

**STARTING
LEFT
SIDE OF
FILE**

L. GLEN SAXTON, P.E.
Hearing Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of February, 2003 I mailed a true and correct copy, postage prepaid, by certified mail, of the above and foregoing document to the following:

BRUCE SMITH
225 N 9TH ST STE 420
BOISE ID 83701-2720

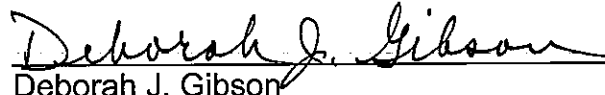
MATT HOWARD
PO BOX 190012
BOISE ID 83719

JIM BURTON
1896 N EAGLE RD
EAGLE ID 83616

MOLLY O'LEARY
PO 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
OF THE STATE OF IDAHO**

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

**ORDER DENYING MOTIONS
TO VACATE HEARING AND
DENYING MOTIONS FOR ORDER
AUTHORIZING DISCOVERY**

On January 22, 2003, The Estate of Eleanor Chase ("Chase") filed with the Idaho Department of Water Resources ("IDWR") a motion for order vacating hearing and a motion for order authorizing discovery. On January 23, 2003, Eagle Water Company ("Eagle Water") also filed motions seeking to vacate the hearing and for discovery. Finally, on January 27, 2003, IDWR received a letter from James Burton, the spokesperson for a group of protestants, concurring with the previous motions filed.

The moving parties argue that good faith negotiations for settlement continued through most of January 2003, and that the negotiations have recently failed. The moving parties argue that they cannot adequately prepare for a hearing now scheduled for February 26, 2003.

On January 30, 2003, the City of Eagle ("the City" or "Eagle") filed a response to the motion of the protestants to vacate the hearing date. The City argues that the protestants have not provided a substantive reason why the hearing should be vacated other than the desire to conduct discovery.

The City filed application to amend permit to appropriate water no. 63-12448 on June 8, 2001. A prehearing conference was conducted on August 15, 2001. Another prehearing conference was scheduled for September 2001, and a tentative hearing was scheduled for November 2001. The September prehearing conference and several subsequent prehearing conferences were scheduled and vacated by request of the attorney representing the City. A hearing was not scheduled for November 2001.

A prehearing conference was scheduled for December 3, 2001, and the City requested that IDWR postpone the conference. On its own volition, IDWR issued a notice canceling the hearing and suspending processing for a period of six months. The delay was granted to accommodate further settlement negotiations.

The six-month suspension expired, and IDWR conducted another prehearing conference on September 18, 2002. At the prehearing conference, the parties agreed that IDWR would issue a prehearing order stating the following: 1) The parties would be allowed an additional 30 days for negotiations; 2) The parties would be granted

three months for discovery (informal or formal); 3) A party would petition for an order authorizing discovery if needed; and 4) A hearing would be scheduled in February 2003.

On October 18, 2002, IDWR issued a prehearing order documenting that the parties could negotiate until November 1, 2002, and identifying February 26, 2003 as the date for hearing. The order also granted in excess of three months for discovery, and expressly stated that formal discovery must be sought by filing a petition for an order authorizing discovery with IDWR.

IDWR granted extended periods for settlement negotiations following filing of the application for amendment. In addition, at the September 2002 prehearing conference, the moving parties agreed to fixed time periods for further negotiations, discovery, and a hearing.

In addition, the motions to vacate the hearing and for an order authorizing discovery and the supporting documents to the motions do not describe any additional factual issues that must be explored through formal discovery. The motions do not identify subjects for which facts are unknown or not readily available to the parties through other means.

The parties have had sufficient time to prepare for the hearing, and the motions should be denied.

Nonetheless, each party should be required to disclose technical information to other parties to allow sufficient time for evaluation and preparation of related evidence.

ORDER

IT IS HEREBY ORDERED that the motions for an order vacating the hearing are **DENIED**.

IT IS FURTHER ORDERED that the motions for an order authorizing discovery are **DENIED**.

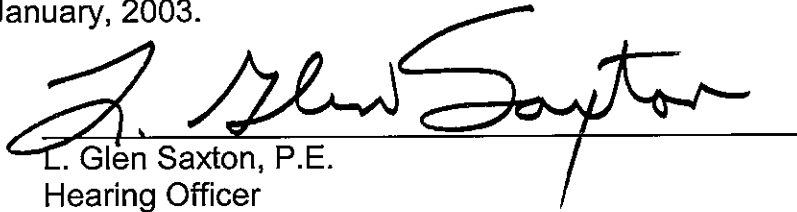
IT IS FURTHER ORDERED that, on or before February 12, 2003, each party shall serve the following information upon the other parties and the hearing officer:

- 1) The identity of each expert witness that may be called at the hearing;
- 2) Any data summaries or reports that may be offered as evidence in conjunction with possible expert testimony, or any data that an expert may rely on to prepare the evidence that may be offered; and

3) Any additional scientific evidence that may be offered related to the issue of injury to other water rights or enlargement of use.

IT IS FURTHER ORDERED that the parties shall adhere to all other deadlines for submittal set forth in the Notice of Hearing.

Dated this 31st day of January, 2003.


L. Glen Saxton, P.E.
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of January, 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
CITY OF EAGLE
225 N 9TH ST STE 420
BOISE ID 83701-2720

CITY OF EAGLE
310 E STATE ST
EAGLE ID 83616

ROBERT DESCHAZO, JR
EAGLE WATER CO
PO BOX 455
EAGLE ID 83616

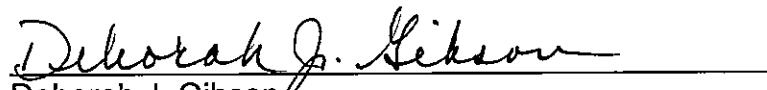
JIM BURTON
1896 N EAGLE RD
EAGLE ID 83616

WELDON FISHER
546 E BEACON LIGHT RD
EAGLE ID 83616

MATT HOWARD
PO BOX 190012
BOISE ID 83719

ESTATE OF ELEANOR CHASE
PO BOX 1356
CALDWELL ID 83606-1356

MOLLY O'LEARY
RICHARDSON & OLEARY PLLC
PO BOX 1849
EAGLE ID 83616


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)
THE CITY OF EAGLE)
NOTICE OF HEARING

On June 8, 2001 the City of Eagle filed with the Idaho Department of Water Resources (IDWR) an application for amendment of permit no. 63-12448. The application was protested by Eagle Water Corporation, the Estate of Eleanor I. Chase, Jim Burton, and Weldon Fisher. The prehearing conference held on September 18, 2002 did not resolve the matter of protest.

IDWR has scheduled a hearing for the protest to be held on **Wednesday, February 26, 2003 at 9:00 a.m. at the Eagle Sewer District, 44 N Palmetto Ave., Eagle, Idaho 83616.** The hearing will be held in accordance with provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code and the adopted Rules of Procedure of the Department. A copy of the rules may be obtained from IDWR upon request. The presiding officer at the hearing will be L. Glen Saxton.

The hearing will be conducted in a facility that 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 at least ten (10) days prior to the hearing.

The parties shall exchange copies of proposed exhibits and a list of witnesses on or before February 19, 2003. In addition, copies of the proposed exhibits and the witness list shall be provided to the hearing officer on or before February 19, 2003. Failure to exchange and serve copies of witness list is cause for IDWR to impose appropriate sanctions on the party failing to provide the information.

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

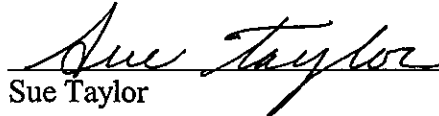
Dated this 10th day of January 2003.



GARY SPACKMAN

CERTIFICATE OF MAILING

I hereby certify that on the 10th day of January 2003 I mailed a true and correct copy, postage prepaid, of this Notice of Hearing to the following:


Sue Taylor
Senior Secretary

CERTIFIED MAIL

BRUCE SMITH
225 N 9TH ST STE 420
BOISE ID 83701-2720

JIM BURTON
1896 N EAGLE RD
EAGLE ID 83616

WELDON FISHER
546 E BEACON LIGHT RD
EAGLE ID 83616

MATT HOWARD
PO BOX 190012
BOISE ID 83719

MOLLY O'LEARY
PO BOX 1849
EAGLE ID 83616

NON-CERTIFIED MAIL

ESTATE OF ELEANOR CHASE
PO BOX 1356
CALDWELL ID 83606-1356

CITY OF EAGLE
310 E STATE ST
EAGLE ID 83616

ROBERT DESCHAZO, JR
EAGLE WATER CO
PO BOX 455
EAGLE ID 83616

CONFERENCE AND HEARING PROCEDURE

APPLICATION FOR AMENDMENT

Section 42-222, Idaho Code, requires the department to consider the following issues in connection with an application for amendment:

1. Will other water rights be injured by the transfer or the amendment?
2. Will the change constitute an enlargement in the use of the original right?
3. Will the proposed change conflict with the local public interest?
4. Will the proposed use be contrary to conservation of water resources within the state of Idaho?

BURDEN OF PROOF

The applicant bears the initial burden of proof for issues 1, 2 and 4 above and must provide evidence for the department to evaluate these criteria. The applicant must also establish that the water right is valid. Forfeiture must be established by clear and convincing evidence.

PROCEDURE

The department generally conducts an informal conference with the parties to determine the issues and to try to settle a protested matter before a hearing is scheduled. If a hearing is held, the department will issue a written decision based on the hearing record.

CONFERENCE

The purpose of a prehearing conference is to provide the opportunity for the parties and the department to familiarize themselves with a contested matter and to attempt to resolve the matter. At the conference, the department may also formulate and simplify the issues, identify documents to avoid unnecessary proof, exchange proposed exhibits or prepared testimony, limit witnesses, discuss settlement offers, schedule hearings, establish procedure at hearings and address other matters that may expedite orderly conduct and disposition of the proceeding or its settlement.

HEARING

The department will tape record the hearing. Copies of a hearing tape are available upon written request and the payment of the cost of reproducing the tape.

The hearing likely will be conducted by a hearing officer appointed by the Director rather than the Director himself. If so, the hearing officer will prepare a preliminary order for the Director's consideration. Parties can file exceptions to a preliminary order, briefs in support of the exceptions or may request oral argument. Parties may seek judicial review of any final order issued by the Director.

Parties may, by written stipulation, waive their right to a preliminary order, particularly when a shortened decision process is desirable or necessary. Such a waiver does not eliminate any rights of the parties in connection with the final order of the Director and judicial review of the order.

EXHIBITS

A party who plans to offer an exhibit as part of the hearing record must provide a copy of the proposed exhibit to the parties and to the hearing officer prior to any scheduled hearing.

AMERICANS WITH DISABILITIES ACT

Any hearing scheduled will be conducted in a facility that 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 ten (10) days prior to the hearing.

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

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

PREHEARING ORDER

On September 18, 2002 the Idaho Department of Water Resources (IDWR) conducted a prehearing conference for application for amendment of water right no. 63-12448 in the name of the City of Eagle. At the close of the prehearing conference, the city requested additional time to negotiate with the protestants regarding settlement of the protests. The parties also discussed a procedure for hearing preparations should negotiations fail. This prehearing order sets forth the agreement of the parties regarding the processing of the application.

ORDER

IT IS HEREBY ORDERED that the parties shall have until November 1, 2002 to negotiate regarding settlement of the protests.

IT IS FURTHER ORDERED that a hearing is tentatively scheduled for February 26, 2003.

IT IS FURTHER ORDERED that the parties may engage in discovery until approximately two (2) weeks prior to the hearing date. If any party wants to engage in formal discovery, the party must petition IDWR for an order authorizing discovery.

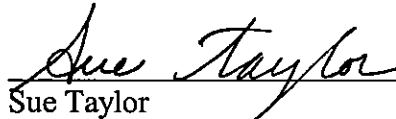
Dated this 18th day of October 2002.



Gary Spackman

CERTIFICATE OF MAILING

I hereby certify that on this 21st day of October 2002, I served a copy of the foregoing Preliminary Order by depositing the same in the United States mail, postage prepaid, addressed to the following:


Sue Taylor
Senior Secretary

BRUCE SMITH
CITY OF EAGLE
225 N 9TH ST STE 420
BOISE ID 83701-2720

CITY OF EAGLE
310 E STATE ST
EAGLE ID 83616

ROBERT DESCHAZO, JR
EAGLE WATER CO
PO BOX 455
EAGLE ID 83616

MOLLY O'LEARY
RICHARDSON & O'LEARY PLLC
PO BOX 1849
EAGLE ID 83616

JIM BURTON
1896 N EAGLE RD
EAGLE ID 83616

WELDON FISHER
546 E BEACON LIGHT RD
EAGLE ID 83616

MATT HOWARD
PO BOX 190012
BOISE ID 83719

ESTATE OF ELEANOR CHASE
PO BOX 1356
CALDWELL ID 83606-1356

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

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

NOTICE OF CANCELLATION AND
RESCHEDULING OF
PREHEARING CONFERENCE

On June 15, 2002 the City of Eagle filed with the Idaho Department of Water Resources (IDWR) an application for amendment of permit no. 63-12448. The application was protested by Eagle Water Corporation, the Estate of Eleanor I. Chase, Jim Burton, and Weldon Fisher.

IDWR scheduled a prehearing conference for the protest to be held on Monday, September 16, 2002. The prehearing conference has been **rescheduled for Wednesday, September 18, 2002 at 9:00 a.m. at the Eagle Sewer District, 44 N. Palmetto Ave, Eagle Idaho 83616.** The conference will be held in accordance with provisions of Chapters 2 and 17, Title 42, and Chapter 52, Title 67, of the Idaho Code, the adopted Rules of Procedure of the Department of Water Resources, and Rules 40 and 45 of the adopted Rules of Water Appropriation of the Department of Water Resources.

The conference will be conducted in a facility that satisfies the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the conference, please advise the IDWR at least ten (10) days prior to the conference.

Dated this 2nd day of September 2002.



Gary Spackman

CERTIFICATE OF MAILING

I hereby certify that on the 3rd day of September 2002, I mailed a true and correct copy, postage prepaid, of this Notice of Cancellation and Rescheduling of Second Prehearing Conference to those listed:


Sue Taylor
Senior Secretary

BRUCE SMITH
CITY OF EAGLE
PO BOX 2720
BOISE ID 83701-2720

CITY OF EAGLE
310 E STATE ST
EAGLE ID 83616

ROBERT DESCHAZO, JR
EAGLE WATER CO
PO BOX 455
EAGLE ID 83616

JIM BURTON
1896 N EAGLE RD
EAGLE ID 83616

WELDON FISHER
546 E BEACON LIGHT RD
EAGLE ID 83616

MATT HOWARD
PO BOX 190012
BOISE ID 83719

ESTATE OF ELEANOR CHASE
PO BOX 1356
CALDWELL ID 83606-1356

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

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

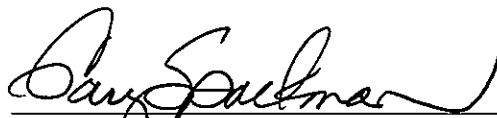
NOTICE OF PREHEARING
CONFERENCE

On June 15, 2001 the City of Eagle filed with the Department of Water Resources (IDWR) an application for amendment to appropriate the public waters of the State of Idaho. The application was protested by Eagle Water Corporation, the Estate of Eleanor Chase, Jim Burton and Weldon Fisher.

IDWR has scheduled a conference for the protest to be held on **Monday, September 16, 2002 at 2:00 p.m. at the Eagle Sewer District, 82 E. State Street, Eagle, Idaho 83616**. The conference will be held in accordance with provisions of Chapters 2 and 17, Title 42, and Chapter 52, Title 67, of the Idaho Code, the adopted Rules of Procedure of the Department of Water Resources, and Rules 40 and 45 of the adopted Rules and Regulations of Water Appropriation of the Department of Water Resources.

The conference will be conducted in a facility that satisfies the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the conference, please advise the IDWR at least (10) days prior to the conference.

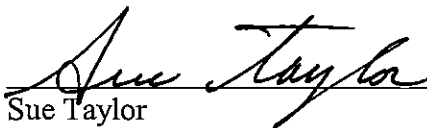
Dated this 25th day of August 2002.



Gary Spackman

CERTIFICATE OF MAILING

I hereby certify that on the 21st day of August 2002, I mailed a true and correct copy, postage prepaid, of this document to the applicant(s) and protestant(s) listed:



Sue Taylor
Senior Secretary

BRUCE SMITH
CITY OF EAGLE
PO BOX 2720
BOISE ID 83701-2720

CITY OF EAGLE
310 E STATE ST
EAGLE ID 83616

ROBERT DESCHAZO, JR
EAGLE WATER CO
PO BOX 455
EAGLE ID 83616

THE ESTATE OF ELEANOR CHASE
C/O MATT HOWARD
~~70~~ W FLOATING FEATHER RD
EAGLE ID 83616

JIM BURTON
1896 N EAGLE RD
EAGLE ID 83616

WELDON FISHER
546 E BEACON LIGHT RD
EAGLE ID 83616

MATT HOWARD
~~2402~~ W JEFFERSON
BOISE ID 83702

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.)
_____)

NOTICE OF SECOND PREHEARING
CONFERENCE

On June 15, 2001, the City of Eagle filed with the Department of Water Resources (IDWR) an application for amendment of permit no. 63-12448 to appropriate the public waters of the State of Idaho. The application was protested by Eagle Water Co., Jim Burton, Weldon Fisher, and Eleanor Chase.

IDWR has scheduled a second prehearing conference for the protest to be held on **Wednesday, September 19, 2001, at 10:00 a.m. at the Eagle Sewer District, 44 N. Palmetto, Eagle, Idaho 83616.** The conference will be held in accordance with provisions of Chapters 2 and 17, Title 42, and Chapter 52, Title 67, of the Idaho Code, the adopted Rules of Procedure of the Department of Water Resources, and Rules 40 and 45 of the adopted Rules of Water Appropriation of the Department of Water Resources.

IDWR has tentatively scheduled a hearing for Wednesday and Thursday, November 14 and 15, 2001, at 9:00 a.m., at the Eagle Sewer District.

The conference will be conducted in a facility that satisfies the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the conference, please advise IDWR within (10) days prior to the conference.

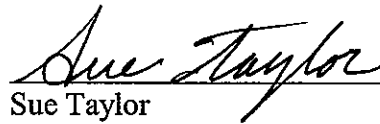
Dated this 20th day of August, 2001.



Gary Spackman

CERTIFICATE OF MAILING

I hereby certify that on the 21st day of August, 2001, I mailed a true and correct copy, postage prepaid, of the Notice of Prehearing Conference to the applicant(s) and protestant(s) listed:



Sue Taylor
Senior Secretary

CHRISTOPHER MEYER
CITY OF EAGLE
PO BOX 2720
BOISE ID 83701-2720

CITY OF EAGLE
310 E STATE ST
EAGLE ID 83616

ROBERT DESCHAZO, JR
EAGLE WATER CO
PO BOX 455
EAGLE ID 83616

ELEANOR CHASE
70 W FLOATING FEATHER RD
EAGLE ID 83616

JIM BURTON
1896 N EAGLE RD
EAGLE ID 83616

WELDON FISHER
546 E BEACON LIGHT RD
EAGLE ID 83616

MATT HOWARD
2402 W JEFFERSON
BOISE ID 83702

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.)
_____)

NOTICE OF PREHEARING
CONFERENCE

On June 15, 2001, the City of Eagle filed with the Department of Water Resources (IDWR) an application for amendment of permit no. 63-12448 to appropriate the public waters of the State of Idaho. The application was protested by Eagle Water Co. and Eleanor Chase.

IDWR has scheduled a prehearing conference for the protest to be held on **Wednesday, August 15, 2001, at 10:00 a.m. at the Eagle Sewer District, 44 N. Palmetto, Eagle, Idaho 83616.** The conference will be held in accordance with provisions of Chapters 2 and 17, Title 42, and Chapter 52, Title 67, of the Idaho Code, the adopted Rules of Procedure of the Department of Water Resources, and Rules 40 and 45 of the adopted Rules of Water Appropriation of the Department of Water Resources.

The conference will be conducted in a facility that satisfies the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the conference, please advise IDWR within (10) days prior to the conference.

Dated this 11th day of July, 2001



Gary Spackman

CERTIFICATE OF MAILING

I hereby certify that on the 11 day of July, 2001, I mailed a true and correct copy, postage prepaid, of the Notice of Prehearing Conference to the applicant(s) and protestant(s) listed:

Sue Taylor
Sue Taylor *sm*
Senior Secretary

CHRISTOPHER MEYER
CITY OF EAGLE
PO BOX 2720
BOISE ID 83701-2720

CITY OF EAGLE
310 E STATE ST
EAGLE ID 83616

JIM BURTON
EAGLE WATER CO
PO BOX 455
EAGLE ID 83616

ELEANOR CHASE
70 W FLOATING FEATHER RD
EAGLE ID 83616

RECEIVED

JUN 08 2001

WATER RESOURCES
WESTERN REGION

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR AMENDMENT OF A PERMIT

Receipt No.
Received by
Date

W027880 \$50
JL
6-8-01
#69218

Applicant The City of Eagle¹ Phone 208-939-6813
Address 310 E. State Street, Eagle, ID 83616

I am the owner and holder of Permit to appropriate the Public Waters of the State of Idaho No. 63-12448, and request that the permit and permit map be amended and/or changed as follows:

Purpose of Amendment:

- ☐ Change point of diversion ☒ Add diversion point(s) ☐ Change place of use
☐ Change nature of use ☐ Change period of use ☐ Other _____

RECEIVED

FEB 24 2003

Department of Water Resources

1. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
	SW	SW	SW	\$3	T4N	R1E	Ada	City of Eagle Well #1 (aka Lexington Hills Well #1)
		NW	SW	\$3	T4N	R1E	Ada	City of Eagle Well #2 (aka Lexington Hills Well #2)
		SW	SW	\$4	T4N	R1E	Ada	City of Eagle Well #3 (aka Brookwood Subdivision Well)
		NE	SE	\$4	T4N	R1E	Ada	City of Eagle Well #4
		SE	SW	\$5	T4N	R1E	Ada	Floating Feather Well

2. Period and nature of use: (irrigation, domestic, stockwatering, industrial, etc.)
amount 3.25 cfs² for municipal (per Idaho Code § 42-202B(4)) purposes from 01/01 to 12/31
(cfs/acre feet per annum) (water use) (begin month) (end month)

3. Place of use or land to be irrigated:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SE 1/4	SW 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	

Total acres not applicable

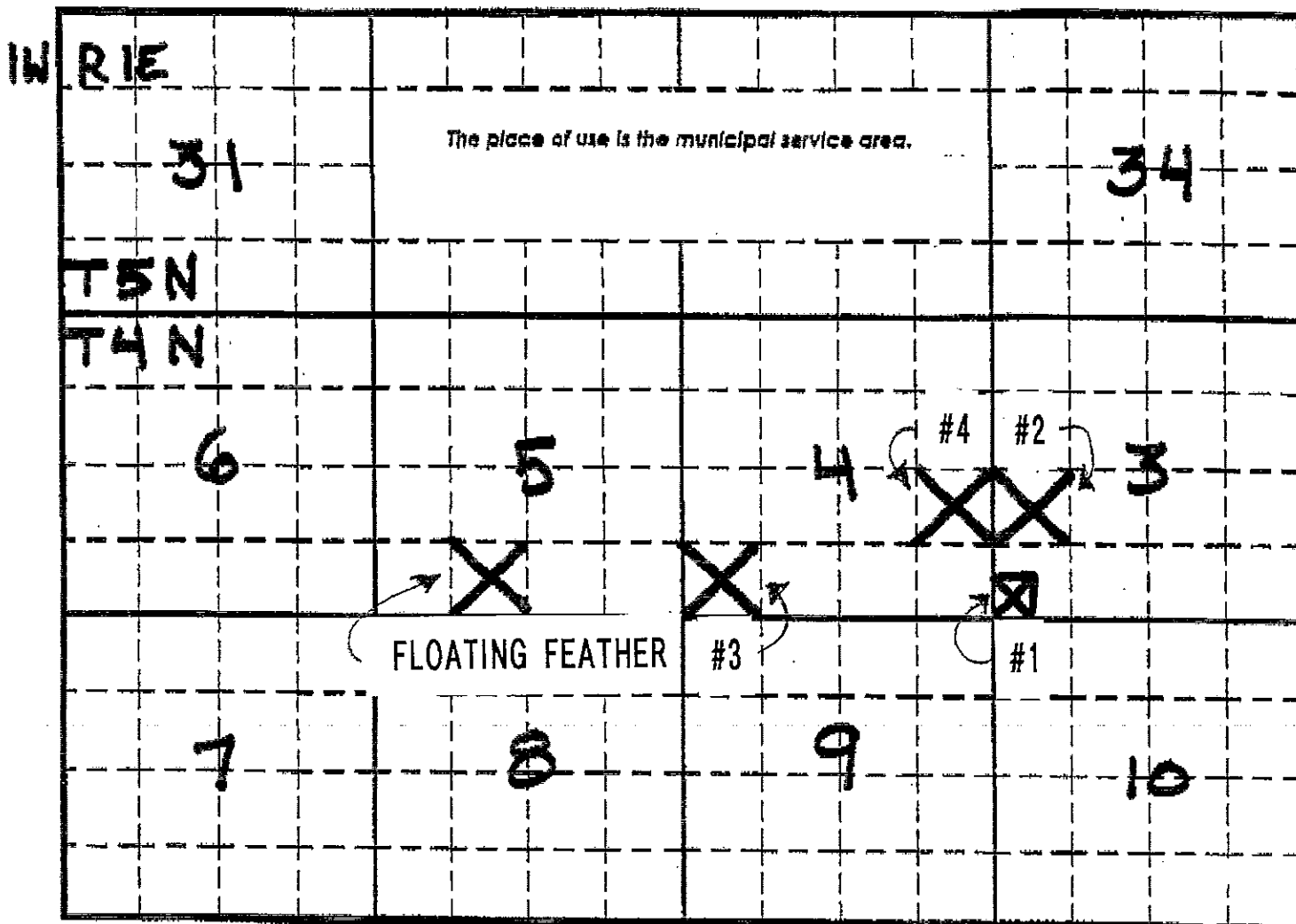
4. a. Who owns the property at the point of diversion? The City of Eagle owns, controls or will otherwise will obtain access to City of Eagle Well sites 1 through 4. United Water Idaho ("UWID") owns the Floating Feather Well. UWID has previously consented to the inclusion of this potential POD, subject to future negotiation of an agreement on use of the Floating Feather Well. This application seeks no change with respect to the Floating Feather p.o.d.
- b. Who owns the land to be irrigated at the place of use? Not applicable to a municipal water right.
- c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing: Ownership of place of use is not applicable to a municipal water right.

¹For city officials, see City of Eagle's most recent Description of Municipal Service Area, filed separately with the Department.

²As limited by Condition No. 11 in the Permit as issued (limiting the total combined diversion rate to 3.25 for Nos. 63-11413, 63-12017 and 63-12448).

The following map shows the five points of diversion associated with this water right:

to be



Scale: 2 inches equal 1 mile.

I hereby request approval of this change subject to the fact that no one will be injured by the change, and that the change will be made at my own risk.

Signed this 8th day of June, 2001.

Christopher H. Meyer

Christopher H. Meyer
Givens Pursley LLP
277 N. 6th Street, Ste. 200
P.O. Box 2720
Boise, ID 83701-2720
(208) 388-1200
Special Water Attorney for Applicant

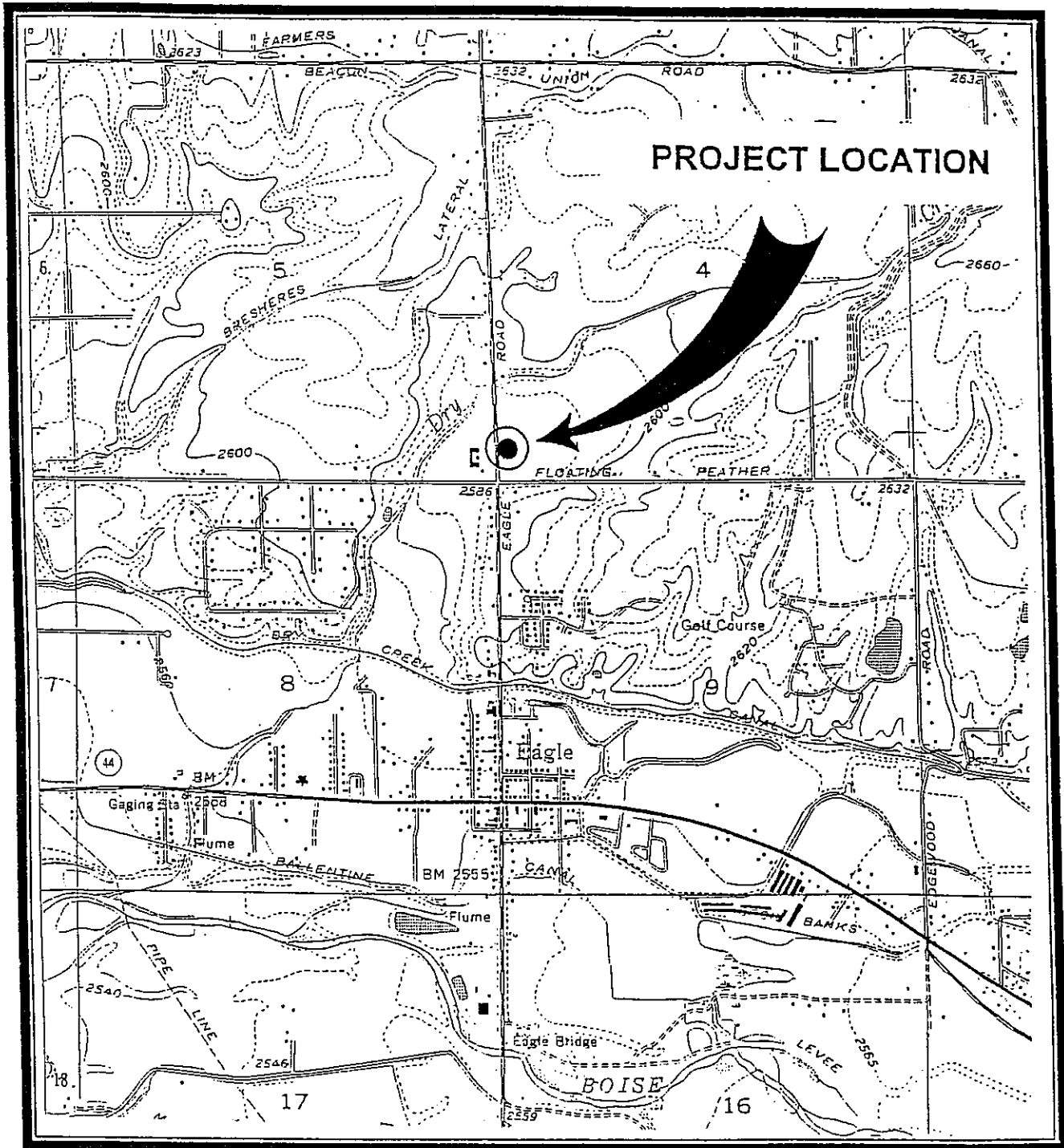
ACTION OF THE DEPARTMENT OF WATER RESOURCES

Preliminary check by JK Publication prepared by JK Date 6/15/01
Published in IO 5 T8 T6 man Pub. dates 6/21 & 6/28/01
I, _____, of the Department of Water Resources hereby

Witness my hand this _____ day of _____, 19____.

Complete the following map by showing land and point of diversion as proposed by this amendment. Show 1/4 1/4, section, township, range and ditches. (The smallest subdivision represents 40 acres.)

The following map shows the City of Eagle Well #3 (Brookwood Subdivision Well) site now under construction. It is labeled "Project Location":



VICINITY MAP



MODIFIED FROM EAGLE, ID. 7 1/2-MIN. TOPOGRAPHIC MAP
HOLLADAY
ENGINEERING CO.

SITE EVALUATION
BROOKWOOD WELL

STARTING RIGHT SIDE OF FILE

RECEIVED

FEB 14 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

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TO:	FROM:
Debbie Gibson	Matt J. Howard
COMPANY:	DATE:
IDWR	February 14, 2003
FAX NUMBER:	TOTAL NO. OF PAGES INCLUDING COVER:
327-7866	7
RE:	

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NOTES/COMMENTS:

Enclosed:

- Applicant's Objection, Motion to Strike, Recuse Hearing Officer and for the Appointment of a Non-Department Hearing Officer

CONFIDENTIAL & PRIVILEGED INFORMATION

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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 OBJECTION,
	)	MOTION TO STRIKE, RECUSE
CITY OF EAGLE, PETITIONER	)	HEARING OFFICER AND FOR
	)	THE APPOINTMENT OF A NON-
APPLICATION FOR PERMIT NO. 63-12448	)	DEPARTMENT HEARING
_____	)	OFFICER

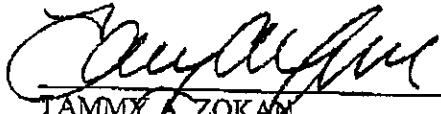
COMES NOW the Applicant, City of Eagle, by and through their attorneys of record and object to and move to strike the confidential settlement negotiation evidence improperly submitted by the Protestants, the Chase Estate and the Eagle Water Company (the "Protestants"), in this matter in accordance with Idaho Rule of Civil Procedure 12(f) and the Rules of Procedure of the Idaho Department of Water Resources. The City further moves for the recusal of the Hearing Officer and for the appointment of a non-Department employee Hearing Officer, or alternatively, for a new Hearing Officer for the reason that due to the Protestants' disclosure of the parties' confidential settlement negotiations, the Hearing Officer was forced to review the confidential settlement discussions and can no longer be objective in this matter. This motion is supported by a memorandum filed concurrently herewith.

**APPLICANT'S OBJECTION, MOTION TO STRIKE, RECUSE HEARING
OFFICER AND FOR THE APPOINTMENT OF A NON- DEPARTMENT
HEARING OFFICER, Page 1**

The City prays that the Department strike the confidential information contained in the Protestants' Motions filed on January 22, 2003 and January 23, 2003, respectively, and the Estate's Petition for Reconsideration filed on February 3, 2003, and appoint an alternate non-Department employee Hearing Officer in this case.

DATED this 12 day of February, 2003.

MOORE SMITH BUXTON & TURCKE,
CHARTERED


TAMMY A. ZOKAN
Attorney for City of Eagle

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12 day of February, 2003 I caused to be served a true and correct copy of the foregoing MOTION AND MEMORANDUM via U.S. Mail Postage pre-paid, and addressed to the following:

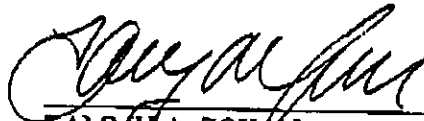
IDWR
Western Region
2735 Airport Way
Boise, Idaho 83705

Matt Howard
2402 W. Jefferson
Boise, Idaho 83702

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


TAMMY A. ZOKAN

APPLICANT'S OBJECTION, MOTION TO STRIKE, RECUSE HEARING
OFFICER AND FOR THE APPOINTMENT OF A NON- DEPARTMENT
HEARING OFFICER, Page 2

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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	)	MEMORANDUM IN SUPPORT
	)	OF APPLICANT'S OBJECTION,
CITY OF EAGLE, PETITIONER	)	MOTION TO STRIKE, RECUSE
	)	HEARING OFFICER AND FOR
APPLICATION FOR PERMIT NO. 63-12448	)	THE APPOINTMENT OF A NON-
	)	DEPARTMENT HEARING
	)	OFFICER

INTRODUCTION

The City of Eagle filed an application to amend water right permit number 63-12448 on June 8, 2001. Subsequently, a number of Protestants filed protests to the City's application. Since that time the City has participated in protracted settlement discussions with the Protestants, including the Eagle Water Company and Ms. Eleanor Chase. Ms. Chase passed away during these negotiations and her estate (the "Estate") was substituted as a party in this matter and has taken part in settlement negotiations. Despite the City's best efforts, settlement negotiations with the Estate and the Eagle Water Company (the "Protestants") broke down and this matter was scheduled for hearing on February 26, 2003. The Protestants moved to vacate the hearing on January 22, 2003 and January 23, 2003, respectively and their motions were denied on January 31, 2003. The Estate then

APPLICANT'S MEMORANDUM IN SUPPORT OF APPLICANT'S OBJECTION
AND MOTION TO STRIKE, Page - 1

petitioned for reconsideration of the Hearing Officer's decision on February 3, 2003. The Protestants' motions to vacate the trial in this case and the Estate's petition for reconsideration included selected letters containing detailed discussions of the parties' settlement negotiations. The Protestants filed this confidential information despite the privileged nature of the information and without first obtaining the City's permission. On February 4, 2003, only one day after the Estate filed its petition for reconsideration, the Hearing Officer granted the Estate's petition for reconsideration and vacated the hearing. The City filed a motion objecting to the Protestants' filing of confidential information, moving to strike the confidential information from the record and for the recusal of the Hearing Officer, and for the appointment of a non-Department employee Hearing Officer.

LEGAL STANDARDS

"Settlement negotiations in a contested case are confidential, unless all participants to the negotiation agree to the contrary in writing." IDAPA 37.01.01.610 (Rule 610). A tribunal may strike "any redundant, immaterial, impertinent, or scandalous matter." Idaho Rule of Civil Procedure 12(f).

A Hearing Officer may be disqualified "for bias, prejudice, interest, substantial prior involvement in the case other than as a presiding officer, status as an employee of the agency, lack of professional knowledge in the subject matter of the contested case, or any other reason provided by law or for any cause for which a judge is or may be disqualified." IDAPA 37.01.01.412 (Rule 412). A party may petition for disqualification of a Hearing Officer upon discovering facts providing a basis for disqualification. Id. Moreover, "[a]ny party may assert a blanket disqualification for cause of all employees of the agency hearing the contested case...." Id.

ARGUMENT

When the Department appointed Mr. L. Glen Saxton as the Hearing Officer in this matter, the City had no objection to his presiding over this case; and until recently his role as Hearing Officer was perfectly acceptable to the City. However, due to the recent conduct of the Protestants, the Hearing Officer was obligated to review confidential settlement negotiations improperly filed by the Protestants in this matter. Specifically, the Protestants included confidential correspondence between the City as exhibits to the Protestants' Motions for An Order Vacating the Hearing and Petition for Reconsideration and Motion for Expedited Hearing. This information records portions of the parties' settlement negotiations and clearly is confidential and inadmissible without the written consent of both of the parties. The Protestants' motions and petition further prejudices the City by including an inaccurate portrayal of the parties' negotiations. The Protestants' disclosures of confidential settlement information are improper and must be stricken.

The Protestants' conduct has prejudiced the City's position in this matter. Unfortunately, excluding the confidential information from the record cannot undo the damage because exclusion does not "unring the bell." Now that the Hearing Officer has had to review this confidential information, he is unable to objectively consider the issues presented by the parties in this case and render an impartial judgment. Thus, the only available remedy is the recusal of the Hearing Officer and the appointment of an alternate Hearing Officer who is not an employee of the Department.

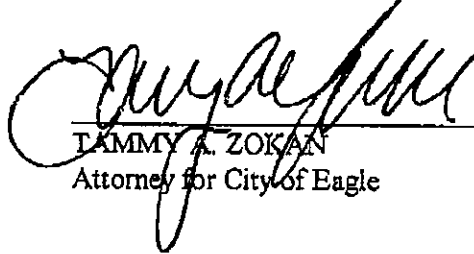
CONCLUSION

The City respectfully requests that the Department strike the confidential information contained in the Protestants' Motions filed on January 22, 2003 and January

23, 2003, respectively, and the Estate's Petition for Reconsideration filed on February 3, 2003, and appoint an alternate non-Department employee Hearing Officer in this case.

DATED this 12 day of February, 2003.

MOORE SMITH BUXTON & TURCKE,
CHARTERED



TAMMY A. ZOKAN
Attorney for City of Eagle

Bruce M. Smith, ISB #3425
Tammy A. Zokan, ISB #5450
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Telephone: (208) 331-1800
Facsimile: (208) 331-1202

Attorneys for the City of Eagle

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FEB 12 2003

WATER RESOURCES
WESTERN REGION

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF	)	APPLICANT'S OBJECTION,
	)	MOTION TO STRIKE, RECUSE
CITY OF EAGLE, PETITIONER	)	HEARING OFFICER AND FOR
	)	THE APPOINTMENT OF A NON-
APPLICATION FOR PERMIT NO. 63-12448	)	DEPARTMENT HEARING
	)	OFFICER

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CHARTERED


TAMMY A. ZOKAN
Attorney for City of Eagle

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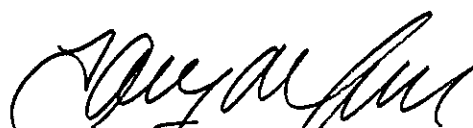
IDWR
Western Region
2735 Airport Way
Boise, Idaho 83705

Matt Howard
2402 W. Jefferson
Boise, Idaho 83702

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


TAMMY A. ZOKAN

APPLICANT'S OBJECTION, MOTION TO STRIKE, RECUSE HEARING OFFICER AND FOR THE APPOINTMENT OF A NON- DEPARTMENT HEARING OFFICER, Page 2

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Tammy A. Zokan, ISB #5450
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Attorneys for the City of Eagle

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FEB 12 2003

WATER RESOURCES
WESTERN REGION

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF	)	MEMORANDUM IN SUPPORT
	)	OF APPLICANT'S OBJECTION,
CITY OF EAGLE, PETITIONER	)	MOTION TO STRIKE, RECUSE
	)	HEARING OFFICER AND FOR
APPLICATION FOR PERMIT NO. 63-12448	)	THE APPOINTMENT OF A NON-
	)	DEPARTMENT HEARING
	)	OFFICER

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The City of Eagle filed an application to amend water right permit number 63-12448 on June 8, 2001. Subsequently, a number of Protestants filed protests to the City's application. Since that time the City has participated in protracted settlement discussions with the Protestants, including the Eagle Water Company and Ms. Eleanor Chase. Ms. Chase passed away during these negotiations and her estate (the "Estate") was substituted as a party in this matter and has taken part in settlement negotiations. Despite the City's best efforts, settlement negotiations with the Estate and the Eagle Water Company (the "Protestants") broke down and this matter was scheduled for hearing on February 26, 2003. The Protestants moved to vacate the hearing on January 22, 2003 and January 23, 2003, respectively and their motions were denied on January 31, 2003. The Estate then

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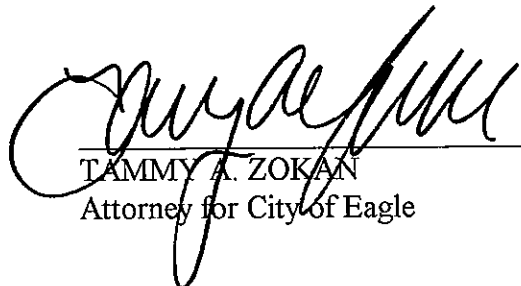
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DATED this 12 day of February, 2003.

MOORE SMITH BUXTON & TURCKE,
CHARTERED



TAMMY A. ZOKAN
Attorney for City of Eagle

MATT J. HOWARD

ATTORNEY AT LAW

RECEIVED

FEB - 6 2003

Department of Water Resources

P. O. BOX 190012

BOISE, IDAHO 83719

TELEPHONE (208) 333-0622

FACSIMILE (208) 333-8409

EMAIL: MHOWARD@FIBERPIPE.NET

February 5, 2003

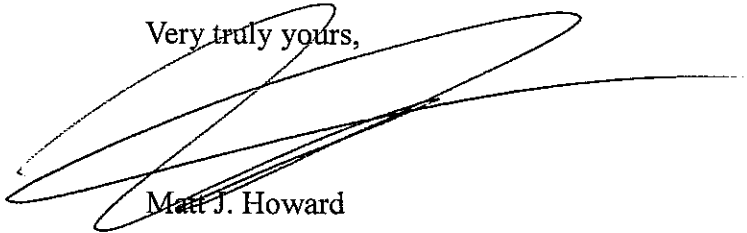
Idaho Department of Water Resources
1301 N. Orchard St.
Boise, ID 83706-2237

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

FEB - 6 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

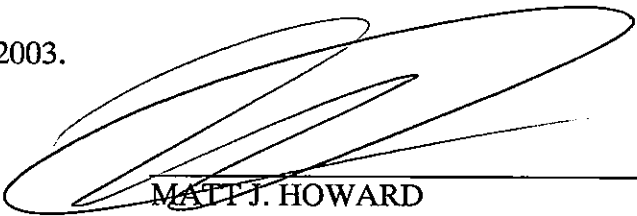
Attorney for the Estate of Eleanor I. Chase

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 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 February 5, 2003.

DATED this 5 day of February, 2003.


MATT J. HOWARD
Attorney for Estate

CERTIFICATE OF SERVICE

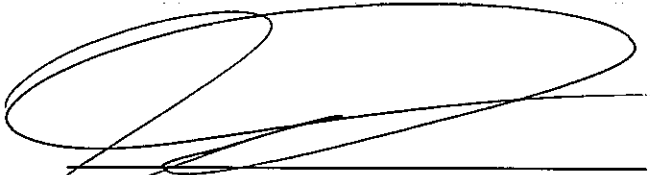
The undersigned certifies that on the 5 day of February 2003, a true and correct copy of the within and foregoing document was sent to the following person(s) as indicated below:

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

TRANSACTION REPORT

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IDAHO DEPARTMENT OF
WATER RESOURCES

Fax

To: Matt Howard for the Estate of Eleanor Chase
From: Deborah J. Gibson (208) 327-7953

Fax: 333-8409, 331-1202, 938-7904 (respectively)
Date: February 4, 2003

Phone:
Pages:

Re: Application for Amendment of Permit No. 63-12448 (City of Eagle)
CC: Bruce Smith for the City of Eagle and Molly O'Leary for

IDAHO DEPARTMENT OF WATER RESOURCES

Fax

To:	<u>Matt Howard</u> for the Estate of Eleanor Chase	From:	Deborah J. Gibson (208) 327-7953
Fax:	333-8409, 331-1202, 938-7904 (respectively)	Date:	February 4, 2003
Phone:		Pages:	
Re:	Application for Amendment of Permit No. 63-12448 (City of Eagle)	CC:	<u>Bruce Smith</u> for the City of Eagle, and <u>Molly O'Leary</u> for Eagle Water Co.

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

•Comments: As you requested I have attached an Order Granting Petition for Reconsideration and Authorizing Discovery. This order was signed this morning by Glen Saxton. Glen has asked that I fax a courtesy to the other parties with fax numbers on file in this record. Therefore, I am faxing this Order to Bruce Smith and Molly O'Leary along with yourself. This order will go into the Statehouse mail on February 5, 2003.

RECEIVED

FEB 3 - 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)
APPLICATION FOR PERMIT NO. 63-12448)
IN THE NAME OF THE CITY OF EAGLE) PETITION FOR RECONSIDERATION AND
MOTION FOR EXPEDITED HEARING

INTRODUCTION

The Estate of Eleanor I. Chase ("Estate"), by and through its attorney Matt J. Howard, moves the Idaho Department of Water Resources (IDWR) for an expedited hearing on its Petition for Reconsideration of *Order Denying Motions to Vacate Hearing and Denying Motions for Order Authorizing Discovery (Jan. 31, 2003)* (hereinafter "*Order*"). Oral argument is requested. Pursuant to IDAPA 37.01.01.260, the grounds for this petition and motion are set forth below:

PETITION FOR RECONSIDERATION

Pursuant to IDAPA 37.01.01.711, the Estate petitions IDWR for reconsideration of the *Order* based on the following grounds:

1. *Unavailability of counsel.* Counsel for the Estate is required to appear before the Snake River Basin Adjudication (SRBA) Court at the Gem County Courthouse, Emmett, Idaho, on February 26, 2003, at 10:00 a.m., in subcase nos. 65-05033A *et al*, and again at 11:00 a.m. in subcase nos. 61-00293B *et al*. Counsel for the parties in those subcases, including IDWR's counsel, Candice McHugh, are scheduled to be at those hearings as well. Those SRBA hearings conflict with the IDWR contested case hearing scheduled for 9:00 a.m. on February 26, 2003, in Eagle, Idaho. Counsel for the Estate is a sole practitioner and has no other attorneys in his firm to cover the IDWR contested case hearing while counsel is at the hearings in Emmett, Idaho. It is simply physically impossible for the Estate's counsel to be in two locations at one time.
2. *Denial of Equal Protection.* The *Order* effectively denies the Estate's constitutional rights to equal protection under the laws. The Applicant, City of Eagle ("the Applicant") has repeatedly requested extensions from IDWR and each request has been summarily granted by IDWR without any requirement of showing of good cause. For example, the *Order* correctly states that "The September prehearing conference and several subsequent prehearing conferences were scheduled and vacated by request of the attorney representing the [Applicant]." As indicated in the *Order*, IDWR again granted a request by the Applicant to vacate the December 3, 2001, prehearing conference. Again, at the September 18, 2002, prehearing conference, IDWR granted the Applicant's request for additional time to negotiate with the protestants. *See Prehearing Order (Oct. 18, 2002)*. Except for the single motion currently before IDWR, the

Estate has never made a request for an extension or to vacate a hearing.

Moreover, unlike the Applicant, the Estate complied with IDAPA 37.01.01.260 and provided grounds for its motion. No rational basis exists for disparate treatment between the Applicant and the protestants in this case. To be sure, neither the Idaho Administrative Procedures Act nor IDWR's rules of procedure allow for preferential treatment of the Applicant.

Sitting in a quasi-judicial capacity, IDWR is required to treat similarly situated litigants the same. The fact that one party is an applicant does not entitle that party to preferential treatment under the rules of procedure. The disparate treatment is even more prejudicial given the fact that the applicant has no vested property right in the application, and therefore, has nothing to lose. Conversely, the protestants, like the Estate, have vested real property rights that stand to be permanently and irrevocably injured in the event the hearing officer bases his decision on information, which is incomplete because the protestants were forced to go to a contested case hearing without the opportunity to conduct even limited discovery.

3. *Denial of Due Process.* Fundamental to the constitutional requirement of due process is the right to a fair trial. The rules relating to discovery, which are provided for under IDWR's rules of procedure, are at the core of our system of jurisprudence. To deny a litigant, whose property rights stand to be diminished, the right to develop its case for trial (especially where there is no prejudice to the opposing party) runs contrary to every notion of fair play and constitutional due process. Due process should not be disregarded simply because the hearing is

before an agency and not a court. Because the agency's findings of facts are given deference on appeal, it is imperative that the litigants be given a full and fair opportunity to develop their case through discovery.

4. *No Prejudice to the Applicant.* In its "Response to Motion to Vacate Hearing Date" the Applicant does not set forth any specific prejudice it would suffer by vacating the hearing to allow for discovery. The Applicant merely provides a conclusory statement that "no further delays are appropriate." The Applicant cannot complain about delay because all the delays up to this point were specifically requested by the Applicant. Furthermore, what is the prejudice to the Applicant by allowing three or four months for discovery to be completed? The Applicant has been allowed to delay this case for 20 months. Why the sudden urgency now? Why is the Applicant determined not to extend this a few more months? Simple. The Applicant perceives it has the protestants at a disadvantage because there is no time left to conduct discovery. While the Applicant may favor a trial by ambush, it is repugnant to the concept of a fair trial.
5. *Reasonable Excuse Existed for Not Moving Earlier for Discovery.* The Applicant and the Estate entered into a binding agreement on November 26, 2002. A copy of that agreement is attached as **Exhibit A** hereto. The agreement is memorialized in a November 16, 2002, letter from the Estate's counsel to the Applicant's counsel. That letter expressly references the November 12, 2002, and the March 15, 2002, correspondence between counsel. *See e.g., Hemingway v. Gruener, 106 Idaho 422, 679 P.2d 1140 (1984)* (unsigned writings are considered part of the agreement where those writings are expressly referenced in the signed

writing). The agreement satisfies the statute of frauds, Idaho Code Title 9, Chapter 5 because it is in writing and is signed by the parties. It sets forth the parties to the agreement, the subject matter, the consideration, and all material terms of the agreement. *See e.g., Hemingway, 106 Idaho 422, 679 P.2d 1140.* It is also initialed by both parties. Nancy Merrill, acting as the President of the City Council, initialed the top of the first page of the letter, and Michael J. Chase initialed the second page. Under Idaho law, those initials constitute signatures for purposes of enforcing an agreement under the statute of frauds. *See e.g., Watkins v. Messenger, 115 Idaho 386, 766 P.2d 1267 (Ct. App. 1988).*

Because the agreement with the Applicant was consummated on November 26, 2002, it would have been unreasonable for the Estate to engage in discovery. However, the fact that a more detailed agreement was not executed by the Applicant does not negate the efficacy of the November 26, 2002, agreement, or the reasonableness of the Estate's conduct.

The *Order* incorrectly characterizes the events leading up to the Estate's motion as "failed" negotiations. As evidence above, that is not the case. Had the negotiations not resulted in an agreement by late November, then it would have been reasonable to expect the Estate to seek an order compelling discovery. However, those are not the facts. The Estate and the City Council consummated the agreement on November 26, 2002, by initialing the Exhibit A letter. That is not typical conduct of parties who are simply "negotiating." The agreement was complete. Consequently, it would have been unreasonable for either party at that

time to seek discovery from the other party based on the mindset of the parties at that time and under those circumstances.

6. *Prejudice to the Estate.* For sake of brevity, the Estate hereby incorporates by reference the grounds set forth in its earlier-filed Motion for Order Vacating Hearing. Additionally, the Estate, unlike the Applicant, stands to have its water rights permanently diminished if it is unable to adequately prepare for the hearing. Conversely, the Applicant has nothing to lose (because it only holds an application) and everything to gain by forcing this case to a hearing before the protestants have had an opportunity to conduct discovery.
7. *The Order Sets a Precedent Discouraging Settlement.* The *Order* establishes a precedent that discourages productive settlement negotiations. At prehearing conferences, including this case, IDWR encourages parties to work out their differences and reach settlement if possible. The Estate did exactly that. However, the Estate is now being penalized for diligently pursuing settlement. Implicit within the *Order* is the requirement that the Estate should have sought an order for discovery in November or December—despite the fact that the Estate and the Applicant had initialed a written agreement. This *Order* puts the Idaho water bar on notice that settlement is second seat to maintaining one's litigation position.
8. *The February 26, 2003, Hearing was "Tentative".* The October 18, 2002, Prehearing Order makes clear that the February 26, 2003, hearing date was "tentative." At the prehearing conference, the Estate's attorney expressed concern that the February 26 hearing date may not provide enough time for the parties to

complete settlement negotiations and complete discovery, if needed. The hearing officer indicated that the February 26 hearing date could be vacated if there were circumstances that warranted vacating the hearing. Clearly, there are circumstances unique to this case that warrant vacating the hearing and allowing for discovery.

9. *Need for Discovery.* The *Order* indicates that the movants did not describe any additional factual issues or subjects that must be explored through formal discovery. One of the primary purposes of discovery is to determine precisely the factual issues and subjects that will be litigated. Through the use of interrogatories, requests for admissions, requests for production, and depositions, it is possible to narrow and refine the facts and issues that will be disputed and those that will not. At the last prehearing conference and at the City Council meeting held on January 28, 2003, the Applicant threatened that it was going to hearing "on all the issues." What does that mean? Every factual issue? Every legal issue? It is a broad threat, but one that must be taken seriously. All the Estate knows at this point is that there are four broad issues to be decided by IDWR: (1) Will other water rights be injured?, (2) Will the change constitute an enlargement?, (3) Will the proposed change conflict with the local public interest?, and (4) Will the proposed use be contrary to the conservation of water resources? Because the Applicant carries the burden of persuasion, it must have facts to support those elements. The protestants are entitled to (a) determine through discovery what facts the Applicant possesses, (b) be given time to develop their case based on those known facts, and (c) be given time to conduct

additional discovery to test and evaluate the opposing party's evidence and determine what facts and issues are reasonably subject to dispute—i.e., time to determine what facts the Applicant will seriously dispute and those facts the Applicant will not seriously dispute.

The *Order* requires parties to exchange scientific/expert data a few weeks before trial. However, simply requiring parties to produce scientific and expert data a few weeks before trial is not a substitute for discovery nor does it provide for a fair trial. Production of documents is only one component of discovery. The *Order* does not even require full production of documents. It is limited to expert/scientific evidence. What about disclosure of documents and facts relating to the issues of local public interest and conservation of water resources? Even if those documents are produced, there is no opportunity to evaluate and develop additional facts, through discovery, based on the facts disclosed by the documents.

Additionally, the exchange of exhibits two weeks before the trial is not a substitute for discovery. It only requires the parties to disclose what evidence they intend to introduce. What about the facts and documents that a party possesses that run contrary to a party's position, but which the party will not introduce as evidence? How will the opposing parties ever learn of those facts and documents without having the opportunity to conduct discovery? How will the hearing officer ever learn of those facts and documents? One of the primary reasons there are discovery rules is because parties are generally unwilling to

disclose adverse facts through “informal” means unless required to do so formally through discovery.

Also, the *Order* implicitly questions what information the protestants seek through formal discovery. The answer to that question rests in large part on the issues that are framed by the Applicant. All the protestants know is that the Applicant is going to hearing “on all the issues.” Therefore, until the protestants hear otherwise from the Applicant, the protestants must be prepared to go on all the issues. Hopefully, in the event discovery is authorized, the Applicant will back away from its broad threat to go to trial on all the issues and will narrow the issues to be litigated. Those issues can be narrowed by the use of requests for admissions and pretrial stipulations.

10. *The Order Unfairly Favors the Applicant and Prejudices the Substantial Rights of the Estate.* Forcing this case to a hearing on February 26, 2003, unfairly favors the Applicant, who has nothing to lose. Because no discovery has been allowed, the protestants will be at a disadvantage to meaningfully challenge the Applicant’s evidence or test the veracity and knowledge of the Applicant’s witnesses. Without any meaningful ability to test and challenge the Applicant’s witnesses and evidence, the hearing officer will have to base his decision on a poorly developed evidentiary record, thus potentially diminishing the vested property rights of the protestants. Conversely, the Estate is simply requesting three to four months to conduct discovery so there can be a fair trial, where all parties have had a fair opportunity to prepare their case.

MOTION FOR EXPEDITED HEARING

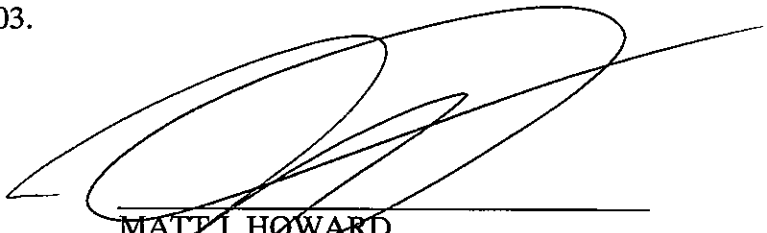
Pursuant to IDAPA 37.01.01.565 good cause exists to grant an expedited hearing on the above petition for the reasons set forth above and because one of the deadlines set forth in the *Order*, for which reconsideration is sought, will expire before the standard 14-day response time provided for under IDAPA 37.01.01.565.

CONCLUSION

In light of the constitutional equal protection and due process infirmities, the need for discovery, good cause shown, the prejudice to the Estate, and the total lack of prejudice to the Applicant, the Estate respectfully requests the following relief:

1. The February 26, 2003, hearing date be vacated, that an order compelling discovery be issued, and that a time certain be set for a contested case hearing following a reasonable time for the parties to complete discovery; or
2. In the event IDWR denies the above request for relief, then in the alternative, (and without waiving any right to appeal or challenge otherwise challenge denial of the above request for relief), the Estate requests that the February 26, 2003, hearing date be vacated and moved to the following month so the Estate can, at the very least, have its attorney present at the hearing.

DATED this 3 day of February, 2003.



MATT J. HOWARD
Attorney for Estate

CERTIFICATE OF SERVICE

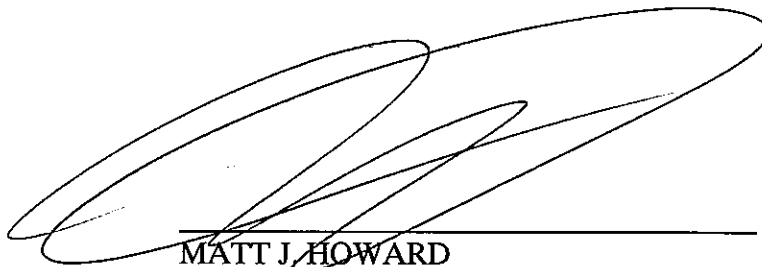
The undersigned certifies that on the 3 day of February 2003, a true and correct copy of the within and foregoing document was sent to the following person(s) as indicated below:

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

Weldon Fisher *Via Overnight 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

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

November 16, 2002

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 have reviewed your November 12, 2002, letter which I understand is intended to outline the basic framework of a potential settlement agreement between our clients. While I am not authorized to make a formal offer, counteroffer, or acceptance, I concur generally with the framework set out in your letter, subject to the following:

1. With respect to the dairy well, the final agreement will need to incorporate the provisions set out in my March 15, 2002, letter relating to (a) annual fluctuations in water use, (b) the City's compliance with environmental regulations and a promise by the City to indemnify the Chases for any failure by the City to comply with such regulations, and (c) the right to receive mitigation water so long as Chases or their successors continue to use the water for authorized agricultural/dairy and/or domestic uses.
2. With respect to the small irrigation well, the City will need to pay the Chases a fixed dollar amount that reflects the fair market value of the type and amount of pipe necessary to connect the small irrigation well to the large well. The Chases will be responsible to purchase the pipe, if and when they need it. As you can understand, it does not make sense for the Chases to purchase the pipe until they receive transfer approval from the Idaho Department of Water Resources (IDWR) to add a point of diversion for their water right.
3. With respect to the large irrigation well, the agreement will need to include language that the Chases or their successors will receive mitigation so long as the well is used for agricultural purposes.

EXHIBIT A

NOVEMBER 16, 2002

4. As for reimbursement of professional fees, I am only authorized to accept the \$14,968.00 set out in my September 24, 2002, letter. Because the issue of professional fees can be a deal breaker, it will be necessary for our clients to reach an agreement on that issue before any time is spent drafting a final agreement.

The February 26, 2003, hearing date is also an issue of concern. If our clients are unable to execute a written agreement by December 13, 2002, it will be necessary for the City to vacate the February 26 hearing date to allow the parties more time to finalize the settlement agreement. This action will avoid the necessity to commence discovery, which would otherwise burden the parties with more expense.

Please feel free to contact me if you have any questions.

Very truly yours,

Matt J. Howard

Cc: Estate of Eleanor I. Chase
Mike Chase ✓

12,000 my Chase
11-26-02

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

November 12, 2002

Matt J. Howard, Esquire
2402 W. Jefferson
Boise, ID 83702

RE: City of Eagle/ Chase Protest

Dear Matt:

Given the long history of negotiations on this matter and what I believe is the basis for a final agreement, I wanted to put in writing where I understand we are. I have based this on the numerous letters between us, including your March 15, 2002, June 7, 2002, and September 24, 2002, letters and the communications between our clients. I have tried to keep the concepts as simple as possible to avoid confusion but I want to confirm the basic outline before going to the expense of putting an agreement together.

Dairy Well (water right nos. 63-05226 and 63-15820)

The City would provide mitigation water for .17 cfs and 12.4 ac-ft/yr and pay for the installation of the piping to get the water to the present water taps. The mitigation water would be provided so long as the Chases or their successors maintain the current dairy operation. As for the backup supply, the City would reimburse the Chases for a water truck to deliver water in the event the City's system goes down and emergency water is needed for the dairy.

Small Irrigation Well (water right no. 63-05229)

The City will provide the Chases with PVC pipe to connect to the large irrigation well. The Chases will be responsible for hooking it up to the well if they decide to use it.

Large Irrigation Well (water right no. 63-08663)

The City will pay for monitoring of this well in accordance with Dave Shaw's letter of October 22, 2001. If there is an increased pumping lift resulting from the Brookwood well, the City will pay for the increased power cost and, if necessary, lowering the bowls. This mitigation

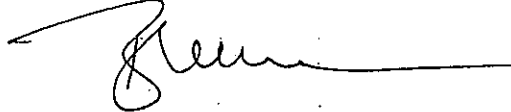
City of Eagle/ Chase Protest

November 12, 2002

Page 2

in the form of payments will be provided so long as the Chases or their successors maintain the current dairy operation. On attorney fees, I am only authorized to offer the \$7500.00 in attorney fees that the City agreed to pay. As to the water rights, the Chases would keep their water rights. Obviously, I do not mean this to be the final document but I would like to confirm the basis before we put one together. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bruce M. Smith', with a long horizontal line extending to the right.

Bruce M. Smith

BMS/aad

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 15, 2002

Via Facsimile and U.S. Mail

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 14, 2002, letter outlining the City's offer, which I have reviewed with my clients. My clients are very disappointed with your letter. Instead of moving forward, the letter represents a significant step backwards from what was agreed to at the settlement conference.

Early on in this process, Chris Meyer and I recognized that there was a feeling of mutual respect between our respective clients and that both our clients wanted to treat the other fairly. Our goal as attorneys in this matter was to find the most efficient and economical manner in which to allow our clients to resolve this matter. Rather than have attorneys repeatedly send written offers and counteroffers back to each other (i.e., spend our clients' money "papering" the case), we decided that given the amicable relationship between our clients, we would have them sit down around a table and work out the terms of a settlement. That is exactly what we did on December, 12, 2001.

The settlement conference was a success. Our clients worked out the basic framework and terms of a settlement. As identified below, there were only a few issues left unresolved that the City wanted to think about a bit more. As for those unresolved issues, the parties had discussed a "range of options" for the City to consider. The net result is everyone left the settlement conference expressing their satisfaction as to the productive nature of the conference and recognizing that the basic settlement framework had been agreed to.

Your letter is inconsistent with the framework agreed to at the settlement conference. Your letter advances the "Option A" approach (as sketched out in Chris Meyer's October 9, 2001, letter), where the Chases would convey their water rights to the City. That approach was rejected by the Chases for a variety of reasons, two of which I will repeat here: (1) The Chases expressed

MARCH 15, 2002

the need to maintain ownership of their water rights, and (2) the offer of a discount on future water hookups is too speculative to be of any value to the Chases. The offer in your letter is directly contrary to the Option B approach (which is also outlined in Chris Meyer's letter) that would allow the Chases to maintain ownership of their water rights and receive temporary mitigation. The parties agreed to that approach at the settlement conference.

Putting aside your letter, it is my clients' intent to stick with the terms of settlement agreed to at the settlement conference. Please do not interpret this statement as a counteroffer. It's not. We're well beyond that. The terms have already been negotiated and agreed to, and my clients are not going to go through the expense to cover that ground again. Outlined below are the terms of the settlement conference, which my clients are still willing to standby:

Dairy Well (Water right nos. 63-05226 and 63-15820)

1. Chases retain ownership of the water rights.
2. City will provide mitigation water for 0.17 cfs and 12.4 ac-ft/yr.
3. City will allow for annual fluctuations in water use.¹
4. Mitigation water will be provided to the Chases only for as long as the Chases (or their successors) continue to operate their wells in accordance with current agricultural/dairy operations at the present location.²
5. Chases will not use their water rights while receiving mitigation water.³
6. In the future, when the Chases sell the land several options were discussed: (a) the Chases could sell the land with the water and the successor would receive mitigation water per #4. above; (b) Chases could transfer their water to other lands, (c) Chases could sell their water to the highest bidder, or (d) the City would accept a forced sale of the water rights based on fair market value as determined by a licensed appraiser.
7. City will pay for the labor and materials for installing the necessary infrastructure to get the mitigation water to the water taps currently on the Chase property. Dave Shaw and Vern Brewer will design the system; Chases will hire a private contractor to do the work; and the City will pay the private contractor to do the work. Chases will also convey an easement to the City for installation and maintenance of its vault (enclosure for meter and backflow preventer).

¹ The range of fluctuation was never agreed to at the settlement conference. However, the 110% fluctuation range for the diverted volume of water set out in your February 14, 2002, letter is acceptable, except that the Chases would only pay for water usage exceeding the 110% cap.

² This language mirrors the language set out in Chris Meyer's October 9, 2001, letter and fairly reflects what was agreed to at the settlement conference.

³ To avoid forfeiture of their water rights and to allow the City to obtain some benefit from those water rights, the parties, pursuant to Chris Meyer's suggestion, considered having the water rights put into the water bank and allow the City to receive the benefit of rental payments. The Chases are still agreeable to this approach.

MARCH 15, 2002

8. City will indemnify Chases for any loss of cattle or to the dairy operation caused by failure of the City's water system.⁴
9. City will ensure compliance with all environmental, EPA, and DEQ regulations. The concern here is that the City's proposed well will be located in close proximity to the dairy and lagoons. To the extent environmental regulations prohibit the use of a public well in such close proximity to a dairy, it would be the well, not the Chase dairy that would have to shut down. I am assuming the City already investigated the environmental compliance issues before filing its transfer application, so this issue should not be a problem for the City.
10. The Chases will withdraw their protest.

Small Irrigation Well (Water right no. 63-05229)

The City agreed to mitigate based upon the most technically and economically viable option as to be recommended by Dave Shaw and Vern Brewer. At the settlement conference, there was insufficient information for Dave and Vern to recommend the best option. It was agreed that Dave and Vern would do some follow-up work and recommend the best option. The range of options discussed at the settlement conference included:

1. Lowering the pump.
2. Increasing the size of the casing and retrofitting existing well.
3. Construct and equip a new well.
4. Tying into the large irrigation well.
5. Tying into the City's system.

Large Irrigation Well (Water Right no. 63-08663)

1. City will pay for monitoring of the large irrigation well as outlined in Dave Shaw's letter.
2. If monitoring shows a reduction in ground water levels attributable to the City's well, the City will (a) reimburse Chases for additional power costs attributable to interference from the City's well, and (b) pay for the costs of lowering the bowls in the large irrigation well, if the drawdown is too great.

Professional Fees

No agreement was reached on the issue of reimbursing the Chases for the professional fees they have incurred in this matter. However, Lynne Sedlacek asked for hard numbers, which were provided to the City in the amount of \$12,049. Your letter offers \$4,000. I personally feel that number is far too low given that we are now spending money caused by the backtracking in your letter. My preference at this point is to see if we still have an agreement concerning the terms

⁴ There was no agreement reached on this issue. While Chris Meyer thought it was a reasonable request, Bruce, you expressed some reservations. My clients concerns are, and remain, that the City is asking my clients to "give up" control of their water supply to the City. After the City starts pumping from its new well, in all likelihood, the dairy well will go dry, and the Chases will have no means to get water to their cattle except through the City's system. The City has represented that its system has so many built in redundancies that it is virtually impossible for the Chases not to have their water available 24/7. That is fine. However, in the unlikely event that the City's water system fails, it is the City, not the Chases, who should bear the costs for the losses sustained to the dairy.

MARCH 15, 2002

outlined above. If we do, then we can discuss the fees issue. If not, there is no sense in going there.

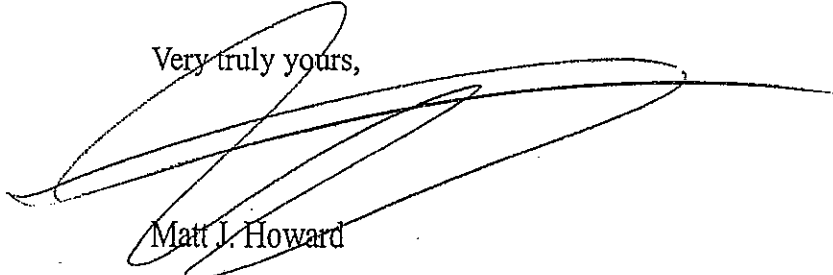
I still believe that settlement, albeit fragile at this point, is possible if the City wishes to stick by the terms reached at the settlement conference. I recognize that Lynne cannot speak for the Council. We understood that at the settlement conference. However, we also recognize the practical reality that Lynne's recommendation will greatly influence the Council's decision. Therefore, at this point, what we need is a commitment by Lynne that she is going to stick with the framework agreed to at the settlement conference. If we have that, then I think we can move forward. On a more personal note, I like to think I am a fair judge of character. Lynne has struck me as a person who stands by her word, much like we all knew Eleanor to be and much like we know her son, Mike, to be. If she possesses that character trait, I think we will get this thing back on track.

I do not wish to end this letter on an adversarial tone, but I think in light of recent developments, it is best that we do not tiptoe around. If the City does not wish to follow the framework agreed to at the settlement conference, I do not believe any further discussions would be fruitful. If the City wishes to pursue the matter to a contested case hearing, we will, of course, engage in discovery and seek appropriate time to complete necessary studies and complete discovery. As you know, the City carries the burden of proof and persuasion to satisfy the elements required for transfer approval. Additionally, based on the facts of this case, *Parker v. Wallentine*, 103 Idaho 506, 650 P.2d 648 (1982) applies. As you know, *Parker* stands for the proposition that well owners such as the Chases are protected to the maintenance of historic ground water pumping levels for their domestic well. That poses a significant obstacle for the City. As for the other wells, the task does not get any easier. The City would need to produce studies and evidence as to what would constitute "reasonable" ground water pumping levels. My understanding is that the Department has not established reasonable ground water pumping levels for Basin 63. The City would be breaking new ground and would be expending significant time, resources, and money necessary to cover that ground. As you know, United Water confronts these same issues. However, from my experience, United Water has opted to reach a settlement with affected water users and make them whole, rather than expend the significant time and resources involved in contested case proceedings and judicial review.

My clients would rather settle this matter pursuant to the terms earlier agreed to. However, if settlement is not possible, they have no choice but to go the litigation route. The livelihood of their dairy and farming operation and the efficacy of their water rights are at stake. Simply put, the Chases have no choice but to be involved in this case. It is up to the City to elect which direction this case is going to go. I will await your reply.

MARCH 15, 2002

Very truly yours,



Matt J. Howard

Cc: Clients
Dave Shaw, ERO
Chris Meyer, Esq.

P. S. I understand from your earlier correspondence and from recent ex parte communications your office has had with my client, the City is interested in purchasing or otherwise acquiring the Chase water rights and obtaining a commitment from the Chases that they will not protest future applications to be filed by the City. I also understand that the City may be willing to help facilitate increasing the density of the Chase land. These are additional issues that were not discussed at the settlement conference, but which my clients would be willing to discuss with the City. Finally, while Lynne and other members of the City Council are free to talk with my clients about these issues, I would request that all further communications to my clients from the City's legal counsel be directed through this office.



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

January 31, 2003

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

Dear Interested Parties:

Enclosed is an Order Denying Motions to Vacate Hearing and Motions for Order Authorizing Discovery issued by Glen Saxton as hearing officer in this matter.

If you have any questions regarding this matter, please contact Glen Saxton or me at (208) 327-7900.

Sincerely,

Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

Enclosure

C: Service list
Gary Spackman, Western Region (w/encl.)

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

JAN 30 2003

WATER RESOURCES
WESTERN REGION

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF	)	RESPONSE TO MOTION TO
	)	VACATE HEARING DATE
CITY OF EAGLE, Petitioner	)	
	)	
APPLICATION FOR PERMIT NO. 63-12448	)	
_____	)	

COMES NOW the City of Eagle and objects to the motions to vacate the February 26, 2003, hearing date in this matter submitted by Eagle Water Company and the Chase Estate. Neither entity has provided any substantive reason why the hearing should be vacated other than the desire to undertake discovery. It appears that the motions are merely means to delay the opportunity for the City of Eagle to have its application heard by the Department. Furthermore, there is plenty of time to undertake discovery before the hearing if that is desired.

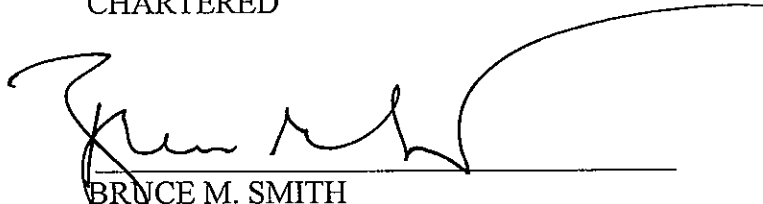
As additional explanation as to the Chase request, the City of Eagle and the Chase Estate had reached a settlement agreement, but due to disagreement over the documentation of details, the Chases refused to complete the agreement. Therefore, the Chase request for vacation of the hearing date is in fact based on their own actions, not

those of the City of Eagle. It is therefore detrimental to the City of Eagle's interests to allow the Chases to refuse to consummate the agreement, and then use that as the basis for vacating the City's hearing date.

As to the Eagle Water Company, no agreement has been reached with them. Nevertheless, based on the discussions which have taken place, the information already provided to them by the City, and the opportunity for discovery before the hearing, there is no basis for vacating the hearing date. Certainly neither entity has provided anything other than a generic intent to undertake discovery as the basis for the motion. The City is entitled to have its hearing and no further delays are appropriate. Therefore, the City requests that the motions be denied.

DATED this 30 day of January, 2003.

MOORE SMITH BUXTON & TURCKE,
CHARTERED



BRUCE M. SMITH
Attorney for City of Eagle

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30 day of January 2003, I caused to be served a true and correct copy of the foregoing Response to Motion to Vacate Hearing Date via U.S. Mail Postage pre-paid, and addressed to the following:

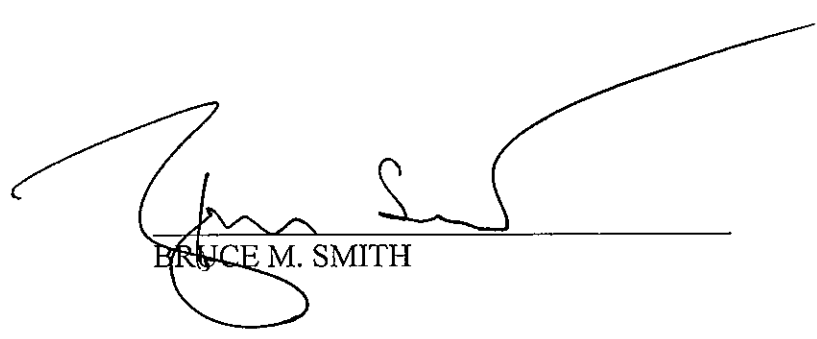
IDWR
Western Region
2735 Airport Way
Boise, Idaho 83705

Matt Howard
2402 W. Jefferson
Boise, Idaho 83702

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



BRUCE M. SMITH

B

1896 North Eagle Road
Eagle, Idaho 83616
jimburton3@aol.com
January 23, 2003

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JAN 27 2003
WATER RESOURCES
WESTERN REGION

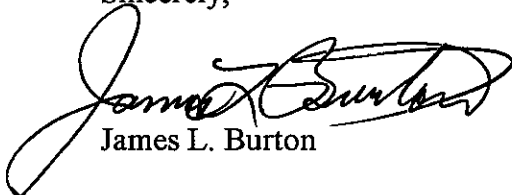
Mr. Gary Spackman
State of Idaho
Department of Water Resources
2735 Airport Way
Boise, Idaho 83705

Subject: Application for Amendment No. 69218 in the Name of City of Eagle

Dear Mr. Spackman:

The group of protestants for whom I am spokesman agree with and support the motions from other protestants requesting to vacate the hearing now scheduled for February 26, 2003 in the above matter. We respectfully request that this vacation be granted.

Sincerely,


James L. Burton

c: City of Eagle
310 East State Street
Eagle, Idaho 83616

Robert DeSchazo, Jr.
Eagle Water Company
P.O. Box 455
Eagle, Idaho 83616

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

Bruce Smith
Moore Smith Buxton &
Turcke, Chtd
P. O. Box 2720
Boise, Idaho 83701-2720

Weldon Fisher
546 East Beacon Light Road
Eagle, Idaho 83616

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



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
JAN 27 2003

Department of Water Resources

RECEIVED
JAN 28 2003

WATER RESOURCES
WESTERN REGION

January 23, 2003

Mr. Gary Spackman
Idaho Department of Water Resources
1301 N. Orchard
P.O. Box 83720
Boise, Idaho 83720-0098

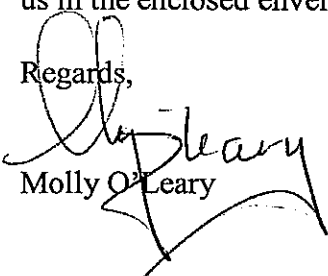
Via facsimile (208) 327.7866
and First Class U.S. Mail

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

Dear Mr. Spackman:

Enclosed please find EAGLE WATER COMPANY, INC.'S MOTION FOR ORDER VACATING HEARING AND MOTION FOR ORDER AUTHORIZING DISCOVERY. An additional copy of the motion has been enclosed, along with a self-addressed, stamped envelope. Please have the enclosed pleading copy date-stamped "Received" and return the stamped copy to us in the enclosed envelope.

Regards,


Molly O'Leary

ENCLOSURE

Cc: Parties of Record

RECEIVED

JAN 27 2003

Department of Water Resources

RECEIVED

JAN 28 2003

WATER RESOURCES
WESTERN REGION

MOLLY O'LEARY
Richardson & O'Leary PLLC
P.O. Box 1849
Eagle, Idaho 83616
Telephone: (208) 938.7900
Facsimile: (208) 938.7904

Attorney for Eagle Water Company, Inc

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.
) MOTION FOR ORDER VACATING
) HEARING AND MOTION FOR ORDER
) AUTHORIZING DISCOVERY
)

INTRODUCTION

Eagle Water Company, Inc. ("Eagle Water"), by and through its attorney Molly O'Leary, moves the Idaho Department of Water Resources (IDWR) for an order vacating the contested case hearing currently scheduled for February 26, 2003, and for an order authorizing discovery. Oral argument is respectfully requested. Pursuant to IDAPA 37.01.01.260, the grounds for these motions are set forth below:

MOTION FOR ORDER VACATING HEARING

Pursuant to IDAPA 37.01.01.052, 37.01.01.260, 37.01.01.413.01, and 37.01.01.565, Eagle Water moves IDWR for an order vacating the discovery deadline and contested case hearing currently scheduled for February 26, 2003. *See Prehearing Order (Oct. 18, 2002); Notice of Hearing (Jan. 10, 2003).* The grounds for this motion are as follows:

EAGLE WATER COMPANY MOTION FOR ORDER
VACATING HEARING AND MOTION FOR ORDER
AUTHORIZING DISCOVERY - 1

1. On September 18, 2002, a prehearing conference was held in the above-captioned case.
2. At the close of the prehearing conference, the applicant, City of Eagle ("the Applicant") requested additional time to negotiate settlement with the protestants.
See Prehearing Order (Oct. 18, 2002)
3. Based on settlement negotiations and statements made by the Applicant's attorney in the interim, which statements Eagle Water reasonably relied on, Eagle Water reasonably believed its protest would be resolved through settlement and a contested case hearing would not be required.
4. Based upon this reliance and reasonable belief, Eagle Water did not engage the Applicant in discovery because Eagle Water reasonably believed that discovery would have frustrated settlement negotiations and substantially increased the costs to the parties.
5. The last communication with the City of Eagle regarding settlement was in a letter to the city's attorney on January 13, 2003. *See Exhibit A, attached.*
6. Based on the impending hearing date and the lack of communication from the Applicant following the January 13th letter, Eagle Water now believes that it is unlikely that its protest will be satisfactorily resolved by means of a negotiated Stipulation with the City of Eagle.
7. The current procedural schedule does not allow Eagle Water enough time to properly prepare its case and defend against the claims and assertions made by the Applicant. Eagle Water believes that there is substantial discovery that needs to be completed before this case can be justly and properly tried.

8. Unless the hearing is vacated and a reasonable time allowed for discovery, Eagle Water will be greatly prejudiced. Eagle Water has several wells located in close proximity to the new well proposed by the Applicant. If the new well is allowed to be developed and Eagle Water is not given a fair and full opportunity to develop its case through discovery and present its case at a contested case hearing, Eagle Water's ability to serve its customers and the public interest will be permanently threatened and jeopardized.

9. Vacating the hearing, on the other hand, does not prejudice the Applicant.

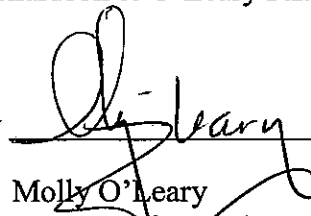
MOTION FOR ORDER AUTHORIZING DISCOVERY

Pursuant to IDAPA 37.01.01.521 and the *Prehearing Order (Oct. 18, 2002)*, Eagle Water moves IDWR for an order authorizing discovery.

DATED this 23rd day of January, 2003.

Richardson & O'Leary PLLC

By



Molly O'Leary
Attorneys for Eagle Water Company, Inc.



COPY

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

January 13, 2003

Bruce M. Smith, Esq.
225 North Ninth Street, Suite 420
Boise, Idaho 83702

Via facsimile (208.331.1202)
and U.S. Mail

Re: City of Eagle, Application for Permit No. 63-12448
For Settlement Discussions Only

Dear Bruce:

This letter is in response to your correspondence dated November 26, 2002. We have reviewed the City of Eagle's proposal for resolving Eagle Water Company's protest to the City's application for Permit No. 63-12448 and have the following comments:

1. Eagle Water generally agrees with the City's offer to test and monitor its proposed Brookwood well.
2. Eagle Water believes the City needs to commit to a 10-year monitoring program, the same as was previously required for this diversion as a condition of Permit No. 63-12448 obtained by the City in December of 1998.
3. Eagle Water requires clarification of the term "all reasonable alternatives" in the third sentence of the second paragraph under "Operation." From our perspective, the only point in entering into a stipulation to resolve our protest is to eliminate the need for future, costly litigation should the City of Eagle's well injure Eagle Water. We will not agree to language that merely postpones to a later date and time a determination of the extent of the City of Eagle's commitment and obligations pursuant to such a stipulation. If the City of Eagle's Brookwood well injures Eagle Water, the only remedy acceptable to Eagle Water is one that does not injure Eagle Water's senior rights.
4. Finally, Eagle Water does not agree to the proposal contained in sentence four of the second paragraph under "Operation". Most, if not all, of the other protestants' wells are in Eagle Water's service territory and it is Eagle Water's intent to serve such customers if and when such need should arise. Consequently, it is Eagle Water's position that, if there is no other alternative to remedy injury caused by the City's Brookwood well to such

EXHIBIT A

CERTIFICATE OF SERVICE

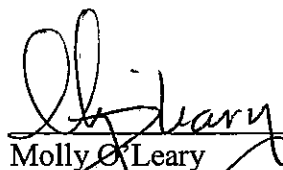
The undersigned certifies that on the 23rd day of January 2003, a true and correct copy of the within and foregoing document was sent to the following person(s) by facsimile (as noted) and/or U.S. Mail:

Matt J. Howard
Attorney at Law
P.O. Box 190012
Boise, Idaho 83719
(208) 333.8409

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

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

Bruce Smith, Esq.
Moore Smith Buxton & Turcke, Cht'd
225 N. 9th St., Ste. 420
Boise, ID 83702
(208) 331.1202


Molly O'Leary



Molly O'Leary

Tel: 208-938-7902 Fax: 208-938-7904

molly@richardsonandoleary.com

P.O. Box 187700 East State Street, Eagle, Idaho 83616

FAX

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE MAY BE PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED BELOW. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE, (COLLECT IF NECESSARY) AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. MAIL.

To: Mr. Gary Spackman

From: Molly O'Leary

Fax: 208.334.2348

Pages: 7

Phone: 208.334.2190

Date: January 23, 2003

Re: 1076/3.4 - Application to Annul Permit

CC: Matt J. Howard (333.8409)

No. 63-12448

Bruce Smith (331.1202)

(Motion to Vacate Hearing - Motion to

Authorize Discovery)

PLEASE SEE ATTACHED

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

January 20, 2003

RECEIVED
JAN 22 2003
WATER RESOURCES
WESTERN REGION

Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705-5082

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

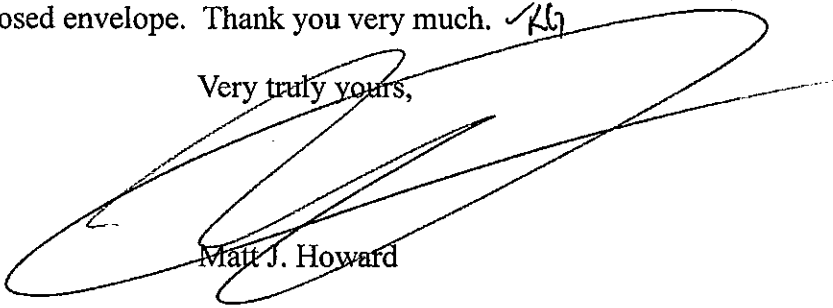
Dear Clerk:

Enclosed for filing with the Idaho Department of Water Resources in the above-referenced matter are the following:

1. Motion for Order Vacating Hearing and Motion for Order Authorizing Discovery; and
2. Affidavit of Mike Chase.

I have also enclosed additional copies of those documents that I would ask that you conform and return to me in the enclosed envelope. Thank you very much. *MJH*

Very truly yours,


Matt J. Howard

Enclosures
Cc: Client

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

RECEIVED

JAN 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) MOTION FOR ORDER VACATING
HEARING AND MOTION FOR ORDER
AUTHORIZING DISCOVERY

INTRODUCTION

The Estate of Eleanor I. Chase ("Estate"), by and through its attorney Matt J. Howard, moves the Idaho Department of Water Resources (IDWR) for an order vacating the contested case hearing currently scheduled for February 26, 2003, and for an order authorizing discovery. Oral argument is respectfully requested. Pursuant to IDAPA 37.01.01.260, the grounds for these motions are set forth below:

MOTION FOR ORDER VACATING HEARING

Pursuant to IDAPA 37.01.01.052, 37.01.01.260, 37.01.01.413.01, and 37.01.01.565, the Estate moves IDWR for an order vacating the discovery deadline and contested case hearing currently scheduled for February 26, 2003. *See Prehearing Order (Oct. 18, 2002); Notice of Hearing (Jan. 10, 2003).* The grounds for this motion are as follows:

1. On September 18, 2002, a prehearing conference was held in the above-captioned case.
2. At the close of the prehearing conference, the applicant, City of Eagle (“the Applicant”) requested additional time to negotiate settlement with the Estate and other protestants. *See Prehearing Order (Oct. 18, 2002).*
3. Following the prehearing conference, the Estate and the Applicant engaged in further settlement negotiations. During this time period, numerous meetings, phone calls, and correspondence were exchanged between the parties and their counsel. The Estate expended much time, resources, and expense in furtherance of seeking a reasonable settlement between the parties. *See Affidavit of Michael J. Chase.*
4. On November 26, 2002, Michael J. Chase met with the City Council (“Council”) and the parties reached an agreement as to all the material terms of the settlement between the parties. *Id.*
5. On December 10, 2002, the Applicant’s attorney sent a letter confirming that a settlement had been reached. *Id., Ex. A.*
6. On December 27, 2002, the Applicant’s attorney sent a draft of the settlement document to the Estate. *Id.*
7. On January 13, 2003, the Estate’s attorney sent a revised draft of the settlement document to the Applicant’s attorney. *Id.*
8. On January 13, 2003, Mr. Chase met with Nancy Merrill, the Mayor of the City of Eagle, to review the settlement document. The Mayor expressed approval of the

settlement document, provided that two revisions requested by the Mayor were included in the settlement document. *Id.*

9. On January 14, 2003, the settlement document was revised to include the changes requested by the Mayor, and the Applicant's attorney was informed that the changes to the settlement document had been made. *Id.*
10. On the evening of January 14, 2003, Mr. Chase appeared at the city council hearing to review the settlement document with the Council. Mr. Chase was surprised by statements made by council members indicating that since the contested case hearing date was so close, the Council would prefer to go to the hearing rather than adhere to the settlement agreement entered into by the parties. However, the Council postponed making a final decision on the matter until the next council meeting scheduled for January 28, 2003. *Id.*
11. Based upon the statements made by council members at the January 14, 2003, hearing, the Estate reasonably believes that, despite earlier assurances and statements made by the Applicant and its attorney, the Applicant will elect to proceed to a contested case hearing. *Id.*
12. Because of the progress made during settlement negotiations and statements made by the Applicant and its attorney, which statements the Estate reasonably relied on, the Estate reasonably believed its protest would be resolved through settlement and a contested case hearing would not be required. *Id.*
13. Based upon this reliance and reasonable belief, the Estate did not engage the Applicant in discovery. Given the status of settlement, engaging in discovery would have been neither reasonable nor prudent. Discovery, at the time, would

have frustrated settlement negotiations and substantially increased the costs to the parties. *Id.*

14. Because it appears that the Applicant will (after the Council meets again on January 28, 2003) elect to engage in litigation against the Estate, the Estate will need adequate time to conduct discovery.
15. The current schedule does not allow the Estate enough time to properly prepare its case and defend against the claims and assertions made by the Applicant. There is substantial discovery that needs to be completed before this case can be justly and properly tried.
16. Unless the hearing is vacated and a reasonable time allowed for discovery, the Estate will be greatly prejudiced. The Estate has numerous irrigation, commercial, and domestic wells and water right points of diversion located in very close proximity to (i.e. across the street from) the new well proposed by the Applicant. If the new well is allowed to be developed and the Estate is not given a fair and full opportunity to develop their case through discovery and present its case at a contested case hearing, the Estate's livelihood—i.e., its commercial dairy, farming, and domestic activities—will be permanently threatened and jeopardized. *Id.*
17. Conversely, vacating the hearing does not prejudice the Applicant. Had the Applicant informed the Estate earlier of its desire to litigate this matter (rather than wait until the eleventh hour), the parties could have avoided wasting substantial time and money pursuing settlement and instead prepared their cases for hearing. Additionally, the Estate has not withdrawn the settlement document.

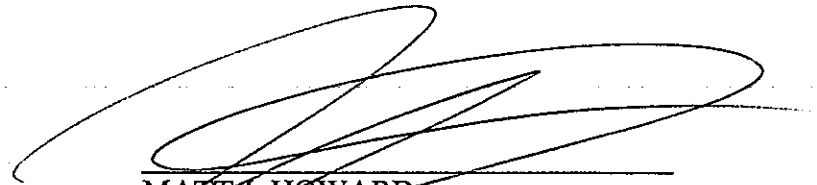
If the Applicant wants to resolve this matter (as earlier agreed to), the Estate remains ready, willing, and able to execute the settlement document. *Id.*

18. Additionally, the Estate has contacted the other protestants to this case, each of whom has indicated that they support vacating the hearing date and allowing more time for discovery. *Id.*

MOTION FOR ORDER AUTHORIZING DISCOVERY

Pursuant to IDAPA 37.01.01.521 and the *Prehearing Order (Oct. 18, 2002)*, the Estate moves IDWR for an order authorizing discovery. This motion is based upon the grounds set forth above and in the *Affidavit of Michael J. Chase* filed contemporaneously herewith.

DATED this 20 day of January, 2003.



MATT J. HOWARD
Attorney for Estate

CERTIFICATE OF SERVICE

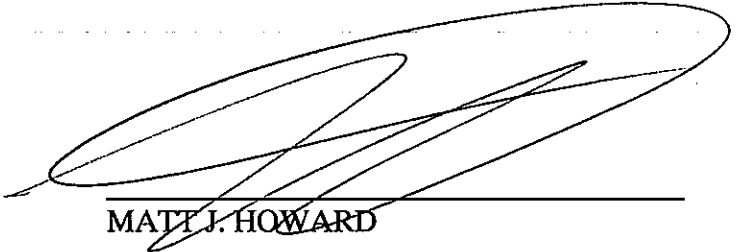
The undersigned certifies that on the 21 day of January 2003, a true and correct copy of the within and foregoing document was sent to the following person(s) by U.S. Mail:

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 J. HOWARD

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

RECEIVED
JAN 22 2003
WATER RESOURCES
DIVISION

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 MICHAEL J. CHASE

STATE OF IDAHO)
County of Ada) ss.

MICHAEL J. CHASE, being first duly sworn upon oath, deposes and says:

1. I am a beneficiary of the Estate of Eleanor I. Chase ("Estate"), and, pursuant to authorization from the Estate, I have been involved in coordinating the Estate's efforts to protect its water rights from the injury that will occur should the above-captioned application be approved. I make the following statements based on my personal knowledge, and I am competent to testify thereto.
2. Following the September 18, 2002, prehearing conference, the Estate and the City of Eagle ("Applicant") engaged in further settlement negotiations. During this time period, numerous meetings, phone calls, and correspondence were

exchanged between the parties and their counsel. The Estate expended much time, resources, and expense in furtherance of seeking a reasonable settlement between the parties.

3. On November 26, 2002, I, on behalf of the Estate, met with the City Council ("Council"), and we reached an agreement on all the material terms of the settlement between the parties.
4. On December 10, 2002, the Applicant's attorney sent a letter confirming that a settlement had been reached. A true and correct copy of that letter is attached as Exhibit A to my affidavit.
5. On December 27, 2002, the Applicant's attorney sent a draft of the settlement document to the Estate.
6. On January 13, 2003, the Estate's attorney sent a revised draft of the settlement document to the Applicant's attorney.
7. On January 13, 2003, I met with Nancy Merrill, the Mayor of the City of Eagle, to review the settlement document. The Mayor expressed approval of the settlement document, provided that two revisions requested by the Mayor were included in the settlement document.
8. On January 14, 2003, the settlement document was revised to include the changes requested by the Mayor, and the Applicant's attorney was informed that the changes to the settlement document had been made.
9. On the evening of January 14, 2003, I appeared at the city council hearing to review the settlement document with the Council. I was surprised by statements made by council members indicating that since the contested case hearing date

was so close, the Council would prefer to go to the hearing rather than adhere to the settlement agreement reached by the parties. However, the Council postponed making a final decision on the matter until the next council meeting scheduled for January 28, 2003.

10. Based upon the statements made by council members at the January 14, 2003, hearing, I believe that, despite earlier assurances and statements made by the Applicant and its attorney, the Applicant will elect to proceed to a contested case hearing.
11. Because of the progress made during settlement negotiations and statements made by the Applicant and its attorney, which statements the Estate reasonably relied on, the Estate reasonably believed its protest would be resolved through settlement and a contested case hearing would not be required.
12. Based upon this reliance and reasonable belief, the Estate did not engage the Applicant in discovery. Given the productive manner in which settlement discussions progressed, engaging in discovery would have been neither reasonable nor prudent. Discovery, at the time, would have frustrated settlement negotiations and substantially increased the costs to the parties.
13. Because it appears that the Applicant will (after the Council meets again on January 28, 2003) elect to engage in litigation against the Estate, the Estate will need adequate time to conduct discovery.
14. The current schedule does not allow the Estate enough time to properly prepare its case and defend against the claims and assertions made by the Applicant.

15. Unless the hearing is vacated and a reasonable time allowed for discovery, the Estate will be greatly prejudiced. The Estate has numerous irrigation, commercial, and domestic wells and water right points of diversion located in very close proximity to (i.e. across the street from) the new well proposed by the Applicant. If the new well is allowed to be developed and the Estate is not given a fair and full opportunity to develop their case through discovery and present its case at a contested case hearing, the Estate's livelihood—i.e., its commercial dairy, farming, and domestic activities—will be permanently and irrevocably threatened and jeopardized.

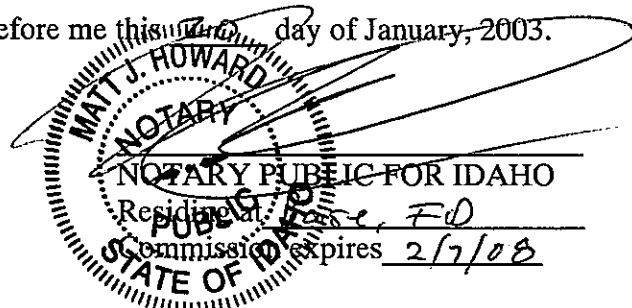
16. Conversely, vacating the hearing does not prejudice the Applicant. Had the Applicant informed the Estate earlier of its desire to litigate this matter, the Estate could have avoided wasting time and money pursuing settlement and instead prepared for hearing. Additionally, the Estate has not withdrawn the settlement document. The Estate remains ready, willing, and able to execute the settlement document.

17. I have contacted the other protestants to this case, each of whom has indicated that they support vacating the hearing date and allowing more time for discovery.

Further your affiant sayeth naught.

Michael J. Chase
MICHAEL J. CHASE

SUBSCRIBED AND SWORN to before me this 2nd day of January, 2003.



CERTIFICATE OF SERVICE

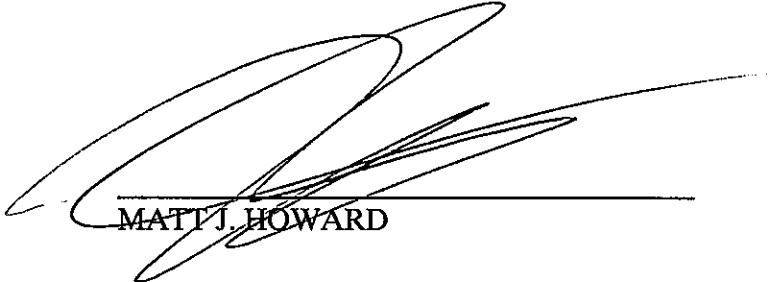
The undersigned certifies that on the 21 day of January 2003, a true and correct copy of the within and foregoing document was sent to the following person(s) by U.S. Mail:

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 J. HOWARD

U.S. Postal Service CERTIFIED MAIL RECEIPT (Domestic Mail Only; No Insurance Coverage Provided)	
Article Sent To:	
Postage \$	Postmark Here
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees \$	
MOLLY O'LEARY RICHARDSON & OLEARY PLLC PO BOX 1849 EAGLE ID 83616	
Instructions	

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
CITY OF
C/O BRU
MOORE
225 N 9TH
BOISE ID

2. Article Number
1717
PS Form 381

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) Gena Crist B. Date of Delivery 1-13-03

C. Signature [Signature]

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
ESTATE
C/O MA
PO BOX
BOISE ID

2. Article Number
1717
PS Form 381

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) WELDON T. F B. Date of Delivery 1-14-03

C. Signature [Signature]

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
WELDON
546 E BE
EAGLE ID

2. Article Number
1717
PS Form 381

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) James L. Burton B. Date of Delivery 1/16/03

C. Signature [Signature]

D. Is delivery address different from item 1? ☐ Yes ☒ No
If YES, enter delivery address below:

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☒ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes ☒ No

2. Article Number (Copy from service label)
1724
63-12448

PS Form 3811, July 1999

Domestic Return Receipt

 1896 North Eagle Road
Eagle, Idaho 83616
October 9, 2002

RECEIVED

OCT 10 2002

WATER RESOURCES
WESTERN REGION

Mr. Bruce Smith
Moore Smith Buxton & Turcke, Chtd
P. O. Box 2720
Boise, Idaho 83701-2720

Subject: City of Eagle Application for Amendment of IDWR Permit 6312448

Dear Mr. Smith:

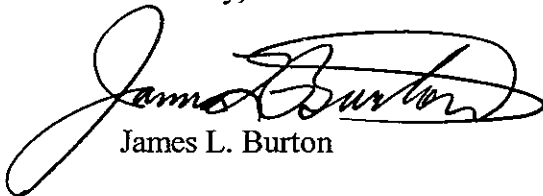
In the meeting at Eagle Sewer District on September 18, 2002, Gary Spackman of the Idaho Department of Water Resources verbally gave the attending parties 30 days to resolve the protests before he would proceed with setting a schedule for hearing. At that time, you committed to contacting each protestant separately to begin that work.

Today, three weeks have past and you have yet to contact me. In order to advance the process, I will call your office Friday, October 11, 2002 at 9:00 am to calendar an initial meeting. For your consideration, I would like to offer these potential dates:

- Tuesday, October 15, 2002 7:00 pm
- Wednesday, October 16, 2002 7:00 pm
- Thursday, October 17, 2002 7:00 pm

We look forward to working with you to resolve our concerns.

Sincerely,



James L. Burton

City of Eagle
310 East State Street
Eagle, Idaho 83616

Robert DeSchazo, Jr.
Eagle Water Company
P.O. Box 455
Eagle, Idaho 83616

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

Gary Spackman
State of Idaho
Department of Water Resources
2735 Airport Way
Boise, Idaho 83705

Weldon Fisher
546 East Beacon Light Road
Eagle, Idaho 83616

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

Protestant Group Members:

✓ Stanton F. Niccolls
1755 North Eagle Road
Eagle, Idaho 83616

✓ Jason D. Stinar
1765 North Eagle Road
Eagle, Idaho 83616

✓ Chris Brooke
1765 North Eagle Road
Eagle, Idaho 83616

✓ Darrell Davis
1857 North Eagle Road
Eagle, Idaho 83616

Sheri Kinzer
1865 North Eagle Road
Eagle, Idaho 83616

✓ Stan Stevens
1901 North Eagle Road
Eagle, Idaho 83616

Steve Capellar
1935 North Eagle Road
Eagle, Idaho 83616

Shelby Conrad
2022 North Eagle Road
Eagle, Idaho 83616

Michael Kilfoyle
201 West Meadow Ridge Lane
Eagle, Idaho 83616

Laren Walker
301 West Meadow Ridge Lane
Eagle, Idaho 83616

Gary W. Heikes
4305 Willow Creek Road
Eagle, Idaho 83616

Melissa Sadlek
✓ 141 West Lance Lane
Eagle, Idaho 83616

William L. Miller
✓ 143 West Lance Lane
Eagle, Idaho 83616

MOLY 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 16 2002

Department of Water Resources

RECEIVED

OCT 17 2002

WATER RESOURCES
WESTERN REGION

Attorneys for Eagle Water Company, Inc.

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

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

COMES NOW, Molly O'Leary of the law firm Richardson & O'Leary, PLLC, and files this NOTICE OF APPEARANCE on behalf of Protestant Eagle Water Company, Inc. ("Eagle Water").

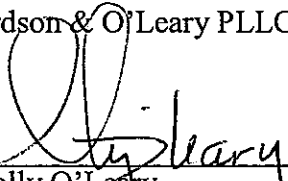
In addition to copies sent directly to Mr. Robert DeShazo, President of Eagle Water, at the address previously provided by Mr. DeShazo, copies of any and all future correspondence concerning the above-captioned matter should be mailed to:

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

DATED this 14th day of October, 2002.

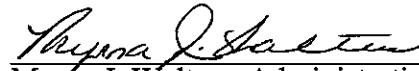
Richardson & O'Leary PLLC

By


Molly O'Leary
Attorneys for Eagle Water Company, Inc.

CERTIFICATE OF MAILING

I hereby certify that on the 14TH day of October, 2002, I mailed a true and correct copy, postage prepaid, of this NOTICE OF APPEARANCE to the persons whose names appear below.


Myrna J. Walters, Administrative Assistant
Richardson & O'Leary, PLLC

BRUCE SMITH
City of Eagle
P.O. Box 2720
Boise, Idaho 83701-2720

JIM BURTON
1896 Eagle Road
Eagle, Idaho 83616

CITY OF EAGLE
310 E. State Street
Eagle, ID 83616

WELDON FISHER
546 E. Beacon Light Road
Eagle, ID 83616

ROBERT DESHAZO, JR.
Eagle Water Company, Inc.
P.O. Box 455
Eagle, ID 83616

MATT HOWARD
P.O. Box 190012
Boise, ID 83719

ESTATE OF ELEANOR CHASE
P.O. Box 1356
Caldwell, ID 83606-1356

ROSTER OF ATTENDANCE

IDAHO DEPARTMENT OF WATER RESOURCES 2735 AIRPORT WAY, BOISE, IDAHO 83705

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

Place: Eagle Sewer District

Date: September 18, 2002

Conducted by: Gary Spackman

NAME

ADDRESS

David Shaw 1106 N Cole, Ste C, Boise 83704

Matt Hecron PO Box 190512 Boise 83709 - City of Eagle

Mike Chase 70 W Floating Feather Rd Eagle 83616

Jim Burton 1896 North Eagle Road, Eagle 83616

Nancy Merrill City of Eagle

VERN BREWER Holladay Engr. Co

Lynne Sedlack City of Eagle 310 E. STATE Eagle 83616

BRUCE SMITH 225 N. 9th St. 420 331-1800
Boise, Id 83702

ROBERT DESHAZO P.O. Box 455 EAGLE, IDAHO

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

FACSIMILE COVER PAGE**To:** Gary Spackman**Fax #:** 334-2348**Company:** Idaho Department of Water**From:** Matt Howard**Fax #:** 1-208-333-8409**Tel #:** 1-208-333-0622**Subject:** Prehearing Conference - Application for Amendment of Permit No. 63-12448**Sent:** 09/03/2002 at 12:03:34 PM**Pages:** 1 (including cover)**MESSAGE:**

Dear Gary,

Pursuant to my telephone conversation with Sue Taylor on August 29, 2002, the following are the unavailable dates for my client and for Bruce Smith for the months of September and October 2002:

My client's (including legal counsel and technical expert) unavailable dates on and after 9/16: 9/16, 9/17, 9/19, 9/23, 9/26, 9/27, 9/30-10/4, 10/7, 10/10, 10/11, and 10/14-10/18.

According to Bruce Smith's secretary, Mr. Smith's unavailable dates after 9/16 are: 9/23 and the month of October.

Based on my telephone conference with Ms. Taylor, I understand that you will reschedule the September 16, 2002, prehearing conference due to the unavailability of my client's technical expert.

Sincerely,



Matt J. Howard

cc: Client
Dave Shaw, P.E.
Bruce Smith, Esq.

CONFIDENTIAL & PRIVILEGED INFORMATION:

This facsimile is confidential & privileged. It is for use of the individual(s) named on this cover sheet. If you are not the intended recipient, do not read this facsimile. Any further inspection, dissemination, or copying of this facsimile is prohibited. If you have received this facsimile in error, please notify use by phone immediately, and we will arrange to have it returned to use. Thank you for your cooperation.

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

July 18, 2002

Department of Water Resources
Western Region
Attn: Gary Spackman
2735 Airport Way
Boise, ID 83705-5082

RECEIVED
JUL 19 2002
WATER RESOURCES
WESTERN REGION

RE: City of Eagle/ Chase Protest

Dear Mr. Spackman:

As promised, we sent Matt Howard the attached letter requesting a response to our proposal by the 17th. We have not heard from him so we want to proceed to hearing. Please send out a notice regarding available dates. A hearing in mid-to-late September should be about right. Thank you.

Sincerely,



Tammy Zokan

BMS/aad
Enclosure
cc Matt Howard
City of Eagle
Vern Brewer

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

FACSIMILE TRANSMITTAL SHEET

TO:	FROM:
Gary Spackman	Matt J. Howard
COMPANY:	DATE:
IDWR	July 21, 2002
FAX NUMBER:	TOTAL NO. OF PAGES INCLUDING COVER:
334-2348	2
RE:	
Chase Protest - City of Eagle Application	

☐ URGENT ☐ FOR REVIEW ☐ FOR YOUR INFO ☐ PLEASE REPLY ☐ KEEP FOR FILES

NOTES/COMMENTS:**CONFIDENTIAL & PRIVILEGED INFORMATION**

This facsimile is confidential & privileged. It is for use of the individual(s) named on this cover sheet. If you are not the intended recipient, do not read this facsimile. Any further inspection, dissemination, or copying of this facsimile is prohibited. If you have received this facsimile by error, please notify us by phone immediately, and we will arrange to have it returned to us. Thank you for your cooperation.

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

July 21, 2002

VIA FACSIMILE

Gary Spackman

Idaho Department of Water Resources

2735 Airport Way

Boise, ID 83705-5082

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

Dear Gary:

I am troubled by (and disagree with) the representations and characterizations contained in Ms. Zokan's July 18, 2002, letter to you. Nonetheless, I understand the City of Eagle intends to pursue litigation. May I suggest that you schedule the next prehearing conference in the same manner as you have done in the past by sending out blank calendars to the parties? That procedure seems to work very well.

Also, I ask that this letter serve as notice of my proper mailing address: Matt Howard, P. O. Box 190012, Boise, Idaho 83719. Thank you.

Very truly yours,


Matt J. Howard

Enclosure

Cc: Client

Robert Deschazo, Jr.

Jim Burton

Weldon Fisher

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

July 10, 2002

RECEIVED

JUL 19 2002

WATER RESOURCES
WESTERN REGION

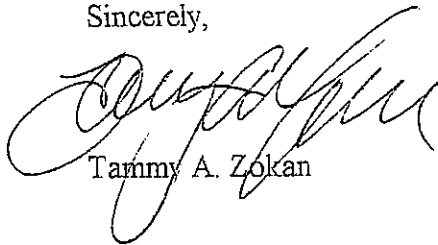
Matt J. Howard, Esquire
2402 W. Jefferson
Boise, ID 83702

RE: City of Eagle/ Chase Protest

Dear Matt:

Bruce and I were at a prehearing conference on another matter at IDWR's western region office today. Gary Spackman asked about the status of our settlement negotiations in this case. We told Gary we would check with you. If we do not hear from you before next Wednesday, July 17, we will request that IDWR schedule a hearing. Thanks.

Sincerely,



Tammy A. Zokan

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

July 11, 2002

RECEIVED

JUL 12 2002

WATER RESOURCES
WESTERN REGION

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 the **Substitution of Counsel** in the above entitled case. Once filed, please mail the conformed copy in the self-addressed, stamped envelope. ✓ *st 7-12-02*

Thank you. If you have any questions, please contact me.

Sincerely,

Amanda A. Duell

Amanda A. Duell
Legal Assistant

AAD

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
JUL 12 2002
WATER RESOURCES
WESTERN REGION

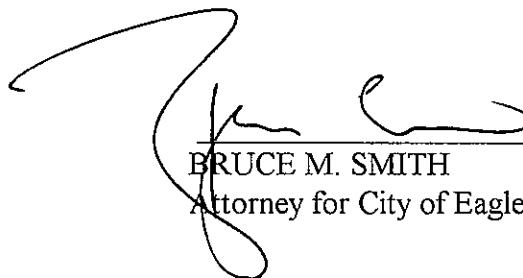
BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF	)	SUBSTITUTION OF COUNSEL
	)	
CITY OF Eagle, Petitioner	)	
	)	
APPLICATION FOR PERMIT NO. 63-12448	)	
_____	)	

COME NOW Bruce M. Smith and Tammy A. Zokan of the law firm MOORE SMITH BUXTON & TURCKE, CHARTERED and give Notice of Substitution of Counsel for the City of Eagle in the above captioned matter. Bruce M. Smith and Tammy A. Zokan hereby replace Chris Meyer as representatives of the City of Eagle in this matter.

DATED this 11 day of July, 2002.

MOORE SMITH BUXTON & TURCKE,
CHARTERED



BRUCE M. SMITH
Attorney for City of Eagle

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17 day of July 2002, I caused to be served a true and correct copy of the foregoing NOTICE OF SUBSTITUTION OF REPRESENTATIVE via U.S. Mail Postage pre-paid, and addressed to the following:

IDWR
Western Region
2735 Airport Way
Boise, Idaho 83705

Matt Howard
2402 W. Jefferson
Boise, Idaho 83702

Robert Deschazo, Jr.
Eagle Water Co.
P.O. Box 455
Eagle, Idaho 83616

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

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



BRUCE M. SMITH

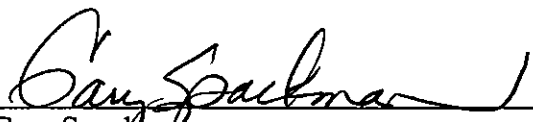
BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

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

The Idaho Department of Water Resources (IDWR) received a petition to intervene from Matt Howard, representing the Estate of Eleanor I. Chase, in the above contested matter. Having shown good cause for intervening into the matter, and, upon a conclusion that the applicant will not be injured by the participation of the prospective intervenor:

IT IS HEREBY ORDERED that the petition to intervene filed by Matt J. Howard, representing the Estate of Eleanor I. Chase, is **GRANTED** and the intervenor shall have the right to participate in the contested matter as a full party.

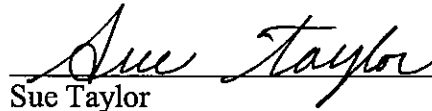
Dated this 11th day of July 2002.



Gary Spackman

CERTIFICATE OF MAILING

I hereby certify that on this 12th day of July 2002 I mailed a true and correct copy, postage prepaid, of an Order Granting Intervention to those listed below:



Sue Taylor
Senior Secretary

CITY OF EAGLE
C/O BRUCE SMITH
MOORE SMITH BUXTON & TURCKE CHTD
225 N 9TH ST STE 420
BOISE ID 83702

CITY OF EAGLE
C/O CHRISTOPHER MEYER
PO BOX 2720
BOISE ID 83701-2720

CITY OF EAGLE
310 E STATE ST
EAGLE ID 83616

ROBERT DESCHAZO, JR
EAGLE WATER CO
PO BOX 455
EAGLE ID 83616

ESTATE OF ELEANOR I CHASE
C/O MATT HOWARD
PO BOX 190012
BOISE ID 83719

JIM BURTON
1896 N EAGLE RD
EAGLE ID 83616

WELDON FISHER
546 E BEACON LIGHT RD
EAGLE ID 83616

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

June 17, 2002

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JUN 18 2002

WATER RESOURCES
WESTERN REGION

Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705-5082

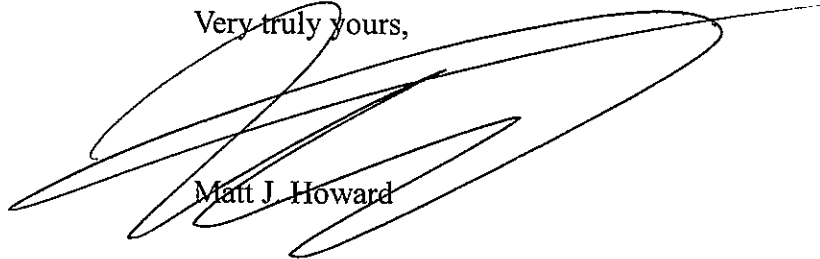
RE: In the Matter of Amendment of Permit No. 63-12448 – City of Eagle

Dear Clerk:

Enclosed is an original Petition for Intervention of the Estate of Eleanor I. Chase and Stipulation to Intervention of the Estate of Eleanor I. Chase. I have also enclosed additional copies of those documents that I would ask that you conform and return to me in the enclosed envelope. Thank you very much.

✓
6-18-02

Very truly yours,



Matt J. Howard

Enclosure
Cc: Client

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

RECEIVED
JUN 18 2002
WATER RESOURCES
WESTERN REGION

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) PETITION FOR INTERVENTION OF THE
ESTATE OF ELEANOR I. CHASE
_____)

PETITION FOR INTERVENTION

The Estate of Eleanor I. Chase ("Estate"), by and through its attorney Matt J. Howard, and pursuant to IDAPA 37.01.01.350-354 petitions the Idaho Department of Water Resources (IDWR) for an order granting intervention of the Estate as a party to the above-captioned proceedings. The grounds for this petition are as follows:

1. Eleanor I. Chase, a protestant in the above-captioned proceedings, passed away in January 2002.
2. The Estate is in possession of all real and personal property, including the land and water rights, held by Eleanor I. Chase and therefore has a direct and substantial interest in these proceedings and in the protest filed by Eleanor I. Chase.

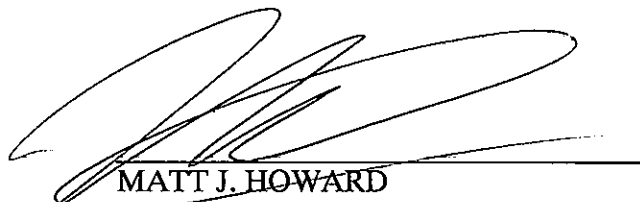
3. Because of the unique and close proximity of the Estate's wells to the proposed point of diversion sought by the City of Eagle, the Estate's interests in these proceedings cannot be adequately represented by the existing protestants.

4. The applicant, City of Eagle, has stipulated to intervention by the Estate.

CONCLUSION

Based on the foregoing, the Estate respectfully requests permission to intervene in these proceedings as a protestant upon the grounds asserted in the original protest filed by Eleanor I. Chase, which protest is incorporated herein by reference.

DATED this 17th day of June, 2002.



MATT J. HOWARD
Attorney for Intervenor

CERTIFICATE OF SERVICE

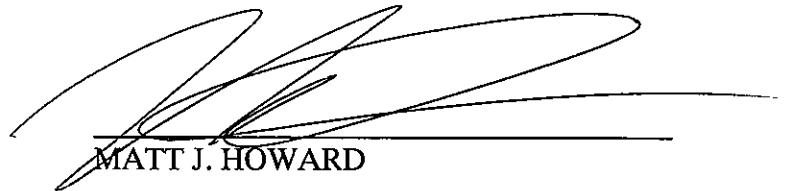
The undersigned certifies that on the 17th day of June, 2002, a true and correct copy of the within and foregoing document was sent to the following person(s) by U.S. Mail:

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

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

Robert Deschazo, Jr.
Eagle Water Co.
P. O. Box 455
Eagle, ID 83616

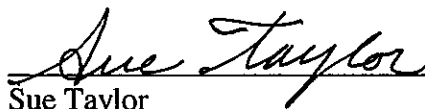
City of Eagle
c/o Bruce Smith
Moore Smith Buxton & Turcke, Chtd
225 N. 9th St., Ste. 420
Boise, ID 83702



MATT J. HOWARD

CERTIFICATE OF MAILING

I hereby certify that on the 19th day of October, 2001, I mailed a true and correct copy, postage prepaid, of the Notice of Cancellation and Rescheduling of Second Prehearing Conference to the applicant(s) and protestant(s) listed:



Sue Taylor
Senior Secretary

CHRISTOPHER MEYER
CITY OF EAGLE
PO BOX 2720
BOISE ID 83701-2720

CITY OF EAGLE
310 E STATE ST
EAGLE ID 83616

ROBERT DESCHAZO, JR
EAGLE WATER CO
PO BOX 455
EAGLE ID 83616

ELEANOR CHASE
70 W FLOATING FEATHER RD
EAGLE ID 83616

JIM BURTON
1896 N EAGLE RD
EAGLE ID 83616

WELDON FISHER
546 E BEACON LIGHT RD
EAGLE ID 83616

MATT HOWARD
2402 W JEFFERSON
BOISE ID 83702



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

September 20, 2001

EAGLE SEWER DISTRICT
44 N PALMETTO
EAGLE ID 83616

Re: Conference Room Reservation

This letter is to confirm the change in conference room reservations from September 19, 2001, to October 16, 2001, made by the Department of Water Resources.

If you have any questions please call me at 334-2190, Western Region of the Department of Water Resources.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Sue', is written over a horizontal line.

Sue Taylor
Senior Secretary

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.)
_____)

AMENDED NOTICE
OF SECOND PREHEARING
CONFERENCE

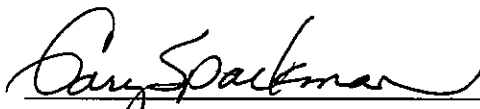
On June 15, 2001, the City of Eagle filed with the Department of Water Resources (IDWR) an application for amendment of permit no. 63-12448 to appropriate the public waters of the State of Idaho. The application was protested by Eagle Water Co., Jim Burton, Weldon Fisher, and Eleanor Chase.

IDWR scheduled a second prehearing conference for the protest to be held on Wednesday, September 19, 2001, at 10:00 a.m. at the Eagle Sewer District, 44 N. Palmetto, Eagle, Idaho 83616. **The prehearing conference date has been changed to Tuesday, October 16, 2001, at 10:00 a.m.** The place will remain the same, at the Eagle Sewer District. At the prehearing conference we will discuss whether the hearing should still be held on November 14 and 15, 2001.

The conference will be held in accordance with provisions of Chapters 2 and 17, Title 42, and Chapter 52, Title 67, of the Idaho Code, the adopted Rules of Procedure of the Department of Water Resources, and Rules 40 and 45 of the adopted Rules of Water Appropriation of the Department of Water Resources.

The conference will be conducted in a facility that satisfies the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the conference, please advise IDWR within (10) days prior to the conference.

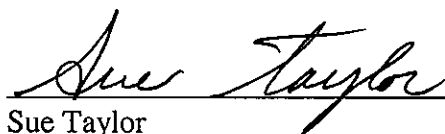
Dated this 14th day of September, 2001.



Gary Spackman

CERTIFICATE OF MAILING

I hereby certify that on the 14th day of September, 2001, I mailed a true and correct copy, postage prepaid, of the Amended Notice of Second Prehearing Conference to the applicant(s) and protestant(s) listed:

A handwritten signature in cursive script, reading "Sue Taylor", is written over a horizontal line.

Sue Taylor
Senior Secretary

CHRISTOPHER MEYER
CITY OF EAGLE
PO BOX 2720
BOISE ID 83701-2720

CITY OF EAGLE
310 E STATE ST
EAGLE ID 83616

ROBERT DESCHAZO, JR
EAGLE WATER CO
PO BOX 455
EAGLE ID 83616

ELEANOR CHASE
70 W FLOATING FEATHER RD
EAGLE ID 83616

JIM BURTON
1896 N EAGLE RD
EAGLE ID 83616

WELDON FISHER
546 E BEACON LIGHT RD
EAGLE ID 83616

MATT HOWARD
2402 W JEFFERSON
BOISE ID 83702

1896 North Eagle Road
Eagle, Idaho 83616
August 10, 2001

State of Idaho Department of Water Resources
Western Region
2735 Airport Way
Boise, Idaho 83705-5082

RECEIVED

AUG 13 2001

WATER RESOURCES
WESTERN REGION

Dear DWR:

Subject: Application for Amendment No 69218 in the Name of City of Eagle

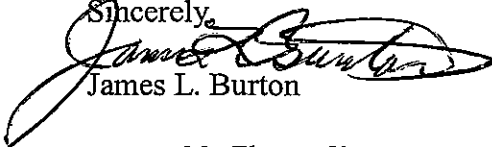
I am the spokesperson of a number of concerned citizens living on Eagle Road. We use our existing, private wells for consumption as well as irrigation. Simply put, our main concern is the impact of additional wells and the requested amendment to the point of diversion on our private wells. In a year when water is short, as it is this year, this issue is especially poignant. The application for amendment (including the attached map) only addresses what City of Eagle wants to do -- and says nothing about the impact on the numerous existing wells in the area.

With the prospect of additional large-capacity wells being drilled in the relatively close vicinity, we are concerned that there will be an impact that may not be realized immediately, but only over the next several years as these wells are brought to their full-production capacity. At that point, any impact to existing wells will likely be the responsibility of the existing well owner. According to Mr. Meyer's letter of August 1, 2001, the requested amendment will not injure owners of existing senior wells. However, the prospect of working that process, with the attendant costs, should injury occur, is a gauntlet we seriously wish to avoid.

Initially, we understood that the amendment to the point of diversion indicated that the currently producing wells mentioned in the application would not continue to operate. According to Mr. Meyer's letter, all wells identified in the application will be available for production, further strengthening our concern.

Finally, Mr. Meyer's letter also indicates that a new hydrological study is being undertaken. It seems that the results of that study should be reviewed before any additional amendment actions are granted.

Sincerely,



James L. Burton

cc: Ms. Eleanor Chase
Mr. Robert DeShazo
Mr. Weldon Fisher
Mr. Christopher Meyer

ROSTER OF ATTENDANCE

IDAHO DEPARTMENT OF WATER RESOURCES 2735 AIRPORT WAY, BOISE, IDAHO 83705

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

Place: Eagle Sewer District

Date: August 15, 2001

Conducted by: Gary Spackman

NAME

ADDRESS

Weldon T. Fiske	546 E. BEACON LT. RD. EAGLE
James Rees	907 N. 27TH Boise, Idaho
ROBERT DESHAZ	846 N EAGLE RD EAGLE
Lynne Sedlacek	City of Eagle, 310 E. State EAGLE
Chris Mayer	Givens Purdy, POBOX 2720 Boise ID 83706
Bill Stroud	1509 Dearborn Caldwell, ID
Mike Chase	70 W Floating Feather Rd, Eagle ID
Matt Howard	2402 W. Jefferson, Boise ID 83702
John Blom	32 N. MAIN PAYETTE, ID
DARRELL DAVIS	1857 N. Eagle Rd. Eagle

MATT J. HOWARD

ATTORNEY AT LAW

2402 W. JEFFERSON

BOISE, IDAHO 83702

TELEPHONE (208) 333-0622

FACSIMILE (208) 345-8945

EMAIL: MHOWARD@MICRON.NET

August 14, 2001

RECEIVED

AUG 15 2001

WATER RESOURCES
WESTERN REGION

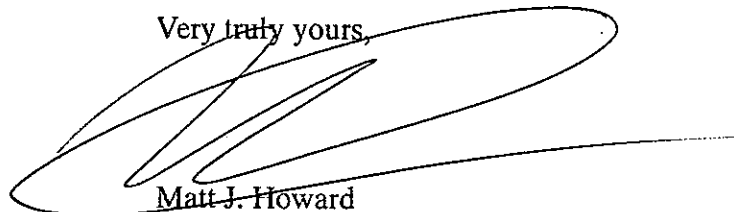
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705-5082

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

Dear Records Clerk:

Enclosed for filing with the Idaho Department of Water Resources in the above-referenced matter is an original Notice of Appearance. Thank you.

Very truly yours,

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Matt J. Howard

cc: Client

MATT J. HOWARD
Attorney at Law
2402 W. Jefferson
Boise, Idaho 83702
Telephone: (208) 333-0622
Facsimile: (208) 345-8945

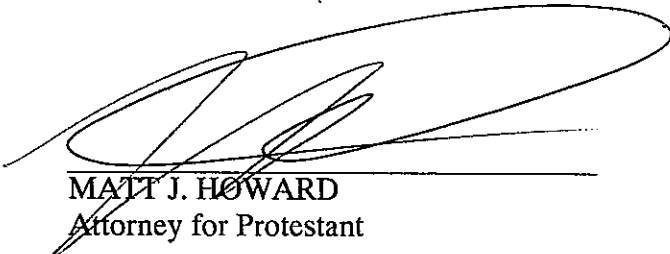
Attorney for Eleanor Chase

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.) NOTICE OF APPEARANCE

PLEASE TAKE NOTICE that Matt J. Howard, Attorney at Law, enters his appearance
on behalf of Eleanor Chase, protestant, in the above-captioned matter.

DATED this 14 day of August, 2001.


MATT J. HOWARD
Attorney for Protestant

CERTIFICATE OF SERVICE

The undersigned certifies that on the 14 day of August, 2001, a true and correct copy of the within and foregoing document was sent to the following person(s) by the method indicated below:

Christopher Meyer, Esq.

Givens Pursley, LLP

P. O. Box 2720

Boise, ID 83701-2720

☒ U.S. Mail ☐ Overnight Mail ☐ Facsimile ☐ Hand-delivered

Jim Burton

Eagle Water Co.

P. O. Box 455

Eagle, ID 83616

☒ U.S. Mail ☐ Overnight Mail ☐ Facsimile ☐ Hand-delivered



MATT J. HOWARD

GIVENS PURSLEY LLP

RECEIVED

AUG 02 2001

WATER RESOURCES
WESTERN REGION

LAW OFFICES

277 North 6th Street, Suite 200
PO Box 2720, Boise, Idaho 83701

TELEPHONE: 208 388-1200

FACSIMILE: 208 388-1300

WEBSITE: www.givenspursley.com

DIRECT DIAL: (208) 388-1236

EMAIL: chm@givenspursley.com

Gary G. Allen
Christopher J. Beeson
Michael C. Creamer
Thomas E. Dvorak
Roy Lewis Eiguren
Jacqueline M. Fearnside
Timothy P. Fearnside
Jeffrey C. Fereday
Amanda L. Keating
Kari T. Klein
Debora K. Kristensen
Franklin G. Lee

David R. Lombardi
D. David Lorelio, Jr.
Kevin T. Maloney
Kimberly D. Maloney
John M. Marshall
Kenneth R. McClure
Kelly Greene McConnell
Cynthia A. Melillo
Christopher H. Meyer
Kendall L. Miller
L. Edward Miller
Patrick J. Miller

Judson B. Montgomery
Angela K. Nelson
W. Hugh O'Riordan
Kenneth L. Pursley
Virginia L. Stukel
Conley Ward
Stephanie C. Westemeier
Robert B. White

Raymond D. Givens
James A. McClure
OF COUNSEL

August 1, 2001

Ms. Eleanor Chase
70 W. Floating Feather Road
Eagle, ID 83616

Mr. Jim Burton
1896 North Eagle Road
Eagle, ID 83616

Mr. Robert DeShazo, Jr.
Eagle Water Company
P.O. Box 455
Eagle, ID 83616

Mr. Weldon Fisher
546 Beacon Light Road
Eagle, ID 83616

Re: City of Eagle Water Right No. 63-12448
Our File No. 5721-1

Dear Ms. Chase, Mr. Burton, Mr. DeShazo and Mr. Fisher:

As you know, I represent the City of Eagle in connection with its water rights.¹ I am writing to each of you as the four protestants in the transfer of the above-captioned water right.

Representation by Counsel

If any of you are represented by counsel in this matter, please let me know so that I may communicate directly with your lawyer. If you are not represented by counsel, I encourage you to obtain counsel. These are serious administrative proceedings with significant economic repercussions for those involved.

¹ Some of you may know that I also represent United Water Idaho in certain water matters (where there is no adversity with the City of Eagle). United Water Idaho, however, is not involved in these transactions.

Ms. Eleanor Chase
Mr. Jim Burton
Mr. Robert DeShazo, Jr.
Mr. Weldon Fisher
August 1, 2001
Page 2

City Needs to Understand Your Concerns

My purpose in writing is to let you know that the City of Eagle takes your concerns seriously. We wish to understand exactly what concerns you have, and to address them in a reasonable manner acceptable to all.

In your initial protests, only Ms. Chase identified any specific concerns. She indicated that her protest is based on potential well interference with her senior domestic and dairy wells. The other three protestants have yet not identified any basis for their respective protests.

We will have an opportunity to explore these matters more fully at the prehearing conference set by the Idaho Department of Water Resources for August 15, 2001. I encourage each of you to be sure to bring specific concerns to the table, including identification of the particular well(s) of concern, hydrological information concerning those wells, and other documentation.

History

The City's municipal water system and water rights date back to 1991 when the Lexington Hills subdivision obtained a water right (No. 63-11413) for its development. Some time later, Lexington Hills conveyed that 1991 water right, along with a 1993 "amenity" water right (No. 63-12017) to the City. Finally, in 1998, the City obtained an additional water right (No. 12448) which roughly doubled the size of the City's water rights. It is that 1998 right which is at issue in this proceeding.

Back in 1991, relatively little was known about the hydrological condition of the aquifer underlying the City. Consequently, a large number of protestants objected to the issuance of the 1991 water right to Lexington Hills. They expressed uncertainty about the impact such a water right might have on existing wells in the area.

The Department of Water Resources took those concerns seriously, and ordered extensive testing and monitoring as a condition of the approval of the 1991 permit. As a result, a huge financial investment was made in understanding the hydrology of the area.

Thankfully, that investment has paid off very well for the entire community. Today, a great deal is known about the aquifer, and all the hydrological evidence suggests that the underlying aquifer is a very strong one capable of serving the growing

Ms. Eleanor Chase
Mr. Jim Burton
Mr. Robert DeShazo, Jr.
Mr. Weldon Fisher
August 1, 2001
Page 3

community far into the future. In all the years that the City has pumped its three water rights, no permanent drawdown has been documented in any well in the vicinity.

Explanation of the City's Objectives

With that brief history in mind, let me begin by providing a clear explanation of what the City is seeking in the proposed application for change. Since the very first application, back in 1991, the City's water rights have all identified at least four points of diversion: two in Lexington Hills and two in what is now the Brookwood subdivision. These have always been alternative points of diversion, meaning that any or all of the water rights could be pumped out of any combination of the four wells. This is typical for municipal systems.

In late 1998 the City sought to add the Floating Feather well site as a fifth alternative point of diversion to its 1998 water right. This was done for purposes of increasing operational flexibility. At the time, the owner of the Brookwood subdivision (the Hormaechea family) objected to the continued listing of the two Brookwood points of diversion on the 1998 right. This is because, at the time, there was no agreement in place between the City and the Hormaecheas regarding water supply on the proposed development. Consequently, the two Brookwood well sites were dropped as points of diversion on the amended 1998 water right, at the insistence of the Hormaecheas. An agreement has now been worked out, and it is necessary to add these two points of diversion back in.

No Change in Water Quantity

In short, the City is simply adding back in points of diversion that have been listed on these water rights dating back to 1991. There will be no change in the quantity of water that may be pumped under this or any of the City's water rights.

New Hydrological Study

Knowing that it will be important to each of you that the re-addition of these two well sites will not strain the aquifer or result in well interference, the City has asked its City Engineer, Holladay Engineering, to undertake an up-to-date, comprehensive review of all available research and data on Eagle's aquifer system. We will be happy to share that with you when it becomes available.

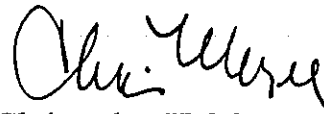
Ms. Eleanor Chase
Mr. Jim Burton
Mr. Robert DeShazo, Jr.
Mr. Weldon Fisher
August 1, 2001
Page 4

Protection of Senior Wells

Next, I wish 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 we have proposed, may result in injury to any other user. The City is prepared to stipulate to this, in writing.

I hope that the above will enhance the utility of our meeting on August 15, 2001. I look forward to meeting with each of you then. Please do not hesitate to contact me before that if you would like to explore any of these points.

Sincerely,



Christopher H. Meyer

cc: Mayor Rick Yzaguirre
Stan Bastian, City Council Member
Steve Guerber, City Council Member
Nancy Merrill, City Council Member
Lynne Sedlacek, City Council Member
Susan Buxton, Moore Smith Buxton & Turcke
Vern Brewer, Holladay Engineering
Bill Strowd, Holladay Engineering
Evan Robertson, Attorney for Brookwood Subdivision
Gary Spackman, IDWR
Steve Lester, IDWR



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

July 18, 2001

ROBERT DESHAZO, JR
EAGLE WATER CO
PO BOX 455
EAGLE ID 83616

JIM BURTON
1896 N EAGLE RD
EAGLE ID 83616

ELEANOR CHASE
70 W FLOATING FEATHER RD
EAGLE ID 83616

WELDON FISHER
546 E BEACON LIGHT RD
EAGLE ID 83616

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

Dear Protestants:

This office acknowledges receipt of your protests to the issuance of a permit pursuant to the above referenced application.

The following are the criteria the department must consider in either approving or denying an application for amendment of a permit (Section 42-203A, Idaho Code):

1. Will the approval of the application result in the diversion and use of more water than originally permitted?
2. Will the rights of others be adversely affected thereby?

Enclosed is a Notice of Prehearing Conference scheduled for August 15, 2001, at 10:00 a.m. at the Eagle Sewer District, 44 N. Palmetto, Eagle, Idaho 83616.

The department suggests you contact the applicant(s) directly in an effort to determine what is proposed by the application and to attempt to resolve the protest prior to the prehearing conference. Direct, sincere conversation between the parties prior to initiation of formal proceedings can often resolve a protest.

If the matter cannot be resolved at the prehearing conference, a formal hearing will be arranged for a future date.

If this office can be of further assistance, please contact us.

Sincerely,



Gary Spackman

GS:st

Encl.: Copy of Application
Notice of Prehearing Conference



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

July 18, 2001

CHRISTOPHER MEYER
CITY OF EAGLE
PO BOX 2720
BOISE ID 83701-2720

ROBERT DESHAZO, JR
EAGLE WATER CO
PO BOX 455
EAGLE ID 83616

ELEANOR CHASE
70 W FLOATING FEATHER RD
EAGLE ID 83616

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

Dear Applicant and Protestants:

Enclosed is a copy of the previously mailed notice of conference and a corrected mailing certificate. Also enclosed are copies of the protests by Jim Burton and Weldon Fisher.

Sincerely,

A handwritten signature in cursive script that reads "Gary Spackman".

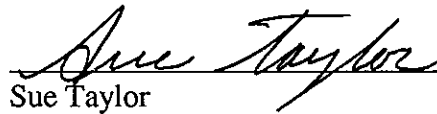
Gary Spackman

GS:st

Encl.

CERTIFICATE OF MAILING

I hereby certify that on the 18th day of July, 2001, I mailed a true and correct copy, postage prepaid, of the Notice of Prehearing Conference to the applicant(s) and protestant(s) listed:



Sue Taylor
Senior Secretary

CHRISTOPHER MEYER
CITY OF EAGLE
PO BOX 2720
BOISE ID 83701-2720

CITY OF EAGLE
310 E STATE ST
EAGLE ID 83616

ROBERT DESCHAZO, JR
EAGLE WATER CO
PO BOX 455
EAGLE ID 83616

ELEANOR CHASE
70 W FLOATING FEATHER RD
EAGLE ID 83616

JIM BURTON
1896 N EAGLE RD
EAGLE ID 83616

WELDON FISHER
546 E BEACON LIGHT RD
EAGLE ID 83616



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

July 18, 2001

EAGLE SEWER DISTRICT
44 N PALMETTO
EAGLE ID 83616

Re: Conference Room Reservation

This letter is to confirm the conference room reservation made by the Department of Water Resources for Wednesday, August 15, 2001, at 10:00 a.m.

If you have any questions please call me at 334-2190, Western Region of the Department of Water Resources.

Sincerely,

Sue Taylor
Senior Secretary



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

July 11, 2001

JIM BURTON
EAGLE WATER CO
PO BOX 455
EAGLE ID 83616

ELEANOR CHASE
70 W FLOATING FEATHER RD
EAGLE ID 83616

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

Dear Protestants:

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The department suggests you contact the applicant(s) directly in an effort to determine what is proposed by the application and to attempt to resolve the protest prior to the prehearing conference. Direct, sincere conversation between the parties prior to initiation of formal proceedings can often resolve a protest.

If the matter cannot be resolved at the prehearing conference, a formal hearing will be arranged for a future date.

If this office can be of further assistance, please contact us.

Sincerely,


Gary Spackman

GS:st

Encl.: Copy of Application
Notice of Prehearing Conference

Receipt Details for ID W028004

Status	Adjustment Type	Version
		1

General Information:

Date Received	Date Deposited	Region	Total Amount	Payment Type
7/9/2001 2:49:51 PM	7/9/2001 3:35:34 PM	WESTERN	\$25.00	Check
Payer		DAVIS, DARRELL E		

Account Information:

Check #	Account #	Credit Card Name	Authorization #
16861			
Card Expiration Date	Credit Card Transaction #		

Comment PROTEST**Fee Detail:**

Amount	Description	PCA	Fund	Fund Detail	Subsidiary	Object
\$25.00	PROTESTS	62103	0229	21		1155

Refund(s):

Amount	Payee	Date	Document Number
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July 6, 2001

RECEIVED

JUL 09 2001

WATER RESOURCES
WESTERN REGION

State of Idaho
Department of Water Resources
2735 Airport Way
Boise, Idaho 83705

W028004

7-9-01

lm

NAME

Re: Application for Amendment No 69218 in the of the City of Eagle.

To Whom it May Concern:

This letter is to inform you that I am in protest to the above mentioned amendment. Attached, please find the \$25.00 fee required to file this protest.

If you have any questions, please feel free to call 939-6648.

Sincerely,

Danell Davis
1857 N Eagle Rd. Eagle ID
939-6133

Jay W Leikes
4305 Willow Creek Rd

939 8476

Stan Stenum
1901 N Eagle Rd
939-0083

James Brant
1826 N. Eagle
939-0455

Shirley King
1865 N. Eagle
311-3346

Steve Thompson
1935 N Eagle Rd
938-0780

Robert Lloyd Smith
2022 N. Eagle Rd.
Eagle, Idaho 82616

July 6, 2001

RECEIVED

JUL 09 2001

WATER RESOURCES
WESTERN REGION

State of Idaho
Department of Water Resources
2735 Airport Way
Boise, Idaho 83705

WO2 8004 7-9-0
Lm

NAME

Re: Application for Amendment No 69218 in the [REDACTED] of the City of Eagle.

To Whom it May Concern:

This letter is to inform you that I am in protest to the above mentioned amendment. Attached, please find the \$25.00 fee required to file this protest.

If you have any questions, please feel free to call 939-6648.

Sincerely,

W. J. Kilfoyle

KILFOYLE

201 W. MEADOW RIDGE LN

EAGLE, ID 83616

Walker

Walker

201 W. Meadow Ridge

Eagle, Id 83616

Stanton J. Niccolls

1755 N. EAGLE RD

EAGLE, ID 83616

Melissa Sadlek

171 W. Lance Ln

Eagle Idaho 83616

Jason D. Shipton
1745 N. EAGLE RD.
EAGLE, ID 83616

William D. Miller
143 W. LANCE
EAGLE, ID 83616
939-1748

C. A. Brooks
1745 N. Eagle Rd
Eagle Id 83616

Dear Sir:

After Reading The notice that the City of Eagle had applied with amendment # 89218 - address [310 E State St. Eagle, Idaho 83616] To change the Point of Diversion pursuant to IC § 42-211 For groundwater in Ada County with all sections in T4N. R1E with permit # 63-12448, I decided To send this protest because this amendment could greatly affect the water rights of my adjacent wells & other wells.

I am against the proposed amendment of adding two points of Diversion of well #3 (AKA Brookwood) and well #4. I understand that wells 1 and 2 combined have 540 Acre Ft. and they could be shut down with the total of 1445 Acre Ft. of water coming from wells 3 & 4. With this amendment the water could come from any one or all 4 wells or the 3rd well (Floating Feather well) total amount is to be 3.25 CFS but the amount could be changed with another amendment.

my adjacent domestic well has a prior water right of 1920 and the dairy has a prior water right of 1950. my original 1920 well has a 3" casing & had some additional pipe added during the 1977 drought & can't have any more pipe added. with a drawdown & without water we would have a severe problem - a new well would have to be drilled to handle a submersible pump. This well is adjacent to the #3 well site with well site 4 further off. but both or either could affect my well. I also have a state license of 1977 with # 63-8663 which is a prior water right of the Floating Feather well - IT is 340 ft. deep - 16" width.

These are real concerns for my family & me.
y address is 70 W. Floating Feather Rd - Eagle, Idaho 83616. Sincerely yours,
Eleanor J. Chase

RECEIVED

JUL - 9 2001

C054688

W028000
Kj

July 6, 2001

State of Idaho
Department of Water Resources
2735 Airport Way
Boise, Idaho 83705

RECEIVED
JUL 09 2001
WATER RESOURCES
WESTERN REGION

Re: Application for Amendment No 669218 in the Mane of the City of Eagle.

To Whom it May Concern:

This letter is to inform you that I am in protest to the above mentioned amendment. Attached, please find the \$25.00 fee required to file this protest.

If you have any questions, please feel free to call 939-6648.

Sincerely,

Weldon T. Fisher

Weldon T. Fisher
Homeowner
Eagle, Idaho

EAGLE WATER

C O M P A N Y I N C.

W021999
24
(208) 939-0242
FAX (208) 939-0267
P.O. BOX 455
EAGLE, IDAHO 83616

July 5, 2001

RECEIVED

JUL 09 2001

WATER RESOURCES
WESTERN REGION

State of Idaho
Department of Water Resources
2735 Airport Way
Boise, Idaho 83705

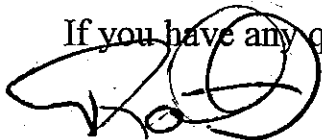
To Whom It May Concern:

Re: Application for Amendment No. 69218 in the Name of the City of Eagle

This letter is to inform you that I am in protest to the above mentioned amendment.

Attached you will find a \$25.00 protest fee.

If you have any questions please call me at 939-0242.



Robert DeShazo, Jr.
President



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

June 21, 2001

EAGLE WATER COMPANY
PO BOX 455
EAGLE ID 83616

Re: Application for Amendment No 69218 in the Name of the City of Eagle.

Dear Sir:

Enclosed is a copy of the above-referenced application for amendment.

This office normally completes the processing of an application within a six-week period and is required to take final action shortly thereafter. However, if you desire to file a protest against the approval of this application(s), your written protest along with the \$25.00 protest fee must be received in this office by July 9, 2001.

If you have any questions or need information, feel free to contact this office.

Sincerely,

Gary Spackman

GS:lm

Encl: Copy of Application

Robert DeShazo - # 939-0242 - Contact person
Norman Berch



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

July 5, 2001

LEXINGTON HILLS EAST
340 W STATE ST
EAGLE ID 83616-4902

Re: Application for Amendment No 69218 in the Name of the City of Eagle.

Dear Sir or Madam:

Enclosed is a copy of the above-referenced application for amendment which may be of interest to your agency. Please review the application and submit any comments you may have.

This office normally completes the processing of an application within a six-week period and is required to take final action shortly thereafter. However, if you desire to file a formal protest against the approval of this application(s), your written protest along with the \$25.00 protest fee must be received in this office by July 9, 2001.

If you have any questions regarding the application, please contact this office.

Sincerely,

A handwritten signature in black ink that reads "Gary Spackman". The signature is written in a cursive, flowing style with a large, sweeping 'G' and a long, horizontal tail stroke.

Gary Spackman

GS:lm

Encl: Copy of Application

The Idaho Statesman

RECEIVED

JUL 03 2001

WATER RESOURCES
WESTERN REGION

P.O. Box 40, Boise, Idaho 83707-0040

LEGAL ADVERTISING PROOF OF PUBLICATION

Account #	DTI#	Identification	Amount:
047628	472091	APPLICATION FOR AMENDMENT TO WATER RIGHT	\$65.40
Ordered by:	P.O. #	Rate	Run Dates
SUE TAYLOR		NT	JUNE 21, 28, 2001
IDAHO DEPARTMENT OF WATER RESOURCES WEST 2735 AIRPORT WAY BOISE, IDAHO 83705			Number of Lines 40
			Affidavit 1
			Legal # 10733

LEGAL NOTICE APPLICATION FOR AMENDMENT OF WATER RIGHT

CITY OF EAGLE of 310 E. State St., Eagle ID 83616 has applied to the Department of Water Resources to change the Point of Diversion pursuant to I.C. § 42-211 for the following ground water right in Ada County (all sections are in T4N R1E):

Permit #63-12448, priority 4-8-1998, 3.25 cfs diverted in NWSW and SWSW S3 and SESW S5. Water is for year around municipal use within the applicant's service area. Water bearing zone appropriated by this permit is from 183 to 602 feet. Current points of diversion are known as City wells 1 and 2 (formerly Lexington Hills wells) and Floating Feather (formerly Crandlemire) well.

PROPOSED AMENDMENT

Add two points of diversion in SWSW and NESE S4. The proposed wells will be known as City wells 3 (aka Brookwood) and 4. The proposed sites were formerly known as the Hormachea well sites.

The permit will be subject to all prior water rights. Any protest against approval of the proposed amendment must be filed with the Department of Water Resources, Western Region, 2735 Airport Way, Boise, ID 83705-5082, together with a protest fee of \$25 for each application on or before July 9, 2001. The protestant must also send a copy of the protest to the applicant.

Karl J. Dreher, Director

Pub. Jun. 21, 28, 2001

10733

JANICE HILDRETH, being duly sworn, deposes and says: That she is the Principal Clerk of *The Idaho Statesman*, a daily newspaper printed and published at Boise, Ada County, State of Idaho, and having a general circulation therein, and which said newspaper has been continuously and uninterruptedly published in said County during a period of twelve consecutive months prior to the first publication of the notice, a copy of which is attached hereto: that said notice was published in *The Idaho Statesman*, in conformity with Section 60-108, Idaho Code, as amended for: TWO

☒ consecutive weekly ☐ single
☐ consecutive daily ☐ odd skip
insertion(s)

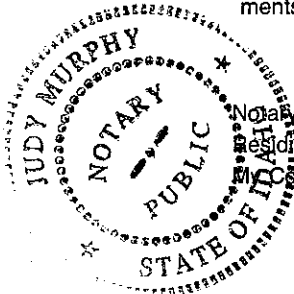
beginning with the issue of: JUNE 21, 2001

and ending with the issue of: JUNE 28, 2001

Janice Hildreth

STATE OF IDAHO)
)ss
COUNTY OF ADA)

On this 28 day of JUNE in the year of 2001
before me, a Notary Public, personally appeared before me Janice Hildreth
known or identified to me to be the person whose name subscribed to the
within instrument, and being by me first duly sworn, declared that the state-
ments therein are true, and acknowledged to me that she executed the same.



Notary Public for Idaho
Residing at: Boise, Idaho
Commission expires:

Judy Murphy

1/6/2004



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

FAX (208) 334-2348

July 11, 2001

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

CITY OF EAGLE
C/O CHRISTOPHER MEYER
PO BOX 2720
BOISE ID 83701-2720

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

Dear Applicant:

Enclosed are protests filed against the issuance of a permit pursuant to the above-referenced application for amendment.

The following are the criteria the department must consider in either approving or denying an application for amendment (per Section 42-203A, Idaho Code):

1. Will the approval of the application result in the diversion and use of more water than originally permitted?
2. Will the rights of others be adversely affected thereby?

Enclosed is a Notice of Prehearing Conference scheduled for August 15, 2001, at 10:00 a.m. at the Eagle Sewer District, 44 N. Palmetto, Eagle, Idaho 83616.

The department suggests you contact the protestant(s) directly in an effort to determine what is in dispute in the application and to attempt to resolve the protest prior to the prehearing conference. Direct, sincere conversation between the parties prior to initiation of formal proceedings can often resolve a protest.

If the matter cannot be resolved at the prehearing conference, a formal hearing will be arranged for a future date.

Please contact this office if you have questions regarding this procedure.

Sincerely,

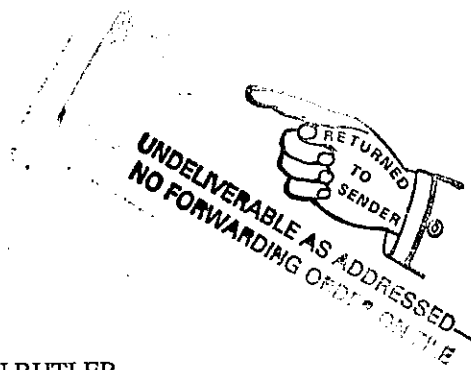

Gary Spackman

GS:st

Enclosure: Copy of protest(s)
Notice of Prehearing Conference

IDAHO DEPARTMENT OF WATER RESOURCES
WESTERN REGION
2735 Airport Way
Boise, Idaho 83705-5082

RETURN SERVICE REQUESTED



RECEIVED

JUL 02 2001

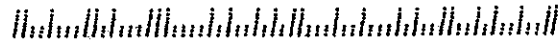
WATER RESOURCES
WESTERN REGION

JOANN BUTLER
SPINK & BUTLER
607 N 8TH ST #310
BOISE ID 83702

BUTL607 837022019 1N 06 06/26/01
RETURN TO SENDER

NO FORWARD ORDER ON FILE
UNABLE TO FORWARD
RETURN TO SENDER

837027535405/5082



IDAHO DEPARTMENT OF WATER RESOURCES
WESTERN REGION
2735 Airport Way
Boise, Idaho 83705-5082

RETURN SERVICE REQUESTED

UNITED STATES POSTAGE
144 9433 # 00.340 JUN 22 01
6687 MAILED FROM BOISE ID 83705

RECEIVED

JUL 02 2001

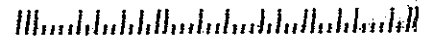
WATER RESOURCES
WESTERN REGION

LEXINGTON HILLS INC &
TREASURE VALLEY VILLAGE
1815 E STONEYBROOK CT
EAGLE ID 83616

LEXI015 836162018 1400 05 06/27/01
FORWARD TIME EXP RTN TO SEND
:LEXINGTON HILLS EAST
340 W STATE ST
EAGLE ID 83616-4902

RETURN TO SENDER

8361674055705/5082





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

June 21, 2001

UNITED WATER ID *+ attached mailing list on*
PO BOX 7488
BOISE ID 83707-1488

Re: Application for Amendment No. 69218 in the Name of the City of Eagle.

Dear Sir:

Enclosed is a copy of the above-referenced application for amendment.

This office normally completes the processing of an application within a six-week period and is required to take final action shortly thereafter. However, if your agency desires to file a formal protest against the approval of this application(s), your written protest along with the \$25.00 protest fee must be received in this office by July 9, 2001.

If you have any questions or need information, feel free to contact this office.

Sincerely,

A handwritten signature in black ink that reads "Gary Spackman". The signature is written in a cursive, flowing style.

Gary Spackman

GS:st

Encl: Copy of Application

CITY OF EAGLE
APPLICATION FOR AMENDMENT
NO.69218
MAILING LIST

UNITED WATER ID
PO BOX 7488
BOISE ID 83707-1488

EAGLE WATER COMPANY
PO BOX 455
EAGLE ID 83616

WELDON FISHER
546 E BEACON LIGHT RD
EAGLE ID 83616

JOINT SCHOOL DIST NO 2
C/O DAN MABE
911 MERIDIAN ST
MERIDIAN ID 83642

JOANN BUTLER
SPINK & BUTLER
607 N 8TH ST #310
BOISE ID 83702

*no forwarding
address*

DIV OF ENV QUALITY
BOISE REGIONAL OFFICE
PO BOX 83720
BOISE ID 83706

ELEANOR CHASE
70 W FLOATING FEATHER RD
EAGLE ID 83616

WAYLAND FISHER
657 BEACON LIGHT RD
EAGLE ID 83616

~~LEXINGTON HILLS INC &
TREASURE VALLEY VILLAGE
1815 E STONEYBROOK CT
EAGLE ID 83616~~

SHERL CHAPMAN
ERO RESOURCES CORP
1106 N COLE RD SUITE C
BOISE ID 83704-8661

ROBERT C DAY
11034 CULDESAC WAY
BOISE ID 83703

SAGE ACRES HOMEOWNERS ASSN
11034 CULDESAC WAY
BOISE ID 83703

AL THORNTON
9601 PRAIRIE RD
BOISE ID 83706

NEIL WILTON
632 N EDGEWOOD
EAGLE ID 83616

DENNIS SUTHERLAND
11036 RUNWAY DR
BOISE ID 83703

BILL PARDEW
PO BOX 699
EAGLE ID 83616

*→ Lexington Hills East
340 W. State St.
Eagle, Id. 83616-4902*



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

FAX (208) 334-2348

June 14, 2001

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

Legal Notice Department
IDAHO STATESMAN
PO BOX 40
BOISE ID 83707

RE: Application to Amend Permit No. 63-12448

Dear **LEGAL NOTICE DEPARTMENT:**

Enclosed you will find a legal notice which we wish to have published in your newspaper on the dates indicated (once a week for two consecutive weekly issues). If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Please send the affidavit and bill to this office before July 9, 2001. Your cooperation is appreciated.

Sincerely

Steve Lester for Sue Taylor
Water Rights Supervisor

FAXED ON 6-15-2001 to meet deadline.



State of Idaho

DEPARTMENT OF WATER RESOURCES

2735 Airport Way, Boise, Idaho 83705

Phone: (208) 334-2190 FAX: (208) 334-2348 www.idwr.state.id.us/idwr/idwrhome.htm

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

FAX TRANSMITTAL COVER SHEET

FAX # (208) 334-2348

DATE: 8/15/01

TO: Jamie
ID. Stateman Legal Notices
for 377-8309

FROM: Steve Lester

DOCUMENT DESCRIPTION: Legal notice for Thursday June
21 and 28.
Please call me at 334-2190 if
any questions.

TOTAL PAGES SENT: 02 + COVER SHEET

CONTACT: _____

Thanks!
-Steve

Sue - Would you send the requested info?
Gary

FAX

June 21, 2001

TO: Gary Spackman- IDWR - Western Regional Office
Fax # (208) 334-2348

FROM: Lin Buck - BLM - Idaho State Office
Fax # (208) 373-3805

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

Our office reviewed the above application from the IDWR New Water Rights Filing Report dated 06-18-2001.

Would you please fax us the POU 1/4 1/4s or a boundary map.

Thank you.

✓
6-26-01
At

NOTICE OF APPLICATION FOR AMENDMENT OF WATER RIGHT

CITY OF EAGLE of 310 E. State St., Eagle ID 83616 has applied to the Department of Water Resources to change the Point of Diversion pursuant to I.C. § 42-211 for the following ground water right in Ada County (all sections are in T4N R1E):

Permit #63-12448, priority 4-8-1998, 3.25 cfs diverted in NWSW and SWSW S3 and SESW S5. Water is for year around municipal use within the applicant's service area. Water bearing zone appropriated by this permit is from 183 to 602 feet. Current points of diversion are known as City wells 1 and 2 (formerly Lexington Hills wells) and Floating Feather (formerly Crandlemire) well.

PROPOSED AMENDMENT

Add two points of diversion in SWSW and NESE S4. The proposed wells will be known as City wells 3 (aka Brookwood) and 4. The proposed sites were formerly known as the Hormachea well sites.

The permit will be subject to all prior water rights. Any protest against approval of the proposed amendment must be filed with the Department of Water Resources, Western Region, 2735 Airport Way, Boise, ID 83705-5082, together with a protest fee of \$25 for each application on or before July 9, 2001. The protestant must also send a copy of the protest to the applicant.

Karl J. Dreher, Director

Published on June 21 and 28, 2001.

RECEIVED

FEB 24 2003

Appl. id # 69218

Form 211a
January 2001

Department of Water Resources

**IDWR WESTERN REGION
AMENDMENT OF PERMIT ANALYSIS SHEET**

Permit No. 63-12448 Applicant City of Eagle *

Reviewed by PL Data entry by PL Date 6/14/07

Legal Notice: Word filename Amend 63-12448

OR Use Workflow ad _____

Purpose of Amendment _____ Change P/D / Add P/D _____ Increase Amount

_____ Change P/U _____ Other: _____

Restore "Hornmacker wells" (not drilled yet) to this right

CHECK:

/ Description of amended elements.

/ Amount, nature and period of use. If increased, delay date of priority.

/ Ownership of P/D and P/U and arrangement for access if not owned by applicant.

/ Map / \$50 Fee.

/ Signature, must be permit holder. Include title if applicant is an organization, partnership etc.

/ Existing water rights from the same source for amended P/D or P/U?

Right No(s). 63-11413 & 63-12017 "Lexington H.B." also list these the 2 proposed old tracts.

yes Should amendment be advertised?

no Should date of priority be delayed? If yes, to what date? _____

yes Send comment Letters? Check any of the following to indicate "yes":

_____ IDFG for surface water _____ Water District No. _____

_____ Water Planning Bureau for protected river or minimum flow reach - reviewer should forward copy of application instead of sending a letter.

/ Other, see attached mailing list. use attached list from 1999 amendment processing

Follow up as needed (?) Additional analysis information attached. Date of the information is _____

* Amendment lists City with Eagle address. Permit lists same plus lists attorney with Boise address... to allow city attorney to also receive IDWR mailings. OK to process amendment with Eagle address as shown but does not choose 2 cannot mailing addresses for this right.

FINAL REGIONAL PROCESSING REVIEW:

_____ Affidavit of publication received

_____ Published correctly?

_____ Re-publication required if published incorrectly?

_____ Protests processed.

_____ Watermaster comments received on date: _____.

_____ Other comment letters received?

Recommendation and Conditions of Approval: _____ APPROVE _____ DENY

By _____

Date _____

Copy for Region file after final recommendations are complete. Always include application, legal notice, staff analysis sheet, and analysis memo (if applicable). List other items to copy:

63-12448
amendment

Reviewer's Notes

JL 6/15/91

Re note prior and # 12 & Hammer well?

Remark -- 1/10: locally known as City well 1-4;
Flint; Feather.

Send all correspondence/signals to both addresses

IDAHO DEPARTMENT OF WATER RESOURCES
Water Permit Report

06/11/2001

WATER RIGHT NO. 63-12448

Owner Type
Current Owner

Name and Address
CITY OF EAGLE
C/O CHRISTOPHER H MEYER
PO BOX 2720
BOISE, ID 83701
(208)388-1236

Current Owner

CITY OF EAGLE
310 E STATE ST
EAGLE, ID 83616
(208)939-6813

Priority Date: 04/08/1998
Status: Active

Source
GROUND WATER

Tributary to

Beneficial Use
MUNICIPAL

From	To	Diversion Rate	Volume
1/01	12/31	3.25 CFS	1455 AFA

Subuse Code

Total Diversion	3.25 CFS	1455 AFA
-----------------	----------	----------

Location of Point(s) of Diversion:

GROUND WATER	NWSW	Sec. 03	Township 04N	Range 01E
GROUND WATER	SWSW	Sec. 03	Township 04N	Range 01E
GROUND WATER	SESW	Sec. 05	Township 04N	Range 01E

ADA County
ADA County
ADA County

6/8/01 Amendment
NBSL.
- City #2
- City #1
- Mustang Feather
- City #3 ("Brookwood")
- City #4

Place(s) of use: No POUs found for this right

SWSW 5.4
NESE 5.4

Conditions of Approval:

- 065 The right holder shall use the full allotment of appurtenant surface water rights in conjunction with groundwater diverted under this right and shall only divert groundwater under this right when water from the appurtenant surface water rights cannot be delivered to the right holder.
- 079 This right shall not be used if the surface water right(s) appurtenant to the place of use is sold, transferred, leased or used on any other place of use.
- 01M After specific notification by the department, the right holder shall install a suitable measuring device or shall enter into an agreement with the department to determine the amount of water diverted from power records and shall annually report the information to the department.
- 046 Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.
- 004 The issuance of this right does not grant any right-of-way or easement across the land of another.
- 121 The Director retains jurisdiction to require the right holder to provide purchased or leased natural flow or stored water to offset depletion of Lower Snake River flows if needed for salmon migration purposes. The amount of water required to be released into the Snake River or a tributary, if needed for this purpose, will be determined by the Director based upon the reduction in flow caused by the use of water pursuant to this permit.

add these
2 to
this wk

NOTE
Wib zone
183'-602'
this WK

Remarks:

- General Rights 63-11413, 63-12017 and 63-12448 when combined shall not exceed a total diversion rate of 3.25 cfs and a total annual maximum diversion volume of 1455.0 af.

Water Right 63-12448

Well drilling for 5.4 proposal
p/d's ("Brookwood") -

Existing Permits "Lexington Hills" list
the 5.4 tracts but permit already
filed so probably cannot get drilling
permit(s) under Lex. Hills Rights.

-R 7/9/01

Points of diversion locally known as City of Eagle Wells #1 and 2, and Floating Feather Well.

Place of use is located within city limits of Eagle and surrounding service area.

Rights 63-11413 and 63-12017 are also diverted from the wells located in the NWSW and SWSW, S3, T4N, R1E.

Water bearing zone to be appropriated is from 183 to 602 feet.

Comments:

<u>Author</u>	<u>Date</u>	<u>Subject</u>	<u>Comment</u>
SCURTIS	10/12/99	WELL INFORMATION	City of Eagle Wells #1 and #2 were formerly known as Lexington Hills Wells #1 and #2.
SCURTIS	10/13/99	AMENDMENT OF PERMIT	An application for amendment was filed on 12/4/98 to add a point of diversion and a volume limitation to this right.

Dates:

Proof Due Date: 12/01/2003
Proof Made Date:
Approved Date: 12/03/1998
Moratorium Expiration Date:
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
Application Received Date: 04/07/1998
Protest Deadline Date:
Number of Protests: 0
Field Exam Date:.
Date Sent to State Off:
Date Received at State Off:

Other Information:

Receipt Number(s):
State or Federal:
Owner Name Connector:
Water District Number:
Generic Max Rate per Acre:
Generic Max Volume per Acre:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Cary Act Number:
Mitigation Plan: False

W R I E

31

The place of use is the municipal service area.

34

COPY

T5N

T4N

6

5

4

#4

#2

3

FLOATING FEATHER

#3

#1

7

8

9

10

add

Scale: 2 inches equal 1 mile.

I hereby request approval of this change subject to the fact that no one will be injured by the change, and that the change will be made at my own risk.

Signed this 8th day of June, 2001.

Christopher H. Meyer

Christopher H. Meyer
Givens Pursley LLP
277 N. 6th Street, Ste. 200
P.O. Box 2720
Boise, ID 83701-2720
(208) 388-1200
Special Water Attorney for Applicant

COPY

ACTION OF THE DEPARTMENT OF WATER RESOURCES

Preliminary check by _____ Publication prepared by _____ Date _____
Published in _____ Pub. dates _____
I, _____, of the Department of Water Resources hereby

Witness my hand this _____ day of _____, 19____.

IDAHO DEPARTMENT OF WATER RESOURCES
Water Permit Report

WATER RIGHT NO. 63-11413

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	CITY OF EAGLE 310 EAST STATE ST PO BOX 1520 EAGLE, ID 836169102 (208)939-6813
Attorney	CITY OF EAGLE C/O CHRISTOPHER H MEYER PO BOX 2720 BOISE, ID 83701 (208)388-1236
Original Owner	FLOATING FEATHER HILLS INC 2417 BANKS DRIVE SUITE 101 BOISE, ID 83705 (208)343-6500
Original Owner	TREASURE VALLEY VILLAGE LIMITED PARTNERSHIP 4720 EMERALD BOISE, ID 83706 (208)336-3393

Priority Date: 04/02/1991
Status: Active

Source
GROUND WATER

Tributary to

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>	<u>Subuse Code</u>
MUNICIPAL	1/01	12/31	3.15 CFS	540 AFA	
Total Diversion			3.15 CFS	540 AFA	

Location of Point(s) of Diversion:

GROUND WATER	NWSW	Sec. 03	Township 04N	Range 01E	ADA County
GROUND WATER	SWSW	Sec. 03	Township 04N	Range 01E	ADA County
GROUND WATER	SWSW	Sec. 04	Township 04N	Range 01E	ADA County
GROUND WATER	NESE	Sec. 04	Township 04N	Range 01E	ADA County

Place(s) of use: No POUs found for this right

Conditions of Approval:

1. 004 The issuance of this right does not grant any right-of-way or easement across the land of another.
2. 046 Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.
3. 01M After specific notification by the department, the right holder shall install a suitable measuring device or shall enter into an agreement with the department to determine the amount of water diverted from power records and shall annually report the information to the department.

Remarks:

1. General

The right holder is responsible on an on-going basis to provide a well suitable for monitoring as determined by the Department.

The right holder is responsible to insure that pumpage under this water right does not directly cause the water level to significantly decline in any domestic well drilled and in use prior to March 29, 1978, or to cause the water level in any other well having a prior right to exceed a reasonable pumping level, unless the right holder provides reasonable compensation or mitigation to the prior water right holder for the reduced water levels as determined by the Director.

Farmers Union Canal Company water shall be utilized for the irrigation of the lots in Lexington Hills and Trail Creek Ranch parcels equal to or greater than one-half acre in size during periods when water is being delivered in the canal.

This water right may be used for irrigation purposes only if the entire amount of water from the Farmers Union Canal Co. remains with the lands in Lexington Hills and Trail Creek Ranch. Sale or transfer of surface water from any portion of these properties will be cause for the Department to further limit the use of this right.

The right holder shall permanently maintain totalizing flow measurement devices of a type approved by the Department at each well. The water right holder shall provide flow measurements to the Department on a frequency determined by the Department.

Each lot which receives water under this right shall be metered.

Rights 63-11413, 63-12017, and 63-12448 when combined shall not exceed a total diversion rate of 3.25 cfs.

Rights 63-12017 and 63-12448 also diverted through the point(s) of diversion described above.

Points of diversion were formerly known as Hormaechea Wells 1 and 2 and Lexington Wells 1 and 2. They are currently known as City of Eagle Wells 1-4.

Place of use is located within the city limits of Eagle and the surrounding service area.

Comments:

Author	Date	Subject	Comment
ZIMMERM A	1/24/94	AMENDED PERMIT	This permit was amended to reduce irrigation use by 3 acres in Lot 2 (NWNE) and 2 acres in Lot 3 (NENW), S03, T04N, R01E to mitigate pond surface area in water right no. 63-12017. This reduction in acres reduced the total diversion rate from 3.25 cfs to 3.15 cfs.
VAULT	8/31/95	Extension of Time Received	Extension of Time Received
JYARBROU	9/11/95	Lapse Notice Sent	Lapse Notice Sent
VAULT	9/27/95	Extension of Time Received	Extension of Time Received
VAULT	9/18/00	Lapse Notice Sent	Lapse Notice Sent
DELLIS	9/19/00	Proof of Beneficial Use Rcvd	Proof of Beneficial Use Rcvd

Dates:

Proof Due Date: 09/01/2000
 Proof Made Date: 08/29/2000
 Approved Date: 09/11/1991
 Moratorium Expiration Date:
 Enlargement Use Priority Date:
 Enlargement Statute Priority Date:
 Application Received Date: 03/14/1991
 Protest Deadline Date:
 Number of Protests: 0
 Field Exam Date::
 Date Sent to State Off:
 Date Received at State Off:

Other Information:

Receipt Number(s):
 State or Federal:
 Owner Name Connector:
 Water District Number:
 Generic Max Rate per Acre:
 Generic Max Volume per Acre:
 Swan Falls Trust or Nontrust:
 Swan Falls Dismissed:
 DLE Act Number:
 Cary Act Number:
 Mitigation Plan: False

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	CITY OF EAGLE C/O CHRISTOPHER H MEYER PO BOX 2720 BOISE, ID 837012720 (208)388-1200
Original Owner	LEXINGTON HILLS INC
Original Owner	TREASURE VALLEY VILLAGE LTD PARTNERSHIP 1815 E STONEYBROOK CT EAGLE, ID 83616 (208)939-6000

1

1. 26A Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which permit holder had no control.
2. 01C A flow measurement port or other device as specified by the Department shall be installed by the right holder to provide for the installation of measuring equipment and the determination of the rate of diversion by the Department.
3. 046 Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.
4. 46A A well drilled pursuant to this permit must be located at least 500 feet from any existing well. Well spacing closer than 500 feet must be approved by the Department of Water Resources.
5. 46B The right holder shall comply with Idaho well construction standards when constructing a well pursuant to this right.
6. 004 The issuance of this right does not grant any right-of-way or easement across the land of another.
7. 020 Use of water under this right may be affected by an agreement between the protestant and the right holder.

Remarks:

1. General Place of use is located within Lexington Hills and Trail Creek Subdivisions.

Comments:

Author	Date	Subject	Comment
LESTER	5/12/93	SNAKE RIVER MORATORIUM & OTHER INFORMATION	Application requested to be exempted from moratorium by reducing acres irrigated by right no. 63-11413 (same system but other uses). Advertisement will contain information from "Remarks" to let people in impact area know intent of application. Water from Farmers Union Canal will fill ponds during most of the summer. Ponds will be an integral part of irrigation system. Well #1 in SWSWSW S.3, well #2 in NWSW S.3, well #3 in NESE S.4, well #4 in SWSW S.4. This application results from a dept. investigation of a complaint filed by Mr. Al Thornton of Sage Acres Sub. (east of Hwy. 55) - complaint filed late 1992, field inspection made on 12-31-92 by SL. File 63-11413 has information about this process.
ZIMMERMAN	1/4/94	MORATORIUM EXEMPTION	This permit is located within the Boise River Drainage Moratorium boundary; however, its uses are within the acceptable parameters of the Moratorium guidelines. DIVERSION DESCRIPTION Total of 4 wells; 2 existing wells are 16" by 415' & 615' deep; with piping and waterways to 9 excavated ponds; active reservoir capacity 10 AF; total reservoir capacity 15 AF. P/D & P/U OWNERSHIP The points of diversion located within SWSWSW, S03, T04N, R01E are owned by the applicant. The points of diversion located within NWSW, S03, T04N, R01E are owned by RHM Company who have given right of way permission. The places of use are owned by both the applicant and individual lot owners.
ZIMMERMAN	1/11/94	CORPORATE OFFICERS	The officers and directors of Lexington Hills Inc. are Duane H Stueckle, President; Bert Bradley, Vice-President; Harvey Neef, Director; Bryce L Peterson, Director; David Roylance, Director; Dennis Whitmore, Secretary/Treasurer; Steve Yates, Assistant Secretary/Treasurer. The partners of Treasure Valley Village Ltd. are William R Guhrke, Martin S Greene, and Laurence S Greene.
JYARBROU	2/8/99	Lapse Notice Sent	Lapse Notice Sent
VAULT	4/8/99	Proof of Beneficial Use Rcvd	Proof of Beneficial Use Rcvd

Dates:

Proof Due Date: 01/01/1999
 Proof Made Date: 04/08/1999
 Approved Date: 01/24/1994
 Moratorium Expiration Date:
 Enlargement Use Priority Date:
 Enlargement Statute Priority Date:
 Application Received Date: 04/21/1993
 Protest Deadline Date:
 Number of Protests: 0
 Field Exam Date:
 Date Sent to State Off:
 Date Received at State Off:

Other Information:

Receipt Number(s):
 State or Federal:
 Owner Name Connector:
 Water District Number: 63
 Generic Max Rate per Acre:
 Generic Max Volume per Acre:
 Swan Falls Trust or Nontrust:

AUG 30 2000

Department of Water Resources

LAW OFFICES

277 North 6th Street, Suite 200
PO Box 2720, Boise, Idaho 83701
TELEPHONE: 208 388-1200
FACSIMILE: 208 388-1300

DIRECT DIAL: (208) 388-1236
EMAIL: chm@givenspursley.com

Gary G. Allen
Christopher J. Beeson
Michael C. Creamer
Thomas E. Dvorak
Roy Lewis Eiguren
Jacqueline M. Fearnside
Jeffrey C. Fereday
Richard W. Jankowski
Amanda L. Keating
Karl T. Klein
Debora K. Kristensen

Franklin G. Lee
David R. Lombardi
Kimberly D. Matoney
John M. Marshall
Kenneth R. McClure
Kelly Greene McConnell
Cynthia A. Melillo
Christopher H. Meyer
L. Edward Miller
Patrick J. Miller
Judson B. Montgomery

Angela K. Nelson
W. Hugh O'Riordan
Kenneth L. Pursley
Virginia L. Stukel
Conley Ward
Stephanie C. Westermeier
Robert B. White

Raymond D. Givens
James A. McClure
OF COUNSEL

August 28, 2000

Mr. Jeff Peppersack
Manager
Water Rights Permits Section
Idaho Department of Water Resources
1301 N. Orchard St.
Statehouse Mail
Boise, ID 83720-9000

Re: City of Eagle Water Right Nos. 63-11413, 63-12017, 63-12448
Our File No. 5721-1

Dear Jeff:

I am writing to advise the Department that I serve as special attorney of record for water matters for the City of Eagle. Please make appropriate entries in the Department's records to reflect this on each of the above-captioned water rights.

I understand that, once I am so listed, both the City and I will be contacted in the event the Department engages in any communications regarding the City's water rights.

I thank you for your attention to this matter. Please do not hesitate to call me if you have any questions.

Sincerely,



Christopher H. Meyer

cc: Honorable Rick Yzaguirre, Mayor
Susan E. Buxton, Esq., Counsel to the City
Scott Rhead, United Water Idaho
Dan Brown, United Water Idaho

GIVENS PURSLEY LLP

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277 North 6th Street, Suite 200
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Department of Water Resources

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Amanda L. Keating
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Conley Ward
Stephanie C. Westemeier
Robert B. White

Raymond D. Givens
James A. McClure
OF COUNSEL

April 17, 2000

Mr. Jeff Peppersack
Water Right Permit Section Manager
Idaho Department of Water Resources
1301 North Orchard Street
Boise, ID 83706

Re: City of Eagle Water Right No. 63-12448
Our File No. 5721-1

Dear Jeff:

Last Monday I received the Amended Amendment of Permit No. 63-12448 issued to the City of Eagle. The permit correctly reflects the requested change, per my letter of March 31, 2000.

I appreciate your very prompt attention to this request.

Sincerely,



Christopher H. Meyer

cc: The Honorable Rick Yzaguirre, Mayor
L. Glen Saxton, Chief, Water Allocation Bureau
Gary Spackman, Western Regional Manager
Steve Lester, Western Regional Office
Susan Buxton, Moore Smith Buxton & Turcke
Vern Brewer, Holladay Engineering

CHM:kdt

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GIVENS PURSLEY LLP

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