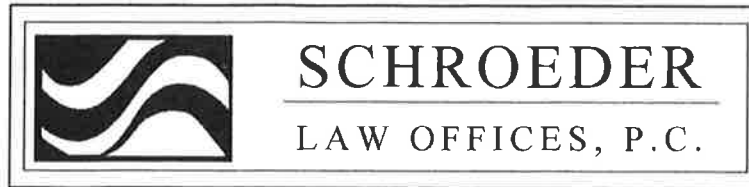


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November 5, 2018

VIA FACSIMILE

Idaho Department of Water Resources
Eastern Regional Office
900 North Skyline Drive, Suite A
Idaho Falls, ID 83402-1718
Facsimile: (208) 525-7177

Idaho Department of Water Resources
State Office
322 East Front Street
Boise, ID 83702-0098
Facsimile: (208) 287-6700

**RE: Matter of Transfer Application 81155: Protestant's Reply in Support of
Motion for Attorney's Fees and Costs**

To Whom It May Concern:

Enclosed please find Protestant Spartan Portneuf, LLC's *Reply in Support of Motion for
Attorney's Fees and Costs* for filing in the above-referenced matter.

If you have any questions, please contact our office at (503) 281-4100. Thank you in
advance for your cooperation and assistance.

Very truly yours,
SCHROEDER LAW OFFICES, P.C.

Rachel S. Harman
Paralegal

RSH:rsh

Enclosure

cc: Service List
Client

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6
7 **BEFORE THE DEPARTMENT OF WATER RESOURCES**
8 **OF THE STATE OF IDAHO**

9
10 IN THE MATTER OF APPLICATION
11 FOR TRANSFER NO. 81155 IN THE
NAME OF CITY OF POCATELLO

**PROTESTANT'S REPLY IN
SUPPORT OF MOTION FOR
ATTORNEY'S FEES AND COSTS**

12
13 Protestant Spartan Portneuf, LLC ("Spartan Portneuf"), by and through Schroeder Law
14 Offices, P.C., and its attorneys, hereby submits this *Reply in Support of Motion for Attorney's*
15 *Fees and Costs*. As established in the Motion, Spartan Portneuf is entitled to an award of
16 reasonable attorney's fees and expenses pursuant to Idaho Code ("I.C.") 12-117 because it is the
17 prevailing party in the above-captioned matter, and the non-prevailing party, Applicant City of
18 Pocatello ("Pocatello"), acted without a reasonable basis in fact or law. Further, the Idaho
19 Department of Water Resources ("IDWR") has jurisdiction to take action on the Motion because
20 the above-captioned matter was active at the time the Motion was filed.

21 Pocatello implies that its withdrawal of Application for Transfer No. 81155 ("Transfer
22 81155") became immediately effective when it was filed with IDWR on October 10, 2018. *See*
23 *City of Pocatello's Special Appearance and Response to Protestant's Motion for Attorney's Fees*
24 *and Costs*, dated November 2, 2018, pp. 1-2, 4, 8-9. Pocatello attempts to substantiate this
25 assertion by pointing to IDWR's receipt of the notice of withdrawal, which was acknowledged in
26



1 a letter dated October 12, 2018, addressed to Pocatello and copied to Spartan Portneuf. *Id.*, pp. 1,
2 9.

3 The language contained in those documents notwithstanding, the withdrawal did not take
4 effect when the notice of withdrawal was received by IDWR. Pursuant to IDAPA 37.01.01.305,
5 “A party desiring to withdraw a pleading must file a notice of withdrawal of the pleading and
6 serve all parties with a copy. Unless otherwise ordered by the presiding officer, the notice is
7 effective fourteen (14) days after filing.” (Emphases added).

8 Being that an application is considered a pleading in a contested case, IDAPA
9 37.01.01.210, Pocatello was required to serve notice of its intent to withdraw Transfer 81155,
10 which it fundamentally did with the document it submitted to IDWR and Spartan Portneuf on
11 October 10, 2018. Although IDWR’s acknowledgement of withdrawal dated October 12, 2018,
12 stated that “no further action will be taken” on Transfer 81155, said acknowledgement cannot be
13 construed as an order, “An agency action of particular applicability that determines the legal
14 rights, duties, privileges, immunities, or other legal interests of one (1) or more specific persons.”
15 IDAPA 37.01.01.005(15). Rather, it amounts to correspondence from IDWR to the respective
16 parties signed by an IDWR administrative assistant, not the contested case’s presiding officer.

17 Consequently, the withdrawal of Transfer 81155 would not have taken effect until
18 October 24, 2018, at the earliest. According to the receipt stamp,¹ IDWR received Spartan
19 Portneuf’s Motion by way of facsimile on October 22, 2018, so Transfer 81155 was an active
20 matter before IDWR when the Motion at issue was filed. Being that the Motion was timely filed
21 and is still pending, IDWR does not need to “revive” Spartan Portneuf’s protest in order to exert
22 jurisdiction.

23 Therefore, Spartan Portneuf respectfully requests the Hearing Officer grant its motion
24 and award Spartan Portneuf reasonable attorney’s fees and expenses pursuant to I.C. 12-117(1)
25

26 ¹ http://www.idwr.idaho.gov/apps/ExtSearch/DocsImages/q81m01_.pdf

1 or, in the alternative, award Spartan Portneuf attorney's fees and expenses under I.C. 12-117(2)
2 related to the portions of this matter in which Spartan Portneuf is determined to have prevailed.
3

4 DATED this 5th day of November, 2018.
5

6 SCHROEDER LAW OFFICES, P.C.

7 

8 Laura A. Schroeder, ESQ (ISB #3799)
9 James Browitt (ISB #9016)
Schroeder Law Offices, P.C.

10 *Attorneys for Protestant*
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1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on this 5th day of November, 2018, I caused a true and correct
3 copy of *PROTESTANT'S REPLY IN SUPPORT OF MOTION FOR ATTORNEY'S FEES AND*
4 *COSTS* to be delivered to the following by Facsimile.

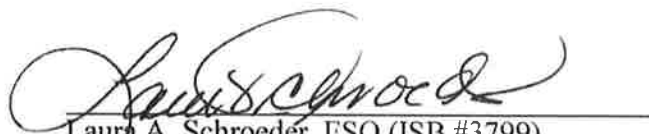
5 Idaho Department of Water Resources
6 Eastern Regional Office
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8 Idaho Falls, ID 83402-1718
9 *Facsimile: (208) 525-7177*

Idaho Department of Water Resources
State Office
322 East Front Street
Boise, ID 83702-0098
Facsimile: (208) 287-6700

10 I HEREBY CERTIFY that on this 5th day of November, 2018, I caused a true and correct
11 copy of *PROTESTANT'S REPLY IN SUPPORT OF MOTION FOR ATTORNEY'S FEES AND*
12 *COSTS* to be delivered to the following by Electronic Mail.

13 Kirk Bybee
14 City of Pocatello
15 P.O. Box 4169
16 Pocatello, ID 83201
17 *Email: kibybee@pocatello.us*

Sarah A. Klahn
Somach Simmons & Dunn
2701 Lawrence Street, Suite 113
Denver, CO 80205
Email: sklahn@somachlaw.com

18 

19 Laura A. Schroeder, ESQ (ISB #3799)
20 James Browitt (ISB #9016)
21 Schroeder Law Offices, P.C.

22 *Attorneys for Protestant*

