

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)
_____)

NOTICE OF HEARING

PLEASE TAKE NOTICE that the hearing in this matter is set for **November 13 & 14, 2003 starting at 9:00 a.m.**, at the Idaho Department of Water Resources, Conference Rooms A&B, 1301 N. Orchard St., Boise, Idaho. The hearing will be held in accordance with the provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code, and the adopted Rules of Procedure of the department. IDAPA 37.01.01. A copy of the rules may be obtained from the department upon request. The presiding officer at the hearing will be the Peter R. Anderson.

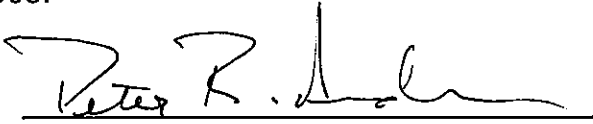
If you plan to offer exhibits for the record, note that Rule 606 of the department's Rules of Procedure requires that a copy be provided to each party and to the presiding officer.

The hearing will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the department within five (5) days prior to the hearing. Inquires about scheduling, hearing facilities, etc., should be directed to Deborah Gibson, Administrative

Assistant, Idaho Department of Water Resources, 1301 N. Orchard St., Boise, Idaho
83706-2237, telephone: (208)327-7953, fax: (208)327-7866.

All parties to the matter will have the opportunity to respond and present
evidence and argument on all issues involved.

Dated this 26th day of August, 2003.


Peter R. Anderson
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th 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

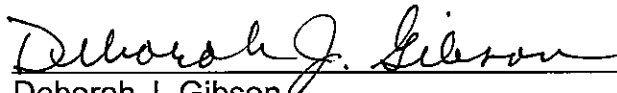
Matt Howard
P.O. Box 190012
Boise, ID 83719

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

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.

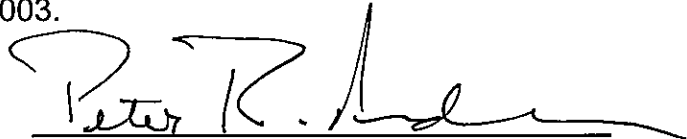
This constitutes the ruling disposing of the *Motion for Order Compelling Discovery and Motion in Limine* filed by the Estate of Eleanor I. Chase on April 28, 2003

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

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2735 Airport Way
Boise, ID 83705-5082



Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

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)
_____) **ORDER DENYING ESTATE'S**
MOTION TO STRIKE
AND MOTION FOR
SANCTIONS


On March 5, 2003, Protestant Estate of Eleanor I. Chase ("Estate") filed a *Motion to Strike and Preliminary Response to Requests for Admissions* (Motion to Strike). The Motion to Strike requested that a notice of service filed in this matter by the Applicant City of Eagle because the notice "erroneously states that counsel for the Estate was served on February 21, 2003" when the discovery request was actually mailed on February 28, 2003. The City of Eagle responded by arguing that the discovery request was sent to the Estate's counsel at the address provided in his notice of appearance on February 21, 2003. When the discovery request was returned to the City of Eagle, it was re-mailed on February 28.

The Estate then filed its *Reply to Applicant's Response to the Estate's Motion to Strike and Motion for Sanctions* (Motion to Strike), arguing that the City of Eagles' response to the motion to strike was unreasonable and frivolous because the City of Eagle knew the Estate's counsel's mailing address on February 21.

The Estate established no prejudice to itself in the Motion to Strike. There is no indication in the Estate's papers that the City of Eagle was demanding a response to the discovery request based upon the February 21, 2003, service date. From the record it appears that the City of Eagle's discovery request and notice of service was mailed to the wrong address on February 21, 2003. When the documents were returned to the City of Eagle, rather than re-executing them to reflect a new service date the City of Eagle simply forwarded them to the correct address. The date of actual service is controlling. *See e.g. Workman v. Brown*, 103 Idaho 945, 946 (App. 1982). Because the Motion to Strike was unnecessary in the first instance, the Motion for Sanctions is also untenable.

Based upon the foregoing the Estate's Motion to Strike and Motion for Sanctions are DENIED.

Dated this 14th day of July, 2003.


Peter R. Anderson
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of July, 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

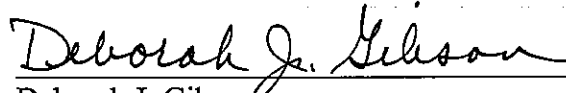
Matt Howard
P.O. Box 190012
Boise, ID 83719

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

Molly O'Leary
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Gary Spackman
IDWR – Western Region
2735 Airport Way
Boise, ID 83705-5082



Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

BEFORE THE DEPARTMENT OF WATER RESOURCES

IN AND FOR THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR	)	NOTICE OF PREHEARING
AMENDMENT OF PERMIT NO. 63-12448	)	CONFERENCE AND NOTICE
IN THE NAME OF THE CITY OF EAGLE	)	OF HEARING ON MOTION
<hr/>	)	TO COMPEL DISCOVERY

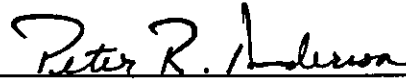
PLEASE TAKE NOTICE, that an informal Prehearing Conference and a Hearing on the Motion to Compel Discovery, filed by the Protestant, the Estate of Eleanor I. Chase, is set in this matter for August 1st, 2003, starting at 8:30 a.m. in Conference Rooms A&B at the offices of the Idaho Department of Water Resources, located at 1301 N. Orchard St., Boise, Idaho.

The prehearing conference and the hearing will be held in accordance with the provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code, and the adopted Rules of Procedure of the department. IDAPA 37.01.01. A copy of the rules may be obtained from the department upon request.

The prehearing conference and the hearing will be conducted in accordance with the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the department within twenty-four hours prior to the hearing. Inquires about scheduling, hearing facilities, etc., should be directed to Deborah Gibson,

Administrative Assistant, Idaho Department of Water Resources, 1301 N. Orchard St.,
Boise, Idaho 83706-2237, telephone: (208) 327-7953, fax: (208) 327-7866.

Dated this 8th day of July, 2003.



Peter R. Anderson
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of July, 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
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2735 Airport Way
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Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

BEFORE THE DEPARTMENT OF WATER RESOURCES
FOR THE STATE OF IDAHO

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

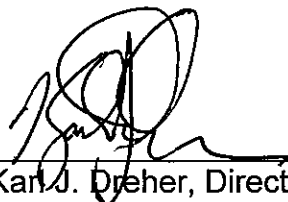
**ORDER APPOINTING
HEARING OFFICER**

This matter is before the Idaho Department of Water Resources (Department), as a result of a protests having been filed against the referenced application. L. Glen Saxton, who previously served as the presiding officer for this matter has recused himself from presiding further in this matter due to a change in his administrative responsibilities with the Department. The Department makes the following Order appointing a new presiding officer for this matter:

ORDER

IT IS HEREBY ORDERED that Peter R. Anderson is appointed to serve as hearing officer, and is authorized to hear the above captioned matter on behalf of the Department of Water Resources pursuant to IDAPA Rules 37.01.01.410 through 413 and the provisions of chapter 52, title 67, Idaho Code.

Dated this 5th day of June 2003.



Karl J. Dreher, Director

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on this 10th day of June, 2003, the above and foregoing document was served upon 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. Ste 420
Boise, ID 83701-2720

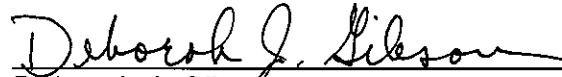
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Gary Spackman
IDWR – Western Region
2735 Airport Way
Boise, ID 83705-5082



Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

**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 CITY)	ORDER GRANTING MOTION
OF EAGLE)	TO STRIKE AND RECUSING
_____)	HEARING OFFICER

On June 8, 2001, the City of Eagle (City) filed application for amendment of permit no. 63-12488 with the Idaho Department of Water Resources (Department). Among those filing protests to the application were the Estate of Eleanor I. Chase (Estate) and the Eagle Water Corporation (Eagle Water). On January 10, 2003, the Department issued a Notice of Hearing setting the matter for hearing on February 26, 2003. On January 22, 2003, the Estate filed a *Motion for Order Vacating Hearing and Motion for Order Authorizing Discovery*. On January 23, 2003, Eagle Water filed *Eagle Water Company, Inc. Motion for Order Vacating Hearing and Motion for Order Authorizing Discovery*.

On January 31, 2003, the Hearing Officer denied the motions of the Estate and Eagle Water to vacate the hearing date and to authorize discovery. On February 3, 2003, the Estate filed a petition asking the Hearing Officer to reconsider. The Hearing Officer issued an order on February 4, 2003, that rescinded the order of January 31, 2003, vacated the scheduled hearing, and authorized the parties to engage in discovery.

On February 12, 2003, the City filed *Applicant's Objection, Motion to Strike, Recuse Hearing Officer and for the Appointment of a Non-Department Hearing Officer* ("motion"), together with a supporting memorandum. The Estate filed a response to the City's motion on February 26, 2003.

The City filed its motion to strike and to recuse the Hearing Officer because the protestants included with their motions to vacate and the petition for reconsideration certain "letters containing detailed discussions of the parties' settlement negotiations." The City argues that these materials constitute confidential settlement negotiation information, which is protected from disclosure without the written agreement of the City. Rule 610 of the Department's Rules of Procedure concerning the confidentiality of settlement negotiations provides:

Settlement negotiations in a contested case are confidential, unless all participants to the negotiation agree to the contrary in writing. Facts disclosed, offers made and all other aspects of negotiation (except

agreements reached) in settlement negotiations in a contested case are not part of the record.

IDAPA 37.01.01.610 (Rule 610).

The City argues that because the Hearing Officer was required to review the confidential settlement negotiation information submitted by the protestants "he is unable to objectively consider the issues presented by the parties in this case and render an impartial judgment." The City argues that the only available remedy is the recusal of the Hearing Officer and the appointment of an alternate non-Department Hearing Officer.

The Estate responds that the City mischaracterizes the nature of the materials it submitted as merely "negotiation" documents. The Estate argues that the information it submitted represents a valid binding "settlement agreement" between the parties and that the Estate has a right to have the agreement considered by the Hearing Officer pursuant to IDAPA 37.01.01.612 (Consideration of Settlements).

Based upon the information presented, the Hearing Officer is not persuaded that the negotiations reached the point of a binding settlement agreement among the parties as maintained by the Estate. The hand-written initial of a representative of the City on the first page of the November 16, 2002, letter from the Estate's attorney, attached as Exhibit A to the Petition for Reconsideration, does not clearly signify final approval of a settlement agreement. Likewise, the dated initial of a representative of the Estate on page two of the letter appears to indicate approval of a specific change in text and not the final approval of a settlement agreement.

The Hearing Officer does not agree with the City that his review of confidential settlement negotiation information necessarily requires the appointment of a new hearing officer. Rule 610 simply provides that such settlement materials shall not be included as a part of the record in a contested case. In other words, the hearing officer is not to consider such information in rendering a decision in the contested matter. Exposure to confidential settlement negotiation information is not a basis for automatic disqualification of a hearing officer for "bias, prejudice, [or] interest" under Idaho Code § 67-5252 and IDAPA 37.01.01.412 (Rule 412). To conclude otherwise would mean that in cases such as the present a party would not have an opportunity to argue that specific settlement documents in fact constitute a binding agreement among the parties.

Having determined that the settlement negotiations did not reach the point of a binding agreement, the letters attached as exhibits to the protestants' motions to vacate and to the petition for reconsideration shall be excluded from the agency record. This means that the excluded documents will not be considered a part of the record for purposes of making a determination on the substantive issues required to be decided in this proceeding.

The Hearing Officer is not required to recuse himself due to bias or prejudice in this matter. Likewise, status as an employee of the Department is not an available basis for disqualification of the Hearing Officer. Idaho Code § 67-5252 provides that a motion to disqualify due to employee status must be filed within fourteen (14) days after receipt of notice indicating that the employee will preside at the contested case. In this case, the Department served notice to the parties on January 10, 2003, that L. Glen Saxton would serve as the presiding officer at the scheduled hearing. The City filed its motion for disqualification of the hearing officer more than fourteen days later on February 14, 2003.

Although cause for disqualification of a presiding officer does not exist in this case, the Hearing Officer nevertheless elects to recuse himself from presiding further in this matter due to changes in his administrative responsibilities with the agency.

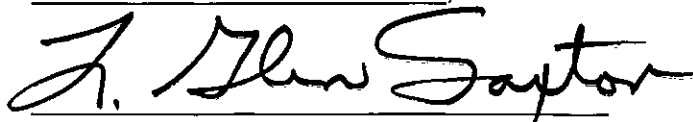
ORDER

IT IS, THEREFORE, HEREBY ORDERED that:

1. The City's motion to strike is **GRANTED** to the extent that the following documents shall be excluded from consideration as a part of the record in this proceeding:
 - a) Exhibit A to protestant Estate's *Motion for Order Vacating Hearing and Motion for Order Authorizing Discovery* (letter from Bruce Smith to Matt Howard, dated December 10, 2002);
 - b) Exhibit A to protestant *Eagle Water Company Motion For Order Vacating Hearing and Motion for Order Authorizing Discovery* (letter from Molly O'Leary to Bruce Smith dated January 13, 2003); and
 - c) Exhibit A to protestant Estate's *Petition for Reconsideration and Motion for Expedited Hearing* (letters from Matt Howard to Bruce Smith dated March 15, 2002 and November 16, and letter from Bruce Smith to Matt Howard dated November 12, 2002).
2. The City's motion to disqualify hearing officer for cause due to bias or prejudice or due to status as an employee of the agency is **DENIED**, however, the Hearing Officer shall recuse himself from presiding further in this matter for separate reasons.
3. The parties are bound by and shall comply with the terms of orders issued prior to the date of this Order.

IT IS FURTHER ORDERED that motions submitted after the date of this order including the scheduling of a hearing in this matter shall be addressed by a newly appointed hearing officer.

Dated this 5th day of June, 2003.


L. GLEN SAXTON, P.E.
Hearing Officer

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on this 6th day of June, 2003, the above and foregoing document was served upon 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. Ste 420
Boise, ID 83701-2720

Matt Howard
PO Box 190012
Boise, ID 83719

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Eagle, ID 83616

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



Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau



1896 North Eagle Road
Eagle, Idaho 83616
December 6, 2003
jimburton3@aol.com

RECEIVED

DEC 15 2003

Department of Water Resources

Mr. Peter R. Anderson
Idaho Department of Water Resources
1301 North Orchard Street
Boise, Idaho 83706

Re: Protestants' Closing Statement for Application for Amendment of
Permit No. 63-12448 in the name of City of Eagle

Dear Mr. Anderson:

Now that the hearing has been concluded and all the testimony and documentation has been presented, the group of individual well owners for whom I speak continue to be very concerned about the potential impact of proposed well(s) in the proposed amendment. Because we do not individually have the same resources as the City, we are even more concerned about the City's willingness to respond to any harm they might cause with legal process rather than a remedial solution. In the longer term, we are also concerned about the ongoing development of additional points of diversion of the aquifer.

Notwithstanding the above concerns, wish success to The Chase Estate, to Eagle Water, and to the City of Eagle in its efforts to provide quality municipal water to their residents. I personally believe success is not a limited resource – unlike our water supply. Because we do not have a clear, exacting view of where that limit is, we must continually monitor that critical resource.

If the amendment is granted to the City of Eagle, we respectfully request IDWR to:

- Make a proper monitoring program a conditional requirement of this application with a minimum duration of 10 years.
- Clearly outline the burden of proof on the City and the resolution process of any harm caused to senior water rights in the permit.

We want to commend and encourage the Department in its continued diligence to protect the health and long-term viability of the aquifer.

Thank you.

Sincerely,



James L. Burton



RICHARDSON & O'LEARY
ATTORNEYS AT LAW

Molly O'Leary

Tel: 208-938-7902 Fax: 208-938-7904
molly@richardsonandoleary.com
P.O. Box 1849 99 East State Street, Eagle, Idaho 83616

RECEIVED
DEC 17 2003
Department of Water Resources

December 12, 2003

RECEIVED
DEC 15 2003

Peter R. Anderson, Hearing Officer
729 W. Braemere Road
Boise, ID 83702

WATER RESOURCES
WESTERN REGION

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

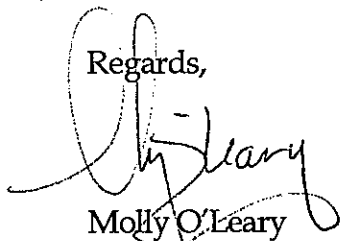
RE: Application for Amendment of Permit No. 63-12448

Dear Messrs. Anderson and Spackman:

Enclosed please find EAGLE WATER COMPANY, INC.'S POST-HEARING MEMORANDUM. An additional copy of this document has been enclosed for Mr. Spackman, along with a self-addressed, stamped envelope. Please date-stamp "Received" the additional copy and return the same to us in the enclosed envelope.

✓ sk
12-15-03

Regards,


Molly O'Leary

ENCLOSURE

MMO/nmc

DEC 17 2003

Department of Water Resources

RECEIVED

DEC 15 2003

WATER RESOURCES
WESTERN REGION

Molly O'Leary (ISB No. 4996)
Richardson & O'Leary PLLC
99 East State Street, Suite 200
P. O. Box 1849
Eagle, Idaho 83616
Telephone: (208) 938-7900
Fax: (208) 938-7904

Attorneys for Eagle Water Company

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

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

}
} POST-HEARING MEMORANDUM OF
} EAGLE WATER COMPANY, INC.

COMES NOW, Protestant Eagle Water Company, Inc. ("Eagle Water"), by and through undersigned counsel, and files this POST-HEARING MEMORANDUM in the above-captioned case.

ARGUMENT

1. Facts

The City of Eagle ("City"/ "Applicant") applied for an amendment to Permit No. 63-12448 on June 8, 2001. Exhibit 1. The City's application requested the addition of a new point of diversion for Permit No. 63-12448. *Id.* That point of diversion is located in the SW ¼ of the SW ¼ of Section 4, Township 4N, Range 1E, and has been referred to throughout proceedings on this Application as "the Brookwood Well." *Id.*

The Brookwood Well is one of the four points of diversion included in the City's 1998 Application for Permit No. 63-12448, filed with the Idaho Department of Water Resources ("Department"/"IDWR") on or about April 8, 1998. IDWR File for Permit No. 63-12448. At the time of the 1998 application, the Brookwood well was referred to by the City as "Hormachea Well # 2." *Id.*

The City ultimately withdrew "Hormachea Well # 2" from its application for Permit No. 63-12448 because, according to a letter dated August 1, 2001 from attorney Christopher H. Meyer to Protestants on behalf of the City, a dispute arose between the Hormachea family and the City, regarding ownership of Hormachea Well # 2. IDWR File for Permit No. 63-12448; *see also*, Exhibit 133 (Letter dated Nov. 25, 1998, from J. Evan Robertson to Gary Spackman).

Nevertheless, when the City's application for Permit No. 63-12448 was initially granted on December 3, 1998, it contained a condition specifically addressed to the Hormachea Well # 2 point of diversion. Condition No 12 stated:

Prior to diverting water under this right, the right holder shall locate the existing wells within one-quarter mile of the proposed well near the intersection of Floating Feather Road and Eagle Road, and shall measure water levels semi-annually in one of the wells for ten years after the right holder's well is constructed. The monitoring well shall be selected based on depth, proximity, and permission to monitor from other landowners. This condition can be waived if the right holder cannot find a suitable well for monitoring or cannot gain access to a suitable well in the area.

The permit was signed by L. Glen Saxton on behalf of Karl J. Dreher, Director. IDWR File for Permit No. 63-12448.

The erroneous inclusion of Condition No. 12 was brought to the Department's attention in subsequent correspondence dated December 6, 1998 from attorney Christopher H. Meyer. The error was also documented by the Department in the "Remarks" section of a "Water Right Profile Report" dated February 9, 1999, and in Item No. 4 of Steve Lester's File Memo of the

File Memo of the same date. IDWR File for Permit No. 63-12448.

Several Protestants have filed objections to the City's present application to amend its Permit No. 63-12448, including Eagle Water. IDWR File for Permit No. 63-12448.

Several of the current Protestants filed protests to the City's original application for Water Right No. 63.12448, including Eagle Water and Eleanor I. Chase (now represented by the Estate of Eleanor I. Chase). *Id.* The Protestants' concerns in this proceeding remain the same as in the prior proceeding: the potential for injury to existing, senior water rights. *Id.*

In the previously referenced letter dated August 1, 2001, from former City attorney Christopher H. Meyer to Protestants Eagle Water, Eleanor Chase, Jim Burton, and Weldon Fisher, Mr. Meyer stated that:

Next, I want to reassure each of you that the City does not intend to use the approval of the pending application to undermine any existing, senior well. Idaho law requires that no change, including the one that we have proposed, may result in injury to any other user. The City is prepared to stipulate to this in writing.

IDWR File for Permit No. 63-12448. Then-Mayor of Eagle, Rick Yzaguirre, as well as city council members Stan Bastian, Steve Guerber and Lynn Sedlacek, along with former city council woman and current Mayor Nancy Merrill were carbon-copied on this letter. *Id.* In addition, the letter was carbon-copied to attorney Susan Buxton of the firm Moore Smith Buxton & Turcke (of which present City counsel, Bruce Smith, is a named partner), and to Gary Spackman and Steve Lester of the Department. *Id.*

The City acknowledge in testimony at the hearing on this matter that, at less than maximum capacity, its proposed diversion of water from the Brookwood Well will injure the Protestants in varying degrees. *See also*, Exhibit 102.

2. Applicable Law

As stated in the Notice of Hearing served on the parties on January 10, 2003, section 42-222, Idaho Code requires the Department to consider the following issues in this proceeding:

- a. Will other water rights be injured by the requested amendment?
- b. Will the change constitute an enlargement?
- c. Will the proposed change conflict with the local public interest?
- d. Will the proposed use be contrary to conservation of water resources within the state of Idaho?

Notice of Hearing, "Conference and Hearing Procedure - Application for Amendment", January 10, 2003; Idaho Code § 42-222(1). The Applicant bears the initial burden of proof for issues a, b and d, above. Notice of Hearing, "Conference and Hearing Procedure -Application for Amendment" (Burden of Proof), January 10, 2003.

An application is properly denied where the applicant does not present sufficient evidence of non-injury. *Barron v. Idaho Dep't of Water Resources*, 135 Idaho 414, 18 P.3d 219 (2001). A change in point of diversion will not be permitted without limitations if the requested change injures senior appropriators. *Beecher v. Cassia Creek*, 66 Idaho 1, 154 P.2d 507 (1944).

3. CONCLUSION

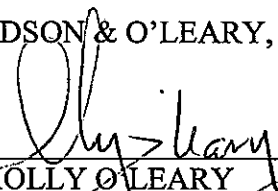
By its own admission, the City's proposed diversion will injure some, if not all, of the Protestants. The only question is: How much? This is a question that neither the City nor the Department can answer to any degree of reasonable certainty based on the present record. Therefore, in accordance with Section 42-222, Idaho Code and applicable case law, the City's Application must be denied.

Barring an outright denial, the City's Application should only be conditionally granted

based on implementation by the City of a well-monitoring system that will adequately and effectively protect Protestants from injury to their senior water rights. Such a well-monitoring system should continue for the length of time the City diverts water from the proposed Brookwood Well. And the City should be required to enter into a legally binding Stipulation, as previously promised, to hold Protestants harmless from any and all injury to their senior water rights, including recovery of attorney fees and costs incurred by Protestants should they be required to administratively and/or judicially enforce such Stipulation. The remedy for any injury caused by the City's diversion from the proposed Brookwood Well should be in the injured Protestant's sole, albeit reasonable, discretion.

RESPECTFULLY SUBMITTED this 12th day of December, 2003.

RICHARDSON & O'LEARY, PLLC



MOLLY O'LEARY
Attorneys for Eagle Water Company, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of December, 2003, I caused a true and correct copy of the foregoing POST-HEARING MEMORANDUM OF EAGLE WATER COMPANY, INC. to be served by the method indicated below, and addressed to the following:

Peter R. Anderson
729 W. Braemere Road
Boise, ID 83702

208.395.0222 (Fax)

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Facsimile
 Electronic Mail

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

208.334.3428 (Fax)

U.S. Mail, Postage Prepaid
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 Overnight Mail
 Facsimile
 Electronic Mail

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

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Facsimile
 Electronic Mail

Bruce Smith, Esq.
Moore Smith Buxton & Turcke, Chtd.
225 N. 9th Street, Suite 420
Boise, Idaho 83702

208.331.1202 (Fax)

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Facsimile
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Matt J. Howard
Attorney at Law
P.O. Box 190012
Boise, Idaho 83719

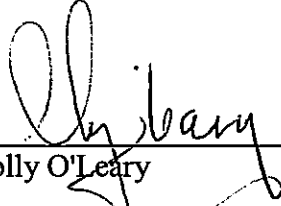
208.333.8409 (Fax)

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Facsimile
 Electronic Mail

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

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile
- Electronic Mail

Signed


Molly O'Leary

RECEIVED

DEC 15 2003

WATER RESOURCES
WESTERN REGION

Bruce M. Smith, ISB #3425
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Attorneys for the City of Eagle

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

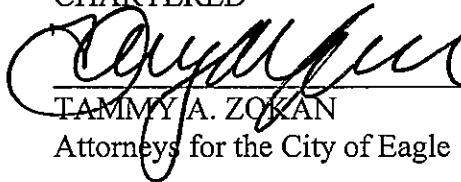
IN THE MATTER OF)
)
CITY OF EAGLE, PETITIONER)
)
APPLICATION FOR PERMIT NO. 63-12448)
)
)
)

**NOTICE OF SERVICE OF
RECOMMENDED DECISION
AND ORDER**

COMES NOW, the City of Eagle, and gives notice that the City served its Recommended Decision and Order on the parties on the 15th day of December, 2003 by the method indicated on the Certificate of Service.

DATED this 15 day of December, 2003.

MOORE SMITH BUXTON & TURCKE,
CHARTERED



TAMMY A. ZOKAN
Attorneys for the City of Eagle

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 15 day of December, 2003, I caused to be served a true and correct copy of the foregoing NOTICE OF SERVICE and the City's RECOMMENDED DECISION AND ORDER by the method indicated below, and addressed to the following:

IDWR
Western Region
2735 Airport Way
Boise, Idaho 83705

U.S. Mail
 Hand Delivered
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Matt Howard
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Molly O'Leary
Eagle Water Co.
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 Facsimile

Peter Anderson
Hearing Officer
729 W. Braemere Road
Boise, ID 83702

U.S. Mail
 Hand Delivered
 Overnight Mail
 Facsimile



TAMMY A. ZOKAN

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

IN THE MATTER OF)	
)	
CITY OF EAGLE, PETITIONER	)	RECOMMENDED DECISION AND ORDER
)	
APPLICATION FOR PERMIT NO. 63-12448)	
)	

This matter comes 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. Specifically, the City seeks to add two (2) points of diversion at the following locations in Eagle, Idaho: SW¼ SW¼ Sec. 4 T4N R1E (Eagle well #3 aka Brookwood well) and NE¼ SE¼ Sec. 4 T4N R1E (Eagle well #4). 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.” Shokal v. Dunn, 109 Idaho 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. IDAPA 37.08.040.03. 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. IDAPA 37.03.08.05.040 and .045.

FINDINGS OF FACT

I. COURSE OF PROCEEDINGS

1. On June 8, 2001, the City of Eagle submitted an application to amend existing water right permit 63-12448 to add two (2) points of diversion (Exhibit 1). The proposed points of diversion would be located in Eagle, Idaho in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 4 T4N R1E (Eagle well #3 aka Brookwood well) and NE $\frac{1}{4}$ SE $\frac{1}{4}$ 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.
2. The City's application was protested by Ms. Eleanor Chase, Mr. Deshazo for the Eagle Water Company and a group of property owners represented by one of the group, Mr. Jim Burton. While this matter was pending, Ms. Chase died and the Chase Estate intervened on her behalf.
3. The City, the Chase Estate and the Eagle Water Company engaged in discovery prior to the hearing.
4. A two-day hearing was held at the Department's state office in Boise, Idaho on November 13-14, 2003. The City was represented by Mr. Bruce M. Smith and Ms. Tammy A. Zokan, the Chase Estate was represented by Mr. Matt Howard, the Eagle Water Company (the "Company") was represented by Ms. Molly O'Leary, and the group filing a joint protest was represented by Mr. Jim Burton on November 13, 2003 and Mr. Shelby Conrad on November 14, 2003.

5. At the beginning of the hearing, all of the parties stipulated to the admission of the City's exhibits and the Company's exhibits. The City stipulated to the admission of all of the Chase Estate's exhibits with the exception of Exhibits 113-119 and 124.
6. The City objected to the admission of Exhibits 113-119 and 124 on the basis that the exhibits were not relevant to the Department's standards for the City's application and admission would waste administrative resources and confuse the issues legitimately before the Department. The Hearing Officer overruled the City's objections and admitted Exhibits 113-119 and 124. Consequently, all of the Chase Estate Exhibits were admitted.
7. The Burton Group did not offer any exhibits.
8. At the hearing, the Hearing Officer informed the parties that he would admit and take into consideration the following additional information:
 - a. The written testimony of City of Eagle Mayor, Nancy Merrill who was unavailable for hearing due to medical reasons;
 - b. Exhibit 23 – *Chase Dairy Well Pump Evaluation, 11/13/03 by Terry M. Scanlan, P.E.*, submitted during the City's rebuttal case;
 - c. Exhibit 24 – *Chase Small Irrigation Well Suction Lift Evaluation, 11/13/03 by Terry M. Scanlan, P.E.*, submitted during the City's rebuttal case.
 - d. A list of water rights located within the NE ¼ of the SE ¼ of Section 5, T4N, R1E in Eagle, Idaho.
9. A complete list of exhibits is attached to this decision.
10. At the hearing the following witnesses testified in support of the City's application:
 - 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

11. At the hearing the following witnesses were called by the Chase Estate:

a. Mr. Mike Chase, Chase Estate

b. Mr. Dave Shaw, ERO Resources, Inc.

c. Mr. Bill Chase, Chase Estate

d. Mr. Vernon Brewer, representative of Eagle City Engineer, Holladay Engineering Co.

12. The Company did not present any testimony or witnesses at hearing.

13. The Burton Group did not present any testimony or witnesses at the hearing.

II. THE APPLICATION

14. 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 to the water users within the City's municipal service area. The City is 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 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.

15. Eagle City Councilwoman Lynne Sedlacek and City Engineer representative Vernon Brewer presented testimony describing the City's proposed wells and the City's need for the wells.

Eagle Mayor Nancy Merrill also submitted written testimony explaining the City's proposed project. The City's representatives presented the following testimony and evidence.

Proposed Project

16. The City has a 1998 water right permit (63-12448) to divert 3.25 cfs for municipal purposes within the City's municipal water service area. The City currently needs 3.25 cfs to meet peak demands. The City has filed an application to amend its permit, no. 63-12448, to add two (2) points of diversion. The City's application does not seek to increase the City's right to divert or consume water. The City would use the water produced at the proposed points of diversion within the City's municipal water service area.
17. The proposed wells would be used in conjunction with Eagle well #1 to supply water to users within the City's municipal service area. The City anticipates pumping an average of 200-250 gpm from proposed Eagle well #3. Eagle well #3 will provide a back up to the City's one existing well. Having various points of diversions will allow the City to balance pumping between more than just one well, which will reduce operation and maintenance expenses. A second well will also provide the important benefit of a back-up supply in the event of a well or pump failure, and will increase the available fire protection within the City's municipal service area.
18. The City has adequate funding to construct Eagle well #3. The City has significantly invested in the Eagle well #3 well site, which is located outside of the floodplain of Dry Creek. The City Engineer has prepared a well design for Eagle well #3 in accordance with applicable well design standards. In addition, the Idaho Department of Environmental Quality has reviewed and approved the well design for Eagle well #3. The City intends to

construct Eagle well #4 if Eagle well #4 is needed for the City to supply water within its municipal service area.

19. The City has committed to continue to charge water users based upon metered consumption.
20. The City has committed to continue to require new development to use surface water for irrigation when available.

Basis for the City's Proposal

21. The current governing administration of the City desires to develop an independent City-owned municipal water system to serve water users within the City's municipal service area. The City leaders have determined that it is in the City's best interest to provide such water service using a City-owned system that does not rely on contracts with third-parties.
22. The City's Engineer recommends the City develop a City-owned municipal water system that is not dependent upon contracts with third-parties. The City Engineer has prepared a Master Plan describing the Engineer's evaluation of the City's water supply system and the Engineer's recommendations (Exhibit 106). The City has adopted the City Engineer's recommendations.
23. Neither United Water Idaho, Inc. nor Eagle Water Company is certificated by the Idaho Public Utilities Commission to supply water to the City's municipal water service area.
24. No evidence was presented showing that United Water Idaho, Inc. or the Company desire to provide water to City citizens within the City's municipal water service area.
25. No evidence was presented showing United Water Idaho, Inc. and the Company are capable of supplying water within the City's municipal water service area.

26. According to the evidence in the record, the current Mayor and City Council have determined that it is in the City's best interest for the City to be the water supplier to users within the City's municipal water service area.

History of the City's Municipal Water System

27. The City began developing a City-owned municipal water system in 1991 when a group of developers requested that the City take over a water system planned for the Lexington Hills development in Eagle, Idaho. In 1991, the developers submitted an application to appropriate water using four (4) points of diversion, including the two (2) points of diversion the City now proposes to add to water right permit no. 63-12448. The 1991 application was protested and a contested case hearing was held. After the hearing, the Department issued water right permit no. 63-11413 with all four (4) points of diversion. Water right no. 63-11413 was later transferred to the City.

28. The developers constructed wells at two (2) of the points of diversion authorized under water right permit no. 63-11413. The two wells are referenced as City of Eagle well #1 (aka Lexington Hills #1) and City of Eagle well #2 (aka Lexington Hills #2). The two wells were developed to serve the Lexington Hills and surrounding developments. Upon completion of the Lexington Hills water system, inspection, and acceptance by the City, the water system consisting of two (2) wells and a distribution system was turned over to the City and became the first stage of the City's municipal water system.

29. During the development of the Lexington Hills area a pump test was conducted which determined that Eagle wells #1 and #2 did not meet occupancy standards for the Lexington Hills School. At that time, since the City was just beginning to develop its municipal water system, it had not developed an alternative water source. Time was of the essence because

the two wells could not meet minimum standards. As a result, the City had to find an interim solution.

30. As its interim solution, the City entered into a series of agreements with United Water Idaho, Inc. and the developers of the Lexington Hills area developments to obtain a fireflow and emergency back up source. The agreements allowed occupancy of the Lexington Hills School and provided an emergency back up source. The agreements satisfied the City's immediate need and have allowed the City to meet demands and comply with regulatory requirements to date.
31. Since the Idaho Public Utilities Commission regulates United Water Idaho, Inc., the Idaho Public Utilities Commission had to approve United Water Idaho, Inc. supplying fire flow and emergency water within the City's municipal water service area. The Public Utilities Commission does not have jurisdiction over the City.
32. Based upon these events, the City anticipated a two-well system for the Lexington Hills area developments. However, while Eagle well # 1 has and continues to produce a good quantity and quality of water, Eagle well # 2 is a failed well that produces sand and has water with a high sulfur content. It is not usable for the City's needs.
33. Because Eagle well #2 failed, the City-owned municipal water system now consists of only one usable well. With only one well, the City cannot meet minimum regulatory requirements without the benefit of the City's agreements with United Water Idaho, Inc.
34. At times the City's system has used primarily Eagle well #1 to service the City's entire municipal water service area. At other times the City's system has used United Water Idaho, Inc.'s Floating Feather well to supply City water (water right 63-12448) to part of the City's service area and Eagle well #1 to supply the other part of the City's service area. The City

does not have any ownership interest in United Water Idaho, Inc.'s Floating Feather well. The proposed well(s) will operate in balance with Eagle well #1 and eliminate the need to use United Water Idaho, Inc.'s Floating Feather well.

35. The City approved the Brookwood subdivision development on the condition that an additional well of sufficient capacity be developed and incorporated into the City's municipal water system. The City and the developer entered into an agreement whereby the developer would provide a well site for Eagle well #3, and the City and the developer would equally share the actual cost of the construction of the well. Under this agreement, Eagle well #3 would be transferred to the City and become part of the City's municipal water system.

36. The two (2) proposed points of diversion that are the subject of this proceeding were originally included in the City's 1998 application for water right 63-12448. However, the Department dropped the two (2) points of diversion from the City's 1998 permit (63-12448) in response to an objection by the Brookwood developer and his demand that the points of diversion be eliminated. The developer subsequently withdrew its objection.

37. When the City learned the two (2) points of diversion had been removed from the City's 1998 permit (63-12448), the City filed the present application to amend water right 63-12448 to add back the two points of diversion. Thus, the purpose of the City's application is to replace failed Eagle well #2 and equip the City with the desired City-owned two-well system.

III. EVIDENCE PRESENTED BY THE CITY'S EXPERT

38. The City presented the expert testimony of Mr. Terry Scanlan, P.E., P.G. Mr. Scanlan described his extensive experience as a hydrogeologist and with proceedings before the Department. Mr. Scanlan's experience includes investigation and analyses of the groundwater resource in the area of Eagle, Idaho, including a study of the hydrologic conditions of the

aquifer in the vicinity of the proposed wells. Mr. Scanlan also testified that he reviewed available information about the aquifer, including the Department's Open File Report on aquifer conditions in the Dry Creek area.

39. As part of Mr. Scanlan's investigations related to the City's application, Mr. Scanlan conducted site investigations of the Protestants' wells as identified by the Protestants. Mr. Scanlan visited the Chase Estate's property for the purpose of gathering information about the Chase Estate's diversions. Mr. Scanlan also contacted Mr. Burton of the Burton Group and offered to measure wells belonging to the Burton Group. Some members of the Burton Group took advantage of Mr. Scanlan's offer whereupon Mr. Scanlan investigated and measured these wells. In his evaluation of the Protestants' wells, Mr. Scanlan utilized his technical experience with the groundwater resource in the area of the proposed diversions and the reports and studies described herein.

40. Mr. Scanlan also reviewed the Department's information related to the Protestants' water rights and information provided by the Protestants in order to evaluate the potential for injury and the availability of mitigation measures in the unlikely event that injury occurs.

41. Mr. Scanlan testified that (1) the City definitely needs the proposed points of diversion; (2) there is adequate groundwater to satisfy existing water rights plus new uses; (3) the anticipated pumping from the new wells is not going to significantly affect groundwater levels; (4) the Protestants' water rights are not likely to be injured; (5) 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; (6) 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. He noted that the Chase Estate dairy/domestic and small irrigation wells are poorly constructed, utilize antiquated pumping systems, and are not reasonable means of diversion. As noted, these wells cannot produce the amount of water claimed by the Chase Estate. However, new pumps could be installed that would pump the amount of water the existing pumps are capable of pumping today and could withstand drawdowns in the range of tens of feet.

42. Mr. Scanlan also identified serious errors in the analysis and formulas used by the Chase Estate's consultant and demonstrated that the Chase Estate consultant's analysis significantly overestimated the anticipated average production from the proposed Eagle well #3.

The Eagle, Idaho Groundwater Resource

43. There is a significant amount of information available about the groundwater resource in the area of Eagle, Idaho. A number of reports are available including: an Idaho Department of Water Resources' *Open File Report on Ground-Water Conditions in the Dry Creek Area, Eagle, Idaho*; the *Results of the 30-Day Pumping Test and Aquifer Analysis* regarding Lexington Hills well no. 1 (aka Eagle well #1) by CH2M HILL; the results of the *Aquifer Test at Floating Feather Well* by Mr. Terry Scanlan, P.E., P.G.; and a *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. Additional information about the groundwater resource in the Eagle, Idaho area is also available as the result of Mr. Scanlan's analysis of the groundwater production history and his field investigations and analyses of wells in the area.
44. 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.

45. Most of the wells in the area are single-home domestic wells 50 to 150 feet deep that draw from the shallow aquifer. However, there are some deep aquifer municipal wells in the area. Municipal use has increased as the area has developed.
46. The reports in the record, the testimony of the City's expert, and the Chase Estate's consultant all indicate that there is sufficient groundwater to supply existing demands and additional demands in the area of the proposed diversions.
47. 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.

The City's Report on the Proposed Project

48. City Engineer representative Vern Brewer and the City's expert, Terry Scanlan, testified about the City Engineer's report on the proposed Eagle well #3, which was developed using well logs and other available information about the groundwater resource in the Eagle area. The report, entitled *Summary of Groundwater Conditions in the Vicinity of Proposed Brookwood Subdivision Well Site* (Exhibit 102) is a compilation and analysis of: (1) the 30-day pumping test and report on Lexington Hills no. 1 (aka Eagle well #1); (2) the Idaho Department of Water Resources Open File Report on groundwater conditions in the Dry Creek area, Eagle, Idaho; (3) Mr. Terry Scanlan's pump test and monitoring of United Water Idaho, Inc.'s Floating Feather Well; and (4) information provided by Protestants.
49. The City Engineer's Report used an impacts analysis based upon an assumed 1000 gpm pumping rate on a continuous basis for six (6) months, the same assumptions used in the Department's Open File Report. Mr. Shaw, who testified on behalf of the Chase Estate, agreed that the City Engineer's report and analysis were reasonable.

50. The City Engineer's aquifer analysis, based on the actual the pumping test of Eagle well #1, assumed a 1000 gpm production rate with 6-months' continuous pumping. Even under these conditions, the analysis indicated an estimated drawdown of only 8 feet for wells located within 1000 feet from the Eagle well #3. The actual drawdown in the vicinity of the proposed wells directly caused by the wells at the proposed diversions will be much less because the anticipated average production from the proposed points of diversion is only 200-250 gpm. Consequently, drawdowns would likely be minimal.

51. Because the proposed points of diversion are not going to pump 1000 gpm on a continuous basis, the estimate represents a worst-case scenario that is not likely to occur. Current and historical pumping rates for the City show that the City is projected to pump 200-250 gpm from the proposed points of diversion on average and 400-500 gpm on an interim basis if Eagle Well #1 is shut down for maintenance.

The City Expert's Analysis of the Protestants' Water Rights and Wells

52. **Chase Estate dairy/domestic well: water right nos. 63-5226 (dairy) and 63-15820 (domestic).** There is no well log for the dairy/domestic well. The dairy/domestic well is not suitable for monitoring because so little is known about the well construction. Additionally, the small size and the poor condition of the well makes it almost impossible to measure water levels at the same time the well is pumped for domestic and dairy use. Thus, no pump test was conducted on this well. The Chase Estate claims that two (2) $\frac{3}{4}$ hp electric shallow-well jet pumps are used in this well and the Chase Estate claims 13 cfs of water at this well. However, Mr. Scanlan testified that, based on the design configuration of this well, it is not currently capable of producing the .13 cfs claimed by the Chase Estate. Furthermore, the Chase Estate's dairy/domestic diversion is currently on the verge of failure using the current

- pumping configuration. The Chase Estate does not currently have a back up source of water for the dairy. 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.
53. Approval of the City's application will not injure water right nos. 63-5226 (dairy) or 63-15820 (domestic). Mr. Scanlan testified a deep well jet pump or a submersible pump sized to fit a 3-inch well could be installed at the dairy/domestic well location to pump the amount of water that the diversion is currently producing even if water levels were to drop.
54. **Chase Estate small irrigation well: water right no. 63-5229.** This well has not been pumped since at least 1983 and there is no power to it. Consequently, what amount of water, if any, that could be pumped is unknown. The small irrigation well is not suitable for monitoring because so little is known about the design and construction of the well. However, Mr. Scanlan testified that the existing well and pump configuration could definitely not pump the .42 cfs claimed by the Chase Estate. Mr. Scanlan identified some alternative pumps that could pump some water from the well as it is currently constructed. However, given the age and antiquated pumping system in place, the well does not represent a reasonable means of diversion.
55. There is likewise no well log for the small irrigation well. The Chase Estate presented testimony that it has used a 2 hp electrical motor and centrifugal pump to pump .42 cfs in the past (prior to 1983). However, the small irrigation well and pump are clearly not currently capable of producing the .42 cfs claimed by the Chase Estate. A different pump on the small irrigation well could pump a portion of the claimed water right. A 4-inch diameter submersible pump installed in the small irrigation well could produce approximately .22 cfs.

56. The proposed diversions by the City will not injure water right no. 63-5229. The Chase Estate has no means of diverting the claimed .42 cfs from the small irrigation well today, however, .22 cfs could be pumped from the small irrigation well if a 4-inch diameter submersible pump were installed.

57. **Chase Estate big irrigation well: water right no. 63-08663.** The Chase Estate presented testimony that the big irrigation well produces 2.0 cfs of supplemental water. Mr. Terry Scanlan also investigated this well as part of his study of United Water Idaho, Inc.'s Floating Feather well. There is a well log for the big irrigation well. The big irrigation well is 338 feet deep with a 16 inch steel casing and was constructed in 1980. A 25 hp electric motor and turbine pump is installed at the big irrigation well. Mr. Scanlan testified that the big irrigation well and pump is currently capable of pumping the claimed 2.0 cfs licensed amount.

58. Based on the distance of the big irrigation well from the proposed diversions and the configuration of the big irrigation well, the proposed diversions are not likely to injure the water right no. 63-08663. However, in the unlikely event the proposed points of diversion directly injure water right no. 63-08663, mitigation is easily accomplished by, for instance, compensation for increased pumping cost, or perhaps lowering the pump bowls, if appropriate.

59. **Chase Estate hill house well: water right nos. 63-5225 (domestic and stock) and 63-18731 (domestic).** The Chase Estate did not present evidence at hearing regarding the water rights at this location or this well. However, Mr. Terry Scanlan measured this well as part of his study of United Water Idaho, Inc.'s Floating Feather well.

60. There is a well log for the hill house well. The hill house well is 112 deep with a 6 inch casing and was constructed in 1981. A ¾ hp electric pump is installed at the hill house well. The pump was replaced in 2002.
61. Based upon the distance of the hill house well from the proposed wells, the depth of the hill house well and the results of monitoring United Water Idaho, Inc.'s Floating Feather well's impact on similarly situated domestic wells, and the depth and pump configuration of the Hill House Well, the proposed points of diversion are not likely to injure water right nos. 63-18731 (domestic) or 63-5225 (domestic and stock).
62. **Chase Estate old house well: water right no. 63-5224.** There is no well log for the old house well. The old house well is of unknown depth and size. There is no pump at the old house well. Very little information is known about the old house well. The Chase Estate did not present evidence at hearing regarding this water right or well.
63. Based upon the distance of the old house well from the proposed wells, the depth of the old house well and the results of monitoring United Water Idaho, Inc.'s Floating Feather well's impact on similarly situated domestic wells, even if a pump were installed at the old house well and the water right used, the proposed points of diversion are not likely to injure water right no. 63-5224.
64. **Eagle Water Company wells:** The Company presented no evidence about its wells or water rights. However, according to Mr. Scanlan's analysis, based upon the distance of the Company wells from the proposed wells and the well construction and pump configuration in the Company wells, the proposed points of diversion are not likely to injure the Company water rights.

65. **Burton Group wells:** The Burton Group presented no evidence about its wells or water rights. However, 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.

IV. THE PROTESTANTS' PRESENTATION

66. Protestants to the City's application include: the Chase Estate, Eagle Water Company and a group of individuals identified as the Burton Group.

A. The Burton Group

67. The Burton Group, which includes Mr. Weldon Fisher, did not present any witnesses or exhibits at the hearing.

68. The Burton Group did not present any evidence regarding the Burton Group's water rights, any alleged injury to the Group's water rights, or evidence about the Burton Group's wells.

B. The Eagle Water Company

69. The Company did not present any witnesses at the hearing.

70. The Company did not present any evidence regarding its water rights, any alleged injury to its water rights or any evidence about its wells.

71. The Company simply argued that the City should not be permitted to appropriate water and instead should be required to contract with an existing company for needed water. The Company claimed that the City's ability to appropriate water is related to the local public interest standard. However, the Company did not present any legal or factual basis for this

argument. Furthermore, the Company did not present evidence or testimony showing that the Company is willing or even capable of providing water to the City's municipal service area.

C. The Chase Estate

72. The Chase Estate is the only Protestant that submitted any testimony for the record.
73. The Chase Estate Protestants also alleged that the City should not be permitted to appropriate water and instead should be required to contract with a water company for needed water. However, the Chase Estate presented no legal or factual basis for this argument. The Chase Estate presented no evidence that any other water provider is even capable or desirous of supplying the City's municipal service area.
74. The Chase Estate Protestants presented evidence regarding three (3) wells it claimed might be injured by the proposed Eagle Well #3: the dairy/domestic well (63-5226 and 63-15820), the small irrigation well (63-5229) and the big irrigation well (63-08663). The Chase Estate did not present any testimony regarding the Chase Estate's other two (2) wells: the old house well (63-5224) and the hill house well (63-18731 and 63-5225).
75. The Chase Estate submitted the testimony of consultant Mr. Dave Shaw who testified that he knew absolutely what was going to happen if proposed Eagle Well #3 was constructed. Mr. Shaw testified that a precisely calculated drawdown would occur in the vicinity of the well.
76. Mr. Shaw did not testify that there was not enough water to satisfy water rights in the area of the proposed wells.
77. Mr. Shaw's analysis was based upon the assumption that the proposed Eagle well #3 will pump 1,000 gpm on a sustained basis, 24-hours per day, continuously for 6 months. The Chase Estate produced no analysis or other evidence or testimony regarding the effects of pumping Eagle well #3 at the anticipated average rate of 200-250 gpm.

78. Mr. Shaw claimed that if the proposed Eagle well #3 impacts the Chase Estate wells, the only remedy is to construct a new well to replace the dairy/domestic well and the small irrigation well. However, Mr. Shaw did not rebut Mr. Scanlan's testimony about the fact the dairy/domestic and small irrigation wells are poorly constructed with antiquated pumps and that there are newer pumps that could pump the currently available water in a more reliable manner.
79. Mr. Shaw presented testimony regarding his calculations of drawdown using his interpretation of certain formulas. However, he did not correct his drawdown calculations once the errors in his use of the formulas were identified.
80. Although the Chase Estate has filed a claim to .31 cfs for water right nos. 63-5226 (dairy) and 63-15820 (domestic) from the dairy/domestic well, during the hearing the Chase Estate acknowledged that the claim should be reduced to .13 cfs.
81. The dairy/domestic well is used to produce water for domestic and dairy purposes. The Chase Estate claimed that the dairy/domestic well is 240 feet deep with a 3-inch diameter casing. The Chase Estate acknowledged the well is more than 100 years old and stated that two (2) $\frac{3}{4}$ hp electric shallow-well jet pumps are in the well.
82. The Chase Estate has filed a claim to .42 cfs for water right no. 63-5229 from the diversion point identified as the "small irrigation" well. The Chase Estate claimed that the small irrigation well is 280 feet with a 4-inch diameter casing. The Chase Estate acknowledged that the small irrigation well is approximately 77 years old. Mr. Mike Chase testified that a 2 hp centrifugal pump is installed at the small irrigation well but it has not been used since at least 1983. There is no power hooked up to the well but Mr. Chase testified the Chase Estate has a generator it could use for power.

83. The Chase Estate claimed that water right no. 63-5229 is a supplemental water right, however, the Chase Estate's claim to water right no. 63-5227 (Exhibit 20) indicates that water right no. 63-5227 is supplemental to 63-5229. This makes water right 63-5229 the primary right.
84. The small irrigation well has not been pumped for approximately twenty (20) years. Mr. Mike Chase testified that the Estate has not operated, attempted to operate, or tested the small irrigation well since 1983.
85. The Chase Estate has a license for 2.0 cfs for water right no. 63-08663 from the diversion point identified as the "big irrigation" well. Mr. Mike Chase testified that water right no. 63-08663 is used to supply supplemental water for irrigation.

V. MR. SCANLAN'S REBUTTAL TESTIMONY

86. Mr. Scanlan had the most knowledge of and experience with the aquifer in the area of the proposed wells. Mr. Scanlan's analysis relied on the Department's Open File Report in addition to other reports and available information, and his investigation of the Protestants' water rights.
87. Mr. Scanlan testified that Mr. Shaw was incorrect in his testimony that he knew precisely what would happen because so little is known about the Chase Estate's wells.
88. Mr. Scanlan testified that pumping at the average pumping rate is not likely to injure the Chase Estate water rights.
89. Mr. Scanlan testified that the Chase Estate consultant's testimony was not accurate and that it was based on the incorrect use of certain formulas.
90. Mr. Scanlan described the Chase Estate's dairy/domestic and small irrigation wells as antiquated, unreasonable means of diversion. 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.

91. Mr. Scanlan testified that Mr. Shaw's testimony regarding drilling new wells as a remedy is an extreme idea and certainly not the only remedy, and that what is needed, if mitigation is necessary, is new pumps. He produced charts from supply houses showing the availability of such pumps. He testified these pumps could pump water to satisfy the Chase Estate's actual use.

VI. SUMMARY OF FINDINGS

92. The record shows that there is adequate groundwater to satisfy existing water rights and new water rights.

93. The City's application does not propose to divert or use more water than already permitted. Approval of the City's application will not result in the enlargement of the City's existing water rights.

94. Approval of the City's application will not be contrary to the conservation of water within the State of Idaho.

95. The application to amend the existing water right permit is found to have been made in good faith and not for delay or speculative purposes.

96. Approval of the City's application will not injure existing water rights.

97. Approval of the City's application is not adverse to the local public interest.

CONCLUSIONS OF LAW

98. The City is authorized to construct a City-owned municipal water system. In Idaho "[c]ities are empowered to establish, create, develop, maintain and operate domestic water systems;

provide for domestic water from wells, streams, water sheds or any other source; provide for storage, treatment and transmission of the same to the inhabitants of the city....” Idaho Code § 50-323. The Department cannot disregard this clear statutory grant of authority.

99. The City is authorized to appropriate water for municipal purposes. Water used for municipal purposes “refers to water for residential, commercial, industrial, irrigation of parks and open space, and related purposes, excluding use of water from geothermal sources for heating, which a municipal provider is entitled or obligated to supply to all those users within a service area...” Idaho Code § 42-202B(6).

100. The City filed the subject application because it needs additional points of diversion to independently satisfy state regulations and provide water for its citizens. The Idaho Department of Environmental Quality requires that community water systems supplying groundwater to more than twenty-five (25) homes have a minimum of two (2) sources. IDAPA 58.01.08.550.03.p. A public water system must also meet certain capacity standards, including “the physical infrastructure to consistently meet drinking water quality standards and treatment requirements and is able to meet the requirements of routine and emergency operations.” IDAPA 58.01.08.003.10. The record also shows that the City filed its application to meet these and other water system standards the City has determined would be in the best interest of its citizens.

101. The City’s administration has determined that the City and its citizens would best be served by a City-owned water system. The Department gives due deference to the representatives who offered testimony on behalf of their constituents.

102. The Idaho Public Utilities Commission, not the Department, is the entity authorized by the Legislature to grant or deny public water utilities permission to serve certain areas within the

State of Idaho. The Idaho Public Utilities Commission has jurisdiction to supervise and regulate every public utility in the State of Idaho, including purveyors of water service. Idaho Code §§ 61-501; 61-125. Other than approving the City's third-party agreement for emergency and fireflow back up, the Public Utilities Commission has not given any utility permission to provide water to the City's municipal water service area.

103. The City's application is in the local public interest as defined by Idaho law. "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) (emphasis added).

104. Drilling a limited number of municipal wells is better for the groundwater resource than drilling an individual domestic well for each user, due to the potential for domestic wells to act as conduits for groundwater contamination. Additionally, ensuring that the City has an adequate system to meet water demand and is protected in the case of emergency is also in the local public interest.

105. The issue of whether the City can appropriate water under Idaho law or instead is required to contract with a water company for water needs does not fall within the statutory definition of "local public interest."

106. Approval of the City's application is not likely to significantly affect reasonable pumping levels. "[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.

107. The City has committed to mitigate in the unlikely event there is injury to valid senior water rights that is directly attributable to the City's diversions and has identified available mitigation measures.

108. All of the Protestants in this matter have had sufficient opportunity to be heard.

RECOMMENDED ORDER

Based upon the substantive analysis and data submitted as set forth in this Recommended Decision and Order, the City's Application is GRANTED.

Hearing Officer, Idaho Department of Water Resources

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DEC 15 2003

Department of Water Resources

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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 POST-HEARING BRIEF
IN THE NAME OF THE CITY OF EAGLE)
_____)

INTRODUCTION AND ISSUES

This case concerns a small family dairy in Eagle. The Chase dairy, which includes a relatively small 100-plus acre farming operation, is the sole source of income for Bill Chase and his family, a primary source of income for Mike Chase and his family, and supplemental sources of income for other members of the Chase family. The land has been in the Chase family for over 80 years. During this time, the Chases built the dairy, farmed the land, developed their water rights, and contributed to the Eagle area and its economy.

The Chase dairy and farming operations depend upon ground water. In particular, the dairy needs a reliable supply of sanitary ground water to keep its facilities clean and its dairy cows productive and disease free. 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. As a safeguard against interruptions in the water supply needed for the dairy, the Chases

have installed redundant pumps and power supplies. If one pump fails, the other pump can continue pumping water; if power goes out, the Chases can bring their portable generator online.

On June 8, 2001, the City of Eagle filed Application for Amendment of Permit No. 63-12448, 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 next to a barn depicted at the bottom of the photograph admitted as Exhibit 156.

On August 15, 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" ("Strowd report"). According to the Strowd report, wells located within the inner circle of the "Strowd Bullseye"¹ will most likely experience drawdowns in excess of 8 or 10 feet. At the time Strowd prepared the report, he was unaware that the Chases² had two wells—the dairy well and small irrigation well—in very close proximity to the proposed Brookwood well. When Mike Chase contacted Strowd and informed him of the Chase wells, Strowd responded that the Chase dairy and small irrigation wells would experience "problems" from the proposed Brookwood well.

Two days later, on August 17, 2001, Strowd revised his report to include references to the Chase dairy and small irrigation wells. Strowd did not change his Bullseye diagram, which continued to estimate drawdowns within the inner circle in excess of 8 or 10 feet. The only difference is that the revised Strowd report now put the City on notice that the Chase dairy and small irrigation wells were both located inside the inner circle of the Bullseye and were likely to

¹ The Strowd Bullseye is actually entitled "Estimated 6-Month Draw Down Based on 1000 GPM Sustained Pumping" *Exhibit 102*, but was labeled during the City's testimony as the "Strowd Bullseye." To avoid confusion, the diagram will continue to be referred to as the "Strowd Bullseye."

² The "Estate," "Chases," and "Chase" are used interchangeably throughout. They all refer to the Estate of Eleanor I. Chase.

experience drawdowns in excess of 8 or 10 feet. The City subsequently terminated its counsel, brought in new legal counsel (*see Substitution of Counsel dated July 11, 2002*) and retained a new expert, Terry Scanlan, P.E. At the hearing, however, when Scanlan was questioned on cross examination whether the Strowd report provided “the best estimate available,” he conceded, “Yes.”

As will be shown, the City and its expert do not seriously dispute the fact that the dairy well will cease producing water. Similarly, based on the evidence, there is no serious dispute that the small irrigation well will suffer the same fate, and that the large irrigation well will also incur drawdowns. The City will attempt to water down the impact of these conclusions by raising various arguments about projected average use of the Brookwood well being only 200 gpm and speculating about other possible pump configurations.

Putting aside the City’s arguments (which will be addressed later), the first dispositive issue to decide is framed by Idaho Code § 42-211. Because the central fact in this case—i.e. that two of the Chase wells will effectively “dry up” and another will potentially be impacted—has not changed since Strowd issued his report over two years ago, the issue is whether the ground water rights of the Estate will be “adversely affected” by the Brookwood well. As detailed below, pursuant to Idaho Code § 42-211 and *Parker v. Wallentine, 103 Idaho 506, 650 P.2d 648 (1982)*, the interference by the Brookwood well (as estimated by the Strowd report) constitutes an adverse effect to the Estate’s ground water rights.

The second dispositive issue is whether the City has failed to carry its burden of proof to show that the Brookwood well is in the local public interest. As discussed below, the City has failed to demonstrate why it cannot use the high-capacity well at its existing Floating Feather point of diversion to partner with its Lexington No. 1 high-capacity well. It is contrary to the

local public interest for the City to develop the Brookwood well and cause harm to neighboring wells, when the evidence shows that a less injurious option exists.

DISCUSSION

I. THE ESTATE’S WATER RIGHTS WILL BE ADVERSELY AFFECTED BY THE BROOKWOOD WELL.

A. **LEGAL STANDARD.** Pursuant to Idaho Code § 42-211, the City’s application cannot be approved “if the rights of others will be . . . adversely affected thereby.” (emphasis added). The first hurdle is established. Nobody disputes that the Estate has “rights” to divert ground water from the dairy well, small irrigation well and large irrigation well pursuant to the following beneficial-use, licensed, and partially decreed water rights:

<i>Well Name</i>	<i>Water Right No.</i>	<i>Priority Date</i>	<i>Purposes</i>	<i>See Exhibit No.</i>
Dairy Well	63-5226	01/01/1950	Commercial, stock water, and domestic	144
	63-15820	01/01/1920	Domestic	150
Small Irrigation Well	63-5229	10/27/1925	Irrigation, stock water, and domestic	146
Large Irrigation Well	63-8663	04/06/1977	Irrigation and stock water	147, 148

The second hurdle is the key issue. That is, for purposes of determining whether the Estate’s rights will be adversely affected it is necessary to first determine what those ground water “rights” include. Stated otherwise, what “bundle of sticks” are encompassed within the real property right to divert ground water? Once those bundle of property-right sticks are identified, it is then possible, based on the evidence, to determine whether the proposed Brookwood well is going to take (i.e., adversely affect) one or more of the Estate’s property-right sticks.

The “bundle of sticks” for a ground water right has been clearly articulated by the Idaho Supreme Court in *Parker v. Wallentine*, 103 Idaho 506, 510 fn.4, 512, 650 P.2d 648, 652 fn. 4, 654 (1982):

The issue in this case is the type of protection to which Parker’s [the senior] rights is entitled.

....

[Parker’s ground water] right *includes* the right to [1] have the water available at the historical pumping level, or [2] to be compensated for expenses incurred if a subsequent appropriator is allowed to lower the water table and Parker [the senior] is required to change his *method or means of diversion* in order to maintain his right to use the water.

(emphasis, ellipses, and brackets added).

In addition to articulating the bundle of property-right sticks included within a ground water right, the *Parker* case is important to the present case in several other ways. First, it establishes a clear line as to the ground water rights governed solely by the prior appropriation doctrine and the other category of ground water rights governed by the prior appropriation doctrine as modified by passage of the 1951 Ground Water Act, codified at Idaho Code § 42-226 *et seq.* The Ground Water Act provides that “This act shall not *affect* the rights to the use of ground water in this state acquired before its enactment” in 1951. *Idaho Code § 42-226.* Consequently, the act sets 1951 as the line between ground water rights “affected” by the Ground Water Act and those not affected by the act. Similarly, in *Parker*, the Court refused to apply an amendment to the Ground Water Act retroactively, holding that “statutes in Idaho are not to be applied retroactively in the absence of a clear legislative expression to that effect.” *103 Idaho at 511, 650 P.2d at 653.* Because a legislative exception to domestic ground water rights was not repealed until 1978, the *Parker* court held that the dividing line for domestic ground water rights is 1978. *103 Idaho at 510, 650 P.2d at 652.* All other non-domestic ground water rights are subject to the 1951 dividing line. *See id. at 512, 650 P.2d at 654.*

Recognizing the dividing line is important in this case because it determines which of the Chase water rights are protected to historical pumping levels (thus entitling the Chases to compensation if they are forced to change their method or means of diversion) and which ground water rights are only protected to reasonable ground water pumping levels. As the following table illustrates, the water rights diverted from the Chase dairy and small irrigation wells are protected to historical pumping levels, and the water right from the large irrigation well is protected to historical pumping levels for purposes of diverting stock water.

Pre-1951 Chase Ground Water Rights³			
<i>Water Right No. & Well</i>	<i>Priority Date</i>	<i>Governed by</i>	<i>Protected to</i>
63-5226 Dairy Well	01/01/1950	Prior appropriation doctrine	Historical pumping levels
63-15820 Dairy Well	01/01/1920	Prior appropriation doctrine	Historical pumping levels
63-5229 Small Irrigation Well	10/27/1925	Prior appropriation doctrine	Historical pumping levels

Post-1951 Chase Ground Water Rights			
<i>Water Right No.</i>	<i>Priority Date</i>	<i>Governed by</i>	<i>Protected to</i>
63-8663 Large Irrigation Well	04/06/1977	For irrigation use – governed by prior appropriation doctrine as modified by the Ground Water Act	For irrigation use – protected to reasonable ground water pumping levels
		For stock water use, governed by the prior appropriation doctrine because the 1977 priority date predates the 1978 exception for domestic rights as held by <i>Parker</i> . In 1977, stock water use was included within the definition of “domestic.” See <i>Idaho Code § 42-111</i> (use for “livestock”).	For stock water use – protected to historical pumping levels.

³ The Chases own additional water rights. However, for purposes of this brief, only the Chase water rights from the dairy well, small irrigation well, and large irrigation well are discussed.

Equally important to marking the dividing line for ground water rights, the *Parker* case also makes clear that the rule of law to be applied to ground water rights that predate 1951 (or in the case of domestic rights predate 1978) is the prior appropriation doctrine. The City will likely try to dismiss *Parker* as limited to domestic ground water rights only. Such an argument is inconsistent with the clear rule of law set forth by the *Parker* court:

Prior to the enactment of the Ground Water Act, the doctrine of prior appropriation, i.e., first in time is first in right, governed the appropriation of ground water in the State of Idaho.

Parker, 103 Idaho at 512, 650 P.2d at 654. Contrary to the City's argument, that rule of law is in no way limited to only domestic ground water rights. The fact that the Court had before it only one domestic ground water right in that case, does not negate the rule of law the Court applied to determine the protection to which Parker's ground water right was entitled. *See 103 Idaho at 510 fn.4, 650 P.2d at 652 fn. 4.* Because the Chase ground water rights illustrated in the table above are governed solely by the prior appropriation doctrine their rights include protection of the following property-right bundle of sticks:

Under the prior appropriation doctrine . . . [the senior ground water 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 [the senior] is required to change his method or means of diversion in order to maintain his right to use the water.

103 Idaho at 512, 650 P.2d at 654.

The *Parker* case also sets forth a careful balancing of interests between senior and junior ground water users, which applies with equal force to this case:

If subsequent appropriators desire to engage in such a contest [a race to the bottom of the aquifer] the financial burden must rest on them and with no injury to the prior appropriators for loss of their water.

....

The principles set forth in *Bower and Noh* balance the competing interests of the parties involved and the public and serve to effectuate the policy of maximum development of the water resources of this state. Under these principles, we hold

that Wallentine has a right to divert any surplus subterranean waters provided and so long as his diversion does not deprive Parker of his use of the water. 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 for 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.

Parker, 103 Idaho at 513, 514, 650 P.2d at 655, 656 (brackets in original) (emphasis added).

There is one problem with *Parker* that need not be repeated in this case. In that case, the parties spent over five years in litigation. Parker filed his complaint in 1977 and the Idaho Supreme Court issued its opinion in 1982. Parker had to obtain a temporary restraining order, then a preliminary injunction, and prevail again on appeal. According to the record in *Parker*, IDWR experts underestimated the adverse impacts to Parker's well when they first issued Wallentine's water right permit:

In this very case, the record demonstrates that the Department issued the water permit to Wallentine because its experts did not expect that the Wallentine well would have a significant impact on the Parker domestic well. This later proved to be incorrect.

Parker, 103 Idaho at 510 fn. 4, 650 P.2d at 652 fn 4.

In Wallentine's case there may have been good reason Department experts underestimated the impacts to Parker's well. In this case, however, there is no basis upon which to underestimate the impacts to the Chase dairy and small irrigation wells. As discussed below, the Strowd reports and the evidence concerning the Chase wells, makes clear that if the Brookwood well is diverting 1,000 gpm or more, the Chases will not be able to divert water from the dairy well and the small irrigation well.

Thus, there is no reason for the Chases to have to become the modern-day Parker and spend five years litigating a case that the Legislature intended for IDWR to head off at the application stage. That is, if the applicant (i.e. the City) fails to satisfy its burden to prove no

adverse effects, then the application must be denied. That action puts a stop to an additional five years of otherwise unnecessary litigation and properly protects the senior water right users. It also properly preserves the Department's role in determining hydrological impacts within an administrative forum rather than having the technical issues decided by courts in a judicial forum.

Interference from a newly-issued water right permit is not (as the City might suggest) something that should be litigated in courts at a later date after the "impacts are actually known." That is simply passing the buck. If well interference cases go to court immediately following the issuance of a permit (as in *Parker*), it is an indication that the system did not work to protect the senior water users. By establishing the statutory process for evaluating water right applications, the Legislature intended for IDWR to make the hard decisions, now, based on the available evidence and placed the burden squarely on the shoulders of the applicant to meet its burden to show no adverse affects. That process prevents a line of would-be Parkers from forming at the courthouse to obtain protection for their senior ground water rights.

Based upon the above discussion, pursuant to Idaho Code § 42-211 and *Parker*, the narrower issue to be determined is whether the Brookwood well will, in fact, *lower the historic pumping levels* in the Chase wells and thus force the Chases to *change their method or means of diversion* (i.e. drill new wells). However, because the City, as the applicant, has the burden of proof in this case the issue must be more properly phrased: Has the City proved by a preponderance of evidence that the Chases will not need to change their method or means of diversion in order to divert their ground water rights? As discussed below, the City has fallen far short of this burden.

B. THE DAIRY WELL.

1) **Drawdown in the Dairy Well will Likely Exceed 8 or 10 Feet.** While the parties disagree on many points, they do agree on this one point: The August 17, 2001, Strowd report provides the “best estimate” of probable impacts to the Chase wells based on 1,000 gpm withdrawals. The Estate’s expert also offered corroborating testimony concerning the estimated drawdowns based on the Cooper-Jacobs analysis to which the City’s expert disagreed. This disagreement is not important. Because both parties’ experts agree that the Strowd report provides the “best estimate available” it is unnecessary to resolve disagreements over other corroborating scientific estimates.

(a) *The Strowd Report.* According to undisputed testimony at the hearing, the dairy well is located within the inner circle of what the parties commonly referred to as the “Strowd Bullseye.” The Bullseye is actually a diagram of the cone of depression that would be expected to occur based upon 1,000 gpm sustained withdrawals. *Exhibit 103, p. 20.* According to the testimony of the Estate’s expert, David Shaw, P.E., the dot in the middle of the Strowd Bullseye is the proposed Brookwood well. Shaw testified that the outer ring of the innermost circle is located approximately 1,000 feet from the proposed Brookwood well.

According to the Strowd Bullseye, wells located 1,000 feet from the Brookwood well can expect drawdowns of up to 8 feet. Wells closer than 1,000 feet can expect even greater drawdowns. In this case, the dairy well was measured at 509 feet from the proposed Brookwood well. *Exhibit 155.* Because of such close proximity, Shaw opined that based on the Strowd analysis, it was more likely than not that the dairy well would experience drawdowns in excess of 8 or 10 feet. Shaw’s opinion is consistent with the opinion offered by Strowd:

Wells within hundreds of feet of the Brookwood site, however, may experience drawdowns in excess of eight or ten feet.

Exhibit 102, p. 6.

At the hearing, the City and its expert did not dispute the opinions of Shaw and Strowd concerning the drawdown at the dairy well. On cross-examination, the City's expert agreed the Strowd Bullseye was "the best estimate available." Consequently, it is undisputed that drawdowns in the dairy well will, more likely than not, be in excess of 8 or 10 feet.

(b) *The City's 200 GPM Argument.* Rather than dispute the Strowd report, the City tried to water it down. Recognizing that the Strowd Bullseye assumes sustained withdrawals of 1,000 gpm, the City devoted much of its time and its expert's testimony on the effects caused by much lower (assumed) withdrawals of only 200 gpm. In short, the City could not beat the Strowd analysis, so it changed an underlying assumption to make the Strowd analysis appear more favorable. The City's tactic is problematic for a number of reasons.

One problem is that the City's 200-gpm argument is contrary to its application. The City's application establishes the relevant gpm for purposes of determining the adverse effects of the proposed Brookwood well. The City's permit for 63-12448 authorizes a diversion rate of 3.25 cfs (about 1,460 gpm). *Exhibit 128.* The City's application to amend its permit requests the addition of the Brookwood well but it does not also request that its permitted diversion rate be amended downward to 200 gpm or even 1,000 gpm. *See Exhibit 1.* The application frames this case. The application seeks a maximum rate of 1,460 gpm, and therefore, any determination of adverse effects must be based upon the only rate before IDWR: 1,460 gpm. Not 200 gpm. If the City wishes to withdraw its current application and file a new one requesting a 200 gpm diversion rate that is a separate matter. However, those are not the facts before IDWR.

Moreover, the City's 200-gpm argument is inconsistent. On one hand, the City wants IDWR to issue it a permit so it would have the right, if it so chose, to divert the entire 1,460 gpm

from the Brookwood well. On the other hand it wants IDWR to base its determination of adverse effects on assumed 200 gpm withdrawals. The City is blowing hot and cold. While the City blows a lot of air about how based on its "current planning" it does not expect to withdraw 1,460 gpm from the Brookwood well, the well will nonetheless be designed to accommodate such withdrawals and to maintain "sustained" 1,000 gpm withdrawals. *See Exhibit 2.* Also, there is no guarantee the Lexington No. 1 well will always be functional. The Brookwood well could very likely become the workhorse, particularly, if the City continues to expand its service area to include new subdivisions. Bottom line: The City has applied for the right to withdraw 1,460 gpm from the Brookwood well and that is the measuring stick that must be used to evaluate adverse impacts. Indeed, on cross examination, the City's witness, Vern Brewer, conceded that the peak diversion rate for the Brookwood well could exceed 1,000 gpm if the City were to provide water throughout its designated service area.

Because the City's application seeks 1,460 gpm withdrawals, the Strowd assumption of 1,000 gpm actually *understates* the potential drawdown in the dairy well. Thus, the City's attempt to soften the impact of the Strowd report, is merely an attempt to distort the real impacts that are most likely to occur if the Brookwood well is developed.

Finally, the City's 200-gpm argument is inconsistent with the analysis performed by IDWR when it evaluated the Lexington No. 1 well as part of the application for permit no. 63-11413. *See Exhibit 122.* The Lexington No. 1 well is a high-capacity well used for municipal purposes with a diversion rate of 3.15 cfs under permit no. 63-11413. *See Exhibits 122 and 127.* According to the City, the proposed Brookwood well is supposed to be a similar high-capacity well used for the same purposes. Because the two wells are very similar, why should they be evaluated differently? Why should the effects of the Lexington No. 1 well be based on a 1,000-

gpm analysis, and the effects of the proposed Brookwood well be based on only a 200-gpm analysis? The City provides no answer. Also, the City does not explain why it is designing the Brookwood well to handle a “sustained rate of 1,000 gpm” as set forth in its design specifications, if, as it claims, it is only going to maintain sustained rates of 200 gpm. See *Exhibit 2*.

(c) *The City’s Don’t-Know-For-Sure Argument.* In another attempt to sidestep the Strowd report, the City’s expert testified that we cannot know for sure what the “actual” impacts of the Brookwood well will be until the well is drilled and a pump test is performed. On cross examination, the City’s expert conceded that was the case with every new ground water application where a pump test had not been previously performed. He agreed that circumstance (i.e. lack of knowledge of actual impacts) was not unique to this case.

The problem with the City’s don’t-know-for-sure argument is twofold. First, knowledge of actual impacts has never prevented IDWR from making decisions based upon the best available data and best available estimates of probable impacts. That is why there is an expert agency (and not a court) charged with determining hydrological impacts. The agency is well-equipped to estimate probable impacts based upon available data. In this case, there is ample available data. The Strowd report is based upon detailed studies and aquifer analysis performed by IDWR hydrologists, see *Exhibit 103 (IDWR Open-File Report, 1991)*, by CH2M Hill engineers, see *Exhibit 104 (Results of the 30-Day Pumping Test and Aquifer Analysis, 1991)*, and a pump test at the Floating Feather well, see *Exhibit 105 (Aquifer Test at Floating Feather Well, 1995)*. Noticeably absent from the testimony of the City’s expert is any allegation that there is not enough data upon which to make a reasonable estimate of probable impacts. In fact, the City’s expert testified that there is a lot of hydrological data about the Eagle area, as compared to

other areas of the state. And both experts at the hearing agreed that Stowd drawdown estimates were reasonable based upon the data.

There is a second problem with the City's don't-know-for-sure argument. If the City truly felt it was necessary for IDWR to know the "actual" impacts of the Brookwood well (rather than IDWR basing its decision on estimates of probable impacts) then why didn't it seek permission to drill a test well at the Brookwood site and perform a pump test? The hearing officer may take judicial notice of the fact that IDWR regularly receives requests from applicants for drilling a test well and performing a pump test as a precursor to proving up on their applications.

IDWR typically grants the request where there is not enough existing data upon which to estimate impacts. In fact, the hearing officer may take judicial notice of Application for Water Right No. 65-22650 as a recent example of where IDWR has allowed the applicant to drill a test well to collect additional data—with no guarantees that a permit would ultimately be issued. In this case, there is no evidence that the City ever requested that it be allowed to drill a test well and perform a pump test in order to collect more data. In fact, as the City's discovery responses make clear, it has always intended to rely on the Stowd report. *See Exhibit 110 (Response to Interrogatory No. 2)*. Thus, the City's suggestion that the hearing officer should not make a determination of impacts until after actual impacts are known is inconsistent with the City's discovery responses and inconsistent with IDWR's statutory duty (and practice) to make such determinations before allowing or disallowing an application.

2) The Chases Will Be Forced to Change Their Method or Means of Diversion for the Dairy Well.

(a) *Actual Use of the Dairy Well.* As Mike Chase testified, the dairy well water right has been used since 1950. The dairy well configuration consists of a 240' foot well, 3-inch

casing, and two $\frac{3}{4}$ horsepower pumps and two alternate power sources (electric and tractor-powered generator) for redundancy purposes. According to Mike Chase, this dairy well configuration has continued to this day to supply water to the dairy on a daily basis, 7 days a week, 365 days a year, without problem. According to the *Exhibit 152* calculations by Shaw, the existing dairy well configuration is capable of yielding a diversion rate of 0.13 cfs.⁴ Shaw's calculations also show that the water requirement for the dairy is 0.13 cfs with an annual volume of 11.2 afa. *Exhibit 152*.

Based on the comments made at the hearing, the City will likely try to portray the dairy well as an inadequate system barely able to meet the requirements of the dairy. This portrayal falls apart under scrutiny. First, there is no dispute—the dairy well works and it provides ample water to operate the dairy on a daily basis. As the testimony indicated, there is ample water to keep the cows healthy and producing and the dairy sanitized. The dairy well worked last year, it worked last month, it worked last week, it worked yesterday, and it works today. It may be old and it may not be perfect, but those are not reasons to replace the entire system. The farmers in this state have never been held to such an unrealistic standard.

No one questions that from the moment a well is put into the ground it begins to deteriorate. At some point, it will need to be replaced. But that point does not occur when the well—as in the case of the dairy well—is still able to perform its function of supplying ample water to operate the dairy based upon the undisputed testimony by Mike and Bill Chase. In short, (contrary to the City's portrayal) the dairy well is not broke and there exists no need to fix it.

⁴ Mike Chase pointed out during his testimony that the 0.13 cfs diversion rate calculated by Mr. Shaw was less than the 0.31 cfs claimed for the dairy water right (no. 63-5226). Mike Chase testified that the latter diversion rate was

As part of its attempt to portray the dairy well in a bad light, the City had its expert offer testimony suggesting that the dairy well configuration currently produces only 0.07 cfs, which is less than 0.13 cfs historically diverted from the well. That testimony is based on a faulty assumption. It assumes the 20' 10" static ground water level as measured on May 27, 2003 (as testified to by Mike Chase) remains constant throughout the year.

We know that is not true. On cross examination, the City's expert conceded, "on an annual basis *May* is the lowest part of the cycle." Thus, we know that on an annual basis the month of May is the *low* water level cycle for that area. This fact is based upon Scanlan's own measurements of the nearby Miller and Vail wells. *See Exhibit 11*. According to Scanlan's own measurements, the depth of water in the Miller and Vail wells is quite low in May and rises perceptibly between May and October of each year. *See Exhibit 11*. On cross examination, Scanlan conceded that these same cycles would apply to the dairy well. Thus, because water levels are higher in other times of the year, Scanlan conceded that it was possible that the water levels in the dairy well would also be higher than the one-time 20' 10" depth measured in May 2003.

Consequently, the City's argument that the dairy well can "currently" produce only 0.07 cfs collapses. It is a house of cards founded solely upon a one-time static water level measurement taken during the *lowest* part of the annual water cycle for the area.

Noticeably absent from the testimony of the City's expert is an opinion about the quantity of water the dairy well will produce as the water levels increase during the summer and fall. Based upon Mike and Bill Chases' testimony, even though the water requirements for the dairy increase during the hot summer months, they have had no problem with the dairy well *actually*

the number estimated by the IDWR claims taker when the original claim for 63-5226 was prepared and that number

providing sufficient water to meet the increased water needs. According to Shaw's calculations, based upon the number of dairy cows and other factors specific to the Chase dairy, the water requirement for the Chase dairy is 0.13 cfs with an annual diversion volume and consumptive use volume of 11.2 afa. *Exhibit 152.*

In short, the City's expert revealed only half the story: The part about low water production from the dairy well during the lowest water level period of the year. The unsung half of the story—as supported by Scanlan's own well-measurement data and the testimony of the Chases—paints a much more complete picture about a dairy well that is capable of producing substantially more than the 0.07 cfs testified to by Scanlan based on a one-time low water level measurement.

(b) *Interference with the Dairy Well.* Shaw testified that if there is a drawdown in the dairy well of approximately 5 feet, the Chases would be unable to divert water from the dairy well. Shaw's opinion is based upon the following undisputed evidence. Based on atmospheric pressure the jet pumps on the dairy well can only pump water to a depth of approximately 26 feet. Based on the May 2003 measurement by Mike Chase, we know that the static water level was at 20' 10", which according to the testimony of Shaw puts the pumping level below 21 feet. That leaves only 4 to 5 feet of drawdown (26' minus 21' or more) before the pumps quit working. We also know, as discussed above, based on the Strowd reports the drawdown in the dairy well is estimated to exceed 8 or 10 feet. This drawdown effectively puts the dairy well out of commission during both the low and high water months. On direct examination, Scanlan agreed that additional drawdown in the dairy well could cause the well to cease functioning.

was carried over onto the amended claim for 63-5226.

Putting aside the City's 200-gpm argument, the City does not seriously dispute that the dairy well will effectively be rendered useless by the Brookwood well. Instead, the City will focus on advancing theories about possible mitigation options for the dairy well. This is based upon its expert's testimony. Specifically, the City's expert speculated that, assuming water levels dropped 10 to 20' in the dairy well, it may be possible to retrofit the well with a 1.5-hp deep well jet pump or a 1-hp 3-inch submersible pump and still pump about 0.07 cfs of water, which, as discussed above, is less than the 0.13 cfs required for the Chase dairy.

The flaws in Scanlan's testimony are significant. First, he did not have the necessary data upon which to offer a credible opinion as to whether or not the deep well jet pump or 3-inch submersible would work or not. The critical piece of missing evidence to support Scanlan's opinion is an examination of the casing. What condition is it in? Is it perfectly straight or crooked, as is the case with some, if not most, small diameter wells as old as the dairy well? Scanlan admitted that he did not know the condition of the casing. But he has to know. He has to know that information about the casing before he can credibly testify that it is possible to squeeze a 3-inch submersible or deep well jet pump down the dairy well's aged 3-inch casing. It is going to be a tight fit under ideal circumstances. In less than ideal circumstances, it is a boondoggle. On cross examination, even Scanlan conceded that his proposed pump options may not work: "If there's an obstruction in the casing that we're not aware of then perhaps a 3-inch pump submersible [sic] or a deep well jet couldn't be installed."

Second, what happens if the casing breaks or the pump becomes lodged while trying to squeeze a larger pump down the well? How is the City going to fix it? According to Scanlan, well drillers do not have tools to work on 3-inch wells because they do not make them anymore. Also, who is going to supply water for the dairy while the City is scrambling around trying to

drill a new well to replace the well it broke? The City is content not to answer those practical questions—questions the Chases must have answers to or risk substantial hardship to their dairy operation.

Third, Scanlan’s testimony highlights a common problem with the City’s case. The City ignores that it has the burden of proof, and therefore, the duty, to collect the evidence necessary to support its case. If the City truly wanted to explore whether other pumps would work in the dairy well, it could have requested through discovery the right to inspect the condition of the casing in the dairy well. There is no evidence that such a request was ever made by the City. Instead of collecting evidence, the City offers only speculation delivered through the mouth of its expert that it “may” be possible to utilize other pump configurations. It is *equally true* that it may be *impossible* to use the other pump configurations. The City does not know and neither does its expert.

Moreover, the City does not have the luxury to sit back, claim ignorance, and point fingers at the Chases if there is something that is unknown—but *could* have been known through discovery. Bottom line. The City could have through discovery determined the condition of the casing in the Chase dairy well. Since the City obviously knew it was going to have its expert offer an opinion that would require first-hand knowledge of the condition of the casing, it is troubling that the City made no attempt through discovery to inspect the casing. This omission highlights the City’s continued misunderstanding of its burden of proof in this proceeding and its corresponding duty to have gathered the evidence necessary to support its arguments and expert testimony.

Fourth, Scanlan’s pump options do not provide for redundancy. Bill Chase testified that the current dairy well configuration allows for redundancy. The existing well configuration has

two pumps that work in parallel with each other. If one fails, the other keeps operating and supplying water for the dairy operation and cows. Scanlan's scenarios do not allow for this redundancy. It is physically impossible to squeeze two 3-inch submersible pumps into a 3-inch casing. Also, the City's expert provided no evidence that two deep well jet pumps could work within the existing 3-inch casing. Thus, without evidence that Scanlan's other pump options would provide for redundancy to safeguard against water outages for the dairy, the Chase dairy would be put in a worse position. Mitigation does not require that the senior water user be forced to accept less than what he had before.

Fifth, Scanlan's pump options would substitute one adverse affect caused by the Brookwood well (i.e. rendering the dairy well unable to divert water) with another adverse affect caused by the 3-inch submersible pump or deep well jet pump (i.e. limiting the dairy well to less than its historical pumping capacity). Specifically, according to Shaw's calculations, the existing dairy well configuration is capable of yielding a diversion rate of 0.13 cfs (i.e. 58.5 gpm) and that based upon the number of dairy cows and other factors specific to the Chase dairy, the water requirement for the Chase dairy is 58.5 gpm. *Exhibit 152*. Conversely, in his testimony, Scanlan admitted that the deep well jet pump would only produce about 23 gpm and the 3-inch submersible pump would only produce 35 gpm. Scanlan suggested the reduced diversion rates of these pumps would be similar to the 0.07 cfs diversion rate he opined the dairy well produced based on the one-time-low-water-cycle measurement taken in May 2003.

Scanlan did not testify, nor could he, that the deep well jet pump or 3-inch submersible pump would be able to divert the quantity of water, likely closer to 58.5 gpm, produced by the dairy well during more normal and high-water-cycle months. Consequently, the lower-capacity-pump options advanced by Scanlan, if adopted, would constitute a taking of one of the property-

right-bundle-of-sticks held by the Chases for the dairy well because it would “deprive” the Chases of their right to divert up to the historical capacity of the dairy well, which is 0.13 cfs. *See e.g. Parker, 103 Idaho at 514, 650 P.2d at 656.*

Putting aside the City’s speculation about other pump options, there is a mitigation option that will work. As Shaw testified, the most reasonable option for mitigating the effects of the Brookwood well would be to drill a new well to replace the dairy well. Drilling a new well will allow a larger casing to be installed, which in turn, will allow more common pump configurations to be installed, which will do two things: (1) allow water to be pumped at lower levels, thus negating the adverse drawdown effects of the Brookwood well, and (2) allow for dual pump configurations to be installed to provide the necessary redundancy for the dairy operation.

There is no dispute that physically speaking the new-well option suggested by Shaw will work and is a reasonable solution to the interference problem. The underlying issue is about expense. *Parker* requires that the City pays the “expense of changing the method or means of diversion” so the Chases “will not suffer any monetary loss.” *See e.g., Parker, 103 Idaho at 514, 650 P.2d at 656.* It is more expensive for the City to drill a replacement well for the dairy than foot the bill for a 3-inch submersible pump or deep well jet pump. The problem with the City’s position is that there is insufficient evidence (as discussed above) to conclude that the 3-inch submersible or deep well jet pump options will work. It is just speculation. On the other hand, it is undisputed that drilling a new well as indicated by Shaw will solve the interference problem and put the Chases in no worse position.

This new-well option provides no windfall to the Chases. It simply keeps the Chases in the same position they enjoy today, i.e., able to divert ground water to supply their dairy

operation. The Chases are equally content not to receive a new well so long as the City's application for the Brookwood well is denied. This latter outcome will ensure that the Chases can continue to divert water from the dairy well free from interference by the proposed high-capacity Brookwood well.

In the end, the City's actions towards the dairy well have been pennywise and a pound foolish. In an attempt to avoid having to incur the one-time expense of drilling a new well to mitigate for impacts its own expert (Strowd) predicted two years ago, the City has caused the parties and the City's taxpayers to incur substantial litigation expenses so the City could make two arguments: (1) That the Brookwood well will not cause interference (which is not true, as shown above), and (2) That even if there is interference, the Chases can get by with either a 3-inch submersible pump or a deep well jet pump (which, as shown above, is speculative at best).

(c) *Recovery Time and Damages to the Dairy.* Related to the well interference issue is the question of recovery time. Specifically, after the water level in the dairy well drops in excess of 8 or 10 feet (as predicted above), how long will it take for the water levels in the dairy well to recover? Shaw estimated that it could take 12 hours or more for water levels in the dairy well to fully recover.⁵ Shaw testified that he based his opinion on the similar recovery times exhibited by the Vail well during the 1995 pump test of the Floating Feather well. *See Exhibit 105.* The City's expert did not dispute Shaw's opinion concerning the recovery time for the dairy well.

Bill Chase testified about the daily water needs for operating the dairy. According to Bill Chase, the dairy requires a regular supply of sanitary ground water to keep its facilities clean and in compliance with dairy regulatory requirements. A regular supply of water is also

needed to keep its dairy cows healthy, productive, and disease free. According to Bill Chase, if the dairy cows are without water for over six (6) hours, productivity will decrease, the cows may become stressed and sick, and if it is a hot day, they can die. According to Bill Chase, there is no air conditioning inside the dairy to keep the cows cool. Thus, water is critical during the hot summer months. The City offered no evidence to dispute Bill Chase's testimony. To be sure, even Scanlan agreed that the dairy could not go much more than a few hours without suffering a real hardship.

When these daily water needs are held up to the 12-plus hour recovery time estimated by Shaw, the outcome does not bode well for the Chase dairy. There clearly exists a substantial likelihood that the Chase dairy will suffer losses and damages, if the Brookwood well is allowed to be developed and pumped without a replacement dairy well already in place. Ultimately at stake are the livelihoods of the Chase family members who depend upon the continued financial viability of the dairy.

C. THE SMALL IRRIGATION WELL.

1) Drawdown in the Small Irrigation Well will Likely Exceed 8 or 10 Feet.

The small irrigation well was measured at 820 feet from the proposed Brookwood well. *Exhibit 155*. This is within the inner circle of the Strowd Bullseye. Because of this close proximity to the proposed Brookwood well, Shaw opined that based on the Strowd analysis, it is more likely than not that the small irrigation well will experience drawdowns in excess of 8 or 10 feet. Shaw's opinion is consistent with the opinion offered in the Strowd report and was not disputed by the City's expert. *See generally discussion, supra, at Paragraph I.B.1.* Therefore,

⁵ This is assuming the City would agree to immediately shut off the Brookwood well after being notified of the interference to the Dairy well.

based on the undisputed evidence, it is likely that the small irrigation well will experience drawdowns in excess of 8 or 10 feet.

2) The Chases Will Be Forced to Change Their Method or Means of Diversion for the Small Irrigation Well.

(a) *Actual Use of the Small Irrigation Well.* Mike Chase testified that the small irrigation well (water right no. 63-5229) has historically been used only as a supplemental irrigation right. The primary water right for the 20-acre parcel of land is a wastewater right, no. 63-5227. Mike Chase testified that during the mid-1980's and into the 1990's the wastewater right had been sufficient to irrigate the 20-acres, which is currently in pasture. Consequently, there has been no need to use the small irrigation well during this time. The small irrigation well was last used to divert water during 1983. This is supported by the memorandum prepared by Shaw that shows the volume of water produced by the small irrigation well based on power records from 1979 through 1983. *See Exhibit 152.*

The small irrigation well may likely need to be used again as early as next year. This is because wastewater flows have begun to diminish substantially. According to Mike Chase, the wastewater originates, in part, from the lands to the east of the dairy. Mike Chase testified that as houses and lots have been developed on the land, which is commonly referred to as the Brookwood Subdivision, the wastewater has declined to a point where there is not enough water to irrigate the pasture. As the Brookwood Subdivision continues to be developed, Mike Chase expects that the wastewater flows will continue declining. Mike Chase indicated that he would expect that the Chase family may need to use the small irrigation well next year to keep the 20-acre parcel irrigated and productive.

The City may try to argue that the small irrigation well has been forfeited because it has not been used since 1983. This argument ignores that the small irrigation well (water right no.

63-5229) is for supplemental uses only. Neither Idaho law nor IDWR have ever required that supplemental water rights actually divert water once every five years. The only requirement is that supplemental water rights be used when they are *in fact* needed. It makes no sense to require farmers to hook power up to their wells, turn on the pumps, and splash water on the ground when ample surface water supplies are available. This point was made during the hearing. According to Mike Chase it did not make sense to the Chase family to incur the power charges for operating the small irrigation well, when ample wastewater was supplied via gravity flow through the ditch.

It would be a different matter if there was clear and convincing evidence that the Chases did not use their supplemental water right during five consecutive years in which the water was needed to grow the crops or pasture. However, there is no evidence that was the case.⁶ In fact, the evidence indicates that wastewater supplies were adequate during this time period. Moreover, based on the SRBA Court's forfeiture tolling rule, *Wood v. Troutt, Memorandum Decision and Order on Challenge, Subcase No. 65-5663B (SRBA Court, May 2002)*, the small irrigation right (no. 63-5229) is not subject to forfeiture based on any non-use on or after the date of filing a claim in the SRBA and prior to the issuance of a partial decree. In this case, the original notice of claim for 63-5229 was received by IDWR on June 21, 1989, and was later amended on August 26, 2002. *See Exhibit 146.*

(b) *Interference with the Small Irrigation Well.* Shaw testified that if there is a drawdown in the small irrigation well of 5 feet or less, the Chases would likely be unable to divert any water from the small irrigation well. Shaw's opinion is based upon the following undisputed evidence. The small irrigation well is equipped with a 2-hp centrifugal suction-lift

⁶ Any claims of forfeiture by the City to the Chases' water rights would need to be addressed to the SRBA court.

pump. *Exhibit 152*. Shaw testified that based on the physical limitations of atmospheric pressure, the centrifugal pump is unable to pump water below depths of approximately 26 feet. The City's expert did not dispute that fact.

Based on the static water level measurement of 20' 6" in the small irrigation well taken by Mike Chase on August 15, 2003, Shaw estimated the pumping level in the small irrigation well to be below approximately 21 feet. Shaw testified that if the drawdown in the small irrigation well was 5 feet or less, it would be unable to produce water. As discussed in Paragraph I.C.1., above, the drawdown effect of the Brookwood well on the small irrigation well is estimated to be in excess of 8 feet. This amount of drawdown effectively puts the small irrigation well out of commission. The City does not seriously dispute that the small irrigation well, based on the existing pump configuration, will effectively be rendered useless by the Brookwood well.

Instead, the City will argue that the small irrigation well is currently unable to produce water. This is similar to the argument the City advanced against the dairy well. *See supra, Paragraph I.B.2(a)*. That argument was refuted because the opinion of the City's expert is based on a faulty assumption that a single static water level measurement taken in May 2003 is characteristic of the entire year. That is not true. Similarly, with respect to the small irrigation well, the opinion of the City's expert is based on a single static water level measurement taken by Mike Chase on August 15, 2003.

We know that a one-time water level measurement is not indicative of the water levels for the entire year. To be sure, the evidence shows that there are significant fluctuations in water levels in that area. *See supra, Paragraph I.B.2(a)*. The evidence also shows that water levels change significantly within most years and from year to year. *See id.* Scanlan's own

measurements of the Vail well illustrate this fluctuation in water levels. For example, on 10/11/95, the depth to water in the Vail well was 34.01 feet. The following May (5/15/96) the water level fell to 40.40 feet, then again in October (10/29/96) the water level rose to 34.31 feet. *See e.g. Exhibit 11.*

The City's expert based his opinion of the quantity of water the small irrigation well could produce on a single measurement. In light of the evidence of fluctuating water levels, the more intriguing question is this: What opinion did the City's expert offer about the quantity of water the small irrigation well would produce taking into account the fluctuating water level cycles? 100 gpm? 150 gpm? 200 gpm? No opinion. The City's expert was curiously silent in this regard. However, in the City's Exhibit 24 (which was prepared by the City's expert), the City's expert concedes that when the ground water level is higher (i.e., depth to water is less) a centrifugal pump (like the one in the small irrigation well) will produce the quantities of water historically used by the Chases. *See Exhibit 24.*

Shaw testified that the pumping level in the small irrigation well was likely still at a level that would allow the Chases to divert water from the well. Neither expert could answer the precise quantity of water that could be produced by the small irrigation well during the higher water level periods because no pump test had been performed on the small irrigation well.

The question, then, really boils down to this: Who has the burden of proof in this case? More specifically, who has to prove "no adverse affects"? The City, not the Chases. If the City is going to seriously argue that there will be no adverse effects on the ability of the small irrigation well to produce water because it is already a dry well, it was incumbent on the City to collect that evidence and offer it in its case-in-chief.

That evidence would have been very simple to obtain. Through discovery, the City could have requested that its expert be allowed to use a portable generator (which the Chases have on their farm and which they indicated can be hooked up to the small irrigation well) to pump test the small irrigation well. The City made no such request. Consequently, the City cannot point its finger at the Chases for the City's failure to gather evidence to support its case-in-chief. To meet its burden of proof, the City must come to the hearing with more than a briefcase full of arguments supported by guesswork.

This lack of evidence by the City highlights a common problem in its case: The City does not understand its burden. This was evident by the questions asked by the City's legal counsel at the hearing. The City's legal counsel asked the City's expert if it was "possible" for the Chases to have performed a pump test for the small irrigation well. The City's expert responded, "Yes." Now turn that question on the City. Was it possible for the City to have performed a pump test? Yes.

The question is not *who* could have done a pump test, but *who* has the burden of proof. There is no requirement that senior water users spend more money by hiring engineers or hydrologists to do a pump test every time a new application is filed. That burden is squarely on the shoulders of the applicant, not on the senior water users. The City's attempt to shift that burden onto the Chases is therefore improper.

Based on the above, the City has not proved that the small irrigation well produces anything less than that claimed during the periods of high ground water levels. The City's argument is also refuted by the undisputed testimony of Mike Chase that the last time the supplemental well was used in 1983 and in the preceding years, it produced sufficient water to irrigate the 20-acre parcel.

The City may also attempt to argue that it is possible for the Chases to get by with a different pump configuration. Specifically, the City may argue that a 4-inch submersible pump will fit down the 4-inch casing of the small irrigation well and will be able to pump water at lower levels.⁷

According to Shaw, while it may be possible to fit a small submersible pump down the 4-inch casing of the small irrigation well to pump water at lower levels, the tradeoff is that the small submersible pump would not produce the amount of water historically available from the well. In fact, it would produce far less (about 100 gpm) than the 225 gpm (0.50 cfs) diversion capacity of the existing centrifugal pump as reflected in the Exhibit 152 calculations performed by Shaw. In short, the submersible pump option means you can get water at lower levels, but you get *less* water. The City's expert did not dispute this limitation of a 4-inch submersible pump.

Consequently, to the extent the City may argue that it could mitigate the adverse effects to the small irrigation well by supplying the Chases with a 4-inch submersible pump such argument cannot be accepted. The City's proposal would be to take one adverse effect caused by the Brookwood well (i.e. rendering the small irrigation well unable to divert water) with another adverse effect caused by a 4-inch submersible pump (i.e. limiting the small irrigation well to less than its historical pumping capacity).

As Shaw testified, the most reasonable option for mitigating the effects of the Brookwood well would be to drill a new well to replace the small irrigation well. Drilling a new well will allow a larger casing to be installed, which in turn, will allow a larger pump to be installed,

⁷ Alternatively, the City may argue that the Chases could apply to transfer the point of diversion from the small irrigation well to the large irrigation well. There is no guarantee such a transfer would be approved, and even if

which will do two things: (1) allow water to be pumped at lower levels, thus negating the adverse drawdown effects of the Brookwood well, and (2) allow the entire 0.46 cfs of water to be pumped from the well. There is no dispute that physically-speaking the new-well option suggested by Shaw will work and is a reasonable solution to the interference problem.

As with the dairy well, this new-well option provides no windfall to the Chases. It simply keeps the Chases in the same position they are in today, e.g., able to divert supplemental ground water to irrigate their 20-acre land parcel. The Chases are equally content not to receive a new well so long as the City's application for the Brookwood well is denied. This latter outcome will ensure that the Chases can continue to divert water from the small irrigation well free from interference by the proposed high-capacity Brookwood well.

Like in the case of the dairy well, the City is attempting to avoid having to incur the one-time expense of drilling a new well for the Chases to mitigate for the impacts its own expert (Strowd) predicted two years ago. Instead of using its money to install a replacement well for the small irrigation well, the City is using its money to ante up in the litigation and gamble on the outcome.

D. THE LARGE IRRIGATION WELL.

1) Drawdown in the Large Irrigation Well will Likely be 4 to 5 Feet.

The large irrigation well is located 2,450 feet from the proposed Brookwood well. *Exhibit 155*. This is between the 4 to 5-foot drawdown circles on the Strowd Bullseye. Because of this proximity to the proposed Brookwood well, Shaw opined that based on the Strowd analysis, it was more likely than not that the large irrigation well would experience drawdowns in the range of about 4.5 feet.

approved, it would entail costs of burying over a thousand feet of pipe, increasing the pumping capacity of the large

2) The Chases May Be Forced to Change Their Method or Means of Diversion for the Large Irrigation Well.

Unlike the dairy well and the small irrigation well, the *estimated* impacts to the large irrigation well are unknown. Both experts agree that if the pumping water level drops below 80 feet in the large irrigation well, the pump will cease producing water or quit functioning properly. The question is whether the estimated 4.5 feet of drawdown will cause the large irrigation well to drop below the threshold level of 80 feet.

To know the answer to this question, it is necessary to first determine the current pumping level for the large irrigation well. According to Shaw, the static water level was measured at 58 feet during the parties' May 13, 2003, field examination. During that examination a pump test was not performed to determine the pumping level in the well.

The only pump test information in evidence is from the October 23, 1980, pump test performed by Layne Pumps when the pump was first installed. *Exhibit 108*. According to Shaw, that pump test shows a 28 foot drawdown in the large irrigation well based upon a pumping rate of 1,005 gpm.

If the 28-foot drawdown number taken in 1980 is added to the 58-foot static water level measurement taken in May 2003, the pumping level should be 86 feet. But how is that possible? According to both experts, if the pumping level drops below 80 feet, the pump will cease to produce water or quit functioning properly. Based upon the undisputed testimony of Mike Chase, the large irrigation well continues to produce irrigation water.

This anomaly likely stems from the fact that the pump does not pump the same quantity of water it did when it was brand new. Indeed, the City's expert suggested that the pump could

irrigation well, and other costs associated with the change.

be operating at a lower efficiency. Because it pumps less water, albeit sufficient for irrigation purposes, the drawdown in the large irrigation well is likely less than 28 feet.

That explanation brings us full circle. Neither expert knows with any degree of reasonable certainty the pumping level in the large irrigation well. Without knowing the pumping level, neither expert can with any degree of reasonable certainty predict whether the estimated 4 to 5 feet of drawdown in the large irrigation well (caused by the Brookwood well) will cause the pumping levels to drop below the 80-foot threshold.

In the event this 80-foot is threshold met, the pump in the large irrigation well will need to be lowered. According to Shaw, this would entail pulling the pump, adding more column, tube, shaft, and an additional stage, and then replacing it down the well. A quote obtained from Layne Pumps estimates the costs to be around \$2,111.00 to pull the pump and add column, tube and shaft, but not to add an additional stage. *Exhibit 108*. According to the City's expert, costs of impacts to the large irrigation well could include replacing the bowls, paying for additional power consumption, and lowering the pump.

II. THE APPLICATION IS NOT IN THE LOCAL PUBLIC INTEREST.

A. THE CITY FAILED TO PROVE THAT THE LOCAL PUBLIC INTEREST FAVORED THE BROOKWOOD SITE OVER THE FLOATING FEATHER SITE

The local public interest element is applicable to changes sought under Idaho Code § 42-211. *See e.g., Hardy v. Higginson, 123 Idaho 485, 849 P.2d 946 (1993)*. The "local public interest" means "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)*. According to the Idaho Supreme Court, the local public interest "should be read broadly in order to secure the greatest possible benefit from the public waters for the public." *Shokal v. Dunn, 109*

Idaho 330, 338, 707 P.2d 441, 449 (1985). Moreover, it is the City's burden to prove that its application is in the local public interest:

It is not the protestant's burden of proof to establish that the project is not in the local public interest. 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.

Id. at 339, 707 P.2d at 450.

According to Brewer, the City's sole purpose for adding the proposed Brookwood well is so it can have *one* high-capacity well to partner with the other city-owned high-capacity well, Lexington No. 1. *See also Exhibit 106, p. 21.* However, by focusing solely on the Brookwood well to satisfy its water-related objectives, the City has ignored that it already has access and use of a second high-capacity well at its Floating Feather point of diversion.

The City has not provided sufficient evidence to indicate that it is in the local public interest to drill a new high-capacity well into the aquifer, where there already exists another high-capacity well which can serve the City's objective of having one high-capacity well to partner with Lexington No. 1.

One element of the public interest concerns the harm to other persons resulting from the proposed Brookwood well. *See e.g., Shokal, 109 Idaho at 338, 707 P.2d at 449* (elements of local public interest include harm to other persons resulting from the proposed appropriation). Based on the evidence discussed above, the Chase dairy well and small irrigation well will be unable to produce water if the Brookwood well is developed. Conversely, there is no evidence of any material harm caused by the City's diversions from the Floating Feather well. According to the City, it is currently diverting potable water for municipal purposes from its Floating Feather point of diversion to serve its service area, including the Brookwood Subdivision. *See Exhibit 107, Deposition & Affidavit of Vern Brewer pp 1-2.* According to Mike Chase, the dairy

well continues to produce ample water for the dairy. Based on this evidence, the Floating Feather well option is the less harmful of the two options.

Moreover the City has not provided evidence of any factors that would outweigh the local public interest in favor of the project. *See e.g., Shokal, 109 Idaho at 339, 707 P.2d at 450.* To be sure, the evidence points to numerous factors that favor the Floating Feather well over the proposed Brookwood well. A comparison of the evidence illustrates this point. First, in terms of costs, the City will have to spend thousands of dollars to construct the new Brookwood well and connect to the City's water system, which Brewer acknowledged was "an expensive proposition." *See Exhibit 141.* Conversely, the Floating Feather well is already constructed and tied into the City's system. Second, the Floating Feather well is located nearly one-half mile or more from the Chase wells and the wells of some of the other protestants. Conversely, the Brookwood well is proposed to be located across the street, within 509 feet, of the Chase dairy well. Based on the above evidence, it is contrary to the local public interest for the City to develop the Brookwood well and cause harmful impacts to neighboring wells, when the evidence shows that a less harmful and less expensive option exists in the Floating Feather well.

At the hearing, Brewer testified that the City preferred the Brookwood well site because it would give the City "ownership" of the well. Brewer indicated that because United Water Idaho (UWI) owned the Floating Feather well, it was not an option favored by the city council. When questioned on cross examination why ownership was so important, Brewer testified that ownership of the Brookwood well would be more cost-effective for the city. It would also, according to Brewer, give the City better control over the well in terms of scheduling well maintenance and operating the well.

This ownership-rationale offered up by Brewer and the City does not hold water. How can the City credibly argue that the Brookwood well is *more cost-effective* than the Floating Feather well if it has not performed a meaningful comparison of the two options? That is exactly the case, here. According to the City's deposition and testimony at the hearing, the City never contacted UWI to inquire about the *costs* of purchasing the Floating Feather well or entering into another type of contractual arrangement that would give the City the type of *cost-effectiveness* and *control* it wanted:

MR. HOWARD: Has the City ever approached United Water for permission to use the Floating Feather well for other purposes than fire flows?

MR. BREWER: No.

Q: Does the City have any future plans to approach United Water for use of the Floating Feather well for purposes other than fire flows?

A. I can't predict the future.

Q. But does it currently have any plans?

A. It currently has no plans.

....

Q. To your knowledge, then, is it fair to say that neither United Water nor the City have talked to each other about use of the Floating Feather well for other purposes for the City other than for fire flow backup. Is that correct?

A. That's correct.

...

Q: Did the City ever explore the option of using the Floating Feather well to partner with the City of Eagle No. 1 well?

A: Not to my knowledge.

See Exhibit 107, Deposition pp. 52, LL 17-25, pp. 53, LL 1, 11-16, pp. 91, LL 12-15.

Because the City failed to ever inquire about the costs associated with acquiring or entering into a long-term lease or contractual arrangement for the Floating Feather well, it cannot credibly argue that the Brookwood well is the better option. The City does not know. It has not performed any due diligence to determine the answer. It has not even picked up the phone to call United Water. On cross examination, Brewer conceded, "we [the City] haven't explored a

comparison of costs.” Thus, the City’s argument is akin to a person claiming to have purchased the least expensive loaf of bread at the store, but never checking the prices on the other loaves of bread on the shelf to make a valid comparison.

The City may argue that it is *its* business on how it conducts business for the City. That is true. If the City wishes to make uninformed decisions, it may do so. But when that uninformed decision is used to support a water right application, it cannot expect IDWR to base its local public interest determination on such an arbitrary basis. Consequently, the City’s application fails to pass the local public interest criterion and must be denied.

B. THE CITY’S PUBLIC INTEREST ARGUMENTS ARE UNPERSUASIVE.

The City will likely try to make its case for local public interest based on the testimony of its mayor and one councilmember and based on the city’s alleged desire to divorce itself from UWI. Both these points will be addressed.

The testimony of the City’s mayor and councilmember largely consists of repeated statements about how the City believes it is in the best interests of the City for the application to be approved. For example, the mayor’s written testimony repeatedly uses the term “best interests” and then concludes that “Approval of the additional points of diversion sought by the City’s application is in the best interest of the inhabitants of the City of Eagle.” *See Written Testimony of Merrill, p. 4.* That statement is not helpful. It is conclusory. One would expect the City to believe its application is in the local public interest. However, that conclusion or belief by the City provides no evidence to IDWR as to *why* the application is or is not in the local public interest. If conclusory statements of *belief* were helpful to determining the local public interest, the local public interest could be resolved by a count of hands by the parties at the

contested case hearing, which in this case, protestants' hands would far outnumber the applicant's.

The City also claims that it is not in the "best interests" of the City to have UWI "involved in the City's water service."⁸ The City suggests that the Brookwood well will allow the City to further distance itself from UWI, which according to the City is in the local public interest. There are two problems with that argument.

First, according to the City's master plan the City needs a minimum of 1,500 gpm for fire flow for the elementary school (*see Exhibit 106—Appendix: Report by Daniel Brown, P.E. dated Aug. 1997*), whereas the City's water rights only total 1,460 gpm. Also, Brewer testified that being tied into the UWI system gives the City access to the Hidden Hollow Reservoir as an emergency backup water supply. Brewer suggested that it was more cost effective for the City to use UWI's reservoir system than try to build its own. According to the Hidden Hollow Agreement entered into between the City and UWI, the City and UWI are obligated to each other for 30 years, until 2027. *See Exhibit 140*. In light of the fact that the City is bound with UWI for 30 years, it is difficult to understand how the local public interest supports the City's desire to try to divorce itself from UWI.

Second, the City's desire to divorce itself from UWI is a relatively new development. As indicated from the record, during the mid to late 1990's the City actively supported UWI's efforts to supply water to the Eagle area and to the City. *See e.g., Exhibit Nos. 113, 114, 115, 116, 117, 118, and 119*. In one particular case, the City Council, through councilmember

⁸ In her testimony, the mayor vaguely referred to "third parties," but Brewer later clarified that "third parties" would include UWI.

Morgan Masner, filed written testimony with the Idaho Public Utilities Commission (IPUC) supporting UWI's application to expand its service area into Eagle:

It is the [sic] our conclusion that it is in the best interests of the City and its residents to grant United Water's application . . .

We continue to believe that United Water is the best available choice for water service in our community.

See Exhibit 114, pp. 3,10; see also e.g. Exhibit no. 124. On rebuttal, councilmember Sedlacek described her predecessor as a "maverick." However, on cross examination, councilmember Sedlacek did not dispute that councilmember Masner was acting on behalf of a unanimous council at the time.

The City's "current" desire to divorce itself from UWI is not a valid basis for determining the local public interest. At most, it shows that the "current" city council does not share the prior council's high praise for UWI. This short-term flip-flopping by the City as to whether UWI is good or bad for the residents is a poor evidentiary basis upon which to assert that the Brookwood well is in the local public interest.

It is also difficult to understand how the City's application can be in the local public interest, when the City takes steps to mitigate the harmful effects to UWI *before* seeking approval of its application, but it does not extend the same treatment to local residents who actually depend upon their wells for a living. Specifically, as part of the City's original filing for 63-12448, it agreed to a diversion volume cap of 1,455 afa to address UWI's concerns about interference from the proposed Brookwood well to its Floating Feather well.⁹ *Exhibit 125, p. 2.*

In short, the City has given IDWR no evidence upon which to conclude that the local public interest favors the Brookwood well site over the Floating Feather well site. Consequently,

the City has failed to meet its burden of proof that the Brookwood well is in the local public interest.

III. THE CITY FAILED TO SATISFY ITS BURDEN OF PROOF FOR THE BROOKWOOD WELL.

The City has the burden of proof to prove that the Brookwood well will not “adversely affect” the rights of others. *Idaho Code § 42-211*. Based on the City’s own admissions, it cannot meet that burden. Specifically, the City admitted that the likelihood or extent of interference caused by the Brookwood well to the dairy well and the small irrigation well is unknown.

REQUEST NO. 48. Please admit that the diversion of water from the proposed Brookwood Well at 1,000 gpm may cause drawdowns in the Dairy well in excess of eight or ten feet.

RESPONSE: The City admits that the Dairy Well may experience some effects from the Brookwood Well diversion, however, the *likelihood* of a [sic] interference and *extent of any interference is unknown*. . . .

....

REQUEST NO. 50. Please admit that the diversion of water from the proposed Brookwood Well at 1,000 gpm may cause drawdowns in the Small Irrigation Well in excess of eight or ten feet.

RESPONSE: The City admits that the Small Irrigation Well may experience some effects from the Brookwood Well diversion, however, the *likelihood* of interference and *extent of any interference is unknown*. . . .

See Exhibit 109, pp. 17-18 (emphasis added).

Pursuant to I.R.C.P. 36(b), the City’s admissions “conclusively establish” that the likelihood or extent of interference to the dairy well or small irrigation well based on diversions

⁹ This was before the City applied for and received permission to add the Floating Feather well as a point of diversion. *Cf. Exhibits 125 and 129.*

from the proposed Brookwood well is unknown.¹⁰ Because the likelihood and extent of interference is unknown, according to the City, the City necessarily cannot meet its burden of proof under Idaho Code § 42-211 to affirmatively show that there will be “no adverse affects” caused by the Brookwood well to the Chase ground water rights.

Equally significant, Idaho law makes clear that the City’s admissions cannot be rebutted by contrary evidence or testimony:

An admission that is not withdrawn or amended cannot be rebutted by contrary testimony or ignored by the district court simply because it finds the evidence presented by the party against whom the admission operates more credible.

Deloge v. Cortez, 131 Idaho 201, 204, 953 P.2d 641, 644 (Ct. App. 1998) (quoting *Quiring v. Quiring*, 130 Idaho 560, 944 P. 2d 695 (1997)). Therefore, to the extent the City offered evidence or expert testimony regarding the “likelihood or extent of interference” to the Chase ground water rights, such evidence and testimony are inadmissible.

As the City’s admissions make clear, the City chose to play dog-in-the-manger during discovery by disavowing any knowledge about interference by its proposed Brookwood well. Consequently, I.R.C.P. 36 binds the City to its admissions and bars the City from being able to tell a different story at the hearing. As far as Rule 36 is concerned, the City has no evidence to prove anything other than the “likelihood and extent of interference” is unknown. That falls well short of the evidence needed to satisfy the City’s burden of proof.

IV. THE PROPOSED CITY WELL NO. 4 IS SPECULATIVE.

In addition to the Brookwood well site, the City’s application also seeks the addition of a second point of diversion referred to as the City of Eagle Well No. 4. The City’s request for well No. 4 is purely speculative. Based on the deposition testimony of the City’s 30(b)(6) witness,

¹⁰ Rule 527 of the IDWR Rules of Procedure require that answers to requests for admissions “conform to the

Vern Brewer, the City Well No. 4 is “not in the [city’s] present scale of planning” to drill. *See Exhibit 107, pp. 24, LL 2-4.* According to Brewer, the City does not own the land for the proposed well no. 4 site and has no agreements in place to give it access to the site. *See Exhibit 107, pp. 29, LL 1-14.* The proposed City Well No. 4 also is contrary to the local public interest for the reasons provided in Section II, above. Also, the City failed to provide any evidence to meet its burden of proof that the well would not adversely affect other water rights.

CONCLUSION

In the end, this case is not, as the City will attempt to characterize it, about a City simply trying to improve the viability of its water system. It is not as the City tries to paint, a “one-well” city or a “city without water.” *See e.g. Written Testimony of Merrill.* Those are exaggerated statements that ignore the reality that the City’s system is tied directly into United Water of Idaho’s system and is in no threat of going without water. *See e.g., Exhibit 119.¹¹* This case is also not about the vague assurances the City offered at the hearing to accept responsibility to mitigate for any future interference and damages it will cause. As demonstrated by the litigious history of this case, those assurances ring hollow and provide no guarantees.

Ultimately, this case is about fairness. The Estate has no objection to the City developing its water system, so long as (1) it is done in accordance with the local public interest, and (2) mitigation is in place *before* the adverse effects occur. It is unfair to require the Chases to suffer through water outages, crop losses, reduced milk production, diseased or dead dairy cows, and financial hardship—all of which are reasonably foreseeable and likely to occur based on the Strowd report—until they are entitled to mitigation from the City.

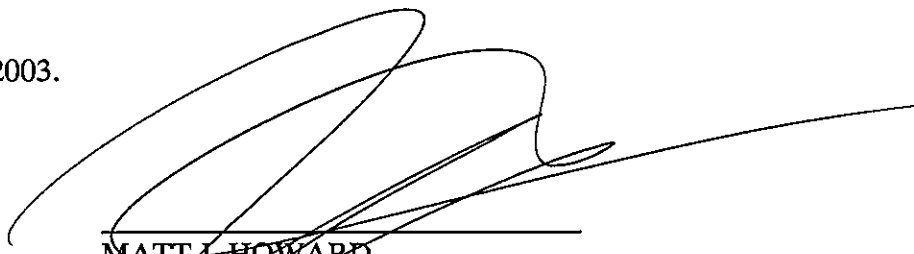
requirements of the Idaho Rules of Civil Procedure,” which in the case of admissions is I.R.C.P. 36.

Allowing the City to develop the Brookwood well without mitigation in place is only going to create more litigation. Additionally, it will unfairly shift the burden of proof onto the Chases to prove interference and causation issues. Certainly, the Legislature foresaw this sort of scenario and decided the best way to head off litigation is to prevent the adverse effects from occurring in the first place and place the burden of proof on the applicant. IDWR rules make clear, the burden of proof is on the applicant, i.e., the City in this case, to convince IDWR that there will be “no adverse affects” *before* IDWR will allow ground water pumping at the Brookwood site to occur. The applicant, in this case, has failed in that burden, and the application must be denied.

This outcome is not unfair to the City. It simply requires the City to do what it should have done over two years ago. Compensate the Chases for the costs to replace the dairy and small irrigation wells and related expenses, agree to monitor and mitigate the large irrigation well, and take actions that are truly consistent with the local public interest. Those commonsense actions merely maintain the *status quo*; they provide no windfall to the Estate, but they allow the Chase family to continue to operate its small dairy and farming operation and maintain their livelihoods. Moreover, those are all appropriate actions the City can choose to undertake in the future as it moves forward, in a more reasoned approach, to expand its water system. However, until that time comes, the City’s application must be denied.

¹¹ Exhibit 119 is an Order from the IPUC finding “that United Water has adequate water supply for the present requirements of the City.” The IPUC also noted that the “[Fire Flows] Agreement is not limited to fire flow and will probably be used by the City to provide waters for other end-uses. *See Exhibit 119, p. 3.*

DATED this 15th day of December, 2003.



MATT J. HOWARD
Attorney for the Estate

CERTIFICATE OF SERVICE

The undersigned certifies that on the 15th day of December 2003, a true and correct copy of the within and foregoing document was sent to the following person(s) by the method indicated below:

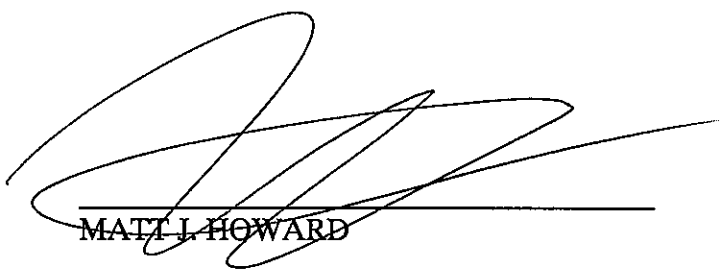
Peter R. Anderson *U. S. Mail*
729 W. Braemere Road
Boise, ID 83702

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

Weldon Fisher *U.S. Mail*
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Molly O'Leary, Esq. *U.S. Mail*
Richardson & O'Leary, PLLC
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Bruce Smith, Esq. *U.S. Mail*
Moore Smith Buxton & Turcke, Chtd
225 N. 9th St., Ste. 420
Boise, ID 83702



MATT J. HOWARD

TE.

11-20-2003

RECEIVED

NOV 20 2003

Department of Water Resources

Mike Chase

3482 Hwy 30 W

New Plymouth ID 83655

278-3845

I would like to get copies of the tapes for the City of Eagle hearing Nov 13+14 for my review with other family members. IF not possible to get copies, I would like to make an appointment to come in and listen to them.

Thank you.

Mike Chase



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

November 17, 2003

PETER ANDERSON
C/O IDWR STATE OFFICE
1301 N ORCHARD ST
BOISE ID 83706

RECEIVED
NOV 18 2003
Department of Water Resources

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

Dear Mr. Anderson:

You requested information from the Idaho Department of Water Resources (IDWR) at the conclusion of the hearing last Friday in the above referenced matter. You asked for a summary of water rights located in the NE ¼ of SE ¼, Section 5, T4N, R1E in Ada County.

Please see the enclosed summary of IDWR records in that regard. Page 1 lists records with a *point of diversion* in that location. Pages 2 and 3 include records with a *place of use* in that location. The far right-hand column in the summary identifies whether a specific record is an adjudication claim, an adjudication recommendation or a water right. An individual record number might appear in multiple formats, i.e., 63-2406.

This information is also being provided to the parties in this contested case. Please let me know if you require additional information in this regard.

Sincerely,

A handwritten signature in black ink, appearing to read 'Steve Lester', written over a white background.

Steve Lester
Water Rights Supervisor

Enclosure

CC: Applicant and Protestants for Application for Amendment of Permit No. 63-12448

P/D	Query	NE	SE	S.5	T4N	R1E	1-1/7/2003	
63	18950	Beneficial Use	10/31/1983	0.08		GROUND WATER	DOMESTIC, STOCKWATER	GRZADZIELESKI, NANCY (Current); GRZADZIELESKI, ROD (Current)
63	4546	Decreed	7/5/1962	0.04		GROUND WATER	DOMESTIC, STOCKWATER	DAVIS, DARRELL E (Current); DAVIS, MARLA H (Current)
63	10980	License	9/15/1989	0.03	5	GROUND WATER	IRRIGATION	TISDALE, ALAN E (Current); TISDALE, MARY M (Current)
63	20263	Decreed	4/10/1984	0.04		GROUND WATER	DOMESTIC	MEEK, HAROLD A (Current)
63	20974	Decreed	3/23/1917	0.04		WASTE WATER	DOMESTIC, STOCKWATER	BAKER, CONSTANCE L (Current)
63	21017	Decreed	3/23/1917	0.04		GROUND WATER	DOMESTIC	BAKER, CONSTANCE L (Current)
63	26762	Decreed	2/6/1978	0.04		GROUND WATER	DOMESTIC	COOMBS, FRANK D (Current); COOMBS, SUSAN A (Current)

Version SourceTr/AmplD

1 wvAdjudicationRecommendation

wvWaterRight

wvWaterRight

wvWaterRight

wvWaterRight

wvWaterRight

wvWaterRight

P/U	Query	NE	SE	S.5	T4N	R1E	11/17/2003	SourceTitle	Version	SourceTitle/Version
63	120 G	Decreed	Decreed	1864-06-01	1.8		BOISE RIVER	IRRIGATION	FARMERS UNION DITCH CO LTD (Current)	wrAdjudicationClaim
63	123 C	Decreed	Decreed	1864-06-01	20		BOISE RIVER	IRRIGATION	FARMERS UNION DITCH CO LTD (Current)	wrAdjudicationClaim
63	124 Q	Decreed	Decreed	1864-06-01	0.1		BOISE RIVER	IRRIGATION	FARMERS UNION DITCH CO LTD (Current)	wrAdjudicationClaim
63	125 J	Decreed	Decreed	1871-06-01	0.26		BOISE RIVER	IRRIGATION	FARMERS UNION DITCH CO LTD (Current)	wrAdjudicationClaim
63	126 F	Decreed	Decreed	1891-06-01	0.08		BOISE RIVER	IRRIGATION	FARMERS UNION DITCH CO LTD (Current)	wrAdjudicationClaim
63	164 E	Decreed	Decreed	1866-06-01	1.8		BOISE RIVER	IRRIGATION	FARMERS UNION DITCH CO LTD (Current)	wrAdjudicationClaim
63	165 M	Decreed	Decreed	1866-06-01	1.69		BOISE RIVER	IRRIGATION	FARMERS UNION DITCH CO LTD (Current)	wrAdjudicationClaim
63	198 AG	Decreed	Decreed	1877-06-01	3.12		BOISE RIVER	IRRIGATION	FARMERS UNION DITCH CO LTD (Current)	wrAdjudicationClaim
63	248	Decreed	Decreed	1894-07-02	110		BOISE RIVER	IRRIGATION	FARMERS UNION DITCH CO LTD (Current)	wrAdjudicationClaim
63	297	Decreed	Decreed	1894-07-02	54.46		BOISE RIVER	IRRIGATION	FARMERS UNION DITCH CO LTD (Current)	wrAdjudicationClaim
63	2406	License	License	7/11/1927	150		WASTE WATER	IRRIGATION	DRAINAGE DIST NO 2 (Current)	wrAdjudicationClaim
63	21729	Beneficial Use	Beneficial Use	5/20/1926	1.8		UNNAMED DRAINS	IRRIGATION	FARMERS UNION DITCH CO LTD (Current)	wrAdjudicationClaim
63	21730	Beneficial Use	Beneficial Use	9/10/1921	38.5		UNNAMED DRAINS	IRRIGATION	FARMERS UNION DITCH CO LTD (Current)	wrAdjudicationClaim
63	18950	Beneficial Use	Beneficial Use	10/31/1993	0.06		GROUND WATER	DOMESTIC, STOCKWATER	GRZADZIELESKI, NANCY (Current); GRZADZIELESKI, ROD (Current)	1 wrAdjudicationRecommendation
63	2406	License	License	7/5/1965	150	61123	WASTE WATER	IRRIGATION	DRAINAGE DIST NO 2 (Current)	wrWaterRight

Account Number	Account Name	Account Type	Priority	Priority Date	Priority Amount	Source	Water Use	Source Title	Version
63	4546	Decreed		7/15/1962	0.04	GROUND WATER	DOMESTIC, STOCKWATER	DAVIS, DARRELL E (Current); DAVIS, MARLA H (Current)	wrWaterRight
63	10980	License		9/15/1989	0.03	5 GROUND WATER	IRRIGATION	TISDALE, ALAN E (Current); TISDALE, MARY M (Current)	wrWaterRight
63	20283	Decreed		4/10/1984	0.04	GROUND WATER	DOMESTIC	MEEK, HAROLD A (Current)	wrWaterRight
63	20974	Decreed		3/23/1917	0.04	WASTE WATER	DOMESTIC, STOCKWATER	BAKER, CONSTANCE L (Current)	wrWaterRight
63	21017	Decreed		3/23/1917	0.04	GROUND WATER	DOMESTIC	BAKER, CONSTANCE L (Current)	wrWaterRight
63	26762	Decreed		2/6/1978	0.04	GROUND WATER	DOMESTIC	COOMBS, FRANK D (Current); COOMBS, SUSAN A (Current)	wrWaterRight

ROSTER OF ATTENDANCE

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

November 14, 2003
 HEARING
 Beginning at 9:00 a.m.
 Conducted by Peter Anderson
 Hearing Officer

NAME	ADDRESS	REPRESENTING
SHERBY COURAN	2022 N EAGLE RD	BURTON GROUP
David Shaw	1106 N Cole Rd, Ste C	Chase Estate
Molly O'Leary	99 E. State Street, Suite 200 Eagle, Idaho 83616	Eagle Water
MATT Howard	P.O. Box 190012 Boise 83709	Chase Estate
CHAS DUNCAN		
Vernon Brewer	745 Crest Rd, Caldwell	City of Eagle
Mike Chase	3482 Hwy 30 W New Plymouth 1083655	Chase Estate
Bruce Smith	225 N 9th St. 420	City of Eagle
Jerry Foker	"	"
Terry Scantler	"	"

ROSTER OF ATTENDANCE

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

November 13, 2003
 HEARING
 Beginning at 9:00 a.m.
 Conducted by Peter Anderson
 Hearing Officer

NAME	ADDRESS	REPRESENTING
------	---------	--------------

Tammy Zokan	225 N 9th St, Suite 400 Boise	City of Eagle, Applicant
Bruce Smith	Same " " "	" " "
Mike Chase	3482 Hwy 30 W New Plymouth ID	CHASE ESTATE
Vernon Brewer	745 Crest Rd Caldwell	City of Eagle
Jim Burton	1896 N. Eagle Rd Eagle	Neighborhood Residents
Parrell Davis	1857 N Eagle Rd Eagle	" "
Lynne Sedlacek	PO Box 1520 Eagle 83616	City of Eagle
MATT Howard	P.O. Box 190012 Boise 83719	Chase Estate
David Shaw	1106 N Cole Rd, Ste C, Boise 83704	Chase Estate
ROBERT DESHAZON JR.	31 RANCH DRIVE EAGLE 83616	EAGLE WASTE
Molly O'Leary	99 E. State Street, Suite 200, Eagle, ID 83616	Eagle Waste
Bill Chen	2276 W. Fleetly Feather Rd Eagle, Idaho 83616-3506	Chase Estate
Waldon T. Fushan	546 E. BEACON LIGHT RD EAGLE	MYSELF
Chris deBrook	1821 North Eagle Road, Eagle	self
Terry Scanlan	600 E. River Park Lane #105, Boise 06	City of Eagle
Mike Hofmaecker	1101 W. River St. Suite 300 Boise, ID 83702	self

**TESTIMONY LOG FOR
THE MATTER OF THE AMENDMENT FOR PERMIT NO. 63-12448
IN THE NAME OF CITY OF EAGLE**

Conducted by Peter Anderson, Hearing Officer

DATE: 11/13/03
TAPE NUMBER 1

TAPE TO	LOCATION FROM	TESTIMONY DESCRIPTION
36	64	HO opening
65	87	Appearances
95	207	matters to discuss ... other rights labeled etc.
208	556	HO e procedure, exhibits etc.
557	595	APPL opening statement
600	670	Burton " "
686	970	Appl D Sedbrook Sedbrook City of Eagle
972	1237	Prot Howard X "
1240	1267	" Burton X "
1268	1345	HO X "
1346 1346	1381	Appl RD "
1400	2126	APPL D Brewer Holladay Engr.
2150	2661	Prot Howard X "
2668	2840	" OLGARY X "
2841	2929	" Burton X "
2930	3006	HO X "
3010	3126	APPL RD "
3152	4762	} APPL D SCANLAN Scanlan Engr. → Chase wells → Burton wsl. → Eagle water co. wells → Proposed pldr
4763	5024	
5025	5099	
5100	5306	
5349	5996	Prot Howard X SCANLAN
6002	6180	" Burton X "

ABBREVIATIONS

HO - hearing officer
D - direct testimony
X - cross exam
RD - re-direct
RX - re cross exam

APPL - Applicant
Prot - protest
EXH - exhibit

**TESTIMONY LOG FOR
THE MATTER OF THE AMENDMENT FOR PERMIT NO. 63-12448
IN THE NAME OF CITY OF EAGLE**

Conducted by Peter Anderson, Hearing Officer

DATE: 11/13/03 § 11/14/03
TAPE NUMBER 1 § 2

TAPE TO	LOCATION FROM	TESTIMONY DESCRIPTION
6185	6455	HO X SCANLAN register characteristics
6460	6616	APPL RD "
6625	6750	e Eagle Mayor's Affidavit
6800	6995	Prot Gleary D Sedlack e Mayor's Affidavit*
- END OF APPL. CASE in CHIEF -		
7083	7276	Prot Howard opening statement
7300	-	Prot Howard D Mike Chase
-	8436	END OF TAPE #1
- - -		
030	-	BEGIN TAPE #2
039	512	Prot Howard D Mike Chase - continued -
525	551	APPL X "
555	600	HO X "
618	2612	Prot D DAVE SHAW
2643	2699	APPL X "
2701	2812	Prot HOWARD RD "
2835	3334	Prot HOWARD D BILL CHASE
3342 HO		
3451	-	Prot HOWARD D Brewer
4110	-	Ex. 117 & 118 admitted in HOWARD D Brewer
4155	-	Ex. 119 " " "
4420	4565	Ex. 113 " " "
4735	4787	Ex. 114 " " "

11/13/03
DAY #1
↑
DAY #2
11/14/03

Prot. E
Prot. Howard
Exhibits

* Adm. Hqd. into evidence as testimony of Mayor, Mayor absent re health issues

**TESTIMONY LOG FOR
THE MATTER OF THE AMENDMENT FOR PERMIT NO. 63-12448
IN THE NAME OF CITY OF EAGLE**

Conducted by Peter Anderson, Hearing Officer

DATE: 11/14/03
TAPE NUMBER 2 & 3

TAPE TO	LOCATION FROM	TESTIMONY DESCRIPTION
4890	4950	Exh. 115 admitted in Howard D Brewer
5000	5028	Exh. 116 " "
5045	5137	Exh. 124 not " " (lacks foundation)
* 5138	5335	Exh. 124 is " "
-	6429	End Howard D Brewer ← END OF PROT. HOWARD CASES in chief
6439	6672	Prot O'Leary X Brewer
6734	6780	} NO QUESTIONS to O'Leary; "BURTON", PROT. CASES ARE CONCLUDED
6805	-	APPL D SCANLAN (Rebuttal testimony)
7348	7698	APPL Exh 23 admitted in Appl D Scanlan
8105	-	APPL Exh. 24 discussion " "
-	8493	END TAPE #2
25	-	BEGIN TAPE #3
26	35	APPL Exh 24 NOT admitted " "
36	247	APPL Exh 24 is admitted " "
318	760	Prot Howard X SCANLAN
791	-	APPL D Brewer (Rebuttal testimony)
1045	1315	APPL Exh 25 not admitted
1325	1809	Prot Howard X Brewer
1814	1828	APPL RD Brewer
1845	1989	APPL D Sedlacek
1991	2045	Prot Howard X Sedlacek

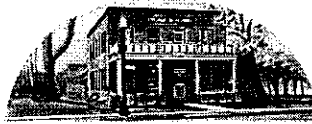
Prot Howard Exhibits

(lacks foundation)

Prot. Howard cases in chief

Appl Exhibit

* 5355 All of Prot. Howard exhibits have been admitted



RICHARDSON & O'LEARY
ATTORNEYS AT LAW

Molly O'Leary

Tel: 208-938-7902 Fax: 208-938-7904
molly@richardsonandoleary.com

P.O. Box 1849 99 East State Street, Eagle, Idaho 83616

RECEIVED
OCT 22 2003
WATER RESOURCES
WESTERN REGION

October 21, 2003

IDWR
Western Region
2735 Airport Way
Boise, ID 83705

Re: Eagle Water Company's Witness & Exhibit List

Dear Sir/Madam:

We are enclosing your copies of Eagle Water Company, Inc.'s Exhibit No.207 and Exhibit No.208, as noted on the above list, filed with the Department of Water Resources on October 17, 2003.

These Exhibits were inadvertently omitted from Eagle Water's service on that date.

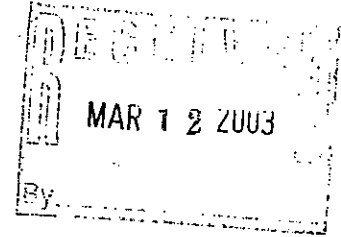
We appreciate your understanding.

Sincerely,

Nina M. Curtis
Administrative Assistant for Molly O'Leary

encl.

BRUCE M. SMITH, ISB # 3425
TAMMY A. ZOKAN, ISB # 5450
MOORE SMITH BUXTON & TURCKE, CHARTERED
225 North 9th, Suite 420
Boise, Idaho 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202



RECEIVED

OCT 22 2003

WATER RESOURCES
WESTERN REGION

Attorney for the City of Eagle

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

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

} THE CITY OF EAGLE'S RESPONSE TO
} THE EAGLE WATER COMPANY, INC.'S
} FIRST SET OF REQUESTS FOR
} PRODUCTION

THE CITY OF EAGLE BY and through its attorney, MOORE SMITH BUXTON & TURCKE, CHARTERED, hereby responds to the following requests for production nos. 1-15 by the Eagle Water Company, Inc. ("Eagle Water"). As a general objection, the City objects to providing any response or producing any documents protected by the attorney client or work product privileges.

DEFINITIONS AND INSTRUCTIONS

In answering these discovery requests, furnish all information available to you, however obtained, including hearsay which is available to you and including information known by or in the possession of yourself, your attorney(s), investigator(s), expert(s), employee(s), or agent(s)

APPLICANT'S RESPONSE TO EAGLE WATER COMPANY'S FIRST SET OF
REQUESTS FOR ADMISSIONS TO THE CITY OF EAGLE - Page 1

retained by you or your attorney, or appearing in your records, and not merely information known of your own personal knowledge.

If you cannot answer the following interrogatories in full, after exercising due diligence to secure the information to do so, so state, and answer to the extent possible, specifying your inability to answer the remainder, and stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

If you are unable to produce the requested documents after exercising due diligence to secure the documents, so state and identify the reason for your inability to produce the documents, the whereabouts of the documents if not in your control or possession, and the means whereby you lost control or possession of the documents. Identify any documents which once did exist if not now existing and state whatever information or knowledge you have concerning the information contained in those documents.

The entire discovery herein is deemed continuing. If after responding to these interrogatories, you acquire any documents requested herein, or any information related to any interrogatories or documents requested herein which is not reflected by one of the answers, you must file a supplemental discovery response. Such supplementation is requested herein in addition to any supplementation required by the Idaho Rules of Civil Procedure.

THE FOLLOWING DEFINITIONS APPLY TO THESE DISCOVERY REQUESTS:

1. "*Application*" means the Application for Amendment of Permit No. 63-12448 in the Name of The City of Eagle.
2. "*Document or Documents*" means all writing of any kind, including the original and all non-identical copies, whether different from the original by reason of any notation made on such copies or otherwise including without limitation correspondence,

memoranda, notes, diaries, statistics, letters, telegrams, minutes, contracts, reports, studies, checks, statements, receipts, returns, summaries, pamphlets, books, prospectuses, interoffice and intra-office communications, offers, notations of any sort of conversations, bulletins, printed matter, computer printouts, teletypes, telecopy, invoices, work sheets, and all drafts, alterations, modifications, changes, and amendments of any of the foregoing, graphic or oral records or representation of any kind including without limitations, photographs, charts, graphs, microfiche, microfilm, videotapes, recording, motion pictures and electronic, mechanical, or electrical records or representation of any kind including without limitation, tapes, cassette discs, recordings.

3. "*Eagle Water's Water Rights*" means the water rights represented by SRBA water right claim nos. 63-7368; 63-7618; and 63-9245.

4. "*Fact*" or "*Facts*" mean all circumstances, events, evidence, information, including statements or testimony made by, or knowledge of, any person(s), pertaining to or touching upon the item or matter in question.

5. "*Issues*" means the issues set forth in the Notice of Hearing dated January 10, 2003, which are as follows:

- A. Will other water rights be injured by the amendment?
- B. Will the requested change constitute an enlargement in the use of the original right?
- C. Will the proposed change conflict with the local public interest?
- D. Will the proposed use be contrary to conservation of water resources within the state of Idaho?

6. "*Person*" includes any natural person, partnership, corporation, joint venture, unincorporated association, governmental entity (or agency or other subdivision thereof), quasi-public entity or other form of entity or combination thereof.

7. "*You and Your*" means the City of Eagle.

REQUESTS FOR PRODUCTION

REQUEST NO. 1: Please produce copies of all documents identified in your answers to the above interrogatories and the admissions set out below.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1: Attached please find (1)

Ground-water Conditions in the Dry Creek Area, Eagle, Idaho, report prepared by IDWR

**APPLICANT'S RESPONSE TO EAGLE WATER COMPANY'S FIRST SET OF
REQUESTS FOR ADMISSIONS TO THE CITY OF EAGLE - Page 3**

(1991); (2) Results of the 30-Day Pumping Test and Aquifer Analysis, report prepared by CH2M Hill (1991); and (3) Aquifer test Floating Feather Well, report prepared by Scanlan Engineering of Boise.

REQUEST NO. 2: Please produce copies of all documents that contain information or facts relating to the factual basis for the allegations and statements set forth in the Application.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2: The City objects to this interrogatory because it is overbroad, unduly burdensome, designed to harass, and requests information generally available to the public. Notwithstanding the City's objection, see response to request for production no. 1.

REQUEST NO. 3: Please produce copies of all documents used, relied on, or reviewed in the preparation of your response to the interrogatories and admissions contained herein.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3: See the response to request for production no. 1.

REQUEST NO. 4: Please produce copies of all documents that you may offer as exhibits at any hearing or trial in this case.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4: Exhibits for hearing have not yet been identified, however the City does anticipate offering the documents identified in the response to production no. 1 at any trial or hearing in this case.

REQUEST NO. 5: Please produce copies of all Eagle City Council minutes, transcripts, memoranda, and related documents that relate to the Application.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5: The City objects to this Request because it is overbroad, unduly burdensome and requests the production of privileged information. Notwithstanding the City's objection, see response to request for

production no. 1.

REQUEST NO. 6: Please produce copies of all documents that contain information or facts relating to the Issues.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6: The City objects to this Request because it is ambiguous, vague, overbroad and overly burdensome and requests the production of privileged information. Notwithstanding the City's objection, to the extent the City understands this request, see response to request for production no. 1.

REQUEST NO. 7: If you claim that the diversion of ground water pursuant to the Application, if approved, will not injure Eagle Water's Water Rights, please produce copies of all documents that contain information or facts relating to such claim.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7: See response to request for production no. 1.

REQUEST NO. 8: If you claim that the Application, if approved, will not conflict with the local public interest, please produce copies of all documents that contain information or facts relating to such claim.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8: See response to request for production no. 1.

REQUEST NO. 9: If you claim that the Application, if approved, will not be contrary to conservation of water resources within the state of Idaho, please produce copies of all documents that contain information or facts relating to such claim.

RESPONSE TO REQUEST FOR PRODUCTION NO. 9: See response to request for production no. 1.

REQUEST NO. 10: If you claim that the diversion of ground water pursuant to the

Application, if approved, will not interfere with, reduce, and/or otherwise diminish the ground water levels at the locations of the points of diversion for the Eagle Water's Water Rights, please produce copies of all documents that contain information or facts relating to such claim.

RESPONSE TO REQUEST FOR PRODUCTION NO. 10: See response to request for production no. 1.

REQUEST NO. 11: If you claim that the Application, if approved, will not constitute an enlargement in the use of the original right, please produce copies of all documents that contain information or facts relating to such claim.

RESPONSE TO REQUEST FOR PRODUCTION NO. 11: See response to request for production no. 1.

REQUEST NO. 12: Please produce copies of all documents, data, data summaries, reports, and/or scientific evidence that may be offered as evidence in conjunction with expert testimony in this case.

RESPONSE TO REQUEST FOR PRODUCTION NO. 12: See response to request for production no. 1.

REQUEST NO. 13: Please produce copies of all documents, data, data summaries, reports, and/or scientific evidence that your expert(s) may rely on to prepare the evidence that may be offered in this case.

RESPONSE TO REQUEST FOR PRODUCTION NO. 13: See response to request for production no. 1.

REQUEST NO. 14: Please produce copies of all documents, data, data summaries, reports, and/or scientific evidence that may be offered as evidence related to the issue of injury to other water rights.

RESPONSE TO REQUEST FOR PRODUCTION NO. 14: See response to request for production no. 1.

REQUEST NO. 15: Please produce copies of all documents, data, data summaries, reports, and/or scientific evidence that may be offered as evidence related to the issue of enlargement of use.

RESPONSE TO REQUEST FOR PRODUCTION NO. 15: See response to request for production no. 1.

DATED this _____ day of March, 2003.

Lynne Sedlacek
Lynne Sedlacek, Councilmember
City of Eagle

Tammy A. Zokan
Attorney for the City of Eagle

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the _____ day of March, 2003 I caused to be served a true and correct copy of the foregoing CITY OF EAGLE'S RESPONSE TO THE EAGLE WATER COMPANY'S FIRST SET OF REQUESTS FOR ADMISSIONS AND PRODUCTION TO THE CITY via U.S. Mail Postage pre-paid, and addressed to the following:

IDWR
Western Region
2735 Airport Way
Boise, Idaho 83705

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

Molly O'Leary
Eagle Water Co.
P.O. Box 1849
Eagle, Idaho 83616

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

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

Glen Saxton
IDWR State Office
1301 N. Orchard Street
Boise, ID 83706

TAMMY A. ZOKAN

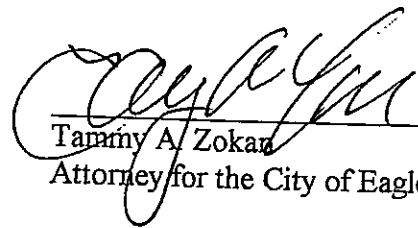
RESPONSE TO REQUEST FOR PRODUCTION NO. 14: See response to request for production no. 1.

REQUEST NO. 15: Please produce copies of all documents, data, data summaries, reports, and/or scientific evidence that may be offered as evidence related to the issue of enlargement of use.

RESPONSE TO REQUEST FOR PRODUCTION NO. 15: See response to request for production no. 1.

DATED this 11 day of March, 2003.

Lynne Sedlacek, Councilmember
City of Eagle



Tammy A. Zokan
Attorney for the City of Eagle

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 11 day of March, 2003 I caused to be served a true and correct copy of the foregoing CITY OF EAGLE'S RESPONSE TO THE EAGLE WATER COMPANY'S FIRST SET OF REQUESTS FOR PRODUCTION TO THE CITY via U.S. Mail Postage pre-paid, and addressed to the following:

IDWR
Western Region
2735 Airport Way
Boise, Idaho 83705


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

Molly O'Leary
Eagle Water Co.
P.O. Box 1849
Eagle, Idaho 83616

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

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

Glen Saxton
IDWR State Office
1301 N. Orchard Street
Boise, ID 83706



TAMMY A. ZOKAN

BRUCE M. SMITH, ISB # 3425
TAMMY A. ZOKAN, ISB # 5450
MOORE SMITH BUXTON & TURCKE, CHARTERED
225 North 9th, Suite 420
Boise, Idaho 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202

Attorney for the City of Eagle

RECEIVED
MAR 17 2003

RECEIVED

OCT 22 2003

WATER RESOURCES
WESTERN REGION

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

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

) THE CITY OF EAGLE'S RESPONSE TO
) THE EAGLE WATER COMPANY, INC.'S
) FIRST SET OF INTERROGATORIES,
) REQUESTS FOR PRODUCTION OF
) DOCUMENTS NOS. 16-19

THE CITY OF EAGLE BY AND THROUGH ITS ATTORNEY, MOORE SMITH BUXTON & TURCKE, CHARTERED, HEREBY respond to the following interrogatories and requests for production of documents nos. 16-19, by the Eagle Water Company, Inc. ("Eagle Water Company"). As a general objection, the City objects to providing any response or producing any documents protected by the attorney client or work product privileges.

DEFINITIONS AND INSTRUCTIONS

In answering these discovery requests, furnish all information available to you, however obtained, including hearsay which is available to you and including information known by or in the possession of yourself, your attorney(s), investigator(s), expert(s), employee(s), or agent(s) retained by you or your attorney, or appearing in your records, and not merely information

APPLICANT'S RESPONSE TO EAGLE WATER COMPANY'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS NOS. 16-19 TO THE CITY OF EAGLE - Page 1

known of your own personal knowledge.

If you cannot answer the following interrogatories in full, after exercising due diligence to secure the information to do so, so state, and answer to the extent possible, specifying your inability to answer the remainder, and stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

If you are unable to produce the requested documents after exercising due diligence to secure the documents, so state and identify the reason for your inability to produce the documents, the whereabouts of the documents if not in your control or possession, and the means whereby you lost control or possession of the documents. Identify any documents which once did exist if not now existing and state whatever information or knowledge you have concerning the information contained in those documents.

The entire discovery herein is deemed continuing. If after responding to these interrogatories, you acquire any documents requested herein, or any information related to any interrogatories or documents requested herein which is not reflected by one of the answers, you must file a supplemental discovery response. Such supplementation is requested herein in addition to any supplementation required by the Idaho Rules of Civil Procedure.

THE FOLLOWING DEFINITIONS APPLY TO THESE DISCOVERY REQUESTS:

1. "*Application*" means the Application for Amendment of Permit No. 63-12448 in the Name of The City of Eagle.
2. "*Document or Documents*" means all writing of any kind, including the original and all non-identical copies, whether different from the original by reason of any notation made on such copies or otherwise including without limitation correspondence,

memoranda, notes, diaries, statistics, letters, telegrams, minutes, contracts, reports, studies, checks, statements, receipts, returns, summaries, pamphlets, books, prospectuses, interoffice and intra-office communications, offers, notations of any sort of conversations, bulletins, printed matter, computer printouts, teletypes, telecopy, invoices, work sheets, and all drafts, alterations, modifications, changes, and amendments of any of the foregoing, graphic or oral records or representation of any kind including without limitations, photographs, charts, graphs, microfiche, microfilm, videotapes, recording, motion pictures and electronic, mechanical, or electrical records or representation of any kind including without limitation, tapes, cassette discs, recordings.

3. "*Eagle Water's Water Rights*" means the water rights represented by SRBA water right claim nos. 63-7368; 63-7618; and 63-9245.

4. "*Fact*" or "*Facts*" mean all circumstances, events, evidence, information, including statements or testimony made by, or knowledge of, any person(s), pertaining to or touching upon the item or matter in question.

5. "*Issues*" means the issues set forth in the Notice of Hearing dated January 10, 2003, which are as follows:

- A. Will other water rights be injured by the amendment?
- B. Will the requested change constitute an enlargement in the use of the original right?
- C. Will the proposed change conflict with the local public interest?
- D. Will the proposed use be contrary to conservation of water resources within the state of Idaho?

6. "*Person*" includes any natural person, partnership, corporation, joint venture, unincorporated association, governmental entity (or agency or other subdivision thereof), quasi-public entity or other form of entity or combination thereof.

7. "*You and Your*" means the City of Eagle.

INTERROGATORIES

INTERROGATORY NO. 1 Excluding IDWR personnel and the Protestants, please identify every person known to you who has knowledge or information concerning any of the facts related to (a) the Application and/or (b) the Issues. For each person identified, describe the

substance of the knowledge or information held by that person and provide that person's name, job title, address, day-time phone number, and relationship to you.

RESPONSE TO INTERROGATORY NO. 1: The City objects to this interrogatory because it is ambiguous, vague, overbroad and overly burdensome. Notwithstanding the City's objection, to the extent the City understands this request, the City is aware of the following individuals who may have knowledge or information related to the City's application:

- (1) Mayor
City Council
Eagle City Hall
P.O. Box 1520
Eagle, Idaho 83616
(208) 939-6813
- (2) Vern Brewer
City Project Manager/Engineer Liaison
Holladay Engineering Co.
P.O. Box 235
Payette, Idaho 83661
(208) 642-3304
- (3) Bill Strowd, P.G.
Former Employee of
Holladay Engineering Co.
1509 Dearborn
Caldwell, Idaho 83605
(208) 454-1051
(Mr. Strowd is a Rule 26(b) (4) (B) expert.)
- (4) Terry Scanlan, P.E., P.G.
Scanlan Engineering
600 East River Park Lane, Suite 105
Boise, Idaho 83706
(208) 383-4140
- (5) The Eagle Water Company and their representatives (hereinafter referred to as the "Protestants" or the "Eagle Water Company")
C/O Molly O'Leary, Esq.
Richardson & O'Leary PLLC

99 East State Street, Suite 200
Eagle, Idaho 83616
(208) 938-7900

The City may identify and disclose additional individuals with knowledge or information concerning this case as this case progresses.

INTERROGATORY NO.2: Identify each person you expect to call as an expert witness at any hearing or trial in the above-captioned case. For each person, state (a) the subject matter on which the expert is expected to testify, (b) the substance of the opinions to which the expert is expected to testify, and (c) the underlying facts and data upon which the expert opinions are based.

RESPONSE TO INTERROGATORY NO. 2: The City anticipates calling Mr. Terry M. Scanlan, P.E., P.G., as an expert witness in this case. The City may identify and disclose additional expert witnesses as this case progresses and thus, reserves the right to call additional experts at hearing. Mr. Scanlan may testify regarding his analysis of the groundwater conditions in the vicinity of the proposed well and his opinion that the City's proposal would result in minimal impact on the aquifer and neighboring wells. Mr. Scanlan's opinions and expected testimony are based upon Idaho Department of Water Resources records available to the public and the following reports: Ground-water Conditions in the Dry Creek Area, Eagle, Idaho, prepared by IDWR (1991); Results of the 30-Day Pumping Test and Aquifer Analysis, prepared by CH2M Hill (1991); and Aquifer Test Floating Feather Well, prepared by Scanlan Engineering of Boise. See response to requests for production nos. 1-15.

INTERROGATORY NO. 3: Identify every person you may call as a witness at any hearing or trial in the above-captioned case. For each person identified, describe the specific factual matters as to which that person will testify and describe the substance of that person's

APPLICANT'S RESPONSE TO EAGLE WATER COMPANY'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS NOS. 16-19 TO THE CITY OF EAGLE - Page 5

testimony. For each person identified, provide that person's name, job title, address, day-time phone number, and relationship to you.

RESPONSE TO INTERROGATORY NO. 3: Please see the City's response to interrogatory nos. 1-2. These witnesses may testify generally regarding the diversion of water by the City of Eagle as described in the City's application. The City may identify and disclose additional witnesses as this case proceeds, and therefore, reserves the right to call additional witnesses at hearing.

INTERROGATORY NO. 4: Do you claim that the diversion of ground water pursuant to the Application, if approved, will not injure Eagle Water's Water Rights? If so, please identify and describe each fact, study, analysis, opinion, and document that supports, negates, and/or relates to your claim.

RESPONSE TO INTERROGATORY NO. 4: Yes. The City's claim is based upon Idaho water law, the analysis and reports described in its response to interrogatory no. 2, and representations made by the Protestants. Multiple points of diversion, when operated in parallel, will exhibit less impact than a single point of diversion operating at the authorized withdrawal rate. See reports identified in response to interrogatory no. 2.

INTERROGATORY NO. 5: Do you claim that the Application, if approved, will not conflict with the local public interest? If so, please identify and describe each fact, study, analysis, opinion, and document that supports, negates, and/or relates to your claim.

RESPONSE TO INTERROGATORY NO. 5: Yes. The City's claim is based upon Idaho water law and the analysis and reports described in its response to interrogatory no. 2. It is in the public's interest to develop a multiple-points-of-diversion well system.

INTERROGATORY NO. 6 Do you claim that the Application, if approved, will not be contrary to conservation of water resources within the state of Idaho? If so, please identify and describe each fact, study, analysis, opinion, and document that supports, negates, and/or relates to your claim.

RESPONSE TO INTERROGATORY NO. 6: Yes. The City's claim is based upon Idaho water law and the analysis and reports described in its response to interrogatory no. 2. The City is not requesting an increase from its authorized withdrawal rate (cubic-feet-per-second) or total allowed volume (acre-feet) in this application. See reports identified in response to interrogatory no. 2.

INTERROGATORY NO. 7: Do you claim that the diversion of ground water pursuant to the Application, if approved, will not interfere with, reduce, and/or otherwise diminish the ground water levels at the locations of the points of diversion for Eagle Water's Water Rights? If so, please identify and describe each fact, study, analysis, opinion, and document that supports, negates, and/or relates to your claim.

RESPONSE TO INTERROGATORY NO. 7: The City objects to this interrogatory because it is ambiguous and vague. Notwithstanding the City's objection, to the extent the City understands this interrogatory, the City's response is yes. Please see the City's response to interrogatory no. 4.

INTERROGATORY NO. 8: Do you claim that the Application, if approved, will not constitute an enlargement in the use of the original right? If so, please identify and describe each fact, study, analysis, opinion, and document that supports, negates, and/or relates to your claim.

RESPONSE TO INTERROGATORY NO. 8: Yes. The City's claim is based upon Idaho water law and the analysis and reports described in its response to interrogatory nos. 2 and 6.

INTERROGATORY NO. 9: Please identify all water rights held by the City of Eagle, including all water rights that the City of Eagle holds an interest in, including interests that are legal, equitable, and/or contractual in nature.

RESPONSE TO INTERROGATORY NO. 9: The City objects to this interrogatory because it is overbroad, unduly burdensome, designed to harass, and requests information generally available to the public. Notwithstanding the City's objection, the following water rights held by the City is relevant to the City's application: water right no. 63-11413.

INTERROGATORY NO. 10: Please describe the City's business relationship with United Water Idaho ("United Water"). In particular, please describe:

- (a) what role United Water currently plays in the servicing of the City's customers;
- (b) what role United Water will play in the administration of the points of diversion that are the subject of the City's present Application; and
- (c) what role United Water will play in the distribution of the water proposed for diversion pursuant to the City's Application.

RESPONSE TO INTERROGATORY NO. 10: The City has a commercial/contractual relationship with the United Water Idaho (UWI) and with their operating division, United Water Operations (UWO). The City has an agreement with UWI for the provision of fire flow backup. The City has a separate "To and Through Agreement" that allows UWI to utilize the City's 12-inch main on Floating Feather Road. Operation under these agreements is discussed in the City's response to interrogatory no.

11. These agreements are a matter of public record.

- (a) UWO presently reads meters, makes service calls and repairs, and bills Eagle residents for water used from the City's system.
- (b) None.
- (c) UWO will operate the well, read meters, perform routine maintenance on the well, make necessary repairs to the well, and report to the City in accordance with contract terms set forth by the City.

INTERROGATORY NO. 11: Please describe the manner in which the City's water diversion and/or distribution system is connected to United Water facilities. In particular, please describe, in detail, the nature of United Water's access to the City's water diversion and/or distribution system.

RESPONSE TO INTERROGATORY NO. 11: The City objects to this interrogatory because it is not understood what the Eagle Water Company means by the City's "water diversion" or "distribution system." Notwithstanding the City's objection, the City's Lexington Hills well is connected to United Water Idaho (UWI) pipes at two points.

It is also not clear what the Eagle Water Company means by "access" to the City's diversion or distribution system. As a good faith response, UWI can get into the well house and get to the valves that control flows.

INTERROGATORY NO. 12: Please describe the intended place of use for the water proposed for diversion pursuant to the City's Application.

RESPONSE TO INTERROGATORY NO. 12: The City of Eagle's Municipal Service Area.

INTERROGATORY NO. 13: Please describe, in detail, what, if any, system the City has in place to ensure that water it diverts pursuant to the water rights identified in response to Interrogatory No. 9 is not used outside the City's service area, either directly or through co-mingling with United Water's water.

RESPONSE TO INTERROGATORY NO. 13: The water diverted from the City's wells is equal to the volume delivered to the City's service area. This is confirmed by means of metering.

INTERROGATORY NO. 14: Please describe, in detail, what, if any, system the City will have in place to ensure that water it diverts pursuant to the City's Application will not be used outside the City's service area, either directly or through co-mingling with United Water's water.

RESPONSE TO INTERROGATORY NO. 14: See response to interrogatory no. 13.

REQUESTS FOR PRODUCTION

REQUEST NO. 16: Please produce copies of all documents, data, data summaries, reports, and/or scientific evidence that contain information or facts supporting your response to Interrogatory No. 10.

RESPONSE TO REQUEST FOR PRODUCTION NO. 16: The City objects to this request because it is ambiguous and because it is not calculated to lead to admissible evidence. Notwithstanding the City's objection, please see the August 1, 1997 Agreement to Provide Supplemental Water for Fire Flows and the December 2, 1997 Agreement.

REQUEST NO. 17: Please produce copies of all documents, data, data summaries, reports, and/or scientific evidence that contain information or facts supporting your response to Interrogatory No. 11.

RESPONSE TO REQUEST FOR PRODUCTION NO. 17: See response to request for production no. 16.

REQUEST NO. 18: Please produce copies of all documents, data, data summaries, reports, and/or scientific evidence that contain information or facts supporting your response to Interrogatory No. 13.

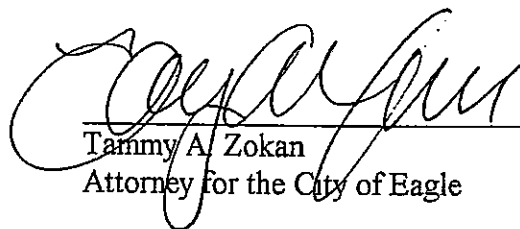
RESPONSE TO REQUEST FOR PRODUCTION NO. 18: The City objects to this request because it is ambiguous and because it is not calculated to lead to admissible evidence. Notwithstanding the City's objection, please see the August 1, 1997 Agreement to Provide Supplemental Water for Fire Flows and the December 2, 1997 Agreement, and the United Water Operations Metering Reports dated February 2001 – February 13, 2003.

REQUEST NO. 19: Please produce copies of all documents, data, data summaries, reports, and/or scientific evidence that contain information or facts supporting your response to Interrogatory No. 14.

RESPONSE TO REQUEST FOR PRODUCTION NO. 19: See response to request for production no. 18.

DATED this 13 day of March, 2003.

Lynne Sedlacek, Councilwoman
City of Eagle



Tammy A. Zokan
Attorney for the City of Eagle

RESPONSE TO REQUEST FOR PRODUCTION NO. 17: See response to request for production no. 16.

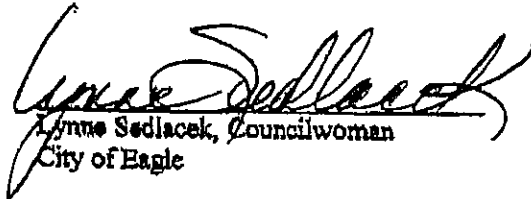
REQUEST NO. 18: Please produce copies of all documents, data, data summaries, reports, and/or scientific evidence that contain information or facts supporting your response to Interrogatory No. 13.

RESPONSE TO REQUEST FOR PRODUCTION NO. 18: The City objects to this request because it is ambiguous and because it is not calculated to lead to admissible evidence. Notwithstanding the City's objection, please see the August 1, 1997 Agreement to Provide Supplemental Water for Fire Flows and the December 2, 1997 Agreement, and the United Water Operations Metering Reports dated February 2001 - February 13, 2003.

REQUEST NO. 19: Please produce copies of all documents, data, data summaries, reports, and/or scientific evidence that contain information or facts supporting your response to Interrogatory No. 14.

RESPONSE TO REQUEST FOR PRODUCTION NO. 19: See response to request for production no. 18.

DATED this ____ day of March, 2003.


Lynne Sedlacek, Councilwoman
City of Eagle

Tammy A. Zokan
Attorney for the City of Eagle

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14 day of March, 2003 I caused to be served a true and correct copy of the foregoing CITY OF EAGLE'S RESPONSE TO THE EAGLE WATER COMPANY'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR AND PRODUCTION 16-19 TO THE CITY via U.S. Mail Postage pre-paid, and addressed to the following:

IDWR
Western Region
2735 Airport Way
Boise, Idaho 83705

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

Molly O'Leary
Eagle Water Co.
P.O. Box 1849
Eagle, Idaho 83616

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

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

Glen Saxton
IDWR State Office
1301 N. Orchard Street
Boise, ID 83706


TAMMY A. ZOKAN

RECEIVED & FILED
 CITY OF EAGLE
 JUL 14 1997
 Effective this _____
 at _____ (Eagle) m/c

AGREEMENT TO PROVIDE SUPPLEMENTAL WATER FOR FIRE FLOWS

This Agreement to Provide Supplemental Water for Fire Flows (this "Agreement"), is effective this first day of August, 1997 by and between THE CITY OF EAGLE CITY, a municipal corporation whose address is 310 East State Street, Eagle, Idaho 83616, and UNITED WATER IDAHO INC., an Idaho corporation ("United Water"), whose address is P.O. Box 7488, Boise, Idaho 83709.

RECITALS:

- A. United Water provides domestic, commercial, and fire flow water in the Eagle, Idaho area and is a public utility within the meaning of the Idaho Public Utility law,
- B. Eagle desires to obtain an additional source of water, including for fire protection purposes, to serve Eagle.
- C. United Water is willing and able to make quantities available to Eagle during each month of the year for the term hereof, as provided further herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, to be kept and performed by the parties, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, it is mutually agreed as follows to wit:

1. Provision of Water. United Water agrees to provide to City additional water and supplemental fire flow as hereinafter set forth. Said flow shall be provided on August 1, 1997 or within a reasonable time after approval by the Idaho Public Utilities Commission ("IPUC") of such provision by United Water. Water for fire flow shall not be less than One Thousand Five Hundred (1,500) gallons per minute measured at the hydrant nearest to the point of diversion of such water flow from United Water to City. United Water shall provide such flow by tying to City's water system at United Water's Floating Feather Well.
2. Payment. City will pay, as billed monthly, for actual flow through the meter, at the metered tariff rates then allowed to United Water by the IPUC for such provision.
3. Assistance by City. City agrees to use its best efforts to aid and assist United Water in obtaining IPUC approval, as required or as helpful for such approval or to speed such approval. The parties acknowledge that City cannot force said entities to provide such consents, and the only requirement hereof is that City reasonably use its best efforts to such end.
4. Term. The term of this Agreement shall be for one year from and after the date above written, during which term this Agreement may not be terminated by either party. Thereafter, the Agreement shall be deemed automatically extended for successive one-year periods unless terminated as herein provided. Eagle may terminate this Agreement by providing written notice of intention to so terminate at least twelve months prior to the proposed termination. United Water may terminate this Agreement by providing written notice of intention to so terminate at least twelve months prior to the proposed termination.
5. Interruptions: United Water shall use reasonable care and diligence to prevent interruptions and fluctuations in delivering the water provided for in this Agreement. Both parties agree that they will make no claim against each other for damages in the event United Water is unable to deliver water because of the need to make repairs for breaks or leaks or other repairs to its facilities, or because of other causes beyond its control. United Water agrees that any necessary repairs or maintenance shall be scheduled so as to minimize disruption to Eagle. Further, if repairs or maintenance are necessary, United Water will provide to Eagle reasonable advance notice of the need to make repairs and shall complete said repairs or maintenance in a timely and workmanlike manner.

6. Indemnity. Each of the parties hereto agrees to indemnify and hold harmless the other party from and against all actions, suits, proceedings, judgments, costs and expenses relating to any claims arising in connection with the subject matter hereof prior to the execution of this Agreement.

7. Notices. All notices required or desired to be given under this Agreement shall be in writing and delivered personally or sent by facsimile or by first class United States mail, postage prepaid addressed as follows:

If to Eagle:

310 East State Street
Eagle, Idaho 83616
208/939-6813
208/939-6827 (facsimile)
Attn: City Clerk

If to United Water:

United Water Idaho Inc.
P.O. Box 7488
Boise, Idaho 83709
208/362-1704
208/362-3858 (facsimile)

8. Miscellaneous:

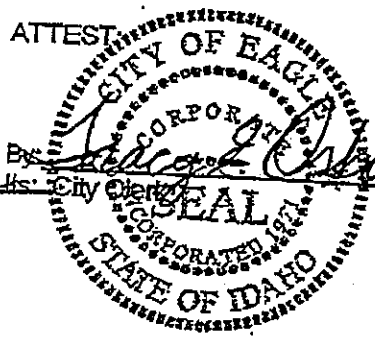
- a. Enforcement. The failure on the part of any party to enforce its rights as to any provision of the Agreement shall not be construed as a waiver of such party or parties rights to enforce such provision in the future.
- b. Assignment. This Agreement, and the terms hereof, are binding on the parties named herein, their heirs, successors, and assigns. This Agreement shall not be assigned without the written consent of the other parties hereto not to be unreasonably withheld; provided however, that if the business of United Water is taken over by or transferred to a successor company, such shall not be deemed an assignment hereunder. United Water agrees to give Eagle prompt written notice of any such change in ownership.
- c. Entire Agreement. This Agreement contains the entire agreement between the parties hereto in connection with the transactions contemplated herein and supersedes all previous or contemporaneous communications, representations or agreements. This Agreement may be modified only by written amendment signed by all parties.
- d. Severability. If any section, subsection, sentence, clause, phrase or portion of this Agreement is for any reason held invalid, preempted or unconstitutional by any court or by any Federal or State agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision of this Agreement, and such holding shall not affect the validity of the remaining portions hereof.
- e. Application of Law. This Agreement is subject to all applicable laws of the State of Idaho.
- f. Survival. The terms, representations, provisions, covenants, agreements and indemnities shall remain binding upon and for the parties hereto until fully observed, kept or performed.

- g. Authority. The parties hereto represent and confirm that they have the authority to execute this Agreement on their behalf and on behalf of the other persons named herein, although those persons may not have executed this Agreement.
- i. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original, but all together shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.

CITY OF EAGLE CITY

By: *Paul V. [Signature]*
 Its: Mayor



By: *[Signature]*
 Acting as: City Clerk

UNITED WATER IDAHO INC.

By: *Benjamin M. [Signature]*
 Its: VICE PRES.

AGREEMENT

This Agreement is made this 2nd day of December 1997, by and between the City of Eagle, an Idaho municipal corporation (herein called "City"), and United Water Idaho Inc., an Idaho corporation (herein called "UWID").

RECITALS

- A. City is the owner of a municipal, domestic water transmission and distribution system in the City of Eagle (hereinafter called the "System"). The geographical boundaries of the System are shown on Exhibit A, attached hereto and made a part hereof, which geographical boundaries of the System may be amended by the City from time to time.
- B. UWID is engaged in the business of owning, operating and managing a potable water systems, and delivering potable water. UWID owns and operates a potable water reservoir commonly known as the Hidden Hollow reservoir (the "Reservoir").
- C. City desires to have UWID provide such emergency back-up water to City and UWID desires to provide emergency back-up water to City.
- D. Conveyance of emergency back-up water to City from the Reservoir will require that UWID convey potable water to and through the System. City desires to have UWID convey such emergency back up water to City from the Reservoir to and through the System.

NOW, THEREFORE, in consideration of the recitals above which are incorporated below, the mutual terms, conditions, covenants and agreements contained herein, the parties hereto agree as follows:

1. In consideration of conveyance of emergency back-up water to City from the Reservoir, City hereby grants to UWID, and to its successors and assigns, the exclusive right and privilege, for a period of thirty (30) years from the first day following the hereof, to convey potable water to and through the System, all subject to the terms and conditions hereinafter specified.
2. The System shall be constructed and at all times maintained in good order and condition and in accordance with standard engineering practices and all applicable safety codes and lawful governmental regulations, including all applicable local, state, and federal regulations.
3. UWID shall at all times indemnify and hold City, its officers, employees and agent, harmless from any and all expenses or liability arising from or by reason of any negligent act or omission of UWID, its agents or employees, in conveying water to and through the System.
4. Before UWID shall have any rights hereunder, UWID shall file with City Clerk a certificate of insurance evidencing general liability insurance which covers claims for bodily injury, property damage and personal injury. Such insurance shall have minimum limits of \$1,000,000 per occurrence. City of Eagle shall be named as an additional named insured under UWID's insurance policy. Should the minimum limits of insurance as set forth herein be increased above \$1,000,000, pursuant to the Idaho Tort Claims Act (Idaho Code Section 6-901, et. seq.) or any similar legislation, UWID shall, upon City's request, be required to provide City with a new certificate of insurance evidencing such higher limits.
5. This Agreement shall at all times be subject to all rules, regulations and orders that may be lawfully prescribed by the IPUC or by any other governmental authority now or hereafter having jurisdiction over such matters.

6. City and UWID acknowledge that delivery of water other than water controlled by City and/or UWID is undesirable and agree that City shall not grant a permit, license or other agreement for the use of the System to another water service provider during the term of this Agreement.

7. In the event of an amendment to the laws, rules or regulations of City, the State of Idaho, or the IPUC applicable to this Agreement, or for periodic review of any section of this Agreement, the terms of this Agreement and the rights and privileges hereby conferred may be changed, altered, amended, or modified upon mutual agreement between City and UWID to carrying out the intent of this Agreement. In all cases, sixty (60) days notice shall be required on the part of City or UWID to reopen the Agreement pursuant to this section.

8. Sale, assignment, lease or other transfer of this Agreement by UWID may occur only subsequent to notification to City. Sale of the System by City shall be subject to the terms of this Agreement.

9. GENERAL PROVISIONS.

a. All notices, demands, requests, and other communications under this Agreement shall be in writing and shall be deemed properly served or delivered, if delivered by hand to the party to whose attention it is directed, or when sent, three (3) days after deposit in the U.S. mail, postage prepaid, by registered or certified mail, return receipt requested, or if sent by facsimile to the party to whose attention it is directed, addressed as follows:

If to City: The City of Eagle
 Attn: Mayor
 City Hall
 310 E. State Street
 Eagle, ID 83616
 (208) 939-6813
 (208) 939-6827(facsimile)

If to UWID: United Water Idaho Inc.
 Attn: President
 8248 W. Victory Road
 Boise, Idaho 83707
 (208) 362-1704
 (208) 362-3858 (facsimile)

or at such other address or to such other party which any party entitled to receive notice hereunder designates to the other in writing as provided above.

b. Upon reasonable request by City, UWID shall send a representative to any particular meeting of City's Council and shall provide City with quarterly reports of activities in connection with conveying water to and through the System.

c. The failure on the part of either party to enforce its rights as to any provision of the Agreement shall not be construed as a waiver of its rights to enforce such provision in the future.

d. If any party shall fail to perform such party's obligation(s) contemplated herein for any reason, one or more of the other parties may pursue any and all remedies at law or equity; provided, however, all parties affected by any default agree to attempt to mediate a settlement in good faith prior to initiating litigation. In the event litigation is filed, the prevailing party or parties shall be entitled to an award of reasonable costs and attorneys' fees.

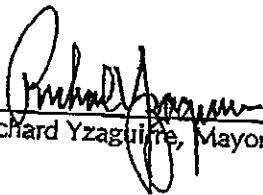
e. If any section, subsection, sentence, clause, phrase or portion of the Agreement is for any reason held invalid, preempted or unconstitutional by any Federal or State court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision of the Agreement, and such holding shall not affect the validity of the remaining portions hereof.

f. The Agreement is subject to all applicable laws of the State of Idaho and ordinances of City.


g. The terms, representations, provisions, covenants, agreements and indemnities shall remain binding upon and for the parties hereto until fully observed, kept or performed.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of the date first above written.

CITY OF EAGLE, an Idaho municipal corporation

By: 
Richard Yzaguirre, Mayor

ATTEST:

By: 
City Clerk

UNITED WATER IDAHO INC., an Idaho corporation


By: 
William C. Linam, President



EXHIBIT A

**Geographical Boundaries
City of Eagle Water System**

Commencing at the section corner common to Sections 4, 5, 8 and 9, Township 4 North, Range 1 East, Boise Meridian, Ada County, Idaho, the REAL POINT OF BEGINNING;

thence easterly along the section line common to Sections 4, 3, 9 and 10 approximately 2 miles to the section corner common to Sections 2, 3, 10 and 11, Township 4 North, Range 1 East, Boise Meridian, said point being the centerline of State Highway 55;

thence northwesterly along said centerline of State Highway 55 approximately 3/4 mile to a point on the north line of the south half of the north half of said Section 3, Township 4 North, Range 1 East, Boise Meridian;

thence westerly along said north line of the south half of the north half of Section 3, approximately 3/4 mile to the common north-south section line of Sections 3 and 4, Township 4 North, Range 1 East, Boise Meridian;

thence southerly along said north-south section line of Sections 3 and 4 approximately 1/4 mile to the 1/4 corner common to said Sections 3 and 4, Township 4 North, Range 1 East, Boise Meridian;

thence westerly along the east - west half section line of said Section 4 approximately 1/8 mile to the centerline of Dry Creek;

thence southwestery along said centerline of Dry Creek approximately 5/8 mile to the west line of the east half of the west half of said Section 4, Township 4 North, Range 1 East, Boise Meridian;

thence southerly along said west line of the east half of the west half of Section 4 approximately 3/8 mile to the north line of the south half of the south half of said Section 4, Township 4 North, Range 1 East, Boise Meridian;

thence westerly along said north line of the south half of the south half of Section 4 approximately 1/4 mile to the common north - south section line of said Sections 4 and 5, Township 4 North, Range 1 East, Boise Meridian;

thence southerly along said north - south section line of Sections 4 and 5 approximately 1/4 mile to the section corner common to Sections 4, 5, 8 and 9, Township 4 North, Range 1 East, Boise Meridian, the REAL POINT OF BEGINNING;

UNITED WATER OPERATIONS

8248 W. Victory Road
Boise Idaho 83709
208-362-7304

RECEIVED & FILED
CITY OF EAGLE
FEB 13 2003
File: _____
Route to: File

Lexington Hills - Pond
Master Meter

Account # 550030

Date 2-12-03

Meter Reading	<u>730462</u>	Gallons
Previous Reading	<u>705458</u>	Gallons
Difference	<u>25004</u>	Gallons
Divide 7.48	<u>33.43</u>	CCF
Balance Forward	\$ <u>67.16</u>	
Rate 0.72/100 CCF	\$ <u>24.07</u>	
Customer Charge	\$ <u>20.82</u>	
BILL AMOUNT	\$ <u>112.05</u>	

BILL TO: Lexington Hills Homeowners Association
1815 E. Stonybrook Dr. 9601 W State St
Eagle, ID 83616 Ste 203
Boise, ID 83703

COPY TO: City of Eagle
Box 1520
Eagle, ID 83616

UNITED WATER OPERATIONS

8248 W. Victory Road
Boise Idaho 83709
208-362-7304

RECEIVED & FILED
CITY OF EAGLE

JAN 21 2003

File: _____
Route to: _____

Lexington Hills -- Pond
Master Meter

Account # 550030

Date 1-16-03

Meter Reading	<u>705458</u>	Gallons
Previous Reading	<u>657313</u>	Gallons
Difference	<u>48145</u>	Gallons
Divide 7.48	<u>6436</u>	CCF
Balance Forward	\$ <u>0</u>	
Rate 0.72/100 CCF	\$ <u>4634</u>	
Customer Charge	\$ <u>20.82</u>	
BILL AMOUNT	\$ <u>67.16</u>	

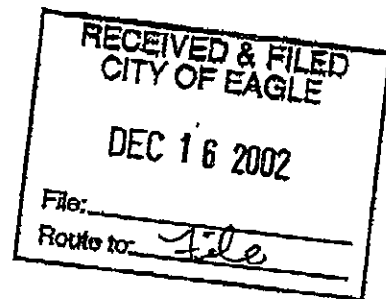
BILL TO: Lexington Hills Homeowners Association
1815 E. Stonybrook Dr. 9601 W State St
Eagle, ID 83616 Ste 203
Boise, Id 83703

COPY TO: City of Eagle
Box 1520
Eagle, ID 83616

UNITED WATER OPERATIONS

8248 W. Victory Road
Boise Idaho 83709
208-362-7304

Lexington Hills - Pond
Master Meter



Account #	<u>556030</u>	
Date	<u>12/12/02</u>	
Meter Reading	<u>657,313</u>	Gallons
Previous Reading	<u>619,456</u>	Gallons
Difference	<u>37,857</u>	Gallons
Divide 7.48	<u>5,061</u>	CCF
Balance Forward	\$ <u>0</u>	
Rate 0.72/100 CCF	\$ <u>36.44</u>	
Customer Charge	\$ <u>20.82</u>	
BILL AMOUNT	\$ <u>57.26</u>	

BILL TO: Lexington Hills Homeowners Association
1815 E. Stonybrook Dr. 9601 W State St
Eagle, ID 83616 Ste 203
Boise, Id 83703

COPY TO: City of Eagle
Box 1520
Eagle, ID 83616

UNITED WATER OPERATIONS

8248 W. Victory Road
Boise Idaho 83709
208-362-7304

Lexington Hills - Pond
Master Meter

RECEIVED & FILED
CITY OF EAGLE
NOV 18 2002
File: _____
Route to: _____

Account # 550030

Date 11-14-02

Meter Reading	<u>619,456</u>	Gallons
Previous Reading	<u>532,197</u>	Gallons
Difference	<u>87,259</u>	Gallons
Divide 7.48	<u>11,666</u>	CCF
Balance Forward	\$ <u>0</u>	
Rate 0.72/100 CCF	\$ <u>84.00</u>	
Customer Charge	\$ <u>20.82</u>	
BILL AMOUNT	\$ <u>104.82</u>	

BILL TO: Lexington Hills Homeowners Association
1815 E. Stonybrook Dr. 9601 W State St
Eagle, ID 83616 Ste 203
Boise, Id 83703

COPY TO: City of Eagle
Box 1520
Eagle, ID 83616

UNITED WATER OPERATIONS

8248 W. Victory Road
Boise Idaho 83709
208-362-7304

RECEIVED & FILED
CITY OF EAGLE

OCT 16 2002

File: _____
Route to: _____

Lexington Hills - Pond
Master Meter

Account # 550030

Date 10-14-02

Meter Reading	<u>532197</u>	Gallons
Previous Reading	<u>520371</u>	Gallons
Difference	<u>11826</u>	Gallons
Divide 7.48	<u>1518</u>	CCF
Balance Forward	\$ <u>0</u>	
Rate 0.72/100 CCF	\$ <u>11.38</u>	
Customer Charge	\$ <u>20.82</u>	
BILL AMOUNT	\$ <u>32.20</u>	

BILL TO: Lexington Hills Homeowners Association
1815 E. Stonybrook Dr. *9601 W State St*
Eagle, ID 83616 *Apt 203*
Boise, Id 83703

COPY TO: City of Eagle
Box 1520
Eagle, ID 83616

UNITED WATER OPERATIONS

8248 W. Victory Road
Boise Idaho 83709
208-362-7304

RECEIVED & FILED
CITY OF EAGLE
SEP 13 2002
File: _____
Route to: _____

Lexington Hills - Pond
Master Meter

Account # 550030

Date 9-12-02

Meter Reading	<u>520371</u>	Gallons
Previous Reading	<u>520371</u>	Gallons
Difference	<u>- 0 -</u>	Gallons
Divide 7.48	_____	CCF
Balance Forward	\$ _____	
Rate 0.72/100 CCF	\$ _____	
Customer Charge	\$ <u>20.82</u>	
BILL AMOUNT	\$ <u>20.82</u>	

BILL TO: Lexington Hills Homeowners Association
1815 E. Stonybrook Dr. 9601 W State St
Eagle, ID 83616 Ste 203
Boise, Id 83703

COPY TO: City of Eagle
Box 1520
Eagle, ID 83616

UNITED WATER OPERATIONS

8248 W. Victory Road
Boise Idaho 83709
208-362-7304

RECEIVED & FILED
CITY OF EAGLE
AUG 21 2002
File: _____
Route to: _____

Lexington Hills - Pond
Master Meter

Account # 550030

Date 8-14-02

Meter Reading	<u>520371</u>	Gallons
Previous Reading	<u>520371</u>	Gallons
Difference	<u>- 0 -</u>	Gallons
Divide 7.48	_____	CCF
Balance Forward	\$ <u>- 0 -</u>	
Rate 0.72/100 CCF	\$ _____	
Customer Charge	\$ <u>20.82</u>	
BILL AMOUNT	\$ <u>20.82</u>	

BILL TO: Lexington Hills Homeowners Association
1815 E. Stonybrook Dr. *9601 W State St*
Eagle, ID 83616 *Ste 203*
Boise, Id 83703

COPY TO: City of Eagle
Box 1520
Eagle, ID 83616

UNITED WATER OPERATIONS

8248 W. Victory Road
Boise Idaho 83709
208-362-7304

RECEIVED & FILED
CITY OF EAGLE
MAY 16 2002
File: _____
Route to: _____

Lexington Hills - Pond
Master Meter

Account # 550030

Date 5-15-02

Meter Reading	<u>520371</u>	Gallons
Previous Reading	<u>520371</u>	Gallons
Difference	<u>- 0 -</u>	Gallons
Divide 7.48	_____	CCF
Balance Forward	\$ <u>180.44</u>	
Rate 0.72/100 CCF	\$ _____	
Customer Charge	\$ <u>20.82</u>	
BILL AMOUNT	\$ <u>201.26</u>	

BILL TO: Lexington Hills Homeowners Association
1815 E. Stonybrook Dr.
Eagle, ID 83616

COPY TO: City of Eagle
Box 1520
Eagle, ID 83616

UNITED WATER OPERATIONS

8248 W. Victory Road
Boise Idaho 83709
208-362-7304

RECEIVED & FILED
CITY OF EAGLE
APR 25 2002
File: _____
Route No: _____

Lexington Hills - Pond
Master Meter

Account # 550030

Date: 4-24-02

Meter Reading	<u>520371</u>	Gallons
Previous Reading	<u>419431</u>	Gallons
Difference	<u>100940</u>	Gallons
Divide 7.48	<u>13494</u>	CCF
Balance Forward	\$ <u>62.46</u>	Jan Feb Mar customer charge
Rate 0.72/100 CCF	\$ <u>97.16</u>	
Customer Charge	\$ <u>20.82</u>	
BILL AMOUNT	\$ <u>180.44</u>	

BILL TO: Lexington Hills Homeowners Association
340 W State St
Eagle, ID 83616

COPY TO: City of Eagle
Box 1520
Eagle, ID 83616

UNITED WATER OPERATIONS

8248 W. Victory Road
Boise Idaho 83709
208-362-7304

Lexington Hills - Pond
Master Meter

RECEIVED & FILED CITY OF EAGLE
DEC 19 2001
File: _____
Route to: _____

Account # 550030

Date 12-18-01

Meter Reading 419431 Gallons

Previous Reading 372404 Gallons

Difference 47027 Gallons

Divide 7.48 6287 CCF

Balance Forward \$ 20.82 *Nov. cust. chg*

Rate 0.72/100 CCF \$ 45.27

Customer Charge \$ 20.82

BILL AMOUNT \$ 86.91

BILL TO: Lexington Hills Homeowners Association
340 W State St ~~1815 E. Stonybrook Dr.~~
Eagle, ID 83616

COPY TO: City of Eagle
Box 1520
Eagle, ID 83616

UNITED WATER OPERATIONS

8248 W. Victory Road
Boise Idaho 83709
208-362-7304

RECEIVED & FILED
CITY OF EAGLE
OCT 25 2001
File: _____
Route to: _____

Lexington Hills - Pond
Master Meter

Account# 550030

Date 10-23-01

Meter Reading	<u>372404</u>	Gallons
Previous Reading	<u>350876</u>	Gallons
Difference	<u>21528</u>	Gallons
Divide 7.48	<u>2878</u>	CCF
Balance Forward	\$ <u>20.82</u>	Sept customer charge
Rate 0.72/100 CCF	\$ <u>20.72</u>	
Customer Charge	\$ <u>20.82</u>	
BILL AMOUNT	\$ <u>62.36</u>	

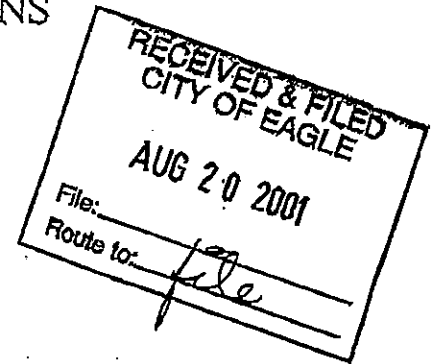
BILL TO: Lexington Hills Homeowners Association
340 W State 1815 E. Stonybrook Dr.
Eagle, ID 83616

COPY TO: City of Eagle
Box 1520
Eagle, ID 83616

UNITED WATER OPERATIONS

8248 W. Victory Road
Boise Idaho 83709
208-362-7304

Lexington Hills - Pond
Master Meter



Account # 550030
Date 8-17-01

Meter Reading	<u>350876</u>	Gallons
Previous Reading	<u>350876</u>	Gallons
Difference	<u>0</u>	Gallons
Divide 7.48	_____	CCF
Balance Forward	\$ <u>120.55</u>	
Rate 0.72/100 CCF	\$ _____	
Customer Charge	\$ <u>62.46</u>	
BILL AMOUNT	\$ <u>183.01</u>	

BILL TO: Lexington Hills Homeowners Association
1815 E. Stonybrook Dr.
Eagle, ID 83616

COPY TO: City of Eagle
Box 1520
Eagle, ID 83616

UNITED WATER OPERATIONS

8248 W. Victory Road
Boise Idaho 83709
208-362-7304

Lexington Hills - Pond
Master Meter



Account # 550030

Date 5-16-01

Meter Reading	<u>350876</u>	Gallons
Previous Reading	<u>290525</u>	Gallons
Difference	<u>60351</u>	Gallons
Divide 7.48	<u>8068</u>	CCF
Balance Forward	\$ <u>0</u>	
Rate 0.72/100 CCF	\$ <u>58.09</u>	
Customer Charge	\$ <u>62.46</u>	
BILL AMOUNT	\$ <u>120.55</u>	

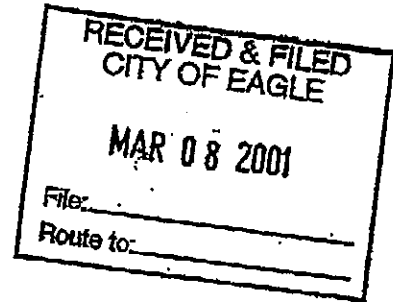
BILL TO: Lexington Hills Homeowners Association
1815 E. Stonybrook Dr.
Eagle, ID 83616

COPY TO: City of Eagle
Box 1520
Eagle, ID 83616

UNITED WATER OPERATIONS

8248 W. Victory Road
Boise Idaho 83709
208-362-7304

Lexington Hills - Pond
Master Meter



Account # 550030

Date 2-16-01

Meter Reading	<u>290525</u>	Gallons
Previous Reading	<u>272960</u>	Gallons
Difference	<u>17565</u>	Gallons
Divide 7.48	<u>2348</u>	CCF
Balance Forward	\$ <u>0</u>	
Rate 0.72/100 CCF	\$ <u>16.91</u>	
Customer Charge	\$ <u>20.82</u>	
BILL AMOUNT	\$ <u>37.73</u>	

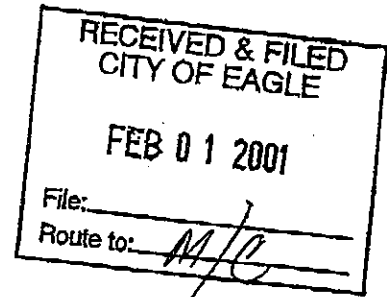
BILL TO: Lexington Hills Homeowners Association
1815 E. Stonybrook Dr.
Eagle, ID 83616

COPY TO: City of Eagle
Box 1520
Eagle, ID 83616

UNITED WATER OPERATIONS

8248 W. Victory Road
Boise Idaho 83709
208-362-7304

Lexington Hills -- Pond
Master Meter



Account # 550030

Date 1-24-01

Meter Reading	<u>272960</u>	Gallons
Previous Reading	<u>229196</u>	Gallons
Difference	<u>43764</u>	Gallons
Divide 7.48	<u>5850</u>	CCF
Balance Forward	\$ <u>60.78</u>	
Rate 0.72/100 CCF	\$ <u>42.13</u>	
Customer Charge	\$ <u>41.64</u>	
BILL AMOUNT	\$ <u>144.55</u>	

BILL TO: Lexington Hills Homeowners Association
1815 E. Stonybrook Dr.
Eagle, ID 83616

COPY TO: City of Eagle
Box 477
Eagle, ID 83616

BRUCE M. SMITH, ISB # 3425
TAMMY A. ZOKAN, ISB # 5450
MOORE SMITH BUXTON & TURCKE, CHARTERED
225 North 9th, Suite 420
Boise, Idaho 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202

Attorney for the City of Eagle

RECEIVED

OCT 22 2003

WATER RESOURCES
WESTERN REGION

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

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

} THE CITY OF EAGLE'S FIRST
} SUPPLEMENTAL RESPONSE TO THE
} EAGLE WATER COMPANY, INC.'S
} FIRST SET OF REQUESTS FOR
} PRODUCTION

THE CITY OF EAGLE BY and through its attorney, MOORE SMITH BUXTON & TURCKE, CHARTERED, hereby supplements its response to the following requests for production by the Eagle Water Company, Inc. ("Eagle Water"). As a general objection, the City objects to providing any response or producing any documents protected by the attorney client or work product privileges.

DEFINITIONS AND INSTRUCTIONS

In answering these discovery requests, furnish all information available to you, however obtained, including hearsay which is available to you and including information known by or in the possession of yourself, your attorney(s), investigator(s), expert(s), employee(s), or agent(s)

APPLICANT'S FIRST SUPPLEMENTAL RESPONSE TO EAGLE WATER
COMPANY'S FIRST SET OF REQUESTS FOR ADMISSIONS TO THE CITY OF
EAGLE - Page 1

retained by you or your attorney, or appearing in your records, and not merely information known of your own personal knowledge.

If you cannot answer the following interrogatories in full, after exercising due diligence to secure the information to do so, so state, and answer to the extent possible, specifying your inability to answer the remainder, and stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

If you are unable to produce the requested documents after exercising due diligence to secure the documents, so state and identify the reason for your inability to produce the documents, the whereabouts of the documents if not in your control or possession, and the means whereby you lost control or possession of the documents. Identify any documents which once did exist if not now existing and state whatever information or knowledge you have concerning the information contained in those documents.

The entire discovery herein is deemed continuing. If after responding to these interrogatories, you acquire any documents requested herein, or any information related to any interrogatories or documents requested herein which is not reflected by one of the answers, you must file a supplemental discovery response. Such supplementation is requested herein in addition to any supplementation required by the Idaho Rules of Civil Procedure.

THE FOLLOWING DEFINITIONS APPLY TO THESE DISCOVERY REQUESTS:

1. "*Application*" means the Application for Amendment of Permit No. 63-12448 in the Name of The City of Eagle.
2. "*Document or Documents*" means all writing of any kind, including the original and

all non-identical copies, whether different from the original by reason of any notation made on such copies or otherwise including without limitation correspondence, memoranda, notes, diaries, statistics, letters, telegrams, minutes, contracts, reports, studies, checks, statements, receipts, returns, summaries, pamphlets, books, prospectuses, interoffice and intra-office communications, offers, notations of any sort of conversations, bulletins, printed matter, computer printouts, teletypes, telecopy, invoices, work sheets, and all drafts, alterations, modifications, changes, and amendments of any of the foregoing, graphic or oral records or representation of any kind including without limitations, photographs, charts, graphs, microfiche, microfilm, videotapes, recording, motion pictures and electronic, mechanical, or electrical records or representation of any kind including without limitation, tapes, cassette discs, recordings.

3. "*Eagle Water's Water Rights*" means the water rights represented by SRBA water right claim nos. 63-7368; 63-7618; and 63-9245.
4. "*Fact*" or "*Facts*" mean all circumstances, events, evidence, information, including statements or testimony made by, or knowledge of, any person(s), pertaining to or touching upon the item or matter in question.
5. "*Issues*" means the issues set forth in the Notice of Hearing dated January 10, 2003, which are as follows:
 - A. Will other water rights be injured by the amendment?
 - B. Will the requested change constitute an enlargement in the use of the original right?
 - C. Will the proposed change conflict with the local public interest?
 - D. Will the proposed use be contrary to conservation of water resources within the state of Idaho?
6. "*Person*" includes any natural person, partnership, corporation, joint venture, unincorporated association, governmental entity (or agency or other subdivision thereof), quasi-public entity or other form of entity or combination thereof.
7. "*You and Your*" means the City of Eagle.


REQUESTS FOR PRODUCTION

REQUEST NO. 18: Please produce copies of all documents, data, data summaries, reports, and/or scientific evidence that contain information or facts supporting your response to Interrogatory No. 13.

SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 18: The City objects to this request because it is ambiguous and because it is not calculated to lead to admissible evidence. Notwithstanding the City's objection, please see United Water Idaho's reports on total production and consumption for four (4) quarters in 2000, four (4) quarters in 2001 and two (2) quarters in 2002.

REQUEST NO. 19: Please produce copies of all documents, data, data summaries, reports, and/or scientific evidence that contain information or facts supporting your response to Interrogatory No. 14.

SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 19: See supplemental response to request for production no. 18.

DATED this _____ day of March 2003.

Lynae Sedlacek, Councilmember
City of Eagle

Tatmany A. Zokan
Attorney for the City of Eagle

REQUESTS FOR PRODUCTION

REQUEST NO. 18: Please produce copies of all documents, data, data summaries, reports, and/or scientific evidence that contain information or facts supporting your response to Interrogatory No. 13.

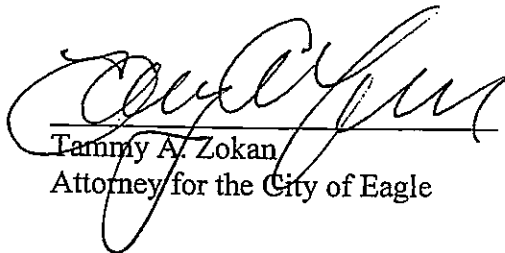
SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 18: The City objects to this request because it is ambiguous and because it is not calculated to lead to admissible evidence. Notwithstanding the City's objection, please see United Water Idaho's reports on total production and consumption for four (4) quarters in 2000, four (4) quarters in 2001 and two (2) quarters in 2002.

REQUEST NO. 19: Please produce copies of all documents, data, data summaries, reports, and/or scientific evidence that contain information or facts supporting your response to Interrogatory No. 14.

SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 19: See supplemental response to request for production no. 18.

DATED this 24 day of March, 2003.

Lynne Sedlacek, Councilmember
City of Eagle



Tammy A. Zokan
Attorney for the City of Eagle

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24 day of March, 2003 I caused to be served a true and correct copy of the foregoing CITY OF EAGLE'S FIRST SUPPLEMENTAL RESPONSE TO THE EAGLE WATER COMPANY'S FIRST SET OF REQUESTS FOR PRODUCTION TO THE CITY via U.S. Mail Postage pre-paid, and addressed to the following:

IDWR
Western Region
2735 Airport Way
Boise, Idaho 83705

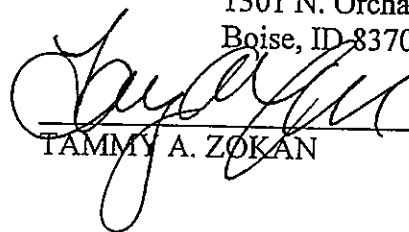
Matt Howard
P.O. Box 190012
Boise, Idaho 83719

Molly O'Leary
Eagle Water Co.
P.O. Box 1849
Eagle, Idaho 83616

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

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

Glen Saxton
IDWR State Office
1301 N. Orchard Street
Boise, ID 83706



TAMMY A. ZOKAN

**City of Eagle Contract
United Water Operations Idaho
Quarterly Report - Year Ending December 31, 2001**

<u>Total Production (in 1,000 gallons)</u>	<u>2000</u>	<u>2001</u>
1st Quarter (March 31)	18,350	29,570
2nd Quarter (June 30)	24,209	25,208
3rd Quarter (Sept. 30)	21,490	24,550
4th Quarter (Dec. 31)	25,070	30,250

**City of Eagle Contract
United Water Operations Idaho
Quarterly Report - Quarter Ending September 30, 2001**

	<u>2000</u>	<u>2001</u>
Total Consumption (in 1,000 gallons)		
1st Quarter (March 31)	12,827	17,634
2nd Quarter (June 30)	19,277	23,253
3rd Quarter (Sept. 30)	23,027	23,880
4th Quarter (Dec. 31)	18,167	-

**City of Eagle Contract
 United Water Operations Idaho
 Quarterly Report - Quarter Ending June 30, 2002**

<u>Total Production (in 1,000 gallons)</u>	<u>2001</u>	<u>2002</u>
1st Quarter (March 31)	29,570	29,470
2nd Quarter (June 30)	25,208	29,510
3rd Quarter (Sept. 30)	24,550	
4th Quarter (Dec. 31)	30,250	

ER-2.3

City of Eagle Contract
Quarterly Report - Quarter ending June 30, 2002

<u>Total Consumption (in 1,000 gallons)</u>	<u>2001</u>	<u>2002</u>
1st Quarter (March 31)	17,634	19,236
2nd Quarter (June 30)	23,253	25,155
3rd Quarter (Sept. 30)	23,880	
4th Quarter (Dec. 31)	22,898	

07/29/02


REQUEST NO. 6: Please admit that the diversion of water from the proposed

Brookwood Well may cause drawdowns in Eagle Water's wells.

RESPONSE TO REQUEST FOR ADMISSION NO. 6: The City objects to the Eagle Water Company's discovery, including this request for admission, because it is untimely. The Hearing Officer ordered that written discovery shall be concluded by August 29, 2003 and that discovery shall be timely served to comply with the August 29, 2003 deadline. The Eagle Water Company served its second set of discovery on the City via facsimile on August 29, 2003, which does not allow adequate time for the City to respond before the deadline. Notwithstanding the City's objection, and without waiving the same, request for admission no. 6 is denied.

DATED this 12 day of September, 2003.

Lynne Sedlacek, Councilmember
City of Eagle



Tammy A. Zokan
Attorney for the City of Eagle

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that on the 12 day of September, 2003 I caused to be served a true and correct copy of the foregoing CITY OF EAGLE'S RESPONSE TO THE EAGLE WATER COMPANY'S SECOND SET OF REQUESTS FOR ADMISSIONS via U.S. Mail Postage pre-paid, and addressed to the following:

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



TAMMY A. ZOKAN

MATT J. HOWARD
Attorney at Law
P. O. Box 190012
Boise, Idaho 83719
Telephone: (208) 333-0622
Facsimile: (208) 333-8409

RECEIVED
OCT 17 2003
Department of Water Resources

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) ESTATE'S WITNESS AND EXHIBIT LIST
IN THE NAME OF THE CITY OF EAGLE)
_____)

Pursuant to the Hearing Officer's *Scheduling Order (Aug. 20, 2003)*, the Estate of Eleanor I. Chase ("Estate"), by and through its attorney of record, Matt J. Howard, hereby lodges with the Idaho Department of Water Resources its list of witnesses and exhibits and further certifies that it has served this document together with copies of the Estate's pre-marked exhibits on the other parties.

WITNESS LIST

The Estate may call the following witnesses at the hearing scheduled in the above-captioned case:

1. Mike Chase;
2. Bill Chase;
3. Dave Shaw, P.E., ERO Resources, Inc.;
4. The City of Eagle, by and through, its designated IRCP 30(b)(6) representative, Vern Brewer; and
5. Any witnesses identified and/or called by the applicant or any of the protestants.

EXHIBIT LIST

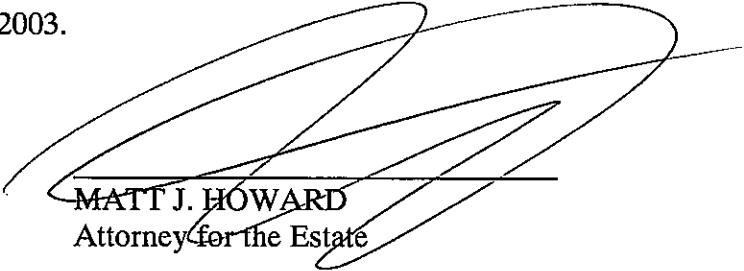
Exhibit No.	Description	Offered	Admitted
101.	Summary of Ground Water Conditions in the Vicinity of Proposed Brookwood Subdivision Well Site, Eagle, Idaho, (Bill Strowd, P.G., Aug, 15, 2001) ("The Strowd Report")		
102.	Revised Summary of Ground Water Conditions in the Vicinity of Proposed Brookwood Subdivision Well Site, Eagle, Idaho, (Bill Strowd, P.G., Aug, 17, 2001) ("The Revised Strowd Report")		
103.	IDWR Open-File Report, Ground-Water Conditions in the Dry Creek Area (June 1991)		
104.	Results of the 30-Day Pumping Test and Aquifer Analysis (CH2M Hill, June 1991)		
105.	Aquifer Test at Floating Feather Well (Scanlan, Aug. 9, 1995)		
106.	Municipally-Owned Water System Master Plan and Budget Study (Apr. 12, 2002 and rev. May 21, 2003).		
107.	Deposition of City of Eagle, by and through its representative, Vernon Brewer (Sept. 10, 2003).		
108.	Well specifications and reports from Layne of Idaho, Inc. Re: the Large Irrigation Well (7 pages)		
109.	The City of Eagle's Response to the Estate's Third Set of Interrogatories, Requests for Production of Documents, and Requests for Admissions		
110.	The City of Eagle's Fifth Supplemental Response to the Estate's Interrogatories and Requests for Production of Documents		
111.	The City of Eagle's Sixth Supplemental Response to the Estate's Interrogatories and Requests for Production of Documents		

112.	Verification of Signatures on the City of Eagle's Response and Supplemental Response to the Estate's Interrogatories, Requests for Production of Documents, and Requests for Admissions.		
113.	Amendment to Application of Boise Water Company DBA Eagle United Water before the Idaho Public Utilities Commission (IPUC) (Sept. 1, 1994).		
114.	Testimony of Morgan W. Masner for the City of Eagle before IPUC (Dec. 1, 1995).		
115.	IPUC Order No. 26337 (Mar. 5, 1996).		
116.	IPUC Order No. 26524 (July 19, 1996).		
117.	Application of United Water Idaho (UWI) (July 11, 1997).		
118.	IPUC Comments of the Commission Staff (Aug. 20, 1997).		
119.	IPUC Order No. 27121 (Sept. 8, 1997).		
120.	Protest by Eleanor I. Chase to Application No. 63-11413 (Nov. 29, 1990)		
121.	Notes of by D. Tuthill Re: Testimony in Contested Case Proceeding for 63-11413		
122.	Proposed Memorandum Decision and Order Approving Application for Permit No. 63-11413 (Aug. 7, 1991).		
123.	The City of Eagle's Response to the Eagle Water Company, Inc.'s First Set of Interrogatories, Requests for Production of Documents Nos. 16-19 (selected portions, pp. 1, 8-end)		
124.	Letter from City of Eagle to David R. Tuthill (May 24, 1995)		

125.	Letter from Chris Meyer to Jim Johnson (Nov. 19, 1998)		
126.	Proof of Beneficial Use – 63-12017		
127.	Proof of Beneficial Use – 63-11413		
128.	Amendment of Permit No. 63-12448 (Apr. 7, 2000)		
129.	Application for Amendment of Permit 63-12448 (Dec. 2, 1998)		
130.	Application for Permit 63-12448 (Apr. 7, 1998)		
131.	Letter from Chris Meyer to Jeff Peppersack (Mar. 31, 2000)		
132.	Letter from Eleanor I. Chase to Gary Spackman (Aug. 14, 1999)		
133.	Letter from J. Evan Robertson to Gary Spackman (Nov. 25, 1998)		
134.	Letter from Eleanor I. Chase to Gary Spackman (Sept. 23, 1998).		
135.	Letter from Eleanor I. Chase to IDWR (July 9, 2001).		
136.	United Water Operations Reports (13 pages)		
137.	Agreement to Provide Supplemental Water for Fire Flows (Aug. 1, 1997)		
138.	Cooperative Agreement (Oct. 14, 1997)		
139.	Water Line Agreement (Aug. 5, 1997)		
140.	Agreement (Dec. 2, 1997)		
141.	Well Purchase Agreement (Sept. 26, 2000)		
142.	Notice of Claim 63-5224		

143.	Partial Decree 63-5225		
144.	Amended Notice of Claim 63-5226		
145.	Notice of Claim 63-5227		
146.	Amended Notice of Claim 63-5229		
147.	Notice of Claim 63-8663		
148.	License 63-8663		
149.	IDWR Field Report 63-8663		
150.	Partial Decree 63-15820		
151.	Partial Decree 63-18731		
152.	ERO Resources, Inc., Report Regarding Wells for 63-5226 and 63-5229 (Dec. 11, 2001).		
153.	Curriculum Vitae for David B. Shaw, P.E.		
154.	Beneficial Use Field Report 63-12192		
155.	Diagram of Selected Well Locations		
156.	1970's photograph of Chase Dairy and barn (area of City's proposed Brookwood well development)		
157.	1952 photograph of barn (area of City's proposed Brookwood well development).		
158.	1952 photograph of Chase Dairy and barn (area of City's proposed Brookwood well development)		

Dated this 17th day of October, 2003.



MATT J. HOWARD
Attorney for the Estate

CERTIFICATE OF SERVICE

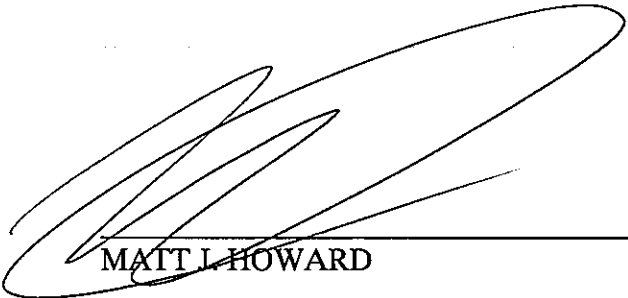
The undersigned certifies that on the 17th day of October 2003, a true and correct copy of the within and foregoing document together with copies of the exhibits was hand-delivered to the following person(s):

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

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

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

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



MATT L. HOWARD

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

RECEIVED
OCT 20 2003
WATER RESOURCES
WESTERN REGION

Attorneys for the City of Eagle

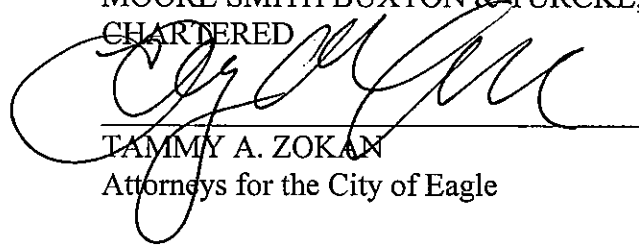
BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF)	
)	
CITY OF EAGLE, PETITIONER	)	NOTICE OF SERVICE OF
	)	WITNESS AND EXHIBIT LIST
APPLICATION FOR PERMIT NO. 63-12448	)	AND PRE-MARKED EXHIBITS
)	
)	

COMES NOW, the City of Eagle, and gives notice that the City served its exhibit and witness lists and pre-marked exhibits in accordance with the Scheduling Order dated August 20, 2003 via hand delivery on the parties on the 17th day of October, 2003.

DATED this 17 day of October, 2003.

MOORE SMITH BUXTON & TURCKE,
CHARTERED



TAMMY A. ZOKAN
Attorneys for the City of Eagle

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17 day of October, 2003, I caused to be served a true and correct copy of the foregoing NOTICE OF SERVICE 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

Weldon Fisher
546 E. Beacon Light Road
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

Peter Anderson
Hearing Officer
729 W. Braemere Road
Boise, ID 83702

U.S. Mail
 Hand Delivered
 Overnight Mail
 Facsimile


TAMMY A. ZOKAN

Molly O'Leary (ISB No. 4996)
Richardson & O'Leary PLLC
99 East State Street, Suite 200
P. O. Box 1849
Eagle, Idaho 83616
Telephone: (208) 938-7900
Fax: (208) 938-7904

RECEIVED
OCT 20 2003
WATER RESOURCES
WESTERN REGION

Attorneys for Eagle Water Company

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

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

}
} EAGLE WATER COMPANY INC.'S
} WITNESS AND EXHIBIT LIST

Pursuant to the hearing Officer's Scheduling Order, dated August 20, 2003, Eagle Water Company, Inc., by and through its attorney of record, Molly O'Leary, hereby lodges with the Idaho Department of Water Resources its list of witnesses and exhibits and further certifies that it has served this document on the other parties.

WITNESS LIST

Eagle Water may call the following witnesses at the hearing scheduled in this matter:

1. Dave Shaw, P.E., ERO Resources, Inc.
2. Robert V. DeShazo, Jr., Eagle Water Company, Inc.
3. The City of Eagle by and through its designated IRCP 30(b)(6) representative, Vern Brewer; and
4. Any witness identified and/pr called by the Applicant or any other Protestants.

EXHIBIT LIST

Exhibit Number	DESCRIPTION	CHASE ESTATE EXHIBIT NUMBER ¹	OFFERED	ADMITTED
200	Summary of Ground Water Conditions in the Vicinity of Proposed Brookwood Subdivision Well Site, Eagle, Idaho (Bill Strowd, P.G., Aug. 15, 2001) ("The Strowd Report")	101		
201	Revised Summary of Ground Water Conditions in the Vicinity of Proposed Brookwood Subdivision Well Site, Eagle, Idaho (Bill Strowd, P.G., Aug. 17, 2001) ("The Revised Strowd Report")	102		
202	IDWR Open-File Report, Ground-Water Conditions in the Dry Creek Area (June 1991)	103		
203	Results of the 30-day Pumping Test and Aquifer analysis (CH2M Hill, June 1991)	104		
204	Aquifer Testing at Floating Feather Well (Scanlan, August 9, 1995)	105		
205	Municipally-Owned Water System Master Plan and Budget Study (April 12, 2002 and rev. May 21, 2003)	106		
206	Deposition of City of Eagle, by and through Vernon Brewer, its IRCP 30(b)(6) representative (September 10, 2003)	107		
207	City of Eagle's Response to Eagle Water's First Set of Interrogatories, Requests for Production of Documents and Requests for Admissions Upon the City of Eagle			
208	City of Eagle's Response to Eagle Water's Second Set of Interrogatories, Requests for Production of Documents and Requests for Admissions Upon the City of Eagle			
209	Amendment to Application of Boise Water Company DBA Eagle United Water before the Idaho Public Utilities Commission (September 1, 1994)	113		

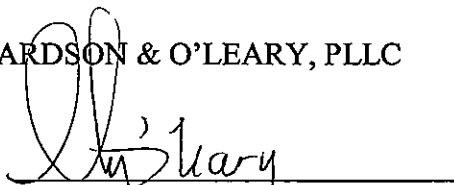
¹ Protestant Eagle Water, Applicant, and Protestant Chase Estate agreed to share in the cost of reproducing certain reports and documents that each intended to identify as exhibits in this matter and to reference the Chase Estate's designated exhibit numbers.

210	Testimony of Morgan W. Masner for the city of Eagle before the Idaho Public Utilities Commission (December 1, 1995)	114		
211	Idaho Public Utilities Commission Order No. 26337 (March 5, 1996)	115		
212	Idaho Public Utilities Commission Order No. 26524 (July 19, 1996)	116		
213	Application of United Water Idaho (July 11, 1997)	117		
214	Idaho Public Utilities Commission, Comments of the Commission Staff (August 20, 1997)	118		
215	Idaho Public Utilities Commission Order No. 27121 (September 8, 1997)	119		
216	Notes of D. Tuthill, re: Testimony in contested Case proceeding for 63-11413	121		
217	Proposed Memorandum Decision and Order Approving Application for Permit No. 63-11413 (August 7, 1991)	122		
218	Letter from City of Eagle to David R. Tuthill (May 24, 1995)	124		
219	Letter from Chris Meyer to Jim Johnson (November 19, 1998)	125		
220	Proof of Beneficial Use -- 63-12017	126		
221	Proof of beneficial use -- 63-11413	127		
222	Amendment of Permit No. 63-12448 (April 7, 2000)	128		
223	Application for Amendment of Permit No. 63-12448 (December 2, 1998)	129		
224	Application for Amendment of Permit No. 63-12448 (April 7, 1998)	130		
225	Letter from Chris Meyer to Jeff Peppersack (March 31, 2000)	131		
226	Letter from J. Evan Robertson to Gary Spackman (November 25, 1998)	133		
227	United Water Operations Reports (13 pages)	136		
228	Agreement to Provide Supplemental Water for Fire Flows (August 1, 1997)	137		
229	Cooperative Agreement (October 14, 1997)	138		
230	Water Line Agreement (August 5, 1997)	139		

231	Agreement (December 2, 1997)	140		
232	Well Purchase Agreement (September 26, 2000)	141		
233	Curriculum Vitae for David B. Shaw, P.E.	153		
234	Beneficial use Field Report 63-12192	154		

DATED this 17th day of October, 2003.

RICHARDSON & O'LEARY, PLLC



MOLLY O'LEARY
Attorneys for Eagle Water Company, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of October, 2003, I caused a true and correct copy of the foregoing EAGLE WATER'S WITNESS & EXHIBIT LIST to be served by the method indicated below, and addressed to the following:

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

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile
- Electronic Mail

Bruce Smith, Esq.
Moore Smith Buxton & Turcke, Chtd.
225 N. 9th Street, Suite 420
Boise, Idaho 83702
208.331.1202

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile
- Electronic Mail

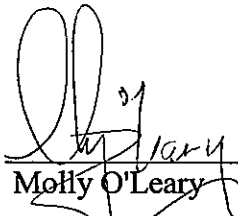
Matt J. Howard
Attorney at Law
P.O. Box 190012
Boise, Idaho 83719
208.333.8409

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile
- Electronic Mail

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

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile
- Electronic Mail

Signed


Molly O'Leary

September 30, 2003

CITY OF EAGLE
310 E STATE ST
EAGLE, ID 83616

PROOF DUE NOTICE

RE: PERMIT NO. 63-12448

Dear Permit Holder:

One of the conditions of approval of the above referenced water permit was that proof of the extent of your beneficial use must be submitted to this office on or before December 01, 2003. (See last page of your approval permit or your last approved extension request.) Enclosed is a form which when accompanied by the license examination fee or a completed field examination report prepared by a certified water right examiner may be used to submit the required proof.

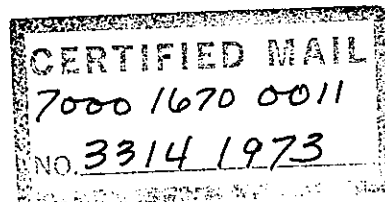
If you have not fully completed your project, and you or a previous owner of this permit have not received a prior extension of time, you may request an extension of time if the delay is for reasonable cause as provided in Section 42-204, Idaho Code. If you have been prevented from proceeding by a governmental agency or by litigation which might bring title to the water in question, more than one extension of time can be granted. An extension of time request form is enclosed for your convenience.

Either an acceptable proof of beneficial use submittal or an acceptable request for an extension of time must be received by this department on or before the above described proof due date. If neither is received, the department will send you a lapse notice. Within sixty (60) days of the mailing of the lapse notice, the permit will no longer be of any force nor effect.

Sincerely,

Deborah J. Gibson, Administrative Assistant
Water Allocation Bureau

Enclosures



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

Attorneys for the City of Eagle

RECEIVED
AUG 15 2003

Department of Water Resources

RECEIVED

AUG 14 2003

WATER RESOURCES
WESTERN REGION

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)
)
)
)

NOTICE OF COMPLIANCE

COMES NOW, the City of Eagle, and gives notice that the City served its Fifth Supplemental Response to the Chase Estate's Interrogatories and Requests for Production for the purpose of clarifying its previous responses to discovery propounded by the Chase Estate. The City served counsel for the Chase Estate at the Law Office of Matt Howard, 2125 S. Sumpter Way, Boise, Idaho via regular U.S. mail, postage prepaid on the 13th day of August, 2003.

DATED this 13 day of August, 2003.

MOORE SMITH BUXTON & TURCKE,
CHARTERED


TAMMY A. ZOKAN
Attorneys for the City of Eagle

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13 day of August, 2003, I caused to be served a true and correct copy of the foregoing NOTICE OF COMPLIANCE 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

Weldon Fisher
546 E. Beacon Light Road
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

Peter Anderson
Hearing Officer
729 W. Braemere Road
Boise, ID 83702

U.S. Mail
 Hand Delivered
 Overnight Mail
 Facsimile


TAMMY A. ZOKAN

**PRE-HEARING CONFERENCE & HEARING
ROSTER OF ATTENDANCE-**

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

August 1, 2003

NAME	ADDRESS	REPRESENTING
Molly O'Leary	99 E State Street Eagle, Id 83616	Eagle Water
MAIT Howard	P.O. Box 190017 Boise, ID 83719	Chase Estate
Tammy Zokan	225 N 9th St, Suite 420	Boise, ID 83702 Applicant
Bruce Smith	225 W. 9th Suite 420	Boise ID 83702
SHELBY CONRAD	2022 N. EAGLE RD EAGLE ID 83616	BURTON GROUP

RECEIVED

JUL 30 2003

Department of Water Resources

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

RECEIVED

JUL 18 2003

WATER RESOURCES
WESTERN REGION

Attorneys for the City of Eagle

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

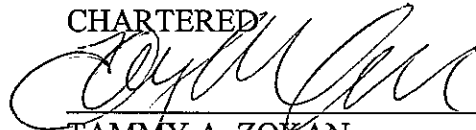
IN THE MATTER OF)
)
CITY OF EAGLE, PETITIONER)
)
APPLICATION FOR PERMIT NO. 63-12448)
)
)

NOTICE OF COMPLIANCE

COMES NOW, the City of Eagle, and gives notice that the City served its responses to the Chase Estate's Third Set of Interrogatories, Requests for Production and Requests for Admission on counsel for the Chase Estate at the Law Office of Matt Howard, 2125 S. Sumpter Way, Boise, Idaho via hand delivery on the 17th day of July, 2003.

DATED this 17th day of July, 2003.

MOORE SMITH BUXTON & TURCKE,
CHARTERED



TAMMY A. ZOKAN
Attorneys for the City of Eagle

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17 day of July, 2003, I caused to be served a true and correct copy of the foregoing NOTICE OF COMPLIANCE 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
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 Overnight Mail
 Facsimile

Weldon Fisher
546 E. Beacon Light Road
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

Peter Anderson
Hearing Officer
729 W. Braemere Road
Boise, ID 83702

U.S. Mail
 Hand Delivered
 Overnight Mail
 Facsimile



TAMMY A. ZOKAN

MOORE SMITH BUXTON & TURCKE, CHARTERED

ATTORNEYS AT LAW

NINTH & IDAHO CENTER, SUITE 420
225 NORTH 9TH STREET, BOISE, ID 83702
TELEPHONE: (208) 331-1800 FAX: (208) 331-1202

RECEIVED

JUL 30 2003

FACSIMILE COVER SHEET

Department of Water Resources

DATE: May 9, 2003 RECIPIENT'S FAX: 334-2348

TO: IDWR CLIENT: 1019-03 (Chase)

RE: City of Eagle, Application for Permit No. 63-12648

FROM: Tammy A. Zokan/ amanda

NUMBER OF PAGES INCLUDING THIS COVER SHEET: 2

- ORIGINAL WILL NOT BE SENT
- ORIGINAL WILL BE SENT BY FIRST CLASS MAIL
- ORIGINAL WILL BE SENT BY FEDERAL EXPRESS

ADDITIONAL COMMENTS:

***** IMPORTANT MESSAGE *****

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS ATTORNEY PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE, AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.

MOORE SMITH BUXTON & TURCKE, CHARTERED RECEIVED

ATTORNEYS AND COUNSELORS AT LAW

JUL 30 2003

225 NORTH 9TH STREET, SUITE 420
BOISE, ID 83702
TELEPHONE: (208) 331-1800 FAX: (208) 331-1202

Department of Water Resources

RANSOM J. BAILEY
SUSAN E. BUXTON*
MICHAEL C. MOORE*
BRUCE M. SMITH
PAULA A. TURCKE*
CHRISTOPHER E. YORGASON
TAMMY A. ZOKAN*

JOHN J. McFADDEN*
Of Counsel

* Also admitted in Oregon
* Also admitted in Washington
* Also admitted in South Dakota
* Also admitted in New Mexico

May 9, 2003

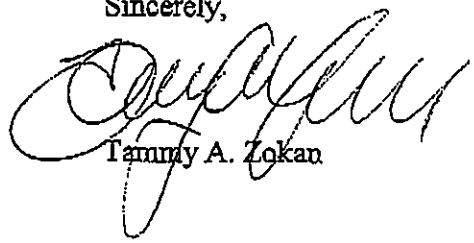
Idaho Department Water Resources
Attn: Glen Saxton
1301 Orchard Street
Boise, ID 83706

RE: City of Eagle, Application for Permit No. 63-12648

Dear Mr. Saxton:

The Chase Estate has filed a Motion to Compel and a Motion In Limine in this matter. The Chase Estate also recently propounded additional discovery on the City of Eagle. The City of Eagle requested that the Chase Estate allow the City additional time to respond to the Estate's Motions and to the Estate's Second Set of Discovery requests. The Chase Estate considerably agreed to extend the time for the City's response to the Estate's Motion to Compel, Motion In Limine, and Second Set of Discovery. In accordance with the City's agreement with the Chase Estate, the City will file its response to the Chase Estate's Motion to Compel, Motion In Limine and Second Set of Discovery Requests on or before May 26, 2003.

Sincerely,



Tammy A. Zokan

cc All Protestants
IDWR

**IDAHO DEPARTMENT OF
WATER RESOURCES**

Fax

To:	Tammy Zokan	From:	Deborah J. Gibson (208) 327-7953
Fax:	331-1202	Date:	July 15, 2003
Phone:	331-1804	Pages:	3
Re:	City of Eagle	CC:	

Urgent **For Review** **Please Comment** **Please Reply** **Please Recycle**

•Comments: See the attached Notice of Prehearing Conference and Notice of Hearing on Motion to Compel Discovery. I hope you have received the copy I sent to you last week.

MATT J. HOWARD
ATTORNEY AT LAW

P. O. BOX 190012
BOISE, IDAHO 83719
TELEPHONE (208) 333-0622
FACSIMILE (208) 333-8409

RECEIVED

JUL - 9 2003

Department of Water Resources

EMAIL: MHOWARD@FIBERPIPE.NET

July 8, 2003

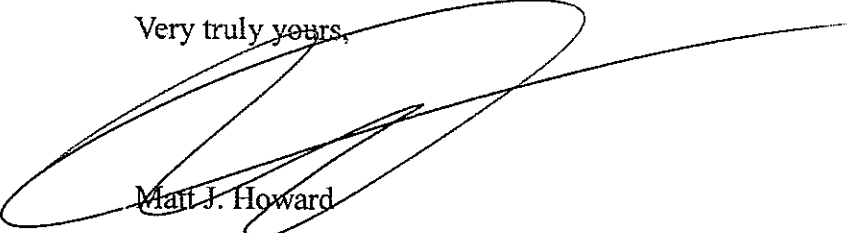
Idaho Department of Water Resources
1301 N. Orchard St.
Boise, ID 83706-2237

RE: In the Matter of Amendment of Permit No. 63-12448 – City of Eagle

Dear Clerk:

Enclosed for filing with the Idaho Department of Water Resources in the above-referenced matter is the following: Notice of Service of Discovery. I have also enclosed an additional copy of that document that I would ask that you conform and return to me in the enclosed envelope. Thank you very much.

Very truly yours,


Matt J. Howard

Enclosures

RECEIVED

JUL - 9 2003

Department of Water Resources

MATT J. HOWARD
Attorney at Law
P. O. Box 190012
Boise, Idaho 83719
Telephone: (208) 333-0622
Facsimile: (208) 333-8409

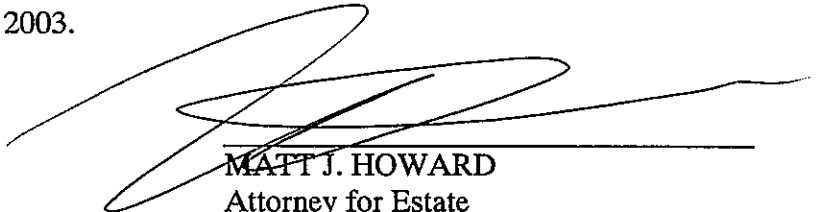
Attorney for the Estate of Eleanor I. Chase

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

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

_____)
The Estate of Eleanor I. Chase ("Estate"), by and through its attorney of record, Matt J. Howard, hereby gives notice, pursuant to IDAPA 37.01.01.520 *et seq* and the Idaho Rules of Civil Procedure, that a true and correct copy of the ESTATE'S FIRST SUPPLEMENTAL RESPONSE TO APPLICANT'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION was served via facsimile on Bruce M. Smith, Moore Smith Buxton & Turcke, Chtd., counsel for Applicant, City of Eagle, on the date first indicated below.

DATED this 8 day of July, 2003.


MATT J. HOWARD
Attorney for Estate

CERTIFICATE OF SERVICE

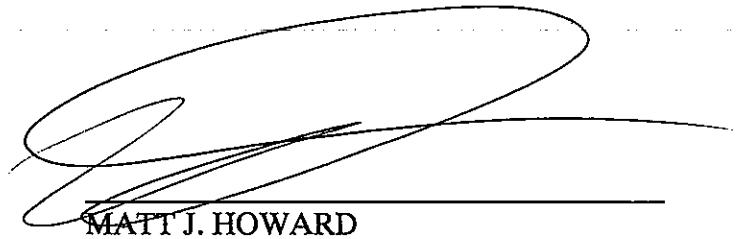
The undersigned certifies that on the 8 day of July 2003, a true and correct copy of the within and foregoing document was sent to the following person(s) as indicated below:

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

Weldon Fisher *Via U.S. Mail*
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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)
IN THE NAME OF THE CITY OF EAGLE) REPLY IN SUPPORT OF MOTION FOR
ORDER COMPELLING DISCOVERY AND
MOTION IN LIMINE
_____)

The Estate of Eleanor I. Chase ("Estate"), by and through its attorney Matt J. Howard, submits this reply in support of its Motion for Order Compelling Discovery and Motion In Limine (hereinafter "*Motion to Compel*").

INTRODUCTION

The Chase Estate's diary, irrigation, and domestic wells are located directly across the street from the new well proposed by the Applicant. The development of the new large City well across the street threatens the viability of the Chase family's small dairy and farming operation and the livelihood of those members of the Chase family that work on the farm. The City's characterization of its application as a minor amendment to add a point of diversion wrongly ignores the real, adverse impacts threatened against the Chase dairy and farm.

As indicated in its *Motion to Compel*, the Estate simply seeks responsive answers to its discovery requests. Without responsive discovery answers, the Estate is unfairly prejudiced in its ability to defend against an application that threatens to interfere with its senior ground water rights, and ultimately jeopardize the existence of its small dairy and farm.

As demonstrated in its *Motion to Compel*, the Applicant has failed to respond to the Estate's discovery requests because the Applicant's responses contain numerous "incomplete and evasive" answers. Pursuant to I.R.C.P. 37(a)(3), "an evasive or incomplete answer is to be treated as a failure to answer." (emphasis added).

In an effort to shift blame from itself and onto the Estate, the Applicant points its finger at the Estate's counsel. It accuses "the Estate's counsel of [failing] to attempt to resolve any alleged outstanding requests or concerns with counsel for the City." *Applicant's Response in Objection to the Chase Estate's Motion to Compel and Motion in Limine* (hereinafter "*Applicant's Objection*") pp. 2-3. The Applicant also repeatedly claims that all the Estate's counsel had to do was "contact the City's counsel" and that the City's counsel would have cooperated.

The Applicant and its counsel give only lip service to words like "cooperation" and "disclosure"; their *actual conduct* reveals just the opposite. For example, neither the *Applicant's Objection* nor Ms. Zokan's affidavit make mention to the numerous letters and communications between the Estate's counsel, Matt Howard, and the Applicant's counsel, Bruce Smith, relating to the Estate's attempt to obtain missing documents and complete discovery responses from the Applicant. *See Exhibits A, B, C, D, E, F, G, H, and I to the Affidavit of Matt J. Howard.*

These letters show that the Estate and its counsel have, through numerous communications, made known its concerns about the Applicant's evasive and incomplete

discovery responses. These letters also show that the Estate has been willing to try to work with the Applicant to allow the Applicant the opportunity to remedy its incomplete discovery responses. Interestingly, neither the Applicant nor Ms. Zokan makes reference to any of these letters or efforts by the Estate to obtain responsive discovery answers from the Applicant. In light of their accusation of nonfeasance against the Estate, the failure of the Applicant and its counsel to disclose the above letters to the hearing officer is disturbing and misleading.

The Applicant also accuses the Estate of “unnecessarily involve[ing] the Department in this matter.” *Applicant’s Objection p. 2*. The Applicant fails to point out that it was action by the Applicant’s attorney that necessitated the filing of the *Motion to Compel*. Specifically, during an April 1, 2003, telephone call, the Applicant’s counsel and the Estate’s counsel discussed that there were outstanding discovery issues and agreed to communicate further to work to resolve those issues. *See Exhibit G to the Affidavit of Matt J. Howard*. The Applicant’s counsel, Mr. Smith, indicated that he would re-review the Estate’s discovery requests and contact the Estate’s counsel so they could go through each of the outstanding discovery issues item by item. *Id.*

Subsequently, on April 18, 2003, Mr. Smith sent a letter to the hearing officer indicating that “discovery is substantially complete” and requested a hearing date be set. *See Exhibit H to the Affidavit of Matt J. Howard*. The Estate and its counsel were caught off guard by Mr. Smith’s letter. *See Exhibit G to the Affidavit of Matt J. Howard*. The Estate had not heard from Mr. Smith since the April 1 discussion between counsel. *Id.* The Estate and its counsel were led to believe that the Applicant and its counsel were getting additional information and documents together to remedy the incomplete discovery responses and that further discussions concerning remedying the incomplete responses were forthcoming. *Id.*

The Applicant and its counsel apparently had a change of heart—and failed to tell the Estate about it. Rather than attempt to resolve the outstanding discovery issues (as discussed during the April 1st phone call between counsel), the Applicant’s counsel sent the April 18th letter to the hearing officer stating that “discovery was substantially complete.” Applicant’s counsel made no mention of the outstanding discovery issues. He made no mention of the April 1 phone call with the Estate’s counsel. He made no mention of the prior correspondence from the Estate’s counsel concerning the outstanding discovery issues.

The April 18th letter from the Applicant’s counsel to the hearing officer left the Estate with no choice but to file a motion to compel. The Applicant made its intention clear that it was going to press for a hearing without attempting to remedy its incomplete discovery responses.

Based on the above facts, it is troubling that the Applicant would attempt to blame the Estate for having to involve the Department in this matter. The Estate has attempted to work with the Applicant to try to resolve the outstanding discovery issues. The Applicant, it turns out, had a different agenda.

DISCUSSION

I. THE APPLICANT HAS DELAYED PRODUCING DOCUMENTS AND HAS FAILED TO COOPERATE TO REMEDY THE INCOMPLETE DISCOVERY RESPONSES.

As the following chronology of correspondence and communications demonstrate, the Applicant has delayed responding to discovery and has failed to cooperate to try to remedy its incomplete discovery responses.

On February 19, 2003, the Applicant served on the Estate the *City of Eagle’s Response to the Estate’s First Set of Interrogatories, Requests for Production of Documents and Requests for Admissions*. The Applicant’s discovery responses did not include any the documents requested

in the Estate's first set of discovery. It merely provided that the documents could be inspected at the offices of the Applicant's legal counsel "by prior appointment."

On February 22, 2003, the Estate's counsel sent a letter to the Applicant's counsel requesting that (1) the incomplete discovery responses be remedied, and (2) the documents be mailed to the Estate's counsel or that Estate's counsel be allowed to send someone over to the offices of the Applicant's counsel to make copies of the documents referred to in the discovery responses. *See Exhibit A to Affidavit of Matt J. Howard.*

On February 27, 2003, the Applicant's counsel sent a letter to the Estate's counsel disagreeing that the responses were incomplete but indicated that he would "try to work something out, including producing documents to [the Estate's counsel]." The letter, however, did not say (a) that the documents would be copied and sent to the Estate's counsel, or (b) that the Estate's counsel could come over to copy the documents. *See Exhibit B to Affidavit of Matt J. Howard.*

On March 3, 2003, the Estate's counsel sent yet another letter to the Applicant's counsel requesting the right to inspect and copy the documents or to receive them in the mail. The Estate's counsel also indicated that he was willing to try to work out the discovery issues with the Applicant's counsel, thus avoiding the necessity for a motion to compel. *See Exhibit C to Affidavit of Matt J. Howard.*

On March 6, 2003, the Estate's counsel and the Applicant's counsel during a telephone conference discussed the pending discovery issues and status of the production of documents. During the conversation, the Applicant's counsel conceded (a) that he did not have all the documents in his possession, (b) that he still needed to obtain documents from the Applicant's former counsel, Chris Meyer, (c) that his associate, Ms. Zokan, was in depositions all week and

that he needed to speak with her concerning the document production, and (d) that he needed more time to gather the documents. Counsel for the parties agreed that after the Applicant produced the documents, counsel would revisit the Applicant's discovery responses and attempt to resolve the outstanding issues involving the incomplete responses. The phone conversation between counsel is memorialized in the March 6, 2003, letter from the Estate's counsel to the Applicant's counsel. *See Exhibit D to the Affidavit of Matt J. Howard.*

Interestingly, in her affidavit, Ms. Zokan indicates that the Applicant's documents "were available for inspection" at the offices of the Applicant's counsel. Apparently, at the time of signing her affidavit, Ms. Zokan had forgotten that as of March 6, 2003, (which was past the deadline for producing documents), the Applicant's counsel still had not given permission to the Estate's counsel to come over and inspect and copy the documents—despite the fact that the Estate's attorney had previously sent two letters requesting the documents. Ms. Zokan apparently has also forgotten that as of March 6, 2003, the Applicant's counsel admitted to not even having possession of all the documents. Put simply, Ms. Zokan's suggestion that the documents had always been available for inspection at the offices of the Applicant's counsel is not accurate.

On March 18, 2003, the Estate's counsel sent a letter to the Applicant's counsel indicating that the three documents received in the mail from the Applicant constituted only a fraction of the requested documents. The Estate's counsel proposed that there be a timeline for the Applicant to disclose the remaining documents and remedy its incomplete discovery responses. *See Exhibit E to Affidavit of Matt J. Howard.*

On March 24, 2003, the Applicant's counsel sent a letter requesting that the Estate's counsel let him know what documents are missing. *See Exhibit F to Affidavit of Matt J. Howard*

On April 1, 2003, the Applicant's counsel and the Estate's counsel discussed the pending discovery issues and agreed to have another discussion to attempt to resolve the outstanding discovery issues. The details of the April 1 phone conference are memorialized in an April 23, 2003, letter from the Estate's counsel to the hearing officer, which is set forth in relevant part below:

My notes show that our last communication occurred on April 1, 2003, during a telephone conversation wherein Mr. Smith and I had agreed that he was going to re-review the Estate's discovery requests and contact me so we could go through item-by-item the outstanding discovery issues and attempt to resolve those issues, thus avoiding the need for the Estate to file a motion for an order compelling the applicant to provide complete and responsive answers. Mr. Smith has not contacted me since that date to work through the issues. I had assumed he was getting additional documents or information together.

See Exhibit G to Affidavit of Matt J. Howard.

On April 18, 2003, the Applicant's counsel sent a letter to hearing officer representing that "discovery was substantially complete." *See Exhibit I to Affidavit of Matt J. Howard.* The Applicant's counsel made this statement even though he was aware of the prior communications concerning the outstanding discovery issues involving the Applicant's incomplete responses.

The above chronology demonstrates that (a) the Applicant was aware of the concerns by the Estate concerning the incomplete discovery responses by the Applicant, (b) as of April 18, 2003, the Applicant was aware that discovery was not "substantially complete," and (c) that the Estate was led to believe on April 1, 2003, that the Applicant was going to try to cooperate to resolve its incomplete discovery responses.

The above chronology also reveals that it is Applicant that has continued to delay this case. For example, as noted above, the Applicant indicated that it had documents available for inspection at the offices of its legal counsel. However, it never allowed the Estate's counsel to inspect the documents. Later, the Applicant's counsel conceded that he did not have all the

documents in his possession, which was contrary to the assertions repeatedly made in the Applicant's discovery response, i.e., that the documents were available for inspection at the offices of the Applicant's attorney.

Moreover, the Applicant has also repeatedly sought extensions in this case. *See Petition for Reconsideration and Motion for Expedited Hearing at 2.* The most recent extension was a request for it to extend the time to respond to the Estate's *Motion to Compel* and second set of discovery. In the spirit of cooperation, the Estate's did not oppose the Applicant's requested extension, and the Applicant took nearly one month to respond to the Estate's *Motion to Compel*. Astonishingly, in the *Applicant's Objection*, the Applicant has the audacity to accuse the Estate of attempting to delay this matter. *See Applicant's Objection p. 8.* If the Applicant does not want further delays it simply needs to provide *complete* discovery responses and quit asking for so many extensions.

II. THE ESTATE HAS PROPERLY SERVED THE APPLICANT WITH THE REQUESTED DOCUMENTS AND DISCOVERY RESPONSES.

In the *Applicant's Objection*, the Applicant, for the first time, claims that the Estate has not completely responded to the Applicant's discovery requests. *See Applicant's Objection p. 9.* The Applicant has never raised that issue with the Estate. In fact, in his April 29, 2003, letter to the Applicant's counsel, the Estate's counsel produced the requested documents (at no charge to the Applicant) and asked if the Applicant's counsel believed he was missing any discovery responses or documents:

If you believe there are any documents missing *or* any other or further discovery responses to which your client is entitled, please let me know immediately.

See Exhibit I to Affidavit of Matt J. Howard. The Applicant's counsel has never notified the Estate's counsel that there was anything missing.

It is troubling that the Applicant would keep its alleged objections to the Estate's discovery responses a secret until it was ready to disclose those objections to the hearing officer. Why would the Applicant seek to involve the Department in an alleged discovery dispute until it has at least attempted to resolve the issue informally with the Estate? How can the Estate be expected to address any alleged concerns by the Applicant if it does not even make those concerns known to the Estate? The Applicant provides no answers, only accusations.

III. THE APPLICANT'S EVASIVE AND INCOMPLETE RESPONSES CONSTITUTE A FAILURE TO RESPOND TO DISCOVERY.

The Applicant's discovery responses are evasive and incomplete for the reasons set out in the Estate's *Motion to Compel*. For sake of brevity, those reasons will not be repeated here. However, the Estate will, to the extent necessary, respond to the issues raised in the *Applicant's Objection* as set forth below.

Interrogatory No. 2. The Applicant suggests that it was surprised that the Estate's counsel needed more clarification on what the Applicant meant when it referred to "IDWR records" in its response to Interrogatory No. 2. This sort of response is precisely the problem that permeates the Applicant's entire discovery responses. The Applicant is trying to be as vague and evasive as possible in terms of disclosing information to the protestants.

Make no mistake. This will not be the same approach the Applicant will use before the hearing officer at the contested case hearing. For example, when the hearing officer requests the Applicant present its expert opinion, analysis, and data to support its burden to prove no injury, is the Applicant going to vaguely respond, "it is based on IDWR records" and sit down? Surely not.

Why then is the Applicant using a double standard? The Applicant should not be permitted to make vague references to documents during discovery in an effort to prevent the

protestants from being able to evaluate its expert's factual basis. Through discovery, the protestants are entitled to obtain from the Applicant "the underlying facts and data upon which its expert opinions are based." *I.R.C.P. 26(b)(4)*.

Let's look at an example of what the Applicant has disclosed. Now, instead of referring simply to "IDWR records," the Applicant has allegedly "clarified" its response to disclose that its expert is relying on IDWR records that are "relevant to the City's permit."

Applicant's Objection p. 4. That is not a clarification. The Estate had already assumed that the Applicant's expert would not rely on IDWR records that are irrelevant to the City's permit. Quite simply, this absurd clarification by the Applicant highlights its continued evasiveness. It is a microcosm of a much larger pattern of evasiveness.

The Estate has made a very simple request to the Applicant – i.e., please tell us specifically what documents your expert is relying on to support his opinion. The Applicant has said that it is ready to go to a hearing. Since that is the case, its expert obviously has formed an opinion and knows what documents and data he will use as a basis for that opinion. All the Applicant needs to do is to specifically identify the documents, facts, and data upon which its expert's opinions are based.

The Applicant also argues that its inability to disclose the basis for its expert's opinion is because the Estate has not disclosed how it will be injured by development of a new city well across the street from the dairy. *Applicant's Objection p. 4*. This argument ignores the fact that it is the Applicant, not the protestants, that bear the burden to prove no injury. Furthermore, as indicated above, the Applicant has not informed the Estate that it is missing any discovery responses from the Estate.

The Applicant has also unnecessarily complicated and confused the expert reports that its experts will allegedly rely on. In her affidavit, Ms. Zokan indicates that the “City has habitually” referred to the Stowd Report as the “Scanlan Report.” This is apparently true, despite the fact that they are two separate reports. Regardless of the City’s reasoning for unnecessarily confusing the reports, it needs to supplement its discovery responses to make clear precisely which reports they are relying on and to make clear that it is going to refer to both the Stowd Report and the Scanlan Report as the “Scanlan Report.” For purposes of keeping a clear record, for purposes of trial and appeal, it is necessary for the Applicant to make any such “clarifications” and additional disclosures in the form of a supplemental discovery response that is signed *by Applicant*.

Interrogatory Nos. 4, 5, 6, 7, 8, 9, and 10. In the *Applicant’s Objection*, the Applicant engages in word play. It claims that as a matter of law an “approved application” cannot injure anyone and, therefore, it struggled to understand the interrogatories. Nonetheless, the Applicant claims it fully responded to the interrogatories, so apparently, it did understand the interrogatories. Because those interrogatories are premised on Interrogatory No. 2, they are incomplete, as discussed above and in the *Motion to Compel*. Moreover, the Applicant has not shown that the response to Interrogatory No. 2 is in any way responsive to the other interrogatories. They are separate questions. They require separate answers.

Moreover, the Applicant indicates that in support of its application it will rely on statements made by Mike Chase to certain “individuals” listed in the City’s earlier discovery responses. *Applicant’s Objection p. 4-5*. The Applicant does not specifically identify the “individuals” that allegedly possess information obtained from Mr. Chase and that were allegedly made outside of settlement discussions. The Applicant vaguely points to the

numerous individuals listed in its earlier discovery responses. Again, the Applicant is playing “hide the ball.” If the Applicant simply identifies the “individual” that allegedly possesses the information obtained from Mr. Chase, then it will be possible for the Estate to take the person’s deposition, if necessary, so this matter can then proceed forward to hearing.

IV. GRANTING THE MOTION IN LIMINE IS PROPER.

The purpose of the motion in limine is simply this: If the Applicant is going to continue to withhold information, it should not be allowed to later introduce that withheld or vaguely identified information as evidence at the contested case hearing. For example, as discussed above, the Applicant indicates that “relevant IDWR records” support its expert’s opinion. “Relevant” is a very subjective term. By making vague references to documents, the Applicant creates a loophole to allow it to introduce into evidence documents that were never properly disclosed to the Estate or the other protestants, thus prejudicing the Estate’s ability to properly prepare its defense to the Application.

The most troubling aspect of the Applicant’s evasiveness stems from the fact that it has indicated that it is ready to go to hearing. In fact, the Applicant admits that it has been working at this for two years. It obviously knows exactly which facts and documents it will use to support its expert’s opinion. It also obviously knows what facts, documents and opinions it will rely on to try to overcome its burden to prove the elements of injury, public interest, enlargement, and conservation of water resources. However, nowhere in its discovery responses does the Applicant provide responsive answers to questions concerning the facts, documents, and opinions underlying its burden to prove the elements of injury, public interest, enlargement, and conservation of water resources. If the Applicant is not going to disclose those facts, documents, and opinions to the Estate and the other protestants

through discovery, it should not be allowed to later introduce that information in the form of evidence to the hearing officer.

Finally, the Applicant confuses the well-known distinction between discoverable information and information which is not discoverable because it is protected as attorney work product. The Applicant complains that it should not be required to identify witnesses and exhibits if the protestants do not have to identify witnesses and exhibits. *Applicant's Objection p. 8*. The Applicant misreads the Estate's *Motion to Compel*.

In its *Motion to Compel*, the Estate is not demanding that the Applicant identify its witnesses or exhibits. Identification of witnesses and exhibits is considered attorney work product under Idaho law and, therefore, is protected from disclosure until ordered by the hearing officer,¹ typically a few weeks before trial. As evidenced in this case, it is common practice for legal counsel to include a discovery request for the identification of witnesses and exhibits to serve as a placeholder to ensure that such disclosures are, in fact, made prior to trial. For example, in this case, legal counsel for the Estate, the Applicant, and Eagle Water Co. have all requested through discovery identification of witnesses and exhibits. Under Idaho law, attorneys understand that identification of witnesses and exhibits is not required until ordered by the hearing officer.

What the *Motion to Compel* does demand is that the Applicant identifies "persons with knowledge" and experts pursuant to Interrogatory Nos. 1 and 2 of the Estate's first discovery request. This information is clearly discoverable under Idaho law. *I.R.C.P. 26(b)(1) and 26(b)(4)*. The *Motion to Compel* also demands that the Applicant identify and disclose the facts, opinions, and documents that relate to the questions posed in interrogatory nos. 4

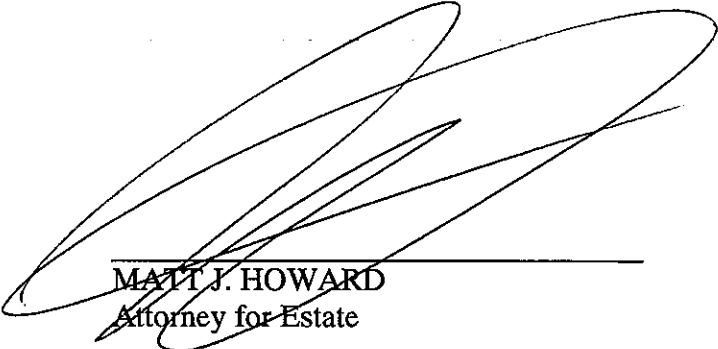
though 10 and production request nos. 1 through 3 and 5 through 15 of the Estate's first set of discovery.

The Motion in Limine simply requests that to the extent the Applicant refuses to specifically disclose such individuals, facts, opinions, and documents through discovery, it should not be allowed to later introduce such individuals and information in the form of witnesses and exhibits to the hearing officer. Granting of the Motion in Limine is necessary to avoid having a trial by ambush and thus prejudicing the Estate's ability to protect its senior ground water rights and the livelihood of its small dairy and farming operation.

CONCLUSION

Based on the foregoing, the Estate respectfully requests that its *Motion to Compel* be granted.

DATED this 9th day of June, 2003.



MATT J. HOWARD
Attorney for Estate

¹ See *Don't Ask, Won't Tell (In Discovery)!*, THE ADVOCATE (October 2002), which summarizes Idaho law relating to the disclosure of witnesses and exhibits. For convenience of the reader, a copy of the article is attached hereto.

CERTIFICATE OF SERVICE

The undersigned certifies that on the 9th day of June 2003, 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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MATT J. HOWARD

Don't Ask, Won't Tell (In Discovery)!

By Jim Davis

In the mail today was another set of interrogatories and requests for production that included inquiries about the identity of witnesses and trial exhibits. Once again, the stock response will be: "Objection is made to this interrogatory and/or request on the basis that it seeks work-product. Witnesses and exhibits will be disclosed pursuant to Rule 16, Idaho Rules of Civil Procedure, and/or the pretrial order." In short, "don't ask because we won't tell!"

The purpose of this article is to address the interplay between Idaho Rules of Civil Procedure, Rule 26(b)(1), governing discovery, and Rule 16(a)-(i), governing pretrial procedures, with respect to disclosure of witness and exhibits. As will be seen, since witness and exhibit information is not discoverable under Rule 26, it is important that a Rule 16 pretrial order require disclosure of witnesses and exhibits in a timely, meaningful manner. Another article, "Pretrial Orders and Initial Disclosures" by John Goodell (p.14) addresses that and other matters under Rule 16.

Witnesses and exhibits are not discoverable under Rule 26. The reason is that the identity of witnesses and exhibits is work-product. Who may be called as a witness at trial and what may be offered as exhibits are within the thought processes of legal counsel. Wright, Miller & Marcus, *Federal Practice and Procedure: Civil 2d* § 2012. The court can, however, require disclosure of that information under Rule 16. *Stevenson v. Steele*, 93 Idaho 4, 8, 453 P.2d 819 (1969) (Rule 16 requires full disclosure in good faith of the gist of the evidence expected to be offered.); Wright, Miller & Marcus, *Federal Practice and Procedure: Civil 2d* §§ 2012 and 2013.

Witnesses. Rule 26(b)(1) permits inquiry into "... the identity and location of persons having knowledge of any discoverable matter." It does not mention witnesses. Instead, its focus is upon persons with knowledge whether or not the person may be called as a witness.

Prior to 1988, I.R.C.P. Rule 26(e)(1), which concerns supplementation of discovery responses, included a requirement that discovery responses disclosing "witnesses" be supplemented. Based upon that language, the court in *Wiseman v. Schaffer*, 115 Idaho 537, 539, 768 P.2d 800 (Ct. App. 1989), held that the identity of witnesses is discoverable.

In 1988, Rule 26(e)(1) was amended to omit the word "witnesses" and substitute the language "... the identity and location of persons having knowledge of any discoverable matters" from Rule 26(b)(1). The purpose of the change was to clarify that witnesses need not be disclosed in discovery, as explained by the Idaho Civil Rules Committee, which had recommended it. The rule was changed:

"...to clear up the ambiguity of discoverability of witnesses. It was voiced in Committee that the discovery procedure does not require a person to disclose expected witnesses in answer to interrogatories, the only inquiry being to disclose persons having knowledge of relevant facts. Before this amendment, Rule 26(e)(1) required supplementation as

to the disclosure of *all* witnesses thereby leading to an inference that non-expert witnesses had to be disclosed in answers to interrogatories rather than through the Rule 16 procedure of pretrial meetings and/or stipulations.

We hope this article clears up that disclosure of *non-expert witnesses* is not required in answers to interrogatories under Rule 26. However, disclosure of all persons with knowledge of relevant facts and all relevant documents, no matter what purpose to be served at trial, is discoverable by any party under Rule 26. The parties must disclose under Rule 16 procedures all witnesses and other evidence to be used at trial" R. Burdick and W. McCurdy, "Disclosure of Witnesses in Discovery or Pretrial," *The Advocate*, p. 14, 15 (September 1988) (emphasis in original).

Thus, as the Idaho Civil Rules Committee explained, witnesses are not discoverable under Rule 26.¹

Exhibits. Rule 26(b)(1) permits discovery of "...the existence, description, nature, custody, condition and location of any books, documents, or other tangible things" Again, the rule does not specifically include discovery of trial exhibits.

When the Idaho Civil Rules Committee suggested the changes to Rule 16 and Rule 26 in 1987 and 1988, no mention was made as to whether a party's proposed trial exhibits were discoverable. The apparent reason the Committee did not address disclosure of trial exhibits in discovery was that it was focused on fixing the reference to "witnesses" in Rule 26(e)(1). Since Rule 26(e)(1) did not require supplementation of trial exhibits, there was no need for the Committee to recommend a change in the rule. The Committee did, however, specifically note that exhibits were to be disclosed under Rule 16. *Id.*

Trial exhibits are not discoverable under the Federal Rules of Civil Procedure. Wright, Miller & Marcus, *Federal Practice and Procedure: Civil 2d* § 2012. Again, the rationale is that such inquiry involves the thought processes of counsel. *Id.* Rule 26(b)(1), I.R.C.P., is patterned after the similar Federal Rule. Since Idaho courts look to cases interpreting the federal rules for guidance in interpreting similar Idaho rules, *Martin v. Hoblit*, 133 Idaho 372, 376, n. 3, 987 P.2d 284 (1999); *Compton v. Compton*, 101 Idaho 328, 334, n. 1, 612 P.2d 1175 (1980), trial exhibits are not discoverable under I.R.C.P. 26(b)(1). Since witnesses and exhibits are not discoverable under Rule 26, but the information obviously is important to the development and evaluation of a case, a Rule 16 pretrial order should be sought early in the litigation process. The order can and should require disclosure of witnesses and exhibits because if you ask for it in discovery, we won't tell!

JAMES J. DAVIS practices law in Boise, Idaho.

¹ *Wiseman*, *supra*, was decided after the 1988 amendment to Rule 26(e)(1), but the court acknowledged in its decision that it was interpreting the pre-amendment rule. *Id.* at 539.

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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)
IN THE NAME OF THE CITY OF EAGLE) AFFIDAVIT OF MATT J. HOWARD
_____)

STATE OF IDAHO)
County of Ada) ss.

MATT J. HOWARD, being first duly sworn upon oath, deposes and says:

1. I am the attorney for the Estate of Eleanor I. Chase ("the Estate"), and I make the following statements based on my personal knowledge.
2. Attached as Exhibit A is a true and correct copy of a letter I sent to Bruce Smith, the Applicant's counsel, on February 22, 2003.
3. Attached as Exhibit B is a true and correct copy of a letter I received from Bruce Smith, the Applicant's counsel, dated February 27, 2003.
4. Attached as Exhibit C is a true and correct copy of a letter I sent to Bruce Smith, the Applicant's counsel, on March 3, 2003.

5. Attached as Exhibit D is a true and correct copy of a letter I sent to Bruce Smith, the Applicant's counsel, on March 6, 2003.

6. Attached as Exhibit E is a true and correct copy of a letter I sent to Bruce Smith, the Applicant's counsel, on March 18, 2003.

7. Attached as Exhibit F is a true and correct copy of a letter I received from Bruce Smith, the Applicant's counsel, dated March 24, 2003.

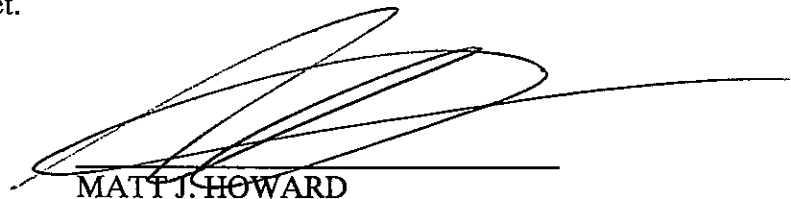
8. Attached as Exhibit G is a true and correct copy of a letter I sent to Glen Saxton, the hearing officer in the above-captioned matter, on April 21, 2003.

9. Attached as Exhibit H is a true and correct copy of a letter Bruce Smith sent to Glen Saxton, the hearing officer in the above-captioned matter, on April 18, 2003.

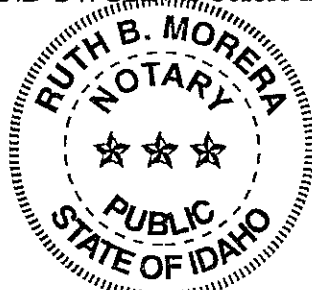
10. Attached as Exhibit I is a true and correct copy of a letter I sent to Bruce Smith, the Applicant's counsel, on April 29, 2003.

11. Further it has been my experience that discovery issues and disputes can generally be resolved informally between counsel for the opposing parties. However, it has also been my experience that when counsel for the opposing party informs me that (a) he understands that there are issues regarding incomplete discovery responses by the opposing party, and (b) that he will engage in further discussions to try to resolve the discovery issues – that opposing counsel does not send off a letter to the hearing officer representing that “discovery is substantially complete” and request that a hearing date be set.

Further your affiant sayeth naught.


MATT J. HOWARD

SUBSCRIBED AND SWORN to before me this 9 day of June, 2003.



Ruth B. Morera
NOTARY PUBLIC FOR IDAHO
Residing at Boise, Idaho
Commission expires 7/1/2003

CERTIFICATE OF SERVICE

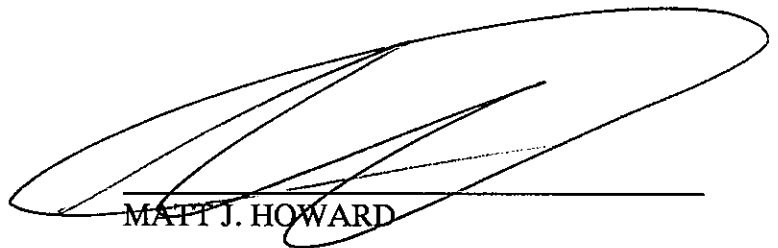
The undersigned certifies that on the 9th day of June 2003, a true and correct copy of the within and foregoing document was sent to the following person(s) by the method indicated below:

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

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

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

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


MATT J. HOWARD

MATT J. HOWARD

ATTORNEY AT LAW

P. O. BOX 190012
BOISE, IDAHO 83719
TELEPHONE (208) 333-0622
FACSIMILE (208) 333-8409

EMAIL: MHOWARD@FIBERPIPE.NET

February 22, 2003

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

Re: Protest to Application for Amendment of Permit in the Name of the City of Eagle

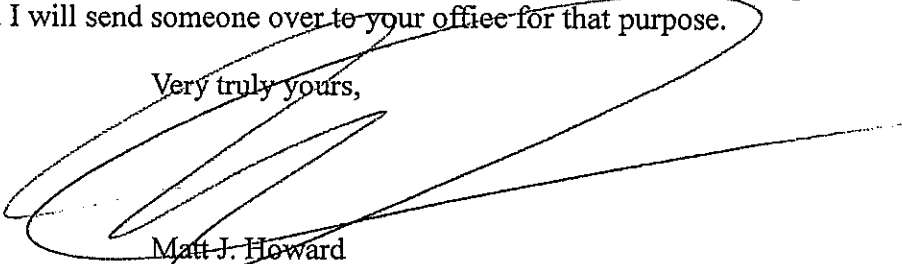
Dear Bruce:

I am in receipt of the City of Eagle's Response to the Estate's First Set of Interrogatories, Requests for Production of Documents, and Requests for Admissions dated February 20, 2003. In my eight years of practicing law, the City's responses are the most incomplete and evasive responses I have seen.

Unfortunately, the evasive and incomplete answers will only cause more delay in this case. My client is entitled to complete responses and disclosures pursuant to Department rules of procedure and the Idaho Rules of Civil Procedure. In the spirit of cooperation and good faith, I would ask that you have your client supplement its discovery responses with more complete answers consistent with the Idaho Rules of Civil Procedure. Such action by your client will obviate the need for a motion and order compelling disclosure.

As for the documents, I understand your client wants me to come review those at your office. For the purpose of saving time and our clients' money, I would prefer that you simply send me copies, and I will do the same for you. As you know, that is usually a standard discovery practice and courtesy among attorneys in this community. If, however, you are unwilling to make copies for me, please let me know and I will send someone over to your office for that purpose.

Very truly yours,



Matt J. Howard

Cc: Estate of Eleanor I. Chase (w/enclosure)
Mike Chase (w/enclosure)
Molly O'Leary, Esq.

EXHIBIT A

MOORE SMITH BUXTON & TURCKE, CHARTERED

ATTORNEYS AND COUNSELORS AT LAW

225 NORTH 9TH STREET, SUITE 420
BOISE, ID 83702
TELEPHONE: (208) 331-1800 FAX: (208) 331-1202

RANSOM J. BAILEY
SUSAN E. BUXTON*
MICHAEL C. MOORE†
BRUCE M. SMITH
PAUL A. TURCKE‡
CHRISTOPHER E. YORGASON
TAMMY A. ZOKAN*

JOHN J. MCFADDEN*
Of Counsel

* Also admitted in Oregon
† Also admitted in Washington
‡ Also admitted in South Dakota
* Also admitted in New Mexico

February 27, 2003

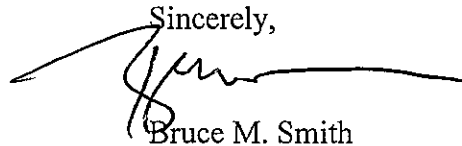
Matt J. Howard, Esquire
2402 W. Jefferson
Boise, ID 83702

RE: City of Eagle/ Chase Protest

Dear Matt:

In response to your letter of February 22, 2003, in my almost twenty years of practice, I've rarely seen discovery that was as vague as some of the questions you've asked. We did our best to respond without having to interpret too much into what you've requested. My concern is that your entire approach to this matter seems to have been designed to impose the maximum amount of costs on the City, not to mention your client, and to drag this out. For instance, your assertions that there is a contract as well as the submission of our clearly inadmissible settlement documents to the hearing officer highlight my concerns with tactics that go well beyond a simple protest to a transfer. In the spirit of cooperation, I am more than willing to discuss with you which answers/responses you disagree with and to try to work something out, including producing documents to you. However, you are going to need to focus your requests instead of taking a fishing expedition approach. Review your discovery and give me a call. Let's see what we can work out.

Sincerely,



Bruce M. Smith

BMS/aad

Not cc'd to hearing officer

EXHIBIT B

MATT J. HOWARD

ATTORNEY AT LAW

P. O. BOX 190012

BOISE, IDAHO 83719

TELEPHONE (208) 333-0622

FACSIMILE (208) 333-8409

EMAIL: MHOWARD@FIBERPIPE.NET

March 3, 2003

VIA FACSIMILE

Bruce M. Smith

Moore Smith Buxton & Turcke, Chtd

225 N. 9th St., Ste. 420

Boise, ID 83702

Re: Protest to Application for Amendment of Permit in the Name of the City of Eagle

Dear Bruce:

I am in receipt of your February 27, 2003, letter. In reply to that letter, please note the following:

Failure to Produce Documents. It has been nearly 30 days since my client served its discovery requests on your client. I still have not received a single document from you. In my earlier correspondence to you dated February 22, 2003, I asked that you either send me copies of the documents identified in your client's discovery response or that you let me know when I can send someone over to make copies of those documents. You still have not responded to this request or provided any documents to me. I would appreciate that you not delay the production of documents further.

Delays Caused by the Applicant. I take issue with your accusation that my client is trying to drag this out. My client has been diligent in every aspect of this case. It is currently your client's failure to produce documents (which you do not dispute that my client is entitled to) and incomplete/evasive discovery responses that are delaying matters.

Allegations Concerning Discovery Requests. I cannot accept your claim that my client's discovery requests are vague or ambiguous. Those requests contain the same questions that IDWR will require your client, the Applicant, to answer in order to satisfy the requirements of Idaho Code § 42-211. If your client cannot understand those questions now, then I am not sure how your client intends to answer those questions for IDWR. Nonetheless, Bruce, I am happy to talk with you about the requests if you have questions. Please feel free to give me a call.

Settlement Agreement. I disagree with your characterization concerning the settlement agreement. Your client has disputed neither the case law nor the facts supporting the settlement agreement.

EXHIBIT C

MARCH 3, 2003

Order Compelling Discovery. I would prefer to resolve the deficiencies in your client's discovery responses without having to seek an order to compel. Resolving these differences informally allows us to save our clients money and save the resources of IDWR personnel. However, Bruce, I cannot standby and allow you to drag your feet on discovery while you simultaneously rush this matter to a hearing. Therefore, within seven (7) days of this letter, I request that you either (a) provide me with copies of the documents referenced in your client's discovery responses, or (b) if you are unwilling to provide me with copies, then I request that you provide me with available dates that I can send someone over to your office to make copies of the documents. After my client and I have had an opportunity to review the documents, you and I can discuss how best to resolve the other deficiencies in your client's discovery responses.

Hearing Date. I received your voice message indicating that you wanted to schedule this matter for a contested case hearing in late May. Given the incomplete discovery responses by your client and your client's failure to disclose any documents to date, I cannot agree to your request. The next dates we need to set are dates for depositions. However, those dates cannot be set until the initial round of discovery is complete and documents are produced.

Summary. My client is eager to get this case timely resolved but not at the expense of jeopardizing their water rights. In order to prepare its case for trial, my client is entitled to receive non-evasive discovery responses and documents from your client. To date, you and your client have greatly frustrated and complicated the discovery process by failing to provide complete responses and failing to turn over any documents. Your client is also causing litigation costs to climb. At the last prehearing conference, you threatened that your client was going to contest every issue. I did not realize that threat included fighting over discovery as well.

Bruce, in closing, I would ask that you meet with your client and have it supplement its discovery responses and provide me with copies of the requested documents as set forth above.

Very truly yours,



Matt J. Howard

Cc: Estate of Eleanor I. Chase (w/enclosure)
Mike Chase (w/enclosure)

MATT J. HOWARD

ATTORNEY AT LAW

P. O. BOX 190012
BOISE, IDAHO 83719
TELEPHONE (208) 333-0622
FACSIMILE (208) 333-8409

EMAIL: MHOWARD@FIBERPIPE.NET

March 6, 2003

VIA FACSIMILE

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

Re: Protest to Application for Amendment of Permit in the Name of the City of Eagle

Dear Bruce:

This letter is a confirmation of our telephone conversation this morning. Based upon our telephone conversation, the following is my understanding:

1. You maintain the Estate's discovery is too broad.
2. I maintain that the discovery is well within the "scope" of discovery permitted by the rules of procedure and that your client's responses are incomplete and evasive.
3. We discussed that after your client produces the documents requested in the Estate's discovery requests that we will revisit your client's discovery responses and attempt to resolve the issues. If we fail to resolve those issues, the Estate will need to seek an order to compel complete disclosures.
4. I inquired about the production of documents from your client. To date, I have not received any documents, and it has been 30 days since the initial discovery requests were served on your client.
5. You indicated that (a) you do not have all the documents, (b) you need to get documents from Chris Meyer, (c) your associate, Tammy Zokan, is in depositions this week and you need to meet with her to discuss the document production, and (d) you need more time to gather the documents.
6. You did not indicate whether you would provide me with copies or whether you would require someone to come to your office to make copies.
7. You indicated that you will contact me next week concerning the status of document production from your client.

EXHIBIT D

MARCH 6, 2003

8. We both agreed that we were willing to give the other party more time to gather and produce the documents, if necessary. (However, I want to make clear that the Estate's willingness to allow your client additional time to gather and produce documents will not be used as the basis for any future allegation that the Estate has delayed this matter. Rather, as a matter of professional courtesy and the saving of expenses otherwise associated with a motion to compel, the Estate is willing to accommodate your client's request for more time to gather documents).
9. You indicated that you will likewise give the Estate more time, if necessary, to produce documents. Given that discovery requests were served on your client over two weeks prior to the requests served on the Estate, I would expect that your client will first produce the requested documents and then allow my client at least two weeks to reciprocate. If that is not the case, please let me know.

Finally, in response to your March 3, 2003, letter, please serve documents on the Estate as follows: (a) by mail: P. O. Box 190012, Boise, Idaho 83719, (b) hand-delivery: 2125 S. Sumpter Way, Boise, Idaho, or (c) by fax: 333-8409.

Very truly yours,



Matt J. Howard

Cc: Clients

MATT J. HOWARD

ATTORNEY AT LAW

P. O. BOX 190012
BOISE, IDAHO 83719
TELEPHONE (208) 333-0622
FACSIMILE (208) 333-8409

EMAIL: MHOWARD@FIBERPIPE.NET

March 18, 2003

VIA FACSIMILE

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

Re: Protest to Application for Amendment of Permit in the Name of the City of Eagle

Dear Bruce:

This letter is a follow-up to my March 6, 2003, letter to you. I had understood you were going to contact me last week concerning the status of document production from your client. I did not hear from you.

Last week, I received the City of Eagle's second supplemental response. That response included only a few of the requested documents. There are still many documents outstanding. Please contact me concerning how much additional time you will require until you can disclose the remaining documents.

Also, the City's second supplemental response indicates that it enclosed the "Aquifer Test Floating Feather Well Report prepared by Scanlan Engineering." None of the three documents submitted with the City's response contained that title. Would you please send me the Scanlan report. It would also be helpful if you indicate the "date" of the Scanlan report so as to avoid further confusion.

Please contact me at your earliest convenience so we can discuss a reasonable timeline for your client to complete disclosure of the remaining documents as well resolving issues relating to the need for your client to supplement its earlier incomplete discovery responses.

Very truly yours,


Matt J. Howard

Cc: Client

EXHIBIT E

MOORE SMITH BUXTON & TURCKE, CHARTERED

ATTORNEYS AND COUNSELORS AT LAW

225 NORTH 9TH STREET, SUITE 420

BOISE, ID 83702

TELEPHONE: (208) 331-1800 FAX: (208) 331-1202

RANSOM J. BAILEY
SUSAN E. BUXTON*
MICHAEL C. MOORE†
BRUCE M. SMITH
PAUL A. TURCKE‡
CHRISTOPHER E. YORGASON
TAMMY A. ZOKAN*

JOHN J. MCFADDEN*†
Of Counsel

* Also admitted in Oregon
† Also admitted in Washington
‡ Also admitted in South Dakota
* Also admitted in New Mexico

March 24, 2003

Sent via Facsimile and U.S. Mail

333-8409

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

RE: City of Eagle/ Chase Protest

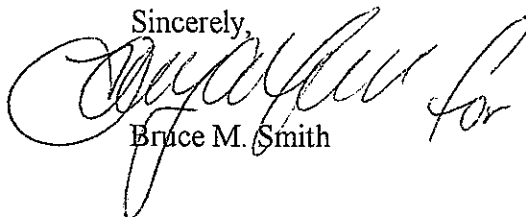
Dear Matt:

I received your response to the City's discovery. It was my understanding we agreed to each produce copies of requested documents to each other's office. The City has provided you copies of documents in response to your requests, but you have not done the same. Please provide copies of the documents we requested. If you believe the City has not produced documents you requested, please let me know which documents you think are missing.

Mr. Scanlan's report is dated August 9, 1995. The Scanlan Report was included in Mr. Bill Strowd's report, which the City disclosed and relied upon as a basis for the City's application.

Finally, there was no response to the City's requests for information concerning water levels and production. Is this information available?

Sincerely,

A handwritten signature in cursive script, appearing to read "Bruce M. Smith".

Bruce M. Smith

EXHIBIT F

MATT J. HOWARD

ATTORNEY AT LAW

P. O. BOX 190012
BOISE, IDAHO 83719
TELEPHONE (208) 333-0622
FACSIMILE (208) 333-8409

EMAIL: MHOWARD@FIBERPIPE.NET

April 21, 2003

Via Facsimile & U. S. Mail
Glen Saxton, P.E.
Idaho Department of Water Resources
1301 N. Orchard St.
Boise, ID 83706-2237

RE: In the Matter of Amendment of Permit No. 63-12448 – City of Eagle

Dear Mr. Saxton:

Over the weekend I received in the mail a letter from Bruce Smith, the attorney for the applicant in the above-referenced matter, dated April 18, 2003, indicating that “discovery is substantially complete” and requesting a hearing date.

Contrary to the applicant’s assertion, discovery is not substantially complete. Mr. Smith and I have exchanged a number of communications relating to the incomplete discovery responses tendered by the applicant to date. My notes show that our last communication occurred on April 1, 2003, during a telephone conversation wherein Mr. Smith and I had agreed that he was going to re-review the Estate’s discovery requests and contact me so we could go through item-by-item the outstanding discovery issues and attempt to resolve those issues, thus avoiding the need for the Estate to file a motion for an order compelling the applicant to provide complete and responsive answers. Mr. Smith has not contacted me since that date to work through the issues. I had assumed he was getting additional documents or information together.

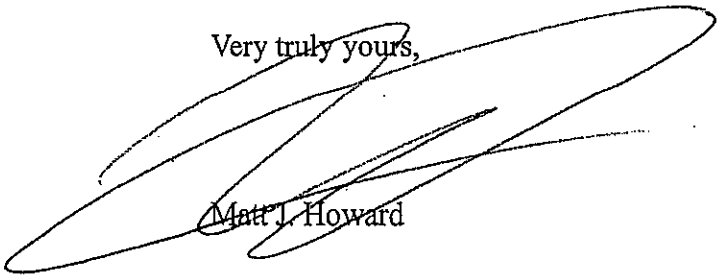
I was quite surprised to receive Mr. Smith’s letter indicating that discovery was substantially complete and that a hearing should be scheduled. Since the applicant appears intent on pressing this matter to a hearing without remedying the outstanding discovery issues, the Estate will need to file a motion to compel requesting that the hearing officer order the applicant to provide responsive answers to the Estate’s discovery requests.

To avoid putting the cart before the horse, it would be better if scheduling issues were addressed following the hearing officer’s ruling on the outstanding discovery issues. I will expedite the filing of the motion to avoid any delay. Furthermore, I am unavailable during July and August for a contested case hearing, but I am available during September and October.

EXHIBIT G

APRIL 21, 2003

Very truly yours,

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and lines, positioned over the typed name.

Matt L. Howard

Cc: Client
All Protestants
Bruce Smith, Esq.

MOORE SMITH BUXTON & TURCKE, CHARTERED

ATTORNEYS AND COUNSELORS AT LAW

225 NORTH 9TH STREET, SUITE 420
BOISE, ID 83702
TELEPHONE: (208) 331-1800 FAX: (208) 331-1202

RANSOM J. BAILEY
SUSAN E. BUXTON*
MICHAEL C. MOORE†
BRUCE M. SMITH
PAUL A. TURCKE‡
CHRISTOPHER E. YORGASON
TAMMY A. ZOKAN*

JOHN J. MCFADDEN**
Of Counsel

* Also admitted in Oregon
†Also admitted in Washington
‡Also admitted in South Dakota
* Also admitted in New Mexico

April 18, 2003

Idaho Department Water Resources
Attn: Glen Saxton
1301 Orchard Street
Boise, ID 83706

RE: City of Eagle, Application for Permit No. 63-12648

Dear Mr. Saxton:

The City of Eagle has requested an independent hearing officer be appointed to conduct the hearing in this matter. The basis for that request is, in part, the submittal of certain information by some of the Protestants to the Department. The City of Eagle suggests that Mr. Norm Young would be a good hearing officer.

This matter has been delayed for quite some time due to Protestants request for discovery. Discovery is substantially complete. The City of Eagle requests a hearing in July. Anytime after July 8 would be acceptable. We would anticipate no more than two days would be required.

Sincerely,



Bruce M. Smith

BMS/aad
cc All Protestants

EXHIBIT H

MATT J. HOWARD

ATTORNEY AT LAW

P. O. BOX 190012
BOISE, IDAHO 83719
TELEPHONE (208) 333-0622
FACSIMILE (208) 333-8409

EMAIL: MHOWARD@FIBERPIPE.NET

April 29, 2003

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

Re: Protest to Application for Amendment of Permit No. 63-12448 in the Name of the City of Eagle

Dear Bruce:

Enclosed is a copy of the documents identified in the Estate's Response to Applicant's First Set of Interrogatories, Requests for Admissions and Production and the Estate's Response to Applicant's Second Set of Interrogatories, Requests for Admissions and Production. As indicated in those responses, the documents have been available for inspection at my office; however, you have requested that the documents be copied and mailed to you.

Based on our earlier correspondence, I had understood that I would mail copies of the requested documents to you *after* you first mailed me copies of all the documents requested of your client. To date, your client has failed to produce all of the documents requested of it; nonetheless, I am enclosing the documents your client has requested from the Estate. If you believe there are any documents missing *or* any other or further discovery responses to which your client is entitled, please let me know immediately.

I have not enclosed copies of the Strowd reports, the Scanlan report, the CH2M Hill report, the IDWR report, or the City's minutes because I understand you already have a copy of those. If that is not the case, please let me know. Thank you.

Very truly yours,


Matt J. Howard

Cc: Client
Glen Saxton, IDWR hearing officer (w/enclosures)
Protestants (w/o enclosures)

EXHIBIT I

RECEIVED

JUL - 7 2003

MATT J. HOWARD
ATTORNEY AT LAW

Department of Water Resources

P. O. BOX 190012
BOISE, IDAHO 83719
TELEPHONE (208) 333-0622
FACSIMILE (208) 333-8409

EMAIL: MHOWARD@FIBERPIPE.NET

July 2, 2003

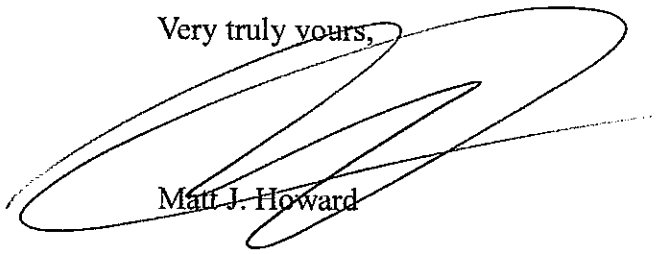
Idaho Department of Water Resources
1301 N. Orchard St.
Boise, ID 83706-2237

RE: In the Matter of Amendment of Permit No. 63-12448 – City of Eagle

Dear Clerk:

Enclosed for filing with the Idaho Department of Water Resources in the above-referenced matter is the following: Notice of Service of Discovery. I have also enclosed an additional copy of that document that I would ask that you conform and return to me in the enclosed envelope. Thank you very much.

Very truly yours,



Matt J. Howard

Enclosures

RECEIVED

JUL - 7 2003

Department of Water Resources

MATT J. HOWARD
Attorney at Law
P. O. Box 190012
Boise, Idaho 83719
Telephone: (208) 333-0622
Facsimile: (208) 333-8409

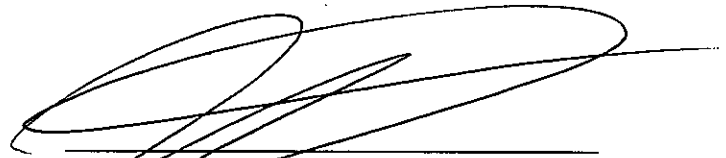
Attorney for the Estate of Eleanor I. Chase

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

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

The Estate of Eleanor I. Chase ("Estate"), by and through its attorney of record, Matt J. Howard, hereby gives notice, pursuant to IDAPA 37.01.01.520 *et seq* and the Idaho Rules of Civil Procedure, that a true and correct copy of the ESTATE'S THIRD SET OF INTERROGATORIES, REQUESTS FOR PRODUCTION OF DOCUMENTS, AND REQUESTS FOR ADMISSIONS UPON THE CITY OF EAGLE was served via facsimile on Bruce M. Smith, Moore Smith Buxton & Turcke, Chtd., counsel for Applicant, City of Eagle, on the date first indicated below.

DATED this 2 day of July, 2003.


MATT J. HOWARD
Attorney for Estate

CERTIFICATE OF SERVICE

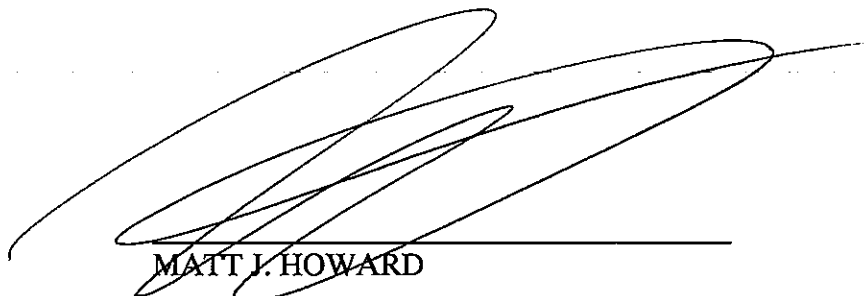
The undersigned certifies that on the 2 day of July 2003, a true and correct copy of the within and foregoing document was sent to the following person(s) as indicated below:

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

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

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

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



MATT J. HOWARD

**IDAHO DEPARTMENT OF
WATER RESOURCES**

Fax

To:	Matt Howard	From:	Deborah J. Gibson (208) 327-7953
Fax:	333-8409	Date:	June 6, 2003
Phone:	333-0622	Pages:	8
Re:	City of Eagle Application for Amendment of Permit No. 63-12448	CC:	

Urgent **For Review** **Please Comment** **Please Reply** **Please Recycle**

•Comments: For your information, see the attached orders issued by IDWR regarding the City of Eagle matter before the department.

**IDAHO DEPARTMENT OF
WATER RESOURCES**

Fax

To:	Tammy Zokan	From:	Deborah J. Gibson (208) 327-7953
Fax:	331-1202	Date:	June 5, 2003
Phone:	331-1804	Pages:	8
Re:	City of Eagle – 63-12448	CC:	

Urgent **For Review** **Please Comment** **Please Reply** **Please Recycle**

•Comments: As you requested, attached are two orders regarding the City of Eagle matter.

MOORE SMITH BUXTON & TURCKE, CHARTERED

ATTORNEYS AND COUNSELORS AT LAW

225 NORTH 9TH STREET, SUITE 420
BOISE, ID 83702
TELEPHONE: (208) 331-1800 FAX: (208) 331-1202

RANSOM J. BAILEY
SUSAN E. BUXTON*
MICHAEL C. MOORE†
BRUCE M. SMITH
PAUL A. TURCKE‡
CHRISTOPHER E. YORGASON
TAMMY A. ZOKAN*

RECEIVED

JUN - 2 2003

Department of Water Resources

JOHN J. MCFADDEN*
Of Counsel

* Also admitted in Oregon
† Also admitted in Washington
‡ Also admitted in South Dakota
* Also admitted in New Mexico

May 28, 2003

Idaho Department of Water Resources
Western Regional Office
2735 Airport Way
Boise, ID 83705

RECEIVED

MAY 29 2003

WATER RESOURCES
WESTERN REGION

RE: In the Matter of City of Eagle, Petitioner, Application for Permit No. 63-12448

To Whom it May Concern:

Please find enclosed an original and one copy of **Applicant's Notice of Errata** for filing in the above entitled case. Once filed, please mail the conformed copy of this document to me in the self-addressed, stamped envelope. *AT*

Thank you. If you have any questions, please contact me.

Sincerely,



Rebecca A. Ihli

MOORE SMITH BUXTON & TURCKE, CHARTERED

ATTORNEYS AND COUNSELORS AT LAW

225 NORTH 9TH STREET, SUITE 420
BOISE, ID 83702
TELEPHONE: (208) 331-1800 FAX: (208) 331-1202

RECEIVED

MAY 29 2003

Department of Water Resources

JOHN J. MCFADDEN*†
Of Counsel

RANSOM J. BAILEY
SUSAN E. BUXTON*
MICHAEL C. MOORE†
BRUCE M. SMITH
PAUL A. TURCKE‡
CHRISTOPHER E. YORGASON
TAMMY A. ZOKAN*

RECEIVED

MAY 27 2003

WATER RESOURCES
WESTERN REGION

* Also admitted in Oregon
† Also admitted in Washington
‡ Also admitted in South Dakota
* Also admitted in New Mexico

May 23, 2003

Idaho Department of Water Resources
Western Regional Office
2735 Airport Way
Boise, ID 83705

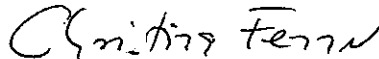
RE: In the Matter of City of Eagle, Petitioner, Application for Permit No. 63-12448

To Whom it May Concern:

Please find enclosed an original and one copy of (1) **Applicant's Response in Objection to the Chase Estate's Motion Compelling Discovery and Motion in Limine** and; (2) **Notice of Compliance** for filing in the above entitled case. Once filed, please mail the conformed copies of these documents to me in the self-addressed, stamped envelope.

Thank you. If you have any questions, please contact me.

Sincerely,



Christina C. Fenner
Legal Assistant

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

Attorneys for the City of Eagle

BEFORE THE DEPARTMENT OF WATER RESOURCES
 OF THE STATE OF IDAHO

IN THE MATTER OF	)	APPLICANT'S RESPONSE IN
	)	OBJECTION TO THE CHASE
CITY OF EAGLE, PETITIONER	)	ESTATE'S MOTION FOR AN
	)	ORDER COMPELLING
APPLICATION FOR PERMIT NO. 63-12448	)	DISCOVERY AND MOTION IN
_____	)	LIMINE

COMES NOW the Applicant, City of Eagle, by and through its attorneys of record and responds in objection to the Chase Estate's Motion for an Order Compelling Discovery and Motion In Limine, dated April 28, 2003. The City did not fail to answer discovery propounded by the Chase Estate, therefore an order compelling discovery is not warranted in this matter and the Chase Estate's Motion should be denied. In addition, the Department has not imposed a deadline on the disclosure of witnesses and exhibits; thus, the City is not precluded from disclosing additional witnesses and exhibits as they become known and the Chase Estate's Motion In Limine should be denied.

INTRODUCTION

This is a case of a simple process that has become ridiculously abused. Two years ago, the City applied to the Department to add back a previously withdrawn point of diversion to permit no. 63-12448 to serve the municipal needs of the City of Eagle. The

City does not seek to increase the amount of diversion authorized by permit no. 63-12448. The City was careful to conduct a thorough review and analysis before filing its application with the Department. The City was also careful to discuss the proposal with neighboring landowners, the Chase family, to ensure they understood what the City was proposing and to make sure the City understood their concerns. Additionally, the City has been considerate of all the parties to this proceeding and forthright in its efforts to satisfy any reasonable information requests requested of the City. Regrettably, some of the parties have turned the City's simple application for an additional point of diversion into an emotionally charged and extremely adversarial proceeding.

The parties have exchanged and will continue to exchange information. In accordance with the Hearing Officer's February 4, 2003 Order authorizing discovery, the City has copied the Hearing Officer with its requests and responses. Likewise, the City has diligently responded to the Chase Estate's requests and attempted to determine and then locate any information, Mr. Howard, the Estate's counsel, alleged has been withheld from discovery. See Affidavit of Tammy A. Zokan at ¶ 5. Contrary to the Chase Estate's Motion to Compel, which argues that the City has not failed to respond to the Estate at all, the City has provided huge amounts of information to the Estate. Moreover, a simple phone call could have resolved the Estate's questions. Unfortunately, the Estate refused to seek an amicable resolution of the issues and instead chose to unnecessarily involve the Department in this matter.

The City's responses to discovery have been anything but evasive. In fact, the City is troubled by the Estate's Motion given that: (1) the City has responded and supplemented its responses to the Chase Estate's discovery requests; and (2) the Estate's

counsel failed to attempt to resolve any alleged outstanding requests or concerns with counsel for the City; and (3) the Chase Estate has refused to provide in response to the City's request, the very same information that is the subject of the Estate's Motion to Compel. As illustration, when asked to identify witnesses, their qualifications and the facts and/or opinion they will give, the Chase Estate has refused to do so.¹ Estate's Response to Interrogatory No. 5. Unlike the Chase Estate, the City provided its known witnesses, their opinions and the basis for their testimony. Applicants' Response, First Supplemental and Second Supplemental Responses to Discovery. Notwithstanding the City's responses, the Chase Estate filed this Motion to Compel and Motion In Limine. Both Motions are without merit and should be denied.

1. Interrogatory No. 2.

The City has responded to Interrogatory No. 2 by providing photocopies of all the reports prepared and relied upon by their expert in this matter and mailed the reports to the Estate's counsel. Applicant's Second Supplemental Response to Production. These reports form the basis for the City's application to add back a diversion point to permit no. 63-12448. These currently are the only reports relevant to the City's application that have been prepared or relied upon by a City representative as a basis for the City's application.

As the City has indicated, when the Estate's counsel has identified a question or concern regarding discovery, the City has offered clarifying information. Regarding the City's expert reports, when the Estate's counsel raised a question about the City's

¹ Moreover, the Chase Estate did not provide photocopies of its production requested by the City of Eagle until after filing the subject Motions.

reference to a report by Mr. Strowd, the City's counsel explained, "Mr. Scanlan's report is dated August 9, 1995. The Scanlan report was included in Mr. Bill Strowd's report, which the City disclosed and relied upon as a basis for the City's application." Since counsel for the City responded to the Estate's questions about the document the City referred to as the "Scanlan Report" and received no further questions regarding the same, the matter was presumed resolved. The City never anticipated the Chase Estate would file a Motion to Compel questioning whether the City is relying upon Mr. Strowd's report. It is.

Next, the Estate's attorney did not previously notify the City's counsel that he required further detail concerning the City's reference to "IDWR records." Had he done so, the City would have advised him that the relevant IDWR records are those relevant to the City's permit no. 63-12448, the City's application to amend permit no. 63-12448 to add a point of diversion, and the Department's records as they relate to the protestants' claims. These records of course may be identified using the water right numbers. However, the Chase Estate has placed the City in the position of guessing what injury may occur given that the Chase Estate has never specifically identified the harm allegedly suffered by the Chase Estate. Thus, the City may need to identify and review additional Department records as more information is provided by the Chase Estate.

Regarding the Chase Estate's issue with the City's identification of "representations by protestants," counsel for the Estate did not notify counsel for the City he had any questions about this reference. Had he done so, the City would have simply explained that Mr. Mike Chase had some conversations with individuals identified in the City's Response and First Supplemental Response to Discovery, outside of settlement

negotiations and executive session, regarding the operation of some of the Chase Estate's wells. Because the construction and use of the Estate's wells are relevant to the question of whether injury would occur, the City may call Mr. Chase as a witness.

2. Interrogatory Nos. 4 and 7

The City completely responded to interrogatory nos. 4 and 7, and then some. First, it is important to highlight the form of the interrogatories. Estate's counsel posed his interrogatories in the context of the outcome of an "approved" application. By law, the City's application cannot be approved if it would injure other water rights, or constitute an enlargement of use. Idaho Code § 42-211. Consequently, the City referenced Idaho law as a basis for their response that an approved application would not result in injury or enlargement. However, the City assumed the Chase Estate did not intentionally limit the City to a recitation of the law; thus, the City voluntarily disclosed additional information the City felt was perhaps responsive to the Estate's requests.

The City completely responded to interrogatory nos. 4 and 7, providing information beyond what was technically requested, and provided photocopies of the documents referenced therein. The City has identified and provided the Chase Estate photocopies of the reports that form the basis of the City's position that the simple addition of the proposed diversion point would not injure other water rights or "interfere with, reduce, and/or otherwise diminish the ground water levels at the locations of the points of diversion for the Estate Water Rights." If the Chase Estate provides additional information regarding the "Estate Water Rights," points of diversion, and alleged injury, the City may be able to provide the Estate additional information.

The Chase Estate's allegations again raise the issue of the Estate asking the Hearing Officer to compel the City to disclose something the Estate has wholly refused to provide. Unlike the Chase Estate, the City did disclose available information. The Chase Estate argues it is entitled to additional detail regarding the City's application but refuses to provide basic information about the Estate's alleged injury. When asked for the information, the Chase Estate responds by saying, "the Applicant carries the burden of proof and persuasion to establish that the Estate's water rights will not be injured by the Applicant's proposed amendment to its permit. Estate's Response to Interrogatory Nos. 3 and 13. Bare allegations of injury get us nowhere. Nevertheless, the City more than completely answered these interrogatories and will supplement its answers in the event the Chase Estate provides information about the alleged harm to the Estate.

3. Interrogatory Nos., 5, 6, and 8

This issue is similar to those addressed above. Again, the City has appropriately responded the interrogatory nos. 5, 6, and 8. The reports relied upon by the City that were photocopied and provided to the Chase Estate provide the basis for the City's application and the City's position that the proposed addition of a diversion point to water right permit no. 63-12448 would not conflict with the public interest.

4. Interrogatory No. 9

The City has responded to Interrogatory No. 9, which requested that the City "identify all water rights held by the City of Eagle, including all water rights that the City of Eagle holds an interest in, including interests that are legal, equitable, and/or contractual in nature." As previously pointed out, the Estate's counsel could have contacted the City if he had any concerns about the City's response. Alternatively, this

information is available to the public, including the Chase Estate, via the Department's records. Moreover, the City identified the City's water right license relevant to this proceeding.

5. Interrogatory No. 10

The City has also provided a complete response to interrogatory no. 10. As the City explained in its responses to discovery, and herein, the referenced responses identify the City's scientific reports that the City has and continues to rely upon for the purposes of the City's application to add a point of diversion to water right permit no. 63-12448.

6. Requests for Production

The City provided the Chase Estate copies of all documents, including scientific reports, responsive to the Chase Estate's requests for production to the Estate without charge.² The produced reports, as explained above, provide the basis for the City's application to add a diversion point to water right permit no. 63-12448, and for the City's position that the additional diversion point would not cause injury, negatively affect the public interest, be contrary to conservation of water resources, reduce ground water level, or constitute enlargement. The reports also make up the anticipated evidence that will be introduced in support of the City's expert testimony.

Finally, as explained above, the City explained that its reference to the "Scanlan Report" is to the report the City produced containing both Mr. Strowd and Mr. Scanlan's reports. If the Estate's counsel had additional questions after reviewing the City's March

² Applicant's Second and Third Supplemental Responses to Production. Remarkably, the Chase Estate only responded to the City's requests for production, after the Estate filed its Motion to Compel.

24, 2003 letter of explanation, he knew he could have contacted counsel for further explanation. He did not. Affidavit of Tammy A. Zokan.

7. Motion In Limine

Next, the Chase Estate argues that the City should be precluded from identifying additional witnesses or exhibits as they become known to the City because the City has expressed its desire to proceed to hearing. The Estate wants (1) to delay the hearing on this matter; and (2) delay the Estate's disclosure of witnesses and exhibits until the Hearing Officer issues a pretrial order; and (3) prohibit the City's disclosure of additional witnesses and exhibits. See Estate's Motion to Vacate Hearing and Petition for Reconsideration; Estate's Response to Interrogatory No. 5; Estate's Motion and Memorandum in Support of Motion to Compel and Motion In Limine. The City fails to see the logic in the Estate's demands and the Hearing Officer should decline to grant the Chase Estate's motion. The Department has not imposed a deadline for the disclosure of witnesses and exhibits. When that happens there will be a deadline by which all parties must abide. Furthermore, it is patently unfair for the Estate to claim that it is not yet required to disclose witnesses and exhibits and that the City is precluded from making further disclosures. Finally, it is also incongruous to argue that a hearing on the City's application should be delayed, but the City should be precluded from disclosing and using witnesses and exhibits identified during the requested delay. The Chase Estate's Motion In Limine is without merit and should be denied.

The City is ready to go to hearing; however, until a hearing is set, the City is going to diligently pursue information regarding the protestants' claims. However, the Chase Estate's Motion In Limine is not ripe because no deadline for completing discovery or

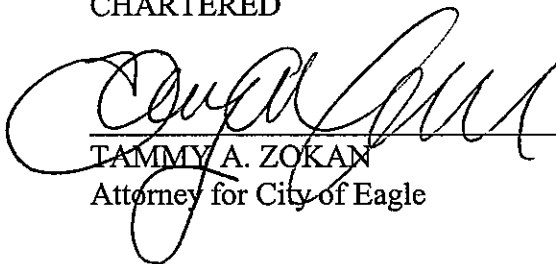
pre-trial order has been entered. Moreover, the City may identify additional witnesses and exhibits once the Chase Estate has completely responded to the City's discovery requests.

CONCLUSION

The City of Eagle has provided the Chase Estate the best available information responsive to the Estate's discovery requests; thus, the Estate's Motion to Compel is not warranted and should be denied. The City continues to supplement its responses to discovery in accordance with the Idaho Rules of Civil Procedure as additional information is identified and the Estate provides information clarifying its claimed injury. The Hearing Officer should not prohibit the City from doing so until such time the Hearing Officer has ordered a cut-off date. Furthermore, there is no justification for the dismissal of the City's application and the Hearing Examiner should decline to dismiss the City's application.

DATED this 23 day of May, 2003.

MOORE SMITH BUXTON & TURCKE,
CHARTERED



TAMMY A. ZOKAN
Attorney for City of Eagle

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 23 day of May, 2003 I caused to be served a true and correct copy of the foregoing RESPONSE IN OBJECTION TO MOTION TO STRIKE AND MOTION IN LIMINE via the method indicated below:

IDWR State Office
Hearing Officer
Glen Saxton
1301 N. Orchard Street
Boise, ID 83706

via U.S. MAIL
 via HAND DELIVERY
 via OVERNIGHT MAIL
 via FACSIMILE

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

via U.S. MAIL
 via HAND DELIVERY
 via OVERNIGHT MAIL
 via FACSIMILE

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

via U.S. MAIL
 via HAND DELIVERY
 via OVERNIGHT MAIL
 via FACSIMILE

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

via U.S. MAIL
 via HAND DELIVERY
 via OVERNIGHT MAIL
 via FACSIMILE

Matt Howard, Esq.
P.O. Box 190012
Boise, Idaho 83719

via U.S. MAIL
 via HAND DELIVERY
 via OVERNIGHT MAIL
 via FACSIMILE


TAMMY A. ZOKAN

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

Attorneys for the City of Eagle

BEFORE THE DEPARTMENT OF WATER RESOURCES
 OF THE STATE OF IDAHO

IN THE MATTER OF	)	AFFIDAVIT OF TAMMY A.
	)	ZOKAN IN SUPPORT OF
CITY OF EAGLE, PETITIONER	)	APPLICANT'S RESPONSE IN
	)	OBJECTION TO THE CHASE
APPLICATION FOR PERMIT NO. 63-12448	)	ESTATE'S MOTION TO
	)	COMPEL AND MOTION IN
		LIMINE

STATE OF IDAHO)
)ss.
 County of Ada)

I, TAMMY A. ZOKAN, based upon my personal knowledge and being first duly sworn upon oath, deposes and says:

1. I am an attorney employed by MOORE SMITH BUXTON & TURCKE, CHARTERED, attorneys for the City of Eagle in the above-entitled case.
2. The City identified three (3) reports in response to the Chase Estate's Discovery, which response was hand-delivered to the counsel for the Chase Estate on March 7, 2003. The City notified the Estate that the (3) reports were available for inspection at Moore Smith Buxton & Turcke, Chartered.

3. Pursuant to an agreement between Bruce M. Smith, counsel for the City and Matt Howard, counsel for the Estate, the City produced photocopies of the three (3) identified reports by mailing copies of the reports to Mr. Howard on March 11, 2003, at no charge to the Chase Estate.

4. On March 18, 2003, I received a letter from Mr. Howard addressed to Mr. Smith, inquiring about the disclosed reports. Apparently, my reference to the report "prepared by Scanlan Engineering" confused Mr. Howard in two respects: (1) the Scanlan Report is actually included in the bound report regarding groundwater conditions in the vicinity of the proposed diversion; and (2) the City has habitually referenced that entire bound report as the "Scanlan Report," however, it is Mr. Bill Strowd who is identified on the front cover of that report. On March 24, 2003, I responded to Mr. Howard's letter and clarified that the City produced and relied upon Mr. Strowd's report, which contained Mr. Scanlan's report. A copy of my March 24, 2003 letter is attached. I received no further inquiries about this issue from Mr. Howard.

5. The March 24, 2003 letter also asked Mr. Howard to identify the documents he thinks may be missing from discovery. To my knowledge, Mr. Howard has not done so.

6. I have diligently requested, located and transmitted information to Mr. Howard that is responsive to the Chase Estate's discovery requests. The City has supplemented its response to discovery every time responsive information becomes known.

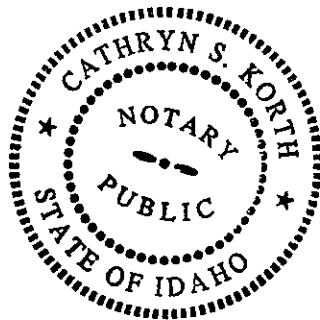
7. To the best of knowledge, I am not aware that the Hearing Officer has ordered any discovery deadline or witness and/or exhibit disclosure deadline in this matter. Additionally, it has been my experience that simple questions regarding discovery or deadlines are remedied by a simple letter or phone call between counsel, not by the filing of a Motion to Compel or Motion In Limine.

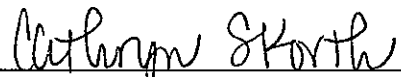
FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 23 day of May, 2003.


TAMMY A. ZOKAN

SUBSCRIBED AND SWORN TO before me this 23rd day of May, 2003.




NOTARY PUBLIC FOR IDAHO
Residing at: Nampa Idaho
My Commission Expires: 3-6-2006

CERTIFICATE OF SERVICE

I hereby certify that on this 23 day of May, 2003, a true and correct copy of the foregoing Affidavit of Tammy A. Zokan was served upon the following by the method indicated below:

IDWR State Office
Hearing Officer
Glen Saxton
1301 N. Orchard Street
Boise, ID 83706

via U.S. MAIL
 via HAND DELIVERY
 via OVERNIGHT MAIL
 via FACSIMILE

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

via U.S. MAIL
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 via FACSIMILE



TAMMY A. ZOKAN

Bruce M. Smith, ISB #3425
Tammy A. Zokan, ISB #5450
MOORE SMITH BUXTON & TURCKE, CHARTERED
Attorneys at Law
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Telephone: (208) 331-1800
Facsimile: (208) 331-1202

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) **NOTICE OF COMPLIANCE**
)
)
_____)

COMES NOW, the City of Eagle, and gives notice that the City served its responses to the Chase Estate's Second Set of Interrogatories and Requests for Production on counsel for the Chase Estate and the Eagle Water Company via U.S. Mail on the 23rd day of May, 2003.

DATED this 23 day of May, 2003.

MOORE SMITH BUXTON & TURCKE,
CHARTERED



TAMMY A. ZOKAN
Attorneys for the City of Eagle

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 23 day of May, 2003, I caused to be served a true and correct copy of the foregoing NOTICE OF COMPLIANCE by the method indicated below, and addressed to the following:

IDWR
Western Region
2735 Airport Way
Boise, Idaho 83705

U.S. Mail
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 Facsimile

Matt Howard
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BRUCE M. SMITH

RECEIVED

MAY 27 2003

Department of Water Resources

Bruce M. Smith, ISB #3425
Tammy A. Zokan, ISB #5450
MOORE SMITH BUXTON & TURCKE, CHARTERED
Attorneys at Law
225 North 9th Street, Suite 420
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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)
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DATED this 23 day of May, 2003.

MOORE SMITH BUXTON & TURCKE,
CHARTERED


TAMMY A. ZOKAN
Attorneys for the City of Eagle

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Attorneys for the City of Eagle

RECEIVED
MAY 19 2003
Department of Water Resources
RECEIVED
MAY 14 2003
WATER RESOURCES
WESTERN REGION

COPY

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

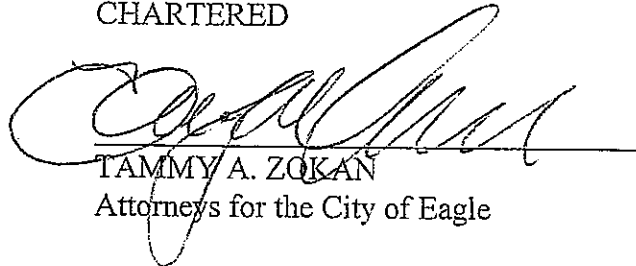
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NOTICE OF COMPLIANCE

COMES NOW, the City of Eagle, and gives notice that the City served its responses to the Chase Estate's Second Set of Requests for Admission on the 13th day of May, 2003, via U.S. Mail.

DATED this 13 day of May, 2003.

MOORE SMITH BUXTON & TURCKE,
CHARTERED



TAMMY A. ZOKAN
Attorneys for the City of Eagle

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BRUCE M. SMITH

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Department of Water Resources

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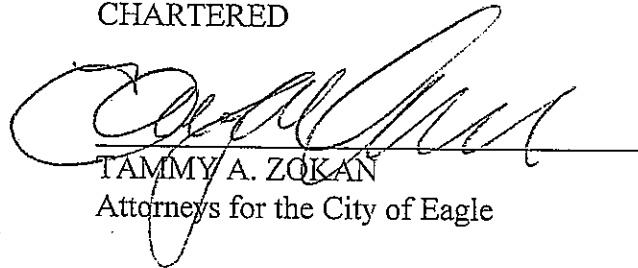
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DATED this 13 day of May, 2003.

MOORE SMITH BUXTON & TURCKE,
CHARTERED


TAMMY A. ZOKAN
Attorneys for the City of Eagle

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BRUCE M. SMITH

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

Attorneys for the City of Eagle

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MAY 13 2003

WATER RESOURCES
WESTERN REGION

RECEIVED

MAY 19 2003

Department of Water Resources

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

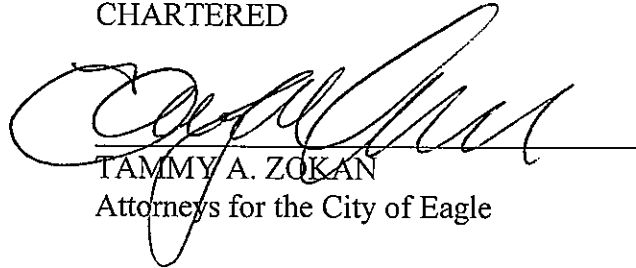
IN THE MATTER OF)
)
CITY OF EAGLE, PETITIONER)
)
APPLICATION FOR PERMIT NO. 63-12448)
)
)
)

NOTICE OF COMPLIANCE

COMES NOW, the City of Eagle, and gives notice that the City served its responses to the Chase Estate's Second Set of Requests for Admission on the 13th day of May, 2003, via U.S. Mail.

DATED this 13 day of May, 2003.

MOORE SMITH BUXTON & TURCKE,
CHARTERED



TAMMY A. ZOKAN
Attorneys for the City of Eagle

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13 day of May, 2003, I caused to be served a true and correct copy of the foregoing NOTICE OF COMPLIANCE by the method indicated below, and addressed to the following:

IDWR
Western Region
2735 Airport Way
Boise, Idaho 83705

U.S. Mail
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 Overnight Mail
 Facsimile

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

U.S. Mail
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Molly O'Leary
Eagle Water Co.
P.O. Box 1849
Eagle, ID 83616

U.S. Mail
 Hand Delivered
 Overnight Mail
 Facsimile

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

U.S. Mail
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 Facsimile

Jim Burton
1896 N. Eagle Road
Eagle, ID 83616

U.S. Mail
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 Overnight Mail
 Facsimile

Glen Saxton
IDWR State Office
1301 N. Orchard Street
Boise, ID 83706

U.S. Mail
 Hand Delivered
 Overnight Mail
 Facsimile



BRUCE M. SMITH

MOORE SMITH BUXTON & TURCKE, CHARTERED

ATTORNEYS AND COUNSELORS AT LAW

225 NORTH 9TH STREET, SUITE 420
BOISE, ID 83702
TELEPHONE: (208) 331-1800 FAX: (208) 331-1202

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CHRISTOPHER E. YORGASON
TAMMY A. ZOKAN*

JOHN J. MCFADDEN*
Of Counsel

* Also admitted in Oregon
† Also admitted in Washington
‡ Also admitted in South Dakota
* Also admitted in New Mexico

May 9, 2003

Molly O'Leary
Richardson and O'Leary
99 E. State Street
Suite 200
Eagle, ID 83616
Facsimile: 938-7904

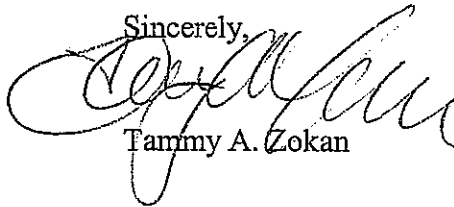
RECEIVED
MAY 12 2003
WATER RESOURCES
WESTERN REGION

Re: City of Eagle, Application for Permit No. 63-12448

Dear Ms. O'Leary:

The City is supplementing its response to the Chase Estate's First Set of Discovery. Specifically, the City is producing two reports that it may offer at any hearing on this matter. Consistent with the practice we've followed in this case, I am mailing you a copy of these reports at the same time I am mailing a copy to Mr. Matt Howard. The reports are also responsive to the Eagle Water Company's request for production number 4. I assume that mailing these responsive documents under this cover is a suitable response. Please let me know if it is necessary for me to draft a formal supplemental response to discovery and notice of compliance.

Sincerely,



Tammy A. Zokan

cc Protestants

RECEIVED
MAY 19 2003

Department of Water Resources

Bruce M. Smith, ISB #3425
Tammy A. Zokan, ISB #5450
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RECEIVED
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WATER RESOURCES
WESTERN REGION

Attorneys for the City of Eagle

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

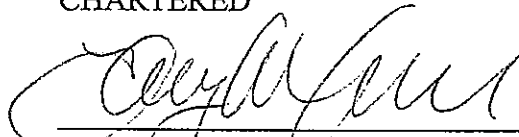
IN THE MATTER OF)
)
CITY OF EAGLE, PETITIONER)
)
APPLICATION FOR PERMIT NO. 63-12448)
)
_____)

NOTICE OF COMPLIANCE

COMES NOW, the City of Eagle, and gives notice that the City served its fourth supplemental responses to the Chase Estate's First Set of Interrogatories, Requests for Production of Documents, and Requests for Admission on the 9th day of May, 2003, via U.S. Mail.

DATED this 9th day of May, 2003.

MOORE SMITH BUXTON & TURCKE,
CHARTERED



TAMMY A. ZOKAN
Attorneys for the City of Eagle

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 1st day of May, 2003, I caused to be served a true and correct copy of the foregoing NOTICE OF COMPLIANCE by the method indicated below, and addressed to the following:

IDWR
Western Region
2735 Airport Way
Boise, Idaho 83705

U.S. Mail
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P.O. Box 190012
Boise, Idaho 83719

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MOORE SMITH BUXTON & TURCKE, CHARTERED

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CHRISTOPHER E. YORGASON
TAMMY A. ZOKAN*

JOHN J. MCFADDEN*
Of Counsel

* Also admitted in Oregon
† Also admitted in Washington
‡ Also admitted in South Dakota
* Also admitted in New Mexico

May 9, 2003

Idaho Department Water Resources
Attn: Glen Saxton
1301 Orchard Street
Boise, ID 83706

RECEIVED

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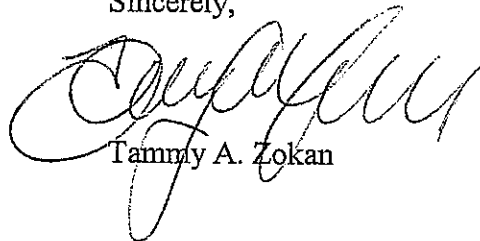
WATER RESOURCES
WESTERN REGION

RE: City of Eagle, Application for Permit No. 63-12648

Dear Mr. Saxton:

The Chase Estate has filed a Motion to Compel and a Motion In Limine in this matter. The Chase Estate also recently propounded additional discovery on the City of Eagle. The City of Eagle requested that the Chase Estate allow the City additional time to respond to the Estate's Motions and to the Estate's Second Set of Discovery requests. The Chase Estate considerably agreed to extend the time for the City's response to the Estate's Motion to Compel, Motion In Limine, and Second Set of Discovery. In accordance with the City's agreement with the Chase Estate, the City will file its response to the Chase Estate's Motion to Compel, Motion In Limine and Second Set of Discovery Requests on or before May 26, 2003.

Sincerely,



Tammy A. Zokan

cc All Protestants
IDWR

RECEIVED

MAY 12 2003

WATER RESOURCES
WESTERN REGION

Bruce M. Smith, ISB #3425
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RECEIVED

MAY 19 2003

Department of Water Resources

Attorneys for the City of Eagle

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

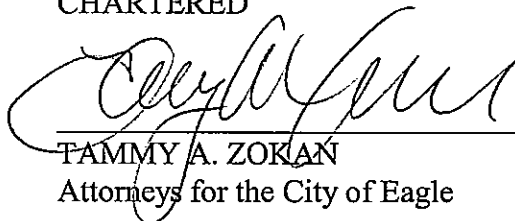
IN THE MATTER OF)
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 CITY OF EAGLE, PETITIONER)
)
 APPLICATION FOR PERMIT NO. 63-12448)
)
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DATED this 9th day of May, 2003.

MOORE SMITH BUXTON & TURCKE,
CHARTERED



TAMMY A. ZOKAN
Attorneys for the City of Eagle

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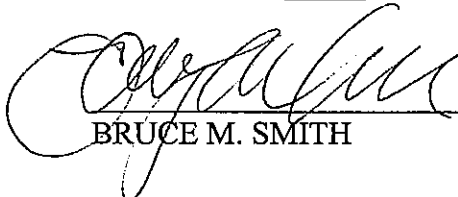
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TAMMY A. ZOKAN*

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MAY 12 2003

Department of Water Resources

JOHN J. MCFADDEN**
Of Counsel

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‡Also admitted in South Dakota
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May 9, 2003

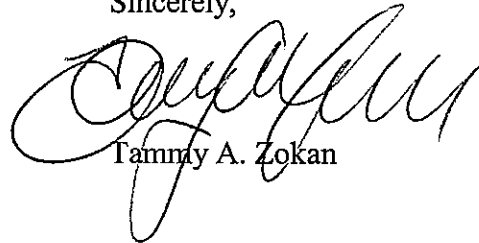
Idaho Department Water Resources
Attn: Glen Saxton
1301 Orchard Street
Boise, ID 83706

RE: City of Eagle, Application for Permit No. 63-12648

Dear Mr. Saxton:

The Chase Estate has filed a Motion to Compel and a Motion In Limine in this matter. The Chase Estate also recently propounded additional discovery on the City of Eagle. The City of Eagle requested that the Chase Estate allow the City additional time to respond to the Estate's Motions and to the Estate's Second Set of Discovery requests. The Chase Estate considerably agreed to extend the time for the City's response to the Estate's Motion to Compel, Motion In Limine, and Second Set of Discovery. In accordance with the City's agreement with the Chase Estate, the City will file its response to the Chase Estate's Motion to Compel, Motion In Limine and Second Set of Discovery Requests on or before May 26, 2003.

Sincerely,



Tammy A. Zokan

cc All Protestants
IDWR

MAY 12 2003

MOORE SMITH BUXTON & TURCKE, CHARTERED

Department of Water Resources

ATTORNEYS AND COUNSELORS AT LAW

225 NORTH 9TH STREET, SUITE 420
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TELEPHONE: (208) 331-1800 FAX: (208) 331-1202RANSOM J. BAILEY
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*Of Counsel** Also admitted in Oregon
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May 9, 2003

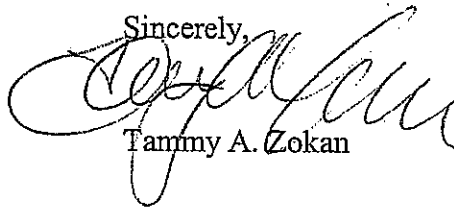
Molly O'Leary
Richardson and O'Leary
99 E. State Street
Suite 200
Eagle, ID 83616
Facsimile: 938-7904

Re: City of Eagle, Application for Permit No. 63-12448

Dear Ms. O'Leary:

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Sincerely,



Tammy A. Zokan

cc Protestants

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

Attorneys for the City of Eagle

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

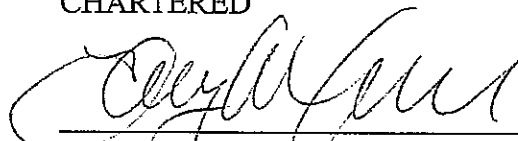
IN THE MATTER OF)
)
CITY OF EAGLE, PETITIONER)
)
APPLICATION FOR PERMIT NO. 63-12448)
)
_____)

NOTICE OF COMPLIANCE

COMES NOW, the City of Eagle, and gives notice that the City served its fourth supplemental responses to the Chase Estate's First Set of Interrogatories, Requests for Production of Documents, and Requests for Admission on the 9th day of May, 2003, via U.S. Mail.

DATED this 9th day of May, 2003.

MOORE SMITH BUXTON & TURCKE,
CHARTERED



TAMMY A. ZOKAN
Attorneys for the City of Eagle

CERTIFICATE OF SERVICE

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BRUCE M. SMITH

MOORE SMITH BUXTON & TURCKE, CHARTERED

ATTORNEYS AT LAW

NINTH & IDAHO CENTER, SUITE 420
225 NORTH 9TH STREET, BOISE, ID 83702
TELEPHONE: (208) 331-1800 FAX: (208) 331-1282

RECEIVED

MAY - 9 2003

FACSIMILE COVER SHEET

DATE: May 9, 2003 RECIPIENT'S FAX: 327-7866 Department of Water Resources

TO: Glen Saxton CLIENT: 1019-03 (Chase)

RE: City of Eagle, Application for Permit No. 63-12648

FROM: Tammy A. Zokan/ amanda

NUMBER OF PAGES INCLUDING THIS COVER SHEET: 2

- ORIGINAL WILL NOT BE SENT
 ORIGINAL WILL BE SENT BY FIRST CLASS MAIL
 ORIGINAL WILL BE SENT BY FEDERAL EXPRESS

ADDITIONAL COMMENTS:

***** IMPORTANT MESSAGE *****

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS ATTORNEY PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE, AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.

MOORE SMITH BUXTON & TURCKE, CHARTERED

ATTORNEYS AND COUNSELORS AT LAW

225 NORTH 9TH STREET, SUITE 420
BOISE, ID 83702
TELEPHONE: (208) 331-1800 FAX: (208) 331-1202

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May 9, 2003

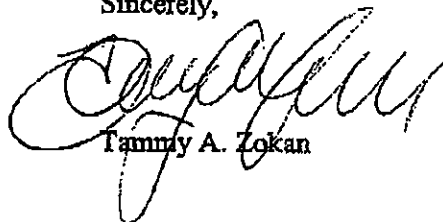
Idaho Department Water Resources
Attn: Glen Saxton
1301 Orchard Street
Boise, ID 83706

RE: City of Eagle, Application for Permit No. 63-12648

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Sincerely,



Tammy A. Zokan

cc All Protestants
IDWR

RECEIVED
MAY 9 2003

MATT J. HOWARD

Department of Water Resources

ATTORNEY AT LAW

P. O. BOX 190012
BOISE, IDAHO 83719
TELEPHONE (208) 333-0622
FACSIMILE (208) 333-8409

EMAIL: MHOWARD@FIBERPIPE.NET

May 2, 2003

Idaho Department of Water Resources
1301 N. Orchard St.
Boise, ID 83706-2237

RE: In the Matter of Amendment of Permit No. 63-12448 – City of Eagle

Dear Clerk:

Enclosed for filing with the Idaho Department of Water Resources in the above-referenced matter is the following: Notice of Service of Discovery. I have also enclosed an additional copy of that document that I would ask that you conform and return to me in the enclosed envelope. Thank you very much.

Very truly yours,

Matt J. Howard

Enclosures

RECEIVED

MAY - 5 2003

Department of Water Resources

MATT J. HOWARD
Attorney at Law
P. O. Box 190012
Boise, Idaho 83719
Telephone: (208) 333-0622
Facsimile: (208) 333-8409

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) NOTICE OF SERVICE OF DISCOVERY
APPLICATION FOR PERMIT NO. 63-12448)
IN THE NAME OF THE CITY OF EAGLE)

The Estate of Eleanor I. Chase ("Estate"), by and through its attorney of record, Matt J. Howard, hereby gives notice, pursuant to IDAPA 37.01.01.520 *et seq* and the Idaho Rules of Civil Procedure, that a true and correct copy of the ESTATE'S SECOND SET OF INTERROGATORIES, REQUESTS FOR PRODUCTION OF DOCUMENTS, AND REQUESTS FOR ADMISSIONS UPON THE CITY OF EAGLE was served via facsimile on Bruce M. Smith, Moore Smith Buxton & Turcke, Chtd., counsel for Applicant, City of Eagle, on the date first indicated below.

DATED this 2 day of May, 2003.


MATT J. HOWARD
Attorney for Estate

CERTIFICATE OF SERVICE

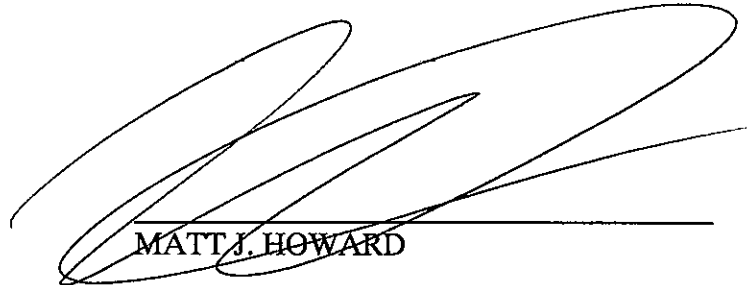
The undersigned certifies that on the 2 day of May 2003, a true and correct copy of the within and foregoing document was sent to the following person(s) as indicated below:

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

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

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

Bruce Smith, Esq. *Via Facsimile*
Moore Smith Buxton & Turcke, Chtd
225 N. 9th St., Ste. 420
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MATT J. HOWARD