

BRUCE M. SMITH, ISB #3425  
MOORE SMITH BUXTON & TURCKE, CHTD.  
Attorneys at Law  
950 W. Bannock Street, Suite 520  
Boise, ID 83702-5716  
Telephone: (208) 331-1800  
Facsimile: (208) 331-1202

Attorney for City of Eagle

**BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO**

IN THE MATTER OF	)	
INTEGRATED MUNICIPAL	)	
APPLICATION PACKAGE	)	
("IMAP") OF UNITED WATER	)	CITY OF EAGLE'S RESPONSE TO
IDAHO, INC. BEING A	)	UNITED WATER'S OBJECTION AND
COLLECTION OF INDIVIDUAL	)	MOTION TO STRIKE THE CITY OF
APPLICATIONS FOR	)	EAGLE'S INITIAL STATEMENT
TRANSFERS OF WATER RIGHTS	)	
AND APPLICATIONS FOR	)	
AMENDMENT OF PERMITS.	)	
	)	

COMES NOW, the City of Eagle, by and through its counsel of record, Moore Smith Buxton & Turcke, Chtd., and responds to United Water's Objection and Motion to Strike.

The Director's order issued June 6, 2012, lifted the stay on United Water's ("UW") IMAP submission which was filed in 2001. Because of the extended period between the filing and the lifting of the stay, the participating entities were requested to give notice of their continued participation in the IMAP proceeding. Pursuant to the Director's Order, the City of Eagle provided notice as requested. UW did not object and the City of Eagle has continued to participate in the IMAP proceeding to date. The City has attended all conferences, offered

comments, suggestions, and raised questions at the conferences consistent with its notice. Neither UW nor any other party has objected to the City's participation. UW further has consulted with and sought the City's participation and discussion on matters outside the formal conferences.

The City of Eagle has not objected to or protested any representations or comments by UW. Instead the City has offered what it considered helpful comments in response to the parties' and the Director's questions or suggestions. UW has thus waived any objections at this late date to the City of Eagle's participation.

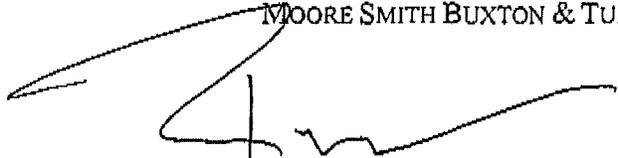
The timing of UW's objection is interesting. The City of Eagle has attempted to communicate with UW and other parties as appropriate to address the novel issues and procedural questions raised by UW's filings and request to lift the stay. It would appear that so long as the City of Eagle agreed to follow whatever proposal or procedure sought by UW, the City's participation was not objectionable. However, if the City does not support UW's position, suddenly UW finds fault with the City's participation. UW is not a municipality. Its interests are not necessarily the same as municipalities. Consistent with its Notice of Continued Participation, the City will make comments as this matter develops.

The City has not sought to participate as a party. However, the City's Notice of Continued Participation was clear. IDAPA Rule 37.01.01.355 provides for comments by public witnesses, and UW is certainly free to object. UW is not entitled to stifle or silence appropriate comments simply because they do not just follow UW's lead or changing positions. This matter is at a sensitive stage given the dated filings, the long stay, the changing positions of UW, and the uncertainties created by a procedure which all participants, including the applicant, parties, participants, agency staff, or the Director, are attempting in good faith to address. The City will

continue in good faith as well to offer suggestions or comments. If the Hearing Officer elects to consider or ignore the comments, that is within his discretion. However, simply attempting to stifle comment is not appropriate.

Respectfully submitted this 28<sup>th</sup> day of November, 2012.

MOORE SMITH BUXTON & TURCKE, CHTD.



---

BRUCE M. SMITH  
Attorney for City of Eagle

**CERTIFICATE OF SERVICE**

I hereby certify that on this 28<sup>th</sup> day of November, 2012, a true and correct copy of the foregoing document was served upon the following by the method indicated below:

**DOCUMENT FILED:**

Idaho Department of Water Resources	<input checked="" type="checkbox"/>	U.S. Mail
322 E. Front Street	<input type="checkbox"/>	Hand Delivery
P.O. Box 83720	<input checked="" type="checkbox"/>	Facsimile
Boise, ID 83720-0098	<input type="checkbox"/>	Email

**COURTESY COPIES TO:**

Gary Spackman	<input checked="" type="checkbox"/>	U.S. Mail
Director	<input type="checkbox"/>	Hand Delivery
Idaho Department of Water Resources	<input type="checkbox"/>	Facsimile
322 E. Front Street	<input type="checkbox"/>	Email
P.O. Box 83720		
Boise, ID 83720-0098		
<a href="mailto:Gary.spackman@idwr.idaho.gov">Gary.spackman@idwr.idaho.gov</a>		

John Westra	<input checked="" type="checkbox"/>	U.S. Mail
Manager	<input type="checkbox"/>	Hand Delivery
Western Regional Office	<input type="checkbox"/>	Facsimile
Idaho Department of Water Resources	<input type="checkbox"/>	Email
2735 Airport Way		
Boise, ID 83705-5082		
<a href="mailto:John.westra@idwr.idaho.gov">John.westra@idwr.idaho.gov</a>		

Garrick L. Baxter	<input checked="" type="checkbox"/>	U.S. Mail
John Homan	<input type="checkbox"/>	Hand Delivery
Deputy Attorney General	<input type="checkbox"/>	Facsimile
Idaho Department of Water Resources	<input type="checkbox"/>	Email
PO Box 83720		
Boise, ID 83720-0098		
<a href="mailto:Garrick.baxter@idwr.idaho.gov">Garrick.baxter@idwr.idaho.gov</a>		
<a href="mailto:John.homan@idwr.idaho.gov">John.homan@idwr.idaho.gov</a>		

Clive Strong	<input checked="" type="checkbox"/>	U.S. Mail
Natural Resources Division	<input type="checkbox"/>	Hand Delivery
Office of the Attorney General	<input type="checkbox"/>	Facsimile
PO Box 83720-0010	<input type="checkbox"/>	Email
<a href="mailto:Clive.strong@ag.idaho.gov">Clive.strong@ag.idaho.gov</a>		

Thomas H. Barry  
 Public Works Director  
 City of Meridian Public Works Department  
 33 E. Broadway Avenue, Suite 200  
 Meridian, ID 83642  
[tbarry@meridiancity.org](mailto:tbarry@meridiancity.org)

U.S. Mail  
 Hand Delivery  
 Facsimile  
 Email

Kyle Radek  
 Assistant City Engineer, Engineering  
 Division  
 City of Meridian Public Works Department  
 33 E. Broadway Avenue, Suite 200  
 Meridian, ID 83642  
[kradek@meridiancity.org](mailto:kradek@meridiancity.org)

U.S. Mail  
 Hand Delivery  
 Facsimile  
 Email

Scott Campbell  
 Andrew Waldera  
 Moffatt Thomas Barrett Rock & Fields, Chtd.  
 PO Box 839  
 Boise, ID 83701-0829  
[slc@moffatt.com](mailto:slc@moffatt.com)  
[ajw@moffatt.com](mailto:ajw@moffatt.com)

U.S. Mail  
 Hand Delivery  
 Facsimile  
 Email

S. Bryce Farris  
 Ringert Law, Chtd.  
 PO Box 2773  
 Boise, ID 83701-2773  
[bryce@ringerlaw.com](mailto:bryce@ringerlaw.com)

U.S. Mail  
 Hand Delivery  
 Facsimile  
 Email

Charles Honsinger  
 Honsinger Law, PLLC  
 PO Box 517  
 Boise, ID 83701  
[honsingerlaw@gmail.com](mailto:honsingerlaw@gmail.com)

U.S. Mail  
 Hand Delivery  
 Facsimile  
 Email

Brent Orton  
 Public Works Director, City Engineer  
 City of Caldwell  
 621 E. Cleveland Blvd.  
 Caldwell, ID 83605  
[borton@ci.caldwell.id.us](mailto:borton@ci.caldwell.id.us)

U.S. Mail  
 Hand Delivery  
 Facsimile  
 Email

Josephine Beeman  
 Jane Newby  
 Beeman & Associates  
 409 W. Jefferson  
 Boise, ID 83702  
[Jo.beeman@beemanlaw.com](mailto:Jo.beeman@beemanlaw.com)  
[Jane.newby@beemanlaw.com](mailto:Jane.newby@beemanlaw.com)

U.S. Mail  
 Hand Delivery  
 Facsimile  
 Email

Kathleen Carr  
 Office of Field Solicitor  
 US Department of Interior  
 960 W. Broadway Avenue, Suite 400  
 Boise, ID 83706  
[Kathleenmarion.carr@sol.doi.gov](mailto:Kathleenmarion.carr@sol.doi.gov)

U.S. Mail  
 Hand Delivery  
 Facsimile  
 Email

Gail McGarry  
 Matt Howard  
 U.S. Bureau of Reclamation  
 Pacific Northwest Regional Office  
 1150 N. Curtis  
 Boise, ID 83706-1234  
[emcgarry@pn.usbr.gov](mailto:emcgarry@pn.usbr.gov)  
[mhoward@pn.usbr.gov](mailto:mhoward@pn.usbr.gov)

U.S. Mail  
 Hand Delivery  
 Facsimile  
 Email

**SERVICE COPIES TO:**

Christopher Meyer  
 Michael Lawrence  
 Givens Pursley, LLP  
 PO Box 2720  
 Boise, ID 83701-2720  
[chrismeyer@givenspursely.com](mailto:chrismeyer@givenspursely.com)

U.S. Mail  
 Hand Delivery  
 Facsimile  
 Email

Albert P. Barker  
 Shelley Davis  
 Barker Rosholt & Simpson, LLP  
 PO Box 2139  
 Boise, Idaho 83701-2139  
[apb@idahowaters.com](mailto:apb@idahowaters.com)  
[smd@idahowaters.com](mailto:smd@idahowaters.com)

U.S. Mail  
 Hand Delivery  
 Facsimile  
 Email

Ed Squires  
Hydro Logic, Inc.  
1002 West Franklin Street  
Boise, ID 83702-5431  
[ed@hydrologicinc.net](mailto:ed@hydrologicinc.net)

- U.S. Mail
- Hand Delivery
- Facsimile
- Email

Matthew Wilde  
Brenda Bauges  
Assistant City Attorneys  
City of Boise  
PO Box 500  
Boise, ID 83701-0500  
[mwilde@cityofboise.org](mailto:mwilde@cityofboise.org)

- U.S. Mail
- Hand Delivery
- Facsimile
- Email

Paul Woods  
Environmental Manager  
Public Works Department  
Boise City Hall  
150 N. Capitol Blvd.  
Boise, ID 83702  
[pwoods@cityofboise.org](mailto:pwoods@cityofboise.org)

- U.S. Mail
- Hand Delivery
- Facsimile
- Email

Richard Roats  
Roats Law Office, PLLC  
Plantation Business Center  
6126 W. State Street  
Suite 203  
Boise, ID 83703  
[rtr@roatslaw.com](mailto:rtr@roatslaw.com)

- U.S. Mail
- Hand Delivery
- Facsimile
- Email

Gordon N. Law  
City Engineer  
City of Kuna  
PO Box 13  
Kuna, ID 83634  
[Gordon@cityofkuna.com](mailto:Gordon@cityofkuna.com)

- U.S. Mail
- Hand Delivery
- Facsimile
- Email



BRUCE M. SMITH

# MOORE SMITH BUXTON & TURCKE, CHARTERED

ATTORNEYS AT LAW

950 WEST BANNOCK, SUITE 520  
BOISE, ID 83702  
TELEPHONE: (208) 331-1800 FAX: (208) 331-1202

## FACSIMILE COVER SHEET

DATE: November 28, 2012 RECIPIENT'S FAX: 208-287-6700

TO: IDWR CLIENT: 1769-00

RE: IMAP

FROM: Bruce M. Smith/Kat

NUMBER OF PAGES INCLUDING THIS COVER SHEET: 8

ORIGINAL WILL NOT BE SENT

ORIGINAL WILL BE SENT BY FIRST CLASS MAIL

ORIGINAL WILL BE SENT BY FEDERAL EXPRESS

ADDITIONAL COMMENTS:

---

---

---

---

\*\*\*\*\* IMPORTANT MESSAGE \*\*\*\*\*

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS ATTORNEY PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE, AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.