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**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 )	<b>CLOSING STATEMENT OF</b>
M3 EAGLE LLC ASSIGNED TO THE CITY OF )	<b>THE CITY OF EAGLE</b>
EAGLE )	

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COMES NOW the City of Eagle, by and through its counsel of record, Bruce M. Smith of the firm Moore Smith Buxton & Turcke, Chtd. and submits this closing statement for the Remand Hearing for the above application which took place October 17-18, 2011.

**INTRODUCTION**

Pursuant to the Director's Order dated October 3, 2011, the Remand Hearing was limited in scope and only certain evidence was permitted to be introduced or considered. Further, witnesses were similarly limited in the testimony they could give.

The only testimony or evidence permitted related to the following three areas:

1. Evidence establishing that the M3 Eagle project has been annexed by the City of Eagle.

2. Evidence related to the City of Eagle's planning horizon and reasonably anticipated future municipal needs for the City of Eagle's service area, including the M3 Eagle project, based on the City of Eagle's current water rights portfolio and planning information.

3. Information on the quantity of water appropriated for permit 63-32573 appurtenant to the M3 Eagle project in relationship to water needs of the City's service area.

**I. Evidence Submitted by the City Of Eagle**

For its written evidence, the City submitted five exhibits:

Exhibit R1: City of Eagle Reasonably Anticipated Future Needs Analysis.

Exhibit R2: 2011 Eagle Comprehensive Plan, Adopted 2/3/2011, Resolution 11-02.

Exhibit R3: City of Eagle Municipally Owned Water System Amended Master Plan, Revised November 2005 – Volume I, Development Plan & Ownership Documents.

Exhibit R4: City of Eagle Municipally Owned Water System Master Plan Update #1 – March 2008 – to City of Eagle Amended Master Plan, Revised November 2005 – Volume I, Development Plan & Ownership Documents.

Exhibit R5: Ordinance 634 Approving Annexation of M3 Property.

For its testimonial evidence, the City provided testimony by: (1) Vern Brewer, Holladay Engineering Co., the City of Eagle Engineer, and (2) Nichoel Baird-Spencer, Planner for the City of Eagle in charge of long range planning and comprehensive planning for the City of Eagle. The testimony by Mr. Brewer and Ms. Baird-Spencer corroborated the written evidence. The written evidence and the City's testimonial evidence was *unrebutted* by the Protestants. The City's evidence established conclusively that: (1) the M3 Eagle project area had been annexed into the City, (2) the City's Reasonably Anticipated Future Needs ("RAFN") are 26.57 cubic feet per second ("cfs") for the City's population in 2041 based on the population as planned for under the

City's Comprehensive Plan which was developed pursuant to the Local Land Use Planning Act ("LLUPA"), and (3) the 23.18 cfs of water applied for by M3 Eagle was consistent with the overall water needs for the City's service area which includes the annexed M3 Eagle project area.

**II. The M3 Eagle Project Area Has Been Annexed into the City of Eagle.**

City of Eagle Exhibit R5 is the City of Eagle Ordinance 634 which approved annexation of the M3 Eagle project area into the City of Eagle. Mr. Brewer testified that he was familiar with the M3 Eagle project itself and whether it has been annexed into the City. He testified it has been annexed. Hearing Transcript ("HT") p. 144, L. 24-25; p. 115, L. 1-6. Ms. Baird-Spencer's testimony was the same. She testified as to her familiarity with Ordinance 634 and its purpose and confirmed that the M3 Eagle project is now annexed into the City. HT, p. 164, L. 5-12. Protestants offered no rebuttal or contrary evidence or even challenged that the M3 Eagle project area has not been annexed.

**III. The City of Eagle Demonstrated a RAFN for 26.57 cfs of Municipal Water Right for its Population in 2041.<sup>1</sup>**

City of Eagle Exhibit R1 is the City of Eagle's RAFN analysis which is based on the City's Comprehensive Plan. The RAFN analysis is a comprehensive evaluation of the City's future water needs based on the City's estimated population in 2041. This constitutes a 30 year planning horizon. The Executive Summary explains the analysis and its underlying premise:

The City of Eagle's Comprehensive Plan and other planning data reflects the City's planning information and efforts pursuant to the Local Land Use Planning Act and is the basis for determining the City's population during the planning period. For its water needs assessment, the City selected a planning area consistent with its Comprehensive Plan and a planning horizon of 30 years. The

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<sup>1</sup> If its existing portfolio amount is lowered for any reason, the RAFN amount would increase by a corresponding amount.

City's professional planning and engineering staff, in conjunction with the City's Public Works Department, used the planning data from the Comprehensive Plan to determine future water needs for the City in 2041 taking into account the goals of the City, the City's existing water rights, the Development Agreement between the M3 Eagle and the City, and the geographic limitations on use of Application for Permit No. 63-32573.

Based on its Comprehensive Plan and other factors, the City determined its population in 2041 will be 65,322 citizens. Based on the Development Agreement with M3 and anticipating Permit No. 63-32573 will be issued for its full amount, water for 47,867 citizens will be needed. The population of 47,867 will require 32.15 cfs of water. Since the City has an assumed existing portfolio of 5.58 cfs of Municipal rights, the City will require an additional 26.57 cfs of municipal water rights.

Although not spelled out in the Executive Summary, the City's RAFN analysis used several values which are explained and supported in the analysis itself as well as in the City's testimony. For instance, the estimated usage per household is 281 gallons per day ("gpd") per household. This value is based on "actual historical data using values approved by IDEQ for planning [the City's] municipal service." RAFN Report p. 10. Further "[t]he City's Engineer reviewed historical water use in the City's current system as identified in the City's Master Water Plan." *Id.* This review of actual use provides the basis for the 281 gpd. Mr. Brewer's testimony corroborated the analysis and the value and fully explained the process the City Engineer used to determine water demand. HT p. 116-126. Matt Weaver testified the demand value of 281 gpd was reasonable as was the 30 year planning horizon and the City's service area. HT p. 29, L. 1-11.

The City's analysis includes an irrigation review since portions of the City's service area in the foothills may require irrigation<sup>2</sup>. In considering the irrigation demand, Ms. Baird-Spencer, using density limitations from the Comprehensive Plan, determined that approximately 7,473 houses could be built in the non-M3 Eagle area of the foothills planning area. HT p. 154, L. 8-25; p. 155, L. 1-19. She confirmed that of the approximately 49,000 acres in the foothills planning area, only about 360 acres would need additional irrigation water. HT p. 155, L. 18-20. Mr. Brewer testified the City used the Idaho Department of Water Resources ("IDWR") standard for irrigated tracts of 5 acres or less since the households would likely be less than five acres in size. HT p. 121, L. 6-18. *See* Attachment 2 to City of Eagle Exhibit 1 City of Eagle RAFN Analysis.

The City's RAFN analysis also sets out in detail the basis for the City's future population determination and how that determination was based on the City's Comprehensive Plan and planning efforts. RAFN Analysis, p. 5-6.

Ms. Baird-Spencer, a professional planner for the City of Eagle in charge of long range planning and comprehensive planning, testified as to the City's planning efforts pursuant to the LLUPA, the process for developing the City's Comprehensive Plan, and the City's updates to the Comprehensive Plan. Ms. Baird-Spencer recounted her 16 years experience as a professional planner – something which no other witness could remotely match. Ms. Baird-Spencer gave a detailed review of the process she went through to determine a population estimate for the City and her role in preparing the City's RAFN analysis. HT p. 150-155.

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<sup>2</sup> Although the City examined irrigation demands specifically, irrigation is an included use within the Municipal beneficial use designation. I.C. § 42-202B(6). Therefore, this irrigation component must be included within the

After reviewing the 2010 Census data for the City's population, Ms. Baird-Spencer adjusted the population estimate based on the building permits issued since the 2010 Census data was released. HT p. 152, L. 24-25; p. 153, L. 1-15. Ms. Baird-Spencer also explained that the City's Comprehensive Plan contained a growth rate of 4% which was adopted by the City in 2004. The Comprehensive Plan was updated in 2007 and 2011 keeping in place the 4% growth rate. HT p. 150, L. 11-16. She also re-evaluated the growth rate as part of the City's RAFN analysis by examining eight different indicator growth rates, comparing the City of Eagle to other Treasure Valley communities, and reviewing an analysis by Moody's Analytics. HT p. 151, L. 20-25; p. 152, L. 1-15. She confirmed the growth rate remains valid and a reasonable growth rate for the City over the planning horizon.

Ms. Baird-Spencer's testimony, Mr. Brewer's testimony, and the City's RAFN analysis were unrebutted by the Protestants. In fact, Mr. John Thornton re-verified the City's population estimate for 2041, the RAFN determination of 26.57 cfs, and the City's current portfolio of 5.58 cfs. Mr. Thornton did not object to or contest any of these determinations. HT p. 175, L. 18-25; HT p. 176, L. 1-2. Nor did any other Protestant. Dr. John Church, testifying on behalf of M3 Eagle, testified that Ms. Baird-Spencer's population calculation was reasonable. HT p. 211, L. 12-14. The Hearing Officer also confirmed this process. HT p. 180, L. 1-25; p. 181, L. 1-25. Ms. Baird-Spencer testified that the City's service area incorporated all of the planning areas for the City. HT p. 153, L. 16-21.

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Municipal use designation.

The City's RAFN analysis establishes a reasonable planning horizon of 30 years, a service area consistent with its planning area based on its Comprehensive Plan, and a calculation of future needs based on a population developed as part of the City's Comprehensive Planning pursuant to the LLUPA. The analysis and determination of the City's RAFN was approved by the Mayor and the Public Works Director. The City's RAFN analysis and determination of future needs should be approved.

**IV. The 23.18 cfs of Municipal Right for the M3 Eagle Project is Consistent with the Water Needs of the City's Service Area**

City Exhibit R1, the City's RAFN analysis, takes into consideration the amount of water sought by application 63-32573 in relation to the overall City needs. Further, the amount of water sought specifically for the M3 Eagle project is reasonable and was relied upon by the City in entering into the Development Agreement with M3 Eagle. *See* City Exhibit R1, Attachment 4. As noted in the RAFN analysis, the City's population in 2041 was determined to be 65,322. *See* City Exhibit R1. However, the M3 Eagle project area, based on the Development Agreement accounts for approximately 17,455 of that population. *See also* HT p. 174, L. 12-23. In assessing the water needs for the M3 Eagle project area, the developer used a domestic demand of 274 gpd per residence. Mr. Brewer testified that this M3 Eagle calculated water demand of 274 gpd per household was reasonable. HT p. 116, L. 4-6. He also testified that the 23.18 cfs allocated to the M3 Eagle City to serve the project was needed for the project, and that the 23.18 cfs was reasonable in relation to the rest of the City of Eagle's needs. HT p. 129, L. 18-25; p. 130, L. 1-4. This testimony was unrebutted and uncontested.

**V. The Hearing Officer Should Strike the RAFN Analysis by Matt Weaver and Don Reading which was marked as Exhibit R100.**

The Remand Hearing began with testimony by Mat Weaver, an IDWR employee, and Dr. Don Reading, an economist retained by the Director, to examine information related to the City's RAFN. Mr. Weaver and Dr. Reading testified as to preparation of a memorandum by themselves and other IDWR employees which was marked as Exhibit R100. As part of the Remand Hearing, the City submitted a formal Objection and Motion to Strike the June 1, 2011, Revised October 4, 2011 RAFN Evaluation for the City of Eagle in Connection with Application for Permit 63-32573. ("Exhibit R100" or "Weaver/Reading memorandum").<sup>3</sup> The City identified at least eight reasons why the Weaver/Reading RAFN memorandum should be struck on both factual and legal grounds. The motion was specific in that it was directed at the Weaver/Reading memorandum insofar as it sought to establish a protocol for a RAFN analysis or any determination of the City's RAFN. HT p. 294, L. 13-17.

The origin of the Weaver/Reading memorandum remains somewhat obscure. The Hearing Officer/Director indicated that Mr. Weaver and Dr. Reading were tasked with *reviewing* information submitted by the City. HT p. 23, L. 14. The memorandum prepared by Mr. Weaver and Dr. Reading, however, went far beyond reviewing information and purported to actually do an analysis of what Mr. Weaver and Dr. Reading thought the City's process and RAFN determination should be – even to the point of calculating the City's population. The Hearing Officer/Director confirmed that the memorandum was not meant to be any type of

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<sup>3</sup> The Weaver/Reading memorandum went through several iterations and was amended a third time just prior to the Remand Hearing. However, the last change was to fix a minor editing problem identified at the last minute by Mr.

policy/directive/protocol and that he had just wanted a review of information. HT p. 26, L. 14-16.

By not limiting their exercise to a review of City information, Mr. Weaver and Dr. Reading arbitrarily usurped the City's determination of population and its RAFN analysis, and substituted their judgment for that of the City. This is inconsistent with the direction they were given, inconsistent with the statutes governing RAFN determinations, and inconsistent with the LLUPA.

Idaho Code §42-202(2) provides in part:

An application proposing an appropriation of water by a municipal provider for reasonably anticipated future needs shall be accompanied by sufficient information and documentation to establish that the applicant qualifies as a municipal provider and that the reasonably anticipated future needs, the service area and the planning horizon are consistent with the definitions and requirements specified in this chapter.

The definitions of "municipal provider,"<sup>4</sup> "reasonably anticipated future needs," "planning horizon"<sup>5</sup> and "service area"<sup>6</sup> are supplied in Idaho Code §42-202B. As set forth in Idaho Code §42-202B(8), "reasonably anticipated future needs" refers to:

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Weaver. The City's Objection and Motion to Strike applies to all three versions as the process/procedure for each remained unchanged.

<sup>4</sup> A "municipal provider" can be (1) a municipality; (2) a franchisee (either a corporation or association); or (3) a corporation or association which supplies water through a water system that is regulated by the state of Idaho as a "public water supply." Idaho Code §42-202B(5).

<sup>5</sup> The "planning horizon" is the length of time that the Idaho Department of Water Resources determines is reasonable for a municipal provider to hold water rights to meet reasonably anticipated future needs. Idaho Code §42-202B(7).

...future uses of water by a municipal provider for **municipal purposes** within a service area which, **on the basis of population and other planning data**, are reasonably expected to be required within the planning horizon of each municipality within the service area **not inconsistent with the comprehensive land use plans approved by each municipality**.

(emphasis added). “Municipal purposes,” in turn, “refers to water for residential, commercial, industrial, irrigation of parks and open space, and related purposes,..., which a municipal provider is entitled or obligated to supply to all those users within a service area....” Idaho Code §42-202B(6).

The above-cited provisions related to RAFN water rights were adopted by the Idaho Legislature in 1996. The legislation, sponsored by the IDWR, was originally introduced as S1355 but was later amended and became S1535.<sup>7</sup> The statement of purpose for S1535 provides in part, “Municipalities would be required to provide information to describe their service area, to establish a reasonable planning horizon, and to show that the water rights are necessary for reasonably anticipated future needs.”<sup>8</sup> The intent of the bill was further explained by IDWR staff to the House Resources and Conservation Committee as a way of encouraging long-term land use planning by municipalities and supporting municipal water rights with comprehensive land use plans that are not in conflict with another municipality’s long-range plan.<sup>9</sup> This is exactly what the City’s RAFN analysis does and what the Weaver/Reading memorandum does.

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<sup>6</sup> The “service area” is the area within which a municipal provider is or becomes entitled or obligated to provide water for municipal purposes. Idaho Code §42-202B(9). For a municipality, the service area corresponds to its corporate limits or other recognized boundaries. *Id.*

<sup>7</sup> See Minutes of S. Res. & Env. Comm., Jan. 24, 1996, p. 1, and Feb. 21, 1996, p. 2.

<sup>8</sup> Statement of Purpose/Fiscal Impact, RS06104 (S1535).

<sup>9</sup> See Minutes of H. Res. & Cons. Comm., March 7, 1996, p. 2.

Although the LLUPA is not specifically mentioned in Chapter 2, Title 42, the references to “population and other planning data,” and “comprehensive land use plans approved by each municipality” in the definition of RAFN (Idaho Code §42-202B(8)) are clearly references to the planning authority of municipalities under the LLUPA. Idaho Code §67-6508 gives to local planning and zoning commissions the duty to “conduct a comprehensive planning process designed to prepare, implement, and review and update a comprehensive plan....” The plan must include all land within the jurisdiction of the governing board and “shall consider previous and existing conditions, trends, desirable goals and objectives, or desirable future situations for each planning component.” Idaho Code §67-6508. The plan must consider fifteen components, including population, land use, public services, facilities and utilities,<sup>10</sup> recreation and community design. *Id.*

Idaho courts have long recognized the broad planning and zoning authority granted under the LLUPA. For example, in *Worley Hwy. Dist. v. Kootenai County*, 104 Idaho 833, 835-36, 663 P.2d 1135, 1137-1138 (Ct. App. 1983), the Idaho Court of Appeals noted:

The Local Planning Act of 1975 imposes upon cities, and counties in unincorporated areas, the duty to promote rational development of local land and resources. To be effective and meaningful, planned development must encompass a broad range of activities, resources, and facilities. The legislature has recognized this and has invested the powers and responsibilities for such sweeping functions in cities and counties—deeming those entities of local government best equipped and experienced to deal broadly with the problems.

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<sup>10</sup> Within the “public services, facilities and utilities” component, cities must include an analysis “showing general plans for sewage, drainage, power plant sites, utility transmission corridors, water supply, fire stations...and related services.” Idaho Code §67-6508(h).

While the issue in *Worley Hwy. Dist.* involved the ability of county commissioners to approve standards for street names and numbering, the Idaho Supreme Court has also acknowledged the authority of cities and counties to address issues related to water quality and quantity. See *Ralph Naylor Farms, LLC v. Latah County*, 144 Idaho 806, 810, 172 P.3d 1081, 1085 (2007) (recognizing that local governing boards have authority to consider the effect any proposed amendments to the comprehensive plan “would have on the source, quantity and quality of ground water in the area.” I.C. §67-6537); *Idaho Dairymen’s Ass’n, Inc. v. Gooding County*, 148 Idaho 653, 660, 227 P.3d 907, 914 (2010) (holding that counties have authority to complement state and federal regulations relating to water quality at confined animal feeding operations by overseeing the siting of CAFOs).

Judicial recognition of local planning authority as it relates to the regulation of water confirms the City of Eagle’s position that its planning and population data submitted in its RAFN application is entitled to deference. When the legislature passes a statute, it is presumed to be aware of all legal precedent and existing statutes. *City of Sandpoint v. Sandpoint Independent Hwy. Dist.*, 126 Idaho 145, 150, 879 P.2d 1078, 1083 (1994); *First American Title Co. of Idaho, Inc. v. Clark*, 99 Idaho 10, 13, 576 P.2d 581, 584 (1978). The LLUPA was adopted in 1975 and imposes upon cities the duty to promote rational development of local land and resources. Idaho Code §§67-6501 *et seq.*; *Worley Hwy. Dist. v. Kootenai County*, 104 Idaho at 835, 663 P.2d at 1137. Since the definition of RAFN in Idaho Code §42-202B(8) and the related statutory provisions for approving a RAFN water right were not added until 1996, the Legislature intended the comprehensive planning data approved by municipalities under the LLUPA be utilized to

support RAFN water right applications. These determinations and data are to be developed by the municipalities, not the IDWR.

The City is authorized to do its planning and to determine its needs pursuant to the LLUPA. The IDWR is not. The IDWR is required to defer to the City's determination made pursuant to the LLUPA.<sup>11</sup> Both Mr. Weaver and Dr. Reading erred significantly when they tried to determine the City's future population. One fundamental error in the Weaver/Reading memorandum began when Mr. Weaver and Dr. Reading both misread and misapplied 42-202(B)'s provisions on conflicting comprehensive land use plans. This provision refers to conflicts in comprehensive plans. Both Mr. Weaver and Dr. Reading simply ignored any consideration of "conflict" or "comprehensive plans" and instead applied a "overlapping service area" concept.

Mr. Weaver then proceeded to take their misunderstanding of the statute and calculated a population size for only a small portion of the City. He handed off that population number to Dr. Reading, who proceeded to apply his arbitrarily determined 3% growth rate to the reduced population number. The result was a significantly reduced future City population. Once Mr. Weaver miscalculated the initial 2011 population, all the following calculations by Dr. Reading were incorrect. Mr. Weaver and Dr. Reading both acknowledged that if they started off with an incorrect initial population, the resulting future population determination would be incorrect. That is what happened.

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<sup>11</sup> While the IDWR must defer to a City determination made pursuant to the LLUPA for RAFN planning purposes, that may not be the case with a non-municipal provider. That is because such an entity does not have the independent legislative authority that a municipality has under the LLUPA. Thus a different level of scrutiny can and probably should be applied to a non-municipal water provider.

Mr. Weaver exacerbated his errors by meeting with unidentified Eagle Water Co. representatives who presumably gave him some information which helped lead him to his incorrect initial population determination.<sup>12</sup>

Ms. Baird-Spencer, the City's expert planner, reviewed the memorandum prepared by Mr. Weaver and Dr. Reading and their methodology. Ms. Baird-Spencer testified the memorandum and its methodology was not the type of work-product the IDWR could rely upon to determine the City's RAFN or review its RAFN analysis.

[To Ms. Baird Spencer]

Q. Based on your experience as a planner for the City of Eagle, having reviewed Mr. Weaver and Dr. Reading's methodology and their report, do you think it is something that the Department can rely upon to assess the City's RAFN analysis?

A. No, I do not.

HT p. 163, L. 18-23.

Ms. Baird-Spencer provided a specific critique of the problems with the methodology and results in the Weaver/Reading memorandum. Some of the problems she identified included:

- The methodology failed to use a City macro level growth analysis (HT p. 156, L. 8-9).
- The methodology failed to consider growth in the City as a whole, instead, using only a small part of the City (HT p. 156, L. 9-13).
- The methodology failed to examine growth rate across the City as a whole followed by an allowance for vacant lands, market, and for land capacity (HT p. 156, L. 17-22).

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<sup>12</sup> Although required to do so, Mr. Weaver failed to bring his notes regarding his meetings with Eagle Water Co. to his deposition, so any verification of the information was not possible. Deposition of Matt Weaver, p. 33, L. 21-25; p. 34, L. 1-4. Additionally, Mr. Weaver did not bring a Handbook on RAFN analysis he used to help write the protocol in the Weaver/Reading memorandum. HT p. 34, L. 1-7. Without these documents and information, exactly what Mr. Weaver did is not known. However, he was directed to bring the information to the deposition by the Director. He did not. This is another reason to strike the Weaver/Reading memorandum.

- The methodology was not use a process that City planners would use (HT p. 157, L. 9-13).
- The methodology failed to consider allocation of units based on land capacity and land infrastructure availability (HT p. 157, L. 13-17).
- Mr. Weaver miscalculated the initial population in 2011, then gave that figure to Dr. Reading to use, thus producing an incorrect future population (HT p. 158, L. 1-11).
- Dr. Reading's assessment of the City's population and growth rate was incorrect because he relied on a few internet articles to determine the City growth (HT p. 159, L. 1-6).
- Dr. Reading's information was not local, was not specific to the actual demographics and buildout of the City of Eagle and did not consider the City's past and present growth (HT p. 159, L. 1-6).
- Mr. Weaver eliminated portions of the City of Eagle from his population calculations because he misdetermined that there was a conflict between the Comprehensive Plan for the City of Star and the City of Eagle when, in fact, there was no conflict (HT p. 161, L. 23-25, p. 162, L. 1-25, p. 163, L. 1-17).

As noted, Ms. Baird-Spencer testified to the process used by the City to determine a growth rate and include it in the City's Comprehensive Plan. Dr. Church corroborated the reasonableness of Ms. Baird-Spencer's analysis of the City's Comprehensive Plan growth rate of 4%, and that Dr. Reading and Mr. Weaver had an incorrect initial population. HT p. 211, L. 4-25. Part of Dr. Reading's error was probably based on the fact that he did not even speak to the City of Eagle planning department. HT p. 160, L. 18-21. He did not recognize that the City's Comprehensive Plan contained a growth rate of 4% determined through the application of the LLUPA. HT p. 86, L. 14-24. Further, Dr. Reading's methodology, like Mr. Weaver's was not the type of methodology that a professional planner, including the City of Eagle, uses. HT p. 161, L. 18-20.

Another major factor underlying the faulty protocol and incorrect results in the Weaver/Reading memorandum is that Mr. Weaver has no experience as a planner, no recent experience with the City of Eagle's long term plans, and no experience predicting populations. HT p. 30, L. 11-19. Incredibly, Dr. Reading, whose primary responsibility in the development of the Weaver/Reading memorandum was to determine population, simply took Mr. Weaver's population determination and used it with no verification, no validation, and not a single attempt to make sure the number was correctly determined. Dr. Reading just used a number he was given, a number that was inherently flawed. HT p. 81, L. 7-12. As Dr. Reading testified:

[To Dr. Reading]

Q: So if Matt had given you a wrong starting number for the population in 2011, you would have carried that through into your calculations; correct?

A: Certainly.

HT p. 78, L. 18-21.

Mr. Weaver confirmed:

[To Mr. Weaver]

Q: So if you gave Mr. Reading an incorrect population number to start with, his prediction at the end of 2041 would reflect that; correct?

A: Correct.

HT p. 33, L. 17-20.

The fact is the Weaver/Reading memorandum is fundamentally flawed. It was developed by individuals who testified they had no experience at what they were doing. It reflects, as Mr. Weaver testified, an "evolving" concept of RAFN analysis and an "evolving" application of the relevant statutes. HT p. 34, L. 8-21. It was based on an

incorrect interpretation of the RAFN statute. It is developed without even talking to the City of Eagle planning staff. The protocol in the memorandum is flawed, the memorandum is inconsistent with law and fact, and therefore the results in the memorandum are flawed.<sup>13</sup> The Weaver/Reading memorandum provides no basis for determining the City's RAFN.

### **CONCLUSION**

The evidence admitted in the Remand Hearing established conclusively that the M3 Eagle project area has been annexed into the City of Eagle, and that the City needs the 23.18 cfs of water associated with permit 63-32573 to serve the project. Further, the City of Eagle's RAFN analysis is a complete and thorough RAFN analysis demonstrating a RAFN for 26.57 cfs of Municipal water rights. The City's RAFN analysis is the only valid RAFN analysis because the Weaver/Reading memorandum was fundamentally flawed and should not be considered. The Hearing Officer/Director should issue Findings of Fact and Conclusions of Law that state:

1. Application for Permit 63-32573 is approved for 23.18 cfs.
2. The City of Eagle's RAFN analysis is approved for a RAFN of 26.57 cfs.

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<sup>13</sup> Although the IDWR believes it is entitled to apply its own expertise in evaluating evidence, in this instance the IDWR has no expertise. The hiring of a consultant cannot provide any experience or expertise such that the IDWR could rely upon the analysis of the consultant as the IDWR's experience or expertise. In other words, hiring a consultant does not give IDWR expertise that is entitled to any deference. For that reason, it is clear the Weaver/Reading memorandum cannot be relied upon, is not entitled to any deference, and should be struck.

Respectfully Submitted this 23 day of November, 2011.

MOORE SMITH BUXTON & TURCKE, CHTD.

A handwritten signature in black ink, appearing to read "Bruce M. Smith", written over a horizontal line.

Bruce M. Smith  
Attorney for the City of Eagle

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 23 day of November, 2011, I caused to be served a true and correct copy of the foregoing **CLOSING STATEMENT OF THE CITY OF EAGLE** via prepaid, U.S. Mail, to the following:

**FILED:**

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- via Overnight Delivery
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