

**BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO**

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OCT 05 2011

DEPARTMENT OF  
WATER RESOURCES

North Ada County Groundwater Users Association  
John Thornton / David Head  
855 Stillwell Drive  
Eagle, Idaho 83616  
(208) 938-8508

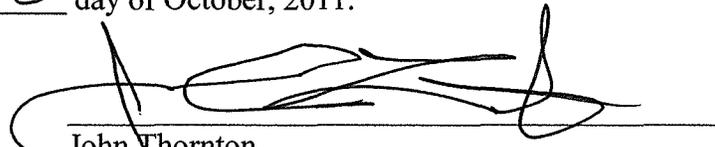
Eagle Pines Water Users Association  
Alan Smith  
3135 Osprey  
Eagle, Idaho 83616  
Protestants  
(208) 939-6575

IN THE MATTER OF APPLICATION )  
FOR PERMIT NO. 63-32576 )  
IN THE NAME OF M3 EAGLE, LLC )  
AND THE CITY OF EAGLE, )  
ASSIGNEE OF PERMIT NO. 63-32576 )

**MOTION TO DISMISS  
REMAND PROCEEDINGS**

Protestants, North Ada County Water Association and Eagle Pines Water Association, by and through John Thornton and Alan Smith, respectively, hereby move to dismiss all Remand Proceedings on the grounds stated herein and in the attached brief.

Respectfully submitted this 5 day of October, 2011.



John Thornton,  
North Ada County Water Users Association



Alan Smith,  
Eagle Pines Water Users Association, and  
Individually



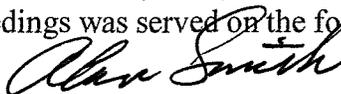
Norm Edwards,  
Individually

1. The M3 Eagle application has been adjudicated and denied, a municipal water right does not exist and cannot be assigned to the City of Eagle.
2. M3 Eagle is not a municipal provider and cannot assign a municipal provider application to the City of Eagle. The City of Eagle has no present integrated water system contiguous or within a reasonable distance which supplies water for municipal purposes.
3. The City of Eagle is not a proper party in the case solely by an assignment of the application from M3 Eagle.
4. The Amended Final Order of January 25, 2010 is the only decision on the merits in the present case and stands as the law of the case.
5. M3 is not a co-applicant as it does not qualify as a municipal provider.
6. While the appeal was pending neither Water Resources nor the Director had any jurisdiction to enter into the January 19<sup>th</sup> agreement.
7. That agreement is invalid and can not be used to void a court decision which affects other well owners and litigants.
8. The M3 application had been adjudicated and denied and the January 19<sup>th</sup> Agreement does not restore it to life or void a court decision.
9. The City of Eagle is only used as a “straw man” to obtain a municipal future needs water right for M3.
10. The M3 developer will hold all the attributes of ownership including full management and control when not a municipal provider.
11. The developer will own the water right until it is conveyed to the City of Eagle on a “phase by phase basis”. (See Pre-Annexation Contract, Section 2.2c and e.)
12. The only legal issue decided by the district court was Protestants attempts to intervene.
13. The January 19<sup>th</sup> Agreement and June 14<sup>th</sup> Stipulation are invalid in that both attempt to grant a reconsideration of the case and re-opening of the evidence in violation of the time limits of the I.R.C.P. without notice and an opportunity to be heard in advance of the reconsideration ruling. (See Hells Canyon case cited in the brief.)
14. Neither M3 nor Water Resources can contract away the procedural and evidentiary rights of others for private gain. (See Campbell v Kildew, cited in attached brief).
15. The negotiated Agreement and the Stipulation do not supersede the Idaho Statutes, Procedural Rules or the case law.

16. Reconsideration one (1) year later is untimely and invalid as a contract or negotiation to supersede the Statutes and Rules
17. The Agreement deletes certain findings that the Director is required to enter whether or not protested. Section 42-203(A)(5)(a), (b), (d), and (e).
18. This whole post-judgment process, reconsideration, and reopening of the evidence 1 year later is a nullity and Water Resources acting in a judicial or quasi-judicial capacity has no power or authority to reconsider and enter a different ruling. (Hells Canyon case, supra).
19. Also upon all other grounds stated in the attached brief.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5 day of October, 2011, a true and correct copy of the foregoing Motion To Dismiss Remand Proceedings was served on the following parties as set forth below:



### NOTICE OF SERVICE AND DISCOVERY

North Ada County Groundwater Users Association  
John Thornton / David Head  
5264 N Sky High Lane  
Eagle, ID 83616

U.S. Mail  
 Hand Delivered  
 Overnight Mail  
 Facsimile

Norman Edwards  
884 W Beacon Light Road  
Eagle, ID 83616

U.S. Mail  
 Hand Delivered  
 Overnight Mail  
 Facsimile

Jeffrey C. Fereday  
GIVENS PURSLEY LLP  
601 West Bannock Street  
PO Box 2720  
Boise, ID 83701-2720

U.S. Mail  
 Hand Delivered  
 Overnight Mail  
 Facsimile

Gary Spackman, Hearing Officer  
State of Idaho  
Department of Water Resources  
322 E Front Street  
Boise, Idaho

U.S. Mail  
 Hand Delivered  
 Overnight Mail  
 Facsimile

Garrick L. Baxter and John W. Homan  
Deputy Attorneys General, IDWR  
P.O. Box 83720  
Boise, Idaho 83720-0098

U.S. Mail  
 Hand Delivered  
 Overnight Mail  
 Facsimile

City of Eagle, Bruce Smith  
950 W Bannock, Suite 520  
Boise, Idaho 83702

U.S. Mail  
 Hand Delivered  
 Overnight Mail  
 Facsimile