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Department of Water Resources

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WATER RESOURCES
WESTERN REGION

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WATER RESOURCES
WESTERN REGION

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

In the Matter of United Water Idaho's	)	RESPONSE TO UNITED
Municipal Application Package, United Water	)	WATER'S MOTION
Idaho, Petitioner	)	REGARDING EXPERT
	)	WITNESSES
_____	)	

The Cities of Eagle, Kuna, Middleton, Star, and the Star Sewer and Water District (collectively referred to as "Protestants"), by and through their counsel of record, MOORE SMITH BUXTON & TURCKE, CHARTERED, hereby respond to United Water's Motion Regarding Expert Witnesses, dated November 19, 2003. The Protestants do not object to United Water's request to pre-file the written testimony of John Church; however, Protestants object to United Water's attempts to limit the testimony of the other parties' witnesses. Protestants also object to United Water's proposal to limit the parties' review of Mr. Church's written testimony to the ten (10) day period immediately preceding the two (2) week hearing of this matter.

The Department's Rules allow the Hearing Officer "to require the advance filing of expert testimony, when authorized before the agency." Rule 413.01(b). The Department's Rules permit the Hearing Officer to "order a witness's prepared testimony previously distributed to all parties to be included in the record of hearing as if read." Rule 605. Prepared testimony is subject to Rule 600. Id. The Department's Rules do not impose any requirement that a Hearing Officer must require or accept written testimony in a contested case proceeding.

COPY

1. United Water's Request to Submit Written Testimony of Mr. John Church Should be Granted

United Water desires to submit the direct testimony of Mr. John Church in writing, and in advance of the hearing. The Protestants have no objection to the presentation of Mr. Church's testimony in written form so long as (1) Mr. Church's testimony is limited to the written testimony; and (2) Mr. Church's written testimony is provided to all the parties well in advance of the scheduled hearing. Ten (10) days before hearing does not allow sufficient time for the parties to review Mr. Church's testimony, prepare for the two-week hearing, deal with objections, as well as tend to other pending matters. Given the complexity of Mr. Church's testimony and the amount of time which otherwise must be devoted to preparation of the lengthy hearing on this matter, the Hearing Officer should allow thirty (30) days for review of Mr. Church's written testimony.

2. United Water's Request to Limit All the Parties to Written Testimony Should be Denied

The Protestants desire to present expert testimony at the hearing scheduled in this matter. Presentation of the parties' expert testimony at hearing will give the Protestants sufficient opportunity to be heard and will be valuable to the Hearing Officer's consideration of the Protestant's case. United Water is the applicant and presents its case first. The Protestants must then respond to United Water's case in chief. The Protestants cannot do so before the fact via written testimony. The Protestants must be given an opportunity to respond to the actual evidence presented at hearing. Additionally, the interactive nature of live testimony should paint a more understandable picture of the matters pending before the Hearing Officer. Consequently, the Hearing Officer should allow the parties who wish to present live testimony to do so.

The status of the pending applications and hearing thereon has been in flux for quite some time. The Protestants have desired to conserve resources until such time that United Water

RESPONSE TO UNITED WATER'S MOTION REGARDING EXPERT WITNESSES –
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settled on the applications before the Department, proposed changes were made clear, and the matter of the stay decided. Now that these issues have been decided and the hearing scheduled, the Protestants may identify an expert and/or rely on the expert testimony presented by another party. As soon as the Protestants identify an expert they will immediately notify United Water of their selection.

RESPECTFULLY SUBMITTED this 3 day of December, 2003.



TAMMY A. ZOKAN

MOORE SMITH BUXTON & TURCKE, CHARTERED

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13 day of December, 2003, I caused to served a true and correct copy of the forgoing REPLY by the U.S. mail, addressed to the following:

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