

DECISION MEMORANDUM

**TO: COMMISSIONER KJELLANDER
 COMMISSIONER SMITH
 COMMISSIONER HANSEN
 COMMISSION SECRETARY
 COMMISSION STAFF
 LEGAL**

FROM: LISA NORDSTROM

DATE: JULY 16, 2004

**RE: IN THE MATTER OF THE APPLICATION OF EAGLE WATER
 COMPANY, INC., TO AMEND ITS CERTIFICATE OF PUBLIC
 CONVENIENCE AND NECESSITY NO. 278. CASE NO. EAG-W-04-2.**

On May 21, 2004, Eagle Water Company, Inc. (Eagle Water; Company) filed an Application with the Idaho Public Utilities Commission (Commission) requesting authorization to amend its Certificate of Public Convenience and Necessity No. 278 by extending the boundary of the area in which it is authorized to provide service. This proposed expansion is located in Ada County just east of Old Highway 55/Horseshoe Bend Road and immediately south of the Farmers Union Canal. The proposed area to be served contains five parcels and is contiguous to Eagle Water’s main system.

According to the Company’s Application, Jan G. Troutner, Dorthy McKay and the Dry Creek Cemetery Maintenance District have requested water service to their respective properties as evidenced by Exhibits A-C. Service to these properties would be provided through Eagle Water’s eight-inch main line located on the east side of Old Highway 55/Horseshoe Bend Road. Extension of service to these parcels by Eagle Water will require excavation; installation of mains, fire hydrants and service meter boxes; bedding; backfill; compaction; inspection; and testing. The estimated construction cost for this project is between \$15,000 and \$20,000 plus legal fees, all of which will be paid by the developer pursuant to Eagle Water’s standard “Main Extension Contract” as provided for in its tariff on file with the Commission. In addition to construction costs, Eagle Water will incur legal fees in connection with this Application that have yet to be determined.

Eagle Water proposed to begin construction in June 2004 and complete construction in August 2004. The proposed expansion will add three to five customers to Eagle Water's customer base. The Company estimates that the monthly gross revenue per such customer is \$20 to \$30. According to the Application, there will be no affect on Eagle Water's revenue requirement.

Eagle Water states that it has an adequate source of supply to provide service to these properties in a safe and reliable manner, as evidenced by a letter from James M. Rees, P.E., MTC, Inc. attached as Exhibit D. The Company also submits that the extension of its facilities to service the Idaho State Veterans Cemetery is consistent with the public convenience and necessity. Finally, Eagle Water requests that its Application be processed pursuant to Modified Procedure, i.e., by written submission rather than by hearing. IDAPA 31.01.01.201-204.

STAFF COMMENTS

According to Staff's June 29 comments, three of the five parcels Eagle Water is seeking to add to its certificated area are residential, one will be the site of a future church, and the remaining parcel is the existing Dry Creek Cemetery. By far, the majority of the area Eagle Water is seeking to add is the Dry Creek Cemetery. However, it is Staff's understanding that the Cemetery already irrigates its grounds using an alternate water source, and that Eagle Water will only be providing water for potable water and fire protection.

In Order No. 29429 issued on February 20, 2004, the Commission approved the expansion of Eagle Water's certificated area to include the Idaho State Veterans Cemetery, which is contiguous to the Dry Creek Cemetery. Eagle Water has informed Staff that it inadvertently omitted the Dry Creek Cemetery from its earlier Application seeking to add the Idaho State Veterans Cemetery to its certificated area.

Both Eagle Water and United Water have the capability to serve the properties. Both utilities have a main line along the east side of Horseshoe Bend Road, fronting two of the residential lots. In fact, United Water is currently supplying water to a residential lot at the corner of Horseshoe Bend Road and Hill Road, which is also adjacent to one of the parcels Eagle Water is seeking to serve in this Application. Both utilities also have main lines near the Dry Creek Cemetery.

Given that both utilities have the capability to serve the requested parcels, Staff believes the Commission should consider which utility it believes will provide the best service to

customers over the long term. Eagle Water has had problems in the past providing sufficient pressure to the nearby Bonita Hills and Eagle Springs Estates subdivisions (reference Case No. EAG-W-00-1, Order No. 28513). Staff believed that water pressure problems of the past had been resolved following Eagle Water's installation of a booster station nearby. However, on June 2, 2004, Eagle Water informed Staff that the main line supplying the booster station had been exposed by excavation activities of a nearby sand and gravel operation. As a result, the exposed line had to be taken out of service, which in turn, has again caused very low water pressure on the northeast side of Eagle Water's system. After a month, Eagle Water has still been unable to relocate the main line and restore normal water pressure in the area. Staff understands that there may be a dispute over the property easement within which the main line is located, and that Eagle Water is having difficulty securing an easement for an alternate route. Nevertheless, Eagle Water customers located east of Horseshoe Bend Road are again facing poor water pressure during the hottest part of the year. Eagle Water is not able to commit to a date by which the problem will be resolved.

Because of Eagle Water's ongoing problems in providing adequate pressure in the vicinity, Staff believes that United Water possesses greater capability for providing the best service. United Water can easily serve the requested properties without diminishing its ability to continue to provide adequate service to its existing customers.

Although it is not being requested in this Application, Staff believes that further apportionment of uncertificated areas surrounding Eagle is ripe for a decision. Areas around Eagle are rapidly growing and it is just a matter of time before the Commission will be required to make decisions about which company will provide service. Presumably, both utilities would benefit by knowing in advance the reasonable extent of their service areas so that nearby facilities could be planned and sized accordingly. A piecemeal approach to awarding certificated areas may not be in the best interests of the customers of either utility.

For these reasons, Staff recommends denial of the Company's Application. Staff further recommends that Eagle Water and United Water be directed to try to negotiate apportionment of uncertificated areas in the vicinity of Eagle between the two companies and the City of Eagle. For those areas where apportionment between Eagle Water and United Water cannot be agreed upon, Staff recommends that either or both companies make a filing with the

Commission to open a new docket for the purpose of resolving which company shall serve contested areas in the future.

**UNITED WATER REPLY COMMENTS
AND MOTION TO INTERVENE**

In its July 14 Reply Comments, United Water was not optimistic about the likely success of Staff's suggestion that United and Eagle Water "try to negotiate apportionment of uncertificated areas in the vicinity of Eagle." At a recent informal conference between United Water, Eagle Water and the Commission Staff, United Water presented such a suggestion. Eagle Water, however, declined the invitation at that time. Moreover, as the Commission is aware, the working relationship between United Water and Eagle Water is, regrettably, less than harmonious.

Rather, United Water recommends that the scope of this proceeding be expanded to include assignment of the remaining uncertified areas, including the customers requesting service in this case, to the utility best able to serve. To that end, United Water suggests that an intervention deadline be set, thus giving other interested parties, including the City of Eagle, the opportunity to participate. Thereafter, the Commission should quickly convene a prehearing conference to more precisely identify the matters at issue and develop a procedure for resolving them. In the event the Commission adopts this recommendation, United Water filed a Petition to Intervene in this case on July 15, 2004.

United Water is investigating its ability to serve the specific customers requesting service in this case. United Water's preliminary investigation reveals the following: United Water has an existing 16-inch water main in place fronting the entire area in question along the east side of Old Highway 55/Horseshoe Bend Road. This mainline fronts the two Troutner parcels in addition to the Dry Creek Cemetery Maintenance District off Old Highway 55/Horseshoe Bend Road. Service lines up to two-inch diameter can be installed at no charge to the customer under United Water's rules and regulations. Along Hill Road, the McKay property, as well as the property currently being developed as the Northwest Bible Church, are also fronted. There is an existing 12-inch stub line located at the entrance to McKay Construction at 10512 Hill Road. Since this property is "landlocked," United Water presumes McKay Construction has an ingress/egress agreement for access. Service for these two properties can be

provided from the 12-inch stub line or at any other point along Hill Road where the mainline fronts the property.

By the time of a prehearing conference United Water will be able to provide definitive information regarding its ability to serve these potential customers. If there is some urgency of expeditiously getting service to these customers, the Commission could direct United Water to provide service at that time.

EAGLE WATER REPLY COMMENTS

Staff's Comments reference a temporary problem with water pressure in the Bonita Hills and Eagle Springs subdivisions, which are near the properties that are the subject of the present Application. Eagle Water would like to provide the Commission with a more complete, and current, understanding of the water pressure issues raised by the Commission Staff. To that end, Eagle Water presented the following chronological account of the events leading up to the temporary reduction in water pressure:

1. Eagle Water's 12-inch booster line, which runs east-west from its Highway 55 main line to its main line along Horseshoe Bend Road, through its booster station was taken out of service by Eagle Water because Prime Earth, Inc. Sand & Gravel had exposed the line while digging into the north bank of its gravel pit. This action occurred with less than 24 hours prior notice to Eagle Water. Eagle Water was required to shut the line off to prevent loss of service to its customers east of its booster station.
2. Despite this short notice, at no time were Eagle Water customers without service.
3. Although Prime Earth, Inc. initially told Eagle Water that it could route its booster line along a route just north of the gravel pit, Eagle Water has been unable to do so because Prime Earth piled tons of overburden on top of that route while excavating the pit.
4. In the meantime, water for Eagle Water customers east of the booster station has been routed north along Highway 55 and then east along Floating Feather Road to Eagle Water's Horseshoe Bend Road main line, circumventing the booster station.
5. Water pressure coming out of the booster station has been historically logged at 90 to 97 pounds per square inch (psi), which exceeds minimum water pressure standards by nearly three-fold. The re-routing of the booster water line has caused a temporary drop of approximately 20 psi of water pressure for Eagle Water customers east of the booster station. At no

time has Eagle Water's pressure dropped near or below the state standard for minimum water pressure as a result of having to re-route the booster line.

6. However, it came to Eagle Water's attention, on or about June 28, 2004, that Prime Earth, Inc. was filling its water trucks from a fire hydrant serviced by Eagle Water's main line near the subject area every morning between 6:30 a.m. and 9:00 a.m. This conduct exacerbated the otherwise insignificant drop in water pressure and Eagle Water demanded that Prime Earth cease and desist this conduct immediately.
7. Once this problem was addressed by Eagle Water, the water pressure for its customers east of the booster station returned to approximately 70 psi, twice the minimum state standard.
8. In the meantime, Eagle Water has worked diligently to locate a new route for its booster line.
9. Floyd Patterson, Prime Earth, Inc., has agreed to allow Eagle Water to re-route its booster line along an east-west gravel road that connects to Horseshoe Bend Road.
10. Gene Bailey, President of Farmers Union Canal Company, has agreed to allow Eagle Water to run its booster line north from the Prime Earth, Inc. road along the canal right of way to the Eagle Water booster station.
11. All utilities for the Horseshoe Bend Road crossing to connect the new booster line to the Horseshoe Bend Road main line have been bored "pot holed" and mapped.
12. Bobby Hall, of Circle H Construction, is scheduled to complete the Horseshoe Bend Road crossing the week of July 18.
13. Eagle Water Construction Company will then complete placement of the booster line.

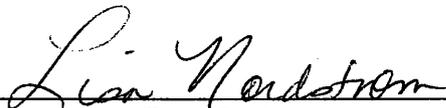
Eagle Water believes that the foregoing facts demonstrate that it has acted responsibly in addressing a temporary problem that was not of its making, and further demonstrates that the water pressure problem that resulted in Eagle Water customer complaints has been addressed (Prime Earth, Inc. has ceased filling its water trucks from Eagle Water's main line). Eagle Water remains committed to getting its booster line back in service as expeditiously as possible and respectfully requests that the Commission honor the requests of the owners of the properties that are the subject of its Application to allow Eagle Water to provide service to them.

Finally, Eagle Water does not believe that the current proceeding is the appropriate venue for making broad policy decisions regarding future service of customers in the Eagle, Idaho area. Eagle Water is long overdue for a rate case and intends to file for a rate increase later this year. United Water has stated to Eagle Water and Staff that it, likewise, intends to file a rate case in the near future. Therefore, Eagle Water respectfully submits that the appropriate time for the Commission to take up the broader issue of allocating service territory in the Eagle area is after the two companies have brought their service revenue in line with current service costs.

COMMISSION DECISION

How does the Commission wish to decide?

1. Which Company should serve the properties identified in this Application?
2. If it is necessary to expand this proceeding or open an additional proceeding to allocate service territory in the Eagle area, either now or after the respective rate cases of Eagle Water and United Water are complete?
3. United Water's Petition to Intervene?



Lisa Nordstrom

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