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DEPARTMENT OF  
WATER RESOURCES

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

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

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

**RESPONSE TO M3  
EAGLE 9, SEPTEMBER  
ARGUMENT**

Eagle Pines Water Users Association, by and through its designated spokesperson hereby responds to the 9, September, 2009 Argument of M3 Eagle.

1. Protestants reiterate their position as stated in their September 8, 2009 "Notice of Opposition". (See also the North Ada County group's 4, September, 2009 response.)
2. At no time throughout these proceedings was it stated by counsel for M3 that they intended to have the M & M transcript "designated as the official transcript."
3. At the outset, counsel for M3 stated in their "9, September, 2009 Response" that the M & M transcript which has been lodged with the Department must now be the designated the official transcript because it has been "received by the Hearing Officer under Rule 650" - that argument further supports our complaint that this was done without any prior notice to Protestants.

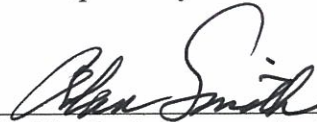
Counsel has practiced law long enough to know that the proper procedure is to file a

“Motion” and “Notice it For Hearing” - **not to do it and then notify the adverse parties afterward that it has been done.** This is not fundamental fairness.

4. We do not contend and never would that the M & M transcript has been altered, edited, or in any way misrepresents the hearing testimony, however, mistakes and misunderstandings do occur. This is especially so in the present case where there are larger amounts of hydrological and geological “lingo” used.
5. The conversation during the July 30, 2009 hearing concerned **using the transcript as an aid to determine exactly which exhibits**, out of a tremendous volume of documents, **had been admitted**. The Hearing Officer stated: “Okay, if we need to do that . . . I hadn’t requested it.”

Wherefore, Protestants urge the Hearing Officer to deny the “Motion to Designate the M & M transcript the Official Transcript”.

Respectfully submitted,



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Alan Smith, Spokesperson for Eagle Pines and  
individually

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18<sup>th</sup> day of September, 2009, I mailed a true and correct copy of the foregoing document to all parties set forth below:

### NOTICE OF SERVICE AND DISCOVERY

North Ada County Groundwater Users Association  
John Thornton  
5264 N Sky High Lane  
Eagle, ID 83616

U.S. Mail  
 Hand Delivered  
 Overnight Mail  
 Facsimile  
 E-mail

Norman Edwards  
884 W Beacon Light Road  
Eagle, ID 83616

U.S. Mail  
 Hand Delivered  
 Overnight Mail  
 Facsimile  
 E-mail

Jeffrey C. Fereday  
GIVENS PURSLEY LLP  
601 West Bannock Street  
PO Box 2720  
Boise, ID 83701-2720

U.S. Mail  
 Hand Delivered  
 Overnight Mail  
 Facsimile  
 E-mail

John Westra  
Western Regional Office  
Idaho Department of Water Resources  
2735 Airport Way  
Boise, Idaho 83705-8052

U.S. Mail  
 Hand Delivered  
 Overnight Mail  
 Facsimile  
 E-mail

Gary Spackman, Hearing Officer  
State of Idaho  
Department of Water Resources  
322 E Front Street  
Boise, Idaho

U.S. Mail  
 Hand Delivered  
 Overnight Mail  
 Facsimile  
 E-mail

