

OCT 23 2002

Department of Water Resources

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Via Hand Delivery

October 23, 2002

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

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

Dear Ms. Gibson:

Enclosed for filing in the above-captioned matter please find the following document: *Correspondence Dealing With Implementation of the 1996 Municipal Water Rights Act and United Water Idaho's Integrated Municipal Application Package (October 9, 1997 to April 26, 2002)*.

In accordance with the hearing officer's instructions during the last pre-hearing conference in this matter, we understand that the hearing officer will make a determination as to whether or not this compilation of correspondence should be included in the administrative record for purposes of appeal. In any event, the document should be made a part of the Department's general IMAP file and be made available for review by Department personnel, parties to the IMAP, and the general public.

Pursuant to a prior stipulation, we are providing copies of the document to counsel for Pioneer and Settlers Irrigation Districts, Nampa-Meridian Irrigation District, and the Boise Project Board of Control, as well as to each protestant, as identified below.

Ms. Debbie Gibson
October 23, 2002
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If you have any questions, please contact me.

Sincerely,



Christopher H. Meyer

Encl: *Compilation of Communications*

Copies to:

Irrigation Districts:

Daniel V. Steenson and Charles L. Honsinger, Nampa-Meridian Irrigation District
(also representing the Cities of Meridian and Caldwell)*
Scott L. Campbell and Angela Schaer, Pioneer and Settlers Irrigation Districts*
Albert P. Barker and Randall Fredericks, Boise Project Board of Control*

United States:

Kathleen Marion Carr, US DOI*
E. Gail McGarry, U.S. Bureau of Reclamation
Rick Wells, U.S. Bureau of Reclamation

Municipalities:

William Ancell, City of Boise*
Carl Ellsworth, City of Boise
Catherine Chertudi, City of Boise
Josephine P. Beeman, City of Boise
Beth Baird, City of Boise
Matthew K. Wilde, City of Boise*
Ed Squires, Cities of Meridian and Caldwell*
Gordon N. Law, City of Caldwell
Gary D. Smith, City of Meridian
Brad Watson, City of Meridian
Bruce M. Smith and Tammy Zokan, City of Eagle, et al.*

Other Protestants (without enclosure):

Matt Howard, the Chase Family*
Michael Chase, the Chase Family

Ms. Debbie Gibson
October 23, 2002
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IDWR staff:

Peter Anderson, Hearing Officer*
Karl J. Dreher, IDWR*
Norman C. Young, IDWR
Gary Spackman, IDWR*
Hal Anderson, IDWR
Zena Cook, IDWR
Bill Graham, IDWR
Steve Lester, IDWR
Phillip J. Rassier, IDWR*
Glen Saxton, IDWR
David R. Tuthill, Jr, IDWR

Client:

Gregory P. Wyatt, United Water Idaho Inc.*
Benjamin M. Hepler, United Water Idaho Inc.
H. Scott Rhead, United Water Idaho Inc.
Daniel Brown, United Water Idaho Inc.
Jeffrey C. Fereday, Givens Pursley LLP
John M. Marshall, Givens Pursley LLP
Dean J. Miller, McDevitt & Miller, LLP
John S. Church, Idaho Economics

* *Copy of enclosure included.*

CHM:kdt

S:\clients\30\71\chm ltr to debbie gibson re filing correspondence.doc

**CORRESPONDENCE
DEALING WITH IMPLEMENTATION OF THE
1996 MUNICIPAL WATER RIGHTS ACT
AND UNITED WATER IDAHO'S
INTEGRATED MUNICIPAL
APPLICATION PACKAGE**

GIVENS PURSLEY LLP

**CORRESPONDENCE
DEALING WITH IMPLEMENTATION OF THE
1996 MUNICIPAL WATER RIGHTS ACT
AND UNITED WATER IDAHO'S
INTEGRATED MUNICIPAL
APPLICATION PACKAGE**

**October 9, 1997
To
April 26, 2002**

**Compiled by
Givens Pursley LLP**

**On behalf of
United Water Idaho Inc.**

October 23, 2002

This compilation of correspondence is provided by United Water Idaho Inc. ("UWID"), through its counsel, in response to a request by certain parties to proceedings in connection with its Integrated Municipal Application Package ("IMAP"). It is being made available to all parties and to the Idaho Department of Water Resources ("IDWR").

This compilation includes all letters and memoranda (as well as other written communications, to the extent available) between UWID and IDWR dealing with UWID's IMAP and/or the implementation or administration of the Municipal Water Rights Act of 1996 ("1996 Act").

These communications document discussions over the course of several years in which UWID sought IDWR's guidance on how the Department would implement the 1996 Act. Much of the correspondence relates to UWID's anticipated IMAP filing. Other correspondence included here does not address the IMAP itself, but raises broader questions regarding administration of water rights under the 1996 Act. We have also included internal IDWR communications on the subject that have been made available to us.

This compilation begins on October 9, 1997, the date of the first written communication on this subject. The compilation ends on April 26, 2002, the date UWID was advised of the filing of protests in connection with the IMAP. Substantive communications from that time forward are subject to the IDWR's *ex parte* communication rules and have been served on all parties.

GIVENS PURSLEY LLP

Dated: October 23, 2002

By: 
Christopher H. Meyer

Counsel for United Water Idaho Inc.

INDEX TO CORRESPONDENCE

TAB	DATE	DOCUMENT
1.	10/09/97	Memo from Jeff Fereday and Chris Meyer to Ed Squires summarizing issues addressed at August 26, 1997 meeting with IDWR; Cover letter from Ed Squires to Norm Young enclosing above memo.
2.	08/10/98	Letter from Ed Squires to Norm Young providing additional information and following up on prior memo.
3.	09/21/98	Letter from Chris Meyer to Norm Young summarizing meetings on August 25, 1998 and September 4, 1998 regarding implementation of 1996 Act.
4.	09/21/98	Letter from Chris Meyer to Phil Rassier following up on meeting of September 4, 1998.
5.	01/19/99	Letter from Ed Squires to Steve Lester regarding municipal service area description.
6.	01/25/99	Letter from Chris Meyer to Karl Dreher summarizing meeting on October 21, 1998 and documenting re-thinking of approach to IMAP.
7.	06/03/99	Letter from Chris Meyer to Karl Dreher noting commentary on municipal water rights by Judge Krogh.
8.	06/14/99	Letter from Karl Dreher to Chris Meyer setting out departmental views on implementation of the 1996 Act in response to prior letters of inquiry.
9.	07/26/99	Letter from Chris Meyer to Karl Dreher in response to Mr. Dreher's letter of June 14, 1999.
10.	09/24/99	Letter from Chris Meyer to Karl Dreher raising additional questions about implementation of 1996 Act.
11.	10/26/99	Letter from Chris Meyer to Karl Dreher recapping discussion in meeting of October 18, 1999.
12.	04/14/00	Letter from Chris Meyer to Karl Dreher enclosing <i>draft</i> IMAP and requesting opportunity to discuss.
13.	05/10/00	Memo from Zena Cook to Hal Anderson and Dave Tuthill critiquing <i>draft</i> IMAP.
14.	06/16/00	Letter from John Marshall to Karl Dreher and Gary Spackman submitting IMAP for filing, together with filing fee.
15.	09/12/00	IDWR internal notes regarding IMAP.
16.	03/19/01	Letter from Chris Meyer to Karl Dreher requesting guidance on transfer of water rights held by a municipal provider.

TAB	DATE	DOCUMENT
17.	04/17/01	Letter from Chris Meyer to Karl Dreher following up on March 19, 2001 letter. Memo from Chris Meyer to Karl Dreher noting that this is a substitute letter. Note from Chris Meyer confirming that no response has been received.
18.	05/04/01	Letter from John Marshall to Karl Dreher and Gary Spackman submitting new IMAP for filing. This replaced the IMAP submitted on June 16, 2000.
19.	05/08/01	Letter from John Marshall to Gary Spackman enclosing corrected version of the cover page for the IMAP.
20.	02/06/02	Letter from John Marshall to Steve Lester submitting updated pages for the IMAP. Power of Attorney.
21.	02/12/02	Email from John Marshall to Steve Lester attaching spreadsheet of UWID's points of diversion.
22.	02/12/02	Email from Steve Lester to Shelley Keen forwarding spreadsheet of UWID's points of diversion.
23.	02/14/02	Fax from Steve Lester to John Marshall with comments on IMAP submission.
24.	02/21/02	Letter from John Marshall to Steve Lester enclosing updated pages for the IMAP.
25.	03/22/02	Letter from Tina Smith to Steve Lester enclosing amended version of IMAP (dated March 20, 2002).
26.	03/26/02	Email from Steve Lester to IDWR staff regarding IMAP processing.
27.	03/27/02	Email from Steve Lester to Western Region regarding IMAP processing.
28.	03/27/02	Email from Steve Lester to IDWR staff regarding IMAP processing.
29.	03/27/02	Email from Steve Lester to IDWR staff regarding IMAP processing.
30.	03/27/02	Letter from John Marshall to Steve Lester enclosing tabs for insertion into IMAP. (The tabs only were included, not the material after the tabs.)
31.	03/28/02	Letter from John Marshall to Steve Lester enclosing amended address pages for IMAP.
32.	03/28/02	Fax from Chris Meyer to Phil Rassier attaching proposed edits to legal notice for IMAP.
33.	03/28/02	Fax from Chris Meyer to Phil Rassier, Steve Lester and Gary Spackman attaching proposed edits to legal notice for IMAP.
34.	04/03/02	IDWR Press Release regarding IMAP.

TAB	DATE	DOCUMENT
35.	04/04/02	Transcript of Voice Mail from Gary Spackman to John Marshall regarding publication of legal notice.
36.	04/05/02	Memo from Steve Lester to the file regarding legal notice for IMAP.
37.	04/22/02	Letter from Steve Lester to John Marshall seeking additional information on IMAP.
38.	04/26/02	Letter from Gary Spackman to John Marshall enclosing protests filed in response to the IMAP.

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LAW OFFICES
GIVENS PURSLEY & HUNTLEY LLP
A Limited Liability Partnership

MEMORANDUM

TO: Edward Squires, United Water Idaho

FROM: Jeffrey C. Fereday
Christopher H. Meyer *CHM*

RE: United Water Idaho - Municipal Water Rights
GPH File No. 30-71

DATE: September 1, 1997
(Revised October 9, 1997 for release to IDWR)

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This follows up on our meeting on Tuesday, August 26, 1997, at the Department of Water Resources.

In attendance for the Department were Norm Young, David Tuthill, Glen Saxton, Gary Spackman, Jim Johnson and Phil Rassier. UWID was represented by Ed Squires, Jeff Fereday and Chris Meyer.

These are the key points:

- The Department supports a single, expanding service area. This will allow water to be shifted around within the system, so long as there are not increases in individual well capacity.
- The Department supports a universal alternate points of diversion approach. This will further expand the flexibility by allowing reallocation of system capacity by increasing the capacity of certain wells. This will be subject, however, to a prohibition against changes which result in well interference or other localized injury to water rights.
- The Department supports the systematic retention of older priority water rights, up through 1987 (the date of the accomplished transfer statute). This will entail application of a "stepwise function" illustrated in Figure 1 on page 5.
- We need to have further discussions with the Department in order to refine system capacity concepts and further develop a strategy for the "future needs" component of the company's water rights.
- To accomplish all this we need to file a comprehensive change application with the Department. As this will take some time to complete, we should proceed simultaneously with any site specific change applications (such as Lexington Hills) which require faster turn around.
- The company's SRBA filings are in need of supplementation.

The following is a more detailed review of the issues we explored.

I. Name Changes

A. Licensed Rights

We will file "change of ownership notification forms" with the IDWR for every licensed water right held by UWID which is not in the name of UWID. This will be accompanied by (1) a summary/explanation of changes in corporate names and corporate structure over time and (2) documentation of ownership with respect to purchased water rights. No fee is required.

B. Permits

In each case where a permitted (but not yet licensed) right is not in the name of UWID, we will file a "water right assignment form." There is a fee associated with this.

C. SRBA

There is no need to file name change forms in the SRBA, so long as the forms described above are filed with the IDWR before Basin 63 (the Treasure Valley) is reported.

D. Timing

These name changes are ministerial actions, and will not require a hearing process at IDWR. We should proceed at once with this cleanup. It is possible that, once the comprehensive transfer or SRBA review is completed, some of the water rights may be disqualified due to nonuse. At this point, however, it is difficult if not impossible to predict which rights might be eliminated. (Our objective is to retain as much senior priority as possible, but this is a complicated process. See discussion accompanying graph below.) Consequently, we recommend that UWID update the names on all of its water rights.

E. Any Other Clerical Corrections

At this point, we are not aware of other clerical corrections in UWID's water rights which need to be made. But we should be alert to this as we move through the process.

II. SRBA Claims

A. File Omitted Claims

We need to go through UWID's entire portfolio to insure that claims are made accurately on all rights.

B. Correct Any Understated Quantities

It appears that many of UWID's SRBA claims may have been made for less than the full certificated quantity of flow. Instead, apparently, claims were filed on the basis of pumping levels at a particular point in time—even when the well may have produced more. These claims should be amended to reflect the full claim based on total installed pump capacity.

C. File Post-SRBA Claims

For water rights licensed after the SRBA was initiated, filing claims in the SRBA is optional. If the holder files an SRBA claim, they will be adjudicated. If the owner does not file, the rights will not be adjudicated. Instead, they will be left as unadjudicated licenses.

Given that there is very little marginal cost to filing the recent claims and moving them through the SRBA along with the other claims, it probably makes sense to do so. The advantage is that those rights will be decreed, and *res judicata* will attach, making them less vulnerable to attack in the future.

III. Capture Old Priorities

Ed Squires coined the phrase "the younging of our water rights." This refers to the unintended loss of priority on UWID's system resulting from the inadvertent failure to formally transfer older water rights as wells decline or are taken out of production.

One of the significant issues explored with the Department was the subject of retaining the priority dates of water rights on older wells which have been "replaced" by more junior filings on newer wells. The Department agreed that the older priorities could be retained as "accomplished transfers" up until 1987, the date of the accomplished transfer statute.

However, the Department indicated that we would not be allowed simply to round up all the old priorities, and declare them to be reassigned to newer wells. Rather, the

methodology for recapture would be fairly complex, based on an annual "stepwise function" as illustrated by the graph in Figure 1.

For each year, the Department will approve water rights up to, but no more than, the total production capacity of UWID's system.¹ Any "paper" rights in excess of this will not be approved for transfer (or for inclusion in the Director's Report to the SRBA). For each year, the Department will seek to assign the oldest priority water rights first, setting aside those junior rights added in that year which are not needed to support production capacity in that year. Once a water right is set aside, it can be recaptured only if new production is brought on line within five years.²

Let's take one example. Suppose that in 1970 UWID takes out of production one

well which previously produced 1 cfs, and adds three new wells totaling 3 cfs, for a total net gain of 2 cfs in production capacity.

Meanwhile, UWID files new 1970 priority water rights claiming a total of 3 cfs. For that year, the Department would retain the senior priority on the abandoned well. Next, it would retain any earlier priorities from rights "set aside" for five years or less. If there were none set aside, it would allow 2 cfs of new (1970 priority) water rights for that year, corresponding to the net increase in production capacity. The remaining 1 cfs "paper" right would be set aside, subject to retention (or

Annual Water System Increment

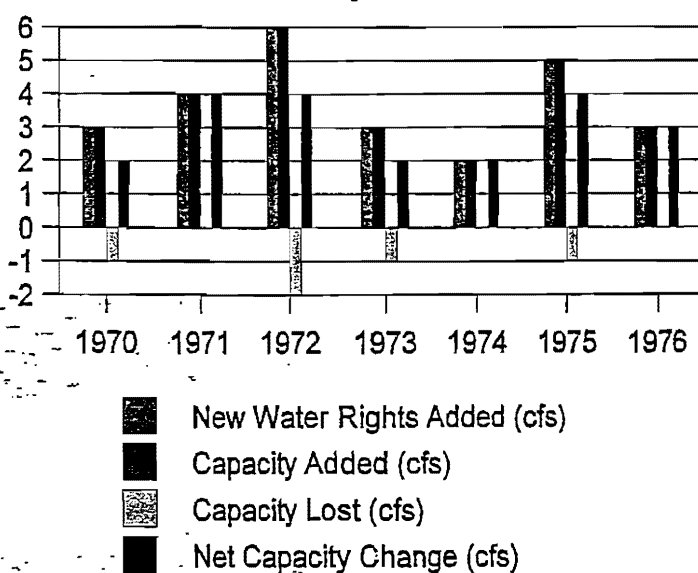


Figure 1
Annual Additions and Subtractions to a Hypothetical
Municipal Water Rights Portfolio

¹We had an extended discussion about what "total production capacity" means. Essentially, it refers to the total physical potential of the system to produce in any given year. This may correspond to the high peak on the production hydrograph, or it might exceed it by some if the system did not produce up to its full capacity in that year. This is an issue which will require further discussion and refinement with the Department. Norm Young promised to get back to us after further IDWR internal discussions.

²This five year retention rule is a function of the five year period in the forfeiture statute. Norm Young seemed open to grafting this provision onto the stepwise function, but said that would require further departmental analysis.

recapture) within five years.³ In 1971 4 cfs of new capacity is brought on line, and none is lost. The "retained" 1970 priority would be assigned to the first cfs of new capacity added in 1971, and the remaining 3 cfs would be assigned a 1971 priority, with the fourth cfs set retained for potential reassignment in 1972.

Based on our preliminary review, it appears likely that UWID should be able to retain many of its older priorities. However, we need a complete run of this stepwise function exercise to determine exactly how we will fare. (And before we commit to this as the appropriate means of analysis.)

IV. Convert Existing Rights to Bring Under Municipal Statute

A. Single, Expanding Service Area

(1) Departmental Support

The Department was in agreement that it makes sense to establish a single, expanding service area for all (or virtually all⁴) of UWID's water rights.⁵ Moreover, the Department agreed that the description ought to be quite broad—covering the entire metropolitan area.

Rather than having each water-right describe a service area, each water right would reference a centrally described service area. That single description would describe the current service area and would also contain a narrative and graphic discussion of how that service area is expected to expand over time. From time to time,

³This "loss" and "recapture" language is merely a description of how the model would operate. It does not correspond to the legal status of these water rights, which would not be lost until the five year period expired.

⁴Water rights with special geographic restrictions (such as acquired agricultural rights, or appropriative rights with ground water protection provisions) would need to be carved out of this process and handled separately.

⁵It is possible that objectors would point out that the "physical" service area of a given well may be less than the entire system service area, because, in some instances, it is not physically possible to get water from here to there.

We believe that we can defeat this argument. The whole purpose of the municipal statute is to bring the administration of municipal water rights into line with modern realities. The modern reality is that water is accounted for systemwide, not on a molecule by molecule basis. Moreover, this is a constantly changing system, with new links being added all the time. Breaking down the service area on a well-by-well basis would defeat in large part the statute's goal of simplifying the administration of these rights and building in flexibility to respond to changing circumstances.

that description may be updated, without the need to modify each of the company's water rights.

Following our meeting, a "global" description of our service area was filed with the Western Regional Office of the Department on September 24, 1997. The Department has not yet provided any feedback on that filing.

(2) The "Change" Procedure

UWID certainly could take the position that because all of its municipal water rights are subject to an expanding service area under the common law of municipal water rights, it is unnecessary to go through a formal change proceeding to implement this. A more cautious approach would be to file a change application stating our position that the company's service area is expanding under the common law, but seeking the clarity and certainty of the new statute. As Norm Young pointed out in the meeting, a court might find that even though a municipal provider's service area grew under the common law in the past, that aspect of the common law may have been cut off by establishment of the SRBA, the adoption of the municipal water rights statute, or some other legislative action. Furthermore, relying solely on the common law approach likely would postpone a determination on this subject to a final ruling in the SRBA or some other equally indefinite time. The simplest and surest approach is to have the expanding service area confirmed through a change application.

(3) Practical Effect

Once a single, expanding service area is established, the law would recognize that water from any well is entitled to be delivered anywhere within UWID's delivery system which it is physically capable of reaching. The practical effect would be to allow any given well to be pumped up to its full licensed flow rate to meet demand anywhere in the system. (This is subject, of course, to any special constraints such as moratorium conditions, instances of interference, or ground water management conditions which might limit the use of a particular well.) Moreover, it would allow UWID to alter or expand the delivery system at will, without notice to or approval of IDWR, so long as the changes are consistent with the general description of the expanding service area. If the company so chose, it could bring water all the way from Nampa to serve users in the Columbia Village area.

Note, however, the single, expanding service area alone would not allow UWID to reallocate capacity within its system by enlarging some wells and pumping less from others. (That could be accomplished under the "universal points of diversion" option

discussed below.) But it would allow UWID to shift capacity around to the extent it can without altering the pumping capacity of existing wells.

B. Future Needs Component

We had quite a discussion of the implementation of the future needs component. It is the Department's view (as articulated by David Tuthill) that under the common law, municipal water rights are limited only by their certificated rate of pumping or diversion, and therefore are entitled to increase the hours of full diversion as needed over time. However, the Department does not believe that a city can reserve within an existing water right the right to improve the well in the future and expand its capacity. In other words, under Dave Tuthill's view of the common law, a municipal user is granted the flexibility to "fill out the graph," by pumping at or near the full certificated cfs for longer periods—thus gradually increasing the total annual diversion volume up to the full physical potential. But a municipal user cannot enlarge the well and increase its capacity without obtaining a new, junior water right for the incremental use.

After Dave left, we had a further discussion about what might be allowed under the statute. We acknowledged that the statute contains the following limitation: "A license may be issued to a municipal provider for an amount up to the full capacity of the system constructed or used in accordance with the original permit . . ." Idaho Code § 42-219(1). Thus, no matter how real its "future needs," a municipal provider may not appropriate water simply by declaring that future need without an accompanying on-the-ground investment of some sort to expand system capacity.

However, it is our position that this statute would allow a municipal provider to demonstrate its "on-the-ground" commitment to expanding system capacity by sizing some significant system component or by taking some other concrete step associated with the water right to accommodate the future growth. Significantly, we would contend that the entire system need not be simultaneously expanded to correspond to the new component. We explored two examples. In the context of an appropriation to serve the new water treatment plant, it should be sufficient to size the physical plant to meet the larger need, even if, for instance, some of the system components were not added until later. Likewise, we would contend, if UWID could demonstrate that it is constructing a well specifically so that it may be easily upgraded and expanded later, then the company ought to be able to obtain a future needs component (under the municipal statute) for the full "build out" of the well.

Plainly, this is a departure from the traditional notion that current pumping capacity serves as an upper limit on the quantity for which a municipal water right license can be issued. But this view does not take into account a variety of investments

(other than merely "pumping capacity") that we might assert as a basis for arguing that we have constructed a "system" of a particular size. Norm Young reserved judgment on this point until he explores it further.

Ed Squires pointed out that it would be enormously advantageous to municipal providers if they could obtain water rights with a volume component based on total current, year-round pumping capacity, but no flow limitation. This would enable the user to improve the well and to add higher peaking ability. So long as the annual volume limit based on the lower pumping capacity was not needed, no change application would be required. Such an approach would change the current informal rule, which limits the typical municipal water right only to its flow rate, without regard to annual volume. Making annual volume the limit, without regard to flow rate, would allow the municipal provider to increase flow rate capacity at will, so long as an annual volume cap is not exceeded. Norm Young promised to engage in further departmental discussions on this point, and get back to us.

C. Universal Alternate Points of Diversion

The Department was entirely supportive of the concept of changing UWID's water rights to make each diversion point an alternate to each other—the so-called "universal alternate points of diversion" concept. (Again, this would exclude water rights with special limitations.)

This would allow UWID to correct imbalances in which some wells are producing less than their certificated quantity and some wells are producing more. It would allow UWID to take full advantage of its most senior priorities and to shift well capacity around without individual change applications (e.g., abandon one well and enlarge another). Thus, it would enable UWID to respond flexibly to physical constraints (e.g., aging of wells) and legal constraints (e.g., ground water management restrictions).

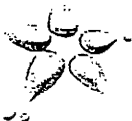
Of course, alternate points of diversion cannot be added if doing so will injure other rights, and IDWR would be expected to impose conditions to protect against well interference. We explored how this might work. The basic approach we anticipate would be to avoid injury simply by including a condition which protects and preserves the rights of others to claim well interference at such time as a problem arises. Thus, if UWID enlarged a well next to another person's domestic well and sought to pump from the enlarged well based on senior priorities elsewhere in UWID's system to the extent that production declined in the neighbor's well, the neighbor could raise an objection at that time (and UWID's pumping probably would be curtailed). However, if, due to a drought, a senior call or some new regulatory restriction, the Department found it necessary to administer water rights on a system-wide basis, UWID could reallocate its

priorities throughout the system in the manner most beneficial to it. Thus, it could reallocate an older priority water right from a declining well to the newly enlarged well (without going through a change procedure), and thus reduce the likelihood of the new well being curtailed.

We were encouraged by the Department's unqualified support for the general concept of universal alternate points of diversion (or "homogenous points of diversion" as Jim Johnson referred to them).

CHM:baf

United Water



United Water Idaho
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Boise, ID 83707-1488
telephone 208-362-1300
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October 9, 1997

Mr. Norman C. Young, Administrator
Idaho Department of Water Resources
1301 North Orchard Street
Boise, ID 83706-2237

Re: United Water Idaho -Municipal Water Rights Discussion

Dear Norm:

This letter is to follow up on our meeting of August 26, 1997 at the Department and our discussions concerning the implications and implementation of the municipal water rights statute. We very much appreciate the time and energy you and your staff have committed to this undertaking. The individual perspectives from each represented Bureau, Section, and branch within IDWR was very helpful and, from my perspective, much progress was made.

Following the meeting, Chris Meyer, Jeff Fereday, and I reconvened to review our impressions and I asked Chris Meyer to prepare the attached memorandum to summarize our understanding of what is on the table, to identify areas of consensus, and to highlight key issues to be resolved. United Water Idaho has had a chance to digest the memorandum and I am now forwarding it to you and your staff, who were present at the August meeting, so that we can keep the subject fresh and the discussions moving along.

We are busy developing the historical production data for comparison with water rights priority dates as suggested by Dave Tuthill. This information may be compiled by the end of October and I hope that we may be able to meet a second time in mid November.

Please convey your collective thoughts to me after you have had a chance to review the document. We look forward to exploring these issues further.

Sincerely,

United Water Idaho

Edward Squires
Hydrogeologist

c: Jeff Fereday
Jim Johnson
Chris Meyer
Phil Rassier
Glen Saxton
Gary Spackman
David Tuthill

2

United Water



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facsimile 208-362-1479

August 10, 1998

Mr. Norman C. Young, Administrator
Idaho Department of Water Resources
1301 North Orchard Street
Boise, Idaho 83706 - 2237

Re: United Water Idaho - Municipal Water Rights Discussion

Dear Norm:

Ten months have passed since our first discussion concerning municipal water rights and, in particular, the implementation of the Municipal Water Rights Statute's Future Needs component. Over that time period, and with the help of your staff, UWID has made much progress towards getting our groundwater rights in order. A myriad of new groundwater rights issues have arisen during the last ten months which have kept us from pursuing these discussions, although they have served to keep the ideas alive and fresh in our minds.

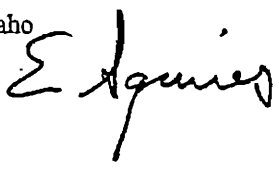
We now find ourselves running into the "future needs" and "accomplished transfer" issues at every turn. Therefore, we believe it may be time to reconvene to discuss these ideas again. It is my hope that we might have the same IDWR representation as the last meeting and it would be very good to have Mr. Dreher's perspective as well. Dave Tuthill, Gary Spackman, Phil Rassier, and your attendance are critical to the discussion.

We have developed 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. I have included a draft plot of these data for IDWR's advance consideration. Although these data are preliminary, they should form the basis for a useful discussion.

Please refer to Chris Meyer's and Jeff Fereday's letter of September 1, 1997 (under my cover letter of October 9, 1997) for the topics of discussion. Key points we would like to address are: 1) Recapture of older priority water rights ("accomplished transfer") via the stepwise function discussed earlier, 2) How, or if, a well's installed capacity relates to a municipal water right's measure of current beneficial use and/or its future needs component, and 3) The level and type of documentation needed by IDWR to support recognition of the future needs component. As we discussed, Tuesday, August 25 at 8:30 AM is the target date and time for this meeting. I will rely on you to invite the other Department personnel. We look forward to exploring these uncharted waters further.

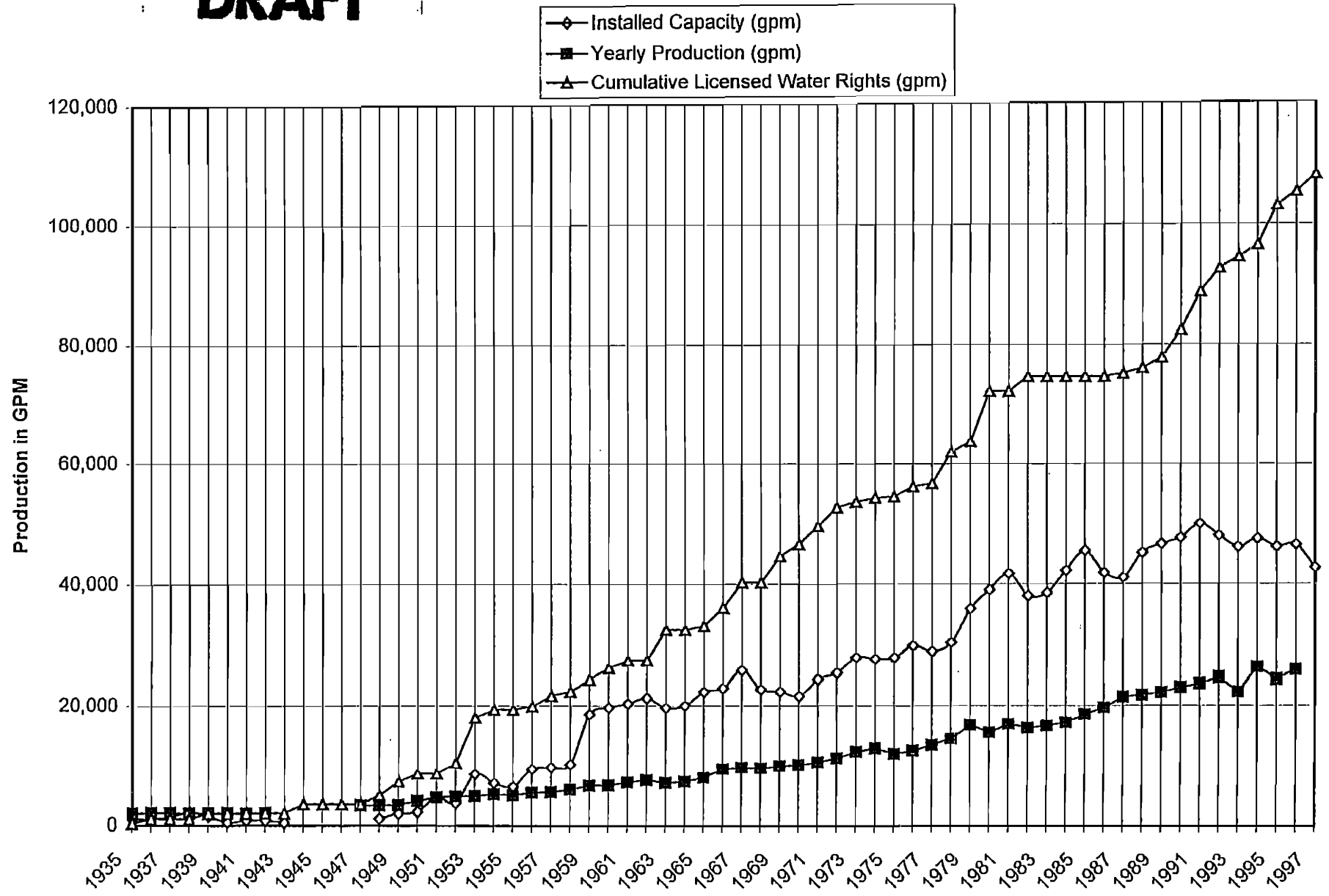
Sincerely,

United Water Idaho


Edward Squires
Hydrogeologist

c: Chris Meyer
Ben Hepler

DRAFT



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September 21, 1998

Mr. Norman C. Young
Administrator
Idaho Department of Water Resources
1301 N. Orchard St.
Statehouse Mail
Boise, ID 83720-9000

Re: United Water Idaho — Municipal Rights
Our File No. 30-77

Dear Norm:

Thank you for meeting with Ed Squires and me on August 25, 1998. Ed and I had a follow up meeting with Phil Rassier on September 4, 1998. These discussions were most helpful in sorting through many of the evolving issues involving the implementation of Idaho's new municipal water rights statute.

Two Stages

Based on these discussions, United Water Idaho is preparing to move forward with a master transfer application. We expect to approach this in two stages.

The first stage will focus on bringing UWID's water rights portfolio up to date, integrating it into a common system, and allocating the company's most senior water rights to current operations. The end result of this process will be the allocation of the most senior rights within UWID's portfolio to support the company's present level of production.

To the extent that "excess" paper water rights are identified, these will be the

Mr. Norman C. Young
September 21, 1998
Page 2

company's most junior rights. We have discussed whether these water rights may be transferred to support UWID's "future needs." At our last meeting, you expressed doubt about whether such a transfer can be justified. We have given this considerable thought, and are inclined at this point to agree with you. Consequently, our current anticipation is that this first phase will result in a reallocation of older priorities to UWID's operation coupled with a recognition in some form that the more recently obtained rights are in excess of UWID's current needs.¹

The second phase will address future needs through a separate filing for new future need water right, in compliance with all procedural and substantive requirements under the 1996 Municipal Water Rights Act. This will carry a junior (1998 or 1999) priority. There are some outstanding issues to be resolved with respect to such a filing. These are addressed in a separate letter from me to Phil Rassier.

Allocating Older Priority Water Rights

As you know, UWID holds a portfolio of water rights in which some older water rights correspond to wells which are no longer in operation or are operating at less than their original capacity. When new wells were brought on line to replace or supplement the older wells, UWID obtained new rights for these new wells, rather than transferring the older rights to the new wells. UWID wishes to ensure that its older priority water rights are retained and used to support UWID's current system operation.

This may be accomplished by filing a set of "after the fact" transfer applications administratively prior to SRBA review. We agree with Phil Rassier's comment that such an administrative filing does not trigger (or require) the accomplished transfer statute (Idaho Code § 42-1425). The Department is empowered to approve such an after the fact application, so long as beneficial use can be demonstrated.

One Approach: The Stepwise Function

In previous discussions with the Department, we have considered a number of

¹One caveat: We discuss below the company's plan to file a new application for a junior right to cover UWID's reasonably anticipated future needs. If, for any reason, that application were to hit a roadblock—a new moratorium or whatever—then UWID reserves the right to contend that water rights it holds today in excess of current capacity are held for future needs.

Mr. Norman C. Young
September 21, 1998
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ways to approach this reallocation process. One approach has been referred to as the "stepwise function"—described in some detail in my memorandum of September 1, 1997 to Ed Squires (revised October 9, 1997 for release to the Department).

This approach entails the reallocation of UWID's water rights on a year-by-year (or, perhaps, a five-year-by-five-year) basis. At each "step," UWID would show the amount of capacity added to its system in that period. Additional "paper" rights acquired in that period (or in the previous five years) would then be allocated to that new capacity. Any "excess" paper rights would be held for up to five years to see if they could be assigned to new capacity coming on line within five years. At the end of this process, the oldest priorities would be retained and allocated to support UWID's current system operation.

Another Approach: One Step Systemwide Re-Allocation

Upon further reflection, UWID believes that we may be able to get to essentially the same place through a much simpler process.

I will enclose a copy of the draft graph Ed Squires and his staff prepared showing, for each year, UWID's system capacity compared to total water rights. We propose to draw a horizontal line from the point the system capacity line crosses the year 1998, back to the left until it intersects with the line for water rights. According to the draft graph, that appears to be the year 1977. (This may require some adjustment in either direction as the data are further refined and verified.) Thus, UWID would contend, based on this graph, that all water rights acquired roughly through the year 1977 can properly be used to support UWID's current system operation. Our transfer application package would so reflect. (By the way, excess paper water rights as of 1998 would still be subject to the "recapture" during the next five years.)

In essence, this is a "stepwise function" with a single step.

Choosing the right approach

There are a number of reasons for preferring the single-step approach. First breaking this analysis down to every year (or even every five years) would not significantly change the outcome. This follows from the fact that the two lines are remarkably linear, and hence predictable. That is, there are no significant leaps in water rights without corresponding increases in system capacity which might "wipe out" a set

of older priority water rights.

Second, based on our current understanding, the "one step" approach is consistent with how the Department approaches the analysis of non-municipal water rights. For instance, if an irrigator holding a number of overlapping water rights for the same farm approached the Department with a transfer application, the Department would look at the farmer's current operation, and then allocate water rights in his or her portfolio to that operation in order of priority, saving the oldest water rights first. (The farmer would not be required to document water use patterns over the entire life of the farm.) To the extent he or she held "excess" paper water rights today, only the most junior water rights would be subject to potential forfeiture. This "one step" process is analogous to what UWID would like to accomplish.

On the other hand, if it could be shown that an applicant (whether that be UWID, an irrigator or anyone else) has acquired paper rights which outpace beneficial use (or system capacity in UWID's case) by more than five years, then an argument can be made that the applicant should show proof based on historical increments under the so-called stepwise function.²

UWID's bottom line is that it is willing to defer to the Department as to which approach is (stepwise or one-step) is justified. However, we insist that the decision be applied consistently to all applicants for transfers (or SRBA evaluations). UWID is willing to subject itself to an exercise under which it may end up forfeiting older water rights if and only if the Department applies the same rules to others.

Integrated Points of Diversion

In re-allocating water rights within UWID's portfolio, the point of diversion for an older right will not be re-assigned to a specific newer well. Rather, all points of diversion within UWID's integrated system will be identified as alternative points of diversion for each of the older priority rights.

²The Department could adopt the position that it is justified in overlooking "gaps" in beneficial use, so long as the beneficial use is resumed by the time of transfer. UWID has taken a contrary view in other matters. In any event, it is essential that a consistent policy be applied.

Updating the Points of Diversion in the Future

It would be simpler if UWID could identify its points of diversion descriptively for the entire system in a manner to pick up future points of diversion, rather than identifying each point by quarter-quarter. However, such a flexible, general description does not appear to satisfy the strict statutory requirement for identification of points of diversion. (In other words, there is no municipal-points-of-diversion analog for the evolving "municipal service area.") This means that, as new wells come on line after we have completed the transfer, the list of points of diversion for the current water rights will not include the new wells.

However, this does not seem to be a substantial practical problem. UWID will still have sufficient flexibility to allow system-wide accounting in the event aquifer-wide regulation should ever be imposed in the future. We would appreciate any further thoughts you have on this issue.

Injury Protection

Re-naming the points of diversion in the manner described above carries with it the potential for working injury on other water users in the Valley, unless appropriate conditions are imposed. For instance, if no new constraints were added, UWID would be able—in theory at least—to deepen existing wells and pump quantities of water from them in excess of the original licensed amounts.

UWID has agreed from the outset of these discussions, however, to accept appropriate conditions on the transfer to protect other water right holders from such injury.

One approach would be to identify the current capacity of each well in UWID's system, and impose that as the pumping limit on each well. Thus, if UWID wished to deepen or otherwise expand the pumping capacity of a given well, it would be required to file for a new water right (or a transfer). It could not say, "We are simply pumping water at this location that we could have just as well pumped over there." The effect of such a limitation would be to lock in existing well capacities—that is, the status quo—thereby reducing the likelihood of well interference disputes.

In effect then, each well would have two priority dates: One for well interference purposes and one for aquifer-wide regulation. Thus, if a well interference dispute arose,

Mr. Norman C. Young
September 21, 1998
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the priority of the UWID well for well interfere purposes would that of the pre-transfer water right associated with that well. For example, if, in the year 2005, Farmer Jones were to contend that a well installed by UWID in 1995 was interfering with his 1960 well, the Department would treat UWID's well as junior to the farmer's. That is, UWID would not be able to contend that it was pumping 1950 priority water out of its 1995 well and was thus senior to the farmer.

Aquifer-Wide Call or Regulation

Although well-specific priority dates would be retained for purposes of well interference disputes (as described above), UWID's system would be treated as having fungible points of diversion for purposes of any aquifer-wide regulation in the future. For example, if, at some time in the future, water rights junior to 1975 were required to provide mitigation or face curtailment (due to drought, federal regulatory action, or whatever), UWID would be free to chose which wells were pumping pre-1975 water and which were pumping post-1975 water.

In closing, let me reiterate on behalf of myself, Ed Squires and the rest of the UWID staff our appreciation for the opportunity to work through our thinking with you on these critical issues. We will appreciate hearing your thoughts with respect to the issues outlined above.

Sincerely,



Christopher H. Meyer

Encl: UWID's Draft Graph Showing System Capacity and Water Rights Over Time

cc: Dave Tuthill
Gary Spackman
Jim Johnson
Phil Rassier
Ed Squires

CHM:baf

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September 21, 1998

Phillip J. Rassier, Esq.
Deputy Attorney General
Idaho Department of Water Resources
1301 N. Orchard St.
Statehouse Mail
Boise, ID 83720-9000

Re: United Water Idaho — Municipal Rights
Our File No. 30-77

Dear Phil:

Thank you for meeting with Ed Squires and me on September 4, 1998. I am writing to follow up on one particular issue left unresolved—approaches to quantifying the future needs component of a municipal water right.

UWID and the Department agree that, under both the common law and the 1996 Municipal Water Rights Act, municipal providers are afforded additional flexibility with respect to the acquisition of water rights for long-term future needs. While it may be that every entrepreneur would love the “flexibility” of being able to hoard future water supplies, the economy would grind to a halt if that were permitted. The opposite is true for municipalities. Towns and cities—and their economies—cannot thrive unless municipal providers are allowed to provide the assurance of a long-term water supply for all the future enterprises and citizens who may come to the community. On this we agree.

There appears to be a divergence of opinion, however, when it comes to the proper way of defining and quantifying future needs. Specifically, the question is whether municipal providers may acquire water rights for growing communities in excess of the present physical pumping capacity. There is also the related question of how to define

physical capacity.

There are two reasons for the attention focused on physical capacity. First, the Department historically has licensed municipal water rights with no volumetric limitation but, instead, according to the discharge rate of the installed pumping equipment. Second, the 1996 Municipal Water Rights Act refers to "capacity" as an upper limit on the quantity to be stated in the license:

A license may be issued to a municipal provider for an amount up to the full capacity of the system constructed or used in accordance with the original permit

Idaho Code § 42-219 (emphasis supplied).

Some within the Department see the reference to "capacity" in section 42-219 as a codification of departmental practice. We believe, however, that such a reading would place an unnecessary and inappropriate limit on municipal providers and would undercut the very flexibility intended to be accorded to municipal providers under the law.

UWID suggests that the statutory phrase "capacity of the system" is intended to draw attention to the provider's entire "system," rather than to an individual well or other system component. Thus, where a municipal provider can demonstrate that its overall system is "constructed or used" in a manner consistent with the long-term growth envisioned under the planning horizon and that its wells are adequately sized for such growth,¹ the Department may license water rights for a quantity in excess of a well's installed capacity (or the system's pumping capacity).

¹For example, the 13th Street Well was drilled in 1934 to accommodate a 1,000 gallon per minute pump, but only a 300 gallon pump was installed. (Consequently it was licensed according to the installed capacity of 0.8 cfs, *see* Water Right No. 63-2500.) Two decades later, in accordance with the long-term plan, the original pump was removed and replaced with a 1,000 gallon pump (*see* beneficial use Water Right No. 63-19456 adding an additional 1.6 cfs for a total of 2.4 cfs out of the well). The additional funds expended back in 1934 to drill the well to accommodate the larger pump provide tangible evidence that the municipal provider's long-term planning is no idle venture. UWID can document similar examples throughout its system.

In short, this "capacity of the system" limitation is simply intended to ensure that tangible, on-the-ground system components are constructed by the time of licensing. This will confirm that the municipal provider has made a real, practical and economic commitment to meet those future needs. In other words, at the time of licensing, the future needs component must be consistent with the evolving physical system.

Thus, capacity should not be seen as a mathematical summing of the present physical pumping capacity of each well in a municipal system at a given point in time. Rather, it reflects in a broader way the capacity of the system to accommodate the future needs water rights. For instance, if the system is not sized and designed in a manner to readily accommodate the claimed future growth, the future needs component may be rejected or scaled back at the time of licensing. On the other hand, if a provider can point to substantial on-the-ground system components which are plainly sized to accommodate anticipated future growth, this should be sufficient to satisfy the statutory criteria.

In this way, municipal providers should be able to secure water rights for particular well sites, but then hold off actual construction of the well, or temporarily equip the well to a smaller capacity. If, at the time of proof, the additional capacity can be absorbed by the municipal provider's overall system, it should not matter that an individual well holds a smaller pump than ultimately planned. Indeed, it should not matter if the well has even been constructed, so long as other system components demonstrate a serious commitment to this future supply.

We note, by the way, that this approach is consistent with the statute's provisions for the acquisition and transfer of other water rights. The statute specifically provides that beneficial use may be demonstrated by reference to a properly documented future needs component:

The director ... shall approve the change in whole, or in part, or upon conditions, provided ... the new use is a beneficial use, which in the case of a municipal provider shall be satisfied if the water right is necessary to serve reasonably anticipated future needs as provided in this chapter.

Idaho Code § 42-222. Thus, such an acquired right may be held for the length of the planning horizon before it is applied to use within the municipal provider's system.

The "capacity of the system" requirement in section 42-219 should be read

Phillip J. Rassier, Esq.
September 21, 1998
Page 4

harmoniously with its absence from section 42-222. A fair conclusion is that, in the case of an acquisition under section 42-222, the fact that the municipal provider was willing to pay market price for the water right provides sufficient assurance that the need is real. In the case of a newly licensed right under section 42-129, the legislature plainly expects some sort of evaluation of the current "capacity of the system" to ensure that the new right is not a speculative holding. But this need not be the sort of mechanical toting up of present pumping capacities which would largely defeat the entire purpose of obtaining water rights today to provide for a municipal supply to be built out gradually over the course of many years.

In our meeting on September 4, 1998, you suggested that the Department might be supportive of a legislative amendment to clarify this intent. UWID believes and hopes that we can accomplish what is needed under the existing statute, but is not opposed to seeking a clarifying amendment if that makes sense.

Ed and I look forward to exploring these issues with you further.

Sincerely,



Christopher H. Meyer

cc: David Tuthill
Gary Spackman
Jim Johnson
Phil Rassier
Ed Squires

CHM:baf

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United Water



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January 19, 1999

Mr. Steve Lester
Water Rights Supervisor
Idaho Department of Water Resources
Western Regional Office
2735 Airport Way
Boise, ID 83705-5082

Subject: United Water Idaho's Coventry Place Application for Permit

Dear Mr. Lester:

This letter follows United Water Idaho's (UWID) Application for Permit to Appropriate Water filed with your office on the 15th of January, 1999. The filing makes reference to UWID's "*Description of Service Area for United Water Idaho*" relative to Place of Use. Because this most recent filing, for our service area south of Nampa, Idaho (Coventry Place Subdivision), is presently non-contiguous to our Boise service area, we reviewed the current version of the service area description and believe that it is sufficiently broad to encompass this new service area in Nampa. The Description states:

UWID serves customers and other water users within the city of Boise, Idaho, as well as a number of nearby communities, unincorporated areas and rural customers within the Treasure Valley. . . .

From time to time, however, UWID will provide service to adjacent or outlying areas within the general vicinity which are not immediately connected to UWID's main distribution system. . . .

Even though this description is broad enough to cover the Coventry Place application, we are in the process of updating the Description again. Specifically will supply maps which expressly show that UWID is now serving as far away as Nampa and beyond.

I hope this explanation is helpful to your consideration of UWID's application.

Sincerely,

Ed Squires

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January 25, 1999

Mr. Karl J. Dreher
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Re: United Water Idaho — Municipal Rights
Our File No. 30-71

Dear Mr. Director:

This letter follows up on the meeting Ed Squires and I had with you on October 21, 1998 to discuss approaches to implementation of the 1996 Municipal Water Rights Act. Thanks also to the other members of your staff who participated, Norm Young, Dave Tuthill and Phil Rassier. As we mentioned to you subsequently, your articulation of the law governing municipal rights prompted considerable internal discussion among United Water staff and counsel. The end result has been a productive re-thinking of our approach, and our adoption of the direction laid out by you in that meeting.

We agreed that UWID should follow up with a letter summarizing the discussion we had with you and outlining how United Water Idaho expects to proceed. This would serve as a basis for further discussions. The requested summary follows.

I. Protection of senior priorities

As you know, a critical concern for UWID, and all municipal providers, is the protection of senior priority water rights. Some of UWID's water rights correspond to wells which are no longer capable of producing at their historical levels. In some cases

the wells named as points of diversion for senior rights may no longer produce at all. However, these rights have never been surrendered, abandoned or forfeited, but instead have been maintained in reserve to satisfy long term future needs. Our objective is to ensure that these rights are properly maintained within UWID's portfolio so that they may continue to be available to support the rapidly growing needs of municipalities within the Treasure Valley.

Two basic approaches to this issue present themselves.

The first, which has been explored extensively in prior correspondence and discussions with the Department, would entail a system-wide "after the fact" change of earlier priority water rights to newer points of diversion.¹

The second approach is the more straightforward one suggested by you in the October meeting. After considerable thought, discussion and research, we are now convinced that it is the soundest. (Due to its relative simplicity, this approach will also avoid what would be an enormous commitment of Departmental resources should UWID be required to pursue the "reallocation of priorities" application under the first option.)

Under this second approach, there is no need to go through the complicated exercise of reallocating senior priority water rights to replace junior priority rights obtained for newer wells. Rather, we would simply recognize that all municipal water rights remain available to meet reasonably anticipated future needs. Thus, as wells sustain predictable declines in productivity over time, or as aging wells are retired, the full water right held for that well remains in beneficial use so long as it is held by the municipal provider to meet foreseeable future needs. Moreover, the fact that a municipal provider acquires new water rights along the way corresponding to new points of diversion does not extinguish the senior rights associated with the older points of diversion.

This conclusion rests firmly on the application of more flexible (and realistic)

¹Prior discussions with the Department have explored whether this task should be approached using a "stepwise function" or a "one-step reallocation." There was also the unresolved question of whether the junior water rights displaced by the transfer could be retained by UWID. All this debate is mooted under the second approach. Also largely mooted is the debate over well capacity versus pumping capacity (as the measure of current use). Assuming that UWID can secure a substantial future needs component, the line between current and future needs becomes academic.

beneficial use concepts applicable to municipal providers under the common law—that is, the Growing Communities Doctrine.² It is also consistent with Idaho's recent codification thereof, Idaho Code §§ 42-202, 42-202B, 42-217, 42-219, 42-222.³

II. Future needs and the "capacity of the system" limitation

Much of the discussion at our October 21 meeting addressed the question of how to quantify future needs at the proof stage under the 1996 Municipal Water Rights Act. This issue is explored in detail in my letter of September 21, 1998 to Phil Rassier.

It appears that the current thinking of both UWID and the Department is consistent on this point. In short, the reference to "capacity of the system" in the 1996 Act⁴ was not intended by the Legislature to limit the future needs component of a water right to what can be physically pumped out of a particular well with which the right is associated.⁵ If

²For a recent and thoughtful discussion of the Growing Communities Doctrine see, Janis E. Carpenter, *Water for Growing Communities: Refining Tradition in the Pacific Northwest*, 27 Env'tl. L. 127 (1997); Brian Faller, *Special Treatment of Municipal Water Suppliers Under Washington Water Law* in Third Annual Sinking Creek Water Law Symposium (Wash. Law School Found. 1996); *State of Washington, Dept. of Ecology v. Theodoratus*, 135 Wash.2d 582, 957 P.2d 1241 (Wash. 1998) (the majority declined to extend special treatment of municipal providers to a private home developer; dissent contains good discussion of Growing Communities Doctrine). I will make copies of these available to Phil Rassier.

³Although the 1996 Municipal Water Rights Act is addressed primarily to newly acquired or changed water rights, the amendment to the forfeiture provision, Idaho Code § 222(2), appears to provide the same protection against forfeiture to all water rights held for municipal purposes (not just those acquired after the 1996 Act). "A water right held by a municipal provider to meet reasonably anticipated future needs shall be deemed to constitute a beneficial use, and such rights shall not be lost or forfeited for nonuse unless the planning horizon specified in the license has expired and the quantity of water authorized for use under the license is no longer needed to meet reasonably anticipated future needs."

⁴"A license may be issued to a municipal provider for an amount up to the full capacity of the system constructed or used in accordance with the original permit" Idaho Code § 42-219 (emphasis supplied).

⁵We have discussed the distinction between a well's maximum potential pumping capacity (based on how the well is designed) and its installed capacity (based on how the well is currently equipped). I mentioned in footnote 1 at page 2 that this debate now appears to be moot, since we no longer anticipate going through the "reallocation of priorities" exercise. However, should the Department adhere to a restrictive definition of "capacity of the system" for quantifying future needs at the proof stage, this issue

that were the case, the purpose of the Act would be largely frustrated because it would not be possible for a municipal provider to acquire a future need water right without actually drilling and equipping additional new wells within the proof period.

Such a rigid interpretation of the "capacity of the system" language would provide a perverse incentive for municipalities to drill wells prematurely, basing their location on guesses about where growth will occur. This would subject the wells to unnecessary deterioration as they sat idle, and would pose unnecessary risks of contamination to the aquifer. It is difficult to imagine that the Legislature could have intended such an unsound policy. Moreover, a rigid interpretation of "capacity of the system" (focusing on a single well's capacity) would be impossible to implement logically with the emerging trend toward applying for municipal water rights with system-wide, multiple points of diversion. (Which well do you measure?)

Instead the statute should be understood to reflect the Legislature's concern that the municipal provider provide evidence satisfactory to the Department that the future need for which the water right is claimed is consistent with real, on-the-ground system infrastructure. In making that judgment, however, the Department need not quantify the capacity of individual wells or pumps. Rather, the statute simply asks the Department to ensure that the applicant's ongoing infrastructure development is consistent with the applicant's assertions about future needs. Thus, a municipal provider should not be allowed to hold overly aggressive future need water rights which are inconsistent with an insubstantial commitment to future expansion reflected on the ground. On the other hand, so long as the water rights portfolio is backed up with a documentable history of commitment to long term development as reflected in the scope and nature of its built infrastructure, the statutory "capacity of the system" requirement is satisfied. This interpretation avoids putting too fine a point on the proof requirement in order to achieve the statute's overall objectives. It also reflects, by the way, the modest draw on the resource collectively imposed by municipalities, in contrast to the much higher collective toll imposed by irrigation and industrial uses. It will also promote the conservation and preservation of water supplies in an orderly, economical and, most of all, nonspeculative manner during the ongoing transition from predominantly agricultural uses to a blend of rural and urban demands.

We discussed the possibility of the Department issuing an Administrator's

would once again come into play.

Mr. Karl J. Dreher
January 25, 1999
Page 5

Memorandum addressing this subject. UWID urges you to consider doing so. Administrative clarification of this statutory language would be very helpful to municipalities and water utilities throughout the state.

III. System-wide change application

Although UWID agrees that there is no longer a need to undertake a system-wide reallocation of water rights in order to reassign its most senior priority rights to currently operating wells, a simpler system-wide change application is still necessary. The purpose of this application is be two-fold.

First, UWID intends to integrate its portfolio of water rights by identifying each water right as an alternative point of diversion for each other within the company's integrated supply and delivery system.⁶ This issue is discussed more fully in my September 21, 1998 letter to Norman Young addressing integrated points of diversion,⁷

⁶Although a few components of UWID's current system are not yet physically interconnected, the long term plan is to interconnect all components. In some cases that will occur in a matter of months. In the case of the recently acquired service area in Nampa, integration is a longer term goal.

UWID's scientists consider the Boise aquifer a sole source aquifer and are of the opinion that the aquifer is hydraulically connected throughout. Therefore, all wells essentially are drawn from the same pool of water recharged by the Boise River.

⁷In re-allocating water rights within UWID's portfolio, the point of diversion for an older right will not be re-assigned to a specific newer well. Rather, all points of diversion within UWID's integrated system will be identified as alternative points of diversion for each of the older priority rights.

updating points of diversion in the future,⁸ injury protection,⁹ and aquifer-wide regulation.¹⁰ For your convenience, corresponding sections from that letter are reproduced verbatim in the preceding footnotes.

⁸It would be simpler if UWID could identify its points of diversion descriptively for the entire system in a manner to pick up future points of diversion, rather than identifying each point by quarter-quarter. However, such a flexible, general description does not appear to satisfy the strict statutory requirement for identification of points of diversion. (In other words, there is no municipal-points-of-diversion analog for the evolving "municipal service area.") This means that, as new wells come on line after we have completed the transfer, the list of points of diversion for the current water rights will not include the new wells.

However, this does not seem to be a substantial practical problem. UWID will still have sufficient flexibility to allow system-wide accounting in the event aquifer-wide regulation should ever be imposed in the future. We would appreciate any further thoughts you have on this issue.

⁹Re-naming the points of diversion in the manner described above carries with it the potential for working injury on other water users in the Valley, unless appropriate conditions are imposed. For instance, if no new constraints were added, UWID would be able—in theory at least—to deepen existing wells and pump quantities of water from them in excess of the original licensed amounts. UWID has agreed from the outset of these discussions, however, to accept appropriate conditions on the transfer to protect other water right holders from such injury.

One approach would be to identify the current capacity of each well in UWID's system, and impose that as the pumping limit on each well. Thus, if UWID wished to deepen or otherwise expand the pumping capacity of a given well, it would be required to file for a new water right (or a transfer). It could not say, "We are simply pumping water at this location that we could have just as well pumped over there." The effect of such a limitation would be to lock in existing well capacities—that is, the status quo—thereby reducing the likelihood of well interference disputes.

In effect then, each well would have two priority dates: One for well interference purposes and one for aquifer-wide regulation. Thus, if a well interference dispute arose, the priority of the UWID well for well interfere purposes would be that of the pre-transfer water right associated with that well. For example, if, in the year 2005, Farmer Jones were to contend that a well installed by UWID in 1995 was interfering with his 1960 well, the Department would treat UWID's well as junior to the farmer's. That is, UWID would not be able to contend that it was pumping 1950 priority water out of its 1995 well and was thus senior to the farmer.

¹⁰Although well-specific priority dates would be retained for purposes of well interference disputes (as described above), UWID's system would be treated as having fungible points of diversion for purposes of any aquifer-wide regulation in the future. For example, if, at some time in the future, water rights junior to 1975 were required to provide mitigation or face curtailment (due to drought, federal regulatory action, or whatever), UWID would be free to choose which wells were pumping pre-1975 water and which were pumping post-1975 water.

Mr. Karl J. Dreher
January 25, 1999
Page 7

Second, and at the same time, UWID wishes to convert all of its existing municipal water rights to expressly bring them under the 1996 Municipal Water Rights Act. This applies both to UWID's junior rights which correspond to its more recent wells, and those more senior priority rights associated with declining or non-productive wells. To the extent that these rights collectively describe more water than is needed to meet UWID's current level of demand, UWID intends to satisfy the requirements under the statute to have the excess capacity formally recognized as held in support of future needs. UWID also anticipates taking advantage of the statutory recognition of an expanding service area for all these rights.

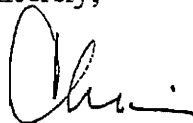
IV. Time frames for moving forward

As you know, UWID wishes to move forward with this process as expeditiously as possible. We hope that the Department will be in a position to formally address the "capacity of the system" issue just as soon as possible. (Please feel free to call upon us if we can provide operational experience or other information.) In the meantime, UWID will begin to put together its comprehensive change application along the lines described in this letter. Please advise us of any concerns or comments you have in this regard.

Once again, Ed and I thank you for the opportunity to work through these issues with you and your staff as we put together our application. We acknowledge and commend your vision in streamlining and simplifying the approach to integrating UWID's water rights under the new 1996 Municipal Water Rights Act — which you largely wrote — as well as your evident recognition of and commitment to the special needs of municipalities within our growing State.

We look forward to continuing to work closely with you and your staff as we move forward with this important and precedent-setting process.

Sincerely,



Christopher H. Meyer

Mr. Karl J. Dreher
January 25, 1999
Page 8

cc: Norman C. Young
David R. Tuthill
Gary Spackman
Jim J. Johnson
Phillip J. Rassier
Ed Squires

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Via Facsimile and U.S. Mail

June 3, 1999

Mr. Karl J. Dreher
Director
Idaho Department of Water Resources
1301 N. Orchard St.
Statehouse Mail
Boise, ID 83720-9000

Re: Municipal Water Rights
Our File No. 30-71

Dear Mr. Director:

This letter follows up my letter to you of January 25, 1999 and the meeting Ed Squires and I had with you and your staff on October 21, 1998 to discuss approaches to implementation of the 1996 Municipal Water Rights Act.

As you know, we are awaiting guidance from the Department, particularly with respect to (1) the issue of non-applicability of forfeiture rules to municipal water rights and (2) the proper interpretation of the "capacity of the system" provision in the 1996 Act.

With respect to the first item, I came across a discussion by Judge Krogh in her seminal work on water rights transfers which I wanted to make sure you were aware of. Judge Krogh states:

In *Beus v. Soda Springs*, [62 Idaho 1, 107 P.2d 151 (1940),] the court held that 1) the statutes which authorize

municipal corporations to acquire water works and provide water to its inhabitants give the city the power to acquire water rights not only for existing needs but also for future needs, 2) that a city may purchase lands with appurtenant water rights to acquire water for its municipal needs but need not cause the land to be irrigated in order to avoid loss of the water right on a charge of abandonment, and 3) that municipal corporations are by statute authorized to provide water outside city limits.

Therefore, when a municipal corporation acquires a water right, the city generally will not lose the water right due to nonuse. The possible limit of this holding is an open issue under Idaho law. Since the purpose of the exception is to allow cities reasonable opportunity to plan for future needs, there should similarly be some reasonable limitation on nonuse. One limitation that clearly applies is that the water right is still subject to challenges based on prior nonuse by the entity from which the water right is acquired, because the city would still be subject to the rule that when it purchases realty it acquires no more than the grantor had to convey. In addition, the court [*Beus v. Soda Springs*] stated that the city need not cause the land to be irrigated to avoid loss of the water right on a charge of *abandonment*. In those days, the courts often failed to distinguish between forfeiture and abandonment. Since the court relied on nonuse, it seems that the court was actually talking about forfeiture. The potential remains for a city's water rights to be lost by abandonment.

A. Lynne Krogh-Hampe, *Injury and Enlargement in Idaho Water Right Transfers*, 27 Idaho L. Rev. 249, 294-95 (1990) (emphasis supplied; footnotes omitted).¹

¹Judge Krogh goes on to note that the *Beus* case does not expressly extend the same result to private corporations serving municipalities. However, *Beus* itself quoted from a Wyoming case, *Holt v. Cheyenne*, 22 Wyo. 212, 137 P. 876 (1914), which demonstrates that the basis of the decision is not limited to interpretation of the statute, but was also based on general common law principles. This broader reading of *Beus* is confirmed in *Village of Peck v. Denison*, 92 Idaho 747, 450 P.2d 310 (1969), which

Mr. Karl J. Dreher
June 3, 1999
Page 3

Most likely you are already aware of this authority. But I wanted to make certain that it was not overlooked by the Department (as I had until recently!).

I do want to underscore the considerable sense of urgency which United Water feels in awaiting your guidance. The same is true, by the way, for the City of Nampa which is also undertaking a comprehensive review of its water rights. Since I will be out of the country from June 13 to July 2, it would be extraordinarily helpful if draft guidance could be made available before my departure.

Once again, thank you and your staff for your help, perseverance and consistently insightful perspective on this subject. I look forward to hearing from you.

Sincerely,



Christopher H. Meyer

cc: Norm Young, IDWR
Phil Rassier, IDWR
Ed Squires, UWID
Scott Rhead, UWID
Paul Raymond, City of Nampa
Case Houson, City of Nampa

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came to the same conclusion despite the fact that the statute in *Beus* had by then been repealed. Other commentators have also recognized that *Beus* is not limited to municipalities, but recognized special rules applying to all who serve "municipal needs." Wells A. Hutchins, *The Idaho Law of Water Rights*, 5 Idaho L. Rev. 1, 44 n.211 (1968); Frank J. Trelease, *Preferences to the Use of Water*, 27 Rocky Mtn. L. Rev. 133, 138 (1955).

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State of Idaho

DEPARTMENT OF WATER RESOURCES

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June 14, 1999

DIRK KEMPTHORNE

Governor

KARL J. DREHER

Director

RECEIVED

JUN 16 1999

Givens Pursley, LLP

Mr. Christopher H. Meyer
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277 North 6th Street
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Re: Municipal Water Rights

Dear Chris:

I have finally been able to focus on the issues you framed in your various letters dating back to January 25, 1999, regarding municipal water rights under the 1996 Municipal Water Rights Act (Idaho Code §§ 42-202, 42-202B, 42-217, 42-219, and 42-222). I very much appreciate your patience in waiting for me to have sufficient time to respond to these issues, even though this matter is of some urgency for one of your clients, United Water Idaho ("United Water"). My response is divided into three general topics: (1) System-Wide Change Application; (2) System Capacity; and (3) Forfeiture of Municipal Water Rights.

System-Wide Change Application.

It is my understanding that when an existing well in United Water's system suffered reduced production over a period of time or when a well was damaged, United Water obtained new water rights to divert ground water from new wells. As a result, United Water holds water rights that authorize the diversion of more ground water than the current system of wells has the capacity to produce. As I suggested in our meeting on October 21, 1998, the difference between the total quantity of ground water authorized for diversion and use by all of the water rights held by United Water, versus the total capacity of the current system of wells, could be considered a portion of the amount of water necessary for United Water to provide for "reasonably anticipated future needs" within its service area. This could require meeting all of the conditions set forth in Idaho Code § 42-202B as well as the "capacity of the system" limitation in § 42-219(1).

To initiate the process through which a determination can be made whether a portion of the water rights held by United Water could be considered necessary to provide for reasonably anticipated future needs, United Water could file an application under Idaho Code § 42-222 to change the point of diversion authorized under each water right for ground water to include as

alternate points of diversion some or most of the wells in United Water's system that are currently operated as production wells. The location of each well to be used as an alternate point of diversion would have to be specifically identified. Together with identifying each well location by quarter-quarter section, it would be helpful if the longitude-latitude or geographic coordinates for each well could be provided as well. Similarly, for those water rights wherein the place of use is defined differently than the service area of United Water, the application could also propose to change the place of use for those water rights to the service area.

If United Water chooses to file a system-wide change application, notice of the application would be provided and the application processed as set forth in Idaho Code § 42-222. If the application is approved, the approval would be conditioned to prevent enlargement of the water rights and injury to other water rights. Conditions of approval would likely include limiting the diversion rate from each well to the diversion rate authorized by the original water right established at each well and setting forth the priority date of the original water right at each well as the effective implementation date of the alternate point of diversion. The effective implementation dates would be used in resolving any future claims of well interference by other well owners, but would not be viewed as secondary priority dates. Another condition that would be considered would not allow wells in ground water management areas to be used as alternate points of diversion for water rights established outside of those areas.

System Capacity

As we have previously discussed and as noted in your January 25 letter, Idaho Code § 42-219(1) was modified by the 1996 Municipal Water Rights Act to allow the issuance of a water right license to a municipal provider for "an amount up to the full capacity of the system constructed or used in accordance with the original permit" Some might construe this limitation to require that a municipal provider fully construct the system used to divert or deliver water associated with a water right for an amount "reasonably necessary to provide for the existing uses and reasonably anticipated future needs within the service area" However, such interpretation would not be consistent with the intent of the 1996 Municipal Water Rights Act.

The purpose of the language in Idaho Code § 42-219(1) that refers to "an amount up to the full capacity of the system constructed or used in accordance with the original permit" is to define the beneficial use requirement for a municipal water right which includes "reasonably anticipated future needs." If a municipal provider is limited to the amount of water which is actually diverted and used under a permit, then there would never be any amount of water included under a water right for reasonably anticipated future needs. Similarly, if a municipal provider is required to fully construct the system used to divert or deliver water for reasonably anticipated future needs, the provider would not have any flexibility in its water supply/distribution system to make adjustments as the reasonably anticipated future needs become reality. Such inflexibility would likely result in system modifications that would be inefficient and increase consumer costs; a result that would be incompatible with the objective of encouraging municipal providers to implement well-planned, efficient water supply/distribution systems. Consequently, the beneficial use requirement of "the full capacity of the system constructed or used in accordance with the original permit" for a municipal water

right which includes an amount of water for "reasonably anticipated future needs" must lie between the one extreme of fully constructing the system used to divert or deliver water for reasonably anticipated future needs and the other extreme of simply intending to construct the system at some future date.

The appropriate criteria for determining whether "the full capacity of the system [has been] constructed or used in accordance with the original permit" are the degree to which the full capacity of the system has been constructed and the consistency of the constructed capacity with a definitive plan for fully constructing the system, both of which can only be evaluated on a case by case basis. To provide some guidance as to how these criteria should be applied, the following hypothetical examples are offered.

Consider the case of a municipal water provider with a permit to appropriate an amount of surface water for "reasonably anticipated future needs." If the municipal provider fully constructed the necessary water treatment plant and the distribution mains needed to deliver the full amount of water under the water right, the "full capacity of the system" requirement (termed herein as the "full beneficial use requirement") would clearly be satisfied, whether or not water lines for individual users were connected to the distribution mains. But less constructed capacity could also satisfy the full beneficial use requirement. For example, if the municipal provider constructed only a portion of the necessary water treatment plant and only a portion of the distribution mains, and those constructed portions of the system were shown to be significant, integral parts of a detailed plan or design to provide the full capacity of the system, the full beneficial use requirement could still be satisfied provided a substantial investment in the unconstructed capacity of the total system had been made. However, if the municipal water provider constructed a water treatment plant with limited potential for expansion which could treat only a small portion of the water authorized under the permit to appropriate water, constructed an isolated portion of the distribution mains needed to deliver the full amount of water, or otherwise made only a small investment in the unconstructed capacity of the planned system, the water right license might appropriately be issued for an amount of water less than the amount authorized by the permit or the planned full capacity of the system.

For a municipal provider with a permit to appropriate an amount of ground water for reasonably anticipated future needs, construction of the well or wells and the distribution mains needed to divert and deliver the full amount of ground water authorized under the permit should clearly satisfy the full beneficial use requirement. But like the hypothetical provider of treated surface water, less constructed capacity for a ground water system could also satisfy the requirement if the constructed portions of the system were shown to be significant, integral phases of implementing a detailed plan to provide the full capacity of the system and there was substantial planning, design, and investment in the unconstructed capacity of the complete system. Documentation that could be used to demonstrate substantial planning, design, and investment in the unconstructed capacity of the complete system includes the following:

- provision of an overall detailed design of the full capacity system for meeting reasonably anticipated future needs;
- financing plan demonstrating ability to fully pay the costs of constructing the full capacity system needed to meet reasonably anticipated needs;

- completed environmental studies needed to satisfy legal or permitting requirements for some unconstructed portion or for all of the full capacity system;
- acquisition of lands needed for future wells, pumping stations, and other facilities consistent with the overall design for the full capacity system;
- substantial construction of distribution mains shown to be essential and integral portions of the full capacity system through water distribution network analysis;
- construction of distribution system or regulatory storage consistent with the overall design of the full capacity system; and
- development of operations protocol and infrastructure needed to operate the full capacity system consistent with the overall system design.

There may be other information that a municipal water provider could also provide to demonstrate that constructed portions of the system were significant phases of implementing a detailed plan to construct the full capacity of the system and that substantial investment had been made in the unconstructed capacity of the complete system. However, any single factor alone probably would not be sufficient to demonstrate that the full beneficial use requirement for a municipal water right had been satisfied. Rather, constructed capacity and all of the information used to demonstrate substantial planning, design, and investment in unconstructed capacity of the complete system would be weighed as a whole in determining whether the beneficial use requirement had been met.

The type of information outlined above that could be used to satisfy the full beneficial use requirement for a municipal water right is similar to the information required in Colorado to establish and maintain a conditional water right. In fact, under the 1996 Municipal Water Rights Act, that portion of a municipal water right in Idaho that includes an amount of water for reasonably anticipated future needs could be viewed as somewhat analogous to a conditional water right in Colorado.

Please note that I have not attempted to outline the type of information that should be considered in supporting the "reasonably anticipated future needs" that a municipal water provider might claim. However, Idaho Code § 42-202B(5) describes in general the information that would be required to support an appropriation of water for "reasonably anticipated future needs."

Forfeiture of Municipal Water Rights

In your recent letter dated June 3, 1999, you provided some information that could be interpreted to suggest that a water right held by a municipal corporation, or another municipal provider as defined by the 1996 Municipal Water Rights Act, may not generally be subject to

Mr. Christopher H. Meyer

June 14, 1999

Page 5 of 5

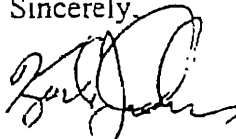
forfeiture. Although the basis for forfeiture is different for a municipal water right, just as the standard for beneficial use is different as discussed above, I would disagree with a conclusion that municipal water rights are immune from forfeiture.

When a municipal provider is granted a permit to appropriate water for "reasonably anticipated future needs" within the planning horizon for the municipality, the permit will be conditioned to require that the full system capacity needed to provide water for the reasonably anticipated future needs be constructed by the end of the municipality's planning horizon. The municipal provider will then be required to submit proof of beneficial use evidenced by construction of system capacity and substantial planning, design, and investment in the unconstructed capacity of the complete system by the end of the permit development period. If proof is not submitted and an extension to the permit development period has not been granted, as provided under Idaho Code § 42-204, the municipal provider shall be deemed to have lost all rights under its permit.

If sufficient proof of beneficial use is submitted before the end of the permit development period and the municipal water right is licensed for an amount of water for "reasonably anticipated future needs," the requirement that the full system capacity needed to provide water for the reasonably anticipated future needs be constructed by the end of the municipality's planning horizon will continue as a condition of the license. If the municipal provider fails to construct the full system capacity needed to provide water for the reasonably anticipated future needs by the end of the planning horizon for the municipality, or the anticipated future needs do not materialize by the end of the planning horizon, the quantity of water under the license may be reduced to the capacity of the constructed system or the amount of water required to meet the needs that actually exist at the end of the planning horizon. Although a municipal provider can revise the planning horizon and amend its projections of reasonably anticipated future needs subsequent to the water right license being issued, provided the criteria in Idaho Code § 42-202B(5) are fully satisfied, the water right remains subject to being reduced or forfeited if actual use of the water does not occur. Municipal water rights established prior to the 1996 Municipal Water Rights Act might also be subject to common law abandonment or forfeiture if the rights are not required to satisfy reasonable future needs of the municipality.

I hope these thoughts on the issues you raised are helpful to you and your clients. I intend to have these concepts incorporated in a guidance memorandum for staff of the Department of Water Resources so that the 1996 Municipal Water Rights Act is implemented uniformly. If you have additional questions or would like to discuss these issues or others further, we can arrange to meet again.

Sincerely,



Karl J. Dreher
Director

cc: IDWR Water Management Division
Ed Squires / Scott Rhead - United Water

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July 26, 1999

Mr. Karl J. Dreher
Director
Idaho Department of Water Resources
1301 N. Orchard St.
Statehouse Mail
Boise, ID 83720-9000

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

Dear Mr. Director:

Thank you for your letter of June 14, 1999, which arrived just as Chris was leaving for his sabbatical. We are writing jointly to thank you for the time and effort you have put into your review of this matter.

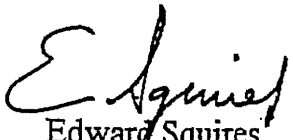
The guidance you offer is critical to the United Water Idaho's thinking as it moves forward with its planned System-Wide Change Application. Based on this information, the Company is now gearing up to proceed as rapidly as possible in this regard.

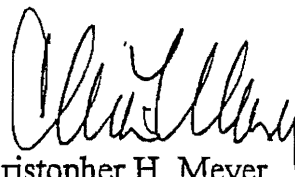
We will be in touch with you shortly to inquire about the possibility of scheduling a further meeting with you. We would like to explore the specifics of the application with you, including such matters as the duration of the planning horizon, projected growth numbers, documentation requirements, and so on. We are now preparing a draft outline of our application and supporting documents. As soon as the draft is completed, we would like an opportunity to share our thinking with you and to seek additional, more specific guidance. We anticipate moving quickly on this, and look forward to working with you and your staff further.

Mr. Karl J. Dreher
July 26, 1999
Page 2

Once again, we wish to thank you for the thoughtful and comprehensive guidance set out in your letter of June 14, 1999.

Sincerely,


Edward Squires
United Water Idaho


Christopher H. Meyer
Givens Pursley LLP

cc: Norm Young, IDWR
Phil Rassier, IDWR
Scott Rhead, UWID
Jeff Fereday, Givens Pursley

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September 24, 1999

Mr. Karl J. Dreher
Director
Idaho Department of Water Resources
1301 N. Orchard St.
Statehouse Mail
Boise, ID 83720-9000

Re: Municipal Water Rights
Our File No. 30-71

Dear Mr. Director:

As you know, United Water Idaho ("UWID") is developing a comprehensive transfer application to bring its water rights portfolio under the Municipal Water Rights Act of 1996. Your guidance and the assistance of your staff have been invaluable in that process. As we develop the application, however, additional questions have arisen which, I believe, call for further discussions with the Department.

I request a meeting at your earliest convenience to explore the issues outlined below. I will contact your staff to inquire about possible times.

I. Flow rate and annual volume dimensions of municipal water rights held for future needs

One of the issues UWID has explored is how to describe and quantify a municipal water right, particularly in the context of a future needs analysis. As you know, municipal rights are ordinarily quantified solely by a flow measurement. In the case of a ground water right, that flow measurement is typically the installed capacity of the well with which the right is associated.

The lack of a volume limitation reflects the Department's recognition of the authority of a municipal provider to fully "grow into" each of its municipal water rights. Another way of putting this is that the annual volume which corresponds to a municipal water right is the volume associated with pumping at full capacity year round. This would be the maximum volume physically capable of being produced in a year. (By the way, this "capacity" measure—and how to handle potential future increases in well capacity—is explored in part II below.)

Of course, at any given point in time, a municipal provider will have an actual, instantaneous production quantity associated with its portfolio of rights (in other words, the sum of flows from each of its wells). This production level will vary over the course of the year, obviously, with a peak during the summer months and demand tapering off on both sides toward a lower year-round base demand. This "annual production curve" may be plotted on a graph, with instantaneous flow rate on the vertical axis and the months of the year on the horizontal axis. The area under the curve would reflect the annual production volume.¹ A set of hypothetical annual production curves is sketched in Appendix A.

In a given year, the base demand will be filled by the most senior water rights in the municipal provider's portfolio of rights. (At least, this is the way it will work after we transfer all of the company's rights so that each is an alternative point of diversion for each other.) In other words, the rights serving the base will be drawn upon at the full diversion rate 365 days a year—thus achieving their full potential annual volume.

Over time, as municipal production expands, the production curve will rise, including the base. As each water right in the portfolio reaches maturity, it will serve year-round base demand. Assuming continued growth, each water right eventually will become part of the base and will be used to its full annual volume capacity.

¹During the summer peak, most wells are literally producing at full capacity 24 hours a day. Demand, of course, falls off a bit at night and during midday, but these times are used to refill the reservoirs on a daily basis. During the non-peak season, the wells typically do not produce at full diversion rate 24 hours a day. If the data are based on historic records of daily volumetric totals (gallons/day), the flow rate shown on the vertical axis is not truly instantaneous, but a daily average. Consequently, it may readily be translated into an annual volume in acre-feet at all times of the year (by multiplying by 723.795). To the extent historical data based on gallons/minute are used (virtually equating to instantaneous flow), this translation may not be accurately made without some adjustment.

This is the practical way in which the Department has implemented the flexibility accorded to municipal providers under the common law. The question we pose is whether the analysis ought to be any different in the context of a future needs analysis under the Municipal Water Rights Act of 1996. We think not. But we wish to squarely pose the question, invite discussion, and make sure that we are proceeding with the same understanding as the Department.

The question is posed graphically by the figure shown in Appendix A. As noted above, the area under each hypothetical annual production curve reflects the total volume of water produced in that year. The 25 numbered horizontal lines represent 25 hypothetical ground water rights in order of priority, with the most senior at the bottom. (Their widths vary, reflecting the diversion volume of each right.)

The hypothetical 1999 production curve, in green, shows that water rights 1 through 13 were required to meet the peak flow this year, while water right 1 through 4 would have been sufficient to satisfy the year-round base demand. UWID would suggest that under this hypothetical, water rights 1 through 13 are "current use" water rights. Per current departmental practice, they should be quantified solely in terms of diversion rate, allowing UWID to "grow into" the red-shaded part of the rights.

Let us suppose also that the Department were to approve a 50 year planning horizon with projected needs as reflected in the purple curve. (The length of the planning horizon is discussed in part III below.) In the Appendix A hypothetical, this justifies holding water rights 14 through 25 as "future needs" water rights.

UWID would contend that the future needs water rights, just like current needs rights, should be quantified in terms flow. That is, they should have no volume component (or the volume component should equate to year round use at peak flow). Thus, as UWID continues to grow its service area, it may continue to "grow into" its water rights held for future needs. If the future needs predictions comes to pass, by year 2049 UWID would grow into the red-shaded area of water rights 4 through 13 and the purple shaded area of water rights 14 through 25.

We want to call to your attention the fact that this approach contemplates not growing into the yellow-shaded portion of water rights 14 through 25 for more than 50 years—that is, not until some time beyond the planning horizon. For instance, if all goes as predicted in this hypothetical, in the year 2049, UWID will have grown into a

relatively small part of water right number 50 (about two month's use), which will be needed to fill in the top of the summer peak. In the years beyond 2049, UWID would presumably continue to grow more fully into water right numbers 14 through 50, using more and more of them until, at some point, their entire volume became part of UWID's base production.

Of course, UWID fully recognizes that all water rights, including municipal water rights, are subject to an ongoing beneficial use requirement. If, for instance, dramatic changes in demographic trends had occurred by the year 2049, and it appeared that UWID would never grow into its full portfolio of future needs water rights, some part of UWID's portfolio might be subject to challenge on the basis of partial forfeiture.

In the absence of such a startling reversal in the growth pattern, however, UWID would take the position that it should be allowed to continue to grow fully into each of its water rights, including those held for future needs. And including those which it will be using only "partially" by the end of its planning horizon.

We would appreciate your guidance on this issue. Obviously, how one views the measure of a municipal water right will have a significant impact on how UWID goes about analyzing and documenting its current and future needs.

II. Peak capacity

The discussion above assumes that "peak capacity" is a fixed number for each well. In fact, for a substantial number of UWID's wells, there is a measurable potential increase in production which is, if you will, "built into" the well.

UWID has prepared a draft chart, which we will be pleased to share with you, showing on a well-by-well basis how much additional capacity is achievable, and what steps would be required to achieve it. Typical actions include increasing the pump capacity, lowering the pump, adjustment of screens, etc.

In some cases, the well was expressly designed from the beginning, at increased cost, to facilitate future production increases.² In other cases, the wells were designed to

²The clearest example of this is the 13th Street Well. It was drilled in 1934 to accommodate a 1,000 gallon per minute pump, but only a 300 gallon pump was installed. (Consequently it was licensed

facilitate future production increases, but that design may have served multiple purposes—thus making it less clear whether there was an original “intent” to expand production at a later time. In other cases, the potential production increases are not reflected at all in the original design of the well, but are nonetheless feasible.

We would appreciate guidance from the Department as to whether and under what circumstances UWID may assert a claim, presumably a “beneficial use” claim with priority dating back to the original well construction, based on the higher potential production capacity of a well.

III. Planning horizon

We intend to request the Department’s approval of a 50 year planning horizon. We believe that this level of forward planning is justified and appropriate for a major municipal supplier in a rapidly growing area such as the Treasure Valley.

Obviously, looking this far out will entail extrapolation beyond the time horizon of other planning agencies in the region. We would like to discuss this with you, and make certain that it is consistent with what the Department envisions.

IV. Overlapping inconsistent comprehensive plans

As you well know, the 1996 Act contains special provisions prohibiting the recognition of future needs water rights to serve areas overlapped by conflicting, inconsistent comprehensive plans. Specifically, the Act defines “reasonably anticipated future needs” with these two provisos:

Proviso 1: “Reasonably anticipated future needs’ refers to future uses of water by a municipal provider for municipal purposes within a service area which, on the basis of population and other planning data, are reasonably expected to be required within the planning horizon of each

according to the installed capacity of 0.8 cfs, *see* Water Right No. 63-2500.) Two decades later, in accordance with the long-term plan, the original pump was removed and replaced with a 1,000 gallon pump (*see* beneficial use Water Right No. 63-19456 adding an additional 1.6 cfs for a total of 2.4 cfs out of the well).

municipality within the service area not inconsistent with comprehensive land use plans approved by each municipality."

Proviso 2: "Reasonably anticipated future needs shall not include uses of water within areas overlapped by conflicting comprehensive land use plans."

Idaho Code § 42-202B(5) (definition of "reasonably anticipated future needs") (emphasis supplied).

A. Do we need to map our future service area?

The first question is which municipalities are we talking about? Those served today, or those which might be served 50 years out?

In our case, the question is somewhat academic, in that UWID, at this point, does not expect to claim future need water rights on the basis of expanding its service areas into municipal areas it does not serve today.³

Nevertheless, it seems conceptually troubling for the statute to recognize, on the one hand, that a provider has a growing service area which has no clear boundaries, and then, on the other hand, to expect the provider to predict exactly which areas it will be serving 50 years from now for purposes of projecting future demand.

We want to make sure that we are on the same page with the Department as we approach this process. Does the Department anticipate that a municipal provider will base its future demand projections on the basis of identified expansions in its service area, or simply upon more generalized projections of regional growth?

B. Is it the planning horizon of the municipality or the provider?

³Specifically, UWID does not assert future needs based on service to Nampa, Meridian, Kuna, or Star. Rather, its future needs are based entirely on expansion of the municipal areas it serves today: Boise, Eagle and Ada County. UWID also serves two isolated residential developments in Canyon County. UWID is not claiming future need water rights for these, however.

The first provision is somewhat difficult to decipher. Future needs are defined (perhaps in error) in the context of "the planning horizon of each municipality within the service area." But it is the municipal provider (UWID, in this case) which has a planning horizon, not the municipalities it serves. So what, then, is meant by the "planning horizon of each municipality"? We think that the legislature must have meant "for" when it said "of." Thus, the provision should be read to refer to water "required within the planning horizon [of the provider] for [use within] each municipality within the service area [of the provider] ..." This reading makes sense of the statute, and avoids the need to define separate planning horizons for each municipality.

C. How do we show "consistency" with comprehensive plans?

This leaves the final clause: "not inconsistent with comprehensive land use plans approved by each municipality." A threshold question for the Department is, what does "inconsistent" mean.

We attribute a limited role to this proviso. If, for instance, a comprehensive plan contained specific provisions bearing on water use, those should be reflected in the future needs assessment. For example, if a comprehensive plan declared that all future development shall be xeriscaped, dual irrigated (e.g., with water from paved irrigation district land), or the like, then such requirements should be reflected in and factored in some reasonable way to the projected future needs. However, not too sharp a point should be put on this.

D. Areas of impact

The second provision quoted above contains the more specific requirement. It apparently requires that the comprehensive plans for each municipality (including counties) within the service area be reviewed to determine if any conflict with each other.

Again, the question is, what is a "conflict"? We assume here that "conflict" reaches only conflicts having some bearing on growth, population, water demand and the like.

An example of such a conflict, and the primary one, we assume, would be

overlapping area of impact zones.⁴ Fortunately, this is not a common problem in Idaho due to the nature of planning and zoning law and practice. But it does arise—in fact, twice in Ada County.

In any event, UWID has undertaken a preliminary review of all comprehensive plans in Ada County (including the County's). The only conflict we have been able to identify to date is with respect to the area of impact zone for the Cities of Kuna and Star. Apparently these cities and Ada County are in disagreement as to where their respective area of impact boundaries should fall. (In short, the cities have more expansive visions of their future growth than does Ada County.)

Does this mean that UWID must exclude any population growth attributable to these disputed areas from its future needs analysis? How, exactly, should we go about making an adjustment to reflect this? We assume that we need to draw a map of UWID's projected future service area which excludes these areas of conflict, and to base future demands only on areas not so excluded. Are we putting too fine a point on this exercise? May we ignore "de minimus" inclusion of "overlapped areas" in our future service area (as in the case of Star)?

V. Approaches to the growth projections

We are now in the process of quantifying the growth projections on which UWID will base its future needs claims. The statute provides no guidance whatsoever on how this is to be accomplished, other than to say that its future needs should be based on "population and other planning data." Idaho Code § 42-202B(5).

There are a number of ways this might be approached, including uses of UWID historical production data, population trend data, water consumption data, and various interactions among them. We would like to lay out for you our current approach, and make certain that we are progressing in a direction that is consistent with your expectations.

⁴Of course, this does not prohibit actual water service to such an area. Rather, it means that a provider's future needs claim may not be based on projected growth in demand within this particular area.

VI. Integration of ground and surface rights

It is our assumption that the Department will want to look at both the ground water and surface rights components of UWID's portfolio in analyzing the company's current and future needs. We view this as a fairly straightforward exercise whereby ground and surface rights are added together to present a total flow number for the entire portfolio. We raise it here, however, in the event that you may prefer a different approach, or perceive special issues or difficulties in quantification.

VII. Water conservation

UWID has an active program promoting water conservation by its customers. We wish to discuss with you how this program should enter into the analysis of future needs.

VIII. Isolated Areas

As mentioned above, UWID serves two residential developments in Canyon County: Coventry Place and Carriage Hills. These areas are not interconnected to UWID's Ada County system. Since UWID does not currently plan to extend its service area through Meridian and Nampa, it is not clear whether these areas (and others which might be added in Canyon County) will ever be integrated with UWID's Ada County system.

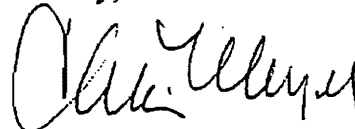
We would appreciate the Department's guidance on how to handle these areas. Should they be reflected in UWID's future needs portfolio? Should UWID's service area description address these areas? Or should we treat them as distinct components which do not figure in at all to UWID's future needs application?

Conclusion

I appreciate that this letter has been quite a mouthful, and that it will take some time and concentration to hash through each of these issues. We continue to believe, however, that the "up front" effort put into this by both the Department and the company will pay off for all concerned with a carefully reasoned application and, ultimately, a more manageable water rights system. Once again, allow me to thank you and your staff for your help in achieving this goal.

Mr. Karl J. Dreher
September 24, 1999
Page 10

Sincerely,



Christopher H. Meyer

Attachment: Future needs chart (hypothetical)

cc: Norm Young, IDWR
Phil Rassier, IDWR
Scott Rhead, UWID
Joe Miller, McDevitt & Miller

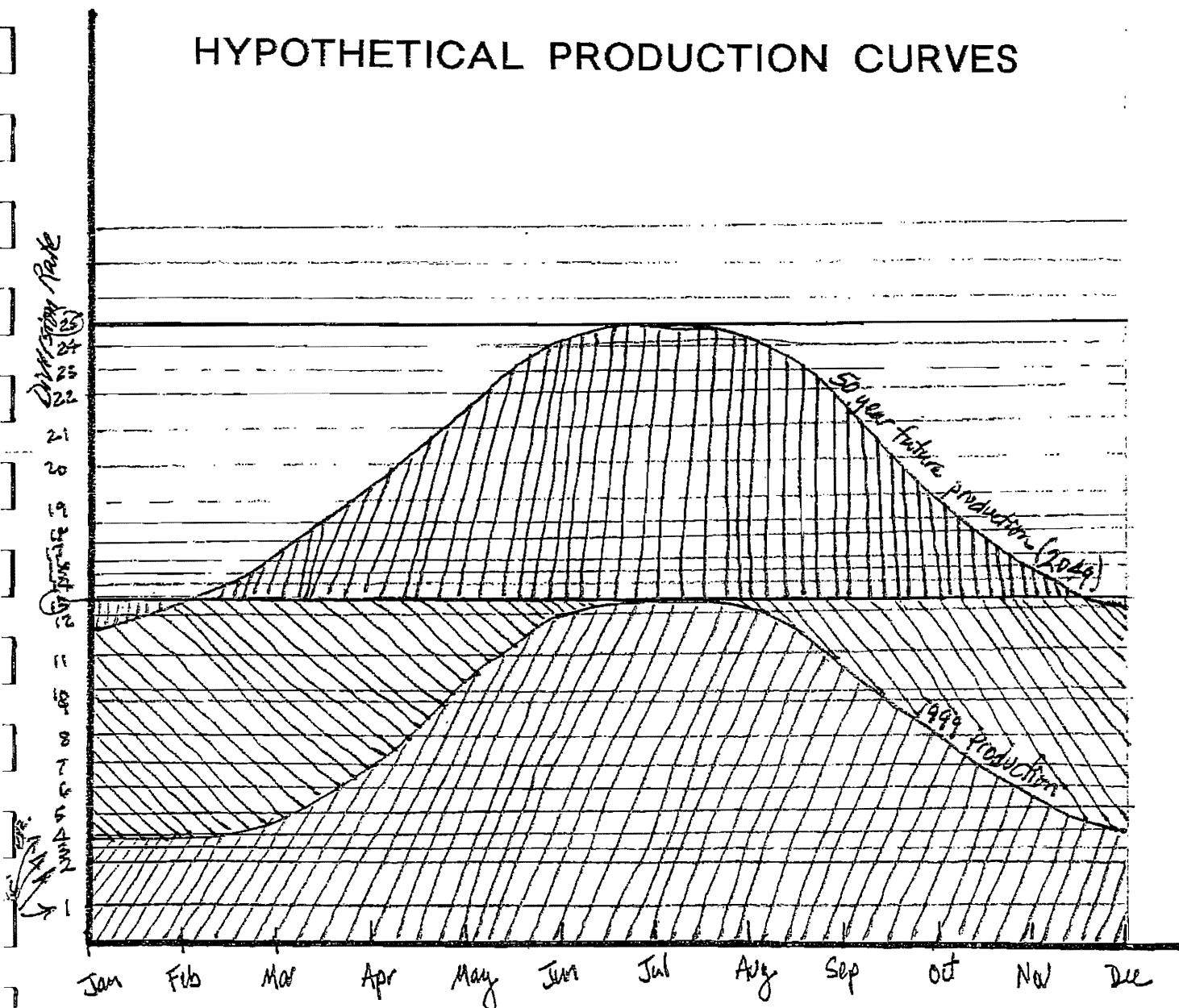
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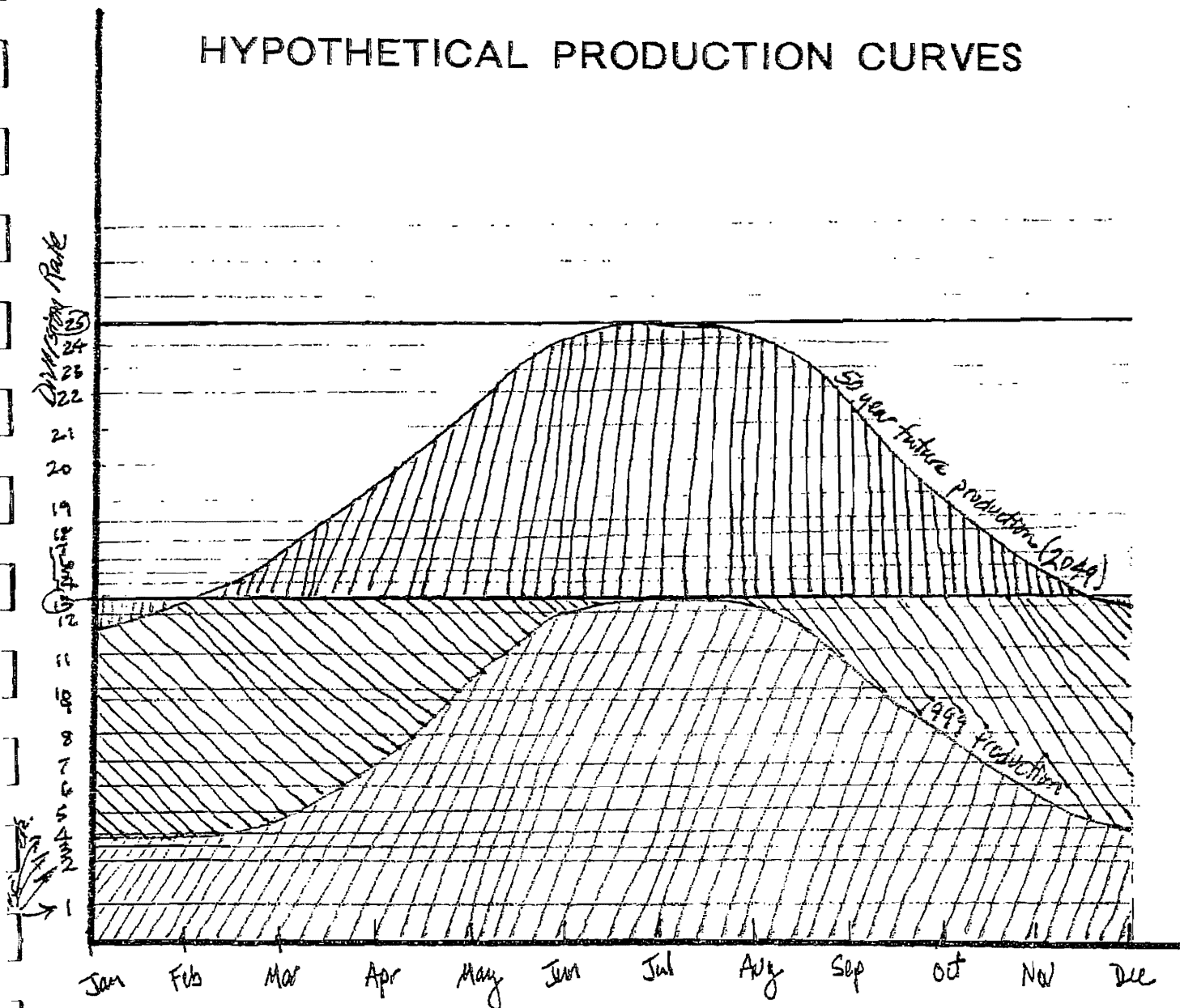
APPENDIX A TO CHM LETTER (9-24-99)

HYPOTHETICAL PRODUCTION CURVES



APPENDIX A TO CHM LETTER (9-24-99)

HYPOTHETICAL PRODUCTION CURVES



11

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October 26, 1999

Mr. Karl J. Dreher
Director
Idaho Department of Water Resources
1301 N. Orchard St.
Statehouse Mail
Boise, ID 83720-9000

Re: Municipal Water Rights
Our File No. 30-71

Dear Mr. Director:

On behalf of United Water Idaho ("UWID" or the "Company"), I would like to thank you very much for the opportunity to meet with you, Norm Young and Phil Rassier last Monday, October 18, 1999, regarding implementation of the Municipal Water Rights Act of 1996. Ed Squires, Don Alloway and I appreciated the good discussion and progress made in ironing out a number of issues. As I mentioned, Scott Rhead of United Water would have participated but was out of town.

As always, your guidance was most helpful on a number of fronts. I thought it would be a good idea to briefly recap where we left things. For simplicity, I will follow the same outline of issues used in my September 24, 1999 letter on behalf of UWID.

I. Flow rate and annual volume dimensions of municipal water rights

We discussed the Department's longstanding practice of quantifying municipal water rights in terms of instantaneous flow rate without a volumetric component (other than the implicit quantity based on year-round operation at peak). You indicated, and we agree, that nothing in the 1996 Act suggests that any departure from this practice is

Mr. Karl J. Dreher
October 26, 1999
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appropriate.

The effect of this is that when a new water right is first added to a municipal provider's portfolio, it will be used at peak flow only for a few months of the year. As the municipal provider's service demand continues to grow over time, the water right will eventually be put to use year round to serve a steadily growing base demand. This idea of "growing into" a municipal water right is illustrated on the colored Attachment A to my letter to you of September 24, 1999.

On the other hand, as a practical matter, you made it clear that the Department needs realistic information about the current and projected shape of the Company's overall production curve for the agency's planning purposes. We agreed to provide such information.

II. Peak capacity

Our September 24, 1999 letter raised the question of how we measure the peak capacity of the Company's existing water rights. For instance, should the water right be limited to the capacity of each well as installed? Or should it take into account the inherent potential for increasing the capacity?

We did not spend very much time on this subject at our meeting last week. In large part this is because the factual issues are not yet fully developed.¹

In the meantime, we follow the more conservative approach of using the original installed capacity (as proved up, in the case of a licensed right) as the measure of each water right in UWID's current portfolio.

III. Planning horizon

We discussed our intention, at this point, to seek the Department's approval of a planning horizon of at least fifty years. You asked for additional documentation, but seemed generally comfortable with this.

¹For instance, I am advised that the suggestion in my September 24, 1999 letter that the Company incurred additional expense at the time of original drilling in order to accommodate subsequent capacity enhancements may not be accurate.

IV. Overlapping inconsistent comprehensive plans

A. Do we need to map our future service area?

We inquired whether it made sense to require applicants for 1996 Act water rights to map out their projected service area fifty years into the future. (After all, one might ask, isn't this inconsistent with the idea reflected in the statute of a flexible, expanding service area whose boundaries are not delineated?)

You acknowledged that there is indeed some irony in requiring the mapping of precise boundaries fifty years out when it is not required in year one. But you observed that you can not meaningfully evaluate and quantify an application under the 1996 Act without having a clear delineation of the area for which long-term service obligations are to be calculated.

We both noted that any map provided to the Department is no more than a prediction. Moreover, it intentionally excludes areas which are likely to be served, but which may not fit the statute's rules governing conflicting comprehensive plans. Consequently, we agreed to call this fifty-year projection a "planning area" to distinguish it from the current or future "service area".

Fifty years from now, the actual service area will have evolved extensively and may not end up matching the planning area as submitted. This is of no consequence, so long as the water is needed somewhere within the service area. Water rights approved under the 1996 Act may be used anywhere within the provider's evolving service area, whatever that area turns out to include. In other words, the fact that a particular area has been excluded from the "planning area" at the time of application will correspondingly reduce the total quantity of water approved under the 1996 Act. But failure to include an area within the planning area does not in any way restrict the applicant from actually serving the excluded area (then or in the future).

B. Is it the planning horizon of the municipality or the provider?

We identified a semantic drafting problem with the 1996 Act. Section 42-202B(5) refers to "the planning horizon of each municipality within the service area". This does not fit with the definitions in the Act. Municipalities which are not in the water business do not have planning horizon as the term is used in the statute.

By the way, out of curiosity, I went back to my original draft of the bill (dated November 27, 1995) to see how this language compared. Sure enough, the language that you and I were working from refers to "the planning horizon of the municipal provider ...". Who knows how this got changed along the way.² In any event, I feel confident that the switch from "municipal provider" to "municipality" was inadvertent.

The bottom line is that you read this provision the way it was originally intended: requiring that there be no inconsistency between the provider's articulation of its long-term service obligations and the comprehensive plans of each municipality within the area to be served.

C. How do we show "consistency" with comprehensive plans?

We had an interesting, philosophical discussion about the purpose of the section of the 1996 Act which prohibits the inclusion of "areas overlapped by conflicting comprehensive land use plans." I observed that the statute is aimed at prohibiting water hoarding by nearby municipalities each of whom envision growing into the same adjacent area. This is the "Front Range" phenomenon.

In Idaho, with very few exceptions, this problem does not exist. Idaho is blessed with a very effective Local Land Use Planning Act which provides a strong impetus for municipalities to work out their differences, in coordination with planning at the county level. What results, almost always, are precisely negotiated, non-overlapping areas of impact. Thus, conflicts between municipalities in Idaho over conflicting geographical growth projections are relatively few.

Rather, the type of conflict which you must deal with is between competing private municipal providers, or between a private municipal provider and a municipality. Frankly, the statute does not directly address this issue. It says that the Director must deny a 1996 Act water right where comprehensive plans are in conflict. But private providers do not have comprehensive plans. For instance, in Eagle, there are three potential providers but only one comprehensive plan—which says nothing about who

²I recall your changing "generally consistent with" to "not inconsistent with". And I recall your adding the additional sentence: "Reasonably anticipated future needs shall include uses of water within areas overlapped by conflicting comprehensive land use plans." But I do not recall the other wording changes, and am inclined to attribute them to poltergeists within the office of legislative drafting.

Mr. Karl J. Dreher
October 26, 1999
Page 5

will provide water (or how much). The statute does not tell you how to resolve this, or whether it even needs to be resolved.

You indicated at our meeting that, regardless of what the statute says or fails to say, you think the intent of the statute is exclude from the benefit of the 1996 Act any land subject to any planning conflict (including conflicting service claims between private providers). (Of course, the exclusion of such an area from the calculation under the 1996 Act would not prevent a municipal provider from serving that area or any area ultimately approved by the PUC.)

I promised to explore this issue further with United Water to evaluate whether, from a practical perspective, the Company objects to this interpretation of the statute. I will be following up.

In any event, at the risk of stating the obvious, United Water will expect consistent application of such a rule. For instance, United Water will not exclude an area from its "planning area" only to see another entity claim long-term service responsibility and/or water rights for that same area.

D. Areas of impact

We identified two areas in which the areas of impact have not been fully resolved within Ada County: Kuna and Star. You suggested that we leave all disputed rural areas surrounding these cities out of UWID's planning area. We believe that some of these disputes fall outside the statute's "conflicting comprehensive plans" prohibition, but are looking into this further. We certainly do not wish to pick a fight over an academic concern.

V. Approaches to the growth projections

A considerable portion of the meeting was given to a discussion of how we are approaching the quantification of the Company's claim under the 1996 Act. Following extensive discussion and explanation, you seemed to be generally comfortable with our proposed approach.

The basic thrust is this:

1. Determine the current baseline population served by UWID within the planning area today.
2. Project Ada County's population out for fifty years. We have been using Idaho Power data for this. At Phil Rassier's suggestion, we will also look at some other sources.
3. Allocate the proper fraction of the county's year 2050 population to UWID's planning area.
4. Compare the baseline population for the planning area with the fifty-year projection to produce a "growth multiple".
5. Adjust the growth multiple to take into account anticipated changes in:
 - (a) water conservation;
 - (b) lot size;
 - (c) dual irrigation; and
 - (d) family size.
6. Apply the adjusted "growth multiple" to current peak production. For instance, if the adjusted growth multiple is 2.5, and the Company's current peak production is Y gpm, then the sum of our current and long-term needs would be $2.5 \times Y$ gpm.

VI. Integration of ground and surface rights

We did not address this issue, but we think the answer is obvious. We assume that the Department will want both the ground water and surface rights to be evaluated together as part of a comprehensive determination of UWID's service obligations in Ada County.

Mr. Karl J. Dreher
October 26, 1999
Page 7

VII. Water conservation

As mentioned above in item V.5(a), this is a factor which would be reflected in the adjusted growth multiple.

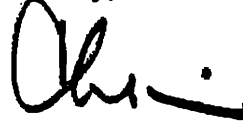
VIII. Isolated Areas

You and I agreed, at least for the time being, that it made sense to exclude UWID's two small and non-interconnected Canyon County operations from the Company's long-term service analysis under the 1996 Act. If and when UWID develops a larger footprint in Canyon County with a more tightly integrated delivery system, it may seek to readdress the issue. For instance, the Company may always approach the Department in the future with a separate application under the 1996 Act to serve its Canyon County operations and/or a revised comprehensive application to serve both Ada and Canyon Counties.

Conclusion

Once again, allow me to thank you on behalf of United Water Idaho for the time and effort you and your staff have put into this undertaking. As a result, we are making real progress in developing the comprehensive transfer application which will enable UWID to bring all its water rights within the 1996 Act. As we discussed, we anticipated the transfer application being followed (or accompanied) by an application for a new ground water right to fill out UWID's long-term service obligation.

Sincerely,



Christopher H. Meyer

cc: Norm Young, IDWR
Phil Rassier, IDWR
William C. Linam, UWID
Scott Rhead, UWID
Ed Squires, UWID
Joe Miller, McDevitt & Miller

CHM:baf

12

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April 14, 2000

Via Hand Delivery

Mr. Karl J. Dreher
Director
Idaho Department of Water Resources
1301 N. Orchard St.
Statehouse Mail
Boise, ID 83720-9000

Re: United Water Idaho — Integrated Municipal Application Package
Our File No. 30-71

Dear Mr. Director:

I am pleased to enclose, on behalf of United Water Idaho, a copy of our final draft *Integrated Municipal Application Package* or IMAP, as we have termed it.

This document reflects the culmination of years of work which began with the drafting of the Municipal Water Rights Act of 1996, in which you played the principal role. In the years which followed, you and your staff have worked closely with United Water to answer numerous technical questions.

With your guidance in hand, UWID has worked over the last several months to develop this comprehensive application package. We believe it responds effectively to the legislative demand for sound planning by municipal providers in the face of events which are rapidly transforming the Treasure Valley.

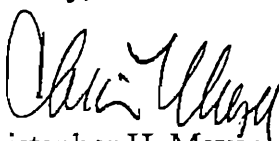
We are submitting this to you informally as a draft document and not for filing at this time.

Mr. Karl J. Dreher
April 14, 2000
Page 2

At your earliest convenience, we wish to sit down with you and your staff, as you deem appropriate, to answer any questions you may have about the approach taken in the IMAP, and to explore any issues which may arise. This will afford us an opportunity to address immediate concerns of the Department and, if necessary, make changes or additions to the IMAP before formal submission and public review.

We look forward to discussing this with you.

Sincerely,



Christopher H. Meyer

Encl: *Integrated Municipal Application Package* (Draft 4-12-2000)

cc (with encl.):

Norman C. Young, IDWR
Gary Spackman, IDWR
David R. Tuthill, IDWR
Phillip J. Rassier, IDWR
Gregory P. Wyatt, UWID
H. Scott Rhead, UWID
Daniel Brown, UWID

CHM:kdt

S:\CLIENTS\30\71\Corr\2000-04-14 CHM Ltr to K.Dreher - Re Draft IMAP.wpd

13

Memo

*Comments c 4/2000 DRAFT
IMAP*

To: Hal Anderson, Dave Tuthill
From: Zena Cook
CC: Bill Graham
Date: 05/10/00
Re: Data

1. General Comments:

Overall I find the report to be poorly documented, both in terms of methodology and reference material. There are too many conjectural statements which are unsubstantiated. The methodology is rather simplistic and relies too much on population as a determinant of water use, which has been found to overestimate water demand. It also appears that the population projections are high.

I appreciate that an attempt has been made to incorporate factors such as price, conservation and density into the analysis, but these have been done in a back of the envelope fashion which makes it difficult to evaluate them.

2. General Methodology:

- a. The methods used in the study are not typical of those used in other water forecasting studies. The most widely used and accepted method separates residential from commercial water demand and uses different approaches for each. United Water has treated commercial water needs as a residual component (as a fixed percentage of residential) rather than broken it out separately with sectors (e.g. manufacturing, services etc.) which can develop in various ways with different water use implications. Idaho Power has forecasts of employment by sector which could be used for predicting commercial water use on a county level.
- b. United Water's study weighs population heavily in determining and projecting water demand. It considers density and price, the latter indirectly through conservation. Residential demand for water is explained by other factors such as the income of residents and weather. These factors are important and should be included.

Much of the behavior we perceive as being unresponsive to price is in fact a reflection of higher real income levels (income after adjusting for inflation). When we observe that people are putting more swimming pools, fountains, and other water features in their homes in spite of rising water prices, it's because real incomes are rising and the "income effect" offsets the "price effect". If we ignore income in our analysis we are implicitly assuming that the trend in real incomes levels will continue. (Since we are not told which years United Water used to select its estimate of "residential consumption" we can't identify the trend in income levels).

Considering weather, if the baseline for projecting water use is not a "normal" year, in terms of temperature and precipitation, then it needs to be adjusted so that projected future use is not biased upward or downward. Again, we can't tell what this implies for the United water study because we are not told what years they use.)

3. **Using Census Bureau projections rather than those from the Bureau of Economic Analysis:** Census Bureau projections tend to be higher than BEA's: The Census Bureau projects an Idaho population of 2,866,178 in 2050 whereas BEA projects a population of 1,725,000 to 2045. Clearly, United Water have taken the higher of the two set of estimates. Note that BEA uses a semi-log method to forecast their numbers, i.e. they assume that population will increase but at a decreasing rate. That takes demographic changes into consideration: primarily the fact that the population is aging, and baby boomers will be retiring, implying a lower employment to population ratio. This, in turn, implies that commercial demand will not be a constant proportion of population.
4. **Extrapolating methods:** United Water uses linear and exponential methods to forecast population into the future. It appears that United Water extrapolates from historical data presented in five year increments (Table 9, Page 33). Growth rates fell and then rose again. If you look at more recent data in one-year increments, the general pattern is of a growth rate which is falling. Exponential and even linear methods are hard to justify in view of this. A semi-log function, such as used by BEA would be more appropriate to use in this case.
5. **Implications of growth:** It is questionable whether the amount of growth United water projects is going to occur. Some of the growth would require redevelopment, which is more expensive than developing new areas. Whereas this may be justified for commercial use it is unlikely to be economical for residential development. Indeed, it seems that other areas of the county are growing faster than the United Water Service area. Boise City is growing less than 2% whereas Meridian (outside the UW area) is growing at 9%.

6. **Comparison of growth rates (Idaho Power versus United Water):** Idaho Power's projected annual growth rate for Ada County to 2025 is 1.9%. This is lower than United Water's annual projected rate for its service area out to 2050 (2.37%). This implies that the area outside of United Water area of operations is growing more slowly than the area inside. One would expect the opposite to happen.
7. **Density implications.** The United Water study implies very high densities inside the urban core. Historical data on densities of new subdivisions suggest that densities are declining rather than increasing (Compass). While much of this development is going on outside of the urban core it demonstrates a preference for lower density living and development outside of United water's area of operations.
8. **Summary Statistics:** United Water need to include summary statistics for their regression analyses so that we can determine the level of confidence there is for their results
9. **A fifty year planning horizon:** Fifty years appears to be a somewhat typical time horizon for water demand forecasts at the state level. Oklahoma, Texas and Utah use fifty year horizons. However, California uses a 25 year horizon and Nevada offers an interesting hybrid. They have a "hard" forecast for 30 years out but makes a "soft extrapolation" for the last 20 years. However, forecasting on a local level for more than 25 years is less reliable and, indeed neither the Census Bureau nor the Bureau of Economic Analysis provide forecasts out that far, probably for that reason. Further, comprehensive plans for cities are typically 20-25 years. Compass's estimates are only for that period

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JUN 16 2000

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WESTERN REGION

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June 16, 2000

Via Hand Delivery

Mr. Karl J. Dreher
Director
Idaho Department of Water Resources
1301 N. Orchard St.
Statehouse Mail
Boise, ID 83720-9000

Mr. Gary Spackman
Regional Manager
Western Regional Office
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705-5082

Re: United Water Idaho — Integrated Municipal Application Package
Our File No. 30-71

Dear Messrs. Dreher and Spackman:

I am pleased to enclose, on behalf of United Water Idaho, copies of our *Integrated Municipal Application Package*, or IMAP as we have termed it, which culminates literally years worth of work and coordination between your agency and United Water Idaho to pass and implement the Municipal Water Rights Act of 1996.

The copy submitted to the Western Region is accompanied with the filing fee and is the official copy for filing with the Department. We are providing a copy for Headquarters so that your two offices can coordinate on the processing of the application. We can easily provide additional copies if necessary and are more than willing to provide as many copies as you may need.

The enclosed filing fee is for \$10,800.00. This fee was calculated by allocating \$100.00 for each of the 108 water rights involved in this IMAP. Although 16 of the rights are permits, which require only a \$50.00 fee to amend, we are submitting a \$100.00

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March 19, 2001

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MAR 20 2001

WATER RESOURCES
WESTERN REGION

Mr. Karl J. Dreher
Director
Idaho Department of Water Resources
1301 N. Orchard St.
Statehouse Mail
Boise, ID 83720-9000

Re: United Water Idaho
Request for Guidance on Effect of Transfer of Water Right within a
Municipal Portfolio
Our File No. 30-71

Dear Mr. Director:

I am writing on behalf of United Water Idaho to seek clarification of departmental policy respecting how the transfer of a municipal water right within a municipal water provider's portfolio might impact that provider's planning horizon. We raise this issue as a request for general guidance, because we anticipate that it may arise from time to time, for this provider as well as others. Consequently, we believe it is important for the Department to articulate a consistent approach in analyzing the issue under a variety of circumstances.

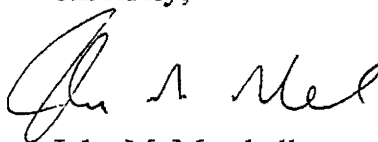
To facilitate the discussion, I have attached Appendix A, a schematic of a hypothetical municipal provider's water rights portfolio.

Mr. Karl J. Dreher
Mr. Gary Spackman
June 16, 2000
Page 2

fee for each permit as well since United Water Idaho is aggressively working to have each of the permits brought to license as part of the processing of this IMAP.

We look forward to working with the Department on the processing of this IMAP.

Sincerely,



John M. Marshall

Encl: *Integrated Municipal Application Package* (2)
United Idaho Check No. 00176177
Planning Area Map (2)

cc: Norman C. Young, IDWR
David R. Tuthill, IDWR
Phillip J. Rassier, IDWR
Gregory P. Wyatt, UWID (with encl.)
H. Scott Rhead, UWID (with encl.)
Daniel Brown, UWID (with encl.)
Christopher H. Meyer, Givens Pursley

15

Water Use Forecasting Methods

9/12/00
Meeting
J.O. (by
gong)

1. Use a forecasting method that is recognized in the water use or economic forecasting literature as credible and up-to-date. An example of a forecasting method is a sector or "end use" approach. This involves separating water use into sectors and sub sectors and forecasting these separately. Baseline water use for each sector is estimated first, followed by the forecast. Another approach is econometric forecasting approach. It involves looking at a historical path of water use, identifying the major determinants of water use and econometrically estimating the parameter values of the determinants. The determinants are then forecasted into the future and are used in combination with the parameter values to predict future water use. The econometric forecasting method does not require as much detailed information as the sector approach but does require current and projected values for the major determinants of water use. Important characteristics of both these models are set out as follows:

- a. Account for changes over time in the major determinants of water use; i.e. income, prices, density and weather in the case of residential and employment in the case of commercial.
 - b. Specifications of the models are selected on the basis of statistical confidence and the parameter values and statistics associated with a particular specification are reported.
 - c. Different uses are either treated separately (in a different equation or sector) or in the same equation with explicit treatment so that important differences are accounted for.
 - d. Where, because of lack of information, it is not possible to separate by sector, by equation or explicitly within an equation, an attempt should be made to make the sample more homogeneous in terms of water use, and treat outliers, particularly those with high water use, on a separate basis.
2. The forecasting method that is adopted would be used to generate estimates which can then be calibrated so that they make sense "on the ground". Calibration can involve testing the different implications of the forecasted numbers. For example, forecasted numbers will have implications in terms of density of development, which can be explored. Calibration can also involve using a variety of different approaches such as was used in the "IMAP" to replicate a particular number.
3. High and low bound estimates should be calculated. The higher bound estimates would reflect high use assumptions throughout. Similarly, low bound estimates would reflect low use assumptions throughout.
4. Peak flow requirements should be identified separately. Average use estimates should also be reported.
5. All assumptions are clearly stated and the implications of the assumptions are calculated in terms of water use, where feasible and reasonable.
6. Support important assumptions where possible with historical trend information, for example, trend information for average density is available from Compass and can be used to support or refute the IMAP assumptions.
7. Projections to 2050 should be given in two increments and explicitly reflect data availability. For example, since county numbers are only available to the year 2025, the "hard" projections can be made to 2025 and a "soft" extrapolation made to 2050.

8. All references should be clearly documented.

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March 19, 2001

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MAR 20 2001

WATER RESOURCES
WESTERN REGION

Mr. Karl J. Dreher
Director
Idaho Department of Water Resources
1301 N. Orchard St.
Statehouse Mail
Boise, ID 83720-9000

Re: United Water Idaho
Request for Guidance on Effect of Transfer of Water Right within a
Municipal Portfolio
Our File No. 30-71

Dear Mr. Director:

I am writing on behalf of United Water Idaho to seek clarification of departmental policy respecting how the transfer of a municipal water right within a municipal water provider's portfolio might impact that provider's planning horizon. We raise this issue as a request for general guidance, because we anticipate that it may arise from time to time, for this provider as well as others. Consequently, we believe it is important for the Department to articulate a consistent approach in analyzing the issue under a variety of circumstances.

To facilitate the discussion, I have attached Appendix A, a schematic of a hypothetical municipal provider's water rights portfolio.

Mr. Karl J. Dreher
March 19, 2001
Page 2

The statute prohibits the transfer of "planning horizon water rights."

As you know, the Municipal Water Supply Act of 1996¹ contains two provisions that prohibit municipal providers from transferring "planning horizon water rights"² to a place of use outside the bounds of the service area or to new beneficial uses.³

The director shall condition the license to prohibit any transfer of the place of use outside the service area, as defined in section 42-202B, Idaho Code, or to a new nature of use of amounts held for reasonably anticipated future needs together with such other conditions as the director may deem appropriate.

Idaho Code § 42-219(1).

When a water right or portion thereof to be changed is held by a municipal provider for municipal purposes, as defined in section 42-202B, Idaho Code, that portion of the right held for reasonably anticipated future needs at the time of the change shall not be changed to a place of use outside the service area, as defined in section 42-202B, Idaho Code, or to a new nature of use.

¹ The Municipal Water Rights Act of 1996 ("1996 Act"), 1996 Idaho Sess. Laws, ch. 297 (codified at Idaho Code §§ 42-202, 42-202B, 42-217, 42-219, 42-222), was a codification of the "Growing Communities Doctrine." See, Janis E. Carpenter, *Water for Growing Communities: Refining Tradition in the Pacific Northwest*, 27 *Env'tl. L.* 127 (1997); Wells A. Hutchins, *The Idaho Law of Water Rights*, 5 *Idaho L. Rev.* 1, 44 n.211 (1968); A. Lynne Krogh-Hampe, *Injury and Enlargement in Idaho Water Right Transfers*, 27 *Idaho L. Rev.* 249, 294-95 (1990); Frank J. Trelease, *Preferences to the Use of Water*, 27 *Rocky Mtn. L. Rev.* 133, 138 (1955); *State of Washington, Dept. of Ecology v. Theodoratus*, 135 *Wash.2d* 582, 957 *P.2d* 1241 (1998); *City and County of Denver v. Sheriff*, 96 *P.2d* 836, 841 (Colo. 1939); *City of Pocatello v. Murray*, 206 *F. 72*, 80 (D. Idaho 1913), *aff'd*, 214 *F. 214* (9th Cir. 1914); *Village of Peck v. Denison*, 92 *Idaho* 747, 450 *P.2d* 310 (1969); *Beus v. Soda Springs*, 62 *Idaho* 1, 107 *P.2d* 151 (1940).

² The term "planning horizon water rights" refers to those water rights (or portions thereof) that are not required to meet current production demand, but are maintained in the provider's portfolio of water rights to meet "reasonably anticipated future needs" within an established "planning horizon" under Idaho Code § 42-202B. We do not use the term "future needs water rights," because the 1996 Act expressly recognizes that these rights serve a present beneficial use, even though they are held to meet anticipated demand. Idaho Code § 42-222.

³ It bears emphasis that this restriction is purely statutory. It was not part of the Growing Community Doctrine, and does not apply to conveyances which predate a municipal provider's acquisition of water rights under the statutory protection.

Mr. Karl J. Dreher
March 19, 2001
Page 3

Idaho Code § 42-222(1).

I distinctly recall your adding these provisions to the bill at the time it was being drafted. It was your view that a bright statutory line needed to be drawn to ensure that the opportunity and incentive under the common law for municipal providers to hoard water rights for speculative purposes was curtailed under the 1996 Act. Indeed, I recall your saying that you would put it in the legislation twice, just to make certain that it was not overlooked. (Hence, the essentially redundant language in sections 219 and 222(1).)

The basic principle is to prohibit providers from converting this special statutory benefit to financial gain by extending the benefit to others.

The basic idea behind the restriction, as I understand it, is that if a municipal provider is granted the special statutory benefit of being able to hold planning horizon water rights for an extended period of time, the provider should not be allowed to convert that benefit to profit by turning around and selling those rights to another user. The fact that the provider saw fit to sell the water right constitutes, essentially, an admission that it did not really need quite that much water in its planning horizon in the first instance. If that is the case, the provider's planning horizon portfolio should simply be reduced, without financial benefit to the provider.

Seen from the side of the buyer, the idea is that if the statute is going to relax the forfeiture rule with respect to a special class of water right holders (municipal providers), no third party should be able to buy its way into that class by purchasing planning horizon water rights that only exist because of the statute.

Thus, the holder of "planning horizon water rights" is prohibited absolutely from selling those rights to either (1) a different municipality (hence, the prohibition on a new service area) or (2) a non-municipal user (hence, the prohibition on a new beneficial use).⁴

⁴ One might ask why we focused on change in beneficial use and place of use, instead of simply prohibiting the transfer of such rights to a new entity. I believe there are three reasons.

First, by focusing on objective criteria (changes in beneficial uses and places of use), the statute avoids confusion when entities undergo change. For example, under the statute, it is of no consequence (and ought to be of no consequence) that a municipal provider undergo a corporate reorganization or that a new company might buy out a municipal provider, so long as the new provider steps into the shoes of the former provider and maintains the same service with the same water rights.

Second, under some circumstances it may be permissible to convey a "planning horizon water right" to a different municipality. For example, one municipal provider might buy out a neighboring municipal provider,

The practical implementation of the restriction raises questions.

As a broad concept, the purpose of the statutory restriction seems clear enough. It gets a little trickier, however, in the application.

The statute does not bar a municipal provider from selling any and all water rights in its portfolio. Rather, the statute draws a distinction, repeated in both section 42-219 and section 42-222(1). The statute allows municipal providers to sell off what I will call the provider's "current demand" water rights (those currently required to meet present annual peak demand), while prohibiting the provider from conveying "planning horizon" water rights (those held solely to meet anticipated demand during the planning horizon).

There are two practical problems:

- First, how does one tell whether a particular water right in the provider's portfolio is part of the provider's "current demand" (and may be conveyed) or whether it is held as an planning horizon water right (and may not be conveyed)?
- Second, assuming that a water right has been identified as being within a municipal provider's current demand, what effect, if any, does conveyance of this water right have on the provider's portfolio?

I will explore these issues in turn.

How to identify a "current demand" water right.

As noted above, the statute draws a clear distinction between current demand water rights and planning horizon water rights. But the statute offers no guidance on how to tell the difference between the two.

A municipal provider should be allowed to align its portfolio as it sees fit, and declare which water rights are within its "current demand" component and which are

acquiring the second provider's planning horizon water rights, and merging them into the first provider's portfolio. This probably would not constitute a change in place of use, so long as the first provider's expanding service area was reasonably understood to contemplate possible expansion into the adjacent provider's service area.

Third, an industrial company seeking to buy a municipal provider's water rights and transfer them to a new place of use could not overcome the statutory prohibition by simply buying the municipal provider. Even though this might arguably be "the same entity," the statute would prohibit this transaction (as it should) because the change would entail a new place of use and/or new nature of use.

within its "planning horizon" component. After all, a municipal provider will typically hold an integrated portfolio of ground water rights, where all points of diversion serve as alternative points of diversion for each other. Consequently, at any particular time, the holder is free to declare which water rights are being used to meet current demand and which are being held to meet anticipated demand during the planning horizon. There is nothing tricky about this. Indeed, the ability to shuffle rights around in response to a call or other external demand is precisely the reason that the provider sought to, and was allowed to, integrate its portfolio in the first instance.⁵

The Department should bar transfers of municipal rights that simply cash out water rights.

Saying that the provider has considerable flexibility in arraying its water rights is not the end of the analysis, however. We believe that the Department retains the responsibility to look at the overall transaction. Where a provider simply "cashes out" one of the water rights in its portfolio, the effect is simply and necessarily to pull down an equivalent water right from the planning horizon portion of its portfolio in order to meet unchanged current demand

In the schematic set out in Appendix A, this would correspond to the provider selling, for example, water rights number 2 and 3 (totaling 2 cfs). This would cause water right number 8 (also 2 cfs) to "slip down" into the current demand component of the provider's portfolio.

But this should not be permitted under the statute. A provider should not be allowed to sell off its current demand water rights, and then turn around and replace them with water rights held for anticipated demand during the planning horizon. That is precisely the sort of behavior the statute was meant to circumscribe: the conversion of a statutorily-bestowed benefit to private gain. In this circumstance, the Department should prohibit the transfer altogether.

⁵ Typically, the holder would array its portfolio in such a way that the most senior ground water rights would be used first (*i.e.*, put in the "current demand" component of the portfolio) with the more junior held for planning horizon purposes. Then, in the case of a system wide call on the aquifer, the provider would be in the best possible position. However, there might be special circumstances under which a provider might pull out a more senior water right (assigning it to the planning horizon) and replace it with other more junior rights. This might be done, for instance, to address well interference issues, to address conservation concerns with particular areas of the aquifer, or for other legitimate planning reasons.

A provider may reduce its current demand, and sell the conserved water.

On the other hand, there are circumstances in which a municipal provider may be justified in selling a particular municipal water right. Suppose, for instance, that an industrial company in need of water rights offered to fund municipal system improvements that would reduce a municipal provider's system losses. In that special circumstance, the provider might legitimately claim that the water rights it was selling to the industry were truly "current demand" water rights. This is so because the transaction involves (1) a true reduction in current demand, (2) no "filling in" current demand by drawing on planning horizon rights, and (3) no reduction in anticipated demand during the planning horizon. This scenario, however, we expect will be a rare one.

To analyze this problem in terms of the schematic attached as Appendix A, one might imagine that the system improvements would save 1 cfs. The provider would then be entitled to sell, for instance, water right number 1, to the industry, dropping the size of the provider's total portfolio to 19 cfs. In approving the transfer, the Department would recalculate the provider's current demand at 9 cfs, leaving its anticipated demand at 15 cfs, for a total municipal need of 24 cfs.

A provider is entitled to sell a water right for non-speculative purposes, subject to a reduction in its planning horizon.

It bears emphasis that not all sales of municipal water rights are driven by profit-taking. For instance, a municipal provider might sell a water right:

- in order to resolve a well interference problem,
- in order to address an aquifer conservation concern,
- in order to allow another to make use of a contaminated well unsuited for municipal use,
- in order to maximize use of a geothermal resource,
- or for other legitimate, non-speculative reasons.

Where the provider can document to the Department's satisfaction that it is motivated by some legitimate, non-speculative motive such as those listed above, the

provider should be authorized to convey the water right to a third party.

This sensible policy can be reconciled with the statute in the following way: The 1996 Act allows sales of water rights from the current demand component of a provider's portfolio. In the previous example involving conserved water, the provider documented that the current demand was reduced, allowing a sale from this part of the portfolio. Where there is no conserved water, but there is some other legitimate, non-speculative purpose served by the transfer, the Department should simply allow the provider to "deem" this water right to be from the current demand portion of its portfolio.

Even though the conveyance is approved, however, the Department may be justified in making a permanent downward adjustment in the provider's anticipated needs quantification for the planning horizon. This would serve to ensure that the provider does not attempt to re-fill that gap created in its planning horizon portfolio, and sell the water resource to yet another party. In other words, even if the provider may legitimately claim to be selling a portion of its current demand portfolio, the Department may be justified in correspondingly reducing the planning horizon quantification as a *quid pro quo* for the transaction. Moreover, that reduction should in some sense be permanent.⁶

In terms of Appendix A, if a provider sought to sell water right number 6 (1 cfs), for instance, in order to resolve a well interference dispute with a nearby well, the Department might reasonably reduce the provider's planning horizon needs from 15 to 14 cfs. In fact, the same result should follow if the provider sought to sell water right number 11 (currently arrayed within the planning horizon component of the portfolio). The provider should be allowed to re-array the portfolio and declare water right number 11 to be part of the current demand portion of the portfolio before selling it. But the provider would be subject to the same reduction in planning horizon demand from 15 to 14 cfs.

When the provider sells its entire portfolio, only the current demand portion may be transferred.

Finally, consider the circumstance of a provider selling its entire portfolio, or, for that matter, any amount in excess of its "current demand" needs. Were that to occur, the Department should simply void that part of the transfer in excess of the current demand.

⁶ By permanent, we mean simply that the Department should carry some administrative memory of the event, such that the Department retains the discretion to prevent efforts by the provider to circumvent the restriction by filing for a new evaluation of its anticipated demand.

Under the statute, however, the provider may freely sell its entire current demand (that is, water rights currently in use), even if some of that current demand was originally acquired as a planning horizon water right.

Looking to Appendix A, the provider should be allowed to transfer only 10 cfs to the third party, even though the provider has sold the entire 20 cfs portfolio. The provider and the purchaser, however, should be allowed to select which water rights (totaling 10 cfs) are to be conveyed.

When water rights are exchanged or replaced, there is no impact on current or anticipated demand.

While we acknowledge a need for strict enforcement of the "no conveyance of planning horizon water rights" rule, we urge an important distinction.

Where the conveyed water right is promptly replaced by another water right (or rights) of equivalent size, the conveyance should be deemed not to fall within the prohibition of sections 42-219 and 42-222(1). In other words, the swap was a "non-event" for purposes of the restriction. Consequently, it should be approved without any reduction or other impact on the provider's planning horizon.

The reason is simply that where a water right is promptly replaced with another, the planning horizon component is not called upon to fill in the loss caused by the transfer. In other words, planning horizon rights do not "drop down" into the current demand component, and there is no reason to reduce the size of the planning horizon component.

In Appendix A, this would correspond to a provider selling, for instance, water right number 7 (for 2 cfs) and promptly replacing it with a new water right of the same quantity (or larger). This might happen simultaneously as part of a swap, or it might occur as part of a more complex arrangement (for example, involving federal water rights modified under a multi-party settlement).

There is no prohibition against leasing municipal water rights to others.

The statute addresses only the permanent transfer of water rights. The leasing (or other temporary conveyance) of a water right is another matter altogether. We are aware of no limitation on the ability of a municipal provider to lease water rights held for

Mr. Karl J. Dreher
March 19, 2001
Page 9

anticipated demand purposes. Indeed, we understand the case law under the Growing Communities Doctrine to encourage the interim use of such water rights in this fashion.

Summary

To sum up, where a municipal provider seeks to convey a water right from its portfolio to a third party, without replacing it, then the provider has essentially confessed that it no longer needs quite that much water in its anticipated demand. This should be prohibited altogether where there is no purpose to the transaction other than profit-taking.

On the other hand, where there is an independent, non-speculative purpose, it should be permitted, but with a condition reducing anticipated demand during the planning horizon by an equivalent amount.

Then again, if the proposed transfer of a municipal water right is part of a legitimate "swap" of water rights, then the Department should treat the transaction as having no impact on the provider's anticipated demand calculation for the planning horizon.

Likewise, a lease or other temporary arrangement involving a municipal water right is another "non event" for purposes of the statutory prohibition.

We would appreciate an opportunity to explore these ideas with you further. If they are consistent with the Department's view, we would like to have them confirmed in an appropriate manner.

Sincerely,



Christopher H. Meyer

Encl: Appendix A (Schematic of municipal provider's portfolio)

cc: Norman C. Young, IDWR
Hal Anderson, IDWR
Gary Spackman, IDWR
David R. Tuthill, IDWR

Mr. Karl J. Dreher

March 19, 2001

Page 10

Phillip J. Rassier, IDWR
Client

CHM:kdt

S:\CLIENTS\30\71\Corr\2001-03-19 CHM Ltr to Karl Dreher - Re transfer of municipal water rights.doc

APPENDIX A

Schematic Showing Components Of A Municipal Provider's Water Rights Portfolio

To be acquired Water Right (1cfs)	Planning horizon water rights yet to be appropriated or acquired (5 cfs)	To be acquired portfolio (5 cfs)	Anticipated demand within planning horizon (15 cfs)	Total municipal needs within planning horizon (current and anticipated demand) (25 cfs)
To be acquired Water Right (1cfs)				
To be acquired Water Right (1cfs)				
To be acquired Water Right (1cfs)				
To be acquired Water Right (1cfs)				
Water Right #12 (2 cfs)	Planning horizon water rights now within portfolio (10 cfs)	Current portfolio (20 cfs)		
Water Right #11 (1 cfs)				
Water Right #10 (1 cfs)				
Water Right #9(4 cfs)				
Water Right #8 (2 cfs)				
Water Right #7 (2 cfs)	Current demand Water rights now within portfolio (10 cfs)		Current demand (10 cfs)	
Water Right #6 (1 cfs)				
Water Right #4 (4 cfs)				
Water Right #3 (1 cfs)				
Water Right #2 (1 cfs)				
Water Right #1 (1 cfs)				

17

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Virginia L. Stukel
Conley Ward
Stephanie C. Westemeier
Robert B. White

Raymond D. Givens
James A. McClure
OF COUNSEL

Via Hand Delivery

April 17, 2001

Mr. Karl J. Dreher
Director
Idaho Department of Water Resources
1301 N. Orchard St.
Statehouse Mail
Boise, ID 83720-9000

Re: United Water Idaho
Request for Guidance on Effect of Transfer of Water Right within a
Municipal Portfolio
Our File No. 30-71

Dear Mr. Director:

I am writing to follow up on my letter of March 19, 2001. That letter sought a declaration of departmental policy respecting how the transfer of municipal water rights within a municipal water provider's portfolio might impact that provider's planning horizon.

Temporary Lease of Municipal Rights---Withdrawal of Question

I received a call from David Tuthill who explained that he was not speaking for the Department, but wished to informally raise an issue of concern to him. Dave was concerned, in particular, with the paragraph containing this heading: "There is no prohibition against leasing municipal water rights to others." In that paragraph I

Mr. Karl J. Dreher
April 17, 2001
Page 2

suggested that the restrictions on transfers of municipal water rights contained in the Municipal Water Rights Act of 1996 apply only to the permanent conveyance of a water right, and not to temporary leases of municipal rights while a municipality grows into its full entitlement.

Dave expressed some doubt about that conclusion. In any event, he said, it was not as obvious as I had suggested. Moreover, he said, this is too big an issue to be resolved in such a cursory fashion. David's gut feeling was that municipal providers should be allowed to purchase a water right for municipal purposes while leaving it in place for the time being (e.g., through a sale and lease-back arrangement). However, Dave felt that a municipal provider should not be allowed to lease a water right within its planning horizon portfolio to a new user even on a temporary basis.

I have briefly reviewed the case law on municipal water rights, and continue to feel confident that the common law supports the right of municipal water right holders to make interim use of water rights held for long term supply purposes by leasing them to others. See, in particular, *Beus v. City of Soda Springs*, 62 Idaho 1, 107 P.2d 151 (1940). The question, then, is whether this right was bargained away in the codification of the Growing Communities Doctrine reflected in the 1996 Act.

My recollection is that the drafters (you, most notably) were focused on prohibiting permanent conveyances of municipal water rights by municipal suppliers who found that they were holding more rights to water than they really needed (or who received an offer they couldn't refuse). I do not recall an intent to alter what I view as the common law right of a municipal provider to put its planning horizon portfolio to work in the interim by leasing excess water rights on a temporary basis, so long as the provider has a continuing, legitimate long term need for the water.

However, I have discussed the matter with my client, and we do not believe there is any need to press for resolution of this point now. United Water Idaho does not have any immediate or foreseeable plans to lease out any part of its planning horizon portfolio. Should the need arise, it would probably occur in the context of a sale and lease-back, which I think plainly does not fall within the statute's prohibition.¹

¹ A sale and lease-back would retain the original use of the water right, and thus would not require a transfer at all until the lease-back is completed. Because no transfer is required at the time of purchase, the anti-transfer provisions (Idaho Code §§ 42-219(1) and 42-222(1)) would not come into play.

On the other hand, UWID believes it would be reasonable for the Department to require that such rights be identified to the Department (e.g., through a notice of change in ownership) and included in the municipal provider's planning horizon portfolio.

Mr. Karl J. Dreher
April 17, 2001
Page 3

In short, the question at this point is both less important and more difficult than I first thought. I included it in my earlier letter in an effort to be comprehensive. The fact is, however, it is a side issue which does not need to be resolved any time soon. Consequently, United Water Idaho has authorized me to simply withdraw the entire paragraph dealing with the subject of leasing from my March 19, 2001 request letter, if the Department would just as soon not resolve this issue now.

Description of Anticipated Potential Transfers

The second issue David raised with me was an informal request for more information on what plans the Company has with respect to possible upcoming transfers. I volunteered to share with you what the Company foresees at this point.²

I have checked with the client. As it happens, there is not much to report.

Gowen Road / Oregon Trail

There has been some discussion of late with respect to the Gowen Road / Oregon Trail rights, which United Water sold to Micron Technology in 1997 and which were transferred in 1999. However, these rights are not a part of UWID's portfolio today and are not included in its recent IMAP (Integrated Municipal Application Package). These rights were pre-Act rights conveyed prior to the approval of any planning horizon for the Company. Consequently, they are simply not subject to this analysis.

However, if UWID were to undertake this conveyance after approval of its municipal portfolio, we believe that this would be an example of an appropriate sale, that is, outside the strictures of the 1996 Act. This transaction fits within examples of "non-speculative" sales undertaken for other legitimate purposes, as discussed on page 6 of my March 19, 2001 letter. This transfer was motivated not by a desire to "cash out" a water right, but to cooperate with other water users in resolving a thorny well interference and aquifer management issue in a ground water management area. In short, we would hope that this is the sort of transfer that the Department would encourage municipal suppliers to engage in.

Gamble Right

² I have included here only water right transfers which are essentially permanent. The Company anticipates purchase and lease-back arrangements in the future, but does not currently have any in the works. It is also possible that the Company might elect to enter into formal or informal arrangements for use or lending of water rights on an emergency basis, for example, for firefighting or other emergency service requirements; we view these as beyond the scope of this discussion.

Mr. Karl J. Dreher
April 17, 2001
Page 4

Several years ago the City of Boise purchased land and water rights in the Hulls Gulch area from UWID, in accordance with a public referendum to create a park and nature preserve. The land conveyed included the Gamble well. After a delay of some time, the water right was formally conveyed to the City, as well.

Like the Gowen Road / Oregon Trail rights, the Gamble right was transferred prior to UWID coming under the 1996 Act, and is therefore not subject to the restrictions on transfer. However, if this transfer had occurred after approval of UWID's planning horizon portfolio, it, too, would be an appropriate transfer. It was undertaken in cooperation with the City to achieve broad public policy objectives consistent with a public referendum. So long as no speculative purpose is involved, a municipal provider should be allowed to sell water resources to public agencies to fulfill public purposes, rather than force the entity to condemn the rights.

Long Meadow Well

As I understand it, this well used to pull from two aquifers, one of which contains elements not considered desirable for drinking water. There is a proposal now being explored to transfer some or all of this right to the City of Boise, which can use the water for park irrigation or related uses. The ground water right would be exchanged for shares in the Boise City Canal Company on an acre-foot for acre-foot basis.

We believe that such a trade should be exempt from the anti-transfer rule on the basis of being "exchanged or replaced" water, as described on page 8 of my March 19, 2001 letter.

Cartwright Well

This well is located near the Crane Creek Golf Course. Preliminary negotiations are now underway to sell this water right to the Crane Creek Country Club. The purpose of the contemplated sale would be to eliminate troublesome disputes over well interference in the area. Again, this is not speculation, but sound management: municipal providers should not be required to expend ratepayers' funds fighting every well interference battle to the bitter end, where an amicable settlement presents a preferred economical alternative. The Company believes this transaction should be exempt from restrictions on transfer as a "non-speculative" sale undertaken for other legitimate purposes as discussed on page 6 of my March 19, 2001 letter.

Crandelmire Well

Mr. Karl J. Dreher
April 17, 2001
Page 5

The Crandlemire water right in the Eagle area is probably the most confused and confusing water right in the Company's portfolio. Ongoing disputes over its extent have led to difficulties and frustrations among the affected parties. There has been some discussion of selling or conveying part of this right in the context of efforts to resolve uncertainties surrounding this right. This, too, the Company feels should fall within the exception for a "non-speculative" sale undertaken for other legitimate purposes as discussed on page 6 of my March 19, 2001 letter.

Having put forward these specific examples, let me reiterate that the thrust of my March 19, 2001 letter is a request that the Department explore and consider these issues as much as possible in a comprehensive package. In other words, rather than resolving these as they come up on case-by case basis, we ask the Department to provide some guidance on a broader basis.

I look forward to hearing from you.

Sincerely,



Christopher H. Meyer

Encl: Copy of my March 19, 2001 letter

cc: Norman C. Young, IDWR
Hal Anderson, IDWR
Gary Spackman, IDWR
David R. Tuthill, IDWR
Phillip J. Rassier, IDWR
Client

CHM:kdt

S:\CLIENTS\30\71\Corr\2001-04-16 Ltr from CHM to Karl Dreher - Re follow up on transfer of municipal water rights - corrected version.doc

LAW OFFICES
GIVENS PURSLEY LLP

MEMORANDUM

TO: Karl Dreher

FROM: Christopher H. Meyer *CHM*

RE: United Water Idaho
Request for Guidance on Effect of Transfer of Water Right within a Municipal
Portfolio
Our File No. 30-71

DATE: April 17, 2001

I am enclosing with this note a substitute letter, dated April 17, 2001, to replace the letter I sent to you yesterday. Please toss the April 16 version and substitute the new letter.

The revised letter corrects a reference in the paragraph labeled "Cartwright Well" on page 4. Yesterday's version misidentified the potential purchaser. That has been corrected in today's letter to refer to the Crane Creek Country Club. There are no other differences between the letters.

I apologize for any confusion this may have caused.

Enclosure

CHM:kdt

S:\Clients\30\71\Corr\2001-04-17 Memo from CHM to Karl Dreher re edit to letter.doc

Note to Letter from Christopher H. Meyer to Karl Dreher (dated April 17, 2001)

As of this date, neither United Water Idaho Inc. nor its counsel, Givens Pursley LLP, have received a written response to the above-captioned letter April 17, 2001 nor to the earlier referenced letter of March 19, 2001. The only oral response is as described in the letter of April 17, 2001.

GIVENS PURSLEY LLP

Dated: October 22, 2002

By 
Christopher H. Meyer

Counsel for United Water Idaho Inc.

18

GIVENS PURSLEY LLP

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OF COUNSEL

Direct Dial: (208) 388-1270
E-Mail: jmm@givenspursley.com

May 4, 2001

RECEIVED

MAY 04 2001

WATER RESOURCES
WESTERN REGION

Via Hand Delivery

Mr. Karl J. Dreher
Director
Idaho Department of Water Resources
1301 N. Orchard St.
Statehouse Mail
Boise, ID 83720-9000

Mr. Gary Spackman
Regional Manager
Western Regional Office
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705-5082

Re: United Water Idaho — Integrated Municipal Application Package
Our File No. 30-71

Dear Messrs. Dreher and Spackman:

I enclose with this letter the final version of United Water Idaho's *Integrated Municipal Application Package*, or IMAP as we have termed it, which incorporates an amended population and water demand forecast prepared by John Church, president of Idaho Economics.

We are providing a copy for the State Office so that your two offices can coordinate on the processing of the application. We can easily provide additional copies if necessary and are more than willing to provide as many copies as you may need. The filing fee of \$10,800.00 was previously paid with an earlier version of the IMAP.

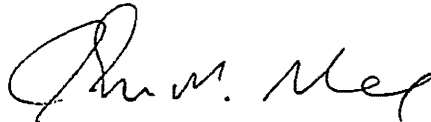
* neither set has signed transfer + amendment apps (apps. w/o signatures)
-sc 5/8/01
✓ OK 5/10/01 signatures

May 4, 2001

Page 2

We look forward to working with the Department on the processing of this IMAP.

Sincerely,

A handwritten signature in cursive script, appearing to read "John M. Marshall".

John M. Marshall

Encl: *Integrated Municipal Application Package* (2)

cc: Norman C. Young, IDWR
David R. Tuthill, IDWR
Phillip J. Rassier, IDWR
Gregory P. Wyatt, UWID (with encl.)
H. Scott Rhead, UWID (with encl.)
Christopher H. Meyer, Givens Pursley

19

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E-Mail: jmm@givenspursley.com

May 8, 2001

VIA US MAIL

Gary Spackman
Regional Manager
Western Regional Office
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705-5082

RECEIVED

MAY 09 2001

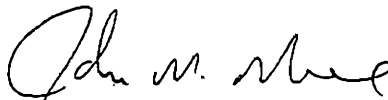
WATER RESOURCES
WESTERN REGION

Re: United Water Idaho — Integrated Municipal Application Package
Our File: 30-71

Dear Gary:

I am enclosing a corrected version of the cover page for the IMAP we filed on Friday May 4, 2001. The caption under the picture was incorrectly labeled as the Marden Wastewater Treatment Plant. It should read Marden Water Treatment Plant. Please replace the original cover page with this corrected version.

Sincerely,



John M. Marshall

JMM/nlg
Enclosure

20

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OF COUNSEL
*Licensed in California only

RECEIVED

FEB 06 2002

WATER,
WESTERN REGION

February 6, 2002

VIA HAND DELIVERY

Steve Lester
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705-5082

Re: IMAP Update Pages
Our File: 30-71

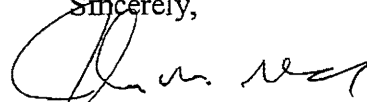
Dear Steve:

Enclosed please find the updated pages for United Water's IMAP that we discussed. Please treat this letter and its enclosures as an amendment to the IMAP. I have enclosed a copy of a Power of Attorney that authorizes me to sign on United Water's behalf.

The enclosed pages replace all the water rights tables behind Tabs "J-N" in the IMAP. The footer on each set of documents indicates which Tab it belongs behind. I am also enclosing a replacement page 50 that is the summary of the final calculations in the IMAP (behind Tab "G"). We have adjusted these final numbers to reflect the changes made to the water right tables.

Please call me if you have any questions.

Sincerely,



John M. Marshall

JMM/tns

Enclosures

cc: Scott Rhead (via U.S. Mail w/ enclosures)

S:\clients\30\71\corr\2002-02-05 Lester IMAP changes-JMM.doc

SPECIAL POWER OF ATTORNEY

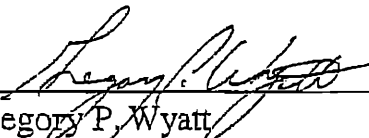
United Water Idaho, Inc., an Idaho corporation, hereby appoints the attorneys of Givens Pursley LLP, 277 North 6th Street, Suite 200, Boise, Idaho, 83701 as its true and lawful attorneys for the purpose of signing on its behalf the following forms for submission with the Idaho Department of Water Resources:

- 1) Request for Extension of Time to Provide Additional Time in Which to Submit Proof of Beneficial Use for a Water Right Permit;
- 2) Notice of Change of Water Right Ownership;
- 3) Application for Amendment of Permit to Appropriate the Waters of the State of Idaho;
- 4) Notice of Protest;
- 5) Application for Transfer of a Water Right;
- 6) Proof of Beneficial Use;
- 7) Application for Exchange of Water;
- 8) Application for Extension of Time to Avoid Forfeiture of a Water Right;
- 9) Application to Sell or Lease a Water Right to the Water Supply Bank;
- 10) Application for Temporary Approval of a Water Application;
- 11) Application for Permit to Appropriate the Waters of the State of Idaho;
- 12) Any application of submission in connection with the requirements of the Municipal Water Rights Act of 1996;
- 13) Any other document in support or furtherance of any of the above.

All may rely on such authority. This Special Power of Attorney shall be effective until revoked in writing by United Water Idaho, Inc.

For purposes of the exercise of the powers herein granted, the facsimile signature of said attorneys shall be lawful and binding and any person may rely upon such facsimile signature as if it were an original.

IN WITNESS WHEREOF, I have signed this special power of attorney effective the 18th day of February, 2000.



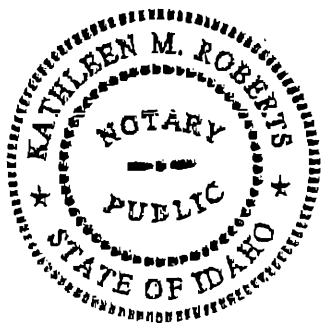
Gregory P. Wyatt
President, United Water Idaho

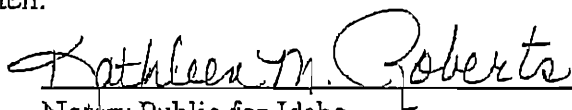
ACKNOWLEDGMENT

State of Idaho)
) ss.
County of Ada)

On this 18th day of February, 2000, before me, a Notary Public, in and for said County and State, personally appeared Gregory P. Wyatt, known or identified to me to be the President, of United Water Idaho, the corporation that executed the foregoing instrument, and acknowledged to me that such corporation executed the same.

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





Notary Public for Idaho
Residing at Boise
My Commission expires 12-11-2001

21

Lester, Steve

From: John Marshall [jmm@givenspursley.com]
Sent: Tuesday, February 12, 2002 11:12 AM
To: slester@idwr.state.id.us
Cc: Christopher Meyer; skeene@idwr.state.id.us
Subject: Excel spreadsheet of United Water's points of diversion (30-71)



2002-02-12 Well
locations copy...

Steve:

As you requested, I am forwarding an electronic version of the table behind Tab "N" in the IMAP that shows the points of diversion for UWID's ground water rights. Please call with any questions.

- John Marshall

22

emailed well list to Shelley

Lester, Steve

From: Lester, Steve
Sent: Tuesday, February 12, 2002 12:52 PM
To: Keen, Shelley
Subject: United Water well list

Shelley:

John Marshall emailed me this Excel list of wells for IMAP. I still need to do some checking to make sure the list is comprehensive. Once that is done, the application will be ready to publish and we can work on the publication arrangements we discussed the other day.

For now, please treat this list as preliminary. I'm sending it to you with the hope that we won't need a revised list but you never know.

Steve



UW well locations
for IMAP.xls...

23



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

FAX (208) 334-2348

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

FAX TRANSMITTAL COVER SHEET

FAX NUMBER (208) 334-2348

DATE: 2/14/02

TO: John Marshall
givens Presley
Fax 388-1300

FROM: Steve Lester

DOCUMENT DESCRIPTION/NOTES: IMAP Review per your 2/6/02 Submittal:

(1) Revised Pg. 50 Not Received.

(2) Review of Tab M with suggested revisions to reflect permits
as 5/4/01.

(3) Review of Tab N well list. Checked items on list addressed in (4).

(4) Notes & reconcile IDWR records vs. UW well list.

Let me know if anything not clear etc. Thanks

TOTAL PAGES SENT: 6 + COVER SHEET

CONTACT: _____

Description of UWID's Permits After Application for Amendment

RIGHT NUMBER	SOURCE	PRIORITY	PURPOSE OF USE	AMOUNT (CFS)	AMOUNT (AFA)	PERIOD OF USE
63-10945	Ground water	10/29/1989	Municipal	2.00		1/1-12/31
63-11467	Ground water	2/21/1991	Municipal	0.72		1/1-12/31
63-11878	Ground water	6/15/1992	Municipal	0.26		1/1-12/31
63-12043	Ground water	7/23/1993	Municipal	4.46		1/1-12/31
63-12055	Boise River	9/8/1993	Municipal	24.80		1/1-12/31
63-12138	Ground water	8/19/1994	Municipal	3.90		1/1-12/31
63-12139	Ground water	8/19/1994	Municipal	4.90		1/1-12/31
63-12140	Ground water	10/19/1994	Municipal	3.50		1/1-12/31
63-12192	Ground water	3/31/1995	Municipal	5.00		1/1-12/31
63-12310	Ground water	1/19/1996	Municipal	3.00		1/1-12/31
63-12334	Ground water	3/8/1995	Municipal	0.06		1/1-12/31
63-12362	Ground water	9/30/1996	Municipal	2.22		1/1-12/31
63-12432	Ground water	1/30/1998	Municipal	4.50		1/1-12/31
63-12452	Ground water	4/15/1998	Municipal	4.50		1/1-12/31
63-12464	Ground water	7/13/1998	Municipal	0.30		1/1-12/31
63-12516	Ground water	4/13/1999	Municipal	4.00		1/1-12/31

Total CFS: 68.12

Place of use for all permits: "Within the Service Area of UWID"

Point of diversion for all permits: Please see list behind Tab "N", except right 63-10255 for which the point of diversion will be Township 3N, Range 2E, Section 14 SENE (lot 7) (existing Marden Treatment Plant intake), and Township 2N, Range 3E, Section 4 NWNE (existing pipeline intake for proposed Columbia Treatment Plant).

→ Delete 63-12043 - 4.46 cfs already in TAB L (transfer)*

→ Add 63-12424 + .87

63-12463 + 3.00

63-12506 + 3.50

63-12552 + 3.00

NET change + 5.91 ← assume list as permit rate instead of something different

+ 68.12 from above

TOTAL 74.03 (correct per 5/4/01 permit data, can be less per UW's pg. 20 etc. discussion)

* licensed 8/7/00 so ok list in transfer section with 5/4/01 packages

UWID GROUND WATER ALTERNATE POINTS OF DIVERSION

2/6/02
List

WELL NAME	TWN	RGE	SEC	TRACT	CURRENT ASSOCIATED WATER RIGHT NUMBER(s)	INTERFERENCE PRIORITY DATE	INTERFERENCE QUANTITY
Amity	3N	1E	36	NW,NW,NE	63-09223	4/3/1979	4.23
Arctic #1	3N	2E	8	NE,NE,NE	63-02668	7/15/1947	2.14
Arctic #2	3N	2E	8	NE,NE,NE	63-07204	3/13/1969	1.82
B.I.F.	3N	2E	27	SE,NW,SE	63-04015 63-07077	10/17/1960 3/15/1968	2.00 1.11
Barber #1	3N	3E	28	SE,NE	63-04395 63-08385 63-10150 63-12464	6/1/1950 11/6/1977 7/1/1983 7/13/1998	0.75 0.49 0.48 0.30
Barber #2	3N	3E	28	SW,NW	63-10150 63-12464	7/1/1983 7/13/1998	0.48 0.30
Barber #3	3N	3E	33	SE,NW,NE	Application #	1/18/2002	2.00
Bali Hai #1	3N	1E	3	SW,SE,NE	63-07589 63-07658	4/20/1973 1/8/1973	4.40 1.06
Beacon	3N	2E	14	NW,SE,NW	63-03448	4/27/1965	4.90
Bergeson	3N	2E	26	NW,NE,SE	63-10862	7/18/1989	1.44
Bethel	3N	2E	7	NE,SW,SW	63-07348	7/14/1970	6.60
Biggs	3N	2E	18	SE,SE,SE	63-02956	8/27/1953	0.56
Broadway	3N	2E	22	SE,SE,SE	63-07479	8/20/1971	7.00
Brookhollow No. 1	3N	1E	15	SE,NE	63-08265	2/23/1976	2.37
Byrd	3N	2E	33	SW,NE,NW	63-04424	7/1/1943	1.33
Carriage Hill	3N	2W	31	SE,NE	63-12463	6/25/1998	3.00
	3N	2W	31	NE,SE	63-12463	6/25/1998	3.00
	3N	2W	31	NW,SE	63-12463	6/25/1998	3.00
Cartwright	4N	2E	27	NW,SE	63-10533	9/9/1987	0.52
Cassia	3N	2E	16	NE,NE,SE	63-11118	2/1/1990	2.78
Cassia #2	3N	2E	16	NE,NE,SE	63-12363	9/9/1996	4.50
Centennial	3N	2E	25	NW,NW,SE	63-08236	11/28/1975	3.63
Central Park	3N	2E	2	NW,NE,NW	63-04752	1/1/1947	1.11
Chamberlin #1	3N	2E	22	SE,NW,NE	63-03202	6/8/1960	2.89
Chamberlin #2	3N	2E	22	SE,NW,NE	63-03292	5/21/1982	2.26
Cliffside	3N	2E	15	SW,NW,NW	63-02703	6/23/1948	5.00
Clinton	3N	2E	8	SW,NE,SW	63-11068	11/17/1989	2.79
Cole	3N	1E	24	NE,NE,SE	63-08990	7/19/1977	4.00
Coventry Place	2N	2W	10	NW,SE	63-12424 63-12606	12/3/1997 1/15/1999	3.50 3.50
Country Club	3N	2E	28	SE,NW,NW	63-03073	1/4/1956	2.00
Country Squire	3N	1E	23	NW,NW	63-09087	11/25/1977	3.40
Countryman Estates	3N	1E	23	SE,NW	63-08011	7/18/1974	3.00
Danskin # 1	2N	1W	11	NW,NW	63-12552	11/18/1999	3.00
Danskin # 2	2N	1W	12	NW,NW	63-12553	11/19/1999	4.00
Edgeview	3N	1E	16	SE,NE	63-11990	1/27/1993	1.80
Empire	3N	2E	18	NE,SW,SE	63-02954	8/27/1953	0.90
Fisk	3N	2E	6	SW,SE,SE	63-11558	6/24/1991	2.67
Five Mile Estates W.	3N	1E	27	NW,SE	63-07896	11/13/1973	0.25

UWD GROUND WATER ALTERNATE POINTS OF DIVERSION

Five Mile Estates W.	3N	1E	27	SE, NE	63-07998	6/25/1974	1.27
Five Mile West #12	3N	1E	27	NW, SW	63-09198	1/2/1979	2.45
Floating Feather	4N	1E	5	SESW	63-11090A	1/21/1990	1.73
					63-12192	3/31/1995	5.00
					63-12452	4/15/1998	4.50
Foxtail	4N	1E	24	SE, SE	63-12334	3/8/1995	0.38
					63-12362	9/30/1996	2.22
					63-12516	4/13/1999	4.00
Franklin Park	3N	2E	18	SW, NW, NE	63-03105	12/19/1956	2.00
Frontier	4N	1E	34	SE, NE, SW	63-09855	12/23/1981	3.34
Goddard	4N	1E	36	SW, NE, NW	63-07066	2/28/1968	5.80
H.P.	4N	1E	27	SW, SE, NE	63-11384	8/7/1990	3.12
Hidden Valley Estates	2N	1E	3	SE, SE	63-07641	8/17/1972	2.00
					63-08405	1/12/1977	2.00
Hidden Valley Estates	2N	1E	3	NE, SW	63-07979	5/13/1974	2.00
Hillcrest	3N	2E	20	SE, SE, NE	63-07282	12/2/1969	4.12
Hilton	3N	2E	17	SE, NE, SW	63-03494	3/8/1988	6.44
Hope	3N	1E	9	NE, SE, NE	63-11232	2/12/1990	2.83
Hummel	3N	2E	18	SW, NE, SW	63-03172	10/14/1959	2.22
Idaho	3N	2E	4	SWSW	63-07067	2/28/1988	2.84
Island Woods #1	4N	1E	16	NE, NW, SW (lot	63-11467	2/21/1991	2.27
					63-12432	1/30/1998	4.50
Island Woods #2	4N	1E	21	NE, NW, NW (lot	63-11467	2/21/1991	2.27
					63-12432	1/30/1998	4.50
J.R. Flat	2N	2E	2	SW, NW, NW	63-10569	2/5/1988	1.78
Joplin	4N	1E	27	NW, NW, SW	63-09204	1/9/1979	4.00
Junker	3N	2E	32	SE, NE, NE	63-04414	7/1/1943	1.11
Kirkwood	3N	2E	19	SW, NE, NE	63-03112	9/11/1957	1.44
La Grange	3N	1E	34	NE, SW	63-09199	1/3/1979	3.12
Lizaso Well	3N	1E	15	SE, SW	63-09384	5/27/1980	1.00
Logger	3N	2E	24	NW, SW, NW	63-09219	3/20/1979	2.23
Longmeadow	3N	2E	13	NW, SW, NW	63-02808	4/3/1950	3.10
Mac	3N	2E	32	SW, NW, NW	63-11034	10/22/1989	2.74
Maple Hills #1	3N	1E	14	SW, NE, NE	63-09671	2/25/1981	2.12
Maple Hills #2	3N	1E	14	SW, NE, NE	Application *	1/18/2002	2.00
Marden	3N	2E	14	NE, SE, NE	63-10386	9/19/1986	1.11
Marden Collectors	3N	2E	14	SE, SE, NE	63-02802	2/7/1952	15.00
Market	3N	2E	35	NE, NE, NW	63-11385	8/7/1990	2.58
McMillan	4N	1E	26	SE, SW, SW	63-12140	10/19/1994	3.50
Mesa #1	3N	2E	24	NE, SW, NE	63-03457	7/14/1965	1.67
					63-10945	8/31/1989	2.00
Mesa #2	3N	2E	24	NE, SW, NE	63-03457	7/14/1965	1.67
					63-10945	8/31/1989	2.00
Mesa #3	3N	2E	24	NE, SW, NE	63-10945	8/31/1989	2.00
Mountain View	3N	2E	14	SW, NE, NE	63-02506	6/5/1935	1.66
Orchid	3N	2E	14	SE, NE, NE	63-02576	4/26/1938	1.90
Overland	3N	2E	19	NW, NE, NW	63-11951	10/14/1992	0.85
Overland #6	3N	2E	19	NW, NE, NW	63-03662	11/7/1966	1.47
Overland Estates	3N	1E	15	SW, SW	63-10391	11/14/1986	0.30
Paradise North	3N	1E	15	NE, SE	63-09106	1/23/1978	1.12

UWID GROUND WATER ALTERNATE POINTS OF DIVERSION

Pioneer <i>OK</i>	2N	2E	22	NW,NE	63-12043	7/23/1993	4.46
					63-12138	8/19/1994	3.90
					63-12139	8/19/1994	4.90
Pleasant Valley	2N	2E	17	SE,NE	63-12043	7/23/1993	4.46
					63-12138	8/19/1994	3.90
					63-12139	8/19/1994	4.90
Raptor	2N	2E	17	SE,NE	63-12043	7/23/1993	4.46
					63-12138	8/19/1994	3.90
					63-12139	8/19/1994	4.90
Redwood Creek	4N	1E	7	SW,NW (lot 2)	63-11878	6/15/1992	0.99
					63-12182	3/31/1996	5.00
					63-12452	4/15/1998	4.50
River Run	3N	2E	24	NE,SW,SE	63-10405	3/17/1987	1.56
Roosevelt #1	3N	2E	16	SW,NW,NW	63-02595	8/31/1966	1.34
Roosevelt #2	3N	2E	16	SW,NW,NW	63-03293	5/21/1962	3.56
Roosevelt #3	3N	2E	16	SW,NW,NW	63-03293	5/21/1962	3.56
Settlers	4N	1E	36	NW,NE,NW	63-08205	1/8/1979	4.00
Sherman Oaks	3N	1E	23	SE, SE	63-08635	8/17/1983	0.89
Sixteenth St.	3N	2E	9	SW,SE,NW	63-02874	8/19/1951	4.00
Spurwing	4N	1W	23	NE,SW	63-12334	3/8/1995	0.38
					63-12516	4/13/1999	4.00
Sunrise	3N	2E	27	NE,NE,SW	63-03164	8/5/1959	1.73
Sunset West #1	3N	1E	36	SE,NE,SE	63-08432	2/10/1977	1.78
Swift #1	3N	2E	30	SE,SW,SE	63-09147	6/6/1978	4.00
Swift #2	4N	2E	31	SE,SW,SE	63-10688	8/15/1988	2.00
Taggart #1	3N	2E	21	SW,NE,NE	63-03128	4/24/1958	4.44
Taggart #2	3N	2E	21	SW,NE,NE	63-11950	10/14/1992	2.30
Tenmile	2N	2E	17	SE,NE	63-12043	7/23/1993	4.46
					63-12138	8/19/1994	3.90
					63-12139	8/19/1994	4.90
Terteling	3N	2E	36	NE,SW,NE	63-07577	4/6/1972	2.01
Thirteenth	3N	2E	10	NE,NW,NW	63-02500	8/30/1934	0.80
Thirteenth B	3N	2E	4	SW,SW	63-19455A	3/31/1953	1.60
Twenty-eighth & Lem	3N	2E	4	NE,NW	63-02605	7/2/1943	0.90
Veterans	4N	2E	32	SW,SE,SE	63-12310	1/19/1996	3.00
Veterans Collectors	3N	2E	5	SE,NE	63-02892	2/7/1952	15.00
Victory	3N	1E	27	NE,NE	63-08248	1/2/1976	1.57
Vista	3N	2E	28	NE,NE,NE	63-03295	5/24/1962	3.24
Westland Acres	3N	1E	1	SE,SE	63-02989	6/2/1954	1.00
Westmoreland	4N	2E	31	NE,NW,SW	63-03084	10/31/1955	1.22
Willow Lane #1	4N	2E	32	NW,NW,NW	63-03291	5/21/1962	2.40
Willow Lane #2	4N	2E	32	NW,SW,NW	63-03411	6/17/1964	1.50
Willow Lane #3	4N	2E	32	NW,SW,NW	63-08059	11/12/1974	0.57

NO
SUFF.

IMAP - RECONCILE WELL LIST WITH IDWR RECORDS PRIOR TO LEGAL NOTICE

February 14, 2002 

Replace "Application" with numbers as shown.

Abbreviations - WR for IDWR record & UW for United Water 2/6/02 well list.

Confirm - UW list correct or revise as needed.

DETAILS

Barber #3 = 63-31407 instead of Application.

Countryman Estates, 63-8011: WR = 2 wells same legal / UW = 1 well.

Coventry Place, 63-12424 & 63-12506: WR = 2 wells same legal / UW = 1 well;
permits ... second well drilled or retain as possible well site?

Danskin #2, 63-12552: WR = 2 wells same legal / UW = #2 well in S.12 with incorrect
permit number.

Foxtail, 63-12334 & 63-12362 & 63-12516: WR = R1W .. SWSE / UW = R1E .. SESE.
(Note: associated with Spurwing in R1W so WR probably correct.)

Island Woods #2, 63-11467 & 63-12432:

- WR = license 63-11467 Island Woods #1 in NWSW S.16 and #2 in SWSW S.16
but as permit listed #2 in S.21. Permit 63-12432 Island Woods #1 in S.16 & #4 in
NWNW S.21.
- UW = #2 in S.21, oversight based on permit vs. license data, should be SWSW
S.16? Well #4 used, location?

Maple Hills #2 = 63-31406 instead of Application: WR = SENENE / UW = SWNENE ..
should match or could just describe to qq .. NENE.

Marden & Marden Collectors, 63-2892 & 63-10386: WR = 3 "wells" same legal (3 in
2892 & 1 overlapping in 10386) / UW = 2 wells.

Overland Estates, 63-10391: WR = 2 wells same legal / UW = 1 well.

Pioneer, Pleasant Valley, Raptor & Tenmile, same 4 wells for 63-12043, 63-12138 & 63-12139:

- WR = NWNW S.17, SENE S.17, NENW S.21, NWNE S.22 (latter is Pioneer).
- UW = Pioneer matches, 3 others SENE S.17, confirm correct legal linked to correct well name for 3 others.

Redwood Creek, 63-11878, 63-12192 & 63-12452:

- WR = 63-11878 with 1 well SWNW S.7 & 1 well SENW S.7, Redwood Creek #1 & #2.
- WR = other 2 rights include 1 well SWNW S.7 (in addition to Floating Feather well in S. 5, FF well site ok).
- UW = 1 well Redwood Creek SWNW S.7 .. is second Redwood Creek well used? location?

Roosevelt #2 & #3, 63-3293: WR = 1 well / UW = 2 wells same legal.

Sunrise, 63-3164: WR = 2 wells same legal / UW = 1 well.

Thirteenth B, Transfer 4998 with same 5 wells for 4 rights: 63-2500, 63-2874, 63-7067 & 63-19456 (no suffix with latter right):

- WR = Transfer listed 3 existing & 2 proposed wells. Existing wells Idaho, Sixteenth & Thirteenth. Proposed wells 27th St. #1 & #2 in NENW S.9 T3N R2E.
- UW = Idaho, Sixteenth & Thirteenth ok but shows 1 more well, Thirteenth B, in SWSW S.4. Confirm 27th St. wells not drilled but Thirteenth B drilled instead & S.4 legal is correct.

GIVENS PURSLEY ^{LLP}

RECEIVED

FEB 21 2002

WATER RESOURCES
WESTERN REGION

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OF COUNSEL
*Licensed in California only

February 21, 2002

VIA HAND DELIVERY

Steve Lester
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705-5082

Re: IMAP Update Pages
Our File: 30-71

Dear Steve:

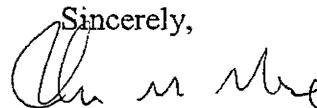
I am enclosing the following documents relating to United Water's IMAP:

1. An updated "Tab M" spreadsheet, which is the description of United Water's permits after the transfer.
2. An updated "Tab N" spreadsheet, which is the list of United Water's ground water points of diversion.
3. An updated page no. 50 of the IMAP.

These documents address the questions and issues you raised in a February 14, 2002 facsimile. Please refer to the Special Power of Attorney enclosed with my letter dated February 4, 2002 for my authority to make these changes on behalf of United Water.

The "Tab N" spreadsheet has been amended to address questions and issues you raised relating to United Water's ground water points of diversion. Please call if you have further questions.

Sincerely,



John M. Marshall

JMM/tns

Enclosures

cc: Scott Rhead (via U.S. Mail w/ enclosures)

S:\Clients\30\71\Corr\2002-2-20 Lester IMAP changes-JMM.doc

25

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March 22, 2002

VIA HAND DELIVERY

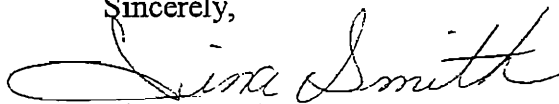
Steve Lester
Idaho Department of Water Resources
Western Regional Office
2735 Airport Way
Boise, ID 83705

Re: United Water Idaho — Integrated Municipal Application Package
Our File: 30-71

Dear Steve:

I enclose with this letter an original and four copies of the amended version of United Water Idaho's *Integrated Municipal Application Package* ("IMAP"). If you have any questions, please call me.

Sincerely,



Tina N. Smith
Assistant to John M. Marshall

Enclosure

cc: H. Scott Rhead (with 2 copies of encl.)
S:\Clients\30\71\Corr\2002-3-22 Lester amend IMAP.doc

RECEIVED

MAR 22 2002

WESTERN REGION

26

Lester, Steve

✓ SRBA coordination
in processing

From: Lester, Steve
Sent: Tuesday, March 26, 2002 1:28 PM
To: Shaff, Don; Shurte, Jan
Cc: Keen, Shelley; Grindle, Dave; Larsen, Dick
Subject: United Water IMAP filing of 112 rights/permits

Don & Jan:

This week we will process the massive IMAP package filed to change United Water's 112 rights & permits for a 50 year planning period. Legal notices will run first two weeks of April in local & statewide papers if all goes as planned.

This is an unusual project. Literally it involves 99 transfers of licenses/stat. claims and 13 amendments of permits. None of the permits require an SRBA claim. SRBA claims have been filed for all rights as required except 63-7077. United Water hopes 63-4015 will replace 63-7077 so did not claim the latter right.

The package of applications is being processed independent of transfer & amendment application data entry in Workflow by agreement with Western & State Office. Shelley Keen and Dave Grindle will be working behind the scenes to complete the data entry, mostly if not entirely through programming steps instead of traditional data entry. To give you an example of why traditional data entry is not feasible, 109 p/ds will be listed on 111 of the 112 rights (each will have 109 p/ds!!).

So we don't have an automatic email reminder from Workflow to let you know that claims so & so are being changed by transfers. Instead, I provided a copy of a spreadsheet from IMAP to Jan. IMAP is also available electronically. I imagine the necessary SRBA work within transfer processing can be done by using the e'version of IMAP somehow. Contact Dick Larsen for details about e'version (he is posting it on the net but can give you as much or as little of the info you need electronically). Shelley or Dave might be able to help you in that regard.

The spreadsheet listing rights for which SRBA claims have been filed is Tab J that follows page 60 of IMAP. Every right in Tab J has a claim *except*: 63-7077 (pg. 2 of spreadsheet), and all the rights on pg. 4 of the spreadsheet except 63-19456, which has been claimed. The other rights on pg. 4 do not require SRBA claims. The copy of the spreadsheet to Jan has all this information on it.

None of the claims have been partially decreed so we don't need to worry about migrating anything to wr side. I hope this gives you enough information to plan the easiest way to notify the court about pending administrative procedures relative to the claims. Please let me know if I can help in any way.

This is a huge package dealing with about 310 cfs. If approved, all the rights & permits will have identical p/d, use, season, p/u (blank field) and service area remark. Cleans up the database for most United Water stuff pretty nicely.

Steve

27

Taylor, Sue

From: Lester, Steve
Sent: Wednesday, March 27, 2002 3:48 PM
To: Western Region
Subject: United Water's IMAP - 112 applications for transfer or amendment, 310 cfs

Sue sent the legal notices for the big IMAP package today. For office day etc. inquiries beyond "when does the protest deadline end" and that sort of thing, please feel free to refer questions to me. The filing is available for review but we will not make copies here at Western if anyone asks. You might want to keep a copy of the legal notice handy for very general office day inquiries.

Here is some background fyi. I sent the following information to all other IDWR offices as a heads up.

United Water, the largest municipal provider in Idaho, filed a change to 112 of its rights/permits based on the Municipal Act of 1996. UW wants to consolidate its filings to provide water for the next 50 years in the Treasure Valley. The filing is the Integrated Municipal Application Package (IMAP). It is a collection of 93 transfers and 19 amendments instead of a single transfer and 19 amendments. But we are processing all of it as a single package. Some of the permits have been licensed since the filing was made, and IMAP is being processed as 99 transfers and 13 amendments. All of the rights/permits describe ground water, except for one junior Boise River permit.

All the ground water filings will list 109 well sites as alternate p/ds. The river permit will list two existing river diversions. All uses will be year around municipal with the same service area remark. About half of the existing cfs described by the rights/permits is currently being used. The remainder is requested to be reserved for future growth over 50 years. UW paid a \$10,800 filing fee!

The legal notice will run locally and statewide on April 4 and 11, 2002. The notice is attached. A hard copy of the IMAP notebook is being provided to all IDWR offices in case someone wants to review the package in person. We do not intend to copy the document for anyone. Instead, if you get requests for copies, please do the following: send me the person's name, address and telephone number and determine if the person wants a hard copy or will accept a CD-ROM. I will coordinate distribution of hard copies (from applicant) or electronic copies (from IDWR) to save you some work.

The department determined that the entire package can be protested for \$25. The protest deadline is April 22, 2002.

The transfers and amendments are being processed independent of Workflow at this time. Transfer and amendment application id numbers have not been assigned. The traditional way to view the application data on the Internet is not available. Dick Larsen is coordinating the Internet alternative. He will post a heading under "Special Interest" on our website. That will link to a menu of items to download ... a summary, the legal notice, key portions of IMAP, and the entire IMAP document for those so inclined. So we have several ways to provide information to people who request it. Dick will also issue a press release, probably early next week.

Shelley Keen and Dave Grindle will be working behind the scenes to programmatically complete most/all of the data entry (I can't thank them enough for that!). Norm Young, Glen Saxton, Gary Spackman, Jeff Peppersack and Pam Skaggs also had a hand in this along the way. I particularly want to thank Lisa Mattson for her hard work for initial review of all the rights, permits and SRBA claims associated with this to get the ball rolling. She did a lot of good work and was a big help to me in reviewing this unique filing. Gee, this is starting to sound like the academy awards or something. But many people have done much along the way, and it is a pleasure to acknowledge their efforts.

John Marshall at Givens Pursley is the attorney for the applicant in case there is a need to initiate contact.

Please let me know if you have any questions about processing IMAP.

Steve



IMAP ad.doc

28

✓ informed other IDWR
office

Lester, Steve

From: Lester, Steve
Sent: Wednesday, March 27, 2002 3:39 PM
To: Young, Norm; Saxton, Glen; Tuthill, Dave; Peppersack, Jeff; Shaff, Don; Keen, Shelley; Larsen, Dick; Grindle, Dave; Skaggs, Pam; Haynes, Bob; Merritt, Allen; Carlson, Ron; Jones, Harold (Skip)
Cc: Spackman, Gary; Mattson, Lisa
Subject: Processing United Water's 112 applications for future municipal growth - "IMAP"

Gentlemen:

United Water, the largest municipal provider in Idaho, filed a change to 112 of its rights/permits based on the Municipal Act of 1996. UW wants to consolidate its filings to provide water for the next 50 years in the Treasure Valley. The filing is the Integrated Municipal Application Package (IMAP). It is a collection of 93 transfers and 19 amendments instead of a single transfer and 19 amendments. But we are processing all of it as a single package. Some of the permits have been licensed since the filing was made, and IMAP is being processed as 99 transfers and 13 amendments. All of the rights/permits describe ground water, except for one junior Boise River permit.

All the ground water filings will list 109 well sites as alternate p/ds. The river permit will list two existing river diversions. All uses will be year around municipal with the same service area remark. About half of the existing cfs described by the rights/permits is currently being used. The remainder is requested to be reserved for future growth over 50 years. UW paid a \$10,800 filing fee!

The legal notice will run locally and statewide on April 4 and 11, 2002. The notice is attached. A hard copy of the IMAP notebook is being provided to all IDWR offices in case someone wants to review the package in person. We do not intend to copy the document for anyone. Instead, if you get requests for copies, please do the following: send me the person's name, address and telephone number and determine if the person wants a hard copy or will accept a CD-ROM. I will coordinate distribution of hard copies (from applicant) or electronic copies (from IDWR) to save you some work.

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John Marshall at Givens Pursley is the attorney for the applicant in case there is a need to initiate contact.

Please let me know if you have any questions about processing IMAP.

Steve



IMAP ad.doc

29

Lester, Steve

From: Lester, Steve
Sent: Wednesday, March 27, 2002 1:00 PM
To: Keen, Shelley; Grindle, Dave
Subject: Well update for IMAF

Shelley & Dave:

John Marshall concurred yesterday with our thoughts about the 3 wells or well sites for Carriage Hill ... can label them 1, 2 and 3 when we get to the data entry step. John confirmed this with Roger Dittus of United Water.

Steve

30

GIVENS PURSLEY LLP

RECEIVED

MAR 28 2002

WATER RESOURCES
WESTERN REGION

LAW OFFICES

277 North 6th Street, Suite 200
PO Box 2720, Boise, Idaho 83701
TELEPHONE: 208 388-1200
FACSIMILE: 208 388-1300
WEBSITE: www.givenspursley.com

Direct Dial: (208) 388-1270
E-Mail: jmm@givenspursley.com

Gary G. Allen
Christopher J. Beeson
Michael C. Creamer
Emily MacMaster Durkee
Thomas E. Dvorak
Roy Lewis Elguren
Timothy P. Feamside
Jeffrey C. Fereday
Amanda L. Keating
Karl T. Klein
Debora K. Kristensen
Anne C. Kunkel
Franklin G. Lee

David R. Lombardi
D. David Lorello, Jr.
Kevin T. Maloney
Kimberly D. Maloney
John M. Marshall
Kenneth R. McClure
Kelly Greene McConnell
Cynthia A. Melillo
Christopher H. Meyer
Kendall L. Miller
L. Edward Miller
Patrick J. Miller
Judson B. Montgomery

Angela K. Nelson
W. Hugh O'Riordan
Kenneth L. Pursley
Brad V. Sneed
Conley E. Ward
Robert B. White

Raymond D. Givens
James A. McClure
Stephanie C. Westemeier
OF COUNSEL
*Licensed in California only

March 27, 2002

VIA US MAIL

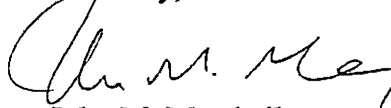
Steve Lester
Idaho Department of Water Resources
Western Regional Office
2735 Airport Way
Boise, ID 83705

Re: United Water Idaho Inc. IMAP
Our File: 30-71

Dear Steve:

As discussed yesterday, I am enclosing tabs A-N, which you can insert before the appropriate sections of the IMAP. If you have any questions, please call me.

Sincerely,



John M. Marshall

JMM/tns

Enclosure

S:\Clients\30\71\Corr\2002-3-27 Lester IMAP tabs.doc

31

GIVENS PURSLEY LLP

LAW OFFICES

277 North 6th Street, Suite 200
PO Box 2720, Boise, Idaho 83701
TELEPHONE: 208 388-1200
FACSIMILE: 208 388-1300
WEBSITE: www.givenspursley.com

Direct Dial: (208) 388-1270
E-Mail: jmm@givenspursley.com

Gary G. Allen
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Emily MacMaster Durkee
Thomas E. Dvora
Roy Lewis Eiguren
Timothy P. Feamside
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Conley E. Ward
Robert B. White

Raymond D. Givens
James A. McClure
Stephanie C. Wastemeier
OF COUNSEL
*Licensed in California only

March 28, 2002

VIA HAND DELIVERY

Steve Lester
Idaho Department of Water Resources
Western Regional Office
2735 Airport Way
Boise, ID 83705

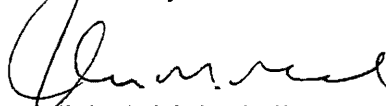
Re: Amended address pages
Our File: 30-71

Dear Steve:

Enclosed please find the amended address pages, which we discussed yesterday. Please replace them with the appropriate pages in the IMAP.

If you have any questions, please call me.

Sincerely,



John M. Marshall

JMM/tns

Enclosure

S:\Clients\30\71\Corr\2002-3-28 Lester add pgs.doc

RECEIVED

MAR 28 2002

WATER RESOURCES
WESTERN REGION

32

FAX COVER SHEET

DATE: Thursday, March 28, 2002

PAGES (INCLUDING COVER): 3ORIGINAL TO FOLLOW: No

From:

CHRISTOPHER H. MEYER

GIVENS PURSLEY LLP

Suite 200, Park Place

277 North Sixth Street

Post Office Box 2720

Boise, Idaho 83701-2720

Telephone: 208-388-1236

Fax: 208-388-1300

Email: chm@givenspursley.comWeb: www.givenspursley.comRE: United Water Idaho – IMAP
Our File No. 30-71TO: Phil Rassier 327-7866
Steve Lester 334-2348
Gary Spackman 334-2348

MESSAGE:

Gentlemen:

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

— Chris

cc: Scott Rhead (via Facsimile – 362-3858)
Joe Miller (via Facsimile – 336-6912)
John M. Marshall

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

CONFIDENTIALITY NOTICE

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

3-28-2002

*Edits to Notice by Chris Meyer
- With further edits by K. Dehr**existing
uses***NOTICE OF PROPOSED CHANGE OF WATER
RIGHTS AND WATER PERMITS**

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

*hold
water*

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

"reasonably anticipated future needs"

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

PROPOSED CHANGE

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

expanding

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

is required to meet demand today. The balance will serve long term

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

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

Karl J. Dreher, Director

Published on April 4 and 11, 2002.

33

FAX COVER SHEET

DATE: Thursday, March 28, 2002

PAGES (INCLUDING COVER): 3

ORIGINAL TO FOLLOW: No

From:

CHRISTOPHER H. MEYER

GIVENS PURSLEY LLP

Suite 200, Park Place

277 North Sixth Street

Post Office Box 2720

Boise, Idaho 83701-2720

Telephone: 208-388-1236

Fax: 208-388-1300

Email: chm@givenspursley.com

Web: www.givenspursley.com

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

TO: Phil Rassier
Idaho Department of Water Resources

SEND TO FAX PHONE: 327-7866

MESSAGE:

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

— Chris

cc: Gary Spackman (via Facsimile – 334-2348)
Steve Lester (via Facsimile – 334-2348)
Scott Head - 360-3858
Joe Miller - 336-6912

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

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Edits to Notice by Chris Meyer

NOTICE OF PROPOSED CHANGE OF WATER RIGHTS AND WATER PERMITS

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hold water

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

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

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expanding

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

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Karl J. Dreher, Director

Published on April 4 and 11, 2002.

TRANSACTION REPORT

Broadcast

Transaction(s) completed

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

FAX COVER SHEET

DATE: Thursday, March 28, 2002

PAGES (INCLUDING COVER): 3ORIGINAL TO FOLLOW: No

From:

CHRISTOPHER H. MEYER

GIVENS PURSLEY LLP

Suite 200, Park Place

277 North Sixth Street

Post Office Box 2720

Boise, Idaho 83701-2720

Telephone: 208-388-1236

Fax: 208-388-1300

Email: chm@givenspursley.comWeb: www.givenspursley.comRE: United Water Idaho - IMAP
Our File No. 30-71TO: Phil Rassier
Idaho Department of Water Resources

SEND TO FAX PHONE: 327-7866

MESSAGE:

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

— Chris

34

FILE COPY

30-71

FAX TRANSMITTAL COVER SHEET

DATE: 4-3-02

TO: JOHN MARSHALL
GIVENS, PURSLEY
388-1300

FROM: PHIL RASSIER
IDAHO DEPT OF WATER
RESOURCES

DOCUMENT DESCRIPTION: NEWS RELEASE

COMMENTS: PLEASE GIVE ME ANY COMMENTS ASAP.

COVER SHEET + 2 PAGES

PLEASE CONTACT PATSY @ 327-7390
IF YOU DO NOT RECEIVE THIS ENTIRE DOCUMENT

RECEIVED

APR 03 2002

Givens Pursley, LLP



News Release

IDAHO DEPARTMENT OF WATER RESOURCES
1301 N. Orchard St., Boise, ID 83706 - TEL: (208) 327-7900 FAX: (208) 327-7866
Internet Homepage: <http://www.idwr.state.id.us>

Release 2002-17

UNITED WATER IDAHO FILES WATER RIGHT APPLICATIONS

For Immediate Release
Boise, Idaho - April 3, 2002

For Media Information Contact:
Dick Larsen - (208) 327-7933

United Water Idaho, the largest municipal water provider in the state, has filed applications with state water managers seeking to change 112 of the company's water rights, the Idaho Department of Water Resources announced today.

The application package reflects a water planning process designed to provide UWI with water rights for "reasonably anticipated future needs" in an expanding municipal service area, according to the company. Supporting material supplied by UWI with the applications documents the company's anticipated water needs over the next 50 years.

The applications are being filed as an Integrated Municipal Application Package, a procedure authorized under the 1996 Idaho Municipal Water Rights Act. UWI is seeking to consolidate its existing water rights, all but one of which involve ground water rights, through 99 transfers and 13 amendments.

IDWR staff has begun technical and legal processing of the application including publication of legal notice. There is no projected completion date for the approval process.

The Municipal Water Right Act allows municipal providers to hold water rights for increased use within a planning period to accommodate growth in expanding municipal service areas. The company's IMAP is designed to make its current water rights conform to the provisions of the Municipal Water Rights Act. It also makes minor corrections to a few of the rights.

-more-more-

United Water Idaho Applications – Page 2 of 2

UWI says it anticipates a water demand of about 420 cubic feet per second (CFS) within 50 years. The company says the population in its service area will grow from 214,000 now to about 540,000 over the next 50 years.

UWI's existing water rights provide about 310 CFS, although current peak demand is about 150 CFS. The difference between the total of 310 CFS and the current peak demand is about 160 CFS, which UWI wants to hold to satisfy long-term water demands.

The company's applications also say it may need to acquire an additional 100 to 120 CFS over the next 50 years, but that additional water is not being asked for in the applications.

A full copy of the company's application package is available via the "Special Interest Items" element of the IDWR web site. The address is: www.idwr.state.id.us. You can also call the IDWR Western Regional Office in Boise at 334-2190.

-30-30-30-

35

VOICE MAIL
of
John M. Marshall
Transcribed on April 5, 2002
File No. 30-71

John, this is Gary Spackman at Water Resources calling. I understand that the publication of the IMAP notice in the Statesman today is incorrect, and despite all the uproar that the second version that we sent to them, not the last final was printed and I have not read it, Steve informed me of that this morning and we're trying to correct the next legal noti—or the notice for next Thursday so that it reads as we agreed. But, anyway, I thought I ought to give you a call and let you know. Give me a call if you have any questions. Maybe you already knew. Thanks. Bye.

[Received April 4, 2002]

S:\clients\30\71\2002-04-5 JMM Voicemail from Spackman.doc

Copies sent to - Scott Rhead
Joe Miller
JCF
JMM

36

MEMORANDUM

TO: IMAP File
FROM: Steve Lester 
DATE: April 5, 2002
RE: Legal Notice

This memo summarizes publication of legal notices for United Water's IMAP. Publication was scheduled for the first two weeks of April in five newspapers: two local ones plus three out of area papers to complete statewide publication required in this case.

I completed the legal notice by March 26. To honor a previous request, an email including the notice was sent to UW attorney John Marshall that day. Western Region distributed the notice to the newspapers via a combination of email and regular mail by early afternoon on March 27, the deadline for sending notices for publication on April 4 and April 11.

Around 4:30 p.m. on March 27, Marshall and his colleague, Chris Meyer, called me. They wanted to change some language in the notice, mostly to avoid use of the word "future", apparently for reasons involving the PUC. They also noted the legal notice had the incorrect zip code for UW, although the zip code matched the application information. They wondered how difficult it would be to retract the notice and replace it with a revised version by the next day.

I told them the matter would be discussed with the regional manager by the next morning and that Western Region would contact them on March 28. By late morning on March 28, a second version of the notice to correct the zip code and change some but not all of the language requested by the attorneys was sent to at least the Ada County newspaper. Before the corrected notice could be supplied to the other papers, more exchanges occurred between department staff and then between staff and UW attorneys, including telephone and fax contacts involving the attorneys, the State Office and Western Region.

The result by the close of business on March 28 was a third and final version of the notice. All five newspapers were provided this information by March 29 with instructions to disregard any prior versions. It was expected that legal notices of April 4 and April 11 would reflect the final information provided by this office to the newspapers.

One should note past experience with similar last minute and/or multiple changes has not always been successful, lengthening the legal notice process. In any event, the die was cast by March 28.

The final and correct legal notice was added to the IDWR web site. The correct notice was included in hard copy IMAP notebooks provided to the State Office and the other regional offices.

Results of the first publication on April 4 are shown below. Only two papers published the final and correct version. Two other papers used the first version, and the remaining newspaper used the second version. This is an unfortunate but not surprising result.

<i>NEWSPAPER & LOCATION</i>		<i>VERSION PUBLISHED</i>
Statesman	Boise	Second
Press Tribune	Nampa	First
Times News	Twin Falls	First
Post Register	Idaho Falls	Third
Tribune	Lewiston	Third

The last two newspapers are expected to publish the desired version on April 11. The other three newspapers were alerted today (fax and emails) to disregard versions one and two but to publish the third and final edition of the notice on April 11.

In hindsight, it would have been better to cancel publication for early April and try again later. After years of work on IMAP, another two weeks probably would not matter.

Approximately two person-days of additional work by department staff for the above steps were required since initial mailing of the legal notice on March 27.

37



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

FAX (208) 334-2348

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

April 22, 2002

JOHN MARSHALL
GIVENS PURSLEY LLP
PO BOX 2720
BOISE ID 83701-2720

Re: United Water Idaho's IMAP Package

Dear John:

This letter seeks additional information for IMAP as follows.

1. *How did the applicant determine the peak rate of flow currently used by United Water Idaho?* See Table 11 on page 50 of IMAP ... "rights in current portfolio used to support immediate demand = 147.5 cfs."
2. *What is the historic annual volume associated with current use?* Your response for items 1 and 2 need not include supporting data but should discuss methodology used to reach the conclusions. I imagine the applicant is best served by being able to respond to items 1 and 2 in whole and on an individual well basis at some point in the process.
3. *What information can be provided by the applicant to verify the elements of beneficial use rights included with IMAP?* These include 63-4015, 63-4395, 63-4414, 63-4424 and 63-4752. (Beneficial use right 63-19456 was already covered in this regard in prior Transfer No. 4998.) Verification of the elements should include evidence supporting priority dates, pump curves or 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.

Please submit the above requested information within thirty (30) days of the date of this letter, or the reply can be deferred until a hearing should one occur. Thank you for your attention to these matters.

Sincerely,

Steve Lester
Water Rights Supervisor

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State of Idaho

DEPARTMENT OF WATER RESOURCES

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

FAX (208) 334-2348

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

April 26, 2002

UNITED WATER ID INC
C/O JOHN MARSHALL ATTORNEY
GIVENS PURSLEY LLP
PO BOX 2720
BOISE ID 83701

Re: United Water Applications for Transfer and Amendment of Permits

Dear Applicant:

Enclosed are protests filed against United Water's recent applications for transfer and amendment of permits, referred to as "IMAP."

The following are the criteria IDWR must consider in either approving or denying an application for transfer (per Section 42-222, Idaho Code).

1. Will other water rights be injured by the transfer?
2. Will the change constitute an enlargement in the use of the original right?
3. Will the proposed change conflict with the local public interest?
4. Will the proposed use be contrary to conservation of water resources within the state of Idaho?

The following are the criteria the department must consider in either approving or denying an application for amendment of a permit (Section 42-203A, Idaho Code):

1. Will the approval of the application result in the diversion and use of more water than originally permitted?
2. Will the rights of others be adversely affected thereby?

The department suggests you contact the protestant(s) directly in an effort to determine what is in dispute in the application and to attempt to resolve the protest. Direct, sincere conversation between the parties prior to initiation of formal proceedings can often resolve a protest.

UNITED WATER ID INC

April 26, 2002

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Enclosed are calendars for the months of June and July, 2002. Please mark dates you are **unavailable** during the two months and return them by May 10, 2002. After May 10, 2002, this office will schedule a conference if the matter is not resolved informally. At the conference, the department will review possibilities for resolution of the protest. If the matter cannot be resolved at that time, a formal hearing will be arranged for a future date.

Please contact this office if you have questions regarding this procedure.

Sincerely,

A handwritten signature in cursive script, reading "Gary Spackman".

Gary Spackman

GS:st

Encl. Copies of Protests
Calendars