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DEPARTMENT OF
WATER RESOURCES

Before The Department of Water Resources of The State of Idaho

North Ada County Groundwater Users Association
John Thornton / David Head
5264 N Sky High Lane
Eagle, Idaho 83616
(208) 938-8508

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

In the Matter of Application	)	**Motion For**
For Permit No. 63-32573	)	**Reconsideration and**
In The Name of the City of Eagle	)	**Clarification**

Comes now, Petitioners North Ada County Ground Water Users' Association, by and through John Thornton; and Eagle Pines Water Users' Association, by and through Alan Smith and Norman Edwards; and Alan Smith and Norman Edwards, individually; and hereby Petition pursuant to Rule 740 and rule 770 Department of Water Resources Rules of Procedure for Reconsideration and Clarification of the SECOND AMENDED FINAL ORDER of March 9, 2012 on the grounds set forth below. ORAL ARGUMENT IS REQUESTED.

1. Protestants' Motion to Dismiss All Remand Proceedings and to Reject the Meaningless and Defective Assignment to the City of Eagle in violation of 42-202(2) and 42-205 B(5)(a)(b) and (c), Idaho Code, was made at the conclusion of the Remand Hearing, was taken under advisement, but was never decided or ruled on in the Second Amended Final Order of March 9, 2012, and was ignored and omitted from that decision in violation of the "Due Process" rights of Petitioners/Protestants.

2. Protestants' "Right of Procedural Due Process" has been flagrantly violated by improper negotiations between IDWR and M3 while the appeal was pending and the IDWR tribunal had no jurisdiction to do so. Those negotiations, without any notification to Protestants, changed the entire scope and focus of the evidence from that of the contested case and allowed the record to be supplemented to establish annexation by this "negotiated deal" after the IDWR tribunal had already denied a motion to reopen the evidence in the contested case. The focus of the evidence was also changed from the contested case and from issues concerning "upslope pumping

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of ground water under the M3 property to water supply issues in the "valley floor", without any opportunity afforded to Protestants to contest or rebut those issues.

3. Additional and further "Due Process" violations as set forth in the Memorandum and Brief accompanying this Motion.

Wherefore: Petitions urge this tribunal to vacate and set aside the Second Amended Final Order for the following reasons.

1. That March 9, 2012 Order is an extra – judicial order entered as a result of a "deal" negotiated while the case was on appeal and when this court did not have jurisdiction. That deal was not required or necessary as a judgment on the merits in this contested case had already been entered and the appeal was from that judgment. The Petitioners have repeatedly raised the jurisdiction issue asking for a ruling, but have been ignored and denied such without due process.

   The litigants are entitled to rely on the judgment on the merits. It will not be set aside, even on appeal, unless it is clearly erroneous.

   > "A judgment should not be vacated or disturbed unless refusal to take such action appears to the court inconsistent with substantial justice." (ICRP, Rule 61).

   Due process here is quite clear.

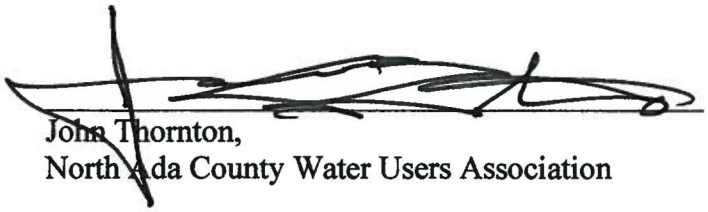
2. Over 20 negotiation conferences took place between IDWR and M3's representatives behind closed doors without all litigants notified or present. This resulted in the January 19, 2011 "deal" between IDWR and M3, signed by the M3 representative and the judge of this tribunal before the Petitioners ever saw it. As a result of that Deal a SECOND AMENDED FINAL ORDER was entered superseding, replacing, and suspending the prior judgment on the merits in a contested case: to wit, the Amended Final Order, in denial of Petitioners' due process.

   Conclusion of Law #17, p 14 of the Second Amended Final Order of March 9, 2012 is an unlawful and illegal award of a water right to the City of Eagle which was never an applicant. Since no application by the City of Eagle was ever filed with the required published notice allowing for protests to be filed, Section 42-203A, Idaho Code has been breached and violated. That Section, Idaho Code provides:

   > "Upon receipt of an application to appropriate waters of this state, the Department of Water Resources shall prepare a notice . . . The Department shall also state in said notice that any protest against the approval of such application . . . shall be filed with the Department within ten (10) days from the last date of publication of such notice."
   >
   > Change of the applicant, whether by an assignment or otherwise, triggers the statutory authority with this Department and requires a new notice and publication under the above law and due process.

3. During the remand hearing the Petitioners filed a motion to dismiss all remand proceedings. That motion was taken under advisement by this tribunal. No ruling or determination on that motion was ever made. That motion raised issues of: (1) the impropriety of the court negotiating a "deal" with part of the litigants; (2) jurisdiction to do so while jurisdiction was only in the appellate court; and (3) whether the proposed assignment by M3 which had language allowing M3 to own a future needs municipal water right when it failed to qualify should be allowed under 42-202(2) and 42-205B(5) Idaho Code. Instead, Petitioners received a SECOND AMENDED FINAL ORDER. The pending motion of Petitioners was ignored and this tribunal apparently refuses to determine that meritorious motion which is fully supported by cited Idaho case precedent and statutory law, all in denial of the due process rights of Petitioners.

Respectfully submitted this 21st day of March, 2012.



John Thornton,
North Ada County Water Users Association

3-21-12
Date

Alan Smith,
Eagle Pines Water Users Association, and
Individually

3-21-12
Date

Norman Edwards,
Eagle Pines Water Users Association, and
Individually
884 Beacon Light
Eagle, Idaho 83616
(208) 939-6796

3-21-12
Date

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22 day of March, 2012, a true and correct copy of the foregoing Motion for Reconsideration and Clarification 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 __X__ Hand Delivered _____ Overnight Mail _____ Facsimile
Norman Edwards 884 W Beacon Light Road Eagle, ID 83616	_____ U.S. Mail __X__ 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 __X__ 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 __X__ Hand Delivered _____ Overnight Mail _____ Facsimile
City of Eagle, Bruce Smith 950 W Bannock, Suite 520 Boise, Idaho 83702	_____ U.S. Mail __X__ Hand Delivered _____ Overnight Mail _____ Facsimile

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