

## Hansen, Angela

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**From:** Ken Acuff <kacuff@cityofeagle.org>  
**Sent:** Wednesday, June 2, 2021 1:18 PM  
**To:** Spackman, Gary  
**Cc:** Miller, Nick; Hansen, Angela; Jason Pierce  
**Subject:** RE: 63-12448 related to Chase farms63-05229

Gary,

Thank you so much for your timely response! The 2" positive displacement meter we have at the site specs at 160gpm max or 35.68 cfs, so it is a little short of the 179 gpm ( ,40cfs ). We can easily change the meter to a turbine and get ( 197 gpm ) or an ultra-sonic ( 200+ gpm ). It sounds like that should satisfy the obligation? Ken

**From:** Spackman, Gary <Gary.Spackman@idwr.idaho.gov>  
**Sent:** Wednesday, June 2, 2021 12:27 PM  
**To:** Ken Acuff <kacuff@cityofeagle.org>  
**Cc:** Miller, Nick <Nick.Miller@idwr.idaho.gov>; Hansen, Angela <Angie.Hansen@idwr.idaho.gov>  
**Subject:** RE: 63-12448 related to Chase farms63-05229

Ken,

I reviewed the City of Eagle's license for water right no. 63-12448. The license contains the following condition:

*The right holder of 63-12448 shall maintain direct back-up service from the right holder's municipal system without additional cost to the right holder(s) of 63-15820, 63-05226 and 63-05229. This water service compensates for the loss of production from the dairy-domestic well and the small irrigation well caused by diverting ground water from the municipal production well located in the SWSW, Section 4, T4N, R1E. The full extent of the diversion rate and volume authorized under each of the following decreed water rights is authorized to be diverted at the municipal water service: 63-15820 (0.04 cfs), 63-05226 (0.10 cfs) and 63-05229 (0.26 cfs).*

Does the two inch line from the City of Eagle's municipal water system to Chase deliver the cumulative total of the quantities required in the condition quoted above ( $0.04 + 0.10 + 0.26 = 0.40$ )? If so, the City has fulfilled its obligation. If not, the City is not complying with a requirement of water right license no. 63-12448.

The Idaho Department of Water Resources does not have the authority to initiate proceedings to determine forfeiture for a decreed water right unless another water application, like an application for transfer, is pending before the Department. The City could file a lawsuit against Chase alleging forfeiture. Courts abhor a forfeiture, however, and the City may have difficulty maintaining a lawsuit if its pumping of ground water is lowering the water table so the ground water right holder can't divert the ground water and the City is supposed to mitigate for the loss.

I am happy to discuss with you directly if you desire.

Gary Spackman

**From:** Ken Acuff [<mailto:kacuff@cityofeagle.org>]  
**Sent:** Thursday, May 27, 2021 4:56 PM  
**To:** Spackman, Gary <[Gary.Spackman@idwr.idaho.gov](mailto:Gary.Spackman@idwr.idaho.gov)>  
**Subject:** RE: 63-12448 related to Chase farms63-05229

Thank you!

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

**From:** "Spackman, Gary" <[Gary.Spackman@idwr.idaho.gov](mailto:Gary.Spackman@idwr.idaho.gov)>  
**Date:** 5/27/21 4:55 PM (GMT-07:00)  
**To:** Ken Acuff <[kacuff@cityofeagle.org](mailto:kacuff@cityofeagle.org)>  
**Subject:** RE: 63-12448 related to Chase farms63-05229

Mr. Acuff,

I have not forgotten about your email. I will look at the water right files and get back to you shortly.  
Gary Spackman

**From:** Ken Acuff [<mailto:kacuff@cityofeagle.org>]  
**Sent:** Friday, May 21, 2021 3:53 PM  
**To:** Spackman, Gary <[Gary.Spackman@idwr.idaho.gov](mailto:Gary.Spackman@idwr.idaho.gov)>  
**Cc:** Jason Pierce <[jpierce@cityofeagle.org](mailto:jpierce@cityofeagle.org)>; Norman M. Semanko <[NSemanko@parsonsbehle.com](mailto:NSemanko@parsonsbehle.com)>  
**Subject:** 63-12448 related to Chase farms63-05229

Gary,

On September 22, 2005 Director Karl Dreher issued a final order on City of Eagle 63-12448 with the condition that the City compensate Chase for well 63-15820 ( 0.04cfs ) domestic and dairy and stock well 63-05226 ( 0.13 cfs ). The City installed a 2" meter and backflow at the location spelled out by Chase and has been providing them water at no cost to this day. Another claim for a small irrigation well ( 63-05229 ) was potentially affected ( 850' from 63-12448 ) but had not been used since 1983, was a 4" well with an in-operable pump ). The order gave Chase the opportunity to test it with its current pump to have a baseline to see if levels dropped after the 63-12448 went into production. 5 months later Chase test ran the well and was able to verify 0.66.4gpm or 0.15cfs. This test was run on February 10, 2006. A partial decree was issued in 2007 for compensation of 0.26cfs. In the 63-12448 Licensing Memorandum of March 02, 2016 by Ashley Newbry conditions 1-B states: This water service compensates for the loss of production from the dairy-domestic well and the small irrigation well caused by diverting ground water from the municipal production well located in the SWSW, Section 4, T4N, R1E. The full extent of this diversion rate and the volume authorized under each of the following decreed water rights is authorized to be diverted at the municipal service: 63-15820 ( 0.04 cfs ), 63-05226 ( 0.10 ), and 63-05229 ( 0.26 cfs ). We have been under the impression that this one 2" service made their claim whole. Last week Chase sent a letter to the City of Eagle stating their intentions to use well 63-05229 and that it appeared to be dry ( the pump motor runs but the pump produces no water.) The City met with their representative who says they expect the City to provide 0.26 cfs of water at the well site or provide a new well or new pump. No proof of previous static water level or current static level is provided.

My point is that 15 years have past since the pump test, all the time we believed we had satisfied the compensation. Now Chase says we owe them 0.26cfs at the point of diversion of the small well which is over 900' from the service we provided. This well has not provided beneficial use since 1983 or 38+ years ago. If there is no use for 38 years wouldn't

that right be forfeited? Or according to the decree can Chase allow this well to fall into disrepair for 15-38 years and expect the City to then make it whole?

The City is willing to do what is right by all parties but we don't want to open an old can of worms if e don't have to, your opinion would be greatly appreciated.

By the way, the static water level when 63-12448 was drilled was 28 feet. Today it is still at 28 feet. It runs 850 gpm for 10 hours every other day. Ken

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