

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE APPLICATION )**  
**OF UNITED WATER IDAHO INC. TO )** **CASE NO. UWI-W-06-04**  
**AMEND AND REVISE CERTIFICATE OF )**  
**CONVENIENCE AND NECESSITY NO. 143 )** **ORDER NO. 30436**  
**)**

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On April 26, 2006, United Water Idaho Inc. (United Water; Company) filed an Application with the Idaho Public Utilities Commission (Commission) for authority to amend and revise its Certificate of Public Convenience and Necessity No. 143, as amended. *Idaho Code* § 61-526; IDAPA 31.01.01.112. United Water seeks to add an area known as the Trailhead Community (Trailhead) to its certificated service territory. The area of expansion (approximately 520 acres) is located in Ada County north of Homer Road near the City of Eagle in an area more particularly described as: A parcel of land being all of the West 1/2 of the Southwest 1/4 of Section 27 and all of Section 28, Township 5 North, Range 1 East, Boise Meridian, Ada County, Idaho.

On August 3, 2007, the Commission in Order No. 30367 approved United Water's Application to amend its certificated area of service and authorized the Company to provide water service to Trailhead.

On August 24, 2007, the City of Eagle petitioned the Commission to reconsider its Order No. 30367. *Idaho Code* § 61-626(1); IDAPA 31.01.01.331.01. On August 31, 2007, United Water filed an answer to the City's Petition. *Idaho Code* § 61-626; IDAPA 31.01.01.331.05. On September 10, 2007, the City of Eagle filed a reply brief.

The City raises two issues on reconsideration.

1. First: whether the Commission determined that United Water had the capability (capacity and resources) to serve Trailhead and whether there was substantial evidence to support such a finding.

Regarding the first issue, the City contends that the capability of a provider of water to serve Trailhead cannot be determined without first knowing the clearly defined needs and development plans of Capital Development, Inc. (CDI).

United Water contends that the City's argument ignores the plain text of the Commission's Order and the transcript of the proceeding.

The City maintains that the Commission's authority in this case is limited to determining whether a regulated water service company possesses the capability to provide service to a specific development in a specific area. The City contends, however, that the Commission should give deference to a municipality with specific planning efforts to serve an area. Because a portion of the Trailhead development (140 acres south of Homer Road) is located within the municipal area of impact, the City submits that deference should be given to the City to serve Trailhead in its entirety.

If the Commission based its decision solely on the jurisdictional limitation of a municipality to serve outside City boundary, the City maintains its objection to the Commission's Order.

2. Second: whether the Commission exceeded its statutorily enumerated powers as provided in Idaho Code, Title 61, and erroneously determined that the City had no authority to serve outside its municipal boundaries and designated area of impact. The City contends that the Commission does not have the statutory authority to determine the jurisdiction and authority of a municipality.

Regarding the second issue, the City contends that municipalities have a right to contract to provide and extend municipal services outside municipal boundaries. *Idaho Code* §§ 50-323; -222. A city's power to contract for services, it states, is not defined by city boundaries. The orderly planning and development of future municipal services to a growing area, it states, logically requires a municipality's ability to "contract and be contracted with." *Idaho Code* § 50-301. The City reads the Commission's Order as focusing on the City's municipal contractual power and authority. The City's statutory and contractual powers, the City contends, is a judicial question and beyond the Commission's jurisdiction.

United Water presents a "judicial powers" versus "judicial functions" analysis and concludes that the Commission can exercise judicial functions of ascertaining the law and the legal status of parties that come before the Commission. Further, it should be remembered, it states, that the City, of its own volition, intervened in this proceeding, claiming it was "ready, willing and able" to serve Trailhead. It is inconsistent for the City to say, on one hand, it is able

to serve, but on the other, to assert the Commission has no authority to examine its legal ability to serve.

At the outset, United Water contends, it is important to clarify what this case is not about. It does not, it states, involve a contract or agreement between a willing landowner and a city to provide water service outside municipal boundaries. The question presented here, it contends, is whether a city may compel an unwilling landowner outside its boundaries to accept water service from the City. The case authority cited by the City in its Petition, the Company states, all relate to circumstances involving contractual relations between a city and a willing extra-territorial landowner. (City on reply notes exception – *Albee v. Judy*, 136 Idaho 226, 31 P.3d 248 (2001).)

United Water in its answer provides an analysis of constitutional and statutory limits to municipal power. Citing *Blaha v. Board of Ada County Commissioners*, 134 Idaho 770, 9 P.3d 1236 (2000), the Company contends that creation of an Area of Impact and adoption of a Comprehensive Plan do not authorize a city to exercise municipal powers or authority within the Area of Impact. The City's role within such area, the Company contends, is only advisory to the county.

### ***Commission Findings***

The City of Eagle has filed a Petition for Reconsideration of our final Order No. 30367 approving United Water's Application to add a 520-acre portion of Trailhead in Ada County north of Homer Road to the Company's certificated service territory. The Commission has reviewed the filings of record in Case No. UWI-W-06-04 including our Order No. 30367, the City's Petition, United Water's Answer and the City's Reply.

The Commission in this case considered the Application of United Water to provide water service for Trailhead and the record before us. We find the record supporting our decision to be adequate and sufficient. *Idaho Code* § 61-526; IDAPA 31.01.01.112. In our Order we stated:

This Commission finds that United Water has adequately planned for and has a fully integrated water system with sufficient and multiple sources of supply and is capable of providing safe and reliable water service to the 520 acres of Trailhead Community property located north of Homer Road and outside the City of Eagle's area of impact boundary. Tr. pp. 22, 24, 61, 62, 82, 84, 126. Under the Company's existing line extension rules, we find that the cost of additional facilities required to serve Trailhead will be contributed by the

developer without refund. Tr. pp. 22, 23. Any booster stations and storage reservoirs that may be required will be constructed pursuant to a Special Facilities Agreement and a developer advance with related refund eligibility. Tr. pp. 84-86. We find that service to Trailhead by United Water will be in the public interest and that the same can be provided without adversely affecting the Company's other water customers.

Order No. 30367, p. 3. We approved United Water's Application because we found that Kastera, the developer of Trailhead, had requested water service from United Water, because we found the Company has the present ability to meet the identified water needs of Trailhead and because we found water service provided by United Water to the requested area of expansion to be in the public interest. As to the City's request for deference, we note that the 140 acres of Trailhead south of Homer Road and within the City's Area of Impact is not part of United Water's Application. Indeed, Kastera's position, as reflected at hearing, is that the 140 acres is not to be developed as part of Trailhead. Tr. p. 163.

The Commission in its Order made no findings regarding the City's contractual authority to extend service outside its municipal boundaries and designated area of impact. The City's contractual powers are what they are. They do not derive from this Commission, and we do not seek to define them, expand them or limit them. We offer this statement by way of clarification. IDAPA 31.01.01.325. That being said however, in the spirit of comity, we amend our Order No. 30367 deleting language that we find unessential and the City finds troublesome. *Idaho Code* § 61-624; IDAPA 31.01.01.326.02. Our deletion of such language, we find, does not compromise the integrity of the Order.

The City raises two issues in its Petition for Reconsideration but offers no statement of the "nature and quantity of evidence it would offer if reconsideration is granted," as required by Rule of Procedure 331.01. We conclude that the City's argument is fully contained in its Petition and reply. In light of the foregoing discussion and clarification, the Commission finds it reasonable to deny the City of Eagle's Petition for Reconsideration. *Idaho Code* § 61-626(2); IDAPA 31.01.01.332.

#### **CONCLUSIONS OF LAW**

The Commission has jurisdiction over United Water Idaho Inc., a water utility, and the issues raised in Case No. UWI-W-06-04 pursuant to the authority granted under Title 61 of the Idaho Code and the Commission's Rules of Procedure, IDAPA 31.01.01.000 *et seq.*

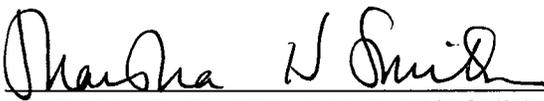
**ORDER**

In consideration of the foregoing and as more particularly described above, IT IS HEREBY ORDERED and the Commission does hereby deny the City of Eagle's Petition for Reconsideration of our final Order No. 30367.

THIS IS A FINAL ORDER DENYING RECONSIDERATION. Any party aggrieved by this Order or other final or interlocutory Orders previously issued in this Case No. UWI-W-06-04 may appeal to the Supreme Court of Idaho pursuant to the Public Utilities Law and the Idaho Appellate Rules. See *Idaho Code* § 61-627.

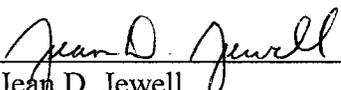
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 20<sup>th</sup> day of September 2007.

  
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PAUL KJELLANDER, PRESIDENT

  
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MARSHA H. SMITH, COMMISSIONER

  
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MACK A. REDFORD, COMMISSIONER

ATTEST:

  
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Jean D. Jewell  
Commission Secretary

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