

File Folder # 4

Starting with Corres. from Givens Pursley Received 11/14/08
Re: M3 Motion to Compel NACGUA Discovery;
Affidavit MPL ISO Motion Compel. (Both PDF)

And

Ending with NACGUA'S Disclosure of Expert
Witnesses Received
on 10/16/08

Gibson, Deborah

From: Lori Anderson [lorianderson@givenspursley.com]
Sent: Friday, November 14, 2008 4:16 PM
To: Spackman, Gary; Gibson, Deborah; Westra, John; 'Josephine Beeman'
Cc: Jeffrey C Fereday; Michael P. Lawrence
Subject: M3 Motion to Compel Discovery & Affidavit in Support

Attachments: M3 Motion to Compel NACGUA Discovery.PDF; Affidavit MPL ISO Motion Compel.PDF



M3 Motion to
Compel NACGUA Dis.



Affidavit MPL ISO
Motion Compe.

On behalf of Jeffrey Fereday and Michael Lawrence, I am attaching M3 Eagle's Motion to Compel Discovery Responses, Memorandum in Support, and Request for Sanctions Against NACGUA and its Member Protestants along with the Affidavit of Michael P. Lawrence in Support of Motion to Compel Discovery Responses. Copies will also be sent to you via U.S. Mail.

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NOV 14 2008

DEPARTMENT OF
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**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

**M3 EAGLE'S MOTION TO
COMPEL DISCOVERY
RESPONSES, MEMORANDUM IN
SUPPORT, AND REQUEST FOR
SANCTIONS AGAINST NACGUA
AND ITS MEMBER
PROTESTANTS**

MOTION TO COMPEL DISCOVERY RESPONSES

Applicant M3 Eagle LLC ("M3 Eagle"), pursuant to Idaho Rule of Civil Procedure ("I.R.C.P." or "Rule") 37(a) and IDAPA 37.01.01.521, moves the Hearing Officer for an order compelling Protestant North Ada County Groundwater Users Association and the individual protestants in this matter for whom it is appearing (collectively, "NACGUA") to respond to *Applicant M3 Eagle LLC's First Set Of Discovery Requests To Protestant North Ada County Groundwater Users Association* ("Discovery Requests"). M3 Eagle further moves, pursuant to I.R.C.P. 37(a)(4), for an award of expenses, fees, and sanctions against NACGUA.

In summary, the Hearing Officer should issue an order to compel against NACGUA and its individual protestant members because NACGUA has not produced documents in response to

**M3 EAGLE'S MOTION TO COMPEL DISCOVERY RESPONSES, MEMORANDUM IN SUPPORT, AND
REQUEST FOR SANCTIONS AGAINST NACGUA - 1**

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M3 Eagle's requests for production, has not answered M3 Eagle's interrogatories, and has denied all of M3 Eagle's requests for admission as a matter of course and without any legal or factual basis. NACGUA's failure to respond is not in good faith and is another example of its deliberate strategy to hinder discovery, settlement negotiations, and hearing preparation in this matter.

MEMORANDUM IN SUPPORT

I. BACKGROUND

The Hearing Officer's September 12, 2008 *Notice of Hearing, Order Authorizing Discovery and Prehearing Order* ("Order"), authorized the parties to begin discovery on October 1, 2008, and set a deadline of November 26, 2008, to complete written discovery. Accordingly, on October 1, 2008, M3 Eagle served its Discovery Requests on NACGUA, a copy of which is attached as Exhibit A to the *Affidavit of Michael Lawrence in Support of Motion to Compel Discovery Responses* ("Lawrence Affidavit") filed contemporaneously herewith. Pursuant to Rules 33, 34, and 36, NACGUA's original deadline for responding to M3 Eagle's Discovery Requests was November 3, 2008 (33 days after they were mailed). Subsequently, however, M3 Eagle agreed to provide NACGUA with an additional week to respond, making the new deadline November 10, 2008.

During a hastily-scheduled telephonic hearing (or status conference) on November 10, NACGUA's attorney told M3 Eagle and the Hearing Officer that NACGUA would not serve its responses that day on grounds that it had just filed a Motion for Stay and Limited Discovery for Purposes of Settlement ("Motion for Stay"). At roughly 5:30 p.m. that evening, NACGUA actually did serve a discovery response, a copy of which is attached as Exhibit B to the *Lawrence Affidavit*. Unfortunately, NACGUA counsel's statement at the hearing proved largely true because the document contained almost nothing in the way of good faith responses.

In its responses, NACGUA denied all requests for admission, produced no documents, and largely left interrogatories unanswered. NACGUA's reasons for doing so include its assertions that "NACFA is not a party,"¹ that M3 Eagle "has the burden of proof," and, without further explanation, because of NACGUA's Motion for Stay.

As shown in Exhibit C attached to the *Lawrence Affidavit*, M3 Eagle has conferred in good faith with NACGUA in an attempt to secure proper responses to M3 Eagle's interrogatories and requests for production, but to no avail.

II. RELEVANT RULES OF PROCEDURE

Idaho Rules of Civil Procedure 33(a)(2), 34(b)(2), and 37(a) provide that a party submitting interrogatories or requests for production may move for an order compelling discovery with respect to any objection or other failure to respond. "The motion must include a certification that the movant has in good faith conferred or attempted to confer with the party not making the disclosure in an effort to secure the disclosure without court action." I.R.C.P. 37(a)(2). For purposes of Rule 37, "an evasive or incomplete answer is to be treated as a failure to answer." I.R.C.P. 37(a)(4).

As for requests for admission, Rule 36(b) states that

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served.

III. NACGUA FAILED TO PRODUCE DOCUMENTS IN RESPONSE TO M3 EAGLE'S REQUEST FOR PRODUCTION NO. 1.

In Request for Production No. 1, M3 Eagle requested documents held by NACGUA and its members that relate to M3 Eagle, its application, its water rights, its prospective water use,

¹ "NACFA" is the North Ada County Foothills Association.

NACGUA's protest, or M3 Eagle's project. But NACGUA produced none. Instead, it stated that it has no documents "not already in the record at IDWR or the website for the North Ada County Hydrogeologic Project," and that the only other document in its possession is the preliminary expert report already provided to M3 Eagle. This response defies reason.

It is extremely difficult to believe that NACGUA and its members, each of whom is an individual protestant in this matter, do not among them have any documents besides those cited in its response to Request for Production No. 1—that they have no non-privileged e-mails, letters, memoranda, newsletters, handwritten notes or the like regarding M3 Eagle or this matter.² This refusal to produce documents is not in good faith and hinders discovery and hearing preparation in this matter. The Hearing Officer should order NACGUA to fully respond to Request for Production No. 1.

IV. NACGUA'S EXCUSES FOR FAILING TO RESPOND ARE WITHOUT MERIT.

Rather than discuss M3 Eagle the rest of NACGUA's incomplete and evasive responses individually, below M3 Eagle sets forth why NACGUA's stated reasons for not adequately responding are without merit.

A. "NACFA is not a party" is not a valid excuse.

NACGUA refused to respond to four of M3 Eagle's interrogatories and two requests for production on grounds that "NACFA is not a party. No response is required." (*See* Interrogatory Nos. 1-4; Request for Production Nos. 2-3.) NACGUA also denied three requests for admission on the same grounds. (*See* Request for Admission Nos. 1-3.) This is not a valid basis for failing or refusing to adequately respond.

² NACGUA has not claimed that any documents in its or its members' possession are privileged.

As the Hearing Officer will recall, this case began when some 40 individuals filed individual protests. They asked the Hearing Officer for permission to band together for purposes of this case under the unincorporated organization known as the North Ada County Foothills Association (“NACFA”), through spokesman David Head. M3 did not object to this organization, but it also did not agree to any limitations on discovery.

For reasons that are not clear, these individuals who were using NACFA as their organizing vehicle and service address in this matter then formed a new unincorporated association known as North Ada County Groundwater Users Association (“NACGUA”) and “assigned” the protests to NACGUA. Such a maneuver is not contemplated in the Idaho Department of Water Resources Rules of Procedure or in the Idaho Rules of Civil Procedure. Nevertheless, again M3 Eagle did not object and again did not agree to any limitations on discovery.

In other words, M3 Eagle acquiesced in good faith to having the NACFA protestants re-align themselves and advance their individual protests as members of NACGUA. NACGUA now attempts to hide behind these maneuvers as if they bar M3 Eagle from obtaining these individuals’ documents pertinent to their protests merely because they were produced when they were referring to themselves as individuals, or as NACFA members. They now essentially are saying: “such documents are not ours, and we won’t produce them, because they are NACFA’s” and (as repeated throughout the responses) “NACFA is not a party.” *See, e.g.*, Exhibit D to Lawrence Affidavit.

M3 Eagle is entitled to information known to or in the possession of NACGUA and the individual protestants who now claim to be NACGUA members, whether the documents were produced while these individuals were NACFA members, while they were in no organization, or

since they have been aligned under NACGUA. Furthermore, NACGUA is responsible for producing discoverable documents of its “predecessor” organization NACFA.

For example, Request for Production No. 3 states: “Please produce all documents that pertain to NACFA’s protest of Application No. 63-31966 filed by SunCor in May 2004.” NACGUA is obligated to provide M3 Eagle with any such documents held by its members. But it has not provided any documents even though they certainly exist.

M3 Eagle respectfully requests that the Hearing Officer order NACGUA to fully respond to those Discovery Requests for which it cited “NACFA is not a party” as a reason for its failure to respond.

B. NACGUA’s Motion for Stay is not a valid excuse.

Without further explanation, NACGUA cites its pending Motion for Stay as a reason why it denies or fails to respond to a variety of M3 Eagles requests for admission, requests for production, and interrogatories. (*See* Request for Production No. 5; Interrogatory Nos. 5-8, 10-11, and 13; Request for Admission Nos. 4-7, 8-9, 11). This, however, is no excuse for failing to respond. First, as discussed in *M3 Eagle’s Response To NACGUA’s Stay Motion And Limited Discovery* filed on November 13, 2008, NACGUA’s Motion for Stay is completely without merit. Regardless of its merits, however, there simply is no basis for citing a pending (i.e. undecided) motion as a reason to not respond to discovery requests. Even if the motion were granted, this still would not excuse the discovery responses.

M3 Eagle respectfully requests that the Hearing Officer order NACGUA to fully respond to those Discovery Requests for which it cited its Motion for Stay as a reason for its failure to respond.

C. Allegations that M3 Eagle carries a “burden of proof” do not excuse NACGUA from responding.

NACGUA denied three of M3 Eagle’s requests for admission and refused to answer associated interrogatories because “[t]he applicant has the burden of proof on this issue.” (*See* Request for Admission Nos. 5-6, 8 *and* Interrogatory Nos. 6-7, 10.) These requests for admission and interrogatories seek information pertaining to claims made by NACGUA (formerly NACFA) members’ protests; namely, any discoverable information NACGUA’s has that M3 Eagle’s proposed water use will cause injury to other water rights, that it will adversely impact water quality, and that the water supply is not adequate for M3 Eagle’s proposed needs. NACGUA’s excuse for not answering is without merit.

Idaho Rule of Civil Procedure 26(b)(1) provides that “Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party. (Emphasis added.) The Rule further states “It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.”

(Emphasis added.)

These requests for admission and interrogatories are well within these standards and are subject to discovery by M3 Eagle under Rule 26. NACGUA does not assert that the information M3 Eagle seeks is outside these bounds or that it is privileged. M3 Eagle is entitled to obtain discoverable information from NACGUA and its members (and their predecessor representative, NACFA) on these issues.

The whole point of discovery is for opposing parties to learn each others' facts. *Edmunds v. Kraner*, 142 Idaho 867, 136 P.3d 338 (2006) ("The purpose of our discovery rules is to facilitate fair and expedient pretrial fact gathering.") In this way, the parties can ascertain the strengths and weaknesses of their respective cases. *See Lester v. Salvino*, 141 Idaho 937, 940, 120 P.3d 755, 758 (Ct. App. 2005), *citing Smith v. Big Lost River Irrigation Dist.*, 83 Idaho 374, 383, 364 P.2d 146, 151 (1961) ("The principal purpose of interrogatories is to afford parties information in the possession of the other party regarding the issues in suit to enable the propounding party to prepare for trial and to reduce the possibility of surprise in the trial.") It makes absolutely no difference which party has the burden of proof at hearing. Any assertion to the contrary is without foundation.

Accordingly, M3 Eagle respectfully requests that the Hearing Officer order NACGUA to fully respond to those Discovery Requests for which it stated that M3 Eagle has the burden of proof as a reason for its failure to respond.

REQUEST FOR SANCTIONS

Rule 37(a)(4) states "If the motion [to compel discovery responses] is granted, the court shall, after opportunity for hearing, require the party . . . whose conduct necessitated the motion . . . to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees."

As discussed above, NACGUA has failed to respond to M3 Eagle's Discovery Requests and has expressly stated its intent not to. NACGUA's failure to respond is not in good faith and appears part of a strategy to hinder discovery and hearing preparation. Accordingly, M3 Eagle respectfully requests the Hearing Officer order NACGUA and the individual protestants to pay M3 Eagle's expenses and attorney fees incurred in connection with this Motion.

DATED this 14th day of November, 2008.

Respectfully submitted,

GIVENS PURSLEY LLP

By Jeffrey C. Fereday
Jeffrey C. Fereday
Michael P. Lawrence

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of November, 2008, the foregoing was filed, served, or copied as follows:

FILED

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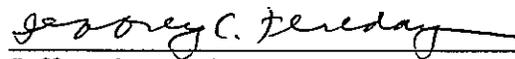
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Jeffrey C. Fereday

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DEPARTMENT OF
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**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

**AFFIDAVIT OF MICHAEL P. LAWRENCE
IN SUPPORT OF MOTION TO COMPEL
DISCOVERY RESPONSES**

State of Idaho)
) ss.
County of Ada)

MICHAEL P. LAWRENCE, being first duly sworn upon oath, deposes and states:

1. I am an attorney with Givens Pursley LLP, counsel to M3 Eagle LLC.
2. I make this Affidavit based on my own personal knowledge.
3. Attached hereto as Exhibit A is a true, correct, and complete copy of *Applicant M3 Eagle LLC's First Set of Discovery Requests to Protestant North Ada County Groundwater Users Association*, which was served on October 1, 2008.
4. Attached hereto as Exhibit B is a true, correct, and complete copy of *NACGUA's Responses to Applicant M3 Eagle LLC's First Set of Discovery Requests to Protestant North Ada County Groundwater Users Association*, which was served on November 10, 2008.

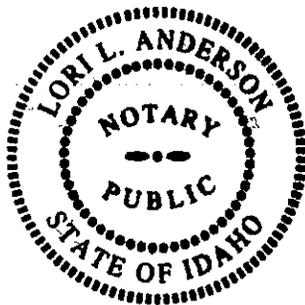
5. Attached hereto as Exhibit C is a true, correct, and complete copy of the e-mail exchange between Jeffrey C. Fereday and Josephine Beeman regarding inadequate discovery responses from NACGUA.

6. Attached as Exhibit D is a letter from Josephine Beeman to Jeffrey C. Fereday regarding discovery responses.

DATED this 4th day of November, 2008.


Michael P. Lawrence

Subscribed and sworn to before me this 4 day of November, 2008.




Notary Public for Idaho
Residing at Boise Idaho
My Commission expires Aug. 23, 2013

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of November, 2008, the foregoing was filed, served, or copied as follows:

FILED

Idaho Department of Water Resources
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**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

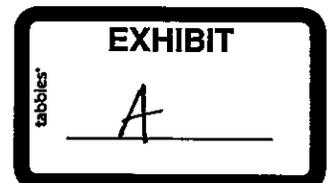
**APPLICANT M3 EAGLE LLC'S FIRST
SET OF DISCOVERY REQUESTS TO
PROTESTANT NORTH ADA COUNTY
GROUNDWATER USERS ASSOCIATION**

TO: North Ada County Groundwater Users Association, in care of David Head or its attorney of record.

PLEASE TAKE NOTICE that M3 Eagle LLC, by and through its counsel, hereby requires you to respond to the following Discovery Requests.

INSTRUCTIONS

These Discovery Requests are issued to you pursuant to the Hearing Officer's *Order Authorizing Discovery and Scheduling Order* of September 12, 2008, IDWR's Rules of Procedure (IDAPA §§ 37.01.01.001.02 and 37.01.01.520 through 37.01.01.532), and Rules 33, 34, and 36 of the Idaho Rules of Civil Procedure, which are incorporated by reference in the Department's Rules (IDAPA § 37.01.01.520.02). Pursuant to the September 12 Order and the Idaho Rules of Civil Procedure Rule 33(a)(2), 34 (b)(2), and 36(a), your responses are due 30 days after service of these Discovery Requests, no later November 3, 2008.



Your responses to these Discovery Requests must be made under oath.

In responding to these Discovery Requests, please base your responses on all information available to NACGUA and each NACGUA Member. This information includes information in the possession of NACGUA's attorneys, experts, and consultants, and each NACGUA Member's attorneys, experts, and consultants.

If you cannot respond to these Discovery Requests in full after exercising due diligence to secure the information to do so, so state and respond to the extent possible, specifying your inability to respond to the remainder, and providing whatever information, documents, and knowledge you have concerning the unanswered portion.

Requests to identify or produce documents include all documents in the possession or control of: 1) NACGUA; 2) any NACGUA Member; or 3) any attorney, accountant, expert witness, lay witness or other agent or person from whom NACGUA or any NACGUA Member has a legal right to obtain such document.

The documents requested shall be produced as they are kept in the usual course of business or shall be organized and labeled to correspond with the categories of this Discovery Request.

If any document or any portion of any document requested herein is or will be withheld from production, inspection or copying (whether because it is claimed to be attorney work product, communication from attorney to client, or is entitled to be withheld for any other reason), please fully identify each such document or portion thereof by providing the following information as to each such document withheld:

- a. the identity of the document;
- b. the subject matter of the document;
- c. the date the document was prepared;

- d. the identity of the person(s) preparing the document;
- e. the identity of each person to whom the document was sent or given;
- f. the identity of each person possessing a copy of the document;
- g. the privilege(s) claimed;
- h. the facts upon which each claim of privilege is based; and
- i. the identity of the current custodian of the document.

If any document is practically impossible of production, inspection or copying, please fully identify such document and the reason for the practical impossibility.

All of these Discovery Requests are deemed continuing. If, after responding to these Requests, you acquire any document requested herein, or any information related to any document herein, which is not reflected by any documents produced or any response to these Requests, you must file a supplemental response or indicate to M3 Eagle's counsel the existence of such document. Such supplementation is required by Rule 26(e)(3) of the Idaho Rules of Civil Procedure upon this request.

DEFINITIONS

As used herein, the following terms have the following meanings:

1. "Applicant" means M3 Eagle LLC.
2. "Application" means the Applicant's *Second Amended Application for Permit* dated April 22, 2008, which was assigned No. 63-32573.
3. "Describe" means to explain with particularity and in detail, setting forth all facts material to such explanation.
4. "Discovery Requests" or "Request" means these Interrogatories, Requests for Admission, and Requests for Production, or any particular one of them, as the case may be.

5. "Document" means and includes any and all tangible things and papers, whether written, recorded, graphic, typewritten, printed, photographed, stored in electronic and data storage devices or other mediums, or otherwise produced or reproduced, and whether produced manually or by mechanical, electrical, electronic, other artificial process, or a combination of these methods, including, but not limited to, papers, computer records or files, emails, minutes, records, accounting books, maps, plans, blueprints, sketches, charts, drawings, diagrams, photographs, films, videotapes, recordings, checks, receipts, analyses, surveys, transcriptions, and recordings of which you have any knowledge or information, referring, relating or pertaining in any way to the subject matters in connection with which the word is used. The term "document" includes, without limitation, originals and all drafts prepared in connection with such writings, whether used or not, all file copies, and all other copies in whatever medium they are stored.

6. "Identify" means to describe. When used in relation to a document, it also means to set forth the document's date of creation, its author(s), its identifying number, if any, and its location.

7. "IDWR" and the "Department" both mean the Idaho Department of Water Resources.

8. "M3 Eagle Project" means the mixed-use planned community proposed for an approximately 6,000-acre parcel north of Eagle, Idaho and for which the Application seeks a municipal water right.

9. "NACFA" means the North Ada County Foothills Association, an unincorporated association that is a protestant or former protestant in this matter.

10. "NACGUA" means Protestant North Ada County Groundwater Users Association.

11. "NACGUA Member" means an individual who joined NACGUA and designated NACGUA as the individual's representative in this matter pursuant to the September 12 Order.

12. "Or" as used herein is not intended to refer strictly to the disjunctive, and means and includes "and/or," whichever is broader in the context.

13. "Protest" means the October 16, 2007 protest to the Application filed in this matter by David Head on behalf of NACFA and then assigned to NACGUA. This definition assumes that, pursuant to the August 5, 2008 *Prehearing Order and Notice of Prehearing Conference*, each of the essentially identical protests originally filed by NACGUA (or NACFA) Members has been subsumed into the NACGUA Protest and therefore no longer is a separate protest.

14. "September 12 Order" means the *Order Authorizing Discovery and Scheduling Order* of September 12, 2008, as amended by any subsequent order of the Hearing Officer, if any.

15. "You" or "your" refers to NACGUA and assumes that NACGUA is speaking on behalf of NACGUA and each NACGUA Member that has designated NACGUA as his or her spokesman in this matter.

INTERROGATORIES, REQUESTS FOR ADMISSION,

AND REQUESTS FOR PRODUCTION

Please note: The sub-headings set out below are provided solely for the convenience of the reader. They are not intended to modify or limit the discovery requests or intended to serve as a guide for the interpretation of the discovery requests.

Information About NACGUA

REQUEST FOR PRODUCTION NO. 1. Please produce all documents referring to Applicant, the Application, Applicant's water rights, Applicant's prospective water use, the Protest, or the M3 Eagle Project.

REQUEST FOR ADMISSION NO. 1. Please admit that all NACGUA Members also are NACFA members.

INTERROGATORY NO. 1. If the answer to Request for Admission No. 1 is anything other than an unqualified admission, please describe the basis for your answer and identify each document that supports, contradicts, or in any way pertains to such answer.

INTERROGATORY NO. 2. Please describe why NACFA assigned its Protest to NACGUA by means of Katherine Pennisi's August 26, 2008 letter to the Hearing Officer.

REQUEST FOR ADMISSION NO. 2. Please admit that in assigning its Protest to NACGUA by means of Katherine Pennisi's August 26, 2008 letter to the Hearing Officer, NACFA intended that NACGUA is to be substituted for NACFA as a Protestant in this proceeding.

INTERROGATORY NO. 3. If the answer to Request for Admission No. 2 is anything other than an unqualified admission, please describe the basis for your answer and identify each document that supports, contradicts, or in any way pertains to such answer.

REQUEST FOR ADMISSION NO. 3. Please admit that all information and documents pertaining to the Protest or the Application that is or was in the possession of NACFA also is available to or in the possession of NACGUA.

INTERROGATORY NO. 4. If the answer to Request for Admission No. 3 is anything other than an unqualified admission, please describe the basis for your answer and identify each document that supports, contradicts, or in any way pertains to such answer.

REQUEST FOR PRODUCTION NO. 2. To the extent not produced in response to Request for Production No. 1, please produce all documents that pertain to NACFA's protest of the Application.

REQUEST FOR PRODUCTION NO. 3. Please produce all documents that pertain to NACFA's protest of Application No. 63-31966 filed by SunCor in May 2004.

Alleged Injury to Water Rights

REQUEST FOR ADMISSION NO. 4. Please admit that the water use proposed by the Application will not cause the amount of water available under an existing water right to be reduced below the amount recorded by permit, license, decree or valid claim or the historical amount beneficially used by the water right holder under such recorded water rights, whichever is less.

INTERROGATORY NO. 5. If the answer to Request for Admission No. 4 is anything other than an unqualified admission, please state the owner, the legal basis of the water right (e.g., license, permit, decree, or domestic exemption), and the IDWR water right number (if any), of such existing water right(s), and please describe the basis for your answer and identify each document that supports, contradicts, or in any way pertains to such answer.

REQUEST FOR ADMISSION NO. 5. Please admit that the water use proposed by the Application will not force the holder of an existing water right to an unreasonable effort or expense to divert water under his/her water right.

INTERROGATORY NO. 6. If the answer to Request for Admission No. 5 is anything other than an unqualified admission, please state the owner, the legal basis of the water right (e.g., license, permit, decree, or domestic exemption), and the IDWR water right number (if any), of such existing water right(s), and please describe the basis for your answer and identify each document that supports, contradicts, or in any way pertains to such answer.

REQUEST FOR ADMISSION NO. 6. Please admit that the water use proposed by the Application will not cause the quality of the water available to the holder of an existing water right to be made unusable for the purposes of the existing user's water right.

INTERROGATORY NO. 7. If the answer to Request for Admission No. 6 is anything other than an unqualified admission, please state the owner, the legal basis of the water right (e.g., license, permit, decree, or domestic exemption), and the IDWR water right number (if any), of such existing water right(s), and please describe the basis for your answer and identify each document that supports, contradicts, or in any way pertains to such answer.

REQUEST FOR ADMISSION NO. 7. Please admit that NACGUA, or some or all of the NACGUA Members, object to or oppose the M3 Eagle Project for reasons other than water supply, the Application, or the effect that Applicant's pumping ground water may have on their wells or water supplies.

INTERROGATORY NO. 8. If the answer to Request for Admission No. 7 is an unqualified admission, please describe the reasons and identify each document that supports, contradicts, or in any way pertains to such answer.

INTERROGATORY NO. 9. If the answer to Request for Admission No. 7 is anything other than an unqualified admission, please describe the basis for your answer and identify each document that supports, contradicts, or in any way pertains to such answer.

Sufficiency of Water Supply

REQUEST FOR ADMISSION NO. 8. Please admit that water will be available for an adequate time interval in quantities sufficient to make the M3 Eagle Project economically feasible, where economic feasibility means that the direct benefits to the Applicant will exceed the direct costs to the Applicant.

INTERROGATORY NO. 10. If the answer to Request for Admission No. 8 is anything other than an unqualified admission, please describe the basis for your answer and identify each document that supports, contradicts, or in any way pertains to such answer.

REQUEST FOR ADMISSION NO. 9. Please admit that you have no information upon which to question the methods, accuracy, or findings of the May 4, 2007 *M3 Eagle Regional Hydrogeologic Characterization North Ada, Canyon and Gen Counties, Idaho: Year-One Progress Report* by Squires, Utting and Pearson of Hydro Logic, Inc. that is attached as Exhibit 4 to Attachment A of the Application.

INTERROGATORY NO. 11. If the answer to Request for Admission No. 9 is anything other than an unqualified admission, please describe the basis for your answer and identify each document that supports, contradicts, or in any way pertains to such answer.

REQUEST FOR ADMISSION NO. 10. Please admit that you have no information upon which to question the methods, accuracy or findings of the July 4, 2008 *Re-Analysis of 16 Aquifer Tests in the Greater Eagle-Star Area of North Ada County, Idaho* by Utting and Squires of Hydro Logic, Inc. that has been sent to NACFA, IDWR and others.

INTERROGATORY NO. 12. If the answer to Request for Admission No. 10 is anything other than an unqualified admission, please describe the basis for your answer and identify each document that supports, contradicts, or in any way pertains to such answer.

REQUEST FOR ADMISSION NO. 11. Please admit that you have no information upon which to question the methods, accuracy, or findings of the January 31, 2008 *M3 Eagle Water Demand At Build-Out, Based on Projected Uses* by Stanley Consultants, Inc. and Toothman-Orton Engineering that was submitted as Exhibit 5 to Attachment A of the Application..

INTERROGATORY NO. 13. If the answer to Request for Admission No. 11 is anything other than an unqualified admission, please describe the basis for your answer and identify each document that supports, contradicts, or in any way pertains to such answer.

REQUEST FOR ADMISSION NO. 12. Please admit that you have no information upon which to question the methods, accuracy, or findings of the December 2007 Master's Thesis by Stacey L. Douglas of the University of Idaho, prepared under Major Professor Dr. James Osiensky, Ph.D. and entitled *Development of a Numerical Ground Water Flow Model for the M3 Eagle Development Area Near Eagle, Idaho*, that has been sent to NACFA, IDWR and others.

INTERROGATORY NO. 14. If the answer to Request for Admission No. 12 is anything other than an unqualified admission, please describe the basis for your answer and identify each document that supports, contradicts, or in any way pertains to such answer.

Good Faith

REQUEST FOR ADMISSION NO. 13. Please admit that the Application was made in good faith and not made for delay or speculative purposes, where speculation means "an intention to obtain a permit to appropriate water without the intention of applying the water to beneficial use with reasonable diligence."

INTERROGATORY NO. 15. If the answer to Request for Admission No. 13 is anything other than an unqualified admission, please describe the basis for your answer and identify each document that supports, contradicts, or in any way pertains to such answer.

Applicant's Financial Resources

REQUEST FOR ADMISSION NO. 14. Please admit that the Applicant has, or will have, sufficient financial resources available to complete the M3 Eagle Project.

INTERROGATORY NO. 16. If the answer to Request for Admission No. 14 is anything other than an unqualified admission, please describe the basis for your answer and identify each document that supports, contradicts, or in any way pertains to such answer.

Local Public Interest and Local Economy

REQUEST FOR ADMISSION NO. 15. Please admit that the water use proposed by the Application will not conflict with the local public interest, which is defined in Idaho Code § 42-202B(3) 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.”

INTERROGATORY NO. 17. If the answer to Request for Admission No. 15 is anything other than an unqualified admission, please describe the basis for your answer and identify each document that supports, contradicts, or in any way pertains to such answer.

REQUEST FOR ADMISSION NO. 16. Please admit that the water use proposed by the application will not adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates.

INTERROGATORY NO. 18. If the answer to Request for Admission No. 16 is anything other than an unqualified admission, please describe the basis for your answer and identify each document that supports, contradicts, or in any way pertains to such answer.

Additional Issues

INTERROGATORY NO. 19. To the extent not fully disclosed by your earlier responses, please identify and describe in detail any other basis or bases for your contention that the Application should not be approved and please identify each document that supports, contradicts, or in any way pertains to such answer.

INTERROGATORY NO. 20. Please describe what condition(s), amendment(s) to the permit, or limitations, if any, you believe must be imposed by IDWR in order to lawfully approve the Application.

Your Witnesses and Evidence

INTERROGATORY NO. 21. For each person you have identified or will identify as an expert witness pursuant to the September 12 Order, please describe the name and address of each such witness and include for each such witness, as provided in Idaho Rule of Civil Procedure 26(b)(4)(A)(i), a complete statement of all opinions to be expressed and the basis and reasons therefore, the data or other information considered by the witness in forming the opinions, any exhibits to be used as a summary of or support for the opinions, any qualifications of the witness including a list of all publications authored by the witness within the preceding ten years, the compensation to be paid for the testimony, and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

INTERROGATORY NO. 22. Please state the name and address of each person you intend to call as a lay witness at the trial of this matter, and for each such person describe the substance of the facts and opinions to which he or she is expected to testify and set forth specifically and in detail the underlying facts and data upon which the opinion and testimony is based.

REQUEST FOR PRODUCTION NO. 4. Please produce all documents, exhibits, and/or other items of tangible evidence which you expect to introduce or use, or may use, at the hearing in this matter. If such documents, exhibits, and/or other items of tangible evidence have been produced in response to Request for Production Nos. 1 through 3, please identify the documents, exhibits, and/or other items of tangible evidence which you expect to introduce or use, or may use, at the hearing in this matter but do not produce the documents, exhibits, and/or other items

of tangible evidence twice.

REQUEST FOR PRODUCTION NO. 5. To the extent not produced in response to Request for Production Nos. 1 through 4, please produce all documents that you relied on to respond to these Discovery Requests.

DATED this 1st day of October, 2008.

Respectfully submitted,

GIVENS PURSLEY LLP

By Jeffrey C. Fereday
Jeffrey C. Fereday
Michael P. Lawrence
Kelsey J. Nunez

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of October, 2008, the foregoing was filed, served, or copied as follows:

NOTICE OF SERVICE

Idaho Department of Water Resources	<input checked="" type="checkbox"/>	U. S. Mail
Attn: Gary L. Spackman	<input type="checkbox"/>	Hand Delivered
322 East Front Street	<input type="checkbox"/>	Overnight Mail
P.O. Box 83720	<input type="checkbox"/>	Facsimile
Boise, ID 83720-0098	<input type="checkbox"/>	E-mail

NOTICE OF SERVICE AND DISCOVERY

North Ada County Groundwater Users Association	<input checked="" type="checkbox"/>	U. S. Mail
Josephine P. Beeman	<input type="checkbox"/>	Hand Delivered
Beeman & Associates PC	<input type="checkbox"/>	Overnight Mail
409 West Jefferson	<input type="checkbox"/>	Facsimile
Boise, ID 83702-6049	<input type="checkbox"/>	E-mail

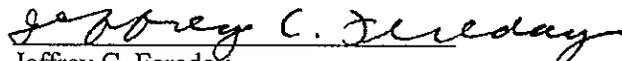
David Head	<input checked="" type="checkbox"/>	U. S. Mail
855 Stillwell Drive	<input type="checkbox"/>	Hand Delivered
Eagle, ID 83616	<input type="checkbox"/>	Overnight Mail
	<input type="checkbox"/>	Facsimile
	<input type="checkbox"/>	E-mail

John Westra	<input checked="" type="checkbox"/>	U. S. Mail
Western Regional Office	<input type="checkbox"/>	Hand Delivered
Idaho Department of Water Resources	<input type="checkbox"/>	Overnight Mail
2735 Airport Way	<input type="checkbox"/>	Facsimile
Boise, ID 83705-5082	<input type="checkbox"/>	E-mail

Bill Lawton, Spokesman for	<input checked="" type="checkbox"/>	U. S. Mail
Robert L and Kip C. Wood	<input type="checkbox"/>	Hand Delivered
M. Howard Goldman	<input type="checkbox"/>	Overnight Mail
Timothy R. and Judy L. Milburn	<input type="checkbox"/>	Facsimile
3145 Osprey Road	<input type="checkbox"/>	E-mail
Eagle, ID 83616		

Norman Edwards	<input checked="" type="checkbox"/>	U. S. Mail
884 W. Beacon Light Road	<input type="checkbox"/>	Hand Delivered
Eagle, ID 83616	<input type="checkbox"/>	Overnight Mail
	<input type="checkbox"/>	Facsimile
	<input type="checkbox"/>	E-mail

Alan Smith	<input checked="" type="checkbox"/>	U. S. Mail
3135 N. Osprey Road	<input type="checkbox"/>	Hand Delivered
Eagle, ID 83616	<input type="checkbox"/>	Overnight Mail
	<input type="checkbox"/>	Facsimile
	<input type="checkbox"/>	E-mail


 Jeffrey C. Fereday

Jeffrey C. Fereday [ISB No. 2719]
Michael P. Lawrence [ISB No. 7288]
Kelsey J. Nunez [ISB No. 7899]
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601 West Bannock Street
P.O. Box 2720
Boise, Idaho 83701-2720
Office: (208) 388-1200
Fax: (208) 388-1300
www.givenspursley.com
Attorneys for M3 Eagle LLC

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OCT 02 2008
DEPARTMENT OF
WATER RESOURCES
COPY

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

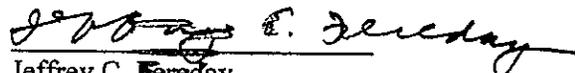
IN THE MATTER OF APPLICATION
FOR PERMIT NO. 63-32573 IN THE
NAME OF M3 EAGLE LLC

NOTICE OF SERVICE

M3 Eagle LLC ("M3 Eagle"), through its counsel Givens Pursley LLP, and pursuant to Rules 33(a)(5) and 34(d) and 36(c) of the Idaho Rules of Civil Procedure, hereby gives notice to all parties and counsel of record that M3 Eagle's First Set of Interrogatories, Requests for Admission, and Requests for Production to North Ada County Groundwater Users Association ("NACGUA") was served upon NACGUA and David Head.

Dated this 1st day of October, 2008.

GIVENS PURSLEY LLP


Jeffrey C. Fereday

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of October, 2008, the foregoing was filed, served, or copied as follows:

NOTICE OF SERVICE

Idaho Department of Water Resources	<input checked="" type="checkbox"/> U. S. Mail
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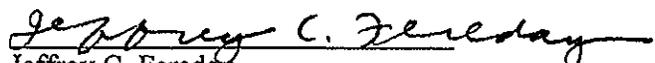
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Eagle, ID 83616	<input type="checkbox"/> Overnight Mail
	<input type="checkbox"/> Facsimile
	<input type="checkbox"/> E-mail


 Jeffrey C. Fereday

RECEIVED

NOV 11 2008

Givens Pursley, LLP

Josephine P. Beeman #1806
Beeman & Associates, P.C.
409 West Jefferson Street
Boise, ID 83702
(208) 331-0950
(208) 331-0954 (Facsimile)
jo.beeman@beemanlaw.com

Attorneys for North Ada County Groundwater Users Association

**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

NACGUA'S RESPONSES TO
APPLICANT M3 EAGLE LLC'S FIRST
SET OF DISCOVERY REQUESTS TO
PROTESTANT NORTH ADA COUNTY
GROUNDWATER USERS ASSOCIATION

**RESPONSES AND OBJECTIONS BY NACGUA TO M3 EAGLE'S FIRST SET OF
INTERROGATORIES, REQUESTS FOR PRODUCTION,
AND REQUESTS FOR ADMISSION**

North Ada County Groundwater Users Association (NACGUA) responds **M3 EAGLE
LLC'S FIRST SET OF DISCOVERY REQUESTS** ("Discovery Requests") as follows:

GENERAL OBJECTIONS

1. NACGUA objects to the Discovery Requests, **including but not limited to the Instructions and Definitions therein, whether or not specifically restated hereinafter, insofar as they purport to require NACGUA to respond differently from or beyond what is required by the Idaho Rules of Civil Procedure or relevant case law.**
2. NACGUA objects to the Discovery Requests, **including but not limited to the Instructions and Definitions therein, whether or not specifically restated hereinafter, insofar as they purport to require NACGUA to disclose information that is protected by attorney-client, deliberative process, work product, Rule 26 (b),**

EXHIBIT

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B

or any other applicable privilege or protection.

3. These General Objections are incorporated into each of NACGUA's Responses to the Discovery Requests.
4. None of NACGUA's objections, whether these General Objections or additional specific objections, is waived where NACGUA, notwithstanding its objections, has chosen to respond to a Discovery Request.
5. NACGUA is making its initial responses on November 10, 2008 and shall make further responses pursuant to its duties under Rule 26(e), I.R.C.P., until production of responsive documents is completed.

Definitions

1. "Applicant" means M3 Eagle LLC, referred to herein as Applicant or M3 Eagle LLC.
2. "Application" means the Applicant's *Second Amended Application for Permit* dated April 22, 2008, which was assigned No. 63-32573.
3. "Describe" means to explain with particularity and in detail, setting forth all facts material to such explanation.
4. "Discovery Requests" or "Request" means these Interrogatories, Requests for Admission, and Requests for Production, or any particular one of them, as the case may be.
5. "Document" means and includes any and all tangible things and papers, whether written, recorded, graphic, typewritten, printed, photographed, stored in electronic and data storage devices or other mediums, or otherwise produced or reproduced, and whether produced manually or by mechanical, electrical, electronic, other artificial process, or a combination of these methods, including, but not limited to, papers, computer records or files, emails, minutes, records, accounting books, maps, plans, blueprints, sketches, charts, drawings, diagrams, photographs, films, videotapes, recordings, checks, receipts, analyses, surveys, transcriptions, and recordings of which you have any knowledge or information, referring, relating or pertaining

in any way to the subject matters in connection with which the word is used. The term “document” includes, without limitation, originals and all drafts prepared in connection with such writings, whether used or not, all file copies, and all other copies in whatever medium they are stored.

6. “Identify” means to describe. When used in relation to a document, it also means to set forth the document’s date of creation, its author(s), its identifying number, if any, and its location.

7. “IDWR” and the “Department” both mean the Idaho Department of Water Resources.

8. “M3 Eagle Project” means the mixed-use planned community proposed for an approximately 6,000-acre parcel north of Eagle, Idaho and for which the Application seeks a municipal water right.

9. “M3 Eagle Project water system” means the public water supply system for the M3 Eagle Project.

10. “NACGUA” means Protestant North Ada County Groundwater Users Association.

11. “NACGUA Member” means an individual who filed a protest to M3 Eagle LLC’s *Amended Application for Permit 63-32573* (dated August 27, 2007) and then subsequent to M3 Eagle LLC’s *Second Amended Application for Permit 63-32573* (dated April 22, 2008), designated the officers of NACGUA as spokespersons to speak for them in the above contested case and during the hearing for Application 63-32573; and then pursuant to the October 7, 2008 Order to Consolidate Parties and Default Order, had their protest subsumed into the protest of NACGUA.

12. “Or” as used herein is not intended to refer strictly to the disjunctive, and means

and includes “and/or,” whichever is broader in the context.

13. “Protest”, pursuant to the October 7, 2008 Order to Consolidate Parties and Default Order, means the October 16, 2007 NACGUA protest to the Application filed in this matter by David Head.

14. “September 12 Order” means the *Order Authorizing Discovery and Scheduling Order* of September 12, 2008, as amended by any subsequent order of the Hearing Officer, if any.

15. “You” or “your” refers to M3 Eagle LLC.

**M3 EAGLE’S FIRST SET OF
INTERROGATORIES, REQUESTS FOR PRODUCTION,
AND REQUESTS FOR ADMISSION**

Information About NACGUA

REQUEST FOR PRODUCTION NO. 1. Please produce all documents referring to Applicant, the Application, Applicant’s water rights, Applicant’s prospective water use, the Protest, or the M3 Eagle Project.

RESPONSE: NACGUA does not have in its possession any documents that are not already in the record at IDWR or the website for the North Ada County Hydrogeologic Project. NACGUA has already provided Dr. Dale Ralston’s preliminary analysis (Ralston Hydrologic Services, Inc. November 6, 2008 Memorandum of Initial Hydrogeologic Analysis) to the Applicant.

REQUEST FOR ADMISSION NO. 1. Please admit that all NACGUA Members also are NACFA members.

DENIED.

INTERROGATORY NO 1. If the answer to Request for Admission No. 1 is anything other than an unqualified admission, please describe the basis for your answer and identify each document that supports, contradicts, or in any way pertains to such answer.

RESPONSE: NACFA is not a party. No response is required. Without waiving this objection, NACGUA responds that not all of its members are also members of NACFA.

INTERROGATORY NO. 2 Please describe why NACFA assigned its Protest to NACGUA by means of Katherine Pennisi's August 26, 2008 letter to the Hearing Officer.

RESPONSE: NACFA is not a party. No response is required.

REQUEST FOR ADMISSION NO. 2. Please admit that in assigning its Protest to NACGUA by means of Katherine Pennisi's August 26, 2008 letter to the Hearing Officer, NACFA intended that NACGUA is to be substituted for NACFA as a Protestant in this proceeding.

DENIED.

INTERROGATORY NO.3 If the answer to Request for Admission No. 2 is anything other than an unqualified admission, please describe the basis for your answer and identify each document that supports, contradicts, or in any way pertains to such answer.

RESPONSE: See response to Interrogatory No. 2.

REQUEST FOR ADMISSION NO. 3. Please admit that all information and documents pertaining to the Protest or the Application that is or was in the possession of NACFA also is available to or in the possession of NACGUA.

DENIED.

INTERROGATORY NO. 4 If the answer to Request for Admission No. 3 is anything other than an unqualified admission, please describe the basis for your answer and identify each document that supports, contradicts, or in any way pertains to such answer.

RESPONSE: NACFA is not a party. No response is required.

REQUEST FOR PRODUCTION NO. 2. To the extent not produced in response to Request for Production No. 1, please produce all documents that pertain to NACFA's protest of the Application.

OBJECTION: NACFA is not a party to this proceeding.

REQUEST FOR PRODUCTION NO. 3. Please produce all documents that pertain to NACFA's protest of Application No. 63-31966 filed by SunCor in May 2004.

OBJECTION: NACFA is not a party to this proceeding.

Alleged Injury to Water Rights

REQUEST FOR ADMISSION NO. 4. Please admit that the water use proposed by the Application will not cause the amount of water available under an existing water right to be reduced below the amount recorded by permit, license, decree or valid claim or the historical amount beneficially used by the water right holder under such recorded water rights, whichever is less.

DENIED.

INTERROGATORY NO.5 If the answer to Request for Admission No. 4 is anything other than an unqualified admission, please state the owner, the legal basis of the water right (e.g., license, permit, decree, or domestic exemption), and the IDWR water right number (if any), of such existing water right(s), and please describe the basis for your answer and identify each document that supports, contradicts, or in any way pertains to such answer.

RESPONSE: See response to request for production no. 1 and November 10, 2008 NACGUA motion for stay and limited discovery for purposes of settlement.

REQUEST FOR ADMISSION NO. 5. Please admit that the water use proposed by the Application will not force the holder of an existing water right to an unreasonable effort or expense to divert water under his/her water right.

DENIED.

INTERROGATORY NO. 6 If the answer to Request for Admission No. 5 is anything other than an unqualified admission, please state the owner, the legal basis of the water right (e.g., license, permit, decree, or domestic exemption), and the IDWR water right number (if any), of such existing water right(s), and please describe the basis for your answer and identify each document that supports, contradicts, or in any way pertains to such answer.

RESPONSE: The applicant has the burden of proof on this issue. See response to request for production no. 1 and November 10, 2008 NACGUA motion for stay and limited discovery for purposes of settlement.

REQUEST FOR ADMISSION NO. 6. Please admit that the water use proposed by the Application will not cause the quality of the water available to the holder of an existing water right to be made unusable for the purposes of the existing user's water right.

DENIED.

INTERROGATORY NO. 7 If the answer to Request for Admission No. 6 is anything other than an unqualified admission, please state the owner, the legal basis of the water right (e.g., license, permit, decree, or domestic exemption), and the IDWR water right number (if any), of such existing water right(s), and please describe the basis for your answer and identify each document that supports, contradicts, or in any way pertains to such answer.

RESPONSE: The applicant has the burden of proof on this issue. See response to request for production no. 1 and November 10, 2008 NACGUA motion for stay and limited discovery for purposes of settlement.

REQUEST FOR ADMISSION NO. 7. Please admit that NACGUA, or some or all of the NACGUA Members, object to or oppose the M3 Eagle Project for reasons other than water supply, the Application, or the effect that Applicant's pumping ground water may have on their wells or water supplies.

DENIED.

INTERROGATORY NO. 8 If the answer to Request for Admission No. 7 is an unqualified admission, please describe the reasons and identify each document that supports, contradicts, or in any way pertains to such answer.

RESPONSE: See response to request for production no. 1 and November 10, 2008 NACGUA motion for stay and limited discovery for purposes of settlement.

INTERROGATORY NO. 9. If the answer to Request for Admission No. 7 is anything other than an unqualified admission, please describe the basis for your answer and identify each document that supports, contradicts, or in any way pertains to such answer.

NO RESPONSE. THIS DUPLICATES INTERROGATORY NO. 8.

Sufficiency of Water Supply

REQUEST FOR ADMISSION NO. 8. Please admit that water will be available for an adequate time interval in quantities sufficient to make the M3 Eagle Project economically feasible, where economic feasibility means that the direct benefits to the Applicant will exceed the direct costs to the Applicant.

DENIED.

INTERROGATORY NO. 10 If the answer to Request for Admission No. 8 is anything other than an unqualified admission, please describe the basis for your answer and identify each document that supports, contradicts, or in any way pertains to such answer.

RESPONSE: The burden of proof is on the applicant and that burden has not been shown. See response to request for production no. 1 and November 10, 2008 NACGUA motion for stay and limited discovery for purposes of settlement.

REQUEST FOR ADMISSION NO. 9. Please admit that you have no information upon which to question the methods, accuracy, or findings of the May 4, 2007 *M3 Eagle Regional Hydrogeologic Characterization North Ada, Canyon and Gen Counties, Idaho: Year-One Progress Report* by Squires, Utting and Pearson of Hydro Logic, Inc. that is attached as Exhibit 4 to Attachment A of the Application.

DENIED.

INTERROGATORY NO. 11 If the answer to Request for Admission No. 9 is anything other than an unqualified admission, please describe the basis for your answer and identify each document that supports, contradicts, or in any way pertains to such answer.

RESPONSE: See response to request for production no. 1 and November 10, 2008 NACGUA motion for stay and limited discovery for purposes of settlement.

REQUEST FOR ADMISSION NO. 10. Please admit that you have no information upon which to question the methods, accuracy or findings of the July 4, 2008 *Re-Analysis of 16 Aquifer Tests in the Greater Eagle-Star Area of North Ada County, Idaho* by Utting and Squires of Hydro Logic, Inc. that has been sent to NACFA, IDWR and others.

DENIED.

INTERROGATORY NO. 12 If the answer to Request for Admission No. 10 is anything other than an unqualified admission, please describe the basis for your answer and identify each document that supports, contradicts, or in any way pertains to such answer.

RESPONSE: Dr. Dale Ralston's preliminary analysis (Ralston Hydrologic Services, Inc. November 6, 2008 Memorandum of Initial Hydrogeologic Analysis) already provided to the Applicant.

REQUEST FOR ADMISSION NO. 11. Please admit that you have no information upon which to question the methods, accuracy, or findings of the January 31, 2008 *M3 Eagle Water Demand At Build-Out, Based on Projected Uses* by Stanley Consultants, Inc. and Toothman-Orton Engineering that was submitted as Exhibit 5 to Attachment A of the Application.

DENIED.

INTERROGATORY NO. 13 If the answer to Request for Admission No. 11 is anything other than an unqualified admission, please describe the basis for your answer and identify each document that supports, contradicts, or in any way pertains to such answer.

RESPONSE: Does not meet future needs documentation. See response to request for production no. 1 and November 10, 2008 NACGUA motion for stay and limited discovery for purposes of settlement.

REQUEST FOR ADMISSION NO. 12. Please admit that you have no information upon which to question the methods, accuracy, or findings of the December 2007 Master's Thesis by Stacey L. Douglas of the University of Idaho, prepared under Major Professor Dr. James Osiensky, Ph.D. and entitled *Development of a Numerical Ground Water Flow Model for the M3 Eagle Development Area Near Eagle, Idaho*, that has been sent to NACFA, IDWR and others.

DENIED.

INTERROGATORY NO.14 If the answer to Request for Admission No. 12 is anything other than an unqualified admission, please describe the basis for your answer and identify each document that supports, contradicts, or in any way pertains to such answer.

RESPONSE: Dr. Dale Ralston's preliminary analysis (Ralston Hydrologic Services, Inc. November 6, 2008 Memorandum of Initial Hydrogeologic Analysis) already provided to the Applicant.

Good Faith

REQUEST FOR ADMISSION NO. 13. Please admit that the Application was made in good faith and not made for delay or speculative purposes, where speculation means "an intention to obtain a permit to appropriate water without the intention of applying the water to beneficial use with reasonable diligence."

DENIED.

INTERROGATORY NO. 15 If the answer to Request for Admission No. 13 is anything other than an unqualified admission, please describe the basis for your answer and identify each document that supports, contradicts, or in any way pertains to such answer.

RESPONSE: The application states: that the permit will be transferred or sold; that the water system will be operated by an entity other than the Applicant. M3 Eagle LLC has not completed:

- environmental studies needed to satisfy legal or permitting requirements for some unconstructed portion or for all of the M3 Eagle Project water system.
- Provision of an overall detailed design of the full capacity system for meeting reasonably anticipated future needs;
- Financing plan demonstrating ability to fully pay the costs of the constructing the full capacity system needed to meet reasonably anticipated needs;
- Completed environmental studies needed to satisfy legal or permitting requirements for some unconstructed portion or for all of the full capacity system;

- Acquisition of lands needed for future wells, pumping stations, and other facilities consistent with the overall design for the full capacity system;
- Substantial construction of distribution mains shown to be essential and integral portions of the full capacity system through water distribution network analysis;
- Construction for distribution system or regulatory storage consistent with the overall design of the full capacity system; and development of operations protocol and infrastructure needed to operation the full capacity system consistent with the overall system design.

Applicant's Financial Resources

REQUEST FOR ADMISSION NO. 14. Please admit that the Applicant has, or will have, sufficient financial resources available to complete the M3 Eagle Project.

DENIED.

INTERROGATORY NO. 16 If the answer to Request for Admission No. 14 is anything other than an unqualified admission, please describe the basis for your answer and identify each document that supports, contradicts, or in any way pertains to such answer.

RESPONSE: APPLICANT has not provided current documentation (since October 31, 2006) of a financing plan that demonstrates the ability to fully pay costs of the construction of the M3 Eagle Project water system needed to meet reasonably anticipated needs.

Local Public Interest and Local Economy

REQUEST FOR ADMISSION NO. 15. Please admit that the water use proposed by the Application will not conflict with the local public interest, which is defined in Idaho Code § 42-202B(3) 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.”

DENIED.

INTERROGATORY NO. 17 If the answer to Request for Admission No. 15 is anything other than an unqualified admission, please describe the basis for your answer and identify each document that supports, contradicts, or in any way pertains to such answer.

REPNSE: The Applicant has a burden of coming forward on this issue. To the knowledge of NACGUA, there is no information of this issue that is uniquely in the province of NACGUA, and the Applicant has not come forward with any information on this issue

REQUEST FOR ADMISSION NO. 16. Please admit that the water use proposed by the application will not adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates.

DENIED.

INTERROGATORY NO. 18 If the answer to Request for Admission No. 16 is anything other than an unqualified admission, please describe the basis for your answer and identify each document that supports, contradicts, or in any way pertains to such answer.

RESPONSE: See the Response to Interrogatory No. 17

Additional Issues

INTERROGATORY NO. 19. To the extent not fully disclosed by your earlier responses, please identify and describe in detail any other basis or bases for your contention that the Application should not be approved and please identify each document that supports, contradicts, or in any way pertains to such answer.

RESPONSE: NACGUA is making its initial responses on November 10, 2008 and shall make further responses pursuant to its duties under Rule 26(e), I.R.C.P., until production of responsive documents is completed. NACGUA has asked for a limited stay of proceedings on

the Application, but notes that the current scheduling order provides a November 26, 2008 deadline for expert reports.

INTERROGATORY NO. 20 Please describe what condition(s), amendment(s) to the permit, or limitations, if any, you believe must be imposed by IDWR in order to lawfully approve the Application.

RESPONSE: Until the Application is complete and has appropriate supporting information, NACGUA does not have sufficient information to respond.

Your Witnesses and Evidence

INTERROGATORY NO. 21 For each person you have identified or will identify as an expert witness pursuant to the September 12 Order, please describe the name and address of each such witness and include for each such witness, as provided in Idaho Rule of Civil Procedure 26(b)(4)(A)(i), a complete statement of all opinions to be expressed and the basis and reasons therefore, the data or other information considered by the witness in forming the opinions, any exhibits to be used as a summary of or support for the opinions, any qualifications of the witness including a list of all publications authored by the witness within the preceding ten years, the compensation to be paid for the testimony, and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

RESPONSE: This is premature and duplicative of the current scheduling order and its November 26, 2008 deadline for written discovery and expert reports.

INTERROGATORY NO. 22 Please state the name and address of each person you intend to call as a lay witness at the trial of this matter, and for each such person describe the substance of the facts and opinions to which he or she is expected to testify and set forth specifically and in detail the underlying facts and data upon which the opinion and testimony is based.

RESPONSE: NACGUA reserves the right to call any of the members of NACGUA as lay witnesses who will present testimony on their diversion and use of water and the potential impact from this Application.

REQUEST FOR PRODUCTION NO. 4. Please produce all documents, exhibits, and/or other items of tangible evidence which you expect to introduce or use, or may use, at the hearing in this matter. If such documents, exhibits, and/or other items of tangible evidence have been produced in response to Request for Production Nos. 1 through 3, please identify the documents, exhibits, and/or other items of tangible evidence which you expect to introduce or use, or may use, at the hearing in this matter but do not produce the documents, exhibits, and/or other items of tangible evidence twice.

RESPONSE: This is premature and duplicative of the current scheduling order and its November 26, 2008 deadline for written discovery, exhibits and expert reports. NACGUA is making its initial responses on November 10, 2008 and shall make further responses pursuant to its duties under Rule 26(e), I.R.C.P., until production of responsive documents is completed.

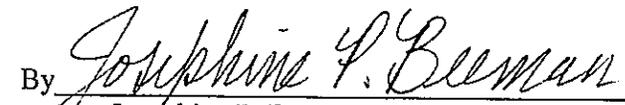
REQUEST FOR PRODUCTION NO. 5. To the extent not produced in response to Request for Production Nos. 1 through 4, please produce all documents that you relied on to respond to these Discovery Requests.

RESPONSE: See response to request for production no. 1 and November 10, 2008 NACGUA motion for stay and limited discovery for purposes of settlement.

Dated this 10th day of November 2008.

BEEMAN & ASSOCIATES, P.C.
Attorneys for North Ada County Groundwater Users Assn.

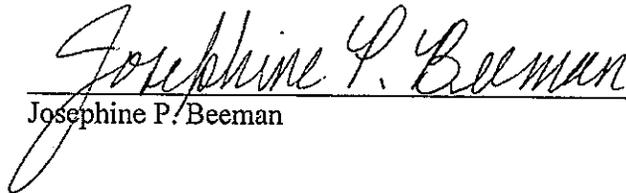
By


Josephine P. Beeman

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of November 2008, I caused the original of the foregoing document to be served by hand mail email delivery:

JEFF FEREDAY
GIVENS PURSLEY
601 W. BANNOCK STREET
P. O. BOX 2720
BOISE ID 83701-2720



Josephine P. Beeman

Michael P. Lawrence

From: Jo Beeman [jo.Beeman@beemanlaw.com]
Sent: Wednesday, November 12, 2008 12:22 PM
To: Jeffrey C Fereday
Cc: William Brownlee; Gerry Robbins; Michael P. Lawrence
Subject: RE: Inadequate discovery responses

Jeff,

We will certainly double check with NACGUA about the concerns you have expressed. However, since NACGUA is the party, not its members, we could only respond to the written discovery on behalf of NACGUA. I will get back with you. NACGUA understands, of course, that if it did have materials subject to discovery that were not produced (and it does not believe it has any such materials), those materials could not be used at any hearing on M3 Eagle's Application 63-32573.

Jo

Josephine P. Beeman
Beeman & Associates, P.C.

-----Original Message-----

From: Jeffrey C Fereday [mailto:JeffFereday@givenspursley.com]
Sent: Wednesday, November 12, 2008 9:05 AM
To: Jo Beeman
Cc: 'William Brownlee'; 'Gerry Robbins'; Michael P. Lawrence
Subject: Inadequate discovery responses

Jo,

At 5:30 Monday, November 10, we received NACGUA's responses to M3 Eagle's First Set of Discovery Requests. I was unable to review them until yesterday afternoon, the 11th. Unfortunately, after reading them, I have to conclude that they are not adequate responses.

For example, we find it difficult to believe that NACGUA has no documents referring to M3, its water right application, or its project besides those in IDWR's possession or Dale Ralston's preliminary analysis. Are there no e-mails or other correspondence on these subjects between NACGUA's members, or with its consultants? Do NACGUA's members possess no documents produced by its predecessor NACFA? We know some of NACGUA's members have commented on M3's project to the City of Eagle.

It is not sufficient for NACGUA to refuse to respond because it asserts that NACFA is no longer a party. As you know, NACFA initiated the protest NACGUA is pursuing, and assigned its protest to NACGUA. You also know that a great many of NACGUA's members also are members of NACFA. M3 has a right to obtain all discoverable information held by or known to NACGUA and its members that has to do with NACFA and the subject matter of its initial protest.

Jo, we have accommodated your clients' desires and shifting approaches respecting how they will approach this case through spokespeople, through grouping together in unincorporated associations, and so forth. Most importantly, we did not object to the protest being assigned from NACFA to NACGUA, as unusual as that may be. But we cannot now be blocked from obtaining documents or other information because of a claim that NACFA is no longer a party. Your attempts to do so, through objections in written discovery, hardly displays good faith in return. Especially after we agreed to give you a week's extension on your discovery response deadline.

It also is not sufficient to cite NACGUA's November 10, 2008 motion as a basis for not responding to M3's discovery requests. That motion has not properly been heard by the Hearing Officer, and it certainly has not been ruled upon in NACGUA's favor.

Unless NACGUA commits to immediately respond fully to M3's discovery requests, M3 will file the appropriate motions to compel and for sanctions, including attorney fees, against NACGUA.

By the way, I just got into the office this morning, the 12th, and see that you have filed a second motion for protective order and have provided a letter responding to our November 6 settlement proposal.

These came to our office last evening, and I have not yet had a chance to review them. However, we must insist on a full and good faith response to our written discovery immediately.

Jeff

Jeffrey C. Fereday
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November 12, 2008

Via Fax 388-1300 and Email

Jeffrey C. Fereday, Esq.
Givens Pursley LLP
601 W. Bannock Street
P O Box 2720
Boise, Idaho 83701-2720

Re: M3 Eagle Application 63-32573
Discovery Responses by NACGUA

Dear Jeff:

I reviewed your November 12 email entitled "inadequate discovery responses." This letter may become an exhibit if M3 Eagle seeks a motion to compel regarding the discovery responses.

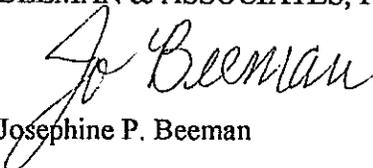
Consistent with my earlier email response, it is our position that the North Ada County Groundwater Users Association (NACGUA) is the party to this action. The North Ada County Foothills Association (NACFA) is not a party. *See* Hearing Officer Spackman's *Order to Consolidate Parties and Default Order*, October 7, 2008, ¶ 7.

NACGUA answered the discovery requests correctly from NACGUA's perspective.

M3 Eagle could do either or both of the following: request information from NACFA with a subpoena; and/or rephrase the interrogatories (or change them to requests for admission) so they are from NACGUA's perspective rather than NACFA's.

Sincerely,

BEEMAN & ASSOCIATES, P.C.


Josephine P. Beeman

cc: NACGUA Board



RECEIVED

NOV 13 2008

Department of Water Resources

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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

**M3 EAGLE'S RESPONSE TO
NACGUA'S STAY MOTION AND
LIMITED DISCOVERY**

Applicant M3 Eagle LLC ("M3 Eagle") hereby responds to the November 10, 2008 *Motion for Stay and Limited Discovery for Purposes of Settlement* ("Stay Motion") filed by Protestant North Ada County Groundwater Users Association ("NACGUA"). The Stay Motion asks the Hearing Officer to stay scheduled depositions of NACGUA's experts and to "stay all proceedings . . . for two months"—"except for the disclosure of M3's expert reports on November 26." (Stay Motion at 1.)

While the Stay Motion is not clear on exactly what would be delayed, it appears NACGUA is asking to be relieved of providing its own expert reports by November 26 and then to have a two-month delay of that and all other dates. At the same time NACGUA apparently wants an order to leave in place M3 Eagle's current obligation to provide its expert reports to NACGUA by November 26.

NACGUA's rationale is its counsel's assertion that: (1) additional time is needed for settlement discussions; and (2) M3 Eagle "has not met its burden of proof to have a complete application and supporting information." (Stay Motion at 1.) NACGUA is incorrect on both counts.

In summary, NACGUA's contention that a stay is needed for settlement purposes is inaccurate. Settlement discussions are not ongoing. The parties had two recent meetings to explore settlement, after which M3 Eagle promptly sent a written settlement proposal to NACGUA and the other Protestants. That offer is still on the table and the Protestants are free to respond to it. But M3 Eagle is not currently in settlement talks and has none planned. Even if such discussions were ongoing, that hardly is a reason for a delay of the proceedings unless both parties agree to it. M3 Eagle does not agree. Accordingly, NACGUA's motion amounts to no more than a unilateral request to gain time for leverage purposes. That is hardly a proper basis for a stay motion.

The second point is simply wrong on the law. The Application is complete, it has been published and is being considered by the Department in a contested case. Any point about burdens of proof must await the hearing.

These points are discussed in greater detail below.

1. NACGUA should not be allowed to force a delay based its declaration about settlement discussions.

NACGUA's request to stay the proceedings seems to imply that both parties want a delay to pursue settlement. M3 Eagle respectfully disagrees. It does not seek a stay and does not join in NACGUA's apparent optimism about settlement. As noted, M3 Eagle already has stated its settlement position to NACGUA in writing and is not now involved in settlement discussions. While M3 Eagle is willing to discuss settlement at any reasonable time if there is

concrete reason to conclude that such discussions might be fruitful, it has not agreed to change the schedule in this matter to do so. Indeed, in the proposal, M3 Eagle expressly stated its unwillingness to change the hearing or discovery schedules. Things might be different if the settlement discussions had provided M3 Eagle with any confidence that settlement is a reasonable possibility. To date they have not.¹

2. NACGUA's allegation about "burden of proof for an application" is without merit and irrelevant; M3 Eagle's Application is complete and is entitled to be evaluated in an evidentiary hearing.

In a perplexing and convoluted argument, NACGUA says that a stay should be granted because of its belief that M3 Eagle has not met supposed "burdens of proof" necessary even to file, or allow the Department to process, a municipal water right application. Such an argument is off the mark.

To begin with, Idaho Department of Water Resources Water Appropriation Rule 35.03 (IDAPA 37.03.08.035.03) sets forth the requirements for water permit applications, and M3 Eagle's Application meets them.

The Application also is complete with regard to the additional information described in Rule 40.05 (IDAPA 37.03.08.040.05) for those seeking larger permit amounts. The Rule indicates that such information "may be requested by the director . . . , may be made a part of the record of the hearing held to consider the protest, or may be made available in accordance with any pre-hearing discovery procedures." IDAPA 37.03.08.040.05.b. While not obligated to provide this information with its initial application, M3 Eagle did include it. If NACGUA has questions or criticisms about this information that it believes relevant, it is free to offer proof of such a contention at the evidentiary hearing. But contentions as to the adequacy of M3 Eagle's

¹ The prospects for settlement are hardly improved by NACGUA's refusal to cooperate regarding the scheduling of depositions or adequately respond to M3 Eagle's discovery requests.

proof or its satisfaction of its burden of proof are not subjects for a summary pre-hearing determination, much less a motion for stay.

In support of a stay, NACGUA makes three arguments with regard to its “burden of proof” theory. First, it says its hydrologist has questions about whether M3 Eagle’s hydrological report submitted with the Application is broad enough to answer NACGUA’s questions. (Stay Motion at 2.) Second, it claims that “M3 has not met the burden to show that it is a municipal provider.” (Stay Motion at 3.) Third, NACGUA asserts that M3 Eagle “has not met the burden to show what is necessary to demonstrate future needs and the planning horizon.” (Stay Motion at 4.) Each of these arguments is baseless.

If M3 Eagle has failed to “answer NACGUA’s questions,” the obvious answer is for NACGUA to engage in discovery. Instead, it has filed a motion seeking to shut down discovery. The sheer irrationality of this position is reason enough to deny NACGUA’s Stay Motion.

As discussed below, NACGUA’s claims also are wrong on their merits:

A. Although not required to do so, M3 Eagle provided substantial hydrologic information with its Application; it has not failed to carry any “burden” on this point.

Without any citation to authority whatsoever, NACGUA accuses M3 Eagle of failing to meet its “burden of proof to have a complete application and supporting information” regarding the adequacy of the water resource. Stay Motion at 2-3. Without any basis in statute, rule, or case law, NACGUA asserts that M3 Eagle presumably should not even qualify as an applicant because it somehow has not provided “sufficient evidence” about the water resource. NACGUA criticizes M3 Eagle’s hydrologic studies as not “complete enough” and needing “additional work.” *Id.* NACGUA, however, is not the fact-finder in this matter and now is not the time for determining the evidence.

What NACGUA attempts to do in its Stay Motion is have the Hearing Officer decide the matter before it is fully developed for hearing. NACGUA asks the Hearing Officer to weigh the parties' expert testimony before it is presented and without the benefit of cross-examination. In fact, NACGUA expressly acknowledges that this is the game it is trying to play. Stay Motion at 3 ("NACGUA did not have the opportunity to cross-examine Hydro Logic's report and realizes that M3 has not had the opportunity to cross-examine Dr. Ralston's report.")

To be sure, M3 Eagle's hydrologic information submitted to date would appear sufficient to qualify it as an applicant for a water right permit. There is no basis for NACGUA's assertion to the contrary. In its Application, M3 Eagle included Hydro Logic Inc.'s 2007 "*M3 Eagle Regional Hydrologic Characterization North Ada, Canyon and Gem Counties, Idaho: Year-One Progress Report*, which describes the area's hydrogeologic framework and aquifer characteristics. That is in addition to substantial additional work on aquifer characteristics M3 Eagle has funded and made available to the Department and the parties through the Department's website and otherwise.² If NACGUA has concerns about any of this, the proper place to bring it forward is at the hearing, not by means of an attempted stay of the proceedings on the ground the M3 Eagle has not provided enough information to make out an application.

B. M3 Eagle will be a municipal provider.

NACGUA faults M3 Eagle for not showing that it is currently a municipal provider, suggesting that this is another reason a stay should be granted. Stay Motion at 3-4. NACGUA apparently believes that only existing municipal providers can apply for new municipal future needs water rights. This interpretation has no support in the law or in common sense.

M3 Eagle will be a municipal provider, as it is defined by statute, upon approval of its permit Application and the development of water to serve the homes and businesses in its

² See http://www.idwr.idaho.gov/hydrologic/projects/nac/consultant_reports/M3/.

planned community. Idaho Code Section 42-202B(5)(c) provides that one form of “municipal provider” is “a corporation or association which supplies water for municipal purposes through a water system regulated by the state of Idaho as a ‘public water supply’ as described in section 39-103(12), Idaho Code.” There is no support for the proposition that only those entities already doing this can apply for municipal water rights, and NACGUA does not argue otherwise.

C. Documentation relevant at the licensing stage is not, and cannot be, a matter of “proof” at the application stage.

On this third point, NACGUA appears to contend that M3 Eagle’s Application must include documentation of several accomplished tasks as “an overall detailed design of the full system capacity,” a “financing plan,” “completed environmental studies,” substantial construction of distribution mains,” and construction of storage for distribution of system regulation. These are items described in Department Memorandum 63, the substance of which is a June 14, 1999 letter from Karl Dreher to Chris Meyer. (NACGUA included Department Memorandum 63 with its Stay Motion.) However, such potential documentation obviously is not something required with an application. If they were, there effectively could be no applications for future needs water rights because the projects would need to be essentially constructed before the application stage; such a scenario is simply nonsensical.

Furthermore, NACGUA’s argument ignores what Department Memorandum 63 actually says. The Memorandum lists these items as “[d]ocumentation that could be used to demonstrate substantial planning, design, and investment in the unconstructed capacity of the complete system” for purposes of water right licensing under I.C. § 42-219. (Department Memorandum 63 at 3.) Indeed, the section of the Memorandum containing this discussion begins by stating:

The purpose of the language in Idaho Code § 42-219(1) that refers to “an amount up to the full capacity of the system constructed or used in accordance with the original permit” is to define the beneficial use requirement for a municipal water right which includes “reasonably anticipated future needs.”

Department Memorandum at 2 (emphasis added). Later in the Memorandum, in the very paragraph NACGUA quotes in its Stay Motion, the Director states:

For a municipal provider with a permit to appropriate an amount of ground water for reasonable anticipated future needs, construction of the well or wells and the distribution mains needed to divert and deliver the full amount of ground water authorized under the permit should clearly satisfy the full beneficial use requirement. But like the hypothetical provider of treated surface water, less constructed capacity for a ground water system could also satisfy the requirement if . . . there was substantial planning, design, and investment in the unconstructed capacity of the complete system. Documentation that could be used to demonstrate substantial planning, design, and investment in the unconstructed capacity of the complete system includes the [items listed in NACGUA's Stay Motion].

Department Memorandum at 3 (emphasis added). NACGUA asks the Hearing Officer to require such documentation with an application. This argument should be rejected. As the Director's letter makes perfectly clear, this information is not required at all at the permitting stage.

NACGUA's citation to a May 29, 2007 letter regarding JMM's application for Permit 63-32423 also is misplaced. In that letter, which cites the same Administrative Memorandum 63, Senior Water Rights Agent Dan Nelson explained to the applicant's consultant that he could not process the application—that is, accept it for public notice—until the applicant provides additional information as to whether it was seeking a future needs/planning horizon water right or one that would be fully developed within the standard 5 years. JMM sought a municipal water right but the application did not mention future needs; it consisted of only the two-page application form and a one-page map. Thus, it was entirely appropriate for the Department to inquire whether that applicant was seeking a future needs right, and to signal to the applicant what information eventually may be relevant in licensing a permit for future needs purposes. Obviously, no such ambiguity exists with respect to M3 Eagle's Application.

In this case, the Department has accepted and published M3 Eagle's Application and has processed it to the point that it is now a contested case. Unlike the JMM application, the M3 Eagle Application states on its face that it seeks a future needs water right. Moreover, the Application includes substantial information to explain the project, the ground water hydrology of the area, and the details of the proposed use. The information submitted covers each relevant element in the Department's Rule. More information doubtless will be provided at the hearing. But there is no basis whatsoever for the conclusion that proceedings on the Application must be stayed until the applicant fully proves its use of water and its construction of diversion works.

3. Discovery should not be limited.

It is not clear what "limited discovery" NACGUA seeks in its Stay Motion, but it appears that it wants to be relieved of its current obligation to provide expert reports to M3 Eagle by November 26, but wants M3 Eagle to continue to be required to meet that deadline. In any case, for the reasons already discussed, there is no reason to limit discovery or delay the current discovery schedule. In no case should M3 Eagle be obligated to provide its expert reports before NACGUA or any other Protestant provides its reports.

M3 Eagle anticipates that, provided there is cooperation with regard to expert depositions, it can complete its discovery of NACGUA information within the schedule set forth in the Hearing Officer's September Order, even in light of the November 12, 2008 Order denying Motion to Compel and Motion for Protective Order. M3 Eagle intends to respond to NACGUA's written discovery requests and make its experts available for depositions within the schedule set by the Order. Discovery should not be limited.

DATED this 13th day of November 2008.

Respectfully submitted,

GIVENS PURSLEY LLP

By *Jeffrey C. Fereday*
Jeffrey C. Fereday
Michael P. Lawrence

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of November 2008, the foregoing was filed, served, or copied as follows:

FILED

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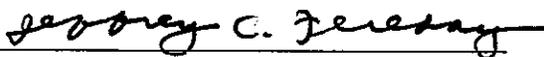
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Jeffrey C. Fereday

**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

ORDER DENYING MOTIONS

On October 31, 2008, M3 Eagle, LLC ("M3 Eagle"), by and through its attorney of record Jeffrey C. Fereday and Michael P. Lawrence of the firm Givens and Pursley, LLP, notified Dale Ralston and several employees of ERO, all of whom have been retained by North Ada County Groundwater Users Association ("NACGUA") as expert witnesses, that they would be deposed on November 14, 2008 and November 17, 2008, respectively. Subpoenas were not issued requiring attendance. The hearing officer interpreted these notices as informal confirmation of times that the parties mutually agreed would be appropriate times deposing the expert witnesses.

NACGUA filed a motion for a protective order asking the hearing officer approve nonattendance of its expert witnesses at depositions scheduled for November 14 and 17, 2008.

M3 Eagle filed a motion to compel attendance of NACGUA's expert witnesses at the scheduled depositions.

Both parties requested oral argument.

The deadline for submittal of technical reports prepared by the expert witnesses is November 26, 2008. The deadline for taking of depositions is December 12, 2008. The

most reasonable time for the taking of depositions of experts is the time period within these two deadlines.

As a result, because of the informal nature of the original notices, the hearing officer will not issue a protective order because one is not required. Furthermore, the hearing officer will not compel attendance of the expert witnesses. If the parties cannot agree to a time for taking the depositions of the expert witnesses between November 26, 2008 and December 12, 2008, the party wanting to depose a witness may seek a subpoena from the Director of the Department. Upon issuance of a subpoena a witness must attend, or the party affiliated with the witness will be sanctioned.

No oral argument is necessary.

ORDER

IT IS HEREBY ORDERED that NACGUA's motion for protective order is **Denied.**

IT IS FURTHER ORDERED that M3 Eagle's motion to compel attendance is **Denied.**

IT IS FURTHER ORDERED that the requests from both NACGUA and M3 Eagle for oral argument are **Denied.**

Dated this 12th day of November, 2008.



Gary Spackman
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of November, 2008, a true and correct copy of the foregoing document described below was served on the following as noted:

Document(s) Served: **ORDER DENYING MOTIONS**

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Deborah J. Gibson
Administrative Assistant
Water Management Division

Gibson, Deborah

From: Lori Anderson [lorianderson@givenspursley.com]
Sent: Thursday, November 13, 2008 4:00 PM
To: Spackman, Gary; Gibson, Deborah; Westra, John; 'Josephine Beeman'
Cc: Jeffrey C Fereday; Michael P. Lawrence
Subject: M3 Response to NACGUA Stay Motion & Ltd Discovery

Attachments: M3 Response to NACGUA Stay Motion & Disc.PDF



M3 Response to
NACGUA Stay Mot...

On behalf of Jeffrey Fereday, I am attaching M3 Eagle's Response to NACGUA's Stay Motion and Limited Discovery for your review. Copies are also being sent to you via U.S. Mail.

Lori Anderson
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Attorneys for M3 Eagle LLC

**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

**M3 EAGLE'S RESPONSE TO
NACGUA'S STAY MOTION AND
LIMITED DISCOVERY**

Applicant M3 Eagle LLC ("M3 Eagle") hereby responds to the November 10, 2008 *Motion for Stay and Limited Discovery for Purposes of Settlement* ("Stay Motion") filed by Protestant North Ada County Groundwater Users Association ("NACGUA"). The Stay Motion asks the Hearing Officer to stay scheduled depositions of NACGUA's experts and to "stay all proceedings . . . for two months"—"except for the disclosure of M3's expert reports on November 26." (Stay Motion at 1.)

While the Stay Motion is not clear on exactly what would be delayed, it appears NACGUA is asking to be relieved of providing its own expert reports by November 26 and then to have a two-month delay of that and all other dates. At the same time NACGUA apparently wants an order to leave in place M3 Eagle's current obligation to provide its expert reports to NACGUA by November 26.

NACGUA's rationale is its counsel's assertion that: (1) additional time is needed for settlement discussions; and (2) M3 Eagle "has not met its burden of proof to have a complete application and supporting information." (Stay Motion at 1.) NACGUA is incorrect on both counts.

In summary, NACGUA's contention that a stay is needed for settlement purposes is inaccurate. Settlement discussions are not ongoing. The parties had two recent meetings to explore settlement, after which M3 Eagle promptly sent a written settlement proposal to NACGUA and the other Protestants. That offer is still on the table and the Protestants are free to respond to it. But M3 Eagle is not currently in settlement talks and has none planned. Even if such discussions were ongoing, that hardly is a reason for a delay of the proceedings unless both parties agree to it. M3 Eagle does not agree. Accordingly, NACGUA's motion amounts to no more than a unilateral request to gain time for leverage purposes. That is hardly a proper basis for a stay motion.

The second point is simply wrong on the law. The Application is complete, it has been published and is being considered by the Department in a contested case. Any point about burdens of proof must await the hearing.

These points are discussed in greater detail below.

1. NACGUA should not be allowed to force a delay based its declaration about settlement discussions.

NACGUA's request to stay the proceedings seems to imply that both parties want a delay to pursue settlement. M3 Eagle respectfully disagrees. It does not seek a stay and does not join in NACGUA's apparent optimism about settlement. As noted, M3 Eagle already has stated its settlement position to NACGUA in writing and is not now involved in settlement discussions. While M3 Eagle is willing to discuss settlement at any reasonable time if there is

concrete reason to conclude that such discussions might be fruitful, it has not agreed to change the schedule in this matter to do so. Indeed, in the proposal, M3 Eagle expressly stated its unwillingness to change the hearing or discovery schedules. Things might be different if the settlement discussions had provided M3 Eagle with any confidence that settlement is a reasonable possibility. To date they have not.¹

2. NACGUA's allegation about "burden of proof for an application" is without merit and irrelevant; M3 Eagle's Application is complete and is entitled to be evaluated in an evidentiary hearing.

In a perplexing and convoluted argument, NACGUA says that a stay should be granted because of its belief that M3 Eagle has not met supposed "burdens of proof" necessary even to file, or allow the Department to process, a municipal water right application. Such an argument is off the mark.

To begin with, Idaho Department of Water Resources Water Appropriation Rule 35.03 (IDAPA 37.03.08.035.03) sets forth the requirements for water permit applications, and M3 Eagle's Application meets them.

The Application also is complete with regard to the additional information described in Rule 40.05 (IDAPA 37.03.08.040.05) for those seeking larger permit amounts. The Rule indicates that such information "may be requested by the director . . . , may be made a part of the record of the hearing held to consider the protest, or may be made available in accordance with any pre-hearing discovery procedures." IDAPA 37.03.08.040.05.b. While not obligated to provide this information with its initial application, M3 Eagle did include it. If NACGUA has questions or criticisms about this information that it believes relevant, it is free to offer proof of such a contention at the evidentiary hearing. But contentions as to the adequacy of M3 Eagle's

¹ The prospects for settlement are hardly improved by NACGUA's refusal to cooperate regarding the scheduling of depositions or adequately respond to M3 Eagle's discovery requests.

proof or its satisfaction of its burden of proof are not subjects for a summary pre-hearing determination, much less a motion for stay.

In support of a stay, NACGUA makes three arguments with regard to its “burden of proof” theory. First, it says its hydrologist has questions about whether M3 Eagle’s hydrological report submitted with the Application is broad enough to answer NACGUA’s questions. (Stay Motion at 2.) Second, it claims that “M3 has not met the burden to show that it is a municipal provider.” (Stay Motion at 3.) Third, NACGUA asserts that M3 Eagle “has not met the burden to show what is necessary to demonstrate future needs and the planning horizon.” (Stay Motion at 4.) Each of these arguments is baseless.

If M3 Eagle has failed to “answer NACGUA’s questions,” the obvious answer is for NACGUA to engage in discovery. Instead, it has filed a motion seeking to shut down discovery. The sheer irrationality of this position is reason enough to deny NACGUA’s Stay Motion.

As discussed below, NACGUA’s claims also are wrong on their merits:

A. Although not required to do so, M3 Eagle provided substantial hydrologic information with its Application; it has not failed to carry any “burden” on this point.

Without any citation to authority whatsoever, NACGUA accuses M3 Eagle of failing to meet its “burden of proof to have a complete application and supporting information” regarding the adequacy of the water resource. Stay Motion at 2-3. Without any basis in statute, rule, or case law, NACGUA asserts that M3 Eagle presumably should not even qualify as an applicant because it somehow has not provided “sufficient evidence” about the water resource. NACGUA criticizes M3 Eagle’s hydrologic studies as not “complete enough” and needing “additional work.” *Id.* NACGUA, however, is not the fact-finder in this matter and now is not the time for determining the evidence.

What NACGUA attempts to do in its Stay Motion is have the Hearing Officer decide the matter before it is fully developed for hearing. NACGUA asks the Hearing Officer to weigh the parties' expert testimony before it is presented and without the benefit of cross-examination. In fact, NACGUA expressly acknowledges that this is the game it is trying to play. Stay Motion at 3 ("NACGUA did not have the opportunity to cross-examine Hydro Logic's report and realizes that M3 has not had the opportunity to cross-examine Dr. Ralston's report.")

To be sure, M3 Eagle's hydrologic information submitted to date would appear sufficient to qualify it as an applicant for a water right permit. There is no basis for NACGUA's assertion to the contrary. In its Application, M3 Eagle included Hydro Logic Inc.'s 2007 "*M3 Eagle Regional Hydrologic Characterization North Ada, Canyon and Gem Counties, Idaho: Year-One Progress Report*," which describes the area's hydrogeologic framework and aquifer characteristics. That is in addition to substantial additional work on aquifer characteristics M3 Eagle has funded and made available to the Department and the parties through the Department's website and otherwise.² If NACGUA has concerns about any of this, the proper place to bring it forward is at the hearing, not by means of an attempted stay of the proceedings on the ground the M3 Eagle has not provided enough information to make out an application.

B. M3 Eagle will be a municipal provider.

NACGUA faults M3 Eagle for not showing that it is currently a municipal provider, suggesting that this is another reason a stay should be granted. Stay Motion at 3-4. NACGUA apparently believes that only existing municipal providers can apply for new municipal future needs water rights. This interpretation has no support in the law or in common sense.

M3 Eagle will be a municipal provider, as it is defined by statute, upon approval of its permit Application and the development of water to serve the homes and businesses in its

² See http://www.idwr.idaho.gov/hydrologic/projects/nac/consultant_reports/M3/.

planned community. Idaho Code Section 42-202B(5)(c) provides that one form of “municipal provider” is “a corporation or association which supplies water for municipal purposes through a water system regulated by the state of Idaho as a ‘public water supply’ as described in section 39-103(12), Idaho Code.” There is no support for the proposition that only those entities already doing this can apply for municipal water rights, and NACGUA does not argue otherwise.

C. Documentation relevant at the licensing stage is not, and cannot be, a matter of “proof” at the application stage.

On this third point, NACGUA appears to contend that M3 Eagle’s Application must include documentation of several accomplished tasks as “an overall detailed design of the full system capacity,” a “financing plan,” “completed environmental studies,” substantial construction of distribution mains,” and construction of storage for distribution of system regulation. These are items described in Department Memorandum 63, the substance of which is a June 14, 1999 letter from Karl Dreher to Chris Meyer. (NACGUA included Department Memorandum 63 with its Stay Motion.) However, such potential documentation obviously is not something required with an application. If they were, there effectively could be no applications for future needs water rights because the projects would need to be essentially constructed before the application stage; such a scenario is simply nonsensical.

Furthermore, NACGUA’s argument ignores what Department Memorandum 63 actually says. The Memorandum lists these items as “[d]ocumentation that could be used to demonstrate substantial planning, design, and investment in the unconstructed capacity of the complete system” for purposes of water right licensing under I.C. § 42-219. (Department Memorandum 63 at 3.) Indeed, the section of the Memorandum containing this discussion begins by stating:

The purpose of the language in Idaho Code § 42-219(1) that refers to “an amount up to the full capacity of the system constructed or used in accordance with the original permit” is to define the beneficial use requirement for a municipal water right which includes “reasonably anticipated future needs.”

Department Memorandum at 2 (emphasis added). Later in the Memorandum, in the very paragraph NACGUA quotes in its Stay Motion, the Director states:

For a municipal provider with a permit to appropriate an amount of ground water for reasonable anticipated future needs, construction of the well or wells and the distribution mains needed to divert and deliver the full amount of ground water authorized under the permit should clearly satisfy the full beneficial use requirement. But like the hypothetical provider of treated surface water, less constructed capacity for a ground water system could also satisfy the requirement if . . . there was substantial planning, design, and investment in the unconstructed capacity of the complete system. Documentation that could be used to demonstrate substantial planning, design, and investment in the unconstructed capacity of the complete system includes the [items listed in NACGUA's Stay Motion].

Department Memorandum at 3 (emphasis added). NACGUA asks the Hearing Officer to require such documentation with an application. This argument should be rejected. As the Director's letter makes perfectly clear, this information is not required at all at the permitting stage.

NACGUA's citation to a May 29, 2007 letter regarding JMM's application for Permit 63-32423 also is misplaced. In that letter, which cites the same Administrative Memorandum 63, Senior Water Rights Agent Dan Nelson explained to the applicant's consultant that he could not process the application—that is, accept it for public notice—until the applicant provides additional information as to whether it was seeking a future needs/planning horizon water right or one that would be fully developed within the standard 5 years. JMM sought a municipal water right but the application did not mention future needs; it consisted of only the two-page application form and a one-page map. Thus, it was entirely appropriate for the Department to inquire whether that applicant was seeking a future needs right, and to signal to the applicant what information eventually may be relevant in licensing a permit for future needs purposes. Obviously, no such ambiguity exists with respect to M3 Eagle's Application.

In this case, the Department has accepted and published M3 Eagle's Application and has processed it to the point that it is now a contested case. Unlike the JMM application, the M3 Eagle Application states on its face that it seeks a future needs water right. Moreover, the Application includes substantial information to explain the project, the ground water hydrology of the area, and the details of the proposed use. The information submitted covers each relevant element in the Department's Rule. More information doubtless will be provided at the hearing. But there is no basis whatsoever for the conclusion that proceedings on the Application must be stayed until the applicant fully proves its use of water and its construction of diversion works.

3. Discovery should not be limited.

It is not clear what "limited discovery" NACGUA seeks in its Stay Motion, but it appears that it wants to be relieved of its current obligation to provide expert reports to M3 Eagle by November 26, but wants M3 Eagle to continue to be required to meet that deadline. In any case, for the reasons already discussed, there is no reason to limit discovery or delay the current discovery schedule. In no case should M3 Eagle be obligated to provide its expert reports before NACGUA or any other Protestant provides its reports.

M3 Eagle anticipates that, provided there is cooperation with regard to expert depositions, it can complete its discovery of NACGUA information within the schedule set forth in the Hearing Officer's September Order, even in light of the November 12, 2008 Order denying Motion to Compel and Motion for Protective Order. M3 Eagle intends to respond to NACGUA's written discovery requests and make its experts available for depositions within the schedule set by the Order. Discovery should not be limited.

DATED this 13th day of November 2008.

Respectfully submitted,

GIVENS PURSLEY LLP

By Jeffrey C. Fereday
Jeffrey C. Fereday
Michael P. Lawrence

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of November 2008, the foregoing was filed, served, or copied as follows:

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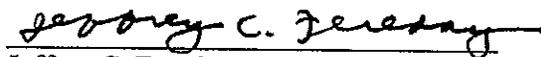
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Jeffrey C. Fereday

F A X

TO: '12082876700@venali.net' FROM: Lori Anderson

FAX: 12082876700 DATE: Wed, 12 Nov 2008 16:09:21 -0700

RE: M3 Motion to Compel Attendance at Depos

MESSAGE

Attn: Gary Spackman, John Westra and Josephine Beeman

On behalf of Jeffrey Fereday, I am attaching M3 Eagle LLC's Emergency Motion to Compel Attendance at Depositions and Response to Motion for Protective Order. Please contact us if you have difficulty receiving the document. This was also sent to you via email.

Lori Anderson
 Assistant to Jeffrey C. Fereday,
 Deborah E. Nelson & Michael P. Lawrence
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If this fax does not transmit fully or is difficult to read, please contact me at (208) 388-1200.

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of a portion of the exhibits filed.

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 Attorneys for M3 Eagle LLC

**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

**M3 EAGLE LLC'S EMERGENCY
 MOTION TO COMPEL ATTENDANCE AT
 DEPOSITIONS AND RESPONSE TO
 MOTION FOR PROTECTIVE ORDER**

M3 Eagle LLC ("M3 Eagle") by and through its attorney, Jeffrey C. Fereday of the firm Givens Pursley LLP, hereby moves the Hearing Officer for an immediate order compelling the individual Protestants comprising North Ada County Groundwater Users Association's ("NACGUA") and their counsel, Josephine Beeman, to ensure the attendance of NACGUA expert witnesses Norm Young and Paul Drury, and Steven Hannula and Dale Ralston at their depositions scheduled respectively for November 14 and 17, 2008 as required by the October 31, 2008 Notices of Depositions served in this matter. The deposition notices are attached as Exhibit A. M3 Eagle also hereby responds to NACGUA's Motion for Protective Order filed today, November 12, 2008 ("Protective Order Motion") by which NACGUA seeks to postpone the depositions pending the outcome of its pending Stay Motion (discussed below).

**M3'S EMERGENCY MOTION TO COMPEL ATTENDANCE AT DEPOSITIONS AND RESPONSE TO
 PROTECTIVE ORDER MOTION**

S:\CLIENTS\85264\M3 Emerg Motion Compel Attendance at Depos.DOC

Page 1 of 5

Because counsel for M3 Eagle learned just today that NACGUA's counsel, rather than await any proceedings on her Protective Order Motion or the Stay Motion, is instructing these individuals not to attend the depositions, M3 Eagle's motion must be an emergency motion for which M3 Eagle respectfully requests a hearing at the Hearing Officer's earliest opportunity.

The basis for this motion is as follows

1. On October 31, 2008, M3 Eagle served Notices of Deposition on the four expert witnesses identified by NACGUA, in accordance with IRCP 30(a).
2. At about 8:30 p.m. November 11, 2008, Ms. Beeman emailed the Protective Order Motion to counsel's offices; it was first seen by counsel this morning, November 12. No hearing has yet been noticed on the Protective Order Motion. At approximately noon today, M3 Eagle's counsel received a faxed letter from Ms. Beeman stating that

In consideration of NACGUA's Motion for Stay that is currently pending.... I am advising Norm Young, Paul Drury, and Steve Hannula of ERO Resources, and Dale Ralston of Ralston Hydrologic Services, Inc. not to appear at your office for the depositions.

Ms. Beeman's letter is attached as Exhibit B.

3. The Motion for Stay to which Ms. Beeman refers is NACGUA's November 10, 2008 Motion for Stay and Limited Discovery for Purposes of Settlement ("Stay Motion"), which was served on M3 Eagle's counsel while he was participating in the November 10 status conference the Hearing Officer convened upon Ms. Beeman's request that same day. The Stay Motion, which Ms. Beeman attempted to argue during the impromptu status conference, seeks a stay of discovery against NACGUA (but not a stay of M3 Eagle's discovery responses to NACGUA) based on the fact that the parties have discussed settlement and the fact that NACGUA has a theory that the M3 Eagle application somehow is incomplete.

simply to instruct one's experts not to attend duly-scheduled depositions merely because counsel has filed a motion (to which there has not even been a response) or has discussed settlement.

7. M3 Eagle seeks an emergency and immediate order to compel attendance at the depositions in a situation where there are no valid grounds for disrupting the schedule, to avoid unnecessary costs and expenses, and to allow this matter to stay on schedule. It also seeks an order remove any question that M3 Eagle would be entitled to seek attorneys fees and other sanctions should the deponents not attend the depositions on the 14th and 17th.

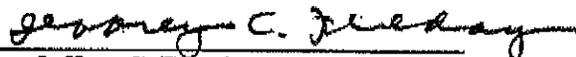
For these reasons, M3 Eagle's Emergency Motion should be granted. NACGUA's Protective Order Motion should be denied. A proposed order will follow.

DATED this 12th day of November 2008.

Respectfully submitted,

GIVENS PURSLEY LLP

By



Jeffrey C. Fereday

Michael P. Lawrence

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of November 2008, the foregoing was filed, served, or copied as follows:

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OCT 14 2008

DEPT. OF WATER RESOURCES

**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

**NOTICE OF DEPOSITION OF
NORMAN YOUNG**

TO: NORMAN YOUNG

PLEASE TAKE NOTICE that on November 14, 2008 at 8:30 a.m. at the offices of Givens Pursley, LLP, 601 W. Bannock St., Boise, Idaho, counsel for the Applicant M3 Eagle LLC, will take the deposition of Norman Young, an expert in the above-entitled action upon oral examination pursuant to Rule 30 of the Idaho Rules of Civil Procedure, before a Notary Public, or before some other officer authorized by law to administer oaths, and continuing from day to day thereafter, until the deposition is completed. You are notified and required to appear and provide testimony under oath.



DATED this 31st day of October, 2008.

Respectfully submitted,

GIVENS PURSLEY LLP

By Jeffrey C. Fereday
Jeffrey C. Fereday
Michael P. Lawrence

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of October 2008, the foregoing was filed, served, or copied as follows:

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Attorneys for M3 Eagle LLC

RECEIVED

NOV 12 2008

Department of Water Resources

**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

**M3 EAGLE LLC'S EMERGENCY
MOTION TO COMPEL ATTENDANCE AT
DEPOSITIONS AND RESPONSE TO
MOTION FOR PROTECTIVE ORDER**

M3 Eagle LLC ("M3 Eagle") by and through its attorney, Jeffrey C. Fereday of the firm Givens Pursley LLP, hereby moves the Hearing Officer for an immediate order compelling the individual Protestants comprising North Ada County Groundwater Users Association's ("NACGUA") and their counsel, Josephine Beeman, to ensure the attendance of NACGUA expert witnesses Norm Young and Paul Drury, and Steven Hannula and Dale Ralston at their depositions scheduled respectively for November 14 and 17, 2008 as required by the October 31, 2008 Notices of Depositions served in this matter. The deposition notices are attached as Exhibit A. M3 Eagle also hereby responds to NACGUA's Motion for Protective Order filed today, November 12, 2008 ("Protective Order Motion") by which NACGUA seeks to postpone the depositions pending the outcome of its pending Stay Motion (discussed below).

**M3'S EMERGENCY MOTION TO COMPEL ATTENDANCE AT DEPOSITIONS AND RESPONSE TO
PROTECTIVE ORDER MOTION**

S:\CLIENTS\85264\M3 Emerg Motion Compel Attendance at Depos.DOC

Because counsel for M3 Eagle learned just today that NACGUA's counsel, rather than await any proceedings on her Protective Order Motion or the Stay Motion, is instructing these individuals not to attend the depositions, M3 Eagle's motion must be an emergency motion for which M3 Eagle respectfully requests a hearing at the Hearing Officer's earliest opportunity.

The basis for this motion is as follows

1. On October 31, 2008, M3 Eagle served Notices of Deposition on the four expert witnesses identified by NACGUA, in accordance with IRCP 30(a).

2. At about 8:30 p.m. November 11, 2008, Ms. Beeman emailed the Protective Order Motion to counsel's offices; it was first seen by counsel this morning, November 12. No hearing has yet been noticed on the Protective Order Motion. At approximately noon today, M3 Eagle's counsel received a faxed letter from Ms. Beeman stating that

In consideration of NACGUA's Motion for Stay that is currently pending.... I am advising Norm Young, Paul Drury, and Steve Hannula of ERO Resources, and Dale Ralston of Ralston Hydrologic Services, Inc. not to appear at your office for the depositions.

Ms. Beeman's letter is attached as Exhibit B.

3. The Motion for Stay to which Ms. Beeman refers is NACGUA's November 10, 2008 Motion for Stay and Limited Discovery for Purposes of Settlement ("Stay Motion"), which was served on M3 Eagle's counsel while he was participating in the November 10 status conference the Hearing Officer convened upon Ms. Beeman's request that same day. The Stay Motion, which Ms. Beeman attempted to argue during the impromptu status conference, seeks a stay of discovery against NACGUA (but not a stay of M3 Eagle's discovery responses to NACGUA) based on the fact that the parties have discussed settlement and the fact that NACGUA has a theory that the M3 Eagle application somehow is incomplete.

4. While the Stay Motion ostensibly seeks a stay on the unilateral assertion that “[t]ime is needed for continuing settlement negotiations and resolution of the protests through settlement” (Stay Motion at 1), the bulk of the Stay Motion is devoted to making the allegation that M3 Eagle “has not met the burden of proof to have a complete application.” *Id.* While M3 Eagle normally would have 14 days to respond to the Motion for Stay, it intends to file a response by tomorrow, November 13. The response will argue that no motion for stay is warranted and should not be granted. It also will explain why NACGUA’s counsel is incorrect with her assertions concerning the completeness of M3 Eagle’s application and the “burden of proof to have a complete application.”

5. Now that Ms. Beeman has instructed her expert witnesses not to appear at the depositions, M3 Eagle seeks the Hearing Officer’s immediate involvement. M3 Eagle and its consultant have made arrangements for the November 14 and 17 depositions. Postponing them would work a hardship on M3 Eagle and its counsel and consultants. There are many additional depositions to conduct in this matter, and a significant amount of discovery to produce. Not conducting these initial depositions of NACGUA’s experts will disrupt preparations for the January hearing.

6. NACGUA and its counsel have had ample time since the notices were served to inform M3 Eagle of any compelling reasons why any of the experts could not attend their depositions. Had this been done, the parties may have been able to adjust schedules; we have done so for another deponent who is a NACGUA member. But it is not in good faith to wait until two days before the depositions to seek to cancel them, whether by protective order motion or otherwise. Nor is it consistent with the Department’s rules or the Rules of Civil Procedure

simply to instruct one's experts not to attend duly-scheduled depositions merely because counsel has filed a motion (to which there has not even been a response) or has discussed settlement.

7. M3 Eagle seeks an emergency and immediate order to compel attendance at the depositions in a situation where there are no valid grounds for disrupting the schedule, to avoid unnecessary costs and expenses, and to allow this matter to stay on schedule. It also seeks an order remove any question that M3 Eagle would be entitled to seek attorneys fees and other sanctions should the deponents not attend the depositions on the 14th and 17th.

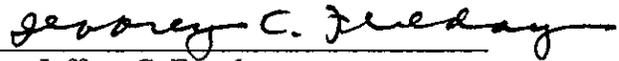
For these reasons, M3 Eagle's Emergency Motion should be granted. NACGUA's Protective Order Motion should be denied. A proposed order will follow.

DATED this 12th day of November 2008.

Respectfully submitted,

GIVENS PURSLEY LLP

By



Jeffrey C. Fereday

Michael P. Lawrence

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of November 2008, the foregoing was filed, served, or copied as follows:

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Idaho Department of Water Resources
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Boise, ID 83720-0098

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Beeman & Associates PC
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Bill Lawton, Spokesman for
Robert L. Wood
M. Howard Goldman
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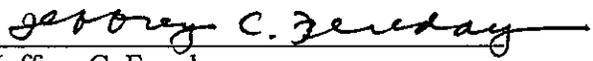
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Jeffrey C. Fereday

Jeffrey C. Fereday [ISB No. 2719]
Michael P. Lawrence [ISB No. 7288]
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Office: (208) 388-1200
Fax: (208) 388-1300
www.givenspursley.com
Attorneys for M3 Eagle LLC

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

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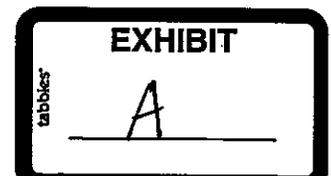
OCT 31 2008
DEPARTMENT OF
WATER RESOURCES

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

**NOTICE OF DEPOSITION OF
NORMAN YOUNG**

TO: NORMAN YOUNG

PLEASE TAKE NOTICE that on November 14, 2008 at 8:30 a.m. at the offices of Givens Pursley, LLP, 601 W. Bannock St., Boise, Idaho, counsel for the Applicant M3 Eagle LLC, will take the deposition of Norman Young, an expert in the above-entitled action upon oral examination pursuant to Rule 30 of the Idaho Rules of Civil Procedure, before a Notary Public, or before some other officer authorized by law to administer oaths, and continuing from day to day thereafter, until the deposition is completed. You are notified and required to appear and provide testimony under oath.



DATED this 31st day of October, 2008.

Respectfully submitted,

GIVENS PURSLEY LLP

By Jeffrey C. Fereday
Jeffrey C. Fereday
Michael P. Lawrence

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of October 2008, the foregoing was filed, served, or copied as follows:

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North Ada County Groundwater Users Association
Josephine P. Beeman
Beeman & Associates PC
409 West Jefferson
Boise, ID 83702-6049

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Norman Young
ERO Resources Corp.
3314 Grace Street
Boise, ID 83703-5836

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Bill Lawton, Spokesman for
Robert L. Wood
M. Howard Goldman
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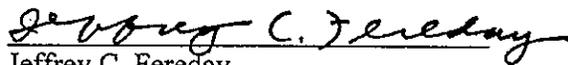
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Jeffrey C. Fereday

Jeffrey C. Fereday [ISB No. 2719]
Michael P. Lawrence [ISB No. 7288]
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Boise, Idaho 83701-2720
Office: (208) 388-1200
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www.givenspursley.com
Attorneys for M3 Eagle LLC

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OCT 31 2008

DEPARTMENT OF
WATER RESOURCES

**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

**NOTICE OF DEPOSITION OF
PAUL DRURY**

TO: PAUL DRURY

PLEASE TAKE NOTICE that on November 14, 2008 at 1:00 p.m. at the offices of Givens Pursley, LLP, 601 W. Bannock St., Boise, Idaho, counsel for the Applicant M3 Eagle LLC, will take the deposition of Paul Drury, an expert in the above-entitled action upon oral examination pursuant to Rule 30 of the Idaho Rules of Civil Procedure, before a Notary Public, or before some other officer authorized by law to administer oaths, and continuing from day to day thereafter, until the deposition is completed. You are notified and required to appear and provide testimony under oath.

DATED this 31st day of October, 2008.

Respectfully submitted,

GIVENS PURSLEY LLP

By *Jeffrey C. Fereday*
Jeffrey C. Fereday
Michael P. Lawrence

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of October 2008, the foregoing was filed, served, or copied as follows:

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Josephine P. Beeman
Beeman & Associates PC
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Paul Drury, P.E.
ERO Resources Corp.
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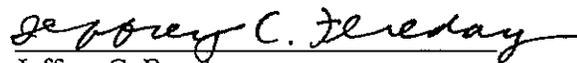
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Jeffrey C. Fereday

Jeffrey C. Fereday [ISB No. 2719]
Michael P. Lawrence [ISB No. 7288]
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www.givenspursley.com
Attorneys for M3 Eagle LLC

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DEPARTMENT OF
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**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

**NOTICE OF DEPOSITION OF
STEVEN HANNULA**

TO: STEVEN HANNULA

PLEASE TAKE NOTICE that on November 17, 2008 at 8:30 a.m. at the offices of Givens Pursley, LLP, 601 W. Bannock St., Boise, Idaho, counsel for the Applicant M3 Eagle LLC, will take the deposition of Steven Hannula, an expert in the above-entitled action upon oral examination pursuant to Rule 30 of the Idaho Rules of Civil Procedure, before a Notary Public, or before some other officer authorized by law to administer oaths, and continuing from day to day thereafter, until the deposition is completed. You are notified and required to appear and provide testimony under oath.

DATED this 31st day of October, 2008.

Respectfully submitted,

GIVENS PURSLEY LLP

By Jeffrey C. Fereday
Jeffrey C. Fereday
Michael P. Lawrence

CERTIFICATE OF SERVICE

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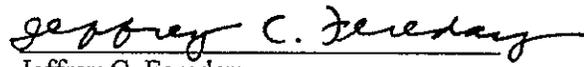
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Jeffrey C. Fereday

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Michael P. Lawrence [ISB No. 7288]
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www.givenspursley.com
Attorneys for M3 Eagle LLC

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DEPARTMENT OF
WATER RESOURCES

**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

**NOTICE OF DEPOSITION OF
DALE RALSTON**

TO: DALE RALSTON

PLEASE TAKE NOTICE that on November 17, 2008 at 1: 00 p.m. at the offices of Givens Pursley, LLP, 601 W. Bannock St., Boise, Idaho, counsel for the Applicant M3 Eagle LLC, will take the deposition of Dale Ralston, an expert in the above-entitled action upon oral examination pursuant to Rule 30 of the Idaho Rules of Civil Procedure, before a Notary Public, or before some other officer authorized by law to administer oaths, and continuing from day to day thereafter, until the deposition is completed. You are notified and required to appear and provide testimony under oath.

DATED this 31st day of October, 2008.

Respectfully submitted,

GIVENS PURSLEY LLP

By Jeffrey C. Fereday
Jeffrey C. Fereday
Michael P. Lawrence

CERTIFICATE OF SERVICE

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Dale Ralston
Ralston Hydrologic Services
1122 East B Street
Moscow, ID 83843

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Bill Lawton, Spokesman for
Robert L. Wood
M. Howard Goldman
Timothy R. Milburn
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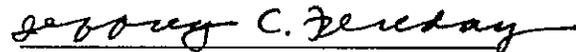
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Jeffrey C. Fereday

BEEMAN & ASSOCIATES, P.C.

Counselors and Attorneys at Law
409 West Jefferson Street
Boise, Idaho 83702-6049

Josephine P. Beeman
jo.beeman@beemanlaw.com

Phone (208) 331-0950
Fax (208) 331-0954
office@beemanlaw.com

November 12, 2008

Via Fax 388-1300 and Email

Jeffrey C. Fereday, Esq.
Givens Pursley LLP
601 W. Bannock Street
P O Box 2720
Boise, Idaho 83701-2720

Re: M3 Eagle Application 63-32573
Depositions of NACGUA's Experts

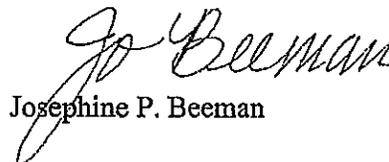
Dear Jeff:

In consideration of NACGUA's Motion for Stay that is currently pending before IDWR Hearing Officer Gary Spackman, and the Motion for Protective Order filed today, it is NACGUA's position that the depositions of its experts scheduled for November 14 and 17 should not go forward at this time.

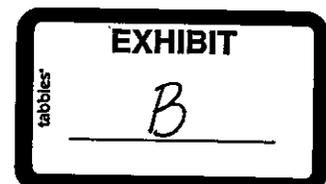
Therefore, I am advising Norm Young, Paul Drury, and Steve Hannula of ERO Resources, and Dale Ralston of Ralston Hydrologic Services, Inc. not to appear at your office for the depositions. I am also reconfirming my November 3 conversation with you that Steve Hannula of ERO has not been involved in the work for NACGUA regarding M3 Eagle Application 63-32573.

Sincerely,

BEEMAN & ASSOCIATES, P.C.


Josephine P. Beeman

cc: Norm Young
Paul Drury
Steve Hannula
Dale Ralston
NACGUA Board



Gibson, Deborah

From: Lori Anderson [lorianderson@givenspursley.com]
Sent: Wednesday, November 12, 2008 4:31 PM
To: Spackman, Gary; Gibson, Deborah; Westra, John; 'Josephine Beeman'
Cc: Jeffrey C Fereday; Michael P. Lawrence
Subject: Proposed Order on Deposition Attendance

Attachments: Proposed Order on Deposition Attendance.DOC



Proposed Order on
Deposition A...

On behalf of Jeffrey Fereday, I am attaching the proposed Order Compelling Attendance at Depositions in Word format for your convenience.

Lori Anderson
Assistant to Jeffrey C. Fereday,
Deborah E. Nelson & Michael P. Lawrence
Givens Pursley, LLP
601 W. Bannock St.
Boise, ID 83702
Direct Dial: (208) 388-1234
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www.givenspursley.com

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**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

**ORDER COMPELLING ATTENDANCE AT
DEPOSITIONS**

This matter has come before the Hearing Officer on the November 12, 2008 Emergency Motion filed by Applicant M3 Eagle LLC (“M3 Motion”) and the November 12, 2008 Motion for Protective Order and Motion for Expedited Consideration filed by North Ada County Groundwater Users Association (“NACGUA Motion”).

Attached as exhibits to the M3 Motion are: a) four October 31, 2008 deposition notices whereby M3 Eagle seeks to conduct initial depositions of four of NACGUA’s experts on November 14 and 17, and b) the November 12, 2008 letter from NACGUA counsel Josephine Beeman to M3 Eagle counsel Jeffrey Fereday in which Ms. Beeman states she is advising the experts not to appear for their depositions in consideration of the pendency of a separate Motion for Stay and Limited Discovery for Purposes of Settlement (“NACGUA Stay Motion”) that NACGUA’s counsel filed on November 10, 2008 during a recent status conference.

Having considered the arguments of the parties on these matters, and good cause appearing therefor, the Hearing Officer hereby orders as follows:

1. The M3 Motion is GRANTED. The deponents shall appear for their depositions as provided in the notices unless the parties mutually agree otherwise.
2. The NACGUA Motion is DENIED.

3. Further proceedings based on the NACGUA Stay Motion shall follow upon M3 Eagle's timely response to it.

DATED this ____ day of November, 2008.

By _____
Gary Spackman
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this ____ day of November, 2008, the foregoing was filed, served, or copied as follows:

SERVICE

M3 Eagle LLC	<input checked="" type="checkbox"/> U. S. Mail
Jeffrey C. Fereday	<input type="checkbox"/> Hand Delivered
Givens Pursley LLC	<input type="checkbox"/> Overnight Mail
601 W. Bannock St.	<input type="checkbox"/> Facsimile
Boise, ID 83702	<input checked="" type="checkbox"/> E-mail
John Westra	<input checked="" type="checkbox"/> U. S. Mail
Western Regional Office	<input type="checkbox"/> Hand Delivered
Idaho Department of Water Resources	<input type="checkbox"/> Overnight Mail
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North Ada County Groundwater Users Association	<input checked="" type="checkbox"/> U. S. Mail
Josephine P. Beeman	<input type="checkbox"/> Hand Delivered
Beeman & Associates PC	<input type="checkbox"/> Overnight Mail
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Bill Lawton, Spokesman for	<input checked="" type="checkbox"/> U. S. Mail
Robert L. Wood	<input type="checkbox"/> Hand Delivered
M. Howard Goldman	<input type="checkbox"/> Overnight Mail
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DEPARTMENT OF
WATER RESOURCES

Josephine P. Beeman #1806
BEEMAN & ASSOCIATES, P.C.
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(208) 331-0950
(208) 331-0954 (Facsimile)
office@beemanlaw.com

Attorneys for North Ada County Groundwater Users Association

**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 M3 EAGLE, LLC) _____)	NACGUA’S MOTION FOR PROTECTIVE ORDER and MOTION FOR EXPEDITED CONSIDERATION
--	---

MOTION FOR EXPEDITED CONSIDERATION

The North Ada County Groundwater Users Association (NACGUA) requests that its Motion for Protective Order (below) be considered on an expedited basis. Counsel for NACGUA is available for a hearing on this matter on Wednesday, November 12, any time, or Thursday, November 13, after 1:30 pm.

NACGUA requests expedited consideration because depositions of its experts are scheduled for November 14 and November 17, and this matter should be resolved prior to those depositions.

MOTION FOR PROTECTIVE ORDER

NACGUA, pursuant to the Idaho Department of Water Resources Rules of Procedure 520.02 and 523 (IDAPA 37.01.01.520.02 and 37.01.01.523) and Rule 26(c) of the Idaho Rules of Civil Procedure, seeks a Protective Order that NACGUA, its members, and its experts are not

subject to discovery by deposition, during the pendency of NACGUA's November 10, 2008 Motion for Stay and Limited Discovery for Purposes of Settlement (November 10 Motion).

For good cause, NACGUA cites the following:

1. Discovery by deposition is allowed through December 12, 2008.
2. An Order on NACGUA's November 10 Motion is reasonably expected prior to December 1, based on discussions at the November 10 status conference regarding the November 24 response deadline to NACGUA's November 10 Motion.
3. It would be an undue burden and expense for NACGUA to have itself, its members, and its representatives subject to depositions during the pendency of the November 10 Motion, especially when the following factors are considered:
 - If, as NACGUA's November 10 Motion asserts, the Applicant did not meet the burden of proof to have a complete application and supporting information on file at IDWR, there would have been no necessity or occasion for I.C. 42-203A protests to the Application and a contested case would not have proceeded until after the Applicant's burden of proof was met.
 - Nonetheless, in compliance with the Hearing Officer's September 12, 2008 Scheduling Order, NACGUA served written discovery requests in advance of the October 27, 2008 deadline and has served responses to M3 Eagle's Discovery Requests, while simultaneously arranging for and participating in settlement negotiations.

- Also, and in advance of the Scheduling Order's November 26, 2008 deadline, NACGUA submitted to the parties and the Hearing Officer the November 6, 2008 report of NACGUA's expert Dr. Dale Ralston.

MOTION TO QUASH

None of the depositions presently noticed are subject to subpoena, but if subpoenas were sought, this Motion for Protective Order also stands as a Motion to Quash those subpoenas.

RESPECTFULLY SUBMITTED this 12TH day of November 2008.

BEEMAN & ASSOCIATES, P.C.
Attorneys for NACGUA

By Josephine P. Beeman
Josephine P. Beeman

CERTIFICATE OF SERVICE

I certify that on this 12th day of November 2008, I caused to be served a true and correct copy of the foregoing document on the following by the method indicated.

Original to:

IDWR Hearing Officer
P. O. Box 83720
Boise, ID 83720-0098
(Hand delivery)

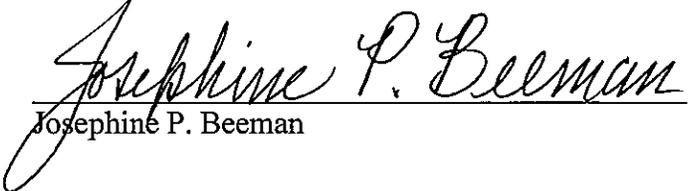
John Westra
IDWR Western
2735 Airport Way
Boise ID 83705
(Email)

Norman L. Edwards
884 W. Beacon Light Road
Eagle ID 83616
(U.S. Mail)

Jeffery Fereday
Givens Pursley LLP
P. O. Box 2720
Boise ID 83701
(Email)

Alan Smith
3135 Osprey Road
Eagle ID 83616
(U.S. Mail)

Bill Lawton
3145 N. Osprey Road
Eagle ID 83616
(U.S. Mail)


Josephine P. Beeman

Jeffrey C. Fereday [ISB No. 2719]
Michael P. Lawrence [ISB No. 7288]
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Boise, Idaho 83701-2720
Office: (208) 388-1200
Fax: (208) 388-1300
www.givenspursley.com
Attorneys for M3 Eagle LLC

RECEIVED
NOV 12 2008
DEPARTMENT OF
WATER RESOURCES

**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

**NOTICE OF DEPOSITION OF
ANNE RITTER**

TO: ANNE RITTER

PLEASE TAKE NOTICE that on December 2, 2008 at 8:00 a.m. at the offices of Givens Pursley, LLP, 601 W. Bannock St., Boise, Idaho, counsel for the Applicant M3 Eagle LLC, will take the deposition of Anne Ritter, a protestant in the above-entitled action upon oral examination pursuant to Rule 30 of the Idaho Rules of Civil Procedure, before a Notary Public, or before some other officer authorized by law to administer oaths, and continuing from day to day thereafter, until the deposition is completed. You are notified and required to appear and provide testimony under oath.

DATED this 12th day of November, 2008.

Respectfully submitted,

GIVENS PURSLEY LLP

By Jeffrey C. Fereday
Jeffrey C. Fereday
Michael P. Lawrence

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of November 2008, the foregoing was filed, served, or copied as follows:

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Idaho Department of Water Resources
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Josephine P. Beeman
Beeman & Associates PC
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Boise, ID 83702-6049

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Anne Ritter
1270 W. Beacon Light Road
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Bill Lawton, Spokesman for
Robert L. Wood
M. Howard Goldman
Timothy R. Milburn
3145 Osprey Road
Eagle, ID 83616

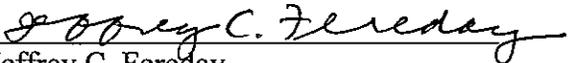
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Jeffrey C. Fereday

Jeffrey C. Fereday [ISB No. 2719]
Michael P. Lawrence [ISB No. 7288]
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Fax: (208) 388-1300
www.givenspursley.com
Attorneys for M3 Eagle LLC

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**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

**AMENDED NOTICE OF DEPOSITION OF
ROBERT S. NICCOLLS JR.**

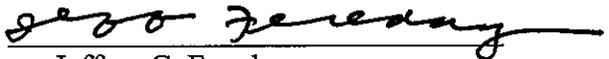
TO: ROBERT S. NICCOLLS, JR.

PLEASE TAKE NOTICE that on December 8, 2008 at 10:30 a.m. at the offices of Givens Pursley, LLP, 601 W. Bannock St., Boise, Idaho, counsel for the Applicant M3 Eagle LLC, will take the deposition of Robert S. Niccolls, Jr., a protestant in the above-entitled action upon oral examination pursuant to Rule 30 of the Idaho Rules of Civil Procedure, before a Notary Public, or before some other officer authorized by law to administer oaths, and continuing from day to day thereafter, until the deposition is completed. You are notified and required to appear and provide testimony under oath.

DATED this 11th day of November, 2008.

Respectfully submitted,

GIVENS PURSLEY LLP

By 
Jeffrey C. Fereday
Michael P. Lawrence

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of November 2008, the foregoing was filed, served, or copied as follows:

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Beeman & Associates PC
409 West Jefferson
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Robert S. Niccolls, Jr.
P.O. Box 968
Eagle, ID 83616

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Bill Lawton, Spokesman for
Robert L. Wood
M. Howard Goldman
Timothy R. Milburn
3145 Osprey Road
Eagle, ID 83616

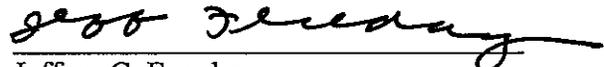
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Jeffrey C. Fereday

A

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DEPARTMENT OF WATER RESOURCES

Josephine P. Beeman #1806
BEEMAN & ASSOCIATES, P.C.
409 West Jefferson Street
Boise, ID 83702
(208) 331-0950
(208) 331-0954 (Facsimile)
office@beemanlaw.com

Attorney for North Ada County Groundwater Users Association

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 M3 EAGLE, LLC)
_____)**

**NACGUA'S NOTICE OF SERVICE
OF RESPONSES TO DISCOVERY
REQUESTS FROM M3 EAGLE LLC**

North Ada County Groundwater Users Association (NACGUA) hereby gives notice that on November 10, 2008, it served NACGUA's Responses to Applicant M3 Eagle LLC's First Set of Discovery Requests to Protestant North Ada County Groundwater Users Association, by hand delivering the original to Givens Pursley LLP, at 602 W. Bannock Street, Boise, the law firm of M3 Eagle LLC's attorney, Jeffrey Fereday.

DATED this 10th day of November 2008.

BEEMAN & ASSOCIATES, P.C.
Attorneys for NACGUA

By Josephine P. Beeman
Josephine P. Beeman

CERTIFICATE OF SERVICE

I certify that on this 10th day of November 2008, I caused to be served a true and correct copy of the foregoing document on the following by the method indicated.

Original to:

IDWR Hearing Officer
P. O. Box 83720
Boise, ID 83720-0098
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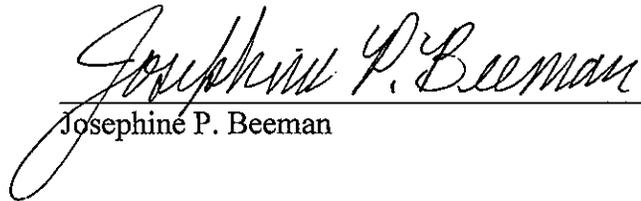
John Westra
IDWR Western
2735 Airport Way
Boise ID 83705
(U.S. Mail)

Norman L. Edwards
884 W. Beacon Light Road
Eagle ID 83616
(U.S. Mail)

Jeffrey Fereday
Givens Pursley LLP
P. O. Box 2720
Boise ID 83701
(U.S. Mail)

Alan Smith
3135 Osprey Road
Eagle ID 83616
(U.S. Mail)

Bill Lawton
3145 N. Osprey Road
Eagle ID 83616
(U.S. Mail)



Josephine P. Beeman

Gibson, Deborah

From: Jo Beeman [jo.Beeman@beemanlaw.com]
Sent: Tuesday, November 11, 2008 8:47 PM
To: Spackman, Gary; Jeffrey C. Fereday; Westra, John; Kelsey Nunez; Michael Lawrence
Cc: Anne Ritter (NACGUA); David Head (NACGUA); Gibson, Deborah; Jason Hudson (B&A); Jo Beeman (B&A); Joyce Angell (B&A); Kathy Pennisi (NACFA); Lori Anderson (Fereday); Office (B&A)
Subject: 63-32573: NACGUA Motion for Protective Order
Attachments: 20081112 NACGUA Motion for Protective Order and Motion for Expedited Consideration.pdf

The original of NACQUA's attached "Motion for Protective Order and Motion for Expedited Consideration" will be hand-delivered to IDWR in the morning.

Jo

Josephine P. Beeman
Beeman & Associates, P.C.
Phone: 208-331-0950
Fax: 208-331-0954
jo.beeman@beemanlaw.com

CONFIDENTIAL NOTICE: This transmission is intended only for the use of the individual(s) named as recipients. It may contain information that is privileged, confidential and/or protected from disclosure under applicable law including, but not limited to, the attorney client privilege and/or work product doctrine. If you are not the intended recipient of this transmission, please notify the sender immediately by telephone. Do not deliver, distribute or copy this transmission, disclose its contents, or take any action in reliance on the information it contains.

Jeffrey C. Fereday [ISB No. 2719]
Michael P. Lawrence [ISB No. 7288]
GIVENS PURSLEY LLP
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Boise, Idaho 83701-2720
Office: (208) 388-1200
Fax: (208) 388-1300
www.givenspursley.com
Attorneys for M3 Eagle LLC

**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

**NOTICE OF DEPOSITION OF
SHERRI RANDALL**

TO: SHERRI RANDALL

PLEASE TAKE NOTICE that on December 3, 2008 at 8:00 a.m. at the offices of Givens Pursley, LLP, 601 W. Bannock St., Boise, Idaho, counsel for the Applicant M3 Eagle LLC, will take the deposition of Sherri Randall, a protestant in the above-entitled action upon oral examination pursuant to Rule 30 of the Idaho Rules of Civil Procedure, before a Notary Public, or before some other officer authorized by law to administer oaths, and continuing from day to day thereafter, until the deposition is completed. You are notified and required to appear and provide testimony under oath.

RECEIVED
NOV 10 2008
DEPARTMENT OF
WATER RESOURCES

DATED this 10th day of November, 2008.

Respectfully submitted,

GIVENS PURSLEY LLP

By Jeffrey C. Fereday
Jeffrey C. Fereday
Michael P. Lawrence

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of November 2008, the foregoing was filed, served, or copied as follows:

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Idaho Department of Water Resources
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North Ada County Groundwater Users Association
Josephine P. Beeman
Beeman & Associates PC
409 West Jefferson
Boise, ID 83702-6049

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Sherri Randall
278 E. Beacon Light Road
Eagle, ID 83616

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Bill Lawton, Spokesman for
Robert L. Wood
M. Howard Goldman
Timothy R. Milburn
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Eagle, ID 83616

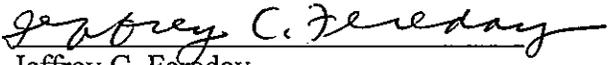
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Eagle, ID 83616

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Jeffrey C. Fereday

Jeffrey C. Fereday [ISB No. 2719]
Michael P. Lawrence [ISB No. 7288]
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P.O. Box 2720
Boise, Idaho 83701-2720
Office: (208) 388-1200
Fax: (208) 388-1300
www.givenspursley.com
Attorneys for M3 Eagle LLC

**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

**NOTICE OF DEPOSITION OF
BRUCE RICHARDSON**

TO: BRUCE RICHARDSON

PLEASE TAKE NOTICE that on December 4, 2008 at 3:30 p.m. at the offices of Givens Pursley, LLP, 601 W. Bannock St., Boise, Idaho, counsel for the Applicant M3 Eagle LLC, will take the deposition of Bruce Richardson, a protestant in the above-entitled action upon oral examination pursuant to Rule 30 of the Idaho Rules of Civil Procedure, before a Notary Public, or before some other officer authorized by law to administer oaths, and continuing from day to day thereafter, until the deposition is completed. You are notified and required to appear and provide testimony under oath.

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NOV 10 2008

**DEPARTMENT OF
WATER RESOURCES**

DATED this 10th day of November, 2008.

Respectfully submitted,

GIVENS PURSLEY LLP

By Jeffrey C. Fereday
Jeffrey C. Fereday
Michael P. Lawrence

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of November 2008, the foregoing was filed, served, or copied as follows:

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Idaho Department of Water Resources
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North Ada County Groundwater Users Association
Josephine P. Beeman
Beeman & Associates PC
409 West Jefferson
Boise, ID 83702-6049

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Bruce Richardson
3171 W. Deerfield Court
Eagle, ID 83616

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Bill Lawton, Spokesman for
Robert L. Wood
M. Howard Goldman
Timothy R. Milburn
3145 Osprey Road
Eagle, ID 83616

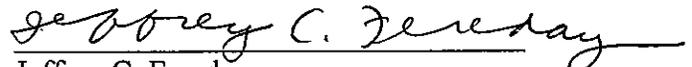
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Jeffrey C. Fereday

Jeffrey C. Fereday [ISB No. 2719]
Michael P. Lawrence [ISB No. 7288]
GIVENS PURSLEY LLP
601 West Bannock Street
P.O. Box 2720
Boise, Idaho 83701-2720
Office: (208) 388-1200
Fax: (208) 388-1300
www.givenspursley.com
Attorneys for M3 Eagle LLC

**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

**NOTICE OF DEPOSITION OF
BARRETT D. JONES**

TO: BARRETT D. JONES

PLEASE TAKE NOTICE that on December 4, 2008 at 1:00 p.m. at the offices of Givens Pursley, LLP, 601 W. Bannock St., Boise, Idaho, counsel for the Applicant M3 Eagle LLC, will take the deposition of Barrett D. Jones, a protestant in the above-entitled action upon oral examination pursuant to Rule 30 of the Idaho Rules of Civil Procedure, before a Notary Public, or before some other officer authorized by law to administer oaths, and continuing from day to day thereafter, until the deposition is completed. You are notified and required to appear and provide testimony under oath.

RECEIVED
NOV 10 2008
DEPARTMENT OF
WATER RESOURCES

DATED this 10th day of November, 2008.

Respectfully submitted,

GIVENS PURSLEY LLP

By Jeffrey C. Fereday
Jeffrey C. Fereday
Michael P. Lawrence

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of November 2008, the foregoing was filed, served, or copied as follows:

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Beeman & Associates PC
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Barrett D. Jones
4032 N. Croft Place
Eagle, ID 83616

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Bill Lawton, Spokesman for
Robert L. Wood
M. Howard Goldman
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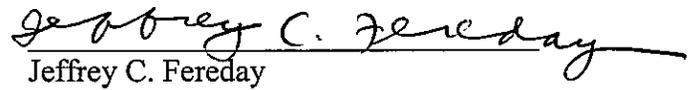
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Jeffrey C. Fereday

Jeffrey C. Fereday [ISB No. 2719]
Michael P. Lawrence [ISB No. 7288]
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www.givenspursley.com
Attorneys for M3 Eagle LLC

**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

**NOTICE OF DEPOSITION OF
MORGAN MASNER**

TO: MORGAN MASNER

PLEASE TAKE NOTICE that on December 4, 2008 at 10:30 a.m. at the offices of Givens Pursley, LLP, 601 W. Bannock St., Boise, Idaho, counsel for the Applicant M3 Eagle LLC, will take the deposition of Morgan Masner, a protestant in the above-entitled action upon oral examination pursuant to Rule 30 of the Idaho Rules of Civil Procedure, before a Notary Public, or before some other officer authorized by law to administer oaths, and continuing from day to day thereafter, until the deposition is completed. You are notified and required to appear and provide testimony under oath.

RECEIVED
NOV 10 2008
DEPARTMENT OF
WATER RESOURCES

DATED this 10th day of November, 2008.

Respectfully submitted,

GIVENS PURSLEY LLP

By Jeffrey C. Fereday
Jeffrey C. Fereday
Michael P. Lawrence

CERTIFICATE OF SERVICE

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Beeman & Associates PC
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Morgan Masner
4325 W. Gray Teal Court
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Bill Lawton, Spokesman for
Robert L. Wood
M. Howard Goldman
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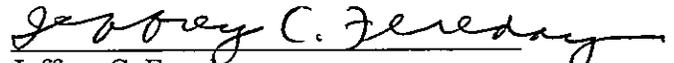
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Alan Smith
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Eagle, ID 83616

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Jeffrey C. Fereday

Jeffrey C. Fereday [ISB No. 2719]
Michael P. Lawrence [ISB No. 7288]
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Boise, Idaho 83701-2720
Office: (208) 388-1200
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www.givenspursley.com
Attorneys for M3 Eagle LLC

**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

**NOTICE OF DEPOSITION OF
JOHN PETROVSKY**

TO: JOHN PETROVSKY

PLEASE TAKE NOTICE that on December 4, 2008 at 8:00 a.m. at the offices of Givens Pursley, LLP, 601 W. Bannock St., Boise, Idaho, counsel for the Applicant M3 Eagle LLC, will take the deposition of John Petrovsky, a protestant in the above-entitled action upon oral examination pursuant to Rule 30 of the Idaho Rules of Civil Procedure, before a Notary Public, or before some other officer authorized by law to administer oaths, and continuing from day to day thereafter, until the deposition is completed. You are notified and required to appear and provide testimony under oath.

RECEIVED

NOV 10 2008

**DEPARTMENT OF
WATER RESOURCES**

DATED this 10th day of November, 2008.

Respectfully submitted,

GIVENS PURSLEY LLP

By *Jeffrey C. Fereday*
Jeffrey C. Fereday
Michael P. Lawrence

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of November 2008, the foregoing was filed, served, or copied as follows:

FILED

Idaho Department of Water Resources
Attn: Gary L. Spackman
322 East Front Street
P.O. Box 83720
Boise, ID 83720-0098

U. S. Mail
 Hand Delivered
 Overnight Mail
 Facsimile
 E-mail

SERVICE

John Westra
Western Regional Office
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705-5082

U. S. Mail
 Hand Delivered
 Overnight Mail
 Facsimile
 E-mail

North Ada County Groundwater Users Association
Josephine P. Beeman
Beeman & Associates PC
409 West Jefferson
Boise, ID 83702-6049

U. S. Mail
 Hand Delivered
 Overnight Mail
 Facsimile
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John Petrovsky
4831 Willow Creek Road
Eagle, ID 83616

U. S. Mail
 Hand Delivered
 Overnight Mail
 Facsimile
 E-mail

Bill Lawton, Spokesman for
Robert L. Wood
M. Howard Goldman
Timothy R. Milburn
3145 Osprey Road
Eagle, ID 83616

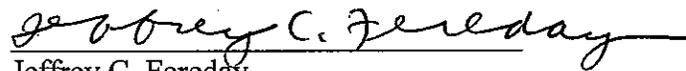
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Norman Edwards
884 W. Beacon Light Road
Eagle, ID 83616

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 Overnight Mail
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Alan Smith
3135 N. Osprey Road
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Jeffrey C. Fereday

Jeffrey C. Fereday [ISB No. 2719]
Michael P. Lawrence [ISB No. 7288]
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Attorneys for M3 Eagle LLC

**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

**NOTICE OF DEPOSITION OF
JOHN FRANDEN**

TO: JOHN FRANDEN

PLEASE TAKE NOTICE that on December 3, 2008 at 3:30 p.m. at the offices of Givens Pursley, LLP, 601 W. Bannock St., Boise, Idaho, counsel for the Applicant M3 Eagle LLC, will take the deposition of John Franden, a protestant in the above-entitled action upon oral examination pursuant to Rule 30 of the Idaho Rules of Civil Procedure, before a Notary Public, or before some other officer authorized by law to administer oaths, and continuing from day to day thereafter, until the deposition is completed. You are notified and required to appear and provide testimony under oath.

RECEIVED

NOV 10 2008

**DEPARTMENT OF
WATER RESOURCES**

DATED this 10th day of November, 2008.

Respectfully submitted,

GIVENS PURSLEY LLP

By Jeffrey C. Fereday
Jeffrey C. Fereday
Michael P. Lawrence

CERTIFICATE OF SERVICE

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2735 Airport Way
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North Ada County Groundwater Users Association
Josephine P. Beeman
Beeman & Associates PC
409 West Jefferson
Boise, ID 83702-6049

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John Franden
2300 E. Buckskin Court
Eagle, ID 83616

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 Overnight Mail
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 E-mail

Bill Lawton, Spokesman for
Robert L. Wood
M. Howard Goldman
Timothy R. Milburn
3145 Osprey Road
Eagle, ID 83616

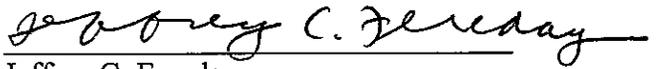
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Alan Smith
3135 N. Osprey Road
Eagle, ID 83616

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Jeffrey C. Fereday

Jeffrey C. Fereday [ISB No. 2719]
Michael P. Lawrence [ISB No. 7288]
GIVENS PURSLEY LLP
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P.O. Box 2720
Boise, Idaho 83701-2720
Office: (208) 388-1200
Fax: (208) 388-1300
www.givenspursley.com
Attorneys for M3 Eagle LLC

**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

**NOTICE OF DEPOSITION OF
STEPHEN DICK**

TO: STEPHEN DICK

PLEASE TAKE NOTICE that on December 3, 2008 at 1:00 p.m. at the offices of Givens Pursley, LLP, 601 W. Bannock St., Boise, Idaho, counsel for the Applicant M3 Eagle LLC, will take the deposition of Stephen Dick, a protestant in the above-entitled action upon oral examination pursuant to Rule 30 of the Idaho Rules of Civil Procedure, before a Notary Public, or before some other officer authorized by law to administer oaths, and continuing from day to day thereafter, until the deposition is completed. You are notified and required to appear and provide testimony under oath.

RECEIVED

NOV 10 2008

**DEPARTMENT OF
WATER RESOURCES**

DATED this 10th day of November, 2008.

Respectfully submitted,

GIVENS PURSLEY LLP

By Jeffrey C. Fereday
Jeffrey C. Fereday
Michael P. Lawrence

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of November 2008, the foregoing was filed, served, or copied as follows:

FILED

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Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705-5082

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North Ada County Groundwater Users Association
Josephine P. Beeman
Beeman & Associates PC
409 West Jefferson
Boise, ID 83702-6049

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 Hand Delivered
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Stephen Dick
3675 N. Saddleman Place
Eagle, ID 83616

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 Overnight Mail
 Facsimile
 E-mail

Bill Lawton, Spokesman for
Robert L. Wood
M. Howard Goldman
Timothy R. Milburn
3145 Osprey Road
Eagle, ID 83616

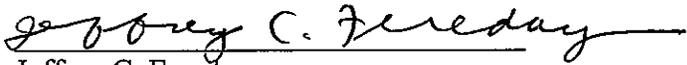
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Norman Edwards
884 W. Beacon Light Road
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Alan Smith
3135 N. Osprey Road
Eagle, ID 83616

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Jeffrey C. Fereday

Jeffrey C. Fereday [ISB No. 2719]
Michael P. Lawrence [ISB No. 7288]
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601 West Bannock Street
P.O. Box 2720
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Office: (208) 388-1200
Fax: (208) 388-1300
www.givenspursley.com
Attorneys for M3 Eagle LLC

**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

**NOTICE OF DEPOSITION OF
DAVID HEAD**

TO: DAVID HEAD

PLEASE TAKE NOTICE that on December 3, 2008 at 10:30 a.m. at the offices of Givens Pursley, LLP, 601 W. Bannock St., Boise, Idaho, counsel for the Applicant M3 Eagle LLC, will take the deposition of David Head, a protestant in the above-entitled action upon oral examination pursuant to Rule 30 of the Idaho Rules of Civil Procedure, before a Notary Public, or before some other officer authorized by law to administer oaths, and continuing from day to day thereafter, until the deposition is completed. You are notified and required to appear and provide testimony under oath.

RECEIVED

NOV 10 2008

DEPARTMENT OF
WATER RESOURCES

DATED this 10th day of November, 2008.

Respectfully submitted,

GIVENS PURSLEY LLP

By Jeffrey C. Fereday
Jeffrey C. Fereday
Michael P. Lawrence

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of November 2008, the foregoing was filed, served, or copied as follows:

FILED

Idaho Department of Water Resources
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322 East Front Street
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Beeman & Associates PC
409 West Jefferson
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David Head
855 Stillwell Drive
Eagle, ID 83616

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Bill Lawton, Spokesman for
Robert L. Wood
M. Howard Goldman
Timothy R. Milburn
3145 Osprey Road
Eagle, ID 83616

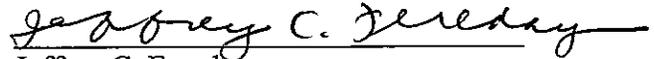
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Eagle, ID 83616

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 E-mail


Jeffrey C. Fereday

BEEMAN & ASSOCIATES, P.C.

Counselors and Attorneys at Law
409 West Jefferson Street
Boise, Idaho 83702-6049

Josephine P. Beeman
jo.beeman@beemanlaw.com

Phone (208) 331-0950
Fax (208) 331-0954
office@beemanlaw.com

November 12, 2008

RECEIVED

NOV 12 2008

DEPARTMENT OF
WATER RESOURCES

Debbie Gibson
IDWR
322 W. Front Street
Boise, ID 83702

Re: M3 Eagle Application 63-32573
NACGUA's Motion for Stay, dated November 10, 2008

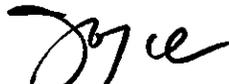
Dear Debbie,

Enclosed is a color copy of the map which was an exhibit to NACGUA's Motion for Stay, fax filed on November 10. I believe it was page 14 of the 29 pages of the motion and exhibits.

Please replace the black & white copy with this color copy. Thanks.

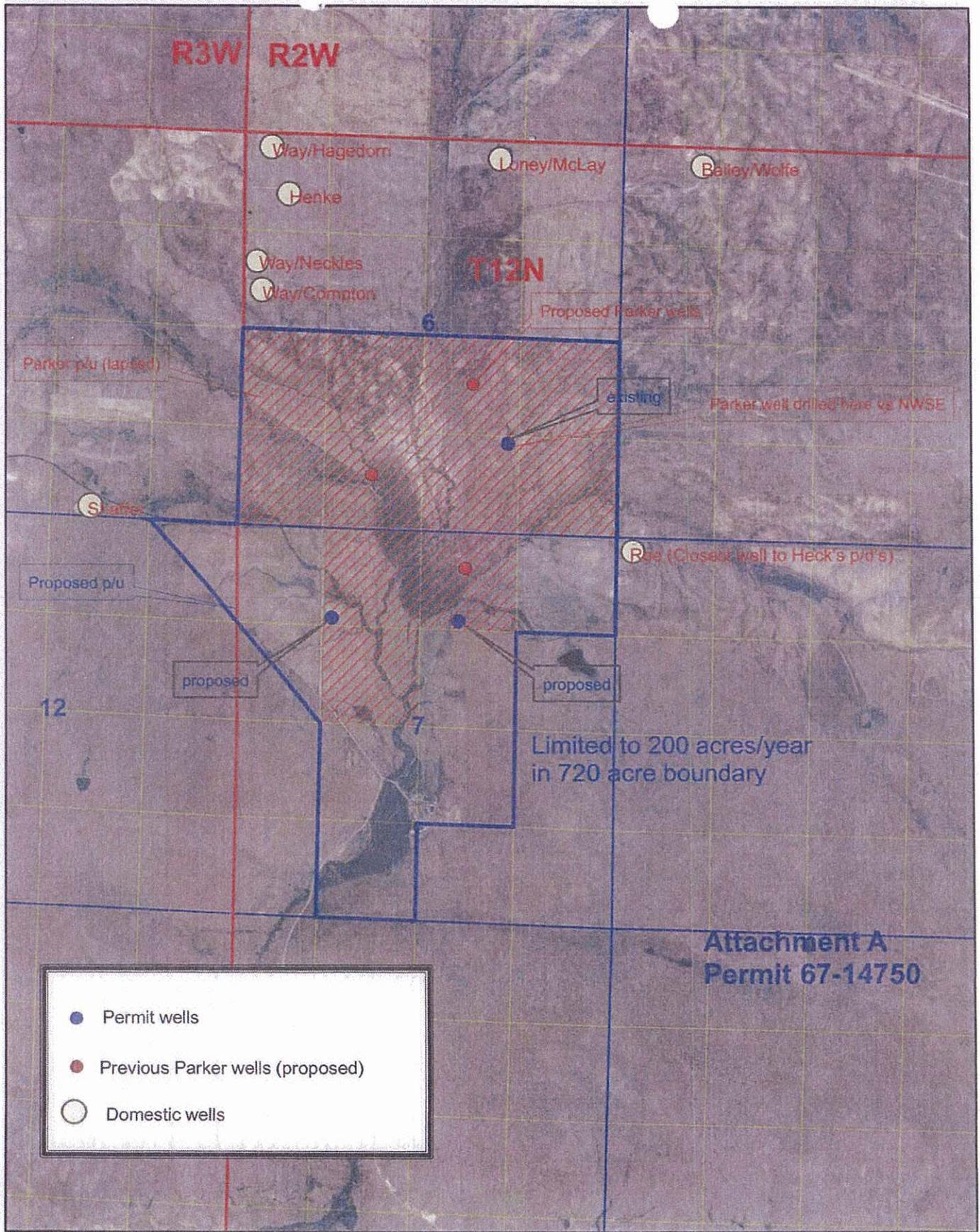
Sincerely,

BEEMAN & ASSOCIATES, P.C.



Joyce E. Angell
Legal Assistant to Josephine P. Beeman

Enclosure



R3W R2W

Way/Hagedorn

Luney/McLay

Bailey/Wolfe

Henke

T12N

Way/Neckles

Way/Compton

Proposed Parker wells

Parker p/u (lapsed)

existing

Parker well drilled here vs NWSE

Slabs

Rae (Closest well to Heck's p/d's)

Proposed p/u

proposed

proposed

12

7

Limited to 200 acres/year
in 720 acre boundary

Attachment A
Permit 67-14750

- Permit wells
- Previous Parker wells (proposed)
- Domestic wells

RECEIVED
NOV 10 2008
Department of Water Resources
by email

Josephine P. Beeman #1806
BEEMAN & ASSOCIATES, P.C.
409 West Jefferson Street
Boise, ID 83702
(208) 331-0950
(208) 331-0954 (Facsimile)
office@beemanlaw.com

Attorney for North Ada County Groundwater Users Association

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

**IN THE MATTER OF APPLICATION) NACGUA'S MOTION FOR STAY,
FOR PERMIT NO. 63-32573,) AND LIMITED DISCOVERY FOR
IN THE NAME OF M3 EAGLE, LLC) PURPOSES OF SETTLEMENT**

The North Ada County Groundwater Users Association (NACGUA) is willing to withdraw its protests to M3 Eagle LLC's (M3) Application 63-32573 if it can enter into a settlement that protects its interests. NACGUA is willing to work cooperatively with M3 to develop a settlement to protect its interests.

In order to support settlement efforts and to address the integrity of Application 63-32573, NACGUA requests that, except for the disclosure of M3's expert reports on November 26, the Hearing Officer enter an order to stay all proceedings on Application 63-32573 for two months following November 26, 2008. The stay is necessary for two reasons:

1. Time is needed for continuing settlement negotiations and resolution of the protests through settlement.
2. The applicant has not met the burden of proof to have a complete application and supporting information.

**TIME IS NEEDED FOR CONTINUING SETTLEMENT NEGOTIATIONS
AND RESOLUTION OF THE PROTESTS THROUGH SETTLEMENT**

1. In the last week, M3 and NACGUA have met twice and exchanged written term sheets just two business days ago.

2. M3's September 24, 2007 letter (attached) commits to IDWR's evaluation of the adequacy of the resource as the project is developed:

The purpose of such a condition would be to allow your agency to ensure that adequate water supplies exist for the level of development involved at any given stage of the approved planning horizon. (Permit 67-14750 attached as example of such condition.)

3. This monitoring and evaluation and IDWR's recourse when the monitoring indicates the resource is not adequate, is the major focus of the NACGUA and M3 settlement negotiations.

**THE APPLICANT HAS NOT MET THE BURDEN OF PROOF TO HAVE
A COMPLETE APPLICATION AND SUPPORTING INFORMATION**

1. M3 has promised additional information in the form of Ed Squires' Hydro Logic report due November 26, 2008. The protestants need time to review this information for two reasons:

- (a) The threshold inquiry as to the adequacy of the resource; and
- (b) Injury to the protestants not to have this information while going through the discovery process.

2. With respect to the Applicant's threshold demonstration of the adequacy of the resource:

- There is not sufficient evidence to support the presumption of lateral extent and continuity of what has been called the Pierce Gulch Sand Aquifer from the M3 Eagle site to the Payette River. Also, additional work is needed to assemble and present the available information to support of presumption of lateral extent and continuity of

what has been called the Pierce Gulch Sand Aquifer from the M3 Eagle site to the presumed recharge area in the Boise River drainage.

- There is not sufficient evidence to support the presumption that ground water flows in the manner and quantity described within what has been called the Pierce Gulch Sand Aquifer from the presumed recharge area in the Boise River drainage to the presumed discharge area in the Payette River drainage?
- The characterization of the target aquifer system, including a pre-development water balance, has not been complete enough to support an analysis of impacts from full project development.

These statements, from Dr. Dale Ralston's preliminary analysis (attached), have been read by Dr. Ralston to M3's principal representatives [Gerry Robbins, Jeff Fereday, and Ed Squires]. That same preliminary analysis has been provided to Mr. Fereday. Dr. Ralston's preliminary analysis is directed to Hydro Logic's 2007 "*M3 Eagle Regional Hydrogeologic Characterization – North Ada Canyon and Gem Counties, Idaho – Year One Progress Report.*" Because Hydro Logic's 2007 report was offered as supporting information for M3's burden of proof to have a complete application, Dr. Ralston's preliminary analysis is attached to this motion in the same spirit that M3 made Hydro Logic's report part of the record for Application 63-32573.

NACGUA did not have the opportunity to cross-examine Hydro Logic's report and realizes that M3 has not had the opportunity to cross-examine Dr. Ralston's report. Both the Hydro Logic 2007 report and Dr. Ralston's 2008 preliminary analysis are to be viewed in terms of whether M3 has met the burden of proof to have a complete application and supporting information.

3. In their present showing, M3 has not met the burden to show that it is a municipal provider:

- M3 Eagle LLC is not "a corporation or association which supplies water for municipal purposes through a water system regulated by the State of Idaho as a 'public water supply' as described in Section 39-103(12), Idaho Code."
- M3 Eagle LLC is not "a corporation or association holding a franchise to supply water for municipal purposes, or a political subdivision of the State of Idaho"

authorized to supply water for municipal purposes, and which does supply water, for municipal purposes to users within its service area.”

- M3 Eagle LLC is not “a municipality that provides water for municipal purposes to its residents and other users within its service area.”
- The full build out of the M3 Eagle Project will not occur within 5 (five) years.

4. In its present showing, M3 has not met the burden to show what is necessary to demonstrate future needs and the planning horizon. As a preface to the following bullets, NACGUA refers to the May 29, 2007 IDWR letter to SPF Engineering regarding the JMM Dry Creek Application and the documentation required to demonstrate substantial planning, design, and investment in the unconstructed capacity of the complete system for a municipal right to be developed beyond five years (letter and IDWR Administrative Memo Application Process 63, both attached). That documentation would include

- Provision of an overall detailed design of the full capacity system for meeting reasonably anticipated future needs;
- Financing plan demonstrating ability to fully pay the costs of the constructing the full capacity system needed to meet reasonably anticipated needs;
- Completed environmental studies needed to satisfy legal or permitting requirements for some unconstructed portion or for all of the full capacity system;
- Acquisition of lands needed for future wells, pumping stations, and other facilities consistent with the overall design for the full capacity system;
- Substantial construction of distribution mains shown to be essential and integral portions of the full capacity system through water distribution network analysis;
- Construction for distribution system or regulatory storage consistent with the overall design of the full capacity system; and development of operations protocol and infrastructure needed to operation the full capacity system consistent with the overall system design.

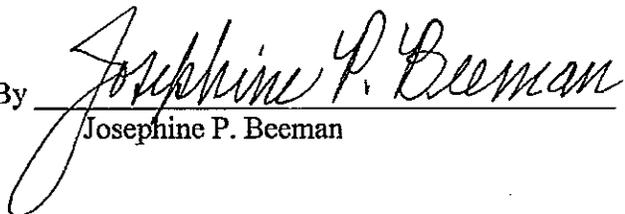
With respect to those required demonstrations:

- M3 Eagle LLC has not provided an overall detailed design of the M3 Eagle Project water system for meeting reasonably anticipated future needs.
- M3 Eagle LLC has not provided current documentation (since October 31, 2006) of a financing plan that demonstrates the ability to fully pay costs of the construction of the M3 Eagle Project water system needed to meet reasonably anticipated needs.
- M3 Eagle LLC has not completed environmental studies needed to satisfy legal or permitting requirements for some unconstructed portion or for all of the M3 Eagle Project water system.
- M3 Eagle LLC's Preliminary Master Wastewater Study, dated June 14, 2006, by Stanley Consultants, Inc., and all subsequent amendments, and the Preliminary Master Potable Water Study, dated June 14, 2006, by Stanley Consultants, Inc., and all subsequent amendments, do not constitute a completed overall detailed design of the M3 Eagle Project water system.

NACGUA's counsel will be present at the 1:30 p.m. phone conference today to discuss this Motion.

DATED this 10TH day of November 2008.

BEEMAN & ASSOCIATES, P.C.
Attorneys for NACGUA

By 
Josephine P. Beeman

CERTIFICATE OF SERVICE

I certify that on this 10th day of November 2008, I caused to be served a true and correct copy of the foregoing document on the following by the method indicated.

Original to:

IDWR Hearing Officer
P. O. Box 83720
Boise, ID 83720-0098
(Fax and Email)

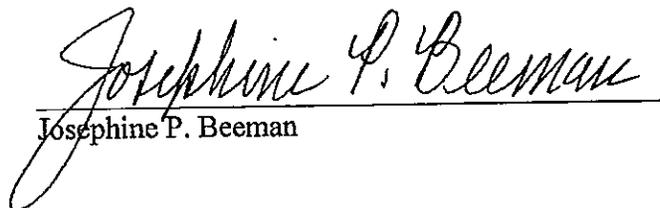
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Alan Smith
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(U.S. Mail)

Bill Lawton
3145 N. Osprey Road
Eagle ID 83616
(U.S. Mail)



Josephine P. Beeman

GIVENS PURSLEY LLP

*Water Right Job
in Western Region*

Save
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SEP 25 2007
**DEPARTMENT OF
WATER RESOURCES**

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PO Box 2720, Boise, Idaho 83701
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WEBSITE: www.givenspursley.com

Gary G. Allen
Peter G. Barton
Christopher J. Beeson
William C. Cole
Michael C. Creamer
Amber N. Dina
Thomas E. Dvorak
Jeffrey C. Fereday
Martin C. Handrickson
Steven J. Hippler
Debra K. Kristensen
Anne C. Kunkel
Jeremy G. Ladle
Michael P. Lawrence
Franklin G. Lee
David R. Lombardi
John M. Marshall
Kenneth R. McGuire
Kelly Greene McConnell
Cynthia A. Melillo
Christopher H. Meyer
L. Edward Miller
Patrick J. Miller
Judson B. Montgomery
Angela K. Nelson
Deborah E. Nelson
W. Hugh O'Riordan, LL.M.
G. Andrew Page
Angela M. Reed
Scott A. Techirgi, LL.M.

J. Will Varin
Conley E. Ward
Robert B. White
Terri R. Yost
RETIRED
Kenneth L. Pursley
Raymond D. Givens
James A. McGuire

JEFFREY C. FEREDAY
Direct Dial: 208-388-1217
E-Mail: jeffereday@givenspursley.com

September 24, 2007

Via E-Mail and U.S. Mail

David R. Tuthill, Jr., P.E. *DM*
Director
Idaho Department of Water Resources
322 East Front Street
P.O. Box 83720
Boise, ID 83720-0098

RECEIVED
OCT 10 2007
WATER RESOURCES
WESTERN REGION

Re: M3 Eagle Amended Water Right Permit Application

Dear Director Tuthill:

Thank you for taking the time to meet with Ed Squires and me on September 20, 2007 regarding the M3 Eagle, LLC Amended Water Right Permit Application, which was submitted to the Department on August 27, 2007. We also appreciated having Jeff Peppersack and John Westra in attendance. The purpose of this letter is to memorialize what we discussed.

Ed and I described the M3 Eagle permit application amendments in general terms, and noted that the project's housing units have been reduced from about 12,000 to 8,160. This change allowed the overall peak diversion rate to be reduced substantially, from about 42 cfs to about 27 cfs. We noted that the annual volumes do not show these same levels of decrease, in part due to the significant reductions in the amount of sewage effluent produced that can be reused to irrigate ball fields, common areas, and golf courses. In any case, it is a smaller water right application than the original.

We agree with your observation, which you have made to Eagle area groups before, that water availability generally should not be seen as the limiting factor for growth in the Valley. You observed that some view the water right application process as a means of guiding or limiting growth, regardless of what the merits might be on the subject of available water. We

63-32573

David R. Tuthill, Jr., P.E.
September 24, 2007
Page 2

agree that local land use decisions should remain with local governments and that the public should expect the Department to focus on processing permit and transfer applications for water development.

We discussed the role of the Technical Committee that has been organized, with the Department's leadership, to evaluate hydrogeologic questions in the North Ada area. M3 Eagle intends to be a full contributing member in the Technical Committee, and to support its work. Ed and his staff at Hydro Logic, Inc. will continue to be active participants, and will bring their findings to the Committee for comment. Ed explained that he soon will have two additional M3 Eagle-funded studies ready to present to the Committee—an analysis of earlier pump tests in the area and an aquifer water level analysis. We expect to present additional information to the Committee as it is developed in the next few months and to post the reports to the Department's newly created North Ada County web site.

We are pleased to hear that you expect the Legislature to fund the Department-sponsored hydrogeologic study of the north Ada area, and that it should be ready to begin in mid-2008. We also were pleased to hear you again confirm that pending water right applications, such as M3 Eagle's, will not be delayed by the commencement or outcome of that effort. We agree with your position on this point, of course, especially given the great amount of hydrogeologic study that M3 Eagle already has completed and provided for public review. We sincerely hope that processing of M3 Eagle's water right application can get underway this fall, a point we underscored at the meeting and in our previous meeting on M3 Eagle.

You stated that you will meet with your staff to evaluate how to proceed with processing the M3 Eagle application as well as other applications pending for this area. We look forward eagerly to a response on the processing issue so that M3 Eagle can begin to plan accordingly for any administrative hearing that might be necessary.

We discussed the question of how any approval of M3 Eagle's application might be structured or conditioned. We agreed that it would be reasonable, and within the bounds of the municipal water rights statute, for the Department to approve the application but impose a condition requiring periodic reporting on well production, aquifer pressure levels, and similar information. The purpose of such a condition would be to allow your agency to ensure that adequate water supplies exist for the level of development involved at any given stage of the approved planning horizon.

As you know, we sincerely hope the Department can authorize the construction of large bore supply wells in advance of water right approval to make possible meaningful aquifer testing. Ed brought up the point that our existing studies of the Pierce Gulch Sand Aquifer underlying M3 Eagle are at a relatively mature point (as evidenced by the report submitted with the amended application), and that, in his opinion, the next significant contribution to knowledge about the aquifer would be a high-quality, long-term aquifer test using a large-yield water supply well in the foothills area. Of course, we would anticipate constructing the supply well so that it

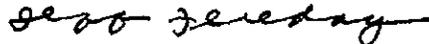
David R. Tuthill, Jr., P.E.
September 24, 2007
Page 3

can be used later as a municipal production well, and M3 Eagle would need to proceed with the understanding that, until a permit is granted, M3 Eagle does so entirely at its own risk.

Finally, we pointed out that there is a state-supported movement in the wine-making industry to establish an "appellation" region in North Ada and Canyon Counties, and that M3 Eagle is seriously considering committing some of its hillside open space to vineyards in support of these efforts. I believe we agree that a commercial-scale vineyard operation (e.g., a few hundred acres) would require an agricultural irrigation water right that likely would be seen as outside the definition of "municipal use" under the statute. Consequently, we are considering filing a separate irrigation ground water right for that purpose, and we wanted to make the Department aware of this possibility. We also may seek to acquire additional surface water supplies that could be delivered through the Farmer's Union Canal, although we are just at the initial stages of this idea. In any event, we will keep the Department informed of our plans for any commercial-scale vineyards that M3 Eagle may pursue.

Thanks again for meeting with us. It means a lot to us to be able to receive this type of guidance as we work toward the long-term development of a water supply for the M3 Eagle planned community.

Sincerely,



Jeffrey C. Fereday

JCF/lla

cc: Bill Brownlee, Managing Partner, M3 Companies
Gerry Robbins, Project Manager, M3 Eagle, LLC
John Westra, Manager, IDWR Western Regional Office
Jeff Peppersack, Chief, Water Allocations Bureau
Ed Squires, Hydro Logic, Inc.

State of Idaho
 Department of Water Resources
Permit to Appropriate Water

NO. 67-14750

Priority: May 18, 2006

Maximum Diversion Rate: 4.00 CFS

This is to certify, that DENNIS L HECK And/Or
 CHRIS HECK
 15007 WILLIS RD
 CALDWELL ID 83607

has applied for a permit to appropriate water from:

Source: GROUND WATER

and a permit is APPROVED for development of water as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>
IRRIGATION	03/15 to 10/31	4.00 CFS

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER	SW1/4SE1/4	Sec. 6, Twp 12N, Rge 02W, B.M., WASHINGTON County
GROUND WATER	NE1/4NW1/4	Sec. 7, Twp 12N, Rge 02W, B.M., WASHINGTON County
GROUND WATER	NW1/4NE1/4	Sec. 7, Twp 12N, Rge 02W, B.M., WASHINGTON County

PLACE OF USE: IRRIGATION

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
12N 02W 6									40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	320.0
12N 02W 7	40.0	40.0	40.0		40.0	40.0	20.0	40.0	40.0			40.0		40.0			380.0
12N 03W 12	20.0																20.0

Total Acres: 720

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **August 01, 2013**.
2. Proof of application of water to beneficial use shall be submitted no sooner than June 1, 2013.
 Upon filing proof of beneficial use for this right, the right holder shall include a report from a qualified professional acceptable to the Department summarizing hydro geologic data collected under the conditions of approval of this right. The purpose of the report is to verify that senior right holders of wells noted on Attachment A have not been injured by the diversion and use of water in connection with this right.
3. Subject to all prior water rights.

Permit to Appropriate Water

NO. 67-14750

4. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
5. Any well used as a point of diversion for this right shall be cased with impermeable casing into or through the first confining layer below ground surface to prevent diversion of water having a direct hydraulic connection to surface water sources within the Weiser River Basin.
6. This right is limited to the irrigation of 200 acres within the place of use described above in a single irrigation season.
7. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor exceed a combined annual maximum diversion volume of 800 af at the field headgate for the 200 acres of land authorized to be irrigated in connection with this right.
8. This right when combined with all other rights shall provide no more than 4.0 afa per acre at the field headgate for irrigation of the lands above.
9. The right holder shall make full beneficial use of all surface water rights available to the right holder for irrigation of the lands authorized to be irrigated under this right. The right holder shall limit the diversion of ground water under this right for lands also authorized to be irrigated using surface water rights to those times when the surface water supply is not available or the surface water supply is not reasonably sufficient to irrigate any lands authorized to be irrigated in connection with this right.
10. If the surface water right(s) appurtenant to the place of use is abandoned, forfeited, sold, transferred, leased or used on any other place of use, this right to divert ground water shall not be used to replace the surface water supply without an approved transfer pursuant to Section 42-222, Idaho Code, or approval of the Department if a transfer is not required.
11. For the first five years of use under this right, the right holder shall provide semi-annual written notification to the owners of surrounding wells identified in Attachment A regarding the diversion of water for irrigation purposes in connection with this right. Notification shall occur approximately fourteen (14) days prior to the first diversion of water at the beginning of each irrigation season and approximately fourteen (14) days following the end of each irrigation season. To verify compliance with this condition, the right holder shall provide the Department with copies of the written notices.
12. Prior to diversion of water from any existing point of diversion for this right and/or prior to Department approval for the construction of any additional wells to be used as points of diversion for this right, the right holder shall submit an operations plan for Department approval. The plan shall include specific and credible information demonstrating how the right holder will employ a qualified professional to comply with conditions Nos. 13 through 16 regarding pump tests, observation well(s), collection of flow and volume data from the right holder's irrigation well(s), drawdown and water level measurements from the right holder's irrigation well(s), and any changes in water levels and water production from the observation well(s) described in condition No. 16.
13. The right holder shall conduct a pump test of a least twenty-four hours for each well used as a point of diversion in connection with this water right. The pump test shall be designed and conducted by a qualified professional, such as a hydrologist, geologist, or engineer, and shall be approved by the Department before being conducted. The pump test shall measure all standard parameters associated with pump tests for the right holder's irrigation well being tested and for observation well(s) used for the pump test. The right holder shall keep records of the data collected during the pump test and shall make them available to the Department upon request.

Permit to Appropriate Water

NO. 67-14750

14. The right holder shall install measuring devices acceptable to the Department on all points of diversion authorized under this right. The measuring devices shall be capable of displaying instantaneous diversion rates and totalized volume measurements. The right holder shall record rate and volume measurements monthly for any calendar year during the first five irrigation seasons in which water is diverted in connection with this right and shall make the records available to the Department upon request. One measurement shall be in April for each year the wells are being used.
15. All existing or newly constructed wells used as points of diversion for this right shall include measuring tubes or other suitable methods to allow measurement of water levels. The right holder shall measure water levels for all existing or newly constructed wells used as points of diversion for this right. Wells not used as active points of diversion can serve as additional observation wells beyond the requirements of condition No. 16. For at least the first five (5) years of water use under this right, measurements shall be made monthly for any calendar year that water is being diverted and used. One measurement shall be in April for each year the wells are being used. The right holder shall keep records and make them available to the Department upon request.
16. The right holder shall install a continuous data logger in the observation well located in NW1/4NW1/4NW1/4 Section 8, T12N, R2W, currently known as the Roe Well, to record water level measurements for the observation well for at least five years from the beginning of the diversion and use of water in connection with this right. The first water level measurement for the observation well shall precede any irrigation under this right to establish baseline data for the observation well. An alternate observation well can be substituted for the Roe Well, subject to the approval of the Department. The right holder shall provide written confirmation to the Department upon installation of the data logger in the observation well. The right holder's access to the observation well and installation and maintenance of the data logger are civil matter between private parties; they are not enforceable by this right.
17. For the observation well noted in condition No. 16, the right holder shall determine the cumulative water level decline during April of each year as follows: determine the historical ground water decline by subtracting the current April ground water level from the initial ground water level measured for the observation well after right 67-14750 was approved. The right holder shall keep records from the data logger and make them available to the Department upon request.
18. Upon detection of a cumulative water level decline of ten (10) feet or more in April static water levels for the observation well, the right holder shall immediately cease pumping and shall notify the Department in writing. The Department shall require additional testing by the right holder to determine if the use of this right has injured senior right holders. Irrigation shall not resume until the Department has issued written notification to the right holder that either (a) the right holder has demonstrated injury has not occurred, or (b) the right holder has demonstrated injury has occurred but the diversion and use under this right have not caused the injury, or (c) the right holder has demonstrated injury has occurred and that the right holder has mitigated the injury. A mitigation plan must be approved by the Department prior to any mitigation activity.
19. After specific notification by the Department, the right holder shall annually submit a measurement report to the Department. The report shall include the rate, volume and water level data for the irrigation wells authorized by this right and all data from the observation well required under condition No. 16 plus all data from all other wells also used for monitoring purposes.
20. 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.

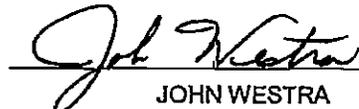
State of Idaho
Department of Water Resources

Permit to Appropriate Water

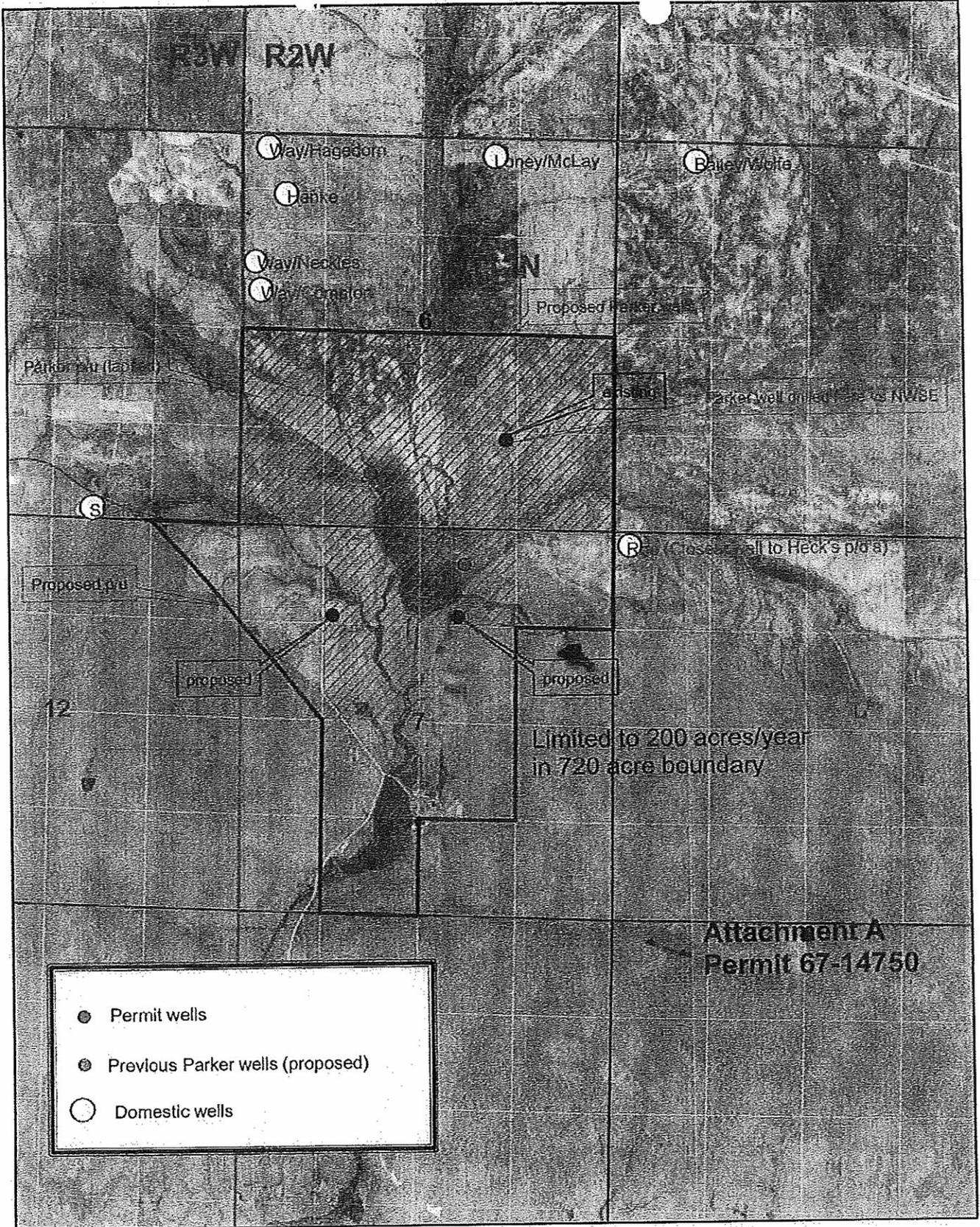
NO. 67-14750

21. Violation of any condition of this right is cause for the Director to cancel or revoke the approval.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this 21st day of July, 2008.



JOHN WESTRA
WESTERN REGIONAL MANAGER



R3W R2W

Way/Hagedorn

Toney/McLay

Bailey/Wolfe

Habke

Way/Neckles

Way/Dragon

R1W

Proposed Parker well

Parker pu (adj)

proposed

Parker well owned by Heck's NWSE

S

R

(Classified to Heck's plot)

Proposed pu

proposed

proposed

12

Limited to 200 acres/year
in 720 acre boundary

- Permit wells
- Previous Parker wells (proposed)
- Domestic wells

Attachment A
Permit 67-14750

RHS Ralston Hydrologic Services, Inc.

GROUND WATER CONSULTING AND EDUCATION
1122 East B Street, Moscow, ID USA 83843
Voice and FAX 208-883-0533, E-mail ralston@moscow.com

MEMORANDUM

To: Jo Beeman
From: Dale R. Ralston
Subject: Initial Hydrogeologic Analysis
Date: November 6, 2008

The purpose of this memo is to provide you with my initial hydrogeologic analysis of the M3 Eagle project. I anticipate writing a more detailed hydrogeologic analysis after having more time to review existing reports and receiving and reviewing additional M3 Eagle information that may be made available. This memo is divided into four sections. The first section provides a summary description of the hydrogeologic information provided to date. The second section is my analysis of the hydrogeologic conceptual model as presented. The third section is my analysis of the ground-water flow systems as presented. The fourth section is my analysis of likely impacts from full project development. The references cited are listed at the end of the memo.

SUMMARY OF M3 EAGLE DESCRIPTION OF THE GROUND-WATER SYSTEM

The following quotes are taken from the 2007 report entitled "*M3 Eagle Regional Hydrogeologic Characterization – North Ada Canyon and Gem Counties, Idaho – Year One Progress Report*" (Hydro Logic Inc. 2007).

"Hydrogeologic studies commissioned by M3 Eagle in the North Ada County area have delineated a highly productive regional sand aquifer with good quality water that underlies the area near Eagle and Star and the proposed M3 Eagle planned community. This aquifer, herein named the Pierce Gulch Sand Aquifer, underlies the north Ada County Foothills where it extends continuously from the Eagle-Star area to the Payette River Valley. Because the Payette Valley near Letha is almost 300 feet lower than the Boise Valley near Eagle, ground water flows out of the Boise River Basin and into the Payette River Basin through the sands of this aquifer.... The ground water proposed to be withdrawn by M3 Eagle for its development will be from subsurface flow that has already departed the Boise Basin, on its way to the Payette Basin, so that impacts to existing area water users in the lowlands near Eagle are predicted to be small" (page 1).

"The Pierce Gulch Sand Aquifer consists of a 150-to-275-foot thick sequence of stratified sand layers with inter-bedded thin and locally discontinuous layers of silt and clay. The base of the dipping aquifer is typically 480-to-700 feet deep beneath land surface of the M3 Eagle site. The aquifer sand thickens and

descends deeper beneath of land surface to the south and southwest in the Eagle-Star-Meridian area and is believed to do the same to the northwest toward Payette River” (page 3).

“The Pierce Gulch Sand Aquifer is bounded on its northeast side by the geologic fault system ... originally named the West Boise-Eagle fault by Wood and Anderson (1981). The base of the aquifer is underlain (and bounded) by the thick clays and mudstones of the Terteling Springs Formation. This structural dip explains why the municipals wells in Star are deeper than they are in Eagle. In the Boise River Valley near Eagle and Star, the Pierce Gulch Sand Aquifer is overlain by clays, some other minor sand aquifers, and a shallow surficial floodplain-gravel aquifer (the present day floodplain of the Boise River). Beneath most of the M3 Eagle site, the aquifer is overlain by clay layers with no shallow surficial aquifer present” (pages 3 and 4).

“Using the derived aquifer transmissivity values and the measured water levels in wells to derive a ground water gradient, our analyses indicate that 20 to 30 mgd (million gallons per day (equivalent to approximately 22 thousand to 34 thousand ac ft/yr (acre feet per year)) of ground water currently flows in a northwesterly direction through the Pierce Gulch Sand Aquifer beneath a five-mile wide strip of the M3 site between State Highway 16 and the inferred edge of the pierce Gulch sand aquifer ...” (page 5).

ANALYSIS OF THE HYDROGEOLOGIC CONCEPTUAL MODEL

The question of primary importance relative to the hydrogeologic conceptual model presented in the Hydro Logic Inc. 2007 report is stated below.

- **Is there sufficient evidence to support the presumption of lateral extent and continuity of what has been called the Pierce Gulch Sand Aquifer from the presumed recharge area in the Boise River drainage to the presumed discharge area in the Payette River drainage?**

Supporting evidence for the lateral extent and continuity of a geologic unit comes from knowledge of the depositional environment, surface geologic maps and geologic information from wells. These topics are addressed below.

- The Hydro Logic Inc. (2007) report provides only limited information on the depositional environment for the target aquifer. However, considerable discussion of the depositional environment during emplacement of the geologic units is available in supporting documents. Most of the scientific articles describe conditions southwest of the M3 Eagle development. I was not able to find any discussion of the depositional environment that would result in the sand unit extending and being laterally continuous to the vicinity of the Payette River valley.
- I was not able to find a published geologic map that provides information on outcrops patterns of Pierce Gulch Sand in the immediate vicinity or northwest of the M3 Eagle development.

- The Hydro Logic Inc. (2007) report provides subsurface geologic information in the vicinity of the M3 Eagle development in the form of a cross section. Support documents present geologic cross sections in areas southeast of the M3 Eagle property. I was not able to find any geologic cross sections for the area between the M3 Eagle property and the Payette River.

I conclude that there is not sufficient evidence to support the presumption of lateral extent and continuity of what has been called the Pierce Gulch Sand Aquifer from the M3 Eagle site to the Payette River. Also, additional work is needed to assemble and present the available information to support of presumption of lateral extent and continuity of what has been called the Pierce Gulch Sand Aquifer from the M3 Eagle site to the presumed recharge area in the Boise River drainage.

ANALYSIS OF THE GROUND-WATER FLOW SYSTEM

The question of primary importance relative to the ground-water flow system that is described in the Hydro Logic Inc. 2007 report is stated below.

- **Assuming that the hydrogeologic conceptual model question is answered in the affirmative, is there sufficient evidence to support the presumption that ground water flows in the manner and quantity described within what has been called the Pierce Gulch Sand Aquifer from the presumed recharge area in the Boise River drainage to the presumed discharge area in the Payette River drainage?**

Supporting evidence for the description of the ground-water flow system comes from the hydrogeologic conceptual model, water-level data from wells and estimates of transmissivity calculated using data collected during aquifer tests. These topics are addressed below.

- The heterogeneity of what has been called the Pierce Gulch Sand Aquifer is very important relative to the description of the ground-water flow system and particularly in the estimation of the quantity of water moving in the system. The following is a description of the Pierce Park sand by Squires and Wood (2001, pp. 13-14)
 - “Because this is the uppermost delta in the lacustrine sequence, we correlate it to the Pierce Park sand that crops out in the upper part of the foothills section west of Crane Creek. In the foothills, this unit is mostly foreset beds of coarse sand typical of the ‘Gilbert-type’ of delta. Some foreset bed sets are 60 feet thick, and the sand unit as a whole is up to 250 feet thick in the foothills... This delta is then correlated by Wood and Clemens (in press) to the history of Lake Idaho. Since it is the uppermost major delta in the section its deposition over mudstone, is explained as a prograding sand delta in response to the slow lowering of lake levels after Lake Idaho spilled over into Hells Canyon.... We feel fairly certain that there is a ‘long-term’ hydraulic connection in the sands of the upper delta sequence; however, local lenses of mudstone in that section may prevent short-term detection of well-drawdown responses. It may take

months to decades for large drawdowns to propagate through this seemingly continuous section of interbedded sand and thin muds.”

- The above quote from Squires and Wood (2001) indicates that ground-water flow patterns in what has been called the Pierce Gulch Sand Aquifer likely are more complex than is described in the Hydro Logic Inc. (2007) report. This likely is true for the portion of the postulated flow system that has been investigated (southeast of the M3 Eagle site) as well as the area northwest of the M3 Eagle site where little information is available.
- Figure 6 of the Hydro Logic Inc. (2007) report shows a complex pattern of water-level elevation contours in what appears to be several different ground-water flow systems. In my opinion, the figure raises many questions relative to characterization of ground-water flow systems. My questions include the following. 1) Are all of the wells in the purple colored area completed only in what has been called the Pierce Gulch Sand Aquifer? 2) Is there a vertical gradient within the Pierce Gulch Sand Aquifer and, if so, how are water levels from different wells interpreted? 3) What aquifer is penetrated by the wells located on within the Payette River floodplain? 4) Is the aquifer on the Payette River floodplain hydraulically connected to what is called the Pierce Gulch Sand Aquifer and, if so, how? 5) Do the flow lines represent ground-water discharge from the Pierce Gulch Sand Aquifer into whatever aquifer underlies the Payette River Valley?
- Figure 8 of the Hydro Logic Inc. (2007) report shows calculated values of transmissivity and storativity for selected wells in the general M3 Eagle area. The range of transmissivity values shown is consistent with the expected high level of heterogeneity and anisotropy believed to characterize the sand deposit. The transmissivity value(s) used in calculating an estimated flow through a portion of the target aquifer is not identified in the Hydro Logic Inc. report (2007, page 5).

I conclude that there is not sufficient evidence to support the presumption that ground water flows in the manner and quantity described within what has been called the Pierce Gulch Sand Aquifer from the presumed recharge area in the Boise River drainage to the presumed discharge area in the Payette River drainage?

ANALYSIS OF LIKELY IMPACTS FROM FULL PROJECT DEVELOPMENT

The question of primary importance relative to the subsurface water balance and likely impacts from full project development is stated below.

- **Has the characterization of the target aquifer system, including a pre-development water balance, been complete enough to support an analysis of impacts from full project development?**

Analysis of impacts from project development is dependent on gaining a suitable level of understanding of aquifer boundaries plus knowledge of the locations and controls for ground-water recharge and the locations and controls for ground-water discharge. These topics are addressed below.

- The Hydro Logic Inc. (2007) report identifies the northeast boundary of what has been called the Pierce Gulch Sand Aquifer but none of the other boundaries. Characterization of all of the aquifer boundaries is a necessary step for analysis of impacts from full project development.
- The Hydro Logic Inc. (2007) report indicates that recharge occurs to the aquifer within the Boise River basing with discharge within the Payette River basin. The report indicates that the “major source of ground water in the aquifer in the vicinity of Eagle is ground water underflow from areas south and east of the Boise River at Eagle. This ground water originates as direct infiltration from the Boise River in the east-central Boise area and through leakage from irrigation canals south and east of Eagle” (page 13). The report does not provide specifics relative to locations and characteristics of recharge in the Boise River basin or any information relative to locations and characteristics of ground-water discharge within the Payette River basin.
- A general description of the temporal sequence of impacts from development and operation of the project wells is presented below.
 - The initiation of consumptive withdrawal of water via wells from the aquifer would result in local water-level decline in the aquifer.
 - Continued operation of the wells would result in an ever increasing cone of depression (area of water-level decline) until pumping effects reach the recharge and/or discharge areas.
 - Water-level decline would cause an increase in recharge if recharge to the aquifer is head dependent (saturated hydraulic connection with a surface water system). Water-level decline would cause a decrease in the rate of ground-water discharge (all ground-water discharge rates are head dependent).
 - The basin water levels would stabilize if the rate of consumptive pumping was balanced by increased ground-water recharge and/or decreased ground-water discharge. The time required for the ground-water system to come into a new equilibrium is dependent on the size of the aquifer and hydraulic properties of the ground-water flow system.
 - Long-term water-level decline would occur if the consumptive withdrawal of ground water is greater than the annual rate of recharge.

I conclude that the characterization of the target aquifer system, including a pre-development water balance, has not been complete enough to support an analysis of impacts from full project development.

Please contact me if you have any questions relative to the information presented in this memorandum. Thank you.

REFERENCES CITED

- Hydro Logic Inc., 2007, M3 Eagle Regional Hydrogeologic Characterization – North Ada, Canyon and Gem Counties, Idaho – Year One Progress Report: Consulting Report Prepared for M3 Companies; 19 pages plus figures.
- Squires, E. and S.H. Wood, 2001, Stratigraphic Studies of the Boise (Idaho) Aquifer System Using Borehole Geophysical Logs with Emphasis on Facies Identification of Sand Aquifers: Report to the Treasure Valley Study, Idaho Department of Water Resources; Hydro Logic Inc. and Boise State University; 15 pages.



State of Idaho

DEPARTMENT OF WATER RESOURCES

2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Web Site: www.idwr.idaho.gov

WESTERN REGION

May 29, 2007

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Interim Director

SPF WATER ENGINEERING LLC
ATTN KRISTIN BRASTRUP
600 EAST RIVER PARK LANE SUTIE 105
BOISE ID 83706

RE: APPLICATION FOR PERMIT 63-32423. FOR JMM DRY CREEK LLC

Dear Ms. Brastrup:

Our office received the above application for permit for JMM Dry Ceek LLC on 8/22/2006. At the time the application was received, staff had been re-allocated to department obligations to the Snake River Basin Adjudication (SRBA). Most of those obligations have been satisfied, and I have been asked to review this application for permit. During my initial review, several questions and concerns have been raised that will need to be addressed before processing can continue. Please address the following items:

This application does not state whether or not this application is for current beneficial needs (within the next 5 years) or for future anticipated needs for this development. If the application were for future anticipated needs, then documentation that could be used to demonstrate substantial planning, design, and investment in the unconstructed capacity of the complete system would be required. This documentation would include the following.

- a.) Provision of an overall detailed design of the full capacity system for meeting reasonably anticipated future needs;
- b.) Financing plan demonstrating ability to fully pay the costs of the constructing the full capacity system needed to meet reasonably anticipated needs;
- c.) Completed environmental studies needed to satisfy legal or permitting requirements for some unconstructed portion or for all of the full capacity system;
- d.) Acquisition of lands needed for future wells, pumping stations, and other facilities consistent with the overall design for he full capacity system;
- e.) Substantial construction of distribution mains shown to be essential and integral potions of the full capacity system through water distribution network analysis;
- f.) Construction for distribution system or regulatory storage consistent with the overall design of the full capacity system; and development of operations protocol and infrastructure needed to operate the full capacity system consistent with the overall system design.

Page 2
JMM Dry Creek

I have enclosed a copy of Administrative Memorandum 63, which discusses reasonably anticipated future needs in more details. However, if the project will be fully completed within the 5-year development period, then the above information would not be needed.

We will also need additional information required by I. C. § 42-203A(5)(a-e) for "large diversion projects." This requirement includes the following items discussed in the enclosed copy of Water Appropriation Rule 40, Rule Subsections 040.05c through 040.05g:

1. effect on existing water rights
2. sufficiency of water supply
3. good faith, delay or speculative purposes
4. financial resources
5. local public interest.

For local public interest factors, please provide information as follows:

- Describe work the applicant has completed or will complete to become a municipal provider pursuant to I. C. § 42-202B(5).
- Describe work the applicant has completed or will complete to satisfy Ada County approval requirements.
- Send a comment letter to IDEQ. Provide a copy of that letter, and any response, to IDWR.

We will need the above information to continue processing your application for permit. This information will be reviewed and may require the department to request even more information, if more clarification is required. Due to the large amount of information requested in this letter, we will extend the 30-day standard deadline to return this information out to 60 days.

Please submit the requested information to allow final evaluation of your application to be completed. You may seek additional time to provide the information by making a written request to delay or interrupt processing. **Your written response including the requested information, or a request for more time to seek the information must be received by July 30, 2007.** The application will be voided or returned without a timely reply.

If you have any questions or concerns please contact me at the above address.

Respectfully,


Daniel A. Nelson
Sr. Water Right Agent

Enclosures

Water Appropriation Rules 40.05.c through 40.05.g

c. Information relative to the effect on existing water rights, Section 42-203A(5)(a), Idaho Code, shall be submitted as follows:

i. For applications appropriating springs or surface streams with five (5) or fewer existing users, either the identification number, or the name and address of the user, and the location of the point of diversion and nature of use for each existing water right shall be submitted.

ii. For applications appropriating groundwater, a plat shall be submitted locating the proposed well relative to all existing wells and springs and permitted wells within a one-half mile radius of the proposed well.

iii. Information shall be submitted concerning any design, construction, or operation techniques which will be employed to eliminate or reduce the impact on other water rights.

d. Information relative to sufficiency of water supply, Section 42-203A(5)(b), Idaho Code, shall be submitted as follows:

i. Information shall be submitted on the water requirements of the proposed project, including, but not limited to, the required diversion rate during the peak use period and the average use period, the volume to be diverted per year, the period of year that water is required, and the volume of water that will be consumptively used per year.

ii. Information shall be submitted on the quantity of water available from the source applied for, including, but not limited to, information concerning flow rates for surface water sources available during periods of peak and average project water demand, information concerning the properties of the aquifers that water is to be taken from for groundwater sources, and information on other sources of supply that may be used to supplement the applied for water source.

e. Information relative to good faith, delay, or speculative purposes of the applicant, Section 42-203A(5)(c), Idaho Code, shall be submitted as follows:

i. The applicant shall submit copies of deeds, leases, easements or applications for rights-of-way from federal or state agencies documenting a possessory interest in the lands necessary for all project facilities and the place of use or if such interest can be obtained by eminent domain proceedings the applicant must show that appropriate actions are being taken to obtain the interest. Applicants for hydropower uses shall also submit information required to demonstrate compliance with Sections 42-205 and 42-206, Idaho Code.

ii. The applicant shall submit copies of applications for other needed permits, licenses and approvals, and must keep the department apprised of the status of the applications and any subsequent approvals or denials.

f. Information Relative to Financial Resources, Section 42-203A(5)(d), Idaho Code, shall be submitted as follows:

i. The applicant shall submit a current financial statement certified to show the accuracy of the information contained therein, or a financial commitment letter along with the financial statement of the lender or other evidence to show that it is reasonably probable that financing will be available to appropriate the water and apply it to the beneficial use proposed.

ii. The applicant shall submit plans and specifications along with estimated construction costs for the project works. The plans shall be definite enough to allow for determination of project impacts and implications.

g. Information Relative to Conflict with the Local Public Interest, Section 42-203A(5)(e), Idaho Code, shall be submitted as follows:

The applicant shall seek comment and shall submit all letters of comment on the effects of the construction and operation of the proposed project from the governing body of the city and/or county and tribal reservation within which the point of diversion and place of use are located, the Idaho Department of Fish and Game, the Idaho Department of Environmental Quality, and any irrigation district or canal company within which the proposed project is located and from other entities as determined by the director.



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

ADMINISTRATIVE MEMORANDUM

Application Processing No. 63

To: Distribution List
From: L. Glen Saxton, P.E. *LS*
RE: **MUNICIPAL WATER RIGHTS**
Date: June 15, 1999

Attached is the Director's June 14, 1999, letter to Christopher H. Meyer in connection with municipal water rights. This letter provides guidance how the department will treat system capacity and other aspects of municipal uses.

Please discard my prior memo dated March 18, 1998, in connection with municipal use.



State of Idaho

DEPARTMENT OF WATER RESOURCES

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Phone: (208) 327-7900 FAX: (208) 327-7866 www.idwr.state.id.us/idwr/idwrhome.htm

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

June 14, 1999

Mr. Christopher H. Meyer
Givens Pursley LLP
Suite 200
277 North 6th Street
P. O. Box 2720
Boise, ID 83701

Re: Municipal Water Rights

Dear Chris:

I have finally been able to focus on the issues you framed in your various letters dating back to January 25, 1999, regarding municipal water rights under the 1996 Municipal Water Rights Act (Idaho Code §§ 42-202, 42-202B, 42-217, 42-219, and 42-222). I very much appreciate your patience in waiting for me to have sufficient time to respond to these issues, even though this matter is of some urgency for one of your clients, United Water Idaho ("United Water"). My response is divided into three general topics: (1) System-Wide Change Application; (2) System Capacity; and (3) Forfeiture of Municipal Water Rights.

System-Wide Change Application.

It is my understanding that when an existing well in United Water's system suffered reduced production over a period of time or when a well was damaged, United Water obtained new water rights to divert ground water from new wells. As a result, United Water holds water rights that authorize the diversion of more ground water than the current system of wells has the capacity to produce. As I suggested in our meeting on October 21, 1998, the difference between the total quantity of ground water authorized for diversion and use by all of the water rights held by United Water, versus the total capacity of the current system of wells, could be considered a portion of the amount of water necessary for United Water to provide for "reasonably anticipated future needs" within its service area. This could require meeting all of the conditions set forth in Idaho Code § 42-202B as well as the "capacity of the system" limitation in § 42-219(1).

To initiate the process through which a determination can be made whether a portion of the water rights held by United Water could be considered necessary to provide for reasonably anticipated future needs, United Water could file an application under Idaho Code § 42-222 to change the point of diversion authorized under each water right for ground water to include as

Mr. Christopher H. Meyer
June 14, 1999
Page 2 of 5

alternate points of diversion some or most of the wells in United Water's system that are currently operated as production wells. The location of each well to be used as an alternate point of diversion would have to be specifically identified. Together with identifying each well location by quarter-quarter section, it would be helpful if the longitude-latitude or geographic coordinates for each well could be provided as well. Similarly, for those water rights wherein the place of use is defined differently than the service area of United Water, the application could also propose to change the place of use for those water rights to the service area.

If United Water chooses to file a system-wide change application, notice of the application would be provided and the application processed as set forth in Idaho Code § 42-222. If the application is approved, the approval would be conditioned to prevent enlargement of the water rights and injury to other water rights. Conditions of approval would likely include limiting the diversion rate from each well to the diversion rate authorized by the original water right established at each well and setting forth the priority date of the original water right at each well as the effective implementation date of the alternate point of diversion. The effective implementation dates would be used in resolving any future claims of well interference by other well owners, but would not be viewed as secondary priority dates. Another condition that would be considered would not allow wells in ground water management areas to be used as alternate points of diversion for water rights established outside of those areas.

System Capacity

As we have previously discussed and as noted in your January 25 letter, Idaho Code § 42-219(1) was modified by the 1996 Municipal Water Rights Act to allow the issuance of a water right license to a municipal provider for "an amount up to the full capacity of the system constructed or used in accordance with the original permit . . ." Some might construe this limitation to require that a municipal provider fully construct the system used to divert or deliver water associated with a water right for an amount "reasonably necessary to provide for the existing uses and reasonably anticipated future needs within the service area . . ." However, such interpretation would not be consistent with the intent of the 1996 Municipal Water Rights Act.

The purpose of the language in Idaho Code § 42-219(1) that refers to "an amount up to the full capacity of the system constructed or used in accordance with the original permit" is to define the beneficial use requirement for a municipal water right which includes "reasonably anticipated future needs." If a municipal provider is limited to the amount of water which is actually diverted and used under a permit, then there would never be any amount of water included under a water right for reasonably anticipated future needs. Similarly, if a municipal provider is required to fully construct the system used to divert or deliver water for reasonably anticipated future needs, the provider would not have any flexibility in its water supply/distribution system to make adjustments as the reasonably anticipated future needs become reality. Such inflexibility would likely result in system modifications that would be inefficient and increase consumer costs; a result that would be incompatible with the objective of encouraging municipal providers to implement well-planned, efficient water supply/distribution systems. Consequently, the beneficial use requirement of "the full capacity of the system constructed or used in accordance with the original permit" for a municipal water

Mr. Christopher H. Meyer
June 14, 1999
Page 3 of 5

right which includes an amount of water for "reasonably anticipated future needs" must lie between the one extreme of fully constructing the system used to divert or deliver water for reasonably anticipated future needs and the other extreme of simply intending to construct the system at some future date.

The appropriate criteria for determining whether "the full capacity of the system [has been] constructed or used in accordance with the original permit" are the degree to which the full capacity of the system has been constructed and the consistency of the constructed capacity with a definitive plan for fully constructing the system, both of which can only be evaluated on a case by case basis. To provide some guidance as to how these criteria should be applied, the following hypothetical examples are offered.

Consider the case of a municipal water provider with a permit to appropriate an amount of surface water for "reasonably anticipated future needs." If the municipal provider fully constructed the necessary water treatment plant and the distribution mains needed to deliver the full amount of water under the water right, the "full capacity of the system" requirement (termed herein as the "full beneficial use requirement") would clearly be satisfied, whether or not water lines for individual users were connected to the distribution mains. But less constructed capacity could also satisfy the full beneficial use requirement. For example, if the municipal provider constructed only a portion of the necessary water treatment plant and only a portion of the distribution mains, and those constructed portions of the system were shown to be significant, integral parts of a detailed plan or design to provide the full capacity of the system, the full beneficial use requirement could still be satisfied provided a substantial investment in the unconstructed capacity of the total system had been made. However, if the municipal water provider constructed a water treatment plant with limited potential for expansion which could treat only a small portion of the water authorized under the permit to appropriate water, constructed an isolated portion of the distribution mains needed to deliver the full amount of water, or otherwise made only a small investment in the unconstructed capacity of the planned system, the water right license might appropriately be issued for an amount of water less than the amount authorized by the permit or the planned full capacity of the system.

For a municipal provider with a permit to appropriate an amount of ground water for reasonably anticipated future needs, construction of the well or wells and the distribution mains needed to divert and deliver the full amount of ground water authorized under the permit should clearly satisfy the full beneficial use requirement. But like the hypothetical provider of treated surface water, less constructed capacity for a ground water system could also satisfy the requirement if the constructed portions of the system were shown to be significant, integral phases of implementing a detailed plan to provide the full capacity of the system and there was substantial planning, design, and investment in the unconstructed capacity of the complete system. Documentation that could be used to demonstrate substantial planning, design, and investment in the unconstructed capacity of the complete system includes the following:

- provision of an overall detailed design of the full capacity system for meeting reasonably anticipated future needs;
- financing plan demonstrating ability to fully pay the costs of constructing the full capacity system needed to meet reasonably anticipated needs;

Mr. Christopher H. Meyer
June 14, 1999
Page 4 of 5

- completed environmental studies needed to satisfy legal or permitting requirements for some unconstructed portion or for all of the full capacity system;
- acquisition of lands needed for future wells, pumping stations, and other facilities consistent with the overall design for the full capacity system;
- substantial construction of distribution mains shown to be essential and integral portions of the full capacity system through water distribution network analysis;
- construction of distribution system or regulatory storage consistent with the overall design of the full capacity system; and
- development of operations protocol and infrastructure needed to operate the full capacity system consistent with the overall system design.

There may be other information that a municipal water provider could also provide to demonstrate that constructed portions of the system were significant phases of implementing a detailed plan to construct the full capacity of the system and that substantial investment had been made in the unconstructed capacity of the complete system. However, any single factor alone probably would not be sufficient to demonstrate that the full beneficial use requirement for a municipal water right had been satisfied. Rather, constructed capacity and all of the information used to demonstrate substantial planning, design, and investment in unconstructed capacity of the complete system would be weighed as a whole in determining whether the beneficial use requirement had been met.

The type of information outlined above that could be used to satisfy the full beneficial use requirement for a municipal water right is similar to the information required in Colorado to establish and maintain a conditional water right. In fact, under the 1996 Municipal Water Rights Act, that portion of a municipal water right in Idaho that includes an amount of water for reasonably anticipated future needs could be viewed as somewhat analogous to a conditional water right in Colorado.

Please note that I have not attempted to outline the type of information that should be considered in supporting the "reasonably anticipated future needs" that a municipal water provider might claim. However, Idaho Code § 42-202B(5) describes in general the information that would be required to support an appropriation of water for "reasonably anticipated future needs."

Forfeiture of Municipal Water Rights

In your recent letter dated June 3, 1999, you provided some information that could be interpreted to suggest that a water right held by a municipal corporation, or another municipal provider as defined by the 1996 Municipal Water Rights Act, may not generally be subject to

Mr. Christopher H. Meyer
June 14, 1999
Page 5 of 5

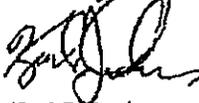
forfeiture. Although the basis for forfeiture is different for a municipal water right, just as the standard for beneficial use is different as discussed above, I would disagree with a conclusion that municipal water rights are immune from forfeiture.

When a municipal provider is granted a permit to appropriate water for "reasonably anticipated future needs" within the planning horizon for the municipality, the permit will be conditioned to require that the full system capacity needed to provide water for the reasonably anticipated future needs be constructed by the end of the municipality's planning horizon. The municipal provider will then be required to submit proof of beneficial use evidenced by construction of system capacity and substantial planning, design, and investment in the unconstructed capacity of the complete system by the end of the permit development period. If proof is not submitted and an extension to the permit development period has not been granted, as provided under Idaho Code § 42-204, the municipal provider shall be deemed to have lost all rights under its permit.

If sufficient proof of beneficial use is submitted before the end of the permit development period and the municipal water right is licensed for an amount of water for "reasonably anticipated future needs," the requirement that the full system capacity needed to provide water for the reasonably anticipated future needs be constructed by the end of the municipality's planning horizon will continue as a condition of the license. If the municipal provider fails to construct the full system capacity needed to provide water for the reasonably anticipated future needs by the end of the planning horizon for the municipality, or the anticipated future needs do not materialize by the end of the planning horizon, the quantity of water under the license may be reduced to the capacity of the constructed system or the amount of water required to meet the needs that actually exist at the end of the planning horizon. Although a municipal provider can revise the planning horizon and amend its projections of reasonably anticipated future needs subsequent to the water right license being issued, provided the criteria in Idaho Code § 42-202B(5) are fully satisfied, the water right remains subject to being reduced or forfeited if actual use of the water does not occur. Municipal water rights established prior to the 1996 Municipal Water Rights Act might also be subject to common law abandonment or forfeiture if the rights are not required to satisfy reasonable future needs of the municipality.

I hope these thoughts on the issues you raised are helpful to you and your clients. I intend to have these concepts incorporated in a guidance memorandum for staff of the Department of Water Resources so that the 1996 Municipal Water Rights Act is implemented uniformly. If you have additional questions or would like to discuss these issues or others further, we can arrange to meet again.

Sincerely



Karl J. Dreher
Director

cc: IDWR Water Management Division
Ed Squires / Scott Rhead - United Water

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NOV 07 2008

DEPARTMENT OF
WATER RESOURCES

Jeffrey C. Fereday [ISB No. 2719]
Michael P. Lawrence [ISB No. 7288]
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Attorneys for M3 Eagle LLC

**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

**NOTICE OF DEPOSITION OF
TIMOTHY MILBURN**

TO: TIMOTHY MILBURN

PLEASE TAKE NOTICE that on December 1, 2008 at 8:00 a.m. at the offices of Givens Pursley, LLP, 601 W. Bannock St., Boise, Idaho, counsel for the Applicant M3 Eagle LLC, will take the deposition of Timothy Milburn, a protestant in the above-entitled action upon oral examination pursuant to Rule 30 of the Idaho Rules of Civil Procedure, before a Notary Public, or before some other officer authorized by law to administer oaths, and continuing from day to day thereafter, until the deposition is completed. You are notified and required to appear and provide testimony under oath.

DATED this 7th day of November, 2008.

Respectfully submitted,

GIVENS PURSLEY LLP

By Jeffrey C. Fereday
Jeffrey C. Fereday
Michael P. Lawrence

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of November 2008, the foregoing was filed, served, or copied as follows:

FILED

Idaho Department of Water Resources
Attn: Gary L. Spackman
322 East Front Street
P.O. Box 83720
Boise, ID 83720-0098

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North Ada County Groundwater Users Association
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Beeman & Associates PC
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Bill Lawton, Spokesman for
Robert L. Wood
M. Howard Goldman
Timothy R. Milburn
3145 Osprey Road
Eagle, ID 83616

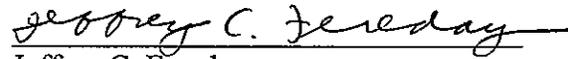
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Jeffrey C. Fereday

Jeffrey C. Fereday [ISB No. 2719]
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Attorneys for M3 Eagle LLC

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DEPARTMENT OF
WATER RESOURCES

**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

**NOTICE OF DEPOSITION OF
RICHARD LAGERSTROM**

TO: RICHARD LAGERSTROM

PLEASE TAKE NOTICE that on December 1, 2008 at 10:30 a.m. at the offices of Givens Pursley, LLP, 601 W. Bannock St., Boise, Idaho, counsel for the Applicant M3 Eagle LLC, will take the deposition of Richard Lagerstrom, a protestant in the above-entitled action upon oral examination pursuant to Rule 30 of the Idaho Rules of Civil Procedure, before a Notary Public, or before some other officer authorized by law to administer oaths, and continuing from day to day thereafter, until the deposition is completed. You are notified and required to appear and provide testimony under oath.

DATED this 7th day of November, 2008.

Respectfully submitted,

GIVENS PURSLEY LLP

By Jeffrey C. Fereday
Jeffrey C. Fereday
Michael P. Lawrence

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of November 2008, the foregoing was filed, served, or copied as follows:

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Idaho Department of Water Resources
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North Ada County Groundwater Users Association
Josephine P. Beeman
Beeman & Associates PC
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Boise, ID 83702-6049

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Richard Lagerstrom
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Bill Lawton, Spokesman for
Robert L. Wood
M. Howard Goldman
Timothy R. Milburn
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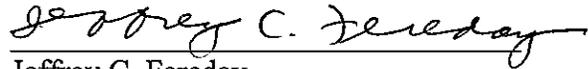
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Jeffrey C. Fereday

Jeffrey C. Fereday [ISB No. 2719]
Michael P. Lawrence [ISB No. 7288]
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Attorneys for M3 Eagle LLC

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DEPARTMENT OF
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**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

**NOTICE OF DEPOSITION OF
SHELBY CONRAD**

TO: SHELBY CONRAD

PLEASE TAKE NOTICE that on December 1, 2008 at 1:00 p.m. at the offices of Givens Pursley, LLP, 601 W. Bannock St., Boise, Idaho, counsel for the Applicant M3 Eagle LLC, will take the deposition of Shelby Conrad, a protestant in the above-entitled action upon oral examination pursuant to Rule 30 of the Idaho Rules of Civil Procedure, before a Notary Public, or before some other officer authorized by law to administer oaths, and continuing from day to day thereafter, until the deposition is completed. You are notified and required to appear and provide testimony under oath.

DATED this 7th day of November, 2008.

Respectfully submitted,

GIVENS PURSLEY LLP

By Jeffrey C. Fereday
Jeffrey C. Fereday
Michael P. Lawrence

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of November 2008, the foregoing was filed, served, or copied as follows:

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North Ada County Groundwater Users Association
Josephine P. Beeman
Beeman & Associates PC
409 West Jefferson
Boise, ID 83702-6049

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Shelby Conrad
2022 N. Eagle Road
Eagle, ID 83616

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Bill Lawton, Spokesman for
Robert L. Wood
M. Howard Goldman
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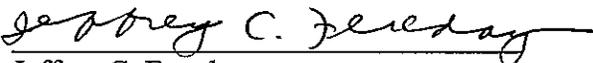
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Jeffrey C. Fereday

Jeffrey C. Fereday [ISB No. 2719]
Michael P. Lawrence [ISB No. 7288]
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Attorneys for M3 Eagle LLC

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**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

**NOTICE OF DEPOSITION OF
STEVEN C. PURVIS**

TO: STEVEN C. PURVIS

PLEASE TAKE NOTICE that on December 1, 2008 at 3:30 p.m. at the offices of Givens Pursley, LLP, 601 W. Bannock St., Boise, Idaho, counsel for the Applicant M3 Eagle LLC, will take the deposition of Steven C. Purvis, a protestant in the above-entitled action upon oral examination pursuant to Rule 30 of the Idaho Rules of Civil Procedure, before a Notary Public, or before some other officer authorized by law to administer oaths, and continuing from day to day thereafter, until the deposition is completed. You are notified and required to appear and provide testimony under oath.

DATED this 7th day of November, 2008.

Respectfully submitted,

GIVENS PURSLEY LLP

By Jeffrey C. Pereday
Jeffrey C. Pereday
Michael P. Lawrence

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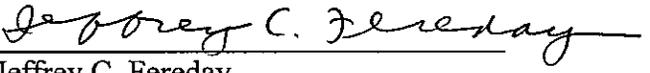
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Jeffrey C. Fereday

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Attorneys for M3 Eagle LLC

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DEPARTMENT OF
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**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

**NOTICE OF DEPOSITION OF
ROBERT S. NICCOLLS JR.**

TO: ROBERT S. NICCOLLS, JR.

PLEASE TAKE NOTICE that on December 2, 2008 at 8:00 a.m. at the offices of Givens Pursley, LLP, 601 W. Bannock St., Boise, Idaho, counsel for the Applicant M3 Eagle LLC, will take the deposition of Robert S. Niccolls, Jr., a protestant in the above-entitled action upon oral examination pursuant to Rule 30 of the Idaho Rules of Civil Procedure, before a Notary Public, or before some other officer authorized by law to administer oaths, and continuing from day to day thereafter, until the deposition is completed. You are notified and required to appear and provide testimony under oath.

DATED this 7th day of November, 2008.

Respectfully submitted,

GIVENS PURSLEY LLP

By Jeffrey C. Fereday
Jeffrey C. Fereday
Michael P. Lawrence

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I HEREBY CERTIFY that on this 7th day of November 2008, the foregoing was filed, served, or copied as follows:

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SERVICE

John Westra
Western Regional Office
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705-5082

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North Ada County Groundwater Users Association
Josephine P. Beeman
Beeman & Associates PC
409 West Jefferson
Boise, ID 83702-6049

U. S. Mail
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Robert S. Niccolls, Jr.
P.O. Box 968
Eagle, ID 83616

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Bill Lawton, Spokesman for
Robert L. Wood
M. Howard Goldman
Timothy R. Milburn
3145 Osprey Road
Eagle, ID 83616

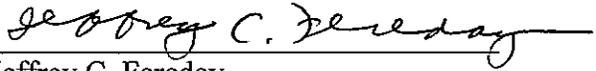
U. S. Mail
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Norman Edwards
884 W. Beacon Light Road
Eagle, ID 83616

U. S. Mail
 Hand Delivered
 Overnight Mail
 Facsimile
 E-mail

Alan Smith
3135 N. Osprey Road
Eagle, ID 83616

U. S. Mail
 Hand Delivered
 Overnight Mail
 Facsimile
 E-mail



Jeffrey C. Fereday

Jeffrey C. Fereday [ISB No. 2719]
Michael P. Lawrence [ISB No. 7288]
GIVENS PURSLEY LLP
601 West Bannock Street
P.O. Box 2720
Boise, Idaho 83701-2720
Office: (208) 388-1200
Fax: (208) 388-1300
www.givenspursley.com
Attorneys for M3 Eagle LLC

RECEIVED
NOV 07 2008
DEPARTMENT OF
WATER RESOURCES

**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

**NOTICE OF DEPOSITION OF
GEORGE W. KEYES**

TO: GEORGE W. KEYES

PLEASE TAKE NOTICE that on December 2, 2008 at 10:30 a.m. at the offices of Givens Pursley, LLP, 601 W. Bannock St., Boise, Idaho, counsel for the Applicant M3 Eagle LLC, will take the deposition of George W. Keyes, a protestant in the above-entitled action upon oral examination pursuant to Rule 30 of the Idaho Rules of Civil Procedure, before a Notary Public, or before some other officer authorized by law to administer oaths, and continuing from day to day thereafter, until the deposition is completed. You are notified and required to appear and provide testimony under oath.

DATED this 7th day of November, 2008.

Respectfully submitted,

GIVENS PURSLEY LLP

By Jeffrey C. Fereday
Jeffrey C. Fereday
Michael P. Lawrence

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of November 2008, the foregoing was filed, served, or copied as follows:

FILED

Idaho Department of Water Resources
Attn: Gary L. Spackman
322 East Front Street
P.O. Box 83720
Boise, ID 83720-0098

U. S. Mail
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North Ada County Groundwater Users Association
Josephine P. Beeman
Beeman & Associates PC
409 West Jefferson
Boise, ID 83702-6049

U. S. Mail
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George W. Keyes
3898 N. Saddleman Place
Eagle, ID 83616

U. S. Mail
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Bill Lawton, Spokesman for
Robert L. Wood
M. Howard Goldman
Timothy R. Milburn
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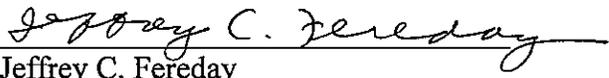
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 E-mail

Alan Smith
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Jeffrey C. Fereday

Jeffrey C. Fereday [ISB No. 2719]
Michael P. Lawrence [ISB No. 7288]
GIVENS PURSLEY LLP
601 West Bannock Street
P.O. Box 2720
Boise, Idaho 83701-2720
Office: (208) 388-1200
Fax: (208) 388-1300
www.givenspursley.com
Attorneys for M3 Eagle LLC

RECEIVED
NOV 07 2008
DEPARTMENT OF
WATER RESOURCES

**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

**NOTICE OF DEPOSITION OF
LINDA D. BURKE**

TO: LINDA D. BURKE

PLEASE TAKE NOTICE that on December 2, 2008 at 1:00 p.m. at the offices of Givens Pursley, LLP, 601 W. Bannock St., Boise, Idaho, counsel for the Applicant M3 Eagle LLC, will take the deposition of Linda D. Burke, a protestant in the above-entitled action upon oral examination pursuant to Rule 30 of the Idaho Rules of Civil Procedure, before a Notary Public, or before some other officer authorized by law to administer oaths, and continuing from day to day thereafter, until the deposition is completed. You are notified and required to appear and provide testimony under oath.

DATED this 7th day of November, 2008.

Respectfully submitted,

GIVENS PURSLEY LLP

By Jeffrey C. Fereday
Jeffrey C. Fereday
Michael P. Lawrence

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of November 2008, the foregoing was filed, served, or copied as follows:

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Beeman & Associates PC
409 West Jefferson
Boise, ID 83702-6049

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Linda D. Burke
256 Beacon Light Road
Eagle, ID 83616

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Bill Lawton, Spokesman for
Robert L. Wood
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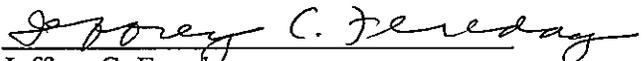
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Alan Smith
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Jeffrey C. Fereday

Jeffrey C. Fereday [ISB No. 2719]
Michael P. Lawrence [ISB No. 7288]
GIVENS PURSLEY LLP
601 West Bannock Street
P.O. Box 2720
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Office: (208) 388-1200
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www.givenspursley.com
Attorneys for M3 Eagle LLC

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**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

**NOTICE OF DEPOSITION OF
JOHN L. THORNTON**

TO: JOHN L. THORNTON

PLEASE TAKE NOTICE that on December 2, 2008 at 3:30 p.m. at the offices of Givens Pursley, LLP, 601 W. Bannock St., Boise, Idaho, counsel for the Applicant M3 Eagle LLC, will take the deposition of John L. Thornton, a protestant in the above-entitled action upon oral examination pursuant to Rule 30 of the Idaho Rules of Civil Procedure, before a Notary Public, or before some other officer authorized by law to administer oaths, and continuing from day to day thereafter, until the deposition is completed. You are notified and required to appear and provide testimony under oath.

DATED this 7th day of November, 2008.

Respectfully submitted,

GIVENS PURSLEY LLP

By Jeffrey C. Fereday
Jeffrey C. Fereday
Michael P. Lawrence

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of November 2008, the foregoing was filed, served, or copied as follows:

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John L. Thornton
5264 N. Sky High Lane
Eagle, ID 83616

U. S. Mail
 Hand Delivered
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 E-mail

Bill Lawton, Spokesman for
Robert L. Wood
M. Howard Goldman
Timothy R. Milburn
3145 Osprey Road
Eagle, ID 83616

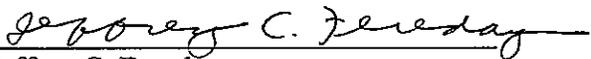
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Alan Smith
3135 N. Osprey Road
Eagle, ID 83616

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Jeffrey C. Fereday

RECEIVED

NOV 03 2008

DEPARTMENT OF
WATER RESOURCES

October 28, 2008

Gary Spackman, Hearing Officer
State of Idaho
Department of Water Resources
322 E Front Street
PO Box 83720
Boise, Idaho 83720-0098

Dear Sir:

Enclosed is a motion to reinstate Eagle Pines Water Association as a protestant in the M3 Application #63-32573.

There is some confusion as to whether Eagle Pines Water Association was dismissed since Brent Watson did not appear for Eagle Pines Water. It is out view that Eagle Pines did appear at that hearing as one member, Bill Lawton, and two board members, Alan Smith and Norman Edwards, were present and Eagle Pines Water should therefor not be dismissed.

In the even you conclude that Eagle Pines Water was dismissed, then we request that this Motion for Reinstatement be considered as Eagle Pines is registered with the Secretary of State as of September 15th as required by your Order. This would appear to be a reasonably prompt effort to comply with that order.

Sincerely,



Alan Smith

*Norman Edwards is also an officer of
Eagle Pines.*



ALAN SMITH
3135 OSPREY
EAGLE, IDAHO 83616-2725
(208) 939-6575

RECEIVED

NOV 03 2008

DEPARTMENT OF
WATER RESOURCES

IN THE MATTER OF APPLICATION
FOR PERMIT NO. 63-32576 IN THE
NAME OF M3 EAGLE LLC

MOTION

Comes now Alan Smith, Board member and Registered Agent for Eagle Pines Subdivision Water Association and as representative thereof and hereby makes a Motion for the Reinstatement of Eagle Pines Water Association as a Protestant herein.

BASIS FOR THIS MOTION

The protest filed by Eagle Pines Water Association in the above entitled matter was not only signed by Brent Watson as president, but was also signed by all five (5) board members, two of which, Norman Edwards and Alan Smith, were present at the Pre-Hearing and stated on the record that they were appearing individually and as representatives of Eagle Pines Water Association. Eagle Pines therefor appeared as required by the Pre-Hearing Order. A copy of the Protest signed by all board members is attached hereto as Exhibit A.

That attached hereto as Exhibit B is a copy of the letter to IDWR dated September 15,

2008 regarding the re-filing of Articles of Incorporation.

Attached hereto as Exhibit C is a copy of the Articles of Incorporation filed with the Secretary of State thereby establishing that Eagle Pines Water is an Association registered with the Secretary of the State of Idaho as required by the Pre-Hearing Order dated August 5, 2008.



Alan Smith,
Representative for Protestant Eagle Pines Association

CERTIFICATE OF SERVICE

I hereby Certify that on October 28th, 2008, a true and correct copy of the foregoing Motion and Attached Exhibits were mailed to Jeffrey Fereday, Josephine Beeman, Bill Lawton, and Norman Edwards.



EXHIBIT A

NOTICE OF PROTEST PURSUANT TO IDAHO CODE § 42-203A

A/

A. Matter protested: Application for Permit No. 63-32573 filed by M3 Eagle LLC on or about 11/21/2006, and all amendments thereto.

B. Protestant's name: Eagle Pines Water User Assn

C. Protestant's water right number(s): 63-03-018

D. Priority date(s): 1-4-1955

E. Protestant's representative for service: Brent Wyattson

F. Service address: 3357 N. Osprey Rd.
Eagle, Id 83616

G. Service phone #: 208 939-0374

H. Proposed source of diversion: Groundwater

I. Basis of Protest:

(1) The proposed diversion of groundwater by M3 has the potential for significant adverse affects to my senior water rights, including , but not limited to, reduction in quality and/or quantity of my senior water rights.

(2) At the current time, there is insufficient hydrological data or evidence to support a finding by the IDWR that M3's proposed diversion of groundwater will not conflict with the local public interest, as defined in Idaho Code § 42-202B(3), and as required by Idaho Code § 42-203A.

(3) At the current time, there is insufficient hydrological data or evidence to determine whether the ground water supply in the relevant area is sufficient to support M3's proposed level of diversion of groundwater [See Idaho Code § 42-203A(5)(b)].

(4) At the current time, there is insufficient hydrological data or evidence to determine whether M3's proposed groundwater diversion adversely affects the local economy of the watershed within which the source of water for the proposed use originates.

(5) The M3 application requests authorization to divert a significant quantity of groundwater from undefined and unquantified foothills aquifers – aquifers which the IDWR proposes to study and model in the near future with aquifers in an area for which IDWR will establish a water budget, before applicant has any need to put its proposed water rights to beneficial use.

(6) The M3 application requests water rights sufficient to support a 20-year residential development plan, all before completion of the aforementioned IDWR foothills study and water budget establishment. IDWR should only consider granting M3 water rights for that amount of water which M3 can put to beneficial use in the reasonably foreseeable future.

K. Resolution of Protest:

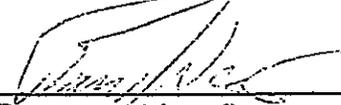
1. This protest may be resolved only upon the collection and presentation of substantial and competent evidence to support findings that: (a.) the proposed diversion of groundwater by M3 will not adversely affect my senior water rights, including, but not limited to, reduction in quality and/or quantity; (b.) M3's proposed diversion of groundwater will not conflict with the local public interest, as defined in Idaho Code § 42-202B(3); (c.) the groundwater supply in the areas relevant to M3's application is sufficient to support M3's proposed level of diversion of groundwater; and (d.) M3's proposed groundwater diversion does not adversely affect the local economy of the watershed in within which the source of water for the proposal originates.

2. This protest may be resolved upon IDWR's completion of its planned study and modeling of the relevant area and completion of IDWR's water budget for any affected aquifers—assuming that such study and modeling results in substantial and competent evidence to support the findings listed above.

3. This protest may be resolved by (a.) a combination of phased in granting of groundwater rights at no more than 2 CFS per phase to the applicant, along with (b.) a sufficient aquifer monitoring program to gather substantial and competent evidence to support the findings listed above.

I certify that I or one of my representatives has served a copy of this protest upon the applicant.

Signed this 14 day of May, 2008.



Protestant (signed)

Brent R. Whorson

Protestant (printed).

Norman H. Edwards
Norman H. Edwards

L. Alan Smith
L. ALAN SMITH

David H. Sparks
NOTICE OF PROTEST - PAGE 2 OF 2
(GODSHALL)

David H. Sparks
David H Sparks

EXHIBIT B

September 15, 2008

Gary Spackman, Hearing Officer
State of Idaho
Department of Water Resources
322 E Front Street
PO Box 83720
Boise, Idaho 83720-0098

Dear Sir:

In accordance with your PreHearing Order, Eagle Pines Water Association hereby submits to IDWR a duplicate copy of the Articles of Incorporation for Eagle Pines Water Association.

Upon seeking to comply with your order we discovered that the corporation charter or license had been forfeited several years ago for failing to file an annual report.

We have therefore filed new articles to incorporate along with the required fee and should be registered with the office of the Secretary of State within a few days as was required by your order.

Those documents were mailed to the Secretary of State on September 12, 2008.

Sincerely,

Alan Smith



ARTICLES OF INCORPORATION

(Non-Profit)

(Instructions on back of application)

The undersigned, in order to form a Non-Profit Corporation under the provisions of Title 30, Chapter 3, Idaho Code, submits the following articles of incorporation to the Secretary of State.

Article 1: The name of the corporation shall be:

Eagle Pines Subdivision Water Association, Inc.

Article 2: The purpose for which the corporation is organized is:

Pumping and delivering irrigation ground water to Eagle Pines Sub.

Article 3: The street address of the registered office is: 3135 N. Osprey Rd. Eagle, Idaho 83616

and the registered agent at such address is: L. Alan Smith

Article 4: The board of directors shall consist of no fewer than three (3) people. The names and addresses of the initial directors are:

Norman L. Edwards, 884 W. Beacon Light Rd, Eagle 83616
Brent Watson - 3357 N. Osprey, Eagle Hal Godshall, 1252 Meander Dr. Eagle
Daryl Sparks - 3120 N. Osprey, Eagle L. Alan Smith, 3135 N. Osprey Eagle 83616

Article 5: The name(s) and address(es) of the incorporator(s):

Norman Edwards, (see above)
L. Alan Smith (see above)
William Lawton 3145 N. Osprey Rd. Eagle, Idaho 83616

Article 6: The mailing address of the corporation shall be:

3135 Osprey Rd. Eagle, Idaho 83616-2725

Article 7: The corporation (does does not) have voting members.

Article 8: Upon dissolution the assets shall be distributed:

to elected board members

Signatures of all incorporators:

Norman L. Edwards Typed Name: Norman L. Edwards
L. Alan Smith Typed Name: L. ALAN SMITH
William Lawton Typed Name: William L. Lawton

Customer Acct #:
(if using pre-paid account)
Secretary of State use only
g:\corp\form\incorp form\start\incorpno1.p65
Revised 07/2002



ARTICLES OF INCORPORATION (Non-Profit)

08 SEP 15 AM 9:00

(Instructions on back of application)

SECRETARY OF STATE STATE OF IDAHO

The undersigned, in order to form a Non-Profit Corporation under the provisions of Title 30, Chapter 3, Idaho Code, submits the following articles of incorporation to the Secretary of State.

Article 1: The name of the corporation shall be:

Eagle Pines Subdivision Water Association, Inc.

Article 2: The purpose for which the corporation is organized is:

Pumping and delivering irrigation ground water to Eagle Pines Subdivision

Article 3: The street address of the registered office is: 3135 N. Popokey Rd, Eagle, Id 83616

and the registered agent at such address is: Alan Smith

Article 4: The board of directors shall consist of no fewer than three (3) people. The names and addresses of the initial directors are:

Norman L. Edwards - 884 W. Beacon Light Rd, Eagle 83616
David Watson - 3357 N. Popokey Rd, Eagle 83616 / Hal Goldshell 1252 Meander, Eagle
Alan Smith - 3135 N. Popokey, Eagle 83616 / David Sparks 3120 N. Popokey, Eagle 83616

Article 5: The name(s) and address(es) of the incorporator(s):

Norman L. Edwards, 884 W. Beacon Light Rd, Eagle, Id 83616
L. Alan Smith, 3135 N. Popokey Rd, Eagle, Id 83616
William L. Lawton, 3145 N. Popokey Rd, Eagle, Id 83616

Article 6: The mailing address of the corporation shall be:

3135 N. Popokey Rd, Eagle, Idaho 83616-2725

Article 7: The corporation (X) does () does not have voting members.

Article 8: Upon dissolution the assets shall be distributed:

To the elected board members

Signatures of all incorporators:

Norman L. Edwards Typed Name: Norman L. Edwards
L. Alan Smith Typed Name: L. ALAN SMITH
William L. Lawton Typed Name: William L. LAWTON

Customer Acct #:
Secretary of State use only
@180085
IDAHO SECRETARY OF STATE
09/15/2008 05:00
CK: 322 CT: 229699 BH: 1135749
1 @ 30.00 = 30.00 INC NONP # 2

Jeffrey C. Fereday [ISB No. 2719]
Michael P. Lawrence [ISB No. 7288]
GIVENS PURSLEY LLP
601 West Bannock Street
P.O. Box 2720
Boise, Idaho 83701-2720
Office: (208) 388-1200
Fax: (208) 388-1300
www.givenspursley.com
Attorneys for M3 Eagle LLC

RECEIVED
OCT 31 2008
DEPARTMENT OF
WATER RESOURCES

**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

**NOTICE OF DEPOSITION OF
NORMAN YOUNG**

TO: NORMAN YOUNG

PLEASE TAKE NOTICE that on November 14, 2008 at 8:30 a.m. at the offices of Givens Pursley, LLP, 601 W. Bannock St., Boise, Idaho, counsel for the Applicant M3 Eagle LLC, will take the deposition of Norman Young, an expert in the above-entitled action upon oral examination pursuant to Rule 30 of the Idaho Rules of Civil Procedure, before a Notary Public, or before some other officer authorized by law to administer oaths, and continuing from day to day thereafter, until the deposition is completed. You are notified and required to appear and provide testimony under oath.

DATED this 31st day of October, 2008.

Respectfully submitted,

GIVENS PURSLEY LLP

By *Jeffrey C. Fereday*
Jeffrey C. Fereday
Michael P. Lawrence

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of October 2008, the foregoing was filed, served, or copied as follows:

FILED

Idaho Department of Water Resources
Attn: Gary L. Spackman
322 East Front Street
P.O. Box 83720
Boise, ID 83720-0098

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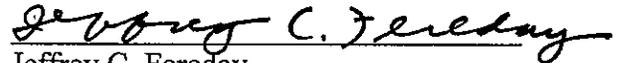
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Jeffrey C. Fereday

Jeffrey C. Fereday [ISB No. 2719]
Michael P. Lawrence [ISB No. 7288]
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www.givenspursley.com
Attorneys for M3 Eagle LLC

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**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

**NOTICE OF DEPOSITION OF
PAUL DRURY**

TO: PAUL DRURY

PLEASE TAKE NOTICE that on November 14, 2008 at 1:00 p.m. at the offices of Givens Pursley, LLP, 601 W. Bannock St., Boise, Idaho, counsel for the Applicant M3 Eagle LLC, will take the deposition of Paul Drury, an expert in the above-entitled action upon oral examination pursuant to Rule 30 of the Idaho Rules of Civil Procedure, before a Notary Public, or before some other officer authorized by law to administer oaths, and continuing from day to day thereafter, until the deposition is completed. You are notified and required to appear and provide testimony under oath.

DATED this 31st day of October, 2008.

Respectfully submitted,

GIVENS PURSLEY LLP

By Jeffrey C. Fereday
Jeffrey C. Fereday
Michael P. Lawrence

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Beeman & Associates PC
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Boise, ID 83702-6049

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Paul Drury, P.E.
ERO Resources Corp.
3314 Grace Street
Boise, ID 83703-5836

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Bill Lawton, Spokesman for
Robert L. Wood
M. Howard Goldman
Timothy R. Milburn
3145 Osprey Road
Eagle, ID 83616

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Norman Edwards
884 W. Beacon Light Road
Eagle, ID 83616

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Alan Smith
3135 N. Osprey Road
Eagle, ID 83616

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Jeffrey C. Fereday

Jeffrey C. Fereday [ISB No. 2719]
Michael P. Lawrence [ISB No. 7288]
GIVENS PURSLEY LLP
601 West Bannock Street
P.O. Box 2720
Boise, Idaho 83701-2720
Office: (208) 388-1200
Fax: (208) 388-1300
www.givenspursley.com
Attorneys for M3 Eagle LLC

RECEIVED
OCT 31 2008
DEPARTMENT OF
WATER RESOURCES

**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

**NOTICE OF DEPOSITION OF
STEVEN HANNULA**

TO: STEVEN HANNULA

PLEASE TAKE NOTICE that on November 17, 2008 at 8:30 a.m. at the offices of Givens Pursley, LLP, 601 W. Bannock St., Boise, Idaho, counsel for the Applicant M3 Eagle LLC, will take the deposition of Steven Hannula, an expert in the above-entitled action upon oral examination pursuant to Rule 30 of the Idaho Rules of Civil Procedure, before a Notary Public, or before some other officer authorized by law to administer oaths, and continuing from day to day thereafter, until the deposition is completed. You are notified and required to appear and provide testimony under oath.

DATED this 31st day of October, 2008.

Respectfully submitted,

GIVENS PURSLEY LLP

By Jeffrey C. Fereday
Jeffrey C. Fereday
Michael P. Lawrence

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of October 2008, the foregoing was filed, served, or copied as follows:

FILED

Idaho Department of Water Resources
Attn: Gary L. Spackman
322 East Front Street
P.O. Box 83720
Boise, ID 83720-0098

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Western Regional Office
Idaho Department of Water Resources
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Boise, ID 83705-5082

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North Ada County Groundwater Users Association
Josephine P. Beeman
Beeman & Associates PC
409 West Jefferson
Boise, ID 83702-6049

U. S. Mail
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Steven Hannula
ERO Resources Corp.
3314 Grace Street
Boise, ID 83703-5836

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Bill Lawton, Spokesman for
Robert L. Wood
M. Howard Goldman
Timothy R. Milburn
3145 Osprey Road
Eagle, ID 83616

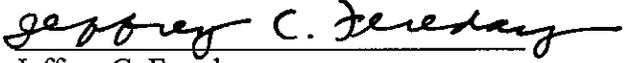
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Jeffrey C. Fereday

Jeffrey C. Fereday [ISB No. 2719]
Michael P. Lawrence [ISB No. 7288]
GIVENS PURSLEY LLP
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P.O. Box 2720
Boise, Idaho 83701-2720
Office: (208) 388-1200
Fax: (208) 388-1300
www.givenspursley.com
Attorneys for M3 Eagle LLC

RECEIVED
OCT 31 2008
DEPARTMENT OF
WATER RESOURCES

**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

**NOTICE OF DEPOSITION OF
DALE RALSTON**

TO: DALE RALSTON

PLEASE TAKE NOTICE that on November 17, 2008 at 1: 00 p.m. at the offices of Givens Pursley, LLP, 601 W. Bannock St., Boise, Idaho, counsel for the Applicant M3 Eagle LLC, will take the deposition of Dale Ralston, an expert in the above-entitled action upon oral examination pursuant to Rule 30 of the Idaho Rules of Civil Procedure, before a Notary Public, or before some other officer authorized by law to administer oaths, and continuing from day to day thereafter, until the deposition is completed. You are notified and required to appear and provide testimony under oath.

DATED this 31st day of October, 2008.

Respectfully submitted,

GIVENS PURSLEY LLP

By *Jeffrey C. Fereday*
Jeffrey C. Fereday
Michael P. Lawrence

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of October 2008, the foregoing was filed, served, or copied as follows:

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North Ada County Groundwater Users Association
Josephine P. Beeman
Beeman & Associates PC
409 West Jefferson
Boise, ID 83702-6049

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Dale Ralston
Ralston Hydrologic Services
1122 East B Street
Moscow, ID 83843

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Bill Lawton, Spokesman for
Robert L. Wood
M. Howard Goldman
Timothy R. Milburn
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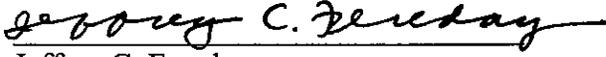
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Jeffrey C. Fereday

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OCT 28 2008

DEPARTMENT OF WATER RESOURCES

Josephine P. Beeman #1806
BEEMAN & ASSOCIATES, P.C.
409 West Jefferson Street
Boise, ID 83702
(208) 331-0950
(208) 331-0954 (Facsimile)
office@beemanlaw.com

Attorney for North Ada County Groundwater Users Association

BEFORE THE DEPARTMENT OF WATER RESOURCES
FOR THE STATE OF IDAHO

IN THE MATTER OF APPLICATION) NACGUA's NOTICE OF SERVICE
FOR PERMIT NO. 63-32573,) OF DISCOVERY REQUESTS TO
IN THE NAME OF M3 EAGLE, LLC) M3 EAGLE LLC
_____)

North Ada County Groundwater Users Association (NACGUA) hereby gives notice that on October 24, 2008, it served upon M3 Eagle LLC its INTERROGATORIES, REQUESTS FOR PRODUCTION, AND REQUESTS FOR ADMISSION by hand delivering the original at 7:30 pm through the front door of Givens Pursley LLP, at 602 W. Bannock Street, Boise, the law firm of M3 Eagle LLC's attorney, Jeffrey Fereday. The original (in PDF format and MS WORD format) was also emailed to Mr. Fereday at 7:30 pm and 8:11 pm, respectively. On Saturday, October 25, 2008 (9:04 am, by email), Mr. Fereday acknowledged receipt of the WORD format version of the original.

DATED this 27th day of October 2008.

BEEMAN & ASSOCIATES, P.C.
Attorneys for NACGUA

By Josephine P. Beeman
Josephine P. Beeman

CERTIFICATE OF SERVICE

I certify that on this 27th day of October 2008, I caused to be served a true and correct copy of the foregoing document on the following by the method indicated.

Original to:

IDWR Hearing Officer
P. O. Box 83720
Boise, ID 83720-0098
(U.S. Mail)

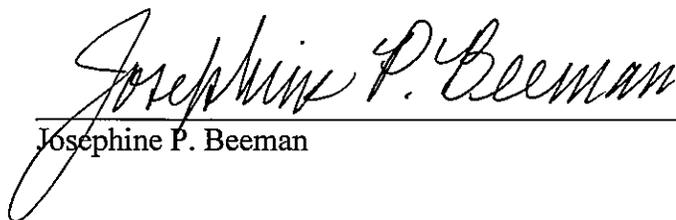
John Westra
IDWR Western
2735 Airport Way
Boise ID 83705
(U.S. Mail)

Norman L. Edwards
884 W. Beacon Light Road
Eagle ID 83616
(U.S. Mail)

Jeffrey Fereday
Givens Pursley LLP
P. O. Box 2720
Boise ID 83701
(U.S. Mail)

Alan Smith
3135 Osprey Road
Eagle ID 83616
(U.S. Mail)

Bill Lawton
3145 N. Osprey Road
Eagle ID 83616
(U.S. Mail)



Josephine P. Beeman

GIVENS PURSLEY LLP

LAW OFFICES
601 W. Bannock Street
PO Box 2720, Boise, Idaho 83701
TELEPHONE: 208 388-1200
FACSIMILE: 208 388-1300
WEBSITE: www.givenspursley.com

Gary G. Allen
Peter G. Barton
Christopher J. Beeson
Clint R. Bolinder
Erik J. Bolinder
Jeremy C. Chou
William C. Cole
Michael C. Creamer
Amber N. Dina
Kristin Bjorkman Dunn
Thomas E. Dvorak
Jeffrey C. Fereday
Justin C. Fredin
Martin C. Hendrickson
Steven J. Hippler

Debra K. Kristensen
Anne C. Kunkel
Jeremy G. Ladle
Michael P. Lawrence
Franklin G. Lee
David R. Lombardi
John M. Marshall
Kenneth R. McClure
Kelly Greene McConnell
Cynthia A. Mellillo
Christopher H. Meyer
L. Edward Miller
Patrick J. Miller
Judson B. Montgomery
Deborah E. Nelson

Kelsey J. Nunez
W. Hugh O'Riordan, LL.M.
G. Andrew Page
Angela M. Reed
Terri R. Pickens
Scott A. Tschirgi, LL.M.
J. Will Varin
Conley E. Ward
Robert B. White

RETIRED
Kenneth L. Pursley
Raymond D. Givens
James A. McClure

October 24, 2008

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OCT 28 2008
DEPARTMENT OF
WATER RESOURCES

Gary L. Spackman
Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098

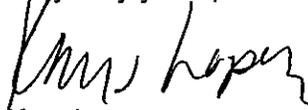
Re: M3 Eagle LLC
File: 8526-4

Dear Mr. Spackman:

Enclosed for filing in the above matter are Notices of Deposition for Bill Lawton and Alan Smith. Please conform the additional copies of the Notices and return in the self-addressed stamped envelopes. *Done on 10/29/08*

Please do not hesitate to contact our offices if you have questions or concerns.

Very truly yours,



Krys Lopez
Document Specialist/
Legal Secretary

/kml
Enclosures
S:\CLIENTS\8526\4\KML to IDWR with NOD.DOC

Jeffrey C. Fereday [ISB No. 2719]
Michael P. Lawrence [ISB No. 7288]
GIVENS PURSLEY LLP
601 West Bannock Street
P.O. Box 2720
Boise, Idaho 83701-2720
Office: (208) 388-1200
Fax: (208) 388-1300
www.givenspursley.com
Attorneys for M3 Eagle LLC

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OCT 2 8 2008

DEPARTMENT OF
WATER RESOURCES

**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

**NOTICE OF DEPOSITION OF
BILL LAWTON**

TO: BILL LAWTON

YOU WILL PLEASE TAKE NOTICE that on the 11th day of November, 2008 at the hour of 10:30 a.m. at the offices of Givens Pursley, LLP, 601 W. Bannock St., Boise, Idaho, the Applicant M3 Eagle LLC, will take the deposition of Bill Lawton, protestant in the above-entitled action upon oral examination pursuant to Rule 30 of the Idaho Rules of Civil Procedure, before a Notary Public, or before some other officer authorized by law to administer oaths, and continuing from day to day thereafter, until said deposition is completed. You are notified to appear and take such part in said examination as shall be deemed just and proper.

DATED this 21st day of October, 2008.

Respectfully submitted,

GIVENS PURSLEY LLP

By Jeffrey C. Pereday
Jeffrey C. Pereday
Michael P. Lawrence

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th of October 2008, the foregoing was filed, served, or copied as follows:

FILED

Idaho Department of Water Resources
Attn: Gary L. Spackman
322 East Front Street
P.O. Box 83720
Boise, ID 83720-0098

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North Ada County Groundwater Users Association
Josephine P. Beeman
Beeman & Associates PC
409 West Jefferson
Boise, ID 83702-6049

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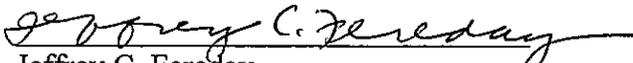
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Jeffrey C. Fereday

Jeffrey C. Fereday [ISB No. 2719]
Michael P. Lawrence [ISB No. 7288]
GIVENS PURSLEY LLP
601 West Bannock Street
P.O. Box 2720
Boise, Idaho 83701-2720
Office: (208) 388-1200
Fax: (208) 388-1300
www.givenspursley.com
Attorneys for M3 Eagle LLC

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OCT 28 2008

DEPARTMENT OF
WATER RESOURCES

**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

**NOTICE OF DEPOSITION OF
ALAN SMITH**

TO: ALAN SMITH

YOU WILL PLEASE TAKE NOTICE that on the 11th day of November, 2008 at the hour of 8:00 a.m. at the offices of Givens Pursley, LLP, 601 W. Bannock St., Boise, Idaho, the Applicant M3 Eagle LLC, will take the deposition of Alan Smith, protestant in the above-entitled action upon oral examination pursuant to Rule 30 of the Idaho Rules of Civil Procedure, before a Notary Public, or before some other officer authorized by law to administer oaths, and continuing from day to day thereafter, until said deposition is completed. You are notified to appear and take such part in said examination as shall be deemed just and proper.

DATED this 24th day of October, 2008.

Respectfully submitted,

GIVENS PURSLEY LLP

By Jeffrey C. Fereday
Jeffrey C. Fereday
Michael P. Lawrence

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th of October 2008, the foregoing was filed, served, or copied as follows:

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Idaho Department of Water Resources
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North Ada County Groundwater Users Association
Josephine P. Beeman
Beeman & Associates PC
409 West Jefferson
Boise, ID 83702-6049

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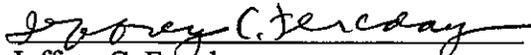
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Jeffrey C. Fereday

Josephine P. Beeman #1806
BEEMAN & ASSOCIATES, P.C.
409 West Jefferson Street
Boise, ID 83702
(208) 331-0950
(208) 331-0954 (Facsimile)
office@beemanlaw.com

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OCT 27 2008
DEPARTMENT OF
WATER RESOURCES

Attorney for North Ada County Groundwater Users Association

BEFORE THE DEPARTMENT OF WATER RESOURCES

FOR THE STATE OF IDAHO

IN THE MATTER OF APPLICATION) NACGUA's NOTICE OF SUBMITTAL
FOR PERMIT NO. 63-32573,) OF LINDA BURKE QUESTIONNAIRE
IN THE NAME OF M3 EAGLE, LLC)
_____)

North Ada County Groundwater Users Association hereby submits the questionnaire of
Linda Burke (attached).

DATED this 24th day of October 2008.

BEEMAN & ASSOCIATES, P.C.
Attorneys for NACGUA

By Josephine P. Beeman
Josephine P. Beeman

CERTIFICATE OF SERVICE

I certify that on this 24th day of October 2008, I caused to be served a true and correct copy of the foregoing document on the following by the method indicated.

Original to:

IDWR Hearing Officer
P. O. Box 83720
Boise, ID 83720-0098
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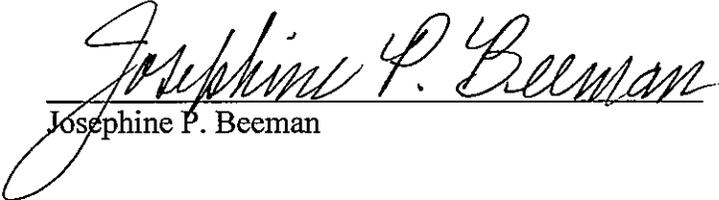
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Jeffrey Fereday
Givens Pursley LLP
P. O. Box 2720
Boise ID 83701
(Email)

Alan Smith
3135 Osprey Road
Eagle ID 83616
(U.S. Mail)

Bill Lawton
3145 N. Osprey Road
Eagle ID 83616
(U.S. Mail)


Josephine P. Beeman

QUESTIONNAIRE FOR PROTESTANTS TO M3 EAGLE WATER RIGHT APPLICATION

1) Your name and address: Linda Burke / Kevin Culligan
256 E. Beacon Light Rd. Eagle, ID 83616

2) Do you have or use a ground water right in the Eagle area? No. If yes, please continue. If you have no information on a particular item, just say so.

3) If the well and/or water right was included when you bought your property, please name the person from whom you purchased: well included with property purchase from Steve Dunham

4) The drilling company who drilled your well: unknown

5) Year (or approximate year) your well was drilled: unknown Water right #: _____

6) Overall well depth: 80 ft Depth to water: 70 ft

7) The use(s) of your well (domestic, irrigation, etc): Domestic

8) Do you have records of the well's construction or maintenance? No

9) Do you have records of pump maintenance and/or replacement? No (pump replaced 4 years ago)

10) Describe any change in water level or productivity in the last few years: No

11) Do you have records of water levels? No

12) Describe any problems you have experienced with your well or pump: pump wore out

- a. Does your well produce sand? Yes. If so, how much? minimal
- b. Who is your pump professional? Randy Morrison (Hillston Drilling)
- c. To what do you attribute the problems you have experienced? _____

13) If you have had your well deepened or a screen or casing inserted after the well was drilled, please provide the details as to when, who did the work, what the work entailed, and how this changed the well's performance: N/A

14) If you are willing to have your well located (via GPS), measured, and inspected by Hydro Logic, Inc., please provide a phone number where you can be reached during the week: _____

RECEIVED

OCT 21 2008

DEPARTMENT OF
WATER RESOURCES

Josephine P. Beeman #1806
BEEMAN & ASSOCIATES, P.C.
409 West Jefferson Street
Boise, ID 83702
(208) 331-0950
(208) 331-0954 (Facsimile)
office@beemanlaw.com

Attorney for North Ada County Groundwater Users Association

**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 M3 EAGLE, LLC)
_____)** **NOTICE OF WITHDRAWAL OF
PROTEST (Julie & Loring Evans)**

Julie & Loring Evans, protestants, whose protest was subsumed by the North Ada County Groundwater Users Association (NACGUA) protest, by order of the Hearing Officer on October 7, 2008, now wish to withdraw their protest to M3 Eagle's Application 63-32573, and be dismissed from this matter.

The remaining individuals represented by NACGUA shall remain on the list as protestants in this action.

DATED this 20TH day of October 2008.

BEEMAN & ASSOCIATES, P.C.
Attorneys for NACGUA

By Josephine P. Beeman
Josephine P. Beeman

CERTIFICATE OF SERVICE

I certify that on this 20th day of October 2008, I caused to be served a true and correct copy of the foregoing document on the following by the method indicated.

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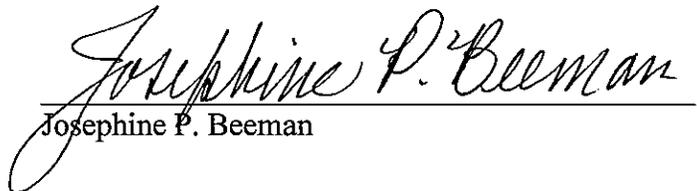
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Norman L. Edwards
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Jeffery Fereday
Givens Pursley LLP
P. O. Box 2720
Boise ID 83701
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Alan Smith
3135 Osprey Road
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(U.S. Mail)

Bill Lawton
3145 N. Osprey Road
Eagle ID 83616
(U.S. Mail)



Josephine P. Beeman

Josephine P. Beeman #1806
BEEMAN & ASSOCIATES, P.C.
409 West Jefferson Street
Boise, ID 83702
(208) 331-0950
(208) 331-0954 (Facsimile)
office@beemanlaw.com

Attorney for North Ada County Groundwater Users Association

**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 M3 EAGLE, LLC) NACGUA's MOTION TO VIEW THE
PLACE OF USE**

North Ada County Groundwater Users Association (NACGUA) hereby requests that the Hearing Officer schedule a site visit at M3 Eagle's Planned Community for all parties and IDWR on either Wednesday October 29 or Thursday October 30. The site visit would allow NACGUA (through its attorneys and experts), IDWR (Hearing Officer, Dennis Owsley), and other parties to meet with M3 Eagle (its attorneys and experts) for a general reconnaissance to develop an understanding of the Project's proposed water use and supply, and waste disposal. Without limiting the scope of the site visit, certain general aspects would likely include site layout, test well sites and other points of diversion, water supply (aquifers, sustainability), location of water and waste water facilities, infiltration ponds and other disposal methods, recharge from ground water irrigation, aquifer recharge, and aquifer storage and retrieval.

DATED this 20TH day of October 2008.

BEEMAN & ASSOCIATES, P.C.
Attorneys for NACGUA

By Josephine P. Beeman
Josephine P. Beeman

CERTIFICATE OF SERVICE

I certify that on this 20th day of October 2008, I caused to be served a true and correct copy of the foregoing document on the following by the method indicated.

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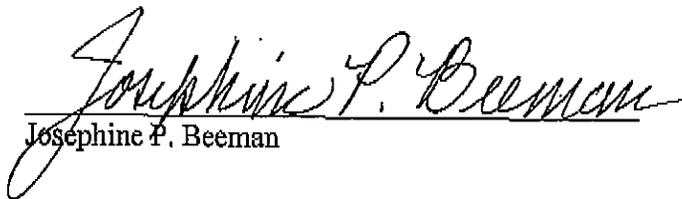
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Jeffery Fereday
Givens Pursley LLP
P. O. Box 2720
Boise ID 83701
(Fax and Email)

Alan Smith
3135 Osprey Road
Eagle ID 83616
(U.S. Mail)

Bill Lawton
3145 N. Osprey Road
Eagle ID 83616
(U.S. Mail)


Josephine P. Beeman

To: Gary Spaulman

Hearing

today

3 pm

Josephine P. Beeman #1806
BEEMAN & ASSOCIATES, P.C.
409 West Jefferson Street
Boise, ID 83702
(208) 331-0950
(208) 331-0954 (Facsimile)
office@beemanlaw.com

RECEIVED
OCT 16 2008

Department of Water Resources

Attorney for North Ada County Groundwater Users Association

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

IN THE MATTER OF APPLICATION) NACGUA'S MOTION FOR
FOR PERMIT NO. 63-32573,) PROTECTIVE ORDER
IN THE NAME OF M3 EAGLE, LLC)
_____)

The North Ada County Groundwater Users Association (NACGUA) requests that the Hearing Officer enter a protective order against M3 Eagle, LLC (M3) proceeding with individual site visits until such time as NACGUA and M3 have agreed in writing regarding, but not limited to, the following: equipment to be used, nature of information to be sought, manner of access to the well, liability issues, costs, and production/access/dissemination of information obtained. This is a common practice.

The attached email correspondence between counsel for M3 and NACGUA verifies that on October 15, 2008, M3 informed NACGUA that it would proceed with site visits; NACGUA's counsel responded immediately that it would confer with NACGUA. On October 16, M3 responded that, "Hydro Logic will call or email you with the time and date of any site visit so you may attend if you wish. Unless we receive contrary instructions from the Hearing Officer, we will proceed with these contacts."

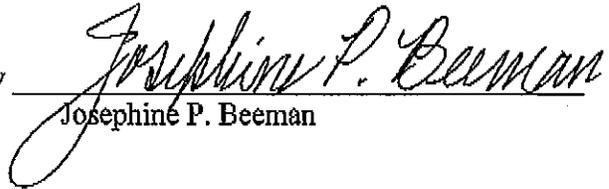
The Hearing Officer's September 12, 2008 and October 7, 2008 Orders determined that the individual protestants that Hydro Logic would be contacting have had their representation and protests subsumed into NACGUA's protest and representation by Josephine P. Beeman. It is both appropriate and necessary that these site visits be coordinated through NACGUA's counsel with oversight from NACGUA's experts and in a manner that addresses liability and protection of property, and the integrity and dissemination of information relevant to Application 63-32573.

NACGUA's counsel is available for a phone conference to discuss these practical issues regarding site visits. We understand that the Hearing Officer is available at 3:00 p.m. or 4:00 p.m., Monday, October 20, 2008.

DATED this 16TH day of October 2008.

BEEMAN & ASSOCIATES, P.C.
Attorneys for NACGUA

By


Josephine P. Beeman

CERTIFICATE OF SERVICE

I certify that on this 16th day of October 2008, I caused to be served a true and correct copy of the foregoing document on the following by the method indicated.

Original to:

IDWR Hearing Officer
P. O. Box 83720
Boise, ID 83720-0098
(Fax and Email)

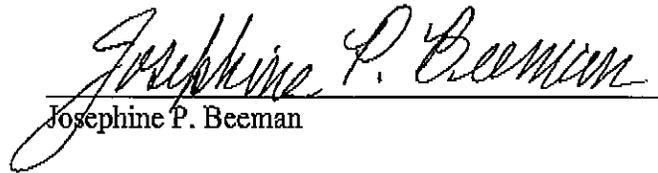
John Westra
IDWR Western
2735 Airport Way
Boise ID 83705
(Email)

Norman L. Edwards
884 W. Beacon Light Road
Eagle ID 83616
(U.S. Mail)

Jeffery Fereday
Givens Pursley LLP
P. O. Box 2720
Boise ID 83701
(Email)

Alan Smith
3135 Osprey Road
Eagle ID 83616
(U.S. Mail)

Bill Lawton
3145 N. Osprey Road
Eagle ID 83616
(U.S. Mail)


Josephine P. Beeman

Jo Beeman

From: Jeffrey C Fereday [JeffFereday@givenspursley.com]
Sent: Thursday, October 16, 2008 10:07 AM
To: Jo Beeman
Cc: Ed Squires; Michael P. Lawrence; bbrownlee@m3comp.com
Subject: RE: Witness list, questionnaire follow-up

Jo:

The October 7 Order in this matter, and those preceding it, requires that your clients, the individual protestants who now have joined together for common representation, cannot serve their own individual discovery requests or conduct their own depositions of M3 Eagle witnesses. But I hope you'll agree the orders do not restrict M3 Eagle from obtaining information from your clients individually. The individuals remain as witnesses or potential witnesses, and their wells are the subject of their (and their organization's) claims of potential injury. The questionnaire was designed to address what we understand to be your clients' concerns about these individual wells; certainly, obtaining information about these wells is appropriate. In the September 12 Order the Hearing Officer required your clients to respond by September 30 to the Questionnaire, which includes the permission-to-visit item. We see this process as a straightforward, least-cost way to get information relevant to all, and we believe the Hearing Officer sees it that way too. We assume you are not taking the position that basic data about the individuals' wells can be withheld. As you know, once Hydro Logic obtains the information from these wells, it will share it with you, your experts, and the Department's technical staff.

Having met with several of your clients, and now having seen their responses to the questionnaire, we also understand that many of these respondents to the questionnaire agree that Hydro Logic can and should contact them to inspect their wells.

For us to respond satisfactorily to your clients' concerns, the requested information is necessary. This was the intent of the questionnaire, to which most respondents replied in the affirmative. We believe these well owners are expecting to be contacted by Hydro Logic.

As I've noted, Hydro Logic will call or email you with the time and date of any site visit so you may attend if you wish. Unless we receive contrary instructions from the Hearing Officer, we will proceed with these contacts.

Jeff

-----Original Message-----

From: Jo Beeman [mailto:jo.Beeman@beemanlaw.com]
Sent: Wednesday, October 15, 2008 4:20 PM
To: Jeffrey C Fereday
Cc: Ed Squires; Michael P. Lawrence
Subject: RE: Witness list, questionnaire follow-up
Importance: High

Jeff,

Thanks for the info and I have forwarded it to NACGUA.

However, I need to talk with NACGUA before the site visits proceed. I know what the form (p. 5 of the September 12 order) provides about permission and phone numbers, but the October 7 order states that, "The individual Protestants [now represented by NACGUA through me] waive their right to independently participate in discovery"
Jo

Josephine P. Beeman
Beeman & Associates, P.C.

-----Original Message-----

From: Jeffrey C Fereday [mailto:JeffFereday@givenspursley.com]
Sent: Wednesday, October 15, 2008 3:18 PM
To: Jo Beeman
Cc: 'Ed Squires'; Michael P. Lawrence
Subject: Witness list, questionnaire follow-up

Jo:

A couple things concerning M3 Eagle water right application contested case.

1. I'm attaching our expert witness disclosure as required.
2. It appears we have received a completed (or partially completed) questionnaire from each of the NACGUA members except Linda Burke, whose address is 256 E. Beacon Light Road. Could you look into getting Ms. Burke to complete hers and get it to us soon? We'd appreciate it.
3. Ed Squires and his staff at Hydro Logic, Inc. will be contacting those questionnaire respondents who provided phone numbers, including several NACGUA members, and plans to visit their wells to precisely locate, inspect, and measure them. Ed will call or email you with the time and date of any site visit so you may attend if you wish.
4. By the way, Ed has provided copies of the completed questionnaires to Department technical staff.

Jeff
Jeffrey C. Fereday
Attorney at Law
GIVENS PURSLEY LLP
601 W. Bannock St.
Boise, ID 83702
Phone: (208) 388-1200
Direct Dial: (208) 388-1217
Facsimile: (208) 388-1300
E-Mail: JeffFereday@givenspursley.com
www.givenspursley.com

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sender, and please do not deliver, distribute or copy this e-mail, or disclose its contents or take any action in reliance on the information it contains.

Gibson, Deborah

From: Mitchell, Camille on behalf of IDWR Fax
Sent: Thursday, October 16, 2008 2:33 PM
To: Gibson, Deborah
Subject: FW: incoming fax 287-6700

Attachments: image-X16142522-0001.pdf

From: idwr.fax@idwr.idaho.gov [mailto:idwr.fax@idwr.idaho.gov]
Sent: Thursday, October 16, 2008 3:25 PM
To: IDWR Fax
Subject: incoming fax 287-6700



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Gibson, Deborah

From: Office Beeman [office@beemanlaw.com]
Sent: Thursday, October 16, 2008 2:40 PM
To: Spackman, Gary; Jeffrey C. Fereday; Westra, John; Kelsey Nunez; Michael Lawrence
Cc: Anne Ritter (NACGUA); David Head (NACGUA); Jason Hudson (B&A); Jo Beeman (B&A); Joyce Angell (B&A); Kathy Pennisi (NACFA); Lori Anderson (Fereday); Gibson, Deborah
Subject: M3/NACGUA 63-32573
Attachments: 20081016 NACGUA Motion Protective Order.pdf

Please find attached North Ada County Groundwater Users Association's Motion for Protective Order which was fax filed with IDWR today.

Joyce Angell
Legal Assistant
Beeman & Associates
208.331.0950

RECEIVED

OCT 16 2008

DEPARTMENT OF
WATER RESOURCES

Josephine P. Beeman #1806
BEEMAN & ASSOCIATES, P.C.
409 West Jefferson Street
Boise, ID 83702
(208) 331-0950
(208) 331-0954 (Facsimile)
office@beemanlaw.com

Attorney for North Ada County Groundwater Users Association

**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 M3 EAGLE, LLC)
_____)** **NACGUA'S DISCLOSURE OF
EXPERT WITNESSES**

Pursuant to the Hearing Officer's September 12, 2008 Order Authorizing Discovery and Scheduling Order, Protestant North Ada County Groundwater Users Association (NACGUA) hereby discloses the witnesses it may call as experts at the hearing in the above-captioned matter.

1. Dale Ralston
Ralston Hydrologic Services
1122 East B Street
Moscow, ID 83843
208-883-0533

2. Paul Drury
ERO Resources
3314 Grace Street
Boise, ID 83703
208-373-7983

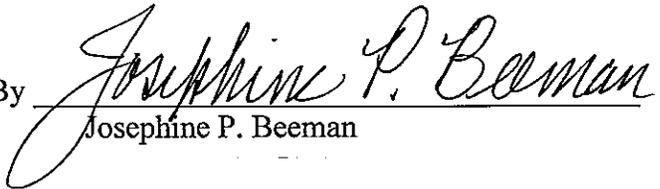
3. Norm Young
ERO Resources
3314 Grace Street
Boise, ID 83703
208-373-7983

4. Steve Hannula
ERO Resources
3314 Grace Street
Boise, ID 83703
208-373-7983

Protestant NACGUA reserves the right to add additional experts or lay witnesses as necessary.

DATED this 15TH day of October 2008.

BEEMAN & ASSOCIATES, P.C.
Attorneys for NACGUA

By 
Josephine P. Beeman

CERTIFICATE OF SERVICE

I certify that on this 15th day of October 2008, I caused to be served a true and correct copy of the foregoing document on the following by the method indicated.

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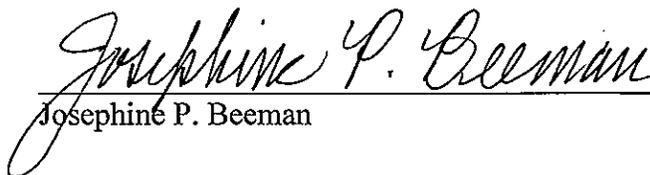
John Westra
IDWR Western
2735 Airport Way
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Norman L. Edwards
884 W. Beacon Light Road
Eagle ID 83616
(U.S. Mail)

Jeffery Fereday
Givens Pursley LLP
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Alan Smith
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Bill Lawton
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Eagle ID 83616
(U.S. Mail)



Josephine P. Beeman