

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

**IN THE MATTER OF APPLICATION FOR
TRANSFER NO. 81155 IN THE NAME OF
CITY OF POCATELLO**

**ORDER GRANTING REQUEST
FOR HEARING; NOTICE OF
HEARING**

BACKGROUND

On October 26, 2018, Spartan Portneuf, LLC (“Spartan”), a protestant in the above captioned matter, filed a *Motion for Attorney’s Fees and Costs* (“Motion”). Spartan asserted it was entitled to attorney’s fees and expenses under Idaho Code §§ 12-117(1) or 12-117(2) after the City of Pocatello voluntarily withdrew Application for Transfer No. 81155 (“Application”). Spartan’s Motion argued that it was the prevailing party in the subject contested case, at least in part, and that Pocatello acted without a reasonable basis in fact or law in pursuing its Application. On January 11, 2019, the Hearing Officer issued a *Preliminary Order on Attorney’s Fees* (“Order”), denying Spartan’s Motion.

On January 25, 2019, Spartan filed with the Director its *Notice of Exceptions to Preliminary Order Denying Attorneys’ Fees and Costs* (“Notice of Exceptions”). While the Notice of Exceptions contained no argument or briefing related to Spartan’s taking exception to the Hearing Officer’s rationale in denying the Motion, it did contain a request for hearing: “To the extent the Protestant has not been afforded a hearing in this matter, Spartan Portneuf requests, pursuant to Idaho Code § 42-77014(3) [sic], that a hearing be held.” *Notice of Exceptions* at 1.

On March 11, 2019, the City of Pocatello (“Pocatello”) filed *City of Pocatello’s Response to Protestant’s Notice of Exceptions to Preliminary Order Denying Attorney’s Fees and Costs* (“Response”). Pocatello argues that Spartan’s Notice of Exceptions does not comply with the Department’s procedural rules as Spartan did not provide any argument or briefing in support of the Notice of Exceptions. *Response* at 4. Pocatello also argues that the Hearing Officer properly found that Spartan is not entitled to attorney’s fees. *Id.* at 5-7.

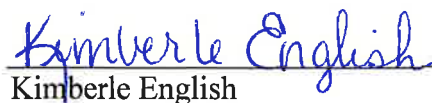
The Director infers Spartan meant to cite Idaho Code § 42-1701A(3), since Idaho Code § 42-77014(3) does not exist. Idaho Code § 42-1701A(3) provides, in relevant part:

Unless the right to a hearing before the director ... is otherwise provided by statute, any person aggrieved by any action of the director ... and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the director to contest the same.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of April 2019, the above and foregoing was served on the following by the method(s) indicated below:

Eastern Regional Office Idaho Department of Water Resources 900 North Skyline Drive, Suite A Idaho Falls, ID 83402-1718 james.cefalo@idwr.idaho.gov sharla.cox@idwr.idaho.gov	<u>X</u> _____ _____ _____ <u>X</u>	U.S. Mail, Postage Prepaid Hand Delivery Federal Express Overnight Facsimile Email
Jim Browitt Laura Schroeder Spartan Portneuf LLC Schroeder Law Offices P.C. 1915 NE Cesar E. Chavez Blvd. Portland, OR 97212 schroeder@water-law.com j.browitt@water-law.com	<u>X</u> _____ _____ _____ <u>X</u>	U.S. Mail, Postage Prepaid Hand Delivery Federal Express Overnight Facsimile Email
Kirk Bybee City of Pocatello P.O. Box 4169 Pocatello ID 83201 kibybee@pocatello.us	<u>X</u> _____ _____ _____ <u>X</u>	U.S. Mail, Postage Prepaid Hand Delivery Federal Express Overnight Facsimile Email
Justin Armstrong City of Pocatello 911 North 7th Ave. P.O. Box 4169 Pocatello, ID 83250-4169 jarmstrong@pocatello.us	_____ _____ _____ _____ <u>X</u>	U.S. Mail, Postage Prepaid Hand Delivery Federal Express Overnight Facsimile Email
Thomas J. Katsilometes PLLC P.O. Box 777 Boise, ID 83701-0777	<u>X</u> _____ _____ _____ _____ _____ <u>X</u>	U.S. Mail, Postage Prepaid Hand Delivery Federal Express Overnight Facsimile Email
Sarah Klahn Somach Simmons & Dunn 2701 Lawrence, #1134 Denver, CO 80205 720-279-7868 sklahn@somachlaw.com	<u>X</u> _____ _____ _____ _____ <u>X</u>	U.S. Mail, Postage Prepaid Hand Delivery Federal Express Overnight Facsimile Email


Kimberle English