

File Folder # 5

Starting with Notice of Hearing Dated 12/18/08

And

Ending with NACGUA's Response Ltr. Re: Deposition
received on 11/21/08

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Sent To

NORMAN L EDWARDS
884 W BEACON LIGHT RD
EAGLE ID 83616

PS Form 3800, June 2002 See Reverse for Instructions

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Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

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Here

Sent To

BILL LAWTON
3145 OSPREY RD
EAGLE ID 83616

PS Form 3800, June 2002 See Reverse for Instructions

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Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

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Sent To

ALAN SMITH
3135 OSPREY RD
EAGLE ID 83616

PS Form 3800, June 2002 See Reverse for Instructions

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Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

12/19/08
Postmark
Here
dy

Sent To

JOSEPHINE P BEEMAN
BEEMAN & ASSOCIATES
409 W JEFFERSON ST
BOISE ID 83702

PS Form 3800, June 2002 See Reverse for Instructions

U.S. Postal Service™
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Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

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Postmark
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dy

Sent To

M3 EAGLE LLC

PS Form 3800, June 2002 See Reverse for Instructions

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Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

12/19/08
Postmark
Here
dy

Sent To

GIVENS PURSLEY LLP

PS Form 3800, June 2002 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

Complete item 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits.

Article Addressed to:

JOSEPHINE P BEEMAN
BEEMAN & ASSOCIATES
409 W JEFFERSON ST
BOISE ID 83702

63-32573

Article Number

(Transfer from service) 7005 1160 0000 1505 3093

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *J. Angel* Agent Addressee

B. Received by (Printed Name)

Joyce E Angel

C. Date of Delivery

12-30-08

D. Is delivery address different from item 1? YesIf YES, enter delivery address below: No

3. Service Type

 Certified Mail Express Mail Registered Return Receipt for Merchandise Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee)

 Yes

SENDER: COMPLETE THIS SECTION

Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

GIVENS PURSLEY LLP
C/O JEFFREY C FEREDAY
PO BOX 2720
BOISE ID 83701

63-32573

2. Article Number

(Transfer from service lab) 7005 1160 0000 1505 3086

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *David Creamer* Agent Addressee

B. Received by (Printed Name)

DAVID CREAMER

C. Date of Delivery

12-22-08

D. Is delivery address different from item 1? YesIf YES, enter delivery address below: No

3. Service Type

 Certified Mail Express Mail Registered Return Receipt for Merchandise Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee)

 Yes

SENDER: COMPLETE THIS SECTION

Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

ALAN SMITH

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *Alan Smith* Agent Addressee

B. Received by (Printed Name)

A Smith

C. Date of Delivery

12/20/08

D. Is delivery address different from item 1? YesIf YES, enter delivery address below: No

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

IN THE MATTER OF APPLICATIONS TO)
APPROPRIATE WATER NO. 63-32573) **NOTICE**
IN THE NAME OF THE M-3 EAGLE) **OF HEARING**
_____)

On December 4, 2008, the Idaho Department of Water Resources (“Department”) issued an *Order Postponing and Continuing Hearing and Order Granting Motion for Stay, Order Denying All Motions to Compel and Motions for Sanctions, and Order Reinstating Party* that postponed the hearing. The Department requested the parties to submit information about their unavailable dates for setting new hearing dates on or before December 12, 2008.

Applicant’s representative and Protestant North Ada County Groundwater Users Association’s (“NACGUA”) representative have submitted their unavailable dates. No other protestants responded by the deadline set. Therefore, it is proper to issue a Notice of Hearing for this matter.

PLEASE TAKE NOTICE that the formal hearing has been rescheduled at the parties’ request and will be held on **March 23-27, and continued to March 30-31, 2009, beginning at 9:00 a.m.** at the offices of the Idaho Department of Water Resources, located at 322 East Front Street, 6th Floor Conference Rooms, Boise, Idaho. The presiding officer at the hearing will be Gary Spackman.

If you plan to offer exhibits for the record at the hearing, note that Rule 606 of the department’s Rules of Procedure requires that a copy be provided to each party and to the presiding officer.

The hearing 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 hearing will be conducted in accordance with the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the department no later than ten (10) days prior to the hearing. Inquires about scheduling, hearing facilities, etc., should be directed to Deborah Gibson, Administrative Assistant, Idaho Department of Water Resources, P.O. Box 83720, Boise, Idaho 83720-0098, telephone: (208) 287-4942, fax: (208) 287-6700.

All parties appearing in this matter will have the opportunity to present information, examine witnesses, and provide argument on issues related to the appropriation of water this application has bearing on, during the course of this hearing.

Dated this 18th day of December, 2008



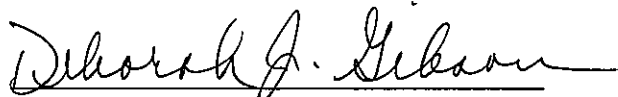
Gary Spackman
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of December, 2008, a true and correct copy of the document described below was served on the following by placing a copy of the same in the United States mail, certified mail with return receipts, postage prepaid and properly addressed to the following:

Document(s) Served: NOTICE OF HEARING

Name	Address	City	State	Postal Code
NORMAN L EDWARDS	884 W BEACON LIGHT RD	EAGLE	ID	83616
ALAN SMITH	3135 OSPREY RD	EAGLE	ID	83616
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
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



Deborah J. Gibson
Administrative Assistant
Water Management Division

UNITED STATES POST SERVICE ID: 837

20 DEC 2008 PM 2:17

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

WA
IDAHO DEPT OF WATER
RESOURCES
ATTN DEBORAH GIBSON
PO BOX 83720
BOISE ID 83720-0098

RECEIVED
DEC 22 2008
DEPARTMENT OF
WATER RESOURCES



UNITED STATES POST SERVICE ID: 837

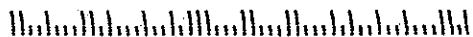
22 DEC 2008 PM 1:17

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WA
IDAHO DEPT OF WATER
RESOURCES
ATTN DEBORAH GIBSON
PO BOX 83720
BOISE ID 83720-0098

RECEIVED
DEC 24 2008
DEPARTMENT OF
WATER RESOURCES



UNITED STATES POST SERVICE ID: 837

24 DEC 2008 PM 2:17

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USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

WA
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18
OF
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SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

NORMAN L EDWARDS
884 W BEACON-LIGHT RD
EAGLE ID 83616

63-32573

2. Article Number

(Transfer from service lat

7005 1160 0000 1505 3130

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *N Edwards* PM 1 Agent
 Addressee

B. Received by (Printed Name)

Norman L Edwards C. Date of Delivery
12/20/08

D. Is delivery address different from item 1? YesIf YES, enter delivery address below: No

3. Service Type

- Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee)

 Yes

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

BILL LAWTON
3145 OSPREY RD
EAGLE ID 83616

63-32573

2. Article Number

(Transfer from service

7005 1160 0000 1505 3109

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *Bill Lawton* Agent
 Addressee

B. Received by (Printed Name)

Bill Lawton C. Date of Delivery
12-22-08

D. Is delivery address different from item 1? YesIf YES, enter delivery address below: No

3. Service Type

- Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee)

 Yes

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *M. May* Agent
 Addressee

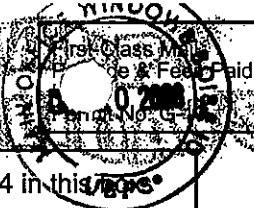
B. Received by (Printed Name)

M. May C. Date of Delivery

D. Is delivery address different from item 1? Yes

UNITED STATES POSTAL SERVICE

WA
30 DEC 2008 PM 2:17



• Sender: Please print your name, address, and ZIP+4 in this box •

IDAHO DEPT OF WATER
RESOURCES
ATTN DEBORAH GIBSON
PO BOX 83720
BOISE ID 83720-0098

RECEIVED

DEC 31 2008

DEPARTMENT OF
WATER RESOURCES

UNITED STATES POSTAL SERVICE

WA



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

IDAHO DEPT OF WATER RES
OURCES
ATTN DEBORAH GIBSON
PO BOX 83720
BOISE ID 83720-0098

RECEIVED

DEC 23 2008

DEPARTMENT OF
WATER RESOURCES



UNITED STATES POSTAL SERVICE

WA
23 DEC 2008 PM 2:17

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Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

IDAHO DEPT OF WATER
RESOURCES

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28

OF
RES

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DEC 15 2008

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 REVISED NOTICE OF
UNAVAILABLE DATES AND NOTICE OF
PROPOSED HEARING DATES**

Pursuant to the Hearing Officer's December 4, 2008 *Order Postponing and Continuing Hearing and Order Granting Motion for Stay, Order Denying All Motions to Compel and Motiosn for Sanctions, and Order Reinstating Party*, and in light of the notices of unavailable dates filed by M3 Eagle LLC ("M3 Eagle") and North Ada County Groundwater Users Association ("NACGUA") on December 12, 2008, M3 Eagle submits this Revised Notice of Unavailable Dates and Notice of Proposed Hearing Dates.

Upon further consideration, M3 Eagle has determined that all dates in February and March 2009 are unavailable for hearing except for those dates during the weeks beginning March 9, March 23, and March 30.

M3 Eagle proposes scheduling the hearing for March 23-27 and 30-31, 2009. March 30-31 are necessary because one of M3 Eagle's expert witnesses is not available the week of March 23.

DATED this 15th 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 15th 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
 Overnight Mail
 Facsimile
 E-mail

SERVICE

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

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

North Ada County Groundwater Users Association
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. Wood
M. Howard Goldman
Timothy R. Milburn
3145 Osprey Road
Eagle, ID 83616

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

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

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

Alan Smith
3135 N. Osprey Road
Eagle, ID 83616

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


Michael P. Lawrence

RECEIVED

DEC - 9 2008

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

**AMENDED NOTICE OF DEPOSITION OF
KATHERINE PENNISI**

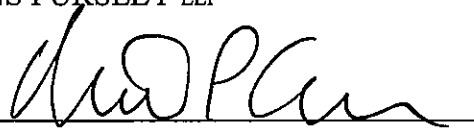
TO: KATHERINE PENNISI

PLEASE TAKE NOTICE that, based on Katherine Pennisi's December 9, 2008 request to reschedule the deposition on December 17, 2008 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 Katherine Pennisi, a protestant 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 9th 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 9th 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

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Western Regional Office
Idaho Department of Water Resources
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U. S. Mail
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 Overnight Mail
 Facsimile
 E-mail

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

Katherine Pennisi
3675 N. Saddleman Place
Eagle, ID 83616

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

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

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 Facsimile
 E-mail



Michael P. Lawrence

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

RECEIVED
DEC 12 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 NOTICE OF
UNAVAILABLE DATES**

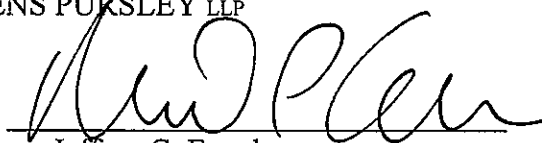
Pursuant to the Hearing Officer's December 4, 2008 *Order Postponing and Continuing Hearing and Order Granting Motion for Stay, Order Denying All Motions to Compel and Motiosn for Sanctions, and Order Reinstating Party*, M3 Eagle LLC submits that all dates in February and March 2009 are unavailable for hearing except for those dates during the week beginning March 9. In other words, M3 Eagle's only available dates for hearing this matter in February and March 2009 are March 9 through March 13.

DATED this 12TH 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 12th of December, 2008, the foregoing was filed, served, or copied as follows:

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322 East Front Street
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Boise, ID 83720-0098

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


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

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

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

Alan Smith
3135 N. Osprey Road
Eagle, ID 83616

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


Michael P. Lawrence

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

RECEIVED

DEC 15 2008

Department of Water Resources
*Rec'd by email
& fax on 12/12/08.*

Attorney for North Ada County Groundwater Users Association

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)**
_____)

**NACGUA MEMBERS UNAVAILABLE
DATES FOR HEARING IN EARLY
2009**

Pursuant to the Hearing Officer's October 7, 2008 and December 1, 2008 Orders, counsel for the North Ada County Groundwater Users Association (NACGUA) submits the following statement regarding the unavailable dates for hearing for the individual members of NACGUA:

1. The individual members of NACGUA have waived their right to administratively or judicially appeal any decision by IDWR in this proceeding.
2. The individual members of NACGUA have waived their right to call and examine witnesses.
3. The only capacity in which an individual member of NACGUA can participate in the hearing is as a public witness or as a witness called by another party.
4. NACGUA has indicated it is not available for hearing February 16-20 and March 9-20 and that it will work within the hearing schedule established with regard to any individual members that NACGUA would call as witnesses at the hearing.

5. To the extent that any other party wants to call an individual member of NACGUA as a witness, it is understood to be the responsibility of that party to make appropriate arrangements regarding such testimony and attendance.
6. Any individual member of NACGUA intending to present public witness testimony shall provide five (5) days notice prior to the hearing. The notice shall include the name and address of the witness and the general nature or subject matter of the testimony to be given. If the notice is not given, the public testimony will be allowed only at the discretion of the presiding officer upon a finding of good cause.
7. Counsel is aware that Steve Purvis, a member of NACGUA is unavailable the middle two weeks of March, which are also unavailable dates for NACGUA.
8. To the extent that Counsel's office can provide more information about the unavailable dates for other individual members of NACGUA, it would only serve to increase the unavailable dates already listed by NACGUA.

DATED this 12TH day of December 2008.

BEEMAN & ASSOCIATES, P.C.
Attorneys for NACGUA

By Josephine P. Beeman
Josephine P. Beeman

CERTIFICATE OF SERVICE

I certify that on this 12th day of December 2008, 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
(Email and U.S. Mail)

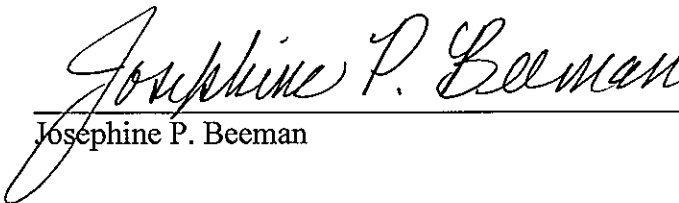
John Westra
IDWR Western
2735 Airport Way
Boise ID 83705
(Email and U.S. Mail)

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Bill Lawton
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Josephine P. Beeman

Gibson, Deborah

From: Jo Beeman [jo.Beeman@beemanlaw.com]
Sent: Friday, December 12, 2008 6:38 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: unavailable dates for IDWR hearing on 63-32573
Attachments: 20081212 NACGUA unavailable dates for IDWR hearing.pdf; 20081212 NACGUA Revised unavailable dates.pdf; 20081212 NACGUA members unavailable dates for IDWR hearing.pdf

The attached documents are also being sent by U.S. Mail:

1. NACGUA unavailable dates (my apologies; this was premature)
2. NACGUA Revised unavailable dates (this is correct)
3. NACGUA member unavailable dates

NACGUA has 3 weeks that it would be unavailable for hearing. If NACGUA calls any of its members as witnesses it will do so within the hearing schedule that is established.

Jo

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

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DEC 15 2008

Department of Water Resources

*Rec'd by email
& fax on 12/12/08*

Josephine P. Beeman #1806
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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)
FOR PERMIT NO. 63-32573,)
IN THE NAME OF M3 EAGLE, LLC)**
_____)

**REVISED
NACGUA'S UNAVAILABLE DATES
FOR HEARING IN EARLY 2009**

The North Ada County Groundwater Users Association (NACGUA) submits the following statement regarding unavailable dates for hearing:

NACGUA is unavailable for hearing during February 16-20 and March 9-20, 2009.

NACGUA will be represented pro se at hearing by either or both NACGUA President David Head or NACGUA Vice-President John Thornton. The unavailable dates are with reference to Messrs. Head and Thornton being able to represent NACGUA in this fashion. To the extent that NACGUA will call any of its members as witnesses, it will be responsible to make those arrangements in accordance with the hearing dates established.

DATED this 12TH day of December 2008.

BEEMAN & ASSOCIATES, P.C.
Attorneys for NACGUA

By *Josephine P. Beeman*
Josephine P. Beeman

CERTIFICATE OF SERVICE

I certify that on this 12th day of December 2008, 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
(Email and U.S. Mail)

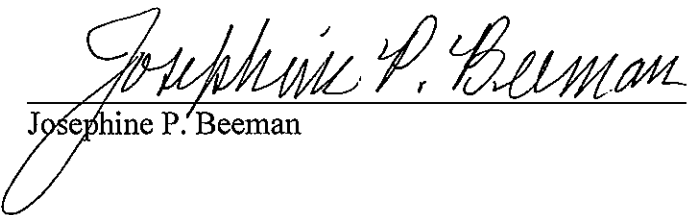
John Westra
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2735 Airport Way
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Josephine P. Beeman

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DEC 15 2008

Department of Water Resources

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fax 12/12/08*

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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)	
FOR PERMIT NO. 63-32573,)	NACGUA MEMBERS'
IN THE NAME OF M3 EAGLE, LLC)	UNAVAILABLE DATES FOR
_____)	HEARING IN EARLY 2009

The North Ada County Groundwater Users Association (NACGUA) submits the following statement regarding unavailable dates for hearing:

None from February 16 through March 31, 2009.

NACGUA will be represented pro se at hearing by either or both NACGUA President David Head or NACGUA Vice-President John Thornton. The unavailable dates are with reference to Messrs. Head and Thornton being able to represent NACGUA in this fashion.

DATED this 12TH day of December 2008.

BEEMAN & ASSOCIATES, P.C.
Attorneys for NACGUA

By *Josephine P. Beeman*
Josephine P. Beeman

CERTIFICATE OF SERVICE

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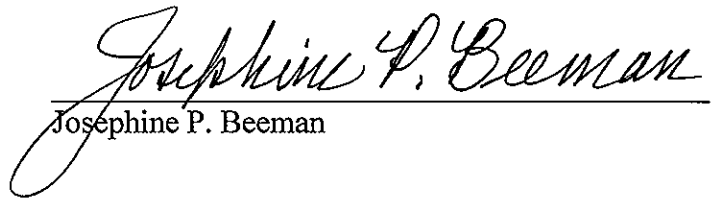
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Josephine P. Beeman

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DEC 02 2008
Department of Water Resources

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Attorney for North Ada County Groundwater Users Association

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)**
_____)

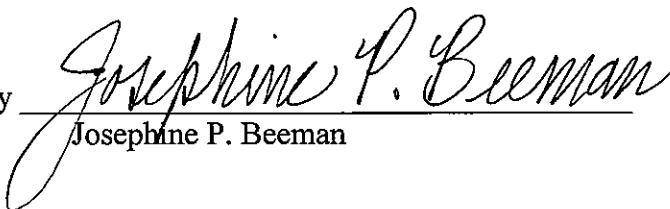
**NACGUA'S NOTICE OF SERVICE
OF NACGUA'S CONTINUING
OBJECTION FOR THE RECORD IN
EACH OF M3 EAGLE'S SCHEDULED
DEPOSITIONS OF 17 INDIVIDUAL
NACGUA MEMBERS, BEGINNING
WITH TIMOTHY MILBURN.**

North Ada County Groundwater Users Association (NACGUA) hereby gives notice that on December 1, 2008, it served NACGUA's Continuing Objection for the Record in each of M3 Eagle's Scheduled Depositions of 17 Individual NACGUA Members, beginning With Timothy Milburn, by hand delivering the original to Givens Pursley LLP, at 602 W. Bannock Street, Boise, the law firm of M3 Eagle LLC's attorney, Jeffrey Fereday.

DATED this 1st day of December 2008.

BEEMAN & ASSOCIATES, P.C.
Attorneys for NACGUA

By



Josephine P. Beeman

CERTIFICATE OF SERVICE

I certify that on this 1st day of December 2008, 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
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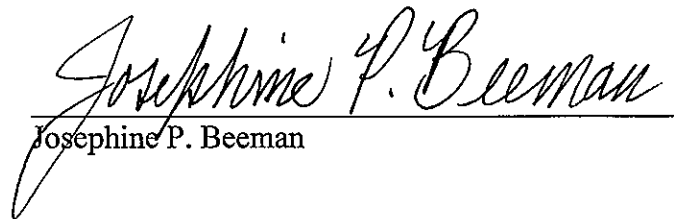
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Josephine P. Beeman

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Department of Water Resources

Jeffrey C. Fereday [ISB No. 2719]
Michael P. Lawrence [ISB No. 7288]
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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

**SECOND AMENDED NOTICE OF
DEPOSITION OF DAVID HEAD**


TO: DAVID HEAD

PLEASE TAKE NOTICE that, based on David Head's December 3, 2008 request to reschedule the deposition, on December 9, 2008 at 8:00 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 David Head, a protestant 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 4th 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 4th 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
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Boise, ID 83720-0098

U. S. Mail
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Bill Lawton, Spokesman for
Robert L. Wood
M. Howard Goldman
Timothy R. Milburn
3145 Osprey Road
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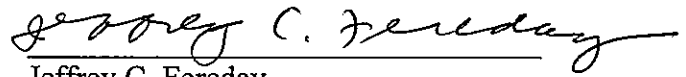
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Jeffrey C. Fereday

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DEC 04 2008

Department of Water Resources

Jeffrey C. Fereday [ISB No. 2719]
Michael P. Lawrence [ISB No. 7288]
GIVENS PURSLEY LLP
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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 JEFFREY C. FEREDAY
RE MOTION FOR STAY**

State of Idaho)
) ss.
County of Ada)

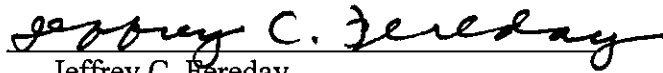
Jeffrey C. Fereday, being first duly sworn upon oath and upon his personal knowledge,
deposes and states:

1. I am an attorney with Givens Pursley LLP, counsel to Applicant M3 Eagle LLC
("M3 Eagle").

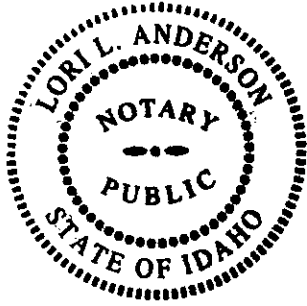
2. On November 6, 2008, I mailed letters on behalf of M3 Eagle to Josephine
Beeman (counsel for protestants North Ada County Groundwater Users Association
("NACGUA")) ("Beeman letter"), William Lawton (spokesperson for protestants William
Lawton, M. Howard Goldman, Timothy R. and Judy L. Milburn, and Robert L. and Kip C.
Wood) ("Lawton letter"), and individual protestants Alan Smith and Norman Edwards. These
letters were essentially the same and contained the same settlement offer by M3 Eagle. I mailed

copies of the Lawton letter to the persons for whom he serves as spokesperson in this matter. In the Beeman letter, I requested that Ms. Beeman provide copies of my letter to her clients.

DATED this 4th day of December, 2008.


Jeffrey C. Fereday

Subscribed and sworn to before me this 4th day of December, 2008.



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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of December, the foregoing was filed, served, or copied as follows:

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

U. S. Mail
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Beeman & Associates PC
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Boise, ID 83702-6049

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M. Howard Goldman
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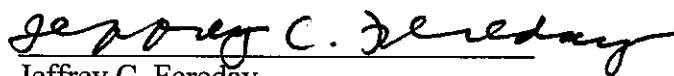
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Jeffrey C. Fereday

RECEIVED

DEC 04 2008

Department of Water Resources

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Michael P. Lawrence [ISB No. 7288]
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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 RESPONSE TO
NACGUA'S REPLY RE MOTION FOR
STAY, AND LIMITED DISCOVERY FOR
PURPOSES OF SETTLEMENT**

M3 Eagle LLC ("M3 Eagle"), though Jeffrey C. Fereday and Michael P. Lawrence of the firm Givens Pursley LLP, hereby responds to *NACGUA's Reply to M3 Eagle's Response to NACGUA's Motion for Stay and Limited Discovery for Purposes of Settlement* dated November 24, 2008 ("Reply").

M3 Eagle respectfully suggests that a response is warranted because the Reply raises new issues (and makes inaccurate statements in doing so). In its November 10, 2008 *Motion for Stay and Limited Discovery for Purposes of Settlement* ("Motion for Stay"), NACGUA asked the Hearing Officer to delay these proceedings to provide more time for "settlement negotiations," and because M3 Eagle allegedly had "not met the burden of proof to have a complete application and supporting documentation." Motion for Stay at 1. M3 Eagle addressed these points in its November 13, 2008 *Response to NACGUA's Stay Motion and Limited Discovery* ("Response").

In its Reply, NACGUA now completely ignores its "burden of proof" argument and goes off on completely new grounds, stating that a stay is justified due to an alleged "change in

circumstances relat[ing] to M3's perception of the water source." Reply at 1. It also takes a new tack on the settlement argument, asserting that the "inclusion of the [non-NACGUA] protestants in the settlement negotiations between NACGUA and M3" should induce the Hearing Officer to stay the proceedings. M3 Eagle responds briefly as follows.

1. New allegation that M3 Eagle has changed its "perception of the water source."

M3 Eagle has never changed its position as to the source of its proposed ground water diversions. M3 Eagle asserts the same source for its proposed water right—the Pierce Gulch Sand Aquifer—as it has since the beginning of this process. The Pierce Gulch Sand Aquifer is identified as the source of the proposed water right in the hydrogeological report entitled *M3 Eagle Regional Hydrogeologic Characterization North Ada, Canyon and Gem Counties, Idaho: Year-One Progress Report* ("May 2007 Report"). The May 2007 Report was included as an exhibit to M3 Eagle's First Amended Application dated August 27, 2007, and is included as Exhibit 4 to Attachment A to the February 1, 2008 Second Amended Application for Permit No. 63-32573 ("Application").

The May 2007 Report repeatedly states that the proposed source is the Pierce Gulch Sand Aquifer and that the aquifer extends from the Boise River basin into the Payette River basin. In its first two sentences, the May 2007 Report states that the proposed source of water for the M3 Eagle planned community project is the Pierce Gulch Sand Aquifer that underlies the Boise River and Payette River Valleys. May 2007 Report at 1. The May 2007 Report also states that "ground water flows from south of Eagle and areas south of the Boise River toward the Payette River Valley where it ultimately discharges. Most of this groundwater originates as recharge in the east and south Boise regions augmented by leakage from canals south and east of Meridian and recharge from the Boise River in the Boise area." *Id.* at 5. Figure 4 of the May 2007 Report

“is a cross-sectional schematic of the aquifer beneath the Boise River Valley extending to the Payette River Basin.” *Id.* at 4. Figures 9 and 10 of the May 2007 Report show predicted affects of pumping from six hypothetical supply wells on the M3 Eagle property to the Pierce Gulch Sand Aquifer extending into the Boise River Valley. These are but a few of the references to the extent of the Pierce Gulch Sand Aquifer in the May 2007 Report. Neither M3 Eagle nor its consultant, Hydro Logic Inc. (“HLI”), has stated anything to the contrary.

In support of her allegation in the Reply that M3 Eagle has “changed its perception of the water source,” NACGUA’s counsel evidently has the notion that M3 Eagle revealed for the first time in the summer of 2008 that the Pierce Gulch Sand Aquifer extends into both basins. Her idea is that this is a change, and that the Protestants should have additional time in which to evaluate it.

In the Reply, NACGUA’s counsel offers Dr. Dale Ralston’s affidavit in which he quotes from HLI’s *Re-Analysis of 16 Aquifer Tests in the Greater Eagle-Star Area of North Ada County, Idaho* dated July 4, 2008 (“16 Aquifer Tests Report”). However, Dr. Ralston does not claim that HLI or M3 Eagle has changed any perception about the aquifer whatsoever—that claim is solely an invention of NACGUA’s counsel. Indeed, the very language Dr. Ralston quotes from the 16 Aquifer Tests Report is a direct reference to the May 2007 Report and that earlier report’s statement that the aquifer underlies both the Boise and Payette River basins:

A report released by Hydro Logic, Inc. in the spring of 2007 (HCI, 2007), demonstrates that a regional water-supply aquifer, named therein the Pierce Gulch Sand Aquifer, underlies the Boise River Valley in the greater Eagle-Star and Meridian area, and the foothills lying to the north of these cities.

Affidavit of Dale R. Ralston, ¶ 1 (Nov. 24, 2008). The 16 Aquifer Tests Report (and several other analyses) support the May 2007 Report’s original conclusion that the aquifer is laterally extensive and underlies portions of both river basins. For NACGUA’s counsel to assert that this

is new information is simply not correct. Not even her expert's affidavit supports this contrivance, and certainly not the language quoted in his affidavit which expressly confirms the May 2007 Report's original finding.

In any event, none of this is reason to stay these proceedings. The May 2007 Report has been publicly available since long before the protest period even began on M3 Eagle's Application. The 16 Aquifer Tests Report (along with many other studies provided by M3 Eagle and HLI) were made publicly available on the Department's North Ada County website in the summer of 2008. Protestants have had access to this information all along.

2. New allegation about settlement.

NACGUA's assertion that stay should be granted based on alleged settlement negotiations also is not a ground for the Hearing Officer to impose a stay. Furthermore, M3 Eagle is at a loss to understand NACGUA's point concerning the addition of non-NACGUA Protestants to the process "subsequent to the September 9, 2008 Prehearing conference." Reply at 1. M3 Eagle sent NACGUA Protestants and non-NACGUA Protestants a written settlement proposal on the same day—all of them received an essentially identical letter on this subject on November 6, 2008. *Affidavit of Jeffrey C. Fereday re Motion For Stay* ¶ 2 (Dec. 4, 2008).

No "[a]dditional time is needed to involve these other parties in the settlement process." Reply at 1. These parties were sent the same settlement offer, at the same time, as that sent to NACGUA's counsel for delivery to each Protestant. The Protestants have been free to accept the offer or reject it, but this provides no justification for delaying the hearing. If M3 believed there was a legitimate opportunity for settlement, and that it justified a stay of the proceedings, M3 Eagle would say so. But one party's view about a claimed "settlement process" is hardly a justification for an order delaying the hearing. For its part, M3 Eagle is preparing for hearing

and using its valuable time conducting discovery (and, unfortunately, having to find its way around the obstacles to discovery NACGUA has created).

In sum, the Reply further underscores the lack of any good faith basis for seeking a stay of the proceedings in this case. The Hearing Officer should deny NACGUA's Motion for Stay.

DATED this 4th day of December, 2008.

Respectfully submitted,

GIVENS PURSLEY LLP

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

Certificate of Service

I HEREBY CERTIFY that on this 4th 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
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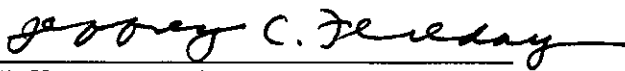
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Jeffrey C. Fereday

BEFORE THE DEPARTMENT OF WATER RESOURCES
FOR THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)	ORDER GRANTING MOTION FOR
TO APPROPRIATE WATER NO. 63-32573)	STAY, ORDER DENYING ALL
IN THE NAME OF M-3 EAGLE)	MOTIONS TO COMPEL AND
)	MOTIONS FOR SANCTIONS, AND
)	ORDER REINSTATING PARTY

On November 10, 2008, Josephine Beeman, attorney at law, representing the North Ada County Groundwater Users Association (NACGUA), filed a motion for stay and limited discovery with the Idaho Department of Water Resources ("IDWR") in the above titled matter. NACGUA argued that (1) the scheduled hearing does not allow for continuing negotiations and settlement, and (2) the applicant has not met the burden of proof to have a complete application and supporting information.

The parties have had sufficient time for negotiations or settlement in this case, particularly where months have expired since filing of protests against the application.

The hearing officer does not understand NACGUA's argument that the hearing should be delayed because of deficiencies in M-3 Eagle's required burden of proof. The applicant must carry the burden of proof at the time IDWR finally considers the application. For a contested case, this time occurs when the record closes. The Water Appropriation Rules require submittal of information to make the application complete, including submittal of additional information for large applications. NACGUA may have been arguing that this information is not complete, but the argument is obscured by the discussion of burdens of proof that are not part of the initial application review process. Furthermore, satisfaction of the additional information requirement is dynamic depending on the nature of the application, the availability of information, and the willingness of outside entities to comment on the application. These arguments are not grounds for a continuance.

On November 26, 2008, the parties filed voluminous technical documents with the hearing officer. The M-3 Eagle documents are over a foot thick. The hearing officer is concerned about the ability of the expert witnesses and IDWR staff to review the documents and to offer meaningful prehearing analysis. At the prehearing conference, the hearing officer committed to submittal of the technical documents to IDWR staff and production of a staff memorandum regarding the information. The hearing officer was hoping this review and staff memorandum would be complete before Christmas and would be available to the parties. The hearing officer is convinced the information cannot be reviewed and digested, and that a meaningful staff memorandum cannot be produced within this time frame. As a result, the parties will not have an opportunity to review the staff memorandum, address any possible deficiencies, and adequately prepare for the hearing. As a result, the hearing should be postponed for approximately one month.

The parties in this matter have filed multiple motions and requests for various relief in the above matter. Many of these documents have sought protection, compulsion, or sanctions in the interactions between the parties. Presently there are motions to compel and motions for sanctions pending before the hearing officer.

The hearing officer will not attempt to individually address all of the requests of this type, but will deny all of the requests. Deadlines for written discovery have expired. Given the extra time resulting from the continuance, the hearing officer will establish a date for submittal of a document to the hearing officer and the parties containing (1) a list of unanswered questions or questions answered unsatisfactorily from the written discovery, and (2) the name of the party to whom the question was directed. The hearing officer will also establish a date for each of the parties identified by the document to submit to the hearing officer and the parties, a written response to the questions, or an explanation why the question cannot be answered. The hearing officer expects the parties to interact in this process with a reduced level of acrimony and legal processes. Refusal to fully answer a question must be carefully justified.

Alan Smith filed a motion that the "Eagle Pines Water Association" should be reinstated as a party. Alan Smith asserted that the association was in good standing with the Secretary of State's office. Alan Smith also submitted with the motion a copy of articles of incorporation for a corporation named Eagle Pines Subdivision Water Association, Inc. The copy of the articles of incorporation show a filing date of September 15, 2008. Alan Smith and Norman Edwards are identified as Director's of the corporation. Eagle Pines Subdivision Water Association, Inc. is reinstated as a party in this matter. Alan Smith and Norman Edwards will be recognized as the spokespersons for Eagle Pines Subdivision Water Association, Inc.

ORDER

IT IS HEREBY ORDERED that the hearing in the above titled matter is **Postponed** and **Continued**.

IT IS FURTHER ORDERED that, on or before December 12, 2008, the parties shall identify, in writing, all **unavailable dates** for hearing beginning with February 16, 2009 and all of March 2009. An amended notice of hearing will be served on the parties shortly thereafter.

IT IS FURTHER ORDERED that all pending motions for protective orders, motions to compel, and motions for sanction are **Denied**.

IT IS FURTHER ORDERED that, on or before December 22, 2008, any party may file a document with the hearing officer, served on the parties, containing (1) a list of unanswered questions or questions answered unsatisfactorily from the written discovery, and (2) the name of the party to whom the question was directed.

IT IS FURTHER ORDERED that, on or before January 12, 2009, any parties listed in a document submitted to the hearing officer as not having answered written discovery shall submit to the hearing officer and the parties a written response to the questions, or an explanation why the question cannot be answered. Refusal to fully answer a question must be carefully justified.

IT IS FURTHER ORDERED 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. The request for staff memorandum by the hearing officer will list January 23, 2009, as the deadline for IDWR's response.

IT IS FURTHER ORDERED that the parties may continue to take depositions of those who prepared the technical reports and the analysis of the technical reports until February 6, 2009.

IT IS FURTHER ORDERED that Eagle Pines Subdivision Water Association, Inc. is **reinstated** as a party. Alan Smith and Norman Edwards are recognized as spokespersons for the Eagle Pines Subdivision Water Association, Inc.

Dated this 4th day of December, 2008.

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

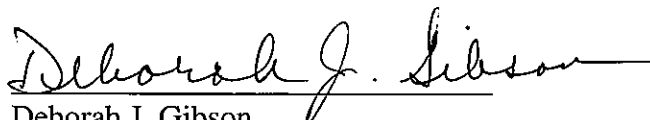
GARY SPACKMAN
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of December, 2008, 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**

Name	Address	City	State	Postal Code
NORMAN L EDWARDS	884 W BEACON LIGHT RD	EAGLE	ID	83616
ALAN SMITH	3135 OSPREY RD	EAGLE	ID	83616
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
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



Deborah J. Gibson
Administrative Assistant
Water Management Division

- Development of a Numerical Ground Water Flow Model for the M3 Eagle Development Area Near Eagle, Idaho
- 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
- Re-analysis of 16 Aquifer Tests in the Greater Eagle – Star Area of North Ada County, Idaho
- M3 Eagle Development – Demographic Forecast – Economic & Fiscal Impact Analysis
- Ralston Hydrologic Services, Inc., Memorandum – Initial Hydrogeologic Analysis, dated November 6, 2008

THEREFORE the hearing officer invites Department staff to review and analyze the technical information submitted, review data and information in possession of IDWR, and prepare staff memoranda regarding the above-captioned matter, which could include, without limitation:

1. A full analysis of the methods of gathering data, the data presented, and results of the aquifer tests or other tests or modeling contained in the information submitted by the parties.
2. A secondary review of any review and analysis of the original technical documents submitted by the parties.
3. Presentation and analysis of additional data available to Department staff to enhance the hearing officer's understanding of the hydrogeology and aquifers in the vicinity of the proposed appropriations of water.
4. Conclusions about the impacts on other water users and aquifers caused by pumping of ground water as proposed by the application to appropriate water no. 63-32573.
5. Any analysis of M3 Eagle LLC's demographic and economic modeling and forecasting.

Any such staff memoranda shall be submitted to the hearing officer on or before January 23, 2009, and also served upon the parties to this matter. The Department will require attendance of staff participating in writing staff memoranda for examination at any hearing set in this matter pursuant to IDAPA 37.01.01.201 and 602.

Dated this 8th day of December, 2008



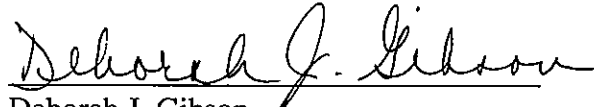
Gary Spackman
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of December, 2008, a true and correct copy of the 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: REQUEST FOR STAFF MEMORANDUM

Name	Address	City	State	Postal Code
NORMAN L EDWARDS	884 W BEACON LIGHT RD	EAGLE	ID	83616
ALAN SMITH	3135 OSPREY RD	EAGLE	ID	83616
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
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



Deborah J. Gibson
Administrative Assistant
Water Management Division

Gibson, Deborah

From: Lori Anderson [lorianderson@givenspursley.com]
Sent: Thursday, December 04, 2008 10:03 AM
To: Spackman, Gary; Gibson, Deborah; Westra, John; 'Josephine Beeman'
Cc: Jeffrey C Fereday; Michael P. Lawrence; Susan Heneise
Subject: M3 Response To NACGUA's Reply Motion for Stay & Aff

Attachments: M3 Response to Reply re Stay.PDF; Affidavit JCF re Motion for Stay.PDF



M3 Response to
Reply re Stay.P...



Affidavit JCF re
Motion for St...

On behalf of Jeffrey Fereday, I am attaching M3 Eagle's Response to NACGUA's Reply re: Motion For Stay, and Limited Discovery for Purposes of Settlement along with the Affidavit of Jeffrey C. Fereday re: Motion for Stay. A copy of each will also be sent to you via U.S. Mail today.

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

CONFIDENTIALITY NOTICE: This e-mail contains confidential information that is protected by the attorney-client and/or work product privilege. It is intended only for the use of the individual(s) named as recipients. If you are not the intended recipient of this e-mail, please notify the sender, and please do not deliver, distribute or copy this e-mail, or disclose its contents or take any action in reliance on the information it contains.

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
DEC - 8 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

**NOTICE OF DEPOSITION OF
KATHERINE PENNISI**

TO: KATHERINE PENNISI


PLEASE TAKE NOTICE that on December 11, 2008 at 8:00 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 Katherine Pennisi, a protestant 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 8th 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 8th 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
 Overnight Mail
 Facsimile
 E-mail

SERVICE

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

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

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

U. S. Mail
 Hand Delivered
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Katherine Pennisi
3675 N. Saddleman Place
Eagle, ID 83616

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

U. S. Mail
 Hand Delivered
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 Facsimile
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Norman Edwards
884 W. Beacon Light Road
Eagle, ID 83616

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

Alan Smith
3135 N. Osprey Road
Eagle, ID 83616

U. S. Mail
 Hand Delivered
 Overnight Mail
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Michael P. Lawrence

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

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NOV 28 2008

Department of Water Resources

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 MOTION TO
FOR PERMIT NO. 63-32573,)	DESIGNATE THE DEPOSITIONS
IN THE NAME OF M3 EAGLE, LLC)	SCHEDULED FOR DAVID HEAD,
_____)	JOHN THORNTON, AND ANNE
	RITTER, AS IRCP 30(B)(6)
	DEPOSITIONS OF NACGUA
	and
	REQUEST FOR HEARING

The North Ada County Groundwater Users Association (NACGUA), a party to the 63-32573 proceeding, requests an order designating the depositions scheduled for David Head, John Thornton, and Anne Ritter as 30(B)(6) depositions of NACGUA.

The Hearing Officer's October 7, 2008 Order provides,

IT IS FURTHER ORDERED that the individual protests of the protestants listed in paragraph 1 are subsumed into the protest of the North Ada County Groundwater Users Association, and Josephine Beeman shall represent the interests of these protestants as attorney for the association. The individual Protestants waive their right to independently participate in discovery, to call and examine witnesses, and to administratively or judicially appeal any decision by IDWR. The individual protestants shall have the right to appear at the hearing and testify as public witnesses.

The Hearing Officer correctly contemplated that NACGUA would speak for the individual protestants in the sense that NACGUA's officers and/or other designated

representatives would appear for it – as is permitted by IRCP 30(B)(6) and IDWR’s Reciprocal Discovery Rule 522. This is what NACGUA and its counsel had in mind as well.

NACGUA believes it is critical that NACGUA be allowed to appear as a deponent through its officers and/or other designated representatives. There have been no Notices of Deposition to NACGUA. See M3 Eagle’s November 24, 2008 “Motion for Order Compelling Parties to Attend Scheduled Depositions, or for Issuance of Subpoenas”, Exhibit B. Three of NACGUA’s officers (David Head, President; John Thornton, Vice President; and Anne Ritter, Secretary) are scheduled for depositions in their individual capacity and not pursuant to 30(B)(6) depositions of NACGUA. See M3 Eagle’s November 24, 2008 “Motion for Order Compelling Parties to Attend Scheduled Depositions, or for Issuance of Subpoenas”, pages 1-2. The focus on individuals has obscured this important representational component of NACGUA’s role as a party in the 63-32573 proceedings.

There are 14 members of NACGUA also scheduled for depositions who are neither officers nor designated representatives of NACGUA. See M3 Eagle’s November 24, 2008 “Motion for Order Compelling Parties to Attend Scheduled Depositions, or for Issuance of Subpoenas”, Exhibit B. Pursuant to the October 7, 2008 Order, these are individuals who have:

- subsumed their protest into the protest of the North Ada County Groundwater Users Association;
- waived their right to independently participate in discovery;
- waived their right to call and examine witnesses;
- waived their right to administratively or judicially appeal any decision by IDWR;
- but retained the right to appear at the hearing and testify as public witnesses.

In this limited capacity, an individual member of NACGUA who is subject to deposition as an individual protestant, and not as an officer or designated representative of NACGUA, is a lay witness. A solution to protect the individuals who are not officers and/or designated representatives of NACGUA and also to protect NACGUA would be to have counsel for these

individuals separate from NACGUA's counsel. This is a burden that the October 7, 2008 Order was intended to prevent.

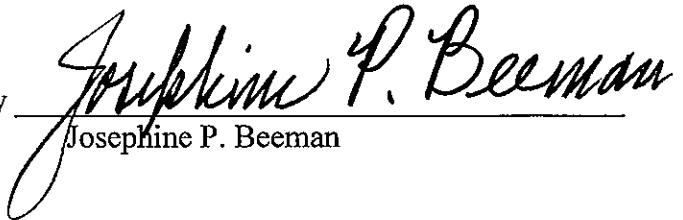
In light of the November 25, 2008 Order in this proceeding, the designation of 30(B)(6) depositions of NACGUA is critical because it is what the Hearing Officer contemplated, it is what NACGUA intended, and it is the appropriate procedural route for NACGUA to speak for its individual members through the appearance of NACGUA's officers and/or other designated representatives.

NACGUA requests that a hearing on this motion be scheduled before IDWR Hearing Officer Gary Spackman on December 1, 2008, at 3:30 p.m. The call in number is 1-866-720-1447, participant code 236 063.

DATED this 26TH day of November 2008.

BEEMAN & ASSOCIATES, P.C.
Attorneys for NACGUA

By



Josephine P. Beeman

CERTIFICATE OF SERVICE

I certify that on this 26TH day of November 2008, 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)

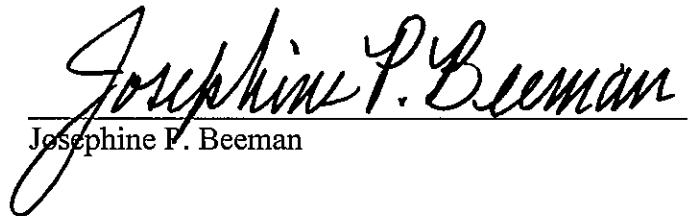
John Westra
IDWR Western
2735 Airport Way
Boise ID 83705
(U.S. Mail)

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

Jeffery 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

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

RECEIVED
NOV 28 2008
Department of Water Resources

Attorney for North Ada County Groundwater Users Association

**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)
_____)** **NACGUA'S SUBMISSION IN
COMPLIANCE WITH THE
NOVEMBER 26, 2008 DEADLINE**

North Ada County Groundwater Users Association (NACGUA) hereby gives notice of the following information in compliance with the November 26, 2008 deadline established by the September 12, 2008 Scheduling Order to complete written discovery and to submit all technical documents intended as exhibits at the hearing or technical reports prepared for reference at the hearing.

1. NACGUA's October 15, 2008 expert witness disclosure is amended by the removal of Steve Hannula, Paul Drury, and Norm Young, all of ERO Resources.

2. All technical documents that NACGUA would intend to submit as exhibits at the hearing are in the IDWR file for 63-32573, the website for the North Ada County Hydrogeologic Project, referenced by M3 expert's reports and submittals, filed today, or to be referenced in any rebuttal report or rebuttal testimony to M3 Eagle's expert reports filed today. NACGUA has already provided Dr. Dale Ralston's preliminary analysis (Ralston Hydrologic Services, Inc. November 6, 2008 Memorandum of Initial Hydrogeologic Analysis) to the Applicant.

DATED this 26th day of November 2008.

BEEMAN & ASSOCIATES, P.C.
Attorneys for NACGUA

By 
Josephine P. Beeman

CERTIFICATE OF SERVICE

I certify that on this 26th day of November 2008, 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)

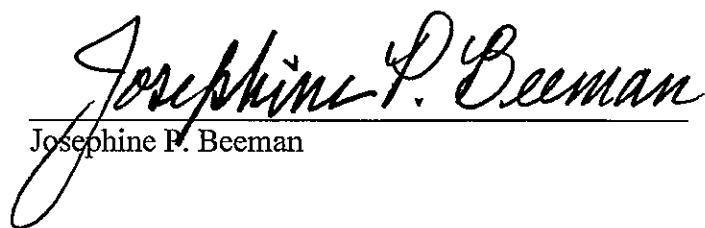
John Westra
IDWR Western
2735 Airport Way
Boise ID 83705
(U.S. Mail)

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

Jeffrey Fereday
Givens Pursley LLP
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Boise ID 83701
(U.S. Mail)

Alan Smith
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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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DEC 01 2008

Department of Water Resources

Jeffrey C. Fereday [ISB No. 2719]
Michael P. Lawrence [ISB No. 7288]
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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

**AMENDED NOTICE OF DEPOSITION OF
JOHN FRANDEN**

TO: JOHN FRANDEN

PLEASE TAKE NOTICE that, based on John Franden's November 26, 2008 request to reschedule the deposition, on December 9, 2008 at 10:30 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 John Franden, a protestant 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 1st day of December, 2008.

Respectfully submitted,

GIVENS PURSLEY LLP

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st 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
 Overnight Mail
 Facsimile
 E-mail

SERVICE

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

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 Overnight Mail
 Facsimile
 E-mail

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

U. S. Mail
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John Franden
2300 E. Buckskin Court
Eagle, ID 83616

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 Overnight Mail
 Facsimile
 E-mail

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

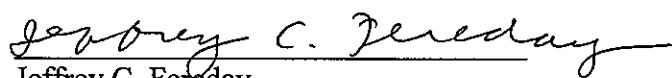
U. S. Mail
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 E-mail

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

U. S. Mail
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 Overnight Mail
 Facsimile
 E-mail

Alan Smith
3135 N. Osprey Road
Eagle, ID 83616

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


Jeffrey C. Fereday

BEFORE THE DEPARTMENT OF WATER RESOURCES
FOR THE STATE OF IDAHO

**IN THE MATTER OF APPLICATION)
TO APPROPRIATE WATER NO. 63-32573)
IN THE NAME OF M-3 EAGLE)**
_____)

**ORDER DENYING REQUEST TO
DESIGNATE INDIVIDUAL
DEPOSITIONS UNDER RULE
30(b)(6); AND DENYING MOTION
FOR ORDER COMPELLING
ATTENDANCE AT DEPOSITIONS**

By letter, dated November 26, 2008, Josephine Beeman, attorney at law, representing the North Ada County Groundwater Users Association (NACGUA), requested that the depositions of three officers of the NACGUA be designated as depositions of an association as described by Rule 30(b)(6) of the Idaho Rules of Civil Procedure.

Rule 30(b)(6) provides a procedure for a party seeking to depose another party appearing as an organization without determining the officer within the organization who should be deposed. If the party seeking the deposition identifies an officer of the organization or a member of the organization, the deposition follows the general procedures for deposing individuals. The request for Rule 30(b)(6) designation should be denied.

The October 7, 2008 Order to Consolidate stated:

The filing of a notice of appearance by Josephine P. Beeman on behalf of the North Ada County Groundwater Users Association potentially conflicts with the express designation of spokespersons filed by protestants who are members of the North Ada County Groundwater Users Association. The designation documents filed by each of the protestants designated officers in the North Ada County Groundwater Users Association as spokespersons, but stated the protests were subsumed into the association's protest. The hearing officer will interpret this possible conflict by recognizing Josephine Beeman as the attorney and representative of the North Ada County Groundwater Users Association. Because the association member protestants stated that their protests were subsumed into the association protest, the hearing officer determines that

Josephine Beeman will also represent, through the association, the other protestants. As a result David Head, Ann Ritter, John Thornton, and Ginger Head, officers in the North Ada County Groundwater Users Association, will not be spokespersons for the association member protestants.

The order portion of the document also stated:

IT IS FURTHER ORDERED that the individual protests of the protestants listed in paragraph 1 are subsumed into the protest of the North Ada County Groundwater Users Association, and Josephine Beeman shall represent the interests of these protestants as attorney for the association. The individual protestants waive their right to independently participate in discovery, to call and examine witnesses, and to administratively or judicially appeal any decision by IDWR. The individual protestants shall have the right to appear at the hearing and testify as public witnesses.

The Order to Consolidate stated that Josephine Beeman would represent NACGUA and would also represent the members of NACGUA who were individual protestants. The individual member-protestants agreed to this arrangement and there is no apparent conflict in the contested case between the association and the individual member-protestants.

Questions about representation raised by counsel for NACGUA should not affect whether an individual party should attend a deposition. Furthermore, the agreed-to relationship between the individual member-protestants created an advantage for the protesting parties, and as a result, the relationship should also impose a responsibility on both to jointly participate in the contested case processes. A notice of deposition, sent by counsel for M-3 Eagle, subject to rescheduling for convenience, should be sufficient to require attendance at the deposition by the individual member-protestants. Non-attendance and issuance of a subpoena by the Idaho Department of Water Resources to require attendance at a deposition will be viewed by the hearing officer as obstreperous, and will be grounds for dismissal of an individual protest. As the spokesperson for the individual member-protestants, NACGUA should encourage attendance.

As a result, M-3 Eagle's motion to compel attendance at depositions should be denied.

ORDER

IT IS HEREBY ORDERED that the request to designate depositions as Rule 30(b) (6) depositions is **Denied**.

IT IS FURTHER ORDERED that the motion to compel attendance at depositions is **Denied**.

IT IS FURTHER ORDERED that a protestant who (1) is an individual member of the North Ada County Groundwater Users Association; (2) agreed to have the individual protest subsumed into the protest of the North Ada Groundwater Users Association; and (3) fails to appear at a scheduled deposition for which the protestant has received notice, and the individual protestant has had a reasonable opportunity to reschedule the time and place of the deposition; may be dismissed as a party and prohibited from participating in the above contested case.

IT IS FURTHER ORDERED that the North Ada County Groundwater Users Association, as a representative of the individual members-applicants, shall exert every effort to ensure attendance at the depositions by its members.

Dated this 1st day of December, 2008.



Gary Spackman
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of December, 2008, the above and foregoing, was served by the method indicated below, and addressed to the following:

NORMAN L EDWARDS
884 W BEACON LIGHT RD
EAGLE ID 83616
nmedwards@q.com

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ALAN SMITH
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BILL LAWTON
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JEFFREY FEREDAY
GIVENS PURSLEY
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BOISE ID 83701-2720
jcf@givenspursley.com

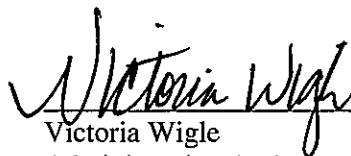
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NORTH ADA COUNTY
GROUNDWATER USERS ASSN
C/O JOSEPHINE BEEMAN
BEEMAN & ASSOCIATES PC
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joyce.angell@beemanlaw.com

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Victoria Wigle
Administrative Assistant to the Director
Idaho Department of Water Resources

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Department of Water Resources

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Michael P. Lawrence [ISB No. 7288]
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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

**AMENDED NOTICE OF DEPOSITION OF
BARRETT D. JONES**

TO: BARRETT D. JONES

PLEASE TAKE NOTICE that, based on Barret Jones' December 1, 2008 request to reschedule the deposition, on December 8, 2008 at 3:30 p.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 Barrett D. Jones, a protestant 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 2nd day of December, 2008.

Respectfully submitted,

GIVENS PURSLEY LLP

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of December, 2008, the foregoing was filed, served, or copied as follows:

FILED

Idaho Department of Water Resources
Attn: Gary L. Spackman
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Beeman & Associates PC
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Barrett D. Jones
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Bill Lawton, Spokesman for
Robert L. Wood
M. Howard Goldman
Timothy R. Milburn
3145 Osprey Road
Eagle, ID 83616

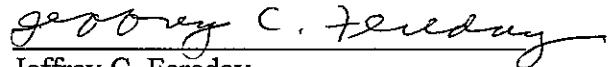
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Jeffrey C. Fereday

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Department of Water Resources

Jeffrey C. Fereday [ISB No. 2719]
Michael P. Lawrence [ISB No. 7288]
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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

**NOTICE OF DEPOSITION OF
KEVIN CULLIGAN**

TO: KEVIN CULLIGAN

PLEASE TAKE NOTICE that, based on Linda Burke's December 2 request through personal counsel Michael Kulchak to reschedule her deposition due to unavailability, on December 10, 2008 at 10:30 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 Kevin Culligan, husband to Linda D. Burke and a protestant 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 2nd day of December, 2008.

Respectfully submitted,

GIVENS PURSLEY LLP

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of December, 2008, the foregoing was filed, served, or copied as follows:

FILED

Idaho Department of Water Resources
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Beeman & Associates PC
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Kevin Culligan
Linda D. Burke
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Bill Lawton, Spokesman for
Robert L. Wood
M. Howard Goldman
Timothy R. Milburn
3145 Osprey Road
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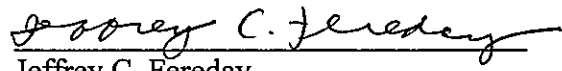
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Jeffrey C. Fereday

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Department of Water Resources

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Michael P. Lawrence [ISB No. 7288]
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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

**AMENDED NOTICE OF DEPOSITION OF
SHERRI RANDALL**

TO: SHERRI RANDALL

PLEASE TAKE NOTICE that, based on Sherri Randall's December 2, 2008 request to reschedule the deposition, on December 10, 2008 at 3:30 p.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 Sherri Randall, a protestant 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 2nd day of December, 2008.

Respectfully submitted,

GIVENS PURSLEY LLP

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of December, 2008, the foregoing was filed, served, or copied as follows:

FILED

Idaho Department of Water Resources
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Beeman & Associates PC
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Bill Lawton, Spokesman for
Robert L. Wood
M. Howard Goldman
Timothy R. Milburn
3145 Osprey Road
Eagle, ID 83616

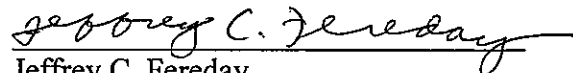
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DEPARTMENT OF
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Attorneys for M3 Eagle LLC

**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

**AMENDED NOTICE OF DEPOSITION OF
DAVID HEAD**

TO: DAVID HEAD

PLEASE TAKE NOTICE that, based on David Head's November 26, 2008 request to reschedule the deposition, on December 8, 2008 at 1:30 p.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 David Head, a protestant 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 26th day of November, 2008.

Respectfully submitted,

GIVENS PURSLEY LLP

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of November 2008, the foregoing was filed, served, or copied as follows:

FILED

Idaho Department of Water Resources
Attn: Gary L. Spackman
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M. Howard Goldman
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Jeffrey C. Fereday
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NOV 26 2008
DEPARTMENT OF
WATER RESOURCES

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Michael P. Lawrence [ISB No. 7288]
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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

**NOTICE OF SERVICE OF M3 EAGLE'S
TECHNICAL REPORTS AND
SUPPORTING DOCUMENTATION**

M3 Eagle LLC ("M3 Eagle"), through its counsel Givens Pursley LLP, and pursuant to the Hearing Officer's September 12, 2008 *Order Authorizing Discovery and Scheduling Order* ("September 12 Order"), hereby files with the Hearing Officer and makes available to the parties the technical documents and reports prepared for or intended to be submitted or referenced at the hearing ("Technical Documents"). These are listed in Exhibit A.

Because they are within the scope of the September 12 Order, individual experts' summaries of facts and opinions, together with resumes, also are provided here, and are served on the Protestants with this Notice. These also are listed in the exhibit.

Copies of the Technical Documents, particularly bound reports and the like, are large in size and therefore are not being served with this Notice (but are being filed with the Hearing Officer as noted). Instead, these are available on the Idaho Department of Water Resources' website for North Ada County Ground Water Studies or are available for copying at Givens

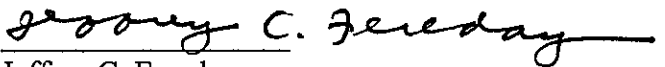
Pursley's offices. The Department's North Ada website is located at this address:

(http://www.idwr.idaho.gov/hydrologic/projects/nac/consultant_reports/).

M3 Eagle previously has made copies of most of the Technical Documents available to the Protestants in response to NACGUA's discovery requests (including previously posting most these on the website).

Respectfully submitted this 26th day of November, 2008.

GIVENS PURSLEY LLP


Jeffrey C. Fereday

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of November, 2008, the foregoing was filed, served, or copied as follows:

Idaho Department of Water Resources
Attn: Gary L. Spackman
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Robert L and Kip C. Wood
M. Howard Goldman
Timothy R. and Judy L. Milburn
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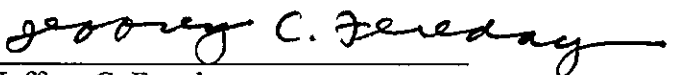
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Jeffrey C. Fereday

EXHIBIT A

M3 EAGLE LLC'S LIST OF TECHNICAL REPORTS AND SUPPORTING DOCUMENTATION AS OF NOVEMBER 26, 2008

APPLICATION No. 63-32573

1. Drillers Logs Location Map For M3 Eagle 09-13-2007 small
2. M3 Eagle Regional Hydrogeologic Characterization Year One Progress Report
3. Map of Protestants Wells 10-14-2008
4. M3 Eagle SVR #6 Composite - FINAL
5. M3 Eagle SVR #7 Composite by Hydro Logic, Inc. 4-14-2008 - FINAL
6. M3 Eagle SVR #9 Test Well Composite Diagram by Hydro Logic, Inc 07-07-2008 smaller
7. M3 Eagle Test Well #1 Composite by Hydro Logic, Inc. 4-23-2008
8. M3 Eagle Test Well #2 Composite - FINAL
9. M3 Eagle Test Well #3 Composite Diagram by Hydro Logic, Inc. 9-27-2007
10. M3 Eagle Test Well #4 Composite Diagram by Hydro Logic, Inc 4-16-2008
11. Magnetometer Report for M3 Eagle May 20, 2007
12. RE-Analysis of 16 Aquifer Tests in the Greater Eagle-Star Area of North Ada County, Idaho
13. Seismic Reflection Profiling in the Big Gulch Area - Report by John Bradford at CGISS (BSU) - September 2006
14. Star Supply Well #3 Composite - FINAL smaller
15. SVR #10 Test Well Composite Diagram by Hydro Logic, Inc 07-07-2008 smaller
16. Modeling of Ground Water Flow in the Pierce Gulch Sand Aquifer 11-19-2008
17. Well Density by section and Quarter Section 09-13-2007
18. Water Level Measurement Survey Update to M3 Eagle Hydrogeologic Characterization
19. Documentation provided by S. H. Wood, PhD., Professor Emeritus
20. Test Well #1 Plot - M3 Eagle

21. Monthly Monitoring Hand Measured Water Levels
22. Figures and Tables to be included and described in upcoming Aquifer Test 2008 Report
23. 2007 Regional Ground Water Level Contour Map
24. Summary of Water Chemistry Data for M3 Eagle and Select Regional Wells
25. Water Chemistry and Cross-Section Wells Map
26. Cross-Sections from wells with geophysical logs (four total)
27. Cross-Sections of wells near M3 Eagle with well construction and lithology (thirteen total)
28. Hydrographs of United Water Idaho's State and Linder Monitoring Wells (1999-2008)
29. Ground water gradient map in Eagle, Idaho area (USGS 1980)
30. Hydrograph of Vail and Miller domestic wells (1995-1998)
31. Ground Water Gradient Map from Lindholm (USGS 1991)
32. Curriculum Vitae and Summaries of Facts and Opinions of M3 Eagle Experts
33. Documentation for the Treasure Valley Hydrologic Project (documents too lengthy to include with this filing, but these are on the Department's website at idwr.idaho.gov/hydrologic/projects/tvhp-revised/reports.htm)
34. Map and composite diagram of Eagle Pines Water Association well
35. Draft spreadsheet containing information currently known about Protestants' wells (HLI 2008)
36. November 6, 2008 Memorandum from Dale Ralston, PhD and Professor Emeritus to Josephine Beeman
37. Compact disc of ground water level monitoring data and aquifer test data obtained by Hydro Logic, Inc. in the North Ada County Area
38. M3 Eagle Potable Water Facility Planning Progress Update Meeting #3 Presentation Slides, November 25, 2008, prepared by Stanley Consultants, Inc.
39. Map of Preliminary Sewer Plan, prepared by Stanley Consultants, Inc.
40. Demographic Forecast: Economic & Fiscal Impact Analysis, October 2008, prepared by Dr. John Church

41. Development of a Numerical Ground Water Flow Model for the M3 Eagle Development Area Near Eagle Idaho, Douglas, Stacey L., Master's Thesis (Deember 2007).

BEEMAN & ASSOCIATES, P.C.

Counselors and Attorneys at Law
409 West Jefferson Street
Boise, Idaho 83702-6049

Josephine P. Beeman
jo.beeman@beemanlaw.com

Phone (208) 331-0950
Fax (208) 331-0954
office@beemanlaw.com

November 26, 2008

Via Fax and Email

Gary Spackman
Hearing Officer
Idaho Department of Water Resources
P. O. Box 83720
Boise, ID 83720-0098

Re: M3 Application 63-32573
Protestant: North Ada County Groundwater Users Association

Dear Mr. Spackman:

The Hearing Officer correctly contemplated that NACGUA would speak for the individuals in the sense that NACGUA's officers and/or other designated representatives would appear for it - as is permitted by IRCP 30(B)(6) and IDWR's Reciprocal Discovery Rule 522. This is what NACGUA and its counsel had in mind as well.

NACGUA believes it is critical to reinject this concept into the discussions and permit NACGUA to appear as a deponent through its officers and/or other designated representatives. There have been no Notices of Deposition to NACGUA. Three of NACGUA's officers (David Head, President; John Thornton, Vice President; and Anne Ritter Secretary) are scheduled for depositions in their individual capacity and not as officers of NACGUA. The focus on individuals has obscured this important representational component of NACGUA's role as a party in the 63-32573 proceedings.

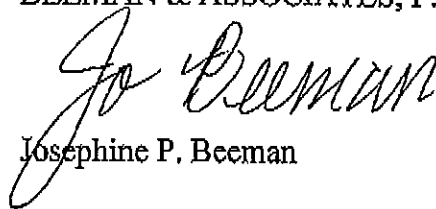
NACGUA would certainly be willing to designate these depositions as 30(B)(6) depositions of NACGUA. In light of your November 25, 2008 Order, the 30(B)(6) concept is critical because it is what the Hearing Officer contemplated, it is what NACGUA intended, and it is the appropriate procedural route for NACGUA to speak for its individual members through the appearance of NACGUA's officers and/or other designated representatives.

Gary Spackman, Hearing Officer
Re: 63-32573
November 26, 2008
Page 2

A solution to protect the individuals who are not officers and/or designated representatives of NACGUA and also to protect NACGUA would be to have counsel for these individuals separate from NACGUA's counsel. This is a burden that the October 7, 2008 Order was intended to prevent.

Sincerely,

BEEMAN & ASSOCIATES, P.C.



Josephine P. Beeman

cc: Service List (via email)
NACGUA Board

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

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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
NACGUA'S MOTION TO DESIGNATE
30(B)(6) DEPONENTS**

Applicant M3 Eagle LLC ("M3 Eagle"), through Jeffrey C. Fereday and Michael P. Lawrence of the firm Givens Pursley LLP, hereby responds to *Motion to Designate 30(b)(6) Deponents* filed by North Ada County Groundwater Users Association ("NACGUA") on November 26, 2008 ("Deposition Motion").

Introduction

The Deposition Motion, which might more accurately be described as a "deposition avoidance motion," should be denied. Although NACGUA is entitled to organize the Protestants and carry out the litigation on their behalf, M3 Eagle should not be prevented from proceeding with its scheduled (and rescheduled) depositions of individual Protestants who are both parties and designated witnesses in this case.

The Deposition Motion is of a piece with previous efforts of NACGUA's counsel over the last week to block depositions.¹ Like those, this motion is completely lacking in legal foundation and appears intended to delay these proceedings and to frustrate or render more expensive the Applicant's legitimate efforts to determine facts through discovery. This time, counsel for NACGUA takes the novel tack of moving for an order to transform M3 Eagle's currently-scheduled depositions of three Protestants who are NACGUA officers into Rule 30(b)(6) depositions of NACGUA, the organization.

Counsel requests this as "a solution to protect the individuals who are not officers" but rather are merely "lay witness[es]," and "also to protect NACGUA." Deposition Motion at 2. Counsel declines to identify what the Protestants or their organization are being protected from. While not expressly asking for a protective order to stop the depositions or limit them to just the three NACGUA officers, the thrust of the motion is that the scheduled depositions of the fourteen other individual Protestants should not go forward because it somehow would be "a burden." Deposition Motion at 3.

This latest attempt to block depositions should be summarily denied. M3 Eagle requests that no hearing be held.²

¹ On November 24, 2008, M3 Eagle was forced to file its *Motion for Order Compelling Parties to Attend Depositions, or for Issuance of Subpoenas*, which resulted in the Hearing Officer's November 25th email noting that the individual protestants cannot ignore deposition notices.

² In a November 26, 2008 email, attached hereto as Exhibit A to the *Affidavit of Jeffrey C. Fereday in Support of M3 Eagle's Response to NACGUA's Motion to Designate 30(b)(6) Deponents* ("Fereday Aff."), NACGUA's counsel has suggested Monday, December 1 as a possible hearing date for the Deposition Motion. However, the very depositions NACGUA is trying to stop with this motion will be taking place all day that day, and

Argument

1. M3 Eagle has not sought to proceed under Idaho Rule of Civil Procedure 30(b)(6) and is not obligated to.

It is not the deponent's prerogative to dictate when Rule 30(b)(6) will be used. This Rule is something the party seeking the deposition may use if it chooses; it is not something the deponent decides. The Rule states:

A party may in the party's notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. A subpoena shall advise a nonparty organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision (b)(6) of this rule does not preclude taking a deposition by any other procedure authorized in these rules.³

This Rule does not limit a party to only one avenue for selecting deponents, regardless of whether an association is involved.

Rule 30(b)(6) provides a mechanism for a party to depose an organization if the party names the organization as the deponent. In many cases, such as when the Protestant is a

M3 Eagle's counsel will not be available to participate in such a hearing. M3 Eagle also believes such a hearing is unnecessary.

³ This Rule's reference to the use of a subpoena for a nonparty organization further underscores M3 Eagle's point, in its November 24, 2008 *Motion for an Order Compelling Attendance at Deposition or for Issuance of Subpoenas*, that parties (who by definition already are under the jurisdiction of the tribunal) are supposed to behave like parties and provide discovery in good faith, and that only "proper notice," not a subpoena, is required for a party's attendance at a deposition. See IRCP 37(d), which is an entire section pertaining to the sanctions appropriate where a "party" fails to attend its duly-scheduled deposition. In this case, NACGUA's counsel's attempt to insist on subpoenas before her clients would deign to attend depositions hardly demonstrated good faith and does not conform to the clear intent of the civil rules. It was, and remains, an attempt to erect artificial barriers to frustrate discovery, cost M3 Eagle more money, and delay the process. So far the first two have been achieved.

corporation, a 30(b)(6) deposition can be the most expeditious—and often is the only practical—way to proceed. But this case, where the protests were filed by individual water right owners who now have created an unincorporated association to conduct the litigation, hardly presents such circumstances. Regardless, deposing individuals in an organization (rather than the organization itself) is allowed under this Rule, which “does not preclude taking a deposition by any other procedure authorized in these rules.”

Furthermore, the Rule makes it perfectly clear that a party can depose “any person.” IRCP 30(a). Here, of course, each of the proposed deponents is not even simply “any person” who might have relevant evidence or information: each also personally initiated this contested case by filing his or her own protest against M3 Eagle’s water right application, and each is a party. M3 Eagle is entitled to depose any proposed witness, and certainly is entitled to depose all seventeen of these individual Protestants, regardless of whether they have organized themselves into an association to conduct litigation. Nothing in Rule 30(b)(6) is to the contrary.

There really has been only one question before the Hearing Officer on this entire run-around NACGUA’s counsel has caused concerning depositions, and it is a question quite apart from whether these individuals can be deposed (which obviously they can be). This question is simply whether the scheduled depositions of the seventeen individual Protestants somehow can be delayed, or even blocked, on the argument that they were improperly noticed. M3 Eagle believes this question must be (and has been) answered in the negative by the fact that deposition schedules and notices have been in place for weeks without objection or request for rescheduling, by the practicalities of the existing discovery calendar, by the Rules’ references to using subpoenas only in the case of “nonparties,” and by the Hearing Officer’s November 24th email in which he made it clear that the individuals noticed are to show up without the necessity

of subpoenas. In addition, as noted in footnote 4, several of the individual Protestants now even have requested and have been given a new deposition time to conform to their calendars.

In the face of all this, it is frustrating for M3 Eagle—not to mention expensive—to be forced to respond again to counsel’s renewed attempt to upset the deposition schedule.⁴ It is doubly vexing when counsel now attempts to rely on Rule 30(b)(6), which plainly cannot justify forcing a party to forego depositions of witnesses.

2. M3 Eagle is entitled to depose each potential witness in this case, including each individual Protestant, regardless of that person’s status as a member of NACGUA.

In its responses to NACGUA’s discovery request asking which lay witnesses the Applicant may call, M3 Eagle listed “[s]ome or all of the Protestants in this matter, including each NACGUA member...as adverse witnesses.” Excerpt from *M3 Eagle’s Response to NACGUA’s Discovery Requests*, attached hereto as Exhibit B (emphasis added). This point bears emphasis: at the hearing M3 Eagle currently intends to call each NACGUA member to testify as an adverse witness about the basis for his or her protest; that Protestant’s water rights, water use, and well construction and maintenance; the investigation each conducted before filing the protest; and related matters. Although M3 Eagle is entitled to depose them all, due to time constraints it is proposing to depose less than half of them. These depositions should go forward.

NACGUA’s counsel appears to be claiming that by associating themselves into an unincorporated association the individual Protestants have shielded themselves from depositions.

⁴ It is curious why NACGUA’s lawyer doggedly pursues strategies to block these depositions when, since the Hearing Officer’s November 24 email, not a single individual Protestant has notified M3 Eagle’s counsel that he or she will not attend or believes (as Protestant Mr. Purvis previously had advised counsel) that the depositions are “optional.” To the contrary, several of these individuals, plainly now recognizing that they must appear after all, telephoned M3 Eagle’s counsel on November 26, 2008 and asked to be rescheduled to accommodate their calendars. In each case, we were able to accommodate them within the timeframe set out for the discovery. The individuals for whom we have rescheduled depositions are: John Franden, Stephen Dick, Julie (or Morgan) Masner, Bruce Richardson, and David Head. *Fereday Aff. at 2.* (Mr. Purvis called to confirm that he would attend as originally scheduled.)

Counsel might as well assert that they also are shielded from appearing as witnesses at the hearing. Attempting to block their full and good faith participation in either is without support. Attempting to erect such a shield is contrary to the Rules of Civil Procedure and M3 Eagle's rights as a litigant; if allowed, it would prejudice M3 Eagle.

NACGUA's counsel also misinterprets the Hearing Officer's October 7, 2008 *Order to Consolidate Parties and Default Order* ("Order to Consolidate"). The Order to Consolidate states that "[t]he individual [NACGUA] protestants shall have the right to appear at the hearing and testify as public witnesses." Order to Consolidate at 2. Rather than making the individual NACGUA members immune from depositions or any other discovery, the Order to Consolidate implicitly warns NACGUA's members that they should expect to be deposed and called as witnesses at trial because, regardless of their having joined together, they still are considered (even in the words of NACGUA's counsel) "lay witness[es]." Neither NACGUA's officers nor its members—and least of all its legal counsel—should be surprised that M3 Eagle seeks to depose individual NACGUA Protestants and not just NACGUA officers.

3. Deposing the organization is almost certainly of little practical value in any event.

NACGUA holds no water rights, and, if its vacant "responses" to discovery to date are any indication,⁵ NACGUA and its leaders not only have no knowledge about the potential injury to individual water rights or other facts that each of its other Protestants/members asserted in his or her protest, they also have made no attempt to determine these or other relevant facts known to the individuals. M3 Eagle wishes to inquire into these points, and also into the individual Protestant's understanding of M3 Eagle's application, M3 Eagle's written offer of settlement,

⁵ M3 Eagle's November *Motion to Compel* based on these inadequate discovery responses is pending.

and the individual's contribution to answering M3 Eagle's discovery that sought responses from NACGUA on behalf of both the organization and its individual members/Protestants.

In any event, and regardless of who might know what, M3 Eagle unquestionably is entitled to take the deposition of each individual.

M3 Eagle can understand that it might serve to "protect NACGUA," as the Deposition Motion states, if its counsel were to obtain an order limiting M3 Eagle's depositions to the organization's three officers. Deposition Motion at 2. Indeed, M3 Eagle has little doubt that implementing such a tactic, whether through arguments about lack of subpoenas or about NACGUA's preference for a 30(b)(6) approach, would "protect" the organization and the individual Protestants from disclosure of material facts that are potentially adverse to their case. But approving such a maneuver would not comport with the law or the Rules, not to mention the intent and spirit of the orders and admonitions the Hearing Officer has issued in this case to date.

It also is not a ground for prohibiting depositions that the individual protests are subsumed in that of NACGUA. The Hearing Officer's orders confirm that the Protestants can submit discovery as a group through NACGUA (which they have done), be entitled to service and notice at a central location, have legal counsel coordinated through the group, and (perhaps most importantly) have the individual member Protestants bound by the group's decisions. M3 Eagle has not opposed any of this. However, forming an association does not change the discovery rules or the scope of M3 Eagle's discovery, and should not be allowed to thwart M3 Eagle's legitimate efforts to determine facts with which to defend against the protests.

4. M3 Eagle served timely and proper deposition notices on individual NACGUA members/Protestants and on their counsel, and now has accommodated each request for a schedule change; it is entitled to have these depositions go forward.

M3 Eagle has scheduled depositions of seventeen individual Protestants because it seeks answers to questions from these individual members, each of whom is slated to be a witness. NACGUA's counsel believes deposing three of the individuals (Head, Thornton, and Ritter) is "critical" and "important" because they are the officers of NACGUA. Deposition Motion at 2. But these are M3 Eagle's depositions. Which witnesses to include in them is not for NACGUA's counsel to decide.

In any event, M3 Eagle already has included all three of these individuals in deposition notices which they and their organization's counsel have had for weeks. In Mr. Head's case, the deposition has even been rescheduled (since the Hearing Officer's November 25th email) at Mr. Head's request. These three will be deposed, but that does not mean that no other Protestant or NACGUA member can be.

5. Individual Protestants are free to hire counsel as they choose, and nothing in the discovery process has impeded them from doing so.

NACGUA's counsel contends that the individual Protestants/members may need their own separate counsel if they are to be deposed. This is a surprise. M3 Eagle understood that Ms. Beeman represents the organization and its members.

However, whatever NACGUA's members may understand about representation, the Rules of Civil Procedure do not require deponents to have counsel, and the absence of counsel is not grounds for refusing to appear at a deposition or at the hearing as a witness. Nothing in this case to date has impeded any Protestant from obtaining counsel. If an individual desires to have separate counsel at his or her deposition, that is the individual's choice. M3 Eagle does caution,

however, that at this late date it would oppose the Protestants' citing the entry of new or additional counsel as a ground for delay of the hearing.

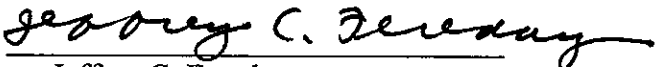
Conclusion

NACGUA's Deposition Motion is counsel's latest attempt to upset the current deposition schedule and limit M3 Eagle's ability to discover facts in this case. The motion cites no legitimate ground for doing so. M3 Eagle respectfully requests that the Hearing Officer deny it.

DATED this 28th day of November, 2008.

Respectfully submitted,

GIVENS PURSLEY LLP

By 
Jeffrey C. Fereday
Michael P. Lawrence

Certificate of Service

I HEREBY CERTIFY that on this 28th day of November, 2008, the foregoing Response, together with the Affidavit of Jeffrey C. Fereday and its exhibits, were filed, served, or copied as follows:

FILED

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

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 Overnight Mail
 Facsimile
 E-mail

SERVICE

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Beeman & Associates PC
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Robert L. Wood
M. Howard Goldman
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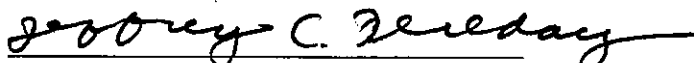
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Jeffrey C. Fereday

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Attorneys for M3 Eagle LLC

RECEIVED

NOV 28 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

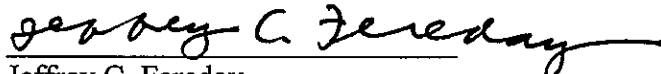
**AFFIDAVIT OF
JEFFREY C. FEREDAY IN SUPPORT OF
M3 EAGLE'S RESPONSE TO
NACGUA'S MOTION TO DESIGNATE
30(B)(6) DEPONENTS**

STATE OF IDAHO)
)
COUNTY OF ADA)

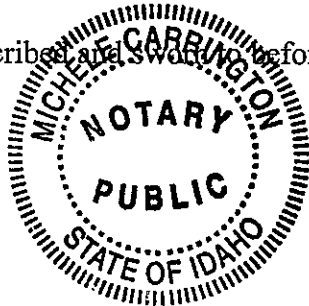
Jeffrey C. Fereday, of lawful age and of his own personal knowledge, hereby states:

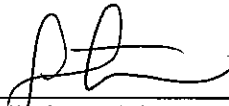
1. I am counsel for Applicant M3 Eagle LLC in this matter.
2. Attached as Exhibit A to this Affidavit are true and correct copies of emails I received November 26, 2008 at 2:41, 3:10, and 8:18 p.m. from Jo Beeman, counsel for North Ada County Groundwater Users Association ("NACGUA").
3. Attached as Exhibit B is a true and correct copy of pages 6 and 7 of M3 Eagle's *Responses to NACGUA's Interrogatories, Requests for Production, and Requests for Admission* in this matter which were served on NACGUA and the other parties on the service list on November 24, 2008.

4. On November 26, 2008, my assistant, Lori Anderson, received telephone calls from the following individual Protestants and NACGUA members in this case: John Franden, Stephen Dick, Julie Masner, Bruce Richardson, David Head, and Barrett Jones. She informed me that each of them asked to reschedule his or her deposition due to a conflict with the time that had been set out in their notices, and I suggested alternative dates. In each case except for that of Mr. Jones, the individual's deposition was rescheduled within the timeframe allowed for discovery in this case. With regard to Mr. Jones, my understanding is that he is checking his schedule and will contact us soon about rescheduling.


Jeffrey C. Fereday

Subscribed and sworn to before me, this 28th of November, 2008.




Notary Public in and for the State of Idaho
My commission expires: 4-6-13

Jeffrey C Fereday

From: Jo Beeman [jo.Beeman@beemanlaw.com]
Sent: Wednesday, November 26, 2008 3:10 PM
To: Jo Beeman; Bill Lawton ; Gary Spackman (IDWR); Jeffrey C Fereday; John Westra (IDWR Western); Kelsey J. Nunez; Michael P. Lawrence; Norm Edwards ; Anne Ritter (NACGUA); David Head (NACGUA); Jerry Peterson ; John Thornton (home); John Thornton (NACGUA); Kathy Pennisi (NACFA); Mike McMurray
Cc: Bill Lawton ; Norm Edwards ; Debbie Gibson (IDWR); Jason Hudson (B&A); Jo Beeman (B&A); Joyce Angell (B&A); Lori Anderson; Office (B&A); Dale Ralston; Norm Young (ERO); Paul Drury (ERO)
Subject: RE: M3 Eagle: Necessity of 30(B)(6) depositions of NACGUA

Pursuant to the letter provided this afternoon to all the parties and IDWR, NACGUA will file a Motion to designate the depositions scheduled for David Head, John Thornton, and Anne Ritter, as 30(B)(6) depositions for NACGUA.

We will file the Motion shortly and indicate the date and time for the hearing. At the time of this email, we have inquired about Gary Spackman's availability on Monday, December 1.

You are welcome to call my office. I am closing off B&A's conference line. I was joined by Alan Smith.
 Jo

Josephine P. Beeman
 Beeman & Associates, P.C.

From: Jo Beeman
Sent: Wednesday, November 26, 2008 2:41 PM
To: Jo Beeman; Bill Lawton ; Gary Spackman (IDWR); Jeffrey C. Fereday; John Westra (IDWR Western); Kelsey Nunez; Michael Lawrence; Norm Edwards ; Anne Ritter (NACGUA); David Head (NACGUA); Jerry Peterson ; John Thornton (home); John Thornton (NACGUA); Kathy Pennisi (NACFA); Mike McMurray
Cc: Bill Lawton ; Norm Edwards ; Debbie Gibson (IDWR); Jason Hudson (B&A); Jo Beeman (B&A); Joyce Angell (B&A); Lori Anderson (Fereday); Office (B&A); Dale Ralston; Norm Young (ERO); Paul Drury (ERO)
Subject: RE: M3 Eagle: Necessity of 30(B)(6) depositions of NACGUA

NACGUA's letter proposes that the 30(B)(6) procedure be reinjected into the 63032573 proceedings as an immediate and critical step to allow NACGUA to participate in its intended role as a party to these proceedings.

B&A's conference line is available right now for all the parties to discuss NACGUA's proposal. We do not know if Gary Spackman will join, but NACGUA hopes that he can.

1-866-720-1447, then 236 063#

Jo

Exhibit A

11/28/2008

Jeffrey C Fereday

From: Jo Beeman [jo.Beeman@beemanlaw.com]
Sent: Wednesday, November 26, 2008 8:18 PM
To: Bill Lawton ; Gary Spackman (IDWR); Jeffrey C Fereday; John Westra (IDWR Western); Kelsey J. Nunez; Michael P. Lawrence; Norm Edwards
Cc: Anne Ritter (NACGUA); David Head (NACGUA); Debbie Gibson (IDWR); Jason Hudson (B&A); Jo Beeman (B&A); Joyce Angell (B&A); Kathy Pennisi (NACFA); Lori Anderson; Office (B&A)
Subject: NACGUA documents
Attachments: 20081126 NACGUA Motion to Designate 30B6 deponents.pdf; 20081126 NACGUA NOS Supp Discovery Responses to M3.pdf; 20081126 NACGUA Submission for Nov 26 deadline.pdf; 20081126 NACGUA submittal of Ralston analysis.pdf

NACGUA served the following documents by U.S. Mail earlier today:
 Motion to Designate 30(B)(6) deponents
 Notice of Service of NACGUA's supplemental Discovery Responses to M3
 NACGUA Submission for Nov 26 deadline
 NACGUA submittal of Ralston analysis

Jo Beeman

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

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M3 Eagle is responsible for paying for its experts' work and testimony except for that of Mr. Whitney. The amount of compensation to be paid is unknown at this time because this matter is ongoing and the experts' work is not complete.

M3 Eagle does not currently have the requested information as to which cases each expert may have testified as an expert at trial in the preceding four years, but will supplement with this information as it becomes available.

Interrogatory No. 4: Provide the name, address and phone number of all other persons who you will or may call as a fact witness at the hearing in this action and state the fact(s) to which you expect each such witness to testify.

Response to Interrogatory No. 4: M3 Eagle has not yet determined all the non-expert witnesses it will call in this matter, and reserves the right to supplement this response with additional witnesses. However, at this time M3 Eagle anticipates calling the following non-expert witnesses:

William Brownlee and Gerry Robbins of M3 Eagle LLC: these persons may testify to the overall project plan, permitting for various parts of the project, experience with planned community development, experience with re-use water systems and water conservation techniques, financial capability, City of Eagle decisions concerning the project, environmental surveys and studies completed, and contact with state, local and federal agencies concerning the project.

Mayor Phil Bandy, City of Eagle: this person may testify to the City's decisions and requirements concerning the M3 Eagle Project; the role of the M3 Eagle Project in the City's future development.

Joan Langdon: this person is a nearby well owner and may testify to her views of the M3 Eagle Project in terms of its effects on her interests in the local water resource.

Jon Busack: this person is a nearby well owner and may testify to his views of the M3 Eagle Project in terms of its effects on his interests in the local water resource.

Some or all of the Protestants in this matter, including each NACGUA member or represented Protestant, as adverse witnesses: these persons may be called to testify as to the factual basis for their protests; the nature, construction, productivity, and repair history of their ground water wells; their understanding of the proposed project; their understanding of the hydrological studies that concern the Pierce Gulch Sand Aquifer; and related matters.

Interrogatory No. 5: Please identify and describe each item which you will or may attempt to introduce into evidence at the hearing in this action. Also, please provide a copy of each item and indicate the location and who has control of the original.

Response to Interrogatory No. 5: M3 Eagle has not yet determined all exhibits it intends to introduce at the hearing in this matter, but currently intends to use the documents currently in the Department's file for this case and all documents available on the Department's North Ada website. M3 Eagle may use the Department's water right records and existing hydrologic reports, any of the documents M3 Eagle or any party produced in response to discovery, and any additional documents that it may develop or obtain between now and the hearing.

Interrogatory No. 6: For each of the referenced water rights 63-10669, 63-15786, 63-17379, 63-20181, 63-22879, 63-22880, 63-22899, and 63-32170, please describe precisely and in detail:

a. All records that exist that evidence the diversion and beneficial use of water, including the periods and quantities of use;

Gibson, Deborah

From: Jo Beeman [jo.Beeman@beemanlaw.com]
Sent: Wednesday, November 26, 2008 8:18 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 documents
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Jo Beeman

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RHS Ralston Hydrologic Services, Inc.

GROUND WATER CONSULTING AND EDUCATION
1122 East B Street, Moscow, ID USA 83843
Voice and FAX 208-883-0533, E-mail ralston@moscow.com

MEMORANDUM

To: Jo Beeman
From: Dale R. Ralston
Subject: Initial Hydrogeologic Analysis
Date: November 6, 2008

The purpose of this memo is to provide you with my initial hydrogeologic analysis of the M3 Eagle project. I anticipate writing a more detailed hydrogeologic analysis after having more time to review existing reports and receiving and reviewing additional M3 Eagle information that may be made available. This memo is divided into four sections. The first section provides a summary description of the hydrogeologic information provided to date. The second section is my analysis of the hydrogeologic conceptual model as presented. The third section is my analysis of the ground-water flow systems as presented. The fourth section is my analysis of likely impacts from full project development. The references cited are listed at the end of the memo.

SUMMARY OF M3 EAGLE DESCRIPTION OF THE GROUND-WATER SYSTEM

The following quotes are taken from the 2007 report entitled "*M3 Eagle Regional Hydrogeologic Characterization – North Ada Canyon and Gem Counties, Idaho – Year One Progress Report*" (Hydro Logic Inc. 2007).

"Hydrogeologic studies commissioned by M3 Eagle in the North Ada County area have delineated a highly productive regional sand aquifer with good quality water that underlies the area near Eagle and Star and the proposed M3 Eagle planned community. This aquifer, herein named the Pierce Gulch Sand Aquifer, underlies the north Ada County Foothills where it extends continuously from the Eagle-Star area to the Payette River Valley. Because the Payette Valley near Letha is almost 300 feet lower than the Boise Valley near Eagle, ground water flows out of the Boise River Basin and into the Payette River Basin through the sands of this aquifer.... The ground water proposed to be withdrawn by M3 Eagle for its development will be from subsurface flow that has already departed the Boise Basin, on its way to the Payette Basin, so that impacts to existing area water users in the lowlands near Eagle are predicted to be small" (page 1).

"The Pierce Gulch Sand Aquifer consists of a 150-to-275-foot thick sequence of stratified sand layers with inter-bedded thin and locally discontinuous layers of silt and clay. The base of the dipping aquifer is typically 480-to-700 feet deep beneath land surface of the M3 Eagle site. The aquifer sand thickens and

descends deeper beneath of land surface to the south and southwest in the Eagle-Star-Meridian area and is believed to do the same to the northwest toward Payette River” (page 3).

“The Pierce Gulch Sand Aquifer is bounded on its northeast side by the geologic fault system ... originally named the West Boise-Eagle fault by Wood and Anderson (1981). The base of the aquifer is underlain (and bounded) by the thick clays and mudstones of the Terteling Springs Formation. This structural dip explains why the municipals wells in Star are deeper than they are in Eagle. In the Boise River Valley near Eagle and Star, the Pierce Gulch Sand Aquifer is overlain by clays, some other minor sand aquifers, and a shallow surficial floodplain-gravel aquifer (the present day floodplain of the Boise River). Beneath most of the M3 Eagle site, the aquifer is overlain by clay layers with no shallow surficial aquifer present” (pages 3 and 4).

“Using the derived aquifer transmissivity values and the measured water levels in wells to derive a ground water gradient, our analyses indicate that 20 to 30 mgd (million gallons per day (equivalent to approximately 22 thousand to 34 thousand ac ft/yr (acre feet per year)) of ground water currently flows in a northwesterly direction through the Pierce Gulch Sand Aquifer beneath a five-mile wide strip of the M3 site between State Highway 16 and the inferred edge of the pierce Gulch sand aquifer ...” (page 5).

ANALYSIS OF THE HYDROGEOLOGIC CONCEPTUAL MODEL

The question of primary importance relative to the hydrogeologic conceptual model presented in the Hydro Logic Inc. 2007 report is stated below.

- **Is there sufficient evidence to support the presumption of lateral extent and continuity of what has been called the Pierce Gulch Sand Aquifer from the presumed recharge area in the Boise River drainage to the presumed discharge area in the Payette River drainage?**

Supporting evidence for the lateral extent and continuity of a geologic unit comes from knowledge of the depositional environment, surface geologic maps and geologic information from wells. These topics are addressed below.

- The Hydro Logic Inc. (2007) report provides only limited information on the depositional environment for the target aquifer. However, considerable discussion of the depositional environment during emplacement of the geologic units is available in supporting documents. Most of the scientific articles describe conditions southwest of the M3 Eagle development. I was not able to find any discussion of the depositional environment that would result in the sand unit extending and being laterally continuous to the vicinity of the Payette River valley.
- I was not able to find a published geologic map that provides information on outcrops patterns of Pierce Gulch Sand in the immediate vicinity or northwest of the M3 Eagle development.

- The Hydro Logic Inc. (2007) report provides subsurface geologic information in the vicinity of the M3 Eagle development in the form of a cross section. Support documents present geologic cross sections in areas southeast of the M3 Eagle property. I was not able to find any geologic cross sections for the area between the M3 Eagle property and the Payette River.

I conclude that there is not sufficient evidence to support the presumption of lateral extent and continuity of what has been called the Pierce Gulch Sand Aquifer from the M3 Eagle site to the Payette River. Also, additional work is needed to assemble and present the available information to support of presumption of lateral extent and continuity of what has been called the Pierce Gulch Sand Aquifer from the M3 Eagle site to the presumed recharge area in the Boise River drainage.

ANALYSIS OF THE GROUND-WATER FLOW SYSTEM

The question of primary importance relative to the ground-water flow system that is described in the Hydro Logic Inc. 2007 report is stated below.

- **Assuming that the hydrogeologic conceptual model question is answered in the affirmative, is there sufficient evidence to support the presumption that ground water flows in the manner and quantity described within what has been called the Pierce Gulch Sand Aquifer from the presumed recharge area in the Boise River drainage to the presumed discharge area in the Payette River drainage?**

Supporting evidence for the description of the ground-water flow system comes from the hydrogeologic conceptual model, water-level data from wells and estimates of transmissivity calculated using data collected during aquifer tests. These topics are addressed below.

- The heterogeneity of what has been called the Pierce Gulch Sand Aquifer is very important relative to the description of the ground-water flow system and particularly in the estimation of the quantity of water moving in the system. The following is a description of the Pierce Park sand by Squires and Wood (2001, pp. 13-14)
 - “Because this is the uppermost delta in the lacustrine sequence, we correlate it to the Pierce Park sand that crops out in the upper part of the foothills section west of Crane Creek. In the foothills, this unit is mostly foreset beds of coarse sand typical of the ‘Gilbert-type’ of delta. Some foreset bed sets are 60 feet thick, and the sand unit as a whole is up to 250 feet thick in the foothills... This delta is then correlated by Wood and Clemens (in press) to the history of Lake Idaho. Since it is the uppermost major delta in the section its deposition over mudstone, is explained as a prograding sand delta in response to the slow lowering of lake levels after Lake Idaho spilled over into Hells Canyon.... We feel fairly certain that there is a ‘long-term’ hydraulic connection in the sands of the upper delta sequence; however, local lenses of mudstone in that section may prevent short-term detection of well-drawdown responses. It may take

- The above quote from Squires and Wood (2001) indicates that ground-water flow patterns in what has been called the Pierce Gulch Sand Aquifer likely are more complex than is described in the Hydro Logic Inc. (2007) report. This likely is true for the portion of the postulated flow system that has been investigated (southeast of the M3 Eagle site) as well as the area northwest of the M3 Eagle site where little information is available.
- Figure 6 of the Hydro Logic Inc. (2007) report shows a complex pattern of water-level elevation contours in what appears to be several different ground-water flow systems. In my opinion, the figure raises many questions relative to characterization of ground-water flow systems. My questions include the following. 1) Are all of the wells in the purple colored area completed only in what has been called the Pierce Gulch Sand Aquifer? 2) Is there a vertical gradient within the Pierce Gulch Sand Aquifer and, if so, how are water levels from different wells interpreted? 3) What aquifer is penetrated by the wells located on within the Payette River floodplain? 4) Is the aquifer on the Payette River floodplain hydraulically connected to what is called the Pierce Gulch Sand Aquifer and, if so, how? 5) Do the flow lines represent ground-water discharge from the Pierce Gulch Sand Aquifer into whatever aquifer underlies the Payette River Valley?
- Figure 8 of the Hydro Logic Inc. (2007) report shows calculated values of transmissivity and storativity for selected wells in the general M3 Eagle area. The range of transmissivity values shown is consistent with the expected high level of heterogeneity and anisotropy believed to characterize the sand deposit. The transmissivity value(s) used in calculating an estimated flow through a portion of the target aquifer is not identified in the Hydro Logic Inc. report (2007, page 5).

I conclude that there is not sufficient evidence to support the presumption that ground water flows in the manner and quantity described within what has been called the Pierce Gulch Sand Aquifer from the presumed recharge area in the Boise River drainage to the presumed discharge area in the Payette River drainage?

ANALYSIS OF LIKELY IMPACTS FROM FULL PROJECT DEVELOPMENT

The question of primary importance relative to the subsurface water balance and likely impacts from full project development is stated below.

- **Has the characterization of the target aquifer system, including a pre-development water balance, been complete enough to support an analysis of impacts from full project development?**

Analysis of impacts from project development is dependent on gaining a suitable level of understanding of aquifer boundaries plus knowledge of the locations and controls for ground-water recharge and the locations and controls for ground-water discharge. These topics are addressed below.

- The Hydro Logic Inc. (2007) report identifies the northeast boundary of what has been called the Pierce Gulch Sand Aquifer but none of the other boundaries. Characterization of all of the aquifer boundaries is a necessary step for analysis of impacts from full project development.
- The Hydro Logic Inc. (2007) report indicates that recharge occurs to the aquifer within the Boise River basing with discharge within the Payette River basin. The report indicates that the “major source of ground water in the aquifer in the vicinity of Eagle is ground water underflow from areas south and east of the Boise River at Eagle. This ground water originates as direct infiltration from the Boise River in the east-central Boise area and through leakage from irrigation canals south and east of Eagle” (page 13). The report does not provide specifics relative to locations and characteristics of recharge in the Boise River basin or any information relative to locations and characteristics of ground-water discharge within the Payette River basin.
- A general description of the temporal sequence of impacts from development and operation of the project wells is presented below.
 - The initiation of consumptive withdrawal of water via wells from the aquifer would result in local water-level decline in the aquifer.
 - Continued operation of the wells would result in an ever increasing cone of depression (area of water-level decline) until pumping effects reach the recharge and/or discharge areas.
 - Water-level decline would cause an increase in recharge if recharge to the aquifer is head dependent (saturated hydraulic connection with a surface water system). Water-level decline would cause a decrease in the rate of ground-water discharge (all ground-water discharge rates are head dependent).
 - The basin water levels would stabilize if the rate of consumptive pumping was balanced by increased ground-water recharge and/or decreased ground-water discharge. The time required for the ground-water system to come into a new equilibrium is dependent on the size of the aquifer and hydraulic properties of the ground-water flow system.
 - Long-term water-level decline would occur if the consumptive withdrawal of ground water is greater than the annual rate of recharge.

I conclude that the characterization of the target aquifer system, including a pre-development water balance, has not been complete enough to support an analysis of impacts from full project development.

Please contact me if you have any questions relative to the information presented in this memorandum. Thank you.

REFERENCES CITED

- Hydro Logic Inc., 2007, M3 Eagle Regional Hydrogeologic Characterization – North Ada, Canyon and Gem Counties, Idaho – Year One Progress Report: Consulting Report Prepared for M3 Companies; 19 pages plus figures.
- Squires, E. and S.H. Wood, 2001, Stratigraphic Studies of the Boise (Idaho) Aquifer System Using Borehole Geophysical Logs with Emphasis on Facies Identification of Sand Aquifers: Report to the Treasure Valley Study, Idaho Department of Water Resources; Hydro Logic Inc. and Boise State University; 15 pages.



RHS Ralston Hydrologic Services, Inc.

GROUND WATER CONSULTING AND EDUCATION
1122 East B Street, Moscow, ID USA 83843
Voice and FAX 208-883-0533, E-mail ralston@moscow.com

MEMORANDUM

To: Jo Becman
From: Dale R. Ralston
Subject: Review of 2008 Hydro Logic Inc. Report
Date: November 26, 2008

I have completed my review of the 2008 Hydro Logic Inc. report entitled "Re-Analysis of 16 Aquifer Tests in the Greater Eagle-Star Area of North Ada County, Idaho". I found no information that would change the conclusions stated in my November 6, 2008 report on the M3 Eagle development. My November 6, 2008 report is an accurate statement of my professional conclusions relative to the project.



November 26, 2008



November 26, 2008

Josephine P. Beeman #1806
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409 West Jefferson Street
Boise, ID 83702
(208) 331-0950
(208) 331-0954 (Facsimile)
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RECEIVED

NOV 28 2008

Department of Water Resources

Attorney for North Ada County Groundwater Users Association

BEFORE THE DEPARTMENT OF WATER RESOURCES

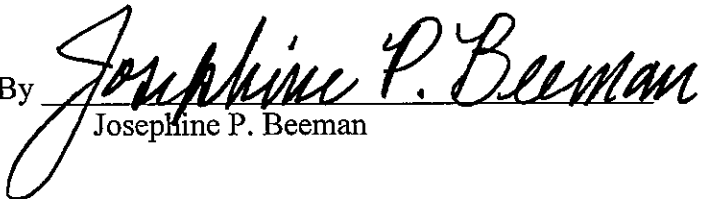
FOR THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)	NACGUA'S NOTICE OF SERVICE
FOR PERMIT NO. 63-32573,)	OF SUPPLEMENTAL RESPONSES
IN THE NAME OF M3 EAGLE, LLC)	TO DISCOVERY REQUESTS FROM
_____)	M3 EAGLE LLC

North Ada County Groundwater Users Association (NACGUA) hereby gives notice that on November 26, 2008, it served NACGUA's Supplemental Responses to Applicant M3 Eagle LLC's First Set of Discovery Requests to Protestant North Ada County Groundwater Users Association, delivering the original by U.S. Mail to Givens Pursley LLP, P. O. Box 2720, Boise, Idaho 83701, the law firm of M3 Eagle LLC's attorney, Jeffrey Fereday.

DATED this 26th day of November 2008.

BEEMAN & ASSOCIATES, P.C.
Attorneys for NACGUA

By 
Josephine P. Beeman

CERTIFICATE OF SERVICE

I certify that on this 26th day of November 2008, 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)

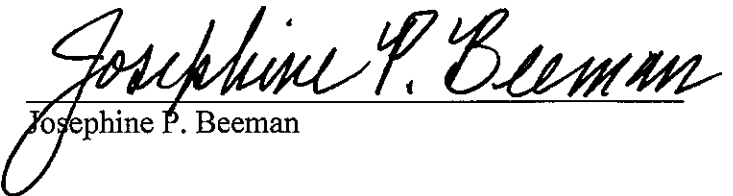
John Westra
IDWR Western
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Boise ID 83705
(U.S. Mail)

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

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

Alan Smith
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(U.S. Mail)

Bill Lawton
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Josephine P. Beeman

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NOV 28 2008

Department of Water Resources

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Attorney for North Ada County Groundwater Users Association

**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) _____)	NACGUA'S SUBMITTAL OF RALSTON HYDROLOGIC SERVICES, INC.'S HYDROGEOLOGIC ANALYSIS OF THE M3 EAGLE PROJECT
--	---

The North Ada County Groundwater Users Association (NAGUA) hereby submits:

1. Ralston Hydrologic Services, Inc.'s November 6, 2008 initial hydrogeologic analysis of the M3 Eagle Project.
2. Ralston Hydrologic Services, Inc.'s November 26, 2008 subsequent hydrogeologic analysis of the M3 Eagle Project.

DATED this 26th day of November 2008.

BEEMAN & ASSOCIATES, P.C.
Attorneys for NACGUA

By Josephine P. Beeman
Josephine P. Beeman

CERTIFICATE OF SERVICE

I certify that on this 26th day of November 2008, I caused to be served a true and correct copy of the foregoing document on the following by the method indicated.

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(U.S. Mail)

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



Josephine P. Beeman

Rec'd 1/24/08
by email

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Attorney for North Ada County Groundwater Users Association

**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)
_____)**

**AFFIDAVIT OF DALE R. RALSTON
IN SUPPORT OF NACGUA'S REPLY
TO M3 EAGLE'S RESPONSE TO
NACGUA'S MOTION FOR STAY,
AND LIMITED DISCOVERY FOR
PURPOSES OF SETTLEMENT**

STATE OF IDAHO)
) ss:
COUNTY OF _____)

I, Dale R. Ralston, after first being duly sworn upon oath, depose and state that:

1. I am over 18 and a resident of the State of Idaho. I am a Professor Emeritus of Hydrogeology at the University of Idaho, have a Ph.D. in civil engineering, and have 41 years experience in ground water studies. I have owned and operated Ralston Hydrologic Services, Inc., a ground water consulting and education business, since 2000.

2. I reviewed the 2008 report entitled "Re-Analysis of 16 Aquifer Tests in the Greater Eagle-Star area of North Ada County, Idaho" (page i), which states in part:

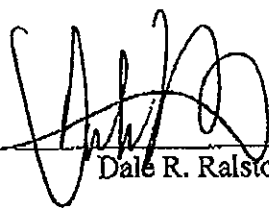
A report released by Hydro Logic, Inc. in the spring of 2007 (HCI, 2007), demonstrates that a regional water-supply aquifer, named therein the Pierce Gulch Sand Aquifer, underlies the Boise River Valley in the greater Eagle-Star and Meridian area, and the foothills lying to the north of these cities.



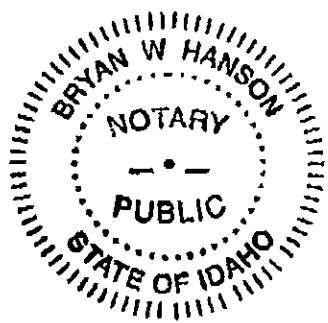
3. The Pierce Gulch Sand Aquifer is the target water supply source for M3 Eagle production wells. This means that operation of the M3 Eagle production wells will have hydraulic impacts on ground water and connected surface water systems within the Boise Basin. I believe that this hydrogeologic conceptual model is correct.

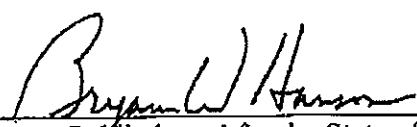
FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 24 day of November 2008.


Dale R. Ralston

SUBSCRIBED AND SWORN to before me this 24 day of November 2008.




Notary Public in and for the State of Idaho
My Commission Expires: 9-26-2013

CERTIFICATE OF SERVICE

I certify that on this 24th day of November 2008, I caused to be served a true and correct copy of the foregoing document on the following by the method indicated.

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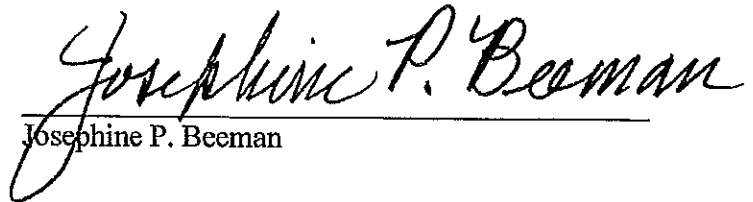
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Rec'd 11/24/08
by email

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Attorney for North Ada County Groundwater Users Association

**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)	NACGUA'S REPLY TO M3 EAGLE'S RESPONSE TO NACGUA'S MOTION FOR STAY, AND LIMITED DISCOVERY FOR PURPOSES OF SETTLEMENT
---	--

The North Ada County Groundwater Users Association (NACGUA) files this Reply to M3 Eagle LLC's (M3) November 13, 2008 Response (Response) to NACGUA November 10, 2008 Motion for Stay, and Limited Discovery for Purposes of Settlement (Motion for Stay).

NACGUA believes the Stay is appropriate because of two changes in circumstances. First, there has been a change in circumstances since the advertising of M3's Application 63-32573 in May 2008. See below. The second change in circumstances, subsequent to the September 9, 2008 Prehearing conference, relates to M3's inclusion of the other protestants in the settlement negotiations between NACGUA and M3. Additional time is necessary to involve these other parties in the settlement process.

The first change in circumstances relates to M3's perception of the water source for Application 63-32573. M3's perception of the source of this water has changed from a source that is separate from the Boise valley aquifer system to a source that is part of the Boise valley

aquifer system. This change is documented by statements in "Re-analysis of 16 Aquifer Tests in the Greater Eagle-Star Area of North Ada County, Idaho", prepared July 4, 2008 by Hydro Logic Inc. after the advertising of M3's Application 63-32573. See affidavit of Dale Ralston, attached. This change in perception of source requires more time for evaluation of the Application. Initial reviews of the status of proposed ground water development indicates that a significant portion of the aquifers in basin 63 are already under permit or application senior to M3. M3's Application 63-32573 has a priority date which is junior to at least 90 cfs of pending ground water applications in basin 63 and junior to at least 300 cfs of ground water permits in basin 63 issued since 2003. The 390 cfs of pending ground water development senior to M3's Application 63-32573 would account for 35% of the estimated discharge from the Lower Boise River Basin. See affidavit of Norm Young attached.

DATED this 24th day of November 2008.

BEEMAN & ASSOCIATES, P.C.
Attorneys for NACGUA

By Josephine P. Beeman
Josephine P. Beeman

CERTIFICATE OF SERVICE

I certify that on this 24th day of November 2008, I caused to be served a true and correct copy of the foregoing document on the following by the method indicated.

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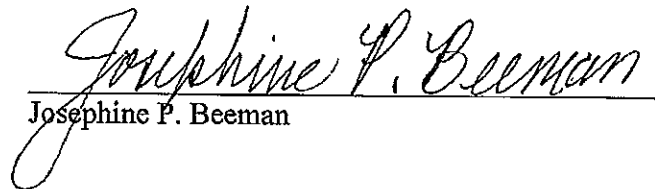
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www.givenspursley.com
Attorneys for M3 Eagle LLC

**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 MOTION FOR ORDER
COMPELLING PARTIES TO ATTEND
SCHEDULED DEPOSITIONS, OR FOR
ISSUANCE OF SUBPOENAS**

Motion

M3 Eagle, through Jeffrey C. Fereday and Michael P. Lawrence of the firm Givens Pursley LLP, hereby requests, pursuant to IRCP 31 and 37, and IDAPA 37.01.01.525, that the Hearing Officer either: 1) issue an order compelling attendance at scheduled depositions of individual Protestants in this matter, or, alternatively, 2) issue subpoenas requiring their attendance. The parties M3 Eagle seeks to depose, and the schedule for each as contained in M3 Eagle's notices, are as follows (copies are on file with the Hearing Officer):

Monday, December 1, 2008

8:00 a.m.	Deposition of Timothy Milburn
10:30 a.m.	Deposition of Richard Lagerstrom
1:00 p.m.	Deposition of Shelby Conrad
3:30 p.m.	Deposition of Steven Purvis

Tuesday, December 2, 2008

8:00 a.m. Deposition of Anne Ritter
10:30 a.m. Deposition of George Keyes
1:00 p.m. Deposition of Linda Burke
3:30 p.m. Deposition of John Thornton

Wednesday, December 3, 2008

8:00 a.m. Deposition of Sherri Randall
10:30 a.m. Deposition of David Head
1:00 p.m. Deposition of Stephen Dick
3:30 p.m. Deposition of John Franden

Thursday, December 4, 2008

8:00 a.m. Deposition of John Petrovsky
10:30 a.m. Deposition of Morgan Masner
1:00 p.m. Deposition of Barrett Jones
3:30 p.m. Deposition of Bruce Richardson

Monday, December 8, 2008 (rescheduled at deponent's request)

10:30 a.m. Deposition of Robert Niccolls

These deposition notices were mailed to these parties from November 7-12, 2008.

Background

Counsel for M3 Eagle sent Ms. Beeman a letter on October 23, 2008 setting forth a proposed deposition schedule proposing to depose the Protestants' expert witnesses on November 14, 17 and 18, and the individual Protestants the week of December 1, 2008. Exhibit A (the "Scheduling Letter"). The September 12 Order in this case establishes December 12 as the cut off of all discovery, so the parties have been on notice since then that any depositions would have to take place within that timeframe. Not hearing of any scheduling conflict or other objection from Ms. Beeman in response to the Scheduling Letter, M3 Eagle's counsel sent out deposition notices on October 31 for the experts and on November 7, 10, 11 and 12 for the individual Protestants. These notices used the dates in the Scheduling Letter.

After these notices were sent, M3 Eagle's separately-scheduled depositions of NACGUA's experts were canceled because Ms. Beeman instructed them not to attend. While

Ms. Beeman had not expressly agreed to the experts' proposed deposition dates, she also had not communicated any disagreement or scheduling conflict to counsel for M3 Eagle. Affidavit of Jeffrey C. Fereday, attached hereto ("Fereday Aff."). Then, on November 12, Ms. Beeman filed a motion for protective order and in response M3 Eagle filed a motion to compel attendance. Despite their having received timely deposition notices, the Hearing Officer declined to compel attendance because of "the informal nature of the original notice" and noting that counsel could seek a subpoena for attendance of an expert witness at deposition. November 12 Order.

On Monday, November 17, 2008, M3 Eagle's counsel sent Ms. Beeman a second letter noting the service of the Protestants' deposition notices and specifically asking that she inform us immediately if there are any problems with the schedules for any of these depositions. Exhibit B. The following Friday, November 21, Ms. Beeman faxed counsel a letter (Exhibit C) stating that she represents North Ada County Groundwater Users Association ("NACGUA"), and does not represent the Protestants who are "individual members" of NACGUA; that she cannot be "responsible for the attendance of these individuals at any depositions"; and that "IDWR rules do not require attendance at a deposition" unless a subpoena has been issued.

In response to this, M3 Eagle's counsel immediately emailed Ms. Beeman noting that he believes her supervision of these parties is required by the October 7 Order in this case and that we intend to contact individual Protestants to confirm their attendance. By return email (copying the Hearing Officer), Ms. Beeman stated she recognized the depositions were scheduled to begin December 1 and that she would respond more fully later. Ms. Beeman later sent a second email restating this and adding her assumption that we would be obtaining subpoenas for these parties' depositions. To this M3 Eagle's counsel responded that we do not believe subpoenas are necessary to depose parties, and in any event subpoenas normally are not required in good faith discovery scheduling between counsel. This exchange of emails is contained in Exhibit D.

Indeed, in 25 years of practice before the Department, counsel has never had to use subpoenas except for the convenience of witnesses such as government employees who requested them.

On Monday, November 24, counsel for M3 Eagle telephoned one of the first-scheduled party deponents, Steven Purvis, and asked whether he was planning to attend his deposition scheduled for Monday, December 1. Mr. Purvis confirmed that he received the deposition notice and is available at the time scheduled, but stated that he believes he is not obligated to attend based on information he had from NACGUA representatives that attendance is “optional.” He also explained that he did not believe he had legal counsel in this matter. *Fereday Aff.*

Argument

Rule 37(d), IRCP, states that if “a party” fails to appear at a deposition “after being served with proper notice,” the party is subject to sanction. While Rule 31(a) states that the “attendance of witnesses” may be compelled by subpoena, nothing in the rules expressly states that “proper notice” on a party must be by subpoena. Indeed, the implication in Rule 37(d) is that once a party deponent has received a notice, and does not timely object or notify opposing counsel of a scheduling conflict, the party is obligated to attend.

The deposition notices M3 Eagle sent are “proper notices” pursuant to IRCP 37(d). Unlike expert witnesses or other non-party witnesses, the proposed deponents are parties. Here, counsel wrote to Ms. Beeman proposing dates for these depositions and never received any indication that these dates are not acceptable. Only one of the deponents (Mr. Niccolls) notified counsel—directly, not through counsel—that he is unavailable on the originally proposed date; we promptly changed it to a mutually acceptable time. In these circumstances, M3 Eagle believes an order compelling attendance is proper, and respectfully requests that the Hearing Officer issue one.

In the alternative, M3 Eagle requests that the Hearing Officer issue subpoenas to these Protestants that maintains the same deposition dates and times as specified above.

In acting on this motion, M3 Eagle asks that the Hearing Officer confirm that the individual Protestants cannot be shielded from providing testimony or evidence in this case by the fact they have banded together for purposes of the hearing, and regardless of counsel's assertions as to whom she represents. M3 Eagle requests that the Hearing Officer confirm that each of the individual Protestants is receiving documents served on NACGUA and is otherwise informed of developments in this case.

With the exception of each individual's deposition notice, M3 Eagle has not been serving documents on the individual Protestants associated with NACGUA due to our understanding that these individuals indeed are being represented by Ms. Beeman. In this connection, we note that the Hearing Officer's October 7, 2008 Order to Consolidate Parties and Default Order states the Hearing Officer's assumption "that Josephine Beeman will also represent, through the association, the other protestants" and "shall represent the interests of those protestants as attorney for the association." In agreeing to the individual Protestants banding together under spokespeople and for purposes of service of documents, M3 Eagle did not agree to the creation of a structure that would thwart its efforts to conduct ordinary discovery or develop evidence for presentation at the hearing.

DATED this 24th day of November, 2008.

Respectfully submitted,

GIVENS PURSLEY LLP

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

Certificate of Service

I HEREBY CERTIFY that on this 24th day of November 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
 Overnight Mail
 Facsimile
 E-mail

SERVICE

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

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

North Ada County Groundwater Users Association
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. Wood
M. Howard Goldman
Timothy R. Milburn
3145 Osprey Road
Eagle, ID 83616

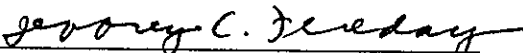
U. S. Mail
 Hand Delivered
 Overnight Mail
 Facsimile
 E-mail

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

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

Alan Smith
3135 N. Osprey Road
Eagle, ID 83616

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


Jeffrey C. Fereday

GIVENS PURSLEY LLP

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: jffereday@givenspursley.com

Gary G. Allen
Peter G. Barton
Christopher J. Beeson
Clint R. Bofender
Erik J. Bolinder
Jeremy C. Chou
William C. Cole
Michael C. Creamer
Amber N. Dina
Elizabeth M. Donick
Kristin Bjorkman Dunn
Thomas E. Dvorak
Jeffrey C. Fereday
Justin M. Fredin
Martin C. Hendrickson
Steven J. Hippler
Debra K. Kristensen
Anna C. Kunkel
Jeremy G. Ladle
Michael P. Lawrence
Franklin G. Lea
David R. Lombardi
John M. Marshall
Kenneth R. McClure
Kelly Groano McConnell
Cynthia A. Moffo
Christopher H. Moyer
L. Edward Miller
Patrick J. Miller
Judson B. Montgomery
Dorothy E. Nelson
Kelsey J. Nunez

W. Hugh O'Riordan, LL.M.
Terra R. Pickens
Angela M. Reed
Justin A. Steiner
Scott A. Tschirgl, LL.M.
J. Will Verin
Conley E. Ward
Robert B. White

RETIRED
Kenneth L. Pursley
Raymond D. Gvens
James A. McClure

October 23, 2008

Via Hand Delivery

Josephine Beeman
Beeman and Associates
409 West Jefferson
Boise, ID 83702

Re: M3 Eagle site visit; deposition schedule; Linda Burke status
GP File No. 8526-4

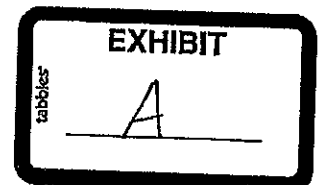
Dear Jo:

Site visit.

In response to your request, M3 Eagle is willing to host a site visit for you, your experts, and Hearing Officer Gary Spackman. The date will be November 3, 2008 from 8:30 to 4:30. I have confirmed with Debbie Gibson that Mr. Spackman is available. If you have scheduling conflicts, please let me know immediately.

The purpose of the visit will be to: 1) tour the entire 6,000 acre property and note significant landmarks, making reference to maps presented in our water right application; 2) visit each of the active monitoring wells M3 Eagle maintains in the area; 3) point out the proposed locations of major features of the development. We intend for the visit to be informal and do not see the need for a court reporter. We will expect your experts to make available to us within three days afterward any field notes they produce from the visit, and to make available any resulting reports as soon as they are completed.

Attending from M3 Eagle will be Ed Squires and Mark Utting of Hydro Logic, Inc., perhaps Gerry Robbins or Bill Brownlee from M3 Eagle, me and perhaps my associate, Michael Lawrence.



Josephine Beeman
October 23, 2008
Page 2

Depositions.

I plan to depose your experts on November 14 (Young and Drury) and 17 and 18 (Ralston and Hannula).

I plan depositions of the individual protestants whom you represent through NACGUA on November 18-21 and December 1-4. I anticipate 1-2 hours for each deponent. We reserve the right to depose these experts again once their reports have been filed.

I will send out notices shortly.

Linda Burke

We still have not heard anything about Linda Burke's status. She did not submit a completed questionnaire as required. Is she willing to do so? If not, we will need to consider filing a motion to have her protest dismissed.

Please get back to me right away concerning these matters.

Sincerely,



Jeffrey C. Fereday

JCF/la

cc: William Brownlee
Gerry Robbins
Ed Squires
Mark Utting
Michael Lawrence

GIVE NS PURSLEY LLP

LAW OFFICES
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FACSIMILE: 208 288-1200
WEBSITE: www.givenspursley.com

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DIRECT DIAL: 208 368-1217
EMAIL: JCF@fereday@givenspursley.com

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Peter G. Barton
Christopher J. Beeson
Curt R. Bokander
Erik J. Bollender
Jeremy C. Chou
William C. Cole
Michael C. Croemer
Amber N. Dine
Elizabeth M. Donick
Krislin Bjorkman Dunn
Thomas E. Dvoretz
Jeffrey C. Fereday
Justin C. Freadin
Marta C. Hendrickson

Steven J. Hopler
Debra K. Kristensen
Anne C. Kunkel
Jeremy S. Ladio
Michael P. Lawrence
Franklin C. Lee
David R. Lombardi
John M. Marshall
Kenneth R. McClure
Kelly Greene McConnell
Cynthia A. Mello
Christopher H. Meyer
L. Edward Miller
Patrick J. Miller
Judson B. Montgomery

Deborah E. Nelson
Kelsey J. Nunez
W. Hugh O'Riordan, LL.M.
Angela M. Reed
Justin A. Steiner
Scott A. Tschirg, LL.M.
J. Will Vain
Conley E. Ward
Robert B. White

RETIRED
Kenneth T. Pursley
Janet A. McClure
Raymond D. Ghens (1917-2008)

November 17, 2008

Ms. Josephine P. Beeman
Beeman & Associates PC
409 West Jefferson
Boise, ID 83702-6049

Re: Deposition Schedule

Dear Jo:

I am writing to confirm the dates for my proposed depositions of several of the protestants you represent through NACGUA. I have provided you with their deposition notices already, but a schedule is attached. Please let me know immediately if any of these dates do not work for you or them.

One of your clients, Mr. Niccolls, contacted me immediately after he got his deposition notice and informed me of a scheduling conflict he had. I rescheduled to accommodate him. I have not heard from any others as to their schedules, so I assume there are no problems.

We anticipate receiving your expert reports on November 26. Thanks for providing Dr. Ralston's November 6, 2008 memorandum, which I take it will be a part of his report. We will look to that, and whatever supplemental information he provides on the 26th, as the facts he knows and the opinions he holds concerning this matter.

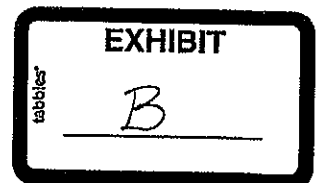
Sincerely,

Jeffrey C. Fereday

Enclosure

JCF:la S:\CLINITS\45264\VCF to Beeman re depo.DOC
cc: William Brownlee
Gerry Robbins
Ed Squires

RECEIVED NOV 18 2008



M3 EAGLE**DEPOSITION SCHEDULE****Tuesday, November 11, 2008**

- 8:00 a.m. Deposition Alan Smith – Givens Pursley (Pahsimeroi Conf. Rm.)
10:30 a.m. Deposition Bill Lawton – Givens Pursley (Pahsimeroi Conf. Rm.)

Friday, November 14, 2008

- 8:30 a.m. Deposition of Norman Young – Givens Pursley (Pahsimeroi Conf. Rm.)
1:00 p.m. Deposition of Paul Drury – Givens Pursley (Pahsimeroi Conf. Rm.)
(NACGUA Experts) (CANCELLED)

Monday, November 17, 2008

- 8:30 a.m. Deposition of Steven Hannula – Givens Pursley (Pahsimeroi Conf. Rm.)
1:00 p.m. Deposition of Dale Ralston – Givens Pursley (Pahsimeroi Conf. Rm.)
(NACGUA Experts) (CANCELLED)

Monday, December 1, 2008

- 8:00 a.m. Deposition of Timothy Milburn – Givens Pursley (Pahsimeroi)
10:30 a.m. Deposition of Richard Lagerstrom – Givens Pursley (Pahsimeroi)
1:00 p.m. Deposition of Shelby Conrad – Givens Pursley (Pahsimeroi)
3:30 p.m. Deposition of Steven Purvis – Givens Pursley (Pahsimeroi)

Tuesday, December 2, 2008

- 8:00 a.m. Deposition of Anne Ritter – Givens Pursley (Pahsimeroi)
10:30 a.m. Deposition of George Keyes – Givens Pursley (Pahsimeroi)
1:00 p.m. Deposition of Linda Burke – Givens Pursley (Pahsimeroi)
3:30 p.m. Deposition of John Thornton – Givens Pursley (Pahsimeroi)

Wednesday, December 3, 2008

- 8:00 a.m. Deposition of Sherri Randall – Givens Pursley (Pahsimeroi)
10:30 a.m. Deposition of David Head – Givens Pursley (Pahsimeroi)
1:00 p.m. Deposition of Stephen Dick – Givens Pursley (Pahsimeroi)
3:30 p.m. Deposition of John Franden – Givens Pursley (Pahsimeroi)

Thursday, December 4, 2008

- 8:00 a.m. Deposition of John Petrovsky – Givens Pursley (Pahsimeroi)
10:30 a.m. Deposition of Morgan Masner – Givens Pursley (Pahsimeroi)
1:00 p.m. Deposition of Barrett Jones – Givens Pursley (Pahsimeroi)
3:30 p.m. Deposition of Bruce Richardson – Givens Pursley (Pahsimeroi)

Monday, December 8, 2008

- 10:30 a.m. Deposition of Robert Niccolls – Givens Pursley (Pahsimeroi) (Amended)

BEEMAN & ASSOCIATES, P.C.

Counselors and Attorneys at Law
409 West Jefferson Street
Boise, Idaho 83702-6049

Josephine P. Beeman
jo.beeman@beemanlaw.com

Phone (208) 331-0950
Fax (208) 331-0954
office@beemanlaw.com

November 21, 2008

Via Fax 388-1300 and Email

Jeffrey C. Fereday, Esq.
Givens Pursley LLP
601 W. Barnock Street
P O Box 2720
Boise, Idaho 83701-2720

Re: M3 Eagle Application 63-32573
Deposition Schedule

Dear Jeff:

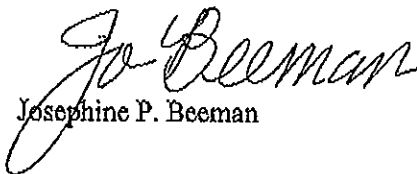
Thank you for your letter of November 17, 2008 (attached) regarding conducting depositions of individuals located in the area that may be impacted by M3 Eagle's Application 63-32573.

As you know, I represent NACGUA, not its individual members. *In Re: Application 63-32573, Order to Consolidate Parties and Default Order*, dated October 7, 2008. Since you intend to conduct depositions of NACGUA members, whom I do not represent individually, I must request on behalf of NACGUA that you serve each of these individual members with a subpoena. Neither NACGUA nor I can be responsible for the attendance of these individuals at any depositions. Without a subpoena, the IDWR rules do not require attendance at a deposition. *In Re: Application 63-32573, Order Denying Motions*, dated November 12, 2008.

Please feel free to contact me if you have any further questions or concerns.

Sincerely,

BEEMAN & ASSOCIATES, P.C.


Josephine P. Beeman

Attachment
cc: Gary Spackman
NACGUA Board



Filters Used:
1 Tagged Record

Email Report

Form Format

Date Printed: 11/24/2008
Time Printed: 1:07PM
Printed By: LA1

Date 11/21/2008 Time 2:58PM 2:58PM Duration 0.00 (hours) Code
Subject RE: Depositions of individual Protestants Staff Lori L Anderson
Client M3 Companies, LLC, MatRef Water Right Hearing MatNo 8526-4
From Jeffrey C Fereday
To 'Jo Beeman'
CC To Michael P. Lawrence; Gary Spackman (IDWR); John Westra (IDWR Western); Kelsey J. Nunez; Anne Ritter (
Bcc To
Reminders (days before) Follow N Done N Notify N Hide N Trigger N Private N Status
Email Topic User3
User2 User4

Jo:

I had not planned to subpoena them. As you know, it is customary not to require subpoenas of parties, and I fail to see how they should be necessary in this case. Furthermore, I read Rule 37(d) as requiring a party to attend a deposition after being served with a "proper notice." We have provided such a notice, and each of these deponents is a party/protestant.

I have expected an ordinary, good faith compliance with my depo notices, which have been in these parties' hands for more than 10 days now in most cases. (For example, several were served on Nov. 7, two weeks ago, with the depositions still more than a week away.) As previously explained, I have heard from Mr. Nicolls, whose depo I readily rescheduled to meet his needs. I have not heard from you or from any other of them that they have scheduling conflicts of any kind.

I also informed you of this same early Decembrer deposition schedule in my October 23 letter, in which I asked for your response. You did not respond, and have never informed me that this schedule is a problem. I trust you shared that letter, or at least my schedule, with each of your individual clients/NACGUA members. I know they each received their deposition notices.

Jo, I expect these individuals to show up for their depositions. Please tell me now if you are advising them they do not have to attend unless they are subpoenaed. Also please tell me immediately if you know if any of them are not planning to attend.

By the way, I question whether it is appropriate to include the Hearing Officer on emails such as the two you've sent today, including the one to which this responds. I'm including him on this reply because you have included him.

I need to hear from you immediately.

Jeff

-----Original Message-----

From: Jo Beeman [mailto:jo.Beeman@beemanlaw.com]
Sent: Friday, November 21, 2008 2:26 PM
To: Jeffrey C Fereday
Cc: Michael P. Lawrence; Gary Spackman (IDWR); John Westra (IDWR Western); Kelsey J. Nunez; Anne Ritter (NACGUA); David Head (NACGUA); Debbie Gibson (IDWR); Jason Hudson (B&A); Jo Beeman (B&A); Joyce Angell (B&A); Kathy Pennisi (NACFA); Lori Anderson; Office (B&A)
Subject: RE: Depositions of individual Protestants

EXHIBIT

tabbles

D

Filters Used:
1 Tagged Record

Email Report

Form Format

Date Printed: 11/24/2008
Time Printed: 1:07PM
Printed By: LA1

Jeff,

The depositions you reference are set to begin Monday December 1. All of the individuals have already been served with Notices, and I assume that you are arranging to subpoena them.

Jo

Josephine P. Beeman
Beeman & Associates, P.C.

-----Original Message-----

From: Jo Beeman
Sent: Friday, November 21, 2008 12:31 PM
To: 'Jeffrey C Fereday'
Cc: Michael P. Lawrence; Gary Spackman (IDWR); John Westra (IDWR Western); Kelsey Nunez; Anne Ritter (NACGUA); David Head (NACGUA); Debbie Gibson (IDWR); Jason Hudson (B&A); Jo Beeman (B&A); Joyce Angell (B&A); Kathy Pennisi (NACFA); Lori Anderson (Fereday); Office (B&A)
Subject: RE: Depositions of individual Protestants

Jeff,

The depositions you reference are set to begin Monday December 1, and all of the individuals have already been served with Notices.

I am in the midst of work on a Nov 21 SRBA filing deadline in BWI 92-23, so will respond more fully after 2pm.

Thanks,
Jo

Josephine P. Beeman
Beeman & Associates, P.C.

-----Original Message-----

From: Jeffrey C Fereday [mailto:JeffFereday@givenspursley.com]
Sent: Friday, November 21, 2008 11:21 AM
To: Jo Beeman
Cc: Michael P. Lawrence
Subject: Depositions of individual Protestants

November 21, 2008

Jo:

We received your letter of today's date in which you state that you are not responsible for the attendance of individual NACGUA members at depositions because you represent NACGUA, not its individual members.

Filters Used:

1 Tagged Record

Email Report

Form Format

Date Printed: 11/24/2008

Time Printed: 1:07PM

Printed By: LA1

We disagree with your position and believe it to be inconsistent with the Hearing Officer's October 7 Order to Consolidate Parties and Default Order.

However, our immediate interest is to ensure the deponents' attendance at the depositions for which we have provided notices and scheduled a court reporter. Accordingly, we intend to contact these individual Protestants directly beginning today. We interpret your letter to mean that you do not object to us doing so for this purpose. Please let us know immediately if this is not the case.

Thank you.

Jeff

Jeffrey C. Fereday
Attorney at Law
GIVENS PURSLEY LLP
601 W. Bannock St.
Boise, ID 83702
Phone: (208) 388-1200
Direct Dial: (208) 388-1217
Facsimile: (208) 388-1300
E-Mail: JeffFereday@givenspursley.com
www.givenspursley.com

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

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

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

**AFFIDAVIT OF JEFFREY C. FEREDAY IN
SUPPORT OF MOTION FOR ORDER
COMPELLING PARTIES TO ATTEND
SCHEDULED DEPOSITIONS, OR FOR
ISSUANCE OF SUBPOENAS**

State of Idaho)
) ss.
County of Ada)

Jeffrey C. Fereday, being first duly sworn upon oath and upon his personal knowledge,
deposes and states:

1. I am an attorney with Givens Pursley LLP, counsel to Applicant M3 Eagle LLC.
2. On the morning of November 24, 2008, I telephoned one of the Protestants in this case, Steven Purvis, to inquire as to whether he had received a deposition notice from me and whether planned to attend his deposition scheduled for the afternoon of December 1, 2008. Mr. Purvis is listed in this matter as a member of North Ada County Groundwater Users Association ("NACGUA"). In response to my questions, confirmed that he had received the November 7, 2008 deposition notice we had served on him, but that he is not planning to attend his deposition

because he heard from other NACGUA members that attendance was optional. Mr. Purvis stated that he had not heard this from legal counsel. Mr. Purvis also stated that he has no legal representation in this matter, and that only NACGUA has legal counsel. Mr. Purvis stated that he is available, and has no scheduling conflict, on December 1, but he did not commit to attend his deposition.

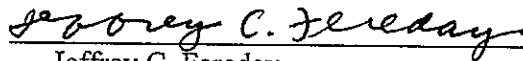
3. On or about November 11, 2008, my assistant received a call from Protestant Mr. Niccolls in which he explained that he had received our November 7 deposition notice but had a scheduling conflict with his proposed deposition date. We immediately rescheduled it and sent him a new deposition notice, with copies to the service list.

4. Other than the above statements from Mr. Purvis and Mr. Niccolls, I have received no notice from any of the scheduled Protestants concerning scheduling or attendance at their depositions. On or about November 10, 2008 I received a telephone call from Protestant John Franden, but John did not raise any scheduling issues concerning his deposition.

5. I have received no notice from counsel for NACGUA that any of these individual Protestant depositions present scheduling conflicts. Nor had counsel informed me earlier of any scheduling conflicts concerning the expert witnesses that were the subject of earlier notices (and the subject of the Hearing Officer's November 12, 2008 Order).

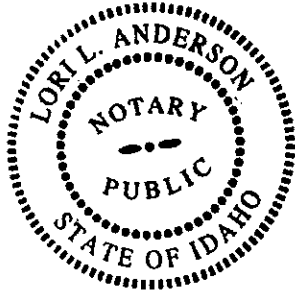
6. The exhibits attached to the accompanying Motion are true and correct copies.

DATED this 24th day of November, 2008.



Jeffrey C. Fereday

Subscribed and sworn to before me this 24th day of November, 2008.



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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of November, 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
 Overnight Mail
 Facsimile
 E-mail

SERVICE

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

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

North Ada County Groundwater Users Association
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. Wood
M. Howard Goldman
Timothy R. Milburn
3145 Osprey Road
Eagle, ID 83616

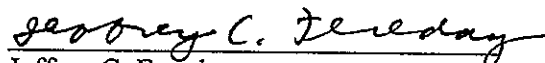
U. S. Mail
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Alan Smith
3135 N. Osprey Road
Eagle, ID 83616

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 Hand Delivered
 Overnight Mail
 Facsimile
 E-mail


Jeffrey C. Fereday

Gibson, Deborah

From: Jo Beeman [jo.Beeman@beemanlaw.com]
Sent: Monday, November 24, 2008 9:55 PM
To: Lori Anderson; Spackman, Gary; Gibson, Deborah; Westra, John
Cc: Jeffrey C Fereday; Michael P. Lawrence; Anne Ritter (NACGUA); David Head (NACGUA); Jason Hudson (B&A); Jo Beeman (B&A); Joyce Angell (B&A); Kathy Pennisi (NACFA); Office (B&A)
Subject: RE: M3 Motion re Depos and Subpoenas

I would like to advise the parties and IDWR of a prior scheduled settlement meeting from noon to 3pm, Tuesday November 25, at my office with NACGUA and the other protestants to M3 Eagle's Application 63-32573.

If a hearing is scheduled for M3 Eagle's November 24 Motion, I will do my best to accommodate the direction of the Hearing Officer.

Jo Beeman

Josephine P. Beeman
Beeman & Associates, P.C.

-----Original Message-----
From: Lori Anderson [mailto:lorianderson@givenspursley.com]
Sent: Monday, November 24, 2008 3:12 PM
To: 'Gary Spackman'; 'Debbie Gibson'; 'John Westra'; Jo Beeman
Cc: Jeffrey C Fereday; Michael P. Lawrence
Subject: M3 Motion re Depos and Subpoenas

On behalf of Jeffrey Fereday, I am attaching M3 Eagle's Motion for Order Compelling Parties to Attend Scheduled Depositions, or for Issuance of Subpoenas with the attached Affidavit of Jeffrey C. Fereday in Support. This will also be sent to you via U.S. Mail.

Jeff has confirmed that the hearing officer is available for a telephonic hearing, if necessary, tomorrow November 25, 2008 at 1:30 p.m. (see call in # below) We will plan on this hearing unless I hear otherwise from the hearing officer.

Dial Access #: 1-877-326-0011
Dial Meeting # preceded and followed by the * key: *4056031*

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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Gibson, Deborah

From: Office Beeman [office@beemanlaw.com]
Sent: Monday, November 24, 2008 5:27 PM
To: Spackman, Gary; Jeffrey C. Fereday; Westra, John; Kelsey Nunez; Michael Lawrence
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)
Subject: M3 Eagle 63-32573
Attachments: 20081124 NACGUA Reply M3 Response NACGUA Motion Stay.pdf; 20081124 NACGUA Reply Affidavit Dale Ralston.pdf; 20081124 NACGUA Reply Affidavit Norm Young w- exh.pdf

Please see attached Reply and Affidavits filed with IDWR on behalf of NACGUA.

Beeman & Associates
208.331.0950

11/25/2008

Gibson, Deborah

From: Spackman, Gary
Sent: Tuesday, November 25, 2008 12:46 PM
To: Jo Beeman; Lori Anderson; Gibson, Deborah; Westra, John
Cc: Jeffrey C Fereday; Michael P. Lawrence; Anne Ritter (NACGUA); David Head (NACGUA); Jason Hudson (B&A); Joyce Angell (B&A); Kathy Pennisi (NACFA); Office (B&A)
Subject: RE: M3 Motion re Depos and Subpoenas

Parties:

When an expedited conference about attendance at depositions was requested, I identified my available times and received an email from Givens Pursley scheduling the telephone conference for 1:30 pm today. I assumed the time had been coordinated with the parties. Based on the email from Jo Beeman below, she is apparently not available. In addition, all of the independent parties are not included in the notice. As a result, I will not conduct a conference this afternoon.

Prior proceedings and orders in this contested case allowed some of the multiple protestants to appoint officers of the ground water association as spokespersons. This was advantageous to all participants. The protestants' voices could be channeled through a single conduit, and each individual protestant would not have to personally appear at each scheduled proceeding. The applicant could deal with a reduced number of active parties, and the dealings between parties would probably be more professional. The hearing officer could better direct the preparations for hearing and the hearing itself.

At the end of this procedural restructuring, the association hired counsel. As a result, instead of designating officers of the association as spokespersons, the hearing officer recognized counsel as the representative of the association in the contested case. Appointment of counsel did not excuse the association or officers of the association of speaking for the individual protestants who are members of the association. Disavowal by counsel for the association of an obligation to speak for and make commitments for the protestants who are members of the association violates the spirit and the content of the consolidation and representation of the parties as previously discussed and ordered by the hearing officer.

I am not inclined to issue an order compelling attendance at a scheduled deposition because the order might require inconvenient attendance at a deposition that could easily be rescheduled with counsel for the applicant. On the other hand, if the individual protestants are not willing to communicate scheduling conflicts after having received a notice, and require service of a subpoena to attend the deposition, I will consider totally dismissing the party from the contested case, and will also consider sanctions against the association for not adhering to the spirit and directives of the past proceedings.

Gary Spackman

-----Original Message-----

From: Jo Beeman [mailto:jo.Beeman@beemanlaw.com]
Sent: Monday, November 24, 2008 9:55 PM
To: Lori Anderson; Spackman, Gary; Gibson, Deborah; Westra, John
Cc: Jeffrey C Fereday; Michael P. Lawrence; Anne Ritter (NACGUA); David Head (NACGUA); Jason Hudson (B&A); Jo Beeman (B&A); Joyce Angell (B&A); Kathy Pennisi (NACFA); Office (B&A)
Subject: RE: M3 Motion re Depos and Subpoenas

I would like to advise the parties and IDWR of a prior scheduled settlement meeting from noon to 3pm, Tuesday November 25, at my office with NACGUA and the other protestants to M3 Eagle's Application 63-32573.

If a hearing is scheduled for M3 Eagle's November 24 Motion, I will do my best to accommodate the direction of the Hearing Officer.

Jo Beeman

Josephine P. Beeman
Beeman & Associates, P.C.

-----Original Message-----

From: Lori Anderson [mailto:lorianderson@givenspursley.com]
Sent: Monday, November 24, 2008 3:12 PM
To: 'Gary Spackman'; 'Debbie Gibson'; 'John Westra'; Jo Beeman

Cc: Jeffrey C Fereday; Michael P. Lawrence
Subject: M3 Motion re Depos and Subpoenas

On behalf of Jeffrey Fereday, I am attaching M3 Eagle's Motion for Order Compelling Parties to Attend Scheduled Depositions, or for Issuance of Subpoenas with the attached Affidavit of Jeffrey C. Fereday in Support. This will also be sent to you via U.S. Mail.

Jeff has confirmed that the hearing officer is available for a telephonic hearing, if necessary, tomorrow November 25, 2008 at 1:30 p.m. (see call in # below) We will plan on this hearing unless I hear otherwise from the hearing officer.

Dial Access #: 1-877-326-0011

Dial Meeting # preceded and followed by the * key: *4056031*

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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Gibson, Deborah

From: Lori Anderson [lorianderson@givenspursley.com]
Sent: Monday, November 24, 2008 3:12 PM
To: Spackman, Gary; Gibson, Deborah; Westra, John; 'Josephine Beeman'
Cc: Jeffrey C Fereday; Michael P. Lawrence
Subject: M3 Motion re Depos and Subpoenas

Attachments: M3 Mtn re Depos and Subpoenas.PDF



M3 Mtn re Depos
and Subpoenas....

On behalf of Jeffrey Fereday, I am attaching M3 Eagle's Motion for Order Compelling Parties to Attend Scheduled Depositions, or for Issuance of Subpoenas with the attached Affidavit of Jeffrey C. Fereday in Support. This will also be sent to you via U.S. Mail.

~~Jeff has confirmed that the hearing officer is available for a telephonic hearing, if necessary, tomorrow November 25, 2008 at 1:30 p.m. (see call in # below). We will plan on this hearing unless I hear otherwise from the hearing officer.~~

Dial Access #: 1-877-326-0011
Dial Meeting # preceded and followed by the * key: *4056031*

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
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www.givenspursley.com

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*Gary -
I've asked Jeff to provide the Subpoenas,
is that Ok? (since there are so many.)*

Debbie

RECEIVED

NOV 26 2008

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

**AMENDED NOTICE OF DEPOSITION OF
STEPHEN DICK**

TO: STEPHEN DICK

PLEASE TAKE NOTICE that, based on Stephen Dick's November 26, 2008 request to reschedule the deposition, on December 8, 2008 at 8:00 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 Stephen Dick, a protestant 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 26th day of November, 2008.

Respectfully submitted,

GIVENS PURSLEY LLP

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of November 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
 Overnight Mail
 Facsimile
 E-mail

SERVICE

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

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

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

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

Stephen Dick
3675 N. Saddleman Place
Eagle, ID 83616

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

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

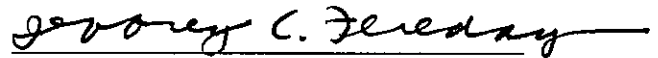
U. S. Mail
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 E-mail

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

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

Alan Smith
3135 N. Osprey Road
Eagle, ID 83616

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 E-mail


Jeffrey C. Fereday

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NOV 26 2008

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

**AMENDED NOTICE OF DEPOSITION OF
BRUCE RICHARDSON**

TO: BRUCE RICHARDSON

PLEASE TAKE NOTICE that, based on Bruce Richardson's November 26, 2008 request to reschedule the deposition, on December 9, 2008 at 3:30 p.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 Bruce Richardson, a protestant 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 26th day of November, 2008.

Respectfully submitted,

GIVENS PURSLEY LLP

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of November 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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 Overnight Mail
 Facsimile
 E-mail

SERVICE

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

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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

Bruce Richardson
3171 W. Deerfield Court
Eagle, ID 83616

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

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


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Norman Edwards
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Eagle, ID 83616

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Alan Smith
3135 N. Osprey Road
Eagle, ID 83616

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Jeffrey C. Fereday

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DEPARTMENT OF
WATER RESOURCES

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

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

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

**AMENDED NOTICE OF DEPOSITION OF
MORGAN MASNER OR JULIE MASNER**

TO: MORGAN MASNER or JULIE MASNER

PLEASE TAKE NOTICE that, based on Julie Masner's November 26, 2008 request to reschedule the deposition, on December 10, 2008 at 1:00 p.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 Morgan Masner or Julie Masner, husband and wife, each of whom is a protestant 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 26th day of November, 2008.

Respectfully submitted,

GIVENS PURSLEY LLP

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of November 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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SERVICE

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

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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

Morgan Masner & Julie Masner
4325 W. Gray Teal Court
Eagle, ID 83616

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

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

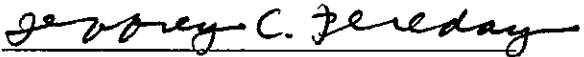
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Eagle, ID 83616

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Alan Smith
3135 N. Osprey Road
Eagle, ID 83616

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 Overnight Mail
 Facsimile
 E-mail


Jeffrey C. Fereday

BEEMAN & ASSOCIATES, P.C.

Counselors and Attorneys at Law
409 West Jefferson Street
Boise, Idaho 83702-6049

Josephine P. Beeman
jo.beeman@beemanlaw.com

Phone (208) 331-0950
Fax (208) 331-0954
office@beemanlaw.com

November 21, 2008

Via Fax 388-1300 and Email

Jeffrey C. Fereday, Esq.
Givens Pursley LLP
601 W. Bannock Street
P O Box 2720
Boise, Idaho 83701-2720

Re: M3 Eagle Application 63-32573
Deposition Schedule

Dear Jeff:

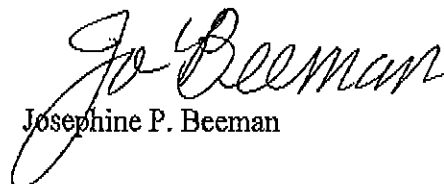
Thank you for your letter of November 17, 2008 (attached) regarding conducting depositions of individuals located in the area that may be impacted by M3 Eagle's Application 63-32573.

As you know, I represent NACGUA, not its individual members. *In Re: Application 63-32573, Order to Consolidate Parties and Default Order*, dated October 7, 2008. Since you intend to conduct depositions of NACGUA members, whom I do not represent individually, I must request on behalf of NACGUA that you serve each of these individual members with a subpoena. Neither NACGUA nor I can be responsible for the attendance of these individuals at any depositions. Without a subpoena, the IDWR rules do not require attendance at a deposition. *In Re: Application 63-32573, Order Denying Motions*, dated November 12, 2008.

Please feel free to contact me if you have any further questions or concerns.

Sincerely,

BEEMAN & ASSOCIATES, P.C.



Josephine P. Beeman

Attachment
cc: Gary Spackman
NACGUA Board

GIVENS PURSLEY LLP

LAW OFFICES
601 W. Banrock 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
EMAIL: JeffFereday@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.
Curt R. Bolander	Jeremy G. Ledle	Angela M. Reed
Erk J. Bolinger	Michael P. Lawrence	Justin A. Steiner
Jeremy D. Chou	Franklin G. Lee	Scott A. Tschirgl, LL.M.
William C. Cole	David R. Lombardi	J. Will Varrin
Michael C. Creanler	John M. Marshall	Conley E. Ward
Amber H. Dine	Kenneth R. McClure	Robert B. White
Elizabeth M. Donick	Kelly Grace McConnell	
Kristin Bjorkman Durv	Cynthia A. Meffle	RETIRED
Thomas E. Dvorak	Christopher H. Meyer	Kenneth L. Pursley
Jeffrey C. Fereday	L. Edward Miller	James A. McClure
Justin G. Fredin	Patrick J. Miller	Raymond D. Givens (1917-2008)
Marin G. Hendrickson	Judson B. Montgomery	

November 17, 2008

Ms. Josephine P. Beeman
Beeman & Associates PC
409 West Jefferson
Boise, ID 83702-6049

Re: Deposition Schedule

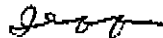
Dear Jo:

I am writing to confirm the dates for my proposed depositions of several of the protestants you represent through NACGUA. I have provided you with their deposition notices already, but a schedule is attached. Please let me know immediately if any of these dates do not work for you or them.

One of your clients, Mr. Niccolls, contacted me immediately after he got his deposition notice and informed me of a scheduling conflict he had. I rescheduled to accommodate him. I have not heard from any others as to their schedules, so I assume there are no problems.

We anticipate receiving your expert reports on November 26. Thanks for providing Dr. Ralston's November 6, 2008 memorandum, which I take it will be a part of his report. We will look to that, and whatever supplemental information he provides on the 26th, as the facts he knows and the opinions he holds concerning this matter.

Sincerely,



Jeffrey C. Fereday

Enclosure

ICF:la S:\CLIENTS\8526\UCF to Beeman re depo.DOC

cc: William Brownlee
Gerry Robbins
Ed Squires

RECEIVED NOV 18 2008

M3 EAGLE**DEPOSITION SCHEDULE****Tuesday, November 11, 2008**

- 8:00 a.m. Deposition Alan Smith – Givens Pursley (Pahsimeroi Conf. Rm.)
10:30 a.m. Deposition Bill Lawton – Givens Pursley (Pahsimeroi Conf. Rm.)

Friday, November 14, 2008

- 8:30 a.m. Deposition of Norman Young – Givens Pursley (Pahsimeroi Conf. Rm.)
1:00 p.m. Deposition of Paul Drury – Givens Pursley (Pahsimeroi Conf. Rm.)
(NACGUA Experts) (CANCELLED)

Monday, November 17, 2008

- 8:30 a.m. Deposition of Steven Hannula – Givens Pursley (Pahsimeroi Conf. Rm.)
1:00 p.m. Deposition of Dale Ralston – Givens Pursley (Pahsimeroi Conf. Rm.)
(NACGUA Experts) (CANCELLED)

Monday, December 1, 2008

- 8:00 a.m. Deposition of Timothy Milburn – Givens Pursley (Pahsimeroi)
10:30 a.m. Deposition of Richard Lagerstrom – Givens Pursley (Pahsimeroi)
1:00 p.m. Deposition of Shelby Conrad – Givens Pursley (Pahsimeroi)
3:30 p.m. Deposition of Steven Purvis – Givens Pursley (Pahsimeroi)

Tuesday, December 2, 2008

- 8:00 a.m. Deposition of Anne Ritter – Givens Pursley (Pahsimeroi)
10:30 a.m. Deposition of George Keyes – Givens Pursley (Pahsimeroi)
1:00 p.m. Deposition of Linda Burke – Givens Pursley (Pahsimeroi)
3:30 p.m. Deposition of John Thornton – Givens Pursley (Pahsimeroi)

Wednesday, December 3, 2008

- 8:00 a.m. Deposition of Sherri Randall – Givens Pursley (Pahsimeroi)
10:30 a.m. Deposition of David Head – Givens Pursley (Pahsimeroi)
1:00 p.m. Deposition of Stephen Dick – Givens Pursley (Pahsimeroi)
3:30 p.m. Deposition of John Franden – Givens Pursley (Pahsimeroi)

Thursday, December 4, 2008

- 8:00 a.m. Deposition of John Petrovsky – Givens Pursley (Pahsimeroi)
10:30 a.m. Deposition of Morgan Masner – Givens Pursley (Pahsimeroi)
1:00 p.m. Deposition of Barrett Jones – Givens Pursley (Pahsimeroi)
3:30 p.m. Deposition of Bruce Richardson – Givens Pursley (Pahsimeroi)

Monday, December 8, 2008

- 10:30 a.m. Deposition of Robert Niccolls – Givens Pursley (Pahsimeroi) (Amended)

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

NOV 24 2008

Department of Water Resources

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

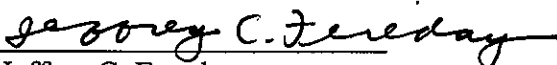
IN THE MATTER OF APPLICATION
FOR PERMIT NO. 63-32573 IN THE
NAME OF M3 EAGLE LLC

NOTICE OF SERVICE

M3 Eagle LLC ("M3 Eagle"), through its counsel Givens Pursley LLP, and pursuant to Rules 33(a)(5) and 34(d) and 36(c) of the Idaho Rules of Civil Procedure, hereby gives notice to all parties and counsel of record that *M3 Eagle's Responses to NACGUA's Interrogatories, Requests for Production, and Requests for Admission* ("Discovery Responses") was served upon North Ada County Groundwater Users Association's ("NACGUA") counsel on November 24, 2008. Pursuant to the Hearing Officer's October 7, 2008 Order to Consolidate Parties and Default Order, M3 Eagle believes service upon NACGUA's counsel constitutes service to NACGUA's individual members. As a courtesy, M3 Eagle also has served the Discovery Responses on Protestants Bill Lawton, Norman Edwards, and Alan Smith.

Dated this 24th day of November, 2008.

GIVENS PURSLEY LLP


Jeffrey C. Fereday

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of November, 2008, the foregoing was filed, served, or copied as follows:

NOTICE OF SERVICE AND DISCOVERY RESPONSES

North Ada County Groundwater Users Association	<u> X </u>	U. S. Mail
Josephine P. Beeman	<u> </u>	Hand Delivered
Beeman & Associates PC	<u> </u>	Overnight Mail
409 West Jefferson	<u> </u>	Facsimile
Boise, ID 83702-6049	<u> X </u>	E-mail

Bill Lawton, Spokesman for	<u> X </u>	U. S. Mail
Robert L and Kip C. Wood	<u> </u>	Hand Delivered
M. Howard Goldman	<u> </u>	Overnight Mail
Timothy R. and Judy L. Milburn	<u> </u>	Facsimile
3145 Osprey Road	<u> </u>	E-mail
Eagle, ID 83616		

Norman Edwards	<u> X </u>	U. S. Mail
884 W. Beacon Light Road	<u> </u>	Hand Delivered
Eagle, ID 83616	<u> </u>	Overnight Mail
	<u> </u>	Facsimile
	<u> </u>	E-mail

Alan Smith	<u> X </u>	U. S. Mail
3135 N. Osprey Road	<u> </u>	Hand Delivered
Eagle, ID 83616	<u> </u>	Overnight Mail
	<u> </u>	Facsimile
	<u> </u>	E-mail

NOTICE OF SERVICE

Idaho Department of Water Resources	<u> X </u>	U. S. Mail
Attn: Gary L. Spackman	<u> </u>	Hand Delivered
322 East Front Street	<u> </u>	Overnight Mail
P.O. Box 83720	<u> </u>	Facsimile
Boise, ID 83720-0098	<u> </u>	E-mail

John Westra	<u> X </u>	U. S. Mail
Western Regional Office	<u> </u>	Hand Delivered
Idaho Department of Water Resources	<u> </u>	Overnight Mail
2735 Airport Way	<u> </u>	Facsimile
Boise, ID 83705-5082	<u> </u>	E-mail

Jeffrey C. Fereday
Jeffrey C. Fereday

FAX COVER SHEET

November 21, 2008

TO: Gary Spackman

FAX: 287-6700

FROM: Jo Beeman

RE: M3 Eagle Application 63-32573

Please see attached copy of NACGUA's November 21 letter to M3 Eagle's counsel regarding depositions.

The information contained in this facsimile is confidential information or attorney work product or both and is for the exclusive use of the intended recipient listed above. Any reading, disclosure, use or reproduction of this communication other than by the intended recipient is prohibited. If you have received this communication in error, please notify us by collect telephone call immediately and return the communication to us by U. S. Mail.

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ORIGINAL BY MAIL: YES _____ NO X

BEEMAN & ASSOCIATES, P.C.

409 West Jefferson Street

Boise, Idaho 83702

Phone: (208) 331-0950

Fax: (208) 331-0954

office@beemanlaw.com

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

NOV 24 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 MOTION FOR ORDER
COMPELLING PARTIES TO ATTEND
SCHEDULED DEPOSITIONS, OR FOR
ISSUANCE OF SUBPOENAS**

Motion

M3 Eagle, though Jeffrey C. Fereday and Michael P. Lawrence of the firm Givens Pursley LLP, hereby requests, pursuant to IRCP 31 and 37, and IDAPA 37.01.01.525, that the Hearing Officer either: 1) issue an order compelling attendance at scheduled depositions of individual Protestants in this matter, or, alternatively, 2) issue subpoenas requiring their attendance. The parties M3 Eagle seeks to depose, and the schedule for each as contained in M3 Eagle's notices, are as follows (copies are on file with the Hearing Officer):

Monday, December 1, 2008

8:00 a.m. Deposition of Timothy Milburn
10:30 a.m. Deposition of Richard Lagerstrom
1:00 p.m. Deposition of Shelby Conrad
3:30 p.m. Deposition of Steven Purvis

Tuesday, December 2, 2008

8:00 a.m. Deposition of Anne Ritter
10:30 a.m. Deposition of George Keyes
1:00 p.m. Deposition of Linda Burke
3:30 p.m. Deposition of John Thornton

Wednesday, December 3, 2008

8:00 a.m. Deposition of Sherri Randall
10:30 a.m. Deposition of David Head
1:00 p.m. Deposition of Stephen Dick
3:30 p.m. Deposition of John Franden

Thursday, December 4, 2008

8:00 a.m. Deposition of John Petrovsky
10:30 a.m. Deposition of Morgan Masner
1:00 p.m. Deposition of Barrett Jones
3:30 p.m. Deposition of Bruce Richardson

Monday, December 8, 2008 (rescheduled at deponent's request)

10:30 a.m. Deposition of Robert Niccolls

These deposition notices were mailed to these parties from November 7-12, 2008.

Background

Counsel for M3 Eagle sent Ms. Beeman a letter on October 23, 2008 setting forth a proposed deposition schedule proposing to depose the Protestants' expert witnesses on November 14, 17 and 18, and the individual Protestants the week of December 1, 2008. Exhibit A (the "Scheduling Letter"). The September 12 Order in this case establishes December 12 as the cut off of all discovery, so the parties have been on notice since then that any depositions would have to take place within that timeframe. Not hearing of any scheduling conflict or other objection from Ms. Beeman in response to the Scheduling Letter, M3 Eagle's counsel sent out deposition notices on October 31 for the experts and on November 7, 10, 11 and 12 for the individual Protestants. These notices used the dates in the Scheduling Letter.

After these notices were sent, M3 Eagle's separately-scheduled depositions of NACGUA's experts were canceled because Ms. Beeman instructed them not to attend. While

Ms. Beeman had not expressly agreed to the experts' proposed deposition dates, she also had not communicated any disagreement or scheduling conflict to counsel for M3 Eagle. Affidavit of Jeffrey C. Fereday, attached hereto ("Fereday Aff."). Then, on November 12, Ms. Beeman filed a motion for protective order and in response M3 Eagle filed a motion to compel attendance. Despite their having received timely deposition notices, the Hearing Officer declined to compel attendance because of "the informal nature of the original notice" and noting that counsel could seek a subpoena for attendance of an expert witness at deposition. November 12 Order.

On Monday, November 17, 2008, M3 Eagle's counsel sent Ms. Beeman a second letter noting the service of the Protestants' deposition notices and specifically asking that she inform us immediately if there are any problems with the schedules for any of these depositions. Exhibit B. The following Friday, November 21, Ms. Beeman faxed counsel a letter (Exhibit C) stating that she represents North Ada County Groundwater Users Association ("NACGUA"), and does not represent the Protestants who are "individual members" of NACGUA; that she cannot be "responsible for the attendance of these individuals at any depositions"; and that "IDWR rules do not require attendance at a deposition" unless a subpoena has been issued.

In response to this, M3 Eagle's counsel immediately emailed Ms. Beeman noting that he believes her supervision of these parties is required by the October 7 Order in this case and that we intend to contact individual Protestants to confirm their attendance. By return email (copying the Hearing Officer), Ms. Beeman stated she recognized the depositions were scheduled to begin December 1 and that she would respond more fully later. Ms. Beeman later sent a second email restating this and adding her assumption that we would be obtaining subpoenas for these parties' depositions. To this M3 Eagle's counsel responded that we do not believe subpoenas are necessary to depose parties, and in any event subpoenas normally are not required in good faith discovery scheduling between counsel. This exchange of emails is contained in Exhibit D.

Indeed, in 25 years of practice before the Department, counsel has never had to use subpoenas except for the convenience of witnesses such as government employees who requested them.

On Monday, November 24, counsel for M3 Eagle telephoned one of the first-scheduled party deponents, Steven Purvis, and asked whether he was planning to attend his deposition scheduled for Monday, December 1. Mr. Purvis confirmed that he received the deposition notice and is available at the time scheduled, but stated that he believes he is not obligated to attend based on information he had from NACGUA representatives that attendance is “optional.” He also explained that he did not believe he had legal counsel in this matter. Fereday Aff.

Argument

Rule 37(d), IRCP, states that if “a party” fails to appear at a deposition “after being served with proper notice,” the party is subject to sanction. While Rule 31(a) states that the “attendance of witnesses” may be compelled by subpoena, nothing in the rules expressly states that “proper notice” on a party must be by subpoena. Indeed, the implication in Rule 37(d) is that once a party deponent has received a notice, and does not timely object or notify opposing counsel of a scheduling conflict, the party is obligated to attend.

The deposition notices M3 Eagle sent are “proper notices” pursuant to IRCP 37(d). Unlike expert witnesses or other non-party witnesses, the proposed deponents are parties. Here, counsel wrote to Ms. Beeman proposing dates for these depositions and never received any indication that these dates are not acceptable. Only one of the deponents (Mr. Niccolls) notified counsel—directly, not through counsel—that he is unavailable on the originally proposed date; we promptly changed it to a mutually acceptable time. In these circumstances, M3 Eagle believes an order compelling attendance is proper, and respectfully requests that the Hearing Officer issue one.

In the alternative, M3 Eagle requests that the Hearing Officer issue subpoenas to these Protestants that maintains the same deposition dates and times as specified above.

In acting on this motion, M3 Eagle asks that the Hearing Officer confirm that the individual Protestants cannot be shielded from providing testimony or evidence in this case by the fact they have banded together for purposes of the hearing, and regardless of counsel's assertions as to whom she represents. M3 Eagle requests that the Hearing Officer confirm that each of the individual Protestants is receiving documents served on NACGUA and is otherwise informed of developments in this case.

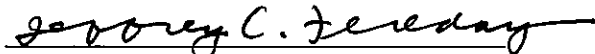
With the exception of each individual's deposition notice, M3 Eagle has not been serving documents on the individual Protestants associated with NACGUA due to our understanding that these individuals indeed are being represented by Ms. Beeman. In this connection, we note that the Hearing Officer's October 7, 2008 Order to Consolidate Parties and Default Order states the Hearing Officer's assumption "that Josephine Beeman will also represent, through the association, the other protestants" and "shall represent the interests of those protestants as attorney for the association." In agreeing to the individual Protestants banding together under spokespeople and for purposes of service of documents, M3 Eagle did not agree to the creation of a structure that would thwart its efforts to conduct ordinary discovery or develop evidence for presentation at the hearing.

DATED this 24th day of November, 2008.

Respectfully submitted,

GIVENS PURSLEY LLP

By



Jeffrey C. Fereday

Michael P. Lawrence

Certificate of Service

I HEREBY CERTIFY that on this 24th day of November 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
 Overnight Mail
 Facsimile
 E-mail

SERVICE

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

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

North Ada County Groundwater Users Association
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. Wood
M. Howard Goldman
Timothy R. Milburn
3145 Osprey Road
Eagle, ID 83616

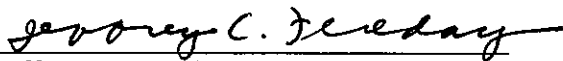
U. S. Mail
 Hand Delivered
 Overnight Mail
 Facsimile
 E-mail

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

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

Alan Smith
3135 N. Osprey Road
Eagle, ID 83616

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


Jeffrey C. Fereday

GIVENS **GP** PURSLEY LLP

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
Peter G. Barton
Christopher J. Beason
Clint R. Bolinder
Erik J. Bolinder
Jeremy C. Chou
William C. Cole
Michael C. Creamer
Amber N. Dina
Elizabeth M. Donick
Kristin Bjorkman Dunn
Thomas E. Dvorak
Jeffrey C. Fereday
Justin M. Fredin
Marlin C. Hendrickson
Steven J. Hippler

Debora K. Kristensen
Anne C. Kunkel
Jeremy G. Ladle
Michael P. Lawrence
Franklin G. Lee
David R. Lombardi
John M. Marshall
Kenneth R. McClure
Kelly Groene McConnell
Cynthia A. Melillo
Christopher H. Meyer
L. Edward Miller
Patrick J. Miller
Judson B. Montgomery
Deborah E. Nelson
Kelsey J. Nunez

W. Hugh O'Riordan, LL.M.
Terri R. Pickens
Angela M. Reed
Justin A. Steiner
Scott A. Tschirgi, LL.M.
J. Will Varin
Conley E. Ward
Robert B. White

RETIRED
Kenneth L. Pursley
Raymond D. Givens
James A. McClure

October 23, 2008

Via Hand Delivery

Josephine Beeman
Beeman and Associates
409 West Jefferson
Boise, ID 83702

Re: M3 Eagle site visit; deposition schedule; Linda Burke status
GP File No. 8526-4

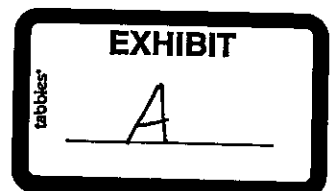
Dear Jo:

Site visit.

In response to your request, M3 Eagle is willing to host a site visit for you, your experts, and Hearing Officer Gary Spackman. The date will be November 3, 2008 from 8:30 to 4:30. I have confirmed with Debbie Gibson that Mr. Spackman is available. If you have scheduling conflicts, please let me know immediately.

The purpose of the visit will be to: 1) tour the entire 6,000 acre property and note significant landmarks, making reference to maps presented in our water right application; 2) visit each of the active monitoring wells M3 Eagle maintains in the area; 3) point out the proposed locations of major features of the development. We intend for the visit to be informal and do not see the need for a court reporter. We will expect your experts to make available to us within three days afterward any field notes they produce from the visit, and to make available any resulting reports as soon as they are completed.

Attending from M3 Eagle will be Ed Squires and Mark Utting of Hydro Logic, Inc., perhaps Gerry Robbins or Bill Brownlee from M3 Eagle, me and perhaps my associate, Michael Lawrence.



Josephine Beeman
October 23, 2008
Page 2

Depositions.

I plan to depose your experts on November 14 (Young and Drury) and 17 and 18 (Ralston and Hannula).

I plan depositions of the individual protestants whom you represent through NACGUA on November 18-21 and December 1-4. I anticipate 1-2 hours for each deponent. We reserve the right to depose these experts again once their reports have been filed.

I will send out notices shortly.

Linda Burke

We still have not heard anything about Linda Burke's status. She did not submit a completed questionnaire as required. Is she willing to do so? If not, we will need to consider filing a motion to have her protest dismissed.

Please get back to me right away concerning these matters.

Sincerely,



Jeffrey C. Fereday

JCF/la

cc: William Brownlee
Gerry Robbins
Ed Squires
Mark Utting
Michael Lawrence

GIVE & PURSLEY LLP

LAW OFFICES
601 W. Bannock Street
PO Box 2720, Boise, Idaho 83701
TELEPHONE: 208 388-1200
FACSIMILE: 208 268-1300
WEBSITE: www.giveandpursley.com

JEFFREY C. FEREDAY
DIRECT DIAL: 208 389-1217
EMAIL: JeffFereday@giveandpursley.com

Gary G. Allen	Steven J. Hopler	Deborah E. Nelson
Peter G. Barlow	Debra K. Kristensen	Kelsey J. Nunez
Christopher J. Beeson	Anne C. Kunkel	W. Hugh O'Riordan, LL.M.
Clint R. Bolinder	Jeremy G. Lodie	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 Verlin
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. Dyorek	Christopher H. Meyer	RETIRED
Jeffrey C. Fereday	L. Edward Miller	Kenneth T. Fursley
Justin C. Freidin	Patrick J. Miller	James A. McClure
Marin C. Hendrickson	Judson B. Montgomery	Raymond D. Glynn (1917-2006)

November 17, 2008

Ms. Josephine P. Beeman
Beeman & Associates PC
409 West Jefferson
Boise, ID 83702-6049

Re: Deposition Schedule

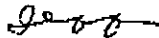
Dear Jo:

I am writing to confirm the dates for my proposed depositions of several of the protestants you represent through NACGUA. I have provided you with their deposition notices already, but a schedule is attached. Please let me know immediately if any of these dates do not work for you or them.

One of your clients, Mr. Niccolls, contacted me immediately after he got his deposition notice and informed me of a scheduling conflict he had. I rescheduled to accommodate him. I have not heard from any others as to their schedules, so I assume there are no problems.

We anticipate receiving your expert reports on November 26. Thanks for providing Dr. Ralston's November 6, 2008 memorandum, which I take it will be a part of his report. We will look to that, and whatever supplemental information he provides on the 26th, as the facts he knows and the opinions he holds concerning this matter.

Sincerely,

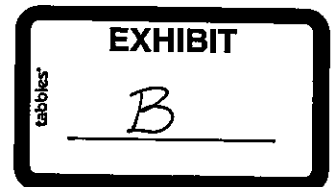


Jeffrey C. Fereday

Enclosure

JCF:la SA\CLIBNTS\83264\VCF to Beeman re depo.DOC
cc: William Brownlee
Gerry Robbins
Ed Squires

RECEIVED NOV 18 2008



M3 EAGLE**DEPOSITION SCHEDULE****Tuesday, November 11, 2008**

8:00 a.m. Deposition Alan Smith – Givens Pursley (Pahsimeroi Conf. Rm.)
10:30 a.m. Deposition Bill Lawton – Givens Pursley (Pahsimeroi Conf. Rm.)

Friday, November 14, 2008

8:30 a.m. Deposition of Norman Young – Givens Pursley (Pahsimeroi Conf. Rm.)
1:00 p.m. Deposition of Paul Drury – Givens Pursley (Pahsimeroi Conf. Rm.)
(NACGUA Experts) (CANCELLED)

Monday, November 17, 2008

8:30 a.m. Deposition of Steven Hannula – Givens Pursley (Pahsimeroi Conf. Rm.)
1:00 p.m. Deposition of Dale Ralston – Givens Pursley (Pahsimeroi Conf. Rm.)
(NACGUA Experts) (CANCELLED)

Monday, December 1, 2008

8:00 a.m. Deposition of Timothy Milburn – Givens Pursley (Pahsimeroi)
10:30 a.m. Deposition of Richard Lagerstrom – Givens Pursley (Pahsimeroi)
1:00 p.m. Deposition of Shelby Conrad – Givens Pursley (Pahsimeroi)
3:30 p.m. Deposition of Steven Purvis – Givens Pursley (Pahsimeroi)

Tuesday, December 2, 2008

8:00 a.m. Deposition of Anne Ritter – Givens Pursley (Pahsimeroi)
10:30 a.m. Deposition of George Keyes – Givens Pursley (Pahsimeroi)
1:00 p.m. Deposition of Linda Burke – Givens Pursley (Pahsimeroi)
3:30 p.m. Deposition of John Thornton – Givens Pursley (Pahsimeroi)

Wednesday, December 3, 2008

8:00 a.m. Deposition of Sherri Randall – Givens Pursley (Pahsimeroi)
10:30 a.m. Deposition of David Head – Givens Pursley (Pahsimeroi)
1:00 p.m. Deposition of Stephen Dick – Givens Pursley (Pahsimeroi)
3:30 p.m. Deposition of John Franden – Givens Pursley (Pahsimeroi)

Thursday, December 4, 2008

8:00 a.m. Deposition of John Petrovsky – Givens Pursley (Pahsimeroi)
10:30 a.m. Deposition of Morgan Masner – Givens Pursley (Pahsimeroi)
1:00 p.m. Deposition of Barrett Jones – Givens Pursley (Pahsimeroi)
3:30 p.m. Deposition of Bruce Richardson – Givens Pursley (Pahsimeroi)

Monday, December 8, 2008

10:30 a.m. Deposition of Robert Niccolls – Givens Pursley (Pahsimeroi) (Amended)

BEEMAN & ASSOCIATES, P.C.

Counselors and Attorneys at Law
409 West Jefferson Street
Boise, Idaho 83702-6049

Josephine P. Beeman
jo.beeman@beemanlaw.com

Phone (208) 331-0950
Fax (208) 331-0954
office@beemanlaw.com

November 21, 2008

Via Fax 388-1300 and Email

Jeffrey C. Fereday, Esq.
Givens Pursley LLP
601 W. Bannock Street
P O Box 2720
Boise, Idaho 83701-2720

Re: M3 Eagle Application 63-32573
Deposition Schedule

Dear Jeff:

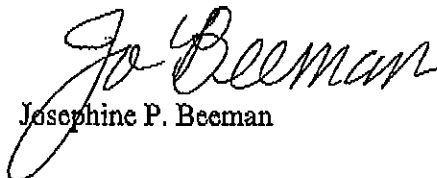
Thank you for your letter of November 17, 2008 (attached) regarding conducting depositions of individuals located in the area that may be impacted by M3 Eagle's Application 63-32573.

As you know, I represent NACGUA, not its individual members. *In Re: Application 63-32573, Order to Consolidate Parties and Default Order*, dated October 7, 2008. Since you intend to conduct depositions of NACGUA members, whom I do not represent individually, I must request on behalf of NACGUA that you serve each of these individual members with a subpoena. Neither NACGUA nor I can be responsible for the attendance of these individuals at any depositions. Without a subpoena, the IDWR rules do not require attendance at a deposition. *In Re: Application 63-32573, Order Denying Motions*, dated November 12, 2008.

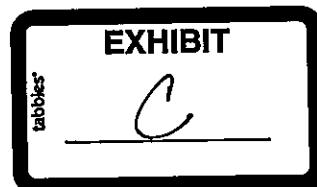
Please feel free to contact me if you have any further questions or concerns.

Sincerely,

BEEMAN & ASSOCIATES, P.C.


Josephine P. Beeman

Attachment
cc: Gary Spackman
NACGUA Board



Filters Used:
1 Tagged Record

Email Report

Form Format

Date Printed: 11/24/2008
Time Printed: 1:07PM
Printed By: LA1

Date 11/21/2008 Time 2:58PM 2:58PM Duration 0.00 (hours) Code
Subject RE: Depositions of individual Protestants Staff Lori L Anderson
Client M3 Companies, LLC, MatRef Water Right Hearing MatNo 8526-4
From Jeffrey C Fereday
To 'Jo Beeman'
CC To Michael P. Lawrence; Gary Spackman (IDWR); John Westra (IDWR Western); Kelsey J. Nunez; Anne Ritter ()
Bcc To
Reminders (days before) Follow N Done N Notify N Hide N Trigger N Private N Status
Email Topic User3
User2 User4

Jo:

I had not planned to subpoena them. As you know, it is customary not to require subpoenas of parties, and I fail to see how they should be necessary in this case. Furthermore, I read Rule 37(d) as requiring a party to attend a deposition after being served with a "proper notice." We have provided such a notice, and each of these deponents is a party/protestant.

I have expected an ordinary, good faith compliance with my depo notices, which have been in these parties' hands for more than 10 days now in most cases. (For example, several were served on Nov. 7, two weeks ago, with the depositions still more than a week away.) As previously explained, I have heard from Mr. Nicolls, whose depo I readily rescheduled to meet his needs. I have not heard from you or from any other of them that they have scheduling conflicts of any kind.

I also informed you of this same early Decembrer deposition schedule in my October 23 letter, in which I asked for your response. You did not respond, and have never informed me that this schedule is a problem. I trust you shared that letter, or at least my schedule, with each of your individual clients/NACGUA members. I know they each received their deposition notices.

Jo, I expect these individuals to show up for their depositions. Please tell me now if you are advising them they do not have to attend unless they are subpoenaed. Also please tell me immediately if you know if any of them are not planning to attend.

By the way, I question whether it is appropriate to include the Hearing Officer on emails such as the two you've sent today, including the one to which this responds. I'm including him on this reply because you have included him.

I need to hear from you immediately.

Jeff

-----Original Message-----

From: Jo Beeman [mailto:jo.beeman@beemanlaw.com]
Sent: Friday, November 21, 2008 2:26 PM
To: Jeffrey C Fereday
Cc: Michael P. Lawrence; Gary Spackman (IDWR); John Westra (IDWR Western); Kelsey J. Nunez; Anne Ritter (NACGUA); David Head (NACGUA); Debbie Gibson (IDWR); Jason Hudson (B&A); Jo Beeman (B&A); Joyce Angell (B&A); Kathy Pennisi (NACFA); Lori Anderson; Office (B&A)
Subject: RE: Depositions of individual Protestants

EXHIBIT

D

Filters Used:
1 Tagged Record

Email Report

Form Format

Date Printed: 11/24/2008
Time Printed: 1:07PM
Printed By: LA1

Jeff,

The depositions you reference are set to begin Monday December 1. All of the individuals have already been served with Notices, and I assume that you are arranging to subpoena them.

Jo

Josephine P. Beeman
Beeman & Associates, P.C.

-----Original Message-----

From: Jo Beeman
Sent: Friday, November 21, 2008 12:31 PM
To: 'Jeffrey C Fereday'
Cc: Michael P. Lawrence; Gary Spackman (IDWR); John Westra (IDWR Western); Kelsey Nunez; Anne Ritter (NACGUA); David Head (NACGUA); Debbie Gibson (IDWR); Jason Hudson (B&A); Jo Beeman (B&A); Joyce Angell (B&A); Kathy Pennisi (NACFA); Lori Anderson (Fereday); Office (B&A)
Subject: RE: Depositions of individual Protestants

Jeff,

The depositions you reference are set to begin Monday December 1, and all of the individuals have already been served with Notices.

I am in the midst of work on a Nov 21 SRBA filing deadline in BWI 92-23, so will respond more fully after 2pm.

Thanks,
Jo

Josephine P. Beeman
Beeman & Associates, P.C.

-----Original Message-----

From: Jeffrey C Fereday [mailto:JeffFereday@givenspursley.com]
Sent: Friday, November 21, 2008 11:21 AM
To: Jo Beeman
Cc: Michael P. Lawrence
Subject: Depositions of individual Protestants

November 21, 2008

Jo:

We received your letter of today's date in which you state that you are not responsible for the attendance of individual NACGUA members at depositions because you represent NACGUA, not its individual members.

Filters Used:
1 Tagged Record

Email Report

Form Format

Date Printed: 11/24/2008
Time Printed: 1:07PM
Printed By: LA1

We disagree with your position and believe it to be inconsistent with the Hearing Officer's October 7 Order to Consolidate Parties and Default Order.

However, our immediate interest is to ensure the deponents' attendance at the depositions for which we have provided notices and scheduled a court reporter. Accordingly, we intend to contact these individual Protestants directly beginning today. We interpret your letter to mean that you do not object to us doing so for this purpose. Please let us know immediately if this is not the case.

Thank you.

Jeff

Jeffrey C. Fereday
Attorney at Law
GIVENS PURSLEY LLP
601 W. Bannock St.
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www.givenspursley.com

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Jeffrey C. Fereday [ISB No. 2719]
Michael P. Lawrence [ISB No. 7288]
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Boise, Idaho 83701-2720
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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 JEFFREY C. FEREDAY IN
SUPPORT OF MOTION FOR ORDER
COMPELLING PARTIES TO ATTEND
SCHEDULED DEPOSITIONS, OR FOR
ISSUANCE OF SUBPOENAS**

State of Idaho)
) ss.
County of Ada)

Jeffrey C. Fereday, being first duly sworn upon oath and upon his personal knowledge,
deposes and states:

1. I am an attorney with Givens Pursley LLP, counsel to Applicant M3 Eagle LLC.
2. On the morning of November 24, 2008, I telephoned one of the Protestants in this case, Steven Purvis, to inquire as to whether he had received a deposition notice from me and whether planned to attend his deposition scheduled for the afternoon of December 1, 2008. Mr. Purvis is listed in this matter as a member of North Ada County Groundwater Users Association ("NACGUA"). In response to my questions, confirmed that he had received the November 7, 2008 deposition notice we had served on him, but that he is not planning to attend his deposition

because he heard from other NACGUA members that attendance was optional. Mr. Purvis stated that he had not heard this from legal counsel. Mr. Purvis also stated that he has no legal representation in this matter, and that only NACGUA has legal counsel. Mr. Purvis stated that he is available, and has no scheduling conflict, on December 1, but he did not commit to attend his deposition.

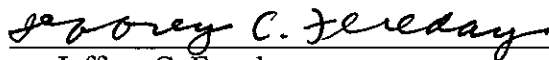
3. On or about November 11, 2008, my assistant received a call from Protestant Mr. Niccolls in which he explained that he had received our November 7 deposition notice but had a scheduling conflict with his proposed deposition date. We immediately rescheduled it and sent him a new deposition notice, with copies to the service list.

4. Other than the above statements from Mr. Purvis and Mr. Niccolls, I have received no notice from any of the scheduled Protestants concerning scheduling or attendance at their depositions. On or about November 10, 2008 I received a telephone call from Protestant John Franden, but John did not raise any scheduling issues concerning his deposition.

5. I have received no notice from counsel for NACGUA that any of these individual Protestant depositions present scheduling conflicts. Nor had counsel informed me earlier of any scheduling conflicts concerning the expert witnesses that were the subject of earlier notices (and the subject of the Hearing Officer's November 12, 2008 Order).

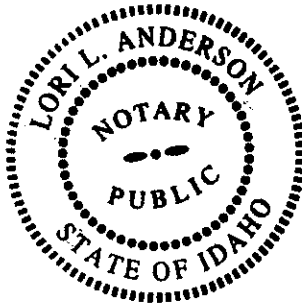
6. The exhibits attached to the accompanying Motion are true and correct copies.

DATED this 24th day of November, 2008.



Jeffrey C. Fereday

Subscribed and sworn to before me this 24th day of November, 2008.



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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of November, 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
 Overnight Mail
 Facsimile
 E-mail

SERVICE

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

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

North Ada County Groundwater Users Association
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. Wood
M. Howard Goldman
Timothy R. Milburn
3145 Osprey Road
Eagle, ID 83616

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

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

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

Alan Smith
3135 N. Osprey Road
Eagle, ID 83616

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

Jeffrey C. Fereday
Jeffrey C. Fereday

Rec'd 12/4/08
by email

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)
FOR PERMIT NO. 63-32573,)
IN THE NAME OF M3 EAGLE, LLC)
_____)**

**AFFIDAVIT OF NORM YOUNG
IN SUPPORT OF NACGUA'S REPLY
TO M3 EAGLE'S RESPONSE TO
NACGUA'S MOTION FOR STAY,
AND LIMITED DISCOVERY FOR
PURPOSES OF SETTLEMENT**

STATE OF IDAHO)
) ss:
COUNTY OF ADA)

I, Norm Young, after first being duly sworn upon oath, depose and state that:

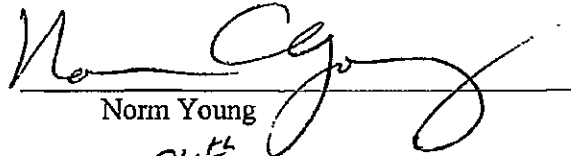
1. I am over 18, a resident of the State of Idaho, and am employed by ERO Resources Corporation, a business consisting of natural resource and environmental consultants,
2. I used the water right information available on IDWR's webpage to research applications for permit and permits issued within the past 5 years to appropriate ground water within Administrative Basin 63 (Boise River and Tributaries).
3. Exhibit A is a true and correct copy of the search report showing applications for permit pending in Basin 63 for diversion of ground water with a diversion rate greater than 1.0 cfs with a priority date earlier than the application filed by M3 Eagle LLC (November 21, 2006). This report identifies 26 applications seeking a total of 90.7 cfs.

4. Exhibit B is a true and correct copy of the search report showing permits issued to appropriate ground water within Basin 63 during the past 5 years for which the diversion rate exceeds 1 cfs. This report identifies 89 permits authorizing diversion of 297.9 cfs.

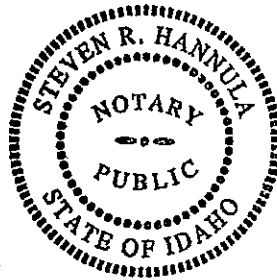
5. The total annual discharge of ground water from aquifers within the lower Boise River Basin has been estimated at about 800,000 acre feet per year (or approximately 1100 cfs), including gains to the Boise River and other surface streams subject to diversion under decreed and licensed rights from those sources (Ref. "Characterization of Ground Water Flow in the Lower Boise River Basin," Idaho Water Resources Research Institute Research Report IWRRI-2004-1, page 47).

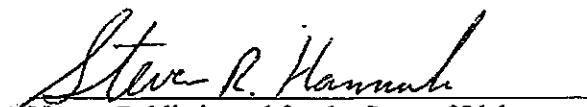
FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 24th day of November 2008.


Norm Young

SUBSCRIBED AND SWORN to before me this 24th day of November 2008.




Notary Public in and for the State of Idaho
My Commission Expires: 8-18-11

CERTIFICATE OF SERVICE

I certify that on this 24th day of November 2008, 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
(Fax and Email)

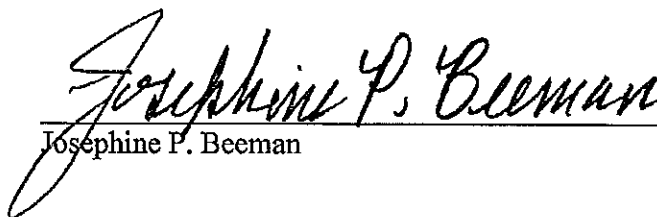
John Westra
IDWR Western
2735 Airport Way
Boise ID 83705
(Email)

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

Jeffery Fereday
Givens Pursley LLP
P. O. Box 2720
Boise ID 83701
(Email)

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

IDWR Water Right and Adjudication Search

Note: This search tool identifies active water rights and active transfers. If you want to search both active and inactive water rights, please check the box below.

Search for both active and inactive water right records.

Search Results

Type of Query	
<input type="checkbox"/> All SRBA & Water Rights	
<input type="checkbox"/> SRBA <input type="checkbox"/> Claims <input type="checkbox"/> Recommendations <input type="checkbox"/> Both	Water Rights <input checked="" type="checkbox"/> Applications <input type="checkbox"/> Permits <input type="checkbox"/> Decrees, Licenses and Statutory Claims <input type="checkbox"/> Transfers <input type="checkbox"/> All of the above

Query parameters:

basinFrom = 63
 DiversionMin = 1.0
 DiversionMax = 1000
 Source = Ground Water
 Search for: active Records
 POD = 1

Information for type: Application

Record	Basin	Sequence	Suffix	Version	Basis	Status	Priority Date	Diversion Rate	Source List	Water Uses	Owner List
1	63	11460				Active	1991-02-25	2.96	GROUND WATER	IRRIGATION	YAMAMOTO, CHRIS (Current)
2	63	11791				Active	1992-04-21	2.5	GROUND WATER, UNNAMED DRAIN	AESTHETIC, AESTHETIC STORAGE, DIVERSION TO STORAGE	MEADOW CREEK HOMES ASSN (Current Owner)
3	63	11866				Active	1992-06-16	2.2	GROUND WATER	IRRIGATION	BATT, REED (Current)
4	63	11976				Active	1993-01-19	1.6	GROUND WATER	IRRIGATION	TEUNISSEN FAMILY TRUST (Current); TEUNISSEN FAMILY TRUST DTD 1-8-1990 (Current)

5	63	12260				Active	1995-07-21	1.12	GROUND WATER	IRRIGATION	MAYFIELD SPRINGS WATER CO INC (Current)
6	63	12329				Active	1996-03-25	3.8	GROUND WATER	IRRIGATION	DILLER MILLER LAND COMPANY LLC (Current)
7	63	12333				Active	1996-04-04	1.96	GROUND WATER	IRRIGATION	DARLING INTERNATIONAL INC (Current)
8	63	12448				Active	1998-04-08	3.25	GROUND WATER	MUNICIPAL	CITY OF EAGLE (Current)
9	63	12505				Active	1999-01-19	2	GROUND WATER	COMMERCIAL	TELLERIA, PATRICK (Current)
10	63	12510				Active	1999-03-12	1	GROUND WATER	COMMERCIAL, STOCKWATER	VANDERWOUDE, BRIDGET (Current); VANDERWOUDE, GEORGE (Current)
11	63	12519				Active	1999-03-23	1	GROUND WATER	COMMERCIAL, DOMESTIC, STOCKWATER	P&L DOORNENBAL DAIRY LLP (Current)
12	63	12540				Active	1999-06-24	1.1	GROUND WATER	IRRIGATION	THE TERTELING CO INC (Current)
13	63	12546				Active	1999-09-02	8.93	GROUND WATER	IRRIGATION	TYSON FOODS, INC (Current)
14	63	12571				Active	2000-02-02	1.6	GROUND WATER	IRRIGATION	DOYLE, CHRISTOPHER E (Current)
15	63	31133				Active	2000-12-19	1.2	GROUND WATER	COMMERCIAL, IRRIGATION	ARENA VALLEY VINEYARDS LLC (Current)
16	63	31207				Active	2001-03-28	1.1	GROUND WATER	DOMESTIC, INDUSTRIAL	I W LAND CO (Current)
17	63	31406				Active	2002-01-18	2	GROUND WATER	MUNICIPAL	UNITED WATER IDAHO INC (Current)

18	63	31563				Active	2002-09-25	1	GROUND WATER	IRRIGATION	HIGHPLAINS ESTATES SUBDIVISIONS HOA INC (Current)
19	63	31969				Active	2004-06-09	5	GROUND WATER	MUNICIPAL	STAR SEWER & WATER DISTRICT (Current)
20	63	32064				Active	2004-06-18	3.4	GROUND WATER	MUNICIPAL	CITY OF NAMPA (Current)

Information for type: Application

Record	Basin	Sequence	Suffix	Version	Basis	Status	Priority Date	Diversion Rate	Source List	Water Uses	Owner List
21	63	32089				Active	2005-01-19	4	GROUND WATER	MUNICIPAL	CITY OF EAGLE (Current)
22	63	32090				Active	2005-01-19	4.9	GROUND WATER	MUNICIPAL	CITY OF EAGLE (Current)
23	63	32237				Active	2005-12-16	2.11	GROUND WATER	IRRIGATION	JOHNSON RESEARCH LLC (Current)
24	63	32423				Active	2006-08-22	5	GROUND WATER	MUNICIPAL	JMM DRY CREEK LLC (Current)
25	63	32499				Active	2006-07-28	10	GROUND WATER	MUNICIPAL	MAYFIELD TOWNSITE LLC (Current)
26	63	32535				Active	2006-10-12	16	GROUND WATER	MUNICIPAL	BONNEVILLE PROPERTIES LLC (Current)

IDWR Water Right and Adjudication Search

Note: This search tool identifies active water rights and active transfers. If you want to search both active and inactive water rights, please check the box below.

Search for both active and inactive water right records.

Search Results

Type of Query	
<input type="checkbox"/> All SRBA & Water Rights	
SRBA	Water Rights
<input type="checkbox"/> Claims	<input type="checkbox"/> Applications
<input type="checkbox"/> Recommendations	<input checked="" type="checkbox"/> Permits
<input type="checkbox"/> Both	<input type="checkbox"/> Decrees, Licenses and Statutory Claims
	<input type="checkbox"/> Transfers
	<input type="checkbox"/> All of the above

Query parameters:

basinFrom = 63
 DiversionMin = 1.0
 DiversionMax = 1000
 PermitApprovedDateFrom = 11/24/2003
 PermitApprovedDateTo = 11/24/2008
 Source = Ground Water
 Search for: active Records
 POD = 1

Information for type: Permit

Record	Basin	Sequence	Suffix	Version	Basis	Status	Priority Date	Diversion Rate	Source List	Water Uses	Owner List
1	63	11677				Active	1992-02-10	1.28	GROUND WATER	IRRIGATION	SYMMS FRUIT RANCH INC (Current)
2	63	11686				Active	1992-03-04	1.6	GROUND WATER	IRRIGATION	FARGO FARMS INC (Current)
3	63	11691				Active	1992-03-05	2	GROUND WATER	IRRIGATION	GARMAN, STEPHEN KENT (Current)

Exhibit B

4	63	11696				Active	1992-03-06	1.56	GROUND WATER	IRRIGATION	DURRANT, C RUSSELL (Current)
5	63	11716				Active	1992-03-13	1.6	GROUND WATER	IRRIGATION	LAW, NORMAN E (Current); LAW, RHEA P (Current)
6	63	11741				Active	1992-05-22	2.3	GROUND WATER	IRRIGATION	PORTER, FRANCES (Current); PORTER, PAUL W (Current)
7	63	11754				Active	1992-04-06	1.48	GROUND WATER	IRRIGATION	FARNER, TOM (Current)
8	63	11756				Active	1992-03-18	3.7	GROUND WATER	IRRIGATION	J R SIMPLOT CO (Current)
9	63	11763				Active	1992-04-08	3	GROUND WATER	IRRIGATION	EGGERS, DREW F (Current); EGGERS, JOANN (Current)
10	63	11769				Active	1992-04-14	1.4	GROUND WATER	IRRIGATION	GREENFIELD, JEAN M (Current); GREENFIELD, JOHN (Current)
11	63	11772				Active	1992-04-15	2.19	GROUND WATER	IRRIGATION	MILLER LAND CO INC (Current)
12	63	11773				Active	1992-04-16	1.18	GROUND WATER	DOMESTIC, IRRIGATION	TRACY, MARK S (Current); TRACY, SUSAN (Current)

13	63	11777				Active	1992-04-17	8.1	GROUND WATER	IRRIGATION	TLUCEK, JERRY L (Current); TLUCEK, MARY LOUISE (Current)
14	63	11797				Active	1992-04-16	1.8	GROUND WATER	IRRIGATION	PROESCH, ROBERT M (Current)
15	63	11803				Active	1992-04-29	1.5	GROUND WATER	IRRIGATION	WILLIAMSON ORCHARDS (Current)
16	63	11819				Active	1992-05-07	1.9	GROUND WATER	IRRIGATION	J C WATSON CO INC (Current)
17	63	11830				Active	1992-05-14	2	GROUND WATER	IRRIGATION	ALDER, KATHRYN (Current); ALDER, NORMAN C (Current)
18	63	11834				Active	1992-05-18	2.4	GROUND WATER	IRRIGATION	TAYLOR, CHARLES B (Current)
19	63	11865				Active	1992-06-15	2	GROUND WATER	IRRIGATION	HENNIS, JESS (Current)
20	63	11892				Active	1992-06-29	3.2	GROUND WATER	IRRIGATION	J & S FARMS INC (Current)

Record	Basin	Sequence	Suffix	Version	Basis	Status	Priority Date	Diversion Rate	Source List	Water Uses	Owner Li
21	63	11911				Active	1992-08-10	1.3	GROUND WATER	IRRIGATION	LESTER, HAROLD H (Current)

22	63	11933				Active	1992-09-28	3	GROUND WATER	IRRIGATION	ASCUAGA FARMS INC (Current)
23	63	11980				Active	1992-12-23	2.78	GROUND WATER	IRRIGATION	GARMAN, STEPHEN KENT (Current)
24	63	12007				Active	1993-04-14	3.4	GROUND WATER	IRRIGATION, STOCKWATER	JOHNSON I MIERS C (Current)
25	63	12090				Active	1993-12-17	3.55	GROUND WATER	DOMESTIC, IRRIGATION, STOCKWATER	SCHMID, II E (Current); SCHMID, JAMES E (Current); SCHMID, W ALLEN (Current); SCHMID, W JOE (Current)
26	63	12097				Active	1994-01-26	2.3	GROUND WATER	IRRIGATION	WILSON PROPERTIES LP (Current)
27	63	12161				Active	1994-11-21	1	GROUND WATER	IRRIGATION	GREENFIELD VERNON D (Current)
28	63	12187				Active	1995-03-08	2.66	GROUND WATER	AESTHETIC STORAGE, IRRIGATION	PACIFIC LINKS LIMITED LIABILITY COMPANY (Current)
29	63	12207				Active	1995-05-08	2.76	GROUND WATER	IRRIGATION	THORNTON LAYNE (Current)
30	63	12211				Active	1995-05-11	1.8	GROUND WATER	IRRIGATION	THORNTON LAVAR (Current)

31	63	12225				Active	1995-06-30	4.46	GROUND WATER	FIRE PROTECTION	DEER FLAT FREE METHODIST CHURCH (Current)
32	63	12253				Active	1995-06-02	2.78	GROUND WATER	IRRIGATION	THORNTON LAVAR (Current)
33	63	12254				Active	1995-07-31	3.25	GROUND WATER	IRRIGATION	THORNTON LAVAR (Current)
34	63	12255				Active	1995-07-31	1.77	GROUND WATER	IRRIGATION	THORNTON LANDS LTD (Current)
35	63	12319				Active	2004-06-21	1	GROUND WATER	COMMERCIAL, STOCKWATER	TROOST, GREGORY (Current)
36	63	12389				Active	1997-03-03	1.06	GROUND WATER	IRRIGATION	SLEGGERS, JAMES (Current); SLEGGERS, MARY ANN (Current)
37	63	12503				Active	1998-12-29	3.2	GROUND WATER	IRRIGATION	BARNES, ROY M (Current)
38	63	31145				Active	2001-01-25	4	GROUND WATER	IRRIGATION	GOODELL, MICHAEL J (Current)
39	63	31406				Active	2002-01-18	2	GROUND WATER	MUNICIPAL	UNITED WATER IDAHO INC (Current)
40	63	31677				Active	2003-04-18	5	GROUND WATER	MUNICIPAL	CITY OF MERIDIAN (Current)

Record	Basin	Sequence	Suffix	Version	Basis	Status	Priority Date	Diversion Rate	Source List	Water Uses	Owner
41	63	31741				Active	2003-06-26	18	GROUND WATER	MUNICIPAL	CITY OF (Current)
42	63	31770				Active	2003-09-10	1	GROUND WATER, UNNAMED STREAM	AESTHETIC STORAGE, DIVERSION TO STORAGE, FIRE PROTECTION FROM STORAGE, FIRE PROTECTION STORAGE, RECREATION STORAGE	SHARP, S ADAMS (
43	63	31785				Active	2003-10-09	3.3	GROUND WATER	FIRE PROTECTION	CORP OF PRESID BISHOP (
44	63	31786				Active	2003-10-09	3.3	GROUND WATER	FIRE PROTECTION	CORP OF PRESID BISHOP (
45	63	31787				Active	2003-08-15	1	GROUND WATER	MUNICIPAL	CITY OF GREENLI (Current)
46	63	31807				Active	2003-11-04	2	GROUND WATER	COMMERCIAL, DOMESTIC, FIRE PROTECTION	TOWN R/ LP (Curre
47	63	31810				Active	2003-10-06	5	GROUND WATER	MUNICIPAL	CAPITOL WATER C (Current)
48	63	31817				Active	2003-10-28	4.9	GROUND WATER	MUNICIPAL	CITY OF CALDWE (Current)

49	63	31830				Active	2003-10-27	2.64	GROUND WATER	DOMESTIC, FIRE PROTECTION	IFI PARTI (Current)
50	63	31858				Active	2004-02-23	4.9	GROUND WATER	MUNICIPAL	CITY OF MERIDIA (Current)
51	63	31859				Active	2004-04-06	2.2	GROUND WATER	DOMESTIC	LOCHSA LLC (Curr
52	63	31862				Active	2004-01-29	3.26	GROUND WATER	DOMESTIC	HILLSDA ESTATES HOMES A INC (Curr Owner)
53	63	31884				Active	2003-12-03	2.23	GROUND WATER	DOMESTIC, FIRE PROTECTION	L222-3 SUMMER LLC (Curr
54	63	31889				Active	2004-02-02	3.34	GROUND WATER	FIRE PROTECTION	VALLIV SCHOOL DISTRICT (Current)
55	63	31932				Active	2004-04-20	3.34	GROUND WATER	FIRE PROTECTION	CORP OF PRESIDIN BISHOP (
56	63	31949				Active	2004-06-14	3.4	GROUND WATER	MUNICIPAL	CITY OF (Current)
57	63	31966				Active	2004-05-21	5	GROUND WATER	MUNICIPAL	SUNCOR LLC (Curr
58	63	31969				Active	2004-06-09	5	GROUND WATER	MUNICIPAL	STAR SE WATER DISTRICT (Current)
59	63	31982				Active	2004-08-04	1.11	GROUND WATER	FIRE PROTECTION	BULLOCI INVESTM LLC (Curr
60	63	31987				Active	2004-07-14	1.12	GROUND	FIRE	CORTLOI

										WATER	PROTECTION	DEVELOP (Current)
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Record	Basin	Sequence	Suffix	Version	Basis	Status	Priority Date	Diversion Rate	Source List	Water Uses	Owner I
61	63	31995				Active	2004-06-03	5.57	GROUND WATER	FIRE PROTECTION	BC SIX LLC (Current)
62	63	32049				Active	2004-11-08	4.2	GROUND WATER	INDUSTRIAL, IRRIGATION	BOISE VALLEY FEEDERS LLC (Current)
63	63	32061				Active	2005-01-25	5	GROUND WATER	MUNICIPAL	AVIMOR LLC (Current)
64	63	32083				Active	2005-02-10	4.9	GROUND WATER	MUNICIPAL	CITY OF MERIDIAN (Current)
65	63	32103				Active	2004-04-20	1	GROUND WATER	COMMERCIAL	SORRENTO LACTALIS LLC (Current)
66	63	32107				Active	2005-05-06	4.9	GROUND WATER	MUNICIPAL	CITY OF CALDWELL (Current)
67	63	32157				Active	2005-05-23	4.9	GROUND WATER	MUNICIPAL	CITY OF CALDWELL (Current)
68	63	32181				Active	2005-05-05	4.66	GROUND WATER	DOMESTIC, FIRE PROTECTION	BLACKROCK (Current)
69	63	32182				Active	2005-08-15	5	GROUND WATER	MUNICIPAL	CITY OF MIDDLETON (Current)
70	63	32185				Active	2005-03-29	4.8	GROUND WATER	DIVERSION TO STORAGE, WILDLIFE, WILDLIFE	STATE OF IDAHO (Current)

										STORAGE	
71	63	32221				Active	2005-10-07	4	GROUND WATER	MUNICIPAL	CITY OF PA (Current)
72	63	32225				Active	2005-09-16	10	GROUND WATER	MUNICIPAL	INTERMOU SEWER & W CORP (Curre
73	63	32228				Active	2005-11-15	4.9	GROUND WATER	MUNICIPAL	CITY OF CALDWELI (Current)
74	63	32244				Active	2006-02-03	3.34	GROUND WATER	DOMESTIC, FIRE PROTECTION	CANYON COUNTY L/ ESTATES LJ (Current)
75	63	32245				Active	2005-12-14	3.79	GROUND WATER	DOMESTIC, FIRE PROTECTION	PEACHTRE DEVELOPM LLC (Curren
76	63	32258				Active	2005-11-18	3.74	GROUND WATER	DOMESTIC, FIRE PROTECTION	THE ORCH/ LLC (Curren
77	63	32268				Active	2006-01-18	4.72	GROUND WATER	DOMESTIC, FIRE PROTECTION	BACKLUNI MIKE (Curre
78	63	32337				Active	2005-12-12	5	GROUND WATER	MUNICIPAL	CITY OF NA (Current)
79	63	32358				Active	1992-03-06	1.51	GROUND WATER	IRRIGATION	CITY OF NA (Current)
80	63	32365				Active	2006-07-18	4.36	GROUND WATER	DOMESTIC, FIRE PROTECTION	BPB DEVELOPM CORP (Curre

Record	Basin	Sequence	Suffix	Version	Basis	Status	Priority Date	Diversion Rate	Source List	Water Uses	Owner Lis
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81	63	32367				Active	2006-06-14	4.9	GROUND WATER	MUNICIPAL	CITY OF CALDWELL (Current)
82	63	32388				Active	2006-07-26	5	GROUND WATER	MUNICIPAL	CITY OF MIDDLETON (Current)
83	63	32545				Active	2007-09-12	4.05	GROUND WATER	DOMESTIC, FIRE PROTECTION	BARRON DEVELOPME LLC (Current)
84	63	32549				Active	2006-09-26	3.34	GROUND WATER	DOMESTIC, FIRE PROTECTION	RAWLINGS, RICHARD T (Current)
85	63	32599				Active	2006-03-07	4.52	GROUND WATER	DOMESTIC, FIRE PROTECTION	TUSCANY HILLS LLC (Current)
86	63	32610				Active	2006-12-12	3.34	GROUND WATER	DOMESTIC, FIRE PROTECTION	GRAY, CARC (Current); GR. ROBERT (Current)
87	63	32809				Active	2007-01-16	3.63	GROUND WATER	DOMESTIC, FIRE PROTECTION	KEYSTONE INVESTMEN GROUP LLC (Current)
88	63	32981				Active	2008-02-21	2.23	GROUND WATER	MUNICIPAL	COUNTY OF CANYON (Current)
89	63	32988				Active	2008-02-19	1.28	GROUND WATER	DOMESTIC	BPB DEVELOPME CORP (Current)

Number of records = 89

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
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www.givenspursley.com
Attorneys for M3 Eagle LLC

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NOV 24 2008

Department of Water Resources

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

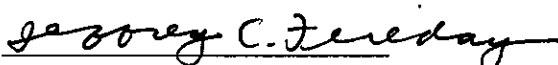
IN THE MATTER OF APPLICATION
FOR PERMIT NO. 63-32573 IN THE
NAME OF M3 EAGLE LLC

NOTICE OF SERVICE

M3 Eagle LLC ("M3 Eagle"), through its counsel Givens Pursley LLP, and pursuant to Rules 33(a)(5) and 34(d) and 36(c) of the Idaho Rules of Civil Procedure, hereby gives notice to all parties and counsel of record that *M3 Eagle's Responses to NACGUA's Interrogatories, Requests for Production, and Requests for Admission* ("Discovery Responses") was served upon North Ada County Groundwater Users Association's ("NACGUA") counsel on November 24, 2008. Pursuant to the Hearing Officer's October 7, 2008 Order to Consolidate Parties and Default Order, M3 Eagle believes service upon NACGUA's counsel constitutes service to NACGUA's individual members. As a courtesy, M3 Eagle also has served the Discovery Responses on Protestants Bill Lawton, Norman Edwards, and Alan Smith.

Dated this 24th day of November, 2008.

GIVENS PURSLEY LLP


Jeffrey C. Fereday

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of November, 2008, the foregoing was filed, served, or copied as follows:

NOTICE OF SERVICE AND DISCOVERY RESPONSES

North Ada County Groundwater Users Association	<u> X </u>	U. S. Mail
Josephine P. Beeman	<u> </u>	Hand Delivered
Beeman & Associates PC	<u> </u>	Overnight Mail
409 West Jefferson	<u> </u>	Facsimile
Boise, ID 83702-6049	<u> X </u>	E-mail

Bill Lawton, Spokesman for	<u> X </u>	U. S. Mail
Robert L and Kip C. Wood	<u> </u>	Hand Delivered
M. Howard Goldman	<u> </u>	Overnight Mail
Timothy R. and Judy L. Milburn	<u> </u>	Facsimile
3145 Osprey Road	<u> </u>	E-mail
Eagle, ID 83616		

Norman Edwards	<u> X </u>	U. S. Mail
884 W. Beacon Light Road	<u> </u>	Hand Delivered
Eagle, ID 83616	<u> </u>	Overnight Mail
	<u> </u>	Facsimile
	<u> </u>	E-mail

Alan Smith	<u> X </u>	U. S. Mail
3135 N. Osprey Road	<u> </u>	Hand Delivered
Eagle, ID 83616	<u> </u>	Overnight Mail
	<u> </u>	Facsimile
	<u> </u>	E-mail

NOTICE OF SERVICE

Idaho Department of Water Resources	<u> X </u>	U. S. Mail
Attn: Gary L. Spackman	<u> </u>	Hand Delivered
322 East Front Street	<u> </u>	Overnight Mail
P.O. Box 83720	<u> </u>	Facsimile
Boise, ID 83720-0098	<u> </u>	E-mail

John Westra	<u> X </u>	U. S. Mail
Western Regional Office	<u> </u>	Hand Delivered
Idaho Department of Water Resources	<u> </u>	Overnight Mail
2735 Airport Way	<u> </u>	Facsimile
Boise, ID 83705-5082	<u> </u>	E-mail

Jeffrey C. Fereday
Jeffrey C. Fereday

FAX COVER SHEET

November 21, 2008

TO: Gary Spackman

FAX: 287-6700

FROM: Jo Beeman

RE: M3 Eagle Application 63-32573

Please see attached copy of NACGUA's November 21 letter to M3 Eagle's counsel regarding depositions.

The information contained in this facsimile is confidential information or attorney work product or both and is for the exclusive use of the intended recipient listed above. Any reading, disclosure, use or reproduction of this communication other than by the intended recipient is prohibited. If you have received this communication in error, please notify us by collect telephone call immediately and return the communication to us by U. S. Mail.

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IF ALL PAGES ARE NOT RECEIVED, PLEASE CALL JOYCE AT (208) 331-0950.

ORIGINAL BY MAIL: YES _____ NO X

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Josephine P. Beeman
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Phone (208) 331-0950
Fax (208) 331-0954
office@beemanlaw.com

November 21, 2008

Via Fax 388-1300 and Email

Jeffrey C. Fereday, Esq.
Givens Pursley LLP
601 W. Bannock Street
P O Box 2720
Boise, Idaho 83701-2720

Re: M3 Eagle Application 63-32573
Deposition Schedule

Dear Jeff:

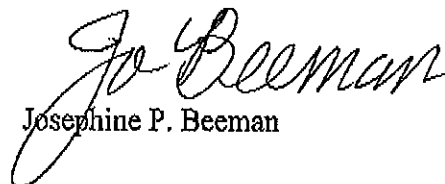
Thank you for your letter of November 17, 2008 (attached) regarding conducting depositions of individuals located in the area that may be impacted by M3 Eagle's Application 63-32573.

As you know, I represent NACGUA, not its individual members. *In Re: Application 63-32573, Order to Consolidate Parties and Default Order*, dated October 7, 2008. Since you intend to conduct depositions of NACGUA members, whom I do not represent individually, I must request on behalf of NACGUA that you serve each of these individual members with a subpoena. Neither NACGUA nor I can be responsible for the attendance of these individuals at any depositions. Without a subpoena, the IDWR rules do not require attendance at a deposition. *In Re: Application 63-32573, Order Denying Motions*, dated November 12, 2008.

Please feel free to contact me if you have any further questions or concerns.

Sincerely,

BEEMAN & ASSOCIATES, P.C.


Josephine P. Beeman

Attachment
cc: Gary Spackman
NACGUA Board

GIVENS PURSLEY LLP

LAW OFFICES
601 W. Sannock 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
EMAIL: JeffFereday@givenspursley.com

Gary G. Allen	Steven J. Hippler	Deborah E. Nelson
Peter G. Barton	Dabara K. Kristensen	Kelsey J. Nuraz
Christopher J. Eason	Anne C. Kuntel	W. Hugh O'Riordan, LL.M.
Chih R. Bolinder	Jeremy G. Ledle	Angela M. Reed
Erik J. Bolinder	Michael F. Lawrence	Justin A. Steiner
Jeremy D. Chou	Franklin G. Lee	Scott A. Tsching, LL.M.
William C. Cole	David R. Lombardi	J. Will Varin
Michael C. Creamer	John M. Marshall	Conley E. Ward
Amber N. Dins	Kenneth R. McGuire	Robert E. White
Elizabeth M. Dorick	Kelly Greene McConnell	
Kristin Bjorkman Dunn	Cynthia A. Meffle	RETIRED
Thomas E. Dvorak	Christopher H. Meyer	Kenneth L. Pursley
Jeffrey C. Fereday	L. Edward Miller	James A. McClure
Justin C. Freidin	Patrick J. Miller	Raymond D. Givens (1917-2008)
Marin C. Hendrickson	Judeon B. Montgomery	

November 17, 2008

Ms. Josephine P. Beeman
Beeman & Associates PC
409 West Jefferson
Boise, ID 83702-6049

Re: Deposition Schedule

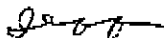
Dear Jo:

I am writing to confirm the dates for my proposed depositions of several of the protestants you represent through NACGUA. I have provided you with their deposition notices already, but a schedule is attached. Please let me know immediately if any of these dates do not work for you or them.

One of your clients, Mr. Niccolls, contacted me immediately after he got his deposition notice and informed me of a scheduling conflict he had. I rescheduled to accommodate him. I have not heard from any others as to their schedules, so I assume there are no problems.

We anticipate receiving your expert reports on November 26. Thanks for providing Dr. Ralston's November 6, 2008 memorandum, which I take it will be a part of his report. We will look to that, and whatever supplemental information he provides on the 26th, as the facts he knows and the opinions he holds concerning this matter.

Sincerely,



Jeffrey C. Fereday

Enclosure

JCF:la S:\CLIENTS\8326\WCF to Beeman re depo.DOC
cc: William Brownlee
Gerry Robbins
Ed Squires

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M3 EAGLE**DEPOSITION SCHEDULE****Tuesday, November 11, 2008**

8:00 a.m. Deposition Alan Smith – Givens Pursley (Pahsimeroi Conf. Rm.)
10:30 a.m. Deposition Bill Lawton – Givens Pursley (Pahsimeroi Conf. Rm.)

Friday, November 14, 2008

8:30 a.m. Deposition of Norman Young – Givens Pursley (Pahsimeroi Conf. Rm.)
1:00 p.m. Deposition of Paul Drury – Givens Pursley (Pahsimeroi Conf. Rm.)
(NACGUA Experts) (CANCELLED)

Monday, November 17, 2008

8:30 a.m. Deposition of Steven Hannula – Givens Pursley (Pahsimeroi Conf. Rm.)
1:00 p.m. Deposition of Dale Ralston – Givens Pursley (Pahsimeroi Conf. Rm.)
(NACGUA Experts) (CANCELLED)

Monday, December 1, 2008

8:00 a.m. Deposition of Timothy Milburn – Givens Pursley (Pahsimeroi)
10:30 a.m. Deposition of Richard Lagerstrom – Givens Pursley (Pahsimeroi)
1:00 p.m. Deposition of Shelby Conrad – Givens Pursley (Pahsimeroi)
3:30 p.m. Deposition of Steven Purvis – Givens Pursley (Pahsimeroi)

Tuesday, December 2, 2008

8:00 a.m. Deposition of Anne Ritter – Givens Pursley (Pahsimeroi)
10:30 a.m. Deposition of George Keyes – Givens Pursley (Pahsimeroi)
1:00 p.m. Deposition of Linda Burke – Givens Pursley (Pahsimeroi)
3:30 p.m. Deposition of John Thornton – Givens Pursley (Pahsimeroi)

Wednesday, December 3, 2008

8:00 a.m. Deposition of Sherri Randall – Givens Pursley (Pahsimeroi)
10:30 a.m. Deposition of David Head – Givens Pursley (Pahsimeroi)
1:00 p.m. Deposition of Stephen Dick – Givens Pursley (Pahsimeroi)
3:30 p.m. Deposition of John Franden – Givens Pursley (Pahsimeroi)

Thursday, December 4, 2008

8:00 a.m. Deposition of John Petrovsky – Givens Pursley (Pahsimeroi)
10:30 a.m. Deposition of Morgan Masner – Givens Pursley (Pahsimeroi)
1:00 p.m. Deposition of Barrett Jones – Givens Pursley (Pahsimeroi)
3:30 p.m. Deposition of Bruce Richardson – Givens Pursley (Pahsimeroi)

Monday, December 8, 2008

10:30 a.m. Deposition of Robert Niccolls – Givens Pursley (Pahsimeroi) (Amended)