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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 ASSIGNED
TO THE CITY OF EAGLE

**M3 EAGLE'S SECOND OBJECTION AND
MOTION IN LIMINE TO EXCLUDE
THREE OF PROTESTANTS' FOUR
PROPOSED WITNESSES**

Applicant M3 Eagle LLC ("M3 Eagle"), through Jeffrey C. Fereday and Michael P. Lawrence of the firm Givens Pursley LLP, hereby submits its *Second Objection and Motion in Limine to Exclude Three of Protestants' Four Proposed Witnesses* ("Motion in Limine"). This Motion in Limine is filed in response to Protestant Alan Smith's and Eagle Pines Water Users Association's (together, "Mr. Smith") October 4, 2011 *Response to M3's Reply of September 27, 2011 and Revised Witness List* ("Revised Witness List"), a copy of which is attached hereto. The Revised Witness List reduces the witnesses Protestants propose to call to four: Jason Smith, Mary Taylor, Charles Meissner, and Mike Moyle.

However, the Revised Witness List states that proposed witnesses Mary Taylor, Charles Meissner, and Mike Moyle "will testify as to actual, 'not potential,' damage and injury they have already endured as a result of the pumping of groundwater from the 'valley floor' being done by the City of Eagle." M3 Eagle hereby moves for an order excluding these individuals as

witnesses during these remand proceedings because their proposed testimony is not within the scope of permissible evidence.

The Hearing Officer repeatedly—most recently in his October 3, 2011 *Order Limiting Presentation of Evidence at Supplemental Hearing*—has ordered the scope of evidence during these remand proceedings be limited to:

1. The City of Eagle’s annexation of the M3 Eagle planned community project lands;
2. The City’s planning horizon and reasonably anticipated future municipal water needs for City’s service area, including the M3 Eagle planned community project, based on City’s current water rights portfolio and planning information; and
3. The quantity of water requested in the M3 Application for the M3 Eagle planned community project in relationship to the water needs of the rest of the City’s service area.

The District Court’s Amended Order pursuant to which this matter was remanded imposed the same limitation. As Mr. Smith describes it, the proposed testimony of Mary Taylor, Charles Meissner, and Mike Moyle does not fit within these categories, and Mr. Smith does not suggest that these witnesses will testify to any matter within the permissible categories. Accordingly, these witnesses should be excluded.

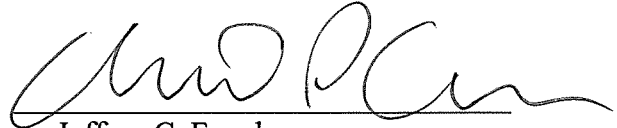
Given the short amount of time remaining to notice and take depositions, M3 Eagle respectfully requests the Hearing Officer issue such an order excluding these witnesses without delay.

DATED this 4th day of October, 2011.

Respectfully submitted,

GIVENS PURSLEY LLP

By

A handwritten signature in black ink, appearing to read "Jeffrey C. Fereday", written over a horizontal line.

Jeffrey C. Fereday

Michael P. Lawrence

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of October, 2011, the foregoing was filed, served, or copied as follows:

FILED

Idaho Department of Water Resources
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Jeffrey C. Fereday
Michael P. Lawrence