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APR 13 PM 2:36
IDAHO PUBLIC UTILITIES COMMISSION
April 13, 2007

Via Hand Delivery

Jean Jewell, Secretary
Idaho Public Utilities Commission
472 W. Washington St.
Boise, Idaho 83720

Re: Case No. UWI-W-07-01

Dear Ms. Jewell:

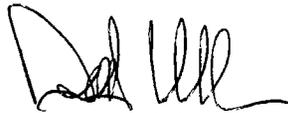
Enclosed for filing in the above matter, please find the original and seven (7) copies of United Water's Reply Comments.

An additional copy of the document and this letter is included for return to me with your file stamp thereon.

Thank you for your assistance.

Very Truly Yours,

McDevitt & Miller LLP



Dean J. Miller

DJM/hh
Enclosures

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2007 APR 13 PM 2:36
IDAHO PUBLIC UTILITIES COMMISSION

Attorneys for United Water Idaho Inc.

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF)
UNITED WATER IDAHO INC., FOR)
AUTHORITY TO AMEND AND REVISE)
CERTIFICATE OF PUBLIC CONVENIENCE)
AND NECESSITY NO. 143 AND FOR)
APPROVAL OF A SPECIAL FACILITIES)
AGREEMENT WITH AVIMOR LLC.)
_____)

CASE NO. UWI-W-07-01
REPLY COMMENTS

COMES NOW United Water Idaho Inc., (“United Water,” the “Company”) and submits the following Reply Comments in response to the Staff Comments dated March 16, 2007 (“Staff Comments”).

INTRODUCTION AND SUMMARY OF ARGUMENT

In this Application, United Water seeks authority to expand its Certificate of Public Convenience and Necessity (“Certificate”) to include a planned residential community known as Avimor. The location of the Avimor development and the area of proposed Certificate expansion is depicted on Exhibit A, attached hereto. In its initial phase the Avimor development will consist of approximately 700 residential and commercial lots located on approximately 860 acres of land. It is anticipated that over time the development will expand to occupy additional

area. As shown on Exhibit A, United Water has requested that its certificate be expanded to include the anticipated additional expansion area.

In conjunction with the development United Water and Avimor negotiated and executed a Special Facilities Agreement (“SFA”) consistent with Rules 74-77 of the Company’s Rules and Regulations as approved by the Commission. Pursuant to the SFA, Avimor will advance the entire cost of system extensions necessary to serve the development, estimated to be \$6,308,805. Of this total cost, approximately \$1,749,962 will be considered as non-refundable Contributions in Aid of Construction and approximately \$4,558,843 will be considered as refundable Advances in Aid of Construction. Under the refund mechanism contained in the SFA, and approved by the Commission in the Company’s Rules, Avimor does not become eligible for refunds until customers are connected to the system and producing revenue, thus insulating the Company’s general body of ratepayers from speculative risk. In addition, Avimor will contribute without the possibility of refund, the entire cost of constructing the distribution system within the development, pursuant to United Water’s standard policies.

As explained in the Direct Testimony of Gregory P. Wyatt, filed with the Application, negotiations leading to execution of the SFA in January of 2007 stretched over several years, commencing in 2004. (Wyatt, Direct, Pgs. 2—3). In all respects the negotiations were at arms-length.

The Staff Comments do not object to several features of the SFA, and, accordingly, these Reply Comments will not discuss areas in which the Company and Staff are in agreement. The Staff Comments, however, contain two recommendations with which the Company does not agree and which are the subject of these Reply Comments. Those recommendations are:

--Deny expansion of the Certificate beyond Phase 1 of the development and open a new docket to examine water supply cost recovery;

--Require United Water and Avimor to re-negotiate the SFA such that all transmission investment would be contributed by Avimor without the possibility of refund.

ARGUMENT

The Commission Should Approve the Certificate Expansion as Requested

The Staff Comments assert that the cost of source of supply to serve areas beyond Phase 1 of the development are uncertain and may be a burden to the Company's general body of ratepayers and that the public interest requires consideration of potential impacts on existing customers. (Staff Comments, Pgs. 2—3). The Comments further suggest that the Commission may impose conditions upon a Certificate expansion regarding source of supply costs. (Staff Comments, Pgs. 3—6) It is recommended that a new docket be opened to consider possible conditions. (Staff Comments Pg. 6). For the following reasons, these recommendations should not be accepted.

Staff's Public Interest Analysis is Narrow and Takes Into Account Only One Public Interest Consideration

While the phrase "public interest" is not susceptible of precise definition, the Idaho Supreme Court has made clear that a rigorous public interest analysis should take into account all relevant circumstances: "...where the Commission is required to consider the "public interest," it must look to the interest of the public, their needs and necessities and location and, *in fact, all the surrounding facts and circumstances.*" (Emphasis supplied). *Browning Freight lines v. Wood*, 99 Idaho 174, 579 P.2d 120 (1978). The Commission has followed the "all relevant circumstances" approach in recent cases. *See, In the Matter of the Joint Application of PacifiCorp and Scottish Power*, Case No. PAC-E-99-1, Order No. 28213, pg. 33 (1999): "In this

case there was a wide range of issues raised and concerns expressed that pertain to the public interest standard. We considered them all in reaching our decision.”

Despite the requirement for examination of all relevant circumstances, Staff Comments focus on a single consideration—holding down rates for existing customers. “The Public Interest of particular concern to Staff is the potential impact of the proposed expansion on the general body of United Water ratepayers.” (Staff Comments pg. 2). Depending on how one views the proper role of Staff, it is perhaps arguable that Staff is not obligated to engage in an “all relevant circumstances” public interest analysis and Staff instead may be an advocate for only one affected interest—in this case existing ratepayers. When, however, Staff takes on the role of advocate for only one affected interest, the Commission, while giving appropriate weight to the Staff advocacy, should apply its own “all relevant circumstances” public interest analysis.

United Water respectfully suggests that the following are additional relevant considerations that should be taken into account:

First, it should be recognized that the utility customer does not have a right to service at rates in effect when the customer is connected to the system. It has never been the law, and could not be the law that a utility customer on the day he or she connects to the utility system obtains a right to perpetual service at the rate in effect on that date. Put differently, the utility customer does not acquire an ownership interest in the utility’s facilities entitling the customer to rates based on the utility cost existing on that date. And, it is a fact of life that utility costs rise over time due to inflation, changes in regulatory requirements, additions to and replacements of existing infrastructure and the impact of growing demand. As discussed below, “old customers” contribute just as much to rising demand as do “new customers” and there is no legitimate reason to insulate existing customers from these effects.

Second, “new” customers are entitled to fair treatment. The narrowness of Staff’s analysis is disclosed in the final section of Staff’s Comments where it is stated that the cost burden should not be placed on United Water’s ratepayers but, “The cost burden is more appropriately placed on the developers that profit when water is provided to these lands.” (Staff Comments, Pg. 10). It is, of course, not the developer that will ultimately bear the burden of added source of supply costs, but rather it is new United Water customers who purchase lots within the development.

A third public interest concern is discouraging the proliferation of small independent water companies. A predictable consequence of shifting costs of source of supply onto developments intending to connect to the United Water system is that developers of those systems will consider creation of independent water utilities to serve the development. As illustrated by this case, Avimor at one time appeared to have the intent and ability to form its own water company, and United Water sought to negotiate a SFA that would prevent that result, while remaining consistent with Commission rules. (Wyatt, Direct, Pgs 2—3).

As the Commission is aware from experience, small independent water utilities, lacking economies of scale, often present significant regulatory challenges when the Commission seeks to insure reliable service at reasonable prices. *See, In the Matter of the Investigation of Terra Grande*, Case No. TWG-04-01, Order No. 29974; *In the Matter of the Application of Spirit Lake East Water Company*, Case No. SPL-W-06-01, Order No. 30279.

Small independent water utilities may also present health and safety concerns. For this reason, the Idaho Department of Environmental Quality requires owners of a new system to investigate the feasibility of connecting to an established system, and if the owner chooses not to

connect to an established system, the owner must justify its decision in terms of environmental protection, affordability and protection of public health. IDAPA 58.01.08.500.6 (Rules for Public Drinking Water System) provides:

“Consolidation. In demonstrating new system capacity, the owner of the proposed new system must investigate the feasibility of obtaining water service from an established public water system. If such service is available, but the owner elects to proceed with an independent system, the owner must explain why this choice is in the public interest in terms of environmental protection, affordability to water user, and protection of public health.”

While it may be impossible to identify the precise economic tipping point at which creation of an independent company becomes an attractive alternative to service by United Water, the proposal to shift United Water’s source of supply costs to new development goes in the wrong direction from the public interest standpoint of discouraging creation of small water companies.

United Water’s Application is Fully Consistent with Existing Rules

At its core, United Water’s current system of allocating costs of system expansions is relatively simple—developers contribute the cost of line extensions and terminal facilities while source of supply and related facilities are funded through rate base investment and included in rates paid by all customers.

This system of allocation was adopted by the Commission in Case No. UWI-W-96-4, which followed the Supreme Court’s decision declaring the previous allocation system to be discriminatory in *Building Contractors of Southern Idaho v. Idaho Public Utilities Commission*, 128 Idaho 534, 916 P.2d 1259 (1996), which is discussed in more detail below.

The system adopted by the Commission in Case No. UWI-W-96-4 accepted Staff’s recommendation as set out in Staff testimony. The Staff witness testified:

“My proposal is to use new customer revenue to support current per customer operation and maintenance (O&M) expense, backbone plant and other miscellaneous investment and to require a capital contribution from each new customer for actual line extension and terminal facility costs incurred. I specifically recommend that line extension escrows, refunds and supply based hook-up fees for backbone plant be eliminated in favor of a non-refundable one time contribution equal to the actual cost of distribution, service and meter facilities required to serve a new customer.” (Testimony of Randy Lobb dated January 6, 1997, Pgs. 2—3).

Staff explained the rationale for its proposal as follows:

“My recommendation is supported by analysis showing that average new customer revenue is needed to support O&M expenses and a reasonable range of non-line extension investment. Implementation of my proposal will greatly simplify line extension and customer contribution rules and will result in a more consistent application from customer to customer. Finally, while the recommended changes on average will result in larger capital contributions from new customers, fees will be based on actual cost of service with potential cost reduction provided through labor in lieu of cash provisions in the Company's line extension rules. Labor in lieu of a cash contribution could provide the potential for reduced construction costs through competition.” (*Id.* Pg. 7).

Staff also explained that its proposal was aimed at controlling growth related investment made by the Company:

“Q. Will the solution you propose sufficiently control Company investment and eliminate the need for growth related rate increases?”

A. Yes, I believe that it will. My analysis shows that current water rates are designed to support four categories of costs as shown in Staff Exhibit No. 102. The first category is the amount of revenue required to cover system operation and maintenance (O&M) expenses. The other three categories are depreciation expense, return on investment and taxes which are all a function of net investment (rate base). The revenue requirement shown in each of these three categories can be directly calculated from the rate base currently in each plant account. If rate base increases, then revenue requirement increases. If the revenue requirement per customer is determined, then the amount of allowable investment per customer can also be determined.” (*Id.* Pg. 9).

The system of system expansion cost allocation which Staff now suggests be examined for possible change is precisely the system Staff previously recommended.

Staff's Legal Analysis is Questionable

Staff Comments argue, relying on Idaho Code 61-526, that as a condition of granting an amendment to United Water's certificate the Commission could, in some manner that is not defined, require that the developer make a non-refundable contribution to future source of supply costs. As discussed below, there are several legal and practical problems with this recommendation.

As legal authority for its recommendation, Staff Comments rely on Idaho Code 61-526.

That section, re-formatted for ease of reading, provides:

“No street railroad corporation, gas corporation, electrical corporation, telephone corporation or water corporation, shall henceforth begin the construction of a street railroad, or of a line, plant, or system or of any extension of such street railroad, or line, plant, or system, without having first obtained from the commission a certificate that the present or future public convenience and necessity require or will require such construction:

provided, that this section shall not be construed to require such corporation to secure such certificate for an extension within any city or county, within which it shall have theretofore lawfully commenced operation, or for an extension into territory whether within or without a city or county, contiguous to its street railroad, or line, plant or system, and not theretofore served by a public utility of like character, or for an extension within or to territory already served by it necessary in the ordinary course of its business:

and provided further, that if any public utility in constructing or extending its lines, plant or system, shall interfere or be about to interfere with the operation of the line, plant or system of any other public utility already constructed, or if public convenience and necessity does not require or will require such construction or extension, the commission on complaint of the public utility claiming to be injuriously affected, or on the commission's own motion, may, after hearing, *make such order and prescribe such terms and conditions for the locating or type of the line, plant or system affected as to it may seem just and reasonable:*

and provided, that power companies may, without such certificate, increase the capacity of their existing generating plants.” (Emphasis and formatting supplied)

As can be seen, the code section begins with a general requirement for utility companies to obtain a certificate before commencing construction of facilities. This general requirement is then followed by three qualifications, the first relating to contiguous expansions, the second relating to conflicts with existing utilities and the third relating to increased generating capacity for electric companies.

It is further apparent that the only statutory language providing authority to impose conditions is in the second exception, relating to circumstances when new construction may interfere with the operation of the system of another utility already constructed. In such a circumstance, the Commission may impose terms and conditions for locating the line or plant so as to prevent interference with the existing utility.

In the present case, there is no issue of United Water's proposed facilities interfering with those of another utility. Rather, United Water seeks to extend its facilities to an area unserved by any existing utility. On its face, the third exception allowing conditions to prevent interference contained in Idaho Code 61-526 is inapplicable to the facts of this case and does not provide authority to place conditions on the proposed expansion. It is well settled that:

“The Idaho Public Utilities Commission has no authority other than that given to it by the legislature. It exercises a limited jurisdiction and nothing is presumed in favor of its jurisdiction. *United States v. Utah Power & Light Co.*, 98 Idaho 665, 570 P.2d 1353 (1977); *Lemhi Tel. Co. v. Mountain States Tel. & Tel. Co.*, 98 Idaho 692, 571 P.2d 753 (1977); *Arrow Transp. Co. v. Idaho Pub. Utils. Comm'n*, 85 Idaho 307, 379 P.2d 422 (1963). As a general rule, administrative authorities are tribunals of limited jurisdiction and their jurisdiction is dependent entirely upon the statutes reposing power in them and they cannot confer it upon themselves, although they may determine whether they have it. If the provisions of the statutes are not met and compliance is not had with the statutes, no jurisdiction exists.” *Washington Water Power v. Kootenai*, 99 Idaho 875, 591 P.2d (1979); *See also, Alpert v. Boise Water Corp.*, 118 Idaho 136, (1990);

Staff Comments also discuss, and attempt to distinguish, two Idaho Supreme Court cases, *Idaho State Homebuilders v. Washington Water Power*, 107 Idaho 413, 690 P.2d 350 (1984) and

Building Contractors of Southern Idaho v. Idaho Public Utilities Commission, 128 Idaho 534, 916 P.2d 1259 (1996). In *Homebuilders*, the Court invalidated as impermissible discrimination against new customers the Commission's attempt to impose a non-recurring charge in installation of electric space heating after a certain date. In *Building Contractors* the Court invalidated, on similar grounds, a hook-up fee to be imposed on new customers aimed at collecting increasing costs of source of supply. Staff suggests these cases, involving fees imposed on new customers within an already certified area, are inapplicable where the utility seeks an extension to its certified area. (Staff Comments, Pg. 5).

Whether or not the Supreme Court would extend the *Homebuilders/Building Contractors* rule to the facts of this case is a question that cannot be answered with certainty as it involves a predictive judgment about future determinations by the Court. As will be discussed in more detail below, what can be said with certainty, however, is that the ability of the Commission to treat "new" customers differently from "old" customers is subject to substantial legal doubt. United Water respectfully suggests that when a proposed rule or course of action is subject to substantial legal doubt, the Commission should exercise extra caution in evaluating the proposal.

While the specific facts of this case differ from those of *Homebuilders* and *Building Contractors* the thrust of the language in each case seems quite clear—imposing the cost of growth solely on new customers is prohibited discrimination. In *Homebuilders*, the Court, quoting from an expert witness, said:

“[T]rying to track ‘casual’ responsibility for costs can quickly degenerate into a metaphysical debate similar in character to the famous medieval debate over how many angels can fit in the head of a pin. From the economist’s perspective, a new customer is no more responsible for the level of demand than an old customer. The need for additional capacity can be avoided either by the old customer reducing demand or by the new customer abandoning plans to purchase electricity. An old electric heat customer in an uninsulated house or an existing industrial customer with an old, energy inefficient production process or an industrial customer who could produce thermal electric energy

more cheaply than Washington Water Power, et cetera, are all as responsible for the rising demand for electric energy and power as the new home heating customer is”.

In *Building Contractors* the Court said:

“While it is true that the cost of service has increased, the cost has increased proportionately for each Boise Water customer. There is no difference in the cost of service between customers who connected to Boise Water’s system before July 25, 1994, and those who have connected or will connect to the system from that date forward. Each new customer that has come into the system at any time has contributed to the need for new facilities. No particular group of customers should bear the burden of additional expense occasioned by changes in federal law that impose new water quality standards”.

Thus, on two recent occasions the Supreme Court has strongly stated a rule of public utility law in Idaho¹--old customers are just as responsible for the cost of rising demand as new customers and attempts to assign those costs to new customers are unlawful discrimination. In light of this, Staff’s attempt to create a distinction based on the fact that in this case the new customers will reside in a previously un-served area appears questionable, at best. Whether the “new” customers are in a previously un-served area appears irrelevant to the Court’s central point that “old” customers are equally responsible for costs of rising demand.

The problem with Staff’s attempted distinction can be illustrated with a specific example. In the year 2006, United Water added approximately 2,900 “new” customers to its system. None of these customers were required to contribute toward source of supply costs, yet they have contributed to the rise in demand of source of supply, and they have contributed to a proportional rise in revenues which helps to offset increased costs for “legacy” customers. It would appear discriminatory on its face to shift the rise in cost caused, at least in part, by the last group of new customers to the next group of new customers—those residing in the Avimor area.

¹ With the exception of a concurring opinion by Justice Bistline in *Homebuilders*, both opinions were by unanimous courts.

A New Docket is Not Likely to Be Productive

Staff Comments, in addition to limiting the certificate expansion to Phase 1 of the Avimor development recommends opening a new docket so that interested parties can discuss water supply concerns, to include a discussion of “developer contributions, hook-up fees as a condition of certificate, source of supply investment cap, contributed water rights, a water right differential, etc.” (Staff Comments Pg. 6, 11).

For the reasons discussed below, United Water believes this suggestion is unwise and the Commission should not adopt it.

First, as previously discussed, United Water’s Application and proposed division of cost responsibility is fully consistent with its existing Rules and Regulations. United Water’s Application should be evaluated under its approved Rules and Regulations at the time its Application was filed, not under a new, but undefined set of rules. *See, South Fork Coalition v. Board of Commissioners, 112 Idaho 89, 730 P.2d 1009 (1986).*

Second, while “opening a new docket” is sometimes a tempting solution to a regulatory problem, careful thought should be given to whether any potential outcome of the new docket is likely to result in improvement to the current system. As discussed above, in the absence of a change in law, any new method of shifting growth related costs to new customers and/or developers will be subject to substantial legal doubt. In this regard, Staff’s recommendation does not offer any specific new proposal, only a list of general possibilities, all of which, on their face, appear suspect under the *Homebuilders/Building Contractors* cases. United Water respectfully urges the Commission to think carefully about the wisdom of opening a new docket when there is not even a preliminary showing that some new, but undefined, system would be practically and legally superior to the current system.

Third, it is extremely difficult to conceive of a rule that would fairly differentiate between developments in new areas that had ample groundwater or surface water supplies and areas with limited supplies with regard to how much contribution or water rights the developer should provide. Aside from the obvious discriminatory nature of such a proposal, the concept of developers contributing water rights, as Staff suggests, is fraught with numerous administrative difficulties and questions. For example, are groundwater and surface water rights to be considered equal? Does the water right have to be tied to the land being developed? Are shares in mutual ditch companies considered water rights? Who is responsible to transfer the water right if it is not tied to the land? Will rented water qualify as water rights? Can groundwater recharge qualify? There are many others.

Fourth, United Water is aware of other developers who are in various stages of progress toward applying to United Water for service. Because United Water's existing Rules and Regulations have been in existence for a long period of time and are well understood by the development community, these developers have been analyzing and preparing their proposals under the current Rules and Regulations. Declaring a sudden *de facto* moratorium on the current system and opening a docket to examine un-specified ideas for change would create great confusion and uncertainty in the development community.

A final reason for caution, which is related to the fourth, is that the Commission would face difficult questions as to which developments are sufficiently mature so as to be entitled to service under existing rules and which would be required to take service under whatever new rules might emerge from a new docket. Questions about "grandfathering" are particularly troublesome and difficult to resolve. (*See, Petition of Idaho Power to Suspend PURPA*

Obligations, Case No. IPC-E-05-22; *Cassia Wind Petition to Determine Exemption Status*, Case No. IPC-E-05-35; *Magic Wind Petition to Determine Exemption Status*, Case No. IPC-E-05-34).

United Water, of course, is willing to informally discuss with Staff and interested parties possible improvements to its current rules. United Water suggests any formal docket be preceded by informal discussions to determine if consensus-based changes are possible. These discussions, however, should not act as a moratorium with respect to United Water's existing Rules and Regulations.

The SFA's Treatment of Transmission Line Investment is Reasonable

As depicted on Exhibit A, transmission facilities to serve the development are divided into two segments. Approximately 18,000 feet is characterized as "on-site" with an estimated cost of \$2,519,944 and approximately 12,500 feet is characterized as "off-site" with an estimated cost of \$1,749,962. Pursuant to the SFA the cost of the "off-site" segment will be contributed by Avimor without refund by the Company (although available for "late-comers" reimbursements), while the cost of the "on-site" segment would be advanced subject to later refund. Staff Comments, apparently fearing that as refund payments are included in rate base there will be an upward pressure on rates, recommends that non-refundable contributions be required for the "on-site" segment in addition to the "off-site" portion. (Staff Comments Pg. 7).

For the following reasons, United Water continues to believe the treatment proposed in the SFA is reasonable in this case and the Commission should accept it.

First, pursuant to the SFA and Rule 75 of the Company's Rules and Regulations, as approved by the Commission, refunds are payable only when customers are connected to the system and providing revenue to the system. The refund formula is constructed such that revenue generated from new customers off-sets the revenue requirement needed to serve those customers,

including embedded source, treatment, storage and pumping investments, thus insulated existing ratepayers from speculative risk and upward rate pressure. The revenue requirement generated from the new customers in excess of these amounts is then available for refund to the developer on the advanced plant. Because this is so, the refund formula has a built-in protection and only enables the developer to receive refunds on advanced plant to the extent that it is supported by new customer revenue.

Second, on the particular facts of this case, there is sound logic for treating the “on-site” segment as available for refund. As Mr. Wyatt explains in his Direct Testimony:

“Q. Please discuss the rationale for including the on-site transmission mainline in advanced plant available for refunds on the Company’s books.

A. The Avimor on-site mainline is included in advanced plant available for refunds because the line is first and foremost a transmission mainline. The line will operate as a high pressure transmission main with maximum operating pressures in excess of 200 psi (pounds per square inch). This high pressure is not typical in distribution mains, and this particular mainline will serve primarily as a source of supply line to Avimor. The transmission main is not designed for distribution purposes, but as part of an integrated facility plan to deliver water to and from the Project.” (Wyatt, Direct, Pg. 6).

Third, treating supply lines connected to storage reservoirs as advanced plant eligible for refund is consistent with prior decisions and practice. As Staff Comments concede, the Commission approved such treatment in cases involving the Hidden Springs and Harris Ranch developments. *See*, Case No. UWI-W-97-3, Order No. 27762 and Case No. UWI-W-00-4, Order No. 28588. The SFA for the Claremont development project contained similar treatment of a supply line and reservoir. In this regard, United Water is perplexed by the Staff Comments assertion that the agreements for Claremont Development and Jayo Construction were never filed with the Commission and Staff did not have an opportunity to review them. (Staff Comments, Pg 8). As illustrated by Exhibits B and C, attached hereto, United Water’s records

indicate those agreements were in fact submitted and, presumably, reviewed by Staff following submission. United Water does not have any record indicating objection by Staff.²

Finally, of the \$4,558,843 advanced plant in the SFA, \$2,519,944 is attributed to the on-site transmission main and \$2,038,899 is attributed to the storage and booster. At the estimated \$600 refund per new customer, the Avimor development will need to connect 3,398 new customers before the advance on the storage and booster would be exhausted, and before any advance attributable to the transmission main would be available for refund. Given that Avimor's initial construction phase calls for approximately 700 units, it appears the potential for refund of any advance related to the main is extremely remote before the expiration of the SFA in 15 years.

CONCLUSION

Based on the reasons and authorities cited herein, United Water respectfully requests:

1. That the Commission approve the expansion of United Water's service area as herein requested;
2. That the Commission authorize the preparation and filing of an Amended Certificate No. 143 to include the areas described herein;
3. That the Commission approve the SFA and determine that the Company's investments made pursuant to the Agreement are prudently incurred and recoverable in a future rate proceeding; and,
4. That the Commission grant such other and further relief as the Commission may determine proper herein.

² Because United Water has filed the SFA's for review, Staff's recommendation that United Water be ordered to file all future agreements is unnecessary.

DATED this 13 day of April, 2007.

UNITED WATER IDAHO INC.

By:  _____

Dean J. Miller

McDevitt & Miller LLP

420 West Bannock

Boise, Idaho 83702

P: 208.343.7500

F: 208.336.6912

Attorney for United Water

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of April, 2007, I caused to be served, via the method(s) indicated below, true and correct copies of the foregoing document, upon:

Jean Jewell, Secretary
Idaho Public Utilities Commission
472 West Washington Street
P.O. Box 83720
Boise, ID 83720-0074
jjewell@puc.state.id.us

Hand Delivered
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Fax
Fed. Express
Email

BY: Heather Hrule, legal Asst.
MCDEVITT & MILLER LLP

EXPLANATION

Avimor Planned Community

New UWID Certificated Area

Existing UWID Certificated Area

06N02E

33

32

31

33

33

34 06N01E

33

32

Gem County
Ada County

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36

05N02E

05N01E

Boise County
Ada County

	New UWID Certificated Area	
		Water Engineering, LLC water resource consultants <small>502 Westpark Dr. U.S. GDS Operating W. 201 201-112 Fax: 208-314-1478</small>
0 0.5 1 Miles		August 25, 2006

September 21, 2005

Mr. Randy Lobb
Utilities Division Administrator
Idaho Public Utilities Commission
472 West Washington
Boise, ID 83702

Dear Randy:

According to United Water Idaho's Rules relating to Special Facilities Agreements (SFA), which contemplate informal review by Commission Staff, I am transmitting herewith an Agreement with Claremont Realty Company concerning special facilities for the Arrowhead Canyon and Arrowhead Ridge subdivisions. The following information is offered to assist in your review:

Scope of the Arrowhead Project

The Arrowhead Project consists of water facilities to serve residential subdivisions consisting of approximately 240 lots in the foothills north of Boise. The Project is located northeast of the Quail Hollow Golf Course and southwest of Cartwright Road. The Special Facilities Agreement provides for the construction of a 440,000-gallon water storage reservoir (the "Arrowhead Reservoir"), pump stations (identified as "Pump Station 1" and "Pump Station 2"), the necessary supply line, overflow and drain line, controls and telemetry equipment, and roadway.

In addition to the water facilities covered in the Special Facilities Agreement, Claremont and UWID executed standard Residential, Multiple Family Housing, Commercial, Industrial, or Municipal Development Water Main Extension Agreements for the construction of the water distribution facilities (mains, valves, services, and fire hydrants) to serve the subdivisions.

Service Configuration

The project presented a number of engineering challenges because the development traversed three pressure zones within the system. Several approaches were discussed with Claremont for the pumping and storage facility needs of the Project, all of which included extension of the existing 12-inch main at Medicine Creek and water supplied from the 36th Street booster. UWID engineering staff ultimately determined that the best approach was to construct a larger reservoir on the north side of Cartwright Road at the top of the hill at an elevation sufficient to supply gravity pressure to the uppermost service zone of the Project. This configuration

Mr. Randy Lobb
September 21, 2005

UWI-W-07-1
Exhibit B
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would be most advantageous to existing portions of the UWID system as well as to the Arrowhead Project. In addition, two pump stations would be needed to lift water to the reservoir. These pump stations were designed to regulate service pressure to the lots within their respective pressure zones. The key element of this design is that one large reservoir located at the highest point can supply both peak demand and fire protection to the entire Project and existing UWID customers by gravity.

Cost and Cost Sharing

The total cost of the water facilities included in the Special Facilities Agreement was \$1,427,023. There is a portion of the cost of the Project that UWID funded, which amount is \$390,584.

The rationale for cost sharing is based on the fact that the Arrowhead Project facilities provide improved service, fire protection, and reliability to the previously existing 164 UWID customers. The calculation of UWID cost sharing was based upon identification of the benefits these customers would receive as a result of the new Arrowhead facilities. The most significant benefit is from the water storage reservoir and pump stations. In all cases, foothill systems that utilize gravity storage are preferred over those served solely from booster pumps. The key advantages are more uniform pressure, smaller and less complicated pump stations than a system with no storage, protection from temporary interruptions in electrical power, and the provision of adequate fire protection reserves.

UWID's cost sharing can be summarized as follows:

UWID share of peak demand storage	\$171,820
UWID share of fire protection storage	\$103,131
UWID share in land cost	\$ 7,600
Oversizing cost of Pump Station #1	\$ 11,687
Oversizing cost of Pump Station #2	\$ 15,068
Avoided cost of auxiliary power	\$ 52,000
Negotiated settlement amount	<u>\$ 29,278</u>
Total UWID cost sharing amount	<u>\$390,584</u>

The cost sharing rationale for each component is discussed below.

Storage Capacity

Storage capacity is determined from two factors, peak hour supply and fire protection reserve. Peak hour supply or peaking volume is determined by calculating the volume of water that exceeds the average demand on maximum day. With this in mind, during maximum demand the pumps that supply the system operate at the normal rate while the peak demands are fed from storage. During lower demand periods, when the normal pumping rate exceeds the

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customer demands, the volume used for peaking is replenished in storage. Historically the volume for peaking is approximately 20% of the maximum day demand.

Peaking Capacity Calculation

Customers to be served:

UWID existing customers	164
Proposed Arrowhead customers	<u>240</u>
Total customers	<u>404</u>

Average maximum day demand is approximately 3,200 gallons per customer. Therefore, the total water usage on maximum day is projected at $404 \times 3,200 = 1,292,800$ or about 1,300,000 gallons. Peaking storage is then estimated at 20% of maximum day demand resulting in a peaking storage total of $1,300,000 \times 20\% = 260,000$ gallons.

Fire protection reserve is determined by multiplying the fire flow rate of 1,500 gpm by the required duration of two hours, resulting in 180,000 gallons of fire protection volume required. Thus the total reservoir volume becomes $260,000 + 180,000 = 440,000$ gallons, which is the size of the Arrowhead reservoir.

The total cost of the Arrowhead reservoir is \$720,433, thus the unit cost per gallon becomes $\$720,433 / 440,000 = \1.637 per gallon.

The UWID portion of the peaking volume is $164 \text{ customers} \times 3,200 \text{ gallons} \times 20\% = 104,960$ gallons.

At \$1.637 per gallon, the UWID cost portion is $104,960 \times \$1.637 = \$171,820$.

The existing Quail/Medicine Creek customers previously had no storage facilities and depended exclusively on the 36th Street booster for all water service needs. The Cartwright/El Pelar customers had storage water available, but the existing Cartwright water tank (capacity of 150,000 gal.) was too small to provide both peak hour demands and the fire protection reserve. The Arrowhead reservoir provides both peaking and the reserve for fire protection and allows the retirement of the undersized Cartwright tank. Inclusion of the El Pelar system also benefits both El Pelar and Arrowhead as it strengthens both with independent alternative sources of supply, the Cartwright booster and the 36th Street booster.

Fire Protection Capacity Calculation

As previously mentioned, there were two groups comprising 164 existing UWID customers: the 141 Cartwright/El Pelar customers served by the Cartwright reservoir and booster and the 23 Quail Hollow/Medicine Creek customers served by the 36th Street booster. The 36th Street booster had the capacity to provide fire protection, but the Cartwright system did not.

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The Cartwright storage tank did not meet current requirements for fire protection plus maximum day demand conditions. Based on the maximum day demand estimates for the 141 customers, peaking storage requirements are approximately $141 \times 3,200 \times 20\% = 90,200$ gallons. The full capacity of the Cartwright tank is 150,000 gallons. Therefore, the peaking capacity demands reduce the available fire protection reserve to 59,800 gallons of the 180,000 gallons required. The expansion of the Cartwright storage capacity by 120,000 gallons would cost approximately \$196,000 at Arrowhead reservoir unit costs.

The 141 customers on the Cartwright side of the system constitute 35% of the total 404 customers to be served by the Arrowhead facilities. At a unit cost of \$1.637 x 180,000 gallons required for fire protection = \$294,660 for the cost of the fire protection component. Applying the 35% factor against this amount results in UWID's proportionate share for the fire protection reserve of \$103,131. This lower cost was the basis of UWID's decision to retire the Cartwright tank and to participate in the costs of oversizing the Arrowhead reservoir as its replacement.

Thus, the total UWID participation for the storage tank becomes:

Peaking storage	\$171,820
Fire protection – Cartwright side	<u>\$103,131</u>
Total	<u>\$274,951</u>

Land Cost Determination

The total estimated land value of \$19,000 for the reservoir and associated pipeline easements was a negotiated value discussed between the parties. The developer was unable to provide an historical basis for the land since it was owned for a long time. The 404 total customers are made up of Arrowhead at 240 and UWID's existing 164. This results in a 60 / 40 split respectively. This value was carried forward in the calculations with UWID being attributed 40% of this amount or \$7,600.

Oversizing Cost of the Two Pump Stations

The pump stations include two 450-gpm pumps, together with one 900-gpm pump, at each station. If the Arrowhead system were constructed without UWID's customer involvement, these pumps would have been sized smaller with two 270-gpm pumps and one 540-gpm pump at each station. In addition, the clear well capacities would have been reduced proportionately from the current 20' wide x 20' long x 10' high to 12' wide x 20' long x 10' high. The table below summarizes the cost differences between these capacities.

	Total System	Arrowhead Only	Difference
Pump Station 1:			
Pump 1 & Motor	\$8,266	\$7,016	\$1,250
Pump 2 & Motor	7,053	5,946	1,107

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Pump 3 & Motor	<u>7,053</u>	<u>5,946</u>	<u>1,107</u>
	\$22,372	\$18,908	\$3,464
Pump 1 VFD	\$3,422	\$2,512	\$ 910
Pump 2 VFD	2,248	1,833	415
Pump 3 VFD	<u>2,248</u>	<u>1,833</u>	<u>415</u>
	\$7,918	\$6,178	\$1,740

The reduction in size for the clear well, as discussed above, is eight feet in width. At \$350 per cubic yard for one-foot thick reinforced concrete, the resultant cost reduction becomes:

Clear well cost difference:

$$\begin{aligned} & (8 \times 10 \times 1 + 8 \times 10 \times 1 + 8 \times 20 \times 1 + 8 \times 20 \times 1) / 27 \times \$350 \\ & (80 + 80 + 160 + 160) / 27 \times \$350 \\ & 17.78 \times \$350 = \$6,223 \end{aligned}$$

Pump Station 1 Cost Difference: $(\$3,464 + \$1,740) \times 1.05 \text{ sales tax} + 6,223 = \$11,687$

	Total System	Arrowhead Only	Difference
Pump Station 2:			
Pump 1 & Motor	\$ 9,929	\$ 7,806	\$2,123
Pump 2 & Motor	8,319	7,201	1,118
Pump 3 & Motor	<u>8,319</u>	<u>7,201</u>	<u>1,118</u>
	\$26,567	\$22,208	\$4,359
Pump 1 VFD	\$ 6,061	\$3,422	\$2,639
Pump 2 VFD	2,961	\$2,248	713
Pump 3 VFD	<u>2,961</u>	<u>\$2,248</u>	<u>713</u>
	\$11,983	\$7,918	\$4,065

Clear well cost difference: Same as for Clear well 1 above at \$6,223

Pump Station 2 Cost Difference:

$$(\$4,359 + \$4,065) \times 1.05 \text{ sales tax} + \$6,223 = \$15,068$$

Total UWID Oversizing Pump Station 1 and Pump Station 2 is:

$$\$11,687 + \$15,068 = \$26,755$$

Avoided Cost of Auxiliary Power

Current UWID design standards require that new foothill systems provide gravity storage to ensure continuous water service in the event of an interruption in the electrical power supply.

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If gravity storage cannot be provided, then an auxiliary power supply is required. The water system supplied by the 36th Street booster, serving Medicine Creek and Quail Hollow Golf Clubhouse facilities and several individual homes, was constructed prior to this design standard and without gravity storage or auxiliary power. Hence, UWID faced the ultimate responsibility and cost to upgrade this section of the system with auxiliary power. However, inter-tying the 36th Street system with Arrowhead provides the gravity storage capacity and eliminates the need to install an auxiliary power supply.

The avoided cost of the auxiliary power supply is estimated to be \$52,000 as follows:

Auxiliary generator	\$43,600
Sales tax @ 5%	2,180
Installation	3,000
Const. O/H @ 6.6%	<u>3,220</u>
Total	<u>\$52,000</u>

Negotiated Settlement Amount

The Special Facilities Agreement for the Project was entered into after all physical construction of the Project was completed and all costs were known. After construction, UWID and Claremont representatives met in an attempt to finalize the Agreement. The parties had significantly different opinions on the issue of cost sharing and in fact were quite far apart in the amount of money each believed that UWID should contribute to the Project. It quickly became apparent that the only solution short of litigation was going to be a negotiated settlement. Ultimately, an arms-length settlement was reached by which UWID would contribute the \$390,584 amount to the Project according to the justifications provided previously. The \$29,278 amount is the excess contribution over what can be directly calculated from the new facilities providing service to UWID's existing 164 customers. It is UWID's opinion that this negotiated settlement amount is quite small compared to the significant improvements in service to customers the Project affords, and is also small in comparison to the costs that might have been incurred by UWID if no agreement was reached and litigation had ensued.

Benefits to Existing Customers

As previously stated, the most significant benefit is from the water storage reservoir. In all cases, foothill systems that include gravity storage are preferred over those served solely from booster pumps. The key advantages are more uniform pressure, smaller and less complicated pump stations than a system with no storage, protection from temporary interruptions in electrical power, and the provision of adequate fire protection reserves.

The existing UWID customers also now enjoy a significant improvement in the level of reliability which was previously unavailable to them. In particular, the El Pelar/Cartwright customers now have adequate fire protection.

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In addition, all the existing customers now enjoy the benefit of an alternate source of supply that previously did not exist, that being the Arrowhead reservoir and the potential of water supply from "either end" since the Arrowhead system tied together the Quail/Medicine Creek system and the El Pelar/Cartwright system. The investments in the two pump stations now enable supply to be provided to both systems.

Arrowhead SFA Contrasted with Quail Ridge SFA

UWID's most recent other SFA is with Capital Development with respect to the Quail Ridge Subdivision project. The Arrowhead SFA is different from the Quail Ridge Agreement in four significant areas as follows:

1. The Arrowhead Agreement is written from the perspective of the construction having already taken place and in fact was created and has been executed after physical construction of the facilities was completed.
2. The amount of UWID participation in the project, which has been discussed previously.
3. The specifics of the refund calculation as shown on Exhibit C to the SFA. Items worth noting are: All OpEx data has been updated to reflect 2004 actual. Revenue estimates are based on rates in effect as of the date of the agreement. Cost of capital figures are based on the numbers stipulated to with Staff in UWID's current case since they were known at the time of the agreement. The calculation of backbone plant which revenue must support is updated to consider depreciation. Exhibit C results in a higher refund in each usage column than previous SFAs largely due to these updates.
4. There is a change to the amount of refund that UWID initially proposes to pay the developer as new customers are connected. The Quail Ridge Agreement calls for UWID to pay 90% of the anticipated total refund amount to the developer as each new customer connection occurs. In the Claremont Agreement, this initial refund amount has been reduced to 80% of the anticipated total refund at the time of connection to the system because experience with the final adjustments to refunds on the Quail Ridge Agreement has shown that the 90% amount was slightly higher than the total ultimate refund required based on actual revenues received from customers. The initial portion of the refund is lowered to 80% in the Claremont Agreement in order to reduce UWID's risk of refunding more than is required. This more conservative initial refund also reduces the risk that UWID will have to request any previously refunded amounts be paid back by the developer.

Circumstances Regarding Delay in the SFA

The circumstances leading to the Claremont SFA being executed after physical construction was completed are as follows: Representatives from Claremont initially contacted UWID regarding their proposed 240-lot project in the spring of 2000. As previously mentioned, Mr. Randy Lobb
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various approaches for providing service to the Project were discussed. By mid-2001 the project construction had begun and the facilities were completed and in service on or about July 31, 2002. All the while during design discussions and construction, UWID engineering was in discussions with Claremont about the particulars of the SFA. Both parties have worked together on various projects in the past and had developed a level of comfort and understanding based on a sound working relationship from previous projects. The parties thus established a verbal agreement to proceed with the Project under an atmosphere of "trust" with regard to the eventual execution of the SFA. Both Claremont and UWID had interest in the project moving forward so as to provide service to Claremont's future subdivisions and to improve service to UWID's existing customers. In the fall of 2002, the principal for Claremont was involved in a serious snowmobiling accident that kept him unavailable for meetings for almost six months. In January 2003, UWID's lead engineer on the Project was diagnosed with cancer and was virtually unavailable for the entire year as he underwent treatments and recovery.

The parties did conduct some negotiation meetings toward establishing the SFA during 2003, but progress was slowed by the aforementioned difficulties. Negotiations were able to resume in earnest in January 2004; and by May, the parties reached agreement on cost sharing as well as on many language issues in the SFA itself. It was not until July 2005 that the Claremont Board gave final approval on the Agreement.

After you review this information, please let me know if you have further questions or require any additional information.

Respectfully,



Gregory P. Wyatt
General Manager

cc: J. Miller, Attorney
D. Brown
M. Gennari
Arrowhead File

Attachment: Claremont Special Facilities Agreement

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Ways

McDevitt & Miller LLP

Lawyers

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Chas. F. McDevitt
Dean J. (Joe) Miller

March 24, 2006

Via Hand Delivery

Ms. Jean Jewell, Secretary
Idaho Public Utilities Commission
472 W. Washington Street
P.O. Box 83720
Boise, Idaho 83702

Re: Case No. UWI-W-05-05, Jayo Construction v. United Water

Dear Ms. Jewell:

In the above matter the parties reached a negotiated settlement agreement which led to the filing of a Withdrawal of Complaint on January 26, 2006. Pursuant to the settlement agreement the parties agreed to negotiate and submit for review by Staff a Special Facilities Agreement.

Enclosed herewith for Staff review is the executed Special Facilities Agreement.

I would appreciate being advised when Staff has completed its review.

Very Truly Yours,

MCDEVITT & MILLER LLP

Dean J. Miller

DJM/lc

C: Greg Wyatt, United Water Idaho
Molly O'Leary, Esquire

EXHIBIT C