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RECEIVED  
FILED  
2004 APR 16 PM 3:23  
IDAHO PUBLIC  
UTILITIES COMMISSION

*Attorneys for United Water Idaho Inc.*

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE JOINT	)	Case No. UWI-W-04-02
APPLICATION OF UNITED WATER IDAHO	)	
INC., AND BARBARA V. CHILD, D/B/A	)	<b>UNITED WATER IDAHO INC.'S</b>
TERRA GRANDE FOR AN ORDER	)	<b>REPLY TO STAFF COMMENTS</b>
APPROVING THE PURCHASE BY UNITED	)	<b>AND EXPLANATION OF</b>
WATER IDAHO INC., OF WATER SERVICE	)	<b>CURRENT STATUS</b>
PROPERTIES OWNED BY BARBARA V.	)	
CHILD; FOR AUTHORITY TO EXPAND	)	
UNITED WATER IDAHO INC.'S	)	
CERTIFICATE OF PUBLIC CONVENIENCE	)	
AND NECESSITY NO. 143 AND FOR	)	
APPROVAL OF RATES AND CHARGES	)	

United Water Idaho Inc., (“United”, or “the Company”) respectfully submits the following in reply to Staff Comments filed herein on April 2, 2004.

**Current Status of Acquisition**

The Agreement for Purchase and Sale between United and Terra Grande provides that United would have a 90 day “due diligence” period following execution of the Agreement in which to further investigate the Terra Grande system. (Agreement, paragraph 7(d)). United’s investigation has lead to the conclusion that the Terra Grande system is in worse condition than originally thought.

The system deficiencies are accurately summarized in Staff’s Comments: the water system has not met DEQ sampling requirements and a number of contaminates are presently

borderline acceptable and may require treatment in the near future if Terra Grande is not interconnected to United's system. In addition, portions of the distribution system are deteriorated and undersized. The Terra Grande system appears to be a classic example of a non-viable small water company. As noted in Staff Comments, if Terra Grande was not interconnected to United's system the investment necessary for Terra Grande to come into compliance with DEQ requirements would be approximately \$250,000 which would translate into a 167% rate increase for Terra Grande customers, even assuming the current owner had the financial ability to make the required investment.

On April 2, 2004 United received a copy of Staff Comments in which Staff recommended that the Commission not approve any cash payment to the Terra Grande owner and, in effect, that amounts that would have been paid to the owner be used for system improvements. United agrees with Staff that it could not economically make the cash payment to the owner *plus* make the improvements expected to be necessary.

In light of these developments, United met with the system owner and tendered a proposed Amendment to the Purchase and Sale Agreement ("Amendment") a copy of which is attached hereto as Exhibit A. The effect of the Amendment would have been to reduce the cash payment to the system owner to zero.

On April 16, 2004 the system owner in a telephone conversation with Mr. Wyatt, United's Vice-President, stated that on the advice of her attorney she would not sign the Amendment. She further reported her attorney advised her that "she should let the Commission decide."

As noted in Staff Comments, even after the purchase price has been reduced to zero and the amount that would have been paid in purchase price is invested in system improvements, the revenue the Company expects to receive from Terra Grande customers at current United Water

rates will likely not be sufficient to perform all the facility upgrades necessary to provide adequate service. If the transaction goes forward and United acquires the system, some amount of subsidy from other customers will likely be necessary. United requests a determination that the public health and safety concerns presented by this case justify some amount of subsidy from other customers in order to rehabilitate the system. Staff supports this determination. Put differently, United seeks authority to invest amounts in excess of the “revenue requirement cap” presented as Exhibit 5 to the original application. The investments originally contemplated were those necessary to interconnect the systems, abandon the existing wells, and install meters. It is now apparent that additional investment in the distribution system will be necessary. Based on current knowledge, United estimates that the required investment, over and above the originally proposed \$47,000 payment to Ms. Childs (which would now be retained to partially fund those improvements) will not materially burden other customers. As estimates of necessary costs become more firm, United would provide the estimates to Staff for review. This will insure that the investments are necessary and reasonable. After the initial investments to restore system integrity, United would fund ongoing operation and maintenance as it does with respect to its system generally.

United, in its initial Application proposed commencing charging customers its metered rates immediately as meters are installed. Staff, in its Comments, recommended that United charge its flat rates contained in its Schedule 1-E until March, 2005 at which time all customers would be switched to metered rates. United prefers its original proposal because it more closely matches prices with the service being provided. However, in order to expedite Commission review, United acquiesces in Staff’s recommendation, for the purpose of this case only.

### **Commission Decision**

The unexpected turn of events in this matter causes the case to be in a somewhat unusual procedural posture. As a solution, United suggests that if the Commission enters its Order accepting Staff's recommendation to disapprove the purchase price in the original Purchase and Sale Agreement, the Commission could also indicate in its Order: a) whether it would approve the Purchase and Sale Agreement with the Amendment if signed by the parties; and b) whether it would provide United the financial assurance regarding recovery of rehabilitation costs, discussed above. Based on this Commission guidance, the parties can then determine whether to proceed with the transaction or allow it to dissolve.

### **Request for Expeditious Review and Approval**

As noted in Staff's Comments, the City of Boise is installing a new sewer line within the subdivision. It would be most efficient if United could coordinate its required construction with the City effort prior to final paving. United, of course, cannot begin construction until it has legal ownership of the system. Accordingly, United requests expeditious review.

Respectfully submitted this 16 day of April, 2004.

**McDevitt & Miller LLP**



Dean J. Miller

*Attorneys for United Water Idaho Inc.*

## AMENDMENT TO AGREEMENT FOR PURCHASE AND SALE

This AMENDMENT TO AGREEMENT FOR PURCHASE AND SALE is made by and among **Barbara V. Child d/b/a Terra Grande** (hereinafter referred to as "Seller" or "Terra Grande") and **United Water Idaho Inc., an Idaho Corporation** (hereinafter referred to as "Buyer" or "United")

### RECITALS

- A. On or about December 23, 2003 the parties made and executed that certain Agreement for Purchase and Sale ("Agreement") wherein, among other things Seller agreed to sell to Buyer Seller's domestic water system for an agreed purchase price of FORTY SEVEN THOUSAND DOLLARS (\$47,000).
- B. On or about February 19, 2004 the Parties jointly filed with the Idaho Public Utilities Commission an Application for approval of the Agreement ("Application").
- C. Pursuant to the Agreement United was granted a due diligence period during which United would conduct further investigation regarding the quality and soundness of Seller's water distribution system and United's obligation to close the transaction was contingent upon satisfactory conclusion of its due diligence investigation.
- D. As a result of its investigation United has learned that the system is not in good working order and is not in conformance with applicable laws, rules and regulations, as represented and warranted by paragraph 5(t) of the Agreement.
- E. Accordingly, the Parties desire to re-negotiate the terms of the Agreement.

### AGREEMENT

NOW THEREFORE in consideration of the foregoing recitals and of the terms conditions and mutual covenants herein set forth, the parties mutually covenant and agree as follows:

#### **1. ADJUSTMENT TO PURCHASE PRICE**

Paragraph 2 of the Agreement, "Purchase Price and Terms of Payment" is hereby amended such that the amount to be paid by Buyer to Seller is reduced to zero dollars. Seller acknowledges that Buyer's agreement to assume operation of the domestic water system and relieving Seller from further liability therefore constitutes good and valuable consideration for the execution of the Amendment.

#### **2. COMMISSION APPROVAL**

Buyer and Seller agree that consummation of the transaction contemplated by this Amendment is subject to Buyer obtaining an approval and order from the Idaho Public Utilities Commission that:

- (i) Approves this Amendment.
- (ii) Authorizes the issuance of an amendment to Buyer's certificate of convenience and necessity by the Commission indicating approval of the transaction contemplated hereby.
- (iii) Confirms the right of Buyer to provide service to the area being served by Seller.
- (iv) Confirms the right of Buyer to provide service to Seller's customers according to Buyer's rates for water service.
- (v) Confirms the right of Buyer to make system improvement investments in excess of amounts shown in the Application and provides an assurance that reasonable system improvement investments may be recovered in Buyer's general rates for water service.

**3. WAIVER OF WARRANTY**

Buyer waives and releases Seller from the warranty of paragraph 5(t) above referenced.

**4. SELLER'S CASH DEPOSIT AT CLOSING**

In addition to Seller's Deposits at Closing identified in paragraph 9(a) of the Agreement, Seller shall deposit cash or official bank check in an amount sufficient to meet costs which are prorated to Seller at closing.

**5. AGREEMENT AFFIRMED**

In all other respects the Agreement is ratified and confirmed as first written.

**UNITED WATER IDAHO INC.**

\_\_\_\_\_  
By: \_\_\_\_\_

**BARBARA V. CHILD d/b/a TERRA GRANDE**

\_\_\_\_\_  
Barbara V. Child