BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATIONS TO APPROPRIATE WATER NOS. 63-32089 AND 63-32090 IN THE NAME OF THE CITY OF EAGLE	)	**PRELIMINARY ORDER**

On January 19, 2005, the City of Eagle ("Eagle") filed two applications for permit to appropriate water, numbered in the files of the Idaho Department of Water Resources ("IDWR" or "Department") as 63-32089 and 63-32090. IDWR published notice of the applications in the Idaho Statesman on April 21 and 28, 2005. The applications were protested by the following individuals: Roy Barnett, Tim Cheney, City of Star, Dean and Jan Combe, Michael Dixon/Hoot Nanney Farms, Bill Flack, Bob and Elsie Hanson, Michael Heath, Charles Howarth, Corrin Hutton, Norma Mares, Michael McCollum, Charles Meissner, Jr., LeRoy and Billie Mellies, Robyn and Del Morton, Frank and Elaine Mosman, Joseph, Lynn, and Mike Moyle, Eugene Muller, Tony and Brenda O'Neil, Bryan and Marie Pecht, Dana and Viki Purdy, Sam and Kari Rosti, Ronald Schreiner, Star Sewer and Water District, Jerry and Mary Taylor, United Water Idaho, and Ralph and Barbara Wilder.

IDWR conducted a prehearing conference on July 28, 2005. At the prehearing conference, Scott Reeser hand-delivered a letter to IDWR. In the letter, Scott Reeser asked to intervene in the contested case.

On September 13, 2005, IDWR issued an order granting Scott Reeser's petition to intervene.

Several protestants failed to appear at the prehearing conference. IDWR mailed a notice of default to the non-appearing protestants. The following non-appearing protestants who failed to show good cause for non-appearance were dismissed as parties: Roy Barnett, Bryan and Marie Pecht, Del and Robin Morton, Tony and Brenda O'Neil, and Frank and Elaine Mosman.

The hearing officer conducted a second prehearing conference on October 18, 2005. At the prehearing conference, Eagle proposed to drill two wells for conducting a pump test. Eagle proposed to pump water from one of the wells and measure water levels in other wells in the vicinity of the pumped well to determine the impacts of pumping.

On December 22, 2005, IDWR approved two drilling permits to construct wells for the pump test.

On January 17, 2006, IDWR received a "notice of protest" from Bud R. Roundtree. IDWR interpreted the document as a petition to intervene.

On January 19, 2006, the hearing officer issued a *Notice of Hearing, Order Authorizing Discovery, and Prehearing Order*. The hearing officer scheduled the hearing for April 10 through April 14, 2006. On February 28, 2006, Eagle notified the hearing officer that the two test wells had not been constructed. The letter stated "the City of Eagle will not be able to get the pump test completed pursuant to the existing schedule." As a result of the notice, the hearing officer canceled and continued the hearing. In the *Order Continuing Hearing and Canceling Prehearing Deadlines*, the hearing officer ordered the following:

> ...[U]pon completion of construction of the test wells, the City of Eagle shall arrange a time for the anticipated pump tests with the other parties. When the date(s) for the pump tests have been arranged, the City of Eagle shall notify the Department of the test date(s). After receiving notice of the test date(s), the Department will inquire about available dates for a hearing. The hearing will be scheduled no earlier than ninety days following the date of the test to allow the exchange of information and discovery previously authorized.

On July 11, 2006, the City of Eagle notified the hearing officer that "the pump test conducted by the City of Eagle has been completed."

Sometime during late summer or the fall of 2006, Eagle submitted a report titled *City of Eagle – 7 Day Aquifer Test* to IDWR staff for review. The document is dated "June 2006," but the test was not completed until June 19, 2006.

On September 6, 2006, the hearing officer issued a second *Notice of Hearing, Order Authorizing Discovery, and Prehearing Order*. The Notice of Hearing scheduled the hearing for December 6 through 8, 2006 and December 11 and 12, 2006. At the time of service of the notice of hearing, IDWR had not acted on the petition to intervene filed by Bud Roundtree. The record does not show that IDWR ever determined whether Roundtree should be allowed to intervene. Roundtree received notice of all the proceedings, however, and IDWR treated Roundtree as a full party to the contested case.

On November 7, 2006, Star Sewer & Water District withdrew its protest.

On November 13, 2006, protestants Joseph, Lynn and Mike Moyle, Eugene Muller, Dana and Viki Purdy, Charles Meissner, Jr., and Charles Howarth filed a *Motion to Continue the Hearing*. On November 15, 2006, the above protestants filed an *Amended Motion to Continue Hearing*. The protestants filing the motion for continuance asserted: (1) various scheduling conflicts of the protestants; and (2) Eagle failed to "arrange a time for the anticipated pump test with the other parties" as required by the hearing officer's March 10, 2006 *Order Continuing Hearing and Canceling Prehearing Deadlines*.

On November 20, 2006, the hearing officer denied the *Amended Motion for Continuance*. This order will not discuss the grounds for refusing the continuance based on scheduling conflicts. A discussion of the prearrangement of the pump test is germane, however.

In denying the request for a continuance on the grounds of failure to jointly conduct a pump test, the hearing officer wrote:

> ...The hearing officer intended that all the parties interested in the pump test have an opportunity to participate in the test. If Eagle failed to arrange the timing of the test with the parties, the hearing officer is dismayed that Eagle did not follow the dictates of the order.
>
> Nonetheless, even assuming Eagle did not arrange a time for the pump test with the protestants as required by the hearing officer's March 10, 2006 order, the protestants have known that the City of Eagle completed its pump test since receiving the July 11, 2006 letter. The hearing officer also notified the protestants of the completion of the pump test in his August 16, 2006 letter and alluded to the completion of the test in his September 6, 2006 order. Failure of the city to fully coordinate the pump test with the protestants should have been raised as an issue at the time the protestants were notified that the pump test had been completed. Instead, the protestants waited until less than a month before the scheduled hearing to complain. Despite Eagle's failure, the protestants' inaction after learning of the completion of the pump test for approximately four months leads the hearing officer to surmise that the protestants were disinterested in participating actively in the pump test. Consequently, failure to coordinate the pump test is not grounds for postponing the hearing at this late date.

On November 22, 2006, protestants Joseph, Lynn and Michael Moyle, Eugene Muller, Dana and Viki Purdy, Charles Meissner, Jr., and Charles Howarth filed a *Motion in Limine*. The protestants participating in the *Motion in Limine* argued that the "...data and results collected from the seven-day pump test conducted by the City of Eagle in May and June, 2006" should be excluded from the evidence "...because the Protestants were not provided an opportunity to collect data from their wells while the pump test was conducted."

On November 30, 2006, the hearing officer issued an *Order Denying Motion in Limine, Notice of Staff Memorandum, and Amended Notice of Hearing*. In the order, the hearing officer stated:

> ...The protestants had an opportunity to complain about their inability to participate in the test long in advance of the hearing. The protestants did not avail themselves of the opportunity and should not be allowed to raise the issue just prior to the hearing as a means of preventing consideration of technical information.
>
> The *Motion in Limine* should be denied.
>
> On November 29, 2006, Sean Vincent and Shane Bendixsen submitted a Department staff memorandum to the hearing officer that evaluated the pump test conducted for the City of Eagle test wells. A copy of the staff memorandum is enclosed with this document. The staff memorandum raises several issues about the procedures of the pump test and the analysis of the pump test data. The

questions raised by Department staff could seriously affect the credibility of the pump test evidence presented at the hearing.

The hearing officer will consider the Department staff memorandum as part of the evidence in this contested case. Because the analysis of the pump test submitted to Department staff was incomplete, the hearing officer will forward any additional evidence about the pump test received into evidence at the hearing to Department staff for further review to determine possible deficiencies. After the staff review, the hearing officer will distribute the results of the Department's post hearing review to the parties who will have an opportunity to submit additional comments and possibly to request supplemental hearings about the document. This process **will delay** the ultimate consideration of the applications.

The November 30, 2006 order also delayed commencement of the hearing by one day.

A hearing for the contested case was conducted on December 7 and 8, 2006, and resumed on December 11 and 12, 2006. At the end of the day on December 12, 2006, the presentation of evidence was not complete. As a result, additional evidence was presented the morning of December 18, 2006.

Bruce Smith and Tammy Zokan, attorneys at law, appeared on behalf of Eagle. Charles Honsinger and Jon Gould, attorneys at law, appeared on behalf of Joseph, Lynn and Mike Moyle, Eugene Muller, Dana and Viki Purdy, Charles Meissner, Jr., Charles Howarth, and Mike Dixon/Hoot Nanney Farms. Sam Rosti, Corrin & Terry Hutton, Mary Taylor, and Jan Combe appeared individually representing themselves.

On December 20, 2006, the hearing officer issued a request for staff memorandum to Hal Anderson, Rick Raymondi, Sean Vincent, and Shane Bendixsen. The request for staff memorandum stated the following:

> Sean Vincent (Vincent) and Shane Bendixsen (Bendixsen) reviewed a technical document titled *City of Eagle, Idaho 7–Day Aquifer Test* prepared by Chris H. Duncan of Holladay Engineering Company. After the review, Vincent and Bendixsen issued a staff memorandum dated November 29, 2006. In the memorandum Vincent and Bendixsen stated that "the scope of the data collection was adequate, but the aquifer test analysis is incomplete."

The request for staff memorandum recited some of the procedural background, and further stated:

> At a hearing conducted on December 7-8, 11-12, and 18, 2006, the City of Eagle presented additional analysis of the aquifer test data. In addition, the City of Eagle called Vincent to testify regarding the November 29, 2006 staff memorandum.
>
> THEREFORE, the hearing officer invites department staff to augment the November 29, 2006 staff memorandum regarding the above captioned matter, which could include, without limitation:

1. A full scrutiny of the methods of gathering data, the data presented, and results of the aquifer test contained in the *City of Eagle, Idaho 7-Day Aquifer Test* report dated June 2006.

2. Presentation and analysis of additional data available to department staff to enhance the hearing officer's understanding of the hydrogeology and aquifers in the vicinity of the proposed appropriations of water, including, but not limited to data related to aquifer tests performed for the Lexington Hills well and the Floating Feather well.

3. An independent analysis of Eagle's 7-Day Aquifer Test data using commonly accepted scientific methods in the field of geology, hydrogeology, and engineering.

4. A technical review and critic (sic) of any information and analysis of data presented as evidence during the contested case hearing conducted on December 7-8, 11-12, and 18, 2006.

On February 27, 2007 (date on the document was February 27, 2006), Sean Vincent of IDWR submitted to the hearing officer a staff memorandum titled *Review of Addendum to City of Eagle, Idaho 7-Day Aquifer Test Report*. Attached to the staff memorandum was a document titled *Addendum to City of Eagle 7-day Aquifer Test Report*.

In the staff memorandum, Vincent states that "the Addendum adequately addresses comments made in a previous memo to you dated November 29, 2006."

On March 13, 2007, Eagle mailed copies of the written addendum reviewed by IDWR staff to the parties who attended the December hearing.

On March 27, 2007, the hearing officer mailed a copy of the staff memorandum written by Vincent to the parties who attended the December hearing. The hearing officer also served a *Notice of Consideration of Additional Evidence and Post Hearing Order* on the parties. The document informed the parties that the hearing officer would consider the information in the addendum and the staff memorandum, and granted the parties until April 25, 2007 to review documents and to submit technical comments about the addendum to the hearing officer and/or request a supplemental hearing.

On March 27, 2007, the hearing officer issued an order dismissing the following parties from the contested case: Michael McCollum, Michael and Nancy Heath, Tim Cheney, Bob & Elsie Hanson, Bill Flack, Ronald Schreiner, City of Star, Scott and Nancy Reeser, Bud Roundtree, Ralph and Barbara Wilder, and Norma Mares.

On April 24, 2007, Mary Taylor submitted written comments to Eagle's addendum.

On April 25, 2007, protestants Joseph, Lynn and Mike Moyle, Eugene Muller, Dana and Viki Purdy, Charles Meissner, Jr., Charles Howarth, and Mike Dixon/Hoot Nanny Farms, Inc., submitted comments to Eagle's addendum and the IDWR staff memorandum.

Having considered the evidence presented at the hearing, and the information subsequently submitted to the hearing officer, the hearing officer finds, concludes, and orders as follows:

FINDINGS OF FACT

1. On January 19, 2005, the City of Eagle submitted two applications to appropriate water to IDWR. IDWR assigned application numbers 63-32089 and 63-32090 to the applications.

2. Application to appropriate water no. 63-32089 seeks the following:

Source:		Groundwater
Flow Rate:		4.0 cfs
Purpose of Use:		Municipal
Proposed Priority:		January 19, 2005
Period of Use:		Jan. 1 through Dec. 31
Points of Diversion:		
Township 04 North, Range 01 West,	Section 10	NWNE[1]
	Section 11	SENW
	Section 10	NWNW
	Section 11	NWSE (two wells)
Place of Use:		The municipal service area for the City of Eagle.

3. Application no. 63-32090 proposes the following:

Source:		Groundwater
Flow Rate:		4.9 cfs
Purpose of Use:		Municipal
Proposed Priority:		January 19, 2005
Season of Use:		Jan. 1 through Dec. 31
Points of Diversion:		
Township 04 North, Range 01 West,	Section 10	NWNE
	Section 11	SENW
	Section 10	NWNW
Place of Use:		The municipal service area for the City of Eagle.

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

4. The two applications identify eight possible separate well locations. The three points of diversion listed in application no. 63-32090 duplicate locations described in application no. 63-32089. Eagle only intends to construct a maximum of five wells.

5. Eagle owns and operates a municipal water system that serves a geographical area within the municipal boundaries of the City of Eagle. The certificated area of service for the Eagle municipal water system also includes lands outside of the city boundaries. The certificated area for service by the Eagle municipal water system is depicted in Eagle Exhibit 6 and is color-coded in pink. Eagle Exhibit 6 also shows locations of the five wells proposed by the applications.

6. A portion of Eagle's service area is located west of Linder Road, east of Highway 16, and north of Highway 44 to the edge of the foothills bounded on the north by Homer Road. This area will be referred to in this decision hereinafter as the "western expansion area."

7. Two housing developments named Eaglefield and Legacy are currently proposed for construction in the western expansion area. The combined number of homes proposed for the development is approximately 2,000 homes. The homes will be constructed on approximately 800 to 900 acres in Sections 2, 3, 9, 10, and 11, T4N, R1W.

8. Eagle anticipates that the development for the 2,000 homes will be complete within five-years, although all of the homes may not be built by that time.

9. Developers proposing construction of residential housing within Eagle are required to dedicate sufficient ground water or surface water rights to the proposed developed lands to accommodate irrigation demands within the subdivision. When surface water is the traditional method of irrigating the lands prior to development, the developer is required to install a separate system from Eagle's municipal water system for delivery of surface water for irrigation.

10. The applications propose delivery of water primarily for in-house use in the 2,000 homes projected for construction. The peak one-hour demand for in-house use in 2,000 residential units is 2.23 cfs. In addition, Eagle is required to supply the development with 6.68 cfs for fire protection. The total projected instantaneous demand is 8.9 cfs, the combined flow rate sought by the two applications.

11. The developers of the proposed subdivisions must pay for the five proposed wells and internal delivery system within the development. In addition, Eagle has set aside monies in its budget for construction of main lines and trunk lines to connect with the existing Eagle municipal water system. Eagle also has the power to levy assessments against its water users for payment of additional improvements. Finally, Eagle has the authority to form a Local Improvement District (LID) and issue bonds to be repaid by future assessments.

12. Eagle does not presently intend to employ any water storage to meet peak demands. Storage to supply short-term peak demands and fire flow demands could be a component of future use, however. Eagle Exhibit 6 identifies the location of a future storage tank at the northern boundary of the western expansion area.

13. In May 2006, Eagle constructed two wells within the proposed development property. Both of the wells were constructed according to the Department of Environmental Quality standards.

14. The first well was constructed in the SENW, Section 11, Township 04 North, Range 01 West. This well will be referred to hereafter as Well no. 1 or the "Legacy Well." The second well was constructed in the NWSE, Section 11, Township 04 North, Range 01 West. This well will be referred to hereafter as Well no. 2, or the "Eaglefield Well."

15. An aquifer pump test was conducted from approximately May 25 through June 19, 2006, by pumping the Eaglefield Well and monitoring water levels in other wells. The test was conducted in three separate phases. Background testing was conducted for seven days prior to the pump test. A seven-day constant rate pump test commenced on June 2 and ended on June 9 at a pumping rate of 1,580 gallons per minute ("gpm"). Following pumping, water levels were measured for seven days following the end of the pumping period to determine recoveries of ground water levels without pumping.

16. Eagle monitored the water levels in eight wells. One of the monitoring wells was the pumping well (Eaglefield Well). Water levels in the Legacy Well were monitored. Water levels in six other privately owned wells were also monitored. Other parties to this contested case were not given an opportunity to participate in the test and monitor their own wells during the test.

17. Eagle submitted to IDWR a report titled *City of Eagle, Idaho 7-Day Aquifer Test*. The report was received into evidence as Eagle Exhibit 14. Copies of the aquifer test were made available to the parties.

18. IDWR staff reviewed the report. In a staff memorandum dated November 29, 2006, staff found several deficiencies in the report. The staff memorandum stated, among other things, the following:

a. A higher pumping rate than was originally proposed for the lower yielding Monitoring Well # 1 (Legacy Well) could and should have been used to stress the system. If Eagle had done so, the effect on other nearby wells and possible boundary conditions would have been more clearly identified.

b. Site hydrogeology should have been consulted to determine whether the test data and conceptual models were reasonable

c. Other factors such as water level trends, barometric pressure fluctuations, and fluctuations caused by nearby pumping wells should have been examined and used to correct and/or interpret the test data.

d. Tables should have been prepared to identify the various wells and their construction characteristics. Methods of analysis other than the Theis Equation should have been employed. This would have verified the results of the Theis estimates. Use of other methods would have better analyzed the water level recovery data.

e. Significant differences in the values estimated for storativity were not well explained.

f. Some water levels recovered to an elevation higher than the initial static water level.

19. The above deficiencies were discussed at the hearing. As a result of these concerns, the hearing officer allowed additional analysis of data and information following the conclusion of the presentation of evidence.

20. Ground water levels measured in a well owned by Ricks (Monitoring Well no. 6) showed some signs of a boundary condition. The Ricks well began a steeper decline in water levels approximately four to five days into the pump test. Because the rate of pumping of the Eaglefield Well was not as high as it could have been, and because the pumping test was of somewhat short duration, this possibility of boundary conditions was never explored.

21. In an addendum to its original report submitted to the hearing officer after the hearing, Eagle addressed some of the concerns raised by IDWR staff. As a result, IDWR staff issued a supplemental staff memorandum dated February 27, 2007. The author of the supplemental memorandum, Sean Vincent, wrote the following:

1. The water level and aquifer test data presented in the Addendum generally support the authors' primary conclusion (i.e., the deep sand layers that are targeted for production have sufficient capacity for additional withdrawals). The fact that static water levels in the deep system near the area of proposed development are above land surface and appear to be relatively stable suggest that the deep aquifer system is not currently in a state of overdraft.

2. An exception to the relatively stable water level trend described above is the hydrograph for Well 04N01W-31AAA1, which is located approximately 5 miles southwest of the area of proposed development. The water level in this well has declined by approximately 10 to 15 feet since 1970. Because the aquifer strata are dipping, however, this 462-foot deep well may not be producing from the same aquifer system that is targeted for the development by the City of Eagle.

3. The inclusion of a conceptual hydrogeologic model, hydrographs for area wells, and additional analyses using the Cooper-Jacob (1946) and Theis (1935) residual drawdown methods, significantly improves the value of the aquifer test as a basis for evaluating the water supply.

4. As discussed in the Addendum, semilogarithmic plots of drawdown and residual drawdown suggest that both positive (recharge) and negative (finite aquifer) boundaries affected the test data. The observed behaviors are consistent with the conceptual model of a finite, confined aquifer that receives recharge from the surrounding uplands. Given the available data,

application of the Theis (1935) solution to estimate the aquifer properties is appropriate for this hydrologic setting.

5. The Addendum also includes calculations for estimating potential impacts to existing wells. The calculations, which also are based on the Theis (1935) solution, are conservative in that they neglect to account for aquifer recharge but non-conservative in that they are premised on the assumption of an infinite aquifer.

6. The 1-year timeframe for evaluating impacts to existing wells is appropriate, in my opinion, and is consistent with guidance for determining yield for public drinking water supply wells (IDEQ, 2007). The ranges of transmissivity and storativity values used to estimate drawdown also are appropriate based on available information.

7. I verified that the drawdown estimates presented in Table 4 of the Addendum were calculated correctly using the series approximation of the Theis (1935) solution and the assumed input values.

8. Although the data analysis provides the basis for estimating hydraulic properties for the target aquifer system, the aquifer test was not of sufficient duration to definitively evaluate aquifer boundary conditions and long-term impacts associated with pumping. As recommended in the Addendum (Recommendations 15 and 16), a long-term water level and discharge rate monitoring program should be implemented if the water right applications are approved in order to evaluate water level trends as affected by pumping. Dedicated upgradient and downgradient monitoring wells that are completed in the deep aquifer system within the zone of influence of the aquifer test are recommended.

22 The hearing officer adopts the Vincent analysis text quoted above as findings of fact.

23. Ground water underlying the location of the proposed wells resides in three aquifers separated by discontinuous clay aquatards. The discontinuity of the impervious clay strata allows some communication between the aquifers. This communicative relationship between the aquifers will be discussed in subsequent findings.

24. The shallow aquifer is a water table aquifer extending from land surface to approximately 100 feet below land surface. The intermediate aquifer is generally found from 100-200 feet below ground surface and is at least semi-confined. The deep aquifer is located at depths below approximately 200 feet and is under artesian pressure. There may also be deeper aquifers, including geothermal aquifers.

25. The production zones for two of the test wells are completed in the shallow aquifer. The production zones for three of the test wells are completed in the intermediate aquifer. The

Eaglefield Well, the Legacy Well, and one of the United Water wells are completed in the deep aquifer. Evidence at the hearing established that a United Water intermediate aquifer well and a United Water deep aquifer well were completed within the same borehole. Upon construction, United Water nested strings of casing inside a single well. The casing for the monitoring well identified as having been constructed into the deep aquifer monitoring well commingled the intermediate and deep aquifers together, resulting in a mixing of water from the intermediate and deep aquifers, and also mixing the pressures of the two zones. This commingling probably skewed the data gathered from the United Water deep aquifer well. As a result, the only direct measurements of drawdowns in the deep aquifer caused by pumping are the measurements of drawdowns for the Legacy well.

26. Eagle Exhibit 8 is a summary of the potential effects on the protestants' wells of pumping the proposed Eagle Wells at various flow rates.

27. Eagle Exhibit 24 contains information about the protestants' well and tables estimating drawdowns using the Theis equation at various radial distances from a producing well in the three different aquifers, the shallow aquifer, the intermediate aquifer, and the deep aquifer.

28. Table 1 of Eagle Exhibit 24 is an estimate of potential drawdown in the shallow aquifer based on various pumping rates and distance from the pumping well. The estimates were calculated by multiplying Theis equation drawdowns by a multiplier of 0.116. The 0.116 multiplier is an arbitrary number that has no basis in scientific or technical literature nor is it derived from actual data. Nonetheless, there is limited communication between the shallow, intermediate, and deep aquifers, and the separation between the shallow aquifer and the deep aquifer production zone significantly reduces the communication. The hearing officer determines there is little effect on the shallow aquifer by pumping from the deep aquifer.

29. Table 2 of Eagle Exhibit 24 is an estimate of potential drawdowns in the intermediate aquifer resulting from continuous pumping at various flow rates from the deep aquifer. The drawdowns were calculated by multiplying the Theis equation drawdown values by 0.5. The 0.5 multiplier has no basis in technical literature or data analysis. The hearing officer determines there is a direct hydraulic relationship between the intermediate aquifer and the deep aquifer from which Eagle proposes to produce water. Although the direct relationship may be limited by the separation from the deep aquifer, the degree of the limitation was not established. As a result, the hearing officer assumes the full Theis equation drawdowns will occur in the intermediate aquifer without applying a fractional multiplier, and will use Table 3 of Eagle Exhibit 24 to determine the impacts of pumping the proposed wells on wells constructed in the intermediate aquifer.

30. Table 3 of Eagle Exhibit 24 contains results of a direct Theis equation calculation of drawdowns at various flow rates and distances from the pumping well for continuous pumping over a period of 365 days. Pumping from the deep aquifer will directly and adversely affect other nearby water users diverting from the deep aquifer.

31. Water residing in the intermediate and deep aquifers in the area of proposed well construction is under artesian pressure. Artesian pressure in the deep aquifer causes water to rise

above land surface in wells constructed with a production zone in the deep aquifer. These artesian pressures have been used by some of the protestants to supply water to their beneficial uses.

32. The following is a table of the active protestants' names, water right priorities/date of construction, and the depth of their wells. Some of this information is taken from Eagle Exhibit 24.

Protestant	Water Right	Priority - Construction	Distance from Nearest Proposed Eagle Well	Comments
Dean & Jan Combe	63-2858A	8/5/1956	5,900 ft	Well is 65 feet deep
Mike Dixon	63-2957 63-2958 63-31988	8/28/1953 8/28/1953 3/1/1976		No information about the depth or number of wells was presented at the hearing
Charles Howarth	Domestic (not recorded)	2002	1,399 ft	Well is 333 feet deep
Corrin & Terry Hutton	Domestic		11,992 ft	Well is 115 feet deep
Charles W. Meissner	Three wells. Well logs for two of the wells. No recorded water rights.	July 1981 July 1970	4,800 ft	Well is 90 feet deep Well is 103 feet deep
Mike Moyle	63-2546 63-2609	12/12/1959 2/15/1944	5,643 ft to 7,200 ft	Six wells, all completed in the deep aquifer
Eugene Muller	63-22650	7/25/1887	3,286 ft	Well was initially completed in the shallow aquifer. The well was redrilled in 1979, and now the production zone is in the deep aquifer
Dana & Viki Purdy	63-2920 63-15680 63-22652	1/2/1953 6/1/1900 6/1/1967	3,390 ft 2,700 ft approx.2,640 ft	Well is 90 feet deep Well is 250 feet deep Well is 120 feet deep
Sam & Kari Rosti	Domestic (not recorded) 63-11715	1980 1992	3,444 ft	Well is 255 feet deep Well is 445 feet deep
Jerry & Mary Taylor	63-5040 63-2858B 63-17523 63-3296 63-32189	3/1/1941 6/10/1951 6/1/1960 6/5/1962 3/31/1976	5,997 ft.	Wells completed in the shallow aquifer

33. Pumping at a continuous rate of 8.9 cfs is not an unreasonable assumption about future use of water by Eagle, given Eagle's projected growth and probable storage of municipal water in the future.

34. Pumping of Eagle's proposed wells at a rate of 8.9 cfs will cause significant reduction in the artesian pressures of wells constructed in the deep aquifer. Pumping will also cause reductions in artesian pressures in the intermediate zone.

Moyle

35. Joseph, Lynn, and Mike Moyle own six wells constructed in the deep aquifer that flow under artesian pressure. Four of the wells are described as points of diversion by water rights nos. 63-2546 and 63-2609, bearing priority dates of 1939 and 1943, respectively. A fifth well is the point of diversion for an unrecorded domestic use for a home built by Joseph and Lynn Moyle in approximately 1970. The sixth well was constructed in 1997 to supply water to Mike Moyle's home.

36. Moyles have measured the closed-in pressure in the wells at 10 pounds per square inch ("psi"). Ten psi correlates to a water level head of approximately 21 feet. The flowing artesian wells have supplied stock water for as many as 43,000 mink on the Moyle property. In addition, the Moyle wells have provided irrigation water and water for commercial refrigeration and cooling. Finally, the flowing artesian wells provide domestic water for several homes. In some locations, small, relift pumps increase the pressure for commercial and domestic uses.

37. The four Moyle wells described by decreed or claimed water rights are remote from an electrical supply. As a result, pumping the wells would be difficult if the artesian pressure is lost.

38. As artesian pressure declines, the flow from the artesian wells will decrease. During the end of June 2006 or the first of July 2006, the pressure dropped in some of the artesian wells. Moyles discovered that artesian water was not flowing to the end of the water lines providing drinking water for the mink. As a result, some of the mink died from lack of water.

39. If Moyle's nearest well is approximately 5,643 feet away from a new well pumping continuously at a flow rate of 8.9 cfs, Table 3 of Eagle Exhibit no. 24 predicts a decline in artesian pressure of approximately 15 feet. A reduction from an artesian pressure head of 21 feet down to six feet would significantly reduce the flow needed to supply the domestic, commercial, stockwater, and irrigation needs for Moyles. Lesser reductions of artesian pressure will also significantly reduce the flow needed by Moyles to supply the beneficial uses.

Muller

40. Eugene Muller holds water right no. 63-22650. The original well was constructed to a depth of 70 feet, and the production zone was in the shallow aquifer. In 1979, the well could no long provide water for Muller's beneficial use, and Muller dug a new well in the deep aquifer. The new well is a flowing artesian well.

41. Muller testified that water flowed from the original well. His testimony is inconsistent with the described characteristics of the shallow aquifer. Nonetheless, any loss of pressure or water level in the original well occurred prior to 1979 when the original well failed, requiring construction of a new well in the deep aquifer.

Howarth

42. In approximately 2001 or 2002, Charles Howarth constructed a domestic well in the deep aquifer. The domestic well is under artesian pressure, maintaining 3 to 7 psi of pressure.

Meissner

43. Charles Meissner, Jr. owns three wells. One of the wells is completed in the shallow aquifer at a depth of 90 feet.

44. A second well was constructed to a depth in excess of 103 feet (See Protestants Exhibit 404, second page) in 1970, and is used for domestic and stockwater purposes. This well will be referred to as the "Double R Cattle Well." The well casing is not perforated, and the water in the well is derived from the bottom of the casing. The casing passes through a significant layer of clay from 70 to 85 feet in depth that probably acts as an aquatard. The water underlying the aquatard is under artesian pressure, but the water does not flow above land surface. The production zone for the well is completed in the intermediate aquifer.

45. Table 3 of Eagle Exhibit 24 establishes that, at a distance of 4,800 feet from the nearest proposed Eagle well and at a continuous pumping rate of 8.9 cfs, water levels in the Double R Cattle Well will decline approximately 15 feet.

46. The depth and other information about the third well was not presented, except Meissner speculated that the well has collapsed.

Purdy

47. Dana and Viki Purdy hold water right no. 63-2920 authorizing irrigation from ground water. The point of diversion is a well approximately 90 feet deep. Purdys pump supplemental ground water for irrigation when surface water in not available for irrigation. The water right for the irrigation well bears a priority date of 1953, but is constructed in the shallow aquifer.

48. Water right no. 63-15680 authorizes use of water for domestic and stockwater purposes and bears a priority date of June 1, 1900. The well is constructed to a depth of 250 feet. Viki Purdy testified that the well has been in place during several decades she has lived on the Purdy farm and that the well had not been worked on or replaced. Water in the well is under artesian pressure but does not free flow. The production zone for this well is most likely completed in the deep aquifer.

49. Table 3 of Eagle Exhibit 24 establishes that, at a distance of 2,700 feet from the nearest proposed Eagle well and at a continuous pumping rate of 8.9 cfs, water levels in the well for water right no. 63-15680 will decline approximately 19.5 feet.

50. Water right no. 63-22652 authorizes a stockwater use, and bears a priority date of June 1, 1967. The point of diversion for water right no. 63-22652 is a well drilled to a depth of 120 feet. The well is constructed in the intermediate aquifer. Water in the well is under artesian pressure, but water does not free flow at ground surface. The well was constructed in 1966.

51. Table 3 of Eagle Exhibit 24 establishes that, at an approximate distance of 2,640 feet from the nearest proposed Eagle well and at a continuous pumping rate of 8.9 cfs, water levels in the well for water right no. 63-22652 will decline approximately 19.0 feet.

52. A well log for another well associated with a home owned by Dana Purdy's mother was received into the evidence. The well was drilled in 1991.

Taylor

53. Jerry and Mary Taylor own several water rights. Three of the water rights authorizes a total irrigation of 17 to 18 acres. Another water right authorizes domestic use. Claim no. 63-5040 is for a domestic/commercial use in the City of Star. The point of diversion is sufficiently distant from the proposed wells that it would not be affected. The wells nearest to the proposed points of diversion are completed in the shallow aquifer.

Combe

54. Dean and Jan Combe hold a water right for a domestic use from a well with a priority date of August 5, 1956. The well is 65 feet deep, and is completed in the shallow aquifer.

Rosti

55. Sam and Kari Rosti own a domestic well drilled in 1980. In addition, they own a 445 foot deep irrigation well completed in the deep aquifer drilled in 1992.

56. Diversion of water from the deep aquifer would have little or no effect on the Boise River in the reach from Lucky Peak to just below Star Bridge. The flows of the Boise River in this zone are affected primarily by water residing in the shallow aquifer and are directly related to surface water flows in the Boise River. Water in the deeper zones is separated by an aquatard or several aquatards. Water in the deeper aquifer migrate westerly toward the Snake River.

CONCLUSIONS OF LAW

1. Idaho Code § 42-203A states in pertinent part:

> In all applications whether protested or not protested, where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purpose for which it is sought to

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

2. The applicant bears the ultimate burden of proof regarding all the factors set forth in Idaho Code § 42-203A.

3. Idaho Code § 42-111 defines the phrase "domestic purposes." Stockwater use of up to 13,000 gallons a day is recognized as use of water for domestic purposes.

4. 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 that prior 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 a "reasonable pumping level" established by the Department. In 1978, the Idaho Legislature amended the Ground Water Act again. The 1978 amendment expressly stated that domestic water rights are subject to the reasonable economic pumping level standard.

5. 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 pumping level existing prior to pumping 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.

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

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

> required to change his method or means of diversion in order to maintain his right to use the water.

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

7. Under *Parker*, if (1) pumping of ground water by junior ground water appropriators causes declines in pumping water levels in wells of 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 1953, 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.

8. The extent to which *Parker* provides protection to the protestants' water rights depends on proof of injury and factual similarities to the facts of the *Parker* case.

9. 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 pumping ground water. The proof of the lowered water table caused by pumping from the irrigation well that resulted in inability to pump water from the domestic well was established through testimony about the effects of the initial pumping from the Wallentine well and by a pump test conducted by the parties and the Department.

10. In an administrative hearing for an application to appropriate water, the applicant bears the burden of proving that the proposed use of water will not injure 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 reasonable pumping standard of the Ground Water Act, and (2) the protestant's diversion equipment and facilities are capable of diverting the protestant's water right at the ground water levels at or about the time the application is being considered. Once the protestant comes forward with the information, the applicant ultimately bears the burden of proving that the proposed use of water will not injure the protestant under the *Parker* standard.

11. Pumping of 8.9 cfs will not cause water level declines in area wells below a level that is reasonable.

12. The following describes how *Parker* applies to each of the active protestants.

Moyle

13. The priority dates of the water rights held by Moyle predate the 1953 amendment of the Ground Water Act subjecting subsequent appropriations of water to the reasonable pumping level standard. Moyles are entitled to protection of their historical water levels in the four wells recorded by their water rights and in one other domestic well associated with a home owned by Joseph and Lynn Moyle. Evidence presented established that Moyles were receiving water under artesian pressure at the time Eagle filed its applications and during the summer preceding the hearing. Diversion from the proposed Eagle wells will injure Moyles' water rights.

14. Prior to diverting water from its existing or proposed wells, Eagle must (a) supply water for uses of ground water from the five Moyle wells entitled to *Parker* protection at no cost to Moyles except the cost for incidental electricity that adds additional pressure to the water supply for domestic and commercial uses, and be immediately ready and able to physically deliver the water to Moyles; or (b) acquire the water rights from Moyles, possibly through condemnation. To be immediately ready and able to physically deliver water to Moyles, Eagle must complete one of the following prior to initiating pumping from and beneficial use of ground water under permits for these applications: (a) physically connect Moyle's water delivery system to Eagle's municipal water system; or (b) with Moyles' consent, place the necessary pumps in the Moyle wells, supply the power for the pumps, construct or install any other physical features, including running power to the wells, and at the same time, insure the water supply to Moyles' beneficial uses is not interrupted; or (c) drill new wells that will supply the water to Moyles' beneficial uses and construct and install all necessary features. Eagle must pay all construction and equipment costs, maintenance, and power costs, except for the electricity costs described above to add additional pressure for domestic and commercial uses.

Muller

15. The priority date for water right no. 63-22650 (1887), owned by Eugene Muller, predates the 1953 amendment to the Ground Water Act that subjects water rights to the reasonable pumping level standard. The original well for water right no. 63-22650 was constructed in the shallow aquifer. In 1979 Muller dug a new well in the deep aquifer. *Parker* would only protect Muller's water right from injury to water levels in the shallow aquifer. The hearing officer determines that pumping from the deep aquifer will not injure water rights diverting from the shallow aquifer. Any new water levels (or pressures) in a new well constructed in 1979 are subject to the reasonable pumping level standard established by the 1978 amendment to the Ground Water Act as it relates to domestic water rights.

Howarth

16. Charles Howarth constructed a domestic well in the deep aquifer in approximately 2001 or 2002. The domestic well is under artesian pressure, maintaining 3 to 7 psi of pressure. Howarth's well is subject to the reasonable pumping level standard established by the 1978 amendment to the Ground Water Act as it relates to domestic water rights.

Meissner

17. One of Meissner's three wells derives water from the shallow aquifer. Pumping from the deep aquifer will not injure water rights diverting from the shallow aquifer.

18. The Double R Cattle Well is a domestic well and is entitled to *Parker* protection because its use predates the requirement of ground water pumping levels under the 1978 amendment to the Ground Water Act.

19. The Double R Cattle Well is completed in the intermediate aquifer. Because Eagle did not satisfy its burden of proving the relationship between the intermediate and the deep aquifer, the hearing officer will assume that the Theis equation drawdowns apply directly to the intermediate aquifer. Under *Parker*, Eagle must compensate Meissner for the additional costs of pumping. Eagle must notify Meissner in the year it begins diverting water from the proposed wells. To avail himself of the benefits of *Parker*, Meissner must measure the water levels in the Double R Cattle Well, beginning during the year Eagle begins pumping water from the proposed wells. Meissner must allow Eagle the opportunity to observe or independently measure water levels in the Meissner well. If Meissner monitors static water levels in his well and can show that water levels continue to decline in the well after Eagle begins pumping water, Eagle must compensate Meissner for the additional cost of pumping from up to 15 feet of water level declines, including costs of lowering a pump, if necessary. If the well dries up within the 15 feet of water level declines, Eagle must either: (a) provide free water service to Meissner through its municipal water system; or (b) redrill a well for Meissner and pay for the equipment, construction, installation, and additional energy costs to pump the well; or (c) acquire Meissner's water right, perhaps through condemnation.

20. The depth of the third Meissner well is unknown. Meissner had the burden to show that he had a water right for the well bearing a priority date that would qualify for *Parker* protection. Meissner did not satisfy his burden of proof for the third well.

Purdy

21. Dana and Viki Purdy own an irrigation well that is approximately 90 feet deep and is pumped to supply supplemental ground water for irrigation when surface water is not available. The water right for the irrigation well bears a priority date of 1953. Pumping from the deep aquifer will not injure water right no. 63-2920 because Purdys divert ground water from the shallow aquifer. The water level in the Purdy irrigation well is not entitled to *Parker* protection.

22. The well for water right no. 63-15680 is a domestic well entitled to *Parker* protection of ground water levels.

23. The point of diversion for water right no. 63-15680 is a well drilled to a depth of 250 feet. The well is probably completed in the deep aquifer, although the well does not free flow at land surface. Under *Parker*, Eagle must compensate Purdys for the additional costs of pumping from a deeper depth. Eagle must notify Purdys in the year it begins diverting water from the proposed wells. In order to avail themselves of the benefits of *Parker*, however, Purdys must measure the water levels in the well for water right no. 63-15680, beginning in the first year Eagle

begins pumping water from the proposed wells. Purdys must allow Eagle the opportunity to observe or independently measure water levels in the well. If Purdys monitor static water levels in the well and can show that water levels decline in the well after Eagle begins pumping water, Eagle must compensate Purdys for the additional cost of pumping from up to 19.5 feet of ground water declines, including costs of lowering a pump, if necessary. If the well dries up, Eagle must either: (a) provide free municipal water service to Purdys; or (b) redrill a well for Purdys and pay for the equipment, construction, installation, and additional energy costs to pump the well; or (c) acquire water right no. 63-15680, perhaps through condemnation.

24. Water right no. 63-22652 authorizes domestic and stockwater use, and bears a priority date of June 1, 1967. The well for water right no. 63-22652 is a domestic well entitled to *Parker* protection of ground water levels.

25. The point of diversion for water right no. 63-22652 is a well drilled to a depth of 120 feet. The well is constructed in the intermediate aquifer. Water in the well is under artesian pressure, but water does not free flow at ground surface. The well was constructed in 1966. Under *Parker*, Eagle must compensate Purdys for the additional costs of pumping from a deeper depth. Eagle must notify Purdys in the year it begins diverting water from the proposed wells. In order to avail themselves of the benefits of *Parker*, Purdys must measure the water levels in the well for water right no. 63-22652, beginning in the first year Eagle begins pumping water from the proposed wells. Purdys must allow Eagle the opportunity to observe or independently measure the water levels in their well. If Purdys monitor static water levels in their well and can show that water levels decline in the well after Eagle begins pumping water, Eagle must compensate Purdys for the additional cost of pumping from up to 19 feet of ground water declines, including costs of lowering a pump, if necessary. If the well dries up Eagle must either: (a) provide free municipal water service to Purdys; or (b) redrill a well for Purdys and pay for the equipment, construction, installation, and additional energy costs to pump the well; or (c) acquire water right no. 63-22652, perhaps through condemnation.

26. Purdys also presented evidence about a well supplying water to Dana Purdy's mother's home. This well was drilled after domestic wells were subjected to the reasonable pumping level standard.

Taylor

27. The Taylor wells are completed in the shallow aquifer. Pumping from the deep aquifer will not injure water rights diverting from the shallow aquifer. The water levels in the Taylor wells are not entitled to *Parker* protection.

Combe

28. The Combe well is 65 feet deep. Pumping from the deep aquifer will not injure water rights diverting from the shallow aquifer. The water level in the Combe well is not entitled to *Parker* protection.

Rosti

29. Rostis own a domestic well drilled in 1980. The Rosti domestic well was drilled after the 1978 amendment to the Ground Water Act that subjected domestic wells to the reasonable pumping level. The Rosti domestic well is not entitled to *Parker* protection of ground water levels.

30. The Rosti irrigation well completed in the deep aquifer was drilled in 1992. The Rosti irrigation well was constructed after the 1953 amendment to the Ground Water Act. The Rosti irrigation well is not entitled to *Parker* protection of ground water levels.

31. Water levels and pressures are not declining significantly in the area where water is sought for appropriation. Nontheless, IDWR staff raised concerns about limitations of the pump test. Furthermore, in its addendum to the pump test report, Eagle recognized some of the uncertainties about sufficiency of the water supply and injury and recommended further ground water monitoring. IDWR staff recommended the construction/identification by Eagle of two observation wells, one up-gradient and one down-gradient of the proposed wells. In addition, Eagle must develop a monitoring, recording, and reporting plan for the observation wells.

32. By compensating the protestants entitled to protection of water levels/pressures under *Parker*, and by monitoring ground water levels during pumping, the proposed appropriation by Eagle will not injure other water users.

33. There is sufficient water for the purposes sought by Eagle's applications. The additional monitoring of the two dedicated observation wells will insure that the deep aquifer in the area is not overappropriated.

34. The application is not filed in bad faith or for purposes of speculation or delay.

35. Eagle has sufficient monetary resources to complete the project.

36. The proposed project is in the local public interest.

37. The proposal conserves the water resources of the state of Idaho because irrigation and other outside uses of water will be provided primarily by other water rights.

ORDER

IT IS HEREBY ORDERED that applications to appropriate water nos. 63-32089 and 63-32090 are **Approved** subject to the following conditions:

Proof of application of water to beneficial use shall be submitted on or before **August 1, 2012.**

In connection with the proof of beneficial use submitted for this permit, the permit holder shall also submit a report showing the total annual volume, the maximum daily volume, and the maximum instantaneous rate of flow diverted from the point of diversion authorized for this

permit during the development period. The report shall also show the maximum instantaneous rate of diversion, either measured or reasonably estimated by a qualified professional engineer, geologist, or certified water rights examiner, for the entire City of Eagle municipal water system. The report shall also describe and explain how water diverted under this permit provides an additional increment of beneficial use of water for the City of Eagle municipal water system as opposed to an alternative point of diversion for prior water rights already held and used by the City of Eagle for its municipal water system.

Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which the permit holder had no control.

Subject to all prior water rights.

Place of use is within the service area of the City of Eagle municipal water supply system as provided for under Idaho Law.

Prior to diversion of water under this right, the right holder shall install and maintain a measuring device and lockable controlling works of a type acceptable to the Department as part of the diverting works.

Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.

Prior to diverting water from its existing or proposed wells, for the four wells identified as points of diversion for water right nos. 63-2546 and 63-2609, and for the domestic use of water in the home presently owned by Joseph and Lynn Moyle, the right holder shall: (a) supply water for uses of the five Moyle wells at no cost to Moyles except the cost for incidental electricity that adds additional pressure to the water supply for domestic and commercial uses and be ready and able to immediately, physically deliver the water to Moyles; or (b) purchase the Moyle water rights, perhaps through condemnation. To be immediately ready and able to physically deliver water to Moyles, the right holder must complete one of the following prior to initiating pumping from and beneficial use of ground water under this right: (a) physically connect Moyles' water delivery system to the right holder's municipal water system; or (b) with Moyles' consent, place the necessary pumps in the Moyle wells, supply the power for the pumps, construct or install any other physical features, including running power to the wells, and, at the same time, insure the water supply to Moyles' ongoing beneficial uses is not interrupted; or (c) drill new wells that will supply water to Moyles, and construct and install all necessary features. The right holder shall pay for all construction and equipment costs, maintenance, and power costs, except for the electricity costs described above to add additional pressure for domestic and commercial uses.

The right holder must compensate Meissner for additional costs of pumping from the Double R Cattle Well because of declines in water levels caused by pumping from the authorized points of diversion. The right holder must notify Meissner of the year it begins diverting water from the proposed wells. In order to avail himself of the benefits of *Parker*, however, Meissner must measure the water levels in the Double R Cattle Well, beginning during the year Eagle begins

pumping water from the proposed wells. Meissner must allow Eagle the opportunity to observe or independently measure water levels in the Meissner well. If Meissner monitors static water levels in his well and can show that water levels continue to decline in the well after the right holder begins pumping water, Eagle must compensate the right holder for the additional cost of pumping from up to 15 feet of water level declines, including costs of lowering a pump, if necessary. If the well dries up within the 15 feet of water level declines, Eagle must either: (a) provide free water service to Meissner through its municipal water system; or (b) redrill a well for Meissner and pay for the equipment, construction, installation, and additional energy costs to pump the well; or (c) acquire Meissner's water right, perhaps through condemnation.

The right holder must compensate Purdys for the additional costs of pumping from the well described as a point of diversion by water right no. 63-15680. The right holder must notify Purdys in the year it begins diverting water from the proposed wells. In order to avail themselves of the benefits of *Parker*, however, Purdys must measure the water levels in the well for water right no. 63-15680, beginning in the first year the right holder begins pumping water from the proposed wells. Purdys must allow the right holder the opportunity to observe or independently measure water levels in the well. If Purdys monitor static water levels in the well and can show that water levels decline in the well after the right holder begins pumping water, the right holder must compensate Purdys for the additional cost of pumping from up to 19.5 feet of ground water declines, including costs of lowering a pump, if necessary. If the well dries up within the 19.5 feet of ground water declines, the right holder must either: (a) provide free municipal water service to Purdys; or (b) redrill a well for Purdys and pay for the equipment, construction, installation, and additional energy costs to pump the well; or (c) acquire water right no. 63-15680, perhaps through condemnation.

The right holder must compensate Purdys for the additional costs of pumping from the well described as a point of diversion by water right no. 63-22652. The right holder must notify Purdys in the year it begins diverting water from the proposed wells. In order to avail themselves of the benefits of *Parker*, however, Purdys must measure the water levels in the well for water right no. 63-22652, beginning in the first year the right holder begins pumping water from the proposed wells. Purdys must allow the right holder the opportunity to observe or independently measure water levels in the well. If Purdys monitor static water levels in the well and can show that water levels decline in the well after the right holder begins pumping water, the right holder must compensate Purdys for the additional cost of pumping from up to 19 feet of ground water declines, including costs of lowering a pump, if necessary. If the well dries up within the 18 feet of ground water declines, the right holder must either: (a) provide free municipal water service to Purdys; or (b) redrill a well for Purdys and pay for the equipment, construction, installation, and additional energy costs to pump the well; or (c) acquire water right no. 63-22652, perhaps through condemnation.

Prior to diversion of water under this right, the right holder shall construct/identify two observation wells, one up-gradient and one down-gradient of the production wells under this right. The location and construction must be approved by the Department. Each observation well must be constructed so that water levels in each of the three aquifers can be independently measured.

Prior to diversion of water under this right, the right holder shall develop and the Department must approve, a monitoring, recording, and reporting plan for the observation wells.

The right holder shall not provide water diverted under this right for the irrigation of land having appurtenant surface water rights as a primary source of irrigation water except when the surface water rights are not available for use. This condition applies to all land with appurtenant surface water rights, including land converted from irrigated agricultural use to other land uses but still requiring water to irrigate lawns and landscaping.

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.

The wells constructed at the points of diversion shall be constructed in accordance with the rules of the Idaho Department of Water Resources regarding well construction standards and measurement of diversions and the rules of the Department of Environmental Quality for Public Drinking Water Systems, IDAPA 58.01.08.

Dated this 17th day of July, 2007.

Gary Spackman

Gary Spackman
Hearing Officer