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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-21-02**

**SUEZ WATER IDAHO INC.'S RESPONSE  
TO ATOVA'S PETITION FOR  
RECONSIDERATION OF FINAL ORDER  
No. 35130**

SUEZ Water Idaho Inc. ("SUEZ") files this response to the Petition for Reconsideration and Clarification ("Petition for Reconsideration" or "Petition") filed by Atova, Inc. ("Atova"). As set forth in more detail below, SUEZ respectfully submits that the Petition should be denied.

**BACKGROUND**

As set forth in the Application, over the years, the area removed from SUEZ's certificated service area ("Area 3") has been a source of friction between the City of Eagle ("City") and SUEZ. Application at 2-3. To address this friction, as well as other disputes between the parties, SUEZ and the City signed a Water Management Agreement ("WMA"), under which SUEZ agreed to request removal of Area 3 from its CPCN. Under the WMA, Area 3 was designated as a "Gray Area," and City and SUEZ agreed that, in response to future requests for service in the area, 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 shall provide

water service to that portion of the area as is included or addressed in the particular new customer service request Application at ¶16; WMA at 2.

In a comment letter, the City of Eagle expressed its willingness and ability to serve Area 3. *See* July 8, 2021 Email from Murray Feldman, attached as Exhibit 1. Although now removed from its certificated service area, SUEZ also retains the ability to extend service to the area, in accordance with the terms of the WMA and upon confirmation of the requesting party's needs.

Neither Atova nor any other party intervened in the proceeding. On August 9, 2021, the Commission approved the Application and removed Area 3 from SUEZ's CPCN, noting that 1) "customers will not be impacted by removal of the area from CPCN No. 143;" 2) the WMA "provides the Company and the City a mechanism to engage in discussions involving future expansion in or around the City's service area," which will hopefully "allow the City and the Company to plan for future water service area investments cooperatively and in customers' best interest;" and 3) if the area is developed, "the City has represented it can and will serve customers in the area if it is no longer in the Company's certificated area." *See* Final Order No. 35130 at 3.

On August 27, 2021 Atova filed the Petition for Reconsideration. Atova asserts that, as a result of the Commission's order, no water provider is legally compelled to provide water service within Area #3. Petition for Reconsideration at 2-3.

#### RESPONSE

**1. Atova has not identified any aspect of the Commission's Order that is unreasonable, unlawful, or erroneous.**

Under the Commission's rules, "any person interested in a final order . . . may petition for reconsideration." Commission Rule 331, IDAPA 31.01.01.331.01. Petitions for reconsideration "must set forth specifically the ground or grounds why the petitioner contends that the order or

any issue in the order is unreasonable, unlawful, erroneous or not in conformity with the law, and a statement of the nature and quantity of evidence or argument the petition will offer if reconsideration is granted.” *Id.*

Atova has not identified any aspects of the Commission’s decision that are unreasonable, unlawful, erroneous, or not in conformity with the law. Atova merely identifies one of the legal consequences of the Commission’s decision—that SUEZ is no longer legally obligated to provide service to the area. Petition for Reconsideration at 2-3. The Commission was aware of, and implicitly acknowledged, this component of its decision. Final Order No. 351310 at 2-3 (noting the hope that the WMA will allow the City and SUEZ to work together to serve future areas, and noting the City’s representations that it is able to serve the area if the area is still outside SUEZ’s service territory).

SUEZ respectfully submits that Atova has not met the threshold requirements for reconsideration. Nor has Atova identified any issue the Commission did not consider in issuing its final order. Accordingly, SUEZ respectfully submits that the Petition should be denied.

**2. Like other developers within unincorporated Ada County outside SUEZ’s service territory, Atova has several options for water service.**

Removing Area 3 from SUEZ’s CPCN leaves Atova in a position familiar to developers that are located in unincorporated Ada County outside SUEZ’s service territory. They have a number of options to obtain water service. They are free to request water service from SUEZ, from the nearest municipality, or to develop their own water supply. That has not proven to be an deterrent to growth in these areas.

If anything, a developer within Area 3, such as Atova, is in a better position than other developers. Throughout the years, SUEZ and the City have competed for customers within this area. Both water providers are so keen to serve this area that removal of the area from SUEZ’s

CPCN—which opens the way to competition—was a key component in settling litigation between the City and SUEZ. The City has expressed its willingness and ability to serve the area. SUEZ, as well, is willing and able to serve the area. As noted in the WMA, when faced with requests to serve within Area 3, the City and SUEZ will confer and the provider that can provide service most efficiently will ultimately serve that area.

SUEZ recognizes that Atova might prefer that some water provider have the current legal obligation to serve. However, SUEZ respectfully submits that, under the circumstances, Atova is in no way stranded. SUEZ is confident that Atova will be able to obtain water service when service becomes necessary.

#### CONCLUSION

SUEZ respectfully submits that Atova has not identified any unreasonable, erroneous, or unlawful aspect of the Commission's decision, and that Atova has not provided any other persuasive reason for the Commission to reconsider its final order. Accordingly, SUEZ respectfully submits that the Petition for Reconsideration should be denied.

DATED this 3<sup>rd</sup> day of September, 2021.

SUEZ Water Idaho Inc.

By: 

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Preston N. Carter  
Givens Pursley LLP  
*Attorneys for SUEZ Water Idaho Inc.*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 3<sup>rd</sup> day of September, 2021, a true and correct copy of the foregoing document was served on the following in the manner indicated:

Jan Noriyuki  
Commission Secretary  
Idaho Public Utilities Commission  
11331 W. Chinden Blvd., Bldg No. 8,  
Suite 201-A (83714)  
PO Box 83720  
Boise, ID 83720-0074

[ ] by U.S. Mail  
[ ] by Personal Delivery  
[ ] by Facsimile  
[X] by E-Mail [secretary@puc.idaho.gov](mailto:secretary@puc.idaho.gov)

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Preston N. Carter

**EXHIBIT 1**

**EXHIBIT 1**

## Preston N. Carter

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**From:** Murray Feldman <MFeldman@hollandhart.com>  
**Sent:** Thursday, July 8, 2021 2:32 PM  
**To:** secretary@puc.idaho.gov  
**Cc:** Michael C Creamer; Preston N. Carter; marshall.thompson@suez.com  
**Subject:** City of Eagle comments on SUZ-W-21-02  
**Attachments:** City of Eagle comment ltr PUC SUEZ application SUZ\_W\_21\_02 (070821).pdf

Dear Commission Secretary:

Attached for filing in this matter are the written comments of the City of Eagle on this application.

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### Murray Feldman

Partner, Holland & Hart LLP  
800 W. Main Street, Suite 1750, Boise, ID 83702  
T 208.383.3921 F 208.343.8869

**HOLLAND & HART** 



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July 8, 2021

*Submitted via Email*  
*secretary@puc.idaho.gov*

Commission Secretary  
Idaho Public Utility Commission  
P.O. Box 83720  
Boise, ID 83720-0074

**Re: Case Comments of City of Eagle on Case No. SUZ-W-21-02 (*In Re SUEZ Water Idaho's Application for Amendment of Its Certificate of Public Convenience and Necessity*)**

Dear Commission Secretary:

On behalf of the City of Eagle, this letter presents the comments of the City of Eagle on the above-referenced case.

The City of Eagle supports SUEZ's proposed amendment to its Certificate of Public Convenience and Necessity as set out in SUEZ's Application and Request for Modified Procedure in this case (dated April 2, 2021).

As noted in SUEZ's application, the requested modification is part of the Water Management Agreement entered into between SUEZ and the City of Eagle to resolve litigation and disagreements between those two parties concerning the SUEZ and Eagle Water Company joint application to the Commission to approve the proposed acquisition of the Eagle Water Company assets by SUEZ. *See* SUEZ Application for CPCN Amendment, ¶¶ 9-17.

Also as noted by SUEZ in its application, the original factual situations underlying the Commission's prior determination in UWI-W-06-04, whereby this area was originally added to SUEZ's certificated service area, are no longer applicable. Among other things, the City now has the capacity, desire, and ability to serve this area upon a request for service from a developer or customer. The area is within and surrounded by the current and future service area for the City of Eagle's municipal water system as identified in the Exhibit A map attached to the Water Management Agreement between SUEZ and the City (copy attached here as Exhibit A).



Also, the area is identified in the City's Water System Master Plan Update as being surrounded by the eastern service area of the City's municipal water system, as well as being part of the City's water service planning area under its 2015 modification. (See attached Exhibits B and C, also denominated as "Map #1" and "Map #4" from the "City of Eagle Municipally Owned Water System Master Plan Update #3" (Sept. 2015)).

In addition, the City is now able to provide municipal water service to this area. The nearest water main and source of supply for the City to be able to serve this area is located at Beacon Light Road and Vizcaya Way, about 0.85 miles from the nearest part of the area that is the subject of the SUEZ application. Upon an appropriate application and request for service from a developer or customer, that City of Eagle water supply infrastructure could be expanded to serve the subject area.

In sum, the City supports the SUEZ application and request for CPCN amendment. The City also notes and represents to the Commission that the City is willing and able to serve this area upon appropriate request, the area is part of the City's long-range water service planning area and within the City's identified area of future service, and the City has the water resource supply and water resource delivery facilities nearby to enable it to serve this area upon an appropriate request.

Sincerely,

HOLLAND & HART LLP



Murray D. Feldman

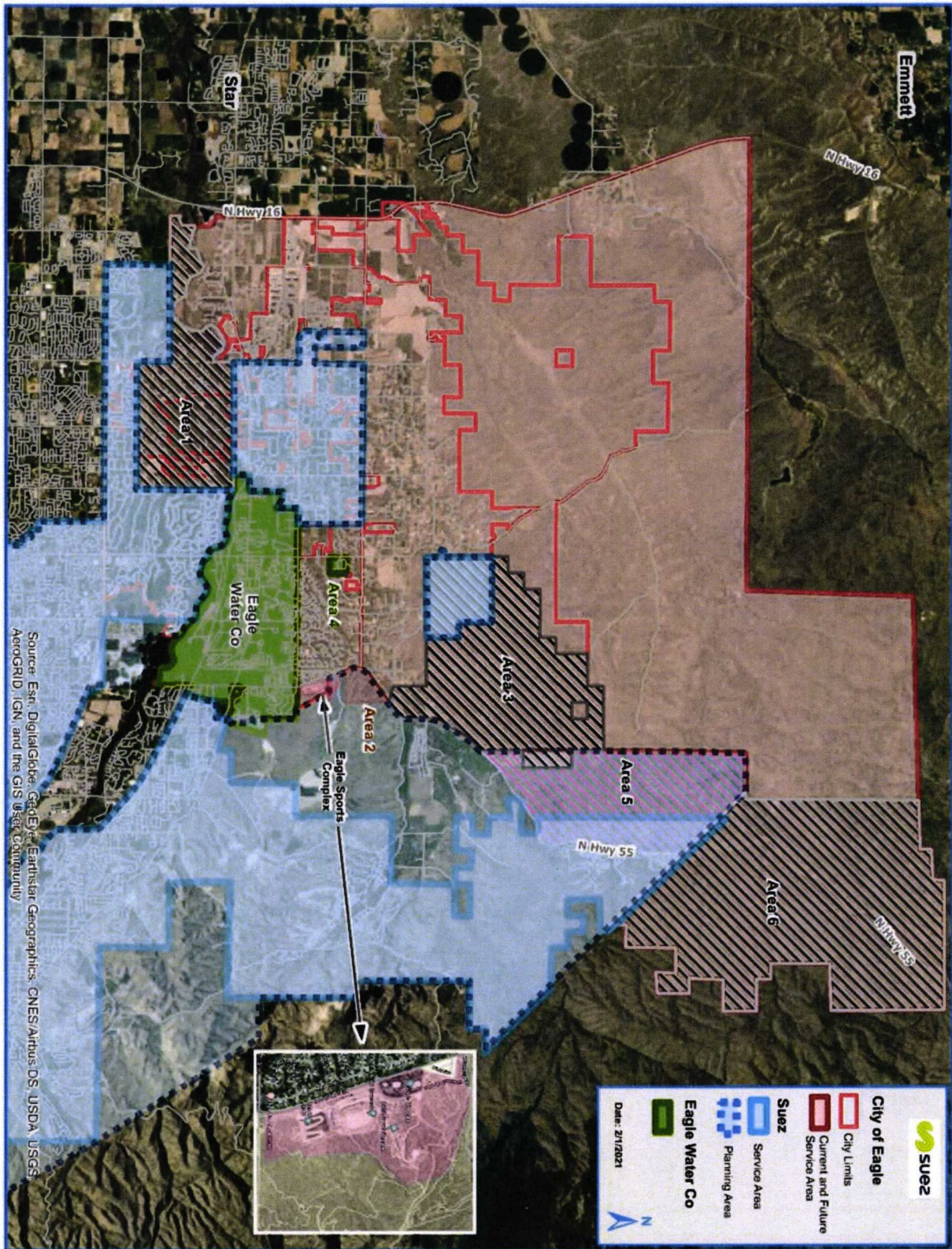
MDF/cmc

cc: Michael Creamer, Preston Carter, Givens Pursley LLC  
*email to [mcc@givenspursley.com](mailto:mcc@givenspursley.com) and [prestoncarter@givenspursley.com](mailto:prestoncarter@givenspursley.com)*  
Marshall Thompson, SUEZ Water Idaho Inc.  
*email to [marshall.thompson@suez.com](mailto:marshall.thompson@suez.com)*

Attachments

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Exhibit A: Map showing areas pertinent to the Agreement





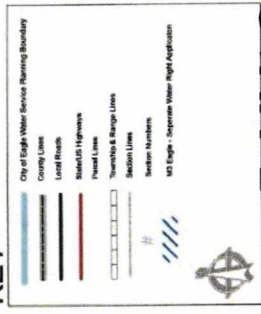
**City of Eagle  
Water System Master Plan  
2015 Update**



**Water Service Planning Area:  
with 2015 modifications**

**MAP #4**

**KEY**



**Exhibit C**

