

Christopher H. Meyer [ISB No. 4461]
Michael P. Lawrence [ISB No. 7288]
GIVENS PURSLEY LLP
601 West Bannock Street
P.O. Box 2720
Boise, Idaho 83701-2720
Office: (208) 388-1200
Fax: (208) 388-1300
www.givenspursley.com
Attorneys for Applicant United Water Idaho

RECEIVED
APR 27 2012
DEPARTMENT OF
WATER RESOURCES

COPY

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 MOTION FOR
CLARIFICATION OF PARTY STATUS**

This is Applicant United Water Idaho Inc.'s ("UWID") motion for clarification of party status.

Pursuant to *United Water's Motion to Lift Stay and Request for Status Conference* filed on October 6, 2011, the Idaho Department of Water Resources ("IDWR") held a status conference on April 13, 2012. Interim Director Gary Spackman presided as Hearing Officer.

At the outset of the status conference, participants were polled as to whom they were representing. Some parties who have previously appeared as protestants or intervenors were not represented at all. Some persons in attendance at the status conference expressed uncertainty as to whom they would be representing. One person stated that she was representing an entity that

is not a party to this proceeding. UWID also understands that one or more of the current protestants may be contemplating re-aligning their status.

For the convenience of the Hearing Officer and the parties, the following is UWID's understanding of the current party status:

United Water Idaho: UWID is the applicant and continues to be represented by the undersigned. Scott Rhead and Roger Dittus of UWID also participated in the status conference.

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. The City's counsel, Bruce M. Smith, confirmed at the status conference that the City is no longer a party. The City should be required to state whether it wishes to remain on the service list as a non-party.

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 City of Kuna did not appear at the status conference.

The Terteling Company and T-7, LLC: Pursuant to a settlement agreement with UWID, Terteling withdrew its motion to intervene on October 20, 2004. For some reason, this document did not appear in IDWR's files, so UWID submitted it again on October 19, 2011. The entities' counsel, Charles Honsinger, appeared at the status conference and confirmed that they are no longer parties.

Estate of Eleanor I. Chase: Pursuant to a settlement agreement with UWID, the estate withdrew without condition on March 18, 2003. The estate did not appear at the status conference.

Nampa Meridian Irrigation District: The irrigation district is a protestant and appeared at the status conference through its attorney, Charles Honsinger of Ringert Law Chartered. Mr. Honsinger has since announced that he is leaving the firm the firm. We presume that the irrigation district will remain a protestant and be represented by Bryce Farris of Ringert Law Chartered, but this should be confirmed.

U.S. Bureau of Reclamation: The Bureau is a protestant and appeared at the status conference through its counsel, Kathleen Marion Carr. Bureau staff member, Gail McGarry, also participated.

City of Boise: The City of Boise is a protestant and appeared at the status conference through its counsel, Matthew K. Wilde. Staff members Paul Woods and Catherine Chertudi also participated.

City of Middleton: The City of Middleton was previously a protestant, but did not appear at the status conference. The City's previous counsel, Bruce M. Smith, appeared at the status conference, but expressed uncertainty as to whether he would continue to represent the City.

City of Star: The City of Star was previously a protestant, but did not appear at the status conference. The City's previous counsel, Bruce M. Smith, appeared at the status conference, but expressed uncertainty as to whether he would continue to represent the City.

Star Sewer and Water District: The District was previously a protestant, but did not appear at the status conference. The District's previous counsel, Bruce M. Smith, appeared at the status conference, but expressed uncertainty as to whether he would continue to represent the District.

Boise Project Board of Control, Wilder Irrigation District, Big Bend Irrigation District, and Boise-Kuna Irrigation District: These entities remain parties, but they have consolidated

their various protests into as a single protest. (See Hearing Officer's memorandum of June 8, 2006.) The entities appeared at the status conference through their counsel, Shelley M. Davis of Barker, Rosholt & Simpson.

City of Meridian: The City of Meridian, the City of Caldwell, and UWID entered into a joint conditional *Stipulation and Withdrawal of Protests* on November 24, 2003. The withdrawal was conditioned upon the approval by IDWR of eight conditions. 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 the prior Hearing Officer's wrap up memo of June 8, 2006. In any event, several of the conditions have since been overtaken by actions in the SRBA. Most notably, the alternative points of diversion ("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) and are hereby withdrawn. For these reasons, the conditional stipulation and the proposed conditions are inoperative. UWID releases the cities from the stipulation, and the cities are free to continue as protestants without limitations, if they choose to do so.

The City of Meridian appeared at the status conference through Kyle Radek, the City Engineer, but it was not represented by counsel.

City of Caldwell: The City of Caldwell was a party to the joint conditional *Stipulation and Withdrawal of Protests* referenced above. For the reasons described above, that stipulation and the accompanying proposed conditions are hereby withdrawn by UWID, and both cities are free to continue as protestants without limitations, if they choose to do so.

The City of Caldwell did not appear at the status conference.

Settlers Irrigation District: The District did not appear at the status conference. The District's former counsel, Scott L. Campbell, participated in the status conference and stated that he is no longer representing the District. On April 24, 2012, counsel for the District submitted a *Notice of Substitution of Counsel* stating that the District will be represented by S. Bryce Farris.

On April 22, 2004, the Hearing Officer issued three orders referred to collectively as the "sanctions orders." One of them provided: "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." *Order Re Motion to Dismiss Settlers' Protest and Preclude its Participation at Hearing* at 6. Settlers filed a petition for reconsideration of the sanctions orders, which has not been acted on due to the stay. The status of the sanctions orders needs to be resolved.

Pioneer Irrigation District: The District remains a protestant and was represented at the status conference by Scott L. Campbell of Moffat, Thomas, Barrett, Rock & Fields, Chartered.

Pioneer is subject to the same restrictions described above for Settlers Irrigation District, but, unlike Settlers, it is not allowed to propose conditions. Pioneer filed a petition for reconsideration, which has not been acted on due to the stay. The status of the sanctions orders needs to be resolved.

Ed Squires: Mr. Squires is listed on the service list, but he is not a party. It is UWID's understanding that he is retained by the City of Meridian as a water rights consultant.

City of Pocatello: Jane M. Newby of Beeman & Associates appeared at the status conference telephonically on behalf of the City of Pocatello. The City of Pocatello is not a party

to this proceeding. Josephine P. Beeman, also of Beeman & Associates, was included on the service list at the time of the stay because she represented the City of Boise. It is UWID's understanding that she no longer represents the City of Boise.


UWID urges as a first order of business that the Hearing Officer require each party who has not done so already to reaffirm its desire to continue with its protest and/or to realign its status as an intervenor, and to clarify who is representing the party in this matter for purposes of service. UWID urges that a deadline be set, and that any party failing to do so by that deadline be deemed to have withdrawn its protest. UWID does not object to parties being represented by non-lawyers employed by the entity, if they so choose. Whether this is allowed, however, is a matter for the Hearing Officer to determine.

UWID further urges that the Hearing Officer rule forthwith on the pending *Petition for Reconsideration / Motion for Referral* filed by Pioneer Irrigation District and Settlers Irrigation District on May 5, 2004. This motion seeks reconsideration of three orders issued by Hearing Officer Peter Anderson on April 22, 2004 (the "sanctions orders"). These orders imposed sanctions in the form of restrictions on the irrigation districts' right to participate as a result of serious discovery misconduct. The motion for reconsideration has been fully briefed, but was never acted on due to the stay of these proceedings.¹ The resolution of this matter is critical to forward progress of this proceeding. UWID is entitled to know if it may rely on the relief afforded to it by the sanctions orders.

¹ The orders were issued after the *Order Re Motion for Stay* issued by then Director Karl Dreher on December 18, 2003. The stay order specifically authorized Mr. Anderson to issue these rulings. "[T]his 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." Because the motion for reconsideration was filed subsequent to the stay order, it has not been acted on.

Respectfully submitted this 26th day of April, 2012.

GIVENS PURSLEY LLP

By 
Christopher H. Meyer