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IDAHO PUBLIC  
UTILITIES COMMISSION

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

IN THE MATTER OF THE  
APPLICATION OF SUEZ WATER  
IDAHO FOR AMENDMENT OF  
CERTIFICATE OF PUBLIC  
CONVENIENCE AND NECESSITY

**Case No. SUZ-W-21-02**

**APPLICATION AND REQUEST FOR  
MODIFIED PROCEDURE**

SUEZ Water Idaho Inc. ("SUEZ" or "Company") through its attorneys Givens Pursley LLP, and pursuant to Idaho Code 61-526 and Rules of Procedure of the Idaho Public Utilities Commission ("Commission"), IDAPA 37.01.01.112 & 37.01.01.201, applies to the Commission to amend and revise its Certificate of Public Convenience and Necessity No. 143, as amended ("CPCN") to remove an area located in unincorporated Ada County, Idaho from its certificated service area as described hereinafter. In support of this Application, SUEZ respectfully submits as follows:

1. SUEZ is a public utility water corporation within the meaning of Idaho public utility statutes, and is duly organized and existing under the laws of the State of Idaho with its principal office and place of business at 8248 West Victory Road, Boise, Idaho 83709.

2. SUEZ currently provides water service to approximately 99,000 customers within its certificated service area in the greater Boise metropolitan area pursuant to Certificate of Public Convenience and Necessity No. 143, as amended.

3. By this Application, SUEZ seeks to remove a currently unserved area included within its CPCN from its certificated service area. This area is legally described in Attachment A and depicted in Attachment B attached hereto.

### **BACKGROUND**

#### **A. 2007 Incorporation of Trailhead Community Property into SUEZ' CPCN**

4. The area SUEZ seeks to remove from its certificated service area was approved for inclusion within SUEZ' CPCN in Case No. UWI-W-06-04 by Commission Amended Order No. 30367 (on reconsideration) dated September 20, 2007. The area was approved for inclusion in SUEZ' CPCN expressly to allow the Company to provide service to an approximately 520-acre tract described as the "Trailhead Community." The Trailhead Community was a residential subdivision for up to 700 homes within unincorporated Ada County then proposed to be developed by Kastera Development, LLC ("Kastera").

5. The City of Eagle intervened in the Company's application proceeding and argued that it wished to provide municipal service to the Trailhead Community, that it was prepared to do so, and that it was in ongoing negotiations with Kastera to provide that service.

6. At the conclusion of the hearing the Commission concluded, among other things, that the Company was the only utility that had demonstrated a present ability to

provide service to Trailhead Community. The Commission noted that the subject area was both outside the City's corporate limit and area of impact boundaries.

7. Of relevance to the instant Application, Commission Amended Order No. 30367 also observed:

What the record in this case reveals is that both the City's Mayor and the Company's general manager agree that it is in the public interest for area water providers to cooperate in water planning and area of service decisions. Yet it appears from the testimony of those with responsibility for planning for each water provider that such cooperation does not take place, not even discussions. Is the public interest being equally well served by not engaging in planning discussions? We suspect not. (citations to record omitted).

Amended Order 30367 at 3.

8. Ultimately, the Trailhead Community was never developed. The entire area is undeveloped and unserved, and SUEZ has not received any formal request for extension of service from, or committed to serve, any property owner in the area. SUEZ is not aware of any development applications pending before Ada County or the City of Eagle affecting this area.

**B. SUEZ and City of Eagle Water Management Agreement**

9. On November 18, 2018, SUEZ and Eagle Water Company ("EWC") filed with the Commission a Joint Application requesting that the Commission approve the proposed acquisition of EWC by SUEZ (Case Nos. SUEZ-W-18-02/EAG-W-18-01). Numerous parties were granted intervention in that proceeding, including the City of Eagle.

10. In its Amended Petition to Intervene, the City disclosed to the Commission and parties that it had recently become aware of, and was evaluating, documents that

purported to require EWC to provide the City a right of first refusal to purchase EWC's water system.

11. On February 26, 2019, the City commenced an action in the District Court, Fourth Judicial District, for declaratory and other relief, asserting that it had a contractual, paramount right of first refusal to purchase EWC's water system (CV01-19-03534; the "District Court Case"). In June of 2019, SUEZ was granted intervenor status in that civil case.

12. Because of the pendency of the City's District Court case, SUEZ requested, and the Commission granted a stay of proceedings in Case Nos. SUEZ-W-18-02/EAG-W-18-01. That matter continues to be stayed.

13. The City, EWC and SUEZ entered into a settlement and a stipulation for dismissal of the District Court Case, and the Court's Order of Dismissal was filed March 8, 2021). The dismissal was without prejudice, allowing the City to reassert its claims if the proposed sale of the EWC assets to SUEZ is not completed.

14. As part of the settlement of the District Court Case, SUEZ and the City have entered into a Water Management Agreement ("WMA") effective as of February 9, 2021. A primary purpose of the WMA is to provide a mechanism and process for the parties to cooperate in their future water planning and area of service decisions. The WMA contains terms addressing future service area adjustments, administrative filings with the Idaho Department of Water Resources and with the Commission, guiding principles for future intertie agreements, and maintenance of good faith communications concerning items of joint interest to SUEZ and the City.

15. Of specific relevance to this Application, the WMA includes an agreement that within sixty days of the effective date of the WMA (i.e., April 9, 2021) SUEZ would file an application with the Commission seeking to remove the Trailhead Community area that is the subject of this Application from SUEZ' CPCN. This Application is in furtherance of that agreement.

16. The WMA also provides that regardless of whether this Application is approved by the Commission, the subject area would nevertheless be treated by the parties as a "Gray Area." Under the WMA, within a Gray Area, and on a request-by-request basis, the Party that has facilities available in the vicinity or that is otherwise most easily, efficiently and reliably able to serve a new customer request made after January 22, 2021 shall provide water service to that portion of the area as included in the new customer request.

17. The City and SUEZ are also parties to a Franchise Agreement entered into in May 2003. Section 14 of the Franchise Agreement provides in part that:

. . . the City agrees not to engage in the business of providing water service during the life of this franchise or any extension thereof in [SUEZ'] certificated service area approved by the PUC as of September 10, 2002 and as subsequently amended by PUC.

## **DISCUSSION**

18. As further substantiated by the Direct Testimony of Cathy Cooper, SUEZ' Director of Engineering, which is being filed contemporaneously with this Application, Commission approval of this Application is in the public interest.

19. The key premises of the application and the Commission's order in Case No. UWI-W-06-04 was that Kastera's development of the Trailhead Community in 2006-2007 was imminent, and that if the Company was best able to extend service to meet

that immediate need it should be authorized to do so. However, the Trailhead Community never came to be and the area remains an undeveloped and unserved area within unincorporated Ada County.

**20.** SUEZ has only received one inquiry regarding availability of water service within the subject area. SUEZ has not received any formal request for service, or entered into any binding commitment to serve or special facilities agreement with any property owner within the subject area.

**21.** Removal of the area from SUEZ' certificated service area would not impair SUEZ' ability to serve any of its existing customers or to extend service to its remaining certificated service area, nor would it result in any stranded investment or affect the usefulness of any existing facilities.

**22.** The City of Eagle has represented to SUEZ that, consistent with the "Gray Area" agreement of the WMA, it can and will serve customers in the subject area if it is removed from SUEZ' service area by amendment of the CPCN.

**23.** Implementation of SUEZ' and the City's Gray Area concept fosters cooperation between them that heretofore may have been lacking. Both parties are now headed by different managers, who through their settlement have committed the City and SUEZ to good faith cooperation and communication concerning their water planning and area of service decisions. This is intended to result in a more efficient allocation of resources, which will benefit their respective customers and/or citizens.

**24.** Removal of the subject area from SUEZ' certificated service area would not necessarily preclude SUEZ from extending service there in the future if a property owner required water service and SUEZ and Eagle agreed that SUEZ was the best able



to serve consistent with their WMA. But it would provide property owners in the area an additional option for water service that they currently do not have—namely City service.

25. Recognizing that the requested CPCN amendment will be of specific interest to property owners in the affected area, SUEZ has provided written notice directly to property owners of record in the form attached hereto as Attachment C advising them that this Application would be filed and how to obtain more information about the Application from SUEZ and on the Commission’s website.

26. Because SUEZ is requesting removal of an area from its CPCN, the requirements of Commission Rule 12.02, 12.04 and 12.05 are not applicable. SUEZ is not expanding or constructing facilities or making investment in the subject area, nor does it have existing facilities or investment in the area. Approval of this Application will therefore have no effect on SUEZ’ revenue requirement.

#### **REQUEST FOR MODIFIED PROCEDURE**

27. SUEZ does not believe that the public interest requires a hearing on the issues presented by this Application and requests that the matter be processed by Modified Procedure under Commission Rule 201, IDAPA 31.01.01.201.

28. Communications and service of notices, pleadings and orders in this matter should be sent to the following:

Mr. Marshall Thompson  
SUEZ Water Idaho Inc.  
8248 West Victory Rd.  
Boise, ID 83709  
[marshall.thompson@suez.com](mailto:marshall.thompson@suez.com)

Michael C. Creamer  
Preston N. Carter  
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## PRAYER FOR RELIEF

WHEREFORE, the Applicant SUEZ Water Idaho Inc. respectfully requests that the Commission:

1. Determine that a hearing is not required and process this matter by Modified Procedure;
2. Approve the amendment of SUEZ' CPCN by removal of the "Trailhead Community" area in unincorporated Ada County described in Attachment A hereto from SUEZ' certificated service area;
3. Authorize the preparation and filing of an Amended Certificate No. 143 to exclude the area described herein; and
4. Grant such other and further relief as the Commission may determine proper herein.

DATED this 2<sup>nd</sup> day of April, 2021.

SUEZ Water Idaho Inc.

By:   
\_\_\_\_\_  
Michael C. Creamer  
Givens Pursley LLP  
*Attorneys for SUEZ Water Idaho Inc.*



ATTACHMENT A  
SUEZ WATER IDAHO INC.  
SUZ-W-21-02

Legal Description of Area Requested for Removal  
from CPCN – SUEZ Water Idaho Inc.

(1 PAGE)

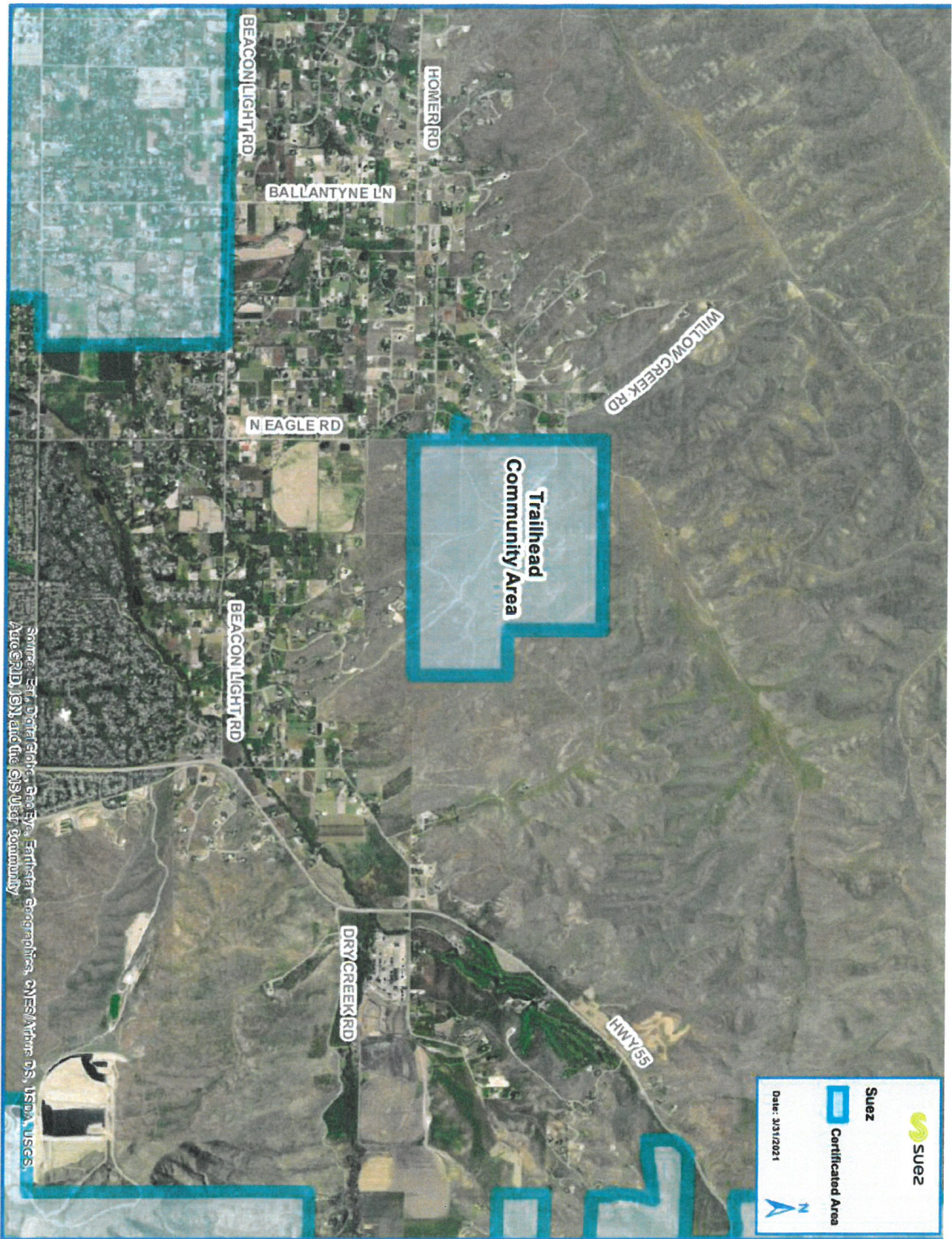
## TRAILHEAD COMMUNITY EXPANSION

A Parcel of land being all of Section 28; and all of the West ½ of the Southwest ¼ of Section 27; and Lot 5, Block 1, Stillwell Estates No. 1, Section 29, as recorded in Book 33 of Plats at Page 02040, Records of Ada County, Idaho, Township 5 North, Range 1 East, Boise Meridian; Ada County, Idaho.

ATTACHMENT B  
SUEZ WATER IDAHO INC.  
SUZ-W-21-02

Depiction of Area Requested for Removal from  
CPCN – SUEZ Water Idaho Inc.

(1 PAGE)



ATTACHMENT C  
SUEZ WATER IDAHO INC.  
SUZ-W-21-02

Notice to Customers – SUEZ Water Idaho Inc.

(2 PAGES)



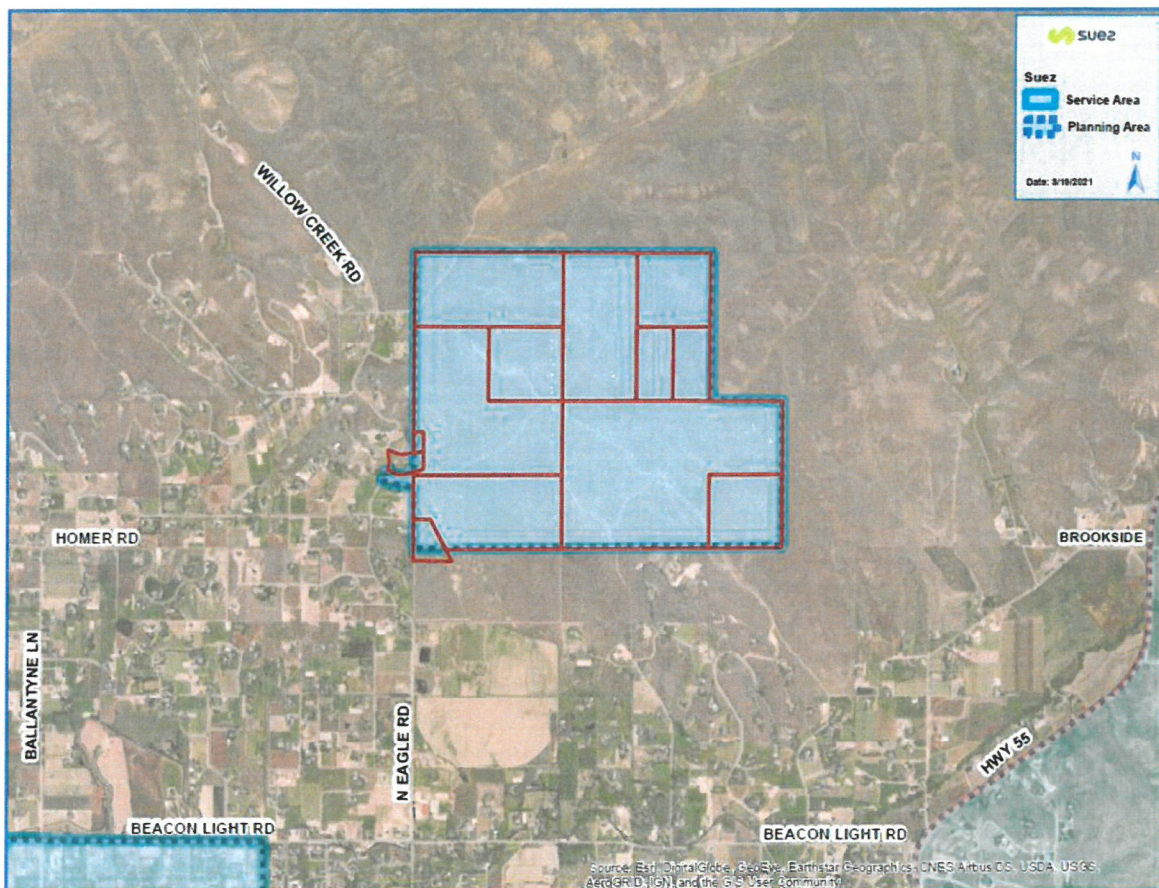


Cathy Cooper, P.E.  
Director of Engineering  
Suez Water Idaho  
8248 W. Victory Road  
Boise, Idaho 83709

March 19, 2021

Dear Property Owner:

In the near future, SUEZ will request the Idaho Public Utilities Commission remove the area on the map below from our certificated service area. SUEZ currently has no customers in this area. As a property owner within this area, you may soon have more options for water service should you choose to connect to a municipal or public utility water provider.







Currently, SUEZ is obligated to provide water service to customers in this area upon request. This filing, if approved by the Commission, would remove that obligation while allowing property owners to choose a water provider that most efficiently serves their property.

**How will this affect me?**

Unless you choose to switch from a well to a municipal or public utility water provider, you won't notice a change. However, should you want to connect to a municipal or public utility water provider, you can explore connection options with the City of Eagle, with SUEZ, or with another provider of your choice.

**How will I benefit?**

You will have more choices about how to provide water service to your property.

**Why is SUEZ doing this?**

In 2006, SUEZ filed with the Idaho Public Utilities Commission to add this area to our certificated service area to serve a large proposed housing development that never materialized. Consequently, SUEZ has no customers in this area.

In 2021, SUEZ agreed with the City of Eagle to request removal of this area from its certificated service area and allow property owners the choice of which provider would most efficiently serve their needs.

SUEZ would not be precluded from serving your property in the future, nor are you obligated to connect to a water utility.

SUEZ's application with the Idaho Public Utilities Commission is expected to be filed on or before April 9, 2021. Soon after it is filed, the Commission will issue a public notice of the filing describing procedures for public comment and Commission review of the application. This information will be available for review on its website at <https://puc.idaho.gov/case?util=3&closed=0>.

**Questions?**

Please contact Jane Kreller at [jane.kreller@suez.com](mailto:jane.kreller@suez.com) or (208) 749-8189.

Thank you,  
Cathy Cooper, P.E.  
Director of Engineering

