERSON
HEARING OFFICER

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 9th day of May, 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:

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Deborah J. Gibson

Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

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

WHEREAS IDAPA 37.01.01.600 allows the Idaho Department of Water Resources ("IDWR's") "experience, technical competence and specialized knowledge" to be used in the evaluation of evidence; and

WHEREAS IDAPA 37.01.01.602 allows a hearing officer to notice technical or scientific facts within IDWR's specialized knowledge, including agency staff memoranda and data; and

WHEREAS the hearing officer is not an employee of IDWR and has no means to utilize IDWR's experience, technical competence and specialized knowledge other than by querying IDWR;

THEREFORE the hearing officer invites IDWR to present staff memoranda regarding the above-captioned matter, which could include, without limitation:

1. An analysis by IDWR staff of the current schedule for reporting the water rights involved in the IMAP to the SRBA District Court;

2. The position of the IDWR Adjudication Bureau regarding the possibility of changing the reporting schedule for the water rights involved in the IMAP to the Snake River Basin Adjudication ("SRBA") District Court dependent upon completion of the IMAP proceeding; and

3. Any decisions by the SRBA District Court regarding the temporal scope of that court's forfeiture analysis and whether the operation of the forfeiture statute is stayed during the pendency of the SRBA.

Any such staff memoranda shall be submitted to the hearing officer on or before May 9, 2003, and served upon the parties to this matter. IDWR would be required to make relevant staff available for cross-examination at any hearing set in this matter pursuant to IDAPA 37.01.01.201 and 602.

Dated this 25th day of April, 2003.

Peter R. Anderson
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of April, 2003, the above and foregoing, was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

In the Matter of United Water Idaho's Municipal Application Package, United Water Idaho, Petitioner	)	**REPLY TO UNITED WATER'S SUPPLEMENTAL RESPONSE TO MOTION TO STAY AND PROPOSING A PARTIAL STAY**

The Cities of Eagle, Kuna, Middleton, Star, and the Star Sewer and Water District (collectively referred to as "Protestants"), by and through their counsel of record, MOORE SMITH BUXTON & TURCKE, CHARTERED, hereby reply to United Water's Supplemental Response to Motion to Stay and Proposing a Partial Stay, dated July 29, 2003. The Protestants oppose United Water's attempts to cause the Hearing Officer to render an advisory opinion on issues that are not ripe for review. Protestants further object to United Water's continuing alteration of its application package, changing its position on the contested issues in this matter, and manipulation of the proceedings on its application package.

1. United Water's Request For An Advisory Opinion Should Be Denied

United Water asks the Department to consider and render a decision on issues it designates as "Category Two: Evaluation of Future Needs Analysis By IDWR." See UWID's Supplemental Response at 3-5. The issues falling within United Water's Category Two are not justiciable because the planning horizon issues are not ripe and any decision rendered on the same would be an advisory opinion. While United Water's latest filing highlights the

reasonableness of a stay in this matter, the stayed issues must be resolved in advance of an opinion on the future needs issues. Until the underlying water rights are determined, there is no actual case or controversy and the Department should decline to decide the hypothetical issues presented by United Water.

2. United Water's Tactical Maneuvering Must End

Highlighting the risk of the ever-changing procedures in this case, United Water, which previously opposed the Motion to Stay filed in this matter, now agrees that the bulk of the issues raised by the IMAP should be resolved by the SRBA Court. While it is unclear what caused United Water's sudden change of heart – the cited staff memorandum was issued on May 9, 2003 -- United Water is obviously jockeying for some tactical advantage. Unfortunately, United Water's latest maneuvering is not an isolated incident and it continues to appear that United Water's tactic in this case really is to continually confuse the Protestants and needlessly complicate the record. Thus far, United Water has amended the IMAP, withdrawn elements from the IMAP, proposed conditions on the IMAP and then withdrawn the conditions, filed a new application package replacing the previous filing, supplemented the IMAP, withdrawn the new application package, taken one position on the issues raised by the Motion to Stay and then changed its position months after the Department issued its Staff Memorandum, and has refused to even provide the parties a map delineating what the IMAP is proposing to do. The manipulation of the IMAP process has and continues to overly complicate and confuse an already complex application.

The most current tactical maneuver is especially disturbing given that the Hearing Officer has ordered a short deadline for the parties to complete discovery, which means the parties have and continue to expend resources on discovery. It seems United Water desires to disrupt the

Protestants' information gathering by again changing its position on significant questions presented by its application package.

The Hearing Officer should consider the reasonableness and benefits of staying this matter for resolution by the SRBA Court and should decline to proceed on the "Category Two" issues raised by United Water until the issues before the SRBA have first been resolved.

RESPECTFULLY SUBMITTED this 12 day of August, 2003.

TAMMY A. ZOKAN
MOORE SMITH BUXTON & TURCKE, CHARTERED

Attorneys for the Cities of Eagle, Kuna, Middleton, Star, and the Star Sewer and Water District

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12 day of August, 2003, I caused to served a true and correct copy of the forgoing REPLY by the U.S. mail, addressed to the following:

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF INTEGRATED MUNICIPAL APPLICATION PACKAGE (CONSISTING OF 99 APPLICATIONS FOR TRANSFERS OF WATER RIGHTS, AND 13 APPLICATIONS FOR AMENDMENT OF PERMITS) IN THE NAME OF UNITED WATER IDAHO, INC.	**RESPONSE OF PIONEER IRRIGATION DISTRICT AND SETTLERS IRRIGATION DISTRICT TO UWID'S SUPPLEMENTAL RESPONSE TO MOTION TO STAY, PROPOSING A PARTIAL STAY**

On or about July 30, 2003, counsel for Pioneer Irrigation District and Settlers Irrigation District received UWID's Supplemental Response to Motion to Stay, Proposing a Partial Stay ("Supplemental Response"). Pioneer Irrigation District ("Pioneer") and Settlers Irrigation District ("Settlers") hereby reply to that filing.

Contrary to the arguments presented by United Water Idaho, Inc. ("UWID") in its Supplemental Response, Pioneer and Settlers do not agree that a partial stay of this administrative proceeding should occur. Instead, a complete stay of this administrative proceeding should be instituted pending resolution of the claims of UWID in the Snake River

Basin Adjudication. Pioneer and Settlers do not accept the proffered partial stipulation by UWID. *See* pg. 2 of Supplemental Response.

UWID suggests that it is possible to separate the "Category Two issues" from the other issues presented in the IMAP proceeding. This will not be possible.

First, it is important to note that the "issues" listed by UWID in its Supplemental Response do not constitute the issues in dispute which have been raised by protestants in this matter. In fact, they appear to be additional issues which UWID attempts to limit or manipulate the issues to the advantage of UWID. The Hearing Officer has already established the issues in play in this proceeding in a discrete process. That statement of issues does not include many of the items raised by UWID in this Supplemental Response.

Second, UWID's counsel apparently has forgotten the position expressed to Peter Anderson on February 24, 2003. In a letter to Mr. Anderson, Christopher Meyer noted:

> To the extent that the SRBA Court takes jurisdiction over UWID's water rights, while the Department continues to process UWID's permits, both would be required to address and answer many of the same questions. Substantive conflicts, and procedural conflicts over the order in which they should be decided, are exceedingly cumbersome to resolve when two decision making entities are involved.

Id. at 4. These same problems would arise if UWID's suggested bifurcation and partial stay were to be adopted by the Hearing Officer. As presented in the Motion to Stay and Memorandum in Support, because United Water has specifically indicated that it intends to integrate all of its water rights into one water right portfolio within the interconnected system, it is virtually impossible to separate out portions of the water rights from others. Additionally, since the SRBA District Court has exclusive jurisdiction over those water rights which have been claimed in the adjudication, any resolution of non-SRBA permits or licenses could produce

conflicting legal precedent which may cause major confusion because of the SRBA District Court's jurisdiction.

While Pioneer and Settlers appreciate UWID's desire to proceed with a portion of the IMAP proceeding immediately, such an action could easily produce inconsistent results on legal issues raised in both proceedings and potentially create an unnecessary conflict of authority between the SRBA District Court and the Idaho Department of Water Resources. Such unnecessary consequences could be entirely avoided by staying the IMAP proceeding until the SRBA proceedings involving the UWID claims are fully resolved.

CONCLUSION

In sum, Pioneer and Settlers reiterate their position that a complete stay of the IMAP proceedings pending conclusive adjudication of the UWID water right claims in the SRBA is the most appropriate course of action

DATED this 8th day of August 2003.

MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8th day of August 2003, I caused a true and correct copy of the foregoing **RESPONSE OF PIONEER IRRIGATION DISTRICT AND SETTLERS IRRIGATION DISTRICT TO UWID'S SUPPLEMENTAL RESPONSE TO MOTION TO STAY, PROPOSING A PARTIAL STAY** 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	(X) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile
Peter Anderson, Hearing Officer 729 W. Braemere Road Boise, ID 83702	(X) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile
Gary L. Spackman, Regional Manager Idaho Department of Water Resources Western Region Office 2735 Airport Way Boise, ID 83705 Fax: 334-2348	(X) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile
United Water Idaho Inc. John M. Marshall Givens Pursley, LLP PO Box 2720 Boise, ID 83701 Fax: 388-1300	(X) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail (X) 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	(X) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile

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Office of the Solicitor
Pacific Northwest Region , Boise Field Office
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Estate of Eleanor I. Chase Matt J. Howard PO Box 190012 Boise, ID 83719 Fax: 333-8409	(X) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile
Cities of Eagle, Kuna, Middleton & Star and Star Sewer District Bruce M. Smith Tammy A. Zokan Moore Smith Buxton & Turcke 225 N. 9th Street, Suite 420 Boise, ID 83702 Fax: 331-1202	(X) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile
City of Meridian Public Works Gary D. Smith 660 E. Watertower Meridian, ID 83642 Fax: 887-1297	(X) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile
City of Caldwell Engineering Department Gordon Law 621 E. Cleveland Blvd. Caldwell, ID 83605 Fax: 455-3003	(X) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile
Ed Squires Hydrologic 1002 W. Franklin Boise, ID 83702-5431 Fax: 342-3100	(X) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile
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By _____
Scott L. Campbell

RECEIVED
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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.	**UWID'S SUPPLEMENTAL RESPONSE TO MOTION TO STAY, PROPOSING A PARTIAL STAY**

On March 28, 2003 several protestants jointly filed a *Motion to Stay and Memorandum in Support*. The motion asked the Hearing Officer to stay the IMAP proceedings in their entirety until the SRBA Court partially decreed United Water Idaho Inc.'s water rights.

United Water responded to the motion on April 14, 2003 with *UWID's Response to Motion to Stay*. In that response, UWID urged caution in issuing any stay. UWID noted that the conflict or overlap between processing of the IMAP by the IDWR and the review of UWID's water rights by the SRBA is entirely within IDWR's control to avoid. UWID specifically suggested that before making a decision with respect to a stay, the Director should be consulted to determine whether he intended to make recommendations to the SRBA on United Water's claims prior to completion of the IMAP process. *Id.* at 2, 4-7. United Water pointed out that the

Director might choose to withhold recommendations until after the IMAP process is complete in order to allow the process to inform his recommendations. *Id.* at 4-7. If he did, then the SRBA would not obtain jurisdiction until the IMAP process was completed, and the feared overlapping proceedings would not occur.

Subsequently, at the request of the Hearing Officer, IDWR provided a Staff Memorandum discussing the reporting schedule for Director's Reports on the water rights involved in the IMAP. The Department declined the suggestion that it withhold its recommendations on UWID's claims. IDWR stated that it intended to report UWID's claims to the SRBA as part of the Director's Report for Basin 63 Part 2 regardless of the status of the IMAP processing. The Staff Memorandum stated that IDWR anticipates sending preliminary recommendations in late fall 2003 and filing the Director's Report in early 2004.

Consequently, it is now apparent that at least some of the issues raised in the IMAP proceeding—the elements of United Water's water rights—will be presented to the SRBA court in the relatively near future. As a practical matter this is very likely to occur prior to the final conclusion of the IMAP proceeding. In sum, IDWR could have avoided the conflict between its proceedings and the SRBA, but we have now learned that it has elected not to do so.

With this information now in hand, United Water agrees that it is not efficient to simultaneously litigate the elements of United Water's water rights before both IDWR and the SRBA. The Protestants have indicated their belief that the SRBA court, not the IDWR, should first review the elements of UWID's rights. Consequently, United Water hereby stipulates to this aspect of Protestants' *Motion to Stay*. On the other hand, United Water does not believe it is prudent or proper to stay the entire IMAP proceeding.

United Water suggests that the issues presented by the IMAP may be divided into three broad categories. The first (which we will call Category One) encompasses all issues required to

evaluate and determine the elements of UWID's pre-1987 water rights portfolio.[1] Both the SRBA court and the IDWR will have jurisdiction over Category One issues. However, UWID stipulates these issues should be stayed in this proceeding to allow the SRBA court to take them up first. The second group (Category Two) deals with UWID's water planning for future needs under the 1996 Act. The SRBA court does not have jurisdiction to determine these issues. This category presents questions of fact and law that may be considered and ruled on by IDWR independently of the Category One issues (that is, without waiting for decisions on Category One issues). In informal parlance, Category Two looks at "the size of the beaker" allowed under the 1996 Act, and does not require any evaluation of the individual water rights that might make up the "beaker." [2] Category Two presents important and urgent questions of interest to many of the parties and others. Consequently, proceedings before IDWR to answer these Category Two questions should not be stayed pending the SRBA process. The third phase (Category Three) encompasses all remaining issues necessary to complete the IMAP proceeding. Unlike Category One, these are issues over which the SRBA court does not have jurisdiction. This includes, for instance, analysis of UWID's post-1987 water rights in the context of their transfer to achieve integrated points of diversion. The legal issues presented in Category One and Three overlap. Consequently, it is appropriate to stay Category Three issues until the completion of the SRBA

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[1] UWID will not file claims for water rights within its portfolio which were not licensed as of November 19, 1987 or for which proof was not due or filed on that date. We use the shorthand "pre-1987" and "post-1987" to refer to this division of the portfolio. IDWR will retain sole jurisdiction to evaluate post-1987 water rights within UWID's portfolio via the transfer process.

[2] We refer to "the beaker" conceptually as representing the total quantity of water rights required to meet reasonably anticipated future needs. The beaker would be filled with individual water rights and, to the extent not full, would allow the acquisition of additional water rights to meet future needs. The legal and factual issues surrounding the "size" of the beaker are entirely distinct from the issues governing the validity of individual water rights which might be held in the beaker. The individual water rights would be analyzed as part of Categories One and Three.

process on Category One issues. This will ensure the proper sequencing of decision-making and the avoidance of potentially inconsistent rulings.

A more detailed description of Categories One, Two and Three Issues follows. It is not possible to identify at this point every single issue which may ultimately be encompassed within each category, and no attempt is made to do so. The purpose of this effort is simply to paint a clear, conceptual picture of how the three categories would work.

CATEGORY ONE: EVALUATION OF PRE-1987 WATER RIGHTS BY THE SRBA

(UWID recommends to the Hearing Officer that these issues be stayed. They will be taken up instead by the SRBA court in the course of review of UWID's pre-1987 claims.)

- Is it proper that municipal water rights are proved up and quantified by IDWR differently than other water rights?
- To what extent does UWID hold water rights as a provider to growing communities to meet reasonably anticipated future needs? (This question is raised in the context of the common law, not the 1996 Act.)
- Are municipal water rights held by those providing water to growing communities to meet reasonably anticipated future needs subject to special treatment under the law of forfeiture? What forfeiture rules apply? How should they be applied to an evolving portfolio of water rights?
- Has UWID accomplished transfers to add new points of diversion to existing water rights in its portfolio?
- Has UWID accomplished transfers to change the nature of use or place of use to existing water rights in its portfolio?
- At the conclusion of the SRBA process, the resolution of these and perhaps other relevant issues will result in partial decrees determining the elements and extent of each of UWID's claimed water rights. Thus, it will be known how much water UWID is entitled to divert under its portfolio of pre-1987 rights.

CATEGORY TWO: EVALUATION OF FUTURE NEEDS ANALYSIS BY IDWR

(These issues arise under the 1996 Act and are not before the SRBA. UWID recommends to the Hearing Officer that consideration of Category Two issues proceed via this contested case without delay.)

- Is UWID a municipal provider within the 1996 Act?

- Does the 1996 Act contemplate a single, consistent service area, planning horizon, and future needs analysis for a municipal provider, encompassing all of its water rights? In other words, are non-1996 Act water rights to be considered together with water rights obtained under the 1996 Act in evaluating the adequacy of a municipal provider's portfolio to meet reasonably anticipated future needs?

- Does the 1996 Municipal Water Rights Act allow a municipal provider to bring existing water rights already within its portfolio within the coverage and protection of the Act via the transfer process?

- Does UWID's "planning area" (as specified in the IMAP) comport with the requirements of the 1996 Act? For instance, is the planning area consistent with the planning limitations in the comprehensive plans of the various municipalities to be served as required by Idaho Code § 42-202B(5)? If not, what changes should be made in the planning area?

- Does the UWID's "service area description" (as filed with IDWR) comport with the requirements of the 1996 Act? If not, what changes should be made?

- Is the fifty year planning horizon sought by UWID consistent with the 1996 Act and justifiable as a matter of public policy? If not, what changes should be made?

- Is the methodology employed by UWID in the IMAP to forecast future needs appropriate? If not, what changes should be made?

- What quantity of water rights is UWID entitled to hold to meet its reasonably anticipated future needs within the planning horizon?

- Should the IDWR impose conditions with respect to re-opening the planning horizon/future needs analysis, in order to evaluate changed circumstances?

CATEGORY THREE: EVALUATION OF REMAINING IMAP ISSUES BY IDWR

(UWID recommends that these issues be stayed pending resolution of Category One and Two issues. They would be taken up again in this proceeding following issuance of partial decrees on pre-1987 rights.)

- All findings and conclusions of the SRBA court reflected in the partial decrees of UWID's pre-1987 water rights become the basis for evaluating the IMAP transfer applications.

- Evaluate the transfers of post-1987 water rights in light of SRBA findings.

- For instance, UWID's request for integrated points of diversion would be considered in light of how the SRBA court handled that issue.

- Should the approval of the request for integrated points of diversion be conditioned so as to prevent injury to other right holders? What are those conditions?

- What other conditions should be imposed on the approval of the IMAP transfers to prevent injury and enlargement, and satisfy other requirements of law?
- Is approval of the IMAP, as modified and conditioned, consistent with the local public interest and other special statutory requirements of the Water Code? (E.g., conservation of water, etc.)
- Should conditions be imposed at this time to govern the means by which UWID identifies portions of is water rights portfolio that are in current use versus held for future needs?
- Should conditions be imposed at this time implementing the prohibition in the 1996 Act against speculation in future need water rights?

As discussed in *UWID's Response to Motion to Stay*, the issues identified above as Category Two issues are ripe for review now. *Response* at 8-9. All parties would benefit by being able to begin their own planning under the 1996 Act. Whether they intend to obtain water rights under the Act or whether they see the Act as a threat to their rights, all parties will benefit from resolution of the fundamental questions about the scope and application of the 1996 Act at the earliest opportunity. The disputes should be resolved without delay based on the current and timely population and water demand analyses now before the Department.

The approach outlined herein presents a logical and efficient means of proceeding. In short, the SRBA court will tackle the issues relating to the validity and extent of UWID's water rights portfolio (at least as to pre-1987 rights). At the end of that process, it will be known, for instance, what forfeiture rules apply to these rights and how they are applied. At the end of the day, UWID will have partial decrees for a given quantity of water rights, whatever that turns out to be.

Meanwhile, the IDWR, via this proceeding, should waste no time in determining the scope and extent of UWID's future needs. The IDWR may also proceed to determine the validity and extent of any post 1987 water rights over which the SRBA court has no jurisdiction. When the two entities (SRBA and IDWR) have completed their respective tasks, the resulting

determinations will fit together and present a picture of how much water UWID has today and how much it needs, and is entitled, to acquire to satisfy reasonably anticipated needs during its planning horizon.

The two exercises are sufficiently independent to allow both to proceed at once. Indeed, no party has presented a valid reason for delaying determination of the forward-looking elements of the IMAP (Category Two). Regardless of the ultimate scope of United Water's portfolio as determined by the SRBA (Category One), the 50-year planning horizon, the planning area mapped on Appendix B to the IMAP, and the calculation of total demand for the planning horizon will not change. The SRBA's determination of United Water's portfolio simply will affect how many new water rights United Water must obtain to meet its future demand. Consequently, the Department should continue active processing of the distinct planning need questions in the IMAP that arise under the 1996 Act.

Respectfully submitted this 29th day of July, 2003.

GIVENS PURSLEY LLP

By: _____ for
Christopher H. Meyer

By: _____
John M. Marshall

Attorneys for Applicant
United Water Idaho Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of July, 2003, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Idaho Department of Water Resources State Office 1301 N. Orchard Street P.O. Box 83720 Boise, ID 83720-0098	_____ U.S. Mail _____ Facsimile __x__ Hand Delivery _____ Overnight Mail
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Kathleen Marion Carr, Esq. Office of the Field Solicitor U.S. Department of the Interior 550 West Fort Street Boise, ID 83724	__x__ U.S. Mail __x__ Facsimile _____ Hand Delivery _____ Overnight Mail
Mr. Edward Squires Hydro Logic, Inc. 1002 West Franklin St. Boise, ID 83702-5431	__x__ U.S. Mail __x__ Facsimile _____ Hand Delivery _____ Overnight Mail

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Matthew K. Wilde, Esq. Assistant City Attorney Boise City Attorney's Office 150 N. Capitol Blvd. P.O. Box 500 Boise, ID 83701-0500	x x 	U.S. Mail Facsimile Hand Delivery Overnight Mail
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Attorney for Boise Project Board of Control,
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.	**REPLY BY THE BOISE PROJECT, WILDER AND BIG BEND IRRIGATION DISTRICTS TO UNITED WATER OF IDAHO'S RESPONSE TO THE PETITION BY BOISE-KUNA REQUESTING THAT DEFAULT ORDER NOT BE ENTERED**

On April 22, 2002, the undersigned, on behalf of the Boise Project, Wilder and Big Bend Irrigation Districts, and Randolph Fredricks, on behalf of Boise-Kuna Irrigation District, filed a protest to the pending IMAP petition. The Boise Project Board of the Control is an agent for those three Irrigation Districts, as well as the New York and Nampa & Meridian Irrigation Districts.

Nampa & Meridian chose to appear not through the Board of Control, but through its own separate counsel, Ringert Clark. They are also a protestant to this IMAP proceeding. The concept that had been worked out between Mr. Fredricks and the undersigned was that the undersigned would act as the lead on matters affecting the Boise Project and its member Irrigation Districts, including Boise-Kuna but not including Nampa & Meridian, Mr. Fredricks would stay involved as counsel of record for Boise-Kuna and receive all pleadings.

Since that original arrangement, Mr. Fredricks retired and was replaced by Mr. Talboy as counsel for the Boise-Kuna Irrigation District. Mr. Talboy and I perhaps did not communicate as well as we should have on how the protest to the IMAP would be handled, whether directly through the Boise Project, as many of these types of issues are handled, or separately by the Boise-Kuna counsel. In any event, it the desire of the Boise Project and Boise-Kuna that the Boise Project act on its own behalf and on behalf of the Boise-Kuna Irrigation District. Mr. Talboy wishes to remain as counsel of record on behalf of the Boise-Kuna Irrigation District, so that he can report directly to the Boise-Kuna Board as to the events associated with the IMAP proceeding.

United Water complains that it does not know what issues have been raised by Boise-Kuna. This is incorrect. The issues raised by the Boise Project were raised on behalf of its member Districts, including the Boise-Kuna Irrigation District. Boise-Kuna stated that its interests are identical to the Boise Projects! Boise-Kuna has no issues to add to the statement of issues provided by the Boise Project or to the issues that this Hearing Officer has identified as pertinent to the proceeding. Consequently, the Boise Project joins in the request of Boise-Kuna Irrigation District that default not be entered against the Boise-Kuna Irrigation District. Any possible concern raised by United Water that Boise-Kuna has not come forward with its statements of issues, or given any indication that it will, is thus cured by Boise-Kuna's petition and by this filing.

Moreover, United Water has misconstrued the intent of Boise-Kuna. They do intend to actively participate in this case but in concert with the Boise Project and through its association with the Boise Project. The Boise Project requests that Boise-Kuna be listed as a named party so that it can ensure that the water rights of the Boise-Kuna Irrigation District are protected through this proceeding. The Boise Project, as agent for the Boise-Kuna Irrigation District, is not the owner of the Boise-Kuna Irrigation District water rights, but is the manager of the distribution system. Thus, as Boise-Kuna has indicated in its petition, the Boise Project will continue to actively represent the interest the Boise-Kuna Irrigation District in this matter and intend to do so in association with the legal counsel for Boise-Kuna. There is no additional burden to this administrative proceeding or to the parties from having Mr. Talboy's and Boise-Kuna's association with the Project recognized, and allowing its direct participation in this proceeding.

Moreover, this Hearing Officer has, by Order dated June 20, 2003, recommended that the notice be republished. If the Director accepts the Hearing Officer's recommendation and requires publication of a new proceeding, the Boise-Kuna Irrigation District and any number of the other parties would be entitled to participate as a new objector. The actions of United Water, in seeking a default of Boise-Kuna, elevate form over substance. If their direct participation is denied, the Boise Project, as agent for the Boise-Kuna Irrigation District, will continue to actively participate in this matter. The Boise-Irrigation District lies directly in the path of expansion of United Water, and is one of several Irrigation Districts threatened directly by the activities of United Water, both in this IMAP and in its other attempts to acquire water. As such, it is entitled to direct participation in this proceeding.

DATED this 21 day of July, 2003.

BARKER ROSHOLT & SIMPSON LLP

Albert P. Barker

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of July, 2003, I caused a true and correct copy of the foregoing **REPLY BY THE BOISE PROJECT, WILDER AND BIG BEND IRRIGATION DISTRICTS TO UNITED WATER OF IDAHO'S RESPONSE TO THE PETITION BY BOISE-KUNA REQUESTING THAT DEFAULT ORDER NOT BE ENTERED** by the method indicated below, and addressed to each of the following individuals:

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Albert P. Barker

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Personal Printer/Fax/Copier/Scanner

Fax History Report for
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Aug 26 2003 2:55pm

Last Fax

Date	Time	Type	Identification	Duration	Pages	Result
Aug 26	2:53pm	Sent	93424657	1:20	4	OK

Result:
OK - black and white fax
Okay color - color fax

HP OfficeJet G Series G95
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Fax History Report for
IDWR

Aug 26 2003 2:11pm

Last 30 Faxes

Date	Time	Type	Identification	Duration	Pages	Result
Aug 25	1:11pm	Received	7753550406	1:58	5	OK
Aug 25	1:57pm	Received	5230202	3:55	2	OK
Aug 25	2:32pm	Received		0:48	1	OK
Aug 25	3:00pm	Sent	9-12083248033----162	1:21	2	OK
Aug 25	3:13pm	Received	eMessaging	0:35	1	OK
Aug 26	6:21am	Received		0:43	1	OK
Aug 26	6:23am	Received		0:44	1	OK
Aug 26	7:58am	Received	2087531011	1:57	3	OK
Aug 26	8:24am	Received	208 356 8907	1:01	1	OK
Aug 26	9:18am	Sent	912087363037----1622	1:23	3	OK
Aug 26	9:39am	Sent	93774473	0:22	1	OK
Aug 26	9:47am	Received	208 672 8201	1:32	2	OK
Aug 26	10:49am	Sent	9-3881300	0:56	2	OK
Aug 26	11:11am	Received		1:04	3	OK
Aug 26	12:11pm	Received		1:03	3	OK
Aug 26	12:55pm	Received	509 448 2090	1:14	3	OK
Aug 26	1:31pm	Sent	93881300 Meyers	1:43	4	OK
Aug 26	1:33pm	Sent	93785066 McGarry	1:19	4	OK
Aug 26	1:39pm	Sent	93446034 Barker	1:25	4	OK
Aug 26	1:43pm	Sent	93424657 Honniger	0:00	0	Cancel
Aug 26	1:45pm	Sent	93311202	0:44	2	Jammed
Aug 26	1:47pm	Sent	93311202 Smith	1:19	4	OK
Aug 26	1:49pm	Sent	93855384 Campbell	1:28	4	OK
Aug 26	1:52pm	Sent	93844454 Wilde	1:42	4	OK
Aug 26	1:55pm	Sent	93310954 Beeman	1:18	4	OK
Aug 26	1:56pm	Received	2083440936	0:47	1	OK
Aug 26	1:59pm	Sent	93423100 Squire	1:19	4	OK
Aug 26	2:01pm	Sent	93446034 Barker	1:21	4	OK
Aug 26	2:03pm	Sent	93341919 Carr	1:18	4	OK
Aug 26	2:09pm	Sent	93458945 Talbot	1:42	4	OK

Result:
OK - black and white fax
Okay color - color fax

IDAHO DEPARTMENT OF WATER RESOURCES

Fax

To:	Participants in the IMAP matter	**From:**	Deborah J. Gibson (208) 327-7953
Fax:	See Certificate of Service	**Date:**	August 26, 2003
Phone:		**Pages:**	4
Re:	United Water Idaho (IMAP)	**CC:**	Western Region

☒ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **Please Recycle**

•Comments: The Hearing Officer has issued the attached Order regarding the Motions for Stay filed in the above-referenced matter.

Please contact me at 327-7953 if you have any problems with the transmission or quality of this fax. This fax will be your only copy.

Debbie

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

August 25, 2003

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

Dear Interested Parties:

According to the department's Administrative Rules of Procedure, discovery is governed by the Idaho Rules of Civil Procedure. Unless otherwise ordered discovery shall not be filed with the department or its hearing officers, according to IDAPA 37.01.01.520 through 528.

Additionally, please remove Gary Spackman, at our Western Regional office from your mailing lists for all documents related to this matter.

If you have any questions, the department's rules, are available on the department's website at: www.idwr.state.id.us.

Sincerely,

Deborah J. Gibson

Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

c: Attached Service list

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

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US DEPT OF INTERIOR
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Christopher H. Meyer, Esq. (Idaho Bar No. 4461)
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Counsel for Applicant United Water Idaho Inc.

RECEIVED
JUL
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 RESPONSE TO BOISE-KUNA'S DEFAULT PETITION

This is United Water Idaho Inc.'s ("United Water" or "UWID") response to the *Petition Requesting the Default Order Not Be Entered* and the *Affidavit of Robert W. Talboy in Support of Petition Requesting Default Order Not Be Entered* (collectively the "*Default Petition*") filed by the Boise-Kuna Irrigation District ("Boise-Kuna") on July 3, 2003. United Water opposes the *Default Petition* and requests that the Idaho Department of Water Resources enter a default order denying Boise-Kuna's protest.

RESPONSE

On June 20, 2003 the Hearing Officer served all Protestants with a Notice of Proposed Order Dismissing Protest of Boise-Kuna Irrigation District ("*Notice*"). The Notice concludes that Boise-Kuna's protest should be dismissed because it had failed to respond to the Hearing

Officer's October 11, 2002 Prehearing Order requiring each protestant to file a statement of issues identifying their positions in this matter. *Notice* at 1. Consistent with Procedure Rule 701, the Notice provided Boise-Kuna an opportunity to petition to avoid default. *Id.* at 2.

Although Boise-Kuna did file the *Default Petition* requesting that the proposed default order not be entered, the *Default Petition* neither addresses Boise-Kuna's failure to comply with the October 11, 2002 Prehearing Order nor makes any effort to bring Boise-Kuna into compliance. Boise-Kuna still has not come forward with a statement of issues and has not given any indication that it will.

It is clear that Boise-Kuna has no intention of actively participating in this case and desires only to continue to "receive pleadings in association with the Boise Project." Talboy Affidavit at 2. Boise-Kuna explains that it has arranged for the Boise Project Board of Control to take the lead for it in this case because "the interests of Boise Kuna Irrigation District and the Boise Project are identical." *Id.*

Boise-Kuna's desire to remain a party to this case only so it can monitor the pleadings is an insufficient reason to avoid default. Boise-Kuna can arrange to have copies forwarded to it by the Boise Project or other protestants with which is aligned. Its interests in this case can continue to be represented by the Boise Project.

Allowing the continued participation in this case by a non-active protestant will prejudice United Water and potentially the other parties. As the Hearing Officer knows, this case has moved into the discovery stage, which is being guided by the parties' statement of issues. Producing written discovery and taking depositions is expensive. United Water cannot simply ignore Boise-Kuna in discovery and other pre-hearing activities simply because Boise-Kuna indicates for now that it is not an active participant. If Boise-Kuna remains a party, United

Water will have no choice but to incur the expense of serving discovery and taking depositions, the expense of which will be exacerbated by the fact that Boise-Kuna has not filed a statement of issues. United Water should not have to bear these and other future expenses associated with litigating Boise-Kuna's protest.

For all these reasons, the Idaho Department of Water Resources should enter the Proposed Default Order and deny Boise-Kuna's Protest.

Respectfully submitted this 10th day of July, 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 10th day of July, 2003, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Idaho Department of Water Resources State Office 1301 N. Orchard Street P.O. Box 83720 Boise, ID 83720-0098	_____ U.S. Mail _____ Facsimile __x__ Hand Delivery _____ Overnight Mail
Peter R. Anderson, Esq. Hearing Officer 729 W. Braemere Rd. Boise, ID 83702	_____ U.S. Mail _____ Facsimile __x__ Hand Delivery _____ Overnight Mail
Mr. Gary L. Spackman Regional Manager Idaho Department of Water Resources Western Regional Office 2735 Airport Way Boise, ID 83705	__x__ U.S. Mail _____ Facsimile _____ Hand Delivery _____ Overnight Mail
Kathleen Marion Carr, Esq. Office of the Field Solicitor U.S. Department of the Interior 550 West Fort Street Boise, ID 83724	__x__ U.S. Mail _____ Facsimile _____ Hand Delivery _____ Overnight Mail
Mr. Edward Squires Hydro Logic, Inc. 1002 West Franklin St. Boise, ID 83702-5431	__x__ U.S. Mail _____ Facsimile _____ Hand Delivery _____ Overnight Mail

E. Gail McGarry, P.E. Program Manager Water Rights & Acquisitions PN-3100 U.S. Bureau of Reclamation Pacific Northwest Region 1150 N. Curtis Road Boise, ID 83706-1234	x	U.S. Mail Facsimile Hand Delivery Overnight Mail
Bruce M. Smith, Esq. Tammy Zokan, Esq. Moore, Smith, Buxton & Turcke, Chtd. 225 North 9th St., Ste. 420 Boise, ID 83702	x	U.S. Mail Facsimile Hand Delivery Overnight Mail
Matthew K. Wilde, Esq. Assistant City Attorney Boise City Attorney's Office 150 N. Capitol Blvd. P.O. Box 500 Boise, ID 83701-0500	x	U.S. Mail Facsimile Hand Delivery Overnight Mail
Charles L. Honsinger, Esq. Daniel V. Steenson, Esq. Ringert Clark, Chart 455 S. Third Street P.O. Box 2773 Boise, ID 83701-2773	x	U.S. Mail Facsimile Hand Delivery Overnight Mail
Scott L. Campbell, Esq. Angela D. Schaer, Esq. Andrew J. Waldera, Esq. Moffatt Thomas Barrett Rock & Fields, Chartered 101 S. Capital Blvd., 10th Floor P.O. Box 829 Boise, ID 83701-0829	x	U.S. Mail Facsimile Hand Delivery Overnight Mail

Albert P. Barker, Esq. Travis L. Thompson, Esq. Barker, Rosholt & Simpson, LLP 205 North 10th, Suite 520 P.O. Box 2139 Boise, ID 83701-2139	x U.S. Mail ____ Facsimile ____ Hand Delivery ____ Overnight Mail
Robert W. Talboy, Esq. Ellsworth, Kallas & Talboy, PLLC 2402 West Jefferson Street Boise, ID 83702	x U.S. Mail ____ Facsimile ____ Hand Delivery ____ Overnight Mail
Josephine P. Beeman, Esq. Beeman & Associates PC 409 West Jefferson Boise, ID 83702-6049	x U.S. Mail ____ Facsimile ____ Hand Delivery ____ Overnight Mail



John M. Marshall

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Department of Water Resources

Robert W. Talboy
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Attorneys for Protestant Boise-Kuna Irrigation District

BEFORE THE DEPARTMENT OF WATER RESOURCES OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER OF WATER RIGHTS IN THE NAME OF UNITED WATER IDAHO, INC., INTEGRATED MUNICIPAL APPLICATION PACKAGE (IMAP)	PETITION REQUESTING THE DEFAULT ORDER NOT BE ENTERED

COMES NOW Protestant Boise Kuna Irrigation District by and through its attorney of record, Robert W. Talboy, and moves the Department of Water Recourses to reinstate Protestant Boise Kuna Irrigation District's Protest. This Petition is based upon the Affidavit of Robert W. Talboy filed concurrently herewith.

DATED this 3rd day of July, 2003.

ELLSWORTH, KALLAS & TALBOY, P.L.L.C.

By _____
Robert W. Talboy, of the Firm
Attorneys for Protestant Boise-Kuna

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 3rd day of July, 2003, I caused to be served a true and correct copy of the foregoing document, by the method indicated below, upon the following:

Christopher H. Meyers John M. Marshall Givens Pursley P.O. Box 2720 Boise, ID 83701	√ United States Mail ____ Express Mail ____ Hand Delivery ____ Facsimile:
E. Gail McGarry PN-3100 Bureau of Reclamation 1150 N Curtis Rd Ste 100 Boise, ID 83706-1234	√ United States Mail ____ Express Mail ____ Hand Delivery ____ Facsimile:
Kathleen Marion Carr MSC-020 Office of Field Solicitor US Dept of Interior 550 W Fort St MSC-020 Boise, ID 83724	√ United States Mail ____ Express Mail ____ Hand Delivery ____ Facsimile:
Albert Barker Barker Rosholt & Simpson P.O. Box 2139 Boise, ID 83701	√ United States Mail ____ Express Mail ____ Hand Delivery ____ Facsimile:
Charles L. Honsinger Ringert Clark Chartered P.O. Box 2773 Boise, ID 83701	√ United States Mail ____ Express Mail ____ Hand Delivery ____ Facsimile:
Bruce M Smith Tammy A Zokan Moore Smith Buxton & Turcke 225 N 9th St Ste 420 Boise, ID 83702	√ United States Mail ____ Express Mail ____ Hand Delivery ____ Facsimile:
Scott L. Campbell Moffatt Thomas P.O. Box 829 Boise, ID 83701	√ United States Mail ____ Express Mail ____ Hand Delivery ____ Facsimile:
Matt Wilde City of Boise P.O. Box 500 Boise, ID 83701	√ United States Mail ____ Express Mail ____ Hand Delivery ____ Facsimile:

Josephine P Beeman Beeman & Associates PC 409 W Jefferson Boise, ID 83702	√ United States Mail ____ Express Mail ____ Hand Delivery ____ Facsimile:
Ed Squires Hydro Logic Inc 1002 W Franklin St Boise, ID 83702	√ United States Mail ____ Express Mail ____ Hand Delivery ____ Facsimile:
Gary Spackman IDWR-Western Region Manager 2735 Airport way Boise, ID 83705-5082	√ United States Mail ____ Express Mail ____ Hand Delivery ____ Facsimile:

Robert W. Talboy

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Department of Water Resources

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Attorneys for Protestant Boise-Kuna Irrigation District

BEFORE THE DEPARTMENT OF WATER RESOURCES OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER OF WATER RIGHTS IN THE NAME OF UNITED WATER IDAHO, INC., INTEGRATED MUNICIPAL APPLICATION PACKAGE (IMAP)	AFFIDAVIT OF ROBERT W. TALBOY IN SUPPORT OF PETITION REQUESTING DEFAULT ORDER NOT BE ENTERED

STATE OF IDAHO)
) ss.
County of Ada)

ROBERT W. TALBOY, being first duly sworn on oath, deposes and says that:

1. I am a member of the firm of ELLSWORTH, KALLAS & TALBOY, P.L.L.C., attorneys of record for Protestant Boise-Kuna Irrigation District, and make this Affidavit based upon my own personal knowledge. This Affidavit is submitted in support of Plaintiff's Petition Requesting Default Order Not Be Entered.

2. Your Affiant recently substituted his counsel of record for Randall C. Fredricks.

3. As counsel of record, your Affiant has been receiving the pleadings in this matter.

4. That it was your understanding that Mr. Fredricks and Mr. Barker had agreed that Mr. Barker, as attorney for the Boise Project, would take the lead in this litigation as the interests of Boise Kuna Irrigation District and the Boise Project are identical.

5. Your Affiant requests that your Affiant requests that Boise-Kuna Irrigation District's Protest not be dismissed and that your Affiant continues to receive pleadings in association with the Boise Project.

Further your Affiant saith naught.

DATED this 3rd day of July, 2003.

ELLSWORTH, KALLAS & TALBOY, P.L.L.C.

By _____
Robert W. Talboy, of the Firm
Attorneys for Plaintiff

Subscribed and sworn to before me this 3rd day of July, 2003.

JON T. SIMMONS NOTARY PUBLIC STATE OF IDAHO

_____
Notary Public for Idaho
Residing at Boise, Idaho
My Commission Expires: 12/9/05

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this____ day of _____, 2003, I caused to be served a true and correct copy of the foregoing document, by the method indicated below, upon the following:

Christopher H. Meyers John M. Marshall Givens Persley P.O. Box 2720 Boise, ID 83701	√ United States Mail _____ Express Mail _____ Hand Delivery _____ Facsimile:
E. Gail McGarry PN-3100 Bureau of Reclamation 1150 N Curtis Rd Ste 100 Boise, ID 83706-1234	√ United States Mail _____ Express Mail _____ Hand Delivery _____ Facsimile:
Kathleen Marion Carr MSC-020 Office of Field Solicitor US Dept of Interior 550 W Fort St MSC-020 Boise, ID 83724	√ United States Mail _____ Express Mail _____ Hand Delivery _____ Facsimile:
Albert Barker Barker Rosholt & Simpson P.O. Box 2139 Boise, ID 83701	√ United States Mail _____ Express Mail _____ Hand Delivery _____ Facsimile:
Charles L. Honsinger Ringert Clark Chartered P.O. Box 2773 Boise, ID 83701	√ United States Mail _____ Express Mail _____ Hand Delivery _____ Facsimile:
Bruce M Smith Tammy A Zokan Moore Smith Buxton & Turcke 225 N 9th St Ste 420 Boise, ID 83702	√ United States Mail _____ Express Mail _____ Hand Delivery _____ Facsimile:
Scott L. Campbell Moffatt Thomas P.O. Box 829 Boise, ID 83701	√ United States Mail _____ Express Mail _____ Hand Delivery _____ Facsimile:
	√ United States Mail _____ Express Mail

Matt Wilde City of Boise P.O. Box 500 Boise, ID 83701	_____ Hand Delivery _____ Facsimile:
Josephine P Beeman Beeman & Associates PC 409 W Jefferson Boise, ID 83702	__√__ United States Mail _____ Express Mail _____ Hand Delivery _____ Facsimile:
Ed Squires Hydro Logic Inc 1002 W Franklin St Boise, ID 83702	__√__ United States Mail _____ Express Mail _____ Hand Delivery _____ Facsimile:
Gary Spackman IDWR-Western Region Manager 2735 Airport way Boise, ID 83705-5082	__√__ United States Mail _____ Express Mail _____ Hand Delivery _____ Facsimile:

Robert W. Talboy

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Department of Water Resources

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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 NOTICE OF WITHDRAWAL OF RESUBMITTED APPLICATIONS**

NOTICE

In accordance with the Hearing Officer's June 20, 2003 Order on Preliminary Procedural Motions, United Water Idaho, Inc. ("UWID") provides this notice that it is withdrawing the Applications it resubmitted in this matter on February 28, 2003 and March 24, 2003.

Respectfully submitted this 2nd day of July, 2003.

GIVENS PURSLEY LLP

By: John M. Marshall

Attorneys for Applicant
United Water Idaho Inc.

CERTIFICATE OF SERVICE

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

Peter R. Anderson, Esq. Hearing Officer 729 W. Braemere Rd. Boise, ID 83702	X U.S. Mail ____ Facsimile ____ Hand Delivery ____ Overnight Mail
Gary L. Spackman Regional Manager Idaho Department of Water Resources Western Regional Office 2735 Airport Way Boise, ID 83705	X U.S. Mail ____ Facsimile ____ Hand Delivery ____ Overnight Mail
Idaho Department of Water Resources Southern Regional Office Idaho Department of Water Resources 1341 Fillmore St., Ste. 200 Twin Falls, ID 83301-3033	X U.S. Mail ____ Facsimile ____ Hand Delivery ____ Overnight Mail
Idaho Department of Water Resources Northern Regional Office Idaho Department of Water Resources 1910 Northwest Blvd., Ste. 210 Coeur d'Alene, ID 83814-2615	X U.S. Mail ____ Facsimile ____ Hand Delivery ____ Overnight Mail
Idaho Department of Water Resources Eastern Regional Office Idaho Department of Water Resources 900 North Skyline Dr. Idaho Falls, ID 83402-6105	X U.S. Mail ____ Facsimile ____ Hand Delivery ____ Overnight Mail
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Mr. Edward Squires Hydro Logic, Inc. 1002 West Franklin St. Boise, ID 83702-5431	X U.S. Mail _____ Facsimile _____ Hand Delivery _____ Overnight Mail
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Matthew K. Wilde, Esq. Assistant City Attorney Boise City Attorney's Office 150 N. Capitol Blvd. P.O. Box 500 Boise, ID 83701-0500	X U.S. Mail _____ Facsimile _____ Hand Delivery _____ Overnight Mail
Charles L. Honsinger, Esq. Daniel V. Steenson, Esq. Ringert Clark, Chart 455 S. Third Street P.O. Box 2773 Boise, ID 83701-2773	X U.S. Mail _____ Facsimile _____ Hand Delivery _____ Overnight Mail
Scott L. Campbell, Esq. Angela D. Schaer, Esq. Andrew J. Waldera, Esq. Moffatt Thomas Barrett Rock & Fields, Chartered 101 S. Capital Blvd., 10th Floor P.O. Box 829 Boise, ID 83701-0829	X U.S. Mail _____ Facsimile _____ Hand Delivery _____ Overnight Mail

Albert P. Barker, Esq. Travis L. Thompson, Esq. Barker, Rosholt & Simpson, LLP 205 North 10th, Suite 520 P.O. Box 2139 Boise, ID 83701-2139	X U.S. Mail _____ Facsimile _____ Hand Delivery _____ Overnight Mail
Robert W. Talboy Ellsworth, Kallas & Talboy, PLLC 2402 West Jefferson Street Boise, ID 83702	X U.S. Mail _____ Facsimile _____ Hand Delivery _____ Overnight Mail
Josephine P. Beeman, Esq. Beeman & Associates PC 409 West Jefferson Boise, ID 83702-6049	X U.S. Mail _____ Facsimile _____ Hand Delivery _____ Overnight Mail

John M. Marshall

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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

In the Matter of United Water Idaho's Municipal Application Package, United Water Idaho, Petitioner	)	**STATEMENT IN SUPPORT OF RECOMMENDED ORDER REQUIRING REPUBLICATION OF NOTICE**

The Cities of Eagle, Kuna, Middleton, Star, and the Star Sewer and Water District (collectively referred to as "Protestants"), by and through their counsel of record, MOORE SMITH BUXTON & TURCKE, CHARTERED, hereby present their support for the Hearing Officer's Recommended Order Requiring Republication of Notice, dated June 20, 2003. For the reasons stated by the Hearing Officer and the reasons described in Protestants' Reply Brief dated April 18, 2003, filed in response to United Water's Consolidated Response to Motions on Preliminary Procedural Issues, the Director should adopt the Hearing Officer's Recommended Order Requiring Republication of Notice and issue an order requiring republication of Notice of United Water's application package. Protestants' Reply Brief is attached hereto as Exhibit A and by this reference fully incorporated herein

RESPECTFULLY SUBMITTED this 1st day of July, 2003.

TAMMY A. ZOKAN
MOORE SMITH BUXTON & TURCKE, CHARTERED

Attorneys for the Cities of Eagle, Kuna, Middleton, Star, and the Star Sewer and Water District

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 1 day of July, 2003, I caused to served a true and correct copy of the forgoing STATEMENT IN SUPPORT, without exhibit, by the U.S. mail, addressed to the following:

Kathleen Marion Carr
Office of the Field Solicitor
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550 West Fort Street, MSC 020
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208-334-1378- fax

Gary Spackman
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705
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United Water Idaho, Inc.
John M. Marshall
Givens Pursley, LLP
P.O. Box 2720
Boise, ID 83701
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Nampa & Meridian Irrigation District
Charles L. Honsinger
Ringert Clark
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208-342-4657 Fax

City of Boise
Boise Public Works Department
Beth K. Baird
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Boise, ID 83719

City of Caldwell Engineering Dept.
Gordan Law
621 East Cleveland Boulevard
Caldwell, ID 83605

City of Meridian Public Works
Gary D. Smith
660 E. Watertower
Meridian, ID 83642
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Scott L. Campbell
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Boise-Kuna Irrigation District
Robert W. Talboy
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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

In the Matter of United Water Idaho's Municipal Application Package, United Water Idaho, Petitioner	)	**REPLY TO UWID'S CONSOLIDATED RESPONSE**

The Cities of Eagle, Kuna, Middleton, Star, and the Star Sewer and Water District (collectively referred to as "Protestants"), by and through their counsel of record, MOORE SMITH BUXTON & TURCKE, CHARTERED, reply to United Water's Consolidated Response to the Protestants' Motion regarding the three (3) preliminary procedural issues identified in the Hearing Officer's Second Prehearing Order.

Introduction

Protestants by their motion proposed a reasonable resolution of the problems associated with the IMAP process thus far. Rather than acknowledge the problems, United Water chooses to complain that the Protestants are not allowed to raise the problems for the Hearing Officer's review. United Water also argues against anything other than its interpretation of the law and its view of correct procedure. Finally, United Water attempts to use some proposed conditions as a wildcard by arguing on the one hand that the conditions are not part of any application or publication because nothing requires United Water to "lock into [the] conditions." On the other

EXHIBIT A

hand, United Water argues the proposed conditions protect Protestants from alleged injuries like those arising from United Water's IPD proposal. UWID Response at 16, 20.

If United Water is going to use conditions to limit the impact of its IMAP, the conditions should be part of the application. If not, United Water should not continue to raise the conditions as a shield to argue there is no injury. United Water cannot have it both ways – either United Water is bound by the conditions and they are part of the application, or they are not. The Hearing Officer should not allow United Water to hide behind the proposed conditions that it argues it is not bound to follow.

1. The Protestants Have Standing To Raise Defects In the IMAP.

a.) The Department committed procedural error by not providing lawful notice of the IMAP.

"Remand to an administrative agency is appropriate when where the agency is found to have violated a statutory procedural requirement." Shokal v. Dunn, 109 Idaho 330, 334 (1985) (quoting Caldwell v. Arizona State Board of Dental Examiners, 137 Ariz. 396, 670 P.2d 1220, 1225 (Ariz. App. 1983)). " The court must remand ... where the agency has taken action without meeting procedural requirements." Id. (quoting 2 Am.Jur2d Administrative Law § 765); see also Idaho Code § 67-5279 (an agency decision made on unlawful procedure shall be set aside or remanded for further proceedings).

Idaho Code provides for public notice of applications to appropriate water, to amend a permit, or to make changes to a water right. Idaho Code §§ 42-203A, 42-211, 42-222. The purpose of the notice is to ensure that potentially affected parties receive sufficient information to determine whether they may have an objection to the application. Since the published notice of the IMAP did not provide sufficient information, potentially affected parties were not given

the opportunity to make an informed decision whether they had an interest in the application package.

The public notice of the IMAP did not comport with statutory requirements which is clear procedural error necessitating remand to the Department. The usual notice format is not a "confused jumble of legalese" as United Water argues. UWID Response at 13. See, for example, legal Notices published on March 6, 2003, attached to this Reply as Exhibits A-B. These exhibits illustrate what an Idaho Code 42-203A notice should look like. These examples also show what the public is used to seeing and the terminology the public is familiar with.

Water issues are usually addressed in terms of water right numbers and information which identifies the basin location, the points of diversion and places of use, diversion and consumption limitations, and priority dates. United Water's notice did not even come close to doing so. For example, describing diversions as in the "Boise area" can hardly be described as an approximate location. If United Water notified its customers that its billing office was located "in the Boise area, " without more, it is unlikely someone would have any idea where the office is. That is exactly the situation presented in this case.

Furthermore, just because diversions may all generally be located within one city, it does not follow that diversions draw from the same source. If United Water had provided the level of detail contained in the normal notices (see attached Exhibits) potentially affected parties and the public could have known which water rights are at issue and where the diversions are actually located, and could then have made an informed determination of their interest in the IMAP. Unless someone has some personal knowledge that their water supply is located near United Water diversion(s), the published notice is of no use. Without any reference to the location of the diversion, potentially affected parties are left in the dark.

The notice did not even identify water right numbers which are the most common identifiers the Department and the public use to locate information about water rights. All this information is what normally makes up a public notice and is the minimum information the public is used to seeing. Since the notice did not comport with minimum statutory requirements or provide sufficient information, the Department committed procedural error and republication of the notice with adequate information is required.

b.) The publication of inadequate notice violates the public's interest.

A substantive consideration in appropriation, transfer, and permit amendment proceedings is the public's interest in the proposal. Hardy v. Higginson, 123 Idaho 485, 489 (1993). The inadequate notice published in this case substantively impacts the public's interest in the IMAP proceeding. Further, any decision on the IMAP without proper notice would be contrary to that interest. Had the published notice met the minimum statutory requirements, the current makeup of the proceeding may have been very different. Accordingly, it is against the public interest to act on United Water's IMAP when the public has been excluded from the process due to the lack of adequate notice. United Water seeks simply to ignore the error, proceed with the process, and hope its unique process passes muster. The Protestants are entitled to a process that is legally correct and proper so that their significant expenditures of time and resources are not wasted on a defective process.

c.) The unlawful notice has caused significant confusion and additional expense to Protestants.

The published notice failed to give notice of United Water's true intentions with regard to the purpose of the IMAP. In response to United Water's allegation, the Protestants did read the published notice. That, coupled with the information gleaned from the process thus far, is what pointed out the shortcomings in the notice. It has been only through the efforts thus far that the

true nature of the IMAP has been revealed. The persistent confusion in the current process is the result of an overly complicated application package that is best characterized as a moving target. The constant submission of extraneous, supplemental materials, misleading information, and modifications to the IMAP have caused the Protestants to spend more time and subsequently more money to work through ever changing issues.

An example of misleading information in the notice is the statement that United Water seeks "to hold about 160 cfs for future growth." That is not the whole story. What United Water is seeking to do is still not clear, but it appears that it is seeking to blur any distinction between its current water needs and those needed for future use. Apparently, under the IMAP, United Water is asking that it have a big pot of water composed of multiple water rights without any ability by IDWR (or anyone else) to distinguish between what has been used, is being used, or will be used. That is not disclosed in the notice and, so far, not disclosed in the IMAP documents.

An example of inadequate information is the lack of notice of the specific water rights United Water seeks to appropriate or to transfer for future needs. "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 reasonable anticipated future needs, the municipal provider shall establish that ... the reasonably anticipated future needs ... are consistent with the definitions and requirements specified in this chapter." Idaho Code § 42-222 (emphasis added). The same is true when a municipality proposes to appropriate water for anticipated future needs. Idaho Code § 42-202(2). United Water argues that it does not need to identify which water rights it holds for current demand or for future needs. United Water recognizes that IDWR must determine which of United Water's water rights are valid. UWID Response at 15. Given the multitude of issues surrounding the complex portfolio of water rights, until the validity of its

water rights are determined, how does United Water even know what additional water it needs for future use?

United Water simply wants the IMAP done its way resulting in an essentially backwards and confusing approach. United Water should first seek confirmation of its water rights through the adjudication process or an administrative proceeding and then evaluate its current versus future needs. After United Water knows what is included in its portfolio, it can determine which water rights are needed to meet current demand and what, if any, water rights are needed for future use. Only then can United Water provide a basis for its claim that it requires water for future needs. Until that is known, the Hearing Officer cannot begin to evaluate United Water's planning horizon.

2. The Amended IMAP Applications Should Be Republished.

United Water argues that it is not obligated to publish notice of the amended IMAP. Protestants disagree and believe it is in everyone's best interest that notice consistent with the law be required. The defects in the original notice could be remedied by publication of the amended IMAP. However, if the amended IMAP is not published, Protestants move that the Hearing Officer order that notice of the original IMAP be republished in accordance with the law.

3. If The Water Rights Described In The Amended IMAP Or The Original IMAP Involve Quantities Greater Than 50 Cfs, Legislative Approval Is Required.

United Water argues on the one hand that its applications should be treated individually, but then seeks approval for an integrated system that changes all the water rights for use at all points of diversion. "Amending UWID's ground water rights to allow each well as an alternate point of diversion will allow UWID to continue to maximize the efficiency of its system by allowing the diversions from the most senior rights to be diverted using the best wells."

Information in Support of IMAP at 5. While United Water argues it has agreed to a condition that would limit the ability to divert more than 50 cfs from any well, it expressly disavows any allegiance to the conditions. UWID's Response at 16, 20. Additionally, United Water has again changed its applications by submitting additional applications that were overlooked. March 20, 2003 letter from John Marshall to Debbie Gibson. If the amended IMAP seeks to change the use of a quantity of water greater than 50 cfs, legislative approval is required.

4. **The IMAP Was Not Submitted "Upon Forms Furnished By The Department."**

A simple comparison of the forms used to submit the original IMAP and the forms used for the amended IMAP, shows that the original forms are not those furnished by the IDWR. As United Water admits, the forms were actually "modeled on the Department's forms." UWID Response at 26. However, United Water has now refiled its application, this time on forms furnished by the Department; thus, this issue should be moot if all the required information has been presented.

Conclusion

For the reasons described in the Protestants' Motion and Reply, the Protestants respectfully request that the Hearing Officer order publication of lawful notice of United Water's IMAP. The notice should provide a sufficient description of all of the changes and conditions UWID is requesting through the amended IMAP so that potentially affected parties have adequate notice of the same.

RESPECTFULLY SUBMITTED this 18 day of April, 2003.

TAMMY A. ZOKAN
MOORE SMITH BUXTON & TURCKE, CHARTERED

Attorneys for The City of Eagle, the City of Kuna, the City of Middleton, the City of Star and the Star Sewer and Water District

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18 day of April, 2003, I caused to served a true and correct copy of the forgoing REPLY by the U.S. mail, addressed to the following:

Kathleen Marion Carr
Office of the Field Solicitor
U.S. Department of the Interior
550 West Fort Street, MSC 020
Boise, ID 83724
208-334-1911-phone
208-334-1378- fax

Gary Spackman
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705
208-327-5400- fax

United Water Idaho, Inc.
John M. Marshall
Givens Pursley, LLP
P.O. Box 2720
Boise, ID 83701
208-388-1300-fax

Nampa & Meridian Irrigation District
Charles L. Honsinger
Ringert Clark
P.O. Box 2773
Boise, ID 83701-2773
208-342-4657 Fax

City of Boise
Boise Public Works Department
Beth K. Baird
Environmental Programs Coordinator
P.O. Box 500
Boise, ID 83701-0500
208-384-3905

Boise Project Board of Control
Albert P. Barker
Barker Rosholt & Simpson
P.O. Box 2139
Boise, ID 83701-2139
208-342-4657

Ed Squires
1002 W. Franklin Street
Boise, ID 83702-5341

Bureau of Reclamation
E. Gail McGarry, PN- 3100
1150 North Curtis Road, Suite 100
Boise, ID 83706

Estate of Eleanor I. Chase
Matt J. Howard
P.O. Box 190012
Boise, ID 83719

City of Caldwell Engineering Dept.
Gordan Law
621 East Cleveland Boulevard
Caldwell, ID 83605

City of Meridian Public Works
Gary D. Smith
660 E. Watertower
Meridian, ID 83642
208-887-1297- fax

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

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

Boise-Kuna Irrigation District
Robert W. Talboy
Ellsworth, Kallas & Talboy
2402 W. Jefferson Street
Boise, ID 83702

T.E. Terteling Company
Daniel V. Steenson
Ringert Clark Chartered
455 S. Third, P.O. Box 2773
Boise, Idaho 83701-2773

TAMMY A. ZOKAN

EXHIBIT A

Pub. Feb. 27, Mar. 6, 13, 2003 15808

LEGAL NOTICE
NOTICE OF TRUSTEE'S SALE

On Thursday, the 3rd day of July, 2003 at the hour of 10:00 o'clock a.m. of said day at the law office of Skinner Fawcett, 515 S. 6th St., Boise, in the County of Ada, State of Idaho, Charles W. Fawcett, as Successor Trustee, will sell at public auction, to the highest bidder, for cash, in lawful money of the United States, all payable at the time of sale, the following described real property situated in the County of Ada, State of Idaho, and described as follows, to-wit:

LOT 30 IN BLOCK 2 OF DEERHORN SUBDIVISION NO. 1, ACCORDING TO THE OFFICIAL PLAT THEREOF, FILED IN BOOK 79 OF PLATS AT PAGES 8506 THRU 8508, RECORDS OF ADA COUNTY, IDAHO.

The Successor Trustee has no knowledge of a more particular description of the above-referenced real property, but for purposes of compliance with Section 60-113 Idaho Code, the Successor Trustee has been informed that the street address of 411 W. Trophy Ave., Kuna, Idaho, is sometimes associated with said real property.

Said sale will be made without covenant or warranty regarding title, possession or encumbrances to satisfy the obligation secured by and pursuant to the power of sale conferred in the Deed of Trust executed by SHANE M. ANDERSON and ERICA A. ANDERSON, Husband and Wife, Grantor, to Charles W. Fawcett, Successor Trustee, for the benefit and security of M&T MORTGAGE CORPORATION, recorded June 16, 2000, as Instrument No. 100047265, and re-recorded on August 14, 2000, as Instrument No. 100064082, Mortgage records of Ada County, Idaho, and assigned to the Idaho Housing and Finance Association by Assignment of Deed of Trust recorded on June 16, 2000, as Instrument No. 100047266, and re-recorded on August 14, 2000, as Instrument No. 100064083, Mortgage records of Ada County, Idaho. THE ABOVE GRANTOR IS NAMED TO COMPLY WITH SECTION 45-1506 (4)(a), IDAHO CODE. NO REPRESENTATION IS MADE THAT THEY ARE, OR ARE NOT, PRESENTLY RESPONSIBLE FOR THIS OBLIGATION.

The default for which this sale is to be made is the failure to pay when due monthly installment payments under the Deed of Trust Note dated June 13, 2000, in the amount of $845.00 each, for the months of October, 2001 through February, 2003, inclusive; and for each and every month thereafter until date of sale or reimbursement. All delinquent payments are now due, plus accumulated late charges, plus any costs or expenses associated with this foreclosure. The accrued interest is at the rate of 7.25% per annum from September 1, 2001. The principal balance owing as of this date on the obligation secured by said Deed of Trust is $95,958.25, plus accrued interest at the rate of 7.25% per annum from September 1, 2001.

DATED This 27th day of February, 2003.
CHARLES W. FAWCETT,
a Member of the Idaho State Bar,
SUCCESSOR TRUSTEE

Pub. Mar. 6, 13, 20, 27, 2003 15836

ENGINEERS, Inc. Copies of these documents may be purchased for a non-refundable fee of Fifty Dollars ($50.00) for each set. Payment is to be made to J-U-B ENGINEERS, Inc.

In determining the lowest responsive bid, the Owner will consider all acceptable bids on a basis consistent with the bid package. The Owner will also consider whether the bidder is a responsible bidder.

Before a contract will be awarded for work contemplated herein, the Owner will conduct such investigation as is necessary to determine the performance record and ability of the apparent low bidder to perform the size and type of work specified under this Contract. Upon request, the bidder shall submit such information as deemed necessary by the Owner to evaluate the bidder's qualifications.

All bids must be signed and accompanied by evidence of authority to sign.

Bids must be accompanied by Bid Security in the form of either a bid bond on the enclosed form, certified check, cashiers check or cash in the amount of 5 percent of the amount of the bid proposal. Said bid security shall be forfeited to the City of Glenns Ferry as liquidated damages should the successful bidder fail to enter into contract in accordance with their proposal as specified in the instruction to Bidders.

The City of Glenns Ferry reserves the right to reject any or all proposals, waive any nonmaterial irregularities in the bids received, and to accept the proposal deemed most advantageous to the best interest of the City of Glenns Ferry.

Dated: February 28, 2003.
Glenn Thompson, Mayor
City of Glenns Ferry

Pub. Mar. 6, 13, 20, 27, 2003 15831

LEGAL NOTICE
NOTICE OF PROPOSED CHANGE OF WATER RIGHT TRANSFER NO. 70420

CITY OF COEUR D ALENE, WATER DEPARTMENT, 1000 W HUBBARD STE 130, COEUR D ALENE ID 83814, has filed Application No. 70420 for changes to the following water rights within KOOTENAI County:

Right No. 95-2198
Priority 12/13/1966
Total Amount 5.12 CFS
Point(s) of Diversion S12 T50N R04W

Right No. 95-7142
Priority 5/3/1971
Total Amount 2.45 CFS
Point(s) of Diversion L1 S4 T50N R04W

Right No. 95-7181
Priority 3/14/1972
Total Amount 5.73 CFS
Point(s) of Diversion S1 T50N R04W

Right No. 95-8565
Priority 12/7/1987
Total Amount 7.55 CFS
Point(s) of Diversion L1 S4 T50N R04W

Right No. 95-8647
Priority 3/19/1990
Total Amount 7.30 CFS
Point(s) of Diversion S35 T51N R04W

Right No. 95-8672
Priority 8/27/1990
Total Amount 3.00 CFS
Point(s) of Diversion S12 T50N R04W

Right No. 95-8938
Priority 2/8/1996
Total Amount 4.57 CFS
Point(s) of Diversion S36 T51N R04W

Right No. 95-9007
Priority 1/25/1999
Total Amount 7.80 CFS
Point(s) of Diversion S26 T51N R04W

Right No. 95-2133
Priority 7/21/1960
Total Amount 2.27 CFS
Point(s) of Diversion S1 T50N R04W

Right No. 95-2111
Priority 4/20/1955
Total Amount 3.00 CFS
Point(s) of Diversion S12 T50N R04W

Note: The source for all rights is ground water and the use is municipal. Place of use for all of above is within service area of applicant.

The purpose of the transfer is to change a portion of the above rights as follows:

To consolidate the water rights of the City of Coeur d'Alene to allow use of portions of all the rights from any well within the City's system.

The proposed new well will be located within L6 (NESE) S35 T51N R04W, and will be used to provide for diversion capacity redundancy within the system.

THERE WILL BE NO INCREASE IN THE DIVERSION RATE OR THE DIVERSION VOLUME.

Remark: Municipal use is within the service area of applicant.

Protests may be submitted based on the criteria of Sec 42-222, Idaho Code. Any protest against the proposed change must be filed with the Department of Water Resources, Northern Region, 1910 Northwest Blvd, Suite 210, Coeur D' Alene ID 83814 together with a protest fee of $25.00 for each application on or before March 17, 2003. The protestant must also send a copy of the protest to the applicant.

KARL J DREHER, Director

Pub. Feb. 27, Mar. 6, 2003, 15769

Thence N 89°45'47" W 975.80 feet to the intersection of said southerly right of way and the easterly right of way of N. Harunan Street;

Thence N 03°56'02" W 50.13 feet to the intersection of the easterly right of way of N. Hartman Street and the northerly right of way of W. Curtisian Avenue;

Along the northerly right of way of W. Curtisian Avenue the following:

Thence S 89°45'47" E 973.55 feet to a point;

Thence S 69°49'05" E 68.89 feet to a point of curvature;

Thence 8.70 feet along a curve to the left, said curve having a radius of 25.00 feet, a central angle of 19°56'42", a tangent of 4.40 feet and a chord of 8.66 feet which bears S 79°47'26" E to a point of tangency;

Thence S 89°45'47" E 205.54 feet to a point of curvature;

Thence 15.75 feet along a curve to the left, said curve having a radius of 10.00 feet, a central angle of 90°15'13", a tangent of 10.04 feet and a chord of 14.17 feet which bears N 45°06'36" E to a point of tangency on the west right of way of Curtis Road;

Thence S 0°01'00" E 62.09 feet to the Real Point of Beginning of this description. This parcel contains 63151 square feet (1.45 acres), more or less. Containing 1.45 acres, more or less. Subject to all Covenants, Rights, Rights-of-Way and Easements.

The public hearing will be held in the auditorium of the Ada County Highway District, 318 East 37th Street, Garden City, Idaho on Wednesday, March 12, 2003, at 6:30 p.m., or as soon thereafter as the matter may be heard, at which hearing any person may appear and show cause why the exchange should not be made.

ADA COUNTY HIGHWAY DISTRICT
By: William J. Schweitzer, Director

Pub. Feb. 20, 21, March 6, 2003 15663

Pub. Feb. 14, 21, 28, March 6, 20031566

LEGAL NOTICE
NOTIFICATION OF SIX-MONTH REVIEW HEARING

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT IN THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

In the Interest of:
JULIANA CALDERON

A Child Under
Eighteen Years of Age

TO: KELLY ANNE REILLY, the natural moth of said Juliana Calderon:

YOU AND EACH OF YOU, will hereby ta notice;

That a Petition under the Child Protecti Act was filed in the above-entitled matter the 19th day of September, 2000.

That a Six-Month Review Hearing on t Petition has been set for 11:00 a.m. on t 17th day of March, 2003, in the Magistra Court, Ada County Courthouse, 200 We Front Street, Boise, Idaho 83702. Unle you file a responsive pleading within twei (20) days, a default judgement may entered against you.

That you have the right to be represent by Counsel of your choosing or upon go cause shown, providing you are financi needy, the Court may appoint Counsel act in your behalf.

DATED This 3rd day of March, 2003.
J. DAVID NAVARRO
Clerk of the District Court
Ada County, Idaho Statesman
By: A. Schmidt
Deputy Clerk

Pub. Mar. 6, 13, 2003 158

LEGAL NOTICE
ABANDONED VEHICLE SALE

From March 5, 6, and 7, 2003 between the hours of 8:00 AM and 5:00 PM, bids will accepted for the following described vehicles. The abandoned vehicles described below be sold on an AS IS - WHERE IS basis only. Payment terms are by certified check o Viewing of the abandoned vehicles must be done at the location listed.

White 1984 Ford Escort Idaho license 2CP4719 Registered owner Javier Martinez-Garcia Caldwell ID Tow Lien $999.00 Vehicle may be viewed at Country Repair & 24hr Towing 9717 Hwy 45 Nampa ID

Blue 1988 Chrysler Lebaron Idaho license 2CK1324 Registered owner Jose Luis Lopez-Popoco Caldwell ID Tow Lien $1332.00 Vehicle may be viewed at Road Rescue Towing 547 E Stagecoach Way Kuna ID

Gold 1974 Plymouth Fury Oregon license VKR867 Registered owner Elizabeth A Heredia Ontario OR Tow Lien $1050.00 Vehicle may be viewed at 1710 Whitley Fruitland ID

Sealed bids must be received at the Idaho State Police Region 3 Office at 3056 Elder Boise, ID 83705, Telephone (208) 334-3731; no later than 5:00 p.m. on March 7, 20 Amount of bid does not have to equal or surpass the lien amount. The highest bidder wil notified on the first working day following the closing date. We reserve the right to rejec accept any or all bids. If you have any questions, contact the Idaho State Police at the ab address and/or telephone number.

Captain Stephen Jones
ISP Region 3 Commander

Pub. Feb. 26, March 5, 6, 7, 2003 15

ID. Statesman 3-6-03

EXHIBIT B tabbies

1627 Cassia St., Nampa. Chapter 7.

- WILSON, Mitchell DeWayne, 338 E. State Ave., #2, Eagle. Chapter 7.
- WATSON, Jason Lee, and Karrie Lynn, 702 S. Muscovy, Meridian. Chapter 7.
- NEILSON, Rocky Lee, 1708 S. Jackson St., Boise. Chapter 13.
- VIVES, Mark Antonio, dba SAME DAY CARGO, and Anita, 2536 E. Clarene Ct., Meridian. Chapter 7.
- ASHTON, Gregory, and Angela, 708 W. Orchard, Nampa. Chapter 7.
- SULLIVAN, William Patrick, and Sharon Kay, 1514 Leadville, Boise. Chapter 7.

na Marie, 10895 Horseshoe Bend Rd., Boise. Chapter 7.

- FORBIS, Sean Doyle, and Carrie Ann, fka SCHUMANN, Carrie Ann., Box 1336, Mountain Home. Chapter 7.
- BRYENTON, David Scott, and Deborah Chavez, 11493 W. Azure Dr., Boise. Chapter 7.
- LEAZER, Anthony D., and Tonia L., P.O. Box 841, Caldwell. Chapter 7.
- ALDRICH, Jack E., and Donna M., 1621 S. Woodland Dr., Nampa. Chapter 7.
- ROWE, David M. and Rita K., 3181 Mountain View Dr., Boise. Chapter 7.

Chris Tina, fdba LITTLE FOLKS UNIVERSITY, 10806 W. Florence Dr., Boise. Chapter 7.

- CAYA, Lorna Elaine, 401 W. 5th St., N., Middleton. Chapter 7.
- MCDANIEL, Angela M., 617 S. 13th St. #311, Boise. Chapter 7.
- COOK, Jason R., and Beth R., aka LORE, Beth, 935 W. Crestwood Dr., Meridian. Chapter 7.
- KOHL, Paul Ryan, and Pauline Helen, aka REDFOX, Pauline Helen, 5909 Stamm Rd., Nampa. Chapter 7.
- KUNZ, Timothy J., and Janice D., 1905 E. Nevada Ave., Nampa. Chapter 7.
- MOKHTARANI, Akbara, 505 E. Trailside Dr., Caldwell. Chapter 7.
- FACKRELL, Joseph M., and Connie L., 1309 Eldoran Dr., Nampa. Chapter 7.
- MARTINEZ, Charles Mike, and Debra Ann, 309 Madison, Caldwell. Chapter 7.
- HARTLEY, Mearill Owen, and Robin Lyn, 711 Hawthorn, Nampa. Chapter 7.
- PRADO, Shirley Maxine, 254 Delaware, Nampa. Chapter 7.
- MCCRACKEN, JoAnn, 1863 E. Comisky St., Meridian. Chapter 7.
- WARDLE, David Brent, aka WARDLE, Brent, and Terry, 7510 Hol-

Abernathy Way, Meridian. Chapter 7.

- SELLARDS, Robert Oscar, and June Marie, 707 Chestnut, Nampa. Chapter 7.
- VANNORTWICK, Angela Michele, 1424 South Colorado Ave., Boise. Chapter 7.
- MAGBY, Eric Warren, and Cynthia Ann, 202 Carson St., Emmett. Chapter 7.
- ELLIOTT, Stephen P., Jr., and Amy F., 5709 Sunset Dr., Nampa. Chapter 7.
- DEVALL, Brent J., 133 N. Canyon St., Nampa. Chapter 7.
- TAYLOR, Robert M., and Sarah N.,

LEGAL NOTICE

Human Health and Welfare Agencies wishing to be listed in the 2003-2004 Southwestern Idaho Combined Federal Campaign (CFC) brochure may request an application by emailing Cyndy Lounsbury at United Way of Treasure Valley (PCFO) at clounsbury@unitedwaytv.org. Application submission deadline is April 15, 2003.

Pub. Mar. 6, 2003 15829

LEGAL NOTICE
INVITATION TO BID

ALL sealed Bids will be received and opened on March 18, 2003 @ 2:00 PM MST at the Idaho Transportation Department, Purchasing Section located at 3311 West State Street, Boise, Idaho. Bidders and other interested parties are invited to be present at the bid opening. This is to furnish all materials and labor for the EB and WB Blacks Creek Rest Area, as directed in the designated areas, as per the specifications contained in requisition number C-303220.

Mandatory Walk through Inspection March 13, 2003 @ 1:00 PM MST. report to the Eastbound Rest Area, I-84 MP 62.068

No bid will be considered unless accompanied by an acceptable guaranty in an amount not less than five percent (5%) of the total amount of the bid. This guaranty must be in the form of a certified check or a cashier's check drawn on an Idaho bank, made payable to the Idaho Transportation Department, or a bidders bond. Surety will be forfeited in the event of failure to sign the contract.

The Idaho Transportation Department reserves the right to reject all bids or to accept the bid deemed best for the State of Idaho.

Dated this 24th day of February 2003
ROD BECKER, PURCHASING AGENT
IDAHO TRANSPORTATION DEPARTMENT

Copies of Bidding Documents, Specifications and other information may be obtained by contacting the Idaho Transportation Department, Supply Services Section, (208) 334-8872, (3311 West State Street Boise ID 83703)

Pub. Mar. 3,4,5,6,7,2003 15773

LEGAL NOTICE

The following application(s) have been filed to appropriate the public waters of the State of Idaho:

63-31631
GABIOLA LAND CO LLC
920 E ANTILLES CT
MERIDIAN ID 83642

Point(s) of Diversion: NENW S24 T02N R01E ADA County Source GROUND WATER
Use: COMMERCIAL 01/01 To 12/31 0.04 CFS
Total Diversion: 0.04 CFS

Date Filed: 01/23/2003
Place Of Use: COMMERCIAL
T02N R01E S24 NENW NWNW
Remark: Applicant agrees to mitigate consumptive use in the future as needed.
Water bearing zone to be appropriated is from 150 to 350 feet.
Permits will be subject to all prior water rights. Protests may be submitted based on the criteria of Sec 42-203A, Idaho Code. Any protest against the approval of this application must be filed with the Director, Dept. of Water Resource, Western Region, 2735 Airport Wy, Boise ID 83705 together with a protest fee of $25.00 for each application on or before 03/24/2003. The protestant must also send a copy of the protest to the applicant.
KARL J DREHER, Director

Pub. Mar. 6, 13, 2003 15794

LEGAL NOTICE
NOTICE OF PROPOSED CHANGE OF WATER RIGHT TRANSFER NO. 70397

ROBERT J HUNTINGTON
PO BOX 140394
GARDEN CITY ID 83714, has filed Application No. 70397 for changes to the following water rights within ADA County: Right No. 63-4219H

Priority	6/17/1910	
Source	DRY CREEK	
Use	IRRIGATION (3 acres)	0.06 CFS
Total Amount		0.06 CFS
Point(s) of Diversion	S35 T05N R01E	
Place of Use	S34 T05N R01E	

Remark: Applicant proposes diverting directly from Dry Creek tributary to the Boise River in the NESE S34 T5N R1E for irrigation of 3 acres aka Lt 6 Blk 1, Maryglen Subdivision No. 1. The original diversion dam in Dry Creek washed out in 1998, which diverted water into a common ditch leading to applicants property.

Protests may be submitted based on the criteria of Sec 42-222, Idaho Code. Any protest against the proposed change must be filed with the Department of Water Resources, Western Region, 2735 Airport Wy, Boise ID 83705 together with a protest fee of $25.00 for each application on or before March 24, 2003. The protestant must also send a copy of the protest to the applicant.
KARL J DREHER, Director

Pub. Mar. 6, 13, 2003 15793

Idaho Statesman 3-6-03

LEGAL NOTICE
CITY OF GLENNS FERRY

LEGAL NOTICE

The Board of Ada County Commissioners will consider a resolution to amend the fees for the Development Services Department on March 11, 2003, at 9 a.m. in the 3rd Floor Commissioners Conference Room, 200 W. Front Street, Boise, ID.

The Engineering Division fees increase by 15-31% for Verification of Plats to cover the cost of administering the street name and addressing function for Ada County.

For more detailed information, contact Ada County Development Services, County Engineer, at 200 W. Front Street, 2nd Floor, Boise, ID or call (208) 287-7900.

BOARD OF COUNTY COMMISSIONERS
Jeffrey L. Patlovich, AICP, Director

Pub. Feb. 27, Mar. 6, 2003 15771

LEGAL NOTICE
AD FOR BIDS

Sealed proposals will be received by CM Company, Inc., for the Division of Public Works, State of Idaho, at the West Conference Room of the Joe R. Williams State Office Building (A.K.A. 'Hall of Mirrors'), 700 West State Street, Boise, Idaho until the times specified on the Bid Schedule and Bid Forms, on **March 25, 2003** for DPW Project No. **02-216**, New Residence Hall, Ph. II. Bid Packages 1-25, Boise State University, Boise, Idaho. Further information, including information regarding Pre-Bid Conference, availability of documents for review and bid bond requirements, is at www2.state.id.us/adm/pubworks/dpwconstprojects.htm or contact Hummel Architects, PH: 343-7523.

Estimated Cost: $14,328,000
Jan P. Frew, Design & Construction Manager, Division of Public Works

Pub. Mar. 6,7,8,2003 15837

LEGAL NOTICE
OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN, that the Board of Commissioners of the Ada County Highway District will hold a public hearing in accordance with the provisions of the Idaho Code, to consider the vacation and abandonment of a tract of land located between N. Curtis Road and N. Hartman Street, located in Section 7 of T. 3N., R. 2E., of the Boise Meridian, Boise, Ada County, Idaho.

LEGAL NOTICE
NOTICE TO CREDITORS
Case No. SP IE 0300098M

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA
MAGISTRATE DIVISION

In the matter of the Estate of HENERIETTA FAY HALL, aka H. FAY HALL, deceased.

NOTICE IS HEREBY GIVEN that the undersigned has been appointed personal representative of the above-named decedent. All persons having claims against the decedent or the estate are required to present their claims within four (4) months after the date of the first publication of this Notice or said claims will be forever barred.

Claims must be presented to the undersigned at the address indicated and filed with the Clerk of the Court.

Dated this 26th day of February, 2003.
MARGY MAKELA
Personal Representative
8171 Bill Burns Road
Emmett, ID 83617

Pub. Mar. 6, 13, 20, 2003 15804

LEGAL NOTICE
NOTICE TO CREDITORS
Case No. SP IE 0300006M

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA
MAGISTRATE DIVISION

In the matter of the Estate of DONALD L. THOMAS, Deceased.

NOTICE IS HEREBY GIVEN that the undersigned has been appointed personal representative of the above-named decedent. All persons having claims against the decedent or the estate are required to present their claims within four (4) months after the date of the first publication of this Notice or said claims will be forever barred.

Claims must be presented to the undersigned at the address indicated and filed with the Clerk of the Court.

Dated this 12th day of February, 2003.
MARK P. THOMAS
901 Main St. Suite 37000
Dallas, Texas
(214) 744-3700

RECEIVED
APR 24 2003
Department of Water Resources

DANIEL V. STEENSON (ISB #4332)
CHARLES L. HONSINGER (ISB #5240)
RINGERT CLARK CHARTERED
455 S. Third, P. O. Box 2773
Boise, Idaho 83701-2773
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Attorneys for Nampa & Meridian Irrigation District,
City of Caldwell, and City of Meridian, and the Terteling entities

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 JOINDER

COMES NOW, Nampa & Meridian Irrigation District, the city of Meridian, the city of Caldwell, and the Terteling entities by and through their attorneys of record, Ringert Clark, Chartered, and hereby notify the hearing officer and the parties of their joinder in the Reply Regarding Motion to Stay filed by Pioneer Irrigation District and Settlers Irrigation District on April 21, 2003.

Dated this 24th day of April,.2003.

RINGERT CLARK, CHARTERED,

By Charles L. Honsinger
Charles L. Honsinger

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of April, 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:

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

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

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

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

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Boise, Idaho 83705-5082

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Meridian, Idaho 83642

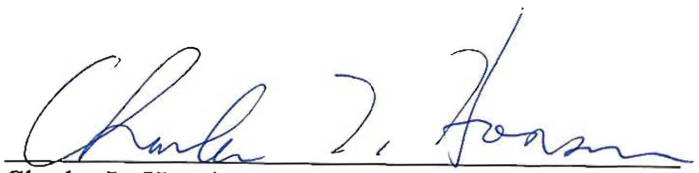
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RECEIVED
APR 22 2003
Department of Water Resources

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 REPLY RE: MOTION TO DISMISS

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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 Hearing Officer's Second PreHearing Order, hereby reply to United Water Idaho, Inc.'s ("UWID") Consolidated Response to Motions to Dismiss, et al. The Districts request that the Hearing Officer grant their Motion to Dismiss in its entirety.

I.

PRELIMINARY MATTERS AND BACKGROUND

The Districts, along with other irrigation entities, recently filed a Motion to Stay the IMAP proceedings. If that Motion to Stay is granted, it would affect the Hearing Officer's disposition of this Motion to Dismiss. Indeed, if the Motion to Stay is granted, all consideration of any issue in the IMAP would be stayed. Therefore, the Hearing Officer should consider the Motion to Stay before considering any other motions, since the Motion to Stay has a jurisdictional basis.

The Districts filed their Motion to Dismiss on March 14, 2003. In their Memorandum in Support of that Motion, the Districts attempted to address the issues inherent in the 2002 version of the IMAP, as well as the issues stemming from the "new" version of the IMAP, "resubmitted" by UWID in February 2003. UWID then submitted an additional change to the IMAP, and filed its Consolidated Response to Motions to Dismiss, Motion to Require Publication and Motion to Require Legislative Approval on or about March 28, 2003.

Shortly thereafter, on April 2, 2003, the Hearing Officer issued his Order Regarding New IMAP Applications. That Order provides, *inter alia*, that:

> The separate applications filed by the Applicant on February 27 and March 24, 2003, shall not be filed in the record until the preliminary motions filed on March 14, 2003, are resolved and the separate applications have been reviewed by the Applicant with staff from IDWR.

Order Regarding New IMAP Applications, p.2. The Districts interpret that Order to mean that the only issues to be addressed in the context of the Hearing Officer's consideration of the March 14, 2003, Motions are those associated with the 2002 version of the IMAP. Therefore, the Districts will not discuss any of the notice or application issues which have arisen in the context of the new IMAP applications filed in February and March, 2003, including any issues related to republication.

The Districts also note that UWID's Response is consolidated, and addresses the arguments of various protests. However, the Districts will respond only to those arguments which are directed to the Districts. They will also endeavor to avoid repetition, and with thus incorporate by reference the arguments from their Memorandum in Support of Motion to Dismiss to the extent it is appropriate.

Any administrative process, particularly one affecting what is probably Idaho's most valuable natural resource, should have clarity and accuracy as its goal, from the inception of the administrative process to its conclusion. That includes the application and notice, such clarity and accuracy is necessary in order to give affected parties (in this case, other water right holders) an opportunity to fully understand the full import and purpose of an application. That is at the heart of the Districts' concerns about the notice in this matter; as well as the application itself.

II.

THE DISTRICTS HAVE STANDING

The Districts have standing to raise the procedural due process arguments inherent in their Motion to Dismiss. Contrary to UWID's assertions, the Districts did not "assume" they have standing. In fact, the Districts achieved standing when they filed their protests in accordance with the Idaho Code. The authorities cited by UWID, as discussed herein, are simply irrelevant.

A. The Districts Have Standing

UWID asserts that in order for the Districts (or other protestants) to have standing, they must allege harm. However, the Idaho Legislature has conferred broad standing on Idaho's citizens to file a protest to a water right application, whether it be a permit application, transfer application, or application to amend permit. Idaho Code section 42-203A provides that:

> ***Any person, firm, association or corporation*** concerned in any such application may, within the time allowed in the notice of application, file with said director of the department of water resources a written protest, . . . which protest shall state the name and address of protestant and shall be signed by him or by his agent or attorney and shall clearly set forth his objections to the approval of such application.

I.C. § 42-203A (emphasis added).[1] Recognizing the value of water to all Idaho waterusers, and recognizing the binding and precedent-setting effect of IDWR administrative proceedings, the Idaho Legislature granted broad rights of participation in application proceedings. *See*

[1] Idaho Code section 42-211 provides that after notice has been published, "[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." I.C. § 42-211. A similar provision is found in the transfer statute, Section 42-222.

I.C. § 42-203A. Any person, firm, association, or corporation who is concerned in an application may protest. Surely UWID would not contend that the Districts lack standing to file a protest.

The decisions of the Idaho Supreme Court make it quite clear that standing is a jurisdictional issue, and asks whether a person or entity has a right to be a part of a case, or to bring an action:

> It is a fundamental tenet of American jurisprudence that a person wishing to ***invoke a court's jurisdiction*** must have standing. Standing is a ***preliminary question to be determined by the Court before reaching the merits of the case.*** The doctrine of standing is a subcategory of justiciability . . . Standing focuses on the party seeking relief and not on the issues the party wishes to have adjudicated.

Young v. City of Ketchum, 137 Idaho 102, 104, 44 P.3d 1157, 1159 (2002) (emphasis added and additional citations omitted).[2] In other words, standing asks whether a party has a right to bring an action in the first place, or whether the party is properly before the tribunal. Once properly there, the party may raise any relevant issues. In the IMAP matter, the protestants such as the District have properly invoked IDWR's jurisdiction pursuant to Idaho Code sections 42-203A, 42-211, and 42-222. They thus have standing to assert pertinent issues in the IMAP process.

Similarly, a review of other recent Idaho appellate cases shows that when the Court addresses standing, it asks whether a party has a right to bring an action in the first place. It does not ask what issues the party might raise once it is properly part of an action. *See, e.g. Gibbons v. Cenarrusa,* 2002 WL 834149 (Idaho); *Noh v. Cenarrusa*, 137 Idaho 798, 53 P.3d

[2] In that case, the Court held that the plaintiffs did not have standing to bring an action (for writ of prohibition and declaratory relief) challenging the constitutionality of a professional services contract and length.

1217 (2002) (stating that "standing is a fundamental prerequisite to ***invoking this Court's jurisdiction*** (emphasis added)); *Hagy v. State*, 137 Idaho 618, 51 P.3d 432 (Ct. App. 2002).

UWID's focus on the issue is misplaced. Standing asks whether a party may bring or be part of an action, not what issues it may raise once it is a proper party to a case. The Districts complied with Section 42-203A to the best of their ability, given the form of the notice and the application. Therefore, they have standing to be a party in this matter. Since they are properly parties to this matter, they may raise any issue, because standing focuses on the party, not the issues. Those issues include whether the notice and application in this matter complied with statutory and constitutional requirements, and whether legislative approval was required before notice of the IMAP was published and IDWR commenced its consideration of the IMAP.

B. The Authorities Cited By UWID Are Nonbinding And Unpersuasive

The arguments made by the Districts in their Memorandum in Support were based on Idaho law. In marked contrast, UWID does not cite a single Idaho case to support its argument that the protestants, including the Districts, are not "persons" entitled to due process. Instead, UWID cites a legal encyclopedia, federal cases (none of which are even from the Ninth Circuit) and cases from other states (none of which are in western states with irrigation districts). The same is true of its argument that "not every deviation from mandated procedures constitutes a violation of due process." (Consolidated Response, p. 10). It cites only one Idaho case in support of its argument that "[p]laintiffs have identified no flaw in procedure that affects them and rises to the level of impairing fundamental fairness." (Consolidated Response, p. 9).

In particular, UWID cites *Spence v. Boston Edison Co.*, 459 N.E.2d 80 (Mass. 1983) and *City of Atlanta v. Spence*, 249 S.E.2d 554 (Ga. 1978) in support of its argument that

the Districts are not "persons" entitled to due process. Obviously, those cases from other states provide no authority as to interpretation of the Idaho Constitution. The Massachusetts case pertained solely to the United States Constitution and the Massachusetts State Constitution, while the Georgia case discussed that state's constitution and the United States Constitution only.

In addition, in *Spence*, the Court drew a distinction between an entity acting on its own behalf, and on behalf of others:

> The constitutional claims of the BHA are therefore barred by the long-standing and far-reaching prohibition on constitutional challenges by governmental entities to acts of their creator State. ***We note that the BHA does not argue that it is a statutorily authorized surrogate for tenants' rights and that the interveners are actively asserting the claim of the tenants.***

Spence, 459 N.E.2d at 85 (emphasis added). In marked contrast to the entity in *Spence*, the Districts ***are*** the statutorily authorized surrogate for their landowners' rights as to the irrigation water rights held by the Districts. The Districts are actively asserting these issues on behalf of the landowners within their boundaries. Indeed, Idaho Code section 43-304 provides, not in one but two places, that the board of directors of an irrigation district has the power to "do any and every lawful act necessary to be done that sufficient water may be furnished to each landowner in said district for irrigation purposes." I.C. § 43-304. The Districts are the statutorily authorized surrogates for the landowners within their boundaries, and thus have standing on that basis as well.

III.

THE DISTRICTS HAVE SUFFERED HARM

As discussed above, the Districts have standing in this matter. Morever, as discussed in the Districts' Memorandum in Support, the harm in this matter stems from the fact of the procedural due process violation itself, and the fact that the notice and the application do not comport with the Idaho Code.

Before discussing the harm to the Districts, they must note the inherent problem that would occur if UWID's position as to the harm to the Districts prevails. UWID argues that the Districts have not been harmed by the deficiencies in the notice and application because the Districts were able to file a protest and are participating in this matter. By extension then, only those individuals or entities who are ***not*** parties could raise the issue of procedural defects. That makes little sense. Individuals or entities may have decided not to protest, based on the notice. Since they are not now parties, it is unlikely that they would know that the notice did not comport with the Idaho Code, and that the application was similarly deficient. How could they raise the issue? The current protestants must be allowed to raise and pursue the procedural due process issues.

The Districts have asserted ***procedural*** due process violations, not substantive due process violations. Therefore, the Am.Jur. citation on pages 10-11 of UWID's Consolidated Response is inapplicable: "[w]hen a statute provides a party with a notice and a hearing that comport with due process standards, the state's failure to follow its own due process standards, the state's failure to follow its own rules is not a per se violation of ***substantive due process***."

Consolidated Response, p. 11 (quoting 16B Am.Jur.2d *Constitutional Law* § 908 at 498-99 (1998) (emphasis added)).

As to the relationship between procedural rules and procedural due process, the Idaho Supreme Court ***has*** considered the issue, and considered it in the context of a permit to appropriate water. In its decision, the Court emphasized the importance of adherence to procedural statutes and rules:

> The district court correctly concluded that I.C. §§ 42-1701A (FN2) and 67-5210 were controlling with regard to the procedure and evidentiary rules governing the permit process. ***These statutes are designed to ensure procedural due process protection to parties involved in administrative actions in Idaho.***

In the Matter of Permit Number 47-7680, 114 Idaho 600, 603-04, 759 P.2d 891, 894-05 (1988) (emphasis added and footnote omitted). Similarly, statutes in Title 42 of the Idaho Code set forth the form in which applications are to be filed, and delineate the information which must be provided in a published notice. Those statutes were surely designed to ensure procedural due process protection. Those statutes were not complied with, thus violating procedural due process requirements and creating harm per se.

To the extent the Districts need to show harm, they can do so. The Districts have had to expend significant amounts of time and money they should not have had to, merely to understand what the IMAP really entails, because it was not clear from the notice. While the notice was understandable, it simply did not contain the required information. In addition, the IMAP was not presented upon Department forms, thus necessitating a search through dozens of pages of text, tables, and charts in an effort to determine what was being done with each

individual right, the status of each right, and various goals sought to be accomplished by the IMAP.

That point brings up another: UWID argues essentially, that the failure to comport with statutory requirements are "technical" failures or "harmless error," and that "not every procedural glitch demands a remedy." In fact, UWID argues that "[t]he notice fully met the ***spirit*** of the statutory requirement . . ." Consolidated Response, p. 13. It is surprising and troubling that when procedures designed to ensure due process are at stake, one can argue about "spirit" and "technicalities." Such rationales teeter atop the slipperiest of slopes. Where does one draw the line? When does failure to comply with procedural statutes tip from "good enough" to "a violation?" Those questions can be avoided by a ruling that the legislative mandates for applications and notice require strict adherence. "Shall" means nothing if mandatory adherence is not required. The Districts request that the Hearing Officer resist the position of UWID that "close is good enough."

IV.

THE NOTICE AND APPLICATION DID NOT COMPORT WITH THE IDAHO CODE

A. The Notice Did Not Comport With The Idaho Code

UWID makes assertions regarding its position about pre-publication and review of a notice, and that the Department accepted only "a few of the most insignificant changes urged by UWID, . . ." Consolidated Response, p. 12-13. UWID also takes the Districts to task for an alleged failure to "develop the point" regarding UWID's involvement in the notice of publication. UWID then has the audacity to assert that "UWID was not permitted to alter anything." Consolidated Response, p. 13, n. 8. The Districts take issue with that

characterization, and urges the Hearing Officer to examine the documents provided as Exhibits to the Affidavit of Scott L. Campbell, in support of the Districts' Motion to Dismiss, as well as the Second Affidavit of Counsel, filed concurrently herewith. As Exhibit 2 to the First Campbell Affidavit clearly shows, counsel for UWID stated:

> Thanks very much for hearing me out on this. I very much appreciate the time you've taken at the last minute. I'm sending along a copy of ***further edits*** which I understand Mr. Dreher has suggested. It is his hope and mine that you will be able to get this out this morning in order to avoid a delay in timing of the notice.

(First Campbell Aff., Ex. 2, p. WIDWR00095.) The following pages of that Exhibit show that counsel made changes, characterized as "further edits" to the Notice. The earlier edits, clearly made by counsel for UWID, are reflected in Exhibit 3 to the Second Campbell Affidavit. The Districts further disagree that the changes can be characterized as "inconsequential," and doubts that UWID felt they were inconsequential either, since UWID pressured IDWR to make changes to the notice prior to publication.

The Districts would be happy to explain why they are troubled by the notice in this matter and UWID's participation in the drafting thereof. The Legislature directed that "the department of water resources shall prepare a notice in such form as the department may prescribe . . ." I.C. § 42-203A(1). The statute does not read "the applicant shall prepare a notice" or "the department of water resources with the assistance and approval of the applicant shall prepare a notice." Instead, the legislature mandated that the department prepare the notice. Again, there has been a failure to follow the Idaho Code.

From a more philosophical perspective, in order that a notice provide a neutral description of the nature of an application, it is imperative that it be prepared by a neutral party.

In matters before the Idaho Department of Water Resources, it is the Department which is and should be the neutral party. Fairness (in addition to the Idaho Code) demands that the Department prepare the notice.

The Idaho Legislature felt that it was important to specifically delineate the information which must be contained in a notice of an application for transfer (or application for amendment of permit). *See* I.C. §§ 42-222, 42-203A, and 42-211.[3] Section 42-222 provides that upon receipt of an application for transfer, "***it shall be the duty*** of the director of the department of water resources . . . to provide notice of the proposed change in the same manner as applications under section 42-203A, Idaho Code." I.C. § 42-222 (emphasis added). Section 42-203A does state that the department may prescribe a form of the notice, but also states that the notice ***shall*** specify:

> (a) the number of the application; (b) the date of filing thereof; (c) the name and post-office address of the applicant; (d) the source of the water supply; (e) the amount of water to be appropriated; (f) in general the nature of the proposed use; (g) the approximate location of the point of diversion; (h) and the point of use.

I.C. § 42-222. The Legislature has ***specified*** the requirements, and deviations cannot be allowed without violating the clear direction of the Legislature.

Contrary to UWID's implication, legal notices need not be written in "legalese" in order to comport with the statute. However, they ***must*** contain all of the information required by the statute. The Districts outlined the deficiencies in their Memorandum in Support of Motion to Dismiss, and will not repeat them here except as necessary to respond to UWID arguments directed specifically to the Districts.

---

[3] The latter section, in particular, is discussed *infra*.

First, UWID notes that the Districts object to the fact that the notice did not disclose the date of filing, and states that "[i]t is difficult to imagine of what consequence this is." Consolidated Response, p. 17. The Idaho Code requires the date of filing. Nothing more need be said. It is irrelevant that the information was available from the Department or the Internet; the Code requires the date of filing, and it was not in the notice.

Second, UWID argues that the notice's description of the legal description of the point of diversion was sufficient to meet the requirements of the Code. UWID's irrelevant arguments in Footnote 12 aside (which also completely miss the point), a broad description of the location of the points of diversion goes far beyond "approximate." When interpreting a statute, a court should give the words therein their plain, usual, and ordinary meaning. *Albee v. Judy*, 136 Idaho 226, 231, 31 P.3d 248, 253 (2001). "Approximate" is defined as "nearly close or exact." WEBSTER'S COLLEGIATE DICTIONARY (10th Ed. 1995). Describing the points of diversion as being in the "Boise area," as well as "noncontiguous areas in and/or near Eagle, Meridian, Kuna, and Nampa" is ***not*** "nearly close or exact," particularly where the legal descriptions of the various points of diversion are known.[4]

The notice did not comport with the Idaho Code and procedural due process requirements.

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[4] UWID's statement that "neighbors of UWID wells have demonstrated over the years a keen understanding of where those wells are located" (Consolidated Response, p. 18, n. 13) is interesting in light of UWID's reluctance to provide a map showing the location of the wells, allegedly because of security concerns.

B. The Imap Application Was Not On Department Forms, And Did Not Comport With The Idaho Code

The Districts based their arguments regarding the deficiency of the IMAP "forms" upon the Idaho Code and the actual forms which are obtainable from the IDWR website. Once again, the Code and the forms say what they say, and the question becomes "when do deviations become too great?"

UWID asserts that "once the Department reviews the submission, and accepts it for filing, it becomes a form of the Department." Consolidated Response, p. 26. There is no legal support offered for that assertion, and the Districts doubt that there is any. While a submission might become a part of the files located at the Department, it does not become a "Department form." If that were the case, then every document ever submitted in connection with an application would become a "department form." That certainly is not the case; nothing less than sheer chaos would ensue.

UWID also argues that "common sense dictates that any conscientious applicant would exclude explanatory material with a complex application." Consolidated Response, p. 26. The Districts disagree. A conscientious applicant would strictly comply with the Idaho Code, and then provide supporting materials during the hearing process, as requested and required. This is particularly the case since at least a good portion of the IMAP is not "explanatory material," but legal and factual argument.

V.

LEGISLATIVE APPROVAL IS REQUIRED

UWID's argument that the right of approval is granted only to the Legislature, with no right of the Districts "to seek redress on behalf of the Legislature" is simply unavailing. UWID cites no Idaho law and, indeed, no law at all in support of its argument. Further, legislative approval is a prerequisite to processing applications which fit within the criteria of Idaho Code section 42-108. It is jurisdictional in nature. Thus, the Districts do not seek to "redress" a grievance on behalf of the Idaho Legislature, but only to ensure that the IMAP is properly before IDWR. There can be no greater waste than to proceed with the IMAP only to be told by a court at a later date that IDWR did not have jurisdiction because the statutory prerequisites were not met.

UWID argues that its rights should not be "summed" for purposes of determining whether they exceed 50 c.f.s. and thus require legislative approval. However, the relevant portion of Idaho Code section 42-108 simply states that "***[a]ny*** permanent or temporary change in period or nature of use . . . for a quantity greater than 50 c.f.s. . . ." I.C. § 42-108 (emphasis added). The words "any . . . change" are important; they are not modified by the word "water right." Instead, any change, even a temporary change, in the period or nature of use for greater than 50 c.f.s. must receive legislative approval. In fact, the Idaho Legislature even raised the bar to 100 c.f.s., and then lowered it again during the same session. Exhibit 4 to Second Campbell Affidavit.

UWID wonders what would happen "if the Department had to figure out whether every application for change entailed an integrated system in which the sum of all diversion rates

exceeded 50 c.f.s.?" The legitimacy of that inquiry is questionable, but its irrelevance is beyond doubt, because that is not the question before the Hearing Office, and that is not the Districts' position. The inquiry instead focuses on what is being sought in the application. UWID is not seeking to make a change to one or two or even ten of its water rights. Instead, via one application, it is seeking changes to virtually all of its water rights. There is nothing for the Department to "figure out." The Districts will not repeat their arguments that given the obvious intent of the IMAP that UWID's water right portfolio (as well as its physical system) be fully integrated, and simply incorporate that argument by reference here.

UWID engages in a rather twisted analysis to argue that legislative approval is not a prerequisite or first step in processing an application in excess of 50 c.f.s. Interestingly, UWID's counsel in other matters (see Stipulation and Withdrawal of Protest, In The Matter of Application for Exchange of Water Right Nos 02-02341, 02-02358 and 02-02420) seems to have recognized that legislative approval would be a ***prerequisite*** when he lobbied for removal of the legislative approval provision in 1985:[5]

> In my view, the legislation should eliminate the provision in that section which requires the approval of the legislature for changes in use for quantities of water greater than 50 cfs or 5,000 acre feet. The legislative approval requirement creates several problems with regard to water rights administration and the maximum utilization of water.
>
> First, the provision would upset the role of the Department of Water Resources in evaluating changes of water rights ***and would deny both the applicant and other water users affected by such a proposed change their opportunity to have the application heard and determined through the procedure already established by law..***

[5] Counsel was not representing UWID when writing that letter, but was writing as a water attorney.

Exhibit 5 to Second Campbell Affidavit, p. 4 (emphasis added).[6] To the extent that letters to legislators regarding pending legislation are indicative of legislative intent, that letter shows that legislative approval should be a prerequisite to departmental procedures. After all, how could the applicant be "denied the opportunity to have the application heard by the department" if the legislature had not already considered the application and denied approval?

From a practical standpoint, it makes little sense to allow a transfer application, application for permit, or permit amendment application to go through the entire administrative process if the legislature can disapprove it at the conclusion. It makes much more sense to obtain legislative approval of the "concept" first, and then allow the application to go through the administrative process.

UWID also argues that the phrase "consent" in Idaho Code section 42-222(1) applies only to the consent which must be obtained from a corporation or irrigation district, under circumstances described in Section 42-108. UWID cites legislative history in support of that position. However, the legislative history is actually to the contrary. UWID correctly cites the statement of purpose for RS 8128, which became House Bill 763, and which included the amendment to section 42-222(1). While UWID emphasizes the last section of the statement of purpose, the first sentence is equally important. In passing the bill, the legislature was "making this Section of Code 42-222 compatible with legislation already on the statute 42-108." Exhibit 7 to Second Campbell Affidavit.

---

[6] In 1986, Section 42-108 was amended to add the words "any" and "temporary" to the legislative approval section. Thus, that provision now reads "Any permanent or temporary change . . . " Ex. 6 to Campbell Affidavit. There was no amendment to Section 42-108 in 1985.

When testifying on behalf of HB 763, Mr. Sherl Chapman told the House Resources and Conservation committee:

> that in the second section of the bill, "notification to the Board of Directors of an irrigation district in a particular area" was omitted last year.

Id. However, that phrase appears nowhere in the finally-passed version of HB 763. 1982 Idaho Sess. Laws Ch. 202, Ex. 8 to Second Campbell Affidavit. Instead, the much broader language "obtain ***any*** consent required by Idaho section 42-108, Idaho Code" (emphasis added) is the language finally passed by the legislature, signed by the Governor, and codified at Section 42-222(1). It is also worth noting that although Mr. Chapman's testimony refers to "the second section of the bill," the second section of House Bill 763 pertains to fees of the department.

Section 42-222(1) contains the phrase "***any*** consent." There is no limiting language, and the legislative approval required in Section 42-108 should be included within the phrase "any consent." In fact, Ken Dunn, who was then Director of the Idaho Department of Water Resources, used the phrase "consent" and "approval" interchangeably:

> This bill amends the code to make certain that in taking action on any change in nature of use of a water right, the Director of the Dept. of Water Resources considers the specific requirements in Section 42-108 which requires that he obtains consent from the affected parties. This makes it clear that ***he has to have that approval.***

Exhibit 7 to Second Campbell Affidavit (emphasis added). Moreover, consent, when given its plain meaning, to give consent means "to give assent or ***approval.***" WEBSTER'S COLLEGIATE DICTIONARY (10th Ed. 1995) (emphasis added). Consent is defined as, *inter alia*, "compliance in ***or approval of*** what is done by another." *Id.*

The bottom line is that there is no difference between consent and approval for purposes of the interplay between Idaho Code sections 42-222(1) and 42-108. Legislative approval must be obtained before notice of an application exceeding 50 c.f.s. is published.

CONCLUSION

When it comes to compliance with statutes designed to ensure procedural due process protections, there are no "technicalities" or "close enough." The notice did not contain the information required by Section 42-203A, and the application was not upon forms furnished by the Department. The IMAP should be dismissed for those reasons. The IMAP should also be dismissed because the prerequisite legislative approval has not been obtained.

The Districts respectfully request that the Hearing Officer grant their Motion to Dismiss in its entirety.

DATED this 18th day of April 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 18th day of April 2003, I caused a true and correct copy of the foregoing **PIONEER IRRIGATION DISTRICT AND SETTLERS IRRIGATION DISTRICT'S REPLY RE: MOTION TO DISMISS** 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	(X) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile
Peter Anderson, Hearing Officer 729 W. Braemere Road Boise, ID 83702	(X) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile
Gary L. Spackman, Regional Manager Idaho Department of Water Resources Western Region Office 2735 Airport Way Boise, ID 83705 Fax: 334-2348	(X) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile
United Water Idaho Inc. John M. Marshall Givens Pursley, LLP PO Box 2720 Boise, ID 83701 Fax: 388-1300	(X) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile
Nampa & Meridian Irrigation District, City of Meridian, City of Caldwell, Terteling Company, and Terteling Trust No. 7 Charles L. Honsinger Ringert Clark 455 South 3rd Street PO Box 2773 Boise, ID 83701-2773 Fax: 342-4657	(X) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile

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

(X) U.S. Mail, Postage Prepaid
( ) Hand Delivered
( ) Overnight Mail
( ) Facsimile

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

(X) U.S. Mail, Postage Prepaid
( ) Hand Delivered
( ) Overnight Mail
( ) Facsimile

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

(X) U.S. Mail, Postage Prepaid
( ) Hand Delivered
( ) Overnight Mail
( ) Facsimile

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

(X) U.S. Mail, Postage Prepaid
( ) Hand Delivered
( ) Overnight Mail
( ) Facsimile

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

(X) U.S. Mail, Postage Prepaid
( ) Hand Delivered
( ) Overnight Mail
( ) Facsimile

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

(X) U.S. Mail, Postage Prepaid
( ) Hand Delivered
( ) Overnight Mail
( ) Facsimile

Estate of Eleanor I. Chase Matt J. Howard PO Box 190012 Boise, ID 83719 Fax: 333-8409	(X) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile
Cities of Eagle, Kuna, Middleton & Star and Star Sewer District Bruce M. Smith Tammy A. Zokan Moore Smith Buxton & Turcke 225 N. 9th Street, Suite 420 Boise, ID 83702 Fax: 331-1202	(X) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile
City of Meridian Public Works Gary D. Smith 660 E. Watertower Meridian, ID 83642 Fax: 887-1297	(X) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile
City of Caldwell Engineering Department Gordon Law 621 E. Cleveland Blvd. Caldwell, ID 83605 Fax: 455-3003	(X) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile
Ed Squires Hydrologic 1002 W. Franklin Boise, ID 83702-5431 Fax: 342-3100	(X) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile
Robert W. Talboy Ellsworth Kallas Talboy, PLLC 2402 W. Jefferson Street Boise, ID 83702 Fax: 345-8945	(X) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile
Mr. Michael Chase 70 W. Floating Feather Road Eagle, ID 83616-3802	(X) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile

Scott L. Campbell

RECEIVED
APR 22 2003
Department of Water Resources

Attorneys for Pioneer Irrigation District
and Settlers Irrigation District

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Boise, Idaho 83701
Telephone: (208) 345-2000
Facsimile: (208) 385-5384
18946.26

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

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

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

3. Appended hereto as Exhibit 3 is a true and correct copy of correspondence from Chris Meyer to Phil Rassier at IDWR regarding changes to the notice in the above captioned matter. This correspondence was disclosed during the course of the informal information exchange.

4. Appended hereto as Exhibit 4 is a true and correct copy of the legislative history pertaining to the 1981 amendments to Idaho Code section 42-108 (1983 Idaho Sess. Laws Ch. 147). These documents were obtained from the Idaho Legislature's legislative library.

5. Appended hereto as Exhibit 5 is a true and correct copy of correspondence from Jeffrey Fereday to Senator Gary Chapman and Representative J. Vard Chatburn, dated September 16, 1985.

6. Appended hereto as Exhibit 6 is a true and correct copy of 1986 Idaho Session Laws, chapter 313.

7. Appended hereto as Exhibit 7 is a true and correct copy of the legislative history for 1982 RS 8128/HB 763. These documents were obtained from the Idaho Legislature's legislative library.

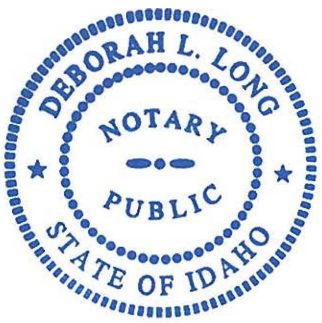
8. Appended hereto as Exhibit 8 is a true and correct copy of 1982 Idaho Session Laws, Chapter 202.

DATED this 18th day of April 2003.

By Scott L. Campbell
Scott L. Campbell

SUBSCRIBED AND SWORN to before me this 18th day of April 2003.

S
E
A
L



Notary Public for Idaho
Residing at: Boise, Idaho
Commission Expires: 10/10/07

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18th day of April 2003, I caused a true and correct copy of the foregoing **SECOND AFFIDAVIT OF SCOTT L. CAMPBELL** to be served by the method indicated below, and addressed to the following:

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

City of Boise Matthew Wilde Boise City Attorney's Office PO Box 500 Boise, ID 83701-0500 Fax: 384-4454	(✗) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile
Josephine P. Beeman Beeman & Associates P.C. 409 W. Jefferson Street Boise, ID 83702 Fax: 331-0954	(✗) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile
City of Boise Boise Public Works Department Beth K. Baird Environmental Programs Coordinator 150 N. Capitol Blvd. PO Box 500 Boise, ID 83701-0500 Fax: 384-3905	(✗) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile
Boise Project Board of Control Albert P. Barker Barker Rosholt & Simpson PO Box 2139 Boise, ID 83701-2139 Fax: 342-4657	(✗) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile
Bureau of Reclamation E. Gail McGarry, PN-3100 1150 N. Curtis Road, Suite 100 Boise, ID 83706-1234 Fax: 378-5019	(✗) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile
Kathleen M. Carr U.S. Department of the Interior Office of the Solicitor Pacific Northwest Region , Boise Field Office 550 West Fort Street, MSC 020 Boise, ID 83724-0020 Fax: 334-1378	(✗) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile

Estate of Eleanor I. Chase Matt J. Howard PO Box 190012 Boise, ID 83719 Fax: 333-8409	(X) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile
Cities of Eagle, Kuna, Middleton & Star and Star Sewer District Bruce M. Smith Tammy A. Zokan Moore Smith Buxton & Turcke 225 N. 9th Street, Suite 420 Boise, ID 83702 Fax: 331-1202	(X) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile
City of Meridian Public Works Gary D. Smith 660 E. Watertower Meridian, ID 83642 Fax: 887-1297	(X) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile
City of Caldwell Engineering Department Gordon Law 621 E. Cleveland Blvd. Caldwell, ID 83605 Fax: 455-3003	(X) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile
Ed Squires Hydrologic 1002 W. Franklin Boise, ID 83702-5431 Fax: 342-3100	(X) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile
Robert W. Talboy Ellsworth Kallas Talboy, PLLC 2402 W. Jefferson Street Boise, ID 83702 Fax: 345-8945	(X) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile
Mr. Michael Chase 70 W. Floating Feather Road Eagle, ID 83616-3802	(X) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile

Angela Schaer Kaufmann

Scott L. Campbell

EXHIBITS TO SECOND AFFIDAVIT OF SCOTT L. CAMPBELL

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.

Exhibit 3

FAX COVER SHEET

DATE: Thursday, March 28, 2002

PAGES (INCLUDING COVER): 3

ORIGINAL TO FOLLOW: No

From:
CHRISTOPHER H. MEYER
GIVENS PURSLEY LLP
Suite 200, Park Place
277 North Sixth Street
Post Office Box 2720
Boise, Idaho 83701-2720
Telephone: 208-388-1236
Fax: 208-388-1300
Email: chm@givenspursley.com
Web: www.givenspursley.com

FILE COPY

RE: United Water Idaho – IMAP
Our File No. 30-71

TO: Phil Rassier
Idaho Department of Water Resources

SEND TO FAX PHONE: 327-7866

MESSAGE:

Thank you so much for taking a look at this. We look forward to hearing what the Director has to say.

— Chris

cc: Gary Spackman (via Facsimile – 334-2348)
Steve Lester (via Facsimile – 334-2348)
Scott Rhead - 363-3858
Joe Miller - 336-6912

If this fax does not transmit fully or is difficult to read, please contact me or my secretary, Katrina Thomas, at (208) 388-1227.

CONFIDENTIALITY NOTICE

This facsimile may contain confidential information that is protected by the attorney-client or work product privilege. It is intended only for the use of the individual(s) named above. If you are not a named recipient or an employee responsible for delivering the facsimile, you are instructed not to deliver, distribute or copy this facsimile, nor should you disclose its contents or take any action in reliance on the information it contains. If you have received this facsimile in error, please notify us immediately by telephone to arrange for the return of the transmitted documents to us. Thank you.

Edits to Notice by Chris Meyer

NOTICE OF PROPOSED CHANGE OF WATER RIGHTS AND WATER PERMITS

UNITED WATER IDAHO INC. (UW), PO Box 7488, Boise ID 83707 has filed 99 Applications for Transfer of Water Rights (Licenses and Statutory Claims) and 13 Applications for Amendment (Permits). For convenience, water rights and water permits are referred to as "rights" in this notice. The 112 applications are known as the Integrated Municipal Application Package (IMAP) and are based on the Idaho Municipal Water Rights Act of 1996 (ACT). The Act allows municipal providers to ~~reserve~~ hold rights ~~and associated water~~ for ~~future~~ use within a planning period to accommodate growth in municipal service areas. IMAP will conform UW rights to the Act. IMAP also makes minor corrections to a few of the rights.

UW documented a 50 year planning period for IMAP, including estimates of population growth and ~~future~~ increased water needs. UW anticipates a water demand of about 420 cfs within 50 years. Existing UW rights describe about 310 cfs, although current peak demand is about 150 cfs. The difference between the rate currently described by the rights (about 310 cfs) and the current peak flow (about 150 cfs) is about 160 cfs. UW requests approval to hold about 160 cfs for future growth. Approximately 100 to 120 additional cfs may need to be acquired by UW within the planning period, but that additional water is not sought by IMAP.

All of the rights describe a ground water source except one Boise River right for 24.8 cfs diverted at the Marden Street Treatment Plant near Municipal Park in Boise. The rights bear priority dates from 1934 through 1999. About 75% of the rights describe municipal use in variously described service areas such as the City of Boise, within city limits of Boise and vicinity, and so forth. About 25% of the rights list various combinations of domestic, irrigation and fire protection uses in specific locations or in generally described service areas. Most ground water rights include a single well although some include multiple wells. UW currently has about 107 authorized well sites for its 111 ground water rights. Most of the sites already have a well drilled under prior Idaho Department of Water Resources (IDWR) approval. Most of the rights serve the Boise area. A few of the rights serve non-contiguous areas in and/or near Eagle, Meridian, Kuna and Nampa.

PROPOSED CHANGE

If approved, IMAP will change the rights as follows. Each well in the municipal system will provide an alternate point of diversion for each ground water right. In other words, each ground water right will list all the wells as possible points of diversion, but each well will retain its original priority date for purposes of well interference. The Boise River right will be diverted at Marden Street and/or at an existing pump station by the Hwy 21 bridge near Diversion Dam.

Nature of use for all rights will be municipal. Season of use for all rights will be all year. Place of use for all rights will be the UW service area. Diversion rates for rights presently limited by annual volume will be adjusted downward to a continuous flow rate sufficient to produce the annual volume. About 50% of the total flow rate authorized by the rights ~~will be dedicated to future~~ is required to meet demand today. water demand within the 50 year planning horizon. The balance will serve long term

Total amount of water to be authorized for use under the rights will be about 295 cfs, a slight reduction in the amount presently authorized for use. The river permit will provide up to 24.8 cfs of the proposed total, with the balance to be provided from wells. Two new well sites are proposed in Boise: near Hwy 21 southeast of Harris Ranch, and near the Maple Grove/Franklin intersection.

More information about IMAP can be obtained from IDWR Western Region, 2735 Airport Way, Boise, ID 83705-5082 or via the Internet (see "Special Interest" items at IDWR homepage www.idwr.state.id.us). Printed copies of IMAP can be reviewed at any IDWR office. Protests may be submitted based on the criteria of Sections 42-222 (transfers) or 42-211 (amendments), Idaho Code. Any protest against the proposed change must be filed, together with a protest fee of $25, at the IDWR Western Region office on or before April 22, 2002. The protestant must also send a copy of the protest to the applicant.

Karl J. Dreher, Director

Published on April 4 and 11, 2002.

TRANSACTION REPORT

Broadcast
Transaction(s) completed

NO.	TX DATE/TIME	DESTINATION	DURATION	PGS.	RESULT	MODE
354	MAR. 28 10:15	327 7866	0° 00' 59"	003	OK	N ECM
	10:16	334 2348	0° 01' 01"	003	OK	N ECM

FAX COVER SHEET

DATE: Thursday, March 28, 2002

PAGES (INCLUDING COVER): 3

ORIGINAL TO FOLLOW: No

From:
CHRISTOPHER H. MEYER
GIVENS PURSLEY LLP
Suite 200, Park Place
277 North Sixth Street
Post Office Box 2720
Boise, Idaho 83701-2720
Telephone: 208-388-1236
Fax: 208-388-1300
Email: chm@givenspursley.com
Web: www.givenspursley.com

RE: United Water Idaho – IMAP
Our File No. 30-71

TO: Phil Rassier
Idaho Department of Water Resources

SEND TO FAX PHONE: 327-7866

MESSAGE:

Thank you so much for taking a look at this. We look forward to hearing what the Director has to say.

— Chris

EXHIBITS TO SECOND AFFIDAVIT OF SCOTT L. CAMPBELL

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.

Exhibit 4

Mr. Durrell Moon, a dredge miner from Burley, gave testimony against this legislation. He spoke of the application procedure and said if this bill passed, it would be taking away the rights of the people.

Mr. Steve Allred also discussed the issue and clarified the application procedure.

Chairman Chatburn asked Mr. Moon to elaborate further on what this legislation would do to him. Mr. Moon said he was overwhelmed with laws and that it could get to basic survival versus the law.

MOTION: It was moved by Rep. Stephenson and seconded by Rep. Orme that RS 6455 be returned to sponsor. The motion carried.

RS 6510: TO PROVIDE THAT PERIOD OF USE AND NATURE OF USE OF A WATER RIGHT MAY BE CHANGED.

Mr. Steve Allred gave background of this legislation to the committee and answered questions.

MOTION: It was moved by Rep. Tibbitts and seconded by Rep. Johnson that RS 6510 be introduced with changes.

Mr. Lynn Tominaga discussed the suggested changes. Mr. Allred said he approves of the change.

Changes: RS 6510, Page 1: Delete Line 27; Line 30 should read--provided, any change in period of use or nature of use in or out of state; Line 31--delete word and number 50 and insert word and number 100; Line 32--delete word and number 5 and insert word and number 10.

With these changes, Rep. Tibbitts withdrew his motion. The committee did unanimously agree to his withdrawing his motion.

MOTION: It was moved by Rep. Orme and seconded by Rep. Stephenson that RS 6510 be introduced after changes are made.

In a substitute motion, it was moved Rep. Tibbitts and seconded by Rep. Brackett that we do not introduce RS 6510 until such time as we have those corrections, so that the committee can look them over. The motion carried.

MOTION: It was moved by Rep. Stephenson and seconded by Rep. Stoicheff that the meeting be adjourned. The motion carried.

J. Vard Chatburn

J. VARD CHATBURN, Chairman

Robin Traver

ROBIN TRAVER, Secretary

MINUTES

RESOURCES AND CONSERVATION COMMITTEE

DATE: FEBRUARY 5, 1981 at 3:30 P.M.

PRESENT:

CHATBURN, CHAIRMAN	STUCKI
LEWIS	ORME
BRACKETT	HIGGINS
JOHNSON	SCATES
TIBBITTS	TRILLHAASE
BATEMAN	STOICHEFF
STEPHENSON	McLAUGHLIN
PARKS	KEETON

ABSENT: JONES HEDLUND

EXCUSED: WINCHESTER

MINUTES: Chairman Chatburn called the meeting to order at 3:30 p.m. He introduced Mr. Bill Dokken, Chief of Bureau of Operations from the Dept. of Parks and Recreation. He discussed RS 6281 C1 with the committee members.

RS 6281C1: DAY USE FEE:

Proposed legislation will authorize Idaho Parks and Recreation Board to establish a "motorized vehicle entrance fee" in the state parks, effective January 1, 1982.

PROPOSED RATE: Day use Fee $ 1.00 per vehicle
Annual Pass 10.00 per year

ANTICIPATED REVENUE: $255,000 per year

The basic purpose of a daytime user fee is to provide a management tool for all areas paying such a fee. A secondary purpose is to have users of a facility pay a more proportionate share of the costs incurred in maintaining and developing facilities. The user fee will be set by the Parks and Recreation Board through The Administrative Procedures Act, thereby giving an opportunity for the fee to be reviewed.

MOTION: It was moved by Rep. Stephenson and seconded by Rep. Tibbitts that RS 6281 C1 be introduced.

There was a vote--the AYES have it. THE MOTION CARRIED.

RS 6510C1: TO PROVIDE THAT PERIOD OF USE AND NATURE OF USE OF A WATER RIGHT MAY BE CHANGED.

Chairman Chatburn explained that the committee had made changes in RS 6510 C1, and asked the committee if they would be willing to reconsider their action.

Rep. Bateman asked for unanimous consent to reconsider previous action. There was no objection.

MOTION: It was moved by Rep. Bateman and seconded by Rep. Johnson that the committee reconsider their action regarding RS 6510C1 and make the necessary changes.

Changes: RS 6510 C1, Page 1: Starting with Line 31, delete word and number 100 and insert word and number 50; Line 32, delete word and number 10 and insert word and number 5.

There was a vote--the AYES have it. The MOTION CARRIED.

RS 6585C1: BONDING FINANCE RELATING TO WATER RESOURCE BOARD

Mr. Steve Allred and the committee examined and discussed the changes relating to RS 6585C1.

Mr. Allred said that through this legislation, Water Resources could finance a project if generation of power is part of another project; but, if the sole purpose is to generate power, then they can't loan the money. The generation of power must be incidental to the project.

He said this legislation does not change the tax status of the sponsor. It would give no one an advantage they don't already have.

Chairman Chatburn told the committee it was the intent of the chair to hold RS 6585C1 in committee and not introduce today.

The last order of business was the reading and adopting of the minutes from the previous meeting.

MOTION: It was moved by Rep. Stucki and seconded by Rep. Tibbitts that the minutes be approved as they appeared. The motion carried.

There being no further business, the meeting adjourned at 4:35 p.m.

J. Vard Chatburn

J. VARD CHATBURN, Chairman

Robin Traver

ROBIN TRAVER, Secretary

MINUTES

RESOURCES AND CONSERVATION COMMITTEE

DATE: FEBRUARY 13, 1981 at 2:25 P.M.

PRESENT:

CHATBURN, CHAIRMAN	PARKS
LEWIS	STUCKI
BRACKETT	ORME
JOHNSON	HIGGINS
TIBBITTS	SCATES
BATEMAN	HEDLUND
STEPHENSON	STOICHEFF

ABSENT:

JONES	McLAUGHLIN
TRILLHAASE	KEETON

EXCUSED: WINCHESTER

GUESTS: Sherl Chapman, Geologist, Idaho Water Users Assoc.
Mike Mogensen, Exec. Vice Pres., Idaho Cattlemen's Assoc.
Stephen Allred, Director, Dept. of Water Resources
Thomas K. Shaver, Engineer, Big Wood Canal Co., Twin Falls
Vern Ravenscroft, Consulting Associates

MINUTES: Chairman Chatburn called the meeting to order at 2:25 p.m. The first order of business was the reading and adopting of the minutes from the previous meeting.

MOTION: It was moved by Rep. Stucki and seconded by Rep. Stephenson that the minutes be approved as they appeared. The motion carried.

RS 6510C2: TO PROVIDE THAT PERIOD OF USE AND NATURE OF USE OF A WATER RIGHT MAY BE CHANGED.

Chairman Chatburn told the committee that they had reconsidered their previous action on RS 6510C2 and changed it back to the original figures of 50cfs and 5,000 acre feet.

MOTION: It was moved by Rep. Bateman and seconded by Rep. Hedlund that RS 6510C2 be introduced.

There was a vote--THE MOTION CARRIED.

Rep. Stoicheff. . . .NAY
Rep. Stephenson . . .NAY

RS 6712: TO ESTABLISH A PRIORITY FOR THE PRESENT HOLDER OF A WATER RIGHT.

Mr. Sherl Chapman said he felt this was a good bill. He represents 450 canal companies and aked for favorable consideration of this legislation.

Mr. Stephen Allred answered the committee member's questions.

Mr. Thomas K. Shaver with the Big Wood Canal Co. said they had been studying power potential since 1968. He spoke of the problem of the three competing filings on the site at Magic Reservoir in southern Blaine County, and said they needed this legislation.

MINUTES

RESOURCES AND CONSERVATION COMMITTEE

DATE: FEBRUARY 27, 1981 at 11:45 A.M.

PRESENT:

CHATBURN, CHAIRMAN	PARKS
LEWIS	STUCKI
WINCHESTER	ORME
BRACKETT	SCATES
JOHNSON	McLAUGHLIN
TIBBITTS	
BATEMAN	
JONES	

ABSENT: STOICHEFF, HEDLUND

EXCUSED: TRILLHAASE, HIGGINS, STEPHENSON, KEETON

MINUTES: Chairman Chatburn called the meeting to order at 11:45 a.m. The first order of business was the reading and adopting of the minutes from the previous meeting.

MOTION: It was moved by Rep. Jones and seconded by Rep. Lewis that the minutes be approved as they appeared. The motion carried.

H 253: RELATING TO THE APPROPRIATION OF WATER; TO PROVIDE THAT PERIOD OF USE AND NATURE OF USE OF A WATER RIGHT MAY BE CHANGED.

Chairman Chatburn explained this bill to the committee and went through its changes. He gave examples and applied them to the law.

MOTION: It was moved by Rep. Jones and seconded by Rep. Bateman that H 253 be sent to the floor with a DO PASS recommendation. The MOTION CARRIED.

Sponsor: Rep. Bateman

H 317: RELATING TO PERMITS FOR APPROPRIATION OF WATER FOR HYDROPOWER PURPOSES; TO PROVIDE A PREFERENCE FOR APPLICATIONS FOR A PERMIT FILED BY THE OWNER OF EXISTING RIGHTS OR HIS AGENT.

Chairman Chatburn presented a brief description of H 317.

MOTION: It was moved by Rep. Stucki and seconded by Rep. Parks that H 317 be sent to the floor with a DO PASS recommendation. The MOTION CARRIED.

Sponsor: Rep. Jones

H 318: RELATING TO THE POWERS AND DUTIES OF THE WATER RESOURCE BOARD: Amends existing loan authority of the Water Resource Board to allow the sale of bonds for the purpose of providing repayable loans to local project sponsors.

MOTION: It was moved by Rep. Tibbitts and seconded by Rep. Bateman that H 318 be sent to the floor with a DO PASS recommendation. The motion carried.

Rep. Stucki: NAY

Sponsor: Rep. Chatburn

MINUTES

SENATE RESOURCES AND ENVIRONMENT COMMITTEE

March 16, 1981

BERS PRESENT: Williams, Chairman, Beitelspacher, Little, Noh, Steen, Peavey, Kiebert, Floyd, Bradshaw.

The meeting was called to order at 3:00 p.m. by Chairman Williams.

1113 This resolution directs the Fish and Game Commission and the State Board of Land Commissioners not to continue with a proposed exchange of lands in the Lindstrom Mountain area on tne St. Maries River drainage and lands in the Buck Creek area on the St. Joe River drainage.

Representative Lewis and Senator Sverdsten testified against the exchange on behalf of people in St. Maries who are wholeheartedly opposed to this exchange.

Testifying for the exchange were Mike Gross representing the District #1 Wildlife Association, Don Hill representing Shoshone County Sportsmen, and Bob Boeh, director of land management for Burlington Northern Railroad. A copy of Mr. Boeh's testimony is attached.

The Fish and Game Commission and the Burlington Northern Railroad are about halfway through the process of documenting this exchange and there are a lot of questions that need to be answered.

OTION: Senator Noh moved we hold SCR 113 until we have more information. Senator Floyd seconded. MOTION CARRIED.

1253 This bill provides that period of use and nature
herl Chapman of use of a water right are items that can be transferred on a valid decree, license or claim to a water right and would require legislative approval for out of state diversions in excess of 50 cfs and 5,000 acre feet of storage.

Two amendments have been proposed to this bill. The first amendment allows leasing of water for less than a three year period primarily to provide a mechanism by which Idaho Power or other

H 253 cont. hydro power facilities can lease water for hydro power generation if there is a willing water right holder.

The second amendment eliminates the ability of someone who has changed the nature of use of a water right, to sell that right continually or for some other use, essentially, to prohibit that kind of bargaining or wheeling and dealing with water rights. If an individual has a water right that has been changed at one time, the only way that right can again suffer a change in nature of use would be back to the original use.

MOTION: Senator Kiebert moved we put H 253 out to the 14th order for amendment. Senator Beitelspacher seconded. MOTION CARRIED. Senator Peavey will carry.

MEETING ADJOURNED.

J. M. Williams

Senator J. Marsden Williams, Chairman

Dorothy True

Dorothy True, Secretary

EXHIBITS TO SECOND AFFIDAVIT OF SCOTT L. CAMPBELL

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.

Exhibit 5

LAW OFFICES
GIVENS, MCDEVITT, PURSLEY, WEBB & BUSER

RAYMOND D. GIVENS
CHAS. F. McDEVITT
KENNETH L. PURSLEY
JAY L. WEBB
PAUL J. BUSER
LEO EDWARD MILLER
KENNETH L. MALLEA
CHRISTOPHER J. BEESON
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September 16, 1985

Senator Gary Chapman
Representative J. Vard Chatburn
Co-Chairmen
Legislative Council Committee on Water Rights
State Capitol
Boise, ID 83720

RE: Comments on House Bill 233

Dear Senator Chapman and Representative Chatburn:

Thank you for your invitation of August 28, 1985 to address your interim committee on the subject of House Bill 233. I appreciate the opportunity. This letter contains a summary of my comments which I submit on my own behalf as a water lawyer who has had experience with the augmentation plan concept.

You will note that most of my comments concern the proposed changes to existing law contained in H.B. 233; in a few instances I suggest changes which relate to, but go beyond, the issues raised by H.B. 233. For ease of reference, my comments are organized under headings which refer to the page numbers of the printed bill and to the Idaho Code section which H.B. 233 proposes to add or amend.

1. Plans for augmentation.

As the committee knows from my previous testimony, I am in favor of legislation, such as that contained in H.B. 233, which clearly establishes a water user's right to implement a plan for augmentation and which sets forth the means by which the Department must evaluate such plans so as to protect other rights. The proposed legislation contains four sections containing substantive provisions pertaining to plans for augmentation. I support these provisions, but believe they could be strengthened and clarified.

a. Definition of plans for augmentation: page 3, §42-114. The bills definition of a plan for augmentation is sound. The definition, which, apparently was borrowed from Colorado's statute (C.R.S. § 37-92-103(9)) differs from Colorado's definition only in the provision prohibiting the use of water in an augmentation plan which is tributary water "salvaged" by the filling or draining of wetlands. However, that provision in H.B. 233 also is well considered. In fact, the Colorado courts have interpreted their statute as prohibiting the use of such salvaged water in augmentation plans. See R.J.A., Inc. v. District 6 Water Users Ass'n, 690 P.2d 823, (Colo. 1984). The use of such additional waters in most cases would result in injury to other water users who rely on return flows occurring historically under the use of the right.

The committee also should be aware that the use of the phrase "tributary waters" in the definition may need further legislative explication in H.B. 233 or elsewhere. In Colorado and some other jurisdictions, surface waters and ground waters which are tributary to surface water sources are administered together. As yet, that is not the case in Idaho. Thus, the use of the term "tributary" in this context may be misplaced.

b. Legislative findings concerning plans for augmentation: page 3, §42-201A. Proposed new section 42-201A sets forth legislative findings concerning plans for augmentation. I support this new section generally, but I believe that both paragraphs of the section should be rewritten to reflect the fact that some augmentation plans will not involve a transfer of rights as such. For example, the augmentation water in some plans may consist of flood flows acquired under a junior right that will be stored, when available for diversion, in an alluvial aquifer in order to provide replacement water for alluvial well pumping or out-of-priority stream diversions during the irrigation season.

c. Department evaluation of proposed plans for augmentation: page 10, §42-222A. New section 42-222A would set forth the procedures to be followed in evaluating plans for augmentation. The provision also appears to be fundamentally sound, but should be changed in a few important respects.

Section 222A(1)(b) should be changed to read, "A complete statement of the water rights to be established or changed by the plan" (added material underlined). While the approval of an augmentation plan itself "establishes" a water right pursuant to the terms of the plan, this provision would be more accurate if it were expanded as suggested to encompass expressly those situations where water rights are being changed in order to use them pursuant to a plan for augmentation.

Section 222A(2) should be changed to improve the method of notifying other water users of the proposed plan for augmentation. Since I discuss the notice question generally in another section of this letter, I will not comment at length on the notice issue here. However, if an alternative notice provision were adopted for all applications for water rights, including applications for plans for augmentation, it would not be necessary to include the language concerning additional published notice as section 222A(2) presently provides.

Section 222A(2) also provides that the Department shall notify the watermaster of "the proposed change" and requires the watermaster to provide the Department with his recommendation. The watermaster's recommendation could be a valuable component of the Department's consideration of any plan for augmentation. Presumably, the watermaster will be able to advise the Department about whether the plan could be easily administered in the priority system, whether the historical diversion figures for any changed rights are accurate, and so forth. However, proposed section 222A(2) should be changed to make it clear that the watermaster's recommendation must be sought even in those cases where there is no protest.

Likewise, the proposed legislation does not state expressly whether the Department is required to investigate the facts pertaining to the application even in those cases where no protest has been filed. Since the Department has the responsibility of insuring that the state's waters are not subject to improper claims or out-of-priority diversions, the Department should have the responsibility of satisfying itself, regardless of the existence of a protestant, that the proposed plan for augmentation will not injure other rights. I suggest changing section 42-222A(2) accordingly.

Section 222A(4) of the bill concerns reserved jurisdiction over plans for augmentation. I support this provision, but suggest that a provision be added which allows the Department to extend the period of reserved jurisdiction for good cause shown, perhaps subject to appeal by the applicant.

Finally, section 222A(4) refers to water "which is the subject of the plan for augmentation and of the transfer." I question the use of the term "transfer" in this context. The term has not been defined in the Idaho Code or in H.B. 233. I believe that the term either should be defined or dropped from the bill. In my opinion, referring simply to "the water which is the subject of the plan for augmentation" is sufficient.

d. Designation of areas where plans for augmentation are required. I agree with the apparent purpose of proposed section 42-222B, which appears on page 11 of the printed bill. I suggest that the provision be changed slightly to allow the Director to change or eliminate the designation for areas within the state where plans for augmentation will be required with any new application for a water right.

As a general comment, I question whether it is necessary or desirable to limit the Director's power to designate areas where augmentation plans will be required to those situations where new diversions in the area "may adversly affect the maintenance of the minimum stream flow." There may be areas in the state where it is necessary to protect other water rights with a designation pursuant to this section even though there is no minimum stream flow established for the stream involved. It appears self evident that other water rights holders should have the same protection that this section would afford a minimum stream flow.

2. Comments on H.B. 233 generally.

a. Change in point of diversion and place of use: page 2, §42-108. I suggest a more extensive change to section 42-108 than that proposed in H.B. 233. In my view, the legislation should eliminate the provision in that section which requires the approval of the legislature for changes in use for quantities of water greater than 50 cfs or 5,000 acre feet. The legislative approval requirement creates several problems with regard to water rights administration and the maximum utilization of water.

First, the provision would upset the role of the Department of Water Resources in evaluating changes of water rights and would deny both the applicant and other water users affected by such a proposed change their opportunity to have the application heard and determined through the procedure already established by law. The present language in section 42-108 would place the legislature in the position of determining these individual water rights on a case by case basis. It is uncertain whether, in making that determination, the legislature would be bound by any of the standards, such as protection of other rights, which presently bind the Department in its determinations. It is possible that other water users could be injured by the legislature's approval of a change in water right pursuant to this provision and yet not have the opportunity to pursue remedies guaranteed to water users normally under the Department's statutory appeal procedures. Moreover, there is little doubt that involving the legislature in what properly should be an administrative function would be an inefficient use of the resources of government.

Second, legislative approval pursuant to the provision could upset the Department's efforts to require or approve plans for augmentation and to administer rights in a watercourse in a uniform manner. Retention of this section in our water code could result in the classic case of the left hand not knowing what the right is doing.

Third, the provision impairs the free market approach to changes in water rights and undoubtedly will have a negative effect on the marketability transfer of water rights. In my view, the application of the provision may inhibit the maximum utilization of water in the State.

b. Water rights acquired under chapter: page 3, §42-201(2). The new material proposed for section 42-201 should be changed for purposes of clarity to read:

> Except as otherwise provided by law, no person shall divert, store or use any waters of the State of Idaho, or change the purpose, place of use, or place of diversion or storage of any portion of such waters, without first obtaining a water right as provided by this chapter.

c. Changes of water rights: page 8, §42-222. Section 42-222, should be changed in two particulars. On line 26 of page 8, I suggest putting a period after the words "Idaho Code" and deleting the remainder of that sentence. The language I suggest deleting states that the Director shall not approve a change in the nature of use of a water right from agricultural use "where such change would significantly affect the agricultural base of the local area." While agriculture is Idaho's largest industry, and while we obviously need to avoid burdening farmers and ranchers with unfair water rights rules, I fail to see how this provision is in the interest of the agricultural community or Idaho citizens in general. This provision may discourage a non-agricultural use where the existing agricultural use is uneconomic. Moreover, the provision is vague and practically impossible to enforce fairly. One question that arises immediately is whether its enforcement would require the Department to conduct an economic study of each proposed change from an agricultural use. Furthermore, the provision may injure the very community it is apparently intended to protect: if a farmer or rancher is prevented from selling a portion of his water right due to the application of this provision, that prohibition may prevent him from accumulating the capital needed to stay in business with lesser water rights.

I support the proposal in H.B. 233 to delete the sentence beginning on line 28 of page 8 of the bill concerning subsequent changes in use. It clearly makes no sense to prohibit changes in the nature of use for rights previously subject to an approved change application except where the change is back to the original use. That provision is similar to the agricultural base provision discussed above in that it is a direct restraint on the marketing of water rights in Idaho. In my view, both provisions will lead to the inefficient use of water within the State and the stifling of market forces that must be allowed to determine, within limits defined by the general public interest, the place and type of use of water rights in Idaho.

Moreover, it is likely that neither the "agricultural base" provision nor the "change back" provision would withstand a challenge by an interstate appropriator who could argue, citing the Sporhase decision, that the provision as applied to him is an unconstitutional burden on interstate commerce.

e. Adjudication report: page 14, §42-1410. Section 42-1410 of the Code pertains to the Department's report to the court in the adjudication process. H.B. 233 proposes to add a sentence at the end of the section stating that the decree entered in an adjudication shall declare -- as to water rights for commercial, industrial, manufacturing, municipal or agricultural purposes -- "the annual volume of consumptive use." This proposed addition is generally a good idea, although I see no reason to omit domestic purposes from the list. If a domestic right is changed, that information will be valuable in the change proceeding. In addition, I suggest that you consider adding language to line 42 of page 14 which clarifies that the water subject to the report includes that used for non-agricultural purposes. In pertinent part, that line should read, "and place of use of the water, if appropriate, the acreage of the tract ...."

f. Powers of the Water Resource Board: page 16, §42-1734. The proposed amendment to section 42-1734 is to include language authorizing the Water Resource Board to "implement" a plan for augmentation to assure maintenance of an instream flow. It probably would be more appropriate to authorize the Board to "apply for and implement" such a plan.

g. Notice: page 8, §42-222. Several sections of the Code concern the method of giving notice of a water right application to other water users and to the public. In my opinion, the notice procedure can be improved and streamlined -- and probably made less costly -- by adopting a simple water application notice procedure that has been proven by many years of use in Colorado.

Presently, the Department mails out notices of applications to newspapers as applications are received, usually on a weekly basis. Each application is published for two consecutive weeks. Interested water users must check the legal notices of the appropriate newspaper weekly, or must subscribe to the Department's computer printout that is mailed every two weeks to subscribers. The time period for protests is ten days after the last publication.

I believe it would be more efficient if the Department prepared a monthly resume of the applications received during the previous thirty days and publish it on a pre-arranged day in several newspapers of statewide and local circulation. In addition, the resume would be mailed to all interested water users who request it. The time for protest would run until the last day of the month after the month in which the resume is published.

This method has the advantage of setting a definite publication schedule and a certain time for protest. Moreover, it expands the protest period to a more reasonable time period.

Thank you for this opportunity to comment.

Very truly yours,

Jeffrey C. Fereday

Jeffrey C. Fereday

JCF/afd

EXHIBITS TO SECOND AFFIDAVIT OF SCOTT L. CAMPBELL

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.

Exhibit 6

fixed by the court, and may at any time be extended or terminated by the court. Such period with any extension thereof shall not exceed ~~five--years;--except--in--cases-in-which-the-defendant-is-charged-with failure-to-provide-subsistance-to-his-dependents~~ the maximum period for which the defendant might have been imprisoned.

At any time during probation or suspension of sentence, the court may issue a warrant for violating any of the conditions of probation or suspension of sentence and cause the defendant to be arrested. Thereupon the court, after summary hearing may revoke the probation and suspension of sentence and cause the sentence imposed to be executed, or may cause the defendant to be brought before it and may continue or revoke the probation, or may impose any sentence which originally might have been imposed at the time of conviction.

Approved April 3, 1986.

CHAPTER 312
(H.B. No. 373)

AN ACT

RELATING TO CRIMINAL PUNISHMENT; AMENDING CHAPTER 1, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-112A, IDAHO CODE, TO PROVIDE A FINE FOR FELONY STATUTES WHEN A FINE IS NOT SPECIFICALLY PROVIDED.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 1, Title 18, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 18-112A, Idaho Code, and to read as follows:

18-112A. FINE AUTHORIZED. In addition to any other punishment prescribed for felonies in specific statutes of the Idaho Code, the court may also impose a fine of up to five thousand dollars ($5,000). This section shall not apply if the specific felony statute provides for the imposition of a fine.

Approved April 3, 1986.

CHAPTER 313
(H.B. No. 369, As Amended in the Senate)

AN ACT

RELATING TO ADMINISTRATION OF WATER RIGHTS; AMENDING SECTION 42-108, IDAHO CODE, TO PROVIDE THAT ANY PERMANENT CHANGE IN PERIOD OR NATURE OF USE FOR A QUANTITY OF WATER GREATER THAN FIFTY CFS OR FOR A STORAGE VOLUME GREATER THAN FIVE THOUSAND ACRE FEET SHALL

REQUIRE THE APPROVAL OF THE LEGISLATURE EXCEPT THAT ANY TEMPORARY CHANGE WITHIN THE STATE OF IDAHO FOR A PERIOD OF LESS THAN THREE YEARS MAY BE APPROVED BY THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES WITHOUT LEGISLATIVE APPROVAL; AMENDING SECTION 42-201, IDAHO CODE, TO PROHIBIT ILLEGAL APPLICATION AND USE OF PUBLIC WATERS; AMENDING SECTION 42-204, IDAHO CODE, TO PROVIDE FOR EXTENSIONS BY THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES FOR COMPLETION OF WORKS AND APPLICATION OF THE WATER TO FULL BENEFICIAL USE UNDER CERTAIN PERMITS AND TO DELETE ARCHAIC LANGUAGE; AMENDING SECTION 42-221, IDAHO CODE, TO PROVIDE A FEE FOR RECEIPT OF ALL NOTICES OF APPLICATION WITHIN A DESIGNATED AREA; AMENDING SECTION 42-222, IDAHO CODE, TO PROVIDE NOTICE OF A PROPOSED CHANGE IN WATER USE, TO PROVIDE CONDITIONS FOR TRANSFER OF THE RIGHT TO STORED WATER FOR IRRIGATION PURPOSES, TO DELETE LANGUAGE RELATING TO CHANGE OF NATURE OF USE OF A WATER RIGHT AND TO PROVIDE NOTICE OF AN APPLICATION FOR AN EXTENSION; REPEALING SECTIONS 42-240 AND 42-311, IDAHO CODE; AMENDING CHAPTER 3, TITLE 42, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 42-311, IDAHO CODE, TO PROVIDE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES THE AUTHORITY TO ISSUE ORDERS PRIOR TO LICENSURE, TO PROVIDE GROUNDS FOR THE ORDER, TO PROVIDE THAT THE ORDER BE SERVED, TO PROVIDE FOR A HEARING, TO PROVIDE FOR JUDICIAL REVIEW AND TO DEFINE PERMITTEE; AMENDING CHAPTER 3, TITLE 42, IDAHO CODE, BY THE ADDITION OF NEW SECTIONS 42-350, 42-351 AND 42-352, IDAHO CODE, TO PROVIDE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES THE AUTHORITY TO ISSUE ORDERS AFTER LICENSURE, TO PROVIDE GROUNDS, TO PROVIDE THAT THE ORDER BE SERVED, TO PROVIDE FOR A HEARING, JUDICIAL REVIEW OR RIGHT OF ACTION IN DISTRICT COURT, TO DEFINE LICENSEE, TO PROVIDE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES AUTHORITY TO ISSUE ORDERS FOR ILLEGAL DIVERSION OR USE OF WATER, TO PROVIDE GROUNDS, TO PROVIDE THAT THE ORDER BE SERVED, TO PROVIDE FOR A HEARING AND JUDICIAL REVIEW AND TO PROVIDE CIVIL PENALTIES; AMENDING CHAPTER 17, TITLE 42, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 42-1778, IDAHO CODE, TO CREATE THE WATER RIGHTS ENFORCEMENT ACCOUNT IN THE AGENCY ASSET FUND; AND AMENDING SECTION 42-1805, IDAHO CODE, TO PROVIDE THAT THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES SHALL HAVE THE POWER AND DUTY TO SEEK AN INJUNCTION OR RESTRAINING ORDER PERTAINING TO CERTAIN VIOLATIONS OR ATTEMPTED VIOLATIONS REGARDING WATER LAW.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 42-108, Idaho Code, be, and the same is hereby amended to read as follows:

42-108. CHANGE IN POINT OF DIVERSION, PLACE OF USE, PERIOD OF USE, OR NATURE OF USE -- APPLICATION OF ACT. The person entitled to the use of water or owning any land to which water has been made appurtenant either by a decree of the court or under the provisions of the constitution and statutes of this state, may change the point of diversion, period of use, or nature of use, and/or may voluntarily abandon the use of such water in whole or in part on the land which is

receiving the benefit of the same and transfer the same to other lands, if the water rights of others are not injured by such change in point of diversion, place of use, period of use, or nature of use, provided; if the right to the use of such water, or the use of the diversion works or irrigation system is represented by shares of stock in a corporation or if such works or system is owned and/or managed by an irrigation district, no change in the point of diversion, place of use, period of use, or nature of use of such water shall be made or allowed without the consent of such corporation or irrigation district~~;-provided,-any~~. Any permanent or temporary change in period or nature of use in or out-of-state for a quantity greater than fifty (50) cfs or for a storage volume greater than five thousand (5,000) acre-feet shall require the approval of the legislature~~.--Any-lease~~, except that any temporary change within the state of Idaho for a term period of less than three (3) years may be approved by the director without legislative approval.

Any person desiring to make such change of point of diversion, place of use, period of use, or nature of use of water shall make application for change with the department of water resources under the provisions of section 42-222, Idaho Code. After the effective date of this act, no person shall be authorized to change the period of use or nature of use, point of diversion or place of use of water unless he has first applied for and received approval of the department of water resources under the provisions of section 42-222, Idaho Code.

SECTION 2. That Section 42-201, Idaho Code, be, and the same is hereby amended to read as follows:

42-201. WATER RIGHTS ACQUIRED UNDER CHAPTER -- ILLEGAL APPLICATION OF WATER. (1) All rights to divert and use the waters of this state for beneficial purposes shall hereafter be acquired and confirmed under the provisions of this chapter and not otherwise. And after the passage of this title all the waters of this state shall be controlled and administered in the manner herein provided. Such appropriation shall be perfected only by means of the application, permit and license procedure as provided in this title; provided, however, that in the event an appropriation has been commenced by diversion and application to beneficial use prior to the effective date of this act it may be perfected under such method of appropriation.

(2) No person shall use the public waters of the state of Idaho except in accordance with the laws of the state of Idaho. No person shall divert any water from a natural watercourse or apply water to land without having obtained a valid water right to do so, or apply it to purposes for which no valid water right exists.

SECTION 3. That Section 42-204, Idaho Code, be, and the same is hereby amended to read as follows:

42-204. EXAMINATION -- PERMIT -- COMMENCEMENT OF WORK -- EXTENSIONS -- APPEAL. On receipt of the application, which shall be of a form prescribed by the department of water resources, it shall be the duty of that department to make an indorsement thereon of the date of

its receipt, and to examine said application and ascertain if it sets forth all the facts necessary to show the location, nature and amount of the proposed use. If upon such examination the application is found defective, it shall be the duty of the department of water resources to return the same for correction or to correspond with the applicant to obtain the needed information or amendments. If the application is returned to the applicant or the department shall request additional information and the applicant fails to return the corrected application or to supply the needed information within thirty (30) days, the department may void the record of said application and notify the applicant of such action. If the corrected application is returned or the information is supplied after thirty (30) days, such corrected application shall be treated in all respects as a new application, and the priority of the right initiated shall be determined by the date of receipt, in the office of the department, of the corrected application or additional information; provided, that upon request, and good cause appearing therefor, the director of the department of water resources may grant an extension of time within which to return the corrected application or supply needed information. All applications which shall comply with the provisions of this chapter and with the regulations of the department of water resources shall be numbered in such manner as will aid in their identification, and it shall be the duty of the department to approve all applications, made in proper form, which contemplate the application of water to a beneficial use: provided, that the department may deny any such application, or may partially approve and grant permit for a lesser quantity of water than applied for, or may grant permit upon conditions as provided in the preceding section.

The approval of an application shall be indorsed thereon, and a record made of such indorsement in the department of water resources. The application so indorsed shall constitute a permit, and a copy thereof shall be returned to the applicant, and he shall be authorized, on receipt thereof, to proceed with the construction of the necessary works for the diversion of such water, and to take all steps required to apply the water to a beneficial use and perfect the proposed appropriation. In its indorsement of approval on any application the department shall require that actual construction work and application of the water to full beneficial use shall be complete within a period of five (5) years from the date of such approval, but may limit the application to a less period than is named in the application, and such indorsement shall give the date when beneficial application of the water to be diverted by such works shall be made. Sixty (60) days before the date set for the completion of the appropriation of water under any permit, the department shall forward a notice to the applicant by certified mail at his address of record of the date for such completion, which said notice shall advise the applicant of the necessity of submitting an affidavit of completion or a request for an extension of time on or before said date; Provided that:

1. In cases where the applicant is prevented from proceeding with his work by his failure to obtain necessary consent or final approval or rejection from the federal government because of the pendency of an application for right of way or other matter within the jurisdiction

of the United States, or by litigation of any nature which might bring his title to said water in question, the department of water resources upon proper showing of the existence of any such condition, and being convinced that said applicant is proceeding diligently and in good faith, shall extend the time so that the amount of time lost by such delays shall be added to the time given in the original permit for each and every action required.

2. The time for completion of works and application of the water to full beneficial use under any permit involving the ~~construction of a reservoir of more than two hundred thousand (200,000) acre feet capacity or for the appropriation of water to be impounded in such reservoir of more than two hundred thousand (200,000) acre feet capacity, or a~~ diversion of more than twenty-five thousand (25,000) acre feet in one (1) irrigation season for a project of no less than five thousand (5,000) acres, may upon application to the director of the department of water resources supported by a showing that additional time is needed on account of the time required for organizing, financing and constructing works of such large size, be extended by the director of the department of water resources for an additional period of seven (7) years, but not to exceed twelve (12) years in all from the date of permit: Provided, that no such extension shall be granted unless the applicant for such extension shall show that there has been actually expended toward the construction of said ~~reservoir or~~ diversion (including expenditures for the purchase of rights of way and property in connection therewith) at least one hundred thousand dollars ($100,000).

3. The time for completion of works and application of the water to full beneficial use under any permit involving the construction of a reservoir of more than ten thousand (10,000) acre feet capacity or for the appropriation of water to be impounded in such reservoir of more than ten thousand (10,000) acre feet capacity, may be extended by the director of the department of water resources upon application to the director if the permittee establishes that the permittee has exercised reasonable diligence and that good cause exists for the requested extension.

4. In connection with permits held by the United States, or the Idaho water resource board, whether acquired as the original applicant, by assignment or otherwise, the director of the department of water resources may extend the time for completion of the works and application of the water to full beneficial use for such additional period or periods of time as he may deem necessary upon application supported by a showing that such additional time is required by reason of the status of plans, authorization, construction fund appropriations, construction, or any arrangements which are found to be requisite to completion of the construction of such works.

45. In all other situations not governed by these provisions the department may grant one (1) extension of time, not exceeding five (5) years beyond the date originally set for completion of works and application of the water to full beneficial use, upon request for extension received on or before the date set for completion, provided good cause appears therefor.

Any applicant feeling himself aggrieved by the indorsement made by

the department of water resources upon his application may request a hearing before the director in accordance with section 42-1701A(3), Idaho Code, for the purpose of contesting the indorsement and may seek judicial review pursuant to section 42-1701A(4), Idaho Code, of any final decision of the director following the hearing.

Every holder of a permit which shall be issued under the terms and conditions of an application filed hereafter appropriating twenty-five (25) cubic feet or less per second must, within one (1) year from the date upon which said permit issues from the office of the department of water resources, commence the excavation or construction of the works by which he intends to divert the water, and must prosecute the work diligently and uninterruptedly to completion, unless temporarily interrupted through no fault of the holder of such permit by circumstances, over which he has no control.

~~The director shall, prior to July 1, 1982, notify holders of permits existing on the effective date of the act of the provisions of this act. Notice shall be by mail to the permit holder's last known address. Existing permit holders shall have one (1) year from the date of mailing to meet the provisions of this section.~~

The holder of any permit who shall fail to comply with the provisions of this section within the time or times specified shall be deemed to have abandoned all rights under his permit.

SECTION 4. That Section 42-221, Idaho Code, be, and the same is hereby amended to read as follows:

42-221. FEES OF DEPARTMENT. The department of water resources shall collect the following fees which shall constitute a fund to pay for legal advertising, the publication of public notices and for investigations required of the department in connection with the issuance of permits and licenses as provided in this chapter:

A. For filing an application for a permit to appropriate the public waters of this state:

1. For a quantity of 0.2 c.f.s. or less or for a storage volume of 20 acre feet or less $30.00

2. For a quantity greater than 0.2 c.f.s. but not exceeding 1.0 c.f.s. or for a storage volume greater than 20 acre feet but not exceeding 100 acre feet $45.00

3. For a quantity greater than 1.0 c.f.s. but not exceeding 20 c.f.s., or for a storage volume greater than 100 acre feet but not exceeding 2,000 acre feet ..... $45.00 plus $20.00 for each additional c.f.s. or part thereof or 100 acre feet or part thereof over the first 1.0 c.f.s. or 100 acre feet.

4. For a quantity greater than 20.0 c.f.s. but not exceeding 100 c.f.s. or for a storage volume greater than 2,000 acre feet but not exceeding 10,000 acre feet ..... $425.00 plus $10.00 for each additional c.f.s. or part thereof or 100 acre feet or part thereof over the first 20.0 c.f.s. or 2,000 acre feet.

5. For a quantity greater than 100.0 c.f.s. but not exceeding 500.0 c.f.s., or for a storage volume greater than 10,000 acre feet but not exceeding 50,000 acre feet $1,225.00

plus $5.00 for each additional c.f.s. or part thereof or 100 acre feet or part thereof over the first 100 c.f.s. or 10,000 acre feet.

6. For a quantity greater than 500 c.f.s., or for a storage volume greater than 50,000 acre feet ..... $3,225.00 plus $1.00 for each additional 1.0 c.f.s. or part thereof or 100 acre feet or part thereof over the first 500.0 c.f.s. or 50,000 acre feet.

B. For filing application for change of point of diversion, place, period, or nature of use of water of established rights; for ~~exchange-of-water~~; or for an extension of time within which to resume the use of water under a vested right:

1. For a quantity of 0.2 c.f.s. or less or for a storage volume of 20 acre feet or less $30.00
2. For all other amounts $50.00

C. For filing application for amendment of permit $20.00

D. For filing claim to use right under section 42-243, Idaho Code $30.00

E. For filing a late claim to use a right under section 42-243, Idaho Code, where the date filed with the department of water resources, or if mailed to the department of water resources the postmark is:

1. After June 30, 1983, but not later than June 30, 1984..$100.00
2. After June 30, 1984, but not later than June 30, 1988..$200.00

F. For readvertising application for permit, change, exchange, or extension to resume use $20.00

G. For certification, each document $1.00

H. For making photo copies of office records, maps and documents for public use .... A reasonable charge as determined by the department.

I. For filing request for extension of time within which to submit proof of beneficial use on a water right permit $15.00

J. For tasks requiring in excess of one (1) hour research or for computerized data provided for public use .... A reasonable charge as determined by the department.

K. For receipt of all notices of application within a designated area, a reasonable annual charge as determined by the department.

All fees received by the department of water resources under the provisions of this chapter shall be transmitted to the state treasurer for deposit in the water administration account.

SECTION 5. That Section 42-222, Idaho Code, be, and the same is hereby amended to read as follows:

42-222. CHANGE IN POINT OF DIVERSION, PLACE OF USE, PERIOD OF USE, OR NATURE OF USE OF WATER UNDER ESTABLISHED RIGHTS -- FORFEITURE AND EXTENSION -- APPEALS. (1) Any person, entitled to the use of water whether represented by license issued by the department of water resources, by claims to water rights by reason of diversion and application to a beneficial use as filed under the provisions of this chapter, or by decree of the court, who shall desire to change the point of diversion, place of use, period of use or nature of use of

all or part of the water, under the right shall first make application to the department of water resources for approval of such change. Such application shall be upon forms furnished by the department and shall describe the right licensed, claimed or decreed which is to be changed and the changes which are proposed, and shall be accompanied by the statutory filing fee as in this chapter provided. Upon receipt of such application it shall be the duty of the director of the department of water resources to examine same, obtain any consent required by section 42-108, Idaho Code, and if otherwise proper to cause provide notice of the proposed change ~~to be published once a week for two (2) consecutive weeks in a newspaper published and of general circulation within the county where the water is diverted; if there is such paper, otherwise in a newspaper of general circulation within the county~~ in the same manner as applications under section 42-203A, Idaho Code. Such notice shall advise that anyone who desires to protest the proposed change shall file notice of protests with the department within ten (10) days of the last date of publication. Upon the receipt of any protest it shall be the duty of the director of the department of water resources to investigate the same and to conduct a hearing thereon. He shall also advise the watermaster of the district in which such water is used of the proposed change and the watermaster shall notify the director of the department of water resources of his recommendation on the application, and the director of the department of water resources shall not finally determine the action on the application for change until he has received from such watermaster his recommendation thereof, which action of the watermaster shall be received and considered as other evidence.

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, and the change is in the local public interest as defined in section 42-203, Idaho Code; except the director shall not approve a change in the nature of use from agricultural use where such change would significantly affect the agricultural base of the local area. ~~The director shall not approve such a change in nature of use of a water right if a change has previously been allowed except where the change is back to the original user.~~ The transfer of the right to the use of stored water for irrigation purposes shall not constitute an enlargement in use of the original right even though more acres may be irrigated, if no other water rights are injured thereby. A copy of the approved application for change shall be returned to the applicant and he shall be authorized upon receipt thereof to make the change and the original water right shall be presumed to have been amended by reason of such authorized change. In the event the director of the department of water resources determines that a proposed change shall not be approved as provided in this section, he shall deny the same and forward notice of such action to the applicant by certified mail, which decision shall be subject to judicial review as hereafter provided.

(2) All rights to the use of water acquired under this chapter or otherwise shall be lost and forfeited by a failure for the term of

five (5) years to apply it to the beneficial use for which it was appropriated and when any right to the use of water shall be lost through nonuse or forfeiture such rights to such water shall revert to the state and be again subject to appropriation under this chapter. Provided, further, that upon proper showing before the director of the department of water resources of good and sufficient reason for non-application to beneficial use of such water for such term of five (5) years, the director of the department of water resources is hereby authorized to grant an extension of time extending the time for forfeiture of title for nonuse thereof, to such waters for a period of not to exceed five (5) additional years. Application for an extension shall be made before the end of the five (5) year period upon forms to be furnished by the department of water resources and shall fully describe the right on which an extension of time to resume the use is requested and the reasons for such nonuse and shall be accompanied by the statutory filing fee. Upon the receipt of such application it shall be the duty of the director of the department of water resources to examine the same and to ~~cause notice to be published once a week for two (2) consecutive weeks in a newspaper published and of general circulation within the county where the water has been diverted if there is such a paper; otherwise in a newspaper of general circulation within the county~~ provide notice of the application for an extension in the same manner as applications under section 42-203A, Idaho Code. The notice shall fully describe the right, the extension for which is requested and the reason for such nonuse and shall state that any person desiring to object to the requested extension may submit a protest to the director of the department of water resources within ten (10) days of the last date of publication. Upon receipt of a protest it shall be the duty of the director of the department of water resources to investigate and conduct hearing thereon as in this chapter provided. The director of the department of water resources shall find from the evidence presented in any hearing, or from information available to the department, the reasons for such nonuse of water and where it appears to the satisfaction of the director of the department of water resources that other rights will not be impaired by granting an extension of time within which to resume the use of the water and good cause appearing for such nonuse, he may grant one (1) extension of five (5) years within which to resume such use. In his approval of the application for an extension of time under this section the director of the department of water resources shall set the date when the use of water is to be resumed. Sixty (60) days before such date the director of the department of water resources shall forward to the applicant at his address of record a notice by certified mail setting forth the date on which the use of water is to be resumed and a form for reporting the resumption of the use of the water right. If the use of the water has not been resumed and report thereon made on or before the date set for resumption of use such right shall revert to the state and again be subject to appropriation, as provided in this section. In the event the director of the department of water resources determines that a proposed extension of time within which to resume use of a water right shall not be approved as provided in this section he shall deny same and forward notice of such

action to the applicant by certified mail, which decision shall be subject to judicial review as hereafter provided.

(3) Any person or persons feeling themselves aggrieved by the determination of the department of water resources in approving or rejecting an application to change the point of diversion, place, period of use or nature of use of water under an established right or an application for an extension of time within which to resume the use of water as provided in this section, may, if a protest was filed and a hearing held thereon, seek judicial review pursuant to section 42-1701A(4), Idaho Code. If no protest was filed and no hearing held, the applicant may request a hearing pursuant to section 42-1701A(3), Idaho Code, for the purpose of contesting the action of the director and may seek judicial review of the final order of the director following the hearing pursuant to section 42-1701A(4), Idaho Code.

SECTION 6. That Sections 42-240 and 42-311, Idaho Code, be, and the same are hereby repealed.

SECTION 7. That Chapter 3, Title 42, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 42-311, Idaho Code, and to read as follows:

42-311. CANCELLATION OF PERMIT -- GROUNDS -- HEARING -- PERMITTEE DEFINED. (1) If the director of the department of water resources finds, on the basis of available information at any time after a permit is issued but prior to license, that the permittee has wilfully and intentionally failed to comply with any of the conditions in the permit, then the director of the department of water resources may issue (a) an order to show cause before the director of the department or the director's designee on or before a date therein set, which shall be not less than thirty (30) days from the date of service, why the director of the department should not cancel said permit and declare the water subject to appropriation; or (b) an order directing the permittee to cease and desist the activity or activities alleged to be in violation of the conditions of the permit. A cease and desist order may direct compliance with the permit forthwith or may provide for a time schedule to bring the permittee into compliance with the conditions of the permit.

(2) Any order to show cause or order to cease and desist shall contain a statement of findings of fact and of conclusions of law that provide a factual and legal basis for the order of the director of the department of water resources.

(3) The director of the department of water resources shall serve forthwith, in accordance with the rules for service of a summons and complaint in the Idaho rules of civil procedure, a certified copy of any such order on the permittee.

(4) The permittee shall have a right to an administrative hearing before the department and to judicial review, all as provided in section 42-1701A, Idaho Code.

(5) The term "permittee," as used in this chapter, includes the heirs, successors, or assigns of the person to whom the department

issued a water right permit.

SECTION 8. That Chapter 3, Title 42, Idaho Code, be, and the same is hereby amended by the addition thereto of NEW SECTIONS, to be known and designated as Sections 42-350, 42-351 and 42-352, Idaho Code, and to read as follows:

42-350. REVOCATION OF LICENSE -- GROUNDS -- HEARING -- LICENSEE DEFINED. (1) If the director of the department of water resources finds, on the basis of available information at any time after a license is issued, that the licensee has ceased to put the water to a beneficial use for a period of five (5) continuous years or that the licensee has wilfully and intentionally failed to comply with any of the conditions in the license, then the director of the department of water resources may issue (a) an order to show cause before the director of the department or the director's designee on or before a date therein set, which shall be not less than thirty (30) days from the date of service, why the director of the department should not revoke said license and declare the water subject to appropriation; or (b) an order directing the licensee to cease and desist the activity or activities alleged to be in violation of the conditions of the license. A cease and desist order may direct compliance with the license forthwith or may provide for a time schedule to bring the licensee into compliance with the conditions of the license.

(2) Any order to show cause or order to cease and desist shall contain a statement of findings of fact and of conclusions of law that provide a factual and legal basis for the order of the director of the department of water resources.

(3) The director of the department of water resources shall serve forthwith, in accordance with the rules for service of a summons and complaint in the Idaho rules of civil procedure, a certified copy of any such order on the licensee.

(4) The licensee shall have a right to an administrative hearing before the department and to judicial review, all as provided in section 42-1701A, Idaho Code.

(5) If the director of the department of water resources has issued an order to show cause why the director should not revoke a license, the licensee may, within twenty-one (21) days from the date of service of the order, notify the director in writing of the intent of the licensee to waive the right to an administrative hearing before the department and to file a complaint in the district court for a determination of the validity of the license. The complaint shall name the director of the department of water resources as a defendant and shall be filed either in the county where the point of diversion or the place of use under the license is located, or in the county where the director issued the order to show cause. The complaint shall be filed within forty-two (42) days of the date of service of the order to show cause by the director.

(6) The term "licensee," as used in this chapter, includes the heirs, successors, or assigns of the person to whom the department issued a water right license.

42-351. ILLEGAL DIVERSION OR USE OF WATER -- CEASE AND DESIST ORDERS. (1) If the director of the department of water resources finds, on the basis of available information, that a person is diverting water from a natural watercourse or from a ground water source without having obtained a valid water right to do so or is applying water not in conformance with the conditions of a valid water right, then the director of the department of water resources may issue an order directing the person to cease and desist the activity or activities alleged to be in violation of applicable law or of any existing water right. A cease and desist order may direct compliance with applicable law and with any existing water right or may provide a time schedule to bring the person's actions into compliance with applicable law and with any existing water right.

(2) Any order to cease and desist shall contain a statement of findings of fact and of conclusions of law that provide a factual and legal basis for the order or the director of the department of water resources.

(3) The director of the department of water resources shall serve forthwith, in accordance with the rules for service of a summons and complaint in the Idaho rules of civil procedure, a certified copy of any such order on the person the subject of the cease and desist order.

(4) The person who is the subject of the cease and desist order shall have a right to an administrative hearing before the department and to judicial review, all as provided in section 42-1701A, Idaho Code.

42-352. CIVIL PENALTIES. (1) Any person who wilfully violates any cease and desist order issued under chapter 3, title 42, Idaho Code, after the same has been served on that person shall be subject to a civil penalty not to exceed one hundred dollars ($100) for each day following service of the cease and desist order in which the illegal diversion or use of water occurs. The director of the department of water resources shall have the authority to file an action in the appropriate district court to impose, assess and recover said civil penalties.

(2) All civil penalties collected by the director of the department of water resources under this section shall be deposited in the state water rights enforcement account established by section 42-1778, Idaho Code.

SECTION 9. That Chapter 17, Title 42, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 42-1778, Idaho Code, and to read as follows:

42-1778. WATER RIGHTS ENFORCEMENT ACCOUNT. (1) The water rights enforcement account is hereby created and established in the agency asset fund.

(2) All moneys in the water rights enforcement account are reserved, set aside, appropriated and made available until expended as may be directed by the director of the department of water resources

in carrying out a water rights enforcement program.

SECTION 10. That Section 42-1805, Idaho Code, be, and the same is hereby amended to read as follows:

42-1805. ADDITIONAL DUTIES. In addition to other duties prescribed by law, the director of the department of water resources shall have the following powers and duties:

(1) To represent the state in all matters pertaining to interstate and international water rights affecting Idaho water resources; and to cooperate with all agencies, now existing or hereafter to be formed, within the state or within other jurisdictions, in matters affecting the development of the water resources of this state.

(2) To prepare a present and continuing inventory of the water resources of this state, ascertain means and methods of conserving and augmenting these and determine as accurately as possible the most effective means by which these water resources may be applied for the benefit of the people of this state.

(3) To conduct surveys, tests, investigations, research, examinations, studies, and estimates of cost relating to availability of unappropriated water, effective use of existing supply, conservation, storage, distribution and use of water.

(4) To prepare and compile information and data obtained and to make the same available to interested individuals or agencies.

(5) To cooperate with and coordinate activities with the administrator of the division of environmental protection of the department of health and welfare as such activities relate to the functions of either or both departments concerning water quality. Such cooperation and coordination shall specifically require that:

(a) The director meet at least quarterly with the administrator and his staff to discuss water quality programs. A copy of the minutes of such meeting shall be transmitted to the governor.

(b) The director transmit to the administrator, reports and information prepared by him pertaining to water quality programs, and proposed rules and regulations pertaining to water quality programs.

(c) The director shall make available to the administrator and the administrator shall make available to the director all notices of hearings relating to the promulgation of rules and regulations relating to water quality, waste discharge permits, and stream channel alteration, as such directly affect water quality, and notices of any other hearings and meetings which relate to water quality.

(6) To perform administrative duties and such other functions as the board may from time to time assign to the director to enable the board to carry out its powers and duties.

(7) After notice, to suspend the issuance or further action on permits or applications as necessary to protect existing vested water rights or to ensure compliance with the provisions of chapter 2, title 42, Idaho Code, or to prevent violation of minimum flow provisions of the state water plan.

(8) To promulgate, adopt, modify, repeal and enforce rules and

regulations implementing or effectuating the powers and duties of the department.

(9) To seek a preliminary or permanent injunction, or both, or a temporary restraining order restraining any person from violating or attempting to violate (a) those provisions of law relating to all aspects of the appropriation of water, distribution of water, headgates and measuring devices; or (b) the administrative or judicial orders entered in accordance with the provisions of law.

Approved April 3, 1986.

CHAPTER 314
(H.B. No. 569, As Amended)

AN ACT

RELATING TO SANITARY REGULATIONS FOR PUBLIC EATING PLACES; AMENDING SECTION 39-1611, IDAHO CODE, TO STRIKE REFERENCES TO INDIVIDUAL CLEAN TOWELS AND TO AUTHORIZE OTHER SANITARY DRYING DEVICES; AND AMENDING SECTION 39-1612, IDAHO CODE, TO STRIKE REFERENCES TO CUSPIDORS AND REQUIREMENTS FOR POSTING OF NOTICES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 39-1611, Idaho Code, be, and the same is hereby amended to read as follows:

39-1611. SLEEPING IN COOK ROOM PROHIBITED -- WASHING FACILITIES AND REQUIREMENTS -- COMMON TOWEL PROHIBITED. No person shall sleep in any room where food is prepared, or cooked. No person in any way connected with the handling, cooking, preparing or serving of food in any kitchen or eating place, shall engage at work following a visit to a toilet room without first thoroughly cleansing his or her hands. Conveniently located washing facilities, including hot and cold running water, soap and ~~individual~~ clean towels or other sanitary drying devices, shall be provided in all such eating places. The use of a common towel is prohibited.

SECTION 2. That Section 39-1612, Idaho Code, be, and the same is hereby amended to read as follows:

39-1612. ~~CUSPIDORS---~~SMOKING, CHEWING, AND SPITTING ~~----NOTICES. Cuspidors--of--impervious--material--shall--be-provided-for-the-use-of employees-and-the--public;--and--these--shall--be--cleaned--daily.~~ No employee or other person shall spit or discharge any substance from the mouth or nose on the floor or walls of the kitchen or any other room of an eating place. The smoking, snuffing or chewing of tobacco is prohibited in any part of any eating place, except that smoking will be permitted in ~~the-toilet-room-or-rest-room,-and-in-the-dining room-by-the-public-only~~ designated smoking areas. ~~Plain-notices--shall be--posted--in-every-eating-place-forbidding-any-person-to-spit-on-the~~

EXHIBITS TO SECOND AFFIDAVIT OF SCOTT L. CAMPBELL

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.

Exhibit 7

STATEMENT OF PURPOSE

RS 8128

This legislation provides another criteria that the director must use in the change of nature of use, or point of diversion or period of use, making this Section of Code 42-222 compatible with legislation already on the statute 42-108. It specifically requires the obtaining of consent from affected parties.

FISCAL IMPACT

None

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 763

BY WAYS AND MEANS COMMITTEE

AN ACT

RELATING TO CHANGE IN POINT OF DIVERSION, PLACE OF USE, PERIOD OF USE, OR NATURE OF USE OF WATER; AMENDING SECTION 42-222, IDAHO CODE, TO PROVIDE THAT REQUIRED CONSENT MUST BE OBTAINED PRIOR TO GRANTING A CHANGE IN POINT OF DIVERSION, PLACE OF USE, PERIOD OF USE, OR NATURE OF USE OF WATER.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 42-222, Idaho Code, be, and the same is hereby amended to read as follows:

42-222. CHANGE IN POINT OF DIVERSION, PLACE OF USE, PERIOD OF USE, OR NATURE OF USE OF WATER UNDER ESTABLISHED RIGHTS -- FORFEITURE AND EXTENSION -- APPEALS. (1) Any person, entitled to the use of water whether represented by license issued by the department of water resources, by claims to water rights by reason of diversion and application to a beneficial use as filed under the provisions of this chapter, or by decree of the court, who shall desire to change the point of diversion, place of use, period of use or nature of use of all or part of the water, under the right shall first make application to the department of water resources for approval of such change. Such application shall be upon forms furnished by the department and shall describe the right licensed, claimed or decreed which is to be changed and the changes which are proposed, and shall be accompanied by the statutory filing fee as in this chapter provided. Upon receipt of such application it shall be the duty of the director of the department of water resources to examine same, obtain any consent required by section 42-108, Idaho Code, and if otherwise proper to cause notice of the proposed change to be published once a week for two (2) consecutive weeks in a newspaper published and of general circulation within the county where the water is diverted, if there is such paper, otherwise in a newspaper of general circulation within the county. Such notice shall advise that anyone who desires to protest the proposed change shall file notice of protests with the department within ten (10) days of the last date of publication. Upon the receipt of any protest it shall be the duty of the director of the department of water resources to investigate the same and to conduct a hearing thereon. He shall also advise the watermaster of the district in which such water is used of the proposed change and the watermaster shall notify the director of the department of water resources of his recommendation on the application, and the director of the department of water resources shall not finally determine the action on the application for change until he has received from such watermaster his recommendation thereof, which action of the watermaster shall be received and considered as other evidence.

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, and the change is in the local public interest as defined in section 42-203, Idaho Code; except the director shall not approve a change in the nature of use from agricultural use where such change would significantly affect the agricultural base of the local area. The director shall not approve such a change in nature of use of a water right if a change has previously been allowed except where the change is back to the original use. A copy of the approved application for change shall be returned to the applicant and he shall be authorized upon receipt thereof to make the change and the original water right shall be presumed to have been amended by reason of such authorized change. In the event the director of the department of water resources determines that a proposed change shall not be approved as provided in this section, he shall deny the same and forward notice of such action to the applicant by certified mail, which decision shall be subject to judicial review as hereafter provided.

(2) All rights to the use of water acquired under this chapter or otherwise shall be lost and forfeited by a failure for the term of five (5) years to apply it to the beneficial use for which it was appropriated and when any right to the use of water shall be lost through nonuse or forfeiture such rights to such water shall revert to the state and be again subject to appropriation under this chapter. Provided, further, that upon proper showing before the director of the department of water resources of good and sufficient reason for nonapplication to beneficial use of such water for such term of five (5) years, the director of the department of water resources is hereby authorized to grant an extension of time extending the time for forfeiture of title for nonuse thereof, to such waters for a period of not to exceed five (5) additional years. Application for an extension shall be made before the end of the five (5) year period upon forms to be furnished by the department of water resources and shall fully describe the right on which an extension of time to resume the use is requested and the reasons for such nonuse and shall be accompanied by the statutory filing fee. Upon the receipt of such application it shall be the duty of the director of the department of water resources to examine same and to cause notice to be published once a week for two (2) consecutive weeks in a newspaper published and of general circulation within the county where the water has been diverted if there is such a paper, otherwise in a newspaper of general circulation within the county. The notice shall fully describe the right, the extension for which is requested and the reason for such nonuse and shall state that any person desiring to object to the requested extension may submit a protest to the director of the department of water resources within ten (10) days of the last date of publication. Upon receipt of a protest it shall be the duty of the director of the department of water resources to investigate and conduct hearing thereon as in this chapter provided. The director of the department of water resources shall find from the evidence presented in any hearing, or from information available to the department, the reasons for such nonuse of water and where it appears to the satisfaction of the director of the department of water resources that other rights will not be impaired by granting an extension of time within which to resume the use of the water and good cause appearing for such nonuse, he may grant one (1) extension of five (5) years within which to resume such use. In his approval of the application for an extension of time under this section the director of the

department of water resources shall set the date when the use of water is to be resumed. Sixty (60) days before such date the director of the department of water resources shall forward to the applicant at his address of record a notice by certified mail setting forth the date on which the use of water is to be resumed and a form for reporting the resumption of the use of the water right. If the use of the water has not been resumed and report thereon made on or before the date set for resumption of use such right shall revert to the state and again be subject to appropriation, as provided in this section. In the event the director of the department of water resources determines that a proposed extension of time within which to resume use of a water right shall not be approved as provided in this section he shall deny same and forward notice of such action to the applicant by certified mail, which decision shall be subject to judicial review as hereafter provided.

(3) Any person or persons feeling themselves aggrieved by the determination of the department of water resources in approving or rejecting an application to change the point of diversion, place, period of use or nature of use of water under an established right or an application for an extension of time within which to resume the use of water as provided in this section, may, if a protest was filed and a hearing held thereon, seek judicial review pursuant to section 42-1701A(4), Idaho Code. If no protest was filed and no hearing held, the applicant may request a hearing pursuant to section 42-1701A(3), Idaho Code, for the purpose of contesting the action of the director and may seek judicial review of the final order of the director following the hearing pursuant to section 42-1701A(4), Idaho Code.

Mike Mogensen said the Cattlemen's Association supports H 680. Rep. Tibbitts objects to the word "easement" in this bill.

MOTION: It was moved by Rep. Jones and seconded by Rep. Stephenson that H 680 be sent to the floor with a DO PASS recommendation.

MOTION: In a Substitute Motion, it was moved by Rep. Orme and seconded by Rep. Jones that H 680 be placed on General Orders for consideration.

MOTION: In a second Substitute Motion, it was moved by Rep. Tibbitts and seconded by Rep. Brackett that H 680 be held in committee until our next meeting. THE SECOND SUBSTITUTION MOTION CARRIED.

RS 8128: RELATING TO CHANGE IN POINT OF DIVERSION, PLACE OF USE, PERIOD OF USE, OR NATURE OF USE OF WATER.

Sherl Chapman told the committee that in the second section of the bill, "notification to the Board of Directors of an irrigation district in a particular area" was ommitted last year.

MOTION: It was moved by Rep. Stucki and seconded by Rep. Stoicheff that a germaine committee be asked to study RS 8128. THE MOTION CARRIED.

RS 8129: RELATING TO CONSTRUCTION WORKS OF IRRIGATION DISTRICTS.

Bill Ringert spoke to the committee on this legislation and said he represents six irrigation districts.

MOTION: It was moved by Rep. Orme and seconded by Rep. Jones that RS 8129 be sent to a germaine committee with a recommendation for introduction. THE MOTION CARRIED.

MOTION: It was moved by Rep. Brackett and seconded by Rep. Winchester that the previous action taken on RS 8129 be reconsidered.

MOTION: In a Substitute Motion, it was moved by Rep. Winchester and seconded by Rep. Stoicheff that RS 8129 be redrafted replacing $25,000 with $15,000 and restructure the paragraph excluding repair work. THE SUBSTITUTE MOTION CARRIED.

RS 8177: RELATING TO THE POWERS AND DUTIES OF THE DEPARTMENT OF WATER RESOURCES.

Ken Dunn spoke to the committee relative to this legislation.

MOTION: It was moved by Rep. Bateman and seconded by Rep. Stucki that RS 8177 be sent to a privileged committee with a recommendation for introduction. THE MOTION CARRIED.

RS 8196C1: HOUSE JOINT MEMORIAL which would give siting and licensing authority over all aspects of hydro-electric generating projects with a nameplate capacity of fifteen megawatts or less to the states.

Rep. Jones presented this memorial to the committee.

MOTION: It was moved by Rep. Winchester and seconded by Rep. Stephenson that RS 8196C1 be sent to a privileged committee with a recommendation for introduction. THE MOTION CARRIED.

MOTION: It was moved by Rep. Jones and seconded by Rep. Trillhaase that the meeting be adjourned. THE MOTION CARRIED. Time - 3:45 p.m.

J. VARD CHATBURN, Chairman ROBIN TRAVER, Secretary

MINUTES

RESOURCES AND CONSERVATION COMMITTEE

DATE: MARCH 3, 1982 at 3:20 P.M.

PRESENT:

CHATBURN, CHAIRMAN	STUCKI
LEWIS	ORME
WINCHESTER	HIGGINS
BRACKETT	SCATES
JOHNSON	TRILLHAASE
TIBBITTS	HEDLUND
BATEMAN	STOICHEFF
JONES	MCLAUGHLIN
STEPHENSON	ADAMS
PARKS	

GUESTS: Sherl Chapman, Director, Idaho Water User's Assoc.
Norm Young, Dept. of Water Resources
Sharon Hubler, Exec. Sec., Idaho Park Foundation
Don McClenahan, Commissioner of Uniform State Laws

MINUTES: Chairman Chatburn called the meeting to order at 3:20 p.m. The first order of business was the reading and adopting of the minutes from the previous meeting.

MOTION: It was moved by Rep. Stephenson and seconded by Rep. Trillhaase that the minutes be approved as they appeared. THE MOTION CARRIED.

H 763: AMENDING SECTION 42-222, IDAHO CODE, TO PROVIDE THAT REQUIRED CONSENT MUST BE OBTAINED PRIOR TO GRANTING A CHANGE IN POINT OF DIVERSION, PLACE OF USE, PERIOD OF USE, OR NATURE OF USE OF WATER.

Sherl Chapman presented this legislation to the committee.

MOTION: It was moved by Rep. Bateman and seconded by Rep. Stucki that H 763 be sent to the floor with a DO PASS recommendation. THE MOTION CARRIED.

Sponsor: Rep. Stucki

S 1246: RELATING TO APPLICATIONS FOR APPROPRIATION OF WATER; AMENDING SECTION 42-204, IDAHO CODE, TO PROVIDE A PERIOD OF ONE YEAR FOR THE COMMENCEMENT OF WORK UPON A PERMIT AND DIRECTING NOTIFICATION OF HOLDERS OF EXISTING PERMITS.

Sherl Chapman and Norm Young spoke to the committee relative to this legislation.

MOTION: It was moved by Rep. Jones and seconded by Rep. Stephenson that S 1246 be sent to the floor with a DO PASS recommendation. THE MOTION CARRIED.

Sponsor: Rep. Jones

S 1248: RELATING TO ADDITIONAL RIGHTS AND POWERS GRANTED IRRIGATION OR CANAL COMPANIES; AMENDING SECTION 42-2401, IDAHO CODE, TO PROVIDE AUTHORIZATION FOR AMENDMENT OR ADOPTION OF ARTICLES OF INCORPORATION BY IRRIGATION OR CANAL COMPANIES TO ALLOW STAGGERED TERMS FOR THE DIRECTORS OF THE COMPANIES.

Sherl Chapman presented this bill to the committee.

MOTION: It was moved by Rep. Johnson and seconded by Rep. Winchester that S 1248 be sent to the floor with a DO PASS recommendation. THE MOTION CARRIED.

Sponsor: Rep. Johnson

RS8128 This bill authorizes that consent be required to change a point of diversion, place of use, period of use, or nature of use of water.

This bill came to the Committee through Resources and Conservation Committee with a unanimous request that it be printed.

MOTION: RS8128 Moved by Kennevick, seconded by Hammond, that the bill be introduced for printing. The MOTION CARRIED.

MOTION: Moved by Lewis, seconded by Kennevick, that the meeting adjourn at 3:25 p.m. The MOTION CARRIED.

Noy Brackett, Chairman

Jo Anne Aschenbrener, Secretary

MINUTES

SENATE RESOURCES AND ENVIRONMENT COMMITTEE

March 12, 1982

EMBERS PRESENT: Senators Williams, Chairman, Beitelspacher, Noh, Steen, Little, Kiebert, Bradshaw, Floyd, Peavey.

The minutes of March 1 were approved as written.

H 710
Ken Dunn

This bill amends the provision in the statute relating to ground water recharge districts so that it can be made applicable for any area in the state where such a district might be organized. The original statutes limited the creation of districts to the counties of Jerome, Lincoln, Gooding and Twin Falls. The Dept. of Water Resources has had requests from counties who want to form districts of their own. This bill will give local people one more vehicle to help solve some of our ground water shortage problems.

MOTION:

Senator Little moved and Senator Bradshaw seconded we send out H 710 with a do pass recommendation. MOTION CARRIED. Senator Little will carry.

H 763
Ken Dunn

This bill amends the code to make certain that in taking action on any change in nature of use of a water right, the Director of the Dept. of Water Resources considers the specific requirements in Section 42-108 which requires that he obtains consent from the affected parties. This makes it clear that he has to have that approval.

MOTION:

Senator Noh moved we send out H 763 with a do pass recommendation. Senator Beitelspacher seconded. MOTION CARRIED. Senator Noh will carry.

S 1443
Senator Steen

This proposed amendment provides that a timber protective association may be organized as a non-profit corporation so that members will not be personally liable for the debts or obligations of an association. The amendment also brings state law concerning distribution of assets upon dissolution of an association into conformity with the United States Internal Revenue Code so that associations may maintain their tax exempt status as a corporate entity.

MOTION:

Senator Steen moved we send S 1443 out with a do pass recommendation. Senator Little seconded. MOTION CARRIED. Senator Steen will carry.

STATEMENT OF PURPOSE

RS 6510C2

Amends Section 42-108, 42-221, and 42-222 to add a period of use and nature of use as items that can be transferred on a valid decree, license or claim to a water right and would require legislative approval for out-of-state diversions in excess of 50 cfs and 5,000 acre feet of storage. This change was identified as recommendation No. 3 in the State Water Plan - Part II.

FISCAL IMPACT

Fiscal impact on water resources - The department's water right processing program is in place and already includes processing of requests to change place of use or point of diversion on existing water rights. The additional impact on the department's workload is expected to be minor and no additional agency funding is requested. Fiscal impact on private sector, citizens, etc.- Major fiscal impact on these sectors has and will continue to occur without passage of this proposal. Water short areas are prevented from developing full and efficient use of water resources, and water users who have made a change in period or nature of use may have lost valuable property rights to water through abandonment.

EXHIBITS TO SECOND AFFIDAVIT OF SCOTT L. CAMPBELL

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.

Exhibit 8

CHAPTER 202
(H.B. No. 763)

AN ACT

RELATING TO CHANGE IN POINT OF DIVERSION, PLACE OF USE, PERIOD OF USE, OR NATURE OF USE OF WATER; AMENDING SECTION 42-222, IDAHO CODE, TO PROVIDE THAT REQUIRED CONSENT MUST BE OBTAINED PRIOR TO GRANTING A CHANGE IN POINT OF DIVERSION, PLACE OF USE, PERIOD OF USE, OR NATURE OF USE OF WATER.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 42-222, Idaho Code, be, and the same is hereby amended to read as follows:

42-222. CHANGE IN POINT OF DIVERSION, PLACE OF USE, PERIOD OF USE, OR NATURE OF USE OF WATER UNDER ESTABLISHED RIGHTS -- FORFEITURE AND EXTENSION -- APPEALS. (1) Any person, entitled to the use of water whether represented by license issued by the department of water resources, by claims to water rights by reason of diversion and application to a beneficial use as filed under the provisions of this chapter, or by decree of the court, who shall desire to change the point of diversion, place of use, period of use or nature of use of all or part of the water, under the right shall first make application to the department of water resources for approval of such change. Such application shall be upon forms furnished by the department and shall describe the right licensed, claimed or decreed which is to be changed and the changes which are proposed, and shall be accompanied by the statutory filing fee as in this chapter provided. Upon receipt of such application it shall be the duty of the director of the department of water resources to examine same, obtain any consent required by section 42-108, Idaho Code, and if otherwise proper to cause notice of the proposed change to be published once a week for two (2) consecutive weeks in a newspaper published and of general circulation within the county where the water is diverted, if there is such paper, otherwise in a newspaper of general circulation within the county. Such notice shall advise that anyone who desires to protest the proposed change shall file notice of protests with the department within ten (10) days of the last date of publication. Upon the receipt of any protest it shall be the duty of the director of the department of water resources to investigate the same and to conduct a hearing thereon. He shall also advise the watermaster of the district in which such water is used of the proposed change and the watermaster shall notify the director of the department of water resources of his recommendation on the application, and the director of the department of water resources shall not finally determine the action on the application for change until he has received from such watermaster his recommendation thereof, which action of the watermaster shall be received and considered as other evidence.

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, and the change is in the local public interest as defined in section 42-203, Idaho Code; except the director shall not approve a change in the nature of use from agricultural use where such change would significantly affect the agricultural base of the local area. The director shall not approve such a change in nature of use of a water right if a change has previously been allowed except where the change is back to the original use. A copy of the approved application for change shall be returned to the applicant and he shall be authorized upon receipt thereof to make the change and the original water right shall be presumed to have been amended by reason of such authorized change. In the event the director of the department of water resources determines that a proposed change shall not be approved as provided in this section, he shall deny the same and forward notice of such action to the applicant by certified mail, which decision shall be subject to judicial review as hereafter provided.

(2) All rights to the use of water acquired under this chapter or otherwise shall be lost and forfeited by a failure for the term of five (5) years to apply it to the beneficial use for which it was appropriated and when any right to the use of water shall be lost through nonuse or forfeiture such rights to such water shall revert to the state and be again subject to appropriation under this chapter. Provided, further, that upon proper showing before the director of the department of water resources of good and sufficient reason for non-application to beneficial use of such water for such term of five (5) years, the director of the department of water resources is hereby authorized to grant an extension of time extending the time for forfeiture of title for nonuse thereof, to such waters for a period of not to exceed five (5) additional years. Application for an extension shall be made before the end of the five (5) year period upon forms to be furnished by the department of water resources and shall fully describe the right on which an extension of time to resume the use is requested and the reasons for such nonuse and shall be accompanied by the statutory filing fee. Upon the receipt of such application it shall be the duty of the director of the department of water resources to examine same and to cause notice to be published once a week for two (2) consecutive weeks in a newspaper published and of general circulation within the county where the water has been diverted if there is such a paper, otherwise in a newspaper of general circulation within the county. The notice shall fully describe the right, the extension for which is requested and the reason for such nonuse and shall state that any person desiring to object to the requested extension may submit a protest to the director of the department of water resources within ten (10) days of the last date of publication. Upon receipt of a protest it shall be the duty of the director of the department of water resources to investigate and conduct hearing thereon as in this chapter provided. The director of the department of water resources shall find from the evidence presented in any hearing, or from information available to the department, the reasons for such nonuse of water and where it appears to the satisfaction of the director of the department of water resources that other rights will not be impaired by granting an extension of time within which to

resume the use of the water and good cause appearing for such nonuse, he may grant one (1) extension of five (5) years within which to resume such use. In his approval of the application for an extension of time under this section the director of the department of water resources shall set the date when the use of water is to be resumed. Sixty (60) days before such date the director of the department of water resources shall forward to the applicant at his address of record a notice by certified mail setting forth the date on which the use of water is to be resumed and a form for reporting the resumption of the use of the water right. If the use of the water has not been resumed and report thereon made on or before the date set for resumption of use such right shall revert to the state and again be subject to appropriation, as provided in this section. In the event the director of the department of water resources determines that a proposed extension of time within which to resume use of a water right shall not be approved as provided in this section he shall deny same and forward notice of such action to the applicant by certified mail, which decision shall be subject to judicial review as hereafter provided.

(3) Any person or persons feeling themselves aggrieved by the determination of the department of water resources in approving or rejecting an application to change the point of diversion, place, period of use or nature of use of water under an established right or an application for an extension of time within which to resume the use of water as provided in this section, may, if a protest was filed and a hearing held thereon, seek judicial review pursuant to section 42-1701A(4), Idaho Code. If no protest was filed and no hearing held, the applicant may request a hearing pursuant to section 42-1701A(3), Idaho Code, for the purpose of contesting the action of the director and may seek judicial review of the final order of the director following the hearing pursuant to section 42-1701A(4), Idaho Code.

Approved March 29, 1982.

CHAPTER 203
(H.B. No. 760)

AN ACT

RELATING TO THE FORFEITURE, REINSTATEMENT AND TAXATION OF CORPORATIONS; REPEALING SECTIONS 30-1-130, 30-1-131, 30-1-132 AND 30-1-139, IDAHO CODE; REPEALING SECTIONS 63-3025, 63-3025A AND 63-3028, IDAHO CODE; REPEALING SECTIONS 30-1-129A, 30-1-133 AND 30-1-137A, IDAHO CODE; AMENDING SECTION 30-1-134, IDAHO CODE, TO REMOVE THE FORFEITURE PENALTY FOR THOSE CORPORATIONS WHO FAIL TO PAY THE FRANCHISE TAX; AMENDING SECTION 30-1-137, IDAHO CODE, TO PROVIDE A REINSTATEMENT FEE FOR FOREIGN CORPORATIONS AND TO REMOVE THE REQUIREMENT OF PAYING FRANCHISE TAXES; AMENDING CHAPTER 1,

RECEIVED
APR 21 2003
Department of Water Resources

Attorneys for Pioneer Irrigation District
and Settlers Irrigation District

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18946.26

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

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

Pioneer Irrigation District and Settlers Irrigation District, (the "Districts"), by and through their counsel of record, Moffatt, Thomas, Barrett, Rock & Fields, Chtd. hereby reply to United Water Idaho's ("UWID") Response to Motion to Stay. Stay of the IMAP proceedings is appropriate pending resolution of the claims in the SRBA.

At the Informal PreHearing Conference held on February 21, 2003, those present agreed that Hearing Officer Peter Anderson could contact the SRBA District Court and receive its input regarding whether IMAP proceedings should effectively be postponed, in whole or in part, pending resolution of UWID's claims in the SRBA. Thereafter, UWID expressed its opinion that the IMAP should continue, and not be stayed. Nevertheless, Hearing Officer

Anderson proceeded on the path to which the parties agreed, and contacted the SRBA District Court via letter. The SRBA District Court duly responded, after which Pioneer and Settlers moved to stay the IMAP proceedings, for the reasons set forth in its Motion to Stay and Memorandum in Support.

UWID has set forth several arguments in support of its argument that the IMAP proceeding should continue in the administrative arena. Those arguments are unavailing, for the reasons set forth herein. The IMAP proceeding should be stayed pending partial decrees of UWID's water rights in the SRBA.

I.

THE DEPARTMENT'S JURISDICTION

As a basic premise, it is true that IDWR has jurisdiction to consider applications to transfer a water right, applications for permit to appropriate water, and applications to amend a permit. The Idaho Code is clear in that regard. However, that does not mean that IDWR has appropriate jurisdiction in every circumstance; jurisdiction may be more appropriate in the SRBA District Court.[1] Indeed, when the Idaho Supreme Court rendered its decision in *Jenkins*, it was prior to the significant revision to Idaho's adjudication statutes in 1986 and the SRBA's commencement in 1987. Therefore, it is of limited value in answering the question before the Hearing Officer now, in 2003.

[1] UWID's statement that "[i]t is our impression that the great majority of water right transfers the Department handles are of unadjudicated water rights" is unsupported and may or may not be true. Since nearly 102,000 water rights have already been decreed in the SRBA, and nearly 120,000 director's reports issued, it seems highly unlikely that the "great majority" of transfers involve unadjudicated water rights. *See* Exhibit A to Affidavit of Angela Schaer Kaufmann.

Moreover, UWID's characterization of the Idaho Legislature's addition of section 42-1401D is overbroad and flat out wrong. UWID asserts that the amendment "confirms the Legislature's intent that the administrative processing of transfers by the Director shall not be hampered or delayed by the SRBA process, . . ." UWID's Response, p. 3. In reality, the best statement of the Legislature's intent is found in the Statement of Purpose in Section 1 of 2001 Idaho Session Laws, Chapter 31. That statement confirms that the Legislature's intent was that the SRBA not become bogged down with judicial review of IDWR decisions, and that the SRBA be completed as expeditiously as possible:

> A principal goal of the Legislature is the timely completion of the pending Snake River Basin Adjudication resulting in a judicial determination of all water rights within the Snake River basin in accordance with the provisions of Chapter 14, Title 42, Idaho Code. A recent judicial decision holding that the Snake River Basin Adjudication district court has exclusive jurisdiction to ***provide judicial review of administrative actions*** by the Department of Water Resources affecting rights to the use of water in the Snake River basin potentially frustrates this legislative goal.
>
> It is and has been the intention of the Legislature that the district court presiding over a water rights adjudication proceeding under the provisions of Chapter 14, Title 42, Idaho Code, exercises unique jurisdiction over the "judicial determination" of the elements of the water rights subject to the court's jurisdiction. Further, it is and has been the intention of the Legislature that judicial review of an agency action by the Department of Water Resources under the provisions of Chapter 52, Title 67, Idaho Code, does not provide a judicial determination of the elements of a water right. Rather, a judicial review proceeding potentially results only in confirmation of an administrative determination of one (1) or more elements of a water right, which then shall constitute prima facie evidence of those elements consistent with the provisions of Section 42-220, Idaho Code. ***In order not to burden and delay the adjudication proceeding with actions for judicial review,*** the Legislature finds it necessary to enact the following statutory amendment, which is intended to apply to all actions for judicial review pending on the date of enactment as well as future actions.

2001 Idaho Sess. Laws Ch. 32, p. 48 (emphasis added). Section 42-1401D was enacted to clarify the jurisdiction of non-SRBA district courts to judicially review SRBA decisions. The section has nothing at all to do with the relative jurisdiction of the SRBA and IDWR. If anything, the just-quoted statement of purpose provides a reason why the IMAP should be stayed pending adjudication of UWID's water rights: if the IMAP is not stayed, it could delay completion of the SRBA, depending upon the length of the IMAP proceedings. By its plain language, as emphasized by the Legislature's statement of intent, Section 42-1401D pertains to judicial review of IDWR decision, ***not*** the circumstance confronting the Hearing Officer here. The same is true of the Idaho Supreme Court's decision in *Sagewillow, Inc. v. Idaho Dept. of Water Resources*, 135 Idaho 24, 13 P.3d 855 (2000), which led to the enactment of Section 42-1401D.

II.

IDWR SHOULD NOT PROCESS THE IMAP PRIOR TO THE DIRECTOR'S REPORTS FOR UWID'S SRBA CLAIMS

UWID is also incorrect when it states that "[t]he issue of potential concurrent jurisdiction between the SRBA and the Department arose through a conversation initiated by the Hearing Officer between himself and David Tuthill." UWID's Response, p. 5. The Hearing Officer and Mr. Tuthill may have had that discussion, but Pioneer and Settlers raised the issue as Issue Number 14 in their Statement of the Issues, filed on or about January 30, 2003, as did Nampa & Meridian Irrigation District in its Statement of the Issues, filed on or about January 31, 2003. The issue was properly raised by the parties.

Pioneer and Settlers also disagree that "the Director should be consulted and his informed input obtained on the issue before any decision is made on a stay." UWID's Response,

p.5. At this time, the Director will still review the Hearing Officer's Order in this matter. It would be highly inappropriate to seek the Director's opinion a critical issue at this time.

IDWR should not withhold the Director's Reports on UWID's rights until after the IMAP is completed. As noted above, that could very well result in a delay in the SRBA, which is quite contrary to the Legislature's intent.[2] Further, Pioneer and Settlers understand it, the Director has already determined the parts in which the Director's Reports for Basin 63 will be filed: Part I (above Lucky Peak) has already been filed, and the response period passed. Part II, encompassing Ada County below Lucky Peak, will likely be submitted in 2004, and Basin 63, Part III sometime after that. Thus, the "parts" have already been determined, and should not be changed.

UWID also suggests that the Director could incorporate the Municipal Water Rights Act of 1996, including its "requirements and protections" into his Director's Reports. Whether the Director could do so is questionable, and could very well be disputed. Similarly, UWID's contention that "if the Department simply submits raw claims to the SRBA, without the benefit of IMAP evaluation, we can expect costly and unncessary disputes to what law applies to their evaluation." UWID's Response, p. 6. Pioneer and Settlers are not certain what is meant by "raw claims"; the Director should never submit "raw claims" to the SRBA District Court, but should instead submit Director's Reports based upon the statutorily-mandated examination. What law applies to the evaluation of UWID's water rights will be a matter of contention no matter where the water rights are considered.

---

[2] UWID implicitly acknowledges that a delay in the entire SRBA may be likely, given its arguments in Section III of its Response.

Finally, Pioneer and Settlers' view, the SRBA District Court has already provided its view of where proper jurisdiction lies. It would be a colossal waste of time for the IMAP to be considered at IDWR, if jurisdiction is not properly there.

III.

THE ENTIRE IMAP SHOULD BE STAYED

Pioneer and Settlers disagree with several of the points UWID makes in the context of its argument that the IMAP proceeding should be only partially stayed. First, while UWID's experts may be "available and up to speed," Pioneer and Settlers' experts are only now obtaining the information to begin to allow them to get "up to speed." Second, UWID's prediction that if the IMAP is delayed, "the first thing we will hear from the Protestants is that the analysis needs to be thrown out and redone" is entirely speculative, and should not be given credence. Third, UWID's contention that it is "entitled to an answer without delay" borders on arrogant, and ignores the justifiable and honest concerns of Pioneer and Settlers. What UWID has proposed is sweeping and long-term, and will have significant effects on the water supply in the Treasure Valley. Careful analysis and consideration is necessary. Fourth, Pioneer and Settlers do not see how the planning horizon and future needs analysis can be fully performed "via a single water permit application." The Entities believe that it is necessary to have a clear picture of UWID's existing "portfolio" before moving forward.

CONCLUSION

For the reasons set forth in the Irrigation Entities' Motion to Stay and Memorandum in Support, a stay of the IMAP proceedings pending the SRBA District Court's partial decrees of UWID's water rights is appropriate and required. As shown in this Reply,

nothing in UWID's Response changes that outcome. Therefore, Pioneer and Settlers respectfully request that the Hearing Officer grant their Motion to Stay.

DATED this 21st day of April 2003.

MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED

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 21st day of April 2003, I caused a true and correct copy of the foregoing **REPLY REGARDING MOTION TO STAY** 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	(X) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile
Peter Anderson, Hearing Officer 729 W. Braemere Road Boise, ID 83702	(X) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile
Gary L. Spackman, Regional Manager Idaho Department of Water Resources Western Region Office 2735 Airport Way Boise, ID 83705 Fax: 334-2348	(X) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile
United Water Idaho Inc. John M. Marshall Givens Pursley, LLP PO Box 2720 Boise, ID 83701 Fax: 388-1300	(X) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile
Nampa & Meridian Irrigation District, City of Meridian, City of Caldwell, Terteling Company, and Terteling Trust No. 7 Charles L. Honsinger Ringert Clark 455 South 3rd Street PO Box 2773 Boise, ID 83701-2773 Fax: 342-4657	(X) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile

City of Boise Matthew Wilde Boise City Attorney's Office PO Box 500 Boise, ID 83701-0500 Fax: 384-4454	(✗) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile
Josephine P. Beeman Beeman & Associates P.C. 409 W. Jefferson Street Boise, ID 83702 Fax: 331-0954	(✗) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile
City of Boise Boise Public Works Department Beth K. Baird Environmental Programs Coordinator 150 N. Capitol Blvd. PO Box 500 Boise, ID 83701-0500 Fax: 384-3905	(✗) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile
Boise Project Board of Control Albert P. Barker Barker Rosholt & Simpson PO Box 2139 Boise, ID 83701-2139 Fax: 342-4657	(✗) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile
Bureau of Reclamation E. Gail McGarry, PN-3100 1150 N. Curtis Road, Suite 100 Boise, ID 83706-1234 Fax: 378-5019	(✗) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile
Kathleen M. Carr U.S. Department of the Interior Office of the Solicitor Pacific Northwest Region , Boise Field Office 550 West Fort Street, MSC 020 Boise, ID 83724-0020 Fax: 334-1378	(✗) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile
Estate of Eleanor I. Chase Matt J. Howard PO Box 190012 Boise, ID 83719 Fax: 333-8409	(✗) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile

Cities of Eagle, Kuna, Middleton & Star and Star Sewer District Bruce M. Smith Tammy A. Zokan Moore Smith Buxton & Turcke 225 N. 9th Street, Suite 420 Boise, ID 83702 Fax: 331-1202	(X) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile
City of Meridian Public Works Gary D. Smith 660 E. Watertower Meridian, ID 83642 Fax: 887-1297	(X) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile
City of Caldwell Engineering Department Gordon Law 621 E. Cleveland Blvd. Caldwell, ID 83605 Fax: 455-3003	(X) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile
Ed Squires Hydrologic 1002 W. Franklin Boise, ID 83702-5431 Fax: 342-3100	(X) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile
Robert W. Talboy Ellsworth Kallas Talboy, PLLC 2402 W. Jefferson Street Boise, ID 83702 Fax: 345-8945	(X) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile
Mr. Michael Chase 70 W. Floating Feather Road Eagle, ID 83616-3802	(X) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile

Angela Schaer Kaufmann

Attorneys for Pioneer Irrigation District
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RECEIVED
APR 21 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 ANGELA SCHAER KAUFMANN RE: REPLY RE: MOTION TO STAY**

State of IDAHO)
) ss.
County of ADA)

ANGELA SCHAER KAUFMANN, 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.

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

3. Appended hereto as Exhibit A is a true and correct copy of a slide entitled "SRBA Summary as of April 2, 2003." I personally downloaded and printed this document from the Idaho Department of Water Resources website on Saturday, April 19, 2003. The address for the IDWR website is www.idwr.state.id.us

DATED this 21st day of April 2003.

By Angela Schaer Kaufmann
Angela Schaer Kaufmann

SUBSCRIBED AND SWORN to before me this 21st day of April 2003.

SEAL



Notary Public for Idaho
Residing at: Boise, Idaho
Commission Expires: 10/10/07

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21st day of April 2003, I caused a true and correct copy of the foregoing **AFFIDAVIT OF ANGELA SCHAER KAUFMANN RE: REPLY RE: MOTION TO STAY** to be served by the method indicated below, and addressed to the following:

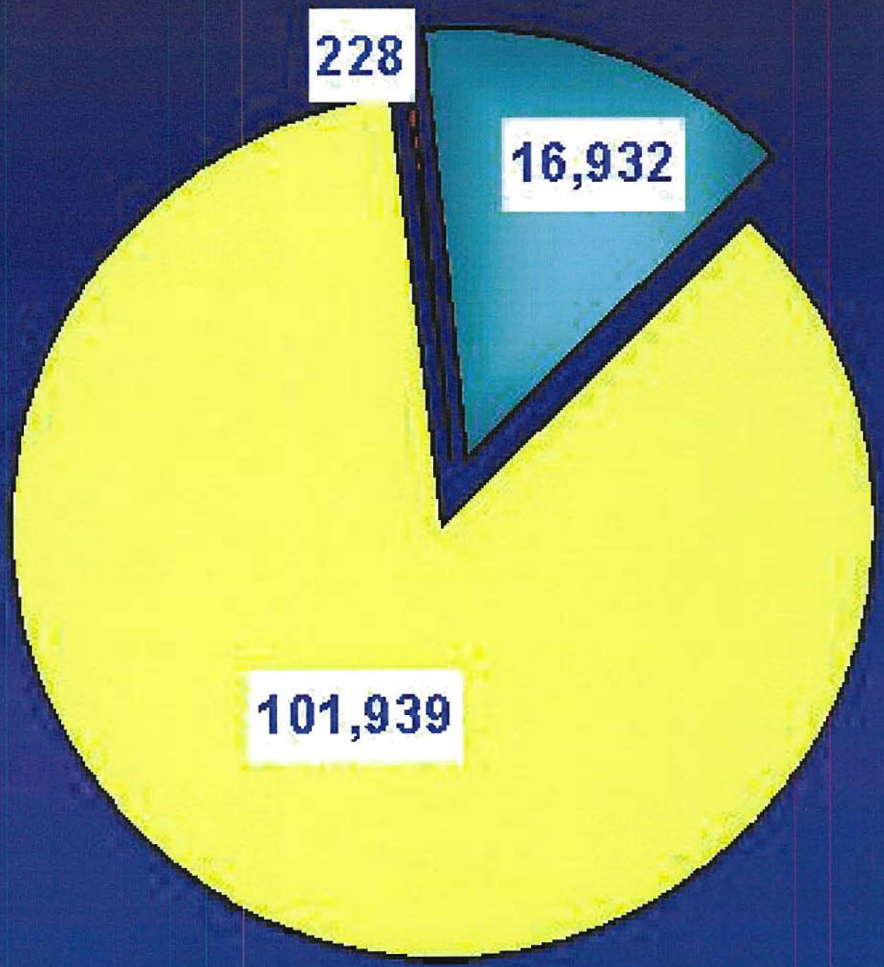
Director Idaho Department of Water Resources 1301 N. Orchard Street PO Box 83720 Boise, ID 83720 Fax: 327-5400	(X) U.S. Mail, Postage Prepaid (X) Hand Delivered ( ) Overnight Mail ( ) Facsimile
Peter Anderson, Hearing Officer 729 W. Braemere Road Boise, ID 83702	(X) U.S. Mail, Postage Prepaid (X) Hand Delivered ( ) Overnight Mail ( ) Facsimile
Gary L. Spackman, Regional Manager Idaho Department of Water Resources Western Region Office 2735 Airport Way Boise, ID 83705 Fax: 334-2348	(X) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile
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Josephine P. Beeman Beeman & Associates P.C. 409 W. Jefferson Street Boise, ID 83702 Fax: 331-0954	(X) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile
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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	(X) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile
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Estate of Eleanor I. Chase Matt J. Howard PO Box 190012 Boise, ID 83719 Fax: 333-8409	(X) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile
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Mr. Michael Chase 70 W. Floating Feather Road Eagle, ID 83616-3802	(X) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile

Angela Schaer Kaufmann for
Scott L. Campbell

SRBA Summary
as of April 2, 2003



119,099 Total Director's Reports

Exhibit A

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APR 18 2003
WATER RESOURCES
WESTERN REGION

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APR 22 2003
Department of Water Resources

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

In the Matter of United Water Idaho's Municipal Application Package, United Water Idaho, Petitioner	**REPLY TO UWID'S CONSOLIDATED RESPONSE**

The Cities of Eagle, Kuna, Middleton, Star, and the Star Sewer and Water District (collectively referred to as "Protestants"), by and through their counsel of record, MOORE SMITH BUXTON & TURCKE, CHARTERED, reply to United Water's Consolidated Response to the Protestants' Motion regarding the three (3) preliminary procedural issues identified in the Hearing Officer's Second Prehearing Order.

Introduction

Protestants by their motion proposed a reasonable resolution of the problems associated with the IMAP process thus far. Rather than acknowledge the problems, United Water chooses to complain that the Protestants are not allowed to raise the problems for the Hearing Officer's review. United Water also argues against anything other than its interpretation of the law and its view of correct procedure. Finally, United Water attempts to use some proposed conditions as a wildcard by arguing on the one hand that the conditions are not part of any application or publication because nothing requires United Water to "lock into [the] conditions." On the other

hand, United Water argues the proposed conditions protect Protestants from alleged injuries like those arising from United Water's IPD proposal. UWID Response at 16, 20.

If United Water is going to use conditions to limit the impact of its IMAP, the conditions should be part of the application. If not, United Water should not continue to raise the conditions as a shield to argue there is no injury. United Water cannot have it both ways – either United Water is bound by the conditions and they are part of the application, or they are not. The Hearing Officer should not allow United Water to hide behind the proposed conditions that it argues it is not bound to follow.

1. The Protestants Have Standing To Raise Defects In the IMAP.

a.) The Department committed procedural error by not providing lawful notice of the IMAP.

"Remand to an administrative agency is appropriate when where the agency is found to have violated a statutory procedural requirement." Shokal v. Dunn, 109 Idaho 330, 334 (1985) (quoting Caldwell v. Arizona State Board of Dental Examiners, 137 Ariz. 396, 670 P.2d 1220, 1225 (Ariz. App. 1983)). " The court must remand ... where the agency has taken action without meeting procedural requirements." Id. (quoting 2 Am.Jur2d Administrative Law § 765); see also Idaho Code § 67-5279 (an agency decision made on unlawful procedure shall be set aside or remanded for further proceedings).

Idaho Code provides for public notice of applications to appropriate water, to amend a permit, or to make changes to a water right. Idaho Code §§ 42-203A, 42-211, 42-222. The purpose of the notice is to ensure that potentially affected parties receive sufficient information to determine whether they may have an objection to the application. Since the published notice of the IMAP did not provide sufficient information, potentially affected parties were not given

the opportunity to make an informed decision whether they had an interest in the application package.

The public notice of the IMAP did not comport with statutory requirements which is clear procedural error necessitating remand to the Department. The usual notice format is not a "confused jumble of legalese" as United Water argues. UWID Response at 13. See, for example, legal Notices published on March 6, 2003, attached to this Reply as Exhibits A-B. These exhibits illustrate what an Idaho Code 42-203A notice should look like. These examples also show what the public is used to seeing and the terminology the public is familiar with.

Water issues are usually addressed in terms of water right numbers and information which identifies the basin location, the points of diversion and places of use, diversion and consumption limitations, and priority dates. United Water's notice did not even come close to doing so. For example, describing diversions as in the "Boise area" can hardly be described as an approximate location. If United Water notified its customers that its billing office was located "in the Boise area, " without more, it is unlikely someone would have any idea where the office is. That is exactly the situation presented in this case.

Furthermore, just because diversions may all generally be located within one city, it does not follow that diversions draw from the same source. If United Water had provided the level of detail contained in the normal notices (see attached Exhibits) potentially affected parties and the public could have known which water rights are at issue and where the diversions are actually located, and could then have made an informed determination of their interest in the IMAP. Unless someone has some personal knowledge that their water supply is located near United Water diversion(s), the published notice is of no use. Without any reference to the location of the diversion, potentially affected parties are left in the dark.

The notice did not even identify water right numbers which are the most common identifiers the Department and the public use to locate information about water rights. All this information is what normally makes up a public notice and is the minimum information the public is used to seeing. Since the notice did not comport with minimum statutory requirements or provide sufficient information, the Department committed procedural error and republication of the notice with adequate information is required.

b.) The publication of inadequate notice violates the public's interest.

A substantive consideration in appropriation, transfer, and permit amendment proceedings is the public's interest in the proposal. Hardy v. Higginson, 123 Idaho 485, 489 (1993). The inadequate notice published in this case substantively impacts the public's interest in the IMAP proceeding. Further, any decision on the IMAP without proper notice would be contrary to that interest. Had the published notice met the minimum statutory requirements, the current makeup of the proceeding may have been very different. Accordingly, it is against the public interest to act on United Water's IMAP when the public has been excluded from the process due to the lack of adequate notice. United Water seeks simply to ignore the error, proceed with the process, and hope its unique process passes muster. The Protestants are entitled to a process that is legally correct and proper so that their significant expenditures of time and resources are not wasted on a defective process.

c.) The unlawful notice has caused significant confusion and additional expense to Protestants.

The published notice failed to give notice of United Water's true intentions with regard to the purpose of the IMAP. In response to United Water's allegation, the Protestants did read the published notice. That, coupled with the information gleaned from the process thus far, is what pointed out the shortcomings in the notice. It has been only through the efforts thus far that the

true nature of the IMAP has been revealed. The persistent confusion in the current process is the result of an overly complicated application package that is best characterized as a moving target. The constant submission of extraneous, supplemental materials, misleading information, and modifications to the IMAP have caused the Protestants to spend more time and subsequently more money to work through ever changing issues.

An example of misleading information in the notice is the statement that United Water seeks "to hold about 160 cfs for future growth." That is not the whole story. What United Water is seeking to do is still not clear, but it appears that it is seeking to blur any distinction between its current water needs and those needed for future use. Apparently, under the IMAP, United Water is asking that it have a big pot of water composed of multiple water rights without any ability by IDWR (or anyone else) to distinguish between what has been used, is being used, or will be used. That is not disclosed in the notice and, so far, not disclosed in the IMAP documents.

An example of inadequate information is the lack of notice of the specific water rights United Water seeks to appropriate or to transfer for future needs. "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 reasonable anticipated future needs, the municipal provider shall establish that ... the reasonably anticipated future needs ... are consistent with the definitions and requirements specified in this chapter." Idaho Code § 42-222 (emphasis added). The same is true when a municipality proposes to appropriate water for anticipated future needs. Idaho Code § 42-202(2). United Water argues that it does not need to identify which water rights it holds for current demand or for future needs. United Water recognizes that IDWR must determine which of United Water's water rights are valid. UWID Response at 15. Given the multitude of issues surrounding the complex portfolio of water rights, until the validity of its

water rights are determined, how does United Water even know what additional water it needs for future use?

United Water simply wants the IMAP done its way resulting in an essentially backwards and confusing approach. United Water should first seek confirmation of its water rights through the adjudication process or an administrative proceeding and then evaluate its current versus future needs. After United Water knows what is included in its portfolio, it can determine which water rights are needed to meet current demand and what, if any, water rights are needed for future use. Only then can United Water provide a basis for its claim that it requires water for future needs. Until that is known, the Hearing Officer cannot begin to evaluate United Water's planning horizon.

2. The Amended IMAP Applications Should Be Republished.

United Water argues that it is not obligated to publish notice of the amended IMAP. Protestants disagree and believe it is in everyone's best interest that notice consistent with the law be required. The defects in the original notice could be remedied by publication of the amended IMAP. However, if the amended IMAP is not published, Protestants move that the Hearing Officer order that notice of the original IMAP be republished in accordance with the law.

3. If The Water Rights Described In The Amended IMAP Or The Original IMAP Involve Quantities Greater Than 50 Cfs, Legislative Approval Is Required.

United Water argues on the one hand that its applications should be treated individually, but then seeks approval for an integrated system that changes all the water rights for use at all points of diversion. "Amending UWID's ground water rights to allow each well as an alternate point of diversion will allow UWID to continue to maximize the efficiency of its system by allowing the diversions from the most senior rights to be diverted using the best wells."

Information in Support of IMAP at 5. While United Water argues it has agreed to a condition that would limit the ability to divert more than 50 cfs from any well, it expressly disavows any allegiance to the conditions. UWID's Response at 16, 20. Additionally, United Water has again changed its applications by submitting additional applications that were overlooked. March 20, 2003 letter from John Marshall to Debbie Gibson. If the amended IMAP seeks to change the use of a quantity of water greater than 50 cfs, legislative approval is required.

4. The IMAP Was Not Submitted "Upon Forms Furnished By The Department."

A simple comparison of the forms used to submit the original IMAP and the forms used for the amended IMAP, shows that the original forms are not those furnished by the IDWR. As United Water admits, the forms were actually "modeled on the Department's forms." UWID Response at 26. However, United Water has now refiled its application, this time on forms furnished by the Department; thus, this issue should be moot if all the required information has been presented.

Conclusion

For the reasons described in the Protestants' Motion and Reply, the Protestants respectfully request that the Hearing Officer order publication of lawful notice of United Water's IMAP. The notice should provide a sufficient description of all of the changes and conditions UWID is requesting through the amended IMAP so that potentially affected parties have adequate notice of the same.

RESPECTFULLY SUBMITTED this 18 day of April, 2003.

TAMMY A. ZOKAN
MOORE SMITH BUXTON & TURCKE, CHARTERED

Attorneys for The City of Eagle, the City of Kuna, the City of Middleton, the City of Star and the Star Sewer and Water District

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18 day of April, 2003, I caused to served a true and correct copy of the forgoing REPLY by the U.S. mail, addressed to the following:

Kathleen Marion Carr
Office of the Field Solicitor
U.S. Department of the Interior
550 West Fort Street, MSC 020
Boise, ID 83724
208-334-1911-phone
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United Water Idaho, Inc.
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Boise-Kuna Irrigation District
Robert W. Talboy
Ellsworth, Kallas & Talboy
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T.E. Terteling Company
Daniel V. Steenson
Ringert Clark Chartered
455 S. Third, P.O. Box 2773
Boise, Idaho 83701-2773

TAMMY A. ZOKAN

EXHIBIT A

(Legal Notice-Notice of Proposed Change of Water Right Transfer No. 70420)

EXHIBIT A

tabbies

LEGAL NOTICE
NOTICE OF TRUSTEE'S SALE

On Thursday, the 3rd day of July, 2003, at the hour of 10:00 o'clock a.m. of said day at the law office of Skinner Fawcett, 515 S. 6th St., Boise, in the County of Ada, State of Idaho, Charles W. Fawcett, as Successor Trustee, will sell at public auction, to the highest bidder, for cash in lawful money of the United States, all payable at the time of sale, the following described real property situated in the County of Ada, State of Idaho, and described as follows, to-wit:

LOT 30 IN BLOCK 2 OF DEERHORN SUBDIVISION NO. 1, ACCORDING TO THE OFFICIAL PLAT THEREOF, FILED IN BOOK 79 OF PLATS AT PAGES 8506 THRU 8508, RECORDS OF ADA COUNTY, IDAHO.

The Successor Trustee has no knowledge of a more particular description of the above referenced real property, but for purposes of compliance with Section 60-113 Idaho Code, the Successor Trustee has been informed that the street address of 411 W. Trophy Ave., Kuna, Idaho, is sometimes associated with said real property.

Said sale will be made without covenant or warranty regarding title, possession or encumbrances to satisfy the obligation secured by and pursuant to the power of sale conferred in the Deed of Trust executed by SHANE M. ANDERSON and ERIGA A. ANDERSON, Husband and Wife, Grantor, to Charles W. Fawcett, Successor Trustee, for the benefit and security of M&T MORTGAGE CORPORATION, recorded June 16, 2000, as Instrument No. 100047265, and re-recorded on August 14, 2000, as Instrument No. 100064082, Mortgage records of Ada County, Idaho, and assigned to the Idaho Housing and Finance Association by Assignment of Deed of Trust recorded on June 16, 2000, as Instrument No. 100047266, and re-recorded on August 14, 2000, as Instrument No. 100064083, Mortgage records of Ada County, Idaho. THE ABOVE GRANTOR IS NAMED TO COMPLY WITH SECTION 45-1506 (4)(a), IDAHO CODE. NO REPRESENTATION IS MADE THAT THEY ARE, OR ARE NOT, PRESENTLY RESPONSIBLE FOR THIS OBLIGATION.

The default for which this sale is to be made is the failure to pay when due monthly installment payments under the Deed of Trust Note dated June 13, 2000 in the amount of $845.00 each, for the months of October, 2001 through February, 2003, inclusive; and for each and every month thereafter until date of sale or reimbursement. All delinquent payments are now due, plus accumulated late charges, plus any costs or expenses associated with this foreclosure. The accrued interest is at the rate of 7.25% per annum from September 1, 2001. The principal balance owing as of this date on the obligation secured by said Deed of Trust is $95,958.25, plus accrued interest at the rate of 7.25% per annum from September 1, 2001.

DATED This 27th day of February, 2003.

CHARLES W. FAWCETT,
a Member of the Idaho State Bar,
SUCCESSOR TRUSTEE

ENGINEERS, Inc. Copies of these documents may be purchased at JUB ENGINEERS, Inc. Fifty Dollars ($50.00) for each set. Payment is to be made to JUB ENGINEERS, Inc.

In determining the lowest responsive bid, the Owner will consider all acceptable bids on a basis consistent with the bid package. The Owner will also consider whether the bidder is a responsible bidder.

Before a contract will be awarded for work contemplated herein, the Owner will conduct such investigation as is necessary to determine the performance record and ability of the apparent low bidder to perform the size and type of work specified under this Contract. Upon request, the bidder shall submit such information as deemed necessary by the Owner to evaluate the bidder's qualifications.

All bids must be signed and accompanied by evidence of authority to sign.

Bids must be accompanied by bid Security in the form of either a bid bond on the enclosed form, certified check, cashiers check or cash in the amount of 5 percent of the amount of the bid proposal. Said bid security shall be forfeited to the City of Glenns Ferry as liquidated damages should the successful bidder fail to enter into contract in accordance with their proposal as specified in the instruction to Bidders.

The City of Glenns Ferry reserves the right to reject any or all proposals, waive any nonmaterial irregularities in the bids received, and to accept the proposal deemed most advantageous to the best interest of the City of Glenns Ferry.

Dated: February 28, 2003.
Glenn Thompson, Mayor
City of Glenns Ferry

LEGAL NOTICE
NOTICE OF PROPOSED CHANGE OF WATER RIGHT TRANSFER NO. 70420

CITY OF COEUR D ALENE WATER DEPARTMENT, 1000 W HUBBARD STE 130, COEUR D ALENE ID 83814, has filed Application No. 70420 for changes to the following water rights within KOOTENAI County:

Right No. 95-2198
Priority 12/13/1966
Total Amount 5.12 CFS
Point(s) of Diversion S12 T50N R04W

Right No. 95-7181
Priority 3/14/1972
Total Amount 5.73 CFS
Point(s) of Diversion S1 T50N R04W

Right No. 95-8647
Priority 3/19/1990
Total Amount 7.30 CFS
Point(s) of Diversion S35 T51N R04W

Right No. 95-8938
Priority 2/8/1996
Total Amount 4.57 CFS
Point(s) of Diversion S36 T51N R04W

Right No. 95-2133
Priority 7/21/1960
Total Amount 2.27 CFS
Point(s) of Diversion S1 T50N R04W

Right No. 95-7142
Priority 5/3/1971
Total Amount 2.45 CFS
Point(s) of Diversion L1 S4 T50N R04W

Right No. 95-8565
Priority 12/7/1987
Total Amount 7.55 CFS
Point(s) of Diversion L1 S4 T50N R04W

Right No. 95-8672
Priority 8/27/1990
Total Amount 3.00 CFS
Point(s) of Diversion S12 T50N R04W

Right No. 95-9007
Priority 1/25/1999
Total Amount 7.80 CFS
Point(s) of Diversion S26 T51N R04W

Right No. 95-2111
Priority 4/20/1955
Total Amount 3.00 CFS
Point(s) of Diversion S12 T50N R04W

Note: The source for all rights is ground water and the use is municipal. Place of use for all of above is within service area of applicant.

The purpose of the transfer is to change a portion of the above rights as follows: To consolidate the water rights of the City of Coeur d'Alene to allow use of portions of all the rights from any well within the City's system.

The proposed new well will be located within L6 (NESE) S35 T51N R04W, and will be used to provide for diversion capacity redundancy within the system.

THERE WILL BE NO INCREASE IN THE DIVERSION RATE OR THE DIVERSION VOLUME.

Remark: Municipal use is within the service area of applicant.

Protests may be submitted based on the criteria of Sec 42-222, Idaho Code. Any protest against the proposed change must be filed with the Department of Water Resources, Northern Region, 1910 Northwest Blvd, Suite 210, Coeur D' Alene ID 83814 together with a protest fee of $25.00 for each application on or before March 17, 2003. The protestant must also send a copy of the protest to the applicant.

KARL J DREHER, Director

I.D. Statesman 3-6-03

Thence N 89°45'47" W 975.80 feet to the intersection of said southerly right of way and the easterly right of way of N. Hartman Street;

Thence N 03°56'02" W 50.13 feet to the intersection of the easterly right of way of N. Hartman Street and the northerly right of way of W. Curtisian Avenue;

Along the northerly right of way of W. Curtisian Avenue the following:

Thence S 89°45'47" E 973.55 feet to a point;

Thence S 69°49'05" E 68.89 feet to a point of curvature;

Thence 8.70 feet along a curve to the left, said curve having a radius of 25.00 feet, a central angle of 19°56'42", a tangent of 4.40 feet and a chord of 8.66 feet which bears S 79°47'26" E to a point of tangency;

Thence S 89°45'47" E 205.54 feet to a point of curvature;

Thence 15.75 feet along a curve to the left, said curve having a radius of 10.00 feet, a central angle of 90°15'13", a tangent of 10.04 feet and a chord of 14.17 feet which bears N 45°06'36" E to a point of tangency on the west right of way of Curtis Road;

Thence S 0°01'00" E 62.09 feet to the Real Point of Beginning of this description.

This parcel contains 63151 square feet (1.45 acres), more or less. Containing 1.45 acres, more or less. Subject to all Covenants, Rights, Rights of Way and Easements.

The public hearing will be held in the auditorium of the Ada County Highway District, 3318 East 37th Street, Garden City, Idaho on Wednesday, March 12, 2003, at 6:30 p.m., or as soon thereafter as the matter may be heard, at which hearing any person may appear and show cause why the exchange should not be made.

ADA COUNTY HIGHWAY DISTRICT
By: William J. Schweitzer, Director

LEGAL NOTICE
NOTIFICATION OF SIX-MONTH REVIEW HEARING

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT IN THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

In the Interest of:
JULIANA CALDERON

A Child Under
Eighteen Years of Age

TO: KELLY ANNE REILLY, the natural moth of said Juliana Calderon:

YOU AND EACH OF YOU, will hereby tal notice;

That a Petition under the Child Protecti Act was filed in the above-entitled matter the 19th day of September, 2000.

That a Six-Month Review Hearing on t Petition has been set for 11:00 a.m. on t 17th day of March, 2003, in the Magistra Court, Ada County Courthouse, 200 We Front Street, Boise, Idaho 83702. Unle you file a responsive pleading within twei (20) days, a default judgement may entered against you.

That you have the right to be represent by Counsel of your choosing or upon go cause shown, providing you are financi needy, the Court may appoint Counsel act in your behalf.

DATED This 3rd day of March, 2003.
J. DAVID NAVARRO
Clerk of the District Court
Ada County, Idaho Statesman
By: A. Schmidt
Deputy Clerk

LEGAL NOTICE
ABANDONED VEHICLE SALE

From March 5, 6, and 7, 2003 between the hours of 8:00 AM and 5:00 PM, bids will accepted for the following described vehicles. The abandoned vehicles described below be sold on an AS IS - WHERE IS basis only. Payment terms are by certified check o Viewing of the abandoned vehicles must be done at the location listed.

White 1984 Ford Escort Idaho license 2CP4719 Registered owner Javier Martinez-Garcia Caldwell ID Tow Lien $999.00 Vehicle may be viewed at Country Repair & 24hr Towing 9717 Hwy 45 Nampa ID

Blue 1988 Chrysler Lebaron Idaho license 2CK1324 Registered owner Jose Luis Lopez-Popoca Caldwell ID Tow Lien $1332.00 Vehicle may be viewed at Road Rescue Towing 547 E Stagecoach Way Kuna ID

Gold 1974 Plymouth Fury Oregon license VKR867 Registered owner Elizabeth A Heredia Ontario OR Tow Lien $1050.00 Vehicle may be viewed at 1710 Whitley Fruitland ID

Sealed bids must be received at the Idaho State Police Region 3 Office at 3056 Elder Boise, ID 83705, Telephone (208) 334-3731, no later than 5:00 p.m. on March 7, 20 Amount of bid does not have to equal or surpass the lien amount. The highest bidder wi notified on the first working day following the closing date. We reserve the right to rejec accept any or all bids. If you have any questions, contact the Idaho State Police at the at address and/or telephone number.

Captain Stephen Jones
ISP Region 3 Commander

EXHIBIT B

(Legal Notice)

EXHIBIT B tabbies

1627 Cassia St., Nampa. Chapter 7.

- WILSON, Mitchell DeWayne, 338 E. State Ave., #2, Eagle. Chapter 7.
- WATSON, Jason Lee, and Karrie Lynn, 702 S. Muscovy, Meridian. Chapter 7.
- NEILSON, Rocky Lee, 1708 S. Jackson St., Boise. Chapter 13.
- VIVES, Mark Antonio, dba SAME DAY CARGO, and Anita, 2536 E. Clarene Ct., Meridian. Chapter 7.
- ASHTON, Gregory, and Angela, 708 W. Orchard, Nampa. Chapter 7.
- SULLIVAN, William Patrick, and Sharon Kay, 1514 Leadville, Boise. Chapter 7.

na Marie, 10895 Horseshoe Bend Rd., Boise. Chapter 7.

- FORBIS, Sean Doyle, and Carrie Ann, fka SCHUMANN, Carrie Ann., Box 1336, Mountain Home. Chapter 7.
- BRYENTON, David Scott, and Deborah Chavez, 11493 W. Azure Dr., Boise. Chapter 7.
- LEAZER, Anthony D., and Tonia L., P.O. Box 841, Caldwell. Chapter 7.
- ALDRICH, Jack E., and Donna M., 1621 S. Woodland Dr., Nampa. Chapter 7.
- ROWE, David M. and Rita K., 3181 Mountain View Dr., Boise. Chapter 7.

Chris Tina, fdba LITTLE FOLKS UNIVERSITY, 10806 W. Florence Dr., Boise. Chapter 7.

- CAYA, Lorna Elaine, 401 W. 5th St., N., Middleton. Chapter 7.
- MCDANIEL, Angela M., 617 S. 13th St. #311, Boise. Chapter 7.
- COOK, Jason R., and Beth R., aka LORE, Beth, 935 W. Crestwood Dr., Meridian. Chapter 7.
- KOHL, Paul Ryan, and Pauline Helen, aka REDFOX, Pauline Helen, 5909 Stamm Rd., Nampa. Chapter 7.
- KUNZ, Timothy J., and Janice D., 1905 E. Nevada Ave., Nampa. Chapter 7.
- MOKHTARANI, Akbara, 505 E.

Trailside Dr., Caldwell. Chapter 7.

- FACKRELL, Joseph M., and Connie L., 1309 Eldoran Dr., Nampa. Chapter 7.
- MARTINEZ, Charles Mike, and Debra Ann, 309 Madison, Caldwell. Chapter 7.
- HARTLEY, Mearill Owen, and Robin Lyn, 711 Hawthorn, Nampa. Chapter 7.
- PRADO, Shirley Maxine, 254 Delaware, Nampa. Chapter 7.
- MCCRACKEN, JoAnn, 1863 E. Cornisky St., Meridian. Chapter 7.
- WARDLE, David Brent, aka WARDLE, Brent, and Terry, 7510 Hol-

Abernathy Way, Meridian. Chapter 7.

- SELLARDS, Robert Oscar, and June Marie, 707 Chestnut, Nampa. Chapter 7.
- VANNORTWICK, Angela Michele, 1424 South Colorado Ave., Boise. Chapter 7.
- MAGBY, Eric Warren, and Cynthia Ann, 202 Carson St., Emmett. Chapter 7.
- ELLIOTT, Stephen P., Jr., and Amy F., 5709 Sunset Dr., Nampa. Chapter 7.
- DEVALL, Brent J., 133 N. Canyon St., Nampa. Chapter 7.
- TAYLOR, Robert M., and Sarah N.,

LEGAL NOTICE

Human Health and Welfare Agencies wishing to be listed in the 2003-2004 Southwestern Idaho Combined Federal Campaign (CFC) brochure may request an application by emailing Cyndy Lounsbury at United Way of Treasure Valley (PCFO) clounsbury@unitedwaytv.org. Application submission deadline is April 15, 2003.

Pub. Mar. 6, 2003 15829

LEGAL NOTICE
INVITATION TO BID

ALL sealed Bids will be received and opened on March 18, 2003 @ 2:00 PM MST at the Idaho Transportation Department, Purchasing Section located at 3311 West State Street, Boise, Idaho. Bidders and other interested parties are invited to be present at the bid opening. This is to furnish all materials and labor for the EB and WB Blacks Creek Rest Area, as directed in the designated areas, as per the specifications contained in requisition number C-303220.

Mandatory Walk through Inspection March 13, 2003 @ 1:00 PM MST, report to the Eastbound Rest Area, I-84 MP 62.068.

No bid will be considered unless accompanied by an acceptable guaranty in an amount not less than five percent (5%) of the total amount of the bid. This guaranty must be in the form of a certified check or a cashiers check drawn on an Idaho bank made payable to the Idaho Transportation Department, or a bidders bond. Surety will be forfeited in the event of failure to sign the contract.

The Idaho Transportation Department reserves the right to reject all bids or to accept the bid deemed best for the State of Idaho.

Dated this 24th day of February 2003
ROD BECKER, PURCHASING AGENT
IDAHO TRANSPORTATION DEPARTMENT

Copies of Bidding Documents, Specifications and other information may be obtained by contacting the Idaho Transportation Department, Supply Services Section, (208) 334-8872, (3311 West State Street, Boise, ID 83703)

Pub. Mar. 3,4,5,6,7,2003 15779

LEGAL NOTICE

The following application(s) have been filed to appropriate the public waters of the State of Idaho:

63-31631
GABIOLA LAND CO LLC
920 E ANTILLES CT
MERIDIAN ID 83642

Point(s) of Diversion: NENW S24 T02N R01E ADA County Source GROUND WATER
Use: COMMERCIAL 01/01 To 12/31 0.04 CFS
Total Diversion: 0.04 CFS

Date Filed: 01/23/2003
Place Of Use: COMMERCIAL
T02N R01E S24 NENW NWNW
Remark: Applicant agrees to mitigate consumptive use in the future as needed.
Water bearing zone to be appropriated is from 150 to 350 feet.
Permits will be subject to all prior water rights. Protests may be submitted based on the criteria of Sec 42-203A, Idaho Code. Any protest against the approval of this application must be filed with the Director, Dept. of Water Resource, Western Region, 2735 Airport Wy, Boise ID 83705 together with a protest fee of $25.00 for each application on or before 03/24/2003. The protestant must also send a copy of the protest to the applicant.
KARL J DREHER, Director

Pub. Mar. 6, 13, 2003 15794

LEGAL NOTICE
NOTICE OF PROPOSED CHANGE
OF WATER RIGHT
TRANSFER NO. 70397

ROBERT J HUNTINGTON
PO BOX 140394
GARDEN CITY ID 83714, has filed Application No. 70397 for changes to the following water rights within ADA County: Right No. 63-4219H

Priority 6/1/1910
Source DRY CREEK
Use IRRIGATION (3 acres) 0.06 CFS
Total Amount 0.06 CFS
Point(s) of Diversion S35 T05N R01E
Place of Use S34 T05N R01E

Remark: Applicant proposes diverting directly from Dry Creek tributary to the Boise River in the NESE S34 T5N R1E for irrigation of 3 acres aka Lt 6 Blk 1, Maryglen Subdivision No. 1. The original diversion dam in Dry Creek washed out in 1998, which diverted water into a common ditch leading to applicants property.
Protests may be submitted based on the criteria of Sec 42-222, Idaho Code. Any protest against the proposed change must be filed with the Department of Water Resources, Western Region, 2735 Airport Wy, Boise ID 83705 together with a protest fee of $25.00 for each application on or before March 24, 2003. The protestant must also send a copy of the protest to the applicant.
KARL J DREHER, Director

Pub. Mar. 6, 13, 2003 15793

Idaho Statesman 3-6-03

LEGAL NOTICE
CITY OF GLENNS FERRY

LEGAL NOTICE

The Board of Ada County Commissioners will consider a resolution to amend the fees for the Development Services Department on March 11, 2003, at 9 a.m. in the 3rd Floor Commissioners Conference Room, 200 W. Front Street, Boise, ID.

The Engineering Division fees increase by 15-31% for Verification of Plats to cover the cost of administering the street name and addressing function for Ada County.

For more detailed information, contact Ada County Development Services, County Engineer, at 200 W. Front Street, 2nd Floor, Boise, ID or call (208) 287-7900.

BOARD OF COUNTY COMMISSIONERS
Jeffrey L. Pallovich, AICP, Director

Pub. Feb. 27, Mar. 6, 2003 15771

LEGAL NOTICE
AD FOR BIDS

Sealed proposals will be received by CM Company, Inc., for the Division of Public Works, State of Idaho, at the West Conference Room of the Joe R. Williams State Office Building (A.K.A. "Hall of Mirrors"), 700 West State Street, Boise, Boise, Idaho until the times specified on the Bid Schedule and Bid Forms, on **March 25, 2003**, for DPW Project No. **02-216**, New Residence Hall, Ph. II, Bid Packages 1-25, Boise State University, Boise, Idaho. Further information, including information regarding Pre-Bid Conference, availability of documents for review and bid bond requirements, is at www2.state.id.us/adm/pubworks/dpwconstprojects.htm or contact Hummel Architects, PH: 343-7523.

Estimated Cost: $14,328,000
Jan P. Frew, Design & Construction Manager, Division of Public Works

Pub. Mar. 6,7,8,2003 15837

LEGAL NOTICE
OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN, that the Board of Commissioners of the Ada County Highway District will hold a public hearing in accordance with the provisions of the Idaho Code, to consider the vacation and abandonment of a tract of land located between N. Curtis Road and N. Hartman Street, located in Section 7 of T. 3N., R. 2E., of the Boise Meridian, Boise, Ada County, Idaho.

LEGAL NOTICE
NOTICE TO CREDITORS
Case No. SP IE 0300098M

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA
MAGISTRATE DIVISION

In the matter of the Estate of HENERIETTA FAY HALL, aka H. FAY HALL, deceased.

NOTICE IS HEREBY GIVEN that the undersigned has been appointed personal representative of the above-named decedent. All persons having claims against the decedent or the estate are required to present their claims within four (4) months after the date of the first publication of this Notice or said claims will be forever barred.

Claims must be presented to the undersigned at the address indicated and filed with the Clerk of the Court.

Dated this 26th day of February, 2003.
MARGY MAKELA
Personal Representative
8171 Bill Burns Road
Emmett, ID 83617

Pub. Mar. 6, 13, 20, 2003 15804

LEGAL NOTICE
NOTICE TO CREDITORS
Case No. SP IE 0300006M

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA
MAGISTRATE DIVISION

In the matter of the Estate of DONALD L. THOMAS, Deceased.

NOTICE IS HEREBY GIVEN that the undersigned has been appointed personal representative of the above-named decedent. All persons having claims against the decedent or the estate are required to present their claims within four (4) months after the date of the first publication of this Notice or said claims will be forever barred.

Claims must be presented to the undersigned at the address indicated and filed with the Clerk of the Court.

Dated this 12th day of February, 2003.
MARK P. THOMAS
901 Main St. Suite 37000
Dallas, Texas
(214) 744-3700