

RECEIVED

NOV 07 2016

DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO DEPARTMENT OF WATER RESOURCES

\$50 fee Received by [Signature] Recept No. 902671 Date 11/7/16

REQUEST FOR EXTENSION OF TIME

To provide additional time in which to submit proof of beneficial use for a water right permit

The Idaho Department of Water Resources will consider this form a request that the permit holder(s) be granted an additional period of time under the provisions of Section 42-204, Idaho Code, in which to complete development of a water right and file proof of beneficial use of water. There is a FILING FEE of \$50.00 to be included with this form when filed with IDWR.

Permit no. 63-32573 Date proof is due March 9, 2017

Name(s) of permit holder(s) City of Eagle

Mailing address 660 E Civic Lane City Eagle State ID Zip 83616

Telephone no. 208-939-6813 Email

Describe what work has been completed toward the development of this water right:

If no work has been completed, show "none".

See Attachment A

Costing \$ 4,483,042 (does not include legal fees and expenses)

The permit holder(s) has been unable to complete the remainder of the work for the following reasons:

See Attachment A

Permit holder(s) request an extension for 10 year(s).

Signature (If other than permit holder, Power of Attorney must be supplied) Cherece M. Jan, City Attorney Date 11-9-16

ACTION OF THE DEPARTMENT OF WATER RESOURCES

The Department has reviewed the explanation for delay and concludes the reason(s) for delay meets the requirements for approval of the Request for Extension of Time as provided by Section(s) 42-204 and/or 42-218, Idaho Code.

IT IS HEREBY ORDERED that the permit is REINSTATED with the priority date advanced to _____, 20____.

IT IS HEREBY ORDERED that the above request for extension of time is APPROVED, and the time within which to submit proof of beneficial use is extended to March 9, 2027.

Signed this 28th day of November, 2016

Jeff Peppersack, Chief Water Allocation Bureau

[Signature]

ATTACHMENT A
**Request for Extension of Time to Submit Proof of Beneficial Use
for Water Right Permit No. 63-32573**

Table of Contents

I.	Introduction	1
II.	Background	2
III.	Information Required by IDWR’s Request for Extension Form	3
A.	Reasons the Permit holder has been unable to fully complete the work necessary to submit proof of beneficial use	3
B.	Description of work that has been completed toward the development of the Permit ...	6
(1)	Water System facilities designed, constructed, tested, and monitored	6
(2)	Governmental processes undertaken and/or completed.....	10
(a)	Project-wide Approvals.....	10
(b)	Phase 1 Approvals.....	12
IV.	Conclusion.....	13

I. INTRODUCTION

The City of Eagle (the “City”) holds Permit No. 63-32573 (the “Permit”) to serve a planned unit development known as “Spring Valley” to be developed by M3 Eagle LLC (“M3 Eagle”).

The Permit authorizes diversions of ground water for municipal purposes (including storage). Specifically, it “authorizes a peak diversion rate of 23.18 cfs with an annual diversion volume limit of 6,535 acre-feet of water for reasonably anticipated future needs for a 30 year planning horizon within the service area pursuant to Chapter 2, Title 42, Idaho Code.”

The Permit’s conditions state, among other things, that “[i]f proof [of beneficial use] is submitted on or before March 9, 2017, the permit holder shall, at the same time, submit a request for a five year extension of time pursuant to Idaho Code § 42-204(5),”¹ and also that “[n]othing in this condition prevents the permit holder from submitting a request for extension of time to submit proof of beneficial use prior to the filing of proof.” Pursuant to the latter provision, the City is requesting an extension of time prior to filing proof of beneficial use—in other words, proof is not being submitted with this request.

As explained below, the City and M3 Eagle have satisfied the standards for obtaining an extension of time to submit proof of beneficial use by proceeding diligently and in good faith toward the development of Spring Valley and the beneficial use of water under the Permit.

¹ The Permit’s reference to Idaho Code § 42-204(5) is out of date because the statute’s subsections were changed by a 2013 amendment by the Legislature. Former subsection (5) is now subsection (6).

CONFIDENTIAL ATTORNEY WORK PRODUCT

Accordingly, pursuant to Idaho Code Section 42-204(4), the City has submitted the attached Request for Extension of Time to Submit Proof of Beneficial Use form (“Request for Extension” or “Request”) requesting that IDWR grant a 10 year extension of time past the Permit’s original proof due date of March 9, 2017, so that proof of beneficial use will become due on March 9, 2027.

II. BACKGROUND

M3 Eagle applied for the Permit in November 2006, and assigned it to the City pursuant to the Assignment of Application and Permit No. 63-32573 filed with the Department on June 13, 2011 (“Assignment”), and the Pre-Annexation and Development Agreement entered into between M3 Eagle and the City, which was recorded in the real property records of Ada County, Idaho, on December 27, 2007, as Instrument No. 107170114 (“Pre-Annexation Agreement”).

M3 Eagle is developing the Spring Valley project on its lands which were annexed into the City of Eagle in 2009. Spring Valley’s development now is occurring pursuant to the Amended and Restated Development Agreement recorded in the real property records of Ada County, Idaho, on January 24, 2014, as Instrument No. 114006036 (“Development Agreement” or “DA”), which superseded the Pre-Annexation Agreement. Spring Valley is referred to in the Development Agreement (and occasionally in this document) as the “Project.”

The Development Agreement states that the Permit “is to be used to provide municipal water service to the Project for all of its municipal uses, including without limitation irrigation, storage, residential, commercial, industrial, and other municipal uses.” DA § 2.2(b).²

Pursuant to the Development Agreement, M3 Eagle is required to construct Spring Valley’s “Water System” which “shall include, without limitation, all water rights, wells, pumps, distribution and service mains and lines, meters, electrical equipment, storage tanks or reservoirs, emergency back-up generators, and related facilities necessary to divert, treat, deliver and account for water used by M3 Eagle and customers within the Project, together with all easements and rights-of-way sized to construct, operate, maintain, upgrade, repair and replace such facilities.” DA § 2.2(a).

The Development Agreement further states that M3 Eagle “shall design, engineer, construct, install, permit and then convey the Water System to City in accordance with the terms of this Agreement and any applicable City-approved Planning Unit Master Plan(s) and applicable federal, state and local laws and ordinances. In designing and constructing the Water System, [M3 Eagle] shall consult regularly with City and construct the Water System to City’s standards. The location and construction of the Water System components shall comport with the phasing of the Project’s development.” DA § 2.2(c).

² In addition to the municipal water uses supplied by the Permit, the DA provides that water for irrigation, aesthetics, amenities, and open space purposes may be supplied by treated wastewater effluent (i.e. “Re-Use Water”), water rights or entitlements associated with ditch company shares, or other surface water or ground water rights provided by M3 Eagle. DA § 2.2(g). Such other water supplies were contemplated, considered, and accounted for in the Permit’s application and approval.

CONFIDENTIAL ATTORNEY WORK PRODUCT

In short, while the City is the Permit holder, M3 Eagle is responsible for constructing the Water System. Accordingly, both the City's and M3 Eagle's efforts are necessary to establish beneficial use under the Permit, and to satisfy the standards for approving a request for extension of time to submit proof of beneficial use for the Permit pursuant to Idaho Code Sections 42-204 and/or 42-218. As explained below, the City and M3 Eagle have been proceeding diligently and in good faith toward the development of the Spring Valley Project, including the Water System needed to beneficially use water under the Permit.

III. INFORMATION REQUIRED BY IDWR'S REQUEST FOR EXTENSION FORM

The Department's Request for Extension form requires information about (A) the reasons the permit holder has been unable to fully complete the work necessary to submit proof of beneficial use, and (B) the extent of the work that has been completed toward the development of the water right. This information is provided in the subsections that follow.

A. Reasons the Permit holder has been unable to fully complete the work necessary to submit proof of beneficial use

This Request for Extension requests a 10 year extension past March 9, 2017 (the initial proof of beneficial use deadline) under Idaho Code Section 42-204(4) because the City and M3 Eagle have exercised reasonable diligence toward demonstrating beneficial use under the Permit and good cause exists.

Idaho Code Section 42-204(4) states:

The time for completion of works and application of the water to full beneficial use under any permit involving the diversion of two (2) or more cubic feet per second or the development or cultivation of one hundred (100) or more acres of land may be extended by the director of the department of water resources upon application by the permittee for an additional period up to ten (10) years beyond the initial development deadline contained in the permit, or beyond a grant of extension pursuant to the provisions of subsection (1) of this section, provided the permittee establishes that the permittee has exercised reasonable diligence and that good cause exists for the requested extension.

In the four years since the Permit was issued, the City and M3 Eagle have completed substantial work toward constructing the full system capacity, and anticipate full diversion and beneficial use of water authorized under the Permit within the approved 30 year planning horizon.

A master planned community such as Spring Valley is a long-term project, the prudent construction of which requires a sequenced and orderly approach to development. Certain

CONFIDENTIAL ATTORNEY WORK PRODUCT

aspects of the Project must be completed before other aspects can begin. For example, public hearings must be held before the City can grant required land use approvals, and land use approvals must be granted before certain infrastructure can be constructed. As is typical with large-scale developments, the actual construction of Spring Valley's infrastructure will continue until relatively late in the development process, after significant time and resources are spent obtaining regulatory approvals and designing the Project.

In addition, projects the size and complexity of Spring Valley are constructed in sequential phases rather than all at once, which was contemplated in the original Permit application and the approvals granted by the Department and the City. In Spring Valley's case, development currently is planned to occur in five phases, each encompassing 15% to 25% of the total Project area. The initial phase of infrastructure necessary to launch the Spring Valley master planned community will be oversized to accommodate build-out on a longer term than five years.

The process for designing, obtaining regulatory approvals for, and ultimately constructing Spring Valley began at a Project-wide level in 2004. Since the Permit was issued in 2012, the City and M3 Eagle have been working on design and regulatory approvals for Phase I of the Project. During our nation's most recent economic recession from 2009 to 2014—an economic period that was challenging for many residential development projects—M3 Eagle and the City, in their respective roles, completed many mandatory Project-wide and Phase I approvals which are summarized in Section III.B(2) below.

M3 Eagle also has constructed portions of the Water System, including some facilities that are necessary to complete Project-wide and Phase I design and to obtain regulatory approvals. Most notably, M3 Eagle has constructed and tested two new municipal water supply wells known as Spring Valley Well #1 and Spring Valley Well #2. Based on the productivity of these wells, demonstrated by multiple-day hydrogeological pumping tests, it appears that the water source sought under the Permit is sufficient and sustainable for all proposed purposes.³ Indeed, it appears that these two new municipal wells, together with the Kling and SVR 7 irrigation wells (which the Permit recognizes as authorized points of diversion), could produce 75-to-80 % of the instantaneous diversion rate of the Permit. This demonstrates at least two important points: (1) the aquifer underlying the Spring Valley Project is robust, productive, and adequate for the purposes sought under the Permit; and (2) the Project's design can, and will, change as additional new information is acquired and the Project is constructed. This sequential approach to developing the Project allows M3 Eagle and the City to take advantage of new information by avoiding over-building infrastructure early in the development process, leading to lower maintenance costs and ultimately lower water rates for the consumer.

³ For example, the Spring Valley Well #2 test resulted in only 60 feet of drawdown in the well and a calculated well specific capacity of 35 gallons per minute per foot of drawdown. Aquifer transmissivity was calculated at 125,000 to 190,000 gpd/ft. The test data show that if this well was pumped continuously at 2,100 gpm for two years without interruption, only an additional seven feet of drawdown would result.

CONFIDENTIAL ATTORNEY WORK PRODUCT

This Phased approach to developing the Project also means that each Phase's final design is not known at the outset and certain Phases may be commenced in a different order than initially planned. Necessary governmental approvals cannot all be obtained up front, and advance construction of infrastructure for all future Phases is not possible or warranted. Even if designs, approvals, and construction plans were completed early in the Project, it still would not be prudent to construct infrastructure years before it is anticipated to be used. Municipal water supply facilities are meant to be used. Significant periods of non-use can result in problems requiring substantial (and expensive) repair and replacement. In other words, the useful life of prematurely constructed facilities would be reduced by the period of time that passes before they are needed. Granted, some infrastructure constructed during early phases must be sized to accommodate later phases. However, as a general matter, it is not prudent to design or construct portions of the Water System for the Project, which has a 30-year planning horizon, years or even decades before such portions would actually be used.

The Project's sequential approach to development and phasing protects against the risk that infrastructure is constructed too soon, unnecessarily, or incorrectly. This approach to development is particularly prudent when market forces are taken into consideration. Many projects failed during the nation's recent recession because they were over-built and overextended. Thanks to M3 Eagle's and the City's conservative approach, Spring Valley did not fail. Instead, while weathering the recession, M3 Eagle and the City diligently proceeded with the many legally required government permitting and administrative actions and processes related to Spring Valley's land and water development. In short, M3 Eagle and the City have continued, and still continue, to move toward the same goals for Spring Valley that were set before the recession.

The long-term nature of a planned development like Spring Valley is why M3 Eagle applied for, and the Department granted, a 30 year planning horizon for the Permit.⁴ However, Idaho's statutes generally require proof of beneficial use within five years from a permit's issuance. In light of this, this request for extension of time to file proof of beneficial use is not surprising. Indeed, doing so was expressly contemplated by the Permit conditions imposed by the Department. See Permit Condition No. 10.

At this time, the City is not requesting an extension under Idaho Code Section 42-204(1) which, among other things, allows for extensions of time resulting from federal, state, county, city or other local government permitting or administrative actions or processes related to land or water development. That subsection of the statute provides that, where the permit holder is proceeding diligently and in good faith, the Department shall extend the time for submitting proof of beneficial use so that the amount of time lost by government permitting or administrative actions or processes shall be added to the time given in the original permit, or in any subsequent grant of extension. We do not presently invoke this basis for an extension, but

⁴ The Permit's conditions state that "[t]he full system capacity necessary to provide water for the reasonably anticipated future needs authorized under this right must be constructed by the end of the designated planning horizon."

CONFIDENTIAL ATTORNEY WORK PRODUCT

notes the possibility of doing so, if circumstances necessitate, in the future, as allowed by Section 42-204(1).

The City's and M3 Eagle's reasonable diligence is demonstrated by the work that has been completed toward the development of the Permit, including all of the Project-wide and Phase I approvals to date, and the Water System facilities constructed and tested. This work is described in more detail in the next section.

B. Description of work that has been completed toward the development of the Permit

As already mentioned, M3 Eagle has constructed and tested significant portions of the Water System, including the Spring Valley Well #1 and Spring Valley Well #2. These Public Drinking Water System wells, together with Spring Valley's two existing irrigation wells, have produced more than 41 million gallons of ground water during well testing, aquifer testing, and well development during the original five-year proof of beneficial use period. M3 Eagle's work on the planning, design, and development of Spring Valley's Water System has cost approximately \$4,483,042 to date (excluding legal fees and expenses).

Also as mentioned, M3 Eagle and the City have undertaken many governmental processes necessary to develop the Spring Valley Project and, as a result, the beneficial use of water authorized under the Permit. Accordingly, such processes reflect work that has been completed toward the development of the Permit, even though it may not involve "on-the-ground" construction.

The next two subsections discuss these categories of work performed. Altogether, these efforts demonstrate the reasonable diligence and good faith justifying the requested extension of time.

(1) Water System facilities designed, constructed, tested, and monitored

M3 Eagle has designed, permitted, constructed and improved, generally through its consultant Hydro Logic, Inc. ("HLI"), the following Water System infrastructure necessary for the Spring Valley Project.

- i. Spring Valley Well #1. Completed on March 2, 2016, this is a finished 17-inch diameter well casing to 338 feet below ground level ("bgl") with 10-inch diameter stainless well screens to 484-feet bgl.
- ii. Spring Valley Well #2. Completed on July 20, 2016, this is a finished 17-inch diameter well casing to 342-feet bgl with 10-inch diameter stainless well screens to 520-feet bgl.

CONFIDENTIAL ATTORNEY WORK PRODUCT

- iii. Monitoring wells. M3 Eagle, through HLI, designed, drilled, constructed, and developed four, multi-depth piezometer nest monitoring stations with a total of 17 two-inch diameter monitoring tube wells. This work occurred from September 5, 2006 through November 16, 2007.
- iv. Kling irrigation well. M3 Eagle, through HLI, performed camera inspection, cleaning, development and reconstruction (with new casing) of this well. This work occurred from August 4, 2006 through August 23, 2006.
- v. SVR#7 well. M3 Eagle, through HLI, performed camera inspection, cleaning, and development of this well. This work occurred April 27, 2007 through May 28, 2007.
- vi. Stockwater wells. M3 Eagle, through HLI, performed camera inspection, cleaning, and development of three stockwater wells.
- vii. SVR#7 pumping plant. M3 Eagle, through HLI, designed, purchased, and installed a permanent 900 gallons per minute (“gpm”) submersible pumping plant with step-up 140 HP high-voltage transformer in this well. The plant was installed in the well on March 1, 2008. Repair and refurbishment of this equipment are underway in August, 2016.
- viii. Spring Valley Well #2 pumping plant. M3 Eagle, through HLI, designed, purchased, and installed a permanent 2,300 gpm, 260 HP submersible pumping plant in this well. This work occurred between July 5, 2016 and July 13, 2016.

To facilitate the construction and use of wells to supply water under the Permit, M3 Eagle has made the following improvements in addition to actual well construction:

- ix. Construction of six miles of all-weather road, cut and graded for year-round well access with subsequent repairs and re-grading every other year. This work has occurred periodically between November 2007 and July 2016.
- x. Construction of eight all-weather well site pads with site-specific access roads developed and graded. This work has occurred periodically between November 2007 and July 2016.
- xi. Construction of high volume pumping rip-rap lined discharge station arranged with Farmer’s Union Ditch, Ltd. This work occurred in October 2006.
- xii. Construction of security fences, gates, barricades and security signage for the well facilities. This work occurred in June and July of 2016.
- xiii. Construction of fourteen custom steel fabricated well head security shelters. This work has occurred periodically between September 2006 and August 2016.

CONFIDENTIAL ATTORNEY WORK PRODUCT

To aid in its design of the Water System, and in accordance with the Monitoring Plan specified as a Permit condition, M3 Eagle has performed the following tests of the Water System infrastructure necessary for the Spring Valley Project.

- xiv. 96-hour pumping test of Spring Valley Well #2. This 2,100 gpm constant-rate-discharge pumping test was performed July 16 through July 20, 2016, and involved the measurement of 21 observation wells.
- xv. 48-hour pumping test of reconstructed Kling irrigation well. This 900 gpm constant-rate-discharge pumping test was performed from January 9, 2007 through January 11, 2007, and involved 15 observation wells.
- xvi. 9-day regional aquifer test of the SVR #7 well. This 917 gpm constant-rate-discharge regional aquifer test was performed from March 10, 2008 through March 19, 2008, and involved equipping and monitoring 26 wells with digital water level monitoring instruments for pre-test, pumping, and recovery periods.
- xvii. 3-day regional aquifer test of Spring Valley Well #1. This 2,700 gpm constant-rate-discharge aquifer test was performed from February 23, 2016 through February 26, 2016, and involved equipping and monitoring 19 observation wells with digital water level monitoring instruments for pre-test, pumping, and recovery periods.
- xviii. Geochemical water sampling. Pump-sampling and laboratory analysis of ground water obtained from 17 area wells between September 5, 2006 and October 30, 2015. An additional sample was taken July 19, 2016.

The Water System's design is evolving as new information, such as from aquifer testing, becomes available. For example, the aquifer productivity demonstrated by the 96-hour pumping test of Spring Valley Well #2 (described above) suggests greater flexibility in well placement and smaller distribution mainlines than previously anticipated for full build-out of Spring Valley and full beneficial use of water under the Permit. Such new information demonstrates why it is not prudent to design or construct portions of the Water System too early in the development process.

Nevertheless, substantial design and engineering of the Water System infrastructure necessary for the Spring Valley Project has occurred and is continuing at this time. These designs include:

- xix. Master Water System Design. The Master Water Facilities Plan, completed and approved by both the City and Idaho Department of Environmental Quality ("IDEQ"), includes an analysis of pressure zones, storage requirements, pipe sizes, cost, and maintenance.
- xx. Phase I Water System Design. The Water Preliminary Engineering Report was completed by JUB Engineering for Spring Valley's Phase 1 and approved by the

CONFIDENTIAL ATTORNEY WORK PRODUCT

City and IDEQ in 2013. The Report includes a detailed water system design for Phase 1, pumping plants, wells, and cost estimates.

- xxi. Hydrogeologic/Engineering Well Field Spacing and General Water System Design Evaluation. This is an on-going joint effort by M3 Eagle's and the City's consultants HLI, JUB Engineering, and T-O Engineers. This project is primarily aimed at wellfield spacing, well capacities, well pumping plants and pump houses, and how those facilities affect the water distribution system design in general. A report for this evaluation is expected in late 2016.

M3 Eagle has implemented the Monitoring Plan required as a condition of the Permit, which demonstrates M3 Eagle's diligence in proceeding with the work required under the Permit. Pursuant to this Monitoring Plan, M3 Eagle has arranged for the preparation and submission of the following monitoring data and reports to the Department:

- xxii. Ground water monitoring data. To date, nine bi-annual submittals to IDWR of monitoring data obtained from nine wells.
- xxiii. Final Well Completion Report for Spring Valley Well #1. This report, prepared and submitted by M3 Eagle's consultant HLI to the IDEQ on July 25, 2016, includes the as-built details of the well's construction, hydraulic testing results, ground water chemistry/water quality analyses (New Source Monitoring), and the IDWR Well Driller's Report. A copy of the report will be provided to IDWR per the terms of the Permit and associated Monitoring Plan. On August 11, 2016, IDEQ issued its approval of the well based on this report.

The following additional well reports have been prepared:

- xxiv. Final Well Completion Report for Spring Valley Well #2. This report, prepared by M3 Eagle's consultant HLI and submitted to IDEQ on August 18, 2016, includes the as-built details of the well's construction, hydraulic testing results, ground water chemistry/water quality analyses (New Source Monitoring), and the IDWR Well Driller's Report. A copy of this report was provided to IDWR per the terms of the Permit and associated Monitoring Plan.
- xxv. Standard Technical Specifications for Drilling, Construction, and Testing of Municipal Water Supply Wells at M3 Eagle. This was approved by IDEQ on August 11, 2016.

The following additional reports currently are in preparation:

- xxvi. Operations and Maintenance manuals for the Spring Valley Well #1 and Spring Valley Well #2 municipal wells.
- xxvii. Comprehensive report of the 96-hour Spring Valley Well #2 regional-scale aquifer test.

CONFIDENTIAL ATTORNEY WORK PRODUCT

(2) Governmental processes undertaken and/or completed

The City and M3 Eagle, in their respective roles, have undertaken and completed many necessary processes and actions over the past four years since the Permit was issued. These fall into two categories: (a) "Project-wide Approvals," meaning they pertain to the entire Spring Valley Project; and (b) "Phase I Approvals," meaning they pertain only to Spring Valley's first phase of development (out of five currently planned phases). In almost all cases, the Phase I Approvals could not be processed until after the Project-wide Approvals were completed.

These are described in more detail below.

(a) Project-wide Approvals

- i. Amended and Restated Development Agreement. The City and M3 Eagle negotiated the Development Agreement between December 2012 and December 2013, finalizing and recording it on January 24, 2014. The Development Agreement sets forth the standards agreed to by the City and M3 Eagle for the development of Spring Valley, including required items such as a habitat mitigation plan and hillside grading guidelines.
- ii. Eagle City Code Title 11A. The City and M3 Eagle negotiated Eagle City Code Title 11A City between December 2012 and December 2013, and the City adopted it on January 2014. This Code section is specific to Spring Valley and includes, among other things, Development Standards, Permitted Uses, Design Review Process, Specific Use Standards, Parking, Planning Unit Master Plan Process, and Subdivision Code.
- iii. Bureau of Land Management (BLM) Rights-of-Way. M3 Eagle applied for, and the BLM processed, rights-of-way agreements across BLM land between 2008 and 2014. This process involved completing environmental assessments and public processes required by federal law. Upon completion of the processes, the BLM granted M3 Eagle rights-of-way for Linder Road and a second connection to State Highway 16 through BLM land, both of which are necessary to develop the Spring Valley Project.
- iv. Federal Emergency Management Agency (FEMA), Conditional Letter of Map Revision ("CLOMR"). M3 Eagle mapped and designed a drainage channel to reduce the flood plain in Big Gulch on the Spring Valley Project property. Based on this work, M3 Eagle submitted its application for a Letter of Map Revision to FEMA in February 2009, which FEMA approved in August 2010. The CLOMR was then amended and approved in 2013 to include additional detailed studies of the drainage conditions and access roads.
- v. Idaho Transportation Department (ITD) Access Permit. In 2013, M3 Eagle sought and obtained a permit from ITD for a new access from the Spring Valley

CONFIDENTIAL ATTORNEY WORK PRODUCT

Project to State Highway 16 at Equest Lane. This access will serve as the primary access for the first development phase.

- vi. Eagle Sewer District (ESD) Service Agreement. Between January 2010 and April 2014, M3 Eagle and ESD negotiated a Service Agreement, which was recorded on April 28, 2014. This Agreement sets forth the terms of service whereby ESD will own and operate the sanitary sewer system and refund a portion of connection fees to M3 Eagle to offset construction cost.
- vii. Wastewater Facility Plan. Between October 2012 and October 2013, M3 Eagle sought and obtained approvals from IDEQ and ESD for Spring Valley's master sewer design and Wastewater Facility Plan. This process involved analyzing wastewater treatment alternatives and selecting the preferred treatment alternative.
- viii. Master Water Facility Plan. In 2012, M3 Eagle, in cooperation with the City, prepared a Master Water Facility Plan analyzing all pressure zones, well locations, storage options, and facility sizing for the Spring Valley Project. IDEQ and the City reviewed and approved the Plan in January 2013, which was further amended based on the Phase 1 Preliminary Engineering Report in November 2013.

The following legally mandated governmental processes related to Spring Valley's land or water development are underway but not yet completed:

- ix. Master Pressurized Irrigation Plan. This plan describes the Project-wide pressurized irrigation system that will include surface water, reclaimed effluent, and ground water. Accordingly, it is integral to the overall Water System design and construction. This plan was required to be submitted with Phase 1 construction plans because the City will use it to evaluate pressurized irrigation designs on a phase by phase basis.

In addition, M3 Eagle and the City completed the following Project-wide approvals prior to the Permit's issuance, which further demonstrate their good faith and diligence toward completion of the Spring Valley Project:

- x. Spring Valley Grading Standards & Guidelines. In 2009, the City approved M3 Eagle's proposed standards and requirements for hillside development grading.
- xi. Spring Valley Habitat Mitigation Plan. In 2010, the City approved M3 Eagle's proposed requirements related to re-vegetation, creation of riparian area, conservation and open space requirements.
- xii. Ada County Highway District (ACHD) Master Traffic Impact Study. In 2011, ACHD approved a master traffic impact study completed by M3 Eagle.

CONFIDENTIAL ATTORNEY WORK PRODUCT

(b) Phase 1 Approvals

- xiii. Planning Unit Master Plan (PUMP) #1. Between December 2012 and June 2014, M3 Eagle proposed, and the City reviewed and approved, the PUMP for Spring Valley's Phase 1. The Plan identifies specific land uses, open space locations, and amenities for Phase 1.
- xiv. Spring Valley Preliminary Plat #1. Between December 2012 and June 2014, M3 Eagle proposed and the City reviewed and approved the Preliminary Plat for Spring Valley's Phase 1. The Preliminary Plat identifies lots, streets, and preliminary utility locations for Phase 1, which includes the first development phase of PUMP #1 and encompasses approximately 160 acres and 190 lots.
- xv. PUMP #1 & Preliminary Plat #1 Traffic Impact Study. Between 2013 and April 2014, M3 Eagle conducted, and Ada County Highway District approved a traffic impact study for the entire PUMP #1 area, which includes approximately 400 residential units.
- xvi. Sanitary Sewer Preliminary Engineering Report. Between June 2012 and August 2013, M3 Eagle prepared and IDEQ approved a sewer plan for Phase 1, which included a financial management plan, utility design, sewer treatment specifications and treatment plan layout.
- xvii. Domestic Water Preliminary Engineering Report. Between June 2012 and August 2013, M3 Eagle prepared, and IDEQ and the City approved, the Domestic Water Preliminary Engineering Report, which includes a financial management plan, utility design, hydrogeologic well design, and storage analysis for Phase 1.

Based on information gathered by the construction and testing of Spring Valley Well #1 and Spring Valley Well #2, the following legally-mandated governmental processes related to Spring Valley's land and water development in Phase 1 currently are planned:

- xviii. Update to Master Water Facility Plan.
- xix. Update to Domestic Water Preliminary Engineering Report.
- xx. Wastewater Treatment Plant Construction Drawings (to be submitted to ESD and IDEQ for approval).
- xxi. Phase 1 Construction Drawings (to be submitted to the City, ESD, and IDEQ for approval).
- xxii. Phase 1 Landscape, Entry, & Fencing Plans (to be submitted to the City for approval).

CONFIDENTIAL ATTORNEY WORK PRODUCT

The pursuit of these governmental permitting and administrative actions and processes demonstrates M3 Eagle's and the City's good faith and diligence toward completion of the Spring Valley Project and the full beneficial use of water under the Permit.

IV. CONCLUSION

The magnitude of the Spring Valley Project, the uniquely challenging circumstances faced, the contemplated timeframe for Project development and beneficial use of water, and the substantial efforts undertaken by the City and particularly M3 Eagle, amply demonstrate satisfaction of the criteria laid out in Idaho Code Section 42-204(4). The maximum allowable ten year extension is well justified and prudent given the scope and nature of this Project. The permittee has exercised reasonable diligence and demonstrated that good cause exists for the requested extension.



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

November 28, 2016

CITY OF EAGLE
660 E CIVIC LN
EAGLE ID 83616

REQUEST FOR EXTENSION OF TIME LETTER

RE: Permit No. 63-32573

Dear Permit Holder(s):

Enclosed is a copy of the approved request for extension of time submitted in connection with the above referenced permit which extends the proof due date to **March 09, 2027**.

The department granted this extension based on evidence of good cause. It is important that you work diligently toward the completion of the project during the development period allowed because the department **will not** grant an additional extension based on good cause, according to Section 42-204(6), Idaho Code.

The extension is a PRELIMINARY ORDER issued by the Department pursuant to Rule 730 of the Department's Rules of Procedure (IDAPA 37.01.01). It can and will become a final order without further action by the Department unless a party petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

Please be advised that Section 42-248, Idaho Code, requires you or the owner of this water right to maintain current ownership and address records on file with the department. Forms to file a change of ownership of a water right and/or a change in the address of the water right owner are available from any department office or at the department's website at www.idwr.idaho.gov .

If you have any questions concerning this permit, please contact the State Office of the Department located in Boise at (208) 287-4800.

Sincerely,

A handwritten signature in blue ink that reads "Darla Block".

Darla Block
Technical Records Specialist

Enclosure(s)

c: CHERESE MCLAIN

CERTIFICATE OF SERVICE

I hereby certify that on **November 29, 2016** I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER (**APPROVED REQUEST FOR EXTENSION OF TIME**) to the person(s) listed below:

RE: Preliminary Order in the Matter of Permit No. **63-32573**

**CITY OF EAGLE
660 E CIVIC LN
EAGLE ID 83616**

**CHERESE MCLAIN
MSBT LAW CHTD
950 W BANNOCK STE 520
BOISE ID 83702**


Darla Block
Technical Records Specialist

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(To be used in connection with actions when a hearing was not held)

(Required by Rule of Procedure 730.02)

The accompanying order or approved document is a "Preliminary Order" issued by the department pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department of Water Resources ("department") unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. **Note: the petition must be received by the department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after: (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its service date if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) The petition for reconsideration is disposed of; or
- (b) The petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

RECEIVED

NOV 07 2016

DEPARTMENT OF
WATER RESOURCES

950 W. BANNOCK STREET, SUITE 520
BOISE, ID 83702

TELEPHONE: (208) 331-1800

FACSIMILE: (208) 331-1202

WWW.MSBTLAW.COM



MSBT Law

ATTORNEYS AND COUNSELORS AT LAW

STEPHANIE J. BONNEY≈
PAUL J. FITZER
JILL S. HOLINKA
FRANCES R. STERN
PAUL A. TURCKE°

CHERESE D. McLAIN
LYNDON P. NGUYEN
ANTHONY M. PANTERA, IV

ELAINE F. EBERHARTER-MAKI, *Of Counsel*
MICHAEL C. MOORE, † *Of Counsel*
BRUCE M. SMITH, *Of Counsel*
≈ Also admitted in Utah
° Also admitted in South Dakota
† Also admitted in Washington

November 2, 2016

Idaho Department of Water Resources
Shelley Keen
P.O. Box 83720
Boise, Idaho 83720-0098

Re: City of Eagle/Spring Valley Water Right 63-32573
Request for Extension

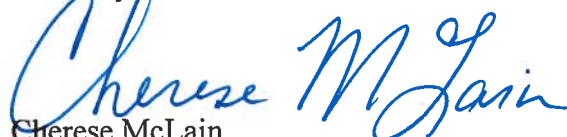
Dear Mr. Keen:

Our office serves as City Attorney for the City of Eagle. The City is hereby submitting our request for an extension for water right 63-32573 a municipal RAFN application. It is attached herein.

As you are aware, this water right is associated with the Spring Valley Planned Community to be developed by M3 Eagle LLC. The City and developer are seeking a 10 year extension for this application. A development of this magnitude and the unique partnership between the City (permit holder) and developer warrants this type of extension. With that, we would welcome a meeting regarding this request to discuss the reasons for the extension or to answer any questions.

Please feel free to contact me with any questions.

Sincerely,



Chereese McLain
City Attorney

cc: file
M3 Eagle

IDWR EXTENSION-1