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DEPARTMENT OF
WATER RESOURCES

Edward S. Smith
P.O. Box 6015
Twin Falls, Idaho 83303

5 November 2015

PRO SE

Before the Department of Water Resources in the State of Idaho

In the matter of Application
for Transfers #79357, #79380
#79384 and #79466 (in the name
of Thomas and Dorothy Leno)

Protestant's Letter Concerning Non-payment
of Deposition Fees by Applicants

Protestant Edward S. Smith respectfully asks for favorable consideration and enforcement of the Idaho Rules of Civil Procedure concerning the subject matter as explained in the attached letter and supporting documents.

Edward S. Smith dated 5 Nov 15

SUPPORT DATA

IN FILE # 47-17589

Edward Smith
PO Box 6015
Twin Falls, Idaho 83303

5 November 2015

Idaho Department of Water Resources
Attn: Deputy Attorney General Mr. Garrick Baxter
322 E. Front St.
Boise, Idaho 83720-0098

Subject: Non-payment of Deposition Fees in water transfer cases #79357, #79380, #79384, & #79466.

Dear Sir,

I was advised by the Hearing Officer to contact your office for resolution of this matter.

According to the Idaho Rules of Civil Procedure (26(b)(4)(c) - "Fees of Expert-Apportionment") and affirmed by the Hearing Officer, Mr. James Cefalo, in his Order dated 27 February 2015, (Tab A) the party asking for a Deposition: "...shall pay the deposed expert a reasonable fee for time spent testifying at said deposition". In this case, the Applicants asked for the Deposition of the Protestant's Expert Witness, Mr. Squires, yet continue to refuse to pay for his time at Deposition.

The Protestants (through the Idaho Rural Council; a non-party to the cases, but a conduit for ease of payment to Mr. Squires), incurred an uncontrollable and unbudgeted expense of \$665.00 for the Deposition of the Protestant's Expert Witness. The relationship between the Protestants and IRC is explained throughout the e-mail thread (Tab B). Protestants contributed to the cause by turning their "pledges" of financial support, to actual payments to IRC as the case progressed.

When Mr. Squires sent his final invoice to the Protestants, through IRC, the Deposition fees were included (Tab C). In good faith, Protestants/IRC paid in full Mr. Squires' invoice in anticipation that the Applicants would reimburse Protestants/IRC for the Deposition fees according to the Idaho Rules of Civil Procedures and the Hearing Officer's decision order.

As of this date, the Applicants continue to refuse to pay for the costs they thrust upon the Protestants/IRC for the Deposition of Mr. Squires. One of their arguments is that IRC was a non-party to the case, and that the Protestants could afford, with IRC assistance, the additional expense of the Deposition. This is not the point of the Idaho Rules of Civil Procedures. The Rules are in place to prevent one party from "running out the clock" on the financial capabilities of the other party.

Given the fact that the Applicants asked for the Deposition of the Protestant's Expert Witness, it is just and equitable for the Applicants to reimburse the Protestants/IRC for Mr. Squires' associated Deposition fees.

Any assistance in this matter would be appreciated.

Sincerely,



Ed Smith
Protestant

INCL:

Tab A : Hearing Officer's Order. Dated 27 Feb 15

Tab A-1: Protestant's (Ed Smith) letter to Hearing Officer asking for ruling in matter. Dated 25 Feb 15

Tab A-2: Applicant's response to Ed Smith's letter. Dated 26 Feb 15

Tab B: E-mail thread concerning the subject at hand. Dates 9 Jul 15 through 3 Nov 15

Tab C: Mr. Squires' Invoice (consolidated from full and final invoice). Dated 11 May 15
and Ed Smith's cover letter to Applicants presenting the invoice. Dated 27 May 15

CERTIFICATE OF SERVICE

I certify that the letter concerning the non-payment of Deposition fees by the Applicants has been delivered to the following parties on 5 November 2015

By hand delivery to:

IDWR Southern Regional Office
650 Addison Ave W.
Suite 500
Twin Falls, Idaho 83301

Barker Rosholt and Simpson LLP
Attn: Mr. Travis Thompson
195 River Vista Place, Suite 204
Twin Falls, Idaho 83301-3029

By e-mail (without Tabs) to:

James Cefalo, Hearing Officer
IDWR Eastern Region Office
900 N Sky Dr. Suite A
Idaho Falls, Idaho 83402-1718
james.cefalo@idwr.idaho.gov

By US Mail to:

IDWR
Attn: Deputy Attorney General Mr. Garrick Baxter
322 E. Front St.
Boise, Idaho 83720-0098

By e-mail (without Tabs) to the following:

gary.spackman@idwr.idaho.gov
deborah.gibson@idwr.idaho.gov

Edward S Smith

Date 5 Nov 15

27 Feb 15

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)	
TRANSFER NOS. 79357, 79380 & 79384)	
IN THE NAME OF LENO AND NO. 79466)	
<u>IN THE NAME OF FOUR SISTERS DAIRY)</u>	ORDER ADDRESSING DISCOVERY DISPUTE

On December 5, 2014, the Idaho Department of Water Resource ("Department") issued a Notice of Hearings and Order Authorizing Discovery for the above referenced contested cases. The Order Authorizing Discovery did not specifically authorize deposition of experts, but did not prohibit the taking of such depositions.

On February 25, 2015, the Department received a letter from protestant Edward Smith raising a question about who should pay for expert witness fees for the time spent in deposition. The letter asked the hearing officer to require the applicants to pay for the protestants' expert witness fees during deposition because the applicant is the one requesting and conducting the depositions.

On February 26, 2015, the applicants filed a *Response in Opposition to Protestants' Request for Payment of Expert Fees for Attending Depositions* ("Response"). The Response argued that the hearing officer appointed by the Department does not have the legal authority to force the applicants to pay the experts' fees. The applicants also assert that it would constitute "manifest injustice" to require the applicants to pay for the experts' fees during depositions.

Generally, the Idaho Rules of Civil Procedure do not apply to contested cases before the Department. Rule 52, IDAPA 37.01.01. However, there are a few exceptions to this rule. One of the exceptions is in the area of discovery. "Unless otherwise provided by statute, rule, order or notice, the scope of discovery, other than statutory inspection, examination, investigation, etc., is governed by the Idaho Rules of Civil Procedure." Rule 520, IDAPA 37.01.01. Specifically, depositions are to be taken in accordance with the Idaho Rules of Civil Procedure. Rule 523, IDAPA 37.01.01.

The Idaho Rules of Civil Procedure include a number of rules describing the process of scheduling and taking depositions. One rule specifically addresses payment of expert fees for time spent in depositions. Rule 26(b)(4)(C) states:

Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subdivisions (b)(4)(A)(ii) and (b)(4)(B) of this rule; and, **in the event discovery is obtained by deposition under (b)(4)(A)(i) of this rule, the party seeking discovery shall pay the expert a reasonable fee for time spent testifying at said deposition;** and (ii) with respect to discovery obtained under

subdivision (b)(4)(A)(ii) of this rule the court may require, and with respect to discovery obtained under subdivision (b)(4)(B) of this rule the court shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert. (emphasis added)

This rule is not ambiguous. It clearly states that the party seeking discovery through a deposition shall pay the deposed expert a reasonable fee for the time spent testifying in the deposition.

In his Response, Travis Thompson, attorney for the applicants, notes that in other contested cases before the Department, the parties usually pay for their own experts during depositions. This is likely the result of informal agreement between the parties. In many contested cases, each party identifies an expert and chooses to depose the opposing party's expert prior to hearing. In such cases, each party volunteering to pay for their own expert during depositions simplifies the process. It eliminates the need to send bills back and forth between opposing parties.

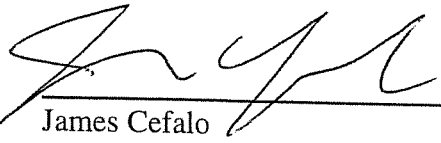
In this case, it appears that none of the protestants have requested to depose the applicants' expert. Therefore, there is not offsetting benefits which would support an informal agreement for each party to pay for their own expert. In the absence of an informal agreement to the contrary, Rule 26(b)(4)(C) governs.

Mr. Thompson argues that the Department does not have the statutory authority to force the applicants to pay for the protestants' expert fees. Even if this argument is correct, it does not affect the outcome of this order. If the applicants wish to depose any of the protestants' experts, they will comply with the Rule 26(b)(4)(C). If the applicants are not willing to comply with Rule 26, then the depositions don't need to be conducted. There is no evidence of "manifest injustice" in this case if Rule 26(b)(4)(C) is followed.

ORDER

IT IS HEREBY ORDERED that depositions conducted in the above referenced contested cases are governed by the Idaho Rules of Civil Procedure, including Rule 26(b)(4)(C). Unless the parties come to an informal agreement regarding payment of expert fees, the party seeking discovery through deposition shall pay the deposed expert a reasonable fee for time spent testifying at said deposition.

Dated this 27th day of February, 2015.


James Cefalo
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of February 2015, true and correct copies of the documents described below were served by placing a copy of the same with the United States Postal Service, postage prepaid and properly addressed, to the following:

Document Served: Order Addressing Discovery Dispute

Jimmie L. Conder
3623 N 2000 E
Filer ID 83328

Jeanie Mc Creary
2217 E 3300 N
Twin Falls ID 83301

Michael & Jana Humphries
2382 E 3300 North
Twin Falls ID 83301

Barbara & Lynn Stephens
PO Box 2118
Twin Falls ID 83303-2118

William D. Hamby
2399 E 3300 N
Twin Falls ID 83301

Margaret Winsryg & Leroy Elliott
David Coleman
PO Box 525
Twin Falls ID 83303-0525

Eric Parrott
2152 E 3300 N
Twin Falls ID 83301

Elizabeth Slifer
3779 N 2250 E
Filer ID 83328

Lois M. Rice
PO Box 200
Filer ID 83328-0200

Martin F. Hackard
3289 N 2300 E
Twin Falls ID 83301

Leslie Ellsworth
PO Box 5023
Twin Falls ID 83303-5023

Richard Parrott
1389 E 4400 N
Buhl ID 83316

Pam Ritter
3283 N 2300 E
Twin Falls ID 83301

Delea C. Miller
2239 E 3300 N
Twin Falls ID 83301

Ed Smith
PO Box 6015
Twin Falls ID 83303-6015

Victoria B. Henson
3295 N 2300 E
Twin Falls ID 83301-0455

Shadow & Bonnie Seaman
1940 E 3700 N
Filer ID 83328

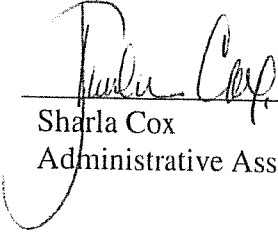
Scott Houtz
2231 E 3300 N
Twin Falls ID 83301

Thomas and Dorothy Leno
4236 N 1900 E
Buhl ID 83316

Four Sister Dairy LLC
PO Box 105
Twin Falls ID 83303-0105

Greg Sullivan
Brockway Engineering PLLC
2016 N. Washington St., Ste 4
Twin Falls ID 83301

Barker Rosholt & Simpson
Travis L Thompson
195 River Vista Place, Ste 204
Twin Falls ID 83301-3027



Sharla Cox
Administrative Assistant

Mr James Cefalo
Hearing Officer
Idaho Department of Water Resources
900 N. Skyline Drive, Suite A
Idaho Falls, Idaho 83402-1718

25 February 2015

Edward S. Smith,
P.O. Box 6015
Twin Falls, Idaho 83303

Reference: Water Transfers: #79357, #79380, #79384, #79466

Dear Mr. James Cefalo, Hearing Officer,

Sir, the Applicants for the transfers referenced above are directing two of our protestant group members and our three Expert Witnesses to stand for Depositions.

As a group, our funds are limited and can only provide the barest of support and presence at the Hearing on 18 and 19 March 2015. Tight control of our expenses must be maintained.

According to Idaho Rules of Civil Procedures, 26 (b)(4)(c), "Fees of Expert-Apportionment", states in part:

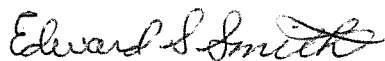
"Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subdivisions"

The cited Rule goes on to delineate the subdivisions as to whether the Expert Witness was: retained, not retained, or was not going to attend the hearing. In all cases, the Applicants are to compensate the Expert Witness for his/her time, as I read the Rule.

On behalf of the group of protestors, I ask you to agree with the intent of the Idaho Rule in the cited paragraph, and determine in the group's favor to have the Applicants pay for the time our Expert Witnesses have to testify at the Deposition. The Expert Witness' normal fee would apply for each separate Deposition.

In full disclosure, the Applicants have agreed to pay for all costs associated with the Court Reporter for taking the Depositions, which our group appreciates.

Respectfully,



Edward S. Smith
Protestant

List of Protestants attached.

Copy delivered to Applicant's Attorney on : 25 Feb 2015 via US mail

TAB A-1

Edward S. Smith
PO Box 6015
Twin Falls, Idaho 83303
(208) 326-3270

25 Feb 2015

PRO SE

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR
TRANSFER NOS. 79357, 79380, 79384
(in the name of Thomas and Dorothy Leno)
AND 79466 (in the name of Four Sisters Dairy
LLC)

NOTICE OF SERVICE OF
PROTESTANT'S ASKING FOR
APPLICANTS TO PAY FOR EXPERT
WITNESS FEES DURING DEPOSITION.

TO THE HEARING OFFICER, ATTORNEY FOR APPLICANTS,

PLEASE TAKE NOTICE that Edward S. Smith, Protestant, has served the letter dated 25 February 2015 and addressed to James Cefalo, Hearing Officer, for a ruling that affirms that the Applicants must pay for the normal fees of Protestant's Expert Witnesses for the time the Expert Witness is testifying during Deposition.

CERTIFICATE OF SERVICE

The Office of Travis L. Thompson
Barker Rosholt and Simpson LLP
195 River Vista Place, Suite 204
Twin Falls, Idaho 83301-3029

By US Postal Service 25 February 2015

Idaho Department of Water Resources
Hearing Officer, James Cefalo
900 N. Skyline Dr. Suite A
Idaho Falls, Idaho 83402-1718

By US Postal Service 25 February 2015



Edward S. Smith,
Protestant

COPY

Travis L. Thompson, ISB #6168
Paul L. Arrington, ISB #7198
BARKER ROSHOLT & SIMPSON LLP
195 River Vista Place, Suite 204
Twin Falls, Idaho 83301-3029
Telephone: (208) 733-0700
Facsimile: (208) 735-2444

*Attorneys for Thomas Leno, Four Sisters Dairy, LLC, and
Cedar Ridge Dairy, LLC*

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATION FOR
TRANSFER NOS. 79357, 79380, & 79384
(in the name of Thomas & Dorothy Leno);
79466 (in the name of Four Sisters Dairy,
LLC)

**APPLICANTS' RESPONSE IN
OPPOSITION TO PROTESTANTS'
REQUEST FOR PAYMENT OF EXPERT
FEES FOR ATTENDING DEPOSITIONS**

COME NOW, the Applicants in the above-referenced matter, THOMAS LENO & FOUR SISTERS DAIRY LLC, and the proposed intervenor CEDAR RIDGE DAIRY LLC¹ (hereinafter collectively referred to as "Applicants"), by and through counsel of record and pursuant to the Department's Rules of Procedure (Rule 270.02), and hereby oppose the Protestants' request² to have the Applicants pay for the Protestants' expert witnesses to attend depositions requested by the Applicants. The reasons for this response are set forth below.

¹ Cedar Ridge Dairy LLC filed a motion to intervene in these proceedings dated January 16, 2015. No other party has opposed the motion and the Hearing Officer has yet to issue an order on the motion.

² The Applicants consider the Protestants' February 25, 2015 letter to constitute a "motion" and are responding to the same. See IDAPA 37.01.01.260.

RESPONSE

By hand delivery on February 25, 2015, Protestant Ed Smith presented a copy of a letter that he intended to mail to the Hearing Officer. In the letter, Mr. Smith requests that the Applicants pay for the time that the Protestants' experts would have to spend to testify at a deposition.³ The Applicants are in the process of attempting to set up depositions of the Protestants' expert witnesses. Idaho Rule of Civil Procedure 26(b)(4)(C) requires a "court" to order the "party seeking discovery pay the expert a reasonable fee for the time spent testifying at said deposition" unless "manifest injustice would result." As described below, the rule does not apply to administrative proceedings before the Idaho Department Water Resources (IDWR). Further, given common practice before IDWR in contested cases, it would be "manifestly unjust" for IDWR to require the Applicants to pay the Protestants' expert fees for testifying at a deposition in this matter.

First, the plain language of the rule references a "court." IDWR is an executive state agency, not a court within Idaho's judiciary. Further, the authorities of IDWR, its Director, and any hearing officers are limited by statute. *See* I.C. § 42-1701; *Henderson v. Eclipse Traffic Control and Flagging, Inc.*, 147 Idaho 628, 632 (2009). While the Director has authority to commence and pursue certain enforcement actions and seek civil penalties for violations, nothing in Title 42, Idaho Code, authorizes the Director or a hearing officer to order a party to pay certain expert witness fees through discovery in an administrative contested case. *See* I.C. § 42-1701B. Further, nothing in the Idaho Administrative Procedures Act provides for such authority either. *See* I.C. § 67-5201 et seq. Consequently, IDWR, its Director, and any designated hearing officers cannot order parties to pay for these types of costs incurred in administrative contested

³ Mr. Smith does not represent the other protestants in this matter. To the best of the Applicants' knowledge no other protestant has made a similar request.

cases. Such an order would exceed the limited statutory authority granted by the Idaho Legislature in these matters and would not be enforceable. For this reason alone the request should be denied.

Next, IDWR's Rules of Procedure provide that unless "otherwise provided by these rules, the Idaho Civil Rules of Procedure and the Idaho Rules of Evidence do not apply to contested case proceedings before the agency." IDAPA 37.01.01.52 (emphasis added). Accordingly, any request for an order of expert fees must be examined against Rule 52, which plainly states such rules do not apply. There is no statute or other rule of procedure that would change this analysis in regard to a request for the payment of a party's expert fees.⁴ As such, any request made for payment of expert fees under I.R.C.P. 26(b)(4)(C) should be denied.

Further, the Department's procedural rules only apply the Idaho Rules of Civil Procedure in reference to the "scope of discovery." See IDAPA 37.01.01.520.02. The "scope of discovery" does not address a requirement to pay an expert's fee associated with testifying at a deposition. Although the rules recognize that depositions may be taken in accordance with Idaho's civil rules "for any purpose allowed by statute, the Idaho Rules of Civil Procedure, or rule or order of the agency," that authorization does not expand IDWR's authority to order a party to pay for any expert fees incurred for the same. See IDAPA 37.01.01.523. Stated another way, although the rules of civil procedure apply to the "scope" of discovery in IDWR contested cases, they are not wholesale adopted for any purpose, including creating a new authority for IDWR to order payment of expert fees in connection with testifying at depositions.

⁴ IDWR cannot adopt a rule of procedure that would conflict with its statutory authorities set forth in Title 42, Idaho Code, or the Idaho APA, Chapter 52, Title 67, Idaho Code. Accordingly, any attempt to interpret IDWR's procedural rules as granting authority to order the payment of such costs must be rejected. See *Roeder Holdings, LLC v. Board of Equalization of Ada County*, 136 Idaho 809, 813 (2001); *Hillcrest Haven Convalescent Ctr. v. Idaho Dept. of Health and Welfare*, 142 Idaho 123, 125 (2005) ("This Court will not enforce a regulation that is, in effect, a rewriting of the statute"). Only the legislature can grant administrative agencies like IDWR the power and authority to impose costs on parties under Idaho's civil rules like a court.

Next, it is common administrative practice before IDWR to have Applicants and Protestants pay for their own expert witnesses in contested cases. In nearly 15 years of practice before IDWR counsel for the Applicants is unaware of any instance where a Director or hearing officer has ever attempted to require a party to pay for another party's expert in regards to testifying at a deposition. In this regard the common practice is fair in that each party pays for its own witnesses that have been retained in a particular matter. There is no reason to change what is already an accepted practice before the agency. Moreover, the Applicants are not seeking expert fees from the Protestants for any matter, including depositions if taken. Further, there is no reason to order a party to pay for another party's expert in an effort to discover information which would aid in the presentation at hearing and streamline and make the proceedings as efficient as possible.

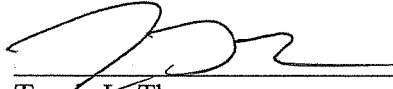
Finally, and alternatively, if it is the Hearing Officer's position that I.R.C.P. 26(b)(4)(C) applies and that IDWR can order the payment of such costs, the Applicants submit that it would result in "manifest injustice." The Protestants filed a *Submission of Expert Reports to Applicants* on February 13, 2015 identifying three reports submitted on behalf of 18 separate Protestants. Presumably the costs of the Protestants' experts are being shared in some fashion. For example, even assuming the Protestants' experts charge \$175/hr, if a deposition took 3 hours, the expert fee would be \$525. If this fee were split by all the Protestants, it would only amount to about \$30 per person. However, forcing Cedar Ridge Dairy LLC (the party in interest seeking the approval of the transfer applications) to pay for the Protestants' experts' time at a deposition would be unreasonable and unjust under the circumstances since it would require the payment from a single entity, in an amount approximately 17 times greater than what each Protestant might be expected to pay. Further, Cedar Ridge already has to incur the costs of its own experts,

counsel, and the court reporter for any depositions resulting from this contested case. Having each party for its own experts is fair and consistent with common administrative practice before IDWR.

In sum, the rule does not apply, and if it did it would be manifestly unjust to require payment of such fees in this instance. Therefore, the Applicants respectfully request the Hearing Officer to deny the Protestants' request.

DATED this 26th day of February, 2015.

BARKER ROSHOLT & SIMPSON LLP



Travis L. Thompson

*Attorneys for Thomas Leno, Four Sisters Dairy,
LLC, and Cedar Ridge Dairy, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of February, 2015, I served a true and correct copy of the foregoing *Response in Opposition to Protestants' Request*, by depositing same in the United States mail, postage prepaid, addressed to the following:

James Cefalo, Hearing Officer
IDWR – Eastern Regional Office
900 N. Skyline Dr., Suite A
Idaho Falls, Idaho 83402-1718
james.cefalo@idwr.idaho.gov

Elizabeth Slifer
3779 N 2250 E
Filer, Idaho 83328

Barbara Stephens
Lynn Stephens
P.O. Box 2118
Twin Falls, Idaho 83303-2118

Martin F. Hackard
3289 N 2300 E
Twin Falls, Idaho 83301

Jeanie McCreary
2217 E 3300 N
Twin Falls, Idaho 83301

Pam Ritter
3283 N 2300 E
Twin Falls, Idaho 83301

Delea C. Miller
2239 E 3300 N
Twin Falls, Idaho 83301

Lois M. Rice
P.O. Box 200
Filer, Idaho 83328

Richard M. Parrott
1389 E 4400 N
Buhl, Idaho 83316

Eric Parrott
2152 E 3300 N
Twin Falls, Idaho 83301

William D. Hamby
2399 E 3300 N
Twin Falls, Idaho 83301

David Coleman
Attorney for Margaret Winsryg & Leroy Elliot
P.O. Box 525
Twin Falls, Idaho 83303-0525

Michael & Jana Humphries
2382 E 3300 N
Twin Falls, Idaho 83301

Leslie Ellsworth
P.O. Box 5023
Twin Falls, Idaho 83303

Jimmie L. Conder
3623 N 2000 E
Filer, Idaho 83328

Ed Smith
P.O. Box 6015
Twin Falls, Idaho 83303

Victoria B. Henson
3295 N 2300 E
Twin Falls, Idaho 83301

Scott R. Houtz
2231 E 3300 N
Twin Falls, Idaho 83301

Bonnie Seaman
1940 E 3700 N.
Filer, Idaho 83328



Travis L. Thompson

E-MAILS: 9 JULY 2015 THROUGH 3 NOVEMBER 2015

From: Ed and Phuong
Sent: Tuesday, November 03, 2015 9:59 AM
To: Travis Thompson
Subject: Re: Deposition Expense Reimbursement

Hi Travis,
Thanks for asking.
Ed

From: Travis Thompson
Sent: Tuesday, November 03, 2015 9:05 AM
To: Ed and Phuong
Subject: RE: Deposition Expense Reimbursement

Ed,

I spoke to my clients and their position has not changed from what we previously communicated to you and IDWR.

Travis

From: Ed and Phuong [<mailto:edphuong@filertel.com>]
Sent: Sunday, November 01, 2015 8:07 PM
To: Travis Thompson; James Cefalo
Subject: Fw: Deposition Expense Reimbursement

Hi Travis,

Reference Transfers #79357 et al.

Upon receipt of the Director's Final Order, dated 13 and 14 Oct 15, I noticed that he did not mention the issue of the Applicant's non-payment of Deposition fees for Mr. Squires' Deposition.

I therefore called Mr. Cefalo on Tuesday, 27 Oct 15 to inquire as to whether or not he had actually sent the issue to the Director as Mr. Cefalo said he would do in his 6 Aug 15 e-mail to both of us.

Mr. Cefalo confirmed that he had in fact sent the e-mails to the Director, but would resend them.

On Friday, 30 Oct 15, I received a phone message from Mr. Cefalo that he had heard back from the IDWR Legal Department, and that they want a statement from me as to the current status, and the Invoice from Mr. Squires.

Travis, before I embark on my reply to IDWR-Legal, I would like to know if the Applicants are willing to change their position on this matter? Please let me know by close of business on Monday, 2 Nov 15.

Thanks, Ed

From: Ed and Phuong

Sent: Thursday, August 06, 2015 4:07 PM

To: Cefalo, James ; Travis Thompson

Subject: Re: Deposition Expense Reimbursement

Hello Mr. Cefalo,

Good to hear from you. We'll wait for Mr. Spackman's decision.

Thanks, Ed

From: Cefalo, James

Sent: Thursday, August 06, 2015 8:24 AM

To: Ed and Phuong ; Travis Thompson

Subject: RE: Deposition Expense Reimbursement

Ed and Travis,

Sorry for the delayed response to your emails. As you know, the Leno transfer applications are still pending before IDWR (currently on appeal to the director, Gary Spackman). I have forwarded your emails to Gary Spackman. If he determines that there was a failure to comply with a discovery order, he has an array of alternatives to address the matter.

James

From: Ed and Phuong [<mailto:edphuong@filertel.com>]

Sent: Monday, August 03, 2015 8:56 AM

To: Cefalo, James; Travis Thompson

Subject: Fw: Deposition Expense Reimbursement

Dear Mr. Cefalo and Mr. Thompson,

In response to the latest e-mail from Travis.

During my deposition on 9 March 2015 Mr. Thompson asked about the relationship between Mr. Squires, IRC and the Protestants. I gave Mr. Thompson a copy of the "Consultation Agreement" (a contract) between Mr. Squires and IRC (at the time my copy was unsigned), Mr. Squires' rate schedule and the first bill received from Mr. Squires (\$3800). All these items were asked for by Mr. Thompson in his request for my Deposition. During my Deposition I explained to Mr. Thompson the relationship between IRC, the Protestants and Mr. Squires and Mr. Thompson encapsulated it well on:

Page 18, line 7-10 of my Deposition: Mr. Thompson asked: "So Idaho Rural Council is paying this, but then some protestants are contributing to help defer that cost?" I answered "yes". Note: the "this" Mr. Thompson refers to is the first bill from Mr. Squires for \$3800.

It is immaterial who initially paid from the Protestant side for Mr. Squires' Deposition expenses of \$665.00. Mr. Squires billed the Idaho Rural Council since the Protestants were paying for the protest expenses through IRC. IRC had contracted with Mr. Squires at the request of the Protestants. In good faith, and in a timely manner, IRC used the Protestant's contributions to pay Mr. Squires for his Deposition expenses, with the expectation that the Applicants would pay the Deposition expenses since you, the representative of the Applicants, requested the Deposition. The Hearing Officer's decision was known two weeks in advance of Mr. Squires' Deposition on 13 March 2015.

On 27 May 2015 I sent you a letter that outlined the situation and Mr. Squire's Deposition Expenses Statement and requested you reimburse IRC for Mr. Squires' Deposition expenses.

To state that there is no outstanding bill is incorrect. You requested the Deposition, and the Applicant has the obligation to pay.

Please reconsider your position and reimburse IRC for Mr. Squires' Deposition Expenses.

Thank You,
Ed

From: Travis Thompson
Sent: Friday, July 17, 2015 2:17 PM
To: Ed and Phuong
Subject: RE: Deposition Expense Reimbursement

Ed,

Based on your prior email, it's my understanding that the Idaho Rural Council, a non-party to the transfer proceedings (nos. 79357 et al.), has already paid Mr. Squires for his deposition expenses. As such, there are no outstanding expenses in the matter and my client has no obligation to reimburse the Idaho Rural Council. Further, it was misrepresented to the Hearing Officer that the protestants could not afford to pay for those expenses. Clearly, that was not the case as it had the backing of an outside organization throughout this proceeding.

Thank you,
Travis

From: Ed and Phuong [<mailto:edphuong@filertel.com>]
Sent: Thursday, July 09, 2015 8:29 AM
To: Travis Thompson
Subject: Deposition Expense Reimbursement

Hi Travis,
Can you please let me know the status of the reimbursement for Mr. Squires Deposition expenses?
Thanks, Ed

Hydro Logic, Inc.

1002 W. Franklin Street, Boise, ID 83702 (208) 342-8369, Fax (208) 342-3100, hli@hydrologicinc.net

May 11, 2015

Idaho Rural Council
269 Spring Cove Road
Bliss, Idaho 83314.
Attn: Stacy

INVOICE FOR HYDROGEOLOGICAL AND WATER RIGHTS CONSULTING SERVICES

Deposition of Edward Squires by Rosholt Law Firm in Hafliger Dairy Matter

Date	Hours	Task	LABOR	Amount
Mar. 10	1 hour	E. Squires: Gather requested files for deposition and scheduling.		\$ 140.00
Mar. 13	3¾ hours	E. Squires: Deposition at Rosholt.		\$ 525.00
Totals		Ed Squires = 4¾ hours at \$140/hr = \$ 665.00		
			<i>Sub-total Geotechnical Labor: \$ 665.00</i>	
			EXPENSES:	
			<i>Sub-Total Expenses: \$ 0.00</i>	

Total Amount Due this invoice = \$ 665.⁰⁰

Please make check payable to: Hydro Logic, Inc. at above address.

Thank-you

TAB C

IDAHO RURAL COUNCIL
269 Spring Cove Road
Bliss, Idaho, 83314

27 May 2015

BARKER ROSHOLT and SIMPSON LLP
Attn: Mr. Travis Thompson
195 River Vista Place, Suite 204
Twin Falls, Idaho, 83301-3029

Subject: Deposition Fees (Water Transfers: #79357, #79380, #79384, #79466)

Dear Mr. Thompson, *Travis,*

Please find attached the summarized invoice for Deposition expenses incurred by Mr. Ed Squires, Hydro Logic Inc, in response to your request for his Deposition on 13 March 2015.

The Idaho Rural Council has already paid Mr Squires' fees, to include these Deposition related expenses. The Idaho Rural Council requests reimbursement for these Deposition expenses as per the ruling by the Hearing Officer, Mr. James Cefalo, on 27 February 2015.

Please send your reimbursement to the Idaho Rural Council at the above address.

Respectfully,



Ed Smith
Board Member, IRC