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WATER RESOURCES
WESTERN REGION

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

REQUEST FOR EXTENSION OF TIME

**TO PROVIDE ADDITIONAL TIME IN WHICH TO SUBMIT PROOF OF
BENEFICIAL USE FOR A WATER RIGHT PERMIT**

The Idaho Department of Water Resources will consider this form as a request that the permit holder(s) be granted an additional period of time under the provisions of Section 42-204, Idaho Code in which to complete development of a water right.

Permit No. 63-12448

Name(s) of Permit Holder: City of Eagle

Mailing Address: City Hall, P.O. Box 1520, Eagle, Idaho 83616

Date Proof is Due: 12/31/03

Telephone No. (208) 331-1800

Describe what work has been completed toward the development of this water right:
(This must be filled out! If no work has been completed, show "none".)

Wells and water works are partially completed.

Costing \$ _____

The permit holder(s) has been unable to complete the remainder of the work for the following reasons:

The Permitholder filed an application to amend permit no. 63-12448 to
add points of diversion in 2001. A number of protests were filed and
the application is set for hearing on November 13-14, 2003. The points
of diversion cannot be constructed until the pending litigation is resolved.
Permit holder(s) request an extension to December 31, 2008

FEE: \$50.00

(Signature)*

*If other than permit holder, Power of Attorney must be supplied.

ACTION OF THE DEPARTMENT OF WATER RESOURCES

IT IS HEREBY ORDERED that the above request for extension of time be
APPROVED and the time within which to submit proof of beneficial use is extended
to October 1, 2009.

Signed this 7th day of October, 2005

GARY SPACKMAN
GARY SPACKMAN

*A copy of the Order scheduling the hearing is attached.

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATION FOR)
AMENDMENT OF PERMIT NO. 63-12448)
IN THE NAME OF THE CITY OF EAGLE)
_____)

FINAL ORDER

This matter is before the Director of the Department of Water Resources ("Director" or "Department" or "IDWR") as the result of an application to amend water right permit no. 63-12448 filed by the City of Eagle ("Eagle" or "Applicant"). The application seeks to add two new points of diversion from ground water to the permit.

STANDARD FOR DECISION

Applications to amend existing permits are considered pursuant to Idaho Code § 42-211. Idaho Code § 42-211 provides in part:

Whenever a permit has been issued pursuant to the provisions of this act, and the permit holder desires to change the place, period, or nature of the intended use, or make other substantial changes in the method of diversion or proposed use or uses of the water, he shall file an application for amendment upon forms furnished by the department of water resources together with the statutory fee for filing and recording the same, and upon receipt thereof it shall be the duty of the department of water resources to examine same and if approval thereof would not result in the diversion and use of more water than originally permitted and if the rights of others will not be adversely affected thereby, the director of the department of water resources shall approve said application and return an approved copy to the permit holder. The director of the department of water resources shall give such notice to other affected water users as he deems appropriate and may grant the amendment, in whole or in part or upon conditions, or may deny the same. Notice of partial approval or conditions or denial of an amendment shall be forwarded to the applicant by certified mail and shall be subject to judicial review as hereafter provided. The priority of the right established pursuant to a permit which has been amended under these provisions shall date from the date of the original application for permit, provided the permit holder has complied with other provisions of this act.

An applicant bears the burden of proof for the factors the Department must consider under Idaho Code § 42-211. The Director should also determine whether an amendment of a water right permit is in the local public interest. *Hardy v. Higginson*, 123 Idaho 485, 849 P.2d 946 (1993).

The Director, having examined the application and the written record and having reviewed the testimony of the parties, makes the following findings of fact and conclusions of law.

COURSE OF PROCEEDINGS

On June 8, 2001, Eagle filed an application to amend existing water right permit no. 63-12448 to add two additional points of diversion (the "Application"). The proposed points of diversion are located in Eagle, Idaho, in the SWSW, Section 4, T4N, R1E¹ (Eagle well no. 3, aka Brookwood well) and NESE, Section 4, T4N, R1E (Eagle well no. 4). Notice of the application was published in The Idaho Statesman of Boise, Idaho, on or about June 21 and 28, 2001. Eagle Water Company, Inc., Weldon T. Fisher, Eleanor I. Chase, and a group of concerned citizens² protested the Application.

The Department held a prehearing conference for the application and protests on August 15, 2001. Following several attempts to schedule a second prehearing conference, the Department issued a *Notice Canceling Prehearing Conference and Interrupting Processing* on November 29, 2001, which interrupted the proceedings for six months to allow the parties to attempt negotiation of a settlement in this matter.

In January 2002, protestant Eleanor I. Chase died. On July 11, 2002, the Estate of Eleanor I. Chase (the "Chase Estate" or "Chase" or "Estate") was allowed to intervene as a full party on the grounds stated in Ms. Chase's protest.

The Department held a second prehearing conference on September 18, 2002. A *Prehearing Order* issued following the conference (1) gave the parties until November 1, 2002, to negotiate a settlement of the protests, (2) tentatively scheduled a hearing for February 26, 2003, and (3) authorized informal discovery. A *Notice of Hearing* issued on January 10, 2003, scheduled a hearing for February 26, 2003. That hearing was vacated and formal discovery was authorized on February 4, 2003, in the *Order Granting Petition for Reconsideration and Authorizing Discovery*.

The Director appointed Peter Anderson as Hearing Officer in this matter on June 5, 2003.

The Department conducted a third prehearing conference on August 1, 2003. After this conference, a *Scheduling Order* issued on August 20, 2003, established time periods for completion of discovery, provided for the exchange of witness and exhibit lists, and set tentative hearing dates for November 13 and 14, 2003.

On September 30, 2003, the Department notified Eagle that proof of beneficial use or a request for extension of time to file proof of beneficial use was due on or before December 1,

¹ Public land survey descriptions in this decision without a fraction following a two alpha character descriptor are followed by the fraction "1/4." In addition, all public land survey descriptions are based on the Boise Meridian. All locations are in Ada County.

² James Burton identified himself as the spokesperson for a number of concerned citizens living on Eagle Road who signed the protest. Letter received August 13, 2001, at the Department's Western Region Office. Many of the signatures on the protest forms were illegible. Only one protest fee of \$25 was received from Darrell E. Davis with this protest. Using the forms and other submissions in the record, the concerned citizens included Darrell Davis, James Burton, Stan Stevens, Stanton Niccolls, Melissa Sadlek, Jason Stinar, William Miller, Chris Brooke, Sheri Kinzer, Steve Capellar, Shelby Conrad, Michael Kilfoyle, Laren Walker, and Gary Heikes.

2003. Eagle requested an extension of time to file proof of beneficial use on the basis that the contested application for amendment had been pending since 2001, and the contested case had not been heard or resolved. In response to the request, the Department sent a letter to Eagle on January 14, 2004, acknowledging timely receipt of the request for extension of time to file proof of beneficial use and stating:

Because of the pending contested case, and the effect it may have on the water right permit, IDWR will hold the request for extension of time without action until the contested case is resolved. The request has been timely filed and satisfies the requirements of the law related to filing proof of beneficial use or a request for extension of time.

Pursuant to a formal *Notice of Hearing*, a two-day hearing was held at the Department's state office in Boise, Idaho, on November 13 and 14, 2003. Eagle was represented by Bruce M. Smith and Tammy A. Zokan, the Chase Estate was represented by Matt Howard, and Eagle Water Company was represented by Molly O'Leary. James Burton, from the group filing a joint protest, attended the hearing on November 13, 2003, and Shelby Conrad attended the hearing on November 14, 2003. Weldon Fisher did not appear at the hearing.

At the conclusion of the hearing, the parties were given until December 15, 2003, to file written closing statements. Eagle, the Chase Estate, Eagle Water Company, and James Burton filed written statements. This matter was fully submitted to the Department on December 15, 2003.

Following issuance of the Hearing Officer's *Recommended Decision and Order* on March 8, 2004, Eagle filed a *Petition for Reconsideration of Recommended Decision and Order*. A hearing on the *Petition* was held on April 8, 2004. Following the hearing, the *Petition for Reconsideration of Recommended Decision and Order* was granted. Parties were allowed until April 21, 2004, to file briefs on any of the issues raised in the *Petition* or discussed at the hearing. Eagle and James Burton submitted comments.

On April 30, 2004, the Hearing Officer issued a *Recommended Decision and Order Following Reconsideration* approving the application with conditions. The City of Eagle and the Chase Estate filed exceptions to the recommended order of April 30, 2004.

STATEMENT OF ISSUES RAISED BY EXCEPTIONS

City of Eagle Exceptions

The exceptions filed by Eagle raised the following issues about the Hearing Officer's recommended order:

- (1) Eagle should not be required to cease diversion upon an allegation that a ground water right holder is not able to pump the full quantity of water to which the water right holder is entitled;

- (2) The priority date of permit no. 63-12448 should not be advanced to June 8, 2001;
- (3) The proposed point of diversion referred to as Eagle well no. 4 should have been approved as a point of diversion;
- (4) Eagle should not be required to fully compensate for the inability of the Chase Estate to divert its paper water rights;
- (5) Eagle should not be required to (a) conduct a pump test for proposed Eagle well no. 3, (b) determine a maximum flow rate for Eagle well no. 3, (c) negotiate with the Chase Estate for injury caused by pumping of the maximum flow rate, and if the negotiations are not productive, (d) file a lawsuit for judicial determination of the compensation required; and
- (6) The evidence does not support a finding in the recommended order that a new well cannot be drilled at or near Eagle well no. 2.

Chase Estate Exceptions

The exceptions filed by the Chase Estate raised the following issues about the Hearing Officer's recommended order:

- (1) The recommended order did not identify all the Chase water rights protected to historical ground water pumping levels;
- (2) Projected drawdowns in the Chase dairy well, small irrigation well, and large irrigation well are not consistent with the evidence and expert opinions;
- (3) A finding that the dairy well will only produce 0.067 cfs is not supported by the evidence;
- (4) Supplemental water right no. 63-05229 should be afforded the same protection as other water rights;
- (5) The recommended order incorrectly determined that the large irrigation well would not be adversely impacted;
- (6) The amendment does not satisfy the local public interest standard; and
- (7) The application for amendment should have been denied rather than forcing additional iterations of negotiations and litigation in court and perhaps before the Department.

EVIDENCE CONSIDERED

Exhibits offered by Eagle and admitted by stipulation of the protestants as part of the record are as follows:

- Exhibit 1: Application for Amendment of Permit No. 63-12448 filed by the City of Eagle
- Exhibit 2: Brookwood Public Water Supply Well Design/Proposal Plans and Specifications dated May 2000
- Exhibit 3: Map of Eagle Water System
- Exhibit 4: Map of Protestants & Eagle Wells
- Exhibit 5: Chart of Eagle Water System changes
- Exhibit 6: Resume of Terry Scanlan, P.E., P.G.
- Exhibit 7: Municipal Production Bar Graph
- Exhibit 8: United Water Idaho Floating Feather & Redwood Creek Monthly Well Production
- Exhibit 9: Eagle Water Company Annual Well Production
- Exhibit 10: Eagle Annual Well Production
- Exhibit 11: Water Level Monitoring of Vail and Miller Wells, October 22, 1999
- Exhibit 12: June 2, 2003 and June 3, 2003 letters regarding monitoring results for Vail and Miller Wells
- Exhibit 13: September 26, 2003 letter regarding water level monitoring results for Vail and Miller Wells
- Exhibit 14: June 3, 2003 letter regarding Burton Group Well Measurements
- Exhibit 15: Photo log and photographs of May 13, 2003 site inspection of Chase Dairy site
- Exhibit 16: Agreement to Provide Supplemental Fire Flows
- Exhibit 17: Water Line Agreement
- Exhibit 18: December 2, 1997 Agreement

Exhibit 19: Water Service Contract and First Amendment to Water Service Contract

Exhibit 20: Water Right Claim No. 63-5227

Exhibit 21: Water Right Claim No. 63-5229.

Exhibit 22: Approved Application for Permit No. 63-8663.

Eagle also joined with the Chase Estate in offering Exhibits 102, 103, 104, 105 and 106, which are described in the Findings of Fact.

Exhibits offered by Eagle and admitted in rebuttal to the Protestants' case and part of the record are as follows:

Exhibit 23: Chase Dairy Well Pump Evaluation, 11/13/03

Exhibit 24: Chase Small Irrigation Well Suction Lift Evaluation, 11/13/03

Exhibit 25: (Not admitted).

Exhibits offered by the Chase Estate and admitted as part of the record are as follows:³

Exhibit 101: Summary of Ground Water Conditions in the Vicinity of Proposed Brookwood Subdivision Well Site, August 15, 2001

Exhibit 102: Revised Summary of Ground Water Conditions in the Vicinity of Proposed Brookwood Subdivision Well Site, August 17, 2001

Exhibit 103: IDWR Open-File Report, Ground-Water Conditions in the Dry Creek Area, June 1991

Exhibit 104: Results of the 30-Day Pumping Test and Aquifer Analysis, June 1991

Exhibit 105: Aquifer Test at Floating Feather Well, August 9, 1995

Exhibit 106: Municipally-Owned Water System Master Plan and Budget Study, April 12, 2002 and rev. May 21, 2003

Exhibit 107: Deposition of the City of Eagle, September 10, 2003

Exhibit 108: Well specifications and reports from Layne of Idaho, Inc.

Exhibit 109: Eagle's Response to the Estate's Third Set of Interrogatories, etc.

³ Exhibits 101-112 and 120-123 were admitted by stipulation of the City of Eagle.

Exhibit 110: Eagle's Fifth Supplemental Response to Estate's Interrogatories, etc.

Exhibit 111: Eagle's Sixth Supplemental Response to Estate's Interrogatories, etc.

Exhibit 112: Eagle's Verification of Signatures on Discovery Responses

Exhibit 113: Amendment to Application of Eagle United Water before IPUC, September 1, 1994

Exhibit 114: Testimony of Morgan Masner before IPUC, December 1, 1995

Exhibit 115: IPUC Order No. 26337, March 5, 1996

Exhibit 116: IPUC Order No. 26524, July 19, 1996

Exhibit 117: Application of United Water Idaho, July 11, 1997

Exhibit 118: Comments of IPUC Staff, August 20, 1997

Exhibit 119: IPUC Order No. 27121, September 8, 1997

Exhibit 120: Protest by Eleanor I. Chase to Application No. 63-11413, November 29, 1990

Exhibit 121: Notes of D. Tuthill re Application No. 63-11413

Exhibit 122: Proposed Memorandum Decision and Order Approving Application for Permit No. 63-11413

Exhibit 123: Portions of Eagle's Response to Eagle Water Company, Inc.'s First Set of Interrogatories, etc.

Exhibit 124: Letter from Eagle to David Tuthill, May 24, 1995

Exhibit 125: Letter from Chris Meyer to Jim Johnson, November 19, 1998

Exhibit 126: Proof of Beneficial Use for Permit No. 63-12017

Exhibit 127: Proof of Beneficial Use for Permit No. 63-11413

Exhibit 128: Amendment of Permit No. 63-12448, April 7, 2000

Exhibit 129: Application for Amendment of Permit 63-12448, December 2, 1998

Exhibit 130: Application for Permit 63-12448, April 7, 1998

Exhibit 131: Letter from Chris Meyer to Jeff Peppersack, March 31, 2000

Exhibit 132: Letter from Eleanor I. Chase to Gary Spackman, August 14, 1999

Exhibit 133: Letter from J. Evan Robertson to Gary Spackman, November 25, 1998

Exhibit 134: Letter from Eleanor I. Chase to Gary Spackman, September 23, 1998

Exhibit 135: Letter from Eleanor I. Chase to the Department, July 9, 2001

Exhibit 136: City of Eagle United Water Operations Reports

Exhibit 137: Agreement to Provide Supplemental Water for Fire Flows

Exhibit 138: Cooperative Agreement

Exhibit 139: Water Line Agreement

Exhibit 140: Agreement dated December 2, 1997

Exhibit 141: Well Purchase Agreement

Exhibit 142: Notice of Claim No. 63-5224

Exhibit 143: Partial Decree No. 63-5225

Exhibit 144: Amended Notice of Claim No. 63-5226

Exhibit 145: Notice of Claim No. 63-5227

Exhibit 146: Amended Notice of Claim No. 63-5229

Exhibit 147: Notice of Claim No. 63-8663

Exhibit 148: License No. 63-8663

Exhibit 149: IDWR Field Report for No. 63-8663

Exhibit 150: Partial Decree No. 63-15820

Exhibit 151: Partial Decree No. 63-18731

Exhibit 152: ERO Resources, Inc., Report Regarding Wells for No. 63-5226 and
No. 63-5229

Exhibit 153: Resume of David B. Shaw, P.E.

Exhibit 154: Beneficial Use Field Report for Permit No. 63-12192

Exhibit 155: Diagram of Selected Well Locations

Exhibit 156: 1970's photograph of barn and Chase Dairy

Exhibit 157: 1952 photograph of barn

Exhibit 158: 1952 photograph of barn and Chase dairy.

The Department, on its own initiative and without objection from the parties, admitted the following exhibit:

Exhibit 400: Summary of water rights located in the NESE, Section 5, T4N, R1E.

The following individuals testified on behalf of Eagle:

- a. Ms. Lynne Sedlacek, Eagle City Councilmember;
- b. Mr. Vernon Brewer, representative of Eagle City Engineer, Holladay Engineering Co.;
- c. Mr. Terry M. Scanlan, P.E., P.G., Scanlan Engineering; and
- d. Nancy Merrill, Eagle Mayor.⁴

The following individuals testified on behalf of the Chase Estate:

- a. Mr. Mike Chase, Chase Estate;
- a. Mr. Dave Shaw, ERO Resources, Inc.;
- b. Mr. Bill Chase, Chase Estate; and
- c. Mr. Vernon Brewer, representative of Eagle City Engineer, Holladay Engineering Co.

No other party offered exhibits or testimony for the Department's consideration. All parties present at the hearing were afforded the opportunity to cross-examine the opposing side's witnesses.

⁴ Ms. Merrill's testimony was presented in writing and is in the Department's files as the *Sworn Testimony of Nancy Merrill, Mayor, City of Eagle in Support of City's Application to Amend Permit No. 63-12448*.

ANALYSIS OF EXCEPTIONS

There was significant discussion in the record and in the briefs about whether the impacts to other wells should be based on an average ground water withdrawal rate anticipated by Eagle or the maximum withdrawal rate allowed under the permit. Unless Eagle limits the withdrawal rate sought, the Department must assume that Eagle may divert the full authorized quantity of water from any one of the authorized or proposed points of diversion and evaluate the effects of such withdrawals based on the maximum authorized diversion rate and volume. The maximum diversion rate authorized by permit no. 63-12448 is 3.25 cubic feet per second (cfs), equivalent to approximately 1,460 gallons per minute (gpm). However, Eagle has designed the proposed well to produce a maximum of 1,000 gpm. Because water right no. 63-12448 limits the annual volume diverted to 1,455 acre-feet, Eagle could withdraw 902 gpm continuously for the entire year. Technical analysis in the record assumes a withdrawal rate of 1,000 gpm. Assuming a continuous withdrawal rate of 1,000 gpm at any one of the authorized or proposed points of diversion provides a reasonable basis for evaluating the effects of ground water withdrawals under permit no. 63-12448.

For this analysis, the following is a summary of wells owned by the Chase Estate for which testimony about use of water was presented into the record:

Water Right No.	Well Name	Beneficial Use	Water Right Status	Priority Date	Withdrawal Rate
63-15820	Dairy-domestic	Domestic	Decreed	Jan. 1, 1920	0.04 cfs
63-05226	Dairy-domestic	Domestic, stock, & commercial	Beneficial use claim	Jan. 1, 1950	0.31 cfs ⁵
63-05229	Small irrigation	Irrigation, stock, & domestic	Beneficial use claim	Oct. 27, 1925	0.46 cfs
63-08663	Large irrigation	Irrigation	Licensed	April 6, 1977	2.0 cfs

For this analysis, the following is a summary of ground water rights held or claimed by the Chase Estate for which the Chase Estate submitted water right information as exhibits, but no testimony was presented about the identity or production of the associated wells:

Water Right No.	Well Name	Beneficial Use	Water Right Status	Priority Date	Withdrawal Rate
63-05224	(not known)	Domestic, stock, & irrigation	Beneficial use claim	Jan. 1, 1872	0.10 cfs
63-05225	(not known)	Domestic & stock	Decreed	Jan. 1, 1900	0.17 cfs
63-18731	(not known)	Domestic	Decreed	Aug. 1, 1982	0.04 cfs

In 1951, the Idaho Legislature enacted legislation known as the Ground Water Act. In 1953, the Idaho Legislature amended the Ground Water Act. The 1953 Amendment recognized that ground water rights would be administered according to the prior appropriation doctrine, but

⁵ Mike Chase testified that the flow rate should be reduced to 0.13 cfs.

that senior water rights should not prevent the full economic development of the ground water resources of the State of Idaho, and that ground water appropriators would be required to pump from "reasonable pumping levels" established by the Department. In 1978, the Idaho Legislature amended the Ground Water Act again. The 1978 Amendment expressly stated that domestic water rights were subject to reasonable pumping levels.

The priority dates recognized or claimed for the water rights authorizing diversion from the dairy-domestic well (no. 63-05226 and no. 63-15820) and the small irrigation well (no. 63-05229) predate the enactment of the Ground Water Act in 1951 and the subsequent amendment to the Ground Water Act in 1953. In addition, the priority dates for claim no. 63-05224 and water right no. 63-05225 (for which no production data was submitted) also predate the enactment of the Ground Water Act in 1951 and the subsequent amendment to the Ground Water Act in 1953.

In *Parker v. Wallentine*, 103 Idaho 506, 650 P.2d 648 (1982), the Idaho Supreme Court determined that a later in time appropriator should be enjoined from pumping ground water for irrigation that almost immediately dried up a domestic well located nearby. The Court held that the water right for the domestic well was perfected prior to the irrigation water right and before the reasonable pumping level standard was applied to domestic beneficial uses, and that the domestic water right holder was entitled to the protection of the ground water levels existing prior to the junior appropriation. The Court held that the injunction was not permanent, and could be absolved upon full compensation by the junior appropriator for the cost of deepening the senior appropriator's well and payment of the costs of additional equipment and energy.

Under the principles of *Parker*, if (1) withdrawal of ground water by a junior ground water appropriator causes declines in ground water levels in wells owned by the senior water right holders because of local well interference, and (2) the water rights held by the senior water right holders bear priority dates earlier than 1951, or 1978 for domestic water rights, the holders of the senior water rights are, at a minimum, entitled to compensation for the increased costs of diverting ground water caused by the declines in ground water levels at the point of diversion. In so applying the Court's holding in *Parker*, the Department acknowledges that the Court in that case may not have taken into consideration the applicable common law principles of the prior appropriation doctrine that predate the Ground Water Act. The Court may at some future date address whether ground water rights that predate the Act enjoy an absolute protection from interference by junior appropriators regardless of the reasonableness of the means of diversion used by the senior right holder.

The extent to which *Parker* provides protection to the ground water levels for the Chase Estate water rights depends on proof of injury and similarities to the facts of the *Parker* case. In *Parker*, the owner of the domestic well was unable to divert water from the domestic well within minutes of when the junior priority right holder began withdrawing ground water. The proof of lowered ground water levels caused by the irrigation well that resulted in inability to withdraw water from the domestic well was established through testimony about the effects of the initial diversion from the Wallentine well and by a pump test conducted by the parties and the Department.

In an administrative hearing for an application to amend a permit, the applicant bears the burden of proving that the proposed change will not adversely affect other water rights. If a protestant seeks the protection of *Parker* that would insulate the protestant from the reasonable pumping level standard of the Ground Water Act, however, the protestant must come forward with evidence that (1) the protestant is the holder of a water right that is not subject to the Ground Water Act, and (2) the protestant's means of diversion (equipment and facilities) is capable of diverting water under the water right from ground water at levels existing when the application to amend a permit is considered by the Department. Once the protestant comes forward with the information, the applicant ultimately bears the burden of proving that the amendment would not injure the protestant under the *Parker* standard.

Evidence to Establish Protection from Reasonable Economic Pumping Standard

Witnesses for the Chase Estate testified that the dairy-domestic well produces sufficient water for the dairy and the domestic uses. The current need for the Chase Dairy is 0.13 cfs. Another 0.04 cfs is provided as domestic water to the Chase residence near the dairy, for a total current supply of 0.17 cfs. At the time of the hearing, the static water level in the dairy domestic well was 20 feet 10 inches, and the pumping depth was between 20 feet and 25 feet. Claim no. 63-05226 and water right no. 63-15820 describe the dairy-domestic well as the point of diversion, and the water right and the claim bear priority dates that pre-date the date of the Ground Water Act. The Chase Estate provided sufficient information about the dairy-domestic well to invoke the protection of *Parker*.

The priority date for water right no. 63-05229 authorizing the diversion of ground water from the small irrigation well predates the Ground Water Act. Nonetheless, the Chase Estate and its predecessors have not withdrawn ground water from the small irrigation well since 1983, because the place of use has been irrigated with waste water. Eagle's expert witness, Terry Scanlan, testified that the pump in the small irrigation well is not presently capable of withdrawing water because ground water levels have already declined below the level at which the pump could withdraw water. Dave Shaw, expert witness for Chase Dairy, testified that the pump connected to the small irrigation well would currently produce water for the water right. However, no information from an actual pumping test was submitted. The Chase Estate came forward with some information about the small irrigation well indicating that *Parker* should apply if the existing diversion works can withdraw water under existing ground water conditions.

The Chase Estate did not offer evidence about ground water diversions authorized by other ground water rights that predate the date of the Ground Water Act.

General Injury Analysis

The effects on ground water levels in the Chase Estate wells caused by withdrawing ground water from the proposed Eagle well no. 3 was predicted by experts retained by Eagle and by the Chase Estate. Exhibit 102 is a 2002 report prepared by Bill Strowd, a former employee of Holladay Engineers, the firm Eagle retained as the city engineer. Both parties agreed the report is the best compilation of ground water information related to construction of the proposed Eagle well no. 3. Page 12 (unnumbered) of the Strowd report is a vicinity map of the area where

construction of Eagle well no. 3 is proposed. Superimposed on the map is a series of concentric circles that represent water surface elevations of a theoretical pumping cone of depression. The parties referred to the document as a "bull's-eye" diagram. The diagram was developed by assuming a continuous ground water withdrawal rate of 1,000 gallons per minute for a period of 6 months.

Each of the circles locates the radius from the pumping center at which water levels will decline by equal amounts below pre-pumping ground water levels. The concentric circles define a three dimensional depiction of ground water levels that resembles a cone standing on its narrow end. Ground water levels in the cone of depression are deeper the closer the location to the pumping center of the cone. The sides of the cone do not have a constant slope; rather, the slope of the sides of the cone become steeper as the radial distance to the pumping center decreases. The changing slope or gradient towards the center of the cone is illustrated by the reduction of the distance between the concentric circles of equal declines as the circles become smaller and are closer to the center of the cone.

The inner circle drawn on the cone of depression diagram is located 1,000 feet away from the center of the cone of depression. At a radius of 1,000 feet, the report estimates a drawdown of 8 feet.

Injury Analysis for the Dairy-Domestic Well

The dairy-domestic well is located 509 feet from the site proposed for Eagle well no. 3, which is about halfway between the 1,000 foot radius circle on the bull's-eye diagram and the proposed site for Eagle well no. 3. Since the gradient of the ground water levels increase the closer to the center of the cone of depression, predicted ground water level declines at half the distance between the 1,000 foot radius circle and the center of the cone of depression may be several times the drawdown of 8 feet expected at a radial distance of 1,000 feet. The present static water level in the Chase dairy-domestic well is 20 feet 10 inches, and the pumping depth is between 20 feet and 25 feet. The experts agreed that double-digit declines of the ground water level in the dairy-domestic well will cause failure of the dairy-domestic diversion works to supply water for the dairy and domestic uses.

Because of the close proximity of the dairy-domestic well to the proposed Eagle well no. 3, it is likely that withdrawing ground water from Eagle well no. 3 will cause a decline in ground water levels in the dairy-domestic well below the level at which the present diversion works can divert water. As a result, approval of the proposed Eagle well no. 3 as an alternate point of diversion for permit no. 63-12448 is expected to result in injury to water right no. 63-15820 and any right resulting from claim no. 63-05226.

Injury Analysis for the Small Irrigation Well

The small irrigation well is located 820 feet from the site proposed for Eagle well no. 3. The small irrigation well is located within the 1,000 foot radius circle where the rate of decline in ground water levels increases significantly as the distance to the center of the cone of depression decreases. Predicted ground water declines at the location of the small irrigation well caused by

ground water withdrawals at the proposed Eagle well no. 3 could be in the range of double the predicted ground water drawdown of 8 feet at a radial distance of 1,000 feet.

It is likely that withdrawing ground water from the proposed Eagle well no. 3 will also cause declines in the ground water level at the location of the small irrigation well. However, Eagle is not required to protect the Chase Estate against declines in ground water levels that occurred prior to the construction and operation of the proposed Eagle well no. 3. From 1970 to 1989, ground water levels in the area of the proposed Eagle well no. 3 declined approximately 10 feet. Exhibit 103, at p. 18. Increases in overall ground water diversions and other factors, such as drought, may have caused these ground water declines. Because the Chase Estate and its predecessors have not withdrawn ground water from the small irrigation well since 1983, there is presently insufficient information available to determine the injury, if any, that the Chase Estate might incur from construction and operation of the proposed Eagle well no. 3. The Department cannot protect the ground water level for the Chase Estate small irrigation well unless the Estate has sufficient information to show that the water rights for the small irrigation well can be exercised at present ground water levels.

Eagle should not be enjoined from constructing and operating Eagle well no. 3 by a claim of injury to a water right that has not been exercised for over 20 years and under which right ground water may not be available for diversion using the existing diversion works. However, the Chase Estate may conduct a pump test using the existing diversion works (equipment and facilities) to demonstrate the existing availability of ground water and the capacity of the existing diversion works prior to completion of construction and operation of the proposed Eagle well no. 3. The pump test must be coordinated with Eagle and approved by the Department. Any sustainable diversion of ground water from the small irrigation well using the existing diversion works at current ground water levels, verified by the pump test, is protected from ground water declines caused by the operation of Eagle well no. 3.

Analysis of Injury to the Large Irrigation Well

Irrigation from the large irrigation well owned by the Chase Estate is authorized by a water right bearing a priority date later than the date of amendment to the Ground Water Act. Although the present ground water level in the large irrigation well is unknown, the intake for the turbine pump in the well is set at approximately 90 feet. The decline in ground water levels at the large irrigation well caused by construction and operation of the proposed Eagle well no. 3 is predicted by the cone of depression diagram to be approximately 4 feet. While this decision does not establish a reasonable pumping level, an additional 4 feet of decline in the ground water level at the large irrigation well from the present ground water level, presumed to be above 90 feet, is above the reasonable pumping level. Injury to the water right for the large irrigation well from construction and operation of the proposed Eagle well no. 3 is not expected.

Injury Analysis for Other Chase Estate Wells

Two other wells owned by the Chase Estate are located on a map received into evidence as Exhibit 1. The two wells are identified as points of diversion for water rights added to the Findings of Fact in this Final Order. While ground water withdrawals from the proposed Eagle

well no. 3 will result in ground water declines at the locations of these two wells, no information was submitted about historic diversions from the wells, whether there are operational diversion works in the wells, and whether there are ground water levels that are protected under *Parker*.

The Chase Estate took exception to the Hearing Officer's Amended Recommended Order for not addressing all the water rights held by the Chase Estate. Because sufficient information about the water rights associated with these two wells was not presented at the hearing, the Amended Recommended Order and this Final Order need not address these rights in the Findings of Fact or Conclusions of Law.

Injury Analysis for the Burton Group Wells

Finally, a group of wells depicted on Exhibit 4, and labeled as wells owned by the "Burton Group," are located in sufficiently close proximity to the proposed Eagle well no. 3 that ground water levels in the wells will decline as a result of ground water withdrawals from the proposed Eagle well no. 3. Finding No. 49 in the Amended Recommended Order addressed these wells. A portion of the Finding stated:

There are a number of domestic wells directly to the north of the Chase Estate's small irrigation well. They are shown on Exhibit 4 and are labeled the Burton Group Wells. Information in the record regarding these wells is limited. *See* Exs. 14 and 400. At least two wells in this area operate under water rights with priority dates of 1917 and 1962. These wells would be hydraulically connected to the proposed Eagle Well no. 3, although they likely do not penetrate to the deeper aquifer zone.

Comparing the list of Burton Group participants with the holders of water rights listed in Exhibit 400, reveals that Darrell Davis is the only name found in both lists. Darrell and Marla Davis hold decreed water right no. 63-04546 bearing a priority date of July 15, 1962. The water right authorizes domestic and stockwater uses. The priority date predates the 1978 amendment to the Ground Water Act, subjecting domestic wells to the reasonable pumping level standard. The Davis well is a well that is eligible for protection of water level declines under *Parker*.

Water right no. 63-04546 authorizes use of a point of diversion in the NESE, Section 5, T4N, R1E. The record does not precisely locate the Davis well within the NESE of Section 5. The Davis point of diversion may be located a minimum of approximately 1,500 feet and a maximum of approximately 3,000 feet from the location of the proposed Eagle well no. 3. Ground water level declines in the Davis well predicted by the cone of depression diagram could be from approximately 6 feet at a distance of 1,500 feet to 3.5 feet at a distance of 3,000 feet.

Exhibit 14 shows that the Davis well is four inches in diameter. Water levels in the Davis well were not measured. Davis did not submit any information about present ground water conditions or capacity of the well.

A determination of whether ground water withdrawals from the proposed Eagle well no. 3 would injure Davis and other owners of wells under the *Parker* standard is dependent on the date of priority of the water rights for the wells and an analysis of the diversion works employed by the well owners. Some evidence about the water right for the Davis well was submitted, but

the well was not located. Evidence about the water rights authorizing diversion from other wells was not submitted at the hearing. No evidence was submitted about the present pumping ground water conditions or capacity of the Davis or other Burton Group wells.

Eagle made a prima facie case that injury, in general, would not occur to the Burton Group wells by construction and operation of the proposed Eagle well no. 3. To assert protection under *Parker*, the water right holders alleging injury must come forward with information about their water rights and diversion works for analysis by the Department and the applicant. The required evidence was not presented.

Eagle Well No. 4

The Hearing Officer did not recommend approval of an additional point of diversion for the proposed Eagle well no. 4 on the basis that evidence wasn't presented about the well addressing the criteria that must be considered by the Department. After reviewing the evidence, the Director agrees that Eagle did not present evidence about the design and exact location of the proposed well, that Eagle owns or has access to the property where the well is proposed to be constructed, or that the proposed Eagle well no. 4 would not adversely affect other water users. However, the evidence in the record provides the basis for determining the expected effects on the protestants' wells.

The cone of depression diagram used to predict drawdowns expected by the proposed Eagle well no. 3 was developed from data collected and analyzed after an extended pumping test for Eagle well no. 1 at the time it was constructed. The proposed Eagle well no. 4 would be located between one-quarter and one-half mile northwest from Eagle well no. 1. Assuming the subsurface geological formations underlying the proposed location for Eagle well no. 4 are similar to the subsurface geological formations underlying Eagle well no. 1, the cone of depression diagram can be superimposed over the location for the proposed Eagle well no. 4.

The proposed Eagle well no. 4 would be located about three-quarter mile northeast of the proposed Eagle well no. 3. The Chase Estate wells are all located west of the proposed Eagle well no. 3, and the nearest Chase Estate well would be located approximately three-quarters of a mile from the location of the proposed Eagle well no. 4. The nearest well of the Burton group wells is also located approximately three-quarters of a mile away from the proposed Eagle well no. 4, which is greater than the distance between the location of the proposed Eagle well no. 3 and the nearest well of the Burton group wells. Because the proposed Eagle well no. 4 would be located a significant distance further away from the Chase Estate wells and the Davis and other Burton Group wells than the proposed Eagle well no. 3, Eagle well no. 4 will have substantially less adverse effects on the Chase Estate wells and on the Davis and other Burton Group wells than would the proposed Eagle well no. 3.

Local Public Interest

During examination of Eagle's witnesses, the Chase Estate attempted to establish that the construction of the proposed points of diversion is not in the local public interest. The Chase Estate asserted that Eagle had contracted with United Water Idaho, Inc., to provide a back-up

water supply from United Water's Floating Feather well, and the back-up water supply was approved by the Idaho Public Utilities Commission, which held that providing water from the back-up well was in the local public interest. The fact that one alternative supply was in the local public interest to serve a then-present public need does not preclude subsequent proposals from also being in the local public interest. Eagle is committed to owning a stand-alone, independent water system without crossover commitments to other water service providers. The goal of Eagle to independently own and control its water system is in the local public interest.

Advancement of Priority

The application for amendment does not propose an enlargement of use of the permit. As a result, there is no justification for advancement of the priority date. The priority date should remain April 8, 1998.

Miscellaneous Exceptions

References inferring that a supplemental water right does not receive full protection under the law will be eliminated.

FINDINGS OF FACT

Applicant and Permit No. 63-12448

1. Eagle is a municipal corporation under the laws of the State of Idaho. Eagle owns a municipal water system serving several developments in Eagle under water right permit no. 63-12448 (the "Permit") with a priority date of April 8, 1998. The current water use authorized under the Permit is described as follows:

Source of Water:	Ground water from a water bearing zone between 183 to 602 feet
Point(s) of Diversion:	NWSW, Section 3, T4N, R1E, B.M., Ada County, Idaho SWSW, Section 3, T4N, R1E, B.M., Ada County, Idaho SESW, Section 5, T4N, R1E, B.M., Ada County, Idaho
Use(s):	Municipal
Total Quantity:	3.25 cfs / 1,455 acre feet annually
Period of Use:	January 1 – December 31 (year-round)
Place of Use:	Within the city limits of Eagle and surrounding service area.

Source of Water

2. The ground water source underlying the points of diversion authorized by the Permit is characterized as a leaky water table aquifer, with attenuated communication from shallow, water bearing zones to deep-water zones. The vertical gradient is generally from shallower to deeper. The aquifer is generally described in a report prepared by the engineering firm CH2M Hill in June 1991 following a 30-day pump test at one of the currently authorized points of diversion for the permit, referred to later in these Findings of Fact as Eagle well no. 1:

The aquifer is characterized as a complexly stratified water table aquifer consisting of highly permeable sand layers and lenses separated by discontinuous and leaky sandy clays. Aquifer response to pumping is expected to behave as a single thick water table aquifer with significant delayed yield due to gravity drainage early in the pumping period and close to the well. In distant observation wells the response during the relatively short 30-day pumping period was more indicative of a confined aquifer owing to the stratified nature.

Exhibit 104 at 52.

“Lateral inflow from the aquifer margin to the north and east and seepage from canal and irrigation laterals are probably the most significant sources of water.” Exhibit 104 at 3. Although the points of diversion under the Permit are spread laterally over approximately one mile, the authorized points of diversion and the proposed additional points of diversion are in the same aquifer and are hydraulically connected. No evidence was presented to show that current ground water withdrawals from the existing points of diversion authorized under the Permit detrimentally impacted other wells or surface water diversions.

3. From 1970 to 1989, ground water levels in the area of the proposed additional points of diversion declined approximately 10 feet. Exhibit 103, Page 18. Ground water levels in the area may have also declined after 1989. Data from two wells monitored by Terry Scanlan, an expert witness for Eagle, show declines of 2 to 8 feet from 1998 to 2003. *See* Exhibit 7. The recorded ground water declines may have been caused by increased pumping, drought, or changes in recharge. Increased pumping from an aquifer will lower ground water levels, steepen the gradient to the location of the point of ground water diversion, and draw more water from the boundaries of the aquifer, ultimately resulting in equilibrium at lower ground water levels.

Points of Diversion

4. Eagle well no. 1: This well, located in the SWSW, Section 3, T4N, R1E, also known as Lexington Hills well no. 1, is currently Eagle’s primary municipal well. It supplies all the municipal water used during normal operation of the system. Two pumps, one with a capacity of 160 gallons per minute (“gpm”) and the other with a capacity of 800 gpm, draw from the well and can be operated together. Water quality and stability of production at this well are both excellent. Exhibit 106 at 11.

5. Eagle well no. 2: This well, located in the NWSW, Section 3, T4N, R1E, also known as Lexington Hills well no. 2, is no longer used due to high iron content in the water and excessive sand production.

6. Floating Feather Well: This well, located in the SESW, Section 5, T4N, R1E, is owned and operated by United Water Idaho. The Floating Feather well provides Eagle with a reliable second well to satisfy minimum municipal water system requirements pursuant to a number of agreements between Eagle and United Water Idaho. Exhibits 16, 17, 18. At the time of the hearing, the entire water service for the Brookwood Subdivision was being supplied by the Floating Feather Well.

Use

7. Eagle's municipal water system serves the Lexington Hills, Echo Creek, Crown Point, and Brookwood residential subdivisions, including Lexington Hills School, and can serve other potential residential subdivisions in the same general area. The system distributes potable water and fire flows to the subdivisions. There is a 12-inch diameter trunk line along the north side of Floating Feather Road that interties the system with the United Water Idaho distribution network and Hidden Hollow Reservoir. Irrigation water is largely supplied to the subdivisions through a parallel surface water irrigation system.

Total Quantity

8. Permit no. 63-12448 authorizes Eagle to instantaneously withdraw ground water at a maximum rate of 3.25 cfs and a volume of up to 1,455 acre-feet annually. The instantaneous diversion rate of 3.25 cfs equals approximately 1,460 gpm. The annual volume of 1,455 acre-feet equals a continuous average diversion rate of 902 gpm. The rate and volume limitations apply to the combined quantities of ground water diverted under all of Eagle's current water right permits; no. 63-11413, no. 63-12017, and no. 63-12448. Because Eagle does not have storage in its system, it must meet peak demands by increasing the rates of diversion at its wells, subject to the combined diversion rate limitation of 3.25 cfs.

Period of Use

9. Eagle's municipal water system is used every day of each year for potable water needs, irrigation during the irrigation season, and may at any time be needed for fire suppression.

Place of Use

10. A general representation of Eagle's water service area boundary is shown on Exhibits 3 and 4. A general representation of the actual area served by Eagle's water system is shown on the second map in Appendix I of Exhibit 106. The physical characteristics of the planning area are described as follows:

The topography of the Planning Area generally comprises relatively high ground in Section 3 and the E ½ of Section 4, and ground water 50 to 100 feet lower than the

foregoing in the Dry Creek Valley in the W ½ of Section 4 and the E ½ of Section 5. There is a prominent bluff, 30 to 50 feet high, defining the boundary between the higher ground and the valley of Dry Creek, but the higher ground is rolling hills with elevation differences as great as 60 feet above the approximate top of the bluff. For practical management, the bluff divides the Planning Area into two service pressure zones

Exhibit 106 at 12.

Extension of Time for Filing Proof of Beneficial Use

11. Eagle filed the currently pending application to amend permit no. 63-12448 on June 8, 2001, and the application was protested. Eagle requested a 5-year extension of time to file proof of beneficial use on the basis that the contested application for amendment had been pending since 2001, and the contested case had not been heard or resolved.

12. Permit no. 63-12448 was approved on December 3, 1998. At the time of approval, the Department granted 5 years for development and beneficial use of water. On December 4, 1998, Eagle filed application to amend permit no. 63-12448 (prior to the current application for amendment), which was contested and finally approved on April 7, 2000. The development period that expired between approval of the first amendment and the filing of the second application for amendment was approximately 1 year. As a result, approximately 4 years of the development period was lost because of contests to applications for amendment between the time the permit was approved and the time when proof of beneficial use was due.

Proposed Project

13. Eagle's Application requests that two additional points of diversion be approved for permit no. 63-12448 without any increase in the diversion rate under the Permit. Eagle needs at least two wells for its municipal system. The Idaho Department of Environmental Quality requires that community water systems supplying ground water to more than 25 homes have a minimum of two sources. IDAPA 58.01.08.550.03.p. Beyond this legal requirement, having a minimum of two wells provides Eagle many technical advantages. Two or more wells provide redundancy if a particular well fails or needs maintenance. Two or more wells also provide greater capacity for meeting emergency demands. Water supplies are more reliable with two or more wells, and having two more wells provides Eagle the ability to rest a well, extending the life of pumps. Having two or more wells also spreads the effects on the aquifer. Finally, if Eagle could develop new wells in the Dry Creek Valley below the bluff upon which Eagle well no. 2 is located, the new wells could provide water directly to the lower pressure zone without having to reduce pressure from the higher pressure zone on the bluff.

14. Eagle desires to develop an independent, city-owned, municipal water system that does not rely on contracts with third parties. If the application for amendment is not approved, Eagle would have to continue its contractual relationship with United Water Idaho to use the Floating Feather Well.

Eagle Well No. 3 (Brookwood Well)

15. Eagle's application for amendment seeks an additional point of diversion in the SWSW, Section 4, T4N, R1E. Eagle proposes to construct a well near the northeast corner of the intersection of Eagle and Floating Feather Roads that would be known as Eagle well no. 3 or the Brookwood well. A well constructed at this location would supply the Eagle municipal water system with a point of diversion in the lower zone of its service area. Eagle well no. 3 is an authorized point of diversion for permits no. 63-11413 and no. 63-12017 also held by Eagle.

16. Eagle submitted plans and specifications for the proposed Eagle well no. 3 with other details for evaluation of the water resource impact of the well. Exhibit 2. The well would be 335 feet deep, with a production zone from 220 to 330 feet below ground surface. The minimum, sustained, rate of withdrawal for the well as designed is 1,000 gpm, but no current condition in permit no. 63-12448 would prevent Eagle from withdrawing water from the proposed Eagle well no. 3 at the maximum diversion rate of approximately 1,460 gpm. Eagle anticipates diverting an average of 200 to 280 gpm from the proposed Eagle well no. 3 provided Eagle Well no. 1 is in operation. The Idaho Department of Environmental Quality has reviewed and approved the well design and well site for the proposed Eagle well no. 3, although at the time of the hearing the well construction approval had expired and the well design had been resubmitted for approval. The proposed well location is located outside of the floodplain of Dry Creek.

17. Construction of the proposed Eagle well no. 3 is a condition of development of the Brookwood subdivision by Aries Development, LLC. Aries Development, LLC, agreed to construct the proposed Eagle well no. 3 as a joint venture with Eagle. Exhibit 141. Eagle contracted to purchase the well upon completion pursuant to a *Well Purchase Agreement* with Aries Development, LLC. Eagle budgeted \$200,000.00 for the purchase of the proposed Eagle well no. 3 in Eagle's *Capital Improvement Plan* for the fiscal year following the hearing. Eagle has already invested significant capital in the proposed well site. It is reasonably certain that Eagle will continue to budget in the future for construction of the well.

Eagle Well No. 4

18. Eagle's application for amendment also seeks an additional point of diversion in the NESE, Section 4, T4N, R1E, which is about three-quarter mile northeast of the location proposed for Eagle well no. 3. Exhibit 3. Eagle seeks to reserve this well site, which is located southwest of the intersection of Edgewood Road and Dry Creek within about one-quarter mile from Eagle well no. 2, if the proposed Eagle well no. 3 is not a productive well. Eagle well no. 4 is an authorized point of diversion for permits no. 63-11413 and no. 63-12017 also held by Eagle. Eagle does not own the site or have legal access to the site, although Eagle does have eminent domain authority, which could be exercised if necessary to gain access to the site. Eagle has not designed the well.

Effects On Ground Water Levels and Water Quantity Under Existing Water Rights

19. Four written studies relevant to the Application have been conducted: a June 1991 aquifer analysis by CH2M Hill; a June 1991 IDWR open-file report on ground water conditions in the Dry Creek area; a July 1995 aquifer pumping test at the Floating Feather Well by Terry Scanlan; and an August 2001 summary of ground water conditions in the vicinity of the proposed Eagle well no. 3 by Bill Strowd.

20. The CH2M Hill report prepared in 1991, Exhibit 104, is based primarily on an extended pump test conducted using Eagle well no. 1, located one mile east of the proposed Eagle well no. 3 site. From that pump test, CH2M Hill derived aquifer characteristics in the study area. From those aquifer characteristics, CH2M Hill simulated the aquifer's response to various pumping scenarios.

21. The IDWR open file report prepared in 1991, Exhibit 103, analyzed the CH2M Hill aquifer test, water well measurements, and other data to assess concerns regarding the effects of expanding development in the Dry Creek area. The report also used the CH2M Hill data to further predict well interference caused by pumping from wells in the Dry Creek area. The key document in this analysis is a diagram of the predicted "cone of depression" caused by pumping ground water from Eagle Well no. 1 at 1,000 gpm for 6 months. Exhibit 103, p. 21, fig. 11. The prediction used a more conservative transmissivity value than used in the CH2M Hill report.

22. The Scanlan Report prepared in 1995, Exhibit 105, described the results of a pump test of United Water Idaho's Floating Feather well, located approximately one-half mile west of the proposed Eagle well no. 3 location. Scanlan monitored ground water levels for drawdowns in wells in the vicinity of the Floating Feather well during a 51-hour pump test at an average rate of 1,500 gpm. One monitored well was the Vail domestic well, located approximately 250 feet from the Floating Feather well. Observed drawdown in the Vail well was 1.4 feet. However, Scanlan calculated that the drawdown would have been 8.7 feet if the aquifer zone intercepted by the Vail well was directly connected to the zones intercepted by the Floating Feather well. Exhibit 105, p. 4. Another monitored well, identified as the Chase domestic well, was located approximately 1,000 feet from the Floating Feather well. Observed drawdown in the Chase domestic well was approximately 1.5 feet. However, Scanlan calculated that the drawdown would have been 5.7 feet if the aquifer zone intercepted by the Chase domestic well was directly connected to the zones intercepted by the Floating Feather well. Exhibit 105, p. 5. Scanlan suggested in his report that there are three aquifer zones in this area: a shallow unconfined aquifer zone to a depth of 50 feet, an upper confined aquifer zone extending from 100 to 170 feet, and a lower confined aquifer zone extending from 170 feet to depths of more than 335 feet. The Vail and Chase domestic wells described in the report penetrated the middle aquifer zone, while the Floating Feather well penetrated the lower aquifer zone. The drawdowns measured and computed by Scanlan suggest, however, that the confinement is limited, and that the aquifer zones are hydraulically connected.

23. The Strowd Report prepared in August 2001, Exhibit 102, analyzed the reports described in Findings 20 through 22, analyzed well logs in the vicinity of the proposed Eagle well no. 3, and predicted the effects of ground water withdrawals from the proposed Eagle well no. 3. The cone of depression diagram for Eagle well no. 1 in the IDWR open file report was

superimposed on the proposed Eagle well no. 3 point of diversion to show potential drawdowns caused by the withdrawal of 1,000 gpm for 6 months. Exhibit 102, Figure entitled "Estimated 6-Month Draw Down Based On 1,000 GPM Pumping." This figure predicts 8 feet of drawdown at 1,000 feet from the proposed Eagle well no. 3. This is a worst case analysis of predicted effects because the sustained average rate of withdrawal from the proposed Eagle well no. 3 is not expected to exceed 280 gpm, and the sustained average rate of withdrawal cannot exceed 902 gpm on a continuous basis. However, no condition in permit no. 63-12448 would prevent Eagle from withdrawing ground water from the proposed Eagle well no. 3 at the maximum instantaneous rate authorized of 1,459 gpm or a sustained average rate of 902 gpm. The assumed withdrawal rate of 1,000 gpm is a reasonable estimate of the maximum pumping rate. As a result, the cone of depression diagram is used to analyze probable effects on other wells caused by withdrawing ground water from the proposed Eagle well no. 3.

24. The Strowd Report concludes:

By employing this model, only the nearest wells to the Brookwood site should experience drawdowns in excess of five to six feet. Local wells exploiting another aquifer zone may be influenced even less. Wells within hundreds of feet of the Brookwood site, however, may experience drawdowns in excess of eight or ten feet.

Exhibit 102, p. 6.

Eagle testified that it was willing to mitigate for the impacts caused to senior water rights by its water use.

Effects on Chase Estate Wells

25. The Chase Estate holds several ground water rights represented by decree, license, or beneficial use claims, with points of diversion in the vicinity of proposed Eagle wells no. 3 and no. 4. The record contains water right information about the following water rights and claims held or claimed by the Chase Estate: no. 63-05224, no. 63-05225, no. 63-05226, no. 63-05229, no. 63-08663, no. 63-15820, and no. 63-18731. Information about well identification, exact well location, and use was only submitted for water right nos. 63-05226, 63-05229, 63-08663, and 63-15820. Only information about the wells described by these water rights are presented in these Findings of Fact, as discussed in the previous Analysis of Exceptions.

26. Water right no. 63-15820 has been decreed in the Snake River Basin Adjudication, Twin Falls County Case No. 39576 (the "SRBA"), Exhibit 150, and is described as follows:

Priority Date:	January 1, 1920
Source of Water:	Ground water
Point(s) of Diversion:	SESESE, Section 5, T4N, R1E
Use(s):	Domestic
Total Quantity:	0.04 cfs
Period of Use:	January 1 – December 31
Place of Use:	SESE, Section 5, T4N, R1E.

The point of diversion for this right is known as the Chase "dairy-domestic well." The dairy-domestic well is 240 feet deep with a 3-inch casing at ground surface. The dairy-domestic well is equipped with two ¾-horsepower, shallow, jet pumps that can lift water a maximum vertical distance of about 26 feet. In May 2003, the depth to water in the dairy-domestic well was measured at 20 feet, 10 inches from the top of the well casing. The dairy-domestic well is located 509 feet southwest of the proposed site for Eagle well no. 3.

27. Claim no. 63-05226 is a beneficial use right that has been claimed by the Chase Estate in the SRBA, and is described in the claim as follows:

Priority Date:	January 1, 1950
Source of Water:	Ground water
Point(s) of Diversion:	SESESE, Section 5, T4N, R1E
Use(s):	Stockwater, commercial, domestic
Total Quantity:	0.31 ⁶ cfs
Period of Use:	January 1 – December 31
Place of Use:	SESE, Section 5, T4N, R1E.

The point of diversion for this claim is the Chase dairy-domestic well. The water diverted under this water right is used for critical activities at the Chase Dairy. Loss of water under this water right for as short a period as four to six hours in the summer could injure the dairy cows, and after one to three days cows could die, which would irreparably damage the Chase Estate's dairy herd.

28. If the proposed Eagle well no. 3 withdraws 1,000 gpm for 6 months, the diversion is expected to cause drawdowns in the range of 20 to 40 feet in the Chase dairy-domestic well from which diversions of ground water are made under water right no. 63-15820 and claim no. 63-05226. Since the Chase dairy-domestic well is only 509 feet southwest of the proposed location of Eagle well no. 3, the expected drawdown caused by the withdrawal of 1,000 gpm for 6 months would be several times the drawdown of 8 feet predicted by the cone of depression diagram at a radial distance of 1,000 feet from the proposed well. Since the proposed Eagle well no. 4 would be located about three-quarter mile further away from the Chase dairy-domestic well than the proposed Eagle well no. 3, the expected drawdown caused by ground water withdrawals from the proposed Eagle well no. 4 would be substantially less than the drawdown caused by the proposed Eagle well no. 3.

29. Claim no. 63-05229 is a beneficial use right that has been claimed by the Chase Estate in the SRBA, and is described as follows:

Priority Date:	October 27, 1925
Source of Water:	Ground water
Point(s) of Diversion:	NESESE, Section 5, T4N, R1E
Use(s):	Irrigation of 20 acres, stockwater, domestic
Total Quantity:	0.46 cfs

⁶ Michael Chase testified that the correct quantity for this water right is 0.13 cfs.

Period of Use:	Irrigation - 3/1 to 11/15 Other - January 1 – December 31
Place of Use:	SESE, Section 5, T4N, R1E.

The point of diversion for this claim is a well known as the Chase “small irrigation well.” The small irrigation well is 280 feet deep with a 4-inch casing at ground surface. The small irrigation well is equipped with a 2 horsepower, centrifugal, end suction pump.

The water diverted from the small irrigation well supplements wastewater the Chase Estate uses to irrigate the place of use under claim no. 63-05229. The wastewater has supplied the entire irrigation needs for the place of use since 1983, and ground water has not been diverted from the small irrigation well since 1983. The Chase small irrigation well is located 820 feet northwest of the proposed site of Eagle well no. 3.

30. If ground water is diverted from the proposed Eagle well no. 3 at a rate of 1,000 gpm for 6 months, the diversion is expected to cause drawdown in the range of 10 to 20 feet in the small irrigation well from which ground water is diverted under claim no. 63-05229. Since the Chase small irrigation well is only 820 feet northwest of the proposed location of Eagle well no. 3, the expected drawdown caused by the withdrawal of 1,000 gpm for 6 months would probably be at least double the drawdown of 8 feet predicted by the cone of depression diagram at a radial distance of 1,000 feet from the proposed Eagle well no. 3. Since the proposed Eagle well no. 4 would be located about three-quarter mile further away from the Chase small irrigation well than the proposed Eagle well no. 3, the expected drawdown caused by ground water withdrawals from the proposed Eagle well no. 4 would be substantially less than the drawdown caused by the proposed Eagle well no. 3.

31. Water right no. 63-08663 is a licensed water right that has been claimed by the Chase Estate in the SRBA, and is described as follows:

Priority Date:	April 6, 1977
Source of Water:	Ground water
Point(s) of Diversion:	NWSE, Section 5, T4N, R1E
Use(s):	Irrigation of 100 acres, stockwater
Total Quantity:	2.0 cfs, 452.7 acre-feet annually
Period of Use:	Irrigation - 3/15 to 11/15 Other - January 1 – December 31
Place of Use:	NWSE, SWSE, and SESE, Section 5, T4N, R1E.

The point of diversion for this right is a well known as the Chase “large irrigation well.” The large irrigation well is 338 feet deep and has a 16-inch casing. The large irrigation well is equipped with a 25 horsepower, line-shaft, turbine pump that produces 2.0 cfs. The pump intake is currently set at 92 feet. In May 2003, the depth to water in the large irrigation well was measured at 58 feet, 3 inches from land surface. The large irrigation well is located 2,450 feet northwest of the proposed site for Eagle well no. 3.

32. If the proposed Eagle Well no. 3 withdraws 1,000 gpm for six months, the diversion is expected to cause approximately a 5-foot drawdown in the large irrigation well. Since the proposed Eagle well no. 4 would be located about one mile further away from the Chase large irrigation well than the proposed Eagle well no. 3, the expected drawdown caused by ground water withdrawals from the proposed Eagle well no. 4 would be substantially less than the drawdown caused by the proposed Eagle well no. 3.

Impact on Burton Group Wells

33. There are a number of domestic wells directly to the north of the Chase small irrigation well. The locations of the wells are shown on Exhibit 4 and are labeled the Burton Group wells. Information in the record regarding these wells is limited. *See* Exhibits 14 and 400. Exhibit 400 identifies water rights in the area of the Burton Group wells. The Burton Group wells are hydraulically connected to the proposed Eagle well no. 3, although the Burton Group wells likely are not deep enough to penetrate the deeper aquifer zone.

34. The list of Burton Group participants was compared with the holders of water rights listed in Exhibit 400. Darrell Davis was the only name found in both lists. Darrell and Marla Davis hold decreed water right no. 63-04546 with a priority date of July 15, 1962. The water right authorizes domestic and stockwater uses.

35. Water right no. 63-04546 has a point of diversion in the NESE, Section 5, T4N, R1E. The record does not precisely locate the Davis well within the NESE of Section 5. Exhibit 14 states that the Davis well is four inches in diameter. Water levels in the Davis well were not measured. Davis did not submit any information about present pumping capacity of the well.

36. Information about water rights, precise locations, and present pumping capacities of the Burton Group wells was not presented at the hearing.

37. The points of diversion for the Davis well and the other Burton Group wells are probably located a minimum of approximately 1,500 feet and a maximum of approximately 3,000 feet to the northwest of the proposed Eagle Well no. 3. The drawdowns predicted by the cone of depression diagram would be from approximately 6 feet at a distance of 1,500 feet to 3.5 feet at a distance of 3,000 feet. Since the proposed Eagle well no. 4 would be located even further away from Davis well and the other Burton Group wells than the proposed Eagle well no. 3, the expected drawdowns caused by ground water withdrawals from the proposed Eagle well no. 4 would be less than the drawdowns caused by the proposed Eagle well no. 3.

Impact on Other Wells

38. The undisputed testimony is that the proposed Eagle well no. 3 would minimally affect ground water levels in the wells of Weldon Fisher and Eagle Water Company. Since the location of the proposed Eagle well no. 4 would be about the same distance away from the eastern-most well of Eagle Water Company as the proposed Eagle well no. 3 and further away from the other Eagle Water Company wells and the Weldon Fisher well than the proposed Eagle

well no. 3, operation of Eagle well no. 4 would also minimally affect ground water levels in the wells of Weldon Fisher and Eagle Water Company.

CONCLUSIONS OF LAW

Based on the Findings of Fact and applicable Idaho law, the Director makes the following Conclusions of Law.

Effect on Other Water Rights

1. The Director must determine whether the proposed amendment of permit no. 63-12448 will adversely affect other water rights.

2. In 1951, the Idaho Legislature enacted legislation known as the Ground Water Act. In 1953, the Idaho Legislature amended the Ground Water Act. The 1953 Amendment recognized that:

while the doctrine of "first in time is first in right" is recognized, a reasonable exercise of this right shall not block full economic development of underground water resources, but early appropriators of underground water shall be protected in the maintenance of reasonable ground water pumping levels

Idaho Code § 42-226.

In 1978, the Idaho Legislature again amended the Ground Water Act. The 1978 Amendment expressly stated that domestic water rights are subject to the reasonable economic pumping level standard.

3. In *Parker v. Wallentine*, 103 Idaho 506, 650 P.2d 648 (1982), the Idaho Supreme Court determined that a later in time appropriator should be enjoined from withdrawing ground water for irrigation that almost immediately caused the ground water level to drop below a domestic well located nearby. The Court held that the water right for the domestic well was perfected prior to the irrigation water right and before the reasonable pumping level standard was applied to domestic beneficial uses, and that the domestic water right holder was entitled to the protection of the ground water pumping level existing prior to ground water withdrawals by the junior appropriator. The Court held that the injunction was not permanent, and could be absolved upon full compensation by the junior appropriator for the cost of deepening the senior appropriator's well and payment of the costs of additional equipment and energy.

4. The Idaho Supreme Court stated in *Parker v. Wallentine*:

Under the doctrine of prior appropriation, because Parker's domestic well was drilled prior to Wallentine's irrigation well, Parker has a vested right to use the water for his domestic well. That right includes the right to have the water available at the historic pumping level or to be compensated for expenses incurred if a subsequent appropriator is

allowed to lower the water table and Parker is required to change his method or means of diversion in order to maintain his right to use the water.

103 Idaho 506, 512 (1982) (emphasis added).

The Idaho Supreme Court went on to note that:

Parker will not be deprived of any right to his use if water can be obtained for Parker by changing the method or means of diversion. The expense of changing the method or means of diversion, however, must be paid by the subsequent appropriator, Wallentine, so that Parker will not suffer any monetary loss. Thus, upon a proper showing by Wallentine that there is adequate water available for both he and Parker, it is within the inherent equitable powers of the court upon a proper showing and in accordance with the views herein expressed to enter a decree which fully protects Parker and yet allows for the maximum development of the water resources of the State.

103 Idaho at 514.

5. Under the principles of *Parker*, if (1) diversion of ground water by junior ground water appropriators causes declines in ground water levels in wells of senior water right holders because of local well interference, and (2) the water rights held by the senior water right holders bear priority dates earlier than 1951, or 1978 for domestic water rights, the holders of the senior water rights are, at a minimum, entitled to compensation for the increased costs of diverting ground water caused by the declines in ground water levels.

6. The extent to which *Parker* provides protection to the Chase Estate water rights depends on proof of injury and factual similarities to the facts of the *Parker* case.

7. In *Parker*, the owner of the domestic well was unable to divert water from the domestic well within minutes of when the junior priority right holder began withdrawing ground water. The proof of the lowered ground water level caused by diversion of ground water from the irrigation well that resulted in inability to divert ground water from the domestic well was established through testimony about the effects of the initial withdrawals from the Wallentine well and by a pump test conducted by the parties and the Department.

8. In an administrative hearing for an application to amend a permit, the applicant bears the burden of proving that the proposed change will not injure other water rights. If a protestant seeks the protection of *Parker* from application of the reasonable pumping level standard of the Ground Water Act, however, the protestant must come forward with evidence that: (1) the protestant is the holder of a water right that is not subject to the Ground Water Act, and (2) the protestant's diversion works are capable of diverting the water right at the ground water levels existing at or about the time the application is considered. Once the protestant comes forward with the information, the applicant ultimately bears the burden of proving that the amendment will not injure the protestant under the *Parker* standard.

9. Withdrawing ground water from the proposed Eagle well no. 3 is expected to cause a decline in ground water levels in the Chase dairy-domestic well below the level at which

the present diversion works can divert water. As a result, water right no. 63-15820 and claim no. 63-05226 are expected to be adversely affected by approval of the additional point of diversion at the proposed Eagle well no. 3.

10. Withdrawing ground water from the proposed Eagle well no. 3 is expected to cause declines in ground water levels at the location of the Chase small irrigation well. However, Eagle is not required to protect the Chase Estate against declines in ground water levels that occurred prior to the potential construction and operation of Eagle well no. 3. Since the Chase Estate and its predecessors have not diverted ground water from the small irrigation well since 1983, the Director cannot presently determine the adverse effects, if any, that the Chase Estate might incur as a result of the construction and operation of Eagle well no. 3. The Director cannot protect the ground water pumping level for the Chase Estate unless it has information to show that the water right having the small irrigation well as the point of diversion can be exercised at the present ground water level. Eagle should not be enjoined from constructing and operating the proposed Eagle well no. 3 by a claim of injury to a water right that has not been exercised for over 20 years and that may not be divertible with the present ground water levels and diversion works. However, the Chase Estate may conduct a pump test at the small irrigation well using the existing diversion works to demonstrate its existing capacity to divert ground water prior to the operation of Eagle well no. 3. The pump test must be coordinated with Eagle and approved by the Department. Any sustainable diversion of water from the small irrigation well with the existing diversion works at current ground water levels, verified by the pump test, should be protected from injury.

11. Since the proposed Eagle well no. 4 would be located about three-quarter mile further away from the Chase dairy-domestic and small irrigation wells than the proposed Eagle well no. 3, the expected drawdown caused by ground water withdrawals from the proposed Eagle well no. 4 would be substantially less than the drawdown caused by the proposed Eagle well no. 3.

12. Water right no. 63-08663 is diverted through the Chase large irrigation well. The Director concludes that water right no. 63-08663 has a priority date later than applicable amendments to the Ground Water Act, and that water right no. 63-08663 is subject to the reasonable economic pumping level standard. Drawdowns caused by ground water withdrawals from the proposed Eagle well no. 3 or Eagle well no. 4 would not be expected to cause water levels to decline below the reasonable economic pumping level. Water right no. 63-08663 will not be adversely affected by approval, construction, and withdrawals of ground water from the proposed Eagle well no. 3 or Eagle well no. 4.

13. Since the Burton Group did not present sufficient proof of water rights, locations of points of diversion, and ability to divert ground water as authorized under any of the water rights, the individuals within the Burton Group are not entitled to protection against declines in ground water pumping levels in this administrative action.

14. Withdrawing ground water from the proposed Eagle well no. 3 or Eagle well no. 4 will not adversely affect water rights held by the Eagle Water Company or Weldon Fisher.

15. Eagle does not presently own or have legal access to the site proposed for Eagle well no. 4. However, Eagle does have eminent domain authority which could be exercised if necessary to gain access to the site for the proposed Eagle well no. 4.

16. Water rights of the protestants will not be injured by development of the proposed Eagle well no. 4 provided the conditions of this order for the proposed Eagle well no. 3 are satisfied.

Enlargement of Use

17. The Director must determine whether the proposed amendment of permit no. 63-12448 will result in the diversion and use of more water than originally permitted.

18. Eagle will not increase the maximum rate of diversion or annual volume of ground water diverted from the amounts authorized by permit no. 63-12448. The Director should not advance the date of priority for permit no. 63-12448.

Local Public Interest

19. Idaho Code § 202B(3) defines the local public interest as follows:

“Local public interest” is defined as the interests that the people in the area directly affected by a proposed water use have in the effects of such use on the public water resource.

20. Eagle submitted sufficient information concerning the proposed Eagle well no. 3 and Eagle well no. 4 to allow the water resource impact of the project to be evaluated. Since the application requests that permit no. 63-12448 be amended only to add additional points of diversion, the only area directly affected by the application is the area within the immediate vicinity of the proposed wells.

21. Eagle’s intent to have an independent, municipal, water supply system is in the local public interest.

Extension of Time to File Proof of Beneficial Use

22. Idaho Code § 42-204 states, in pertinent part as follows.

Sixty (60) days before the date set for the completion of the appropriation of water under any permit, the department shall forward a notice to the applicant by certified mail at his address of record of the date for such completion, which said notice shall advise the applicant of the necessity of submitting an affidavit of completion or a request for an extension of time on or before said date; Provided that:

1. In cases where the applicant is prevented from proceeding with his work ... by litigation of any nature which might bring his title to said water in question, the department of water resources upon proper showing of the existence of any such condition, and being convinced that the applicant is proceeding diligently and in good faith, shall extend the time so that the amount of time lost by such delays shall be added to the time given in the original permit . . .

23. The contested case initiated by the protests filed against this application for amendment and a previous application for amendment qualify as "litigation of any nature which might bring ... title to said water in question . . ." Four years of the original development period were lost as a result of the contested applications for amendment. Eagle has proceeded diligently and in good faith. The time for filing proof of beneficial use should be extended until October 1, 2009.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED that application to amend permit no. 63-12448 filed by the City of Eagle is GRANTED as follows.

Water right permit no. 63-12448 is amended to allow for two additional points of diversion: one additional point of diversion in the SWSW, Section 4, T4N, R1E, B.M., Ada County, Idaho; and one additional point of diversion in the NESE, Section 4, T4N, R1E, B.M., Ada County, Idaho.

The extension of time requested by the City of Eagle for filing proof of beneficial use, filed by the City of Eagle in November 2003, is APPROVED, and proof of beneficial use is due on or before October 1, 2009.

The priority date for water right permit no. 63-12448 shall remain April 8, 1998, the original priority date of the Permit.

Water right permit no. 63-12448 is conditioned as follows:

- (1) The City of Eagle must compensate the Chase Estate for the loss of production from the dairy-domestic well to the full extent of the diversion rate authorized under water right no. 63-15820 (0.04 cfs) and claim no. 63-05226 (0.13 cfs) caused by diverting ground water from Eagle well no. 3 located in the SWSW, Section 4, T4N, R1E. Two acceptable alternatives for compensation are: (a) constructing a new well for the Chase Estate, installing the necessary pumping equipment, and paying for additional pumping costs; or (b) providing direct back-up service from the City of Eagle's municipal system without additional cost to the Chase Estate. If one of these two alternatives is offered to the Chase Estate by the City of Eagle, the Chase Estate must except the alternative offered. If the Chase Estate does not accept whichever of these two alternatives is offered by the City of Eagle, the Chase Estate is not entitled to protection of its rights. Alternatively, the Chase Estate and

the City of Eagle may negotiate another mutually acceptable alternative for compensation.

- (2) Before construction of Eagle well no. 3 in the SWSW, Section 4, T4N, R1E, is completed and ground water is diverted from Eagle well no. 3, the Chase Estate may conduct a pump test using the small irrigation well. The Department must pre-approve the test, and the City of Eagle must be allowed to participate in the test. The test must use presently in-place pumping equipment and be conducted for a sufficient duration to establish the current sustainable rate of diversion. Any sustainable rate of diversion within the diversion rate limitation of claim no. 63-05229 (0.46 cfs) will be recognized as diversion capacity that will no longer be available because of declines caused by diverting ground water from Eagle well no. 3 in the SWSW, Section 4, T4N, R1E. The City of Eagle must compensate the Chase Estate for any loss of proven, sustainable diversion rate from the small irrigation well. Two acceptable alternatives for compensation are: (a) constructing a new well for the Chase Estate, installing the necessary pumping equipment, and paying for additional pumping costs; or (b) providing direct back-up service from the City of Eagle's municipal system without additional cost to the Chase Estate. If one of these two alternatives is offered to the Chase Estate by the City of Eagle, the Chase Estate must accept the alternative offered. If the Chase Estate does not accept whichever of these two alternatives is offered by the City of Eagle, the Chase Estate is not entitled to protection of its rights. Alternatively, the City of Eagle and the Chase Estate may negotiate another mutually acceptable alternative for compensation.
- (3) Right no. 63-12448 is subject to all prior water rights, including rights held by the Chase Estate as provided in (1) and (2) above.
- (4) The water bearing zone to be appropriated under right no. 63-12448 is from 183 to 602 feet below ground surface.
- (5) Wells at the additional points of diversion authorized shall be constructed in accordance with the rules of the Idaho Department of Water Resources regarding well construction, IDAPA 37.03.09, and the rules of the Department of Environmental Quality for Public Drinking Water Systems, IDAPA 58.01.08.
- (6) The right holder shall install suitable measuring devices approved by the Department at Eagle wells no. 3 and no. 4 and shall annually provide a report to the Department documenting the total volume of ground water diverted annually to the Department.
- (7) Proof of construction of works and application of water to beneficial use shall be submitted on or before October 1, 2009.
- (8) The issuance of permit no. 63-12448 and the granting of amendment does not grant any right-of-way or easement across the land of another.

- (9) Rights no. 63-11413 and no. 63-12017 also have authorized points of diversion from the wells in the SWSW (Eagle well no. 1) and NWSW (Eagle well no. 2), Section 3, T4N, R1E, and the wells in the SWSW (Eagle well no. 3) and NESE (Eagle well no. 4), Section 4, T4N, R1E, B.M.
- (10) Rights no. 63-11413, no. 63-12017, and no. 63-12448, when combined, shall not exceed a total maximum diversion rate of 3.25 cfs and a total annual maximum diversion volume of 1,455 acre-feet.
- (11) The place of use for rights no. 63-11413, no. 63-12017, and no. 63-12448 is within the service area of the City of Eagle municipal water supply system as provided for under Idaho law.
- (12) The Director retains jurisdiction to require the right holder to provide purchased or leased natural flow or stored water to offset depletion of Lower Snake River flows if needed for salmon migration purposes. The amount of water required to be released into the Snake River or a tributary, if needed for this purpose, will be determined by the Director based upon the reduction in flow caused by the use of water pursuant to this permit.

IT IS FURTHER ORDERED that pursuant to the Department's Rule of Procedure 740, this is a final order and subject to review by reconsideration or appeal.

DATED this 22nd day of September 2005.



KARL J. DREHER
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of September, 2005, a true and correct copy of the above and foregoing documents described below were served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

Document(s) Served: Final Order

Statement of Available Procedures and Applicable Time Limits.

BRUCE SMITH
TAMMY ZOKAN
225 N 9TH ST STE 420
BOISE ID 83701-2720
bms@msblaw.com
taz@msblaw.com

(x) U.S. Mail, Postage Prepaid

(x) E-mail

JIM BURTON
1896 N EAGLE RD.
EAGLE ID 83616

(x) U.S. Mail, Postage Prepaid

WELDON FISHER
546 E BEACON LIGHT RD.
EAGLE ID 83616

(x) U.S. Mail, Postage Prepaid

CHARLES L. HONSINGER
RINGERT CLARK CHARTERED
P. O. BOX 2773
BOISE ID 83702
clh@ringertclark.com

(x) U.S. Mail, Postage Prepaid

(x) E-mail

MOLLY O'LEARY
P. O. BOX 1849
EAGLE ID 83616
molly@richardsonandoleary.com

(x) U.S. Mail, Postage Prepaid

(x) E-mail

JOHN WESTRA
IDWR – WESTERN REGION
2735 AIRPORT WAY
BOISE ID 83705-5082
john.westra@idwr.idaho.gov

(x) U.S. Mail, Postage Prepaid

(x) E-mail



Victoria Wigle

Administrative Assistant to the Director
Idaho Department of Water Resources

**EXPLANATORY INFORMATION
TO ACCOMPANY A
FINAL ORDER**

(Required by Rule of Procedure 740.02)

The accompanying order is a "Final Order" issued by the department pursuant to section 67-5246 or 67-5247, Idaho Code.

Section 67-5246 provides as follows:

- (1) If the presiding officer is the agency head, the presiding officer shall issue a final order.
- (2) If the presiding officer issued a recommended order, the agency head shall issue a final order following review of that recommended order.
- (3) If the presiding officer issued a preliminary order, that order becomes a final order unless it is reviewed as required in section 67-5245, Idaho Code. If the preliminary order is reviewed, the agency head shall issue a final order.
- (4) Unless otherwise provided by statute or rule, any party may file a petition for reconsideration of any order issued by the agency head within fourteen (14) days of the issuance of that order. The agency head shall issue a written order disposing of the petition. The petition is deemed denied if the agency head does not dispose of it within twenty-one (21) days after the filing of the petition.
- (5) Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:
 - (a) the petition for reconsideration is disposed of; or
 - (b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.
- (6) A party may not be required to comply with a final order unless the party has been served with or has actual knowledge of the order. If the order is mailed to the last known address of a party, the service is deemed to be sufficient.
- (7) A non-party shall not be required to comply with a final order unless the agency has made the order available for public inspection or the nonparty has actual knowledge of the order.

(8) The provisions of this section do not preclude an agency from taking immediate action to protect the public interest in accordance with the provisions of section 67-5247, Idaho Code.

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a final order within fourteen (14) days of the service date of this order as shown on the certificate of service. **Note: the petition must be received by the Department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5243(4) Idaho Code.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by a final order or orders previously issued in a matter before the department may appeal the final order and all previously issued orders in the matter to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days a) of the service date of the final order, b) of an order denying petition for reconsideration, or c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.

**STARTING
RIGHT
SIDE OF
FILE**



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

October 7, 2005

CITY OF EAGLE
CITY HALL
PO BOX 1520
EAGLE ID 83616

RE: PERMIT NO. 63-12448

Dear Permit Holder:

Enclosed is a copy of the approved request for extension of time submitted in connection with the above referenced permit, which extends the time within which to submit proof of beneficial use to **October 1, 2009**. Please note that the department has granted this extension based on a delay caused by litigation (the protested Application for Amendment of Permit before the Department of Water Resources). It is important that you work diligently toward the completion of the development during the construction period allowed since the department may not be able to grant additional extensions in connection with this permit.

Section 42-248, Idaho Code, requires you or the owner of the water rights to maintain current ownership and address records on file with the department. Please contact any office of the department for the proper form to file a change of ownership of a water right and/or a change in the address of the owner.

Please contact me at (208) 287-4942, if you have any questions regarding this matter.

Sincerely,

Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

Enclosure

c: IDWR - Regional Office

RECEIVED

OCT 06 2005

Department of Water Resources

CHARLES L. HONSINGER (ISB #5240)
JON C. GOULD (ISB #6709)
RINGERT CLARK CHARTERED
455 S. Third, P. O. Box 2773
Boise, Idaho 83701-2773
Telephone: (208) 342-4591
Facsimile: (208) 342-4657

Attorneys for the Estate of Eleanor I. Chase

BEFORE THE DEPARTMENT OF WATER RESOURCES OF
THE STATE OF IDAHO

_____	)	
IN THE MATTER OF AMENDMENT OF	)	MEMORANDUM OF COSTS AND
APPLICATION FOR PERMIT NO. 63-12448	)	ATTORNEY FEES
IN THE NAME OF THE CITY OF EAGLE	)	
_____	)	

COMES NOW Protestant, the Estate of Eleanor I. Chase, by and through its attorneys of record, Ringert Clark Chartered, and hereby claims the following costs and disbursements incurred in the above-entitled cause:

COSTS AS A MATTER OF RIGHT

Reasonable Expert Witness Fees for David Shaw's Testimony at Hearing	\$ 500.00
Depositions of Vern Brewer and City of Eagle	\$ 596.04
Total Costs as a Matter of Right	<u>\$1,096.04</u>

DISCRETIONARY COSTS

Expert's Fees (\$12,572.55 - \$500.00 claims as costs as a matter of right)	\$12,072.55
Copy costs, Postage, supplies	\$ 1,889.59
Total Discretionary Costs	<u>\$13,962.14</u>

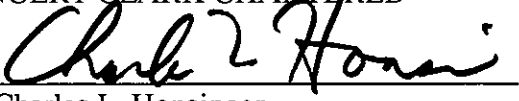
In addition to the costs above-referred to, Protestant has incurred attorney fees by agreeing to pay the same of the law firms of Charles L. Honsinger and Matt J. Howard, and is entitled to the same pursuant to I.R.C.P. 54(d)(and (e) and I.C. §12-117. A reasonable attorney fee in this matter is the sum of \$77,554.18. Attached to the *Affidavit of Charles L. Honsinger in Support of Memorandum of Costs and Fees* as Exhibits "A" and "B" and to the *Affidavit of Matt J. Howard in Support of Memorandum of Costs and Fees* as Exhibit "A", are copies of the billing ledgers with regard to attorney fees and costs requested pursuant to this *Memorandum of Costs and Attorney Fees*. Such billing ledgers are incorporated herein by this reference.

TOTAL COSTS AS DISCRETIONARY	\$13,962.14
COSTS AS A MATTER OF RIGHT	\$ 1,096.04
TOTAL ATTORNEY FEES	\$62,496.00
 TOTAL COSTS AND ATTORNEY FEES	 \$77,554.18

Protestant, by and through its attorneys of record hereby states that to the best of its knowledge and belief, the costs and attorney fees stated herein and attached hereto are correct and accurate, and that the costs and attorney fees claimed are in compliance with I.R.C.P. 54. This Memorandum of Costs and Attorney Fees is supported by the *Affidavit of Charles L. Honsinger in Support of Memorandum of Costs and Fees*, the *Affidavit of Matt J. Howard in Support of Memorandum of Costs and Fees*, and the *Brief in Support of Request for Attorney Fees and Costs*, all of which are submitted concurrently herewith, and the record herein. A hearing is requested in this matter.

Dated this 6th day of October, 2005.

RINGERT CLARK CHARTERED

By 
Charles L. Honsinger
Attorneys for Protestant

CERTIFICATE OF SERVICE

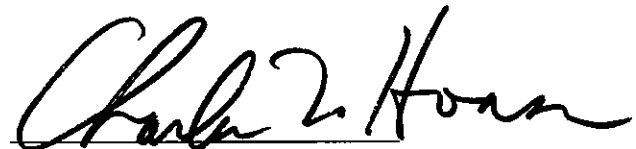
The undersigned certifies that on the 6th day of October, 2005, a true and correct copy of the within and foregoing document was sent to the following person(s) by the method indicated below:

Jim Burton
1896 N. Eagle. Rd.
Eagle, ID 83616
U.S. Mail

Weldon Fisher
546 E. Beacon Light Rd.
Eagle, ID 83616
U.S. Mail

Molly O'Leary, Esq.
Richardson & O'Leary, PLLC
P. O. Box 1849
Eagle, ID 83616
U.S. Mail

Bruce Smith, Esq.
Moore Smith Buxton & Turcke, Chtd
225 N. 9th St., Ste. 420
Boise, ID 83702
U.S. Mail


Charles L. Honsinger

CHARLES L. HONSINGER (ISB #5240)
RINGERT CLARK CHARTERED
455 S. Third, P. O. Box 2773
Boise, Idaho 83701-2773
Telephone: (208) 342-4591
Facsimile: (208) 342-4657

RECEIVED
OCT 06 2005
Department of Water Resources

Attorneys for the Estate of Eleanor I. Chase

BEFORE THE DEPARTMENT OF WATER RESOURCES OF
THE STATE OF IDAHO

IN THE MATTER OF AMENDMENT OF	)	BRIEF IN SUPPORT OF REQUEST FOR
APPLICATION FOR PERMIT NO. 63-12448	)	ATTORNEY FEES AND COSTS
IN THE NAME OF THE CITY OF EAGLE	)	PURSUANT TO I.C. §12-117(1)
	)	
	)	

COMES NOW the Estate of Eleanor I. Chase (hereinafter the "Estate" or "Chase"), by and through its attorneys of record, Ringert Clark Chartered, and hereby submit this *Brief* in Support of the *Memorandum of Costs and Attorney Fees* submitted concurrently herewith. This *Brief* is supported by the record herein, and by the *Affidavits* of Charles L. Honsinger and Matt J. Howard filed concurrently herewith. For purposes of this request for attorney fees and costs, the *Final Order* issued by the Director in this proceeding is assumed to be accurate. This request for attorney fees and costs is made pursuant to I.R.C.P. 54(d) and (e), and I.C. §12-117(1). A hearing is requested.

INTRODUCTION

This administrative proceeding involved the City of Eagle's (hereinafter the "City" or "Eagle") application to amend an existing water right permit by adding two additional points of diversion. The Estate requested protection from the loss of production from its wells caused by the City's diversion of ground water from its proposed new wells. On September 22, 2005, the Director

of the Department of Water Resources issued a *Final Order* granting the City's application to amend the permit with twelve (12) conditions. Condition 1 states in relevant part as follows:

The City of Eagle must compensate the Chase Estate for the loss of production from its dairy-domestic well to the full extent of the diversion rate authorized under water right nos. 63-15820 (0.04 cfs) and claim no. 63-05226 (0.13 cfs) caused by diverting ground water from Eagle well #3.

Similarly, Condition 2 states in relevant part that after the Chase Estate establishes its protected pumping rate in its small irrigation well, "the City of Eagle must compensate the Chase Estate for any loss of proven, sustainable diversion rate from the small irrigation well." Thus, the *Final Order* issued by the Department provides the Estate the protection from injury to its dairy/domestic and small irrigation wells and water rights that it has sought throughout this proceeding.

ARGUMENT

I.R.C.P. 54(d)(1) provides that "[e]xcept when otherwise limited . . . , costs shall be allowed as a matter of right to the prevailing party" in litigation. I.R.C.P. 54(e)(1) provides that "the court may award reasonable attorney fees . . . to the prevailing party or parties as defined in Rule 54(d)(1)(B), when provided for by any statute or contract."

I.C. §12-117(1) provides that "[i]n any administrative or civil judicial proceeding involving as adverse parties a state agency, a city, a county; or other taxing district and a person, the court shall award the prevailing party reasonable attorney's fees, witness fees and reasonable expenses, if the court finds that the party against whom the judgment is rendered acted without a reasonable basis in fact or law." (Emphasis added). The statute is not discretionary but provides that courts and administrative bodies must award attorney fees where an agency (such as the City in this proceeding) acted without a reasonable basis in fact or law in a proceeding involving a person who prevails in

the action. *Fischer v. City of Ketchum*, 109 P.3d 1091, 1098-99 (2005). In *Bogner v. State Dep't of Revenue & Taxation, State Tax Comm'n*, the Idaho Supreme Court stated that "the purpose of [I.C. §12-117] is two-fold: (1) to serve as a deterrent to groundless or arbitrary agency action; and (2) to provide a remedy for persons who have borne unfair and unjustified financial burdens defending against groundless charges or attempting to correct mistakes agencies should never have made." *Bogner v. State Dep't of Revenue & Taxation, State Tax Comm'n*, 107 Idaho 854, 858-859, 693 P.2d 1056 (1984). In the case at bar, the City should have agreed to provide the Estate with either a new well or a backup water supply without going through a contested case proceeding before IDWR which resulted in exactly that remedy - thus its actions in failing to provide that remedy to the Estate at the beginning of, and throughout this case were groundless. Additionally, because of the groundless actions that the City should not have taken, the Estate has had to bear an unfair and unjustified financial burden, and should be compensated, made whole, and relieved from that burden.

I. THE ESTATE IS THE PREVAILING PARTY

As the prevailing party in this litigation, Chase is entitled to an award of fees and expenses under I.C. §12-117(1). "In determining which party to an action is a prevailing party and entitled to costs, the trial court shall in its sound discretion consider the final judgment or result of the action in relation to the relief sought by the respective parties." I.R.C.P. 54(d)(1)(B). Under the plain meaning of the language in I.C. §12-117(1), a party prevails in an administrative action if the relief sought is granted. In *The Matter of Application For Transfer No. 5691 In the Name of Jerome Cheese Company, Order Denying Motion for Attorney's Fees*, p. 3-4 ("*Jerome Cheese*").

In her July, 2001 Protest to the City's Application to Amend Permit, Eleanor Chase

recognized that the City's proposed new wells would cause injury to her dairy-domestic well, and that a replacement well would need to be drilled. *See* Ex. 135. Therefore, Chase filed a protest to the City's application to amend water right permit no. 63-12448 to protect her water rights and to protect herself from financial injury that would result from the physical injury caused to her wells by the City's proposed new wells. *Id.*

The Department, in its *Final Order*, concluded that "[t]he City of Eagle must compensate the Chase Estate for the loss of production from its dairy-domestic well to the full extent of the diversion rate authorized under water right nos. 63-15820 and 63-05226 caused by diverting ground water from Eagle well #3 by either replacing the well(s) or by providing a full and adequate backup supply without any additional cost to the Estate. *Final Order*, p. 31-32. The Department granted the relief sought by the Estate and, accordingly the Estate is the prevailing party in this matter.

In *Jerome Cheese*, the Department recognized that "even though a significant legal issue was decided in the city's favor", the case was resolved "in favor of" the non-governmental party because the Department's Final Order granted the relief sought by that party. *Jerome Cheese*. In that case, Jerome Cheese Company was seeking a water right transfer. The City of Jerome filed an objection to the transfer on grounds that, inter alia, as a result of the proposed transfer, the economic impact of a departing municipal water customer on the remaining water customers of the city was within the purview of the local public interest criterion of Idaho Code 42-222 and must be considered. The Department sided with the city and concluded that the economic impact of a departing municipal water use customer on the city and the remaining water customers of the city is within the purview of the local public interest criterion and that the Department must consider it. *Jerome Cheese*. Even

though it considered the local public interest as requested by the City of Jerome, the Department granted the transfer application. While the Department decided a significant legal issue in favor of the city, in the overall case, IDWR found “in favor of” Jerome Cheese Company because it approved the relief sought by the Company.

In this matter, IDWR has ruled “in favor of” the Estate because it granted the relief sought by the Estate: protection or compensation for the loss of production from its dairy-domestic well to the full extent of the diversion rate authorized under water right nos. 63-15820 and 63-05226 caused by diversion of ground water from proposed Eagle well #3. *Final Order*, p. 31-32. Even though the *Final Order* grants the City’s application, it also provides exactly the relief requested by the Estate and opposed by the City throughout the litigation. Thus the Estate is the prevailing party in this litigation and is entitled to a mandatory award of attorney fees against the City.

II. EAGLE ACTED WITHOUT A REASONABLE BASIS IN FACT AND LAW

The City, in litigating the Estate’s protest, has repeatedly acted and/or failed to act without a reasonable basis in fact and law. The most blatant examples include: (A) the City unreasonably failed to, at any point in this contested case, recognize that evidence it introduced at hearing established that operation of its proposed Well #3 would cause injury to the Estate’s wells; (B) despite bearing the statutory burden to establish that its proposed amendment would not injure other water right holders, the City unreasonably provided no evidence supporting its assertion that there would be no injury to water rights held by the Estate; (C) the City unreasonably failed to acknowledge that the Estate’s domestic/dairy well and the small irrigation well are protected in their historic pumping levels by I.C. § 42-226 and the holding in *Parker v. Wallentine*, 103 Idaho 506, 650

P.2d 648 (1982); and (D) the City unreasonably failed to address impacts from its proposed wells as required under I.C. § 42-211.

A. Evidence Presented by the City Conclusively Established that Operation of the City's Proposed Well #3 Will Cause Injury to Chase Wells.

Eagle's positions in this litigation were that "[t]here is no evidence in the record that water rights within 2000 ft. of well #3 will be injured", and that "drawdowns are not likely to be significant" as a result of Eagle's pumping. *Applicant's Exceptions to Recommended Decision and Order to be Filed with Director*, p. 8. These positions are contrary to the presented evidence and are in fact disingenuous. On August 17, 2001, Bill Strowd, an expert retained by the City of Eagle, prepared a report entitled "Summary of Groundwater Conditions in the Vicinity of Proposed Brookwood Subdivision Well Site - Revised" ("Strowd Report"). Ex. 102. According to the Strowd Report, wells located within the inner circle of the "Strowd Bullseye" will most likely experience drawdowns in excess of 8 or 10 feet from the pumping of proposed well #3 at 1,000 gallons per minute. Ex. 102, p. 6, Figure Showing Estimated 6-Month Draw Down Based on 1000 GPM Sustained Pumping attached to the Strowd Report. Both the Chase dairy/domestic well and the small irrigation well are within the innermost circle of the Strowd Bullseye. *Id.*

After completion of the Strowd Report, Eagle retained a new expert, Terry Scanlan, P.E. Mr. Scanlan testified that the Strowd Report provided the best estimate available regarding impacts resulting from the operation of the proposed Well #3. Dave Shaw, the Estate's expert witness confirmed the Strowd Report's conclusions that drawdowns in the Estate's wells could exceed 8 - 10 feet, and that such a drawdown effectively would put the Estate's dairy/domestic well completely out of operation.

As confirmed by both parties' experts, the evidence establishes that operation of the City's proposed Well #3 will injure the Chase Estate water rights.¹ Eagle simply never acknowledged what is conclusively established by the evidence - that diversions from its proposed well locations will impact senior water rights. Rather, it merely assumes that because it is a "city," its needs for and diversions of water "trump" other water right holders' needs and diversions. *See Applicant's Exceptions to Recommended Decision and Order to be Filed with Director*, p. 8. Such a position is groundless and unreasonable and is not the law of prior appropriation as it is followed in Idaho. "It is the long-standing rule in Idaho that, as between competing appropriators of water, 'the first in time is first in right.' Each junior appropriator is entitled to divert water only when the rights of previous appropriators have been satisfied." *R.T. Nahas Co. v. Hulet*, 114 Idaho 23, 26 (App., 1988) (Citations omitted). According to *Parker, supra*, any drawdown of wells with pre-1953 priority dates by junior water right holders is significant and unlawful. *Parker*, at pp 512 - 513. Clearly, the City cannot divert water until the Estate's water rights are adequately protected and satisfied, despite its protestation to the contrary. In light of the evidence provided by the experts, and the law on this point, it is unreasonable, arbitrary and capricious to conclude, as has Eagle, either that none of the Chase water rights will be injured, or that "drawdowns are not likely to be significant."

¹United Water Idaho also recognized that it would likely be injured by the Brookwood well when it entered into an agreement with Eagle. As Eagle points out, it agreed to a 1455 af annual "cap" on its water right in exchange for United Water agreeing that Eagle could file an application first and acquire priority over an application for permit filed with IDWR by United Water. *Applicant's Exceptions to Recommended Decision and Order to be Filed with Director*, p. 10. If United Water didn't think that the Brookwood well was going to impact its water right, why did it insist upon a "cap"? In addition, why did Eagle agree to the "cap" if it did not think it was necessary to mitigate for injury?

B. Eagle Provided No Evidence Supporting its Assertion That No Water Right Holders Will Be Injured in the Vicinity of the Proposed Well Sites

An applicant bears the burden of proof for the factors the Department must consider under I.C. § 42-211. *Final Order*, p. 1. The only physical evidence regarding the impacts from the operation of the proposed wells on surrounding water rights is the Strowd Report provided by the City, which concludes that the operation of Well #3 will likely result in drawdowns of over 8 feet in the identified Chase wells. Eagle has provided no pump tests results from the proposed sites supporting Eagle's claim of no injury to other water right holders. The City provided no other data to challenge or contradict the Strowd Report. Accordingly, Eagle failed to meet its burden to show that diversions from its proposed new wells would not impact existing water rights. In fact, the evidence provided by the City itself established exactly the opposite. Eagle fails to understand that the applicant, not the potentially impacted water right holders, bears the burden of proof in proceedings such as these. The City simply failed to provide data to support its assertions that no other water right holders would be injured by its proposed wells. By failing to support its assertions, the City acted without a reasonable basis in fact or law.

C. The Chase Estate's domestic/dairy well and the small irrigation well are protected in their historic pumping levels.

Eagle cites to *Parker v. Wallentine*, 103 Idaho 506 (1982) as authority for the flagrantly erroneous proposition that only domestic water rights are exempt from the reasonable pumping level standard set forth in I.C. § 42-226. *Applicant's Exceptions to Recommended Decision and Order to be Filed with Director*, pp. 13 - 14. Therefore, according to the City, the Estate's wells are not protected as to their historic pumping levels. *Id.* Eagle's argument is not only false, it is demonstrably misleading.

It is true that I.C. § 42-226 provides that "prior appropriators of underground water shall be protected in the maintenance of reasonable ground water pumping levels as may be established by the Director." However, the language of the statute itself also provides that "[t]his act shall not

affect the rights to the use of ground water in this state acquired before its enactment.” I.C. § 42-226. (Emphasis added). The Idaho Groundwater Act was enacted in 1951, although the “reasonable pumping level” requirements were not added until 1953. 1953 Idaho Sess. Laws, ch. 182, pp. 278 - 279. The priority dates of the water rights diverted from the domestic/dairy well are January 1, 1950 for water right no. 63-5226, and January 1, 1920 for water right no. 63-15820, and the priority date of the water right diverted from the small irrigation well is October 27, 1925. Therefore, according to the plain language of the statute, neither of the rights diverted from the dairy/domestic well, nor the right from the small irrigation well are subject to “reasonable pumping level” requirements, and all three rights are absolutely protected in their pumping levels. *See Parker v. Wallentine, supra*; see also *Chase Estate’s Post-Hearing Brief*, pp. 4 - 9. Eagle’s interpretation of *Parker* is simply erroneous, unreasonable and misleading.

D. The City Failed to Address Impacts from Proposed Well Locations As Required Under I.C. § 42-211

Eagle, knowing that injury would result if the proposed wells were completed and became operational, should have submitted a mitigation plan, or a plan to address injuries to the Chase wells for evaluation by the parties and the Department. I.C. § 42-211 requires that an applicant’s application be denied unless the applicant can establish that the proposed water right will not injure senior water rights. The evidence of injury to the Estate’s water rights was clear, uncontradicted and known to the City at the time of its application, or shortly thereafter. See Ex. 102. Therefore, the City should have included a plan with its application, or shortly after the filing of the application that identified measures to mitigate for injuries that would be caused by the City’s diversion - especially in light of the Strowd Report that the City had by August of 2001. See Ex. 102. In its *Exceptions to the Hearing Officer’s Recommended Decision*, the City stated that “there is no basis for ordering the City to mitigate for an unidentified injury.” *Applicant’s Exceptions to Recommended Decision and Order to be Filed with Director*, p. 15. Not only is the injury identified by the Strowd Report, but there is a basis for the City to mitigate for or address the same - the City knew the injury would

occur both at the time it stated this long held position, and long before. Therefore its failure to address the impacts of its proposed wells at the time of its application, shortly thereafter or at any time during the proceeding is entirely unreasonable, and subjects the City.

III. THE ESTATE IS ENTITLED TO AN AWARD OF ATTORNEY FEES AND COSTS UNDER I.C. §12-117(1)

As discussed above, Eagle acted without a reasonable basis in fact or law in pursuing its application to amend permit no. 63-12448 in many aspects. Any of the City's unreasonable actions warrant the award of fees to the Estate under I.C. §12-117. All of the City's actions and/or failures to take action, taken together, overwhelmingly satisfies the requirements of I.C. §12-117.

In *Fischer v. City of Ketchum*, ___ Idaho ___, 109 P.3d 1091, 1097-98 (2005), a builder filed an application with the Planning and Zoning Commission ("Commission") for a conditional use permit ("CUP") related to an avalanche attenuation device. *Id* at 1093. The Commission granted a CUP to the builder without first receiving certification by an Idaho Licensed engineer, as required by local ordinance. *Id*. Neighboring land owners challenged the issuance of the CUP. *Id*.

The Supreme Court held that the plain language of the ordinance required certification by an Idaho Licensed engineer before granting a CUP. *Id* at 1098. The Court also held that by ignoring the plain language of the ordinance, the Commission acted without a reasonable basis in fact or law. *Id*. Therefore, attorney fees were awarded to Fischer pursuant to I.C. § 12-117. *Id*.

In this matter, Eagle has ignored the evidence provided by its own expert that the surrounding wells will be impacted, ignored the plain language of I.C. §§ 42-226 and 42-211, and misinterpreted the plain language of the *Parker* decision. As in *Fischer*, by ignoring the plain language of the applicable statutes, substantial evidence, and case law, Eagle has acted without a reasonable basis in fact or law.

In *Bogner, supra*, the plaintiff, a West German citizen, was residing in Idaho. *Bogner* at 855. As such, the plaintiff was taxed on her German income by three governmental entities: West Germany, the United States, and Idaho. *Id*. In 1982, the plaintiff filed a 1981 income tax return with

the Internal Revenue Service claiming a credit for taxes paid to West Germany pursuant to Internal Revenue Code § 901. *Id.* At about the same time, the plaintiff filed her Idaho state income tax return claiming a deduction for foreign taxes paid pursuant to her interpretation of I.C. § 63-3022 and Internal Revenue Code § 164. *Id.* An auditor for the State Tax Commission subsequently disallowed the foreign tax deduction claimed on her state tax return. *Id.* According to the auditor, once the plaintiff chose to take the federal tax credit, she could no longer take a foreign tax deduction under Idaho law. *Id.*

Plaintiff protested the auditor's findings and asked for a redetermination by the State Tax Commission. *Id.* at 856. The Commission reviewed the case, considered plaintiff's arguments, and affirmed the auditor's position. *Id.* Plaintiff then paid the tax and took her case to the district court. *Id.* The district court entered a judgment reversing the State Tax Commission. *Id.* Thereafter, the district court concluded that the Tax Commission had pursued the "action frivolously, unreasonably and without foundation in that it has misread and misinterpreted Idaho Code Sections 63-3002 and 63-3022 and the related regulations, and has been unprepared and dilatory in discussing the issues at an informal hearing with Plaintiff and at other times while Plaintiff was pursuing her administrative remedies." *Id.* at 858 *quoting district court (citation omitted)*. The District Court awarded fees, costs and reasonable expenses to the Plaintiff. *Id.*

While the Supreme Court found no evidence in the record that the Tax Commission was dilatory and unprepared, it did find that the Tax Commission had defended the case unreasonably and without foundation by misreading and misinterpreting I.C. §§ 63-3002 and 63-3022 to its advantage. *Id.* The Court stated that the statutes were clear and unambiguous. *Id.* Therefore, the Court affirmed the order allowing attorney's fees and awarded Costs and attorney's fees on appeal to respondent. *Id.* at 859.

Like the Tax Commission in *Bogner*, Eagle lacks a foundation to defend its position regarding the impacts to the Chase wells. The evidence established that the operation of proposed

Well #3 would injure the Chase wells and water rights. According to the clear and unambiguous language of I.C. § 42-226, I.C. §42-211 and controlling legal authority, the pumping levels in the Chase well must be protected and any injury to those wells must be remedied. *See Parker v. Wallentine, supra*. Based on the City's lack of evidence that the Estate would not be injured, and its unreasonable misreading and misinterpretation of the statutes and controlling legal authority, Eagle acted without a reasonable basis in fact or law. Therefore, just as was the case in *Bogner, supra*, the Estate should be awarded costs and attorney fees in this case.

This matter is also similar to the case of *County Residents Against Pollution from Septage Sludge (CRAPSS) v. Bonner County*, 138 Idaho 585, 67 P.3d 64 (Idaho 2003). In that case, the Plaintiffs filed a notice of appeal with the Bonner County Board of Commissioners ("County Commissioners") on November 9, 2001, stating, in detail, grounds for the appeal. *CRAPSS* at 856. On December 7, 2000, the Commissioners summarily dismissed the appeal "for failure to state lawful grounds upon which the appeal can be based." *Id.* On January 3, 2001, the Plaintiffs filed a petition for judicial review. On April 18, 2001, they filed a motion for summary judgment seeking to have the case remanded to the County Commissioners on the grounds that they unlawfully dismissed the appeal from the Planning and Zoning Commission. Bonner County objected, arguing that there was no showing that the Commissioners abused their discretion in dismissing the appeal. The district court granted the motion and awarded the Plaintiffs costs and attorney fees pursuant to §12-117(1). *Id.* at 866-67.

On appeal, Bonner County argued that, under its ordinance providing for appeals, the County Commissioners could summarily dismiss an appeal if they simply did not want to hear it. *Id.* at 588. However, the plain language of the ordinance stated that an appeal can be summarily dismissed only if the notice of appeal does not state on its face lawful grounds for an appeal. *Id.* The Idaho Supreme Court determined that Bonner County arbitrarily dismissed Plaintiffs' appeal without a reasonable basis in fact or law, and affirmed the district court's award of attorney fees, and granted

an additional award of fees on the appeal. *Id* at 859.

Similar to Bonner County in *CRAPPS*, Eagle has refused to accept the evidence provided by its own expert stating that impact to surrounding wells would result from the operation of proposed well #3. Eagle failed to interpret the plain language of I.C. §42-226, I.C. §42-211 and the legal authority provided by the *Parker* decision providing that it was required to protect senior water rights and wells. Eagle, throughout this entire process, has acted without a reasonable basis in fact or law. Therefore the Estate should be awarded attorney fees pursuant I.C. § 12-117 both to deter similar actions by other agencies in the future, and to compensate the Estate for expenses it has unfairly been forced to bear, just as is the purposes for such an award as discussed in *Bogner, supra*.

IV. THE ESTATE IS ENTITLED TO AN AWARD OF DISCRETIONARY COSTS

I.R.C.P. 54(d)(1)(D) provides in relevant part that discretionary costs may be awarded to a prevailing party “upon a showing that said costs were necessary and exceptional costs reasonably incurred, and should in the interest of justice be assessed against the other party.” In this case, Chase is requesting that its discretionary costs, composed primarily of the expert witness fees of David Shaw, be awarded.

Mr. Shaw’s fees were necessary and exceptional precisely because of the fact that the City simply refused to recognize what its own experts were telling it: that the City’s proposed well would impact and injure the Chase wells. Chase was required to retain an expert to evaluate and combat the City’s false assertions, and to testify at hearing regarding the impact of the proposed wells. Absent the City’s unreasonable position throughout this contested matter, the discretionary costs requested would not have been necessary.

These discretionary costs must be assessed against the City in the interests of justice. Chase did not ask for this litigation - it simply requested that its water rights and wells be protected from the City’s proposed wells. Yet, the City never responded to Chase’s request that it be “made whole” by agreeing to, in fact, make them “whole.” The court in *Parker v. Wallentine, supra*, enunciated

the policy that a senior must be made whole for injury caused by a proposed new well when it stated that “[t]he expense of chainging the method or means of diversion . . . must be paid by the [junior] so that [the senior] will not suffer any monetary loss.” *Parker, supra* at 514. (Emphasis added). Chase has suffered a monetary loss by being forced to litigate this case to enforce its rights just as surely as if the City had simply drilled its well and started diverting water without amending its permit application. Accordingly, Chase must be “made whole” and is entitled to an award of discretionary costs in addition to all other costs and fees requested.

V. THE ATTORNEY FEES REQUESTED ARE REASONABLE IN LIGHT OF THE FACTORS SET FORTH IN I.R.C.P. 54(e)(3)

When attorney fees are granted to a to a party pursuant to I.R.C.P. 54, the court/administrative body must consider certain factors enumerated in I.R.C.P. 54(e)(3) to determine the amount of those fees. Those factors and comments analyzing this case in the context of those factors follow:

- A. The time and labor required. This case required an inordinate amount of attorneys’ time and labor to prepare for hearing. The attorneys attended depositions, reviewed and analyzed enormous piles of evidence and documents, discussed the same with expert witnesses, filed, prepared for, and argued pre-hearing motions, were involved in discovery disputes, and researched and prepared voluminous post-hearing briefs, exceptions and responses to the same to address the issues and their resolution. The attorneys fee requested by Chase reflects the large amount of time required of its attorneys both before and after the hearing.
- B. The novelty and difficulty of the questions. The issues presented at hearing were not particularly novel or difficult, but the facts salient to those issues were complex and extensive, requiring the interpretation of expert witnesses. Again, Chase points out that the City could have avoided litigating these issues if it had simply agreed with its own experts that its proposed wells would impact Chase..
- C. The skill requisite to perform the legal service properly and the experience and ability of

the attorney in the particular field of law. Substantial experience and skills were necessary in this case to organize voluminous documents, analyze facts, and coordinate with expert witnesses.

D. The prevailing charges for like work. Similar charges are made for like work by other attorneys in the Boise area.

E. Whether the fee is fixed or contingent. The attorney fee paid by Chase is fixed.

F. The time limitations imposed by the client or the circumstances of the case. No particular time limitations were present in this case.

G. The amount involved and the results obtained. As discussed above, the relief sought by Chase - that it be compensated for the injury caused its water rights by the City's proposed wells was the eventual final outcome of the case.

H. The undesirability of the case. The case was not undesirable.

I. The nature and length of the professional relationship with the client. The attorneys involved began representing the client prior to the initiation of this case, and have continued representation until this date.

J. Awards in similar cases. Counsel is not aware of similar cases, nor of the amounts of awards in such similar cases.

K. The reasonable cost of automated legal research. Not applicable.

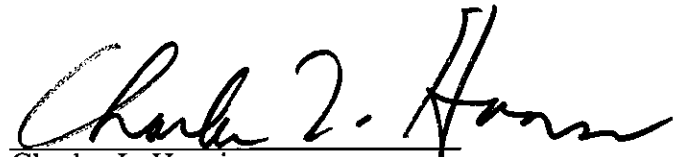
L. Any other factor which the court deems appropriate in the particular case. Once more, Chase points out that, under the principles enunciated by the Supreme Court in *Parker*, *supra*, it should not be forced to "suffer any monetary loss."

VI. CONCLUSION

Chase has been forced to bear the expenses of this litigation against their will to defend their water rights from injury by the City's proposed new wells. Throughout the litigation, the City, at all times, has had the opportunity to follow the law and the findings of its own experts, and make Chase

whole. Yet the City has refused to ensure that Chase is not injured in this proceeding. Because Chase has been injured - because it has had to expend enormous amounts of money to defend its water right and financial interests - it must be awarded its attorney fees and costs requested pursuant to I.C. §12-117(1).

DATED This 6th day of October, 2005.


Charles L. Honsinger
RINGERT CLARK, CHARTERED

CERTIFICATE OF SERVICE

BRIEF IN SUPPORT OF REQUEST FOR ATTORNEY FEES AND COSTS PURSUANT TO
I.C. §12-117(1)- Page 16

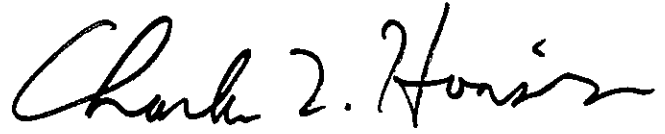
The undersigned certifies that on the 6th day of October, 2005, a true and correct copy of the within and foregoing document was sent to the following person(s) by the method indicated below:

Jim Burton
1896 N. Eagle. Rd.
Eagle, ID 83616 *U.S. Mail*

Weldon Fisher
546 E. Beacon Light Rd.
Eagle, ID 83616 *U.S. Mail*

Molly O'Leary, Esq.
Richardson & O'Leary, PLLC
P. O. Box 1849
Eagle, ID 83616 *U.S. Mail*

Bruce Smith, Esq.
Moore Smith Buxton & Turcke, Chtd
225 N. 9th St., Ste. 420
Boise, ID 83702 *U.S. Mail*


Charles L. Honsinger

CHARLES L. HONSINGER (ISB #5240)
JON C. GOULD (ISB #6709)
RINGERT CLARK CHARTERED
455 S. Third, P. O. Box 2773
Boise, Idaho 83701-2773
Telephone: (208) 342-4591
Facsimile: (208) 342-4657

RECEIVED
OCT 06 2005
Department of Water Resources

Attorneys for the Estate of Eleanor I. Chase

BEFORE THE DEPARTMENT OF WATER RESOURCES OF
THE STATE OF IDAHO

_____	)	
IN THE MATTER OF AMENDMENT OF	)	AFFIDAVIT OF CHARLES L.
APPLICATION FOR PERMIT NO. 63-12448	)	HONSINGER IN SUPPORT OF
IN THE NAME OF THE CITY OF EAGLE	)	MEMORANDUM OF COSTS AND FEES
_____	)	

STATE OF IDAHO	)
	) ss
COUNTY OF ADA	)

CHARLES L. HONSINGER, being first duly sworn upon his oath, deposes and says that:

1. I am the attorney for Estate of Eleanor I. Chase, the Protestant in the above-entitled action, and make this affidavit based upon my own personal knowledge and belief of the facts contained herein, and upon my review of the pertinent cost and accounting records associated with this action.

2. Protestant contracted with affiant to pay affiant's law firm the sum of One Hundred Thirty dollars (\$130.00) per hour before February 1, 2005 and One Hundred Fifty dollars (\$150.00) per hour for each hour after February 1, 2005 expended by Charles L. Honsinger, and One Hundred Twenty-five (\$125.00) per hour expended by Jon C. Gould in the

representation of its interests in this action, together with all costs and expenses advanced on its behalf and incurred by affiant's law firm.

3. The following amounts of attorney time were expended in the preparation and review of pleadings, briefings and correspondence related to this matter, and in the research and analysis of the issues herein:

Charles L. Honsinger:

35.7 Hours at \$130/Hour	\$4,641.00
18.7 Hours at \$150/Hour	\$2,805.00

Jon C. Gould

22.4 Hours at \$125/Hour	\$2,800.00
--------------------------	------------

Total Attorney Fees - Ringert Clark, Chartered	<u>\$10,246.00</u>
--	--------------------

The Attorneys Fees described above are further detailed in Exhibit "A" attached hereto.

4. In addition to the attorney fees described above, Protestant also claims attorney fees incurred during the period when Matt J. Howard was its attorney. The *Affidavit of Matt J. Howard in Support of Memorandum of Costs and Fees*, including Exhibit "A" thereto, which is submitted concurrently herewith, further details and describes those attorney fees which are in the amount of \$52,250.

5. The following costs were expended by the Estate of Eleanor I. Chase in the prosecution of this action.

COSTS AS A MATTER OF RIGHT

Reasonable Expert Witness Fees for David Shaw's Testimony at Hearing	\$ 500.00
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Depositions of Vern Brewer and City of Eagle	\$ 596.04
Total Costs as a Matter of Right	<u>\$1,096.04</u>

DISCRETIONARY COSTS

Expert's Fees (\$12,572.55 - \$500.00 claims as costs as a matter of right)	\$12,072.55
Copy costs, Postage, supplies	\$ 1,889.59
Total Discretionary Costs	<u>\$13,962.14</u>
Total costs:	<u>\$15,058.18</u>

The costs described above are further detailed in Exhibit "B" attached hereto, and in Exhibit "A" to the *Affidavit of Matt J. Howard in Support of Memorandum of Costs and Fees* submitted concurrently herewith..

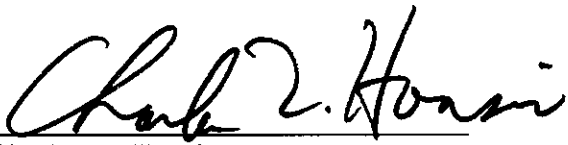
6. The actual and expected attorney fees and costs described listed above and spent in the litigation of this action were necessarily and reasonably expended in light of the factual and legal issues involved, the results obtained, and the factors set forth in Rule 54(e)(3), Idaho Rules of Civil Procedure.

7. The costs and attorney fees incurred as set forth above are properly awardable pursuant to I.C. § 12-117(1) and I.R.C.P. 54(d). Therefore, costs and attorney fees should be assessed against Applicant as follows:

Total Costs as Discretionary	\$ 13,962.14
Costs as a Matter of Right	\$ 1,096.04
Attorney Fees - Matt J. Howard	\$ 52,250.00
Attorney Fees - Ringert Clark, Chartered	\$ 10,246.00
Total Costs and Attorney Fees	<u>\$ 77,554.18</u>

8. To the best of my knowledge and belief, the costs and attorney fees stated herein and attached hereto are correct and accurate, and the costs and attorney fees claimed are in compliance with IRCP 54.

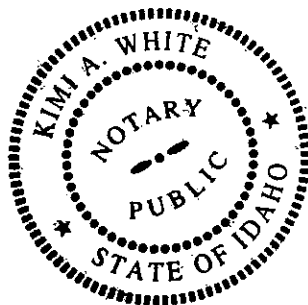
Further your affiant sayeth naught.

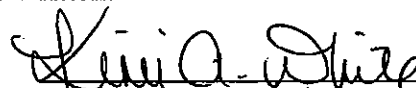

Charles L. Honsinger

STATE OF IDAHO)
)ss.
County of ADA)

On this 6th day of October, 2005, before me, the undersigned, a notary public in and for said state, personally appeared Charles L. Honsinger, known to me to be the individual that executed the foregoing affidavit, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.




Notary Public for Idaho
Residing at Boise, Idaho
My Commission Expires 01/01/10

CERTIFICATE OF SERVICE

The undersigned certifies that on the 6th day of October, 2005, a true and correct copy of the within and foregoing document was sent to the following person(s) by the method indicated below:

Jim Burton
1896 N. Eagle. Rd.
Eagle, ID 83616
U.S. Mail

Weldon Fisher
546 E. Beacon Light Rd.
Eagle, ID 83616
U.S. Mail

Molly O'Leary, Esq.
Richardson & O'Leary, PLLC
P. O. Box 1849
Eagle, ID 83616
U.S. Mail

Bruce Smith, Esq.
Moore Smith Buxton & Turcke, Chtd
225 N. 9th St., Ste. 420
Boise, ID 83702
U.S. Mail

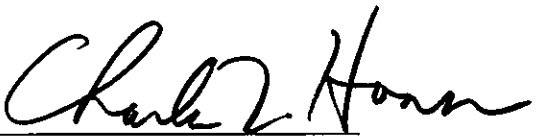

Charles L. Honsinger

EXHIBIT A

Detail Transaction File List Ringert Clark Chartered

Client	Trans Date	H Atty P	Tcd	Stmt # Rate	Hours to Bill	Amount	Ref #
Client ID 10327.00	CHASE/ESTATE OF ELEANOR						
10327.00	05/13/2004	39 A	30	130.00	3.50	455.00 Travel to/from client's property to meet with attorney Matt Howard and clients re. initial explanatory meeting; Review Post-Hearing Brief.	ARCH
10327.00	05/14/2004	39 A	30	130.00	3.40	442.00 Review Post-Hearing Brief, Amended Recommended Decision, draft exceptions to the Hearing Officer's Recommended Decision.	ARCH
10327.00	05/19/2004	39 A	104	130.00	0.30	39.00 Phone Call(s) with Bruce Smith re. status of case.	ARCH
10327.00	05/20/2004	39 A	30	130.00	0.50	65.00 Review Eagle's Exceptions to Amended Recommended Decision.	ARCH
10327.00	05/21/2004	39 A	30	130.00	3.20	416.00 Review exceptions from City of Eagle to recommend Decision; Review Eagle's response to Chase's exceptions; Draft outline of response to Eagle's exceptions.	ARCH
10327.00	05/24/2004	39 A	104	130.00	0.30	39.00 Phone Call(s) with Mike Chase re. plan for drafting Response to Eagle's exceptions.	ARCH
10327.00	05/25/2004	39 A	30	130.00	0.50	65.00 Review City's exceptions.	ARCH
10327.00	05/26/2004	39 A	30	130.00	3.80	494.00 Draft Exceptions Brief.	ARCH
10327.00	05/27/2004	39 A	30	130.00	5.10	663.00 Draft Response to Eagle's Exceptions; Phone calls with Phil Rassier re. attorney fees decisions before IDWR; Phone calls from Bruce Smith re. potential settlement; Research re. IDWR decision on attorney fees.	ARCH
10327.00	05/28/2004	39 A	30	130.00	2.10	273.00 Draft Response to Eagle's Exceptions; send same to client and Matt Howard; Phone calls with Matt Howard re. Response Brief; Review of and Revisions to Brief.	ARCH
10327.00	06/01/2004	39 A	30	130.00	1.10	143.00 Final review and revisions to Brief; file and serve same.	ARCH
10327.00	06/02/2004	39 A	30	130.00	0.50	65.00 Review City's Response to Chase Estate's Amended Exceptions.	ARCH
10327.00	06/18/2004	39 A	104	130.00	0.30	39.00 Phone Call(s) with Mike Chase re. billing matters and status of case.	ARCH
10327.00	07/30/2004	A	1			1470.57 PAYMENT RECEIVED - THANK YOU - Mike Chase	ARCH
10327.00	07/30/2004	A	1			356.86 PAYMENT RECEIVED - THANK YOU - Kathryn Cock	ARCH
10327.00	07/30/2004	A	1			1370.57 PAYMENT RECEIVED - THANK YOU - William Chase	ARCH
10327.00	09/15/2004	39 A	104	130.00	0.90	117.00 Phone Call(s) with Bruce Smith re. status of case; Review case law re. attorneys fees; Draft letter to client re. same.	ARCH
10327.00	09/22/2004	39 A	104	130.00	0.30	39.00 Phone Call(s) with Bruce Smith, Tammy Zokan re. settlement of issues other than attorney fees.	ARCH
10327.00	09/23/2004	39 A	104	130.00	0.70	91.00 Phone Call(s) with Mike Chase re. discussions with Bruce Smith/Tammy Zokan; Review file in preparation or discussions re. settlement.	ARCH
10327.00	09/23/2004	39 A	30	130.00	1.00	130.00 Meet with Tammy Zokan, Mike Chase and Chris Duncan re. potential settlement.	ARCH
10327.00	10/12/2004	39 A	104	130.00	0.50	65.00 Phone Call(s) with Tammy Zokan re: settlement; research files for attorney bills; Phone Call(s) with client re: same; Phone Call(s) with Matt Howard re: same; Phone Call(s) with Dave Shaw re: same.	ARCH
10327.00	10/18/2004	39 A	104	130.00	0.10	13.00 Phone Call(s) with Bruce re. attorney fees.	ARCH
10327.00	10/19/2004	39 A	30	130.00	0.90	117.00 Review Matt Howard/Dave Shaw Billings; Draft letter conveying billing amounts to Bruce Smith/Zokan.	ARCH
10327.00	10/20/2004	39 A	104	130.00	0.20	26.00 Phone Call(s) with Tammy Zokan re. potential settlement offers.	ARCH
10327.00	10/21/2004	39 A	104	130.00	0.40	52.00 Phone Call(s) with client re. potential settlement offers; Phone calls with Tammy Zokan re. same.	ARCH
10327.00	10/25/2004	39 A	104	130.00	0.50	65.00 Phone Call(s) from client re. mitigation/well costs; Review Mitigation Plan submitted by Eagle; Phone calls with client re. same; Phone calls with Tammy Zokan re. same.	ARCH
10327.00	10/27/2004	39 A	30	130.00	2.20	286.00 Review IDWR's rules re. Water Appropriation to determine if refer to submission of	ARCH

Detail Transaction File List Ringert Clark Chartered

Client	Trans Date	H Atty	P	Tcd	Stmt # Rate	Hours to Bill	Amount	Ref #
Client ID 10327.00 CHASE/ESTATE OF ELEANOR								
							mitigation plans; Review record to determine if any reference to submission of mitigation plan to Director is contemplated by hearing officer; Review Rules re. Conjunctive Management to determine response to Eagle's Proposed Mitigation Plan; Phone calls with client re. same; Phone calls with Tammy Zokan re. mitigation plan, etc.	
10327.00	11/01/2004	39	A	30	130.00	0.90	117.00	Draft Response to Mitigation Plan. ARCH
10327.00	11/02/2004	39	A	30	130.00	2.10	273.00	Draft Response to Mitigation Plan; Draft letter to clients re. same. ARCH
10327.00	11/03/2004	39	A	104	130.00	0.40	52.00	Phone Call(s) with Mike Chase re. revisions to response to Mitigation Plan; File and serve same. ARCH
10327.00	11/09/2004		A	1			650.00	PAYMENT RECEIVED - THANK YOU ARCH
10327.00	12/14/2004		A	1			793.00	PAYMENT RECEIVED - THANK YOU - Michael Chase ARCH
10327.00	09/26/2005	39	P	30	150.00	2.20	330.00	Review and analyze Final Order issued by Director. 1
10327.00	09/27/2005	39	P	30	150.00	0.60	90.00	Review decision; Office conference with client re. decision; Phone calls with Bruce Smith re. decision from IDWR. 2
10327.00	09/30/2005	39	P	30	150.00	0.70	105.00	Research re. request for attorney fees; Phone calls with client re. same. 3
10327.00	10/03/2005	39	P	30	150.00	2.20	330.00	Research re. Request for attorney fees and costs; Phone calls with Matt Howard re. same; Phone calls with Dave Shaw re. same; Explain briefing to Jon Gould for his initial draft. 4
10327.00	10/03/2005	64	P	30	125.00	2.40	300.00	Review file and proceedings; Research fee awards under I.C. 12-117. 7
10327.00	10/04/2005	39	P	108	150.00	0.50	75.00	Office conference with Jon Gould re. briefing re. attorney fees. 5
10327.00	10/04/2005	64	P	30	125.00	7.00	875.00	Finalize research on fee awards; Prepare brief to support fee request. 8
10327.00	10/05/2005	39	P	108	150.00	6.30	945.00	Review costs and attorney fees billing statement; Review and research statutes re. request for Costs and Fees; Phone calls with Matt Howard re. same; Draft Affidavits in support of request for attorney fees and costs; Draft Memorandum of Costs and Fees; Review/revise/edit research re. Brief in Support of Memorandum of Costs and Fees. 6
10327.00	10/05/2005	64	P	30	125.00	8.70	1087.50	Draft brief to support fee request. 9
10327.00	10/06/2005	64	P	30	125.00	5.00	625.00	Preparation and revision of brief Requesting Attorney Fees. 10
10327.00	10/06/2005	39	P	30	150.00	6.20	930.00	Draft Brief re. Memorandum of Costs and Attorney Fees; Draft./Revise/Edit all documents in preparation for filing; File same with IDWR. 11

Total for Client ID 10327.00	Billable	77.50	10333.50	CHASE/ESTATE OF ELEANOR
	Payments		4641.00	CITY OF EAGLE

GRAND TOTALS

Billable	77.50	10333.50
Payments		4641.00

EXHIBIT B



RESOURCES CORPORATION

To: Charlie Honsinger	Fax No.: 342-4657
Company: Ringert Clark	Date/Time: 10/5/05
From: David Shaw	Pages (including cover): 31

Notes:

ERO Resources Corporation
3314 Grace St.
Boise, Idaho 83703-5836
Phone: (208) 373-7983
Fax: (208) 373-7985

Denver ~ Boise ~ Durango

www.eroresources.com
eroboise@eroresources.com

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Thank you.

ERO Resources Corp.
1842 Clarkson Street
Denver, CO 80218
(303) 830-1188
Fax: 830-1199



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ero@eroresources.com

INVOICE

Invoice No. 9607
Date 11/5/01
ERO Project No. 1422
Invoice period 10/1/01 - 10/31/01

Eleanor Chase
70 W. Floating Feather Rd.
Eagle, ID 83616

Eleanor Chase

Description	Total
Activity 11: Consulting	
D. Shaw 10.75 @ \$98.00/hr	\$1,053.50
S. Chapman 0.50 @ \$90.00/hr	\$45.00
N. Bradford 0.50 @ \$48.00/hr	\$24.00
S. Welsh 3.00 @ \$48.00/hr	\$144.00
Indirect Expenses	
Photocopies	\$1.80
Direct Expenses	
Postage and shipping	\$1.02
Subtotal for Activity:	\$1,269.32
Total Due:	\$1,269.32



Invoice No. 9607

Page 1

Consultants in
Natural Resources
and the Environment

12/22/31 P.02/31 303 830 1199

ERO RESOURCES

OCT-05-2005 12:59

ERO Resources Corporation

Project 1422: Eleanor Chase

Activity 11	Consulting		Mileage	Hours
Bradford, Norma	10/31/01	Admin support	0	0.50
Total for Norma Bradford			0	0.50
Chapman, Sheri L	10/9/01	Consultation w/ D. Shaw	0	0.50
Total for Sheri Chapman			0	0.50
Shaw, Dave B	10/2/01	Analysis	0	0.50
	10/3/01	Measure wells	0	0.25
	10/4/01	Data analysis	0	0.25
	10/9/01	Analysis, develop monitoring proposal	0	3.00
	10/10/01	Analysis & monitoring plan	0	1.00
	10/15/01	Monitoring Plan	0	0.50
	10/16/01	Water Right Research	0	1.50
	10/17/01	Water Right Research	0	0.50
	10/18/01	Meeting w/ Eleanor, Mike & Matt	0	2.00
	10/22/01	Monitoring plan to Brewer	0	0.75
Total for Dave Shaw			0	10.75
Welsh, Staci D	10/3/01	Clerical	0	0.50
	10/17/01	Copies at IDWR	0	1.00
	10/22/01	Letter; Clerical	0	1.50
Total for Staci Welsh			0	3.00
Total for project 1422:			0	14.75

INVOICE FOR SPECIAL SERVICES

IDAHO DEPARTMENT OF WATER RESOURCES

Western Region
2735 Airport Way
Boise ID 83705
(208) 334-2190

proj. 1422

Date: 10-17-01

Bill To:

Company Name: ERO Research

Address: 1106 N. Cole Rd

City / State: Boise, ID Zip: 83704

Telephone No. _____

Nature of Research:

☐ Water Rights

☐ Adjudication

☐ Well Construction

☐ Stream Channel
Program/Dredging

☐ Other Copies

of Hours: (applies to research only) @ \$25/hour _____

of Copies: 36 @ 5¢ each: \$ 1.80

Other charges: _____ \$ _____

Total: \$ 1.80

Remarks: _____

Please remit the total amount to the above address.

Receipt #: _____ Received by: _____ Fee: _____ Date: _____

ERO Resources Corp.
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Denver, CO 80218
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Fax: 830-1189



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c@eroresources.com

INVOICE

Invoice No. 9939
Date 1/7/02
ERO Project No. 1422
Invoice period 12/1/01 - 12/31/01

Eleanor Chase
70 W. Floating Feather Rd.
Eagle, ID 83616

Eleanor Chase

Description			Total
Activity 11: Consulting			
D. Shaw	12.00 @ \$98.00/hr		\$1,176.00
S. Hannula	0.50 @ \$70.00/hr		\$35.00
N. Bradford	0.50 @ \$48.00/hr		\$24.00
Direct Expenses			
Postage and shipping			\$0.68
Subtotal for Activity:			\$1,235.68
Total Due:			\$1,235.68

Invoice No. 9939

Page 1

Consultants in
Natural Resources
and the Environment

303 830 1189 P. 05/31

ERO RESOURCES

OCT-05-2005 13:01

ERO Resources Corporation
Project 1422 Eleanor Chase

Activity H Consulting			Mileage	Hours
Bradford, Norma	12/31/01	Admin Support	0	0.50
Total for Norma Bradford			0	0.50
Hannula, Steve R	12/5/01	Calc QA	0	0.50
Total for Steve Hannula			0	0.50
Shaw, Dave B	12/3/01	Water requirement evaluation	0	0.50
	12/4/01	Settlement review, determine water use & capacities	0	3.25
	12/5/01	Water use analysis & reporting	0	1.50
	12/6/01	Respond to letter from Chris	0	0.75
	12/11/01	Prepare for settlement conference	0	0.50
	12/12/01	Settlement conference	0	4.00
	12/13/01	Letter to Vern Brewer, costs to date	0	1.00
	12/21/01	Respond to Vern Brewer re: small irrigation well	0	0.50
Total for Dave Shaw			0	12.00
Total for project 1422:			0	13.00

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INVOICE

Invoice No. 10229
Date 3/7/02
ERO Project No. 1422
Invoice period 2/1/02 2/28/02

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ero@erosources.com

Eleanor Chase
70 W. Floating Feather Rd.
Eagle, ID 83616

Eleanor Chase

Description	Total
Activity 11: Consulting	
D. Shaw	2.25 @ \$98.00/hr
	\$220.50
Subtotal for Activity:	\$220.50
Total Due:	\$220.50

Invoice No. 10229

Page 1

Consultants in
Natural Resources
and the Environment

303 830 1199 P.07/31

ERO RESOURCES

13:02 OCT-05-2005

ERO Resources Corporation

Project 1422- Eleanor Chang

Activity 11 Consulting			Mileage	Hours
Shaw, Dave B	2/21/02	Review settlement proposal	0	0.50
	2/27/02	Meeting w/ Matt, Mike & Bill	0	1.75
Total for Dave Shaw			0	2.25
Total for project 1422:			0	2.25

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INVOICE

Invoice No. 10377
Date 4/8/02
ERO Project No. 1422
Invoice period 3/1/02 - 3/31/02

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Estate of Eleanor Chase
P.O. Box 1356
Caldwell, ID 83606

Description		Total
Activity 11: Consulting		
D. Shaw	3.50 @ \$98.00/hr	\$343.00
Subtotal for Activity:		\$343.00
Total Due:		\$343.00

ERO Resources Corporation

Project 1422: Estate of Eleanor Chase

Activity 11 Consulting			Mileage	Hours
Shaw, Dave B	3/12/02	Review Matt's letter	0	0.50
	3/14/02	Review & analysis	0	0.50
	3/28/02	Field visit w/ Mike, Bill & Vern Brewer	0	2.50
	Total for Dave Shaw		0	3.50
Total for project 1422:			0	3.50

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INVOICE

Invoice No. 11409
Date 10/8/02
ERO Project No. 1422
Invoice period 6/1/02 - 9/30/02

Estate of Eleanor Chase
P.O. Box 1356
Caldwell, ID 83606

Description			Total
Activity 11: Consulting			
Labor			
Shaw, Dave B.	5.00 @ \$98.00/hr		\$490.00
Bradford, Norma	0.50 @ \$50.00/hr		\$25.00
Subtotal for Activity:			\$515.00
Total Due:			\$515.00

Invoice No. 11409

303 830 1199 P. 11/31

ERO RESOURCES

Page 1

Consultants in
Natural Resources
and the Environment

13:04 10/10/02

ERO Resources Corporation

Project 1422: Estate of Eleanor Chase

Activity 1) Consulting			Mileage	Hours
Bradford, Norma	9/30/02	Admin Support	0	0.50
Total for Norma Bradford			0	0.50
Shaw, Dave B.	6/19/02	Telcon w/ Matt	0	0.25
	9/18/02	Prehearing conference, telcon w/ Matt	0	4.25
	9/23/02	Review & comment on	0	0.50
		Review & comment on Matt's letter		
Total for Dave Shaw			0	5.00
Total for project 1422:			0	5.50

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1818 Glenwood Street
Denver, CO 80218
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INVOICE

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Invoice No 12413
Date 4/8/03
ERO Project No 1427
Invoice period 3/1/03 3/31/03

Estate of Eleanor Chase
P.O. Box 1336
Caldwell, ID 83606

Description			Total
Activity 11: Consulting			
Labor			
Shaw, Dave B	8.25 @ \$100.00/hr		\$825.00
Bradford, Norma	0.50 @ \$52.00/hr		\$26.00
Schrenk, Lillie A	0.50 @ \$35.00/hr		\$17.50
Welsh, Staci D	0.25 @ \$35.00/hr		\$8.75
Indirect Expenses			
Photocopies			\$52.80
Subtotal for Activity:			\$930.05
TOTAL DUE:			\$930.05

Invoice No. 12413

Page 1

Consultants in
Natural Resources
and the Environment

303 830 1199 P. 13/31

ERO RESOURCES

OCT-05-2005 13:05

ERO Resources Corporation

Project 1422 Estate of Eleanor Chase

Activity 11 Consulting

			Mileage	Hours
Bradford, Norma	3/31/03	Admin Support	0	0.50
Total for Norma Bradford			0	0.50
Schrenk, Lillie A	3/6/03	Clerical	0	0.50
Total for Lillie Schrenk			0	0.50
Shaw, Dave B	3/5/03	Review with Matt & Mike	0	0.50
	3/6/03	Discovery info	0	0.75
	3/10/03	Discovery material	0	1.00
	3/12/03	Discovery response	0	4.50
	3/13/03	Discovery information	0	0.50
	3/15/03	Discovery information	0	0.50
	3/19/03	Discovery information	0	0.50
Total for Dave Shaw			0	8.25
Welsh, Staci D	3/5/03	Clerical	0	0.25
Total for Staci Welsh			0	0.25
Total for project 1422:			0	9.50

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INVOICE

Invoice No. 12734
Date 6/10/03
ERO Project No. 1422
Invoice period 4/1/03 - 5/31/03

Estate of Eleanor Chase
P.O. Box 1356
Caldwell, ID 83606

Description		Total
Activity 11: Consulting		
Labor		
Shaw, Dave B	2.50 @ \$100.00/hr	\$250.00
Subtotal for Activity:		\$250.00
TOTAL DUE:		\$250.00

Invoice No. 12734

Page 1

303 830 1199 P. 16/31

ERO RESOURCES

13:08 OCT-05-2005

Consultants in
Natural Resources

ERO Resources Corporation

Project 1422: Estate of Eleanor Chase

Activity 11 Consulting

			Mileage	Hours
Shaw, Dave B	4/29/03	Schedule site visit w/ Terry Scanlan	0	0.50
	5/13/03	Site visit w/ Mike, Bill & Terry Scanlan	0	2.00
		Total for Dave Shaw	0	2.50
		Total for project 1422:	0	2.50

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INVOICE

Invoice No. 12903
Date 7/10/03
ERO Project No. 1422
Invoice period 6/1/03 - 6/30/03

Estate of Eleanor Chase
P.O. Box 1356
Caldwell, ID 83606

Description	Total
Activity 11: Consulting	
Labor	
Shaw, Dave B	6.25 @ \$100.00/hr
	\$625.00
Bradford, Norma	0.50 @ \$52.00/hr
	\$26.00
Subtotal for Activity:	\$651.00
TOTAL DUE:	\$651.00

Invoice No. 12903

Page 1

Consultants in
Natural Resources

303 830 1199 P. 18/31

ERO RESOURCES

13:09 OCT-05-2005

ERO Resources Corporation

Project 1422: Estate of Eleanor Chase

Activity 11	Consulting			Mileage	Hours
Bradford, Norma	6/30/03	Admin support		0	0.50
Total for Norma Bradford				0	0.50
Shaw, Dave B	6/25/03	Discovery analysis		0	2.50
	6/27/03	Discovery analysis		0	2.25
	6/30/03	Discovery analysis, consult w/ Matt		0	1.50
Total for Dave Shaw				0	6.25
Total for project 1422:				0	6.75

ERO Resources Corp.
1642 Clarkson Street
Denver, CO 80218
(303) 830-1188
Fax: 830-1199



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INVOICE

Invoice No. 13086
Date 8/18/03
ERO Project No. 1422
Invoice period 7/1/03 - 7/31/03

Estate of Eleanor Chase
P.O. Box 1356
Caldwell, ID 83606

Description	Total
Activity 11: Consulting	
Labor	
Shaw, Dave B 4.25 @ \$100.00/hr	\$425.00
Subtotal for Activity:	\$425.00
TOTAL DUE:	\$425.00

Invoice No. 13086

Page 1

Consultants in
Natural Resources

303 830 1199 P. 20/31

ERO RESOURCES

OCT-05-2005 13:10

ERO Resources Corporation

Project 1422: Estate of Eleanor Chase

Activity 11 Consulting			Mileage	Hours
Shaw, Dave B	7/2/03	Discovery requests	0	2.50
	7/8/03	Review disclosures, telcon w/ Matt	0	0.75
	7/23/03	Review discovery	0	1.00
	Total for Dave Shaw		0	4.25
Total for project 1422:			0	4.25

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Denver, CO 80218
(303) 830-1188
Fax: 830-1189



Denver - Bolan

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ero@erosources.com

INVOICE

Invoice No. 13185
Date 9/15/03
ERO Project No. 1422
Invoice period 8/1/03 - 8/31/03

Estate of Eleanor Chase
P.O. Box 1356
Caldwell, ID 83606

Description		Total
Activity 11: Consulting		
Labor		
Shaw, Dave B	8.00 @ \$100.00/hr	\$800.00
Bradford, Norma	0.50 @ \$52.00/hr	\$26.00
Subtotal for Activity:		\$826.00
TOTAL DUE:		\$826.00

Invoice No. 13185

Page 1

Consultants in
Natural Resources

303 830 1199 P. 22/01

ERO RESOURCES

13:11 OCT-05-2005

ERO Resources Corporation

Project 1422 Estate of Eleanor Chase

Activity 11 Consulting

			Mileage	Hours
Bradford, Norma	8/29/03	Admin Support	0	0.50
Total for Norma Bradford			0	0.50
Shaw, Dave B	8/4/03	Consultation w/ Matt	0	0.50
	8/18/03	Review discovery docs	0	1.50
	8/19/03	Prepare depth to water chart & meet w/ Mike, Bill & Matt	0	3.50
	8/21/03	Review discovery check lists	0	1.00
	8/22/03	Conference call w/ Mike & Matt	0	1.50
Total for Dave Shaw			0	8.00
Total for project 1422:			0	8.50

ERO Resources Corp.
1842 Clarkson Street
Denver, CO 80218
(303) 830-1188
Fax: 830-1199



Denver • Boise

www.erosources.com
ero@erosources.com

INVOICE

Invoice No. 13492
Date 11/11/03
ERO Project No. 1422
Invoice period 10/1/03 - 10/31/03

Estate of Eleanor Chase
P.O. Box 1356
Caldwell, ID 83606

Description		Total
Activity 11: Consulting		
Labor		
Shaw, Dave B	10.50 @ \$100.00/hr	\$1,050.00
Bradford, Norma	0.50 @ \$52.00/hr	\$26.00
Subtotal for Activity:		\$1,076.00
TOTAL DUE:		\$1,076.00

Invoice No. 13492

Page 1

Consultants in
Natural Resources
and the Environment

303 830 1199 P.24/31

ERO RESOURCES

13:12 OCT-05-2005

Project 1422: Estate of Eleanor Chase

Activity 11 Consulting

			Mileage	Hours
Bradford, Norma	10/31/03	Admin support	0	0.50
Total for Norma Bradford			0	0.50
Shaw, Dave B	10/8/03	Site visit to locate wells w/ GPS	0	2.00
	10/9/03	Review Floating Feather exam, process GPS data	0	3.00
	10/27/03	Review exhibits	0	1.25
	10/29/03	Hearing research	0	4.25
Total for Dave Shaw			0	10.50
Total for project 1422:			0	11.00

ERO Resources Corp.
1842 Clarkson Street
Denver, CO 80218
(303) 830-1199
Fax: 830-1199



INVOICE

Denver • Boise

www.eroresources.com
ero@eroresources.com

Invoice No. 13646
Date 12/5/03
ERO Project No. 1422
Invoice period 11/1/03 - 11/30/03

Estate of Eleanor Chase
P.O. Box 1356
Caldwell, ID 83606

Description		Total
Activity 11: Consulting		
Labor		
Shaw, Dave B	34.75 @ \$100.00/hr	\$3,475.00
Bradford, Norma	0.50 @ \$52.00/hr	\$26.00
Subtotal for Activity:		\$3,501.00
TOTAL DUE:		\$3,501.00

Invoice No. 13646

Page 1

Consultants in
Natural Resources

303 830 1199 P. 26/31

ERO RESOURCES

13:13 OCT-05-2005

ERO Resources Corporation

Project 1422: Estate of Eleanor Chase

Activity 11 Consulting			Mileage	Hours
Bradford, Norma	11/28/03	Admin support	0	0.50
Total for Norma Bradford			0	0.50
Shaw, Dave B	11/5/03	Hearing preparation w/ Matt	0	3.00
	11/6/03	Hearing prep	0	1.50
	11/7/03	Hearing prep, get field supplies	0	2.25
	11/8/03	Hearing prep	0	0.50
	11/10/03	Pump test	0	7.00
	11/11/03	Analyze pump test data, meet w/ Matt re: hearing prep	0	7.50
	11/12/03	Hearing prep	0	0.50
	11/13/03	Hearing	0	8.00
	11/14/03	Hearing	0	4.50
Total for Dave Shaw			0	34.75
Total for project 1422:			0	35.25

ERO Resources Corp.
1842 Clarkson Street
Denver, CO 80218
(303) 830-1188
Fax: 830-1189



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www.erosources.com
rod@erosources.com

INVOICE

Invoice No. 13916
Date 1/12/04
ERO Project No. 1422
Invoice period 12/1/03 - 12/31/03

Estate of Eleanor Chase
P.O. Box 1356
Caldwell, ID 83606

Description			Total
Activity 11: Consulting			
Labor			
Shaw, Dave B	8.00 @ \$100.00/hr		\$800.00
Bradford, Norma	0.50 @ \$52.00/hr		\$26.00
Subtotal for Activity:			\$826.00
TOTAL DUE:			\$826.00

Invoice No. 13916

Page 1

Consultants in
Natural Resources

P.28/31 199 830 830 1199

ERO RESOURCES

13:14 OCT-05-2005

ERO Resource Corporation

Project 1422: Estate of Eleanor C. Shaw

Activity 11 Consulting

			Mileage	Hours
Bradford, Norma	12/31/03	Admin support	0	0.50
Total for Norma Bradford			0	0.50
Shaw, Dave B	12/2/03	Closing arguments	0	2.25
	12/10/03	Review final brief	0	0.50
	12/11/03	Review final brief	0	3.25
	12/12/03	Review final brief	0	2.00
Total for Dave Shaw			0	8.00
Total for project 1422:			0	8.50

ERO Resources Corp.
1842 Clarkson Street
Denver, CO 80218
(303) 830-1198
Fax: 830-1199



Denver • Boise

www.eroresources.com
ero@eroresources.com

INVOICE

Invoice No. 14264
Date 4/8/04
ERO Project No. 1422
Invoice period 3/1/04 - 3/31/04

Estate of Eleanor Chase
P.O. Box 1356
Caldwell, ID 83606

Description	Total
Activity 11: Consulting	
Labor	
Shaw, Dave B	
2.00 @ \$105.00/hr	\$210.00
Subtotal for Activity:	\$210.00
TOTAL DUE:	\$210.00

Invoice No. 14264

Page 1

303 830 1199 P.30/31

ERO RESOURCES

OCT-05-2005 13:15

Consultants in
Natural Resources

ERO Resources Corporation

Project 1422: Estate of Dean A. Chase

Activity 11 Consulting			Mileage	Hours
Shaw, Dave B	3/18/04	Analysis for exceptions	0	1.00
	3/21/04	Exception review	0	1.00
Total for Dave Shaw			0	2.00
Total for project 1422:			0	2.00

¹ Eleanor I. Chase passed away during the pendency of the above-captioned action. For purposes of this affidavit, the “Estate of Eleanor I. Chase” is intended to refer to both Ms. Chase (deceased) and the Estate.

3. The following amounts of attorney time were expended in the preparation and review of pleadings, briefings and correspondence related to this matter, and in the research and analysis of the issues herein:

418 Hours at \$125.00/Hour	\$52,250
----------------------------	----------

4. The attorney fees described above are further detailed in the invoices attached as Exhibit "A" attached hereto. The invoices attached as Exhibit A have been annotated, as appropriate, and initialed by the affiant to remove charges that related to other matters for which the affiant provided legal services to the Estate but which were unrelated to the above-captioned action.

5. The actual and expected attorney fees listed above and spent in the litigation of this action were necessarily and reasonably expended in light of the factual and legal issues involved, the results obtained, and the factors set forth in Rule 54(e)(3), Idaho Rules of Civil Procedure.

6. The attorney fees incurred as set forth above are properly awardable pursuant to I.C. § 12-117(1) and I.R.C.P. 54(d). Therefore, attorney fees should be assessed against Applicant as follows:

Total Attorney Fees	<u>\$52,250</u>
---------------------	-----------------

7. To the best of my knowledge and belief, the attorney fees stated herein and attached hereto are correct and accurate, and the attorney fees claimed are in compliance with IRCP 54.

Further your affiant sayeth naught.

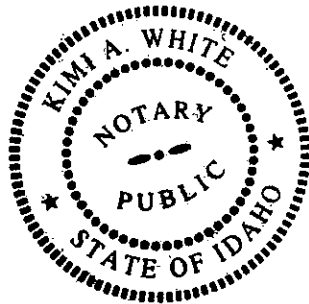


Matt J. Howard

STATE OF IDAHO)
)ss.
County of ADA)

On this 6th day of October, 2005, before me, the undersigned, a notary public in and for said state, personally appeared Matt J. Howard, known to me to be the individual that executed the foregoing affidavit, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.



Kimi A. White
Notary Public for Idaho
Residing at Boise, Idaho
My Commission Expires: 01/01/10

CERTIFICATE OF SERVICE

The undersigned certifies that on the 6th day of October, 2005, a true and correct copy of the within and foregoing document was sent to the following person(s) by the method indicated below:

Jim Burton
1896 N. Eagle. Rd.
Eagle, ID 83616

U.S. Mail

Weldon Fisher
546 E. Beacon Light Rd.
Eagle, ID 83616

U.S. Mail

Molly O'Leary, Esq.
Richardson & O'Leary, PLLC
P. O. Box 1849
Eagle, ID 83616

U.S. Mail

Bruce Smith, Esq.
Moore Smith Buxton & Turcke, Chtd
225 N. 9th St., Ste. 420
Boise, ID 83702

U.S. Mail

Charles L. Honsinger

EXHIBIT A

Matt J. Howard
Attorney at Law
P. O. Box 190012
Boise, ID 83719

Statement

DATE	Statement #
08/31/2001	2128-1

BILL TO

Estate of Eleanor I. Chase
c/o Kathryn L. Cock
P. O. Box 1356
Caldwell, ID 83606-1356

PAID

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
08/08/2001	Meeting with Client and Mike Chase re: review of protest to City permit amendment and review of Client's water rights. Telephone conference with Chris Meyer, City's attorney, re: issues relating to protest and possible avenues of resolving same and chronological development of City's water rights. Telephone conference with Dave Shaw, ERO Resources, re: availability to provide technical assistance to Client. Telephone conference with Steve Lester, IDWR agent, re: rescheduling prehearing conference. Telephone conference with Chris Meyer re: same. Left message with Gary Spackman, IDWR Western Region Manager, re: same. Telephone conference with Norm Young, IDWR administrator, re: history of protests to City of Eagle's water rights.	2.9	362.50
08/10/2001	Telephone conference with Gary Spackman, IDWR Western Region Manager, re: rescheduling prehearing conference. Telephone conference with Chris Meyer, re: decision to proceed with prehearing conference. Left message with Gary Spackman re: same. Telephone conference with Client re: same.	0.6	75.00
08/13/2001	Reviewed application and protest files for City of Eagle water right no. 63-12448 received from the IDWR Western Region and state offices. Reviewed documents received from Client. Drafted Notice of Appearance.	2	250.00
08/14/2001	Reviewed IDWR administrative rules re: burden of proof on the City of Eagle to show proposed well site will not adversely affect existing water rights and criteria for determining injury. Reviewed Idaho Code sections 42-211, 203a, and 203b re: same. Telephone conference with Client re: letter from Jim Burton. Reviewed Municipal Water Right Act provisions. Telephone conference with Dan Nelson, IDWR allocations agent, re: diversion volume limits on the City of Eagle's water rights. Outlined issues for the prehearing conference.	1.6	200.00
Client trust account billed. Amount still due.		Total	

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
 Attorney at Law
 P. O. Box 190012
 Boise, ID 83719

Statement

DATE	Statement #
08/31/2001	2128-1

BILL TO

Estate of Eleanor I. Chase
 c/o Kathryn L. Cock
 P. O. Box 1356
 Caldwell, ID 83606-1356

PAID

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
08/15/2001	Attended Prehearing Conference at the Eagle Sewer District Office. Meeting with Mike Chase re: recommendation to retain Dave Shaw, ERO Resources, re: evaluation of aquifer data and practical/technical solutions. Telephone conference with Dave Shaw re: background on City's proposed well site. Telephone conference with Chris Meyer and Bill Strowd, geologist with Holland Engineering, re: elevation of Client's irrigation well.	4.2	525.00
08/16/2001	Telephone conference with Mike Chase re: his telephone conference with Bill Strowd. Drafted letter to Dave Shaw, ERO Resources, re: development of practical solutions and evidence relating to potential adverse impacts to the Chase family wells caused by the City's proposed well site.	0.5	62.50
08/31/2001	Client costs: copy costs(\$11.30), poatage(\$2.04).		13.34
	CLIENT TRUST ACCOUNT (CTA)		
	Previous CTA balance: \$1,500.00		
	Withdrawal from CTA applied toward payment of invoice: \$1,488.34		-1,488.34
	Current CTA balance: \$11.66		
	Amount required to maintain minimum CTA balance: \$488.34		488.34
Client trust account billed. Amount still due.		Total	\$488.34

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
 Attorney at Law
 P. O. Box 190012
 Boise, ID 83719

Statement

DATE	Statement #
09/30/2001	2128-2

BILL TO

Estate of Eleanor I. Chase
 c/o Kathryn L. Cock
 P. O. Box 1356
 Caldwell, ID 83606-1356

PAID

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
09/04/2001	Telephone conference with Dave Shaw, ERO Resources, and Client re: status of field exam by Dave Shaw.	0.2	25.00
09/06/2001	Telephone conference with Chris Meyer, City's attorney, re: request to reschedule prehearing conference, status of proposal for resolution of protest, proposal that City retain Scanlan Engineering. Telephone conference with Dave Shaw re: rescheduling prehearing conference.	0.4	50.00
09/07/2001	Telephone conference with Client re: rescheduling prehearing conference. Drafted email to Chris Meyer, City's attorney, re: same.	0.1	12.50
09/17/2001	Telephone conference with Dave Shaw, ERO Resources, re: rescheduling of prehearing conference and status of meeting with Client. Telephone conference with Client re: same.	0.1	12.50
	CLIENT TRUST ACCOUNT (CTA)		
	Previous CTA balance: \$500.00		
	Withdrawal from CTA applied to invoice: \$100.00		-100.00
	Current CTA balance: \$400.00		
	Amount required to maintain minimum CTA balance: \$100.00		100.00
Client trust account billed. Amount still due.		Total	\$100.00

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
Attorney at Law
P. O. Box 190012
Boise, ID 83719

Statement

DATE	Statement #
10/31/2001	2128-3

BILL TO

Estate of Eleanor I. Chase
c/o Kathryn L. Cock
P. O. Box 1356
Caldwell, ID 83606-1356



DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
10/01/2001	Telephone conference with Dave Shaw re: final draft of Holladay Engineering study. Telephone conference with Chris Meyer, City's attorney, re: same.	0.1	12.50
10/02/2001	Telephone conference with Chris Meyer, City's attorney, re: City's recognition of potential interference to three of Client's water rights and City's proposal to mitigate interference by providing free supply of water to Client. Telephone conference with Dave Shaw re: City's proposal and need to determine impacts to Client's main irrigation water right.	0.9	112.50
10/03/2001	Telephone conference with Mike Chase re: mitigation offer by the City of Eagle and need to include additional Chase wells into the mitigation package. Reviewed water right profile reports to identify water rights included within the City's mitigation proposal. Telephone conference with Becky Harvey, IDWR paralegal, re: status of Chase water rights in the SRBA.	1.5	187.50
10/04/2001	Telephone conference with Mike Chase re: details of counteroffer to the City's mitigation proposal.	0.7	87.50
10/05/2001	Telephone conference with Chris Meyer re: Client's counterproposal to the City's mitigation offer. Telephone conference with Client re: same. Telephone conference with Chris Meyer re: City's response to the water rights "ownership" issue, payment of professional fees, and temporary mitigation option.	1.1	137.50
10/10/2001	Telephone conference with Dave Shaw re: proposal for determining impacts from the City's proposed well. Telephone conference with Mike Chase re: pump test proposal and costs for same. Telephone conference with Dave Shaw re: costs.	1	125.00
Client trust account billed. Amount still due.			Total

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
Attorney at Law
P. O. Box 190012
Boise, ID 83719

Statement

DATE	Statement #
10/31/2001	2128-3

BILL TO

Estate of Eleanor I. Chase
c/o Kathryn L. Cock
P. O. Box 1356
Caldwell, ID 83606-1356

PAID

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
10/11/2001	Reviewed letter from City's attorney outlining proposed settlement options by City. Drafted letter to Client re: settlement options and proposed settlement conference. Drafted memorandum re: Dave Shaw's data gathering proposal for the large irrigation well.	1.6	200.00
10/15/2001	Reviewed files notes and summarized water rights subject to mitigation and water rights not subject to mitigation. Telephone conference with Dave Shaw re: valuation of Client's water rights and advantages of full mitigation versus temporary mitigation. Telephone conference with City's attorney re: clarification of City's Option B settlement offer and scheduling of settlement conference and vacating prehearing conference. Telephone conference with Gary Spackman, IDWR hearing officer, re: vacating prehearing conference. Telephone conference with Dave Shaw re: City Engineer's support for monitoring proposal for the large irrigation well. Telephone conference with Dave Shaw re: Hollday Engineering's request for outline of monitoring proposal for submission to the City Council. Telephone conference with Mike Chase re: settlement options, including conveyance of some rights and retaining other water rights and valuation issues.	2.1	262.50
10/16/2001	Telephone conference with Dave Shaw re: determination of historical beneficial use of Client's water rights based facts predating filing of the SRBA claims. Reviewed email from Dave Shaw re: review of 1987 NAPP photographs and issue re: overlapping places of use.	0.6	75.00
10/17/2001	Telephone conference with Dave Shaw re: location of points of diversion of Client's water rights and overlap in place of use between the large and small irrigation rights. Telephone conference with Client re: scheduling meeting with Dave Shaw to review extent of beneficial use water rights.	0.4	50.00
Client trust account billed. Amount still due.		Total	

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
Attorney at Law
P. O. Box 190012
Boise, ID 83719

Statement

DATE	Statement #
10/31/2001	2128-3

BILL TO

Estate of Eleanor I. Chase
c/o Kathryn L. Cock
P. O. Box 1356
Caldwell, ID 83606-1356

PAID

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
10/18/2001	Meeting with Client, Mike Chase, and Dave Shaw re: review of water rights and quantification of historical beneficial use, monitoring proposal, and proposed settlement conference	2	250.00
10/29/2001	Reviewed letter from Dave Shaw to Holladay Engineering. Drafted letter to Client re: rescheduling prehearing conference. Telephone conference with Dave Shaw re: same.	0.2	25.00
10/31/2001	Client costs: postage (\$1.93), copy costs (\$1.30).		3.23
	CLIENT TRUST ACCOUNT (CTA)		
	Previous CTA balance: \$500.00		
	Withdrawal from CTA applied toward payment of invoice: \$500.00		-500.00
	Current CTA balance: \$0.00		
	Amount required to maintain minimum CTA balance: \$500.00		500.00
Client trust account billed. Amount still due.		Total	\$1,528.23

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
 Attorney at Law
 P. O. Box 190012
 Boise, ID 83719

Statement

DATE	Statement #
11/30/2001	2128-4

BILL TO

Estate of Eleanor I. Chase
 c/o Kathryn L. Cock
 P. O. Box 1356
 Caldwell, ID 83606-1356

PAID

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
11/05/2001	Telephone conference with the City's attorney re: settlement proposals.	0.2	25.00
11/07/2001	Reviewed file re: settlement terms proposed by the City and Client. Telephone conference with the City's attorney re: outline of the settlement proposals by the City and Client, and mitigation options for Client to convey water rights or to retain water rights and scheduling of a settlement conference between Client and the City. Telephone conference with Keith Donahue, DEQ attorney, re: water quality issues concerning the City's proposed transfer. Telephone conference with Client re: discussion with the City's attorney concerning settlement proposals. Telephone conference with Dave Shaw re: availability for settlement conference.	1.6	200.00
11/08/2001	Telephone conference with Steve Goddard, DEQ attorney, re: water quality issues relating to the proposed supply of municipal water to Client's dairy operation. Telephone conference with Chris Meyer re: rescheduling of settlement conference.	0.4	50.00
11/09/2001	Telephone conference with Client and Dave Shaw re: availability of dates for settlement conference.	0.1	12.50
11/12/2001	Telephone conference with Dave Shaw and Chris Meyer re: scheduling of settlement meeting.	0.1	12.50
11/13/2001	Telephone conference with the City's attorney, Dave Shaw, and Client re: scheduling settlement conference.	0.1	12.50
11/26/2001	Telephone conference with Client and Dave Shaw re: status of settlement conference.	0.1	12.50
11/27/2001	Telephone conference with Client re: power records. Telephone conference with the City's attorney re: rescheduling of settlement conference and prehearing conference. Telephone conference with Dave Shaw re: same.	0.3	37.50
Client trust account billed. Amount still due.		Total	

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
Attorney at Law
P. O. Box 190012
Boise, ID 83719

Statement

DATE	Statement #
11/30/2001	2128-4

BILL TO

Estate of Eleanor I. Chase
c/o Kathryn L. Cock
P. O. Box 1356
Caldwell, ID 83606-1356

PAID

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
11/28/2001	Telephone conference with Client, Chris Meyer, and Dave Shaw re: rescheduling settlement conference to December 5.	0.2	25.00
	CLIENT TRUST ACCOUNT (CTA)		
	Previous CTA balance: \$500.00		
	Withdrawal from CTA applied toward payment of invoice: \$387.50		-387.50
	Current CTA balance: \$112.50		
	Amount required to maintain minimum CTA balance: \$387.50		387.50
Client trust account billed. Amount still due.		Total	\$387.50

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
 Attorney at Law
 P. O. Box 190012
 Boise, ID 83719

Statement

DATE	Statement #
12/31/2001	2128-5

BILL TO

Estate of Eleanor I. Chase
 c/o Kathryn L. Cock
 P. O. Box 1356
 Caldwell, ID 83606-1356

PAID

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
12/05/2001	Prepared for settlement conference. Reviewed file and prepared outline of settlement issues and options. Telephone conference with Mike Chase re: settlement outline. Telephone conference with Dave Shaw re: settlement outline and findings based on power records provided by Client and spreadsheet for the dairy right. Telephone conference with Chris Meyer re: cancellation of settlement conference. Telephone conference with Client re: same. Telephone conference with Dave Shaw re: same.	1.8	225.00
12/06/2001	Telephone conference with Client and Dave Shaw re: rescheduling of settlement conference. Reviewed email from Chris Meyer re: request for information concerning historical use of Client's water rights. Telephone conference with Dave Shaw re: same. Drafted reply email to Chris Meyer re: request for reimbursement of professional fees.	0.4	50.00
12/11/2001	Reviewed email and attachments from Dave Shaw re: quantification of the dairy well water right and small irrigation water right based on power records and data provided by Client. Telephone conference with Dave Shaw re: revisions to the first set of calculations. Reviewed facsimile received from Dave Shaw concerning revised calculations. Telephone conference with Mike Chase re: Dave Shaw's calculations and settlement options relating to the dairy well, domestic well, small irrigation right, and large irrigation right. Telephone conference with Dave Shaw re: aerials for the settlement conference. Telephone conference with Katrina, Chris Meyer's assistant, re: confirmation of settlement conference.	1.5	187.50
12/12/2001	Reviewed file in preparation for settlement conference. Participated in settlement conference with Clients, Dave Shaw, and city representatives. Drafted memorandum to file re: terms of settlement discussed at the conference.	4.8	600.00
12/14/2001	Drafted letter to City's attorney re: breakdown of professional fees. Telephone conference with Dave Shaw re: same.	0.5	62.50
Client trust account billed. Amount still due.		Total	

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
Attorney at Law
P. O. Box 190012
Boise, ID 83719

Statement

DATE	Statement #
12/31/2001	2128-5

BILL TO

Estate of Eleanor I. Chase
c/o Kathryn L. Cock
P. O. Box 1356
Caldwell, ID 83606-1356

PAID

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
12/21/2001	Reviewed emails from Vern Brewer and Dave Shaw re: status of investigation of the small irrigation well. Reviewed email from Chris Meyer re: summary of discussion with Glen Saxton, IDWR water bank supervisor, re: water bank proposal.	0.1	12.50
12/31/2001	Client costs: copy costs (\$0.30), postage (\$1.36).		1.66
	CLIENT TRUST ACCOUNT (CTA)		
	Previous CTA balance:\$500.00		
	Withdrawal from CTA applied toward payment of invoice: \$500.00		-500.00
	Current CTA balance: \$0.00		
	Amount required to maintain minimum CTA balance: \$500.00		500.00
Client trust account billed. Amount still due.		Total	\$1,139.16

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
Attorney at Law
P. O. Box 190012
Boise, ID 83719

Statement

DATE	Statement #
01/31/2002	2128-6

BILL TO

Estate of Eleanor I. Chase
c/o Kathryn L. Cock
P. O. Box 1356
Caldwell, ID 83606-1356

PAID

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
01/04/2002	Reviewed email from Dave Shaw re: status of response from City. Drafted reply email re: same.	0.2	25.00
01/28/2002	Reviewed IDAPA rules re: intervention of the Estate of Eleanor Chase in the contested case proceedings concerning the protest against the City of Eagle water right transfer. Telephone conference with Gary Spackman, IDWR hearing officer, re: intervention.	0.3	37.50
01/31/2002	Reviewed emails from the City's attorney re: the quantity and priority elements for the dairy well, domestic well, and small irrigation right. Reviewed file and held telephone conference with Dave Shaw re: same. Drafted reply emails.	0.4	50.00
	CLIENT TRUST ACCOUNT (CTA)		
	Previous CTA balance: \$500.00		
	Withdrawal from CTA applied toward payment of this invoice: \$112.50		-112.50
	Current CTA balance: \$387.50		
Client Trust Account billed. No further payment due.		Total	\$0.00

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
 Attorney at Law
 P. O. Box 190012
 Boise, ID 83719

Statement

DATE	Statement #
02/28/2002	2128--7

BILL TO

Estate of Eleanor I. Chase
 c/o Kathryn L. Cock
 P. O. Box 1356
 Caldwell, ID 83606-1356

PAID

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
02/14/2002	Drafted e-mail to the City's attorney re: status of settlement offer from the City.	0.1	12.50
02/21/2002	Reviewed settlement offer received from the City's attorney. Drafted letter to Client re: same.	0.7	87.50
02/22/2002	Telephone call with the City's attorney re: status of Clients' response to the City's settlement offer.	0.1	12.50
02/25/2002	Telephone conference with Mike Chase and Dave Shaw re: offer from City.	0.2	25.00
02/27/2002	Re-reviewed offer from the City and compared the offer with the terms reached at the settlement conference. Drafted chart outlining differences between the City's offer and terms agreed to at the settlement conference. Retrieved and reviewed Parker v. Wallentine case re: protection of historical groundwater pumping levels for domestic water rights. Telephone conference with Phil Rassier, IDWR attorney, re: IDWR's application of the Parker case and reasonable ground water pumping levels for non-domestic uses. Reviewed provisions of the groundwater act, Idaho Code secs. 42-226, 227, and 229. Viewed Clients' water delivery system and location of the proposed well by the City. Meeting with Mike Chase, Bill Chase, and Dave Shaw re: response to the City's offer.	4.3	537.50
	Client costs: copy costs (\$3.30), postage (\$1.14).		4.44
	CLIENT TRUST ACCOUNT (CTA)		
	Previous CTA balance: \$387.50		
	Withdrawal from CTA applied toward payment of invoice: \$387.50		-387.50
	Current CTA balance: \$0.00		
Client trust account billed. Amount still due.		Total	

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
Attorney at Law
P. O. Box 190012
Boise, ID 83719

Statement

DATE	Statement #
02/28/2002	2128--7

BILL TO

Estate of Eleanor I. Chase
c/o Kathryn L. Cock
P. O. Box 1356
Caldwell, ID 83606-1356



DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
	Amount required to maintain minimum CTA balance: \$500.00		500.00
Client trust account billed. Amount still due.			Total \$791.94

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
 Attorney at Law
 P. O. Box 190012
 Boise, ID 83719

Statement

DATE	Statement #
03/31/2002	2128-8

BILL TO

Estate of Eleanor I. Chase
 c/o Kathryn L. Cock
 P. O. Box 1356
 Caldwell, ID 83606-1356



DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
03/11/2002	Reviewed file notes and correspondence. Drafted reply letter to City re: Client's request that City abide by settlement framework agreed to at the settlement conference.	2.8	350.00
03/12/2002	Reviewed and revised response letter to the City of Eagle. Received voice message from City's attorney re: status of response letter. Drafted facsimile letter to City's attorney re: same. Drafted e-mail to Dave Shaw, ERO Resources, re: revisions to response letter.	1.3	162.50
03/13/2002	Telephone conference with Client re: Client's conversation with city council members and Susan Buxton. Meeting with Client re: review of draft response letter to City, increasing density of Client's land, and strategy for dealing with City.	1.3	162.50
03/15/2002	Reviewed revisions to response letter received from Dave Shaw. Revised response letter. Drafted e-mail to Dave Shaw re: same. Telephone conference with Client re: density of land use based upon waiver of hookup fees offered by City. Telephone conference with Client re: revisions to draft letter and approval of same. Reviewed IDAPA rules for intervention of Estate in the contested case proceedings.	1.3	162.50
03/18/2002	Telephone conference with Bruce Smith, attorney for the City, re: Client's response to Smith's letter and basis for response.	0.6	75.00
03/26/2002	Telephone conference with Client re: discussions with Bruce Smith and Lynne Sedlacek and need for the Estate through the personal representatives to intervene as a party in the contested case proceedings.	0.5	62.50
03/27/2002	Telephone conference with Client re: meeting with Vern Brewer and Dave Shaw.	0.1	12.50
03/31/2002	Client costs: copy costs (\$3.90), postage (\$2.85).		6.75
Client trust account billed. Amount still due.		Total	

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
Attorney at Law
P. O. Box 190012
Boise, ID 83719

Statement

DATE	Statement #
03/31/2002	2128-8

BILL TO

Estate of Eleanor I. Chase
c/o Kathryn L. Cock
P. O. Box 1356
Caldwell, ID 83606-1356

PAID

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
	CLIENT TRUST ACCOUNT (CTA)		
	Previous CTA balance: \$500.00		
	Withdrawal from CTA applied toward payment of invoice: \$500.00		-500.00
	Current CTA balance: \$0.00		
	Amount required to maintain minimum CTA balance: \$500.00		500.00
Client trust account billed. Amount still due.		Total	\$994.25

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
Attorney at Law
P. O. Box 190012
Boise, ID 83719

Statement

DATE	Statement #
04/30/2002	2128-9

BILL TO

Estate of Eleanor I. Chase
c/o Kathryn L. Cock
P. O. Box 1356
Caldwell, ID 83606-1356

PAID

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
04/10/2002	Telephone conference with Client re: filing of protest to the United Water IMAP application.	0.3	37.50
04/17/2002	Completed summary review of 90-page IMAP application. Drafted Protest to IMAP Application. Reviewed Idaho Code sections 42-203A, 211, and 222 re: same. Arranged for filing of protest.	1.8	225.00
04/18/2002	Drafted letter to Client re: protest to IMAP application, status of substitution of party, and retainer agreement.	0.8	100.00
04/19/2002	Telephone conference with Client re: IMAP protest and status of the City of Eagle protest. Reviewed protests filed by Nampa Meridian Irrigation District, Settlers Irrigation District, and Pioneer Irrigation District to the United Water IMAP application.	0.2	25.00
04/25/2002	Telephone conference with Chris Meyer re: Client's protest to the IMAP application and proposed stipulation to limit annual diversion volume and priority date with respect to the Floating Feather well.	0.3	37.50
04/26/2002	Reviewed letter from Chris Meyer, United Water's attorney, re: offer to settle protest. Drafted letter to Client re: same.	0.3	37.50
04/29/2002	Telephone conference with Client re: settlement of the IMAP protest. Left message with Chris Meyer re: same.	0.1	12.50
04/30/2002	Client costs: copy costs (\$18.00), postage (\$2.16), filing fee (\$25.00).		45.16
	CLIENT TRUST ACCOUNT (CTA)		
	Previous CTA balance: \$500.00		
Client trust account billed. Amount still due.		Total	

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
Attorney at Law
P. O. Box 190012
Boise, ID 83719

Statement

DATE	Statement #
04/30/2002	2128-9

BILL TO

Estate of Eleanor I. Chase
c/o Kathryn L. Cock
P. O. Box 1356
Caldwell, ID 83606-1356

PAID

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
	Withdrawal from CTA applied toward payment of invoice: \$500.00		-500.00
	Current CTA balance: \$0.00		
	Amount required to maintain minimum CTA balance: \$500.00		500.00
Client trust account billed. Amount still due.		Total	\$520.16

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
Attorney at Law
P. O. Box 190012
Boise, ID 83719

Statement

DATE	Statement #
05/31/2002	2128-10

BILL TO

Estate of Eleanor I. Chase
c/o Kathryn L. Cock
P. O. Box 1356
Caldwell, ID 83606-1356

PAID

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
05/01/2002	Drafted fax letter to Gary Spaekman, IDWR hearing officer, re: unavailable dates for the IMAP protest hearing.	0.1	12.50
05/08/2002	Drafted Petition for Intervention. Drafted Stipulation for Intervention. Drafted Letter to Bruce Smith, City of Eagle attorney, regarding execution of the Stipulation for Intervention.	1.4	175.00
05/22/2002	Telephone conference with Bruce Smith, City of Eagle attorney, re: status of contested case and scheduling meeting re: same.	0.1	12.50
05/25/2002	Drafted e-mail to Chris Meyer, United Water attorney, regarding IMAP settlement proposal. Drafted letter to Client re: status of IMAP protest, City of Eagle protest, and notice of prehearing conference.	0.5	62.50
05/29/2002	Meeting with Bruce Smith, City of Eagle attorney, re: settlement issues and proposal by the City to purchase water rights. Telephone conference with Dave Shaw, ERO Resources, re: same.	1.4	175.00
05/30/2002	Telephone conference with Client re: discussion with Bruce Smith concerning the City's interest in purchasing water rights, viability of the small irrigation well and request for reimbursement of professional fees. Telephone conference with Bruce Smith re: Client's response to the City's interest in purchasing water rights and city council meeting. Telephone conference with Client re: follow-up discussion with Bruce Smith and adherence to position set out in our March 15 letter to the City.	2.2	275.00
05/31/2002	Telephone conference with Client re: city council meeting. Telephone conference with Client re: counteroffer by the City.	0.3	37.50
05/31/2002	Client costs: copy costs (\$2.70), postage (\$2.28).		4.98
Client trust account billed. Amount still due.		Total	

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
Attorney at Law
P. O. Box 190012
Boise, ID 83719

Statement

DATE	Statement #
05/31/2002	2128-10

BILL TO

Estate of Eleanor I. Chase
c/o Kathryn L. Cock
P. O. Box 1356
Caldwell, ID 83606-1356

PAID

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
	CLIENT TRUST ACCOUNT (CTA)		
	Previous CTA balance: \$500.00		
	Withdrawal from CTA applied toward payment of invoice: \$500.00		-500.00
	Current CTA balance: \$0.00		
	Amount required to maintain minimum CTA balance: \$500.00		500.00
Client trust account billed. Amount still due.		Total	\$754.98

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
 Attorney at Law
 P. O. Box 190012
 Boise, ID 83719

Statement

DATE	Statement #
06/30/2002	2128-11

BILL TO

Estate of Eleanor I. Chase
 c/o Kathryn L. Cock
 P. O. Box 1356
 Caldwell, ID 83606-1356

PAID

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
06/01/2002	Reviewed letter received from Bruce Smith re: counteroffer by City. Drafted letter to Client re: same.	0.2	25.00
06/03/2002	Telephone conference with Client re: acceptance of City's offer contingent on arbitration of indemnity provision, terms of March 15 letter, and arbitration of the small irrigation well.	0.2	25.00
06/05/2002	Telephone conference with Client re: decision to go to contested case proceedings if the City is unwilling to agree to arbitrate the issue of mitigation of the small irrigation well.	0.2	25.00
06/06/2002	Reviewed IDAPA rules re: representation required for the Estate at the IMAP prehearing conference.	0.1	12.50
06/07/2002	Drafted letter to Bruce Smith re: response to City's offer. Telephone conference with Client re: same.	1	125.00
06/11/2002	Reviewed United Water's Preliminary Response to Protests.	0.2	25.00
06/13/2002	Telephone conference with Mike Chase re: message from Bruce Smith concerning "take it or leave it offer" and status of IMAP. Reviewed letter from City's attorney re: take it or leave it offer. Drafted letter to Client re: same.	0.6	125.00 75.00
06/17/2002	Drafted letter to IDWR re: filing of Petition for Intervention. Arranged for filing and service of same. Reviewed letter from Chris Meyer and Al Barker re: scheduling of subsequent IMAP prehearing conferences.	0.3	37.50
For billing inquiries, please call (208) 333-0622		Total	

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

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 Boise, ID 83719

Statement

DATE	Statement #
06/30/2002	2128-11

BILL TO

Estate of Eleanor I. Chase
 c/o Kathryn L. Cock
 P. O. Box 1356
 Caldwell, ID 83606-1356

PAID

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
06/19/2002	Re-reviewed Parker v. Wallentine case re: reimbursement of attorney fees under the element of "damages" required to be mitigated to a senior right holder and whether stockwater use is included under domestic uses. Telephone conference with Dave Shaw, ERO Resources, and Phil Rassier, IDWR attorney, re: definition of domestic purposes as including stockwater. Reviewed 1899 session laws and Idaho Code 42-111 re: definition of domestic purposes. Reviewed IDWR rules re: procedure for initiating discovery. Telephone conference with Mike Chase re: protection of stockwater rights under Parker v. Wallentine and filing of amended notices of claim to claim the stockwater component of domestic use as an additional use.	1.4	175.00
06/20/2002	Reviewed session laws received from Phil Rassier, IDWR attorney, re: definition of "domestic purposes." Retrieved and reviewed Idaho session laws for 1951, 1970, and 1971 re: inclusion of stockwater within the definition of "domestic purposes." Outlined legal analysis relating to application of the 1951 and 1971 session laws to the Parker v. Wallentine case.	0.9	112.50
06/30/2002	Client costs: copy costs (\$9.90), postage (\$6.83).		16.73
	CLIENT TRUST ACCOUNT (CTA)		
	Previous CTA balance: \$500.00		
	Withdrawal from client trust account applied to invoice: \$500.00		-500.00
	Current CTA balance: \$0.00		
	Amount required to maintain minimum CTA balance: \$500.00		500.00
For billing inquiries, please call (208) 333-0622		Total	\$704.23

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
Attorney at Law
P. O. Box 190012
Boise, ID 83719

Statement

DATE	Statement #
07/31/2002	2128-12

BILL TO

Estate of Eleanor I. Chase
c/o Kathryn L. Cock
P. O. Box 1356
Caldwell, ID 83606-1356

PAID

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
07/10/2002	Reviewed letter from City's attorney regarding scheduling of prehearing conference and deadline for response to City.	0.1	12.50
07/11/2002	Telephone conference with Mike Chase re: correspondence from City's attorney concerning scheduling of prehearing conference. Reviewed second letter from City's attorney re: prehearing conference. Telephone conference with Mike Chase re: status of IMAP settlement. Drafted e-mail to John Marshall, United Water's attorney, re: status of settlement agreement.	0.2 0.1	25.00 12.50
07/15/2002	Telephone conference with Ron Howerton, IDWR agent, re: amendment of notices of claim for Client's water right nos. 63-5224, 63-5226, and 63-5229 to add "domestic" as a purpose of use and filing of a separate domestic claim for the large irrigation well.	0.5	62.50
07/19/2002	Reviewed letter received from City's attorney to IDWR hearing officer. Drafted response to City's letter.	0.5	62.50
07/21/2002	Organized files for litigation. Began preparation of amended notices of claims. Revised letter to Gary Spackman re: prehearing conference and response to City's July 18 letter.	1	125.00
07/22/2002	Completed preparation of amended notices of claim for 63-5226 and 63-5229. Drafted new SRBA claim for domestic use from large irrigation well. Drafted letter to Client re: amended SRBA claims and correspondence from the City.	1.7	212.50
07/23/2002	Telephone conference with City's attorney re: proposal by City and rejection by City of compromise position. Drafted memorandum to file re: same.	0.5	62.50
Client trust account billed. Amount still due.		Total	

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
Attorney at Law
P. O. Box 190012
Boise, ID 83719

Statement

DATE	Statement #
07/31/2002	2128-12

BILL TO

Estate of Eleanor I. Chase
c/o Kathryn L. Cock
P. O. Box 1356
Caldwell, ID 83606-1356

PAID

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
07/24/2002	Telephone conference with Mike Chase regarding review of the amended claims for domestic use from the large irrigation well, small irrigation well, and the dairy well and discussion with the City's attorney re: the status of settlement. Drafted letter to City's attorney re: Client's response to City's counteroffer.	1.3	162.50
07/31/2002	Client costs: copy cost (\$1.95), postage (\$3.05).		5.00
	CLIENT TRUST ACCOUNT (CTA)		
	Previous CTA balance: \$500.00		
	Withdrawal from CTA applied toward payment of invoice: \$500.00		-500.00
	Current CTA balance: \$0.00		
	Amount required to maintain minimum CTA balance: \$500.00		500.00
Client trust account billed. Amount still due.		Total	\$730.00

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
 Attorney at Law
 P. O. Box 190012
 Boise, ID 83719

Statement

DATE	Statement #
08/31/2002	2128-13

BILL TO

Estate of Eleanor I. Chase
 c/o Kathryn L. Cock
 P. O. Box 1356
 Caldwell, ID 83606-1356

PAID

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
08/01/2002	Telephone conference with John Marshall, United Water's attorney, re: timing for draft of settlement agreement.	0.1	12.50
08/13/2002	Telephone conference with Sue Taylor, IDWR secretary, re: scheduling of prehearing conference for the protests to the City of Eagle application.	0.1	12.50
08/14/2002	Telephone conference with Sue Taylor re: prehearing conference. Reviewed August 12, 2002 letter re: IMAP prehearing conference. Review e-mail from Chris Meyer, United Water's attorney, re: status of IMAP agreement. Telephone conference with Mike Chase re: his meeting with the Councilman Stan Bastian, status of prehearing conference, and status of IMAP settlement. Telephone conference with Debbie Gibson, IDWR paralegal, re: IMAP prehearing conference. Telephone conference with Mike Chase re: review of letter to Stan Bastian.	0.8 0.1	100.00 12.50
08/24/2002	Draft letter to IDWR re: filing of SRBA claims. Arrange for filing of same. Draft letter to Client re: IMAP prehearing conference.	0.5 0.1	62.50 12.50
08/26/2002	Telephone conference with Mike Chase re: filing protest against application no. 63-31528 filed by Aries Development LLC.	0.1	12.50
08/28/2002	Draft Protest to Application for Water Right Permit no. 63-31528. Draft letter to IDWR re: filing of protest. Draft letter to Client re: same. Arrange for filing and service of same.	0.8	100.00
08/29/2002	Review Notice of Prehearing Conference re: the City of Eagle protests. Telephone conference with Dave Shaw, ERO Resources, re: his unavailability. Telephone conference with Sue Taylor, IDWR secretary, re: request to move hearing date.	0.1	12.50
		Total	

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
Attorney at Law
P. O. Box 190012
Boise, ID 83719

Statement

DATE	Statement #
08/31/2002	2128-13

BILL TO

Estate of Eleanor I. Chase
c/o Kathryn L. Cock
P. O. Box 1356
Caldwell, ID 83606-1356

PAID

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
08/30/2002	Telephone conference with Sue Taylor re: re-scheduling prehearing conference.	0.1	12.50
08/31/2002	Client costs: copy costs (\$8.40), postage (\$5.63), filing fee (\$25.00). CLIENT TRUST ACCOUNT (CTA) Previous CTA balance: \$0.00 NOTE: THIS INVOICE DOES NOT INCLUDE THE AMOUNT STILL OWING FROM INVOICE # (2128-12) OF \$730.00.		39.03
Total			\$364.03

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
 Attorney at Law
 P. O. Box 190012
 Boise, ID 83719

Statement

DATE	Statement #
09/30/2002	2128-14

BILL TO

Estate of Eleanor I. Chase
 c/o Kathryn L. Cock
 P. O. Box 1356
 Caldwell, ID 83606-1356

PAID

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
09/03/2002	Telephone conference with Mike Chase re: availability for the prehearing conference for the City of Eagle application. Telephone conference with Dave Shaw, ERO Resources, and Bruce Smith's secretary re: unavailable dates. Draft letter to Gary Spackman, IDWR Western Region Supervisor, re: rescheduling prehearing conference.	0.5	62.50
09/06/2002	Reviewed Notice of Prehearing Conference for the City of Eagle application. Telephone conference with Dave Shaw, ERO Resources, and Mike Chase re: prehearing conference, discovery schedule and litigation strategy.	0.4	50.00
09/08/2002	Reviewed letter and notice re: prehearing conference concerning the application filed by Aries Development.	0.1	12.50
09/09/2002	Telephone conference with Mike Chase re: prehearing conference for the Aries application. Telephone conference with Ron Howerton, IDWR agent, re: filing fee for the domestic right claim and status of change of ownership of the Chase family water rights.	0.3 0.2	37.50 25.00
09/16/2002	Telephone conference with Ron Howerton, IDWR agent, re: basis for the domestic claim from the large irrigation well and basis for claiming domestic versus stockwater. Review license file 63-8663 re: same.	0.6	75.00
09/17/2002	Prepared for the City of Eagle prehearing conference (e.g., reviewed application for amendment and file notes). Re-reviewed Parker case concerning protection of historical ground water pumping levels for ground water rights in existence prior to 1953. Telephone conference with Phil Rassier, IDWR attorney, re: protection of pre-1953 ground water rights. Telephone conference with Ron Howerton, IDWR agent, re: withdrawal of domestic claim for the large irrigation well. Telephone conference with Dave Shaw, ERO Resources, re: prehearing conference and required discovery.	2.4	300.00
Client trust account billed. Amount still due.		Total	

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
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 P. O. Box 190012
 Boise, ID 83719

Statement

DATE	Statement #
09/30/2002	2128-14

BILL TO

Estate of Eleanor I. Chase
 c/o Kathryn L. Cock
 P. O. Box 1356
 Caldwell, ID 83606-1356

PAID

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
09/18/2002	Telephone conference with Mike Chase re: prehearing conference. Attend prehearing conference at the Eagle Sewer District offices. Draft memorandum to file re: same. Telephone conference with Dave Shaw, ERO Resources, re: additional basis for the City to share the expenses of a transfer proceeding.	4.2	525.00
09/19/2002	Telephone conference with Mike Chase re: options to indemnity issue and follow up with the insurance agent.	0.4	50.00
09/20/2002	Reviewed draft proposed set of conditions to IMAP. Draft fax letter to Mike Chase regarding same. Telephone conference with Mike Chase re: review of the proposed set of conditions for IMAP and non-viability of insurance for the city water system failure. Draft letter to City re: settlement issues.	1.7 0.5	212.50 62.50
09/22/2002	Reviewed Parker case re: reimbursement of fees. Reviewed settlement notes and prior settlement correspondence. Draft letter to City re: issues of indemnification, mitigation for the small irrigation well, and reimbursement of professional fees. Draft fax-letter to Mike Chase re: same. Draft e-mail to Dave Shaw re: same.	3.4	425.00
09/23/2002	Reviewed and revised letter to City of Eagle. Reviewed e-mail from Dave Shaw re: revisions to letter and option for selling water right to third party. Revised letter to City. Telephone conference with Mike Chase re: resolution of IMAP and results of prehearing conference.	0.8 0.5	100.00 62.50
09/24/2002	Reviewed and revised letter to City.	0.3	37.50
09/25/2002	Reviewed Motion for Order Authorizing Preliminary Discovery and Affidavit of Scott Campbell in support of motion (IMAP). Telephone conference with Mike Chase re: city council hearing.	0.2 0.1	25.00 12.50
Client trust account billed. Amount still due.		Total	

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
Attorney at Law
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Boise, ID 83719

Statement

DATE	Statement #
09/30/2002	2128-14

BILL TO

Estate of Eleanor I. Chase
c/o Kathryn L. Cock
P. O. Box 1356
Caldwell, ID 83606-1356



DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
09/30/2002	Client costs: copy costs (\$3.00), postage (\$1.11).		4.11
	CLIENT TRUST ACCOUNT (CTA)		
	Previous CTA balance: \$500.00		
	Withdrawal from CTA applied toward payment of invoice: \$500.00		-500.00
	Current CTA balance: \$0.00		
	Amount required to maintain minimum CTA balance: \$500.00		500.00
Client trust account billed. Amount still due.		Total	\$1,916.61

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
 Attorney at Law
 P. O. Box 190012
 Boise, ID 83719

Statement

DATE	Statement #
10/31/2002	2103-32

BILL TO

Estate of Eleanor I. Chase
 c/o Kathryn L. Cock
 P. O. Box 1356
 Caldwell, ID 83606-1356

PAID

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
10/08/2002	Prepared for Aries Development prehearing conference. Reviewed Aries' water right permit application. Telephone conference with Mike Chase re: issues related to the Aries application, status of settlement discussions with the City of Eagle. Left message with Chris Meyer re: status of IMAP settlement agreement. Attend prehearing conference.	3 0.1	375.00 12.50
10/11/2002	Compare water right claim (63-5227) with small irrigation water right claim (63-5229) regarding Bruce Smith's assertion that the 63-5229 is not a supplemental right. Telephone conference with Jeff Peppersack, IDWR Permits Section Manager, re: transfer of a "primary" irrigation water right to municipal purposes and promulgation of transfer guidelines. Telephone conference with Bruce Smith re: proposal for transferring 63-5229 as a primary right and purchase by City of same. Telephone conference with Mike Chase re: discussions with Jeff Peppersack and Bruce Smith.	1.6	200.00
10/14/2002	Telephone conference with John Marshall re: drafting of agreement in lieu of stipulation to resolve protest.	0.2	25.00
10/15/2002	Telephone conference with Mike Chase re: proposal for entering into agreement with United Water for resolution of protest and elements required for agreement. Left message with John Marshall.	0.2	25.00
10/16/2002	Reviewed Prehearing Order re: IMAP deadlines.	0.1	12.50
10/22/2002	Review preliminary order setting deadlines in the City of Eagle matter. CLIENT TRUST ACCOUNT (CTA) Previous CTA balance: \$500.00	0.1	12.50
Client trust account billed. Amount still due.		Total	

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
Attorney at Law
P. O. Box 190012
Boise, ID 83719

Statement

DATE	Statement #
10/31/2002	2103-32

BILL TO

Estate of Eleanor I. Chase
c/o Kathryn L. Cock
P. O. Box 1356
Caldwell, ID 83606-1356

PAID

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
	Withdrawal from CTA applied toward payment of invoice: \$500.00		-500.00
	Current CTA balance: \$0.00		
	Amount required to maintain minimum CTA balance: \$500.00		500.00
Client trust account billed. Amount still due.			
Total			\$650.00

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
 Attorney at Law
 P. O. Box 190012
 Boise, ID 83719

Statement

DATE	Statement #
11/30/2002	2128-16

BILL TO
Estate of Eleanor I. Chase c/o Kathryn L. Cock P. O. Box 1356 Caldwell, ID 83606-1356

PAID

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
11/01/2002	Receive message from Bruce Smith, City of Eagle attorney, re: terms of counter-offer by the City. Left message with Bruce Smith re: request for written counter-offer. Telephone conference with Mike Chase re: proposed counter-offer by City. Telephone conference with Sue Taylor, IDWR clerk, re: service of Aires and City of Eagle documents.	0.6	75.00
11/04/2002	Telephone conference with John Marshall, United Water attorney, regarding terms of draft settlement agreement.	0.3	37.50
11/08/2002	Review e-mail from John Marshall re: draft IMAP settlement agreement. Telephone conference with Mike Chase re: receipt of draft agreement and status of discussions with Bruce Smith re: City of Eagle counter-offer. Telephone conference with Molly O'Leary counsel for Eagle Water Co., re: status of City of Eagle litigation. Review draft Stipulation and Withdrawal of Protest received from John Marshall. Compare stipulation with proposed IMAP conditions. Draft letter to Mike Chase re: revisions to draft stipulation.	1.8 0.2	225.00 25.00
11/11/2002	Telephone conference with Bruce Smith re: terms to be presented to the City Council.	0.2	25.00
11/13/2002	Review letter from Bruce Smith re: outline of terms of settlement. Telephone conference with Mike Chase re: same.	0.1	12.50
11/14/2002	Compare settlement terms outlined in Bruce Smith's letter with prior correspondence. Telephone conference with Mike Chase re: review of proposed IMAP Stipulation to Withdraw Protest and proposed revisions. Telephone conference with Mike Chase re: terms set forth in Smith's letter.	1.5 0.1	162.50 12.50
11/16/2002	Review file notes re: settlement framework. Draft letter to Bruce Smith regarding response to settlement framework outlined by the City.	0.9	112.50
Client trust account billed. Amount still due.		Total	

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
Attorney at Law
P. O. Box 190012
Boise, ID 83719

Statement

DATE	Statement #
11/30/2002	2128-16

BILL TO

Estate of Eleanor I. Chase
c/o Kathryn L. Cock
P. O. Box 1356
Caldwell, ID 83606-1356



DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
11/30/2002	Client costs: copy costs (\$3.60), postage (\$3.69). CLIENT TRUST ACCOUNT (CTA) Previous CTA balance: \$0.00 NOTE: THIS INVOICE DOES NOT INCLUDE THE AMOUNT OWING UNDER INVOICE NO. 2103-32 OF \$650.00		7.29
Client trust account billed. Amount still due.			Total \$657.29

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
 Attorney at Law
 P. O. Box 190012
 Boise, ID 83719

Statement

DATE	Statement #
12/31/2002	2140-6

BILL TO

Estate of Eleanor I. Chase
 c/o Kathryn L. Cock
 P. O. Box 1356
 Caldwell, ID 83606-1356

PAID

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
12/02/2002	Telephone conference with Mike Chase re: status of settlement with the City of Eagle and agreement reached at the city council meeting.	0.6	75.00
12/09/2002	Telephone conference with John Marshall, attorney for United Water of Idaho, re: revisions to Stipulation to Withdraw Protest and drafting of separate agreement.	0.2	25.00
12/10/2002	Review letter from Bruce Smith re: drafting of settlement agreement. Draft fax letter to Mike Chase re: same. Telephone conference with Mike Chase re: letter received from Bruce Smith and follow with the City of eagle and status of discussions with United Water's attorney re: IMAP. Telephone conference with John Marshall re: agreement to draft separate stipulation to dismiss and contract relating to the Floating Feather well.	0.4 0.1	50.00 12.50
12/11/2002	Telephone conference with Mike Chase re: results of the city council meeting and decision to hold off on discovery.	0.2	25.00
	CLIENT TRUST ACCOUNT (CTA)		
	Previous CTA balance: \$1,150.00		
	Withdrawal from CTA applied toward payment of invoice: \$175.00		-175.00
	Current CTA balance: \$975.00		
Client Trust Account billed. No further payment due.		Total	\$0.00
Questions? Please call (208) 333-0622.			

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
 Attorney at Law
 P. O. Box 190012
 Boise, ID 83719

Statement

DATE	Statement #
01/31/2003	2128-7

BILL TO

Estate of Eleanor I. Chase
 c/o Kathryn L. Cock
 P. O. Box 1356
 Caldwell, ID 83606-1356

PAID

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
01/02/2003	Review letter and draft Stipulation and Withdrawal of protest received from Bruce Smith. Draft fax letter to Mike Chase re: same.	0.4	50.00
01/06/2003	Outline revisions to City of Eagle Stipulation and Withdrawal of Protest. Review Agreement Between the Estate of Eleanor Chase and United Water of Idaho re: the Floating Feather well. Telephone conference with Mike Chase re: revisions to same.	2.1 0.1	262.50 12.50
01/10/2003	Draft Agreement Between the Estate of Eleanor Chase and the City of Eagle. Telephone conference with Mike Chase re: same.	2.3	287.50
01/12/2003	Continue drafting Agreement Between the Estate of Eleanor Chase and the City of Eagle. Review and revise same. Draft Fax-Letter to Mike Chase for review of same.	5.9	737.50
01/13/2003	Telephone conference with Client re: revisions to draft agreement. Draft letter to Bruce Smith re: draft agreement. Telephone conference with Mike Chase re: revisions to agreement based on meeting with Nancy Merrill.	1.1	137.50
01/14/2003	Telephone conference with John Marshall, United Water attorney, re: revisions to the IMAF agreement. Telephone conference with Bruce Smith re: revisions to the City of Eagle Agreement. Draft revisions to the City of Eagle agreement. Telephone conference with Mike Chase re: revisions to the City of Eagle Agreement and IMAF agreement. Review Notice of Hearing.	1.6 0.3	200.00 37.50
01/15/2003	Telephone conference with Mike Chase re: results of city council hearing concerning settlement and decision to file motion for discovery and vacation of hearing. Telephone conference with Mike Chase re: discussion with other protestants.	0.5	62.50
Client trust account billed. Amount still due.		Total	

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
Attorney at Law
P. O. Box 190012
Boise, ID 83719

Statement

DATE	Statement #
01/31/2003	2128-7

BILL TO

Estate of Eleanor I. Chase
c/o Kathryn L. Cock
P. O. Box 1356
Caldwell, ID 83606-1356

PAID

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
01/16/2003	Review revised IMAP agreement received from John Marshall. Revise IMAP agreement. Telephone conference with John Marshall re: additional revisions and verification of UWID water right information. Telephone conference with Molly O'Leary, attorney for Eagle Water Company, re: cooperation in protest against the City of Eagle application, vacating hearing date, and sharing costs for engineering expenses and discovery. Telephone conference with Mike Chase re: review of IMAP agreement and discussion with Nancy Merrill.	2.9 0.2	362.50 25.00
01/17/2003	Review IDWR rules of procedure. Review prior correspondence, pleadings, orders, and notes. Draft Motion for Order to Vacate Hearing. Draft Motion for Order Authorizing Discovery. Draft letter to Bruce Smith re: revised settlement agreement. Review UWID water right records at IDWR to verify elements set forth in the IMAP agreement.	3.7 2.7	462.50 337.50
01/19/2003	Review IMAP agreement. Draft letter to Estate re: final draft of IMAP agreement. Draft Affidavit of Mike Chase in support of Motion for Order to Vacate Hearing. Draft letter to IDWR clerk re: filing of motion and affidavit. Review and revise motion and letter to Smith.	2.4 1.8	300.00 225.00
01/20/2003	Telephone conference with Mike Chase re: revisions to affidavit and motions. Review and revise same. Revise letter to Bruce Smith. Telephone conference with David Shaw, ERO Resources, re: availability for contested case hearing. Meeting with Mike Chase re: review of affidavit. Review e-mail from Molly O'Leary re: status of motion to vacate hearing. Draft reply e-mail.	2	250.00
01/21/2003	Listen to tapes of November 26, 2002, and January 14, 2003, council meetings.	1	125.00
01/22/2003	Telephone conference with Mike Chase re: tape of January 14 hearing and status of motions.	0.2	25.00
Client trust account billed. Amount still due.		Total	

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Matt J. Howard
 Attorney at Law
 P. O. Box 190012
 Boise, ID 83719

Statement

DATE	Statement #
01/31/2003	2128-7

BILL TO

Estate of Eleanor I. Chase
 c/o Kathryn L. Cock
 P. O. Box 1356
 Caldwell, ID 83606-1356

PAID

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
01/23/2003	Review Notice of Withdrawal of the Arics application. Review Eagle Water's Motion to Vacate Hearing and Motion to Compel Discovery. Telephone conference with Mike Chase re: his discussion with Nancy Merrill regarding letter to City and accompanying motions to vacate and compel discovery. Meeting with Mike Chase re: tapes of November 26 hearing and January 14, hearing.	0.8 0.5	75.00 62.50
01/24/2003	Telephone conference with Mike Chase re: his discussion with the other protestants re: motion to vacate hearing. Review letter from Bruce Smith re: denial of breach of contract. Draft fax letter to Mike Chase re: same.	0.3	37.50
01/28/2003	Telephone conference with Mike Chase re: letter from Bruce Smith.	0.1	12.50
01/29/2003	Listen to additional tapes of the November 26, 2002, and January 14, 2003, city council meetings. Telephone conference with Mike Chase re: January 28, 2003, city council meeting and review of the November 26, 2002, meeting minutes.	0.8	100.00
01/31/2003	Telephone conference with Mike Chase regarding the January 28 city council meeting. Telephone conference with Molly O'Leary regarding response filed by the City of Eagle to the motions to vacate. Review response filed by the City of Eagle.	0.5	62.50
01/31/2003	Client costs: copy costs (\$11.35), postage (\$9.31).		20.66
	CLIENT TRUST ACCOUNT (CTA)		
	Previous CTA balance: \$975.00		
	Withdrawal from CTA applied toward payment of invoice: \$975.00		-975.00
	Current CTA balance: \$0.00		
Client trust account billed. Amount still due.		Total	

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
Attorney at Law
P. O. Box 190012
Boise, ID 83719

Statement

DATE	Statement #
01/31/2003	2128-7

BILL TO

Estate of Eleanor I. Chase
c/o Kathryn L. Cock
P. O. Box 1356
Caldwell, ID 83606-1356

PAID

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
	Amount required to maintain minimum CTA balance: \$500.00		500.00
Client trust account billed. Amount still due.		Total	\$3,095.66

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
Attorney at Law
P. O. Box 190012
Boise, ID 83719

Statement

DATE	Statement #
02/28/2003	2128-8

BILL TO

Estate of Eleanor I. Chase
c/o Kathryn L. Cock
P. O. Box 1356
Caldwell, ID 83606-1356

PAID

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
02/02/2003	Review Order Denying Motions to Vacate Hearing and Motions to Compel Discovery. Research Lexis Nexis legal database for Idaho case law re: enforceability of contract evidenced by initials of the parties and compliance with the statute of frauds. Review Idaho Code section 6-906 re: deadline for filing claim against City for breach of contract. Research Idaho Code Title 9, Chapter 5 re: compliance with the statute of frauds. Telephone conference with Mike Chase re: order denying motions and issues related to enforceability of agreement with the City. Draft Petition for Reconsideration and Motion for Expedited Hearing.	6.6	825.00
02/03/2003	Telephone conference with Dave Shaw, ERO Resources, and Phil Rassier, IDWR attorney, re: Order Denying Motions to Vacate and Compel Discovery. Review and revise Petition for Reconsideration. Arrange for filing and service of same.	2.1	262.50
02/04/2003	Telephone conference with Glen Saxton, IDWR hearing officer, re: granting of Petition for Reconsideration. Review Order Granting Petition for Reconsideration. Telephone conference with Mike Chase re: same. Telephone conference with Molly O'Leary re: initiation of discovery and sharing of expert expenses. Draft Estate's First Set of Interrogatories, Requests for Production of Documents, and Requests for Admissions upon the City of Eagle.	1.9	237.50
02/05/2003	Review and revise discovery requests. Draft Notice of Service of Discovery. Draft letter to IDWR clerk re: filing of same. Draft letter to Estate re: status of case and filing of discovery.	1.9	237.50
02/06/2003	Telephone conference with Bruce Smith, City of Eagle attorney, re: response to City's request to strike the agreement from the Petition for Reconsideration. Telephone conference with Mike Chase re: status.	0.2	25.00
02/12/2003	Telephone conference with John Marshall's office re: status of IMAP agreement.	0.1	12.50
Client trust account billed. Amount still due.		Total	

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard

Attorney at Law

P. O. Box 190012

Boise, ID 83719

Statement

DATE	Statement #
02/28/2003	2128-8

BILL TO

Estate of Eleanor I. Chase
c/o Kathryn L. Cock
P. O. Box 1356
Caldwell, ID 83606-1356

PAID

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
02/13/2003	Review City of Eagle's Objection, Motion to Strike, Recuse Hearing Officer and For the Appointment of a Non-Department Hearing Officer.	0.1	12.50
02/14/2003	Telephone conference with Mike Chase re: Motion to Strike and response to same. Telephone conference with Debbie Gibson, IDWR paralegal, re: deadline for filing response. Draft outline of response.	1	125.00
02/16/2003	Draft letter to Chris Meyer, UWID attorney, re: execution of original IMAP agreement. Draft Withdrawal of Protest.	0.5	62.50 <i>u</i>
02/22/2003	Review Eagle Water Company's First Set of Interrogatories, Requests for Production of Documents, and Request for Admissions. Review City of Eagle's Response to Estate's First Set of Interrogatories, Requests for Production of Documents, and Requests for Admissions. Draft letter to City's attorney re: document production. Draft Response to City of Eagle's Motion to Strike.	2.2	275.00
02/25/2003	Telephone conference with Molly O'Leary re: discovery response from the City of Eagle and discovery filed by Eagle Water Co.	0.3	37.50
02/28/2003	Review IMAP Second Prehearing Conference Order. Telephone conference with Trina, paralegal for the Givens Pursely firm, re: status of execution of IMAP agreement. Review Notice of Service of Discovery filed by City of Eagle. Review letter from the City of Eagle attorney regarding discovery responses.	0.3 0.1	37.50 12.50 <i>u</i>
02/28/2003	Client costs: copy costs (\$44.40), postage (\$12.24), FED EX charges (\$31.72).		88.36
Client trust account billed. Amount still due.		Total	

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
Attorney at Law
P. O. Box 190012
Boise, ID 83719

Statement

DATE	Statement #
02/28/2003	2128-8

BILL TO

Estate of Eleanor I. Chase
c/o Kathryn L. Cock
P. O. Box 1356
Caldwell, ID 83606-1356

PAID

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
	CLIENT TRUST ACCOUNT (CTA)		
	Previous CTA balance: \$1,404.34		
	Withdrawal from CTA applied toward payment of invoice: \$1,404.34		-1,404.34
	Current CTA balance: \$0.00		
	Amount required to maintain minimum CTA balance: \$500.00		500.00
Client trust account billed. Amount still due.		Total	\$1,334.02

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
 Attorney at Law
 P. O. Box 190012
 Boise, ID 83719

Statement

DATE	Statement #
03/31/2003	2128-9

BILL TO

Estate of Eleanor I. Chase
 c/o Kathryn L. Cock
 P. O. Box 1356
 Caldwell, ID 83606-1356

PAID

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
03/03/2003	Review City of Eagle's First Set of Interrogatories, Requests for Admissions, and Request for Production of Documents on the Estate. Outline preliminary response to same. Review City of Eagle's First Set of Interrogatories, Requests for Production, and Requests for Admissions on Eagle Water Co. Telephone conference with Molly O'Leary, Eagle Water Co. Attorney, re: responses to discovery, response to request from Bruce Smith for hearing date. Telephone conference with Debbie Gibson, IDWR paralegal re: hearing dates. Draft Motion to Strike and Preliminary Response to Requests for Admissions. Draft letter to Bruce Smith re: request for disclosure of documents. Draft letter to IDWR re: filing of motion.	3.4	425.00
03/04/2003	Telephone conference with Mike Chase re: letter from Bruce Smith re: discovery and response to same, discovery requests received from City, and motion to strike. Review Applicant's Response in Objection to the Chase Estate's Motion to Strike. Review Applicant's Motion to Withdraw Applicant's Motion to Reschedule the Hearing. Draft Reply to Applicant's Response to the Estate's Motion to Strike and Motion for Sanctions. Draft letter to clerk re: filing of same.	2.3	287.50
03/05/2003	Telephone conference with Mike Chase re: review of the City of Eagle's discovery requests upon the Estate and outline preliminary responses to same and follow up required. Conference call with Dave Shaw, ERO Resources, re: responses by the Estate's expert to Interrogatory nos. 3 and 13.	1.5	187.50
03/06/2003	Phone conference with Bruce Smith regarding status of production of documents and supplementation of incomplete discovery responses. Draft letter to Bruce Smith re: same.	1	125.00
Client trust account billed. Amount still due.		Total	

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
Attorney at Law
P. O. Box 190012
Boise, ID 83719

Statement

DATE	Statement #
03/31/2003	2128-9

BILL TO

Estate of Eleanor I. Chase
c/o Kathryn L. Cock
P. O. Box 1356
Caldwell, ID 83606-1356

PAID

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
03/10/2003	Review Applicant's First Supplemental Response to the Estate's First Set of Interrogatories, Requests for Production, and Requests for Admissions. Review Applicant's Reply in Support of Motion to Strike and for Recusal of Hearing Officer. Phone conference with Debbie Gibson re: service of same. Review Applicant's Response to Eagle Water Company's Requests for Admissions. Meeting with Dave Shaw, ERO Resources, re: drafting of response relating to opinion of expert.	1.4	175.00
03/11/2003	Meeting with Mike Chase re: preparation of responses to City of Eagle's discovery requests and follow-up research relative to the local public interest criteria and IDWR and City files.	2.7	337.50
03/13/2003	Review and revise response to Interrogatory No. 3 received from Dave Shaw, ERO Resources. Draft Estate's Response to the City's First Set of Interrogatories, Requests for Admissions, and Requests for Production. Telephone conference with Dave Shaw re: same. Review the City's Second Supplemental Response to the Estate's Request for Production. Telephone conference with Dave Shaw re: same. Telephone conference with Molly O'Leary, attorney for Eagle Water Company, re: coordination of discovery responses.	5	625.00
03/14/2003	Review and revise draft Estate's Response to the City's First Set of Interrogatories, Requests for Admissions, and Requests for Production. Draft e-mail to David Shaw re: review of same.	1.4	175.00
03/17/2003	Review revisions to discovery responses received from Dave Shaw. Telephone conference with Mike Chase re: revisions. Revise Notice of Withdrawal of Protest.	0.7 0.2	87.50 25.00
Client trust account billed. Amount still due.		Total	

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
 Attorney at Law
 P. O. Box 190012
 Boise, ID 83719

Statement

DATE	Statement #
03/31/2003	2128-9

BILL TO

Estate of Eleanor I. Chase
 c/o Kathryn L. Cock
 P. O. Box 1356
 Caldwell, ID 83606-1356

PAID

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
03/18/2003	Meeting with Mike Chase re: review and revisions to Estate's Response to the City's First Set of Interrogatories, Requests of Admissions, and Production. Draft Notice of Service of Discovery. Draft letter to IDWR clerk re: filing of same. Draft letter to Bruce Smith re: status of production of documents from the City. Draft letter to Client re: resolution of Aries Development protest and the United Water IMAP protest and status of the City of Eagle protest.	2.7 1.7	337.50 212.50
03/28/2003	Review letter from Bruce Smith regarding discovery. Review City of Eagle's First Supplemental Response to Interrogatories, Requests for Production and Requests for Admission from Eagle Water Company. Review City of Eagle's Second Set of Interrogatories, Requests for Production, and Requests for Admission upon the Chase Estate. Telephone conference with Mike Chase re: responses to second discovery requests.	1	125.00
03/31/2003	Client costs: copy costs (\$55.65), postage (\$16.57). CLIENT TRUST ACCOUNT (CTA) Previous CTA balance: \$0.00		72.22
Client trust account billed. Amount still due.		Total	\$2,959.72

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
Attorney at Law
P. O. Box 190012
Boise, ID 83719

Statement

DATE	Statement #
04/30/2003	2128-10

BILL TO

Estate of Eleanor I. Chase
c/o Kathryn L. Cock
P. O. Box 1356
Caldwell, ID 83606-1356

PAID

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
04/01/2003	Telephone conference with Bruce Smith, City of Eagle attorney, re: status of production of documents.	0.4	50.00
04/03/2003	Draft Estate's Response to Applicant's Second Set of Interrogatories, Requests for Production, and Requests for Admissions. Draft Notice of Discovery. Review license files for water right nos. 63-12448, 63-11413, and 63-12017. Meeting with Mike Chase re: review of license files, preparation of a second set of discovery requests upon the City, and review and signing of the Estate's Response to the Applicant's Second Set of Interrogatories, Requests for Production and Requests for Admission. Draft Estate's Second Set of Interrogatories, Requests for Production, and Requests for Admissions upon the City of Eagle. Begin preparation of trial notebook. Review discovery documents received from the City of Eagle.	6	750.00
04/10/2003	Telephone conference with Molly O'Leary, Eagle Water Company attorney, re: status of discovery response from the City. Draft letter to clerk re: filing of Estate's Response to Applicant's Second Set of Interrogatories, Requests for Production of Documents, and Requests for Admissions. Arrange for filing and service of same.	0.3	37.50
04/21/2003	Review letters from Bruce Smith dated April 18, 2003, regarding request for hearing and inspection of the Estate's property. Draft letter to IDWR re: pending discovery issues and scheduling of hearing. Draft letter to Bruce Smith re: request for inspection of property. Telephone conference with Mike Chase re: filing of motion to compel discovery and response to request for inspection of property.	1.3	162.50
04/24/2003	Review City of Eagle's Third Supplemental Response to the Estate's Request for Production. Meeting with Mike Chase re: review of documents collected from the City through a public records request. Review April 24, 2003, letter from Bruce Smith re: request for inspection of property. Meeting with Mike Chase re: same.	1	125.00
Client trust account billed. Amount still due.		Total	

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
 Attorney at Law
 P. O. Box 190012
 Boise, ID 83719

Statement

DATE	Statement #
04/30/2003	2128-10

BILL TO

Estate of Eleanor I. Chase
 c/o Kathryn L. Cock
 P. O. Box 1356
 Caldwell, ID 83606-1356

PAID

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
04/25/2003	Draft table of exhibits, evidence, and legal theories. Continue review of notes and City of Eagle water right files received from Mike Chase.	2.3	287.50
04/26/2003	Continue drafting of summary table. Review and compare draft Strowd Report with revised Strowd Report. Review Scanlan Floating Feather Well Report, 1991 IDWR Open Report, and CHM2 Hill report. Review documents to be disclosed to the City of Eagle in response to discovery request. Complete drafting summary table. Complete review of city water right file nos. 63-12448, 63-11413, and 63-12017.	4.9	612.50
04/27/2003	Draft Motion for Order Compelling Discovery and Motion in Limine. Draft Memorandum in Support of Motion for Order Compelling Discovery and Motion in Limine.	3.8	475.00
04/28/2003	Review and revise Motion for Order Compelling Discovery and Memorandum in Support of Motion for Order Compelling Discovery. Arranged for filing and service of same. Telephone conference with Molly O'Leary re: Eagle Water Company letter to the hearing officer re: discovery and scheduling of hearing. Review letter from Molly O'Leary re: same. Meeting with Dave Shaw, ERO Resources, re: scope of City's request for inspection. Review e-mail from Tammy Zokan, City of Eagle attorney, re: City's request for inspection. Draft reply e-mail.	2	250.00
04/29/2003	Telephone conference with Dave Shaw and Mike Chase re; production of documents to the City. Telephone conference with Tammy Zokan re: scope of inspection requested by the City. Telephone conference with Mike Chase and Dave Shaw re: same. Draft letter to Bruce Smith responding to April 24 letter and outlining scope of inspection. Draft letter to Bruce Smith re: production of documents by the Estate.	2.7	337.50
04/30/2003	Client costs: copy costs (\$55.35), postage (\$17.43).		72.78
Client trust account billed. Amount still due.		Total	

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
Attorney at Law
P. O. Box 190012
Boise, ID 83719

Statement

DATE	Statement #
04/30/2003	2128-10

BILL TO

Estate of Eleanor I. Chase
c/o Kathryn L. Cock
P. O. Box 1356
Caldwell, ID 83606-1356

PAID

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
	CLIENT TRUST ACCOUNT (CTA)		
	Previous CTA balance: \$1,206.26		
	Withdrawal from CTA applied toward payment of invoice: \$1,206.26		-1,206.26
	Current CTA balance:\$0.00		
	Amount required to maintain minimum CTA balance: \$500.00		500.00
Client trust account billed. Amount still due.		Total	\$2,454.02

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
Attorney at Law
P. O. Box 190012
Boise, ID 83719

Statement

DATE	Statement #
05/31/2003	2128-11

BILL TO

Estate of Eleanor I. Chase
c/o Kathryn L. Cock
P. O. Box 1356
Caldwell, ID 83606-1356

PAID

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
05/02/2003	Revise draft of Estate's Second Set of Interrogatories, Requests for Production, and Requests for Admission upon the City of Eagle. Draft e-mail to Dave Shaw, ERO Resources, re: review of draft discovery requests. Review e-mail from Dave Shaw re: comments. Telephone conference with Dave Shaw re: same. Draft revisions. Draft Notice of Service of Discovery. Draft letter to IDWR clerk re: same. Arrange for filing and service of same.	2.9	362.50
05/03/2003	Draft letter to Client re: status of discovery, filing of motion to compel, and request for inspection by the City.	1	125.00
05/06/2003	Telephone conference with Mike Chase re: motion to compel and limited documents produced by City through public records requests. Meeting with Mike Chase re: public records request and disclosure of EM2 contract and review of summary table.	0.5	62.50
05/07/2003	Review e-mail from Tammy Zokan, attorney for City of Eagle, re: City's request for extension to respond to Estate's motions to compel and in limine and second set of discovery. Draft e-mail to Tammy Zokan re: same.	0.2	25.00
05/09/2003	Review letter from Tammy Zokan re: extension of time for City to respond to Estate's motions to compel and in limine and second set of discovery.	0.1	12.50
05/23/2003	Telephone conference with Mike Chase re: status of discovery responses from City and results of field inspection by Scanlan. Review e-mail from Tammy Zokan re: service of response and discovery.	0.2	25.00
For billing inquiries, please call (208) 333-0622		Total	

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Matt J. Howard
Attorney at Law
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Boise, ID 83719

Statement

DATE	Statement #
05/31/2003	2128-11

BILL TO

Estate of Eleanor I. Chase
c/o Kathryn L. Cock
P. O. Box 1356
Caldwell, ID 83606-1356

PAID

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
05/27/2003	Review City of Eagle's Fourth Supplemental Response to Estate's First Set of Interrogatories and Requests for Production of Documents. Review City of Eagle's Response to Estate's Second Set of Interrogatories and Requests for Production of Documents. Review City of Eagle's Response to Estate's Second Set of Requests for Admissions. Review City of Eagle's Response in Objection to Estate's Motion for Order Compelling Discovery and Motion in Limine. Draft e-mail to City's attorney re: correction of error in City's discovery response. Telephone conference with City's attorney re: correction of error in City's discovery response.	1.8	225.00
05/31/2003	Client costs: copy costs (\$28.20), postage (\$6.82). CLIENT TRUST ACCOUNT (CTA) Previous CTA balance: \$0.00 NOTE: THIS INVOICE DOES NOT INCLUDE THE AMOUNT STILL OWING FROM INVOICE NO. 2128-10 OF \$2,454.02		35.02
For billing inquires, please call (208) 333-0622		Total	\$872.52

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
 Attorney at Law
 P. O. Box 190012
 Boise, ID 83719

Statement

DATE	Statement #
06/30/2003	2128-12

BILL TO

Estate of Eleanor I. Chase
 c/o Kathryn L. Cock
 P. O. Box 1356
 Caldwell, ID 83606-1356

PAID

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
06/08/2003	Review Order Granting Motion to Strike and Recusing Hearing Officer. Review Order Appointing Hearing Officer. Draft Reply in Support of Motion to Compel and Motion in Limine.	6.2	775.00
06/09/2003	Complete draft of Reply in Support of Motion to Compel and Motion in Limine. Draft Affidavit of Matt J. Howard in support of Motion to Compel.	3.6	450.00
06/10/2003	Review and organize documents produced by City of Eagle. Begin preparation of exhibit and trial notebooks. Telephone conference with Mike Chase re: status of production of documents from the City and Reply in Support of Motion to Compel.	1.3	162.50
06/23/2003	Prepare and organize exhibit notebook. Telephone conference with Phil Rassier and John Homan, IDWR attorneys, regarding IDWR decisions relating to award of attorney fees, well interference, and alternatives required for the local public interest criterion. Research IDWR database for IDWR decisions relating to requirement of reasonable alternatives and award of attorney fees. Draft e-mail to Dave Shaw re: review of additional data disclosed by the City of Eagle.	4.2	525.00
06/25/2003	Review reports produced by the City of Eagle (i.e., "Brookwood Public Water Supply Well Design/Proposal Plans and Specifications"; "City of Eagle Municipally-Owned Water System Master Plan and Budget Study"). Draft outline of legal theories. Meeting with Mike Chase re: review of documents produced by City and narrowing of legal theories and litigation strategy. Review Water Service Contract (May 1992) between City and EM2, Agreement for Delivery of Water (Oct. 1993) between City and Lexington Hills et al, Agreement to Provide Supplemental Water for Fire Flows (Aug. 1997) between City and UWID, Cooperative Agreement (Oct 1997) between City and Lexington Hills et al, Water Line Agreement (Aug1997) between City and Lexington Hills et al, and Agreement (Dec 1997) between City and UWID, and First Amendment to Water Service Contract. Compare agreements with the City's discovery responses.	4.7	587.50
Client trust account billed. Amount still due.		Total	

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
Attorney at Law
P. O. Box 190012
Boise, ID 83719

Statement

DATE	Statement #
06/30/2003	2128-12

BILL TO

Estate of Eleanor I. Chase
c/o Kathryn L. Cock
P. O. Box 1356
Caldwell, ID 83606-1356

PAID

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
06/26/2003	Telephone conference with Mike Chase re: questions and issues raised by the City's master water plan and follow-up regarding same.	1.2	150.00
06/30/2003	Telephone conference with Debbie Gibson, IDWR clerk, re: scheduling of prehearing conference. Telephone conference with Dave Shaw, ERO Resources, re: review of City's master plan and Brookwood well reports, follow-up discovery, and litigation strategy.	0.7	87.50
06/30/2003	Client costs: copy costs (\$163.14), postage (\$3.50), legal dividers (\$11.98).		178.62
	CLIENT TRUST ACCOUNT (CTA)		
	Previous CTA balance: \$1,173.46		
	Withdrawal from CTA applied toward payment of invoice: \$1,173.46		-1,173.46
	Current CTA balance: \$0.00		
	Amount required to maintain minimum CTA balance: \$500.00		500.00
Client trust account billed. Amount still due.		Total	\$2,242.66

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
Attorney at Law
P. O. Box 190012
Boise, ID 83719

Statement

DATE	Statement #
07/31/2003	2128-13

BILL TO

Estate of Eleanor I. Chase
c/o Kathryn L. Cock
P. O. Box 1356
Caldwell, ID 83606-1356

PAID

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
07/01/2003	Draft letter to Client re: status of discovery, motion to compel, and litigation strategy. Draft Estate's Third Set of Interrogatories, Requests for Production of Documents, and Requests for Admissions. Draft e-mail to Dave Shaw, ERO Resources, re: review of draft admission requests.	4	500.00
07/02/2003	Review e-mail from Dave Shaw re: estimated drawdown/well interference based upon Strowd report and IDWR 1991 report. Telephone conference with Dave Shaw re: same and drafting of additional requests for admissions. Draft additional requests for admissions. Arrange for filing and service of Estate's Third Set of Interrogatories, Requests for Production of Documents, and Requests for Admissions. Draft letter to IDWR clerk re: same. Research IDWR rules re: definition of "injury" to ground water right. Review IDWR administrative decisions re: basis for award of attorney fees, requirement of "alternatives" to satisfy local public interest criterion, and maintenance of ground water pumping levels.	4.3	537.50
07/03/2003	Review Idaho case law re: award of attorney fees by agency pursuant to Idaho Code section 12-117, protection of pre-ground water act senior right holders to historical ground water pumping levels, and local public interest. Telephone conference with Mike Chase re: status of research, narrowing legal strategy re: the requirement of alternatives, and measurement of depth to water in the dairy well. Telephone conference with Dave Shaw re: measurement.	2.1	262.50
07/07/2003	Telephone conference with Mike Chase re: measurement of water level in the dairy well. Telephone conference Mike Chase re: additional documents obtained re: the large irrigation well water level and depth of bowls.	0.3	37.50
Client trust account billed. Amount still due.		Total	

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
 Attorney at Law
 P. O. Box 190012
 Boise, ID 83719

Statement

DATE	Statement #
07/31/2003	2128-13

BILL TO

Estate of Eleanor I. Chase
 c/o Kathryn L. Cock
 P. O. Box 1356
 Caldwell, ID 83606-1356



DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
07/08/2003	Draft Estate's First Supplemental Response to Applicant's First Set of Interrogatories and Requests for Production. Draft letter to Dave Shaw re: supplemental response. Telephone conference with Dave Shaw re: documents from Layne Pumps, Inc. Telephone conference with Mike Chase re: supplemental discovery responses and estimated drawdown based on records from Layne Pumps. Draft Notice of Service of Discovery. Draft letter to IDWR re: filing of same. Arrange for filing and service of supplemental discovery response.	1.8	225.00
07/25/2003	Review City of Eagle's Response to Estate's Third Set of Interrogatories, Requests for Production, and Requests for Admissions. Telephone conference with Mike Chase re: same.	1.7	212.50
07/30/2003	Telephone conference with Chris Meyer re: terms of the Floating Feather Well agreement between the City of Eagle and United Water of Idaho. Draft file memorandum re: conversation with Chris Meyer. Telephone conference with Gary Spackman, IDWR Western Region Manager, re: procedure and legal basis for applicant who requests permission to drill a test well. Prepare for prehearing conference and hearing on motion to compel. Review City's prior discovery responses. Review motion to compel. Outline proposed litigation track.	2.7	337.50
07/31/2003	Complete review of City's Objection to Motion to Compel, Estate's Reply in Support of Motion to Compel, and Affidavit of Matt J. Howard. Outline missing discovery information. Telephone conference with Mike Chase re: litigation strategy and proposal for summary judgment. Telephone conference with Molly O'Leary re: litigation strategy for prehearing conference.	2.3	287.50
07/31/2003	Client costs: copy costs (\$49.05), postage (\$12.92).		61.97
Client trust account billed. Amount still due.		Total	

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
Attorney at Law
P. O. Box 190012
Boise, ID 83719

Statement

DATE	Statement #
07/31/2003	2128-13

BILL TO

Estate of Eleanor I. Chase
c/o Kathryn L. Cock
P. O. Box 1356
Caldwell, ID 83606-1356

PAID

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
	CLIENT TRUST ACCOUNT (CTA)		
	Previous CTA balance: \$1,257.34		
	Withdrawal from CTA applied toward payment of invoice: \$1,257.34		-1,257.34
	Current CTA balance: \$0.00		
	Amount required to maintain minimum CTA balance: \$500.00		500.00
Client trust account billed. Amount still due.		Total	\$1,704.63

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
 Attorney at Law
 P. O. Box 190012
 Boise, ID 83719

Statement

DATE	Statement #
08/31/2003	2128-14

BILL TO

Estate of Eleanor I. Chase
 c/o Kathryn L. Cock
 P. O. Box 1356
 Caldwell, ID 83606-1356

PAID

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
08/01/2003	Prepare for hearing on Motion to Compel Discovery and prehearing conference. Attend hearing at IDWR re: pretrial scheduling and motion. Meeting with Mike Chase re: same.	3.5	437.50
08/02/2003	Draft file memorandum re: results of prehearing conference. Draft e-mail to Dave Shaw, ERO Resources, re: deadlines and issues raised by the hearing officer. Review and compare Idaho Code section 42-211 standard for injury versus 42-203A standard.	1.1	137.50
08/04/2003	Telephone conference with Dave Shaw re: strategy for addressing hearing officer's view concerning effect of approved permits on senior water rights. Draft outline of proposed response. Telephone conference with Mike Chase re: proposed settlement offer to City.	1	125.00
08/05/2003	Telephone conference with Molly O'Leary, attorney for Eagle Water Company, re: coordination of litigation strategy and sharing of expenses of a 30(b)(6) deposition of City of Eagle. Telephone conference with Bruce Smith, attorney for City of Eagle, re: proposed settlement offer from Client. Telephone conference with Mike Chase re: Smith's response to settlement offer.	1.4	175.00
08/12/2003	Telephone conference with Mike Chase re: follow-up discovery on the City of Eagle re: agreements with non-United Water entities and issues raised during the prehearing conference on the Aries application.	0.5 0.1	62.50 12.50
08/18/2003	Review City of Eagle's Fifth Supplemental Response to the Estates' Interrogatories and Requests for Production. Draft fax-letter to Mike Chase and Dave Shaw re: same. Review and organize exhibits.	2.1	262.50
Client trust account billed. Amount still due.		Total	

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
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 Boise, ID 83719

Statement

DATE	Statement #
08/31/2003	2128-14

BILL TO

Estate of Eleanor I. Chase
 c/o Kathryn L. Cock
 P. O. Box 1356
 Caldwell, ID 83606-1356

PAID

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
08/19/2003	Prepare proof checklists for elements of injury, local public interest, HGWPLs, reimbursement of costs and fees, and response arguments. Meeting with Dave Shaw, Mike Chase, and Bill Chase re: legal strategy re: elements of injury, local public interest, Parker v. Wallentine, and reimbursement of costs and attorney fees and discussed gathering of additional evidence and the scheduling of a 30(b)(6) deposition of the City of Eagle.	5.4	675.00
08/20/2003	Revise injury proof checklist. Telephone conference with Molly O'Leary re: scheduling and scope of 30(b)(6) deposition of City of Eagle. Draft e-mail to Tammy Zokan, City of Eagle attorney, re: scheduling of depositions. Draft e-mail to City's attorney re: missing pages from Terry Scanlan's June 3, 2003, letter re: well measurements. Receive and review missing page of Scanlan letter received from the City's attorney. Draft fax-letter to Mike Chase and Dave Shaw re: same.	2.2	275.00
08/21/2003	Telephone conference with Phil Rassier, IDWR attorney, re: standard to be applied under Idaho Code section 42-211 for amendment of a permit and comparison with standard under 42-203A re: approval of new permit. Complete revisions to proof checklists for elements of injury, local public interest, responses, HGWPLs and attorney fees and costs for construction of new wells. Telephone conference with Mike Chase re: same.	2.8	350.00
08/22/2003	Telephone conference with Mike Chase re: Well Purchase Agreement between Aries and the City of Eagle re: the Brookwood Well. Review Well Purchase Agreement. Conference call with Dave Shaw and Mike Chase re: review of questions in proof checklists and gathering of additional information re: distances and wells. Review e-mail from the City's attorney re: confirmation of deposition scheduling. Draft reply e-mail. Revise proof checklists. Review scheduling order.	2.1	262.50
08/26/2003	Review e-mail from City's attorney re: rescheduling deposition to September 10. Draft e-mail to Molly O'Leary and Dave Shaw re: same.	0.1	12.50
Client trust account billed. Amount still due.		Total	

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Matt J. Howard
 Attorney at Law
 P. O. Box 190012
 Boise, ID 83719

Statement

DATE	Statement #
08/31/2003	2128-14

BILL TO

Estate of Eleanor I. Chase
 c/o Kathryn L. Cock
 P. O. Box 1356
 Caldwell, ID 83606-1356

PAID

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
08/27/2003	Telephone conference with Mike Chase re: drafting of second supplemental discovery response. Draft Estate's Second Supplemental Response to the City's First Set of Interrogatories and Requests for Production. Draft Notice of Taking Deposition of the City of Eagle Duces Tecum. Telephone conference with City's attorney, Tammy Zokan, re: scheduling of deposition and request for verification page. Draft e-mail to Zokan re: confirmation of deposition schedule. Draft letter to IDWR re: filing of Notice of Deposition and Notice of Service of Discovery. Draft Notice of Service of Discovery. Draft e-mail to Molly O'Leary regarding splitting costs for deposition.	2.8	350.00
08/31/2003	Client costs: copy costs (\$30.27).		30.27
	CLIENT TRUST ACCOUNT (CTA)		
	Previous CTA balance: \$795.37		
	Withdrawal from CTA applied toward payment of invoice: \$795.37		-795.37
	Current CTA balance: \$0.00		
	Amount required to maintain minimum CTA balance: \$500.00		500.00
Client trust account billed. Amount still due.		Total	\$2,859.90

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
 Attorney at Law
 P. O. Box 190012
 Boise, ID 83719

Statement

DATE	Statement #
09/30/2003	2128-15

BILL TO

Estate of Eleanor I. Chase
 c/o Kathryn L. Cock
 P. O. Box 1356
 Caldwell, ID 83606-1356

PAID

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
09/02/2003	Review City of Eagle's 6th Supplemental Response to the Estate's Interrogatories and Requests for Production. Review Eagle Water Company's Second Set of Interrogatories and Requests for Production. Telephone conference with Mike Chase re: same. Telephone conference with court reporter re: scheduling of deposition. Draft letter to court reporter confirming same. Draft fax-letter to Dave Shaw, ERO Resources, re: review of well report submitted by the City in its 6th supplemental discovery response. Draft letter to Estate re: status of case.	2.1	262.50
09/04/2003	Telephone conference with Rick Sterling, P.E., Idaho Public Utilities Commission (PUC), re: records relating to agreement between United Water of Idaho (UWI) and City of Eagle re: supply of water. Meeting with Rick Sterling at PUC re: review of services areas of UWI and City of Eagle and PUC orders relating to delivery of water by UWI to the City service area.	1.9	237.50
09/05/2003	Telephone conference with Janet Barroha, PUC clerk, re: copies of additional PUC files. Travel to PUC to review UWI and City of Eagle PUC files. Meeting with Randy Lobb, P.E., PUC technical section administrator, re: history of agreement between UWI and City of Eagle re: delivery of water from the Floating Feather well.	2.3	287.50
09/09/2003	Prepare for deposition. Review notes, discovery responses, and expert reports. Draft outline of deposition questions. Telephone conference with Jeff Peppersack, IDWR Permits Section Manager, re: lapse of points of diversion for City of Eagle permit nos. 63-11413 and 63-12017. Telephone conference with Cynthia Clark, IDWR agent, re: same. Prepare deposition exhibits. Review Idaho Rules of Civil Procedure re: deposition procedures.	4.3	537.50
Client trust account billed. Amount still due.		Total	

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
 Attorney at Law
 P. O. Box 190012
 Boise, ID 83719

Statement

DATE	Statement #
09/30/2003	2128-15

BILL TO

Estate of Eleanor I. Chase
 c/o Kathryn L. Cock
 P. O. Box 1356
 Caldwell, ID 83606-1356

PAID

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
09/10/2003	Review City's Municipal Water System Master Plan. Review contracts and agreements entered into by the City of Eagle re: water delivery. Complete outline of deposition questions. Take 30(b)(6) deposition of the City of Eagle. Take deposition of Vern Brewer. Review Verification of Signatures received from the City of Eagle.	8.5	1,062.50
09/12/2003	Telephone conference with Tammy Zokan, attorney for the City of Eagle, re: status of statement from Lynne Sedlacek. Review e-mail from Tammy Zokan re: same with draft statement from Lynne Sedlacek. Telephone conference with Zokan re: vacation of deposition for Lynne Sedlacek.	0.3	37.50
09/29/2003	Travel to Idaho PUC office. Review PUC case file nos. EUW-W-94-1 (United Water) and EAG-W-95-1 (Eagle Water Company) concerning statements and testimony provided by City of Eagle relating to service area expansion applications filed by United Water and Eagle Water Co., during the mid-1990's.	1	125.00
09/30/2003	Client Costs: copy costs (\$49.43), postage (\$10.87), exhibit index tabs (\$38.03), Tucker & Associates - charges for court reporter and transcripts for depositions of City of Eagle and Vern Brewer (\$596.04).		694.37
	CLIENT TRUST ACCOUNT (CTA)		
	Previous CTA balance: \$500.00		
	Withdrawal from CTA applied toward payment of invoice: \$500.00		-500.00
	Current CTA balance: \$0.00		
	Amount required to maintain minimum CTA balance: \$500.00		500.00
Client trust account billed. Amount still due.		Total	\$3,244.37

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
 Attorney at Law
 P. O. Box 190012
 Boise, ID 83719

Statement

DATE	Statement #
10/31/2003	2128-16

BILL TO

Estate of Eleanor I. Chase
 c/o Kathryn L. Cock
 P. O. Box 1356
 Caldwell, ID 83606-1356



DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
10/01/2003	Travel to Idaho Department of Water Resources (IDWR) state office. Review City of Eagle water right file nos. 63-12017, 63-11413, and 63-12448.	2	250.00
10/06/2003	Begin review of discovery files for identification of trial exhibits.	0.6	75.00
10/07/2003	Complete review of documents received from Idaho Public Utilities Commission (PUC) re: use of Floating Feather well to serve the City of Eagle. Review discovery files (i.e. City of Eagle responses to interrogatories and production requests and admissions, and Estate's production responses) to identify exhibits. Draft e-mail to Tammy Zokan, City of Eagle attorney, regarding status of disclosure of information for City Well No. 2. Review water right files obtained from IDWR (i.e., City of Eagle water right file nos. 63-12448, 63-11413, and 63-12017, and United Water Idaho file no. 63-12192 for Floating Feather well). Telephone conference with Phil Rassier, IDWR attorney, re: IDWR decision relating to substitution of party and standing of protestant where protestant conveys water right to non-party.	4.4	550.00
10/09/2003	Review proof checklists re: identification of additional exhibits. Research Idaho case law re: elements of collateral estoppel. Draft response to potential argument by City re: collateral estoppel. Phone conference with Dave Shaw, ERO Resources, re: identification of technical exhibits and review of information relating to the Floating Feather well. Draft Witness and Exhibits List.	3	375.00
10/10/2003	Complete draft of Witness and Exhibit List. Telephone conference with Mike Chase re: exhibits. Draft e-mail to Dave Shaw re: exhibits. Review e-mail from Dave Shaw re: same and additional exhibit. Pre-mark exhibits. Arrange for copying.	4	500.00
10/14/2003	Telephone conference with Tammy Zokan, attorney for City of Eagle, re: stipulation re: exhibits and sharing costs for same. Telephone conference with Mike Chase re: stipulation. Telephone conference with Molly O'Leary, attorney for Eagle Water Company, re: proposed stipulation.	0.3	37.50
Client trust account billed. Amount still due.		Total	

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
 Attorney at Law
 P. O. Box 190012
 Boise, ID 83719

Statement

DATE	Statement #
10/31/2003	2128-16

BILL TO

Estate of Eleanor I. Chase
 c/o Kathryn L. Cock
 P. O. Box 1356
 Caldwell, ID 83606-1356



DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
10/16/2003	Review and revise Exhibit and Witness List. Review e-mail from Tammy Zokan re: stipulation re: exhibits. Telephone conference with Tammy Zokan re: same. Draft e-mail to Tammy Zokan and Molly O'Leary outlining terms of agreement re: exhibits. Meeting with Mike Chase re: inclusion of additional photographs. Compare exhibits with proof checklists outline. Arrange for service of exhibits.	3.4	425.00
10/20/2003	Draft letter to parties regarding substitution of Affidavit of Vern Brewer. Review changes to deposition made by Vern Brewer. Review witness and exhibit lists served by City of Eagle and Eagle Water Company. Review City of Eagle's pre-marked exhibits.	1.3	162.50
10/21/2003	Telephone conference with Mike Chase re: revisions to deposition by Vern Brewer and exhibits offered by the City of Eagle. Telephone conference with Dave Shaw, ERO Resources, re: request for review of City's technical exhibits for analysis of expected testimony by City's expert.	0.4	50.00
10/22/2003	Review e-mail from Tammy Zokan re: status of IDWR report. Draft reply e-mail to Tammy Zokan re: same. Review Eagle Water Company supplementary exhibits. Review e-mail from Victoria Wigle, IDWR administrative assistant, re: status of IDWR staff report. Prepare exhibits for record and hearing officer. Draft letter to Dave Shaw and Mike Chase re: review of the City of Eagle exhibits.	1	125.00
10/27/2003	Telephone conference with Mike Chase re: review of City exhibits and deposition and strategy re: presentation of local public interest argument.	0.4	50.00
10/29/2003	Phone conference with David Cromwell, Tucker & Associates, regarding omission of verification, change sheet, and affidavit from original deposition of City of Eagle.	0.1	12.50
Client trust account billed. Amount still due.		Total	

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Matt J. Howard
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Statement

DATE	Statement #
10/31/2003	2128-16

BILL TO

Estate of Eleanor I. Chase
c/o Kathryn L. Cock
P. O. Box 1356
Caldwell, ID 83606-1356



DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
10/31/2003	Client costs: copy costs (\$295.20), postage (\$6.47), exhibit binders (\$58.00).		359.67
	CLIENT TRUST ACCOUNT (CTA)		
	Previous CTA balance: \$500.00		
	Withdrawal from CTA applied toward payment of invoice: \$500.00		-500.00
	Current CTA balance: \$0.00		
	Amount required to maintain minimum CTA balance: \$500.00		500.00
Client trust account billed. Amount still due.			
Total			\$2,972.17

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
 Attorney at Law
 P. O. Box 190012
 Boise, ID 83719

Statement

DATE	Statement #
11/30/2003	2128-17

BILL TO

Estate of Eleanor I. Chase
 c/o Kathryn L. Cock
 P. O. Box 1356
 Caldwell, ID 83606-1356



DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
11/05/2003	Review notes and technical exhibits in preparation for meeting with Dave Shaw, ERO Resources, Inc., re: expert testimony. Draft outline of direct examination of Dave Shaw. Meeting with Dave Shaw re: review of proposed outline of expert testimony, review of well data by Scanlan, and anticipated testimony by Scanlan and response to same. Identified illustrative exhibits for use during expert testimony.	5.9	737.50
11/06/2003	Phone conference with Dave Shaw re: presentation of witnesses. Revise and reorganize trial notebook. Phone conference with Mike Chase re: presentation of evidence and trial strategy. Compare annotated discovery documents with trial exhibits. Revise proof checklists for well-injury argument, local public interest argument, and response arguments.	3.8	475.00
11/07/2003	Conference call with Mike Chase and Dave Shaw re: large irrigation well.	0.5	62.50
11/08/2003	Draft outline of opening statement. Draft outline of theory of case and response arguments to City's theory of case. Draft outline of direct examination of Mike Chase. Draft outline of direct examination of Bill Chase. Draft outline of direct examination of Dave Shaw.	5.4	675.00
11/09/2003	Review Deposition of City of Eagle 30(b)(6) witness, Vern Brewer. Outline direct examination of Brewer. Meeting with Mike Chase and Bill Chase re: trial preparation and trial strategy.	6	750.00
11/11/2003	Review Estate trial exhibits including expert reports. Review City of Eagle Exhibits. Meeting with Dave Shaw re: review of November 10 pump test and review of expert testimony. Phone conference with Mike Chase re: pump test.	5.4	675.00
For billing inquires, please call (208) 333-0622		Total	

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

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Statement

DATE	Statement #
11/30/2003	2128-17

BILL TO

Estate of Eleanor I. Chase
c/o Kathryn L. Cock
P. O. Box 1356
Caldwell, ID 83606-1356

PAID

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
11/12/2003	Revise outline of direct testimony of Dave Shaw. Revise outline of opening statement. Telephone conference with Dave Shaw re: November 10 measurements. Complete preparation for trial.	3.5	437.50
11/13/2003	Attend and present evidence at contested case hearing.	6.5	812.50
11/14/2003	Draft outline of additional direct examination of Vern Brewer. Attend and present evidence at second day of contested case hearing.	6	750.00
11/15/2003	Draft summary of evidence and arguments advanced during the contested case proceeding. Draft e-mail to Dave Shaw re: review and comments to same. Draft fax-letter to Mike Chase re: same.	1	125.00
11/30/2003	Client costs: copy costs (\$41.50), two foam exhibit boards (\$8.98). CLIENT TRUST ACCOUNT (CTA) Previous CTA balance: \$0.00 NOTE: THIS INVOICE DOES NOT INCLUDE THE AMOUNT STILL OWING ON INVOICE #2128-16 OF \$2,972.17.		50.48
For billing inquires, please call (208) 333-0622		Total	\$5,550.48

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
 Attorney at Law
 P. O. Box 190012
 Boise, ID 83719

Statement

DATE	Statement #
12/31/2003	2128-18

BILL TO

Estate of Eleanor I. Chase
 c/o Kathryn L. Cock
 P. O. Box 1356
 Caldwell, ID 83606-1356

PAID

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
12/02/2003	Draft outline of closing argument. Meeting with Mike Chase re: closing argument and responses to City's arguments.	2	250.00
12/04/2003	Complete draft of outline of Estate's Post-Hearing Brief.	3.3	412.50
12/05/2003	Draft Introduction, Issues, Mitigation, and Conclusion sections of brief.	4	500.00
12/06/2003	Review and revise Introduction and Issues sections. Review Parker v. Wallentine case. Draft Adverse-Impacts section of brief.	6	750.00
12/07/2003	Draft Dairy-Well and Local-Public-Interest sections of brief. Revise Mitigation-argument section of brief.	5	625.00
12/08/2003	Draft Small-Irrigation-Well and Large-Irrigation-Well sections of brief. Telephone conference with Dave Shaw, ERO Resources, re: same.	5.6	700.00
12/09/2003	Draft Admissions-argument section of brief. Revise Local-Public-Interest section of brief. Listen to tape of direct testimony by Terry Scanlan, P.E. Complete initial rough draft of brief.	5.7	712.50
12/10/2003	Review and revise brief. Telephone conference with Gary Spackman, IDWR bureau chief, re: case law applying local public interest to changes under Idaho Code section 42-211. Draft e-mail to Dave Shaw re: draft brief.	3.7	462.50
12/12/2003	Meeting with Mike Chase re: review of draft brief.	0.5	62.50
12/13/2003	Review comments and revisions to brief received from Dave Shaw. Revise draft brief. Continue listening to tapes of trial testimony by Estate witnesses and City of Eagle witnesses.	3.9	487.50
For billing inquiries, please call (208) 333-0622		Total	

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
 Attorney at Law
 P. O. Box 190012
 Boise, ID 83719

Statement

DATE	Statement #
12/31/2003	2128-18

BILL TO

Estate of Eleanor I. Chase
 c/o Kathryn L. Cock
 P. O. Box 1356
 Caldwell, ID 83606-1356

PAID

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
12/14/2003	Complete listening to tapes of trial testimony. Shepardize cases. Verify citations to record. Review and revise arguments and brief based upon trial testimony. Draft fax-letter to Mike Chase re: final draft of brief. Draft e-mail to Dave Shaw re: final review of brief.	7.2	900.00
12/15/2003	Review e-mail from Dave Shaw re: final revisions. Telephone conference with Mike Chase re: final revisions and approval of final draft. Revise brief. Arrange for filing and service.	0.1	12.50
12/16/2003	Review City's proposed Recommended Order and Decision (i.e. closing argument).	0.2	25.00
12/18/2003	Draft letter to Client re: status of case and closing arguments.	0.2	25.00
12/31/2003	Client costs: copy costs (\$54.78), postage (\$18.05).		72.83
	CLIENT TRUST ACCOUNT (CTA)		
	Previous CTA balance: \$0.00		
	NOTE: THIS INVOICE DOES NOT INCLUDE THE AMOUNT STILL OWED ON INVOICE #2128-16 OF \$972.17, AND INVOICE #2128-17 OF \$5,550.48.		
For billing inquiries, please call (208) 333-0622		Total	\$5,997.83

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
Attorney at Law
P. O. Box 190012
Boise, ID 83719

Statement

DATE	Statement #
03/31/2004	2128-19

BILL TO

Estate of Eleanor I. Chase
c/o Kathryn L. Cock
P. O. Box 1356
Caldwell, ID 83606-1356

PAID

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
03/09/2004	Review Recommended Decision and Order issued by the hearing officer. Draft fax-letter to Mike Chase re: same.	0.5	62.50
03/11/2004	Review IDWR procedural rules re: appeal of hearing officer's decision to the IDWR Director and time for filing motion for attorney fees. Telephone conference with Phil Rassier, IDWR attorney, re: procedure and timing for claiming attorney fees. Telephone conference with Mike Chase re: the recommended decision and recommendation to proceed with appeal to the IDWR Director. Telephone conference with Dave Shaw re: request for review and comments to technical portion of recommended decision.	1.7	212.50
03/12/2004	Draft letter to Client re: Recommended Decision and Order and appeal options.	0.5	62.50
03/16/2004	Review and compare Post-hearing brief with recommended decision. Draft rough outline of issues on appeal. Draft e-mail to Dave Shaw re: comments on recommended decision.	2.6	325.00
03/17/2004	Telephone conference with Kathryn Cock re: recommended decision and decision to appeal same. Telephone conference with Mike Chase re: discussion of issues to be appealed. Draft letter to Client re: decision to proceed with appeal.	1.3	162.50
03/18/2004	Draft Chase Estate's Exceptions to the Hearing Officer's Recommended Decision and Order ("exceptions brief").	5.2	650.00
03/19/2004	Continue drafting exceptions brief.	1.5	187.50
03/20/2004	Review e-mails from Dave Shaw re: comments to recommended decision. Complete rough draft of exceptions brief. Telephone conference with Mike Chase re: same. Draft e-mail to Dave Shaw re: review of same.	8.1	1,012.50
Client trust account billed. Amount still due.		Total	

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
 Attorney at Law
 P. O. Box 190012
 Boise, ID 83719

Statement

DATE	Statement #
03/31/2004	2128-19

BILL TO

Estate of Eleanor I. Chase
 c/o Kathryn L. Cock
 P. O. Box 1356
 Caldwell, ID 83606-1356

PAID

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
04/21/2004	Telephone conference with Mike Chase re: proposed revisions received from Dave Shaw.	0.4	50.00
03/22/2004	Review e-mail and proposed revisions received from Dave Shaw. Review and revise exceptions brief. Arrange for filing and service of same. Draft letter to Client re: exceptions brief.	3.6	450.00
03/24/2004	Telephone conference with Mike Chase re: Petition for Reconsideration of Recommended Order and Decision filed by the City of Eagle.	0.4	50.00
03/25/2004	Review City's petition for reconsideration. Draft outline of response arguments to same. Telephone conference with Mike Chase re: response arguments to petition.	1.5	187.50
03/26/2004	Begin drafting response to City's Petition for Reconsideration. Review Notice of Hearing on Petition for Reconsideration. Telephone conference with Kathryn Cock and Mike Chase re: presenting oral argument against petition in lieu of filing written response. Draft letter to hearing officer re: unavailability for April 1 hearing. Telephone conference with hearing officer re: rescheduling hearing.	2.3	287.50
03/29/2004	Telephone conference with Mike Chase re: hearing on petition for reconsideration. Draft letter to Client re: petition for reconsideration.	0.4	50.00
03/31/2004	Client costs: copy costs (\$53.10), postage(\$18.39).		71.49
	CLIENT TRUST ACCOUNT (CTA)		
	Previous CTA balance: \$525.34		
	Withdrawal from CTA applied toward payment of invoice: \$525.34		-525.34
Client trust account billed. Amount still due.		Total	

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
Attorney at Law
P. O. Box 190012
Boise, ID 83719

Statement

DATE	Statement #
03/31/2004	2128-19

BILL TO

Estate of Eleanor I. Chase
c/o Kathryn L. Cock
P. O. Box 1356
Caldwell, ID 83606-1356

PAID

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
	Current CTA balance: \$0.00		
	Amount required to maintain minimum CTA balance: \$500.00		500.00
Client trust account billed. Amount still due.		Total	\$3,796.15

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
 Attorney at Law
 P. O. Box 190012
 Boise, ID 83719

Statement

DATE	Statement #
04/30/2004	2128-20

BILL TO
Estate of Eleanor I. Chase c/o Kathryn L. Cock P. O. Box 1356 Caldwell, ID 83606-1356

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
04/05/2004	Telephone conference with Mike Chase re: proposal by Vern Brewer to move the City's point of diversion one-half mile from the Chase dairy.	0.3	37.50
04/08/2004	Review Recommended Order, Petition for Reconsideration, and file notes in preparation for hearing on the City's petition for reconsideration. Prepare outline of rebuttal arguments re: the City's petition for reconsideration. Telephone conference with Jeff Peppersack, IDWR Permits Section Manager, re: circumstances for requirement of mitigation plan as part of an application. Attend hearing on the City's petition for reconsideration. Meeting with Mike Chase re: follow-up strategy.	4.5	562.50
04/12/2004	Review Order Granting City of Eagle's Motion for Reconsideration. Telephone conference with Mike Chase re: decision not to file additional briefing with hearing officer.	0.1	12.50
04/23/2004	Review City of Eagle's Briefing on Reconsideration. Telephone conference with Mike Chase re: same. Draft letter to Client re: same.	0.6	75.00
04/30/2004	Client costs: copy costs (\$10.65), postage (\$3.87).		14.52
	CLIENT TRUST ACCOUNT (CTA)		
	Previous CTA balance: \$500.00		
	Withdrawal from CTA applied toward payment of invoice: \$500.00		-500.00
	Current CTA balance: \$0.00		
	Amount required to maintain minimum CTA balance: \$500.00		500.00
Client trust account billed. Amount still due.		Total	\$702.02

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

Matt J. Howard
Attorney at Law
P. O. Box 190012
Boise, ID 83719

Statement

DATE	Statement #
05/15/2004	2128-21

BILL TO

Estate of Eleanor I. Chase
c/o Kathryn L. Cock
P. O. Box 1356
Caldwell, ID 83606-1356

PAID

DATE	DESCRIPTION	HOURS/QUANTITY	AMOUNT
05/05/2004	Telephone conference with Victoria Wigle, IDWR secretary, re: merged copy of original and revised recommended order. Review "merged" recommended order received from Victoria.	0.3	37.50
05/07/2004	Review Recommended Order and Decision Following Reconsideration. Outline additional arguments for inclusion in amended appeal brief. Draft letter to Client re: same.	2	250.00
05/13/2004	Telephone conference with Phil Rassier, IDWR attorney, re: filing of amended exceptions brief. Draft Amended Exceptions Brief.	1.9	237.50
05/14/2004	Complete draft of Amended Exceptions Brief. Draft e-mail to Charlie Honsinger re: same. Draft fax-letter to Mike Chase re: same.	3.2	400.00
05/15/2004	Review e-mail from Charlie Honsinger re: proposed revisions. Draft revisions to exceptions brief. Arrange for filing and service of same.	1	125.00
05/15/2004	Client costs: copy costs (\$59.70), postage (\$6.63).		66.33
	CLIENT TRUST ACCOUNT (CTA)		
	Previous CTA balance: \$0.00		
	CREDIT per May 16, 2004, letter		-1,116.33
For billing inquires, please call (208) 333-0622		Total	\$0.00

Payment due upon receipt. For billing inquiries please call (208) 333-0622. Thank you.

1017-5
Chase
RECEIVED
AUG 22 2003
MSB&T,CTD.

BEFORE THE DEPARTMENT OF WATER RESOURCES

IN AND FOR THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR
AMENDMENT OF PERMIT NO. 63-12448
IN THE NAME OF THE CITY OF EAGLE

SCHEDULING ORDER

Following a pretrial conference on August 1, 2003, at which the following schedule was announced orally, IT IS HEREBY ORDERED that the following schedule shall apply to these matters:

August 15, 2003: The City of Eagle shall serve a formal discovery response on all parties by this date providing the following information

1. Identifying all Department of Water Resources records which the City of Eagle's experts rely upon in forming their opinions
2. Identifying all expert witness reports by their formal title that the City of Eagle may present at the hearing in this matter.
3. Identifying all persons to whom Mike Chase made statements which the City of Eagle's experts rely upon in forming their opinions.
4. Identify all water rights in which the City of Eagle has either an ownership or contractual interest.

This constitutes the ruling disposing of the *Motion for Order Compelling Discovery and Motion in Limine* filed by the Estate of Eleanor I. Chase on April 28, 2003

August 29, 2003: Formal written discovery shall be concluded. Discovery requests shall be timely served to allow adequate time to comply with this deadline.

Sept. 15, 2003: The taking of depositions shall be concluded.

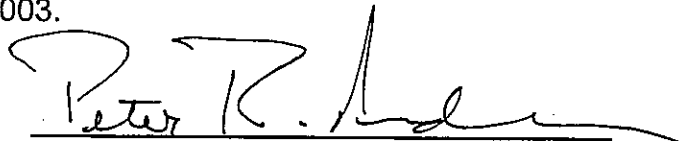
Oct. 17, 2003: Parties shall exchange on or before this date witness and exhibit lists, and copies of pre-marked exhibits. The City of Eagle shall pre-mark its exhibits with nos. 1-99. The Estate of Eleanor I. Chase shall pre-mark its exhibits with nos. 100-199. The Eagle Water Company shall pre-mark its exhibits with nos. 200-299. The group of protestants led by Jim Burton shall pre-mark its exhibits with nos. 300-399.

Oct. 17, 2003: The Idaho Department of Water Resources ("IDWR") staff memorandum, if any, will be submitted to the record and served on the parties.

Nov. 13, 2003: Two day hearing commencing in Boise.

The precise times and locations of the November 13-14 hearing will be provided to the parties by notice from IDWR.

Dated this 20th day of August, 2003.


Peter R. Anderson
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of August, 2003, the above and foregoing document was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

Bruce Smith
225 N 9th St., Suite 420
Boise, ID 83701-2720

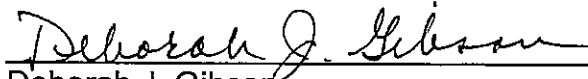
Matt Howard
P.O. Box 190012
Boise, ID 83719

Jim Burton
1896 N. Eagle Rd.
Eagle, ID 83616

Molly O'Leary
P.O. Box 1849
Eagle, ID 83616

Weldon Fisher
546 E. Beacon Light Rd.
Eagle, ID 83616

Gary Spackman
IDWR – Western Region
2735 Airport Way
Boise, ID 83705-5082



Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

ANALYSIS SHEET FOR EXTENSION OF TIME

Permit No.: 63-12448

Reviewed By: dgibson

Date: September 29, 2005

	<u>Yes</u>	<u>No</u>		<u>Yes</u>	<u>No</u>
Request received timely?	X		Is delay by a government agency?	X	
Appropriate fee	X		Is supporting documentation needed to support the file?		
Additional Amount Due:					
Receipt No.:	W027880, W031085		Has the permit been involved in litigation?	X	
Name and signature same as permit?	X		Is supporting documentation needed to support the file?		
Is address same as permit?	X		Is the project more than 25,000 acre feet for irrigation or 10,000 acre feet for a reservoir?		
Has adequate work been completed to demonstrate due diligence?	X				

Priority Calculation

Extension request received	11/06/2003	New proof due date	10/01/2009
Date proof due	- 12/01/2003		
Lapse notice sent	-		
No. of days late	= 0		
Holiday allowance	+		
Priority date	+ 04/08/1998		
New priority date	= 04/08/1998		

*Database
updated
9/29/05*

Action Taken

Acknowledge request for extension and extend proof deadline to 10/1/2009 based on Final Order issued on 9/22/2005.

Held mailing this approval until after the 14-day period for filing petitions for reconsideration has past. (10/7/05).



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

April 8, 2005

Honorable Nancy Merrill
Mayor, City of Eagle
310 E. State Street
Eagle, Idaho 83616

Re: Application for Amendment of Permit No. 63-12448

Dear Mayor Merrill:

I am writing to you in response to recent inquiries from Bruce Smith, your attorney in the above referenced matter, to Department legal counsel concerning the status of Application for Amendment of Permit No. 63-12448 in the name of the City of Eagle. The Department hearing officer issued *Recommended Decision and Order Following Reconsideration* in this matter on May 3, 2004. The recommended order requires my review and approval before it can become a final order.

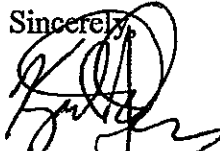
Other parties to this contested case proceeding have filed exceptions to the recommended order raising significant legal issues related to the manner and extent to which various categories of ground water rights should be administered and protected under the Idaho Ground Water Act. I regret the length of time this action has been pending final action before the Department, and I appreciate that a timely resolution is very important to the City of Eagle as well as the other parties to this proceeding.

This case raises important legal issues, some of which have not been previously decided. Although it is important that the parties receive a timely decision, it is also important that I devote the time necessary to ensure the best decision possible is made. Unfortunately, the time I would normally have devoted over the past year to reviewing this and other pending decisions has been spent trying to resolve the current water crisis on the Eastern Snake River Plain, which has serious consequences for the economy of the entire state, as you are well aware.

Honorable Nancy Merrill
April 8, 2005
Page 2 of 2

I appreciate the importance of this water right permit to the City of Eagle. I will endeavor to have a final order issued in this matter as soon as possible. However, I am not presently able to commit to a specific date. Your continued patience and consideration is appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Karl J. Dreher", written over the word "Sincerely,".

Karl J. Dreher
Director

c: Bruce Smith, Esq.
Charlie Honsinger, Esq.
Molly O'Leary, Esq.
Jim Burton
Weldon Fisher

JUN 01 2004

Bruce M. Smith, ISB #3425
Tammy A. Zokan, ISB #5450
MOORE SMITH BUXTON & TURCKE, CHARTERED
Attorneys at Law
225 North 9th Street, Suite 420
Boise, ID 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

**RESPONSE TO CHASE
ESTATE'S FIRST AMENDED
EXCEPTIONS TO
RECOMMENDED DECISION**

RESPONSE TO FIRST AMENDED EXCEPTIONS - PAGE 1

Hills #2), does not produce the quality and quantity of water suitable for the City's needs. Because the City owns only one operating well, it must depend on contracts with United Water Idaho, Inc. to meet minimum regulatory requirements for community water systems and emergency demand. Consequently, the City filed an application to amend its existing water right permit 63-12448 to reinstate two (2) points of diversion (well #s 3 and 4) previously included on the City's other water rights. The City's application to amend was filed in accordance with applicable laws and regulations and based upon the best information available at the time.² The needed diversions are located in Eagle, Idaho in the SW¼ SW¼ Sec. 4 T4N R1E (Eagle well #3 aka Brookwood well) and NE¼ SE¼ Sec. 4 T4N R1E (Eagle well #4). The points of diversion for wells #3 and #4 were already authorized as points of diversion for the City's water rights 63-11413 and 63-12017. The proposed wells would be used to supply water to municipal users within the City's municipal service area, which is illustrated on Exhibit 3.

A hearing on the City's application was held on November 13 and 14, 2003 and the Hearing Officer issued a Recommended Decision and Order dated March 5, 2004. The City filed a Petition for Reconsideration on the Recommended Decision on March 22, 2004. The Chase Estate Protestants, filed Exceptions to the Recommended Decision on the same date. The Hearing Officer granted reconsideration and issued a Recommended Decision and Order Following Reconsideration on April 30, 2004, which was served on May 3, 2004. On May 17, 2004 the City filed Exceptions to the Order Following Reconsideration and the Chase Estate filed First Amended Exceptions to the Recommended Decision and Order.

² In fact, because there are no well logs for many of the Chase Estate's diversions, the City did not become aware of the diversions until the first prehearing conference in this matter. Once identified, the City's engineer evaluated the City's proposed diversions in light of the new information and revised his report accordingly. See Exhibits 101 and 102.

LEGAL STANDARDS

A. Contested Case Proceeding

This matter is before the Idaho Department of Water Resources (Department) on the City of Eagle, Idaho's application to amend existing municipal water right permit no. 63-12448 to add two (2) points of diversion. Applications to amend an existing permit are processed under Idaho Code §§ 42-211 and 42-203A. Section 42-211 provides in part:

Whenever a permit has been issued pursuant to the provisions of this act, and the permit holder desires to change the place, period, or nature of the intended use, or make other substantial changes in the method of diversion or proposed use or uses of the water, he shall file an application for amendment upon forms furnished by the department of water resources together with the statutory fee for filing and recording the same, and upon receipt thereof it shall be the duty of the department of water resources to examine same and if approval thereof would not result in the diversion and use of more water than originally permitted and if the rights of others will not be adversely affected thereby, the director of the department of water resources shall approve said application and return an approved copy to the permit holder. The director of the department of water resources shall give such notice to other affected water users as he deems appropriate and may grant the amendment, in whole or in part or upon conditions, or may deny the same. Notice of partial approval or conditions or denial of an amendment shall be forwarded to the applicant by certified mail and shall be subject to judicial review as hereafter provided. The priority of the right established pursuant to a permit which has been amended under these provisions shall date from the date of the original application for permit, provided the permit holder has complied with other provisions of this act.

* * *

Protests to the application for amendment may be filed with and heard by the director in the same manner as provided by section 42-203 [42-203A], Idaho Code, for protests to an application for a permit.

Idaho Code § 42-203A(5) provides, in part, that:

[s]uch hearing shall be conducted in accordance with the provisions of section 42-1701A(1) and (2), Idaho Code. The director of the department of water resources shall find and determine from the evidence presented to what use or uses the water sought to be appropriated can be and are intended to be applied. In all applications whether protested or not protested, where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purpose for which it is sought to be

appropriated, or (c) where it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or speculative purposes, or (d) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) that it will conflict with the local public interest as defined in section 42-202B, Idaho Code, or (f) that it is contrary to conservation of water resources within the state of Idaho, or (g) that it will adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates, in the case where the place of use is outside of the watershed or local area where the source of water originates; the director of the department of water resources may reject such application and refuse issuance of a permit therefor, or may partially approve and grant a permit for a smaller quantity of water than applied for, or may grant a permit upon conditions.

The applicant bears the burden of proof for the factors the Department must consider.

Cantlin v. Carter, 88 Idaho 179, 187 (1964); Shokal v. Dunn, 109 Idaho 330, 339 (1985).

However, “a protestant who claims a harm peculiar to himself should have the burden of going forward to establish that harm.” Id. at 339 (quoting from decision below). Both the applicant and protestant have the burden of coming forward with information concerning factors affecting the local public interest. Department Appropriation Rule 40. The Idaho Department of Water Resources has adopted rules applicable to the factors for processing of the application and setting forth the criteria for evaluating the factors. Department Appropriation Rules 40 and 45.

B. On Appeal

An agency’s order may be overturned where its findings: (1) violate statutory³ or constitutional provisions; (2) exceed the agency’s statutory authority; (3) are made upon unlawful procedure; (4) are not supported by substantial evidence in the record; or (5) are arbitrary, capricious, or an abuse of discretion. Idaho Code § 62-5279(3); Matter of Permit No. 65-12842, 122 Idaho 59, 61, 831 P.2d 527 (1992).

³ Policies enacted by administrative agencies have the force and effect of statutory law. Zattiero v. Homedale School Dist. No. 370, 137 Idaho 568, 571, 51 P.3d 382 (2002).

“A finding of fact without any basis in the record would be clearly erroneous. Also a finding of fact lacking substantial and competent evidence to support it is clearly erroneous. In order to uphold an agency’s finding, we must find more than a mere scintilla of evidence.” Id. at 62 (internal citations omitted). For an agency’s decision to avoid being found to be arbitrary and capricious, the agency must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made. See Motor Vehicle Mfr’s Ass’n v. State Farm Mutual Auto. Ins. Co., 103 S.Ct. 2856, 2866, 463 U.S. 29, 77 L.Ed.2d 443 (1983). An agency action is arbitrary and capricious if the agency has relied on factors which the legislature has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise. See 103 S.Ct at 2867.

If an agency order is not affirmed, “it shall be set aside in whole or in part, and remanded for further proceedings as necessary.” Idaho Code § 67-5279(3).

ARGUMENT

I. The Department Properly Granted the City’s Application to Amend its Existing Permit.

Idaho Code § 42-211 authorizes the Director of the Department to grant an amendment to an existing permit, “in whole or in part or upon conditions, or may deny the same.” The Department routinely imposes conditions on permits. Said conditions primarily serve to insure that the permitted water use complies with Idaho law and Department regulations. In this case, the Hearing Officer recommended the approval of the City’s application in part and recommended a number of conditions purported to mitigate for any injury that might result. While the imposition of reasonable conditions is permissible to ensure the maximum use of the state’s

water resource and the protection of water users, the conditions imposed in this case are not supported by the record or authorized by law. Notwithstanding the problems with the conditions imposed by the Recommended Decision, the Recommended Decision correctly allows the City to add well #3 to the City's existing water right permit no. 63-12448.

A. The Evidence in the Record Shows That the City's Project is Unlikely to Injure the Chase Estate's Water Rights and Should be Permitted.

With the exception of water used for domestic purposes prior to 1978, only reasonable pumping levels of senior water rights are protected. Parker v. Wallentine, 103 Idaho 506 (1982). Domestic purposes are defined at Idaho Code § 42-111, and include limited domestic, irrigation and stock use not exceeding 13,000 gallons per day. Just because a water right is used for domestic or stock use, it does not automatically meet the definition of a "domestic purpose." See Idaho Code § 42-111. Only one of the Chase Estate's water rights falls under Idaho Code § 42-111: water right no. 63-15820. Water right no. 63-15820 is a partially decreed water right serving the Chase home at the rate of .04 cfs and shall not exceed 13,000 gallons per day. Exhibit 150.

Even if a senior domestic water right or other reasonable diversion is impacted by water use by a junior appropriator that does not mean the junior user is precluded from diverting water for a beneficial use. If water can be provided to the junior appropriator as well as the senior appropriator by changing the method or means of diversion of the senior appropriator, the junior appropriator can appropriate water so long as the junior appropriator pays the expense of any change needed to supply the senior appropriator. 103 Idaho at 514. This insures the maximum development of the state's water resources. Id.

"Idaho's Ground Water Act seeks to promote 'full economic development' of our ground water resources." Baker v. Ore-Ida Foods, Inc., 95 Idaho 575, 584 (1973). "We hold that the

Ground Water Act is consistent with the constitutionally enunciated policy promoting optimum development of water resources in the public interest. Full economic development of Idaho's ground water resources can and will benefit all of our citizens." Id. (internal citations omitted).

In the enactment of the Ground Water Act, the Idaho legislature decided, as a matter of public policy, that it may sometimes be necessary to modify private property rights in ground water in order to promote full economic development of the resource. The legislature has said that when private property rights clash with the public interest regarding our limited groundwater supplies, in some instances at least, the private interests must recognize that the ultimate goal is the promotion of the welfare of our citizens. We conclude that our legislature attempted to protect historic water rights while at the same time promoting full development of ground water. Priority rights in ground water are and will be protected insofar as they comply with reasonable pumping levels. Put otherwise, although a senior may have a prior right to ground water, if his means of appropriation demands an unreasonable pumping level his historic means of appropriation will not be protected.

Baker v. Ore-Ida Foods, Inc., 95 Idaho at 584 (internal citations omitted).

For the maximum development and use of the state's groundwater resource to occur, only water that can be and actually is diverted and beneficially used by a senior appropriator is entitled to any protection. A water right that is not used because a diversion is not capable of diverting it should not preclude the development of the water supply. It goes without saying that hypothetical rights are not deserving of any protection.

Given the public's interest in the maximum development of the state's water resources, the Chase Estate's allegations regarding individual harm to its diversions, and the Estate's burden of going forward to establish that alleged harm, the amount of water the Chase Estate actually diverts for beneficial use necessarily factors into the evaluation of the City's application. The Department is not adjudicating the Estate's water rights. Instead, it is considering and deciding on the merits the factual issues raised by the Chase Estate in its protest.

Based upon the evidence in the record, the City's project is in the public interest and should not injure the Chase Estate's domestic right or any reasonable diversions. As the record reflects, in the case the City's project actually injures the Chase Estate, there are modifications that could be made to the Chase Estate's diversions to allow the City and Chase Estate to both divert without injury. The City has agreed to pay for any such changes needed to supply water to the Chase Estate.

SUMMARY OF EVIDENCE

The City presented expert testimony and evidence relating to the construction of the City's proposed wells #3 and #4. The Chase Estate however only presented evidence concerning allegations of injury it attributes to the City's well #3. In response to the Chase Estate's protest, the City's expert conducted an investigation of the Chase Estate's diversions and reviewed information provided by the Chase Estate regarding their diversions, including the dairy well (water right nos. 63-5226 and 63-15820), the small irrigation well (water right no. 63-5229) and the large irrigation well (water right no. 63-8663).⁴ Given that no well logs are available for the dairy well and the small irrigation well, and there is little if any information about the wells, the City's expert had to rely on information provided by the Chase Estate. Based upon the information about the groundwater resource in the area of the proposed project, the City's planned development and use of well #3, the expert's observations of the well/pump configurations, and the Chase Estate's representations relating to the configuration and use of their wells, the City's expert concluded it was unlikely that the City's proposed wells would injure the Chase Estate's water rights. However, given so little is known about the Chase

⁴ While the Chase Estate has other water rights, it has not alleged injury to its other water rights. However, the City did provide evidence that the other water rights would not be impacted by the City's project.

Estate's antiquated system of wells, the City's expert described potential mitigation measures that would redress any actual injury to the Chase Estate's individual wells actually caused by the City. The City's representatives testified that the City is committed to undertake mitigation necessary to insure the City's projects do not injure the Chase Estate.⁵

1. Dairy/domestic well (water rights nos. 63-5226 and 63-15820).

At the hearing, the Chase Estate offered testimony correcting its actual use of the dairy well (water rights 63-5226 and 63-15820). According to Mike Chase, the correct amount of that water right should be .13 cfs, not .31 cfs. The Chase Estate offered testimony describing the use of the dairy well water rights to supply water for the commercial dairy operation and to provide domestic water for a home. The City's expert testified that the dairy well is not a reasonable means of diversion that it is on the verge of failure and is not currently capable of diverting .13 cfs. The City's expert concluded that the City's wells would not reduce the Chase Estate's ability to divert the amount of water the Chase Estate can currently divert. However, the expert identified available pumps which could produce the amount of water being beneficially used by the Chase Estate in the case water levels dropped for whatever reason.

The City presented reports and expert testimony concerning the predicted effects of pumping Eagle well #3. See Exhibit 103, Idaho Department of Water Resources' *Open File Report on Ground-Water Conditions in the Dry Creek Area, Eagle, Idaho*; Exhibit 104, *Results of the 30-Day Pumping Test and Aquifer Analysis* regarding Lexington Hills well no. 1 (aka Eagle well #1) by CH2M HILL; Exhibit 105, *Aquifer Test at Floating Feather Well* by Mr. Terry

⁵ Other than the likelihood for failure at anytime, very little is known about the Chase Estate's diversions. This factor alone makes it extremely difficult to compose an acceptable mitigation plan. Although the City has attempted to rely on the information provided by the Chase Estate to evaluate potential impacts, the Chase Estate has since disputed the information it provided the City. See Chase Estate Brief at pp. 7, 10. It is not possible for the City to craft a mitigation plan under such circumstances. The Department should utilize its expertise to determine what, if any, mitigation is needed.

Scanlan, P.E., P.G.; Exhibit 102, *Summary of Groundwater Conditions in The Vicinity of Proposed Brookwood Subdivision Well Site*, by Mr. Bill Strowd, P.G., a former employee of the City Engineer. The City's expert testified that during his site investigation the Chase Estate representatives provided information regarding the dairy well pumps, including the 30 psi pump pressure setting. The Hearing Officer's actual Findings relating to the potential drawdowns in the dairy/domestic well are consistent with the expert reports and testimony submitted in this matter.⁶ Contrary to the Chase Estate's assertions, the Hearing Officer made no Finding that the dairy well would be rendered unusable.

2. Small irrigation well (water right no. 63-5229)

The Chase Estate testified they use the small irrigation well (water right no. 63-5229) to irrigate 20 acres. The Chase Estate claims .42 cfs for water right no. 63-5229 (irrigation and stockwater) plus an additional .04 cfs for domestic supply.⁷ See Exhibit 146. The Chase Estate testified that no water has been diverted from the small irrigation well since 1983. According to Mike Chase, there has been adequate surface waste water to irrigate and consequently there has been no need to utilize the small irrigation well. Mr. Chase testified that because the Chase Estate has not needed the well to irrigate, there is no power to the well and has been no need to test the well. The Chase Estate presented no testimony regarding its use of water right no. 63-5229 for domestic or stockwater purposes. The City's expert concluded that the small irrigation well and pump configuration is not a reasonable means of diversion and is not capable of producing the claimed .42 cfs. Furthermore, the record supports a conclusion that given the

⁶ The Hearing Officer's conclusion regarding short-term impacts may be conservative because it is based on a calculated impact at 250 ft. rather than 509 ft. Exhibit 105 (Scanlan Report).

⁷ The Chase Estate presented no evidence regarding the use of this diversion for domestic water needs. And presumably, the Chase Estate has not been using the alleged "primary" wastewater right for domestic needs. Moreover, the Chase Estate does not limit its claim to 13,000 gpd; thus, it does meet the requirements of Idaho Code § 42-111.

extremely long history of non-use of this well and water right, it is highly unlikely that it would be impacted at all.

The City presented reports and expert testimony concerning the predicted effects of pumping Eagle well #3. See Exhibit 103, Idaho Department of Water Resources' *Open File Report on Ground-Water Conditions in the Dry Creek Area, Eagle, Idaho*; Exhibit 104, *Results of the 30-Day Pumping Test and Aquifer Analysis* regarding Lexington Hills well no. 1 (aka Eagle well #1) by CH2M HILL; Exhibit 105, *Aquifer Test at Floating Feather Well* by Mr. Terry Scanlan, P.E., P.G.; Exhibit 102, *Summary of Groundwater Conditions in The Vicinity of Proposed Brookwood Subdivision Well Site*, by Mr. Bill Strowd, P.G., a former employee of the City Engineer. The Hearing Officer's Findings relating to the potential impacts to the small irrigation well are consistent with the expert reports and testimony submitted in this matter.

3. Large irrigation well (water right no. 63-8663).

The Chase Estate claims 2.0 cfs from the large irrigation well (water right no. 63-8663) for irrigation and stockwater use.⁸ Unlike the antiquated dairy and small irrigation wells, more is known about the large irrigation well because a well log has been filed with the Department. However, information regarding actual pump configuration and water level was provided to the City by the Chase Estate. Given the location and configuration of the large irrigation well, the City's expert determined that the well is capable of producing the full water right even if there are significant water level declines and concluded that the City's project is not likely to injure water right no. 63-8663. However, the City's expert testified regarding deficiencies in the pump in the large irrigation well and recommended that it be replaced with a more efficient pump regardless of the City's project.

The City presented reports and expert testimony concerning the predicted effects of pumping Eagle well #3. See Exhibit 103, Idaho Department of Water Resources' *Open File Report on Ground-Water Conditions in the Dry Creek Area, Eagle, Idaho*; Exhibit 104, *Results of the 30-Day Pumping Test and Aquifer Analysis* regarding Lexington Hills well no. 1 (aka Eagle well #1) by CH2M HILL; Exhibit 105, *Aquifer Test at Floating Feather Well* by Mr. Terry Scanlan, P.E., P.G.; Exhibit 102, *Summary of Groundwater Conditions in The Vicinity of Proposed Brookwood Subdivision Well Site*, by Mr. Bill Strowd, P.G., a former employee of the City Engineer. The Hearing Officer's Findings relating to the potential impacts to the large irrigation well are consistent with the expert reports and testimony submitted in this matter.

B. Granting the City's Application is in the Public Interest as Defined by Idaho Code § 42-202B(3).

The "local public interest" is defined as "the interests that the people in the area directly affected by a proposed water use have in the effects of such use on the public water resource." Idaho Code § 42-202B(3). The people in the area directly affected by the City's proposed wells, including the Chase Estate, are benefited by the City's application for a number of reasons. Indeed, the City's desire to act in the best interest of its citizens is the reason for the City's application. The evidence in the record shows the City's elected officials' and City Engineer's determination that there is an immediate need for additional wells to meet regulatory requirements and the needs of the City's citizens, so that the City can best serve its citizens and (1) insure a reliable source of potable water; (2) further insure that there is adequate water to fight fires and respond to other emergency situations; (3) provide for better distribution across pressure zones; and (4) decrease maintenance costs. Additionally, the City's project benefits

⁸ The Chase Estate does not use this water right for domestic purposes at all or limit its claim to 13,000 gpd; thus, it does meet the requirements of Idaho Code § 42-111.

water users by serving a large number of households using only a few wells and thereby significantly reduces the potential for groundwater contamination. The City's municipal wells must comply with higher standards and controls than domestic wells resulting in less impact to the aquifer and a better quality water supply. Finally, the City's water supply provides an alternative supply for domestic well users in the case they encounter a problem with their domestic well. The City's project is consistent with Idaho law as it relates to public interest, reasonable diversions, application of water to beneficial use, conservation of water resources, and full economic development of the groundwater resource.

II. The Parties' Concerns About Conditions 2 and 3 of the Recommended Order Could be Resolved With Minimal Modification to the Conditions.

Both the City and the Chase Estate have expressed legitimate concerns about conditions 2 and 3 imposed by the Recommended Order. However, there is a simple solution. This matter does not have to be resolved by the complex litigation schemes outlined by the Chase Estate.

A. Condition 2

Condition 2 of the Recommended Order requires that the City complete a pump test, establish a pumping rate "cap," and then negotiate an agreement with the Chases to resolve any impact the identified pumping rate might have on the Chase water right no. 63-15820. Recommended Order at ¶2, p. 29. If the Chases refuse the City's mitigation proposal for whatever reason, the Order sends the parties to District Court. Id. This condition was designed to address the Department's desire that the City have a mitigation plan in place to address any potential material injury. However, as written, the condition does not appear to completely fulfill that objective. Condition 2 be modified to provide as follows:

The City will develop a pump test of Eagle well #3 and submit it to the Department for review and approval. The City will conduct the pump test,

establish a maximum operating diversion rate not to exceed that permitted by water right permit 63-12448, and use the results of the pump test to develop a mitigation plan for Department review and approval in accordance with Parker v. Wallentine, 103 Idaho 506 (1982). The maximum diversion rate shall be a limiting condition of water right permit no. 63-12448 on the operation of the well at this point of diversion. The mitigation plan shall mitigate any injury to the Chase Estate's domestic water right no. 63-15820 consistent with Parker v. Wallentine, 103 Idaho 506 (1982), caused by the City's diversion of water right no. 63-12448 from Eagle well #3. Once approved by the Department, the City shall implement the mitigation measures in accordance the approved plan. Any subsequent claims of material injury to water right no. 63-15820 shall be evaluated under the Department's Rules in existence at the time the allegation of injury is made.

B. Condition 3

Condition 3 of Recommended Order requires the City to turn off its pump if any senior water right within 2000 ft. cannot pump its full quantity of water. Recommended Order at ¶ 3, p. 29-30. This condition is designed to recognize the City's obligations to neighboring water users and encourage the City to have a mitigation plan in place before pumping water from well #3. This condition, however, is vague, does not fulfill the purposes the condition seeks to achieve, and is unworkable since the condition that water rights must be able "to pump the full quantity of water" is not a standard used in Department rules or Idaho statutes and makes the City responsible for pumping problems unrelated to the City's water use. However, it is possible to achieve the intent of this provision within the existing framework of the rules and regulations.

To better meet the objectives of this condition and protect all interested parties, the condition should be modified as follows:

Upon the completion of the City's pump test of Eagle well #3, the City shall develop a mitigation plan for Department review and approval in accordance with Parker v. Wallentine, 103 Idaho 506 (1982). The mitigation plan shall mitigate any injury to senior water rights within a radial distance of 2,000 feet of the point of diversion for Eagle well #3 consistent with Parker v. Wallentine, 103 Idaho 506 (1982), caused by the City's diversion of water right no. 63-12448 at Eagle well #3. Once approved by the Department, the City shall implement the mitigation measures in accordance with the plan. Any subsequent claims of material injury to water rights shall be evaluated under the Department's Rules in existence at the time the allegation of injury is made.

CONCLUSION

For the reasons stated in the City's Exceptions and herein, the City's application to add additional points of diversion to its existing water right permit should be approved. A Final Order should be entered approving the City's application that is consistent with Idaho Law, Department Regulations and the evidence in the record.

MOORE SMITH BUXTON & TURCKE, CHARTERED



Tammy A. Zokan
Attorneys for City of Eagle

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 1 day of ~~May~~^{June}, 2004, I caused to be served a true and correct copy of the foregoing RESPONSE by the method indicated below, and addressed to the following:

IDWR
Western Region
2735 Airport Way
Boise, Idaho 83705

☒ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Charles L. Honsinger
Ringert Clark
P.O. Box 2773
Boise, ID 83701-2773

☒ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Molly O'Leary
Eagle Water Co.
P.O. Box 1849
Eagle, ID 83616

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☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Jim Burton
1896 N. Eagle Road
Eagle, ID 83616

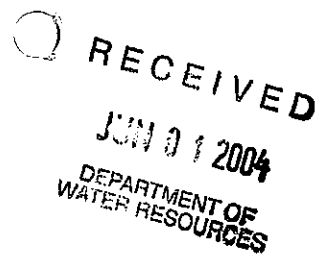
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Attorneys for the Estate of Eleanor I. Chase

BEFORE THE DEPARTMENT OF WATER RESOURCES OF
THE STATE OF IDAHO

_____	)	
IN THE MATTER OF AMENDMENT OF	)	CHASE ESTATE'S RESPONSE TO CITY
APPLICATION FOR PERMIT NO. 63-12448	)	OF EAGLE'S EXCEPTIONS TO
IN THE NAME OF THE CITY OF EAGLE	)	RECOMMENDED DECISION AND
	)	ORDER
_____	)	

Pursuant to the Hearing Officer's April 30, 2004 *Recommended Decision and Order Following Reconsideration* (hereinafter "*Decision*") filed in the above-captioned matter, Protestant Estate of Eleanor I. Chase, by and through its attorneys of record, Ringert Clark, Chartered, hereby files this *Response* to the City of Eagle's May 17, 2004 *Exceptions to Recommended Decision and Order* (hereinafter "*City's Exceptions*").

INTRODUCTION

Many of the arguments raised by the City of Eagle's *Exceptions* are addressed in the *Chase Estate's First Amended Exceptions to the Hearing Officer's Recommended Decision and Order*, which are hereby incorporated by reference. Eagle's *Exceptions* contain a lot of bluster, but little substance to back up the City's claims. The vague arguments made by the City refer to very few, if any, specific statements made by witnesses at the hearing, nor do they refer to many specific documents or facts elicited from those documents which were introduced at trial. Instead, the City

makes general statements apparently intended to either confuse the Director, or to obfuscate the real facts in such a manner that the Director upholds the portions of the *Decision* that are clearly erroneous or unsupported, and strikes down those portions of the *Decision* that should be affirmed. In short, the Director must examine the true facts himself, analyze the same, and, once having done so, modify the *Decision* such that it adequately protects water right holders, the public, and the resource.

ARGUMENT

I. Idaho Law Protects the Chase Estate's Established Water Rights

The City argues its case that Chase's wells are not entitled to protection on two fronts: First, it attempts to minimize and undercut Chase's established water rights. Second, it argues that the water rights are not protected by the law in any case because the diversions and/or pumping levels for those water rights are allegedly "not reasonable." The facts and law do not support the City's arguments.

First, the City asserts that the Chase's dairy/domestic well is not currently capable of producing .13 cfs. As discussed in the Chase Estate's *Amended Exceptions*, the City's conclusion is based upon a one-time static water level measurement taken in that well during the "lowest" part of the annual water cycle for the area, and upon an unsupported assumption that the discharge pressure for the pumps in the dairy well is 30 psi. Opposed to this questionable evidence is David Shaw's calculation that the dairy well is currently capable of producing a flow of .13 cfs, his calculations that the dairy requires .13 cfs, and Mike Chase's testimony that the dairy well has worked

satisfactorily for years, and continues to work satisfactorily today.¹ The City's assertion - based upon a single one-time static well measurement and a questionable assumption - that the dairy/domestic well produces less than .13 cfs is simply not supported by the evidence. Moreover, the City fails to recognize that this proceeding is not the forum in which the elements of the Chase Estate's water rights are determined. Rather, that forum is the Snake River Basin Adjudication (hereinafter "SRBA"), and any attempt to reduce the Chase Estate's water rights outside of the SRBA, including in the context of this proceeding, is precluded. See *State of Idaho v. Idaho Conservation League (Basin-Wide Issue 5A)*, 131 Idaho 329, 335 (1998).

Second, the City argues that the diversion and pump for the domestic/dairy well and the small irrigation well are not "reasonable means of diversion" because they are allegedly antiquated, and may fail. The City's tactics in making this argument are clear: focus the Director on an irrelevant issue, in hopes that he will not focus on the issue which is truly relevant - whether the City's proposed well will injure existing water rights. The Director should simply ignore this argument because (1) it is irrelevant; (2) because the evidence presented at the hearing established that the domestic/dairy well is operating fine; and (3) this is not a proceeding which can determine the nature and elements of the Chase Estate water rights from either the domestic/dairy well or the small irrigation well. *State of Idaho v. Idaho Conservation League, supra*. It is true that the wells and pumps are old, and that one or the other of them may, at some time in the future, fail. However, the same is the case with any well or pump, new or old - they may, at any time, fail, and need to be replaced. When they do, it is up to the owner to replace them should he so desire. Nevertheless, the simple fact remains that the

¹Obviously, if the dairy's requirements are .13 cfs, and the well satisfactorily meets those requirements, it can be inferred that the well must be supplying .13 cfs when it is needed.

well is working now, and supplies the water necessary for the dairy. Nothing else about the “reasonableness” of the diversion system needs to be shown or known.

The more relevant question is whether the domestic/dairy well, and the Chase Estate’s small irrigation well are protected in their pumping levels. Contrary to Eagle’s argument, the law provides that they are. Eagle cites to *Parker v. Wallentine*, 103 Idaho 506 (1982) as authority for the erroneous proposition that only domestic water rights are exempt from the reasonable pumping level standard in I.C. § 42-226. Eagle’s argument is false. Also exempt from reasonable pumping level requirements are water rights with priority dates prior to the date of enactment of the Idaho Ground Water Act.

It is true that I.C. § 42-226 provides that “prior appropriators of underground water shall be protected in the maintenance of reasonable ground water pumping levels as may be established by the Director.” However, the language of the statute also provides that “[t]his act shall not affect the rights to the use of ground water in this state acquired before its enactment.” I.C. § 42-226. (Emphasis added). The Idaho Groundwater Act was enacted in 1951, although the “reasonable pumping level” requirements were not added until 1953. 1953 Idaho Sess. Laws, ch. 182, pp. 278 - 279. The priority dates of the water rights diverted from the domestic/dairy well are January 1, 1950 for water right no. 63-5226, and January 1, 1920 for water right no. 63-15820, and the priority date of the water right diverted from the small irrigation well is October 27, 1925. Therefore, according to the plain language of the statute, neither of the rights diverted from the dairy/domestic well, nor the right from the small irrigation well are subject to “reasonable pumping level” requirements, and all three rights are absolutely protected in their pumping levels. See *Parker v. Wallentine*, *supra*;

Chase Estate's Post-Hearing Brief, pp. 4 - 9. Eagle's argument to the contrary is simply erroneous, and must be disregarded.

The simple fact is that the evidence presented at the hearing of this matter conclusively established that development and use of the City's proposed Brookwood Well will result in injury to the Chase Estate water rights. Accordingly, the Director must deny the City's water right permit application.

II. The Cessation of the City's Injurious Diversions is Necessary to Protect Senior Water Rights

As the Chase Estate discussed in its *Amended Exceptions*, the Director should simply deny Eagle's application because the evidence establishes that the Chase Estate water rights will be injured by development and operation of the Brookwood well. The City's statements that "[t]here is no evidence in the record that water rights within 2000 ft. of well #3 will be injured", and that "drawdowns are not likely to be significant" as a result of the City's pumping are disingenuous at best. As both parties' experts agreed, the "Strowd Report" provided the "best estimate available" for estimating drawdowns in the Chase Estate wells caused by the City's proposed Brookwood well. Those estimated drawdowns were: (1) in excess of 8 to 10 feet for the Chase Estate's dairy/domestic well - resulting in a complete cessation of the Estate's ability to use that well; (2) in excess of 8 to 10 feet for the Chase Estate's small irrigation well - again resulting in the complete inability to use the well; and (3) a drawdown of 4.5 feet in the Chase Estate's large irrigation well - which estimate the City did not even evaluate to determine whether the large irrigation well would be negatively impacted. Given these facts, it is arbitrary and capricious to conclude, as has the City, either that none of the Chase water rights will be injured, or that "drawdowns are not likely to be significant."

If drawdowns which result in the inability to divert from a well are “not significant,” when are they significant?

Eagle argues that the *Decision's* requirement that the City's pump be shut down upon a showing that pumping from the proposed Brookwood well is affecting nearby senior water rights will result in “difficulties” for the City, and should be modified for that reason. The problem with the City's argument is that it illustrates the very reason why the City should not be allowed to proceed with the development of its Brookwood well. The evidence establishes that operation of the Brookwood well will injure the Chase Estate water rights.² Accordingly, under the condition imposed by the hearing officer, the City will be required to shut down its Brookwood well immediately after it begins operating.³ The impacts of the Brookwood well upon the Chase Estate water rights, and upon the water rights of others would then be evaluated - potentially resulting in permanent shut down of the Brookwood well. Quite frankly, this scenario does not even make sense. The more appropriate scenario - which would save both the City and the Chase Estate (and other potentially impacted parties) time, aggravation and money - would be for the Director to deny the City's application so that the City could go back, re-evaluate its approach, gather the necessary data,

²United Water Idaho also recognized that it would likely be injured by the Brookwood well when it entered into an agreement with the City. As the City points out, it agreed to a 1455 af annual “cap” on its water right in exchange for United Water agreeing that the City could file an application first and acquire priority over an application for permit filed with IDWR by United Water. If United Water didn't think that the Brookwood well was going to impact its water right, why did it insist upon a “cap”? In addition, why did the City agree to the “cap” if it did not think it was necessary to mitigate for injury?

³Notably, the evidence at the hearing established that even operation of the Brookwood well for a short term was likely to result in the Chase Estate's inability to use its domestic/dairy well, which would in turn result in irreparable damage to the Chase Dairy's herd and operations.

and submit another, better supported application.

However, in the event that the Director chooses to affirm the hearing officer's approval of the City's application - in whole or in part, he must also affirm the imposition of a requirement that the City immediately cease its diversions from the Brookwood well when the Chase Estate wells are (inevitably) unable to pump the full amount authorized under their water rights. The City's arguments to the contrary are really nothing more than arguments that it will be injured by having to shut down its well. The City simply does not acknowledge what is established by the evidence - that its diversions will impact senior water rights. Rather, it merely assumes that because it is a "city," its needs for and diversions of water "trump" other water right holders' needs and diversions. Fortunately, that is not the law of prior appropriation as it is followed in Idaho. Instead "[i]t is the long-standing rule in Idaho that, as between competing appropriators of water, 'the first in time is first in right.'" Each junior appropriator is entitled to divert water only when the rights of previous appropriators have been satisfied." *R.T. Nahas Co. v. Hulet*, 114 Idaho 23, 26 (App., 1988) (Citations omitted). To properly implement Idaho law and protect prior appropriators, at a bare minimum, the Director must impose upon the City the "immediate pumping cessation" condition recommended by the hearing officer.

III. The Director Must Deny the City's Request to Reinstate the Point of Diversion for Eagle Well Site #4

Eagle argues that the Director should overrule the hearing officer's recommendation that its proposed point of diversion located at its well site #4 should be denied. The hearing officer recommended that the Director deny well site #4 as a point of diversion because the testimony and evidence submitted did not establish whether wells and water rights might be in the vicinity of the proposed well site, and because no testimony or evidence was offered regarding the impacts on those other wells and water rights. Accordingly, the hearing officer correctly held that the City had failed

to meet its burden to show that diversions from Well #4 would not impact existing water rights. *Decision*, p. 24.

Eagle argues that “no party even bothered to address well # 4 at all in their post-hearing briefing.” Eagle’s *Exceptions*, p. 3. The City’s assertion is completely false. In fact, the Chase Estate’s *Post-Hearing Brief* set out an entire section dealing with the well site #4. Chase Estate’s *Post-Hearing Brief*, pp. 40 - 41. The City’s false assertion illustrates the problems with its entire briefing: it strongly argues its points, but obfuscates the real issues and plays loosely with the facts.

Eagle’s argument that the Director should overrule the *Decision* and approve well site #4 centers on an assumption that because that site has already been approved as a point of diversion under permit nos. 63-12017 and 63-11413, the site should automatically receive approval under the permit application at issue in this proceeding. Unfortunately for Eagle, it is not that simple.

The problem for the City is that although permit nos. 63-12017 and 63-11413 listed the location of proposed well site #4 as points of diversion, it never developed the well under either of those permits. Therefore, there is simply no data whatsoever to support Eagle’s assertion that no water right holders will be injured. In fact, Eagle has submitted its Proof of Beneficial Use for both of those permits, and through its submission thereof has relinquished the undeveloped portions of those permits (including the undeveloped point of diversion proposed to be located at well site #4) to the State of Idaho. *See* Chase Estate Ex. No. 126, § 10, Ex. No. 127, § 10. Thus, Eagle’s argument that the point of diversion it seeks through this proceeding has already been approved and should simply be approved again is disingenuous. No well at well site #4 exists, and Eagle utterly failed to submit even the slightest shred of evidence establishing that the well proposed for that site would not injure any other water rights. Accordingly, the Director must simply affirm the hearing

officer, and deny the City's request to reinstate well #4 as a point of diversion for water right no. 63-12448.

IV. The Pump Test/Maximum Sustained Pumping Level Condition is Inappropriate

Eagle argues that the Director should not impose a condition requiring the City to determine the maximum level of sustained water diversions by conducting a pump test on the Brookwood Well, and then require the City to mitigate at the proposed maximum level. The Chase Estate agrees that the suggested procedure is inappropriate albeit for different reasons than does the City. The City argues that the condition is improper because it forces the City to choose between, on the one hand, setting its pumping rate at the anticipated "average of 200-250 gpm from Eagle well #3" - thereby precluding the diversion of a higher rate from that well, and, on the other hand, setting its pumping rate at the maximum capacity of the well - thereby forcing the City to mitigate for a high pumping level from that well that it allegedly will not be diverting other than in emergency conditions. Eagle's argument makes the very point that the Chase Estate has been trying to make all along: that even though both the City and the hearing officer state that the average pumping level will be less than 300 gpm (*see Decision*, p. 14, ¶¶ 31, 38; Eagle's *Exceptions*, p. 16), it is the City's intent to increase the pumping level in the future. Given the City's admission that it fully expects to be able to divert more than the 200- 250 gpm it asserts it will divert, the hearing officer's finding that the average diversion rate will only impact the water levels near the Brookwood Well at a percentage rate of that discussed in the Strowd Report simply makes no sense - because it is based on the erroneous assumption that the City will not divert more than 250gpm (this is in addition to the fact that the hearing officer's erroneous method of calculating impacts has no basis in fact or law).

The hearing officer's analysis and the City's argument as to this point also illustrate another point the Chase Estate has been making in this case: the time to conduct a pump test is before a permit is granted. It is only then that a proper evaluation of the potential impacts on senior water rights can be conducted. In fact, to do it as is suggested by the hearing officer is contrary to law - especially when even the hearing officer admits that the pump test may severely impact the Chase Dairy. (It is axiomatic under the Idaho Constitution, and its case law and statutes that "first in time is first in right"). The proposed "test pumping" procedure suggested by the hearing officer makes no sense in any context - for either the applicant or the protestants. Accordingly, the Director should simply deny the permit application. Thereafter, if Eagle chooses to again submit a permit application, it should do its homework and properly and adequately carry the burden of showing no impacts to senior water rights.

V. The Negotiated/Litigated Mitigation Proposed by the Hearing Officer is Contrary to Idaho Law

The City argues that the negotiated/litigated mitigation condition imposed by the hearing officer is improper because the City's proposed point of diversion would not result in injury to senior water rights and because the Department cannot delegate its duty to evaluate a mitigation plan to a District Court, as is proposed by the hearing officer. The Chase Estate agrees that the hearing officer's mitigation condition cannot be imposed, but in contrast to the City's argument, points out that the condition cannot be imposed both because injury to the Chase Estate's water rights was established at hearing, and because it is necessary to establish that the proposed mitigation actually mitigates the Chase Estate's injury before the injury can occur.

Contrary to the City's argument, the evidence at trial established that the Chase Estate water

rights will be injured. The City makes the same arguments in the section of its brief addressing the proposed mitigation condition as it did when discussing the Chase Estate's water rights: that Mr. Scanlan testified that the groundwater level will not be "significantly" affected by the City's increased pumping, and that the Chase Estate's wells can't produce the full quantity of the water rights diverted through them. The response to these arguments are the same as discussed earlier: the evidence clearly establishes that groundwater levels will drop below the level at which they can be pumped by either the Chase Estate's small irrigation well or its dairy/domestic well - if that is not a "significant" drop in ground water levels, what is? If that is not an injury to a senior water right, what is? As to Mr. Scanlan's testimony that the wells cannot produce the full quantity of the water rights, his conclusion regarding the dairy/domestic well is based on minimal data, is based upon a complete failure to adequately investigate the Chase Estate wells, and is directly contradicted by the testimony of Dave Shaw and the fact that the dairy/domestic well has been used in, and has fulfilled the needs of, the Chase Dairy for many, many years. Mr. Scanlan's conclusion regarding the small irrigation well is based upon no hard data whatsoever. His conclusions as to both wells clearly contradict even the evidence on which he bases those conclusions, and must be disregarded.

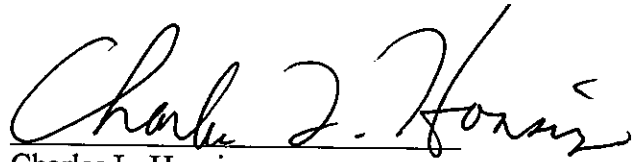
As to the City's argument that the Department cannot delegate its authority to determine the adequacy of a mitigation plan, the Chase Estate agrees. Instead, the City should have submitted a mitigation plan with its application for evaluation by the parties and the Department. The simple fact is that I.C. § 42-211 requires that an applicant's application be denied unless the applicant can establish that the proposed water right will not injure senior water rights. That would include the submission of a mitigation plan with the application to mitigate for presumed injuries. Here, the

evidence established that the Chase Estate's water rights would be injured by the City's application (the City even admits that the *Decision* presumes injury to the Chase Estate's water rights. *See* Eagle's *Exceptions*, p. 14). Accordingly, the application should simply be denied - rather than approved with some kind of proposed, vague, ambiguous mitigation plan which cannot even be evaluated in this proceeding.

CONCLUSION

This case is really rather simple. I.C. § 42-211 requires that the City establish that its application will not injure the water rights of others, and that the application is in the public interest. The evidence and testimony at hearing established that the Chase Estate's water rights would be injured by the City's proposed new well at well site #3. The City did not provide the necessary information for a finding that a well at well site #4 would not result in injury to others. The City does not really make an argument in its *Exceptions* that its application is in the public interest, but it implies that because it is a City, and because it needs the water, the application is necessarily in the public interest. As discussed in the Chase Estate's *Amended Exceptions*, the evidence establishes that the real reason behind the City's application is its desire to become less dependent on United Water Idaho - it does not truly "need" the water. Moreover, part of determining whether an application is in the public interest is determining whether the proposed water right will harm others. *Shokal v. Dunn*, 109 Idaho 330, 338 (1985). This application does harm the Chase Estate's water rights, and thus harms the Chase Dairy and its employees. Accordingly, the Director should deny the application outright based upon the necessary conclusions that the application injures senior water rights and is not in the public interest.

DATED This 1st day of June, 2004.



Charles L. Honsinger
RINGERT CLARK, CHARTERED

CERTIFICATE OF SERVICE

The undersigned certifies that on the 1st day of June, 2004, a true and correct copy of the within and foregoing document was sent to the following person(s) by the method indicated below:

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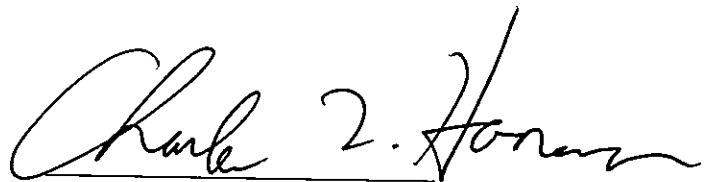
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RECEIVED

MAY 18 2004

Department of Water Resources

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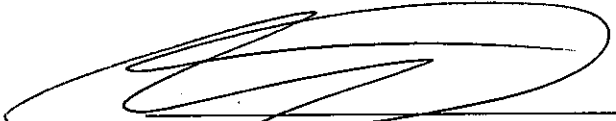
Attorney for the Estate of Eleanor I. Chase

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

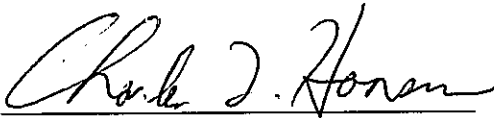
IN THE MATTER OF AMENDMENT OF)
APPLICATION FOR PERMIT NO. 63-12448) NOTICE OF SUBSTITUTION OF
IN THE NAME OF THE CITY OF EAGLE) COUNSEL
)
)
)
)
)
_____)

PLEASE TAKE NOTICE that Matt J. Howard, Attorney at Law, has been substituted by Charles L. Honsinger, of the firm Ringert Clark, Chtd, P. O. Box 2773, Boise, Idaho 83701, to serve as the legal counsel for the Estate of Eleanor I. Chase, protestant in the above-entitled action.

DATED this 17 day of May, 2004.


MATT J. HOWARD

DATED this 17th day of May, 2004.


CHARLES L. HONSINGER

MAY 18 2004

NOTICE OF SUBSTITUTION OF COUNSEL - 1

CERTIFICATE OF SERVICE

The undersigned certifies that on the 17th day of May, 2004, a true and correct copy of the within and foregoing document was sent to the following person(s) by the method indicated below:

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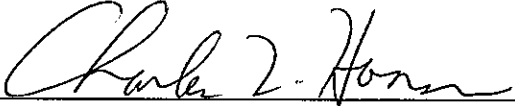
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Attorney for the Estate of Eleanor I. Chase

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF AMENDMENT OF)
APPLICATION FOR PERMIT NO. 63-12448) CHASE ESTATE'S FIRST AMENDED
IN THE NAME OF THE CITY OF EAGLE) EXCEPTIONS TO THE HEARING
OFFICER'S RECOMMENDED DECISION
AND ORDER

DESCRIPTIVE SUMMARY

On March 8, 2004, the hearing officer issued a *Recommended Decision and Order* in this case. On March 22, 2004, the Chases¹ timely filed the *Chase Estate's Exceptions to the Hearing Officer's Recommended Decision and Order*. Following reconsideration requested by the Applicant, the hearing officer revised his earlier decision and issued a *Recommended Decision and Order Following Reconsideration (May 3, 2004)*. The Chases hereby file exceptions to the hearing officer's revised recommended order pursuant to IDAPA 37.01.01.720. To avoid confusion, the Chases intend for this brief and list of exceptions to replace and supercede their first exceptions brief filed on March 22, 2004.

¹ The "Estate," "Chases," and/or "Chase" as used herein refer to the Estate of Eleanor I. Chase.

INTRODUCTION

This appeal takes exception to the inadequate and improper conditions recommended by the hearing officer as mitigation for the adverse impacts to the Chase water rights. The hearing officer's recommended conditions when removed from abstract theory and put into practice provide no meaningful or real protection to the Chases' rights to water for dairy, irrigation, and domestic purposes. The recommended conditions also threaten to leave the Chase dairy without a continuous supply of water that is critical to the daily operation of the dairy and health of the dairy herd. This appeal also takes exception to other significant errors identified below in the List of Exceptions and Issues.

This case stems from an Application for Amendment of Permit No. 63-12448 filed by the City of Eagle ("City") seeking to add two new points of diversion. One of the points of diversion, referred to as the "Brookwood well," is proposed to be located directly across the street from the Chase dairy within 509 feet of the Chase dairy well. The proposed Brookwood well is designed to be a high-capacity municipal well capable of diverting the maximum authorized diversion rate of 3.25 cfs (about 1,460 gpm) or sustaining 1,000 gpm withdrawals.

The Chases operate three wells in close proximity to the proposed Brookwood well: the dairy well², the small irrigation well, and the large irrigation well. There is no serious dispute that the Chases will be unable to divert water from either the dairy well or the small irrigation well after the Brookwood well is developed and producing water at 1,460 gpm, 1,000 gpm or even less. The viability of the large irrigation well is also threatened by development of the Brookwood well.

² The recommended order refers to the dairy well as the "dairy-domestic well." The dairy well actually diverts water for commercial, stock water and domestic purposes. The evidence and testimony in the record refers to the

Rather than deny the application based upon a finding of adverse impacts under Idaho Code § 42-211, the hearing officer recommends development of the Brookwood well and suggests that the “adverse impacts” can be mitigated or negated by a series of unorthodox conditions, one of which expressly requires litigation before the district court. As discussed below, these conditions provide no real protection to Chases’ senior water rights and only invite more litigation between the parties to remedy the adverse impacts to the Chase water rights that will be caused by development of the proposed Brookwood well.

LIST OF EXCEPTIONS AND ISSUES

1. The hearing officer failed to identify all of the Chase water rights that are protected to historical ground water pumping levels pursuant to *Parker v. Wallentine*.
2. The hearing officer’s independent calculations of projected drawdowns in the Chase dairy well, small irrigation well, and large irrigation well are not consistent with the evidence and expert opinions in this case.
3. The hearing officer’s finding that the dairy well can produce only 0.067 cfs is not supported by the evidence and beyond the jurisdiction of the hearing officer.
4. The hearing officer’s implicit conclusion that because right no. 63-5229 is a “supplemental” water right it is not entitled to the same degree of protection is contrary to Idaho law.
5. The hearing officer’s determination that right no. 63-8663, which is diverted from the large irrigation well, will not be adversely impacted is inconsistent with uncontroverted expert testimony and not supported by the evidence.
6. The hearing officer erred in determining that the application meets the local public interest criteria.
7. The conditions proposed by the hearing officer violate Idaho Code § 42-211 and Idaho law.

On December 15, 2003, the Chase Estate filed with IDWR, in the above captioned case, the *Chase Estate’s Post-Hearing Brief* (hereinafter “Post-Hearing Brief.”). The Post-Hearing

dairy well as the “dairy well.” Therefore, to avoid any confusion, it will continue to be referred to herein as the

Brief provides a detailed summary of the relevant evidence and testimony as well as application of that evidence to Idaho law. The entire contents of the Post-Hearing Brief are expressly incorporated herein by reference. For sake of brevity and avoiding unnecessary duplication of legal and evidentiary analyses, citations will be made to relevant portions of the Post-Hearing Brief as appropriate.

DISCUSSION

I. ADVERSE IMPACTS TO THE CHASE WATER RIGHTS HAVE BEEN ESTABLISHED.

A. **LEGAL STANDARD.** Pursuant to Idaho Code § 42-211, the application cannot be approved “if the rights of others will be . . . adversely affected thereby.” (emphasis added). In this case, there is no serious dispute that the Chase water rights will be adversely affected. The hearing officer’s attempt to create conditions to negate the adverse impacts to the Chase water rights highlights the real impact to the Chase water rights.

The hearing officer initially errs in concluding that only one water right, no. 63-15820, will be “legally impact[ed]” pursuant to *Parker v. Wallentine*, 103 Idaho 506, 650 P.2d 648 (1982). *Rec. Order at p. 22, ¶ 2.* As discussed in the Post-Hearing Brief, the following Chase water rights are protected to historical ground water pumping levels under *Parker*:

- The Dairy Well: 63-5226 (commercial, domestic, and stock water) and 63-15820 (domestic);
- The Small Irrigation Well: 63-5229 (irrigation, stock water, and domestic); and
- The Large Irrigation Well: 63-8663 (stock water portion only).

See Post-Hearing Brief at pp. 4-9. Consequently, the hearing officer’s failure to identify the “legal impacts” to 63-5226, 63-5229, and the stock water portion of 63-8663 is in error and inconsistent with Idaho law.

“dairy well.”

Particularly troubling with the hearing officer's decision is the complete lack of any analysis or reasoning showing how he arrived at the conclusion that only 63-15820 is entitled to protection. What about the other senior water rights that are critical to the operation of the Chase dairy and farming operation? Based on the evidence and findings (as discussed below), there is no question that the drawdowns caused by the Brookwood well will impact the Chases' senior water rights diverted from the dairy well and the small irrigation well and likely impact the large irrigation well.

B. ESTIMATES OF ANTICIPATED DRAWDOWNS. The hearing officer's calculations of drawdown in the dairy well, small irrigation well, and large irrigation well are not consistent with the evidence and expert opinions offered at the hearing. At trial, the parties introduced a report entitled "Summary of Groundwater Conditions in the Vicinity of Proposed Brookwood Subdivision Well Site" prepared by Bill Stowd, P.G., an expert formerly retained by the City (hereinafter "the Stowd report"). According to the Stowd report, wells located within the inner circle of the "Bullseye"³ will most likely experience drawdowns in excess of 8 or 10 feet. Experts for both parties agreed that the Stowd report provides "the best estimate available" for estimating drawdowns to the Chase wells caused by the proposed Brookwood well. *Post-Hearing Br. at pp. 10-11.*

In his recommended order, the hearing officer presents new drawdown calculations for the dairy well and small irrigation well but fails to explain the methodology or basis for those calculations. *See Rec. Order at p. 18, ¶ 41, and p. 20, ¶ 45.* Without knowing how the hearing officer arrived at his new drawdown calculations, it is impossible to determine the reliability of the hearing officer's drawdown estimates. IDAPA 37.01.01.712 requires that the findings of fact

contain “a concise and explicit statement of the underlying facts of record supporting the finding.” Because the hearing officer does not disclose the underlying basis and methodology for his new drawdown estimates, IDAPA 37.01.01.712 has not been satisfied. However, because the order has been submitted to the Director as a “Recommended Order,” it is unnecessary to remand this matter to the hearing officer for the determination of drawdown estimates. The Director is free to review the Strowd report and other data in the record and arrive at his own estimates of drawdown based upon a proper methodology.

The hearing officer also erroneously concludes that the Strowd report sets out a “worst case” scenario because it is based upon 1,000 gpm withdrawals, whereas the City testified that it did not “expect” to exceed 280 gpm sustained withdrawals. *See Rec. Order at p. 17, ¶ 38.* The hearing officer’s reliance on 280-gpm withdrawals is inconsistent with the diversion rate *actually requested* in the application, the fact that the Brookwood well is being *designed* to accommodate sustained 1,000 gpm withdrawals, and the *prior analysis* performed by IDWR when it considered the anticipated impacts from the City’s Lexington No. 1 well. *See Post-Hearing Br. at pp. 10-13.*

The hearing officer’s finding that the Strowd report’s 1,000 gpm withdrawals is a worst case scenario ignores the uncontroverted testimony in this case. Specifically, on cross examination, the City’s engineer, Vern Brewer, testified that withdrawals from the Brookwood well could exceed 1,000 gpm if the City were to provide water throughout its entire service area. *See Post-Hearing Br. at p. 12.* Thus, a true “worst case” scenario would be the pumping of water from the Brookwood well at the full permitted rate of 3.25 cfs for an extended period of

³ The Bullseye is actually entitled “Estimated 6-Month Draw Down Based on 1000 GPM Sustained Pumping” *Exhibit 102*, but was referred to by both parties as the Bullseye.

time. This would create even more severe drawdowns in the Chase wells than those predicted in the Strowd report.

The hearing officer also errs in his estimates of drawdown in the large irrigation well based upon adopting the “actual observations” in the Scanlan report. *See Rec. Order at p. 20-21, ¶ 47.* The Scanlan report gives several reasons why the “observed” drawdown was less than the calculated drawdown in the large irrigation well. *See Exhibit 105, pp. 5-6, 9-10.* The Scanlan report indicates that the “actual value” would more likely be in the range of “3 to 6 feet.” *Id. at pp. 9.*⁴

C. THE DAIRY WELL.

The hearing officer erroneously concludes that the dairy well is capable of producing only 0.067 cfs. *See Rec. Order at p. 18, ¶ 40.* That conclusion is based upon a one-time static water level measurement taken during the “lowest” part of the annual water cycle for the area. *See Post-Hearing Br. at pp. 14-17.* The hearing officer’s conclusion also appears to be based on an assumption that the discharge pressure for the pumps in the dairy well is 30 psi. There is no evidence in the record to support that assumption; it is merely a guess contained in the City’s Exhibit 23. Consequently, if the discharge pressure is less than 30 psi, which it very well could be, the pumps would be capable of producing even more water. In short, the hearing officer’s conclusion that the dairy well can produce only 0.067 cfs is not supported by the evidence.

Moreover, the hearing officer is without jurisdiction to determine the quantity element of the Chase water rights from the dairy well because those water rights are not properly before the department on any pending applications filed by the Chases and the claims for those water rights

⁴ For purposes of clarification, the Scanlan report refers to the large irrigation well as the “Chase irrigation well.” Also, the “Chase Domestic well” identified in the Scanlan report is a small domestic well owned by the Chases that is located close to the Floating Feather well; it should not to be confused with the Chase dairy well, which is located further east near the intersection of Eagle and Floating Feather roads.

are pending in the Snake River Basin Adjudication, which has exclusive jurisdiction to determine the quantity elements of those water rights. *See e.g., Bischoff v. Salem Union Canal Co.*, 130 Idaho 455, 457, 943 P.2d 45, 47 (1997) (“Once SRBA was commenced, jurisdiction to resolve all of the water rights claims within the scope of the general adjudication is in the SRBA district court only. Jurisdiction remains with the SRBA district court until it issues a final order concerning the particular water right at issue.”); *State of Idaho v. Idaho Conservation League (Basin-Wide Issue 5A)*, 131 Idaho 329, 335, 955 P.2d 1108, 1114, n.1 (1998) (“The law in Idaho is that once SRBA was commenced, jurisdiction to resolve all of the water rights claims within the scope of the general adjudication is in the SRBA district court only.”).

In terms of impact, the hearing officer’s findings demonstrate that the Brookwood well will adversely impact the dairy well, rendering it unusable. *See and compare Rec. Order at p. 40, ¶¶ 40, 41, 42, and 43.* Based upon the evidence and findings by the hearing officer, the dairy well can only withstand a maximum of 4 to 5 feet of drawdown before the pumps quit working. *Post-Hearing Br. at pp. 17-22; Rec. Order at p. 18, ¶ 40.* Whether drawdowns are estimated to be in excess of 8 to 10 feet based on the Strowd Report, *Post-Hearing Br. at p. 10*, or between 7 to 9 feet as calculated by the hearing officer, *Rec. Order at p. 18, ¶ 40*, the same result will occur: The dairy well will cease functioning, and the Chase dairy will be without water. That outcome is not in question.

D. THE SMALL IRRIGATION WELL.

It is unclear what the hearing officer means by the following statement: “the supplemental nature of this right [63-5229] makes it unlikely that its enforcement would preclude the development of [the Brookwood well].” *Rec. Order at p. 23, ¶ 4.* This statement seems to suggest that because this water right is supplemental, it is entitled to less protection than other water rights. However, under Idaho Code § 42-211, development of the Brookwood well

cannot occur “if the rights of others will . . . be adversely affected thereby.” This provision of law does not exclude supplemental water rights from protection.

The small irrigation well is expected to suffer the same fate as the dairy well. Based upon the evidence, the small irrigation well will be unable to produce water if drawdowns are 5 feet or even less. *Post-Hearing Br. at pp. 25-30*. Whether drawdowns are estimated to be in excess of 8 to 10 feet based on the Strowd Report, *Post-Hearing Br. at p. 23*, or between 7 to 9 feet as calculated by the hearing officer, *Rec. Order at p. 20, ¶ 45*, the same result occurs: The Chases will be unable to divert water from the small irrigation well. Again, this outcome is not questioned.

E. THE LARGE IRRIGATION WELL.

The hearing officer seems to conclude that water right no. 63-8663 will not be adversely impacted because the large irrigation well is located “sufficiently distant” from the proposed Brookwood well. *See Rec. Order at p. 23, ¶ 5*. That conclusion is totally unsupported by the evidence and testimony offered by both experts at the hearing. Based on the Strowd report, the large irrigation well could expect drawdowns in the range of about 4.5 feet. *Post-Hearing Br. at p. 30*. Similarly, the hearing officer estimated drawdowns would likely range from 3.6 to 4.5 feet if the Brookwood well were producing 902 gpm over 6 months. *Rec. Order at p. 20, ¶ 47*.

Now compare those drawdown estimates to the uncontroverted testimony of both experts at the hearing. Both parties’ experts agreed that if the pumping level in the large irrigation well dropped below 80 feet, the pump would cease producing water or quit functioning properly. *Post-Hearing Br. at p. 31-32*. The question, therefore, is whether the estimated 4.5 feet of drawdown will cause the pumping level in the large irrigation well to drop below the threshold level of 80 feet, thus adversely impacting 63-8663. The City could not answer that question

because it had not collected the necessary pumping level data for the large irrigation well prior to the hearing in this case. *See id.* In short, the City failed to properly prepare its case to carry its burden of proof to show no adverse impacts to the large irrigation well. Therefore, at the hearing, the City could not offer an opinion with any degree of reasonable certainty as to whether or not the estimated 4.5 feet of drawdown would adversely impact 63-8663. *Post-Hearing Br. at pp 30-32.*

Also, there is no question that if the pumping level fell below the 80-foot threshold, the impact would impose a significant cost on the Chases. Evidence in the record indicates that in such event, the Chases could incur costs for pulling the pump, adding more column, tube and shaft, and possibly replacing the bowls. *Post-Hearing Br. at p. 32.* In light of the evidence presented in this case, the hearing officer's conclusion that 63-8663 will not be adversely impacted by the proposed Brookwood well is totally inconsistent with undisputed testimony and evidence in the record and must be reversed.

II. THE APPLICATION IS NOT IN THE LOCAL PUBLIC INTEREST.

The hearing officer does not provide a reasoned analysis explaining how he determined that the Application is in the local public interest. The hearing officer's determination in this regard is especially problematic given that he has determined that *adverse impacts* from the proposed Brookwood well will likely occur. The hearing officer's public-interest finding juxtaposed with his adverse-impacts finding are inconsistent with *Shokal v. Dunn, 109 Idaho 330, 338, 707 P.2d 441, 449 (1985)* wherein one of the elements to be considered in determining whether an application is in the local public interest is the "harm to other persons resulting from the proposed appropriation." If there are going to be adverse impacts, how can an application be in the public interest absent a finding that there are factors that outweigh the harm to other

persons? *See e.g., Shokal, 109 Idaho at 338, 707 at 449* (“The burden of proof is upon the applicant to show that the project is either in the local public interest or that there are factors that outweigh the local public interest in favor of the project). The hearing officer suggests that his proposed conditions will negate the adverse impacts. However, as discussed below, those conditions provide no real protection and simply invite more litigation.

The hearing officer also indicates that IDWR will not “second guess” the Applicant’s decision in this case. *Rec. Order at p. 27, ¶ 17*. No one is asking IDWR to second guess an Applicant’s decision to file an application. Rather, the question is whether *the evidence* in the record can support a finding that the proposed Brookwood well is in the local public interest, especially since harm to other water users is going to occur. In this case, the evidence shows that the City has no present or immediate need for the Brookwood well. *See e.g., Post-Hearing Br. at pp. 32-39*. It can continue indefinitely to supply its municipal users through the use of the city-owned Lexington #1 well and the Floating Feather well owned by United Water of Idaho (UWI), through existing long-term contractual arrangements with UWI. *See e.g., Post-Hearing Br. at pp. 32-39*.

As the evidence shows, the proposed Brookwood well is not about public necessity. It is about the current city council’s desire to become less reliant on its contractual arrangements with UWI. The current council’s decision is a reversal of actions by the prior city councils, which actively encouraged UWI’s involvement in providing water service to Eagle area residents. *Post-Hearing Br. at pp. 32-39*. While the short term cyclical on-again-off-again relationship between the Applicant and UWI may be sufficient reason for the Applicant to currently seek ownership of a second city-owned municipal well, it should not be the basis for a public interest finding for the Brookwood well that will have long-term, permanent and detrimental impacts to

neighboring wells. Moreover, as the evidence clearly shows, the proposed Brookwood well (in terms of municipal water supply) provides no benefit that is not already being provided to City residents by the Floating Feather well. *See e.g., Post-Hearing Br. at pp. 32-39.* In short, as the evidence in the record demonstrates, there is no basis to support a public interest finding in this case. *Id.*

III. “CONDITIONS” PROPOSED BY THE HEARING OFFICER WILL NOT NEGATE THE ADVERSE IMPACTS TO THE CHASE WATER RIGHTS.

The hearing officer does not deny there will be adverse impacts to the Chase water rights. Rather than deny the application based upon a finding of adverse impacts under Idaho Code § 42-211, the hearing officer recommends development of the Brookwood well. He then suggests that the adverse impacts can be mitigated or negated by a series of unorthodox conditions, which include performing a pump test, holding more settlement discussions, filing a lawsuit in district court, and shutting down the City’s well while future well interference claims are adjudicated. As discussed below, the conditions proposed by the hearing officer do not “mitigate” the adverse impacts to the Chase water rights. They only invite more years of litigation.

A. The Hearing Officer’s Proposed “Test Well” Procedure is Inconsistent with IDWR Practice and Imposes an Unfair Risk of Loss on the Chase Dairy.

The hearing officer indicates that IDWR should first approve the application and then allow the City to construct the Brookwood well so the City can “study the well’s impacts.” *Rec. Order at p. 23, ¶ 2 and p. 29, ¶ 2.* This proposal violates Idaho Code § 42-211 because it is improper to grant the application, in the first place, if there is a finding of adverse impacts, which necessarily exists in this case based upon the evidence and findings as discussed above.

This proposal is also inconsistent with current IDWR practice. Pursuant to its authority under Chapter 17, Title 42, Idaho Code, IDWR has, in limited circumstances, allowed applicants

prior to obtaining approval of the application to drill a well and perform a pump test so the applicant could gather more data. This is allowed only on a case-by-case basis where IDWR believes there is insufficient evidence to estimate impacts of the project proposed by the application. In this case, there has been no showing that there is insufficient evidence to estimate impacts by the proposed Brookwood well. To the contrary, there are numerous reports and studies that have been performed in the area near the proposed Brookwood well. *Post-Hearing Br. at p. 13*. Even the City's expert acknowledged that there exists a lot of hydrological data for the Eagle area as compared to other parts of the state. *Id.*

Why should the City be treated any different than other applicants? Moreover, if the City would not have been able to drill a test well prior to its application being approved, what is the justification for allowing the City to drill a test well after the application is approved? The hearing officer's proposal gives the City the best of both worlds: It gets to proceed with a test well and have its application approved at the same time. If the hearing officer's proposal is followed in this case, does this open the door for other applicants to be afforded the same opportunity in the future? If not, is there a rational basis for such deferential treatment for the City in this case?

In addition to the legal questions, the test well imposes real hardship on the Chases. As found by the hearing officer, the Chase dairy cannot go without water for more than four to six hours without suffering hardship:

The water used under [63-5226] is used for critical activities at the Chase dairy. Loss of water under this water right for as short a period as four to six hours in the summer could injure the cows, and after one to three days cows could die, irreparably damaging the Chase Dairy's closed herd.

Rec. Order at p. 19, ¶ 42. If during this proposed pump test, the dairy well ceases to produce water (which according to the hearing officer's findings is likely to occur), what is going to happen to the Chase dairy herd?

According to Bill Chase, the dairy manager, there is no air conditioning inside the dairy to keep the cows cool. Thus, water is especially critical during the summer months. *See Post-Hearing Br. at p. 22-23.* According to Mr. Chase, if the dairy cows are without water for over six hours, productivity will decrease, the cows may become stressed and sick, and if it is a hot day, they can die. *Id.* Even the City's expert agreed that the dairy could not go much more than a few hours without suffering a real hardship. *Id.*

The Chases' expert, Dave Shaw, estimated that it could take 12 hours or more for water levels in the dairy well to fully recover after the Brookwood well is shut down. *Id.* This estimate was based upon similar recovery times observed during the 1995 pump test performed on the Floating Feather well. *Id.* This estimated recovery time coupled with an estimated 8 to 10 (or more) feet of drawdown in the dairy well indicates that the dairy will definitely be without water for a period of time sufficient to cause substantial damages to the Chase dairy and dairy herd.

Obviously the question arises as to who is going to be responsible for the damages to the dairy and dairy herd as a result of the pump test? The more difficult question is the likely dispute over the dollar amount of damages. Will the City require the Chases to hire a dairy-cow expert to prove a causal connection between the damages (i.e. reduced milk production and/or onset of disease as a result of the cows being stressed) and the deprivation of water? Even after a causal connection between lack-of-water and damages is established, will the City argue that the Chases failed to mitigate against the damages to their dairy? Also, will the City try to avoid

liability for damages by filing a third-party complaint against IDWR for authorizing the pump test and development of the Brookwood well knowing that damages to the Chase dairy were likely to occur?

These questions highlight the problems inherent with allowing development of the Brookwood well without mitigation in place prior to pumping of the well. A reasonable mitigation option would be for the City to drill a new well for the Chase dairy that would not be materially impacted by the proposed Brookwood well. *See Post-Hearing Br. at p. 21.* This would properly shift the risk of loss off of the Chase dairy. Without this form of mitigation in place prior to pumping the Brookwood well, the Chases will be forced to bear the risk of loss. There is little dispute that, if the Brookwood well is developed and pumped, the Chase dairy well will cease to produce water and the Chase dairy will incur hardship and damages. The only question is how much hardship and damages. It is improper and unfair to force the Chase dairy to bear the risk of loss, especially where the evidence indicates that such loss is likely to occur.

B. Condition No. 2: Condition Requiring Litigation Before the District Court is Not Mitigation and Improperly Shifts Responsibility Onto Courts to Determine Mitigation.

The hearing officer's underlying premise appears to be that mitigation of adverse impacts should be determined *after* the application is approved. This premise is inconsistent with current IDWR practice that requires, in cases such as this where injury is likely to occur, that specific mitigation proposal(s) be submitted with the application and considered as part of the application process and not afterwards. While there is no rule requiring an applicant submit a mitigation plan with an application, the application cannot be approved under Idaho Code § 42-211 if it will cause adverse impacts to senior water rights. Thus, if an applicant fails or refuses to accompany

its application with a mitigation plan, its application must be denied if the applicant cannot prove the absence of adverse impacts under Idaho Code § 42-211, which is the case here.

An example of the administrative practice of requiring mitigation plans with applications is found in IDWR Transfer Processing Memorandum No. 24 entitled *Transfer Processing Policies and Procedures* (hereinafter “the Transfer Guidelines”). The Transfer Guidelines specifically address the issue of mitigation:

(4) Mitigation. Whether mitigation would be needed to prevent injury to an existing water right that would be injured otherwise.

Unless agreed to in writing by the holder of an existing right, the only mitigation that can be considered acceptable by the department is the provision of replacement water in the full amount of the injury, at the same time injury would otherwise occur, and of acceptable water quality at the point of diversion for the existing right.

Transfer Guidelines at p. 19. The Transfer Guidelines also specifically contemplate that mitigation provisions be built into applications that would otherwise cause injury to existing water rights absent mitigation:

If mitigation for the proposed transfer is proposed by the applicant, which consists of reduced ground water withdrawals, then any proposed schedule for adjusting reduced withdrawals must also be set forth in the application for transfer.

Id. at 10 (emphasis added). While the Transfer Guidelines expressly apply to the Eastern Snake River Plain, the underlying policy and rationale espoused by those guidelines is equally applicable to other areas of the state. The Transfer Guidelines attempt to further refine an administrative process by which applications are processed in a manner that does not injure existing water rights. Elements of that process dealing with mitigation plans accompanying applications applies equally well to other areas of the state where senior water rights must be protected from injury by new applications.

The administrative practice outlined above helps ensure that applications, which pose injury to other water rights, are not approved without mitigation in place. This practice greatly reduces the likelihood of future litigation over adverse impacts caused by newly approved applications. Moreover, it is not IDWR's responsibility to prepare a mitigation plan for an applicant. The applicant, in order to satisfy its burden of proof under Idaho Code § 42-211, has the duty to submit a mitigation plan for review by the protestants and IDWR. The City has filed no mitigation plan in this case.

The hearings officer's proposal is also inconsistent with Idaho Code § 42-211, which requires that the application be denied if it will adversely affect the rights of others. The hearing officer cannot make a finding of adverse impacts and then claim that those impacts can be mitigated by future litigation. Under that rationale, every adverse impact could be mitigated by a condition that says, "go to district court to get a mitigation plan." That is not mitigation, it is litigation. The former is prospective; the latter is inherently retrospective.

In effect, the hearing officer puts the cart before the horse. He creates a scenario where the application (which creates the adverse impacts) is approved first and then leaves mitigation (which is supposed to negate the adverse impacts) to be determined by the district court at a later date. How does this scenario allow IDWR to make a finding of no adverse impacts under Idaho Code § 42-211, which is a necessary prerequisite prior to approval of the City's application? All IDWR has accomplished under the hearing officer's scenario is that it has made a finding of adverse impacts and then shipped the case off to district court to determine what constitutes appropriate mitigation for those adverse impacts.

The hearing officer suggests that IDWR, as an executive agency, does not have the equitable powers of a court to force mitigation upon the Chases. *Rec. Order at p. 22, ¶ 2.* But

the hearing officer gets way ahead of himself. His statement begs the question: Where is the mitigation plan? There currently exists no specific mitigation plan to offer, much less force upon, the Chases. That is the problem. Rather than steadfastly deny that its proposed Brookwood well was going to adversely impact the Chase water rights, the City could have opted to submit with its application a detailed mitigation plan specifically stating how it was going to mitigate for the anticipated adverse impacts to the Chase water rights. The City never did that. It opted for an all-or-nothing approach—i.e., that IDWR would find no adverse impacts and approve the application, or IDWR would find adverse impacts and not approve the application.

Also, the City cannot claim that it failed to file a mitigation plan with its application because it was unaware of the adverse impacts associated with its application. To be sure, the City's *own expert* Bill Strowd issued a report on August 17, 2001, indicating that drawdowns in the area of the Chase dairy well could exceed 8 to 10 feet. *Post-Hearing Br. at p. 2*. Mike Chase also testified that Strowd told him that the Chase dairy and small irrigation wells would experience "problems" from the proposed Brookwood well. *Post-Hearing Br. at p. 2*. Thus, the City was fully aware of the adverse impacts posed by the Brookwood well.

Under the scenario created by Condition No. 2, the City is supposed to develop a mitigation proposal after the pump test (and after the application is approved) and share it with the Chases. If the Chases do not accept the City's proposal, then the City is instructed by IDWR to file a lawsuit against the Chases in district court to determine what constitutes appropriate mitigation to negate the adverse impacts to the Chase water rights. *Rec. Order at p. 29, ¶ 2c*. This scenario creates serious problems. First, it puts the district court in the position of determining what constitutes sufficient mitigation to offset the adverse hydrological impacts to

the Chase water rights, where IDWR is the agency vested with the expertise to make such hydrological determinations. Second, it allows IDWR to avoid its statutory duty under Idaho Code § 42-211 to ensure that an application will not adversely affect other water rights. By leaving it up to the district court to determine mitigation, IDWR has effectively avoided its duty to determine that there will be no adverse impacts to the Chase water rights.

C. Condition No. 3: Condition Requiring Parties to Litigate Future Well Interference Claims Does Not Constitute Mitigation of the Adverse Impacts to the Chase Water Rights.

Clearly, the evidence and the hearing officer's findings demonstrate that the Chase water rights will be adversely affected. Also, as discussed above, the evidence shows that there exists a real likelihood that the large irrigation well may be adversely impacted as well. What is not clear is the legal authority the hearing officer is relying on to suggest that these "adverse impacts" should not trigger denial of the application under Idaho Code § 42-211. It appears that the hearing officer simply believes that Condition No. 3 of the recommended order provides sufficient mitigation to negate the anticipated adverse impacts to the Chase water rights.

Condition No. 3 does not provide for mitigation of the foreseeable impacts to the Chase water rights. It simply invites more litigation over well interference claims that the Chases will be forced to file to protect their water rights from adverse impacts that are virtually certain to occur. Why should the Chases, senior water users, who have already endured nearly three years of litigation and incurred substantial litigation expenses, be forced to endure more litigation simply to have IDWR arrive at the same conclusion a second time, i.e., that the Brookwood well adversely impacts the Chase water rights? In other words, does more litigation constitute "mitigation" as suggested by the hearing officer?

More litigation also imposes an unfair hardship on the Chases. As indicated in the recommended order, the Chases would be at a disadvantage to protect their senior water rights:

The critical needs of the Chase dairy and individual domestic water users would be hard pressed to defend their senior water rights in the face of the pressing needs of a larger group of municipal water users.

Rec. Order at p. 27, ¶ 16.

Aside from the additional litigation and hardship created by Condition No. 3, the condition is also vague and unrealistic. The condition suggests that IDWR will “immediately” shut down the City’s Brookwood well in the event any senior water user within 2,000 feet is “not able to pump the full quantity of water under the senior right because of declines in ground water levels.” *See Rec. Order at p. 29-30, ¶ 3.* This condition raises numerous questions. What proof will a senior water user have to present to IDWR to satisfy the threshold requirement of “not able to pump the full quantity . . . because of declines in ground water levels? Will the City, prior to being “immediately” shut off, be able to contest whether or not the threshold showing has been adequately proved? If the City is allowed to contest that issue, will the senior user have to endure months of discovery and litigation before IDWR renders a decision as to whether or not the senior user was unable to pump the full quantity of his water right because of ground water declines? During those months of litigation is the senior user expected to go without water or a substantially diminished flow of water? Alternatively, does Condition No. 3 mean the City cannot initially contest whether or not a senior user has not been able to pump water because of ground water declines? If so, is it wise to have a municipal water supply system subject to being immediately shut off on such short notice? Also, does IDWR want to place itself in the likely position of having to curtail water use to a large number of Eagle area residents?

The above questions illustrate the real problems created by Condition No. 3 as proposed by the hearing officer. In the abstract, the proposed condition may look harmless, but in practice, it is fraught with problems. It simply invites more litigation and puts IDWR in a precarious position of having to protect senior water rights by immediately shutting down a municipal well for an extended time or even indefinitely. *See e.g., Rec. Order at p. 27, ¶ 16* (“Eagle bears the small risk, but risk nonetheless, that it may never be able to use [the Brookwood well] because of impacts on senior water rights”).

Moreover, this is not a case of merely hypothetical well interference claims. As the evidence demonstrates and as the hearing officer found, the Chase water rights will likely be impacted. Given that reality—the reality that the Chases need water and their water rights will be impacted by the Brookwood well—future litigation is much more than a mere hypothetical. It is a necessity that will be created by the development of the proposed Brookwood well. Even the hearing officer recognizes that the Chase dairy has “an immediate and critical need for water.” *Rec. Order at p. 21, ¶ 51* (emphasis added).

D. Conditions Proposed by the Hearing Officer Unnecessarily Set the Stage for Multiple Lawsuits and Create Additional Hardship on the Chases.

The hearing officer’s proposed conditions create an environment of uncertainty, conflict, and lawsuits. Below are two sets of diagrams. The first set of diagrams illustrate a “typical” litigation process for resolving contested water right applications. The second set of diagrams illustrate the litigation processes that will likely ensue under the scenario created by the hearing officer’s recommended order.

1. Diagram of “Typical” Litigation Process for Water Right Applications.

As the following flow chart illustrates, a “typical” litigation process involving a contested water right application consists of litigation before IDWR and judicial review before a court, if a

party feels aggrieved by the decision issued by IDWR. It is a straightforward two-step litigation process.

**Application with Mitigation
Plan filed with IDWR** → **Decision issued by IDWR** → **Judicial Review**

The above flow chart assumes that the applicant would file a mitigation plan to accompany the application, in a case such as this, where adverse impacts are expected to result. If the mitigation plan properly *negated* the adverse impacts of the water use proposed by the application, IDWR would then be in a position to approve the application. Judicial review would then be available to any party feeling aggrieved by the decision.

The same scenario applies in the event an application, such as the one filed in this case, does *not* include a mitigation plan to negate adverse impacts. The application would be denied under Idaho Code § 42-211 because of the adverse impacts. The applicant is free to seek judicial review of the decision, or re-file another application with a mitigation plan. The scenario would look like this:

**Application (without mitigation
plan) filed with IDWR** → **Decision issued by IDWR
denying application** → **Judicial Review**

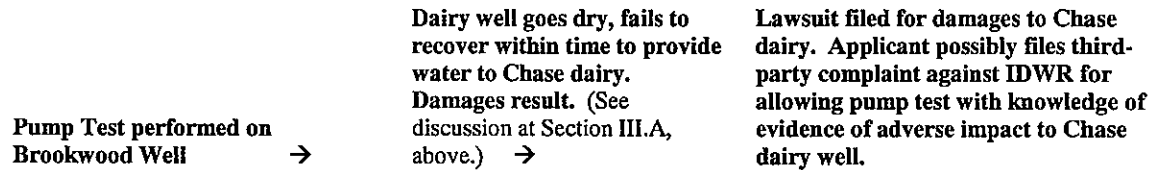
2. *Diagram of Litigation Processes Created by the Recommended Order.*

As illustrated by the following flow charts, the hearing officer's recommended decision creates many problems and opens many doors for future litigation in various forums.

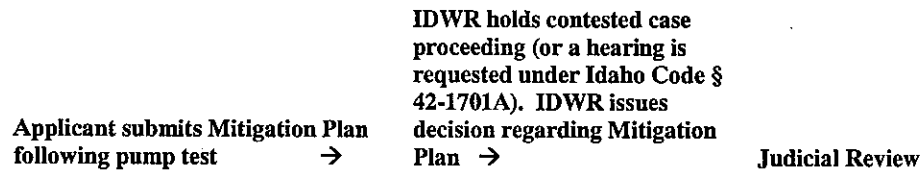
a) *First Lawsuit: Judicial Review of Agency Decision*

**Application (without mitigation
plan) filed with IDWR** → **IDWR approves Application,
even though finding of adverse
impacts** → **Judicial Review**

b) *Second Lawsuit: Action Filed in District Court for Damages to Dairy Resulting from Loss of Water during "Pump Test."*



c) *Third Lawsuit: Contested Case Proceeding Concerning "Mitigation Plan" to be Filed by the Applicant after the Pump Test.*



d) *Fourth Lawsuit: Action filed by Applicant to "Impose" Mitigation on Chases.*



e) *Fifth Lawsuit: Contested Case Proceedings Involving "Immediate Curtailment" of the Brookwood Well under Condition No. 3.*



As the above diagrams illustrate, the hearing officer's recommended order is untenable.

While judicial review of an agency decision is a typical process for individuals who are aggrieved by an agency decision to seek relief from the district court, the numerous litigation avenues created by the recommended order are atypical and totally unnecessary. Indeed, any decision, such as the hearing officer's recommended order, that purports to create multiple levels of litigation ought to send up a red flag.

CONCLUSION

In the end, the hearing officer takes his analysis one step too far. Based on the hearing officer's findings, there will be adverse impacts to the Chase water rights. Pursuant to Idaho Code § 42-211, the hearing officer was required to deny the application. However, rather than deny the application, the hearing officer offers up a well-intended, but misguided, set of conditions that simply invite more litigation. The unorthodox nature of the hearing officer's conditions highlights the fact that the proposed Brookwood well is a poor location for a high-capacity municipal well because of its adverse impacts on other water rights. The solution is not more litigation before the district court and IDWR, as suggested by the hearing officer.

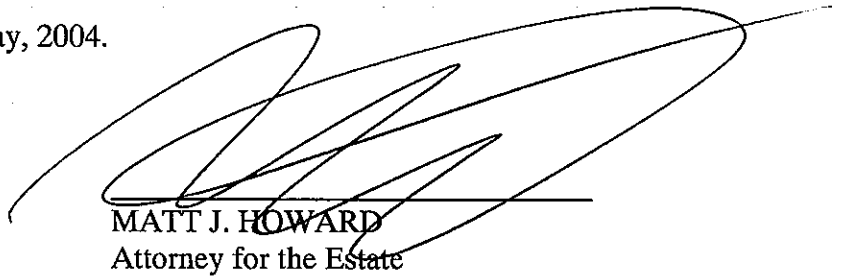
The Chases have already incurred substantial costs and attorney fees after enduring nearly three years of litigation to protect their water rights. In the face of overwhelming data and the report from its own expert, Bill Strowd, the City has steadfastly refused to acknowledge that its proposed Brookwood well will adversely impact the Chase wells and water rights. The City's unreasonable refusal to accept responsibility for reasonably foreseeable impacts on the Chase wells has imposed substantial litigation costs on the Chases. Now that the hearing officer has determined there will likely be adverse impacts to the Chase water rights, he lays out a road map for more litigation. More litigation is not a solution.

The proper solution is to follow the statute, Idaho Code § 42-211. Deny the application based upon a finding that the proposed Brookwood well will adversely impact the Chase senior water rights. The City is free to re-file its application accompanied by a detailed mitigation plan that specifies how it will mitigate for the adverse impacts to the Chase water rights. Once that occurs, the application and mitigation plan would be subject to review by the parties, and IDWR would be in a position to properly evaluate whether or not the mitigation plan would properly

negate the adverse impacts to the Chase water rights and allow the application to pass muster under Idaho Code § 42-211.

Ultimately, this case is a very simple one. The application was filed without a mitigation plan. The evidence and findings demonstrate that adverse impacts will result if the Brookwood well is developed. Consequently, the application must be denied under Idaho Code § 42-211. The hearing officer's attempt to try to "condition around" the adverse impacts simply highlights the simple fact that the proposed Brookwood well is a poor location for a high-capacity municipal well. The recommended order effectively creates a Pandora's Well—a well, which if approved and developed, will spawn more litigation, cause severe financial hardship on the Chases, and threaten the livelihood of the Chase family members whose sole income depends upon the continued viability of the dairy operation and associated water rights.

DATED this 17th day of May, 2004.



MATT J. HOWARD
Attorney for the Estate

CERTIFICATE OF SERVICE

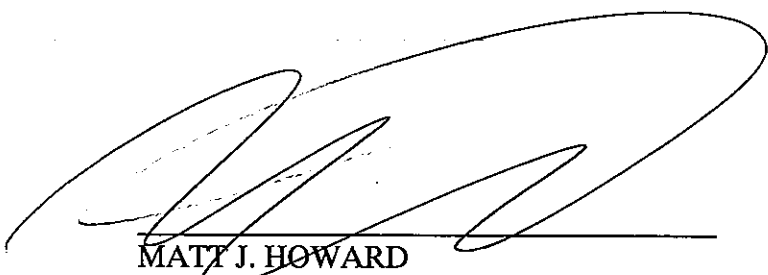
The undersigned certifies that on the 17th day of May, 2004, a true and correct copy of the within and foregoing document was sent to the following person(s) by the method indicated below:

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RECEIVED

MAY 17 2004

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Attorneys for the City of Eagle

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF

CITY OF EAGLE, PETITIONER

APPLICATION FOR PERMIT NO. 63-12448

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**EXCEPTIONS TO
RECOMMENDED DECISION
AND ORDER TO BE FILED
WITH DIRECTOR**

The City of Eagle, by and through its attorneys of record MOORE SMITH BUXTON & TURCKE, CHARTERED, hereby file exceptions to the Hearing Officer's Recommended Decision and Order dated March 8, 2004 as amended by the Hearing Officer's Recommended Decision and Order Following Reconsideration served on May 3, 2004, in accordance with Idaho Code 67-5243(3) and Department Rule 720.02(b).

INTRODUCTION

The City of Eagle is a municipal corporation formed and doing business under the laws of the State of Idaho. The City is entitled to supply water within the City's municipal service area and obligated to supply water to the citizens who depend on the City's municipal water system. The City's current municipal water system consists of only one (1) City-owned well, Eagle well #1 (aka Lexington Hills #1). The City's other City-owned well, Eagle well #2 (aka Lexington Hills #2), does not produce the quality and quantity of water suitable for the City's needs.

Because the City owns only one operating well, it must depend on contracts with United Water Idaho, Inc. to meet minimum regulatory requirements for community water systems and emergency demand. Consequently, the City filed an application to amend its existing water right permit 63-12448 to include two (2) points of diversion (Well #s 3 and 4). The needed diversions are located in Eagle, Idaho in the SW¼ SW¼ Sec. 4 T4N R1E (Eagle well #3 aka Brookwood well) and NE¼ SE¼ Sec. 4 T4N R1E (Eagle well #4). The proposed wells would be used to supply water to municipal users within the City's municipal service area, which is illustrated on Exhibit 3.

The Hearing Officer issued a Recommended Decision and Order in the matter of the City's application. The City filed a Petition for Reconsideration. The Hearing Officer granted reconsideration and issued a Recommended Decision and Order Following Reconsideration (the "Decision"). The Decision contains Findings of Fact, Conclusions of Law, and a Recommended Order. The Decision denies the City's request to reinstate the point of diversion known as Eagle well #4. The Decision correctly approves the development of the point of diversion for Eagle well #3 but imposes unreasonable and unsubstantiated restrictions on the City's development of the point of diversion. Some of the Findings are contrary to the evidence in the record and portions of the Decision are arbitrary and capricious, constitute an abuse of discretion, and are contrary to law.

The Decision forces the City to immediately stop producing water for its citizens when any claim that a point of diversion is not able to pump the full quantity of water is made. The City is then prohibited from pumping any water until the allegations are resolved. The Decision sets forth no standard for what a complainant must show, or if the complainant must show anything at all, to shutdown the City's water supply. The Decision is silent as to any procedure

or process required for making or evaluating complaints. Consequently, anyone can claim their well is not able to pump at full quantity for whatever reason and the City will have to cease diverting until the complaint is resolved. These conditions put the City in the position of proving a negative anytime a water right is not available at maximum quantity regardless of the reason. That poses real and significant harm to the City's citizens.

The Decision also orders that the priority date on the amended permit shall be June 8, 2001, which is not the date of the original permit. Not only is the June 8, 2001 priority date contrary to law, it completely undermines the City's preexisting agreement with United Water Idaho. The proposed priority date subverts City's senior interest in water right no. 63-12448.

The Decision's denial of the reinstatement of the point of diversion for well site #4 is not supported by the record. The City presented evidence that it needed the two (2) points of diversion to comply with minimum regulatory requirements and standards, and the recommendations of the City Engineer. The City submitted sworn testimony that the City could and would develop well #4 if needed to meet its citizens' water needs. No contradictory evidence was offered by any interested party. In fact, no protestant even objected to the development of well #4. Indeed, no party even bothered to address well # 4 at all in their post-hearing briefing. See Chase Estate Post-Hearing Brief; Eagle Water Company Post Hearing Memorandum; and Burton Group post-hearing correspondence.

The Decision ignores the evidence relating to the protestants' water rights. The City submitted substantial evidence showing that the current diversion works for senior water rights within the area of well #3 are not even capable of pumping the claimed quantities. Even the Chase Estate testified that it is not using all the water claimed under its "dairy/domestic" adjudication claim. With the exception of a brief footnote, the Decision does not address this

evidence. Instead, the Decision obligates the City to insure these water rights are divertible at the maximum claimed rate which suggests the City must make these water rights better than they currently exist.

For there reasons stated herein, the Final Decision should be revised as described herein to conform to the evidence in the record and controlling law.

STANDARD OF REVIEW

A. Contested Case Proceeding

This matter is before the Idaho Department of Water Resources (Department) on the City of Eagle, Idaho's application to amend existing municipal water right permit no. 63-12448 to add two (2) points of diversion. Applications to amend an existing permit are processed under Idaho Code §§ 42-211 and 42-203A. Section 42-211 provides in part:

Whenever a permit has been issued pursuant to the provisions of this act, and the permit holder desires to change the place, period, or nature of the intended use, or make other substantial changes in the method of diversion or proposed use or uses of the water, he shall file an application for amendment upon forms furnished by the department of water resources together with the statutory fee for filing and recording the same, and upon receipt thereof it shall be the duty of the department of water resources to examine same and if approval thereof would not result in the diversion and use of more water than originally permitted and if the rights of others will not be adversely affected thereby, the director of the department of water resources shall approve said application and return an approved copy to the permit holder. The director of the department of water resources shall give such notice to other affected water users as he deems appropriate and may grant the amendment, in whole or in part or upon conditions, or may deny the same. Notice of partial approval or conditions or denial of an amendment shall be forwarded to the applicant by certified mail and shall be subject to judicial review as hereafter provided. The priority of the right established pursuant to a permit which has been amended under these provisions shall date from the date of the original application for permit, provided the permit holder has complied with other provisions of this act.

* * *

Protests to the application for amendment may be filed with and heard by the director in the same manner as provided by section 42-203 [42-203A], Idaho Code, for protests to an application for a permit.

Idaho Code § 42-203A(5) provides, in part, that:

[s]uch hearing shall be conducted in accordance with the provisions of section 42-1701A(1) and (2), Idaho Code. The director of the department of water resources shall find and determine from the evidence presented to what use or uses the water sought to be appropriated can be and are intended to be applied. In all applications whether protested or not protested, where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or speculative purposes, or (d) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) that it will conflict with the local public interest as defined in section 42-202B, Idaho Code, or (f) that it is contrary to conservation of water resources within the state of Idaho, or (g) that it will adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates, in the case where the place of use is outside of the watershed or local area where the source of water originates; the director of the department of water resources may reject such application and refuse issuance of a permit therefor, or may partially approve and grant a permit for a smaller quantity of water than applied for, or may grant a permit upon conditions.

The applicant bears the burden of proof for the factors the Department must consider.

Cantlin v. Carter, 88 Idaho 179, 187 (1964); Shokal v. Dunn, 109 Idaho 330, 339 (1985).

However, “a protestant who claims a harm peculiar to himself should have the burden of going forward to establish that harm.” Id. at 339 (quoting from decision below). Both the applicant and protestant have the burden of coming forward with information concerning factors affecting the local public interest. Department Appropriation Rule 40. The Idaho Department of Water Resources has adopted rules applicable to the factors for processing of the application and setting forth the criteria for evaluating the factors. Department Appropriation Rules 40 and 45.

B. On Appeal

An agency's order may be overturned where its findings: (1) violate statutory¹ or constitutional provisions; (2) exceed the agency's statutory authority; (3) are made upon unlawful procedure; (4) are not supported by substantial evidence in the record; or (5) are arbitrary, capricious, or an abuse of discretion. Idaho Code § 62-5279(3); Matter of Permit No. 65-12842, 122 Idaho 59, 61, 831 P.2d 527 (1992).

"A finding of fact without any basis in the record would be clearly erroneous. Also a finding of fact lacking substantial and competent evidence to support it is clearly erroneous. In order to uphold an agency's finding, we must find more than a mere scintilla of evidence." Id. at 62 (internal citations omitted). For an agency's decision to avoid being found to be arbitrary and capricious, the agency must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made. See Motor Vehicle Mfr's Ass'n v. State Farm Mutual Auto. Ins. Co., 103 S.Ct. 2856, 2866, 463 U.S. 29, 77 L.Ed.2d 443 (1983). An agency action is arbitrary and capricious if the agency has relied on factors which the legislature has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise. See 103 S.Ct at 2867.

If an agency order is not affirmed, "it shall be set aside in whole or in part, and remanded for further proceedings as necessary." Idaho Code § 67-5279(3).

¹ Policies enacted by administrative agencies have the force and effect of statutory law. Zattiero v. Homedale School Dist. No. 370, 137 Idaho 568, 571, 51 P.3d 382 (2002).

ARGUMENT

A. The Decision's Requirement that the City Must Cease Diversion Upon a Claim that a Water Right Holder "is Not Able to Pump the Full Quantity of Water" is Not Supported by the Evidence in the Record and Imposes Severe Constraints and Impacts on the Citizens of the City of Eagle.

The Decision requires the City to turn off its pump if "any senior, licensed or decreed, ground water right holder within a radial distance of 2000 ft. ... is not able to pump the full quantity of water under the senior right because of declines in ground water levels." Recommended Order at ¶ 3, p. 30. The condition affords the City no due process; its right to divert water is simply lost if a water right is not pumping at "full quantity" regardless of whether the City is responsible. More importantly, it provides for a continuous shutdown while the matter is tied up in investigations. The Decision does not include any requirement that a complainant show or even allege that the City is responsible for any alleged reduction in quantity before the City must shut down. A City cannot simply turn off its water supply on a whim. A complainant must have a reasonable basis and information for an allegation of injury.

Shutting users down under a "maximum quantity" standard ignores Idaho law as it relates to reasonable diversions, application of water to beneficial use and conservation of water resources, and is contrary to the Department's own rules regarding injury. The Department promulgated rules that "apply to all situations in the state where the diversion and use of water under junior-priority ground water rights ... causes material injury to uses of water under senior-priority water rights." Department Conjunctive Management Rule 20. In accordance with Rule 20, when a "call" for water is made, the Department must determine whether the complainant's water use is reasonable, whether there is material injury, whether an alternative supply of water available, whether a mitigation plan is in place, and other relevant factors. See Department

Conjunctive Management Rules 30 and 42. Additionally, the City must be afforded due process before its rights are taken away. See Department Conjunctive Management Rule 30.

Moreover, in accordance with the terms of the Decision, before the City is ever allowed to use well #3 it must have a negotiated mitigation plan in place. Recommended Order at ¶2, p. 29. Under Department Conjunctive Management Rule 42(2), a senior water right holder cannot make a call on water when there is a mitigation plan in place. Department Conjunctive Management Rule 42(2). Under the terms of the Decision, such mitigation plan will be in place; thus, under the Department's own rules, no water right holder would be able to make a call on water. Id.

The Decision also has no basis for obligating the City to insure water rights within a 2000 ft. radius can pump the full quantity under the rights. There is no evidence in the record that water rights within 2000 ft. of well #3 will be injured. Only one protestant submitted information regarding potential injury: the Chase Estate submitted allegations related to well #3. The Eagle Water Company did not present any testimony or witnesses at hearing. Likewise, the Burton Group did not present any exhibits, testimony or witnesses. The City on the other hand did offer expert testimony relating to potential impacts.

Mr. Terry Scanlan, P.E., P.G., testified that pumping from the proposed points of diversion may increase the depth to water in some wells immediately adjacent to the proposed wells. However, drawdowns are not likely to be significant. According to Mr. Scanlan's analysis, based upon the distance of the Burton Group wells from the proposed wells, the depth of the Burton Group wells and the results of monitoring United Water Idaho, Inc.'s Floating Feather well's impact on similarly situated domestic wells, the proposed points of diversion are not likely to injure the Burton Group water rights. Neither the Burton Group nor Eagle Water

Company contradicted the City's expert, identified any water rights at issue, or defined any alleged injury. Regarding the water right holders identified on Exhibit 400, they similarly did not allege injury and there is no evidence in the record that the water rights listed on Exhibit 400 will be injured.

The Decision cites no evidence in support of the Finding that the Burton Group wells "would be hydraulically connected" to well #3. See Section V at ¶ 48, p. 20.² Despite that erroneous Finding, the Decision makes no Finding that the City's project will impact the Burton Group water rights, the water rights on Exhibit 400, or any other water right within a 2000 ft. radius of the City's diversion, with the exception of the Chase Estate's domestic water right no. 63-15820. Indeed, there is no such evidence in the record. Under the circumstances there is no basis for imposing such a severe restriction on the City.

The Decision's conditions relating to the City's obligation to insure the "full quantity" of water rights within 2000 ft. and the requirement that the City cease pumping should be vacated. These conditions are contrary to law and not supported by the evidence in the record. See Department Conjunctive Management Rules 20, 30 and 42. At the very least the Final Decision should be issued in compliance with the Department's rules and clearly set forth reasonable obligations if a situation occurs. Simply shutting down the City systems because of a claim is not reasonable.

B. The Priority Date Assigned by the Decision is Contrary to Law and Constitutes an Abuse of Discretion.

The Decision establishes a June 8, 2001 priority date for water right no. 63-12448.

² The Decision's Finding relating to "hydraulic connection" is a gross oversimplification of the relevant hydrology that is at odds with the Department's own analysis of groundwater conditions in the area. See Exhibit 103 at p. 19-20.

Recommended Order at ¶4, p. 30. However, the City's water right no. 63-12448 has a priority date of April 8, 1998. Idaho Code § 42-211 provides that the priority date of an amended permit shall be the date of the original permit. Therefore the June 8, 2001 priority date has no basis in law and should be corrected.

Additionally, the June 8, 2001 priority date subverts the City's agreement with United Water Idaho related to the parties' water rights. As evidenced by the Department's records, the City has an annual 1455 acre ft. "cap" on its water rights. The City agreed to the cap in exchange for United Water agreeing that the City could file its application first and acquire priority over United Water's water right no. 63-12452. See Exhibit 131 at fn. 2 (March 31, 2000 letter to Jeff Peppersack). As the result of the parties' agreement, the priority date for United Water's water right no. 63-12452 is April 15, 1998 and the priority date for the City's water right no. 63-12448 is April 8, 1998. Under the priority date unilaterally created by the Decision, water right 63-12448 retains the cap imposed by United Water but is now junior to United Water and other water rights not even part of this proceeding. This subrogation causes significant harm to the City's water right.

The Decision cites Fremont-Madison v. Ground Water Approp., 129 Idaho 454, 461 (1996), in support of the June 8, 2001 priority date. Fremont-Madison does not authorize the Department to ignore the plain language of Idaho Code § 42-211. Instead, Fremont-Madison acknowledged that a priority date could be modified to mitigate enlargement in accordance with Idaho Code § 42-1426. Idaho Code § 42-1426 authorizes adjusting a priority date to one day later than a junior water right when (1) there is enlargement resulting in injury (2) and the resulting injury cannot otherwise be mitigated. Idaho Code § 42-1426; 129 Idaho at 461. Such

circumstances are not present in this case. Indeed, the Decision concludes that the use of water under the amended permit “will not be increased.” Conclusions of Law at ¶21, p. 28.

The Final Decision should include the correct priority date, April 8, 1998.

C. The Denial of Eagle Well No. 4 is Not Supported by the Evidence in the Record, is Arbitrary and Capricious, Constitutes an Abuse of Discretion, and is Contrary to the Law.

The Decision denies the City’s application to reinstate the point of diversion for Eagle well site #4. Recommended Order at p. 30. As shown by the evidence in the record and the Department’s records, the point of diversion for well #4 was already authorized as a point of diversion for the City’s water rights 63-11413 and 63-12017. Thus, the Department has already reviewed well #4 and concluded that it is not speculative and that it does meet all applicable legal standards. The Department’s own records provide an adequate basis for approving the point of diversion for well site #4. There is no evidence in the record that the circumstances have changed since the Department last approved well #4.

In addition to the Department’s previous findings, no one, including the Department, objected to the inclusion of a point of diversion for well #4; neither the location nor the owner of the site for well #4 has changed since first identified in 1991;³ and, the City provided testimony to support its plans to construct a well at point of diversion #4. The Final Decision should allow the City to reinstate the point of diversion for well #4.

Additionally, notice of the City’s application to amend permit no. 63-12448 to add well site #3 and well site #4 was duly published in accordance with law. While some protests were

³ The developers of the Brookwood Subdivision first identified the sites where they wanted wells #3 and #4 located on land owned by the developers. These are the same well sites the City desires to develop through its application to amend water right 63-12448. In fact, Brookwood developer Mike Hormaechea attended the November 2003 hearing on the City’s application and voiced no objection or protest to the City’s testimony regarding use of point of diversion #4.

filed relating to well site #3, no one protested well site #4. No one met their burden to establish harm or even made a claim or protest related to well site #4. See Shokal v. Dunn, 109 Idaho at 339. The City proposed well site #4 so that it had another well site option in case well #3 did not work out or if an additional well site were otherwise needed. Sworn testimony indicated that the City could and would develop well #4 if needed to provide water to its citizens. No contradictory evidence was presented. There is no evidence in the record supporting the denial of the point of diversion for well #4 and the City's application to reinstate the point of diversion for well #4 to water right permit 63-12448 should be granted.

D. The Decision's Findings Relating to the Chase Estate's Water Rights are Not Supported by the Evidence in the Record and Hold the City to an Unobtainable Standard.

The Decision's Findings of Fact describe the neighboring senior Chase Estate water rights as they appear on paper. See Section V, Impact on Water Quantity Under Existing Water Rights at ¶¶ 38-47, p. 18-21. The Decision then obligates the City to mitigate for impacts to the Chase Estate water rights and insure that all neighboring water rights can divert their "full quantity" as described on paper. See Recommended Order at ¶¶ 2b and 3, p. 29-30. There is no basis for Decision's Findings relating to the Chase Estate's water rights.

The City submitted significant evidence demonstrating that the Chase Estate diversions are not capable of pumping the amount of water claimed. Mr. Scanlan testified that, based on the design configuration of the "dairy/domestic" well, it is not currently capable of producing the .13 cfs claimed by the Chase Estate during the hearing. Furthermore, the Chase Estate's "dairy/domestic" diversion is currently on the verge of failure using the current pumping configuration. Mr. Scanlan testified that the existing well and pump configuration are not reliable under current water level conditions, and that the 100-year old well's 3-inch diameter

bore hole and unknown construction design is not reliable as the sole water source for a dairy. Mr. Scanlan testified that it is not prudent to rely on the “dairy/domestic” well for a dairy operation and that if the Chase Estate desired a reliable water supply, it should be making improvements and upgrading its diversions regardless of the City’s project.

Mr. Scanlan further testified that the existing well and pump configuration at the “small irrigation well” could definitely not pump the .42 cfs claimed by the Chase Estate and that given the age and antiquated pumping system in place, the well does not represent a reasonable means of diversion. Mr. Scanlan described the Chase Estate’s dairy/domestic and small irrigation wells as antiquated, unreasonable means of diversion. Mr. Shaw did not rebut Mr. Scanlan’s testimony about the dairy/domestic and small irrigation wells. This evidence is ignored by the Decision.

Significantly, the Chase Estate testified that water right nos. 63-5226 and 63-15820 should be less than they appear on paper: Mr. Mike Chase testified that the “dairy/domestic” right, water right nos. 63-5226 (dairy) and 63-15820 (domestic) should be .13 cfs, not .31 cfs. Since the water rights have not been used as they appear on paper and cannot be completely satisfied today, the Decision appears to obligate the City to mitigate for impacts it did not cause.

Additionally, the conditions imposed on water right permit no. 63-12448 undermine Idaho law making unappropriated waters available for appropriation and Idaho policy promoting the application of water to its maximum use and benefit. See Parker v. Wallentine, 103 Idaho at 513. “[W]hile the doctrine of ‘first in time is first in right’ is recognized, a reasonable exercise of this right shall not block full economic development of underground resources. Prior appropriators of underground water shall be protected in the maintenance of reasonable groundwater pumping levels as may be established by the director of the department of water resources as herein provided.” Idaho Code § 42-226. The information in the record shows that

the approval of the City's application is not likely to significantly affect reasonable pumping levels.⁴ The evidence in the record shows that the Chase Estate's antiquated diversions are not reasonable and are incapable of pumping the claimed water rights.

The Final Decision should require the City to mitigate only for material injury to valid water rights, if the City's diversion is the cause of said injury. The Department should determine allegations of injury and appropriate mitigation under the Department's existing rules developed specifically for such situations. See Section A, above and Section E, below.

E. The Negotiated Mitigation Provisions are Not Supported by the Evidence in the Record or the Law and Constitute an Abuse of Discretion.

The Decision mandates that the City complete a pump test, establish a pumping rate "cap," and then negotiate an agreement with the Chases to resolve any impact the identified pumping rate might have on the Chase Estate's water right no. 63-15820. Recommend Order at ¶2, p. 27-28. It also appears that the same mandate under condition 2 also applies to the Chase Estate's non-domestic diversion of water right 63-5226. See Conclusion at ¶3, p. 23. Recommended condition number 2 seems to presume that material injury to a water right will occur but the Decision never makes any finding as to injury.⁵ Furthermore, any such presumption is contradicted by the evidence in the record. The City presented the expert testimony of Mr. Terry Scanlan, P.E., P.G., which is contrary to the Decision's presumption and was largely ignored by the Decision. For example, after significant investigation and analyses, Mr. Scanlan concluded in part that (1) there is adequate groundwater to satisfy existing water rights plus new uses; (2) the anticipated pumping from the new wells is not going to significantly affect

⁴ While domestic water rights are exempt from reasonable pumping level standards, other water rights are not exempt and are subject to Idaho Code § 42-226. Parker v. Wallentine, 103 Idaho 506 (1982).

⁵ The Decision makes Findings regarding what drawdowns could potentially be but makes no Finding that the approval of the City's application will amount to material injury to any water right.

groundwater levels; (3) the Protestants' water rights are not likely to be injured; (4) the Chase Estate dairy/domestic and small irrigation wells and pumps are not currently capable of producing the amount of water claimed at these diversions; (5) in the unlikely event that the City's proposed points of diversion were to have a significant impact on groundwater levels in the vicinity of the dairy/domestic and small irrigation wells, there are alternative ways to continue current water use. Neither the record nor the Decision indicates that material injury to a water right will occur; consequently there is no basis for ordering the City to mitigate for an unidentified injury.

Second, the Decision has made a determination on some mitigation related issues but then says the City has to go to District Court to resolve others. Significantly, it is the Department that is the expert agency qualified to determine water resource related issues, not the District Court. Additionally delegating the Department's duties to the District Court is contrary to the Department's own rules, which provide a process for developing a mitigation plan and Department approval of such plans. Under Department Conjunctive Management Rule 42, a mitigation plan shall be submitted to the Department. The Department then gives notice, holds a hearing if necessary, and evaluates the plan under Idaho Code § 42-222, just as for a transfer of water rights. Department Conjunctive Management Rule 42. Included in the factors the Department considers when evaluating mitigation plans is whether replacement water or other compensation will be provided to offset injury to senior water rights. Id. Accordingly, matters concerning mitigation should be determined by the Department. The Department cannot disregard its own Rules and simply shift its obligations to the District Court. In any event, if this matter were presented to a District Court, since the Department is the expert agency, it is very likely a District Court would turn to the Department for its review and recommendation.

If the Director determines that that a mitigation plan is necessary, the Final Decision should provide that the mitigation plan will be developed in accordance with Idaho law and Department Rules. The City would then propose a mitigation plan to the Department in accordance with Parker v. Wallentine, 103 Idaho 506 (1982) and the Department's Rules. Any other result is contrary to law and subjects the City to the burden and delays of yet another time consuming and costly process.

F. The Decision's Condition Imposing a Diversion/Pumping Limit is Not Supported by the Evidence in the Record, is Arbitrary and Capricious, and Constitutes an Abuse of Discretion.

The Decision requires the City to conduct a pump test, determine the maximum rate it will pump at well #3, and determine what the impacts to neighboring water rights would be at that rate. Recommended Order at ¶2, p. 29. The maximum rate would then be a limiting condition on well no. 3 and the City would be obligated to mitigate at that rate. Id. Presumably, if the City later needed to increase that amount, it would have to make application to the Department and there would be an opportunity for protests. This is unworkable from a municipal provider's perspective. To best provide for its municipal users, the City must be able to utilize its water supplies at all times. As the record reflects, the proposed wells would be used in conjunction with Eagle well #1 to supply water to users within the City's municipal service area. While the City anticipates pumping an average of 200-250 gpm from proposed Eagle well #3 on average, a significant reason for a multi-well system is back-up supply. The City will need to rely on well #3 in the event of a well or pump failure, and must be able to adjust its pumping rate accordingly. Thus, the condition puts the City between a rock and a hard place. If the City sets the "cap" to reflect emergency conditions, the Decision suggests the City will have to mitigate at all times for conditions present only in emergency situations. On the other hand, if the City sets

the “cap” at the average anticipated diversion rate, it will be unable to utilize the diversion in emergency situations. Finally, the diversion cap is contrary to the Department’s own rules for the reasons stated in Sections A and E, above, and should not be included in the Final Decision.

G. The Decision’s Findings Related to the Existing Permitted Point of Diversion, Eagle Well No. 2 is Not Supported by the Evidence in the Record.

The Decision finds that “no evidence was offered to explain why a new well could not be drilled at this point of diversion....” Section III, Applicant and Permit No. 63-12448, at ¶ 21, p. 11. This Finding is completely unsupportable given the record. The evidence in the record shows that well logs and recorded well performance indicate that aquifer conditions tend to improve in areas farther west of the foothills in the area of Eagle, Idaho. Additionally, both Mr. Scanlan and Mr. Vernon Brewer opined that the water quality and quantity are better at well site #3 than in the area of well #2. These opinions are confirmed by the Department’s own report. See Exhibit 103 at p. 24-26; see also Exhibit 102 at p. 3. The City also presented evidence describing the problems with well #2, the problems with the general water quality in the area of well #2, the efforts the City had undertaken in attempt to fix well #2, and the City Engineer’s recommendation that the City develop a water supply farther west and not expend any more money trying to fix well #2. Id.; see also Exhibit 106 at p. 4. Thus, the purpose of the City’s application is to replace failed Eagle well #2 and equip the City with the desired City-owned multi-well system. Any such Findings relating to well #2 in the Final Decision should be revised to conform to the evidence in the record.

CONCLUSION

In summary, the Decision correctly approves the point of diversion for Eagle well #3; however, portions of the Decision’s Findings, Conclusions, and Recommended Order are not based on the evidence in the record and are contrary to law. Additionally, the Recommended

Order is arbitrary and capricious in that it is completely unworkable from the standpoint of municipal provider. A municipal provider cannot “immediately cease” diverting water without putting its citizens at substantial risk. At the very least, there should be clear a standard and process for determining whether a water right is injured before the City is ordered to cease pumping water; and any mitigation should only obligate the City to make a valid water right whole, not better. Additionally, the establishment of a mitigation plan and administration of the prior appropriation doctrine must be in accordance with Idaho law and the Department’s own rules. The Final Decision should be consistent with the information contained herein.

Due to the importance of this matter to the City of Eagle and novelty of the issues presented by the Recommend Decision and Order, oral argument on the City’s Exceptions is requested.

MOORE SMITH BUXTON & TURCKE,
CHARTERED

A handwritten signature in black ink, appearing to read 'Tammy A. Zokan', written over a horizontal line.

Tammy A. Zokan
Attorneys for City of Eagle

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17 day of May, 2004, I caused to be served a true and correct copy of the foregoing EXCEPTIONS by the method indicated below, and addressed to the following:

IDWR
Western Region
2735 Airport Way
Boise, Idaho 83705

☒ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Matt Howard
P.O. Box 190012
Boise, Idaho 83719

☒ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Molly O'Leary
Eagle Water Co.
P.O. Box 1849
Eagle, ID 83616

☒ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Jim Burton
1896 N. Eagle Road
Eagle, ID 83616

☒ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

IDWR Director
State Office
1301 N. Orchard Street
Boise, Idaho 83706

☐ U.S. Mail
☒ Hand Delivered
☐ Overnight Mail
☐ Facsimile


TAMMY A. ZOKAN

MAY 17 2004

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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

APPLICATION FOR PERMIT NO. 63-12448

RESPONSE TO CHASE ESTATE'S EXCEPTIONS TO RECOMMENDED DECISION

INTRODUCTION

RESPONSE TO EXCEPTIONS - PAGE 1

Because the City owns only one operating well, it must depend on contracts with United Water Idaho, Inc. to meet minimum regulatory requirements for community water systems and emergency demand. Consequently, the City filed an application to amend its existing water right permit 63-12448 to reinstate two (2) points of diversion (well #s 3 and 4) previously included on the City's other water rights. The needed diversions are located in Eagle, Idaho in the SW¼ SW¼ Sec. 4 T4N R1E (Eagle well #3 aka Brookwood well) and NE¼ SE¼ Sec. 4 T4N R1E (Eagle well #4). The proposed wells would be used to supply water to municipal users within the City's municipal service area, which is illustrated on Exhibit 3.

A hearing on the City's application was held on November 13 and 14, 2003 and the Hearing Officer issued a Recommended Decision and Order dated March 5, 2004. The City filed a Petition for Reconsideration on the Recommended Decision on March 22, 2004. The Chase Estate Protestants, filed Exceptions to the Recommended Decision on the same date. The Hearing Officer granted reconsideration and issued a Recommended Decision and Order Following Reconsideration on April 30, 2004, which was served on May 3, 2004.

LEGAL STANDARDS

A. Contested Case Proceeding

This matter is before the Idaho Department of Water Resources (Department) on the City of Eagle, Idaho's application to amend existing municipal water right permit no. 63-12448 to add two (2) points of diversion. Applications to amend an existing permit are processed under Idaho Code §§ 42-211 and 42-203A. Section 42-211 provides in part:

Whenever a permit has been issued pursuant to the provisions of this act, and the permit holder desires to change the place, period, or nature of the intended use, or make other substantial changes in the method of diversion or proposed use or uses of the water, he shall file an application for amendment upon forms furnished by the department of water resources together with the statutory fee for filing and

recording the same, and upon receipt thereof it shall be the duty of the department of water resources to examine same and if approval thereof would not result in the diversion and use of more water than originally permitted and if the rights of others will not be adversely affected thereby, the director of the department of water resources shall approve said application and return an approved copy to the permit holder. The director of the department of water resources shall give such notice to other affected water users as he deems appropriate and may grant the amendment, in whole or in part or upon conditions, or may deny the same. Notice of partial approval or conditions or denial of an amendment shall be forwarded to the applicant by certified mail and shall be subject to judicial review as hereafter provided. The priority of the right established pursuant to a permit which has been amended under these provisions shall date from the date of the original application for permit, provided the permit holder has complied with other provisions of this act.

* * *

Protests to the application for amendment may be filed with and heard by the director in the same manner as provided by section 42-203 [42-203A], Idaho Code, for protests to an application for a permit.

Idaho Code § 42-203A(5) provides, in part, that:

[s]uch hearing shall be conducted in accordance with the provisions of section 42-1701A(1) and (2), Idaho Code. The director of the department of water resources shall find and determine from the evidence presented to what use or uses the water sought to be appropriated can be and are intended to be applied. In all applications whether protested or not protested, where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or speculative purposes, or (d) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) that it will conflict with the local public interest as defined in section 42-202B, Idaho Code, or (f) that it is contrary to conservation of water resources within the state of Idaho, or (g) that it will adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates, in the case where the place of use is outside of the watershed or local area where the source of water originates; the director of the department of water resources may reject such application and refuse issuance of a permit therefor, or may partially approve and grant a permit for a smaller quantity of water than applied for, or may grant a permit upon conditions.

The applicant bears the burden of proof for the factors the Department must consider.

Cantlin v. Carter, 88 Idaho 179, 187 (1964); Shokal v. Dunn, 109 Idaho 330, 339 (1985).

However, “a protestant who claims a harm peculiar to himself should have the burden of going forward to establish that harm.” Id. at 339 (quoting from decision below). Both the applicant and protestant have the burden of coming forward with information concerning factors affecting the local public interest. Department Appropriation Rule 40. The Idaho Department of Water Resources has adopted rules applicable to the factors for processing of the application and setting forth the criteria for evaluating the factors. Department Appropriation Rules 40 and 45.

B. On Appeal

An agency’s order may be overturned where its findings: (1) violate statutory¹ or constitutional provisions; (2) exceed the agency’s statutory authority; (3) are made upon unlawful procedure; (4) are not supported by substantial evidence in the record; or (5) are arbitrary, capricious, or an abuse of discretion. Idaho Code § 62-5279(3); Matter of Permit No. 65-12842, 122 Idaho 59, 61, 831 P.2d 527 (1992).

“A finding of fact without any basis in the record would be clearly erroneous. Also a finding of fact lacking substantial and competent evidence to support it is clearly erroneous. In order to uphold an agency’s finding, we must find more than a mere scintilla of evidence.” Id. at 62 (internal citations omitted). For an agency’s decision to avoid being found to be arbitrary and capricious, the agency must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made. See Motor Vehicle Mfr’s Ass’n v. State Farm Mutual Auto. Ins. Co., 103 S.Ct. 2856, 2866, 463 U.S. 29, 77 L.Ed.2d 443 (1983). An agency action is arbitrary and capricious if the agency has relied on factors which the legislature has not intended it to consider, entirely failed to consider an

¹ Policies enacted by administrative agencies have the force and effect of statutory law. Zattiero v. Homedale School Dist. No. 370, 137 Idaho 568, 571, 51 P.3d 382 (2002).

important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise. See 103 S.Ct at 2867.

If an agency order is not affirmed, “it shall be set aside in whole or in part, and remanded for further proceedings as necessary.” Idaho Code § 67-5279(3).

ARGUMENT

I. The Department Properly Granted the City’s Application to Amend its Existing Permit.

Idaho Code § 42-211 authorizes the Director of the Department to grant an amendment to an existing permit, “in whole or in part or upon conditions, or may deny the same.” The Department routinely imposes conditions on permits. Said conditions primarily serve to insure that the permitted water use complies with Idaho law and Department regulations. In this case, the Hearing Officer recommended the approval of the City’s application in part and recommended a number conditions purported to mitigate for any injury that might result. While the imposition of reasonable conditions is permissible to ensure the maximum use of the state’s water resource and the protection of water users, the conditions imposed in this case are not supported by the record or authorized by law. Notwithstanding the problems with the conditions imposed by the Recommended Decision, the Recommended Decision correctly allows the City to add well #3 to the City’s existing water right permit no. 63-12448.

A. The Evidence in the Record Shows That the City’s Project is Unlikely to Injure the Chase Estate’s Water Rights and Should be Permitted.

With the exception of water used for domestic purposes prior to 1978, only reasonable pumping levels of senior water rights are protected. Parker v. Wallentine, 103 Idaho 506 (1982). Domestic purposes are defined at Idaho Code § 42-111, and include limited domestic, irrigation

and stock use not exceeding 13,000 gallons per day. Just because a water right is used for domestic or stock use, it does not automatically meet the definition of a “domestic purpose.” See Idaho Code § 42-111. Only one of the Chase Estate’s water rights falls under Idaho Code § 42-111: water right no. 63-15820. Water right no. 63-15820 is a partially decreed water right serving the Chase home and is for .04 cfs and shall not exceed 13,000 gallons per day. Exhibit 150.

Even if a senior domestic water right or other reasonable diversion is impacted by water use by a junior appropriator that does not mean the junior user is precluded from diverting water for a beneficial use. If water can be provided to the junior appropriator as well as the senior appropriator by changing the method or means of diversion of the senior appropriator, the junior appropriator can appropriate water so long as the junior appropriator pays the expense of any change needed to supply the senior appropriator. 103 Idaho at 514. This insures the maximum development of the state’s water resources. Id.

Based upon the evidence in the record, the City’s project should not injure the Chase Estate’s domestic right or any reasonable diversions. As the record reflects, in the case the City’s project actually injures the Chase Estate, there are modifications that could be made to the Chase Estate’s diversions to allow the City and Chase Estate to both divert without injury. The City has agreed to pay for any such changes needed to supply water to the Chase Estate.

SUMMARY OF EVIDENCE

The City presented expert testimony and evidence relating to the construction of the City’s proposed wells #3 and #4. The Chase Estate however only presented evidence concerning allegations of injury it attributes to the City’s well #3. In response to the Chase Estate’s protest, the City’s expert conducted an investigation of the Chase Estate’s diversions and reviewed

information provided by the Chase Estate regarding their diversions, including the dairy well (water right nos. 63-5226 and 63-15820), the small irrigation well (water right no. 63-5229) and the large irrigation well (water right no. 63-8663).² Given that no well logs are available for the dairy well and the small irrigation well, and there is little if any information about the wells, the City's expert had to rely on information provided by the Chase Estate. Based upon the information about the groundwater resource in the area of the proposed project, the City's planned development and use of well #3, the expert's observations of the well/pump configurations, and the Chase Estate's representations relating to the use of their wells, the City's expert concluded it was unlikely that the City's proposed wells would injure the Chase Estate's water rights. However, given so little is known about the Chase Estate's antiquated system of wells, the City's expert described potential mitigation measures that would redress any actual injury to the Chase Estate's individual wells actually caused by the City. The City's representatives testified that the City is committed to undertake mitigation necessary to insure the City's projects do not injure the Chase Estate.

1. Dairy/domestic well (water rights nos. 63-5226 and 63-15820).

At the hearing, the Chase Estate offered testimony correcting its actual use of the dairy well (water rights 63-5226 and 63-15820). According to Mike Chase, the correct amount of that water right should be .13 cfs, not .31 cfs. The Chase Estate offered testimony describing the use of the dairy well water rights to supply water for the commercial dairy operation and to provide domestic water for a home. The City's expert testified that the dairy well is not a reasonable means of diversion that it is on the verge of failure and is not currently capable of diverting .13

² While the Chase Estate has other water rights, it has not alleged injury to its other water rights. However, the City did provide evidence that the other water rights would not be impacted by the City's project.

cfs. The City's expert concluded that the City's wells would not reduce the Chase Estate's ability to divert the amount of water the Chase Estate can currently divert. However, the expert identified available pumps which could produce the amount of water being beneficially used by the Chase Estate in the case water levels dropped for whatever reason.

The City presented reports and expert testimony concerning the predicted effects of pumping Eagle well #3. See Exhibit 103, Idaho Department of Water Resources' *Open File Report on Ground-Water Conditions in the Dry Creek Area, Eagle, Idaho*; Exhibit 104, *Results of the 30-Day Pumping Test and Aquifer Analysis* regarding Lexington Hills well no. 1 (aka Eagle well #1) by CH2M HILL; Exhibit 105, *Aquifer Test at Floating Feather Well* by Mr. Terry Scanlan, P.E., P.G.; Exhibit 102, *Summary of Groundwater Conditions in The Vicinity of Proposed Brookwood Subdivision Well Site*, by Mr. Bill Strowd, P.G., a former employee of the City Engineer. The City's expert testified that during his site investigation the Chase Estate representatives provided information regarding the dairy well pumps, including the 30 psi pump pressure setting. The Hearing Officer's actual Findings relating to the potential drawdowns in the dairy/domestic well are consistent with the expert reports and testimony submitted in this matter.³ Contrary to the Chase Estate's assertions, the Hearing Officer made no Finding that the dairy well would be rendered unusable.

2. Small irrigation well (water right no. 63-5229)

The Chase Estate testified they use the small irrigation well (water right no. 63-5229) to irrigate 20 acres. The Chase Estate claims .42 cfs for water right no. 63-5229 (irrigation and

³ The Hearing Officer's conclusion regarding short-term impacts may be conservative because it is based on a calculated impact at 250 ft. rather than 509 ft. Exhibit 105 (Scanlan Report).

stockwater) plus an additional .04 cfs for domestic supply.⁴ See Exhibit 146. The Chase Estate testified that no water has been diverted from the small irrigation well since 1983. According to the Mr. Mike Chase, there has been adequate surface waste water to irrigate and consequently there has been no need to utilize the small irrigation well. Mr. Chase testified that because the Chase Estate has not needed the well to irrigate, there is no power to the well and no need to test the well. The Chase Estate presented no testimony regarding its use of water right no. 63-5229 for domestic or stockwater purposes. The City's expert concluded that the small irrigation well and pump configuration is not a reasonable means of diversion and is not capable of producing the claimed .42 cfs. Furthermore, the record supports a conclusion that given the extremely long history of non-use of this well and water right, it is highly unlikely that it would be impacted at all.

The City presented reports and expert testimony concerning the predicted effects of pumping Eagle well #3. See Exhibit 103, Idaho Department of Water Resources' *Open File Report on Ground-Water Conditions in the Dry Creek Area, Eagle, Idaho*; Exhibit 104, *Results of the 30-Day Pumping Test and Aquifer Analysis* regarding Lexington Hills well no. 1 (aka Eagle well #1) by CH2M HILL; Exhibit 105, *Aquifer Test at Floating Feather Well* by Mr. Terry Scanlan, P.E., P.G.; Exhibit 102, *Summary of Groundwater Conditions in The Vicinity of Proposed Brookwood Subdivision Well Site*, by Mr. Bill Strowd, P.G., a former employee of the City Engineer. The Hearing Officer's Findings relating to the potential impacts to the small irrigation well are consistent with the expert reports and testimony submitted in this matter.

⁴ The Chase Estate does not limit its claim to 13,000 gpd; thus, it does meet the requirements of Idaho Code § 42-111.

3. Large irrigation well (water right no. 63-8663).

The Chase Estate claims 2.0 cfs from the large irrigation well (water right no. 63-8663) for irrigation and stockwater use.⁵ Unlike the antiquated dairy and small irrigation wells, more is known about the large irrigation well because a well log has been filed with the Department. However, information regarding actual pump configuration and water level was provided by the Chase Estate. Given the location and configuration of the large irrigation well, the City's expert determined that the well is capable of producing the full water right even if there are significant water level declines and concluded that the City's project is not likely to injure water right no. 63-8663. However, the City's expert testified regarding deficiencies in the pump in the large irrigation well and recommended that it be replaced with a more efficient pump regardless of the City's project.

The City presented reports and expert testimony concerning the predicted effects of pumping Eagle well #3. See Exhibit 103, Idaho Department of Water Resources' *Open File Report on Ground-Water Conditions in the Dry Creek Area, Eagle, Idaho*; Exhibit 104, *Results of the 30-Day Pumping Test and Aquifer Analysis* regarding Lexington Hills well no. 1 (aka Eagle well #1) by CH2M HILL; Exhibit 105, *Aquifer Test at Floating Feather Well* by Mr. Terry Scanlan, P.E., P.G.; Exhibit 102, *Summary of Groundwater Conditions in The Vicinity of Proposed Brookwood Subdivision Well Site*, by Mr. Bill Strowd, P.G., a former employee of the City Engineer. The Hearing Officer's Findings relating to the potential impacts to the large irrigation well are consistent with the expert reports and testimony submitted in this matter.

⁵ The Chase Estate does not use this water right for domestic purposes at all or limit its claim to 13,000 gpd; thus, it does meet the requirements of Idaho Code § 42-111.

B. Granting the City's Application is in the Public Interest as Defined by Idaho Code § 42-202B(3).

The "local public interest" is defined as "the interests that the people in the area directly affected by a proposed water use have in the effects of such use on the public water resource." Idaho Code § 42-202B(3). The people in the area directly affected by the City's proposed wells, including the Chase Estate, are benefited by the City's application for a number of reasons. Indeed, the City's desire to act in the best interest of its citizens is the reason for the City's application. The evidence in the record shows the City's elected officials' and City Engineer's determination that there is an immediate need for additional wells to meet regulatory requirements and the needs of the City's citizens, so that the City can best serve its citizens and (1) insure a reliable source of potable water; (2) further insure that there is adequate water to fight fires and respond to other emergency situations; (3) provide for better distribution across pressure zones; and (4) decrease maintenance costs. Additionally, the City's project benefits water users by serving a large number of households using only a few wells and thereby significantly reduces the potential for groundwater contamination. The City's municipal wells must comply with higher standards and controls than domestic wells resulting in less impact to the aquifer and a better quality water supply. Finally, the City's water supply provides an alternative supply for domestic well users if there is any problem with a domestic well. The City's project is consistent with Idaho law as it relates to reasonable diversions, application of water to beneficial use, conservation of water resources, and full economic development of the groundwater resource.

CONCLUSION

For the reasons stated in the City's Exceptions filed concurrently with this Response and herein, the City's application to add additional points of diversion to its existing water right

permit should be approved. A Final Order should be entered approving the City's application that is consistent with Idaho Law, Department Regulations and the evidence in the record.

MOORE SMITH BUXTON & TURCKE, CHARTERED



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Attorneys for City of Eagle

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17th day of May, 2004, I caused to be served a true and correct copy of the foregoing RESPONSE by the method indicated below, and addressed to the following:

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