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DEPARTMENT OF
WATER RESOURCES

EAGLE PINES WATER ASSOCIATION
ALAN SMITH
3135 OSPREY
EAGLE, IDAHO 83616-2725
PROTESTANTS
(208)939-6575

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

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 63-32576 IN THE)
NAME OF M3 EAGLE LLC)

**REPLY TO THE M3 REQUEST
FOR PRODUCTION
OF IDWR DOCUMENTS**

Protestants give full deference to whatever the Department's judgment may be with regard to this Request for Production and Copying of Documents in IDWR's possession. However, Protestants are compelled to raise the following points. This request is outrageous, inappropriate, and contains a reprehensory aspect toward IDWR for the following reasons:

1. This Request is nothing more than a motion under Rule 34, IRCP to inspect and copy documents and records.
2. M3's Request exceeds the scope of The Idaho Rules of Civil Procedure which covers only adverse parties.
3. IDWR is not an adverse party. Protestants are the only adverse party.
4. Rule 34 (c) requires an independent action against a person or entity not a party for production of documents This is a fatal flaw in the applicant request.
5. A request for production of documents should be supported by an affidavit showing that there is reasonable cause to believe and a probability that the documents sought contain material evidence. Belser v. Savarona Ship Corp., 26 Fed. Supp. 599; Hayhurst v. Boyd, 50 Idaho 752, 300 P.2d 895.
6. There is no affidavit supporting the Request by M3.

7. A party should not be obligated to produce and permit inspection and copying of documents unless they are designated with reasonable particularity. Rule 34 (b) IRCP. Good cause should also be shown to require production of documents.
8. Mere surmise or suspicion is not sufficient. Hauger v. Chi. R.I. & P.R.Co. 216 Fed 2d 501. Hayhurst v. Boyd, supra.
9. "Good cause" should be shown to require the production of documents. Penn R. Co. v. Kirkpatrick, 203 F.2d 149; Park & Tilford Distillers Corp. v U.S. , 20 Fed Rules Dec 404.
10. Motions for a general examination of books and records to determine which, if any, might contain evidence is too sweeping and indefinite to be allowed. Wallace Bank & Trust v. First National Bank, 40 Idaho 712, 237 P 284, 50 ALR 316.
11. This rule is not intended to permit a party to engage in a "fishing expedition" against the Department which is not even an "adverse party" to berate the Department and it should be denied.

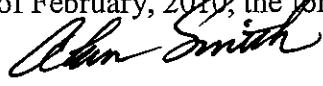
Respectfully submitted this 7th day of February, 2010.



Alan Smith
Eagle Pines Water Association

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 9th day of February, 2010, the foregoing document was filed, served or copied as follows:



NOTICE OF SERVICE AND DISCOVERY

North Ada County Groundwater Users Association
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