

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

IN THE MATTER OF APPLICATION) FOR TRANSFER OF WATER RIGHTS) IN THE NAME OF UNITED WATER) IDAHO, INC., INTEGRATED) MUNICIPAL APPLICATION) PACKAGE (IMAP)) 	NOTICE OF PREHEARING CONFERENCE
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PLEASE TAKE NOTICE, that an informal Prehearing Conference is set in this matter for September 23, 2002, starting at 9:00 a.m. in Conference Rooms A&B at the offices of the Idaho Department of Water Resources, located at 1301 N. Orchard St., Boise, Idaho. Upon conclusion of the prehearing conference, a technical meeting will immediately follow in the same location. The technical meeting will be staffed by an IDWR - Western Region representative, and the hearing officer will not be present.

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

The prehearing conference will be conducted in accordance with the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the department within twenty-four hours prior to the hearing. Inquires about scheduling, hearing facilities, etc., should be directed to

Deborah Gibson, Administrative Assistant, Idaho Department of Water Resources, 1301 N. Orchard St., Boise, Idaho 83706-2237, telephone: (208) 327-7953, fax: (208) 327-7866.

Dated this 21st day of August, 2002.



Peter R. Anderson
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of August, 2002, the above and foregoing document was served by faxing a copy of the same to the noted fax number of the following:

UNITED WATER ID INC
C/O JOHN M MARSHALL
PO BOX 2720
BOISE ID 83701
FAX: 388-1300

BUREAU OF RECLAMATION
C/O E GAIL MCGARRY PN-3100
1150 N CURTIS RD STE 100
BOISE ID 83706-1234
FAX: 378-5066

BUREAU OF RECLAMATION
C/O KATHLEEN MARION CARR
OFFICE OF THE FIELD SOLICITOR
US DEPT OF INTERIOR
550 W FORT ST - MSC 020
BOISE ID 83724
FAX: 334-1378

BOISE PROJECT BD OF CONTROL
WILDER IRRIGATION DIST
BIG BEND IRRIGATION DIST
C/O ALBERT P BARKER
PO BOX 2139
BOISE ID 83701-2139
FAX: 344-6034

NAMPA & MERIDIAN IRRIG DIST
C/O CHARLES L HONSINGER
RINGERT CLARK CHARTERED
PO BOX 2773
BOISE ID 83701-2773
FAX: 342-4657

ESTATE OF ELEANOR I CHASE
C/O MATT J HOWARD
ATTORNEY AT LAW
PO BOX 190012
BOISE ID 83719
FAX: 333-8409

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
FAX: 331-1202

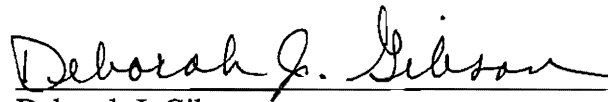
CITY OF MERIDIAN PUBLIC WORKS
C/O GARY D SMITH
660 E WATERTOWER
MERIDIAN ID 83642
FAX: 887-1297

CITY OF CALDWELL
ENGINEERING DEPT
C/O GORDON LAW
621 E CLEVELAND BLVD
CALDWELL ID 83605
FAX: 455-3003

PIONEER IRRIG DIST
SETTLERS IRRIG DIST
C/O SCOTT CAMPBELL
PO BOX 829
BOISE ID 83701-0829
FAX: 385-5384

BOISE PUBLIC WORKS DEPT
C/O BETH BAIRD
PO BOX 500
BOISE ID 83701-0500
FAX: 384-3905

GARY SPACKMAN
WESTERN REGIONAL MANAGER
IDAHO DEPT. OF WATER RESOURCES
2735 AIRPORT WAY
BOISE ID 83705-5082
FAX: 334-2348

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

Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

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

IN THE MATTER OF UNITED WATER)
IDAHO, INC'S INTEGRATED MUNICIPAL)
APPLICATION PACKAGE)
_____)

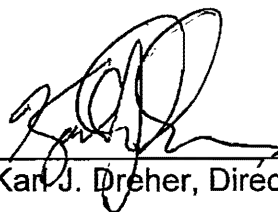
**ORDER APPOINTING
HEARING OFFICER**

This matter having come before the Idaho Department of Water Resources (department), as a result of a Protest filed against the referenced petition, the department makes the following Order:

ORDER

IT IS THEREFORE, HEREBY ORDERED that Peter R. Anderson is appointed effectively August 1, 2002 to serve as hearing officer, and is authorized to hear this matter on behalf of the Idaho Department of Water Resources pursuant to IDAPA Rules 37.01.01.410-413 and the provisions of chapter 52, title 67, Idaho Code.

Dated this 5th day of August, 2002.



Karl J. Dreher, Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of August, 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:

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

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

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

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

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

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

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

CITY OF CALDWELL
ENGINEERING 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

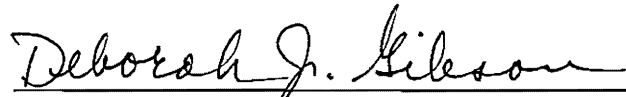
BOISE PUBLIC WORKS DEPT
C/O BETH BAIRD
PO BOX 500
BOISE ID 83701-0500

ED SQUIRES
988 S LONGMONT AVE STE 100
BOISE ID 83706

JO BEEMAN
409 W JEFFERSON
BOISE ID 83702

MATT WILDE
DEPUTY CITY ATTORNEY
101 S CAPITAL BLVD STE 700
PO BOX 500
BOISE ID 83701

GARY SPACKMAN
WESTERN REGIONAL MANAGER
IDAHO DEPT. OF WATER
RESOURCES
2735 AIRPORT WAY
BOISE ID 83705-5082



Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

cc: Repository file

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

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

NOTICE OF PREHEARING
CONFERENCE

On March 22, 2002, United Water Idaho, Inc., Integrated Municipal Application Package (IMAP) filed with the Department of Water Resources (IDWR) an application for transfer. The application was protested by the Boise Project Board of Control, US Bureau of Reclamation, Nampa & Meridian Irrigation District, Estate of Eleanor Chase, City of Meridian (Public Works), City of Caldwell (Engineering Department), Pioneer Irrigation District, Boise Public Works Department, and Cities of Eagle, Kuna, Middleton & Star and Star Sewer District.

IDWR has scheduled a conference for the protest to be held on **Tuesday, June 11, 2002, at 10:00 a.m. at the Department of Water Resources, conference rooms A & B, 1301 N. Orchard, Boise Idaho 83706.** The conference will be held in accordance with provisions of Chapters 2 and 17, Title 42, and Chapter 52, Title 67, of the Idaho Code, the adopted Rules of Procedure of the Department of Water Resources, and Rules 40 and 45 of the adopted Rules of Water Appropriation of the Department of Water Resources.

The conference will be conducted in a facility that satisfies the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the conference, please advise IDWR at least (10) days prior to the conference.

Dated this 20th day of May 2002.


Gary Spackman

CONFERENCE AND HEARING PROCEDURE

APPLICATION FOR TRANSFER

Section 42-222, Idaho Code, requires the department to consider the following issues in connection with an application for transfer:

- 1) Will the proposed transfer injure other water rights?
- 2) Will the proposed transfer constitute an enlargement in use of the original right?
- 3) Is the proposed transfer in the local public interest, where local public interest is defined as the affairs of the people in the area directly affected by the proposed use?
- 4) Is the proposed use contrary to conservation of water resources within the state of Idaho?

BURDEN OF PROOF

The applicant has the initial burden of proof of issues 1, 2 and 4 above and must provide evidence for the department to evaluate these criteria.

The initial burden of proof on issue 3 above lies with both the applicant and protestant as to factors which they are most knowledgeable and cognizant. The applicant has the ultimate burden of persuasion, however, for this issue.

PROCEDURE

The department generally conducts an informal conference with the parties to determine the issues and to try to settle a protested matter before a hearing is scheduled. If a hearing is held, the department will issue a written decision based on the hearing record.

CONFERENCE

The purpose of a prehearing conference is to provide the opportunity for the parties and the department to familiarize themselves with a contested matter and to attempt to resolve the matter. At the conference, the department may also formulate and simplify the issues, identify documents to avoid unnecessary proof, exchange proposed exhibits or prepared testimony, limit witnesses, discuss settlement offers, schedule hearings, establish procedure at hearings and address other matters that may expedite orderly conduct and disposition of the proceeding or its settlement.

HEARING

The department will tape record the hearing. Copies of a hearing tape are available upon written request and the payment of the cost of reproducing the tape.

The hearing likely will be conducted by a hearing officer appointed by the Director rather than the Director himself. If so, the hearing officer will prepare a preliminary order for the Director's consideration. Parties can file exceptions to a preliminary order, briefs in support of the exceptions or may request oral argument. Parties may seek judicial review of any final order issued by the Director.

Parties may, by written stipulation, waive their right to a preliminary order, particularly when a shortened decision process is desirable or necessary. Such a waiver does not eliminate any rights of the parties in connection with the final order of the Director and judicial review of the order.

EXHIBITS

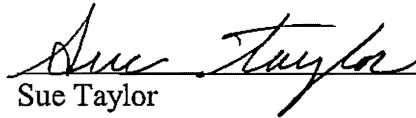
A party who plans to offer an exhibit as part of the hearing record must provide a copy of the proposed exhibit to the parties and to the hearing officer prior to any scheduled hearing.

AMERICANS WITH DISABILITIES ACT

Any hearing scheduled will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing please advise the department within ten (10) days prior to the hearing.

CERTIFICATE OF MAILING

I hereby certify that on the 20th day of May 2002 I mailed a true and correct copy, postage prepaid, of the Notice of Prehearing Conference to those listed:



Sue Taylor
Senior Secretary

APPLICANT

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

PROTESTANTS

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

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

NAMPA & MERIDIAN IRRIG DIST
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STAR AND STAR SEWER DIST
C/O TAMMY A ZOKAN
MOORE SMITH BUXTON & TURCKE
225 N 9TH ST STE 420
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C/O GARY D SMITH
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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

INTERESTED PARTIES

ED SQUIRES
988 S LONGMONT AVE STE 100
BOISE ID 83706

Official Record
Continued to File #2.

This file contains documents dated
May 8, 2001 through Aug. 21, 2002.

RECEIVED

AUG 21 2002

dy
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 Pioneer Irrigation District
and Settlers Irrigation District

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

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

**PIONEER IRRIGATION DISTRICT AND
SETTLERS IRRIGATION DISTRICT'S
REPLY RE: MOTION TO STRIKE**

Pioneer Irrigation District and Settlers Irrigation District (collectively "Districts"),
by and through their counsel of record Moffatt, Thomas, Barrett, Rock & Fields, Chtd., hereby
reply to United Water Idaho's ("UWID") Response to Districts' Motions and Request for
Attorney Fees ("Response"). This reply is predicated upon the fact that it is critical that parties to
a formal proceeding before the Idaho Department of Water Resources (IDWR) follow all
applicable laws and rules, particularly given the magnitude of the above-captioned matter, the

questions of first impression which will arise in this matter, and the long-term, far-reaching effects of the decisions rendered in this matter.

I.

PRELIMINARY MATTERS

The Districts want to make it very clear why they filed the *Motion*. It is critical that the parties know what documents the Hearing Officer will consider in rendering his decision. Similarly, if this matter is judicially reviewed, the reviewing court must know exactly what comprises the administrative record. Moreover, the parties must also know to what pleadings they should respond. For example, is the *Overview* considered a pleading which the Hearing Officer will consider in rendering his decision? If so, then all parties should be advised of that fact and must have an opportunity to respond after discovery has been conducted. Unfortunately, the Rules do not provide when such a response to an “Overview” must be filed. It would be appropriate for the Hearing Officer to issue an order notifying all parties of the proper briefing schedule for the legal issues so that all parties would know the time and manner for a response.

A piecemeal approach to addressing the issues (absent formal bifurcation) makes very little sense, and is a waste of everyone’s time, particularly when public records reviews have not been completed, and no discovery has been conducted. No party could fully respond to the matters set forth in the *Overview* and *Handbook* at this time, and all would be irreparably prejudiced if the Hearing Officer did not allow them an appropriate time period to respond (if he does not grant the Motion to Strike).

The Districts filed a Motion to Strike, but also asked for an extension of time to file a response, until discovery can be fully conducted. In the alternative, the Districts asked for a

procedural ruling from the Hearing Officer, designed to let all the parties know how this matter will be proceeding as far as briefing, fact finding, presentation of proof, and hearings. This is a case of considerable magnitude, and it is important that the parties know what rules and procedures will be applied.

II.

THIS MATTER IS A FORMAL PROCEEDING

UWID asserts, or at least implies, that the Integrated Municipal Application Package (“IMAP”) has not yet become a formal proceeding. (Response, p. 4). However, the Rules of Procedure of the Idaho Department of Water Resources (Rules) clearly define informal versus formal proceedings.

Informal proceedings are:

proceedings in contested cases authorized by statute, rule or order of the agency to be conducted using informal procedures, i.e., procedures without a record to be preserved for later agency or judicial review, without the necessity of representation according to Rule 230, without formal designation of parties, without the necessity of hearing examiners or other presiding officers, or without other formal procedures required by these rules for formal proceedings.

Rule 100, IDAPA 37.01.01.100. In turn, a “formal proceeding:”

must be initiated by a document (generally a notice, order or complaint if initiated by the agency) or another pleading listed in Rules 210 through 280 if initiated by another person. Formal proceedings may be initiated by a document from the agency informing the party(ies) that the agency has reached an informal determination that will become final in the absence of further action by the person to whom the correspondence is addressed, provided that the document complies with the requirements of Rules 210 through 280. Formal proceedings can be initiated by the same document that initiates informal proceedings.

Rule 104, IDAPA 37.01.01.104.

In this matter, a Hearing Officer has been designated (Order Appointing Hearing Officer, August 5, 2002), which alone takes this matter out of the “informal proceeding” realm. Moreover, the IMAP has been protested by the Districts as well as other entities, in accordance with Rule 250. Therefore, this is a formal proceeding, not an informal one. As such, it becomes even more imperative that the matter be conducted in accordance with the Rules, as well as all applicable laws.

III.

THE RULES ARE THE RULES

UWID characterizes the Districts’ *Motion* as resting on a “technicality.” The Districts can’t help but wonder if UWID feels that the Rules are all merely “technicalities,” to be followed only when it suits a party, and ignored when they do not. That certainly is not the intent of the Rules; the “Scope” section of the Rules provides that “[t]his chapter contains the rules of procedure which *shall* govern contested case proceedings before the Department of Water Resources and the Water Resource Board of the state of Idaho.” Rule 1.02, IDAPA 37.01.01.001.02 (emphasis added). Neither IDWR nor any party may pick and choose when to follow the Rules, and when to ignore them. The Rules govern, and must be followed.

The Rules provide that they are to be construed liberally. However, that liberal construction is limited, and the circumstances which prevent deviation from the Rules are not present here:

The rules in this chapter will be liberally construed to secure just, speedy and economical determination of all issues presented to the agency. Unless prohibited by statute, the agency may permit deviation from these rules when it finds that compliance with them

is impracticable, unnecessary, or not in the public interest. Unless required by statute, or otherwise provided by these rules, the Idaho Rules of Civil Procedure and the Idaho Rules of Evidence do not apply to contested case proceedings conducted before the agency.

(Rule 52, IDAPA 37.01.01.052). Liberal construction does not mean that rules should be disregarded, particularly without a finding from the hearing officer. Moreover, there has been no agency finding that it would be impracticable, unnecessary, or not in the public interest for UWID to comply with IDWR's rules. Indeed, in a matter of this significance, compliance with the Rules becomes even more important: the public, and potentially a reviewing court, must have a very clear picture of the agency record, and must be able to know with certainty the factors which went into IDWR's decision on this matter.

UWID discusses "common sense" in its Response. The Districts agree insofar as common sense is an essential, if often missing, component of legal proceedings. However, the use of common sense does not mean that one can disregard duly adopted administrative rules, or muddy the administrative record. Moreover, while this matter may be at the "preliminary" stages in that no hearing date has been set, this matter is, nevertheless, a formal proceeding.

IV.

THE RULES CITED BY UWID ARE INAPPLICABLE

UWID cites several rules which it contends supports the filings at issue. However, a careful reading of IDWR's Rules shows that rules cited by UWID do not stand for the proposition for which they are cited, and are taken out of context.

The Rules set forth an orderly progression of a contested case before IDWR. (Rule 50, IDAPA 37.01.01.50). After setting forth definitions and rules of general concern, the Rules lead off with a discussion of the documents which constitute an initial pleading. (Rule 200,

IDAPA 37.01.01.200). The Rules then discuss the various types of pleadings which are permitted (Rules 210 through 270, IDAPA 37.01.01.210 through 270), as well as the form those pleadings must take. (Rule 301, IDAPA 37.01.01.310) (*see discussion infra*).

After discussing service and signature requirements, the process to intervene in a matter, and declaratory rulings, the Rules discuss the appointment of hearing officers, as well as the scope of their authority. (Rule 410 *et seq.*, IDAPA 37.01.01.410 *et seq.*). After discussing issues of ex parte communications and alternative dispute resolution, the Rules proceed naturally into the prehearing conference. (Rule 510 through 514, IDAPA 37.01.01.510 through 514), then on to discovery. (Rules 520 through 528, IDAPA 37.01.01.520 through 528).

The next logical step, as in any contested matter whether administrative or judicial, is the formal hearing and order stage of the proceedings. (Rules 550 through 780, IDAPA 37.01.01.550 through .780). The rules conclude with a discussion of the review process.

UWID cites two rules in support of its idea that the *Overview* and *Handbook* were properly filed. However, citation to both of those rules belies UWID's assertion that this matter is in an "informal" stage. Moreover, since the hearing has not yet been set, reliance on those rules to support its filings is premature. Rule 564, cited by UWID is one of several Rules dealing with hearing procedures. It provides that "any party may *ask* to file briefs, memoranda, . . . or statements of position." (Rule 564, IDAPA 37.01.01.564) (emphasis added). However, UWID did not really ask to file the *Overview* and *Handbook*; it simply filed them. In addition, a critical concern that the Districts have is that they did not know what the *Overview* and *Handbook* were intended to be? Were they intended to be a memorandum of law? A statement of facts? A statement of position? Since they were not filed pursuant to the Rules or an order of the Hearing

Officer, the Districts simply had no way to know, which made it difficult to determine how to proceed. Finally, as noted above, UWID's citation to Rule 564 pertaining to formal proceedings belies their earlier assertion that this matter is "informal."

Rule 650.02 does provide that the "Record of Decision" shall include "all briefs, memoranda, proposed orders of the parties or of the presiding officers, statements of position, statements of support, and exceptions filed by parties or persons not parties; . . ." (Rule 650.02.f, IDAPA 37.01.01.650.02.f.) However, that Rule does not provide authority for the acceptance of all documents into the administrative record; it simply provides that all briefs, memoranda, and statements of position which are properly before IDWR shall be made part of the record of decision. Compliance with Rule 564 is a prerequisite. Moreover, given the context, this provision clearly speaks to those items presented in a contested case hearing process.

Other Rules must be considered as well. Rule 210 requires that

A party's initial pleading in any proceeding must comply with Rule 200, but the presiding officer may allow documents filed during informal stages of the proceeding to be considered a party's initial pleading without the requirement of resubmission to comply with this rule. *All pleadings filed during the formal stage of a proceeding must be filed in accordance with Rules 300 through 303.*

(Rule 210, IDAPA 37.01.01.210) (emphasis added). UWID has already filed its initial pleading: the IMAP. Moreover, even though no hearing date has been set, this matter is clearly a formal contested case, as discussed above in Section II. The *Overview* and the *Handbook* do not comport with Rules 300 through 303.

Rule 300 provides that "[a]ll pleadings, except those on agency forms, submitted by a party and intended to be part of the agency record. . ." must comply with certain standards. Specifically, Rule 303 require that the pleading state the case caption, and be in the form set forth

in Rule 303.02. The *Overview* and the *Handbook* do not comply with that rule. Further, UWID did not file a sworn proof of service as required by Rule 303. (IDAPA 37.01.01.303). Counsel for UWID indicated that he sent a copy to “All Protestants in this Matter”, but did not list those protestants, did not certify when the information was sent, and did not otherwise comport with Rule 303.

The Rules cited by UWID do not support their arguments, and UWID further ignored the mandatory procedural requirements in IDWR’s Rules. For that reason, the Districts’ *Motion* should be granted.

V.

RESPONSE TO SPECIFIC STATEMENTS

The Districts note that some of the statements made by UWID pertain to the prehearing conference, which was not recorded and of which there is no formal transcript. However, counsel for the Districts, who was present at the administrative hearing, will endeavor to respond to assertions made regarding statements at the prehearing conference, as well as other specific statements made in UWID’s *Response*. For the remainder of this Section, UWID’s statements are set forth in bold, followed by the District’s response.

1. **“The goal of contested case proceedings authorized by IDWR is to speedily, effectively and accurately determine the issues, narrow them if possible, obtain all relevant facts, fully explore the governing law and reach a decision. (See Rule of Procedure 510 quoted below).”**

Rule 510 pertains to prehearing conferences only, by its very terms. Moreover, “facts disclosed, offers made and all other aspects of negotiation (except agreements reached) in prehearing conferences in contested cases are not part of the record.” (Rule 514, IDAPA 37.01.01.514). If UWID wants to further the purposes of Rule 510, it must do so in accordance with that rule and the others governing prehearing conferences. If that is the case, the *Overview* and the

Handbook should not be part of the administrative record, and should not be considered by the hearing officer in rendering his decision.

If, on the other hand, UWID wants the *Overview* and the *Handbook* to be part of the administrative record, it must fully comply with the Rules pertaining to the administrative record and proper filings before IDWR in contested case proceedings.

2. This preliminary stage of proceedings is still underway.

As noted above, no hearing has been set at this time. However, the mere fact that no hearing has been set does not mean that this is an informal proceeding. Indeed, under the Rules, there is really no “preliminary stage”; a proceeding is either formal or informal. According to the Rules, the IMAP proceeding is a formal proceeding. *See* Section I.

3. At the June 11 conference, many parties, including the Districts, asked questions and expressed concerns about the issue of “Integrated Points of Diversion” or “IPD” which is presented in the IMAP.

Counsel for the Districts and others identified that as an issue, but in no way requested or consented to additional filings by UWID. (Affidavit of Counsel, ¶ 3). They simply identified issues, as provided by Rule 510.

4. Counsel for the Districts specifically requested access to communications with IDWR bearing on implementation of the Municipal Water Rights Act of 1996.

As that statement shows, and as should have been absolutely apparent to everyone at the prehearing conference, counsel requested access to IDWR’s records; ironically, that was a request opposed by UWID counsel. (Affidavit of Counsel, ¶ 4). Indeed, the Districts filed a public records request with IDWR, and have been conducting a review of the files which have been provided by IDWR, a review which is ongoing.

The only correspondence between IDWR and UWID attached to the Handbook is a letter from Director Dreher to Christopher Meyer, dated June 14, 1999. In marked contrast, the files which have been examined by the Districts include significant amounts of correspondence between UWID and IDWR prior to the IMAP’s filing. In fact, although the Districts’ public records review is not complete, the Districts have found at least four items of correspondence from UWID’s counsel to IDWR at various stages in the IMAP process, which appear to be attempts to persuade IDWR on various substantive issues. (Affidavit of Counsel, ¶ 5). For some reason,

that correspondence was not attached to the *Handbook*. (See Discussion under Item 7, *infra*).

That, along with the other information listed in the public records request, is what was sought by the Districts. The Districts did not seek an additional premature filing by UWID, one which fails to conform with IDWR procedural rules.

5. **In order to respond to those questions, concerns and requests, and in an attempt to narrow the issues as much as possible, UWID submitted the Overview and Handbook.**

UWID has a very interesting perspective. It has selected a rather unique way of attempting to “narrow the issues as much as possible.” The *Overview* and *Handbook* address none of the Districts’ concerns involving pre-application communications with IDWR. In fact, those “pleadings” raise many additional issues, and resolve none.

In reality, the *Overview* and *Handbook* appear to be nothing more than a continuation of the pattern of “informal” communications between UWID and IDWR. Communications which appear to have been intended to persuade IDWR of UWID’s positions regarding this contested administrative proceeding.

6. **The Handbook was included because it contains further discussion of the IPD issue, as well as a number of other issues which had arisen during the June 11 prehearing conference. Moreover, the Handbook was referenced in and incorporated by reference to the Overview.**

If the IPD discussion in the Handbook was so critical, it should have been included in a properly filed pleading before IDWR. Since the Handbook is “not formally published” and was published by UWID’s counsel, there is no reason why they needed to cite to it. Instead, the pertinent material could simply be discussed.

Moreover, the Districts are troubled by the fact that no mention was made in the *Overview* and the *Handbook* of the fact that the *Handbook* is not formally published. If one read those documents, one could wrongly conclude that the *Handbook* is a document which had been peer-reviewed and edited by an independent party. It could easily be construed as an authoritative publication rather than, as UWID admits, an “adversarial” document.

7. **Finally, the Handbook was included because it contained an appendix of IDWR correspondence and memoranda directly on point. These**

communications had been specifically requested by counsel for the Districts in the prehearing conference. Rather than provide them to selected Protestants, UWID made them conveniently available to all by submission of the Handbook.

First, although the Districts have not completed their public records review of IDWR records, there were significantly more communications between IDWR and UWID and its counsel than are included in the *Handbook*. The communications pertain to a variety of issues which have been raised by the various protestants to this matter. (Affidavit of Counsel, ¶ 5).

Second, UWID could have easily submitted the *Overview* and the *Handbook* to all the Protestants without attempting to make the documents part of the administrative record. It did not need to file them with IDWR.

VI.

THE REQUEST FOR ATTORNEY FEES SHOULD BE DENIED

UWID has requested attorney fees under Idaho Code Section 12-117. The Districts first note that the Rules do not provide for the award of attorney fees. Second, even if the provision does apply, no fees should be awarded because the Districts acted with a reasonable basis in fact or law. They have, at the most basic level, asked IDWR to inform the parties how this matter will be conducted, and how the Rules will be applied. The Districts were reasonable, both factually and legally. UWID's request for attorney fees should be denied.

CONCLUSION

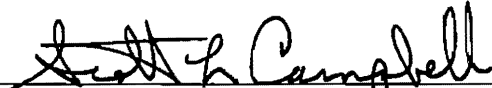
How will this proceeding be conducted? That is the critical question before the Hearing Officer. Will all the parties to this proceeding be allowed to file documents at will without compliance with IDWR's Rules? Will parties be expected to respond to all filings, or else risk an argument that they agree with the matters set forth therein? When will the Hearing Officer

hold hearings regarding documents filed? It is essential that the Hearing Officer maintain order in accordance with the Rules in this complicated, far-reaching and precedent setting matter.

Therefore, the Districts continue to respectfully request that the Hearing Officer grant their *Motion to Strike*, or permit the Districts to respond once discovery has been completed. In the alternative, as set forth in the *Motion*, the Districts respectfully request that the Hearing Officer set forth for the parties the procedural manner in which the IMAP proceeding will be conducted.

DATED this 21st day of August 2002.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By 
Scott L. Campbell - Of the Firm

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21st day of August 2002, I caused a true and correct copy of the foregoing **PIONEER IRRIGATION DISTRICT AND SETTLERS IRRIGATION DISTRICT'S REPLY 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
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☐ 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
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☐ Facsimile

Interested Parties:

Ed Squires

988 S. Longmont Avenue, Suite 100

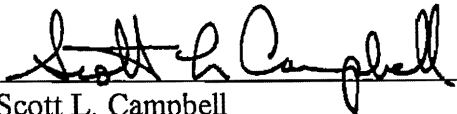
Boise, ID 83706

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() Facsimile



Scott L. Campbell

cc: Western

RECEIVED

AUG 21 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 Pioneer Irrigation District
and Settlers Irrigation District

**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 REPLY RE: MOTION TO
STRIKE**

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.

2. I attended the prehearing conference in the above-captioned matter on June 11, 2002, representing Pioneer Irrigation District and Settlers Irrigation District.

3. To the best of my recollection, while I identified previous communications between United Water Idaho ("UWID") and the Idaho Department of Water Resources ("IDWR") as an issue in this matter, I never requested that UWID file any pleading with IDWR on that issue.

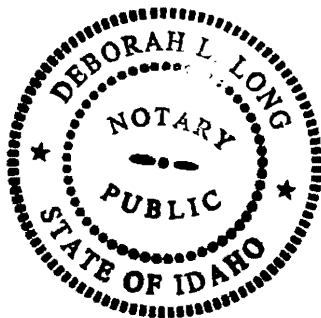
4. To the best of my recollection, when I requested access to IDWR's records regarding the IMAP at the PreHearing Conference, counsel for UWID objected to that request.

5. I filed a public records request with IDWR on behalf of my clients. At my direction, Angela Schaer, an attorney who is working with me on this matter, and Lynette Cochran, who is a legal assistant also working with me on this matter, have been conducting a review of IDWR's public records related to the IMAP. That review is not complete, but at this stage, we have found at least four pieces of correspondence from UWID's counsel to IDWR pertaining to issues inherent in the IMAP. At least some of those issues have been raised by the various Protestants in this matter. None of those pieces of correspondence were attached to the *Handbook*.

DATED this 21st day of August 2002.

By Scott L. Campbell
Scott L. Campbell

S
E
A
L



SUBSCRIBED AND SWORN to before me this 21st day of August 2002.

Deborah L. Long
Notary Public for Idaho

Residing at: Boise Idaho

Commission Expires: 10/10/07

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21st day of August 2002, I caused a true and correct copy of the foregoing **AFFIDAVIT OF SCOTT L. CAMPBELL IN SUPPORT OF REPLY 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
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Idaho Department of Water Resources
PO Box 83720
Boise, ID 83720

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Givens Pursley, LLP
PO Box 2720
Boise, ID 83701
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Charles L. Honsinger
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PO Box 2139
Boise, ID 83701-2139
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Cities of Eagle, Kuna, Middleton & Star and
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Tammy A. Zokan
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City of Meridian Public Works
Gary D. Smith
660 E. Watertower
Meridian, ID 83642
Fax: 887-1297

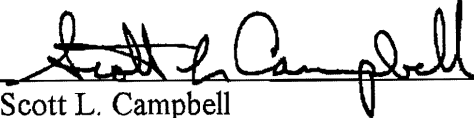
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Gordon Law
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Interested Parties:
Ed Squires
988 S. Longmont Avenue, Suite 100
Boise, ID 83706

☒ U.S. Mail, Postage Prepaid
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☐ Facsimile



Scott L. Campbell

cc: Western

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

RECEIVED

AUG 16 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 RESPONSE TO MOTIONS
FILED BY PIONEER AND SETTLERS
IRRIGATION DISTRICTS AND REQUEST
FOR ATTORNEY FEES.**

INTRODUCTION

On July 15, 2002, the Applicant, United Water Idaho ("UWID") submitted the following two documents to the Idaho Department of Water Resources ("IDWR" or the "Department") for inclusion in the record:

1. *Overview of United Water's "IMAP" Including an Explanation of the "Integrated Points of Diversion Issue* (July 15, 2002) ("Overview").
2. *Handbook on Idaho Water Law* ("Handbook") (July 7, 2002).

Copies were served on each party.

On or about August 2, 2002, the Pioneer Irrigation District and Settlers Irrigation District (collectively, the "Districts") filed their joint *Motion to Strike / Motion for Procedural Ruling or in the Alternative Motion for Additional Time to Respond Following Discovery* (hereinafter, "Motions").

This response constitutes UWID's opposition to each of the Districts' alternative requests. UWID also requests recovery of attorney fees in connection with this response.

RESPONSE

I. WE ARE STILL IN THE PRE-HEARING CONFERENCE STAGE OF THE PROCEEDINGS.

The goal of the contested case proceedings authorized by IDWR is to speedily, effectively and accurately determine the issues, narrow them if possible, obtain all relevant facts, fully explore the governing law, and reach a decision. (See Rule of Procedure 510 quoted below.) This is typically accomplished in an iterative process through which the parties learn more about each other's position, refine the issues, and settle as many as possible. The process typically begins informally, and advances to a more formal context if necessary.¹

This orderly progression is facilitated by the prehearing conference provisions of IDWR's rules, IDAPA 37.01.01.510. That process is aimed at:

formulating or simplifying the issues, obtaining concessions of fact or identification of documents to avoid unnecessary proof, ... discussing settlement offers or making settlement offers, ... and addressing other matters that may expedite orderly conduct and disposition of the proceeding or its settlement.

IDAPA 37.01.01.510.

The first prehearing conference in this matter was held on June 11, 2002. This preliminary stage of proceedings is still underway.

At the June 11 conference, many parties, including the Districts, asked questions and expressed concerns about the issue of "Integrated Points of Diversion" or "IPD" which is presented in the IMAP. Counsel for the Districts specifically requested access to communications with the Department bearing on implementation of the Municipal Water Rights

¹ We use the terms "formal" and "informal" here colloquially, not in the sense of defined terms describing different process for handling contested cases. IDAPA 37.01.01.100 and .104

Act of 1996. In order to respond to those questions, concerns and requests, and in an attempt to narrow the issues as much as possible, UWID submitted the Overview and Handbook.

The Overview provides a detailed explanation of the IPD issue and concluded with a set of proposed stipulated conditions.

The Handbook was included because it contains further discussion of the IPD issue, as well as a number of other issues which had arisen during the June 11 prehearing conference. Moreover, the Handbook was referenced in and incorporated by reference in the Overview. Thus, it may be seen as an appendix to the Overview. Finally, the Handbook was included because it contained an appendix of IDWR correspondence and memoranda directly on point. These communications had been specifically requested by counsel for the Districts in the prehearing conference. Rather than provide them to selected Protestants, UWID made them conveniently available to all by submission of the Handbook.²

The discussion, conditions and disclosures contained in the Overview and Handbook are expressly designed to do that which is contemplated by Rule of Procedure 510 quoted above.

UWID feels confident that a fair reading will demonstrate that they were intended to elucidate important issues related to the current proceeding, to clarify UWID's position, and to promote settlement. UWID therefore finds it perplexing, to say the least, why the Districts would waste the Department's time (and that of the parties) with this objection.

² Treatises and legal authorities, such as the Handbook, are not ordinarily included in an administrative record because they are published documents available to all. The Handbook, however, is not formally published (although copies are available at the State Law Library). Moreover, it contains material that is more narrowly tailored to issues raised in this proceeding than is the case with most treatises. Finally, since its authors represent a party in this litigation, it may be viewed (by some at least) as adversarial. For all these reasons, it is appropriate to include in the record. Since the Handbook contains numerous cross-references, and multiple sections bearing on issues in this case, we thought it best to include the entire document.

II. COMMON SENSE REQUIRES THAT THESE DOCUMENTS BE PLACED IN THE RECORD.

The Department's rules do not directly and explicitly address what should be done with documents such as those submitted by UWID in the course of a prehearing conference. Of course, the Department has not written a rule to cover every single action which occurs during the course of a proceeding. Rather, the Parties are expected to exercise elementary common sense to fill in the interstices. Consistent with that, it is the Department's practice—and a good one—to make such submissions part of the official record. This ensures that all parties and staff have equal access to them, and that they are available for judicial review if necessary.

Indeed, should UWID have attempted to place these documents before the Department and exclude them from the record, then a motion would have been appropriate to demand that they be included in the record. The opposite motion (to exclude them from the record), as urged by the Districts, is contrary to common sense.

III. SUBMISSION OF MEMORANDA, POSITIONAL STATEMENTS AND STATEMENTS OF SUPPORT ARE EXPRESSLY AUTHORIZED UNDER THE RULES.

The Districts complaint rests on a technical argument. They complain that these documents may not be included in the record because they do not fall within the definitions of a "pleading" or a "motion" as set out in IDAPA 37.01.01.210; .220 and .260. Motions at 2-3.

First, this overlooks that Rule of Procedure 210 is applicable "during the formal stage of a proceeding." Thus, it is not clear that these definitions have any controlling effect during the prehearing conference stage.

Second, there is nothing in any of these definitions that limits administrative submissions to "pleadings" and "motions." Thus Rules of Procedure 210, et al., are not on point. Elsewhere, the rules expressly note that the "record for decision" should include, among other things, "all briefs, memoranda, proposed orders of the parties or of the presiding officers, statements of

position, statements of support, and exceptions filed by parties or persons not parties.” IDAPA 37.01.01.650.02.f (emphasis added).

Additionally, Rule of Procedure 564 expressly provides that any party “may ask to file briefs, memoranda, proposed orders of the parties or statements of position.” IDAPA 37.01.01.654 (emphasis supplied). UWID sought this permission by filing the Overview and Handbook with a specific request that they be included in the administrative record.

The Overview and Handbook each fall within this catch-all description. The Overview is a self-described “memorandum” and also can be described as a positional statement or statement of support by UWID explaining portions of the IMAP. Page 1 of the Overview explains that it is a “memorandum,” and the Introduction section on page 3 further explains that this “memorandum provides a brief explanation and overview of the IMAP, paying particular attention to the issue of UWID’s request for “integrated points of diversion” (or “IPD”) for its ground water rights.” Likewise, the Handbook, which is referenced in the Overview as providing additional explanation and citation on issues regarding municipal water rights and submitted as part of the Overview, provides additional supporting authority for the IMAP and further responds to issues raised by the Protestants in the first prehearing conference.

Because IDWR Rules of Procedure 650 and/or 564 specifically contemplate the inclusion of memoranda, positional statements, and statements of support as part of the administrative record, it is evident that the Overview and the Handbook may properly be made part of the administrative record.

IV. THE DISTRICTS’ OTHER COMPLAINTS ABOUT THE DOCUMENTS DO NOT GIVE RISE TO A VALID OBJECTION.

The Districts also assert that the Handbook should be stricken because it is self-serving and because it has changed. Both accusations are true and irrelevant.

Obviously it is self-serving. All submissions in litigation are self-serving.

As for being changed, it is true that the Handbook is regularly updated by its authors (who also represent UWID in this proceeding). This is a reflection of their best efforts to keep the Handbook up-to-date. In this particular case, it was updated specifically in response to a request by counsel for the Districts that communications with the Department regarding the IMAP be made available. By including them in the Handbook, they are now made readily available to all parties (and to a reviewing court). Moreover, their relevance and effect is explained in the Handbook.

The Districts complain that the Overview and Handbook are “clouding the administrative record” with “non-conforming documents.” Motions at 4. Again, we think a bit of common sense should be sufficient to dispose of this complaint.

Perhaps the Districts disagree with something which UWID has submitted. If so, they should say so. That iterative process will help to clarify issues in the case. This is quite the opposite of “clouding” the record.

V. THE OVERVIEW EXPLAINS THE EXISTING IMAP APPLICATION AND DOES NOTHING TO AMEND THE IMAP.

The Districts also argue IDWR should treat the Overview as an amendment to the IMAP, requiring IDWR to republish public notice of the IMAP. Motions at 3, 4. The Districts do not support this argument with any explanation of how it believes the Overview changes the IMAP. The Overview on its face is explanatory in nature and does nothing to change the substance of the transfer applications and applications to amend permits that comprise the IMAP.

Likewise, the stipulated conditions are no different in nature from any other stipulations contemplated and expected under the Department’s rules. The conditions narrow the application and impact of the transfer application. No person could reasonably complain that they are

entitled to republication because a proposed transfer's impacts have been reduced or limited through a proposed stipulation. Again, a modicum of common sense should be sufficient to resolve the Districts' concerns here.

Moreover, since the Districts have already secured their position as Protestants, the republication issue has no bearing on them. Consequently, they have no legal standing to raise it.

VI. A "PROCEDURAL RULING" EXPLAINING WHAT DOCUMENTS MAY BE INCLUDED IN THE ADMINISTRATIVE RECORD IS UNNECESSARY.

The Districts' seek, in the alternative, an order from IDWR explaining what IDWR believes the Overview is and when and what kind of documents IDWR will accept as part of the agency record. They also request additional time to respond to materials submitted. Motions at 4. A procedural order along these lines is unnecessary.

Both the Overview and the Handbook are self-explanatory documents. Their relevance to this proceeding is readily apparent. If the Districts wish to submit documents explaining their positions or offering stipulations for settlement, they too should be accepted for the record. Indeed, such would be more than welcome, and would be most helpful in understanding the basis of the Districts' protests.

On the other hand, nothing in the rules requires them to respond at this time. They may choose, if they wish, to wait until a briefing schedule is established.

Accordingly, IDWR need not contribute its resources to issue an order stating the obvious.

ATTORNEY FEES

UWID hereby seeks recovery of attorney fees in connection with this response under Idaho Code § 12-117 and any other applicable authority.

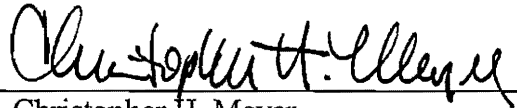
In the interest of avoiding unnecessary administrative distractions, and in the interest of promoting settlement, UWID proposes, if the Department so desires, to postpone a decision on this attorney fee request, and any others that may be made in the course of these proceedings, until the proceedings are concluded. At that time, the parties may request an opportunity for briefing, argument, fact-finding or other appropriate procedures.

CONCLUSION

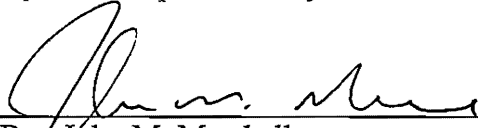
IDWR's rules are structured so that the agency has full opportunity to consider all relevant evidence and argument. Motions designed to preclude IDWR from considering explanations and arguments from parties to this matter are counterproductive and should be affirmatively discouraged.

DATED this 15th day of August, 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 15th day of August, 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
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Gordon N. Law, P.E.
City Engineer
Engineering Department
City of Caldwell
621 E. Cleveland Blvd.
P.O. Box 1177
Caldwell, ID 83605

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

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

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☐ 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

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☐ Facsimile
☐ Hand Delivery
☐ Overnight Mail

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

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

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

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

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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


Christopher H. Meyer



United States Department of the Interior

OFFICE OF THE SOLICITOR
Pacific Northwest Region
Boise Field Office
Federal Building & U.S. Courthouse
MSC 020-550 West Fort Street
Boise, Idaho 83724-0020

RECEIVED

AUG 07 2002

WATER RESOURCES
WESTERN REGION

August 6, 2002

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

Re: United Water Idaho - Integrated Municipal Application Permit
("IMAP")

Dear Steve:

Please add my name and address to your service list for the subject case. As you will note from the attached protest by the Bureau of Reclamation, my name was listed along with Ms. McGarry's as the protestant's representative. I'm also sending this letter to the other parties in order for them to update their records.

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

Sincerely,


Kathleen Marion Carr

Attachment -Bureau of Reclamation Protest

Steve Lester
August 6, 2002
Page 2

cc: Director
Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720
Fax: 327-5400

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

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

City of Boise
Boise Public Works Department
Beth K. Baird
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Boise Project Board of Control
Albert P. Barker
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P.O. Box 2139
Boise, ID 83701-2139
Fax: 342-4657

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

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

Cities of Eagle, Kuna, Middleton,
Star and Star Sewar District
Tammy A. Zokan
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225 North 9th Street, Suite 420
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Fax: 331-1202

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

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

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

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APR 22 2002

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Department of Water Resources

PROTEST

This form may be used to file a protest with the department under section 42-108B, 42-203A, 42-203C, 42-211, 42-222 and 42-224, Idaho Code. The department will also accept a timely protest not completed on this form if it contains all the necessary information.

1. Matter being protested Integrated Municipal Application Package (IMAP) in the name of United Water Idaho, Inc., 8248 W. Victory Rd, PO Box 7488, Boise, Idaho 83709-4165

2. Name of Protestant United States Department of Interior Bureau of Reclamation

3. Protestant's representative for service (if different than Protestant)

E. Gail McGarry, Manager Water Rights and Acquisition, Pacific Northwest Regional Office, Bureau of Reclamation Kathleen Carr, Attorney, Office of Field Solicitor, Federal Building, United States Department of Interior

4. Service mailing address

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

Kathleen Carr, Office of Field Solicitor, Federal Building Room 365, 550 West Fort St, Boise Idaho 83724

5. Service telephone number E. Gail McGarry (208) 378-5306; Kathleen Carr (208) 334-1911

6. Basis of protest (including statement of facts and law upon which the protest is based)

The Bureau of Reclamation has a direct and substantial interest in these proceedings as it diverts water from the Boise River to three storage reservoirs as provided by permit and licenses granted by the State of Idaho. Reclamation provides storage water to five irrigation districts, among other individuals and entities, within the Treasure Valley pursuant to federal contracts. Reclamation's interest is to see that no injury will occur to these Federal project water rights and to assure that any newly issued permits for water rights are administered in accordance with laws and regulations related to conjunctive management of interconnected sources.

7. What would resolve your protest? To be determined.

I hereby, acknowledge that if I, or my designated representative, fails to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Signed this 22 day of April, 2002.

United States

PROTESTANT

E. Gail McGarry
PROTESTANT'S REPRESENTATIVE



United States Department of the Interior

BUREAU OF RECLAMATION
Pacific Northwest Region
1150 N Curtis Road, Suite 100
Boise ID 83706-1234

PN-3110
WTR-1.10

APR 22 2002

United Water Idaho, Inc.
P.O. Box 7488
Boise ID 83709-4165

Subject: Notice of Protest - Integrated Municipal Application Package (IMAP).

Enclosed is a copy of the United States Bureau of Reclamation Notice of Protest for Application No. 63-31420. This copy is sent to you as a requirement of the Idaho Department of Water Resource's Rules of Procedure, IDAPA 37.01.01203. Call me at 208-378-5306 if you have questions.

Sincerely,

E. Gail McGarry
Program Manager
Water Rights & Acquisition

Enclosure

WBR:RPage:kl:04/22/02:378-5302
H:\COMMON\PN3100\IMAP\tr.wpd

RECEIVED

AUG - 6 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
18-946.26

Attorneys for Pioneer Irrigation District
and Settlers Irrigation District

**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.

**MOTION TO STRIKE / MOTION FOR
PROCEDURAL RULING OR IN THE
ALTERNATIVE MOTION FOR
ADDITIONAL TIME TO RESPOND
FOLLOWING DISCOVERY**

Protestants Pioneer Irrigation District and Settlers Irrigation District ("Districts"), by and through their counsel of record Moffatt, Thomas, Barrett, Rock & Fields, Chtd., pursuant to IDAPA 37.01.01.260 hereby file this Motion to Strike / Motion for Procedural Ruling. In the alternative, the Districts seek an order from the Idaho Department of Water Resources ("IDWR") allowing the Districts time to respond to the substantive matters set forth in the document entitled

**MOTION TO STRIKE / MOTION FOR PROCEDURAL RULING OR IN
THE ALTERNATIVE MOTION FOR ADDITIONAL TIME TO RESPOND
FOLLOWING DISCOVERY - 1**

“An Overview of United Water’s ‘IMAP’ Including an Explanation of the ‘Integrated Points of Diversion’ Issue” (“Overview”). This portion of the Motion is predicated upon the fact that the Rules of Procedure of IDWR do not provide for continuing, ever-evolving applications.

Moreover, no briefing or hearing schedule has been set, making the Overview premature at best.

This Motion also seeks an Order from IDWR striking the *Handbook on Idaho Water Law*. The *Handbook* is a self serving, unreviewed document which is an attempt to improperly place items in the administrative record.

The Districts respectfully request that IDWR grant their Motion to Strike.

I.

THE DEPARTMENT’S RULES OF PROCEDURE DO NOT PROVIDE FOR DOCUMENTS SUCH AS THE “OVERVIEW” AND THE HANDBOOK

UWID filed their Integrated Municipal Application Package (“IMAP”) in April 2002. Recently, UWID filed the Overview, along with the *Handbook*. The problem stems first from the fact that the Districts do not know what the Overview and *Handbook* are intended to be. However, this is a contested case proceeding before IDWR, and all filings should comport fully with IDWR’s Rules of Procedure and alternatively, with the Idaho Administrative Procedures Act. Neither the Overview nor the *Handbook* meet those criteria. Moreover, it appears that UWID is improperly attempting to augment the administrative record in this very important and precedent-setting contested case proceeding.

A. The Overview Should Be Stricken from the Administrative Record

IDWR’s Rules of Procedure (IDAPA 37.01.01) provide that pleadings “are called applications or claims or appeals, petitions, complaints, protests, motions, answers and consent

agreements.” IDAPA 37.01.01.210. The Overview does not fit the description of any of those pleadings, and should therefore be stricken. It is not a claim, appeal, petition, complaint, answer, or consent agreement.

The Rules of Procedure define “applications” as: “All pleadings requesting a right, license, award or authority from the agency. . . .” IDAPA 37.01.01.220. The Overview does not fit within that definition, since it is not requesting a right, license, award or authority from the agency. If it is intended to be a part of the initial application in this matter (i.e., the IMAP), then the Overview constitutes an amendment to the IMAP sufficient to require republication of the notice required by Idaho Code section 42-203A.

The Overview is also not a motion. The Overview does not appear to request that IDWR take any particular action other than approve the IMAP. IDAPA 37.01.01.260. Moreover, it does not fit within the definition of any of the pleadings contemplated in IDWR’s Rules of Procedure.

If IDWR is of the view that the Overview is permitted under the Rules of Procedure, it should remember that the official agency record is comprised of:

1. all notices of proceedings, pleadings, motions, briefs, petitions, and intermediate rulings;
2. evidence received or considered;
3. a statement of matters official noticed;
4. offers of proof and objections and rulings thereon;
5. the record prepared by the presiding officer under the provisions of section 67-5242, Idaho Code, together with any transcript of all or part of that record;
6. staff memoranda or data submitted to the presiding officer or the agency head in connection with the consideration of the proceeding; and
7. any recommended order, preliminary order, final order, or order on reconsideration.

I.C. § 67-5249. For purposes of review of an agency decision, Section 67-5249 reflects a legislative intent that the agency record, upon which the decision is based, consists of documents properly filed and testimony properly taken.

The Legislature did not contemplate that a formal contested case proceeding be one in which parties are free to file non-conforming documents continually throughout a proceeding, thus clouding the agency record. It becomes unclear what an agency may rely on in making its decision, and is also unclear to parties such as the Districts whether they should respond to information which has been filed with IDWR. The Districts respectfully request that IDWR strike the Overview because it is not contemplated in IDWR's Rules of Procedure. If IDWR refuses to strike the Overview, the Districts respectfully request that IDWR rule that the Overview constitutes an amendment to the IMAP, sufficient to require republication.

B. If the Overview is not Stricken, the Districts Seek a Procedural Ruling.

In the alternative, if IDWR will not strike the Overview or rule that it constitutes an amendment to the IMAP, the Districts respectfully request that IDWR provide the parties with a procedural ruling as to the nature and posture of the Overview. Such a ruling will allow the Districts and other parties to know how IDWR will consider the Overview in the context of the Department's Rules of Procedure, as well as inform them of their right or duty to respond to the same. In addition, the Districts seek a ruling from IDWR setting forth:

- (1) The type of documents IDWR will accept as part of the agency record, once a matter becomes a contested case;
- (2) When, during the contested case process, IDWR will accept documents as part of the agency record;
- (3) The circumstances and timing under which parties who have not filed the document in question will have to respond to the document.

Without answers to those questions, parties to this formal contested case proceedings will be left in procedural and substantive limbo, not knowing when and how to defend their interests in these matters of great importance.

C. The *Handbook* Should be Stricken

IDWR's Rules of Procedure govern the receipt of evidence in contested case proceedings:

Evidence should be taken by the agency to assist the parties' development of a record, not excluded to frustrate that development. The presiding officer at hearing is not bound by the Idaho Rules of Evidence. No informality in any proceeding or in the manner of taking testimony invalidates any order. The presiding officer, with or without objection, may exclude evidence that is irrelevant, unduly repetitious, inadmissible on constitutional or statutory grounds, or on the basis of any evidentiary privilege provided by statute or recognized in the courts of Idaho. All other evidence may be admitted if it is of a type commonly relied upon by prudent persons in the conduct of their affairs. The agency's experience, technical competence and specialized knowledge may be used in evaluation of evidence.

IDAPA 37.01.01.600.

UWID attached the *Handbook* to the Overview. If the Overview is stricken, the *Handbook* should be stricken as well on that basis. If it is not stricken for that reason, the Districts respectfully request that the *Handbook* be stricken because it is an improper attempt to introduce evidence into the administrative record. While the presiding officer is not bound by the Idaho Rules of Evidence, it is important that any evidence introduced in this formal contested case be relevant and reliable.

The *Handbook* is a document self-published by UWID's counsel. There is no evidence that it has been peer reviewed or edited by anyone outside of that law firm. As such, when

introduced in this context, the *Handbook* becomes self-serving, and an attempt to obtain IDWR's imprimatur on the matters set forth in the *Handbook*. Moreover, the Municipal Water Rights section of the *Handbook* has changed significantly since 1998. Those changes further illustrate the self-serving nature of the *Handbook*. See Exhibit A to Affidavit of Counsel.

UWID is free to cite existing law and learned treatises in any briefing properly filed in this matter. However, the *Handbook* has been improperly introduced and should be stricken from the administrative record.

II.

IF IDWR WILL NOT TAKE THE ACTION REQUESTED ABOVE THE DISTRICTS REQUEST ADDITIONAL TIME TO RESPOND TO THE MATTERS DESCRIBED IN THE OVERVIEW AND HANDBOOK

As noted above, the Overview is not provided for in IDWR's Rules of Procedure, and appears to be an amendment to the IMAP. However, if IDWR will not strike the *Handbook* and the Overview, or republish notice of the IMAP, the Districts request that they be allowed to delay responding to the matters set forth in both filings. No discovery has been conducted, and no hearing schedule has been set. Therefore, at this stage, it would be difficult, if not impossible, for the Districts to respond fully and competently to the matters set forth therein.

If IDWR does not strike the Overview and the *Handbook* from the administrative record, the Districts respectfully request that IDWR rule that the Districts may respond to the Overview and the *Handbook* after discovery has been conducted, at any time up to and including trial in this matter.

CONCLUSION

The Districts respectfully request that IDWR grant their Motion to Strike in its entirety, or to otherwise grant the relief requested herein.

DATED this 2nd day of August 2002.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

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

By Scott L. Campbell for
Angela D. Schaer - Of the Firm
Attorneys for Pioneer Irrigation District
and Settlers Irrigation District

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 2nd day of August 2002, I caused a true and correct copy of the foregoing **MOTION TO STRIKE / MOTION FOR PROCEDURAL RULING OR IN THE ALTERNATIVE MOTION FOR ADDITIONAL TIME TO RESPOND FOLLOWING 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

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

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

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City of Boise
Boise Public Works Department
Beth K. Baird
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Fax: 384-3905

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

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

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Cities of Eagle, Kuna, Middleton & Star and
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City of Meridian Public Works
Gary D. Smith
660 E. Watertower
Meridian, ID 83642
Fax: 887-1297

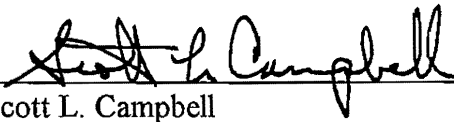
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City of Caldwell Engineering Department
Gordon Law
621 E. Cleveland Blvd.
Caldwell, ID 83605

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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

RECEIVED

AUG - 6 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 Pioneer Irrigation District
and Settlers Irrigation District

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 COUNSEL

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.

RECEIVED

AUG 08 2002

WATER RESOURCES
WESTERN REGION

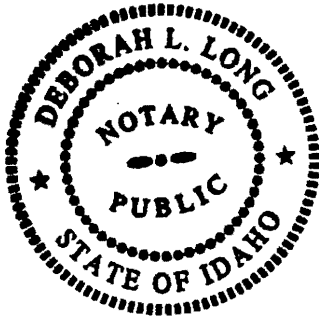
2. Appended hereto as Exhibit A is a true and correct copy excerpts of the *Handbook on Idaho Water Law: A Practical Guide* (September 1998 (Preliminary Release). Specifically, Exhibit A is the cover and pages 29-38 of that document.

DATED this 2nd day of August 2002.

By Scott L. Campbell
Scott L. Campbell

SUBSCRIBED AND SWORN to before me this 2nd day of August 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 2nd day of August 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

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John M. Marshall
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PO Box 2720
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Nampa & Meridian Irrigation District
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455 South 3rd Street
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Boise, ID 83701-2773
Fax: 342-4657

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Cities of Eagle, Kuna, Middleton & Star and
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Tammy A. Zokan
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City of Meridian Public Works
Gary D. Smith
660 E. Watertower
Meridian, ID 83642
Fax: 887-1297

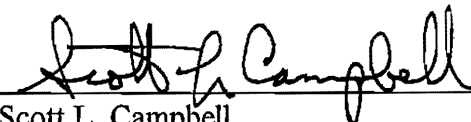
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Ed Squires
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Boise, ID 83706

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



Scott L. Campbell

HANDBOOK ON IDAHO WATER LAW

A PRACTICAL GUIDE

Jeffrey C. Fereday, Esq.
Christopher H. Meyer, Esq.
Michael C. Creamer, Esq.

GIVENS PURSLEY LLP
ATTORNEYS AT LAW

277 North Sixth Street, Suite 200
P.O. Box 2720
Boise, Idaho 83701-2720
208-388-1200

September 1998 (Preliminary Release)

Exhibit A

(g) Final decision and judicial review

Following the hearing, a Memorandum Decision and Order signed by the Director will be issued that contains the Department's findings of fact and conclusions of law. In some instances a proposed decision will be issued and the parties will be given an opportunity to file exceptions to it and present oral argument. Any party who is not satisfied with the Department's decision is entitled to file a Petition for Rehearing within 20 days after service of the Order.⁹¹ Judicial review of the Agency decision is available from the state district court in the county in which the hearing was held, or in Ada County which is where the Director's office is located.⁹²

K. Municipal water rights and the Growing Communities Doctrine

(1) The line between beneficial use and speculation

All water users, from the family farmer to the industrial giant, have plans for the future, it seems. Water is often a part of those plans. The Prior Appropriation Doctrine is well suited to the task of assisting the entrepreneur in expanding his or her panoply of water rights to serve a growing enterprise. It must be said, however, that these new uses are not accommodated under the Prior Appropriation Doctrine without some tension.

The reason is this. While the Prior Appropriation Doctrine has long been an engine of growth in the West, it has just as long been the enemy of speculation.

Under the prior appropriation doctrine, one cannot claim a right to use water one in fact does not use. With limited exceptions, a person cannot tie up quantities of water for development or use at some future time, thus preventing appropriations by others who can and will develop today.

The basis for this anti-speculation feature of the doctrine is the same as the foundation of the doctrine itself: water rights are based on beneficial use of a public resource that remains the property of the public. Beneficial use is the basis, the measure and the limit of the right.

This is not to say that no speculative scheme in the West ever involved water rights. However, the water right itself ultimately can be recognized only on the basis of bona fide use, and cannot be maintained indefinitely as a "paper" entitlement.

⁹¹ See generally, IDAPA 37.01.01.720 to 791.

⁹² Idaho Code §§ 67-5215, 67-5217 and 42-1701A.

Hence, from the start, the Prior Appropriation Doctrine has recognized the lawful rights of those who apply water to beneficial use, and has denied any legal protection to those who would hold water for speculative purposes. This distinction between need and speculation has remained viable over time, and rules have developed to define which is which.

In the early days, before permit systems were established in Idaho and virtually every western state, a water right did not come into existence until actual diversion to beneficial use occurred.⁹³ The statutory permit system provided some critical leeway to the developer of a new right. Rather than engage in a risky race to develop a water supply, the user could obtain in advance a water right permit which secured the quantity and priority of the water right sought. With permit in hand, the user then could obtain financing and proceed to construction of the diversion and delivery system with some confidence that water would be available. Once the project was completed and in use, a license would be awarded, serving as *prima facie* evidence of the actual diversion and application to beneficial use.⁹⁴

In Idaho, the user might spend five years getting from permit to license, with another five year extension upon showing of need; in specified circumstances, further extensions might be obtained.⁹⁵ In most cases, that has proven sufficient time to design, fund and construct a water project, at least for the typical Idaho irrigation project. The system has not been entirely satisfactory, however, for municipal suppliers.

Municipal suppliers have argued that they shoulder an obligation unlike that of other water users. The municipal supplier (whether that be a city or a corporation supplying a city), is bound to serve all those customers who find it desirable to locate within the municipality. Cities point out that they cannot wait for the future to unfold. Although uncertainty is inherent in growth projections, practical necessity demands that cities lay the foundation today to meet the water

⁹³ "The procedure for appropriating water contained in the act of 1881, providing that an intending appropriator should post a notice at the point of diversion and record the same, was replaced in 1903 by the present procedure which places the regulation of appropriation of waters under the jurisdiction of [what is now Idaho Department of Water Resources]." Wells A. Hutchins, *The Idaho Law of Water Rights*, 5 Idaho L. Rev. 1, 21 (1968). Except for certain small domestic wells, the permit/license process is now mandatory in Idaho. Idaho Code §§ 42-103, 42-201 (for surface water diversions, effective May 19, 1971) and Idaho Code § 42-229 (for ground water diversions, effective March 25, 1963). Implementing regulations are found at IDAPA 37.03.08 § 035.01.a. (may not "commence the construction of any project works" until permit application has been approved).

⁹⁴ Once the project is completed and the water is put to beneficial use, the permittee is entitled to receive a license for that amount of water with a priority date relating back to the date of the application for the permit. Idaho Code § 42-219.

⁹⁵ Idaho Code §§ 42-204, 42-218, 42-128(a).

needs of the coming decades. Surface and underground supplies must be identified and acquired. Diversion and storage systems must be put in place. Delivery systems must be expanded and treatment plants constructed.

The bottom line is that the planning horizon for these endeavors may be longer than five or ten years. It is economically, if not physically, impossible for most cities simply to add on additional supply as needed in five or ten year increments. When pipe is laid, wells are drilled, and treatment systems are engineered, cities contend, these systems sensibly must be sized for many years of future growth. But if that need is more than ten years out, what becomes of the water right?

The courts of Idaho and other western states long ago have addressed this question. Their answer has been consistent. They have recognized the unique obligations of municipalities and have treated them differently than other water users. The seminal statement comes from the Colorado Supreme Court, writing in 1939:

The concern of the city is to assure an adequate supply to the public which it serves. In establishing a beneficial use of water under such circumstances the factors are not as simple and are more numerous than the application of water to 160 acres of land for agricultural purposes. A specified tract of land does not increase in size, but populations do, and in short periods of time. With that flexibility in mind, it is not speculation but the highest prudence on the part of the city to obtain appropriations of water that will satisfy the needs resulting from a normal increase in population within a reasonable period of time.⁹⁶

This quotation demonstrates that the core of the debate over the right of municipalities to hold water for future growth is whether or not this practice constitutes "beneficial use" on the one hand or "speculation" on the other. That is, does the acquisition of water rights beyond the usual five or ten year time frame constitute prudence or hoarding? The Growing Communities Doctrine⁹⁷ recognizes that long term planning by municipalities, under proper circumstances, may be prudent, necessary and lawful.

⁹⁶ *City and County of Denver v. Sheriff*, 96 P.2d 836, 841 (Colo. 1939) (emphasis supplied).

⁹⁷ I employ the phrase "Growing Communities Doctrine" to capture the essential points of the case law. Although this shorthand description has not been employed by the Idaho Supreme Court, and differs somewhat from the "Great and Growing Cities Doctrine" which has taken hold in Colorado, I think it captures the idea. The doctrine plainly applies to all growing communities, 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.

In a sense, the Growing Communities Doctrine is not that much of a departure from the norm. Indeed, one might argue that the idea of a city designing a delivery system sized to accommodate future growth is similar in concept to the idea of storing water in a reservoir for use during a future drought. That drought may not come for many years, but no one would deny the benefit derived today simply from knowing that water will be available in the event of drought. Thus, it is undisputed that the storage of water for use in time of future shortage constitutes a current "beneficial use."⁹⁸ The Growing Communities Doctrine is simply a recognition of the fact that Idaho's cities derive a substantial and tangible benefit today from securing a water supply sufficient to satisfy reasonably foreseeable needs. Without such ability, cities argue, they would be hard pressed to attract desirable new industries and manage sensibly for growth.

(2) Judicial recognition of the Growing Communities Doctrine in Idaho

Two Idaho cases and one federal case applying Idaho law have addressed the question of whether cities may obtain water rights of sufficient quantity to meet future population growth. In each case, the court squarely ruled that such water rights may be obtained.

The first case was *City of Pocatello v. Murray*.⁹⁹ In this case, the City of Pocatello granted a franchise to Murray and his associates to provide water to the city. The city complained that while Murray had delivered some water from Mink Creek, he had not obtained the entire supply physically available in the creek. The federal court (applying Idaho law) found that Murray had indeed failed to fulfill his obligation under the contract. The court rejected Murray's argument that it was against public policy for the city to appropriate more water than was then needed. The court declared that the leeway afforded to agricultural users "should and doubtless would, be applied with even greater liberality to the superior and more elastic needs of a growing municipality."¹⁰⁰

In *Beus v. City of Soda Springs*,¹⁰¹ the court upheld the right of the City of

⁹⁸ *Waters and Water Rights*, § 12.03(c)(2) at 108 (Robert E. Beck ed., The Michie Company 1991); Samuel C. Wiel, *Water Rights in the Western States* § 378 at p. 410 (1911); 45 Am. Jur. 2d *Irrigation* § 38 (1969).

⁹⁹ *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). The appeals court affirmed on the more narrow basis of the construction of the municipal ordinance. However, the appeals court noted that one of the purposes of the water supply agreement between the city and defendants was to provide "as well for their future use." 214 F. at 220.

¹⁰⁰ *Id.*, 206 F. at 80.

¹⁰¹ *Beus v. City of Soda Springs*, 62 Idaho 1, 107 P.2d 151 (1940).

Soda Springs to purchase water rights from agricultural users and hold them for future municipal needs. The court went on to hold that such water need not be applied to irrigation in the meantime in order to avoid forfeiture.¹⁰² "To require that would amount to nullifying the power granted to a municipality to acquire and hold water for future needs—an absolute necessity of life and existence for a municipality."¹⁰³

In the more recent case of *Village of Peck v. Denison*,¹⁰⁴ the court upheld the right of the village to obtain an unquantified water right for "all the flow" from a particular source. Whether the water was needed for current or future needs is somewhat unclear from the decision. However, the court noted in a footnote that:

[A]lthough the Village of Peck became a municipality only after the events giving rise to this litigation, we would have found it difficult not to allow the appropriation of some excess water (had there been any in fact) under I.C. § 50-323 and its predecessors and *Beus v. City of Soda Springs*, 62 Idaho 1, 107 P.2d 151 (1940); see Hutchins, op. cit. at p. 44 (municipal use of water).¹⁰⁵

The court in *Village of Peck v. Denison* cites an article published a year earlier by the distinguished water law scholar, Wells A. Hutchins.¹⁰⁶ Mr. Hutchins concluded that Idaho law does recognize water rights for future municipal growth:

¹⁰² In support of its decision, the Idaho court quoted from a Wyoming case, *Holt v. Cheyenne*, 137 P. 876 (1914):

[T]he Supreme Court of Wyoming had before it . . . the identical question presented in this case. The court held: "A city's right to appropriate the waters of a stream is not limited to the needs of its citizens at the time of the adjudication of its rights, but is entitled to appropriate for the probable future demands of its population."

The court then reviewed numerous authorities holding that property may be held by a municipality for its future growth and development without being subject to adverse claims of others, and then continues: "Such, we think, is the better reasoning, and is supported by the great weight of authority and to which many courts have in later cases acceded, although a contrary doctrine has been announced in earlier decisions."

Beus, 62 Idaho at 6, 107 P.2d at 154 (this quotation, which *Beus* attributed to *Holt*, is actually from the headnote to *Holt*).

¹⁰³ *Beus*, 62 Idaho at 7, 107 P.2d at 154.

¹⁰⁴ *Village of Peck v. Denison*, 92 Idaho 747, 450 P.2d 310 (1969).

¹⁰⁵ *Village of Peck v. Denison*, 92 Idaho at 751, n.4, 450 P.2d at 314, n.4.

¹⁰⁶ Wells A. Hutchins, *The Idaho Law of Water Rights*, 5 Idaho L. Rev. 1 (1968).

[A] city is not limited in the amount of its appropriation to the needs of its citizens at the time of adjudication of its water right, but may dispose of and apply the surplus water to beneficial use up to the amount of its application.¹⁰⁷

In sum, Idaho case law consistently has recognized and accommodated the special burdens on municipal providers of water. This body of law is consistent with that of cases and statutes throughout the West.¹⁰⁸

(3) Idaho's 1996 codification of the doctrine

In 1996 the Idaho Legislature codified the Growing Communities Doctrine and established specific procedures and limitations governing a municipality's ability to acquire water rights (by appropriation or transfer) for long term growth.¹⁰⁹ In short, the legislature affirmed the doctrine's role in Idaho water law, but placed clear sideboards on how it is to be applied.

¹⁰⁷ Hutchins at 44, n. 211.

¹⁰⁸ 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 (1954); *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); *State v. Crider*, 431 P.2d 45 (N.M. 1967); *State ex rel. State Engineer v. Rio Rancho Estates, Inc.*, 624 P.2d 502 (N.M. 1981); *In re the Application of Plains Electric Generation and Transmission Coop., Inc.*, 750 P.2d 475 (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*, 63 Cal. 2d 291, 405 P.2d 377, 46 Cal. Rptr. 465 (1965).

Statutes:

Ariz. Rev. Stat. Ann. § 45-160; Cal. Water Code §§ 106.5, 1264 (Deering 1977); 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:

Frank J. Trelease, *Preferences to the Use of Water*, Rocky Mtn. L. Rev. 133, 138 (1955) (Obviously a water supply for a city must keep a step ahead of the needs of its inhabitants; a city cannot obtain water from day to day as demand increases.); *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).

¹⁰⁹ S.B. 1535 (Idaho 1996), codified at Idaho Code §§ 42-202, 42-202B, 42-217, 42-219, 42-222.

The legislature recognized that it was not writing on a blank slate:

The appropriation doctrine as applied throughout the western states provides flexibility for municipal providers to obtain and hold water rights needed to assure an adequate water supply for reasonably anticipated future needs. While this concept is recognized in Idaho case law, it should be further described in statutes in order to guide the actions of the Department of Water Resources, water users and the courts, and to assure that the use of this concept is appropriately controlled. The legislation seeks to define and limit the authority of municipal water providers to develop and hold water rights for reasonably anticipated future needs and to allow water to be supplied to expanding service areas. This statute addresses future licensing of water rights for municipal purposes (including those currently permitted) as well as future changes in water rights to municipal purposes. The statute does not address those licensed and decreed water rights now held by municipal providers, and the legislation intends no change in the common law with respect to such rights. Municipalities would be required to provide information to describe their service area, to establish a reasonable planning horizon, and to show that the water rights are necessary for reasonably anticipated future needs.¹¹⁰

The 1996 Act contains several new concepts. They are reflected in the terms of art contained in the following summary of the law: "Municipal providers" may secure water rights for "municipal purposes" of sufficient quantity to serve all "reasonably anticipated future needs" within a described "service area" during a specified "planning horizon."

"Municipal providers" include (1) cities, counties and state institutions, (2) corporations and associations holding a franchise to supply water for municipal purposes, and (3) corporations and associations supplying water for municipal purposes through a water supply system regulated as a "public water supply" under Idaho Code § 39-103(15).¹¹¹

The term "municipal purposes" is broadly defined to include "residential, commercial, industrial, irrigation of parks and open space, and related purposes,"

¹¹⁰ Statement of Purpose, S.B. 1535 (Idaho 1996).

¹¹¹ Idaho Code §§ 42-202B(1), 42-202B(2).

but expressly excludes "water from geothermal sources for heating."¹¹² Thus, water rights for geothermal heating systems (which are common in Idaho) may be obtained only to meet current need. However, geothermal water used for non-heat purposes (such as drinking) does fall within the Act.

The "reasonably anticipated future needs" must be documented with "population and other planning data" by the municipal provider to the satisfaction of the Idaho Department of Water Resources ("IDWR").¹¹³ Moreover, they must "not be inconsistent with comprehensive land use plans approved by each municipality" within the service area, and may not include "uses of water within areas overlapped by conflicting comprehensive land use plans."¹¹⁴ This last requirement is a draconian measure designed to provide a stern incentive to municipalities to cooperate in planning efforts. To the extent two or more municipalities assert planning authority over the same area and develop fundamentally conflicting planning scenarios, no one may obtain a "future needs" water right for that overlapped area. Of course, water rights may continue to be acquired to serve existing needs in such areas.

The Act contains no limit on the duration of the "planning horizon,"¹¹⁵ but simply requires the IDWR to establish a reasonable period to fit the needs of the particular user. The Act also provides for substantial flexibility in the establishment of a "service area."¹¹⁶ The area need not be limited to a city's corporate limits, and corresponds instead to the actual area served. This eliminates the requirement under prior law to describe the area outside of a city's corporate limits by metes and bounds. More significantly, the service area is not fixed, but includes "changes therein after the permit or license is issued."¹¹⁷ This eliminates the need to initiate a formal change proceeding with the IDWR each time the area served by a municipality is expanded.

It bears emphasis that the Act does not create any automatic entitlement on the part of municipal providers to obtain water rights for future needs. Rather, the Act imposes on the Director of the IDWR the responsibility to determine the reasonableness of the applicant's asserted future requirements. No doubt, a body of administrative and judicial law will emerge over time establishing how much need an applicant must have and how well the applicant must demonstrate it.

¹¹² Idaho Code § 42-202B(3).

¹¹³ Idaho Code § 42-202B(3).

¹¹⁴ Idaho Code § 42-202B(3).

¹¹⁵ Idaho Code § 42-202B(4).

¹¹⁶ Idaho Code § 42-202B(4).

¹¹⁷ Idaho Code § 42-202B(4).

The Act applies at both the permit and license stage, as well as to transfers of water rights to municipal use. The initial determination of the scope of the future needs and the duration of the planning horizon may be adjusted by the IDWR at the license stage where the user "proves up" the right. Transfers in Idaho do not entail a two stage process (as for permits and licenses). Consequently, the scope of the water right is established just once, at the time of transfer.

The Act contains several strong anti-speculation provisions. The prohibition against "future need" rights for areas with overlapped growth plans already has been mentioned. In addition, the Act expressly prohibits the transfer of "future need" water rights by a municipal provider to a place of use outside the service area or to a new nature of use.¹¹⁸ In other words, the statute recognizes that while a municipality is accorded extra leeway in holding water rights to meet long term future needs, the *quid pro quo* is that the municipal provider may not later decide to accept a "better offer" and trade away its water rights for cash or other consideration. In a sense, the legislature had determined to take away one stick from the property owner's bundle of rights (free transferability) in recognition of the fact that municipal suppliers hold a stick which other water right holders do not (the right to hold water rights "unused" for long term future needs).

Finally, a license for a "future need" water right may be issued "for an amount up to the full capacity of the system constructed or used in accordance with the original permit . . ."¹¹⁹ In other words, at the time of license, the water right claimant actually must have constructed some "system" for diversion, storage and/or delivery of the water which is physically sized to meet the claimed future needs. Presumably a municipal provider need not have constructed the entire system. Indeed, parts of it may be constructed in years to come as the municipality grows into its right. However, the statute appears to require that there be some tangible evidence of the provider's commitment to meet the claimed future needs. The idea is that the willingness of the provider to invest today's capital in infrastructure to meet future needs is a further guard against the purely speculative acquisition of water rights.

While the legislature laid out extensive procedures for the acquisition of "future need" water rights henceforth, it has not codified or altered the common law Growing Communities Doctrine with respect to pre-Act rights held by municipal providers. Instead, the legislature recognized the existence of the doctrine and provided "no change in the common law."¹²⁰ Presumably, then, such rights will continue to be governed by the general principles enunciated in *Beus v.*

¹¹⁸ This provision is stated twice in the Act. Idaho Code §§ 42-219(1), 42-222(1).

¹¹⁹ Idaho Code § 42-219(1).

¹²⁰ See the Act's Statement of Purpose quoted at page 40.

City of Soda Springs, City of Pocatello v. Murray, and *Village of Peck v. Denison*. One would expect, as well, that as the Growing Communities Doctrine continues to evolve in the context of pre-1996 municipal rights, Idaho courts may be influenced to some extent by what the legislature has done for post-1996 rights.

It is unclear exactly how municipal providers holding water rights for quantities exceeding their current needs will respond to the new law. Some may let a sleeping dog lie and see how their rights fair under the common law when they come up for review under the SRBA or in other contexts. Others may affirmatively seek to convert these rights to "future need" rights under S.B. 1535.¹²¹ Inevitably, there is some risk in either approach. Left intact, the rights are subject to the court's evolving view of the common law.¹²² If a transfer is initiated, the end product will have the security of the statute's protection, but the water right must first have passed muster before the IDWR.

L. Instream flow rights

(1) The traditional diversion requirement

Traditionally, western states required a "diversion" to beneficial use before a water right could be recognized.¹²³ Under a literal reading of this requirement, a legally enforceable right to the use of water could only be obtained for water removed from a natural watercourse. A person seeking to protect natural (or, for that matter, artificial) stream flows from subsequent appropriation and diversion

¹²¹ The Act does not specifically address such transfers of "old" municipal rights to "new" municipal rights and no test case has yet occurred. However, there appears to be no reason why such a transfer would be prohibited.

¹²² Whether the very enactment of S.B. 1535 has had an effect on the common law is a fundamental question yet to be answered. One might argue that in adopting a codified municipal rights law for some water rights, the legislature intended to repeal common law protections for other municipal water rights. This does not appear to be the intent of the legislature, however. As noted on page 40, the Act's Statement of Purpose expressly disclaims any intent to change the common law. Moreover, the Act contains a savings clause, Idaho Code § 42-202(11), which purports to preserve the common law's protection for pre-1996 municipal rights. In the end, however, the common law is whatever the court says it is.

¹²³ Although Idaho has no explicit statutory requirement for a diversion, the water code does speak of water rights in terms of diversion, Idaho Code §§ 42-101, 42-202, as does the state constitution, Idaho Const., art. XV, § 3 (see footnote 138 at page 45). Likewise, Idaho cases long have spoken of a diversion requirement (though, arguably in *dictum*). "In order to acquire a prior or superior right to the use of such water, it is essential that a riparian owner locate or appropriate the waters and *divert* the same as it is for any other user of water to do so." *Hutchinson v. Watson Sough Ditch Co.*, 16 Idaho 484, 493, 101 P. 1059 (1909); "We deem it clear that until the time of the enactment of the statute in question herein [the 1971 Malad Canyon statute, discussed *infra* at page 45] Idaho's statutory scheme regulating the appropriation of water has contemplated an actual physical diversion." *State of Idaho, Dep't of Parks v. Idaho Dep't of Water Admin.*, 96 Idaho 440, 530 P.2d 924, 928 (1974).

GIVENS PURSLEY LLP

LAW OFFICES
277 North 6th Street, Suite 200
PO Box 2720, Boise, Idaho 83701
TELEPHONE: 208 388-1200
FACSIMILE: 208 388-1300
WEBSITE: www.givenspursley.com
DIRECT DIAL: (208) 388-1236
EMAIL: chm@givenspursley.com

Gary G. Allen
Christopher J. Beeson
Michael C. Creamer
Jeffrey A. DeVoe
Emily MacMaster Durkee
Thomas E. Dvorak
Roy Lewis Eiguren
Timothy P. Feamside
Jeffrey C. Fereday
Steven J. Hippler
Karl T. Klein
Deborah 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
Kenneth L. Pursley
Brad V. Sneed
Conley E. Ward
Robert B. White

Raymond D. Givens
James A. McClure
Stephanie C. Westermeier
OF COUNSEL

Via Hand Delivery

July 15, 2002

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

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

Dear Gary:

Enclosed please find an *errata* sheet for United Water Idaho Inc.'s pending Integrated Municipal Application Package ("IMAP"). Each of the corrections reflect minor typographical errors. None of the changes noted reflect a change in the water rights sought, nor do they otherwise impinge on the rights or interests of other users, government entities or the public. They are offered solely for purposes of clarification.

Copies of this *errata* sheet are being made available to each of the Protestants in this matter.

Sincerely,



Christopher H. Meyer

Encl: *Errata* Sheet

cc: Karl J. Dreher, Director, IDWR
United Water Idaho Inc.
All Protestants in This Matter
Other Interested Parties

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JUL 15 2002

WATER RESOURCES
WESTERN REGION

**United Water Idaho
Integrated Municipal Application Package**

Errata

Submitted July 15, 2002

The original IMAP was submitted on May 4, 2001. An amended version of the IMAP was submitted to the Department on March 20, 2002. Public notice of the IMAP (based on the March 20, 2002 amendments) was published on April 4 and 11, 2002. The following four corrections should be noted in the March 20, 2002 version of the IMAP:

1. The average annual increase in population for the planning area was incorrectly displayed as 2.08 percent on pages 6 and 38 (of the internet version). It should read 1.86 percent. This error does not affect the amount of water sought by United Water Idaho in its application package.
2. The cross-reference in footnote 18 on page 28 (of the internet version) should read: "This addition is reflected in Part E6(f)(i) on page 39."
3. The cross-reference in footnote 29 on page 43 (of the internet version) should read: "As noted in Part E4(a) beginning on page 28, ..."
4. The address and signature lines have been corrected on the transfer applications (Tabs H and I). (These corrections were submitted to IDWR on or about March 21, 2002, prior to public notice.)

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JUL 15 2002

**WATER RESOURCES
WESTERN REGION**

ROSTER OF ATTENDANCE

IDAHO DEPARTMENT OF WATER RESOURCES

2735 AIRPORT WAY, BOISE, IDAHO 83705

Re: Application for Transfer in the Name of United Water Idaho

Place: IDWR, 1301 N. Orchard, Boise, ID 83706

Date: June 11, 2002

Conducted by: Gary Spackman

NAME

ADDRESS

Scott h. Campbell	Hoffatt Thomas P.O. Box 829, Boise 83701
John M. Marshall	Givens Purley 277 N. ~~State~~ 6th St., Boise 83702
Christopher H. Meyer	"
John Church	IDAHO Economics P.O. Box 45694, Boise 83711
MATTHEW WILDS	City of Boise 150 N. Capitol Blvd. PO Box 500 Boise, ID 83701-0500 384-3870
Jo Beeman	Beeman & Associates 409 W. Jefferson St. Boise 83702
Tammy Zokan	Moore Smith Buxton + Turck Chld 225 N. 9th, Suite 420 Boise 83702
Vernon Brewer	Holladay Engr. Co 32 N. Main St Payette 83661 642-2304
E Gail McGarry	Bureau of Reclamation Regional office 1150 N Curtis Boise, ID 83706
Kathleen Carr	U.S. Dept. of the Interior 550 W. Fort St. MSC-020 Boise, ID 83724 1234
Alexandra Butler	"
Charles Honsinger	Ringier Clark Chld. P.O. Box 2773 Boise 83701
Ed Squires	Hydro Logic, Inc. 988 S. Longmont Ste 200 83706
Gary D. Smith	City of Meridian - Public Works- 660 E. Water tower lane, Ste. 200 Meridian, 83642

<u>NAME</u>	<u>ADDRESS</u>	<u>phone</u>
Mike Chase	70 W Floating Feather Rd Eagle ID.	Contact - Matt Howard 333-0622
Ken Henley	2465 Overland Rd. Boise, Ida	344-1141
Albert BAKER	205 N 10th, Suite 520, Boise, Id	336-0700
Scott RHEAD	8248 W. Victory Rd "	362-7345

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

**BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES**

In the Matter of Integrated Municipal
Application Package of United Water
Idaho Inc.

CERTIFICATE OF MAILING

I hereby certify that on this 12th day of June, 2002, I caused to be served a true and correct copy of United Water Idaho Inc.'s Preliminary Response to Protests, which was filed with the Department on June 10, 2002, by the method indicated below, and addressed to the following:

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

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

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
U.S. Bureau of Reclamation
1150 N. Curtis Road
Boise, ID 83706-1234

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

CERTIFICATE OF MAILING

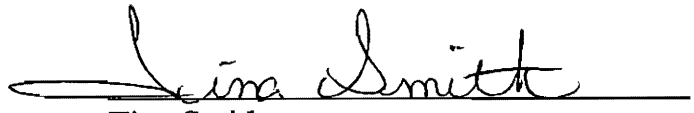
S:\Clients\30\71\Pleadings, Protests & Stipulations-IDWR\2002-06-12 Cert of Mailing.doc

Beth Baird
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


Tina Smith

GIVENS PURSLEY LLP

LAW OFFICES

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

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

Gary G. Allen
Christopher J. Boeson
Michael C. Creamer
Jeffrey A. DeVoe
Emily MacMaster Durkee
Thomas E. Dvorak
Roy Lewis Elguren
Timothy P. Feamside
Jeffrey C. Fereday
Steven J. Hippler
Karl T. Klein
Debora K. Kristensen
Anne C. Kunkel

Franklin G. Leach
David J. Loefer
D. David Loretto, 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
Angele K. Nelson
Deborah E. Nelson
W. Hugh O'Riordan
Kenneth L. Pursley
Brad V. Sneed
Conley E. Ward
Robert B. White

Raymond D. Givens
James A. McClure
Stephanie C. Westermeier
OF COUNSEL

RECEIVED
JUN 12 2002
Department of Water Resources

June 10, 2002

VIA US MAIL

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

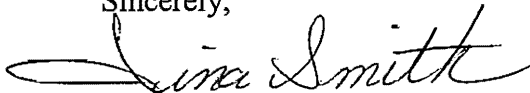
Re: United Water IMAP
Our File: 30-71

Dear Clerk:

Enclosed please find a copy of United Water's Preliminary Response to Protests, which was faxed to you earlier this afternoon.

If you have any questions, please call me.

Sincerely,



Tina N. Smith
Assistant to John M. Marshall

Enclosure

S:\Clients\30\71\Corr\2002-6-10 IDWR response.doc

RECEIVED
JUN 14 2002
WATER RESOURCES
WESTERN REGION

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

RECEIVED
JUN 12 2002
Department of Water Resources

RECEIVED
JUN 14 2002
WATER RESOURCES
WESTERN REGION

**BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES**

In the Matter of Integrated Municipal
Application Package of United Water
Idaho Inc.

**PRELIMINARY RESPONSE TO
PROTESTS**

United Water Idaho Inc. ("UWID") filed the above-captioned Municipal Water Rights Application ("IMAP") on May 4, 2001. Sixteen persons or entities have filed protests to the IMAP, identified in the attached Appendix A. In order to facilitate discussion at the pre-hearing conference, the Applicant is submitting the following summary of protests.

No.	Issue raised	Protestants	UWID comment
1.	The IMAP violates sections 42-202B, 42-222, 42-222A, 42-211, 42-203A, and/or the entire 1996 Act.	Boise Project; Eagle et al.; Pioneer & Settlers; NMID; Chase	Many of the protests allege violations based on broad references to code provisions without any specificity or explanation. These should be fleshed out at the prehearing conference.
2.	The IMAP violates section 42-202 (which deals solely with new appropriations). The water supply is insufficient to support the new appropriation.	Pioneer & Settlers; Chase	The IMAP does not seek any new appropriation of water. This IMAP seeks only to change existing water rights.

3.	The IMAP seeks more water than originally permitted, will constitute an enlargement of use, and/or will reduce the quantity of water available to other rights.	Boise Project; Eagle et al.; Pioneer & Settlers; NMID; Chase	The Applicant is not seeking to increase the quantity of any water right in its portfolio.
4.	The IMAP will injure Protestant's water rights. Allowing UWID's wells to serve as alternative points of diversion may injure Protestant's water rights.	BuRec Eagle, et al.	The IMAP is specifically designed to protect the status quo. This is the reason that original priority dates and quantities are retained for purposes of well interference. Given this, it is not apparent how the IMAP could adversely affect any water right.
5.	It appears that certain rights and interests of Protestants may be impacted.	Eagle et al.	UWID has expressly and consciously excluded from the IMAP's planning area communities such as Eagle and Kuna in which there is some uncertainty about who will be the water provider in the future. Consequently, it is difficult to understand how the IMAP could adversely impact these communities.
6.	The IMAP will adversely affect the "rights of others" or "other water rights."	Boise Project; NMID	First, this is not true. Second, Protestants do not have standing to base their protest on injury to "the rights of others" or "other water rights."
7.	The IMAP will change priority dates.	Boise Project	The IMAP specifically retains the original priority date of each water right.
8.	The quantity sought exceeds "reasonably anticipated future needs." UWID has failed to adequately document its future needs.	Pioneer & Settlers; NMID	The Applicant stands by its analysis, which it believes is very conservative. We see this essentially as an issue for the experts. However, at the pre-hearing conference the parties should explore this area thoroughly to determine whether there are specific issues of law or other matters which might be addressed specially.
9.	The IMAP may authorize use outside of UWID's service area. The IMAP's "planning area" is inconsistent with the definition of "service area" in section 42-202B. The IMAP fails to document its service area.	Boise Project; Pioneer & Settlers	First, it is important to distinguish between four terms: (1) service area (defined in the 1996 Act); (2) service area (prior to 1996 Act); (3) planning area (on which the IMAP is based); and (4) certificated area (the area UWID is authorized to serve by the PUC). Second, under the 1996 Act, a provider's service area does not have any definite bounds, but is described only generally. Third, UWID is not seeking any change in its service area through the IMAP. Indeed, the IMAP does not control what the service area will be fifty years from now. Fourth, the planning area described in the IMAP is smaller than what UWID's service area is likely to be in the future. It is circumscribed to avoid controversial areas and thereby makes a conservative projection of future needs.

10.	The IMAP is based on speculation.	Boise Project; Chase	The law of speculation, as it relates to municipal providers, has been codified by the 1996 Act. Consequently, we see this as adding nothing to Issue No. 9. If there is a distinction, that should be brought out at the prehearing conference, and mechanisms explored for resolving this.
11.	The IMAP is not consistent with the conservation of water.	Boise Project; Pioneer & Settlers; NMID; Chase	This criterion was added to the statute in response to <i>Sporhase v. Nebraska</i> . We do not know what the Protestants have in mind by this generic reference to water conservation. This should be clarified or dropped.
12.	The IMAP would promote economic waste by encouraging the conversion of irrigation systems to treated water systems.	Boise Project	This issue appears to be premised on a misapprehension. UWID has a consistent policy of working with irrigation districts to facilitate NPI (non-potable irrigation) systems. The IMAP specifically maps all areas now served by irrigation and assumes that they will be served by NPI systems. The IMAP does not depart from UWID's history of cooperation with the Irrigation Districts, which UWID considers to be its partners in serving the Treasure Valley.
13.	The IMAP and/or the planning horizon conflicts with the local public interest.	Boise Project; Eagle et al.; Pioneer & Settlers; NMID; Chase	It is not clear what Protestants mean by this generic claim. We trust that it is not a challenge to the basic principles articulated by the Legislature in the 1996 Act. This issue should be explored thoroughly at the prehearing conference, and mechanisms established to bring the most efficient resolution to this claim.
14.	The IMAP involves changes in the nature of use from agriculture to municipal use without consideration of the impact on the agricultural base of the local area.	Boise Project	This issue appears to be based on a misconception. Although some water rights in UWID's portfolio break down the uses into "domestic," "irrigation" and other uses. In fact all of these have been used since their inception to serve domestic uses and lawn irrigation. Most of these came from water service entities like Barber Water Company, Warm Springs Mesa, Inc., and South County Water Company that have since been acquired by UWID. No agricultural land is being dried up. Consequently, there will be no impact on the agricultural base of the local area.
15.	The IMAP would allow UWID to hold water rights "potentially without beneficial use" for up to fifty years.	NMID	The 1996 Act expressly provides that water held for reasonably anticipated future needs within a municipal provider's approved planning horizon is a <u>present</u> "beneficial use." This is similar in concept to the idea that water held in a reservoir for drought protection is a present beneficial use, even though the water is not diverted out of the reservoir for many years. If it turns out, years from now, that UWID is holding more water than it has need for, current Departmental policy provides that the excess supply is subject to partial forfeiture at that time.

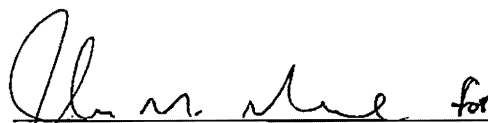
16.	The IMAP is the first major application of the 1996 Act. It may set important precedents. The Protest has an interest in fully understanding the IMAP's ramifications and following these proceedings.	Meridian; Caldwell; NMID; Eagle et al.; Boise	UWID welcomes the participation of who wish to better understand the impact of the IMAP. We will make ourselves fully available to assist in this process.
17.	The IMAP and the fifty-year planning horizon may impair Protestant's ability to plan for future needs.	Eagle et al.	The Protestant's concern is not clear. Approval of the IMAP will set a beneficial precedent to Eagle and all other municipal providers.
18.	The published notice contains insufficient information to determine the impact of the IMAP.	Eagle et al.	The notice, as well as the IMAP itself, was carefully drafted in non-legalese to put the public on fair notice of its goals and effects. However, if a Protestant believes it needs more information beyond the IMAP itself to completely understand how the IMAP will work. UWID will work with each Protestant, formally or informally, to assist in that process.
19.	The fifty year planning horizon is not reasonable.	Pioneer & Settlers	Presumably, Protestants believe that UWID should plan for the future, but for a shorter period of time. UWID contends that planning for the next fifty years is reasonable, consistent with the practice of other municipalities, and a fulfillment of the expectation of the Legislature. Indeed, failure to do so would be unreasonable. This issue should be explored further at the prehearing conference.
20.	The IMAP seeks approval of out-of-priority diversions.	Pioneer & Settlers	This comment appears to be based on a misconception. The IMAP does not advance any priority date.
21.	Some portions of water rights have been forfeited through nonuse.	Pioneer & Settlers	None of UWID's water rights have been forfeited. UWID has consistently met the standard for beneficial use applicable to municipal providers.
22.	The IMAP is overly complicated. It should have been filed as a series of separate applications.	Pioneer & Settlers	There is no denying that the IMAP is an important and complicated document. However, the IMAP was carefully designed to make it as simple as could be. Dividing it into over a hundred separate applications would hardly make things simpler. UWID would welcome suggestions for approaching the issues in a matter that allows parties to focus on issues of particular concern to them.
23.	The Protestant has questions about changes in points of diversion, places of use, and season of use.	NMID	UWID is pleased to provide further explanation on each of these issues.

The following comments have been provided informally by the Protestants subsequent to their protests.

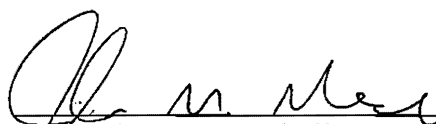
24.	UWID's decision to exclude the City of Eagle from its "planning area" might be used to prevent the City of Eagle from obtaining its own municipal water rights under the Act.	City of Eagle	UWID excluded the City of Eagle from the planning area due to uncertainties about who will serve this area in the long term. As stated in the Application, UWID does not believe that these areas must be excluded, but rather deferred to the Department's view. UWID would simply expect the Department to be consistent in this.
25.	Protestant is concerned about potential interference with Floating Feather well.	Chase	No such effect is intended. UWID and Chase have initiated settlement discussions intended to resolve this concern.

DATED this 10th day of June, 2002.

GIVENS PURSLEY LLP



By: Christopher H. Meyer



By: John M. Marshall

*Attorneys for Applicant
United Water Idaho Inc.*

APPENDIX A – Protestants to the IMAP

1. Boise Project Board of Control 2. Wilder Irrigation District 3. Boise-Kuna Irrigation District 4. Big Bend Irrigation District	Referred to collectively as “Boise Project”
5. United States Department of Interior Bureau of Reclamation	“BurRec”
6. Nampa & Meridian Irrigation District	“NMID”
7. City of Eagle 8. City of Kuna 9. City of Middleton 10. City of Star 11. Star Sewer and Water District	Referred to collectively as “City of Eagle et al.”
12. Estate of Eleanor I. Chase	“Chase”
13. City of Meridian	“Meridian”
14. City of Caldwell	“Caldwell”
15. Pioneer Irrigation District 16. Settlers Irrigation District	Referred to collectively “Pioneer and Settlers”
17. City of Boise	“Boise”

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of June, 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
1301 N. Orchard St.
P.O. Box 83720
Boise, ID 83720-0098

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

Charles L. Honsinger
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
2125 South Sumpter Way
P.O. Box 190012
Boise, ID 83719

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

Scott L. Campbell
Moffatt Thomas Barrett Rock & Fields
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
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
Meridian, ID 83642

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

Gordon Law, P.E.
City Engineer
621 E. Cleveland Blvd.
Caldwell, ID 83605

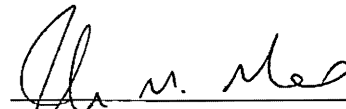
☐ U.S. Mail
☒ Facsimile
☐ Hand Delivery
☐ Overnight Mail

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

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

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

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



John M. Marshall

0100285 04507
1 ID Dept. of Water
2735 Airport Way
Boise ID 83705

AFFIDAVIT PUBLICATION

STATE OF IDAHO)
) SS.
County of Canyon)

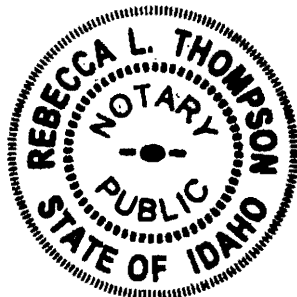
Traci L. Griffin
of Nampa, Canyon County, Idaho, being
first duly sworn, deposes and says:

1. That I am a citizen of the United States, and at all times hereinafter mentioned was over the age of eighteen years, and not a party to the above entitled action.
2. That I am the Principle Clerk of the Idaho Press-Tribune, a daily newspaper published in the City of Nampa, in the County of Canyon, State of Idaho; that the said newspaper is in general circulation in the said County of Canyon, and in the vicinity of Nampa and Caldwell, and has been uninterruptedly published in said County during a period of seventy-eight consecutive weeks prior to the first publication of this notice, a copy of which is hereto attached.
3. That the notice, of which the annexed is a printed copy, was published in said newspaper 2 time(s) in the regular and entire issue of said paper, and was printed in the newspaper proper, and not in a supplement.
4. That said notice was published the following:

04/04/2002, 04/11/2002

STATE OF IDAHO)
County of Canyon)

On this 15th day of May in the year of 2002 before me a Notary Public, personally appeared Traci L. Griffin, known or identified to me to be the person whose name is subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledge to me that he/she executed the same.



Rebecca L. Thompson
Notary Public for Idaho
Residing at Nampa
My Commission expires April 19, 2008

✓ st

**NOTICE OF PROPOSED
CHANGE OF WATER
RIGHTS AND WATER PERMITS
UNITED WATER IDAHO INC.**
(UW), PO Box 7488, Boise ID
83709-4165 has filed 99 Applications for Transfer of Water Rights (Licenses and Statutory Claims) and 13 Applications for Amendment (Permits). For convenience, water rights and water permits are referred to as "rights" in this notice. The 112 applications are known as the Integrated Municipal Application Package (IMAP) and are based on the Idaho Municipal Water Rights Act of 1996 (ACT). The Act allows municipal providers to hold water rights for "reasonably anticipated future needs" within a planning period to accommodate growth in municipal service areas. IMAP will conform UW rights to the Act. IMAP also makes minor corrections to a few of the rights.

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

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

PROPOSED CHANGE

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

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

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

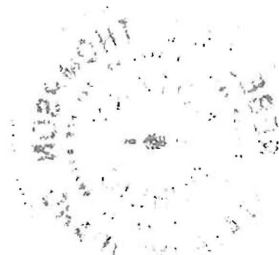
More information about IMAP can be obtained from IDWR Western Region, 2735 Airport Way, Boise, ID 83705-5082 or via the Internet (see "Special Interest" items at IDWR homepage www.idwr.state.id.us). Printed copies of IMAP can be reviewed at any IDWR office. Protests may be submitted based on the criteria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

Karl J. Dreher, Director
April 4, 11, 2002 04507086

RECEIVED

MAY 16 2002

WATER RESOURCES
WESTERN REGION



November 26, 1999

Receipt #
WD 29061

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

NOTICE OF PROTEST

This form may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, 42-222, and 42-224, Idaho Code. The department will also accept a timely protest not completed on this form if it contains the same information.

1. Matter being protested United Water Idaho, Inc. - IMAP Transfer Application
2. Name of protestant City of Meridian, Idaho
3. Protestant's Representative for service (If different than protestant) _____
Mr. Gary D. Smith P.E., Public Works Director, City of Meridian
4. Service mailing address Department of Public Works, 660 E. Watertower, Meridian, ID 83642
5. Service telephone no. (208) 898-5500
6. Basis of protest (including statement facts and law upon which the protest is based) _____
See attached letter

(additional pages may be attached to describe nature of protest)
7. What would resolve your protest? _____
See attached letter

I hereby, acknowledge that if I, or my designated representative, fails to appear at any regular scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Signed this 22 day of April, 2002.

City of Meridian, Idaho
Protestant
Gary D. Smith
Gary D. Smith, P.E.,
Public Works Director

RECEIVED

APR 22 2002

WATER RESOURCES
WESTERN REGION

NOTE:

A protestant is required to timely file a protest with the department together with a \$25.00 protest fee for each application being protested in order for the protestant to be considered a full party by the department. In addition, the department's Rule of Procedure, IDAPA 37.01.01203, requires a protestant to send a copy of a protest to the applicant.

INSTRUCTIONS

1. The matter being protested must be clearly identified. A typical matter is identified by the application number such as "Application for Permit No. _____ in the name of _____" or "Application for Transfer No. _____ in the name of _____."
2. Show the name of the protestant. Only one (1) protestant may be shown per protest form. If this protest form is signed by more than one person, the hearing officer will consider the first signer as the official protestant and the representative for service of documents.
3. If the protestant is represented by an attorney or other authorized representative, show the representative's name. The department then will serve documents on the representative and upon the protestant if specifically requested.
4. Show the address where the department is to serve the documents. This should be the address of the authorized representative unless the protestant does not designate a representative.
5. Show the telephone number of the authorized representative unless the protestant does not designate a service representative.
6. Specifically describe the nature of the protest.
7. Describe the relief being sought by the protestant.

FOR DEPARTMENT USE ONLY

Received by DAW Date 4-22-02 Time 4:59
\$25.00 fee Received by DAW # W029061 Date 4-22-02

GARY D. SMITH, P.E.
PUBLIC WORKS DIRECTOR

CITY OF MERIDIAN
PUBLIC WORKS / BUILDING DEPARTMENT

MAYOR
ROBERT D. CORRIE

BRAD R. WATSON, P.E.
CITY ENGINEER

COUNCIL MEMBERS
KEITH BIRD
TAMMY DE WEERD
CHERIE MCCANDLESS
WILLIAM L.M. NARY

April 22, 2002

Dear Department of Water Resources:

For the purposes of this proceeding, the City of Meridian's (City) contact address is:

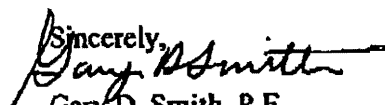
Mr. Gary D. Smith, P.E.
Public Works Director
City of Meridian
660 East Watertower, suite 200
Meridian, Idaho 83642

The City specifically requests that all documents related to this protest and proceeding be served to the City's representative cited above.

The City has a keen interest in the process and outcome of this large transfer of water rights because it addresses several key issues important to the City which are currently under discussion and development with the Department. As a major municipal water provider in Boise River Valley, the City of Meridian has a vested interest in fully comprehending the ramifications of this filing with respect to its own water rights and to the 1996 Municipal Water Rights Act (Idaho Code § 42-202, §42-202B, §42-211, §42-217, §42-219, and §42-222). To the City's knowledge, this is the first major attempt at implementation of the 1996 Municipal Water Rights Statute. Although the Applicant is also a municipal water provider, its charge, as a privately held public utility, may have the effect that important aspects of the proposed transfer may not address considerations applicable to or considerate of municipally-owned water systems. Concern lies with the process and the potential for precedent-setting rules to become established without full consideration of issues that may be relevant to municipally owned and operated water systems.

Therefore, the City of Meridian is unsure whether the changes to United Water Idaho's permitted and/or licensed water rights comport with Idaho Code § 42-211 and §42-222 with respect to the potential for the proposed changes to result in injury to the City's water rights or whether the proposed changes could result in an enlargement in use of the original water rights.

As previously stated, the City needs to be aware of the Department's thinking relating to the above sections of the Idaho Code and wants to be in a position to receive the latest developments of the proceeding and to have the opportunity for input should it be deemed necessary.

Sincerely,

Gary D. Smith, P.E.

c: United Water Idaho

Apr 22 02 03:03p

Squires

208-2-3100

p.3

November 26, 1999

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF PROTEST

Receipt #
W029060
Received By DGN
4/22-2002
4:59 PM

This form may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, 42-222, and 42-224, Idaho Code. The department will also accept a timely protest not completed on this form if it contains the same information.

1. Matter being protested United Water Idaho, Inc. - IMAP Transfer Application
2. Name of protestant City of Caldwell, Idaho
3. Protestant's Representative for service (If different than protestant) Mr. Gordon Law, City Engineer
4. Service mailing address Engineering Department, 621 E. Cleveland Blvd., Caldwell, ID 83605
5. Service telephone no. (208) 455-3006
6. Basis of protest (including statement facts and law upon which the protest is based) See attached letter
- (additional pages may be attached to describe nature of protest)
7. What would resolve your protest? See attached letter

I hereby, acknowledge that if I, or my designated representative, fails to appear at any regular scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Signed this 22 day of April, 2002.

City of Caldwell, Idaho

Protestant

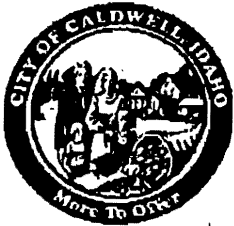


Gordon Law, P.E.,
City Engineer

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APR 22 2002

WATER RESOURCES
WESTERN REGION



Office of City Engineer
&
Public Works Director

April 22, 2002

GORDON N. LAW, P.E.

City of Caldwell
P.O. Box 1177
Caldwell, Idaho 83606-1177
BUS. 208/455-3006

CITY OF CALDWELL

621 Cleveland Blvd.
Caldwell, Idaho 83605
PHONE (208) 455-3000
FAX (208) 455-3003

Dear Department of Water Resources:

For the purposes of this proceeding, the City of Caldwell's (City) contact address is:

Mr. Gordon Law, P.E.
City Engineer
City of Caldwell
621 Cleveland Blvd.
Caldwell, Idaho 83605

The City specifically requests that all documents related to this protest and proceeding be served to the City's representative cited above.

The City has a keen interest in the process and outcome of this large transfer of water rights because it addresses several key issues important to the City which are currently under discussion and development with the Department. As a major municipal water provider in Boise River Valley, the City of Caldwell has a vested interest in fully comprehending the ramifications of this filing with respect to its own water rights and to the 1996 Municipal Water Rights Act (Idaho Code § 42-202, §42-202B, §42-211, §42-217, §42-219, and §42-222). To the City's knowledge, this is the first major attempt at implementation of the 1996 Municipal Water Rights Statute. Although the Applicant is also a municipal water provider, its charge, as a privately held public utility, may have the effect that important aspects of the proposed transfer may not address considerations applicable to, or considerate of, municipally-owned water systems. Concern lies with the process and the potential for precedent-setting rules to become established without full consideration of issues that may be relevant to municipally owned and operated water systems.

Therefore, the City of Caldwell is unsure whether the changes to United Water Idaho's permitted and/or licensed water rights comport with Idaho Code § 42-211 and §42-222 with respect to the potential for the proposed changes to result in injury to the City's water rights or whether the proposed changes could result in an enlargement in use of the original water right.

As previously stated, the City needs to be aware of the Department's thinking relating to the above sections of the Idaho Code and wants to be in a position to receive the latest developments of the proceeding and to have the opportunity for input should it be deemed necessary.

Sincerely,


Gordon Law

c: United Water Idaho

Proof of Publication

The Post Register

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APR 22 2002

WATER RESOURCES
WESTERN REGION

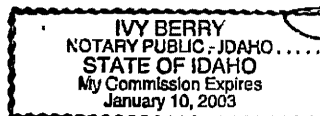
State of Idaho
County of Bonneville

I, ~~Lynn Winter~~ or Danae Jacobsen, first being duly sworn, depose and say: That I am the Production Supervisor or Asst. Prod. Supervisor of The Post Company, a corporation of Idaho Falls, Bonneville County, Idaho, publishers of The Post Register, a newspaper of general circulation, published daily at Idaho Falls, Idaho; said Post Register being a consolidation of the Idaho Falls Times, established in the year 1890, The Idaho Register, established in the year 1880 and the Idaho Falls Post, established in 1903, such consolidation being made on the First day of November, 1931, and each of said newspapers have been published continuously and uninterruptedly, prior to consolidation, for more than twelve consecutive months and said Post Register having been published continuously and uninterruptedly from the date of such consolidation, up to and including the last publication of notice hereinafter referred to.

That the notice, of which a copy is hereto attached and made a part of this affidavit, was published in said Post Register for 2 consecutive (days) weeks, first publication having been made on the 4TH day of APRIL 2002, last publication having been made on the 11TH day of APRIL 2002 at the said notice was published in the regular and entire issue of said paper on the respective dates of publication, and that such notice was published in the newspaper and not in a supplement.


.....

Subscribed and sworn to before me, this 17TH day of APRIL 2002




.....
Notary Public

My commission expires January 10, 2003

**NOTICE OF PROPOSED
CHANGE OF WATER
RIGHTS AND WATER PERMITS
UNITED WATER IDAHO INC.
(UW)**, PO Box 7488, Boise ID 83707 has filed 99 Applications for Transfer of Water Rights (Licenses and Statutory Claims) and 13 Applications for Amendment (Permits). For convenience, water rights and water permits are referred to as: "rights" in this notice. The 112 applications are known as the Integrated Municipal Application Package (IMAP) and are based on existing uses and the Idaho Municipal Water Rights Act of 1996 (ACT). The Act allows municipal providers to hold water rights for "reasonably anticipated future needs" within a planning period to accommodate growth in municipal services areas. IMAP will conform UW rights to the Act. IMAP also makes minor corrections to a few of the rights.

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

All of the rights described a ground water source except one Boise River right for 24.8 cfs diverted at the Marden Street Treatment Plant near Municipal Park in Boise. The rights bear priority dates from 1934 through 1999. About 75% of the rights describe municipal use in variously described service areas such as the City of Boise, within city limits of Boise and vicinity, and so forth. About 25% of the rights list various combinations of domestic, irrigation and fire protection uses in specific locations or in generally described service areas. Most ground water rights include a single well although some include multiple wells. UW currently has about 107 authorized well sites for its 111 ground water rights. Most of the sites already have a well

drilled under prior Idaho Department of Water Resources (IDWR) approval. Most of the rights serve the Boise area. A few of the rights serve non-contiguous areas in and/or near Eagle, Meridian, Kuna and Nampa.

PROPOSED CHANGE

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

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

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

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

Karl J. Dreher, Director

Published: April 4, 11, 2002

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APR 22 2002
WATER RESOURCES
WESTERN REGION

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APR 23 2002

WATER RESOURCES
WESTERN REGION

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

PROTEST

RECEIVED

APR 22 2002

Department of Water Resources

This form may be used to file a protest with the department under section 42-108B, 42-203A, 42-203C, 42-211, 42-222 and 42-224, Idaho Code. The department will also accept a timely protest not completed on this form if it contains all the necessary information.

1. Matter being protested Integrated Municipal Application Package (IMAP) in the name of United Water Idaho, Inc., 8248 W. Victory Rd, PO Box 7488, Boise, Idaho 83709-4165

2. Name of Protestant United States Department of Interior Bureau of Reclamation

3. Protestant's representative for service (if different than Protestant)
E. Gail McGarry, Manager Water Rights and Acquisition, Pacific Northwest Regional Office, Bureau of Reclamation Kathleen Carr, Attorney, Office of Field Solicitor, Federal Building, United States Department of Interior

4. Service mailing address
E. Gail McGarry, PN-3100, Bureau of Reclamation, 1150 North Curtis Road, Suite 100, Boise Idaho 83706-1234
Kathleen Carr, Office of Field Solicitor, Federal Building Room 365, 550 West Fort St, Boise Idaho 83724

5. Service telephone number E. Gail McGarry (208) 378-5306; Kathleen Carr (208) 334-1911

6. Basis of protest (including statement of facts and law upon which the protest is based)
The Bureau of Reclamation has a direct and substantial interest in these proceedings as it diverts water from the Boise River to three storage reservoirs as provided by permit and licenses granted by the State of Idaho. Reclamation provides storage water to five irrigation districts, among other individuals and entities, within the Treasure Valley pursuant to federal contracts. Reclamation's interest is to see that no injury will occur to these Federal project water rights and to assure that any newly issued permits for water rights are administered in accordance with laws and regulations related to conjunctive management of interconnected sources.

7. What would resolve your protest? To be determined.

I hereby, acknowledge that if I, or my designated representative, fails to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Signed this 22 day of April, 2002.

United States

PROTESTANT

E. Gail McGarry
PROTESTANT'S REPRESENTATIVE

C061587

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APR 22 2002

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Department of Water Resources

RECEIVED

APR 23 2002

WATER RESOURCES
WESTERN REGION

NOTICE OF PROTEST

1. **Matter being protested:**
Integrated Municipal Application Package (IMAP) in the name of United Water Idaho, Inc.
2. **Name of protestant:**
City of Boise, c/o Department of Public Works, attn: Beth Baird
3. **Protestant's Representative for service (If different for protestant):**
Matt Wilde, City Attorney's Office
4. **Service mailing address:** (Please send separate notice to these individuals.)
Beth Baird, Public Works Dept., City of Boise, P.O. Box 500, Boise, ID 83701-0500
Matt Wilde, City of Boise, P.O. Box 500, Boise, ID 83701-0500
5. **Service telephone no.:**
Beth Baird, (208) 384-3984
Matt Wilde, (208) 384-3870
6. **Basis of protest (including statement of facts and law upon which the protest is based):**
The City of Boise is a municipal water provider using ground water and surface water in the areas described in United Water Idaho Inc.'s IMAP. Since the IMAP seeks approval of a "planning horizon" (as defined in Idaho Code 42-202B), 93 water right transfers (pursuant to Idaho Code 42-222), and amendments to 19 water right permits (pursuant to Idaho Code 42-211), the City of Boise's "protest" is for the purpose of confirming that the relevant case law and statutory standards are addressed in the processing of the IMAP. Those standards include, but are not limited to: does the permit amendment result in the diversion and use of more water than originally permitted; does the permit amendment adversely affect the rights of others; does the transfer injure any other water rights; does the transfer constitute an enlargement in use of the original right; is the transfer consistent with the conservation of water resources within the state of Idaho; is the transfer in the local public interest; is the transfer necessary to serve reasonably anticipated future needs of a municipal water provider; are the transfers and amendments consistent with the provisions of the Idaho Municipal Water Rights Act of 1996, as subsequently amended and codified.
7. **What would resolve your protest?**
The City of Boise wants to participate as a party to the IMAP proceedings to understand what conditions will be necessary to approve the IMAP within the applicable legal standards.

I hereby acknowledge that if I, or my designated representative, fails to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the Department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Signed this 22nd day of April, 2002.

Beth K Baird
Protestant: City of Boise, by Beth Baird

Matt Wilde
Protestant's Representative: Matt Wilde

Service made upon applicant at the following address:

Gregory P. Wyatt, President
United Water Idaho Inc.
8248 W. Victory Rd.
Boise, ID 83707-1488

and

Gregory P. Wyatt, President
United Water Idaho Inc.
P.O. Box 7488
Boise, ID 83707

FOR DEPARTMENT USE ONLY

Received by J. Masi Date 4-22-02 Time 3:51 P.M.
\$25.00 fee Received by: J. Masi # 0061587 Date 4/22/02



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

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

JOHN J. MCFADDEN *†
Of Counsel

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

April 22, 2002

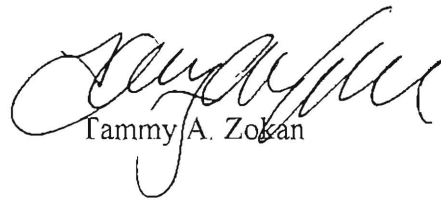
Idaho Department of Water Resources
Western Region Office
2735 Airport Way
Boise, Idaho 83705-5082

RE: Notice of Protest to United Water Idaho, Inc.'s IMAP

Dear Western Region Office:

Enclosed please find a Notice of Protest to United Water's Municipal Application Package, filed on behalf of the Cities of Eagle, Kuna, Middleton and Star and the Star Sewer and Water District ("Protestants"). The enclosed check for \$125.00 is for the \$25 fee for each Protestant.

Sincerely,



Tammy A. Zokan

cc: United Water Idaho

Enclosures

W029059

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APR 22 2002

WATER RESOURCES
WESTERN REGION

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

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

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

NOTICE OF PROTEST

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, file this protest to United Water Idaho's ("UW") Integrated Municipal Application Package ("IMAP") which includes 99 Applications for Transfer of Water Rights (Licenses and Statutory Claims) and 13 Applications for Amendment (Permits). Given the complexity and scope of UW's application, it appears certain rights and interests of Protestants may be impacted. Based upon review of the Notice of the IMAP the grounds for this Protest include, but are not limited to, the following:

- (1) UW's IMAP and 50-year planning horizon may injure Protestants' municipal water rights and Protestants' ability to plan for anticipated future needs; and
- (2) UW's IMAP and 50-year planning horizon are in conflict with public interest; and
- (3) UW's IMAP may constitute an enlargement of UW's water rights; and
- (4) Allowing all UW's wells as possible points of diversion for all water rights may injure Protestants' water rights; and

- (5) The published Notice of the IMAP contains insufficient information describing the application, the extent of the planning area and impacted communities, the proposed changes, and the affect of the proposed changes on other water rights; and
- (6) The IMAP and 50-year planning horizon raise significant issues with regard to the applicability of Idaho Code, section 42-202B.

RESPECTFULLY SUBMITTED this 22nd day of April, 2002.



TAMMY A. ZOKAN

MOORE SMITH BUXTON & TURCKE, CHARTERED

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22 day of April, 2002, I caused to served a true and correct copy of the forgoing NOTICE OF PROTEST by the method indicated below, addressed to the following:

United Water of Idaho, Inc.
P.O. Box 7488
Boise, Idaho 83707

☒ via U.S. MAIL
☐ via HAND DELIVERY
☐ via OVERNIGHT MAIL
☐ via FACSIMILE

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

☐ via U.S. MAIL
☒ via HAND DELIVERY
☐ via OVERNIGHT MAIL
☐ via FACSIMILE


TAMMY A. ZOKAN

Albert P. Barker ISB #2867
 Barker, Rosholt & Simpson
 P. O. Box 2139
 Boise, ID 83701-2139
 Telephone: 208-336-0700
 Facsimile: 208-344-6034

Attorney for Boise Project Board of Control,
 Wilder Irrigation District, and
 Big Bend Irrigation District

Randall Fredricks ISB # 989
 P.O. Box 2835
 Boise, ID 83701-2835
 Telephone: 208-384-5144
 Facsimile: 208-433-8976

Attorney for Boise-Kuna Irrigation District

BEFORE THE DEPARTMENT OF WATER RESOURCES
 OF THE STATE OF IDAHO

IN THE MATTER OF 99	)	
APPLICATIONS FOR TRANSFER	)	<u>NOTICE OF PROTEST</u>
AND 13 APPLICATIONS FOR	)	
AMENDMENT OF PERMITS, KNOWN	)	
AS THE INTEGRATED MUNICIPAL	) :	
APPLICATION PACKAGE (IMAP) BY	) :	
APPLICANT UNITED WATER IDAHO,	) :	
INC.	)	

BOISE PROJECT BOARD OF CONTROL, WILDER IRRIGATION DISTRICT, BOISE-KUNA IRRIGATION DISTRICT and BIG BEND IRRIGATION DISTRICT (hereinafter the Protestants), by and through its attorneys, Barker, Rosholt & Simpson, and Randall C. Fredricks,

NOTICE OF PROTEST - 1

file their Notice of Protest to the approval of the above-named applications (collectively referred to as the Integrated Municipal Application Package or IMAP) filed in the name of UNITED WATER IDAHO, INC. The basis for the Protestant's protest is as follows:

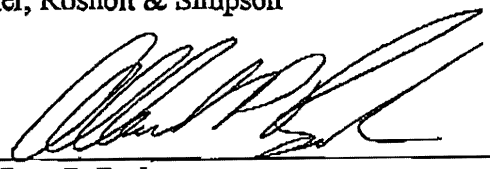
1. The proposed diversion and use of the waters described in the aforesaid applications violate all, or a portion of, the criteria set forth in Idaho Code Section 42-222A and 42-211, and to the extent that the application in reality seeks new water rights, 42-203A.

It appears that the application: (1) would result in the diversion and use of more water than originally permitted or an enlargement on use of water; (2) would adversely affect the rights of others; (3) would seek to change priority dates in violation of Idaho law; (4) fails to comply with the procedures of Idaho Code § 42-222; (5) would exceed any reasonably anticipated future needs and is for speculative purposes; (6) may include area outside applicants' service area; (7) would not be consistent with the conservation of water resources; (8) would be economically wasteful by encouraging conversion of irrigation systems to treated water systems; (9) conflicts with out the local public interest, and (10) involves changes in nature of use from agricultural use to municipal use without consideration of the impact on the agricultural base of the local area.

2. For such other and further reasons as may be set forth at the hearing on this matter.

DATED this 22nd day of April 2002.

Barker, Rosholt & Simpson

By: 

Albert P. Barker

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of April 2002, I served a copy of the foregoing
NOTICE OF PROTEST, by mail and facsimile to the following:

Idaho Department of Water Resources
Western Region
2735 Airport Way
Boise, ID 83705-5082

and by mail to:

United Water Idaho, Inc.
8248 W. Victory Rd.
Boise, ID 83709-4165



Boise
Idaho Falls
Pocatello

Moffatt Thomas

MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD.

Eugene C. Thomas	Glenna M. Christensen	James L. Martin
John W. Barrett	Gerald T. Husch	C. Clayton Gill
R. B. Rock	Scott L. Campbell	Stephanie A. Balzarini
Richard C. Fields	Michael G. McPeck	David P. Gardner
Robert E. Bakes	Kirk R. Helvie	Julian E. Gabiola
John C. Ward	Robert B. Burns	Paul C. Swainston
D. James Manning	James C. Dale	Angela D. Schaer
Gary T. Dance	Michael E. Thomas	Casey C. Robertson
Larry C. Hunter	Patricia M. Olsson	Ray J. Chacko
Morgan W. Richards	James C. deGlee	Bradley J. Dixon
Mark A. Ellison	Bradley J. Williams	Keasa L. Hollister
Randall A. Peterman	Lee Radford	
Mark S. Prusynski	Michael O. Roe	<i>Willis C. Moffatt,</i>
Stephen R. Thomas	David S. Jensen	1907-1980

April 18, 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

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APR 18 2002

WATER RESOURCES
WESTERN REGION

Karl Dreher, Director
Idaho Department of Water Resources
Western Region Office
2735 Airport Way
Boise, ID 83705

Re: Protest Against Integrated Municipal Application Package
MTBR&F File No. 18946.10

Dear Director:

Please find enclosed the Protest of Pioneer and Settlers Irrigation Districts concerning Integrated Municipal Application Package (IMAP). I have enclosed an original and two copies of the Protest; please accept the original and one copy for filing with the Department and please file stamp the second copy and return it with the messenger service for return delivery to our office.

Please do not hesitate to contact my office if you have any questions.

Very truly yours,



Scott L. Campbell

SLC/dll

Enclosures

cc: Pioneer Irrigation District
Settlers Irrigation District
United Water Idaho
John M. Marshall
Daniel V. Steenson

W029044

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
18-946.10 and 18-955.7

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APR 18 2002

WATER RESOURCES
WESTERN REGION

Attorneys for Pioneer Irrigation District and
Settlers Irrigation District

**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.

PROTEST

Pioneer Irrigation District ("Pioneer") and Settlers Irrigation District ("Settlers")
by and through their attorneys of record Moffatt Thomas Barrett Rock & Fields, Chtd., and in
accordance with IDAPA 37.01.01.250, hereby protest the Integrated Municipal Application
Package ("IMAP") filed with the Idaho Department of Water Resources ("IDWR"). This protest
is predicated upon the Idaho Constitution, Title 42 of the Idaho Code, and IDWR's rules.

Pioneer and Settlers are irrigation districts duly organized and existing under Idaho law and have been active in the effort to create the Boise Irrigation Project, which includes Arrowrock and Anderson Ranch Dams and Reservoirs. As irrigation districts, Pioneer and Settlers provide water to landholders within their boundaries, and have natural flow water rights in the Boise River, groundwater rights, and contracts with the Bureau of Reclamation to provide water.

The following constitutes the bases for their protest in this matter.

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

The "Municipal Water Rights Act of 1996", as it has been named by UWID, is codified throughout Title 42, Chapter 2 of the Idaho Code. The IMAP fails to meet the standards set forth in Idaho Code section 42-202B ("Definitions") in that UWID has not met its burden of showing that: (1) the planning horizon sought by UWID is reasonable; (2) the future uses or needs projected by IMAP are reasonably anticipated future needs; (3) the "planning area" and "service area" described in the IMAP comport with the definition of "service area" set forth in Section 42-202B.

In turn, UWID has failed to meet its burden of providing sufficient information and documentation to establish that the reasonably anticipated future needs, the service area, and the planning horizon are consistent with the definitions and requirements of Idaho Code Title 42, Chapter 2.

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

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

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

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

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

The water right transfers sought in the IMAP, if approved, will result in injury to other water rights, will constitute an enlargement in the original rights, is inconsistent with the conservation of water resources in Idaho, and is contrary to the local public interest. The water right transfers also fail to constitute a beneficial use, in that the water rights are not necessary to serve reasonably anticipated future needs. Some portions of many of the water rights may have been forfeited because of non-use.

Further, the reasonably anticipated future needs, the service area, and the planning horizon are not consistent with the definitions and requirements of Idaho Code Title 42, Chapter 2, and thus fail to comply with the requirements of Idaho Code section 42-222(1).

Additional Concerns

As a further basis for their protest, the IMAP is improper in that it attempts to: (1) establish UWID's reasonably anticipated future needs, planning horizon, and service area; (2) establish the quantity of water which it is entitled to hold to satisfy current and reasonably anticipated future needs; (3) transfer 93 water rights; and (4) amend 19 water right permits. The Idaho Code, including those provisions incorporated via the Municipal Water Rights Act of 1996, does not contemplate such a complicated, all-in-one package. The establishment of UWID's

reasonably anticipated future needs, planning horizon, and service area are a necessary predicate to the transfers and amendments, at least in part, and should be taken up separately from the transfers and amendments.

This is a complicated matter, and constitutes the most comprehensive application of the Municipal Water Rights Act of 1996. Consideration of the IMAP may set considerable precedent for the future, and Pioneer and Settlers will be involved to ensure that any precedent set in this matter fully comports with Idaho law.

CONCLUSION

Pioneer and Settlers request that IDWR rule that the planning horizon, service area, and "reasonably anticipated future needs" set forth by UWID in the IMAP do not comport with the Idaho Code. Moreover, they request that the transfers and permit amendments be denied, or if approved, be approved with such conditions as will ensure that the transfers and permit amendments will comply fully with Idaho Code section 42-211, Idaho Code section 42-222, other pertinent provisions of the Idaho Code, and the Idaho Constitution. They also request that IDWR issue a final order determining forfeiture of all or a portion of those water rights which have not been used for the statutory period producing forfeiture.

DATED this 18th day of April 2002.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

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

By Scott L. Campbell for
Angela D. Schaer - Of the Firm
Attorneys for Pioneer Irrigation District and
Settlers Irrigation District

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18th day of April 2002, I caused a true and correct copy of the foregoing **PROTEST** 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: (208) 327-5400

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

United Water Idaho
PO Box 7488
Boise, ID 83709-4165

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

John M. Marshall
GIVENS PURSLEY, LLP
PO Box 2720
Boise, ID 83701

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

Daniel V. Steenson
RINGERT CLARK
455 South 3rd Street
PO Box 2773
Boise, ID 83701-2773
Fax: (208) 342-4657

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

Scott L. Campbell
Scott L. Campbell

RECEIVED

APR 17 2002

WATER RESOURCES
WESTERN REGION

W029036

MATT J. HOWARD
Attorney at Law
P. O. Box 190012
Boise, Idaho 83719
Telephone: (208) 333-0622
Facsimile: (208) 333-8409

Attorney for the Estate of Eleanor I. Chase

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF THE IMAP
APPLICATION IN THE NAME OF
UNITED WATER OF IDAHO, INC.)
)
) PROTEST
)
)
)
)

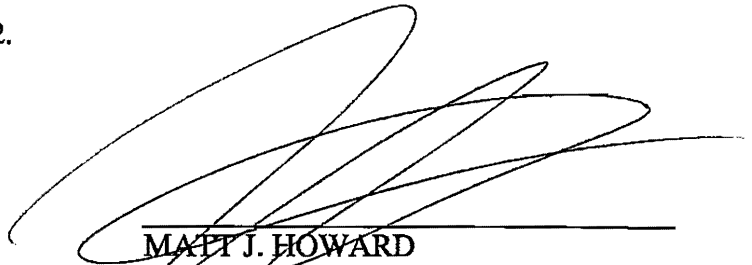
The Estate of Eleanor I. Chase, by and through its attorney Matt J. Howard, hereby files this protest, pursuant to Idaho Code §§ 42-211 and 42-222, as applicable, to the IMAP application in the name of United Water of Idaho, Inc. ("United Water"). The basis for the Protestant's protest includes, but is not limited to, the following:

1. The application, if approved, will reduce the quantity of water under existing water rights;
2. The water supply is insufficient for the purpose for which it is sought to be appropriated;
3. The application is speculative;
4. The application conflicts with the local public interest;
5. The application is contrary to the conservation of water resources;

6. The application is contrary to the provisions of the Idaho Municipal Water Rights Act of 1996, as subsequently amended and codified; and

7. The application, if approved, would result in the diversion and use of more water than originally permitted and adversely affect senior existing water rights.

DATED this 17 day of April, 2002.

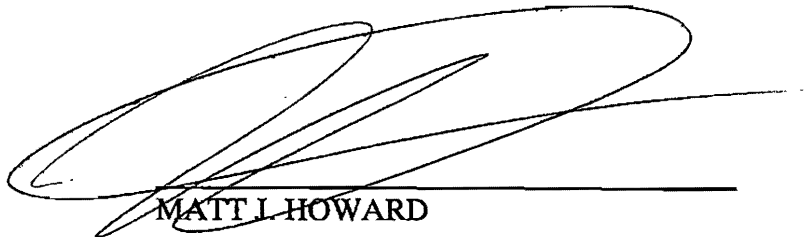


MATT J. HOWARD
Attorney for Protestant

CERTIFICATE OF SERVICE

The undersigned certifies that on the 17 day of April, 2002, a true and correct copy of the within and foregoing document was sent to the following person(s) by the method indicated below:

United Water of Idaho, Inc.
P. O. Box 7488
Boise, ID 83707



MATT J. HOWARD

RECEIVED

APR 17 2002

WATER RESOURCES
WESTERN REGION

No 43885

Affidavit of Publication

STATE OF IDAHO }
COUNTY OF TWIN FALLS } SS.

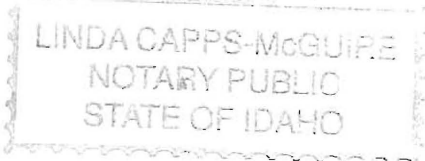
I, Ruby Aufderheide being first duly sworn upon oath, depose
and say that I am principal clerk of the TIMES-NEWS, published daily at,
Twin Falls, Idaho, and do solemnly swear that a copy of the notice of advertisement, as per clipping
attached, was published in the regular and entire issue of said newspaper, and not in any supplement
thereof, for two consecutive weeks,
commencing with the issue dated April 4, 20 02,
and ending with the issue dated April 11, 20 02.

And I do further certify that said newspaper is a consolidation, effective February 16, 1942, of the Idaho
Evening Times, published theretofore daily except Sunday, and the Twin Falls News, published theretofore daily
except Monday, both of which newspapers prior to consolidation had been published under said names in said city and
county continuously and uninterruptedly during a period of more than twelve consecutive months, and said TIMES-
NEWS, since such consolidation, has been published as a daily newspaper except Saturday, until July 31, 1978, at
which time said newspaper began daily publication under said name in said city and county continuously and unin-
terruptedly.

And I further certify that pursuant to Section 60-108 Idaho Code, Thursday of each week has been designated
as the day on which legal notice by law or by order of any court of competent jurisdiction within the state of Idaho to
be issue thereof, Thursday is announced as the day on which said legal notices will be published.

STATE OF IDAHO
COUNTY OF TWIN FALLS

On this 15th day of April in the year 2002, before me,
a Notary Public, personally appeared Ruby Aufderheide,
known or identified to me to be the person whose name subscribed to the within instrument, and being by me first
duly sworn, declared that the statements therein are true, and acknowledged to me that he executed the same.



Linda Capps McGuire
Notary Public for Idaho
Residing at Twin Falls, Idaho.
My commission expires: 5-19-03

REC IVED

APR 17 2002

WATER RESOURCES
WESTERN REGION

No 43885

NOTICE OF PROPOSED CHANGE OF
WATER RIGHTS AND WATER PERMITS
UNITED WATER IDAHO, INC. (UW), PO Box 7488,
Boise, ID 83709-4165 has filed 99 Applications for Trans-
fer of Water Rights (Licenses and Statutory Claims) and
13 Applications for Amendment (Permits). For conven-
ience, water rights and water permits are referred to as
"rights" in this notice. The 112 applications are known as
the Integrated Municipal Application Package (IMAP) and
are based on the Idaho Municipal Water Rights Act of
1996 (ACT). The Act allows municipal providers to hold
water rights for "reasonably anticipated future needs"
within a planning period to accommodate growth in mu-
nicipal service areas. IMAP will conform UW rights to the
Act. IMAP also makes minor corrections to a few of the
rights.

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

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

PROPOSED CHANGE

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

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

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

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

PUBLISH: April 4 and 11, 2002

of Publication

AHO
TWIN FALLS } SS.

Ruby Rydahl being first duly sworn upon oath, depose
1. principal clerk of the TIMES-NEWS, published daily at,
, and do solemnly swear that a copy of the notice of advertisement, as per clipping
published in the regular and entire issue of said newspaper, and not in any supplement
_____ consecutive _____
the issue dated April 4, 2002,
the issue dated April 11, 2002.

ther certify that said newspaper is a consolidation, effective February 16, 1942, of the Idaho
lished theretofore daily except Sunday, and the Twin Falls News, published theretofore daily
of which newspapers prior to consolidation had been published under said names in said city and
and uninterruptedly during a period of more than twelve consecutive months, and said TIMES-
onsolidation, has been published as a daily newspaper except Saturday, until July 31, 1978, at
sapper began daily publication under said name in said city and county continuously and unin-

certify that pursuant to Section 60-108 Idaho Code, Thursday of each week has been designated
egal notice by law or by order of any court of competent jurisdiction within the state of Idaho to
rsday is announced as the day on which said legal notices will be published.

FALLS

_____ day of April in the year 2002, before me,
nally appeared Ruby Rydahl,
me to be the person whose name subscribed to the within instrument, and being by me first
hat the statements therein are true, and acknowledged to me that he executed the same.

Deirda Lippa McGinnis
Notary Public for Idaho

Residing at Twin Falls, Idaho.

My commission expires: 5-19-03

TRIBUNE PUBLISHING COMPANY, INC.

The Lewiston Morning Tribune
505 C St., P.O.Box 957
Lewiston, Idaho 83501
(208) 743-9411

**LEGAL ADVERTISING
INVOICE**

SOLD TO: DEPT OF WATER RESOURCES
2735 AIRPORT WAY
BOISE ID 83705

Date 04/11/2002INVOICE NO. 290461Account No. 964760Description 290461NOTICE OF PROPOSTimes 2Lines 138**RECEIVED**

Tab. Lines _____

APR 15 2002\$ 206.31WATER RESOURCES
WESTERN REGION

NOTICE: This is an invoice of Purchase made by you. Statement will be rendered the first of the month.
Please Retain This Invoice as Your Statement Will Refer to Invoice by No. Only.

290461
**NOTICE OF PROPOSED
CHANGE OF WATER RIGHTS
AND WATER PERMITS**
UNITED WATER IDAHO INC.
(UW), PO Box 7488, Boise ID
83707 has filed 99 Applications for
Transfer of Water Rights (Licenses
and Statutory Claims) and 13 Ap-
plications for Amendment
(Permits). For convenience, water
rights and water permits are re-
ferred to as "rights" in this notice.
The 112 applications are known as
the Integrated Municipal Applica-
tion Package (IMAP) and are based
on the Idaho Municipal Water
Rights Act of 1996 (ACT). The Act
allows municipal providers to hold
water rights for "reasonably anti-
cipated future needs" within a plan-
ning period to accommodate
growth in municipal service areas.
IMAP will conform UW rights to
the Act. IMAP also makes minor
corrections to a few of the rights.

UW documented a 50 year plan-
ning period for IMAP, including es-
timates of population growth and
increased water needs. UW anti-
cipates a water demand of about 420
cfs within 50 years. Existing UW
rights describe about 310 cfs, al-
though current peak demand is
about 150 cfs. The difference be-
tween the rate currently described
by the rights (about 310 cfs) and
the current peak flow (about 150
cfs) is about 160 cfs. UW requests
approval to hold about 160 cfs for
future growth. Approximately 100
to 120 additional cfs may need to
be acquired by UW within the plan-
ning period, but that additional wa-
ter is not sought by IMAP.

All of the rights describe a
ground water source except one
Boise River right for 24.8 cfs di-
verted at the Marden Street Treat-
ment Plant near Municipal Park in
Boise. The rights bear priority
dates from 1934 through 1999.
About 75% of the rights describe
municipal use in variously de-
scribed service areas such as the
City of Boise, within city limits of
Boise and vicinity, and so forth.
About 25% of the rights list various
combinations of domestic, irriga-
tion and fire protection uses in spe-
cific locations or in generally de-
scribed service areas. Most ground

AFFIDAVIT OF PUBLICATION

Karen Lewis _____, being duly sworn, deposes and
says, I am the Legal Clerk of the Tribune
Publishing Company, a corporation organized and existing
under and by virtue of the laws of the State of Idaho,
publishers of the LEWISTON MORNING TRIBUNE, a news-
paper of general circulation published at Lewiston, Nez Perce
County, Idaho; That the said Lewiston Morning Tribune is
an established newspaper and has been published regularly
and issued regularly at least once a day for more than 21
consecutive years next immediately preceding the first
publication of this notice, and has been so published
uninterrupted for said period; that the 290461NOTICE OF
attached hereto and which is made a part of this affidavit
was published in the said Lewiston Morning Tribune,
2 time(s). Publication being on
04/04, or once a WEEK
for 2 consecutive WEEKS,
the first publication thereof being on the 04/04/2002,
and the last publication thereof being on the 04/11/2002,
and said 290461NOTICE OF was so published in the
regular and entire issue of said newspaper and was not in a
supplement thereof and was so published in every issue and
number of the said paper, during the period and times of
publication as set forth above.

State of Idaho

S.S.

County of Nez Perce

On this _____ day of _____ in the year
of _____, before me, a Notary Public, personally
appeared _____, known or identified
to me to be the person whose name subscribed to the
within instrument, and being by me first duly sworn,
declared that the statements therein are true, and
acknowledged to me that he executed the same.

Notary Public in and for the State of Idaho,
residing at Lewiston, therein
Commission Expires _____

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

W029007
RECEIVED
APR 12 2002
WATER RESOURCES
WESTERN REGION

Attorneys for Nampa & Meridian Irrigation District

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	)	PROTEST
13 APPLICATIONS FOR AMENDMENT OF	)	
PERMITS) IN THE NAME OF UNITED	)	
WATER IDAHO, INC.	)	
_____	)	

COMES NOW, Nampa & Meridian Irrigation District (hereinafter referred to as "NMID"), by and through its attorneys, Ringert Clark, Chartered, and hereby notifies the Idaho Department of Water Resources ("IDWR") and the Applicant in the above referenced matter of its Protest to the Integrated Municipal Application Package ("IMAP") consisting of 99 Applications for Transfers of Water Rights, and 13 Applications for Amendment of Permits filed by United Water Idaho, Inc. This protest conforms with and is filed pursuant to IDAPA 37.01.01, Rule 250.

NMID's address is 1503 First Street South, Nampa, ID 83651-4395. NMID has a direct and substantial interest in this proceeding in that it diverts water from both the Boise River and from groundwater pursuant to water rights it holds for the benefit of its landowners. Such water is

diverted from and used in the area(s) encompassed and contemplated by the proposed transfers and amendments in the IMAP. As a major water user and supplier in the Treasure Valley, NMID is concerned about the IMAP's numerous Applications for Transfer of Water Rights and Applications for Amendment of Permits in that apparently all of the applications seek dramatic changes to several elements of existing water rights or permits. For example, the requested changes in purpose of use will permit the water rights to be held (potentially without beneficially using the same) for up to 50 years for "reasonably anticipated future needs." Such water as may be held pursuant to water rights that are transferred or amended pursuant to the proposed IMAP may therefore not be available for future appropriations even though such water might not be beneficially used by United Water Idaho (or its successor(s)) at the time of any future application for permit to appropriate water either from the Boise River or from groundwater.

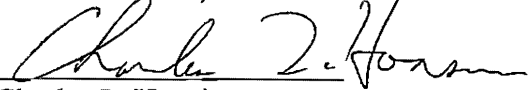
Specifically, NMID is concerned that any permit amendments or transfers proposed under the IMAP may not comply with the requirements of I.C. §42-211 and I.C. §42-222, in that such transfers: (1) may result in injury to other water rights; (2) may constitute an enlargement; (3) may not be consistent with the conservation of water resources within the state of Idaho; (4) may not be in the local public interest; and (5) may not be necessary to serve reasonably anticipated future needs. NMID also has various concerns related to the requested changes in points of diversion, places of use and season of use, and desires to understand the same. Moreover, as this is one of the first (and certainly the most significant) "future needs" transfer applications and/or permit amendment applications of which NMID is aware, it desires to be involved at this stage to ensure that any concerns it may have or that may arise regarding the processing of this or any other "future needs" transfer, amendment or permit applications are heard and addressed by the parties and the Idaho

Department of Water Resources.

NMID proposes that, should IDWR or the parties determine that all or any portion of the amendments and transfers proposed under the IMAP must be limited or denied to meet the requirements of I.C. §42-211 and I.C. §42-222, such limitations be imposed and/or such denials be issued.

Dated this 11th day of April, 2002.

RINGERT CLARK, CHARTERED

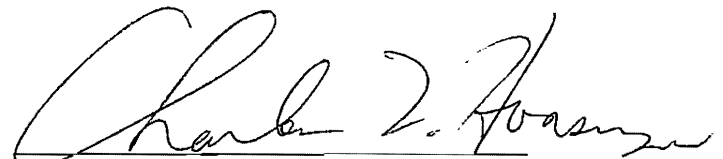
By: 
Charles L. Honsinger
Attorney for Nampa & Meridian
Irrigation District

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on this 11th day of March, 2002, he caused a true and correct copy of the within and foregoing document to be transmitted by U.S. mail to the following

John M. Marshall
GIVENS PURSLEY, LLP
P.O. Box 2720
Boise, Idaho 83701

United Water Idaho
P.O. Box 7488
Boise, ID 83709-4165


Charles L. Honsinger

The Idaho Statesman

P.O. Box 40, Boise, Idaho 83707-0040

LEGAL ADVERTISING PROOF OF PUBLICATION

Account #	DTI#	Identification	Amount:
047628	633688	NOTICE OF PROPOSED CHANGE UNITED WATER IDAHO, INC.	\$227.00
Attention:	P.O. #	Run Dates	
SUE TAYLOR		APRIL 4, 11, 2002	
IDAHO DEPT. WATER RESOURCES WEST 2735 AIRPORT WY. BOISE, ID 83705			Number of Lines 62 X 2
RECEIVED APR 12 2002			Legal # 13072

WATER RESOURCES
WESTERN REGION

LEGAL NOTICE NOTICE OF PROPOSED CHANGE OF WATER RIGHTS AND WATER PERMITS

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

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

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

PROPOSED CHANGE

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

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

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

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

Karl J. Dreher, Director

Pub. Apr. 4, 11, 2002

13072

JANICE HILDRETH, being duly sworn, deposes and says: That she is the Principal Clerk of *The Idaho Statesman*, a daily newspaper printed and published at Boise, Ada County, State of Idaho, and having a general circulation therein, and which said newspaper has been continuously and uninterruptedly published in said County during a period of twelve consecutive months prior to the first publication of the notice, a copy of which is attached hereto: that said notice was published in *The Idaho Statesman*, in conformity with Section 60-108, Idaho Code, as amended, for:

TWO

☒ consecutive weekly ☐ single
☐ consecutive daily ☐ odd skip
insertion(s)

beginning issue of: APRIL 4, 2002

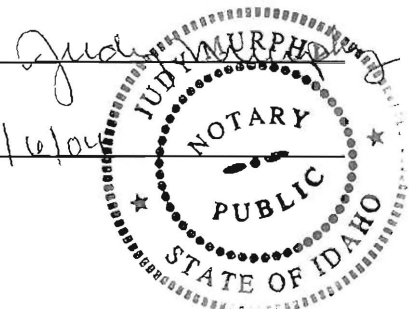
ending issue of: APRIL 11, 2002

Janice Hildreth

STATE OF IDAHO)
) SS
COUNTY OF ADA)

On this 11 day of APRIL in the year of 2002 before me, a Notary Public, personally appeared before me Janice Hildreth known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that she executed the same.

Notary Public for Idaho
Residing at: Boise, Idaho
My Commission expires: 1/6/04



AFFIDAVIT OF PUBLICATION

STATE OF IDAHO)
) **SS.**
County of Canyon)

Traci L. Griffin
of Nampa, Canyon County, Idaho, being
first duly sworn, deposes and says:

e0100285 04507086
Idaho Dept. of Water Resourc
2735 Airport Way
BOISE ID 83705

RECEIVED

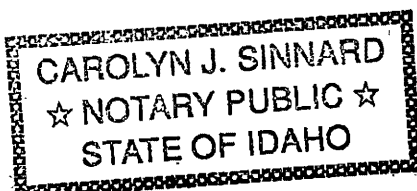
APR 12 2002

WATER RESOURCES
WESTERN REGION

1. That I am a citizen of the United States, and at all times hereinafter mentioned was over the age of eighteen years, and not a party to the above entitled action.
2. That I am the Principal Clerk of the Idaho Press-Tribune, a daily newspaper published in the City of Nampa, in the County of Canyon, State of Idaho; that the said newspaper is in general circulation in the said County of Canyon, and in the vicinity of Nampa and Caldwell, and has been uninterruptedly published in said County during a period of seventy-eight consecutive weeks prior to the first publication of this notice, a copy of which is hereto attached.
3. That the notice, of which the annexed is a printed copy, was published in said newspaper 2 time(s) in the regular and entire issue of said paper, and was printed in the newspaper proper, and not in a supplement.
4. That said notice was published the following:
04/04/2002, 04/11/2002

Traci L. Griffin
STATE OF IDAHO)
County of Canyon)

On the 11 day of April in the year of 2002
before me, a Notary Public, personally appeared.
Traci L. Griffin,
known or identified to me to be the person
whose name is subscribed to the within
instrument, and being by me first duly sworn,
declared that the statements therein are true, and
acknowledge to me that he/she executed the same.



Notary Public for Idaho
Residing at Nampa
My commission expires March 01, 2003

RECEIVED

APR 12 2002

WATER RESOURCES
WESTERN REGION

**NOTICE OF PROPOSED
CHANGE OF WATER**

**RIGHTS AND WATER PERMITS
UNITED WATER IDAHO INC.
(UW)**, PO Box 7488, Boise ID 83709-4165 has filed 99 Applications for Transfer of Water Rights (Licenses and Statutory Claims) and 13 Applications for Amendment (Permits). For convenience, water rights and water permits are referred to as "rights" in this notice. The 112 applications are known as the Integrated Municipal Application Package (IMAP) and are based on the Idaho Municipal Water Rights Act of 1996 (ACT). The Act allows municipal providers to hold water rights for "reasonably anticipated future needs" within a planning period to accommodate growth in municipal service areas. IMAP will conform UW rights to the Act. IMAP also makes minor corrections to a few of the rights.

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

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

PROPOSED CHANGE

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

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

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

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

Karl J. Dreher, Director

April 4, 11, 2002 04507086

GIVENS PURSLEY LLP

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

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

Gary G. Allen
Christopher J. Beeson
Michael C. Creamer
Emily MacMaster Durkee*
Thomas E. Dvorak
Roy Lewis Eiguren
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Brad V. Sneed
Conley E. Ward
Robert B. White

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

March 28, 2002

VIA HAND DELIVERY

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

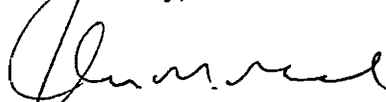
Re: Amended address pages
Our File: 30-71

Dear Steve:

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

If you have any questions, please call me.

Sincerely,



John M. Marshall

JMM/tns

Enclosure

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

RECEIVED
MAR 28 2002
WATER RESOURCES
WESTERN REGION

MAR 28 2002

WATER RESOURCES
WESTERN REGION

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

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

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Stephanie C. Westermeier
OF COUNSEL
*Licensed in California only

March 27, 2002

VIA US MAIL

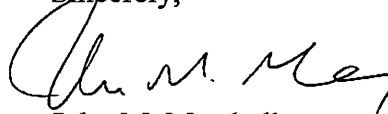
Steve Lester
Idaho Department of Water Resources
Western Regional Office
2735 Airport Way
Boise, ID 83705

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

Dear Steve:

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

Sincerely,



John M. Marshall

JMM/tns

Enclosure

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

FEB 21 2002

WATER RESOURCES
WESTERN REGION

LAW OFFICES
Gary G. Allen
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

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Robert B. White

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

February 21, 2002

VIA HAND DELIVERY

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

Re: IMAP Update Pages
Our File: 30-71

Dear Steve:

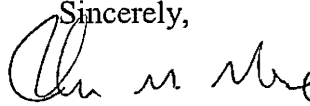
I am enclosing the following documents relating to United Water's IMAP:

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

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

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

Sincerely,


John M. Marshall

JMM/tns

Enclosures

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

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

GIVENS PURSLEY LLP

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FEB 06 2002

WATER
WESTERN REGION

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

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Stephanie C. Westemeier
OF COUNSEL
*Licensed in California only

February 6, 2002

VIA HAND DELIVERY

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

Re: IMAP Update Pages
Our File: 30-71

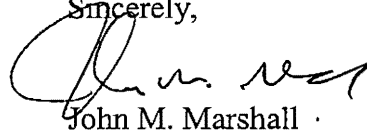
Dear Steve:

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

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

Please call me if you have any questions.

Sincerely,



John M. Marshall

JMM/tns
Enclosures
cc: Scott Rhead (via U.S. Mail w/ enclosures)
S:\clients\30\71\corr\2002-02-05 Lester IMAP changes-JMM.doc

SPECIAL POWER OF ATTORNEY

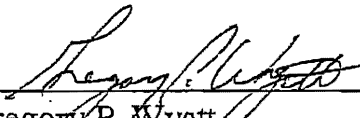
United Water Idaho, Inc., an Idaho corporation, hereby appoints the attorneys of Givens Pursley LLP, 277 North 6th Street, Suite 200, Boise, Idaho, 83701 as its true and lawful attorneys for the purpose of signing on its behalf the following forms for submission with the Idaho Department of Water Resources:

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

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

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

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



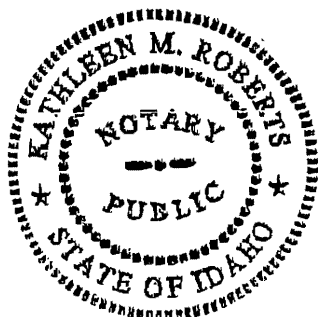
Gregory P. Wyatt
President, United Water Idaho

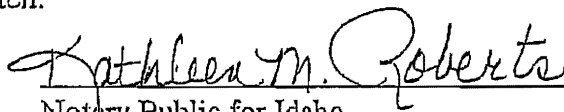
ACKNOWLEDGMENT

State of Idaho)
) ss.
County of Ada)

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

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





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

GIVENS PURSLEY LLP

LAW OFFICES

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

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Robert B. White

Raymond D. Givens
James A. McClure
OF COUNSEL

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

May 8, 2001

VIA US MAIL

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

RECEIVED

MAY 09 2001

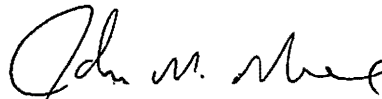
**WATER RESOURCES
WESTERN REGION**

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

Dear Gary:

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

Sincerely,



John M. Marshall

JMM/nlg
Enclosure