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IDAHO PUBLIC  
UTILITIES COMMISSION

Attorneys for Applicant

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

IN THE MATTER OF THE  
APPLICATION OF MAYFIELD  
SPRINGS WATER COMPANY, INC.,  
FOR A CERTIFICATE OF PUBLIC  
CONVENIENCE AND NECESSITY

**CASE NO. MSW-W-08-01**

**REPLY COMMENTS ON  
RECONSIDERATION**

COMES NOW, Mayfield Springs Water Company, Inc., an Idaho corporation (the “Company” or “Mayfield”), by and through its counsel, Fisher Pusch & Alderman LLP, and files its Reply Comments on Reconsideration in response to the previously filed comments of the Idaho Public Utilities Commission Staff and Intervenor Gerald J. Corvino.

**ARGUMENT**

Mayfield agrees with Staff’s analysis that the developer should be allowed to recover the cost of the system through the sale of lots especially where the presumption of contributed capital exists. By Mr. Corvino’s calculations, only One Hundred Forty Thousand Dollars (\$140,000.00) would have been recovered by the developer through hook-up fees when the system actually cost Six Hundred Ninety Thousand Dollars (\$690,000.00) to build.

**1. Retroactive Ratemaking and McGuire Estates**

The Company still asserts that to order refunds for charges or fees assessed prior to the Application date would amount to retroactive ratemaking. *See Arkansas Louisiana Gas Company v. Hall et al.*, 453 U.S. 571, 101 S.Ct. 2925, 60 L.Ed.2d 856 (1981) (“the Commission itself has no power to alter a rate retroactively. When the Commission finds a rate unreasonable, it “shall determine the just and reasonable rate . . . to be thereafter observed and in force.” § 5 (a), 52 Stat. 823, 15 U.S.C. § 717d (a) (emphasis added). See, e. g., *FPC v. Tennessee Gas Co.*, 371 U.S. 145, 152-153 (1962); *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348, 353 (1956). This rule bars “the Commission’s retroactive substitution of an unreasonably high or low rate with a just and reasonable rate.” *City of Piqua v. FERC*, *supra*, at 12, 610 F.2d, at 954.”).

Based on the Commission’s analysis in Order No. 30628 of *McGuire Estates Water Co. v. Idaho PUC*, the Company also asserts that the Commission cannot grant the relief Mr. Corvino seeks, that is the refund of charges or fees assessed prior to the Application date in this case. In *McGuire Estates* the Idaho Supreme Court overturned a Commission Order barring a water company “from collecting past due accounts which accrued while the Company was operating as an ‘illegal’ utility. . . .” *McGuire Estates Water Co., v. Idaho PUC*, 111 Idaho 341, 343, 723 P.2d 885, 887 (1986).

**2. No Privity of Contract**

In combination with the above arguments, or as an alternative to them, the Company asserts that the vast majority of homeowners do not have privity of contract with the Company in regard to the hookup charges. At least 46 homeowners, including Mr. Corvino, in the Arrowrock subdivision contracted with a third party in regard to the payment of the hookup fee and not Mayfield or its predecessors, Arrowrock Water or Arbor Ridge, LLC. In his comments,

Mr. Corvino essentially admits that this was the case for at least 36 homeowners. Privity of contract is required in a contract action to recover economic loss.” *See Salmon Rivers Sportsman Camps, Inc. v. Cessna Aircraft Co.*, 97 Idaho 348, 354, 544 P.2d 306, 312 (1975). Based on the foregoing, the vast majority of relief requested by Mr. Corvino must be denied.

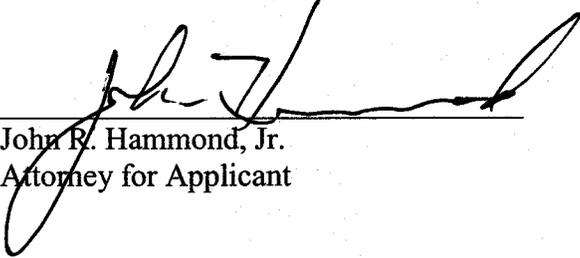
**CONCLUSION**

Based on the foregoing arguments, Mayfield respectfully requests that the Commission deny the relief requested by Intervenor Gerald J. Corvino in his Petition for Reconsideration and Comments on Reconsideration.

DATED THIS 12 day of December, 2008.

MAYFIELD SPRINGS WATER COMPANY, INC.

By: \_\_\_\_\_

  
John R. Hammond, Jr.  
Attorney for Applicant

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 20<sup>th</sup> day of December, 2008, a true and correct copy of the foregoing document was served on the following individuals by the method indicated below:

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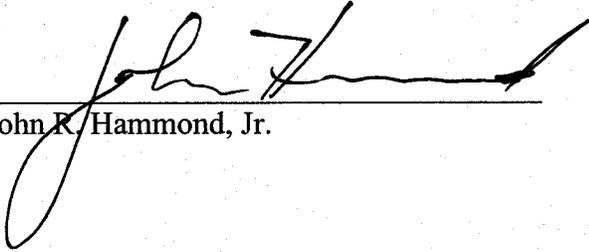
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