

BEFORE THE DEPARTMENT OF WATER RESOURCES

FOR THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)	ORDER DENYING
FOR PERMIT NO. 63-32573, IN THE)	MOTION TO DISMISS
NAME OF M3 EAGLE ASSIGNED)	REMAND PROCEEDINGS
TO THE CITY OF EAGLE ¹)	
_____)	

Protestants North Ada County Groundwater Users Association, Eagle Pines Water Users Association, Alan Smith and Norman Edwards (collectively “Protestants”) filed a *Motion To Dismiss Remand Proceedings* (“Motion to Dismiss”) on October 5, 2011. M3 Eagle LLC (“M3 Eagle”) filed a *M3 Eagle’s Response to Protestants’ Motion To Dismiss Remand Proceedings* on October 12, 2011.

Protestants raise several arguments attacking the assignment of the application to the City of Eagle and the validity of the Idaho Department of Water Resources (“Department”) to settle pending litigation to support their Motion to Dismiss. The Hearing Officer has reviewed the Protestants’ arguments and finds that the arguments lack merit and the Motion to Dismiss should be denied.

I. Assignment to the City of Eagle is Effective

Protestants’ contention that the City of Eagle cannot be assigned the application in this matter because the application had been fully adjudicated and denied in the January 25, 2010 Amended Final Order is incorrect. The petition for judicial review filed in this case preserved the matter on appeal. The case was subsequently remanded back to the Department with instruction to hold a hearing. The City of Eagle is now the applicant before the Department. The permit and application were assigned to the City of Eagle on June 13, 2011. The Department required the assignment to the City of Eagle, a qualified municipal provider, as a condition of agreeing to the remand.

II. Settlement Negotiations by the Department were Appropriate

The Protestant are incorrect in their assertion that the January 19, 2011 Agreement is invalid. The Department was a party to the judicial review case before the district court. The Department like any other party maintains the right to negotiate an agreement to settle pending litigation. The settlement negotiations resulted in the January 19, 2011 Agreement and eventually the Joint Stipulation dated June 14, 2011. The district court approved the Joint

¹ The original caption was changed to reflect that an assignment of water right application and permit no. 63-32573 to the City of Eagle was filed with IDWR on June 13, 2011.

Stipulation and remanded the case back to the Department with instructions to hold a hearing limited to accepting certain planning information from the City of Eagle.

Protestants are parties to the contested case and have the right to participate before the Department, but should not have the right to upset settlement reached by the parties and approved by the district court. Protestants elected not to participate as parties in the judicial review case and now want to undo the settlement agreed to by the parties in that case. Although the Protestants may disagree, it is not appropriate for the Department to violate the terms of the district court's June 30, 2011 *Amended Order* nor is it appropriate for the Department to breach the terms of the January 19, 2011 Agreement and June 14, 2011 Joint Stipulation and dismiss this case.

ORDER

IT IS HEREBY ORDERED that Protestants' Motion to Dismiss Remand Proceedings is DENIED.

DATED this 14th day of October, 2011.



GARY SPACKMAN
Interim Director

CERTIFICATE OF SERVICE

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

Bruce M. Smith, Susan Buxton
Moore Smith Buxton & Turcke, Chtd.
950 W Bannock Street, Suite 520
Boise Idaho 83702
bms@msbtlaw.com
seb@msbtlaw.com

- U.S. Mail
- Hand Delivered
- Overnight Mail
- Facsimile
- E-mail

Jeffrey C. Fereday
Givens Pursley, LLP
601 W Bannock Street
P.O. Box 2720
Boise, Idaho 83701
jcf@givenspursley.com

- U.S. Mail
- Hand Delivered
- Overnight Mail
- Facsimile
- E-mail

Norman L. Edwards
884 W. Beacon Light Road
Eagle, Idaho 83616

- U.S. Mail
- Hand Delivered
- Overnight Mail
- Facsimile
- E-mail

David Head
North Ada County Groundwater Users Assn.
855 Stillwell Drive
Eagle, Idaho 83616

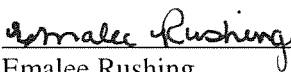
- U.S. Mail
- Hand Delivered
- Overnight Mail
- Facsimile
- E-mail

John Thornton
North Ada County Groundwater Users Assn.
5264 North Sky High Lane
Eagle Idaho 83616

- U.S. Mail
- Hand Delivered
- Overnight Mail
- Facsimile
- E-mail

Alan Smith
Eagle Pines Water Users Assn.
3135 Osprey Road
Eagle, Idaho 83616

- U.S. Mail
- Hand Delivered
- Overnight Mail
- Facsimile
- E-mail



Emalee Rushing
Office Services Supervisor
Idaho Department of Water Resources