

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 63-32573 IN) VOLUME XII
THE NAME OF M3 EAGLE, LLC) (Pages 2608 through 2882)
_____)

BEFORE
HEARING OFFICER: GARY SPACKMAN

Date: June 23, 2009 - 9:00 a.m.
Location: Idaho Department of Water Resources
322 East Front Street
Boise, Idaho

REPORTED BY:

SHERI LUDIKER FOOTE, CSR No. 90, RPR, CRR

Notary Public

APPEARANCES:

For M3 Eagle, LLC:

Givens Pursley, LLP

BY MR. JEFFREY C. FEREDAY

BY MR. MICHAEL P. LAWRENCE

601 West Bannock Street

P.O. Box 2720

Boise, Idaho 83701-2720

For North Ada County Groundwater Users

Association:

BY MR. JOHN THORNTON

5264 North Sky High Lane

Eagle, Idaho 83616

For Eagle Pines Water Users Association and

Individually:

BY MR. ALAN SMITH

3135 Osprey Road

Eagle, Idaho 83616

Appearing Individually:

BY MR. NORMAN L. EDWARDS

884 W. Beacon Light Road

Eagle, Idaho 83616

ALSO PRESENT: Jean Hersley, William Brownlee,

Ed Squires, David Head, Steven Purvis,

Dennis Owsley

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1 THE HEARING OFFICER: Let's talk about
2 a couple of things before we start. Again, I
3 think, as I recall, Mr. Thornton had presented
4 all of his information and we were ready to start
5 with Alan Smith's presentation of evidence. Is
6 my memory correct everyone?

7 MR. FEREDAY: Yes, I believe so.

8 THE HEARING OFFICER: And then the
9 other thing that I wanted to talk about briefly,
10 because I got some inkling of, Mr. Thornton, I
11 think a request or a discussion that you had with
12 Debbie Gibson of our office about public
13 witnesses.

14 MR. THORNTON: Correct.

15 THE HEARING OFFICER: And so, I just
16 want to make sure that we know where we're headed
17 with that so that we don't have a particular
18 problem. And, you know, I guess my understanding
19 of the inquiry was that there were a number of
20 people who wanted to show up and testify who may
21 not have originally been protestants. And what I
22 told Debbie to convey was that there was a
23 particular provision in our Rules of Procedure --
24 I didn't bring it in today, so I don't recall
25 what number it is -- but it requires five days

1 notice. And I don't know whether we want to
2 strictly adhere to that and I don't know whether
3 people are planning to show up. John, I just
4 wanted to make sure that they didn't come
5 expecting to have something happen and then I'm
6 faced with -- and by the way, the rule says that
7 the Hearing Officer has some discretion in
8 allowing that to come in.

9 But my concern, I guess, was that we
10 didn't have -- that the hearing didn't become
11 rowdy at some point here. And if it did, I was
12 ready to send them down onto Broadway with their
13 banners and say, you know, "You can compete with
14 people who are picketing Riverstone on the other
15 side of the street." So, you know, I don't know
16 how we want to approach that, if those people are
17 coming.

18 And I wanted to have a discussion,
19 Jeff, with you about it and the other parties in
20 case we have people show up and we don't have
21 that dialogue in front of all of them. I think
22 it's much better if we talk about it here and
23 figure out what we want to do if there's a number
24 of people that show up. So, maybe I'll let you
25 speak to that.

1 MR. THORNTON: My understanding of
2 people that would like to attend, I believe
3 there's one protestant that apparently does have
4 the right to go ahead and appear as a public
5 witness and then there's maybe two to four other
6 individuals. I think a couple of them have
7 written letters. I'm not sure how timely those
8 letters were. And they are -- one of them
9 because of his daughter's wedding requested to
10 see if he could talk on July 9th in a letter that
11 he told me and sent to you, I'm not sure if
12 you've even received that yet. He sent it last
13 week probably late.

14 THE HEARING OFFICER: I don't recall
15 seeing it.

16 MR. THORNTON: And then the other
17 folks, there's I think two other folks that I've
18 told to wait for a conversation like this and
19 then if they can attend -- I think one of them I
20 know said he sent a letter and the other has not.
21 And I think they would like to, two of them, come
22 and discuss that, but I told them to wait until I
23 give them a call because I didn't, just like you
24 were saying, I didn't want them to come down here
25 just to find out that they weren't going to be

1 able to appear as a public witness.

2 THE HEARING OFFICER: Okay.

3 MR. THORNTON: So, I think we're
4 talking -- outside of the one protestant I
5 believe that I'm aware of, maybe more would show,
6 but I'm not aware of any others and I didn't
7 query them to find out. And then possibly two at
8 the most, three others, I think, and one of them
9 would like to talk on July 9th because of a prior
10 obligation today. As far as I know, that's the
11 extent for any folks we know.

12 THE HEARING OFFICER: How about your
13 folks, Alan?

14 MR. ALAN SMITH: We don't have any
15 public witnesses.

16 THE HEARING OFFICER: Okay. And Jeff,
17 your reaction to that discussion?

18 MR. FEREDAY: Well, first of all, M3
19 would not take any kind of a hard-line position
20 against having people testify. So, it's not my
21 intent to object to folks coming in even today
22 and showing up and testifying.

23 I'm not sure, as I guess John is not
24 sure, how many we're going to see today, but I
25 understand that there are some who want to come

1 in on M3's side of this as well. I have not
 2 spoken to those people about their testimony at
 3 all. So, I don't know what they're going to say.
 4 So, I guess we'll just roll with it today.

5 THE HEARING OFFICER: Do you expect
 6 some of those people to show up today?

7 MR. FEREDAY: I do. Apparently they
 8 were told around noon to show up. Evidently, I
 9 think this was based on your comment maybe at the
 10 last hearing that perhaps we would get going
 11 around 1:00 with public witnesses, but that's
 12 just my recollection. But in any event, I think
 13 we are going to have public witnesses this
 14 afternoon.

15 I would also like to point out with
 16 regard to schedule that we anticipate about a day
 17 of rebuttal through several witnesses, most of
 18 whom will not be here today. And we anticipate
 19 that being on July 9th and we would hope that we
 20 could conclude on that day. That would be a
 21 goal. So, we had anticipated that today would be
 22 the day for Mr. Smith's witnesses, whoever they
 23 might be, and also public witness testimony.

24 THE HEARING OFFICER: Okay. So, it
 25 sounds to me as if there are public witnesses

1 that M3 contemplates will be here and they
 2 probably haven't filed the requisite notice and a
 3 few of yours haven't, John. So, I guess what we
 4 ought to say is: As long as it's not unruly,
 5 let's let people come, show up, and they can
 6 testify today.

7 And I have no objection, if somebody
 8 has a conflict, if they want to come in on the
 9 9th. I appreciate you're trying to finish on the
 10 9th, Mr. Fereday, and I would hope that we could
 11 try to do that even if we have to go a little
 12 late. I would prefer to do that and finish and
 13 not come back.

14 Okay. So, do you want to let your
 15 people know?

16 MR. THORNTON: Yeah, I was just going
 17 to ask if I could just take like maybe five
 18 minutes and then call those folks to have them be
 19 here 20 minutes before 1:00 or 15 minutes before
 20 1:00.

21 THE HEARING OFFICER: Do you want to do
 22 that right now or would you like --

23 MR. THORNTON: If I could. Then that
 24 would allow them to -- if that would be okay
 25 before we go on the record. I think I've just

1 got two calls to make.

2 THE HEARING OFFICER: All right, let's
 3 take five minutes.

4 (Recess held.)

5 THE HEARING OFFICER: Are we ready? Is
 6 there anything else we need to talk about? Okay,
 7 let's record.

8 (IDWR recording started.)

9 THE HEARING OFFICER: We are recording.
 10 This is a continuation of the hearing for the
 11 M3 Eagle contested case. And prior to going on
 12 the record we discussed the proceedings, how
 13 we'll go forward today. And Mr. Smith, it's time
 14 for presentation of your evidence.

15 MR. ALAN SMITH: Yes, we're prepared.

16 THE HEARING OFFICER: So, at this point
 17 I don't think we have anything preliminary to
 18 address and we'll press forward. Mr. Smith, you
 19 may call your first witness.

20 MR. ALAN SMITH: We would call Jason
 21 Smith to the stand, please.

22 THE HEARING OFFICER: Mr. Smith, if
 23 you'll come forward, please. Raise your right
 24 hand.

25 //

1 JASON SMITH,
 2 first duly sworn to tell the truth relating to
 3 said cause, testified as follows:

4
 5 THE HEARING OFFICER: And you may
 6 examine the witness, Mr. Smith.

7 ALAN SMITH: Thank you, sir. We've
 8 waived any opening statement, but I do have just
 9 a couple of comments. We've heard of all of this
 10 hypertechnical data with all of the assumptions,
 11 presumptions calculations, estimations,
 12 projections, theories, and predictions about the
 13 groundwater situation in the North Eagle area.
 14 Now you're going to hear some layman evidence --

15 MR. LAWRENCE: Objection.

16 MR. ALAN SMITH: -- based on
 17 research --

18 MR. LAWRENCE: Objection, Mr. Hearing
 19 Officer.

20 THE HEARING OFFICER: Yes,
 21 Mr. Lawrence?

22 MR. LAWRENCE: Mr. Smith appears to be
 23 testifying.

24 THE HEARING OFFICER: Well, I don't
 25 think so yet. I think this is in the nature of

1 an opening statement. Overruled. Go ahead,
2 Mr. Smith.

3 MR. ALAN SMITH: You're going to hear
4 some evidence now that's layman evidence based on
5 reports from the IDWR's own records and well
6 drillers reports about what is going on with the
7 groundwater in the area north of Eagle. And that
8 will give us some insight into that situation.

9 Our evidence is going to show that the
10 groundwater levels are dropping about a foot a
11 year in this area and that wells have, in fact,
12 gone dry. Our evidence will also show that this
13 situation has only gotten worse in recent years
14 with more and more demands being made on the
15 aquifers, both shallow and deep. Our evidence
16 will be short and simple and we believe rather
17 convincing.

18
19 DIRECT EXAMINATION
20 QUESTIONS BY MR. ALAN SMITH:

21 Q. Would you state your name and address
22 and occupation, please.

23 A. My name is Jason Smith. I'm your son.
24 I live at 1675 West Hickory Drive, Boise, Idaho,
25 83713.

1 Q. And your occupation?

2 A. Occupation? I'm a firefighter with
3 Boise City.

4 Q. And are you a captain?

5 A. Yes, sir.

6 Q. How long have you been with the Fire
7 Department?

8 A. With the Fire Department? About 23
9 years.

10 Q. And as a captain?

11 A. About 11 years.

12 Q. And have you reviewed the M3 water
13 right application?

14 A. I've read through it, yes.

15 Q. And what did you determine from that
16 review?

17 MR. LAWRENCE: Objection, Mr. Hearing
18 Officer, Mr. Smith has not been qualified as an
19 expert who should be allowed to provide expert
20 opinion testimony.

21 THE HEARING OFFICER: Overruled.

22 MR. EDWARDS: Could you have him speak
23 up a little bit? I can't even hear him down
24 here.

25 THE HEARING OFFICER: Well, I think

1 everybody needs to hear this morning. So, we all
2 need to speak a little louder.

3 MR. ALAN SMITH: All right.

4 THE HEARING OFFICER: I will let
5 Mr. Smith testify about the application and what
6 he thinks it pretends to say. I don't think
7 that's the nature of expert testimony. Overruled.

8 Q. (BY MR. ALAN SMITH) Go ahead. You may
9 answer.

10 A. I am testifying as a lay person, if
11 that helps. I am not claiming to be an expert.

12 THE HEARING OFFICER: Sure.

13 THE WITNESS: Okay, this is just a copy
14 so everybody can see it. What's going on here?
15 (Adjusting projector) Well, something like that.
16 Can you guys see it now? Is that better? Could
17 you repeat the question again?

18 Q. (BY MR. ALAN SMITH) I asked what you
19 determined from that review of the application?

20 A. Well, I thought it was a pretty
21 significant water right request, pretty large.
22 I'm concerned with how the aquifer has been
23 handling the stress the last few years in our
24 North Eagle, Northwest Eagle area. And this
25 large request is going to put that aquifer even

1 under more stress. I think we need to look at
2 this pretty closely before anything of this size
3 is approved in that area.

4 MR. ALAN SMITH: We would offer Exhibit
5 No. 411, which I believe is also Exhibit No. 42,
6 page 1. We're offering our Exhibit No. 411,
7 which is also Exhibit No. 42, page 1, I believe
8 it is. That is the water right application dated
9 May 1, 2008.

10 MR. LAWRENCE: Mr. Hearing Officer, I
11 believe Exhibit No. 411 is a copy of the notice
12 that was published by the department advertising
13 the application, but it is not Exhibit No. 42.
14 Exhibit No. 42 is the application itself.

15 THE HEARING OFFICER: Okay, I have a
16 copy of your marked exhibit, Mr. Smith. It is a
17 part of the record already. You want to offer it
18 as a separate document?

19 MR. ALAN SMITH: Yes, please.

20 THE HEARING OFFICER: Mr. Fereday -- or
21 Mr. Lawrence, I'm sorry?

22 MR. LAWRENCE: No objection.

23 THE HEARING OFFICER: The document
24 marked as Exhibit No. 411 is received into
25 evidence.

1 (Exhibit 411 admitted into evidence.)
 2 THE HEARING OFFICER: Mr. Smith?
 3 Q. (BY MR. ALAN SMITH) And after you
 4 reviewed this water right application, did you
 5 compute or figure out what 23.18 cfs would be in
 6 gallons?

7 A. Yeah, when I first read this in the
 8 paper, I figured 23 cfs was a lot of water, but I
 9 really didn't know how much. So, what I did, and
 10 this is just my figuring here, I just took 23 cfs
 11 and timesed it out and came to about 15 million
 12 gallons a day. And I can run through it if you
 13 want.

14 23 cfs, there's about 7-1/2 gallons per
 15 cubic foot. That comes to about 172-1/2 gallons
 16 per second, times 60 seconds is about
 17 10,350 gallons per minute. And the gallons per
 18 minute times 60 minutes is about 621,000 gallons
 19 an hour. And times 24 hours comes to -- it's
 20 just shy of 15 million, but if I go back and put
 21 that .18 on there, it's very, very close to 15
 22 million gallons. So, for practical purposes 15
 23 million gallons a day.

24 Q. And did that tell you how much water we
 25 were talking about?

1 A. Well, again, I knew it was a lot, but I
 2 really didn't know how much. So, being a lay
 3 person, I wanted to compare it to something to
 4 see just how much water it really was. So, what
 5 I did was I found a tank and -- that's a little
 6 light. I don't know if you guys can make that
 7 out or not.

8 This is a tank just off of Curtis at
 9 one of the tank farms. I talked to the manager
 10 there to find out just how big this was. It's
 11 about a 750,000-gallon tank. You can see kind of
 12 the stairs going up the side here up to the top,
 13 and then there's a little stairs, kind of -- you
 14 cross over the pipe, the pipe works, to go in and
 15 out of the tank. It gives a little perspective.

16 I don't have the dimensions of that
 17 tank, but you can get an idea how big that is.
 18 And again, that's a 750,000-gallon tank.

19 Q. And did you take that photograph
 20 yourself?

21 A. Yes, I did.

22 Q. Do you recall when you took that?

23 A. That would have been probably either
 24 the very end of August or the start of September
 25 in 2008.

1 Q. And that photograph has been enlarged?

2 A. That photograph was taken with a
 3 digital camera and then printed off of the
 4 computer.

5 Q. And has it been distorted in any way by
 6 that enlargement?

7 A. No, I'd say that's a pretty accurate
 8 depiction of the size of that tank.

9 Q. Is that a fair and accurate portrayal
 10 of the scene as you saw it with your own eyes
 11 when you took the photograph?

12 A. Yes.

13 MR. ALAN SMITH: We would offer Exhibit
 14 No. 414, please.

15 THE HEARING OFFICER: Mr. Lawrence?

16 MR. LAWRENCE: No objection.

17 THE HEARING OFFICER: The document
 18 marked as Exhibit No. 414 is received into
 19 evidence.

20 (Exhibit 414 admitted into evidence.)

21 Q. (BY MR. ALAN SMITH) So, at the rate of
 22 15 million gallons a day, how many tanks would be
 23 being pumped from this aquifer?

24 A. Per day at the maximum rate you're
 25 asking?

1 Q. Yes, at the maximum peak rate.

2 A. At the maximum peak rate for one day,
 3 that would be about 20 of those tanks.

4 Q. So, if M3 needed water during a hot
 5 period for a five-day period, how many tanks
 6 would we be talking about then?

7 A. Five days at the maximum rate, you
 8 would be looking at about 100 of those.

9 Q. And ten days would be what, 200 tanks?

10 A. Yeah. Yeah, 200.

11 Q. As you understand it, this water is to
 12 be used for domestic purposes, aesthetics, and
 13 irrigation?

14 A. That's my understanding, yes.

15 Q. And what other existing water rights
 16 does M3 already have?

17 A. Well, according to their Exhibit
 18 No. 42, which is that second amended application
 19 for water right permit, their attachment C -- let
 20 me make sure I get the right one. And this is
 21 basically a copy of their attachment C. And what
 22 I did was just go in and pull up these different
 23 wells that were existing wells on the property
 24 when M3 bought the properties. And what I've
 25 done is I just, when I went in and found like,

1 say, for instance the Davis domestic well, I just
2 recorded what cfs went with that well which went
3 with that property.

4 So, you can tell that by far the
5 largest one is the Kling irrigation well at 2.22
6 cfs. If you add all of those up, you come up
7 with about 2.70 cfs that's already existing for
8 the property. That would be groundwater, 2.70
9 cfs.

10 Q. And does that include the ditch water
11 from the Farmers Union Canal?

12 A. No, that doesn't include the ditch
13 water. This is groundwater only.

14 Q. Did you compute the ditch water?

15 A. Well, I didn't compute it, but they've
16 got -- and I believe this is attachment D in that
17 same Exhibit No. 42. And they don't say it on
18 this page, but on page 3, I think it is -- yeah,
19 on the bottom of page 3 on that same Exhibit
20 No. 42, they figured it at 3.94 cfs. And I just
21 wrote that in there. That's my own writing.
22 Everything else is in Exhibit No. 42 in the back
23 and I believe it's the --

24 MR. LAWRENCE: Mr. Hearing Officer,
25 we'd object to the recitation of these facts that

1 Mr. Smith, some foundation related to the United
2 Water numbers and where they're derived might be
3 helpful to me, and what acquaintance Mr. Jason
4 Smith may have with respect to it. So, let's
5 start there. So, at least right now I'll sustain
6 the objection.

7 Q. (BY MR. ALAN SMITH) All right. How
8 did you make that comparison? What factors did
9 you use?

10 A. Where did I get my factors?

11 Q. Yes, sir.

12 A. Where I got my factors was from United
13 Water for their statistics. And then for M3's
14 statistics, I got most of those out of their
15 second amended application, such as their number
16 of dwelling units, the area that the development
17 is going to cover, like how many acres, that type
18 of thing. So, all of the statistics come from
19 either United Water's website information or
20 M3 Eagle's second amended application for water
21 right.

22 Q. How big an area does United Water
23 service?

24 A. United Water services approximately
25 150 square miles. Their area is generally

1 are already in evidence regarding the amount of
2 water that M3 owns under existing rights.

3 THE HEARING OFFICER: Okay, what's the
4 purpose, Mr. Smith?

5 MR. ALAN SMITH: Well, this is
6 preliminary to some further questioning.

7 THE HEARING OFFICER: Okay, I'll
8 overrule the objection for now. I don't see a
9 need for extensive questions in this area,
10 though.

11 THE WITNESS: Okay.

12 Q. (BY MR. ALAN SMITH) Have you made a
13 comparison of the M3 Eagle water use per capita
14 with that of United Water's use per capita?

15 A. Yeah -- or yes, we have.

16 MR. LAWRENCE: Mr. Hearing officer, I
17 object. Mr. Smith is not qualified as an
18 engineer or a water system planner to make such
19 comparison.

20 THE HEARING OFFICER: Okay, some -- go
21 ahead Mr. Smith.

22 MR. ALAN SMITH: This is just a
23 mathematical comparison. I don't think it takes
24 an expert to do that.

25 THE HEARING OFFICER: I suppose,

1 roughly from about Micron, kind of a southwest
2 slant out to about Columbia Road and Cloverdale,
3 kind of come north, northwest from there, skirt
4 around the town of Meridian out to about Linder
5 and Chinden, north from there across the river.
6 And it gets a little muddy when you get over into
7 that area, but they have some area west of Eagle.
8 They go kind of around Eagle, take in Island
9 Woods, which is there on Eagle Island. They go
10 up and -- Lexington Hills, which is off Floating
11 Feather and Highway 55, just kind of northwest of
12 Eagle. Then up into Hidden Springs, the Dry
13 Creek area, and then basically swoop around the
14 town up in the foothills back to about Diversion
15 Dam and then back to Micron. That's roughly
16 their service area.

17 Q. What's the total population of that
18 area that they service?

19 A. According to United Water, they serve
20 about 240,000 people in that area.

21 Q. And did you compare those figures with
22 M3's water right application?

23 A. Yeah, and what I did here was --

24 THE HEARING OFFICER: What I'd like to
25 know, Mr. Smith -- and again, I'm back to my

1 initial question. It may not be a question of
2 whether Jason is an expert or not an expert. My
3 question is whether I'm comparing numbers that
4 United Water has to numbers that are actually
5 comparable and whether I'm looking at the same
6 kind of use for United Water as I might be that
7 Mr. Smith, Jason Smith is computing.

8 So, I want to know where the numbers
9 are coming from and what they represent. What
10 are the United Water numbers? I'm not sure that
11 we can jump to a comparison immediately. I don't
12 know what the numbers are, where are they coming
13 from, and what do they represent?

14 MR. LAWRENCE: Mr. Hearing Officer, I
15 would be happy to ask some questions to aid in
16 our objection if it would help to try to flesh
17 out the lack of foundation.

18 THE HEARING OFFICER: Well, let's give
19 Mr. Smith, Alan Smith, an opportunity to lay a
20 foundation.

21 Q. (BY MR. ALAN SMITH) All right, could
22 you tell us where those numbers come from.

23 A. The numbers for United Water are
24 statistics from United Water. So, the 240,000
25 people is from United Water. The 150 square

1 miles is from United Water.

2 Then the M3 comparison numbers, which
3 would be like the dwelling units, is from their
4 second amended application. And there's 6,000
5 acres -- and I found some discrepancies there in
6 a couple of places, 6,000, I saw 6005. But those
7 numbers also come from the second amended
8 application for water right permit.

9 The only other number that I didn't
10 mention earlier was the 2.6 people up there at
11 the top per dwelling unit. That came off of the
12 2005 U.S. Census. And that's how I came up with
13 that total 18,600 people.

14 Q. Would you summarize your comparison
15 that you made of the number of dwelling units
16 with the number of M3 dwelling units.

17 MR. LAWRENCE: Mr. Hearing Officer,
18 we'll continue our objection to this line of
19 questioning. We don't believe that adequate
20 foundation has been laid, as you stated, as to
21 what these United Water numbers actually
22 represent and whether a comparison can be made to
23 M3's calculated water demands. Again, I'd be
24 happy to ask questions to aid in our objection
25 for the Hearing Officer.

1 THE HEARING OFFICER: All right, I'll
2 give you a chance to do that.

3
4 QUESTIONS IN AID OF AN OBJECTION
5 QUESTIONS BY MR. LAWRENCE:

6 Q. Mr. Smith, do you know whether your
7 figures for United Water include commercial uses?

8 MR. ALAN SMITH: Could you speak
9 louder, please?

10 MR. LAWRENCE: Sure.

11 Q. (BY MR. LAWRENCE) Mr. Smith, do you
12 know whether your figures for United Water's uses
13 include commercial uses within United Water's
14 service area?

15 A. I believe that includes all of their
16 uses in that service area: Commercial,
17 residential, industrial.

18 Q. Do you know whether United Water
19 irrigates any parks, open spaces, or golf
20 courses?

21 A. I know that United Water provides a lot
22 of water for commercial landscaping at various
23 places around the city, probably most of them.
24 Golf courses, I do not know.

25 Q. Have you heard testimony during this

1 hearing that M3 intends to irrigate parks, open
2 spaces, and golf courses with its proposed water
3 right?

4 A. I have heard that and I've also heard
5 that you intend to use a lot of reuse water and
6 canal water.

7 Q. Do you know whether any of United
8 Water's customers reuse their wastewater?

9 A. I know Micron does. That's all I can
10 think of off the top of my head.

11 Q. Mr. Smith --

12 MR. ALAN SMITH: Is this a question in
13 aid of an objection or is this cross-examination
14 at this point? I think we've had several
15 questions asked here.

16 THE HEARING OFFICER: Well, I think
17 these are legitimate questions. I'll allow a
18 couple more in this area and then you can revoice
19 your objection if you wish to, Mr. Lawrence.

20 Q. (BY MR. LAWRENCE) Mr. Smith, are you
21 aware that within United Water's service area
22 water from other sources, such as surface water
23 sources from irrigation districts, ditch
24 companies, private wells are used to irrigate,
25 landscape, turf, and pasture?

1 A. Yes, I'm aware of that, but you also
2 have some canal water.

3 Q. Is the amount of surface water used for
4 irrigation within United Water's service area
5 proportional to the amount of surface water that
6 M3 intends to use for irrigation?

7 A. I do not know the answer to that.

8 Q. Is the amount of water used within the
9 United Water service area for commercial uses
10 proportional to the amount proposed under M3's
11 application?

12 A. I don't know the answer to that, but I
13 would suspect they're probably going to have more
14 commercial use than M3.

15 THE HEARING OFFICER: Okay, do you
16 still object to this document, Mr. Lawrence?

17 MR. LAWRENCE: Yes.

18 THE HEARING OFFICER: Mr. Smith, any
19 response to the objection?

20 MR. ALAN SMITH: Well, I think it goes
21 to the weight rather than the admissibility. We
22 would offer to prove or make an offer of proof if
23 the objection is sustained that it's merely going
24 to show that M3 is asking for much more water per
25 capita than United Water uses per capita in the

1 Boise area.

2 THE HEARING OFFICER: Well, here's some
3 concerns that I have just looking at it,
4 Mr. Smith. For instance, under average daily
5 water use there's a number for United Water, if
6 I'm to assume that this comes off of their
7 website and that it's accurate, that it's an
8 actual use number. And then I have a number for
9 M3 of 15 million gallons, which comes off of
10 Jason's computation sheet, which is continuous
11 diversion all of the time, which does not happen
12 with United Water. So, the comparison is not
13 legitimate.

14 THE WITNESS: Well, it's --

15 THE HEARING OFFICER: Just a minute.

16 THE WITNESS: Okay.

17 THE HEARING OFFICER: It's a comparison
18 between apples and oranges. It is actual use
19 numbers versus the maximum amount of water that
20 could possibly be diverted under this water right
21 for every minute, every second of every day. And
22 so, the comparison isn't legitimate. And I
23 suspect the other comparisons have the same sorts
24 of problems associated with them.

25 Now, with that, Mr. Smith, I'll give

1 you one more chance to lay a foundation, but my
2 inclination is not to allow the comparison into
3 the record. You can make an offer of proof.

4 MR. ALAN SMITH: We would offer to
5 prove at this point that M3's water application
6 seeks much more water per capita than is utilized
7 by United Water in the Boise area. And we can
8 take this another way.

9
10 CONTINUED DIRECT EXAMINATION
11 QUESTIONS BY MR. ALAN SMITH:

12 Q. Would you look at your information on
13 United Water's peak day in July of '07.

14 A. We can do that. What United Water's
15 record is for 2007, which is the latest stuff I
16 had --

17 MR. LAWRENCE: Objection, Mr. Hearing
18 Officer, there's no foundation for these numbers
19 that Mr. Smith is about to --

20 MR. ALAN SMITH: Can the witnesses
21 finish his answer, please?

22 THE HEARING OFFICER: Okay, I'll allow
23 them to delve into this subject to some degree.
24 Mr. Smith, we're bordering on, in my opinion, the
25 kind of information that expert witnesses

1 normally would refer to and testify that they
2 normally would rely on this kind of information
3 for concluding something. And so, I'll allow
4 some questions in this area, but I guess I'm a
5 little leery of where we're headed with it. It's
6 overruled for now. Go ahead.

7 Q. (BY MR. ALAN SMITH) All right, you may
8 answer.

9 A. All right. Can I say something on the
10 last sheet that I didn't get a chance to?

11 THE HEARING OFFICER: No, I think we
12 need to do this through the examination process.

13 THE WITNESS: All right. This was in
14 2007. This is what United Water's record was.
15 And that's 90.1 million gallons per day.

16 THE HEARING OFFICER: You have
17 documentation of this?

18 THE WITNESS: I do, but it's not
19 written down. This is -- you don't have this in
20 your stuff that we gave to you as an exhibit.

21 THE HEARING OFFICER: Okay, can you
22 provide documentation? It seems to me that's
23 where the foundation ought to be laid, but I
24 don't have the well drilling numbers.

25 THE WITNESS: This number comes from

1 that last sheet. What I was doing was doing a
2 comparison of the number of people and the land
3 and the record usage that United Water used in
4 2007.

5 MR. LAWRENCE: Mr. Hearing Officer, I
6 object. I believe Mr. Smith is incorrect that
7 this number comes from the last sheet, which I
8 believe is Exhibit No. 413.

9 THE WITNESS: Well, no -- I'm sorry, go
10 ahead. The 90.1 million doesn't, but the
11 percentages I'm about to put up here do. Okay?

12 MR. ALAN SMITH: I don't think there's
13 any question before the witness right now anyway.

14 THE HEARING OFFICER: Well, except that
15 there's information coming in, Mr. Smith, and
16 I've got to determine whether I ought to be
17 allowing it to come in or not. And I don't have
18 any foundation for the numbers that are being put
19 on the overhead. So, what is the foundation for
20 these numbers and what's the underlying
21 documentation for them? And I don't know whether
22 these --

23 Q. (BY MR. ALAN SMITH) Do you have that
24 documentation with you?

25 A. What do you mean by "documentation"?

1 Q. Well, where do you get this figure of
2 90.1 million gallons per day?

3 A. Yeah, I do. I've got it in my file
4 there. I would have to find that.

5 Q. All right. Could you take a minute and
6 do that.

7 THE HEARING OFFICER: All right, let's
8 take a brief recess. Let's go off the record.

9 (Recess held.)

10 (IDWR recording paused.)

11 THE HEARING OFFICER: All right, before
12 we start recording, I want to spend just a
13 minute. And I feel like I'm being a little
14 clumsy this morning. Maybe I haven't done this
15 for awhile and my tongue isn't loose yet. But
16 I'm concerned that we will spend a whole lot of
17 time trying to get something into the record and
18 be bound up with objections in trying to do that.
19 And so, I guess I want to express my intent in
20 this process. And what I'd like to do is get the
21 information that the Smiths are attempting to
22 offer into the record if it -- if I'm convinced
23 that it has sufficient basis and foundation, both
24 in documentation and in truth, so that we know
25 what it is we're looking at.

1 And then second of all, if that
2 information that comes in, if it's comparable to
3 something, then I guess I'm willing to allow that
4 to go forward. So, for me, it's more
5 foundational than it is a question of expertise,
6 Mr. Lawrence and Mr. Smith. But I think just the
7 bare presentation of numbers without some sort of
8 explanation of what's behind them and some
9 documentation of how you come up with them so
10 that I can look at them and comfortably say,
11 "Yes, this number is good. Yes, it comes from a
12 source that's reliable" on both sides, and then,
13 "Yes, this source is apples and this source is
14 apples of the same variety."

15 So, that's the assurance, I guess, that
16 I need and that I don't have, Mr. Smith, and so
17 everybody knows kind of where I'm at. I think
18 the Rules of Evidence are relaxed in this matter.
19 And I want the information to come in, but I
20 don't want it to be faulty information. Okay?

21 All right, let's go back on the record.

22 (IDWR recording resumed.)

23 THE HEARING OFFICER: We're recording
24 again. And I would also remind everyone to speak
25 up.

1 ALAN SMITH: All right, we have two
2 documents here we'd like to mark as exhibits.
3 They're off of the United Water website. The
4 first one shows the number of residents. The
5 second one is the source of supply. We'd like
6 these marked as Exhibits I think 427 and 428.

7 THE HEARING OFFICER: Okay, I think we
8 have labels.

9 MR. ALAN SMITH: (Handing.)

10 MR. LAWRENCE: Could we get some
11 copies, please?

12 MR. ALAN SMITH: Yes.

13 THE HEARING OFFICER: So, which do you
14 have marked as 427?

15 MR. ALAN SMITH: This first one with
16 the map.

17 THE HEARING OFFICER: With the
18 depiction of the State of Idaho on the front?

19 MR. ALAN SMITH: Yes.

20 THE HEARING OFFICER: So, the one
21 titled "Where Does Your Water Come From?" and a
22 picture of the State of Idaho on the front of it
23 will be 427. And then I assume the document,
24 one-page document that is titled "Source of
25 Supply" --

<p style="text-align: right;">Page 2645</p> <p>1 THE WITNESS: With my scribbling. 2 THE HEARING OFFICER: -- United Water 3 is 428. 4 (Exhibits 427 and 428 marked.) 5 THE HEARING OFFICER: All right, 6 Mr. Smith. 7 Q. (BY MR. ALAN SMITH) All right, 8 Mr. Smith, on exhibit what has been marked as 9 427, is that off of the United Water website? 10 A. Yes. 11 Q. And did you use that as part of your 12 foundation for your computations? 13 A. That's where I got one of the numbers, 14 yes. 15 Q. And Exhibit No. 428 entitled "Your 16 Water Supply, Source of Supply"? 17 A. Yes, sir. 18 Q. Did you use that document as one of the 19 foundational documents to make your computations? 20 A. Yes, we used the average daily usage of 21 44 million gallons kind of towards the bottom, 22 and the peak usage of -- and actually, I've got 23 it at 90.1 million gallons. And again, this was 24 for 2007. Those were the latest that were 25 available at that time.</p>	<p style="text-align: right;">Page 2647</p> <p>1 you state what your computations were from those 2 documents comparing United Water's peak usage 3 with M3 water's projected peak usage. 4 A. Okay. Again, these -- again, these 5 statistics come from United Water's website and 6 information. M3's come from the second amended 7 application for water right. And we already 8 talked about United Water's, roughly their 9 service area. And they serve about 240,000 10 people in that area. 11 MR. LAWRENCE: Mr. Hearing Officer, we 12 would again object to this exhibit. It misstates 13 several items from the M3 application, including 14 the persons per household in the first section 15 and the 15 million gallons a day of average daily 16 water use that's found in the third section. 17 MR. ALAN SMITH: We can't hear your 18 objection. What is the objection? 19 THE HEARING OFFICER: Okay, what is the 20 objection? Can you restate the objection, 21 Mr. Lawrence, or the Court Reporter? 22 MR. LAWRENCE: I'll restate the 23 objection, Mr. Hearing Officer. We object 24 because this proposed exhibit misstates facts 25 from the M3 application. In particular, the</p>
<p style="text-align: right;">Page 2646</p> <p>1 Q. And are those figures on Exhibit 2 No. 428 your computations? 3 A. Off to the right lower side? 4 Q. Yes, correct. 5 A. Yes. I didn't realize that this would 6 become an exhibit or I wouldn't have written on 7 it. 8 MR. ALAN SMITH: We would offer 427 and 9 428. 10 THE HEARING OFFICER: Mr. Lawrence? 11 MR. LAWRENCE: Mr. Hearing Officer, we 12 object to the admission of 428. We have not had 13 a chance to verify the accuracy of any of these 14 computations in the lower right. So, we object 15 because we -- to the foundation of those 16 handwritten notes. 17 THE HEARING OFFICER: Okay, the 18 documents will be received into evidence. The 19 computations will not be taken into account as 20 part of the hearing officer's review. 21 (Exhibits 427 and 428 admitted 22 into evidence.) 23 THE HEARING OFFICER: Go ahead, 24 Mr. Alan Smith. 25 Q. (BY MR. ALAN SMITH) All right, would</p>	<p style="text-align: right;">Page 2648</p> <p>1 number of persons per dwelling unit in the first 2 section of this exhibit and the 15 million 3 gallons per day of average daily water use in the 4 third section of this exhibit is also incorrect. 5 And the 382 gallons per day per residential unit 6 down in the last section of this exhibit is also 7 a misstatement of the M3 application. 8 Q. (BY MR. ALAN SMITH) Do you have any 9 corrections to those? 10 THE HEARING OFFICER: Just a minute. I 11 have an objection pending. Okay. Well, I'll 12 sustain the objection right now. The exhibit 13 hasn't yet been offered that I'm aware of, 14 Mr. Lawrence, but I need some foundation on these 15 numbers, Mr. Alan Smith. 16 Q. (BY MR. ALAN SMITH) All right, could 17 you give some foundation as to how you arrived at 18 those numbers. 19 A. Which ones? Are you asking where the 20 statistics came from? 21 Q. Overhead, yes. Where did you get those 22 statistics and -- 23 A. Well, United Water's is off of Exhibit 24 No. 427. That -- is that 428? 25 MR. THORNTON: Yes.</p>

1 THE WITNESS: Okay, 428. And the
2 square miles is off the other one that we just
3 admitted.

4 M3's 7,153 dwellings is off of their
5 second amended application, the first page, I
6 believe, the second page of their amended
7 application. The 6,000 acres is also off that
8 second page on that second amended application.

9 The 150 square miles for United Water
10 for land is off of either 427 or 428. I haven't
11 got mine marked. And the 9.5 square miles of M3
12 is 6,000 acres divided by 640 acres per square
13 mile. That's my computation, the 9.5 square
14 miles.

15 The 2.6 people per household is from
16 the 2005 U.S. Census. When we divide those out,
17 we come up with -- and this is at full buildout
18 for M3. M3 will have about 7.75 percent of the
19 people at full buildout when compared to what
20 United Water serves today in the greater Boise
21 area.

22 Now, the next one on the land, United
23 Water today serves about 150 square miles. M3 at
24 full buildout will serve about 9-1/2 square
25 miles. So, at full buildout M3 will have about

1 6-1/3 percent of the land that United Water
2 serves today.

3 Now, in this next one, I've got a
4 correction that was kind of hinted on here a few
5 times. And if I can, I'd like to make that
6 correction.

7 Q. (BY MR. ALAN SMITH) Go ahead.

8 A. Is that okay? What this should say
9 is -- I've got to find my notes, though. That's
10 5.9.

11 What happened here, a little
12 explanation: This was actually found before the
13 exhibits were put in. I was supposed to change
14 those, but in the heat of trying to get
15 everything in, I didn't get it done. I forgot.
16 But that's a more accurate number.

17 What the problem was is we -- or really
18 I plugged in the 15 million gallons and it should
19 have been average daily, not peak. So, the
20 average is about 5.9 million gallons, I believe
21 it's 9.03 cfs, I believe. And that's out of,
22 again, the second amended application. And if we
23 compute that, we come up with about 13.4 percent
24 of the water.

25 And basically what I'm trying to show

1 here is that United Water (sic) is going to -- is
2 wanting roughly twice as much water, whether we
3 figure it per acre, per square mile, or per
4 person, that United Water uses today in their
5 service area.

6 And this doesn't include, we're not
7 even talking about the 2.7 cfs that comes out of
8 groundwater currently that they already have a
9 right to that we talked about just a few minutes
10 ago. I believe that was attachment C of the
11 second amended application. This doesn't include
12 any of the 3.94 cfs for the canal water and it
13 doesn't include any reuse water. This is after
14 all of that. That's if you add all of those up,
15 that's about another 10 cfs that we're not even
16 comparing to here. That's just the application
17 water, the 23.18 cfs, compared to United Water's
18 area today.

19 MR. LAWRENCE: Mr. Hearing Officer, we
20 would continue to object to discussion of this
21 slide and this entire line of testimony. We
22 would move to strike. Mr. Smith has yet to lay
23 an adequate foundation for any of his analysis.

24 THE HEARING OFFICER: Okay. Well,
25 Mr. Lawrence, I understand your objection, but at

1 least with respect to the documentation and the
2 methods by which these numbers were derived, I'm
3 comfortable with it. I'll at least allow a
4 discussion of these numbers in the record and
5 admission of this document with the correction.
6 Because in my opinion, the average daily water
7 usage comparison is not a legitimate comparison
8 previously. I think it's within reasonable range
9 now and I understand what's been done. So, at
10 least with respect to the first three categories,
11 I'll allow that information.

12 I don't know whether you wish to offer
13 this, Mr. Smith. There's a fourth titled subject
14 here that we've not covered.

15 MR. ALAN SMITH: We would offer it at
16 this time with that correction.

17 THE HEARING OFFICER: Okay.

18 MR. ALAN SMITH: I think it goes to the
19 weight rather than the admissibility.

20 THE HEARING OFFICER: What about the
21 last heading, margin heading, "Average Water
22 Usage Per Residential Unit"? What is that
23 computation? There has not been a discussion
24 about it. What's its worth?

25 Q. (BY MR. ALAN SMITH) Would you explain

1 that computation on the average water use per
2 day, how you arrived at that.

3 A. Yeah, what I did is I took an average
4 water use per day per residential unit. And
5 that's from United Water's average use. I
6 wasn't -- until you guys brought this up, I
7 wasn't even going to discuss that because I
8 don't -- you've got to remember, we did all of
9 these exhibits three or four months ago in the
10 heat of trying to get everything done. There was
11 some stuff that was done that we didn't know
12 everything about yet. And I would just as soon
13 strike that out of the 413 exhibit, if I could,
14 but I'm not sure that's proper.

15 MR. ALAN SMITH: We would so move.

16 THE HEARING OFFICER: Okay, how do we
17 go about correcting this exhibit at the present
18 time? Do you want to hand mark the exhibit?

19 THE WITNESS: I can do that if you'd
20 like.

21 THE HEARING OFFICER: Let's strike out
22 the portions that are stricken.

23 THE WITNESS: I'm going to strike out
24 everything from -- I'm going to strike out
25 "Average Water Usage for Residential" -- I'm

1 going to strike out all of that. And then I'm
2 going to change those two numbers and that's it.

3 Q. (BY MR. ALAN SMITH) Very well, please
4 do so.

5 A. And I apologize.

6 MR. ALAN SMITH: We would offer Exhibit
7 No. 413 at this time.

8 THE HEARING OFFICER: Okay,
9 Mr. Lawrence, a continued objection?

10 MR. LAWRENCE: Yes, Mr. Hearing
11 Officer, a continued objection.

12 THE HEARING OFFICER: The document is
13 received into evidence with this particular
14 caveat of warning, Mr. Alan Smith, and that is
15 that I recognize that United Water has both in
16 its rate structure and in what occurs within its
17 system I think an aggressive scheme of
18 conservation. And I would just surmise based on
19 my experience that other water systems in the
20 Treasure Valley do not provide water at the same
21 reduced rate to customers that United Water does.
22 So, there is a comparison here. I'm not sure
23 what worth it has to me, but I'll receive it into
24 evidence.

25 MR. ALAN SMITH: Very well.

1 (Exhibit 413 admitted into evidence.)

2 MR. ALAN SMITH: 427 and 428 have been
3 admitted and 413 has also been admitted, I
4 believe.

5 THE HEARING OFFICER: Yes, they're
6 received into evidence.

7 Q. (BY MR. ALAN SMITH) Did you have
8 anything further on that exhibit, Mr. Smith?

9 A. No, sir.

10 Q. All right. I believe you earlier
11 expressed some concerns about the stress the
12 aquifer was undergoing now. Would you refer to
13 Exhibit No. 12 at page 243, please.

14 A. (Witness complied.) I can see why
15 these guys had so much trouble looking for
16 exhibits. I'm there, sir.

17 Q. All right. About halfway down the page
18 where it states, "Monitoring can be the key,"
19 would you read that, please.

20 A. Read that sentence?

21 Q. Yes.

22 A. "Monitoring can be the key to
23 understanding the long-term performance of a
24 groundwater system. It can also be a tool to
25 detect changes before they become too large and,

1 therefore, more difficult to" -- I think that's
2 supposed to be "manage."

3 Q. And would you refer to Exhibit No. 50
4 at page 24.

5 A. (Witness complied.)

6 Q. Do you have that?

7 A. Yes, sir. I don't know if everyone
8 else is there, though.

9 THE HEARING OFFICER: Okay.

10 Q. (BY MR. ALAN SMITH) The second bullet,
11 I believe it says, "The absence of a thick
12 laterally" --

13 THE HEARING OFFICER: Now, wait a
14 minute.

15 THE WITNESS: Wait a minute. I'm not
16 sure I'm in the right spot.

17 THE HEARING OFFICER: Exhibit No. 50,
18 page 24? I don't see a bullet.

19 MR. ALAN SMITH: I'm sorry. At the top
20 of the page it says, "We feel fairly certain
21 there is a long-term" --

22 THE HEARING OFFICER: Okay.

23 THE WITNESS: You want me to read that,
24 sir?

25 Q. (BY MR. ALAN SMITH) If you would,

1 please.
 2 A. "We feel fairly certain that there is a
 3 'long-term' hydraulic connection in the sands of
 4 the upper delta sequence. However, local lenses
 5 of mudstone in that section may prevent
 6 short-term detection of well-drawdown responses.
 7 It may take months to decades for large drawdowns
 8 to propagate through the seemingly continuous
 9 section of interbedded sand and thin muds."

10 And this comes from Squires and Wood,
 11 2001, page 14.

12 Q. And would you refer to Exhibit No. 50
 13 at page 4, the second bullet.

14 A. (Witness complied.) Is that the one
 15 that starts, "It is difficult"?

16 Q. I believe it starts, "The absence of a
 17 thick laterally contiguous confining layer."

18 A. Oh, okay.

19 THE HEARING OFFICER: I don't see that.

20 THE WITNESS: It's the last sentence of
 21 the second bullet, I think.

22 Q. (BY MR. ALAN SMITH) And would you read
 23 that, please.

24 MR. LAWRENCE: Mr. Hearing Officer,
 25 we'd object to the extent that we're simply

1 pumping are transmitted throughout the aquifer
 2 because the clay layers are discontinuous and/or
 3 varying in permeability over a lateral extent.
 4 In other words, pumping a deeper zone ultimately
 5 affects the shallower portions of the aquifer.
 6 Similarly, pumping a shallower zone ultimately
 7 affects deeper zones."

8 Q. And at page 239, item 9 of Exhibit
 9 No. 12, would you read that, please.

10 MR. LAWRENCE: Mr. Hearing Officer,
 11 again, we would object to reading this document
 12 into the record. It's already a part of the
 13 record.

14 THE HEARING OFFICER: Okay, overruled.
 15 Some reference to voluminous documents that I
 16 have to --

17 MR. ALAN SMITH: I've only got one more
 18 after this one.

19 THE HEARING OFFICER: Okay, overruled.

20 Q. (BY MR. ALAN SMITH) Do you have that
 21 Exhibit No. 12, page 239?

22 A. Yes, sir.

23 Q. Item 9?

24 A. Item 9. Read the whole thing or --

25 Q. The last sentence.

1 rereading parts of the record. If Mr. Smith has
 2 a question, we would like to hear it.

3 THE HEARING OFFICER: Okay. Well, I
 4 assume, Mr. Smith, that you intend to ask Jason
 5 some questions about it?

6 MR. ALAN SMITH: I do. This is
 7 preliminary to further questioning.

8 THE HEARING OFFICER: Okay, overruled.

9 Q. (BY MR. ALAN SMITH) Go ahead and read
 10 that, please.

11 A. Okay, the last sentence of the second
 12 bullet is: "The absence of a thick laterally
 13 continuous confining layer provides a mechanism
 14 for hydraulic communication between the PGSA and
 15 overlying undifferentiated sediments."

16 Q. All right. And if you'd refer back to
 17 Exhibit No. 12 again at page 7, the bottom of the
 18 third paragraph. It starts, Exhibit No. 12,
 19 page 7, bottom of the third paragraph,
 20 "Eventually the hydraulic effect" --

21 A. Okay, the last -- well, I guess it
 22 would be the last few sentences of the third
 23 paragraph?

24 Q. Yes.

25 A. "Eventually the hydraulic effects of

1 A. The last sentence? "In some
 2 situations" -- this is a quote: "In some
 3 situations, the observed water level effects of
 4 delayed yield in relatively deep wells indicate
 5 that the Pierce Gulch Sand Aquifer is in
 6 hydraulic communication with the water table in
 7 this area."

8 THE HEARING OFFICER: Give me that
 9 reference again. I missed it. I'm on 239?

10 MR. ALAN SMITH: Correct, item 9.
 11 Exhibit No. 12, page 239. It's at the last
 12 sentence.

13 THE WITNESS: The last sentence of
 14 item 9.

15 THE HEARING OFFICER: Okay. All right.

16 Q. (BY MR. ALAN SMITH) Have you
 17 researched the water levels in the Eagle Pines
 18 area from the department records and well
 19 drillers reports?

20 A. Yes.

21 Q. And did you create a map from IDWR's
 22 records showing the wells that have needed to be
 23 deepened or replaced with deeper wells?

24 A. Yes, we did. And that's what's -- and
 25 I apologize for you guys not being able to see

1 that very well, but we're going to kind of go
2 through that and I'll point out stuff to you so
3 hopefully it will make a little more sense.

4 MR. LAWRENCE: Mr. Hearing Officer, we
5 would object to Mr. Smith's testimony regarding
6 the alleged existence of dry wells and also to
7 the discussion regarding this map that he has
8 posted on the wall. There is no foundation for
9 any of the information on this map.

10 MR. ALAN SMITH: We're prepared to give
11 you that. We're not saying they're dry wells. I
12 believe the question was wells that had needed to
13 be replaced or deepened.

14 MR. LAWRENCE: Mr. Hearing Officer, the
15 map and a bar chart that is also labeled as a
16 proposed exhibit expressly state that they are
17 charting, quote, "Dry Wells."

18 THE HEARING OFFICER: Okay. Well, I'll
19 take your objection as a preliminary warning,
20 Mr. Lawrence. Let's see if they can lay the
21 foundation. So, overruled right now. Mr. Alan
22 Smith, let's see what kind of foundation there
23 is.

24 Q. (BY MR. ALAN SMITH) Did you personally
25 prepare this map?

1 A. Yes, sir.

2 Q. From your own research?

3 A. Yes, sir.

4 Q. And that's from IDWR records and well
5 drillers reports?

6 A. Yes, sir.

7 Q. Is this map to scale?

8 A. Yes.

9 Q. And is this just a pictorial
10 representation of what you found in the IDWR's
11 own records?

12 A. Yes.

13 Q. Would you explain what the different
14 colored dots are, what they represent.

15 A. Yes, what we did here, and we didn't
16 have much time to do it, but -- I can stand up
17 and walk over there if I talk loud?

18 THE HEARING OFFICER: Sure. Take the
19 mike to the extent you can.

20 THE WITNESS: Okay, I'll put it right
21 by the fan. What we did was we researched, we
22 went back four years. I'll go ahead and -- we
23 went back four years. And it wasn't that we
24 didn't want to go back further, but we didn't
25 have time to.

1 We used -- all of this information is
2 IDWR record well drillers reports. So, we looked
3 at the years 2005, '06, '07, and '08 that you can
4 see here. These are dry wells. And let me -- I
5 guess I should explain my layman's opinion of
6 what a dry well is. That's a well that the water
7 has receded in far enough that you can no longer
8 lower the pump any further, yet there's still not
9 enough water covering the pump that the pump
10 doesn't break suction. There still may be a few
11 feet of water in the well, but you can't pump it
12 out of there by conventional means.

13 So, when I say "dry well," it doesn't
14 necessarily have to be completely dry. It can
15 have a few feet of water in it. So, that's --
16 but that's the term all, you know, well drillers
17 and everybody else seem to like to use. So,
18 that's the one we used. But dry doesn't
19 necessarily mean dry in this case.

20 So, what we did is we went back for
21 four years, '05, '06, '07, and '08. We found one
22 well that needed to be deepened or replaced in
23 '05, two in '06, seven in '07, and ten in '08.

24 Now, the study area -- okay, we went
25 back those four years.

1 MR. LAWRENCE: Mr. Hearing Officer, we
2 would object to Mr. Smith's statements here.
3 There's been no foundation laid for how these
4 so-called dry wells were identified, which
5 so-called dry wells these are, who owns them,
6 what aquifer they might be in, whether they're at
7 all relevant to the M3 application.

8 THE HEARING OFFICER: Okay --

9 MR. ALAN SMITH: Again, we're not
10 calling them dry wells. That's Mr. Lawrence's
11 definition. I think the witness has given his
12 meaning of a dry well. We have the information I
13 believe available to show those wells that have
14 had to be replaced that are shown on that bar
15 graph.

16 THE HEARING OFFICER: Okay, Mr. Smith,
17 with respect to the testimony of Jason Smith, his
18 testimony related to dry wells and those wells
19 being defined as wells for which the pump would
20 no longer submerge within the water, the
21 groundwater in the well so that it could
22 adequately pump water, I have no information or
23 foundation on that subject. And so, his
24 characterization of these replacements as being
25 of that type I think without further foundation

1 I've got to disregard.
 2 I have evidence in the record from an
 3 expert on the M3 side and that testimony is that
 4 often wells are replaced because there are other
 5 problems with the wells. And so, unless you can
 6 show me that the static water level in these
 7 wells is declining in some way and it's not a
 8 problem with the wells themselves, I think that
 9 particular line of testimony I'll have to
 10 disregard.

11 Now, if you can put on evidence to show
 12 me that there are wells that were existing that
 13 had to be replaced without an assumption that
 14 those were replaced because they were dry, then
 15 we might be able to get there. So --

16 MR. ALAN SMITH: Very well.

17 THE HEARING OFFICER: So, let's go
 18 through the arduous process of comparison, I
 19 guess.

20 MR. ALAN SMITH: Very well.

21 THE HEARING OFFICER: So, the objection
 22 is sustained at least in part, Mr. Lawrence.

23 Q. (BY MR. ALAN SMITH) Would you refer to
 24 the wells that have had to be replaced whether or
 25 not they were dry, just as wells that have had to

1 (IDWR recording paused.)

2 THE HEARING OFFICER: All right.

3 Again, I think there's probably some legitimate
 4 information that can come in relating to this
 5 subject, Mr. Lawrence and Mr. Smith. But I guess
 6 what I need to know is: What's the comparison?
 7 What was there before? And how do we know that
 8 this is a replacement well and not a new well?
 9 So --

10 THE WITNESS: That's exactly what this
 11 is.

12 THE HEARING OFFICER: Now, we are off
 13 the record. You can take it, but what is the
 14 level of documentation, I guess, that you have,
 15 Mr. Smith? And do we need to take a break and
 16 make copies of these documents? They're
 17 department documents, I assume.

18 THE WITNESS: Yeah, we could. They are
 19 available on the IDWR website.

20 MR. LAWRENCE: Which would be fine,
 21 Mr. Hearing Officer, except we were not provided
 22 copies of these documents or even a list of names
 23 for which we could go and obtain these documents
 24 from the IDWR website.

25 MR. THORNTON: And it is part of

1 be replaced.

2 A. Do you want me to go to specific wells?

3 Q. If you have those there available.

4 A. Okay. Well, this first one is a well
 5 that is over off -- and I'll just point kind of
 6 so you know where it's at. This is Eagle. And I
 7 know you can't see this, but this is Star
 8 (indicating.) This well is about, oh, two and a
 9 half miles northwest of Eagle off of Ballantyne
 10 Lane.

11 MR. LAWRENCE: Mr. Hearing Officer,
 12 Mr. Smith, the witness appears to be reading from
 13 some document. We were not provided with any
 14 documentation as to the locations or data
 15 regarding these so-called dry wells by the
 16 protestants.

17 MR. ALAN SMITH: We're not calling them
 18 dry wells, Counsel.

19 THE HEARING OFFICER: Okay, what are
 20 you referring to?

21 THE WITNESS: This is a well driller's
 22 report for Larry Christensen's well that was
 23 redone in 2008. This is off IDWR's records.

24 THE HEARING OFFICER: Okay, let's take
 25 a break. Let's go off the record.

1 NACGUA's information that we shared, is that we
 2 had about 40 of these well logs off of the
 3 Department of Water Resources site which were
 4 shared with all parties. So, they've got a
 5 subset apparently of that larger set of 40 that
 6 were handed out to all parties through NACGUA.

7 MR. ALAN SMITH: We would be happy to
 8 take a break and provide them with copies of
 9 these documents. We're not going to offer them
 10 as exhibits. We're just using them as a basis
 11 for the foundation that Counsel seems to want.

12 THE HEARING OFFICER: Well,
 13 Mr. Lawrence, I don't intend to shut down this
 14 line of questioning. And these are department
 15 documents. And if they compare one well log to
 16 another and show me the particular well that's
 17 been replaced, I'm willing to go through that
 18 comparing process with them. So, do we want
 19 copies of those documents provided at this point?

20 MR. LAWRENCE: Yes, Mr. Hearing
 21 Officer.

22 THE HEARING OFFICER: Okay, let's get
 23 them made. We're about due for a break anyway.
 24 So, let's take a 15-minute break.

25 (Recess held.)

1 THE HEARING OFFICER: Okay. Now,
 2 before we start again, I have in front of me some
 3 documents stapled together. I heard Mr. Lawrence
 4 represent that they were two two-page documents.
 5 I see lots more dots on the map than I have
 6 documents here. So, I don't know where we're
 7 headed, but let's start.
 8 (IDWR recording resumed.)
 9 THE HEARING OFFICER: Okay, we're
 10 recording again. Mr. Alan Smith?
 11 MR. ALAN SMITH: We would offer at this
 12 time Exhibit No. 417, which I believe is the bar
 13 graph.
 14 THE WITNESS: No.
 15 MR. ALAN SMITH: And 418, the ditch
 16 water rights.
 17 THE HEARING OFFICER: Okay, I show 417
 18 as a table with a number of wells listed --
 19 THE WITNESS: Here's 417.
 20 THE HEARING OFFICER: -- in the first
 21 column. So, that's not a bar graph.
 22 MR. ALAN SMITH: Okay. All right, we
 23 would offer 417 and 418.
 24 THE HEARING OFFICER: Okay, I show 418
 25 as a two-page document. The first page is a

1 portion of an attachment to M3 Eagle's second
 2 amended municipal water right application and
 3 it's a page 3. And then the second page is a
 4 summary of water rights that are listed on the
 5 page that's depicted on the overhead projection.
 6 So, you're offering 418?
 7 THE WITNESS: Yes.
 8 THE HEARING OFFICER: And then 417 is a
 9 table that I'm unfamiliar with. Is there some
 10 foundation for 417, Mr. Smith? Is this
 11 something -- is 417 something that's been
 12 previously discussed?
 13 MR. ALAN SMITH: I believe so.
 14 THE HEARING OFFICER: All right,
 15 offered. Mr. Lawrence?
 16 MR. LAWRENCE: We object to the
 17 admission of 417 and 418. They are both already
 18 in the record included as parts of M3's second
 19 amended application. So, the evidence would be
 20 cumulative. To the extent they're admitted, we
 21 object to any of the handwritten notes that are
 22 contained on those exhibits.
 23 THE HEARING OFFICER: Well, I don't
 24 object to them coming in as cumulative evidence
 25 to the extent they want to refer to them

1 specifically.
 2 What about the handwritten notes,
 3 Mr. Smith? Do you want those included?
 4 MR. ALAN SMITH: Yes.
 5 THE HEARING OFFICER: And what's the
 6 basis for them?
 7 MR. ALAN SMITH: Can the witness state
 8 the basis for those?
 9 THE WITNESS: Are you looking at the
 10 one --
 11 THE HEARING OFFICER: Well, I assume
 12 that it's the handwritten numbers.
 13 THE WITNESS: Where those came from is
 14 off IDWR's records. What I did was look up those
 15 particular wells. And those numbers represent
 16 cfs water rights of those wells that were on the
 17 property when M3 purchased them. So, those are
 18 existing groundwater rights that M3 already has.
 19 MR. ALAN SMITH: I think they're also,
 20 Exhibit No. 42, attachment C and D, they've
 21 already been admitted, but these are our exhibit
 22 copies of those. I believe it's Exhibit No. 42,
 23 attachments C and D.
 24 THE WITNESS: The back of 42.
 25 MR. LAWRENCE: Again, Mr. Hearing

1 Officer, both of these exhibits that are being
 2 offered, 417 and 418, are a part of the M3 second
 3 amended application. M3 merely objects to the --
 4 well, and we object to their admittance on the
 5 basis that they would be cumulative, but in
 6 addition, we also object to the handwritten
 7 notes. There's no water right numbers written on
 8 attachment C. There's no way to verify that the
 9 wells listed on attachment C have the diversion
 10 rates that are handwritten in the margin.
 11 THE HEARING OFFICER: Okay, I'm trying
 12 to find attachment C.
 13 THE WITNESS: It's way, way at the back
 14 of 42.
 15 THE HEARING OFFICER: Is this what's
 16 tab C?
 17 THE WITNESS: Yeah, way at the back, C
 18 and D.
 19 THE COURT: Okay, but there are no
 20 water right -- there's no water right information
 21 in attachments C and D; correct?
 22 THE WITNESS: Water right -- you mean
 23 like the numbers?
 24 THE HEARING OFFICER: Well, you just
 25 testified that the flow rates that are listed in

1 the margin on the left-hand side were taken from
2 water rights, but that information is not
3 contained in attachment C of Exhibit No. 42.

4 THE WITNESS: No, but they're wells.
5 They should have that information.

6 THE HEARING OFFICER: Okay, I'll
7 receive the exhibits into evidence and we'll
8 strike the references in the left-hand margin,
9 Mr. Alan Smith, unless we establish those in some
10 way. So, they're received into evidence with
11 that limitation.

12 (Exhibits 417 and 418 admitted
13 into evidence.)

14 MR. ALAN SMITH: Very well, that's
15 fine.

16 THE HEARING OFFICER: Okay.

17 Q. (BY MR. ALAN SMITH) In your research
18 in the North Eagle area, did you also look at the
19 exhibit on well No. 32DBD1?

20 A. That was one of the ones that was in
21 Exhibit No. 50, I believe, the Vincent-Owsley-
22 McVay memo. And I've got an overhead of that
23 also. And what this is is it's a monitoring well
24 that's it's about a quarter mile north and about
25 a quarter mile west of Beacon Light and Floating

1 THE HEARING OFFICER: Overruled.

2 THE WITNESS: Basically what this is
3 saying is that the water level in that well is
4 dropping approximately a foot a year and has been
5 since, oh, the mid '90's sometime.

6 Q. (BY MR. ALAN SMITH) Are you also
7 familiar with the measurements that have been
8 taken by Mr. Owsley on the Edwards well?

9 A. Yeah, I believe Mr. Owsley testified
10 that there was some dropping going on in
11 Mr. Edwards' well, which we believe is a PGSA
12 well.

13 Q. And that's located where?

14 A. That would be about, if you'll allow me
15 to point again, that's about -- if you go from
16 Eagle about two miles north of Beacon Light, it's
17 about a half mile west of Eagle towards
18 Ballantyne Road and then just to the north of
19 Beacon Light. So, it's probably within probably
20 a little more than a quarter mile of the well
21 we're talking about there, the monitoring well.

22 Q. And the Eagle Pines well, have you
23 taken a look at those figures on it?

24 A. Yeah, and that's in one of the -- I
25 think it's Exhibit No. 45. I think it's figure

1 Feather, which would be about right in here
2 (indicating).

3 THE HEARING OFFICER: "Right in here"
4 doesn't tell us anything.

5 THE WITNESS: Okay, from -- this is
6 Beacon Light and Eagle Road. So, we're about two
7 miles north of Eagle. And then it's about a
8 quarter mile northwest of there.

9 THE HEARING OFFICER: You're referring
10 to a particular dot on the map?

11 THE WITNESS: No, that dot is separate.
12 That well is just in this area; okay?

13 THE HEARING OFFICER: Okay.

14 THE WITNESS: And this is a well that
15 USGS has monitored for I believe since about
16 1995. What we've got here is elevation above
17 mean sea level and then the years down here. And
18 I think we've already talked about this, but
19 basically it's dropping --

20 MR. LAWRENCE: Objection. Mr. Hearing
21 Officer, Mr. Smith is not qualified as an expert
22 to give an opinion as to what this chart may
23 mean.

24 MR. ALAN SMITH: He can read the chart,
25 Counsel.

1 27. I believe that's correct. And that's
2 showing some dropping of its water level also.

3 Q. And how much water level dropped there
4 per year, if you know?

5 A. I believe -- this is a longer time
6 frame. And these are actually from two different
7 wells that were drilled right next to each other.
8 The older well showed a no-pumping water level of
9 105 feet in 1955, I believe. And that was
10 replaced a few years ago with a deeper well. And
11 the no-pumping water level in that well is
12 112 feet. And that was in 2001 that that new
13 replacement well was put in. That is figure 27,
14 Exhibit No. 45.

15 Q. Any other wells that you've checked
16 into in that area from IDWR records?

17 A. Are you talking about the Stinar well?
18 Is that what you're referring to?

19 Q. Any other wells that you researched in
20 that area? We'll get to the Stinar well later.

21 A. Okay.

22 MR. LAWRENCE: Mr. Hearing Officer, we
23 would object to Mr. Smith's testimony regarding
24 any research he's conducted into wells in the
25 area for which he has no personal knowledge.

1 He's not qualified, again, as an expert witness.
2 MR. ALAN SMITH: I believe the question
3 was: Have you researched into it? He can answer
4 that "yes" or "no." And besides, I think he's
5 already answered that and there's no question
6 before the witness.

7 THE HEARING OFFICER: Overruled. I
8 need to at least allow him to testify about the
9 research and I'll allow some testimony about the
10 information that he's gathered. I think when it
11 comes to the interpretation of that information,
12 Mr. Lawrence, I think that's when degree of
13 expertise needs to be evaluated. So, overruled
14 for now.

15 Q. (BY MR. ALAN SMITH) All right, let's
16 return to the map at this time, Exhibit No. 424.

17 A. Okay.

18 Q. And I believe you were explaining what
19 the different colored dots were that were placed
20 there on the map.

21 A. Yeah. Yes. What we did is, remember,
22 we went back those four years. And so, this is
23 only for that four-year period. We did not have
24 time to go back further than that, '05, '06, '07
25 and '08.

1 What we did is we pulled up IDWR's
2 records. We went through -- in these townships,
3 we went through all of the -- any records that
4 showed any activity at all of any wells, whether
5 they were new, replacements, whatever they were.
6 We went through the range of -- or the townships
7 of 5 north, range 1 west, which is here
8 (indicating.) And then we did 5 north, 1 east,
9 here (indicating.) But because we live basically
10 right at the very bottom, I mean, we're only
11 about a quarter mile off the edge of that, we
12 went ahead and dropped another mile into 4 north,
13 1 east, and 4 north, 1 west, but we only covered
14 about that top mile.

15 What we did there is anything that was
16 a large well that had a permit given in that time
17 frame, that four-year time frame, we pulled. Any
18 permit, whether it was drilled or not -- and I'll
19 explain the difference in the dots here in a
20 second. And we also pulled any that showed --
21 whether they were a replacement well, those got
22 thrown into another pile to look into further.
23 Really what we were trying to screen for is wells
24 that had had problems that had to be either
25 deepened or replaced with deeper wells. That's

1 what we were trying to do.

2 What kind of drew us into this whole
3 thing to start with is we had a couple of
4 neighbors that -- actually, several neighbors
5 right around us that there seemed to be more and
6 more wells needing to be replaced. And most of
7 the time it was for a water level problem.

8 MR. LAWRENCE: Objection, hearsay and
9 foundation.

10 THE HEARING OFFICER: Okay. Well, at
11 least with respect to the last statement, I'll
12 strike that. With respect to the other
13 information, I'll allow it into the record.

14 THE WITNESS: Okay, the green dots
15 are -- the green and yellow dots are only large
16 municipal wells. We didn't, you know, worry
17 about the mom and pop wells that were new in the
18 area. We were only worried about the bigger
19 ones.

20 What we did is we pulled those and then
21 determined from IDWR's records whether those
22 wells had actually been put in and were pumping
23 versus ones that were granted but not put in and
24 pumping. And that's the difference between the
25 green and the yellow.

1 For instance, the 5 cfs over here,
2 which is over -- this is east of Highway 55 up
3 Dry Creek. This is the JMM, I believe, Dry Creek
4 development. There's been 5 cfs granted there,
5 but as near as I can tell from IDWR's records,
6 that is not in pumping yet.

7 THE HEARING OFFICER: Okay, you're
8 referring to "there" on the map.

9 THE WITNESS: "There" would be Dry
10 Creek about, I'm going to say about a half mile
11 east of Highway 55.

12 THE HEARING OFFICER: But you're
13 referring to a label.

14 THE WITNESS: Yes, I'm referring to a
15 yellow dot. That is a 5 cfs water grant that has
16 not been drilled and pumping yet.

17 Q. (BY MR. ALAN SMITH) Any other wells
18 that have been approved or permitted that are not
19 pumping yet?

20 A. Yeah. Yes. As near as we can tell,
21 the two wells that have been granted for Avimor,
22 which is approximately here in the Spring Valley
23 area, they have a fairly large area they can
24 drill in according to their permit. So, I just
25 stuck those dots up here. I mean, it could vary

1 by a few miles. But there's two 5 cfs granted
2 water rights there that to the best of my
3 knowledge have not been put in and are not
4 pumping yet. So, there's kind of 10 cfs already
5 right there that's basically hanging over
6 everybody's heads that we haven't felt the
7 effects of yet.

8 Q. (BY MR. ALAN SMITH) And would those
9 two dots --

10 MR. LAWRENCE: Objection, Mr. Smith
11 just gave an expert opinion about the effects
12 that would be felt from these wells once they
13 start pumping. He's not qualified to give such
14 an opinion.

15 THE HEARING OFFICER: Well, certainly
16 if they're not pumping, there would be no
17 effects. So, the statement is one that is
18 obvious. So, overruled.

19 Go ahead, Alan Smith.

20 THE WITNESS: Do you want me to keep
21 going?

22 Q. (BY MR. ALAN SMITH) Those two dots you
23 show for the Avimor wells are right along the
24 northeast property line of M3?

25 A. Yes, they are. But as I explained,

1 there's several sections that they can drill in
2 according to the permit. I just kind of stuck
3 those dots in one of those areas. So, that isn't
4 necessarily exactly where those wells are going
5 to go. That's the general area of where those
6 wells are going to go.

7 Q. That area that you have marked in black
8 borders with the initials "M3" in the middle of
9 it, that's the M3 property?

10 A. That's the approximate M3 property,
11 yes. That's hand-drawn by me.

12 Q. All right. Any other wells that have
13 been permitted that are not pumping shown by any
14 other yellow dots?

15 A. Yes, there are. There's a couple. I
16 believe this is called High Plains development
17 that's directly west of the M3 site. They've
18 been granted two different ones that I could
19 find. One is for 1 cfs and the other is for
20 3.55 cfs. And according to department records
21 again, those are not pumping. They are not
22 installed yet.

23 There's another one called I think it's
24 Monarch Ridge that's -- well, it's down Big Gulch
25 about, oh, a half a mile or so west of the

1 panhandle of the M3 proposed development.

2 There is one more that I may -- I found
3 out later on that actually isn't pumping that I
4 have as a green dot that indicates that it should
5 be pumping, and that's a new well for Eagle Water
6 off of Highway 55 and 44. That's a 5 cfs water
7 permit. The well is in, but apparently there's
8 some problems finishing up the -- or doing the
9 building that's going to house the pump and
10 everything. So, that green dot should really be
11 yellow. And that's another 5 cfs.

12 THE HEARING OFFICER: Okay, in terms of
13 the record, Mr. Jason Smith, when you say "that
14 well" and point, nobody knows what we --

15 THE WITNESS: That is the one that is
16 just south of the intersection of Highway 44 and
17 55, about a quarter mile to a half a mile south.

18 Q. (BY MR. ALAN SMITH) That's the
19 furthest green dot on the map to the southeast,
20 then?

21 A. Yes.

22 Q. All right. Go ahead.

23 A. Now, there are other ones that have
24 been granted. The green ones are ones that have
25 been granted that we believe are pumping. And

1 I'll just run through them. There's one off
2 of -- it's fairly close to where the Eagle bypass
3 ties in to State Street. It's off a road called
4 McGrath and that's a 3.5 cfs. That well was
5 stuck in in 11 of '08.

6 There's the Brookwood well that we've
7 talked about a little bit that's just north of
8 Floating Feather right off of Eagle Road, just
9 north of the town of Eagle, that's 3.25 cfs. And
10 it started pumping in March of 2007.

11 There is -- and I always get these
12 mixed up. There's the Legacy and Eaglefield.
13 One of them was put in in 4 of '06, the other one
14 in 5 of '06. One of those is 4 cfs and one is
15 4.9 cfs.

16 Q. Can you give us a location on those?

17 A. That is west of Linder Road, north of
18 State Street.

19 Q. All right, go ahead.

20 A. Then there's one up here for the
21 Trellis subdivision that's approximately Beacon
22 Light and Highway 16 that's 3.9 cfs. That was
23 drilled in August of '05. And Star Water has put
24 in a fairly big well in August of '06, 5 cfs.
25 And that is off of Floating Feather about a half

1 a mile east of Star Road.
 2 Now, these green dots don't count the
 3 older wells that are older than that four-year
 4 period. For instance, there's the old -- I think
 5 this was the very first Eagle Water well that
 6 DeShazo put in right across from Eagle Elementary
 7 School just north of State Street and Eagle Road.

8 We've got a couple out here off --
 9 Island Woods off Eagle Island just south of the
 10 town of Eagle that have been there awhile. We've
 11 got the Lexington Hills area. We've got the old
 12 Crandalmire well that's just north of Floating
 13 Feather west of Eagle about a half mile. That
 14 well has been in awhile, but it was upgraded to a
 15 higher capacity pump, we found out from Roger
 16 Dittus, in 2005. So, these dots don't represent
 17 all of the bigger municipal wells in this area.
 18 There's quite a few more.

19 Q. All right. That one that you referred
 20 to there as the Crandalmire well, that's what the
 21 experts have called the Floating Feather well?

22 A. I believe so.

23 Q. All right. Would you go to the orange
 24 dots and explain what those are.

25 A. Okay, the orange dots are the ones that

1 Exhibit 421, we only have one that we could find
 2 in this area that had problems in 2005. And that
 3 was the one not very far -- right about here is
 4 where the Floating Feather well is, the United
 5 Water well. And just to the north of it maybe a
 6 half mile, maybe not quite a half mile, was the
 7 one well that had problems that year. It was off
 8 of Rush Lane.

9 MR. LAWRENCE: Objection, Mr. Hearing
 10 Officer, they have not provided any foundation
 11 about this 2005 well that Mr. Smith is now
 12 referencing.

13 THE HEARING OFFICER: Sustained. And I
 14 think in this area, Mr. Smith, I need some
 15 foundation. I think this is where really the
 16 protestants -- the other discussion I think is
 17 general about what's happened in the area and I
 18 think there's some repeat of information or
 19 testimony that we've heard before about locations
 20 of wells. But with respect to the wells
 21 themselves that have been replaced and the
 22 documentation behind it, I think it's critical
 23 that the applicants have the information that you
 24 relied on to make these comparisons. So, I want
 25 to have that documentation come in because

1 we -- when we went through the records in that
 2 four-year period, the ones that said that they
 3 were a replacement well, those went in a
 4 different pile. What we did is went through them
 5 year by year, attempted to link those up with the
 6 old wells that were on the property, and also
 7 contact the people that currently own the
 8 property and ask them, you know, "Why was this
 9 well replaced? What was the reason?"

10 These wells here, the red or orange
 11 dots, are the ones that are depicted here.

12 THE HEARING OFFICER: Here?

13 Q. (BY MR. ALAN SMITH) And "here" is the
 14 bar graph?

15 A. The bar graph, yes, Exhibit 421.

16 Q. 421? All right, go ahead.

17 A. Let's see. We could go through in
 18 order if you'd like. Starting with our first
 19 year in 2005, that was the year that the Trellis
 20 well was put in at Beacon Light and Highway 16.
 21 That was also the year that the old Crandalmire
 22 well, or what we called the Floating Feather well
 23 that's now a United Water well, that was upgraded
 24 to a higher capacity pump in 2005.

25 And as you can see by the bar graph,

1 otherwise they have no ability to evaluate the
 2 accuracy of the statements that are being made.

3 Q. (BY MR. ALAN SMITH) Do you have any
 4 documentation on any of those wells?

5 A. I do, but I don't have copies.

6 Q. Well, let me ask you this: Are all of
 7 the orange dots that are shown on Exhibit
 8 No. 424, are all of those orange dots wells that
 9 have been replaced, whether you know the reason
 10 or not?

11 A. Yes, sir.

12 MR. LAWRENCE: Objection, foundation.

13 THE HEARING OFFICER: Okay, sustained.

14 Q. (BY MR. ALAN SMITH) Would you refer to
 15 the IDWR records. I believe it's on document,
 16 North Ada County Groundwater document No. 202.

17 A. 282?

18 Q. 282. And is that taken from the Idaho
 19 Water Resources' own records?

20 A. It appears to be.

21 THE HEARING OFFICER: What are we
 22 looking at?

23 THE WITNESS: This is document 282. I
 24 believe this is from NACGUA.

25 MR. THORNTON: It's a document that we

1 filed.
 2 MR. ALAN SMITH: NACGUA's Exhibit
 3 No. 282, I believe it is.
 4 Q. (BY MR. ALAN SMITH) Would you just
 5 look at that for a moment.
 6 THE HEARING OFFICER: Just a minute.
 7 Okay, let's go off the record for a minute. I
 8 need to find it.
 9 (IDWR recording paused.)
 10 (Discussion held off the record.)
 11 THE HEARING OFFICER: Let's mark this
 12 Exhibit 282.
 13 (Exhibit 282 marked.)
 14 THE HEARING OFFICER: Okay, it's been
 15 marked.
 16 MR. THORNTON: Is it marked 282,
 17 Mr. Hearing Officer?
 18 THE HEARING OFFICER: It is marked as
 19 Exhibit No. 282. So, let's go back on the
 20 record.
 21 (IDWR recording resumed.)
 22 THE HEARING OFFICER: Okay, we're
 23 recording again. I'll deliver this back to Jason
 24 Smith. And I don't have a copy right now. I may
 25 have to look over his shoulder if he refers to

1 it.
 2 Q. (BY MR. ALAN SMITH) I just have one
 3 very simple question. Would you look at that
 4 first page.
 5 A. Okay.
 6 Q. And tell me whether that is the same as
 7 what you show on your map, Exhibit No. 424, from
 8 IDWR's records.
 9 A. Well, that is similar, except there's
 10 more dots on this first page of Exhibit No. 282.
 11 But I suspect that's probably because they went
 12 back further than the four years we went back.
 13 MR. LAWRENCE: Objection, Mr. Hearing
 14 Officer, Mr. Smith is speculating as to the
 15 origins of this map and what it shows this map
 16 contains at the first page of Exhibit 282.
 17 THE HEARING OFFICER: Well, I'll
 18 sustain the objection partially. If there's some
 19 similarity in appearance which Jason Smith has
 20 testified to, I'll allow that to come in. But
 21 with respect to the origin of the dots, I'll
 22 sustain the objection.
 23 ALAN SMITH: All right, we would ask
 24 that the Water Resources Department take official
 25 notice of their own record in the matter. And it

1 may show a few more dots on there.
 2 Q. (BY MR. ALAN SMITH) But let me ask you
 3 this, Mr. Smith: Is that map, 424, a fair and
 4 accurate pictorial representation of the wells
 5 you found over the last four years that have
 6 either been replaced or drilled deeper, and also
 7 that the green dots are municipal wells, and the
 8 yellow dots show wells that have been approved or
 9 permitted that are not pumping? Would that be a
 10 fair and accurate statement of that?
 11 MR. LAWRENCE: Objection, Mr. Hearing
 12 Officer, foundation again, particularly as it
 13 pertains to the orange or pinkish dots that are
 14 in the legend noted as dry wells.
 15 MR. ALAN SMITH: We will strike the
 16 word "Dry" from the map legend and put "Replaced
 17 Wells" if that will make Counsel happy.
 18 MR. LAWRENCE: We would continue our
 19 objection to the foundation of these alleged
 20 replaced wells.
 21 THE HEARING OFFICER: Okay.
 22 MR. ALAN SMITH: We would offer Exhibit
 23 No. 424. We think it goes to the weight rather
 24 than the admissibility. It's only offered as a
 25 pictorial representation of what the Department

1 of Water Resources' own records will show over
 2 those last four years.
 3 MR. LAWRENCE: Mr. Hearing Officer,
 4 there's been absolutely no foundation laid for
 5 the origin of the pink dots on Exhibit No. 424.
 6 THE HEARING OFFICER: Okay, Mr. Smith,
 7 I'd like to have the evidence come in. I would
 8 like to have the map come into evidence, but I
 9 think at a minimum the applicants deserve to have
 10 the underlying information and data from which
 11 the conclusions were drawn that these are
 12 replacement wells and under what circumstances
 13 they were replaced. And I don't have any of that
 14 information nor do they have that information.
 15 It may be in the records, but I don't
 16 know where it is. It may be part of the
 17 department's records, but I don't know where
 18 those records are. So, I'm at a loss as a
 19 hearing officer to go back and establish the
 20 existence of these replacements. And the
 21 applicants don't have the ability to look at the
 22 technical information and then ask meaningful
 23 questions about it. So, I can't bring it into
 24 evidence or receive it without the underlying
 25 support.

1 MR. ALAN SMITH: We're merely offering
2 it to show that those orange dots represent wells
3 that have been replaced in the last four years
4 regardless of what the reason is.

5 THE HEARING OFFICER: Well, I think the
6 underlying documentation needs to be there. I'll
7 sustain the objection. I won't let the exhibit
8 into the record.

9 MR. ALAN SMITH: Very well. We would
10 make an offer of proof at this time that if the
11 witness were allowed to answer, he would state
12 that this is taken off of the Idaho Water
13 Resources records, that the green dots show
14 municipal wells, the yellow dots show wells that
15 have been approved but are not pumping at this
16 time, and the orange dots show wells that have
17 been replaced regardless of why.

18 THE HEARING OFFICER: Okay, your offer
19 of proof is received by the Hearing Officer and
20 the map will be placed into the record as not
21 having been received into evidence, but certainly
22 will be there for review.

23 MR. ALAN SMITH: And we would offer
24 Exhibit No. 421, which is the bar graph.

25 THE HEARING OFFICER: Based on the same

1 information, the same reasoning, Mr. Smith, I
2 won't allow it into the record. I badly want to
3 allow it in, but I think it needs the
4 foundational information. Otherwise the
5 applicant can't make a determination about the
6 truthfulness of the information or not. I think
7 they deserve that minimum courtesy.

8 ALAN SMITH: All right, we would
9 reserve the right to reoffer this as part of
10 North Ada County Groundwater's evidence. And
11 I've made the offer of proof and it has been
12 sustained and the map has not been admitted.

13 Q. (BY MR. ALAN SMITH) Let's go now --

14 MR. LAWRENCE: Mr. Hearing Officer, if
15 I might, we would object to this coming in as an
16 exhibit offered by North Ada County Groundwater
17 Users Association, NACGUA, as they rested their
18 case. There is no opportunity for them to bring
19 this piece of evidence into the record.

20 THE HEARING OFFICER: Well, let's see
21 where that goes, Mr. Smith is not representing
22 them, if Mr. Thornton wants to attempt to bring
23 evidence into the record.

24 MR. ALAN SMITH: Counsel has had a copy
25 of this map.

1 Q. (BY MR. ALAN SMITH) Are you familiar
2 with those well drillers reports contained in
3 Exhibit No. 282?

4 A. There's some of those, as I was
5 thumbing through them, there's some of those that
6 are in our four-year period that I am familiar
7 with, but there's some others that are within
8 that exhibit that I'm not familiar with that are
9 beyond that four-year window.

10 Q. Would you take a look at that Exhibit
11 No. 282 and tell us which ones you are familiar
12 with.

13 A. Okay, off the top of my head --

14 Q. Take your time.

15 A. William George, which is probably about
16 the tenth or twelfth one back on Edgewood, that's
17 one of them that are depicted on the map. He's
18 at 2636 Edgewood Lane, which is just off of
19 Beacon Light.

20 Q. All right, would you go to the map and
21 point that well out, please.

22 A. That would be this one right here
23 (indicating.)

24 MR. LAWRENCE: Objection, foundation,
25 there is nothing contained on this well driller's

1 report that was just noted by Mr. Smith to
2 indicate that it's been replaced.

3 MR. ALAN SMITH: I can't hear your
4 objections, Counsel. Could you speak up?

5 THE HEARING OFFICER: Okay, I think
6 both parties need to speak up. I think the
7 question was not one of replacement, I think it
8 was one of identification. So, I think the
9 objection is premature, Mr. Lawrence. Overruled.
10 So, let's identify the location of the
11 well.

12 THE WITNESS: Okay, that's on Edgewood
13 Lane. That is off of Beacon Light about,
14 probably about a mile east of Eagle Road. And
15 that was William George.

16 And it does say down there the type of
17 work done was modifying -- I'm on the wrong one,
18 I'm sorry. I've got to go back to William George
19 here. That might have been a mistake. Yeah, it
20 says, "Other, 6-inch well." And I actually
21 talked to William George and that well was
22 replaced.

23 MR. LAWRENCE: Objection, hearsay.

24 THE WITNESS: Okay.

25 THE HEARING OFFICER: Okay, sustained.

1 MR. ALAN SMITH: Hearsay has been
2 allowed before.

3 THE HEARING OFFICER: Well, yeah, I
4 understand, but let's work off of the document to
5 start with. Let's identify what page it is in
6 the document, in 282, and what it represents and
7 what the document purports to show. And then
8 when we get to there, then maybe we can talk
9 about the issue of hearsay. But I don't even
10 know if we have yet, Mr. Alan Smith. As a
11 Hearing Officer, I'm confused right now about
12 what document it is you're looking at.

13 THE WITNESS: I have a copy of it here.
14 We're looking at about page 10, William --

15 THE HEARING OFFICER: Now, "about"
16 doesn't help me.

17 THE WITNESS: That's what I counted,
18 page 10.

19 THE HEARING OFFICER: I need to know
20 what page it's on and I need to know what the
21 document says. And then we need to try to
22 reference that document to something and then try
23 to discern from the document what the driller's
24 report says.

25 THE WITNESS: Okay, it is page 10.

1 It's William George is the name of the owner of
2 the property currently. It was redone in May of
3 2008.

4 THE HEARING OFFICER: Now, what does
5 the driller's report say?

6 THE WITNESS: It says --

7 THE HEARING OFFICER: Does it say
8 "redone"?

9 THE WITNESS: It says, under "Type of
10 Work" it says: "Other, 6-inch well." And it's a
11 domestic.

12 THE HEARING OFFICER: Okay. And there
13 was a 6-inch well that was drilled for Mr. George?

14 THE WITNESS: Yes, sir.

15 THE HEARING OFFICER: And that's what
16 the document shows?

17 THE WITNESS: Yes, it's 163 feet deep,
18 the new well, and the static level is 48 feet
19 below ground.

20 Q. (BY MR. ALAN SMITH) What was that?

21 A. The static level was 48 feet below
22 ground.

23 Q. All right, can you refer to any other
24 documents there that you're familiar with and
25 count the pages as you go.

1 A. Okay, on page 16, Tavis, and I'm not
2 sure how to say his last, it's R-e-c-h-e. He had
3 a domestic well in April of 2005 that's labeled
4 under "Other" or "Replacement," "6-inch well"
5 domestic well, 152 feet deep, static levels about
6 50 feet below ground.

7 THE HEARING OFFICER: Now, what does
8 the document say? Does it say "Other"?

9 THE WITNESS: It says "Other" and then
10 right above "Other" it says "Replacement,
11 et cetera," and then it has "6-inch well." And
12 that's the same as the last one too.

13 THE HEARING OFFICER: So, the
14 "Replacement" is handwritten in the document?

15 THE WITNESS: No, no, it's typed above
16 it.

17 THE CLERK: Right here, Gary
18 (indicating.)

19 THE HEARING OFFICER: This is one of
20 the documents -- the concern I have with the well
21 log is that when it says "Replacement" above,
22 et cetera, it appears to me that that particular
23 reference is on the form itself and is not an
24 indicator of what kind of work is actually being
25 done. So, it's a reference to try to guide

1 somebody as to the kind of thing that they might
2 be marking, but it certainly isn't an indication
3 or a statement that that is why the well is being
4 drilled. I can't draw that from the driller's
5 report. I can't draw that conclusion.

6 Q. (BY MR. ALAN SMITH) All right, any
7 others there that you're familiar with?

8 A. Yes, probably. David O'Neal is another
9 one that I recognize.

10 Q. What was the name again?

11 A. David O'Neal.

12 Q. Go ahead.

13 A. I lost my pen somewhere and the page
14 number. This is the one that's up Eagle Road.
15 Well, this one actually has "Replacement"
16 circled, domestic, was drilled 332 feet deep.
17 The static level is 218 feet below the ground and
18 this was done in March of 2008. And do you want
19 me to point that out on the map?

20 Q. Yes, if you would.

21 A. Okay, that's the one -- that's the one
22 well that's -- here's Eagle again. That's the
23 well that's up in the Woods Gulch area, probably,
24 oh, from Beacon Light, I'm going to say probably
25 not two miles, but probably a mile and a half

<p style="text-align: right;">Page 2701</p> <p>1 anyway north of Eagle right on Eagle Road. 2 Q. What was the page number again? 3 A. I've got to count them. I lost count. 4 It would be 21. 5 The next page, 22, Rick -- and I'm not 6 sure how to say this name -- Katucki, 7 K-a-t-u-c-k-i. This is at 2070 Homer Road. This 8 was done in September of 2008. And it's got 9 "Replacement" circled, domestic, new well. 10 MR. LAWRENCE: Objection, Mr. Hearing 11 Officer, that somewhat mischaracterizes this 12 document to say that "Replacement" is circled. 13 The entire "Other" column with "Replacement, 14 et cetera" is circled. 15 THE WITNESS: I'll let you take -- 16 MR. THORNTON: Mr. Katucki may be 17 appearing today or on July 9th. 18 MR. LAWRENCE: I'll also note that 19 under item 5 on this report "New Well" is also 20 checked. 21 THE HEARING OFFICER: Okay, I'll 22 sustain as to its characterization. 23 THE WITNESS: Okay. Did you want me to 24 point this out on the map? 25 Q. (BY MR. ALAN SMITH) Yes, if you would,</p>	<p style="text-align: right;">Page 2703</p> <p>1 "Modify," "Abandonment" or "Other," 2 "Replacement." And it says "Replacement." 3 THE HEARING OFFICER: So, it's labeled 4 "Replacement"? 5 THE WITNESS: It actually is typed in 6 this page, "Replacement." 7 THE HEARING OFFICER: Okay. 8 THE WITNESS: Okay, two more pages. 9 Page 26 is Robert Jones. He's another one in 10 that same group of about three or four red dots 11 and it's on the list. Under his it says under 5, 12 "Type of Work" it says "Other" and it has "Old 13 8-inch." This new well was drilled in July of 14 '07. And I don't know what else you would like 15 me to say there. 16 Q. (BY MR. ALAN SMITH) Does it show the 17 depth and the static level? 18 A. It shows the depth at 250 feet and it 19 shows the static at 120 feet. 20 Q. All right. Would you go back two pages 21 to the Roberts well. I don't believe you stated 22 the depth and the static level there. 23 A. Okay, on the Roberts well on 2000 Homer 24 Road, the depth is 284 feet, this is according to 25 the well driller's report still, and the static</p>
<p style="text-align: right;">Page 2702</p> <p>1 please. 2 A. Now, there's several right in this 3 area. So, I may not be able to tell you exactly 4 which dot it is, but it's one of these dots right 5 here. And that's the end of Ballantyne Road just 6 almost starting into the foothills. There's a 7 Homer Road that Ballantyne runs into. And that's 8 about probably a little over a mile west of Eagle 9 Road and about three miles north of Eagle. 10 Q. Any others that you're familiar with? 11 A. I'm not sure on this one. The next 12 page, Jerry Keulman, I'm not sure on that one. 13 I'd have to dig into my notes to be sure if that 14 was one of them or not. I don't remember. 15 Q. All right, go ahead. 16 A. The next page, 24, Charles and Joy 17 Roberts. That's right next door basically to the 18 last one that I just pointed out, the Katucki 19 well. This well shows replacement, domestic. 20 THE HEARING OFFICER: When you testify 21 it shows replacement, what are you referring to 22 in the document? 23 THE WITNESS: I'm referring to No. 5 in 24 the well driller's report. It says under "Type 25 of Work," that they have a choice of "New Well,"</p>	<p style="text-align: right;">Page 2704</p> <p>1 is 134 feet below ground. 2 Q. All right. Any others that you're 3 familiar with? 4 A. Yeah, number -- or page 27, the next 5 page after the Robert Jones one, is Larry 6 Christensen, 3472 North Ballantyne. This new 7 well, this was a replacement for a 4-inch well. 8 MR. LAWRENCE: Objection, that 9 mischaracterizes this document. It doesn't say 10 "replacement for a 4-inch well." 11 THE WITNESS: Okay, it does say "Other" 12 "4-inch well" where it's typed in "Replacement," 13 yes. 209 feet deep, 100 feet static level. And 14 this one is about that same general area, just a 15 little bit -- from Ballantyne and Beacon Light we 16 are north of there about a quarter mile to a half 17 mile. So, it's the same area as the last three 18 or four we just looked at. And that was drilled 19 in May of '08. I don't know if we said that or 20 not. 21 I'm not sure about the Matt Marsh. I 22 don't think so. 23 Okay, the Lonnie Morris, which is two 24 pages further, page 29, 3875 North Ballantyne, 25 that's that same area that we've been looking at,</p>

1 Ballantyne between Beacon Light and Homer Road,
2 not too far from the foothills. This was a -- it
3 has "Replacement" underlined under the "Other"
4 and a "6-inch well" written below that. It's a
5 domestic well 218 feet deep. The static level is
6 90 feet below ground. That was done in April of
7 '06.

8 Page 31, Jill Kohler is another one I
9 recognize, 4005 North Eagle Road.

10 Q. Would you spell that last name, please.

11 A. K-o-h-l-e-r, Jill Kohler. This says it
12 was a replace -- it says -- it has "Other"
13 checked with "Replaced" printed in or typewritten
14 in behind "Other." This is a 300-foot well with
15 a 139-foot static level. It was done in July of
16 '07. That one there, the Kohler well, is about a
17 mile north of Beacon Light and Eagle Road. And I
18 believe that's the correct dot for it there
19 (indicating.)

20 Okay, page 34, Bob Wood, I believe this
21 is one of them also. This shows -- has "Other"
22 checked under the "Type of Work." It has
23 "Replacement" underlined and the "6-inch well."
24 It's 220 feet deep. Static is 95. And it was
25 done in October of '06. And that one I believe

1 is this dot right here (indicating), which is
2 about -- let's see, how do I describe this? It's
3 about a half mile north of Beacon Light and about
4 halfway between Eagle Road and Ballantyne. So,
5 it's basically centered pretty close into that
6 section.

7 Bill Lawton, the next page, that's one
8 that's right next door to us. This is -- it just
9 has "Other" checked here, but I have some hearsay
10 evidence I could enter into all of this, but I
11 won't. The new well is 161 feet. The static
12 water level is 97 feet below ground. This one is
13 just south of the last one I just pointed out.
14 This is off Osprey Road, which is roughly just
15 north of Beacon Light about halfway between Eagle
16 Road and Ballantyne.

17 The next page, Ilene Stinar, that's two
18 houses away from the last one. The new well --
19 on this one under "Type of Work" it says "Other,"
20 a 6-inch well. This is 211 feet deep, the new
21 well, drilled in April of '08, and the static
22 level is 75 feet below ground. This one is
23 located right just south of the last dot we
24 pointed out. That's about halfway between Eagle
25 and Ballantyne just north of Beacon Light.

1 Page 38, Cort Hanson, 3477 Shadow
2 Hills. It says "Replacement" well under "Type of
3 Work." This is 259 feet deep, static is 110 feet
4 deep. And I don't remember exactly where this
5 one is at. I believe this is the one that's
6 fairly close to that one monitoring well
7 that's -- this would be -- from Beacon Light and
8 Eagle Road, this would be maybe a quarter mile
9 north and about a quarter mile west. I believe
10 that's correct. I'm not going to swear to that
11 one, but I believe that's correct.

12 THE HEARING OFFICER: Mr. Smith, and
13 maybe I've waited too long to ask this question,
14 but as I look at the orange dots, at least you
15 referred to them as being orange --

16 THE WITNESS: Yes.

17 THE HEARING OFFICER: -- they appear to
18 have something written on them. Is that a
19 reference number?

20 THE WITNESS: That's just the year that
21 they were replaced. That's all that's there.

22 THE HEARING OFFICER: All right.

23 THE WITNESS: Now, the other dots, the
24 yellow ones and the green ones, I've got the
25 month and year and I also have the cfs on those.

1 THE HEARING OFFICER: Okay.

2 THE WITNESS: Okay, 40, I recognize
3 this name, Josh or Jennifer Harmon, 3660 North
4 Falcon Ridge. This has "Replacement" circled.
5 This was done in April of '07. The depth is
6 258 feet, static level is 115 feet.

7 Q. (BY MR. ALAN SMITH) 115 feet?

8 A. Yes, 115 feet. And this one, I believe
9 that's this one right here (indicating.) It's
10 about a half mile north and probably a quarter
11 mile west of Beacon Light and Eagle Road.

12 Let's see. Well, this is going to mess
13 up the pages because there's two copies of Josh
14 or Jennifer Harmon, but I'll just count it as 40.

15 I believe page 43, I think this is
16 another one, Milan or Joyce Jackson. This was a
17 replacement well, 170 feet deep. The static is
18 62. And this is one off North Brookside, which
19 is going to be this one right here. That's from
20 Highway 55 and Brookside, which is just north of
21 Beacon Light, it's about a quarter mile north of
22 there, kind of in the Dry Creek Valley.

23 I think this is one of them, Blackhorse
24 Construction. This is page 45, I believe. This
25 is the one on Hanley Place. This is circled a

1 replacement well, 340 feet deep. Oh, well, it
2 says 335 feet deep here. The static is 254 feet
3 down. And this is one of them that's kind of
4 west of the M3 property. I'm not sure which one
5 of those two dots it is, but it's one of those
6 two that are west of the M3 property probably a
7 little over a mile.

8 Q. What was the depth of that well?

9 A. 335, I think. It says "335" in one
10 spot and "340" in another.

11 Q. Any others?

12 A. Probably. I think this is another one,
13 that other orange dot in that same area just
14 about a mile and a half west of the M3 property,
15 Robert Steele. This is page 46.

16 Q. Spell the last name, please.

17 A. S-t-e-e-l-e.

18 Q. Go ahead.

19 A. Okay, this is also -- this was one that
20 didn't -- that wouldn't print. And every once in
21 awhile you run into this, I don't know why, on
22 the IDWR website. So, it's handwritten in here.
23 The depth is 565 feet deep, but it says "Domestic
24 Replacement" handwritten in here. But without
25 pulling that up and looking at it, I don't know

1 for sure if that's what that says or not. But
2 anyway, Robert Steele, page 46.

3 I believe that's all that's in there.

4 Q. All right, thank you. Let's go now to
5 the Madsen/Stinar well.

6 A. Okay.

7 Q. Where is that located?

8 THE HEARING OFFICER: Mr. Smith, do you
9 intend to do something with Exhibit No. 282,
10 what's been marked as 282?

11 MR. ALAN SMITH: We'll offer it. We'll
12 ask the department to take official notice of
13 their own records.

14 THE HEARING OFFICER: Mr. Lawrence?

15 MR. LAWRENCE: We object to the map on
16 page 1. There has been no foundation laid for
17 the information plotted or depicted on this map.

18 THE HEARING OFFICER: Okay. Well, the
19 Hearing Officer -- other than testimony that this
20 is a general representation of what Mr. Jason
21 Smith has at least plotted as well locations, you
22 know, the Hearing Officer puts the rest of these
23 documents, they are all well logs, and the
24 parties have had an opportunity to look at these.
25 So, it's received into evidence with that

1 particular qualification for the first page.
2 Okay?

3 MR. ALAN SMITH: All right.

4 (Exhibit 282 admitted into evidence.)

5 Q. (BY MR. ALAN SMITH) If you'd go to the
6 Madsen/Stinar well, please, and draw that on the
7 easel from the well driller's reports.

8 A. Yeah, and I believe these are the
9 handouts we just gave out. It just happened at
10 the last break. You guys should have these.

11 THE HEARING OFFICER: Do you want to
12 mark this document, Mr. Smith?

13 MR. ALAN SMITH: We will, or we can
14 now.

15 THE HEARING OFFICER: Just for purposes
16 of reference. It seems to me it would be
17 helpful, unless you don't intend to offer it.

18 MR. ALAN SMITH: It would be Exhibit
19 No. 425, both the well driller's report and the
20 drawing representation that the witness is now
21 making.

22 MR. LAWRENCE: Which well driller's
23 report are we discussing?

24 THE WITNESS: We're looking at -- the
25 one for Floyd Madsen is the one I'm writing right

1 now. Floyd Madsen and Ilene Stinar, they may be
2 typed together -- or stapled together. Okay?

3 This is the well that's just south of us off of
4 Beacon Light, about halfway between Eagle and
5 Ballantyne.

6 THE HEARING OFFICER: What number do
7 you want to assign to it, Mr. Alan Smith?

8 MR. ALAN SMITH: 425.

9 THE HEARING OFFICER: Is that a vacant
10 number right now?

11 MR. ALAN SMITH: I show it as a vacant
12 number, particularly with 427 and 428 admitted.

13 THE HEARING OFFICER: We just marked
14 two of them as 427 and 428. So, I was concerned
15 about going backwards in the numbering, but if
16 you feel comfortable that it's not marked --

17 MR. ALAN SMITH: We have the map as 424
18 and the Madsen/Stinar well would be 425.

19 THE HEARING OFFICER: Okay, 425.
20 (Exhibit 425 marked.)

21 THE WITNESS: This well was originally
22 drilled in October of 1975.

23 Q. (BY MR. ALAN SMITH) Speak loud, if you
24 would.

25 A. Maybe I should turn around. This well

1 was originally drilled by Floyd Madsen, he was
2 the original owner of the property, in October
3 of '75. And basically what I'm doing is writing
4 the information off of the well driller's sheet
5 that came off of that well for that property back
6 in 1975. And you guys all should have a copy of
7 this. The well depth was 72 feet and the static
8 level was 48 feet.

9 THE CLERK: Could he turn around?

10 THE WITNESS: Okay, turn around? The
11 well was done in October of 1975 by the original
12 owner, Floyd Madsen. The depth was 72 feet and
13 the static was 48 feet, per IDWR's well driller's
14 report records. That well, the pump was lowered
15 in that well --

16 THE HEARING OFFICER: Mr. Smith, why
17 don't you move the easel this direction. You're
18 talking away from us.

19 THE WITNESS: Okay. It was drilled
20 originally in October of '75. 72 feet deep, 48
21 foot static level. That pump was lowered a
22 couple of times in the last several years by
23 Ilene Stinar, who is now the current owner.

24 MR. LAWRENCE: Objection, foundation
25 for that statement regarding lowering of the

1 this new well is 211 feet deep and the new static
2 level is 75 feet deep. These wells were drilled
3 less than 10 feet apart. Those numbers also come
4 out of IDWR's records, the well driller's report.
5 And again, this is our neighbor just to the
6 south.

7 Q. So, could a layman conclude that that
8 well went dry?

9 MR. LAWRENCE: Objection, Mr. Smith is
10 not qualified to give an expert opinion even
11 though Mr. Smith, the questioner, characterized
12 it as a question for a lay person.

13 MR. ALAN SMITH: He can read from the
14 well driller's report. If it was 72 feet deep
15 originally and the static level is now 75, I
16 think a layman can give an opinion as to what
17 happened.

18 MR. LAWRENCE: We further object to the
19 use of this term "dry wells" and Mr. Smith, the
20 witness's, ability to characterize wells as going
21 dry or as dry wells.

22 THE HEARING OFFICER: Sustained,
23 Mr. Smith. And the reason for that is that just
24 because the static water level is deeper in a
25 newly constructed well doesn't necessarily or is

1 pump.

2 Q. (BY MR. ALAN SMITH) Did you talk to --

3 THE HEARING OFFICER: Just a minute.
4 Just a minute. All right, sustained at least
5 right now. Mr. Smith?

6 THE WITNESS: Are you talking to me?

7 THE HEARING OFFICER: No, Mr. Alan
8 Smith, you were ready to ask a question.

9 MR. ALAN SMITH: Yes.

10 Q. (BY MR. ALAN SMITH) Did you talk to
11 the owner, Ilene Stinar?

12 A. Yes, several times.

13 Q. Do you recall when that was, about?

14 A. It was -- this well was drilled,
15 according to the well driller's report, in April
16 of '08. It was April 2nd of '08. So, it would
17 have either been the tail end of March or the
18 very first part of April of 2008.

19 Q. And did you also go on the property
20 while the well driller was there?

21 A. Yes, sir.

22 Q. Did you talk to him?

23 A. Yes, sir.

24 Q. All right. Go ahead.

25 A. Okay, the new well that was drilled,

1 not necessarily the basis for a conclusion that
2 the old well was dry at the time that the new
3 well was drilled. The construction is completely
4 different, the depth of the well is significantly
5 deeper, and honestly may have a different static
6 water level for the aquifers or the water levels
7 encountered. So, whether he concludes it or not,
8 it doesn't make any difference to me. There's no
9 basis for it. It's sustained.

10 MR. ALAN SMITH: Very well, I'm going
11 to let the Hearing Officer draw his own
12 conclusions. And I think it goes to the weight
13 rather than the admissibility. We'll offer
14 Exhibit No. 425 along with the well driller's
15 report.

16 THE HEARING OFFICER: Mr. Lawrence,
17 it's been offered.

18 MR. LAWRENCE: Exhibit No. 425 being
19 the hand-drawn exhibit?

20 THE HEARING OFFICER: I thought 425
21 were these two. Now, are you adding that in as a
22 hand-drawn representation that's to be attached
23 to this?

24 MR. ALAN SMITH: Yes, we're offering
25 both. You may want to -- if the well driller's

1 report is a different number, we could make that
2 429 if you prefer.

3 THE HEARING OFFICER: Well, you want
4 the hand-drawn representation to be a part of
5 this?

6 MR. ALAN SMITH: Yes.

7 THE HEARING OFFICER: So, let's just
8 attach it as part of it. So, three documents or
9 one together? Mr. Lawrence?

10 MR. LAWRENCE: We don't object to the
11 diagram drawn by the witness as far as it
12 represents the information on the well drillers
13 reports also contained in Exhibit No. 425.
14 However, we do object to the handwritten notes on
15 the first page, the well driller's report for
16 Ilene Stinar that characterizes this well as dry
17 and shallow. We don't know who wrote that and
18 there's no basis for that --

19 THE WITNESS: I actually wrote that
20 before I knew those were going to be entered into
21 evidence. Those were my personal notes.

22 MR. ALAN SMITH: We'll ask that the
23 handwritten notes be stricken and not admitted as
24 part of the exhibit.

25 THE HEARING OFFICER: Okay, with that

1 qualification, it's received into evidence. You
2 can give it to me.

3 (Exhibit 425 admitted into evidence.)

4 THE WITNESS: Keep all of this
5 together?

6 THE HEARING OFFICER: I have the
7 original here.

8 Q. (BY MR. ALAN SMITH) What does that
9 exhibit show as to the drop in the water level in
10 the 34 years since the well was originally
11 drilled in May of 2008 when it was replaced?

12 A. Well, it would be from '75 to 2008.
13 So, that would be 33 years give or take a few
14 months. And from 48 feet to 75 feet would be
15 27 feet. So, 27 feet in about 33 years.

16 Q. All right, let's go to the Mosier/
17 Christensen well.

18 THE HEARING OFFICER: Okay, before we
19 launch into this line of questioning, it's about
20 quarter after 12:00. I expect to have public
21 witnesses coming in here at 1:00. I think we'd
22 better take our lunch hour and get back.

23 MR. ALAN SMITH: This will be the
24 final -- it's up to you what you want to do.

25 THE HEARING OFFICER: You have no more

1 questions to ask?

2 MR. ALAN SMITH: Well, there will be a
3 couple about this drawing, but that's all.

4 THE HEARING OFFICER: Well, I still
5 think -- we only have about 45 minutes and we'll
6 have people in here. If we want to have any time
7 for lunch, I think we'd better take it right now.

8 So, let's quit because we'll have
9 cross-examination anyway of Jason Smith and we'll
10 have to come back to him. So, let's recess. And
11 it's a short lunch, folks, but be back at 1:00.

12 THE WITNESS: Do we anticipate me being
13 back up later today or do we have any idea?

14 THE HEARING OFFICER: Probably I don't
15 think our public witnesses will take that long.
16 Let's go off.

17 (Luncheon recess taken.)

18 (IDWR recording paused.)

19 THE HEARING OFFICER: All right, let's
20 talk just for a minute before we go on the
21 record. We're not recording yet; are we?

22 THE CLERK: No.

23 THE HEARING OFFICER: For those of you
24 who have just come, this is a hearing for the M3
25 Eagle contested water right case. And this is a

1 time appointed for the appearance and testimony
2 of public witnesses. And we talked a little bit
3 about the way in which we'll proceed with this
4 presentation today early this morning.

5 I think what we'll do, and I haven't
6 talked to the parties about this, but I think
7 what I would like to do is have those people who
8 were parties and who are here to testify today to
9 testify first. It seems to me that we ought to
10 show them some deference today. So, unless
11 there's some objection, I think that's the way I
12 would proceed.

13 And then I don't know in what order we
14 want to bring those folks up. Maybe from there
15 we just go from the roster in the order in which
16 people signed up.

17 I have appeared I know at one Fish &
18 Game hearing and they went in reverse order. I
19 was the first one on the list and the last person
20 to testify about 11:30 at night. And I don't
21 intend to do that. Those that are here first
22 ought to be able to testify. Okay, no, we don't
23 have that many.

24 So, how many of those who are here
25 originally filed a protest and wish to testify?

1 THE HEARING OFFICER: Okay, we have
2 two, then. And so, we'll go on the record.
3 We're recording the testimony or the presentation
4 here. And so, I'll ask Jean Hersley, who is
5 helping me today, to turn the recorder on and
6 then I'll ask you to come forward. And let me --
7 what's your name, sir?

8 MR. ROBERT NICCOLLS: Robert Niccolls.
9 I am part of the group. I'm not individual, but
10 I am a protestant.

11 THE HEARING OFFICER: Okay. And then
12 ma'am, your name is?

13 MS. BARB JEKEL: Barb Jekel, J-e-k-e-l.

14 THE HEARING OFFICER: You were on
15 probably the first roster that we had.

16 THE CLERK: On the first page, I think.

17 THE HEARING OFFICER: I have two lists.

18 THE CLERK: She's on the first page,
19 that other list, I think.

20 THE HEARING OFFICER: Oh, right. So, I
21 have two lists and I don't know which are first.

22 So, maybe I'll alter it. I'll try to do this as

23 randomly as I can.

24 Okay, anything else we need to talk
25 about? I want those of you who are here to know

1 that when you testify, you may narrate your
2 testimony into the record unless you have someone
3 that you want to interrogate you here, which I
4 assume is not the case. And when you come up,
5 I'll swear you in. That's a requirement to
6 testify in an evidentiary hearing. And then you
7 can be seated and you can testify by narration
8 and then you'll be subject to examination by the
9 parties.

10 So, and I don't know in what order we
11 want to go in examination. So, perhaps for those
12 witnesses -- I think I'll just ask perhaps the
13 witness if their position is in favor of or
14 adverse to the applicant. And based on that,
15 I'll allow the party who's favorable to go first
16 and then allow cross-examination so it has that
17 sense of a presentation and then cross-
18 examination, if that's fair to the parties.

19 MR. THORNTON: Yes.

20 THE HEARING OFFICER: Now, do we want
21 to go through twice with each witness again or
22 just once, public witnesses? Do we need the
23 rigor of two times going through?

24 MR. THORNTON: (Shaking head.)

25 THE HEARING OFFICER: Let's see if we

1 can just go through once and get done. Is
2 that okay?

3 MR. LAWRENCE: That should be all
4 right.

5 THE HEARING OFFICER: Okay, let's go on
6 the record.

7 (IDWR recording resumed.)

8 THE HEARING OFFICER: We're recording
9 after the lunch recess. We talked about the
10 order of presentation of the public witness
11 testimony. And based on that discussion, then,
12 Mr. Robert Niccolls, if you'll come forward,
13 please. Raise your right hand.

14
15 ROBERT S. NICCOLLS,
16 first duly sworn to tell the truth relating to
17 said cause, testified as follows:

18
19 THE HEARING OFFICER: Thank you.
20 Please be seated and please state your name and
21 spell it for the record and tell us where you
22 live.

23
24 THE WITNESS: I have that data on a
25 sheet available. If you wish, I will distribute

1 it to each party.

2 THE HEARING OFFICER: Okay, that would
3 be fine, but I think it's still important to read
4 your name into the record.

5 THE WITNESS: That's fine.

6 THE HEARING OFFICER: The Court
7 Reporter needs to have that information.

8 THE WITNESS: I made 20 copies. How
9 many do you folks want?

10 MR. FEREDAY: Two -- three.
11 (Discussion held off the record.)
12

13 DIRECT NARRATIVE TESTIMONY
14 BY MR. ROBERT S. NICCOLLS:

15 My name is Robert S. Niccolls. I and
16 my wife own property at 4238 North Triple Ridge
17 Place, Eagle. It's in the Eagle area of
18 influence south of the M3 Eagle property.

19 My wife, who could not be here today,
20 and I are protestants to the application. Is
21 there any other data you need at this time?

22 THE HEARING OFFICER: No.

23 THE WITNESS: Okay, I'm going to read
24 the statement that I've distributed for ease to
25 be expedited and then I'll happily answer

1 questions.

2 I hold a Stanford University degree in
3 Engineering, which I practiced for 10 years. My
4 work included predicting failure rates on new
5 flight safety products to meet government and
6 customer requirements. That requires making
7 assumptions, tests, and calculations where there
8 is no directly applicable experience. A rule of
9 thumb we encountered was the more voluminous the
10 material presented, the more likely it is to
11 contain errors.

12 I have heard statements by the
13 applicant and their experts since they initially
14 proposed the project. The sales personnel, as
15 would be expected, always boasted there was
16 plenty -- there was adequate water without
17 jeopardizing those of us now using wells for our
18 potable water. Their hired professionals,
19 however, used different wording. They had to
20 balance their professional reputation with the
21 knowledge of who was paying their bill. Careful
22 listening heard a number of qualifiers and hedges
23 because there is no way to be certain.
24 Probability percentages as to their predictions
25 were never given any time I was present. There

1 simply is no way to project long-term results of
2 something totally new with short-term testing and
3 so many unknowns.

4 The way to minimize the exposure to
5 error is to deny the request and only allow the
6 use of existing rights in use purchased from
7 people using water in the M3 Eagle area. As this
8 is mostly arid land, the amount available would
9 eliminate the type of project they are trying to
10 develop.

11 Next best would be to allot new water
12 rights incrementally over time synchronized with
13 the rate of development and close, ongoing
14 monitoring of the effects on preestablished
15 users. An independent agency, probably the IDWR,
16 would be empowered to cap the water right if at
17 any time it determines the M3 Eagle projections
18 are flawed so as to significantly affect the
19 prior water users.

20 To grant the total amount requested is
21 asking those of us using local well water to
22 assume the risk of the projections being off,
23 while M3 Eagle gets the profits from the land
24 they sell to builders, then leave. It would be
25 especially inequitable if those of us in the area

1 had our wells go bad and we had to buy water from
2 the owner of M3 Eagle's rights in competition
3 with the new homes, businesses, golf courses, and
4 other users in order to stay in our established
5 homes.

6 That ends my prepared comments.

7 THE HEARING OFFICER: Okay. And in the
8 order of presentation that we discussed,
9 Mr. Thornton, I did not ask Mr. Niccolls, but he
10 apparently is opposed to the application. So, I
11 will ask you and the other protestants to examine
12 Mr. Niccolls if you wish at this point in time.

13 MR. THORNTON: Mr. Niccolls, I'm John
14 Thornton --

15 THE HEARING OFFICER: You need to speak
16 up, Mr. Thornton.

17 MR. THORNTON: I'm John Thornton. I'm
18 representing North Ada County Groundwater Users
19 Association. I appreciate your time, your
20 sincerity, and your prepared report. And I
21 really don't have any questions to ask you. I
22 just appreciate you being here.

23 THE WITNESS: Thank you.

24 THE HEARING OFFICER: Mr. Alan Smith?

25 MR. ALAN SMITH: Yes, I'm Alan Smith,

1 one of the individual protestants and also
2 spokesperson for the Eagle Pines Water Users
3 Association which is on Osprey Road and an
4 individual protestant also, myself, and Mr. Norm
5 Edwards. I think your letter is very clear. I
6 don't have any questions for you.

7 THE HEARING OFFICER: Mr. Edwards, any
8 questions?

9 MR. EDWARDS: I want to thank you,
10 Mr. Niccolls, for preparing this and coming here
11 today and giving your side of the view. Thank
12 you very much.

13 THE HEARING OFFICER: Mr. Lawrence, are
14 you examining?

15 MR. LAWRENCE: Yes, Mr. Hearing
16 Officer.

17
18 CROSS EXAMINATION
19 QUESTIONS BY MR. LAWRENCE:

20 Q. Thank you, Mr. Niccolls, for your
21 statement. I just have a couple of questions for
22 you.

23 You state in here that M3's technical
24 experts had to balance their professional
25 reputations with the knowledge of who was paying

1 their bill. Are you implying that somehow their
2 conclusions were made solely to give their client
3 what they were asking for?

4 A. I think to use the term "solely" is
5 probably a little strong. On the other hand, all
6 professionals who are brought on as expert to
7 help in a project, and I don't care whether it's
8 real estate development or otherwise, they know
9 who is paying their bill and they're going to
10 present it in as positive a light they feel they
11 can within their professional code of ethics.

12 I'm sure there are some people who
13 are -- do not hold themselves to that standard,
14 but that would be an appropriate standard.

15 Q. You are a retired engineer?

16 A. I am retired, yes.

17 Q. Was that your practice when you were an
18 engineer, that you would tailor your conclusions
19 to what your client was looking for?

20 A. I never worked as a consultant. I
21 always worked for firms specifically. So, I was
22 never put in that position. It was obvious from
23 day one I was trying to get the firm for whom I
24 worked to get their products in as good a
25 condition and so on as possible. That included

1 for a period of time doing calculations as to the
2 probability of safety of flight equipment,
3 meaning if it doesn't work, you fall out of the
4 sky, the probability that these would work both
5 with a very high percentage of accuracy and an
6 expected failure rate as to when, how often,
7 what -- just something can always go wrong.

8 It was my job in part to develop the
9 analysis which we then presented to our customers
10 and the military to show that we met the
11 standards that had been set and that -- not
12 unlike what's being done here, there were a lot
13 of unknowns and a lot of variables. We had ways
14 to test some of it. We also had to use
15 assumptions. And after a number of years of
16 that, I came to the distinct conclusion that
17 using perfectly appropriate and honest
18 mathematics, if I wanted to skew the assumptions,
19 I could skew the results.

20 Now, I never did that. That was not
21 within my willingness. I wasn't willing to do
22 that. I'm not saying that your people did that
23 either. I'm just saying I'm aware of the tension
24 that -- potential tension of the interests of
25 both total exposure, disclosure, et cetera, and

1 knowing that you're being paid by a person with a
2 bias.

3 Q. You have no evidence that M3's
4 technical experts were anything less than
5 objective; do you?

6 A. You are correct, and I'm not accusing
7 them of that.

8 Q. Do you have any experience in
9 hydrology, geology, modeling of aquifers?

10 A. No. However, the principles are much
11 the same. And I appreciate the fact that
12 everybody here has spent a lot of time doing a
13 lot of review. As I sat back, not having been
14 involved day to day, detail by detail, I'm
15 concerned that it is easy to get caught up in the
16 details and lose the overview.

17 Q. You state in your narrative that:
18 "There simply is no way to project long-term
19 results of something totally new with short-term
20 testing and so many unknowns." But you don't
21 have any experience or education in hydrologic
22 modeling to really state that in regard to the
23 field of hydrology; do you?

24 A. The field of hydrology? No. However,
25 there is -- when you're doing scientific

1 extrapolation from what you know and can find, it
2 doesn't matter your field as much as it does your
3 approach. And that I feel with my experience is
4 very parallel. I would not know how to read the
5 hydrology reports and so on. But by the same
6 token, when I hear multiple times, including the
7 meeting held by this group on May 28th, there was
8 a great deal of maybe's, kind of's. I have some
9 in my notes from that time. And I don't remember
10 all of the exact words. There were a lot of
11 qualifiers put in there. And that's
12 understandable and appropriate.

13 And it also means that you can't take
14 those best assumptions or those assumptions and
15 not appreciate there is a risk of error in there.
16 And the question is: Who is facing that risk?
17 It's myself and the others who have wells in that
18 area on which we depend for our potable water, in
19 some cases irrigation too. I'm not as worried
20 about that. It's the potable water that I think
21 is the serious issue.

22 MR. LAWRENCE: No further questions.

23 THE HEARING OFFICER: Okay, thank you,
24 Mr. Niccolls.

25 THE WITNESS: Thank you.

<p style="text-align: right;">Page 2733</p> <p>1 THE HEARING OFFICER: And next, Barb 2 Jekel, if you'll come forward, please. You're a 3 patient listener. 4 BARB JEKEL, 5 first duly sworn to tell the truth relating to 6 said cause, testified as follows: 7 8 THE HEARING OFFICER: Please be seated. 9 And you're appearing in opposition to the 10 application, I assume? 11 THE WITNESS: Yes, sir. 12 THE HEARING OFFICER: Okay, if you'll 13 state your name and spell it for the record 14 please. 15 THE WITNESS: Okay, should I do this 16 first? I wrote this as a letter because I wasn't 17 originally thinking I was going to be here. So, 18 I was just going to read it from a letter. So, 19 should I give people copies? 20 THE HEARING OFFICER: If you have them. 21 THE WITNESS: Yeah, I have them. 22 THE HEARING OFFICER: How many do you 23 have? 24 THE WITNESS: I have just one more. 25 (Discussion held off the record.)</p>	<p style="text-align: right;">Page 2735</p> <p>1 address in response to testimony and 2 cross-examination. As a lay person hearing very 3 technical data, it sounds to me that pertinent 4 issues concerning the hydrologic boundaries and 5 recharge mechanisms have not been resolved. The 6 ancestral water versus contemporary recharge 7 seems to indicate questions of long-term 8 sustainability. Complete water flow direction 9 from source to discharge site has open areas of 10 determination. It appears the upper 1,000 feet 11 of ground has not been thoroughly analyzed for 12 water flow blockage from point of recharge to 13 pumping site for interference due to earthquakes 14 in the 1980's and/or other potential inhibitors. 15 The transference and recharge 16 connections between the overlaying aquifer and 17 the termed PGSA are still questionable. Many 18 surface and/or groundwater users receive their 19 well water from these areas. So, it could follow 20 that senior water right holders beyond the 21 M3 Eagle PUD and beyond the PGSA discharge site 22 could be very negatively affected by the 23 tremendous request M3 PUD has applied for of 23 24 cfs water rights. 25 The anomaly in the SVR-7 well test of</p>
<p style="text-align: right;">Page 2734</p> <p>1 THE HEARING OFFICER: By the way, with 2 respect to this written documentation, my 3 intention, since we're all looking at it, it's 4 been read into the record, I can rely on it 5 there, that I'll just place these in the file as 6 written comments like we received some others. 7 Okay. All right, go ahead. 8 9 DIRECT NARRATIVE TESTIMONY 10 BY MS. BARB JEKEL: 11 Barb Jekel, 2862 North Haven Drive, 12 Eagle, Idaho. I'm a protestant to this 13 application, so I've attended most of the 14 hearings. I wanted to learn just what was known 15 and what was still undetermined about the aquifer 16 M3 Eagle, LLC, proposes to use. The IDWR staff 17 testimony at these hearings was extremely 18 professional. They were thorough in their 19 research and analysis of received data. It seems 20 they would do an exacting job on PGSA findings. 21 Therefore, I hope this request will not be 22 granted until IDWR has completed its study of the 23 foothills area water reserves, preferably not 24 granted at all as a municipal provider. 25 There are points I would like to</p>	<p style="text-align: right;">Page 2736</p> <p>1 not full recovery prior to test determination has 2 not been ascertained as to what it may indicate 3 and should be retested. 4 Patricia -- and forgive me -- 5 Minkiewicz's recent published letter pointed out 6 that if the City of Eagle has to eventually pull 7 water from the Boise River to support new 8 businesses in the already approved housing units, 9 it would entail millions of dollars. Having 10 water wars or water shortages would be extremely 11 harmful to the efforts of trying to attract new 12 capital commercial investments to the area. 13 I'm concerned that M3 Eagle's community 14 wells could cause a bathtub effect, water going 15 to the lowest and strongest point of pumping. 16 M3's PUD would still have available water, but 17 surrounding users would be gravely impacted. 18 I gather from testimony that the 19 average M3 large projects have around 2,000 to 20 3,000 plus dwelling units. Now they are 21 escalating to over 7,000 dwelling units plus 22 commercial space at their Eagle site. To me, 23 this adds to the imperative need to further 24 address the definitions section for purpose of 25 the Idaho statute as define and describe</p>

1 "municipal provider" of the Idaho statute 42-222.
 2 Going by the definition and the requirements that
 3 I heard read into the record, it sounded to me
 4 that M3 Eagle, LLC, didn't qualify under this
 5 Idaho statute.

6 M3 Eagle's testimony also indicates
 7 that they are unwilling to accept phased-in water
 8 rights. I see this as a contradiction to their
 9 acceptance of phased-in financing, infrastructure,
 10 amenities, and dwelling parcels. It would seem
 11 that phased-in water rights could correlate with
 12 phased-in dwelling, conditional upon approval
 13 from IDWR monitoring. This approach could allow
 14 for resolution of unanswered issues surrounding
 15 the PGSA, quantified by additional study and
 16 monitoring.

17 I ask the Hearing Officer to consider
 18 phased-in water rights at most, since the goal of
 19 phasing in is to assure adequate water for all
 20 parties, without senior right or permit holders
 21 having to deepen or redrill wells due to lower
 22 water levels.

23 IDWR could establish monitoring wells,
 24 which may be a necessary consideration given the
 25 domestic and commercial growth Eagle has had in

1 horizon type of water right.

2 This process has been very costly and
 3 time consuming, certainly not for M3 Eagle, LLC,
 4 alone. But what are the costs and ramifications
 5 of not getting it right? It's not surprising to
 6 me that M3's water study has been extensive. It
 7 sounds like an equal correlation to the 23 cfs
 8 requested water right.

9 It's also not surprising that M3 Eagle
 10 has added so much to the bank of knowledge
 11 concerning the PGSA. I wouldn't think a lot of
 12 time or taxpayers' dollars would have been
 13 previously extended on what was an area of
 14 extremely low-density housing.

15 Testimony from April 15th as to
 16 M3 Eagle, LLC, proposing to turn the water system
 17 over to the City of Eagle concerns me when I
 18 think of the tax dollars involved and also recall
 19 citizen reprisal after the city council plan to
 20 purchase Eagle Water Company.

21 As to the 13 water conservation methods
 22 under consideration by M3 Eagle for their PUD, I
 23 didn't hear an exact amount planned for actual
 24 implementation. I also noted a 45 percent drip
 25 irrigation use on housing lots was figured by M3

1 the previous ten years and what potential impact
 2 could stem from a large M3 water right.

3 The M3 request for 23 cfs makes the
 4 amount of locally available water an imperative
 5 question to answer. There are other requests
 6 that amount to 92 cfs ahead of this M3 Eagle
 7 request. I believe Mr. Vincent of IDWR testified
 8 that he had not encountered a denser well field
 9 than the one -- and it should say "in the North
 10 Eagle area." I left out the word "North."

11 The proposed M3 Eagle, LLC, pond
 12 reclaimed system is a great idea, but I believe
 13 it was testified to as being online at full
 14 buildout, which was said to be 30 years. In the
 15 interim, will there be use beyond the stated
 16 average 9.3 cfs until it's fully functioning?

17 As I listened to the construction plan
 18 of their reclaim system, I thought of the
 19 enormous capital investment it will take. To me,
 20 this further supports the need for certified
 21 accounting and compliance with Idaho State law as
 22 to the shall demonstrate letter of financial
 23 commitment, especially in light of the recent
 24 financial issues and bankruptcy with the Tamarack
 25 development that used the same 1996 long planning

1 when calculating average water use for this PUD.
 2 Which of these are set to be a part of the
 3 governing CCR's so as to stay within the upper
 4 end of irrigation efficiencies, as M3 used in
 5 their reports, and to maintain M3's stated
 6 average use of 9.3 cfs.

7 During April 16th testimony, I recall
 8 hearing that M3 Eagle's spreadsheet didn't
 9 incorporate their surface area or well rights.
 10 This is further water drain on the PGSA and/or
 11 overlying aquifer in addition to the requested
 12 23 cfs.

13 If it turns out that there isn't the
 14 water quantity or flow availability in the termed
 15 PGSA that M3 Eagle, LLC, and their consultants
 16 assert, Eagle would find itself in a crisis
 17 situation similar to that which affects other
 18 communities in water shortage dilemmas.
 19 Personally, I would lose value in my home, not be
 20 able to afford redrilling my well, and if the
 21 financial recession continues, I may not be able
 22 to obtain a loan to cover the well expenditures.
 23 There would be further job loss in the area which
 24 could affect my household. These are my personal
 25 considerations. Beyond those, there's the

1 well-being of the Eagle area and the concern for
2 knowing what finite amount of local water reserve
3 is really there for all of us.

4 I appreciate the Hearing Officer's time
5 in review. For the good of the Treasure Valley,
6 I hope the goal of IDWR completing their
7 independent analysis holds as a prevailing issue.

8 THE HEARING OFFICER: Okay, thank you,
9 Ms. Jekel. Mr. Thornton, questions?

10
11 CROSS EXAMINATION
12 QUESTIONS BY MR. THORNTON:

13 Q. Thank you, Ms. Jekel for your efforts
14 in putting that letter together. A couple of
15 questions: You, have you not, attended the
16 majority of the hearing?

17 A. Yes, I have.

18 Q. And then have you heard testimony --
19 and I'll, I guess, maybe refer you to one of the
20 documents called "Reanalysis of 16 Aquifer Tests
21 in the Greater Eagle-Star Area." It's Exhibit
22 No. 12. And I'd just like to look at two points.

23 Maybe you can help her find that
24 Exhibit No. 12. There's not very many binders up
25 there.

1 And then, Ms. Jekel, if you'd turn in
2 that document to page 240.

3 A. (Witness complied.)

4 Q. It's on page 240 at the bottom.
5 There's a number 19, which is one of the
6 conclusions of the summary of M3's regional
7 aquifer characteristics. And are you on
8 page 240?

9 A. (Witness nodding head.)

10 Q. That -- I guess I'll read it out loud.
11 And then I'd like, I guess, for No. 19, I'd like
12 to just get your personal thoughts of what that
13 tells you as being a person living in the North
14 Eagle area relatively close to the M3 property
15 boundary. You live on Haven; is that correct?

16 A. Yes, that's correct.

17 Q. That's probably within three miles or
18 so, two to three miles of some of the M3 area.

19 So, on No. 19 it says, this is from
20 M3's own reports: "Construction of additional
21 high-capacity wells in the Pierce Gulch Sand
22 Aquifer appears feasible throughout much of the
23 Eagle-Star M3 project area. These high-capacity
24 wells will cause drawdowns that will affect other
25 wells. There are more than 1,600 wells in the

1 greater Eagle-Star M3 area as of August of 2007,
2 many of them poorly constructed. Development of
3 additional municipal groundwater supplies and
4 associated water table drawdowns may require some
5 existing wells to be deepened or replaced."

6 Have you heard that brought up numerous
7 times during the testimony?

8 A. Yes, I have.

9 Q. And as a person potentially impacted by
10 those M3 wells, have you heard anything that
11 provides you with some assurance or comfort that
12 if something happens to your well, that it's
13 going to be taken care of by M3?

14 A. Absolutely not.

15 Q. If we can go to No. 20 on page 241, and
16 again, in the same report by M3, it says:
17 "Development of additional wells and full
18 development of additional municipal water rights
19 will cause artesian pressures to decline over
20 time throughout the Star-Eagle area. This
21 decline of artesian pressures may cause some
22 wells that flow at ground surface or above to
23 cease doing so. Wells currently relying on
24 artesian flowing conditions to provide water
25 supplies may require pumps to produce water for

1 use in the future."

2 Have you heard this statement
3 identified numerous times?

4 A. Yes, I have.

5 Q. In your, I guess, personal interest in
6 this area and knowing -- I'm assuming you know a
7 number of people in the Eagle-Star area. In
8 general, if the average person in the Eagle-Star
9 area was aware of those two statements, would
10 there not probably be hundreds or thousands of
11 people in this room?

12 MR. LAWRENCE: Objection, calls for
13 speculation.

14 THE HEARING OFFICER: Sustained.

15 Q. (BY MR. THORNTON) If people were aware
16 of these two statements -- let me phrase the
17 question differently. Are you aware of people
18 talking actively about this in the Eagle-Star
19 area, these two statements?

20 A. Yes, I am. And a lot of people that
21 are aware of this situation have also said to me
22 that they --

23 MR. LAWRENCE: Objection, Your Honor,
24 or Mr. Hearing Officer, hearsay.

25 THE HEARING OFFICER: I'll let this

1 come in.
 2 MR. ALAN SMITH: Can the witness finish
 3 her answer?
 4 THE HEARING OFFICER: Overruled.
 5 THE WITNESS: -- that they would have
 6 liked to attend today, but due to work
 7 obligations, they could not.
 8 Q. (BY MR. THORNTON) And from what you've
 9 heard over the last 11, 12 days of testimony,
 10 have you -- and again, as a public witness and a
 11 lay person, have you been comforted by any of the
 12 testimony provided by M3 that they have adequate
 13 knowledge as to the potential effects that may
 14 occur to well users in the Eagle-Star area?
 15 A. No, I don't feel that for absolute
 16 certain at all, no.
 17 MR. THORNTON: All right. No other
 18 questions. Thank you, Ms. Jekel.
 19 THE HEARING OFFICER: Okay, Mr. Smith,
 20 questions?
 21 MR. ALAN SMITH: I don't believe I have
 22 any questions.
 23 THE HEARING OFFICER: Okay.
 24 MR. EDWARDS: I have no questions, but
 25 thank you very much for your time.

1 THE HEARING OFFICER: Thank you.
 2 Mr. Fereday -- just a minute. We need to change
 3 tapes.
 4 (Discussion held off the record.)
 5 THE HEARING OFFICER: Okay, are both
 6 recorders operating?
 7 THE CLERK: Yes.
 8 THE HEARING OFFICER: Mr. Lawrence?
 9
 10 CROSS EXAMINATION
 11 QUESTIONS BY MR. LAWRENCE:
 12 Q. Yes, Ms. Jekel, thank you for coming
 13 and making your statement. I just have a couple
 14 of questions. Do you have any background in any
 15 of the scientific fields discussed during this
 16 hearing?
 17 A. No. That's why I vote as a lay person.
 18 Q. What is your knowledge of your
 19 own well? I assume you own a well?
 20 A. Yes, I do.
 21 Q. What's your knowledge of your well's
 22 construction?
 23 A. The well construction, I know that it
 24 has a 4-horsepower pump, as told to me by the
 25 previous owners. IDWR has been out twice to

1 measure it and gave us static water levels. I
 2 tried to check awhile ago about the well's
 3 construction, the reports here on record, but
 4 they said they couldn't find the record.
 5 Q. Do you know how deep your well is?
 6 A. No, I do not, just from hearsay from
 7 what previous owners and neighbors have told me.
 8 Q. Do you recall what IDWR measured your
 9 water levels at?
 10 A. My static water level, I think the
 11 first one was like 81 and then the second one I
 12 believe was 77, somewhere in there, in that
 13 neighborhood.
 14 Q. Do you know when those measurements
 15 were taken?
 16 A. The first one I believe in late fall to
 17 early winter. The second one in early spring,
 18 late winter to early spring, February, March,
 19 somewhere in there. I'm sorry, I don't have
 20 those records with me.
 21 Q. Do you know how old your well is?
 22 A. Yeah, approximately 29 years old, give
 23 or take a month or two. The home was built in
 24 1980.
 25 MR. LAWRENCE: No further questions.

1 THE HEARING OFFICER: Okay, thank you,
 2 Ms. Jekel.
 3 And I have a Jean Langdon.
 4 MS. JOAN LANGDON: Joan.
 5 THE HEARING OFFICER: I'm sorry, Joan.
 6 JOAN LANGDON,
 7 first duly sworn to tell the truth relating to
 8 said cause, testified as follows:
 9
 10 THE HEARING OFFICER: Please be seated
 11 and state your name for the record, please, and
 12 give us your address.
 13
 14 DIRECT NARRATIVE TESTIMONY
 15 BY MS. JOAN LANGDON:
 16 My name is Joan, J-o-a-n, Langdon,
 17 L-a-n-g-d-o-n. I live at 4690 Hartley,
 18 H-a-r-t-l-e-y, Road in Eagle. I'm just on the
 19 other side of the ridge from the new development.
 20 I'm at the mouth of Little Gulch, which parallels
 21 Big Gulch. And so, I'm just right there.
 22 Is there any other information you
 23 need?
 24 THE HEARING OFFICER: No.
 25 THE WITNESS: Okay. Strange as it may

1 seem, I favor the M3 development. I have the
2 highest regard for their research and planning
3 integrity. Other developers to the south of my
4 property are frightening me a great deal more.
5 They have not put in any time at all on research.
6 They assume they can just tap into as much water
7 as they need any time they want it. And they
8 want to have very dense housing.

9 So, I'm thinking water runs downhill in
10 my mind. And my home is a little higher than
11 they are and my well is shallow. So, that has me
12 more frightened than what I perceive to be the
13 plan of M3 over their huge area.

14 When I went to their first neighborhood
15 meeting, M3 explained how their development would
16 work with the natural topography. They presented
17 their sensitivity to water issues right off the
18 bat. And I believe they will not leave their
19 future residents high and dry. And I'm thinking
20 that they are going to have covenants that are
21 far superior to the covenants that people have in
22 subdivisions around Eagle.

23 I'm excited about their plans to reuse
24 water and monitor as they go, I'm certain, their
25 decision to use plant species that require less

1 water, and other conservation measures. And as I
2 said, I think the overlying reason in my thinking
3 is that they are not going to leave their
4 residents in a situation that will cause them to
5 have an unfortunate future as far as water is
6 concerned.

7 I believe some of the local residents
8 are just used to using that land for their own
9 private enjoyment or are used to using some of
10 their time to just run down the possibility of
11 development. And if they could see the other
12 developers that are coming into that area that
13 haven't even put any care and concern into what's
14 going to happen to the residents in the future,
15 they would be a little more frightened. But I've
16 been very impressed with M3 and the amount of
17 time and patience and concern that they've showed
18 not only to the residents around me, but for the
19 future of the residents of their area. That's
20 all I have to say.

21 THE HEARING OFFICER: Okay. Thank you,
22 Ms. Langdon. And based on her testimony,
23 Mr. Fereday -- or Mr. Lawrence, I'm sorry, you
24 may examine.

25 MR. LAWRENCE: We have no questions,

1 Ms. Langdon. We would just like to express our
2 gratitude for your coming down to testify today.
3 Thank you.

4 THE HEARING OFFICER: Mr. Thornton,
5 questions?

6 MR. THORNTON: No questions, but I
7 appreciate your time and effort.

8 THE HEARING OFFICER: Mr. Smith, any
9 questions?

10 MR. ALAN SMITH: I just have a couple.
11

12 CROSS EXAMINATION
13 QUESTIONS BY MR. ALAN SMITH:

14 Q. How much property do you own in the
15 area?

16 A. I have approximately 13.43 acres, I
17 think.

18 Q. Are you aware that some of the wells
19 around that area have had to be replaced or
20 deepened?

21 A. Yes, and --

22 MR. LAWRENCE: Objection.

23 THE HEARING OFFICER: Overruled.

24 Q. (BY MR. ALAN SMITH) Go ahead.

25 THE HEARING OFFICER: You may answer.

1 THE WITNESS: Yes, I'm aware that some
2 have had to be replaced, but I don't have any
3 firsthand knowledge of the exact reasoning for
4 that.

5 MR. ALAN SMITH: Thank you. That's
6 all.

7 THE HEARING OFFICER: Mr. Edwards?

8 MR. EDWARDS: I have no questions. And
9 thank you for your time.

10 THE HEARING OFFICER: Thank you,
11 Ms. Langdon.

12 Sheri Foote? Oh, maybe this is a
13 roster from this morning, Jean. So, I don't need
14 to work off of that. I thought I had conflicting
15 rosters. And Ms. Foote, if I gave you a start,
16 I'm sorry.

17 Okay, Gregory Taylor?

18
19 GREGORY J. TAYLOR,
20 first duly sworn to tell the truth relating to
21 said cause, testified as follows:

22
23 THE HEARING OFFICER: Please be seated.
24 State your name and spell it for the record,
25 please, and tell us whether you're in favor or in

1 opposition.,

2
3 DIRECT NARRATIVE TESTIMONY

4 BY MR. GREGORY J. TAYLOR,

5 Gregory J. Taylor, G-r-e-g-o-r-y J.

6 T-a-y-l-o-r. And I would be opposed. And my
7 address is 4216 Ballantyne Lane in Eagle, which
8 is approximately the corner of Homer and Eagle.

9 THE HEARING OFFICER: Go ahead.

10 THE WITNESS: I've lived at that
11 property for 19 years. I'm a native Idahoan and
12 I've lived in Eagle at that property for since
13 1990.

14 My concern is the drop-down of water
15 that's happened already and, you know, I look for
16 it to happen even more as we have more growth.

17 Our concern right now is our irrigation
18 well. We have an irrigation well on that
19 property that sits on my property that also
20 irrigates four other -- excuse me, three other
21 properties, a total of 30 acres.

22 We had noticed the last -- I might
23 mention that that irrigation well was put in in
24 1955. At that time the water was at 90 foot.
25 And the entire I've lived there we've had

1 adequate, more than adequate water. We replaced
2 the pump, I don't have the exact date, but about
3 six, seven years ago, the pump and all of the
4 piping. So, that was all new.

5 And we had -- in the last two or three
6 years, toward the end of the irrigation season we
7 lost pressure, we started getting sand pumped
8 out. And we just tolerated it, just, you know,
9 we couldn't cover our fields. And we just don't
10 have pasture, I raise horses, thoroughbred horses
11 as well. So, I harvest roughly half of my
12 property, so does my neighbor, for feed and then
13 pasture the rest. So, you know, it's important
14 that I have pasture.

15 So, after the two or three years of
16 putting up with this low pressure at the end of
17 the season, last fall it was really bad. And so,
18 we met as a group, the four of us met. We
19 decided what we were going to have to do is
20 probably put in a new well. That was after we
21 had the pump people come out and examined our
22 well. I was hoping that it could be a pump, as
23 simple as that. But they said, "No, the pump is
24 fine." So, we thought that we needed to put a
25 new well in.

1 At that time it was going to be a
2 financial burden for all of us to do that. So,
3 we decided to put it off till winter. Winter
4 came and it was still going to be a financial
5 burden for us, particularly a couple of my
6 neighbors.

7 In the meantime, since -- for about a
8 year, the Department of Water Resources has been
9 monitoring my well, our well, I should say. And
10 they came out in July of last year, again in
11 September, December, and then in March. And then
12 in March, March 26th this letter is dated, it
13 says: "Dear Greg: Thank you for allowing the
14 Department the opportunity to measure the static
15 water level in your well. On March 24th, '09,
16 your irrigation well was dry. We measured down
17 125 feet below the casing and did not encounter
18 water. We will be back out again to measure in
19 June."

20 So, at that point we felt like we had
21 no choice, whether we were financially strapped
22 or not, we had to put a new well in. So, we did
23 dig a new well. We were unable to go down the
24 exact same casing because we were too close to
25 the power line. So, we moved over, dug a

1 complete new well, 8-inch casing. We dug it
2 down -- they went down 253 feet. And that was
3 done just in April of this year. And we just
4 actually just barely got the pump moved and set
5 back up. And it was able to irrigate one time
6 before this rain come, which was a good thing.

7 That was a total cost of \$16,995 to put
8 in that new well, which we shared. But that
9 still, you know, is still a lot of money for
10 something you don't plan on.

11 The other concern I have, like some
12 others have expressed, is the domestic well. On
13 that same property I have a domestic well which
14 has been there since we've lived there, nearly 20
15 years, that I have to do the same thing with that
16 to get enough water.

17 I do know that my neighbor, one of the
18 partners on the irrigation well who lives on the
19 corner of Homer and Ballantyne, his domestic
20 well, he has run out of water about the same time
21 that we did with the irrigation well. And he had
22 the pump people come out. They were able to
23 lower his pump two feet, which gave him enough
24 water to get by.

25 You know, I said, "What are you going

1 to do, Dan?" This is Dan Blackwood. And, you
2 know, he couldn't afford to do both. He couldn't
3 afford to redo the irrigation well and his
4 domestic well. He chose the irrigation well.

5 And I know my other neighbor to the
6 south of me, Matt Marsh, who is also a partner,
7 he replaced his well five or six years ago for
8 the same reason. He had an older well.

9 So, I do know that in that area the
10 water level is dropping. And the only thing that
11 I know that's changed out there in the years that
12 I've lived there is the number of people and the
13 number of wells that have gone in. Water is --
14 you know, I'm not a hydrologist and I'm not an
15 expert, but I do know that we have wet years and
16 dry years. But the only thing I know that's
17 changed is the number of new wells that have gone
18 in that area, which has caused the drawdown as
19 far as I can see.

20 And that's pretty much my concern is
21 that, you know, I've already had to replace an
22 irrigation well. Maybe I'll have to, with this
23 change I'll have to do a domestic well, and all
24 of my neighbors the same. And that's pretty much
25 the reason I was here.

1 THE HEARING OFFICER: Okay. All right.
2 Mr. Thornton, do you wish to examine Mr. Taylor
3 and ask him questions?

4 MR. THORNTON: No, Mr. Taylor, I
5 appreciate your time and effort and your
6 testimony. Thank you.

7 THE WITNESS: You bet.

8 THE HEARING OFFICER: Mr. Smith, do you
9 wish to examine Mr. Taylor?

10 MR. ALAN SMITH: Yes, I have just a
11 couple of questions.

12
13 CROSS EXAMINATION
14 QUESTIONS BY MR. ALAN SMITH:

15 Q. How deep did you say your new well was?

16 A. 253 feet. I have the well log. Would
17 that be of help to you at all or does that
18 matter?

19 Q. No, that's fine. Your word is good
20 enough. Do you know who wrote the letter from
21 Idaho Water Resources?

22 A. Dennis Owsley.

23 Q. And did that state your well was dry?

24 A. It's just like I read it, yes. Here's
25 a copy if you'd like to see it.

1 Q. No, that's fine.

2 MR. ALAN SMITH: No further questions.

3 THE HEARING OFFICER: Okay,
4 Mr. Edwards?

5 MR. EDWARDS: Mr. Taylor, thank you. I
6 don't have any questions. Thank you for your
7 time.

8 THE HEARING OFFICER: Mr. Lawrence,
9 cross-examination?

10
11 CROSS EXAMINATION
12 QUESTIONS BY MR. LAWRENCE:

13 Q. Yes, thank you, Mr. Taylor, for your
14 testimony. Just a couple of questions. The
15 irrigation well you described was drilled in
16 1955; is that correct?

17 A. Yeah, that's right.

18 Q. And you replaced it in 2009?

19 A. Yes, just last month -- excuse me,
20 April of 2009.

21 Q. So, that well was about 54 years old?

22 A. Right.

23 Q. If you purchased an automobile in 1955,
24 would you expect for it to be running today like
25 it did in 1955?

1 A. If I expect an automobile? No, but I
2 don't know how you can compare the two. We, like
3 I mentioned earlier, we replaced the pump and all
4 of the piping that goes with that pump. So, I
5 don't know how, you know, that could be comparable,
6 the two.

7 Q. Do you know how the 1955 well was
8 constructed?

9 A. I've got the original well log. I can
10 read it. I wasn't there in 1955. Would that be
11 of help to you?

12 Q. What was the water level in 1955?

13 A. 90 foot.

14 Q. Do you know what aquifer that well was
15 completed into?

16 A. No, no.

17 Q. That well had a steel casing all of the
18 way to its bottom?

19 A. It did, yes.

20 Q. In your experience --

21 A. It's called red hand steel.

22 THE HEARING OFFICER: Just a warning:
23 In the questions and the answers, each of you are
24 cutting each other off.

25 THE WITNESS: Okay. I apologize for

1 that.

2 THE HEARING OFFICER: So, you wait
3 until Mr. Lawrence finishes and he'll
4 reciprocate.

5 THE WITNESS: I will do that. Thank
6 you.

7 Q. (BY MR. LAWRENCE) Regarding the
8 domestic wells you were describing that you were
9 also concerned with, do you know what aquifers
10 those wells are in?

11 A. I do not. My domestic well is at
12 205 feet, I do know that. But what aquifer it's
13 in, I couldn't tell you.

14 Q. Do you know what name the irrigation
15 well was drilled under?

16 A. The original irrigation well?

17 Q. Both wells, the original and the new
18 well.

19 A. The new well is under my name, Gregory
20 Taylor.

21 Q. Gregory Taylor?

22 A. The original was Warren Strawn.

23 Q. Could you please spell that.

24 A. W-a-r-r-e-n S-t-r-a-w-n.

25 Q. What is the static water level in the

1 no original information on our domestic well. I
2 have two wells on my five acres, a domestic well
3 and an irrigation well.

4 My domestic well is one of the red
5 dots, I hate to say it. So, when we moved in
6 in '93, let's see, two years later we needed to
7 put a new pump in our domestic well. I had
8 Burgess Pump do that. Unfortunately, they did
9 not write down our static level and our well
10 depth. And I've been trying to call them.
11 They're looking at records. They haven't found
12 those '95 records.

13 In 2003 I was having pressure issues.
14 I ended up going with a different outfit. I went
15 with Caron Pump. They came out. Our static was
16 at 116 feet. Our depth was at 127, which made me
17 feel good because in my memory that's -- nothing
18 had changed since '95 when we had Burgess out.
19 They had to replace the motor on our well.

20 And then five years later, last year,
21 2008, we were having pressure issues again.
22 Called up Caron Pump. Out they came. And our
23 static level had dropped 5 feet, as well as a
24 well was filling from the bottom 5 feet. They
25 pulled the pump up. The result was we had just a

1 new well?

2 A. I don't know if I have that. Let's
3 see. 105 feet.

4 MR. LAWRENCE: No more questions.

5 THE HEARING OFFICER: Okay. Thank you,
6 Mr. Taylor. Charles Roberts?

7 CHARLES ROBERTS,
8 first duly sworn to tell the truth relating to
9 said cause, testified as follows:

10
11 THE HEARING OFFICER: Please be seated.
12 State your name for the record and spell your
13 last name.

14
15 DIRECT NARRATIVE TESTIMONY
16 BY MR. CHARLES ROBERTS:

17 My name is Charles Roberts,
18 C-h-a-r-l-e-s R-o-b-e-r-t-s. I live at 2000 west
19 Homer Road, which is right at the intersection of
20 Ballantyne, Ballantyne and Homer Road. I've
21 lived there since 1993.

22 The house we live in is the oldest
23 house in the area. It's the original farmhouse.
24 It's the reason Ballantyne Lane is even there.
25 The date on our deed is 1920. The well -- I have

1 couple feet of water on top of our pump. So,
2 they said, "That's not much. You should think
3 about drilling a new well."

4 So, that's what we did. We ended up
5 last fall drilling a new well. 285 feet deep, we
6 ended up going. Our static was at 130, 131. I
7 wrote it down, 134 feet. 283 feet was the depth
8 on the new well.

9 At the same time my neighbor just to
10 the west, Rick Katucki, he was drilling at the
11 same time. We had a lot of fun. He was drilling
12 it. They were pounding away. It took him a
13 month to drill his. And I had a hydraulic guy
14 come out and in two days I had my well drilled.
15 So, we were comparing notes.

16 But his static and his depth came to
17 about the same. We were running through the
18 same. Our well logs parallel each other with the
19 sand and the clay layers. So, our wells are very
20 similar.

21 He had just put in his new well -- or a
22 new pump the year before. His pump was still
23 under warranty when his well level dropped 7 feet
24 and he was having fill-in from the bottom. So,
25 he also was too low on water to run with his old

1 well.

2 I'm here also protesting M3's
3 application for this much water because, you
4 know, in the 15 years I've lived there, like Greg
5 said, the only thing I've seen is more
6 subdivisions, you know, more domestic wells and
7 more commercial wells go in. And so -- and with
8 all of the wells I'm seeing going in in the
9 neighborhood, I am loathe to see that volume of
10 water coming out of the ground, you know, and
11 endangering -- I spent nearly \$20,000 to put in
12 that well. I don't want to do that again. So,
13 there you go.

14 THE HEARING OFFICER: Okay.
15 Mr. Thornton, this witness is friendly to the
16 protestants, I assume.

17 THE WITNESS: Yes.

18 THE HEARING OFFICER: Do you wish to
19 question?

20 MR. THORNTON: Yes, a couple of
21 questions if I could, Mr. Roberts.

22

23 CROSS EXAMINATION

24 QUESTIONS BY MR. THORNTON:

25 Q. So, in the area you live at the end

1 all somehow had the same problem instantaneously?

2 A. No, I wouldn't jump to that conclusion.
3 I have no idea. Like I said, I have no idea when
4 my well was put in. We have no record on it.
5 Rick's I believe was put in in '70. And I don't
6 know about anybody else's. I don't know the
7 dates.

8 All I can say is what I'm seeing is
9 that a lot of wells are going in at once and
10 everybody is seeing water dropping. And so,
11 that's all I can testify to is our water levels
12 are dropping.

13 Q. And are you interested in trying to get
14 your new domestic well also monitored?

15 A. I would like -- it would be nice. It
16 would be very interesting to watch that water
17 level over the years, yeah.

18 Q. And I believe you had identified that
19 you paid almost \$20,000 and that money came
20 apparently from your kids' college fund; is that
21 right?

22 A. You bet. That's why they have jobs.

23 MR. THORNTON: No further questions and
24 thank you.

25 THE WITNESS: Thanks.

1 of --

2 A. Ballantyne.

3 Q. Ballantyne meets Homer Road?

4 A. Right.

5 Q. And are you familiar somewhat with the
6 map and where you might be located on that map on
7 the wall?

8 A. I assume I'm this dot right here. And
9 my neighbor -- the two 2008's next to each other
10 is myself and Rick right there at the end.

11 Q. And then where would Mr. Taylor be?

12 A. He would be -- well, he's not on here,
13 but he would be -- his 2009 dot would be between
14 2008 and this 2006 right here. He would be right
15 just south of us.

16 Q. And then Mr. -- are you familiar with
17 Mr. Dan Blackwood?

18 A. Dan Blackwood, he would be just to the
19 east of us. His dot, whenever he puts in his new
20 well, would just be to the east of us.

21 Q. And then Mr. Matt Marsh?

22 A. Matt Marsh, he's just south. He would
23 be the 2006 in there.

24 Q. So, in your mind does it seem that all
25 of the wells were built sometime in 1955 and they

1 THE HEARING OFFICER: Okay, Mr. Smith?

2

3 CROSS EXAMINATION

4 QUESTIONS BY MR. ALAN SMITH:

5 Q. Just one question, Mr. Roberts. I
6 believe you testified your static level was
7 116 feet and then it dropped to 121?

8 A. 121, that's correct.

9 Q. So, it dropped five feet in five years?

10 A. Five years, that's correct.

11 Q. So, about a foot a year?

12 A. Yep.

13 Q. Could you answer?

14 A. Yes. Yes, that's correct.

15 MR. ALAN SMITH: That's all.

16 THE HEARING OFFICER: Mr. Edwards,
17 questions?

18 MR. EDWARDS: I have no questions, but
19 thank you for your time.

20 THE WITNESS: Sure

21 THE HEARING OFFICER: Mr. Lawrence?

22

23 CROSS EXAMINATION

24 QUESTIONS BY MR. LAWRENCE:

25 Q. Thank you, Mr. Roberts, for your

1 testimony. Regarding the well that you replaced
2 in 2008, do you know what aquifer that new well
3 was completed into it?

4 A. The name of it? No, I don't. I just
5 know it was 127 feet deep.

6 Q. That was the well that you replaced was
7 127 feet deep?

8 A. That's correct. And the new one is
9 283 feet deep, but I don't know names.

10 Q. And you also described static water
11 levels measured in 2003 and 2008. Do you know
12 what times of the year those measurements were
13 taken?

14 A. The 2003, I don't remember. The 2008,
15 it was middle of summer. I can get that
16 information. I don't have it with me.

17 MR. LAWRENCE: No more questions.

18 THE HEARING OFFICER: Okay.

19 THE WITNESS: Thanks.

20 THE HEARING OFFICER: Thank you,
21 Mr. Roberts. And Mr. Scott Nordstrom, come
22 forward, please.

23
24 SCOTT NORDSTROM,
25 first duly sworn to tell the truth relating to

1 reuse, and land planning, which also incorporates
2 management and minimalization of water consumption.

3 As an Idahoan and as a citizen of
4 Eagle, I think there are few issues that are more
5 important than the availability of water and that
6 certainly, that it be readily available for the
7 future of our area. The City of Eagle went to
8 great lengths to make sure that M3 met the city's
9 standards on behalf of the citizens that would be
10 most affected by the addition of that subdivision.

11 Some of the highlights of the M3 plan
12 that were included in the development agreements
13 that were reached by the City of Eagle included
14 the addition of the study that they performed of
15 the aquifer, which ended up being, as we got more
16 involved in it, probably the largest undertaking
17 ever done in the State of Idaho for a water
18 research project. Their studies and their
19 testings were in my opinion more than sufficient
20 to make the case for available water for the
21 project without adverse effect to the surrounding
22 area.

23 They also made a commitment to
24 establishing municipal water rights and a
25 municipal water system that would be granted to

1 said cause, testified as follows:

2
3 THE HEARING OFFICER: Please be seated.
4 State your name and spell it for the record,
5 please.

6 //

7 DIRECT NARRATIVE TESTIMONY

8 BY MR. SCOTT NORDSTROM:

9 My name is Scott Nordstrom. Scott,
10 S-c-o-t-t, Nordstrom, N-o-r-d-s-t-r-o-m. I live
11 at 2590 West Timber Drive in Eagle.

12 I'm here in support of the M3
13 application. I was a member of the Eagle City
14 Council during the course of the initial
15 application that M3 presented to become a part of
16 the future of the City of Eagle and was involved
17 in the entire process that reviewed and granted
18 the land use and the future annexation to the
19 City of Eagle. It was a very exhaustive process
20 that incorporated a lot of public outreach,
21 months of Eagle City review, public hearings, and
22 a final determination by the city council.

23 The City of Eagle has some of the most
24 stringent guidelines of any municipality in the
25 State of Idaho, including water usage, water

1 the City of Eagle for future management on behalf
2 of the citizens and that the quantity and the
3 quality of water that they were going to provide
4 would meet the standards that we would want as a
5 municipal system and be able to help manage the
6 impact of that area from a municipal standpoint.

7 They went on as part of the agreement
8 to build a wastewater treatment facility onsite
9 and to bring those standards of reuse coming out
10 of that wastewater system up to class A water
11 standards prior to discharging it back into the
12 ground.

13 Their extensive plans for reuse, water
14 conservation, which was evidenced by the land use
15 design criteria that they created that was
16 ultimately agreed upon after a tremendous amount
17 of time, hours spent in public testimony and
18 evaluation before the city reached an agreement
19 with them. Those things include water metering
20 and xeriscape planning and design that went into
21 the master plan of their community.

22 Obviously, the City of Eagle is not a
23 water expert and no one claimed to be. But at
24 the same time, recognizing the importance of
25 water, we spent an inordinate amount of time

1 delving into the subject.

2 I think the final decision rightfully
3 belongs with the Idaho Department of Water
4 Resources because they are the experts in working
5 on behalf of the citizens of the state and I do
6 trust in their ability to make a correct
7 decision, final outcome.

8 I think it's important to know that as
9 we checked into the background of M3 when it
10 first became apparent that they were going have a
11 significant impact on the community of Eagle,
12 that they do have a very successful history of
13 development in the West and that their
14 recognition of the success in the foothills in
15 their project resides within the ability to not
16 only be a good neighbor but to also have the
17 resources necessary to support a community that
18 they're proposing. And without adequate water,
19 they simply can't do that, nor can the community
20 that surrounds it survive either.

21 I guess I'd like to leave you with a
22 couple of thoughts. Number one, I think change
23 is inevitable, and we certainly are seeing that
24 in this valley, and that property rights at some
25 point should prevail above and beyond almost

1 anything else that we have to deal with as
2 citizens in the state.

3 And sometimes I wonder as I read the
4 press and watch the goings-on both at a city
5 level when I was involved and as I watch it going
6 on further today, not just for M3 but for a lot
7 of other people that try and initiate change,
8 that maybe M3 isn't really an evildoer here and
9 that they don't really have an intent to take
10 advantage of or adversely affect.

11 And sometimes I read that the
12 opposition states that they're going to -- well,
13 they overstate the uses and the consumptions that
14 are really going to happen there in that
15 particular development and that perhaps that
16 they're ending up using the water issue as almost
17 a tactic to avoid development period. And I
18 think in reality, this development really demands
19 no more water consumption than a typically sized
20 farm of the same magnitude.

21 As I've heard -- just one other
22 comment. As I've heard some of the testimony
23 today, it strikes me funny. It's almost like
24 when I was involved on city council, that it
25 seems like progress and development are really at

1 the core of the issue here. And whether it be M3
2 with a 7,000-acre development or whether it be
3 XYZ company with a 100-acre development or
4 whether it be the developments that have taken
5 place to date, they're all developments and it's
6 all part of change. And I think it's important
7 that we make sure that everyone can figure out
8 how to do this harmoniously. But I don't think
9 it's fair to, say, stop one because it's an issue
10 of a larger magnitude than the next guy that's
11 going to build something smaller. Thank you.

12 THE HEARING OFFICER: Thank you. Let's
13 see, this is a friendly witness, Mr. Lawrence. I
14 would like to know, though, Mr. Nordstrom, are
15 you speaking on behalf of the City of Eagle
16 today?

17 THE WITNESS: Absolutely not. I am no
18 longer a city councilman. I retired from that
19 job two years ago.

20 THE HEARING OFFICER: All right. Thank
21 you. Mr. Lawrence?

22
23 CROSS EXAMINATION
24 QUESTIONS BY MR. LAWRENCE:

25 Q. Thank you, Mr. Nordstrom, for coming in

1 today and providing those words. Just a couple
2 of questions:

3 As a former city council member, are
4 you familiar with the preannexation agreement
5 between M3 and the City of Eagle?

6 A. I am. I was a part of that judgment.

7 Q. Do you understand that agreement to
8 contemplate having the City of Eagle own and
9 operate the M3 municipal water system?

10 A. That's correct.

11 MR. LAWRENCE: No more questions.

12 THE HEARING OFFICER: Mr. Thornton?

13
14 CROSS EXAMINATION
15 QUESTIONS BY MR. THORNTON:

16 Q. Mr. Nordstrom, thanks for providing
17 your testimony. I believe you stated that
18 property rights need to prevail; is that right?

19 A. I think that's an important criteria,
20 yes.

21 Q. And do you realize that in the State of
22 Idaho water rights are considered property
23 rights?

24 A. I do.

25 Q. And so, when you say "property rights

1 prevail," how do you put that into the context of
2 senior water rights potentially being affected by
3 new developments? What do you mean by property
4 rights prevailing?

5 A. Well, I think that everyone is entitled
6 to fair and useful use of the land. I think
7 that -- I don't know that I can quote you the law
8 in terms of senior property rights or water
9 rights versus property rights and try and become
10 an authority on that because I'm not. But I can
11 tell you that as it was stated in the earlier
12 testimony, that once upon a time that ground up
13 there was owned by a handful of farm ranch
14 families and that people sort of assumed that
15 that was public ground when it never was and
16 never was intended to be, but people sort of
17 allowed you to use it.

18 I think those people chose to sell
19 their land. And then that result was someone
20 bought that land. And now they choose to make a
21 use out of it themselves. That's what I consider
22 property rights.

23 Q. And so, in that property rights, when
24 that land is purchased from the early ranching
25 families and the new owners propose to use the

1 land differently, in this case more water than
2 was previously used, whose -- how do you handle
3 property rights from senior water rights
4 concerned with the new developments going in and
5 their rights to develop their land? Do you see
6 that as an easy resolution?

7 A. No, I don't think it's an easy
8 resolution and I think that's at the crux of why
9 you're here. I think that M3 has a specific and
10 distinct responsibility to make sure that they do
11 not adversely affect other people's water. And
12 certainly, the people that are already there and
13 living on that land in coexistence nearby deserve
14 every right to have access to their water.

15 I think, though, sometimes there's
16 confusion between what was and what will be in
17 terms of, "Gee, I had water 20 years and gee,
18 five years ago I had a little bit less water and
19 today I've got a little bit less water. And so,
20 here comes this new development. And I guess in
21 theory that means I'm going to have less water."

22 So, I think M3 bears a burden of making
23 sure that they don't distract from some other
24 person's water right. But at the same time, I
25 think that can be accomplished and I think that's

1 what we saw when they presented their studies to
2 us.

3 Q. Are you aware -- I don't know if you've
4 been part of this testimony, but are you aware
5 that the North Ada County Groundwater Users
6 Association has discussed at these hearings the
7 possibility of phasing and then monitoring and
8 then adding more water rights over time along
9 with the phasing in of M3's developments? Are
10 you aware of our position for NACGUA on that?

11 A. I am somewhat aware of it, mostly just
12 by general reading. I'm not specifically
13 knowledgeable.

14 Q. Do you constitute that phased-in
15 approach that NACGUA feels feasible and then
16 associated monitoring to make sure that it isn't
17 having an effect on other property rights as
18 being appropriate and feasible?

19 A. I don't know that I know the subject
20 well enough to answer that.

21 Q. Does it appear to you that that
22 position for NACGUA, that we are against
23 development?

24 A. I don't know what the association's
25 position is. I could maybe individually take an

1 assumption based on what I've read and heard and
2 seen that some might be and some might not be.

3 Q. So, would the approach of NACGUA being
4 on the record as saying a phased-in approach with
5 adequate monitoring so your -- does that appear
6 to be anti-development or is that sustainable
7 development?

8 A. Well, again, I'm not an expert on it.
9 I don't have an opinion.

10 Q. Okay. And then earlier Ms. Jekel --
11 were you here during her reading of her
12 testimony?

13 A. Certainly.

14 Q. And do you remember me reading to her
15 out of some of M3's expert reports the statements
16 that wells -- that based on these high-capacity
17 wells, will cause drawdowns that will affect
18 other wells?

19 A. I remember that.

20 Q. And you also remember the statement in
21 M3's reports that the high-capacity wells, that
22 over time will likely cause an effect on artesian
23 flowing conditions and where pumps may be needed?

24 A. I remember reading that or hearing
25 that.

1 Q. And do you see that as a potential
2 effect to those property rights?
3 A. I think that I would take that if I was
4 trying to make a judgment on it as a concern and
5 I would want to know more.
6 Q. And then in your preannexation
7 agreement between M3 and the City of Eagle, can
8 you point us to any knowledge you have where it
9 talks about remediation of problems to adjacent
10 well owners that are affected?
11 A. I don't know that it had anything like
12 that in there because I don't know that that's a
13 jurisdiction that the city carries.
14 Q. And are you aware of any discussions
15 that the City of Eagle may have had with M3 in
16 terms of as they accept these new phased-in water
17 systems, in terms of an obligation to do
18 long-term monitoring that M3 talks about as well
19 as potential remediation?
20 A. I don't know that I can quote you by
21 going to a document and pointing it out. I do
22 remember monitoring was a big point of discussion
23 during the discussions about water because of
24 concerns about levels.
25 Q. And was the City of Eagle at the time

1 you were involved with the City of Eagle willing
2 to take on this long-term monitoring and
3 remediation?
4 A. Was the city willing to?
5 Q. Yes, when M3 is gone?
6 A. I don't remember that we were involved
7 in the monitoring, to be honest with you. I
8 don't remember.
9 Q. So, you're not aware of any kind of an
10 agreement the City of Eagle was willing to take
11 on apparently for long-term monitoring or
12 remediation when people's wells may no longer --
13 A. Well, I don't know that we were trying
14 to solve the water issue in and of itself to the
15 extent that this review is going on here. Ours
16 was land use driven as much as anything.
17 Q. Okay. I believe you, based on the
18 "land use driven," I believe you said in your
19 testimony, and correct me if I'm stating it
20 incorrectly, is that those types of land use
21 decisions were more important than the
22 availability of water, is what I wrote down; is
23 that correct?
24 A. I don't necessarily remember saying
25 that, but we can go back. Would you paraphrase

1 what you think I said.
2 Q. You had made a statement along the
3 lines that there were more important decisions
4 that the city was making in terms of the overall
5 land use decisions, more important than the
6 availability of water.
7 A. Well, I don't know that I said that. I
8 think what I was trying to say was that water was
9 certainly a key component of the land use issue,
10 and that it certainly was to the extent that the
11 city had influence and responsibility, we try to
12 evaluate and take that into account.
13 Q. And then have you been able to make
14 time to read through the results of any of the M3
15 technical documents talking about their aquifer
16 characteristics and sustainability?
17 A. I did at the time that we reviewed the
18 application. We had reams of information that we
19 were spending hours and hours reading through as
20 we went through phases with the evaluation.
21 Q. And are you aware of the document
22 prepared by Idaho Department of Water Resources
23 called their staff -- I think it's the staff
24 memorandum, a technical document where they have
25 identified many concerns with M3's findings?

1 Have you had a chance to read that?
2 A. I have not read that.
3 MR. THORNTON: No further questions.
4 Thank you.
5 THE HEARING OFFICER: Mr. Smith?
6 MR. ALAN SMITH: I have no questions.
7 I think Mr. Thornton has covered any questions I
8 had.
9 THE HEARING OFFICER: Mr. Edwards?
10 MR. EDWARDS: I have no questions.
11 Thank you.
12 THE HEARING OFFICER: Okay, I'll break
13 here and ask a couple of questions of
14 Mr. Nordstrom and then I'll give the parties one
15 more chance.
16
17 EXAMINATION
18 QUESTIONS BY THE HEARING OFFICER:
19 Q. Mr. Nordstrom, the other public
20 witnesses have testified and have all clearly
21 stated their stake in the matter. And your
22 interest, at least as far as I can tell, is a
23 participant as a city council member. And so, I
24 wanted to explore that subject just a little bit
25 with you.

1 I see that your address is on West
 2 Timber Drive. Can you tell me where that's
 3 located with respect to the City of Eagle?
 4 A. Sure, it's about one and a quarter
 5 miles west of the corner of Highway 44 and 55.
 6 So, State Street and 55, the bypass at 55.
 7 Q. Okay.
 8 A. It's in the Redwood Creek subdivision.
 9 Q. Okay, I know where you're located,
 10 then. And you receive water from?
 11 A. United Water.
 12 Q. Okay. And the last question that I
 13 have, then, is --
 14 A. Could I address the second half of your
 15 question?
 16 Q. Sure.
 17 A. I don't have a stake in the matter, to
 18 be frank about it. What I do have is a love for
 19 the city and the surrounding area and a concern
 20 that sometimes issues get not unimportantly
 21 delved into, but sometimes sidetracked by other
 22 issues other than what we're trying to actually
 23 resolve, which is to make sure that the evolution
 24 of our community is done in the very best way.
 25 Q. Okay. My last question: What do you

1 do for a living, Mr. Nordstrom?
 2 A. I buy and sell mining, construction,
 3 and industrial equipment.
 4 THE HEARING OFFICER: All right, thank
 5 you. Now, further questions, Mr. Lawrence?
 6 MR. LAWRENCE: None.
 7 THE HEARING OFFICER: Okay.
 8 Mr. Thornton?
 9 MR. THORNTON: No.
 10 THE HEARING OFFICER: Mr. Smith?
 11 MR. ALAN SMITH: None.
 12 THE HEARING OFFICER: Mr. Edwards?
 13 MR. EDWARDS: None.
 14 THE HEARING OFFICER: Thank you.
 15 THE WITNESS: Thank you.
 16 THE HEARING OFFICER: All right, I am
 17 at the end of the list. Are there other public
 18 witnesses that wish to testify? Okay, I saw one
 19 hand go up first.
 20 THE WITNESS: Well, I got here last.
 21 So, I'll wait.
 22 THE HEARING OFFICER: All right,
 23 Mr. Bastian, I know who you are. I guess I'll
 24 call your name. Come forward, please.
 25 //

1 STANLEY BASTIAN,
 2 first duly sworn to tell the truth relating to
 3 said cause, testified as follows:
 4
 5 THE HEARING OFFICER: Please be seated.
 6 State your name and spell it for the record,
 7 please.
 8
 9 DIRECT NARRATIVE TESTIMONY
 10 BY MR. STANLEY BASTIAN:
 11 A. My name is Stanley, S-t-a-n-l-e-y, last
 12 name Bastian, B-a-s-t-i-a-n. Most people call me
 13 "Stan." I'm a long-time resident of the Eagle
 14 community, 31 years, a past member of the Eagle
 15 City Council. Do you need my address? I forgot
 16 to state that
 17 THE HEARING OFFICER: Sure.
 18 THE WITNESS: 1369 East Nest View Court
 19 in Eagle. I'm a past member of the Eagle City
 20 Council. And as such, along with Mr. Nordstrom,
 21 I have considerable knowledge of the history and
 22 goals of the M3 project.
 23 I want to divert from my prepared
 24 statement just a little bit. One of the things
 25 that I noted serving on the city council is there

1 was a great interest in the foothills
 2 development: M3, Kastera, SunCor, and the
 3 Connolly Ranch, Cullen Connolly in particular, a
 4 person there. And it was my view when I was on
 5 the city council that it would be better for the
 6 community if we had a plan, a development plan
 7 for that whole area, an impact plan.
 8 And so, we looked for that, for the
 9 participants that I just read about to get data,
 10 information, testimony, and community input, and
 11 a large number of meetings held to discuss the
 12 issue and to determine under what conditions
 13 these lands would be possibly annexed to the city
 14 and very specific conditions to make sure that
 15 the annexation and the development would be in
 16 conformity to the interests of the community and
 17 to the protection of the community.
 18 I know that M3 has commissioned
 19 extensive groundwater studies and testing that
 20 support their claim that an adequate water supply
 21 exists to serve their master planned community.
 22 In this process, they have employed recognized
 23 water experts, used the expertise and services of
 24 the University of Idaho and Boise State
 25 University, researched historical information,

1 used it to conduct extensive studies of the
2 area's aquifer.

3 Personally, I've been impressed by M3's
4 commitment to understand the water resources of
5 our community and I commend them for their work.
6 In the years that I served, and those were 16
7 years, we had no other applicant who had done
8 such an extensive preparation and information
9 about the water system -- or the aquifer rather.

10 I have listened to several
11 presentations by Hydro Logic, Incorporated, the
12 firm M3 commissioned to do the water studies.
13 They have developed a three-dimensional
14 hydrological framework which consists of
15 measuring Northern Ada County groundwater levels,
16 determining the flow patterns, and establishing a
17 monitoring system to measure water levels on a
18 continuous basis prior to these hearings, during
19 this time now, and the plan is to continue that
20 monitoring process.

21 M3 has used this framework to assess
22 the potential impact to existing wells from the
23 proposed M3 Eagle wells. Hydro Logic,
24 Incorporated's, conclusions appeared to be
25 credible and were presented in such a way that I

1 could understand them.

2 The data from Hydro Logic,
3 Incorporated, strongly supports their contention
4 that there is a significant regional aquifer, the
5 Pierce Gulch Sand Aquifer, which underlies the
6 City of Eagle, including M3 Eagle's site. And I
7 think that's good news, good news for the
8 community that we have a strong source of water
9 beneath us.

10 Hydro Logic has presented a credible
11 argument that their extensive monitoring network
12 will be able to effectively show any impact to
13 the aquifer from the M3 wells. I believe that
14 long-term monitoring is a reliable way to show
15 such impacts. M3 has shown their support to
16 implement and carry out a well developed water
17 level monitoring program.

18 In summary, Hydro Logic has conducted
19 extensive studies to ensure that the water supply
20 is available to meet the long-term needs of the
21 M3 project and the Eagle community. Unless data
22 can be produced that refutes these conclusions,
23 show damage to the aquifer or existing users, I
24 support M3 Eagle's water right request.

25 Other factors that I think are

1 pertinent and of particular note in this hearing
2 are: M3 has done the kind of long-term -- or
3 long-range study and planning that supports their
4 application. M3 plans to use water conservation
5 techniques, such as drip irrigation and xeriscape
6 practices. Wastewater will be treated to class A
7 drinking water standards and reused as irrigation
8 water, thus conserving water.

9 A centralized water system will limit
10 the number of wells that are needed for the
11 project and ensure that wells that are drilled
12 will be sealed and constructed of quality
13 materials under the state's rules for public
14 drinking water systems.

15 In conclusion, I believe the granting
16 of water rights ought to be based upon sound
17 scientific evidence and not emotional appeals.
18 If, as M3's commissioned groundwater studies
19 indicate, there is sufficient water for the
20 application, I support their request. That's it.

21 THE HEARING OFFICER: Thank you,
22 Mr. Bastian. Mr. Lawrence?

23 //

24

25

CROSS EXAMINATION

1 QUESTIONS BY MR. LAWRENCE:

2 Q. Thank you, Mr. Bastian, for coming and
3 testifying. I'm just going to ask you the same
4 couple of questions that I asked Mr. Nordstrom.

5 First, as a city council member for the
6 City of Eagle, are you familiar with the
7 preannexation agreement entered into between the
8 city and M3?

9 A. I am.

10 Q. And do you understand this agreement to
11 contemplate having the city own and operate the
12 M3 municipal water supply system?

13 A. Yes, as a member of the council at the
14 time that was agreed upon, that was one of the
15 requirements that we placed upon that agreement.
16 We believe it's important that the city have a
17 municipal system and be able to control the water
18 use through that system.

19 MR. LAWRENCE: Thank you. That's all.

20 THE HEARING OFFICER: Okay,
21 Mr. Thornton?

22 MR. THORNTON: Mr. Bastian, thanks for
23 your testimony. I appreciate it.

24

25

CROSS EXAMINATION

1 QUESTIONS BY MR. THORNTON:

2 Q. I believe you just said that you would
3 support M3 data and their -- and I would contend
4 they've collected a lot of information. And you
5 would support their findings unless there was
6 data that refutes their conclusions; is that
7 correct?

8 A. That is correct.

9 Q. And obviously, M3 has provided a lot of
10 information and technical documentations. Are
11 you aware over the last six months of the
12 scientific data and analysis from experts such as
13 Dr. Dale Ralston of the University of Idaho where
14 he has used words such as "flawed models,"
15 "flawed analysis," that type of stuff? Have you
16 had a chance to read through any of his
17 information?

18 A. I have not had a chance to read through
19 that information.

20 Q. Have you had a chance to read through
21 the Department of Water Resources' staff
22 memorandum that I think there was three of their
23 technical experts reviewed M3's documents and
24 reviewed documents that were put forth by the
25 protestants and their experts, as well as other

1 information? Have you had a chance to read any
2 of their findings yet?

3 A. I have not.

4 Q. Okay. Are you aware that in the
5 Department of Water Resources report they have
6 identified numerous concerns and inconsistencies
7 with their findings?

8 A. I have not read those reports.

9 Q. So, prior -- so, being a prudent public
10 servant, I imagine you, before you would be on a
11 firm final record, you would want to assess all
12 of those documents; is that correct?

13 A. That is correct. And I'd like to add
14 that that's what these hearings are all about.
15 The Idaho Department of Water Resources has that
16 responsibility to look at all of that data and
17 make certain that the requested water rights are
18 warranted.

19 Q. Okay. And are you aware -- a similar
20 question as to Mr. Nordstrom: Are you aware that
21 North Ada County Groundwater Users Association is
22 on record as accepting some form of phased water
23 right and monitoring and looking at what the
24 water levels would be doing prior to granting
25 another portion of the water right?

1 A. I only became aware of that in
2 conversation here earlier with people aside from
3 this official testimony. And my opinion on that
4 seems to be -- not my opinion seems to be, but
5 the issue seems to be that M3 would like to
6 secure those rights at a certain date and time
7 and when the rights are granted that they have
8 those rights secured, and I think the water users
9 association would like to see the rights phased
10 in over time.

11 And I would favor granting the rights
12 and if there's any, subject to any conditions
13 about that, then I think that ought to be -- the
14 Idaho Department of Water Resources ought to set
15 those conditions, but the rights ought to be
16 established at a date certain and not over years.

17 Q. Okay. And so, would that
18 potentially -- and I'm assuming you have probably
19 a fair amount of information especially with the
20 recent East Snake Basin concerns statewide,
21 you're probably familiar with that. Would
22 granting a water right but it's conditionally
23 based on monitoring, so maybe would you think
24 this might be an appropriate resolution, that if
25 M3 were granted --

1 A. I think the water right should be
2 granted in full as the Idaho Department of Water
3 Resources sees it at a certain date.

4 Q. Okay.

5 A. And if there's any conditions that
6 would limit that water right or lessen it, then
7 that would be their responsibility and based upon
8 evidence, their right to impose those limits.

9 Q. So, that mitigation could also include
10 potentially a phased approach if the Department
11 of Water Resources determined that to be
12 appropriate?

13 A. It all depends upon what you mean by
14 "phased." I think the water right itself should
15 be certain, at a date certain, and that the
16 conditions then might be involved in a phasing.

17 Q. And these are the same questions as of
18 Mr. Nordstrom and Ms. Jekel: So, are you aware
19 that in M3's own data that they identify that the
20 high-capacity wells will cause drawdowns that
21 will affect other wells?

22 A. I'm aware of that, yes.

23 Q. And you're also aware that the full
24 development of existing municipal water rights
25 will cause artesian pressures to decline over

1 time and folks that have artesian pressure may,
2 in fact, lose that in the Eagle-Star area?

3 A. If that's a part of the public record
4 that they provided, yes. I don't remember
5 reading that.

6 Q. That is in a couple of their reports, I
7 would contend or suggest. And in your time with
8 Eagle City Council and working with the city, are
9 you aware of any agreements that the city has
10 accepted the responsibility for future monitoring
11 and/or future remediation in terms of effects on
12 senior water rights?

13 A. A simple answer would be no. The
14 explanation would be that the application for the
15 water right is being made by M3 and whether the
16 water right is granted and the conditions, if
17 any, on that. And once that has been accepted,
18 if they give that to the city, the city obviously
19 would be limited by the Idaho Department of Water
20 Resources rights and any limitations.

21 Q. And what is your opinion that the city
22 may be, in fact, accepting a fair amount of
23 liability in terms of potential injury to senior
24 water rights?

25 A. I would have to have more data to

1 is going to monitor after M3 sells the land and
2 the water rights and moves on?

3 A. I don't.

4 Q. Are you aware that none of the
5 protestants here take any issue with the amount
6 of work and studies that HLI has done?

7 A. I don't know of any protestants
8 objecting to the studies that have been done, no.

9 Q. Are you aware that we agree they've
10 done a lot of work on this project? Have you
11 been here for any of the prior hearings?

12 A. I have not.

13 Q. Are you aware that wells have gone dry
14 without the effects of M3's pumping?

15 MR. LAWRENCE: Objection, Mr. Hearing
16 Officer, this "gone dry" language is ill-defined
17 at best.

18 THE HEARING OFFICER: I'll allow
19 Mr. Bastian to try to answer the question.
20 Overruled.

21 THE WITNESS: You must know that I'm
22 not a water expert. That's not my field, but
23 I'll -- but the map behind me has red dots on it.
24 I can see those red dots. And they say basically
25 that they're dry wells. So, I'm assuming that we

1 know -- you know, I haven't read all of the
2 studies. I can't tell that you.

3 MR. THORNTON: I appreciate your time.
4 Thank you. No further questions.

5 THE HEARING OFFICER: Mr. Smith,
6 questions for Mr. Bastian?

7 MR. ALAN SMITH: Thank you, just a few.

8
9 CROSS EXAMINATION
10 QUESTIONS BY MR. ALAN SMITH:

11 Q. You talked about this continuous
12 monitoring. Apparently there's no solution as to
13 who does this monitoring after M3 sells out and
14 moves on, sells the land and the water rights.
15 Who monitors it then? It's not the City of
16 Eagle?

17 MR. LAWRENCE: Objection, Mr. Hearing
18 Officer, I believe this has been asked and
19 answered by Mr. Thornton.

20 THE HEARING OFFICER: I'll overrule.
21 I'm just not sure -- there were about four
22 questions, Mr. Smith. Can you ask one?

23 MR. ALAN SMITH: All right.

24 Q. (BY MR. ALAN SMITH) As to this
25 continuous monitoring, do you have any idea who

1 have in that area several dry wells.

2 MR. ALAN SMITH: That's all I have.

3 THE HEARING OFFICER: Okay,
4 Mr. Edwards?

5 MR. EDWARDS: I have no questions, but
6 thank you for your time.

7 THE HEARING OFFICER: Okay, thank you,
8 Mr. Bastian.

9 (Discussion held off the record.)

10 THE HEARING OFFICER: Now, it's about
11 20 minutes to 3:00. Can we forge ahead? Is
12 everybody comfortable or do we need a break?

13 MR. ALAN SMITH: We need a break.

14 THE HEARING OFFICER: Pardon me?

15 MR. ALAN SMITH: We need a break.

16 MR. JASON SMITH: Just a short one.

17 MR. LAWRENCE: I believe there's one
18 more public witness.

19 THE HEARING OFFICER: I think we have
20 two.

21 MR. LAWRENCE: Oh, we have two?

22 THE HEARING OFFICER: So --

23 MR. ALAN SMITH: Are we going to take
24 the public witnesses?

25 THE HEARING OFFICER: How much longer?

1 MS. PATRICIA MINKIEWICZ: Five minutes.

2 MR. DAVID KOEPPEN: Five minutes.

3 THE HEARING OFFICER: Five and five?
4 Does anybody have that much endurance in them,
5 ten minutes? Let's forge ahead.

6 MR. ALAN SMITH: You can go ahead.

7 THE HEARING OFFICER: Sir, you've been
8 here. Come forward.

9
10 DAVID KOEPPEN,
11 first duly sworn to tell the truth relating to
12 said cause, testified as follows:

13
14 THE HEARING OFFICER: Please be seated.
15 And as previously instructed, please state your
16 name and spell it for the record and give us your
17 address. Tell us whether you're in favor or
18 opposed to this applicant.

19
20 DIRECT NARRATIVE TESTIMONY

21 BY MR. DAVID KOEPPEN:

22 My name is David Koeppen, D-a-v-i-d,
23 last name Koeppen, K-o-e-p-p-e-n. My address is
24 8600 West Equest Lane in Eagle, and I am speaking
25 in favor of the application.

1 I am in a somewhat unique position
2 here. I am probably the only person who lives
3 completely surrounded by M3 properties. My wife
4 and I have resided there since 1993. We drilled
5 a well at that point in time. We've had no
6 problems with that well whatsoever during that 16
7 years.

8 One of the issues that I see here is,
9 again, basically science versus emotion. I
10 understand the potential for problems with wells.
11 I have that potential. If the studies by
12 Hydro Logic are correct, I shouldn't have any
13 problems with my well, none of us should have
14 problems with our wells. If they are incorrect,
15 then potentially we are going to go dry. I will
16 be the first to go dry of those wells.

17 In terms of the development itself, I
18 am not a proponent of development. I live in
19 Idaho for a reason. In live on 10 acres in
20 Eagle, Idaho, for another reason, basically it is
21 the same one, which is to have space around me.

22 I have had the privilege of living
23 alongside the M3 property for the last few years
24 and enjoying it to the utmost by hiking on it,
25 biking on it, riding horses, et cetera. And so,

1 having a large community come in next to me is
2 not particularly at the top of my list.

3 However, it is a planned community and
4 that's the part that I find is important in this
5 context. The reason we are probably all in this
6 room is because it is a planned community, not a
7 haphazard development such as we are used to.
8 The haphazard developments don't for the most
9 part come in here for water rights hearings
10 because they don't demand that much water.

11 The reason many of our wells have gone
12 dry over the years presumably is because of that
13 haphazard development. Your neighbor drills a
14 deeper well than you and starts pumping water,
15 and the guy next to him drills a deeper well, and
16 it continues in that manner. Again, because this
17 is a planned community, they have a requirement
18 for a lot more water and, correspondingly, we're
19 here discussing that issue.

20 I have been very pleased with M3's
21 actions over the last couple of years. They have
22 met any request I have for monitoring of my well
23 and, in fact, they ended up drilling a test well
24 fairly close to my property. So, I'm not worried
25 about the water level changing without it

1 basically being noticed by someone.

2 And I have had conversations with them.
3 They have indicated to me that they don't like
4 having unhappy neighbors alongside of their
5 developments. I am quite certain that basically
6 if I have a complaint that they're going to take
7 care of it, that they're going to remedy it.

8 My personal opinion, I've heard a
9 number of comments about who is responsible for
10 the monitoring. My answer to that is: I am
11 responsible for the monitoring. All of us are
12 responsible for the monitoring. We have been
13 talking about some property rights and such. If
14 you have property rights, you have to protect
15 those property rights. You have to know what
16 level your well is at, you have to know when it's
17 changing, and you have to protect that if it does
18 change. I think if we document things in that
19 manner that we'll be just fine.

20 I have been across their property
21 innumerable times. I have seen their test wells.
22 I know where they are. They are spaced out well
23 over the property. I have looked at their plans.
24 I've had numerous conversations with the folks
25 from Hydro Logic and such, and their intent to

1 basically add wells as they need them as they go
2 across the property with their development.

3 Again, the initial application here
4 requires a large quantity of water because at
5 buildout there's going to be a lot of people out
6 there, there's going to be a lot of demand for
7 that water.

8 Again, from personal experience back
9 over the years as an avid kayaker and canoeist, I
10 know that 23 cfs in terms of river flow isn't
11 very much water. In terms of pumping it out of
12 the ground, it's a fair quantity. But again,
13 given that that quantity comes out over a long
14 period of time, it really isn't that much.

15 I find the firm itself again, basically
16 coming out of Arizona with the water conservation
17 that's necessary down there, is I think uniquely
18 positioned to make sure that we do have good
19 water conservation going in. I look at the
20 developments around me, for example, my acreage
21 is on a 40-acre parcel that was subdivided.
22 There are no requirements whatsoever. Okay, each
23 of us put in our well and we live happily ever
24 after going forward.

25 I was quite concerned when the

1 Hillsdale subdivision went in. Again, I don't
2 think there's much provision there for water
3 conservation. I would have expected given, you
4 know, when I go up in there the amount of water
5 going all over the place, the amount of green
6 space that people have put in, the two and
7 three-acre lawns and such, I would have expected
8 problems from that a long time ago. I have not
9 seen extensive problems coming from that.

10 I guess basically what it comes down to
11 to me is I love that area. I would just as soon
12 not see development, but I think if I had my
13 choice, I could have gone out and purchased that
14 property if I had the resources to do it. I
15 chose not to do that. Someone else came along,
16 they decided to purchase the property. They
17 choose to develop it, that's their right. And
18 basically their application for water rights I
19 view the same way: That basically if the water
20 is there, which the studies suggest it is, you
21 know, I think the burden is on us if we choose to
22 not approve the water right to demonstrate in
23 some way, shape, or manner that the water is not
24 there. And I don't think we have done that. I
25 don't think we've done the testing on the wells

1 that we need to establish that they're going to
2 be a problem for us. Thank you.

3 THE HEARING OFFICER: Okay. Thank you.
4 Mr. Lawrence?

5 MR. LAWRENCE: We have no questions.
6 We would just like to thank you for coming in and
7 testifying, Mr. Koeppen.

8 THE HEARING OFFICER: Mr. Thornton?

9 MR. THORNTON: Yes, I have some
10 questions.

11
12 CROSS EXAMINATION
13 QUESTIONS BY MR. THORNTON:

14 Q. Thank you for your time and testimony.
15 I believe you stated in your statement that you
16 wanted to make sure decisions were made based on
17 science, not emotions. Now, similar questions as
18 with Mr. Bastian: Are you -- have you had a
19 chance to actually read any of the findings and
20 conclusions in any of M3's or Hydro Logic's
21 reports?

22 A. I have not read any of the reports in
23 the last few months. I had read a number of them
24 prior to that. I also participated in a number
25 of the planning meetings and such.

1 Q. So, are you aware of what I've
2 identified with the previous couple of public
3 witnesses, some of the statements that are in
4 M3's reports identifying impact, well impact,
5 that their high-capacity wells will impact
6 adjacent wells and wells will lose artesian
7 pressure as far down as the river and even the
8 Star area?

9 A. I've heard that comment made today.
10 It's been long enough ago, I may have read that
11 but I have not remembered it.

12 Q. So, in your public view, can you
13 understand the concern that --

14 A. Absolutely.

15 Q. -- that senior water right users have?

16 A. Yes. I share that concern.

17 Q. So, even with M3 in the science that
18 they have put forward are stating these potential
19 impacts, would you agree, to adjacent wells as
20 well as artesian pressures out of their own
21 reports, is that not science?

22 A. I would assume so, yes.

23 Q. So, do you feel in your opinion, like
24 for the North Ada County Groundwater Users
25 Association, that we're solely emotion or are we

1 even using some of M3's own findings for concern?

2 A. Obviously it's written in the report.

3 You read it earlier to us. Certainly that
4 portion is based on science.

5 Q. Are you familiar with the Department of
6 Water Resources' staff memorandum in response to
7 a large majority, potentially all of M3's
8 reports, their findings, where they have several
9 disagreements, concerns identifying
10 inconsistencies with their data?

11 A. I'm not familiar with those, no.

12 Q. Would that be something that you would
13 like a copy to read at some point?

14 A. Certainly.

15 Q. And then you identified, I think, a
16 benefit of a planned community versus maybe the
17 haphazard approach of either smaller developments
18 or individual developments going in; is that
19 correct?

20 A. Yes.

21 Q. And with a planned community such as
22 M3, they're identifying water rights over, you
23 know, the next 20, 30-year planning horizon;
24 correct?

25 A. Correct.

1 Q. And then I believe you also said
2 something, a concern with haphazard development
3 is the neighbors will drill a well so deep and
4 the next one is drilling it deeper and the next
5 one is drilling it deeper; correct?

6 A. That that could be a problem, yes.

7 Q. And personally, I agree with that. And
8 are you aware that M3 is planning to probably be
9 the deepest well out there?

10 A. Yes, I'm aware of that.

11 Q. Does that seem to reconcile with you in
12 terms of much difference with a haphazard
13 approach of one neighbor coming in drilling a
14 little deeper, the next one deeper, when M3 is
15 going to be drilling the deepest of all?

16 A. Well, I look at a water supply for
17 upwards of 7,000 homes as requiring a deep well.
18 So, I'm not particularly concerned about that.

19 Q. And do you have any thoughts on what it
20 might take, say, if your well was impacted, what
21 you would need to do for recourse?

22 A. Well, I like having my own well. The
23 alternatives are essentially drilling the well
24 deeper or hooking up to an alternative supply.

25 Q. And so, in your terms that would be

1 appropriate for your prior property right to be
2 affected, you would just have to redrill deeper?

3 A. Again, if I failed to document the
4 existing levels of my well and the fact that it
5 declines with their presumed pumping and I can
6 show some sort of a relationship -- if I can't do
7 that, then yeah, it's my responsibility to drill
8 my well deeper.

9 Q. So, in your opinion, for a phased water
10 right approach with monitoring, you know,
11 overseen by some agency like IDWR as well as M3
12 and other private well owners in a phased
13 approach based on what the water level decline
14 over time is telling you, does that seem
15 reasonable to you?

16 A. I don't see the -- again, with a
17 planned community, I see it being phased in as it
18 is. I see the establishment of the water right
19 up front as being appropriate. As they drill
20 their wells, as they develop that planned
21 community and require additional wells, if that
22 causes a drawdown, at that point I think that
23 it's appropriate that something be done to
24 address the problem.

25 Q. What would that something be done?

1 Would you wait until there is a problem or would
2 you try to get ahead of it so we don't have a
3 problem?

4 A. Well, again, if you're going to
5 subscribe to the idea of private property rights,
6 you have to wait until somebody can basically
7 prove that they've been damaged.

8 MR. THORNTON: No further questions.
9 Thank you.

10 THE HEARING OFFICER: Mr. Smith?

11
12 CROSS EXAMINATION
13 QUESTIONS BY MR. ALAN SMITH:

14 Q. Are you aware M3 has said they may
15 install 15 wells on their property plus the 12
16 wells that are already there?

17 A. Yes.

18 Q. And I believe you said if the
19 information and the conclusions are not correct,
20 we can have a problem?

21 A. We can have a problem with virtually
22 anything.

23 Q. Are you aware of the Snake River Plain
24 problem?

25 A. Yes.

<p style="text-align: right;">Page 2813</p> <p>1 Q. Were you approached by M3 to sell your 2 property? 3 A. No. 4 MR. ALAN SMITH: I think that's all I 5 have. 6 THE HEARING OFFICER: Mr. Edwards? 7 MR. EDWARDS: I have no questions, 8 Mr. Koeppen, but thank for your time. 9 THE HEARING OFFICER: Thank you, 10 Mr. Koeppen. 11 THE WITNESS: Thank you. 12 THE HEARING OFFICER: Okay, one more 13 witness. Come forward, please. 14 15 PATRICIA MINKIEWICZ, 16 first duly sworn to tell the truth relating to 17 said cause, testified as follows: 18 19 THE WITNESS: My name is difficult 20 (handing.) 21 THE HEARING OFFICER: I assume you know 22 how to spell it. 23 THE WITNESS: It took me awhile. 24 THE HEARING OFFICER: Please be seated 25 and please state your name and spell it for the</p>	<p style="text-align: right;">Page 2815</p> <p>1 north side of Beacon Light Road. We have 48 2 private wells there with 48 homeowners. Those 3 wells were filed and recorded in 1993 through 4 1997. They're all in pretty good shape because 5 they're relatively new. 6 My well itself is being monitored by 7 IDWR. And Dennis, the young man, where is he? 8 There he is, okay. A very nice young man, by the 9 way. 10 They've been monitoring my well and so 11 far my well has worked well until about last 12 fall. My well is 11 years old and last fall it 13 started banging around. And Dennis said, 14 "Whoops." So, we called in Coonse Well Drilling 15 in Meridian and they said, "Pat, you've got to 16 put a 20-foot extension on your pump" or "your 17 well." I don't know the lingo. But I had to pay 18 for a 20-foot extension. 19 Up until last fall, I would say January 20 of 2008, all was well, not a problem. So, I had 21 pretty good use out of it, but I did have to put 22 a 20-foot extension. That's the history of my 23 well. 24 My first handout is a letter I sent to 25 Dr. Tuthill on April 24. I am a signer of the</p>
<p style="text-align: right;">Page 2814</p> <p>1 record. 2 3 DIRECT NARRATIVE TESTIMONY 4 BY MS. PATRICIA MINKIEWICZ: 5 Patricia Minkiewicz, M-i-n-k-i-e-w-i-c-z. 6 My husband is Polish and since I'm from 3047 7 Deerfield Court, Eagle, I'm wearing my red Polish 8 Eagle T-shirt that my husband gave me, Polish 9 Eagle. All right? 10 I really appreciate all of the 11 testimony I've heard today. And Mr. Spackman, 12 this is your packet that you asked -- you wanted 13 copies of things; right? And I have packets for 14 the two parties. 15 First off -- 16 MR. LAWRENCE: Can we please have a 17 copy? 18 THE WITNESS: Well, if I give it to you 19 now, you'll sit there reading it and you won't 20 listen to me. Do you promise you'll listen? 21 (Discussion held off the record.) 22 THE WITNESS: Two for you and two for 23 the other -- first of all, I've introduced myself 24 and I represent Buckhorn Estates subdivision in 25 Eagle's area of impact, which is located on the</p>	<p style="text-align: right;">Page 2816</p> <p>1 protest petition, which means I do oppose M3 2 basically on the issue of water. We live in a 3 high desert and that is my most major concern. 4 So, I do disagree with Mr. Nordstrom's comment 5 that the City of Eagle has more important issues 6 to address than water availability. I have to 7 disagree with that. Without water availability, 8 you're not going to get business to move to Eagle 9 and you're going to have a lot of unhappy people 10 with dry wells and so on and so forth. We need 11 water. And people need to be assured they're 12 going to have that water longer than when M3 13 decides to leave the area. That's my feeling. 14 I've told you about my experience at my 15 well and I'm going to also tell you that there's 16 more to this than just M3. The former city 17 council of Eagle approved thousands of new homes 18 by rezoning. This was during the housing boom. 19 And I know it alienated most of the people 20 already living in West Eagle, including me, 21 because those lots of 2 to 5 acres and 10 acres 22 were all rezoned down to a half acre, they could 23 be as small as a half acre. 24 Well, you can imagine the public outcry 25 at public hearings. And I was there too. And</p>

1 yet the council said, "Growth is inevitable."
 2 And so, the zoning went through. The developers
 3 got exactly what they wanted. Now, we're talking
 4 about a 1,000-house property for Legacy alone out
 5 in West Eagle and there were several other
 6 developments approved by that former city
 7 council, total about 3,500 homes and it's still
 8 growing.

9 I'm concerned and I would think the
 10 City of Eagle would be concerned about the water
 11 they're going to need not only for present needs
 12 but for all those developments that have already
 13 been approved. I have not seen the city council
 14 address this issue at all. I would think the
 15 developers of all of these large approved home
 16 subdivisions would take precedence over M3. I
 17 don't know. It's a concern of mine. I'm not an
 18 expert.

19 Anyway, those homes that have been
 20 approved but not yet built due to the slack in
 21 the housing market, those homes will take a lot
 22 of water from the aquifer. They will be
 23 competing with us with wells, not just M3.

24 So, I have a general concern for the
 25 city as a whole. I would think Eagle City would

1 heard at all of the public hearings with the
 2 former city council was that, and I quote M3, "M3
 3 must provide evidence that adequate water to
 4 serve M3 Eagle has been secured prior to the
 5 start of construction." Nowhere have I heard or
 6 read anything that M3 Eagle must provide evidence
 7 that there must be adequate water for the Eagle
 8 community, which is present and in the future.
 9 And that's why I predict a real water tug of war
 10 here. Not enough is written down. Too much was
 11 assumed by that former city council.

12 There's no way to protect the Eagle
 13 city wells and there's no way to protect my
 14 subdivision's wells. That's my take on it. I
 15 would like to see this change to say "provide
 16 evidence that adequate water to serve M3 Eagle
 17 has been secured as well as providing evidence
 18 that the future and present needs of the City of
 19 Eagle, adequate water be preserved," whatever.

20 And that's something that, you know,
 21 I'm not an expert, but I read that. And it seems
 22 to me that when the former city council approved
 23 this M3 -- growth is inevitable, not a problem.
 24 As I said, I'm concerned about water.

25 When this was approved, the public

1 be very concerned about its wells in the future.
 2 Okay, that takes care of my first exhibit, which
 3 is my letter to Mr. Tuthill.

4 The next one is a guest opinion I had
 5 in the paper: "High-Tech Business Requirements
 6 Could Mean a Water War." That was my headline.
 7 So, don't get upset.

8 It's been my -- after my research,
 9 there was absolutely no entity in Idaho that will
 10 protect people in the area of impact of Eagle.
 11 The city council will not protect our wells. The
 12 City of Eagle will not protect our wells. M3 is
 13 not going to protect our wells. There's nothing
 14 written down that anybody is going to take care
 15 of us. And it's only hearsay that M3 will look
 16 after us. It's only hearsay. Nothing is written
 17 down.

18 Now, I have this beautiful M3
 19 what's-it. It's beautiful, a flyer
 20 advertisement. And I take issue with what
 21 Mr. Bastian said in his testimony. Mr. Bastian
 22 mentioned that M3 would need to prove that they
 23 have adequate water for their subdivision and
 24 that there would be adequate water in the Eagle
 25 community. That's not written down. What I

1 hearings were packed. And I have to quite
 2 frankly tell you that a lot of people in public
 3 testimony on the record did not agree with
 4 Senator Bastian's motion to approve the M3
 5 project. And in my mind, his testimony is
 6 biased. That's just in my mind, my opinion only.

7 And I also believe, as do many other
 8 people in Eagle who testified at those hearings,
 9 that too much faith was put into the M3 water
 10 data. The City of Eagle did not in my -- not to
 11 my knowledge look for outside water experts.
 12 They accepted totally the M3 paid experts'
 13 opinion. So, that's all I have to go on.

14 On the back of one of your flyers,
 15 which has this -- this is really very slick and
 16 nice, by the way. The water uses for the City of
 17 Eagle which will be used by M3, they're going to
 18 have about 7,000 houses. There's going to be 245
 19 acres of commercial, so on. There's a lot of
 20 landscaping involved there, several schools and
 21 landscaping, one park, five community parks, and
 22 other neighborhood parks. That all involves
 23 landscaping. I don't think it involves gravel.

24 Landscaping takes water. There's going
 25 to be at least one golf course. That takes

1 grass. I'm not sure yet about the hotel. I've
2 heard conflicting opinions on that. All right,
3 that takes care of that handout which I gave you.

4 And then the other handout is this
5 guest opinion. And I'll just briefly say that
6 Mr. Brownlee at the IDWR hearings incorrectly
7 asserted on the record that 2,400 or so current
8 individual wells in the Eagle area of impact
9 where I live are protected by the IDWR or some
10 other entity such as Ada County. Well, that is
11 absolutely not true. And yet Mr. Bastian over
12 here says that M3 will take care of us, it will
13 take care of the community. I don't know who to
14 believe.

15 I'm also very, very concerned about
16 Eagle in its efforts to attract businesses,
17 economic structure, more jobs. Well, let me tell
18 you this: If M3 gets those water rights, there
19 will be a tug of war between the City of Eagle
20 wells for present and future needs, there will be
21 a pull from M3 for what has been approved for,
22 and there will be a tug from the area of impact
23 on the wells. That's going to turn off a lot of
24 economic businesses if they see there's a water
25 war. They need water to run a business.

1 High-tech businesses needs lots of water. My
2 husband is a physicist and he says, "Pat, tell
3 them that. High tech takes a lot of water."

4 Now, maybe they have to move away from
5 high tech, I don't know. But if we're going to
6 attract a business community, we have to be able
7 to tell those people, "Yes, there's plenty of
8 water for everybody."

9 And I attended the meeting here on
10 May 29 and it's the only one I did attend.
11 That's the one when Dr. Ralston was here and
12 refuted, in my mind refuted the end-all testimony
13 from M3's so-called experts. And that's okay.
14 We can't all agree on everything.

15 And I really question why the City of
16 Eagle -- I question why they did not question
17 paid experts by M3. There should have been a
18 third party. Thank goodness IDWR is having these
19 hearings. We're finally getting some outside
20 third opinions. The people who were at those
21 public hearings in Eagle have been vindicated and
22 I am very pleased about that.

23 We have four new city councilmen now.
24 They're on standby watching what's going on here.
25 Whether they agree or not with the former city

1 council, I don't know. But we're not getting
2 their input; are we? All right, that takes care
3 of that third what's-it.

4 And finally, the gentleman who
5 testified just before me, I think he mentioned
6 something about Arizona. I could be wrong. But
7 I have here a copy of the current Arizona
8 Department of Water Resources assured water
9 supply program summary.

10 Now, granted, Arizona is a real desert,
11 a real high desert area. But Arizona apparently
12 knows what it has and doesn't have in its
13 aquifer. And that's a third-party opinion. And
14 they have assured water supply rules for
15 developers, subdivision requirements, they must
16 assure a water supply. It's just amazing in here
17 how strict it is.

18 And I don't know if IDWR has this kind
19 of a water document which is handed to
20 developers. They must take responsibility. Not
21 a city, the developers. This document is between
22 developers and the Arizona Department of Water.
23 And I don't know if Idaho has something like
24 this, but I'm going to include it in Mr. -- your
25 packet.

1 So, I read this and I shudder. I said,
2 "I don't really know that Idaho has this kind of
3 criteria." It's scary. But until I personally
4 and my subdivision personally know what that
5 aquifer has, I have to protest M3. There's no
6 one looking out for me or my subdivision.
7 There's no one looking out for the area of
8 impact. So, I have to protest because no one is
9 looking after us.

10 And who is looking after the City of
11 Eagle wells? I don't know. I don't believe -- I
12 just don't believe in experts who are paid by
13 someone seeking water rights. I can't. And I
14 think you can understand why. If you were in my
15 position, would you? Okay, that's it. Thank you
16 very much.

17 THE HEARING OFFICER: Okay.
18 Mr. Thornton, questions?

19 THE WITNESS: I'm not an expert.

20 MR. THORNTON: I appreciate your time
21 and your effort putting that together and your
22 testimony and I have no further questions.

23 THE WITNESS: Okay, thank you.

24 THE HEARING OFFICER: Mr. Smith,
25 questions?

1 MR. ALAN SMITH: I have none.
 2 THE HEARING OFFICER: Mr. Edwards?
 3 MR. EDWARDS: I have no questions.
 4 Thank you very much.
 5 THE HEARING OFFICER: Mr. Lawrence?
 6 MR. LAWRENCE: No questions. Thank
 7 you.
 8 THE HEARING OFFICER: I have one
 9 question about cleanup. I have several documents
 10 that were handed to me and these go beyond a
 11 personal statement.
 12 THE WITNESS: Right.
 13 THE HEARING OFFICER: And the letter I
 14 think has come in previously and we've been
 15 receiving those kinds of documents.
 16 I have other documents here. One is a
 17 guest opinion apparently written by
 18 Ms. Minkiewicz and I have at least I think an
 19 excerpt from an M3 document.
 20 THE WITNESS: Yes.
 21 THE HEARING OFFICER: And a document
 22 that was printed, at least represented to be from
 23 our counterpart in Arizona, the water resources
 24 agency. So, do you want me to receive this into
 25 evidence, then, Ms. Minkiewicz?

1 THE WITNESS: Yes, because my testimony
 2 is based on what's in there. But that's totally
 3 your call, Mr. Spackman.
 4 THE HEARING OFFICER: Any objections
 5 Mr. Fereday -- or Mr. Lawrence, I'm sorry?
 6 MR. LAWRENCE: Mr. Hearing Officer, we
 7 would object to the information contained in the
 8 assured water supply program summary from Arizona
 9 Department of Water Resources. It's irrelevant
 10 to the M3 water right application.
 11 THE WITNESS: It does refer to the
 12 previous testimony from that gentleman.
 13 MR. LAWRENCE: We don't object to the
 14 parts of the M3 Eagle brochure that are
 15 contained, but we do object to the notations,
 16 handwritten notations made regarding water usage.
 17 For example, it says there will be water usage
 18 involved with the regional park. I don't believe
 19 that that's been determined or included in this
 20 water right application.
 21 THE HEARING OFFICER: Okay.
 22 THE WITNESS: Do you have a question?
 23 THE HEARING OFFICER: No, I think
 24 we're --
 25 THE WITNESS: You're done?

1 THE HEARING OFFICER: Well, I guess you
 2 can argue about the admissibility or the
 3 non-admissibility of the assured water supply
 4 document that you presented and then I need to
 5 rule on the objection, Ms. Minkiewicz. So, you
 6 can comment on this if you wish.
 7 THE WITNESS: I just thought that would
 8 be of interest because the gentleman said that,
 9 unless I misunderstood him, that there would be
 10 plenty of water. And Arizona doesn't believe
 11 there's plenty of water. And we shouldn't just
 12 agree with M3 that there's going to be plenty of
 13 water. But I don't care, whatever you want to
 14 do.
 15 THE HEARING OFFICER: What I will do is
 16 I'll accept the first three documents.
 17 THE WITNESS: Okay.
 18 THE HEARING OFFICER: We'll not take
 19 into account the handwritten portions. And
 20 Ms. Minkiewicz, I am aware just because of my
 21 interaction with people from Arizona of some of
 22 what they have done there.
 23 THE WITNESS: Right.
 24 THE HEARING OFFICER: And I think there
 25 actually was some testimony by Mr. Brownlee early

1 on about the way in which in previous
 2 developments by Mr. Brownlee and his associates,
 3 how they have had to comply with these
 4 requirements. And so, there's been some
 5 testimony in reference to it.
 6 THE WITNESS: Okay.
 7 THE HEARING OFFICER: And I don't see
 8 that there's a problem with this. I think it
 9 probably is irrelevant as far as the law is
 10 concerned because we have to apply Idaho's law --
 11 THE WITNESS: Right.
 12 THE HEARING OFFICER: -- to these
 13 particular circumstances, but I'll allow it into
 14 evidence. Okay?
 15 THE WITNESS: Okay.
 16 THE HEARING OFFICER: All right, thank
 17 you.
 18 THE WITNESS: Thank you, sir.
 19 THE HEARING OFFICER: All right, any
 20 other public witnesses? Okay, let's take a
 21 15-minute break. We'll be back about 3:30.
 22 (Recess held.)
 23 (IDWR recording paused.)
 24 THE HEARING OFFICER: All right, let's
 25 talk just for a minute before we go on.

1 Mr. Smith, I don't know what additional questions
2 you have. I think there are some questions that
3 are hanging out there. I have not allowed the
4 admission of the map that's up here. You've made
5 an offer of proof.

6 I want to just state, I guess, for the
7 parties where I stand on hearsay relating to the
8 evidence that's now come in. And I guess what I
9 want to say is that to the extent, because
10 hearsay is allowed into administrative hearing
11 records and I view hearsay if it's credible as
12 being a source of information that I can
13 consider, but there are certain forms of hearsay
14 which I struggle with.

15 And so, with respect to the information
16 that's been presented, I don't want to shut that
17 out, Mr. Smith, and I think perhaps you have
18 interpreted what I said as not allowing it.
19 We've allowed hearsay in the past. So, these are
20 the limitations, I guess, on hearsay related to
21 these wells that may have been replaced: There's
22 some foundational evidence that's been put in the
23 record. Those are well logs and some of those
24 are identified as replacement wells and some are
25 not.

1 To the extent that Jason can identify
2 others as replacements based on hearsay
3 conversations, I'll allow that information into
4 the record. To the extent that you want to
5 present testimony about the reasons why those
6 wells were replaced and whether the well was dry
7 or whether there were other technical problems
8 with the well, I think at that point in time the
9 hearsay thing becomes suspect to me. I have a
10 hard time, without somebody having established
11 what that problem really is, having that hearsay
12 come in and not having the applicant granted an
13 opportunity.

14 So, I guess to me those are the
15 boundaries. And I kind of want to cut through
16 and see if we can get what you want to present
17 into the record without having to go through
18 continuous objections.

19 Mr. Lawrence, is that helpful to you?

20 MR. LAWRENCE: That is helpful. I
21 would just note that on the map, the orange dots,
22 so-called "dry well" dots, we saw some well
23 drillers' reports that noted replacement, some
24 that didn't. Those haven't been identified on
25 that map. So, if that map were to become

1 admitted into evidence somehow, which ones were
2 actually replacement wells and which ones weren't
3 would have to be noted.

4 THE HEARING OFFICER: Yeah, and I'm
5 struggling with that as well, Mr. Smith. And
6 that is that the applied or applicant dots there
7 don't have any identification to the well logs.
8 And so, it's very difficult for me or for the
9 applicant to go from the well logs which were
10 presented to the map and have any ability to
11 identify any of them at all.

12 So, again, at a minimum, I think we
13 need that kind of information. And how we go
14 about doing it, I don't know. I hate to spend
15 the next hour or hour and a half going through
16 marking those dots. So, I'm not sure what to do
17 at this point.

18 Mr. Thornton?

19 MR. THORNTON: I would suggest, if I
20 could, and I don't know how appropriate it is, I
21 believe I understand the concern and your need to
22 identify well logs with dots. I believe that's
23 one of the main thoughts. Is it possible -- and
24 I'm thinking an hour and a half, however long it
25 might be, I believe it's very doable. Is it

1 something that could be held in suspense until
2 July 9th and then to see how Mr. Smith is able to
3 then connect those dots with actually the well
4 logs? Is that appropriate to do come July 9th?

5 THE HEARING OFFICER: Well, Mr. Smith,
6 you're the person --

7 MR. ALAN SMITH: That's fine with me.
8 Part of the problem we have is you cannot find
9 some of those well logs because you do not know
10 the original owner. And even though we've talked
11 to the people that have replaced the well, we
12 don't know when it was drilled or who the
13 original owner was. The ones that we are able to
14 find the original owner, we can tie them to the
15 well logs.

16 So, we feel it's sort of placing an
17 unreasonable burden on us to try to tie down each
18 one of these dots because we cannot find, for
19 example, on the Lawton well right next to me,
20 there is no original well log. Now, Mr. Lawton
21 knows and he testified as to what he did to
22 replace the well and all of that, but we don't
23 have any original information on the Lawton well.
24 And we even know the owner's name there, but
25 there was no well log ever filed.

1 THE HEARING OFFICER: Well, I don't
2 want to prolong the discussion because I want to
3 go back on the record. But you have the ability
4 based on my discussion to identify a well log and
5 identify it as a replacement well. So, that
6 minimal information can come into the record.

7 Now, if you have further information
8 related to that well, and particularly original
9 data from the well itself, then that's additional
10 evidence that's helpful. But see, right now I
11 can't even make that link. I can't link the
12 markings with the well logs themselves other than
13 Jason's general identification pointing to it.
14 But it doesn't help me looking at the names. And
15 consequently, the map isn't really very helpful
16 right now.

17 So, I haven't asked, Mr. Lawrence, what
18 your feeling is about putting off something with
19 respect to this map. I don't want to go through
20 the exercise of marking this thing.

21 MR. LAWRENCE: We're not interested in
22 going through an exercise of marking this map
23 during the hearing, but we also do not wish to
24 bring this up again on July 9th. The protestants
25 have had months of hearings, worth of hearings at

1 this point to get this data compiled and put
2 together. And to prolong the hearing at this
3 point seems to prejudice M3.

4 THE HEARING OFFICER: Well, the other
5 thing is that if that information were to come in
6 today, and I'll leave that up to Mr. Smith, and
7 we can go through that arduous process, but you
8 know, I'm just wondering if that marking could be
9 made and disclosed within a shorter period of
10 time and then the applicants would have two weeks
11 to prepare and look at that. I guess that would
12 be my proposal, rather than turn around and have
13 Mr. Smith with Jason up here marking and
14 identifying through the well logs.

15 So, I guess my proposal would be that
16 it would be marked and supplied to the applicants
17 by a date certain. And then there would be at
18 least ten days to two weeks of time to be able to
19 at least review that and see what it is.

20 MR. ALAN SMITH: That's acceptable. We
21 can identify some of them now. And I believe
22 some of these other witnesses have identified
23 their wells by those orange dots. There were a
24 couple of them that were drilled in 2009 and I
25 don't think we even have dots on those. But we

1 can do the ones we can. The ones we don't have
2 any original well owner information on, I don't
3 know that we're going to be able to show that.

4 THE HEARING OFFICER: Well, whatever
5 information you have, it could be shown on the
6 map. Okay, today is Tuesday. Can I impose a
7 deadline of Friday, Mr. Smith?

8 MR. JASON SMITH: I would have to get
9 that to both Givens Pursley and you?

10 THE HEARING OFFICER: It doesn't have
11 to come to me.

12 MR. JASON SMITH: Okay, July 9th -- the
13 only thing I've got is I'm on duty Friday and
14 Saturday. If I could do that Monday?

15 THE HEARING OFFICER: All right.

16 MR. JASON SMITH: If that wouldn't mess
17 things up.

18 THE HEARING OFFICER: All right, Monday
19 is the deadline.

20 MR. JASON SMITH: Monday I will have it
21 at your office, Mr. Lawrence.

22 MR. LAWRENCE: Thank you.

23 THE HEARING OFFICER: Okay.

24 MR. JASON SMITH: And what you want is
25 you want -- have you guys got your map here?

1 MR. FEREDAY: We have a small version
2 of it. We don't have the big version like this.

3 THE HEARING OFFICER: Well, let's see
4 if we can deliver Deb Gibson's to you, the other
5 copy, and then they wouldn't have to retrieve
6 theirs. Because the question of admissibility is
7 still out there. So, I just -- I just want to
8 cross-reference some things so that there's some
9 sensible ability even on the applicant's part to
10 look at the well logs, and the Hearing Officer at
11 some point to look at the well logs we have and
12 say, "What do we have? What is this?" And we
13 don't have that ability. It's not there.

14 MR. LAWRENCE: I appreciate that,
15 Mr. Hearing Officer. I'd just note that it is
16 also the substance of what these notations on the
17 map will say. For instance, right now the map
18 depicts so-called dry wells. Mr. Smith has
19 stated repeatedly that that's not what they're
20 intending to show, but that is expressly what
21 that map is contending to show. And all we have
22 at this point are drillers reports regarding some
23 wells that were drilled between 2005 and 2008,
24 some of which were marked as replacement wells
25 but not all of which.

1 THE HEARING OFFICER: Sure. And the
2 reference to dry wells right now with the
3 evidence that I have in the record, I would not
4 consider these replacement wells to be dry wells
5 as I understand dry wells. That's what I would
6 have to conclude.

7 MR. ALAN SMITH: We've offered to
8 strike the word "dry" and replace it with the
9 word "replaced."

10 THE HEARING OFFICER: Okay, let's do
11 that on the map as well.

12 MR. ALAN SMITH: And I think it goes to
13 the weight rather than the admissibility. If the
14 Hearing Officer doesn't feel that they are dry
15 wells, or some of them aren't, he can disregard
16 the evidence.

17 THE HEARING OFFICER: Well, I just
18 don't know. There's no evidence in the record
19 even to support it at this point.

20 MR. JASON SMITH: Do you want me to
21 change that to "replacement" then?

22 THE HEARING OFFICER: Well, unless
23 there's some evidence that they actually were dry
24 and that evidence is sufficiently technical. I
25 hate to suggest that that kind of information

1 come in at this point because I think you would
2 be calling witnesses that are not identified and
3 we'd have an evidentiary problem.

4 MR. ALAN SMITH: We can have that to
5 you by Monday. What date is that? June --

6 MR. LAWRENCE: 29th.

7 THE HEARING OFFICER: The 29th. And if
8 it's not there, it's per se inadmissible, I'm not
9 bringing it in, the offer of proof will be
10 inadmissible. Okay?

11 Now, with that, Mr. Smith, I suppose
12 Jason Smith is still -- you want him in the
13 witness chair?

14 MR. ALAN SMITH: Yes, you can retake
15 the stand. You are still under oath.

16 THE HEARING OFFICER: Mr. Smith, if
17 you'll come forward.

18 MR. JASON SMITH: Okay.
19 (IDWR recording resumed.)

20 THE HEARING OFFICER: Okay, we're
21 recording again. You're under oath, Mr. Jason
22 Smith. And I'll refer to you by your first name
23 so that the record is clear.

24 THE WITNESS: I would prefer that.

25 MR. ALAN SMITH: We are on the record?

1 THE HEARING OFFICER: Yes.

2
3 JASON SMITH,
4 previously duly sworn to tell the truth relating
5 to said cause, testified as follows:
6

7 CONTINUED DIRECT EXAMINATION
8 QUESTIONS BY MR. ALAN SMITH:

9 Q. All right, I believe we had just gotten
10 to the Morrison/Christensen well.

11 (Reporter clarification.)

12 Q. (BY MR. ALAN SMITH) The
13 Mosier/Christensen well located on Ballantyne
14 Road.

15 A. I don't know if we pointed this out yet
16 or not. This one should be -- this is Eagle
17 again up to Beacon Light, over to Ballantyne, and
18 it's this one right here that's about a quarter
19 of a mile or so north of Beacon Light Road.

20 Q. You better speak a little louder.

21 A. Okay. This was originally drilled
22 by --

23 THE HEARING OFFICER: Will you bring
24 the easel this direction, Jason, so that you're
25 closer to the microphone.

1 THE WITNESS: (Witness complied.)

2 THE HEARING OFFICER: Thank you.

3 THE WITNESS: Let's see, this was
4 originally drilled in I think that says '73.
5 It's kind of messy. This well was -- I don't
6 know if I've ever seen this before, but it was
7 96 feet 10 inches deep. I don't think I've ever
8 seen inches on there.

9 Q. (BY MR. ALAN SMITH) It's an accurate
10 well driller.

11 A. I guess. I don't know.

12 Q. And the static is 73 feet. That pump
13 was lowered at least once by the new owners. I
14 don't know if there was any owners between -- the
15 current owner is Christensens, but like I said, I
16 don't know if there's any owners between Mosier
17 and Christensen, but I know the pump was lowered
18 at least once. Christensens --

19 MR. LAWRENCE: Mr. Hearing Officer, we
20 would object to Mr. Smith's statement regarding
21 the lowering of the pump. We move to strike that
22 based on hearsay and for lack of foundation.

23 THE HEARING OFFICER: Oh, in the
24 interest of time, Mr. Lawrence, I'll overrule the
25 objection. I recognize some of the deficiencies.

1 THE WITNESS: And the static level of
2 the new well -- this one was probably drilled,
3 I'm going to say within about 20, 25 feet of the
4 old well. So, this well basically covered a
5 period of 33 years and the static level dropped
6 about 27 feet.

7 MR. LAWRENCE: Objection, Mr. Hearing
8 Officer, I don't believe that's a correct
9 characterization to say that the water level
10 dropped 27 feet. These two separate well
11 driller's reports show that the static water
12 levels in the different wells differ by 27 feet.

13 THE HEARING OFFICER: Sustained.

14 Q. (BY MR. ALAN SMITH) So, the static
15 level dropped what? What are the measurements
16 that you show there?

17 MR. LAWRENCE: Objection.

18 THE HEARING OFFICER: Sustained. I
19 think that the reference needs to be changed,
20 Mr. Smith. It's not necessarily dropped, it's a
21 different well.

22 Q. (BY MR. ALAN SMITH) All right, what's
23 the static level in the old well?

24 A. 73 feet.

25 Q. The static level in the new well?

1 A. 100 feet.

2 Q. And did you go on that property when
3 the well was being drilled?

4 A. Yes, I did.

5 Q. Did you talk to the well driller?

6 A. Yes.

7 Q. And was that Phipps?

8 A. I believe that's correct.

9 MR. ALAN SMITH: I believe that's all
10 of the questions I have. We would reserve the
11 right to reoffer Exhibit Nos. 21 and -- or 421
12 and 424.

13 THE WITNESS: You need to offer this
14 one too.

15 MR. ALAN SMITH: Yes, we would like the
16 Mosier/Christensen well marked as Exhibit
17 No. 426, I believe it is.

18 (Exhibit 426 marked.)

19 MR. ALAN SMITH: And we would offer
20 that at this time.

21 THE HEARING OFFICER: So, the two well
22 drillers' reports plus the hand-drawn diagram?

23 MR. ALAN SMITH: Right, all as one
24 exhibit, unless you prefer to mark them
25 separately.

1 THE HEARING OFFICER: No, I don't think
2 so. Mr. Lawrence, any objection?

3 MR. LAWRENCE: Mr. Hearing Officer, we
4 would object to the diagram drawn by Mr. Smith to
5 the extent that he labels the well as being
6 drilled in 1973. In the Mosier well driller's
7 report that date, as far as I can tell, is not
8 noted on that wells driller's report. Also, we
9 object to the handwritten notation on the face of
10 the Larry Christensen well driller's report
11 noting the well as "dry."

12 THE WITNESS: The date that that was
13 written on, that 11/73 came off IDWR's records
14 that are in their files. And I show it as 11/5
15 of '73.

16 THE HEARING OFFICER: Okay, it is a
17 little unusual, Mr. Lawrence, but I have no
18 reason to believe that this received date isn't
19 from a notation -- so, I'll accept that as the
20 date, the approximate date of this, that this
21 well was constructed.

22 The handwritten notation that the well
23 was "dry," I'll ignore that. I'm not even sure
24 what that means, whether that means that this
25 well was dry or the previous one. So, I'll

1 ignore that particular notation.

2 So, with that qualification, I'll
3 receive what's been marked as Exhibit No. 426
4 into evidence. And you need to give me that
5 sheet, Mr. --

6 (Exhibit 426 admitted into evidence.)

7 MR. JASON SMITH: Okay.

8 MR. ALAN SMITH: That concludes our
9 evidence. We would reserve the right to offer
10 Exhibit Nos. 421 and 424 on July 9th.

11 THE HEARING OFFICER: Okay, you were
12 referring to some other documents that I thought
13 you were offering. Am I mistaken, Mr. Smith?
14 Perhaps it was these documents up here that you
15 were --

16 MR. ALAN SMITH: Yes, the map and the
17 bar graph.

18 THE HEARING OFFICER: So, you're just
19 reserving the right?

20 MR. ALAN SMITH: Yes.

21 THE HEARING OFFICER: Okay,
22 cross-examination, Mr. Lawrence? Well, wait a
23 minute. I think we had a method in place for the
24 questioning of these witnesses by the other
25 protestants. Do you want to go through that same

1 format? I thought that's what we did previously,
2 is the other protestants had the opportunity to
3 question their own witnesses. Weren't we doing
4 that, I think?

5 MR. LAWRENCE: I believe that's how you
6 did it before. We can do that again.

7 THE HEARING OFFICER: All right.
8 Mr. Thornton, do you have any questions of
9 Mr. Jason Smith.

10 MR. THORNTON: Yes, I do.

11
12 CROSS EXAMINATION
13 QUESTIONS BY MR. THORNTON:

14 Q. There is an exhibit that was received,
15 I think it was 282, I believe Mr. Hearing Officer
16 has that. And that was --

17 THE CLERK: All of the well logs.

18 Q. (BY MR. THORNTON) So, you have that
19 exhibit in front of you?

20 A. Yes, sir.

21 Q. Are you aware that that Exhibit No. 282
22 was originally put together by Mr. Norm Young and
23 Mr. Paul Drury of ERO?

24 A. Yes, sir.

25 Q. And you're aware that that was part of

1 the research of IDWR's database going -- and
2 looking at an area that was north of the Boise
3 River and bounded generally by Highway 16 and
4 Highway 55?

5 A. Yes, sir.

6 Q. And that that, I believe they went back
7 to -- I think the oldest record in there is about
8 1998.

9 A. I believe it was about a ten-year
10 period, yes.

11 Q. Are you aware that that is the evidence
12 that NACGUA was trying to have identified by Norm
13 Young and Paul Drury, but were unable,
14 unsuccessful in getting them as an expert
15 witness?

16 A. Yeah, I understand that.

17 Q. And are you aware that you can or
18 should be able to take those well logs and
19 relatively easily put those on the dots on the
20 map, the existing well logs right there, for the
21 hearing procedures?

22 A. Yeah, most of them show addresses.

23 Q. Correct.

24 A. Yes.

25 MR. THORNTON: Other than that, I don't

1 think we have any more questions for you.

2 THE HEARING OFFICER: Mr. Edwards, any
3 questions?

4 MR. EDWARDS: No.

5 THE HEARING OFFICER: Thank you.
6 Mr. Lawrence?

7
8 CROSS EXAMINATION
9 QUESTIONS BY MR. LAWRENCE:

10 Q. Mr. Smith, going to the Christensen/
11 Mosier well driller's reports, Exhibit No. 426
12 that you were discussing a moment ago.

13 A. Yes, I'm there.

14 Q. Is it your testimony that the
15 Christensen -- the well driller's report for the
16 Christensen well is for a well that replaced the
17 Mosier well?

18 A. Yes, I believe that's correct.

19 Q. How do you know that the Mosier well,
20 the well driller's report for the Mosier well is
21 the correct well driller's report for the well
22 that was replaced?

23 A. That's kind of the problem with the
24 whole thing of trying to find an older well log
25 and match it to a newer one. Part of the problem

1 out there was up until I'm going to say about
2 1980 or '85, there weren't any addresses. They
3 were all rural routes. And a lot of the area
4 we're talking about, like where a lot of the
5 protestants live, was even a Boise address, not
6 even an Eagle address.

7 The way I backtracked this was I called
8 the Christensens. I went over there when they
9 were drilling the well and talked to the well
10 driller. And that's where that word "dry" comes
11 from. He told me the old well went dry. This
12 was an old 4-inch well that was probably about
13 20 feet from this new well.

14 And when I called the Christensens and
15 talked to them, they said the original owner was
16 a Leroy Mosier. And that's pretty much what
17 you've got to get to to get to an old well log.

18 Q. Mr. Smith, did you realize that the
19 well depicted on the Mosier report is in a
20 different quarter quarter than the well depicted
21 in the Christensen well driller's report?

22 A. We looked at that. That doesn't
23 surprise me. I think there's a lot of these well
24 drillers reports that probably aren't exactly
25 right when it comes to which quarter quarter

1 they're located in.

2 Q. But you don't know that the Mosier
3 report is the precise well driller's report for
4 the well that was replaced by the Christensen
5 well?

6 A. Yeah, I can't say with 100 percent
7 accuracy, but I believe with about 99 percent
8 accuracy that that is correct.

9 Q. Do you know what aquifer the Mosier
10 well was completed into?

11 A. No. I believe it was probably the
12 shallow alluvial aquifer, but that's just my
13 layman's opinion.

14 Q. But it's your testimony that it is --
15 do you believe that the new Christensen well is
16 completed in the same aquifer as the Mosier well
17 or do you know?

18 A. I don't know for sure. My layman
19 opinion would be the PGSA.

20 Q. Your testimony was that these well
21 driller reports are not accurate?

22 A. Probably not 100 percent.

23 Q. Is there any reason to believe that the
24 water levels noted on the well drillers report
25 are more accurate than, say, the quarter quarter

1 information?

2 A. I would say there's a chance they could
3 be wrong there.

4 Q. The water level in the Mosier well
5 driller's report, do you know when that water
6 level measurement was taken?

7 A. On the Mosier well, what was in the
8 Department of Water Resources records was 11/5
9 of '73.

10 Q. I believe the well driller's report
11 notes that it was received on 11/5 of '73; isn't
12 that correct?

13 A. Yes, and that's the date that I am
14 using for when this well was put in. It was
15 probably a week or so before that.

16 Q. But you don't know when it was --

17 A. But I don't know for sure, no. I
18 assume that it was in the fall that this was
19 measured, but I don't know that for a fact.

20 Q. You don't know how it was measured?

21 A. No. No, sir.

22 Q. Do you know what time of year the water
23 level measurement in the Christensen well was
24 taken?

25 A. It was done, I would assume, if you

1 look at the bottom right corner where the Phipps
2 people signed off, I would say it was probably
3 about the second week of May they -- if you look
4 up just a little ways, it says the date it was
5 started was 5/9 of '08 and it was completed in
6 5/12 of '08. So, I would assume it's one of
7 those days right in there.

8 Q. You've heard testimony during this
9 hearing that water level fluctuations in the
10 beginning and end of the irrigation season can
11 cause water level measurements to be somewhat
12 skewed?

13 A. Yes.

14 Q. Looking at Exhibit No. 425, which is
15 the well drillers' reports for Stinar and
16 Madsen --

17 A. Okay. Okay, I'm there.

18 Q. How can you tell that the Madsen well
19 driller's report is for the well that was
20 ostensibly replaced by the Stinar well?

21 A. Well, down in the lower left corner it
22 says lot 8, block 2, Eagle Pines, and it's the
23 corner of Osprey Road and Beacon Light. That's
24 that lot. I knew Floyd Madsen back then and I
25 know he built the place. That's -- again, I had

1 to get to the name to be able to find the well
2 log to match it up with Ilene Stinar.

3 Q. Mr. Smith, do you note that the Stinar
4 well is completed in a different quarter quarter
5 than the Madsen well?

6 A. Again, what I've said before, that
7 doesn't surprise me that that could be off a
8 little bit, adding to the complexity of trying to
9 figure it out.

10 Q. Do you know what aquifer the Madsen
11 well was completed into?

12 A. I would suspect it was in the shallow
13 alluvial aquifer.

14 Q. And do you know what aquifer the Stinar
15 well was completed into?

16 A. My layman's opinion would be the PGSA
17 or what we're calling the PGSA.

18 Q. What do you base that opinion on?

19 A. Depth mostly.

20 Q. Mr. Smith, you don't have any education
21 or experience in hydrogeology; do you?

22 A. No, sir.

23 Q. In well construction?

24 A. No, sir.

25 Q. In geology?

1 A. I've only had some lower division
2 geology courses in college.

3 Q. Referring to the orange dots on your
4 map that's been labeled Exhibit No. 424, and I'll
5 note that per a discussion off the record, we are
6 now calling the dots labeled as "dry wells,"
7 we're going to call them "replacement wells" or
8 "replaced wells."

9 A. Yes, I can change those if you'd like.
10 I can get that done.

11 Q. That's okay for now. Do you know how
12 these wells were constructed, these allegedly
13 replaced wells?

14 A. The new wells?

15 Q. The new wells.

16 A. I've witnessed both cable rigs and air
17 rotary, what Mr. Squires calls "drill and drive."

18 Q. Do you know how deep these wells are?

19 A. Well, they vary. I would have to look
20 at them.

21 Q. Do you know what aquifers these wells
22 are completed into?

23 A. No, not for sure, but most of the
24 replacement wells are probably in the PGSA in my
25 layman's opinion.

1 Q. And on what do you base that opinion?

2 A. Mostly depth. Most of these wells are
3 fairly close to us. And just from the testimony
4 I've heard over the last 12 days or whatever, you
5 know, about what the PGSA runs, at least in that
6 area below grade.

7 Q. But you have no actual knowledge --

8 A. No.

9 Q. -- that these wells are completed in
10 any particular aquifer?

11 A. No, that's my layman's opinion.

12 Q. In regard to the wells that we have
13 noted during this hearing that have been termed
14 "replaced wells" per the well drillers reports so
15 far, the previous wells, do you know what
16 aquifers those wells were completed into?

17 A. No, not for sure.

18 Q. Do you have any idea what aquifers
19 those wells were completed into?

20 A. Most of them were probably in the
21 shallow alluvial aquifer.

22 Q. Do you have any facts to support that
23 statement?

24 A. Just the depth is mostly what I'm
25 relying on. And that's my layman's opinion.

1 Q. Do you know how those previous wells
2 were constructed?

3 A. I'm sure it was a drill and drive
4 method, but no.

5 Q. Were they sealed to depth?

6 A. I don't know that.

7 Q. Did any of those wells produce sand
8 before they were replaced?

9 A. A couple that I know of did produce
10 small amounts of sand.

11 Q. Did you personally witness these wells
12 producing sand --

13 A. No.

14 Q. -- or was this based on conversations
15 you've had with --

16 A. Yes, that was based on conversations
17 with the homeowners.

18 Q. Do you know of any problems pertaining
19 to wells that are completed into the Pierce Gulch
20 Sand Aquifer?

21 A. Not that I can think of off the top of
22 my head.

23 Q. Mr. Smith, in regards to the wells
24 you've described thus far, is it fair to say that
25 the old wells were not completed into the Pierce

1 Gulch Sand Aquifer but the new wells are
2 completed into the Pierce Gulch Sand Aquifer, or
3 at least that's your estimation of the facts?

4 A. And you're saying for the most part?
5 For the most part, that's what's going on? I
6 would agree with that statement.

7 Q. Do you know that when these wells were
8 replaced, were they all deepened? Were they all
9 completed to a deeper depth?

10 A. A deeper depth? To the best of my
11 knowledge and what I could research, yes, that's
12 true.

13 Q. Is it your contention in reference to
14 your map, Exhibit No. 424, that the wells shown
15 in green have caused the wells, the replaced
16 wells, to need to be replaced or deepened?

17 A. I believe they have been a factor.

18 Q. On what do you base that opinion?

19 A. Just my layman's common sense opinion.
20 There's no expert testimony there at all. What I
21 believe is going on is each of those green dots
22 that represent those municipal wells, each of
23 those has a cone of depression, you know,
24 Mr. Squires has talked about. And what I believe
25 is occurring, in my layman's opinion, is each one

1 of these has -- and it depends how much it's
2 pumping, transmissivity, all of that. There's a
3 lot of variables. But each one of those has a
4 cone of depression. And it's not just the green
5 ones. There's probably this many old ones that
6 are in that same area and each one of those has
7 its own cone of depression.

8 And as each one of those cones of
9 depression meet each other, it's going to make
10 the cone of depression of both of those go a
11 little bit deeper. And this is based on the
12 testimony of those guys, of your experts.

13 Now, what I believe is going on is
14 there's, you know, that fault that runs through
15 here and then there's the green line that takes
16 off in this direction. That aquifer is deeper
17 down here in the southwest. And as it comes up
18 to the northeast it gets shallower and actually
19 comes close to the surface of the land or to the
20 surface of the land.

21 Now, this no-flow barrier, or what we
22 believe is, is not allowing any water to flow
23 through or very little. This is the end of the
24 aquifer. And what I believe is happening, since
25 this tips up towards the M3 property, is these

1 wells, the newer ones and the older ones and
2 these cones of depression, I believe, layman's
3 opinion, that what it's doing is it's pulling
4 water back towards a deeper portion of the
5 aquifer. And we can look at Exhibit No. 42,
6 figure 5, I believe.

7 Q. Well, we can get to that, Mr. Smith,
8 but you don't have any hydrologic studies to
9 support --

10 A. No, that's my --

11 Q. -- the statements that you just made;
12 do you?

13 A. Yeah, that's my layman opinion.

14 Q. Have you spoken with anybody in regard
15 to the statements you made that would corroborate
16 those statements?

17 A. No.

18 Q. Any expert, anyone --

19 A. No.

20 Q. -- with expert background?

21 A. No.

22 Q. Do you know whether those wells
23 depicted in green on your map are all completed
24 into the PGSA?

25 A. I don't know that, but I know they are

1 all fairly deep wells. So, I believe they are.

2 Q. Do you know that all of them are
3 pumping at full capacity?

4 A. I don't think several of them are
5 pumping at full capacity.

6 Q. The yellow dots on your map which are
7 the wells --

8 A. That would be the --

9 Q. Sorry, I --

10 A. Not wells, but the --

11 Q. Water rights granted but not yet
12 producing?

13 A. Yeah. Yes.

14 Q. Those are -- those are not all
15 completed into the PGSA; are they?

16 A. Yeah, those wells as far as I know, the
17 yellow ones, plus -- well, yeah, the yellow ones,
18 those six, those are not completed at all as far
19 as I can tell from Water Resources records.
20 Those are permits, but they haven't been actually
21 punched yet.

22 Q. Then I'll rephrase. Those water rights
23 are not all contemplated to be completed into the
24 PGSA when those wells are drilled; are they?

25 A. I don't know the answer to that.

1 Q. Do you see the two yellow dots to the
2 northeast of the M3 property almost right on the
3 border?

4 A. To the northeast, yes.

5 Q. Do those depict the SunCor or Avimor
6 wells?

7 A. Yeah, they're both 5 cfs proposed
8 Avimor wells.

9 Q. Have you heard testimony during this
10 hearing that the Avimor wells are completed into
11 a different aquifer, the Willow Creek Aquifer?

12 A. I don't believe those are completed
13 yet. I believe those are still --

14 Q. I'll rephrase. That those water
15 rights, the wells for those water rights will be
16 completed into a different aquifer, the Willow
17 Creek Aquifer?

18 A. Well, that could be, but I'm not sure
19 that I buy that.

20 Q. Mr. Smith, you don't have any basis for
21 the statement that you just made?

22 A. Yes, I do.

23 MR. ALAN SMITH: Let the witness finish
24 his answer.

25 THE WITNESS: Yes, I do. Go to Exhibit

<p style="text-align: right;">Page 2861</p> <p>1 No. 71.</p> <p>2 Q. (BY MR. LAWRENCE) Mr. Smith, you don't</p> <p>3 have --</p> <p>4 A. Page 8.</p> <p>5 Q. -- any education or experience</p> <p>6 in hydrogeology; do you?</p> <p>7 A. No.</p> <p>8 Q. Any in geology?</p> <p>9 A. Some geology in college, but like I</p> <p>10 said, it was lower level. I think 200 series was</p> <p>11 about the highest geology class I took.</p> <p>12 If we go to Exhibit No. 71, page 8.</p> <p>13 Q. Mr. Smith, I note that you pointed us</p> <p>14 to a presentation prepared by Dick Glanzman.</p> <p>15 A. Yes.</p> <p>16 Q. M3's geochemist.</p> <p>17 A. Yes.</p> <p>18 Q. You don't have any education or</p> <p>19 experience in geochemistry; do you?</p> <p>20 A. No, sir, other than what I've gotten</p> <p>21 here.</p> <p>22 Q. Mr. Smith, do you recall Mr. Glanzman</p> <p>23 testifying that the Willow Creek Aquifer and the</p> <p>24 PGSA are discrete, that they are distinct from</p> <p>25 each other?</p>	<p style="text-align: right;">Page 2863</p> <p>1 figuring on doing is drilling some wells and</p> <p>2 pumping that water up here. Well, one of those</p> <p>3 wells is an injection, going to be used to inject</p> <p>4 water up here according to what's in the IDWR</p> <p>5 records.</p> <p>6 I don't think they're going to pump out</p> <p>7 of the same aquifer, inject half of that water</p> <p>8 into that same aquifer. Plus, the arsenic level</p> <p>9 is high. I think if there's any way possible,</p> <p>10 they are not going to drill in the Willow Creek,</p> <p>11 they are going to try to drill in the PGSA. And</p> <p>12 most of it is from the arsenic level. And that's</p> <p>13 just my layman's perspective on the whole thing</p> <p>14 That's why those dots were put up there where</p> <p>15 they propose to drill, but I would be surprised</p> <p>16 if they're actually drilled there.</p> <p>17 Q. Mr. Smith, this is all speculation on</p> <p>18 your part; isn't it?</p> <p>19 A. This is all just my opinion, yes.</p> <p>20 Q. This is your lay opinion? You have no</p> <p>21 background in --</p> <p>22 A. Correct.</p> <p>23 Q. -- geochemistry, hydrogeology?</p> <p>24 A. Correct.</p> <p>25 Q. Do you have any information from SunCor</p>
<p style="text-align: right;">Page 2862</p> <p>1 A. I believe I recall that, yes.</p> <p>2 Q. What facts do you have to dispute that</p> <p>3 testimony by Mr. Glanzman?</p> <p>4 A. I don't -- I don't dispute that. But</p> <p>5 what I am saying is if you go to Exhibit No. 71,</p> <p>6 going back to about four questions ago, on page 8</p> <p>7 it shows the Pierce Gulch Sand Aquifer arsenic</p> <p>8 level at .004 level. The Willow Creek Aquifer,</p> <p>9 if you go to page 14, is at .025, which exceeds</p> <p>10 the drinking water standards of .010.</p> <p>11 And while I don't know for sure, I</p> <p>12 believe since these wells have not been punched</p> <p>13 yet, that it may be a mistake to assume that</p> <p>14 they're going to go into the Willow Creek</p> <p>15 Aquifer. Because arsenic, I know from past</p> <p>16 testimony, is hard and expensive to get rid of.</p> <p>17 And just because that's where those dots are --</p> <p>18 there's a pretty good chunk of property, several</p> <p>19 sections in there that they can drill into.</p> <p>20 So, from a layman's perspective here</p> <p>21 and kind of a common sense approach -- well, and</p> <p>22 there's one more thing, too, that leads me to</p> <p>23 believe that that probably won't happen. One of</p> <p>24 those wells -- and I'll point out where Avimor</p> <p>25 is. It's about right here. And what they're</p>	<p style="text-align: right;">Page 2864</p> <p>1 itself as to where they're going to be drilling</p> <p>2 their wells?</p> <p>3 A. No, and I don't believe it will</p> <p>4 actually be SunCor. It sounds like it's going to</p> <p>5 be somebody else.</p> <p>6 Q. Do you have any information from</p> <p>7 SunCor's consultants as to where they propose to</p> <p>8 drill --</p> <p>9 A. No.</p> <p>10 Q. -- their wells?</p> <p>11 A. No.</p> <p>12 THE COURT REPORTER: Mr. Jason Smith,</p> <p>13 please wait till he finishes the question.</p> <p>14 THE WITNESS: Sorry.</p> <p>15 Q. (BY MR. LAWRENCE) Mr. Smith, do you</p> <p>16 know whether in their application for water</p> <p>17 rights permit SunCor specifically proposed to</p> <p>18 drill wells into the Willow Creek Aquifer?</p> <p>19 A. To the best of my recollection, I don't</p> <p>20 think that in Water Resources records it says</p> <p>21 which aquifer. It has the map sections in</p> <p>22 several of those, but I don't believe it actually</p> <p>23 speaks to an aquifer, the best I can remember.</p> <p>24 Q. Mr. Smith, are you familiar with the</p> <p>25 Eagle Pines Water Users Association well?</p>

1 A. I am a little bit familiar with it.
2 There are people in the room that are much more
3 familiar with it than me.

4 Q. Do you know how the discharge from the
5 Eagle Pines well is measured?

6 A. No, I don't.

7 Q. Do you know whether the Eagle Pines
8 well water level is monitored?

9 A. I believe it is, but that's from what
10 somebody has told me. I haven't actually seen
11 that.

12 Q. Does Eagle Pines know how much water it
13 pumps from its well in any given year?

14 A. I don't know the answer to that. Like
15 I said, there's people in the room that know much
16 more about that than I do.

17 Q. You are an Eagle Pines witness in this
18 matter today; aren't you?

19 A. Well, I'm either Eagle Pines' witness
20 or I'm Alan Smith's personal witness. I'm not
21 sure which. Both, I guess.

22 Q. Mr. Smith, turning back to your map,
23 the yellow dots to the east which depicts a --

24 A. Way east?

25 Q. Way, farthest to the east.

1 say that the blue line, the rectangle, we took
2 everything in that rectangle. Just because that
3 dot is up there doesn't mean I'm saying that it's
4 coming from the Pierce Gulch. That's just a
5 proposed water right in that rectangle.

6 Q. How many other wells are in that
7 rectangle?

8 A. New wells?

9 Q. All wells.

10 A. All wells? Thousands. I don't know.
11 I know it's a lot.

12 Q. How many pink dots or orange dots
13 denoting replaced wells are on the map?

14 A. Let's see, there's 10, 17 -- I believe
15 20 total red dots.

16 Q. So, if there are 20 replaced wells but
17 thousands of existing wells, wouldn't you agree
18 that the replaced wells are a quite small
19 percentage of the overall wells in the area?

20 A. It would be -- yeah, it would be -- if
21 there's 2,000 wells and 20 wells go dry or
22 replaced, that would be 1 percent; right? Yeah,
23 1 percent.

24 Q. Some of the wells that you noted when
25 we were going through the well drillers report

1 A. Farthest to the east? The JMM Dry
2 Creek, I think. This one?

3 Q. Is it your testimony that depicts the
4 JMM Dry Creek water right?

5 A. I could check that in my records if you
6 want, but I believe that's correct.

7 Q. That water right is not proposed to be
8 diverted from the Pierce Gulch Sand Aquifer; is
9 it?

10 A. It didn't speak to which aquifer it was
11 going in. It just gave the map section that the
12 proposed well was going to go.

13 Q. Do you know which aquifer that that
14 well is proposed to be completed into?

15 A. No, I don't.

16 Q. That well over in the Dry Creek area,
17 is that not on the other side of the West
18 Boise/Eagle fault that you pointed out a few
19 minutes ago?

20 A. I believe that's correct, yes.

21 Q. Have you heard of any testimony in this
22 hearing that the Pierce Gulch Sand Aquifer
23 extends to where that JMM Dry Creek well is?

24 A. No, I haven't heard any testimony past
25 that red line Boise/Eagle fault. But let me also

1 during your direct testimony were -- strike that.

2 Mr. Smith, could you please turn to
3 your Exhibit No. 413.

4 A. (Witness complied.) Okay, I've got it.

5 Q. Mr. Smith, under the first section
6 under the heading "People" you wrote that M3 is
7 proposing 7,153 dwellings times 2.6 people.

8 A. Yes, sir.

9 Q. Are you aware that to calculate demand
10 M3 used a persons per household figure of 2.74
11 people per household?

12 A. I know -- I don't remember the exact
13 figure, but I remember Mr. Church used a slightly
14 higher figure for this specific area. That 2.6
15 came from a 2005 U.S. Census and I believe this
16 figure was more for a Boise area. Apparently we
17 tend to have just a little bit more average
18 people per household.

19 Q. Do you believe that your figure is more
20 accurate than Dr. Church's figure?

21 A. No, I don't, but I did this before I
22 ever heard what Mr. Church testified to.

23 Q. Using the actual per household figure
24 used by M3 of 2.74 people, that would make your
25 calculated figure of 18,600 artificially smaller;

1 wouldn't it?
 2 A. A little bit. I could -- I have a
 3 calculator somewhere. I can tell you how much,
 4 if you'd like.
 5 Q. That's fine. No thank you. Under the
 6 second section, "Land," you note the United Water
 7 service area of 150 square miles and the M3
 8 service area or proposed service area of roughly
 9 9-1/2 square miles.
 10 A. Yes, sir.
 11 Q. United Water is not obligated to serve
 12 every use within its service area; is it?
 13 A. You're speaking as far as like we were
 14 earlier about watering like maybe a commercial
 15 area?
 16 Q. That's correct.
 17 A. I believe they're obligated to serve
 18 anybody in their area that needs potable water.
 19 But as far as, you know, irrigation, there is
 20 some canal water in that area that's used for
 21 farming, watering yards, that type of thing.
 22 Q. There are also private wells within
 23 that service area?
 24 A. Yes, if they have not tied onto United
 25 Water, yeah, they would probably still have

1 private wells.
 2 Q. United Water does not supply water to
 3 any irrigated park open space; do they?
 4 A. I don't know that for sure. I wouldn't
 5 think they would want to do that cost wise, but I
 6 don't know that for sure.
 7 Q. Did you look into that when you were
 8 preparing your analysis?
 9 A. No, sir.
 10 Q. Considering the fact that M3 will be
 11 obligated to irrigate all parks, golf courses,
 12 and open space areas within its service area,
 13 it's not an apples to apples comparison to
 14 compare M3 to United Water, who doesn't have to
 15 serve those uses; is it?
 16 A. Well, you do have some canal water and
 17 you do have some existing groundwater that's not
 18 in your original 23.18 cfs. And there is going
 19 to be some reuse water. It would be hard for me
 20 to do an exact apples to apples comparison, but
 21 as close as I can get as a lay person, I guess
 22 that's as close as I can get those apples.
 23 Q. Does United Water serve industrial uses
 24 within its service area?
 25 A. Yes, I believe they supply water to

1 Micron, HP, I'm pretty sure just about everything
 2 that's in that area.
 3 Q. And I believe your testimony earlier
 4 today was that the figures you include on your
 5 analysis in Exhibit No. 413 include all of United
 6 Water's, or at least you believe it includes all
 7 of United Water's uses that it serves?
 8 A. I believe that's correct.
 9 Q. M3 does not serve any or is not
 10 proposing to serve any industrial uses within its
 11 service area; is it?
 12 A. Not as far as I know.
 13 Q. Again, that would make a comparison
 14 between United Water and M3's uses apples to
 15 oranges; wouldn't it?
 16 A. Yeah, well, it wouldn't be -- it's as
 17 apples to apples as I can get it being a lay
 18 person.
 19 Q. Mr. Smith, if you could please turn to
 20 Exhibit No. 42, which is the M3 second amended
 21 application, tab 5. I believe more specifically
 22 it's tab A-5.
 23 A. Okay, I'm at tab 5.
 24 Q. If you turn to what's labeled as
 25 Exhibit 5.7, it's a spreadsheet of multiple

1 pages. Did you review this spreadsheet?
 2 A. I looked through it and tried to digest
 3 it. I wouldn't even pretend to say that I
 4 understood a lot of it.
 5 Q. Do you understand that this spreadsheet
 6 was used to calculate M3's water demands for the
 7 M3 project at full buildout?
 8 A. That was my impression, yes.
 9 Q. Is there anything in this spreadsheet
 10 that you disagree with that you can point us to?
 11 A. No.
 12 Q. Did you hear the testimony of Dr. Steve
 13 Holt earlier in this hearing?
 14 A. Yes.
 15 Q. Have you reviewed his engineering
 16 report which is included as Exhibit 33-L?
 17 A. No, I have not.
 18 Q. You don't know what's contained within
 19 his engineering report?
 20 A. No, I don't even have that
 21 Exhibit 33-L.
 22 Q. Did you hear Mr. Holt or Dr. Holt
 23 testify about his methodology for preparing the
 24 spreadsheet in Exhibit 42-A5 and the calculated
 25 water demands for M3?

1 A. I heard his testimony.
 2 Q. Did you disagree with anything Dr. Holt
 3 testified to?
 4 A. No.
 5 Q. Do you have any reason to question his
 6 methodology?
 7 A. No.
 8 Q. His conclusions?
 9 A. No.
 10 Q. Mr. Smith, you're aware that M3
 11 proposes to recapture, treat, and reuse all of
 12 the wastewater that it generates from indoor
 13 potable uses?
 14 A. Yes, I've heard that testimony.
 15 Q. Do all of United Water's customers
 16 treat and reuse their indoor potable wastewater?
 17 A. No, I think hardly any do.
 18 Q. Would M3's plans to recapture, treat,
 19 and reuse its wastewater further the conservation
 20 of water resources?
 21 A. Yes.
 22 Q. Turning to Exhibit No. 417, this is the
 23 attachment C from M3 Eagle's second amended
 24 application listing existing points of diversion;
 25 is that right?

1 A. 417 you said?
 2 Q. 417.
 3 A. Okay, yes. Yes, I've got that one.
 4 Q. Do you know whether these wells provide
 5 supplemental or primary irrigation water rights?
 6 A. No, I believe most of these are
 7 domestic wells. The only one that I know of off
 8 the top of my head that's an irrigation well is
 9 the Kling irrigation well.
 10 Q. Do you know whether the Kling
 11 irrigation well supplies supplemental or primary
 12 irrigation water rights?
 13 A. I recall reading something about that,
 14 but I can't tell you off the top of my head what
 15 that actually was.
 16 Q. Is it your belief that the Kling
 17 irrigation well is entitled to supply primary
 18 irrigation water?
 19 A. I don't recall. I just don't. I don't
 20 remember. But I remember something about that
 21 somewhere in my reading.
 22 Q. You mentioned the surface water
 23 irrigation rights ditch shares that M3 currently
 24 owns.
 25 A. Yes.

1 Q. Do you understand that M3's application
 2 takes the use of those shares into account in
 3 calculating its overall water demands?
 4 A. I don't know that that's correct.
 5 You're saying that this 3.94 cfs is part of the
 6 23 cfs?
 7 Q. Mr. Smith, if I could refer you to
 8 Exhibit No. 42, tab A5 again.
 9 A. Okay.
 10 Q. The spreadsheet, Exhibit 5.7, the first
 11 page of the spreadsheet.
 12 A. (Reviewing document.) Yes, I'm there.
 13 Q. Do you see rows 37 and 38 of the
 14 spreadsheet?
 15 A. Yes.
 16 Q. And under column C do you see where for
 17 public area irrigation, this is the section
 18 entitled "Public Area Irrigation Using
 19 Non-Potable Water," the spreadsheet notes that it
 20 excludes 98 acres irrigated with ditch shares
 21 and then in row 38 it says, "Excluding 99 acres
 22 irrigated with ditch shares."
 23 A. (Reviewing document.) I'm not sure I
 24 understand your point there, Michael.
 25 Q. Mr. Smith, don't these notations in

1 Exhibit No. 42, tab A5, Exhibit 5.7 that state
 2 that the spreadsheet excludes 98 acres irrigated
 3 with ditch shares and 99 acres irrigated with
 4 ditch shares, doesn't that show that the M3
 5 application has taken ditch shares into account
 6 in computing its overall water demands?
 7 A. I'm not sure I understand enough of
 8 that to answer that. It might, but I'm not
 9 positive.
 10 MR. LAWRENCE: Could we have a minute
 11 off the record, please?
 12 THE HEARING OFFICER: Yes, let's go off
 13 the record.
 14 (Discussion held off the record.)
 15 THE HEARING OFFICER: Back on the
 16 record. We're recording again. Mr. Lawrence.
 17 MR. LAWRENCE: Mr. Hearing Officer, we
 18 have no further questions for Mr. Smith except we
 19 would like to reserve the opportunity to address
 20 the map and the Exhibit No. 421, which is the bar
 21 chart that accompanies the map, when they come
 22 back on July 9th as well as any other matters
 23 that Mr. Smith may testify to at that point.
 24 THE HEARING OFFICER: Okay, granted.
 25 All right. Well, it's about almost 5 minutes to

1 5:00. It's probably time to dismiss and clean up
 2 and go. So, we'll see you back here on the 9th.
 3 Now, we went looking for the map again,
 4 one that was originally submitted to the
 5 department. And those things are a little bit
 6 difficult for us to track. Debbie Gibson seems
 7 to think that it may have been left at DEQ when
 8 we were over there. I don't recall it being
 9 there. But anyway, the last time I remember it,
 10 it was in our vault, but she hasn't been able to
 11 locate it yet.
 12 So, Mr. Smith, I guess that method of
 13 getting, you know, a second copy that you can
 14 mark and provide for Givens Pursley isn't
 15 available. So, I'm wondering if there's a way
 16 for you to get theirs and mark it up, would be
 17 the easiest alternative at this point.
 18 MR. JASON SMITH: Any ideas, Jeff?
 19 Michael? Do you guys have that map still or --
 20 MR. FEREDAY: We may have.
 21 MR. LAWRENCE: We have a reduced
 22 version.
 23 MR. FEREDAY: That's all we have?
 24 THE HEARING OFFICER: You don't have a
 25 larger copy that was provided?

1 MR. LAWRENCE: At our office we do.
 2 MR. FEREDAY: We do?
 3 MR. LAWRENCE: We do at our office.
 4 MR. JASON SMITH: Okay.
 5 MR. ALAN SMITH: Mr. Thornton I think
 6 has --
 7 MR. THORNTON: Has which one now?
 8 MR. ALAN SMITH: The big map like is up
 9 there on the wall.
 10 MR. THORNTON: Actually, I don't
 11 believe that I remember receiving that. But I
 12 was just going to offer, Mr. Hearing Officer,
 13 that if appropriate, this map when it's redone
 14 could be taken to Eagle Blueprint and they charge
 15 about \$3.50 to make a copy that size.
 16 MR. JASON SMITH: They'll do it in
 17 color?
 18 MR. THORNTON: Color, I don't know.
 19 But it may be that you need to go back over it
 20 and add your colored dots.
 21 MR. JASON SMITH: Okay.
 22 MR. THORNTON: I can't speak to color,
 23 but they do a blueprint of it.
 24 MR. JASON SMITH: I'll call Jeff or
 25 Michael. Let's see, today is Tuesday. I'll

1 maybe try to call you tomorrow.
 2 MR. FEREDAY: Tomorrow would be good.
 3 MR. LAWRENCE: We can provide you with
 4 this copy of our map now. It's reduced, but it's
 5 legible. And if you simply made a key to the
 6 dots perhaps even on a separate piece of paper --
 7 MR. JASON SMITH: Is that a copy of --
 8 MR. LAWRENCE: Of your map.
 9 MR. ALAN SMITH: Why don't you take a
 10 look at it.
 11 THE HEARING OFFICER: In whatever form
 12 you want to reproduce the map, I don't care.
 13 It's just that Givens Pursley needs to have
 14 something that's legible by no later than next
 15 Monday, the 29th of June.
 16 MR. JASON SMITH: Okay. Would that be
 17 okay for you guys if I indicated which wells went
 18 with which marks there by just labeling like A
 19 through M?
 20 MR. FEREDAY: Yes.
 21 MR. LAWRENCE: Sure.
 22 MR. JASON SMITH: Would that be okay on
 23 these?
 24 MR. FEREDAY: Yes.
 25 MR. LAWRENCE: Sure.

1 MR. JASON SMITH: Then you would get
 2 the corresponding well logs that I have.
 3 MR. FEREDAY: Yes.
 4 MR. LAWRENCE: Sure.
 5 MR. ALAN SMITH: How do you have the
 6 copy if you don't have the large original map?
 7 That was delivered to you.
 8 MR. FEREDAY: We do have the large
 9 original map. We don't have it here today.
 10 MR. LAWRENCE: It's at our office.
 11 THE HEARING OFFICER: Whatever you want
 12 to do in making that arrangement. You could go
 13 by and pick up the large one and mark both of
 14 them and then they're identical.
 15 MR. JASON SMITH: I will get those
 16 marked. I will get the "Dry" redone with
 17 "Replacement" up there. So, I'll try to call
 18 them, then. All right, we'll get it done and
 19 I'll get it to you no later than Monday and drop
 20 it off at your office downtown.
 21 THE HEARING OFFICER: Anything else?
 22 MR. THORNTON: A question that I have
 23 as far as other public witnesses identified, that
 24 there is one public witness that wasn't able to
 25 attend because of a daughter's wedding today, but

1 had written you a letter to appear on July 9th.

2 Is that still possible?

3 THE HEARING OFFICER: I think that's
4 fine. I don't know what time would be best.

5 MR. THORNTON: I think you can identify
6 whatever time and I'll pass that information on.

7 THE HEARING OFFICER: Well, based on my
8 sense of where we're at, I guess I would say mid
9 to late morning. We ought to be shifting perhaps
10 from protestants presentation back to rebuttal
11 testimony, I would guess.

12 MR. FEREDAY: Yes.

13 MR. THORNTON: So, perhaps 10:00 or so.

14 MR. FEREDAY: Well, if it could be done
15 by 10:00, yes.

16 THE HEARING OFFICER: All I can do is
17 estimate.

18 MR. FEREDAY: At the latest, yeah.

19 THE HEARING OFFICER: Okay, we'll start
20 at 9:00 on the 9th. I do want to clean up, but
21 we can do that off the record. So, we'll close
22 or go off the record at this time.

23 (Proceedings adjourned at 4:59 p.m.)

24 -oOo-

25

1 REPORTER'S CERTIFICATE

2 I, SHERI LUDIKER FOOTE, CSR No. 90,
3 Certified Shorthand Reporter, certify:

4 That the foregoing proceedings were taken
5 before me at the time and place therein set
6 forth, at which time the witness was put under
7 oath by me;

8 That the testimony and all objections made
9 were recorded stenographically by me and
10 transcribed by me or under my direction;

11 That the foregoing is a true and correct
12 record of all testimony given, to the best of my
13 ability;

14 I further certify that I am not a relative
15 or employee of any attorney or party, nor am I
16 financially interested in the action.

17 IN WITNESS WHEREOF, I set my hand and seal
18 this 29th day of June, 2009.

19
20 Sheri Ludiker Foote

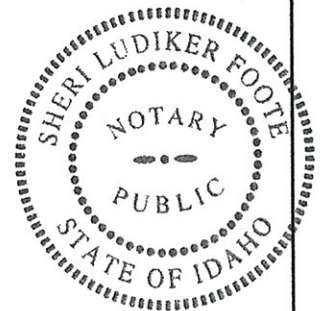
21 SHERI LUDIKER FOOTE, CSR, RPR, CRR

22 Notary Public

23 P.O. Box 2636

24 Boise, Idaho 83701-2636

25 My commission expires January 17, 2010



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