

DECISION MEMORANDUM

TO: COMMISSIONER KJELLANDER
COMMISSIONER SMITH
COMMISSIONER HANSEN
COMMISSION SECRETARY
COMMISSION STAFF
LEGAL

FROM: SCOTT WOODBURY

DATE: NOVEMBER 17, 2005

SUBJECT: CASE NOS. EAG-W-05-3/UWI-W-05-3 (Eagle Water/United Water)
PETITION TO OBTAIN WATER SERVICE – COVENANT HILLS
SUBDIVISION

On October 7, 2005, Hillview Development Corporation (Hillview) filed a Petition with the Idaho Public Utilities Commission (Commission) requesting water service to Covenant Hill subdivision, an area located at 1501 and 1601 West Floating Feather Road in Eagle, Idaho. The site is 48.54 acres and has been approved by the Eagle City Council for development of 41 single-family lots. The requested water provider is United Water Idaho, Inc. Hillview requests expeditious treatment of its request for service.

A portion of the proposed Covenant Hill subdivision is within the certificated service area of Eagle Water Company, and a portion is within the certificated service area of United Water Idaho Inc. Hillview is constructing a pressurized irrigation system for the subdivision and requires only potable water from a water company. Because the site is relatively small and will comprise only 41 lots, it is Hillview's desire to have only one water company provide service to the site.

As represented in the filed Petition, Eagle Water Company informed Hillview that there was a water line that could service the Covenant Hill subdivision at the northeast corner of the site but until Eagle Water obtained several easements from property owners to the south for an additional water line extension, Eagle Water could not guarantee adequate service. A copy of a follow up letter to Eagle Water dated August 17, 2005 was submitted along with the Petition. It is Hillview's belief based on contact with Eagle Water representatives that there has been no

effort put forth to acquire the necessary easements or assurance that Eagle Water can meet the required fire flows for the subdivision (i.e., a minimum of 2,000 gallons per minute measured at 20 psi for a duration of 2 hours for homes up to 6,200 square feet).

On October 19, 2005, the Commission issued a Notice of Petition and Proposed Order in Case Nos. EAG-W-05-3 and UWI-W-05-3. The Commission's Order contained the following findings:

Based on the foregoing and the need for expeditious treatment of the request for service, the Commission finds that the public convenience and necessity requires us to approve the Petition of Hillview Development Corporation and authorize water service to Covenant Hill subdivision by United Water Idaho Inc. In so doing, we find Hillview's request for a single water provider to the subdivision to be reasonable. We also find United Water to be capable of providing adequate service in a timely manner and to have demonstrated a willingness to provide service.

Comments on the Commission's Proposed Order were filed by Eagle Water, United Water, and Commission Staff. Reply Comments were filed by the Petitioner, Hillview Development Corporation.

Commission Staff

Staff agrees with Hillview that only one water company should provide service to the Covenant Hills subdivision. Staff states that it discussed Hillview's request for service with Eagle Water. Eagle Water admitted to Staff that it had made no effort to acquire the necessary easements. Eagle Water further admitted that unless additional information was provided to the Idaho Department of Environmental Quality demonstrating its ability to provide adequate service, that it was currently prohibited from connecting any new customers to its water system until an additional supply source or sources are provided that are large enough to meet minimum state peak hour demand requirements or maximum daily pumping demand plus equalization storage. Reference IDAPA 58.01.08.550.03.p.; DEQ September 7, 2005 Letter to Eagle Water.

Staff does not believe that Eagle Water will be able to take actions soon enough to avoid unreasonable delays in Hillview's development plans. Staff recommends that United Water be authorized to provide water service to the Covenant Hill subdivision. Staff concurs with the Commission's Proposed Order and recommends that United Water be directed to submit to the Commission maps showing the revised certificated area boundary that incorporates the Covenant Hill subdivision.

United Water

United Water agrees that it has both the capability and willingness to provide potable water service to the Covenant Hills subdivision. Following issuance of a final Order and receipt of an appropriate water system drawing, United Water states that it is capable of promptly processing the developer's request for construction of the required facilities.

Eagle Water

Eagle Water filed both comments and supplemental comments. It is Eagle Water's recommendation that it be designated as the sole provider of water service to Covenant Hills subdivision. Eagle Water contends that it is "ready, willing and able to provide service" to Covenant Hills and that it is currently able to provide more than adequate fire flow protection to the subdivision. Eagle Water contends that provision of service to the Covenant Hills subdivision is critical to Eagle Water's overall system plan. Tying Eagle Water's Well No. 6 into its 12-inch mainline on Floating Feather Road, Eagle Water contends, will not only increase fire flow protection to the Covenant Hills subdivision, it will also augment the water supply from Wells 1 and 2, which will, in turn, serve to augment the water supply from Well No. 4 that can be dedicated to service of the eastern portion of Eagle Water's service area. This in turn, Eagle Water contends, will help to alleviate low-pressure problems in the upper elevations of the Eagle Springs subdivision.

Eagle Water attaches to its comments a water supply graph, a letter from its consulting engineer, James M. Rees, a letter from the fire marshal for the Eagle Fire Department and a letter from the Department of Environmental Quality detailing the conditions under which it will authorize Eagle Water Company to serve Covenant Hills subdivision. DEQ will accept a Will Serve Letter for the [Covenant Hills] project under the following conditions:

1. We understand that easements for main construction are being negotiated at this time. The letter must include documentation that (a) all necessary easements have been secured and (b) that funding is available or guaranteed in a manner consistent with a timetable for actual service to Covenant Hills subdivision.
2. DEQ cannot accept additional Will Serve Letters until the issues mentioned in the September 7, 2005 letter are resolved.

Regarding the easements identified by the Company as required to provide service to Covenant Hills subdivision, Eagle Water states that it is currently negotiating with two

landowners for an easement for a 12-inch mainline from its Well No. 6 to the subdivision and expects to have the easements executed and recorded by February 16, 2006. Once the easements are executed and recorded, Eagle Water will begin construction of the mainline and estimates that the line will take three weeks to be placed into service.

Reply Comments – Hillview Development Corporation

Hillview disputes Eagle Water's contention that the Company is ready, willing and able to provide service to Covenant Hills subdivision. The statement is not accurate, Hillview contends, and the documentation submitted does not support the claim. It is Hillview's contention that if Eagle Water is ready, willing and able to provide service to Covenant Hills subdivision, then the easements would already be recorded and the design for the off-site water line would be complete. Hillview states that it cannot wait until sometime in 2006 for Eagle Water to perform tasks which should have already been completed. Regarding Eagle Water's contention that provision of service to Covenant Hills is critical to the Company's overall system plan, Hillview contends that there are other opportunities for Eagle Water Company to loop its water system.

Regarding Eagle Water's contention that DEQ has agreed to lift its informal service connection "moratorium" as it pertains to the Covenant Hills subdivision area, Hillview notes that DEQ conditions its release; conditions that are presently unsatisfied.

Hillview notes that Eagle Water has been aware of the proposed Covenant Hills subdivision since February 2005 when the developers submitted the preliminary plat to the City of Eagle. Even after repeated requests by Hillview to verify that it could adequately serve, including Hillview's written request of August 17, 2005, Hillview notes that Eagle Water essentially did nothing until the Commission issued its Proposed Order.

In the unlikely event that Eagle Water Company's contention is true and that it could actually issue a "Will Serve Letter" to the DEQ by February 16, 2006, Hillview notes that it still would have to have the extension plans reviewed by DEQ and would not be able to begin any construction on its site until March or April 2006 at the earliest. Additionally, Hillview would not be able to process its subdivision plat until DEQ approved the mainline extensions through the subdivision and lifted all service restrictions. This Hillview contends would be additional extensive and unreasonable delay.

Hillview notes that Covenant Hills subdivision straddles the boundary between the United Water and Eagle Water Company certificated areas. United Water has promptly provided Hillview with the assurance that it can adequately serve the entire Covenant Hills subdivision. United Water has responded to all of Hillview's requests and has worked with its engineer on the mainline extension plans for Covenant Hills subdivision. With United Water providing service, Hillview can begin construction in December 2005 with no delay. With United Water providing service, Hillview will have the assurance that it will not have any building restrictions enforced on the lots in its subdivision. It is Hillview Development's position that United Water is the only water company that can truly be "ready, willing and able to provide service to Covenant Hills subdivision."

COMMISSION DECISION

The Commission has issued a Proposed Order in Case Nos. EAG-W-05-3 and UWI-W-05-3 authorizing and directing United Water Idaho Inc. to provide potable water service to Covenant Hills subdivision. Based on its review of the comments filed, does the Commission find that its Proposed Order should be made a final Order? If not, how does the Commission wish to proceed?

Scott D. Woodbury

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