

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

IN THE MATTER OF APPLICATION  
FOR PERMIT NO. 63-32573 IN THE  
NAME OF M3 EAGLE LLC

**PREHEARING ORDER AND  
NOTICE OF PREHEARING  
CONFERENCE**

On June 24, 2008, Applicant M3 Eagle LLC (“M3”) filed a *Motion and Memorandum for Order Authorizing Discovery, Confirming Rules as to Appearances and Representation, and Scheduling Prehearing Conference* with the Idaho Department of Water Resources (“IDWR”).

In its motion and the accompanying documents, M3 asked the hearing officer to rule that, under Rule 202 of IDWR’s Rules of Procedure, “the Protestants must represent himself or herself in this contested case, or be represented by a duly authorized employee, attorney, or family member.”

Rule 202 allows officers of corporations or partners of a partnership to represent the organization. David Head holds himself out as a representative of the North Ada Foothills Association.

Chapter 7, Title 53, of the Idaho Code recognizes nonprofit associations as legal entities having many of the same authorities and privileges as a corporation. These include the right to hold property, the right to sue and be sued, the right to designate an agent to conduct association business, and limitations of liability for officers and members. While Rule 202 does not expressly state that an association can be represented by an officer, allowing representation by an officer of a corporation and excluding representation by an officer of an association would be inconsistent treatment of somewhat similar organizations. According to Rule 202, an officer of an association may represent the association.

A more significant question is whether the Rule 202 allowance of representation of a corporation/association entity by an officer is appropriate under the law. The hearing officer will not address this question directly, however.

The hearing officer has the discretion to exclude repetitive evidence under Rule 600 of IDWR’s Rules of Procedure. Many protestants have designated David Head as their spokesperson. The hearing officer assumes that the protestants have designated a spokesperson because they independently do not have unique evidence to present in the contested case. As a result, their independent participation in the hearing would generate repetitive evidence.

The hearing officer will allow David Head to be a spokesperson for other individuals with limitations set forth in the order.

M3 asked the hearing officer to authorize discovery. Issuance of an order authorizing discovery at this stage of the proceeding would be premature. The Department should conduct a prehearing conference to identify the parties, spokespersons, or representatives, to narrow the issues in controversy, and to initiate an informal exchange of information that may reduce the volume of discovery. Parties should attend the prehearing conference prepared to: (1) declare how they intend to be represented at the hearing, either by counsel, by a spokesperson, or appearing individually; (2) discuss the factors that must be considered by the Department and the legal issues that will be in controversy; (3) present general questions of fact to the other parties to determine whether the questions can be addressed informally or whether formal discovery is necessary; (4) discuss a timetable for investigation, discovery, hearing preparation, and scheduling of a hearing.

### **ORDER**

IT IS HEREBY ORDERED that the M3's motion for order authorizing discovery is **Denied**, without prejudice. The motion can be renewed at or following the prehearing conference. M3 may verbally renew the motion for an order authorizing discovery at the prehearing conference, or in writing at any time following the prehearing conference. The parties may also stipulate to an order authorizing discovery, as limited by the hearing officer.

IT IS FURTHER ORDERED that M3's motion asking that the hearing officer require parties to represent themselves or be represented by an attorney (characterized by M3 as a motion for an order "*Confirming Rules as to Appearances and Representation*") under Rule 202 of the Department's Rules of Procedure is **Denied**.

IT IS FURTHER ORDERED that David Head may be a spokesperson for protestants under the following conditions:

1. David Head, or other protestants asking that David Head be their spokesperson, must submit to IDWR, at or before the prehearing conference scheduled below, that the North Ada County Foothills Association is an organization registered with the Secretary of State of the State of Idaho.
2. The registration must show that David Head is an officer in the North Ada County Foothills Association, and that other officers serve in management capacities in the association.
3. Documents must also be submitted at or before the prehearing conference scheduled below showing that the protestants asking David Head to be their spokesperson are members of the North Ada County Foothills Association.
4. A protestant asking that David Head be his/her spokesperson must sign a document stating that David Head will be the spokesperson, that the individual protest is subsumed into the protest of the North Ada County Foothills Association protest, and that, by designating David Head as a spokesperson, the individual protestant waives the right to

independently participate in discovery, to call and examine witnesses, and to administratively or judicially appeal any decision by IDWR. Individual protestants designating David Head as a spokesperson will retain the right to personally testify and will be subject to cross examination.

IT IS FURTHER ORDERED that other protestants may band together in groups and designate a spokesperson with the limitations set forth in paragraph 4 above.

IT IS FURTHER ORDERED that M3's motion for a prehearing conference is **Granted** as set forth in the following Notice of Prehearing Conference.

IT IS FURTHER ORDERED that parties, particularly protestants, who do not personally appear at the prehearing conference scheduled below or for other matters scheduled for party appearance by the hearing officer, and do not designate a spokesperson as set forth above, or are not represented by an attorney, will be dismissed as parties to this contested case by default order as authorized by the IDWR's Rules of Procedure unless good cause for non-attendance can be shown.

### NOTICE OF PREHEARING CONFERENCE

*(Debbie, would you insert language of a typical prehearing notice here. We need to discuss how to set the date and time for the prehearing conference. Let's talk. Thanks.)*

**PLEASE TAKE NOTICE** that the hearing officer requests your participation in a prehearing conference scheduled for **September 9, 2008 beginning at 9:00 a.m.**, at the offices of the IDWR located at 322 E. Front St., 6<sup>th</sup> Floor Conference Rooms B, C & D, Boise, Idaho. (208) 287-4800.

The conference is an opportunity for all parties in this matter to discuss the application for permit filed on November 21, 2006.

The conference will be conducted in a manner that satisfies the accessibility requirements of the American with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the conference, please advise Deborah Gibson at (208) 287-4942, at least ten (10) days prior to the conference.

DATED this 5<sup>th</sup> day of August, 2008.

  
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Gary Spackman, Hearing Officer

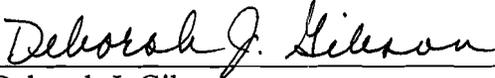
## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6<sup>th</sup> day of July, 2008, a true and correct copy of the foregoing document(s) described below was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

Document(s) Served: PREHEARING ORDER AND NOTICE OF PREHEARING CONFERENCE

Name	Address	City	State	Postal Code
JOHN L THORNTON	5264 N SKY HIGH LN	EAGLE	ID	83616
NORTH ADA COUNTY FOOTHILLS ASSN	ATTN: DAVID HEAD 855 STILLWELL DR	EAGLE	ID	83616
EAGLE PINES WATER USER ASSN	ATTN: BRENT WATSON 3357 N OSPREY RD	EAGLE	ID	83616
NORMAN L EDWARDS	884 W BEACON LIGHT RD	EAGLE	ID	83616
M HOWARD GOLDMAN	3837 N GREEN VALLEY WY	EAGLE	ID	83616
TIMOTHY R MILBURN	1381 W MEANDER DR	EAGLE	ID	83616
ALAN SMITH	3135 OSPREY RD	EAGLE	ID	83616
LINDA D BURKE	C/O 855 STILLWELL DR	EAGLE	ID	83616
JONATHAN SEEL	C/O 855 STILLWELL DR	EAGLE	ID	83616
JOHN FRANDEN	C/O 855 STILLWELL DR	EAGLE	ID	83616
CRAIG TARBET	C/O 855 STILLWELL DR	EAGLE	ID	83616
SHERRI RANDALL	C/O 855 STILLWELL DR	EAGLE	ID	83616
CHARLES WATKINS	C/O 855 STILLWELL DR	EAGLE	ID	83616
JON BUSACK	C/O 855 STILLWELL DR	EAGLE	ID	83616
YVONNE MORTON	C/O 855 STILLWELL DR	EAGLE	ID	83616
ROBERT H WEST	C/O 855 STILLWELL DR	EAGLE	ID	83616
STEPHEN DICK	C/O 855 STILLWELL DR	EAGLE	ID	83616
CAL GOTHBERG	C/O 855 STILLWELL DR	EAGLE	ID	83616
BRUCE VAN CAMP	C/O 855 STILLWELL DR	EAGLE	ID	83616
LORING EVANS	C/O 855 STILLWELL DR	EAGLE	ID	83616
THOMAS RITTER	C/O 855 STILLWELL DR	EAGLE	ID	83616
LORN H ADKINS	C/O 855 STILLWELL DR	EAGLE	ID	83616
DANIEL J GLIVAR	C/O 855 STILLWELL DR	EAGLE	ID	83616
RICHARD LAGERSTROM	C/O 855 STILLWELL DR	EAGLE	ID	83616
VINCE IAZZETTA	C/O 855 STILLWELL DR	EAGLE	ID	83616
DALE GASTON	C/O 855 STILLWELL DR	EAGLE	ID	83616
MARION D GROOTHUIS	C/O 855 STILLWELL DR	EAGLE	ID	83616
VINCENT J MINKIEWICZ	C/O 855 STILLWELL DR	EAGLE	ID	83616
CAROL JEAN THOMPSON	C/O 855 STILLWELL DR	EAGLE	ID	83616
BARB JEKEL	C/O 855 STILLWELL DR	EAGLE	ID	83616
ROBERT LYONS	C/O 855 STILLWELL DR	EAGLE	ID	83616
G E MC DONALD	C/O 855 STILLWELL DR	EAGLE	ID	83616
GEORGE W KEYES	C/O 855 STILLWELL DR	EAGLE	ID	83616
ERIC C LEIGH	C/O 855 STILLWELL DR	EAGLE	ID	83616
SHELBY CONRAD	C/O 855 STILLWELL DR	EAGLE	ID	83616

Name	Address	City	State	Postal Code
MORGAN MASNER	C/O 855 STILLWELL DR	EAGLE	ID	83616
JIM BANDUCCI JR	C/O 855 STILLWELL DR	EAGLE	ID	83616
STEVEN C PURVIS	C/O 855 STILLWELL DR	EAGLE	ID	83616
ROBERT S NICCOLLS JR	C/O 855 STILLWELL DR	EAGLE	ID	83616
DAVID COLLETT	C/O 855 STILLWELL DR	EAGLE	ID	83616
WALTER H MEYER JR	C/O 855 STILLWELL DR	EAGLE	ID	83616
MICHAEL MC MURRAY	C/O 855 STILLWELL DR	EAGLE	ID	83616
BILL LAWTON	3145 N OSPREY RD	EAGLE	ID	83616
ROBERT L WOOD	1380 W MEANDER DR	EAGLE	ID	83616
LYLE JORDAN	C/O 855 STILLWELL DR	EAGLE	ID	83616
RONALD R RAPP	C/O 855 STILLWELL DR	EAGLE	ID	83616
BRUCE RICHARDSON	C/O 855 STILLWELL DR	EAGLE	ID	83616
BARRETT D JONES	C/O 855 STILLWELL DR	EAGLE	ID	83616
GIVENS PURSLEY LLP	C/O JEFFREY C FEREDAY 601 W BANNOCK ST PO BOX 2720	BOISE	ID	83701
M3 EAGLE LLC	533 E RIVERSIDE DR STE 110	EAGLE	ID	83616
WESTERN REGION	ATTN JOHN WESTRA 2735 AIRPORT WAY	BOISE	ID	83705-5082

  
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 Deborah J. Gibson  
 Administrative Assistant