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BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

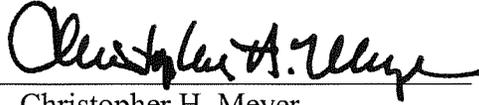
IN THE MATTER OF INTEGRATED
MUNICIPAL APPLICATION PACKAGE
("IMAP") OF UNITED WATER IDAHO
INC., BEING A COLLECTION OF
INDIVIDUAL APPLICATIONS FOR
TRANSFERS OF WATER RIGHTS AND
APPLICATIONS FOR AMENDMENT OF
PERMITS.

**UNITED WATER'S SUBMISSION OF
MEMORANDA DISTRIBUTED AT STATUS
CONFERENCES**

This is Applicant United Water Idaho Inc.'s submission for the record of two documents. The first is a memorandum dated April 13, 2012 captioned "Informal notes for today's status conference," attached hereto as Exhibit A. The second is a memorandum dated July 24, 2012 captioned "Notes for 7-24-2012 status conference," attached hereto as Exhibit B. Both memoranda were distributed to the Hearing Officer and the parties at the respective status conferences on the above-referenced dates. It has come to our attention that these memoranda were not made part of the record, and that this submission is required to make them part of the record.

Respectfully submitted this 25th day of July, 2012.

GIVENS PURSLEY LLP

By 
Christopher H. Meyer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 25th day of July, 2012, the foregoing was filed, served, and copied as follows:

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Christopher H. Meyer

INDEX TO EXHIBITS

Exhibit A **MEMORANDUM OF APRIL 13, 2012**

Exhibit B **MEMORANDUM OF JULY 24, 2012**

EXHIBIT A
MEMORANDUM OF APRIL 13, 2012
“INFORMAL NOTES FOR TODAY’S STATUS CONFERENCE”

MEMORANDUM

TO: IDWR and IMAP parties

FROM: Scott Rhead, Chris Meyer, and Mike Lawrence

RE: Informal notes for today's status conference

DATE: April 13, 2012

In order to facilitate the discussion at today's status conference, we have tried to collect our thoughts and wish to share with you the following summary notes. We anticipate a collegial discussion at this meeting, and our thinking may evolve based on that discussion. Accordingly, this should not be viewed as a position paper, but simply as an effort to share our current viewpoint. Because we expect some new faces, we begin with some background and then move through the history of the IMAP proceeding, concluding with some thoughts on how to proceed.

- **What is the 1996 Municipal Water Rights Act?**

The 1996 Act codified the common law "Growing Communities Doctrine" to provide explicit protection from forfeiture. It also set up procedures requiring municipal providers to undergo rigorous planning and full disclosure if they want the protection of the Act. The Act also prohibits speculation in rights acquired for "reasonably anticipated future needs" (RAFN).

- **How did things work before the 1996 Act?**

Historically, cities and other municipal providers applied for new rights on a well-by-well basis. Pursuant to long-established IDWR guidance and court decisions recognizing the special status of municipal rights, municipal providers obtained licenses based on installed capacity without a volume limitation. The effect was to create future need water rights on an ad hoc basis. These have now been confirmed in the SRBA.

- **Is seeking RAFN rights optional?**

In theory it is optional. But, going forward, there is no longer any practical alternative. IDWR's 2009 guidance authored by Jeff Peppersack brings to an end 100 years of the prior practice. IDWR will no longer allow municipal providers to obtain new water rights that they cannot show a short term need for.

- **What is the IMAP?**

IMAP is an acronym for “Integrated Municipal Application Package.” It is a set of transfer applications applicable to UWID’s entire portfolio of rights at the time the IMAP was filed. The transfers seek alternative points of diversion (APODs) for each right in UWID’s portfolio. This makes every well an alternative point of diversion for every other well. The purpose of the IMAP, aside from securing APODs, is to bring UWID’s existing water rights under the 1996 Act. This will entail establishing a planning horizon and quantifying current demand and reasonably anticipated future needs (RAFN). The IMAP was filed on May 4, 2001 covering 112 water rights (93 transfers and 19 permit amendments) totaling 302.84 cfs.

It bears emphasis that this is just a transfer process. It neither creates new water rights nor enlarges existing ones. Its effect is to supplement the common law protection afforded to municipal rights with the explicit RAFN protection in the 1996 Act. It would also facilitate future acquisition of rights (by quantifying the need for them), but that would come in a separate proceeding subject to its own proofs and protests.

- **How does the IMAP affect other cities and other users?**

Thankfully, most of the uncertainties and controversies over metropolitan boundaries and water service areas have been resolved in recent years. Accordingly, establishing UWID’s planning area for future growth should be straightforward.

UWID views its IMAP application as beneficial to all other municipal providers. Indeed, based on the groundwork laid by the IMAP, the City of Nampa has now secured to RAFN water rights under the 1996 Act based on its own master planning effort. More recently, UWID has worked closely with cities and others in the CAMP process to develop a greater understanding of regional needs and supplies. The CAMP process has confirmed our common need for sound water planning over a 50-year horizon.

The RAFN quantification process will be helpful to the Department, other water users, and other governmental entities, because it will disclose long term needs and facilitate those needs being met in an orderly fashion. UWID wishes to continue to work with other cities to ensure that each of us may move forward with our respective planning efforts without conflict.

- **When and why was the IMAP stayed?**

In 2003 there was discussion of how the IMAP would integrate with the SRBA, and whether both should proceed at the same time. UWID proposed a partial stay whereby the SRBA court would determine forfeiture and quantification of the existing portfolio, but the IMAP would proceed to determine future needs. Initially, the hearing officer, Peter Anderson, did just that. Accordingly, he set a hearing on the IMAP for January 2004. Thereafter, however, he changed course and “referred” his order to the Director. Then, on December 18, 2003, Karl Dreher issued a total stay over UWID’s objection. He explained that the SRBA would be addressing some of the same issues that would be address in the IMAP. He concluded that, given the Department’s limited resources, it made sense to focus on the SRBA.

- **Who supported the stay?**

The stay was supported by Pioneer/Settlers, NMID, Meridian, Caldwell, Terteling, Eagle, Kuna, Middleton, Star, Star Sewer & Water District, Boise Project, Boise-Kuna, Wilder & Big Bend irrigation districts. Only UWID and Boise opposed it.

- **What was resolved in the SRBA?**

The SRBA resolved two of the biggest and most contentious issues presented in the IMAP: Forfeiture and APODs (alternative points of diversion). As a result, UWID's existing portfolio—at least its pre-1987 portfolio—has been quantified and partially decreed. Moreover, the Department has developed standard condition language for APODs which has been confirmed by the Idaho Supreme Court.

Ironically, despite all the heat generated in the IMAP, no one contested UWID's water rights in the SRBA. We would like to think that this is because UWID has worked hard to develop a measure of trust with folks who were Protestants in the IMAP. We believe that we now understand each other better. The atmosphere is less infected by fear of the unknown. We are hopeful that this will make completion of the IMAP an easier task.

- **What are the steps involved in quantifying RAFN?**

We would break the process down into the following steps:

Step One is to determine the overall size of UWID's existing portfolio. This was accomplished in the SRBA, at least for pre-1987 rights. Post-1987 rights are readily quantified because they are all permits and licenses.

Step Two is to determine the duration of UWID's planning horizon. We are seeking a 50-year planning horizon. We believe this is essential to effective long term planning. This is consistent with the conclusions reached in the TV CAMP.

Step Three is to establish a planning area. This is our best guess as to where UWID will be serving over the course of the planning horizon.

Step Four is to quantify reasonably RAFN based on anticipated needs within that planning area through the end of the planning horizon. This involves professional economic and demographic forecasting analysis. We have employed John Church to help in this. We did this before, during the first round of the IMAP. It is possible that we could just pick up where we left off, but our guess is that the Department will require this forecast to be updated based on more recent data.

Step Five is to compare the size of the current portfolio (Step One) with future needs (Step Four). This may require taking into account redundancies in the system, storage, etc. The expectation is that future needs will be greater than the current portfolio. If so, that would establish how much more water may be appropriated to serve future needs. It bears emphasis that this Step Five is a paper exercise; it simply determines the shortfall (if any) between a

provider's portfolio and the rights needed to meet long term demand. If the planning horizon were set so short that current demand and RAFN were less than the existing portfolio, we would have to grapple with what happens. We do not expect to have to cross that bridge.

Step Six is to establish conditions and issue a final order. This would include APOD conditions and, perhaps, conditions establishing periodic re-opening and re-evaluation of the RAFN quantification during the planning horizon. UWID does not oppose some reasonable re-opener, so long as it is fair and even-handed. For example, if a 50-year planning horizon is established, UWID might be required to take another look at its projections after, say, 20 years. At that point, the planning horizon would be pushed out 20 years, and UWID would forecast its needs for the next 50 years. That revised evaluation would then control any issue as to UWID's existing portfolio as well as future acquisitions. The key here is balance. The re-opener should protect other users from errors in the earlier forecast. On the other hand, UWID should not be subject to relinquishment of rights or loss of priority so long as its revised and extended forecast shows a need to retain the rights then in its portfolio.

At the conclusion of Step Six, the IMAP is done.

Step Seven is to actually acquire additional water to meet any shortfall. The key point is that the IMAP does not involve this sixth step. That would happen later, by way of a new appropriation or transfer application.

- **What remains to be done?**

To re-cap, the SRBA resolved forfeiture, confirmed the APOD principle and the APOD condition language, and quantified most of UWID's portfolio. Quantifying the rest (post-SRBA rights) is a trivial exercise.

The most contentious question facing us before was forfeiture. That is resolved. By comparison, what remains is relatively straightforward.

What remains is to determine how much water is needed to serve current demand and RAFN. This will involve establishing the duration of the planning horizon, determining the appropriate planning area, and then quantifying peak demand within the planning area at the end of the planning horizon. Once that is done, the only remaining step is to evaluate UWID's current portfolio vis-à-vis its long term needs.

- **Who remains a party to the IMAP?**

The following Protestants (and one Intervenor) have withdrawn:

City of Eagle: The City withdrew without condition on July 31, 2007, but requested to remain on the service list. UWID does not object to their being on the service list.

City of Kuna: The City withdrew without condition on October 19, 2011. For some reason, this document did not appear in IDWR's files, so UWID submitted it again on October 19, 2011.

The Terteling Company and T-7, LLC: Pursuant to a settlement agreement with UWID, Terteling withdrew its motion to intervene on October 20, 2004.

Estate of Eleanor I. Chase: Pursuant to a settlement agreement with UWID, the estate withdrew without condition on March 18, 2003.

The following Protestants remain parties without limitation:

NMID.

U.S. Bureau of Reclamation

City of Boise.

City of Middleton.

City of Star.

Star Sewer and Water District

Boise Project Board of Control, Wilder Irrigation District, Big Bend Irrigation District, and Boise-Kuna Irrigation District: They remain parties, but they have consolidated as one protest. (See Hearing Officer's memorandum of June 8, 2006.)

The following Protestants have pending settlements that remain in unresolved:

City of Meridian and City of Caldwell: The two cities entered into a joint conditional "Stipulation and Withdrawal of Protests" on November 24, 2003. The withdrawal was subject to approval of eight conditions by IDWR. The cities moved to refer the conditions to Director on December 18, 2003 (the same day as the stay order). No action has been taken, as noted in Peter Anderson's wrap up memo. In any event, several of the conditions have been overtaken by actions in the SRBA. Most notably, the APOD language is inconsistent with the language now in UWID's partial decrees. Accordingly, the conditions are no longer agreeable to UWID (and, presumably, to IDWR). Accordingly, the conditional stipulation is inoperative, and cities are free to continue as Protestants without limitations, if they choose to do so.

The following Protestants remain parties with limitations:

Settlers Irrigation District: On April 22, 2004, the Hearing Officer ruled: "Based on Settlers' answers at its I.R.C.P. 30(b)(6) deposition Settlers' participation in this matter will be restricted solely to making legal arguments and cross-examining the United Water witnesses to the same extent as allowed other protestants. Settlers may propose conditions or modifications to the IMAP based upon its legal arguments and based upon the case presented by United Water at hearing." Settlers filed a petition for reconsideration, which was never acted on due to the stay.

Pioneer Irrigation District: Pioneer is subject to the same restriction, but, unlike Settlers, it is not allowed to propose conditions. Pioneer filed a petition for reconsideration, which was never acted on due to the stay.

Others:

Ed Squires is listed on the service list, for some reason. But he is not a party.

- **What has changed since the first phase of the IMAP?**

Updated forecast. The RAFN projections provided earlier were based on year 2000 data. Obviously, we have data today that did not exist then. We need guidance from the Department as to how they would like us to proceed. An argument can be made that since the stay was imposed at the request of the Protestants and over the strong objection of UWID, the applicant should be allowed to pick up where it left off and not be required to revise its demand forecast. On the other hand, we can appreciate that it seems sensible to look at new data. If UWID is required to revise its forecast, the quid pro quo is that it be allowed to update its planning area and move its planning horizon forward.

Planning area. If a new forecast is called for, UWID will need to make appropriate adjustments in its planning area to reflect new certificated areas, agreements, annexations, developments, impact area changes, and other events that have occurred since the stay. We have brought with us today, for illustrative purposes, a map comparing the original “pink line” demarking the planning area in 2001 and what we anticipate using as the planning area today. We believe that this revised map should put to rest any concerns that UWID is seeking RAFN quantification to support delivery in areas that are not likely to be served by UWID.

Which rights? Since the stay order, UWID has acquired some additional water rights. At this time, our inclination is to limit the scope of the IMAP to those rights included in the IMAP at the time of the stay, and not to add new ones. Of course, it would be appropriate for IDWR to take into account UWID’s entire portfolio (including those rights not in the IMAP) for purposes of quantifying the gap between UWID’s existing portfolio and its long term needs. By not adding them to the IMAP, we simply mean that they would not be included in the transfer process. This would necessitate a “clean up” application afterwards to address the remaining rights. But, since RAFN would have been determined on a system-wide basis in the IMAP, that would be a simple exercise.

Which points of diversion? We would appreciate input from others and guidance from the Department as to whether it makes sense to expand the APOD list to include new PODs developed since the stay. If not, this, too, could be addressed in a post-IMAP clean up transfer.

- **Procedural issues**

First, we need to confirm the status of parties and what restrictions are applicable to them.

We should explore whether mediation or other informal approaches can resolve this matter without a hearing or at least narrow the issues. Are there other ways of avoiding litigation

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by surprise and ambush? UWID would prefer to see a less confrontational and more informal and collegial approach to what, after all, is supposed to be a planning process. For example, if the parties could agree on re-opener provisions and other conditions (Step Six above), they might not feel it was necessary to slog through the hearing on quantification.

We need to determine the scope of the proceeding and the evidence. Will it we take up with the record before, or will UWID revise its forecast, planning area, and planning horizon? Will we limit the water rights to those identified before? Will we add additional APODs?

We should explore a process for logical, incremental decision-making. For example, it makes little sense for UWID to hire experts to revise the demand forecast until there is agreement (or an order) fixing the planning horizon and the planning area. Does it make sense to tackle each of the steps described above in sequence? For example, it seems logical to determine quantify RAFN before comparing UWID's existing portfolio to its long term needs. Trying to do all these things at once in a single hearing may entail wasted effort.

We need to determine whether informal or formal discovery is required.

We should explore whether pre-filed testimony would streamline the process and provide for better decision-making.

EXHIBIT B
MEMORANDUM OF JULY 24, 2012
“NOTES FOR 7-24-2012 STATUS CONFERENCE”

MEMORANDUM

*Attorney-Client Communication
Attorney Work Product
Privileged and Confidential*

TO: Parties

FROM: Christopher H. Meyer *clu*

RE: Notes for 7-24-2012 status conference

DATE: July 24, 2012

I. PARTIES

Parties confirming their continued participation as protestants

- Boise Project Board of Control (Al Barker)
- City of Caldwell (Brent Orton, City Engineer)
- City of Meridian (Charlie Honsinger, Kyle Radek)
- City of Middleton (Bruce Smith)
- City of Star (Bruce Smith)
- Star Sewer and Water District (Bruce Smith)
- Nampa Meridian Irrigation District (Bryce Farris)
- Pioneer Irrigation District (Scott Campbell, Andy Waldera)
- Settlers Irrigation District (Bryce Farris)

Parties withdrawing, realigning, or confirming prior withdrawal

- Bureau of Reclamation (withdrew protest) (Kathleen Carr)

- City of Boise (Matt Wilde, Paul Woods, Catherine Chertudi) – Realigned as intervenor in support.
- City of Eagle (Bruce Smith) – Confirming prior withdrawal. The City has asserted that it has reserved a right to intervene.

Parties confirming their continued participation who are not currently parties

- City of Pocatello (Jo Beeman, Jane Newby) – Pocatello was never a party, unclear why notice was filed. Jo Beeman was listed on service list solely as counsel for City of Boise. She no longer serves in that position.
- City of Kuna (Richard Roats) – Previously withdrew protest.

Parties who have NOT filed any notice of continued participation:

- Big Bend Irrigation District (Al Barker)
- Wilder Irrigation District (Al Barker)
- Boise-Kuna Irrigation District (Robert Talboy)
- Estate of Eleanor Chase (formerly Matt Howard) – Previously withdrawn.
- The Terteling Company et al. (formerly Charlie Honsinger) – Previously withdrawn.
- Ed Squires – He was never a party. He had been listed on service list as a representative for one or more of the protestants.

II. LIMITED PARTY STATUS

Create a limited party status. Limited parties would be allowed to submit briefs and pleadings, but not to conduct discovery, put on evidence, or cross-examine witnesses. They would also be immune from discovery requests.

III. SCOPE OF PROCEEDING

The first order of business needs to be to identify the issues properly before the Department.

We believe that does NOT include injury, given UWID’s acceptance of the APOD condition.

The hearing should be limited to Planning Horizon and RAFN issues.

IV. DISCOVERY

Should be limited to Planning Horizon and RAFN issues.

V. EXPERT REPORTS

Require any party seeking to put an expert on the stand must file an Expert Report. Testimony will be limited to the report.

VI. SCHEDULING

When	Who	What
20 days	All parties and staff	Response to UWID's identification and identification of any additional issues
40 days	United Water	Reply re issues
80 days	Hearing Officer	Ruling on issues
3 months	All parties	Discovery commencement
3 months	United Water	File Expert Reports
4 months	All other parties and staff	File Expert Reports
4 months	All parties and staff	Identify experts
5 months	All parties	Close of discovery
5 ½ months	All parties	Motion deadline
5 ½ months	All parties	Exchange all remaining exhibits
6 ½ months	All parties	Pre-hearing conference
7 months	All parties	Hearing

CHM:js