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IDAHO PUBLIC
UTILITIES COMMISSION

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION)
OF UNITED WATER IDAHO INC., TO) **CASE NO. UWI-W-07-02**
AMEND AND REVISE CERTIFICATE OF)
CONVENIENCE AND NECESSITY NO 143)

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

REBUTTAL TESTIMONY OF SCOTT RHEAD

May 18, 2007

1 Q. Please state your name.

2 A. Scott Rhead

3 Q. Are you the same Scott Rhead who previously filed Direct Testimony in this
4 proceeding?

5 A. Yes, I am.

6 Q. What is the purpose of your Rebuttal Testimony?

7 A. I will respond to certain statements contained in the Amended Direct Testimony
8 of Vern Brewer filed on behalf of the City of Eagle.

9 Q. Do you have a general observation regarding Mr. Brewer's testimony?

10 A. Yes. In my Direct Testimony, I provided a detailed explanation of United
11 Water's ability to serve the Lanewood development. In his Amended Direct
12 Testimony, Mr. Brewer does not dispute any part of my Direct Testimony
13 regarding United Water's ability to serve the development. Because my testimony
14 is not challenged, I take it that the City does not dispute United Water's ability to
15 serve.

16 Q. On page 2 of his testimony Mr. Brewer discusses various water facilities,
17 including wells, which have been or are being constructed as a part of a City
18 water system. Does the City have ground water rights or permits from the Idaho
19 Department of Water Resources (IDWR) for any of the wells to which Mr.
20 Brewer refers?

21 A. No. IDWR has issued no approvals of pending water rights associated with these
22 well facilities.

1 Q. At page 3 Mr. Brewer also refers to the City having “received a favorable staff
2 recommendation” and that he “expects the applications to be approved in the
3 June-July period.” Are you aware of any recent favorable staff recommendations
4 regarding the City’s applications with IDWR in this matter?

5 A. No. I have reviewed the public record in the City’s IDWR water right application
6 proceeding. There is an internal IDWR Staff memo dated February 27, 2007 that
7 concludes that the data lacking from the application in November 2006 has now
8 been provided. However, six (6) Protestants in the proceeding have filed
9 Technical Comments on April 25, 2007 disputing the Staff analysis, stating in
10 part, “The City of Eagle’s Addendum does not provide more and/or better
11 information that the Hearing Officer can use to evaluate whether the proposed
12 water rights will injure other water rights”. The Protestant’s Technical Comments
13 are attached as Exhibit 4

14 Q. What will be the next steps in the IDWR water right permit approval process for
15 Eagle?

16 A. That is difficult to say with certainty, and it is equally difficult to say with
17 certainty, as Mr. Brewer has, that the application can be expected to be approved
18 in the June-July period.

19 Q. Why is that the case?

20 A. The City’s application for the water rights permits is currently in the hands of the
21 hearing officer awaiting his written decision and determination. Even if the
22 hearing officer was to deliver a decision favorable to the City in June or July, the
23 Protestants in the proceeding, and there are many, would have approximately two

1 weeks to request that the matter be reconsidered. With the large number of
2 Protestants this is a potential outcome. A reconsideration process could take
3 another several months. If the City prevailed at that stage, one or more
4 Protestants could still appeal the decision to the Director of the IDWR, and after
5 that process was completed, a Protestant could, if they chose, appeal the decision
6 to District Court. All of this uncertainty and the significant amount of time the
7 appeal processes could take makes it not only unlikely that Eagle will receive its
8 approved water rights permits in the June-July period, but nearly impossible.

9 Q You have mentioned Protestants in Eagles water rights permits application
10 proceeding, and at page 3 of his testimony Mr. Brewer states, "...part of the delay
11 in getting the applications approved was caused by United Water protesting the
12 applications." Is this a fair characterization of the delay?

13 A. Absolutely not. It is true that United Water protested Eagle's water rights
14 application because United Water owns and operates its Redwood Creek Well
15 less than one mile east of the proposed new wells. United Water was concerned
16 that the new diversions could injure the rights of Redwood Creek. In addition,
17 United Water believed that Eagle's requested diversion of almost 9 cubic feet per
18 second (cfs) was not based on any approved Master Plan or justification related to
19 future demands. So United Water had very legitimate reasons for protesting
20 Eagle's applications. It is not uncommon for water right permit applications to
21 experience significant delay when even one protestant enters the process.

22 Q. How many other Protestants were there other than United Water?

1 A. The following is a list of Protestants still active in the Eagle permit application
2 and the IDWR process as of May 17, 2007:

3 **REPRESENTED BY CHARLES HONSINGER:**
4

5 DANA & VIKI PURDY
6 5926 FLOATING FEATHER
7 EAGLE ID 83616
8 286-9701
9

10 JOSEPH & LYNN MOYLE
11 C/O MICHAEL MOYLE
12 480 N PLUMMER RD
13 STAR ID 83669
14 870-6667
15

16 EUGENE MULLER
17 320 N PALMER LN
18 EAGLE ID 83616
19 286-7369
20

21 CHARLES MEISSNER JR
22 3101 N PALMER
23 EAGLE ID 83616
24 866-8688
25

26 CHARLES HOWARTH
27 C/O GUNNER & MATT HOWARTH
28 833 N PALMER
29 EAGLE ID 83616
30 286-9760
31

32 MIKE DIXON PRES
33 HOOT NANNEY FARMS INC
34 C/O TERRY WHITE
35 RT 1 2650 WING RD
36 STAR ID 83669
37

38 **INDIVIDUAL PARTIES:**
39

40 JERRY & MARY TAYLOR
41 3410 HARTLEY
42 EAGLE ID 83616
43 286-7575
44

1 CORRIN & TERRY HUTTON
2 10820 NEW HOPE RD
3 STAR ID 83669
4 286-7752

5
6 SAM & KARI ROSTI
7 1460 N POLLARD LN
8 STAR ID 83669
9 286-7685
10 Fax: 286-9040

11
12 LEEROY & BILLIE MELLIES
13 6860 W STATE ST
14 EAGLE ID 83616
15 286-7257

16
17 DEAN & JAN COMBE
18 6440 W BEACON LIGHT
19 EAGLE ID 83616
20 286-7174
21

22 Q. What has become of United Water's protest?

23 A. As a result of the new well tests and associated test pumping United Water
24 confirmed that Redwood Creek would not likely be affected beyond acceptance
25 limits. United Water's protest in this matter was withdrawn early in the hearing
26 process in December 2006.

27 Q. At page 4 of Mr. Brewer's testimony he refers to a planned 16" main that will run
28 through the Lanewood development to connect and loop other portions of the
29 City's planned system. At page 6 Mr. Brewer implies that service by United
30 Water would hinder the City in implementing its Master Water Plan. Does water
31 service by United Water to the Lanewood development obstruct or impede
32 Eagle's ability to complete its anticipated 16" water main?

1 A. No. Ada County Highway District (ACHD) has existing rights-of-way along
2 Floating Feather Road and Lanewood Drive in the area of Eagle's concern. The
3 proposed development keeps these rights-of-way intact in the development plan.
4 ACHD anticipates a slight realignment for a portion of Floating Feather at the
5 southwest end of Lanewood but will maintain the necessary corridors. The City
6 will not be obstructed or impeded in its ability to construct its mainline because
7 water service is provided to Lanewood by United Water. In fact, Eagle's
8 construction of its proposed main line will result in an unnecessary duplication of
9 water service assets since United Water currently has adequate water supply and
10 transmission capacity to serve Lanewood and surrounding areas. The Lanewood
11 development is contiguous to United Water's existing certificate boundary and
12 constitutes only a small extension of that boundary.

13 Q. At page 4 Mr. Brewer says the City provides water less expensively than United
14 Water. Do you agree?

15 A. Not necessarily. It is true that currently the City's tariff rate for water service is
16 somewhat less than United Water's. The City's current rates, however, may not
17 include recovery of the costs associated with the City's ambitious plan to build a
18 municipal water system. These costs are unknown but potentially huge. Whether
19 those costs are eventually recovered through consumption rates, connection fees,
20 surcharges, or some other mechanism, they will create upward pressure on the
21 City's overall cost of service.

1 Q. At page 5 of Mr. Brewer's testimony he claims that the City of Eagle encourages
2 conservation of water by requiring the use of surface water for irrigation. Please
3 comment.

4 A. Requiring the use of surface water for irrigation can not be equated to
5 encouraging conservation for several reasons. First of all, the use of surface water
6 for irrigation, where available, is required both by Idaho state law and Ada
7 County ordinance. Thus, Eagle can make no "conservation" claim for requiring
8 what the law already requires. Secondly, in many cases, using un-metered, less
9 expensive irrigation water may lead to greater use, not less use of the overall
10 water resource. It is true irrigation is a different type of water (i.e. not treated to
11 potable standards) but this in itself is not conservation. Finally, the City of Eagle
12 historically has not provided its existing water customers with any conservation
13 education or information, water saver kits, or other conservation programs
14 typically offered by water providers. In contrast, United Water has had an active
15 and varied conservation program in place for many years. In addition, United
16 Water has recently completed and the Commission has recently approved in part a
17 detailed revised Water Conservation Plan.

18 Q. At page 5 of his testimony Mr. Brewer seems to contradict your Direct Testimony
19 and states that the City's wells are constructed to Idaho Department of
20 Environmental Quality (IDEQ) standards.

21 A. Mr. Brewer may be correct that the wells are "constructed" to IDEQ standards,
22 however, they are currently classified with IDEQ and IDWR merely as test wells.

1 Q. Even if these two test wells are constructed to IDEQ standards can they be used to
2 provide municipal water supply without an associated water right permit?

3 A. No. IDEQ is very clear in this regard. The City has been allowed to construct
4 these wells to municipal standards but they are considered as test wells only and
5 cannot provide public water service without a water right permit. This
6 requirement can be found in IDAPA 58.01.08,503,19c approved March 30, 2007.
7 As I have testified above, the permitting process may require considerable more
8 time.

9 Q. Mr. Brewer, at page 6 of his testimony, suggests that if United Water serves
10 Lanewood, the City will forgo revenue from those customers that could partially
11 off-set costs of constructing the new trunk line network and storage facilities. Is
12 this a legitimate concern?

13 A. I believe what this indicates is that the City's intended water system in the area is
14 very much in its infancy. It does not yet have approved water rights permits for
15 its wells; it does not yet have an integrated transmission and distribution system;
16 it does not yet have storage capacity for fire protection. In contrast, United
17 Water's system in the area is currently fully integrated with adequate supply
18 redundancy. As Mr. Brewer implies, the costs of constructing such new facilities
19 are significant and would duplicate United Water's facilities already constructed
20 to provide service in the area.

21 Q. Does this conclude your testimony?

22 A. Yes it does,

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of May, 2007, I caused to be served, via the method(s) indicated below, true and correct copies of the foregoing document, upon:

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APR 25 2007
DEPARTMENT OF
WATER RESOURCES

Attorneys for Protestants Joseph, Lynn and Michael Moyle,
Eugene Muller, Dana and Viki Purdy, Charles W. Meissner, Jr.,
Charles Howarth and Mike Dixon/Hoot Nanney Farms, Inc.

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

IN THE MATTER OF APPLICATIONS TO,)
APPROPRIATE WATER RIGHT NOS. 63-)
32089 AND 63-32090 IN THE NAME OF)
THE CITY OF EAGLE)
PROTESTANTS' TECHNICAL)
COMMENTS REGARDING ADDENDUM)
TO CITY OF EAGLE'S 7-DAY AQUIFER)
TEST REPORT AND IDWR'S STAFF)
MEMORANDUM)

COMES NOW, Protestants Joseph, Lynn and Michael Moyle, Eugene Muller, Dana and Viki Purdy, Charles W. Meissner, Jr., Charles Howarth, and Mike Dixon/Hoot Nanney Farms, Inc. by and through their counsel of record Ringert Clark, Chartered, and, pursuant to the Hearing Officer's March 27, 2007 *Notice of Consideration of Additional Evidence and Post Hearing Order*, hereby submit technical comments regarding the *Addendum to the City of Eagle's 7-Day Aquifer Test Report* and IDWR's February 27, 2007 *Staff Memorandum* reviewing the same.

PROTESTANTS' TECHNICAL COMMENTS REGARDING ADDENDUM TO CITY OF
EAGLE'S 7-DAY AQUIFER TEST REPORT AND IDWR'S STAFF MEMORANDUM -
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Exhibit No. 4
Case No. UWI-W-07-02
Scott Rhead, Engineer
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INTRODUCTION

After the December, 2006 hearing revealed severe deficiencies in its *7-Day Aquifer Test Report for Water Right Appropriation 63-32089 and 63-32090*, the City of Eagle met with IDWR personnel in an effort to flesh out its Report and address the concerns raised at hearing. On February 27, 2007, IDWR hydrogeologists authored a memorandum reviewing the February 22, 2007 *Addendum to City of Eagle 7-Day Aquifer Test Report* ("Addendum"). Both the City of Eagle's *Addendum* and the IDWR *Staff Memorandum* ("Memorandum") were provided to the parties by the end of March, 2007. The parties were then given until April 25, 2007 to submit "technical comments" about both documents pursuant to the Hearing Officer's March 27, 2007 *Notice and Order*.

Despite its attempt to better address concerns regarding its previous report, the City of Eagle's *Addendum* does not provide more and/or better information that the Hearing Officer can use to evaluate whether the proposed water rights will injure other water rights. Rather, the *Addendum* to address many of the same concerns raised at hearing, including the failure to analyze or explain data bearing upon the issue of injury to existing water rights.

COMMENTS

One of the primary issues in this litigation is whether and to what extent the water rights proposed by the City of Eagle will injure other water rights, including those of the protestants. At the December hearing in this matter, it was apparent that the City had not sufficiently demonstrated through its analysis that the proposed appropriation would not cause injury. As a result of the events at the hearing, the City conducted another round of analysis culminating in the *Addendum*.

1. **Graph Showing Groundwater Withdrawals**

Figure 10 of the *Addendum* (p. 30) is not current. Data through 2006 would have been helpful to determine whether groundwater withdrawals are continuing to increase or have instead stabilized. If groundwater withdrawals have continued the increasing trend shown from 1993 to 2001 in Figure 10, then the appropriation proposed by the City combined with all other withdrawals could very well result in injury to existing water rights. Figure 10 should have been updated with recent data so that the Hearing Officer could make an informed decision. Without such information, no informed decision can or should be made.

2. **“Meaningful Drawdown”**

The discharge rate during the aquifer test (and that which was used in drawdown-analysis calculations) was 1,580 gpm. *Addendum*, p. 8. The *Addendum* states that the “maximum diversion rate requested under Application 63-32089 (in which the Eaglefield well is listed as a point of diversion) would be limited to 4.0 cfs (1,795 gpm). *Id.* Apparently, the well had a potential capacity of 2,000 gpm. *Id.* Why then was the well pumped at a lower rate than either the proposed diversion rate or the well’s capacity? It seems difficult to make the City’s conclusion, based upon the data in evidence, that “it is unlikely that a higher pumping rate would have provided **meaningful** drawdown data in wells that showed no drawdown at the 1580 g.p.m. rate.” *Id.* (bolded emphasis added). We do not know what is meant by the term “meaningful drawdown data.” We do not know the basis of the *Addendum* author’s opinion that the discharge rate used (1,580 gpm) was sufficient.

In fact, every well monitored showed drawdown during the pumping portion of the test. The authors have concluded that in some wells the amount of drawdown was meaningless. Pumping at

a higher rate would have established if the minor drawdown was related to pumping or to other factors. One purpose of an aquifer test is to stress the interconnected aquifers. This test did not accomplish that purpose.

3. Ricks Well

The City states that “[w]ater levels during the measurement period declined approximately 1 foot, although it is not clear that the decline was caused by the aquifer test.” *Addendum*, p. 10. Although the City explains that this decline was “most possibly caused by other, nearby wells”, it does not provide the data to back up its conclusion. In fact, the City has never explained the water level change in the Ricks Well. It has simply failed to analyze the data that show rapid drawdown in the Ricks Well near the end of the pumping test without recovery - a situation that certainly warrants further analysis, data and explanation. One question that arises is what will happen to water levels in the Ricks Well when pumping lasts longer than one week? Will the drawdown continue? Will there ever be a recovery of drawdown levels? Certainly more analysis and data gathering was warranted.

4. Lack of response to pumping in the Ricks and QRC No. 4 Wells

In their Conclusions and Recommendations, the *Addendum's* authors state that Ricks and QRC No. 4 wells' lack of response to pumping is “likely because of an insufficient hydraulic connection.” *Addendum*, p. 17. However, the premise for the conclusion that there is an “insufficient hydraulic connection” cannot be that there was no response to pumping. In fact, there was a response to pumping. Both wells showed a steady drawdown, the rate of which increased near the end of pumping period and then continued to drop after pumping had stopped. At a bare

minimum, the Applicant should have determined the cause of this decline in water levels; should have determined what would happen when pumping occurs on a continual basis; and should have determined the reason for the wells' failure to fully recover after pumping had ceased.

5. Wells Did Not Fully Recover

The *Addendum* concludes that “[w]ater levels fully recovered in the pumping and monitoring wells from drawdown associated with the aquifer test.” *Addendum*, p. 18. This conclusion is erroneous. The data establishes that QCR No. 4, Ricks Well, Strata Well 1B, and UWI Well 1B did not fully recover. See *Addendum*, Appendices C.5, C.6., C.7, C.8, C.10. Only three wells fully recovered from drawdown and one well showed a very slight drawdown which was probably too small to be significant. Thus, less than 50% of the wells that were monitored fully recovered from drawdowns associated with the aquifer test - in direct contradiction to the *Addendum*'s conclusion.

6. “Well Interference Event(s)”

Individual Water Level Elevation graphs for each well attached to the *Addendum* show an event on June 10 identified as “well interference event (see Table 1)” *Addendum*, Appendices C.3, C.4, C.5, etc. Although Table 1 is referenced on the graphs, neither it nor any other part of the *Addendum* or the *7-Day Aquifer Test* report address this well interference event. The event or events stopped recovery from June 10 until June 13th in the pumping well, Legacy well, QCR4, and Strata 1B well. The Water Level Elevation graph for Strata 1A well did not show significant drawdown so impact from the “well interference event(s)” was not noticeable in that well.

The Water Level Elevation graphs for UWI wells 1A and 1B didn't show any impact on recovery on June 10, but an event prevented drawdown recovery in those wells from about June 12th

to about June 13th. This well interference event was not discussed in either the *Addendum* or the *7-Day Aquifer Test* report, but the data demonstrates that combined pumping impacts can prevent recovery. The cumulative effect of all pumping from existing wells together with pumping from the wells proposed by the City may result in significant drawdowns to area wells, including those owned by the protestants. Neither the *Addendum* nor the *7-Day Aquifer Test* report address the issue of the cumulative impacts on water levels if this application is approved - certainly, given the data showing the possibility that cumulative pumping effects may prevent drawdown recovery, further analysis and data gathering is and was warranted.

7. Summary

The deficiencies of the aquifer test and the *7-Day Aquifer Test* report and *Addendum* generated therefrom can be summarized as follows:

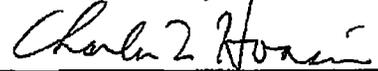
- A. Test pumping lasted only seven days - an insufficient period of time to determine long-term effects both to the aquifer and to individual wells.
- B. The pumping rate of 1,580 gpm did not stress the aquifer sufficiently to be able to determine the impact of the proposed higher pumping rates on both the aquifer and individual wells.
- C. Only six or seven wells were monitored during the pumping test, instead of a number more appropriate to determining the impacts of this very significant proposed water right on the aquifer and individual wells in the area.
- D. Surrounding well owners were not given adequate notice to monitor their own wells and determine the impacts of pumping upon them.

- E. Significant effects such as well interference from sources other than the pumping of the test well were not explained or analyzed. Such explanation and analysis is necessary to determine the possible impacts of cumulative pumping from additional area wells on the aquifer and on existing wells.
- F. A monitoring program using dedicated monitoring wells completed in the same aquifer zone as the pumping wells should be installed if the application is approved to assist the parties in determining how the City's pumping impacts the aquifer and to assist the parties in determining whether and to what extent existing wells are injured by such pumping.

There has simply not been sufficient data or analysis generated by the City in the *7-Day Aquifer Test* report and *Addendum* to warrant the approval of the City's applications. Accordingly, the Hearing Officer should either deny the applications, or require the gathering of additional data and additional analysis from the City prior to making any decision upon the applications.

Dated this 25th day of April, 2007

RINGERT CLARK, CHARTERED



By: Charles L. Honsinger

PROTESTANTS' TECHNICAL COMMENTS REGARDING ADDENDUM TO CITY OF
EAGLE'S 7-DAY AQUIFER TEST REPORT AND IDWR'S STAFF MEMORANDUM -

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Scott Rhead, Engineer
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of April, 2007, the above and foregoing document was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

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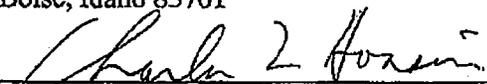
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