

Water Right file
in Western Region

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SEP 25 2007

DEPARTMENT OF
WATER RESOURCES

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September 24, 2007

Via E-Mail and U.S. Mail

David R. Tuthill, Jr., P.E. *DM*
Director
Idaho Department of Water Resources
322 East Front Street
P.O. Box 83720
Boise, ID 83720-0098

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OCT 10 2007

WATER RESOURCES
WESTERN REGION

Re: M3 Eagle Amended Water Right Permit Application

Dear Director Tuthill:

Thank you for taking the time to meet with Ed Squires and me on September 20, 2007 regarding the M3 Eagle, LLC Amended Water Right Permit Application, which was submitted to the Department on August 27, 2007. We also appreciated having Jeff Peppersack and John Westra in attendance. The purpose of this letter is to memorialize what we discussed.

Ed and I described the M3 Eagle permit application amendments in general terms, and noted that the project's housing units have been reduced from about 12,000 to 8,160. This change allowed the overall peak diversion rate to be reduced substantially, from about 42 cfs to about 27 cfs. We noted that the annual volumes do not show these same levels of decrease, in part due to the significant reductions in the amount of sewage effluent produced that can be reused to irrigate ball fields, common areas, and golf courses. In any case, it is a smaller water right application than the original.

We agree with your observation, which you have made to Eagle area groups before, that water availability generally should not be seen as the limiting factor for growth in the Valley. You observed that some view the water right application process as a means of guiding or limiting growth, regardless of what the merits might be on the subject of available water. We

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agree that local land use decisions should remain with local governments and that the public should expect the Department to focus on processing permit and transfer applications for water development.

We discussed the role of the Technical Committee that has been organized, with the Department's leadership, to evaluate hydrogeologic questions in the North Ada area. M3 Eagle intends to be a full contributing member in the Technical Committee, and to support its work. Ed and his staff at Hydro Logic, Inc. will continue to be active participants, and will bring their findings to the Committee for comment. Ed explained that he soon will have two additional M3 Eagle-funded studies ready to present to the Committee—an analysis of earlier pump tests in the area and an aquifer water level analysis. We expect to present additional information to the Committee as it is developed in the next few months and to post the reports to the Department's newly created North Ada County web site.

We are pleased to hear that you expect the Legislature to fund the Department-sponsored hydrogeologic study of the north Ada area, and that it should be ready to begin in mid-2008. We also were pleased to hear you again confirm that pending water right applications, such as M3 Eagle's, will not be delayed by the commencement or outcome of that effort. We agree with your position on this point, of course, especially given the great amount of hydrogeologic study that M3 Eagle already has completed and provided for public review. We sincerely hope that processing of M3 Eagle's water right application can get underway this fall, a point we underscored at the meeting and in our previous meeting on M3 Eagle.

You stated that you will meet with your staff to evaluate how to proceed with processing the M3 Eagle application as well as other applications pending for this area. We look forward eagerly to a response on the processing issue so that M3 Eagle can begin to plan accordingly for any administrative hearing that might be necessary.

We discussed the question of how any approval of M3 Eagle's application might be structured or conditioned. We agreed that it would be reasonable, and within the bounds of the municipal water rights statute, for the Department to approve the application but impose a condition requiring periodic reporting on well production, aquifer pressure levels, and similar information. The purpose of such a condition would be to allow your agency to ensure that adequate water supplies exist for the level of development involved at any given stage of the approved planning horizon.

As you know, we sincerely hope the Department can authorize the construction of large bore supply wells in advance of water right approval to make possible meaningful aquifer testing. Ed brought up the point that our existing studies of the Pierce Gulch Sand Aquifer underlying M3 Eagle are at a relatively mature point (as evidenced by the report submitted with the amended application), and that, in his opinion, the next significant contribution to knowledge about the aquifer would be a high-quality, long-term aquifer test using a large-yield water supply well in the foothills area. Of course, we would anticipate constructing the supply well so that it

can be used later as a municipal production well, and M3 Eagle would need to proceed with the understanding that, until a permit is granted, M3 Eagle does so entirely at its own risk.

Finally, we pointed out that there is a state-supported movement in the wine-making industry to establish an "appellation" region in North Ada and Canyon Counties, and that M3 Eagle is seriously considering committing some of its hillside open space to vineyards in support of these efforts. I believe we agree that a commercial-scale vineyard operation (e.g., a few hundred acres) would require an agricultural irrigation water right that likely would be seen as outside the definition of "municipal use" under the statute. Consequently, we are considering filing a separate irrigation ground water right for that purpose, and we wanted to make the Department aware of this possibility. We also may seek to acquire additional surface water supplies that could be delivered through the Farmer's Union Canal, although we are just at the initial stages of this idea. In any event, we will keep the Department informed of our plans for any commercial-scale vineyards that M3 Eagle may pursue.

Thanks again for meeting with us. It means a lot to us to be able to receive this type of guidance as we work toward the long-term development of a water supply for the M3 Eagle planned community.

Sincerely,



Jeffrey C. Fereday

JCF/lla

cc: Bill Brownlee, Managing Partner, M3 Companies
Gerry Robbins, Project Manager, M3 Eagle, LLC
John Westra, Manager, IDWR Western Regional Office
Jeff Peppersack, Chief, Water Allocations Bureau
Ed Squires, Hydro Logic, Inc.