

McDevitt & Miller LLP
Lawyers

(208) 343-7500
(208) 336-6912 (Fax)

420 W. Bannock Street
P.O. Box 2564-83701
Boise, Idaho 83702

Chas. F. McDevitt
Dean J. (Joe) Miller

September 14, 2007

Via Hand Delivery

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

RECEIVED
2007 SEP 14 AM 10:46
IDAHO PUBLIC
UTILITIES COMMISSION

Re: UWI-W-07-02

Dear Ms. Jewell:

Enclosed for filing in the above matter please find the original and seven (7) copies of United Water Idaho's Initial Reply to Motion to Vacate.

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

Thank you for your assistance.

Very truly yours,

McDEVITT & MILLER LLP



Dean J. Miller

DJM/hh
Enclosures

Dean J. Miller (ISB No. 1968)
MCDEVITT & MILLER LLP
420 West Bannock Street
P.O. BOX 2564-83701
Boise, Idaho 83702
Tel: 208-343-7500
Fax: 208-336-6912
joe@mcdevitt-miller.com

RECEIVED
2007 SEP 14 AM 10:46
IDAHO PUBLIC
UTILITIES COMMISSION

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION)
OF UNITED WATER IDAHO INC., TO) **CASE NO. UWI-W-07-02**
AMEND AND REVISE CERTIFICATE OF) **INITIAL REPLY TO MOTION TO**
CONVENIENCE AND NECESSITY NO 143) **VACATE**

COMES NOW United Water Idaho Inc., (“United Water”) and makes the following Initial Reply to the Motion to Vacate Hearing (“Motion”) filed by the City of Eagle (“City”) on September 13, 2007.

Recommendation and Discussion Regarding Procedure on Motion

For the reasons set forth below United Water recommends that the Commission adopt the following procedures with respect to the Motion:

- The parties should file any desired supplemental testimony on Monday September 17th, as previously ordered by the Commission¹;
- United Water and Capitol Development should be directed to file a full Reply to the City’s Motion by Wednesday September 19th;
- Based on the pre-filed Supplemental Testimony and the full Replies to the Motion, the Commission could rule on Friday, September 21st whether to vacate

¹ Second Notice of Hearing, August 30, 2007.

the hearing Scheduled for Monday September 24th. Alternatively, the Commission could receive additional oral argument on September 24th as to whether the hearing should be vacated.

Because United Water did not receive the City's Motion until approximately 4:45 p.m. on Thursday September 13th,² United Water has not had adequate time to prepare a full reply to the Motion and it would be unreasonable to expect a complete reply before Monday September 17, 2007, the date on which Supplemental Testimony is due. Because the City's Motion alleges improper collusion between United Water and Capitol Development, United Water should have an adequate opportunity to respond to allegations, which if believed, would constitute misleading conduct on the part of United Water. At the same time, the procedural schedule and hearing date should not be prematurely vacated based on allegations of one party to the proceeding.

After the Commission has the benefit of a full record, to be revealed by Supplemental Pre-filed Testimony and a full reply to the Motion, United Water is confident the Commission will come to the following conclusions:

- The City's Motion is an attempt to divert attention away from the central fact that the City has been unable to obtain from the Idaho Department of Water Resources a final non-appealable order approving a water right permit to serve the Lanewood Development and, in consequence, the City has no present ability to serve the development³;

² At about 3:20 PM on Thursday September 13, counsel for United Water received a voice mail from counsel for the City indicating that a motion was being filed along with a general statement of the motion and grounds therefore. An e-mail from counsel for the City followed shortly after that.

³ Whether the City's legal or physical ability to serve is a relevant factor for Commission consideration is a question to be subsequently discussed. The fact is, however, as will be demonstrated by the Supplemental Testimony of Scott Rhead to be filed on September 17, the City does not now have a water right permit which would enable it to provide water service to Lanewood.

- United Water has not somehow been “secretly planning” to serve the Lanewood Development.⁴ The Agreement between Capitol Development and the City recites that one of its purpose is to: “ ..provide for United Water’s service to the Property in the event Eagle is unsuccessful in it efforts to obtain water rights to serve the Property...”⁵ At the request of Capitol Development, United Water executed a Confidentiality Agreement, attached hereto, which enabled United Water personnel to read the Agreement between Capitol and the City. The Confidentiality Agreement did not provide for any form of “secret planning” between United Water and Capitol, and there has been none.

Conclusion

For the reasons cited herein the Commission should:

- Require that pre-filed Supplemental Testimony be filed on September 17th, as previously ordered;
- Require that full Replies to the City’s Motion be filed by Wednesday September 19th;
- Thereafter enter its Order determining whether to vacate the hearing scheduled for September 24th, or alternatively receive additional oral argument on September 24th.

Dated this 14 day of September, 2007.

UNITED WATER IDAHO INC.

By: 
Dean J. Miller
Attorneys for United Water Idaho, Inc.

⁴ Motion Pg. 3.

⁵ Agreement attached to Motion, Pg. 1 of Agreement.

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of September, 2007, 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 Smith	Hand Delivered	<input type="checkbox"/>
MOORE, SMITH, BUXTON & TURCKE	U.S. Mail	<input checked="" type="checkbox"/>
950 W. Bannock, Suite 520	Fax	<input type="checkbox"/>
Boise, ID 83702-5716	Fed. Express	<input checked="" type="checkbox"/>
	Email	<input checked="" type="checkbox"/>

Robert B. Burns	Hand Delivered	<input type="checkbox"/>
MOFFATT THOMAS	U.S. Mail	<input checked="" type="checkbox"/>
101 S. Capital Blvd. 10 th Floor	Fax	<input type="checkbox"/>
P.O. Box 829	Fed. Express	<input type="checkbox"/>
Boise, ID 83701-0829	Email	<input checked="" type="checkbox"/>

BY: Heather Hale, legal Asst.

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

The Parties to this Confidentiality and Non-Disclosure Agreement (“Agreement”), are Capital Development Inc., 6200 Meeker Place, Boise, Idaho (“Capital”) and United Water Idaho Inc., an Idaho Corporation, 8248 W. Victory Road, Boise, Idaho (“United Water”) (hereafter referred to as a “Party”, or collectively as “Parties”).

In consideration of the party’s continuing cooperation in Idaho Public Utilities Commission Case No. UWI-W-07-02, Capital agrees to provide to United Water a copy of that certain Annexation and Cooperation Agreement dated May 23, 2007, between Capital and the City of Eagle, Idaho, herein after the “Confidential Information”, and United Water agrees to the following:

Use of Confidential Information.

United Water will maintain the Confidential Information with at least the same degree of care it uses to protect its own proprietary information, but in no case with less than reasonable care. All persons who may be entitled to review, or who are afforded access to the Confidential Information by reason of this Agreement shall neither use nor disclose the Confidential Information for purposes of business or competition, and shall keep the Confidential Information secure as a trade secret, confidential or proprietary information and in accordance with the purposes and intent of this Agreement.

Persons Entitled to Review.

Access to confidential information shall be strictly limited to employees of the United Water and its legal representatives who have executed an Exhibit “A” to this Agreement.

Nondisclosure Agreement.

Confidential Information shall not be disclosed to any person who has not signed an Exhibit A.

Copies.

No copies or transcriptions of the Confidential Information shall be made by United Water except as necessary to make the information available to individuals who have executed an Exhibit "A" to this Agreement.

Governing Law and Attorneys' Fees.

This Agreement and the transactions hereunder will be governed by the laws of the State of Idaho, U.S.A., excluding its conflict of laws principles. The parties hereby consent to the personal jurisdiction of the courts of Idaho for any dispute arising out of this Agreement. In the event of any suit, action or proceeding arising out of or relating to this Agreement, the prevailing party will be entitled to reasonable attorneys' fees and reasonable costs incurred.

General.

This Agreement: (i) may be amended or modified only by an express writing signed by an authorized representative of each party; (ii) will not be construed as creating a joint venture, partnership or other form of business association; (iii) is not assignable or delegable in whole or in part by either party without the written consent of the other party; (iv) shall inure to the benefit of and be binding upon the parties, their successors, the assigns of the Parties and the permitted assigns of Recipient; (v) is in the English language only, which language shall be controlling in all respects, and all versions of this Agreement in any other language shall not be binding on the parties hereto; (vi) may be executed in any number of counterpart originals, each of which shall be deemed an original instrument for all purposes, but all of which shall comprise one and the

same instrument; and (vii) may be delivered by facsimile and a facsimile of this Agreement shall be binding as an original.

Remedies Available.

Each Party agrees that a Party hereto shall be entitled to equitable relief, including injunction and specific performance, in the event of any breach or threatened breach of the provision of this agreement, in addition to all other remedies available to a Party at law or in equity.

IN WITNESS WHEREOF, the parties hereto, on their own behalf and on behalf of their Subsidiaries, have caused this Agreement to be executed by their duly authorized representatives.

Dated this 24th day of May, 2007

CAPITAL DEVELOPMENT INC

By: _____

Name: _____

Title: _____

UNITED WATER IDAHO INC.

By: Gregory P. Wyatt

Name: Gregory P. Wyatt

Title: VICE PRESIDENT

EXHIBIT "A"

I have reviewed the foregoing Confidentiality and Non-Disclosure Agreement dated May 21 and agree to be bound by the terms and conditions of such Agreement.

Don J. Miller
Name
1691 Pinedale Blvd
Residence Address
McNitt & Miller
Employer or Firm
420 W. Benark
Business Address
United Water
Party
5/25/07
Date