

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. 29929
WATER IDAHO INC.)**

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 recently been approved by the Eagle City Council for development of 41 single-family lots. The requested water provider is United Water Idaho, Inc. Hillview requests expeditious treatment of its request for service.

A portion of the proposed Covenant Hill subdivision is within the certificated service area of Eagle Water Company, and a portion is within the certificated service area of United Water Idaho Inc. Reference Eagle Water Certificate No. 278; United Water Certificate No. 143. Hillview is constructing a pressurized irrigation system for the subdivision and requires only potable water from a water company. Because the site is relatively small and will comprise only 41 lots, it is Hillview's desire to have only one water company provide service to the site.

As represented in the filed Petition, Eagle Water Company informed Hillview that there was a water line that could service the Covenant Hill subdivision at the northeast corner of the site but until Eagle Water obtained several easements from property owners to the south for an additional water line extension, Eagle Water could not guarantee adequate service. A copy of a follow up letter to Eagle Water dated August 17, 2005 was submitted along with the Petition. It is Hillview's belief based on contact with Eagle Water representatives that there has been no effort put forth to acquire the necessary easements or assurance that Eagle Water can meet the required fire flows for the subdivision (i.e., a minimum of 2,000 gallons per minute measured at 20 psi for a duration of 2 hours for homes up to 6,200 square feet).

Following discussions with Commission Staff and discovery that Covenant Hill straddled the certificate service area boundaries of both Eagle Water and United Water, Hillview inquired of United Water whether it was able to provide water service and the fire flows required. Hillview also contacted the State of Idaho Division of Environmental Quality to determine whether there was any moratorium for new service from Eagle Water Company.

As represented in the Petition, United Water has informed Hillview that United Water has a well to the northeast of the Covenant Hill subdivision site and an existing water main along the subdivision's entire north boundary. Based on a design the developer's construction manager provided to United Water, United Water by letter dated October 5, 2005, estimates the total construction cost for the installation of the pipes, fittings, fire hydrants and services necessary to serve the new subdivision to be \$164,807. This figure is comprised of the contractor's cost of \$146,870 for materials and installation, plus United Water's inspection and overheads. Once United Water has approved design drawings, construction of the water facilities could start within a couple of weeks.

Also included with the Petition is a copy of a September 7, 2005 letter from the Department of Environmental Quality to Robert DeShazo of Eagle Water Company apprising Mr. DeShazo that unless additional information is provided by Eagle Water, DEQ will not be able to approve additional connections to the Eagle Water water system until an additional supply source or sources are provided that are large enough to meet minimum state peak hour demand requirements or maximum daily pumping demand plus equalization storage. Reference IDAPA 58.01.08.550.03.p.

PROPOSED ORDER AND COMMENTS

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. The Proposed Order contained the following findings:

Based on the foregoing and the need for expeditious treatment of the request for service, the Commission finds that the public convenience and necessity requires us to approve the Petition of Hillview Development Corporation and authorize water service to Covenant Hill subdivision by United Water Idaho Inc. In so doing, we find Hillview's request for a single water provider to the subdivision to be reasonable. We also find United Water to be capable of providing adequate service in a timely manner and to have demonstrated a willingness to provide service.

Comments on the Commission's Proposed Order were filed by Eagle Water, United Water, Commission Staff, Idaho Department of Environmental Quality and the developer.

Eagle Water contends that it is ready, willing and able to serve Covenant Hill subdivision and is currently able to deliver sufficient water supply and pressure to meet fire flow requirements. As the majority of the proposed subdivision is within Eagle Water's certificated area, Eagle Water contends that it should be designated as the sole provider. Eagle Water states that provision of service to Covenant Hill is critical to Eagle Water's overall system plan. Tying Eagle Water Well No. 6 into its 12-inch mainline on Floating Feather Road, the Company contends, will not only increase fire flow protection to the Covenant Hill subdivision, it will also augment the water supply from Well Nos. 1 and 2, which will, in turn, serve to augment the water supply from Well No. 4 that can be dedicated to service of the eastern portion of Eagle Water's service area. This in turn, it states, will help to alleviate low-pressure problems in the upper elevations of the Eagle Springs subdivision.

Eagle Water has obtained conditional DEQ authority to provide service to Covenant Hill on the following terms as set forth in Eagle Water November 18 letter to DEQ and DEQ November 21 letter to Eagle Water:

1. That Eagle Water continue working with the two land owners (Greg Holmes and Jim Choat) south of Covenant Hill and the Hereford Subdivision Homeowners Association to obtain a permanent easement to connect Eagle Water's existing 12-inch water main stub on the Holmes property to the new Covenant Hill mainline on or before February 16, 2006.
2. That MTC Engineering, Inc. provide DEQ working drawings, plans and specifications for the extension of the 12-inch mainline to Covenant Hill by January 10, 2006.
3. That Eagle Water construct and connect the 12-inch mainline from its Well No. 6 to Covenant Hill on or before April 1, 2006.
4. That, if the above conditions are not met and Eagle Water cannot provide adequate fire flow to Covenant Hill, Eagle Water will relinquish its right to serve the subdivision.

DEQ's acceptance of a Will Serve Letter for Covenant Hill is further conditioned on the following:

- The foregoing schedule (Eagle Water November 18 letter to DEQ) must also be acceptable to the Idaho Public Utilities Commission.

- DEQ must conduct its standard review and approval of the subject project.
- DEQ cannot accept additional Will Serve Letters until the issues mentioned in the September 7, 2005 DEQ letter to Eagle Water are resolved, i.e., minimum hour demand requirement standard (IDAPA 58.01.08.550.03.p).

United Water in its comments confirms that United Water has the capability and willingness to provide potable water service to Covenant Hill. Following issuance of a final Order and receipt of an appropriate water system drawing, United Water contends that it is capable of promptly processing the developer's request for construction of the required facilities.

Commission Staff concurs with the Commission's Proposed Order and recommends that United Water be authorized to provide water service to Covenant Hill.

Hillview, by way of rebuttal to Eagle Water's comments, contends if "Eagle Water is ready, willing and able to provide service to Covenant Hill subdivision," then the easement would already be recorded and the design for the off-site water line would be complete. Hillview also argues that Eagle Water would not be subject to additional DEQ conditions of service if it were ready to serve. Hillview states that it cannot wait until sometime in 2006 for Eagle Water to perform tasks that should already have been completed. Hillview contends that Eagle Water has been aware of Covenant Hill since February 2005 when Hillview submitted the preliminary plat to the City of Eagle. Even after repeated requests to Eagle Water for verification that the utility was willing and capable of providing service, Hillview contends that Eagle Water did nothing until the Commission issued its Proposed Order.

It is Hillview's position that United Water is the only water company that can truly be adjudged to be "ready, willing and able to provide service to Covenant Hill." The specter of Eagle Water failing to satisfy conditions required by DEQ, Hillview contends, will be nothing short of disastrous for Hillview Development, the homebuilders and the homeowners of Covenant Hill.

COMMISSION FINDINGS

The Commission has reviewed the filings of record in Case Nos. EAG-W-05-3 and UWI-W-05-3 including the Petition of Hillview Development Corporation, our Proposed Order directing United Water to provide service to Covenant Hill and related comments. We have also

reviewed the certificated area boundaries of Eagle Water and United Water. We continue to find that the present and future public convenience and necessity is best served by the selection of United Water as service provider to the Covenant Hill subdivision. Reference *Idaho Code* § 61-526; IDAPA 31.01.01.112.

We cannot conclude that Eagle Water is “ready, willing and able” to provide water service to the Covenant Hill subdivision. We find that Eagle Water is still today unable to satisfy DEQ’s minimum peak hour demand system requirement that sets forth a capability requirement that Eagle Water be able to meet peak day requirements should the Company suffer the loss of a major supply well. Reference IDAPA 58.01.08.550.03.p., i.e., “With any source out of service, the remaining source or sources shall be capable of providing either the peak hour demand of the system or maximum daily pumping demand plus equalization storage.” We are therefore unable to find that the requested service can be provided by Eagle Water without adversely affecting the water supply of or otherwise causing an undue hardship on the Company’s existing customers.

DEQ has offered to allow Hillview to proceed while Eagle Water on a parallel path attempts to secure easements and construct the system looping required to obtain additional water from Well No. 6, a well estimated to be now producing at only 15% of the rated capacity of the pumps (2,000 gpm) due to distribution system limitations (bottlenecks and an incomplete loop). DEQ’s offer is conditioned on Eagle Water’s commitment to relinquish the Covenant Hill subdivision area to United Water should Eagle Water be unable to obtain required easements by April 1, 2006 or demonstrate an ability to meet minimum state requirements. Reference November 18, 2005 Eagle Water letter to DEQ; November 21, 2005 DEQ letter to Eagle Water. This contingency we find is unacceptable and is not equivalent to being presently “ready, willing and able” to serve. It does not provide the developer with the certainty of a specific provider and subjects the developer to the conflicting service requirements and engineering design and specifications of United Water and Eagle Water.

We find Eagle Water’s contention that “the potential harm to Eagle Water and its customers of not being able to serve Covenant Hill is profound” to be speculative and without sufficient basis. Reference Eagle Water November 25, 2005 Summary of Comments. The developer should not be held hostage to the Company’s current difficulties and failure to timely act. We find Eagle Water’s delay in remedying identified system deficiencies and its failure to timely address Hillview’s request for service or provide Hillview to date with an estimate of

required contribution in aid of construction to be unacceptable. Reference *Idaho Code* § 61-302 (Maintenance of Adequate Service); Eagle Water General Rules and Regulations.

We find that the Commission has jurisdiction as a condition of the Certificate of Convenience and Necessity to review the extension of service into an unserved area within an already certified area. Reference *Cambridge Tel. Co. v. Pine Tel. Sys.*, 109 Idaho 875, 712 P.2d 576 (1985). This oversight by the Commission is even more critical when a utility has demonstrated a failure to follow through on commitments for improvements identified by the Company as solutions for maintaining and stabilizing pressures in the system. Reference Case No. EAG-W-00-1 (Order No. 28513); EAG-W-03-1 (Order No. 29344); EAG-W-05-1.

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 United Water Idaho Inc. is hereby authorized and directed to provide potable water service to Covenant Hill subdivision.

IT IS FURTHER ORDERED that United Water Idaho Inc. and Eagle Water Company file amended Certificates of Public Convenience and Necessity and area of service maps reflecting service to Covenant Hill subdivision by United Water Idaho Inc. and removal of said area of service where overlap exists from the Certificate of Eagle Water Company. IDAPA 31.01.01.112; *Idaho Code* § 61-526.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 13th
day of December 2005.



PAUL KJELLANDER, PRESIDENT

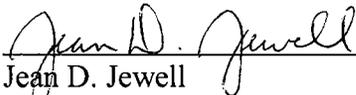


MARSHA H. SMITH, COMMISSIONER



DENNIS S. HANSEN, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary

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