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September 9, 2002

VIA FACSIMILE: 388-1300

Mr. John Marshall
Givens Pursley
277 North 6th Street, Suite 200
P.O. Box 2720
Boise, Idaho 83701-2720

Re: United Water Flood Water Application

Dear John:

Scott Campbell and I have had a chance to look over the significant changes you have made in the conditions. We were surprised at the extent of the changes made based upon our last status conference where you indicated that the conditions seemed to be generally appropriate. Frankly, we do not understand the reason for most of these changes. I am enclosing a marked up version of your red-line showing which portions of the changes we can accept and those we cannot.

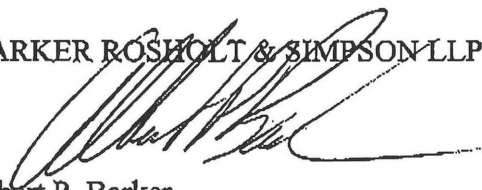
With respect to proof of beneficial use in condition 4 we believe that some time frame needs to be inserted. We are open to some other time period, and based the two year proposal on the urgency expressed by United Water at putting this water to use. We are also curious why United Water would oppose providing notice of any extension of time request. Since this water right is not being considered in the IMAP process as a surface water right, but is still part of the overall water rights portfolio, we need some understanding of how the exercise of that right will fit in to the overall water right portfolio.

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Kathleen Carr is out of the office this week and we have not had an opportunity to run these changes by her, but believe based upon our past discussions, that she would generally be in agreement with our comments attached hereto.

Very truly yours,

BARKER ROUSHOLT & SIMPSON LLP



Albert P. Barker

Enclosure

cc: Scott Campbell

Kathleen Carr

Gary Spackman

boc/united water/marshall ltr 90902

1. Use of water under this water right will be regulated by the watermaster of the State Water District No. 63.
2. If measured or calculated Boise River flows at the point of diversion are less than 240.00 cfs during the period beginning June 16 and ending February 29, water shall not be diverted pursuant to this water right. If measured or calculated Boise River flows at the point of diversion are less than 1,100.00 cfs during the period beginning March 1 and ending May 31, water shall not be diverted pursuant to this water right. Measured or calculated Boise River flows at the point of diversion shall be based on gauged Lucky Peak Dam Discharge minus diversion to the New York Canal.

3. ~~United Water right if granted would be junior to all valid water rights with a priority date prior to February 5, 2002. United Water would shall exercise its this right only when the Boise River is on flood release below Lucky Peak dam/outlet and only when authorized by the District 63 watermaster. United Water shall not have the authority to call for delivery of water independently of flood releases. Flood releases which shall be determined based upon the MOA between the Department of Army and Department of Interior for Flood Control Operations of Boise River Reservoirs, Supplement Contracts with contract holders, the 1985 "Water Control Manual - Boise River Reservoirs" and any modifications duly adopted pursuant to federal law and which are consistent with the MOA between the Department of Army and Department of Interior for Flood Control operations of Boise River Reservoirs and Reclamation's Repayment contracts for the Boise Project Arrowrock Division. This water right may not be used to divert water released from storage for Exercise of this water right will not occur from releases for minimum stream flows or for water released for flow augmentation authorized under Idaho law, or for any other authorized purpose under the water right for Lucky Peak Reservoir.~~

4. ~~Applicant must submit proof of beneficial use to the Department within two years of issuance of this permit. All requests for extension shall be served on Protestants, who shall be provided the opportunity to protest any such extension. This permit does not authorize any increase in the total water rights held by United Water in its service area. To the extent that this water right, when added to Applicant's other existing water rights, exceeds the water rights deemed necessary to meet the United Water's reasonably anticipated future needs as determined by the Department in the IMAP or other APA proceeding, Applicant shall abandon an equivalent portion of Applicant's existing water rights. This water right when combined with all other water rights held by United Water, shall not exceed a total combined diversion rate of 416.8 cfs, or such other diversion rate the Department determines is necessary to meet the permit holder's reasonably anticipated future needs.~~

(We CAN NOT AGREE TO THE 416.8 number - WE THINK THIS IS ADEQUATE)

5. The point of diversion for this water right shall not be treated as interchangeable with Applicant's groundwater rights, regardless of whether the interchangeability of groundwater points of diversion is approved in the IMAP or other process.
6. Applicant must obtain an injection well or recharge permit prior to any groundwater recharge.

7. If the Department or the permit holder proposes to eliminate or alter these conditions, such alteration shall be deemed to be a substantial change in the method or proposed use of the water as to Protestants and Intervenors requiring an amended application or permit to be filed by the permit holder under the provisions of I.C. § 42-211. Notice of any such amended application or permit shall be given to the Protestants and Intervenors by the Director by certified mail. Protestants and Intervenors are entitled to raise any objections to any amendment proposing changes to the conditions which they could have raised in opposition to issuance of original permit.