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DEPARTMENT OF
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**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 RESPONSE TO
PROTESTANTS' MOTION FOR
CLARIFICATION AND/OR
RECONSIDERATION**

M3 Eagle LLC ("M3 Eagle") through its counsel, Jeffrey C. Fereday and Michael P. Lawrence of Givens Pursley LLP, pursuant to Idaho Department of Water Resources ("IDWR" or "Department") Rule of Procedure 270.02, IDAPA 37.01.01.270.02, hereby responds to the Protestants' August 23, 2011 *Motion for Clarification and/or Reconsideration* and brief filed contemporaneously in support thereof (together, "Motion"). Protestants' Motion should be denied because it is meritless.

Protestants make no valid legal argument warranting clarification or reconsideration of the Interim Director's August 9, 2011 *Order Denying Request to Disqualify Interim Director as Hearing Officer* ("Order"). In addition, there is no basis for their factual allegations, most of which are patently untrue or misrepresent and mischaracterize actual facts and events.

Protestants did not intervene or participate as parties in Ada County District Court case no. CV-OC-2010-3180 (the “Judicial Review Case”).

As stated by the Court in its remand order, and as reiterated by the Interim Director, these remand proceedings are limited to taking the evidence concerning:

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.

Amended Order, M3 Eagle LLC v. Idaho Department of Water Resources, Case No. CV OC 10003180, Fourth Judicial District (July 5, 2011), quoting from, and granting, the Joint Stipulation and Motion for Remand With Directions between the parties.


These remand proceedings are not about taking evidence on technical water supply or hydrogeological issues. Those issues were resolved based on the existing record and memorialized in the settlement reached between M3 Eagle and the Department during the Judicial Review Case. The parties’ stipulated findings on those issues—each of which is founded in the existing record—“are essential terms” in the settlement between M3 Eagle and IDWR that cannot be altered by, and are not the subject of, the remand proceedings. Hearing Officer’s *Order Acknowledging Party Status of Protestants and Denying Motion to Alter or*

Amend Findings at 2 (Aug 2, 2011). In complete contradiction of the orders of the court and the Hearing Officer, Protestants want to debate those issues on remand, and they seek to disqualify the Interim Director because they disagree with the stipulated findings. Motion at 6 (“the sole reason Protestants seek disqualification is because the Director has agreed in the January 19th Agreement to make only those findings to which M3 will agree”). These findings are final. Protestants’ after-the-fact complaint about them cannot support broadening the scope of the remand proceedings or disqualifying the Interim Director.

Protestants’ Motion should be denied.

Respectfully submitted this 1st day of September, 2011.

GIVENS PURSLEY LLP

By 
Jeffrey C. Fereday
Michael P. Lawrence

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of September, 2011, the foregoing was filed, served, or copied as follows:

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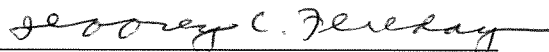
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