

APR 13 2009

DEPARTMENT OF
WATER RESOURCES

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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 MOTION IN LIMINE TO
EXCLUDE NACGUA'S PROPOSED
EXPERT WITNESSES NORM YOUNG
AND PAUL DRURY**

MOTION

Applicant M3 Eagle LLC ("M3 Eagle"), through Jeffrey C. Fereday and Michael P. Lawrence of the firm Givens Pursley LLP, hereby moves for an order prohibiting North Ada County Groundwater Users Association ("NACGUA") from calling Norm Young or Paul Drury as expert witnesses and/or soliciting their expert testimony in the hearing in this matter.

SUPPORTING ARGUMENT

In its April 8, 2009 *Response to IDWR's Order Scheduling Exchange of Information – Response Due April 8, 2009*, NACGUA lists Norm Young and Paul Drury as "private consultant[s]" that may be called as witnesses to testify at hearing. M3 Eagle requests the Hearing Officer prohibit NACGUA from calling Messrs. Young and Drury as expert witnesses and/or soliciting their expert testimony because NACGUA removed Messrs. Young and Drury

from their list of expert witnesses in its November 26, 2008 filing entitled *NACGUA's Submission in Compliance with the November 26, 2008 Deadline*, a copy of which is attached hereto as Exhibit A. Allowing Messrs. Young and Drury to testify as experts would unfairly prejudice M3 Eagle because M3 Eagle did not depose these individuals based on NACGUA's representations that they would not be called as expert witnesses at hearing.

The following is a timeline of relevant events:

1. September 12, 2008. The Hearing Officer issued his *Order Authorizing Discovery and Scheduling Order*, which ordered that "on or before October 15, 2008, the parties shall disclose to the parties and the hearing officer, in writing, the identity and contact information for any expert witnesses who will appear on behalf of the party disclosing the information." The October 15 Order also set a deadline of November 26, 2008 for the parties to complete written discovery and submit technical documents, and a deadline of December 12, 2008 to complete depositions.

2. October 15, 2008. NACGUA submitted its disclosure of expert witnesses, naming Dale Ralston, Paul Drury, and Norm Young, and Steve Hannula as "witnesses it may call as experts at the hearing."

3. October 31, 2008. M3 Eagle sent Notices of Deposition to each of the experts listed in NACGUA's October 15, 2008 expert witness disclosure. The depositions were scheduled to be taken on November 14 and 17, 2008. These depositions were canceled due to schedule extensions arising from the Hearing Officer's November 12, 2008 Order denying NACGUA's *Motion for Protective Order* and M3 Eagle's *Emergency Motion to Compel Attendance at Depositions and Response to Motion for Protective Order*. The Hearing Officer's November 12 Order stated that the "most reasonable time for the taking of depositions of experts

is the time period within [the deadlines for submittal of expert technical reports on November 26 and the deadline for taking depositions on December 12].”

4. November 26, 2008. NACGUA submitted *NACGUA's Submission in Compliance with the November 26, 2008 Deadline*, in which it stated “NACGUA’s October 15, 2008 witness disclosure is amended by the removal of Steve Hannula, Paul Drury, and Norm Young, all of ERO Resources.”

5. December 2-3, 2008. In response to M3 Eagle’s attorney’s deposition questions regarding why Messrs. Hannula, Drury, and Young were no longer named as NACGUA experts, NACGUA officer and spokesperson John Thornton stated:

We didn't feel we needed them as an expert witness We think we've probably got the assistance that we needed from them in terms of some ideas for settlements and that and better understanding water rights and how we can potentially negotiate with those water rights. (Thornton Depo. Tr. at 35, attached as Exhibit B.)

...

Q [M3 Eagle’s counsel]: Okay. I note that your experts -- Young, Hannula, and Drury -- have pulled out being experts for your group. Is that correct?

A [Mr. Thornton]. Correct.

Q. Can you describe why that was done?

...

A. . . . I believe the reason why we no longer have them identified as expert witnesses, they were assisting us more in terms of understanding the water right application, to fully understand it, and then to looking at ways in terms of settlement with the expertise, especially that Norm Young has in terms of what are some ways that we can come to the table and come to some reasonable settlement measures. And in that light, we didn't see where they needed to be an expert. They were providing more process, more mediator-type roles for how we can try to work with M3 in terms of settlements.

(Thornton Depo. Tr. at 169-70, attached as Exhibit C.) Mr. Thornton did not indicate that NACGUA would later consider calling these individuals as expert witnesses.

6. December 9, 2008. In response to M3 Eagle's attorney's deposition question regarding why Messrs. Hannula, Drury, and Young were no longer named as NACGUA experts, NACGUA officer and spokesperson David Head stated:

I was not at the meeting that that was discussed. I was at business. But I was told or it was run by me that -- that their research was more background data on understanding what the application process is and what -- the details of the M3 application. Therefore, the reports or information that they were able to give us as background data was no longer -- that we weren't going to require anything more of them, and therefore we wouldn't need them to do anything more. We had gotten what we needed, is my understanding, in their assistance as consultants.

(Head Depo. Tr. at 98, attached as Exhibit D.) Mr. Head did not indicate that NACGUA would later consider calling these individuals as expert witnesses.

7. February 3, 2009. Following the Hearing Officer's postponement of the hearing and rescheduling of the deposition deadline to February 6, 2009 (*Order Granting Motion for Stay, Order Denying All Motions to Compel and Motions for Sanctions, and Order Reinstating Party* (Dec. 4, 2008)), M3 Eagle deposed NACGUA expert Dr. Dale Ralston on February 3, 2009.

M3 Eagle did not reschedule depositions of Messrs. Young, Drury, or Hannula because those individuals were no longer listed as expert witnesses. NACGUA now has reversed course, listing Messrs. Young and Drury as "private consultant[s]" it intends to call as witnesses at hearing. M3 Eagle would be prejudiced by allowing these individuals to offer any opinions at the hearing because, in reliance on representations made by NACGUA's counsel and its officers/representatives, they were withdrawn as experts and M3 Eagle did not depose them.

Indeed, under Idaho Rule of Civil Procedure 26(b)(4)(B), M3 Eagle could not depose them once they were removed from NACGUA's list of expert witnesses.¹

To prepare for hearing in this matter, M3 Eagle deposed seventeen individual NACGUA members, three non-NACGUA protestants, and NACGUA's only listed expert, Dr. Dale Ralston. M3 Eagle would have deposed Messrs. Young, Drury, and Hannula had NACGUA not removed them from their list of expert witnesses. It would be unfair and prejudicial to M3 Eagle for NACGUA to solicit, or the Hearing Officer to allow, opinion testimony from these individuals when they were expressly removed from NACGUA's list of expert witnesses.²

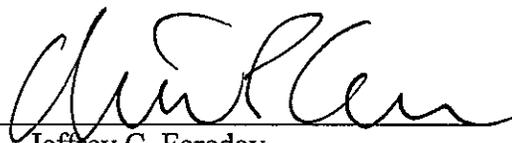
M3 Eagle respectfully requests the Hearing Officer grant this Motion.

DATED this 13th day of April, 2009.

Respectfully submitted,

GIVENS PURSLEY LLP

By


Jeffrey C. Fereday
Michael P. Lawrence

¹ Rule 26(b)(4)(B) states "A party may not discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial"

² M3 Eagle understands that NACGUA could call these individuals as lay witnesses allowed to testify to matters allowed under Idaho Rule of Evidence 701. However, they should not be allowed to provide testimony regarding scientific, technical, or other specialized knowledge in the form of an opinion or otherwise. I.R.E 702.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th of April, 2009, the foregoing was filed, served, or copied as follows:

FILED

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Attn: Gary L. Spackman
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North Ada County Groundwater Users Association
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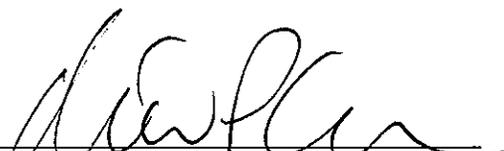
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Attorney for North Ada County Groundwater Users Association

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

**IN THE MATTER OF APPLICATION) NACGUA'S SUBMISSION IN
FOR PERMIT NO. 63-32573,) COMPLIANCE WITH THE
IN THE NAME OF M3 EAGLE, LLC) NOVEMBER 26, 2008 DEADLINE**

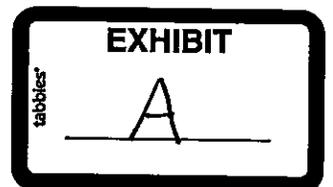
North Ada County Groundwater Users Association (NACGUA) hereby gives notice of the following information in compliance with the November 26, 2008 deadline established by the September 12, 2008 Scheduling Order to complete written discovery and to submit all technical documents intended as exhibits at the hearing or technical reports prepared for reference at the hearing.

1. NACGUA's October 15, 2008 expert witness disclosure is amended by the removal of Steve Hannula, Paul Drury, and Norm Young, all of ERO Resources.
2. All technical documents that NACGUA would intend to submit as exhibits at the hearing are in the IDWR file for 63-32573, the website for the North Ada County Hydrogeologic Project, referenced by M3 expert's reports and submittals, filed today, or to be referenced in any rebuttal report or rebuttal testimony to M3 Eagle's expert reports filed today. 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.

DATED this 26th 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 26th 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
(U.S. Mail)

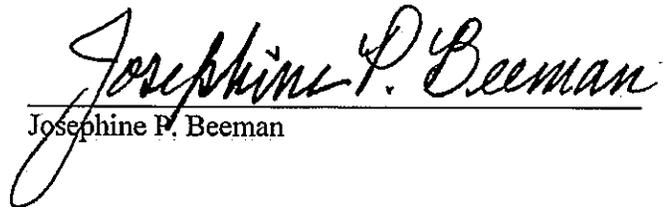
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Josephine P. Beeman

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)
_____)

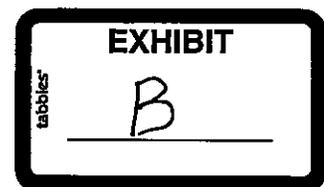
VOLUME I

DEPOSITION OF JOHN L. THORNTON
DECEMBER 2, 2008

REPORTED BY:

JEFF LAMAR, C.S.R. No. 640

Notary Public



1 A. It means that you potentially can use
 2 that amount of water for a peak amount.
 3 Q. On a stream system, you're familiar
 4 with peaks, correct --
 5 A. Uh-huh.
 6 Q. -- on a hydrograph, for example?
 7 A. Uh-huh.
 8 Q. A peak is something that occurs over a
 9 short duration or a limited duration and then
 10 there's a down trend after the peak; isn't that
 11 right?
 12 A. Uh-huh.
 13 Q. And then there might be another peak
 14 at some future time; correct.
 15 A. Right.
 16 Q. So do you know of any streams on the
 17 National Forests that you're familiar with that
 18 run at their peak at all times?
 19 A. Huh-uh.
 20 Q. Is that a "no"?
 21 A. That's a no.
 22 Q. You should probably try to say "no"
 23 instead of "huh-uh."
 24 A. Okay.
 25 Q. It helps Jeff over here a little bit

1 A. I'm not sure what you're asking.
 2 Q. That is, a water right that's granted
 3 in small increments where the company would have
 4 to come back for sequential application?
 5 A. A phasing approach, you mean?
 6 Q. Correct.
 7 A. Your water right is not requesting
 8 that, to my knowledge.
 9 Q. Is it your understanding that M3 Eagle
 10 is not willing to accept a phasing? Haven't they
 11 expressed that to you?
 12 A. You have stated that in one of your
 13 documents. I can't remember exactly where, but I
 14 could probably find it. You did identify that.
 15 However, if this was done, you guys would want to
 16 make sure that if it was phased over time, you
 17 would still be able to have your priority date for
 18 all of the water that was originally requested.
 19 Q. Are you familiar with the municipal
 20 water rights statute, John?
 21 A. Just the little bit that Jo Beeman has
 22 described.
 23 Q. And is it your understanding that that
 24 statute contemplates phasing?
 25 A. No, I don't know that.

1 more.
 2 A. Okay.
 3 Q. Speaking of ERO, I noticed that ERO is
 4 no longer an expert for you in this. Mr. Drury,
 5 Mr. Hannula, and Mr. Young have all pulled out.
 6 Why is that?
 7 A. We didn't feel we needed them as an
 8 expert witness.
 9 Q. Why don't you feel that you need them?
 10 A. We think we've probably got the
 11 assistance that we needed from them in terms of
 12 some ideas for settlements and that and better
 13 understanding water rights and how we can
 14 potentially negotiate with those water rights.
 15 Q. And what is the substance of those
 16 discussions with them?
 17 A. I think the substance is trying to do
 18 a solution that's workable for M3 as well as for
 19 NACGUA in terms of trying to help us understand
 20 your needs and to match it up with our concerns,
 21 and how we can then potentially settle the dispute
 22 or the protest.
 23 Q. You understand that M3's needs do not
 24 include the concept of a piecemeal water right,
 25 don't you?

1 Q. Okay. I'd like to go back to the
 2 "NACFA Friends" letter.
 3 A. Okay.
 4 Q. Thank you for indulging me on that
 5 excursion.
 6 A. And the only thing, I just want to let
 7 you know that at 5:00 -- and I can always come
 8 back -- I got to go pick up a son to get him to
 9 his driver's training. So I'll have to -- however
 10 you want to do it. I can schedule and come back,
 11 if need be, as well. So if we're not done by
 12 5:00. So...
 13 Q. John, if we aren't done by 5:00, as
 14 you'll notice in your deposition notice, you're
 15 required to stay and take -- provide testimony, at
 16 least within reason, and it will be continued
 17 until it's completed.
 18 You understand that; correct?
 19 A. Yeah. It may be continued on another
 20 day after today, but not today.
 21 Q. Would we be able to continue it in the
 22 morning at 8:00?
 23 A. Tomorrow I've got folks coming from
 24 the Payette Forest and -- wait a minute. At 8:00?
 25 No. It would probably have to be Thursday. Could

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REPORTER'S CERTIFICATE

I, JEFF LaMAR, CSR No. 640, Certified
Shorthand Reporter, certify:

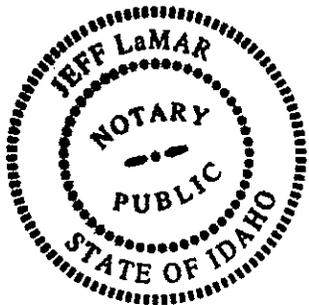
That the foregoing proceedings were taken
before me at the time and place therein set forth,
at which time the witness was put under oath by me.

That the testimony and all objections made
were recorded stenographically by me and transcribed
by me or under my direction.

That the foregoing is a true and correct
record of all testimony given, to the best of my
ability.

I further certify that I am not a relative or
employee of any attorney or party, nor am I
financially interested in the action.

IN WITNESS WHEREOF, I set my hand and seal
this 8th day of December, 2008.



A handwritten signature in black ink, appearing to read "Jeff Lamar", written over a horizontal line.

JEFF LaMAR, CSR NO. 640
Notary Public
Eagle, Idaho 83616

My commission expires December 30, 2011

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)
_____)

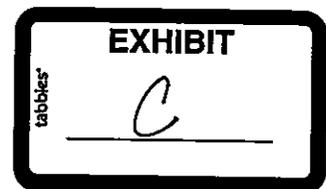
VOLUME II

CONTINUED DEPOSITION OF JOHN L. THORNTON
DECEMBER 3, 2008

REPORTED BY:

JEFF LAMAR, C.S.R. No. 640

Notary Public



1 Q. Could you answer that question? Would
2 you say "yes" or "no"? Would it have been better
3 if she could have done that?

4 A. The more accurate, the better, yes.

5 Q. And a survey-grade elevation would
6 have been more accurate; correct?

7 A. Yes.

8 Q. And would you question data, John,
9 that involved the hand measurement of a well by an
10 experienced technician, coupled with -- that is,
11 the water level in the well, coupled with a
12 surveyed -- survey-grade ground elevation? Would
13 you question that data? Would you rely on that as
14 a scientist?

15 A. I would say I would question it as
16 much as she questioned it in her report. I'm just
17 using the exact words -- and we can get to them --
18 where she was identifying even errors just in
19 that -- in exactly what you said, errors
20 associated with that. So...

21 Q. But in my example, wouldn't it be more
22 accurate to say that this hand measurement coupled
23 with this surveyed ground elevation is accurate to
24 within 3 centimeters or 5 centimeters, but not
25 50 feet? Wouldn't that be -- wouldn't that be a

1 understanding the water right application, to
2 fully understand it, and then to looking at ways
3 in terms of settlement with the expertise,
4 especially that Norm Young has in terms of what
5 are some ways that we can come to the table and
6 come to some reasonable settlement measures.

7 And in that light, we didn't see where
8 they needed to be an expert. They were providing
9 more process, more mediator-type roles for how we
10 can try to work with M3 in terms of settlements.

11 Q. Is Mr. Young still involved as an
12 advisor with regard to potential settlement?

13 A. Yeah, he still helps and visits with
14 Jo Beeman.

15 Q. Uh-huh. Is it your position or your
16 group's position that the report or the analysis
17 done by Hydrologic and its characterization of the
18 aquifer have changed since the application was
19 filed to the present?

20 A. If you could restate that again.

21 Q. Is it your position that Hydrologic's
22 understanding or characterization of the aquifer
23 has changed between the time the application was
24 filed and now?

25 A. It is my understanding, based on what

1 good hypothetical? Would you agree with that?

2 A. I would say that, yes.

3 Q. And would you say that accuracy of
4 that level, to a few centimeters, to a few inches,
5 is the kind of data that a scientist reasonably
6 would rely on in making a conclusion?

7 A. Yes.

8 Q. Wouldn't you say that's correct?

9 A. I would say that.

10 Q. Okay. I note that your experts --
11 Young, Hannula, and Drury -- have pulled out being
12 experts for your group.

13 Is that correct?

14 A. Correct.

15 Q. Can you describe why that was done?

16 A. You asked me the same exact question
17 yesterday.

18 Q. Okay. Maybe we've already been over
19 this.

20 A. Right.

21 Q. And maybe you can just go ahead and
22 answer it, though, in any event.

23 A. It's a test. I believe the reason why
24 we no longer have them identified as expert
25 witnesses, they were assisting us more in terms of

1 I've heard Ed Squires talk about, is as they have
2 been analyzing data further since the application
3 and working on getting better information, better
4 estimates, is that it has changed. And I believe
5 the change has been fairly consistent when things
6 are better condition than we even earlier thought
7 in terms of the ability and sustainability of the
8 aquifer that is described as Pierce Gulch.

9 Q. You don't make the case, do you, that
10 Mr. Squires now believes that the aquifer extends
11 into the Boise River Valley where he did not
12 before? That isn't what you're saying, is it?

13 A. And I'm not doing this to give you a
14 bad time, but could you restate that, please.

15 Q. Is it your contention that
16 Hydrologic's conception of the aquifer has changed
17 since the application was filed in this regard,
18 that it now sees the aquifer as extending into the
19 Boise River basin where it didn't before? Is that
20 your contention?

21 A. I -- for that exactly, I don't think I
22 could answer that. I do believe in my -- in my
23 reading through Hydrologic's two reports -- and I
24 haven't seen the most recent one that apparently
25 is out -- is that there appears to be a difference

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REPORTER'S CERTIFICATE

I, JEFF LaMAR, CSR No. 640, Certified
Shorthand Reporter, certify:

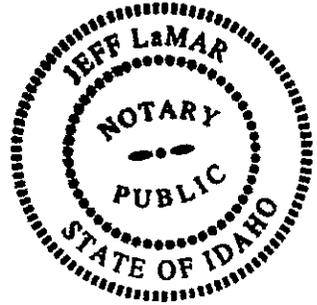
That the foregoing proceedings were taken
before me at the time and place therein set forth,
at which time the witness was put under oath by me.

That the testimony and all objections made
were recorded stenographically by me and transcribed
by me or under my direction.

That the foregoing is a true and correct
record of all testimony given, to the best of my
ability.

I further certify that I am not a relative or
employee of any attorney or party, nor am I
financially interested in the action.

IN WITNESS WHEREOF, I set my hand and seal
this 10th day of December, 2008.



[Handwritten signature]

JEFF LaMAR, CSR NO. 640
Notary Public
Eagle, Idaho 83616

My commission expires December 30, 2011

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)
_____)

DEPOSITION OF DAVID HEAD
DECEMBER 9, 2008

REPORTED BY:
JEFF LAMAR, C.S.R. No. 640
Notary Public



1 A. I'm thinking four cycles. They were
2 going to do an April and an October, although
3 Terry still owes me October's. I don't believe
4 I've got that yet.

5 Q. That's October of 2008?

6 A. Yeah. I have not received that.

7 Q. So you've received or will have
8 received two years of monitoring data --

9 A. Yes.

10 Q. -- once every six months from
11 SunCor's --

12 A. SPF, yeah.

13 Q. -- SunCor's consultant, SPF; correct?

14 A. Yes.

15 Q. What have you done with the data that
16 you have received?

17 A. Filed it because there was no changes
18 in anything I could see, of course, because
19 there's been no appreciable weather changes or
20 appreciable new production that I'm aware of in
21 the area. So I glanced at it to see if there was
22 any changes and filed it away. There was no
23 changes. I mean, within a foot or two in a well
24 or two.

25 Q. When you say you filed it, did you

1 file it at your house?

2 A. Just they send it to me -- I got to
3 think about that. I think the first one they sent
4 me like a little binder. I think since then their
5 fellow -- Jason I think's his name -- sends it
6 e-mail.

7 Q. But do you have it at your house?

8 A. It's in my computer.

9 Q. In your computer?

10 A. Yeah.

11 Q. Have you ever printed it out and
12 provided it to anybody?

13 A. I think the first one I did. I
14 provided it to just anybody who was interested,
15 people that have been part -- Barbara Russell was
16 part of our group at that time on water, and she's
17 moved out of the area. A couple people just asked
18 me about it, and I provided it to them.

19 Q. Have you provide it had to the
20 Department of Water Resources?

21 A. It's filed with them. That was my
22 understanding is that in our agreement we asked
23 them to file with us, with SunCor, and with the
24 Department. So I've never followed up if the
25 Department got it. But that was my understanding

1 is that they were going to get an automatic copy.

2 Q. Your understanding, then, was that SPF
3 would do this monitoring, e-mail a copy of the
4 results to you as NACFA --

5 A. Yes, sir.

6 Q. -- to SunCor, their client --

7 A. Uh-huh.

8 Q. -- and to the Department; correct?

9 A. That was my understanding.

10 Q. Do you know whether that occurred,
11 whether the Department received --

12 A. I don't know.

13 Q. Has the Department ever asked you for
14 this information? Do you know?

15 A. Huh-uh, no.

16 Q. Have you discussed it with
17 Mr. Thornton, John Thornton?

18 A. I have not, no.

19 Q. Do you know whether John Thornton has
20 received this information?

21 A. I can't say that he did not. But he
22 was not part of any SunCor effort at the time. He
23 wasn't part of any kind of water thing. He hadn't
24 even moved into the area. I believe he was
25 building a home at the time. So I don't think he

1 has any background there.

2 Q. Do you think that the SunCor data has
3 any bearing at all on this application or your
4 protest?

5 A. Well, it certainly has some bearing,
6 I'm assuming, technically for people to draw on
7 data provided by those well logs, what they
8 learned. So it has some bearing. Because of the
9 difference in the quantity of water that they
10 withdrew, from a practical sense that's where, to
11 me, the difference between these two applications
12 began to vary was the quantity of water being
13 asked for from M3.

14 Q. Do you know whether SunCor proposed to
15 divert water from the Pierce Gulch Sand Aquifer?

16 A. No, they did not.

17 Q. They did not?

18 A. They did not identify to me that they
19 were -- no, I've never heard that term until the
20 M3 application.

21 Q. I'd like to refer to Exhibit 86.

22 Let's go off the record for a minute.

23 (Discussion.)

24 MR. FEREDAY: Back on.

25 Q. Before we get to Exhibit 86, do you

1 know, David, why Norm Young, Steve Hannula, and
2 Paul Drury are no longer named as experts for
3 NACGUA? Do you know?

4 A. I was not at the meeting that that was
5 discussed. I was at business. But I was told or
6 it was run by me that -- that their research was
7 more background data on understanding what the
8 application process is and what -- the details of
9 the M3 application. Therefore, the reports or
10 information that they were able to give us as
11 background data was no longer -- that we weren't
12 going to require anything more of them, and
13 therefore we wouldn't need them to do anything
14 more. We had gotten what we needed, is my
15 understanding, in their assistance as consultants.

16 Q. Did you ever meet with either Young,
17 Hannula, or Drury?

18 A. I've never met Mr. Hannula. I met
19 Mr. Drury and Mr. Young, yeah.

20 Q. And has Mr. Young given you the
21 impression that this application is for
22 15 million gallons a day year-round?

23 A. It's never been a subject. He's not
24 given me that impression, no.

25 MR. FEREDAY: Let's go off the record.

1 A. I did not. And I think that's a
2 fairly important thing to think about and come to
3 a conclusion that's...

4 Q. Let's just look at your well, for
5 example, David.

6 A. Uh-huh.

7 Q. You have many tens of feet of water
8 over the top of your well; correct -- or excuse
9 me, over the top of your pump?

10 A. I do at static. Not at drawdown. I
11 don't know what that number is, and I never got
12 that from my well driller.

13 Q. And you would agree, would you not,
14 that if M3's pumping did draw down ground water
15 levels in your area by let's say 10 feet but that
16 still left your pump 30 or 40 feet under the water
17 surface, that you would have no basis to complain;
18 correct?

19 A. Well, the caveat, I would say, is that
20 at static level, that's true. I do not know my
21 full pumping level drawdown of what that is. If
22 it's my -- they dropped my -- where is that
23 questionnaire? They dropped my pump down to 185
24 from 215 -- I'm sorry, from 185 to 215. So I'm --
25 I would have to ask Steve Caron why he did that,

1 (Discussion.)

2 MR. FEREDAY: Let's go back on the record.

3 Q. David, can you provide copies of the
4 SPF data pertaining to their monitoring to us?

5 A. I can.

6 Q. Would you make a note of that and send
7 me that as soon as you can?

8 A. Uh-huh.

9 Q. Is that a "yes"?

10 A. Yes.

11 Is electronic okay, Jeff?

12 Q. Yes.

13 A. And first thing -- I don't know why I
14 think it was bound, but if not, I'll make a copy
15 and send it.

16 Q. David, during the break, did you give
17 any further thought to your new recognition about
18 the question of drawdowns and how those would
19 compare to contours and what the implications of
20 that would be for M3 if M3 exceeded what it
21 predicted? Do you remember our conversation about
22 that?

23 A. I do.

24 Q. Did you give any further thought to
25 that or have any further comment about that?

1 if he felt that or monitored drawdown to be closer
2 to the bottom of the hole or not.

3 Q. Okay. David, now, referring to
4 Exhibit 86.

5 A. Uh-huh. Okay.

6 Q. Did you prepare this?

7 A. I did. Just for my own knowledge,
8 because I had never converted actual -- less than
9 the 15, I had not converted the lower quantities
10 and wanted to understand those for my own
11 knowledge.

12 Q. When did you add the handwritten
13 portion at the bottom of this exhibit?

14 A. Oh, gosh. I couldn't even begin to
15 guess. The first one I did because that was the
16 only number that stood out to me on the
17 application that I was concerned about. And then
18 later when I read through the application, I went
19 back and saw the different terminologies for
20 different types of production levels. And so I
21 did that -- just did the math, basically, from
22 above using that formulation.

23 Q. Do you know whether your
24 handwritten --

25 A. Are those mine?

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REPORTER'S CERTIFICATE

I, JEFF LaMAR, CSR No. 640, Certified
Shorthand Reporter, certify:

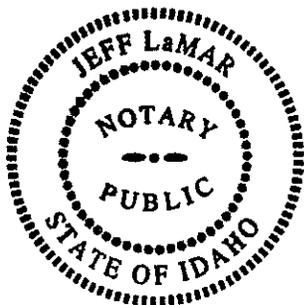
That the foregoing proceedings were taken
before me at the time and place therein set forth,
at which time the witness was put under oath by me.

That the testimony and all objections made
were recorded stenographically by me and transcribed
by me or under my direction.

That the foregoing is a true and correct
record of all testimony given, to the best of my
ability.

I further certify that I am not a relative or
employee of any attorney or party, nor am I
financially interested in the action.

IN WITNESS WHEREOF, I set my hand and seal
this 15th day of December, 2008.



A handwritten signature in black ink, appearing to read "JEFF LaMAR", written over a horizontal line.

JEFF LaMAR, CSR NO. 640
Notary Public
Eagle, Idaho 83616

My commission expires December 30, 2011