

File Folder # 6

Starts With Order Establishing Deadline
for Completion of Staff Memorandum etc.

Dated 02/10/09

AND

Ends With → Affidavit
of Michael P. Lawrence Regarding Unanswered
Discovery Requests. Received by FDWR on
12/22/08

BEFORE THE DEPARTMENT OF WATER RESOURCES

FOR THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)	ORDER ESTABLISHING DEADLINE FOR
TO APPROPRIATE WATER NO.)	COMPLETION OF STAFF MEMORANDUM
63-32573 IN THE NAME OF)	AND COMMENTS, ORDER CONTINUING
M-3 EAGLE)	HEARING, ORDER AUTHORIZING
_____)	ADDITIONAL DISCOVERY

By order dated September 12, 2008, the hearing officer in the above contested case required that "all technical documents intended to be submitted as exhibits at the hearing or technical reports prepared for reference at the hearing must be submitted to the hearing officer and the parties on or before November 26, 2008." Based on the volume and size of the submittal, and the need for Idaho Department of Water Resources ("IDWR") staff to analyze the documents, the hearing officer continued the hearing scheduled for mid-January, 2009. The hearing officer requested that IDWR staff submit a staff memorandum to the hearing officer analyzing the submitted technical reports on or before January 23, 2009. The hearing officer required that "on or before January 23, 2009, the parties shall serve any written analysis of the technical reports that will be presented at the hearing to the parties and the hearing officer."

During January 2009, Department personnel preparing the requested staff memorandum were informed that M-3 Eagle was planning to submit a geochemical analysis of ground water and a report about the aquifer test. As a result, on January 20, 2009, the hearing officer conducted a status conference to determine the nature of the reports that would be filed. After a discussion about the content and extent of the reports, the hearing officer determined that the reports should have been included in the November 26, 2008 submittal, and that the submittals were untimely. The hearing officer stated that the augmentation of the original M3 Eagle reports must be submitted by January 23 to the parties, and the parties and IDWR staff would have two weeks to estimate for the hearing officer the time necessary to review the documents and comment on the additional information. The last document from M3 Eagle was submitted on January 23, 2009.

Department staff informed the hearing officer that the reports submitted by M3 Eagle contained significant additional information and analysis not included in the information submitted on November 26, 2008. Department staff requested until March 2, 2009 to review the additional information and to prepare the staff memorandum. On February 6, 2009, Alan Smith informed the hearing officer that he needed a "couple of weeks" to review the documents.

The hearing in this matter is scheduled for March 23-27, 30-31, 2009. Submittal of the Department staff memorandum on March 2, 2009 leaves little time for analysis of the

memorandum, and further preparations in response to the staff memorandum. As a result, some delay in the hearing is appropriate.

ORDER

IT IS HEREBY ORDERED that the hearing scheduled for March 23-27 and 30-31, 2009 is **Vacated** and **Continued** to a later date.

IT IS FURTHER ORDERED that, on or before February 20, 2009, the parties shall submit to the hearing officer a list of **unavailable** dates for a hearing in April, May, and June, 2009. If a party does not submit a list of unavailable dates, the hearing officer will assume that all weekdays are available dates for scheduling.

IT IS FURTHER ORDERED that, on or before March 2, 2009, the parties shall serve on the other parties and the hearing officer any written analysis of the **other parties'** technical reports that will be presented at the hearing. As part of this submittal, the hearing officer requests that IDWR staff prepare a staff memorandum on or before March 2, 2009, analyzing the technical reports and information that was submitted by the parties on or before January 23, 2009.

IT IS FURTHER ORDERED that, on or before April 3, 2009, the parties may:

1. Offer any documents, technical information, or data to rebut the March 2, 2009 comments on the technical reports, including IDWR's staff memorandum; and/or
2. Depose any potential expert witness who authored or assisted in authoring technical reports prepared by the parties.

The hearing officer will establish deadlines for prehearing motions and submittal of exhibits when the hearing dates are determined.

Dated this 10th day of February, 200~~8~~⁹



GARY SPACKMAN
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of February, 2009, a true and correct copy of the above and foregoing document described below was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

Document(s) Served: **ORDER GRANTING MOTION FOR STAY, ORDER DENYING ALL MOTIONS TO COMPEL AND MOTIONS FOR SANCTIONS, AND ORDER REINSTATING PARTY**

NORMAN L EDWARDS
884 W BEACON LIGHT RD
EAGLE ID 83616

BILL LAWTON
3145 N OSPREY R
EAGLE ID 83616

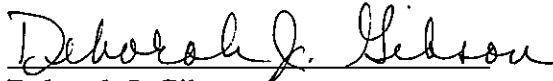
ALAN SMITH
3135 OSPREY RD
EAGLE ID 83616

JOHN THORNTON
NORTH ADA COUNTY
GROUNDWATER
USERS ASSO.
5264 NORTH SKY HIGH LN
EAGLE ID 83616

GIVENS PURSLEY LLP
C/O JEFFREY C FEREDAY
601 W BANNOCK ST
PO BOX 2720
BOISE ID 83701

WESTERN REGION
ATTN JOHN WESTRA
2735 AIRPORT WAY
BOISE ID 83705-5082

M3 EAGLE LLC
533 E RIVERSIDE DR STE 110
EAGLE ID 83616


Deborah J. Gibson
Administrative Assistant
Water Management Division

RECEIVED

JAN 29 2009

DEPARTMENT OF
WATER RESOURCES

Josephine P. Beeman #1806
BEEMAN & ASSOCIATES, P.C.
409 West Jefferson Street
Boise, ID 83702
(208) 331-0950
(208) 331-0954 (Facsimile)
office@beemanlaw.com

Attorney for North Ada County Groundwater Users Association

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

IN THE MATTER OF APPLICATION)	BEEMAN & ASSOCIATES'
FOR PERMIT NO. 63-32573,)	WITHDRAWAL OF ATTORNEY
IN THE NAME OF M3 EAGLE, LLC)	FOR NORTH ADA COUNTY
_____)	GROUNDWATER USERS
	ASSOCIATION

Beeman & Associates, P.C., hereby withdraws as counsel in this proceeding.

The North Ada County Groundwater Users Association (NACGUA) has advised Beeman & Associates, P.C. that financial considerations dictate NACGUA's relinquishment of legal counsel in this proceeding.

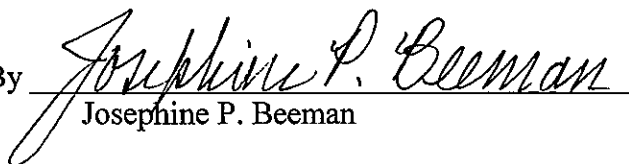
David Head, President of NACGUA, and John Thornton, Vice-President of NACGUA, will represent NACGUA, consistent with David Head's January 7, 2009 email to IDWR and parties (attached). Service to NACGUA will be at the following address:

John Thornton, Vice President
5264 N. Sky High Lane
Eagle, Idaho 83616
Work - 373-4153
cjthornton6@msn.com

DATED this 27th day of January 2009.

BEEMAN & ASSOCIATES, P.C.

By


Josephine P. Beeman

CERTIFICATE OF SERVICE

I certify that on this 27th day of January 2009, I caused to be served a true and correct copy of the foregoing document on the following by the method indicated.

Original to:

IDWR Hearing Officer
P. O. Box 83720
Boise, ID 83720-0098
(U.S. Mail)

Norman L. Edwards
884 W. Beacon Light Road
Eagle ID 83616
(U.S. Mail)

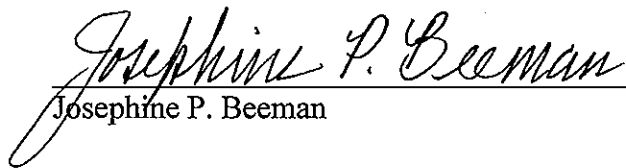
Alan Smith
3135 Osprey Road
Eagle ID 83616
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John Thornton, Vice President
5264 N. Sky High Lane
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(U.S. Mail)

Jeffrey Fereday
Givens Pursley LLP
P. O. Box 2720
Boise ID 83701
(U.S. Mail)

Bill Lawton
3145 N. Osprey Road
Eagle ID 83616
(U.S. Mail)

Dennis Owlsley / Sean Vincent
IDWR
P. O. Box 83720
Boise, ID 83720-0098
(U.S. Mail)



Josephine P. Beeman

From: David Head [head@firstsourceidaho.com]
Sent: Wednesday, January 07, 2009 4:08 PM
To: gary.spackman@idwr.idaho.gov
Cc: Jo Beeman; David Head; jlthornton@fs.fed.us; JeffFereday@givenspursley.com
Subject: NACGWUA Protest Representation

Dear Mr. Spackman,

As you are aware, the North Ada County Groundwater Users Association has two main representatives listed for our group of protestants...these are myself and John Thornton. Due to the nature of both of our occupations that could make us unavailable from time to time, we felt it would be prudent to list both of our names, and we appreciate your acceptance of that approach in earlier correspondence.

In the past several quarters, the industry in which I operate my small business has undergone some very large down sides. The result of these changes will be the either the merger or outright sale of my business. This process will be very time consuming, will involve out of state travel, and is not something I can not put off for even a few weeks.

With the above in mind, the main contact for NACGWUA will be John Thornton. I will do my best to stay abreast of the process, attend the hearing and assist John in anyway that I can, but I will not be able to be an active day to day participant.

While this may or may not have necessitated a written notification to you, I did not want to be remiss, if in fact it was required.

I have copied Jeff Ferreday.

Best regards,

David Head
939-9900

John L. Thornton
5264 North Sky High Lane
Eagle, Idaho 83616
939-8574 home
867-0969 cell
jlthornton@fs.fed.us

RECEIVED

JAN 23 2009

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

**M3 EAGLE'S NOTICE OF SERVICE OF
HYDRO LOGIC'S NINE-DAY AQUIFER
TEST REPORT**

M3 Eagle LLC ("M3 Eagle"), through its counsel, hereby files with the Hearing Officer and makes available to the parties Hydro Logic, Inc.'s report entitled A Nine-Day Constant-Rate-Discharge Aquifer Test of the SVR #7 Test Well In Big Gulch, North Ada County, Idaho ("Report").¹ The Report is being provided in both hard copy and compact disc formats, and is being served by mail on the Protestants. M3 Eagle understands that the Idaho Department of Water Resources will post the Report on the Department's website for North Ada County Ground Water Studies: http://www.idwr.idaho.gov/hydrologic/projects/nac/consultant_reports/.

With respect to service upon North Ada County Groundwater Users Association ("NACGUA"), M3 Eagle is serving this Notice on Ms. Beeman, Mr. Head, and Mr. Thornton

¹ M3 Eagle sent the Overview section of this Report to the Department and the parties via e-mail on January 12, 2009. The Overview is included again here as part of the Report. The Report consists of two parts, the first recently completed and the second previously submitted: 1) an approximately 50-page narrative; and 2) the detailed and interpretive charts, figures, plots, maps, and other data produced from the aquifer test that were filed with the Department and made available to the parties on November 26, 2008.

because, while Ms. Beeman indicated at the January 20, 2009 status conference that she plans to file a notice withdrawing as counsel for NACGUA, M3 Eagle has not yet received it.

DATED this 23rd day of January, 2009.

Respectfully submitted,

GIVENS PURSLEY LLP

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 23, 2009, the foregoing was filed and served 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
☐ Facsimile
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John Westra
Western Regional Office
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705-5082

☐ U. S. Mail
☐ Hand Delivered
☐ Facsimile
☒ E-mail (Notice Only)

North Ada County Groundwater Users Association
Josephine P. Beeman
Beeman & Associates PC
409 West Jefferson
Boise, ID 83702-6049

☒ U. S. Mail
☐ Hand Delivered
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North Ada County Groundwater Users Association
David Head and John Thornton
c/o John Thornton
5264 N. Sky High Lane
Eagle, ID 83616

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☐ Hand Delivered
☐ Facsimile
☐ E-mail

Bill Lawton, Spokesman for
Robert L. Wood, M. Howard Goldman and
Timothy R. Milburn
3145 Osprey Road
Eagle, ID 83616

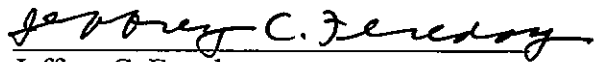
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Norman Edwards
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Jeffrey C. Fereday

Jeffrey C. Fereday [ISB No. 2719]
Michael P. Lawrence [ISB No. 7288]
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Attorneys for M3 Eagle LLC

RECEIVED

JAN 21 2009

DEPARTMENT OF
WATER RESOURCES

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

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

**M3 EAGLE'S NOTICE OF SERVICE OF
HYDRO LOGIC'S GROUND WATER
GEOCHEMISTRY REPORT**

NOTICE IS HEREBY GIVEN that M3 Eagle LLC ("M3 Eagle") served copies of Hydro Logic, Inc.'s, Ground Water Geochemistry Report for North Ada County to the following individuals as indicated below.

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 (on Jan. 21, 2009)
☐ Overnight Mail
☐ Facsimile
☒ E-mail (on Jan. 20, 2009)

North Ada County Groundwater Users Association
Josephine P. Beeman
Beeman & Associates PC
409 West Jefferson
Boise, ID 83702-6049

☐ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☒ E-mail (on Jan. 21, 2009)

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 (on Jan. 20, 2009)

North Ada County Groundwater Users Association
c/o John Thornton
5264 N. Sky High Lane
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☐ U. S. Mail
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Alan Smith
3135 N. Osprey Road
Eagle, ID 83616

☒ U. S. Mail (on Jan. 21, 2009)
☐ Hand Delivered
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M3 Eagle served copies of the Report to Ms. Beeman, Mr. Head, and Mr. Thornton because M3 Eagle has not yet received Ms. Beeman's notice of withdrawal as counsel for North Ada County Groundwater Users Association as she indicated would be forthcoming at the January 20, 2009 status conference.

DATED this 21st day of January, 2009.

Respectfully submitted,

GIVENS PURSLEY LLP

By


Jeffrey C. Fereday
Michael P. Lawrence

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st of January, 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
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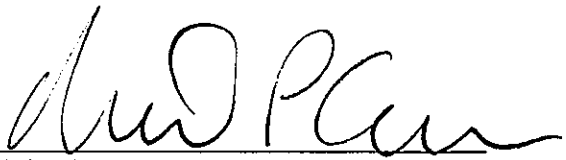
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Michael P. Lawrence

ROSTER OF ATTENDANCE FOR STATUS CONFERENCE

IN THE MATTER OF APPLICATION TO)
 APPROPRIATE WATER NO. 63-32573)
 IN THE NAME OF M3 EAGLE, LLC.)
 _____)

January 20, 2009
 Beginning at 1:00 p.m.
 Conducted by Gary Spackman

NAME	REPRESENTING
Ed Squires/Hydro Logic, Inc.	M3 Eagle, LLC
Gerry Robbins/M3 Eagle, LLC	M3 Eagle, LLC
jeffo jereday	M3 Eagle LLC
SEAN VINCENT/IOWR	IOWR
BILL LAWTON	
Alan Smith	Eagle Pines is individually
Norman Edwards	
John L. Thornton	NACGLA
DENNIS OWSEY	FDWR

RECEIVED

JAN 20 2009

DEPARTMENT OF
WATER RESOURCES

Josephine P. Beeman #1806
BEEMAN & ASSOCIATES, P.C.
409 West Jefferson Street
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(208) 331-0950
(208) 331-0954 (Facsimile)
office@beemanlaw.com

Attorney for North Ada County Groundwater Users Association

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

IN THE MATTER OF APPLICATION	)	NACGUA'S SUBMISSION OF AMENDED
FOR PERMIT NO. 63-32573,	)	ATTACHMENTS TO ITS RESPONSE TO
IN THE NAME OF M3 EAGLE, LLC	)	M3 EAGLE'S LIST OF UNANSWERED
	)	DISCOVERY REQUESTS

North Ada County Groundwater Users Association (NACGUA) hereby submits amended attachment lists for its January 12, 2009 filing entitled "NACGUA'S RESPONSE TO M3 EAGLE'S LIST OF UNANSWERED DISCOVERY REQUESTS." The additions are colored in red for convenience and primarily note duplicate listings among the three attachments.

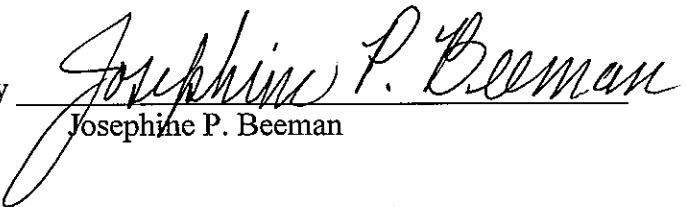
AMENDED Attachment A: DOCUMENTS IN THE PUBLIC DOMAIN (RULE 602).¹

AMENDED Attachment B: DOCUMENTS IN THE FILES OF DAVID HEAD.²

AMENDED Attachment C: DOCUMENTS IN THE FILES OF JOHN THORNTON.³

DATED this 16th day of January 2009.

BEEMAN & ASSOCIATES, P.C.
Attorneys for NACGUA

By 
Josephine P. Beeman

¹ Pursuant to IDWR Rule of Procedure 602, the documents listed in Amended Attachment A are not provided in hard copy or electronically because these documents are subject to official notice and readily available on the IDWR website or have already been submitted as part of Application 63-32573 and/or the November 26, 2008 technical report deadline in this proceedings.

² The documents listed in Amended Attachment B are available on a CD upon request and are also available for inspection and copying at the offices of Beeman & Associates, P.C.

³ The documents listed in Amended Attachment C are available on a CD upon request and are also available for inspection and copying at the offices of Beeman & Associates, P.C.

CERTIFICATE OF SERVICE

I certify that on this 16th day of January 2009, I caused to be served a true and correct copy of the foregoing document on the following by the method indicated.

Original to:

IDWR Hearing Officer
P. O. Box 83720
Boise, ID 83720-0098
(U.S. Mail)

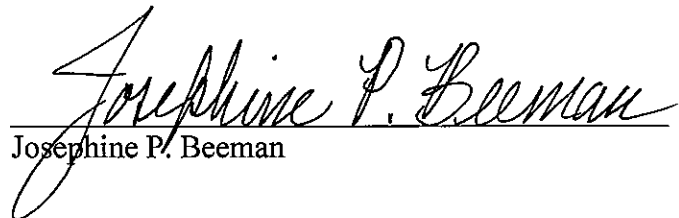
John Westra
IDWR Western
2735 Airport Way
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(U.S. Mail)

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Givens Pursley LLP
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Alan Smith
3135 Osprey Road
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(U.S. Mail)

Bill Lawton
3145 N. Osprey Road
Eagle ID 83616
(U.S. Mail)



Josephine P. Beeman

AMENDED
ATTACHMENT A: DOCUMENTS IN THE PUBLIC DOMAIN (RULE 602)¹

Modeling of Ground-Water Flow in the Pierce Gulch Sand Aquifer: Five Models: History, Updates, and Predictions of Impacts Caused by Pumping at the M3 Eagle Planned Residential Community Ada County, Idaho. November 26, 2008. By Mark Utting and Ed Squires, Hydro Logic, Inc. Also listed and provided in Attachment C, Tab 39.

Characterization of Ground Water Flow in the Lower Boise River Basin. February 2004. By Christian R. Petrich, University of Idaho and Scott M. Urban, Idaho Department of Water Resources.

Development of a Numerical Ground Water Flow Model for the M3 Eagle Development Area near Eagle, Idaho. December 2007. By Stacey L. Douglas. Also listed and provided in Attachment C, Tab 25.

Technical Memorandum – Surveyed Water Level Measurements of Wells in the Northern Ada County/Eagle Area, for the M3 Eagle Hydrogeologic Characterization. March 17, 2008. From Ed Squires, Hydro Logic, Inc.

Influence of Canal Seepage on Aquifer Recharge near the New York Canal. December 2002, By Jon Hutchings and Christian R. Petrich, Idaho Water Resources Research Institute.

M3 Eagle Regional Hydrogeologic Characterization North Ada, Canyon and Gem Counties, Idaho - Year One Progress Report. May 4, 2007. By E. Squires, M. Utting, and L. Pearson, Hydro Logic, Inc. Also listed and provided in Attachment C, Tab 22.

Aquifer Evaluation in the Big Gulch and Little Gulch Areas of Spring Valley Ranch. October 2004. By SPF Water Engineering, LLC.

Re-Analysis of 16 Aquifer Tests in the Greater Eagle-Star Area of North Ada County, Idaho. July 4, 2008. By Hyro Logic, Inc.

Well Construction and Aquifer Testing in the Sandy Hill Area of Spring Valley Ranch. June 18, 2004. By SPF Water Engineering, LLC.

Well Construction and Aquifer Testing of Spring Valley Ranch Exploration Well No. 5. June 17, 2004. By SPF Water Engineering, LLC.

Preliminary Master Potable Water Study for M3-Eagle. By Stanley Consultants Inc.

¹ Pursuant to IDWR Rule of Procedure 602, the documents listed in Amended Attachment A are not provided in hard copy because these documents are subject to official notice and readily available on the IDWR website or have already been submitted as part of Application 63-32573 and/or the November 26, 2008 technical report deadline.

Preliminary Master Wastewater Study for M3-Eagle. By Stanley Consultants Inc.

Well Construction and Aquifer Testing in the Sandy Hill Area of Spring Valley Ranch. June 18, 2004. By SPF Water Engineering, LLC.

Geologic and Tectonic History of the Western Snake River Plain, Idaho and Oregon. 2002. By Spencer H. Wood and Drew M. Clemens.

Treasure Valley Hydrologic Project Executive Summary. February 2004. By Christian R. Petrich, Idaho Water Resources Research Institute. Also listed and provided in Attachment B, Tab 8, and Attachment C, Tab 16.

Treasure Valley's Water Future – Summary of the Treasure Valley Water Summit, January 14-15, 2002. May 15, 2002. Compiled by Community Planning Association of Southwest Idaho, Idaho Department of Water Resources, Idaho Water Resources Research Institute, and Enviro Issues, Inc.

Seismic Expression and Geological Significance of a Lacustrine Delta in Neogene Deposits of the Western Snake River Plain, Idaho. AAPG Bulletin, V. 78, No. 1 (January 1994), P. 102-121. By Spencer H. Wood.

Ground Water Quality Characterization and Initial Trend Analysis for the Treasure Valley Shallow and Deep Hydrogeologic Subareas. March 1998. By Kenneth W. Neely and Janet K. Crockett. Also listed and provided in Attachment C, Tab 11.

Ground Water Recharge and Flow in the Regional Treasure Valley Aquifer System – Geochemistry and Isotope Study. December 2002. Jon Hutchings and Christian R. Petrich, Idaho Water Resources Research Institute.

Simulation of Ground Water Flow in the Lower Boise River Basin. February 2004. By Christian R. Petrich, Idaho Water Resources Research Institute.

Simulation of Increased Ground Water Withdrawals in the Lower Boise River Basin. February 2004. By Christian R. Petrich. Also listed and provided in Attachment C, Tab 18.

Stratigraphic Studies of the Boise (Idaho) Aquifer System Using Borehole Geophysical Logs with Emphasis on Facies Identification of Sand Aquifers. January 8, 2001. By Edward Squires, Hydro-Logic, Inc. and Spencer H. Wood, Boise State University.

Water Budget for the Treasure Valley Aquifer System for the Years 1996 and 2000. By Scott M. Urban, Idaho Department of Water Resources. Also listed and provided in Attachment C, Tab 14.

A Distributed Parameter Water Budget Data Base for the Lower Boise Valley. Revised January 2008. U.S. Bureau of Reclamation and Idaho Department of Water Resources. Also listed and provided in Attachment C, Tab 27.

Radiometric Dating, Volcanic Stratigraphy, and Sedimentation in the Boise Foothills,
Northeastern Margin of the Western Snake River Plain, Ada County, Idaho.
Isochron/West, No. 59, May 1993. By Drew M. Clemens, Arizona State University and
Spencer H. Wood, Boise State University.

Ground Water Analysis at Emmett, Idaho. May 4, 1996. By S.T. Kellogg, V.A. Simon, and M.
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Idaho Domestic Well Exemption: Presentation to the Idaho Water Users Association.
November 6, 2008. Shelley Keen, IDWR Water Rights Section Manager. Attached
hereto.

Idaho's Domestic Well Exemption

Presentation to the Idaho Water Users Association
November 6, 2008

Shelley Keen, Section Manager
IDWR Water Rights Section
shelley.keen@idwr.idaho.gov
208-287-4947

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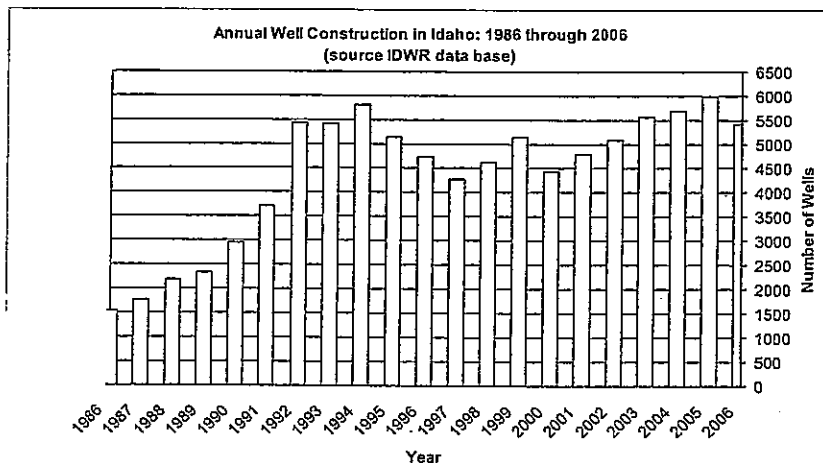
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8	February 2004	Univer. of Idaho Christian Petrich	Treasure Valley Hydrologic Project Executive Summary Also listed on Attachment A.
9	May 20, 2005	NACFA	Notice of Protest to SunCor Idaho, 63-32061
10	October 2004	NACFA	Comments Pertaining to the SPF Water Engineering, LLC Report Titled: Aquifer Evaluation in the Big Gulch and Little Gulch Areas of Spring Valley Ranch
11	2005	NACFA	Well Water Issues Tracking Document
12	January 25, 2006	NACFA	Letter to Karl Dreher, IDWR, re: "Request for Comprehensive Groundwater Resource Evaluation and Consideration of New Water Rights Moratorium"
13	January 9, 2006	NACFA	Petition to IDWR for Aquifer Study
14	February 21, 2006	NACFA	Letter to Karl Dreher, IDWR, re: "Follow up to letter dated January 25, 2006 and request for meeting"
15	May 2, 2006	IDWR Dreher	Letter to David Head, NACFA, re: "Request for Comprehensive Ground Water Resource Evaluation and Consideration of New Water Rights Moratorium"
16	August 2006	NACFA	Map – Well monitoring, aquifer overview and SunCor water rights application
17	January 16, 2007	NACFA	Letter to Dave Tuthill, IDWR, re: "Status of Comprehensive Water Resource Evaluation in North Ada County / Follow-up on May 12, 2006 Correspondence with Director Dreher

18	January 29, 2007	NACFA	(member newsletter) Is there enough groundwater to support 100,000 additional residents in North Ada County in the next 20 years?
19	January 30, 2007	Ada County	Ada County Comprehensive Plan Update: North Foothills Sub-Area Plan recommended Revisions
20	February 2, 2007	Idaho Statesman article by Katy Moeller	Developments add to water worries for North Foothills residents
21	February 2, 2007	Idaho Statesman article by Vince Alberdi	Management plan must protect water supply and senior rights
22	February 12, 2007	NACFA	Notice to members re: "Response to request for water study in North Ada County"
23	April 2007	Hydro Logic, Inc.	Figure 9: Best-Case Predicted Interference from Six Hypothetical Wells Figure 10: Worst-Case Predicted Interference from Six Hypothetical Wells
24	July 9, 2007	City of Eagle	P&Z Commission – Special Meeting Minutes (audio on CD)
25	August 2007	Idaho Statesman article by Katy Moeller	Where will new Foothills homes get water?
26	September 10, 2007	David Head	Email to Dave Tuthill, IDWR, re: "NACFA Concerns on City of Eagle & M3"
27	Spring 2008	Allison Gilbreath BSU Student	Show Me the Water: What Idaho can learn from the impacts of growth on water quality and quantity in other states
28	July 8, 2008	NACGUA	Letter to Dave Tuthill, IDWR, re: "Representation/ M3 Eagle Water Right Application"
29	August 29, 2008	Idaho Statesman article by Katy Moeller	Residents protest water rights application in Foothills: A hydrology firm claims sufficient water for development; skeptics want an independent study
30	September 28, 2008	NACGUA	Letter to members and interested parties
31	October 2008	NACGUA	Handouts for membership meeting
32	November 24, 2008	Givens Pursley	M3 Eagle's Responses to NACGUA's Interrogatories, Requests for Production, and Requests for Admission

AMENDED
ATTACHMENT C: DOCUMENTS IN THE FILES OF JOHN THORNTON

Tab	Date	Author	Description
1		IDWR	Hydrograph for wells
2		M3 Eagle	Exhibit 5.1 – M3 Eagle’s Application: Well Field Diversion Components
3			Exhibits 1-3 – Vicinity Maps
4			Exhibits 6.1 and 6.2 – Regional Well Location and Depth Maps
5		M3 Eagle	Community Update for the Residents of Eagle
6			North Ada County Comprehensive Ground Water Assessment
7			North Ada County Proposed Development Map
8	Various	IDWR database	Well logs for modified or replaced wells Also listed on Attachment A
9	1982		Parker v. Wallentine, 103 Idaho 506, 650 P.2d 648: Facts Sheet
10	May 1996	IDWR	Ground Water Study of the Lower Boise River Valley, Ada and Canyon Counties, Idaho
11	March 1998	IDWR	Ground Water Quality Characterization and Initial Trend Analysis for the Treasure Valley Shallow and Deep Hydrogeologic Subareas Also listed on Attachment A
12	1999	IDWR	Streamflow Gains and Losses in the Lower Boise River Basin, Idaho, 1996-97
13	September 29, 1999	DEQ	Lower Boise River TMDL – Subbasin Assessment, Total Maximum Daily Loads (Revised version of Dec 18, 1998 report)
14	2000	IDWR	Water Budget for the Treasure Valley Aquifer System for the Years 1996 and 2000 Also listed on Attachment A
15	2001	USGS	Assessment of the sand and gravel resources of the Lower Boise River Valley Area, Idaho
16	February 2004	Univ. of Idaho Christian Petrich	Treasure Valley Hydrologic Project Executive Summary Also listed on Attachment A
17	2004	Natural Resources Interim Committee	Aquifer Working Group - report
18	February 2004	Univ. of Idaho	Simulation of Increased Ground Water Withdrawals in the Lower Boise River Basin Also listed on Attachment A
19	November 23, 2004	Interim Legislative Committee	Treasure Valley Working Group Final Report -- Draft

20	2007	City of Eagle	Amended 2007 Eagle Comprehensive Plan: Resolution No. 08-20
21	January 2007	Idaho Geological Survey William M. Phillips	Field Trip Guide to the Natural Hazards of the Boise Area, Idaho
22	May 4, 2007	Hydro Logic, Inc.	M3 Eagle Regional Hydrogeologic Characterization: North Ada, Canyon and Gem Counties, Idaho – Year-One Progress Report Also listed on Attachment A
23	October 23, 2007	Dave Tuthill IDWR	Update for the Legislative Committee
24	October 23, 2007	Natural Resources Interim Committee	Minutes
25	December 2007	Univ. of Idaho Stacey Douglas (student thesis)	Development of a numerical ground water flow model for the M3 Eagle Development Area Near Eagle, Idaho Also listed on Attachment A
26	December 27, 2007	City of Eagle	Applicant's Proposed Pre-Annexation and Development Agreement
27	January 2008	IDWR	(Revised) A Distributed Parameter Water Budget Data Base for the Lower Boise Valley Also listed on Attachment A
28	April 7, 2008	Las Vegas Review-Journal article	Bureau of Reclamation: Fernley flooding triggers canal review – Rodents, trees, time take toll across West
29	May 19, 2008	John Thornton	Notice of Protest
30	June 19, 2008	IDWR Dennis Owsley	Letter to John Thornton re: "Water Level Measurement Results in your domestic well"
31	September 9, 2008	John Thornton	Summary Notes
32	September 28, 2008	David Head John Thornton	Letter to M3 Water Protestants re: "Status on protest with M3 municipal water right application"
33	October 21, 2008	John Thornton	Draft Water Rights Protest Points of Issue
34	October 21, 2008	John Thornton	Draft of Water Rights Protest Statements or Questions
35	October 23, 2008	John Thornton	Note to City of Eagle
36	November 2008	John Thornton	Points of Concern Regarding the M3 Water Right Application
37	November 13, 2008		North Ada County Hydro Study (Power Point)
38	December 9, 2008	NACGUA	Notice of Meeting

39	November 26, 2008	Hydro Logic, Inc.	Modeling of Ground-Water Flow in the Pierce Gulch Sand Aquifer: Five Models: History, Updates, and Predictions of Impacts Caused by Pumping at the M3 Eagle Planned Residential Community, Ada County, Idaho. Also listed on Attachment A
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Gibson, Deborah

From: Office Beeman [office@beemanlaw.com]
Sent: Monday, January 19, 2009 2:41 PM
To: Bill Lawton ; Spackman, Gary; Jeffrey C. Fereday; Westra, John; Kelsey Nunez; Michael Lawrence; Norm Edwards
Cc: Anne Ritter (NACGUA); David Head (NACGUA); Gibson, Deborah; Jason Hudson (B&A); Jo Beeman (B&A); Joyce Angell (B&A); Kathy Pennisi (NACFA); Lori Anderson (Fereday); John Thornton (home); Jerry Peterson ; Kathy Pennisi (NACFA); Mike McMurray
Subject: NACGUA/M3 discovery
Attachments: 20090116 NACGUA Amended Attachments to Response to M3 .pdf

[The original email was sent on Friday, January 16, 5 pm, but because our internet was down, it bounced back.]

Please find attached "NACGUA's Submission of Amended Attachments to its Response to M3 Eagle's List of Unanswered Discovery Requests," dated January 16.

A hard copy of the document will be put in the U.S. mail today to all parties on the service list. In the mailing to IDWR and Givens Pursley, I included a CD of all the documents on Attachments B and C.

Joyce Angell
 Legal Assistant

Beeman & Associates
 208.331.0950

Josephine P. Beeman #1806
BEEMAN & ASSOCIATES, P.C.
409 West Jefferson Street
Boise, ID 83702
(208) 331-0950
(208) 331-0954 (Facsimile)
office@beemanlaw.com

Attorney for North Ada County Groundwater Users Association

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

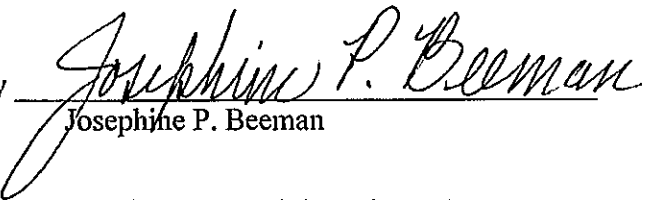
IN THE MATTER OF APPLICATION)	NACGUA'S SUBMISSION OF AMENDED
FOR PERMIT NO. 63-32573,)	ATTACHMENTS TO ITS RESPONSE TO
IN THE NAME OF M3 EAGLE, LLC)	M3 EAGLE'S LIST OF UNANSWERED
_____)	DISCOVERY REQUESTS

North Ada County Groundwater Users Association (NACGUA) hereby submits amended attachment lists for its January 12, 2009 filing entitled "NACGUA'S RESPONSE TO M3 EAGLE'S LIST OF UNANSWERED DISCOVERY REQUESTS." The additions are colored in red for convenience and primarily note duplicate listings among the three attachments.

AMENDED Attachment A: DOCUMENTS IN THE PUBLIC DOMAIN (RULE 602).¹
AMENDED Attachment B: DOCUMENTS IN THE FILES OF DAVID HEAD.²
AMENDED Attachment C: DOCUMENTS IN THE FILES OF JOHN THORNTON.³

DATED this 16th day of January 2009.

BEEMAN & ASSOCIATES, P.C.
Attorneys for NACGUA

By 
Josephine P. Beeman

¹ Pursuant to IDWR Rule of Procedure 602, the documents listed in Amended Attachment A are not provided in hard copy or electronically because these documents are subject to official notice and readily available on the IDWR website or have already been submitted as part of Application 63-32573 and/or the November 26, 2008 technical report deadline in this proceedings.

² The documents listed in Amended Attachment B are available on a CD upon request and are also available for inspection and copying at the offices of Beeman & Associates, P.C.

³ The documents listed in Amended Attachment C are available on a CD upon request and are also available for inspection and copying at the offices of Beeman & Associates, P.C.

CERTIFICATE OF SERVICE

I certify that on this 16th day of January 2009, I caused to be served a true and correct copy of the foregoing document on the following by the method indicated.

Original to:

IDWR Hearing Officer
P. O. Box 83720
Boise, ID 83720-0098
(U.S. Mail)

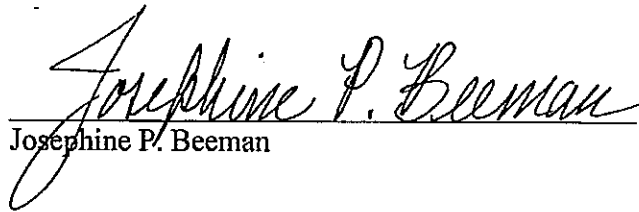
John Westra
IDWR Western
2735 Airport Way
Boise ID 83705
(U.S. Mail)

Norman L. Edwards
884 W. Beacon Light Road
Eagle ID 83616
(U.S. Mail)

Jeffrey Fereday
Givens Pursley LLP
P. O. Box 2720
Boise ID 83701
(U.S. Mail)

Alan Smith
3135 Osprey Road
Eagle ID 83616
(U.S. Mail)

Bill Lawton
3145 N. Osprey Road
Eagle ID 83616
(U.S. Mail)


Josephine P. Beeman

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Modeling of Ground-Water Flow in the Pierce Gulch Sand Aquifer: Five Models: History, Updates, and Predictions of Impacts Caused by Pumping at the M3 Eagle Planned Residential Community Ada County, Idaho. November 26, 2008. By Mark Utting and Ed Squires, Hydro Logic, Inc. Also listed and provided in Attachment C, Tab 39.

Characterization of Ground Water Flow in the Lower Boise River Basin. February 2004. By Christian R. Petrich, University of Idaho and Scott M. Urban, Idaho Department of Water Resources.

Development of a Numerical Ground Water Flow Model for the M3 Eagle Development Area near Eagle, Idaho. December 2007. By Stacey L. Douglas. Also listed and provided in Attachment C, Tab 25.

Technical Memorandum – Surveyed Water Level Measurements of Wells in the Northern Ada County/Eagle Area, for the M3 Eagle Hydrogeologic Characterization. March 17, 2008. From Ed Squires, Hydro Logic, Inc.

Influence of Canal Seepage on Aquifer Recharge near the New York Canal. December 2002, By Jon Hutchings and Christian R. Petrich, Idaho Water Resources Research Institute.

M3 Eagle Regional Hydrogeologic Characterization North Ada, Canyon and Gem Counties, Idaho - Year One Progress Report. May 4, 2007. By E. Squires, M. Utting, and L. Pearson, Hydro Logic, Inc. Also listed and provided in Attachment C, Tab 22.

Aquifer Evaluation in the Big Gulch and Little Gulch Areas of Spring Valley Ranch. October 2004. By SPF Water Engineering, LLC.

Re-Analysis of 16 Aquifer Tests in the Greater Eagle-Star Area of North Ada County, Idaho. July 4, 2008. By Hyro Logic, Inc.

Well Construction and Aquifer Testing in the Sandy Hill Area of Spring Valley Ranch. June 18, 2004. By SPF Water Engineering, LLC.

Well Construction and Aquifer Testing of Spring Valley Ranch Exploration Well No. 5. June 17, 2004. By SPF Water Engineering, LLC.

Preliminary Master Potable Water Study for M3-Eagle. By Stanley Consultants Inc.

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- Preliminary Master Wastewater Study for M3-Eagle. By Stanley Consultants Inc.
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- Geologic and Tectonic History of the Western Snake River Plain, Idaho and Oregon. 2002. By Spencer H. Wood and Drew M. Clemens.
- Treasure Valley Hydrologic Project Executive Summary. February 2004. By Christian R. Petrich, Idaho Water Resources Research Institute. Also listed and provided in Attachment B, Tab 8, and Attachment C, Tab 16.
- Treasure Valley's Water Future – Summary of the Treasure Valley Water Summit, January 14-15, 2002. May 15, 2002. Compiled by Community Planning Association of Southwest Idaho, Idaho Department of Water Resources, Idaho Water Resources Research Institute, and Enviro Issues, Inc.
- Seismic Expression and Geological Significance of a Lacustrine Delta in Neogene Deposits of the Western Snake River Plain, Idaho. AAPG Bulletin, V. 78, No. 1 (January 1994), P. 102-121. By Spencer H. Wood.
- Ground Water Quality Characterization and Initial Trend Analysis for the Treasure Valley Shallow and Deep Hydrogeologic Subareas. March 1998. By Kenneth W. Neely and Janet K. Crockett. Also listed and provided in Attachment C, Tab 11.
- Ground Water Recharge and Flow in the Regional Treasure Valley Aquifer System – Geochemistry and Isotope Study. December 2002. Jon Hutchings and Christian R. Petrich, Idaho Water Resources Research Institute.
- Simulation of Ground Water Flow in the Lower Boise River Basin. February 2004. By Christian R. Petrich, Idaho Water Resources Research Institute.
- Simulation of Increased Ground Water Withdrawals in the Lower Boise River Basin. February 2004. By Christian R. Petrich. Also listed and provided in Attachment C, Tab 18.
- Stratigraphic Studies of the Boise (Idaho) Aquifer System Using Borehole Geophysical Logs with Emphasis on Facies Identification of Sand Aquifers. January 8, 2001. By Edward Squires, Hydro-Logic, Inc. and Spencer H. Wood, Boise State University.
- Water Budget for the Treasure Valley Aquifer System for the Years 1996 and 2000. By Scott M. Urban, Idaho Department of Water Resources. Also listed and provided in Attachment C, Tab 14.
- A Distributed Parameter Water Budget Data Base for the Lower Boise Valley. Revised January 2008. U.S. Bureau of Reclamation and Idaho Department of Water Resources. Also listed and provided in Attachment C, Tab 27.

Radiometric Dating, Volcanic Stratigraphy, and Sedimentation in the Boise Foothills,
Northeastern Margin of the Western Snake River Plain, Ada County, Idaho.
Isochron/West, No. 59, May 1993. By Drew M. Clemens, Arizona State University and
Spencer H. Wood, Boise State University.

Ground Water Analysis at Emmett, Idaho. May 4, 1996. By S.T. Kellogg, V.A. Simon, and M.
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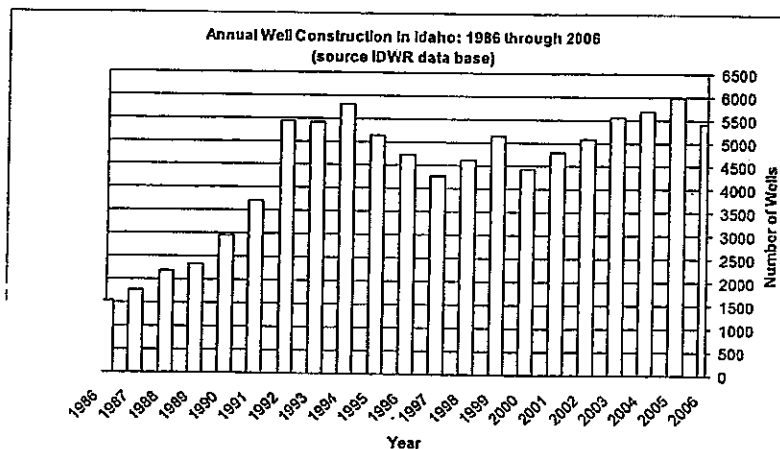
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7	2002	Hydro Logic, Inc.	Test Well (graph)
8	February 2004	Univer. of Idaho Christian Petrich	Treasure Valley Hydrologic Project Executive Summary Also listed on Attachment A.
9	May 20, 2005	NACFA	Notice of Protest to SunCor Idaho, 63-32061
10	October 2004	NACFA	Comments Pertaining to the SPF Water Engineering, LLC Report Titled: Aquifer Evaluation in the Big Gulch and Little Gulch Areas of Spring Valley Ranch
11	2005	NACFA	Well Water Issues Tracking Document
12	January 25, 2006	NACFA	Letter to Karl Dreher, IDWR, re: "Request for Comprehensive Groundwater Resource Evaluation and Consideration of New Water Rights Moratorium"
13	January 9, 2006	NACFA	Petition to IDWR for Aquifer Study
14	February 21, 2006	NACFA	Letter to Karl Dreher, IDWR, re: "Follow up to letter dated January 25, 2006 and request for meeting"
15	May 2, 2006	IDWR Dreher	Letter to David Head, NACFA, re: "Request for Comprehensive Ground Water Resource Evaluation and Consideration of New Water Rights Moratorium"
16	August 2006	NACFA	Map – Well monitoring, aquifer overview and SunCor water rights application
17	January 16, 2007	NACFA	Letter to Dave Tuthill, IDWR, re: "Status of Comprehensive Water Resource Evaluation in North Ada County / Follow-up on May 12, 2006 Correspondence with Director Dreher

18	January 29, 2007	NACFA	(member newsletter) Is there enough groundwater to support 100,000 additional residents in North Ada County in the next 20 years?
19	January 30, 2007	Ada County	Ada County Comprehensive Plan Update: North Foothills Sub-Area Plan recommended Revisions
20	February 2, 2007	Idaho Statesman article by Katy Moeller	Developments add to water worries for North Foothills residents
21	February 2, 2007	Idaho Statesman article by Vince Alberdi	Management plan must protect water supply and senior rights
22	February 12, 2007	NACFA	Notice to members re: "Response to request for water study in North Ada County"
23	April 2007	Hydro Logic, Inc.	Figure 9: Best-Case Predicted Interference from Six Hypothetical Wells Figure 10: Worst-Case Predicted Interference from Six Hypothetical Wells
24	July 9, 2007	City of Eagle	P&Z Commission – Special Meeting Minutes (audio on CD)
25	August 2007	Idaho Statesman article by Katy Moeller	Where will new Foothills homes get water?
26	September 10, 2007	David Head	Email to Dave Tuthill, IDWR, re: "NACFA Concerns on City of Eagle & M3"
27	Spring 2008	Allison Gilbreath BSU Student	Show Me the Water: What Idaho can learn from the impacts of growth on water quality and quantity in other states
28	July 8, 2008	NACGUA	Letter to Dave Tuthill, IDWR, re: "Representation/ M3 Eagle Water Right Application"
29	August 29, 2008	Idaho Statesman article by Katy Moeller	Residents protest water rights application in Foothills: A hydrology firm claims sufficient water for development; skeptics want an independent study
30	September 28, 2008	NACGUA	Letter to members and interested parties
31	October 2008	NACGUA	Handouts for membership meeting
32	November 24, 2008	Givens Pursley	M3 Eagle's Responses to NACGUA's Interrogatories, Requests for Production, and Requests for Admission

AMENDED
ATTACHMENT C: DOCUMENTS IN THE FILES OF JOHN THORNTON

Tab	Date	Author	Description
1		IDWR	Hydrograph for wells
2		M3 Eagle	Exhibit 5.1 – M3 Eagle’s Application: Well Field Diversion Components
3			Exhibits 1-3 – Vicinity Maps
4			Exhibits 6.1 and 6.2 – Regional Well Location and Depth Maps
5		M3 Eagle	Community Update for the Residents of Eagle
6			North Ada County Comprehensive Ground Water Assessment
7			North Ada County Proposed Development Map
8	Various	IDWR database	Well logs for modified or replaced wells Also listed on Attachment A
9	1982		Parker v. Wallentine, 103 Idaho 506, 650 P.2d 648; Facts Sheet
10	May 1996	IDWR	Ground Water Study of the Lower Boise River Valley, Ada and Canyon Counties, Idaho
11	March 1998	IDWR	Ground Water Quality Characterization and Initial Trend Analysis for the Treasure Valley Shallow and Deep Hydrogeologic Subareas Also listed on Attachment A
12	1999	IDWR	Streamflow Gains and Losses in the Lower Boise River Basin, Idaho, 1996-97
13	September 29, 1999	DEQ	Lower Boise River TMDL – Subbasin Assessment, Total Maximum Daily Loads (Revised version of Dec 18, 1998 report)
14	2000	IDWR	Water Budget for the Treasure Valley Aquifer System for the Years 1996 and 2000 Also listed on Attachment A
15	2001	USGS	Assessment of the sand and gravel resources of the Lower Boise River Valley Area, Idaho
16	February 2004	Univ. of Idaho Christian Petrich	Treasure Valley Hydrologic Project Executive Summary Also listed on Attachment A
17	2004	Natural Resources Interim Committee	Aquifer Working Group - report
18	February 2004	Univ. of Idaho	Simulation of Increased Ground Water Withdrawals in the Lower Boise River Basin Also listed on Attachment A
19	November 23, 2004	Interim Legislative Committee	Treasure Valley Working Group Final Report -- Draft

20	2007	City of Eagle	Amended 2007 Eagle Comprehensive Plan: Resolution No. 08-20
21	January 2007	Idaho Geological Survey William M. Phillips	Field Trip Guide to the Natural Hazards of the Boise Area, Idaho
22	May 4, 2007	Hydro Logic, Inc.	M3 Eagle Regional Hydrogeologic Characterization: North Ada, Canyon and Gem Counties, Idaho – Year-One Progress Report Also listed on Attachment A
23	October 23, 2007	Dave Tuthill IDWR	Update for the Legislative Committee
24	October 23, 2007	Natural Resources Interim Committee	Minutes
25	December 2007	Univ. of Idaho Stacey Douglas (student thesis)	Development of a numerical ground water flow model for the M3 Eagle Development Area Near Eagle, Idaho Also listed on Attachment A
26	December 27, 2007	City of Eagle	Applicant's Proposed Pre-Annexation and Development Agreement
27	January 2008	IDWR	(Revised) A Distributed Parameter Water Budget Data Base for the Lower Boise Valley Also listed on Attachment A
28	April 7, 2008	Las Vegas Review-Journal article	Bureau of Reclamation: Fernley flooding triggers canal review – Rodents, trees, time take toll across West
29	May 19, 2008	John Thornton	Notice of Protest
30	June 19, 2008	IDWR Dennis Owsley	Letter to John Thornton re: "Water Level Measurement Results in your domestic well"
31	September 9, 2008	John Thornton	Summary Notes
32	September 28, 2008	David Head John Thornton	Letter to M3 Water Protestants re: "Status on protest with M3 municipal water right application"
33	October 21, 2008	John Thornton	Draft Water Rights Protest Points of Issue
34	October 21, 2008	John Thornton	Draft of Water Rights Protest Statements or Questions
35	October 23, 2008	John Thornton	Note to City of Eagle
36	November 2008	John Thornton	Points of Concern Regarding the M3 Water Right Application
37	November 13, 2008		North Ada County Hydro Study (Power Point)
38	December 9, 2008	NACGUA	Notice of Meeting

39	November 26, 2008	Hydro Logic, Inc.	Modeling of Ground-Water Flow in the Pierce Gulch Sand Aquifer: Five Models: History, Updates, and Predictions of Impacts Caused by Pumping at the M3 Eagle Planned Residential Community, Ada County, Idaho. Also listed on Attachment A
----	-------------------	-------------------	---

Gibson, Deborah

From: Jo Beeman [jo.Beeman@beemanlaw.com]
Sent: Monday, January 12, 2009 9:53 PM
To: Bill Lawton ; Spackman, Gary; Jeffrey C. Fereday; Westra, John; Kelsey Nunez; Michael Lawrence; Norm Edwards
Cc: Anne Ritter (NACGUA); David Head (NACGUA); Gibson, Deborah; Jason Hudson (B&A); Jo Beeman (B&A); Joyce Angell (B&A); Kathy Pennisi (NACFA); Lori Anderson (Fereday); Office (B&A)
Subject: NACGUA Response to M3 Eagle List of Unanswered Discovery
Attachments: 20090112 NACGUA FINAL Response with Att A-B-C.pdf

IDWR and Parties:

Attached for filing is the following combined document from NACGUA:

NACGUA Response to M3 Eagle's List of Unanswered Discovery Requests, with
 Attachment A: DOCUMENTS IN THE PUBLIC DOMAIN (RULE 602)
 Attachment B: DOCUMENTS IN THE FILES OF DAVID HEAD
 Attachment C: DOCUMENTS IN THE FILES OF JOHN THORNTON

Jo Beeman

Josephine P. Beeman
 Beeman & Associates, P.C.
 Phone: 208-331-0950
 Fax: 208-331-0954
jo.beeman@beemanlaw.com

CONFIDENTIAL NOTICE: This transmission is intended only for the use of the individual(s) named as recipients. It may contain information that is privileged, confidential and/or protected from disclosure under applicable law including, but not limited to, the attorney client privilege and/or work product doctrine. If you are not the intended recipient of this transmission, please notify the sender immediately by telephone. Do not deliver, distribute or copy this transmission, disclose its contents, or take any action in reliance on the information it contains.

*Will submit
 Attachments on a
 CD to the Dept.
 1/16/09 - D.H.*

1/16/2009

Josephine P. Beeman #1806
BEEMAN & ASSOCIATES, P.C.
409 West Jefferson Street
Boise, ID 83702
(208) 331-0950
(208) 331-0954 (Facsimile)
office@beemanlaw.com

Attorney for North Ada County Groundwater Users Association

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

IN THE MATTER OF APPLICATION)	NACGUA'S RESPONSE TO M3
FOR PERMIT NO. 63-32573,)	EAGLE'S LIST OF UNANSWERED
IN THE NAME OF M3 EAGLE, LLC)	DISCOVERY REQUESTS
_____)	

North Ada County Groundwater Users Association (NACGUA) responds to M3 Eagle's
List of Unanswered Discovery Requests as follows:

GENERAL OBJECTIONS

In addition to objections from NACGUA's November 10, 2008 Responses to Discovery, incorporated herein by reference, NACGUA objects to M3 Eagle's Unanswered Discovery Requests, insofar as they purport to require NACGUA to respond differently from or beyond what is required by the Idaho Rules of Civil Procedure or relevant case law.

Specifically, M3 Eagle has maintained, with the concurrence of IDWR (see December 1, 2008 Order), that each member of NACGUA is a party, separate from NACGUA's party status. M3 Eagle's written discovery was to NACGUA and did not name individual members of NACGUA.¹ By contrast, all of M3 Eagle's Notices of Deposition were to individual members of

¹NACGUA thus objects to the following definitions/instructions: "You" or "your" refers to NACGUA and assumes that NACGUA is speaking on behalf of NACGUA and each NACGUA Member that has designated NACGUA as his or her spokesman in this matter." ... "[R]esponses will include all responsive information and documents known to or in the possession of NACGUA and any NACGUA Member."

BEFORE THE DEPARTMENT OF WATER RESOURCES

FOR THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 63-32573, IN THE)
NAME OF M3 EAGLE, LLC.)
_____)) NOTICE OF STATUS CONFERENCE

A status conference is set in this matter for **January 20, 2009, starting at 1:00 p.m. at the offices of the Idaho Department of Water Resources, 322 E. Front St., 6th Floor, Boise, Idaho. If any party cannot attend in person they may attend by telephone by dialing (713)577-1201 and entering access code 504265 when**

prompted.

The status conference will be held in accordance with the provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code, and the adopted Rules of Procedure of the department. IDAPA 37.01.01. A copy of the rules may be obtained from the department upon request.

The status conference will be conducted in accordance with the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to participate in or understand the status conference, please advise the department at least twenty-four (24) hours prior to the conference. Inquires for

special accommodations should be directed to Deborah Gibson, Administrative Assistant,
Idaho Department of Water Resources, 322 E. Front St., P.O. Box 83720, Boise, Idaho
83720-0098, telephone: (208) 287-4942, fax: (208) 287-6700.

Dated this 15th day of January, 2009.

A handwritten signature in cursive script, reading "Gary Spackman", written over a horizontal line.

Gary Spackman
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of January, 2009, a true and correct copy of the foregoing document described below was served on the following as noted:

Document(s) Served: Notice of Status Conference

M3 EAGLE LLC
533 E RIVERSIDE DR STE 110
EAGLE ID 83616

(☒) U.S. Mail, Postage Prepaid
() Facsimile
() E-mail

JEFFREY C FEREDAY
GIVENS PURSLEY LLP
601 W BANNOCK ST
PO BOX 2720
BOISE ID 83701

(☒) U.S. Mail, Postage Prepaid
() Facsimile
(☒) E-mail

NORTH ADA COUNTY GROUNDWATER
USERS ASSN.
C/O JOSEPHINE P BEEMAN
BEEMAN & ASSOCIATES PC
409 W JEFFERSON ST
BOISE ID 83702

(☒) U.S. Mail, Postage Prepaid
() Facsimile
(☒) E-mail

NORMAN L EDWARDS
884 W BEACON LIGHT RD
EAGLE ID 83616

(☒) U.S. Mail, Postage Prepaid
() Facsimile
(☒) E-mail

ALAN SMITH
3135 OSPREY RD
EAGLE ID 83616

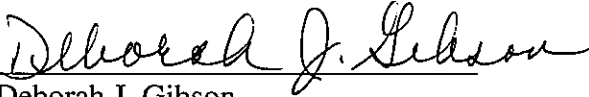
(☒) U.S. Mail, Postage Prepaid
() Facsimile
() E-mail

BILL LAWTON
3145 N OSPREY RD
EAGLE ID 83616

(☒) U.S. Mail, Postage Prepaid
() Facsimile
(☒) E-mail

DENNIS OWSLEY (and)
SEAN VINCENT
IDAHO DEPT OF WATER RESOURCES
322 E FRONT ST 6TH FLOOR
BOISE ID

(☒) Hand Delivery
() U.S. Mail, Postage Prepaid
() Facsimile
() E-mail


Deborah J. Gibson
Administrative Assistant

Gibson, Deborah

From: Gibson, Deborah
Sent: Thursday, January 15, 2009 11:07 AM
To: Jeffrey C Fereday; 'Jo Beeman'; 'Norman Edwards'; Bill Lawton (prcarw20@cableone.net)
Cc: Spackman, Gary; 'Lori Anderson'; 'joyce.angell@beemanlaw.com'
Subject: M3 Eagle Notice of Status Conference for Jan. 20 at 1:00 p.m.
Attachments: img-115103336.pdf

Attached is a Notice of Status Conference regarding the M3 Eagle protested applications and the January 7, 2009 letter issued by the Hearing Officer. I will place a copy of the notice in the mail to everyone. Allan Smith is the only party that will not receive an email copy. He has been notified by phone and plans to participate.

I have reserved Conference Rooms C&D on the 6th Floor for this conference. If anyone calling in to this conference has any problems during the call, they may call me at 287-4942.

Deborah Gibson
Administrative Assistant
Water Management Division
322 E. Front St., Boise, ID
Phone: (208) 287-4942
Fax: (208) 287-6700
Email: deborah.gibson@idwr.idaho.gov
Website: idwr.idaho.gov

JAN 12 2009

DEPARTMENT OF
WATER RESOURCES

LAW OFFICES
601 W. Bannock Street
PO Box 2720, Boise, Idaho 83701
TELEPHONE: 208 388-1200
FACSIMILE: 208 388-1300
WEBSITE: www.givenspursley.com

JEFFREY C. FEREDAY
Direct Dial: 208-388-1217
E-Mail: jeffereday@givenspursley.com

Gary G. Allen	Steven J. Hippler	Deborah E. Nelson
Peter G. Barton	Debora K. Kristensen	Kelsey J. Nunez
Christopher J. Beeson	Anne C. Kunkel	W. Hugh O'Riordan, LL.M.
Clint R. Bolinder	Jeremy G. Ladle	Angela M. Reed
Erik J. Bolinder	Michael P. Lawrence	Justin A. Steiner
Jeremy C. Chou	Franklin G. Lee	Scott A. Tschirgi, LL.M.
William C. Cole	David R. Lombardi	J. Will Varin
Michael C. Creamer	John M. Marshall	Conley E. Ward
Amber N. Dina	Kenneth R. McClure	Robert B. White
Elizabeth M. Donick	Kelly Greene McConnell	
Kristin Bjorkman Dunn	Cynthia A. Melillo	
Thomas E. Dvorak	Christopher H. Meyer	RETIRED
Jeffrey C. Fereday	L. Edward Miller	Kenneth L. Pursley
Justin C. Fredin	Patrick J. Miller	James A. McClure
Martin C. Hendrickson	Judson B. Montgomery	Raymond D. Givens (1917-2008)

January 12, 2009

Via Email and Hand Delivery

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

Re: M3 Eagle Application 63-32573: your letter of January 7, 2009
GP File No. 8526-4

Dear Mr. Spackman:

This responds to your January 7, 2009 letter inquiring about Ed Squires' recent conversation with Dennis Owsley concerning Ed's planned submission of a hydrogeological report discussing M3 Eagle's mid-2008, 9-day aquifer test. Your letter states that "the promised report is the first report the Department will have received for the aquifer test," and inquires about the implications for maintaining the hearing schedule.

At the outset, I want to make sure you recognize that the data and analytical information from the 9-day aquifer test, including annotated charts, figures, maps, and plots, were supplied to the Department and the Protestants on November 26, 2008. These data and information are the aquifer test results, and they provide the basis for independent review and understanding of it. The report Ed mentioned to Dennis is a narrative that will describe how the test was carried out, reference these same data and information, and present Hydro Logic's interpretation of them. It will supplement existing filings and discovery responses, and is in the nature of pre-filed testimony. (The aquifer test also was referenced in Hydro Logic's November 26, 2008 modeling report.)

Given the concerns you raise in your letter, I also want to alert you to the fact that, in addition to the aquifer test narrative report, we plan to submit an additional narrative report discussing previously-filed geochemical data and information. But again, this geochemical data and the analytical results related to it were submitted on November 26, and our experts will

testify about these data at the hearing. In any case, we will have both of these narrative reports to the Department and the Protestants by January 23, 2008.

Over nearly three years, M3 Eagle has assembled and provided to the Department a substantial amount of information describing the hydrogeology of the area. Because of this approach, much of the information M3 Eagle delivered to your office on November 26 actually had been submitted much earlier through the North Ada County Technical Advisory Committee (of which M3 Eagle is a member). We recognize that this is a large volume of material that requires evaluation time, and we certainly appreciate your concern about deadlines and the Department's staff review.

However, because the underlying information already has been provided, we believe the Department has what is necessary for independent review. We are hopeful you will not see the two upcoming reports as substantially adding to the review time or necessitating a delay in the March hearing.

I suggest a telephonic status conference soon to discuss this, and will contact your assistant to inquire about possible times for this.

Sincerely,



Jeffrey C. Fereday

JCF/la
cc (via fax, mail, or email):

Bill Brownlee, Gerry Robbins, and Ed Squires
Josephine Beeman, John Thornton, and David Head
Alan Smith
Bill Lawton
Norman Edwards

Gibson, Deborah

From: Lori Anderson [lorianderson@givenspursley.com]
Sent: Monday, January 12, 2009 11:20 AM
To: Spackman, Gary; Gibson, Deborah
Cc: 'William Brownlee'; 'Gerry Robbins'; 'Ed Squires'; 'Josephine Beeman'; 'David Head'; 'Bill Lawton'; 'Norman Edwards'; Jeffrey C Fereday; Michael P. Lawrence; Susan Heneise
Subject: M3 Response Spackman Jan 7 Letter
Attachments: JCF to Spackman re Addl Repts 011209.PDF



JCF to Spackman re
Addl Repts ...

Mr. Spackman:

On behalf of Jeff Fereday, I am attaching M3 Eagle's response to your January 7, 2009 letter pertaining to Ed Squires' 9-day aquifer test report, etc.. The original letter is also being hand-delivered to you this morning.

Lori Anderson
Assistant to Jeffrey C. Fereday,
Deborah E. Nelson & Michael P. Lawrence
Givens Pursley, LLP
601 W. Bannock St.
Boise, ID 83702
Direct Dial: (208) 388-1234
Facsimile: (208) 388-1300
www.givenspursley.com

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LAW OFFICES
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Justin C. Frodin	Patrick J. Miller	James A. McClure
Marlin C. Hendrickson	Judson B. Montgomery	Raymond D. Givens (1917-2008)

January 12, 2009

Via Email and Hand Delivery

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

Re: M3 Eagle Application 63-32573; your letter of January 7, 2009
GP File No. 8526-4

Dear Mr. Spackman:

This responds to your January 7, 2009 letter inquiring about Ed Squires' recent conversation with Dennis Owsley concerning Ed's planned submission of a hydrogeological report discussing M3 Eagle's mid-2008, 9-day aquifer test. Your letter states that "the promised report is the first report the Department will have received for the aquifer test," and inquires about the implications for maintaining the hearing schedule.

At the outset, I want to make sure you recognize that the data and analytical information from the 9-day aquifer test, including annotated charts, figures, maps, and plots, were supplied to the Department and the Protestants on November 26, 2008. These data and information are the aquifer test results, and they provide the basis for independent review and understanding of it. The report Ed mentioned to Dennis is a narrative that will describe how the test was carried out, reference these same data and information, and present Hydro Logic's interpretation of them. It will supplement existing filings and discovery responses, and is in the nature of pre-filed testimony. (The aquifer test also was referenced in Hydro Logic's November 26, 2008 modeling report.)

Given the concerns you raise in your letter, I also want to alert you to the fact that, in addition to the aquifer test narrative report, we plan to submit an additional narrative report discussing previously-filed geochemical data and information. But again, this geochemical data and the analytical results related to it were submitted on November 26, and our experts will

Mr. Gary L. Spackman
January 12, 2009
Page 2

testify about these data at the hearing. In any case, we will have both of these narrative reports to the Department and the Protestants by January 23, 2008.

Over nearly three years, M3 Eagle has assembled and provided to the Department a substantial amount of information describing the hydrogeology of the area. Because of this approach, much of the information M3 Eagle delivered to your office on November 26 actually had been submitted much earlier through the North Ada County Technical Advisory Committee (of which M3 Eagle is a member). We recognize that this is a large volume of material that requires evaluation time, and we certainly appreciate your concern about deadlines and the Department's staff review.

However, because the underlying information already has been provided, we believe the Department has what is necessary for independent review. We are hopeful you will not see the two upcoming reports as substantially adding to the review time or necessitating a delay in the March hearing.

I suggest a telephonic status conference soon to discuss this, and will contact your assistant to inquire about possible times for this.

Sincerely,



Jeffrey C. Fereday

JCF/la
cc (via fax, mail, or email):

Bill Brownlee, Gerry Robbins, and Ed Squires
Josephine Beeman, John Thornton, and David Head
Alan Smith
Bill Lawton
Norman Edwards

December 19, 2008

RECEIVED

DEC 22 2008

DEPARTMENT OF
WATER RESOURCES

M3 Eagle

Gary Spackman, Hearing Officer
State of Idaho
Department of Water Resources
322 E Front Street
PO Box 83720
Boise, Idaho 83720-0098

Dear Sir:

In response to the IDWR Order of December 4, 2008 directing parties to file with the Hearing Officer (1) a list of unanswered questions, and (2) the name of the party to whom the questions were directed, please be advised as follows:

- (1) On November 13th my requests for admissions and interrogatories were mailed to M3, LLC.
- (2) On November 24th, Mr. Fereday notified me by letter that M3 refused to answer any of my Discovery Requests asserting that they were not timely under the Idaho Rules of Civil Procedure, as 30 days to respond was required.
- (3) M3 had sufficient time to respond.

It was my view that the IDWR Rule 052 provided that "the Idaho Rules of Civil Procedure did not apply".

Rule 521, IDWR Rules also provides that an "order authorizing and scheduling discovery need not conform to the time tables of the Idaho Rules of Civil Procedure".

Please be advised that any of the proposed hearing dates in March, 2009 will be acceptable.

Sincerely,



Alan Smith

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of December, 2008, the foregoing was filed, served, or copied as follows:

NOTICE OF SERVICE AND DISCOVERY

North Ada County Groundwater Users Association
Josephine P. Beeman
Beeman & Associates PC
409 West Jefferson
Boise, ID 83702-6049

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

Bill Lawton, Spokesman for
Robert L. and Kip C. Wood
M. Howard Goldman
Timothy R. And Judy L. Milburn
3145 Osprey Road
Eagle, ID 83616

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

Norman Edwards
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☒ 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



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

January 7, 2009

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

Re: Application for Permit No. 63-32573, in the name of M3 Eagle, LLC.

Dear Interested Parties:

Dennis Owsley, a hydrogeologist employed by the Idaho Department of Water Resources ("Department"), is reviewing the technical reports submitted to the Department and the parties, and may be the principal author of the staff memorandum I requested of Department staff. Yesterday, Dennis Owsley informed me that Ed Squires, a consultant for M3 Eagle, told Dennis that Ed was intending to submit a report to Dennis within the next couple of weeks addressing a nine day aquifer test conducted by Squires on behalf of M3 Eagle. I understand from Dennis the promised report is the first report the Department will have received for the aquifer test. I assume this is the same aquifer test that was discussed during the field tour of the M3 Eagle property. Dennis told me he would be unable to review the document and write any critique of the document in his staff memorandum by the deadline of January 23, 2009.

The *Order Authorizing Discovery and Scheduling Order*, dated September 12, 2008, ordered that all technical reports intended to be used at the hearing be served on the parties and the hearing officer on or before November 26, 2008. Reports were served. The hearing officer delivered the technical reports to Department technical staff for review and for preparation of a staff memorandum that is due on January 23, 2009. Because the parties would need an opportunity to review the Department's staff memorandum prior to the hearing, the hearing officer scheduled the hearing during the last full week of March.

Under the present schedule, the submittal of the promised technical report, as described to me, would be unacceptable. Possible refusal by the hearing officer to accept the document analyzing the data from the test into evidence could be critical to a determination in this contested case. The Department should use all of the data and information available to it in determining the sufficiency of the water supply, whether the proposal will reduce the quantity of water under existing rights, and whether the other factors the Department must consider are satisfied.

The purpose of this letter is to inquire of the parties about the anticipated submittal of the technical report by Ed Squires. If M3 Eagle does not intend to submit evidence about the pump test at the hearing, perhaps the hearing officer's possible refusal to accept the document would be unimportant. On the other hand, if the document will address some of the central issues in this contested case, perhaps the parties and the hearing officer could consider extending some of the deadlines and the dates scheduled for the hearing. Finally, some consideration should be given to the expectation of adherence to deadlines.

Jeff, you should probably take the lead in this matter and explain to me and the parties M3 Eagle's expectation when the promised technical documents are submitted to the Department. I would also expect that the parties might converse about this subject.

Thanks to all for their assistance in this matter.

Respectfully,



Gary Spackman

cc: Service List attached

SERVICE LIST
As of Jan. 7, 2009

JEFFREY C FEREDAY
GIVENS PURSLEY LLP
601 W BANNOCK ST
PO BOX 2720
BOISE ID 83701

M3 EAGLE LLC
533 E RIVERSIDE DR STE 110
EAGLE ID 83616

NORMAN L EDWARDS
884 W BEACON LIGHT RD
EAGLE ID 83616

ALAN SMITH
3135 OSPREY RD
EAGLE ID 83616

BILL LAWTON
3145 N OSPREY RD
EAGLE ID 83616

NORTH ADA COUNTY GROUNDWATER
USERS ASSN.
C/O JOSEPHINE P BEEMAN
BEEMAN & ASSOCIATES PC
409 W JEFFERSON ST
BOISE ID 83702

WESTERN REGION
ATTN JOHN WESTRA
2735 AIRPORT WAY
BOISE ID 83705-5082

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

RECEIVED
JAN 07 2009

Department of Water Resources

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

**AMENDED NOTICE OF DEPOSITION OF
DR. DALE RALSTON**

TO: Dr. DALE RALSTON

PLEASE TAKE NOTICE that on February 3, 2009 at 9:00 a.m. at the offices of Givens Pursley, LLP, 601 W. Bannock St., Boise, Idaho, counsel for the Applicant M3 Eagle LLC, will take the deposition of Dr. Dale Ralston, an expert in the above-entitled action upon oral examination pursuant to Rule 30 of the Idaho Rules of Civil Procedure, before a Notary Public, or before some other officer authorized by law to administer oaths, and continuing from day to day thereafter, until the deposition is completed. You are notified and required to appear and provide testimony under oath.

DATED this 7th day of January, 2009.

Respectfully submitted,

GIVENS PURSLEY LLP

By

A handwritten signature in black ink, appearing to read "Jeffrey C. Fereday", written over a horizontal line.

Jeffrey C. Fereday

Michael P. Lawrence

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of January, 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
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SERVICE

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

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Beeman & Associates PC
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Ralston Hydrologic Services
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Moscow, ID 83843

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☐ E-mail

Bill Lawton, Spokesman for
Robert L. Wood
M. Howard Goldman
Timothy R. Milburn
3145 Osprey Road
Eagle, ID 83616

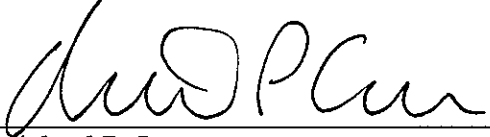
☒ U. S. Mail
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Norman Edwards
884 W. Beacon Light Road
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Alan Smith
3135 N. Osprey Road
Eagle, ID 83616

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Michael P. Lawrence

RECEIVED

DEC 31 2008

DEPARTMENT OF
WATER RESOURCES

December 30, 2008

Gary Spackman, Hearing Officer
State of Idaho
Department of Water Resources
322 E Front Street
PO Box 83720
Boise, Idaho 83720-0098

Dear Sir:

This letter is in response to M3 Eagle's filing of December 23, 2008 in which Mr. Fereday asserts that "Rule 524 provides that requests for production, interrogatories, and requests for admissions may be taken in accordance with the Idaho Rules of Civil Procedure", and therefore the 30 day time limit must apply. That reliance on Rule 524 to reach such a conclusion is somewhat misplaced. This is a general rule setting forth the types of discovery which IDWR allows.

The more specific rules quoted in my earlier letter of December 19, 2008 allow IDWR to apply its own discretion regarding strict compliance with the time requirements of the Idaho Rules of Civil Procedure. The more specific rules should prevail over the more general ones and in that instance M3 Eagle should be required to answer all discovery requests which I submitted to them.

Sincerely,


Alan Smith

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of December, 2008, the foregoing was filed, served, or copied as follows:

NOTICE OF SERVICE AND DISCOVERY

North Ada County Groundwater Users Association
Josephine P. Beeman
Beeman & Associates PC
409 West Jefferson
Boise, ID 83702-6049

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

Bill Lawton, Spokesman for
Robert L. and Kip C. Wood
M. Howard Goldman
Timothy R. And Judy L. Milburn
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Norman Edwards
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www.givenspursley.com
Attorneys for M3 Eagle LLC

RECEIVED
DEC 23 2008
Department of Water Resources

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

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

**M3 EAGLE'S RESPONSE TO ALAN
SMITH'S DECEMBER 19 FILING
REGARDING DISCOVERY**

Applicant M3 Eagle LLC ("M3 Eagle"), through Jeffrey C. Fereday and Michael P. Lawrence of the firm Givens Pursley LLP, hereby responds to Alan Smith's filing dated December 19, 2008 regarding discovery.¹ For the following reasons, M3 Eagle believes it responded to Mr. Smith's discovery requests when it was not obligated to do so and is not required to respond further.

1. Mr. Smith's discovery requests to M3 Eagle were not timely. The Hearing Officer's September 12, 2008 *Order Authorizing Discovery and Scheduling Order* ("September 12 Order") instructed the parties to complete written discovery on or before November 26, 2008. IDWR's Rule of Procedure 524 provides that requests for production, interrogatories, and requests for admission may be taken in accordance with the Idaho Rules of Civil Procedure. The

¹ The letter filed by Mr. Smith was dated December 19, 2008, but the certificate of service attached thereto was dated December 20, 2008.

Hearing Officer's September 12 Order did not alter or amend Rule 524. Idaho Rules of Civil Procedure 33(a)(2), 34(b)(2), and 36(a) provide a party with 30 days to respond to written discovery requests, making October 27 the latest possible date for serving written discovery under the September 12 Order. Mr. Smith served his written discovery requests on November 13 which is more than two weeks past this deadline. M3 Eagle received Mr. Smith's discovery requests by mail on November 14—only 12 days before the November 26 deadline for completing written discovery. Because Mr. Smith's discovery requests were not timely, M3 Eagle was not required to respond.

2. Although not obligated to do so, M3 Eagle provided Mr. Smith with responses. Despite the untimeliness of Mr. Smith's discovery requests, M3 Eagle provided Mr. Smith with a copy of *M3 Eagle's Responses to NACGUA's Interrogatories, Requests for Production, and Request for Admission* on November 24, 2008. A copy of the cover letter to Mr. Smith enclosing M3 Eagle's discovery responses to NACGUA (and explaining the untimeliness problem) is attached to this pleading as Exhibit A. As stated in the letter, M3 Eagle also invited Mr. Smith (as well as Protestants Lawton and Edwards) to inspect the document production made available to NACGUA. M3 Eagle made this offer even though Protestants Smith, Lawton and Edwards did not request such documents through discovery. M3 Eagle believes its written responses and document production to NACGUA are sufficient to respond to Mr. Smith's inquiries.

3. Mr. Smith has not identified any unanswered questions. The Hearing Officer's December 4, 2008 *Order Granting Motion for Stay, Order Denying All Motions to Compel and Motions for Sanctions, and Order Reinstating Party* ("December 4 Order") directed parties to file and serve "a list of unanswered questions or questions answered unsatisfactorily from the written discovery." Mr. Smith has not provided a list of such questions. Instead, Mr.

Smith apparently takes the view that M3 Eagle must respond to all of his untimely discovery requests regardless of whether M3 Eagle's discovery responses to NACGUA answered them (which we believe they did). M3 Eagle doubts that this sort of inefficient discovery was intended by the December 4 Order.

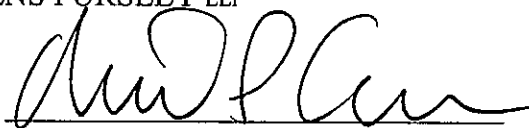
If the Hearing Officer so orders, M3 Eagle will respond in a reasonable time to specific unanswered discovery requests identified by Mr. Smith.

DATED this 23^d day of December, 2008.

Respectfully submitted,

GIVENS PURSLEY LLP

By



Jeffrey C. Fereday
Michael P. Lawrence

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23^d of December, 2008, 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
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M. Howard Goldman
Timothy R. Milburn
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Eagle, ID 83616

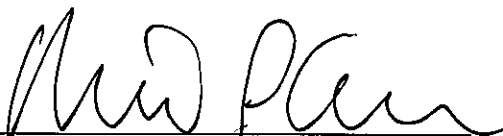
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Michael P. Lawrence

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JEFFREY C. FEREDAY
Direct Dial: 208-388-1217
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Gary G. Allen	Steven J. Hippler	Deborah E. Nelson
Peter G. Barton	Debora K. Kristensen	Kelsey J. Nunez
Christopher J. Beeson	Anne C. Kunkel	W. Hugh O'Riordan, LL.M.
Clint R. Bolinder	Jeremy G. Ladis	Angela M. Reed
Erk J. Bolinder	Michael P. Lawrence	Justin A. Steiner
Jeremy C. Chou	Franklin G. Lee	Scott A. Tschirgi, LL.M.
William C. Cote	David R. Lombardi	J. Will Varin
Michael C. Creamer	John M. Marshall	Conley E. Ward
Amor N. Dina	Kenneth R. McClure	Robert B. White
Elizabeth M. Donick	Kelly Greene McConnell	
Kristin Bjorkman Dunn	Cynthia A. Mellito	
Thomas E. Dvorak	Christopher H. Meyer	RETIRED
Jeffrey C. Fereday	L. Edward Miller	Kenneth L. Pursley
Justin C. Fredin	Patrick J. Miller	James A. McClure
Martin C. Hendrickson	Judson B. Montgomery	Raymond D. Givens (1917-2008)

November 24, 2008

Via U.S. Mail

Alan Smith
3135 Osprey Road
Eagle, ID 83616

Re: M3 Eagle LLC's responses to discovery requests
GP File No. 8526-4

Dear Mr. Smith:

I am writing on behalf of our client, M3 Eagle LLC ("M3 Eagle"). We have received the *Requests for Admissions, Interrogatories, and Production of Documents* ("Discovery Requests") dated November 13, 2008, that you sent on behalf of yourself individually and as a representative of Eagle Pines Water Users Association.

Those Discovery Requests, however, were not timely under the Hearing Officer's September 12, 2008 *Order Authorizing Discovery and Scheduling Order* ("September 12 Order") and the Idaho Rules of Civil Procedure. The September 12 Order requires all written discovery to be complete by November 26, 2008. To comply with this deadline under the Idaho Rules of Civil Procedure (which provide parties with 30 days to respond to requests for admission, interrogatories, and requests for production), written discovery requests must have been served by October 27 at the latest. Accordingly, your November 13 Discovery Requests were not timely and M3 Eagle is not required to respond to them.

Nevertheless, enclosed with this letter you will find a copy of *M3 Eagle's Responses to NACGUA's Interrogatories, Requests for Production, and Requests for Admission* ("M3 Eagle's Responses") served on North Ada County Groundwater Users Association's counsel and others today. We believe M3 Eagle's Responses cover most, if not all, of the inquiries in your Discovery Requests. Furthermore, you are invited to inspect the documents made available at the offices of Givens Pursley LLP as noted in Response to Request for Production No. 1 in M3 Eagle's Responses. By copy of this letter, the same invitation is extended to protestants Mr. Lawton and Mr. Edwards. If you or they want copies of documents, we will make them at our normal copying fee.

EXHIBIT A

Alan Smith
November 24, 2008
Page 2

Please contact my assistant, Lori Anderson, at 208-388-1234 if you would like to schedule an appointment to inspect and copy documents.

Sincerely,



Jeffrey C. Fereday

JCF/la
Encl.

cc: William Lawton
Norman Edwards
Josephine Beeman
William Brownlee
Gerry Robbins
Ed Squires
Michael Lawrence

Jeffrey C. Fereday [ISB No. 2719]
Michael P. Lawrence [ISB No. 7288]
GIVENS PURSLEY LLP
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www.givenspursley.com
Attorneys for M3 Eagle LLC

RECEIVED
DEC 22 2008
Department of Water Resources

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

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

**M3 EAGLE'S LIST OF UNANSWERED
DISCOVERY REQUESTS TO NACGUA
AND ITS MEMBER PROTESTANTS**

M3 Eagle LLC ("M3 Eagle"), though Jeffrey C. Fereday and Michael P. Lawrence of the firm Givens Pursley LLP, pursuant to the Hearing Officer's December 4, 2008 *Order Granting Motion for Stay, Order Denying All Motions to Compel and Motions for Sanctions, and Order Reinstating Party* ("December 4 Order"), hereby files and serves this List of Unanswered Discovery Requests ("List") with the Hearing Officer and upon North Ada County Groundwater Users Association ("NACGUA"), respectively.

This List incorporates by reference the instructions and definitions set forth in *Applicant M3 Eagle LLC's First Set of Discovery Requests to Protestant North Ada County Groundwater Users Association* ("Discovery Requests").¹ In particular:

¹ A copy of M3 Eagle's Discovery Requests is attached as Exhibit A to *Affidavit of Michael Lawrence in Support of Motion to Compel Discovery Responses* filed with the Hearing Officer on November 14, 2008. A copy of NACGUA's Responses to Applicant M3 Eagle LLC's First Set of Discovery Requests to Protestant North Ada County Groundwater Users Association ("NACGUA's Discovery Responses") is attached as Exhibit B to that affidavit. NACGUA has served one set of supplemental responses to M3 Eagle's Discovery Requests; those responses did not respond to requests listed in this pleading.

In responding to these Discovery Requests, please base your responses on all information available to NACGUA and each NACGUA Member. This information includes information in the possession of NACGUA's attorneys, experts, and consultants, and each NACGUA Member's attorneys, experts, and consultants

Requests to identify or produce documents include all documents in the possession or control of: 1) NACGUA; 2) any NACGUA Member; or 3) any attorney, accountant, expert witness, lay witness or other agent or person from whom NACGUA or any NACGUA Member has a legal right to obtain such document

"You" or "your" refers to NACGUA and assumes that NACGUA is speaking on behalf of NACGUA and each NACGUA Member that has designated NACGUA as his or her spokesman in this matter.

Discovery Requests at 2-5. M3 Eagle is serving this List on NACGUA's counsel only.

However, it is M3 Eagle's expectation that, pursuant to the definitions and instructions in the Discovery Requests, responses will include all responsive information and documents known to or in the possession of NACGUA and any NACGUA Member.

This List contains Requests for Admission, Requests for Production, and Interrogatories from M3 Eagle's Discovery Requests that NACGUA did not answer or answered unsatisfactorily. NACGUA refused to answer these requests primarily on grounds that "NACFA is not a party,"² that M3 Eagle "has the burden of proof," and, without further explanation, because of NACGUA's November 10, 2008 *Motion for Stay and Limited Discovery for Purposes of Settlement* ("Motion for Stay"). For the reasons discussed in *M3 Eagle's Motion to Compel Discovery Responses, Memorandum in Support, and Request for Sanctions against NACGUA and its Member Protestants* dated November 14, 2008 ("Motion to Compel"), these are not valid grounds to refuse to respond.

Since filing its Motion to Compel, M3 Eagle has confirmed that NACGUA and its

² NACFA, of course, is the North Ada County Foothills Association—the original protestant in this matter that "assigned" its protest to NACGUA.

members possess information and documents that are responsive to its Discovery Requests but that NACGUA did not provide or produce with NACGUA's Discovery Responses. *Affidavit of Michael P. Lawrence Regarding Unanswered Discovery Requests*, ¶¶ 8-10. M3 Eagle also has confirmed that neither NACGUA's counsel nor its officers communicated M3 Eagle's Discovery Requests to NACGUA's individual members or requested any information or documents from any individual members to respond to the Discovery Requests. *Id.* at ¶ 9. This is despite M3 Eagle's express instructions in its Discovery Requests, as noted above. Again, M3 Eagle expects NACGUA to provide all responsive information and documents known to or in the possession of NACGUA and any of its members.

M3 Eagle further believes that NACGUA should not be permitted to withhold discoverable information and documents on grounds that "NACFA is not a party." The individuals who were organizing under NACFA when they filed protests in this matter formed a new unincorporated association and, by way of a letter to the Hearing Officer, "assigned" the NACFA protests to NACGUA. NACGUA now attempts to hide behind this maneuver as if to say that NACFA's information and documents belong to someone else—namely, the predecessor group and assignor—and therefore need not be produced. NACGUA's position cannot be considered as being in good faith. NACGUA should be held responsible for producing all discoverable documents, whether held by NACGUA, its members, or its predecessor organization NACFA—the original protestant organization in this matter.

It also is apparent that the two organizations remain largely overlapping: they have similar leadership and membership; they collaborate on fundraising; and they act "in cooperation," to quote from their own fundraising materials. Documents obtained by M3 Eagle and depositions of NACGUA's officers and members show that NACGUA is more like an arm of NACFA rather than a separate entity. *Affidavit of Michael P. Lawrence Regarding*

Unanswered Discovery Requests, ¶¶ 8, 11-12. Thus, in addition to the fact that NACGUA is “standing in NACFA’s shoes” as a result of the protest assignment, NACGUA is obligated to produce NACFA-related information because the entities are so closely related.

LIST OF UNANSWERED DISCOVERY REQUESTS

Request for Production No. 4, Request for Admission Nos. 1, 2, 7, 10, 12, 13, and 14, and Interrogatory Nos. 1, 2, 3, 8, 9, 12, 14, 15, 16, 19, and 21 are not included in this List because NACGUA arguably responded satisfactorily and/or because M3 Eagle has decided to not seek responses with this pleading.

Explanations provided in italics below are included to provide the Hearing Officer with a brief synopsis of why M3 Eagle asserts that NACGUA did not answer the requests or answered them unsatisfactorily. Neither the exclusion of a request from this List nor the explanations included below are intended to limit any Discovery Request or relieve NACGUA from its obligation to fully respond or supplement its responses to any of M3 Eagle’s Discovery Requests.

REQUEST FOR PRODUCTION NO. 1. Please produce all documents referring to Applicant, the Application, Applicant’s water rights, Applicant’s prospective water use, the Protest, or the M3 Eagle Project.

NACGUA has not produced all responsive documents in its or its members’ possession. See Affidavit of Michael P. Lawrence Regarding Unanswered Discovery Requests, ¶ 10.

REQUEST FOR ADMISSION NO. 3. Please admit that all information and documents pertaining to the Protest or the Application that is or was in the possession of NACFA also is available to or in the possession of NACGUA.

INTERROGATORY NO. 4. If the answer to Request for Admission No. 3 is anything other than an unqualified admission, please describe the basis for your answer

and identify each document that supports, contradicts, or in any way pertains to such answer.

REQUEST FOR PRODUCTION NO. 2. To the extent not produced in response to Request for Production No. 1, please produce all documents that pertain to NACFA's protest of the Application.

REQUEST FOR PRODUCTION NO. 3. Please produce all documents that pertain to NACFA's protest of Application No. 63-31966 filed by SunCor in May 2004.

NACGUA denied Request for Admission No. 3 and objected to Requests for Production Nos. 2 and 3 because, as stated in its response to Interrogatory No. 4, "NACFA is not a party." As discussed above and in M3 Eagle's Motion to Compel, "NACFA is not a party" is not a sufficient excuse for refusing to answer.

Furthermore, M3 Eagle has confirmed through depositions that NACGUA and its members possess information and documents that are responsive to these requests. Affidavit of Michael P. Lawrence Regarding Unanswered Discovery Requests, ¶ 10.

REQUEST FOR ADMISSION NO. 4. Please admit that the water use proposed by the Application will not cause the amount of water available under an existing water right to be reduced below the amount recorded by permit, license, decree or valid claim or the historical amount beneficially used by the water right holder under such recorded water rights, whichever is less.

INTERROGATORY NO. 5. If the answer to Request for Admission No. 4 is anything other than an unqualified admission, please state the owner, the legal basis of the water right (e.g., license, permit, decree, or domestic exemption), and the IDWR water right number (if any), of such existing water right(s), and please describe the basis for your

answer and identify each document that supports, contradicts, or in any way pertains to such answer.

REQUEST FOR ADMISSION NO. 5. Please admit that the water use proposed by the Application will not force the holder of an existing water right to an unreasonable effort or expense to divert water under his/her water right.

INTERROGATORY NO. 6. If the answer to Request for Admission No. 5 is anything other than an unqualified admission, please state the owner, the legal basis of the water right (e.g., license, permit, decree, or domestic exemption), and the IDWR water right number (if any), of such existing water right(s), and please describe the basis for your answer and identify each document that supports, contradicts, or in any way pertains to such answer.

REQUEST FOR ADMISSION NO. 6. Please admit that the water use proposed by the Application will not cause the quality of the water available to the holder of an existing water right to be made unusable for the purposes of the existing user's water right.

INTERROGATORY NO. 7. If the answer to Request for Admission No. 6 is anything other than an unqualified admission, please state the owner, the legal basis of the water right (e.g., license, permit, decree, or domestic exemption), and the IDWR water right number (if any), of such existing water right(s), and please describe the basis for your answer and identify each document that supports, contradicts, or in any way pertains to such answer.

REQUEST FOR ADMISSION NO. 8. Please admit that water will be available for an adequate time interval in quantities sufficient to make the M3 Eagle Project economically feasible, where economic feasibility means that the direct benefits to the Applicant will exceed the direct costs to the Applicant.

INTERROGATORY NO. 10. If the answer to Request for Admission No. 8 is anything other than an unqualified admission, please describe the basis for your answer and identify each document that supports, contradicts, or in any way pertains to such answer.

REQUEST FOR ADMISSION NO. 9. Please admit that you have no information upon which to question the methods, accuracy, or findings of the May 4, 2007 *M3 Eagle Regional Hydrogeologic Characterization North Ada, Canyon and Gen Counties, Idaho: Year-One Progress Report* by Squires, Utting and Pearson of Hydro Logic, Inc. that is attached as Exhibit 4 to Attachment A of the Application.

INTERROGATORY NO. 11. If the answer to Request for Admission No. 9 is anything other than an unqualified admission, please describe the basis for your answer and identify each document that supports, contradicts, or in any way pertains to such answer.

REQUEST FOR ADMISSION NO. 11. Please admit that you have no information upon which to question the methods, accuracy, or findings of the January 31, 2008 *M3 Eagle Water Demand At Build-Out, Based on Projected Uses* by Stanley Consultants, Inc. and Toothman-Orton Engineering that was submitted as Exhibit 5 to Attachment A of the Application..

INTERROGATORY NO. 13. If the answer to Request for Admission No. 11 is anything other than an unqualified admission, please describe the basis for your answer and identify each document that supports, contradicts, or in any way pertains to such answer.

NACGUA denied Request for Admission Nos. 4, 5, 6, 8, 9, and 11, stating in its responses to Interrogatory Nos. 5, 6, 7, 10, 11, and 13: "See response to Request for Production No. 1 and

November 10, 2008 NACGUA motion for stay and limited discovery for purposes of settlement.”

This answer is insufficient because, as discussed above, NACGUA has not produced or identified all responsive documents in its or its members’ possession. See Affidavit of Michael P.

Lawrence Regarding Unanswered Discovery Requests, ¶ 10.

Furthermore, NACGUA’s Motion for Stay is not a valid ground for refusing to answer M3 Eagle’s Discovery Requests (see M3 Eagle’s Motion to Compel). The December 4 Order ruling on the Motion for Stay did not relieve NACGUA from its obligation to respond.

NACGUA also stated in its responses to Interrogatory Nos. 6, 7, and 10 that “The applicant has the burden of proof on this issue” or something similar. This is not a valid ground for not responding. As determined in the December 4 Order, this “burden of proof” allegation is not grounds for a continuance and M3 Eagle believes it also is not grounds for refusing to respond to discovery.

NACGUA also stated in its response to Interrogatory No. 13: “Does not meet future needs documentation.” This statement is not responsive to the interrogatory. Also, as discussed in M3 Eagle’s Motion to Compel, there is no merit to NACGUA’s allegation that M3 Eagle has not produced sufficient information on this subject. In any event, any lacking by M3 Eagle on this front would not excuse NACGUA from fully responding to this interrogatory.

REQUEST FOR ADMISSION NO. 15. Please admit that the water use proposed by the Application will not conflict with the local public interest, which is defined in Idaho Code § 42-202B(3) as “the interests that the people in the area directly affected by a proposed water use have in the effects of such use on the public water resource.”

INTERROGATORY NO. 17. If the answer to Request for Admission No. 15 is anything other than an unqualified admission, please describe the basis for your answer

and identify each document that supports, contradicts, or in any way pertains to such answer.

REQUEST FOR ADMISSION NO. 16. Please admit that the water use proposed by the application will not adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates.

INTERROGATORY NO. 18. If the answer to Request for Admission No. 16 is anything other than an unqualified admission, please describe the basis for your answer and identify each document that supports, contradicts, or in any way pertains to such answer.

NACGUA denied Request for Admission Nos. 15 and 16. In its responses to Interrogatory Nos. 17 and 18 it stated "The Applicant has the burden of coming forward on this issue. To the knowledge of NACGUA, there is no information of this issue that is uniquely in the province of NACGUA, and the Applicant has not come forward with any information on this issue." This is not satisfactory in relation to Request for Admission No. 15 and Interrogatory No. 17 (which have to do with the local public interest) because IDAPA 37.03.08.040.04.b.ii states "The protestant shall bear the initial burden of coming forward with evidence for those factors relevant to [the local public interest] of which the protestant can reasonably be expected to be more cognizant than the applicant." (Emphases added.)

Regarding Request for Admission No. 16 and Interrogatory No. 18, NACGUA's response is insufficient because the applicant's alleged "burden of proof" is not a valid ground for refusing to answer. Again, as determined in the December 4 Order, this "burden of proof" allegation is not grounds for a continuance and M3 Eagle believes it also is not grounds for refusing to respond to discovery.

INTERROGATORY NO. 20. Please describe what condition(s), amendment(s) to the permit, or limitations, if any, you believe must be imposed by IDWR in order to lawfully approve the Application.

NACGUA responded that "Until the Application is complete and has appropriate supporting information, NACGUA does not have sufficient information to respond." As determined in the December 4 Order, this allegation is not grounds for a continuance and M3 Eagle believes it also is not grounds for refusing to respond to discovery.

INTERROGATORY NO. 22. Please state the name and address of each person you intend to call as a lay witness at the trial of this matter, and for each such person describe the substance of the facts and opinions to which he or she is expected to testify and set forth specifically and in detail the underlying facts and data upon which the opinion and testimony is based.

NACGUA responded that it "reserves the right to call any of the members of NACGUA as lay witnesses who will present testimony on their diversion and use of water and the potential impact from this Application." NACGUA more recently stated that it "will work within the hearing schedule established with regard to any individual members that NACGUA would call as lay witnesses at the hearing." (NACGUA Members Unavailable Dates for Hearing in Early 2009 at 1 (December 12, 2008)). NACGUA should not be allowed to avoid answering this interrogatory with more specificity when it apparently has information about which NACGUA members it may call as lay witnesses.

REQUEST FOR PRODUCTION NO. 5. To the extent not produced in response to Request for Production Nos. 1 through 4, please produce all documents that you relied on to respond to these Discovery Requests.

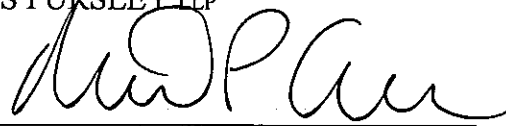
NACGUA responded "See response to request for production no. 1 and November 10, 2008 NACGUA motion for stay and limited discovery for purposes of settlement." This answer is insufficient because NACGUA has not produced all responsive documents in its or its members' possession. Furthermore, NACGUA's Motion for Stay is not a valid ground for refusing to answer M3 Eagle's Discovery Requests (see M3 Eagle's Motion to Compel). The December 4 Order ruling on the Motion for Stay did not relieve NACGUA from its obligation to respond.

DATED this 22nd day of December, 2008.

Respectfully submitted,

GIVENS PURSLEY LLP

By



Jeffrey C. Fereday
Michael P. Lawrence

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of December, 2008, the foregoing was filed, served, or copied as follows:

NOTICE OF SERVICE

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

NOTICE OF SERVICE AND DISCOVERY

North Ada County Groundwater Users Association
Josephine P. Beeman
Beeman & Associates PC
409 West Jefferson
Boise, ID 83702-6049
David Head
855 Stillwell Drive
Eagle, ID 83616

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John Westra
Western Regional Office
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705-5082
Bill Lawton, Spokesman for
Robert L and Kip C. Wood
M. Howard Goldman
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Michael P. Lawrence

RECEIVED

DEC 22 2008

Department of Water Resources

Jeffrey C. Fereday [ISB No. 2719]
Michael P. Lawrence [ISB No. 7288]
Kelsey J. Nunez [ISB No. 7899]
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
REGARDING UNANSWERED DISCOVERY
REQUESTS**

State of Idaho)
) ss.
County of Ada)

MICHAEL P. LAWRENCE, being first duly sworn upon oath, deposes and states:

1. I am an attorney with Givens Pursley LLP, counsel to M3 Eagle LLC ("M3 Eagle") in the above-captioned matter. I have been involved in discovery conducted on behalf of M3 Eagle in this matter. I make this Affidavit based on my own personal knowledge.

2. I have reviewed true and correct copies of the transcripts of depositions conducted by M3 Eagle's counsel of the following individuals who are Protestants in the above-captioned matter and who are members of North Ada County Groundwater Users Association ("NACGUA"): Richard Lagerstrom; Shelby Conrad; Steven Purvis; Anne Ritter; John

Thornton; John Petrovsky; Robert Niccolls; Barrett Jones; David Head; Bruce Richardson; Morgan Masner; Sherri Randall; Katherine Pennisi.

3. On October 1, 2008, this firm served copies of *Applicant M3 Eagle LLC's First Set of Discovery Requests to Protestant North Ada County Groundwater Users Association* ("Discovery Requests") on Josephine Beeman, counsel for NACGUA, and David Head and John Thornton, President and Vice-President of NACGUA, respectively. A true and correct copy of M3 Eagle's Discovery Requests was attached as Exhibit A to *Affidavit of Michael Lawrence in Support of Motion to Compel Discovery Responses* filed in the above-captioned matter on November 14, 2008.

4. M3 Eagle's Discovery Requests set forth the following instructions, among others:

In responding to these Discovery Requests, please base your responses on all information available to NACGUA and each NACGUA Member. This information includes information in the possession of NACGUA's attorneys, experts, and consultants, and each NACGUA Member's attorneys, experts, and consultants

Requests to identify or produce documents include all documents in the possession or control of: 1) NACGUA; 2) any NACGUA Member; or 3) any attorney, accountant, expert witness, lay witness or other agent or person from whom NACGUA or any NACGUA Member has a legal right to obtain such document

"You" or "your" refers to NACGUA and assumes that NACGUA is speaking on behalf of NACGUA and each NACGUA Member that has designated NACGUA as his or her spokesman in this matter.

5. Requests for Production Nos. 1, 2, 3, and 5 in M3 Eagle's Discovery Requests requested "all documents referring to Applicant, the Application, Applicant's water rights, Applicant's prospective water use, the Protest, or the M3 Eagle Project," "all documents that pertain to NACFA's protest of the Application," "all documents that pertain to NACFA's protest

of Application No. 63-31966 filed by SunCor in May 2004,” and “all documents that you relied on to respond to these Discovery Requests.”

6. On November 11, 2008, NACGUA’s counsel served *NACGUA’s Responses to Applicant M3 Eagle LLC’s First Set of Discovery Requests to Protestant North Ada County Groundwater Users Association* (“First Discovery Responses”) on M3 Eagle. On November 26, 2008, NACGUA’s counsel served *NACGUA’s Supplemental Responses to M3 Eagle’s First Set of Discovery Requests* (“Supplemental Discovery Responses”) on M3 Eagle.

7. NACGUA’s counsel did not include documents with the First Discovery Responses but instead referred M3 Eagle to publicly available documents “already in the record at IDWR or the website for North Ada County Hydrogeologic Project” and to Dr. Dale Ralston’s November 6, 2008 Memorandum of Initial Hydrogeologic Analysis which NACGUA had already provided. With its Supplemental Discovery Responses, NACGUA included Dr. Dale Ralston’s curriculum vitae and again referred M3 Eagle to publicly available documents and documents already in the record. NACGUA has not produced other documents in response to M3 Eagle’s Discovery Requests.

8. M3 Eagle has obtained documents, true and correct copies of which are attached as Exhibit A, indicating that NACGUA is considered “NACFA’s water group,” that NACGUA works “in cooperation with” NACFA, and that NACFA assists NACGUA with fundraising efforts by soliciting funds and using NACFA’s treasurer and treasury for NACGUA’s purposes. NACGUA did not produce any of the documents in Exhibit A in response to M3 Eagle’s Discovery Requests.

9. Except for David Head and John Thornton (who received M3 Eagle’s Discovery Requests directly from M3 Eagle), the individuals listed in paragraph 2 testified in their depositions that they did not recall receiving M3 Eagle’s Discovery Requests from NACGUA’s

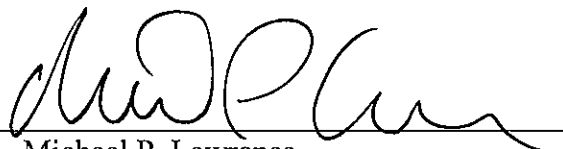
counsel, David Head, or John Thornton. The same individuals testified that they did not recall NACGUA's counsel, David Head, or John Thornton asking them to provide information or documents to respond to M3 Eagle's Discovery Requests and that they did not provide any such information or documents for that purpose. True and correct copies of excerpts from these deposition transcripts are attached hereto as Exhibit B.

10. In their depositions, the following individuals indicated that they possess, may possess, or are aware of documents that are responsive to M3 Eagle's Discovery Requests but that do not appear to have been included with NACGUA's First Discovery Responses or Supplemental Discovery Responses: Shelby Conrad; David Head; Barrett Jones; Richard Lagerstrom; Morgan Masner; Robert Niccolls; Katherine Pennisi; John Petrovsky; Steven Purvis; Sherri Randall; Bruce Richardson; Anne Ritter; John Thornton. Although M3 Eagle has obtained some of the documents referred to by these individuals, including those in Exhibit A, it appears that there are other discoverable documents that M3 Eagle has not obtained and did not obtain from NACGUA in response to M3 Eagle's Discovery Requests. True and correct copies of excerpts from these deposition transcripts are attached hereto as Exhibit C.

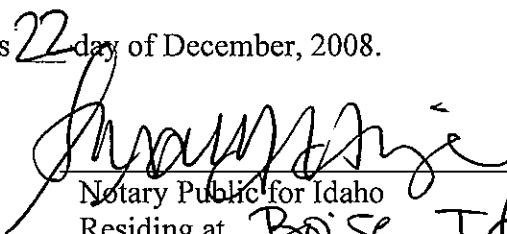
11. In his deposition, David Head stated that he was committee chairman of NACFA's water group and is the President of NACGUA. NACGUA members Katherine Pennisi and Steven Purvis stated in their depositions that they are NACFA co-chairs. John Thornton stated in his deposition that he is a member of NACFA and that most NACGUA members also are members of NACFA. True and correct copies of the pertinent excerpts from these deposition transcripts are attached hereto as Exhibit D.

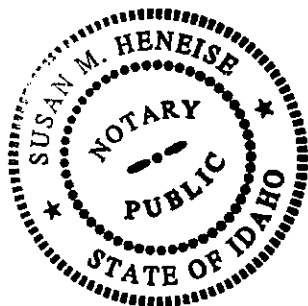
12. Steven Purvis stated in his deposition that NACGUA and NACFA are "working closely together on this." A true and correct copy of the pertinent excerpt from the deposition transcript is attached hereto as Exhibit E.

DATED this 22nd day of December, 2008.


Michael P. Lawrence

Subscribed and sworn to before me this 22 day of December, 2008.


Notary Public for Idaho
Residing at Boise, Idaho
My Commission expires 2/27/2010



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of December 2008, 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
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Boise, ID 83705-5082

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Beeman & Associates PC
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Boise, ID 83702-6049

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Bill Lawton, Spokesman for
Robert L. Wood
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Norman Edwards
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Michael P. Lawrence

EXHIBIT A

Jeffrey C Fereday

From: Wonders, Scott [WondersScott@stanleygroup.com]
Sent: Monday, December 01, 2008 11:13 AM
To: Bill Brownlee; Jeffrey C Fereday; Ed Squires; Mark Tate; Gerry Robbins
Subject: FYI - Update on M3 Water Protest
Attachments: Nacfa_Water_Protest_Update_11_20_08.pdf; NACGWUA_bullet_11_14_08.pdf

FYI - I just recieved this.

Dear NACFA Supporters,

IDWR (Idaho Department of Water Resources) will soon decide on M3's application to supply their 7000+ unit foothills development with water from a local aquifer. NACFA's water group has been working tirelessly to ensure that M3 is held responsible for monitoring and mitigating any ensuing water table draw downs.

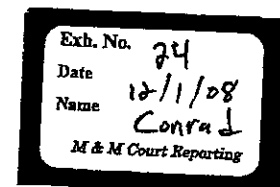
I can't thank this group enough for the countless hours they have spent in meetings and researching issues. We are extremely fortunate to have neighbors who are so willing to give of themselves for the sake of our community. To those of you working in the trenches for this cause (you know who you are) - we so appreciate you!

We are reaching out to the rest of you to help in two important ways. First, get the word out. Many people in this area are unaware of our protest efforts or how they might be affected should water in our area be over appropriated. Tell a friend, forward this email, visit with your neighbor ... let everyone know what is at stake. Second, thoughtfully consider a small donation to assist us in defraying the cost of our excellent legal counsel. If you can do one or both of these things it would help us tremendously.

Please take a moment to read the attached update for details of our progress and where we are headed ...

Many Thanks,

Kathy Pennisi



12/1/2008

Dear NACFA Friends,

We are now fully engaged in the water rights battle with the M3 developers and we need your help! M3 has asked IDWR for approximately 15 million gallons of groundwater per day for their planned community just north of us. While the group of protestants are fighting to protect their senior water rights, legal inroads will benefit anyone in the Treasure Valley who relies on an adequate supply of water for domestic and irrigation uses. Perhaps homeowners who depend on city/private water companies for water don't think about the implications of aquifer draw downs as much as private well owners do, but over appropriation of Idaho's precious water resource should be a concern to us all.

We have been very fortunate in the hiring of Josephine Beeman, Norm Young, Paul Drury and Dr. Dale Ralston. Ms. Beeman is a 32 year veteran in the specific area of Idaho water law. Norm is a former Assistant Director at IDWR, and now a principal at ERO Resources. Paul is an engineer and water policy expert, and Dr. Dale Ralston is a professor emeritus at the University of Idaho and President of Ralston Hydrologic Services. He is a nationally known expert and educator on groundwater issues.

Since hiring this excellent team, we have experienced a shift in momentum. M3 has been forced to abandon their ploys to bog us down in paperwork, and are now defending the adequacy of their proposed water right. We have challenged M3 on the validity of their application as a "municipality" as well as the basis and degree of their expert's theory of a new aquifer deep under the M3 property. In addition, the burden of monitoring water levels and possible mitigation has been shifted to M3, where it belongs, and away from established senior water rights owners.

Our stated goal has never been to stop M3's development. Our goal has always been to negotiate a fair deal to protect existing well owners from aquifer draw downs caused by high volume withdrawals over an extended period of time.

We need to continue to see this effort through to a successful conclusion, but we cannot do it without your help! We estimate the cost of our protest to be nearly \$40,000. Several area well owners have contributed to this effort (thank you!) but this is a huge burden for only a few of our neighbors to pay by themselves - especially when the settlement we are pursuing calls for common sense protections to avoid a repeat of the over appropriation that occurred in the Eastern Snake River Plain. We all stand to benefit, especially senior water rights holders, but we cannot succeed without your support. If we each make a nominal contribution to the cost of this settlement effort, we can reach our goal and have some assurance that our water is properly appropriated.

Please consider the impacts on property values if groundwater becomes a known problem in our area. For well owners, you know how expensive it is to dig a new/deeper well due to a declining water table. Now is the only chance we have to advocate for these protections. If M3 is successful in acquiring this huge municipal water right, with no limitations, we may all be kicking ourselves in the future.

In addition to making a contribution, please read through the one page talking points that we have attached. You may want to print this and give it to your neighbors who might also be concerned about the future of their wells or our water resources in general and would be willing to contribute to our protest efforts.

This is the one time that we can protest the M3 water right application. This process will be completed in the next 8 weeks and we will have to live with the outcome, so we have to act now! If you have questions please feel free to call at the numbers listed below. Thank you for your continued support!

Best regards, David Head 938-8508 and John Thornton 939-8574

Please make checks out to: NACFA and note "water" on the check. Send contributions to Mr. Larry Sandusky at 7602 Canyon Drive, Meridian, Idaho 83646

North Ada County Groundwater Users Association

In cooperation with the North Ada County Foothills Association

855 Stillwell Drive – Eagle, Idaho 83616 – 938-8508

***The M3 Eagle Company has applied for a municipal water right to supply groundwater for their proposed planned community north of the City of Eagle. They are proposing the use of this water for over 7,000 homes, golf courses, hotels, commercial businesses, parks, common areas, waste treatment facilities and fire suppression. They have requested 23.16 cubic feet per second - which equates to approximately 15 million gallons of water per day. This is one of the largest water right applications in state history!**

***M3 Eagle Company has hired a hydrogeologic consultant to help them locate and document a sustainable water source for their planned community. The basis of their water right application says that M3 has discovered a huge aquifer that no one has ever documented before. This aquifer is said to originate in the Boise River Basin and flow northeast under M3's property on its way to the Payette River Basin (Emmett, Idaho). This data conflicts with most current studies available, including the much respected Treasure Valley Hydrologic Study done by a wide number of hydrogeologists and water experts in the 1990's.**

***The North Ada County Groundwater Users Association was formed this summer to file a protest against the M3 water right application. We are now three months into this battle with M3. In our protest, we have asked IDWR to reject or restrict this application because it is based on a lack of data, and on the basis that M3 is not a municipality, but instead is a for profit corporation seeking speculative value through the water right process.**

***We have retained one of the most experienced water attorneys in Idaho, as well as an engineering firm and a nationally known professor, speaker and expert in the study of groundwater. Our NACGWUA group is entirely voluntary in nature, and comprised of people experienced in business, geology and engineering.**

***If you are concerned about the future of groundwater in the north Ada County area, and want to see the appropriation of this water based on well understood hydro geologic study, and granting of water rights in small quantities that are phased in over time so the effects can be monitored and managed, please join us!**

***The M3 water right application is being processed right now! Both sides have filed motions for discovery and depositions commenced on November 11th. The final decision will be handed down in weeks to possibly months. To have a continued impact on the process we have to continue to press every legal and technical argument that we can.**

***Please consider a donation to our legal and technical effort as an investment to protect your own domestic and/or irrigation groundwater. We hope you will compare a generous donation to our effort now to the cost of re-drilling a well to a deeper level, or the loss of your property value later if groundwater problems begin in your area due to the millions of gallons per day that developers would like to use for their planned communities!**

***Checks can be made to: NACFA (North Ada County Foothills Association), and can be sent to our treasurer, Mr. Larry Sandusky, 7602 Canyon Drive, Meridian, Idaho 83646. For questions pertaining to any of the above, please contact David Head at 938-8508 or John Thornton at 939-8574.**

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)
_____)

DEPOSITION OF SHELBY CONRAD

DECEMBER 1, 2008

REPORTED BY:

JEFF LaMAR, C.S.R. No. 640

Notary Public

1 from our snowpack and our rainfall. And it -- and
2 the surface is greatly affected by the flood
3 irrigation and the correlation of perking between
4 the strata; the surface water does have a great
5 impact, depending on where you are out there with
6 the sand and gravel seams between the clay layers.
7 So that -- it works its way into the ground. It
8 migrates.

9 Q. Have you read the Hydrologic May 2007
10 report that's included in the application?

11 A. No.

12 Q. Have you looked at the Exhibit 5 to
13 the application, which is a series of complicated,
14 long spreadsheets showing water use projections at
15 M3 Eagle?

16 A. No, I have not.

17 Q. Have you read the overall description
18 in Attachment A of the application that's some 10,
19 11, 12 pages of text and tables describing the M3
20 application and water uses?

21 A. No.

22 Q. Okay. Have you received from NACGUA
23 or NACGUA's counsel any requests to respond to
24 written discovery that M3 Eagle has sent out?

25 A. No, I have not.

1 Q. Have you seen the interrogatories,
2 requests for admission, and requests for
3 production of documents that M3 Eagle sent to the
4 protestants in this case through NACGUA's counsel?

5 A. No.

6 Q. Okay.

7 A. As far as this (indicating) document
8 goes, we had a summary --

9 Q. And you're referring now to the M3
10 Eagle application, Exhibit 4.

11 A. We were given a synopsis of the
12 document by the North Ada County Groundwater
13 Users.

14 Q. Was it North Ada County Groundwater
15 Users, or was it before that and it was just
16 NACFA?

17 A. I believe it was -- I don't know
18 which, to be honest. But that's where we got most
19 of our information, was they spent a lot of time
20 on the document and then pulled out what they felt
21 were key and relevant.

22 Q. Okay. And do you know who "they"
23 were, the people who --

24 A. I assume it was David Head and whoever
25 assists him. He's the only contact that I really

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)
_____)

DEPOSITION OF BARRETT D. JONES
DECEMBER 8, 2008

REPORTED BY:

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

Notary Public

1 that discussion. My understanding is that there
2 really wasn't a significant study to agree or
3 oppose, is what my understanding has been. And
4 that's the feeling of concern for our wells is,
5 you know, is that a biased or an unbiased study?
6 I don't know. And is there some way that we
7 could pursue and either agree or show that there
8 is some difference in what findings would be from
9 another form of study?

10 Q. Have you been told that M3 Eagle's
11 studies are not accurate?

12 A. I have not been told that. Again, I
13 have seen in this document that there seems to be
14 some conflict there.

15 Q. Let's turn, if you would, in that
16 exhibit binder, could you please turn to Exhibit
17 No. 30.

18 A. (Witness complied.) It's a lot of
19 homework.

20 Q. Exhibit No. 30 is a copy of M3 Eagle's
21 first set of discovery requests to NACGUA. Have
22 you seen this before?

23 A. I do not believe so. Let me look at
24 the document. (Reviewing document.) No, I do
25 not recognize it anyway. I don't think I've

1 received any documents that were more than two or
2 three pages.

3 Q. You have received some documents
4 regarding this?

5 A. Other than what I have in here and what
6 you I think already have.

7 Q. Other than what you've brought and you
8 refused to provide to me earlier, you know of no
9 other documents?

10 A. I -- not of this stature or this setup.
11 I have had some e-mail conversation or e-mail
12 back and forth with David Head, who I believe has
13 been the only one I've been in contact with, you
14 know, communicated with. He seems to be the
15 communication person for our area.

16 Q. And I believe you've already testified
17 that the substance of those communications
18 involves status updates and proposed settlement
19 options; is that correct?

20 A. Yes.

21 Q. Is there anything else involved with
22 those e-mails?

23 A. The only other issue was raising funds
24 to support this, that I can think of off the
25 cuff.

1 Q. Did anyone ask you to provide
2 information to respond to M3 Eagle's discovery
3 requests?

4 A. No, not that I'm -- not that I recall.

5 Q. If you can turn to Exhibit No. 31.

6 A. (Witness complied.)

7 Q. Exhibit No. 31 is a copy of NACGUA's
8 responses to M3 Eagle's first discovery requests.
9 Have you seen this document before?

10 A. I do not believe so. This is in
11 response to the one we just looked at?

12 Q. That's correct.

13 A. What does the -- can you give me a
14 synopsis of the first document that we looked at?

15 Q. I'll represent to you that the document
16 in Exhibit No. 30, M3 Eagle's first discovery
17 requests, are a list of requests for admission,
18 requests for production, and interrogatories
19 asking questions involving or relating to
20 NACGUA's protest of M3 Eagle's water right
21 application.

22 MR. LAWRENCE: Off the record for a
23 minute.

24 (Discussion held off the record.)

25 MR. LAWRENCE: Back on the record,

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)
_____)

DEPOSITION OF RICHARD LAGERSTROM
DECEMBER 1, 2008

REPORTED BY:

JEFF LaMAR, C.S.R. No. 640

Notary Public

1 copies of those documents to us?

2 A. Sure.

3 Q. Okay. We'll make a note of that, and
4 then you can provide those documents to me,
5 anything that relates to this application.

6 Mr. Lagerstrom, were you asked by
7 legal counsel or anyone else to provide
8 information in response to discovery requests that
9 M3 sent out?

10 A. No, I have not had counsel.

11 Q. You have not had legal counsel?

12 A. Not yet.

13 Q. Did anyone send to you any discovery
14 questions --

15 A. No.

16 Q. -- interrogatories?

17 A. No.

18 Q. No?

19 A. No.

20 Q. Okay.

21 A. That would be nice.

22 May I have copies?

23 Q. Yes, again, we'll talk about that if
24 you'd like at some later time.

25 A. Yes, I will.

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)
_____)

DEPOSITION OF MORGAN W. MASNER
DECEMBER 10, 2008

REPORTED BY:

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

Notary Public

1 they were.

2 Q. Did they speak?

3 A. No.

4 Q. What else transpired last night?

5 A. Well, I had a nice dinner just before
6 the meeting. It wasn't a very long meeting. And
7 it was just a kind of bring-you-up-to-speed type
8 meeting.

9 Q. It lasted approximately how long?

10 A. Well, it was to start at 7:00 and it
11 didn't quite get there. There were still a lot
12 of people arriving after 7:00. And I think my
13 wife and I left the building at a little before
14 8:30.

15 Q. Was it explained to you at the meeting
16 that you are being represented as individuals or
17 that a group is being represented by Ms. Beeman?

18 A. No, that wasn't made clear at all.

19 Q. Was it explained to you by anyone there
20 that we have, that is M3 has asked for documents
21 and other information to be provided to us
22 pertaining to this and that that is an ongoing
23 obligation? Did anyone make that comment?

24 A. No, but I think most everybody -- I
25 mean, you're both in the discovery process. So,

1 I think we all understand that.

2 Q. You have not been asked, though, to
3 provide any documents; have you?

4 A. No. Well, wait a minute. You had the
5 copy of my letter that I signed and I think there
6 was -- no, this is it.

7 Q. That's your protest.

8 A. Yeah, this.

9 (Exhibit 101 marked.)

10 Q. (BY MR. FEREDAY) You're referring now
11 to Exhibit No. 101, which is your questionnaire.
12 We'll get to that in just a moment.

13 A. All right.

14 Q. Other than that, have you been asked to
15 provide any documents?

16 A. No.

17 Q. Could you locate your well on this map,
18 on Exhibit No. 37? It's also a part of Exhibit
19 No. 16.

20 A. (Indicating.)

21 Q. There you are. You actually have the
22 distinction of being the westernmost well among
23 all of the protestants; isn't that correct?

24 A. It would appear that way from the map.

25 Q. How deep is your well?

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)
_____)

DEPOSITION OF ROBERT S. NICCOLLS, JR.

DECEMBER 8, 2008

REPORTED BY:

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

Notary Public

1 distance as well as a horizontal factor, but I --
2 I want to see adequate protection for those of us
3 who have invested heavily in that area.

4 Q. Going back to my original question, do
5 you believe that there are no limitations to the
6 water right that M3 seeks?

7 A. I don't know.

8 Q. Bob, could you please turn to Exhibit
9 No. 30 in the binder in front of you.

10 A. (Witness complied.) 30, there we go.
11 Okay.

12 Q. Exhibit No. 30 is a copy of M3's first
13 set of discovery requests to NACGUA. Have you
14 seen this before?

15 A. (Reviewing document.) I don't -- no, I
16 don't think so. I'm quite sure -- no. Let's
17 see, this was dated -- okay, this is basically
18 September.

19 Q. I'll represent to you that these were
20 served on October 1, 2008.

21 A. Okay.

22 Q. Is it accurate to say that you did not
23 receive a copy of this --

24 A. That is correct.

25 Q. -- document? If you could turn to the

1 next exhibit, Exhibit No. 31.

2 A. (Witness complied.)

3 Q. This is a copy of NACGUA's responses to
4 M3 Eagle's first set of discovery requests. Did
5 you receive a copy or have you ever seen this
6 document?

7 A. (Reviewing document.) No, I've not
8 seen this.

9 Q. Were you asked to provide any
10 information to respond to M3 Eagle's discovery
11 requests?

12 A. By whom?

13 Q. Were you asked by NACGUA leadership,
14 anyone within NACGUA or NACGUA's counsel, to
15 provide information to respond to M3's discovery
16 requests?

17 A. No.

18 MR. LAWRENCE: Off the record, please.
19 (Discussion held off the record.)

20 MR. LAWRENCE: On the record. I have
21 no further questions.

22 THE WITNESS: Okay.

23 (Deposition concluded at 12:21 p.m.)

24 (Signature requested.)

25 (Exhibit 77 marked.)

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)
_____)

DEPOSITION OF KATHERINE PENNISI
DECEMBER 17, 2008

REPORTED BY:

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

Notary Public

1 spent so far in pursuing this matter?

2 A. I don't.

3 Q. I'd like to show you and have you refer
4 to Exhibit No. 30 in the binder, please. This is
5 M3 Eagle's first set of discovery requests. Have
6 you ever seen this?

7 A. This might have been mailed to us.
8 Maybe not. I don't know. I don't recall.

9 Q. Do you recall being asked to respond to
10 any written discovery questions, you personally?

11 A. No.

12 Q. So, you were never asked to help
13 respond to any discovery? You weren't asked by
14 legal counsel or anyone else, David Head or
15 anyone?

16 A. No.

17 Q. And then the next exhibit is Exhibit
18 No. 31. I take it from your answer that you've
19 also never seen this document, which is NACGUA's
20 response to written discovery. You haven't seen
21 that either, I take it?

22 A. No.

23 Q. I'd like you to refer to Exhibit
24 No. 16, Kathy, in the binder. And I'll ask
25 whether you have seen this document?

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)
_____)

DEPOSITION OF JOHN PETROVSKY
DECEMBER 4, 2008

REPORTED BY:

JEFF LaMAR, C.S.R. No. 640

Notary Public

1 NACGUA, initially. I have not attended any beyond
2 that. None of the ones associated with the
3 consultants that are mentioned in this. I haven't
4 even met them.

5 Q. Okay. John, I'd like you to refer to
6 Exhibit 30 in your binder.

7 A. Uh-huh.

8 Q. This is applicant M3 Eagle, LLC's,
9 first set of discovery requests to NACGUA.

10 Have you ever seen this before?

11 A. No, I have not.

12 Q. Were you asked to provide information
13 to NACGUA's counsel or to NACGUA's leadership
14 pertaining to answering questions propounded by M3
15 Eagle?

16 A. Via this document?

17 Q. Via this document or otherwise, were
18 you asked to provide information to respond to
19 questions from M3 Eagle?

20 A. There was a questionnaire that was
21 originally sent around. Whether it predates this,
22 I do not know.

23 Q. I'll represent to you that the
24 questionnaire did predate this.

25 Other than the questionnaire, were you

1 asked to provide any --

2 A. No.

3 Q. -- information?

4 A. I have not even seen this. No, I
5 haven't. No.

6 Q. Okay. I'd like you to refer to
7 Exhibit 16. Exhibit 16 is a November 6th, 2008
8 letter from me to Ms. Beeman regarding a proposed
9 offer of settlement.

10 Have you seen this letter before?

11 A. No, I haven't.

12 Q. This was not provided to you?

13 A. No.

14 Q. Was the existence of this settlement
15 offer made known to you by anyone?

16 A. I was told by David that we were
17 actively proposing a settlement, but I have not
18 seen any of the documentation. I would be
19 interested to see -- I'm going to have to get on
20 him.

21 Q. Did you know that M3 Eagle had made a
22 settlement offer on November 6th?

23 A. I did not.

24 MR. FEREDAY: Okay. Let's go off the
25 record for just a moment.

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)
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DEPOSITION OF STEVEN PURVIS
DECEMBER 1, 2008

REPORTED BY:

JEFF LaMAR, C.S.R. No. 640

Notary Public

1 And I went to -- I also went to the
2 hearing at IDWR. I was there at that first
3 organizing hearing.

4 Q. The status conference before Gary
5 Spackman?

6 A. Yes. So I heard a certain amount of
7 information there as well.

8 Q. Okay. But in terms of getting
9 information from NACGUA or NACGUA's counsel, I
10 take it you haven't seen much of anything?

11 A. No, just summaries of information and
12 questions and concerns.

13 Q. I'm handing you what's been marked as
14 Exhibit 30.

15 Does this look familiar to you? Have
16 you seen this? This is M3 Eagle's first set of
17 discovery requests to --

18 A. No.

19 Q. -- NACGUA.

20 A. No.

21 Q. Did anyone ever ask you to help
22 respond to this or provide information that might
23 help respond to this?

24 A. No, I was not. I'm not so sure.
25 Let's see.

1 What's the date of this thing?

2 Q. If you turn to the back.

3 A. October 1. I don't believe so, Jeff.

4 Q. October 1, 2008; correct?

5 A. I don't know that I've seen -- oh,
6 wait. I've seen this part.

7 Q. Well, you're looking at the --

8 A. No, I'm sorry.

9 Q. -- certificate of service.

10 A. No, I was thinking it was the one that
11 was to all the rest of us.

12 Q. Okay. You haven't seen that.

13 Have you seen this (indicating)? This
14 is Exhibit 31. This is NACGUA's responses to that
15 document. That is NACGUA's responses to M3
16 Eagle's discovery requests. Have you seen that?

17 A. No.

18 Q. Did counsel or anyone from NACGUA get
19 in touch with you and inform you that they needed
20 to answer discovery?

21 A. I was aware that they had to do that.

22 Q. How did you become aware of that?

23 A. Well, there's an organized group here.

24 Q. Yeah.

25 A. So there is -- you know, there's an

1 organized means by which you can communicate
2 what's going on. And we periodically received
3 updates about what was going on and what they
4 needed to do next and how we're going about it.
5 And, you know, so it's we get information stuff
6 periodically and systematically because we are an
7 identified organized group for this purpose.

8 Q. Uh-huh. When you get information
9 periodically and systematically, does that come
10 from NACGUA's lawyer or does it come from one of
11 the leaders of NACGUA, such as John Thornton or
12 David Head?

13 A. It usually comes from David.

14 Q. And again, you haven't provided any of
15 those documents or been asked to provide any of
16 those documents of that internal communication?

17 A. No.

18 Q. Okay. I'm showing you now what's been
19 marked as Exhibit 16.

20 Have you seen this document? This is
21 a letter from me to NACGUA's counsel proposing
22 settlement. Were you aware of this document?

23 A. I was aware that this was going to go
24 on, yes.

25 Q. Were you aware that this document had

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 63-32573)
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DEPOSITION OF SHERRI RANDALL
DECEMBER 10, 2008

REPORTED BY:

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

Notary Public

1 happening. It could be quite a bit in between,
2 it could be once a week. It just depends.

3 Q. So, you have received several e-mails
4 on this matter from David Head or John Thornton
5 or someone else in NACGUA?

6 A. Yes.

7 Q. Have you been asked to provide copies
8 of those e-mails in discovery to anybody?

9 A. No.

10 Q. Sherri, I'd like to show you what's
11 been marked as Exhibit No. 30. And it's in here.
12 This is our request for documents and written
13 responses that was sent out on the 1st of
14 October. Have you ever seen that?

15 A. (Reviewing document.) I don't think
16 so.

17 Q. How about Exhibit No. 31, the very next
18 one? If you could just flip to that, which is a
19 response to this, have you seen this one or did
20 you help contribute to its preparation?

21 A. (Reviewing document.) I don't believe
22 so.

23 Q. I'm showing you what's been marked as
24 Exhibit No. 107, which is a document entitled
25 "North Ada County Groundwater Users Association"

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)
_____)

DEPOSITION OF BRUCE RICHARDSON
DECEMBER 9, 2008

REPORTED BY:

JEFF LaMAR, C.S.R. No. 640

Notary Public

1 You would agree?

2 A. Yes.

3 Q. Bruce, if you could please turn in
4 this binder in front of you to what's been marked
5 as Exhibit 30. It would be tab 30 in the binder.
6 Exhibit 30 is a copy of M3 Eagle's first set of
7 discovery requests to NACGUA.

8 Have you ever seen this document
9 before?

10 A. No.

11 Q. Did anyone ask you to provide
12 information to respond to M3's discovery requests?

13 A. Different from these?

14 Q. You're --

15 A. This questionnaire?

16 Q. You're pointing to the questionnaire.
17 Yes.

18 Other than the questionnaire, did
19 anyone ask you to provide any information to
20 respond to M3's discovery requests?

21 A. No.

22 Q. Do you have any documents regarding
23 your protest or M3's application?

24 A. Just these ones you've showed me as
25 copies.

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)
_____)

DEPOSITION OF ANNE RITTER
DECEMBER 2, 2008

REPORTED BY:

JEFF LaMAR, C.S.R. No. 640

Notary Public

1 A. I was involved in the beginning stages
2 and then I, because of time commitments elsewhere
3 and whatever, I just became inactive in terms of
4 the leadership. So I guess you'd have to say that
5 over the last maybe six weeks I have not been
6 involved in decision-making, if that's your
7 question.

8 Q. Yes. Have you been involved in
9 communications with NACGUA or its leadership
10 during that last six weeks?

11 A. I have gotten e-mails, yeah. But most
12 of them have been from the attorney or from the
13 others copied. So yes.

14 Q. Your resignation was effective when?

15 A. Oh, I did it last week sometime. My
16 concern was that I didn't want to be named as a
17 spokesman having not participated over the last
18 six weeks of decision-making because I thought it
19 would appear to be disingenuous, and I didn't want
20 to do that because other people have taken over
21 the leadership capacities and I thought she could
22 speak more knowledgeably than I. And so I didn't
23 want to be a problem.

24 Q. Did you receive from your legal
25 counsel a copy of the written discovery that M3

1 Eagle submitted to NACGUA? Do you recall that?

2 A. I don't remember.

3 That would have been a month ago or
4 more?

5 Q. That's correct. Let me show you
6 what's been marked as Exhibit 30.

7 Do you recognize that?

8 A. I can't -- I can't say that I do. But
9 I can't tell you that I didn't get it either. So
10 I did not go over any of these records prior to
11 coming today.

12 Q. When you were -- the date of this
13 exhibit is October 1st, as you can see here.
14 That's Exhibit 30.

15 A. Yes.

16 Q. Were you still in the leadership of
17 NACGUA at that time on October 1st? You were its
18 secretary, I believe.

19 A. My position as secretary was solely
20 for the purposes of being able to be the
21 third-tier person to appear at the hearings
22 because I don't have a full-time daytime job. And
23 so if Mr. Head was in China or off on business and
24 Mr. Thornton was fighting fires, I was the -- the
25 third tier.

1 Q. Okay. But you were the secretary at
2 that time; is that correct?

3 A. In name only, yes. Yeah.

4 Q. So you don't recall receiving these
5 discovery responses or being asked by your lawyer
6 to help respond to them?

7 A. No, I did not.

8 Q. Okay. What about Exhibit 31, which is
9 NACGUA's responses to these discovery requests?
10 And this is dated November 10th.

11 A. I have not participated in any
12 discovery --

13 Q. Okay.

14 A. -- of any kind.

15 Q. So you didn't contribute at all to any
16 of these answers?

17 A. No.

18 Q. Okay. Thank you.

19 A. Can I say it's not because of my lack
20 of commitment to it. It's because of my other
21 things that are going on.

22 Q. I understand. I'm taking it, though,
23 from your answer that you weren't asked to respond
24 to these either?

25 A. No.

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)
_____)

DEPOSITION OF SHELBY CONRAD
DECEMBER 1, 2008

REPORTED BY:

JEFF LaMAR, C.S.R. No. 640

Notary Public

1 Q. Have you seen the interrogatories,
2 requests for admission, and requests for
3 production of documents that M3 Eagle sent to the
4 protestants in this case through NACGUA's counsel?

5 A. No.

6 Q. Okay.

7 A. As far as this (indicating) document
8 goes, we had a summary --

9 Q. And you're referring now to the M3
10 Eagle application, Exhibit 4.

11 A. We were given a synopsis of the
12 document by the North Ada County Groundwater
13 Users.

14 Q. Was it North Ada County Groundwater
15 Users, or was it before that and it was just
16 NACFA?

17 A. I believe it was -- I don't know
18 which, to be honest. But that's where we got most
19 of our information, was they spent a lot of time
20 on the document and then pulled out what they felt
21 were key and relevant.

22 Q. Okay. And do you know who "they"
23 were, the people who --

24 A. I assume it was David Head and whoever
25 assists him. He's the only contact that I really

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)
_____)

DEPOSITION OF DAVID HEAD
DECEMBER 9, 2008

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

1 application, that SunCor application?

2 A. Yeah, most correspondence or any
3 effort was made at my house around the coffee
4 table. Two neighbors that were in walking
5 distance to my house.

6 Q. I understand. And also some e-mails
7 from time to time; correct?

8 A. I -- I'm assuming so. I couldn't --
9 that's been -- I'm not sure now -- 2 1/2 years.

10 Q. With regard to the M3 Eagle protest,
11 there also are documents that NACFA people or
12 NACFA leaders have, correct, with regard to that?

13 A. So please restate that.

14 Q. With regard to the M3 Eagle protest,
15 there are documents that yourself or others in
16 NACFA have pertaining to that protest; correct?

17 A. To the SunCor protest?

18 Q. No. To the M3 Eagle protest.

19 A. I have data. As the water resource
20 chairman, I have most of that data. I don't know
21 it was disseminated other than the group of people
22 which ended up being one to three people at times
23 to join me to just discuss it, yeah.

24 Q. I assume also -- and please correct me
25 if I'm wrong -- that you also as the NACFA water

1 chair received or sent e-mails or perhaps letters
2 to supporters or others pertaining to the M3 Eagle
3 protest; correct?

4 A. I've sent letters, yes.

5 Q. With regard to the organization now
6 known as NACGUA, North Ada County Groundwater
7 Users Association --

8 A. It's an ugly acronym.

9 Q. Perhaps so.

10 -- you were one of those who helped
11 form NACGUA; correct?

12 A. That is correct.

13 Q. I'm showing you what has been marked
14 as Exhibit 83.

15 Do you recognize that letter from
16 Kathy Pennisi to Gary Spackman?

17 A. I do.

18 Q. Could you tell us what this means, as
19 far as you know?

20 A. So I filed this protest in my name and
21 for -- as a spokesman for North Ada County
22 Foothills Association in June -- I think I'm
23 getting my times right; it was either June, early
24 July -- relative to you notifying us that you had
25 concern about me not being an attorney and/or the

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)
_____)

DEPOSITION OF BARRETT D. JONES
DECEMBER 8, 2008

REPORTED BY:

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

Notary Public

1 A. Well, I believe that is what I actually
2 signed up for to be a member of and then that
3 carried over into the NACGUA. I don't know if
4 I've actually become a member of NACGUA. I think
5 through NACFA I was brought into that.

6 Q. Has anyone from the group NACGUA
7 contacted you in regard to this protest?

8 A. I have been in contact with David Head.
9 And I believe he's with both, I think, you know.

10 Q. What sort of contacts or communications
11 have you had with David Head?

12 A. Most of the contact -- or the contact
13 has dealt with progress through what they have
14 found in development as they've put their group
15 together, you know, what they found that they,
16 you know, might have something that could be
17 reasonably presented to show cause of our
18 concern. So, that's been through telephone
19 conversations, a couple of documents that they've
20 sent, kind of a group document that they've sent
21 via e-mail.

22 Q. Do you have any of those documents?

23 A. I do.

24 Q. You brought them with you?

25 A. Yeah.

1 Q. Can I please take a look at those?

2 A. (Hanging.)

3 MR. LAWRENCE: Off the record for a
4 minute.

5 (Discussion held off the record.)

6 MR. LAWRENCE: Back on the record,
7 please.

8 Q. (BY MR. LAWRENCE) Barry, it appears
9 that you have brought some documents with you,
10 one of which is an October 3rd letter that
11 begins: "Dear Friends and Neighbors" and it's on
12 North Ada County Foothills Association
13 letterhead. And another document dated
14 September 28, 2008. The header says: "North Ada
15 County Foothills Association, North Ada County
16 Groundwater Users Association," and it's in a
17 memo style somewhat and at the top it says:
18 "From David Head and John Thornton."

19 I have asked whether you could provide
20 me copies or allow me to make copies of these
21 documents so I can enter them as exhibits in this
22 deposition. Would you allow me to do that?

23 A. I would actually prefer to pursue
24 counsel on handing over those documents at this
25 time.

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)
_____)

DEPOSITION OF RICHARD LAGERSTROM
DECEMBER 1, 2008

REPORTED BY:

JEFF LaMAR, C.S.R. No. 640

Notary Public

1 whether you had seen the application filed by M3
2 for water rights prior to filing your protest.

3 A. I can't -- I can't say whether I saw
4 that document in its entirety or whether I saw an
5 excerpt. It indicated to me 15 million gallons.
6 And I can't get more water?

7 Q. So have you read the application now,
8 Mr. --

9 A. Not in its entirety, no.

10 Q. Have you read any portion of it?

11 A. Only the excerpts that I have.

12 Q. And which excerpts are those?

13 A. Once again, sir, you didn't tell me
14 what I was supposed to bring here. So off the top
15 of my head, I can't answer your question.

16 Q. Do you have a copy of the application
17 at home?

18 A. I have an excerpt of something at
19 home. If you'd asked me to bring things, I could
20 have done that. You're going to have to take what
21 I know off the top of my head because there's
22 nothing here that said, "Mr. Lagerstrom, please
23 bring everything that you have relative to this
24 application."

25 Q. Well, would you be willing to provide

copies of those documents to us?

A. Sure.

Q. Okay. We'll make a note of that, and then you can provide those documents to me, anything that relates to this application.

Mr. Lagerstrom, were you asked by legal counsel or anyone else to provide information in response to discovery requests that M3 sent out?

A. No, I have not had counsel.

Q. You have not had legal counsel?

A. Not yet.

Q. Did anyone send to you any discovery questions --

A. No.

Q. -- interrogatories?

A. No.

Q. No?

A. No.

Q. Okay.

A. That would be nice.

May I have copies?

Q. Yes, again, we'll talk about that if you'd like at some later time.

A. Yes, I will.

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)
_____)

DEPOSITION OF MORGAN W. MASNER
DECEMBER 10, 2008

REPORTED BY:

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

Notary Public

1 MORGAN W. MASNER,
2 first duly sworn to tell the truth relating to
3 said cause, testified as follows:

4 EXAMINATION

5 QUESTIONS BY MR. FEREDAY:

6 Q. State your name and give your address,
7 please.

8 A. Morgan W. Masner, M-a-s-n-e-r. And I
9 live at 4325 West Gray Teal, that's two words,
10 Gray Teal Court, Eagle, Idaho, 83612 -- 83616,
11 I'm sorry.

12 Q. Mr. Masner -- Masner, sorry, I'm
13 mispronouncing that.

14 A. That's all right.

15 Q. How long have you lived in Eagle?

16 A. 20 years.

17 Q. Did you bring any documents with you
18 today?

19 A. Oh, just a few notes that I had.

20 Q. Do they pertain to this application?

21 A. Yes.

22 Q. Would you mind if I saw those or would
23 you tell me about them?

24 A. Not at all. They're just some -- the
25 hydrologist's report and then just a synopsis of

1 things that have been going on with the water
2 users group.

3 Q. Could I see those?

4 A. Sure (handing.)

5 Q. And I see that you have the Ralston
6 November 6, 2008, memorandum to Josephine Beeman
7 as well as what I call the North Ada County
8 Groundwater Users Association bullet list here.
9 Are these the only documents that you've
10 received?

11 A. The second one is an appeal for
12 funding.

13 Q. An appeal for funding?

14 A. Yes.

15 (Exhibit 100 marked.)

16 Q. (BY MR. FEREDAY) With regard to that
17 appeal for funding, we will have some questions
18 in a few minutes. But for now, I'd like you to
19 take a look, if you would, at Exhibit No. 100.
20 Do you recognize that?

21 A. (Reviewing document.)

22 Q. This is entitled "Notice of Protest."

23 A. Yes.

24 Q. And you and your wife Julie signed
25 that; correct?

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)
_____)

DEPOSITION OF ROBERT S. NICCOLLS, JR.

DECEMBER 8, 2008

REPORTED BY:

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

Notary Public

1 have a definitive time to sell. I can tell you
2 that neither of us could live in the house alone
3 because there's just more than -- well, I would
4 not live in the house alone.

5 Q. Are you and your wife in agreement
6 regarding this protest of M3's application?

7 A. Oh, yes. Very solid marriage,
8 et cetera, it's just that --

9 Q. Mr. Niccolls --

10 A. I can give you this.

11 Q. -- if you could please flip to tab
12 No. 24 in that binder in front of you, Exhibit
13 No. 24.

14 A. (Witness complied.) 24, okay.

15 Q. Bob, this is an e-mail. Do you
16 recognize it?

17 A. (Reviewing document.)

18 Q. Did you receive this e-mail?

19 A. Given the date, I don't think so.
20 Because that's current enough that I think I
21 would remember. I mean, that's only 12/1/08 if
22 that's the correct date. Now, wait a minute. It
23 says up here December 1, '08. How is it sent on
24 a date other than -- or I guess I'm --

25 Q. Bob, do you recognize the text of that

1 e-mail from Kathy Pennisi to "Dear NACFA
2 Supporters"?

3 A. I'd have to go back and check. There's
4 been enough correspondence, and as I say, there's
5 been some things going on personally in our
6 larger family.

7 Q. So, you can't say that you recognize
8 that e-mail?

9 A. No, but I also cannot say that I
10 haven't received it. I just -- I'm sorry, I'm
11 pulling a blank on that.

12 Q. If you could turn the page, you will
13 see what was a document that was attached to that
14 e-mail. I'll refer to it as the "Dear NACFA
15 Friends" letter. Does that look familiar to you?

16 A. I believe that I have seen. There's no
17 date -- oh, or is there? I do believe I have
18 seen this, yes.

19 Q. Bob, if you look in the first paragraph
20 of this letter, it states, the second line down,
21 that: "M3 has asked IDWR for approximately 15
22 million gallons of groundwater per day." Is that
23 your understanding of what M3's application
24 seeks?

25 A. I would expect that to be accurate

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)
_____)

DEPOSITION OF KATHERINE PENNISI
DECEMBER 17, 2008

REPORTED BY:

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

Notary Public

1 sought in the application is a number that is
2 sought for 24 hours a day 7 days a week?

3 A. No.

4 Q. What is your understanding?

5 A. That's at peak is what the maximum
6 would be.

7 Q. So, you understand that it wouldn't be
8 15 million gallons a day times 365 days; correct?

9 A. Yes.

10 Q. Do you have any knowledge at all,
11 Katherine, about the amount of water that
12 M3 Eagle has sought as a volume, as an annual
13 volume?

14 A. No.

15 Q. Have you read M3 Eagle's application in
16 this case?

17 A. I read some documents awhile back.

18 Q. What documents?

19 A. I couldn't even tell you what documents
20 they were. I don't know. I don't remember.

21 Q. Prior to filing your protest, did you
22 read M3 Eagle's application for water right in
23 this case?

24 A. I believe it was -- it was prior to,
25 yes.

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)
_____)

DEPOSITION OF JOHN PETROVSKY
DECEMBER 4, 2008

REPORTED BY:

JEFF LaMAR, C.S.R. No. 640

Notary Public

1 that be accurate?

2 A. I'd call it separate now. That's open
3 to discussion, I suppose.

4 Q. I'd like to refer you to what's been
5 marked as Exhibit 24. And I'll provide you this
6 binder. It has tabs there. The larger numbered
7 tabs will show you where No. 24 is. 24 is an
8 e-mail to NACFA supporters from Kathy Pennisi.

9 Do you see that?

10 A. Uh-huh.

11 Q. And it focuses, don't you agree, on
12 M3's application for --

13 A. Yes.

14 Q. -- water that we're discussing here
15 today?

16 A. Yes.

17 Q. Do you recall receiving that e-mail?

18 A. Yes.

19 Q. Did you respond to this e-mail?

20 A. I did not.

21 Q. Have you discussed it with anyone?

22 A. No.

23 Q. Attached to the e-mail are two
24 documents that are also included in Exhibit 24.

25 The first is a "Dear NACFA Friends" letter.

1 A. Uh-huh.

2 Q. The second is what I'll call the
3 bullet list.

4 Do you see those?

5 A. Yes, I do.

6 Q. Do you remember receiving those?

7 A. I didn't look at them, the
8 attachments. I saw the e-mail, but did not look
9 at the attachments.

10 Q. So you have not read these prior to
11 now?

12 A. I have not, no.

13 Q. I'd like to refer to the "NACFA
14 Friends" letter. The first paragraph states that
15 "M3 has asked IDWR for approximately
16 15 million gallons of ground water per day for
17 their planned community."

18 Do you know where that number comes
19 from?

20 A. I do not.

21 Q. Have you ever calculated how much
22 water M3 Eagle is asking for in this application?

23 A. I have not.

24 Q. In that same paragraph, there's a
25 reference to "implications of aquifer drawdowns."

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)
_____)

DEPOSITION OF STEVEN PURVIS

DECEMBER 1, 2008

REPORTED BY:

JEFF LaMAR, C.S.R. No. 640

Notary Public

1 organized means by which you can communicate
2 what's going on. And we periodically received
3 updates about what was going on and what they
4 needed to do next and how we're going about it.
5 And, you know, so it's we get information stuff
6 periodically and systematically because we are an
7 identified organized group for this purpose.

8 Q. Uh-huh. When you get information
9 periodically and systematically, does that come
10 from NACGUA's lawyer or does it come from one of
11 the leaders of NACGUA, such as John Thornton or
12 David Head?

13 A. It usually comes from David.

14 Q. And again, you haven't provided any of
15 those documents or been asked to provide any of
16 those documents of that internal communication?

17 A. No.

18 Q. Okay. I'm showing you now what's been
19 marked as Exhibit 16.

20 Have you seen this document? This is
21 a letter from me to NACGUA's counsel proposing
22 settlement. Were you aware of this document?

23 A. I was aware that this was going to go
24 on, yes.

25 Q. Were you aware that this document had

(Recess.)

MR. FEREDAY: Back on the record.

Q. Steve, I've handed you what's been marked as Exhibit 24, which is -- in the first place, I'm referring to an e-mail to "Dear NACFA Supporters."

Do you see that? Do you recognize -- do you remember getting that from Kathy Pennisi?

A. Yeah.

Q. And this was sent --

A. This was within the last day or two.

Q. Yeah, it was sent quite recently; correct?

A. Yes, uh-huh.

Q. And you recognize that this has as its only topic "M3's Water Right Application"; correct?

A. This particular one, yes.

I received one I think the same day, an update on dates and things in front of city councils and those kind of things, yes.

Q. And then the next two documents there, I think the next one is something called "Dear NACFA Friends"?

A. Yes.

1 Q. And then I believe attached to it is
2 something called the "North Ada County Groundwater
3 Users Association in Cooperation with the North
4 Ada County Foothills Association." It's kind of a
5 bullet list with several items asterisked.

6 A. Uh-huh.

7 Q. Did you receive any of this?

8 A. Yes, I received these. Yes, I did.

9 Q. Did you contribute to putting these
10 together at all?

11 A. No. I knew that they were -- I knew
12 that they were going to go out because we'd had an
13 internal communication about the need to gather up
14 more funds to participate in this process. And
15 actually, before these came out, I wrote a check,
16 another check.

17 Q. Oh, you did. And this was -- when you
18 say "we," you're talking about NACFA as an
19 organization is cooperating with North Ada County
20 Ground Water Users; correct?

21 A. Yes.

22 Q. And so this was going out to NACFA
23 people as well as NACGUA people; correct?

24 A. That's correct.

25 Q. Would you say it's fair to

1 characterize NACFA and NACGUA as working closely
2 together on this?

3 A. Certainly.

4 Q. Now, in this listing here of issues, I
5 note that the first bullet item states that "M3
6 Eagle has requested a little over 23 cubic feet
7 per second, which equates to approximately
8 15 million gallons of water per day."

9 Do you see that there?

10 A. Yeah.

11 Q. Steve, do you understand M3 Eagle is
12 asking for a full-time, 24/7, year-round pumping
13 rate of 23 cfs?

14 A. I believe in one of the earlier
15 explanations of your own experts, that was the
16 high-peak-time number, and that the normal flow at
17 nonirrigation times and others was lower than
18 that.

19 Q. Do you know how much would be an
20 average for M3 over the course of the year or,
21 say, in the irrigation season or the nonirrigation
22 season, what the daily average would be?

23 A. If you don't hold me to the number, I
24 thought it was around half of that.

25 Q. Okay.

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)
_____)

DEPOSITION OF SHERRI RANDALL
DECEMBER 10, 2008

REPORTED BY:

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

Notary Public

1 receive one of those, yes.

2 Q. The summary report from your
3 hydrologist, could that have been the November 6,
4 2008, memorandum from Dale Ralston to Jo Beeman?
5 I believe that was the date. Does that ring a
6 bell?

7 A. I don't know. I don't know. I'm
8 sorry, I'm whispering again.

9 Q. I'm handing you what's been marked as
10 Exhibit No. 108. Do you recognize that?

11 A. This could be the report that I was
12 given.

13 Q. And that's the one that you testified a
14 minute ago that you think you have at your home?

15 A. Yes.

16 Q. Do you have any other information from
17 your expert pertaining to the hydrology of this
18 matter other than this Ralston report here,
19 Exhibit No. 108?

20 A. There could be information in my
21 e-mail. I haven't read all of this -- all of the
22 documents that I've received.

23 Q. How often do you receive e-mail from
24 NACGUA leadership or your lawyer?

25 A. It varies depending on what's

1 happening. It could be quite a bit in between,
2 it could be once a week. It just depends.

3 Q. So, you have received several e-mails
4 on this matter from David Head or John Thornton
5 or someone else in NACGUA?

6 A. Yes.

7 Q. Have you been asked to provide copies
8 of those e-mails in discovery to anybody?

9 A. No.

10 Q. Sherri, I'd like to show you what's
11 been marked as Exhibit No. 30. And it's in here.
12 This is our request for documents and written
13 responses that was sent out on the 1st of
14 October. Have you ever seen that?

15 A. (Reviewing document.) I don't think
16 so.

17 Q. How about Exhibit No. 31, the very next
18 one? If you could just flip to that, which is a
19 response to this, have you seen this one or did
20 you help contribute to its preparation?

21 A. (Reviewing document.) I don't believe
22 so.

23 Q. I'm showing you what's been marked as
24 Exhibit No. 107, which is a document entitled
25 "North Ada County Groundwater Users Association"

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
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DEPOSITION OF BRUCE RICHARDSON
DECEMBER 9, 2008

REPORTED BY:

JEFF LaMAR, C.S.R. No. 640

Notary Public

1 A. They send me reports on kind of
2 projects that are happening. The ones that I've
3 been involved in are ones that have to do with
4 people trying to rezone above Beacon Light. The
5 plan is that they should be 5-acre lots, and
6 there's been several attempts where they tried to
7 make those smaller lots.

8 Q. That's been the primary thrust of your
9 involvement?

10 A. Yes.

11 Q. Have you held any official positions
12 within NACFA?

13 A. No.

14 Q. I asked you earlier whether you had
15 reviewed M3's application prior to filing your
16 notice of protest and you answered no; correct?

17 A. Correct.

18 Q. Have you reviewed it since then?

19 A. Like I say, only in the form of
20 summations of it.

21 Q. And one summation you mentioned
22 earlier.

23 Have there been other summations
24 provided to you?

25 A. Yes.

1 Q. And who provided you with those?

2 A. The same ground water users.

3 Q. NACGUA?

4 A. Yes.

5 Q. In particular, did David Head provide
6 you with those summations?

7 A. He's one of the people -- whatever you
8 want to call it, the organizational people of that
9 group, yes.

10 Q. Is there anyone else within the NACGUA
11 organization who provided you with any documents
12 or any information regarding the M3 application or
13 your protest?

14 A. Yes.

15 Q. Who else was that?

16 A. I don't remember her name.

17 Q. It was a female?

18 A. Yes.

19 Q. Could it have been Anne Ritter?

20 A. Doesn't sound right. I thought it
21 started with a "P," but...

22 Q. Would it be Kathy Pennisi?

23 A. That sounds -- yes, more.

24 Q. Are you familiar with Kathy Pennisi
25 through her involvement with NACFA?

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)
_____)

DEPOSITION OF ANNE RITTER
DECEMBER 2, 2008

REPORTED BY:

JEFF LaMAR, C.S.R. No. 640

Notary Public

1 Exhibit 37.

2 Thank you very much.

3 A. My pleasure.

4 I don't see Smith on there. He's my
5 neighbor as well.

6 MR. FEREDAY: Let's go off the record.

7 (Discussion.)

8 (Exhibit 37 marked.)

9 MR. FEREDAY: Let's go back on the record.

10 Q. Thank you for locating your property
11 on new Exhibit 37.

12 And could you tell me whether you're a
13 member of NACFA, the North Ada County Foothills
14 Association.

15 A. No.

16 Q. Have you ever been a member?

17 A. No.

18 Q. Are you on their mailing list?

19 A. Yes.

20 Q. So you get e-mails and other
21 information from them?

22 A. Yes.

23 Q. And is some of that information
24 pertaining to the M3 water right?

25 A. Yes.

1 Q. Have you received information from
2 them recently on the M3 Eagle water right
3 application?

4 A. There was an e-mail that came out
5 within the last week with an update just that the
6 protest was proceeding.

7 Q. I'd like to show you what's been
8 marked as Exhibit 24.

9 Let's go off the record.

10 (Discussion.)

11 (Alan Smith joins the proceedings.)

12 MR. FEREDAY: Back on the record.

13 Q. I'm handing you what has been marked
14 as Exhibit 24.

15 And I'd like to note for the record
16 that Mr. Smith just joined us.

17 And, Mr. Smith, do you have any
18 intention to provide a statement today or provide
19 any documents or anything like that?

20 MR. SMITH: No. Just observing.

21 MR. FEREDAY: Okay. Thank you.

22 Q. Exhibit 24 includes an e-mail and a
23 couple of typed documents, one entitled "Dear
24 NACFA Friends," and another a bullet list with
25 asterisk items North Ada County Groundwater Users

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 I

DEPOSITION OF JOHN L. THORNTON
DECEMBER 2, 2008

REPORTED BY:

JEFF LaMAR, C.S.R. No. 640

Notary Public

1 Q. Which reports and documentation are
2 you referring to now? And did you bring some with
3 you today?

4 A. Yeah.

5 Q. Could you show us what those are?
6 Let's go off the record for a moment.
7 (Discussion.)

8 MR. FEREDAY: Let's go back on the record.

9 Q. John, I see you've got two 3-ring
10 binders here: one a blue cover, the other a white
11 cover.

12 Could you describe -- you're looking
13 through the blue one -- what is in that?

14 A. That's just a collection of different
15 kinds of documents that I've put together over the
16 last probably month and a half that talk about, I
17 guess, ground water in the Treasure Valley in a
18 very general sense. So...

19 Q. Are these documents that you're
20 referring to or relying on in any way in making
21 comments to NACGUA members or doing such things as
22 writing the "NACGUA Friends" letter?

23 A. I'm sorry. Say that again.

24 Q. Are these the kinds of documents that
25 you are relying on in any way?

1 A. In terms of basing some of our
2 opinions?

3 Q. Correct.

4 A. Yes. The answer would be yes.

5 Q. Can we get a copy of this?

6 See if you can get somebody to get a
7 copy of this for us.

8 A. Yeah. Do you need that now or do you
9 want me to go through it and I can leave it
10 overnight, then you can copy tomorrow? Or I mean,
11 I'm fine with that.

12 Q. We probably should take it now and see
13 if we can get it copied while you continue to
14 testify.

15 A. But I won't be able to remember which
16 document is which unless I see it. I mean,
17 however you want to do it.

18 Q. Yeah. Let's get it copied now, and
19 then we may keep it overnight. But in any event,
20 we will, if we have to, depose you continuing
21 tomorrow at 4:00. We'll get probably to it then.

22 A. Okay.

23 Q. So why don't we have Michael get it.

24 A. Some of these documents, however you
25 want to do it, are your own. Some of them you

EXHIBIT D

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 63-32573 IN)
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_____)

DEPOSITION OF DAVID HEAD
DECEMBER 9, 2008

REPORTED BY:

JEFF LaMAR, C.S.R. No. 640

Notary Public

1 A. So I guess I would have to say is your
2 line of questioning related to things other than
3 me as a protestant?

4 Q. I'm asking what you know today --

5 A. Uh-huh.

6 Q. -- which I believe you're obligated to
7 testify to.

8 At the time that you filed this
9 protest --

10 A. Uh-huh.

11 Q. -- were you a leader in NACFA?

12 A. I was a committee chairman of the
13 water group.

14 Q. Who was the president of NACFA at that
15 time?

16 A. So we've never had a president. We
17 had a chairman or a co-chairman or both, depending
18 on who's coming in and out of those positions.

19 Q. Who were the chairman or co-chairman
20 at that time?

21 A. When -- at what moment in time are you
22 speaking of?

23 Q. When you filed your protest.

24 A. So I would -- I guess I didn't come
25 prepared to discuss the association or

BEFORE THE DEPARTMENT OF WATER RESOURCES
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DEPOSITION OF KATHERINE PENNISI
DECEMBER 17, 2008

REPORTED BY:

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

Notary Public

1 A. I answered the question. I said a
2 lawyer friend drafted it for me.

3 Q. Is the lawyer friend Ms. Beeman?

4 A. I don't feel like I have to answer that
5 question. If you feel like you have to compel
6 me, you do what you need to do.

7 Q. Okay, we will move on. Ms. Pennisi,
8 you brought some documents with you today?

9 A. I did.

10 Q. Could I see what those are, please.

11 A. Yes (handing.)

12 Q. One I see is the Notice of Deposition
13 of you and the Amended Notice of Deposition of
14 you. I'd like to have these marked, please, as
15 the next two exhibits.

16 (Exhibits 112 and 113 marked.)

17 Q. (BY MR. FEREDAY) So, you received
18 those two from our office; isn't that correct?

19 A. I did, one by hand and one by mail.

20 Q. Ms. Pennisi, you are the co-chair of
21 NACFA, North Ada County Foothills Association;
22 are you not?

23 A. Yes.

24 Q. How long have you been the co-chair?

25 A. Oh, I don't really know. Since the

BEFORE THE DEPARTMENT OF WATER RESOURCES
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DEPOSITION OF JOHN PETROVSKY

DECEMBER 4, 2008

REPORTED BY:

JEFF LaMAR, C.S.R. No. 640

Notary Public

1 Q. So North Ada County Groundwater Users
2 Association was a protestant against Avimor?

3 A. No, that was our first run as a subset
4 or an interest group within NACFA.

5 As the M3 situation came to pass, it
6 became clear that the people who had wells needed
7 to stand up and distinguish themselves from those
8 among NACFA who did not. And so the subgroup was
9 formed to focus attention exclusively on water
10 within the group. So that's why it was done.

11 Actually, if you want me to be clear
12 on that, I think NACGUA was formed as a result of
13 a difficulty caused by you and M3 related to David
14 Head representing the protestants that had filed
15 under NACFA and assigned him their responsibility,
16 their authority to negotiate.

17 You took issue with that. We then
18 formed NACGUA as a response under California -- or
19 under Idaho law to formalize the group so that it
20 could assign David and John Thornton authority.
21 That's why NACGUA was formed. It was not formed
22 out of the clear blue. It was you guys that
23 instigated it.

24 Q. NACGUA then really operates as a
25 project or affiliated effort with NACFA; would

BEFORE THE DEPARTMENT OF WATER RESOURCES
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IN THE MATTER OF APPLICATION)
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DEPOSITION OF JOHN L. THORNTON
DECEMBER 2, 2008

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

1 Association. It's a collection of concerned
2 citizens about the potential and future
3 development of lands north of Eagle.

4 Q. NACFA was the organization that
5 opposed the M3 development before the City of
6 Eagle; isn't that correct?

7 A. Yes, I would have to say I believe so,
8 because initially I was not involved in NACFA at
9 that early stage.

10 Q. You have been a member of --

11 A. But I'm pretty sure that's correct,
12 though.

13 Q. You have been a member of NACFA, have
14 you not, for quite a while, at least a couple of
15 years?

16 A. Probably a year and a half. Something
17 like that.

18 Q. You serve also, do you not, as the
19 NACFA representative on the North Ada County
20 Technical Advisory Committee to the Idaho
21 Department of Water Resources?

22 A. David Head and I do, yes.

23 Q. Could you describe what that involves?

24 A. It involves sitting on as representing
25 the concerns of north Ada County foothills with

1 A. I believe it got sent out to the NACFA
2 list. And to me, that's all that I know of.

3 Q. How big is the NACFA list?

4 A. I'm guessing that it's -- I think -- I
5 can't remember. About 250, maybe.

6 Q. 250 individuals?

7 A. And they could be husband and wives.
8 So I think something in that ballpark.

9 Q. The NACGUA members, I take it, are not
10 all NACFA members; correct?

11 A. The NACGUA members -- I believe that
12 is true.

13 Q. Do you know which ones are not NACFA
14 members?

15 A. I'd have to take a look at the list.
16 Exactly, no.

17 Q. It would be a minority, though,
18 wouldn't you agree?

19 A. Yeah. Most of them -- most of them I
20 believe -- the NACGUA members I believe, a large
21 majority are -- let me make sure. Most of the
22 NACGUA members are also members of NACFA. Not all
23 of them.

24 Q. What are NACFA's dues?

25 A. I couldn't tell you. I don't know.

EXHIBIT E

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)
_____)

DEPOSITION OF STEVEN PURVIS
DECEMBER 1, 2008

REPORTED BY:

JEFF LaMAR, C.S.R. No. 640

Notary Public

1 Q. And then I believe attached to it is
2 something called the "North Ada County Groundwater
3 Users Association in Cooperation with the North
4 Ada County Foothills Association." It's kind of a
5 bullet list with several items asterisked.

6 A. Uh-huh.

7 Q. Did you receive any of this?

8 A. Yes, I received these. Yes, I did.

9 Q. Did you contribute to putting these
10 together at all?

11 A. No. I knew that they were -- I knew
12 that they were going to go out because we'd had an
13 internal communication about the need to gather up
14 more funds to participate in this process. And
15 actually, before these came out, I wrote a check,
16 another check.

17 Q. Oh, you did. And this was -- when you
18 say "we," you're talking about NACFA as an
19 organization is cooperating with North Ada County
20 Ground Water Users; correct?

21 A. Yes.

22 Q. And so this was going out to NACFA
23 people as well as NACGUA people; correct?

24 A. That's correct.

25 Q. Would you say it's fair to

1 characterize NACFA and NACGUA as working closely
2 together on this?

3 A. Certainly.

4 Q. Now, in this listing here of issues, I
5 note that the first bullet item states that "M3
6 Eagle has requested a little over 23 cubic feet
7 per second, which equates to approximately
8 15 million gallons of water per day."

9 Do you see that there?

10 A. Yeah.

11 Q. Steve, do you understand M3 Eagle is
12 asking for a full-time, 24/7, year-round pumping
13 rate of 23 cfs?

14 A. I believe in one of the earlier
15 explanations of your own experts, that was the
16 high-peak-time number, and that the normal flow at
17 nonirrigation times and others was lower than
18 that.

19 Q. Do you know how much would be an
20 average for M3 over the course of the year or,
21 say, in the irrigation season or the nonirrigation
22 season, what the daily average would be?

23 A. If you don't hold me to the number, I
24 thought it was around half of that.

25 Q. Okay.