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October 30, 1987

The Honorable Skip Smyser
Idaho State Senator
District 11A
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THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE

Dear Senator Smyser:

You have asked for legal guidance on the following issues:

1. How does the city of Caldwell disband its municipal irrigation system?
2. If there is a way for the city to disband the municipal irrigation system, does the Pioneer Irrigation District inherit the delivery problems now facing the city's system?
3. Does the city of Caldwell have the right to sell or lease its water to third parties?
4. Assuming the city has the right to sell or lease the water to third parties, would those third parties be obliged to provide water to the patrons of the city's Irrigation System?

CONCLUSIONS:

1. The city of Caldwell may disband its municipal irrigation system by passage of a city ordinance.
2. If the city of Caldwell disbands its municipal irrigation system, it will become the obligation of the Pioneer Irrigation District and the lateral ditch water users' associations created by chapter 13, title 42, Idaho Code, or the irrigation lateral districts authorized by I.C. § 43-1505, to deliver irrigation water to those users within the city of Caldwell entitled to its use.

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3. Because the irrigation water delivered by the municipal irrigation system is owned by the Pioneer Irrigation District for the benefit of its members, the city of Caldwell does not have the right to sell or lease that water to third parties.

ANALYSIS:

The city of Caldwell formed its municipal irrigation system by passage of Resolution No. 4 of the Caldwell City Council, approved by the mayor on May 5, 1941. Recorded Instrument No. 267036, Canyon County Recorder, January 15, 1942.

Resolution No. 4 was enacted pursuant to the provisions of chapter 248 of the 1939 Session Laws of the state of Idaho, which it incorporated by reference. The resolution provided for the city to contract with the Pioneer Irrigation District regarding the water supply for the city of Caldwell and also established the boundaries of the municipal system.

The resolution states that the lands within the municipal irrigation system are situated entirely within the boundaries of the Pioneer Irrigation District and the boundaries of the city of Caldwell. The resolution calls for a contract to be entered into between the city of Caldwell and the Pioneer Irrigation District. The contract is to provide for furnishing of water to the city for irrigation purposes, for the levy and collection of tolls and assessments therefor, and for other matters in connection with the operation of the Caldwell irrigation system as provided by chapter 248 of the 1939 Session Laws, and especially by section 3 thereof. The contract is incorporated into the resolution by reference. The resolution states that it is the resolution required by section 26 and section 27 of chapter 248 of the 1939 Session Laws.

At the time of passage of Resolution No. 4, Chapter 248 of the 1939 Session Laws was codified as chapter 13, title 50, Idaho Code. Sections 3, 26 and 27 referred to in the resolution were codified as sections 50-1303, 50-1326 and 50-1327 respectively. In 1967, the Legislature enacted a comprehensive recodification of the municipal corporation laws of Idaho. 1967 Sess. Laws, ch. 429, p. 1249. The recodification repealed former chapter 13, title 50, and re-enacted its provisions with minor modifications as chapter 18, title 50, Idaho Code.¹ As a result of the

1. The recodification also repealed former chapter 12, title 50, Idaho Code, and merged the provisions of chapter 12 with those of chapter 13 to form the new chapter 18, title 50, Idaho Code. The former chapter 12 sections appear in chapter 18 as sections 50-1802, -1803, -1804, -1806, -1809, and -1810.

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recodification, sections 3, 26 and 27 of chapter 248 of the 1939 Session Laws referred to in the 1941 Resolution are now codified respectively as sections 50-1805, 50-1831 and 50-1832, Idaho Code.

I.C. § 50-1805 (Supp. 1987) reads in pertinent part as follows:

50-1805. Contracts for distribution of water, collection and remission of irrigation district assessments. -- Every city incorporated under the laws of the state of Idaho shall have the power to enter into a contract in writing with an irrigation district organized or hereafter organized under the laws of the state of Idaho, . . . whereby such city shall assume the duty of the distribution of such water to the persons within such city having the right to the use thereof, and to receive such water at such place as shall be provided for in such contract. Such city may enter into a contract with any irrigation district to act as the agent of the irrigation district and be empowered to collect any or all assessments or charges which such irrigation district shall be authorized by law to levy upon all or any part of the lands within such city. . . . Such city shall be entitled to compensation, for collecting assessments and making payments to the irrigation district, in the amount equal to the actual cost which the city incurred in collecting and making such payments. . . . Nothing in sections 50-1801 through 50-1835, Idaho Code, shall be construed to make said city primarily liable for any such irrigation district assessments to be collected or obligations, except for the faithful remittance of the funds collected; provided, however, that under contracts where water rights are pooled for delivery and a uniform method of allocating the assessments and charges of the district has been adopted as authorized by section 50-1805A, Idaho Code, the city shall be primarily liable for all such irrigation district assessments to be collected, including operation, maintenance, and principal and interest on bonded or contract indebtedness.

In summary, the provisions of I.C. § 50-1805 incorporated by reference in the city's 1941 Resolution state that under the contract between the city and the irrigation district, the city shall assume the duty of distribution of the irrigation district water to the persons within the boundaries of the city having the right to use the water. The contract may also authorize the city to collect any assessments or charges which the irrigation district is authorized to levy upon lands within the city. The city is to remit the assessment to the irrigation district annually or more frequently as may be provided in the contract, less any commission contracted to be paid for the collection. The city is not primarily liable to the irrigation district for payment of the assessment. Through a 1981 amendment to I.C. § 50-1805, a city may become primarily liable for all irrigation assessments to be collected if the city has entered into a contract pursuant to I.C. § 50-1805A under which the water rights of the district members within the city boundaries are pooled for delivery purposes. 1981 Sess. Laws, ch. 31, § 1, p. 48.

I.C. §§ 50-1831 and 50-1832, also referred to in the 1941 Resolution, read as follows:

50-1831. Adjustment and settlement of accounts with irrigation system in operation.
-- Any city operating an irrigation system under the provisions of sections 50-1801 through 50-1835 shall cause the accounts between themselves and any irrigation or canal company or irrigation district, as the case may be, to be adjusted and settled at the time such city shall commence to operate a city irrigation system under the provisions of this act.

50-1832. Ordinances or resolutions establishing boundaries. -- Any city desiring to acquire and operate or acquire or operate a city irrigation system under the provisions of sections 50-1801 through 50-1835 for any part or all of such city shall pass and publish an ordinance describing the exterior boundaries of such irrigation system. Thereafter the boundary of such irrigation system may, from time to time, be contracted, extended or enlarged by ordinance of such city; a copy of such ordinance duly certified

to be correct by the city clerk shall be recorded in the office of the recorder of the county wherein such city is situated.

I.C. § 50-1831 requires the accounts between the city and the irrigation district to be adjusted and settled at the time the city commences operation of a city irrigation system. I.C. § 50-1832 provides that a city operating an irrigation system under the provisions of sections 50-1801 through 50-1835 may thereafter contract, extend or enlarge the boundaries of the irrigation system by ordinance of the city.

I.C. § 50-1832 refers to the ability of a city to contract the boundaries of its irrigation system by passage of a city ordinance but not to the termination of the system. Although the statutes do not describe the procedure for terminating the system, they also do not prohibit a city from discontinuing the system through repeal of the originating ordinance or resolution.²

The city of Caldwell created its municipal irrigation system by passage of a resolution rather than an ordinance. The predecessor to I.C. § 50-1832 authorized the establishment of a municipal irrigation system through passage of either an ordinance or a resolution. 1939 Sess. Laws, ch. 284, § 27, p. 599. It is possible, therefore, that disbanding of the city irrigation system could occur through passage of a resolution. Use of a resolution, however, is strongly discouraged because of the subsequent removal from § 50-1832 of any reference to resolutions, except in the section title.

Because § 50-1832 gives a city the authority to create a municipal irrigation system through passage of an ordinance, a city also has the implied power to disband a municipal irrigation system by ordinance. See 6 McQuillin Mun Corp (3rd Ed) § 21.10. The provisions of chapter 18, title 50, Idaho Code, do not prohibit the disbanding of a city irrigation system. In disbanding the irrigation system, the city may not, however,

2. The provisions of I.C. § 50-1803, which provide that if the city council determines that all or a part of the system need not be continued the city may sell or lease all or part of its canal or irrigation company's stock so long as the water can be transferred in accordance with the statutory requirements, are not applicable because Caldwell's municipal irrigation system does not utilize water represented by shares of stock in a canal or irrigation company.

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authorize impairment of a contract or deprivation of property without due process of law. Id. §§ 21.10 and 21.15. If the city of Caldwell disbands its irrigation system, it will be necessary that the city cause any accounts with the Pioneer Irrigation District to be adjusted and settled. See I.C. § 50-1832.

It is recalled that the 1941 Resolution provided for a contract between the city and the Pioneer Irrigation District. The Caldwell city engineer provided this office with a copy of the most recent agreement with the Pioneer Irrigation District. The agreement is for the distribution of water and the collection and remission of irrigation district assessments for the period from April 15, 1980 to October 15, 1980.

The agreement provided for the district to deliver irrigation water to designated points in the city. The city, in turn, agreed to distribute the water from the irrigation works and systems of the district to the persons having the right to the use of the water within the municipal irrigation system.

The city also agreed to maintain and operate and make all necessary and proper improvements and repairs to the ditches and other means of distribution at the expense of the city. In view of the water distribution services to be rendered by the city, the district agreed that the 1980 district assessments for operation and maintenance within the city boundaries would be two-thirds of the amount levied on other district lands. The parties further agreed that the agreement did not affect the making of additional levies and assessments against the district lands within the city boundaries as required for payment of bond and interest and other charges.

The obligations of the city under the 1980 agreement were consistent with the provisions of I.C. § 50-1805 which authorizes a city to act as the agent of an irrigation district for the distribution of water and the collection of assessments or charges which the irrigation district is authorized to levy upon the lands within the city.

It is our understanding that the 1980 Agreement is the last such written agreement between the city and the irrigation district. It is further our understanding that since 1980 the city has operated the municipal irrigation system without having a written contract with the district. If these assumptions are correct, the city and the district have apparently been proceeding from year to year based upon an unwritten understanding which either party should be free to discontinue at any time.

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If the city passes an ordinance disbanding the municipal irrigation system, it will no longer be authorized to contract with the district for the distribution of irrigation water within the boundaries of the city.

It will thereafter be the obligation of the Pioneer Irrigation District and the lateral ditch water users' associations created by chapter 13, title 42, Idaho Code, or the irrigation lateral districts organized pursuant to I.C. § 43-1505, to deliver irrigation water to those users within the city of Caldwell entitled to its use. The district holds title to the water rights of the district in trust for the water users entitled to its use, including those within the boundaries of the city. See I.C. §§ 42-101, 42-914 and 43-316. The district water distributed to lands within the boundaries of the city is dedicated to those lands and its delivery may not be discontinued except upon failure of the water users to pay required district assessments. See Idaho Const. art. 15, § 4; Bradshaw v. Milner Low Lift Irr. Dist., 85 Idaho 528, 545, 547, 381 P.2d 440 (1963).

According to the 1980 contract between the Pioneer Irrigation District and the city of Caldwell, there are six delivery points within the city, consisting of five laterals and the golf course, to which the district delivers water. If the city disbands its irrigation system, it appears that it would become the responsibility of the water users either to form one or more irrigation lateral districts pursuant to I.C. § 43-1505 or to activate one or more lateral ditch water users' associations created by chapter 13, title 42, Idaho Code, to convey the water from the district delivery points to the respective premises of the water users.

Lateral ditch water users' associations are empowered by I.C. §§ 42-1301 through 42-1309 to elect officers, to elect a lateral manager, to adopt rules and regulations, to borrow money and pledge assets, to assess water users for necessary repairs, improvements and maintenance, and to discontinue delivery of water for the nonpayment of assessments.

I.C. § 43-1505 authorizes irrigation lateral districts, by contrast, to be formed within the boundaries of an irrigation district in the same manner as an irrigation district is formed under chapter 1, title 43, Idaho Code. An irrigation lateral district shall have all the powers of the original irrigation district to issue bonds and to levy assessments and taxes for the

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purpose of constructing, operating and managing water in
distributing systems by means of laterals, sublaterals, ditches,
flumes and pipelines.

Sincerely,

PHILLIP J. RASSIER
Deputy Attorney General
Department of Water Resources

PJR:dc

cc: Peter Cowles, Mayor, city of Caldwell
Donald F. Sayre, Chrm., Pioneer Irr. Dist.