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OCT 16 2012
DEPARTMENT OF WATER RESOURCES

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

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	**PIONEER IRRIGATION DISTRICT'S STATEMENT OF ISSUES RE UNITED WATER IDAHO'S IMAP APPLICATION**

I.
INTRODUCTION

Pioneer Irrigation District ("Pioneer") submits this Statement of Issues Regarding United Water Idaho, Inc.'s IMAP Application ("Statement") in response to the Idaho Department of Water Resources' ("Department") Order Affirming Party Status and Notice of Status Conference, dated August 8, 2012, and United Water Idaho, Inc.'s ("UWID") request that the protestants reduce their concerns to writing for consideration and response by UWID. This

Statement is largely based on UWID's Statement Updating and Explaining the IMAP Relaunch ("Relaunch"), dated August 14, 2012, and its prior Statement of Issues for the July 24 Status Conference, dated July 20, 2012.

As a preliminary note, Pioneer expresses its thanks and appreciation for the time and effort UWID expended in preparing its Relaunch document, and corresponding exhibits. The Relaunch document was a substantial undertaking, underscoring the complexity and size of the IMAP proceeding. Despite UWID's laudable efforts to breed transparency, Pioneer still harbors several concerns with the IMAP Application.

II.
PIONEER'S ISSUES OF CONCERN

A. The IMAP Proceeding Is A Transfer Proceeding Subject To Operation Of Idaho Code Section 42-222

One of the major goals of UWID's IMAP proceeding is the uniform designation of 81 alternative points of diversion ("APODs") across its portfolio of groundwater-based water rights. *See*, *e.g.*, Relaunch, pp. 14-28. In promoting its desired APOD framework, UWID contends that its willingness to accept the Department's proposed APOD condition language (or remark) "eliminates the injury issue," or at the least postpones any injury analysis until such time that administration of its water rights becomes necessary in the future. *See* Relaunch, pp. 28-33; *see also*, United Water's Statement of Issues for July 24 Status Conference, dated July 20, 2012, pp. 5-7.

Specifically, UWID asserts that:

> Because the applicant has agreed to the APOD condition, it is unnecessary 'to establish the highly complex facts that relate to the specific interrelationships or degree of connectivity between specific rights until such time as priority administration becomes necessary.' [ ] That may be addressed 'if and when that determination is necessary' in 'a determination more appropriately

> associated with delivery calls.' [ ] . . . Just as with claimants and objectors in the SRBA, it is not necessary for protestants to make their case of injury in this IMAP proceeding, and it is equally unnecessary for the applicant to disprove hypothetical future injury when all existing rights are protected by the APOD condition.

Relaunch, pp. 32-33.

The IMAP proceeding is not an SRBA proceeding, and it is not a delivery call-related proceeding either. Instead, the IMAP proceeding is an administrative transfer proceeding governed by the requirements of Idaho Code Section 42-222, corresponding administrative rules, and the Department's Transfer Memo No. 24, dated December 21, 2009.

In pertinent part, Idaho Code Section 42-222 provides:

> Upon receipt of such application [for transfer] ***it shall be the duty of the director of the department of water resources to examine the same . . . The director of the department of water resources shall examine all of the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby***, the change does not constitute an enlargement in use of the original right, the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-202B, Idaho Code, the change will not adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates. . . .

Id. (emphasis added). Consequently, the transfer process requires the Department to examine potential injury as a threshold matter. Moreover, the transfer process frontloads the injury analysis, it does not postpone the inquiry to some later date when administration of the subject water rights becomes necessary in a subsequent delivery call proceeding.

UWID is correct in stating that "it is not necessary for protestants to make their case of injury in this IMAP proceeding." Relaunch, p. 33. This is because UWID (as transfer applicant), not the protestants, bears the initial burden of coming forward with evidence

presenting a *prima facie* case on the evaluation criteria found in Idaho Code Section 42-222, ***and*** the ultimate burden of persuasion on those criteria as well. *Accord*, IDAPA 37.03.08.040.04 (Rule 40.04); *see also*, *Barron v. IDWR*, 135 Idaho 414, 420-21 (2001) (holding that it is the transfer applicant's burden to produce sufficient evidence regarding each of the statutory evaluation criteria).[1]

UWID's willingness to accept the Department's proposed APOD remark does not excuse it from satisfying its evidentiary burdens in this matter, including the threshold burden of affirmatively disproving injury to other water rights. To the extent UWID argues otherwise, Pioneer disagrees. UWID's attempts to postpone the applicable injury analysis to a later-in-time delivery call proceeding effectively, and impermissibly, shifts the evidentiary injury burden from UWID in the context of this transfer proceeding to a future claimant(s) in the context of a delivery call proceeding. Neither Idaho Code Section 42-222, nor applicable case law contemplate postponement of the injury analysis or any shifting of the transfer applicant's corresponding evidentiary burdens. Consequently, UWID's acceptance of the APOD condition language does not eliminate the injury issue as it contends.

In addition to the evaluation criteria contained in Idaho Code Section 42-222, the Department also evaluates transfer applications under the considerations and guidance outlined

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[1] This is particularly true with respect to the injury criterion. As noted by the Idaho Supreme Court in *Barron*, the Department is statutorily required to examine all available evidence and information when deciding whether to approve a proposed transfer despite the admitted "difficulty" for applicants to disprove injury. *Barron*, 135 Idaho at 420 ("Although the difficulty of showing the absence of injury has prompted criticism by some courts . . . our statute requires [the applicant] to present sufficient evidence to the Department so that the director can make an informed determination as to [the applicant's] transfer application. Accordingly, the question of whether the Department's decision was in derogation of statutory provisions can alternatively be stated as whether [the applicant] produced sufficient evidence to enable the director to approve his proposed transfer.").

in its Transfer Memo No. 24 ("Memo"), dated December 21, 2009. The Memo outlines the following considerations germane to the IMAP proceeding:

- An application for transfer seeking APODs "shall" include conditions of approval identifying the point(s) of diversion authorized under each right prior to the transfer. The purpose of the conditioning is to provide for future administration of the transferred water rights when increased municipal pumping is determined to cause injury through interference with other nearby wells. Memo § 5c.(3).

Presumably, UWID's acquiescence to the Department's proposed APOD remark satisfies this requirement. However, both the proposed APOD remark and this section of the Department's Memo are subject to additional limitations prescribed by Idaho Code Section 42-222, and the holdings of the Idaho Supreme Court in *City of Pocatello v. State of Idaho*, 152 Idaho 830 (2012) as discussed in Section II.B, below.

- An application for transfer seeking to change a point of diversion from one distinct aquifer to another is not approvable, just as an application for transfer proposing to change the point of diversion from one distinct surface water source to a totally separate surface water source is not approvable. Memo § 5c.(8).

Pioneer does not know whether the groundwater rights UWID proposes to amend via the IMAP transfer proceeding divert water from different discrete aquifers. It is entirely possible, however, given the geographical (and presumably depth-related) diversity of its many wells. To the extent UWID's APOD request creates multiple points of diversion across water rights possessing distinctly different groundwater sources (different aquifers or discrete aquifer levels), such a transfer is "not approvable."

- If not already contained in the Department's records, the applicant "must provide" additional information supporting the application, including: (a) the location of nearby wells; (b) the location of nearby springs; (c) groundwater data (including the depth to water, the stability of water levels, or the stability of confined aquifer pressures); and (d) water-bearing zone data (the depth and thickness of water-bearing zones,

including identification of the zone or zones sought for the proposed use). Memo § 5c. ("Additional Considerations").

Pioneer does not know whether the Department already possesses the above-referenced information in its files. To the extent it does not, UWID "must provide" the same to the Department in support of its IMAP Application.

- The diversion rate and annual diversion volume of any given well within UWID's well network "shall not be increased." Memo § 5d.(1); *see also*, IDAHO CODE § 42-222 (generally prohibiting enlargements), and *City of Pocatello*, 152 Idaho at 850-51 (also prohibiting enlargements in a municipal provider APOD context).

The meaning and application of the enlargement concept is more fully discussed in Section II.B, below.

- Applications seeking to change the historic nature or purpose of use of a water right, or a corresponding season of use, are limited to the historic extent of beneficial use/consumptive volume under the original water right pre-transfer. Memo §§ 5d.(5), (6), (12), and (13); *see also*, IDAHO CODE § 42-222 (generally prohibiting enlargements), and *City of Pocatello*, 152 Idaho at 850-51 (also prohibiting enlargements in a municipal provider APOD context).

The meaning and application of the enlargement concept is more fully discussed in Section II.B, below. However, Pioneer further notes it appears UWID is willing accept suitable conditions precluding enlargement with respect to those water rights it seeks to convert from irrigation to year-round municipal purposes, and with respect to those water rights where it seeks to omit preexisting volumetric limitations by adjusting the instantaneous diversion rate downward to match preexisting seasonal and/or volumetric limitations. *See*, *e.g.*, Relaunch, pp. 39-42. Nonetheless, the Department must actively guard against impermissible enlargement in this proceeding.

Pioneer acknowledges UWID's "fishing expedition" concerns. *See*, *e.g.*, United Water's Statement of Issues for the July 24 Status Conference, p. 14. However, the legal

framework and evidentiary burdens provided under Idaho Code Section 42-222 exist for a reason, and Pioneer strongly disagrees that enlargement and injury are "inconsequential to the IMAP" or "off the table" as UWID contends. *Id.*, pp. 7 and 14, respectively.

B. While Available, APODs Provide Only Limited Flexibility

As described in its Relaunch document, UWID operates an interconnected "system of wells" through which it "uses its best and most efficient wells . . . to meet the base demand of the system." Relaunch, p. 29. Then, "[a]s demand surges at different locations within the system, additional wells are electronically activated [to meet those demand surges]." *Id.* The additional wells activated to meet surging demand are selected based upon well quality and the geographic location of the additional wells in relation to the demand surge area. *Id.* Consequently, UWID seeks its many APODs "to move [separate water right quantities] around to the most efficient well." *Id.*

Based upon the foregoing, it is Pioneer's understanding that UWID's integrated well network system maximizes the pumping of some wells while minimizing the pumping of others. This operational regime seemingly results in: (1) the pumping of some wells in excess of the quantity (or volume) of water historically (originally) developed and authorized for the wells; (2) the pumping of some wells at or near historical development quantities; and (3) the pumping of some wells at quantities below that historically developed and authorized when the point of diversion was first perfected.

According to UWID, its desired APOD system under the IMAP Application will not result in a net increase of water diversion across its system as a whole. This may be, provided UWID can prove this to the Department's satisfaction. However, it further appears to Pioneer that UWID's desired APOD system ***will result*** in increased water diversions beyond

previously authorized quantities in at least some portions (within some wells) of UWID's system. UWID's Relaunch document seemingly supports Pioneer's understanding: UWID "uses its best and most efficient wells" (*i.e.*, it "move[s] [separate water right quantities] around to the most efficient well."). To the extent Pioneer's understanding of the interconnection and operation of UWID's well network is correct, that system operation constitutes an impermissible enlargement in derogation of Idaho Code Section 42-222, and the Idaho Supreme Court's holdings in *City of Pocatello*.

Pioneer does not challenge the legality of APODs. Clearly, the Idaho Supreme Court validated the creation and use of APODs in the municipal provider context. *See, e.g.*, *City of Pocatello v. State of Idaho*, 152 Idaho 830 (2012). However, the Court severely restricted the practical utility of APODs by precluding their use to: (1) better the priority date of any given well through the diversion of more senior priority water from any interconnected well location; or (2) increase the quantity (or volume) of water that can be diverted from any given well beyond the quantity of the original (underlying) water right giving rise to the well historically. *Id.* at 850.

At issue in *City of Pocatello* was Pocatello's use and operation of a municipal water distribution system incorporating the coordinated and interconnected pumping of 22 different wells. The coordinated pumping of the wells allowed the full reach of the city's entire distribution system to be the place of use for each well. *City of Pocatello*, 152 Idaho at 850. While the coordinated system (network of interconnected wells) created the same permissible place of use for each of the wells, the Court correctly noted ***and*** expressly admonished:

> When each well began diverting water, it had an associated water right with a specific priority date and a specific quantity of water that could be pumped from the well. Idaho Code section 42-1425 ***does not permit Pocatello to change the priority date of the water***

> ***right associated with any well <u>or</u> the quantity of water that can be pumped from the well.***

Id. (emphasis added). Thus, the Court expressly forbade Pocatello's attempts to use APODs in a manner by which additional water rights could be pumped from any single well in excess of the quantity of water originally authorized for diversion from the well when it was first developed. Because the quantity of water available for diversion from any given APOD can be no more than the quantity diverted when use of the well was first perfected under its original water right, there is seemingly very little flexibility for UWID to gain through the APOD portion of the IMAP proceeding.[2] *Id.*

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[2] To the extent UWID's Relaunch document contends the Idaho Supreme Court affirmed the ability to use APODs to stack water rights upon any preferred points of diversion (wells), and pump them in quantities exceeding that originally authorized, Pioneer disagrees.

Page 31 of UWID's Relaunch document contains a block quote from the *City of Pocatello* opinion that UWID contends was the Idaho Supreme Court's affirmation and further "explanation" of the APOD injury concept stated by the SRBA Court. Though the block-quoted material is properly attributed to the SRBA Court, there is no indication that the Idaho Supreme Court adopted the decision and rationale of the SRBA Court expressly as its own. Instead, the quotation is found in the Idaho Supreme Court's rendition of the history of the issue presented to it on appeal. After summarizing the positions of the Department and the SRBA Court, the Idaho Supreme Court then continued by summarizing the City of Pocatello's arguments on the matter. Only after providing this history of the issue, and the appellate posture of Pocatello's arguments regarding the same, did the Court proceed with its own analysis and decision beginning immediately after the sentence: "Pocatello is wrong on both counts." *Id.* at 849-50.

Consequently, what the Court "explained" through the block quote and immediately thereafter was: (1) both IDWR and the SRBA Court contended and decided that an APOD remark was necessary to allow future administration; and (2) Pocatello disagreed for the reasons argued on appeal; nothing more. The Idaho Supreme Court did not quote the Department or the SRBA Court to hold that the APOD remark allowed the stacking of water rights and the preferred pumping of select wells as UWID proposes. If it had, the Court would not have reached its ***later and opposite conclusion*** that accomplished transfers under Idaho Code Section 42-1425 "[do] not permit Pocatello to change the priority date of the water right associated with any well ***or the quantity of water that can be pumped from the well.***" *City of Pocatello*, 152 Idaho at 850 (emphasis added).

The Idaho Supreme Court's quantity-based admonition in *City of Pocatello* is not a revolutionary concept. This is because transfers, whether applied for under Idaho Code Section 42-222 or accomplished in a general stream adjudication under Idaho Code Section 42-1425, do not permit the "transfer" of the quantity element of a water right. Instead, one can only transfer a point of diversion, place of use, period of use, or nature of use. *Compare* IDAHO CODE § 42-222 and IDAHO CODE § 42-1425. Likewise, transfers whether applied for or accomplished cannot result in an enlargement (which includes the pumping and use of more water from any discrete point of diversion (in this case any APOD well) than was historically diverted and developed under the water right giving rise to the well in the first place).

UWID's APOD system involves more than the simple movement of a water right to a new, lone point of diversion. The APOD system UWID envisions would allow it to stack water rights upon its choice of wells and pump those "best" wells in quantities not authorized, let alone contemplated, when the wells were first developed. This regime violates the well-by-well "specific quantity of water that could be pumped" APOD restriction imposed by the Court in *City of Pocatello*.[3]

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[3] Pioneer further notes that Section 5c.(3) of the Department's 2009 Memo appears at odds with the Idaho Supreme Court's decision as well. The Memo prescribes specific conditioning of APOD-based transfer applications in a manner that provides for future administration "in situations where ***increased municipal pumping over time*** is determined to cause injury through interference with other nearby wells." *Id.* (emphasis added). This section of the Memo suggests the Department supports the ability of a municipal provider to employ APODs to "increase municipal pumping over time" at discrete locations (wells) within their systems. This is contrary to the Court's subsequent (2012) instruction that APODs cannot be used to "change the priority date of the water right associated with any well ***or*** the quantity of water that can be pumped from the well." *City of Pocatello*, 152 Idaho at 850 (emphasis added).

C. Reasonably Anticipated Future Needs Issues

In addition to the APOD designation purpose of the IMAP Application, UWID also seeks to bring its water rights under the forfeiture protections afforded by the Municipal Water Rights Act of 1996—namely the Act's "reasonably anticipated future needs" ("RAFN") planning horizon provisions. *See, e.g.*, United Water's Statement of Issues for July 24 Status Conference, dated July 20, 2012, p. 4; and Relaunch, p. 6. Specifically, UWID seeks a 50-year planning horizon through the IMAP proceeding. *Id.*, pp. 4; 7-11; *see also*, Relaunch, p. 53.

Should UWID successfully convince the Department that a 50-year planning horizon is appropriate, that planning horizon would shield UWID's municipal water right portfolio (at least those water rights included in the IMAP Application) from forfeiture during that 50-year time period under Idaho Code Section 42-223(2) (providing that water rights held by municipal providers to meet RAFN constitutes beneficial use of the water held during the corresponding planning horizon period). It is the Department's task to determine the reasonableness (*i.e.*, approve) the length of the planning horizon requested. IDAHO CODE § 42-202B(7).

RAFN are the future uses of water by a municipal provider that are reasonably expected to be required within an appropriate planning horizon. IDAHO CODE § 42-202B(8). As UWID correctly notes, RAFN analyses are long-range planning forecasts based upon population and other planning data involving the delineation and approval of UWID's proposed planning area. *Id.* UWID's planning area (forecasted service area) must be consistent with the comprehensive land use plans approved by each municipality lying within the planning area. *Id.*

Pioneer has concerns with both UWID's requested 50-year planning horizon, and its 2012-proposed Planning Area Boundary (depicted in Relaunch Exhibit F, and as described at

Relaunch, pp. 47-51). Nearly 10 years have passed since the entry of stay in this matter, and a lot has changed over that time period.

Pioneer's RAFN-related concerns include:

- The currency of UWID's RAFN support data. UWID first filed its IMAP Application in 2001. The Application was later amended in 2003. The RAFN analysis in this 2012/2013 proceeding cannot be based upon stale data that is approximately a decade old. The occurrence of the "Great Recession" (spanning from late 2007 through mid 2009) alone demands the wholesale review and revision of population and economic projection data pre-dating the same. UWID was not immune from the Great Recession's demographic and economic upheaval. For example, on February 27, 2009, UWID filed a Request for Extension of Time in which to develop Permit No. 63-31409 (copy of request attached hereto). UWID filed the Request for Extension of Time because: "Anticipated growth in the southeast Boise area has slowed. Installation of additional plant capacity has not been required."

- The need to carefully review UWID's 2012-proposed Planning Area Boundary. As UWID acknowledges, much of the growth of its service area is expected to take place south of Boise and to the east of Kuna. Extension of UWID's 2012-proposed Planning Area Boundary in this area, particularly in the vicinity and south of Kuna-Mora Road is questionable. Ada County's current Comprehensive Plan (November 2007) projects this area to remain "Rural" on its "Future Land Use" map (Figure 5.2) (copy attached). Consequently, Ada County projects somewhere between 100 and 400 new households to develop south of Kuna-Mora Road between 2005 and 2030. *See* Ada County Comprehensive Plan, Figure 2.1 (copy attached).

  In addition to the questionable growth projections south of Boise and east of Kuna (*i.e.*, relatively little growth projected south of Kuna-Mora Road), there are substantial pockets of land within UWID's 2012-proposed Planning Area Boundary that are currently in public ownership (owned by either the state of Idaho or the United States). *See* Ada County Comprehensive Plan, Figure 5.1 (copy attached). The same is true in the foothills areas skirting (both within and outside) Boise City's existing Area of Impact. *Id.* Thus, not only is growth projected to be slow in several of these areas, but large tracts of land are publicly owned and not subject to the private development that would drive UWID's future provision of water.

- The need to review UWID's entire water rights portfolio, not just those rights included in the IMAP Application. As discussed above, the primary

protection afforded by RAFN status is protection from the typical 5-year forfeiture period for the duration of the approved planning horizon under Idaho Code Section 42-223. Whether existing or subsequent future water rights are necessary to serve RAFN requires taking an inventory of what UWID already possesses. If UWID's current water right portfolio contains more water than is necessary to satisfy projected needs at the end of its approved planning horizon, then: (1) the entirety of UWID's water right portfolio should not be afforded RAFN status (excess portions should instead be subject to the typical 5-year forfeiture period provided under Idaho Code Section 42-222); and (2) the Department should reject future UWID water right applications.

To its credit, UWID recognizes the need for the Department to review its entire water rights portfolio for RAFN analysis purposes, not just those rights included within its IMAP Application. *See*, *e.g.*, Relanuch, pp. 10-11; 43-47. Nonetheless, the Department must carefully and independently inventory UWID's water right portfolio for purposes of the IMAP RAFN analysis.

- The need for appropriate planning horizon reopeners to revisit and review the continuing viability and propriety of whatever reasonable planning horizon the Department ultimately approves, if any. The last five years demonstrated that economic and demographic conditions can change dramatically and rapidly. RAFN allows municipal providers to essentially hoard water contrary to Idaho law's general prohibitions against speculation and delay. *See*, *e.g.*, IDAHO CODE § 42-203A(5). Idaho Code Section 42-222(2) sets a 5-year clock on forfeiture for non-RAFN water rights. Pioneer suggests the Department condition any IMAP approval upon periodic 5-year status reviews (reopeners) for purposes of reviewing the planning horizon granted. Periodic reopeners are particularly appropriate where UWID seeks to hold significant quantities water, and shield the same from forfeiture and appropriation by others, for up to 50 years.

  Again, UWID appears amenable to what it considers "appropriate reopener condition language" as part of any approval of its IMAP Application. *See*, *e.g.*, United Water's Statement of Issues for the July 24 Status Conference, dated July 20, 2012, pp. 10-12. Pioneer likewise agrees that any approval of the IMAP Application, particularly one with a 50-year planning horizon, requires appropriate reopener condition language. However, appropriate and adequate condition language remains to be determined.

D. Additional Miscellaneous Concerns, Questions, and Observations

In addition to the foregoing concerns Pioneer has regarding UWID's IMAP Application, Pioneer also notes the following additional concerns and questions:

- Though not entirely clear from UWID's Relaunch document, Pioneer is concerned that UWID has already informally transferred the point of diversion for Water Right No. 63-10386. The SRBA Court decreed the water right a point of diversion located in the SENE of T03N, R02E, Sec. 14, Lot 7. However, UWID points out in its Relaunch document that the water right's point of diversion (the Marden Well) is no longer in use. Relaunch, p. 21. According to UWID, the Marden Well was once a requested APOD in 2001, but that it was stricken from the APOD list in 2003. *Id.* Pioneer assumes the Marden Well was stricken from the APOD list in 2003 because the well was no longer in use at that time. This begs the questions of: (1) where; and (2) under what authority has UWID been diverting water right 63-10386 if, as Pioneer assumes, the Marden Well was abandoned in 2003? The water right was claimed and decreed in the SRBA with a discrete point of diversion, and UWID is careful to note that the water right remains in its active water right portfolio. The implication is that UWID continues to divert the water right to date, but from what well (or wells)? It may be that the Marden Well was abandoned only recently, but UWID's Relaunch document suggests otherwise.

- UWID references the *res judicata* effect of its SRBA Court partial decrees with respect to forfeiture on various occasions. *See, e.g.*, Relaunch, p. 53; and United Water's Statement of Issues for the July 24 Status Conference, dated July 20, 2012, p. 4. While those water rights ultimately decreed by the SRBA Court survived any forfeiture challenges raised during the SRBA process, UWID's partially decreed water rights are still subject to forfeiture if they go unused for a continuous 5-year period post partial decree issuance. *See*, IDAHO CODE § 42-222(2); and *Memorandum Decision and Order on Challenge; and Order of Partial Decree* (*Wood v. Troutt*), Subcase 65-05663B (2002), p. 21 ("In Idaho a decreed water right is not insulated from forfeiture, however, it has long been established that once the decree is issued the statutory time period for non-use begins to run anew."). To the extent UWID contends its partially decreed water rights are immune from forfeiture, it does so in error. Review of UWID's water right portfolio for partial decree issuance dates is appropriate to determine whether any yet-to-be RAFN-protected water rights have been forfeited for lack of use after issuance of the applicable partial decree(s).

- The Department must appropriately condition any IMAP approval to effectively monitor UWID's operations. Unfettered APODs (stacking

water rights on UWID's best producing wells assuming *arguendo* the *City of Pocatello* decision permits as much) would allow UWID to mine local groundwater and replicate the problem elsewhere within its system should future administration curtail the activity at certain locations. Essentially, if future administration precludes UWID from stacking water rights on any particular well due to local injury, UWID would be allowed to pick up and move its diversions to its next best producing well(s). This could create an injury problem for other local water users elsewhere within UWID's system on a rotating basis.

The APOD system inherently creates a moving target that will be exceedingly difficult to track. Consequently, it is the Department's duty to condition any IMAP approval in a manner that precludes injury, and allows the Department to effectively track and monitor UWID water usage across its system. Thus, Pioneer suggests a requirement that UWID provide volume totalized water use data to the Department on an annual basis across the entirety of its water rights portfolio. The purpose of the data collection and reporting requirement is two-fold: (1) the data will allow the Department to determine whether UWID is operating within the quantity bounds of its water rights portfolio; and (2) the data will assist the Department in regularly reviewing the continuing viability and appropriateness of any long-term planning horizon approved as part of the IMAP proceeding (*i.e.*, if UWID consistently uses substantially less water than its portfolio affords year after year, then it is likely that UWID's RAFN should be adjusted downward to account for decreased use).

III.
RESERVATION OF RIGHTS

While UWID has taken a number of steps and filed many documents explaining and supporting the IMAP Application from its perspective, others have, arguably, been slow to respond in-kind. Therefore, Pioneer submits this document as a good faith (albeit preliminary) attempt to submit its concerns to UWID in writing as it has requested. However, this Statement of Issues is preliminary only.

UWID's IMAP Application involves over 100 different water rights and involves the evaluation of its entire water rights portfolio. UWID's 124-page Relaunch document demonstrates the complexity of this proceeding. Consequently, Pioneer reserves the right to

raise additional issues, and to further amend or refine those contained herein, during the course of this proceeding as it deems necessary.

IV.
CONCLUSION

Pioneer again thanks UWID for its efforts in presenting and explaining the current status and purposes of its IMAP Application. However, despite UWID's efforts, Pioneer still has various concerns and questions. Some questions can likely be answered with additional information. Other issues likely can only be resolved by the Department due to the parties' differing interpretations of applicable law. Regardless, UWID's IMAP Application will require careful and detailed evaluation by both the Department and the parties alike.

DATED this 15th day of October, 2012.

MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED

By _____
Andrew J. Waldera – Of the Firm
Attorneys for Pioneer Irrigation District

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of October, 2012, I caused a true and correct copy of the foregoing **PIONEER IRRIGATION DISTRICT'S STATEMENT OF ISSUES RE UNITED WATER IDAHO'S IMAP APPLICATION** to be served by the method indicated below, and addressed to the following:

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Bruce M. Smith MOORE SMITH BUXTON & TURCKE, CHTD. 950 W. Bannock, Suite 520 Boise, ID 83702 bms@msbtlaw.com	(X) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile
Ed Squires HYDROLOGIC, INC. 1002 W. Franklin Boise, ID 83702-5431 ed@hydrologicinc.net	(X) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile
Matthew K. Wilde CITY OF BOISE 150 N. Capitol Blvd. P.O. Box 500 Boise, ID 83701-0500 mwilde@cityofboise.org	(X) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile
Courtesy Copy John Westra Manager Western Region Office IDAHO DEPARTMENT OF WATER RESOURCES 2735 Airport Way Boise, ID 83705-5082 john.westra@idwr.idaho.gov	(X) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile
Courtesy Copy Garrick L. Baxter ATTORNEY GENERAL STATE OF IDAHO 322 E. Front Street, 6th Floor P.O. Box 83720 Boise, ID 83720-0098 garrick.baxter@idwr.idaho.gov	(X) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile

Courtesy Copy
Jeff Peppersack
Water Allocation Bureau Chief
IDAHO DEPARTMENT OF WATER RESOURCES
322 E. Front Street
P.O. Box 83720
Boise, ID 83720-0098
jeff.peppersack@idwr.idaho.gov

(X) U.S. Mail, Postage Prepaid
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Andrew J. Waldera

Form No. 204
7/94 (Internet)

RECEIVED
FEB 27 2009
DEPARTMENT OF WATER RESOURCES

For Office Use Only
$50 Fee Receipted by SRA
Date 2-27-2009
Receipt No. C088100

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

REQUEST FOR EXTENSION OF TIME

TO PROVIDE ADDITIONAL TIME IN WHICH TO SUBMIT PROOF OF BENEFICIAL USE FOR A WATER RIGHT PERMIT

The Idaho Department of Water Resources will consider this form as a request that the permit holder(s) be granted an additional period of time under the provisions of Section 42-204, Idaho Code in which to complete development of a water right.

Permit No. 63-31409

Name(s) of Permit Holder: United Water Idaho Inc.

Mailing Address: 8248 W. Victory Boulevard; Boise, ID 83709

Date Proof is Due: March 1, 2009 Telephone No. (208) 362-7300

Describe what work has been completed toward the development of this water right:
(This must be filled out! If no work has been completed, show "none".)

The point of diversion for permit 63-31409 is United Water's surface water intake and pumping station on the Boise River, which was constructed a number of years ago. The river intake has a capacity of approximately 24 cfs. The plant came on line in 2005 with a capacity of 9.3 cfs. The plant is constructed to easily accommodate additional filtration capacity in excess of 20 cfs when demand increases. Costing $ 30,000,000

The permit holder(s) has been unable to complete the remainder of the work for the following reasons:

Anticipated growth in the southeast Boise area has slowed. Installation of additional plant capacity has not been required.

Permit holder(s) request an extension to March 1, 2014, _____.

FEE: $50.00

Roger E Fitt (Hydrogeologist for United Water)
(Signature)*
*If other than permit holder, Power of Attorney must be supplied.

ACTION OF THE DEPARTMENT OF WATER RESOURCES

IT IS HEREBY ORDERED that the above request for extension of time be APPROVED and the time within which to submit proof of beneficial use is extended to March 1, 2014.

Signed this 25th day of March, 2009.

JEFF PEPPERSACK, Chief
Water Allocation Bureau

FIGURE 5.2

FUTURE LAND USE

ADA COUNTY, IDAHO

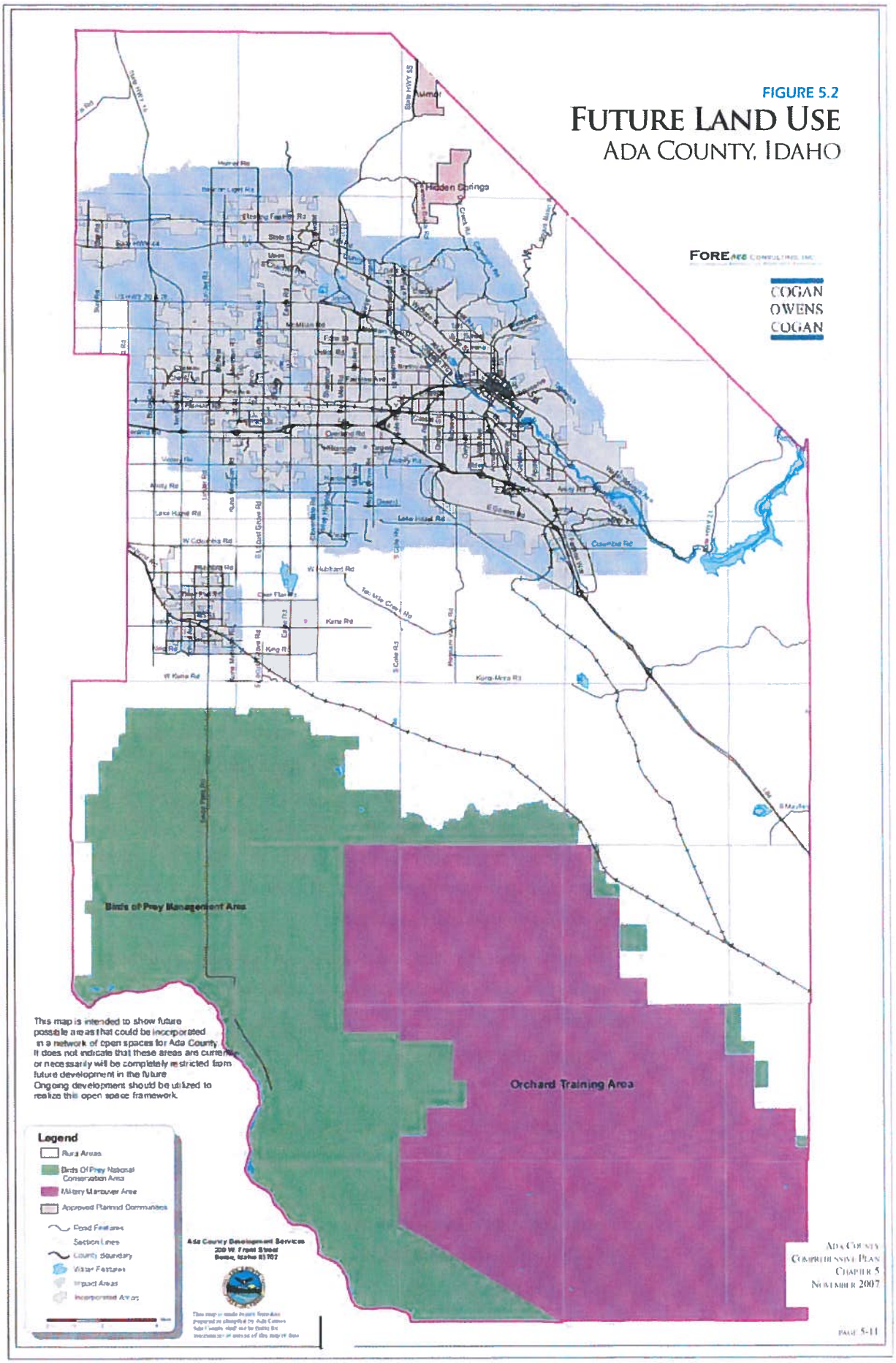
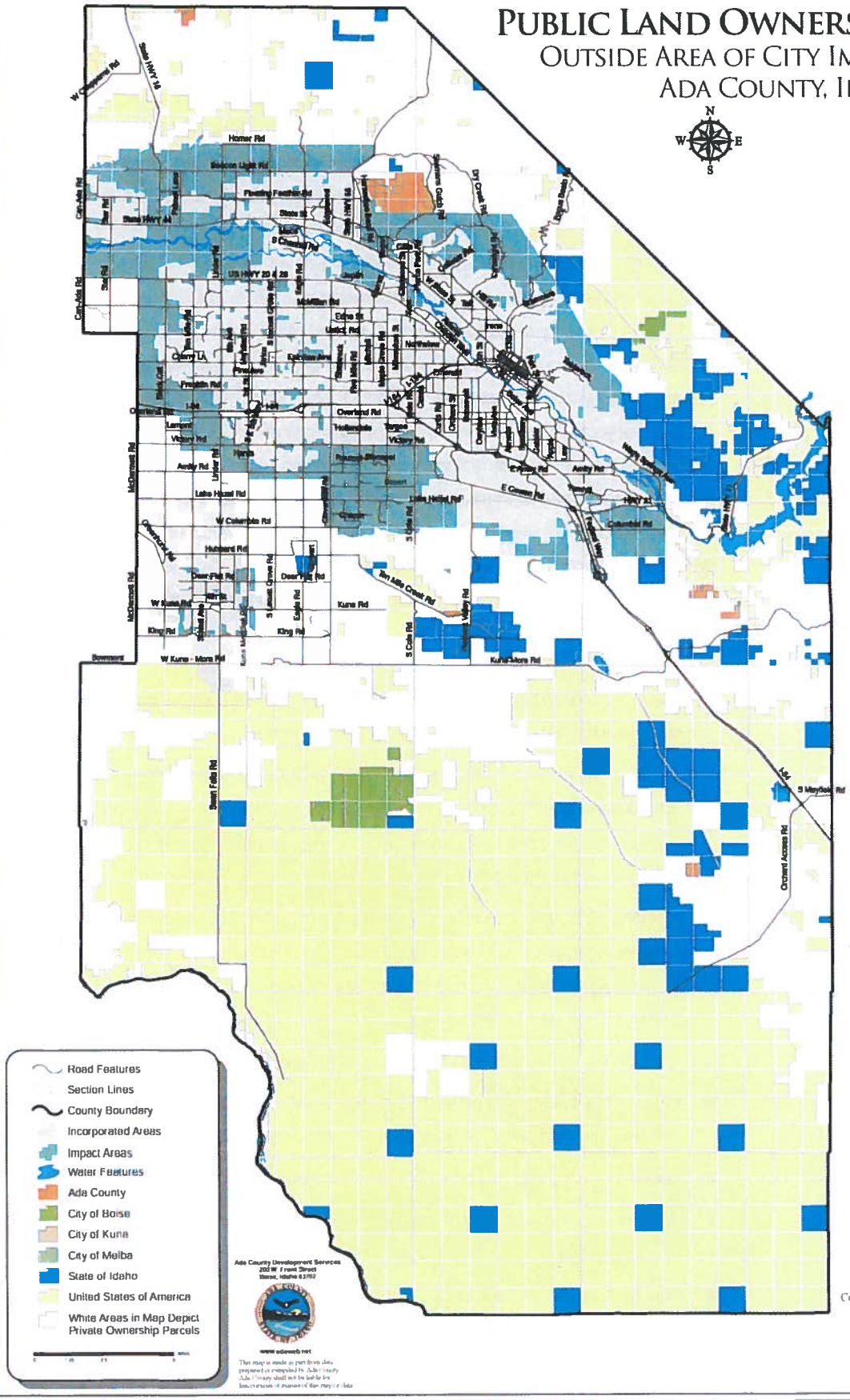


FIGURE 2.1

TREND 2005-2030 HOUSEHOLD GROWTH

ADA COUNTY, IDAHO

FIGURE 5.1

PUBLIC LAND OWNERSHIP

OUTSIDE AREA OF CITY IMPACT
ADA COUNTY, IDAHO