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Scott A. Tschirgi, LL.M.  
J. Will Varin  
Conley E. Ward  
Robert B. White

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

Via Hand Delivery

June 25, 2008

RECEIVED

JUN 25 2008

DEPARTMENT OF  
WATER RESOURCE

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

Re: M3 Eagle LLC Application for Permit No. 63-32573

Dear Mr. Spackman:

On behalf of Jeff Fereday, I am enclosing the original and a copy of M3 Eagle's Motion and Memorandum for Order Authorizing Discovery, Confirming Rules as to Appearances and Representation, and Scheduling Prehearing Conference along with a proposed order for the same. Kindly file the original and return a conformed copy with our runner. I will also be sending you the proposed Order in Word format for ease in editing, if needed, and including the prehearing conference date. Should you have any concerns, you may contact us.

Sincerely,



Lori Anderson  
Assistant to Jeffrey C. Fereday

Enclosures

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RECEIVED

JUN 25 2008

DEPARTMENT OF  
WATER RESOURCES

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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

**M3 EAGLE'S MOTION AND  
MEMORANDUM FOR ORDER  
AUTHORIZING DISCOVERY,  
CONFIRMING RULES AS TO  
APPEARANCES AND  
REPRESENTATION, AND  
SCHEDULING PREHEARING  
CONFERENCE**

Pursuant to Idaho Department of Water Resources Rules 520, 521, 202, and 510, IDAPA 37.01.01.520, 521, 202, and 510, Applicant M3 Eagle LLC ("M3 Eagle"), through Jeffrey C. Fereday and Michael P. Lawrence of the firm Givens Pursley LLP, hereby submits this Motion, supported by the Memorandum that follows.

**Motion**

M3 Eagle hereby moves the Hearing Officer for an order:

1) authorizing the parties to begin immediately to conduct discovery in this matter through depositions and written requests and interrogatories (Rules 520 and 521);

2) confirming that each of the Protestants must either represent himself or herself or be represented by a duly authorized employee, attorney, or family member (Rule 202); and

3) scheduling a prehearing conference in this matter (Rule 510). M3 Eagle suggests that the prehearing conference be convened within the next thirty to forty-five days.

A proposed order is attached, and also has been forwarded via email to the Hearing Officer in Word format.

### Memorandum

1. Discovery. Discovery is appropriate in this matter to determine the bases for numerous protests, the interests or injury alleged by the Protestants, and the facts that support both sides' positions. There is no reason to delay the start of discovery, and no need to await a pre-hearing conference to initiate discovery (although, as noted below, M3 Eagle would anticipate a discovery cut-off date would be agreed upon at the pre-hearing conference). Indeed, due to the large number of individual Protestants, it is conceivable that without an order from the Hearing Officer, there could be significant delays even in getting this matter to pre-hearing conference. Discovery is the most efficient way for the parties to determine the substance of the other's positions, and it should begin without delay. In the interests of moving this case forward as efficiently as possible, M3 Eagle respectfully requests that the Hearing Officer authorize discovery to begin immediately.

2. Appearances and representation. Most of the Protestants submitted their protests on identical forms naming David Head as their representative and listing his address on Stillwell Drive in Eagle as their address for service in this matter. M3 Eagle believes that Mr. Head is not an attorney, and has neither an employer-employee nor a familial relationship with any other Protestant. If this is the case, under Rule 202 Mr. Head cannot appear for or represent anyone other than himself in this matter, and each individual Protestant likewise must appear and represent himself or herself individually. Because the Protestants evidently are not aware of this Rule, M3 Eagle requests that the Hearing Officer issue an order confirming the Protestants'

obligations concerning appearance and representation. M3 Eagle is opposed to the Protestants appearing or having representation that is contrary to the Rule.

As noted, most Protestants did not provide their own addresses for service and instead listed Mr. Head's address at 855 Stillwell Drive in Eagle as their address for service. Rule 202 does not prohibit a joint address for service. However, we respectfully request that the Hearing Officer, in an order addressing the appearance and representation issue, also clarify whether the Stillwell address should continue to be used for Protestants other than Mr. Head. Pending clarification from the Hearing Officer, M3 Eagle is serving this pleading on Protestants at the addresses we currently have on file.

3. Pre-hearing conference. M3 Eagle requests that a pre-hearing conference be convened as soon as is reasonably possible. Because of the large number of Protestants, it is possible that a suitable date will be difficult to nail down. This, indeed, is one of the reasons why legal representation, particularly of a group evidently holding the same or similar positions, would be appropriate. In any event, M3 Eagle would appreciate a pre-hearing conference in the next 30 to 45 days, if possible.

DATED this 25th day of June, 2008.

Respectfully submitted,

GIVENS PURSLEY LLP

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

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on June 25, 2008, the foregoing was filed, served, or copied as follows:

**ORIGINAL 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  
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M3 Eagle LLC  
533 E. Riverside Drive, Suite 110  
Eagle, ID 83616

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

David Head  
North Ada County Foothills Association  
855 Stillwell Drive  
Eagle, ID 83616

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

John and Cathy Thornton  
5264 N. Sky High Lane  
Eagle, ID 83616

U. S. Mail  
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 Facsimile  
 E-mail

Eagle Pines Water User Assn.  
Attn: Brent Watson  
3357 N. Osprey Road  
Eagle, ID 83616

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

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

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Robert L and Kip C. Wood  
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William Lawton  
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Timothy R. and Judy L. Milburn  
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 Facsimile  
 E-mail

Michael and Martha McMurray  
902 Stillwater  
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 Overnight Mail  
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Walter H. Meyer, Jr.  
4640 N. Skyline Drive  
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Vincent J. & Patricia Minkiewscz  
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Loring and Julie Evans  
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 Overnight Mail  
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Dale and Mary Gaston  
2862 W. Deerfield Court  
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 Overnight Mail  
 Facsimile  
 E-mail

Cal and Alei Gothberg  
4411 N. Croft Place  
Eagle, ID 83616

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

Richard and Dr. Dessa Lagerstrom  
1262 W. Beacon Light Road  
Eagle, ID 83616

U. S. Mail  
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 Overnight Mail  
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 E-mail

Vincent Iazzetta  
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 Overnight Mail  
 Facsimile  
 E-mail

Bruce and Rebecca VanCamp  
3800 N. Croft Way  
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 E-mail

Ronald Rapp  
3951 W. Deerfield Drive  
Eagle, ID 83616

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 Overnight Mail  
 Facsimile  
 E-mail

Bruce and Jean Richardson  
3171 W. Deerfield Court  
Eagle, ID 83616

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 Overnight Mail  
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 E-mail

Stephen Dick and Kathy Pennisi-Dick  
3675 N. Saddleman Place  
Eagle, ID 83616

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 Hand Delivered  
 Overnight Mail  
 Facsimile  
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Lyle and Karen Jordan  
3417 N. Croft  
Eagle, ID 83616

U. S. Mail  
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 Overnight Mail  
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 E-mail

Yvonne Morton  
3600 Osprey Road  
Eagle, ID 83616

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

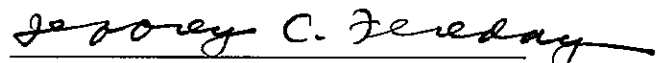
Jonathan & Dianne Seel  
2906 Haven  
Eagle, ID 83616

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

We lack addresses for the following.  
Therefore, the parties are being service c/o  
855 Stillwell Drive

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

David Collett  
Jim Banducci, Jr.  
Robert S. and LaVonne D. Niccolls  
Steven C. Purvis  
Morgan and Julie Masner  
Eric C. and Joyce E. Leigh  
Shelby & Angela Conrad  
George W. Keyes  
G.E. McDonald  
Carol Jean Thompson & John A. Petrovsky  
Barb Jekel and Bill Tiffany  
Robert and Joan Lyons  
Marion and Judy Groothuis  
Lorn Adkins  
Thoams and Anne Ritter  
Barrett D. and Trisha R. Jones  
Robert and Alasya West  
Jon Busack  
Charles Watkins  
Sherri Randall  
John and Janet Fransen  
Sally and Craig Tarbet  
Linda D. Burke

  
Jeffrey C. Fereday

RECEIVED

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

JUN 25 2008

DEPARTMENT OF  
WATER RESOURCES

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

**ORDER AUTHORIZING  
DISCOVERY, CONFIRMING  
RULES AS TO APPEARANCES  
AND REPRESENTATION, AND  
SCHEDULING PREHEARING  
CONFERENCE**

This matter has come before the Idaho Department of Water Resources upon Applicant M3 Eagle's June 24, 2008 *Motion and Memorandum for Order Authorizing Discovery, Confirming Rules as to Appearances and Representation, and Scheduling Prehearing Conference*. The Hearing Officer, having reviewed the pleadings and arguments of the parties, hereby Orders as follows:

1) Discovery is appropriate in this case, and the parties may begin immediately to conduct discovery in this matter pursuant to Rules 520 through 532, IDAPA 37.01.01.520-532. The Hearing Officer will take up the question of a discovery cut-off or other matters pertaining to discovery at the pre-hearing conference, or thereafter as deemed necessary pursuant to motion.

2) Pursuant to Rule 202 of the Department's Rules, IDAPA 37.01.01.202, each of the Protestants must represent himself or herself in this contested case, or be represented by a duly authorized employee, attorney, or family member. Most of the Protestants listed David Head as his or her representative. If Mr. Head is not an attorney licensed in Idaho, he can represent only those Protestants as to whom he is an employee or family member.

Mr. Head shall provide notice to the Hearing Officer within ten days of this Order confirming whether he is an attorney engaged to represent any Protestants in this matter, or whether he is a family member or employee of a Protestant. If such notice is not received, the Hearing Officer will conclude that Mr. Head is not an attorney and lacks the employee or familial relationship required. In that event, each Protestant shall appear separately and either represent himself or herself or, if the Protestants wish, engage an attorney to represent one or more of them.

The service list in this matter also lists Mr. Head's address as the service address for most of the Protestants. Maintaining a joint service list for several parties is not prohibited by the Rules. Therefore, Mr. Head's address may be used as the service address for those Protestants listed. However, if any Protestant wishes to be served individually, he or she shall provide notice, including an address for service, to the Hearing Officer and the other parties, and the service list will be amended accordingly.

3) A prehearing conference shall be held in this matter at [time] o'clock \_\_m. on [date] at [location]. The parties should come prepared to discuss stipulations, witness lists, a discovery cut-off schedule and hearing dates.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2008.

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Gary Spackman, Hearing Officer

LIST OF PARTIES  
M3 – EAGLE PERMIT NO. 63-32573

Name	Address	City	State	Postal Code
JOHN L THORNTON	5264 N SKY HIGH LN	EAGLE	ID	83616
NORTH ADA COUNTY FOOTHILLS ASSN	ATTN: DAVID HEAD 855 STILLWELL DR	EAGLE	ID	83616
EAGLE PINES WATER USER ASSN	ATTN: BRENT WATSON 3357 N OSPREY RD	EAGLE	ID	83616
NORMAN L EDWARDS	884 W BEACON LIGHT RD	EAGLE	ID	83616
M HOWARD GOLDMAN	3837 N GREEN VALLEY WY	EAGLE	ID	83616
TIMOTHY R MILBURN	1381 W MEANDER DR	EAGLE	ID	83616
ALAN SMITH	3135 OSPREY RD	EAGLE	ID	83616
LINDA D BURKE	C/O 855 STILLWELL DR	EAGLE	ID	83616
JONATHAN SEEL	C/O 855 STILLWELL DR	EAGLE	ID	83616
JOHN FRANDEN	C/O 855 STILLWELL DR	EAGLE	ID	83616
CRAIG TARBET	C/O 855 STILLWELL DR	EAGLE	ID	83616
SHERRI RANDALL	C/O 855 STILLWELL DR	EAGLE	ID	83616
CHARLES WATKINS	C/O 855 STILLWELL DR	EAGLE	ID	83616
JON BUSACK	C/O 855 STILLWELL DR	EAGLE	ID	83616
YVONNE MORTON	C/O 855 STILLWELL DR	EAGLE	ID	83616
ROBERT H WEST	C/O 855 STILLWELL DR	EAGLE	ID	83616
STEPHEN DICK	C/O 855 STILLWELL DR	EAGLE	ID	83616
CAL GOTHBERG	C/O 855 STILLWELL DR	EAGLE	ID	83616
BRUCE VAN CAMP	C/O 855 STILLWELL DR	EAGLE	ID	83616
LORING EVANS	C/O 855 STILLWELL DR	EAGLE	ID	83616
THOMAS RITTER	C/O 855 STILLWELL DR	EAGLE	ID	83616
LORN H ADKINS	C/O 855 STILLWELL DR	EAGLE	ID	83616
DANIEL J GLIVAR	C/O 855 STILLWELL DR	EAGLE	ID	83616
RICHARD LAGERSTROM	C/O 855 STILLWELL DR	EAGLE	ID	83616
VINCE IAZZETTA	C/O 855 STILLWELL DR	EAGLE	ID	83616
DALE GASTON	C/O 855 STILLWELL DR	EAGLE	ID	83616
MARION D GROOTHUIS	C/O 855 STILLWELL DR	EAGLE	ID	83616
VINCENT J MINKIEWICZ	C/O 855 STILLWELL DR	EAGLE	ID	83616
CAROL JEAN THOMPSON	C/O 855 STILLWELL DR	EAGLE	ID	83616
BARB JEKEL	C/O 855 STILLWELL DR	EAGLE	ID	83616
ROBERT LYONS	C/O 855 STILLWELL DR	EAGLE	ID	83616
G E MC DONALD	C/O 855 STILLWELL DR	EAGLE	ID	83616
GEORGE W KEYES	C/O 855 STILLWELL DR	EAGLE	ID	83616
ERIC C LEIGH	C/O 855 STILLWELL DR	EAGLE	ID	83616
SHELBY CONRAD	C/O 855 STILLWELL DR	EAGLE	ID	83616
MORGAN MASNER	C/O 855 STILLWELL DR	EAGLE	ID	83616
JIM BANDUCCI JR	C/O 855 STILLWELL DR	EAGLE	ID	83616
STEVEN C PURVIS	C/O 855 STILLWELL DR	EAGLE	ID	83616
ROBERT S NICCOLLS JR	C/O 855 STILLWELL DR	EAGLE	ID	83616
DAVID COLLETT	C/O 855 STILLWELL DR	EAGLE	ID	83616
WALTER H MEYER JR	C/O 855 STILLWELL DR	EAGLE	ID	83616
MICHAEL MC MURRAY	C/O 855 STILLWELL DR	EAGLE	ID	83616
BILL LAWTON	3145 N OSPREY RD	EAGLE	ID	83616
ROBERT L WOOD	1380 W MEANDER DR	EAGLE	ID	83616
LYLE JORDAN	C/O 855 STILLWELL DR	EAGLE	ID	83616