

MEDIA RELEASE

City of Eagle • 660 E. Civic Lane • Eagle, ID 83616

08/14/19 – For Immediate Release

Contact: City Hall: (208) 489-8790



Background and Status Update on *City of Eagle v. Eagle Water Co. litigation*

- Eagle Water Company is attempting to escape its obligations under the 2008 Intertie Agreement with the City. Eagle Water obtained all of the benefits it sought under the Agreement, but it won't honor the City's right of first refusal to purchase Eagle Water. That is why the City was forced to sue Eagle Water to ask the court to enforce the Intertie Agreement and the City's right of first refusal.
- In Spring 2008, Eagle Water faced serious regulatory problems.
 - It was subject to a Consent Order from the Idaho Department of Environmental Quality ("DEQ") to correct violations of the Idaho Public drinking water system rules.
 - Eagle Water also was subject to an Idaho Public Utilities Commission ("PUC") complaint proceeding because it could not serve the Floating Feather Mobile Home Park. The DEQ had imposed a moratorium on new connections for Eagle Water because it lacked the required backup flow and firefighting water capacity.
- To fix its problems, Eagle Water approached the City.
- Under the DEQ Consent Order, Eagle Water had to "[i]nterconnect" with another public water system to ensure a sufficient supply of supplemental water for public drinking water system pressure and flow requirements.
- Eagle Water and the City together engaged in negotiations from at least late April 2008 to July 12, 2008, resulting in the Intertie Agreement.
- In the Agreement negotiations, the City was concerned that it might be using municipal resources to provide a significant financial benefit to the private business of Eagle Water, and that Eagle Water could then leverage that benefit (improvements to its water system and continued ability to operate) to sell its water system to a third party.
- Eagle Water and the City agreed on two key provisions to address these concerns:
 - Eagle Water would pay the City a monthly fee for the interconnection and its value in allowing Eagle Water to satisfy its regulatory issues.
 - Eagle Water agreed to give the City a permanent right of first refusal to acquire Eagle Water Company's water system as part of the overall Intertie Agreement.

- The right of first refusal applied to a “Change of Control Transaction” where there was a change of control or ownership of all or substantially all of Eagle Water’s water system.
 - If Eagle Water were to receive a bona fide offer for such a change of control, then Eagle Water had to provide notice to the City of Eagle of Eagle Water’s desire to sell the water system and the amount and terms of such offer in detail.
- In July 2008 Eagle Water publicly acknowledged its entry into the Intertie Agreement, including the City’s right of first refusal, and Eagle Water used the Intertie Agreement to resolve its DEQ and IPUC issues.
- The City performed its obligations under the Intertie Agreement and allowed Eagle Water to connect to the City’s water system and storage tank.
- Moving forward ten years, Eagle Water began a Change of Control Transaction without complying with the Intertie Agreement’s right of first refusal provision. Eagle Water received a bona fide offer to sell its water system in May 2018.
- But Eagle Water did not to notify the City of its bona fide offer. Instead it directly entered into a deal with H2O Eagle Acquisition LLC (“H2O”).
 - That deal was for the “purchased assets” of Eagle Water.
 - Next, in September 2018, both Eagle Water and H2O entered into an agreement with SUEZ (continuing the “Change of Control Transaction”) to sell to SUEZ the “purchased assets” of the Eagle Water Company’s water system.
- The City learned of the Eagle Water-H2O-SUEZ deal, and the underlying Eagle Water-H2O deal, following the SUEZ public announcement in November 2018.
- The City then notified Eagle Water that it was in default under the Intertie Agreement.
- The City filed its lawsuit in February 2019 to enforce the Intertie Agreement and the City’s right of first refusal.
- In response, Eagle Water filed a motion to dismiss the City’s suit. SUEZ joined in that motion. The City has submitted its response opposing the motion to dismiss. The motion is set for hearing by the district court on August 28, 2019.
- The City will provide a further update after the court’s ruling on the motion to dismiss.
- Additional background materials on the lawsuit may be accessed at www.cityofeagle.org/waterlawsuit