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DEPT OF WATER RESOURCES

Via fax 10-22-18

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Attorneys for Protestant

**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

**PROTESTANT'S MOTION FOR
ATTORNEY'S FEES AND COSTS**

MOTION

Protestant Spartan Portneuf, LLC ("Spartan Portneuf"), by and through Schroeder Law Offices, P.C., and its attorneys, hereby moves the Idaho Department of Water Resources ("IDWR" or "Department") for an Order awarding attorney's fees and expenses. Spartan Portneuf is entitled to attorney's fees and expenses under Idaho Code ("I.C.") 12-117(1) because it is the prevailing party in the above-captioned matter in which the non-prevailing party, Applicant City of Pocatello ("Pocatello"), acted without a reasonable basis in fact or law. In the alternative, Spartan Portneuf is entitled to certain attorney's fees and expenses under I.C. 12-117(2) because it prevailed in a portion of the above-captioned matter. This Motion is based on the following Points and Authorities as well as the pleadings and papers on file.

POINTS AND AUTHORITIES

Pursuant to I.C. 12-117(1), IDWR is authorized to award "reasonable attorney's fees ... and other reasonable expenses" in an administrative proceeding between a political subdivision and a private party, provided the party seeking the award is the prevailing party in the proceeding

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1 and the non-prevailing party “acted without a reasonable basis in fact or law.” Alternatively, I.C.
2 12-117(2) authorizes IDWR to award certain attorney’s fees and expenses to a party that partially
3 prevailed in an administrative proceeding if it is determined the adverse party “acted without a
4 reasonable basis in fact or law with respect to that portion” of the proceeding.

5 Although IDWR’s rules of procedure, IDAPA 37.01.01, do not address such awards,
6 IDWR has found that I.C. 12-117(1) and (2) do authorize the Department to award fees and
7 expenses in administrative matters involving a government entity – such as a municipality – and
8 a private party. *In the Matter of Application for Transfer No. 5691 in the Name of Jerome Cheese*
9 *Company*, (Order Denying Motion for Attorney’s Fees, Nov. 11, 2000). Further, the Idaho Supreme Court
10 has found that an award of fees is mandatory if the requirements set forth in I.C. 12-117(1) and (2)
11 are met. *See, e.g., Fuchs v. Idaho State Police, Alcohol Beverage Control*, 153 Idaho 114, 117 (2012).

12 **A. Pocatello’s withdraw of Transfer 81155 renders Spartan Portneuf the prevailing**
13 **party in this matter.**

14 The Idaho Supreme Court has ruled that the determination of the prevailing party is based
15 on the overall result of a proceeding, whether by way trial or settlement. *See Hobson Fabricating*
16 *Corp. v. SE/Z Const., LLC*, 154 Idaho 45 (2012). Moreover, stipulations to dismiss (and
17 presumably to withdraw) are treated as a form of settlement. *Id.* Guidance for this determination
18 is set forth in Rule 54(d)(1)(b) of the Idaho Rules of Civil Procedure (“IRCP”):

19 In determining which party to an action is a prevailing party and
20 entitled to costs, the trial court [or administrative agency] shall in its
21 sound discretion consider the final judgment or result of the action in
22 relation to the relief sought by the respective parties. The trial court [or
23 administrative agency] in its sound discretion may determine that a
24 party to an action prevailed in part and did not prevail in part, and
upon so finding may apportion the costs between and among the
parties in a fair and equitable manner after considering all of the issues
and claims involved in the action and the resultant judgment or
judgments obtained.

25 The core of this matter, Application for Transfer No. 81155 (“Transfer 81155”), was
26 submitted by Pocatello on July 25, 2016, and timely protested by Spartan Portneuf on September



1 26, 2016. The basis of the protest was that the transfer would “exacerbate existing problem” of
2 Pocatello’s interference with Spartan Portneuf’s existing water rights. In the ensuing two years,
3 Pocatello persistently declined to amend its application or consider Spartan Portneuf’s proposed
4 points of settlement, even after the protest was reinstated by Director Spackman’s order of
5 remand (November 20, 2017) and the City’s subsequent petition for judicial review was
6 dismissed (June 4, 2018). Yet Pocatello ultimately conceded in this matter by withdrawing
7 Transfer 81155 (October 10, 2018), a fact underscored by Spartan Portneuf’s refusal to stipulate
8 to any terms of withdrawal.

9 Based on the outcome, it is clear that Spartan Portneuf is the prevailing party, although
10 whether it prevailed wholly or in part is left to the discretion of IDWR. IRCP 54(d)(1)(b). *See*
11 *also Eighteen Mile Ranch, LLC v. Nord Excavating & Paving, Inc.*, 141 Idaho 716, 719, (2005).

12 **B. Pocatello acted unreasonably by prolonging contested case rather than**
13 **attempting to resolve matter.**

14 The Idaho Supreme Court has recognized a two-fold purpose in I.C. 12-117: Along with
15 serving as a deterrent to groundless or arbitrary action, it provides a remedy for persons who
16 have borne unfair and unjustified financial burdens defending against groundless charges or
17 attempting to correct mistakes agencies [or political subdivisions] should never have made.
18 *See, e.g., Rincover v. State*, 132 Idaho 547, 549 (emphasis added).

19 The deficiencies of Transfer 81155 were brought to Pocatello’s attention shortly after the
20 application was filed, and Spartan Portneuf made repeated offers of reasonable settlement
21 proposals. Yet Pocatello steadfastly refused revise its application or extend any Spartan Portneuf
22 any accommodations. Instead, Pocatello forced Spartan Portneuf to endure two years of
23 administrative and judicial wrangling, only to procedurally capitulate by withdrawing its
24 application. Not only was Spartan Portneuf subjected to significant expense in an effort to
25 protect its legal interests, it may very well be forced to do so again. Should Pocatello file another
26

1 transfer application, Spartan Portneuf's gain as the prevailing party in Transfer 81155 will be
2 effectively negated.

3 In essence, Spartan Portneuf may ultimately be compelled to pay twice for the same
4 result. That possibility, along with the fact that Pocatello needlessly prolonged the Transfer
5 81155 proceeding while escalating the associated costs for Spartan Portneuf, demonstrates that
6 the City acted unreasonably, *Canal/Norcrest/Columbus Action Comm. v. City of Boise*, 136
7 Idaho 666, 671 (2001), and should be held accountable pursuant to I.C. 12-117.

8 CONCLUSION

9 For the reasons stated above, Spartan Portneuf requests that IDWR grant this motion and
10 award Spartan Portneuf reasonable attorney's fees and expenses pursuant to I.C. 12-117(1). In
11 the alternative, if IDWR determines that Spartan Portneuf prevailed in certain portions of the
12 contested case involving Transfer 61155, Spartan Portneuf requests that IDWR award it
13 attorney's fees and expenses under I.C. 12-117(2) related to the portions of the matter in which
14 Spartan Portneuf prevailed.

15
16 DATED this 22nd day of October, 2018.

17
18 SCHROEDER LAW OFFICES, P.C.

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

24
25 *Attorneys for Protestant*
26

**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 POCA TELLO

**ORDER: ATTORNEY'S FEES AND
COSTS**

This matter came before the Idaho Department of Water Resources ("Department") by motion of Protestant Spartan Portneuf, LLC ("Spartan Portneuf"), by and through Schroeder Law Offices, P.C., and its attorneys.

The Department having considered the motion,

IT IS HEREBY ORDERED that:

___ Attorney fees are allowed in full. Spartan Portneuf is to submit an affidavit of attorney fees and costs within ___ days;

___ Attorney fees are allowed in part. Spartan Portneuf is to submit an affidavit of attorney fees and costs within ___ days;

___ Attorney fees are denied.

DATED this ___ day of _____, 2018.

James Cefalo
Hearing Officer

Submitted by:

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

Attorneys for Protestant



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of October, 2018, I caused a true and correct copy of *PROTESTANT'S MOTION FOR ATTORNEY'S FEES AND COSTS* and *[PROPOSED] ORDER: ATTORNEY'S FEES AND COSTS* to be delivered to the following by U.S. Mail and 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

I HEREBY CERTIFY that on this 22nd day of October, 2018, I caused a true and correct copy of *PROTESTANT'S MOTION FOR ATTORNEY'S FEES AND COSTS* and *[PROPOSED] ORDER: ATTORNEY'S FEES AND COSTSS* to be delivered to the following by U.S. Mail and Electronic Mail.

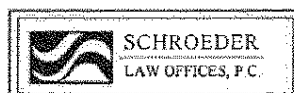
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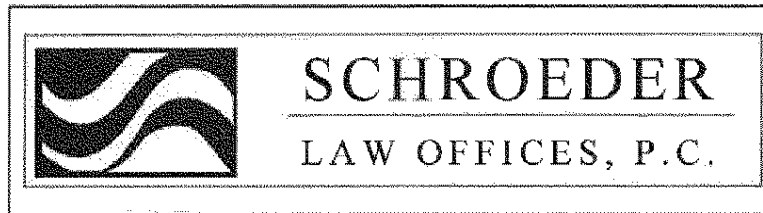


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October 22, 2018

VIA U.S. MAIL AND FACSIMILE

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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 Motion for Attorney's Fees and Costs

To Whom It May Concern:

Enclosed please find Protestant Spartan Portneuf, LLC's *Motion for Attorney's Fees and Costs* and *[Proposed] Order: 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

Enclosures

cc: Service List
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