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IDAHO PUBLIC  
UTILITIES COMMISSION

May 24, 2007

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

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

Dear Ms. Jewell:

Enclosed for filing, please find nine (9) copies of the direct testimony of Thomas Fassino. A computer disc containing the testimony is also enclosed.

Our intent in submitting this testimony is to substitute it for the direct testimony of Wayne Forrey. Wayne was recently involved in a very serious accident in the Idaho back country and will not be able to attend the upcoming hearing. Rather than delay the hearing on May 30, 2007, the direct testimony of Thomas Fassino is substituted. Mr. Fassino has been involved with the Trailhead project from its inception and was the project manager with direct responsibility for this project. Thomas and Wayne worked on a daily basis with each other on this project. Thomas' testimony is almost identical to that of Wayne. The only difference is that Thomas was not a direct participant in the meeting with Vern Brewer in early February, 2006, and with Stan Bastian and Scott Nordstrom on May 18, 2006. However, I do not believe there is any dispute as to what was said by either side at those meetings. Should you have any questions about this, please contact me.

Very Truly Yours,

A handwritten signature in black ink that reads "Tom Morris".

Thomas C. Morris  
Kastera Development, LLC

TCM/bb  
Enclosures

Tom C. Morris, ISB No. 2974  
Kastera LLC  
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IDAHO 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**

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

DIRECT TESTIMONY OF THOMAS FASSINO

May 24, 2007.

1 Q. Please state your name and business address.

2 A. Thomas Fassino, 8850 Emerald St., Suite 164, Boise, Idaho, 83704.

3 Q. Please describe your employment with Kastera LLC.

4 A. I am employed by Kastera Homes LLC, a subsidiary of Kastera LLC (“Kastera”)  
5 as a land use planner. I have worked on the Trailhead development for almost two years  
6 now. For much of that time, I was the project manager.

7 Q. What is the purpose of your testimony?

8 A. I will generally describe the Trailhead development and Kastera’s involvement  
9 with the City of Eagle, Idaho (“City” or “City of Eagle”) and United Water Idaho, Inc.  
10 (“United Water”) in seeking drinking water for the project and possible annexation into  
11 the City of Eagle.

12 Q. Please describe the Trailhead development.

13 A. Kastera is developing 660 acres of property owned by Legacy Investments LLC  
14 in an un-incorporated area of Ada County within an area generally referred to a “north  
15 Ada County”, with access to Willow Creek Road. The property is sometimes referred to  
16 as the Olsen property or the Olsen ranch. Approximately 140 acres in the southeast and  
17 southern most part of the property is included in the City of Eagle Area of Impact  
18 Boundary. At this time, Kastera does not anticipate that any water service will be  
19 necessary from United Water for this 140 acre area. Approximately 520 acres, which is  
20 the balance of the property, is not within the City of Eagle’s Area of Impact.

21 Q. Does the Trailhead property have any irrigation or drinking water rights  
22 associated with it?

23 A. No.

1 Q. How does Kastera intend to provide water to the Trailhead development?

2 A. Kastera approached the City of Eagle in early February of 2006 to inquiry about  
3 water service in the area of the Trailhead property. During this meeting Kastera  
4 discovered that the Trailhead property was not included in the City of Eagle's water  
5 master plan. Wayne Forrey, Kastera's Director of Planning and Development, spoke with  
6 Vern Brewer of Holiday Engineering, who is the City Engineer for the City of Eagle.  
7 They met at Eagle City Hall. Mr. Brewer told Wayne that it would take the City of Eagle  
8 at least two to three years before the City would have a well, water right, and the  
9 necessary storage, pumping and mainline infrastructure in place to provide water to the  
10 Trailhead development. In addition, the City did not master plan to provide water to land  
11 north of Beacon Light Road, which is where the Trailhead property is located. Kastera  
12 was not willing to wait two or three years to develop the property so we approached  
13 United Water to see if they could provide water to the project sooner than the City of  
14 Eagle could.

15 Q. What did United Water tell Kastera about its ability to provide water to the  
16 Trailhead development?

17 A. I met with Mr. John Lee of United Water in February of 2006. Mr. Lee explained  
18 that United Water had the current capacity and the ability to provide all of the water  
19 service necessary for the Trailhead development that we were proposing at that time. We  
20 then sent a letter to Mr. Lee on February 21, 2006, formally requesting water service for  
21 the Trailhead property via United Water. United Water then filed its Application with the  
22 Commission in April of 2006.

1 Q. Did you at some point explore the possibility of annexation with the City of  
2 Eagle?

3 A. Yes. At about the same time that United Water was filing the Application, Kastera  
4 sent a letter to the City of Eagle Mayor Nancy Merrill, dated April 18, 2006, requesting a  
5 meeting to discuss possible annexation of the Trailhead property and our Shadow Valley  
6 property. We were aware that United Water served other areas within the City of Eagle  
7 and believed that annexation and water service were two separate issues. On May 18,  
8 2006, Var Reeve, President of Kastera, and Wayne Forrey met with two City of Eagle  
9 council members and one staff member to discuss development issues. The issue of water  
10 came up at that time and Councilman Stan Bastian and Councilman Scott Nordstrom  
11 confirmed that, while the City was taking steps to work faster on the process, their City  
12 engineer believed that it could be at least two to three years before the City could provide  
13 water to the Trailhead property area. Kastera informed the City Council members and  
14 staff member that it was working with United Water to provide water for the project  
15 because United Water had immediate capacity and facilities in place to serve Trailhead.

16 Q. Did you have any further contact with the City as a result of the May 18, 2006  
17 meeting?

18 A. Yes. When the City found out that we had requested that United Water provide  
19 water service to the Trailhead property and that United Water had filed the Application  
20 with the Commission, we were contacted by City Councilman Stan Bastian who claimed  
21 that Vern Brewer had been mistaken in his previous assessments of the water situation  
22 and that in fact the City could provide water service to Trailhead within one year. We  
23 were also informed that annexation into the City of Eagle would not be possible unless

1 we committed to obtain water from the City. Because our goal was to develop our  
2 Trailhead property and be annexed into the City of Eagle, but only if the City could  
3 assure us of certain development issues, and provided the City could in fact provide water  
4 within our time schedule for development, we decided to further pursue the issue with the  
5 City and discussed entering into a Memorandum of Understanding concerning these  
6 development issues.

7 Q. Did you believe that the City of Eagle could provide you with water as  
8 represented?

9 A. No. We had very serious reservations about the City's ability to perform as  
10 represented. We sent a letter to the Commission on July 24, 2006, hoping to get some  
11 feedback and help in determining if the City could provide water in 6 months. We did not  
12 want to agree to annexation and then be without water for two or three years. At a  
13 meeting on August 10, 2006 with the Commission staff, United Water, Mayor Merrill,  
14 Councilman Bastian, and City of Eagle attorneys, the City again confirmed that it would  
15 not allow annexation if United Water provided water service to the property. At that time  
16 the City further informed all parties that the City would pursue legal action to prevent  
17 Trailhead from receiving water from United Water even if Kastera did not seek  
18 annexation. I felt like the City had put a gun to our head! Wanting to avoid litigation,  
19 Kastera determined that it would be prudent to further pursue annexation with the City.

20 Q. What was going to be the path of annexation for Trailhead?

21 A. Kastera was told on multiple occasions by City Council members, staff members  
22 and their attorneys, including in the meeting on August 10, 2006, and in a letter dated  
23 August 25, 2006, from Bruce Smith to me, that the City had, or was in the process of

1 finalizing, contracts and agreements to provide the annexation path for Trailhead. Kastera  
2 was never privy to the exact path of annexation but was told by City attorneys Bruce  
3 Smith and Susan Buxton, and staff member Nicole Baird Spencer that it would go  
4 through the Triple Ridge subdivision to the south of the Trailhead property. Based upon  
5 these representations by City staff and their attorneys, Kastera continued to pursue  
6 annexation into the City and eventually filed an application with the City for annexation  
7 and rezone in December of 2006.

8 Q. Did the promised annexation path ever materialize?

9 A. No. Kastera subsequently determined that the Triple Ridge subdivision had no  
10 agreement with the City for annexation and in fact did not want to be annexed. This was  
11 confirmed with Nicole Baird Spencer, Eagle City staff member and Susan Buxton, Eagle  
12 City attorney. Based on the City of Eagle's inability to identify any existing or planned  
13 annexation path or contractual agreements to support such a path, (*See CITY OF*  
14 *EAGLE'S RESPONSES TO THE FIRST PRODUCTION REQUEST OF KASTERA*  
15 *LLC TO THE CITY OF EAGLE, IDAHO, Response to Request No. 4, a copy of which*  
16 *is attached hereto), it appears that no annexation path was ever secured. As a result of a*  
17 *lack of an annexation path and the City's inability to provide water service plus inability*  
18 *to commit to certain development requests that Kastera deemed critically necessary,*  
19 *Kastera notified the City by letter dated February 15, 2007, that it was withdrawing its*  
20 *application for annexation and rezone. Kastera also requested a refund of its application*  
21 *fees.*

22 Q. What are Kastera's current development plans for the Trailhead property?

1 A. Kastera is pursuing development of Trailhead within Ada County. Our application  
2 in nearly ready for filing, and Kastera has had several pre-application meetings with Ada  
3 County staff. It is still Kastera's desire that United Water provide water services to the  
4 Trailhead development.

5 Q. Are you confident United Water can provide immediate water service to  
6 Trailhead?

7 A. Yes.

8 Q. Is Kastera able to develop the Trailhead property in Ada County with water  
9 service from United Water?

10 A. Yes.

11 Q. Does that conclude your testimony?

12 A. Yes.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY THAT I HAVE THIS 24th DAY OF MAY, 2007, CAUSED TO BE SERVED BY THE MEHOD(S) INDICATED BELOW, A TRUE AND CORRECT COPY OF THE FOREGOING DOCUMENT:

Dean J. Miller, Esq.  
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PO Box 83720  
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U.S. Mail, Postage Prepaid  
 Hand Delivered  
 Overnight Mail  
 Facsimile



Tom C. Morris

**REQUEST NO. 1:** Please provide a copy of all documentation in your possession, including all letters, memoranda and emails, that in any way deals with the Kastera annexation request for the Trailhead Community.

**RESPONSE TO REQUEST NO. 1:** See Attachment No. 1.

**REQUEST NO. 2:** Please provide a copy of all documentation in your possession, including all letters, memoranda and emails, that in any way deals with the City of Eagle's plan to provide water service to the Trailhead Community.

**RESPONSE TO REQUEST NO. 2:** See Attachment No. 2.

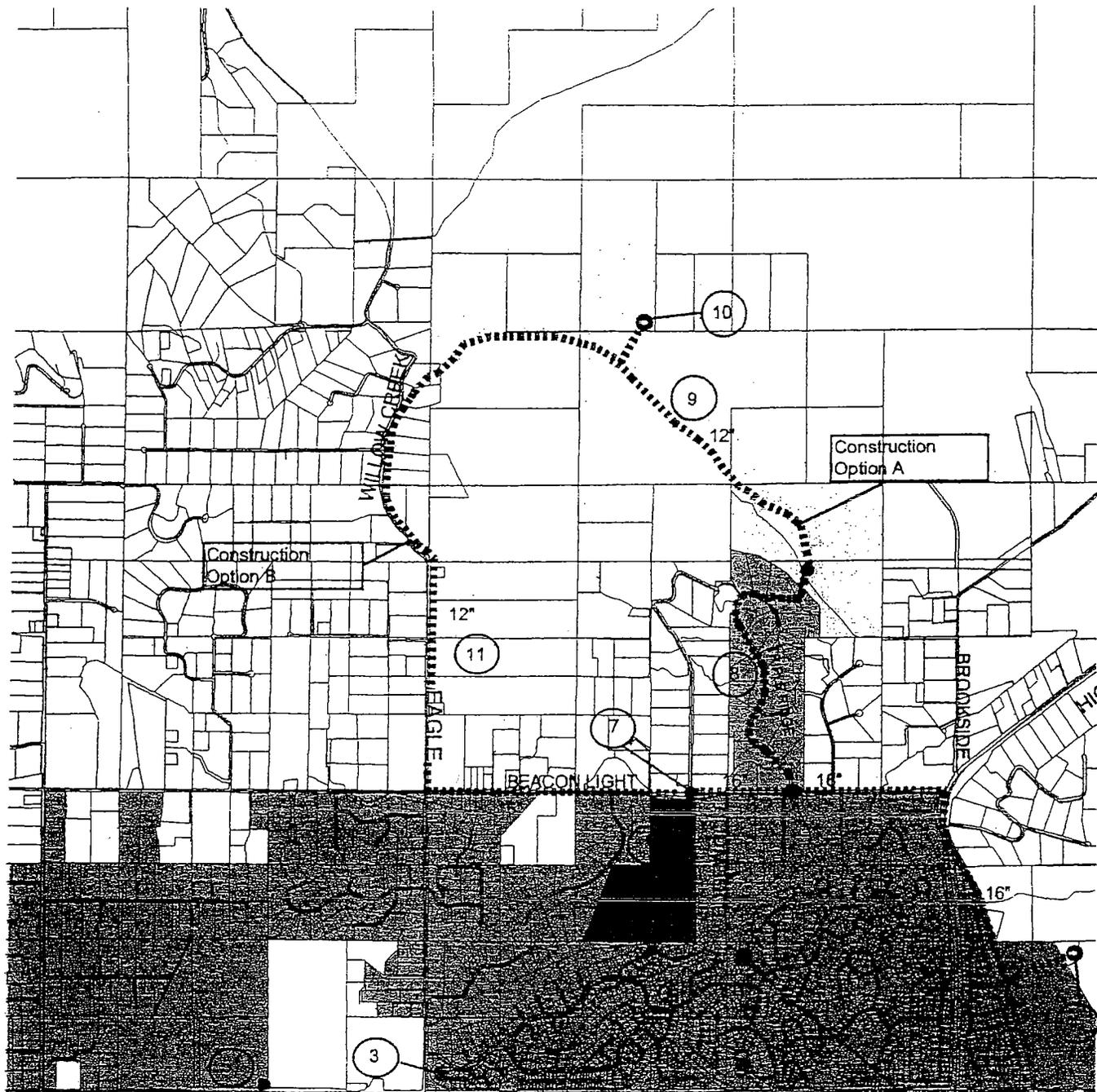
**REQUEST NO. 3:** Please provide a copy of all written or electronic communications with any outside or third party consultants (not including legal counsel) concerning the City of Eagle's ability to provide water service to the Trailhead Community.

**RESPONSE TO REQUEST NO. 3:** See Attachment No. 2.

**REQUEST NO. 4:** If the City of Eagle has, as of this date, an enforceable annexation path for the Trailhead Community, please identify in detail such path of annexation, including all parties involved and the agreements in place to establish such path. If an annexation path does not currently exist, please provide a copy of all letters, contracts, agreements, memoranda of understanding, development agreements or similar documents that the City of Eagle has used in its attempt to establish an annexation path for the Trailhead Community. Please include any map or maps that show the existing, intended or anticipated path of annexation for the Trailhead Community.

**RESPONSE TO REQUEST NO. 4:** See Attachment No. 3.

**ATTACHMENT 3**  
**RESPONSE TO REQUEST NO. 4**  
**CASE NO. UWI-W-06-04**



# City of Eagle Kastera/Triple Ridge Area

## Legend

-  Roads
-  Kastera
-  Triple Ridge
-  Thompson Acres
-  Parcels
-  Eagle City
-  Eagle AOI

1. City Well No. 1 (existing)
2. City Well No. 2 (not in operation)
3. City Well No. 3, construct 2006 (by City)
4. Million-gallon storage reservoir, construct 2007 (by City)
5. Floating Feather Well (existing)
6. Trunk line (Thompson Acres - in process)
7. Booster Pump Station(Kastera)
8. Trunk Line(Kastera)
9. Loop line (Kastera)
10. Storage reservoir - (option to be determined - Kastera)
11. Trunk line (Kastera)

