

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

IN THE MATTER OF APPLICATION)	ORDER LIFTING STAY AND
FOR TRANSFER OF WATER RIGHTS)	ORDER REQUIRING ALL
IN THE NAME OF UNITED WATER)	PARTIES TO FILE NOTICE
IDAHO, INC., INTEGRATED)	REAFFIRMING
MUNICIPAL APPLICATION)	PARTICIPATION AND ORDER
PACKAGE (IMAP))	REVERSING LIMITATION
_____)	ON PARTICIPATION

DESIGNATION OF HEARING OFFICER AND RELIEF FROM STAY

On December 18, 2003, the Director of the Idaho Department of Water Resources (“Department”) issued his *Order Re Motion to Stay* (“Stay Order”) staying all activities in the proceeding known as Integrated Municipal Application Package or (“IMAP”) that was initiated by United Water on May 4, 2001. On October 6, 2011, the Applicant United Water Idaho Inc. (“United Water”) filed a *Motion to Lift Stay and Request for Status Conference* in the IMAP proceeding. Peter Anderson the appointed hearing officer in this matter, issued an Order of Recusal on May 22, 2006 recusing himself of any further participation. The Interim Director will serve as the hearing officer in this contested case and will address the motions pending before the Department in this matter as well as all future matters that may arise.

The Interim Director issued an order on February 17, 2012 setting the matter for status conference. A status conference was held on April 13, 2012 during which the participating parties agreed that there was a need to proceed forward to address unresolved issues. The Interim Director agrees that the existing stay must be lifted for the IMAP proceeding to go forward. At the status conference, the Interim Director agreed to schedule another status conference to provide time for the parties to discuss the unresolved issues informally and to provide time for the Department to address any motions pending before the Department prior to the time the stay was imposed.

On April 27, 2012, United Water filed Motion for Clarification of Party Status seeking to have the Department require all parties reaffirm their participation in the contested case. Specifically, United Water's motion urges the Department to establish a deadline for the parties to reaffirm whether they intend to continue as a protestant or intervenor and clarify who is representing each party for purposes of service. United Water also urged the hearing officer to rule on the pending Petition for Reconsideration / Motion for Referral filed by Protestants Pioneer Irrigation District and Settlers Irrigation District on May 5, 2004.

CLARIFICATION OF PARTY STATUS

Each party listed on the official service list, which have not previously withdrawn its protest or intervention, shall file a participation notice with the Department reaffirming its intent to remain a participant as either a protestant or an intervenor in the IMAP proceeding no later than Friday July 19, 2012. The notice shall state whether the party is a protestant or an intervenor and include the name and contact information for the representative of each party for the purpose of service. Parties failing to file a participation notice with the Department to reaffirm party status by the July 19, 2012 deadline shall result in the issuance of a notice of proposed default order pursuant to IDAPA 37.01.01.01.700.

PETITION FOR RECONSIDERATION / MOTION FOR REFERRAL FILED BY PIONEER AND SETTLERS IRRIGATION DISTRICT

On August 18, 2003, United Water served on Pioneer Irrigation District ("Pioneer") its *Amended Notice of Deposition Duces Tecum of Pioneer Irrigation District* giving notice that United Water would take Pioneer's I.R.C.P. 30 (b)(6) deposition on September 3, 2003. On September 2, 2003, United Water served on Settlers Irrigation District ("Settlers") a similar notice entitled *Second Amended Notice of Deposition Duces Tecum of Settlers Irrigation District* giving notice that United Water would take Settler's I.R.C.P. 30 (b)(6) deposition on September 4, 2003. The representatives for Pioneer and Settlers Irrigation Districts (collectively "Districts") appeared at the time and place for the September 3rd and September 4th depositions and answered questions posed by United Water. A review of the transcript reveals that the answers provided by the districts to United Water's questions inquiring about the factual bases for protests were either unresponsive or at best not very informative. Similarly, answers by the districts to United Water's questions about conditions or modifications to the IMAP that would

resolve the protests were either unresponsive or at best not very informative. Other than a vague reference to well interference, the districts' representatives did not appear to possess any substantive knowledge of the factual bases for the protests nor what conditions or modifications might be necessary to resolve the protests.

United Water filed a *Motion to Dismiss Pioneer's Protest and Preclude its Participation at Hearing* and *Motion to Dismiss Settlers' Protest and Preclude its Participation at Hearing* on September 15, 2003 in response to the Districts' inability to articulate a factual basis for the protest or suggest conditions or modifications to the IMAP that would resolve the protests.

The Districts responded with an *Answer of Pioneer & Settlers to UWID's Motion to Dismiss both Districts' Protests and Preclude their Participation at Hearing* dated September 29, 2003 together with the *Affidavit of Scott L. Campbell in Support of Answer of Pioneer & Settlers to UWID's Motion to Dismiss both Districts' Protests and Preclude their Participation at Hearing* arguing that the responses provided by the Districts met the requirement under I.R.C.P 30(b)(6). Additionally, the Districts filed its *Motion to Strike UWID's Motion to Dismiss Pioneer Irrigation District and Settlers Irrigation District's Protest and Preclude their Participation at Hearing and Memorandum in Support* on September 29, 2003 arguing that United Water's Motion to Dismiss should be struck because it improperly refers to proposed settlement conditions.

In response United Water filed *United Water's Reply in Support of its Motion to Dismiss and Preclude Participation at Hearing* and *United Water's Answer in Opposition to Pioneer and Settlers' Motion to Strike*. Subsequently, United Water filed a *Submission of Supplemental Authority and Affidavit of Michael V. Woodhouse in Support of Submission of Supplemental Authority*. The Districts then filed its *Response to UWID's Supplemental Authority*.

The Stay Order issued on December 18, 2003 stayed any further processing of United Water's water rights in the IMAP proceeding, but did authorize the hearing officer to proceed and take action on any motions pending before the Department as of the date of the Order. The hearing officer issued his *Order Re Motion to Dismiss Pioneer's Protest and Preclude Its Participation at Hearing* and *Order Re Motion to Dismiss Settlers' Protest and Preclude Its*

Participation at Hearing on April 22, 2004. The orders denied United Water's motion to dismiss, but concluded that the Districts' participation at the hearing would be limited to making legal argument and cross examining United Water's witnesses because of the answers provided at the I.R.C.P. 30(b)(6) deposition. The Districts filed their *Petition for Reconsideration / Motion for Referral* on May 5, 2004. United Water filed its *United Water's Response to Pioneer's and Settlers' Petition for Reconsideration* on May 12, 2004 and the Districts filed *Pioneer and Settlers' Reply to UWID's Response to Pioneer and Settlers' Petition for Reconsideration* on May 20, 2004.

Six years have passed since the hearing officer issued his order addressing this dispute regarding the unprepared or nonresponsive answers given by the Districts at the depositions. The Interim Director agrees with the hearing officer that the dismissal of the Districts' protests was not appropriate. While the Interim Director also concurs with the hearing officer's conclusions that the Districts' responses did not provide a factual basis for the protests, he does not agree that it was appropriate to limit their participation at this point in this proceeding.

The components of many of the water rights identified in the various IMAP applications have changed or been clarified during the stay of the proceedings. This clarification of the water rights may have also added clarity to the basis of the pending protests. Nonetheless, the Districts' presentation of evidence at the hearing must be consistent with and must not contradict responses at the deposition. Although the Interim Director reverses the order prematurely limiting the Districts' participation in the proceeding, he will entertain future motions to limit any testimony at the hearing related to the basis for the Districts' protests that is inconsistent with or contradicts the testimony of the Districts' deponents at the depositions.

ORDER


Based upon the foregoing:

1. United Water's Motion to Lift Stay is GRANTED and the Interim Director will serve as hearing officer in the proceeding.

2. United Water's Motion for Party Clarification is GRANTED and all parties shall file a notice with the Department reaffirming their intent to remain a participant as either a protestant or an intervenor in the IMAP proceeding no later than Friday July 19, 2012. The notice shall include the name of the representative and contact information for each party participant.

3. The Motion for Reconsideration / Motion for Referral filed by the Districts is GRANTED. The order limiting the Districts participation to solely legal argument is reversed, but subject to reexamination at hearing should the Districts offer testimony related to the basis for the Districts' protests that is inconsistent with or contradicts the Districts' responses at the depositions.

Dated this 6th day of June, 2012.



Gary Spackman
Interim Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of June, 2012, the above and foregoing were served on the following by providing a copy of the ORDER LIFTING STAY AND ORDER REQUIRING ALL PARTIES TO FILE NOTICE REAFFIRMING PARTICIPATION AND ORDER REVERSING LIMITATION ON PARTICIPATION in the manner selected to the following:

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