BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION TO APPROPRIATE WATER NO. 63-32573 IN THE NAME OF M3 EAGLE LLC.	))))	**FINAL ORDER**

On November 21, 2006, M3 Eagle, LLC ("M3 Eagle" or "M3") filed an application to appropriate water seeking to appropriate 42.5 cubic feet per second ("cfs") from ground water for municipal purposes. On August 27, 2007, M3 Eagle filed an amended application to appropriate water. The amended application sought to appropriate 27.47 cfs from ground water for municipal purposes. On April 22, 2008, M3 Eagle filed a second amended application to appropriate water. The second amended application seeks to appropriate 23.18 cfs of ground water for municipal purposes. In addition, the application seeks a diversion to storage rate of 2.93 cfs and a diversion from storage of 1,668 acre feet of water. The application also states that 1,836 acre feet of water will be stored in ponds on the proposed development.

The applications to appropriate water were assigned water right no. 63-32573. Notice of the second amended application was published statewide on May 1 and 8, 2008. A large number of individual protestants and entities filed protests against the application.

Many of the protestants agreed to be represented at the hearing by spokespersons. The following protestants identified David Head, John Thornton, or Ann Ritter, officers in the North Ada County Groundwater Users Association ("NACGUA"), as spokespersons to speak for them in the above contested case and during the hearing for the contested case: John L. Thornton, Linda D. Burke, John Franden, Craig Tarbet, Sherri Randall, Charles Watkins, Robert H. West, Stephen Dick, Bruce Van Camp, Loring Evans, Thomas Ritter, Lorn H. Adkins, Daniel J. Glivar, Richard Lagerstrom, Vince Iazzetta, Dale Gaston, Marion D. Groothuis, Vincent J. Minkiewicz, Carol Jean Thompson and/or John Petrovsky, Barb Jekel, Robert Lyons, G. E. McDonald, George W. Keyes, Eric C. Leigh, Shelby Conrad, Morgan Masner, Jim Banducci, Jr., Steven C. Purvis, Robert S. Niccolls, Jr., David Collett, Walter H. Meyer, Jr., Michael McMurray, Lyle Jordan, Ronald R. Rapp, Bruce Richardson, and Barrett D. Jones.

The following protestants identified Bill Lawton as the spokesperson in the above contested case and during the hearing for the contested case: Robert L. Wood, M. Howard Goldman, and Timothy R. Milburn.

During prehearing procedures, some protestants were dismissed for failure to appear and participate. In a Default Order dated October 7, 2008, protestants Jonathan Seel, Jon Busack, Yvonne Morton, Cal Gothberg, and Brent Watson for Eagle Pines Water Users Assn. were dismissed as parties for failure to appear at the time and place set for prehearing conference.

In a Default Order dated May 14, 2009, protestants Bill Lawton, Robert L. Wood, M. Howard Goldman, and Timothy R. Milburn's were dismissed as parties for failure to appear at the time and place set for hearing. The Default Order also informed the protestants Bill Lawton, Robert L. Wood, M. Howard Goldman, and Timothy R. Milburn that they could appear and testify as public witnesses.

The remaining active protestants were: David Head, John Thornton, or Ann Ritter as spokespersons for members of NACGUA, Alan Smith as spokesperson for Alan and Jason Smith and Eagle Pines Water Association, and Norman Edwards appearing individually.

Beginning in April 2009 and ending in July 2009, the interim director conducted a hearing regarding the protests. The following parties appeared at the hearing:

Jeffrey C. Fereday and Michael P. Lawrence, attorneys at law, appeared for M3 Eagle, John Thornton and David Head appeared on behalf of the North Ada County Groundwater Association and as spokespersons for multiple protestants, Alan and Jason Smith appeared for Pines Water Association and other protestants, and Norman L. Edwards represented himself.

Following the presentation of testimony, the parties submitted briefs and response briefs. The submittals were complete on October 4, 2009.

Based on the evidence presented at the hearing, the interim director finds, concludes, and orders as follows:

FINDINGS OF FACT

1. Application to appropriate water no. 63-32573, filed by M3 Eagle, proposes the following:

Flow Rate:	23.18 cubic feet per second ("cfs") 2.93 cfs diversion to municipal storage 1,836 acre feet stored in ponds on the proposed development. 1,668 acre feet diversion from storage
Source of Water:	Ground water
Period of Use:	Year-round
Priority Date:	November 21, 2006
Place of Use:	Municipal within the boundaries of the M3 Eagle development
Volume:	6,535 acre feet
Points of Diversion:	
Township 5 North, Range 1 West, Section 13,	SENW
Section 15 (Potential Municipal)	SWSW
Section 21 (Potential Municipal)	SESE
Section 22 (Potential Municipal)	NENE, NESE
Section 23	NESW, SESW
Section 23 (Potential Municipal)	SWNE, NENW, NESW, SESW, NESE
Section 24	NWNE, NENW
Section 24 (Potential Municipal)	NESW
Section 27 (Potential Municipal)	NENE, SENW
Section 28	SWSE, SESE(2)
Section 28 (Potential Municipal)	SWNE, SESE
Section 33	NENE, NWNW(2)
Section 33 (Potential Municipal)	NWNE
Township 5 North, Range 1 East, Section 19	SWNE

2. M3 Eagle proposes to develop 6,005 acres of real estate located approximately five to ten miles northwest of the city center of Eagle, Idaho. The M3 Eagle property is located in the foothills of northwest Ada County. The parcel of property is approximately seven miles long in an east – west direction and approximately four miles wide in a north – south direction. Portions of the drainages of Big Gulch and Little Gulch are within the proposed M3 Eagle development. The parcel is bounded by Highway 55 on the east, Highway 16 on the west, BLM property on the south, and additional undeveloped land to the north.

3. The property is presently raw land, and has been used in the past for dry grazing. There is no concentrated residential development within the property. There are no water lines nor is there any municipal system providing municipal water to any users within the property boundaries.

4. The BLM property located south of the M3 Eagle property is an approximate one mile wide buffer zone between the M3 Eagle property and scattered residential/ranchette development and agricultural lands at the base of the foothills as they transition south into the Boise River Valley. Any water lines from the City of Eagle and its integrated system are located several miles from the proposed development.

5. On December 27, 2007, M3 Eagle and the City of Eagle executed a Preannexation and Development Agreement. The agreement contemplates that the M3 Eagle property will be annexed into the City of Eagle in the future.

6. M3 Eagle and the City of Eagle also agreed that the water system constructed within the M3 Eagle development will be conveyed to the City of Eagle in the future and become part of the city's municipal water system. M3 Eagle will convey portions of the water system to the City of Eagle as phases of the M3 Eagle development are completed.

7. At the time the record closed for this contested case, annexation into the City of Eagle was not possible because the M3 Eagle property was not contiguous with any City of Eagle boundary.

8. The M3 Eagle development will be a planned unit development/planned community. The M3 Eagle developers are planning for homes, schools, and a commercial district within the development. Presently, M3 Eagle plans to develop 7,153 dwelling units. At build-out, M3 Eagle projects a population within the development of approximately 21,000 people. In addition, M3 Eagle plans to develop 245 acres of commercial, office, and mixed use.

9. Within the development, M3 Eagle projects the construction of three elementary schools, one middle school, and one high school. In addition there will be one or more golf courses.

10. Approximately twenty to forty percent of the development will be open space.

11. Because of the size of the M3 Eagle development, M3 Eagle asserts that it must presently secure a water supply for the entire development to obtain the necessary financing and to build the core water system and other infrastructure for the entire development. M3 Eagle projects that build-out will take a thirty year time period. An expert economist predicted growth based on both a twenty year planning horizon (Exhibit 40) and a thirty year planning horizon (Exhibit 60). The economist predicted that growth in the area of over 7,000 housing units and an increase in population of approximately 21,000 additional residents is not unreasonable given the historical growth in and the demographics of the Treasure Valley. With a 30 year development period, the number of homes predicted during the first five years is 1,011. The economist concluded that, even given the cyclical nature of development and of current recessionary effects on development, a 30-year period of time is a reasonable period to complete the development.

12. The Comprehensive Plan for the City of Eagle projects population growth through the year 2025. *See* Exhibit 57, page 9. The City of Eagle projections were made in 2007 prior to the present economic downturn. The supporting information for projections of population

growth in the City of Eagle's Comprehensive Plan was not provided as part of the plan. There is no nexus between the population projections in the comprehensive plan and the population projections for the M3 Eagle development presented at the hearing.

13. The City of Eagle Comprehensive Plan generally discusses development in the foothills but does not specifically address the proposed M3 Eagle development.

14. Despite the number of proposed points of diversion identified in the application, M3 Eagle predicts the total number of points of diversion will probably be between five and seven wells. M3 Eagle applied for a larger number of proposed points of diversion to allow flexibility in location and to allow additional wells to be drilled depending on the productivity of wells as they are completed.

15. Testimony at the hearing established that state of the art conservation measures will be employed through system design, monitoring, and reuse of waste water for ponds and irrigation. M3 Eagle plans to install an independent waste water treatment facility and will treat the water to drinking water quality standards.

16. The proposed points of diversion for the M3 Eagle development are located in an area of complex hydrogeology. Significant testing and analysis by M3 Eagle established that the water underlying the M3 Eagle property is located in a sand aquifer characterized by M3 Eagle as the Pierce Gulch Sand Aquifer ("PGSA").

17. The geological formation of the PGSA was created by an ancient, receding lake. When the lake was full of water, tributary streams deposited sand at the edges of the lake as outwash from the uplands. As the lake receded, these tributary streams washed the deposited sand out into the lake area. These sands were deposited in the lake bed over a long period of time. Coarser sands were deposited near the boundaries of the foothills and the finer sands were suspended as the stream emptied into the receding lake where the finer sands finally dropped out of suspension.

18. Subsequent to the deposition of the material comprising the PGSA, other lakes formed on top of the outwash. During the life of these later-in time-lakes, fine grained sediments were deposited on top of the coarser sand, creating clay layers. These clay layers form impervious aquitards that impede the vertical migration of water into and out of the PGSA. Because of these overlying confining layers, the PGSA throughout much of its extent is under pressure and exhibits artesian conditions.

19. A fault runs through the M3 Eagle property in a southeast to northwest diagonal direction, splitting the northeast one quarter of the M3 property from the southwestern three quarters of the property. The fault is known as the West Boise-Eagle Fault. *See* Exhibit 2, Figure 6. This fault prevents the horizontal movement of water across the fault boundary.

20. The PGSA is not completely horizontal, but is tilted downward from the northeast to the southwest, sloping approximately one to two degrees in declination.

21. If extended upslope, the base of the PGSA would intersect the ground surface on the portion of the M3 Eagle property that is on the southwest side of the West Boise-Eagle fault line. In geologic terms, daylighting of the aquifer material with ground surface is called the outcrop of the formation and defines the strike of the formation as it intersects a horizontal plane. The line of intersection, referred to herein as the "strike line", intersects the West Boise-Eagle fault in the southeast corner of the M3 Eagle property and follows a west-northwest orientation, nearly bisecting the M3 Eagle property in half. *See* Exhibit 2, Figure 6. The exposure of the PGSA to land surface results is an additional physical separation between PGSA water on the southwest side of strike line with shallow ground water in aquifers northeast of the strike line.

22. At the strike line, there is no ground water in the PGSA formation. As the PGSA dips downward to the southwest, the formation reaches sufficient depth that it becomes saturated with PGSA ground water. PGSA ground water near the strike line is not under artesian pressure because there are no-overlying fine grained sediments to confine the aquifer. As the PGSA dips further downward to the southwest, the aquifer is confined by impervious formations above the PGSA.

23. The PGSA underlies approximately the lower southwest half of the M3 Eagle property.

24. The M3 Eagle property overlies a portion of the northeastern edge of the PGSA. The portion of the PGSA underlying the M3 Eagle property is on the upslope edge of the PGSA. Wells completed in the downslope areas of the PGSA in the Boise River Valley will encounter water at greater depths and at greater pressures than at its location under the M3 Eagle property. If the PGSA is significantly stressed in the future, the reliability of the water supply as water levels decline would be first affected in the upslope areas of the aquifer under the M3 Eagle property.

25. PGSA ground water underlying the M3 Eagle property has a gradient, or flow direction, of west in the Boise River Valley and northwest toward the lower Payette River Valley.

26. In areal extent, the PGSA is a large hydrogeologic formation. Although the boundaries have to yet be defined, M3 Eagle estimates that the PGSA extends to the south towards Meridian, to the east into Garden City, to the west in the Boise River Valley toward the Snake River, and northwest toward the Payette River Valley.

27. Several expert witnesses for M3 Eagle testified that there were no signs or indications of faulting that would compartmentalize the PGSA in the area of the proposed M3 Eagle development. Department witnesses raised questions about the data that might indicate some limitation on the availability of water from the larger PGSA. Department staff referred to several M3 Eagle exhibits that identify a possible fault running diagonally from the southeast to the northwest in the southwest portion of the M3 Eagle property (See Exhibit no. 12, page 10) that was identified and mapped by M3 Eagle expert witnesses. This fault is located northeast of

the M3 Eagle test well no. 1 and also northeast of Kling well. The fault line separates test well no. 1 and the Kling well from other M3 Eagle wells located in the Big Gulch Drainage northeast of the fault line.

28. Figure 46 of Exhibit 44 depicts much greater seasonal ground water level drawdowns in the Kling well and test well no. 1 from pumping from the PGSA than in the M3 Eagle wells located farther up Big Gulch. These larges differences in drawdowns could be caused by a horizontal flow impediment that restricts ground water communication between the PGSA underlying the M3 Eagle property and the larger PGSA underlying the Boise River Valley floor.

29. In addition, the slight downward trend of ground water levels for the PGSA wells in Big Gulch plotted on Figure 46 is inconsistent with testimony regarding stable or rising water levels exhibited by PGSA wells in the Boise River Valley floor.

30. Significant differences in comparative ground water level drawdowns and differences in water level trends are indications of discontinuity, possibly caused by faulting, in the PGSA underlying the M3 Eagle property. This discontinuity could limit the supply of available ground water for appropriation proposed by M3 Eagle.

31. M3 Eagle conducted geochemical tests of the water in the PGSA, both inside and outside of the M3 Eagle property. *See* Exhibit no. 43. The geochemical analysis established that the source of the PGSA ground water underlying the M3 Eagle property is the ancestral Boise River. This means that the water in the PGSA is derived primarily from the Boise River and the water presently being pumped is hundreds to thousands of years old The chemistry of the water in the PGSA underlying the M3 Eagle property does not exhibit chemical characteristics of water from surficial recharge.

32. Evidence at the hearing established that most of the "groundwater in the PGSA originates as recharge in the east and south Boise regions augmented by leakage of canals south and east of Meridian." PGSA recharge is from the Boise River in the Boise area. *See* Exhibit 2 Page 5.

33. M3 Eagle developed a numerical ground water model to simulate the effects of withdrawals from the M3 Eagle development at full build-out. The area within the model, defined as the model domain, encompasses 520 square miles. The model boundaries are approximately: Cole Road in Boise on the east extended to the north and south, the Payette River on the north, New Plymouth on the west extended to the north and south, and Lake Hazel Road in Boise on the south extended to the west and east. The model domain includes the municipalities of Eagle, Star, Middleton, Nampa, Caldwell, Emmett, Meridian, and portions of Boise and Garden City.

34. The model was constructed with seven separate lithologic layers. Layers 5-7 represent the PGSA. The model assumes little or no inflow to the PGSA from surficial recharge. The inflow estimate into the PGSA, layers 5-7, through the southeast boundary of the model is

107 - 115 cfs. This assumption is consistent with M3 Eagle's presentation that the Boise River in the Boise area is the major contributing source of water to the PGSA.

35. Despite testimony at the hearing about the direction of ground water flow in the PGSA to the west – northwest, the model shows inflows to the model boundary of layers 5-7 on the north and west of 9.0 cfs. This modeling assumption conflicts with the conceptual model of flow from the Boise Valley into the Payette Valley.

36. The M3 Eagle model estimates existing pumping of ground water from the PGSA within the model domain of 84 cfs and another 10 cfs for the M3 Eagle property at the time of build-out. M3 Eagle assumed these values recognizing it didn't know the volume of water diverted from the PGSA.

37. The interim director assumes that water will not inflow across a model boundary in a direction opposite from the direction of the ground water gradient, and will ignore the 9.0 cfs of inflow to the PGSA at the northwest and west boundaries. Both of these boundaries are referred to as outflows to the PGSA (Exhibit 16). Assuming a total withdrawal of 94 cfs and a total inflow of 107 - 115 cfs, only 13 - 21 cfs would remain of the total inflow for other future uses within the model domain from the PGSA.

38. Most of the communities within the model boundary have expanding growth areas near their perimeters. The flow of 13 - 21 cfs assumed to remain as unpumped water in the PGSA may be needed for future use by the communities within the model boundary. In addition, not all of the ground water in the PGSA is available for withdrawal under the M3 Eagle property. Some component of ground water should be dedicated to underflow and to buffer the estimates used in the ground water flow model unless M3 Eagle proposes an overdraft that would reverse the direction of the flow gradient.

39. The amount of undeveloped land within the model domain that logically could be developed by the existing municipalities as they expand could easily require diversion flow rates in excess of 13-21 cfs for these future uses.

40. M3 Eagle owns the property planned for development almost without debt. M3 Eagle owes a debt of $15,000,000 to the Dallas Police and Fireman's Pension Fund.

41. M3 Eagle does not have any financial reserves to complete the development. M3 Eagle was instrumental in the passage of legislation during the 2009 legislative session authorizing formation of a community infrastructure district. By forming a community infrastructure district, the district can sell tax exempt bonds to finance the development. M3 Eagle is capable of forming a district and selling the tax exempt bonds for financing. Expert witnesses testified that the possibility of obtaining such financing is good.

CONCLUSIONS OF LAW

1. Idaho Code § 42-203A states in pertinent part:

In all applications whether protested or not protested, where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or speculative purposes, or (d) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) that it will conflict with the local public interest as defined in section 42-202B, Idaho Code, or (f) that it is contrary to conservation of water resources within the state of Idaho, or (g) that it will adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates, in the case where the place of use is outside of the watershed or local area where the source of water originates; the director of the department of water resources may reject such application and refuse issuance of a permit therefor, or may partially approve and grant a permit for a smaller quantity of water than applied for, or may grant a permit upon conditions.

2. The applicant bears the ultimate burden of proof regarding all the factors set forth in Idaho Code § 42-203A.

3. Idaho Code § 42-202B(5) defines the term municipal provider:

(5) "Municipal Provider" means:
(a) A municipality that provides water for municipal purposes to its residents and other users within its service area;
(b) Any corporation or association holding a franchise to supply water for municipal purposes, or a political subdivision of the state of Idaho authorized to supply water for municipal purposes, and which does supply water, for municipal purposes to users within its service area; or
(c) A corporation or association which supplies water for municipal purposes through a water system regulated by the state of Idaho as a "public water supply" as described in section 39-103(12), Idaho Code.

Idaho Code § 42-202B(6) defines how a water right can be used for municipal purposes:

(6) "Municipal purposes" refers to water for residential, commercial, industrial, irrigation of parks and open space, and related purposes, excluding use of water from geothermal sources for heating, which a municipal provider is entitled or obligated to supply to all those users within a service area, including those located outside the boundaries of a municipality served by a municipal provider.

4. M3 Eagle is not yet a municipal provider under any of the three definitions contained in Idaho Code § 42-202B(5). M3 Eagle stated that it intends to become a municipal

provider under Idaho Code § 42-202B(5)(c), defined as a "corporation or association which supplies water for municipal purposes through a water system regulated by the State of Idaho as a "public water supply."

5. M3 Eagle's prospective plans to become a municipal provider in the future do not prevent it from obtaining a water right for municipal purposes. The procedure for obtaining a water right in the state of Idaho is an application, permit, and license process. A person or entity seeking a water right often proposes a use of the water for which the person or entity may not have previously used water for in the past. One of the purposes of the application-permit-license process is to authorize a prospective water user to develop the proposed use over a period of five years, and file proof of beneficial use at the expiration of the development period.

6. For issuance of a standard water right, the determination of whether a permit holder is a municipal provider should be made at the time proof of beneficial use is filed and a beneficial use exam is conducted for purposes of licensing.

7. Idaho Code § 42-202(2) states:

> (2) 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 service area need not be described by legal description nor by description of every intended use in detail, but the area must be described with sufficient information to identify the general location where the water under the water right is to be used and the types and quantity of uses that generally will be made. (Emphasis added).

8. Idaho Code § 42-202B(8) defines the term reasonably anticipated future needs:

> (8) "Reasonably anticipated future needs" refers to 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 comprehensive land use plans approved by each municipality.** (Emphasis added).

9. While a person or entity not currently a municipal provider can obtain a water right permit to develop a municipal use, obtaining a permit for municipal use that includes a component for reasonably anticipated future needs requires a higher standard. One of those standards is the requirement in Idaho Code § 42-202 that the municipal provider "qualifies" as a municipal provider at the time the application is filed. In the instant case, M3 has not constructed any of the water services that it proposes. The wells needed for diversion have not been constructed. None of the water lines are in place,

service stubs are not provided for the anticipated residential development. None of the other water related infrastructure has been constructed. M3 Eagle does not qualify as a municipal provider under Idaho Code § 42-202.

10. M3 Eagle argues that relying on the tense of the verb in Idaho Code § 42-202 is not sufficient justification to deny the water right for reasonably anticipated future needs. M3 Eagle argues that the interim director should consider the broader intent of the statute. However, the requirement that the qualification be established at the time of the application is clear from the statutory language.

11. The quoted language above in Idaho Code § 42-202B(8) establishes that, in order to obtain a municipal water right for a reasonably anticipated future need, the municipal provider must have a service area that includes a municipality within the service area, and that the projections of population and other planning data are reasonably expected to be required in the planning horizon of each of the municipalities within the service area. M3 Eagle executed a preannexation agreement with the City of Eagle. At the time the record closed, the M3 Eagle property was not annexed into the City of Eagle. The development agreement establishes that, at some future date when the system is built and homes are in place, the water system will be conveyed to the City of Eagle, but, at present, there is no water system, it is not owned by the City of Eagle, and the proposed development is not part of the City of Eagle.

12. Finally, the population and other planning data presented at the hearing was not population and planning data for the City of Eagle. The population and other planning data related solely to M3 Eagle's projections of what its development might be in the future.

13. M3 Eagle would have the director broadly interpret the municipal act to allow any prospective municipal provider to obtain a water right for a lengthy period of time without any development in place. The interim director's reading of the statutory language leads him to conclude that the legislature wanted to allow existing communities, and more specifically, existing municipalities within which an established integrated water system was in place, to protect future water supplies by allowing these entities or municipal providers to these entities to obtain a water right for future anticipated needs that would extend beyond the normal permit development period. The logical support for this reasoning would be that these integrated systems are in place, that the orderly extension of these systems as the municipalities grow would be more cost effective and would be more orderly than to allow fragmented developments or developments that could preclude these existing systems from expanding.

14. The M3 Eagle development is, by its nature, the very type of development that the legislature did not recognize as qualifying for a water right for reasonably anticipated future needs. M3 Eagle proposes a large appropriation of water for a purpose that is not yet established. The possible result of this protection could limit the future ability of the existing municipalities in the area to extend and expand their currently

existing integrated systems. The interim director determines this was not the purpose of the 1996 municipal act which authorized the appropriation of water for reasonably anticipated future needs.

15. This reasoning is particularly supported by the distance of the M3 Eagle development from the cores of the existing communities and by the location of the M3 Eagle property at the boundaries of the PGSA. As additional demands are made on the PGSA in the Treasure Valley floor, these demands and withdrawals of water could impact the availability of water in the up-gradient area of M3 Eagle. If the water levels or pressures in the PGSA decline significantly, the water users that potentially would be the first to be impacted by these declines will be those drawing water from the up-slope areas of the aquifer where there is limited available drawdown. Consequently, M3 Eagle has the ability, if these proposed future anticipated needs are recognized, to hold the future development of water in the Treasure Valley floor for the existing communities hostage to its future anticipated needs that are distant and not yet developed. This further statement of the public interest supports the decision of the interim director.

16. Based on the evidence presented at the hearing, M3 Eagle should be granted a permit for the approximate proportional flow rate it would be able to develop over a period of five years. The 30-year proposed planning horizon contains six, five year periods. The quotient of 23.18 cfs divided by six is 3.86 cfs. M3 Eagle should be allowed some additional quantity of flow rate for development if additional development can occur in the first five years. A permit should be issued for 4.0 cfs to M3 Eagle.

17. The water supply is sufficient to provide an appropriation of 4.0 cfs.

18. The applicant has sufficient financial resources to develop a first phase of the project within five years at a flow rate of 4.0 cfs.

19. An appropriation of 4.0 cfs from the PGSA underlying the M3 Eagle property will not injure other water rights.

20. A comparable quantity of annual volume for the municipal use is one-sixth of 6,535 acre-feet, or 1,089 acre-feet.

21. To accommodate flexibility, M3 Eagle may divert 2.93 cfs of the 4.0 cfs to storage, but cannot exceed the rate of 4.0 cfs. Diversion from storage for uses shall be limited to 1,089 acre feet of water. To allow construction of ponds and retention of water, M3 Eagle may store up to 1,089 acre feet of water in ponds on the proposed development. Storage in ponds is limited to 1,836 acre feet. The total diversion from ground water is limited to 1,089 acre feet. Additional water of up to 1,836 acre feet may be stored if waste water is delivered to the ponds after treatment.

22. M3 Eagle will employ measures of conservation to conserve the waters of the state of Idaho. At an appropriation of 4.0 cfs, the proposed application is in the public interest.

ORDER

IT IS HEREBY ORDERED that application to appropriate water no. 63-32573 is **APPROVED** for the appropriation of the following quantities:

Flow rate:	4.0 cfs
Flow rate diverted to storage:	2.93 cfs
Total flow rate:	4.0 cfs

Annual volume diverted:	1,089 acre feet
Annual volume diverted from storage:	1,089 acre feet
Volume of storage:	1,089 acre feet
Total annual volume authorized	1,089 acre feet

IT IS FURTHER ORDERED that a map depicting the place of use boundary for this water right at the time of this approval will be attached to the permit approval document for illustration purposes.

IT IS FURTHER ORDERED that permit no. 63-32573 is subject to the following conditions:

Proof of application of water to beneficial use shall be submitted on or before January 2, 2015.

Subject to all prior water rights.

Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which the permit holder had no control.

Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code, and applicable Well Construction Rules of the Department.

The total flow rate diverted under this right shall not exceed 4.0 cfs.

The total annual volume diverted under this right shall not exceed 1,089 acre feet.

Prior to the diversion and use of water under this approval, the right holder shall install and maintain acceptable measuring device(s), including data logger(s), at the authorized point(s) of diversion, in accordance with Department specifications.

Prior to the diversion of water in connection with this right, the right holder shall provide the Department with a plan for monitoring ground water levels in the vicinity of the place of use for this water right. The monitoring should occur in parallel with development and production

and should include identification of non-producing wells and timelines for measuring and reporting. The right holder shall not divert water in connection with this right until the monitoring plan is approved by the Department. Failure to comply with the monitoring plan once it is accepted shall be cause for the Department to cancel or revoke this right.

Prior to or in connection with the proof of beneficial use statement to be submitted for municipal water use under this right, the right holder shall provide the Department with documentation showing that the water supply system is being regulated by the Idaho Department of Environmental Quality as a public water supply and that it has been issued a public water supply number.

Place of use is within the area served by the public water supply system of M3 Eagle LLC. The place of use is generally located within Sections 7, 15, 17, 18, 19, 20, 21, 22, Township 5 North, Range 1 East, and Sections 10, 11, 12, 13, 14, 15, 21, 23, 24, 26, 27, 28, and 33, Township 5 North, Range 1 West.

The right holder shall fully utilize treated waste water for irrigation purposes on all common areas, including parks, playgrounds, golf courses and other similar areas, prior to applying any water under this right to such common area parcels. This condition shall not apply to small isolated common area parcels for which connection to the waste water reuse system is not feasible. The right holder shall provide the Department with a schematic of the waste water reuse system identifying any small isolated common area parcels for which the right holder requests this condition not apply.

Water shall not be diverted for fire protection use under this right except to fight or repel an existing fire. Any amount of water used to fight a fire will not count against the annual volume limit for this right.

Dated this 21st day of December, 2009.

Gary Spackman
Interim Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of December, 2009, a true and correct copy of the documents described below were 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: FINAL ORDER and Explanatory Information to Accompany a Final Order

Name	Address	City	State	Postal Code
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
ALAN SMITH	3135 OSPREY RD	EAGLE	ID	83616
EAGLE PINES WATER USERS ASSN	3135 N OSPREY RD	EAGLE	ID	83616
JOHN THORNTON	5264 N SKY HIGH LN	EAGLE	ID	83616
NORTH ADA COUNTY FOOTHILLS ASSN ATTN: DAVID HEAD	855 STILLWELL DR	EAGLE	ID	83616
NORMAN L EDWARDS	884 W BEACON LIGHT RD	EAGLE	ID	83616
LINDA D BURKE	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
ROBERT H WEST	C/O 855 STILLWELL DR	EAGLE	ID	83616
STEPHEN DICK	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

Name	Address	City	State	Postal Code
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
LYLE JORDAN	C/O 855 STILLWELL DR	EAGLE	ID	83616
RONALD R RAPP	C/O 855 STILLWELL DR	EAGLE	ID	83616
BRUCE RICHARDSON	C/O 855 STILLWELL DR	EAGLE	ID	83616
BARRETT D JONES	C/O 855 STILLWELL DR	EAGLE	ID	83616

Deborah J. Gibson
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