

DECISION MEMORANDUM

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

FROM: DONOVAN E. WALKER

DATE: MAY 5, 2005

SUBJECT: UNITED WATER'S APPLICATION TO AMEND CERTIFICATE – CASE
NO. UWI-W-05-1

On March 15, 2005, 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 Commission ordered that the Company's Application be processed by Modified Procedure with comments due on April 22, 2005. Comments were filed by the Commission Staff and the City of Meridian (City). United Water filed reply comments.

THE APPLICATION

According to the Application, Black Rock LLC, an Idaho corporation, has requested that United Water provide domestic water and fire protection service to a proposed residential subdivision, approximately 44 acres in size and located within an area bounded by Eagle Road, Amity Road, Lake Hazel Road, and Locust Grove Road, Ada County. Black Rock LLC is prepared to execute a Water Main Extension Agreement. A map depicting the location of the Black Rock Development, United Water's current certificated boundary, and United Water's proposed certificated boundary is attached to the Company's Application as Exhibit A.

The Company 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 and is covered by United Water's Rules and Regulations. 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. United Water proposed 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.

STAFF COMMENTS

Staff filed comments on April 15, 2005. Staff recommends that the Company 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.

Staff points out that the development requesting service, Black Rock, is only a portion of the entire area requested by United Water in its Application. Black Rock is outside the city limits of Meridian, and is immediately adjacent to the City's Area of Impact. Attachment A to Staff's comments shows the location of the City's Area of Impact, the Black Rock development, and United Water's proposed expanded service territory. Staff contacted the City of Meridian prior to the City filing its comments. Staff's understanding was that the City would be opposing the Application, but that it would be unable to provide service to Black Rock or adjacent areas for several years into the future.

Staff states that if the Commission were to deny the Company's Application it would effectively deny water service to Black Rock for an indefinite period of time. Given the fact that the development is outside the City's Area of Impact, Staff recommends that the Commission approve the Application to, at the least, serve the Black Rock Development. Additionally, Staff recommends 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 the City's Area of Impact. With regard to the requested area that is actually within the City's Area of Impact Staff recommends that the Commission carefully weigh the expected arguments from both the City and the Company regarding the ability and the legal authority of each to provide service.

CITY OF MERIDIAN COMMENTS

The City of Meridian filed comments on April 21, 2005. The City requests that United Water's Application be denied.

The City does not object to a small portion of United Water's requested area, the area east of the line ¼ mile west of Cloverdale Road. The City objects to the remaining requested area because one portion is within the City's Area of Impact, and the remaining portion has been within the City's sewer master planning area since 1993. The City states that in 1997 it

requested that Ada County include this entire area within its Area of Impact, but was denied because the County believed the City would not be able to provide services to the area within 20 or more years. The City goes on to say that although the rate of growth in southern Meridian has proven that belief to be false, the City cannot at this time provide sewer service to the proposed Black Rock development. The City also states that it intends to proceed this year with additional sewer and water master planning in the area requested by United Water's Application. The City states that the presence of United Water in the subject area may restrict it from extending water and sewer service there in the future. Attached to the City's Comments are two maps: one depicting the City's Area of Impact, and the other showing a 2003 Sewer Master Plan Update.

UNITED WATER'S REPLY COMMENTS

On April 28, 2005, United Water filed reply comments. The Company stated, "in order to avoid, to the extent possible, conflict with the City, United hereby consents to a re-definition of the expansion to eliminate that portion of the expansion area that overlaps with the City's Area of Impact." The Company attached a map labeled Exhibit B depicting United Water's re-defined proposed area of expansion after eliminating the area that was within the City's Area of Impact. The Company otherwise agreed with Staff's analysis and recommendation.

With regard to the City's Comments, the Company states that elimination of the portion of requested territory that falls within the Area of Impact satisfies the legitimate interests of the City. The Company points out that the City admits that Ada County denied its request to expand its Area of Impact into this territory, and that until that happens the City does not have the legal ability to annex property within the area or to control patterns of growth. *Citing* Ada County Code 9-4-2; City of Meridian 2002 Comprehensive Plan.

The Company also states that as a practical matter it will be some time into the future before the City could actually provide service to the area, and the map accompanying the City's Comments indicates that the City does not have water distribution facilities any where near the Black Rock development. By contrast, United Water has the capability of providing service now and Black Rock is requesting service now, not several years into the future. The Company states that Black Rock is proceeding diligently to obtain the necessary approvals, and has filed applications and plans with Ada County, Ada County Highway District, and the Idaho Department of Environmental Quality.

COMMISSION DECISION

Does the Commission wish to approve or deny United Water's Application to amend and revise its Certificate of Public Convenience and Necessity in order to expand its service territory?

If the Commission approves the Application, does it wish to do so for the entire area proposed by the Company or for some portion thereof?



Donovan E. Walker