

SEP 15 2011

DEPARTMENT OF
WATER RESOURCES

Alan Smith
Eagle Pine Water Association
3135 Osprey Road
Eagle, ID 83616
208/939-6575
Protestant

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

IN THE MATTER OF APPLICATION FOR PERMIT) OBJECTION TO
NO. 63-32573, IN THE NAME OF M3 EAGLE) PREHEARING ORDER
ASSIGNED TO THE CITY OF EAGLE)
_____)

The Protestant named above objects to the Prehearing Order of September 8, 2011, signed by the Director/Hearing Officer for the following reasons:

1. The Director, at said Hearing, never requested any of the Litigants to prepare proposed hearing orders for his consideration.
2. The Director, in fundamental fairness, should have given all Litigants, the City of Eagle, the Protestants, and M3 an opportunity to submit proposed Prehearing Orders for his consideration before entering any order that would control or limit procedural or evidentiary matters at the hearing.
3. Protestant never received the proposed Order submitted by M3's counsel until September 9, 2011 and it had already been signed on September 8, 2011.
4. Matters never discussed or even mentioned at the prehearing are set out in the order while matters that were discussed are omitted.
5. The Director should not sign whatever M3's counsel places in front of him without allowing other Litigants, the City of Eagle and the Protestants any opportunity for input or objections.
6. The last clause of the Prehearing Order:

“The parties shall not ... offer evidence at the hearing concerning technical water supply issues, hydrogeology, and potential injury from pumping.”

is too restrictive, vague, and ambiguous and conflicts with the January 19th Agreement and the June 14th Stipulation which leaves “water supply issues and pumping effects” an open issue for the hearing record. These proceedings will also become a part of the “hearing record” and some of our witnesses will testify as to actual injury and damages they have endured (not “potential”) as a result of pumping along the valley floor now being done by the City of Eagle.

7. The so called thirty-two (32) findings are not findings of fact and conclusions of law, but are merely “negotiation points” agreed to by the Department and subject to rebuttal in the remand proceedings.

Respectfully submitted this 15 day of September, 2011.



Alan Smith

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15 day of Sept., 2011, a true and correct copy of the foregoing Objection for Prehearing Order were served on the following parties as set forth below:

Alan Smith

NOTICE OF SERVICE

North Ada County Groundwater Users Association	<u> </u>	U.S. Mail
John Thornton	<u> X </u>	Hand Delivered
5264 N Sky High Lane	<u> </u>	Overnight Mail
Eagle, ID 83616	<u> </u>	Facsimile

North Ada County Groundwater Users Association	<u> </u>	U.S. Mail
David Head	<u> X </u>	Hand Delivered
855 Stillwell Drive	<u> </u>	Overnight Mail
Eagle, ID 83616	<u> </u>	Facsimile

Norman Edwards	<u> </u>	U.S. Mail
884 W Beacon Light Road	<u> X </u>	Hand Delivered
Eagle, ID 83616	<u> </u>	Overnight Mail
	<u> </u>	Facsimile

Jeffrey C. Fereday	<u> </u>	U.S. Mail
GIVENS PURSLEY LLP	<u> X </u>	Hand Delivered
601 West Bannock Street	<u> </u>	Overnight Mail
PO Box 2720	<u> </u>	Facsimile
Boise, ID 83701-2720		

Gary Spackman, Hearing Officer	<u> </u>	U.S. Mail
State of Idaho	<u> X </u>	Hand Delivered
Department of Water Resources	<u> </u>	Overnight Mail
322 E Front Street	<u> </u>	Facsimile
Boise, Idaho		

Garrick L. Baxter and John W. Homan	<u> </u>	U.S. Mail
Deputy Attorneys General, IDWR	<u> X </u>	Hand Delivered
P.O. Box 83720	<u> </u>	Overnight Mail
Boise, Idaho 83720-0098	<u> </u>	Facsimile

Bruce Smith	<u> </u>	U.S. Mail
Moore, Smith, Buxton & Turcke, Chartered	<u> X </u>	Hand Delivered
950 W. Bannock Street Suite 520	<u> </u>	Overnight Mail
Boise, Idaho 83702	<u> </u>	Facsimile