

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)	)	
	)	IMAP-ORDER RE
		MOTIONS TO COMPEL
		AND MOTION FOR
		PROTECTIVE ORDER

The Applicant, United Water Idaho, filed a *Motion to Compel Responses to UWID's First Set of Discovery Requests to Pioneer Irrigation District and Settlers Irrigation District* (the "Motion to Compel") on August 7, 2003. The Applicant requested an order compelling responses to discovery pursuant to IDAPA 37.01.01.522. Protestants, Pioneer and Settlers Irrigation Districts (the "Districts"), filed in response a *Motion for Protective Order and Pioneer Irrigation District and Settlers Irrigation Districts' Response to UWID's Motion to Compel and Memorandum in Support of Motion for Protective Order* on August 15, 2003.

The Idaho Department of Water Resources ("IDWR") has adopted portions of the Idaho Rules of Civil Procedure when it authorizes written interrogatories in an administrative proceeding. IDAPA 37.01.01.524 I.R.C.P. 26(b)(1). Parties may obtain discovery regarding any matter which is relevant to the subject matter involved in the pending action or if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. This matter involves applications to amend water right permits pursuant to Idaho Code § 42-211 and applications to change water rights under Idaho Code §42-222 (the "IMAP"). Discovery from any party is appropriate if it requests information that has a bearing on the issues IDWR must investigate under these statutes.

The Applicant submitted identical interrogatories to the Districts on July 2, 2003. The Districts, served their identical responses on the Applicant on July 17, 2003. The Districts, refused to answer Interrogatory Numbers 10, 12, 13, 14, 19, 20, 21, 22 and 23. Although the Districts also declined to answer Interrogatory Numbers 15 and 16, they have now served responsive answers with the Applicant. Each of the interrogatories that the Districts decline to answer will be examined in turn.

INTERROGATORY NO. 10: Please describe and quantify the hydrologic impact on the District's water rights which is likely to result if the Application were approved.

The Districts argue that this information is irrelevant to IDWR's investigation in this matter. Although the District's acknowledge that IDWR must consider impacts on existing rights under both Idaho Code § 42-211 and Idaho Code §42-222, they argue that quantifying hydrologic impact is different from injury. Further they argue that it is not the Districts' burden to quantify hydrologic impacts. The Districts may be right in their premises, but their conclusion that this information is irrelevant to IDWR's investigation is wrong.

Describing and quantifying the hydrologic impact on the District's water rights is relevant to IDWR's decisions in this proceeding. If there is a large hydrologic impact on the Districts' rights they may be injured. If there is no hydrologic impact on the Districts' rights they may not be injured. It is not the Districts' burden to present this evidence to IDWR, but if the Districts have this information they must provide it to the Applicant. The District's should have answered this interrogatory.

INTERROGATORY NO. 12: Please state whether the District has a water conservation program in effect today. Please describe in full the District's water conservation efforts or program. Please include a discussion of the history and development of the efforts or program.

The Applicant argues that this question is relevant because "conservation" by the Applicant has been raised in this proceeding. The Districts argue that this information is irrelevant because their conservation practices are not at issue, only those of the Applicant.

It is hard to discern the relevance to IDWR of the information requested by this interrogatory. The Districts' conservation efforts would not directly pertain to any issue that IDWR must resolve under the IMAP. The issue of adequacy of conservation efforts would appear to be more of an objective standard than a relative one. Thus, the use of this information as some type of impeachment information is questionable. Sustaining the Districts' relevance objection to interrogatory number 12, the requested information will not be admitted if offered by the Districts at hearing and cannot be the basis for any opinions offered by the Districts.

INTERROGATORY NO. 13: Please identify, describe and summarize the results of all studies, by the District or others, assessing or evaluating the success of the District's water conservation efforts.

The Applicant argues that this question is relevant, again, because "conservation" by the Applicant has been raised in this proceeding. The Districts argue that this information is irrelevant because their conservation practices are not at issue, only those of the Applicant.

The information requested by this interrogatory only appears relevant to IDWR's investigation if the Districts attempt to impeach the Applicant's studies assessing or evaluating the success of the Applicant's water conservation efforts. The Districts' own studies would then illuminate whether or not the Applicant's conservation studies were adequate. Thus, the Districts should have answered this interrogatory if they intend to impeach the Applicant's conservation studies. Sustaining the Districts' relevance objection to interrogatory number 13, the requested information will not be admitted if offered by the Districts at hearing and cannot be the basis for any opinions offered by the Districts.

INTERROGATORY NO. 14: Please provide a quantification of water use by each user group served by the District for which the District keeps separate records. For example, if the District keeps records based on agricultural, commercial or domestic users, please provide a breakdown showing the total quantity of use for each group.

The Applicant argues that this question is relevant because it relates to the Districts' claims of potential injury and allegations that IMAP is not in the public interest. The Districts argue that this information is irrelevant because their water right records provide all the information that the Applicant needs to determine potential injury to the Districts and the Districts' public interest contention relates only to unappropriated water.

It is hard to discern the relevance to IDWR of the information requested by this interrogatory if the Districts' do not intend to offer it at hearing. Sustaining the Districts' relevance objection to interrogatory number 14, the requested information will not be admitted if offered by the Districts at hearing and cannot be the basis for any opinions offered by the Districts.

INTERROGATORY NO. 19: What plans does the District have to annex new lands?

The Applicant argues that this question is relevant because it relates to the issues of whether the irrigation districts should be providing irrigation water in areas United Water claims it will irrigate. The Districts argue that this information is irrelevant because only the overlap between the Applicant's and the Districts' current service areas is relevant in this matter.

It is hard to discern the relevance to IDWR of the information requested by this interrogatory if the Districts do not intend to offer it at hearing. Sustaining the Districts' relevance objection to interrogatory number 19, the requested information will not be admitted if offered by the Districts at hearing and cannot be the basis for any opinions offered by the Districts.

INTERROGATORY NO. 20: How many pressurized, residential irrigation systems or hook-ups does the District serve? (This

interrogatory does not inquire as to the number of individual lots or parcels served by Pioneer/Settlers.)

The Applicant argues that this question is relevant because it relates to the issue of whether the irrigation districts should be providing irrigation water in areas United Water claims it will irrigate and to the issues of whether the IMAP will tie up the public resource. The Districts argue that this specific information regarding their own water use is irrelevant.

It is hard to discern the relevance to IDWR of the information requested by this interrogatory if the Districts do not intend to offer it at hearing. Sustaining the Districts' relevance objection to interrogatory number 20, the requested information will not be admitted if offered by the Districts at hearing and cannot be the basis for any opinions offered by the Districts.

INTERROGATORY NO. 21: Please explain how you quantify and track residential irrigation water use?

The Applicant argues that this question is relevant because it relates to the issue of whether the irrigation districts should be providing irrigation water in areas United Water claims it will irrigate and to the issues of whether the IMAP will tie up the public resource. The Districts argue that this specific information regarding their own water use is irrelevant.

It is hard to discern the relevance to IDWR of the information requested by this interrogatory if the Districts do not intend to offer it at hearing. Sustaining the Districts' relevance objection to interrogatory number 21, the requested information will not be admitted if offered by the Districts at hearing and cannot be the basis for any opinions offered by the Districts.

INTERROGATORY NO. 22: What is the average annual per capita usage in volume of water per irrigated acre and per customer for your members who use water for residential irrigation?

The Applicant argues that this question is relevant because it relates to the issue of whether the irrigation districts should be providing irrigation water in areas United Water claims it will irrigate and to the issues of whether the IMAP will tie up the public resource. The Districts argue that this specific information regarding their own water use is irrelevant.

It is hard to discern the relevance to IDWR of the information requested by this interrogatory if the Districts do not intend to offer it at hearing. Sustaining the Districts' relevance objection to interrogatory number 22, the requested information will not be admitted if offered by the Districts at hearing and cannot be the basis for any opinions offered by the Districts.

INTERROGATORY NO. 23: Has the District undertaken any planning for projected future water demands? If so, explain what it has done in this regard, who did or is doing the work, what the status of the work is, and what conclusion or tentative conclusions have been reached.

The Applicant argues that this question is relevant because the Districts challenge the planning process undertaken by United Water. The Districts argue that this information is irrelevant because they only challenge Applicant's proposed service area and planning horizon.

The information requested by this interrogatory appears relevant to IDWR's investigation if the Districts attempt to impeach the Applicant's planning for projected future water demands. The Districts' own planning would then illuminate whether or not the Applicant's projected future water demand planning was adequate. Thus, the Districts should have answered this interrogatory if they intend to impeach the Applicant's projected future water demand planning. Sustaining the Districts' relevance objection to interrogatory number 23 the requested information will not be admitted if offered by the Districts at hearing and cannot be the basis for any opinions offered by the Districts.

ORDER

Based on the foregoing it is ORDERED that:

1. The Districts' objections to Interrogatory 10 are OVERRULED. The Districts shall serve their respective answers to Interrogatory 10 on the Applicant by September 18, 2003.

2. The Districts' objections to Interrogatories 12, 13, 14, 19, 20, 21, 22 and 23 are SUSTAINED. The information requested by these interrogatories will not be admitted if offered at hearing and cannot be the basis for any opinions offered at hearing unless the Districts' objections are withdrawn, and answers served on the Applicant by September 18, 2003.

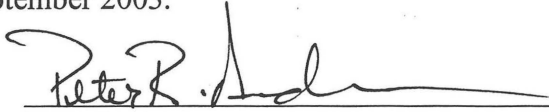
3. The Districts may not challenge the studies by the Applicant assessing or evaluating the success of the Applicant's water conservation efforts nor challenge the planning by the Applicant for projected future water demands unless the objections to Interrogatories 13 and 23, respectively, are withdrawn, and answers served on the Applicant by September 18, 2003.

4. The Districts' *Motion for Protective Order* is DENIED as moot. The time period for formal discovery closed on August 29, 2003.

5. The Districts, in *Pioneer Irrigation District and Settlers Irrigation Districts' Response to UWID's Motion to Compel and Memorandum in Support of*

Motion for Protective Order, at 14, request they be awarded their attorney fees. Although the Districts cite the Idaho Rules of Civil Procedure for authority to award attorney fees, they cite no statutory authority or IDWR rule that provides for the award of attorney fees in administrative proceedings before IDWR. The Districts' request for attorney fees is DENIED.

Dated this 3rd day of September 2003.

A handwritten signature in black ink, appearing to read "Peter R. Anderson", is written over a horizontal line.

Peter R. Anderson
Hearing Officer

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 4th day of September 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:

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