April 17, 2014

Elizabeth,

Pursuant to your request, we have reviewed the areas you have identified as targeted for growth by the city of Nevada. In general, there are three alternatives to provide adequate water service to these areas, which are currently located within CIWA service territory:

1. CIWA provides necessary water service and infrastructure utilizing existing CIWA source/system capacity. No territory transfer necessary, CIWA water rates comparable to Nevada water rates.

2. CIWA provides necessary water service and infrastructure utilizing additional source water capacity from Nevada (bulk Nevada water sale to CIWA). No territory transfer necessary, CIWA water rates comparable to Nevada rates depending on bulk water charge by Nevada.

   Note: Selection of #1 or #2 above depends on specific water demands of the growth sites. CIWA would work with Nevada to provide desired level of service.

3. Transfer of water service territory to Nevada, priced similar to Lincoln Way Energy and DuPont transfers. Nevada provides water service at Nevada rates. Expect the following compensation for the transfer of territory:

   - Area 1A $505,125
   - Area 1B $53,250
   - Area 1C $336,025

   CIWA would be willing to look at options to reduce fees by partnering with the city to install infrastructure in these areas similar to the DuPont strategy, or possible phasing/payment plans.

Hopefully, this information will assist you in your upcoming planning meeting. If you have any questions, do not hesitate to call.

Sincerely,
Central Iowa Water Association
Jim
Dan, it was nice to see you this morning, and I like your new offices. I will definitely try the pizza down the street again! I have attached the proposals to Ames that we discussed. Please review them and let me know if you have any questions. Hopefully, they can be a starting point to find a solution to this situation.
From: Jim LaPlant  
Sent: Monday, June 24, 2013 9:22 AM  
To: SSchainker@city.ames.ia.us  
Subject: CIWA/Ames

Steve,

Thanks for meeting with me last week concerning water supply to the proposed East Ames Industrial Area (EAIP). This email is a follow-up to our discussions.

It is my understanding from our discussions that Ames is willing to work toward an informal resolution of the territorial issues that exist between Ames and CIWA.

CIWA is equally committed to resolving these issues through dialogue and good faith discussions.

To that end (and to get the ball rolling), CIWA proposes, at its expense, to hire an evaluator to review all relevant information, communications, documents, offers and matters related to the negotiations and respective expressed concerns of the parties to date.

This person would also be retained to develop alternative proposals for an amicable resolution of the territorial issues that exist between Ames and CIWA for consideration by both. CIWA will request that the evaluator prepare a comprehensive written report evaluating all facets of the matters at issue, summarizing all alternatives for resolution of the issues (including buy-out) and including specific recommendations for the process forward to amicably resolve these issues. This person could also serve as a mediator if appropriate.

Presently, CIWA is considering hiring former Iowa Rural Development State Director Ellen Huntoon for this task as she has a reputation as an honest, impartial leader and she has worked for decades with both rural water utilities and municipalities across Iowa and would therefore be familiar with the fundamental concerns of each.

CIWA will pledge to fully cooperate and provide all information (including financial information), documents and support materials the evaluator deems necessary to complete the task. CIWA also agrees to participate in any informal resolution process such as mediation or direct dialogue with Ames as recommended in the report.

CIWA envisions that the scope of the report would include:

- Feasibility and costs of CIWA purchasing water from Ames and providing water service to EAIP.
- Feasibility and costs of a buy-out with Ames providing all services.
- Feasibility and costs of CIWA retaining the territory and wheeling Ames supply to EAIP.
CIWA requests that Ames agree to furnish all information (including financial information), documents and support materials the evaluator deems necessary for the analysis and report.

CIWA also asks that Ames agree to suspend its political battle against CIWA until the report is completed and it is determined if a compromise solution acceptable to both parties can be achieved.

Also, Steve, you mentioned that Ames is committed to moving forward with the installation of water service facilities in EAIP. CIWA would appreciate knowing specifically: [a] what is included in such commitment, [b] what is the project budget, and assuming rural water was not an issue, [c] when would the infrastructure be completed and ready for service? You also mentioned the possibility that Ames would phase this infrastructure, and if so, how would it be phased?

Thanks again, and please let me know if the above is acceptable to Ames. If so, CIWA will immediately set about hiring an evaluator with the goal of resolving these issues within the next six (6) months or sooner if possible.

Central Iowa Water Association

Jim
April 22, 2013

Senator Tom Harkin
210 Walnut Street
Room 733, Federal Building
Des Moines, IA 50309

Dear Senator Harkin:

It has been brought to our attention that your office may be receiving complaints from the cities of Ames, Marshalltown and Nevada concerning alleged service territory issues. CIWA believes the information you may have received from these cities is incomplete and misleading. Here is the rest of the story:

As regards AMES:

[a] CIWA negotiated a service territory agreement with Ames in 1992 that clearly defined the service boundaries of each party;

[b] Over the years, CIWA has worked with Ames to address service issues as they have arisen. For example, at Ames’ request CIWA transferred part of its (CIWA’s) service territory to Ames so Ames could serve the Barilla plant; and

[c] Recently, CIWA has offered to finance water service improvements in coordination with Ames providing wastewater service to assist Ames in having land “shovel ready” for development in the remaining service territory Ames agreed in 1992 was reserved to CIWA. (See attached letter to Ames dated March 18, 2013. CIWA awaits a reply to this letter.)

[d] CIWA is not aware of any past or present project under consideration by Ames that is in conflict with CIWA rural water facilities or that was compromised in any way because of rural water.

As regards NEVADA:

[a] CIWA also negotiated a service territory agreement with Nevada in 1992 that clearly defined the service boundaries of each party.

[b] Since then CIWA has worked hard over the years to accommodate Nevada’s service territory transfer requests, with numerous agreements and transfers of territory negotiated, including the site for the Lincoln Way Energy ethanol plant.

[c] CIWA has recently approved an updated service territory agreement with Nevada (approved April 9, 2013) that transfers CIWA territory to Nevada so that Nevada can provide water and wastewater services to DuPont Cellulosic Energy.

[d] CIWA is not aware of any past or present project under consideration by Nevada that is in conflict with CIWA rural water facilities or that was compromised in any way because of rural water.

As regards MARSHALLTOWN:
This one is a real puzzle since, as you know, we have been working cooperatively with Marshalltown on the 26CFR1.1471-7 taxable bond issue (so Marshalltown can sell more than 10% of its output to CIWA without taxable bonds).

CIWA currently purchases over 30% of Marshalltown’s water production!

CIWA has resolved the problem for the Liberty Baptist Church by furnishing a sprinkler system supply main for fire protection. CIWA plans to build a water tower in the vicinity of the church to address future fire protection in CIWA’s water service territory near Marshalltown and CIWA plans to serve any new Marshalltown developments that occur in CIWA’s service territory.

CIWA is not aware of any past or present project under consideration by Marshalltown that is in conflict with CIWA rural water facilities or that was compromised in any way because of rural water.

In short, the complaints by these cities have no basis in fact and are simply an attempt to use half-truths and misinformation to try to change existing laws to gain the power to cherry pick rural water system customers – thereby forcing CIWA and other rural water systems to give up territory and the revenue stream needed to meet their financial obligations. Current federal law is designed to protect rural water systems that are investing, growing, and serving as economic development engine catalysts trying to meet their obligations – and that is exactly what CIWA is doing.

The truth is, the cities’ strategy is to make unreasonable demands (without consideration for the financial factors CIWA must consider to remain financially sound and offer services at reasonable rates), offer no cooperative approach whatsoever to jointly address utility services, and then complain to legislators. No new laws are necessary.

The present laws work if each entity:

[a] recognizes its role,

[b] respects the jurisdictional authority of the other and

[c] recognizes the importance of collaboration in bringing development projects to fruition without wasting time and money on senseless turf wars.

Moreover, here the Ames and Nevada situations are controlled by contractual agreements each party voluntarily entered into; and it would be inequitable to change the law so they can avoid living up to their legal commitments which CIWA has relied on in good faith to develop its system.

Please do not hesitate to call me if you have any questions.

Sincerely,
Central Iowa Water Association

James R. LaPlant, P.E.
Cell # 641-521-5373
March 18, 2013

City of Ames
Bob Kindred
515 Clark Ave
PO Box 811
Ames, IA 50010

Dear Bob:

This letter is in response to your letter of January 28, 2013 concerning water service to the proposed East Ames Industrial Park (“EAI Park”). Although the information supplied by Ames does not indicate there is any imminent or pending development in the proposed EAI Park, CIWA is committed to working with Ames to cost effectively meet the needs of all water customers in the EAI Park, just as CIWA has found ways to cost effectively meet the needs of all other water customers within its service territory over the past thirty-six (36) years.

Specifically, CIWA stands by its letters of September 6, 2012 and October 24, 2012. Whenever Ames is willing to commit to the construction of wastewater infrastructure to EAI Park, CIWA is willing to commit to construction of water infrastructure starting with construction of an appropriate size water main between Ames and Nevada along the EAI Park site. CIWA will finance the water main at no cost to Ames (unless Ames and Nevada are able to negotiate a partnership that would provide for emergency water service between the cities. Then CIWA would expect a partial contribution for such a significant service.) CIWA will plan to meet or exceed the schedule set forth by Ames for installation of wastewater services. CIWA anticipates that water rates will be identical or very similar to Ames rates.

It should be respectfully noted that CIWA is unsure of the accuracy of Ames’ projected water demands of 3.0 MGD for the 563-acre EAI Park site, since that is nearly the same demand CIWA utilizes to serve its many municipal customers and its 13,500 individual farms/rural resident customers located across the 19 counties CIWA serves. Certainly CIWA is hopeful the demand projected by Ames actually materializes; and as it does CIWA will look at all options available for upgrades in water service to meet the actual needs at the EAI Park, including upgrades to existing infrastructure and supply. That said, as with Ames’ development of its wastewater infrastructure, the key is that the future upgrades need to be affordable without putting the costs on the back of either Ames’ or CIWA’s existing customers. CIWA’s model, (and it’s CIWA’s understanding that Ames’ uses the same model), is that new customers pay their fair share and their own way and that neither CIWA or Ames expect existing customers to pay higher rates to finance and pay for service to new potential customers – particularly if there is no reasonable certainty as to when or if a potential development will actually yield a paying customer.
In terms of the specific questions set forth in your letter, in fairness to Ames and itself, CIWA is not able at this time to determine an equitable price for transfer of almost a square mile of its territory (as reserved to CIWA by Ames’ 1992 Agreement with CIWA establishing the water service area boundary between the two entities). There is simply not enough reliable information available, such as the type of user, actual demands, fire flow requirements, etc., to make a practical evaluation to price a transfer. CIWA does commit to Ames that it will do everything in its power to make certain development opportunities are not compromised by water service issues and CIWA further pledges it will work with Ames in a fair and reasonable manner, whether the solution is CIWA, Ames or a partnership that benefits both, once information is available to make a sound, informed decision.

CIWA would also like to join the Ames Economic Development Group and be more involved in the planning process [a] to better coordinate planning for the EAI Park and related areas is CIWA’s service territory and [b] to assure information concerning the location and capacity of CIWA facilities is readily available to Ames economic development officials and potential developers when working in the fringe areas east of Ames or along the I-35 corridor. CIWA is hopeful the Ames Economic Development Group will welcome CIWA as an active member.

As CIWA has repeatedly assured, CIWA remains committed to cooperation and collaboration with Ames as the economic development opportunities such as in the EAI Park and other areas along the I-35 and Highway 30 corridors develop. Indeed, CIWA and the nineteen (19) other regional rural water associations in Iowa are tasked as economic development engines. They have collectively invested nearly one (1) billion dollars to develop the infrastructure critical to fostering and sustaining economic development throughout Iowa in the two-thirds of the state they collectively serve and CIWA remains more committed today than ever to this task. CIWA alone has been involved in numerous successful economic projects and has never been an impediment to economic development.

In summary, CIWA is willing to provide adequate water service to the East Ames Industrial Park area and finance initial water service improvements in coordination with Ames providing wastewater service to assist Ames in having “shovel-ready” development areas. Further CIWA does not foreclose consideration of any and all options to assure economic development occurs in this area. Such options may, in CIWA’s view, likely include some level of partnership with Ames, or other mutually beneficial arrangement at

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1 As noted in prior correspondence, CIWA has expended millions of dollars in developing water and wastewater infrastructure for other business development in central Iowa including the Grundy County Business Park (Heritage Center, Olderog, Hawkeye Community College), Butler County Logistics Park (Zinpro Corporation), and the Vernon Water Supply (under construction near Peosta).

CIWA has also stepped aside and transferred territory to cities, counties and development groups where such is the most cost effective way to assure economic development occurs such as in [a] Story City (Pella Windows, EBY), [b] Ames (Barilla), [c] Newton (Newton Speedway) and [d] Nevada (Lincoln Way Energy and negotiations are concluding regarding DuPont Cellulosic Energy).

An example of a successful economic development that may be a model for Ames and CIWA is the Jasper County Business Park. Newton provides wastewater service, and CIWA financed and installed over two million dollars ($2,000,000) in water supply improvements (water tower and 12” water mains). As a result of the collaboration of Newton, its water works, Jasper County, the developer and CIWA, Newton Water Works’ customers rates remain low by selling excess water capacity to CIWA, CIWA’s customers water rates benefit from the economy of scale of expanding CIWA’s customer base, the City of Newton benefits from the wastewater revenues and Jasper County benefits from the increased property tax revenues.
some point in the future, depending upon the exigent circumstances to as economic development opportunities present themselves.\(^2\)

Sincerely,
Central Iowa Water Association

James R. LaPlant, P.E.
CEO/Engineer

\(^2\) CIWA currently purchases approximately one-third of the Marshalltown Water Works production, and 60% of the Newton Water Works production. Due to their sales of water to CIWA, Newton and Marshalltown have greater economies of scale and very low rates which enhance economic development in both communities.
Dear Representative

It has come to our attention that false and misleading information is being circulated about Central Iowa Water Association (CIWA) and its relationships with cities. The facts are as follows:

1. **First and foremost, CIWA has never used 7 U.S.C §1926(b) as a tool “to seek unreasonably high buyouts”**. Indeed, CIWA has never litigated a territory dispute with a city in its thirty-six (36) year history. Regrettably municipal public water supply systems sometimes adopt the parochial attitude that they are the only ones that can meet the needs of public water supply system customers in urban fringe areas. While sometimes that is the case, just as often it is not. Frankly, end users don’t care who provides their water any more than they care who provides gas or electric to them – all they want is their water needs met as cheaply as possible.

For many cities, such as Ames and Nevada, CIWA has entered into contracts with each which define their respective water service territories. HF 516 will have no impact whatsoever on those contractual agreements insofar as it cannot be used to break contracts legally made years ago. These cities are bound by the deals they made and should not be allowed to use the law to make an end run and grab territory they willingly gave up years ago because they did not want to serve it then - just because it is now lucrative to do so. CIWA has invested hundreds of thousands, if not millions, of dollars meeting the needs of the customers the cities gave up. It has carefully built its system on the conservative fiscal philosophy of meeting customer needs as they arise and not over building or overextending itself unlike, for example, Iowa City which recently acknowledged it spent $12,000,000 for a business park based on a developers promise to bring a wind energy business to the business park which never materialized. The park is empty and unused and Iowa City taxpayers are stuck with the bill.

2. **CIWA has been a catalyst for economic development throughout central Iowa.** CIWA has invested millions of dollars in developing water and wastewater infrastructure for business developments including the [a] Grundy County Business Park (Heritage Center, Olderog, Hawkeye Community College), [b] Butler County Logistics Park (Zinpro Corporation), and [c] the Vernon Water Supply (under construction near Peosta) – all of which have provided jobs for Iowans.
CIWA has a proven track record of being very flexible as economic development opportunities present themselves and is more than willing to make territory adjustments at cost or less where necessary to assure development occurs. CIWA has stepped aside and transferred territory to cities, counties and development groups where such were the most cost effective ways to assure economic development occurred such as in [a] Story City (Pella Windows, EBY), [b] Ames (Barilla), [c] Newton (Newton Speedway) and [d] Nevada (Lincoln Way Energy and negotiations are concluding regarding DuPont Cellulosic Energy).

The model for a collaborative approach between a city, a county, a developer and a regional rural water system for economic development can be found in the development of the Jasper County Business Park just north of Newton. The park is located in Jasper County in CIWA territory, the City of Newton provides wastewater service, and CIWA financed and installed over two million dollars ($2,000,000) in water supply improvements (water tower and 12” water mains). The water is purchased from Newton Water Works by CIWA and sold to the businesses. Newton Water Works customers benefit from selling the water to CIWA and not having the capital expense of building an additional water tower and lines, the City of Newton benefits from the wastewater revenues and Jasper County benefits from the increased property tax revenues.

In the Jasper County Business Park, each entity:[a] recognized its role, [b] respected jurisdictional authority of the others, and [c] recognized the importance of collaboration in promptly bringing this development project to fruition without wasting time and money on senseless turf wars.

3. **CIWA is responsive and works cooperatively with cities.** For example, CIWA has transferred territory to Nevada at its request 4 times in the last 20 years for little consideration – and in one case for no consideration whatsoever.

In appreciation of its cooperative approach, Nevada has sent the following to CIWA:

At the conclusion of negotiations in 1993 regarding CIWA providing service within two (2) miles of Nevada, city administrator Dennis Henderson wrote CIWA CEO James LaPlant on August 26, 1993, and said:

“I am very pleased that we were able to come together on such an agreement. As we [Mr. Henderson and Mr. LaPlant] have previously mentioned, there is no reason we should not be able to work together for mutually beneficial causes and I look forward to following through on this. Stop in when you are in the area.”
At the conclusion of negotiations with Nevada in 2007 regarding CIWA’s voluntary transfer of territory to Nevada at no charge, Neil Guess engineer with Nevada’s engineering firm, Howard R. Green & Company wrote Mr. LaPlant and said:

“Again thanks for your consideration and approval of this request. This cooperation is consistent with the spirit of our earlier service area discussions.”

As recently as November 6, 2012, during negotiations regarding transfer of CIWA territory to Nevada so Nevada can serve the proposed DuPont ethanol facility, Nevada city attorney Erin Clanton wrote Mr. LaPlant of CIWA and said:

“Thanks Jim. I will forward this on [to] the City staff. It looks like we’re getting close. I appreciate all your work in getting this resolved.”

4. **CIWA has the ability to provide fire suppression pressures and the water needed for economic development projects – and in those rare cases where it cannot do so, it voluntarily transfers its service rights to cities.** For example, in the Marshalltown area, Marshalltown refuses to provide fire protection for a local Baptist Church – despite the fact that it has a water main across the street. CIWA is taking care of the Church’s needs at cost to provide it with the fire suppression pressures needed to meet Marshalltown Codes so the Church can obtain an occupancy permit from Marshalltown. Marshalltown is using the Church as a pawn in an attempt to take CIWA territory – territory in which CIWA plans to invest millions of dollars to meet the needs of economic development projects.

5. **Not one economic development project in Iowa has ever failed because of CIWA.** Despite being asked to do so, the sponsor of HF516 has not yet been able to identify to CIWA one (1) economic development project that was lost because CIWA could not provide water or was unwilling to transfer its water rights to a city when that was the best way to provide water to assure the economic development project became reality. Anyone can say anything. The fact is CIWA and the cities in its territory share the common goal of encouraging economic development for the obvious reasons that economic growth and development are beneficial to all in terms of increasing the tax base, keeping user rates down, encouraging new job growth, strengthening the economy and enhancing the quality of life and economic opportunities for the users within their respective service territories. Neither is always and necessarily better equipped or better able than the other to make economic development happen. Each is better served by recognizing their role and what they can respectively bring to the table for the common good.
6. **CIWA is fair in fixing the value of territory rights insofar as many factors affect the value of service territory if it is being transferred.** CIWA considers each proposal on a case by case basis. In some instances, no charge is assessed. In other cases, CIWA asks as compensation the right to purchase water from a municipal water system. In still other cases, a fixed dollar amount is established based on the infrastructure investment, loss of income stream and related factors. In each case, CIWA must determine the financial impact of the loss of service territory to its remaining customers and seek fair compensation to offset that financial impact. CIWA cannot afford to give away the farm any more than municipal water system can afford to give away its territory for no or inadequate compensation.

7. **CIWA and other regional rural water systems operate under, and are subject to, the same DNR regulations as municipal water systems to assure safe water for all Iowans.** There is no legal regulatory distinction between the two. Furthermore, CIWA is the emergency water supplier to many small cities within its service territory. Like municipal water systems, CIWA is a nonprofit association and runs on the leanest of margins – and certainly far more efficiently and with lower overhead costs than municipal systems with their layers of bureaucracies. CIWA is member managed and is audited annually to assure its members and its lenders its financial house is in order.

8. **Neither municipal nor regional rural water systems should be empowered to unilaterally seize the territory of the other.** Both need / require reliable income streams and need economies of scale to keep user rates low. Taking territorial rights away from regional rural water systems drives up costs and rates for their remaining customers and jeopardizes their financial viability; just as the same would happen if regional rural water systems were empowered to take territory from municipal water systems. Cannibalizing the income stream of regional rural water systems will destroy them and deprive thousands of Iowans of safe affordable water for the sole benefit of municipal water systems – and revert Iowa to a system of private wells.

Thank you for your consideration of the above. If you have any questions, please call me at 641-521-5373.

Central Iowa Water Association

Jim LaPlant, CEO
PRESS RELEASE
HF 516 – ANTI-IOWA RURAL WATER / ANTI ECONOMIC DEVELOPMENT / ANTI
COMPETITION / PRO MONOPOLY LEGISLATION

This bill is bad legislation for Marshalltown residents because it forces CIWA to significantly reduce CIWA’s purchases of Marshalltown Water Works water. CIWA is the single largest customer for Marshalltown Water Works purchasing 30% of all water it processes. Without CIWA, the water rates paid by Marshalltown residents would increase dramatically and a substantial part of the Marshalltown Water Works processing plant - which Marshalltown residents pay for - would sit idle. By keeping water rates low for Marshalltown customers, CIWA helps Marshalltown attract economic development.

This bill is bad legislation for Iowa because it will effectively kill rural water associations in Iowa. It is promoted by a few city bureaucrats and empire builders who want a monopoly and job security. They are afraid of the competition and have little regard for the people, like Marshalltown residents and the residents of other cities, who actually pay their salaries.

Supporters of the bill claim it is needed for economic development – when the truth is that this bill [a] has a chilling effect on economic development by stifling competition, [b] allows cities to cherry pick rural water associations by forcing rural water associations to turn over their customers to cities, [c] increases overhead costs for both municipal and rural water associations by requiring more reports and studies and money wasted on lawyers and engineers – all of which ultimately increases the rates paid by both municipal and rural water users.

Furthermore, supporters of the bill cannot identify one actual economic development project that has been lost because rural water stood in the way. Not one. CIWA and other rural water associations have a nearly 40 year history in Iowa of working with municipal water systems when economic development opportunities present themselves to make sure that whichever is best able to meet the needs of the customer cost effectively serves that customer. That has often resulted in rural water associations voluntarily transferring their service territory rights to municipal water systems.

This bill forces such transfers – in violation of federal laws that have been on the books nearly 80 years – thereby stifling competition and without any consideration whatsoever for the interests of the customers.

In short, HF – 516 is anti-rural water, anti-competition, anti-economic development, pro-monopoly and certain to raise the water rates for customers of both municipal and rural water systems.
VOTE NO

HF 516 – ANTI-IOWA RURAL WATER / ANTI ECONOMIC DEVELOPMENT / ANTI COMPETITION / PRO MONOPOLY LEGISLATION

Rural water asks that you not support HF 516 which will essentially allow incorporated cities to kill new rural water service in rural territory within 2 miles of their city limits.

This bill is bad legislation for Iowa – and particularly rural Iowa – for many reasons:

• It takes away the Freedom of rural farms and businesses to receive safe water from a government sponsored rural water association. Iowa citizens living in the two-mile zone have no representation on city councils and absolutely nothing to say about a city controlling their right to get safe water.

• HF 516 will kill regional rural water system development in Iowa by giving cities control of most rural territories. It will allow cities to cherry pick rural water customers thereby depriving regional rural water associations of the economies of scale necessary to keep customer rates affordable. Not only will water rates for rural customers increase dramatically, but the financial integrity of all rural water systems will be jeopardized and the economic development they bring rural Iowa will be threatened.

• HF 516 is anti-economic development and anti-competition. Rural water has invested well over one billion dollars and been instrumental in developing essential infrastructure needed for economic development in rural Iowa by delivering safe and reliable water to rural families, small cities, and rural business at affordable rates. This bill not only kills rural water as an economic development engine for the state, it gives cities a competitive advantage and monopoly on the provision of water services for a 2-mile area outside a city’s limit.

• This bill is a solution in search of a problem – rural water has worked cooperatively with cities for years under the framework of existing law. Rural water has either provided an adequate level of water service, including fire flows if necessary, or transferred territory to cities. There are no “dead zones” where reasonable water service solutions have not been negotiated by cities and rural water.

• We do not need more laws and regulations which result in more paperwork and more money spent for more plans, delays, studies, attorneys, engineers, etc. - all of which drives up rates for both urban and rural customers - when far and away negotiations between cities and rural water have been positive and beneficial to both parties.

• HF 516 violates federal law by attempting to give cities the right to “take” territory without regard to the right of existing rural water providers to adequate compensation for the investment made by the federal government.

• Rural water is strongly opposed to this bill, and there is no amendment that can salvage it.
March 18, 2013

City of Ames
Bob Kindred
515 Clark Ave
PO Box 811
Ames, IA 50010

Dear Bob:

This letter is in response to your letter of January 28, 2013 concerning water service to the proposed East Ames Industrial Park (“EAI Park”). Although the information supplied by Ames does not indicate there is any imminent or pending development in the proposed EAI Park, CIWA is committed to working with Ames to cost effectively meet the needs of all water customers in the EAI Park, just as CIWA has found ways to cost effectively meet the needs of all other water customers within its service territory over the past thirty-six (36) years.

Specifically, CIWA stands by its letters of September 6, 2012 and October 24, 2012. Whenever Ames is willing to commit to the construction of wastewater infrastructure to EAI Park, CIWA is willing to commit to construction of water infrastructure starting with construction of an appropriate size water main between Ames and Nevada along the EAI Park site. CIWA will finance the water main at no cost to Ames (unless Ames and Nevada are able to negotiate a partnership that would provide for emergency water service between the cities. Then CIWA would expect a partial contribution for such a significant service.) CIWA will plan to meet or exceed the schedule set forth by Ames for installation of wastewater services. CIWA anticipates that water rates will be identical or very similar to Ames rates.

It should be respectfully noted that CIWA is unsure of the accuracy of Ames’ projected water demands of 3.0 MGD for the 563-acre EAI Park site, since that is nearly the same demand CIWA utilizes to serve its many municipal customers and its 13,500 individual farms/rural resident customers located across the 19 counties CIWA serves. Certainly CIWA is hopeful the demand projected by Ames’ actually materializes; and as it does CIWA will look at all options available for upgrades in water service to meet the actual needs at the EAI Park, including upgrades to existing infrastructure and supply. That said, as with Ames’ development of its wastewater infrastructure, the key is that the future upgrades need to be affordable without putting the costs on the back of either Ames’ or CIWA’s existing customers. CIWA’s model, (and it’s CIWA’s understanding that Ames’ uses the same model), is that new customers pay their fair share and their own way and that neither CIWA or Ames expect existing customers to pay higher rates to finance and pay for service to new potential customers – particularly if there is no reasonable certainty as to when or if a potential development will actually yield a paying customer.
In terms of the specific questions set forth in your letter, in fairness to Ames and itself, CIWA is not able at this time to determine an equitable price for transfer of almost a square mile of its territory (as reserved to CIWA by Ames’ 1992 Agreement with CIWA establishing the water service area boundary between the two entities). There is simply not enough reliable information available, such as the type of user, actual demands, fire flow requirements, etc., to make a practical evaluation to price a transfer. CIWA does commit to Ames that it will do everything in its power to make certain development opportunities are not compromised by water service issues and CIWA further pledges it will work with Ames in a fair and reasonable manner, whether the solution is CIWA, Ames or a partnership that benefits both, once information is available to make a sound, informed decision.

CIWA would also like to join the Ames Economic Development Group and be more involved in the planning process [a] to better coordinate planning for the EAI Park and related areas is CIWA’s service territory and [b] to assure information concerning the location and capacity of CIWA facilities is readily available to Ames economic development officials and potential developers when working in the fringe areas east of Ames or along the I-35 corridor. CIWA is hopeful the Ames Economic Development Group will welcome CIWA as an active member.

As CIWA has repeatedly assured, CIWA remains committed to cooperation and collaboration with Ames as the economic development opportunities such as in the EAI Park and other areas along the I-35 and Highway 30 corridors develop. Indeed, CIWA and the nineteen (19) other regional rural water associations in Iowa are tasked as economic development engines. They have collectively invested nearly one (1) billion dollars to develop the infrastructure critical to fostering and sustaining economic development throughout Iowa in the two-thirds of the state they collectively serve and CIWA remains more committed today than ever to this task. CIWA alone has been involved in numerous successful economic projects and has never been an impediment to economic development.1

In summary, CIWA is willing to provide adequate water service to the East Ames Industrial Park area and finance initial water service improvements in coordination with Ames providing wastewater service to assist Ames in having “shovel-ready” development areas. Further CIWA does not foreclose consideration of any and all options to assure economic development occurs in this area. Such options may, in CIWA’s view, likely include some level of partnership with Ames, or other mutually beneficial arrangement at

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1 As noted in prior correspondence, CIWA has expended millions of dollars in developing water and wastewater infrastructure for other business development in central Iowa including the Grundy County Business Park (Heritage Center, Olderog, Hawkeye Community College), Butler County Logistics Park (Zinpro Corporation), and the Vernon Water Supply (under construction near Peosta).

CIWA has also stepped aside and transferred territory to cities, counties and development groups where such is the most cost effective way to assure economic development occurs such as in [a] Story City (Pella Windows, EBY), [b] Ames (Barilla), [c] Newton (Newton Speedway) and [d] Nevada (Lincoln Way Energy and negotiations are concluding regarding DuPont Cellulosic Energy).

An example of a successful economic development that may be a model for Ames and CIWA is the Jasper County Business Park. Newton provides wastewater service, and CIWA financed and installed over two million dollars ($2,000,000) in water supply improvements (water tower and 12” water mains). As a result of the collaboration of Newton, its water works, Jasper County, the developer and CIWA, Newton Water Works’ customers rates remain low by selling excess water capacity to CIWA, CIWA’s customers water rates benefit from the economy of scale of expanding CIWA’s customer base, the City of Newton benefits from the wastewater revenues and Jasper County benefits from the increased property tax revenues.
some point in the future, depending upon the exigent circumstances to as economic development opportunities present themselves.  

Sincerely,
Central Iowa Water Association

James R. LaPlant, P.E.
CEO/Engineer

---

2 CIWA currently purchases approximately one-third of the Marshalltown Water Works production, and 60% of the Newton Water Works production. Due to their sales of water to CIWA, Newton and Marshalltown have greater economies of scale and very low rates which enhance economic development in both communities.
Dear Representative Deyoe:

Per Jim LaPlant’s request, please see the attached letter and documents that show your proposed legislation will have no impact on CIWA’s territorial relationships with Ames and Nevada insofar as both cities agreed years ago that CIWA could provide water services to customers within two (2) miles of their respective boundaries and both cities remain bound by such agreements.

Thank you for your attention to the foregoing.

Frank Smith
CENTRAL IOWA WATER ASSOCIATION
WATER SERVICE PLAN

The City of __Ames________, Iowa:

XX Approves of Central Iowa Water Association, its successors or assigns, serving potable water to its existing and new member customers within two miles of the City and east of Iowa Interstate 35.

Does not want Central Iowa Water Association, its successors or assigns, to connect any more new member customers to its potable water distribution system within two miles of the City, and east of Iowa Interstate 35.

Dated this 13th day of October, 1992.

City of __Ames________, Iowa:

By: __________
Mayor

ATTEST:

______________
Acting City Clerk

When completed, please promptly return this to Central Iowa Water Association, Attention Jim LaPlant, Rural Route #2, Box 332, Newton, Iowa 50208.
COUNCIL ACTION FORM

Item # 29
Date: October 13, 1992

SUBJECT: Water service east of Interstate 35.

BACKGROUND:

Last April the City received a request from the Central Iowa Water Association (CIWA) for approval to provide water service to properties within the City's two-mile planning jurisdiction that lie east of Interstate 35. The CIWA is developing a water system throughout the area and wishes to serve the existing properties where the City of Ames has jurisdiction.

The laws dealing with interaction between municipalities and rural water systems were changed in the most recent legislative session. John Klaus has indicated our responsibilities in the memo attached. Preliminary cost estimates for the City to extend service lines to the areas within our planning jurisdiction (two miles) total over $2,000,000. Current water usage by the customers that would be served is very low. In addition, the City would be providing utility service to properties outside of the corporate boundaries which would be a significant change in policy.

Staff has met with representatives of the Central Iowa Water Association to discuss the interaction of our systems. At the present time it does not appear that extensive development will occur east of I-35 due to the lack of sanitary sewer there and the presence of available land closer to the more populated areas of the community that does have sewer available. In addition, the CIWA will not be providing water in sufficient quantities to meet fire fighting needs. It also appears that the CIWA is willing to discuss an agreement for service to future large water users as annexation to Ames occurs.

The final item of discussion relates to the possibility of an interconnection between the CIWA and the City of Ames for water supply reliability. Based on our current system, it is felt by staff that we could sell water to CIWA and still meet our needs. As we experience future growth, the interconnection with CIWA and its multi-county system could provide the potential for water access from the Iowa River basin through Newton and Marshalltown.

ALTERNATIVES:

1. Indicate to the Central Iowa Water Association that the City of Ames does not wish to provide water service to the properties within our two-mile jurisdiction east of I-35 at this time. Direct staff to negotiate an agreement dealing with future large water users to establish the mechanism by which a buy-out system is developed. Also direct staff to pursue further evaluation of the interconnection of the water systems.
2. Direct staff to develop projects to serve the area east of I-35 within the next four years.

**MANAGER'S RECOMMENDED ACTION:**

It is recommended by the City Manager that the City Council adopt a resolution indicating that the City of Ames does not wish to provide water service to the properties within the two-mile jurisdiction that lies east of I-35. The Council should further direct staff to negotiate an agreement detailing the method of transfer when large water users develop property in the area and also to pursue further evaluation of the system interconnection.

**COUNCIL ACTION:**

\pw\caf\water35.013\pw:orig
RESOLUTION NO. 65 (91-92)

A RESOLUTION APPROVING CENTRAL IOWA WATER ASSOCIATION SERVING POTABLE WATER TO CERTAIN CUSTOMERS WITHIN TWO MILES OF THE CITY OF NEVADA, IOWA.

WHEREAS, Central Iowa Water Association (hereafter "the Association") serves softened, treated water to farms and rural residences in Jasper, Marshall, Story and portions of 7 other central Iowa counties, and;

WHEREAS, the Association has recently received Farmers Home Administration loan funds for a major expansion to the Association's rural water system in Story County, and;

WHEREAS, the law and Farmers Home Administration require that the Association obtain approval from cities and towns in its service area in order to be able to provide future water services at locations outside of the city limits, but within two miles of the City of Nevada, Iowa, and;

WHEREAS, the Association, by letter dated April 21, 1992, submitted a plan of existing water mains and preliminary plans of additional proposed mains within two miles of the City of Nevada, Iowa, as shown on attached Exhibit "A", and requesting approval of the same, and;

WHEREAS, in the exercise of the powers granted to it by the Iowa Constitution and the Code of Iowa, the City Council has determined that it is in the best interest and is appropriate for the purposes of protecting and preserving the rights, privileges and property of the City or of its residents and to preserve and improve the peace, safety, health, welfare, comfort and convenience of its residence, that the partial approval should be made, and;

WHEREAS, the City Council of the City of Nevada, Iowa, at its meeting held on June 1, 1992, by motion duly made, seconded and passed, agreed to approve the proposed plans with the exception that no mains should be constructed to service property lying on Airport Road, and;

WHEREAS, the said approval should be memorialized in the form of a resolution of the Council.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NEVADA, IOWA, that the City does hereby approve of Central Iowa Water Association, its successors or assigns, serving potable
water to its existing and new member customers within two miles of the City of Nevada, Iowa, in accordance with the proposed plans as shown on attached Exhibit "A", with the exception that no mains shall be constructed to service property lying on Airport Road, and further, that any future construction of water mains, including but not limited to those proposed on Exhibit "A", receive prior approval of the City with regard to plans, specifications, actual location, and other matters.

BE IT FURTHER RESOLVED that the Mayor and Clerk/Treasurer are hereby authorized and directed to execute any and all documents necessary for the said approval.

Resolved this 15th day of June, 1992, by the City Council of the City of Nevada, Iowa.

APPROVED:

[Signature]

Mayor Pro tem, Jim Johnson

ATTEST:

[Signature]
Sue North, City Clerk/Treasurer
July 14, 1994

James R. LaPlant, P.E.
Central Iowa Water Association
R.R. #2, Box 332
Newton, Iowa 50208

Dear Mr. LaPlant:

In conjunction with your organizations’ request to provide rural water service in the general area north and east of County Road E-29 and Dayton Avenue extended, please be advised that the City Council of the City of Ames has voted to approve your request. The area involved in the approval is that area included in your January 14, 1994 request.

In addition to approving your request for service, the City Council directed City staff to work with your organization to establish a program of partnering with your organization so that the potential of water sales by the City, as well as distribution system coordination can be explored. I will be contacting you to establish a time that is mutually agreeable for each of us to discuss these items.

Your cooperation in our lengthy evaluation process is much appreciated. Please call me if you have any questions.

Sincerely,

Paul D. Wiegand, P.E.
Public Works Director

cc: Brian P. O’Connell, Planning & Housing Director
    Tom Neumann, Water & Pollution Control Director
WATER SUPPLY, WATER SERVICES AND WATER SERVICE TERRITORY AGREEMENT BETWEEN IOWA REGIONAL UTILITIES ASSOCIATION INC. D/B/A CENTRAL IOWA WATER ASSOCIATION AND THE CITY OF NEVADA

In consideration of the covenants and agreements set forth herein and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS. As used in this agreement, terms used herein shall have the following meanings:

1.1 “CIWA” means Iowa Regional Utilities Association Inc. d/b/a Central Iowa Water Association, an Iowa non-profit corporation with its principal offices currently located at 3801 Iowa Speedway Drive, Newton, Iowa 50208.

1.2 “Nevada” means the city of Nevada, Iowa, an Iowa municipal corporation located in Story County, Iowa, with its principal offices currently located at 1209 6th Street, Nevada, Iowa 50201.

1.3 “Tract 1” means the real property locally known as 59511 Lincoln Highway, Nevada, Iowa and legally described on Exhibit 1 which is attached hereto and by this reference made a part hereof.

2. CIRCUMSTANCES AND PURPOSE.

2.1 CIWA is a non-profit Iowa corporation which provides regional water utility services throughout central Iowa including in Story County.

2.2 CIWA is a federally indebted water association under 7 U.S.C § 1926(b).

2.3 Lincolnway Energy is the owner of Tract 1 and has constructed an ethanol plant facility thereon and Lincolnway Energy requires raw water and treated water.

2.4 Nevada is an Iowa municipal corporation and operates a municipal water utility system and has annexed Tract 1.

2.5 CIWA claims the exclusive right to provide water services to Tract 1, and Nevada disputes this claim.

2.6 The parties are mindful of the uncertainties of litigation and desire to settle and resolve this dispute and related matters.

3. NEVADA GRANTED RIGHT TO SERVE TRACT 1 UNTIL JUNE 30, 2026. Subject to compliance with all terms of this agreement, Nevada has the exclusive right retroactive from May 1, 2006, and continuing through June 30, 2026, to provide raw and treated water to Tract 1.

4. PERMANENT RELINQUISHMENT OF CIWA'S RIGHT TO SERVE TRACT 1. If Nevada fully complies with all terms of this agreement, then effective July 1, 2026, [a] CIWA shall relinquish all right, title, interest and claim to provide treated or raw water service to Tract 1; [b] Nevada shall be entitled solely and exclusively to provide treated and raw water service to Tract 1; and [c] Nevada shall not be required to pay any further compensation to CIWA over and above the compensation required by paragraph 5 of this agreement. This paragraph shall be self-executing, and in other words, no other instrument of conveyance shall be necessary.

5. COMPENSATION DUE CIWA THROUGH JUNE 30, 2026. In consideration of the relinquishment of any right CIWA may have under federal law (but subject to the reservation of rights set forth in paragraphs 12 and 13 hereof):

5.1 Treated Water. Nevada shall pay as compensation to CIWA the sum of $7,768.67 upon execution of this agreement, which sum represents partial compensation to CIWA for CIWA's relinquishment of its right to serve Tract 1 with treated water through June 30, 2026.

5.2 Raw Water. Nevada shall pay CIWA $0.03125 (3.125¢) for each one thousand (1,000) gallons of raw water which Nevada provides to Lincolnway


Energy or any other person or entity that is located on Tract 1 from the date Nevada first provides raw water to Lincolnway Energy or any other person or entity that is located on Tract 1 through June 30, 2026.

6. METERING. Nevada will install, operate and maintain, (or will require the installation, operation and maintenance of) the necessary metering equipment and devices for measuring the quantity of water at the points of delivery to Tract 1. CIWA will have access to the meter pits so that CIWA can audit and confirm the accuracy of the metering equipment. Any testing of the metering equipment shall be at the expense of Nevada. Measurement within 2% of the actual amount shall be deemed to be proper calibration. If such testing demonstrates an inaccuracy greater than 2%, the party in whose favor the error has been made shall, unless the parties otherwise agree, pay to the other party, the difference between the reading recorded and the recorded usage for the two-year average recorded usage for the same one-month period of the preceding year. CIWA may take meter readings at any time and as often as it desires.

7. TRANSMITTAL OF MONTHLY METER READINGS AND PAYMENT SCHEDULE. Nevada shall read the master meters for all water provided to Tract 1 within the first ten days of each month and transmit a written statement of each such meter reading to CIWA within the first ten days of the following month. Nevada shall remit payment of the amount due CIWA on or before the 25th day of the month following the reading.

8. ESTABLISHMENT OF SERVICE AREA BOUNDARIES. The water service territory of Nevada is set forth and identified on the map which is attached as Exhibit 2 and by this reference made a part hereof. All areas not identified on the map as the water service territory of Nevada are agreed to be the water service territory of CIWA. Neither party shall provide water service to any customer located outside of its water service territory as identified on Exhibit 2, except by consent of, and pursuant to written agreement with, the other party.

Presently the only written agreement which modifies the provisions hereof are Nevada City Council Resolution 65(91-92) and the August 4, 1993 letter from CIWA to Nevada regarding Airport Road and the Settle property. A copy of said agreements are attached hereto, marked Exhibit 3 and 4 and by this reference made a part hereof. The parties agree that the terms of said agreements shall remain in effect.

9. OPTION FOR CIWA TO PURCHASE WATER FROM NEVADA. As additional consideration, Nevada has granted by separate agreement to CIWA the option to purchase treated water.

10. BINDING ON SUCCESSORS IN INTEREST. This contract is binding on the successors and assigns of each party.

11. ASSIGNMENT. Neither party may assign this contract or the rights and responsibilities hereunder without the express consent of the other party, which consent shall not be unreasonably withheld if the assignee is financially responsible; provided, however, that this provision shall not interfere with or preclude any present or future
security or other interests granted by CIWA to the United States of America acting through
the United States Department of Agriculture, Rural Development Administration or any
other secured lender of CIWA.

12. DEFAULT. Each of the following shall be considered acts of default by
Nevada: [a] Failure to pay the consideration or any part thereof, provided, however, that a
default for the failure to pay the consideration or any part thereof shall not be deemed to
have occurred until after CIWA has given Nevada written notice by certified mail, restricted
delivery and return receipt requested, of nonpayment and opportunity to cure and Nevada
has failed within thirty days from the date of the mailing of said notice to make full payment
of the consideration due hereunder. [b] Failure to do, observe, keep and perform any of the
other terms, covenants, conditions, agreements and provisions required under this agreement
to be done, observed, kept and performed by Nevada; provided, however, that a default shall
not be deemed to have occurred regarding Nevada’s failure to do, observe, keep and
perform any of the other terms, covenants, conditions, agreements and provisions required
of Nevada under this agreement until after CIWA has by certified mail, restricted delivery
and return receipt requested, or in a manner prescribed by the Iowa Rules of Civil Procedure
served Nevada written notice of such failure and opportunity to cure and Nevada has failed
to cure within thirty (30) days of the service receipt of said notice of such failure; PROVIDED
that in all events, if Nevada acts promptly upon receipt of such notice to cure
such failure and diligently pursues rectifying said failure and substantially rectifies said
failure within thirty (30) days of receipt of said notice, then Nevada shall not be deemed in
default so long as it completes rectifying said failure with due diligence. In the event that
Nevada defaults, then in addition to any other remedies as are at law or in equity allowed,
CIWA shall be exclusively entitled to serve Tract 1 and Nevada shall relinquish its right to
do so upon ninety (90) days notice from CIWA of CIWA’s intent to serve Tract 1 and
CIWA shall retain all money paid to it by Nevada through the date that CIWA re-assumes
providing water service to Tract 1. CIWA also expressly retains all rights afforded it by 7
U.S.C § 1926(b) and does not waive any such rights by executing this agreement.

13. REMEDIES. In the event of default, the parties shall be entitled to utilize any
and all remedies as are at law or in equity available to them (including specific performance
or injunctive relief) and shall be entitled to obtain judgment for costs and attorney fees as
permitted by law. The existence of an adequate remedy at law or in money damages shall
not be a defense to an action for specific performance or injunction.

14. APPROVAL OF USDA. This agreement is subject to the approval of the
United States Department of Agriculture.

In witness whereof, the parties, acting under authority of their respective governing
bodies, have caused this contract to be executed in three counter parts, each of which shall
be deemed to be an original.

City of Nevada
STATE OF IOWA, STORY COUNTY, SS:

This instrument was acknowledged before me on the 25th day of July, 2007, by Gearold E. Gull and Teresa R. Peterson-Smith as mayor and clerk of the City of Nevada, Iowa.

[Signature]
Notary Public

Iowa Regional Utilities Association Inc.

[Signature]
President

STATE OF IOWA, COUNTY OF JASPER, ss:

This instrument was acknowledged before me on the 16th day of July, 2007, by Donovan Dunsbach as President of Iowa Regional Utilities Association, Inc.

[Signature]
Notary Public
United States Department of Agriculture
Rural Development Administration

By __________________________
COMMUNITY PROGRAMS DIRECTOR

STATE OF IOWA, COUNTY OF POLK, ss:

This instrument was acknowledged before me on the 14th day of September, 2007, by
Karla Peiffer as Community Programs Director of United States
Department of Agriculture Rural Development Administration

TIMOTHY F. HELMBRECHT
Commission Number 729838
My Commission Expires

Notary Public
Exhibit 1
Legal Description

"Tract 1" means the real property located at 59511 Lincoln Highway, Nevada, Iowa, and having Story County Parcel Identification Numbers 10-03-400-160, 10-03-400-305, and 10-03-300-290, legally described as

Lot Two (2), HOIC Agricultural Subdivision, Story County, Iowa,

AND

That part of the West ½ of the Southeast ¼ of Section 3 in Township 83 North, Range 23 West of the 5th P.M., lying South of the Chicago and Northwestern Railway right-of-way EXCEPT Parcel "D" in the West ½ of the Southeast ¼ of Section 3 in Township 83 North, Range 23 West of the 5th P.M., Story County, Iowa, as shown on the "Plat of Survey" filed in the office of the Recorder of Story County, Iowa on May 1, 2003 as Instrument No. 03-08507 at Slide 164, Page 4.

AND,

Parcel "A" in the Southwest ¼ of Section 3, Township 83 North, Range 23 West of the 5th P.M., Story County, Iowa as shown on the "Plat of Survey" filed in the office of the Recorder, Story County, Iowa on September 4, 1992 in Book 11 Page 48.
RESOLUTION NO. 65 (91-92)

A RESOLUTION APPROVING CENTRAL IOWA WATER ASSOCIATION SERVING POTABLE WATER TO CERTAIN CUSTOMERS WITHIN TWO MILES OF THE CITY OF NEVADA, IOWA.

WHEREAS, Central Iowa Water Association (hereafter "the Association") serves softened, treated water to farms and rural residences in Jasper, Marshall, Story and portions of 7 other central Iowa counties, and;

WHEREAS, the Association has recently received Farmers Home Administration loan funds for a major expansion to the Association's rural water system in Story County, and;

WHEREAS, the law and Farmers Home Administration require that the Association obtain approval from cities and towns in its service area in order to be able to provide future water services at locations outside of the city limits, but within two miles of the City of Nevada, Iowa, and;

WHEREAS, the Association, by letter dated April 21, 1992, submitted a plan of existing water mains and preliminary plans of additional proposed mains within two miles of the City of Nevada, Iowa, as shown on attached Exhibit "A", and requesting approval of the same, and;

WHEREAS, in the exercise of the powers granted to it by the Iowa Constitution and the Code of Iowa, the City Council has determined that it is in the best interest and is appropriate for the purposes of protecting and preserving the rights, privileges and property of the City or of its residents and to preserve and improve the peace, safety, health, welfare, comfort and convenience of its residence, that the partial approval should be made, and;

WHEREAS, the City Council of the City of Nevada, Iowa, at its meeting held on June 1, 1992, by motion duly made, seconded and passed, agreed to approve the proposed plans with the exception that no mains should be constructed to service property lying on Airport Road, and;

WHEREAS, the said approval should be memorialized in the form of a resolution of the Council.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NEVADA, IOWA, that the City does hereby approve of Central Iowa Water Association, its successors or assigns, serving potable
water to its existing and new member customers within two miles of the City of Nevada, Iowa, in accordance with the proposed plans as shown on attached Exhibit "A", with the exception that no mains shall be constructed to service property lying on Airport Road, and further, that any future construction of water mains, including but not limited to those proposed on Exhibit "A", receive prior approval of the City with regard to plans, specifications, actual location, and other matters.

BE IT FURTHER RESOLVED that the Mayor and Clerk/Treasurer are hereby authorized and directed to execute any and all documents necessary for the said approval.

Resolved this 15th day of June, 1992, by the City Council of the City of Nevada, Iowa.

APPROVED:

[Signature]
Mayor Pro tem, Jim Johnson

ATTEST:

[Signature]
Sue North, City Clerk/Treasurer
August 4, 1993

City of Nevada
1209 6th Street Box 530
Nevada, Iowa 50201

Attention: Mr. Dennis Henderson, City Administrator

Dear Dennis:

Pursuant to our telephone conversation concerning the Airport Road area, I have prepared the following summary of our proposal:

*CIWA agrees to install 8" C-900 PVC water main along the west side of Airport Road from old Highway 30 south approximately 1/2 mile. A smaller main (3"-2") would be extended on south to the Rullestad residence. The City of Nevada would not be charged to upgrade the main to 8" size.

*The City agrees to convey perpetual easement across Airport Road and Lincoln Way to serve Settle residence.

*CIWA agrees that maximum damages in the event of annexation by the City along Airport Road of $19,981.00, plus $695.00 for each customer connection that is made along such mains until the date of annexation.

*CIWA agrees that maximum damages in the event of annexation by the City of the Settle property are limited to $4,526.00 plus $695 for each customer connection that is made along such main until the date of annexation.

Dennis, please convey to your Council our appreciation for their willingness to review this concept. If you have any questions or comments, do not hesitate to call.

Very truly yours,

CENTRAL IOWA WATER ASSOCIATION

James R. LaPlant, P.E.
CEO/Engineer
March 20, 2013

Honorable David Deyoe  
c/o State Capitol  
1007 East Grand Avenue  
Des Moines, Iowa 50319

Re: Documents Showing Proposed Legislation Does Not Impact CIWA and Ames / Nevada Territorial Relationships

Dear Representative Deyoe:

Jim LaPlant asked me to send you the documents that show your proposed legislation will have no effect whatsoever on CIWA's territorial relationships with Ames and Nevada insofar as both cities agreed years ago to CIWA providing water services to customers within two (2) miles of their respective boundaries.

As regards Ames, it agreed in 1992 and again in 1994 to allow CIWA to serve customers within two (2) miles of Ames' city limits.

The 1992 agreement involved the area east of Interstate 35 within two (2) miles of Ames' 1992 city limits. CIWA asked Ames if it wanted to serve the area or if Ames would allow CIWA to serve the area. Ames concluded it was not cost effective to serve the area. (Please see October 13, 1992, City Manager's Action Report to the Ames City Council enclosed). Accordingly, the Ames City Council passed a resolution on October 13, 1992, (copy enclosed) agreeing that CIWA was entitled to serve the area.

The 1994 agreement involved an area within two (2) miles of Ames's 1994 city limits on the west side of Interstate 35 and the north side of Ames north and east of County Road E-29 and Dayton Avenue. Once again the Ames City Council concluded it did not want to serve the area and agreed that CIWA could serve the
area. Please see copy of the letter from Ames Public Works Director Paul Wiegand to Jim LaPlant of July 14, 1994 enclosed.

In short, [a] CIWA twice offered to provide water service to defined areas within two (2) miles of Ames’ city limits if Ames did not want to serve those areas; and [b] the Ames’ City Council twice declined to provide water service to these areas, despite being given the opportunity to do so, and [c] the Ames’ City Council twice passed resolutions agreeing that CIWA has the right to provide water service to these areas.

Also in 1992, CIWA asked Nevada if it wanted to serve the area within two (2) miles of its 1992 city limits or if Nevada would agree that CIWA should serve the area. Like Ames, the Nevada City Council chose not to serve the area and agreed that CIWA was entitled to serve the area within two (2) miles of Nevada’s 1992 city limits (with minor exceptions not in dispute) by resolution passed June 15, 1992. Please see copy of the resolution enclosed.

Furthermore, in 2007 Nevada and CIWA agreed by contract approved by the Nevada City Council and CIWA Board of Directors to adjust and redefine their respective service area boundaries. The contract is titled “Water Supply, Water Services and Water Service Territory Agreement Between Iowa Regional Utilities Association Inc. D/B/A Central Iowa Water Association and the City of Nevada” and includes as an exhibit a map showing the service area boundary between Nevada and CIWA. A copy is enclosed.

Ames is contractually bound by what its City Councils agreed to in 1992 and 1994 and Nevada is contractually bound by what its City Councils agreed to in 1992 and 2007. CIWA has relied on these agreements for twenty plus (20+) years in making financial investments, infrastructure development and service extensions to customers in these areas. Both Ames and Nevada freely chose to not serve these areas – despite being given the first opportunity to do so. Neither is entitled to renege on the agreements each made with CIWA defining their respective service areas.

Moreover, the legislation you are proposing would have no impact whatsoever on the territorial relationships between CIWA and Ames / Nevada because each has already agreed that CIWA has the right to serve these areas and each has passed resolutions affirming those decisions.
In summary, your proposed bill could not be used by either Ames or Nevada to void the pre-existing, valid and legally binding agreements between CIWA and Ames and CIWA and Nevada defining CIWA’s service territory in relation to each city.

I am sending a copy of this correspondence to Ames assistant city manager Bob Kindred, Ames city attorney Doug Marek, Nevada city administrator Elizabeth Hansen and Nevada city attorney Erin Clanton as a professional courtesy in the interest of full transparency and so they are fully aware of this communication.

Thank you for your attention to the foregoing.

Sincerely,

[Signature]

Frank Murray Smith

FMS/ejm
Enclosure
cc: Client
cc: Bob Kindred, Doug Marek, Elizabeth Hansen and Erin Clanton via email only.
Sent via email and regular first class mail.
Central Iowa Water Association

March 7, 2013

Congressman Steve King
House of Representatives
Washington, D.C. 20515-1504

RE: City of Ames/Rural Water

Dear Congressman King:

Thank you for your letter of March 6, 2013 concerning the City of Ames and the proposed industrial park that Ames is planning east of I-35. CIWA has been working with Ames for several months to develop a plan to provide necessary water service to the industrial park. Unfortunately, the information you may have received from Ames concerning this matter may be incomplete and misleading. Here is the rest of the story:

First and foremost, contrary to the assertion in your letter, CIWA has never used 7 U.S.C §1926(b) as a tool “to seek unreasonably high buyouts”. Indeed, CIWA has never litigated a territory dispute with a city in its thirty-six (36) year history. Regrettably municipal public water supply systems sometimes adopt the parochial attitude that they are the only ones that can meet the needs of public water supply system customers in urban fringe areas. While sometimes that is the case, just as often it is not. Frankly, end users don’t care who provides their water any more than they care who provides gas or electric to them – all they want is their water needs met as cheaply as possible.

Second, the City of Ames and CIWA negotiated a service territory Agreement in 1992 that defined the service territory boundaries of each party. Thus, the truth is that the only way Ames can modify its 1993 Agreement with CIWA is by negotiation with CIWA – something CIWA has been willing to consider. The city of Ames’ current strategy, however, of “crying wolf” and trying to get state and federal laws changed has no impact on the 1993 Agreement it made with CIWA. Moreover, I doubt anyone would dispute that neither Ames nor CIWA is entitled to unilaterally breach the 1993 Agreement and that each should honor their contractual commitments and respect the jurisdictional authority each agreed the other should have.

Third, CIWA has neither [a] demanded Ames pay CIWA for the water service territory rights CIWA was guaranteed by the 1993 Agreement nor [b] set a figure for such a buyout.

Fourth, CIWA is very capable of providing fire suppression water service and currently does so for other municipalities and customers within CIWA’s water service territory where it is necessary and affordable

Fifth, CIWA would be breaching [a] its fiduciary duties to its members, [b] its contractual commitments to its lenders, [c] its legal obligations under federal law, and [d] its long standing contractual territorial agreements with cities like Ames if it were to unilaterally transfer jurisdiction and allow the areas within its service territory to be cherry picked. The same applies equally to municipal public water supply systems – they cannot simply give their service territory rights away either.
Both types of public water supply systems require reliable income streams and need economies of scale to keep user rates low. Neither is unilaterally entitled to seize the territory of the other thereby compromising the other’s financial integrity and jeopardizing the other’s ability to provide essential water services to their respective customers.

Both best serve their customers when they do what needs to be done to achieve their overarching purpose – to meet the public water supply needs of the public they serve as cost effectively as possible. That often means collaboration, cooperation and compromise. CIWA prefers this approach.

The good news is that, of course, CIWA supports economic development and as you know, rural water has played a major role in supporting rural farms and businesses, as well as serving many communities with safe water so that they can maintain and expand business. CIWA has offered to cooperate and partner with Ames as reflected in the attached correspondence:

- Letter to Ames, October 24, 2012
- Letter to Ames, March 1, 2013

Congressman King, no proposal has been made to Ames for buyout of the territory, so there is absolutely no basis to even suggest that CIWA would or could wrongfully gain from a transfer of territory. To the contrary, CIWA has worked very cooperatively and fairly with cities in situations where the transfer of territory makes the most sense. For example, just up I-35 at Story City, CIWA has worked with the city to transfer territory for the development of the former Pella Windows plant, EBY, and a wind energy facility. The city of Nevada is another example where the city and CIWA have reached agreement on 5 projects that required the transfer of territory. (See attached letter to Nevada dated March 4, 2013.)

Congressman, in summary,

- CIWA is willing to work cooperatively with Ames to assure the proposed Industrial Park project moves forward.
- THIS IS NOT A 7 U.S.C. §1926(b) ISSUE. CIWA has a written territory Agreement with Ames that cannot be compromised by changes in state and federal law.
- CIWA will not be an impediment to economic growth. To the contrary, rural economic development is what CIWA is all about.

Thank you for your support of rural water over the years. Almost a billion dollars of federal funds have flowed into Iowa to build and support rural water infrastructure since the first regional rural water system (Rural Water System #1) was constructed in northwest Iowa in the 1970’s. Rural water systems have a track record of supporting the ag economy and economic development across the entire state. There is no economic development without adequate safe water.

Sincerely,
Central Iowa Water Association

James R. LaPlant, P.E.
CEO/Engineer
March 6, 2013

Jim LaPlant
Central Iowa Water Association
1351 Iowa Speedway Drive
Newton, Iowa  50208

Dear Mr. LaPlant:

Rural Water distribution entities have served our Country’s rural populations by providing necessary water services farms and homeowners who otherwise would not have otherwise been able to gain access to potable water.

Since the enactment of the Consolidated Farm and Rural Development Act of 1961, the U.S. Department of Agriculture has extended federal loans to Rural Water service providers, such as CIWA, thereby enabling the entity to extend the necessary infrastructure to meet the needs of the rural service territory.

As municipalities expand their corporate limit boundaries through annexation for economic development and urban housing purposes, it is no surprise that these actions encroach or extend into Rural Water serviced territories. As municipal growth occurs, Rural Water providers either reach a reasonable service territory buyout with the municipality; or utilize the protections found in 7 U.S.C § 1926(b) as a tool to seek unreasonably high buyouts in exchange for the municipality to provide water, sewer and fire service for the affected parcels of land. This is being done even though the Rural Water provider may be incapable of and/or unwilling to provide the same level of water service (ie. potable water and water for fire protection services). While an argument can be made that a Rural Water provider can provide potable water to a business and a municipality can provide fire protection services; having a bifurcated water utility delivery method does not provide for responsible utilization of taxpayer dollars, nor does it provide for common-sense utility infrastructure deployment whereby a territory is serviced by a sole provider of infrastructure.

Recently, I have been made aware that the City of Ames desires to expand its community boundaries through annexation for economic and industrial growth associated with a growing community. I would encourage you to meet with the City of Ames to develop a reasonable and equitable buyout provision for the targeted areas for annexation that reflect a reasonable return-on-investment made by Central Iowa Water Association. I do not believe it was the intent of Congress under 7 U.S.C § 1926(b) to provide for the leveraging of higher than reasonable public funds for territory buyouts to strengthen the financial position of CIWA.
Thank you for your attention to this matter. Please let me know if I can be of any assistance.

Sincerely,

Steve King
Member of Congress
March 1, 2013

Bob Kindred
City of Ames

Bob,

In regards to your e-mail of February 14, 2013, I was surprised for two (2) reasons to learn from persons that attended the Economic Growth subcommittee meeting while I was in Washington D.C. a couple of weeks ago of the comments made by Ames indicating that CIWA is an impediment to economic development.

First, this is the first that CIWA was made aware of Ames’ concerns. From CIWA’s perspective, it certainly would have been more of a professional courtesy if Ames had shared its concerns directly with CIWA so Ames and CIWA could work together to address them.

Second, nothing could be further from the truth and I doubt that Ames can identify one (1) economic development project that did not proceed because of CIWA or any other regional rural public water supply system.

Please review my letter to you of October 24, 2012, in which CIWA presented a proposal for water supply in the East Ames Industrial Area. The proposal was based on a phased approach since CIWA already has existing 8” water main along East Lincoln Way. However, it was clearly indicated that CIWA could begin construction of a larger water main almost immediately and a water tower as needed in the future.

The model for this approach exists in the development of the Jasper County Business Park just north of Newton. This project is a good example of the cooperation and collaboration necessary in today’s economy to support economic development. The business park and intermodal facility was located in CIWA service territory and necessary partnerships with the developer, Jasper County and Newton were readily established to provide efficient, reasonable utilities to two (2) major businesses on a very short time schedule (TPI composites and REG Biodiesel).

In short, the park is located in Jasper County, the City of Newton provides wastewater service, and CIWA financed and installed over two million dollars ($2,000,000) in water supply improvements (water tower and 12” water mains). The water is purchased from Newton Water Works and sold to the businesses at our standard bulk rate of $3.00/1,000 gallons. I believe this rate is very close to the Ames rate. Newton Water Works customers benefit from the economy of scale of selling the water to CIWA, the City of Newton benefits from the wastewater revenues and Jasper County benefits from the increased property tax revenues.
Each entity:

[a] recognized its role,

[b] respected the jurisdictional authority of the others and

[c] recognized the importance of collaboration in promptly bringing this development project to fruition without wasting time and money on senseless turf wars.

For your general information, CIWA has expended millions of dollars in developing water and wastewater infrastructure for other business development in central Iowa including the Grundy County Business Park (Heritage Center, Olderog, Hawkeye Community College), Butler County Logistics Park (Zinpro Corporation), and the Vernon Water Supply (under construction near Peosta).

In addition, CIWA has also stepped aside and transferred territory to cities, counties and development groups where such is the most cost effective way to assure economic development occurs such as in [a] Story City (Pella Windows, EBY), [b] Ames (Barilla), [c] Newton (Newton Speedway) and [d] Nevada (Lincoln Way Energy and negotiations are concluding regarding DuPont Cellulosic Energy).

The point is that CIWA shares with the Ames city council, Ames’ public water supply system, and the other municipal public water supply systems within CIWA’s service area, the common goal to encourage economic development for the obvious reasons that economic growth and development are beneficial to all in terms of increasing the tax base, keeping user rates down, encouraging new job growth, strengthening the economy and enhancing the quality of life and economic opportunities for the users within their respective service territories.

CIWA’s track record of working with various municipal public water systems bears this out. The other key point is that CIWA has a proven track record of being very flexible as economic development opportunities present themselves and is more than willing to make territory adjustments where necessary to assure development occurs. CIWA has never litigated a territory dispute with a city in its thirty-six (36) year history.

CIWA has assiduously avoided litigation and territorial disputes with municipal public water supply systems – which regrettably sometimes adopt the parochial attitude that they are the only ones that can meet the needs of public water supply system customers in urban fringe areas. While sometimes that is the case, just as often it is not. Frankly, end users don’t care who provides their water – all they want is their water needs met as cheaply as possible.

Concerning your letter of January 28, 2013, I am currently analyzing your requests with our consultants and plan discussion at the upcoming March CIWA Board of Directors meeting. I will follow up with a response once I have received direction from the Board.

In the meantime, I would appreciate a meeting with the Ames Economic Development Director to get a better handle on economic development challenges from the city of Ames perspective.

CIWA remains committed to working with Ames as development occurs in Ames’ fringe areas and CIWA remains hopeful Ames will agree:

[a] that a collaborative approach is best for all,

[b] to respect each other’s jurisdictional authority and
to remain flexible and open to consideration of all options to assure the common goal of economic development for the I-35 corridor and the Highway 30 corridor is achieved.

Sincerely,
Central Iowa Water Association

James R. LaPlant, P.E.
CEO/Engineer
October 24, 2012

Mr. Bob Kindred
City of Ames

Dear Bob:

Pursuant to your request, CIWA has evaluated several options related to water supply for the Ames East Industrial Area. In light of our discussions and the information available, we have decided to focus on options based on CIWA developing the water supply infrastructure and retaining the right to serve customers in such areas. The following is an outline of the option we see as most desirable and effective:

Proposal – Ames East Industrial Area

- **Phase I – Existing 8” water main and supply**
  CIWA has existing 8” water main that can supply approximately 500 – 1500 gpm along E Lincoln Way.

- **Phase II**
  CIWA constructs 12” or 16” water main from Ames to Nevada (parallel to existing 8” water main) along E Lincoln Way.

- **Phase III**
  CIWA constructs new 1.0 MG elevated storage tank in vicinity of Ames East Industrial Area.

The above proposal is based on the following considerations concerning each Phase:

- **Phase I – Water service with reasonable fire flow and sprinkler system capacity is available from an existing 8” water main along E Lincoln Way.** We anticipate that a connection with the City of Nevada will be constructed near the Lincoln Way Energy facility within the next 30 days.

- **Phase II – A 12” or 16” distribution main is planned between Ames and Nevada along E Lincoln Way.** CIWA is currently installing 3 miles of 10” water main near the new Vetter Equipment Facility along Highway 30. Work could begin on the new main as soon as agreements are reached with Ames and Nevada concerning possible emergency back-up water supply, and an agreement with Ames concerning water supply for new customers in the Ames East Industrial Area. While CIWA is willing to accommodate a portion of the water demands for the short term, we would
expect Ames to furnish water for industrial customers that would need to be wheeled through the CIWA distribution system. CIWA would also expect some contribution in the cost of the project from Ames and Nevada for the ability to wheel water to each other in an emergency. CIWA has financing readily available for construction of this water main. A new 12” main looped with our existing 8” main is the hydraulic equivalent of a 14” main between Ames and Nevada. Analysis and agreement on the appropriate size main must occur between Ames, Nevada, and CIWA.

- Phase III – CIWA would construct a new 1.0 MG elevated storage tank in the vicinity of Ames East Industrial Area. Our concept is to share the cost of the new water tower with Ames as the new water tower could benefit both parties. CIWA has financing readily available for the construction of this tank and would be willing to move forward as soon as appropriate agreements are made with Ames. The Ames cost share could be handled up-front or included as a fee in the connection/wheeling agreement.

Bob, I am working on necessary cost estimates in order to start outlining how actual agreements might look to make this proposal work. I expect to have the estimates very soon, including more detail concerning the responsibilities of each party.

Please call if you have any questions at this point.

Sincerely,
Central Iowa Water Association

James R. LaPlant, P.E.
CEO/Engineer
March 4, 2013

Ms. Erin M. Clanton
c/o Brick Gentry P.C.
6701 Westown Parkway, Suite 100
West Des Moines, IA 50266

Re: CIWA/Nevada Emergency Connection Project and 2011 Service Territory Agreement ("Agreement")

Dear Erin:

Thank you for the update. I look forward to Nevada’s response once the city administrator returns this week. CIWA has certainly endeavored to address all of the concerns expressed by Nevada in the proposed Agreement to assure that there is a seamless transition of jurisdictional authority and that the infrastructure for the DuPont project is completed on time and within budget.

That said, there’s one more topic that needs to be addressed before wrapping up this matter - and that relates to concerns expressed recently about CIWA at a legislative subcommittee meeting that were attributed to Nevada officials, including yourself.

Needless to say, I was surprised to hear of such because to my knowledge, CIWA and Nevada have enjoyed an amicable and collaborative relationship for more than twenty (20) years. For example, at the conclusion of negotiations in 1993 regarding CIWA providing service within two (2) miles of Nevada, city administrator Dennis Henderson wrote CIWA CEO James LaPlant on August 26, 1993, and said:

"I am very pleased that we were able to come together on such an agreement. As we [Mr. Henderson and Mr. LaPlant] have previously mentioned, there is no reason we should not be able to work together for mutually beneficial causes and I look forward to following through on this. Stop in when you are in the area."
Another example is contained in Nevada city administrator Dave Haugland’s letter to Mr. LaPlant of July 26, 2007, at the conclusion of negotiations involving the Lincoln Way Energy water service territory transfer:

"Thank you very much for assisting me in getting this complete before I left my employment here."

A third example is found in the letter of November 15, 2007, from Neil Guess (of Howard R. Green Company) regarding CIWA transferring to Nevada (at no charge) its (CIWA’s) right to provide water service to the Stowie property which had recently been annexed by Nevada. This annexation and transfer of jurisdiction occurred approximately four (4) months after CIWA and Nevada had concluded negotiations regarding CIWA’s transfer of its Lincoln Way Energy water service rights to Nevada. Mr. Guess wrote:

"Again thanks for your consideration and approval of this request. This cooperation is consistent with the spirit of our earlier service area discussions."

I note that Nevada city administrator Elizabeth Hailey was copied on Mr. Guess’ letter.

A fourth and more recent example indicating that Nevada felt CIWA was working collaboratively is found in your November 6, 2012, email to Mr. LaPlant wherein you stated:

"Thanks Jim. I will forward this on [to] the City staff. It looks like we’re getting close. I appreciate all your work in getting this resolved."

Erin, I have been representing CIWA for many years including all negotiations with Nevada since at least 2002. During that time I don’t recall receiving one complaint or comment from you or prior counsel asserting that CIWA was unreasonable to deal with or that territory transfer settlements were unfair.

Moreover, despite the fact that Nevada and CIWA contractually defined their water service territory boundaries many years ago, I am personally aware of at least (5) times that CIWA, at Nevada’s request, has ceded its service territory to Nevada - usually for nominal monetary consideration, and in at least one case (Stowie) for no consideration whatsoever.
Certainly I (and CIWA) would have appreciated being told of Nevada’s concerns and given an opportunity to discuss and try to resolve them with Nevada representatives. I regret that we did not have that opportunity.

As an aside and from a purely personal perspective, (being probably the only attorney in Iowa that has represented both municipal and regional rural water systems regarding territorial issues for many years and actually litigated a 1926(b) case defending Altoona from claims asserted by Southeast Polk Rural Water District), I know that sometimes there is a misunderstanding regarding the legal status and relationship of municipal and regional rural public water supply systems which causes municipal water systems [a] to adopt the cavalier attitude that they are superior and [b] to adopt the imperialistic (and most certainly wrongheaded) notion that they have “right” to usurp the territory and interests of regional rural water systems.

It appears possible that current leadership in Nevada may not have a clear understanding, much less to say acceptance, of the historical background and legal parameters that determine the relationship between CIWA’s regional rural water system and Nevada’s municipal water system and therefore it may be helpful to review such.

First and foremost, CIWA and Nevada have voluntarily agreed by contract to expressly define their respective service territory boundaries several times - most recently in 2007; and with another change pending per Nevada’s request regarding the DuPont area.

CIWA and Nevada are bound to honor their contractual commitments to one another. Neither may interfere with the contractual customer relationships the other one has. Nor is either legally entitled to interfere with the potential customers that propose to locate in the service territory of the other.

Second, although they are distinct legal entities, neither is answerable or accountable to the other and each is legally obligated to respect the jurisdictional authority of the other. Indeed, under DNR regulations, municipal and regional rural water systems are both legally classified as the same thing - “public water supply systems” - with no distinction or differentiation whatsoever and are subject to the same DNR administrative rules and regulations.

Both are non-profit entities; and on CIWA’s part (and presumably on Nevada’s part) operate as efficiently as possible with rates fixed to cover only operational costs, administrative expenses, debt service and reserve thereby keeping user rates as low as possible.
Both CIWA and Nevada operate water treatment plants. Indeed, CIWA’s water treatment plant was recognized in 2011 as producing the best tasting water in the entire United States among small communities and regional rural water systems. I am not sure if Nevada’s water treatment plant has received a similar recognition among municipal water systems nationwide, but I am sure Nevada, like CIWA, strives to provide the best water possible to its customers.

Furthermore, both CIWA and Nevada have the ability to provide fire suppression water pressures where needed. CIWA is franchised in thirteen (13) cities in Iowa to provide municipal level water services, including fire flow suppression water pressures when necessary.

Finally, although I don’t know Nevada’s capital investment in its municipal water system, I do know that CIWA has received over $100,000,000 in federal loans and grants in developing its regional rural water system which networks thousands of subscribers, including residential, agricultural and business customers, throughout the nineteen (19) county territory CIWA serves. That capital investment by CIWA is closer to $180,000,000 when subscriber contributions are considered.

Third, both CIWA and Nevada share the common goal of encouraging economic development for the obvious reasons that economic growth and development are beneficial to all in terms of increasing the tax base, keeping user rates down, encouraging new job growth, strengthening the economy and enhancing the quality of life and economic opportunities for the users within their respective service territories. Neither is always and necessarily better equipped or better able than the other to make economic development happen. Each is better served by recognizing their role and what they can respectively bring to the table for the common good.

CIWA has substantial experience with economic development projects – and probably far more so than Nevada. Indeed, CIWA has spent millions of dollars in developing water and wastewater infrastructure for other business developments in central Iowa including the Grundy County Business Park (Heritage Center, Olderog, Hawkeye Community College), Butler County Logistics Park (Zinpro Corporation), and the Vernon Water Supply (under construction near Peosta).

The model for a collaborative approach between a city, a county, a developer and a regional rural water system for economic development can be found in the development of the Jasper County Business Park just north of Newton. This project is a good example of the cooperation necessary in today’s economy to support economic development. The business park and intermodal facility were located in CIWA service territory and necessary partnerships with the developer, Jasper County and Newton were readily
established to provide efficient, reasonably priced water and sewer utilities to two (2) major businesses on a very short time schedule (TPI Composites and REG Biodiesel).

In short, the park is located in Jasper County, the City of Newton provides wastewater service, and CIWA financed and installed over two million dollars ($2,000,000) in water supply improvements (water tower and 12” water mains). The water is purchased from Newton Water Works and sold to the businesses at CIWA’s standard bulk rate of $3.00/1,000 gallons. This rate is $.50 less than Nevada’s bulk rate to CIWA. Newton Water Works customers benefit from the economy of scale of selling the water to CIWA, the City of Newton benefits from the wastewater revenues and Jasper County benefits from the increased property tax revenues.

Each entity:

[a] recognized its role,

[b] respected the jurisdictional authority of the others, and

[c] recognized the importance of collaboration in promptly bringing this development project to fruition without wasting time and money on senseless turf wars.

The other key point is that CIWA has a proven track record of being very flexible as economic development opportunities present themselves and is more than willing to make territory adjustments where necessary to assure development occurs. Besides making multiple water service territory transfers to Nevada at Nevada’s request in the last twenty (20) years, CIWA has also stepped aside and transferred territory to cities, counties and development groups where such were the most cost effective ways to assure economic development occurred such as in [a] Story City (Pella Windows, EBY), [b] Ames (Barilla), [c] Newton (Newton Speedway) and [d] Nevada (Lincoln Way Energy and negotiations are concluding regarding DuPont Cellulosic Energy).

**Fourth**, CIWA has never litigated a territory dispute with a city in its thirty-six (36) year history. Indeed, CIWA has assiduously avoided litigation and territorial disputes with municipal public water supply systems – which regrettably sometimes adopt the parochial attitude that they are the only ones that can meet the needs of public water supply system customers in urban fringe areas. While sometimes that is the case, just as often it is not. Frankly, end users don’t care who provides their water any more than they
care who provides gas or electric to them – all they want is their water needs met as cheaply as possible.

**Fifth**, CIWA would be breaching [a] its fiduciary duties to its members, [b] its contractual commitments to its lenders, [c] its legal obligations under federal law, and [d] its long standing contractual territorial agreements with cities like Nevada if it were to unilaterally transfer jurisdiction and allow the areas within its service territory to be cherry picked. The same applies equally to municipal public water supply systems – they cannot simply give their service territory away either.

Both types of public water supply systems desire reliable income streams and need economies of scale to keep user rates low. Neither is unilaterally entitled to seize the territory of the other.

Both best serve their customers when they do what needs to be done to achieve their overarching purpose – to meet the public water supply needs of the public they serve as cost effectively as possible. That sometimes means collaboration, cooperation and compromise with competing public water supply systems. CIWA prefers this approach and submits it is certainly far better than wasting limited resources on lawyers and litigation.

Erin, I know that my client truly wants to work with Nevada and would just as soon avoid senseless turf wars, litigation and acrimony.

Sometimes changes in political leadership bring in players who allow their egos and misconceptions to guide public policy. That’s not good for anyone.

While reasonable persons can see things differently and disagree, reasonable persons are usually able to set aside their personal feelings and come to constructive resolutions that serve the general public good of all. I know that this is CIWA’s goal and I believe it is Nevada’s. I am hopeful the sharp rhetoric will abate and each will strive to understand and respect the interests of the other.

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1 Perhaps you are unaware that CIWA, as a regional water and sewer utility provider, serves the needs of twenty-one (21) cities that purchase bulk water from CIWA and the needs of thirteen (13) cities where CIWA is the franchised provider of municipal water services, including fire flow pressures. Indeed, of the sixty-seven (67) incorporated cities within the nineteen (19) county area served by CIWA, CIWA purchases water from three (3), sells water to thirty-four (34) and provides emergency water services to eighteen (18) as well as operating its own water treatment plant.
I have advised CIWA it needs to know exactly what issues Nevada has with CIWA and whether such issues relate to the proposed DuPont agreement. To that end, I would appreciate it if you would articulate any such issues and set forth Nevada’s specific concerns. Also, I would appreciate knowing if you would be willing to arrange a meeting between Nevada and CIWA representatives to work toward resolution of such issues.

Thank you for your attention to the foregoing.

Sincerely,

[Signature]

Frank Murray Smith

FMS/ejm

cc: Client

*Sent via email and regular first class mail.*