

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

IN THE MATTER OF APPLICATION )	<b>ORDER ACKNOWLEDGING PARTY</b>
FOR PERMIT NO. 63-32573, IN THE )	<b>STATUS OF PROTESTANTS AND</b>
NAME OF M-3 EAGLE ASSIGNED )	<b>DENYING MOTION TO ALTER AND</b>
TO THE CITY OF EAGLE <sup>1</sup> )	<b>AMEND FINDINGS</b>
_____ )	

**Background**

On June 13, 2011, Petitioner M3 Eagle LLC and Respondents Idaho Department of Water Resources (“IDWR”) and Gary Spackman filed a Joint Stipulation and Motion for Remand with Directions (“Stipulation”) to dismiss the judicial review case and to request that the contested matter be remanded to IDWR for further proceedings consistent with terms and conditions in the Stipulation. On June 30, 2011, the Fourth District Court issued an Amended Order dismissing the judicial review case and remanding the contested matter back to IDWR for further proceedings consistent with terms and conditions in the Stipulation.

On July 1, 2011, IDWR received two documents dated June 30, 2011 from the Protestants titled *Motion to be Included as Parties and Demand for Notice*, and *Motion to Alter and Amend the Exhibit A Findings and for Additional Findings and Motion in Limine*. In response to Protestant’s motions, on July 14, 2011, IDWR received from M3 Eagle LLC, *M3 Eagle’s Response to Protestants June 30 Motions*.

**I. PROTESTANTS ARE PARTIES TO CONTESTED MATTER BEFORE IDWR**

Protestant parties were consolidated in the contested matter before IDWR by the Order Consolidating Parties and Default Order dated October 7, 2008 and permitted to participate in the proceedings according to the terms described therein. Although the Protestants were not parties in the judicial review action before the district court in Ada County case no. CV OC 003180, the Protestants have always been and still remain parties in the contest matter before IDWR and are entitled to Notice and to participate in the remanded proceedings subject to limitations described in the October 7, 2008 Order.

---

<sup>1</sup> The original caption was changed to reflect that an assignment of water right application and permit no. 63-32573 to the City of Eagle was filed with IDWR on June 13, 2011.

**II. PROTESTANTS' MOTION TO ALTER AND AMEND THE EXHIBIT A FINDINGS AND FOR ADDITIONAL FINDINGS AND MOTION IN LIMINE IS DENIED.**

M3 Eagle raised two key issues in the district court appeal: 1) M3 Eagle's status as a municipal provider and 2) IDWR's findings regarding water supply. IDWR and M3 Eagle, the two parties to the judicial review case, negotiated over a year to reach settlement on these issues. The settlement agreement reached by the parties on January 19, 2011 included a number of findings and conditions that contemplated assignment of the water right application and permit to the City of Eagle. Exhibit A to the settlement agreement included findings related to water supply. After assignment of the water right application and permit to the City of Eagle (which provided a path forward to resolve the municipal provider question), IDWR and M3 Eagle requested that the District Court dismiss the judicial review case and remand the matter back to IDWR consistent with the terms and conditions in the Joint Stipulation filed with the Court. The Court issued the Amended Order dismissing the judicial review case and remanded the matter back to IDWR for proceedings consistent with the terms and conditions in the Stipulation.

On remand, the Protestants now ask the Director to amend the findings in Exhibit A and hold that the Stipulation (of which Exhibit A is a part) is of "no force and effect."

The Protestants were not parties in the judicial review action before the district court in Ada County case no. CV OC 003180. The findings in Exhibit A that the Protestants seek to alter or amend are essential terms in the Stipulation. Altering or amending the findings in Exhibit A would be contrary to the express language in the June 30, 2011 Amended Order as well as the Settlement Agreement dated January 19, 2011 and the Joint Stipulation dated June 13, 2011. IDWR is obligated under these earlier agreements and is required under the Amended Order to conduct the remand proceedings consistent with the terms and conditions of the Stipulation. Accordingly, the Protestants Motion to alter or amend the Exhibit A findings and for additional findings and motion in limine is DENIED.

Dated this 2nd day of August, 2011.



**Gary Spackman**  
Interim Director

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 2<sup>nd</sup> day of August, 2011, a true and correct copy of the document described below was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

Document Served: **ORDER ACKNOWLEDGING PARTY STATUS OF  
PROTESTANTS AND DENYING MOTION TO ALTER AND AMEND FINDINGS**

Bruce M. Smith  
Moore Smith Buxton & Turcke,  
Chtd.  
950 W Bannock Street, Suite 520  
Boise Idaho 83702

David Head  
North Ada County Groundwater  
Users Assn.  
855 Stillwell Drive  
Eagle, Idaho 83616

Jeffrey C. Fereday  
Givens Pursley, LLP  
601 W Bannock Street  
P.O. Box 2720  
Boise, Idaho 83701

John Thornton  
North Ada County Groundwater  
Users Assn.  
5264 North Sky High Lane  
Eagle Idaho 83616

Norman L. Edwards  
884 W. Beacon Light Road  
Eagle, Idaho 83616

Alan Smith  
Eagle Pines Water Users Assn.  
3135 Osprey Road  
Eagle, Idaho 83616



Deborah J. Gibson  
Administrative Assistant II  
Water Management Division and Legal Services