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	**)**	**ORDER RE MOTION**
IDAHO, INC., INTEGRATED	**)**	**FOR STAY**
MUNICIPAL APPLICATION	**)**	
PACKAGE (IMAP)	**)**	
	)	

The Idaho Department of Water Resources (IDWR) Hearing Officer in the above titled matter issued an *Order Re Motion for Stay and Scheduling Order* on November 12, 2003. The Order stayed "All issues relating to forfeiture or abandonment of United Water Idaho's pre-1987 water rights included in the IMAP ... pending resolution in the Snake River Basin Adjudication." The Order further provided that "All other issues in the IMAP proceeding, including any alleged forfeiture or abandonment of post-1987 water rights, shall be considered in this proceeding until and unless it becomes apparent at any point that a broader stay is necessary." Finally, the Order schedules a two-week hearing in January and February 2004 to address United Water Idaho's (UWID) reasonably anticipated future needs, and the changes proposed to be made to certain water rights which have been designated by the parties as representative of the various categories of rights at issue in this water rights transfer proceeding. The Order is an interlocutory order pursuant to IDAPA 37.01.01.710.

On December 5, 2003, the Hearing Officer issued an *Order Referring Order Re Motion for Stay to Director for Review*, pursuant to IDAPA 37.01.01.562. The referral order states, "Because the *Order Re Motion for Stay and Scheduling Order* has substantial implications for the costs that IDWR will incur in both this matter and the Snake River Basin Adjudication, and also affects the workload of other IDWR personnel, prudence suggests it should be reviewed by the Director of IDWR." The Hearing Officer thus refers the November 12, 2003 *Order Re Motion for Stay and Scheduling Order* to the Director "for review and modification pursuant to IDAPA 37.01.01.711 as the Director deems appropriate."

The Director has considered the orders of the Hearing Officer and the pleadings and supporting briefs and memoranda of the parties relative to the motion for stay. The Director concludes that a stay of any further processing of UWID's water rights in this transfer proceeding pending the rights being decreed by the SRBA District Court is appropriate. UWID states that it supports the protestants' request for a stay of those transfer issues over which the SRBA District Court has jurisdiction and also those transfer issues that otherwise may be affected by the SRBA's determinations. *UWID's Consolidated Reply Regarding Proposals For Partial Stay* at 1. These two categories of issues include an evaluation of UWID's pre-1987 water rights that will be reviewed by the SRBA District Court, and UWID's post-1987 water rights, which although not reviewed in the SRBA may be affected by the SRBA District Court's

determinations. UWID agrees that these two categories of issues should not be addressed by IDWR for any of UWID's rights until after the SRBA District Court has issued partial decrees for UWID's pre-1987 claimed rights. *Id* at 3.

UWID identifies a third category of issues in this transfer proceeding, which it argues should not be stayed. These issues relate to UWID's request that IDWR make a determination under Idaho Code § 42-222 establishing that UWID "qualifies as a municipal provider and that the reasonably anticipated future needs, the service area and the planning horizon" proposed by UWID are consistent with the definitions of those terms as defined by Idaho Code § 42-202B. Specifically, UWID has proceeded under the definitions contained in Idaho Code § 42-202B(5) - (9) to assert that as a "municipal provider" providing water for "municipal purposes" within its authorized "service area" it claims a "planning horizon" of fifty (50) years and quantifies its "reasonably anticipated future needs" at approximately 416 cfs. *Id* at 4.

UWID states that these issues for which it seeks to proceed with a determination "are not dependent on the outcome of the SRBA and will provide critical guidance to water providers, local governments, planning entities, and other water users throughout Idaho." *Id* at 2. UWID further argues that early resolution of these issues "is vital to ongoing planning efforts by United Water" and that a multi-year delay in addressing these issues "would chill the development and implementation of the 1996 Act throughout the State." *Id* at 4.

The protestants, on the other hand, urge that UWID's entire transfer proceeding before IDWR should be stayed pending consideration of UWID's water right claims by the SRBA District Court. In this regard, the protestants assert that it would be better to have a clear picture of UWID's existing water right "portfolio" before moving forward with a determination of the appropriate planning horizon and the reasonably anticipated future needs of UWID as a municipal provider under the 1996 Act.

IDWR could bifurcate the planning horizon and the reasonably anticipated future needs issues from the other water right transfer issues required to be addressed under Idaho Code § 42-222 as suggested by UWID. The Director, however, is not convinced that this is the most efficient manner in which to proceed when taking into account the present strained resources of IDWR and the interests of the other parties to the proceeding.

The parties and IDWR will be expending considerable resources in addressing UWID's claims before the SRBA. The SRBA determinations will accomplish a first step necessary for the processing of the transfer applications before IDWR. Because the water right claims pre-date the 1996 Act it is conceivable that the SRBA District Court could address some of the issues for which UWID seeks a stay under applicable common law principles. Thus, proceeding simultaneously before the SRBA and IDWR could cause, to some extent, a double expenditure of time and funds. Another consideration is that it could be two or more years before the SRBA District Court makes a final determination of UWID's water rights. It is evident that Idaho Code § 42-222 anticipates that the determinations relating to the planning horizon and the reasonably anticipated future needs be made in conjunction with a transfer proceeding. For these reasons, the Director determines that it would best serve the interests of the parties and the Department to order a complete stay of this transfer proceeding pending a determination of UWID's water right claims before the SRBA District Court.

ORDER

IT IS THEREFORE HEREBY ORDERED that this transfer proceeding shall be stayed in full pending the issuance of partial decrees for UWID's water right claims by the SRBA District Court, provided that action may be taken by the IDWR Hearing Officer upon any motions pending on the date of this order.

IT IS FURTHER ORDERED that this is an interlocutory order, which may be reviewed by the Director at any time pursuant to the provisions of IDAPA 37.01.01.711.

Dated this _18th__ day of December, 2003.

___/s/____
Karl J. Dreher
Director