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DEPARTMENT OF WATER RESOURCES

Jeffrey C. Fereday [ISB No. 2719]
Michael P. Lawrence [ISB No. 7288]
GIVENS PURSLEY LLP
601 West Bannock Street
P.O. Box 2720
Boise, Idaho 83701-2720
Office: (208) 388-1200
Fax: (208) 388-1300
www.givenspursley.com
Attorneys for M3 Eagle LLC

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

IN THE MATTER OF APPLICATION
FOR PERMIT NO. 63-32573 IN THE
NAME OF M3 EAGLE LLC

**AFFIDAVIT OF MICHAEL P. LAWRENCE
IN SUPPORT OF M3 EAGLE'S RESPONSE
TO PROTESTANTS' OPPOSITION TO
MOTION TO DESIGNATE OFFICIAL
HEARING TRANSCRIPT**

State of Idaho)
) ss.
County of Ada)

Michael P. Lawrence, being first duly sworn upon oath and upon his personal knowledge, deposes and states:

1. I am one of the attorneys of record for Applicant M3 Eagle LLC ("M3 Eagle") in this matter.

2. I make this affidavit based on my own personal knowledge.

3. Attached hereto as Exhibit A are true and correct copies of sixteen Reporter's Certificates executed by the certified shorthand reporters ("C.S.R.s") of M&M Court Reporting Services, Inc. ("M&M"), who attended, recorded, and transcribed the proceedings at the sixteen days of hearing in this matter. The Reporter's Certificates in Exhibit A were included with and

correspond to the transcripts M&M prepared for the day of hearing noted at the top of each Certificate.

4. Attached hereto as Exhibit B is a true and correct copy of a portion of M&M's certified hearing transcript for day 13 of the hearing in this matter. Page 2976 of this transcript portion contains M3 Eagle's counsel's statement that M3 Eagle intended to provide the Hearing Officer with a copy of the complete hearing transcript.


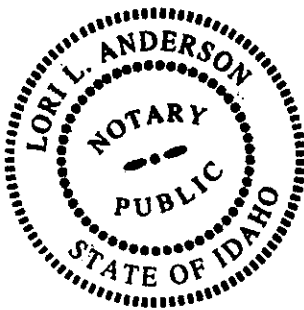
5. Attached hereto as Exhibit C is a true and correct copy of a portion of transcript prepared by M&M containing off-the-record discussions held on day 16 of the hearing in this matter. Pages 14 to 15 of this transcript portion contain a colloquy between M3 Eagle's counsel and the Hearing Officer demonstrating their common understanding that M3 Eagle intended to provide the Hearing Officer with a copy of the hearing transcript.

DATED this 9th day of September, 2009.



Michael P. Lawrence

Subscribed and sworn to before me this 9th day of September, 2009.



Notary Public for Idaho
Residing at Boise Idaho
My Commission expires Aug. 23, 2013

Certificate of Service

I HEREBY CERTIFY that on this 9th of September 2009, the foregoing was filed, served, or copied as follows:

FILED

Idaho Department of Water Resources
Attn: Gary L. Spackman
322 East Front Street
P.O. Box 83720
Boise, ID 83720-0098

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

SERVICE

John Westra
Western Regional Office
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705-5082

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

North Ada County Groundwater Users Association
c/o David Head
855 Stillwell Drive
Eagle, ID 83616

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

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

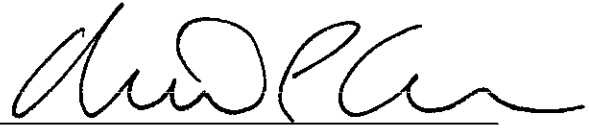
U. S. Mail
 Hand Delivered
 Overnight Mail
 Facsimile
 E-mail

Norman Edwards
884 W. Beacon Light Road
Eagle, ID 83616

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

Alan Smith
3135 N. Osprey Road
Eagle, ID 83616

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



Michael P. Lawrence

EXHIBIT A

REPORTER'S CERTIFICATE

I, SHERI LUDIKER FOOTE, CSR No. 90,
Certified Shorthand Reporter, certify:

That the foregoing proceedings were taken
before me at the time and place therein set
forth, at which time the witness was put under
oath by me;

That the testimony and all objections made
were recorded stenographically by me and
transcribed by me or under my direction;

That the foregoing is a true and correct
record of all testimony given, to the best of my
ability;

I further certify that I am not a relative
or employee of any attorney or party, nor am I
financially interested in the action.

IN WITNESS WHEREOF, I set my hand and seal
this 20th day of April, 2009.

Sheri Ludiker Foote

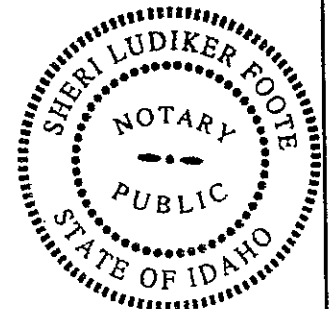
SHERI LUDIKER FOOTE, CSR, RPR, CRR

Notary Public

P.O. Box 2636

Boise, Idaho 83701-2636

My commission expires January 17, 2010



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REPORTER'S CERTIFICATE

I, JEFF LaMAR, CSR No. 640, Certified Shorthand Reporter, certify:

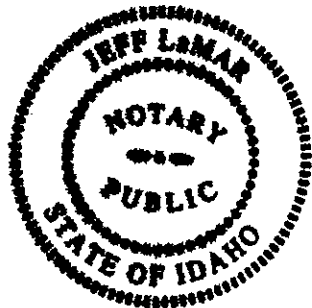
That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witness was put under oath by me.

That the testimony and all objections made were recorded stenographically by me and transcribed by me or under my direction.

That the foregoing is a true and correct record of all testimony given, to the best of my ability.

I further certify that I am not a relative or employee of any attorney or party, nor am I financially interested in the action.

IN WITNESS WHEREOF, I set my hand and seal this 26th day of April, 2009.



[Handwritten signature]

JEFF LaMAR, CSR NO. 640
Notary Public
Eagle, Idaho 83616

My commission expires December 30, 2011

REPORTER'S CERTIFICATE

I, COLLEEN P. KLINE, CSR No. 345, Certified Shorthand Reporter, certify:

That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witness was put under oath by me;

That the testimony and all objections made were recorded stenographically by me and transcribed by me or under my direction;

That the foregoing is a true and correct record of all testimony given, to the best of my ability;

I further certify that I am not a relative or employee of any attorney or party, nor am I financially interested in the action.

IN WITNESS WHEREOF, I set my hand and seal this 5th day of May, 2009.

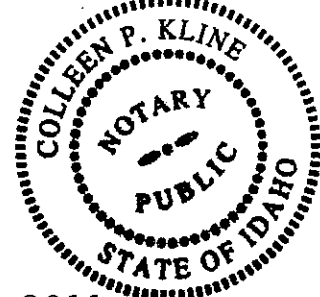
Colleen P. Kline

COLLEEN P. KLINE, CSR

Notary Public

P.O. Box 2636

Boise, Idaho 83701-2636



My commission expires September 17, 2011

REPORTER'S CERTIFICATE

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That the foregoing is a true and correct record of all testimony given, to the best of my ability;

I further certify that I am not a relative or employee of any attorney or party, nor am I financially interested in the action.

IN WITNESS WHEREOF, I set my hand and seal this 5th day of May, 2009.

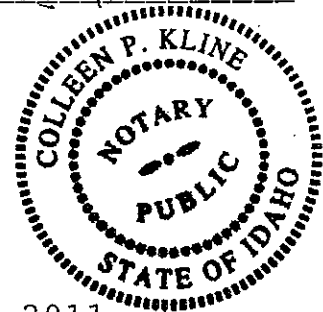
Colleen P. Kline

COLLEEN P. KLINE, CSR

Notary Public

P.O. Box 2636

Boise, Idaho 83701-2636



My commission expires September 17, 2011

REPORTER'S CERTIFICATE

I, JEFF LaMAR, CSR No. 640, Certified Shorthand Reporter, certify:

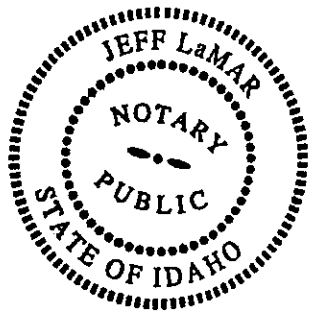
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That the testimony and all objections made were recorded stenographically by me and transcribed by me or under my direction.

That the foregoing is a true and correct record of all testimony given, to the best of my ability.

I further certify that I am not a relative or employee of any attorney or party, nor am I financially interested in the action.

IN WITNESS WHEREOF, I set my hand and seal this 5th day of May, 2009.



[Handwritten signature]

JEFF LaMAR, CSR NO. 640
Notary Public
Eagle, Idaho 83616

My commission expires December 30, 2011

REPORTER'S CERTIFICATE

I, JEFF LaMAR, CSR No. 640, Certified Shorthand Reporter, certify:

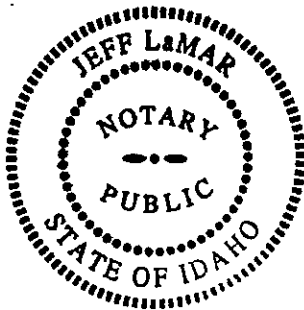
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That the foregoing is a true and correct record of all testimony given, to the best of my ability.

I further certify that I am not a relative or employee of any attorney or party, nor am I financially interested in the action.

IN WITNESS WHEREOF, I set my hand and seal this 12th day of May, 2009.



[Handwritten signature of Jeff Lamar]

JEFF LaMAR, CSR NO. 640

Notary Public

Eagle, Idaho 83616

My commission expires December 30, 2011

REPORTER'S CERTIFICATE

I, JEFF LaMAR, CSR No. 640, Certified Shorthand Reporter, certify:

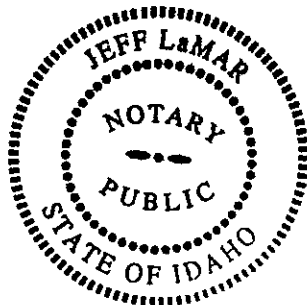
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That the testimony and all objections made were recorded stenographically by me and transcribed by me or under my direction.

That the foregoing is a true and correct record of all testimony given, to the best of my ability.

I further certify that I am not a relative or employee of any attorney or party, nor am I financially interested in the action.

IN WITNESS WHEREOF, I set my hand and seal this 13th day of May, 2009.



[Handwritten Signature]

JEFF LaMAR, CSR NO. 640

Notary Public

Eagle, Idaho 83616

My commission expires December 30, 2011

REPORTER'S CERTIFICATE

I, JEFF LaMAR, CSR No. 640, Certified Shorthand Reporter, certify:

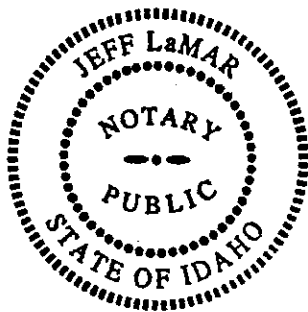
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That the testimony and all objections made were recorded stenographically by me and transcribed by me or under my direction.

That the foregoing is a true and correct record of all testimony given, to the best of my ability.

I further certify that I am not a relative or employee of any attorney or party, nor am I financially interested in the action.

IN WITNESS WHEREOF, I set my hand and seal this 21ST day of May, 2009.



[Handwritten signature]

JEFF LaMAR, CSR NO. 640
Notary Public
Eagle, Idaho 83616

My commission expires December 30, 2011

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REPORTER'S CERTIFICATE

I, JEFF LaMAR, CSR No. 640, Certified
Shorthand Reporter, certify:

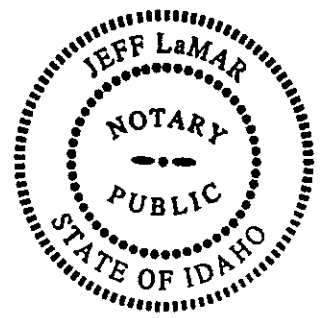
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That the foregoing is a true and correct
record of all testimony given, to the best of my
ability.

I further certify that I am not a relative
or employee of any attorney or party, nor am I
financially interested in the action.

IN WITNESS WHEREOF, I set my hand and seal
this 8th day of June, 2008.



A handwritten signature of Jeff LaMar, written in black ink over a horizontal line.

JEFF LaMAR, CSR NO. 640
Notary Public
Eagle, Idaho 83616

My commission expires December 30, 2011

REPORTER'S CERTIFICATE

I, SHERI LUDIKER FOOTE, CSR No. 90,
Certified Shorthand Reporter, certify:

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ability;

I further certify that I am not a relative
or employee of any attorney or party, nor am I
financially interested in the action.

IN WITNESS WHEREOF, I set my hand and seal
this 8th day of June, 2009.

Sheri Ludiker Foote

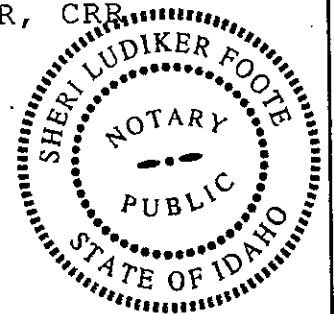
SHERI LUDIKER FOOTE, CSR, RPR, CRR

Notary Public

P.O. Box 2636

Boise, Idaho 83701-2636

My commission expires January 17, 2010





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REPORTER'S CERTIFICATE

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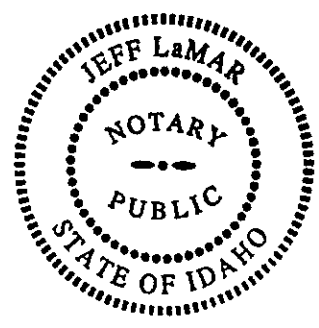
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That the foregoing is a true and correct record of all testimony given, to the best of my ability.

I further certify that I am not a relative or employee of any attorney or party, nor am I financially interested in the action.

IN WITNESS WHEREOF, I set my hand and seal this 16th day of June, 2009.



[Handwritten Signature]

JEFF LaMAR, CSR NO. 640

Notary Public

Eagle, Idaho 83616

My commission expires December 30, 2011

REPORTER'S CERTIFICATE

I, SHERI LUDIKER FOOTE, CSR No. 90,
Certified Shorthand Reporter, certify:

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That the foregoing is a true and correct
record of all testimony given, to the best of my
ability;

I further certify that I am not a relative
or employee of any attorney or party, nor am I
financially interested in the action.

IN WITNESS WHEREOF, I set my hand and seal
this 29th day of June, 2009.

Sheri Ludiker Foote

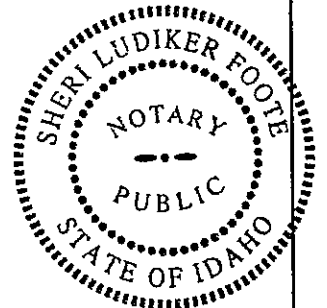
SHERI LUDIKER FOOTE, CSR, RPR, CRR

Notary Public

P.O. Box 2636

Boise, Idaho 83701-2636

My commission expires January 17, 2010



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REPORTER'S CERTIFICATE

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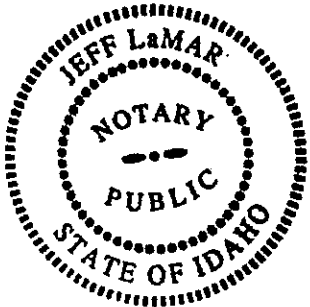
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That the foregoing is a true and correct
record of all testimony given, to the best of my
ability.

I further certify that I am not a relative or
employee of any attorney or party, nor am I
financially interested in the action.

IN WITNESS WHEREOF, I set my hand and seal
this 17th day of July, 2009.



A handwritten signature of Jeff LaMar, written in black ink over a horizontal line.

JEFF LaMAR, CSR NO. 640
Notary Public
Eagle, Idaho 83616

My commission expires December 30, 2011

REPORTER'S CERTIFICATE

I, JEFF LaMAR, CSR No. 640, Certified Shorthand Reporter, certify:

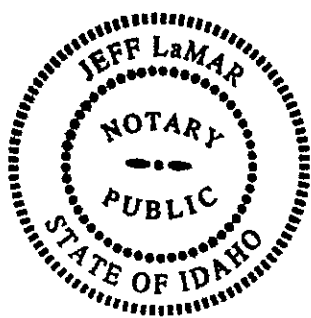
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That the testimony and all objections made were recorded stenographically by me and transcribed by me or under my direction.

That the foregoing is a true and correct record of all testimony given, to the best of my ability.

I further certify that I am not a relative or employee of any attorney or party, nor am I financially interested in the action.

IN WITNESS WHEREOF, I set my hand and seal this 31st day of July, 2009.



Handwritten signature of Jeff Lamar

JEFF LaMAR, CSR NO. 640

Notary Public

Eagle, Idaho 83616

My commission expires December 30, 2011

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REPORTER'S CERTIFICATE

I, JEFF LaMAR, CSR No. 640, Certified
Shorthand Reporter, certify:

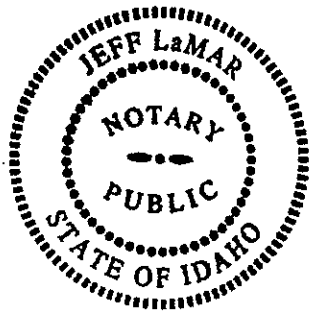
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That the foregoing is a true and correct
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ability.

I further certify that I am not a relative or
employee of any attorney or party, nor am I
financially interested in the action.

IN WITNESS WHEREOF, I set my hand and seal
this 31st day of July, 2009.



A handwritten signature of Jeff Lamar, written in black ink over a horizontal line.

JEFF LaMAR, CSR NO. 640

Notary Public

Eagle, Idaho 83616

My commission expires December 30, 2011

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REPORTER'S CERTIFICATE

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Shorthand Reporter, certify:

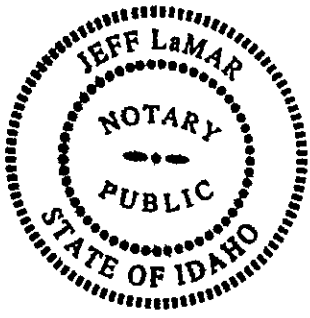
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That the foregoing is a true and correct
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ability.

I further certify that I am not a relative or
employee of any attorney or party, nor am I
financially interested in the action.

IN WITNESS WHEREOF, I set my hand and seal
this 10th day of August, 2009.



[Handwritten signature]

JEFF LaMAR, CSR NO. 640
Notary Public
Eagle, Idaho 83616

My commission expires December 30, 2011

EXHIBIT B

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 63-32573 IN)
THE NAME OF M3 EAGLE LLC)
_____) VOLUME XIII
(Pages 2883 through 3148)

BEFORE
HEARING OFFICER: GARY SPACKMAN

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

REPORTED BY:
JEFF LaMAR, C.S.R. No. 640
Notary Public

1 MR. ALAN SMITH: I recognize that on page 3
2 that it says that the applicant can produce this
3 information during the conduct of the hearing.
4 That should be done in their case-in-chief. It's
5 not rebuttal evidence.

6 In fact, we don't think this thing
7 ever should have been set for a hearing in the
8 first place, because they never had the financial
9 information. And they've ignored that, the same
10 as they have the clear statutory language about
11 what's required of being a municipal provider.

12 If they don't like the provisions of
13 the law, they just ignore them. And I think it's
14 time that the Hearing Examiner and the Department
15 dismissed it.

16 THE HEARING OFFICER: Okay. Well, this
17 motion to dismiss anticipates or at least proposes
18 that the Hearing Officer address this issue at
19 this juncture of the hearing.

20 And I refuse to dismiss the
21 application at this point. As Mr. Fereday pointed
22 out, the rule allows flexibility in what is
23 submitted regarding financial resources. And that
24 flexibility is illustrated or is found in the
25 language where it says "or other evidence to show

1 And my intent is to try to gather all
2 of the evidence that I can on the subject and not
3 have people trapped by rules of evidence that
4 would exclude them somehow from presenting that in
5 some fashion at this hearing. So I will allow
6 some latitude and additional presentation of
7 evidence on this subject. Okay.

8 MR. ALAN SMITH: We still take the position
9 that it should have been done in their
10 case-in-chief and not as rebuttal evidence, and we
11 are at the rebuttal stage of the hearing at this
12 time.

13 We would like the record to show a
14 continuing objection to any financial information
15 that they're now attempting to provide after we
16 pointed out a fatal flaw in their case.

17 THE HEARING OFFICER: Okay. The record
18 will so show your objection, Mr. Smith.

19 All right. Mr. Fereday?

20 MR. FEREDAY: Yes. As our first rebuttal
21 witness, we call Dr. Spencer Wood. And as I do
22 this, I would hand the Hearing Officer and the
23 other parties a document that we can mark it as an
24 exhibit -- it hasn't been marked as of yet -- that
25 is a reproduction of various pages from the

1 that it is reasonably probable that financing will
2 be available to appropriate the water and apply it
3 for the beneficial use proposed."

4 And so I'll deny the motion to
5 dismiss.

6 In that denial, Mr. Fereday, I will
7 mention, however, that I am concerned about the
8 information that was presented, and particularly
9 the discussion in cross-examination -- or
10 examination, I guess, of Mr. Brownlee and the
11 questions that were asked of him regarding the
12 financial statement and what it really means and
13 what's represented by that financial statement.

14 And I guess I would encourage some
15 further presentation of evidence and further
16 elaboration on that particular subject,
17 particularly where this -- this particular factor
18 is one that apparently is at issue in this
19 particular hearing. So I would encourage some
20 additional evidence presentation on this subject
21 as part of your rebuttal.

22 I recognize your argument, Mr. Smith,
23 that you feel that some of that should have been
24 brought in. I've allowed some latitude on both
25 sides on the subject.

1 transcript that we have obtained from our court
2 reporter in this case so that to the extent that
3 we refer to testimony that we are seeking to
4 rebut, the Hearing Officer can see what testimony
5 was. It's simply an aid for the presentation of
6 this rebuttal testimony.

7 THE HEARING OFFICER: Mr. Fereday, it seems
8 to me somewhat unusual to mark an exhibit that is
9 testimony from the record that we're now creating
10 because it will be part of the record. So I guess
11 my suggestion is that we use it -- I don't know
12 that there's any reason to doubt its accuracy --
13 and simply refer to it as part of the record. And
14 if we need to read portions of it, we can do that.
15 And I guess that would be my preference, but...

16 MR. FEREDAY: That is fine, Mr. Hearing
17 Officer. Our intent here is simply to make it
18 clear that when we're referring to what a previous
19 protestant witness said, for example, that we are
20 referring to what was actually said.

21 THE HEARING OFFICER: Right.

22 MR. FEREDAY: It's illustrative, for those
23 purposes.

24 THE HEARING OFFICER: Sure.

25 MR. FEREDAY: And it may make sense that it

1 be marked and admitted as an exhibit, particularly
2 because the record in this case is an audible
3 record, at least at this point.

4 We do intend to provide the Hearing
5 Officer with a complete transcript for the Hearing
6 Officer's use. But this is the written transcript
7 that makes it, I believe, easier to follow along.

8 THE HEARING OFFICER: Well, let's use it
9 for illustrative purposes for now. And if there's
10 a need or we all feel that it would be worthwhile
11 to have it admitted, then let's do that.

12 Okay?

13 Mr. Wood, I would remind you that
14 you're under oath.

15 Mr. Fereday, you may question. And we
16 can refer to this transcript literally from my
17 perspective. If we need portions of it so that
18 Mr. Wood understands what the statements are -- I
19 suspect you want to contrast these statements with
20 perhaps Mr. Wood's opinion of what was said.

21 MR. FEREDAY: That's correct.

22 THE HEARING OFFICER: Okay.

23 MR. ALAN SMITH: We would object to the use
24 of any of this transcript and this witness to try
25 to impeach another witness if that is their

1 THE HEARING OFFICER: All right. Let's
2 proceed. At least right now, the objection's
3 overruled.

4 Mr. Thornton.

5 MR. THORNTON: Clarifying question. So
6 then is it potentially appropriate for us, based
7 on how this rebuttal goes, that we could, in fact,
8 recall Dr. Ralston, if necessary?

9 THE HEARING OFFICER: Sure. Absolutely.

10 MR. THORNTON: Okay.

11 THE HEARING OFFICER: Yeah, that's okay..

12 Yeah, you have a chance for rebuttal, or what I
13 think they call is surrebuttal. I think that's
14 the term for the protestants.

15 MR. THORNTON: Okay.

16 THE HEARING OFFICER: So anyway -- and you
17 have that opportunity.

18
19 SPENCER WOOD,
20 having been called as a rebuttal witness by M3
21 Eagle LLC and previously sworn, testified as
22 follows:

23 THE HEARING OFFICER: Okay. Mr. Fereday.

24 ///
25

1 intent. If they're merely rebutting, that's
2 different. If they're attempting to impeach
3 Dr. Ralston through this witness and his
4 transcript testimony, we would like a continuing
5 objection shown in the record that we object to it
6 as improper impeachment.

7 They had a chance to cross-examine
8 Dr. Ralston, and I don't think they're now using a
9 proper method of impeachment, if that's what
10 they're trying to do.

11 THE HEARING OFFICER: Why do you feel that
12 it's an improper method of impeachment?

13 MR. ALAN SMITH: He didn't ask the witness
14 about it and give him a chance to explain his
15 answer. Now you're coming in with another expert
16 witness and trying to impeach his testimony.

17 THE HEARING OFFICER: To me -- to me,
18 Mr. Smith, that's the very nature of this rebuttal
19 testimony. If there's a conflict in the
20 testimony, the person who comes on can be asked
21 whether they heard testimony of someone and then
22 contrast that or rebut that testimony. And I
23 think that's exactly what we're doing.

24 MR. ALAN SMITH: If it's only rebuttal, we
25 don't have any problem with it.

1 DIRECT EXAMINATION

2 BY MR. FEREDAY:

3 Q. Dr. Wood, I would like to inquire
4 about your response to Dr. Ralston's statement at
5 page 2 of the document that I've given you here,
6 which is on page 2238 of the transcript, that the,
7 quote, "hydrological conceptual model is flawed,"
8 close quote, because there's, quote, "inadequate
9 information that indicates that the PGSA is
10 laterally continuous on over into the Payette
11 River area," close quote. I'd like to ask you a
12 few questions about that, sir.

13 First of all, conceptual model does
14 not refer to a numerical computer model, does it,
15 such as the M3 model or the Stacy Douglas model?

16 A. That's correct, it does not refer to
17 the computer model.

18 Q. It refers rather to the geological and
19 hydrological framework that we've been discussing
20 in this hearing?

21 A. That's correct. It concerns the
22 geological and hydrological -- hydrogeological
23 framework.

24 Q. What is your response to Dr. Ralston's
25 statement that the conceptual model is flawed

25 (Pages 2976 to 2979)

EXHIBIT C

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 63-32573 IN)
THE NAME OF M3 EAGLE LLC)

_____) VOLUME XVI

TRANSCRIPT CONTAINS OFF-THE-RECORD DISCUSSIONS
ONLY

BEFORE
HEARING OFFICER: GARY SPACKMAN

Date: July 30, 2009 - 8:30 a.m.
Location: Idaho Department of Water Resources
322 East Front Street
Boise, Idaho

REPORTED BY:
JEFF LaMAR, C.S.R. No. 640
Notary Public

1 NACGUA or Smith exhibits. I do have some notes on
2 the NACGUA exhibits, but maybe my notes are not
3 complete.

4 MR. THORNTON: Which one?

5 MS. GIBSON: Starting with 200. I don't
6 have any of your exhibits.

7 THE HEARING OFFICER: Well, we do.

8 MS. GIBSON: Somewhere. I just...

9 THE HEARING OFFICER: Okay. What I will
10 need to do, I suppose, is the inventory is
11 somewhat incomplete. And part of it's a result of
12 my having different people assisting. So we'll
13 need to go through our records and we will send
14 out a summary of what we show, and then I want the
15 parties to look at it and confirm that that's
16 accurate.

17 Okay?

18 MR. FEREDAY: We could provide you with a
19 copy of the transcript, from which you could
20 determine exactly which exhibits were.

21 THE HEARING OFFICER: Okay. If we need to
22 do that. And I assume you -- based on your past
23 statements, Mr. Fereday, you were planning to do
24 that anyway. I hadn't requested it.

25 MR. FEREDAY: Right. Yes, I was.

1 THE HEARING OFFICER: I assume that was the
2 case.

3 Okay. Let's go back on just for a
4 minute.

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