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**AN OVERVIEW OF
UNITED WATER'S "IMAP"
INCLUDING AN EXPLANATION
OF THE "INTEGRATED POINTS
OF DIVERSION" ISSUE**

GIVENS PURSLEY LLP

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Prepared on behalf of United Water Idaho Inc.

**By Christopher H. Meyer
Givens Pursley LLP**

July 15, 2002

This memorandum is submitted to the Idaho Department of Water Resources as part of the record in connection with United Water Idaho's pending Integrated Municipal Application Package. It is also made available to participants in the administrative process and to all interested members of the public.

For further information, do not hesitate to contact United Water Idaho (Scott Rhead at 208-362-7345) or Givens Pursley (Christopher Meyer or John Marshall at 208-388-1200).

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I. INTRODUCTION

On May 4, 2001, United Water Idaho (“UWID” or “United Water”) submitted its Integrated Municipal Application Package (“IMAP”) to the Idaho Department of Water Resources (“IDWR” or the “Department”). An amended version of the IMAP was submitted on March 21, 2002. Notice of the IMAP (based on the amended submission) was published on April 4 and 11, 2002. A short errata sheet identifying several minor corrections to the IMAP was submitted on July 15, 2002.

The administrative review process is now underway. This memorandum provides a brief explanation and overview of the IMAP, paying particular attention to the issue of UWID’s request for “integrated points of diversion” (or “IPD”) for its ground water rights.

II. WHAT IS SPECIAL ABOUT MUNICIPAL WATER RIGHTS?

United Water and its predecessors have served the Treasure Valley since 1890—the same year Idaho was granted statehood. Over the course of those 112 years, United Water has acquired a substantial portfolio of water rights serving communities throughout Ada County.¹ As of 2000, United Water holds a portfolio of 112 water rights and permits totaling totals 313.2 cfs.² This includes 93 ground water rights, 18 ground water permits,³ and one surface water permit from the Boise River.⁴

¹ United Water Idaho also owns four small water rights that serve non-contiguous residential areas in Ada and Canyon County. The delivery systems for these areas are not yet integrated into United Water’s main delivery system. The areas served by these rights were not included in the IMAP’s planning area (and therefore did not contribute to future demand predictions), but are included in the IMAP for other purposes, such as IPD.

² In addition to the rights and permits included in its IMAP portfolio for transfer purposes, UWID also holds a handful of contract entitlements, exchanges and other interests in surface water rights. (See Part E7 of the IMAP.) For purposes of simplicity, these are not included in the IMAP transfer applications. All but one (held for mitigation purposes), were included nevertheless in the quantification of United Water’s current portfolio of water rights (313.2 cfs). This disclosure has the conservative effect of reducing the size of United Water’s Planning Horizon Component (explained in Part III.D at page 8 below).

³ A permit is the first stage in obtaining a water right. A permit is issued upon filing an application for a water right. Once a permit holder constructs the project and thereby “proves up” his or her right, it is re-issued as a license. This process of proving up a municipal water right has been specially tailored to municipal providers under the Municipal Water Rights Act of 1996. Idaho Code § 42-219(1).

⁴ The only surface water permit in UWID’s portfolio is its Boise River right for the Marden Treatment Plant, No. 63-12055. Like the other surface entitlements mentioned in footnote 2, UWID has included this water right in the IMAP solely for purposes of addressing needs during the planning horizon. No surface water right or permit is included in UWID’s request for integrated points of diversion. United Water also has pending (independent of this IMAP) a new application for a permit to appropriate 20.0 cfs from the Boise River for a new

Municipal water providers in Idaho and throughout the West are afforded special treatment under water law.⁵ In Idaho, this common law protection is often referred to as the “growing communities doctrine.”⁶ In a nutshell, it allows and encourages municipal providers to acquire water rights to serve long term needs. So long as there is a reasonable basis for holding such water rights, they are deemed to be beneficially used (and thus not subject to forfeiture). This is so even if they are not pumped for years. The idea is that the very presence of a stable, long term municipal supply is essential to the success of every growing community.⁷

In 1996 the Idaho Legislature codified these longstanding common law principles

proposed treatment plant. The point of diversion under this surface right application, if granted, would also be excluded from the request for IPD. However, United Water is requesting that this new right and United Water's existing Boise River right be made alternative points of diversion with each other.

⁵ Janis E. Carpenter, *Water for Growing Communities: Refining Tradition in the Pacific Northwest*, 27 *Envtl. L.* 127 (1997); Wells A. Hutchins, *The Idaho Law of Water Rights*, 5 *Idaho L. Rev.* 1, 44 n.211 (1968); A. Lynne Krogh-Hampe, *Injury and Enlargement in Idaho Water Right Transfers*, 27 *Idaho L. Rev.* 249, 294-95 (1990); Frank J. Trelease, *Preferences to the Use of Water*, 27 *Rocky Mtn. L. Rev.* 133, 138 (1955); *State of Washington, Dept. of Ecology v. Theodoratus*, 135 *Wash.2d* 582, 957 *P.2d* 1241 (1998); *City and County of Denver v. Sheriff*, 96 *P.2d* 836, 841 (Colo. 1939); *City of Pocatello v. Murray*, 206 *F. 72*, 80 (D. Idaho 1913), *aff'd*, 214 *F. 214* (9th Cir. 1914); *Village of Peck v. Denison*, 92 *Idaho* 747, 450 *P.2d* 310 (1969); *Beus v. Soda Springs*, 62 *Idaho* 1, 107 *P.2d* 151 (1940).

⁶ We employ the phrase “growing communities doctrine” to capture the essential points of the case law. The phrase has now been picked up by the Washington Supreme Court, *State of Washington, Dept. of Ecology v. Theodoratus*, 135 *Wash.2d* 582, 957 *P.2d* 1241 (1998). Although this shorthand description has not yet been employed by the Idaho Supreme Court, we think it captures the idea better than the phrase “great and growing cities doctrine” which originated in Colorado. Whatever it is called, the doctrine plainly applies to all growing communities, large and small, not just to great cities. For instance, in *Village of Peck v. Denison*, 92 *Idaho* 747, 751, 450 *P.2d* 310, 314 (1969), the doctrine was applied to a community of 200 inhabitants.

⁷ Some people have trouble with the idea of describing such a long term supply as a current “beneficial use” (in water law parlance). But this is not a foreign concept. In some ways, it is analogous to water stored in a reservoir. Such water might sit there for a decade or more, waiting for the next big drought. Yet no one would suggest that such stored water is not “beneficially used” or is forfeited simply because, due to fortunate weather, it is not needed now. It is easy to understand why the availability of water in a reservoir serves important present purposes, even in years it is not diverted. Its very presence provides economic security to farmers (and to their lenders). The same is true for water rights held for long term use by a municipality. Without an adequate portfolio of water rights, municipal leaders would be hard pressed to attract good businesses and plan effectively for future growth.

These principles are deeply engrained in western water law. “The storage of water for future uses has long been held to be a beneficial use.” *Waters and Water Rights*, § 13.03 at 144 (Robert E. Beck ed., The Michie Company 1991) (citations omitted); “Initially, the system relented on this proposition [requiring immediate use] only with reference to the building of reservoirs to catch otherwise unusable seasonal flows and floodwaters. ... Now, of course, municipalities are allowed to acquire supplies for projected future use; indeed, in many instances are required to, for long-term growth.” *Waters and Water Rights*, § 12.03(c)(2) at 108 (Robert E. Beck ed., The Michie Company 1991) (citations omitted); Samuel C. Wiel, *Water Rights in the Western States* § 378 at p. 410 (1911); 45 *Am. Jur. 2d Irrigation* § 38 (1969).

by adopting the Municipal Water Rights Act of 1996.⁸ The 1996 Act preserved the special features of municipal water rights, but added a number of procedural requirements and substantive sideboards designed to prevent abuses (such as hoarding of water rights) which have occurred in other western states.⁹

III. WHAT IS THE IMAP?

The principal purpose of the IMAP is to bring United Water's portfolio of water rights within the Municipal Water Rights Act of 1996. In doing so, United Water is required to establish a long term planning horizon and estimate its water needs over that period. In its application, United Water adopted a fifty year planning horizon, consistent with those of other rapidly growing western cities.

A. How was United Water's planning area established?

The IMAP is based on projections of future demand within United Water's "planning area." This term should not be confused with United Water's "service area." United Water's service area is set by the Idaho Public Utilities Commission, and evolves over time. United Water's planning area is both larger and smaller than its service area.

This term "planning area" does not appear in the 1996 Act. Rather, the concept of a planning area was developed in pre-application consultation with the Department in order to implement the Act's requirement to quantify its long term needs under constraints imposed by the statute. Idaho Code §§ 42-202B(5) and (6).

The planning area begins with United Water's best guess as to where its service area will be in fifty years. For instance, the planning area includes some largely undeveloped desert land south of Boise that United Water anticipates will eventually be added to its service area.¹⁰ This implements the Act's mandate that long term planning take into account not just today's service area, but areas that the municipal provider later "becomes entitled" to serve. Idaho Code § 42-202B(6). In any event, this expansion area south of Boise contributed a very small quantity of the projected future demand.

⁸ Municipal Water Rights Act of 1996, 1996 Idaho Sess. Laws, ch. 297 (codified at Idaho Code §§ 42-202, 42-202B, 42-203, 42-217, 42-219, 42-222).

⁹ These requirements are explored in detail in Fereday, Meyer & Creamer, *Handbook on Idaho Water Law* (2002) (available on request from Givens Pursley).

¹⁰ This area was included because it is likely to experience some population growth, and is virtually certain to be served by UWID. Although it is not currently part of UWID's current service area nor is it included in Boise's current area of impact, its inclusion is consistent with the 1996 Act's admonition to include areas that the applicant is expected to become entitled to serve during the planning horizon. Idaho Code § 42-202B(7).

Next, the planning area was then cut back to reflect restrictions imposed in the 1996 Act. Idaho Code § 42-202B(5). Finally, out of an abundance of caution, United Water elected to further reduce the planning area in order to eliminate areas of controversy or other uncertainty. These downward adjustments to the planning area boundaries (some required, others discretionary) include the following:

- First, the planning area is limited to Ada County, thus eliminating two water rights serving non-adjacent properties in Canyon County.
- Second, the planning area excludes communities that have their own water supply system, such as Garden City, Meridian, Kuna, Star and parts of Eagle.
- Third, the planning area excludes certain areas that are subject to unresolved planning conflicts among competing governmental entities or to competition among potential water providers. For this reason, the planning area does not include growth areas surrounding Kuna and Star, and it excludes the entire Eagle area.
- Fourth, the planning area excludes other areas that were simply deemed too speculative or controversial, such as expanded development in the foothills.

As a result of these limitations, United Water's planning area largely tracks its current service area.

B. How were population projections calculated?

Once the planning area was established, United Water retained John S. Church, President of Idaho Economics, to develop its long term water demand projections corresponding to that area.¹¹ In doing so, Mr. Church employed the latest economic, population and other data available in the Treasure Valley, and employed a sophisticated econometric model to analyze these data.

In any modeling exercise, a number of choices and assumptions must be made. In each case, Mr. Church's model is based on fundamentally conservative but realistic assumptions, consistent with known data and prior trends. Throughout the process, Mr. Church consulted with IDWR's technical staff to ensure that his methodologies and assumptions comported with those employed in other official planning efforts now

¹¹ For many years, Mr. Church produced the population and economic forecasts for Idaho Power Company. Mr. Church is now in private practice. He is considered by many to be the top economic planner in the state.

underway in the region.

The end result of that extensive effort is a conservative but realistic prediction that the population within United Water's planning area will grow by 1.86 percent per annum over the fifty year planning horizon.¹² This conservative prediction compares with actual annual Ada County population growth of 3.50 percent in the last decade. The results are summarized in Figures 1 and 2 below:

Figure 1 Projected Population in UWID's IMAP			
Geographic Area Served	Actual Population in 2000	Projected Population in 2050	Annual Increase in Population
Ada County	292,160	813,966	2.06%
UWID Service or Planning Area	214,615 (based on year 2000 service area)	540,020 (based on year 2050 planning area)	1.86%

The conservative effect of United Water's planning area delineation is evident in the fact that the projected growth of the planning area is less than the projected growth of the entire county. (See Figure 1 above.) This reflects the fact that much of United Water's planning area is already built out. As a result, future growth is expected to occur somewhat more intensively outside of United Water's planning area.

Figure 2 Recent Historical Population Growth in Ada County	
Actual annual increase in Ada County population in last 30 years (1970-2000):	3.22%
Actual annual increase in Ada County population in last 10 years (1990-2000):	3.50%

C. How was future water demand calculated?

Once the predicted population was established, the next step was to calculate water demand. This is not a simple linear function based on population. Instead it is necessary to predict the answers to questions such as these: How many new jobs will the local

¹² The average annual increase in population uses data based on UWID's service area in 2000, because no data are available for the year 2000 population within its planning area. This overstates the starting point population because parts of Eagle are included in UWID's current service area, and understates it because the planning area includes other areas not within UWID's current service area. To the extent that these discrepancies do not cancel each other out, they may lead to a slight error in the projected annual increase of 1.86 percent. However, this is of no consequence, because the year 2050 projected demand is not based on an extrapolation from current service area statistics, but is arrived at through independent population and economic modeling based on the planning area.

economy create? How much immigration will occur in response to those new jobs? How much of the new population will reside in landscaped suburban homes versus high density apartments? Will lawn sizes, and the use of xeriscaping, increase or decrease? How many of the new lawns will be served with non-potable water from secondary sources? How much new commercial water demand will there be? How will users respond to rate increases?

All of these factors were incorporated into a detailed econometric model developed by Mr. Church. The end result was that peak demand is predicted to grow from its year 2000 peak of 147.5 cfs to 416.8 cfs in the year 2050. This near tripling of water demand over fifty years reflects an annual growth rate of just 2.10 percent (see “note” at bottom the of Figure 3 below).

D. How much water will United Water need?

United Water’s current portfolio of water rights is sufficient only to meet a peak demand of 313.2 cfs (see item B in Figure 3). Thus, if the IMAP is approved, United Water will then be entitled to acquire additional water rights in the amount of 103.6 cfs to meet its long term planning horizon need (see item E in Figure 3). The Planning Horizon Component (or “PHC”) equals the total projected demand (for year 2050) less current demand (for year 2000). This equates to 269.3 cfs (see item F in Figure 3).¹³

¹³ “PHC” and “future need water rights” are two ways of describing the same thing. Both refer to water rights not needed to meet current demand, but held (or later acquired) to meet long term needs over the planning horizon. These are sometimes referred to as “future need water rights,” drawing on the language of the 1996 Act. UWID has not employed that terminology, however, because the reference to “future needs” leads some to think that these rights serve no beneficial use today. Yet, as the 1996 Act makes clear, these water rights are deemed beneficially used today, even if they are not pumped for many years. The certainty provided by the presence of these water rights in the provider’s portfolio assists municipalities in achieving their comprehensive planning goals.

Figure 3**Projected Planning Horizon Needs Under UWID's IMAP**

ITEM	DESCRIPTION	SOURCE / DERIVATION	QUANTITY
A	Current peak demand (year 2000) ¹⁴	Actual	147.5 cfs
B	UWID's current portfolio of water rights	Actual	313.2 cfs
C	Total projected peak demand in year 2050 (composed of current demand plus PHC)	Projected by IMAP also $C = A + F: 147.5 + 269.3$	416.8 cfs
D	Rights in current portfolio held for planning horizon needs	$D = B - A: 313.2 - 147.5$	165.7 cfs
E	Additional rights (not currently owned by UWID) required to meet planning horizon needs	$E = C - B: 416.8 - 313.2$	103.6 cfs
F	The Planning Horizon Component ("PHC")	$F = C - A: 416.8 - 147.5$ or $F = D + E: 165.7 + 103.6$	269.3 cfs

NOTE: AVERAGE ANNUAL RATE OF GROWTH OVER 50 YEARS (from 147.5 cfs to 416.8 cfs): 2.10%¹⁵

Note that approval of the IMAP will not add any water rights to United Water's portfolio. The effect of the IMAP is simply to authorize the company to purchase (or otherwise acquire) water rights and add them to its portfolio.

IV. WHAT DOES IPD MEAN?

A. Why is United Water seeking to integrate its points of diversion?

In addition to planning for long term needs, United Water is seeking through the IMAP to make every ground water point of diversion within its system (that is, every well) an alternative point of diversion for each other. See Part D2 of the IMAP. We refer to this as "integrated points of diversion" or "IPD." The effect of changing to IPD is to allow any water right to be pumped from any well.

As explained in footnote 4 above, United Water's IMAP portfolio includes one permit for surface water from the Boise River, and a second is proposed. However, these permits are not included for purposes of IPD. The IPD request applies only to United

¹⁴ The number for 2002 demand is based on actual data and reflects UWID's systemwide use within its current service area.

¹⁵ This number reflects UWID best estimate of the projected annual increase in water demand. The starting point reflects current production in UWID's "service area" and the ending point corresponds to UWID's "planning area." For reasons of consistency, however, both include water now supplied to the City Eagle. See Part E6(f)(i) of the IMAP.

Water's ground water rights.

Historically, each time United Water drilled a new well, it would acquire a new ground water right associated with that well. The IMAP recognizes the practical reality that all of these ground water rights are operated together as part of a single, integrated delivery system. (See footnote 1 above.)

An example helps to illustrate. Suppose that in 1960 United Water drilled a well and obtained a corresponding ground water right with a 1960 priority date. For a variety of reasons, United Water might some day need to pump that 1960 water right out of another well. Doing so requires a "change" in water right.¹⁶ United Water is seeking such a "change" on a system-wide basis at this time to ensure that it has the flexibility to respond as needed to changing circumstances in the future.

By making every point of diversion an alternative point of diversion for every other ground water right, it is not necessary for United Water to go through a formal change proceeding each time it wishes to make such a move. The practical effect is to treat the water rights in its portfolio as fungible. This way, system operators can operate the system to maximize system efficiency, paying attention to individual and aggregate pumping levels, without having to keep track of which water right is being pumped from which well.

B. Is it common to seek integrated points of diversion?

Yes, use of IPD is common. Nor is it limited in any way to municipal water rights. For instance, a farmer who is adding a new well to his or her system typically will ask the Department, at the same time, to make each point of diversion an alternative point of diversion for each well on his or her farm. These IPD requests are routinely approved by the Department, so long as there is no injury to other users. United Water seeks the same thing, but on a larger scale.

C. Could the integration of United Water's points of diversion injure other water right holders?

United Water has agreed to a set of conditions to prevent any injury resulting from IPD. The proposed conditions are set out in Appendix A to this memorandum.

In order to understand how these conditions work, it is necessary to distinguish carefully two circumstances in which the Department has authority to curtail water rights.

¹⁶ UWID could also claim these changes as "accomplished transfers" under Idaho Code § 42-1425.

Curtailments may occur: (1) in response to well interference (between two specific wells) and (2) in times of area-wide curtailment (such as a drought). In essence, the proposed condition allows United Water to employ IPD only in the context of area-wide curtailment. Moreover, it locks United Water into the current (pre-IMAP) diversion rate limits for each of its wells.

In the past, most water right disputes have occurred as a result of well interference. When the cones of depression from two wells overlap, one well may cause the other to go dry (or reduce its production).¹⁷ In this case, whichever is the senior water right “wins.”¹⁸ In other words, maintaining one’s senior status is critical to protecting oneself against well interference by others. Consequently, if United Water were granted an unfettered right to “swap priority dates” or “stack up water rights” in the name of implementing IPD, it could increase current levels of pumping with impunity,¹⁹ and other water users could be injured. But, United Water is not seeking this.

A fundamental premise of the law of changes in water rights is that every other user, whether junior or senior, must be made no worse off by the change. Plainly, if United Water could defend existing injury claims on the basis of swapped priorities, or increased pumping out of a particular well to the extent of harming adjacent water rights, that would constitute an impermissible injury.

For this reason, United Water has agreed to a set of conditions flatly prohibiting both such actions. The IPD conditions provide, in essence, that United Water may not “move its water rights around” for purposes of defeating an interference claim (Condition No. 2). Nor may United Water “stack up” water rights onto a particular well in order to increase the pumping from that well beyond its originally licensed (or permitted) capacity (Condition No. 3).²⁰ Each of United Water’s wells will retain a “memory” of the original

¹⁷ Pumping a well can also cause injury to a surface user, where there is a hydrological connection between the ground and surface rights.

¹⁸ There may be exceptions to this rule. The Idaho Supreme Court seems to have held that domestic wells drilled prior to March 29, 1978 are absolutely protected from any significant drawdown by junior (i.e. post-1978) ground water diversions. See *Parker v. Wallentine*, 103 Idaho 506, 650 P.2d 648 (1982).

¹⁹ For instance, some have expressed the concern that UWID might use its IPD to defeat a well interference claim by asserting an earlier priority from another well. Others have expressed concern that UWID might increase the capacity of one of its wells and then reallocate multiple water rights to pump out of that well. This “stacking” of water rights could increase the cone of depression associated with the well, and cause injury to other wells or surface users. Obviously, both of these actions (swapping priorities or stacking water rights) would be unfair—and impermissible under Idaho water law.

²⁰ UWID is entitled to its full licensed quantity irrespective of current use. This is one of the unique aspects of a municipal right, long recognized by the Idaho Department of Water Resources. A. Kenneth Dunn, IDWR,

water right associated with it. For purposes of evaluating well interference, United Water's authority to pump from that well will continue to be measured according to the diversion rate and priority date originally associated with that well (prior to the IMAP).

Indeed, the IPD condition goes two steps beyond what is required under established rules of no injury. First, it locks in existing priority dates and quantities, period, irrespective of injury. Thus, other users do not need to worry about the expense or uncertainty of proving injury. Second, the condition extends the "no stacking" protection to future users. Thus, even water rights acquired subsequent to the IMAP will have the same protection against expanding a well beyond current licensed or permitted quantity.

The bottom line is the proposed condition assures that the IPD simply will not be used in the context of well interference. Consequently, persons or entities with wells, surface diversions or canals near United Water's water rights need not fear that the IMAP's provision for IPD can be used to their disadvantage.

D. How will the proposed conditions be implemented?

A simple example illustrates how the proposed conditions would work. Suppose that United Water drilled a well in 1985 and obtained a corresponding water right for 1 cfs in that year. Suppose that the United Water well was located close to two other wells owned by other persons. The United Water well caused no injury to the first adjacent well with a 1970 water right, but is interfering to some extent with another adjacent well with a 1990 water right. (This would be permissible, because United Water's 1985 right is senior to the neighboring 1990 well.)

Next, suppose that the Department curtailed all water rights junior to 1980. Without the IMAP, this would mean that United Water would have to shut down its 1985 well. Likewise the adjacent 1990 well would be shut down. However, if United Water's request for IPD is approved, it might choose to pump 1 cfs of 1965-priority water out of its 1985 well, in order to comply with the curtailment order while keeping its best well in operation. This would be permissible under the proposed IPD conditions (Condition No. 1).

However, if United Water then sought to deepen its 1985 well, and pump 2 cfs of 1965 priority water out of the 1985 well, this would be not allowed, period (Condition No. 3). The only way for United Water to expand production from any of its wells beyond the licensed or permitted diversion rates would be to go through a formal change

Administrator's Memorandum, *Licensing Procedures* (Apr. 7, 1975). See discussion in Fereday, Meyer & Creamer, *Handbook on Idaho Water Law*, Subchapter J-5 (2002) (available on request from Givens Pursley).

or other application process, just as is required for any other water user (Condition No. 4).

E. Will the IMAP protect future users as well?

The proposed IPD conditions (in particular the “anti-stacking” Condition No. 3) protect not only existing water right holders, but those who obtain water rights subsequent to approval of the IMAP. Thus, even someone who obtains a water right in the future may be assured that United Water will not use its IPD authority to increase pumping levels beyond those authorized for the particular well.

Note that this concession on United Water’s part goes beyond anything required by law.²¹ It simply recognizes and affirms that United Water’s request for IPD is intended solely to maximize its flexibility in responding to a crisis or emergency, not to gain an advantage with respect to other users, current or future.

F. Won’t other water users still have to worry about the uncertainty of enforcing their rights?

United Water has crafted the proposed IPD conditions so as to make them essentially automatic. In doing so, United Water went beyond what is required by law. For instance, it could have retained the right to expand production at its wells where doing so did not interfere with other users. However, this could have led to arguments (and costly battles) over injury. Instead, United Water has agreed to Condition No. 3 that imposes a flat prohibition on any expansion beyond previously authorized levels, period.

G. What can United Water do if it needs to increase the capacity of a well?

If United Water finds it necessary at some point in the future to increase the capacity of any of its wells beyond that originally authorized, it will need to go through a change proceeding or other approval by the Department, just like any other user (Condition No. 4). Such changes (or new appropriations) will be allowed only upon a showing of no injury and satisfaction of all other legal requirements.

H. If United Water has agreed to protect against well interference, what difference does it make to have integrated points of diversion?

As discussed above, there are two circumstances where the priority date of a

²¹ Fundamental principles of water law require that any change in water rights protect all existing water rights. There is no legal obligation to extend the protection to future users.

ground water right makes a difference. One is well interference and the other is an area-wide curtailment.

United Water has agreed not to use its IPD to defend well interference claims. On the other hand, IPD could make an important difference in the event that the entire aquifer (or other geographic area) was subject to curtailment or other administration.

As explained above, area-wide curtailment has nothing to do with well interference. Well interference is highly localized, and is typically caused by a particular diversion. In contrast, area-wide curtailment would be imposed in response to a change in circumstances affecting an entire aquifer, sub-aquifer or other geographic area. This might be the result of a physical change (such as an extended drought and/or over-pumping) causing across-the-board decline in ground water levels. Likewise, a curtailment order could result from stricter administration of ground and surface water rights. For instance, at some point in the future the Department could determine that ground water pumping is causing injury to senior surface rights. Under rules of conjunctive administration, the Department could issue an order curtailing the pumping of any ground water right in an area junior to some specified date. Finally, an area-wide curtailment order could result from external demands, such as federal requirements to protect endangered species.

An example may help to illustrate. Suppose water users in the Treasure Valley (including United Water) were subject to a curtailment order cutting off pumping from any ground water right junior to 1980. Suppose, for simplicity's sake, that United Water owned four water rights with priority dates in 1950, 1960, 1990 and 2000, each for 500 acre-feet per annum. The effect of the curtailment order would be to cut United Water's pumping in half: from 2,000 acre-feet to 1,000 acre-feet.

If United Water's water rights were acquired separately and associated with each of its four wells (and there were no IPD authorization), United Water would have no choice but to shut down the two newer wells. However, if United Water had the foresight to obtain IPD approval for its four water rights, it would then have the option of choosing which of its wells to shut down. Thus, if United Water's two newer wells were configured so as to optimize operation of the delivery system at partial capacity, United Water would want to keep those in operation. Or, if it allowed the system to operate more effectively, United Water might operate all four wells, but produce only 250 acre-feet from each. In any event, the company would have the flexibility to allocate as it saw fit the loss of its two junior water rights within its municipal delivery system.

Note, again, that having IPD does not bring anyone any additional water. In this example, United Water must still comply with the curtailment order, and is still out 1,000

acre-feet of water. However, the alternative points of diversion do give the company maximum flexibility in responding to the crisis.

This is essential in the operation of a modern, pressurized, interconnected delivery system such as United Water's. In addition to wells and supply lines, the system contains booster pumps, reservoirs and interties which all act to move water throughout the system to most efficiently meet the current localized demands. Unfortunately, the current water right descriptions do not recognize this flexibility—which United Water has built into its system at considerable cost and with considerable benefits to its customers.

For example, United Water uses its best and most efficient wells around the clock to meet the base demand on the system. As demand surges at different locations within the system, additional wells are electronically activated. The sequence in which the various wells are used to meet the increasing demand is a function of each well's quality and its geographic location in relation to the increased demand. The system maximizes efficiency through a complex, integrated management system which automatically responds to fluctuations in demand, maximizes production of the best wells, stores water, utilizes stored water, and transports water to different service levels.

Moreover, through IPD, the Company can move its water rights around as needed to respond to an emergency. That could be a temporary emergency, such as a broken pump, a water main break, a contamination problem, or what have you.

Whatever the case, if United Water was required to cut back its pumping (and impose use restrictions on its users), the Company would want as much flexibility as possible in selecting which wells to pump, when, and how much. This might be critical, for instance, for maintaining water pressure and satisfying other system requirements.

I. Could the flexibility afforded by integrated points of diversion in responding to area-wide curtailment be disadvantageous to other water users?

Very simply, use of IPD in response to area-wide curtailment hurts no one. United Water will be subject to the same curtailment requirements as anyone else. IPD does not get anyone off the hook.

The only difference is that, in the event of a broad curtailment order, IPD would allow United Water to respond (through use restrictions, mitigation, or a combination) swiftly, efficiently, and in the way least painful to its users—that is, the public.

APPENDIX A

Proposed Conditions on Integrated Points of Diversion

Condition No. 1 (Integrated Points of Diversion). Approval of this IMAP authorizes UWID to pump each of the ground water rights identified in Table A below from any of the points of diversion identified in that table.

Condition No. 2 (Well Interference). In the event of a claim or assertion of well interference against UWID with respect to any of the wells listed in Table A, the priority date(s) and diversion rate(s) corresponding to that well, as shown in Table A, shall establish the controlling priority (or priorities) for purposes of evaluating the interference claim. This is so irrespective of which water right(s) UWID may choose to pump from any of its wells pursuant to Condition No. 1.

Condition No. 3 (Maximum Diversion Rate). In any event, UWID may not divert from any well listed in Table A at a rate in excess of the diversion rate specified in that table for that well.

Condition No. 4 (Future Changes). The points of diversion, diversion rates and priority dates listed in Table A may be altered only upon subsequent approval of a separate application (for change, appropriation or other lawful authorization) to the Idaho Department of Water Resources.

TABLE A INTEGRATED POINTS OF DIVERSION (“IPD”) (This abbreviated example is for illustrative purposes only)					
Well No.	Well Name	Location of Well (Point of Diversion)	Water Right(s) Associated with this Well for Purposes of Well Interference Analysis (Condition No. 1) and Maximum Diversion Rate (Condition No. 2)		
			Water Right Number	Diversion Rate	Priority Date
1.	Apple Well	SE NE SE, sec. 21, T2N, R1E (Ada County)	No. 63-11111 (license)	0.2 cfs	1-12-1950
2.	Baker well	SW NW SW, sec. 23, T2N, R3E (Ada County)	No. 63-33333 (permit);	1.0 cfs	3-30-1999
			No. 63-44444 (permit)	0.5 cfs	9-9-1999
			TOTAL	1.5 cfs ²²	
3.	Candle Well	SW SE, sec. 22, T2N, R2W (Canyon County)	No. 63-22222 (license)	0.5 cfs	2-22-1970

²² Some wells may have more than one water right associated with them. However those water rights interact under their existing licenses or permits will be reflected in this table. In some instances, the water rights may be supplemental. In such a case, the “total” pumping allowed from that well would be reduced accordingly.