

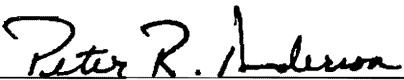
BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION)	
FOR TRANSFER OF WATER RIGHTS)	ORDER GRANTING
IN THE NAME OF UNITED WATER)	PETITION TO INTERVENE
IDAHO, INC., INTEGRATED)	
MUNICIPAL APPLICATION)	
PACKAGE (IMAP))	
_____)	

On October 29, 2002, the Terteling Company, Terteling Trust No. 7, and the Terteling family (the "Terteling Entities") filed a Petition to Intervene as protestants in the above-captioned matter. The Terteling Entities' Petition to Intervene was not timely filed pursuant to IDAPA 37.01.01.352. Although the Terteling Entities fail to state good cause for their untimely filing, the Applicant, United Water Idaho, Inc., indicates that it has no objection to intervention by the Terteling Entities. Based on the foregoing, the Terteling Entities' Petition to Intervene as protestants is **GRANTED** with the following conditions:

- (1) The Terteling Entities are bound by all orders and notices earlier entered; and
- (2) The Applicant may file a motion to strike any issues raised by the Terteling Entities in the Statement of Issues to be filed on January 31, 2003, to prevent disruption, prejudice to existing parties, undue broadening of the issues, or for other reasons pursuant to IDAPA 37.01.01.352.

Dated this 22nd day of November, 2002.



Peter R. Anderson
Hearing Officer

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 25th day of November, 2002, the above and foregoing document was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

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

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

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

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

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

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

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

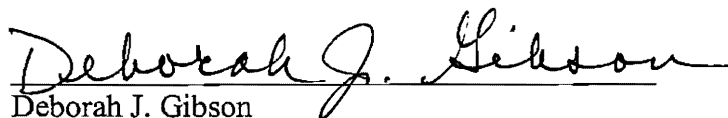
JOSEPHINE P BEEMAN
BEEMAN & ASSOCIATES PC
409 W JEFFERSON
BOISE ID 83702

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

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

MATT J HOWARD
PO BOX 190012
BOISE ID 83719

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



Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

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

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

A prehearing conference in the above-referenced matter was held on September 23, 2002, in Boise, Idaho. All parties were present. This Prehearing Order issues as a result of the discussions at the prehearing conference and pursuant to IDAPA 37.01.01.513, and shall control the course of these proceedings.

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

DISCOVERY/INFORMATION DISCLOSURE

Formal discovery is not authorized at this time.

On or before October 31, 2002, United Water Idaho, Inc. (the "Applicant") shall make the following disclosures to the Protestants regarding its prima facie case in support of the IMAP:

1. The name, address and telephone number of each lay-witness the Applicant may call to testify in support of the IMAP, and a summary of their testimony.
2. A copy of all documents, data compilations, and tangible things the Applicant may offer as evidence in support of the IMAP.
3. The name, address and telephone number of each expert witness the Applicant may call to testify in support of the IMAP, accompanied by a written report prepared and signed by the witness containing a complete statement of all opinions to be expressed and the basis and reasons therefore.

The Applicant shall also informally disclose information by responding to reasonable requests for information submitted to it by Protestants before November 30, 2002. IDWR has agreed to host at least one technical meeting with all parties during December 2002 to assist with these disclosures.

Each Protestant shall meet with the Applicant before December 31, 2002, to discuss the precise nature of their protest with the Applicant.

STATEMENT OF ISSUES

Following its meetings with each of the Protestants, Applicant shall prepare a neutral statement of the specific legal and factual issues raised by the Protestants. The Applicant's statement of the issues shall be circulated to the Protestants by January 17, 2003. If the Applicant's statement of the issues raised by a Protestant is accurate the Protestant shall so indicate by signing the Applicant's statement of the issues. The Applicant's statement of the issues shall be filed with IDWR on January 31, 2003. A Protestant who disputes the accuracy of the Applicant's statement of the issues may file its own statement by January 31, 2003, which statement must completely and precisely describe the legal and/or factual issues raised by that Protestant. Any issues that are not precisely identified shall be waived.

FILING OF DOCUMENTS

All documents filed by the parties with IDWR shall be filed at IDWR's State office located at 1301 N. Orchard St., Boise, ID 83706.

MOTIONS

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

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

The fourteen-day time period set forth in IDAPA 37.01.01.565 for responding to any motion is stayed until the Hearing Officer informs the parties in writing whether a response is necessary, and the applicable time frame.

RECORD FOR DECISION

The Hearing Officer shall establish a file at the central office of IDWR containing the official record for decision in this matter pursuant to IDAP 37.01.01.650 as of November 22, 2002. Following that date, the Hearing Officer will determine whether any document served on IDWR in relation to IMAP will be placed in the official record.

The parties may examine that file at any time. Following November 22, 2002, the Pioneer Irrigation District and Settlers Irrigation District shall inform IDWR whether they wish to proceed with the Motion to Strike/Motion for Procedural Ruling filed August 6, 2002.

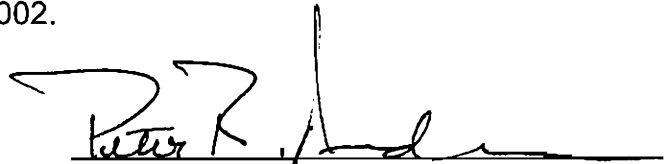
PREHEARING CONFERENCE

A prehearing conference will be held in this matter in February 2003. The precise time and location of the hearing will be provided to the parties by notice from IDWR. At the prehearing conference the parties must be prepared to discuss:

1. The means by which each issue identified in the statement(s) of issues can be resolved.
2. The necessity for further information disclosures from the Applicant, information disclosures by each Protestant, and the need, if any, for precisely focussed discovery on an issue.
3. The schedule for resolution of all issues.

An additional prehearing order shall be issued following that conference.

Dated this 11th day of October, 2002.


Peter R. Anderson
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of October, 2002, the above and foregoing document was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

JOHN M MARSHALL
GIVENS PURSLEY
PO BOX 2720
BOISE ID 83701

GARY D SMITH
MERIDIAN PUBLIC WORKS
660 E WATERTOWER
MERIDIAN ID 83642

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

GORDON LAW
CALDWELL ENGINEERING DEPT
621 E CLEVELAND BLVD
CALDWELL ID 83605

KATHLEEN MARION CARR MSC-020
OFFICE OF THE FIELD SOLICITOR
US DEPT OF INTERIOR
550 W FORT ST RM 365
BOISE ID 83724

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

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

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

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

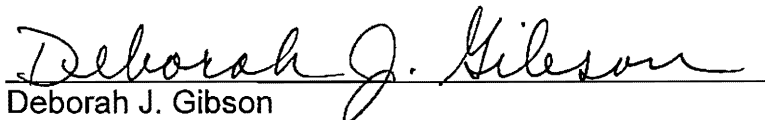
JOSEPHINE P BEEMAN
BEEMAN & ASSOCIATES PC
409 W JEFFERSON
BOISE ID 83702

MATT J HOWARD
PO BOX 190012
BOISE ID 83719

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

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

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


Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

Official Record
Continued to File #3.

This file contains documents
dated Aug. 30, 2002 - Jan. 6, 2003.

RECEIVED *GH.*

JAN - 6 2003

Department of Water Resources

Attorneys for Pioneer Irrigation District
and Settlers Irrigation District

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

Attorneys for Nampa & Meridian Irrigation District

Charles L. Honsinger, ISB No. 5240
RINGERT CLARK CHTD.
PO Box 2773
Boise, ID 83701-2773
Telephone: (208) 342-4591
Facsimile: (208) 342-4657

Attorneys for Boise Project Board of Control

Albert P. Barker, ISB No. 2867
BARKER RSHOLT & SIMPSON, LLP
P.O. Box 2139
Boise, ID 83701
Telephone: (208) 336-0700
Facsimile: (208) 344-6034

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

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

NOTICE REGARDING MOTION FOR
ORDER AUTHORIZING PRELIMINARY
DISCOVERY

Pioneer Irrigation District, Settlers Irrigation District, Nampa & Meridian Irrigation District, and the Boise Project Board of Control, through their respective counsel of record, hereby provide written notice to all parties and the Hearing Officer that it is necessary to reactivate the Motion for Order Authorizing Preliminary Discovery, dated September 23, 2002. This written notice is provided pursuant to the terms of the Stipulation to Stay Motion for Order Authorizing Preliminary Discovery, dated October 7, 2002.

DATED this 2nd day of January 2003.

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

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

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

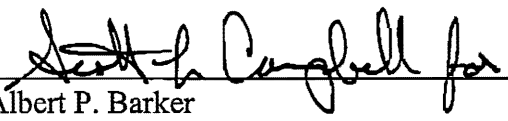
DATED this 2nd day of January 2003.

RINGERT CLARK, CHARTERED

By: Scott L. Campbell for
Charles L. Honsinger
Attorneys for Nampa & Meridian Irrigation
District

DATED this 2nd day of January 2003.

BARKER, ROSHOLT & SIMPSON

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 2nd day of January 2003, I caused a true and correct copy of the foregoing **NOTICE REGARDING MOTION FOR ORDER AUTHORIZING PRELIMINARY DISCOVERY** to be served by the method indicated below, and addressed to the following:

Director
Idaho Department of Water Resources
PO Box 83720
Boise, ID 83720
Fax: 327-5400

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

Peter Anderson, Hearing Officer
Idaho Department of Water Resources
PO Box 83720
Boise, ID 83720

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

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

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

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

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

Nampa & Meridian Irrigation District
Charles L. Honsinger
Ringert Clark
455 South 3rd Street
PO Box 2773
Boise, ID 83701-2773
Fax: 342-4657

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

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

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

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

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

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

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

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

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

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

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

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

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

Estate of Eleanor I. Chase
Matt J. Howard
PO Box 190012
Boise, ID 83719
Fax: 333-8409

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

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

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

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

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

City of Caldwell Engineering Department
Gordon Law
621 E. Cleveland Blvd.
Caldwell, ID 83605

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

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

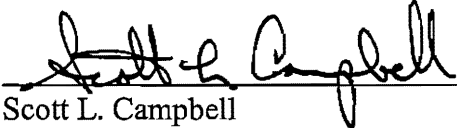
☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

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

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

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

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



Scott L. Campbell

OFF.
RECEIVED
DEC 16 2002

Department of Water Resources

Attorney for Boise-Kuna Irrigation District

Randall C. Fredricks, ISB No. 989
P. O. Box 2835
Boise, Idaho 83701
Telephone: (208) 384-5144
Facsimile: (208) 433-8976

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

COPY

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

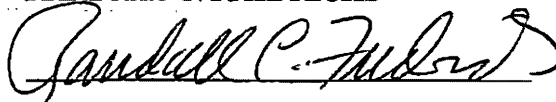
NOTICE OF SUBSTITUTION OF
ATTORNEY FOR BOISE-KUNA
IRRIGATION DISTRICT

COMES NOW, Randall C. Fredricks, attorney for Boise-Kuna Irrigation District and gives
notice that the following attorney shall be substituted as attorney of record for the BOISE-KUNA
IRRIGATION DISTRICT:

Robert W. Talboy, ISB No. 3603
ELLSWORTH, KALLAS & TALBOY, PLLC
2402 W. Jefferson St.
Boise, Idaho 83702
Telephone: (208) 336-1843
Facsimile: (208) 345-8945

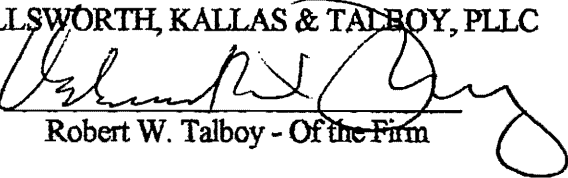
Dated this 12th day of December, 2002.

RANDALL C. FREDRICKS



ELLSWORTH, KALLAS & TALBOY, PLLC

By


Robert W. Talboy - Of the Firm

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13th day of December 2002, I caused a true and correct copy of the foregoing NOTICE OF SUBSTITUTION OF ATTORNEY FOR BOISE-KUNA IRRIGATION DISTRICT to be served by the method indicated below, and addressed to the following:

Director	☐	US Mail, Postage Prepaid
ID Dept. of Water Resources	☐	Hand Delivered
PO Box 83720	☐	Overnight Mail
Boise ID 83720	☒	Facsimile
Fax: 327-5400		

Peter Anderson, Hearing Officer	☒	US Mail, Postage Prepaid
ID Dept. of Water Resources	☐	Hand Delivered
PO Box 83720	☐	Overnight Mail
Boise ID 83720	☐	Facsimile

Gary L. Spackman, Regional Manager	☒	US Mail, Postage Prepaid
ID Dept. of Water Resources	☐	Hand Delivered
Western Region Office	☐	Overnight Mail
2735 Airport Way	☐	Facsimile
Boise ID 83705		

United Water Idaho Inc.	☐	US Mail, Postage Prepaid
John M. Marshall	☐	Hand Delivered
Givens Pursley, LLP	☐	Overnight Mail
PO Box 2720	☒	Facsimile
Boise ID 83701		
Fax: 388-1300		

Nampa & Meridian Irrigation District
Charles L. Honsinger
Ringert Clark
455 S. 3rd St.
PO Box 2773
Boise ID 83701-2773
Fax: 342-4657

☐ US Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Facsimile

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

☐ US Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Facsimile

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

☐ US Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Facsimile

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

☐ US Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Facsimile

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

☐ US Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Facsimile

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

☒ US Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Kathleen M. Carr
US Dept. of the Interior
Office of the Solicitor
Pacific NW Region, Boise Fld. Office
550 W. Fort Street, MSC 020
Boise ID 83724-0020

☒ US Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Estate of Eleanor I. Chase
Matt J. Howard
PO Box 190012
Boise ID 83719
Fax: 333-8409

☐ US Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Facsimile

Cities of Eagle, Kuna, Middleton & Star
And Star Sewer District
Tammy A. Zokan
Moore Smith Buxton & Turcke
225 N. 9th St., Ste. 420
Boise ID 83702
Fax: 331-1202

☐ US Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Facsimile

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

☐ US Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Facsimile

City of Caldwell Engrg. Dept.
Gordon Law
621 E. Cleveland Blvd.
Caldwell ID 83605

☒ US Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Ed Squires
988 S. Longmont Ave., Ste. 100
Boise ID 83706

☒ US Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Michael Chase
70 W. Floating Feather Rd.
Eagle ID 83616-3802

☒ US Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Pioneer Irrigation Dist.
And Settlers Irrigation Dist.
Scott L. Campbell
Angela Schaer Kaufmann
Moffatt, Thomas, Barrett, Rock
& Fields, Chartered
101 S. Capitol Blvd. 10th Flr.
PO Box 829
Boise ID 83701
Fax: 385-5384

() US Mail, Postage Prepaid
() Hand Delivered
() Overnight Mail
(☒) Facsimile



Randall C. Fredricks

Attorneys for Pioneer Irrigation District
and Settlers Irrigation District

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

RECEIVED

DEC 11 2002

Department of Water Resources

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

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

NOTICE RE: MOTION TO STRIKE

Pioneer Irrigation District and Settlers Irrigation District ("the Districts"), through their counsel of record, Scott L. Campbell of Moffatt, Thomas, Barrett, Rock, & Fields, Chartered, hereby provide Notice Re: Motion to Strike filed by the Districts in this matter. This Notice is provided in accordance with the PreHearing Order, dated October 11, 2002.

The Districts concur with the determination of Peter Anderson, Hearing Officer, regarding the documents which constitute the official record for decision in this matter as of November 22, 2002. Because that determination does not substantially differ from the positions

taken by the Districts in their Motion to Strike, the Districts do not believe it is necessary for the Hearing Officer to render a formal decision on the Motion.

DATED this 10th day of December 2002.

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

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

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of December 2002, I caused a true and correct copy of the foregoing NOTICE RE: MOTION TO STRIKE to be served by the method indicated below, and addressed to the following:

Director
Idaho Department of Water Resources
PO Box 83720
Boise, ID 83720
Fax: 327-5400

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

Peter Anderson, Hearing Officer
Idaho Department of Water Resources
PO Box 83720
Boise, ID 83720

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

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

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

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

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

Nampa & Meridian Irrigation District
Charles L. Honsinger
Ringert Clark
455 South 3rd Street
PO Box 2773
Boise, ID 83701-2773
Fax: 342-4657

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

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

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

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

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

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

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

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

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

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

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

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

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

Estate of Eleanor I. Chase
Matt J. Howard
PO Box 190012
Boise, ID 83719
Fax: 333-8409

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

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

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

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

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

City of Caldwell Engineering Department
Gordon Law
621 E. Cleveland Blvd.
Caldwell, ID 83605

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

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

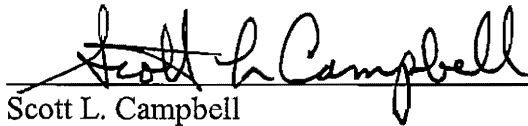
☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Randall Fredericks
Law Offices
PO Box 2835
Boise, ID 83701-2835

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

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

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



Scott L. Campbell



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

November 25, 2002

RE: In the matter of Application for Transfer of Water Rights in the in the name
of United Water Idaho, Inc., Integrated Municipal Application Package
(IMAP)

Dear Parties:

Enclosed, is a copy of an Order Granting Petition to Intervene with the current
service list for this matter

Sincerely,

Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

Encl.

Cc: Service List

NOV 15 2002

Department of Water Resources

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) 388-1236
EMAIL: chm@givenspursley.com

Gary G. Allen
Christopher J. Beeson
Jessica M. Borup
William C. Cole
Michael C. Creamer
Jeffrey A. De Voe
Emily MacMaster Durkee
Thomas E. Dvorak
Roy Lewis Eiguren
Timothy P. Fearnside
Jeffrey C. Fereday
Steven J. Hippler
Karl T. Klein
Debora K. Kristensen
Anne C. Kunkel

Deborah E. Nelson
Franklin G. Lee
David R. Lombardi
D. David Lorello, Jr.
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
Michael C. Orr *
Kenneth L. Pursley
Bradley V. Sneed
Conley E. Ward
Robert B. White

Raymond D. Givens
James A. McClure
Stephanie C. Westermeier
OF COUNSEL
John A. Miller, LL.M. **
TAX CONSULTANT

*Licensed in Oregon only
**Licensed in Kentucky only

November 14, 2002

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

Re: UWID's Notice of Non-Objection to Intervention by Terteling Entities
Our File No. 30-71

Dear Ms. Gibson:

Enclosed for filing in the above-captioned matter please find the following document: *UWID's Notice of Non-Objection to Intervention by Terteling Entities*. Also enclosed is a photocopy of thy Notice of Non-Objection to be conformed and returned in the stamped, self-addressed envelope also provided.

If you have any questions, please contact me.

Sincerely,


Carrine Johnson, Legal Assistant

Encls:

CHM:caw

S:\Clients\30\71\chm ltr to debbie gibson re filing correspondence 11-14-02.doc

Christopher H. Meyer, Esq. (Idaho Bar No. 4461)
John M. Marshall, Esq. (Idaho Bar No. 5628)
GIVENS PURSLEY LLP
277 North 6th Street, Suite 200
P.O. Box 2720
Boise, Idaho 83701-2720
Office: 208-388-1200
Fax: 208-388-1300
Email: chm@givenspursley.com; jmm@givenspursley.com
Counsel for Applicant United Water Idaho Inc.

RECEIVED

NOV 15 2002

Department of Water Resources

**BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES**

In the Matter of Integrated Municipal
Application Package ("IMAP") of United
Water Idaho Inc.

**UWID'S NOTICE OF NON-OBJECTION
TO INTERVENTION BY TERTELING
ENTITIES**

United Water Idaho Inc. ("United Water") has no objection to the intervention of the Terteling Entities in this IMAP proceeding.

United Water does object to the Terteling Entity's characterization of the public notice in this matter as being complex and not adequately setting forth the relevant facts. In fact, the notice clearly and simply states that UWID holds about 310 cfs in water rights, that its current peak demand is about 150 cfs and that the balance of 160 cfs is sought to be held for future needs. The notice could not have been more straightforward.

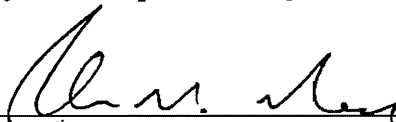
We raise this simply to make clear that our acquiescence with respect to this late intervention should not be understood as establishing a precedent.

DATED this 14th day of November, 2002.

GIVENS PURSLEY LLP



By: Christopher H. Meyer



By: John M. Marshall

*Attorneys for Applicant
United Water Idaho Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of November, 2002, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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

☒ U.S. Mail
☐ Facsimile
☐ Hand Delivery
☐ Overnight Mail

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

☒ U.S. Mail
☐ Facsimile
☐ Hand Delivery
☐ Overnight Mail

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

☒ U.S. Mail
☐ Facsimile
☐ Hand Delivery
☐ Overnight Mail

Kathleen Marion Carr, Esq.
Office of the Field Solicitor
U.S. Department of the Interior
550 West Fort Street
Boise, ID 83724

☒ U.S. Mail
☐ Facsimile
☐ Hand Delivery
☐ Overnight Mail

Mr. Edward Squires
Hydro Logic, Inc.
988 South Longmont Ave., Ste. 200
Boise, ID 83706

☒ U.S. Mail
☐ Facsimile
☐ Hand Delivery
☐ Overnight Mail

E. Gail McGarry, P.E.
Program Manager
Water Rights & Acquisitions
PN-3100
U.S. Bureau of Reclamation
Pacific Northwest Region
1150 N. Curtis Road
Boise, ID 83706-1234

☒ U.S. Mail
☐ Facsimile
☐ Hand Delivery
☐ Overnight Mail

Bruce M. Smith, Esq.
Tammy Zokan, Esq.
Moore, Smith, Buxton & Turcke, Chtd.
225 North 9th St., Ste. 420
Boise, ID 83702

☒ U.S. Mail
☐ Facsimile
☐ Hand Delivery
☐ Overnight Mail

Matthew K. Wilde, Esq.
Assistant City Attorney
Boise City Attorney's Office
150 N. Capitol Blvd.
P.O. Box 500
Boise, ID 83701-0500

☒ U.S. Mail
☐ Facsimile
☐ Hand Delivery
☐ Overnight Mail

Charles L. Honsinger, Esq.
Daniel V. Steenson, Esq.
Ringert Clark, Chart
455 S. Third Street
P.O. Box 2773
Boise, ID 83701-2773

☒ U.S. Mail
☐ Facsimile
☐ Hand Delivery
☐ Overnight Mail

Matt J. Howard, Esq.
Attorney At Law
2125 South Sumpter Way
P.O. Box 190012
Boise, ID 83719

☒ U.S. Mail
☐ Facsimile
☐ Hand Delivery
☐ Overnight Mail

Scott L. Campbell, Esq.
Angela D. Schaer, Esq.
Moffatt Thomas Barrett Rock & Fields,
Chartered
101 S. Capital Blvd., 10th Floor
P.O. Box 829
Boise, ID 83701-0829

☒ U.S. Mail
☐ Facsimile
☐ Hand Delivery
☐ Overnight Mail

Albert P. Barker, Esq.
Barker, Rosholt & Simpson, LLP
205 North 10th, Suite 520
P.O. Box 2139
Boise, ID 83701-2139

☒ U.S. Mail
☐ Facsimile
☐ Hand Delivery
☐ Overnight Mail

Randall Fredricks, Esq.
Law Offices
P.O. Box 2835
Boise, ID 83701-2835

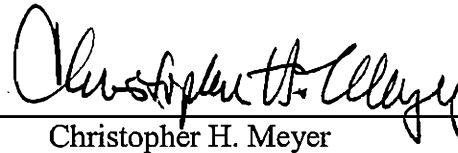
☒ U.S. Mail
☐ Facsimile
☐ Hand Delivery
☐ Overnight Mail

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

☒ U.S. Mail
☐ Facsimile
☐ Hand Delivery
☐ Overnight Mail

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

☒ U.S. Mail
☐ Facsimile
☐ Hand Delivery
☐ Overnight Mail



Christopher H. Meyer

MOORE SMITH BUXTON & TURCKE, CHARTERED

ATTORNEYS AND COUNSELORS AT LAW

225 NORTH 9TH STREET, SUITE 420
BOISE, ID 83702
TELEPHONE: (208) 331-1800 FAX: (208) 331-1202

RANSOM J. BAILEY
SUSAN E. BUXTON*
MICHAEL C. MOORE†
BRUCE M. SMITH
PAUL A. TURCKE‡
CHRISTOPHER E. YORGASON
TAMMY A. ZOKAN*

RECEIVED

NOV - 4 2002

Department of Water Resources

JOHN J. MCFADDEN*
Of Counsel

* Also admitted in Oregon
† Also admitted in Washington
‡ Also admitted in South Dakota
* Also admitted in New Mexico

October 31, 2002

Deborah J. Gibson
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705

RECEIVED

NOV 01 2002

WATER RESOURCES
WESTERN REGION

RE: In the Matter of United Water Idaho's Municipal Application Package,
United Water Idaho, Petitioner

Dear Ms. Gibson:

I have enclosed one original and one copy of **Notice of Nonopposition to Terteling et. al. Motion to Intervene** on behalf of Protests, the Cities of Eagle, Kuna, Middleton, Star and the Star Sewer and Water District. Once filed please return the conformed copy in the enclosed self-addressed, stamped envelope. If you have any questions, please contact me. Thank you.

st
11-1-02

Sincerely,

Amanda A. Duell

Amanda A. Duell
Legal Assistant

AAD

BRUCE M. SMITH, ISB #3425
TAMMY A. ZOKAN, ISB #5450
MOORE SMITH BUXTON & TURCKE, CHARTERED
Attorneys at Law
225 North 9th Street, Suite 420
Boise, Idaho 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202

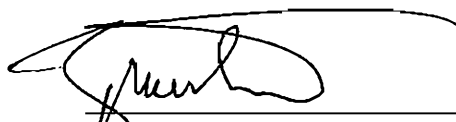
RECEIVED
NOV 01 2002
WATER RESOURCES
WESTERN REGION

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

In the Matter of United Water Idaho's	)	NOTICE OF NONOPPOSITION
Municipal Application Package, United Water	)	TO TERTELING ET. AL.
Idaho, Petitioner	)	MOTION TO INTERVENE
	)	
	)	

Come Now the City of Eagle, the City of Kuna, the City of Middleton, the City of Star and the Star Sewer and Water District (collectively referred to as "Protestants"), by and through counsel of record, MOORE SMITH BUXTON & TURCKE, CHARTERED, and give notice that they do not oppose intervention of the above petitioners for intervention.

RESPECTFULLY SUBMITTED this 31 day of October, 2002.



BRUCE M. SMITH
MOORE SMITH BUXTON & TURCKE, CHARTERED

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 31 day of October, 2002, I caused to served a true and correct copy of the forgoing NOTICE OF NONOPPOSITION TO TERTELING ET. AL. MOTION TO INTERVENE by the method indicated below, addressed to the following:

Kathleen Marion Carr
Office of the Field Solicitor
U.S. Department of the Interior
550 West Fort Street, MSC 020
Boise, ID 83724

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

Gary Spackman
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705

City of Meridian Public Works
Gary D. Smith
660 E. Watertower
Meridian, ID 83642

United Water Idaho, Inc.
John M. Marshall
Givens Pursley, LLP
P.O. Box 2720
Boise, ID 83701

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

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

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

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

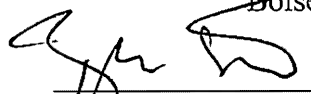
Scott L. Campbell
Moffatt Thomas
P.O. Box 829
Boise, Idaho 83701

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

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

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

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



BRUCE M. SMITH

NOTICE OF NONOPPOSITION TO TERTELING ET. AL. MOTION TO INTERVENE

RECEIVED

OCT 29 2002

Department of Water Resources

DANIEL V. STEENSON (ISB #4332)
CHARLES L. HONSINGER (ISB #5240)
S. BRYCE FARRIS (ISB #5636)
RINGERT CLARK CHARTERED
455 S. Third, P. O. Box 2773
Boise, Idaho 83701-2773
Telephone: (208) 342-4591
Facsimile: (208) 342-4657

Attorneys for The Terteling Company and Terteling Trust No. 7

BEFORE THE DEPARTMENT OF WATER RESOURCES OF
THE STATE OF IDAHO

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

COMES NOW, The Terteling Company, Terteling Trust No. 7, and the Terteling family (hereinafter collectively referred to as the "Terteling Entities"), by and through their attorneys, Ringert Clark, Chartered, and hereby petition the Hearing Officer in the above captioned proceeding to issue an order granting them status as interveners. This petition conforms with and is filed pursuant to IDAPA 37.01.01, Rules 350 - 352. This Petition is supported by the Affidavit of T. E. Terteling filed herewith and the record herein.

The Terteling Entities' address is 3823 N. 36th Street, Boise, ID 83703. The Terteling Entities have a direct and substantial interest in this proceeding in that they divert groundwater within Basin 63 pursuant to water rights they hold, including water right nos. 63-3603, 63-7395A, 63-7595,

and 63-31053. As groundwater users in the Treasure Valley, the Terteling Entities are concerned that the priority dates of their water rights will be diluted by United Water Idaho's Integrated Municipal Application Package (hereinafter "IMAP") because of the fact that current diversion of approximately 150 cfs under United Water Idaho's existing rights and priorities is expected to rise to 313.21 cfs (*see* UWID's IMAP at p. 51) in the future. The Terteling Entities are also concerned that IMAP seeks a "planning horizon" which will allow water to be held (potentially without beneficially using the same) for up to 50 years for "reasonably anticipated future needs," thereby possibly preventing other water users, including the Terteling Entities from appropriating such water in the future.

A protest or petition to intervene was not filed prior to this time because, although the Terteling Entities were aware of the IMAP filing, the Notice of that filing is complex and does not adequately set forth the fact that UWI will be permitted to "grow" into its paper water rights under the IMAP without risk of forfeiture, despite the fact that these paper water rights have not been fully beneficially used (*see* UWID's IMAP at p. 51). Other effects of IMAP, such as the potential of UWI immediately filing permit applications for and holding new water rights without use under the contemplated approximately 420 cfs for "future needs", cannot be gleaned from the filing. Terteling did not become aware of the potential effects of UWI's IMAP filing until they recently questioned their attorney regarding the same. After determining that the IMAP as proposed will likely affect Tertelings' water rights to their detriment (in that water rights with priority dates earlier than those held by Terteling will be permitted to "grow" into the stated or claimed quantities without any risk of forfeiture because of prior historical non-use), Terteling decided to quickly file this Petition to Intervene. Terteling has met with the attorneys for United Water Idaho in an attempt to resolve their

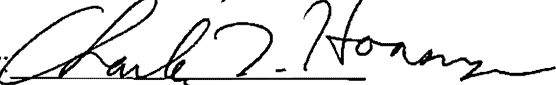
concerns prior to filing this Petition to Intervene.

An Order granting Terteling's Petition to Intervene will not disrupt the process herein, because only two prehearing conferences have been held, and the Hearing Officer only recently issued a scheduling order setting forth the process he outlined at the most recent prehearing conference. Furthermore, Tertelings are willing to abide by that Order, or any other Order that is issued by the Hearing Officer as to issues currently pending herein. An Order granting this Petition to Intervene will not prejudice the parties, because, again, discussions regarding settlement have only just begun, and no formal discovery has been authorized by the Hearing Officer. Finally, Terteling does not raise any new issues herein, but simply wishes to ensure that its water rights are protected from adverse affects that may be caused by this large and complex filing.

Terteling has complied with the requirements of IDAPA 37.01.01, Rules 350 - 352 by stating their name, address and the direct and substantial interest they have in this proceeding. They have stated a valid reason for failing to timely file their Petition to Intervene, and an Order granting such intervention will not prejudice any party, broaden the issues, nor disrupt this process. Therefore, Terteling hereby respectfully requests that the Director of the Department of Water Resources issue an order granting this Petition to Intervene.

Dated this 29th day of October, 2002.

RINGERT CLARK, CHARTERED

By 

Charles L. Honsinger

Attorney for The Terteling Company, et al.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of October, 2002, the above and foregoing document was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

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

Gary D. Smith
Meridian Public Works
660 E. Watertower
Meridian, Idaho 83642

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

Gordon Law
Caldwell Engineering Dept.
621 E. Cleveland Blvd.
Caldwell, Idaho 83605

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

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

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

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

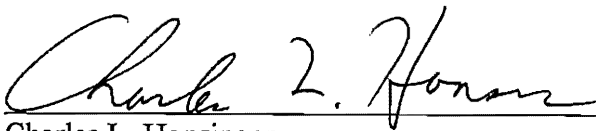
Gary Spackman
IDWR - Western Region
2735 Airport Way
Boise, Idaho 83705-5082

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

Matt J. Howard
P.O. Box 190012
Boise, Idaho 83719

Ed Squires
Hydro Logic Inc.
1002 W. Franklin St.
Boise, Idaho 83702-5431

Tammy A. Zokan
Moore Smith Buxton & Turcke
255 N. 9th St., Ste. 420
Boise, Idaho 83702


Charles L. Honsinger

RECEIVED

OCT 29 2002

Department of Water Resources

DANIEL V. STEENSON (ISB #4332)
CHARLES L. HONSINGER (ISB #5240)
S. BRYCE FARRIS (ISB #5636)
RINGERT CLARK CHARTERED
455 S. Third, P. O. Box 2773
Boise, Idaho 83701-2773
Telephone: (208) 342-4591
Facsimile: (208) 342-4657

Attorneys for The Terteling Company and Terteling Trust No. 7

BEFORE THE DEPARTMENT OF WATER RESOURCES OF
THE STATE OF IDAHO

IN THE MATTER OF INTEGRATED)
MUNICIPAL APPLICATION PACKAGE)
(CONSISTING OF 99 APPLICATIONS FOR) AFFIDAVIT OF T.E. TERTELING IN
TRANSFERS OF WATER RIGHTS, AND) SUPPORT OF PETITION TO
13 APPLICATIONS FOR AMENDMENT OF) INTERVENE
PERMITS) IN THE NAME OF UNITED)
WATER IDAHO, INC.)

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

T.E. Terteling, being first duly sworn on oath, deposes and says:

1. I am a Project Manager for The Terteling Company
2. I am a Trustee of the Terteling Trust No. 7.
3. My business address is 3823 N. 36th St., Boise, ID 83703.
4. I have reviewed the Petition to Intervene filed contemporaneously herewith on behalf of The Terteling Company, Terteling Trust No. 7, and the Terteling Family. I hereby state that the factual matters stated therein are true and accurate to the best of my knowledge.

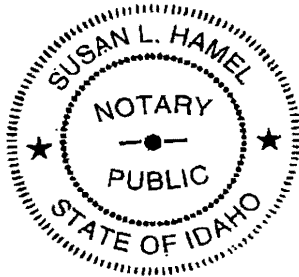
Further your affiant sayeth naught.



T E Terteling

On this 29th day of October, 2002, before me, the undersigned, a Notary Public, in and for said State, personally appeared T.E. Terteling, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

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



Susan L. Hamel
Notary Public for State of Idaho
Residing at Boise, Idaho
My Commission Expires: 03/27/2008

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of October, 2002, the above and foregoing document was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

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

Gary D. Smith
Meridian Public Works
660 E. Watertower
Meridian, Idaho 83642

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

Gordon Law
Caldwell Engineering Dept.
621 E. Cleveland Blvd.
Caldwell, Idaho 83605

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

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

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

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

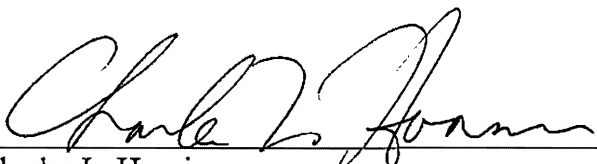
Gary Spackman
IDWR - Western Region
2735 Airport Way
Boise, Idaho 83705-5082

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

Matt J. Howard
P.O. Box 190012
Boise, Idaho 83719

Ed Squires
Hydro Logic Inc.
1002 W. Franklin St.
Boise, Idaho 83702-5431

Tammy A. Zokan
Moore Smith Buxton & Turcke
255 N. 9th St., Ste. 420
Boise, Idaho 83702



Charles L. Honsinger

Idaho Department of Water Resources Receipt

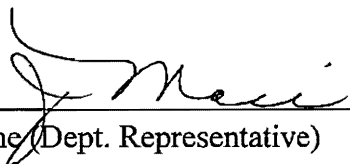
Receipt ID C065466

Payment Amount Date Received Region Status
Payment Type Check Number

Payer
Comment

Fee Detail

Amount	Description	Fund	FD	PCA	SO
\$25.00	TRANSFERS	0229	21	56105	1155


Signature Line (Dept. Representative)



RECEIVED

OCT 29 2002

Department of Water Resources

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

CHRISTOPHER H. MEYER
DIRECT DIAL: 208 388-1236
CELL: 208 407-2782
EMAIL: chm@givenspursley.com

Gary G. Allen
Christopher J. Beeson
Jessica M. Borup
William C. Cole
Michael C. Creamer
Jeffrey A. De Voe
Emily MacMaster Durkee
Thomas E. Dvorak
Roy Lewis Eiguren
Timothy P. Feamside
Jeffrey C. Fereday
Steven J. Hippler
Karl T. Klein
Debora K. Kristensen
Anne C. Kunkel

Franklin G. Lee
David R. Lombardi
D. David Lorello, Jr.
Kimberly D. Maloney
John M. Marshall
Kenneth R. McClure
Kelly Greene McConnell
Cynthia A. Meilillo
Christopher H. Meyer
Kendall L. Miller
L. Edward Miller
Patrick J. Miller
Judson B. Montgomery
Angela K. Nelson
Deborah E. Nelson

W. Hugh O'Riordan
Michael C. Orr *
Kenneth L. Pursley
Bradley V. Sneed
Conley E. Ward
Robert B. White

Raymond D. Givens
James A. McClure
Stephanie C. Westermeier
OF COUNSEL
John A. Miller, LL.M. **
TAX CONSULTANT
*Licensed in Oregon only
**Licensed in Kentucky only

October 28, 2002

Mr. Norman C. Young
Administrator
Water Management Division
Idaho Department of Water Resources
1301 N. Orchard St.
P.O. Box 83720
Boise, ID 83720-0098

Re: United Water Idaho Inc.'s Service Area Descriptions
Our File No. 30-71

Dear Norm:

Enclosed for filing with the Idaho Department of Water Resources, please find an updated description of United Water Idaho Inc.'s service area that reflects changes since United Water last submitted a service area description in 1997. This submission replaces all prior service area descriptions filed by United Water Idaho Inc. Please acknowledge receipt by date stamping the enclosed copy and returning it to our office in the enclosed self-addressed, stamped envelope.

Please call me if you have any questions.

Sincerely,

Christopher H. Meyer

Enclosures

cc: United Water Idaho Inc.

CHM:kdt S:\Clients\30\71\Corr\2002-10-28 CHM Ltr to Norm Young re Service Area.doc

RECEIVED

OCT 29 2002

Department of Water Resources

**Municipal Service Area
Description (MSAD)
For United Water Idaho Inc.**

Revised October 2002

**Submitted in Accordance with the
Municipal Water Rights Act of 1996**

**To the
Idaho Department of Water Resources
Karl J. Dreher, Director**

**By
United Water Idaho Inc.
8248 W. Victory Road
P.O. Box 7488
Boise, ID 83707-1488**

Purpose and Applicability of this MSAD

This revised Municipal Service Area Description (“MSAD”) is submitted to the Idaho Department of Water Resources (“IDWR” or the “Department”) by United Water Idaho Inc. (“UWID” “United Water Idaho,” “United Water” or the “Company”). The MSAD is a general, narrative description, including illustrative maps, describing the geographic area and types of water uses served by the Company.

This updated MSAD is submitted in compliance with the Municipal Water Rights Act of 1996 (the “1996 Act”). It replaces all earlier versions including those filed on January 27, 1997 and September 24, 1997.

In order to avoid confusion and to most effectively provide notice to other water users, regulatory agencies and other interested persons, UWID is providing to the IDWR this single, universal MSAD. UWID intends that this MSAD be made applicable to all municipal water rights¹ held by UWID, as well as any pending application for appropriation, transfer or other action, unless the service area for such right or application is expressly stated to be different.

The Company hereby requests that the Department review this MSAD and to confirm and acknowledge that it meets the requirements of the 1996 Act.

Description of United Water Idaho

United Water Idaho is a municipal water provider operating in the Treasure Valley of Idaho. United Water Idaho is a subsidiary of United Water Resources, incorporated in New Jersey. United Water Resources is owned by Suez S.A., a multinational energy and environmental services company based in Paris.

Since 1890, United Water and its predecessors² have been the principal providers of water for municipal purposes in the greater Boise metropolitan area. UWID holds a

¹ In this MSAD, the term “water rights” should be understood to include all lawful entitlements to the use of water, including, without limitation, all rights to divert, store, and/or place to beneficial use (including instream use) ground or surface waters, or a combination thereof, whether such rights are evidenced by license, permit, court decree, claim, beneficial use, ditch or canal company shares or stock certificates, contract entitlement, irrigation district authority, federal administrative action, executive order, federal court order, other federal authority or otherwise. The term “water rights” also shall encompass any contractual or other legal right (including, by way of example, contract entitlements to storage project water, the subordination of water rights, and the lease or rental of water rights through the water supply bank) to control or affect the storage and release of water or otherwise to control or affect reservoir or river operations.

² UWID’s predecessors include the Boise Water Corporation (and its purchaser, General Waterworks Corporation), the Boise Water Company, the Boise Artesian Hot and Cold Water Company, Boise Waterworks, Inc., and the Artesian Water & Land Development Improvement Co.

substantial portfolio of municipal and other water rights, permits and other entitlements to water that it uses to serve its customers.³

UWID is a municipal provider as defined in Idaho Code § 42-202B(3)(b). As a regulated utility, it provides direct water service on demand to over 70,000 customers and a growing population of over 215,000 within its service area.

UWID's business address and principal officers are as follows:

United Water Idaho
8248 W. Victory Road
P.O. Box 7488
Boise, Idaho 83707-1488
Office: 208-362-1704
Facsimile: 208-362-1479

President:	Gregory P. Wyatt
Vice President:	Benjamin M. Hepler
Secretary:	Carla E. Hjelm
Treasurer:	Edward J. Imparato

Municipal Water Rights

In 1996, the Legislature enacted the Municipal Water Rights Act of 1996 (the "1996 Act"). The 1996 Act codified the common law governing municipal water rights (see Appendix A).

Among the special features of municipal water rights is that their place of use is not described with particular boundaries. Instead, the service area is typically described by simple reference to the name of the community (e.g., City of Boise) or other generic description. This contrasts with other water users, who must describe their service area with particularity.⁴ The longstanding practice regarding the description of municipal service areas was codified in the 1996 Act.⁵ Specifically, the Act requires that municipal providers covered by the Act shall provide a broad, narrative description of their service

³ UWID may, from time to time, acquire water rights held by others for purposes other than municipal use within UWID's service area. These may be held in such other uses for some time, pursuant to contract or other arrangements with others, or they may be transferred to use within UWID's municipal system.

⁴ In the case of irrigation rights, the water right must identify the place of use by "legal subdivisions"—that is, down to the forty acre "quarter-quarter" of a one-square-mile section. Idaho Code § 42-202(6).

⁵ The 1996 Act contains several references to the service area description: Idaho Code §§ 42-202(7) (definition of service area), 42-202(2) (description of service area at time of application to appropriate water), 42-217(4) (revised description of service area at time of proof of beneficial use), 42-222(1) (description of service area in connection with change of water right to municipal).

area:

The service area need not be described by legal description nor by description of every intended use in detail, but the area must be described with sufficient information to identify the general location where the water under the water right is to be used and the types and quantity of uses that generally will be made.

Idaho Code §§ 202(2), 222(1).

The 1996 Act also codified the principle of an evolving service area. While other water right holders must seek a change (or transfer) of their rights any time their place of use changes or expands, municipal providers have never been required to do so. The 1996 Act provides:

“Service area” means that area within which a municipal provider is or becomes entitled or obligated to provide water for municipal purposes. For a municipality, the service area shall correspond to its corporate limits, or other recognized boundaries, including changes therein after the permit or license is issued. The service area for a municipality may also include areas outside its corporate limits, or other recognized boundaries, that are within the municipality’s established planning area if the constructed delivery system for the area shares a common water distribution system with lands located within the corporate limits. For a municipal provider that is not a municipality, the service area shall correspond to the area that it is authorized or obligated to serve, including changes therein after the permit or license is issued.

Idaho Code § 42-202B(8) (emphasis supplied).

Except in one instance,⁶ the 1996 Act does not expressly require municipal providers to revise and update their service area descriptions. Nor has the Department promulgated regulations specifying when to update service area descriptions. Nevertheless, doing so on a periodic basis is good policy and is consistent with the Act’s objectives of informing the public in a general way of the provider’s evolving service area.

⁶ The 1996 Act requires a municipal provider to update its service area description when filing proof of beneficial use. Idaho Code § 42-217 (item 4).

Integrated Municipal Application Package

On May 4, 2002, United Water submitted an Integrated Municipal Application Package (or "IMAP") to the Department. The IMAP is a comprehensive change application intended to bring most of UWID's water rights within the Municipal Water Rights Act of 1996.

The IMAP, as submitted, calls for a "planning horizon" under the 1996 Act of fifty years. Accordingly, it contains projections of increased water demand over that period.

Those long term demand projections, known as the "planning horizon component," are based on a "planning area" described in the IMAP. The planning area includes (in addition to UWID's current certificated area) areas currently receiving no municipal water service where UWID appears likely to become the provider in the future. The planning area specifically excludes certain areas now served, or likely to be served, which may not be consistent with the mandate in the 1996 for coordination of planning among municipal entities. Idaho Code § 42-202B(7) (definition of "reasonably anticipated future needs").

The planning area and the calculation of the planning horizon component provide useful insight into the future direction of UWID's evolving service area. However, the reader should understand that the Company is not limited to servicing those areas included within the planning area.

Municipal Service Area Description

As a regulated public utility, United Water Idaho's authority to serve is controlled primarily by the Idaho Public Utilities Commission ("IPUC"). Generally speaking, United Water may serve only those customers within its "certificated area."⁷ The IPUC has granted Certificate of Public Convenience and Necessity No. 142, as amended, to UWID. From time to time, the IPUC revises UWID's certificated area, as defined in Certificate No. 142, in response to petitions filed by the Company.

Most approved expansions are into adjacent areas that are not served by other water providers. In some instances, the IPUC may expand a water provider's service area to include one or more non-contiguous service areas. This has happened on occasion with UWID where developers have asked that service be provided to a new, non-contiguous development. United Water now serves three such small housing subdivisions in Canyon County and two in southwest Ada County on this basis.

⁷ See Idaho Code 61-526. Under certain circumstances, UWID may serve adjacent areas outside its IPUC certificated area. See, e.g., *Eagle Water Co., Inc. v. Idaho PUC*, 940 P.2d 1133 (1997) (discussing Idaho Code § 61-526).

Occasionally, the IPUC is called upon to resolve disputes between competing service providers, and may award to one an area previously served by another. The IPUC only regulates investor-owned companies. It does not regulate water service provided directly by municipalities, other governmental entities, cooperative or mutual nonprofit corporations.⁸ However, the IPUC takes into account those areas served by municipalities when assigning certificated areas to non-municipal entities. In this way, overlaps between non-municipal entities (such as UWID) and municipalities in the water service business are avoided.

The map attached hereto as Exhibit B shows the Company's certificated area boundary as authorized today (in 2002) and as of 1996. A comparison of the two areas graphically illustrates the expansion of the service area boundary over the last six years.

United Water provides municipal water to a broad range of residential, commercial, industrial and governmental customers.

United Water Idaho is cooperating with local governments and other parties in facilitating the provision of separate, non-potable irrigation ("NPI") water for lawns, parks and common areas. United Water has generally deferred to the policy preferences of local communities in this regard.

UWID operates as a wholesale provider of water, in that it does not control or direct the end use. Virtually every conceivable use of water is made of water provided to UWID's customers. This includes domestic use, irrigation of lawns, gardens, common areas, parks and greenways, open space and recreational fields, water amenities and aesthetic uses, pools and other recreational uses, commercial and industrial uses of all types, habitat protection and improvement, environmental mitigation and remediation, ground-water recharge, traditional agricultural and stockwater uses, fire-fighting, street cleaning, use by the Company, and all other beneficial uses to which its customers apply water. All of these are deemed "municipal purposes" under the 1996 Act.⁹ As with all municipal providers, a fraction of the Company's water is attributed to system losses. These include maintenance flushing, system leaks, and the like. These are deemed a cost of doing business, and are part of the municipal right.

The Company owns some interests in traditional surface storage rights. In addition, the Company is engaged in, and may expand in the future, aquifer storage/recharge ("ASR") projects, in which water is stored in underground aquifers for subsequent removal and beneficial use by those undertaking the storage.¹⁰ These projects

⁸ Idaho Code §§ 61-104, 61-125, 61-129.

⁹ Idaho Code § 42-202B(5) (definition of "municipal purposes").

¹⁰ ASR projects should be distinguished from "public benefit aquifer recharge" (or "PBAR") projects. PBAR projects typically are undertaken with public or other broad funding for the benefit of all water users within a

may be undertaken by the Company independently or in cooperation with other entities. ASR projects may serve both water quality purposes and storage purposes.

In its recently filed IMAP, UWID estimated the quantity of water provided to various broad classes of customers. Not surprisingly, it found that the bulk of its customers (accounting for over 90 percent of water use) comes from residential and commercial customers. The current average per capita use for residential customers is under 500 gallons per day, while the average for commercial customers is over 1,700 gallons per day. The demand for residential customers varies substantially depending upon whether they irrigate lawns with municipal water or with non-potable irrigation ("NPI") water supplied by other sources. Residential customers using NPI use approximately 30 percent of the total water used by those on municipal irrigation.

The IMAP study also determined that public sector customers account for less than one percent of total residential and commercial water sales. All hydrant use (including water sold to construction contractors as well as water not sold but used for firefighting and street cleaning) accounts for less than one percent. Water for the Company's own use (e.g., system flushing) accounts for just over one percent, while system losses account for approximately five percent.

The Company's water conservation program is subject to review and approval by the IPUC. Current measures include the use of education and pricing incentives designed to promote conservation in all uses of water and, in particular, to encourage cautious use of irrigation water during the summer.

The Company's water system is designed to serve both base load and peak demand. The peak demand (driven in large part by lawn irrigation) occurs during the hot summer. Base load has been increasing steadily over the years. In contrast, the peak demand, as a function of total annual production, has declined slightly over the years. In other words, the graph of annual demand has risen as a whole, but the peak is somewhat less pronounced.

Interestingly, the relationship between peak day volume and peak month volume remains quite stable over time. (The peak day will equal roughly 4 percent of the highest monthly volume for that year.) Consequently, United Water can accurately predict future peak day volume based on projections of future monthly demand.

Certification of Accuracy

I am Gregory P. Wyatt. I serve as President of United Water Idaho. I have reviewed the above discussion and the attached map. To the best of my knowledge, they

geographic area. In contrast, ASR projects are privately constructed and operate pursuant to water rights held for the benefit of the Company and its customers.

present a fair, accurate and complete description of the Company's service area and water uses.

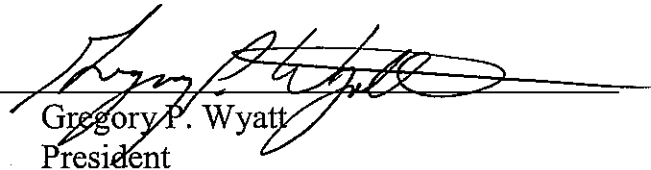
In preparing this MSAD, I have relied on my staff, in particular, H. Scott Rhead, Director of Special Projects, our IMAP consultant, John S. Church, President, Idaho Economics, our water counsel, Given Pursley LLP, in particular Christopher H. Meyer and John M. Marshall, and our IPUC counsel, McDevitt & Miller LLP, in particular Dean J. Miller.

I am authorized to make this submission on behalf of United Water Idaho.

Respectfully submitted,

OCTOBER 21, 2002

Date

A handwritten signature in black ink, appearing to read "Gregory P. Wyatt", is written over a horizontal line.

Gregory P. Wyatt
President

United Water Idaho Inc.

EXHIBIT A

Authorities on the Subject of Municipal Water Rights

Municipal water rights have long been accorded special treatment under the law of water rights in Idaho and throughout the West. This body of law is sometimes referred to as the “Growing Communities Doctrine.”¹¹ The following authorities document and discuss the special treatment accorded municipal water providers.

Idaho Cases:

City of Pocatello v. Murray, 206 F. 72, 80 (D. Idaho 1913), *aff’d*, *Murray v. City of Pocatello*, 214 F. 214 (9th Cir. 1914).

Beus v. City of Soda Springs, 62 Idaho 1, 107 P.2d 151 (1940).

Village of Peck v. Denison, 92 Idaho 747, 450 P.2d 310 (1969).

Other Western Cases:

Holt v. Cheyenne, 137 P. 876 (1914)

City and County of Denver v. Sheriff, 96 P.2d 836 (Colo 1939).

City and County of Denver v. Northern Colorado Water Conservancy Dist., 276 P.2d 992 (Colo. 1954) (“Blue River”).

Metropolitan Suburban Water Users Ass’n v. Colorado River Water Conservation Dist., 365 P.2d 273 (Colo. 1961), *rev’d* on other grounds *sub nom.*, *Denver v. Colorado Water River Conservation Dist.*, 696 P.2d 730 (Colo. 1985).

Colorado River Water Conservation Dist. v. Vidler Tunnel Water Co., 594 P.2d 566 (Colo. 1979).

Rocky Mountain Power Co. v. Colorado River Water Conservation Dist., 646 P.2d 383 (Colo. 1982).

City of Thornton v. Bijou Irrigation Co., 926 P. 1 (Colo. 1996).

In re the Application of Plains Electric Generation and Transmission Coop., Inc., 750 P.2d 475

¹¹ The label “growing communities doctrine” was employed by the Washington Supreme Court in *State of Washington, Dept. of Ecology v. Theodoratus*, 135 Wash.2d 582, 957 P.2d 1241 (1998) (dissent). Although this shorthand description has not yet been adopted by the Idaho Supreme Court, and differs somewhat from the “great and growing cities doctrine” which has taken hold in Colorado, it captures the central idea behind the case law. The doctrine plainly applies to all growing communities, large and small, not just to great cities. For instance, in *Village of Peck v. Denison*, 92 Idaho 747, 751, 450 P.2d 310, 314 (1969), the doctrine was applied to a community of 200 inhabitants.

(N.M. App. 1988).

Jicarilla Apache Tribe v. United States, 657 F.2d 1126 (10th Cir. 1981).

Weaver v. Eureka Lake Co., 15 Cal. 271 (1860).

City of Beaumont v. Beaumont Irrigation Dist., 42 Cal. Rptr. 859, 867 (Cal. App. 1965), *affirmed but opinion vacated by*, 405 P.2d 377 (Cal. 1965).

State of Washington, Dept. of Ecology v. Theodoratus, 957 P.2d 1241 (Wash. 1998) (dissent).

State ex rel. State Engineer v. Crider, 431 P.2d 45 (N.M. 1967).

Reynolds v. City of Roswell, 654 P.2d 537 (N.M. 1982).

Idaho Statute:

Municipal Water Rights Act of 1996, 1996 Idaho Sess. Laws, ch. 297 (codified at Idaho Code §§ 42-202(2), 42-202B, 42-217("4."), 42-219(1) & (2), 42-222(1), 42-223(2), 43-335, 43-338).

Other Western Statutes:

Ariz. Rev. Stat. Ann. § 45-160.

Cal. Water Code §§ 106.5, 1264 (Deering 1977).

15 Colo. Rev. Stat. § 37-92-103(3)(a)(I).

Nev. Rev. Stat. § 533.030(3).

N.M. Stat. Ann. §§ 72-12-8, 72-1-9.

Or. Rev. Stat. §§ 537.230(1), 537.410(2), 537.610(2)(a), 537.260(4).

Utah Code Ann. § 73-1-4(3)(b)(iv).

Utah Code Ann. § 73-3-12(1).

Wash. Rev. Code § 90.03.260.

Commentary:

Janis A. Carpenter, *Water for Growing Communities: Refining Tradition in the Pacific Northwest*, 27 Env'tl. L. 127 (1997).

A. Dan Tarlock, *Law of Water Rights and Resources* §§ 5:63, 5:66 (2002 Supp.).

A. Dan Tarlock, *The Future of Prior Appropriation in the New West*, 41 Natural Resources J. 769 (2001).

Frank J. Trelease, *Preferences to the Use of Water*, Rocky Mtn. L. Rev. 133, 138 (1955).

Waters and Water Rights, § 14.03(a) at 170-71, § 48.03(c) (Robert E. Beck ed., The Michie Company 1991).

Wells A. Hutchins, *The Idaho Law of Water Rights*, 5 Idaho L. Rev. 1, 44 (1968).

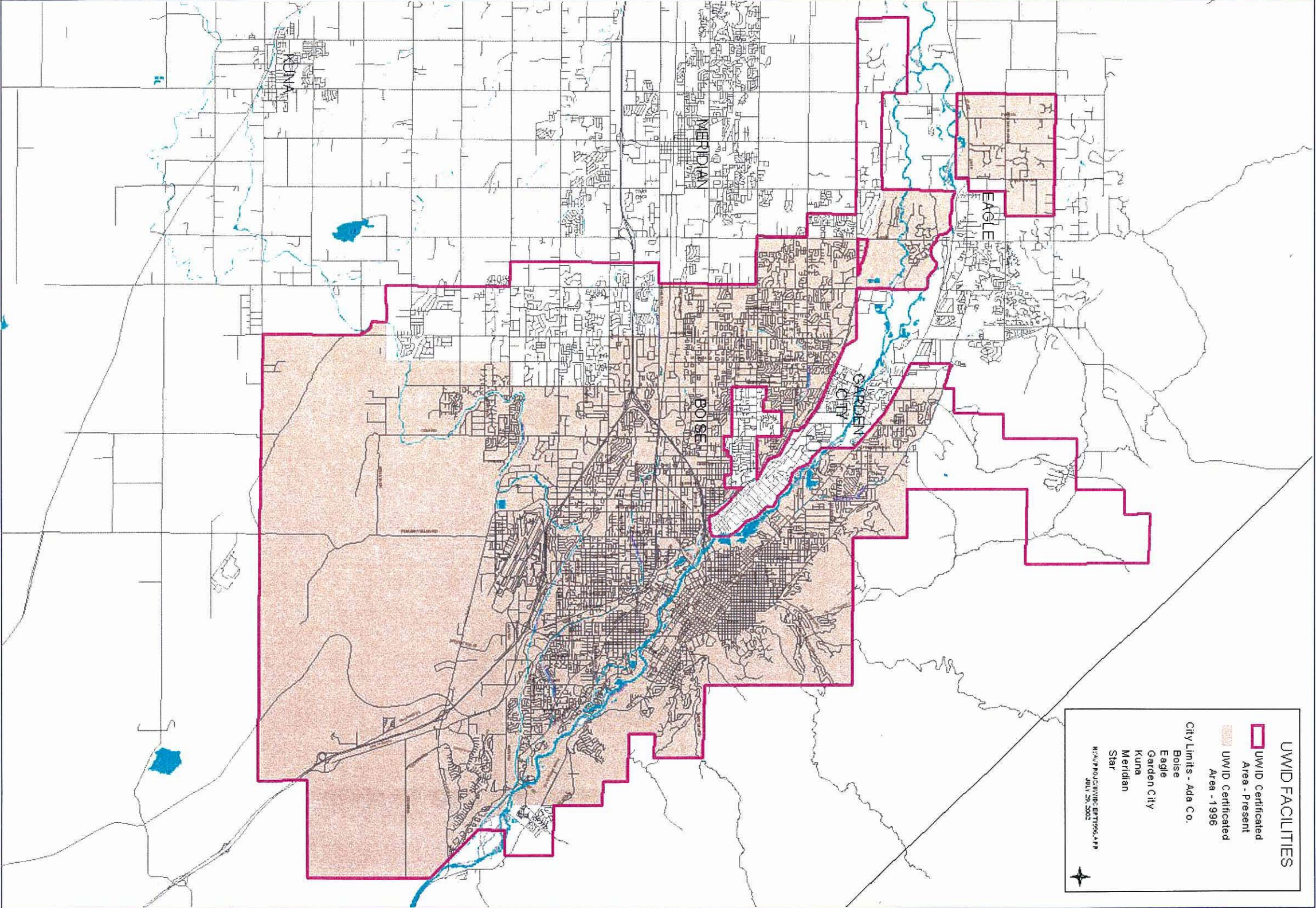
Note, Recent Developments in the El Paso/New Mexico Interstate Groundwater Controversy—The Constitutionality of New Mexico's Municipality Water Planning Statute, 29 Nat. Resources J. 223, 229-30 (1989).

Lynne Krogh-Hampe, *Injury and Enlargement in Idaho Water Right Transfers*, 27 Idaho L. Rev. 249, 294 (1990).

Jeffrey C. Fereday, Christopher H. Meyer and Michael C. Creamer, *The Idaho Water Law Handbook*, ch. J. (2002).

EXHIBIT B

1996 and 2002 Service Boundary Comparison Map (attached)



OCT 21 2002

Department of Water Resources

Laura E. Burri
Jeffrey R. Christenson
D. Blair Clark
Michael J. Doolittle
S. Bryce Farris
Patrick D. Furey
David Hammerquist
Charles L. Honsinger
Joseph B. Jones
James P. Kaufman
Jennifer Reid Mahoney
James G. Reid
William F. Ringert
Daniel V. Steenson
Allyn L. Sweeney

TO: IDAHO DEPARTMENT OF WATER RESOURCES

FROM: CHARLES L. HONSINGER

DATE: 10/18/02

RE: SUBCASE NO. In the Matter of IMAP

1. ORIGINAL and ONE COPY of Notice of Appearance

___ FOR YOUR INFORMATION

___ FILE ORIGINAL & CONFORM COPY

___ FOR YOUR FILE

___ PLEASE REPLY FOR MY SIGNATURE

___ PLEASE FILE

___ PLEASE ANSWER AND SEND COPY OF
LETTER TO ME

___ IN ACCORDANCE WITH
YOUR REQUEST

___ PLEASE RECORD AND RETURN

___ PLEASE COMMENT

___ RUSH

___ PLEASE SIGN AND RETURN

___ AS PER OUR PHONE CONVERSATION

___ PLEASE TELEPHONE/SEE ME

___ PLEASE REVIEW AND CALL TO
DISCUSS

REMARKS: Please file the original Notice of Appearance, conform the enclosed copy and return it in the enclosed pre-paid envelope. Thank you, Kimi White

RECEIVED

OCT 21 2002

Department of Water Resources

DANIEL V. STEENSON (ISB #4332)
CHARLES L. HONSINGER (ISB #5240)
RINGERT CLARK CHARTERED
455 S. Third, P. O. Box 2773
Boise, Idaho 83701-2773
Telephone: (208) 342-4591
Facsimile: (208) 342-4657

Attorneys for Nampa & Meridian Irrigation District,
City of Caldwell, and City of Meridian

BEFORE THE DEPARTMENT OF WATER RESOURCES OF
THE STATE OF IDAHO

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

COMES NOW, Charles L. Honsinger of the firm of Ringert Clark, Chartered, and hereby
make their appearance as counsel of record for Protestants the City of Meridian and the City of
Caldwell in the above entitled matter.

Dated this 18th day of October, 2002.

RINGERT CLARK, CHARTERED

By Charles L. Honsinger
Charles L. Honsinger

Dated this 18th day of October, 2002.

RINGERT CLARK, CHARTERED

By: Charles L. Honsinger

Charles L. Honsinger
Attorney for Nampa & Meridian
Irrigation District, City of Caldwell, and
City of Meridian

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of October, 2002, the above and foregoing document was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

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

Gary D. Smith
Meridian Public Works
660 E. Watertower
Meridian, Idaho 83642

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

Gordon Law
Caldwell Engineering Dept.
621 E. Cleveland Blvd.
Caldwell, Idaho 83605

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

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

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

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

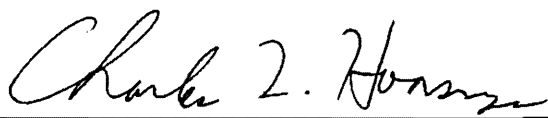
Gary Spackman
IDWR - Western Region
2735 Airport Way
Boise, Idaho 83705-5082

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

Matt J. Howard
P.O. Box 190012
Boise, Idaho 83719

Ed Squires
Hydro Logic Inc.
1002 W. Franklin St.
Boise, Idaho 83702-5431

Tammy A. Zokan
Moore Smith Buxton & Turcke
255 N. 9th St., Ste. 420
Boise, Idaho 83702



Charles L. Honsinger

OCT - 8 2002

Department of Water Resources

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
Jessica M. Borup
William C. Cole
Michael C. Creamer
Jeffrey A. De Voe
Emily MacMaster Durkee
Thomas E. Dvorak
Roy Lewis Eiguren
Timothy P. Feamside
Jeffrey C. Fereday
Steven J. Hippler
Karl T. Klein
Debora K. Kristensen
Anne C. Kunkel

Franklin G. Lee
David R. Lombardi
D. David Lorello, Jr.
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

Deborah E. Nelson
W. Hugh O'Riordan
Michael C. Orr *
Kenneth L. Pursley
Bradley V. Sneed
Conley E. Ward
Robert B. White

Raymond D. Givens
James A. McClure
Stephanie C. Westermeier
OF COUNSEL
John A. Miller, LL.M. **
TAX CONSULTANT
*Licensed in Oregon only
**Licensed in Kentucky only

October 7, 2002

VIA US MAIL

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

RECEIVED

OCT - 8 2002

Department of Water Resources

Re: United Water IMAP
Our File: 30-71

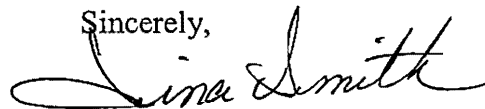
Dear Clerk:

Enclosed please find the original executed Stipulation to Stay Motion for Order Authorizing Preliminary Discovery, which was faxed to you Monday afternoon.

I have enclosed a copy of the Stipulation along with a self-addressed stamped envelope. Please date stamp the copy and return it to me in the envelope provided.

If you have any questions, please call me.

Sincerely,



Tina N. Smith
Assistant to John M. Marshall

Enclosure
S:\Clients\30\71\Corr\2002-10-7 IDWR stip.doc

RECEIVED

OCT 08 2002

Christopher H. Meyer, Esq. (Idaho Bar No. 4461)
John M. Marshall, Esq. (Idaho Bar No. 5628)
GIVENS PURSLEY LLP
277 North 6th Street, Suite 200
P.O. Box 2720
Boise, Idaho 83701-2720
Office: 208-388-1200
Fax: 208-388-1300
Email: chm@givenspursley.com
Counsel for Applicant United Water Idaho

Charles L. Honsinger
RINGERT CLARK CHID.
PO Box 2773
Boise, ID 83701-2773
Telephone: (208) 342-4591
Facsimile: (208) 342-4657
*Attorneys for Boise Project
Board of Control*

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

Albert P. Barker
BARKER ROSHOLT & SIMPSON
P.O. Box 2139
Boise, ID 2139
Telephone: (208) 336-0700
Facsimile: (208) 344-6034
*Attorneys for Boise Project Board of
Control*

**BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES**

In the Matter of Integrated Municipal
Application Package ("IMAP") of United
Water Idaho Inc.

**STIPULATION TO STAY MOTION FOR
ORDER AUTHORIZING PRELIMINARY
DISCOVERY**

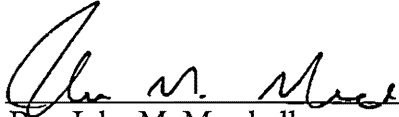
Pioneer Irrigation District, Settlers Irrigation District, Nampa & Meridian Irrigation District, the Boise Project Board of Control (collectively "Movants") and United Water Idaho Inc. ("United Water") hereby stipulate to stay Movants' Motion for Order Authorizing Preliminary Discovery (the "Motion") while Movants and United Water engage in an informal exchange of information.

After Movants have reviewed the information provided by United Water pursuant to this Stipulation, if they still believe their motion is necessary, they may reactivate their Motion by

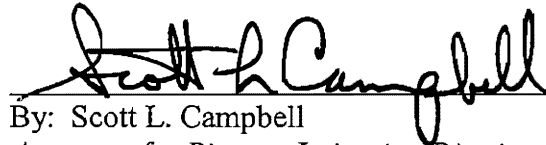
providing written notice to all parties and the Hearing Officer. United Water (and any other parties wishing to file a response) may then file a response to the Motion within seven days.

DATED this 7th day of October, 2002.

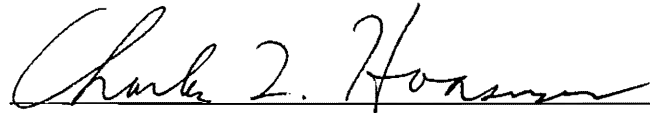
GIVENS PURSLEY LLP



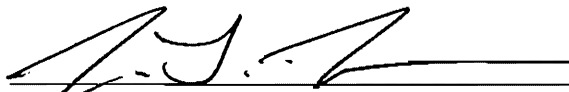
By: John M. Marshall
Attorneys for Applicant
United Water Idaho Inc.



By: Scott L. Campbell
Attorneys for Pioneer Irrigation District and
Settlers Irrigation District



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



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

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of October, 2002, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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

☐ U.S. Mail
☒ Facsimile
☐ Hand Delivery
☐ Overnight Mail

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

☒ U.S. Mail
☐ Facsimile
☐ Hand Delivery
☐ Overnight Mail

Kathleen Marion Carr
Office of the Field Solicitor
U.S. Department of the Interior
550 West Fort Street
Boise, ID 83724

☒ U.S. Mail
☐ Facsimile
☐ Hand Delivery
☐ Overnight Mail

Mr. Edward Squires
Hydro Logic, Inc.
988 South Longmont Ave., Ste. 200
Boise, ID 83706

☒ U.S. Mail
☐ Facsimile
☐ Hand Delivery
☐ Overnight Mail

E. Gail McGarry, P.E.
Program Manager
Water Rights & Acquisitions
PN-3100
U.S. Bureau of Reclamation
Pacific Northwest Region
1150 N. Curtis Road
Boise, ID 83706-1234

☒ U.S. Mail
☐ Facsimile
☐ Hand Delivery
☐ Overnight Mail

Gordon N. Law, P.E.
City Engineer
Engineering Department
City of Caldwell
621 E. Cleveland Blvd.
P.O. Box 1177
Caldwell, ID 83605

☒ U.S. Mail
☐ Facsimile
☐ Hand Delivery
☐ Overnight Mail

Bruce M. Smith
Tammy Zokan, Esq.
Moore, Smith, Buxton & Turcke, Chtd.
225 North 9th St., Ste. 420
Boise, ID 83702

☒ U.S. Mail
☐ Facsimile
☐ Hand Delivery
☐ Overnight Mail

Matthew K. Wilde, Esq.
Assistant City Attorney
Boise City Attorney's Office
150 N. Capitol Blvd.
P.O. Box 500
Boise, ID 83701-0500

☒ U.S. Mail
☐ Facsimile
☐ Hand Delivery
☐ Overnight Mail

Ms. Catherine Chertudi
Ground Water Programs Manager
Boise City Public Works
150 N. Capitol Blvd.
P.O. Box 500
Boise, ID 83701-0500

☒ U.S. Mail
☐ Facsimile
☐ Hand Delivery
☐ Overnight Mail

Charles L. Honsinger, Esq.
Ringert Clark, Chart
455 S. Third Street
P.O. Box 2773
Boise, ID 83701-2773

☒ U.S. Mail
☐ Facsimile
☐ Hand Delivery
☐ Overnight Mail

Matt J. Howard, Esq.
Attorney At Law
2125 South Sumpter Way
P.O. Box 190012
Boise, ID 83719

☒ U.S. Mail
☐ Facsimile
☐ Hand Delivery
☐ Overnight Mail

Scott L. Campbell, Esq.
Moffatt Thomas Barrett Rock & Fields, Chtd.
101 S. Capital Blvd., 10th Floor
P.O. Box 829
Boise, ID 83701-0829

☒ U.S. Mail
☐ Facsimile
☐ Hand Delivery
☐ Overnight Mail

Albert P. Barker, Esq.
Barker, Rosholt & Simpson, LLP
205 North 10th, Suite 520
P.O. Box 2139
Boise, ID 83701-2139

☒ U.S. Mail
☐ Facsimile
☐ Hand Delivery
☐ Overnight Mail

Gary D. Smith, P.E.
Public Works Director
City of Meridian
660 E. Watertower Ln., Ste. 200
Meridian, ID 83642

☒ U.S. Mail
☐ Facsimile
☐ Hand Delivery
☐ Overnight Mail

Ms. Beth Baird
Environmental Programs Coordinator
Public Works
City of Boise
P.O. Box 500
Boise, ID 83701

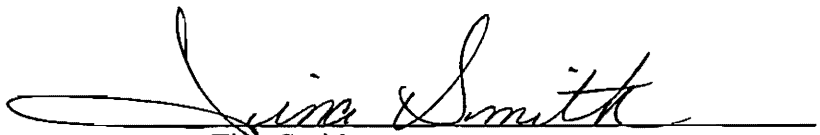
☒ U.S. Mail
☐ Facsimile
☐ Hand Delivery
☐ Overnight Mail

Randall Fredricks
P.O. Box 2835
Boise, ID 83701-2835

☒ U.S. Mail
☐ Facsimile
☐ Hand Delivery
☐ Overnight Mail

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

☒ U.S. Mail
☐ Facsimile
☐ Hand Delivery
☐ Overnight Mail


Tina Smith

- HEARING ROSTER OF ATTENDANCE -

APPLICATION FOR TRANSFER OF WATER RIGHTS IN THE NAME OF UNITED WATER IDAHO, INC., INTEGRATED MUNICIPAL APPLICATION PACKAGE (IMAP) September 23, 2002

NAME	ADDRESS	REPRESENTING
John Marshall	277 N. 6th St, 83702	United Water
Chris Meyer	"	"
Scott RHEAN	8248 W. Victory 83707	"
Mike Chase	70 W Floating Feather Rd, Eagle	Chase ESTATE
Phillip Smith	225 N. 9th Boise 83706	Eagle Kuna Star Middletn + Star Senior + H&D
Tammy Zokan	225 N 9th #400 Boise, ID 83705	Eagle Kuna Star Middletn Star Sen + H&D
MATTHEW WILDE	Po Box 500, Boise, ID 83701-0500	CITY OF BOISE
Angela Schaeer	PO Box 829 Boise, ID 83701	PID 4 SID
Scott Campbell	P.O. Box 829 Boise, ID 83701	PID 4 SID
E GAIL McGarry	1150 N Curtis Boise 83706	Bureau of Reclamation
~~Harold~~ ~~Law~~	621 E. Cleveland	~~Calhoun~~
Ed Squires	1002 W Franklin St., Boise 83702	Meridian/Caldwell
Brad Watson	660 E. Watertower, Ste 200 Meridian	City of Meridian P.W.
Travis Thompson	P.O. Box 2135 Boise ID 83701	Boise Project Board of Control
Charlie Honsinger	P.O. Box 2773 Boise, ID 83701	Nampa & Meridian Irr. Dist
John Church	P.O. Box 45694 Boise, ID 83711	

Attorneys for Pioneer Irrigation District
and Settlers Irrigation District

RECEIVED
SEP 23 2002

Department of Water Resources

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

Attorneys for Nampa & Meridian Irrigation District

Charles L. Honsinger
RINGERT CLARK CHTD.
PO Box 2773
Boise, ID 83701-2773
Telephone: (208) 342-4591
Facsimile: (208) 342-4657

Attorneys for Boise Project Board of Control

Albert P. Barker
BARKER ROSHOLT & SIMPSON
P.O. Box 2139
Boise, ID 83701
Telephone: (208) 336-0700
Facsimile: (208) 344-6034

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF INTEGRATED
MUNICIPAL APPLICATION PACKAGE
(CONSISTING OF 99 APPLICATIONS FOR
TRANSFERS OF WATER RIGHTS, AND 13
APPLICATIONS FOR A7MENDMENT OF
PERMITS) IN THE NAME OF UNITED
WATER IDAHO, INC.

**MOTION FOR ORDER AUTHORIZING
PRELIMINARY DISCOVERY**

Pioneer Irrigation District (“Pioneer”), Settlers Irrigation District (“Settlers”), Nampa & Meridian Irrigation District (“NMID”), and the Boise Project Board of Control (“Project”), (collectively “Irrigation Protestants”) by and through their respective counsel of record¹, hereby move the Hearing Officer for an order authorizing preliminary discovery, for the reasons set forth herein. This Motion is brought in accordance with Rule 521 of the Rules of Procedure of the Idaho Department of Water Resources (“Rules”), IDAPA 37.01.01.521. The discovery sought by the Irrigation Protestants includes written discovery (interrogatories, requests for production, and requests for admission) and depositions, if needed.

I.

BACKGROUND

Pioneer and Settlers filed a public records request with the Idaho Department of Water Resources, seeking access to the Department’s records regarding the Integrated Municipal Application Package (“IMAP”) filed by United Water Idaho (“UWID”). Exhibit 1 to Affidavit of Counsel. Pioneer and Settlers made that request after receiving correspondence from the Department indicating that a public records request would be required in order to gain access to the Department’s public records. Exhibit 2 to Affidavit of Counsel.

Subsequently, counsel for Pioneer and Settlers (as well as a legal assistant working under the supervision of counsel) spent a great deal of time at both the Western Region Office and the State Office of the Department. (Affidavit of Counsel, ¶ 4). Some of the documents which Pioneer and Settlers obtained during the course of that project have caused the Irrigation

¹ Pioneer Irrigation District and Settlers Irrigation District are represented in this matter by the law firm of Moffatt, Thomas, Barrett, Rock & Fields, Chtd. Nampa & Meridian Irrigation District is represented by the law firm of Ringert Clark, Chtd. The Boise Project Board of Control is represented by the law firm of Barker, Rosholt & Simpson, LLP.

Protestants² to become significantly concerned about whether the IMAP has been prejudged by the Department. Those concerns which have not been addressed or alleviated by review of Department documents; if anything, they have been exacerbated.

It is necessary for the Irrigation Protestants to conduct preliminary discovery to determine how to best proceed in this matter. It is possible that additional discovery will relieve the Irrigation Protestants' concerns. While that may not be the case, the credibility of this matter must be determined at the earliest possible juncture. That time is now.

II.

THE DOCUMENTS CAUSING CONCERN

The Irrigation Protestants have reviewed some documents which evidence pre-filing exchanges of information and theories between UWID and the Department.³ Those documents include:

1. Letter from counsel for UWID to Karl Dreher, Director of the Department, dated November 3, 1997. Among other issues, UWID specifically requested "the Department's concurrence that a transfer application is not required for UWID's proposed use of irrigation storage water to meet that portion of its peak demand that is directly attributable to irrigation." (Exhibit 3 to Affidavit of Counsel). The letter then sets forth facts in favor of UWID's position.
2. Letter from counsel for UWID to Norm Young, Administrator of the Idaho Department of Water Resources, dated September 21, 1998. The letter discusses "the allocation of the most senior rights within UWID's portfolio to support the company's present level of production" as well as the possibilities regarding forfeiture of older water rights. That letter also lays the groundwork for UWID's

² In accordance with Idaho Rules of Evidence, the Irrigation Protestants have executed a joint defense agreement to allow them to proceed as efficiently as possible in this matter.

³ The documents are briefly described in this *Motion and Memorandum*. A careful and necessary review of the documents shows that they appear to ask for and/or request the Department's pre-judgment on significant issues. At least, they constitute an attempt to seek the Department's approval of UWID's position on certain issues.

position that integrated points of diversion are appropriate. (Exhibit 4 to Affidavit of Counsel).

3. Letter from counsel for UWID to Phillip J. Rassier, Deputy Attorney General for the Idaho dated September 21, 1998. The letter discusses "approaches to quantifying the future needs component of a municipal water right." (Exhibit 5 to Affidavit of Counsel).
4. Letter from the Director of the Idaho Department of Water Resources to counsel for UWID dated June 14, 1999. The letter is a response to several letters, and addresses, *inter alia*, (a) how to approach a system wide change application; (b) how to deal with system capacity in the context of "reasonably anticipated future needs"; and (c) forfeiture of municipal water rights. (Exhibit 6 to Affidavit of Counsel).
5. Letter from counsel for UWID to the Director of the Idaho Department of Water Resources dated October 26, 1999. The letter addresses whether municipal water rights should have a volume limitation, how peak capacity should be measured, whether a 50 year planning horizon is appropriate, and a variety of issues related to comprehensive plans. (Exhibit 7 to Affidavit of Counsel). As to the planning horizon issue, counsel for UWID states "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." (*Id.*).

III.

THE NEED FOR FURTHER DISCOVERY

The correspondence described above has caused the Irrigation Protestants to become concerned that the IMAP has been pre-judged by the Department. At least some of that correspondence addresses matters which are at the very heart of the issues to be decided during the hearing process in this matter.

It is beyond dispute that the very essence of due process is notice and the opportunity to be heard before an impartial decision maker. *See, e.g., Thomas v. Boise City*, 25 Idaho 522, 138 P. 1110 (1914) (stating that "[a]ll the authorities agree that due process of law requires that a person shall have reasonable notice and a reasonable opportunity to be heard before an impartial

tribunal before any binding decree can be passed affecting his right to liberty or property."); *Bradbury v. Idaho Judicial Council*, 136 Idaho 63, 72, 28 P.3d 1006, 1015 (2001) (stating that "[t]he opportunity to be heard must occur 'at a meaningful time and in a meaningful manner' in order to satisfy the due process requirement.") (Additional citations omitted).

The contacts and discussions described in the correspondence attached as Exhibits 3 through 7 to the Affidavit of Counsel caused the Irrigation Protestants to be concerned that their opportunity to be heard in a meaningful manner before an impartial decision maker will be a hollow one. The Department is to be the impartial decision maker in this matter, *see* I.C. § 42-1701A, but it appears from the documents described above that UWID has attempted to obtain pre-approval of their positions from the Department. They may have been successful in that endeavor, at least as to some of the issues. Preliminary discovery as contemplated by this *Motion* will assist in determining whether those appearances are, in fact, reality.

In order to ensure that the Irrigation Protestants receive the full impartial consideration of their positions to which they are entitled, it is imperative that they be allowed to conduct preliminary discovery to ascertain the full extent of communications between UWID (or its counsel) and the Department prior to the time the final version of the IMAP was filed with the Department. Only after such discovery will the Irrigation Protestants be fully reassured that their due process rights have not been violated, and that these proceedings have not been irretrievably tainted.

If these proceedings are tainted, it is important that the parties and the hearing officer know at the outset, and take whatever steps are necessary to address the problem before the matter proceeds any further. Therefore, the Irrigation Protestants respectfully request that the Hearing Officer allow the Irrigation Protestants to conduct preliminary discovery, including

depositions if necessary, to determine the amount and content of pre-filing correspondence and other discussions between UWID and its representatives and the Department.

The Irrigation Protestants anticipate that they would serve their discovery requests within one week after the Hearing Officer issues an Order granting this Motion. Discovery could then proceed within the time frames and processes contemplated by the Idaho Rules of Civil Procedure. Depositions would be conducted in the same manner, although the Irrigation Protestants anticipate that a first round of discovery would be necessary before they could determine whether depositions were necessary. Moreover, the Irrigation Protestants anticipate that they would conduct discovery in a unified manner.

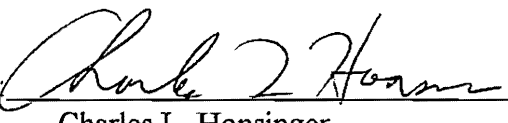
DATED this 23rd day of September 2002.

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

By: 
Scott L. Campbell
Attorneys for Pioneer Irrigation District and
Settlers Irrigation District

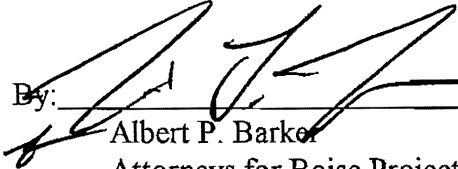
DATED this 25th day of September 2002.

RINGERT CLARK, CHARTERED

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

DATED this 23rd day of September 2002.

BARKER, ROSHOLT & SIMPSON

By: 

Albert P. Barker

Attorneys for Boise Project Board of
Control

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 23rd day of September 2002, I caused a true and correct copy of the foregoing **MOTION FOR ORDER AUTHORIZING PRELIMINARY DISCOVERY** to be served by the method indicated below, and addressed to the following:

Director
Idaho Department of Water Resources
PO Box 83720
Boise, ID 83720
Fax: 327-5400

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

Peter Anderson, Hearing Officer
Idaho Department of Water Resources
PO Box 83720
Boise, ID 83720

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

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

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

Nampa & Meridian Irrigation District
Charles L. Honsinger
Ringert Clark
455 South 3rd Street
PO Box 2773
Boise, ID 83701-2773
Fax: 342-4657

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

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

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

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

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

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

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

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

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

Estate of Eleanor I. Chase
Matt J. Howard
PO Box 190012
Boise, ID 83719
Fax: 333-8409

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

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

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

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

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

City of Caldwell Engineering Department
Gordon Law
621 E. Cleveland Blvd.
Caldwell, ID 83605

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

Interested Parties:

Ed Squires

988 S. Longmont Avenue, Suite 100

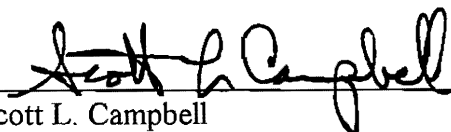
Boise, ID 83706

☒ U.S. Mail, Postage Prepaid

☐ Hand Delivered

☐ Overnight Mail

☐ Facsimile



Scott L. Campbell

Attorneys for Pioneer Irrigation District
and Settlers Irrigation District

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

RECEIVED

SEP 23 2002

Department of Water Resources

Attorneys for Nampa & Meridian Irrigation District

Charles L. Honsinger
RINGERT CLARK CHTD.
PO Box 2773
Boise, ID 83701-2773
Telephone: (208) 342-4591
Facsimile: (208) 342-4657

Attorneys for Boise Project Board of Control

Albert P. Barker
BARKER ROSHOLT & SIMPSON
P.O. Box 2139
Boise, ID 83701
Telephone: (208) 336-0700
Facsimile: (208) 344-6034

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

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

**AFFIDAVIT OF SCOTT L. CAMPBELL IN
SUPPORT OF MOTION FOR ORDER
AUTHORIZING PRELIMINARY
DISCOVERY**

STATE OF IDAHO)
) ss.
County of Ada)

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

1. I am one of the attorneys of record providing legal representation to Pioneer Irrigation District and Settlers Irrigation District in the above-captioned matter. I have knowledge of the files pertinent to this matter, and I make this affidavit based upon personal knowledge. I am an attorney with the law firm of Moffatt, Thomas, Barrett, Rock & Fields, Chtd.

2. On behalf of my clients, I filed a public records request with the Idaho Department of Water Resources on or about June 21, 2002. That request sought certain records associated with United Water Idaho's ("UWID") Integrated Municipal Application Package ("IMAP"). Appended hereto as Exhibit 1 is a true and correct copy of my clients' public records request.

3. Appended hereto as Exhibit 2 is a true and correct copy of the letter dated June 18, 2002 which I received from Steve Lester with the Idaho Department of Water Resources regarding the necessity for a public records request.

4. At my direction, Angela Schaer, who is also counsel of record for Pioneer Irrigation District and Settlers Irrigation District and Lynette Cochran, who is a legal assistant at Moffatt Thomas, conducted a review of public records at the state office of the Idaho Department of Water Resources and the Western Region Office of the Idaho Department of Water Resources.

5. Appended hereto as Exhibit 3 is a true and correct copy of a letter dated November 3, 1997, from counsel for UWID to the Director of the Idaho Department of Water Resources. This letter was obtained during the course and scope of the public records review

referenced in Paragraph 4 of this Affidavit. A court opinion from a Colorado water court was attached to that correspondence, but since the opinion was lengthy, it has been omitted from Exhibit 3.

6. Appended hereto as Exhibit 4 is a true and correct copy of a letter dated September 21, 1998, from counsel for UWID to the Administrator of the Idaho Department of Water Resources. This letter was obtained during the course and scope of the public records review referenced in Paragraph 4 of this Affidavit.

7. Appended hereto as Exhibit 5 is a true and correct copy of a letter dated September 21, 1998 from counsel for UWID to Phillip J. Rassier, Deputy Attorney General for the Idaho Department of Water Resources. June 14, 1999, from the Director of the Idaho Department of Water Resources to counsel for UWID. This letter was obtained during the course and scope of the public records review referenced in Paragraph 4 of this Affidavit.

8. Appended hereto as Exhibit 6 is a true and correct copy of a letter dated June 14, 1999, from the Director of the Idaho Department of Water Resources to counsel for UWID. This letter was obtained during the course and scope of the public records review referenced in Paragraph 4 of this Affidavit.

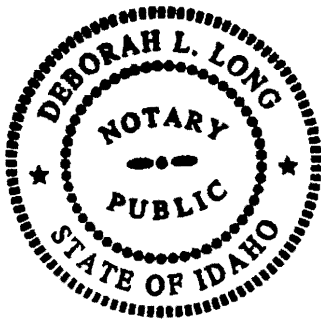
9. Appended hereto as Exhibit 7 is a true and correct copy of a latter dated October 26, 1999, from counsel for UWID to the Director of the Idaho Department of Water Resources. June 14, 1999, from the Director of the Idaho Department of Water Resources to counsel for UWID. This letter was obtained during the course and scope of the public records review referenced in Paragraph 4 of this Affidavit.

DATED this 23rd day of September 2002.

By Scott L. Campbell
Scott L. Campbell

SUBSCRIBED AND SWORN to before me this 23rd day of September 2002.

S
E
A
L



Deborah Long
NOTARY PUBLIC FOR IDAHO
Residing at: Boise, Idaho
Commission Expires: 10/10/07

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 23rd day of September 2002, I caused a true and correct copy of the foregoing **AFFIDAVIT OF COUNSEL** to be served by the method indicated below, and addressed to the following:

Director
Idaho Department of Water Resources
PO Box 83720
Boise, ID 83720
Fax: 327-5400

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

Peter Anderson, Hearing Officer
Idaho Department of Water Resources
PO Box 83720
Boise, ID 83720

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

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

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

Nampa & Meridian Irrigation District
Charles L. Honsinger
Ringert Clark
455 South 3rd Street
PO Box 2773
Boise, ID 83701-2773
Fax: 342-4657

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

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

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

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

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

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

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

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

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

Estate of Eleanor I. Chase
Matt J. Howard
PO Box 190012
Boise, ID 83719
Fax: 333-8409

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

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

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

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

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

City of Caldwell Engineering Department
Gordon Law
621 E. Cleveland Blvd.
Caldwell, ID 83605

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

Interested Parties:

Ed Squires

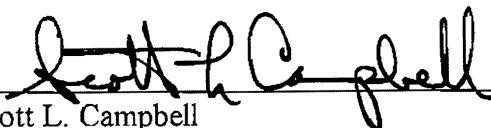
988 S. Longmont Avenue, Suite 100
Boise, ID 83706

☒ U.S. Mail, Postage Prepaid

☐ Hand Delivered

☐ Overnight Mail

☐ Facsimile



Scott L. Campbell

Moffatt Thomas

MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD.

Eugene C. Thomas
John W. Barrett
R. B. Rock
Richard C. Fields
Robert E. Bakes
John C. Ward
D. James Manning
Gary T. Dance
Larry C. Hunter
Morgan W. Richards
Mark A. Ellison
Randall A. Peterman
Mark S. Prusynski
Stephen R. Thomas
Glenna M. Christensen

Gerald T. Husch
Scott L. Campbell
Michael G. McPeck
Kirk R. Helvie
Robert B. Burns
James C. Dale
Michael E. Thomas
Patricia M. Olsson
James C. deGlee
Bradley J. Williams
Lee Radford
Michael O. Roe
David S. Jensen
James L. Martin
C. Clayton Gill

Stephanie A. Balzarini
David P. Gardner
Julian E. Gabiola
Paul C. Swainston
Angela D. Schaer
Casey C. Robertson
Ray J. Chacko
Bradley J. Dixon
Keasa L. Hollister
Mark C. Peterson
Willis C. Moffatt,
1907-1980

June 21, 2002

US Bank Plaza Building
101 S Capitol Blvd 10th Fl
PO Box 829
Boise Idaho 83701 0829

208 345 2000
800 422 2889
208 385 5384 fax
www.moffatt.com

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

**Re: United Water Idaho - Integrated Municipal Application Permit
Public Records Request**
MTBR&F File No. 18946.26

Dear Steve:

This letter will serve as a request for public records on behalf of Pioneer Irrigation District and Settlers Irrigation District (collectively "Districts"), who have each filed protests in the matter of United Water Idaho's IMAP application. This request is made in response to your letter dated June 18, 2002, and is brought in accordance with Idaho Code sections 9-337 through 9-347.

In accordance with those provisions of the Idaho Code, the Districts hereby request the *entire contents* of each of the following files, including "but not limited to, any writing containing information relating to the conduct or administration of the public's business prepared, owned, used or retained by any state agency, independent public body corporate and politic or local agency regardless of physical form or characteristics". I.C. § 9-337(12) (Supp. 2001). The Idaho Code defines "writing" as including:

but not limited to, handwriting, typewriting, printing, photostating, photographing and every means of recording, including letters, words, pictures, sounds or symbols or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, or other documents.

I.C. § 9-337(13) (Supp. 2001). Thus, by this request, the Districts seek all of that information which may be encompassed within the requests set forth below.

Steve Lester
Idaho Department of Water Resources
Western Region Office
June 21, 2002
Page 2

By the use of the term "file" in this request, the Districts mean not only writings stored in file folders, but also writings stored electronically, digitally, on microfiche, on microfilm, or in binders. By this request, the Districts seek all information responsive to this public information request which may be housed at the State Office of the Idaho Department of Water Resources, or any regional office of the Idaho Department of Water Resources.

1. Any and all files labeled "United Water – General Information" mentioned in your letter of June 18, 2002.
2. Any and all general files labeled "United Water IMAP" or some variation thereof.
3. Any and all calendars, whether printed, handwritten, electronic or digital, which reflect any and all dates, times and locations of any and all meetings, conferences, or conversations between any IDWR employee(s) and representative(s) (in whatever capacity) of UWID, which pertained in any way, no matter how remote, to the IMAP or the water rights of UWID.
4. Any and all notes, memoranda, summaries, or correspondence, whether printed, handwritten, electronic or digital, which pertain in any way to meetings, conferences or conversations in person or by telephone between any IDWR employee(s), appointees, or contractors and representative(s) or employees of UWID.
5. Any and all files, including water right, adjudication, legal, hydrologic, planning or administrative files, directly involving or related to the following water rights:
 - a. 63-165L
 - b. 63-169F
 - c. 63-243E
 - d. 63-243H
 - e. 63-2500
 - f. 63-2506
 - g. 63-2550
 - h. 63-2569
 - i. 63-2576

Exhibit 1
Campbell Affidavit

Steve Lester
Idaho Department of Water Resources
Western Region Office
June 21, 2002
Page 3

j.	63-2595
k.	63-2605
l.	63-2668
m.	63-2703
n.	63-2808
o.	63-2874
p.	63-2892
q.	63-2954
r.	63-2956
s.	63-2989
t.	63-3064
u.	63-3073
v.	63-3105
w.	63-3112
x.	63-3128
y.	63-3164
z.	63-3172
aa.	63-3202
bb.	63-3291
cc.	63-3292
dd.	63-3293
ee.	63-3295
ff.	63-3411
gg.	63-3448
hh.	63-3457

Exhibit 1
Campbell Affidavit

Steve Lester
Idaho Department of Water Resources
Western Region Office
June 21, 2002
Page 4

ii.	63-3494
jj.	63-3562
kk.	63-4015
ll.	63-4395
mm.	63-4414
nn.	63-4424
oo.	63-4752
pp.	63-7066
qq.	63-7067
rr.	63-7077
ss.	63-7204
tt.	63-7282
uu.	63-7348
vv.	63-7479
ww.	63-7577
xx.	63-7589
yy.	63-7641
zz.	63-7658
aaa.	63-7896
bbb.	63-7979
ccc.	63-7998
ddd.	63-8011
eee.	63-8059
fff.	63-8236
ggg.	63-8248

Exhibit 1
Campbell Affidavit

Steve Lester
Idaho Department of Water Resources
Western Region Office
June 21, 2002
Page 5

hhh.	63-8265
iii.	63-8357
jjj.	63-8385
kkk.	63-8405
lll.	63-8432
mmm.	63-8433
nnn.	63-8635
ooo.	63-8990
ppp.	63-8992
qqq.	63-9029
rrr.	63-9030
sss.	63-9087
ttt.	63-9106
uuu.	63-9147
vvv.	63-9198
www.	63-9199
xxx.	63-9276
yyy.	63-9204
zzz.	63-9205
aaaa.	63-9219
bbbb.	63-9223
cccc.	63-9239
dddd.	63-9276
eeee.	63-9384
fff.	63-9671

Exhibit 1
Campbell Affidavit

Steve Lester
Idaho Department of Water Resources
Western Region Office
June 21, 2002
Page 6

gggg.	63-9795
hhhh.	63-9855
iiii.	63-10150
jjjj.	63-10386
kkkk.	63-10391
llll.	63-10405
mmmm.	63-10533
nnnn.	63-10569
oooo.	63-10688
pppp.	63-10862
qqqq.	63-10945
rrrr.	63-11034
ssss.	63-11068
tttt.	63-11090A
uuuu.	63-11118
vvvv.	63-11232
www.	63-11384
xxxx.	63-11385
yyyy.	63-11467
zzzz.	63-11541
aaaaa.	63-11558
bbbbb.	63-11878
ccccc.	63-11949
ddddd.	63-11950
eeeee.	63-11951

Exhibit 1
Campbell Affidavit

Steve Lester
Idaho Department of Water Resources
Western Region Office
June 21, 2002
Page 7

ffff.	63-11990
ggggg.	63-12043
hhhhh.	63-12138
iiii.	63-12139
jjjj.	63-12140
kkkkk.	63-12143
llll.	63-12192
mmmmm.	63-12310
nnnnn.	63-12334
ooooo.	63-12362
ppppp.	63-12363
qqqqq.	63-12369
rrrrr.	63-12424
sssss.	63-12432
ttttt.	63-12452
uuuuu.	63-12463
vvvvv.	63-12464
wwwww.	63-12506
xxxxx.	63-12516
yyyyy.	63-12552
zzzzz.	63-12055
aaaaaa.	63-17021
bbbbbb.	63-19456
cccccc.	63-31406
dddddd.	63-31407

Exhibit 1
Campbell Affidavit

Steve Lester
Idaho Department of Water Resources
Western Region Office
June 21, 2002
Page 8

eeeeee. 63-31409

fffff. 02-02339

Please notify me, as counsel for the Districts of the date and time at which inspection of the referenced files can occur. Thank you for your assistance. Your immediate attention to this request will be appreciated.

Very truly yours,



Scott L. Campbell

SLC/ADS/dll

cc: Director, Idaho Department of Water Resources
United Water Idaho
John M. Marshall, Givens Pursley, LLP
Charles L. Honsinger, Ringert Clark
Beth K. Baird, City of Boise, Boise Public Works Department
Albert P. Barker, Barker Rosholt & Simpson
E. Gail McGarry, Bureau of Reclamation
Matt J. Howard
Tammy A. Zokan, Moore Smith Buxton & Turcke
Gary D. Smith, City of Meridian Public Works
Gordon Law, City of Caldwell Engineering Department
Matthew Wilde, City of Boise, City Attorney's Office
Josephine Beeman
Kathleen Carr, Office of the Solicitor, Pacific Northwest Region



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

FAX (208) 334-2348

RECEIVED

JUN 19 2002

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

June 18, 2002

To: Protestants in United Water Idaho's IMAP Applications

Re: Request for Public Records

Dear Protestant:

The prehearing conference in the above matter occurred last week. At least one party made a verbal request for copies of Idaho Department of Water Resources (IDWR) public records related to IMAP but not filed with IDWR's application file for IMAP.

Requests for information are governed by Idaho's Public Records Act I.C. § 9-337 et seq. A request for public records should be made in writing by each party wanting copies of records. Your request should be as specific as possible, preferably identifying file names or file numbers.

As you can imagine, IDWR has numerous files. A vague request such as "all public records related to IMAP" increases the risk that IDWR will miss something in its search. Your request might include identifiers such as the following: (a) any general file labeled United Water IMAP or some variation thereof, or (b) any water right, adjudication, legal, hydrologic, planning, or administrative file known to substantially discuss IMAP. The Western Region Office has a "United Water - General Information" file with three documents addressing IMAP history that might be of interest to you. I am not aware of corresponding files at the IDWR State Office, although they might exist.

Upon receipt of a written request for public records, IDWR can make documents available for your inspection. You may photocopy any of these documents at the IDWR State Office and/or Western Region Office, which are in Boise. Photocopies are available at \$0.05 per page. Please submit written requests for specific public records to the Western Region Office at your convenience.

Sincerely,

Steve Lester
Water Rights Supervisor

CC: United Water Idaho c/o John Marshall
Ed Squires, Interested Party

Encl. Distribution List

UNITED WATER ID INC
C/O JOHN M MARSHALL
PO BOX 2720
BOISE ID 83701

BOISE PROJECT BD OF CONTROL
C/O ALBERT BARKER
PO BOX 2139
BOISE ID 83701-2139

NAMPA & MERIDIAN IRRIG DIST
C/O CHARLES L HONSINGER
RINGERT CLARK CHARTERED
PO BOX 2773
BOISE ID 83701-2773

CITY OF MERIDIAN PUBLIC WORKS
C/O GARY D SMITH
660 E WATERTOWER
MERIDIAN ID 83642

CITY OF CALDWELL ENG DEPT
C/O GORDON LAW
621 E CLEVELAND BLVD
CALDWELL ID 83605

PIONEER IRRIG DIST
C/O SCOTT CAMPBELL
PO BOX 829
BOISE ID 83701-0829

BOISE PUBLIC WORKS DEPT
C/O BETH BAIRD
PO BOX 500
BOISE ID 83701-0500

ED SQUIRES
988 S LONGMONT AVE STE 100
BOISE ID 83706

BUREAU OF RECLAMATION
C/O E GAIL MCGARRY PN-3100
1150 N CURTIS RD STE 100
BOISE ID 83706-1234

CITIES OF EAGLE, KUNA, MIDDLETON
& STAR AND STAR SEWER DIST
C/O TAMMY A ZOKAN
MOORE SMITH BUXTON & TURCKE
225 N 9TH ST STE 420
BOISE ID 83702

ESTATE OF ELEANOR I CHASE
C/O MATT J HOWARD
ATTORNEY AT LAW
PO BOX 190012
BOISE ID 83719

RECEIVED

NOV - 4 1997

WATER RESOURCES
WESTERN REGION

LAW OFFICES

GIVENS PURSLEY & HUNTLEY LLP

A LIMITED LIABILITY PARTNERSHIP

277 NO. 6TH STREET • SUITE 200

P.O. BOX 2720 • BOISE, IDAHO 83701

(208) 388-1200

FACSIMILE (208) 388-1201

November 3, 1997

GARY G. ALLEN
CHRISTOPHER J. BEESON
MICHAEL C. CREAMER
ROY L. EIGUREN
JEFFREY C. FEREDAY
L. W. GRANT III
J. BART GREEN
ROBERT C. HUNTLEY, JR.
RICHARD W. JANKOWSKI
KARL T. KLEIN
DAVID R. LOMBARDI
KIMBERLY D. MALONEY
KENNETH R. MCCLURE
CHRISTOPHER H. MEYER
L. EDWARD MILLER
PATRICK J. MILLER

JUDSON B. MONTGOMERY
TERRY L. MYERS
RAMONA S. NEAL
STEVEN L. OLSEN
W. HUGH O'RIORDAN
ROBERT L. PHILLIPS
KENNETH L. PURSLEY
GREGORY J. VIETZ
CONLEY WARD
STEVEN R. WEEKS
STEPHANIE C. WESTERMEIER

RAYMOND D. GIVENS
JAMES A. MCCLURE
OF COUNSEL

Karl Dreher, Director
Idaho Department of Water Resources
1301 North Orchard Street
Boise, ID 83706

Re: Irrigation Storage Use by Municipal Water Provider
Our File: 30-69

Dear Karl:

This letter follows up on my prior correspondence on behalf of United Water Idaho ("UWID") to Gary Spackman, and our meeting in your office on September 16, 1997, concerning the propriety of UWID's acquisition and use of irrigation water rights which would be delivered through its municipal water system to meet its peaking requirements attributable to irrigation demand during the irrigation season. UWID believes that this should be possible without the need for a transfer proceeding to change the water right's nature of use from irrigation to municipal. UWID requests the Department's concurrence that a transfer application is not required for UWID's proposed use of irrigation storage water to meet that portion of its peak demand that is directly attributable to irrigation.

The facts upon which UWID relies were set forth in my July 22, 1997 letter to Mr. Spackman. However, those facts are restated or clarified here to provide you with the best information currently available upon which to respond to this request.

A. Relevant Facts.

1. UWID is Idaho's single largest provider of domestic, commercial, municipal and industrial users, and serves as the municipal water provider for a large portion of Ada County pursuant to a franchise from the City of Boise and a Certificate of Public Convenience and Necessity issued by the Idaho Public Utilities Commission.

November 3, 1997

Page 2

2. UWID's current average daily demand is approximately 37 million gallons per day ("mgd"). UWID's peak day demand reaches as high as 77 mgd during the summer months. This summer peak is directly attributable to irrigation of lawns, gardens, parks and landscaping. As a result, up to half of UWID's current municipal water demand during the summer months actually goes to meet irrigation needs.
3. UWID currently meets its peak summer demand primarily by using water from natural flow rights diverted from the Boise River through UWID's Marden Street treatment plant, from a small amount of storage space in Anderson Ranch Reservoir specifically set aside by the U.S. Bureau of Reclamation ("Bureau") to municipal and industrial ("M&I") purposes, and from waters diverted under other contract entitlements and rights for approximately 70 ground water wells located throughout UWID's service area.
4. UWID expects that the population that it must serve within the next fifteen to twenty years, and consequently its water supply requirements, will increase significantly. According to the Ada Planning Association, the portion of Ada County which generally represents UWID's current service area, and areas to which UWID may expand service in the future, had a population of 164,780 in 1990. This area has a projected population of 253,483 by 2015. This population increase will cause attendant increases in the amount of water UWID must deliver in the summer months for irrigation.
5. Although land uses in the Boise Valley are shifting from predominantly irrigated agriculture to municipal, these municipal land uses still retain significant areas that require irrigation.
6. Economics and sound policies favor the use of existing irrigation rights derived from surface water sources when possible to serve UWID's summer irrigation peak rather

November 3, 1997

Page 3

than increasing reliance on ground water development. The Boise River drainage is fortunate to have Arrowrock, Anderson Ranch and Lucky Peak Reservoirs, which hold a combined active storage capacity of nearly one million acre-feet. The primary uses authorized for this storage include irrigation, power and flood control.¹

7. Anderson Ranch and Arrowrock Reservoirs are part of the Bureau's Boise Project as authorized by Congress. Lucky Peak is a flood control project built by the U.S. Army Corps of Engineers. Through a Memorandum of Agreement between the Bureau and the Corps, the Bureau contracts with water users for delivery of up to 111,950 acre-feet of irrigation water stored in Lucky Peak pursuant to Department Permit # 63-03618 issued to the Bureau. The Bureau's present position is that it is permitted to "market" or contract for the use of only the *irrigation* storage in Lucky Peak, and that it cannot alter the use of the water to uses such as M&I, and thereafter contract for its delivery.
8. If a change in nature of use is required for UWID to acquire and use water in Lucky Peak currently allocated to irrigation use, the Bureau has taken the position that it cannot contract with UWID for its use. Based on prior discussions UWID has had with the Corps, UWID understands that before the Corps will allocate or reallocate any of its Lucky Peak storage space to municipal use, it must conduct costly reconnaissance and feasibility studies, together with environmental impact and alternatives analysis. UWID understands that much, if not all, of the costs of these studies would be paid by UWID, and ultimately UWID's ratepayers.

¹ The storage rights in Anderson Ranch Reservoir include 5,200 acre-feet of water authorized for municipal and industrial use ("M&I Water"), which have been fully allocated by the Bureau through water service contracts.

November 3, 1997

Page 4

9. Because Lucky Peak was built after Arrowrock and Anderson Ranch, the storage it provides is in addition to that provided by the other two projects. Consequently, some water users who hold contract rights in all three reservoirs find that some portion of their Lucky Peak storage constitutes surplus water on a regular basis. This irrigation storage that may be deemed surplus by the water user is the storage most likely to be available for lease or purchase by UWID on a willing buyer-willing seller basis.
10. UWID believes that use of irrigation storage, particularly that stored in Lucky Peak, represents its most feasible alternative to increased ground water development for meeting its irrigation demand.
11. UWID expects that if it were to acquire storage rights from willing sellers, UWID then either would obtain an assignment of the original contract rights or negotiate a new water service contract with the Bureau authorizing UWID's use of some portion of the acquired irrigation storage and delivery of the irrigation storage to UWID during the irrigation season.
12. UWID proposes to request delivery of the acquired irrigation storage according to the terms of any assigned or negotiated water service contract. This irrigation water would be used to supplement UWID's current surface water supplies from the Boise River during the irrigation season as necessary to meet that portion of its water demand above UWID's average daily demand attributable to irrigation. UWID would divert the water from the Boise River into its municipal treatment and supply system where the irrigation water would be commingled with water diverted under other UWID water rights and entitlements, and thereafter would be delivered through UWID's distribution system.

November 3, 1997

Page 5

13. UWID would specifically identify those lands within its service area and the authorized place of use for Permit No. 63-03618 that would be the beneficiary of the irrigation storage use. UWID would accurately quantify the amount of irrigation water properly allocable to those lands. UWID would maintain a strict accounting and balancing of the amount of water which those lands would be entitled to receive, and of the quantity of irrigation water actually diverted into UWID's municipal supply system for irrigation use.
14. Based on the foregoing, Idaho Code § 42-222 would not require UWID to obtain approval of a change of the Lucky Peak irrigation storage water permit: water under the permit would continue to be stored in priority in Lucky Peak Reservoir; the water would continue to be delivered to the Boise River at the Lucky Peak outlet during the irrigation season for irrigation purposes to supplement UWID's existing surface water sources; the water would continue to be diverted for the benefit of identified lands located within the permissible place of use; and the quantity of water called for and delivered under UWID's contract with the Bureau would not exceed the amount authorized under the Bureau's existing permit. In other words, the only substantive change proposed by UWID would be the name of the holder of the Bureau's contract entitlement.
15. To the extent UWID's irrigation demand can be met using irrigation water rights from surface water sources, UWID's need to rely on existing or developed ground water sources to meet such demand can be reduced.

B. Relevant Law.

UWID believes that where an identifiable portion of its water demand can be demonstrated to be directly attributable to irrigation, a municipal water provider may acquire irrigation storage rights and deliver water under such rights through its municipal supply facilities to meet the demonstrated irrigation demand without

changing the nature of use under Section 42-222 of the Idaho Code. UWID is aware of no statute or legal precedent that would prevent use of irrigation storage to meet UWID's identifiable irrigation demand.

UWID has reviewed the case law in prior appropriation states and has found only one decision—a decree by the District Court for Water Division 1, State of Colorado—which involves the issue presented here. This decision supports UWID's proposition. See *Concerning the Application for Water Rights of the City of Arvada in Jefferson and Adams Counties*, Case Nos. W-8083-75 and W-8762-77 (Colo. Dist. Court, Water Division No. 1, September 9, 1992), attached hereto.

In the *City of Arvada* case, the City acquired direct flow irrigation water rights referred to as "schedule water" and represented by shares in the Farmers' Highline Canal and Reservoir Company (the "Canal Company"). The City sought among other things to change the point of diversion of the water and/or to use the water as a basis for establishing appropriative rights of exchange, a plan for augmentation and replacement of return flows.² The City's sought to deliver the schedule water through its municipal water supply system and apply it to that portion of its municipal demand represented by irrigation. See Decree at ¶ 22. The Canal Company and numerous other water users objected. The City and the primary objectors entered a stipulation which the Court incorporated into its decree that the schedule water would be diverted from storage, treated at the Arvada water treatment plant and delivered through its municipal system for irrigation of the lands to which the water rights were appurtenant. See Decree at ¶ 23. The Water Court found that "[i]rrigation use may include municipal irrigation of such lands, provided that municipal irrigation use is satisfactorily demonstrated through appropriate accounting procedures." Decree at ¶ 15.

Of course, the Water Court restricted delivery of the irrigation water to the irrigation season, and required an accounting of the amount of water diverted and used for irrigation each year. The Water Court concluded that use of the schedule water in accordance with the Decree conditions would not injure other vested water rights, Decree at ¶ 36, and that Arvada was entitled to use the schedule water for irrigation purposes. Decree at ¶ 41.

²It appears from the Decree that the change proceeding was required because changes in the point of diversion were sought, and because the right would be put into storage or made part of an exchange or augmentation plan—not because the purpose of use would be changed.

November 3, 1997

Page 7

Using irrigation storage to meet a municipal provider's irrigation demand is conceptually sound. "Municipal" use in Idaho typically includes beneficial uses associated with and occurring within a municipality such as commercial, industrial, in-house domestic use, and the irrigation of parks, lawns and other landscaping associated with these. Each use constitutes an independent beneficial use. In other words, under the catch-all term "municipal purposes" a municipal water provider delivers water supplies through a common delivery system for domestic, commercial, industrial *and* irrigation purposes.

These same domestic, commercial, industrial and irrigation purposes could be, and often are, accomplished with individual water rights having a specific domestic, commercial, industrial or irrigation purpose of use—the only distinction as to how the purpose is characterized being whether a municipal water provider delivers the water in a common system. Conceptually there is no reason why the terms "domestic use", "commercial use," "industrial use" and "irrigation use" can be semantically commingled within the term "municipal use," but water diverted under distinct domestic, commercial, industrial or irrigation water rights cannot be commingled within a municipal water system for delivery to the municipal water provider's customers.

Idaho law recognizes that water diverted under distinct water rights can be commingled in a stream or conduit so long as it has been diverted to use consistent with the right, and an appropriate accounting mechanism ensures that no more water will be removed from a commingled system for a specified beneficial use than actually was placed into the system for that use. See e.g., I.C. § 42-105 (providing for the commingling of water diverted under separate rights in a common system, or commingling of water under one or more water rights with waters of a natural stream, so long as no more water is reclaimed than was turned into the system). This rule is based on the principle that the law does not track the individual water molecules once they are appropriated, but rather the extent of the diversionary right exercised and the ultimate beneficial use accomplished. In summary, provided an appropriate accounting is made of the water quantities which actually are diverted for irrigation use, there is no legal reason why a municipal water provider cannot divert irrigation water into its municipal system, commingle that water with its other water diverted under its municipal rights and deliver the irrigation component through its supply system for irrigation purposes.

November 3, 1997

Page 8

C. Policy Considerations.

UWID's position is supported by important policies. First and foremost is the policy that promotes use of existing surface water supplies for irrigation before using a ground water source. Experience in the Boise Valley and elsewhere shows that drought, existing development and local hydrology may limit the future availability of ground water. UWID's ability to use existing irrigation surface water rights will reduce the need to look to ground water to meet the municipal irrigation demand associated with a growing metropolitan area.

Second, powerful forces are pulling Boise River Basin water towards downstream and out-of-state uses. UWID believes first consideration is due to the demonstrated needs in the Boise River Valley. UWID's ability to use Boise River irrigation water rights for irrigation of Valley lands preserves the intended benefits of water use within the watershed and to the lands which were in large part responsible for repayment of reservoir construction costs. Facilitating continued irrigation use within the Valley also promotes the secondary benefits of return flows and recharge. Here, an opportunity exists *under state law* to provide for in-state/in-watershed use of Idaho water which otherwise may go exclusively to meet federal or downstream-state priorities.

Third, good policy would encourage use of the developed storage supply in the Boise River Basin whenever possible before new and potentially expensive water developments are required.

In conclusion, UWID has identified a potential opportunity to use surplus irrigation storage in Lucky Peak Reservoir to meet UWID's summer irrigation demand. UWID's proposed use of this water could be accomplished without changing the nature of use, place of use, season of use or point of diversion authorized by the Bureau's permit.

UWID is aware of no precedent or statute that would require a change of use or prevent UWID's proposed use. The Colorado water court has approved use of irrigation rights by a municipal provider under similar facts, where appropriate accounting procedures were used. Sound policy favors allowing UWID to obtain irrigation rights to meet its irrigation requirements. UWID requests the Department's concurrence that UWID's use of irrigation storage for irrigation use does not require approval of a change in use under Idaho Code § 42-222.

November 3, 1997

Page 9

Thank you in advance for your careful consideration of this request. If you require additional information please contact me immediately. United Water Idaho looks forward to your response.

Sincerely,

A handwritten signature in cursive script, reading "Michael C. Creamer".

Michael C. Creamer

MCC/ndf
Enclosure

cc: Benjamin Hepler
Tony Sullins
Phil Rassier
Gary Spackman

GIVENS PURSLEY LLP

LAW OFFICES

277 North 6th Street, Suite 200

PO Box 2720, Boise, Idaho 83701

TELEPHONE: 208 388-1200

FACSIMILE: 208 388-1201

DIRECT DIAL: (208) 388-1236

EMAIL: chm@givenspursley.com

Gary G. Allen
Christopher J. Beeson
Michael C. Creamer
Thomas E. Dvorak
Roy Lewis Eiguren
Jeffrey C. Fereday
L. W. Grant III
Richard W. Jankowski
Karl T. Klein
David R. Lombardi

Kimberly D. Maloney
Kenneth R. McClure
Cynthia A. Mefillo
Christopher H. Meyer
L. Edward Miller
Patrick J. Miller
Judson B. Montgomery
Ramona S. Neal
Aaron H. Nemec
W. Hugh O'Riordan

RECEIVED

SEP 22 1998

**WATER RESOURCES
WESTERN REGION**

Kenneth L. Pursley
Gregory J. Vietz
Conley Ward
Steven R. Weeks
Stephanie C. Westermeyer

Raymond D. Givens
James A. McClure
OF COUNSEL

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
Page 3

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

Mr. Norman C. Young
September 21, 1998
Page 4

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.

Mr. Norman C. Young
September 21, 1998
Page 5

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
Page 6

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

S:\Clients\30\71\Corr\1998-09-21 CHM Ltr to N.Young - Re transfer plan.wpd

GIVENS PURSLEY LLP

RECEIVED

SEP 22 1998

WATER RESOURCES

LAW OFFICES

277 North 6th Street, Suite 200

PO Box 2720, Boise, Idaho 83701

TELEPHONE: 208 388-1200

FACSIMILE: 208 388-1201

DIRECT DIAL: (208) 388-1236

EMAIL: chm@givenspursley.com

Gary G. Allen
Christopher J. Beeson
Michael C. Creamer
Thomas E. Dvorak
Roy Lewis Eiguren
Jeffrey C. Feraday
L. W. Grant III
Richard W. Jankowski
Karl T. Klein
David R. Lombardi

Kimberly D. Maloney
Kenneth R. McClure
Cynthia A. Melillo
Christopher H. Meyer
L. Edward Miller
Patrick J. Miller
Judson B. Montgomery
Ramona S. Neal
Aaron H. Nemecek
W. Hugh O'Riordan

Kenneth L. Pursley
Gregory J. Vietz
Conley Ward
Steven R. Weeks
Stephanie C. Wastermeier

Raymond D. Givens
James A. McClure
OF COUNSEL

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.

Phillip J. Rassier, Esq.
September 21, 1998
Page 3

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 totting 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

S:\Clients\30171\Corr\1998-09-18 CHM Ltr to P.Rassier - Re capacity limits on muni rights.wpd"



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866 www.idwr.state.id.us/idwr/idwrhome.htm

18

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

June 14, 1999

Mr. Christopher H. Meyer
Givens Pursley LLP
Suite 200
277 North 6th Street
P. O. Box 2720
Boise, ID 83701

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

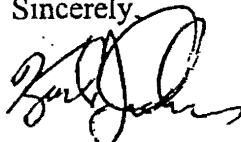
forfeiture. Although the basis for forfeiture is different for a municipal water right, just as the standard for beneficial use is different as discussed above, I would disagree with a conclusion that municipal water rights are immune from forfeiture.

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

Exhibit 6
Campbell Affidavit

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

DIRECT DIAL: (208) 388-1236
EMAIL: chm@givenspursley.com

RECEIVED

OCT 27 1999

Department of Water Resources

Gary G. Allen
Christopher J. Beeson
Michael C. Creamer
Thomas E. Dvorak
Roy Lewis Eiguren
Jeffrey C. Fereday
Richard W. Jankowski
Amanda L. Keating
Karl T. Klein
Franklin G. Lee
David R. Lombardi

Kimberly D. Maloney
John M. Marshall
Kenneth R. McClure
Cynthia A. Melillo
Christopher H. Meyer
L. Edward Miller
Patrick J. Miller
Judson B. Montgomery
Angela K. Nelson
W. Hugh O'Riordan
Kenneth L. Pursley

RECEIVED

JAN 31 2000

**WATER RESOURCES
WESTERN REGION**

Virginia L. Stuber
Conley Ward
Stephanie C. Westermeier
Robert B. White

Raymond D. Givens
James A. McClure
OF COUNSEL

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
Page 2

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.

Mr. Karl J. Dreher
October 26, 1999
Page 4

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.
Colorado

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.

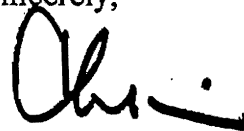
VIII. Isolated Areas

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

Exhibit 7
Campbell Affidavit

RECEIVED

SEP - 4 2002

Department of Water Resources

Josephine P. Beeman (#1806)
BEEMAN & ASSOCIATES, P.C.
409 West Jefferson Street
Boise, ID 83702
(208) 331-0950
Fax (208) 331-0954

Attorney for the City of Boise

**BEFORE THE
DEPARTMENT OF WATER RESOURCES
IN AND FOR THE STATE OF IDAHO**

In the Matter of the Application for)
Transfer of Water Rights in the Name)
of United Water Idaho, Inc., Integrated)
Municipal Application Package)
("IMAP"))
_____)

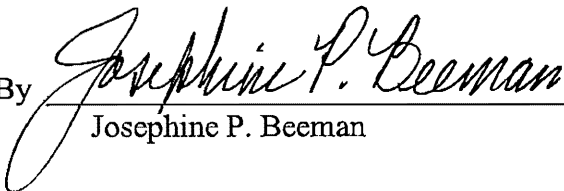
NOTICE OF APPEARANCE

Please take notice that Josephine P. Beeman, of the firm of Beeman & Associates, P.C., hereby enters her appearance as counsel of record for the City of Boise in the above-referenced matter. You are requested to serve all future papers and pleadings on her at the address listed below:

Josephine P. Beeman
Beeman & Associates, P.C.
409 West Jefferson Street
Boise, ID 83702

DATED this 30th day of August, 2002.

BEEMAN & ASSOCIATES, P.C.

By 
Josephine P. Beeman

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of August, 2002, I caused to be served copies of the foregoing **Notice of Appearance** by U. S. Mail:

Idaho Department of Water Resources
Document Depository
P. O. Box 83720
Boise, Idaho 83720-0098
Fax: 327-7866

(Bureau of Reclamation)
Kathleen Marion Carr
U S Department of Interior
550 West Fort Street, MSC 020
Boise, ID 83724
Fax: 334-1378

(Bureau of Reclamation)
Gail McGarry
Bureau of Reclamation
1150 N. Curtis Road, Suite 100
Boise, ID 83706-1234
Fax: 378-5066

(Eleanor Chase)
Matt J. Howard
P. O. Box 190012
Boise, ID 83719
Fax: 333-8409

(City of Boise)
Matt Wilde
City of Boise
P. O. Box 500
Boise, ID 83701-0500
Fax: 384-3905

Gary Spackman
IDWR Western
2735 Airport Way
Boise, ID 83705-5082
Fax: 334-2348

(Pioneer/Settlers)
Scott L. Campbell
Moffatt Thomas
P. O. Box 829
Boise, ID 83701-0829
Fax: 385-5384

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

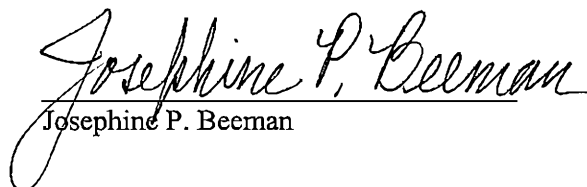
(Boise Project/Wilder/Big Bend)
Albert Barker
Barker, Rosholt & Simpson
P. O. Box 2139
Boise, ID 83701-2139
Fax: 344-6034

(Nampa & Meridian I.D.)
Charles L. Honsinger
Ringert Clark Chtd.
P. O. Box 2773
Boise, ID 83701-2773
Fax: 342-4657

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

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

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


Josephine P. Beeman

Z:\2011\85392