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DEPARTMENT OF
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**AFFIDAVIT OF MICHAEL P. LAWRENCE
IN SUPPORT OF M3 EAGLE'S SUBMISSION
OF DEPOSITION TRANSCRIPTS AND
SUPPLEMENTAL BRIEF RELEVANT TO
MOTION IN LIMINE**

**AFFIDAVIT OF MICHAEL P. LAWRENCE IN SUPPORT OF M3 EAGLE'S
SUBMISSION OF DEPOSITION TRANSCRIPTS RELEVANT TO MOTION IN LIMINE – Page 1**


Pines Water Users Association's October 4, 2011 *Response to M3's Reply of September 27, 2011*
and Revised Witness List.

3. On October 11, 2011, M3 Eagle deposited Mike Moyle. Attached hereto as Exhibit A is a copy of the transcript of the October 11, 2011 *Deposition of Mike Moyle*.

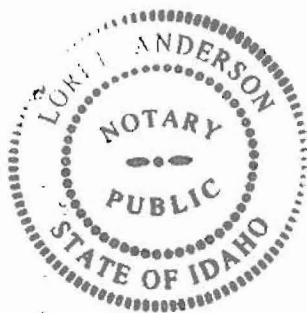
4. On October 12, 2011, M3 Eagle deposited Mary Taylor. Attached hereto as Exhibit B is a copy of the transcript of the October 12, 2011 *Deposition of Mary Taylor*.

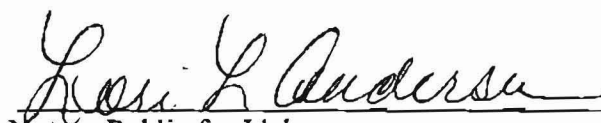
5. On October 12, 2011, M3 Eagle deposited Charles Meissner. Attached hereto as Exhibit C is a copy of the transcript of the October 12, 2011 *Deposition of Charles W. Meissner, Jr.*

DATED this 14th day of October, 2011.


Michael P. Lawrence

Subscribed and sworn to before me this 14th day of October, 2011.




Notary Public for Idaho
Residing at Boise
My Commission expires: Aug 23, 2013

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of October, 2011, the foregoing was filed, served, or copied as follows:

FILED

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Boise, ID 83720-0098

☐ U. S. Mail
☒ Hand Delivered
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SERVICE

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A handwritten signature in black ink, appearing to read "Jeffrey C. Fereday", written over a horizontal line.

Jeffrey C. Fereday
Michael P. Lawrence

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, ASSIGNED)
TO THE CITY OF EAGLE)
_____)

DEPOSITION OF MIKE MOYLE
October 11, 2011

REPORTED BY:
COLLEEN P. ZEIMANTZ, CSR No. 345
Notary Public

DEPOSITION OF MIKE MOYLE was taken on
behalf of the M3 Eagle LLC, at the offices of
Givens Pursley, LLP, located at 601 West Bannock
Street, Boise, Idaho, commencing at 11:35 a.m.,
on October 11, 2011, before Colleen P. Zeimantz,
Certified Shorthand Reporter and Notary Public
within and for the State of Idaho, in the
above-entitled matter.

APPEARANCES:
For M3 Eagle LLC:
Givens Pursley, LLP
BY MR. JEFFREY C. FEREDAY
BY MR. MICHAEL P. LAWRENCE
601 West Bannock Street
P.O. Box 2720
Boise, Idaho 83701-2720
For the City of Eagle:
Moore Smith Buxton & Turcke, Chartered
BY MR. BRUCE M. SMITH
950 West Bannock, Suite 520
Boise, Idaho 83702
Also Present: Dick Legerston
Alan Smith
Jason Smith

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3 - Copy of Re-Analysis of 16 Aquifer Tests in the Greater Eagle-Star Area of North Ada County, Idaho, Dated 07/04/2008	7
4 - Copy of Water Budget for the Treasure Valley Aquifer System For the Years 1996 and 2000	7
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EXHIBIT

A

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1 MIKE MOYLE,
2 first duly sworn to tell the truth relating to
3 said cause, testified as follows:
4 EXAMINATION
5 QUESTIONS BY MR. FEREDAY:
6 Q. Please state your name.
7 A. Mike Moyle.
8 Q. And your occupation?
9 A. Farmer.
10 Q. What do you farm?
11 A. What do I farm? I raise crops like
12 peppermint, spearmint, alfalfa seed, sweet corn,
13 wheat, things like that.
14 Q. What's your education, Mr. Moyle?
15 A. Very little. I graduated from high
16 school. I've got no further education than high
17 school. My father got in an accident, and I've
18 been back farming after that.
19 Q. Do you have any education in analyzing
20 demographic trends, or economics, or real estate
21 market, or subjects like that?
22 A. Just the road of hard knocks. I have
23 played that game a little bit.
24 Q. Which games have you played amongst
25 those?

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1 A. Land development and things like that.
2 Q. Anything other than land development
3 and farming?
4 A. Farming, you look at trends. You look
5 at markets. You look at those sort of things.
6 (Exhibit A marked.)
7 Q. (BY MR. FEREDAY) I would like to show
8 you what's been marked as Deposition Exhibit A,
9 which is a Notice of the Deposition. Do you
10 recall receiving this?
11 A. I got an email.
12 MR. FEREDAY: Could we go off the
13 record for a moment, please?
14 (Discussion held off the record.)
15 MR. FEREDAY: Back on the record,
16 please.
17 THE WITNESS: I've got a phone call and
18 an email.
19 Q. (BY MR. FEREDAY) From?
20 A. From one of your assistants, Jeff, or
21 did you call me? I think it was you. And then I
22 got the email from your assistant.
23 MR. FEREDAY: We would like to mark
24 that as Deposition Exhibit A, if you haven't
25 already.

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1 Q. (BY MR. FEREDAY) Did you bring any
2 documents with you today, Mr. Moyle?
3 A. Just some of the stuff I copied when I
4 was trying to figure out -- when I was trying to
5 figure out what you wanted to talk about today,
6 and just a few of the different things that I
7 would -- kind of played with, when I was looking
8 through what was going on with the water right
9 application up there, and some of those things.
10 Q. Are these all the documents you have
11 concerning the M3 Eagle Application No. 63-32573?
12 A. Yes, I didn't print everything off the
13 internet. You know, I can get the rest of it.
14 MR. FEREDAY: Let's go off the record.
15 (Discussion held off the record.)
16 MR. FEREDAY: Let's go back on the
17 record.
18 (Exhibits 1 through 5 marked.)
19 Q. (BY MR. FEREDAY) So Mr. Moyle, we've
20 marked as Exhibits 1 through 5, five documents
21 that you've brought today; correct?
22 A. Yes.
23 Q. We will return those in a minute, once
24 we've made copies of those.
25 Did any other protestants, Mr. Smith,

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1 or any of the other protestants, ask you to
2 prepare any documents or testimony for today?
3 A. Un-huh, talked to them, but they didn't
4 tell me how to prepare anything.
5 Q. What were the substance of those
6 conversations, and who did you speak to?
7 A. Oh, there is a few of the neighbors
8 there. And we just, basically, talked about what
9 they saw -- the facts, and how they applied to
10 them, and what had happened during the
11 procedures. Kind of how they felt left out when
12 Strickland had asked them to be involved with the
13 decision, and they weren't. It was stuff like
14 that. Just broad spectrum stuff.
15 Q. When you say, met with some of the
16 neighbors, who was included in that group?
17 A. I don't remember all the names.
18 Q. Would it have been John Thornton?
19 A. He was there.
20 Q. David Head?
21 A. I don't remember David Head.
22 Q. Norman Edwards?
23 A. Un-huh, I don't know him. I really
24 don't remember. Mary Taylor was there.
25 Q. Mary Taylor.

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1 A. Meissner was there.
2 Q. Charles Meissner?
3 A. There was a few people.
4 Q. And Alan Smith was there?
5 A. Alan was there.
6 Q. And Jason Smith?
7 A. Uh-huh.
8 Q. What was your understanding from those
9 conversations, as to the purpose of this remand
10 hearing for which this deposition is being taken?
11 A. Well, we didn't really talk about that.
12 That's why I brought three questions, because
13 after talking to you, I needed to know -- I
14 needed to know what happened to them, and their
15 side of the story. And I wanted to know what you
16 wanted to talk about. And tried to figure out
17 how it applied to me.
18 Q. Did any of the protestants that you
19 spoke to, indicate what this hearing was about?
20 A. We talked about broad spectrum stuff.
21 That's why I wanted the three questions when you
22 and I talked on the phone, because I believe from
23 what you told me, that's what this hearing is
24 about. It's not about some of the other things.
25 I don't think you want brought up, some of the

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1 other things. So I assume it's from those three
2 questions, from what you told me.
3 Q. You are not a protestant in this case;
4 correct?
5 A. Correct. I wish I was.
6 Q. Why do you say that?
7 A. Because your study shows that the
8 impact of my wells are going to be greater than I
9 thought they were. So now, I'm kind of
10 concerned.
11 Q. What do you understand about the M3
12 Eagle City application?
13 A. In what regards?
14 Q. With regard to how much water it seeks,
15 what the purpose of it is, so forth.
16 A. I understand it's for development up
17 there. I understand that they came in wanting, I
18 believe, it was 23 cfs or 22. I understand that
19 the director recommended less two or three,
20 something like that. I understand it went to
21 district court. I understand that a judge said,
22 that you were to work with the protestants. I
23 understand that Homan and Baxter, from what I
24 get, didn't.
25 Q. Didn't work with the protestors?

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1 A. Didn't work with the protestors. And I
2 understand that then you got another order, a
3 final order. I don't know how many final orders
4 he goes before he stops, and that's where we are
5 today.
6 Q. Have you ever read the M3 Eagle
7 application?
8 A. Not all of it.
9 Q. Are you a member of the North Ada
10 County Foothills Alliance?
11 A. No.
12 Q. How about the North Ada County Ground
13 Water Users Association?
14 A. No, un-huh.
15 Q. Are you familiar with either of those
16 organizations?
17 A. Familiar, in that, in the legislature
18 I've got letters from them concerning about
19 what's going on up there. I do get letters from
20 some members of them sometimes of those
21 organizations, because they say they are who they
22 are. They are not happy with me, by the way.
23 Q. They are not happy with you; those
24 organizations?
25 A. No, they think I could do some stuff

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1 legislatively, to fix some of the problems that
2 are going on up there. Part of the reasons,
3 though, you have seen what's going on, is to send
4 money up for the study to see what's going on.
5 Q. Has anyone from any of those
6 organizations, or any of the protestant groups,
7 ever approached you with regards to legislation
8 pertaining to the M3 Eagle application?
9 A. Not with legislation. But they wanted
10 to know we hadn't something legislatively, since
11 they think what has happened, has happened.
12 Q. And what is it that they describe, that
13 they think will happen?
14 A. Wells going dry, water tables going
15 down. Some of that stuff came up, too, when we
16 had the Treasure Valley Committee on -- you know,
17 aquifer committee.
18 Q. And what was the relevance of those
19 discussions with regard to this application?
20 A. Well, for example, Christian Petrich
21 was talking about how there was declining water
22 tables in North Ada County, and I believe -- I
23 have to go back and look at the notes -- and also
24 by Lake Lowell. He was concerned with what was
25 happening with the limited resources along North

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<p>1 Ada County; hence, the reason the State is 2 spending money monitoring wells, and trying to 3 make sure what's going on up there. 4 Q. I would like to show you what's -- I'd 5 like to have marked as Deposition Exhibit B, 6 which is Applicant's Exhibit B. 7 (Exhibit B marked.) 8 Q. (BY MR. FEREDAY) Have you seen this? 9 A. I'll look at it. I don't know. 10 Q. I'll represent to you, that it's a copy 11 of the protestants revised witness list, dated 12 October 4th of this year. 13 A. I haven't seen it, but I've heard about 14 it. They asked me if they could use me as a 15 witness, and I said they could. 16 Q. And that was, again, Mr. Smith asked 17 you that? 18 A. Uh-huh, Mr. Smith. 19 Q. And what did he ask you to testify 20 about? 21 A. We really didn't talk about much on 22 what I had to testify about. I could tell him, 23 though, that we had damage from when the Legacy 24 project went in. And I would talk about what 25 happened in that process, if they would allow me.</p> <p style="text-align: right;">Page 13</p>	<p>1 artesian pressure. That it is important. It is 2 a 1930s water right. And the artesian pressure 3 is because there is no power. There is no pump. 4 They are out in the middle of nowhere. They have 5 been there since the '30s. They didn't need the 6 power pump, because they have artesian pressure. 7 And if it goes down 12 foot, it would probably 8 eliminate it. 9 Q. Those wells are flowing today; correct? 10 A. They are today. 11 Q. So is it your contention, Mr. Moyle, 12 that your testimony in this case will involve 13 water supply issues, or issues of hydrogeology, 14 or injury to your wells? 15 A. I would like to talk about that, 16 including some other things. 17 Q. What other things would you talk about, 18 other than those? 19 A. Well, I think the annexation process, 20 and what happened in that regard is kind of a 21 joke. I think as you look at Eagle service area, 22 it's a land grab. They can't service that area 23 with what they have today, and no intention to. 24 It makes no sense to be at annex at 25 10,000, for example, a 10,000 head feedlot was</p> <p style="text-align: right;">Page 15</p>
<p>1 Q. Now, that damage that you refer to is 2 damage to, what; your right? 3 A. We lost well pressure in a water right 4 that we have. 5 Q. How much pressure did you lose? 6 A. You guys did the studies. Ed Squires 7 monitored the wells. And they kind of came back 8 up when they quit pumping in the Legacy. We will 9 know more when you see in the subdivision and 10 they start pumping again. They haven't pumped, 11 this last year. 12 Q. So you can't tell me how much pressure 13 you lost? 14 A. You could probably tell me, because 15 your guys did the study. Ed Squires did it as 16 part of the M3 project. When I asked him for it, 17 he said he would get it to me, and hasn't. 18 Q. And hasn't? 19 A. Un-huh. M3 monitored our well, one of 20 our wells, on part of the study of what its 21 effects would be if your water right was granted. 22 And I believe if you read your study, you will 23 find that it says, that the effects to our wells 24 would be pretty good. I think he's talking about 25 12 foot where we are at, which would take the</p> <p style="text-align: right;">Page 14</p>	<p>1 to, solely, to get to where they could annex M3. 2 Solely, to get annexation, to get on contiguous 3 M3. It makes no sense to annex federal ground. 4 I'm not saying it's illegal. I'm saying, it 5 doesn't make sense. 6 Q. Are you saying that the City of Eagle 7 should reverse its annexation; is that your 8 contention? 9 A. I'm saying, if Eagle can't provide 10 services, which they can't do now, they shouldn't 11 be annexing and creating this service area when 12 they don't have the mechanism to service it. 13 Q. Are you familiar with the arrangements 14 between the City of Eagle and the developer of 15 the M3 planned community with regard to service 16 of utilities in that area? 17 A. If you are saying, am I familiar with 18 the fact that if they get the water right, they 19 give it to the City? Is that what you are 20 getting at, Jeff? 21 Q. No. I'm just asking you, what 22 familiarity do you have with the arrangements 23 between the City of Eagle and the developer? 24 A. Very little. I know there is no sewer 25 lines up there. There is no water lines up</p> <p style="text-align: right;">Page 16</p>

1 there.
2 Q. Okay.
3 A. There is no roads up there.
4 Q. Let's go to your exhibits at this time.
5 I would like you to describe those for me. I
6 think we have copies back of them.
7 A. Can I have mine back?
8 Q. I believe that is yours.
9 A. Yes.
10 MR. FEREDAY: Let's go off the record
11 for a second.
12 (Discussion held off the record.)
13 MR. FEREDAY: Okay. Let's go back on
14 the record.
15 Q. (BY MR. FEREDAY) Mr. Moyle, with
16 regard to Deposition Exhibit No. 1, that you
17 provided. I see it's page 2, of something called
18 an "Order Limiting Presentation of Evidence at
19 Supplemental Hearing," and this includes three
20 numbered sentences.
21 Is it your understanding that this is
22 what the evidence for this upcoming remand
23 hearing will be limited to; do you understand
24 that?
25 A. From what you told me, Jeff, this is

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1 what it's limited to. But I think that those
2 questions are broad enough, they can go other
3 places with them.
4 Q. What other places would you contend
5 that you can go on any of these?
6 A. Well, when you talk about planning
7 horizon and reasonable anticipated future
8 municipal needs. I think if you look at the
9 growth factor right now, Eagle doesn't need what
10 you are claiming they need. I think you can talk
11 about some of these other issues in regards to
12 what has taken place, what they have versus, what
13 is going to happen if they get what they want.
14 Q. You aren't contending, are you, that
15 you are an expert able to give opinions with
16 projected growth; are you?
17 A. Not at all. But I live out there. And
18 I know what is going on out there, and I can
19 testify what's happening. I can go show you
20 what's happening, and go show you the service
21 area with a big feedlot in the middle of it.
22 That makes no sense. There is no roads. There
23 is no sewer. There is no services. It makes no
24 sense. And I know what houses are going for, and
25 I know how many are empty, sitting in the same

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1 area. Sometimes reality is better than having an
2 educated person that can show you numbers.
3 Q. So you are in agreement then, I take
4 it, that you will not be testifying, or
5 attempting to testify on issues having to do with
6 any question, other than those encompassed by
7 these three?
8 A. Say that again.
9 Q. Are you in agreement that your
10 testimony will be restricted to these three
11 areas?
12 MR. ALAN SMITH: We don't know that
13 yet, Counsel. It's very unclear as to what Mr.
14 Spackman is going to allow, and what he isn't.
15 And I don't think asking the witness to speculate
16 about it helps a bit.
17 Q. (BY MR. FEREDAY) I'm asking the
18 witness what he understands.
19 A. It's my understanding, that as I look
20 at those three questions, that they are broad
21 enough where they ought to go in regards to
22 current damage from existing water rights and
23 future damages.
24 Q. Excuse me, when you say --
25 A. I think that's why, when he talks about

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1 future needs, anticipated needs, service area,
2 things like that. So I think there are other
3 things that can be discussed, depending on what
4 the director decides to allow.
5 Q. When you say "damage," do you mean
6 injury to one's ability to pump water or
7 drawdowns in the aquifer is similar?
8 A. I'm talking about injuries to a water
9 right that exists.
10 Q. And those are injuries which you
11 believe you have evidence of?
12 A. I think you have evidence of them. I
13 think your guy, Ed Squires, monitored my wells,
14 and can tell you what those are, if you talk to
15 him.
16 Q. But you don't have any of that evidence
17 here today; do you?
18 A. Not with me, no.
19 Q. You have not seen it; have you?
20 A. Un-huh.
21 Q. Okay. Now, let's go to Exhibit 2.
22 A. Your own stuff, though, shows that the
23 damages will be pretty big.
24 Q. Let's go to Exhibit 2, please.
25 A. All right. 2. We're off to 2.

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1 Q. 2 is pages 1, 5, 19, and 26 of a
 2 January 25, 2010 amended final order signed by
 3 Gary Spackman; correct?
 4 A. Yes, correct.
 5 Q. Why did you bring this today?
 6 A. Well, as I've gone through, and kind of
 7 highlighting, trying to figure out what's going
 8 on with this stuff, and I have a long way to go,
 9 Jeff, and I apologize for that. Some of the
 10 comments that were made by the director,
 11 particularly, on page 5: "M3 Eagle encourages
 12 the interim director to subscribe to the
 13 following maxim: Believe the results of a
 14 scientific study even though the data and input
 15 are unreliable. This suggestion is untenable."
 16 It tells me right there, that he has a
 17 concern about what your model, and what you are
 18 trying to say is going to happen if the water
 19 right is granted.
 20 Q. And this is an issue having to do with
 21 hydrogeology; correct?
 22 A. Correct, it is, I think.
 23 Q. What else is relevant in this, in your
 24 view, Mr. Moyle?
 25 A. What's relevant about it, it tells me

Page 21

1 that the department and the director, himself,
 2 have concerns about the water right, and whether
 3 or not the water right is available there. And
 4 it sounds to me like he has questions about the
 5 model he made.
 6 Q. And why, again, is that relevant in
 7 this remand hearing?
 8 A. That's relevant, because if you are
 9 talking about future needs, the City of
 10 Eagle -- wherever that paper I had -- if you are
 11 talking about these questions, if the water is
 12 not there, that addresses what these things
 13 (indicating) can say or do.
 14 Q. Referring to Exhibit 1?
 15 A. Referring to Exhibit 1, and the
 16 questions that will be before the Hearing
 17 Officer.
 18 Q. What else about the amended final
 19 order, Mr. Moyle, that you find important for
 20 this hearing?
 21 A. He lowers the water right, gives it
 22 back -- and I have to apologize, Jeff, I haven't
 23 gone through it enough, and studied it enough.
 24 So that's the only ones I brought that stuck in
 25 my mind. And I'll do a better job about that if

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1 I'm allowed to testify.
 2 Q. How about Exhibit 3? Exhibit 3 is
 3 something entitled "Re-Analysis of 16 Aquifer
 4 Tests in the Greater Eagle-Star Area of North Ada
 5 County, Idaho," dated July 4, 2008. And I note
 6 that you've included the cover page -- cover
 7 pages and page 241.
 8 A. Uh-huh.
 9 Q. Do you agree that this concerns
 10 hydrogeology and ground water pumping issues?
 11 A. I agree that it concerns with your
 12 perceptions of what will happen, and it is your
 13 study. And, yes, it does deal with water
 14 hydrogeology, whatever the word is.
 15 Q. And I note that on page 241, you've
 16 highlighted paragraph 20?
 17 A. Correct.
 18 Q. That also has to do with effects of
 19 pumping; correct?
 20 A. Correct. No. 20 says, "Development of
 21 additional wells and full development of existing
 22 municipal water rights will cause artesian
 23 pressures to decline over time throughout the
 24 Star-Eagle area. This decline of artesian
 25 pressures may cause some wells that flow at

Page 23

1 ground surface (or above) to cease doing so.
 2 Wells currently relying on artesian flowing
 3 conditions to provide water supplies may require
 4 pumps to produce water for use in the future."
 5 That concerns me, because of our other
 6 existing water rights, and what would happen if
 7 those artesian flows go away.
 8 Q. Is it your position that any reduction
 9 in artesian flows, or ground water levels, are
 10 actionable injury under Idaho law; is that your
 11 contention?
 12 A. I think if you are pre-1951, yeah. If
 13 your water right is pre-1951, yes.
 14 Q. That's your view?
 15 A. That's my view.
 16 Q. Okay. Let's go to Exhibit 4. Please
 17 describe what Exhibit 4 is, Mr. Moyle, and why
 18 you brought it to us today?
 19 A. Well, as I was playing around and
 20 trying to come up with what was going on in the
 21 Treasure Valley, this is the study that was done
 22 in 1996 and 2000 by the Department. And one of
 23 the things that I've actually experienced, even
 24 though I'm not a hydrologist in the Eagle area,
 25 with wells that are not super deep, I found, for

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1 example, just below your proposed project. If I
2 put in potatoes and sprinkle the ground, the
3 wells in the 40-acre subdivision to the south, go
4 dry. In fact, Gary loves me, because he has to
5 drop down and go deeper to get to water.
6 And if I plant a crop like corn or mint
7 where I irrigate flood irrigation and recharge,
8 that their wells work just fine. It's when I
9 don't recharge, when I sprinkle, that their wells
10 decline.
11 And in this document, the one that kind
12 of stuck out with me, it talks about how in areas
13 where there is recharge in agricultural use, that
14 they don't have the problem, basically, with loss
15 in ground water versus the area where there is no
16 agricultural recharge.
17 The area you are proposing for your
18 subdivision has some agricultural use, and you
19 have ground water rights, surface water rights,
20 and you do irrigate some up there. And that
21 water right comes out of the Farmers Union ditch.
22 One of the things I've also thought that
23 municipalities ought to be looking at a surface
24 water, instead of ground water for the need.
25 Especially, for the M3 project, where there is no

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1 recharge. There is no agricultural use going on
2 up there in regard to flood irrigation
3 re-charging.
4 Q. Mr. Moyle, do you agree that Exhibit 4
5 pertains to hydrogeology, and the effects of
6 ground water pumping, and similar issues?
7 A. In North Ada County, yes.
8 Q. Exhibit No. 5 is a copy, apparently,
9 from the internet --
10 A. Oh, yeah. I did that this morning.
11 Q. -- of Idaho Code Title 42 Section 203A.
12 And what was the purpose of bringing this to us
13 today?
14 A. I didn't really know you were going to
15 get what was in my book. I was just reading
16 through the statutes today looking at different
17 options that the director had, the protestants
18 had, and some of the things that the director had
19 to look at. And that's why I copied it down.
20 Q. And do you contend that this is
21 relevant to the remand hearing in this case?
22 A. Well, I think it can be. It talks
23 about being able to, financially, being able to
24 finish the project. It talks about what the
25 director has to look at. And I think as you look

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1 at the Eagle service area and what we're trying
2 to accomplish, that this could be applied to it.
3 But I haven't studied it enough, Jeff,
4 to fill you in with all the details. I just
5 printed it off this morning. So I really just
6 played around my computer, because I didn't want
7 to come in here halfcocked. I didn't know you
8 were going to ask for it.
9 Q. So just to wrap this up. You've
10 brought five documents with you today, which
11 we've marked as Exhibits 1 through 5. Can you
12 tell us how these documents pertain to the
13 subject matter of this hearing?
14 A. I think the director on the first one
15 has concerns; hence, the reason he said what he
16 said, about what's going on there.
17 Q. You mean the pumping?
18 A. The pumping, and what the proposed
19 effects could have. And the fact that he doesn't
20 think your model is -- he has a concern about the
21 model used to apply for the water right.
22 MR. LAWRENCE: To be clear, you were
23 just indicating Exhibit 2.
24 THE WITNESS: Sorry. I'm just going
25 through, whatever.

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1 And in Exhibit 1, you are talking about
2 what you wanted to ask me here. And I think
3 those questions are broad enough to allow me to
4 go to other areas, if I'm allowed to testify.
5 Exhibit 2, the director talks about
6 some of his concerns with your water model, and
7 whether or not the water is really available
8 there for the purposes sought.
9 Exhibit 3 is your own study. And I
10 think it proves that I should have some real
11 concerns with my water right, even though I'm
12 down the road a little ways.
13 Exhibit 4 talks about how even IDWR has
14 concerns with the recharge, and with what's going
15 on in North Ada County.
16 And Exhibit 5 is statutes that, I
17 think, that maybe give the Department leeway to
18 adjust what they are trying to do in regards to
19 the water right, but I haven't studied it enough
20 to tell you how it affects it, Jeff.
21 (Exhibit C marked.)
22 Q. (BY MR. FEREDAY) Okay. I would like
23 to show you our Exhibit C, please. And I
24 apologize if this is going over areas -- some
25 areas that we've already have gone through, but I

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<p>1 just want to make sure you are clear on this, Mr. 2 Moyle.</p> <p>3 Deposition Exhibit C, it's an August 4 2nd, 2011 notice of hearing and pre-hearing order 5 pertaining to this remand case for the City M3 6 water right application. And near the bottom of 7 page 2 of that exhibit, I think you will note 8 that near the top of page 2 -- I'm sorry -- that 9 these three items that we discussed before are 10 listed there. Do you see those?</p> <p>11 A. Uh-huh, the three are right below it, 12 under scheduling order.</p> <p>13 Q. Right. Do you recognize that as -- 14 A. Exhibit 1.</p> <p>15 Q. The same as Exhibit 1? 16 A. It looks like it to me. It's pretty 17 close.</p> <p>18 Q. That was -- 19 A. Those questions were the same, correct.</p> <p>20 Q. Actually, earlier than Exhibit 1; is it 21 not? This is dated August 2nd. 22 A. August 2nd, correct. 23 (Exhibit D marked.)</p> <p>24 Q. (BY MR. FEREDAY) I'm showing you 25 Deposition Exhibit D now, Mr. Moyle. And this Page 29</p>	<p>1 pre-hearing orders or the restricted scope of 2 this hearing?</p> <p>3 A. He said they were restricted, and 4 that's why I got the three questions. And so did 5 you. You told me it was about those three 6 questions. So I think those three questions were 7 broad.</p> <p>8 Q. Did he tell you those three questions 9 were broad; Mr. Smith, or someone else among the 10 protestants?</p> <p>11 A. No, I told myself when I read them.</p> <p>12 Q. But Mr. Smith did represent to you, 13 that this was a restricted hearing; correct? 14 A. Yeah, he told me that it was 15 restricted.</p> <p>16 Q. So, Mr. Moyle, this sentence that we 17 just read, the parties shall not conduct 18 discovery or offer evidence at the hearing 19 concerning matters such as technical water supply 20 issues, hydrogeology, and potential injury from 21 pumping, how does that allow you to offer 22 testimony at the hearing, in your view, on those 23 subjects?</p> <p>24 MR. ALAN SMITH: We would object to 25 that as asking for a conclusion of the witness on Page 31</p>
<p>1 I'll represent to you, is the September 8th 2 pre-hearing order, 2011, limiting discovery to 3 certain items. And on page 2, I would like to 4 direct your attention to the language that states 5 that, quote, "Parties shall not conduct discovery 6 or offer evidence at the hearing concerning other 7 matters, such as technical water supply issues, 8 hydrogeology, and potential injury from pumping." 9 A. And where is that at?</p> <p>10 MR. ALAN SMITH: Way at the bottom, the 11 last sentence.</p> <p>12 THE WITNESS: Okay. Got it.</p> <p>13 Q. (BY MR. FEREDAY) Do you see that, 14 Mr. Moyle? 15 A. I see it.</p> <p>16 Q. And do you see that as consistent with 17 your own Exhibit 1? 18 A. In regards to those are the three 19 questions? 20 Q. Yes.</p> <p>21 A. I see the three questions, and I think 22 that those questions are broad enough to bring in 23 other stuff.</p> <p>24 Q. Did Mr. Smith, or any other of the 25 protestants indicate to you anything about these Page 30</p>	<p>1 a point of law.</p> <p>2 Q. (BY MR. FEREDAY) That's fine. You can 3 go ahead and answer.</p> <p>4 A. I don't think it does. I think if 5 you --</p> <p>6 Q. You don't think it -- 7 A. I think if your evidence is part of 8 what he is granting a water right for, and we are 9 having a hearing on the water right, talking 10 about Eagle's future needs, and everything else, 11 that your evidence ought to be able to be used in 12 that hearing to talk about why there is no water 13 there for the purpose you sought, or the purpose 14 of Eagle City is seeking in regards to future 15 needs.</p> <p>16 Q. So I take it your contention, 17 Mr. Moyle, is that this restricts you not one 18 iota with regard to raising issues of injury; is 19 that your position? 20 A. Personal injury, or injury as a whole? 21 Q. Injury to your water right or any other 22 water rights.</p> <p>23 A. I think that the questions are broad 24 enough, that the case could be made, that the 25 effects of that water right on North Ada County Page 32</p>

<p>1 as a whole, need to be discussed. And I think 2 the reason he asked the questions he did, offers 3 the opportunity to use the stuff that was 4 discussed before, in granting the water right to 5 be brought up at.</p> <p>6 Q. So your answer to my question would be, 7 yes, that this language does not, in fact, 8 restrict your testimony at the hearing; is that 9 correct?</p> <p>10 A. I love the way you answer my question 11 for me. My answer is, yes, I think the stuff 12 could be brought up that was brought up before, 13 including the stuff you used to apply for the 14 water right.</p> <p>15 Q. Okay. Are you familiar with the 16 district court's order remanding this matter to 17 the Department of Water Resources?</p> <p>18 A. Familiar, only enough to know that the 19 protestants weren't happy, and weren't involved, 20 and that's just what I got at our little meeting. 21 I haven't had the opportunity to talk to Homan 22 and Baxter to see what happened there, and what 23 their perceptions of what happened there.</p> <p>24 Q. Do you intend to talk to Homan and 25 Baxter about this?</p> <p style="text-align: right;">Page 33</p>	<p>1 Q. Correct. And do you see this, again, 2 raising that same point that we've been 3 belaboring here?</p> <p>4 A. I think those three questions that the 5 interim director Spackman signed off on, opened 6 up the opportunity to talk about Eagle's future 7 needs, and annexation, and water permit. And I 8 think when you open the door to talk about those 9 things, you talk about all the other stuff, too, 10 that you use to try to get the water right.</p> <p>11 Q. Including hydrogeology, and alleged 12 injury, and so forth?</p> <p>13 A. Your words, not mine.</p> <p>14 Q. Do you agree with that, or do you 15 disagree with that?</p> <p>16 A. I think it does. I think it opens up 17 everything.</p> <p>18 Q. Okay.</p> <p>19 A. I can't see, especially, reading the 20 statute and everything else, how the director 21 can't take all that into effect when he's looking 22 at this.</p> <p>23 Q. What is your knowledge of the City of 24 Eagle's annexation of the M3 project lands? You 25 mentioned it earlier. But I would just like to</p> <p style="text-align: right;">Page 35</p>
<p>1 A. If I'm allowed to testify, I think I 2 will.</p> <p>3 Q. You were not a party to that matter, 4 were you?</p> <p>5 A. Correct, I was not.</p> <p>6 Q. So you haven't read the order and —</p> <p>7 A. I have not read the order.</p> <p>8 Q. Okay. Do you understand that it, too, 9 limits the scope of this hearing?</p> <p>10 A. I did not, because I haven't read it. 11 (Exhibit E marked.)</p> <p>12 Q. (BY MR. FEREDAY) Okay. Let's go to 13 Exhibit E, just to tie this up. Perhaps to be 14 redundant, Mr. Moyle, but I just want to make 15 sure you see this, as well.</p> <p>16 This is an order limiting presentation 17 of evidence at supplemental hearing signed 18 earlier this month, October 3rd, by Gary 19 Spackman. And I believe this is the same as 20 your —</p> <p>21 A. This is where I got mine.</p> <p>22 Q. This is the same as your Exhibit 1; 23 correct?</p> <p>24 A. Correct. This is where page 2 is the 25 same as my Exhibit 1.</p> <p style="text-align: right;">Page 34</p>	<p>1 make sure we understand about, what you know 2 about it.</p> <p>3 A. I know that they were up there begging 4 neighbors to let them at it, so they could get to 5 M3. I know they went to everybody they could try 6 to get contiguous.</p> <p>7 Q. When you said, who —</p> <p>8 A. The City of Eagle and M3, they were 9 both involved in that. I know that they annexed 10 the feedlot to get around some of the other laws.</p> <p>11 Q. Who?</p> <p>12 A. The City of Eagle. Hormachea, is the 13 owner of the feedlot, by the way. And I think 14 that he was under the assumption, I could be 15 wrong, but you would have to ask him, but I think 16 he was under the assumption, that he was going to 17 get sewer, and water, and other city services, 18 which I don't see happening. Hence, I think 19 that's the reason why he put the feedlot back 20 into production.</p> <p>21 I think that you saw what happened when 22 they couldn't get around one way, they went to 23 another neighbor, and they bought a little strip, 24 and annexed federal ground. And I don't think 25 that was ever the intent of annexation laws;</p> <p style="text-align: right;">Page 36</p>

1 annexing federal property, or cutting deals with
2 landowners on a small strip that borders a small
3 strip. But I don't know.
4 Q. You agree that the annexation is
5 complete, though; don't you?
6 A. I agree that they annexed it, and it
7 doesn't mean that it was right. And it doesn't
8 mean that it's going to stand. I don't know that
9 anybody thought it. I don't know. I didn't look
10 at that enough, until I saw the question. It
11 kind of intrigued me that he would put that
12 question in there, actually.
13 Q. Do you intend to challenge the
14 annexation in any way?
15 A. I have to do more research on whether I
16 can or can't. I don't know. I don't know if
17 it's challengeable. Is that a word,
18 challengeable? I still don't think it makes
19 sense. They can't service it. They don't -- it
20 doesn't make sense.
21 Q. Are you familiar with the City's
22 population growth trends? Have you studied that,
23 Mr. Moyle?
24 A. I haven't studied it. I had the mayor
25 talk to me about it, a little bit it. He was

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1 pretty excited, because it looked like they may
2 sell a few houses.
3 Q. This was Mayor Reynolds?
4 A. Uh-huh.
5 Q. When was that?
6 A. We have bimonthly meetings with the
7 mayor and local businesses, and it was brought up
8 there.
9 Q. Do you think that the actions of the
10 mayor and the city council has been unwise with
11 regard to the M3 project?
12 A. If you are asking, would I have done
13 what they did? I would not have done what they
14 did. It doesn't make any sense to me to annex
15 and swap the ag ground. It doesn't make any
16 sense to me to annex federal ground to try to get
17 contiguous to a project. It doesn't make sense.
18 I don't think that was the intentions
19 of the law when the annexation laws were put in.
20 That's just me. That's just speculation. And I
21 don't know that the current council would do
22 with -- what the old council did in regards to
23 that annexation. I don't know.
24 Q. Are you familiar with the per capita
25 water use in the city of Eagle?

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1 A. Un-huh.
2 Q. Is that a no?
3 A. That's a no.
4 Q. How about the City of Eagle's existing
5 water right portfolio? Do you know what's in
6 that portfolio?
7 A. I don't know what all is in that
8 portfolio. I know some of the things they tried
9 to do with the LID to purchase out the private
10 provider in Eagle. I know they have gotten the
11 United Water for part of it. They have the City
12 of Eagle for part of it. And they have got a
13 private company.
14 Q. Okay.
15 A. I think there is three of them, plus I
16 think subdivisions have their own. Because I
17 know that for a fact, because some of them had
18 their water hooked up backwards, and were
19 drinking dirt water for a while, which I thought
20 was funny.
21 Q. Could you elaborate on that? Who did
22 you say was drinking dirt water?
23 A. Well, they had -- I shouldn't have
24 brought it up. But they had one of the farms I
25 used to farm, when they put the subdivision in,

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1 they hooked the waterlines backwards. So they
2 were drinking the water out of the pump in the
3 ditch. A couple people got sick. It was no big
4 deal.
5 Q. Which subdivision was this?
6 A. I can go show you. I don't remember
7 the name. I could get it.
8 Q. It was in the city of Eagle?
9 A. Yes.
10 Q. So, Mr. Moyle, what do you expect your
11 testimony to be if you are allowed to testify at
12 the hearing, in this matter, next week?
13 A. I need to do a little more research on
14 annexation. I would like to talk about, as we go
15 down the road, and annexation being worked from
16 the center off, and widening. That as we go to
17 get the services, and annexing the ground to get
18 this hopscotch. I think the hopscotch
19 annexations is a problem.
20 As we talk about Eagle's future needs,
21 I think we need to -- I know you want to talk
22 about growth. But I would like to talk about the
23 water rights that they have now, but I have to do
24 research on that to figure out what I would like
25 to say there, In regards to whether or not they

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1 have enough to maintain what we have now, let
 2 alone, do they need the new water right? Is
 3 there water available in the city to continue?
 4 And I would kind of like to have a look
 5 at what they are trying to accomplish here, in
 6 regards to their -- you know, I need to know what
 7 Eagle's water is now available, and what they are
 8 trying to accomplish in terms of growth. It
 9 makes no sense to hopscotch up, and go nowhere.
 10 This whole thing confuses me. But I've got to do
 11 some research, and find out some questions.
 12 Q. Have you ever dealt with a planned
 13 community project before?
 14 A. Have not.
 15 Q. Do you recognize that a planned
 16 community, typically, takes place on land that's
 17 previously undeveloped?
 18 A. I didn't recognize that. I think it
 19 could happen on developed or undeveloped ground.
 20 I don't think that that matters. A planned
 21 community could do it on either/or, couldn't
 22 they?
 23 Q. I'm just asking what you know about
 24 planned communities?
 25 A. I don't know enough about -- I don't

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1 know. If I'm not mistaken, it's not to the
 2 Avimor project, a planned community, too, or
 3 annexed in the city of Eagle, also.
 4 Q. I don't -- I'm not in a position to be
 5 answering your questions here, Mr. Moyle.
 6 A. You are going there, so I'm asking you.
 7 Let's have a conversation.
 8 Q. Did you oppose the Avimor project,
 9 Mr. Moyle?
 10 A. I wasn't involved in the Avimor
 11 project, so, un-huh.
 12 Q. I know you weren't involved in it, but
 13 did you oppose it?
 14 A. If they've got water up there, and it's
 15 not going to affect everybody else in North Ada
 16 County -- when Avimor first came in, if I'm not
 17 mistaken, they were going to bring water from the
 18 Payette side, to use a lot of water from the
 19 Payette River. If that's their original plan, I
 20 don't care. It's not going to affect everybody
 21 else.
 22 MR. FEREDAY: Let's go off the record
 23 for a minute.
 24 (Discussion held off the record.)
 25 MR. FEREDAY: Back on the record.

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1 Q. (BY MR. FEREDAY) Mr. Moyle, with
 2 regard to the M3 Eagle project, is this a project
 3 that you oppose, personally?
 4 A. Do I oppose the ability for them to
 5 build houses up there? No, I don't have a
 6 problem with that. But I think that the water
 7 that they get ought to come from the surface, and
 8 not the ground.
 9 My concern is IDWR studies, your
 10 studies, everybody's studies shows there is a
 11 limited resource in ground water. I think they
 12 have the ability today to get the surface water,
 13 instead of using the ground water.
 14 Other than that, if the developer wants
 15 to build the project, carry on with it. But I
 16 think they have to have some sideboards. And I
 17 think that the water issue should come from
 18 surface and not ground.
 19 Q. Do you know how much water is proposed
 20 to be diverted to supply the M3 Eagle portion of
 21 the City of Eagle?
 22 A. I do not know what the total is.
 23 Q. Your contention that they should get
 24 the water from surface water, would that be from
 25 the Farmers Union Canal?

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1 A. They've got options. They have the
 2 Farmers Union Canal water right now. That is
 3 actually one of the few ditches that allows you
 4 to move water rights around. And they have the
 5 ability for in-storage basins, similar to what
 6 Micron does. You are seeing surface water being
 7 used by United Water, in two facilities. One in
 8 Boise, and one there in the same Micron area.
 9 Micron even used underground storage. I think M3
 10 could do something similar.
 11 Q. So is it your contention that there
 12 should be no more ground water developed in North
 13 Ada County, Mr. Moyle?
 14 A. It's my contention that the Department,
 15 your study and others show, that you have a
 16 declining resource. And the amount of water is
 17 not there that everybody thought was there
 18 before. I think that that leads credence, that
 19 they ought to be using surface water and not
 20 ground water.
 21 Q. My question, though, is whether it is
 22 your contention that there should be no further
 23 ground water developed in North Ada County? Is
 24 that your contention?
 25 A. It's my contention that the Department

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1 has concerns. It's my contention that there is a
 2 study going on right now that shows their
 3 concerns. And I think it would be better to use
 4 surface water than ground water. You have a
 5 declining resource. It's not there.
 6 And what's going to happen if the
 7 Department continues to grant these water rights
 8 for water that doesn't exist, is you are going to
 9 end up with a big mess as people's wells go dry.
 10 Everybody keeps suing everybody. It's not a good
 11 thing. Especially, when they have the
 12 opportunity to use surface water, and actually
 13 you could almost turn it into a recharge project
 14 versus a drawn aquifer. You also have seen it
 15 with the development across the road.
 16 Hillsdale's wells are going down. They had to
 17 dig a well a little deeper. The resource isn't
 18 there.
 19 Q. So I recognize that you are a layperson
 20 with regard to growth trends, Mr. Moyle. But is
 21 it your view that economic --
 22 A. I can see the growth trends pretty
 23 easy. It's going (indicating).
 24 Q. -- the economic development in North
 25 Ada County is really not an option for our

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1 future?
 2 A. Those are your words, and not mine.
 3 Q. Okay.
 4 A. And I think you can do the economic
 5 development with surface water and not ground
 6 water. And I think that if you use the ground
 7 water like you are proposing, you are going to
 8 create an economic mess, as everybody's wells go
 9 dry.
 10 Hence, the reason, I think, use the
 11 surface water. It's being done already in Ada
 12 County. They also have the option that Avimor
 13 had, bring the water over the hill from the
 14 Payette. There is about 40 percent of that water
 15 that hasn't even been appropriated out of the
 16 Payette River. There is plenty of water if they
 17 are willing to put the money in to bring the
 18 surface water up, and turn it into a recharge
 19 project, versus the draw. That's going to have
 20 economic detriment to the place, when everybody's
 21 wells go dry.
 22 If you want to talk about economic
 23 benefit, look at Hillsdale. I mean, that's going
 24 to cost a quarter of million dollars to get the
 25 well deep enough to find the water. That's the

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1 same water you are -- you guys are going into.
 2 It doesn't make sense to me.
 3 Q. So it is your contention, that there
 4 should be no further ground water development in
 5 North Ada; is that right?
 6 A. I would say, that it should be very
 7 limited, at best. And none, until they figure
 8 out what's going on, would be better.
 9 Q. And with regard to supplying a place
 10 like north Eagle with surface water, your view is
 11 that that should be provided from the Boise
 12 River; is that correct?
 13 A. I think you have options currently with
 14 the ditch that goes there. And it's a ditch that
 15 allows the water rights to be transferred, unlike
 16 some of the other. And I think it's an option
 17 that nobody has talked about, and ought to look
 18 at.
 19 I think you are seeing the State doing
 20 that, by the way, Jeff, when you have the
 21 governor and others talking about Twin Springs,
 22 raising Anderson Ranch, all those talks are in
 23 regards to more water for municipal. Everybody
 24 knows, eventually, you are going to have to go
 25 there.

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1 The water supply is limited, in my
 2 opinion, I'm not a hydrologist, but in my
 3 opinion, especially, in North Ada County, the
 4 Department and others have said it for quite a
 5 while.
 6 Q. So, Mr. Moyle, is it your contention
 7 that for there to be any significant economic
 8 growth in North Ada, we're going to have to build
 9 a new dam, such as Twin Springs?
 10 A. No, I think you can go in there right
 11 now, and put any surface water right right now
 12 for any water that you have and develop it, if
 13 you are talking about water rights today.
 14 Q. And what --
 15 A. You just don't want to do it.
 16 Q. And what water rights do we have; do
 17 you know?
 18 A. M3, I don't know. I know they have got
 19 some of up there, coming out of Farmers Union,
 20 because I know they irrigate back there. And I
 21 know the guy farming it said, they want him to
 22 expand. So they must have more water rights than
 23 I thought. Have you been there, Jeff?
 24 Q. Sorry?
 25 A. Have you been there?

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1 Q. Been where?

2 A. Up there in Avimor -- I mean, the M3

3 project, where they farm it?

4 Q. Yes, I've been there many times. Thank

5 you.

6 A. It's little pipes right there to go up

7 there. So they have a water right.

8 Q. Right. I would like to show you what

9 we're marking as Deposition Exhibit F.

10 (Exhibit F marked.)

11 Q. (BY MR. FEREDAY) It's a copy of the

12 City's "Reasonably Anticipated Future Needs

13 Analysis." Have you ever seen this before?

14 A. No, sir.

15 Q. Did you know that the City provided

16 information on Reasonably Anticipated Future

17 Needs, or sometimes called RAFN?

18 A. RAFN?

19 Q. RAFN. To the Department of Water

20 Resources?

21 A. I did not know that.

22 Q. What do you know about reasonably

23 anticipated future needs, Mr. Moyle?

24 A. I know that you have a whole bunch of

25 cities trying to grab a whole bunch of ground,

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1 because they are all afraid the other one is

2 going to get there first. And I think their

3 biggest problem, they are not taking care of

4 business from the center out. They are trying to

5 hopscotch. Similarly, to what we were talking

6 about today.

7 Q. Where does the term "reasonably

8 anticipated future needs" come from; do you know?

9 A. I do not know. It's probably different

10 for every city.

11 Q. What about planning horizons for water

12 planning? Do you know what that means?

13 A. I'm assuming it means that what they

14 anticipate their growth will be, and what water

15 they will need for the growth.

16 Q. Do you know where that phrase, planning

17 horizon comes from?

18 A. No.

19 Q. What do you know about municipal water

20 rights, Mr. Moyle, in any particular? Have you

21 had any experience with municipal water rights;

22 looking at them, evaluating them, commenting on

23 them?

24 A. I know they trump my ag water rights.

25 I know the Department had moratorium, and the

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1 only one water right they gave me was municipal.

2 What do you understand? What do you want to

3 know?

4 Q. I want to know what you know, about the

5 subject of municipal water rights?

6 MR. ALAN SMITH: Can you make the

7 question more specific, Counsel? That's pretty

8 broad.

9 THE WITNESS: That's why I gave a broad

10 answer.

11 Q. (BY MR. FEREDAY) I'm asking,

12 everything you know about municipal water rights?

13 MR. ALAN SMITH: The same objection.

14 Q. (BY MR. FEREDAY) You can go ahead and

15 answer, Mr. Moyle.

16 A. I know they trump my water rights. And

17 I know the City is going to continue to do what

18 they are doing with regards to requests for

19 municipal water rights. We're going to have an

20 economic problem, because you are going to drain

21 everybody else's well, and cause a hardship on

22 everybody else.

23 I know, also, that as these cities have

24 sought water rights, they've been allowed to do

25 them, where others have not been allowed to do

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1 water rights. Especially, when you go to the

2 Star Road to the east. I know that when the

3 Department says it's a moratorium, it didn't

4 include municipals.

5 Q. Are you familiar with any statutory

6 provisions pertaining to municipal water rights?

7 A. Not -- well, to explain to you what I

8 know, I guess is the word I'm trying to say. I

9 mean, I know a little bit, but...

10 Q. What would that little bit be?

11 A. Just that they trump my ag rights.

12 (Exhibit G marked.)

13 Q. (BY MR. FEREDAY) I would like you to

14 look now at Deposition Exhibit G.

15 MR. SMITH: Excuse me, Jeff. Is this

16 marked as an exhibit?

17 MR. FEREDAY: It is F.

18 THE WITNESS: So is Exhibit F what the

19 City anticipates; is that what I'm to understand?

20 Q. (BY MR. FEREDAY) I'm asking you,

21 Mr. Moyle, what you know about this document?

22 You said, you had never seen it.

23 A. I've never seen it. I'm reading it as

24 we've been talking, and that is why I asked that

25 question, is this what they anticipate to have?

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1 Q. Well, we would let the document speak
2 for itself. But I would like you now to focus on
3 Exhibit G.
4 A. All right. We're moving on to G?
5 Q. Yes.
6 A. G.
7 Q. G, I'll represent to you, is a document
8 prepared by the Idaho Department of Water
9 Resources, dated June 1st, 2011, and revised
10 October 4, 2011. Have you seen this document,
11 Mr. Moyle?
12 A. Just the little thing on the computer,
13 and I didn't open it up, because I didn't have
14 time.
15 Q. So you have not read it?
16 A. I have not read it.
17 MR. JASON SMITH: Can I get a copy of
18 that one, Jeff, that last one G?
19 MR. FEREDAY: Yes.
20 Let's go off the record.
21 (Discussion held off the record.)
22 MR. FEREDAY: Back on the record.
23 Q. (BY MR. FEREDAY) Mr. Moyle, I would
24 like to just go back over an area that I know I
25 asked you, briefly, about with regard to your

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1 expertise. I would like to confirm that you
2 don't consider yourself an expert on a reasonable
3 anticipated future need water rights, in that
4 you've never appeared as an expert witness on
5 such a subject; correct?
6 MR. ALAN SMITH: Objection. That's
7 been asked and answered.
8 Q. (BY MR. FEREDAY) You can answer.
9 A. I can't answer.
10 Q. You can.
11 A. Do I have to?
12 Q. Well, yes. Yes, you do.
13 A. I can't remember ever testifying as an
14 expert witness on that, so, no.
15 Q. Have you ever testified as an expert
16 witness on anything?
17 A. Not in court, no. Oh, at one time a
18 guy stole one of my guns. I guess I was an
19 expert witness, because I could identify the gun,
20 whatever that means. But I think by the time the
21 testimony and the hearing comes, I'll probably
22 know a lot more about that issue.
23 Q. What issue?
24 A. Anticipated future needs.
25 Q. And what facts do you anticipate

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1 testifying to?
2 A. I have to do homework before I can tell
3 you that.
4 Q. So you don't know that here, today?
5 A. I don't know that today.
6 MR. FEREDAY: Okay. No further
7 questions.
8 Bruce, exam?
9 MR. SMITH: Do the protestants have any
10 questions?
11 MR. ALAN SMITH: No questions.
12 (Discussion held off the record.)
13 MR. SMITH: Back on the record.
14 EXAMINATION
15 QUESTIONS BY MR. SMITH:
16 Q. Mr. Moyle, I'm going to follow-up with
17 very few questions. I represent the City of
18 Eagle in this matter. Okay?
19 A. And Jeff represents M3, correct?
20 Q. That is correct.
21 MR. ALAN SMITH: Right.
22 Q. (BY MR. SMITH) I need mostly to
23 clarify a couple things. I am not sure, I
24 understood what the purpose of your testimony
25 will be. What is the purpose of your testimony

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1 at the hearing that's upcoming?
2 A. I think, Bruce, that if we talk about
3 the three questions brought into play by the
4 director. And we talk about future needs,
5 anticipated growth. We need to talk about the
6 impacts that this water right will have on those.
7 And I would like to talk about that.
8 Q. Okay. So do you intend to talk about
9 the impacts of the Water Right 63-32573 --
10 A. I'm impressed you know the number.
11 Q. -- on future needs; is that correct?
12 A. On future needs, and that -- how it
13 will affect existing people that are there.
14 Q. Are you testifying personally, or as a
15 legislator?
16 A. Personally.
17 Q. So the opinions --
18 A. If I was testifying by the legislature,
19 I wouldn't have done this. I would have just had
20 a hearing.
21 Q. So the testimony you will be giving is
22 as an individual?
23 A. Mike Moyle, as an individual.
24 Q. And so the opinions that you would
25 give, on anything you would testify to, would be

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1 personal opinions?
2 A. Mike Moyle.
3 Q. Okay.
4 A. And I forgot you were left handed.
5 Q. Sometimes. I shoot pistols right
6 handed.
7 You mentioned Treasure Valley
8 hydrologic project. You are familiar with that;
9 correct?
10 A. A little bit, not very well. I need to
11 go back and read all that stuff. It's been a
12 while. I know they are working on the new one
13 now. I am kind of interested in what they come
14 up with.
15 Q. And you mentioned Mr. Christian
16 Petrich. Do you recall that?
17 A. Oh, yeah.
18 Q. Do you know Christian -- Mr. Petrich?
19 A. I know Christian a little bit. He and
20 I did some work together when we did the Treasure
21 Valley Aquifer Committee.
22 Q. Do you understand what Christian does
23 for a living?
24 A. Yes, he's a hydrologist.
25 Q. Do you have confidence in Christian's

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1 opinions?
2 A. It depends on what he's talking about.
3 Q. Water.
4 A. I find that when he talks about water,
5 it depends on who's paying him.
6 Q. So you think his opinion is influenced
7 by who pays him?
8 A. I think that he works for a living.
9 And who he works for, says their story.
10 Q. Do you think everybody is like that?
11 A. Not everybody. But I know that
12 Christian has said certain things within that
13 committee. And those things were different than
14 what he said when he was working for the City of
15 Eagle.
16 Q. And when you said "committee," what
17 committee are you talking about?
18 A. The Treasure Valley Aquifer Committee.
19 It was put together a few years ago when they
20 started dealing with the Eastern Snake Plain.
21 They put one together in Mountain Home, Treasure
22 Valley, north Idaho, as they tried to figure out
23 how to address the issues of declining water.
24 Q. When you say, they put it together, I'm
25 not clear.

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1 A. The chairman, most of them came from
2 the pressure of Eastern Snake Plain as they've
3 tried to address the issue of declining water in
4 Eastern Snake Plain. The ground pumpers, and the
5 spring flows were declining, and all this stuff.
6 It was a way to try to come up with a way to, I
7 think, mostly in the end, generate revenue at
8 that time. At that time, I wasn't in a position
9 to know what was going on. I was just asked to
10 be the chairman of the Treasure Valley.
11 Q. What year was this?
12 A. I don't remember.
13 Q. Is it still in existence?
14 A. Un-huh.
15 Q. Okay.
16 A. The camps were kind of an offshoot from
17 that.
18 Q. Did you attend any of the camp meetings
19 with the Treasure Valley?
20 A. No, I did that on purpose.
21 Q. And you testified about Mr. Squires
22 taking measurements at your --
23 A. Mr. Squires took measurements of our
24 well for two years when he was doing the study
25 for M3.

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1 Q. Mr. Squires would know if you were
2 injured; correct?
3 A. Uh-huh.
4 Q. Okay.
5 A. Mr. Squires, that's why I brought that
6 little thing where we talked about that we were
7 going to do the study we did. I am assuming,
8 since he was testing my well, my well was one of
9 the ones that he used, to come up with that
10 conclusion.
11 Q. Okay. You were testifying earlier, and
12 you mentioned a feedlot. When you are talking
13 about a feedlot, are you talking about
14 Hormachea's feedlot?
15 A. Yes. I said that in my testimony, too,
16 that we talked about them. I think Hormachea
17 thought that he was going to get water and sewer.
18 He didn't get none.
19 Q. Did you talk to him about that?
20 A. No. I do know he's filling his feedlot
21 up, running cattle, which he didn't do for a
22 while. And the annexation took place. They were
23 shutting it down, and now they are going full
24 bore.
25 Q. Full bore with?

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1 A. Cattle, full.
 2 Q. It might have something to do with the
 3 market, though; right?
 4 A. It might, but I doubt it.
 5 Q. Okay.
 6 A. I think it had something to do with the
 7 fact that he thought he could turn it into
 8 houses, and now he can't. So let's go back into
 9 putting in cattle.
 10 Q. Now, when you say, Mr. Hormachea
 11 thought, what do you base that on? How do you
 12 know that?
 13 A. Well, I know that the guys that worked
 14 for them talked about, that there was a
 15 perception that he owned a lot of ground up
 16 there. And if he was annexed into the city, and
 17 he had sewer and water to build houses, it was
 18 probably worth more than a feedlot. I believe
 19 Hormachea -- and this is me speculating -- that
 20 he did some developments. Wasn't he involved
 21 with Brookwood, and some of those other
 22 developments in Eagle, if I'm not mistaken?
 23 Q. I don't know.
 24 A. I don't either, but I think so. And I
 25 think that when they went in there, and said,

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1 hey, we'll bring you water and sewer, I mean,
 2 everybody thinking we're going to get the golden
 3 cow here. We're going to get the services.
 4 Q. Okay. But that's what you are
 5 speculating about?
 6 A. I'm speculating from hearsay, from his
 7 employees.
 8 Q. Sure.
 9 A. By the way, the margins on the feedlot
 10 aren't as good as they used to be, because of the
 11 costs.
 12 Q. On your exhibits, the exhibits that are
 13 marked --
 14 A. They were mine. I was looking at them.
 15 I had to give them to you.
 16 Q. Yeah, that's the way depositions work.
 17 There are marks on them, with an "X" with circles
 18 on them. Are those your marks?
 19 A. Some of them are. Some of them aren't.
 20 Q. Who else's would they be?
 21 A. A friend of mine.
 22 Q. Who is that friend?
 23 A. Do I have to tell you?
 24 Q. Yes.
 25 A. I'm trying to think which marks were

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1 made by who. Some would have been made by
 2 Thornton. Some may have been made by -- I don't
 3 think Mary would have made those marks. And some
 4 made by me, when I was copying them. I didn't
 5 bring them all, though, because I didn't copy
 6 them all off the internet.
 7 Q. Okay. I'm going to hand you, those are
 8 my Exhibits 1 through 5, which are my copies of
 9 the ones that you did.
 10 A. Do I need to hand those back? What do
 11 I need to do with them?
 12 Q. I am going to keep them.
 13 So I want you to go through them, and
 14 where there is an "X" marked on it, and here is a
 15 pen. And I would like for you to mark on that,
 16 who made that mark.
 17 MR. ALAN SMITH: If you know.
 18 MR. SMITH: Mr. Smith, I'm pretty sure
 19 that this is an independent witness. That you
 20 not guide him in the questions I'm asking him,
 21 please.
 22 MR. ALAN SMITH: Well, he can't answer
 23 if he doesn't know.
 24 MR. SMITH: Mr. Smith, do not instruct
 25 the witness.

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1 THE WITNESS: Are we going to have a
 2 fight here?
 3 Q. (BY MR. SMITH) So if you would take
 4 those 1 through 5, which I've handed you. Just
 5 mark on there.
 6 A. I don't know who did this one
 7 (indicating).
 8 Q. Okay.
 9 A. These are mine. There is two copies of
 10 this that I have. This (indicating) one is not
 11 my mark.
 12 Q. You are referring to which exhibit?
 13 A. This is your M3's hydrological study.
 14 Q. That's No. 3.
 15 A. I have marked them, but not that one.
 16 Q. So hang on just a minute. So on No. 3,
 17 there is an "X." And the same thing, would you
 18 just put a question mark, since you don't know
 19 who that was?
 20 A. (Witness complying.)
 21 Q. Okay. Thank you.
 22 A. This is a combo.
 23 Q. And that's Exhibit 4, you are looking
 24 at?
 25 A. And you can't see it, but this should

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<p>1 be underlined here, like that (indicating). 2 Q. So for the record, unfortunately, 3 Mr. Moyle, when you say, "this," it shows up on 4 the transcript -- 5 A. Underlying the statement from the 6 director -- 7 Q. Let's do it this way. You marked on 8 Exhibit 4 -- you just put a new mark? 9 A. Correct. 10 Q. What page is that on? 11 A. It's on page 5. 12 Q. Okay. And you -- 13 A. Page 5 of Exhibit 2. 14 Q. And would you just put a -- 15 A. Combo, what do you want me to put? 16 Q. Whatever you just marked on it, I want 17 you to put a star by it. You are from Star. 18 That's a good one. 19 A. (Witness complying.) That is a star. 20 What do you want? 21 Q. That is fine. 22 A. Now what? 23 Q. That was Exhibit 2? 24 A. Yes. 25 Q. Now, Exhibit 1, there is no marks on</p> <p style="text-align: right;">Page 65</p>	<p>1 A. Very little, but I'm familiar with what 2 it is. 3 Q. Okay. What do you know about it? 4 A. What do you want to know? It allows 5 forced annexations. 6 Q. I want to know -- 7 A. It allows police powers with the 8 cities, things like that. 9 Q. Okay. Anything else? 10 A. I don't know. There is a lot of stuff 11 in it. 12 Q. Okay. But I'm just asking you about, 13 what you know about it? 14 A. Those are the ones that I brought up, 15 that come to my mind. 16 Q. Okay. You mentioned that you were 17 going to talk to Mr. Homan and Mr. Baxter. And I 18 think you said, if I am allowed to testify? 19 A. Yeah, I would like to talk to them and 20 get their side of the story. 21 Q. Would you anticipate talking to them 22 before your testimony? 23 A. I would try to. 24 Q. Okay. Have you looked at the 25 settlement agreement between the Department and</p> <p style="text-align: right;">Page 67</p>
<p>1 it. So just pass it back. 2 A. Well, it's underlined. 3 Q. Did you underline it? 4 A. No. 5 Q. Do you know who underlined it? 6 A. No. 7 Q. Okay. So besides Mr. Thornton, did 8 anybody else mark on these? 9 A. Besides me and Mr. Thornton? 10 Q. Besides you and Mr. Thornton, yes. 11 A. Not unless somebody else did. It could 12 have been something marked there from Mary, but I 13 don't know that she did. 14 Q. Okay. 15 A. You'll have to ask her. 16 Q. Are you familiar with the Local Land 17 Use Planning Act? 18 A. I wrote the note that it should never 19 have been passed. 20 Q. That means you are familiar with it; 21 correct? 22 A. That's your annexation stuff; isn't it? 23 Passed in the '70s. What would you like to know? 24 Q. I would like to know if you are 25 familiar with it?</p> <p style="text-align: right;">Page 66</p>	<p>1 M3? 2 A. Not all of it. 3 Q. What part did you look at? 4 A. Just the front page of it on the 5 computer, and didn't have time to read it before 6 I came. 7 Q. Okay. Do you intend to read it? 8 A. If I testify, yeah. 9 Q. Okay. And -- 10 A. How does that work? How does the 11 Department make an agreement without the 12 protestants involved? How does that work? 13 Q. Well, unfortunately, in a deposition, I 14 ask questions. You answer. If you have 15 questions, it's not part of the deposition. 16 A. I don't get -- it's not a two-way 17 conversation. 18 Q. It is not. It's unfortunate, but 19 that's the way it goes. 20 A. So we could go off the record, and shut 21 the tape down, and I could tell you. 22 Q. Yeah, I could. 23 A. You wouldn't, though, it sounds like? 24 Q. Well, I just need to get through your 25 deposition, if you don't mind.</p> <p style="text-align: right;">Page 68</p>

1 So you had responded to one question.
2 You intended to testify about the annexation
3 process about Eagle's future needs, what is
4 Eagle, quote, "trying to accomplish," and impacts
5 on your water?
6 A. I think you've got to look at the
7 impacts, not only to mine, but everybody else's.
8 Q. Okay.
9 A. It needs to be broader than that.
10 Q. All right. You indicated that in your
11 opinion, cities should be using surface water;
12 correct?
13 A. Yeah, you and I have had that
14 discussion before.
15 Q. Where would the surface water come
16 from, for the M3 project?
17 A. You tell me.
18 Q. You don't know?
19 A. It's not my project. I know they have
20 a surface water right now. I think if they have
21 one now, they could change it over, and use it
22 for the other.
23 Q. And would it be enough for the M3
24 project?
25 A. I don't know. I do know they are on a
Page 69

1 ditch, though, that allows more water to be
2 transferred if they wanted to go purchase it.
3 Q. And you are a farmer. You know that
4 the water in the Farmers Union ditch is owned by
5 someone else; don't you?
6 A. Uh-huh.
7 Q. Okay.
8 A. But I also know, that someone else has
9 been willing to make deals with Micron and United
10 Water. So I think it could be done, you have got
11 examples of that already taking place.
12 Q. Okay.
13 A. And also with in basin storage, and I
14 think that that plays -- that that might be
15 conducive to that, although I am not a
16 hydrologist.
17 Q. But those are your opinions about what
18 a private party should do; correct?
19 A. Maybe they need to have a statute to
20 help them get there.
21 Q. But that is your opinion about what a
22 private party should do with their property;
23 correct?
24 A. It's my opinion, that when a big
25 developer comes in, and is going to affect
Page 70

1 everybody else's water right, we ought to look at
2 a solution to the problem. And I think a
3 solution to the problem would be surface water.
4 So those are my opinions.
5 Q. Those are your opinions about what a
6 party should do with its own private property;
7 correct?
8 A. Those are my opinions on what ought to
9 happen on this project.
10 Q. Okay. You made the comment that we
11 have a declining resource. IDWR says so. How do
12 you know that?
13 A. Hence, the reason that Christian
14 Petrich brought it up in the committee. IDWR had
15 concern about North Ada County. The director had
16 concerns when he had issue with -- well, one of
17 his orders that I read. And quite frankly, their
18 own study from M3 addressed it, that there is a
19 decline in water.
20 I also know that the subdivisions to
21 the other side of the road from this proposed
22 project, are lowering their wells, because they
23 are going down. So that tells me that there is
24 declining water in North Ada County. And the
25 Department -- the reason they are doing the study
Page 71

1 there is, there is a concern. They wouldn't be
2 doing a study if there wasn't a concern with
3 North Ada County.
4 Q. So you don't think the Department would
5 do a study just to gather information, so they
6 can make informed decisions?
7 A. I think the Department is low on
8 resources, and they are going to focus on areas
9 of concern. And I think that when we, the
10 legislature, put the money together for the North
11 Ada County, the reason it stayed on the top of
12 the list was, because we were concerned about
13 declining water levels.
14 And it was brought to their attention,
15 I think, in part by Christian Petrich. If I'm
16 not mistaken, didn't he do the study, early on,
17 that had the concerns? And the two places that
18 Christian Petrich mentioned were concerns, if I'm
19 not mistaken, were North Ada County and Lake
20 Lowell, down by Lake Lowell, south somewhere.
21 Q. That issue, you say, the availability
22 of the water supply, you would have confidence in
23 Mr. Petrich's opinion?
24 A. I'm saying, Mr. Petrich says things,
25 whoever is paying him to do it. I think that you
Page 72

1 could go look at what he said before with his
 2 concerns in North Ada County, and look at other
 3 places, and they don't always say the same thing.
 4 But that's my opinion.
 5 Q. I hope you can understand why I'm
 6 having trouble establishing between your opinion
 7 as a layperson and a legislator. That's why I
 8 asked the question.
 9 A. I apologize.
 10 Q. I recognize it's hard to draw the line
 11 sometimes.
 12 A. I'm not good at drawing lines.
 13 Q. The comment you made, that cities are
 14 trying to grab water. What were you referring to
 15 there?
 16 A. I think they are.
 17 Q. What are you referring to?
 18 A. For example, this water right. They
 19 don't need that much water for the first phase or
 20 two. Let's see if it works. I think that is why
 21 they have these huge planning areas. I think
 22 that goes with their questions there under future
 23 planning needs and anticipated growth.
 24 I think that they are trying to grab
 25 area before somebody else grabs it. I think you

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1 saw that in regards to Eagle and Star, in their
 2 area of impact. The City of Eagle said, they
 3 wouldn't go past Linder. And then they said,
 4 they wouldn't go past Palmer. And then they
 5 wouldn't go past 16. And every time they made
 6 these arbitrary make believe marks in the sand,
 7 they went past them. And in the meantime, they
 8 couldn't provide sewer or any services to them.
 9 It was just, hurry up and grab it before somebody
 10 else got it. It's crazy.
 11 Q. Is it your understanding that the City
 12 of Eagle provides sewer service?
 13 A. They don't. They have a private
 14 company. The same as Star. But when they do
 15 their development agreements, that's my
 16 understanding, that's part of the agreement. So
 17 while it may be Eagle City sewer, it's really the
 18 City of Eagle. They work hand-in-hand on doing
 19 it.
 20 Q. Okay. As a general principle, do you
 21 believe cities shouldn't plan for the future?
 22 A. I think cities should plan from the
 23 center out.
 24 Q. What does that mean?
 25 A. I think you grow this way (indicating).

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1 Not that way (indicating). I think that you grow
 2 from your center. You work your way out. You
 3 don't do what they are doing with the M3 project,
 4 where you go eight miles from the city and create
 5 a whole new enclave, and annex all this ground in
 6 between with no anticipation to providing the
 7 services to develop between them for years to
 8 come. I think that's a mistake. And the cities
 9 need to grow from the center out.
 10 Q. Okay. And again --
 11 A. It's easier for them to provide
 12 services.
 13 Q. And again, that's your own personal
 14 opinion; correct?
 15 A. It's just common sense.
 16 Q. And you made the comment, I wish I had
 17 protested this application. Do you remember
 18 that?
 19 A. Yeah. If I had known the effects it
 20 was going to have on my wells, I probably would
 21 have. I had no idea. And I think that's the bad
 22 situation with regards to the process now.
 23 Because until Squires' study, you know, I didn't
 24 think it was going to affect us as bad as Ed
 25 thinks it will.

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1 Q. Did you review the application filed by
 2 M3 when it was filed?
 3 A. No. I think at that time, you and I
 4 were playing on another one.
 5 Q. At the very beginning of your
 6 deposition, you indicated that you had talked to
 7 Mr. John Thornton, Mary Taylor, Mr. Meissner, and
 8 Alan Smith, and Jason Smith; correct?
 9 A. Yeah.
 10 Q. Any others?
 11 A. There were others. I don't remember
 12 their names.
 13 Q. Do you remember their faces?
 14 A. No.
 15 Q. Okay. Have you ever talked to Eagle?
 16 Have you ever talked to the City of Eagle about
 17 this?
 18 A. Formally, no.
 19 Q. Informally?
 20 A. Oh, the Norm Semanko and I have touched
 21 off on it just a little bit, but not really the
 22 water right. Just issues with M3, what was going
 23 on. He talked to me the other day at a chamber
 24 meeting about CIDs. I think that was in the
 25 paper.

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1 Q. But not about this particular water
2 right?
3 A. Un-huh.
4 Q. And have you talked to the City about
5 its future planning rights?
6 A. Un-huh. Now, on the past one, Mayor
7 Merrill talked about them.
8 Q. The past what?
9 A. The past water rights.
10 Q. No. No. No. Talked about future
11 planning?
12 A. We're good.
13 Q. Have you talked to the City of Eagle
14 about future planning?
15 A. No. We're good.
16 Q. Okay. Are you still raising mink?
17 A. No, un-huh. The wells went dry.
18 Q. Which well?
19 A. The well that supplemented the mink
20 farm.
21 Q. So the well that supplied the mink farm
22 is now dry?
23 A. Not now. It came back when Legacy quit
24 pumping into the ditch. Do you want to talk
25 about that?

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1 Q. Sure, tell me about that.
2 A. The well that supplies the mink farm.
3 And you go by and the sheds are still there. Not
4 all of them, but there is five or six sheds are
5 still there. When Eagle got their water right
6 for Legacy, and they built a few houses. The
7 people living in them didn't like the taste of
8 the water, because it kind of has sulphur taste,
9 because they went to the same aquifer as the well
10 at the mink ranch.
11 So to make the well taste better, they
12 ran the fire hydrants in the drain all summer
13 long. They only ran the fire hydrants and the
14 drain wells all summer long, pretty soon our
15 wells went from up here (indicating), down to
16 where there wasn't.
17 So it cost me a lot of money to go have
18 buckets and cups, watering thousands of mink,
19 because the water pressure was gone in the well.
20 That well was put in in the '30s. There is no
21 power lines to it. There is no pumps in it.
22 There is nothing there. It was always just used
23 for the mink and for ag.
24 Q. Do you recall how deep that well is?
25 A. It's 285, something like that.

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1 Q. Okay. And so if you've been measuring
2 the head pressure, what's your head pressure now?
3 A. Head pressure this summer went up.
4 This summer when Legacy went broke, they quit
5 pumping the water in the ditch. The fire
6 hydrants kept running in the drain, and the
7 pressure came back up. We would have run mink
8 this summer if we would have known that they were
9 quit running in the ditch.
10 Q. So do you know what the head pressure
11 is now?
12 A. I haven't looked at it recently. The
13 last time I looked it was about eight-and-a-half.
14 Q. When you say, it came back up, you mean
15 it ran the artesian?
16 A. The pressures came back up. The
17 pressures went down to about two, two-and-a-half,
18 that's when they wouldn't work for the water in
19 the mink. When they quit running the fire
20 hydrants in the drain, the pressure came back up.
21 But who was to know that they were going to go
22 broke, and turn the wells off.
23 Q. So when you made the comment, again, I
24 just need to clarify that, the City is trying to
25 grab water. You were referring to this

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1 application?
2 A. I think sometimes, like with Legacy,
3 and with this water right application, they apply
4 for more than they need. And I think you saw
5 that, when the director said they needed less in
6 this water right. He said the same thing in the
7 water right that we did before.
8 So sometimes they try to go for a lot
9 more than is necessary, and I think that's a
10 water grab. And they use the excuse of
11 anticipated future needs. Well, you see what's
12 going on out there? Their growth rate didn't hit
13 anywhere near what they anticipated it to be.
14 Q. What did they anticipate it to be?
15 A. I don't know. I'm sure it was not what
16 it is today.
17 Q. So you are speculating?
18 A. I'm guessing. But I do remember when
19 we talked before about the hundreds of houses,
20 and all the stuff in regards to Legacy. I'm sure
21 it was probably similar with M3, and all these
22 homes and stuff that were there. I think that's
23 why the director pared it down, originally,
24 before the final, final, wherever we are at.
25 Q. Okay.

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1 A. So I think that the cities asked for
2 more than they ever anticipated needing or using,
3 and I don't think that's right.
4 Q. So when you say, generically, "cities,"
5 you are referring to the City of Eagle, not
6 anyone else?
7 A. I would have to do some research, but I
8 think I would assume City of Eagle, but I don't
9 know that for sure. I'm speculating.
10 MR. SMITH: I have no further
11 questions. Thank you very much.
12 THE WITNESS: Thanks, Bruce.
13 MR. FEREDAY: I guess that's it.
14 (Deposition concluded at 12:52 p.m.)
15 (Signature requested.)
16
17
18
19
20
21
22
23
24
25

Page 81

1 CERTIFICATE OF WITNESS
2 I, MIKE MOYLE, being first duly sworn,
3 depose and say:
4 That I am the witness named in the foregoing
5 deposition, Volume I, consisting of pages 1
6 through 80; that I have read said deposition and
7 know the contents thereof; that the questions
8 contained therein were propounded to me; and that
9 the answers contained therein are true and
10 correct, except for any changes that I may have
11 listed on the Change Sheet attached hereto:
12 DATED this ____ day of _____, _____.
13
14 _____
15 MIKE MOYLE
16
17 SUBSCRIBED AND SWORN to before me this ____
18 day of _____, 20___.
19
20 _____
21 NAME OF NOTARY PUBLIC
22
23 NOTARY PUBLIC FOR _____
24 RESIDING AT _____
25 MY COMMISSION EXPIRES _____

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1 ERRATA SHEET FOR MIKE MOYLE
2 Page ____ Line ____ Reason for Change _____
3 Reads _____
4 Should Read _____
5
6 Page ____ Line ____ Reason for Change _____
7 Reads _____
8 Should Read _____
9
10 Page ____ Line ____ Reason for Change _____
11 Reads _____
12 Should Read _____
13
14 Page ____ Line ____ Reason for Change _____
15 Reads _____
16 Should Read _____
17
18 Page ____ Line ____ Reason for Change _____
19 Reads _____
20 Should Read _____
21
22 Page ____ Line ____ Reason for Change _____
23 Reads _____
24 Should Read _____
25 You may use another sheet if you need more room.
WITNESS SIGNATURE _____

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1 REPORTER'S CERTIFICATE
2 I, COLLEEN P. ZEIMANTZ, CSR No. 345,
3 Certified Shorthand Reporter, certify:
4 That the foregoing proceedings were taken
5 before me at the time and place therein set
6 forth, at which time the witness was put under
7 oath by me;
8 That the testimony and all objections made
9 were recorded stenographically by me and
10 transcribed by me or under my direction;
11 That the foregoing is a true and correct
12 record of all testimony given, to the best of my
13 ability;
14 I further certify that I am not a relative
15 or employee of any attorney or party, nor am I
16 financially interested in the action.
17 IN WITNESS WHEREOF, I set my hand and seal
18 this 11th day of October, 2011.
19
20 _____
21 COLLEEN P. ZEIMANTZ, CSR 345
22 Notary Public
23 P.O. Box 2636
24 Boise, Idaho 83701-2636
25 My commission expires September 7, 2017.

Page 84

1 BEFORE THE DEPARTMENT OF WATER RESOURCES
2 OF THE STATE OF IDAHO
3
4 IN THE MATTER OF APPLICATION)
5 FOR PERMIT NO. 63-32573 IN THE)
6 NAME OF M3 EAGLE LLC, ASSIGNED)
7 TO THE CITY OF EAGLE)
8 _____)
9
10
11
12
13
14
15
16 DEPOSITION OF MARY TAYLOR
17 October 12, 2011
18
19
20 REPORTED BY:
21 COLLEEN P. ZEIMANTZ, CSR No. 345
22 Notary Public
23
24
25

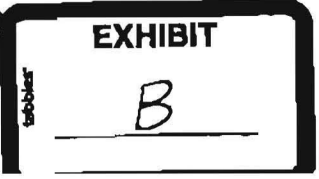
1 DEPOSITION OF MARY TAYLOR was taken on
2 behalf of the M3 Eagle LLC, at the offices of
3 Givens Pursley, LLP, located at 601 West Bannock
4 Street, Boise, Idaho, commencing at 9:53 a.m., on
5 October 12, 2011, before Colleen P. Zeimantz,
6 Certified Shorthand Reporter and Notary Public
7 within and for the State of Idaho, in the
8 above-entitled matter.
9 APPEARANCES:
10 For M3 Eagle LLC:
11 Givens Pursley, LLP
12 BY MR. JEFFREY C. FEREDAY
13 BY MR. MICHAEL P. LAWRENCE
14 601 West Bannock Street
15 P.O. Box 2720
16 Boise, Idaho 83701-2720
17 For the City of Eagle:
18 Moore Smith Buxton & Turcke, Chartered
19 BY MR. BRUCE M. SMITH
20 950 West Bannock, Suite 520
21 Boise, Idaho 83702
22 Also Present: Alan Smith
23 Jason Smith
24
25

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EXHIBITS	
DESCRIPTION	PAGE
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1 (Exhibit H marked.)
2 MARY TAYLOR,
3 first duly sworn to tell the truth relating to
4 said cause, testified as follows:
5 EXAMINATION
6 QUESTIONS BY MR. FEREDAY:
7 Q. Please, state your name and address.
8 A. Mary Taylor, 3410 Hartley Road, Eagle,
9 Idaho.
10 Q. What's your occupation, Mary?
11 A. Housewife, and help my husband with his
12 business.
13 Q. And what's your educational background?
14 A. Three-and-a-half-years at the U of I.
15 Q. In what field?
16 A. I changed every semester. That's why I
17 didn't get a degree.
18 Q. Okay. Have you ever been deposed
19 before -
20 A. No.
21 Q. -- Mary?
22 A. I've never even been to traffic court.
23 Q. Do you mind if I call you, Mary?
24 A. That's fine.
25 Q. So you've never been deposed before?



1 A. No.
2 Q. So let me just explain. This is an
3 exercise where we simply are trying to find out
4 what you know, what facts you know about this
5 matter.
6 A. Okay.
7 Q. So we'll be asking questions. And
8 please, listen for the question, and then after
9 I've asked it, then start your answer.
10 A. Okay.
11 Q. And I'll try not to talk over you, and
12 vice versa, I'm sure. And if you have any
13 questions, you can certainly refer those to, I
14 guess, your assistant here, or your counsel, Mr.
15 Smith. And if you don't understand a question,
16 please ask me.
17 A. Okay.
18 Q. Okay. So I take it you have no
19 education or experience in growth population,
20 growth forecasting, or anything like that?
21 A. No.
22 Q. Or water use forecasting for
23 municipalities, or anything like that?
24 A. No.
25 Q. You said earlier, that you brought no

Page 5

1 documents today; is that correct?
2 A. That's correct.
3 Q. You are not a protestant in this case;
4 are you?
5 A. No.
6 Q. Have you read the M3 Eagle water right
7 application?
8 A. No.
9 Q. Are you a member of the North Ada
10 County Foothills Alliance?
11 A. No.
12 Q. How about the North Ada County Ground
13 Water Users Association?
14 A. No.
15 Q. Have you met with either of those
16 organizations?
17 A. I think so. I'm not certain. We have,
18 through the years, met with a number of people in
19 northwest Ada County. I would think some of them
20 are members of that, but I don't know that for
21 sure.
22 Q. Have you provided financial support --
23 A. No.
24 Q. -- to any of those groups?
25 A. (Witness nodding head.)

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1 Q. Is that, no?
2 A. No.
3 Q. Have you met with John Thornton about
4 this application?
5 A. I met with a gentleman -- I
6 have -- now, let me think. There was a
7 meeting -- yes, his name was John. And I'll be
8 honest with you, I do not remember his last name.
9 Q. Do you remember the substance of that
10 meeting?
11 A. It was about the issue of water in
12 northwest Ada County.
13 Q. Did that meeting pertain to this
14 application; do you know?
15 A. It may have. I'm not certain of that,
16 but it may have.
17 Q. Okay. And what was the substance of
18 what Mr. Thornton conveyed to you?
19 A. It wasn't so much Mr. Thornton, as it
20 was the entire group of people that were
21 together. And we were just concerned about our
22 wells, and damage that might come to them.
23 Q. So that would be injury to your
24 wells --
25 A. Yes.

Page 7

1 Q. -- or water rights from development of
2 other ground water in the --
3 A. Yes.
4 Q. -- area?
5 A. And the City of Eagle, both.
6 MR. FEREDAY: Can we go off the record
7 for a moment?
8 (Discussion held off the record.)
9 MR. FEREDAY: Back on the record.
10 Q. (BY MR. FEREDAY) Do you have any
11 information about your own well, and how it might
12 have been affected by any pumping, by any other
13 entity?
14 A. My understanding is, that wasn't a part
15 of the scope of these questions. Is that -- am I
16 accurate on that?
17 Q. That's accurate, ma'am. I'm just
18 asking you that follow-up question, because you
19 brought up the question about injury to your
20 wells. And I'm trying to find out whether that
21 is an area that might lead us into some evidence,
22 or facts that do pertain to the scope of this
23 hearing. So that's why I'm asking you that.
24 Do you have any information about
25 effects on your wells from other pumping?

Page 8

1 A. The question you asked me was about the
2 meetings, and all of us were concerned that that
3 could happen. We were looking into the future,
4 and what might happen to our wells if these
5 developments took place.
6 Q. So I take it that the answer to my
7 question is, no, that you don't have any
8 information about effects on your well from
9 anybody else's pumping?
10 A. Yes, I do.
11 Q. What is that information?
12 A. They are records that I have kept of
13 the static water level in my well.
14 Q. Are you measuring that well, yourself?
15 A. No.
16 Q. Who is measuring it?
17 A. Various entities.
18 Q. And who are those?
19 A. Idaho Water Department Resource, which
20 I believe that's public information. SPF,
21 engineering firm.
22 Q. Are they currently measuring?
23 A. IDWR is.
24 Q. But SPF is no longer?
25 A. They haven't for a while.

Page 9

1 Q. And what have you learned from those
2 measurements?
3 A. The water level has been pretty
4 reliable, with an exception.
5 Q. There is an exception. What's the
6 exception?
7 A. At a time when the City of Eagle was
8 supposedly doing pump testing.
9 Q. You have pretty good water from your
10 well?
11 A. Uh-huh.
12 Q. Have you ever lacked the ability to
13 produce water from your well?
14 A. Not up to this point in time.
15 Q. I would like to show you an exhibit,
16 Exhibit B, I think from the Moyle deposition.
17 That is a copy of the protestant revised witness
18 list on which your name appears.
19 Have you seen this before?
20 A. No, I have not.
21 Q. You note that your name does appear
22 there as a witness. But you haven't seen this
23 before?
24 A. No.
25 MR. ALAN SMITH: What exhibit is that;

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1 B?
2 MR. FEREDAY: It's Exhibit B from
3 yesterday.
4 Q. (BY MR. FEREDAY) Do you know why the
5 protestants named you as a witness in this case?
6 A. I assume it's because we were
7 protestants with the City of Eagle's application
8 for a water right.
9 Q. But you don't know for sure?
10 A. No.
11 Q. Were you contacted by the protestants
12 to be a witness in this case?
13 A. Yes.
14 Q. Who contacted you?
15 A. I believe, Judge Smith asked, if I
16 would be willing to do that.
17 Q. And what did he ask you to testify
18 about?
19 A. He didn't ask me. He just asked if I
20 would be a witness.
21 Q. He didn't give you any indication of
22 what kind of testimony he would want you to
23 provide?
24 A. No.
25 Q. Have you met with, or had discussions

Page 11

1 with the other witnesses listed here?
2 A. Mike Moyle and I have met -- have
3 talked, not met so much as talked, regarding the
4 protest we made against the City of Eagle on
5 various occasions. And so have I, visited with
6 Mr. Meissner concerning that issue.
7 Q. But you have not spoken to those
8 gentlemen on that discussion?
9 A. Yes, we did.
10 Q. And what was the substance of that
11 discussion?
12 A. Mostly, it was a review of the hearing.
13 I believe we discussed with Mr. Moyle, some
14 issues about legislation. And it seemed like
15 there was something else. That's what I remember
16 mostly, was the legislation, and the review of
17 the history of this application we're discussing
18 about M3.
19 Q. The legislation that you have
20 mentioned, what did that cover?
21 A. I think it was some law that was passed
22 years ago. And I think the name on it started
23 with an H. I want to say, Hurlbutt, or something
24 like that. The legislation had a name on it, but
25 it started with an H.

Page 12

<p>1 Q. What was the substance of the 2 legislation? How did it relate to this matter? 3 A. I think it had to do with the Eastern 4 Snake River Plain aquifer. 5 Q. What discussions did you have with 6 Mr. Moyle, or Mr. Meissner concerning this 7 application? 8 A. Very little. In fact, I don't know 9 that I have discussed it with either one of them, 10 other than we just briefly with Mr. Moyle on 11 Saturday when he was talking about that 12 legislation. 13 Q. Ms. Taylor, I'm handing you what has 14 been marked in yesterday's deposition as 15 Deposition Exhibit E. And I would like you to 16 turn to the second page of that. 17 I would represent to you, that this is 18 one of these orders that we spoke of earlier, 19 that limits the scope of evidence in this 20 hearing, about which this deposition is being 21 taken. Do you see those three numbered 22 paragraphs on page 2? 23 A. Yes. 24 Q. Do you understand that this hearing is 25 limited to this type of evidence on these three</p> <p style="text-align: right;">Page 13</p>	<p>1 into the City. And it gave a date, but the date 2 was already past. That's about the limit of my 3 understanding. 4 I also understand, that under the law, 5 people within 300 feet of anything like that have 6 to be notified. But because this little strip of 7 ground was in the middle of Mr. Hanson's 8 property, and he owned everything to the east, 9 everything to the west, and to the south, and BLM 10 on the north. He was the only one who fell 11 within the 300-foot range. 12 So none of us were notified or had any 13 knowledge about it. And we would have protested 14 had -- we would have gone and testified had we 15 known about it, but it was done before we knew 16 anything. 17 Q. You are not contending here today, are 18 you, Mary, that annexation was in any way 19 illegal? 20 A. I have no idea. I know nothing on the 21 law about that. I just know what happened, of 22 what we understood, just as neighbors. 23 Q. You understood that the annexation has 24 occurred? 25 A. I assume it had. But because we didn't</p> <p style="text-align: right;">Page 15</p>
<p>1 topics? 2 A. Yes. 3 Q. What evidence do you have that relates 4 to any of these three? First of all, annexation 5 of this M3 project into the City of Eagle. Do 6 you have evidence or facts regarding that? 7 A. I'm not sure if you would consider it 8 facts. My understanding is, that we live in 9 close proximity to this. My understanding is, 10 there is a gentleman on Hartley Lane, who owns, I 11 think, it's 40 acres, something like that, that 12 is bordered on the south by Farmers Union Canal, 13 and on the east and west he owns property, and on 14 the north, BLM. 15 And several years ago he plotted that 16 five, ten acre plots. I'm not sure which it is. 17 Our understanding is that we learned, I would 18 say, in the last two years, that he sold a little 19 strip of one of those plots to M3, and that it 20 was being annexed to the City of Eagle. 21 So my husband drove up to the end of 22 the lane, when we first heard about it. And 23 there was a point, a sign up there that said, 24 there is going to be a public hearing for the 25 City of Eagle, for annexation of this property</p> <p style="text-align: right;">Page 14</p>	<p>1 get to know, and we weren't able to go to the 2 hearing, it was a done deal before we had any 3 opportunity to voice our opinions. 4 Q. How about item No. 2, on that page 2 of 5 Exhibit E? Have you any evidence that relates to 6 the City of Eagle's planning horizon, and 7 reasonably anticipated future municipal water 8 needs for this M3 area? 9 A. Evidence? I'm not sure what you mean 10 by evidence on that part of it. 11 Q. Any facts that you know of, that would 12 bear on this question? 13 A. Well, once again, my understanding from 14 having attended some of the M3 planning meetings, 15 the City of Eagle in earlier years has prided 16 itself on not being urban sprawl. And with this 17 project, it looks like urban sprawl on steroids. 18 And so as people who live in that area, 19 I have deep concerns that the resources there are 20 adequate to meet the needs of anything this big, 21 without damaging all the other people who have 22 been there for decades and generations. 23 Q. Would it be fair to say, that you have 24 concerns about the land use decisions of the City 25 of Eagle?</p> <p style="text-align: right;">Page 16</p>

1 A. Yes. Yeah.
2 Q. But with regard to the anticipated
3 future water right needs for the M3 Eagle as part
4 of the City, do you have any facts about that?
5 What water would be needed for that area?
6 A. No, I do not.
7 Q. What about No. 3, the information on
8 the quantity of water appropriated under this
9 permit as it relates to the City, the water needs
10 of the City's overall service area, including M3?
11 Any evidence or facts on that, that you know of?
12 A. It looks like, from what I understand,
13 what they are asking for, is a huge quantity of
14 water. We work in agricultural. So I know a
15 little bit about cubic feet per second. And
16 that's why we protested the City of Eagle's first
17 application out there, that's just south of our
18 property. We were concerned about that amount,
19 which is far less than what M3 is asking, could
20 damage wells. And so I would naturally have
21 concerns of a quantity much larger would have a
22 greater effect on damaging the wells.
23 Q. This, then, is an issue that you
24 believe is within the purview of this hearing;
25 would that be fair to say? The damage —

Page 17

1 A. I --
2 Q. The damage to wells?
3 MR. ALAN SMITH: I'm going to object to
4 that, as asking for a legal conclusion of the
5 witness.
6 Q. (BY MR. FEREDAY) You can go ahead and
7 answer.
8 A. No, un-huh.
9 Q. You don't think it is within the
10 purview?
11 A. That isn't what I said. I am just not
12 going to answer the question, because I don't
13 have any expertise in that part. But I have an
14 opinion.
15 Q. But as a layperson, you understand,
16 that you cannot give opinions in a court of law?
17 Do you understand that?
18 A. I do.
19 Q. And you are not an expert, as you've
20 said, on municipal water use; are you?
21 A. No.
22 Q. What would your testimony be at the
23 hearing, Mary, if limited to these three
24 subjects?
25 A. Pretty much, what I have told you: My

Page 18

1 understanding of how this property was annexed
2 into the City. I don't have any expertise.
3 Eagle's planning -- I assume this is a more
4 relaxed atmosphere; is that true? Yes or no?
5 Q. Sure, this is very relaxed.
6 A. When I see the mileage scope of the
7 land of the M3 project, and I lay that over the
8 mileage, over the current city of Eagle, it's
9 massive. And that just seems -- I have a
10 very -- I don't have a legal mind. I just have a
11 very simple mind. And as a housewife, it just
12 looks logical to me that this thing poses a huge
13 threat to all kinds of resources: schools,
14 roads, fire, you name it.
15 Q. So would it be fair to say, that you
16 are opposed to the City's annexation of this
17 area?
18 A. If the City annexes it, then it will be
19 responsible to provide water, and all the other
20 things that go along with it. So I would be
21 crazy not to be objecting to it, considering I'm
22 right in the middle of all this.
23 Q. Do you have any facts to support a
24 proposition that the City of Eagle will not be
25 able to supply water to this area?

Page 19

1 A. No. I would have to put a PS on that.
2 The City of Eagle may be able to provide water,
3 but at whose expense? They may be able to
4 provide all kinds of services, but at whose
5 expense?
6 Q. Do you have any facts about whose
7 expense?
8 A. Somebody is going to have to pay for
9 it. That's the only fact I know.
10 Q. You indicated that you are in the
11 agricultural business?
12 A. Uh-huh.
13 Q. Do you have a farm or ranch?
14 A. Uh-huh.
15 Q. And what size is it?
16 A. It's just 20 acres.
17 Q. What do you raise there?
18 A. Hay, grain, potatoes.
19 Q. Do you have a domestic well, and an
20 irrigation well?
21 A. Yes. And I might add, that without
22 water, I have nothing.
23 Q. Do you understand that the application
24 that's under review in this limited remand, has
25 been assigned from the M3 Eagle Company to the

Page 20

1 City of Eagle?
2 A. I see that, in footnote 1 here, on this
3 order. I just noticed that.
4 Q. Had you heard that, independent of that
5 footnote?
6 A. No.
7 Q. And you were referring to Deposition
8 Exhibit E there?
9 A. Yeah.
10 Q. What does that mean to you, that the
11 assignment has occurred from M3 Eagle to the
12 City? Does that have any relevance to you?
13 A. You bet it does. It's now a
14 municipality. Municipalities are not regulated
15 by PUC, or anything else. So they may get an
16 order to pump 23 cubic feet per second, but they
17 might pump 50. There is nobody to keep an eye,
18 monitor, control.
19 Q. So your concern is that the City of
20 Eagle would not abide by the water right if it be
21 granted?
22 A. I'm concerned about any public entity
23 that might not, whether M3 municipality, or
24 Eagle, or whoever, Star, or anybody else.
25 Q. Do you have any evidence that the City

Page 21

1 of Eagle, or the City of Star --
2 A. No.
3 Q. -- or anybody else has ever pumped
4 beyond its water right?
5 A. No.
6 Q. Do you have any knowledge of any
7 evaluation done by the Department of Water
8 Resources of the City of Eagle's reasonably
9 anticipated future needs?
10 A. No.
11 Q. How about any analysis done by the
12 Department of Water Resources, or anyone else,
13 that would focus just on the M3 areas reasonably
14 anticipated future water needs?
15 A. I'm not aware of any.
16 Q. Do you know what a planning horizon is
17 in the water rights context?
18 A. I assume it's a projection into the
19 future, that given a certain rate of growth we'll
20 need X amounts of gallons of water.
21 MR. FEREDAY: All right. Let's go off
22 the record.
23 (Discussion held off the record.)
24 MR. FEREDAY: Let's go back on the
25 record.

Page 22

1 I have no further questions at this
2 time.
3 THE WITNESS: Okay.
4 MR. FEREDAY: Mr. Smith, or the other
5 Smith may want to ask you some questions now,
6 Mary.
7 MR. SMITH: Questions?
8 MR. ALAN SMITH: Oh, I only have a
9 couple here, Mary.
10 EXAMINATION
11 QUESTIONS BY MR. ALAN SMITH:
12 Q. How far is your property from the
13 Legacy Subdivision? Can you give us an estimate;
14 a half mile, or a mile?
15 A. One mile south as the bird flies.
16 MR. FEREDAY: Excuse me, Counsel. You
17 asked about the Legacy Subdivision?
18 MR. ALAN SMITH: Yes.
19 MR. FEREDAY: Okay.
20 Q. (BY MR. ALAN SMITH) Was there test
21 pumping done, involving your property?
22 A. Yes.
23 Q. And --
24 A. We were told there was.
25 Q. How did you find out about that?

Page 23

1 A. The Department put out an order to the
2 City of Eagle, and in that order they were told
3 to notify all protestants and the Department so
4 that we could monitor our wells, and that the
5 Department would be present when the pump testing
6 was done.
7 Q. And were you notified?
8 A. No, we were not.
9 Q. How did you find out about the test
10 pumping?
11 A. Word of mouth.
12 Q. And did you observe any impacts to your
13 well as a result of that test pumping?
14 A. At the time the supposed pump tests
15 were done, my static water level changed, yes.
16 Q. Do you know how much, or did you have
17 any measurements made?
18 A. I did have -- there are measurements,
19 and I think it dropped from -- this is a
20 guesstimate. As I recall, those are things that
21 I can bring copies. I didn't think that was part
22 of what I was going to be asked about. I think
23 it dropped from, roughly, 45 to 75 feet.
24 Q. So you had about a 30-foot drop --
25 A. Yes.

Page 24

1 Q. -- in the water?
2 A. Yes, which is dramatic and
3 unprecedented, from when I've been keeping track
4 of my well.
5 Q. Do you know what the amount of water to
6 be appropriated in the Legacy Subdivision is?
7 A. I think their application was for 8.9,
8 but they were given 2.9, I think, from the
9 Department, if my memory serves me correct.
10 Q. Where was that test pumping done?
11 A. It was on wells -- they are about
12 halfway between Palmer and Linder, and I would
13 say about halfway between Floating Feather and
14 44. Pretty much, in the center of the Legacy
15 property.
16 MR. ALAN SMITH: I think that's all I
17 have.
18 MR. FEREDAY: Before we proceed with
19 you, Bruce, I would just like to make sure that
20 we have introduced Exhibit H, and ask the witness
21 to identify that.
22 FURTHER EXAMINATION
23 QUESTIONS BY MR. FEREDAY:
24 Q. Is this the Notice of Deposition?
25 A. Yes.

Page 25

1 Q. Do you recall receiving that?
2 A. Yes, I do.
3 MR. FEREDAY: Okay.
4 EXAMINATION
5 QUESTIONS BY MR. SMITH:
6 Q. Good morning, Mary. I'm Bruce --
7 A. Good morning.
8 Q. I'm Bruce Smith. I represent the City
9 of Eagle. It's good to see you again. And so I
10 only have some clarifying questions based on your
11 testimony to Mr. Fereday's questions.
12 What is the purpose of your testimony
13 at the hearing?
14 A. Which -- what hearing?
15 Q. The one that your deposition is being
16 taken for, in which the protestants to the M3
17 application have called you as a witness.
18 A. Okay.
19 Q. What's the purpose?
20 A. What's the purpose?
21 Q. Uh-huh.
22 A. I suppose my concern about the water,
23 the availability, the adequacy of the water for
24 the project.
25 Q. Okay. You were referring to this

Page 26

1 meeting that you had to discuss the concerns over
2 water in North Ada County. Do you recall those
3 questions?
4 A. Uh-huh.
5 Q. By the way, you have to say, yes.
6 A. Yes.
7 Q. Because she can't record a nod. Okay?
8 A. Yes.
9 Q. Thank you.
10 When did that meeting occur?
11 A. It -- to help me answer the question,
12 maybe you can help me? When was our hearing
13 before the Water Resource Department on that
14 first application of the City? Was that 2007,
15 '08?
16 Q. December 2007 is probably about right.
17 A. '07, so it was after that. So I would
18 say, it was sometime probably, during 2008.
19 Q. Let me ask you. Mr. Moyle testified
20 yesterday about a meeting he had with a number of
21 individuals about this hearing. Okay? He said,
22 Mr. Thornton was there. Mary Taylor was there.
23 Mr. Meissner was there. Alan Smith was there.
24 And Jason Smith was there. Do you recall that
25 meeting?

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1 A. Yes.
2 Q. When was that one?
3 A. I think it was -- the one he was
4 referring to was last Saturday.
5 Q. Okay. That's what I'm trying to get
6 at. Okay. Thank you.
7 Where did that occur at?
8 A. At Judge Smith's home.
9 Q. Who called that meeting?
10 A. The person who called me was Judge
11 Smith.
12 Q. Okay. And besides the people that I
13 named, was anyone else there?
14 A. Name them again.
15 Q. John Thornton, Mary Taylor,
16 Mr. Meissner, Alan Smith, and Jason Smith.
17 A. This (indicating) is Jason; is this
18 right?
19 MR. JASON SMITH: Uh-huh.
20 THE WITNESS: There was one other
21 gentleman there. I can't recall his name. I
22 never met him before, and I don't remember his
23 name.
24 Q. (BY MR. SMITH) What did he look like?
25 A. Oh, I would say, 70s, medium build. He

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7 (Pages 25 to 28)

1 wasn't wearing glasses.
 2 Q. Did he say anything?
 3 A. He was very quiet. No, he did not say
 4 much.
 5 Q. So who did the talking?
 6 A. I would say, Mr. Moyle did mostly.
 7 I -- there was a John. I assume it's this John
 8 Thornton, because I don't recall his last name.
 9 Q. A very tall gentleman?
 10 A. Dark hair, glasses?
 11 Q. Yes.
 12 A. I would say, Mr. Moyle and Mr. Thornton
 13 did the most talking.
 14 Q. So what did Mr. Thornton have to say?
 15 A. He gave a review of the process, up to
 16 this point.
 17 Q. Of what process?
 18 A. Of the hearing we are giving the
 19 deposition for.
 20 Q. So he went through the steps and the
 21 hearing?
 22 A. Yes, just a skeletal sketch of what
 23 they are going through.
 24 Q. Okay. Did he say anything else?
 25 A. I mean, we visited. No, not substance

Page 29

1 that I can think of, that would help in this
 2 process. I mean, we visited about the weather.
 3 Q. Okay. What did Mr. Moyle say?
 4 A. Mr. Moyle visited -- shared with us
 5 that legislation I mentioned earlier. But you
 6 gentlemen probably know, especially, you, better
 7 than myself. As I say, it started with
 8 somebody's name that started with an H.
 9 Q. Judge Hurlbutt?
 10 A. The legislation is called by that, as I
 11 recall.
 12 Q. Would that be Judge Hurlbutt?
 13 A. Hurlbutt is the name I remember. I
 14 don't remember him being referred to as a judge.
 15 But it seems as though the legislation was
 16 something of that sort, that name.
 17 Q. Okay. What did Mr. Moyle say about
 18 that legislation?
 19 A. He was just sharing with us that that
 20 law had been passed. I don't know how long ago.
 21 He didn't say. But it was on the books.
 22 Q. And what was the relevance of that law
 23 to the proceeding that we have before us now?
 24 A. It had to do with the adjudication, I
 25 assume, of the Snake River basin. When we had

Page 30

1 all that adjudication years ago through the
 2 Department of Water Resources. You had to go in,
 3 I think, and file your water rights, and they
 4 were clearing up -- as I recall that
 5 adjudication, it was clearing up water right
 6 ownerships.
 7 Q. In your opinion, was Mr. Moyle there as
 8 a representative in the legislature?
 9 A. No.
 10 Q. Was he there as an individual?
 11 A. Yes.
 12 Q. Okay. Did he say anything else, other
 13 than talking about the statute?
 14 A. Well, we visited a lot about all the
 15 issues in our neighborhood, how we were all
 16 concerned about water, and resources in that
 17 area. But it was very general. It was nothing
 18 specific that I can call to mind.
 19 Q. Did he offer any opinions?
 20 A. Not that I could recall, no.
 21 Q. Okay. Did you talk about the City of
 22 Eagle?
 23 A. I would say, the conversation involved
 24 more around M3, and this project.
 25 Q. Okay.

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1 A. That's my opinion. Or that's what I
 2 heard. That's how I heard it.
 3 Q. But you were at the meeting, so you
 4 heard the conversation?
 5 A. Yes, that's what I heard.
 6 Q. And you participated in the
 7 conversation?
 8 A. Yes.
 9 Q. And that was last Saturday?
 10 A. Yes.
 11 Q. Did you plan at that meeting for your
 12 testimony?
 13 A. No.
 14 Q. Did Judge Smith have anything to say to
 15 you?
 16 A. Other than just his experience through
 17 the hearing, no. He had nothing to say about
 18 this (indicating).
 19 Q. This being, what?
 20 A. This deposition.
 21 Q. Okay.
 22 A. In fact, I would have to say, he made
 23 it quite clear as a retired judge, he was unable
 24 to do anything like that.
 25 Q. Like what?

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1 A. To advise, or help, or counsel, or
2 anything of that nature. He was just another
3 private citizen at a meeting, with concerns about
4 our property and rights.
5 Q. So you think you were asked to be a
6 witness, because you protested the City of
7 Eagle's prior application?
8 A. I -- yes.
9 Q. Do you understand that this is a
10 different application; correct?
11 A. Yes.
12 Q. Other than at that meeting on Saturday,
13 with the people that you've indicated, have you
14 talked to anybody else about this proceeding?
15 A. No. Well, I told my husband.
16 Q. What did you tell him?
17 A. I told him I had a meeting this morning
18 with you.
19 Q. So you knew I was going to be here?
20 A. I suspected.
21 Q. You were talking about the annexation
22 process, and you said, if you had known about it,
23 the annexation of M3, you would have protested?
24 A. If I had known about the piece of
25 property north of us that had been purchased, I

Page 33

1 assume purchased from Mr. Hanson, yes, we would
2 have gone and testified.
3 Q. What would you have protested?
4 A. My concern about making a way to annex
5 the big part of M3.
6 Q. So you didn't like the way M3 was
7 annexed; is that correct?
8 A. I hate to see M3 annexed into the City
9 at all, period.
10 Q. And why is that?
11 A. Because of the size of the project, and
12 because that project is going to take resources.
13 It's going to have to take it from someplace.
14 And I'm concerned it will be at our expense.
15 Meaning all of us, who have protested, and have
16 not protested.
17 Q. So are you opposed to that development
18 of the foothills?
19 A. Yes.
20 Q. In general?
21 A. The size of it, yes.
22 Q. So if M3 hadn't been annexed into the
23 city of Eagle, you would have protested M3's
24 development anyway?
25 A. Rephrase -- give me that question,

Page 34

1 again.
2 Q. You are opposed to the M3 project; are
3 you not?
4 A. The size of it, yes.
5 Q. Okay. And so it's the project, not the
6 annexation into Eagle that you are concerned
7 about?
8 A. No, I'm opposed to that as well.
9 Because once it's annexed into the city of Eagle,
10 the City of Eagle will have to provide all the
11 responsibilities for the resources.
12 Q. Okay. How do you know that?
13 A. Because the City of Eagle is a
14 municipality. And any land within its city
15 limits, it's responsible for providing certain
16 services.
17 Q. I don't recall. Are you within the
18 city limits?
19 A. No.
20 Q. So why are you concerned about the City
21 of Eagle providing services?
22 A. Because it's going to take it from
23 someplace else. I --
24 Q. Go ahead.
25 A. No. No. No.

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1 Q. I don't mean to interrupt.
2 A. No. Go ahead.
3 Q. I want to give you a hypothetical, and
4 I want you to explain it to me.
5 A. Okay.
6 Q. Your concern, as I hear it, is that the
7 City of Eagle will have to provide services to
8 M3?
9 A. Yes.
10 Q. But you are not a member of the City of
11 Eagle?
12 A. No.
13 Q. You are a citizen; correct?
14 A. I'm not in -- my land is not in the
15 city limits.
16 Q. So if the M3 project went forward, and
17 the City of Eagle was not providing services, who
18 would provide services?
19 A. I don't believe it can go forward
20 without services.
21 Q. Okay. The question was, who would
22 provide the services if --
23 A. They would have to provide their own.
24 Q. And that would be okay?
25 A. Not necessarily.

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1 Q. Could you explain that?
2 A. It would depend on where they are going
3 to get their services from. If they are drawing
4 out of the same aquifer that the City of Eagle,
5 and myself, and all the other people do, I would
6 have grave concerns.
7 Q. So any development that draws from the
8 same aquifer as you do, you would oppose?
9 A. At that size, yes.
10 Q. Okay. At what level do you not oppose
11 the development?
12 A. When a hydrologist or a geologist can
13 guarantee me that there is water there for all of
14 us, and since hydrology and geology are not exact
15 sciences, I haven't found one yet that can do
16 that. So I would have reservations. I don't
17 know how far.
18 Q. How far -- I'm talking about size --
19 A. Right. Right. Right.
20 Q. We're talking about anything -- let me
21 finish.
22 A. Okay.
23 Q. We're talking from one acre to 6,000
24 acres, is there any threshold in there, in which
25 you don't oppose development?

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1 A. That would have to be on an individual
2 case basis.
3 Q. Okay. So size doesn't matter?
4 A. It depends on the project; each
5 individual project.
6 Q. Okay. Is it fair to say, that you are
7 concerned about the size of the M3 project?
8 A. Yes.
9 Q. And that would be regardless of who
10 provides services to it?
11 A. Yes.
12 Q. You also made it, I think, in response
13 to the question, do you have concerns about the
14 land use decisions of the City of Eagle? And I
15 indicated in my notes, that you said, yes.
16 A. Yes.
17 Q. Okay. What are those concerns?
18 A. The type of developments that they have
19 approved in the last couple years. Primarily,
20 being that they've approved large lot acreage
21 approvals near to the city center, and they are
22 doing high density -- very high density
23 developments out in the western part of their
24 city limits.
25 Q. Can you give me some examples?

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1 A. Yes, the Corinthian Home -- and I don't
2 know what it is called now. It is that 200, 300
3 acre plot there, on the corner of 16th and Beacon
4 Light. They approved high density there, versus
5 Cove Colony, versus Buckhorn, of course, I don't
6 think Buckhorn is in the city, versus Cove
7 Colony, versus -- what's that other one east of
8 it. Some others that are large lot, larger lot
9 developments, and they are putting high density
10 out at the west end.
11 Q. So you oppose high density
12 developments?
13 A. Outside certain -- yeah. Yeah. When
14 you got that city core, you've got low density.
15 And here, right out there in the ag part of it,
16 you have high density, yeah.
17 Q. And when you mention Cove Colony, do
18 you consider that high density?
19 A. No, that's lower density. Those lots
20 are half acre, I think, at least.
21 Q. So do you think the City should be
22 having low density developments?
23 A. I think as you leave -- I'm not a
24 planner, my opinion.
25 Q. I understand this is your opinion.

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1 A. As you leave the city, the higher
2 density should be around the city core. And the
3 farther out you go, the lower the density should
4 be. And in my opinion, Eagle is hodge-podging,
5 and just whatever fits, or whoever comes in with
6 some type of project, they have no continuity.
7 Q. What do you mean by "continuity"?
8 A. They don't go from high density, to
9 medium density, to lower density, to large
10 densities.
11 Q. Okay. You made the comment that M3 is
12 asking for a huge amount of water. Do you recall
13 that?
14 A. As I recall, when they first made their
15 applications for water rights, I thought it was
16 something around 45 cubic feet per second;
17 roughly, around that number.
18 Q. And do you know what the present
19 requested water right is?
20 A. I'm guessing, it's probably 20.
21 Q. And why are you guessing that?
22 A. Going by what you had asked for before,
23 for the City of Eagle, versus the size of this
24 project. I'm thinking it's got to be at least
25 double what you asked for before.

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10 (Pages 37 to 40)

1 Q. Okay. So other than the size of M3, is
2 there anything else about the annexation of M3
3 into the City of Eagle that you object to?
4 A. Based on hearings at the City of Eagle,
5 and people who have testified, who are
6 developers, and they've made the comment that if
7 Eagle never annexed another drop of land, they've
8 got at least 20 to 30 years build out on what
9 they have already annexed and approved in the way
10 of projects. I'm going by other people who know
11 more about development than me.
12 Q. My question was, what you would object
13 to.
14 A. Okay. Rephrase the question.
15 MR. SMITH: Would the reporter read
16 back the question to Ms. Taylor?
17 (The reporter read back the following
18 requested testimony: "Q. Okay. So other than
19 the size of M3, is there anything else about the
20 annexation of M3 into the City of Eagle that you
21 object to?")
22 THE WITNESS: Yes, I think the City of
23 Eagle has plenty to work with at their present
24 size, more than they can accommodate.
25 Q. (BY MR. SMITH) So if an individual

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1 with a piece of property that wanted to develop,
2 came to the City of Eagle, and said, I would like
3 to annex into the city of Eagle. Do you think
4 that that should be prohibited?
5 A. My first question would be, what is the
6 size of the project?
7 Q. Let me ask it this -- why does that
8 matter? Let me make sure you understand what I'm
9 asking.
10 An individual with private property
11 approaches the City of Eagle, and says, I would
12 like to annex. Do you think that should be
13 prohibited?
14 A. If I sat on the city council, I would
15 take a long hard look of what my resources are
16 available, whether I could accommodate what they
17 are going to need with their project. And if I
18 don't have adequate water, or if I don't have
19 adequate fire, or I don't have adequate sewer,
20 then as a city, I would have to say, we are not
21 able to annex your property right now, because we
22 don't have the resources to supply the needs you
23 are going to present us with.
24 Q. And if there is a plan for providing
25 those resources, then the annexation would be

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1 appropriate, in your opinion?
2 A. It goes back to the question of who is
3 it going to damage? Who are they taking it from
4 to provide for that project?
5 Q. Ms. Taylor, I'm having a really
6 difficult time understanding some of the approach
7 that you are taking. If we have a parcel of land
8 that will be developed, private ground that will
9 be developed. And you are concerned about the
10 resources that that development will take;
11 correct?
12 A. Yes.
13 Q. Why does it matter? If there is a plan
14 for providing the resources, the services for
15 that parcel, whether it comes from the City of
16 Eagle, or anyone else, why does the annexation
17 matter?
18 MR. ALAN SMITH: We would object to the
19 question. It's already been asked and answered.
20 You can go ahead and answer, if you
21 can.
22 THE WITNESS: I'm not a city planner.
23 I'm not a city councilmen. I'm an expert in
24 nothing, except maybe commonsense. And when I
25 see a city, whose city's limits are as big as

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1 Eagle's, and now they want to take on a project
2 that's going to more than double that. Why
3 wouldn't I have concerns about resources? Why
4 would I wonder and question, whether the City can
5 really provide, when they have to fire policemen,
6 they have to shut the library, why wouldn't I
7 question whether they have the resources to
8 provide for any kind of that development?
9 Q. Let me go back to my question, please.
10 I said, if there is a plan for
11 providing the services, and whether the plan is
12 for the City to provide them, or someone else to
13 provide them, what does the issue of
14 annexation -- what is the problem with
15 annexation?
16 A. Because what I have seen over the past
17 years, with our issue with the first water right,
18 and now this one is, I don't see where there are
19 the resources available. I personally question
20 the plan, because everybody tells me, this is a
21 project. This is a projection. This is a model.
22 This is a guess. And so I -- there is no
23 assurance to me that there can be those resources
24 available for it.
25 Q. So it's a question of the availability

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1 of resources, not the question of annexation, per
2 se?

3 A. Resources is my first concern.

4 Q. Regardless of who provides them?

5 A. Exactly. Exactly.

6 Q. Okay. That's what --

7 A. Yes, I will agree with that.

8 Q. I'm sorry. I don't mean to speak over
9 you.

10 So anyway, I was trying to understand
11 that. I think I have that down so --

12 A. The resources are my concern.

13 Q. Okay.

14 A. May I ask a question?

15 Q. Let me suggest this -- well, you can go
16 ahead and ask the question. The deposition is
17 not designed for you asking questions. But go
18 ahead, for the record, and ask your question.

19 A. As a representative of the City of
20 Eagle -- well, let me wait a minute here. As a
21 representative of the City of Eagle, aren't you
22 required by law, as a City, to provide services
23 to anything you annex?

24 Q. We have your question, and I will
25 answer it off the record.

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1 There was one question that you, also,
2 answered. You talked about people pumping, and
3 they were not regulated by the PUC. That no one
4 was monitoring the pumping. Do you recall that?

5 A. That's not what my statement was.

6 Q. Okay. Do you recall what you were
7 talking about?

8 A. Yes.

9 Q. What were you talking about?

10 A. Municipalities are not regulated by PUC
11 on the water issue.

12 Q. Okay. And do you think that the PUC
13 monitors pumping?

14 A. I don't know that.

15 MR. SMITH: I don't have any further
16 questions. Thank you very much.

17 MR. FEREDAY: I just have one follow-up
18 question.

19 FURTHER EXAMINATION
20 QUESTIONS BY MR. FEREDAY:

21 Q. Ms. Taylor, you mentioned in response
22 to questions from Judge Smith, this pump test
23 episode, where you experienced drawdown in your
24 well; do you recall that?

25 A. Yes.

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1 Q. That pump test, and that whole episode
2 involved the City of Eagle's water right
3 application; did it not?

4 A. Yes.

5 MR. FEREDAY: No questions at this
6 point.

7 MR. ALAN SMITH: I just have a couple
8 more, Ms. Taylor.

9 FURTHER EXAMINATION
10 QUESTIONS BY MR. ALAN SMITH:

11 Q. Is your concern of the size of the M3
12 project, also, related to the quantity of water
13 they are going to want?

14 A. Absolutely.

15 Q. And is there any uncertainty in your
16 mind that your well will be adversely impacted by
17 these other pumping areas?

18 MR. FEREDAY: We would just object,
19 just interpose an objection, that she's
20 unqualified to answer the question.

21 But you can go ahead.

22 THE WITNESS: Yes.

23 MR. ALAN SMITH: That's all I have.

24 MR. SMITH: I have no further
25 questions.

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1 MR. FEREDAY: Thank you very much.
2 MR. ALAN SMITH: Thank you, Mary.
3 (Deposition concluded at 10:46 a.m.)
4 (Signature waived.)

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Page 48

1 REPORTER'S CERTIFICATE
2 I, COLLEEN P. ZEIMANTZ, CSR No. 345,
3 Certified Shorthand Reporter, certify:
4 That the foregoing proceedings were taken
5 before me at the time and place therein set
6 forth, at which time the witness was put under
7 oath by me;
8 That the testimony and all objections made
9 were recorded stenographically by me and
10 transcribed by me or under my direction;
11 That the foregoing is a true and correct
12 record of all testimony given, to the best of my
13 ability;
14 I further certify that I am not a relative
15 or employee of any attorney or party, nor am I
16 financially interested in the action.
17 IN WITNESS WHEREOF, I set my hand and seal
18 this 13th day of October, 2011.
19
20
21 COLLEEN P. ZEIMANTZ, CSR 345
22 Notary Public
23 P.O. Box 2636
24 Boise, Idaho 83701-2636
25 My commission expires September 7, 2017.

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1 BEFORE THE DEPARTMENT OF WATER RESOURCES
2 OF THE STATE OF IDAHO
3
4 IN THE MATTER OF APPLICATION)
5 FOR PERMIT NO. 63-32573 IN THE)
6 NAME OF M3 EAGLE LLC, ASSIGNED)
7 TO THE CITY OF EAGLE)
8 _____)
9
10
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12
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15
16 DEPOSITION OF CHARLES W. MEISSNER, JR.
17 October 12, 2011
18
19
20 REPORTED BY:
21 COLLEEN P. ZEIMANTZ, CSR No. 345
22 Notary Public
23
24
25

1 DEPOSITION OF CHARLES W. MEISSNER, JR.,
2 was taken on behalf of the M3 Eagle LLC, at the
3 offices of Givens Pursley, LLP, located at 601
4 West Bannock Street, Boise, Idaho, commencing at
5 11:00 a.m., on October 12, 2011, before Colleen
6 P. Zeimantz, Certified Shorthand Reporter and
7 Notary Public within and for the State of Idaho,
8 in the above-entitled matter.
9 APPEARANCES:
10 For M3 Eagle LLC:
11 Givens Pursley, LLP
12 BY MR. JEFFREY C. FEREDAY
13 BY MR. MICHAEL P. LAWRENCE
14 601 West Bannock Street
15 P.O. Box 2720
16 Boise, Idaho 83701-2720
17 For the City of Eagle:
18 Moore Smith Buxton & Turcke, Chartered
19 BY MR. BRUCE M. SMITH
20 950 West Bannock, Suite 520
21 Boise, Idaho 83702
22 Also Present: Alan Smith
23 Jason Smith
24
25

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Page 3

1 (Exhibit I marked.)
2 CHARLES W. MEISSNER, JR.,
3 first duly sworn to tell the truth relating to
4 said cause, testified as follows:
5 EXAMINATION
6 QUESTIONS BY MR. FEREDAY:
7 Q. Please state your name, and give your
8 address.
9 A. Charles W. Meissner, Jr. I live at
10 3307 Hanson in Boise.
11 Q. In Boise, Idaho?
12 A. Yeah.
13 Q. Your occupation, sir?
14 A. Right now, I'm retired. I'm retired
15 from farming.
16 Q. Where do you farm?
17 A. I farm at 3101 North Palmer.
18 Q. Is that in the city of Eagle?
19 A. It's in the impact area. It's not the
20 city of Eagle, no.
21 Q. How many acres do you farm?
22 A. I farm 30 there, and I own ten and
23 these 20.
24 Q. What's your education, sir?
25 A. I've got a couple of degrees in

Page 4

1 (Pages 1 to 4)

1 electronics and geophysics.
 2 Q. And from where?
 3 A. Boise State University.
 4 Q. And what are those degrees?
 5 A. What are they?
 6 Q. What are the degrees?
 7 A. Oh, bachelor's degree in geophysics. I
 8 did master's studies, and never did finish it at
 9 the University of Utah in geophysics.
 10 Q. Any other degrees or education?
 11 A. The electronics degree from Boise
 12 Junior College.
 13 Q. And what did that consist of, that
 14 course of study?
 15 A. It was just an electronic technicians,
 16 two year.
 17 Q. So you have a bachelor of science
 18 degree in geophysics; is that correct?
 19 A. Yeah, uh-huh.
 20 Q. Do you have any education or experience
 21 in demographics, population forecasting, water
 22 use forecasting?
 23 A. No.
 24 Q. How about planned community
 25 development --

Page 5

1 A. No.
 2 Q. -- of any kind?
 3 A. No.
 4 Q. I'm showing you what's been marked as
 5 Deposition Exhibit I, which is the Notice of
 6 Deposition for your deposition today. Do you
 7 recall receiving it?
 8 A. Yes, I do. I have a copy in here
 9 (indicating).
 10 Q. Did you bring documents with you today?
 11 A. I brought a few?
 12 Q. And could you show us what those are,
 13 please?
 14 MR. FEREDAY: And let's go off the
 15 record at this time.
 16 (Discussion held off the record.)
 17 MR. FEREDAY: Let's go back on the
 18 record.
 19 Q. (BY MR. FEREDAY) You are not a
 20 protestant in this water right case; are you?
 21 A. No, I am not.
 22 Q. Have you ever read the M3 Eagle
 23 application?
 24 A. No.
 25 Q. Are you a member of North Ada County

Page 6

1 Citizens Foothills Alliance, or any similar
 2 group?
 3 A. No.
 4 Q. How about North Ada County Ground Water
 5 Users Association?
 6 A. No.
 7 Q. Have you met with either of those
 8 organizations or their members to discuss this
 9 matter?
 10 A. Oh, I don't know for sure. I met with
 11 Judge Smith, and that was just a minor little
 12 meeting. It was kind of like what this was going
 13 to be all about.
 14 Q. When was that meeting?
 15 A. Last week, or the week before. I don't
 16 know.
 17 Q. Was that a meeting in which Mike Moyle
 18 was present?
 19 A. Yes, it was.
 20 Q. At Judge Smith's house?
 21 A. Yeah.
 22 Q. Would that have been last Saturday,
 23 perhaps?
 24 A. Yeah, it could have been.
 25 Q. And what was the substance of the

Page 7

1 discussion at that meeting?
 2 A. I don't know. We talked about old
 3 friends that haven't seen each other in a while.
 4 And a little bit about what was going on with the
 5 water rights thing, and it wasn't a whole lot.
 6 Q. I mean, what's your understanding as to
 7 what's going on with the water rights thing?
 8 A. I really don't understand any of it. I
 9 haven't studied any of it. I am already out
 10 quite a bit of money, about \$50,000, and I didn't
 11 get involved in it.
 12 Q. \$50,000 you are out, is the amount that
 13 you have paid to build a replacement well on your
 14 property; is that correct?
 15 A. That, and the lawyer bills and fighting
 16 the last -- what I was protesting in the Legacy
 17 water rights things.
 18 Q. What were the substance of your
 19 conversations with Judge Smith about your being a
 20 witness in this case?
 21 A. He asked me if I would be a witness,
 22 because I was the one that was damaged from the
 23 last water rights that Eagle got, so...
 24 Q. That is to say, because you believe
 25 your ground water levels were injured by pumping,

Page 8

1 by the City of Eagle; is that correct?
 2 A. Oh, I know they were.
 3 Q. And you know they were based on, what?
 4 A. Oh, based on my knowledge of what
 5 happened to the well, and replacing it.
 6 Q. With your replaced well, does it
 7 produce water?
 8 A. Yes.
 9 Q. How are its water levels?
 10 A. They are fine. They vary up and down
 11 with -- but they are -- you know, they are doing
 12 okay.
 13 Q. In the City of Eagle matter with regard
 14 to the City's pumping, did you have any expert
 15 advise you that your well was injured by the City
 16 of Eagle's pumping?
 17 A. Ed Squires came out and inspected.
 18 That's what all this (indicating) is about.
 19 Q. Did he advise you that your well was
 20 injured by the City of Eagle's pumping?
 21 A. He verified that it was not producing
 22 anything, and it had been. But he couldn't find
 23 anything -- in fact, there is a copy of an email
 24 that he sent me, that he really couldn't find
 25 anything.

Page 9

1 Q. Couldn't find anything, in what regard?
 2 A. Couldn't find anything, any reason of
 3 why it wasn't pumping. Because he couldn't get
 4 down. It was hydrologically packed in the
 5 bottom.
 6 Q. So your well had physical problems that
 7 wouldn't allow him to get his tool down into the
 8 well; is that right?
 9 A. Right, he couldn't get all the way
 10 down, because it was sand packed in the bottom.
 11 Q. Mr. Meissner, you have brought a group
 12 of documents here that I would like to have
 13 marked as Exhibit J.
 14 MR. LAWRENCE: J.
 15 (Exhibit J marked.)
 16 Q. (BY MR. FEREDAY) Could you tell us
 17 what those documents show?
 18 A. Oh, those documents showed the expenses
 19 that I went through to get new water rights and a
 20 new well.
 21 Q. For your replacement well; correct?
 22 A. (Witness nodding head.)
 23 Q. You have to actually say, yes.
 24 A. Oh, yes.
 25 Q. What about this videotape that you have

Page 10

1 brought? What is this?
 2 A. That's a videotape that Ed Squires made
 3 when he was inspecting the well. He was looking
 4 for problems in the well, and he couldn't find
 5 any problems in the well.
 6 Q. And does this videotape include footage
 7 of a down hole camera?
 8 A. Yes, a footage made by a down hole
 9 camera.
 10 MR. FEREDAY: We'll mark this as
 11 Exhibit K.
 12 (Exhibit K marked.)
 13 Q. (BY MR. FEREDAY) And, Mr. Meissner, is
 14 it okay with you if you leave this here long
 15 enough for us to copy it?
 16 A. Yeah, as long as I get it back, that is
 17 no problem.
 18 Q. That would be understood.
 19 A. I could probably get another copy from
 20 Ed, maybe. I don't know. He was kind of vague
 21 in his email. I think I probably copied that
 22 here -- this -- somewhere that he sent me this
 23 morning, basically, that he has no records, and
 24 couldn't find a reason why it was not producing
 25 water.

Page 11

1 Q. Mr. Meissner, are you familiar with the
 2 district court's order, remanding this matter to
 3 the Department of Water Resources for a hearing
 4 on limited issues?
 5 A. Not really.
 6 Q. Have you heard of such an order?
 7 A. I have heard of something, but it's
 8 hearsay. I haven't seen an order.
 9 Q. I would like to show you what's been
 10 marked as Exhibit D, which is a pre-hearing
 11 order, Mr. Meissner, which includes in its last
 12 sentence on page 2, the following statement in
 13 part.
 14 At the hearing, "the parties shall not
 15 conduct discovery or offer evidence at the
 16 hearing concerning other matters such as
 17 technical water supply issues, hydrogeology, and
 18 potential injury from pumping."
 19 Have you ever seen this report before?
 20 A. No, I haven't.
 21 Q. Did Mr. Alan Smith discuss this with
 22 you --
 23 A. No.
 24 Q. -- before your appearance here?
 25 A. No. No.

Page 12

1 Q. Did you understand that the hearing in
2 this matter is limited, and does not include
3 issues of hydrology and injury to wells? Did you
4 understand that?
5 A. No.
6 Q. I would like to show you what's been
7 marked as Exhibit E, please. And I'm referring
8 now to page 2 of Exhibit E. Do you see that?
9 A. Yes, I do.
10 Q. It's three numbered items. I'll
11 represent to you that this is interim director
12 Spackman's order, again, limiting the scope of
13 this hearing to these three items.
14 Do you see item one, evidence
15 establishing that the M3 Eagle project has been
16 annexed by the City of Eagle?
17 A. Yes.
18 Q. Do you have any information, any facts
19 that you know, that relate to that, that you
20 would testify to at this hearing?
21 A. No, I don't.
22 Q. How about No. 2, "Evidence related to
23 the City of Eagle's planning horizon and the
24 reasonable anticipated future municipal needs for
25 the City of Eagle service area, including M3

Page 13

1 Eagle application?
2 A. The scope of my testimony would be,
3 what I was damaged by the last water rights that
4 was issued.
5 Q. And that would include discussion of
6 the expenses that you have incurred, as outlined
7 in Exhibit J, for constructing a replacement
8 well; would that be correct?
9 A. Uh-huh, yes.
10 Q. What else would you testify to?
11 Anything else?
12 A. Other than that, it's all hearsay. I
13 couldn't testify to anything, other than that.
14 Q. Okay. Do you understand that the City
15 of Eagle has annexed the M3 project area into the
16 City?
17 A. I have heard that they had. It's all
18 hearsay. I am not aware of a fact that they
19 have.
20 Q. Okay.
21 A. I mean, there is all kinds of
22 discussions around the neighborhood about, well,
23 they did this, and they did that, and did that.
24 I don't know for a fact that they have.
25 Q. Okay.

Page 15

1 Eagle project based on the City of Eagle's
2 current water rights portfolio and planning
3 information."
4 Have you got any facts, or do you know
5 of any information that you would testify to at
6 the hearing that relates to item 2?
7 A. No.
8 Q. What about item 3, sir, "Information on
9 the quantity of water appropriated for permit
10 No. 63-32573 appurtenant to the M3 project in
11 relationship to water needs of the City's service
12 area."
13 Do you know anything about that, or
14 have any information that you would testify to at
15 the hearing, relative to that point?
16 A. No, I don't.
17 Q. Did you discuss these three items with
18 any other person?
19 A. No, that's the first time I've seen it.
20 Q. You are not an expert on municipal
21 water use; are you?
22 A. No. The only thing I know is, I've
23 been damaged from previous water use.
24 Q. What matters do you expect to testify
25 about at the hearing next week on the M3, City of

Page 14

1 A. I assume that they did. But then you
2 know how assume is.
3 Q. Do you intend to testify at the hearing
4 next week with regard to the annexation of M3
5 Eagle?
6 A. I hadn't intended on it, no. The scope
7 of my testimony would be on the damage that was
8 done to my well.
9 Q. Okay.
10 A. That's the only thing I know for a
11 fact.
12 Q. Do you understand that this M3
13 application has been assigned to the City of
14 Eagle?
15 A. I have no idea.
16 Q. Have you seen or evaluated any
17 information with regard to reasonably anticipated
18 future needs, that the City of Eagle might have
19 with regard to water?
20 A. With regard to water, yes, I have. And
21 that has to do with the case that -- the previous
22 case with Legacy.
23 Q. What was the nature of that
24 information?
25 A. That they were asking for a lot more

Page 16

4 (Pages 13 to 16)

<p>1 water than they needed. I mean, that was my 2 opinion on it.</p> <p>3 Q. With regard to the concept, though, of 4 reasonably anticipated future needs, have you 5 ever seen any analysis, specifically, addressing 6 that question?</p> <p>7 A. I am not -- I'm not a soothsayer. We 8 cannot, any of us, predict the future. I mean, 9 look what's happened in the last four years.</p> <p>10 Q. Do you understand, though, that City's 11 and other water purveyors do plan for the future?</p> <p>12 A. Yeah, I understand they do try to 13 anticipate. You know, and there we go, 14 anticipate and assume. We can't put that in the 15 bag. If it happens, it happens.</p> <p>16 Q. So I take it that your answer is that, 17 no, you have not evaluated any future needs water 18 right for the City of Eagle?</p> <p>19 A. I'm not a -- I'm not a soothsayer. I 20 can't see into the future.</p> <p>21 Q. So that's a, no, you haven't done that 22 evaluation?</p> <p>23 A. No. I don't think anybody can. I 24 mean, everybody can procrastinate and propagate, 25 and everything else that they do. And oh,</p> <p style="text-align: right;">Page 17</p>	<p>1 MR. FEREDAY: We're going to object to 2 this line of questioning. As you know, this is 3 outside the scope of the hearing. And I don't 4 think it's reasonably calculated to lead to 5 relevant evidence.</p> <p>6 And you can go ahead and answer.</p> <p>7 MR. ALAN SMITH: The objection is noted 8 for the record.</p> <p>9 You can go ahead and answer.</p> <p>10 THE WITNESS: Okay. Yeah, they were 11 pumping the wells, flushing out the systems, and 12 pumping the wells. And every time they would 13 pump the wells, my water level would go down. 14 And what happened was, the bottom of my well got 15 hydrologically impacted.</p> <p>16 There was some sand on the bottom of 17 it, which had never been a problem. It had been 18 pumping out of that well for 20 years. And when 19 the water level started fluctuating as much as it 20 did, which was a whole lot more than they 21 predicted, and it packed the sand in the bottom 22 of the well like concrete, and couldn't pull 23 water through it, and the well went dry.</p> <p>24 Do you want me to go on and explain?</p> <p>25 Q. (BY MR. ALAN SMITH) Yes, if you would.</p> <p style="text-align: right;">Page 19</p>
<p>1 listen. We're going to do this, and we're going 2 to do that. Well, if it happens, it happens.</p> <p>3 Q. What do you know about planning 4 horizons with regard to municipal water rights?</p> <p>5 A. Nothing. It's not my field of study.</p> <p>6 MR. FEREDAY: No further questions.</p> <p>7 THE WITNESS: Okay.</p> <p>8 EXAMINATION</p> <p>9 QUESTIONS BY MR. ALAN SMITH:</p> <p>10 Q. You were protesting in the Legacy case; 11 were you not, Mr. Meissner?</p> <p>12 A. Yes, I was.</p> <p>13 Q. Was that Water Permits 13-2089 and 14 13-2090, if you recall?</p> <p>15 A. I don't recall the exact numbers, but 16 that sounds about right. Yeah.</p> <p>17 Q. And what damages have you suffered as a 18 result of Legacy's pumping?</p> <p>19 A. My well went dry.</p> <p>20 Q. Can you explain to us, or give us some 21 idea of what pumping was going on at Legacy, and 22 when that started, and when you started having 23 problems with your well?</p> <p>24 A. They were -- they were doing testing, 25 and they were going to --</p> <p style="text-align: right;">Page 18</p>	<p>1 A. They did find about a three-eighths 2 inch hole in the screen at the bottom of the 3 well. We finally got everything jerked out of 4 there, and that was allowing some sand to come 5 in. And when the water table would fluctuate as 6 much as it was, there was a 130 foot column of 7 water that impacted the sand in the bottom of the 8 well.</p> <p>9 If you pull it one way through the 10 sand, it's a great filter. It doesn't cause a 11 problem. But when you pack down on it, it 12 becomes like concrete. That is what had happened 13 to my well.</p> <p>14 Q. And what did you have to expend in the 15 way of money to repair that well?</p> <p>16 A. \$43,542, and that does not include the 17 payment to Ed Squires. I couldn't find that 18 check.</p> <p>19 MR. ALAN SMITH: Okay. I think that's 20 all I have.</p> <p>21 Q. (BY MR. ALAN SMITH) What was your 22 payment to Ed Squires for?</p> <p>23 A. That was for inspecting the well, to 24 see what he could find out. There is a 25 videotape.</p> <p style="text-align: right;">Page 20</p>

1 Q. The videotape shows that?
2 A. To make sure there was no real problem
3 with the well. He couldn't find a problem with
4 the well.
5 MR. JASON SMITH: Do you remember,
6 ballpark-wise, what it cost you for Ed Squires?
7 THE WITNESS: It was around 2,000 or
8 2,500 bucks.
9 MR. JASON SMITH: Okay.
10 MR. ALAN SMITH: That's all we have,
11 Mr. Smith.
12 MR. FEREDAY: Bruce, if I could go out
13 of order, I have one brief question here, maybe
14 two.
15 FURTHER EXAMINATION
16 QUESTIONS BY MR. FEREDAY:
17 Q. Mr. Meissner, I would like you to refer
18 to the exhibit that you produced here, Exhibit J,
19 the very last page of it. Here we have an email
20 from Ed Squires to you.
21 A. Yes.
22 Q. That's dated this morning?
23 A. Uh-huh.
24 Q. You recognize that?
25 A. Yeah, I just -- yeah, I just took it

Page 21

1 off the email.
2 Q. And that email says, "Dear Chuck, We
3 were never able to find anything out about your
4 well. The water column was dirty and could not
5 be cleared by adding water because the well would
6 not take any water. Therefore we were not able
7 to video anything useful and did not invoice you,
8 because we did not provide a product. You hired
9 a driller for advice that was contrary to the way
10 we would have recommended you to proceed. So we
11 never really connected on any work, and we have
12 no findings. That is why you have no records."
13 Is that accurate, sir?
14 A. No, because that's not the advice that
15 he gave me. And he did videotape it.
16 Q. And he did invoice you --
17 A. Yes, he did.
18 Q. -- is your testimony?
19 A. And I paid him.
20 Q. And is there a record of that payment
21 in here?
22 A. No, I couldn't find it.
23 Q. You couldn't find it?
24 A. No. Who knows? I've got eight or nine
25 checkbooks, and I couldn't find it. It's

Page 22

1 somewhere.
2 Q. I'm really asking you this question,
3 just to inquire as to how you recall events with
4 regard to your experience. But, so, your
5 testimony is, that you did pay him about \$2,000?
6 A. Yeah, approximately, that, yeah, to the
7 best of my memory.
8 MR. FEREDAY: No further questions.
9 FURTHER EXAMINATION
10 QUESTIONS BY MR. ALAN SMITH:
11 Q. But you know of your own knowledge,
12 Mr. Meissner, that you did, in fact, pay Ed
13 Squires for that work?
14 A. Yes, I did. Yeah, I was invoiced for
15 it.
16 Q. And does the advice that he gave you
17 appear on that videotape?
18 A. No, that's just a videotape of the down
19 hole. There was some paper work and stuff that
20 came with it, that, basically, they couldn't find
21 any real damage to the casing. You know, there
22 was some rust and stuff on the inside of it, and
23 he explained that. I couldn't find it.
24 I mean, that pile of stuff over in the
25 corner is -- and, you know, how it is when you

Page 23

1 are one person? You are chief cook, bottle
2 washer, and secretary, and everything, and it
3 just gets piled.
4 EXAMINATION
5 QUESTIONS BY MR. SMITH:
6 Q. Mr. Meissner, I'm Bruce Smith. I
7 represent the City of Eagle. Good seeing you
8 again.
9 A. Yeah. Did you bring a check?
10 Q. For?
11 A. For this. Don't they just give you a
12 check to write out to me, so I don't have to hire
13 another lawyer to go after it?
14 Q. No, I don't believe a brought a check
15 for you.
16 A. I was hoping to save me another 10,000.
17 Q. Before I ask you some questions. My
18 copies of Exhibit J, I can't read. Could I see
19 what the original is like, to see if I have any
20 questions?
21 A. Yes.
22 Q. Mr. Meissner, with regard to Exhibit J,
23 the documents you brought, there is a page 1,
24 this entry that's marked in pink. It says, "work
25 on the old well." And that, I believe, is that

Page 24

1 to Koontz Well Drilling?
2 A. Yes.
3 Q. For the \$3,275?
4 A. Yes.
5 Q. What's that for?
6 A. He's the first one I called in after Ed
7 Squires finished up, to try to fix the well.
8 Q. What did he do?
9 A. He went down, tried to flush out the
10 bottom of the well. He had some success. Then
11 he tried to pull the screens, and couldn't do it.
12 So he referred me over to the other well
13 drillers, because they had a cable tool that they
14 could pull the screens with.
15 Q. So on the first two pages, which is a
16 series of entries. That is the only one in here,
17 the first two pages, that relates to the well;
18 correct?
19 A. No, there is more than that.
20 Q. Well, I --
21 A. The \$33,000 I paid him, and he's the
22 one who had the cable to it, and he was out there
23 for about a year trying to repair that old well.
24 And finally, they just couldn't repair it.
25 Q. Okay. I now see that it's the one

Page 25

1 that's not marked for the record. It's on page
2 2, the third entry from the bottom, it looks like
3 it's Check No. 112 for \$33,387. Does that sound
4 correct?
5 A. Yes.
6 Q. And page 3, it looks like a copy of the
7 check entry for where you paid him; is that
8 correct?
9 A. Yes.
10 Q. Okay. Page 4 looks like another check
11 to a pump company for 6,880. Does that sound
12 correct?
13 A. That's the Burgess pump.
14 Q. Okay. That's --
15 A. That's for the pump, and the
16 pipe -- and the pump that went into the new well.
17 Q. So that's for your new pump and casing.
18 Okay. And then the next page is a well driller's
19 report from, it says, Bob Stoner, Stoney?
20 A. Yeah, that's what it looks like. And
21 that was one of the problems, because it's the
22 right well, but it was entered improperly. Now,
23 the only -- when this other hearing went on, he
24 didn't have that well log.
25 Q. What is this well log?

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1 A. That well log was a deepening of my
2 well. And it was filed in the wrong coordinates,
3 and the wrong name.
4 Q. Who is Bob Stoner or Stoney?
5 A. I have no idea who that is. I know Bob
6 Storey.
7 Q. Storey, who is that?
8 A. He was the owner of the -- he is the
9 one that built the chicken butts up there. It's
10 Storey Egg Company that built an egg farm,
11 basically. And then when they needed the water
12 for the egg farm, then they had that original
13 well deepened, and that's what that report is.
14 Because that well was only 180-feet deep to begin
15 with. And it was deepened down to 315 feet, and
16 that was in 1980.
17 Q. Mr. Meissner, just for the record, I'm
18 looking at this. And it says, the casing went
19 from 67 to 304 feet; is that correct?
20 A. Uh-huh.
21 Q. Okay.
22 A. And then screens beyond that, so...
23 Q. So it's your testimony that this is,
24 basically, your well; correct?
25 A. That is my well, yes.

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1 Q. Okay.
2 A. And that took some serious hunting.
3 Q. I'm sorry?
4 A. I didn't know that the well was that
5 deep, until Ed Squires ran through there. This
6 well is deeper than what it's supposed to be.
7 And I said, well, it's the right well. Then
8 started looking, and I found that well driller's
9 report, which had been improperly filed.
10 Q. So Mr. Squires found this?
11 A. Yeah, Ed Squires was the one that found
12 out that the well was deeper than it was supposed
13 to be.
14 Q. Who found the driller's report?
15 A. What's that?
16 Q. Who found the driller's report?
17 A. I found the driller's report. And it's
18 a lot of fun going through thousands of driller's
19 reports to find the right one. As you can see on
20 there, it was filed on the wrong coordinates, and
21 the wrong name. That makes it interesting to try
22 to find. But when I contacted Phipps, he said,
23 oh, yeah, I remember doing that. So then it
24 was -- verified that we were in the right hole,
25 with the right well driller's report. And then

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1 there is a copy of a new well driller's report.
 2 The only way I found it was when he marked the
 3 map, he had it marked in the right place, but had
 4 the wrong coordinates on it.
 5 Q. Mr. Meissner, I want to show you, this
 6 is the page that you are talking about for the
 7 well driller's report for Bob Storey. Okay?
 8 A. Uh-huh.
 9 Q. It says, the depth of the well was 315
 10 feet. Do you see that?
 11 A. Right.
 12 Q. The right-hand column, under the
 13 lithologic log?
 14 A. Uh-huh.
 15 Q. Okay. So the next to the last page is
 16 another well driller's report.
 17 A. Yes, that's on my new well.
 18 Q. Okay. That's the work that you had
 19 done by?
 20 A. Dave Phipps.
 21 Q. And that shows that the well was
 22 extended to how far?
 23 A. 348 feet.
 24 Q. Okay. So the well was only deepened 33
 25 feet; correct?

Page 29

1 A. Yeah.
 2 Q. Okay.
 3 A. It wasn't deepened. It was a new well.
 4 Q. So this is a brand new well?
 5 A. Yeah, that's a brand new well.
 6 Q. Okay.
 7 A. They couldn't do anything with that
 8 one. They tried to do something with it, and
 9 they ended up tearing the casing up, tearing the
 10 screens up. They left half of it in the ground.
 11 They had to fill in the hole, and drill a new
 12 well.
 13 They spent a year out there trying to
 14 fix that thing, and couldn't do it. They ended
 15 up tearing the casing up two or three times.
 16 They had a 250,000 pound hydraulic jack in that
 17 thing, and ended up tearing the casing apart
 18 several times. They tried. It even tore his rig
 19 up two or three times. Broke the cables and
 20 dropped the tools, and oh, it was a mess. He
 21 gave it the old college try, let's put it that
 22 way.
 23 Q. So how much did you pay to get this new
 24 well drilled?
 25 A. Oh, all and all, \$43,000 to the well

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1 and the pump, and work that we did out there
 2 trying to fix the old well, and drill the new
 3 one.
 4 Q. And on top of that, the 2,300 that you
 5 paid Mr. Squires?
 6 A. Approximately, yeah.
 7 Q. Okay. And then you said, you paid a
 8 lawyer. Is that part of this?
 9 A. I haven't paid a lawyer, not on this
 10 particular -- I mean, the lawyer bills were on
 11 the previous protest, for when the City of Eagle
 12 wanted that water right on Legacy.
 13 Q. Your testimony was, I'm out \$50,000 to
 14 build a well, and lawyer fees on the Legacy
 15 matter. So I'm trying to figure out, was your
 16 lawyer fees \$5,000 for the Legacy matter, is that
 17 what it was?
 18 A. It was more than that.
 19 Q. But for the well, we're talking about
 20 43,000?
 21 A. Yeah, that's actual expenses. That
 22 doesn't include Ed Squires.
 23 Q. Okay. Do you know what your static
 24 water level is now?
 25 A. It's -- the last time I checked, it was

Page 31

1 about three months ago, and it was 58 foot.
 2 Q. You are talking about 58 feet from
 3 ground surface; correct?
 4 A. Yes.
 5 Q. Okay. Does it vacillate now?
 6 A. It doesn't seem to.
 7 Q. You testified previously, the comment
 8 was, water levels are fine. They are up and
 9 down. I'm trying to figure out what up and down
 10 means?
 11 A. If I know that somebody is going to be
 12 pumping a lot of water close to me, then you can
 13 see it go up and down.
 14 Q. Are there some big wells close to you?
 15 A. The only ones real close to me is
 16 Legacy.
 17 Q. Okay. So when you are saying somebody
 18 is going to be pumping a lot, that's what you are
 19 talking about?
 20 A. Yes.
 21 Q. And you haven't experienced any
 22 significant increases or decreases in your water
 23 level; is that correct?
 24 A. I did in the old well, yes.
 25 Q. I'm talking about your new well.

Page 32

1 A. The new well, no.
2 Q. Okay.
3 A. It went down next an actual 35 feet,
4 and got below that other clay layer. And the
5 water level seems to be fine there now. I just
6 hope that I don't have to drill it deeper again.
7 At least I got a new one to deal with.
8 Q. But you have a new well? They drilled
9 it, roughly, the same depth as the old well;
10 correct?
11 A. It's a little deeper. We went on
12 through that clay layer of 315 feet down to the
13 next clay layer, and then pulling out of that
14 sand.
15 Q. Okay.
16 A. Pulling out of the sand that's below
17 the 315 feet.
18 Q. In Mr. Squires email to you today, he
19 said, you hired a driller for advice that was
20 contrary to the way we would have recommended you
21 to proceed, so we didn't connect any work, and we
22 have no findings. What is Mr. Squires referring
23 to there?
24 A. I have no idea what he's talking about,
25 because he recommended me to get somebody in

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1 there to flush that well. And that's why I
2 brought Koontz in to flush that, and try to get
3 it cleared up. That's the 3,000, or whatever, I
4 paid him.
5 Q. Uh-huh.
6 A. And then when he finally give up, and
7 couldn't do anything, or find anything, he tried
8 to pull the screens out, and couldn't do it with
9 the hydraulic -- or with the rotor drill, and he
10 just couldn't do it.
11 Q. Okay.
12 A. So then he suggested I get Phipps in
13 there, because he had a cable rig that would be
14 most likely the only one that would be able to
15 jerk the screens out, and get that well cleared
16 up.
17 Q. Okay.
18 A. I mean, Ed Squires suggested I get
19 somebody in there to flush the bottom of that
20 well out, so it could be looked at. And that's
21 when all the problems -- that's when we
22 discovered all the problems that were in there.
23 Q. Okay.
24 A. That the sand was impacting the bottom
25 of it. We couldn't pull water through it. It

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1 wouldn't go either direction.
2 Q. So in your new well, what is your water
3 level fluctuation?
4 A. It fluctuates a foot or so right now.
5 But I only check it about once every three
6 months. And I don't have any previous knowledge
7 of somebody doing any testing close to it. I've
8 got a gauge on it. And I'll go out and pump the
9 little tube full of air, and it will come up, and
10 give me the depth of the water.
11 And the City of Eagle was supposed to
12 be monitoring my well. And I have not seen
13 anybody from the City of Eagle out there. I do
14 my own monitoring. About every three months I go
15 out and check it. I probably should put it on a
16 computer, and just let it be continuous.
17 Q. What makes you say, the City of Eagle
18 was supposed to be monitoring it?
19 A. They were ordered to monitor it, so...
20 Q. Do you know where that came from?
21 A. Yeah.
22 Q. Where?
23 A. It came from the Legacy hearing.
24 Q. So you think the City was ordered to
25 come monitor your well?

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1 A. Yes.
2 Q. Have you ever approached the City about
3 this?
4 A. No.
5 Q. You were asked questions
6 about -- basically, you were opposed to planning
7 for future needs in water rights. I had it down
8 here that you said, no; is that correct?
9 A. Well, I don't know anything about
10 future needs. I don't think there is any future
11 needs. But then whose future are we talking
12 about? Mine. I only got probably ten years of
13 life left. You guys, you got 30 or 40 years
14 left, I mean.
15 Q. I hope so.
16 A. Yeah, you hope so. You never know.
17 When you get into the kind of health I am, and
18 I'm 66 years old, you know, I'm on Social
19 Security, retired. I can barely walk from here
20 to the Capitol building.
21 Q. I was going to compliment you, you look
22 like you are in pretty good health.
23 A. It looks that way on the outside.
24 Q. I think we're talking about the City's
25 efforts to plan, is what we're talking about?

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1 A. Yeah. Well, I have no idea what their
2 plans are.
3 Q. But you think it's a good thing to
4 plan?
5 A. The which now?
6 Q. You think it is a positive thing to
7 plan?
8 A. Oh, yes, it is a positive thing to
9 plan.
10 Q. Okay. So when you found this
11 three-eighths inch hole in your screen that
12 allowed sand to come in, who found that?
13 A. Dennis Phipps. When we finally got
14 part of the screen jerked out, we couldn't get
15 the whole screen, but he got six or eight feet of
16 it.
17 Q. So you actually had a hole in the
18 screen that allowed the sand to come in?
19 A. Yeah, that's not a problem. As long as
20 you are only taking water one way through the
21 sand. I mean, how do you clean a fish tank?
22 Sand filters, and you pump water through the
23 sand.
24 Q. And do you remember at what level in
25 the screen, what foot level that that

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1 three-eighths inch hole was?
2 A. It was right at the well.
3 Q. What depth?
4 A. It's, approximately, 316 feet maybe. I
5 don't know exactly how deep it was. I mean, you
6 know, the screen section is put together. It's
7 got a tail piece and a head piece. And then it's
8 shoved down the well, and then sealed in. And it
9 was right at the well where the head piece was
10 welded to the screen. It had probably been there
11 forever. And I had used the well for 20 years,
12 and never had a problem with it.
13 Q. But your water level didn't drop to 316
14 feet; did it?
15 A. Yes, it would. It dropped
16 down -- well, not 316 feet, because my pump was
17 at 220 feet. And that's as far as it could pump
18 the water. There just wasn't any water coming
19 in.
20 You could run it once a day for three
21 minutes. That's how much water was coming in my
22 well. So you could pump about 90 gallons of
23 water. That was the extent of the well. That's
24 not enough to supply with water, not even
25 household water.

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1 Q. And I'm going off recollection. But as
2 I recall from the previous hearing when we talked
3 about this, you had not had to do anything to
4 that well in the years that you were using it;
5 correct?
6 A. I had -- no, I hadn't done a thing to
7 it.
8 Q. So you hadn't done any repairs, any
9 maintenance, anything?
10 A. No.
11 Q. Okay.
12 A. Well, I had replaced a pump once when
13 it burned out, but that was no big deal. I mean,
14 that's ordinary. That's what happens with a well
15 pump. After 20 years, they wear out. I replaced
16 the pump once, but it was replaced at the same
17 depth.
18 Q. Explain to me your --
19 A. It was working.
20 Q. You are saying the hole in the screen
21 was not a problem; correct?
22 A. Yeah, I don't see that there is any
23 problem with it. Anybody that's familiar with
24 how water flows through sand, and screens, and
25 what have you, would probably verify the same

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1 thing.
2 Q. So in your view, the hole in the screen
3 wasn't any kind of problem with the functioning
4 of the well?
5 A. It hadn't been for 20 years, that I'm
6 aware of, and that I've been pumping out of that
7 well.
8 Q. Do you think your water levels
9 fluctuated over those years; those 20 years?
10 A. They didn't appear to. I mean, it
11 wasn't -- I wasn't monitoring it. But I always
12 had water, so...
13 Q. Do you think, maybe, sometimes just the
14 20- or 30-year-old well needs to be fixed, needs
15 to be repaired?
16 A. Only if there is a problem with them.
17 Q. Okay.
18 A. I mean, you know, you've got to replace
19 a pump once in a while. You have to replace a
20 pipe once in a while. Because commonly right
21 above the pump, at about three inches above the
22 pump, you get electrolysis in the pipe, and it
23 will blow a hole out. That was the main reason
24 why I had to replace the pump, because it had
25 blown a hole through the water pipe, which is

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1 common. That happens all the time.
 2 So when the -- okay. We found that.
 3 We're going to have to replace a couple lengths
 4 of pipe. And this pump, it's a three horse, but
 5 it's not pumping like it should. And I do --
 6 Q. So here's \$43,000, that you are saying
 7 that the City damaged -- that was the damage you
 8 incurred. You actually upgraded your system;
 9 correct?
 10 A. Not really. I mean, I've got a
 11 workable system --
 12 Q. But it --
 13 A. -- again.
 14 Q. Let me ask it this way: You found
 15 problems with your old pump, so you put a new
 16 pump in?
 17 A. Yeah, that was 12, 15 years ago.
 18 Q. I thought you put in a new pump as part
 19 of this \$43,000?
 20 A. Yeah, I did. Because the old pump
 21 wouldn't fit in a new casing. I had to go to a
 22 smaller casing.
 23 MR. SMITH: I don't think I have any
 24 further questions. Thank you very much.
 25 THE WITNESS: Okay.

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1 MR. FEREDAY: I have just a comment.
 2 And that is just to note, that I have, for the
 3 record, made my objection on the whole issue of
 4 pumps, and wells, and water supply, and so forth.
 5 And that will be a continuing objection. And if
 6 you testify, you will probably hear that again if
 7 you choose to testify.
 8 MR. SMITH: I have one, while we're on
 9 the record. Judge Smith, in light of
 10 Mr. Meissner's testimony, is it still your intent
 11 to call him as a witness?
 12 MR. ALAN SMITH: I plan to.
 13 MR. SMITH: And what is your basis for
 14 calling him as a witness?
 15 MR. ALAN SMITH: We're presenting
 16 evidence as to actual damage and not potential
 17 damage, which is all that pre-trial order
 18 covered, potential damage. And these people have
 19 been actually damaged, Mr. Moyle and
 20 Mr. Meissner, both.
 21 And it will depend on what Mr. Spackman
 22 rules on it. If he doesn't let us call them,
 23 then they won't be called as witnesses. But we
 24 may make an offer of proof for the record.
 25 MR. SMITH: I understand that. But as

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1 Mr. Meissner testified today, he has no
 2 information relevant to the three areas of
 3 inquiry pursuant to the director's orders.
 4 You would agree with us, that he's
 5 being called to testify to things that are
 6 inconsistent and contradictory to the order;
 7 correct?
 8 MR. ALAN SMITH: Am I being
 9 cross-examined now?
 10 MR. SMITH: No. I'm just wondering why
 11 you would call a witness who has testified he has
 12 nothing to offer with regard to the order in the
 13 areas of testimony that will be allowed.
 14 MR. ALAN SMITH: He will be called as a
 15 witness. And we'll let Mr. Spackman rule on
 16 whether he's going to allow him to testify or
 17 not. I've already answered that.
 18 MR. SMITH: Well, we agree that the
 19 testimony is not --
 20 MR. ALAN SMITH: I don't agree, no. I
 21 think, I'm like Mr. Moyle, I think that pre-trial
 22 order is broad enough to cover a lot of areas.
 23 MR. SMITH: Thank you. I don't think
 24 we need to have this on the record. But I do
 25 have a couple of more questions for Mr. Meissner.

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1 MR. SMITH: Okay.
 2 FURTHER EXAMINATION
 3 QUESTIONS BY MR. ALAN SMITH:
 4 Q. If your static level remained at 58
 5 feet since you re-did the well, has Legacy been
 6 pumping occasionally?
 7 A. They pump occasionally, but for brief
 8 periods of time, and I'm not sure.
 9 Q. Is that amount of pumping, a lot
 10 different than they were earlier?
 11 A. The most I have seen them pump is,
 12 like, six to eight hours at a time.
 13 Q. And what were they pumping before, when
 14 you were having that impact?
 15 A. There was a couple of times where they
 16 pumped for a week straight, and that severely
 17 impacted me.
 18 MR. FEREDAY: Again, I'll interpose my
 19 same objection.
 20 MR. ALAN SMITH: I have no other
 21 questions.
 22 MR. FEREDAY: No further questions.
 23 MR. SMITH: No further questions.
 24 (Deposition concluded at 11:59 a.m.)
 25 (Signature waived.)

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1 REPORTER'S CERTIFICATE
2 I, COLLEEN P. ZEIMANTZ, CSR No. 345,
3 Certified Shorthand Reporter, certify:
4 That the foregoing proceedings were taken
5 before me at the time and place therein set
6 forth, at which time the witness was put under
7 oath by me;
8 That the testimony and all objections made
9 were recorded stenographically by me and
10 transcribed by me or under my direction;
11 That the foregoing is a true and correct
12 record of all testimony given, to the best of my
13 ability;
14 I further certify that I am not a relative
15 or employee of any attorney or party, nor am I
16 financially interested in the action.
17 IN WITNESS WHEREOF, I set my hand and seal
18 this 13th day of October, 2011.

19
20
21 _____
22 COLLEEN P. ZEIMANTZ, CSR 345
23 Notary Public
24 P.O. Box 2636
25 Boise, Idaho 83701-2636
My commission expires September 7, 2017.

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