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2005 APR 15 PM 12:42  
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Attorney for the Commission Staff

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE APPLICATION OF )  
UNITED WATER IDAHO INC. TO AMEND AND ) CASE NO. UWI-W-05-1  
REVISE ITS CERTIFICATE OF PUBLIC )  
CONVENIENCE AND NECESSITY NO. 143. )  
)  
) **COMMENTS OF THE**  
) **COMMISSION STAFF**  
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The Staff of the Idaho Public Utilities Commission, by and through its Attorney of record, Donovan E. Walker, Deputy Attorney General, in response to Order No. 29745, the Notice of Application and Notice of Modified Procedure in Case No. UWI-W-05-1 issued on April 1, 2005, respectfully submits the following comments.

**BACKGROUND**

United Water Idaho Inc. filed an Application seeking to amend and revise its Certificate of Public Convenience and Necessity in order to expand its service territory. The Application was triggered by Black Rock LLC, an Idaho corporation, who requested that United Water provide domestic water and fire protection service to a proposed residential subdivision located in Ada County within an area bounded by Eagle Road, Amity Road, Lake Hazel Road, and Locust Grove Road. Black Rock consists of 44 lots on approximately 42 buildable acres, with approximately 181

acres of open areas. A map depicting the location of the Black Rock Development, United Water's current certificated boundary, and United Water's proposed certificated boundary was attached to the Company's Application as Attachment A.

United Water proposes to provide service pursuant to its Tariff No. 1, General Metered Service, and in all respects will provide service pursuant to its Rules and Regulations as approved by the Commission. United Water submits that the extension into this area is consistent with the public convenience and necessity.

## **STAFF ANALYSIS**

In its Application, United Water is seeking to expand its certificated area boundary to encompass the Black Rock Development and much of the surrounding area. In fact, the Black Rock Development, by itself, represents only about 10 percent of the entire area for which United Water seeks to expand.

The Black Rock Development lies outside of the city limits of the City of Meridian, but is immediately adjacent to Meridian's Area of Impact boundary. Attachment A is a map prepared by Staff showing the location of Meridian's Area of Impact in relation to the proposed Black Rock Development and to the expansion area sought by United Water. Although the Black Rock Development lies outside of the City's Area of Impact, the strip of land immediately north of the Black Rock Development lies within the Area of Impact.

The authority of the Commission with regard to expansion of a water utility's certificated areas is spelled out in the *Idaho Code*, in pertinent part, as follows:

**61-526. Certificate of convenience and necessity.** — No...water corporation shall henceforth begin the construction of a...line, plant, or system or of any extension of such...line, plant, or system, without having first obtained from the commission a certificate that the present or future public convenience and necessity require such construction: provided, that this section shall not be construed to require such corporation to secure such certificate for an extension within any city or county, within which it shall have theretofore lawfully commenced operation, or for an extension into territory whether within or without a city or county, contiguous to its...line, plant, or system, and not therefore served by a public utility of like character,...and provided further, that if any public utility in constructing or extending its lines, plant, or system, shall interfere or be about to interfere with the operation of the line, plant, or system of any other public utility already constructed, or if public convenience and necessity does not require or will require such construction or extension, the commission on complaint of the public utility claiming to be injuriously affected, or on the commission's own motion, may, after hearing,

make such an order and prescribe such terms and conditions for the locating or type of the line, plant or system affected as to it may seem just and reasonable...

United Water, in its Application, correctly states that the area they are proposing to serve is not within the authorized territory of any other public utility water corporation under the jurisdiction of the Commission. The Application states that there are no known public utilities, persons, or corporations with whom the expansion is likely to compete, and the requested expansion would not interfere with the operation of any other water utility corporation under the jurisdiction of the Commission. This too, appears correct because the requested expansion area is not currently being served by any water utility, and because the only water utility likely to compete is the City of Meridian, which is not a public utility, person, or corporation under the jurisdiction of the Commission.

The City of Meridian's intention to provide, and, in fact, require that it be the water service provider within its city limits and Area of Impact is apparent in an April 8, 2003 amendment to the City's July 2002 Comprehensive Plan. The following is an excerpt from that amendment:

Urban Services Policies:

The City of Meridian desires all development within its Area of Impact to be served with city services. Such services include sanitary sewer, water, fire, police, parks and libraries.... However, it is recognized that some development may precede the ability of the City, on its own, to extend services for such development. Upon formal requests to the City for development that is on property not immediately serviceable with urban services, the City may consider said applications. ... Expansion of the sanitary sewer and/or water systems may be at the option of either the City of Meridian or the developer.

Developments within the Area of Impact but outside the City limits will only be considered if the following standards and conditions are agreed to by the developer(s):

1. The development is connected to City of Meridian water and sanitary sewer systems and the extensions to and through said developments are constructed in conformance with the City of Meridian Water and Sewer System Master Plans in effect at the time of development;
- ...
5. All developer-initiated system expansions (approved by the City) must be for properties which are adjacent to existing or previously approved projects where City sewer and water services are or will be provided.

(Reference Urban Services Amendment to the July 2002 Meridian Comprehensive Plan, approved April 8, 2003).

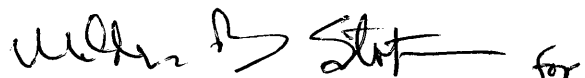
The City of Meridian has been notified of the Application and comment deadline. It is Staff's understanding that Meridian intends to submit comments concurrently with Staff, and that its comments will oppose United Water's Application. It is also Staff's understanding, however, that the City of Meridian will be unable to provide service to the Black Rock Development or adjacent areas for several years in the near future.

If the Commission were to deny United Water's Application, it would effectively deny water service to Black Rock for an indefinite period of time. Especially given that Black Rock is located outside of Meridian's Area of Impact, Staff believes that the Commission should give approval to at least serve Black Rock. In addition, however, Staff also believes that it is reasonable and in the public interest for the Commission to approve expansion of the Company's certificated area to include the requested areas adjacent to Black Rock that are not within Meridian's Area of Impact. For those areas within Meridian's Area of Impact, Staff believes the Commission should carefully weigh additional arguments expected to be put forth by the City of Meridian and United Water regarding the ability and legal authority of each to provide service.

#### **STAFF RECOMMENDATION**

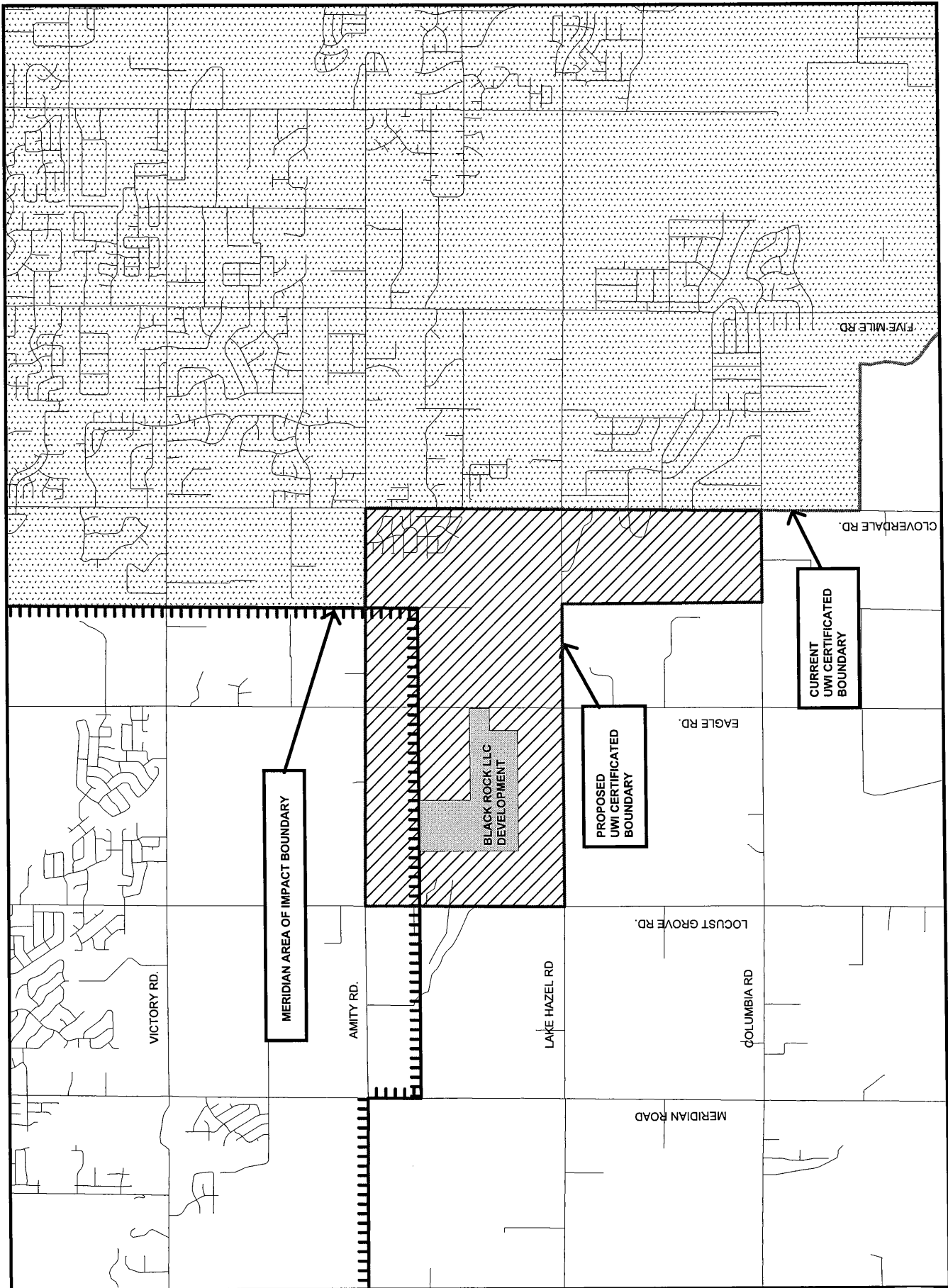
Staff recommends that United Water be granted approval to expand its certificated area to include all of those areas identified in its Application that are not located within the City of Meridian's Area of Impact. For those areas within the City's Area of Impact, Staff recommends that the Commission consider the arguments of the City of Meridian and United Water.

Respectfully submitted this 15<sup>th</sup> day of April 2005.

  
Donovan E. Walker  
Deputy Attorney General

Technical Staff: Rick Sterling

i:umisc/comments/uwiw05.1dwrps




## CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 15<sup>TH</sup> DAY OF APRIL 2005, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. UWI-W-05-01, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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