

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	)	SECOND PREHEARING
IDAHO, INC., INTEGRATED	)	ORDER
MUNICIPAL APPLICATION	)	
PACKAGE (IMAP)	)	

A prehearing conference in the above-referenced matter was held on February 21, 2003, in Boise, Idaho. All parties, except the Estate of Eleanor Chase, were present. Upon the inquiry of the Hearing Officer for an explanation for the Estate's absence, counsel for United Water Idaho, Inc. (the "Applicant") indicated that the Estate and the Applicant had reached a resolution of the Estate's protest. This Prehearing Order issues as a result of the discussions at the prehearing conference and 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. Statement of Issues.

On January 31, 2003, the Applicant submitted to IDWR a *UWID's Submission of Summary of Issues (Without Comments)* as required by the first prehearing order issued on October 15, 2002. Four separate statements of issues were also filed by (1) the Cities of Eagle, Kuna, Middleton, Star, and the Star Sewer and Water District, (2) the Nampa & Meridian Irrigation District, the cities of Meridian and Caldwell, and the Terteling enties, (3) the Pioneer Irrigation District and Settlers Irrigation District, and (4) the City of Boise. From these statements the Hearing Officer intended to make a master list of issues needing to be resolved to achieve final resolution of this matter. At the February, 21, 2003, prehearing conference, however, it became apparent that some parties had not provided to the Applicant or IDWR a listing of any issues that were contained separately in their protests. Therefore, on or before **March 14, 2003**, the parties shall file with IDWR a list of any additional issues that are stated in their protests but are not stated in the previously filed statements of issues.

For purposes of the issues which are scheduled in this order, the numbering system to be used for the issues corresponds with the numbers assigned to them in *UWID's Submission of Summary of Issues (Without Comments)* dated February 3, 2003.

2. Resolution of Preliminary Procedural Issues.

The following procedural issues require resolution before action is taken on the substantive issues raised in this matter:

- 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."

All parties must file any motions, with briefing or affidavits, they believe necessary to protect their interests relating to these issues in accordance with the following schedule:

March 14, 2003: Motions with supportive briefing and affidavits.

March 28, 2003: Response briefs and affidavits.

April 4, 2003: Reply briefs.

The motions may include consideration of the impact of the amendments discussed in Section 3, below.

3. Withdrawal of Applications/Motion to Amend IMAP.

On January 22, 2003, Applicant filed *UWID's Notice of Withdrawal of Four Applications for Amendment of Permit from the IMAP and Motion to Amend the IMAP*. By this motion the Applicant sought to accomplish three things: (1) withdrawal of applications to amend Permit nos. 63-12424, 63-12463, 63-12506 and 63-12552, (2) remove the points of diversion associated with these permits as alternate points of diversion for the water rights and permits remaining in the IMAP, and (3) remove thirteen additional well sites that were proposed alternate points of diversions for the water rights and permits remaining in the IMAP. Attachment B to the motion were three documents titled Tabs K, M and N which apparently were intended to be inserted in the IMAP to reflect the changes.

Pursuant to IDAPA 37.01.01.305 the Applicant was simply required to file its notice to withdraw its application to amend Permit nos. 63-12424, 63-12463, 63-12506 and 63-12552. That withdrawal is now effective.

More problematic is the amendment to the listing of alternate points of diversion for the water rights and permits remaining in the IMAP and how the changes will be reflected in the IMAP. In order to explicitly show the changes that would be made to the IMAP by the proposed amendments, as well as by withdrawal of Permit nos. 63-12424, 63-12463, 63-12506 and 63-12552, the Applicant is ORDERED to review the entire IMAP with staff from IDWR and hand mark all changes to the IMAP, including the executive summary, necessitated by the proposed amendments and the withdrawal. Counsel for the Applicant and IDWR staff will initial and date all such changes and the Applicant shall deliver a copy of the amended IMAP, with the exception of any unchanged, oversized maps, on all parties by **February 28, 2003**. All parties shall file any motions raising issues 1 and 3, discussed in section 2 above, in relation to the amendments by **March 14, 2003**. Additional issues, such as the propriety of removing the sole current point of diversion for a water right from the listing of the IMAP alternate points of diversion, will be addressed during substantive consideration of the IMAP.

4. Pre-applications Contacts with IDWR

Several of the Protestants filed a *Motion for Order Authorizing Preliminary Discovery*, dated September 23, 2002, which requested authority to conduct discovery regarding the issue of the Applicant's contacts with IDWR prior to filing the IMAP. That motion was stayed by stipulation until a notice dated January 2, 2003, informed IDWR of its reactivation. Further, in the listing of issues the parties raised the following issues:

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

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

This matter currently rests with the Hearing Officer, who is not an employee of IDWR. Determination of the extent and scope of pre-filing contacts between IDWR and the Applicant is not a prerequisite for the Hearing Officer to fully process this matter. The Hearing Officer's final action in this matter will be to issue a recommended order on the substance of the IMAP that must be reviewed by the Director of IDWR or his designee. IDAPA 37.01.01.720. The question of whether pre-filing contacts should limit the review of the recommended decision by either the Director or his staff, rests with the Director. See, e.g., I.C. § 67-5252(4). Pursuant to IDAPA 37.01.01.562, it is ORDERED that the ruling on the *Motion for Order Authorizing Preliminary Discovery*, dated September 23, 2002, and Issues 9 and 15 are referred to the Director of IDWR for resolution as the Director deems appropriate.

5. 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 and IDWR have concurrent jurisdiction over any water rights claimed in the SRBA and included in the IMAP. I.C. § 42-1421(4). Questions of timeliness, efficiency, finality and the avoidance of conflicting decisions suggest that proceedings in this matter be coordinated with the proceedings before the SRBA District Court in whatever manner the SRBA District Court deems most appropriate. The Hearing Officer shall notify both the IDWR adjudication division and SRBA District Court of this issue and let the Court determine how it wishes to proceed.

6. 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 not authorized at this time. This does not constitute a ruling on the January 16, 2003, motion. The necessity for discovery will be revisited upon resolution of the preliminary matters discussed in Section 2 and when questions regarding coordination with the SRBA have been resolved.

Until that time all parties shall informally disclose information by responding to reasonable oral or written requests for information from other parties. Such requests cannot be made the basis for a motion to compel. Further, no request for discovery in this matter will be granted unless the party requesting such discovery demonstrates reasonableness, both in making requests for information and in responding to such requests.

7. 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.

Dated this 27th day of February, 2003.


Peter R. Anderson
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of February, 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:

CHRISTOPHER H MEYERS
JOHN M MARSHALL
GIVENS PURSLEY
PO BOX 2720
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E GAIL MC GARRY PN-3100
BUREAU OF RECLAMATION
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KATHLEEN MARION CARR MSC-020
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2735 AIRPORT WAY
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Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

DISTRICT COURT
SNAKE RIVER BASIN ADJUDICATION
STATE OF IDAHO

RECEIVED

MAR 25 2003

Department of Water Resources



ROGER BURDICK
PRESIDING JUDGE
(208) 736-3011
FAX (208) 736-2121

SRBA CHAMBERS
P.O. BOX 2707
TWIN FALLS, IDAHO 83303-2707

March 24, 2003

Peter Anderson
729 W. Braemere Rd.
Boise, Idaho 83702

Dear Mr. Anderson:

I'm in receipt of your 7th day of March letter. Thank you very much for recognizing that the SRBA may, in fact, be a partner in terms of this complicated process with United Water. I have some concerns which I will convey by letter to you as the hearing officer in the United Water case. In that regard, I believe that we do not have concurrent jurisdiction in this case. I believe that the Snake River Basin has original jurisdiction for those water rights which have not been decreed and which have questions of forfeiture included. I cannot see where an unadjudicated water right which may or may not exist can then be transferred in an administrative hearing. As such, it seems to me that the appropriate thing is to stay the administrative proceeding until all water rights can be adjudicated and then the administrative portion of the case can go forward based upon a clear record of what water rights exist.

If, however, the administrative procedure goes forward and you request a stay of the SRBA proceedings while that administrative procedure is going forward, I would advise the Master not to stay the proceedings. As I have been saying for a couple of months now, Notices of Administrative Proceeding (NAP) have been proven to be very inefficient ways of doing the SRBA business. In fact, we have found that prior to the Notice of a Completed Administrative Procedure (NCAP), the stay by the SRBA court based upon a NAP often leads to more work for the parties than less work. Therefore, I have previously instructed my Masters that we will follow Rule A01 explicitly in that, there will not be automatic stays based upon NAPs and that the hearing Master and myself must look with a discerning eye to the motions to stay the SRBA proceedings.

Having said all of those things, I do not have a case before me upon which I can rule nor order anyone to do anything. However, your letter requested a response, and that would be it. I don't believe that an informal conference between the Court and yourself would be productive. In fact, that type of conference may violate the judicial canons because I do not have a case in controversy before me and therefore could be prejudging a case.

Those are my original thoughts. I have talked these over with Special Master Cushman as well as, Eric Wildman, our staff attorney and believe that this is the best way to go forward. If you have any further questions, feel free to contact the court.

Sincerely,

A handwritten signature in black ink, appearing to read "Roger", with a stylized flourish extending from the end.

Honorable Roger S. Burdick
Presiding Judge
Snake River Basin Adjudication

RSB:sb

CC: See attached Certificate of Mailing

CERTIFICATE OF MAILING

I certify that a true and correct copy of this Letter To Peter Anderson was mailed on March 24, 2003, with sufficient first-class postage to the following:

Idaho Department of Water Resources
Attn: Susan Hamlin
PO Box 83720
Boise, Idaho 83720-0098

Christopher H. Meyers
John M. Marshall
Givens Pursley
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Boise, Idaho 83701

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Bureau of Reclamation
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Boise, Idaho 83706-1234

Kathleen Marion Carr
Office of the Field Solicitor
US Dept. of Interior
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Boise, Idaho 83724

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

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

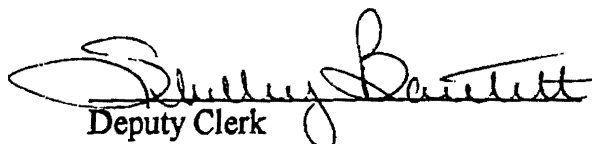
Josephine P. Beeman
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Ed Squires
Hydro Logic Inc.
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IDWR - Western Region Manager
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Bruce M. Smith
Tammy A. Zokan
Moore Smith Buxton & Turcke
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Boise, Idaho 83702


Deputy Clerk

*cc'd: Phil R.
Dave T.
File
Glen S.*

PETER R. ANDERSON
729 W. BRAEMERE RD.
BOISE, ID 83702
(208) 336-7020

FAX: (208) 395-0222

E-MAIL: PRANDERSON@WHITTIES.ORG

March 7, 2003

Honorable Roger S. Burdick
Snake River Basin Adjudication
P.O. Box 2707
Twin Falls, ID 83303-2707

Re: Administrative Proceeding in IDWR Basin 63, part II

Dear Judge Burdick,

I have been appointed by IDWR Director Dreher to be hearing officer in an administrative contested case proceeding involving the water rights of United Water Idaho, Inc. United Water has applied for an administrative transfer involving nearly all of its rights in the Boise Valley under the title of the "Integrated Municipal Application Package" or "IMAP". Many of the water rights in the IMAP are due to be reported by IDWR to the SRBA District Court in the Director's Report for IDWR Basin 63, part II. This report currently is scheduled to be delivered to the SRBA early in 2004.

Many parties filed protests to United Water Idaho's transfer applications and are parties to the contested case proceeding. Most, if not all, of these protesting parties are also claimants in the SRBA. One basis for their protests is that many of United Water Idaho's water rights have been forfeited and are not eligible to be transferred. The parties are understandably concerned that the forfeiture issue is likely to be raised in the SRBA. Further, because of the complexity of the IMAP there would likely be a significant delay in the SRBA's consideration of these rights if the normal Notice of Administrative Proceeding ("NAP") process was followed. As a result, in a recent prehearing order I noted:

The following issue was raised in the listing of issues:

Issue 4: Approval of the IMAP might preclude SRBA review.

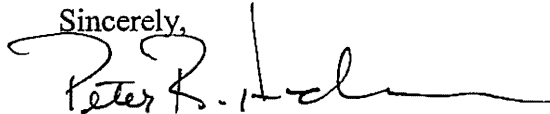
The Snake River Basin Adjudication (SRBA) District Court and IDWR have concurrent jurisdiction over any water rights claimed in the SRBA and included in the IMAP. I.C. § 42-1421(4). Questions of timeliness, efficiency, finality and the avoidance of conflicting decisions suggest that

proceedings in this matter be coordinated with the proceedings before the SRBA District Court in whatever manner the SRBA District Court deems most appropriate. The Hearing Officer shall notify both the IDWR adjudication division and SRBA District Court of this issue and let the Court determine how it wishes to proceed.

I am writing to you to request direction on how you would like to proceed to coordinate the IMAP contested case hearing with the SRBA.

There is disagreement among the IMAP parties regarding the best way to proceed. For that reason I suggest that they come before you at the next scheduled status conference on March 18, 2003, to present their positions. If you would rather proceed in some other fashion, however, I am happy to accommodate. I am available to talk with you by telephone, or at the status conference, regarding this question. I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter R. Anderson", with a long horizontal flourish extending to the right.

Peter R. Anderson
Hearing Officer

Cc Dave Tuthill, IDWR
Certificate of Service

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of March, 2003, the above and foregoing **Letter by Peter Anderson, dated March 7, 2003**, were served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

CHRISTOPHER H MEYERS
JOHN M MARSHALL
GIVENS PURSLEY
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TAMMY A ZOKAN
MOORE SMITH BUXTON & TURCKE
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E GAIL MC GARRY PN-3100
BUREAU OF RECLAMATION
1150 N CURTIS RD STE 100
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MOFFATT THOMAS
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BOISE ID 83701-0829

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

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

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

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

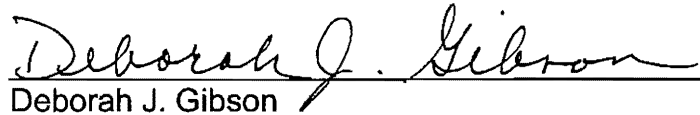
CHARLES L HONSINGER
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1002 W FRANKLIN ST
BOISE ID 83702-5431

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

A handwritten signature in cursive script, reading "Deborah J. Gibson", is written over a horizontal line.

Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

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

RECEIVED

FEB 28 2003

Department of Water Resources

**BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES**

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

**UWID'S NOTICE OF RE-SUBMISSION
OF APPLICATIONS**

NOTICE

On May 4, 2001, United Water Idaho, Inc. ("UWID") filed a package consisting of 112 applications for transfers of water rights and applications for amendment of permits. Various technical amendments were made on March 20, 2002. This package of applications, as amended, is known as the Integrated Municipal Application Package ("IMAP").

Although the IMAP contained consolidated application forms, it was plainly stated that they were, in fact, a collection of individual applications.

The following *Application for Transfer of Water Right* is really a collection of 93 separate applications. For the convenience of the Department and the reader, we have submitted a single form, modeled on the Department's standard form, with corresponding

spreadsheets containing information respecting each of the 93 water rights to be changed.

IMAP, Tab H, page 51.

The following *Application for Amendment of Permit* is really a collection of 19 separate applications. For the convenience of the Department and the reader, we have submitted a single form, modeled on the Department's standard form, with corresponding spreadsheets containing information respecting each of the 19 permits to be amended.

IMAP, Tab I, page 57.

UWID paid a separate filing fee for each of the 112 applications. As stated above, UWID filed in this way because doing so appeared to be simpler and easier to understand for the Department and interested parties.

Subsequently, UWID withdrew four of the applications and eliminated several points of diversion from the remaining applications.

Moreover, in the intervening months since the IMAP was filed, several permits have been proved up and approved as licenses. The original IMAP anticipated this, and provided as follows:

UWID is now in the process of proving up on these permits. If some or all of them are approved as licenses prior to the time the Department completes processing of this IMAP, we request that, in each case, the *Application for Amendment of Permit* be treated as an *Application for Transfer of Water Right*.

IMAP, Tab I, page 57.

Concerns have now been raised that it is becoming difficult to keep track of these modifications in the absence of individual application forms for each water right and permit. Consequently, at a prehearing conference on February 21, 2003, the Hearing Officer instructed

UWID to work with Department staff to better integrate and reflect made changes to date on the application forms.

Although UWID remains un-persuaded that its original submission was difficult to follow, it nevertheless wishes to be responsive to the concerns raised by both parties and the Hearing Officer. Accordingly, all applications that remain active were re-submitted on February 28, 2003, each on a separate form of the Department. These applications are reproduced under Tab A (water rights) and Tab B (permits).

The original IMAP submission included various explanatory materials and supporting information and documentation. In conjunction with the resubmission of applications on February 28, 2003, that information has been repackaged and resubmitted in a separate submission entitled *Information and Documentation in Support of IMAP* ("Information Submission"). This Information Submission is intended to satisfy requirements under both the Municipal Water Rights Act of 1996 and the Growing Communities Doctrine.

The Information Submission essentially consists of Tabs D, E and F of the original IMAP plus the two Appendices. Additional explanatory information contained in the original IMAP submission has been omitted because it contains obsolete references to the earlier filing, and is not required to be submitted with the Application.

In order to save reproduction costs, the map in Appendix B of the Information Submission has not been reproduced. Recipients of this Notice are asked to remove the map from Appendix B of the prior IMAP submission and insert it into the plastic map pocket under Appendix B of the Information Submission. Leave of the Hearing Officer was requested and received in this regard.

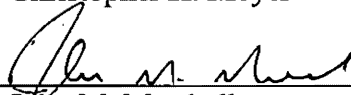
It bears emphasis that the information contained in the *Information and Documentation in Support of IMAP* is not a part of any application. Rather, it is offered in support of all the applications, together with briefs and other evidence and testimony that may be offered at hearing. The information contained in the Information Submission may be revised, updated and supplemented from time to time in during the course of these proceeding.

Respectfully submitted this 28th day of February, 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 28th day of February, 2003, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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

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_____ Facsimile
 x Hand Delivery
_____ Overnight Mail

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Hearing Officer
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Boise, ID 83702

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Regional Manager
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_____ Facsimile
 x Hand Delivery
_____ Overnight Mail

Robert W. Talboy
Ellsworth, Kallas & Talboy, PLLC
2402 West Jefferson Street
Boise, ID 83702

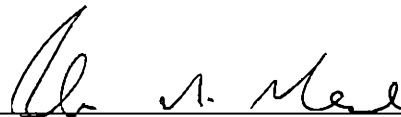
_____ U.S. Mail
_____ Facsimile
 x Hand Delivery
_____ Overnight Mail

Josephine P. Beeman, Esq.
Beeman & Associates PC
409 West Jefferson
Boise, ID 83702-6049

_____ U.S. Mail
_____ Facsimile
 x Hand Delivery
_____ Overnight Mail

Mr. Michael Chase
3482 Hwy. 30 W.
New Plymouth, ID 83655

 x U.S. Mail
_____ Facsimile
_____ Hand Delivery
_____ Overnight Mail



John M. Marshall

EXHIBIT
(In Separate Binder)

Tab A. Applications for Transfer of Water Rights

Tab B. Applications for Amendment of Permits

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Department of Water Resources

**INFORMATION & DOCUMENTATION
IN SUPPORT OF IMAP**

**Submitted by
United Water Idaho Inc.**

February 28, 2003

**HOUSED IN A SEPARATE FILE
SEE OFFICIAL RECORD FILE NO. 5**

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Department of Water Resources

Attorneys for Pioneer Irrigation District
and Settlers Irrigation District

Scott L. Campbell, ISB No. 2251
Angela Schaer Kaufmann, ISB No. 5436
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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.

**OBJECTION TO FEBRUARY 24, 2003
CORRESPONDENCE RE: SRBA V.
ADMINISTRATIVE PROCEEDINGS**

Pioneer Irrigation District and Settlers Irrigation District ("Districts"), by and through their counsel of record Moffatt, Thomas, Barrett, Rock & Fields, Chtd. hereby object to the correspondence from Christopher Meyer to Peter R. Anderson, dated February 24, 2003 ("February 24 correspondence). The correspondence is premature and in direct contravention of the procedural path laid down by the Hearing Officer at the February 21, 2003 PreHearing Conference ("February 21 PreHearing").

At the February 21 PreHearing, the Hearing Officer determined, with input from the parties, that he would contact the SRBA District Court to determine whether the Court would provide guidance on the proper order of procedure in this matter (i.e., SRBA first or administrative process first). The Districts agreed that such course of action was prudent. The Hearing Officer did not request or otherwise approve briefing on the issue of whether it was appropriate to proceed in the SRBA first, or to remain in the instant administrative proceeding.

On February 25, 2003, counsel for the Districts received the February 24 correspondence. That correspondence is really a legal brief, and appears to be an attempt to influence the Hearing Officer to refrain from contacting the SRBA District Court. The February 24 correspondence may also be an attempt to convince the Hearing Officer from otherwise considering whether issues such as forfeiture of the water rights underlying the IMAP might better be determined in the SRBA. The "brief" is inappropriate and unnecessary at this time.

Therefore, the Districts respectfully request that the Hearing Officer disregard the February 24 correspondence until such time as the SRBA District Court or the Hearing Officer might directly request briefing on the issue whether the nature and extent of the underlying water rights should first be determined in the SRBA or in this administrative proceeding. Instead, the Hearing Officer should contact the SRBA District Court to seek that Court's guidance, as the Hearing Officer indicated at the February 21 PreHearing.

The Districts further reserve the right to respond to the substantive arguments made in the February 24 correspondence until such time as the Hearing Officer or the SRBA District Court may deem appropriate.

DATED this 27th day of February 2003.

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

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

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27th day of February 2003, I caused a true and correct copy of the foregoing **OBJECTION TO FEBRUARY 24, 2003 CORRESPONDENCE RE: SRBA V. ADMINISTRATIVE PROCEEDINGS** to be served by the method indicated below, and addressed to the following:

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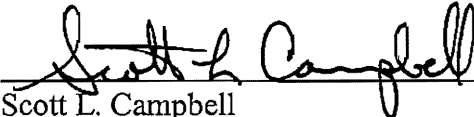
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Scott L. Campbell

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WATER IDAHO, INC.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DATED this 27th day of February 2003.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

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

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

CERTIFICATE OF SERVICE

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

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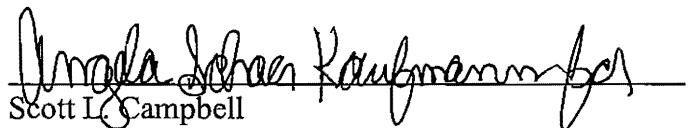
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Scott L. Campbell

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Second Prehearing Order
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*IDAHO DEPARTMENT OF
WATER RESOURCES*

Fax

To:	Parties of Record in the matter of Application for Transfer of Water Rights in the name of United Water Idaho, Inc., (aka IMAP)	From:	Deborah J. Gibson (208) 327-7953
Fax:	See Service List	Date:	February 27, 2003
Phone:		Pages:	7
Re:	United Water Idaho, Inc. (aka IMAP) cc-		

IDAHO DEPARTMENT OF WATER RESOURCES

Fax

To: Parties of Record in the matter of
Application for Transfer of Water
Rights in the name of United Water
Idaho, Inc., (aka IMAP) **From:** Deborah J. Gibson
(208) 327-7953

Fax: See Service List **Date:** February 27, 2003

Phone: **Pages:** 7

Re: United Water Idaho, Inc., (aka IMAP) **CC:**

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

•Comments: See the attached Second Prehearing Order issued today by the Hearing Officer, Peter Anderson, in the above-referenced matter.

- HEARING ROSTER OF ATTENDANCE -

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

February 21, 2003

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Stephanie Bakerini	550 W. Fort, 83724	Solicitor's Office, BOR
Rick Wells	214 Broadway, 83702	USBR - SRAO
Scott Campbell	P.O. Box 829, Boise 83701	Pioneer/Settlers

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

NAME _____

REPRESENTING

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Tammy Zolcan 225 N. 9th, Suite 420, Boise 83702, Proven D.D.
Star, Star Sauer + Hgo, Eagle, Middlebury + Huna

- HEARING ROSTER OF ATTENDANCE -

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

February 21, 2003

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John M. Marshall	"	"
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Ed Squires	1002 W Franklin St.	Cities of Meridian/Caldwell
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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

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

**IRRIGATION ENTITIES' REPLY TO UWID'S
RESPONSES RE: DISCOVERY MOTIONS**

Pioneer Irrigation District and Settlers Irrigation District, by and through their counsel of record Moffatt, Thomas, Barrett, Rock & Fields, Chtd.; Nampa & Meridian Irrigation District, City of Meridian, City of Caldwell, Terteling Company, and Terteling Trust No. 7 (collectively “NMID”), by and through its counsel of record Ringert Clark, Chtd.; and the Boise Project Board of Control (“BPBC”), by and through its counsel of record Barker, Rosholt & Simpson, LLP (collectively “Irrigation Entities”), and in accordance with the Idaho Department of Water Resources Rules of Procedure, the Idaho Rules of Civil Procedure, and the Hearing Officer’s PreHearing Order and other orders, hereby reply to the responses provided by UWID to the Irrigation Entities’ Discovery Motions.

The Irrigation Entities continue to respectfully request that the motions be granted in their entirety.

I.

PROCEDURAL BACKGROUND

A. Procedural Background Leading Up To The Discovery Motions

On or about September 23, 2002, the Irrigation Entities filed a Motion for Order Authorizing Preliminary Discovery (“Preliminary Discovery Motion”). The Motion was specifically tailored to obtaining information regarding pre-filing communications between United Water Idaho, Inc. (“UWID”) and the Idaho Department of Water Resources (“IDWR”). On or about October 8, 2002, the Irrigation Entities and UWID stipulated to stay that motion during an informal discovery process. The Stipulation specifically provided that

After Movants [the Irrigation Entities] have reviewed the information provided by United Water pursuant to this Stipulation, if they still believe their motion is necessary, they may reactivate their Motion by providing written notice to all parties and the Hearing Officer. United Water (and any other parties wishing to

file a response) may then file a response to the Motion within seven days.

Stipulation to Stay Motion for Order Authorizing Preliminary Discovery, p.2.

Following a PreHearing Conference, the Hearing Officer issued a PreHearing Order on October 11, 2002, which did not authorize formal discovery. However, the PreHearing Order required that United Water make certain disclosures regarding its prima facie case (PreHearing Order, p. 1), and further provided that “[t]he Applicant shall also informally disclose information by responding to reasonable requests for information submitted to it by Protestants before November 30, 2002.” PreHearing Order, p. 2.

As to motions, the Hearing Officer stated that “[t]he fourteen-day time period set forth in IDAPA 37.01.01.565 for responding to any motion is stayed until the Hearing Officer informs the parties in writing whether a response is necessary, and the applicable time frame.” PreHearing Order, p. 2. An additional PreHearing Conference was tentatively scheduled for February 2003, and has now been set for February 21, 2003.

B. Procedural Background Since The Discovery Motions

On or about January 2, 2003, the Irrigation Entities provided a Notice Regarding Motion for Order Authorizing Preliminary Discovery, as contemplated in the Stipulation discussed above. On or about January 16, 2003, the Irrigation Entities filed a Motion to Compel/Alternative Motion for Order Authorizing Discovery (“Motion to Compel”), along with a supporting affidavit.

On January 20, 2003, UWID filed a “Preliminary Response to Irrigation Protestants’ Motion for Discovery on Due Process Issues.” On that same day, it also provided a “Response to Protestants’ Motion to Compel and Alternative Motion to Authorize Discovery.”

Subsequently, on January 22, 2003, counsel for Pioneer and Settlers received correspondence from the Hearing Officer (dated January 17, 2003) in which the parties were given until February 13, 2003, to respond to the Motion for Order Authorizing Preliminary Discovery. On January 27, 2003, the Hearing Officer sent correspondence to the parties in this matter. That correspondence provided, *inter alia*, that “[p]arties must file their response, if any, to the *Motion to Compel/Alternative Motion for Order Authorizing Discovery*, dated January 16, 2003, by February 13, 2003. This motion will be considered at the prehearing conference on February 21, 2002.” (January 27, 2003 letter from Hearing Officer to Parties).

On February 13, 2003, UWID filed an “Updated Response to Irrigation Entities’ Pending Discovery Motions,” bringing the total number of UWID’s responses to three.

II.

PROCEDURAL ARGUMENT

The Irrigation Entities recognize that the briefing schedules set forth by the Hearing Officer do not provide for reply briefing, nor do IDWR’s Rules of Procedure provide for reply briefing. However, nothing provides for three responses to two motions (particularly prior to the time the Hearing Officer authorizes responsive briefing), and given the upcoming PreHearing Conference, the Irrigation Entities felt that it was important to provide their perspective regarding the UWID responses.

III.

THE MOTION FOR “PRELIMINARY” DISCOVERY ON THE DUE PROCESS ISSUE SHOULD BE GRANTED

Given that this matter has proceeded, it may no longer be appropriate to refer to the Irrigation Entities’ original motion regarding discovery as a motion for “preliminary

discovery.” Therefore, the Irrigation Entities will refer to the motion as one for “discovery regarding due process.”¹

The Irrigation Entities filed the motion for discovery regarding due process in Fall 2002 because they were concerned about the nature and extent of pre-filing contacts between IDWR and UWID. The Idaho Constitution provides that “[n]o person shall be . . . deprived of life, liberty or property without due process of law.” Idaho Const. Art. I, § 13. In Idaho, as in most western states, the right to use water is among the most valuable of the bundle of sticks that comprise a property right, and is itself akin to a real property right. At a broad level, any action regarding a water right has the potential to affect every other water right in a particular basin (or sometimes another basin). In this particular matter, UWID seeks to transfer 99 water rights and amend permits. A change of that magnitude bears a significant possibility of impacting the Irrigation Entities’ property: their water rights.

How does that relate to due process? Decades ago, the Idaho Supreme Court took up the appeal of a water rights case, one which specifically concerned a summary supplemental adjudication. *Mays v. District Court*, 34 Idaho 200, 200 P. 115 (1921). There, the court held:

No person may be deprived of his ***property without due process of law. Const. art. 1, § 13.*** Due process of law requires that one be heard before his rights are adjudged. Cooley's Const. Lim. p. 506. Except for that limited class of actions which are strictly in rem, a decree is not, and cannot be made, conclusive, as to parties who are strangers to it. 15 R. L. C. Judgments, § 481, p. 1006; 12 C. J. Const. Law, § 1003, p. 1227; *Ray v. Norseworthy*, 23 Wall. 128, 23 L. Ed. 116; *In re Sharp*, 15 Idaho, 120, 96 Pac. 563, 18 L. R. A. (N. S.) 886.

¹ As a practical matter, if the Hearing Officer grants the two discovery motions filed by the Irrigation Entities, discovery on all issues could proceed at the same time.

Id. at ____, 34 Idaho at 116 (emphasis added). The concern is that contacts between IDWR and UWID prior to the time the final version of the IMAP was filed may have resulted in de facto decisions affecting the Irrigation Entities' water rights, without first giving the Irrigation Entities notice and an opportunity to be heard. Indeed, the communications which have been disclosed to date show that important legal issues were discussed and potentially decided before the IMAP was even filed.²

By seeking additional discovery, the Irrigation Entities do not cast inappropriate blame or aspersions. However, "[t]he contention that one's rights can be affected by a decree to which he was a stranger is repugnant to a fundamental principle of our jurisprudence that no one will be judged until he has had a hearing. The operation of this principle cannot be defeated by the mere fact that it will put other parties to some added trouble or expense." *Id.* Similarly, the contention that the Irrigation Entities' rights can be affected by a decision stemming from informal proceedings to which they were strangers is repugnant to the very foundations of due process.

UWID complains the Irrigation Entities have had no communication with UWID "either to seek clarification with respect to documents provided, to request other materials, or for any other purpose related to their motion." UWID's Updated Response, p. 3. While that may be the case, no such communication is required under IDWR's Rules of Procedure or under the Idaho Rules of Civil Procedure. Moreover, the Irrigation Entities believe that it would be most helpful to discuss this matter at the PreHearing Conference, and that the most efficient way to

² The Irrigation Entities recognize that the Hearing Officer is neutral, and can make his own decisions on the issues in this case. However, that does not change the fact that the decision-making authority (IDWR) had significant oral and confirming written communications with UWID on substantive issues in the years and months leading up to the IMAP's filing.

resolve the issue is by allowing the Irrigation Entities to serve discovery requests upon UWID, requests which must be answered within the time limits and in the manner contemplated by the Idaho Rules of Civil Procedure. That will provide the specificity requested by UWID, and will provide assurance to the Irrigation Entities that their requests will be answered in a full and prompt manner.

IV.

THE MOTION TO COMPEL/FOR ADDITIONAL DISCOVERY SHOULD BE GRANTED

The IMAP proceeding is a significant administrative proceeding, one which is fully subject to IDWR's Rules of Procedure. The Irrigation Entities appreciate the Hearing Officer's willingness and desire to encourage the parties to work out issues among themselves, and believe that under many circumstances, such informal procedures are helpful. However, it has become apparent to the Irrigation Entities that more formal procedures are warranted in this matter, in order to ensure that the Irrigation Entities receive the information which they, in good faith, believe they need. The information is needed in four respects: to fully evaluate any settlement offers, to fully determine the nature and extent of the issues, to allow the Protestants to meet their burden as Protestants, and to enable them to defend their water rights in this process.

In this section, the Irrigation Entities will respond to the points raised by UWID, and also provide their perspective on the continuing deficiencies in UWID's responses to the Irrigation Entities' Requests for Additional Information. Before doing so, however, the Irrigation Entities wish to let the Hearing Officer know why they have not provided some of the feedback UWID feels it requires, and why, when initially filing the Motion to Compel, the Entities could not be more specific.

As the Irrigation Entities have previously noted, UWID's responses trickled in over a period of time ranging from December 26, 2002, through February 6, 2003. In that period of 42 days (or six weeks), the Irrigation Entities received 22 individual letters of response. At this time, the Irrigation Entities prefer to refrain from bickering over the reasons UWID responded in that fashion. The Irrigation Entities *will* remain firm, however, in saying that they have expended considerable time in evaluating UWID's responses, and determining whether they were truly responsive. That task involved a request-by-request evaluation of UWID's responses, including a listing of the responses and an analysis of whether the responses were truly responsive.

In addition, the Irrigation Entities question whether providing UWID with additional information or clarification, absent authorization of formal discovery, will accomplish anything. At this point, the Irrigation Entities and UWID appear to have fundamental differences concerning what information should be provided and in what manner. Therefore, the most efficient way to resolve the issues is to conduct formal discovery, with all the procedures and safeguards that entails.

In the remainder of this reply, the Irrigation Entities will endeavor to provide the information UWID requests, and also illustrate for the Hearing Officer why formal discovery would be most appropriate at this juncture. After setting forth each Request for Information, the Irrigation Entities will state whether, in their view, UWID has provided responsive answers. If the Irrigation Entities feel they need additional information, they will endeavor to explain why the answers are not responsive. There are some requests to which the Irrigation Districts will concede, based upon UWID's representations, that UWID has responded. However, if it becomes apparent in the future that UWID has responsive information which it has not provided

to the Irrigation Entities, the Irrigation Entities reserve the right to file appropriate motions including, but not limited to, motions to strike and motions for sanctions.

Request for Additional Information No. 1: Please provide all documents, including but not limited to communications, which pertain to discussions UWID had with Treasure Valley local governments regarding

- a. The current and planned areas of city impact for each city;
- b. The comprehensive plan (both current and future) for each city;
- c. The relationship of items (a) and (b) to any planned or potential extensions of UWID's service area.

UWID has stated that it has provided the information it has, with four enumerated exceptions. One of those exceptions is "communications with local governments regarding discrete additions to service areas, typically in response to requests for service by local developers." (January 2, 2003 communication). The Irrigation Entities believe that information is relevant to the IMAP proceeding, and request that it be provided.

Request for Information No. 2: Please state your planning projections for service into the areas south and east (and southeast) of the City of Boise. By this request, Irrigation Entities also seek any communications or agreements UWID may have had with landowners in the areas south and east (and southeast) of the City of Boise regarding future land development into those areas.

Based upon UWID's representations, the Irrigation Entities believe that UWID has responded to this request.

Request for Information No. 3: Please provide all documents, including but not limited to communications, which pertain in any way to discussions UWID had with Ada or Canyon counties regarding the comprehensive plan (both current and future) for each county, and the relationship of the comprehensive plan (both current and future) to any planned or potential extensions of UWID's service area.

UWID has not responded in a substantive manner to this request. UWID has asserted that the responsive documents pertain "to specific requests for expansion of service to new developments," and that such documents are not relevant to "macro level planning." The

Irrigation Entities disagree; those documents will illustrate how UWID has expanded in the past and, perhaps, even predict future growth. These documents should be produced.³

Request for Information No. 4: Please provide any communications between UWID and any individual or entity with whom UWID has entered into an agreement in order to avoid or resolve a protest in this matter. By this request, Irrigation Entities request communications and agreements.

Based upon UWID's representations, the Irrigation Entities believe that UWID has responded to this request.

Request for Information No. 5: Please provide any communications between UWID and any entity or individual with whom UWID has not yet signed an agreement, which agreement would avoid or resolve a protest in this matter.

The last communication the Irrigation Entities received regarding this request indicated that UWID was perhaps close to a settlement agreement with the Estate of Eleanor Chase. (December 27, 2002). The Irrigation Entities respectfully request that UWID update this response.

Request for Information No. 6: Please provide pumping records for each and every well owned by UWID, and/or which serves as a point of diversion for a UWID-owned water right for its complete history of operation. By this request, the Irrigation Entities seek:

- a. Pumping records for each above-described well;
- b. Electrical records for each above-described well and/or pump;
- c. The size and horsepower of each pump for each above-described well;
- d. The diameter of the discharge pipe for each pump.

UWID has *not* responded in full to this request. The responses began with a refusal by UWID to provide well-specific information, based upon its view that the information was not relevant, or more precisely "[s]o far as we can determine, information related to alleged

³ The answer provided by UWID to this request illustrates a pattern of UWID determining what is relevant. UWID's view as to relevancy cannot preclude disclosure.

well abandonment and/or forfeiture of water rights has no bearing on any of the substantive points raised by any of the parties in ongoing settlement discussions.” (January 6, 2003 letter). UWID also argued that the IMAP provided “ample information about system-wide production levels.”

The Irrigation Entities trust that UWID now understands that abandonment, or more likely forfeiture is one of the most critical issues in this proceeding. Moreover, the information sought may be relevant to other issues such as water availability and the integrated points of diversion. The Irrigation Entities have further made it clear to UWID, or at least its counsel, that in order to properly evaluate a settlement offer or to determine how to proceed, the Irrigation Entities must have a clear factual picture of water usage by UWID.

UWID’s discussion on this issue illustrates another point: UWID initially argued that “we do not understand the reason for requesting electrical records, power ratings, and pipe diameters, in addition to pumping (i.e., production) records.” (January 6, 2003 letter). During the course and scope of discovery, a party need not provide the reason why it requests certain information. Moreover, the standard for discoverable information is really quite low:

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

I.R.C.P. 26(b)(1) (emphasis added). Given that, the fact that UWID may not understand the reason why the Irrigation Entities have requested information, or the fact that UWID may view the requested information as irrelevant, is not a good reason to fail to respond.

UWID ultimately provided a well-by-well production summary for the years 1992 to 2002. While that information is somewhat useful, it does not rise to the level of that requested by the Irrigation Entities.⁴ UWID has accused the Irrigation Entities of requesting the information simply to “truth check.” While the Irrigation Entities dispute that “truth checking” is their motivation, motivation has no bearing on this question. The Irrigation Entities have requested information which in the formal discovery process would be relevant to the matter at hand, or at the least reasonably calculated to lead to the discovery of admissible evidence. Moreover, the information requested is exactly the type of information that any other transfer applicant would be required to produce. Therefore, UWID should provide the requested information.

Request for Information No. 7: Please provide copies of all hydrologic data, studies, or reports upon which UWID relies as support for the IMAP or any component thereof. By this request, the Irrigation Entities also seek all hydrologic data, studies, or reports which UWID or its agents may have reviewed, relied upon, or considered in preparing the IMAP.

The Irrigation Entities note that UWID has referred to the Treasure Valley Hydrologic Project; the Domestic, Commercial and Industrial Water Demand Assessment and Forecast in Ada and Canyon Counties, Idaho; and the Treasure Valley Water Summit. If those are the only materials which are responsive to the just-quoted part of Request for Information 7, the Irrigation Entities would appreciate knowing that fact. If they are not the only responsive

⁴ In addition to the fact that it is not the specific information requested in Request for Information Number 6, the well production information provided by UWID does not tie the well to a specific water right.

documents, the Irrigation Entities seek approval to conduct formal discovery on that issue in order to ensure a full and prompt response.

By this request, the Irrigation Entities also seek the following:

- a. **All interference studies that examine, but are not limited to, all current impacts on wells and future impacts on wells of the IMAP, if approved;**

UWID has stated that it has no such studies. Based on that representation, the Irrigation Entities accept that UWID has responded to this portion of Request for Additional Information 7.

- b. **All studies that examine both current and future impacts to surface water (including the Boise River, drains and canals) of the IMAP, if approved;**

UWID has stated that its response to subparagraph (a) is responsive to this subparagraph, and that “UWID has not undertaken any of its own studies. . . .” It then refers to the reports discussed above. Based upon that representation, the Irrigation Entities assume that UWID has no other responsive documents (noting that the Irrigation Entities’ request asked for “all studies”). If that is not the case, UWID should provide the responsive documents immediately.

Request for Information No. 8: Please provide a comparison of the John Church population projections to the “real population” numbers for the past two years.

Mr. Church is still working on this analysis. The Irrigation Entities trust that this information will be provided at Mr. Church’s earliest possible convenience.

Request for Information No. 9: A comparison of the John Church water usage projections to the “real water use” numbers for the past two years.

See Request for Information No. 8, above.

Request for Information No. 10: Please provide a map of all UWID wells labeled with the currently associated water right(s), as well as an identification of wells that are no longer operating, or are operating at less than originally licensed capacity. If unavailable, map of all UWID wells with information that is available.

The Irrigation Entities believe that this Request provides a good example of the problems with UWID's request for a confidentiality agreement. First, the Bureau of Reclamation, which provided the map, did not require the type of agreement requested by UWID; it seems to be UWID's idea, for the most part. Second, counsel for Pioneer and Settlers was given a copy of the map provided by UWID. However, counsel received it from the Bureau of Reclamation, simply by asking for it. The Bureau neither required nor even requested a confidentiality agreement. Therefore, it is difficult to appreciate the basis for UWID's demand.

More importantly, the map provided by UWID is simply unresponsive. The Irrigation Entities requested a map with labels for all wells currently operating, wells no longer operating, and wells which are operating below licensed capacity. UWID has stated that it has 9/11 related concerns about security, and does not wish to provide a map which shows the specific location of its wells. With all due respect to UWID, public information at the IDWR (i.e., permits, licenses, SRBA claims, and well drillers reports) all contain legal descriptions of the point of diversion for each of UWID's water rights. An evil person armed with that information, a simple map, and a knowledge of what a well house looks like could probably find most if not all of UWID's wells. The refusal to provide the requested information based on security concerns rings hollow in these circumstances.

Moreover, to the extent allowed by the Department's rules and the law, the Irrigation Entities would be willing to agree to sealing that portion of the record of this matter which contains the map requested by the Irrigation Entities. The Irrigation Entities respectfully request that UWID provide the requested information.

Request for Information No. 11: Please provide copies of all of UWID's Certificated Service Agreements.

Apparently, the term "Certificated Service Agreements" is not correct; the impression received from UWID is that they have certificated service area descriptions only. Based upon that representation, the Irrigation Entities will accept the certificated service area descriptions. However, the Irrigation Entities do require the historical iterations of the document. They are relevant to permissible place of use and unauthorized expansion issues.

Request for Information No. 12: Please provide all documents used or prepared to analyze the "Stepwise Function Exercise" referred to at p. 6 of the September 1, 1997 memo from UWID (revised October 7, 1997).

The Irrigation Entities understand that the IMAP is not based on the stepwise function. However, the stepwise function or a similar method may ultimately prove to be the way by which UWID's water rights are assessed. That aside, UWID has indicated that it never prepared a detailed analysis, but has provided spreadsheets and a graph. Based upon UWID's representation, the Irrigation Entities will accept that UWID has responded to this Request.

Request for Information No. 13: Please provide all documents showing measurements of volumes and/or flow rates diverted from any of UWID's wells that are subject to IMAP from 1934 to the present.

See Response to Request for Information No. 6. UWID has not provided the specifically-requested information, nor has it provided any information prior to 1934. The Irrigation Entities require this information, and request formal discovery.

Request for Information No. 14: Please provide a list of "replaced" wells referred to on Page 4 of Memorandum to Ed Squires from Jeffrey C. Fereday and Christopher H. Meyer dated September 1, 1997 (Revised Oct. 9, 1997 for release to IDWR).

UWID asserts that it knows of no list of "replaced" wells. However, the Irrigation Entities assume that UWID knows or has a record of which "older wells which have been 'replaced' by more junior filings on newer wells." Memorandum from Jeff Fereday and Chris

Meyer to Ed Squires dated September 1997 (forwarded to IDWR via cover letter on October 9, 1997). Therefore, the Irrigation Entities seek that information, and request formal discovery.

Request for Information No. 15: Please provide the “global” description of UWID’s service area referred to on Page 7 of Memorandum to Ed Squires from Jeffrey C. Fereday and Christopher H. Meyer dated September 1, 1997 (Revised Oct. 9, 1997 for release to IDWR).

Based upon UWID’s representations, the Irrigation Entities believe that UWID has responded to this request.

Request for Information No. 16: Please provide copies of “the historical production data for comparison with water rights [sic] priority dates as suggested by Dave Tuthill,” identified in the memorandum from Edward Squires to Norman Young, dated October 9, 1997.

See Request for Information No. 6 and analysis thereof. UWID has provided some information, but not fully responsive information, including the information for five years preceding 1992.

Request for Information No. 17: Please provide copies of “the historical record of our water rights acquisitions, the corresponding yearly production data, and the ‘installed’ capacity of our system as suggested by Dave Tuthill,” as described in the memorandum from Edward Squires to Norman Young, dated August 10, 1998.

Based upon a review of the August 10, 1998 memorandum, the Irrigation Entities do not believe the responsive information has been provided. The Irrigation Entities request formal discovery on this issue.

Request for Information No. 18: Please provide copies of “the draft graph Edward Squires and his staff prepared showing, for each year UWID’s system capacity compared to total water rights,” identified in correspondence to Norman Young from Christopher Meyer.

Based upon representation, the Irrigation Entities believe that this information has been provided.

Request for Information No. 19: Please provide copies of the “maps which expressly show that UWID is now serving as far away as Nampa and beyond,” referenced in the January 19, 1999 memorandum from Edward Squires to Steve Lester.

Instead of the maps referred to in the January 19, 1999 letter, UWID referred to the map provided by the Bureau of Reclamation. That answer is non-responsive, and the Irrigation Entities request formal discovery on this issue.

Request for Information No. 20: Please provide copies of the “draft chart . . . showing on a well-by-well basis how much additional capacity is achievable, and what steps would be required to achieve it,” described in September 24, 1999 correspondence from Christopher Meyer to Karl Dreher.

UWID has not provided this chart, even though the Irrigation Entities clearly requested it. Instead, UWID avers that “for the purposes of the IMAP, no additional system capacity is achievable beyond the licensed or permitted quantities associated with UWID’s wells.” (January 7, 2003 letter). The answer is nonresponsive because UWID simply has not provided the referenced chart, and because the Irrigation Entities do not believe that “system capacity” is the same as additional capacity achievable on a well-by-well basis. The Irrigation Entities request formal discovery on this request.

Request for Information No. 21: Please provide copies of “information about the current and projected shape of the Company’s overall production curve for the agency’s planning purposes,” identified in October 26, 1999 correspondence from Christopher Meyer to Karl Dreher.

See Request for Information No. 6. The Irrigation Entities do not believe that the information contained within the response to Request for Information No. 6 includes the information referenced in the October 26, 1999 correspondence from Christopher Meyer to Karl Dreher. The Irrigation Entities request formal discovery on this request.

Request for Information No. 22: Please provide copies of Christopher Meyer’s “original draft of the bill (dated November 17, 1995),” identified in October 26, 1999 correspondence from Christopher Meyer to Karl Dreher.

Based upon UWID's representations, this information has been provided.

Request for Information No. 23: Please explain how Applicant determined the peak rate of flow currently used by UWID. See Table 11 on page 50 of IMAP . . . "rights in current portfolio used to support immediate demand = 147.5 cfs."

Based upon UWID's representations, the Irrigation Entities believe that a response has been provided.

Request for Information No. 24: What is the historic annual volume associated with the current use?

The information provided has not gone back far enough in time; the information sought dates back to 1935.

Request for Information No. 25: Please provide any information to verify the elements of beneficial use rights included with IMAP. These include Nos. 63-4015, 63-4395, 63-4414, 63-44254 and 63-4752. Verification of the elements should include evidence supporting priority dates, pump curves and other data regarding the rate of flow and the historic annual volume per well, confirmed well locations (perhaps GPS data and a related map?), and information validating beneficial use of water as described by each water right. In other words, information expected in support of adjudication claims for these beneficial use water rights should be provided.

See Request for Information Number 6. In addition, UWID asserts that it continues to compile this information. In order to preserve their right to a response, the Irrigation Entities request formal discovery on this Request.

Request for Information No. 26: Please provide documentation of the current pumping capacity by UWID's system vs. actual diversions of groundwater. Also include documentation of current diversion capacity of surface water diversions vs. actual diversions (both peak flow and annual volume).

UWID asserts that "the production information we have provided contains the information you seek." The Irrigation Entities do not concur that it has been provided in full, and request formal discovery on this issue.

Request for Information No. 27: Please provide all system planning documentation including filings with the PUC and local governmental entities which relate in any way to UWID's local service area, current needs and future growth and demands.

UWID has not responded to this request on the basis that the request information is too voluminous. It has also requested clarification. The Irrigation Entities therefore pose the following requests, in an effort to narrow down the information. The following requests could easily become formal discovery:

1. Have you provided information to the PUC related to your future growth and demands? If so, please provide that information to the Irrigation Entities.
2. Have you provided information to the PUC related to your current needs? If so, please provide that information to the Irrigation Entities.
3. Have you provided information to Ada or Canyon counties related to your future growth and demands? If so, please provide that information to the Irrigation Entities.
4. Have you provided information to Ada or Canyon counties related to your current needs? If so, please provide that information to the Irrigation Entities.
5. Have you provided information to the City of Boise or any other city within Ada or Canyon counties related to your future growth and demands? If so, please provide that information to the Irrigation Entities.
6. Have you provided information to the City of Boise or any other city within Ada or Canyon counties related to your current needs? If so, please provide that information to the Irrigation Entities.

Request for Information No. 28: Please describe the improvements that have been made, the investment in those improvements to accommodate future needs above current demand, between current demand and the UWID "paper rights," and above the "paper rights."

Quite frankly, the Irrigation Entities find UWID's response to this request to be somewhat strange. First, UWID requests that the Irrigation Entities sign a confidentiality agreement before reviewing a report, (the "Montgomery Watson report") for which UWID has provided the title page and table of contents. Second, however, UWID cautions that the report is out of date. If it is out of date, the Irrigation Entities see no basis to require them to sign a confidentiality agreement.

That aside, UWID has offered to make its staff available for a presentation in order to obtain the information the Irrigation Entities seek. The Irrigation Entities trust that there are no documents, other than the Montgomery Watson report, which are responsive to this request. If there are responsive documents, the Irrigation Entities request formal discovery in order to obtain those documents. The Irrigation Entities will also want to review the Montgomery Watson report before determining whether a presentation and explanation would be helpful. If the Irrigation Entities determine that informational meetings with UWID staff would be useful, they will be happy to take UWID up on its offer. However, the Irrigation Entities want to make perfectly clear that they expect answers to their questions to come from UWID staff, not from UWID's counsel.

The Irrigation Entities further reserve the right to request additional information or conduct discovery on this issue.

Request for Information No. 29: Karl Dreher's letter of June 14, 1999, to you at pp. 3 - 4, requests that UWID submit seven categories of information:

- a. overall detailed design of full capacity system;
- b. financial plan demonstrating ability to pay the full cost of constructing the full capacity system to meet future needs;
- c. completed environmental studies for the full capacity system;
- d. acquisition of land for wells, pump stations etc. needed for full capacity system;
- e. substantial construction of distribution mains for full capacity system;
- f. construction of distribution system and storage consistent with design of full capacity system; and
- g. development of operations protocol and infrastructure needed for full capacity system.

Please provide that information.

In response to this Request, UWID provided the Montgomery Watson report requested above. In aid of ensuring that the report is truly responsive to this request, the Irrigation Entities wish to re-phrase this request as follows, keeping in mind that it could easily be converted to a discovery request:

1. Karl Dreher's letter of June 14, 1999 at pp. 3-4 requested that UWID submit seven categories of information: [see list above].
2. Did you submit that information?
3. If so, please provide it to the Irrigation Entities in the same form in which it was provided to the Department.
4. If you did not submit that information, please state:
 - a. Why you did not provide it.
 - b. Whether you provided any of the requested information. If you provided any of it, please provide it to us.

Request for Information No. 30: Please provide all planning documents for interconnection of UWID wells, surface diversions, mains, treatment facilities, storage and distribution system and service area.

See Request for Information No. 28.

Request for Information No. 31: Please provide all water conservation plans of UWID and all studies comparing water usage by UWID customers with other western cities.

UWID has stated that it will make a complete copy of Boise Water Corporation's Final Report for Water Conservation Plan available. The Irrigation Entities formally request that document. Other than the Montgomery Watson report, UWID asserts it has no additional responsive information. Until the Irrigation Entities review BWC's Final Report, they cannot know whether UWID has responded to this Request.

Request for Information No. 32: Please provide all studies showing how much water is utilized per acre or per square foot by UWID customers on lawns, gardens and other irrigation uses.

UWID has stated that it does not have this information. The Irrigation Entities believe that duty of water considerations, as well as others, would mandate that UWID have this information.

Request for Information No. 33: Please provide a list of UWID wells, by legal description and water right number, which are no longer producing or producing at less than installed capacity.

UWID has not provided this information. It refers to its responses to Request for Information No. 6, but the information provided therein, as well as the well production information, does not constitute "a list of UWID wells, by legal description and water right number, which are no longer producing or producing at less than installed capacity." The Irrigation Entities request formal discovery on this issue.

Request for Information No. 34: Please provide comprehensive plans of municipalities served by UWID and all documentation examining how the IMAP compares with those comprehensive plans.

UWID has invited the Irrigation Entities to obtain the plans on their own, and also asserts that the documentation is in Part F of the IMAP. The Irrigation Entities will assume that UWID's examination of how the IMAP compares with the comprehensive plans is contained solely within the IMAP. If that is an incorrect assumption, UWID should correct it as soon as possible.

Request for Information No. 35: Please provide proof of beneficial use for all licenses, including all post-1987 licenses.

UWID has simply invited the Irrigation Entities to review IDWR's records. The Irrigation Entities can certainly undertake that research, but by way of clarification, the Irrigation Entities were also seeking proof of current beneficial use.

CONCLUSION

Additional, formal discovery is necessary on both the "due process" issue, and on the issues set forth in the Request for Additional Information to which UWID has provided no response, or an inadequate response. Therefore, the Irrigation Entities respectfully request that the Hearing Officer grant their Motions regarding discovery in their entirety.

DATED this 20th day of February 2003.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By: Angela Schaer Kaufmann for
Scott L. Campbell - Of the Firm

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

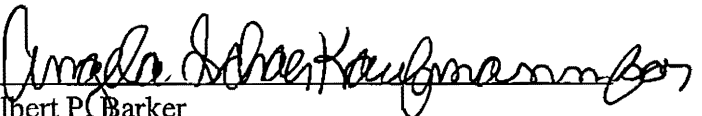
DATED this 20th day of February 2003.

RINGERT CLARK, CHARTERED

By: Angela Schaer Kaufmann for
Charles L. Honsinger
Attorneys for Nampa & Meridian Irrigation
District

DATED this 20th day of February 2003.

BARKER, ROSHOLT & SIMPSON

By: 
Albert P. Barker
Attorneys for Boise Project Board of Control

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20th day of February 2003, I caused a true and correct copy of the foregoing **IRRIGATION ENTITIES' REPLY TO UWID'S RESPONSES RE: DISCOVERY MOTIONS** to be served by the method indicated below, and addressed to the following:

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1301 N. Orchard Street
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City of Meridian, City of Caldwell, Terteling
Company, and Terteling Trust No. 7
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Ringert Clark
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Environmental Programs Coordinator
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Fax: 384-3905

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Tammy A. Zokan
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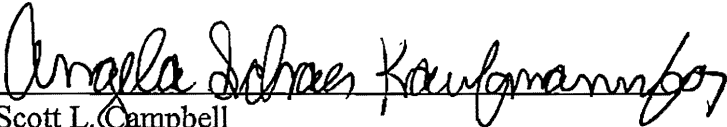
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Mr. Michael Chase
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Scott L. Campbell

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FEB 20 2003

Department of Water Resources

Kathleen Marion Carr
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Email: kcarr@pn.usbr.gov
Attorney-Advisor for the U.S. Bureau of Reclamation

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. (UWID), INTEGRATED	)	U.S. BUREAU OF RECLAMATION'S
MUNICIPAL APPLICATION PACKAGE,	)	RESPONSE TO STATEMENT OF
("IMAP")	)	ISSUES
_____	)	

The U.S. Bureau of Reclamation, by and through their representative of record, Kathleen Marion Carr, submits the response of the U.S. Bureau of Reclamation to both UWID's Statement of Issues and Protestants' Statement of Issues. By this filing, Reclamation does not raise any new or additional issues. However, Reclamation wishes to go on the record indicating the issues raised that are of primary interest to it as:

1. Applicant's (United Water of Idaho), issue XII, whether "UWID's Request for Integrated Points of Diversion ("IPD") is Unlawful [under Idaho's Prior Appropriation Doctrine]."
2. Similarly, Protestants (Nampa Meridian Irrigation District, City of Caldwell, City of Meridian, Pioneer Irrigation District, and Settler's Irrigation District et al.) issue 12, wherein they state whether "the 'integrated points of diversion' approach in IMAP does comport with Idaho law, specifically the prior appropriation doctrine.

a. Senior water rights will not be protected from interference and injury under the approach outlined by UWID.

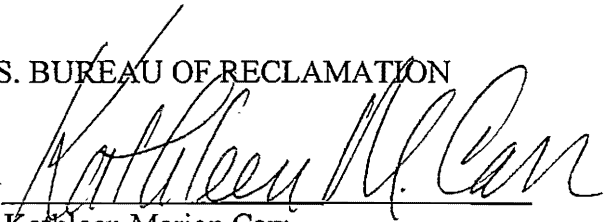
b. The integrated points of diversion approach in IMAP does not adequately protect senior water rights (whether ground or surface water, and not just from well interference).

c. Phrased differently, the integrated points of diversion approach in IMAP violates the prior appropriation doctrine and conjunctive administration of water rights."

RESPECTFULLY SUBMITTED this 14th day of February, 2003.

U.S. BUREAU OF RECLAMATION

By


Kathleen Marion Carr

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14th day of February, 2003, I caused to served a true and correct copy of the forgoing **U.S. BUREAU OF RECLAMATION'S RESPONSE TO STATEMENT OF ISSUES** by the method indicated below, and addressed to the following:

cc: Director

Idaho Department of Water Resources
P.O. Box 83720
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Regional Manager
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Pioneer & Settler's Irr. Districts
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Fields, Chtd.
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Kathleen Marion Carr

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FEB 18 2003
WATER RESOURCES
WESTERN REGION

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Telephone: (208) 342-4591
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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) NOTICE OF JOINDER
13 APPLICATIONS FOR AMENDMENT OF)
PERMITS) IN THE NAME OF UNITED)
WATER IDAHO, INC.)

COMES NOW, Nampa & Meridian Irrigation District, the city of Meridian, the city of Caldwell, the Terteling entities by and through their attorney of record, Ringert Clark, Chartered, and hereby notify the hearing officer and the parties of their joinder in the Response Re: Notice of Withdrawal and Motion to Amend the IMAP filed by Pioneer Irrigation District and Settlers Irrigation District..

Dated this 14th day of February, 2003.

RINGERT CLARK, CHARTERED

By Charles L. Honsinger
Charles L. Honsinger

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of February, 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:

Chris Meyer
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Givens Pursley
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Boise, Idaho 83701

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Meridian, Idaho 83642

E. Gail McGarry PN-3100
Bureau of Reclamation
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Caldwell Engineering Dept.
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Albert Barker
Barker Rosholt & Simpson
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Matt Wilde
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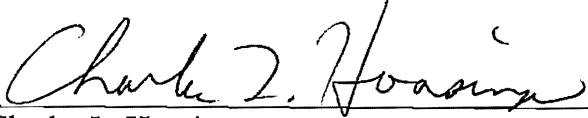
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Charles L. Honsinger