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DEPARTMENT OF
WATER RESOURCES

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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 PETITION FOR STAY OF
AMENDED FINAL ORDER**

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 Rule of Procedure 780, IDAPA 37.01.01.780, hereby petitions the Interim Director to stay his January 25, 2010 *Amended Final Order* in this matter ("Order") so as to suspend the Order's condition regarding the commencement of project construction. M3 Eagle requests that such a stay remain in place until 18 months after any non-appealable order resulting from the pending judicial review proceeding, including any proceedings on remand to the Department.

The *Amended Final Order*, at 25, requires that "[p]roject 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.” Under this condition, the deadline for commencing construction is January 25, 2011.

A stay is appropriate to allow time for M3 Eagle and the Department to continue negotiating a potential resolution of the pending judicial review proceeding involving the Order. As the Interim Director is aware, M3 Eagle and the Department have been working diligently toward a resolution since M3 Eagle filed its February 29, 2010 *Petition for Judicial Review* in Ada County District Court. The settlement discussions have been productive so far, but additional time is needed, including time to involve the City of Eagle and the Protestants, as appropriate. M3 Eagle wishes to continue to put its energies in that direction rather than either litigation or initiating construction of the water system. Even if a settlement is reached by November 1 of this year (which we think is an attainable, albeit ambitious, goal), if further proceedings on remand to the Department are required, it seems likely that they would not conclude by January 25, 2011.¹

M3 Eagle believes that its already-constructed and operating system of monitoring wells satisfies the one-year commencement condition, or alternatively that any alleged failure to commence construction within one year can be attributed to the pending judicial review, which is a proceeding with a schedule over which M3 Eagle has little or no control. Rather than leaving these questions open, however, M3 Eagle is requesting this stay.

Based on the foregoing, M3 Eagle respectfully requests the Interim Director issue an order staying the Order as requested above.

¹ Of course, if a settlement is not reached, the pending judicial review proceeding will continue and there is virtually no chance that it would conclude by January 25, 2011.

Respectfully submitted this 22d day of September, 2010.

GIVENS PURSLEY LLP

By *Jeffrey C. Fereday*
Jeffrey C. Fereday
Michael P. Lawrence

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22d day of September, 2010, the foregoing was filed, served, or copied as follows:

FILED

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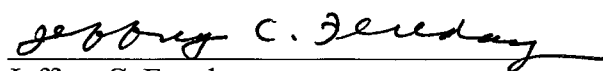
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