

Jan 31, 2003

Attorneys for Pioneer Irrigation District
and Settlers Irrigation District

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WATER RESOURCES
WESTERN REGION

**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.

STATEMENT OF THE ISSUES

Pioneer Irrigation District ("Pioneer") and Settlers Irrigation District ("Settlers"), by and through their counsel of record Moffatt, Thomas, Barrett, Rock & Fields, Chtd., and in accordance with the Hearing Officer's PreHearing Order, hereby provide a neutral statement of the issues.

I.

PRELIMINARY MATTERS

Pioneer and Settlers are providing this neutral statement of the issues because they are not certain whether the Applicant United Water Idaho will provide a neutral statement. UWID

provided a statement of the issues to Pioneer and Settlers on or about January 17, 2003, as required by the Hearing Officer's PreHearing Order. However, Pioneer and Settlers do not view that statement of the issues as neutral, because it included UWID's view of the issues. Pioneer and Settlers conveyed those concerns to UWID's counsel, but received no response. Therefore, Pioneer and Settlers are providing this Statement of the Issues.

UWID also provided that non-neutral statement of the issues (titled "Summary of the Issues") to the Hearing Officer as an attachment to UWID's Response to the Irrigation Entities' Motion to Compel. Pioneer and Settlers are not certain when they will have the opportunity to provide their response to UWID's view of the issues, if not now. Therefore, by separate document filed concurrently, Pioneer and Settlers will respond to the views set forth in UWID's Summary of the Issues.

Pioneer and Settlers are taking the steps just described in order to avoid waiving any issues or rights they may have. Further, Pioneer and Settlers reserve the right to provide further analysis and argument regarding the issues, as allowed by the Hearing Officer.

II.

STATEMENT OF THE ISSUES

This statement of the issues was provided to counsel for UWID on or about December 20, 2002, with oral explanation provided at that time. Additional explanation of some of the issues was provided by counsel for Pioneer and Settlers in writing at a later date. The issues set forth herein remain issues as of the date this document is filed.¹

¹ Pioneer and Settlers have removed one quotation of an Idaho Code section. It was provided for purposes of explanation to UWID's counsel, but has been removed here in an effort to make this statement of the issues as neutral as possible.

- Issue 1** The notice in this matter did not comport with the requirements of Idaho Code section 42-203A.
- Issue 2** The water rights described in IMAP involve quantities greater than 50 cfs. Legislative approval, as required by I.C. section 42-108 appears to be a pre-condition to processing of the IMAP application.
- Issue 3** The IMAP was not submitted “upon forms furnished by the Department;” that failure constitutes a procedural due process defect which invalidates the IMAP process.
- Issue 4** I.C. section 42-222 can not be used when the municipal provider is *not* changing the nature of use to municipal. In other words, the statute does not allow a municipal provider to bring existing water rights under the umbrella of the municipal water rights act, when the current nature of use of the water rights is municipal.
- Issue 5** The IMAP application does not provide a sufficient description of the service area “to identify the general location where the water right is to be used and the types and quantity of uses that generally will be made.”
- Issue 6** The length of time, geographical area, population projections and other planning data for calculating reasonably anticipated future needs are limited to the comprehensive plans and planning horizons of cities within the service area. The IMAP exceeds these statutory parameters and fails to satisfy the mandates of I.C. section 42-202B(5).
- Issue 7** The IMAP expansion of place of use and service area for the water rights, will cause expansion of the consumptive use component of the water rights due to lawn and landscape irrigation. This would constitute an improper enlargement in use of the original rights in violation of I.C. section 42-222(1).
- Issue 8** An application to amend a permit can not be considered under the Municipal Water Rights Act. No statutory provision allows this approach. Therefore, the permit amendment portion of IMAP should be separated and proceed as a distinct proceeding.
- Issue 9** As a matter of procedure, the validity of these proceedings due to the potentially inappropriate contact with the IDWR Director should be decided before any other issues are considered.
- Issue 10** Forfeiture – Municipal water rights can be forfeited. Some of the IMAP water rights have been forfeited.

- (1) The right associated with a particular well should be deemed forfeited when that well is abandoned, and the right was not transferred to another point of diversion.
- (2) Is the “stepwise function” an appropriate way to determine whether municipal water rights have been forfeited?
- (3) If the “stepwise function” is not an appropriate way to determine whether and when municipal water rights have been forfeited, should a “point by point” system be used?

Issue 11 What is the appropriate length of time for reviewing and reevaluating the accuracy of the planning horizon and projected water needs (i.e., at the end of the planning horizon, every five years, every three years, etc.).

Issue 12 The “integrated points of diversion” approach in IMAP does not comport with Idaho law, specifically the prior appropriation doctrine.

- a. Senior water rights will not be protected from interference and injury under the approach outlined by UWID.
- b. The integrated points of diversion approach in IMAP does not adequately protect senior water rights (whether ground or surface water, and not just from well interference).
- c. Phrased differently, the integrated points of diversion approach in IMAP violates the prior appropriation doctrine and conjunctive administration of water rights.

Issue 13 A municipal provider should not be allowed to obtain a water right in the amount of a particular well’s capacity, even though that amount of water is not diverted, and perhaps has never been diverted, from that well.

Issue 14 If the IMAP proceeding is completed before the water rights included within the IMAP reach the SRBA, review of the water rights in the SRBA may be precluded. This conflicts with the requirements of the SRBA statute.

Issue 15 United Water Idaho violated the procedural and substantive due process rights of our clients by its extensive ex parte contacts with the Idaho Department of Water Resources Director and senior management officials concerning the legal and factual issues involving IMAP and interpretations of the statutory language of the Municipal Water Rights Act of 1996 and other provisions of Idaho law. Such actions resulted in pre-decisional interpretations or rulings by the Director and other senior management officials which directly impact the IMAP proceeding. In essence, United Water Idaho conducted an ex parte declaratory proceeding before

the Department in violation of the Department's rules and our clients' constitutional and statutory rights.

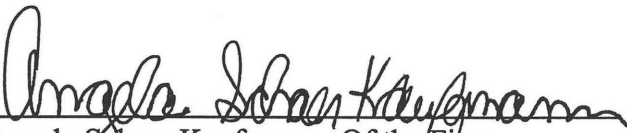
Issue 16

All factual issues can not be stated at this time because UWID has not provided all of the information requested by Pioneer and Settlers in the informal information exchange process and because discovery has not yet been authorized.

DATED this 31st day of January 2003.

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

By 
Scott L. Campbell - Of the Firm

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 31st day of January 2003, I caused a true and correct copy of the foregoing **STATEMENT OF THE ISSUES** to be served by the method indicated below, and addressed to the following:

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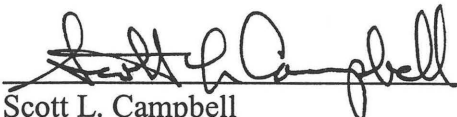
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