

WELDON B. STUTZMAN  
DEPUTY ATTORNEY GENERAL  
IDAHO PUBLIC UTILITIES COMMISSION  
PO BOX 83720  
BOISE, IDAHO 83720-0074  
(208) 334-0318  
IDAHO BAR NO. 3283

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Street Address for Express Mail:  
472 W. WASHINGTON  
BOISE, IDAHO 83702-5983

Attorney for the Commission Staff

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

<b>IN THE MATTER OF THE APPLICATION OF</b>	)	
<b>UNITED WATER IDAHO INC. FOR</b>	)	<b>CASE NO. UWI-W-07-1</b>
<b>AUTHORITY TO AMEND AND REVISE</b>	)	
<b>CERTIFICATE OF PUBLIC CONVENIENCE</b>	)	
<b>AND NECESSITY NO. 143 AND FOR</b>	)	<b>COMMENTS OF THE</b>
<b>APPROVAL OF A SPECIAL FACILITIES</b>	)	<b>COMMISSION STAFF</b>
<b>AGREEMENT WITH AVIMOR LLC.</b>	)	
	)	

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**COMES NOW** the Staff of the Idaho Public Utilities Commission, by and through its Attorney of record, Weldon B. Stutzman, Deputy Attorney General, in response to Order No. 30242, the Notice of Application and Notice of Modified Procedure in Case No. UWI-W-07-1 issued on February 14, 2007, and submits the following comments.

**BACKGROUND**

On January 10, 2007, United Water Idaho Inc. filed an Application requesting approval of an amendment to its Certificate of Public Convenience and Necessity and of a special facilities agreement with Avimor LLC. Avimor intends to develop a planned community north of Boise called Avimor (the Project) on lands known as the Spring Valley Ranch. The Project consists initially of approximately 700 residential and commercial building lots. Avimor has requested that

United Water provide public water service to the Project and to future development located within the Spring Valley Ranch property.

The area of development currently is not within the certificated area of any water company. In order for United Water to provide service to the area, it must extend its facilities, including approximately 30,500 feet of main water line, a booster station, and a 600,000-gallon water storage reservoir. Avimor has agreed to provide the initial funding for the needed facilities at an approximate cost of \$6.3 million. United Water will provide refunds to Avimor, on a portion of its investment, as new customers are connected to the facilities. A portion of Avimor's investment would be contributed without opportunity for refund.

## **STAFF REVIEW**

For the purpose of perspective Staff offers the following estimates taken from United Water's filing. Phase 1 of the Avimor project will be built on approximately 860 acres (1.3 square miles). Phase 1 is approximately one-fifth of United Water's requested service area expansion that includes approximately 4,500 acres (7.0 square miles). The area identified as available for refund of Avimor's investment is more than 10,000 acres (15.6 square miles) and Avimor's total holdings in the area are approximately 23,000 acres (35.9 square miles).

Phase 1 of Avimor includes approximately 700 residential and small commercial water connections that are estimated to require 500 gpm (gallons per minute) of capacity. The 16-inch transmission main that will deliver water to Avimor has an operating capacity of at least 10 times that amount which is 5,000 gpm. The Application states that United Water can provide the initial 500 gpm required to serve Phase 1 without additional investment in source of supply. The Company does not indicate where additional water supply will come from to serve the remaining development or how much it will cost.

In order to determine whether the Company's application should be approved, the Commission must determine if the requested expansion is in the Public Interest. In this case, the Public Interest of particular concern to Staff is the potential impact of the proposed expansion on the general body of United Water ratepayers.

In its filing, United Water requests that the Commission approve the expansion of its service territory as shown on the map that is Exhibit E to the Application. United Water also requests that

the Commission authorize the preparation and filing of an Amended Certificate No. 143 to include that area.

As already discussed, the expanded service area requested by United Water is much larger than Avimor Phase 1. United Water apparently has an adequate water supply for Phase 1 but not for buildout of the additional service area. Once a certificate is granted, United Water will have the obligation to supply service in the expanded area, and that undoubtedly will require a new source of water supply.

While the Company has indicated that sufficient water supplies exist to serve the initial phase of 700 customers, it does not provide any information regarding where additional water will come from to serve the larger area requested or what it might cost. Given the desert location of the development and the limited ground water supply in the area, it is unlikely that water supply can be obtained at the embedded cost currently supported by rates paid by United Water customers. In fact it is likely that water supply costs to serve this area could equal or exceed the investment made for United Water's Columbia Water Treatment Plant, which are six times that currently included in rates.

When revenue generated from new customers fails to cover the cost of new supply sources required to serve them, the general body of ratepayers pays the additional costs. Staff believes that the impact on United Water customer rates must be evaluated to determine if an expanded certificated area is in the Public Interest. This is not necessarily unique to the Avimor development but is the circumstance of all system growth that requires expensive source of supply investment.

### **Source of Supply Contributions**

While the Company can collect contributions from developers for various facilities, and has proposed to do so for some distribution and transmission facilities in this case, it may be prohibited from collecting contributions for source of supply from new customers located within its certificated area. Currently, United Water tariffs require that 100% of the distribution costs to serve a new development be contributed by the developer without refund. The rules also specify that the cost of special facilities such as boosters and storage reservoirs can be advanced by the developer and refunded over time as new customers are connected. Staff will discuss the proposed special facilities agreement between United Water and Avimor later in these comments.

However, under United Water's existing tariffs, it is unclear if the capital costs associated with source of supply such as wells, pumps, water rights and water treatment plants are subject to developer contribution or advance. The Company has not historically collected such an advance, nor is it certain that it could. In addition, restrictions were placed on new customer fees to pay capital costs in *Building Contractors Association of Southwestern Idaho, Inc., v. Idaho Public Utilities Commission*, 128 Idaho 535, 916 P.2d 1259 (1996), where the Supreme Court overturned new customer water supply contribution fees that had been established by the Commission. The Court's decision was based on Idaho Code § 61-315, which prohibits "unreasonable differences" in rates and customer charges. Staff believes the circumstances in this case dealing with service area expansion differ from the *Building Contractors* case, allowing the Commission to consider contributions toward source of supply from the developer or from new customers as a condition of certification.

The *Building Contractors* case began as a rate case filed by Boise Water Corporation. The Commission in that case imposed a hook-up fee on new water customers to pay for a new treatment plant required by federal law, as well as other capital costs associated with increases in numbers of customers. The Court stated that "no particular group of customers should bear the burden of additional expense occasioned by changes in federal law," and held: "To the extent that the new hook-up fees are based on an allocation of the incremental cost of new plant construction required by growth and by the Safe Drinking Water Act solely to new customers, the fees unlawfully discriminate between old and new customers in violation of section.61-315 of the Idaho Code." 128 Idaho at 539.

The Supreme Court also overturned a new customer fee in *Idaho State Homebuilders v. Washington Water Power*, 107 Idaho 14, 690 P.2d 350 (1984), but noted that rate distinctions may be appropriate in some circumstances. The *Homebuilders* case began as a rate case filed by Washington Water Power. The Commission required Washington Water to impose a nonrecurring charge on all customers who installed electric space heating, or converted to electric space heating, after March 1, 1980. The Court held that the one-time charge, "which differentiates between customers using electricity for space heating prior to March 1, 1980, and customers who install or convert to electric space heating after that date, is an invalid classification and violates the legislative prohibition against discriminatory or preferential rates." 107 Idaho at 421. The Court noted, however, that "not all differences in a utility's rates and charges as between different classes

of customers constitute unlawful discrimination or preference under the strictures of I.C. § 61-315.” 107 Idaho at 420. Permissible differences in rates may occur, and must be justified by, “a corresponding classification of customers that is based upon factors such as cost of service, quantity of electricity used, differences in conditions of service, or the time, nature and pattern of the use.” *Id.* Significantly, the Court also noted that the case before it “presents no factors such as when a non-recurring charge is imposed upon new customers *because the service they require demands an extension of existing distribution or communication lines* and a charge is imposed to offset the cost of the utility’s capital investment.” 107 Idaho at 421 (italics added).

A key distinction between the *Homebuilders* and the *Building Contractors* cases and this case is that United Water here seeks an extension to its certificated area, to include an area currently unserved by any water utility. In the court cases, new fees were imposed solely on new customers within the affected utilities’ already certificated area, and in areas already served by the utility. *Idaho Code* § 61-526, which authorizes the Commission to place terms and conditions on a service area certificate, was not considered in those cases.

Staff believes the Commission in this case can and should consider placing conditions on United Water’s certificate if its certificate is amended to include an area larger than Avimor’s Phase 1 development.

### **Certificate of Public Convenience and Necessity**

*Idaho Code* § 61-526 authorizes the Commission to place terms and conditions on a certificate of public convenience and necessity, particularly when considering the extension of a utility’s facilities. The conditions the Commission may place on a certificate, when proper evidence demonstrates the appropriate public need, may be stringent. The Idaho Supreme Court even affirmed the Commission’s authority under Section 61-526 to remove an unserved area from a utility’s certificated area upon evidence the public convenience and necessity warrants it. *Cambridge Telephone Co., Inc., v. Pine Telephone System, Inc.*, 109 Idaho 875, 712 P.2d 576 (1985).

United Water in this case is seeking not only extension of services to an unserved area, but must have the area added to its certificate in order to build facilities to serve the area. The area currently is unserved, and is outside United Water’s certified area. The Commission’s authority to

place terms and conditions on United Water's extension of services to the area, pursuant to *Idaho Code* § 62-526, is clearer than in the *Cambridge Telephone* case.

Consequently, given the size, location and uncertainty in costs associated with source of supply to serve the entire Avimor development, Staff recommends that the Commission deny expansion in the area beyond Avimor's Phase 1 at this time. Staff further recommends that the Commission open a docket so that interested parties can discuss the water supply cost concerns and develop alternative solutions to mitigate the potentially unconstrained investment in source of supply that would otherwise be borne by United Water customers. Areas of discussion might include developer contributions, hook-up fees as a condition of certificate, a source of supply investment cap, contributed water rights, a water rate differential, etc.

It appears that the Company anticipated the possibility of such an approach based on language in the special facilities agreement, which states:

The Company shall supply source water for future Avimor development outside the Project but within the Company's Service Area Expansion as shown on Exhibit E, all subject to approval by the Idaho Public Utilities Commission. If, because of the absence of economically feasible source of supply or because of regulatory constraints imposed by the Idaho Public Utilities Commission, the Company is unable to supply source water sufficient to meet the domestic, commercial, public authority, and associated irrigation water supply needs for future Avimor developments within the Company's service Area expansion as shown on Exhibit E, then the Company shall not object to Avimor's reliance on alternative sources of water.

Contrary to what the quoted part suggests, Staff believes that once the development area is within the Company's certificated service area, United Water may be obligated to provide water to the development regardless of cost, and the Commission may be legally constrained from collecting contributions from the developer or new customers in the area. Thus it is Staff's recommendation to substantially deny the certificate request at this time in order to establish reasonable conditions for water supply cost contribution to enable full development of the Amimor project.

To the extent the company has existing water supply available to serve the Avimor Phase 1, Staff does not oppose expanding the certificate to serve this area. There is little risk to ratepayers as a result of such expansion and Staff believes that it is not contrary to the public interest. However, Staff does have additional concerns with respect to extension of facilities to serve Phase 1 and the terms of the proposed special facilities agreement.

## **The Special Facilities Agreement**

In its Application United Water requests that the Commission approve the special facilities agreement (SFA) it has entered into with Avimor and determine that United Water's investments made pursuant to the agreement are prudently incurred and recoverable in a future rate proceeding.

The special facilities agreement identifies facilities costs that are to be contributed by Avimor and facilities costs that are to be advanced by Avimor with the opportunity for refund from United Water. Contributed costs place no upward pressure on rates because they are not, nor do they become, part of the Company's Rate Base. Advanced costs, on the other hand, become Company investment that is subject to inclusion in Rate Base as United Water refunds the advance to Avimor over time.

In this filing the facilities costs identified by United Water that are subject to advance with the opportunity for refund include a storage tank (\$788,418), a booster pumping station (\$1,250,481) and the "on-site" portion of a 16-inch water transmission main approximately 18,000 feet in length (\$2,519,944). United Water identifies developer-contributed facilities to be the "off-site" 16-inch transmission main approximately 12,500 feet in length (\$1,749,962). Total project costs are estimated to be \$6,308,805.

United Water portrays the contributed versus advanced portions of the special facilities to be standard practice and points to four other projects to substantiate its position. Staff has reviewed the Commission's special facilities agreement policy as established for United Water and the four projects that United Water points to and arrives at the following conclusions. Staff agrees that the costs of the Storage Tank and the Booster Pumping Station should be advanced and that "off-site" transmission main should be contributed. Staff does not agree, however, that "on-site" transmission main should be advanced. Instead, Staff believes that "on-site" transmission main should be contributed along with "off-site" transmission main.

In support of this position Staff points to United Water's current tariff rules 74 through 77 that are listed under the heading "SPECIAL FACILITIES". (Attachment A to these comments) Rule 74 defines Special Facilities as "source of supply, storage and booster pumping facilities". Rule 75 requires that "the Applicant shall advance the cost of such facility or facilities." Transmission main is not included as a special facility that qualifies for advance and refund whether it be on-site or off-site. Further review reveals that the genesis of United Water's current Special

Facilities rules occurred in Case No. UWI-W-96-4, which was a settled case. The Settlement Agreement is attached to the final order in that case, Order No. 26898. (Attachment B to these comments) On page 2 of that order “The general terms of settlement regarding the Company’s customer contribution rules ...” are summarized. The third bullet states one of the settlement results:

Implementation of new main extension agreements whereby the developer or applicant requesting service contributes the actual transmission and distribution cost of connecting to the company’s water system including off-site mains, on-site mains and terminal facilities (service and meter).  
No allowance or line extension refunds (except vested interest).

The Stipulation and Settlement Agreement page 4 starting at line 10 addresses tariff changes necessary to implement the Commission’s order. Those changes are contained in United Water Exhibit No. 8 (Attachment B), which again make it clear what facilities are eligible for advance and refund by United Water. Neither on-site nor off-site transmission main is included.

As previously mentioned United Water cites four other facilities agreements in support of the treatment of special facilities in this agreement. Two of the special facilities agreements--the Claremont Development project and the Jayo Construction project--were never filed with the Commission for approval, and there is no record indicating Staff had an opportunity to review them.

A special facilities agreement was filed with the Commission with a request for approval for the Hidden Springs project. United Water requested that the developer advance on-site water main costs with the opportunity to receive refunds from United Water as new customers hooked up and used water. Staff adamantly opposed the Company’s position on this issue. In its final order the Commission stated:

Although we believe that it is inappropriate to refund distribution and transmission facilities costs, we find the potential for refund of such costs in this case to be relatively small.

(Order No. 27762, Pg. 6)

With this caveat, the Commission approved the Hidden Springs special facilities agreement.

The fourth special facilities agreement identified by United Water is for Harris Ranch. After the developer contributed \$615,700 to bring a 16-inch mainline extension to the development, United Water filed for approval of a special facilities agreement that, among other things, included a relatively small amount of 12 inch mainline estimated to cost \$86,950. Staff did not challenge the



amount, which was identified as an amount to be advanced by the developer. The Commission approved the agreement.

After reviewing United Water's Rules and the case in which those rules were established and the previous cases that involved Commission approval of special facilities agreements for United Water, Staff continues to oppose advances for water mains whether they be on-site or off-site. The developer should contribute the cost of water mains associated with a specific project without the opportunity for refund (except vested interest refunds which are not at issue here). Staff therefore recommends that Avimor contribute without refund the "on-site" portion of the 16-inch water transmission main, approximately 18,000 feet in length, at an estimated cost of \$2,519,944. The remaining advance subject to refund would be \$2,038,899. Such a requirement is consistent with the policy established by the Commission in Case No. UWI-W-96-4, Order No. 26898 and United Water tariffs currently on file with the Commission.

#### Refunds

As previously discussed, the special facilities agreement proposes that United Water refund to Avimor portions of the amount advanced by Avimor as new customers connect to the system in the refund area identified on Exhibit H of United Water's Application. Refunds would continue until either the total amount of the advance is refunded or the 15-year refund period expires.

The refund amount is based on a formula contained in Rule 75 of the Company's Rules and Regulations. The refund amount is the investment amount supported by current rates that is available to pay for storage reservoirs and booster pumping stations. The refund calculation removes amounts from the revenue stream associated with operation and maintenance, and the revenue requirement associated with meter investment and embedded source of supply. Any revenue requirement currently embedded in rates for facilities such as transmission and distribution that are contributed by the developer in this case, remain in the calculation and increase the refund amount.

The refund formula is designed to theoretically match revenue generated from new customers with the revenue requirement needed to serve those customers. The assumption is that once appropriate service costs are subtracted, the remaining revenue from a new customer will support the revenue requirement on the investment made by the company in the form of a developer refund. The primary determinates of the available refund are the amount of water a new customer

uses and the assumption that the water source needed to serve new customers will be provided at embedded cost.

While the refund will be adjusted to reflect actual new customer consumption, the actual cost of water to serve the new development will not be included. To the extent actual water supply costs turn out to be higher than embedded costs, rates for all customers will increase. The Staff recommendation to reduce the developer advance subject to refund does not affect the amount of refund per customer.

United Water estimates that annual water use per customer on the Avimor project will be 154 ccf (15,400 cubic feet), which translates to a refund amount of approximately \$600 per hook-up (Exhibit G). At that rate the Company proposed advance of \$4,558,843 would be completely refunded with the connection of approximately 7,600 customers. It would require approximately 3,400 customers to completely refund Staff's proposed advance of \$2,038,899.

Staff believes the refund amounts calculated in Exhibit G to the Company's Application are as required by United Water's tariff Rule 75.

## **CONCLUSIONS AND RECOMMENDATIONS**

Avimor is one of the first of what could be many large Planned Community developments in the Boise area expected to request water service from United Water. In many areas it is considerably less expensive for developers to take service from United Water under existing policy than it is to develop a stand-alone water system. In the last decade source of new water supply costs have risen dramatically as United Water's source of supply has moved from ground water to treated surface water in many areas. In other areas, ground water is still available at a fraction of treated surface water costs, but still well above the cost incurred for ground water in the past. Surface water in the Boise River drainage is fully appropriated.

Staff does not believe it is appropriate to place the cost burden of providing water supply to projects such as Avimor on the general body of United Water ratepayers. The cost burden is more appropriately placed on the developers that profit when water is provided to these lands. Absent the possibility for United Water and its customers to pay the cost of water supply, Avimor and other similarly situated projects would be required to develop their own water supplies and more appropriately carry the cost burden of land development.

Staff does not oppose United Water's service area expansion to serve Avimor Phase 1. Staff accepts the Company's position that source of supply is available to serve Phase 1 and believes the risk is low that customer rates could be significantly impacted as a result of this limited expansion.

Staff recommends that the Commission deny the expansion of United Water's service territory beyond Phase 1 until a more appropriate method is established to require water supply cost participation by developers or customers requesting service. Staff further recommends that the Commission immediately open a docket to address the issue of increased developer/new customer participation in water supply cost recovery.

Staff also recommends that the Commission deny the special facilities agreement as filed. Staff proposes that the Commission require United Water and Avimor to modify or renegotiate the SFA such that all transmission investment associated with the project is contributed without the potential for refund before Commission approval is provided. The increased contribution is consistent with Company tariffs and Commission policy.

Finally, Staff recommends that the Commission order United Water to file all future special facility agreements requiring contributions or advances with the Commission for approval except on-site distribution contracts which require developers to contribute 100% of those costs without refund.

Respectfully submitted this 16<sup>th</sup> day of March 2007.



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Weldon B. Stutzman  
Deputy Attorney General

Technical Staff: Keith Hessing  
Randy Lobb  
Kathy Stockton

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Sheet No. 23  
Replacing all Previous Sheets

IDAHO PUBLIC UTILITIES COMMISSION  
Approved                      Effective  
March 6, 2006              March 6, 2006  
Per O.N. 29983  
Jean D. Jewell Secretary

**UNITED WATER IDAHO INC.**

**RULES AND REGULATIONS GOVERNING WATER MAIN EXTENSIONS (continued)**

specifications, and estimates, the Applicant shall reimburse the Company an amount equal to the Company's expenses.

73. The deposit referred to in paragraph 71 above, shall normally be a cash deposit. In this instance, the Company shall provide the material and labor for installation of the project.

However, the Applicant may provide the material and/or contract labor for the installation of the necessary facilities. In this instance, the Applicant shall deposit with the Company an amount equal to the estimated cost of applicable overheads for the entire project and the estimated direct labor costs incurred by the Company for such items as engineering design, estimating, and inspection. Also, the Applicant shall furnish the Company a certified invoice of sufficient detail to show the separate costs of material and labor for water mains and appurtenances by size, service laterals by size, meter boxes, meter settings and fire hydrants. The Company shall specify the material to be supplied by the Applicant with respect to size and type. In general, the material shall conform to the Company's standard material specifications and applicable AWWA specifications. The Company shall, at the Applicant's expense, make all connections to the Company's existing system if in the Company's opinion the contractor does not have the experience or equipment to make such a connection. Applicant's contractor shall comply with Section 1 and Section 2 of Company's *Requirements for Labor in Lieu of Cash Contractors*. In general, areas covered are requirements for inspection, monitoring of construction, acceptance and handling of materials, documentation of costs, correction of faulty installation, insurance, bonding, license requirements, experience, and equipment availability. The Company may deny the right of Applicant to provide a contractor who has not complied with its requirements in the past.

**SPECIAL FACILITIES**

74. Special facilities shall include source of supply, storage and booster pumping facilities which may be required to render adequate water service to an area for which such service has been requested.

75. Should an Applicant propose a Residential, Commercial, Industrial, or Municipal Development requiring a special facility or special facilities, the Applicant shall advance the cost of such facility or facilities. Normally, the advance shall be a cash advance. In this instance, the Company shall provide the material and labor for the installation of the facilities.

However, the Applicant may, with the Company's approval, provide the material and/or contract labor for the installation of the special facility or facilities. In the instance where an Applicant provides the material and/or contract labor, the Applicant shall deposit with the

UNITED  
Issued Per IPUC Order No. 29983  
Effective – March 6, 2006

Issued by UNITED WATER IDAHO INC.  
Gregory P. Wyatt, Vice President  
8248 West Victory Road, Boise, Idaho

Attachment A  
Case No. UWI-W-07-1  
Staff Comments  
3/16/07 Page 1 of 2

**UNITED WATER IDAHO INC.**

Company an amount equal to the estimated cost of applicable overheads for the entire project plus the estimated direct labor costs for such items as engineering design, estimating, and inspection.

An amount equal to the estimated cost of the necessary facilities shall be deposited with the Company prior to construction. The Company shall adjust the deposit based upon the determination of the actual cost of facilities installed. Any difference between the estimated and actual cost of the facilities installed shall be shown as a revision of the amount deposited and shall be payable within thirty (30) days of submission.

The cost of the special facilities advanced, or a portion thereof, shall be refunded based upon customer connections and in accordance with the following equation:  $X = [(R-E-D-T)/Y] - (S+M)$ , where:

X = Refund per Customer

R = Annual Revenue per Customer (actual revenue received from each customer served from the special facility)

E = Annual Operating and Maintenance Expense per customer (including Ad Valorem Tax)

D = Annual Depreciation Expense per Customer (Depreciation rate(s) for type(s) of facility installed x investment in that type of facility installed)

Y = Authorized Rate of Return

T = Income Taxes on Net Income per Customer

S = Imbedded investment in Source and Storage plant, less accumulated depreciation and customer advances and contributions against the plant. (Value of plant allocable to support consumption per customer level that produces the annual revenue per customer)

M = Meter cost Installed

Should the Company agree that the cost of any portion of the special facilities (source, storage, or pumping) not be advanced by the Applicant, the per customer refund shall be reduced by the per customer cost of that facility not advanced. The advance and refund agreement for each development shall be evaluated on a case by case basis and submitted to the Idaho Public Utilities Commission for review.

76. The Company shall be responsible to construct and/or install special facilities as may be required from time to time to maintain the rendering of adequate water service to existing customers.

77. The Company shall be the sole judge as to the design of and the time of construction and/or installation for any special facility(ies).

## BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE CONNECTION FEES)  
OF UNITED WATER IDAHO INC. AND OTHER )  
RELATED ISSUES INCLUDING RATE DESIGN.)

CASE NO. UWI-W-96-4

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**ORDER NO. 26898 AND  
NOTICE OF DEADLINE FOR  
INTERVENOR FUNDING**

This case was initiated September 17, 1996 pursuant to Idaho Public Utilities Commission (Commission) Order No. 26611 following a Stipulation/Motion signed by all parties to United Water's most recent rate case, Case No. UWI-W-96-3. The subject matter, as reflected in the case caption above, is the connection fee policy and related tariffs of United Water Idaho Inc. (United Water; Company). This case provides the Commission and parties with the first comprehensive opportunity to revisit the connection fee issue following the Idaho Supreme Court's 1996 opinion in *Building Contractors Association of Southwestern Idaho Inc. vs. IPUC*, 128 Idaho 534, 916 P. 2d. 1259 (1996).

United Water serves approximately 55,000 residential, commercial, and other classes of customers in the city of Boise and surrounding areas. The Company's sources of water supply consist of the Marden Water Treatment Plant and 62 deep wells. The combined 1995 capacity of all wells and the treatment plant is approximately 78 million gallons per day.

Public hearing in Case No UWI-W-96-4 was held on April 10, 1997. The following parties appeared either individually or by and through their respective counsel:

United Water Idaho Inc.  
Coalition of United Water Idaho Customers  
Building Contractors Association  
Sharon Ullman  
Commission Staff

Dean J. Miller, Esq.  
Peter J. Richardson, Esq.  
Forrest Goodrum, Esq.  
  
Scott Woodbury, Esq.

At the hearing on April 10, 1997, the parties presented a proposed Stipulation and Settlement Agreement (Reference Order No. 26898 - Attachment A) and asked that the Commission

NOTICE OF DEADLINE FOR  
INTERVENOR FUNDING  
ORDER NO. 26898

adopt it as the resolution of the case. The general terms of settlement regarding the Company's customer contribution rules are as follows:

- Elimination of guaranteed revenue escrows for residential subdivisions.
- Elimination of connection fees for new customers.
- Implementation of new main extension agreements whereby the developer or applicant requesting service contributes the actual transmission and distribution cost of connecting to the Company's water system including off-site mains, on-site mains and terminal facilities (service and meter).  
No allowance or line extension refunds (except vested interest).
- Vested interest refunds relating to contributions for off-site main extensions and service to completely new pressure zones requiring independent booster pumps and storage.
- Authorization of labor in lieu of cash for installation of facilities within residential subdivisions.  
Prequalification contractor requirements.  
Information disclosure procedure, re.: cost of materials and overheads.
- Provision for good faith renegotiation of Micron Agreement re.: refund mechanism related to Micron's prior advance of costs for supply, transmission and storage facilities.

#### **Commission Findings:**

The Commission has reviewed and considered the filings of record in Case No. UWI-W-96-4, the prefiled testimony and the exhibits of the parties, the Idaho Supreme Court's 1996 opinion in the *Building Contractors* case and the submitted Stipulation and Settlement Agreement. We appreciate the parties' efforts in negotiating what we find to be a fair, just and reasonable change in the Company's customer contribution rules. We find the terms of settlement to be supported by the filed testimony and exhibits of Commission Staff and Company witness Ben Hepler. We find the proposed settlement terms to be in the public interest and equitable, both to the Company's existing customers and to future customers. We also acknowledge and find reasonable and acceptable, the parties' agreed stipulation not to address rate design issues in this proceeding.

To remove any possible confusion, we find it reasonable to establish an explicit deadline for applications for intervenor funding in Case No. UWI-W-96-4. YOU ARE HEREBY NOTIFIED that all applications for intervenor funding must be filed in this case with the Commission Secretary within fourteen (14) days from the date of this Order. Reference *Idaho Code* § 61-617A and Commission Rules of Procedure, IDAPA 31.01.01.161-164.

### CONCLUSIONS OF LAW

The Idaho Public Utilities Commission has jurisdiction over this matter and United Water Idaho Inc., a water utility pursuant to the authority and power granted the Commission under Title 61 of the *Idaho Code* and the Commission's Rules of Procedure, IDAPA 31.01.01.000 *et seq.*

### ORDER

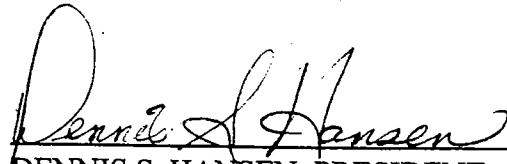
In consideration of the foregoing and as more particularly described above, IT IS HEREBY ORDERED that the customer contribution rules of United Water Idaho Inc. be changed in accordance with and pursuant to the terms contained in the Stipulation and Settlement Agreement attached to this Order. The Company is directed to file revised tariffs to implement and conform to the provisions of the Stipulation within thirty (30) days of this Order. The effective date of the revised tariffs will be the date of filing.

IT IS FURTHER ORDERED and the Commission does hereby adopt the foregoing schedule deadline for intervenor funding applications.

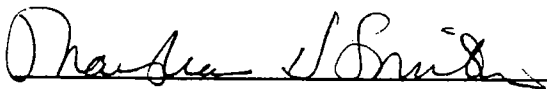
THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.



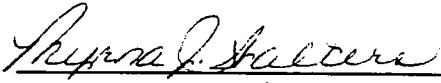
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 23<sup>rd</sup>  
day of April 1997.

  
DENNIS S. HANSEN, PRESIDENT

  
RALPH NELSON, COMMISSIONER

  
MARSHA H. SMITH, COMMISSIONER

ATTEST:

  
Myrna J. Walters  
Commission Secretary

cm\O:uwiw964.sw2

NOTICE OF DEADLINE FOR  
INTERVENOR FUNDING  
ORDER NO. 26898

1 Dean J. Miller  
2 Dean J. Miller, P.A.  
3 877 Main, Suite 610  
4 P.O. Box 2564-83701  
5 Boise, ID 83702  
6 Attorney for United Water Idaho Inc.

8 Scott D. Woodbury  
9 Deputy Attorney General  
10 472 W. Washington  
11 Boise, ID 83720  
12 Attorney for Commission Staff

15 Sharon Ullman  
16 9627 W. Desert Ave.  
17 Boise, ID 83709  
18 Pro Se

Peter J. Richardson  
Davis Wright Tremaine LLP  
999 Main Street, Suite 911  
Boise, ID 83702  
Attorney for the Coalition  
Of United Water Customers

Forrest Goodrum  
Penland & Munther  
350 N. 9th, Suite 500  
Boise, ID 83701  
Attorney for Building  
Contractors Association

20 **BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

23 IN THE MATTER OF THE CONNECTION )  
24 FEES OF UNITED WATER IDAHO INC. )  
25 AND OTHER RELATED ISSUES INCLUDING )  
26 RATE DESIGN )  
27 )  
28 )

CASE NO. UWI-W-96-4

29 **STIPULATION AND SETTLEMENT AGREEMENT**

31 COME NOW the parties identified herein and stipulate and agree as follows to wit:

32 **RECITALS**

33 1. Parties: The parties to this Stipulation and Settlement Agreement are:

34 A. United Water Idaho Inc (United),

35 B. The Coalition of United Water Idaho Customers (Coalition),

36 C. Sharon Ullman (Ullman),

STIPULATION AND SETTLEMENT AGREEMENT  
PAGE 1

Attachment B  
Case No. UWI-W-07-1  
Staff Comments  
3/16/07 Page 5 of 17

**Order No. 26898**  
**Attachment A**

1 D. Building Contractors Association (BCA),

2 E. The Staff of the Idaho Public Utilities Commission (Staff).

3 There are no other parties to this proceeding other than those above named.

4  
5 2. Purpose of Stipulation: The purpose of this stipulation is to resolve and settle  
6 differences of opinion with respect to certain issues in this proceeding and to recommend to the  
7 Commission for approval various modifications to United Water Idaho Inc.'s (United) customer  
8 contribution rules.

9 3. Background: The genesis of this case is United's 1993 general rate case in which the  
10 Commission established certain connection and/or hook-up fees (connection fees).  
11 Subsequently, these fees were found to be discriminatory by the Idaho Supreme Court. At about  
12 the same time, United applied for another general rate increase. At the urging of the parties to  
13 this proceeding, the Commission split that rate case into two separate proceedings--one  
14 addressing the rate increase issues and the instant case addressing hookup fees, rate design and  
15 related issues.

16 In accordance with deadlines established by the Commission in this proceeding each of  
17 the parties who desired has filed written pre-filed testimony setting forth their views regarding  
18 appropriate policies for customer contribution rules for United.

19 STIPULATION

20 1. Recommended changes to customer contribution rules. The parties hereto recommend  
21 that United's customer contribution rules be modified in accordance with the following

STIPULATION AND SETTLEMENT AGREEMENT  
PAGE 2

principles:

- A. Eliminate the use of the current guaranteed revenue/escrow type agreements;
- B. Implement new main extension agreements whereby the developer or applicant requesting service contributes the entire cost of extending the distribution system to make service available at the new customer location;
- C. Eliminate the collection of connection fees.

2. Reasons for recommended changes.

The recommended changes are supported by the pre-file testimony of Staff and concurred in by United and the Coalition. While BCA does not necessarily concur in the rationale for these changes, BCA concurs in the adoption of these changes in light of other terms of this Stipulation.

3. Issues withdrawn: The written pre-filed testimony of some parties to this proceeding contain recommendations with respect to general rate design and the summer/winter differential that currently is part of United's rate structure. The stipulating parties agree that issues relating to general rate design will be withdrawn from this proceeding. Withdrawal of rate design issues from this proceeding is without prejudice to the right of any party to assert any position with respect to rate design in an appropriate future proceeding.

4. Micron Agreement: United and Micron Technology Inc. previously entered into an agreement whereby Micron advanced the cost of some source of supply, major transmission lines and storage. Pursuant to the agreement, United agreed to refund to Micron a percentage of new connection fees for new customers within a specific geographic region where these facilities serve (the geographic region). If, pursuant to the recommendations contained herein, connection

1 fees are eliminated, United would continue to refund the amount of money anticipated by the  
2 agreement to Micron for new customers in the geographic region as if the connection fees had  
3 not been eliminated, but were still in effect. Payments to Micron hereunder shall be added to  
4 United's rate base.

5 In order to accomplish the goal of refunding the percentage of connection fees anticipated  
6 by the agreement, United agrees to negotiate amendment(s) to the agreement in accordance with  
7 its original spirit and in good faith with Micron, and in said negotiations will address increases in  
8 the connection fee level as well as other issues implicated by this settlement. Any such  
9 amendment(s) to the agreement will be subject to the Commission's approval.

10 5. Off-site main extensions and refunds: At pages 10--12 of his Second Supplemental  
11 Direct Testimony, (Attached) Mr. Hepler outlines United's proposal regarding contributions for  
12 off-site mains and service to completely new pressure zones. The proposal regarding off-site  
13 mains is also illustrated in Exhibit No. 7 (Attached). Tariff sheets to implement these proposals  
14 are contained in Exhibit 8 to the Second Supplemental Direct Testimony of Mr. Hepler.

15 The stipulating parties agree that these proposals are appropriate and fair to all parties  
16 concerned and may be adopted by the Commission.

17 6. Labor in lieu of Cash: In order to achieve a settlement of this proceeding, United  
18 agrees to a system that makes it possible for developers to exercise a choice in selecting a  
19 contractor to perform facilities installations within residential subdivisions. The stipulating  
20 parties agree that the following procedures should be adopted to implement such a system:

21 A. In order to be eligible to install water mains and services, a contractor must

1 satisfy the "Pre-Qualification Contractor Requirements," as set forth in Exhibit No. 6 of the  
2 Second Supplemental Direct Testimony of Benjamin Hepler. If found qualified pursuant thereto,  
3 the contractor must thereafter perform all work in accordance with the procedures and  
4 requirements set forth in Exhibit 6.

5 B. United shall implement such systems and procedures as are necessary to  
6 monitor the implementation of a labor in lieu of cash program to insure that implementation of  
7 the program does not result in increased administrative and inspection costs for United and its  
8 customers generally.

9 C. Upon request of a developer, United shall disclose information regarding its  
10 cost of materials and overheads, subject to an appropriate confidentiality agreement.

11 7. Tariffs to be filed, effective date. The stipulating parties agree that the tariff changes  
12 necessary to implement the provisions of this stipulation are contained in Exhibit No. 8 to the  
13 Second Supplemental Direct Testimony of Benjamin Hepler and that the same may be approved  
14 by the Commission.

15 United will file revised tariffs to implement the provisions of this stipulation within thirty  
16 (30) days of the Commission's Final Order to be effective upon filing.

17 8. Testimony to be Spread on Record. To the extent it is necessary to the Commission's  
18 consideration of this Stipulation, the parties agree that the pre-filed testimony of all witnesses  
19 may be spread on the record without the necessity of calling the sponsoring witnesses, and each  
20 party waives the right to cross-examine sponsoring witnesses.

21 8. Authority to Execute. The persons executing this Stipulation in a representative

1 capacity covenant and warrant that they have full power and authority to execute this Stipulation  
2 on behalf of their respective clients.

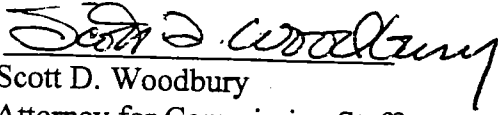
3 9. Waiver of Further Proceedings. Upon entry by the Commission of a Final Order  
4 approving and adopting the terms hereof, each party waives any further proceedings herein,  
5 including Petition for Reconsideration or Appeal to the Idaho Supreme Court.

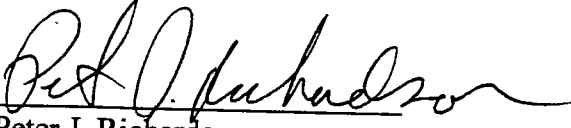
6 10. Effect of Failure to Approve. If the Commission for any reason does not enter a  
7 Final Order approving and adopting the terms hereof, this Stipulation shall be held for naught  
8 and shall be of no further force and effect. Each party shall thereafter be free to again assert  
9 positions contained in pre-filed testimony previously submitted.

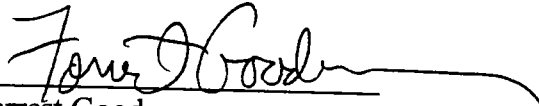
10 11. Intervenor Funding. Pursuant to the Idaho Public Utility and the Rules of Practice of  
11 the Commission, Intervening parties herein may have a right to petition the Commission for an  
12 award of Intervenor Funding. If said petitions are filed, United will neither support nor oppose  
13 awards of intervenor funding. United requests that the Commission conduct its independent  
14 review to determine financial need and the degree to which the requesting party made a material  
15 contribution to the proceeding.


16 12. Approval Requested. The stipulating parties agree, and represent to the  
17 Commission, that each of the individual terms hereof are material and essential to the complete  
18 terms hereof. The stipulating parties further agree, and represent to the Commission, that the  
19 overall terms hereof are fair, just, reasonable and consistent with the public interest.  
20 Accordingly, each of the stipulating parties request that the Commission enter its Final Order  
21 approving and adopting the terms hereof without change and in their entirety.

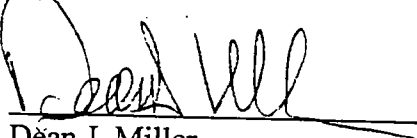
1  
2 DATED this 9<sup>th</sup> day of April, 1997.  
3  
4

5   
6 Scott D. Woodbury  
7 Attorney for Commission Staff  
8  
9

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12 Peter J. Richardson  
13 Attorney for Coalition of United Water Customers  
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19 Forrest Goodrum  
20 Attorney for Building Contractors Association  
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25 Sharon Ullman  
26 Pro se  
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30 Dean J. Miller  
31 Attorney for United Water Idaho Inc.  
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STIPULATION AND SETTLEMENT AGREEMENT  
PAGE 7



1 advanced the money for, I would recommend that for new connections in the area  
2 covered by the contract, the Company continue to refund the same amount of money  
3 to Micron, which would be added to the Company's rate base, as if the connection  
4 fees were still in effect.

5 Q. Basically, would you say you have fundamental agreement with Mr. Lobb's  
6 recommendation?

7 A. Yes, with the exception of labor in lieu of cash we have previously discussed.

8 Q. What if the Commission does agree that labor in lieu of cash be allowed? Should  
9 there be specific requirements for this procedure?

10 A. Yes, the Company's proposed requirements are shown in Exhibit 6 attached. These  
11 are requirements are what are essentially in place at the current time for developers  
12 who chose the labor in lieu of cash option currently allowed on Commercial,  
13 Industrial, or Municipal Projects

14 Q. You are agreeing with Mr. Lobb that the developer or applicant should contribute the  
15 cost of the mains, services, and meters. Should there be any time when a developer  
16 or an applicant should receive any refunds of the cost of a main line extension?

17 A. Yes, I believe that if a developer or applicant pays the cost of an offsite main and  
18 another developer or applicant takes service from that line, within a specific time  
19 frame, then the new developer or applicant should pay their proportionate share of  
20 the offsite main.

21 Q. What is an offsite main?

22 A. This would be a main that is installed between the Company's existing system and  
23 the nearest boundary of the nearest boundary of the property to be served plus one

1 half of the main fronting the property to be served. For example, if an applicant  
2 wants service installed to serve an individual lot or a development but had to install  
3 500 feet of main before it reached his lot, the 500 feet of main plus half of the main  
4 fronting his property would be offsite main. Obviously, the other half of the main  
5 fronting the property to be served and all distribution system facilities within a  
6 development (including mains, service lines and meter installations) would be on  
7 site. See Exhibit 7.

8 Q. What is your suggestion in regard to the offsite main cost?

9 A. My suggestion is that if an applicant requests service from an offsite main, they  
10 would contribute the cost of the proportionate share of their front footage towards  
11 the cost of the offsite main, which would be refunded to the original party(ies) who  
12 paid for the offsite main.

13 Q. Are there other circumstances in which you would recommend that a developer  
14 advance any cost and receive a refund vs. contributing dollars?

15 A. Yes, in an instance where a developer is requesting service to a completely new  
16 pressure zone requiring independent booster pumps and storage, the developer  
17 should contribute the cost of the main, services, and meters, and advance the cost of  
18 the booster pumps and storage. As the customers are added in the area served by  
19 these boosters, pumps and storage, refunds would be made to the developer for these  
20 costs. This would be similar to the Micron projects.

21 Q. Why should the developer advance the cost of the booster pumps and storage rather  
22 than the company installing these facilities?

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Case No. UWI-W-07-1  
Staff Comments  
3/16/07 Page 13 of 17

1 A. Basically because the developer is speculating that there will be a need for the  
2 facilities. If he is correct in his speculation, the company will refund at least a  
3 portion of these dollars and will have made an investment in the backbone plant. If  
4 he is not correct in his speculation, the facilities will not be useful, and the company  
5 should not be stuck with an investment that is not used.

6 Q. How would this refund be calculated?

7 A. If a developer wanted to develop in an area that required a new storage tank due to  
8 serving a new pressure zone and the tank could ultimately serve only 1000  
9 customers, and if the tank cost \$500,000, the average cost would be \$500 per  
10 customer. The normal allotted cost for storage per customer is \$110 as utilized in  
11 our calculation of the \$530 connection fee. Therefore, we would propose to refund  
12 only \$110 per customer.

13 Q. Have you prepared tariff sheets for approval to implement your recommendation for  
14 both the standard main extension agreements and the offsite proposal?

15 A. Yes, see Exhibit 8.

16 Q. Have you reviewed Dr. Reading's testimony?

17 A. Yes.

18 Q. Would you comment on Dr. Reading's recommendations in regard to "Individual  
19 Customer Hook-up Cost and Charges".

20 A. Yes. I believe his first three recommendations are basically (1) eliminate the  
21 guaranteed revenue method; (2) eliminate the free allowance; and (3) require the  
22 applicant to contribute the cost of the main line extension, service lateral, and meter.  
23 As in my testimony concerning Mr. Lobb's recommendations, I believe the

HALF OFFSITE  
MAIN

OFFSITE  
MAIN

STREET R.O.W.

EXISTING WATER MAIN

STREET R.O.W.

300 FT.

500 FT.

HALF  
ONSITE  
MAIN

INDIVIDUAL LOT  
OR  
PROPOSED  
DEVELOPMENT

OFFSITE  
MAIN

OFFSITE COST:

COST / FT. OF MAIN EXTENSION  
X 500 FT. + 1/2 COST / FT. OF  
MAIN EXTENSION X 300 FT.

ONSITE COST:

300 FT. X 1/2 COST / FT. OF MAIN  
EXTENSION PLUS THE COST OF ANY  
DISTRIBUTION FACILITIES LOCATED  
WITHIN THE PROPOSED DEVELOPMENT

Attachment B  
Case No. UWI-W-07-1  
Staff Comments  
3/16/07 Page 15 of 17

Exhibit No. 7  
Case No. UWI-W-96-4  
Hepler, 2nd Supplemental Di  
United Water Idaho  
Page 1 of 1

**BOISE WATER CORPORATION  
UNITED WATER IDAHO INC.**

**RULES AND REGULATIONS GOVERNING WATER MAIN EXTENSIONS (continued)**

settings and fire hydrants. The Company shall, at the Applicant's expense, make all connections to the Company's existing system. Applicant's contractor shall comply with Section 1 and Section 2 of Company's requirements for labor in lieu of cash contractors. In general, areas covered are requirements for inspection, monitoring of construction, acceptance and handling of materials, documentation of costs, correction of faulty installation, insurance, bonding, license requirements, experience, and equipment availability. The Company may deny the right of Applicant to provide a contractor who has not complied with its requirements in the past.

**SPECIAL FACILITIES**

~~85-~~ 74. Special facilities shall include source of supply, storage and/or booster pumping facilities which may be required to render adequate water service to an area for which such service has been requested.

~~86. In the event a developer proposes a residential development that requires the installation of a special facility(ies) before said development can be rendered adequate service, the cost of said facility(ies) shall be included in the cost of development and the return therefor shall be a part of the guaranteed revenue placed in escrow as provided in paragraph 78 above. This provision is primarily intended for, but not limited to, foothills development.~~

~~87-~~ 75. Should an Applicant propose a Residential, Commercial, Industrial, or Municipal Development requiring a special facility(ies), the Applicant shall contribute advance the cost of such facilities. ~~plus the associated tax impact.~~ An amount equal to the estimated cost ~~and tax impact~~ of the necessary facilities shall be deposited with the Company prior to construction. The Company shall adjust the deposit based upon the determination of the actual cost of facility(ies) installed. Any difference between the actual cost of the facilities installed ~~and the resulting tax impact~~ shall be shown as a revision of the amount deposited and shall be payable within thirty (30) days of submission. ~~The actual cost of the facilities and resulting tax impact shall be retained by the Company and booked in accordance with Company Policy 607 paragraph 3.2.3 and Exhibit "C" thereof.~~

Issued: ~~January 10, 1994~~      Effective: ~~January 11, 1994~~

Under Authority of I.P.U.C. Order No. 25062

Issued by: **BOISE WATER CORPORATION UNITED WATER IDAHO INC.**

By: Benjamin M. Hepler, Vice President

Attachment B  
Case No. UWI-W-07-1  
Staff Comments  
3/16/07 Page 16 of 17

Exhibit No. 8  
Case No. UWI-W-96-4  
Hepler, 2nd Supplemental Di  
United Water Idaho  
Page 8 of 28

~~BOISE WATER CORPORATION~~  
~~UNITED WATER IDAHO INC.~~

RULES AND REGULATIONS GOVERNING WATER MAIN EXTENSIONS (continued)

~~88-~~ 76. The Company shall be responsible to construct and/or install special facilities as may be required from time to time to maintain the rendering of adequate water service to existing customers.

~~89-~~ 77. The Company shall be the sole judge as to the design of and the time of construction and/or installation of any special facility(ies).

Issued: ~~January 10, 1994~~ Effective: ~~January 11, 1994~~

Under Authority of I.P.U.C. Order No. 25062

Issued by: ~~BOISE WATER CORPORATION UNITED WATER IDAHO INC.~~

By:  
Benjamin M. Hepler, Vice President

Attachment B  
Case No. UWI-W-07-1  
Staff Comments  
3/16/07 Page 17 of 17

Exhibit No. 8  
Case No. UWI-W-96-4  
Hepler, 2nd Supplemental Di  
United Water Idaho  
Page 9 of 28

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 16<sup>TH</sup> DAY OF MARCH 2007, SERVED THE **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. UWI-W-07-01, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

GREGORY P. WYATT  
UNITED WATER IDAHO INC  
PO BOX 190420  
BOISE ID 83719-0420

DEAN J MILLER ESQ  
McDEVITT & MILLER LLP  
PO BOX 2564  
BOISE ID 83701

  
\_\_\_\_\_  
SECRETARY