BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

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

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

STANDARD FOR DECISION

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

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

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

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

COURSE OF PROCEEEDINGS

On June 8, 2001, Eagle filed an application to amend existing water right permit no. 63-12448 to add two additional points of diversion (the "Application"). The proposed points of diversion are located in Eagle, Idaho, in the SWSW, Section 4, T4N, R1E[1] (Eagle well no. 3, aka Brookwood well) and NESE, Section 4, T4N, R1E (Eagle well no. 4). Notice of the application was published in The Idaho Statesman of Boise, Idaho, on or about June 21 and 28, 2001. Eagle Water Company, Inc., Weldon T. Fisher, Eleanor I. Chase, and a group of concerned citizens[2] protested the Application.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

STATEMENT OF ISSUES RAISED BY EXCEPTIONS

City of Eagle Exceptions

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

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

(2) The priority date of permit no. 63-12448 should not be advanced to June 8, 2001;

(3) The proposed point of diversion referred to as Eagle well no. 4 should have been approved as a point of diversion;

(4) Eagle should not be required to fully compensate for the inability of the Chase Estate to divert its paper water rights;

(5) Eagle should not be required to (a) conduct a pump test for proposed Eagle well no. 3, (b) determine a maximum flow rate for Eagle well no. 3, (c) negotiate with the Chase Estate for injury caused by pumping of the maximum flow rate, and if the negotiations are not productive, (d) file a lawsuit for judicial determination of the compensation required; and

(6) The evidence does not support a finding in the recommended order that a new well cannot be drilled at or near Eagle well no. 2.

Chase Estate Exceptions

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

(1) The recommended order did not identify all the Chase water rights protected to historical ground water pumping levels;

(2) Projected drawdowns in the Chase dairy well, small irrigation well, and large irrigation well are not consistent with the evidence and expert opinions;

(3) A finding that the dairy well will only produce 0.067 cfs is not supported by the evidence;

(4) Supplemental water right no. 63-05229 should be afforded the same protection as other water rights;

(5) The recommended order incorrectly determined that the large irrigation well would not be adversely impacted;

(6) The amendment does not satisfy the local public interest standard; and

(7) The application for amendment should have been denied rather than forcing additional iterations of negotiations and litigation in court and perhaps before the Department.

EVIDENCE CONSIDERED

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

Exhibit 1: Application for Amendment of Permit No. 63-12448 filed by the City of Eagle

Exhibit 2: Brookwood Public Water Supply Well Design/Proposal Plans and Specifications dated May 2000

Exhibit 3: Map of Eagle Water System

Exhibit 4: Map of Protestants & Eagle Wells

Exhibit 5: Chart of Eagle Water System changes

Exhibit 6: Resume of Terry Scanlan, P.E., P.G.

Exhibit 7: Municipal Production Bar Graph

Exhibit 8: United Water Idaho Floating Feather & Redwood Creek Monthly Well Production

Exhibit 9: Eagle Water Company Annual Well Production

Exhibit 10: Eagle Annual Well Production

Exhibit 11: Water Level Monitoring of Vail and Miller Wells, October 22, 1999

Exhibit 12: June 2, 2003 and June 3, 2003 letters regarding monitoring results for Vail and Miller Wells

Exhibit 13: September 26, 2003 letter regarding water level monitoring results for Vail and Miller Wells

Exhibit 14: June 3, 2003 letter regarding Burton Group Well Measurements

Exhibit 15: Photo log and photographs of May 13, 2003 site inspection of Chase Dairy site

Exhibit 16: Agreement to Provide Supplemental Fire Flows

Exhibit 17: Water Line Agreement

Exhibit 18: December 2, 1997 Agreement

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

Exhibit 20: Water Right Claim No. 63-5227

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

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

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

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

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

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

Exhibit 25: (Not admitted).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Exhibit 136: City of Eagle United Water Operations Reports

Exhibit 137: Agreement to Provide Supplemental Water for Fire Flows

Exhibit 138: Cooperative Agreement

Exhibit 139: Water Line Agreement

Exhibit 140: Agreement dated December 2, 1997

Exhibit 141: Well Purchase Agreement

Exhibit 142: Notice of Claim No. 63-5224

Exhibit 143: Partial Decree No. 63-5225

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

Exhibit 145: Notice of Claim No. 63-5227

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

Exhibit 147: Notice of Claim No. 63-8663

Exhibit 148: License No. 63-8663

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

Exhibit 150: Partial Decree No. 63-15820

Exhibit 151: Partial Decree No. 63-18731

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

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

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

Exhibit 155: Diagram of Selected Well Locations

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

Exhibit 157: 1952 photograph of barn

Exhibit 158: 1952 photograph of barn and Chase dairy.

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

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

The following individuals testified on behalf of Eagle:

a. Ms. Lynne Sedlacek, Eagle City Councilmember;

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

c. Mr. Terry M. Scanlan, P.E., P.G., Scanlan Engineering; and

d. Nancy Merrill, Eagle Mayor.[4]

The following individuals testified on behalf of the Chase Estate:

a. Mr. Mike Chase, Chase Estate;

a. Mr. Dave Shaw, ERO Resources, Inc.;

b. Mr. Bill Chase, Chase Estate; and

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

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

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

ANALYSIS OF EXCEPTIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

Evidence to Establish Protection from Reasonable Economic Pumping Standard

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

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

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

General Injury Analysis

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

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

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

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

Injury Analysis for the Dairy-Domestic Well

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

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

Injury Analysis for the Small Irrigation Well

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

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

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

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

Analysis of Injury to the Large Irrigation Well

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

Injury Analysis for Other Chase Estate Wells

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

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

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

Injury Analysis for the Burton Group Wells

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

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

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

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

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

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

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

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

Eagle Well No. 4

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

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

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

Local Public Interest

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

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

Advancement of Priority

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

Miscellaneous Exceptions

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

FINDINGS OF FACT

Applicant and Permit No. 63-12448

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

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

Source of Water

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

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

Exhibit 104 at 52.

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

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

Points of Diversion

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

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

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

Use

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

Total Quantity

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

Period of Use

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

Place of Use

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

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

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

Exhibit 106 at 12.

Extension of Time for Filing Proof of Beneficial Use

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

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

Proposed Project

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

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

Eagle Well No. 3 (Brookwood Well)

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

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

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

Eagle Well No. 4

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

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

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

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

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

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

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

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

24. The Strowd Report concludes:

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

Exhibit 102, p. 6.

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

Effects on Chase Estate Wells

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Impact on Burton Group Wells

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

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

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

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

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

Impact on Other Wells

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

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

CONCLUSIONS OF LAW

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

Effect on Other Water Rights

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

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

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

Idaho Code § 42-226.

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

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

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

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

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

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

The Idaho Supreme Court went on to note that:

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

103 Idaho at 514.

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

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

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

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

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

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

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

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

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

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

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

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

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

Enlargement of Use

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

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

Local Public Interest

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

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

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

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

Extension of Time to File Proof of Beneficial Use

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

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

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

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

ORDER

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

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

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

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

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

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

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

(2) Before construction of Eagle well no. 3 in the SWSW, Section 4, T4N, R1E, is completed and ground water is diverted from Eagle well no. 3, the Chase Estate may conduct a pump test using the small irrigation well. The Department must pre-approve the test, and the City of Eagle must be allowed to participate in the test. The test must use presently in-place pumping equipment and be conducted for a sufficient duration to establish the current sustainable rate of diversion. Any sustainable rate of diversion within the diversion rate limitation of claim no. 63-05229 (0.46 cfs) will be recognized as diversion capacity that will no longer be available because of declines caused by diverting ground water from Eagle well no. 3 in the SWSW, Section 4, T4N, R1E The City of Eagle must compensate the Chase Estate for any loss of proven, sustainable diversion rate from the small irrigation well. Two acceptable alternatives for compensation are: (a) constructing a new well for the Chase Estate, installing the necessary pumping equipment, and paying for additional pumping costs; or (b) providing direct back-up service from the City of Eagle's municipal system without additional cost to the Chase Estate. If one of these two alternatives is offered to the Chase Estate by the City of Eagle, the Chase Estate must except the alternative offered. If the Chase Estate does not accept whichever of these two alternatives is offered by the City of Eagle, the Chase Estate is not entitled to protection of its rights. Alternatively, the City of Eagle and the Chase Estate may negotiate another mutually acceptable alternative for compensation.

(3) Right no. 63-12448 is subject to all prior water rights, including rights held by the Chase Estate as provided in (1) and (2) above.

(4) The water bearing zone to be appropriated under right no. 63-12448 is from 183 to 602 feet below ground surface.

(5) Wells at the additional points of diversion authorized shall be constructed in accordance with the rules of the Idaho Department of Water Resources regarding well construction, IDAPA 37.03.09, and the rules of the Department of Environmental Quality for Public Drinking Water Systems, IDAPA 58.01.08.

(6) The right holder shall install suitable measuring devices approved by the Department at Eagle wells no. 3 and no. 4 and shall annually provide a report to the Department documenting the total volume of ground water diverted annually to the Department.

(7) Proof of construction of works and application of water to beneficial use shall be submitted on or before October 1, 2009.

(8) The issuance of permit no. 63-12448 and the granting of amendment does not grant any right-of-way or easement across the land of another.

(9) Rights no. 63-11413 and no. 63-12017 also have authorized points of diversion from the wells in the SWSW (Eagle well no. 1) and NWSW (Eagle well no. 2), Section 3, T4N, R1E, and the wells in the SWSW (Eagle well no. 3) and NESE (Eagle well no. 4), Section 4, T4N, R1E, B.M.

(10) Rights no. 63-11413, no. 63-12017, and no. 63-12448, when combined, shall not exceed a total maximum diversion rate of 3.25 cfs and a total annual maximum diversion volume of 1,455 acre-feet.

(11) The place of use for rights no. 63-11413, no. 63-12017, and no. 63-12448 is within the service area of the City of Eagle municipal water supply system as provided for under Idaho law.

(12) The Director retains jurisdiction to require the right holder to provide purchased or leased natural flow or stored water to offset depletion of Lower Snake River flows if needed for salmon migration purposes. The amount of water required to be released into the Snake River or a tributary, if needed for this purpose, will be determined by the Director based upon the reduction in flow caused by the use of water pursuant to this permit.

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

DATED this 22nd day of September 2005.

KARL J. DREHER
Director

CERTIFICATE OF SERVICE

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

Document(s) Served: Final Order
Statement of Available Procedures and Applicable Time Limits.

BRUCE SMITH TAMMY ZOKAN 225 N 9TH ST STE 420 BOISE ID 83701-2720 bms@msblaw.com taz@msblaw.com	(x) U.S. Mail, Postage Prepaid (x) E-mail
JIM BURTON 1896 N EAGLE RD. EAGLE ID 83616	(x) U.S. Mail, Postage Prepaid
WELDON FISHER 546 E BEACON LIGHT RD. EAGLE ID 83616	(x) U.S. Mail, Postage Prepaid
CHARLES L. HONSINGER RINGERT CLARK CHARTERED P. O. BOX 2773 BOISE ID 83702 clh@ringertclark.com	(x) U.S. Mail, Postage Prepaid (x) E-mail
MOLLY O'LEARY P. O. BOX 1849 EAGLE ID 83616 molly@richardsonandoleary.com	(x) U.S. Mail, Postage Prepaid (x) E-mail
JOHN WESTRA IDWR – WESTERN REGION 2735 AIRPORT WAY BOISE ID 83705-5082 john.westra@idwr.idaho.gov	(x) U.S. Mail, Postage Prepaid (x) E-mail

Victoria Wigle

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Administrative Assistant to the Director
Idaho Department of Water Resources