

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION)	
TO APPROPRIATE WATER NO. 63-32573)	ORDER GRANTING PETITION FOR
IN THE NAME OF M3 EAGLE LLC)	STAY OF AMENDED FINAL ORDER
_____)	

FINDINGS OF FACT

1. On January 25, 2010, the Department of Water Resources (“Department”) issued an *Amended Final Order* (“order”) approving application to appropriate water no. 63-32573 (“permit”) in the name of M3 Eagle LLC.

2. The permit included the following approval conditions:

Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which the permit holder had no control.

Proof of application of water to beneficial use shall be submitted on or before February 1, 2015.

3. On February 19, 2010, M3 Eagle LLC filed a *Petition for Judicial Review* with the district court of the Fourth Judicial District of the State of Idaho in connection with this matter.

4. M3 Eagle is actively attempting to negotiate a resolution of the pending judicial review of the order.

5. On September 22, 2010, the Department received M3 Eagle’s *Petition for Stay of Amended Final Order* (“Petition”). In the petition, M3 Eagle LLC asserts that the ongoing status of the negotiations and the pending judicial review will make it difficult to meet the permit approval condition requiring it to commence construction within one year from the date of permit issuance. Consequently, M3 Eagle LLC requests in the petition that the Department stay the order.

6. The Department has not received an answer to the petition from any party.

CONCLUSIONS OF LAW

Governing Statutes and Rules of Procedure

1. Rule 780 of the Department’s Rules of Procedure (IDAPA 37.01.01.780) states:

Any party or person affected by an order may petition the agency to stay any order, whether interlocutory or final. Interlocutory or final orders may be stayed by the judiciary

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according to statute. The agency may stay any interlocutory or final order on its own motion.

2. Rule 270.02 of the Department's Rules of Procedure (IDAPA 37.01.01.270.02) states:

Answers to motions may be filed by persons or parties who are the object of a motion or by parties opposing a motion within fourteen (14) days of the filing of the motion. The time to file an answer to a motion may be enlarged or shortened by the presiding officer upon a showing of good cause by a party. The presiding officer may act upon a prehearing motion under Rule 565.

3. Idaho Code § 42-204 says, in pertinent part:

The department shall require that actual construction work and application of the water to full beneficial use shall be complete within a period of five (5) years from the date of such approval . . . and the permit shall set forth the date when beneficial application of the water to be diverted by such works shall be made.

Analysis

4. Requiring M3 Eagle LLC to commence construction of the development authorized in the order while the outcome of the order is subject to judicial review would be unduly burdensome. The Department should grant the petition and stay the order for an indefinite period of time.
5. The date of approval of the permit impacts the date upon which proof of beneficial use shall be due for the permit. The date for submitting proof of beneficial use should be re-evaluated when the stay is lifted.

ORDER

IT IS HEREBY ORDERED that M3 Eagle LLC's petition to stay the *Amended Final Order* approving application to appropriate water no. 63-32573 is **GRANTED** for an indefinite period of time.

IT IS FURTHER ORDERED that the date by which proof of beneficial use shall be submitted in connection with the permit shall be re-evaluated when the stay is lifted.

Dated this 2nd day of November, 2010.



GARY SPACKMAN
Interim Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of November, 2010, 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 GRANTING PETITION FOR STAY OF
AMENDED FINAL ORDER

Jeffrey C. Fereday
GIVENS PURSLEY LLP
P.O. Box 2720
Boise, Idaho 83701

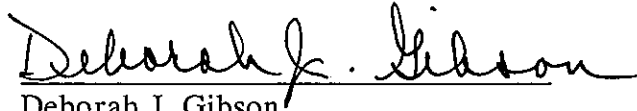
North Ada County Foothills Assn.
c/o David Head
855 Stillwell Drive
Eagle, Idaho 83616

M3 Eagle LLC
533 E. Riverside Dr. Ste 110
Eagle, Idaho 83616

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

John Thornton
5264 North Sky High Lane
Eagle, Idaho 83616

Alan Smith
3135 Osprey Road
Eagle, Idaho 83616



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