

BEFORE THE DEPARTMENT OF WATER RESOURCES

FOR THE STATE OF IDAHO

IN THE MATTER OF APPLICATION) FOR PERMIT NO. 63-32573, IN THE) NAME OF M-3 EAGLE ASSIGNED) <u>TO THE CITY OF EAGLE¹</u>)	ORDER GRANTING MOTION IN LIMINE TO EXCLUDE MARY TAYLOR, CHARLES MEISSNER AND MIKE MOYLE AS WITNESSES
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On June 30, 2011, District Court Judge Kathryn Sticklen issued an order in Ada County District Court case no. CV-OC-2010-03180 remanding the case back to the Idaho Department of Water Resources (Department). The District Court' order limited scope of the remand hearing to:

- a. The City of Eagle's annexation of the M3 Eagle planned community project lands;
- b. The City's planning horizon and reasonably anticipated future municipal water needs for City's service area, including the M3 Eagle planned community project, based on City's current water rights portfolio and planning information; and
- c. The quantity of water requested in the M3 Application for the M3 Eagle planned community project in relationship to the water needs of the rest of the City's service area.

On September 8, 2011, the Department issued a *Prehearing Order* limiting scope in the remand hearing consistent with the District Court's order on remand. The Prehearing Order further provided that the parties shall not conduct discovery or offer evidence at the hearing concerning other matters such as technical water supply issues, hydrogeology, and potential injury from pumping. The Department issued a similar order entitled *Order Limiting Presentation of Evidence at Supplemental Hearing* on October 3, 2011.

Protestant Eagle Pines Water Association filed a *Response to M3's Reply of September 27, 2011 and Revised Witness List* on October 4, 2011 identifying Mary Taylor, Charles Meissner and Mike Moyle, as witnesses that might testify at the supplemental hearing. Eagle Pines Water Association stated, "These witnesses will testify as to actual, 'not potential', damage and injury they have already endured as a result of the pumping of groundwater from the 'valley floor' being done by the City of Eagle." Response at 2.

Depositions of the three witnesses were held on October 11 and October 12, 2011. *Affidavit of Michael P. Lawrence in Support of M3 Eagle's Submission of Deposition Transcripts and Supplemental Brief Relevant to Motion in Limine* was filed with the Department on October 14, 2011 which included transcripts from the three depositions as exhibits.

¹ The original caption was changed to reflect that an assignment of water right application and permit no. 63-32573 to the City of Eagle was filed with IDWR on June 13, 2011.

After review of the transcripts and *Supplemental Brief Relevant to the Motion in Limine*, the Hearing Officer concludes that the Motion in Limine should be granted to exclude the testimony of Mary Taylor, Charles Meissner and Mike Moyle. The prospective witnesses admit that they are neither Protestants in this matter nor are they experts intending to offer any type of expert testimony. All three witnesses stated that they intended to testify as to injury to their water rights. In fact, Alan Smith, Counsel for the Protestant Eagle Pines Water Association when questioned by the counsel for the City of Eagle explained:

“We’re presenting evidence as to actual damage and not to potential damage, which is all that the pre-trial order covered, potential damage. And these people have been actually damaged Mr. Moyle and Mr. Meissner, both”. Meissner Tr. at 42.

The Hearing Officer has twice expressed the limitations pertaining to the testimony at the remand hearing in the September 8, 2011 Order and the October 4, 2011 Order. Eagle Pines Water Association reads these orders more broadly than they were intended. The issues to be discussed at the remand hearing involve evidence showing whether the City of Eagle has annexed the M3 property, not whether Eagle Pines Water Association or others think that it is wise that the City of Eagle annexed the M3 property. Issues of injury, whether characterized as actual or potential, are not within the scope of the remand hearing. Testimony in the remand hearing shall not include matters of technical water supply issues, hydrogeology, and potential or actual injury from pumping.

ORDER

Based upon a review of the record and pleadings of the parties relating to this issue and consistent with the forgoing discussion and analysis,

IT IS HEREBY ORDERED as follows:

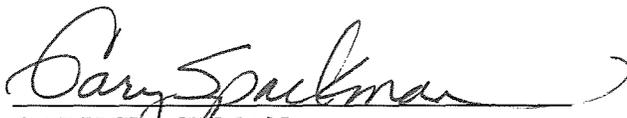
1. The Motion in Limine is GRANTED and the following witnesses will not be allowed to testify at the supplemental remand hearing:

Mary Taylor

Charles Meissner

Mike Moyle

DATED this 17th day of October, 2011.

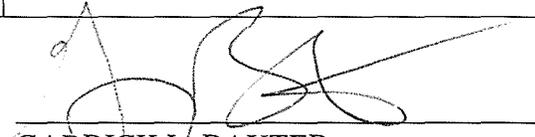

GARY SPACKMAN
Interim Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of October, 2011, I caused a true and correct copy of the foregoing ORDER GRANTING MOTION IN LIMINE to be served on the following parties by the indicated methods:

<p>Bruce Smith City of Eagle Moore, Smith, Buxton & Turcke, Chtd. 950 W. Bannock Street, Suite 520 Boise, ID 83702 bms@msbtlaw.com</p>	<p><input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>
<p>Jeffrey C. Fereday Christopher H. Meyer Michael P. Lawrence GIVENS PURSLEY LLP 601 West Bannock St. P.O. Box 2720 Boise, ID 83701-2720 Telephone: (208) 388-1200 Fax: (208) 388- 1300 jcf@givenspursley.com chrismeyer@givenspursley.com mpl@givenspursley.com</p>	<p><input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>
<p>David Head North Ada County Groundwater Users Asso. 855 Stillwell Dr. Eagle, ID 83616 head@thorsonid.com</p>	<p><input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>
<p>John Thornton North Ada County Groundwater Users Asso. 5264 N. Sky High Lane Eagle, ID 83616 cjthornton6@msn.com jlthornton@fs.fed.us</p>	<p><input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>

<p>Norman Edwards 844 W. Beacon Light Road Eagle, ID 83616 nmedwards@q.com</p>	<p><input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>
<p>Alan Smith Eagle Pines Water Users Assoc. 3135 N. Osprey Rd. Eagle, ID 83616</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile</p>


 GARRICK L. BAXTER