

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE PETITION OF )**  
**HILLVIEW DEVELOPMENT )** **CASE NO. EAG-W-05-3**  
**CORPORATION TO OBTAIN WATER )** **UWI-W-05-3**  
**SERVICE TO COVENANT HILL )**  
**SUBDIVISION, AN AREA WITHIN THE )**  
**CERTIFICATE BOUNDARIES OF BOTH )**  
**EAGLE WATER COMPANY AND UNITED )** **ORDER NO. 29956**  
**WATER IDAHO INC. )**

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**PETITION**

On October 7, 2005, Hillview Development Corporation (Hillview) filed a Petition with the Idaho Public Utilities Commission (Commission) requesting water service to Covenant Hill subdivision, an area located at 1501 and 1601 West Floating Feather Road in Eagle, Idaho. The site is 48.54 acres and has been approved by the Eagle City Council for development of 41 single-family lots. As platted the Covenant Hill subdivision fell within the certificated service areas of Eagle Water Company and United Water Idaho Inc. Reference Eagle Water Certificate No. 278; United Water Certificate No. 143.

On October 19, 2005, the Commission issued a Notice of Petition and Proposed Order in Case Nos. EAG-W-05-3 and UWI-W-05-3 finding Hillview's request for a single water provider to the Covenant Hill subdivision to be reasonable and finding that the public convenience and necessity would be served by authorizing water service to Covenant Hill subdivision by United Water Idaho Inc. IDAPA 31.01.01.312. Comments on the Commission's Proposed Order were filed by Eagle Water, United Water, Commission Staff, Idaho Department of Environmental Quality and the developer, Hillview.

On December 13, 2005, the Commission issued final Order No. 29929 in Case Nos. EAG-W-05-3 and UWI-W-05-3 setting forth additional findings, authorizing and directing United Water to provide potable water service to Covenant Hill subdivision and directing the two utilities to file amended Certificates of Public Convenience and Necessity and area of service maps.

On January 3, 2006, the statutory deadline for reconsideration, Eagle Water Company caused to be filed with the Commission after business hours a facsimile transmission of its Petition for Reconsideration. Hard copy originals were received by the Commission

through U.S. Mail on January 5, 2006, not by overnight mail on the next working day as required by Commission Rules. Reference *Idaho Code* § 61-626; IDAPA 31.01.01.331.04 and IDAPA 31.01.01.061.02.

As grounds for reconsideration Eagle Water's Petition sets forth the following:

1. Contrary to the Commission's statement at Page 1 of its Order, Eagle Water has not stated that it could not guarantee adequate service to Covenant Hill subdivision without 12-inch mainline extension from its Well No. 6. Eagle Water has been ready, willing and able to serve the Calhoun property (site of the proposed subdivision), since installation of its Floating Feather water line in 1996. The 12-inch mainline from Well No. 6 is irrelevant to Eagle Water's service of the Covenant Hill subdivision.
2. Eagle Water never received the August 17 letter allegedly sent to it by Hillview Development Corporation.
3. Contrary to the Commission's statement at Page 1 of its Order, Eagle Water has provided a letter from the Eagle Fire Department verifying that fire flow requirements for the subdivision can be met by Eagle Water.
4. Eagle Water issued a letter on November 4, 2005 providing a cost estimate for service to Covenant Hill subdivision of \$155,405.
5. January 3 letter from Jim Rees, P.E.

Attached to the Petition as exhibits are copies of November 4, 2005 letter from Eagle Water Company and letter from Jim Rees dated January 3, 2006.

Although disputing specific findings and submitting additional letters not previously of record, the Petition contains no contention or assertion, as required, that the Commission's Order was otherwise unreasonable, unlawful, erroneous or not in conformity with the law. Reference IDAPA 31.01.01.331.01. Nor does the Petition state, as required, whether Eagle Water requests reconsideration by evidentiary hearing, written briefs, comments or interrogatories. Reference IDAPA 31.01.01.331.03.

On January 6, 2006, United Water Idaho Inc. filed an Answer to Eagle Water's Petition for Reconsideration. United Water contends that the recitals of Eagle Water's Petition do not rise to the level of a specific demonstration that Order No. 29929 is "unreasonable, unlawful, erroneous or not in conformity with the law," nor does the Petition contain a "statement of nature in quantity of evidence or argument the petitioner will offer if

reconsideration is granted,” all of which United Water contends is required by Commission Rule of Procedure 331.01.

United Water states that in reliance on the Commission’s Order No. 29929, and at the request of the project developer, United Water has incurred expense in preparation for project construction. United Water states that it has examined and approved a final water system. United Water is currently preparing work orders and a mainline extension agreement. These, it is anticipated, it states, will be available for signature during the third week of January and construction is expected to commence during the fourth week of January.

While the filing of a Petition for Reconsideration, from a legal point of view, does not stay the effectiveness of Order No. 29929 (see *Idaho Code* § 61-626), United Water contends that the pendency of the Petition causes uncertainty for United Water as to whether it should proceed with planned efforts. United Water requests that the Commission act expeditiously to deny the Petition.

On January 9, 2006, Hillview Development Corporation, the developer of Covenant Hill subdivision, made a letter filing with the Commission refuting item by item the grounds for reconsideration cited by Eagle Water in its Petition for Reconsideration.

1. Item No. 1 states “. . . *The 12-inch mainline from Well No. 6 is irrelevant to Eagle Water service of the Covenant Hill Subdivision.*” This statement is absolutely false. In our letter of November 25 2005, we correctly pointed out to the Commission that if this were truly the case, **then DEQ would not continue to condition** the “Will Serve Letter” acceptance on Eagle Water’s assurances of the timing of the construction for the offsite 12-inch loop from Eagle Water’s Well No. 6. Please see DEQ’s letter dated November 21, 2005. **This certainly indicates that for final DEQ approval of Covenant Hill, the Eagle Water offsite 12-inch loop is necessary.**
2. Item No. 2 states “*Eagle Water never received the August 17th letter allegedly sent to it by Hillview Development Corporation.*” This is an odd assertion by Eagle Water. Hillview Development has not alleged that it sent a letter to Eagle Water on August 17th. The letter in question was from Tomlinson Consulting, Inc and was **hand delivered** by Richard Tomlinson to Eagle Water’s office. A copy was also **hand delivered** by Richard Tomlinson to MTC Inc. (Eagle Water’s engineer). Mr. Jim Rees of MTC Inc. acknowledges receipt of the letter from Richard Tomlinson and has had several discussions with him about the letter. Why Eagle Water does not acknowledge receipt of the letter we can only speculate. Also, the letter was merely a summary of the items that were discussed with Eagle Water’s president, Robert DeShazo, in a meeting on August

10, 2005. Additionally this letter was included in our submittal to the PUC on October 5, 2005 therefore Eagle Water most certainly had reviewed it by then. Even in the PUC staff comments on November 9, 2005, the PUC mentions they previously discussed with Eagle Water issues which were essentially the substance of the letter submitted to Eagle Water on August 17 2005.

3. Item No. 3 references “. . . a letter from Eagle Fire Department verifying that fireflow requirements for the subdivision can be met by Eagle Water.” The only letter we can find in the record from Eagle Fire Department that was submitted to the PUC by Eagle Water is a letter from the Eagle Fire Department to Eagle Water on November 10, 2005. This letter does not contain any reference to Covenant Hill Subdivision. It addresses a fire flow test from October 2002, in a subdivision (Clear Creek Crossing) which is approximately **3/4 of mile** east of the proposed entrance to Covenant Hill. This fire flow may be unreliable as there have been numerous connections made to the Eagle Water system since October 2002.
4. Item No. 4 references a letter issued “. . . on November 2005, providing a cost estimate for service to Covenant Hill Subdivision. . . .” This is the first time we have seen this letter. If it were truly issued on November 4, 2005, we would like to know to whom it was issued, and why it was not submitted to the PUC along with the numerous submittals made by Eagle Water to the PUC after November 4 2005, and prior to the PUC’s Final Order of December 13 2005.
5. Item No. 5 references a letter from Jim Rees. This letter acknowledges that Hillview Development **did not** get a “will serve” letter from Eagle Water due to DEQ’s concerns. It also acknowledges that “. . . Service to Covenant Hill Subdivision would not adversely affect water supply or cause undue hardship to existing Eagle Water customers if the loop to well Six (6) is completed.” This statement actually **confirms that the offsite loop is most certainly necessary to serve Covenant Hill** and counter to Eagle Water’s claim in Item No. 1 of their grounds for reconsideration that “. . . The 12-inch mainline from Well No. 6 is irrelevant.”

Hillview Development Corporate states that it is now January 2006 and it continues to be delayed by Eagle Water due to their last minute request for reconsideration. Hillview states that it has final design plans completed and has final bids for the entire Covenant Hill project. It has commenced construction on the site. However, it contends, that is not being allowed to finalize its contract with United Water until the Commission’s [reconsideration] decision is made.

The Commission has reviewed the filings of record in Case Nos. EAG-W-05-3 and UWI-W-05-3 including its final Order No. 29929, Eagle Water's Petition for Reconsideration and the related filings of United Water Idaho and Hillview Development Corporation. The Commission on multiple grounds described above finds Eagle Water's Petition for Reconsideration to be procedurally defective. The Commission further finds addressing the merits of the Petition that Eagle Water makes no persuasive offer of proof and identifies no grounds supported by specific explanation to warrant reconsideration of final Order No. 29929.

In our Order issued on December 13, 2005, we found that Eagle Water was unable to satisfy DEQ's minimum peak hour demand requirement. Reference IDAPA 58.01.08.550.03.p., i.e., "With any source out of service, the remaining source or sources should be capable of providing either the peak hour demand of the system or maximum daily pumping demand plus equalization storage." We were accordingly unable to find that the requested service could be provided without adversely affecting the water supply of or otherwise causing an undue hardship on the Company's existing customers. We also found the conditional commitment of the Company to provide service based on its ability at some future date to demonstrate compliance with minimum state requirements to be unacceptable and not equivalent to being presently "ready, willing and able" to serve. Contrary to Eagle Water's representation in Petition Paragraph 1 that it is ready, willing and able to serve Covenant Hill subdivision, we find the facts to be otherwise. We continue to find our Order No. 29929 to be well reasoned, supported by the record and facts and in the best service of the public interest.

#### **CONCLUSIONS OF LAW**

The Commission has jurisdiction over Eagle Water Company and United Water Idaho Inc., public water utilities, and the service issues raised in this case pursuant to Idaho Code, Title 61 and the Commission's Rules of Procedure. IDAPA 31.01.01.000 *et seq.*

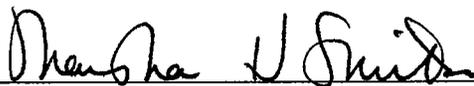
#### **ORDER**

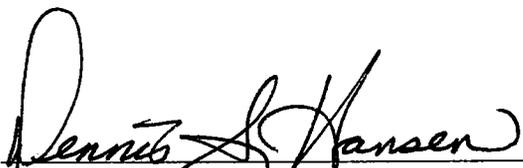
In consideration of the foregoing and as more particularly described above, IT IS HEREBY ORDERED and the Commission does hereby deny Eagle Water Company's Petition for Reconsideration of Order No. 29929.

THIS IS A FINAL ORDER DENYING RECONSIDERATION. Any party aggrieved by this Order or other final or interlocutory Orders previously issued in this Case No. may appeal to the Supreme Court of Idaho pursuant to the Public Utilities Law and the Idaho Appellate Rules. See *Idaho Code* § 61-627.

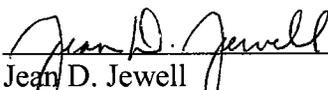
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 19<sup>th</sup>  
day of January 2006.

  
PAUL KJELLANDER, PRESIDENT

  
MARSHA H. SMITH, COMMISSIONER

  
DENNIS S. HANSEN, COMMISSIONER

ATTEST:

  
Jean D. Jewell  
Commission Secretary

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