

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

IN THE MATTER OF APPLICATION	)	
FOR TRANSFER 67055 AND	)	
APPLICATION FOR AMENDMENT	)	ORDER AMENDING THE
PERMIT NO. 63-12296 IN THE NAME	)	SCHEDULING ORDER AND
OF THE STATE OF IDAHO,	)	SECOND NOTICE OF HEARING
DEPARTMENT OF CORRECTION.	)	
_____	)	

On July 2, 2003, the Idaho Department of Water Resources (IDWR) issued a Scheduling Order setting deadlines regarding the above-referenced matter presently before the department as a protested matter for preparation for hearing. This Scheduling Order was issued based on deadlines the parties had agreed to during a prehearing conferences on July 10, 2002, February 18, 2003 and June 30, 2003.

On October 14, 2003 the IDWR received a Joint Motion for An Order Amending the Scheduling Order and Resetting the Date for Hearing filed by the applicant, the State of Idaho, Department of Correction (IDOC) and the protestant United Water Idaho, Inc. filed on behalf of the parties by their counsel of record. The parties are in the process of settlement negotiations and request that additional time be granted for continuation of settlement without binding deadlines related to the upcoming hearing.

Therefore, the IDWR has reviewed the parties' request and HEREBY ORDER that discovery shall be complete on or before **January 16, 2004**. The parties shall submit written expert testimony to the hearing officer and the opposing party by **February 18, 2004**. The submittal will become the direct testimony of the expert witness, subject to corrections at the

hearing. The parties shall also submit hearing exhibits on or before **February 20, 2004** to the hearing officer and the opposing parties according to Rule 606 of the department's Rules of Procedure.

IT IS HEREBY ORDERED that the hearing set in this matter for **November 20 & 21, 2003** is hereby **VACATED**.

SECOND NOTICE OF HEARING

PLEASE TAKE NOTICE that a formal hearing will be held on **February 25 and 26, 2004, beginning at 9:00 a.m.**, at the offices of the Idaho Department of Water Resources, State Office in Conference Rooms A&B, located at 1301 N. Orchard St., Boise, Idaho.

The hearing 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 hearing 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 29th day of October 2003.



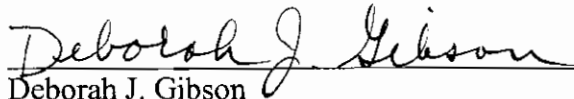
Gary Spackman

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of October, 2003, the above and foregoing document was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

DAVID J BARBER
DEPUTY ATTORNEY GENERAL
PO BOX 83720
BOISE ID 83720-0010

CHRISTOPHER H MEYER
JOHN MARSHALL
GIVENS PURSLEY
PO BOX 2720
BOISE ID 83701-2720


Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

ORIGINAL

RECEIVED

OCT 09 2003

Department of Water Resources
Adjudication Bureau

LAWRENCE G. WASDEN
ATTORNEY GENERAL

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

DAVID J. BARBER (ISB #2597)
Deputy Attorney General
P.O. Box 83720
Boise, Idaho 83720-0010
Telephone: (208) 334-2400
FAX: (208) 334-2690
dbarber@ag.state.id.us

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

IN THE MATTER OF APPLICATION	)	
FOR TRANSFER 67055 AND	)	
APPLICATION FOR AMENDMENT	)	NOTICE OF SERVICE OF IDAHO
OF PERMIT NO. 63-12296 IN THE	)	DEPARTMENT OF CORRECTION'S
NAME OF THE STATE OF IDAHO,	)	ANSWERS AND RESPONSES TO UWID'S
DEPARTMENT OF CORRECTION.	)	FIRST SET OF DISCOVERY REQUESTS
	)	TO THE DEPARTMENT OF CORRECTION
	)	

NOTICE OF SERVICE

On October 8, 2003, the State of Idaho served the original of the IDAHO DEPARTMENT OF CORRECTION'S ANSWERS AND RESPONSES TO UWID'S FIRST SET OF DISCOVERY REQUESTS TO THE DEPARTMENT OF CORRECTION by hand delivery to the following person at the following address:

UNITED WATER IDAHO
c/o JOHN MARSHALL
GIVENS PURSLEY
277 NORTH SIXTH ST., SUITE 200
BOISE ID 83701

**NOTICE OF SERVICE OF IDAHO DEPARTMENT OF CORRECTION'S ANSWERS AND RESPONSES
TO UWID'S FIRST SET OF DISCOVERY REQUESTS TO THE DEPARTMENT OF CORRECTION**

CERTIFICATE OF SERVICE

I further certify that I served on this 8th day of October 2003, a copy of the **NOTICE OF SERVICE OF IDAHO DEPARTMENT OF CORRECTION'S ANSWERS AND RESPONSES TO UWID'S FIRST SET OF DISCOVERY REQUESTS TO THE DEPARTMENT OF CORRECTION** by hand delivery to the John Marshall at the address set forth above.

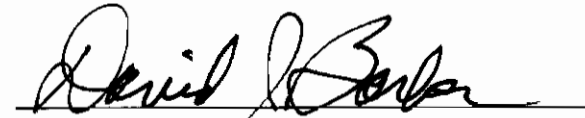
I further certify that on this 8th day of October 2003, I filed the original of the **NOTICE OF SERVICE OF IDAHO DEPARTMENT OF CORRECTION'S ANSWERS AND RESPONSES TO UWID'S FIRST SET OF DISCOVERY REQUESTS TO THE DEPARTMENT OF CORRECTION** by placing the original in the STATEHOUSE MAIL addressed as follows:

IDAHO DEPARTMENT OF WATER RESOURCES
WESTERN REGION
2735 AIRPORT WAY
BOISE, ID 83705-5082

DATED this 8th day of October 2003.

LAWRENCE G. WASDEN
ATTORNEY GENERAL
STATE OF IDAHO

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

A handwritten signature in black ink, appearing to read "David J. Barber", is written over a horizontal line.

DAVID J. BARBER
Deputy Attorney General

RECEIVED

OCT 1 2003

Department of Water Resources

Christopher H. Meyer [ISB No. 4461]

John M. Marshall [ISB No. 5628]

GIVENS PURSLEY LLP

601 W. Bannock Street

P.O. Box 2720

Boise, ID 83701-2720

Telephone No. (208) 388-1200

Fax No. (208) 388-1300

chrismeyer@givenspursley.com

jmm@givenspursley.com

S:\CLIENTS\30\118\NOS - UWID's Answers and Responses to IDOC's 1st Set of Discovery.DOC

Counsel for Protestant United Water Idaho Inc.

BEFORE THE

IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF APPLICATION FOR
TRANSFER 67055 AND APPLICATION
FOR AMENDMENT OF PERMIT NO. 63-
12296 IN THE NAME OF THE STATE OF
IDAHO, DEPARTMENT OF CORRECTION.

NOTICE OF SERVICE

On behalf of Protestant United Water Idaho Inc., I, John M. Marshall, of the law firm Givens Pursley LLP, certify that on this date I caused to be served upon the Department of Correction a true and correct copy of UNITED WATER IDAHO INC.'S ANSWERS AND RESPONSES TO IDAHO DEPARTMENT OF CORRECTION'S FIRST SET OF DISCOVERY by hand delivering the same to their counsel of record as indicated below:

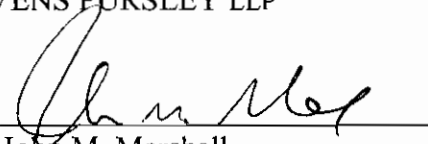
David J. Barber
Office of the Attorney General
700 W. Jefferson Street
Boise, ID 83720

ORIGINAL

DATED this 1st day of October 2003.

GIVENS PURSLEY LLP

By

A handwritten signature in black ink, appearing to read "John M. Marshall", is written over a horizontal line.

John M. Marshall

Counsel for Protestant United Water Idaho Inc.

RECEIVED

SEP 26 2003

Department of Water Resources



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

LAWRENCE G. WASDEN

RECEIVED

SEP 22 2003

WATER RESOURCES
WESTERN REGION

September 19, 2003

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

Re: In The Matter of Application For Transfer 67055 and Application for
Amendment of Permit No. 63-12296 in The Name of The State Of Idaho,
Department Of Correction.

Dear Mr. Spackman:

This letter is a follow-up to our conversation this week about the FIRST SUPPLEMENTAL RESPONSE TO SCHEDULING ORDER. After the Office of the Idaho Attorney General did not receive our conformed copy of this document, I have inquired on several occasions about this document. I understand that staff at the Western Region Office of the Idaho Department of Water Resources has looked for the document and that you have the transmittal letter. But, the original and copy to be conformed have not been found, and no one knows what happened to them. In any event, the office did send a copy to the client, the Idaho Department of Correction (IDOC), and the IDOC provided a copy of their copy to me. Enclosed are two copies of the copy obtained from the IDOC. I ask that you file the one copy in your files and that the other copy be returned to me endorsed filed. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "David J. Barber".

DAVID J. BARBER

Deputy Attorney General

DJB/ov
Enclosures

Natural Resources Division

P.O. Box 83720, Boise, Idaho 83720-0010
Telephone: (208) 334-2400, FAX: (208) 334-2690
Located at 700 W. Jefferson Street, Suite 210

advised?

*M i
File this in our
Water case:*

jm

LAWRENCE G. WASDEN
ATTORNEY GENERAL

RECEIVED

SEP 26 2003

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

Department of Water Resources

DAVID J. BARBER (ISB #2597)
Deputy Attorney General
P.O. Box 44449
Boise, Idaho 83711-4449
Telephone: (208) 334-2400
FAX: (208) 334-2690
dbarber@ag.state.id.us

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

**IN THE MATTER OF APPLICATION)
FOR TRANSFER 67055 AND)
APPLICATION FOR AMENDMENT)
OF PERMIT NO. 63-12296 IN THE)
NAME OF THE STATE OF IDAHO,)
DEPARTMENT OF CORRECTION.)**

FIRST SUPPLEMENTAL RESPONSE

TO SCHEDULING ORDER

The State of Idaho Department of Correction supplements its RESPONSE TO SCHEDULING ORDER as follows:

I. LIST OF WITNESSES AND SUMMARY OF TESTIMONY

There is nothing to add at this time.

COPY

II. LIST OF DATA, SCIENTIFIC INFORMATION, AND DOCUMENTS RELIED ON
THE IDAHO DEPARTMENT OF CORRECTION

A. Documents Incorporated by Reference:

There is nothing to add at this time.

B. The following documents are submitted with this Response:

- i. Report of Ed Squires entitled "Details of Drilling, Construction, and Hydraulic Testing of the Idaho State Correctional Institution #4 Supply Well" dated November 5, 2002.

...

- v. Idaho Department of Correction, Director's Count Sheet for 7/15/2001. A count sheet is available for every day of the year. If the protestant desires a copy of the count sheet for any particular day, please advise counsel, and a copy will be provided.
- vi. Report on Proof of Completion of Works & Beneficial Use dated July 2, 1965 for water right no. 63-3271.
- vii. Report on Proof of Completion of Works & Beneficial Use dated July 20, 1972 for water right no. 63-3445.
- viii. Report on Proof of Completion of Works & Beneficial Use dated August 24, 1972 for water right no. 63-3487.
- ix. Report on Proof of Completion of Works & Beneficial Use dated September 30, 1977 for water right no. 63-7025.
- x. Report on Proof of Completion of Works & Beneficial Use dated January 28, 1981 for water right no. 63-8088.

III. SUPPLEMENTATION OF RESPONSES

The preparation for the hearing in this matter is continuing. The designation of witnesses, description of their testimony, and list of data, scientific information, and documents may be supplemented as the preparation continues for the hearing.

DATED this 4th day of August 2003.



DAVID J. BARBER
Deputy Attorney General

CERTIFICATE OF MAILING

I certify that on August 4, 2003, I served the foregoing FIRST SUPPLEMENTAL RESPONSE TO SCHEDULING ORDER on the following persons by the method designated:

1. Original to:

IDAHO DEPARTMENT OF WATER RESOURCES
WESTERN REGION
2735 AIRPORT WAY
BOISE, ID 83705-5082

STATEHOUSE MAIL

(Without Attachments)

2. One copy to the protestant:

UNITED WATER IDAHO
c/o JOHN MARSHALL
GIVENS PURLSEY
277 NORTH SIXTH ST., SUITE 200
BOISE ID 83720

HAND DELIVERED

(With Attachments)

3. One copy to the applicant:

STATE OF IDAHO
DEPT OF CORRECTION
1299 N. ORCHARD STE 110
BOISE ID 83706

STATEHOUSE MAIL

(Without Attachments)



DAVID J. BARBER
Deputy Attorney General

RECEIVED
SEP 23 2003
Department of Water Resources

Christopher H. Meyer, Esq. (Idaho Bar No. 4461)
John M. Marshall, Esq. (Idaho Bar No. 5628)
GIVENS PURSLEY LLP
601 West Bannock Street
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 Protestant United Water Idaho Inc.

**BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES**

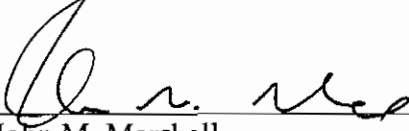
IN THE MATTER OF APPLICATION FOR
TRANSFER 67055 AND APPLICATION
FOR AMENDMENT OF PERMIT NO. 63-
12296 IN THE NAME OF THE STATE OF
IDAHO, DEPARTMENT OF
CORRECTION.

**UWID's NOTICE OF SERVICE OF FIRST
SET OF DISCOVERY REQUESTS TO THE
DEPARTMENT OF CORRECTION**

On behalf of Protestant United Water Idaho Inc., I, John M. Marshall of the firm Givens Pursley LLP, certify that on this date, I caused to be served upon the Department of Correction a true and correct copy of UWID's First Set of Discovery Requests to the Department of Correction by hand delivering the same to their counsel of record as indicated on the attached certificate of service.

Respectfully submitted this 23rd day of September 2003.

GIVENS PURSLEY LLP

By 
John M. Marshall
Attorneys for Protestant United Water

CERTIFICATE OF SERVICE

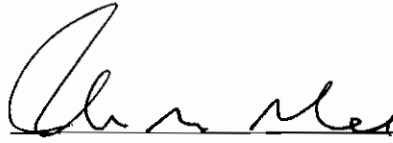
I hereby certify that on this 23rd day of September, 2003, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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

☐ U.S. Mail
☐ Facsimile
☒ Hand Delivery
☐ Overnight Mail
☐ E-mail

David J. Barber
Deputy Attorney General
P.O. Box 44449
Boise, Idaho 83711-4449
Attorney for the Department of Correction

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



John M. Marshall

RECEIVED

SEP 19 2003

Department of Water Resources

LAWRENCE G. WASDEN
ATTORNEY GENERAL

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

DAVID J. BARBER (ISB #2597)
Deputy Attorney General
P.O. Box 83720
Boise, Idaho 83720-0010
Telephone: (208) 334-2400
FAX: (208) 334-2690
dbarber@ag.state.id.us

RECEIVED

SEP 17 2003

WATER RESOURCES
WESTERN REGION

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

**IN THE MATTER OF APPLICATION)
FOR TRANSFER 67055 AND)
APPLICATION FOR AMENDMENT)
OF PERMIT NO. 63-12296 IN THE)
NAME OF THE STATE OF IDAHO,)
DEPARTMENT OF CORRECTION.)**

**NOTICE OF SERVICE OF FIRST
SET OF DISCOVERY SERVED ON
PROTESTANT UNITED WATER IDAHO**

NOTICE OF SERVICE AND CERTIFICATE OF SERVICE

On September 16, 2003, the State of Idaho retained in its files the original of the State of Idaho's FIRST SET OF DISCOVERY ON PROTESTANT UNITED WATER IDAHO and served a copy thereof on the United Water Idaho by hand delivery to the following person at the following address:

UNITED WATER IDAHO
c/o JOHN MARSHALL
GIVENS PURSLEY
277 NORTH SIXTH ST., SUITE 200
BOISE ID 83701

ORIGINAL

NOTICE OF SERVICE

Page - 1

I further certify that I served on this 16th day of September 2003, a copy of the NOTICE OF SERVICE OF FIRST SET OF DISCOVERY SERVED ON PROTESTANT UNITED WATER IDAHO on United Water Idaho by hand delivery to the John Marshall at the address set forth above.

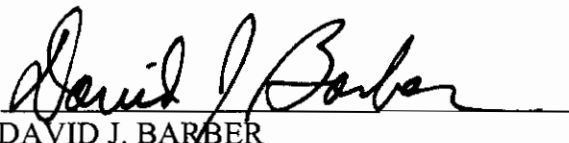
I further certify that on this 16th day of September 2003, I filed the original of this NOTICE OF SERVICE OF FIRST SET OF DISCOVERY SERVED ON PROTESTANT UNITED WATER IDAHO by placing the original in the STATEHOUSE MAIL addressed as follows:

IDAHO DEPARTMENT OF WATER RESOURCES
WESTERN REGION
2735 AIRPORT WAY
BOISE, ID 83705-5082

DATED this 16th day of September 2003.

LAWRENCE G. WASDEN
ATTORNEY GENERAL
STATE OF IDAHO

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division


DAVID J. BARBER
Deputy Attorney General

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

**IN THE MATTER OF APPLICATION)
FOR TRANSFER 67055 AND)
APPLICATION FOR AMENDMENT)
OF PERMIT NO. 63-12296 IN THE)
NAME OF THE STATE OF IDAHO,)
DEPARTMENT OF CORRECTION)**

ORDER AUTHORIZING DISCOVERY

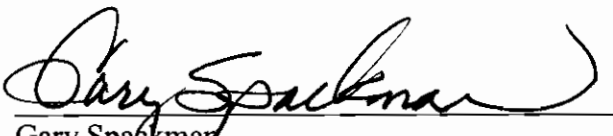
On November 19, 1999, the State of Idaho, Department of Correction (IDOC) filed with the Idaho Department of Water Resources (IDWR) application for transfer no. 67055 and application for amendment of permit no. 63-12296. The applications were protested by United Water Idaho. The prehearing conferences held on July 10, 2002, February 18, 2003, and June 30, 2003, did not resolve the matter of protest.

Based on discussions of the parties at the prehearing conference and the request for discovery by the protestants, IDWR orders as follows:

ORDER

IT IS HEREBY ORDERED that the parties to this matter are authorized to engage in discovery until October 15, 2003.

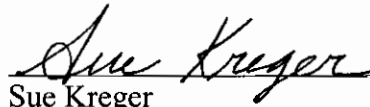
Dated this 5th day of September 2003.



Gary Spackman
Hearing Officer

CERTIFICATE OF MAILING

I hereby certify that on this 8th day of September 2003, I mailed a true and correct copy, postage prepaid, of this Order Authorizing Discovery to those listed below:



Sue Kreger
Administrative Assistant

NON CERTIFIED MAIL

STATE OF IDAHO
DEPT OF CORRECTION
1299 N. O RCHARD STE 110
BOISE ID 83706

UNITED WATER IDAHO
C/O ROGER DITTUS
8248 W. VISTORY RD
BOISE ID 83709

CERTIFIED MAIL

DAVID J. BARBER
DEPUTY ATTY GENERAL
PO BOX 83720
BOISE ID 83720-0010

JOHN MARSHALL
GIVENS PURSLEY
PO BOX 2720
BOISE ID 83701

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 67055 AND)
APPLICATION FOR AMENDMENT)
OF PERMIT NO. 63-12296 IN THE)
NAME OF THE STATE OF IDAHO,)
DEPARTMENT OF CORRECTION)
_____)

NOTICE OF HEARING

On November 19, 1999 the State of Idaho, Department of Correction filed with the Idaho Department of Water Resources (IDWR) application for transfer no. 67055 and application for amendment of permit no. 63-12296. The applications were protested by United Water Idaho. The prehearing conferences held on July 10, 2002, February 18, 2003, and June 30, 2003 did not resolve the matter of protest.

IDWR has scheduled a hearing for the protest to be held on **Thursday, November 20 and Friday, November 21, 2003. The hearing will begin on November 20 at 10:30 a.m. at the Idaho Department of Water Resources, conference room AB, 1301 N. Orchard, Boise, Idaho 83706.** The hearing will be held in accordance with provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code and the adopted Rules of Procedure of the Department. A copy of the rules may be obtained from IDWR upon request. The presiding officer at the hearing will be Gary Spackman.

The hearing will be conducted in a facility that 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 at least ten (10) days prior to the hearing.

All parties to the matter will have the opportunity to respond and present information and argument on all issues involved.

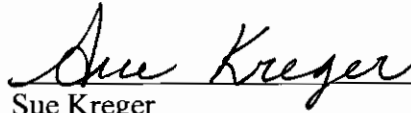
Dated this 6th day of September 2003.



GARY SPACKMAN

CERTIFICATE OF MAILING

I hereby certify that on the 8TH day of September 2003 I mailed a true and correct copy, postage prepaid, of this Notice of Hearing to the following:



Sue Kreger
Administrative Assistant

NON CERTIFIED MAIL

STATE OF IDAHO
DEPT OF CORRECTION
1299 N ORCHARD STE 110
BOISE ID 83706

UNITED WATER IDAHO
C/O ROGER DITTUS
8248 W VICTORY RD
BOISE ID 83709

CERTIFIED MAIL

DAVID J BARBER
DEPUTY ATTY GENERAL
PO BOX 83720
BOISE ID 83720-0010

JOHN MARSHALL
GIVENS PURSLEY
PO BOX 2720
BOISE ID 83701

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.

CONFERENCE AND HEARING PROCEDURE

APPLICATION FOR AMENDMENT

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

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

BURDEN OF PROOF

The applicant bears the initial burden of proof for issues 1, 2 and 4 above and must provide evidence for the department to evaluate these criteria. The applicant must also establish that the water right is valid. Forfeiture must be established by clear and convincing evidence.

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 that 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.



RECEIVED

AUG 29 2003

WATER RESOURCES
WESTERN REGION

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

August 29, 2003

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

Re: In The Matter of Application For Transfer 67055 and Application for
Amendment of Permit No. 63-12296 in The Name of The State Of Idaho,
Department Of Correction.

Dear Mr. Spackman:

Enclosed are the original MOTION FOR AN ORDER AUTHORIZING
DISCOVERY and the original AFFIDAVIT OF DAVID J. BARBER in the
above-referenced matter, along with a copy of each to be conformed to the original's
filed date. Please return the conformed copies to David Barber via statehouse mail.
Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Patricia Boehm".

PATRICIA BOEHM, PLS
Secretary
Natural Resources Division

/pb
Enclosures

ORIGINAL

RECEIVED

AUG 29 2003

WATER RESOURCES
WESTERN REGION

LAWRENCE G. WASDEN
ATTORNEY GENERAL

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

DAVID J. BARBER (ISB #2597)
Deputy Attorney General
P.O. Box 83720
Boise, Idaho 83720-0010
Telephone: (208) 334-2400
FAX: (208) 334-2690
dbarber@ag.state.id.us

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

**IN THE MATTER OF APPLICATION)
FOR TRANSFER 67055 AND)
APPLICATION FOR AMENDMENT)
OF PERMIT NO. 63-12296 IN THE)
NAME OF THE STATE OF IDAHO,)
DEPARTMENT OF CORRECTION.)
_____)**

**MOTION FOR AN
ORDER AUTHORIZING
DISCOVERY**

COMES NOW the State of Idaho, Department of Correction, by and through the undersigned deputy attorney general, and moves the Idaho Department of Water Resources for an order authorizing discovery in this administrative proceeding in accordance with Rule 521 of the Rules of Procedure of the Idaho Department of Water Resources and that the Idaho Department of Water Resources incorporate the deadlines for discovery set forth in the Idaho Rules of Civil Procedure. IDAPA 37.01.01.521. The grounds for this motion are as follows:

1. Rule 521 of the Rules of Procedure of the Idaho Department of Water Resources provides as follows:

No party before the agency is entitled to engage in discovery unless the party moves for an order authorizing discovery and the agency issues an order authorizing the requested discovery, or upon agreement of all parties to the discovery that discovery may be conducted. The presiding officer shall provide a schedule for discovery in the order authorizing discovery, **but the order authorizing and scheduling discovery need not conform to the timetables of the Idaho rules of Civil Procedure.**

IDAPA 37.01.01.521 (emphasis added).

2. The State of Idaho, Department of Correction, has undertaken negotiations with United Water Idaho to resolve its protests in an amicable manner. While the State of Idaho, Department of Correction, remains optimistic that the parties will ultimately resolve this matter through negotiations, the parties do not presently have a settlement.

2. Preparation for the hearing set in November 2003, requires that the State of Idaho, Department of Correction, undertake some limited discovery. Absent the completion of such discovery, the State of Idaho, Department of Correction, will not be prepared to proceed to hearing in this matter. See AFFIDAVIT OF DAVID J. BARBER DATED AUGUST 29, 2003, at 2.

3. Counsel for United Water Idaho has informally advised the undersigned counsel, that United Water Idaho will not oppose this motion.

4. The order authorizing discovery needs to set forth the time schedule for discovery. The State of Idaho, Department of Correction, recommends that the Presiding Officer incorporate the time deadlines set forth in the Idaho Rules of Civil Procedure for this proceeding.

PRAYER FOR RELIEF

1. The State of Idaho, Department of Correction, respectfully requests that the Idaho Department of Water Resources enter an order authorizing discovery in this matter and that the

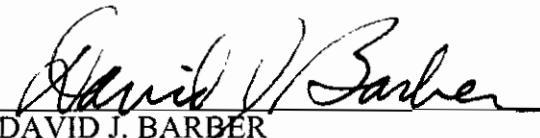
order incorporate the deadlines for discovery set forth in the Idaho Rules of Civil Procedure for this proceeding.

2. The State of Idaho, Department of Correction, respectfully requests such further relief as the Idaho Department of Water Resources deems is proper and appropriate.

DATED this 29th day of August 2003.

LAWRENCE G. WASDEN
ATTORNEY GENERAL

CLIVE J. STRONG
DEPUTY ATTORNEY GENERAL
CHIEF, NATURAL RESOURCES DIVISION



DAVID J. BARBER
Deputy Attorney General

CERTIFICATE OF MAILING

I certify that on August 29, 2003, I served the foregoing MOTION FOR AN ORDER AUTHORIZING DISCOVERY on the following persons by the method designated:

1. Original to:

IDAHO DEPARTMENT OF WATER RESOURCES
WESTERN REGION
2735 AIRPORT WAY
BOISE, ID 83705-5082

HAND DELIVERED

2. One copy to the protestant:

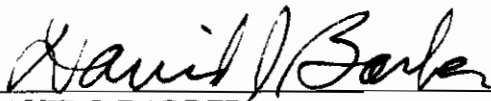
UNITED WATER IDAHO
c/o JOHN MARSHALL
GIVENS PURLSEY
277 NORTH SIXTH ST., SUITE 200
BOISE ID 83720

HAND DELIVERED

3. One copy to the applicant:

STATE OF IDAHO
DEPT OF CORRECTION
1299 N. ORCHARD STE 110
BOISE ID 83706

STATEHOUSE MAIL



DAVID J. BARBER
Deputy Attorney General

ORIGINAL

RECEIVED

AUG 29 2003

WATER RESOURCES
WESTERN REGION

LAWRENCE G. WASDEN
ATTORNEY GENERAL

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

DAVID J. BARBER (ISB #2597)
Deputy Attorney General
P.O. Box 83720
Boise, Idaho 83720-0010
Telephone: (208) 334-2400
FAX: (208) 334-2690
dbarber@ag.state.id.us

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

**IN THE MATTER OF APPLICATION)
FOR TRANSFER 67055 AND)
APPLICATION FOR AMENDMENT)
OF PERMIT NO. 63-12296 IN THE)
NAME OF THE STATE OF IDAHO,)
DEPARTMENT OF CORRECTION.)**
_____)

**AFFIDAVIT OF
DAVID J. BARBER
DATED AUGUST 29, 2003**

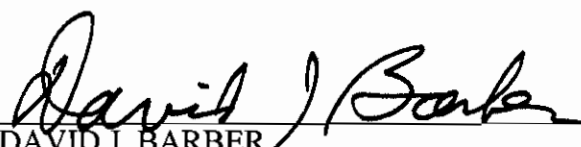
STATE OF IDAHO)
) S.S.
County of Ada)

DAVID J. BARBER, being first duly sworn deposes and says:

1. I am a deputy attorney general assigned to assist the Idaho Department of Correction in this proceeding.

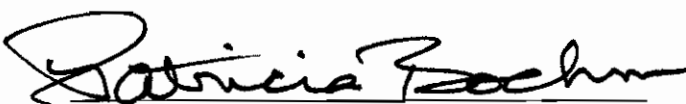
2. The State of Idaho, Department of Correction, has provided to protestant United Water Idaho, sufficient information to demonstrate that the wells at the Idaho State Prisons south of the City of Boise do not impair in any manner the water rights of United Water Idaho. The State of Idaho, Department of Correction, does not presently understand the basis for the continuing protests of United Water Idaho. The State of Idaho, Department of Correction, needs to conduct discovery to obtain this understanding to proceed to hearing in this matter.

3. Further your affiant sayeth naught.


DAVID J. BARBER
Deputy Attorney General

SUBSCRIBED AND SWORN to before me a Notary Public in and for the State of Idaho this 29th day of August 2003.




NOTARY PUBLIC FOR IDAHO
Residing at Boise, Idaho
My Commission expires: 11/6/03

CERTIFICATE OF MAILING

I certify that on August 29, 2003, I served the foregoing AFFIDAVIT OF DAVID J. BARBER DATED AUGUST 29, 2003, on the following persons by the method designated:

1. Original to:

IDAHO DEPARTMENT OF WATER RESOURCES
WESTERN REGION
2735 AIRPORT WAY
BOISE, ID 83705-5082

HAND DELIVERED

2. One copy to the protestant:

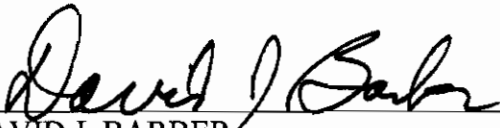
UNITED WATER IDAHO
c/o JOHN MARSHALL
GIVENS PURLSEY
277 NORTH SIXTH ST., SUITE 200
BOISE ID 83720

HAND DELIVERED

3. One copy to the applicant:

STATE OF IDAHO
DEPT OF CORRECTION
1299 N. ORCHARD STE 110
BOISE ID 83706

STATEHOUSE MAIL



DAVID J. BARBER
Deputy Attorney General



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

August 15, 2003

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AUG 18 2003

WATER RESOURCES
WESTERN REGION

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

Re: In The Matter of Application For Transfer 67055 and Application for
Amendment of Permit No. 63-12296 in The Name of The State Of Idaho,
Department Of Correction.

Dear Mr. Spackman:

Enclosed, please find the original State of Idaho's Second Supplemental Response
to Scheduling Order in the above referenced matter, along with a copy of the same to be
conformed to the original's filed date. Please return the conformed copy to David Barber
via Statehouse mail. Thank you for your attention to this matter.

✓ st 8-27-03

Sincerely,

A handwritten signature in cursive script that reads "Patricia Boehm".

PATRICIA BOEHM, PLS
Secretary
Natural Resources Division

/pb
Enclosures

ORIGINAL

LAWRENCE G. WASDEN
ATTORNEY GENERAL

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

DAVID J. BARBER (ISB #2597)
Deputy Attorney General
P.O. Box 44449
Boise, Idaho 83711-4449
Telephone: (208) 334-2400
FAX: (208) 334-2690
dbarber@ag.state.id.us

RECEIVED

AUG 18 2003

WATER RESOURCES
WESTERN REGION

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

**IN THE MATTER OF APPLICATION)
FOR TRANSFER 67055 AND)
APPLICATION FOR AMENDMENT)
OF PERMIT NO. 63-12296 IN THE)
NAME OF THE STATE OF IDAHO,)
DEPARTMENT OF CORRECTION.)**

SECOND SUPPLEMENTAL RESPONSE

TO SCHEDULING ORDER

The State of Idaho Department of Correction supplements its RESPONSE TO
SCHEDULING ORDER as follows:

I. LIST OF WITNESSES AND SUMMARY OF TESTIMONY

There is nothing to add at this time.

II. LIST OF DATA, SCIENTIFIC INFORMATION, AND DOCUMENTS RELIED ON BY THE IDAHO DEPARTMENT OF CORRECTION

A. Documents Incorporated by Reference:

There is nothing to add at this time.

B. The following documents are submitted with this Response:

....

xi. Memo dated October 2, 1986, that amends the Report on Proof of Completion of Works & Beneficial Use dated September 30, 1977, for water right no. 63-7025.

xii. Idaho Department of Correction, Director's Count Sheet for 7/01/2003.

III. SUPPLEMENTATION OF RESPONSES

The preparation for the hearing in this matter is continuing. The designation of witnesses, description of their testimony, and list of data, scientific information, and documents may be supplemented as the preparation continues for the hearing.

DATED this 15th day of August 2003.



DAVID J. BARBER
Deputy Attorney General



RECEIVED

AUG - 5 2003

Department of Water Resources

STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

LAWRENCE G. WASDEN

August 4, 2003

RECEIVED

AUG 06 2003

WATER RESOURCES
WESTERN REGION

Mr. John Marshall
GIVENS PURSLEY LLP
P.O. Box 2720
Boise, ID 83701-2720

Re: State of Idaho Department of Corrections Transfer No. 67055 and
Application for Amendment of Permit No. 63-12296. Your file No. GP File
No. 30-118.

Dear John:

This letter acknowledges receipt of your letter dated July 10, 2003. A draft response is in the review process. While I had initially expected to send it to you last week, I do not expect to get it through the review process until the end of this week.

Enclosed is the FIRST SUPPLEMENTAL RESPONSE TO SCHEDULING ORDER. Item nos. (vi) through (x) of Paragraph II (B) are already part of the administrative file in this matter. But, since you requested historical water use data, I obtained these documents from the Idaho Department of Water Resources (hereinafter "IDWR") and am providing them to you now.

Sincerely,

A handwritten signature in cursive script that reads "David J. Barber".

DAVID J. BARBER
Deputy Attorney General

DJB/ov

Encl.

cc: Gary Spackman
Western Region,
IDWR

CERTIFICATE OF MAILING

I certify that on August 15, 2003, I served the foregoing SECOND SUPPLEMENTAL RESPONSE TO SCHEDULING ORDER on the following persons by the method designated:

1. Original to:

IDAHO DEPARTMENT OF WATER RESOURCES
WESTERN REGION
2735 AIRPORT WAY
BOISE, ID 83705-5082

STATEHOUSE MAIL

(Without Attachments)

2. One copy to the protestant:

UNITED WATER IDAHO
c/o JOHN MARSHALL
GIVENS PURLSEY
277 NORTH SIXTH ST., SUITE 200
BOISE ID 83720

HAND DELIVERED

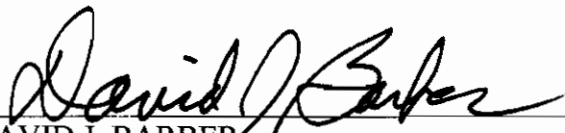
(With Attachments)

3. One copy to the applicant:

PAT DONALDSON
STATE OF IDAHO
DEPT OF CORRECTION
1299 N. ORCHARD STE 110
BOISE ID 83706

STATEHOUSE MAIL

(Without Attachments)



DAVID J. BARBER
Deputy Attorney General



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

JOHN M. MARSHALL

DIRECT DIAL: 208 388-1270
EMAIL: jmm@givenspursley.com

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

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

Michael C. Orr
Kenneth L. Pursley
Bradley V. Sneed
H. Barton Thomas
Conley E. Ward
Robert B. White

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

John A. Miller, LL.M.
TAX CONSULTANT

*Licensed in Kentucky only

Via Facsimile and U.S. Mail
(208) 334.2348

August 1, 2003

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

Re: State of Idaho Department of Corrections Transfer No. 67055 and
Application for Amendment of Permit No. 63-12296/Witness List
Our File: 30-118

Dear Gary:

At this time, United Water Idaho Inc. would like to designate Roger Dittus as a witness in the above-entitled matter. However, we reserve the right to supplement this witness list after we receive information from the State of Idaho, Department of Corrections.

Sincerely,

John M. Marshall

by
lp

JMM/lp

cc: David Barber
Roger Dittus

\\JMM ltr to Spackman re witness list.DOC

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AUG 04 2003
WATER RESOURCES
WESTERN REGION

ORIGINAL

RECEIVED
AUG 01 2003
WATER RESOURCES
WESTERN REGION

LAWRENCE G. WASDEN
ATTORNEY GENERAL

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

DAVID J. BARBER (ISB #2597)
Deputy Attorney General
P.O. Box 44449
Boise, Idaho 83711-4449
Telephone: (208) 334-2400
FAX: (208) 334-2690
dbarber@ag.state.id.us

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

**IN THE MATTER OF APPLICATION)
FOR TRANSFER 67055 AND)
APPLICATION FOR AMENDMENT)
OF PERMIT NO. 63-12296 IN THE)
NAME OF THE STATE OF IDAHO,)
DEPARTMENT OF CORRECTION.)**

**RESPONSE TO
SCHEDULING ORDER**

In accordance with the SCHEDULING ORDER entered on July 1, 2003, the State of Idaho Department of Correction submits its designation of witnesses, summary of testimony, and documents as follows:

I. LIST OF WITNESSES AND SUMMARY OF TESTIMONY

A. Pat Donaldson, Building Operations Manager, Idaho Department of Correction:

Mr. Donaldson will testify about the following items:

- i. the purpose of the application for transfer and application for amendment of the permit;
- ii. the history of water use at the two prisons located south of the City of Boise; and
- iii. other matters relevant to the proposed transfer and amendment.

B. Ed Squires, President Hydro Logic, Inc.:

Mr. Squires will testify about the following items:

- i. the purpose of the application for transfer and application for amendment of the permit;
- ii. the history of water use at the two prisons located south of the City of Boise;
- iii. the construction of the existing wells on the site of the two prisons;
- iv. the potential for injury to other lawful users of water by the changes proposed in the application for transfer and application for amendment; and
- v. other matters relevant to the proposed transfer and amendment.

II. LIST OF DATA, SCIENTIFIC INFORMATION, AND DOCUMENTS RELIED ON THE IDAHO DEPARTMENT OF CORRECTION

- A. The Idaho Department of Correction is relying on the official files of the Idaho Department of Water Resources in this matter and they are listed in Paragraph (i) below for purposes of completeness. The Idaho Department of Correction has already provided the documents described in paragraphs (ii) through (iv) to United Water Idaho. Those documents are not copied a second time but they are incorporated by reference:

- i. The official files of the Idaho Department of Water Resources related to the application for transfer and application for amendment of permit.
- ii. Letter dated November 15, 1999 to Mr. Dan Brown, United Water Idaho, from Mr. Keith E. Anderson with attachments.
- iii. Letter dated July 31, 2002 to Mr. Roger Dittus, United Water Idaho, from Pat Donaldson with attachments.
- iv. Letter dated July 1, 2003 to Mr. Roger Dittus, United Water Idaho, from Mr. Ed Squires, with attachments.

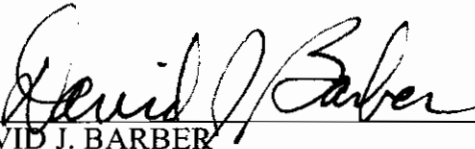
B. The following documents are submitted with this Response:

- i. Report of Ed Squires entitled "Details of Drilling, Construction, and Hydraulic Testing of the Idaho State Correctional Institution #4 Supply Well" dated November 5, 2002. (This document will be provided as soon as a copy is made or an extra copy found.)
- ii. "Water Use Analysis Report" dated November 1998.
- iii. "Water Use Analysis Report" dated December 1998.
- iv. Capital Budget Request, Six Year Plan FY2005 through FY2010.

III. SUPPLEMENTATION OF RESPONSES

The preparation for the hearing in this matter is continuing. The designation of witnesses, description of their testimony, and list of data, scientific information, and documents may be supplemented as the preparation continues for the hearing.

DATED this 31st day of July 2003.



DAVID J. BARBER
Deputy Attorney General

CERTIFICATE OF MAILING

I certify that on July 31, 2003, I served the foregoing RESPONSE TO SCHEDULING ORDER on the following persons by the method designated:

I. Original to:

IDAHO DEPARTMENT OF WATER RESOURCES
WESTERN REGION
2735 AIRPORT WAY
BOISE, ID 83705-5082

STATEHOUSE MAIL

(Without Attachments)

2. One copy to the protestant:

UNITED WATER IDAHO
c/o JOHN MARSHALL
GIVENS PURLSEY
277 NORTH SIXTH ST., SUITE 200
BOISE ID 83720

HAND DELIVERED

(With Attachments)

3. One copy to the applicant:

STATE OF IDAHO
DEPT OF CORRECTION
1299 N. O RCHARD STE 110
BOISE ID 83706

STATEHOUSE MAIL

(Without Attachments)



DAVID J. BARBER
Deputy Attorney General

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

**IN THE MATTER OF APPLICATION)
FOR TRANSFER 67055 AND)
APPLICATION FOR AMENDMENT)
OF PERMIT NO. 63-12296 IN THE)
NAME OF THE STATE OF IDAHO,)
DEPARTMENT OF CORRECTION.)**

SCHEDULING ORDER

On November 19, 1999, the State of Idaho, Department of Correction (IDOC) filed with the Idaho Department of Water Resources (IDWR) application for transfer no. 67055 and application for amendment of permit no. 63-12296. The applications were protested by United Water Idaho. The prehearing conferences held on July 10, 2002, February 18, 2003, and June 30, 2003, did not resolve the matter of protest. IDOC has requested that the matter be set for hearing and proposed a schedule for consideration by the IDWR. The IDWR and parties discussed the proposed schedule at the prehearing conference on June 30, 2003. The parties scheduled a hearing for November 21-22, 2003, and agreed to prepare for the hearing as follows:

IT IS ORDERED that the parties shall provide the following information to the opposing party on or before July 31, 2003.

- A list of witnesses expected to testify at the upcoming hearing.
- A 2-3 line summary of the testimony of each witness.
- Data, scientific information, and documents each party possesses that may be used or relied on at hearing.

IT IS FURTHER ORDERED that the parties shall adhere to the following schedule in preparing for the hearing:

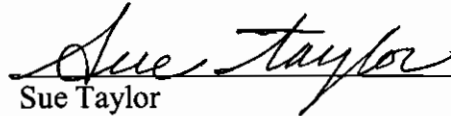
- The parties may petition for an order authorizing discovery after July 31, 2003.
- The parties shall disclose names of trial witnesses on or before September 15, 2003.
- Discovery must be completed on before October 15, 2003.
- The parties shall submit written expert testimony to the hearing officer and the opposing party by November 14, 2003. The submittal will become the direct testimony of the expert witness, subject to corrections at the hearing.
- The hearing on the merits will be conducted on November 20-21, 2003.

DATED this 1st day of July 2002.


 Gary Spackman

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 2nd day of July 2003, I mailed a true and correct copy, postage prepaid, of the foregoing SCHEDULING ORDER to those listed:


 Sue Taylor
 Senior Secretary

STATE OF IDAHO
 DEPT OF CORRECTION
 1299 N. O RCHARD STE 110
 BOISE ID 83706

DAVID J. BARBER
 DEPUTY ATTY GENERAL
 PO BOX 83720
 BOISE ID 83720-0010

UNITED WATER IDAHO
 C/O ROGER DITTUS
 8248 W. VISTORY RD
 BOISE ID 83709

JOHN MARSHALL
 GIVENS PURSLEY
 PO BOX 2720
 BOISE ID 83701