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May 31, 2006

Via Hand Delivery

Jean Jewell, Secretary
Idaho Public Utilities Commission
472 W. Washington St.
Boise, Idaho 83720

Re: Case No. UWI-W-06-04


Dear Ms. Jewell:

Enclosed for filing in the above matter please find the original and seven (7) copies of Comments of United Water Idaho Inc.

An additional copy of the document and this letter is included for return to me with your file stamp thereon.

Very Truly Yours,

McDevitt & Miller LLP



Dean J. Miller

DJM/hh
Attach.

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PUBLIC UTILITIES COMMISSION

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF UNITED WATER IDAHO INC., TO AMEND AND REVISE CERTIFICATE OF CONVENIENCE AND NECESSITY NO 143)))))	CASE NO. UWI-W-06-04 COMMENTS OF UNITED WATER IDAHO INC.
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COMES NOW United Water Idaho Inc., (“United Water”, the “Company”), pursuant to the Commission’s Notice of Application dated May 8, 2006, and submits the following Comments:

The Application

The Application in this matter was filed on April 26, 2006, in response to a written request for service submitted to the Company by the project developer, Kastera Homes. Exhibit A attached to these Comments, depicts the location of the proposed service area addition, with the boundaries of the addition shown in red. Exhibit A also shows the existing City of Eagle Impact Area, as approved by the Ada County Commission. As is obvious from Exhibit A, the proposed service area addition is completely outside the City of Eagle Impact Area.

Exhibit B, attached to these Comments depicts facilities required to provide service to Trailhead—an approximate two-mile extension of 16 inch main line north from the Company’s Floating Feather main line. These facilities would be installed pursuant to United Water’s standard main line extension Rules.¹

Also depicted on Exhibit B are the boundaries of the “Olsen Ranch,” which is the property subject to development. As can be seen on Exhibit B, small portions of the southern boundaries of the Olsen Ranch are within the City of Eagle Impact Area. However, Kastera is not planning to develop these portions of the Olsen Ranch and water service has not been requested for these areas. (See Kastera’s May 24, 2006 Letter to United Water, discussed below).

The Protest

On May 10, 2006, the City of Eagle (“City”) filed a Protest of the Company’s Application in the form of a letter addressed to the Commissioners from the attorney for the City (“Protest”). The Protest generally alleges that the Trailhead area, or a part thereof, will be served by the City municipal water system. The Protest attaches an April 18, 2006, letter from Kastera Homes to the City inquiring whether Kastera could be invited to a work session to discuss the possibility of annexation.

Discussion

- A. Notwithstanding its April 18, 2006, letter to the City, Kastera desires to be served by United Water.

Following receipt of the City’s protest, United Water communicated with Kastera, asking for a clarification of Kastera’s desires and intentions. Attached, as Exhibit C, is a May 24, 2006 letter from Kastera to United Water’s Construction Coordinator, Mr. John Lee. As noted in the

¹ It is likely the developer will also be required to provide Special Facilities Advances for a booster station and storage reservoir although the location and cost of these facilities is yet to be determined.

letter, Kastera desires service from United Water because United Water has the ability to provide service immediately without extensive system upgrades. The letter notes that discussions of annexation with the City have been conceptual only, and relate to the other portions of the Olsen Ranch within the City's Impact area. Those areas are not included in this Application. As stated in the letter:

“At this point, it is undetermined if we will ever be annexed into the City of Eagle. Annexation may happen in the future...and it may not. However, one thing is certain, we need water service immediately and United Water is the only water service provider that can meet our time schedule. Therefore, we are requesting water service from United Water to serve our property outside of the Eagle Area Impact Boundary”.

While the desires of the persons requesting service are not always completely dispositive, they are entitled to weight and consideration. Here, the developer, sensibly, desires service from the provider capable of immediate extension of facilities—United Water. While the City's Protest states generally it will provide service to the area, or part of it, the Protest provides no information regarding the facilities required and when or if they could be physically extended.

B. Because the proposed expansion area is outside its area of impact, the City does not have grounds for objection.

The City's Protest asserts, “The defined area of expansion includes an area and a development that will be served by the City of Eagle municipal system.” As made clear above, United Water does not propose to provide service within the City's impact area. As a legal matter, municipalities may only provide domestic water service within their boundaries. (*See* Idaho Code 50-323). As stated recently by the Idaho Supreme Court in *Big Sky Paramedics v. Sagle*, 140 Idaho 435 (2004):

This Court has articulated this rule as a strict limitation when construing municipal powers: "municipalities may exercise only those powers granted to them or necessarily implied from the powers granted à [and i]f there is a fair, reasonable, substantial doubt as

to the existence of a power, the doubt must be resolved against the city." City of Grangeville, 116 Idaho at 538, 777 P.2d at 1211.

Notwithstanding this, in United Water's experience, it is not uncommon for municipalities to extend facilities into areas of impact in advance of, but in anticipation of, eventual annexation. A municipality, clearly however, has no authority to provide service outside its impact area. The City, therefore, does not have grounds for objection to the proposed addition.

C. Even if annexed by the City, United Water may be entitled to serve the area.

While United Water is not requesting that the Commission, in this case, engage in construction of a contract, the Company believes the Commission should be aware of a written Franchise Agreement between the City and United Water². It is attached as Exhibit D.

Relevant portions of that Agreement are:

"In the case of annexation of property to the corporate limit, such area will be considered under this agreement, upon effective date of the annexation, subject to Section 9 hereof", (Section 1, Page 1).

"In the event the City annexes a new area into its corporate limits, the terms of Section 9 regarding franchise fees shall not apply to the annexed area until sixty (60) days after the City has supplied the Grantee with appropriate information for the identification of the Grantee's customers within the annexed area", (Section 10, Page 3).

"In consideration of Grantee's undertaking hereunder and as exists upon the effective date of ordinance 414, the City agrees not to engage in the business of providing water service during the life of this franchise or any extension thereof in the Grantee's certificated service area approved by the PUC as of September 10, 2002 and as subsequently amended by the PUC", (Section 14, Page 4).

A definitive interpretation of the Franchise Agreement would be premature until such time as the City actually attempted to annex the area, which may or may not come to pass.

² The Franchise Agreement was also submitted to the Commission in May of 2003 when the Commission approved an amendment to United Water's tariff to permit recovery of the 1% franchise fee specified in the Agreement.

Nonetheless, the Commission should be aware of the possibility that the City, by contract, has relinquished the right to provide water service that it might otherwise enjoy.

Conclusion

For the reasons cited herein, United Water respectfully requests that the Application be granted and the Company be authorized to file an Amended Certificate of Public Convenience and Necessity to include the area described in the Application.

DATED this 24 day of May, 2006.

UNITED WATER IDAHO INC.

By: 

Dean J. Miller

Attorney for United Water Idaho Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of May, 2006, I caused to be served, via the method(s) indicated below, true and correct copies of the foregoing document, upon:

Jean Jewell, Secretary	Hand Delivered	<input checked="" type="checkbox"/>
Idaho Public Utilities Commission	U.S. Mail	<input type="checkbox"/>
472 West Washington Street	Fax	<input type="checkbox"/>
P.O. Box 83720	Fed. Express	<input type="checkbox"/>
Boise, ID 83720-0074	Email	<input type="checkbox"/>
jjewell@puc.state.id.us		

Bruce M. Smith	Hand Delivered	<input checked="" type="checkbox"/>
MOORE SMITH BUXTON & TURCKE	U.S. Mail	<input type="checkbox"/>
225 N. 9th Street, Suite 420	Fax	<input type="checkbox"/>
Boise, ID 83702	Fed. Express	<input type="checkbox"/>
	Email	<input type="checkbox"/>

Heather Houle, Legal Asst.

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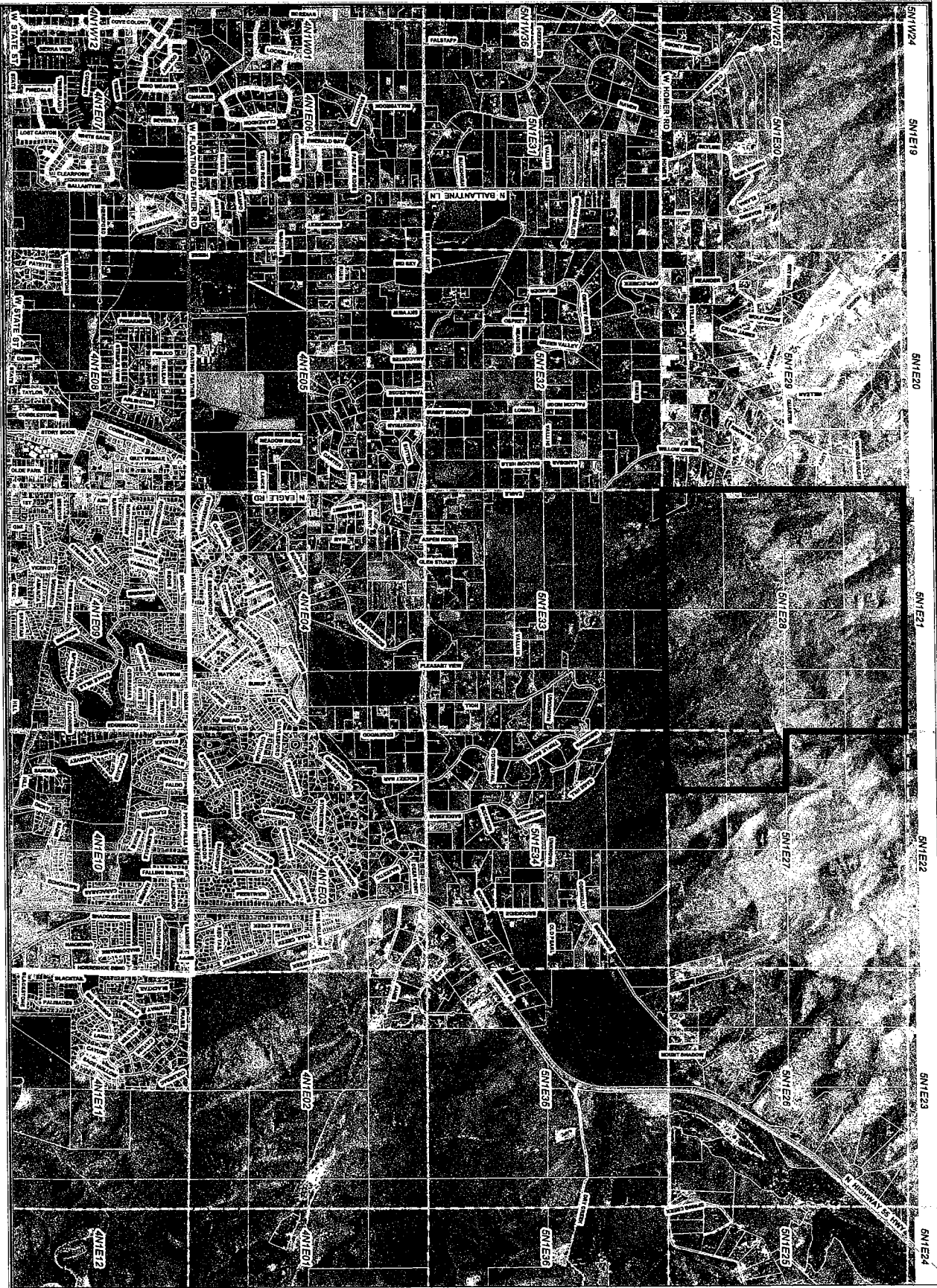



EXHIBIT A
TRAILHEAD COMMUNITY
EXPANSION

-  UWID Certified Area
-  Proposed Certified Area

- Impact Area**
-  Eagle
- UWID Mains**
-  4 inch Main
-  6 inch Main
-  8 inch Main
-  12 inch Main
-  16 inch Main

Scale
 1 inch equals 2,000 feet



All City Council actions shall be subject to the provisions of the Charter of the City of Eagle, Colorado, and the applicable provisions of the Colorado Revised Statutes, and the applicable provisions of the Colorado Constitution. The City Council shall have the authority to amend the Charter of the City of Eagle, Colorado, and the applicable provisions of the Colorado Revised Statutes, and the applicable provisions of the Colorado Constitution. The City Council shall have the authority to amend the Charter of the City of Eagle, Colorado, and the applicable provisions of the Colorado Revised Statutes, and the applicable provisions of the Colorado Constitution.

Revised Date: 04-25-08



