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IDAHO PUBLIC
UTILITIES COMMISSION

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Attorneys for Capital Development, Inc.

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-07-02

**INITIAL REPLY OF CAPITAL
DEVELOPMENT, INC. TO THE CITY
OF EAGLE'S MOTION TO VACATE
HEARING**

Intervenor Capital Development, Inc. ("CDI"), the developer of the real property (Lanewood Estates) that is the subject of the above-captioned matter, joins in the Initial Reply made by United Water Idaho Inc. ("United Water") of equal filing date hereto and, in addition, supplements such Initial Reply with the below information.

The basis for the request that the hearing in this matter be continued from the May 24, 2007, hearing was explained by counsel for CDI and the City of Eagle ("Eagle") at the May 24 hearing as follows:

**INITIAL REPLY OF CAPITAL DEVELOPMENT, INC. TO THE
CITY OF EAGLE'S MOTION TO VACATE HEARING - 1**

BOI_MT2:664838.1

MR. BURNS: I would simply confirm that an agreement has been reached between Capital Development, Inc. and the City of Eagle that will *allow the City of Eagle 90 days in which to try to obtain in fact those water rights necessary to provide timely water service to the project of Capital Development, Inc.* and so in accordance with Ms. Buxton's request, we would ask that this matter be continued over to the first available date occurring after August 24th of this year.

Transcript of May 24, 2007, PUC Hearing at p. 9, LL. 9-17 (emphasis added). Counsel to Eagle confirmed the foregoing intent of the parties as follows:

MS. BUXTON: *Based on what Mr. Burns said, the goal here is to keep all of the parties in the same position that they have. Certainly everybody is prepared. All the testimony and witnesses are ready* with regard to a hearing and a decision by this body, but we're asking for this stay to go forward for approximately 90 days to see if we can work out those differences in the 90-day period. . . .

Id. at p. 10, LL. 16-23 (emphasis added).

Eagle's unfounded and unsupported assertions of collusion and misconduct by CDI and United Water are intended solely to confuse the issues before the Commission for reasons of delay: to ensure that CDI cannot commence construction of its project this fall, so that Eagle might have another six months or so to try "to obtain in fact those water rights necessary" to service Lanewood Estates--which it currently does not have.¹ As such, Eagle's motion has been made in extreme bad faith and may well constitute actionable conduct. Further, because, as Eagle's counsel acknowledges, "[a]ll the testimony and witnesses are ready," there can be no possible prejudice to Eagle for the Commission (i) to give CDI and United Water a reasonable time to respond to Eagle's groundless assertions, and (ii) to proceed forthwith to the scheduled hearing on September 24.

¹ See the attached three recent e-mails between counsel for Eagle and CDI.

CONCLUSION

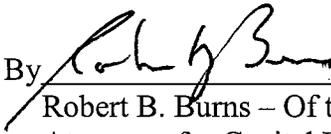
For the foregoing reasons, CDI joins with United Water in urging the

Commission to:

- Require that pre-filed supplemental testimony be filed on Monday, September 17, as previously ordered;
- Require that full replies to Eagle's motion be filed by Wednesday, September 19; and
- Thereafter enter its Order determining whether to vacate the hearing scheduled for September 24 or, alternatively, to receive additional oral argument on September 24.

RESPECTFULLY SUBMITTED this 14th day of September 2007.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By 
Robert B. Burns – Of the Firm
Attorneys for Capital Development, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of September 2007, I caused a true and correct copy of the foregoing **INITIAL REPLY OF CAPITAL DEVELOPMENT, INC. TO THE CITY OF EAGLE'S MOTION TO VACATE HEARING** to be served by the method indicated below, and addressed to the following:

Gregory P. Wyatt
UNITED WATER IDAHO, INC.
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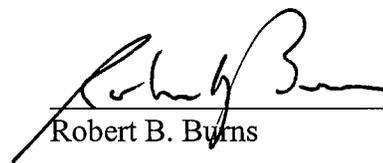
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Robert B. Burns

③
From: "Bruce M. Smith" <BMS@msbtlaw.com>
To: "Bob Burns" <RBB@moffatt.com>, "Susan E. Buxton" <SEB@msbtlaw.com>
Date: 9/14/2007 9:47:32 AM
Subject: RE: Eagle Status Report to Lanewood/CDI

Bob-- We will have a settlement meeting on Tuesday as a result of the actions by your client. There will be a number of items to discuss and we will not start the process, nor jeopardize the City's interests, in a series of emails. Bruce

-----Original Message-----

②
From: Bob Burns [mailto:RBB@moffatt.com]
Sent: Thursday, September 13, 2007 6:50 PM
To: Susan E. Buxton
Cc: Chris Yorgason; Dave Yorgason; Ramon Yorgason; Joe Miller; Bruce M. Smith
Subject: Re: Eagle Status Report to Lanewood/CDI

Susan, as I have now asked you and Bruce repeatedly to do without success, would you please provide me with reasonable documentation establishing that the City has water rights that can be accessed at the boundary of the Lanewood development to service that property. The fact that the City may have water rights in other locations but which cannot be used to service the Lanewood development is both misleading and meaningless for the purposes of the present PUC proceeding. Regards.
Bob

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>>> "Susan E. Buxton" <SEB@msbtlaw.com> 9/13/2007 12:25 PM >>>
Bob:

①
Pursuant to the May 23, 2007 agreement between CDI and the City of Eagle, the City has been providing periodic updates on the City water services. With this email, the City is notifying CDI that it has sufficient water rights to serve the development. However, the City has not received an annexation application or any plans from CDI as required by the Agreement. Please let me know when CDI will be submitting the annexation application and the plans to the City for review.

Thank you,
Susan

Susan E. Buxton
Moore Smith Buxton & Turcke, Chartered
950 W. Bannock Street, Suite 520