

EAGLE PINES WATER ASSOCIATION  
ALAN SMITH  
3135 OSPREY  
EAGLE, IDAHO 83616-2725  
PROTESTANTS  
(208) 939-6575

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

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

**NOTICE OF OPPOSITION TO M3  
EAGLE'S MOTION TO DESIGNATE  
THE M&M TRANSCRIPT THE  
OFFICIAL HEARING TRANSCRIPT**

North Ada County Ground Water Users Association and Eagle Pines Water Users Association by and through their designated spokes persons, John Thornton and Alan Smith, respectively, hereby notify the Hearing Officer of their objection to the M3 Eagle Motion of 21, August, 2009 on the following grounds:

1. The official record of the entire hearing is the audiotape recording which the Department of Water Resources is required by Rule 651 to record.

“All hearings shall be recorded on audio tape or videotape at the agency’s expense . . .”

2. Rule 650 requires the Department of Water Resources to “base its decision in the contested case on the official record for the case.” Subsection 1.d of Rule

650 provides:

“02. Contents of Record. The record for a contested case shall include:

(d.) **All evidence received or considered**  
(including all transcripts or recordings of hearings . . .”

The recording of this proceeding by M&M Court Reporting at the expense of M3 **does not constitute a part of the official record herein unless the Hearing Officer bases his decision in whole or in part on the M&M transcript rather than** on the official audiotape made by the Department.

Such an instance might occur in a situation where there is a malfunction of the recording equipment resulting in a void in the audiotape or in a situation where the tape recording is inaudible because of static or some other outside interference. In such instances the Protestants would not be opposed to using the M&M court reporter recording as a “backup” provided we are afforded the opportunity review such for accuracy before it is so used.

Otherwise, the recording made by M3 Eagle by and through M&M Court Reporting Services would not constitute a part of the evidence received or considered. We again reiterate Rule 650:

**“All evidence received or considered”** (including all transcripts or recordings of hearing . . . )

3. Protestants further object to the lodging of the M&M reporter’s transcript with the Department without giving Protestants any advance notice that they intended to do so. This is simply more of the “hide the ball” strategy used by M3's counsel throughout these

proceedings

4. Protestants further object to any effort by M3 to now claim this transcript to be a part of the evidence **received or considered** by the Hearing Officer without giving the Protestants any advance notice of lodging of the transcript.
  
5. Protestants also object to M3's attempt to formally place or lodge the M&M transcript before the Department without providing a copy for Protestants to review for accuracy. More "hide the ball" by the applicant.
  
6. Regardless of whether the Department's copy of the M&M transcript is made available for review by the Protestants, it should be noted that Protestant's expert witness, Dr. Ralston, does not reside in this area and it would be necessary for Protestants to go to considerable expense to have him return to Boise to review his testimony.

Wherefor, Protestants request that the M3 motion be denied..

Respectfully submitted,

SI JOHN THORNTON  
*verbally authorized to sign for John Thornton*  
John Thornton, Spokesperson for North Ada County  
Ground Water Users Association

Alan Smith

Alan Smith, Spokesperson for Eagle Pines and  
individually

Norman L Edwards  
Norm Edwards

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of September, 2009, the foregoing was filed, served, or copied as follows:

### NOTICE OF SERVICE AND DISCOVERY

North Ada County Groundwater Users Association  
John Thornton  
5264 N Sky High Lane  
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