

9-18-2012

# Bremer v. East Greenacres Irrigation Dist. Clerk's Record Dckt. 39942

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IN THE SUPREME COURT OF THE STATE OF IDAHO

Bremer, LLC, an Idaho Limited Liability Company, and KGG Partnersip	)	
	)	
Plaintiffs-Appellants	)	Supreme Court Docket-39942-2012
	)	Kootenai County Docket-2011-1921
VS	)	
	)	
East Greenacres Irrigation District	)	
	)	
Defendant-Respondent	)	
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CLERK'S RECORD ON APPEAL

Appeal from the District Court of the First Judicial District of the State of Idaho, in and for the County of Kootenai.

HONORABLE LANSING L HAYNES  
District Judge

Arthur Mooney Bistline  
1423 N Government Way  
Coeur d'Alene, ID 83814

Attorney for Plaintiffs-Appellants

Susan P Weeks  
1626 Lincoln Way  
Coeur d'Alene, ID 83814

Attorney for Defendant-Respondent

Bremer LLC, KGG Partnership vs. East Greenacres Irrigation District

Date	Code	User	Judge
3/4/2011	NCOC	HUFFMAN	New Case Filed - Other Claims John T. Mitchell
		HUFFMAN	Filing: A - All initial civil case filings of any type not listed in categories B-H, or the other A listings below Paid by: Bistline, Arthur Mooney (attorney for Bremer LLC) Receipt number: 0009292 Dated: 3/4/2011 Amount: \$88.00 (Check) For: Bremer LLC (plaintiff) John T. Mitchell
3/7/2011	MOTN	HUFFMAN	Motion to Disqualify John T. Mitchell
	SUMI	SREED	Summons Issued John T. Mitchell
3/14/2011	ORDR	CLAUSEN	Order for Disqualification of Judge Mitchell John T. Mitchell
	DISA	CLAUSEN	Disqualification Of Judge Mitchell - Automatic by DA Arthur Bistline John T. Mitchell
		CLAUSEN	Order Assigning Judge on Disqualification Without Cause - Lansing L. Haynes John T. Mitchell
4/5/2011	AFSV	ROSENBUSCH	Affidavit Of Service/Tina Green obo East Greenacres Irrigation District/03-31-11 Lansing L. Haynes
4/20/2011		HUFFMAN	Filing: 11 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Susan P Weeks Receipt number: 0017208 Dated: 4/20/2011 Amount: \$58.00 (Check) For: East Greenacres Irrigation District (defendant) Lansing L. Haynes
	NOAP	HUFFMAN	Notice Of Appearance-Susan P Weeks obo Defendant Lansing L. Haynes
	MOTN	SREED	Defendant's Motion for Extension of Time Lansing L. Haynes
4/21/2011	NTSV	ROSENBUSCH	Notice Of Service Lansing L. Haynes
4/25/2011	HRSC	SVERDSTEN	Hearing Scheduled (Motion 05/13/2011 11:00 AM) Motion to Extend Time, Weeks Lansing L. Haynes
5/13/2011	HRVC	SVERDSTEN	Hearing result for Motion held on 05/13/2011 11:00 AM: Hearing Vacated Motion to Extend Time, Weeks Lansing L. Haynes
5/26/2011	NITD	BAXLEY	Three Day Notice Of Intent To Take Default Lansing L. Haynes
6/1/2011	NOTC	BIELEC	Notice Of Service Of Defendant's Response To Plaintiffs' First Set Of Interrogatories And Requests For Production Of Documents To Defendant Lansing L. Haynes
	ANSW	BIELEC	Answer Lansing L. Haynes
6/2/2011	NOTC	BIELEC	Notice Of Service Of Defendant's First Set Of Requests For Admission Lansing L. Haynes
6/9/2011	HRSC	SVERDSTEN	Hearing Scheduled (Status Conference 07/26/2011 03:30 PM) Lansing L. Haynes
		SVERDSTEN	Notice of Hearing Lansing L. Haynes
6/16/2011	NTSV	CRUMPACKER	Notice Of Service Lansing L. Haynes
	NTSV	CRUMPACKER	Notice Of Service Lansing L. Haynes
7/25/2011	RSCN	SREED	Response to Status Conference Notice-Bistline Lansing L. Haynes
7/26/2011	NTSV	BAXLEY	Notice Of Service Lansing L. Haynes

Bremer LLC, KGG Partnership vs. East Greenacres Irrigation District

Date	Code	User	Judge
7/26/2011	DCHH	SVERDSTEN	Hearing result for Status Conference scheduled on 07/26/2011 03:30 PM: District Court Hearing Held Court Reporter: LAURIE JOHNSON Number of Transcript Pages for this hearing estimated:
7/27/2011	HRSC	SVERDSTEN	Hearing Scheduled (Jury Trial Scheduled 03/19/2012 09:00 AM) 3 DAYS
		SVERDSTEN	Notice of Trial
7/29/2011	ORDR	SVERDSTEN	Order For Court Mediation
8/30/2011	SDTI	DEGLMAN	Subpoena Duces Tecum to Ron Wilson
	SDTI	DEGLMAN	Subpoena Duces Tecum to Ted Leonard
	SDTI	DEGLMAN	Subpoena Duces Tecum to Jim Sappington
	SDTI	DEGLMAN	Subpoena Duces Tecum to Bob Hinote
9/9/2011	HRSC	SVERDSTEN	Hearing Scheduled (Motion for Summary Judgment 11/04/2011 08:00 AM) Bistline, 1 hr
9/12/2011	HRSC	ROHRBACH	Hearing Scheduled (Motion to Compel 10/11/2011 03:30 PM) Bistline
	NOHG	BAXLEY	Notice Of Hearing on 10/11/11 at 3:30 pm
9/14/2011	NOTC	SREED	Notice to Vacate Hearing
9/15/2011	NTSV	LEU	Notice Of Service Of Defendant's Answers And Responses to Plaintiffs' Second And Third Set Of Interrogatories And Requests For Production Of Documents to Defendant
9/21/2011	PLWL	CRUMPACKER	Plaintiff's Expert Disclosure
10/4/2011	HRVC	ROHRBACH	Hearing result for Motion to Compel scheduled on 10/11/2011 03:30 PM: Hearing Vacated Bistline
10/7/2011	HRSC	SVERDSTEN	Hearing Scheduled (Motion for Summary Judgment 12/08/2011 03:30 PM) Weeks
	HRVC	SVERDSTEN	Hearing result for Motion for Summary Judgment scheduled on 12/08/2011 03:30 PM: Hearing Vacated Weeks
	HRVC	SVERDSTEN	Hearing result for Motion for Summary Judgment scheduled on 11/04/2011 08:00 AM: Hearing Vacated Bistline, 1 hr
	HRSC	SVERDSTEN	Hearing Scheduled (Motion for Summary Judgment 12/13/2011 03:30 PM) Weeks
	HRSC	SVERDSTEN	Hearing Scheduled (Motion for Summary Judgment 12/13/2011 03:30 PM) Bistline
10/21/2011	DFWL	CRUMPACKER	Defendant's Expert Witness Disclosure
11/16/2011	AFFD	CRUMPACKER	Affidavit of Gary Bremer
	AFFD	CRUMPACKER	Affidavit of Philip Hart
	MEMS	CRUMPACKER	Plaintiffs Memorandum In Support Of Motion for Summary Judgment

Bremer LLC, KGG Partnership vs. East Greenacres Irrigation District

Date	Code	User		Judge
11/16/2011	AFFD	CRUMPACKER	Affidavit of Brian Crumb	Lansing L. Haynes
	MNSJ	CRUMPACKER	Plaintiffs Motion For Summary Judgment	Lansing L. Haynes
11/17/2011	MNSJ	BAXLEY	Motion For Summary Judgment	Lansing L. Haynes
	MEMS	BAXLEY	Memorandum In Support Of Motion For Summary Judgment	Lansing L. Haynes
	AFIS	BAXLEY	Affidavit Of Ron Wilson In Support Of Defendant's Motion For Summary Judgment	Lansing L. Haynes
	AFIS	BAXLEY	Affidavit Of Weeks In Support Of Defendant's Motion For Summary Judgment	Lansing L. Haynes
	NOHG	BAXLEY	Notice Of Hearing on 12/13/11 at 3:30 pm	Lansing L. Haynes
11/30/2011	FILE	BAXLEY	*****New File #2 Created*****	Lansing L. Haynes
	MISC	BAXLEY	Plaintiffs' Response To Defendants Motion For Summary Judgment	Lansing L. Haynes
	MEMS	BAXLEY	Plaintiffs' Memorandum In Support Of Motion To Strike Affidavit Of Ron Wilson	Lansing L. Haynes
	MOTN	BAXLEY	Plaintiffs' Motion To Strike Affidavit Of Ron Wilson	Lansing L. Haynes
	AFFD	CRUMPACKER	Affidavit of Jim Sappington in Response to Plaintiffs Motion for Summary Judgment	Lansing L. Haynes
	MEMO	CRUMPACKER	Defendants Memorandum in Opposition to Plaintiffs Motion for Summary Judgment	Lansing L. Haynes
12/1/2011	AFFD	BAXLEY	Affidavit Of Bob Skelton	Lansing L. Haynes
12/6/2011	MEMO	GAVIN	Plaintiff's Memorandum in Support of Motion To Strike Affidavit of Jim Sappington	Lansing L. Haynes
	MOTN	GAVIN	Plaintiff's Motion to Strike Affidavit of Jim Sappington	Lansing L. Haynes
12/7/2011	MISC	HUFFMAN	Defendant's Reply Memorandum in Support of Defendant's Motion for Summary Judgment	Lansing L. Haynes
	MISC	HUFFMAN	Defendant's Response to Plaintiffs' Motions to Strike Portions of the Affidavits of Jim Sappington & Ron Wilson	Lansing L. Haynes
12/8/2011	MISC	HUFFMAN	Plaintiffs' Reply to Defendant's Memorandum in Opposition to Plaintiffs' Motion for Summary Judgment	Lansing L. Haynes
	MEMO	HUFFMAN	Plaintiffs' Memorandum in Support of Supplemental Motion to Strike Portions of Affidavit of Jim Sappington & Ron Wilson	Lansing L. Haynes
	MOTN	HUFFMAN	Plaintiffs' Supplemental Motion to Strike Portions of Affidavit of Jim Sappington & Ron Wilson	Lansing L. Haynes
	MOTN	HUFFMAN	Plaintiffs' Motion to Shorten Time	Lansing L. Haynes
	NOHG	BAXLEY	Notice Of Hearing on 12/13/11 at 3:30 pm	Lansing L. Haynes

Bremer LLC, KGG Partnership vs. East Greenacres Irrigation District

Date	Code	User		Judge
12/13/2011	DCHH	SVERDSTEN	Hearing result for Motion for Summary Judgment scheduled on 12/13/2011 03:30 PM: District Court Hearing Held Court Reporter: LAURIE JOHNSON Number of Transcript Pages for this hearing estimated: Bistline	Lansing L. Haynes
	DCHH	SVERDSTEN	Hearing result for Motion for Summary Judgment scheduled on 12/13/2011 03:30 PM: District Court Hearing Held Court Reporter: LAURIE JOHNSON Number of Transcript Pages for this hearing estimated: Weeks	Lansing L. Haynes
1/3/2012	ORDR	SVERDSTEN	Order Denying Plaintiff's Motion to Strike Portions of the Affidavits of Jim Sappington and Ron Wilson	Lansing L. Haynes
1/5/2012	AFFD	CRUMPACKER	Affidavit of Scott Jones	Lansing L. Haynes
1/6/2012	STIP	CLEVELAND	Stipulation for Relief from Pretrial Order	Lansing L. Haynes
1/10/2012	ORDR	SVERDSTEN	Order for Relief from Pretrial Order	Lansing L. Haynes
1/11/2012	NTSV	LEU	Notice Of Service Of Defendant's First Set Of Interrogatories And Requests For Production Of Documents To Plaintiffs	Lansing L. Haynes
1/13/2012	MEMO	SVERDSTEN	Memorandum Decision and Order Granting Defendant's Motion for Summary Judgment	Lansing L. Haynes
1/23/2012	MOTN	CRUMPACKER	Plaintiffs Motion to Reconsider	Lansing L. Haynes
1/30/2012	MEMO	LEU	Plaintiff's Memorandum In Support Of Motion To Reconsider	Lansing L. Haynes
2/7/2012	HRSC	SVERDSTEN	Hearing Scheduled (Motion to Reconsider 03/14/2012 04:00 PM) Bistline	Lansing L. Haynes
2/8/2012	NOHG	BAXLEY	Notice Of Hearing (03/14/12 at 4:00 pm)	Lansing L. Haynes
3/2/2012	HRVC	SVERDSTEN	Hearing result for Jury Trial Scheduled scheduled on 03/19/2012 09:00 AM: Hearing Vacated 3 DAYS	Lansing L. Haynes
3/8/2012	MEMO	CRUMPACKER	Memorandum in Response to Plaintiffs Motion for Reconsideration	Lansing L. Haynes
3/13/2012	MISC	DEGLMAN	Reply in Support of Motion to Reconsider	Lansing L. Haynes
3/14/2012	HRHD	ROHRBACH	Hearing result for Motion to Reconsider scheduled on 03/14/2012 04:00 PM: Hearing Held Bistline - denied	Lansing L. Haynes
	DCHH	ROHRBACH	District Court Hearing Held Court Reporter: NO COURT REPORTER Number of Transcript Pages for this hearing estimated:	Lansing L. Haynes
3/23/2012	ORDR	VICTORIN	Order Denying plaintiff's Motion for Reconsideration	Lansing L. Haynes

Bremer LLC, KGG Partnership vs. East Greenacres Irrigation District

Date	Code	User		Judge
3/23/2012	CVDI	VICTORIN	Civil Disposition entered for: East Greenacres Irrigation District, Defendant; Bremer LLC, Plaintiff; KGG Partnership, Plaintiff. Filing date: 3/23/2012	Lansing L. Haynes
	FJDE	VICTORIN	Order Granting Defendant's Motion for Summary Judgment	Lansing L. Haynes
	STAT	VICTORIN	Case status changed: Closed	Lansing L. Haynes
4/6/2012	HRSC	SVERDSTEN	Hearing Scheduled (Motion 04/27/2012 09:00 AM) Motion to Alter or Set Aside Jdmt, Bistline	Lansing L. Haynes
	STAT	SVERDSTEN	Case status changed: Closed pending clerk action	Lansing L. Haynes
	MOTN	CRUMPACKER	Plaintiffs Motion to Alter or Amend the Judgment and/or to Set Aside the Judgment & to Consider Additional Evidence	Lansing L. Haynes
	MEMS	CRUMPACKER	Memorandum In Support Of Plaintiffs Motion to Alter or Amend the Judgment and/or to Sset Aside The Judgment & to Consider Additional Evidence	Lansing L. Haynes
	AFFD	CRUMPACKER	Affidavit of Gary Bremer in Support of Motion to Alter or Amend	Lansing L. Haynes
	AFFD	CRUMPACKER	Affidavit of Brent Schlotthauer	Lansing L. Haynes
	NOHG	CRUMPACKER	Notice Of Hearing	Lansing L. Haynes
	MOTN	CRUMPACKER	Motion for Costs & Fees	Lansing L. Haynes
	MCAF	CRUMPACKER	Memorandum Of Costs And Fees	Lansing L. Haynes
	AFFD	CRUMPACKER	Affidavit of Computation	Lansing L. Haynes
4/16/2012	OBJT	VIGIL	Objection to an Award of Attorney's Fees	Lansing L. Haynes
4/20/2012	HRSC	SVERDSTEN	Hearing Scheduled (Motion 05/08/2012 04:00 PM) Weeks	Lansing L. Haynes
4/23/2012	HRVC	SVERDSTEN	Hearing result for Motion scheduled on 05/08/2012 04:00 PM: Hearing Vacated Weeks	Lansing L. Haynes
	HRSC	SVERDSTEN	Hearing Scheduled (Motion 05/30/2012 03:30 PM) Motion for Attorney Fees and Costs, Weeks	Lansing L. Haynes
	MEMO	CRUMPACKER	Memorandum in Opposition to Plaintiffs Motion to Alter or Amend the Judgment and/or to Set Aside the Judgment & to Consider Additional Evidence	Lansing L. Haynes
4/26/2012	MEMS	CRUMPACKER	Reply Memorandum In Support Of Plaintiffs Motion to Alter or Amend the Judgment and./or to Set Aside the Judgment & to Consider Additional Evidence	Lansing L. Haynes
4/27/2012	DCHH	SVERDSTEN	Hearing result for Motion scheduled on 04/27/2012 09:00 AM: District Court Hearing Held Court Reporter: ANNE BROWNELL Number of Transcript Pages for this hearing estimated: Motion to Alter or Set Aside Jdmt, Bistline	Lansing L. Haynes

## Bremer LLC, KGG Partnership vs. East Greenacres Irrigation District

Date	Code	User	Judge
4/30/2012	ORDR	HUFFMAN	Order Denying Plaintiffs' Motion Alter Or Amend The Judgment And/Or To Set Aside The Judgment And To Consider Additional Evidence
5/4/2012		HUFFMAN	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Bistline, Arthur Mooney (attorney for Bremer LLC) Receipt number: 0019366 Dated: 5/4/2012 Amount: \$101.00 (Check) For: Bremer LLC (plaintiff)
	BNDC	HUFFMAN	Bond Posted - Cash (Receipt 19367 Dated 5/4/2012 for 100.00)
	APDC	HUFFMAN	Appeal Filed In District Court
	STAT	HUFFMAN	Case status changed: Reopened
	NOTC	HUFFMAN	Notice Of Appeal
5/8/2012	MISC	HUFFMAN	Clerk's Certificate Of Appeal
5/16/2012	AFFD	HUFFMAN	Amended Affidavit Of Computation
	MEMO	HUFFMAN	Amended Memorandum Of Costs & Fees
	NOHG	HUFFMAN	Notice Of Hearing
	MEMO	HUFFMAN	Memorandum In Support Of Request For Costs & Fees
5/22/2012	NOTC	HUFFMAN	Amended Notice Of Appeal
5/29/2012	OBJT	BAXLEY	Objection To Amended Application For Attorneys Fees
5/30/2012	MISC	CRUMPACKER	Reply to Objection to Award of Fees as Cost
	HRHD	ROHRBACH	Hearing result for Motion scheduled on 05/30/2012 03:30 PM: Hearing Held Motion for Attorney Fees and Costs, Weeks
	DCHH	ROHRBACH	District Court Hearing Held Court Reporter: Valerie Nunemacher Number of Transcript Pages for this hearing estimated:
6/1/2012	ORDR	CARROLL	Order RE: Defendant's Request for Costs and Attorney's Fees
	FJDE	CARROLL	Final Judgment
6/12/2012	NOTC	HERSHEY	Notice



ARTHUR BISTLINE  
1423 N. Government Way  
Coeur d'Alene, Idaho 83814  
(208) 665-7270  
(208) 665-7290 (fax)  
arthurmooneybistline@me.com  
ISB: 5216

Attorney for Plaintiffs

STATE OF IDAHO  
COUNTY OF KOOTENAI  
FILED: 9297  
2011 MAR -4 PM 4:57  
CLERK DISTRICT COURT  
DEPUTY *Sherry Helf*

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

BREMER, LLC., an Idaho limited liability  
company, and KGG PARTNERSHIP,

Plaintiffs,

vs.

EAST GREENACRES IRRIGATION  
DISTRICT,

Defendant.

Case No. CV 11-1921

COMPLAINT AND DEMAND FOR JURY  
TRIAL

Plaintiffs, BREMER, LLC, and KGG PARTNERSHIP, for a cause of action, alleges as follows:

- 1) Plaintiff Bremer LLC is an Idaho limited liability company in good standing.
- 2) Plaintiff KGG partnership is an Idaho partnership.
- 3) Defendant is a quasi-municipal organization which maintains and operates an irrigation district which encompasses property owned by KGG and/or Bremer, which Bremer uses for manufacturing and other purposes.
- 4) All acts and/or omission complained of herein occurred in Kootenai County and jurisdiction is proper before this Court.

RECEIVED TO  
JUDGE MITCHELL

- 5) Plaintiffs purchased real property located within Defendant's irrigation district. In the early spring of 2008, Plaintiffs requested to be allowed to hook up to Defendant's irrigation system.
- 6) Defendant is allowed to charge a fee for users who hook up to its water system.
- 7) Defendant required Plaintiffs to perform improvements to its system before it would allow Plaintiffs to hook up to its water system. Said improvements were wholly unrelated to Plaintiffs use of Defendants water system and amount to an illegal hook up fee as the fee was not related to the value of the portion of system capacity that Plaintiffs would utilize at that point in time, and was otherwise arbitrary and capricious.
- 8) Plaintiffs installed the illegally required improvements at a cost in excess of \$10,000 and were allowed to hook up to Defendant's system.
- 9) Plaintiffs are entitled to judgment in an amount to compensate it for the actual costs of the installation of the improvements complained of herein as those costs are an illegal imposed tax and Plaintiffs are entitled to recover the same by this action *indebitatus assumpsit*.
- 10) Plaintiffs are entitled to an award of their reasonable attorney's fees and costs incurred herein.

WHEREFORE, PLAINTIFFS PRAY THAT THIS COURT:

- 1) Enter judgment for Plaintiffs and against Defendant in an amount in excess of \$10,000;
- 2) Enter judgment awarding Plaintiffs its reasonable attorney's fees and costs incurred in this action; and
- 3) Enter judgment granting Plaintiff any other relief that this Court deems fair and equitable.

DEMAND FOR TRIAL BY JURY

Plaintiffs request a trial by jury pursuant to Idaho Rules of Civil Procedure Rule 38(b).

DATED this 4 day of March, 2011.



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ARTHUR M. BISTLINE  
Attorney for Plaintiffs

STATE OF IDAHO  
COUNTY OF KOOTENAI  
FILED: 1917 *JSS*

2011 SEP 21 PM 4: 17

CLERK DISTRICT COURT  
*Barbara Thompson*  
DEPUTY

ARTHUR BISTLINE  
BISTLINE LAW, PLLC  
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(208) 665-7290 (fax)  
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ISB: 5216

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

BREMER, LLC., an Idaho limited liability  
company, and KGG PARTNERSHIP,

Plaintiffs,

vs.

EAST GREENACRES IRRIGATION DISTRICT,

Defendant.

Case No. CV-11-1921

PLAINTIFFS' EXPERT DISCLOSURE

Plaintiffs, BREMER, LLC., an Idaho limited liability company, and KGG PARTNERSHIP, by and through their undersigned counsel and pursuant to this Court's Pretrial Order, hereby discloses the following experts to be called to testify at the time of trial as follows:

- Philip Hart, P.E.  
Alpine Engineering  
9297 Government Way, Suite G  
P.O. Box 1988  
Hayden, ID 83835  
(208)772-2522

Mr. Hart will testify as follows:

I reviewed the matter of water improvements to the property located on the southeast corner of Hayden Avenue and McGuire north of Post Falls.

This is the property owned by your client, Bremer LLC, and/or KKG Partnership. I reviewed the water improvement plans prepared by Scott E. Jones and Associates dated May 5, 2008, and the as-built version of these plans dated September 19, 2008.

In the process of building a new industrial building on a newly acquired property purchased by your client, your client was required to utilize the East Greenacres Water District for his water service. Your client Bremer was required to extend an 8" diameter water main 1,500 lineal feet. This 1,500 lineal feet of new water main was later extended an additional few hundred feet to form a "loop" within the East Greenacres Irrigation District system.

There was also work done to "hook-up" the new industrial building to the water system. In a conversation I had with Mr. Bremer, he told me that the "hook-up" fee was in the range of \$2,300. He also told me that the new building was built on a lot next to a property that he already owned and already had water service to.

Having served seven years on the board of directors of a water district, I know that all water districts attempt to loop their systems whenever possible. From an engineering standpoint, a looped system serves all the users of that system better as the looped configuration tends to equalize pressure within the entire system and generally provides increased flows at any point within a given loop. Looping provides a benefit to the entire water system and its users.

The water use of the facility operated by the Plaintiffs would not impact the ability of the District to deliver its services without compromising quality of service delivery to current users of the water system or imposing substantial additional costs upon them.

Mr. Hart's resume is attached hereto as Exhibit "A" and his fees are billed at an hourly rate of \$150.00.

2. Brian Crumb, Owner  
Copper Creek Environmental Land Clearing, LLC  
P.O. Box 1031  
Post Falls, Idaho 83877  
(208)699-2838

Mr. Crumb will testify as a fact witness regarding the work required to finish the main line extension project which is the subject of this action. He is disclosed as an expert only as a precautionary measure. His proposal for the cost of that work is attached hereto as Exhibit "B". Mr. Crumb's opinions are based on his experience and upon review of the site plan and of the site. Mr. Crumb's qualifications are that he has worked in excavation/earth work for 20 years. He has no publications and has not provided expert testimony in any other cases. His charges are \$40 per hour for his time.

Plaintiffs reserve the right to name additional experts named by Defendant and/or rebuttal experts and/or any other experts as may be deemed necessary by information obtained through ongoing discovery.

Dated this 21<sup>st</sup> day of September, 2011.

BISTLINE LAW, PLLC



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ARTHUR M. BISTLINE  
Attorney for Plaintiffs

**CERTIFICATE OF SERVICE**

I hereby certify that on the 21<sup>st</sup> day of September, 2011, I served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Susan P. Weeks  
James, Vernon & Weeks, PA  
1626 Lincoln Way  
Coeur d'Alene, ID 83814

- Regular mail
- Certified mail
- Overnight mail
- Facsimile to (208) 664-1684
- Interoffice Mail
- Hand Delivered

  
 \_\_\_\_\_  
 LEANNE VILLA

**PHILIP L. HART, S.E.**  
 Post Office Box 1988  
 Hayden, Idaho 83835  
 208-772-2522

## EDUCATION

**The Wharton School - University of Pennsylvania** - Master of Business Administration, May 1984, Concentration in Finance and Management.

**University of Utah** – Bachelor of Science in Civil Engineering, June 1980, Dean's List, editorial staff student newspaper.

**State Representative** to the 58<sup>th</sup> through 61<sup>st</sup> Idaho Legislature. House of Representatives; Legislative District 3, Seat B for the 2005 - 2012 Legislative Sessions. 2005 – 2008 Board of Directors/Legislative Advisor, Idaho Housing and Finance Association, Boise, Idaho. 2009 – 2011, Board Member and Vice Chairman of the Western States Transportation Agreement.

## EXPERIENCE

### **ALPINE ENGINEERING**

**July 1995 – Present**

**Coeur d'Alene, Idaho**

**Principal**

Working as a civil and structural engineer in the Coeur d'Alene, Idaho area. Our activities in Coeur d'Alene are similar to that of Hart Engineering Group, Inc.'s listed below. Currently we now have more emphasis on commercial, multi-family, luxury residential, institutional and industrial projects. Have participated as an expert witness in numerous cases.

### **HART ENGINEERING GROUP, INC.**

**PT 1982-84**

**Truckee, California**

**FT 1984- June 1995**

**Principal, President**

Primarily performed structural engineering in heavy snow load areas on timber structures. Much of our work was with "high end" complicated residences. Have also worked on site development projects and steel and concrete structures throughout California and Northern Nevada. On structural projects, we typically check every member from the roof rafters to the foundation. Structures are engineered for wind, snow and seismic loads. Site development projects included engineering for road design, storm runoff systems, sewer lines and lift stations, water system improvements and utility service.

Another area of expertise was forensic studies on damaged structures. At times this activity represented up to one third of our workload. We also specialize in log home design and engineering, and we worked on log homes and other log structures throughout the western United States.





PHILIP L. HART, S.E.  
 Post Office Box 1988  
 Hayden, Idaho 83835  
 208-772-2522

**MAJOR ENGINEERING**

1981-1982

**Incline Village, Nevada**

**Business Manager, Chief Engineer**

Returned to a former employer to take over and supervise the business and technical operations of a Civil Engineer Consulting Firm. Began with a staff of four and built up the organization to eight staff members. Was responsible for entering a new market area: writing environmental impact reports. Lobbied extensively with regulatory agencies at all levels of government.

**BOEING COMMERCIAL AIRPLANE COMPANY**

1980-1981

**Seattle, Washington**

**Engineer, Structures Technology Group**

Was responsible for checking changes in the 767's structure as a member of the stress group. Was also responsible for supervising a test program where composite panel structures were tested to verify panel design assumptions.

**MAJOR ENGINEERING**

4-10 / 1979

**Incline Village, Nevada**

**Office Manager, Chief Engineer**

Managed a branch office in Truckee, California. Responsibilities included bidding jobs, writing contracts, billing and collections, and establishing new clientele. Also responsible for structural calculations on buildings for snow and seismic loads.

**Engineer**

4-10 / 1977-78

Was responsible for structural calculations on buildings for snow and seismic loads. Also interacted closely with the client, acted as job captain on all assignments. Worked six months per year while working on an engineering degree.

**Carpenter**

4-10 / 1974-76

Worked as a carpenter on new construction and remodeling of existing buildings. Worked on all phases of each project from the foundation to finish work.

**PERSONAL**

Registered Structural Engineer in California, Idaho and Nevada; Served 7 years on the Board of Directors of the Remington Water District, Kootenai County, Idaho.

Registered Civil Engineer in Arizona, California, Colorado, Idaho, Illinois, Missouri, Montana, Nevada, Oregon, Texas, Utah, Washington and Wyoming; British Columbia and Alberta.

Professional ski racer 2 years, USCF category II bicycle racer, track and ski team in college, private pilot.

**Copper Creek Environmental Land Clearing, LLC.**

# PROPOSAL

P.O. Box 1031  
 Post Falls, Idaho 83877  
 Phone (208) 699-2838 Fax (208) 773-9627

**DATE:** September 19, 2011  
**Proposal** 118-11

**BILL TO:**

**FOR:** Reclaim north side of property

Bremer LLC.  
 9456 N. McGuire Rd.  
 Post Falls, ID 83854  
 208-777-8485

**Attn:** Gary

DESCRIPTION	HOURS	RATE	AMOUNT
Reclaim north side of property adjacent Hayden Ave. for approximately 500' where water line was ran down south side of Hayden Ave. Includes bringing land back to grade, compacting and sloping ditch to proper spec. All excess material to be hauled off site. Seed and fertilize ground with native mix. ***Includes all labor, materials, and equipment to complete task***			\$ 56,820.00
<b>SUBTOTAL</b>			\$ 56,820.00
<b>TAX RATE</b>			0.00%
<b>SALES TAX</b>			-
<b>DISCOUNT</b>			
<b>TOTAL</b>			\$ 56,820.00

Thank you for the opportunity to bid your project. No start date can be set without written approval from owner.



Susan P. Weeks, ISB # 4255  
James, Vernon & Weeks, P.A.  
1626 Lincoln Way  
Coeur d'Alene, ID 83814  
Telephone: (208) 667-0683  
Facsimile: (208) 664-1684

*Attorneys for Defendant*

STATE OF IDAHO }  
COUNTY OF KOOTENAI } SS  
FILED: *[Signature]*  
2011 OCT 21 PM 4:00  
CLERK DISTRICT COURT  
*[Signature]*  
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

BREMER, LLC., an Idaho limited liability  
company, and KGG PARTNERSHIP,

Plaintiffs,

EAST GREENACRES IRRIGATION  
DISTRICT,

Defendant.

CASE NO. CV-11-1921

DEFENDANT'S EXPERT WITNESS  
DISCLOSURE

Defendant East Greenacres Irrigation District, by and through its attorney of record, Susan P. Weeks of the firm James, Vernon & Weeks, P.A., pursuant to the Pretrial Order entered in this matter, hereby submits the following disclosure of expert witnesses who may be called at the time of trial.

1. Rob Tate, Tate Engineering, 1103 N. 4<sup>th</sup> Street, Coeur d'Alene, ID 83814, may testify in rebuttal to Plaintiff's expert witness regarding the line extension which is in dispute in this matter. Mr. Tate will rely upon all discovery exchanged in this matter, Plaintiff's expert witness disclosure and any depositions which may be taken

2. in this matter.

DATED this 21<sup>st</sup> day of October, 2011.

JAMES, VERNON & WEEKS, P.A.

By *Susan P. Weeks*  
Susan P. Weeks

CERTIFICATE OF SERVICE

I hereby certify that on the 21<sup>st</sup> day of October, 2011, I caused to be served a true and correct copy of the foregoing instrument by the method indicated below, and addressed to the following:

Arthur Bistline  
1423 N. Government Way  
Coeur d'Alene, ID 83814

- U.S. Mail
- Hand Delivered
- Overnight Mail
- Telecopy (FAX) (208) 665-7290

*Christine Elmore*

STATE OF IDAHO }  
COUNTY OF KOOTENAI } ss  
FILED: }

2011 NOV 16 PM 4:29 642

CLERK DISTRICT COURT  
DEPUTY  
*Randi M. [Signature]*

ARTHUR BISTLINE  
BISTLINE LAW, PLLC  
1423 N. Government Way  
Coeur d'Alene, Idaho 83814  
(208) 665-7270  
(208) 665-7290 (fax)  
arthurmooneybistline@me.com  
ISB: 5216

Attorney for Plaintiff

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

BREMER, LLC., an Idaho limited liability  
company, and KGG PARTNERSHIP,

Plaintiffs,

vs.

EAST GREENACRES IRRIGATION DISTRICT,

Defendant.

Case No. CV11-1921

AFFIDAVIT OF PHILIP HART

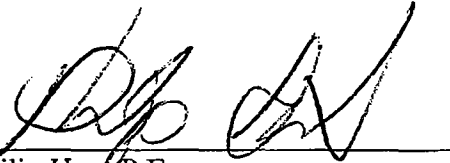
STATE OF IDAHO )  
) ss.  
County of Kootenai )

I, Philip Hart, having been first duly sworn, upon oath depose and state that:

1. I am over the age of eighteen (18) and an individual residing in the State of Idaho.
2. I am familiar with the facts and circumstances surrounding this matter and am competent to testify as to the matters herein contained.
3. I was retained by Plaintiff and its attorney, Arthur Bistline, to provide an assessment of the water line required by East Greenacres Irrigation District.

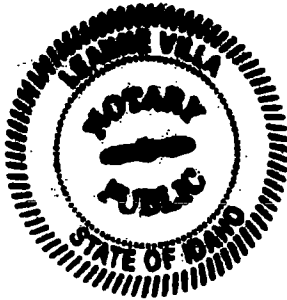
4. Attached hereto as Exhibit "A" is a true and correct copy of my expert opinion in this matter and incorporate it herein as though fully set forth.

Dated this 2<sup>nd</sup> day of November, 2011.



Philip Hart, P.E.  
Alpine Engineering

SUBSCRIBED AND SWORN before me this 7<sup>th</sup> day of November, 2011.



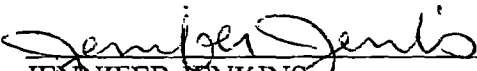
Leanne Villa  
Notary in and for Idaho  
Residing at: Collier Mine  
Commission Expires: 10/15/2015

CERTIFICATE OF SERVICE

I hereby certify that on the 16 day of November, 2011, I served a true and correct copy of AFFIDAVIT OF PHILIP HART by the method indicated below, and addressed to the following:

Susan P. Weeks  
James, Vernon & Weeks, PA  
1626 Lincoln Way  
Coeur d'Alene, ID 83814  
Fax: (208) 664-1684

- Regular mail
- Certified mail
- Overnight mail
- Facsimile
- Interoffice Mail
- Hand Delivered

  
JENNIFER JENKINS

**EXHIBIT "A"**

In reviewing the water improvement plans prepared by Scott E. Jones and Associates dated May 5, 2008, and the as-built version of these plans dated September 19, 2008, I have made the following assessments:

1. In the process of building a new industrial building on a newly acquired property purchased, Plaintiff was required to utilize the East Greenacres Water District for water service. Plaintiff was required to extend an 8" diameter water main 1,500 lineal feet. This 1,500 lineal feet of new water main was later extended an additional few hundred feet to form a "loop" within the East Greenacres Irrigation District system.

2. There was also work done to "hook-up" the new industrial building to the water system. In a conversation I had with Gary Bremer, he told me that the "hook-up" fee was in the range of \$2,300.

3. Mr. Bremer also told me that the new building was built on a lot next to a property that he already owned and already had water service to.

4. Having served seven (7) years on the board of directors of a water district, I know that all water districts attempt to loop their systems whenever possible.

5. From an engineering standpoint, a looped system serves all the users of that system better as the looped configuration tends to equalize pressure within the entire system and generally provides increased flows at any point within a given loop. Looping provides a benefit to the entire water system and its users.



6. The water use of the facility operated by Plaintiff would not impact the ability of the District to deliver its services without compromising quality of service delivery to current users of the water system or imposing substantial additional costs upon them.

ARTHUR BISTLINE  
 BISTLINE LAW, PLLC  
 1423 N. Government Way  
 Coeur d'Alene, Idaho 83814  
 (208) 665-7270  
 (208) 665-7290 (fax)  
arthurmooneybistline@me.com  
 ISB: 5216

STATE OF IDAHO  
 COUNTY OF KOOTENAI } SS  
 FILED:  
 2011 NOV 16 PM 4:54 670 02  
 CLERK DISTRICT COURT  
*[Signature]*  
 DEPUTY

Attorney for Plaintiff

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

BREMER, LLC., an Idaho limited liability  
 company, and KGG PARTNERSHIP,

Plaintiffs,

vs.

EAST GREENACRES IRRIGATION DISTRICT,

Defendant.

Case No. CV11-1921

AFFIDAVIT OF GARY BREMER

STATE OF IDAHO )  
 ) ss.  
 County of Kootenai )

I, Gary Bremer, having been first duly sworn, upon oath depose and state that:

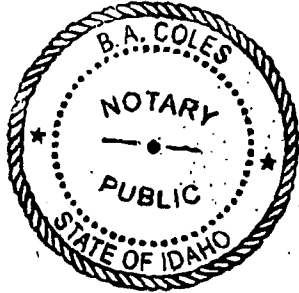
1. I am over the age of eighteen (18) and an individual residing in the State of Idaho.
2. I am the managing member of Bremer, LLC, Plaintiff, in this action and familiar with the facts and circumstances surrounding this matter and am competent to testify as to the matters herein contained.
3. Plaintiff owns FMI-EPS, LLC, which operates a foam insulation business in Post Falls, Idaho, on a property also owned by Plaintiff KGG Partnership.

4. Bremer, LLC, and KGG Partnership (collectively referred to herein as "Bremer") have some common owners.
5. In 2007, Bremer, LLC, constructed a building for FMI-EPS, LLC's use and in the process, hooked-up to the East Greenacres Irrigation District (hereinafter "Greenacres") for its water needs.
6. Bremer retained Scott Jones to engineer the connection from the building/site to the Greenacres system.
7. In the engineering process, a Greenacres representative informed Jim Nirk of Nirk Excavating, who I had hired for excavation, that I would be required to extend the main water line across my property in order to hook up the system.
8. After I learned that Greenacres was requiring me to expend somewhere around \$80,000 for improvements which had nothing to with my company hook-up, I contacted my attorney Brett Schlotthauer. Mr. Schlotthauer negotiated on my behalf, but could not make any progress.
9. My business would have incurred costs of approximately \$6,000 per day if I did not move forward with the line extension as Greenacres had required, so I was coerced into installing the line.
10. The line extension has cost me \$48,340.00 so far. During its installation, Jim Nirk reported to me that there would be a change in the costs because Greenacres changed their design requirements causing further expense.
11. The line extension will cost me an additional \$56,820 to complete.

Dated this 16 day of November, 2011.

Gary Bremer  
Gary Bremer  
Bremer, LLC, Manager/Member

SUBSCRIBED AND SWORN before me this 16 day of November, 2011.



B.A. Coles  
Notary in and for Idaho  
Residing at: Hayden  
Commission Expires: 06-21-17

**CERTIFICATE OF SERVICE**

I hereby certify that on the 16 day of November, 2011, I served a true and correct copy of AFFIDAVIT OF GARY BREMER by the method indicated below, and addressed to the following:

Susan P. Weeks  
James, Vernon & Weeks, PA  
1626 Lincoln Way  
Coeur d'Alene, ID 83814  
Fax: (208) 664-1684

- Regular mail
- Certified mail
- Overnight mail
- Facsimile
- Interoffice Mail
- Hand Delivered

Jennifer Jenkins  
JENNIFER JENKINS

STATE OF IDAHO  
COUNTY OF KOOTENAI } SS  
FILED:

2011 NOV 16 PM 4:32 649  
CLERK DISTRICT COURT  
DEPUTY *Brian Crumb*

ARTHUR BISTLINE  
BISTLINE LAW, PLLC  
1423 N. Government Way  
Coeur d'Alene, Idaho 83814  
(208) 665-7270  
(208) 665-7290 (fax)  
arthurmooneybistline@me.com  
ISB: 5216

Attorney for Plaintiff

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

BREMER, LLC., an Idaho limited liability  
company, and KGG PARTNERSHIP,

Plaintiffs,

vs.

EAST GREENACRES IRRIGATION DISTRICT,

Defendant.

Case No. CV11-1921

AFFIDAVIT OF BRIAN CRUMB

STATE OF IDAHO )  
                              ) ss.  
County of Kootenai )

I, Brian Crumb, having been first duly sworn, upon oath depose and state that:

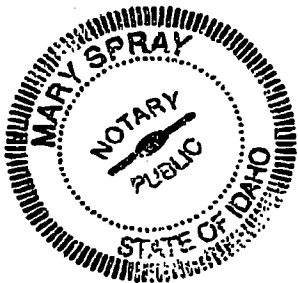
1. I am over the age of eighteen (18) and an individual residing in the State of Idaho.
2. I am the owner of Copper Creek Environmental Land Clearing, LLC.
3. The attached Exhibit "A" is a true and correct copy of a bid for reclaim work dated September 19, 2011, I prepared for the north side of the Bremer property.
4. The work I quoted in said bid to Plaintiff will cost \$56,820.

Dated this 15 day of November, 2011.

Brian Crumb

Brian Crumb, Owner  
Copper Creek Environmental Land Clearing, LLC

SUBSCRIBED AND SWORN before me this 16 day of November, 2011.



Mary Spear  
Notary in and for State of Idaho

Residing at: Coeur d'Alene  
Commission Expires: 7/24/14

**CERTIFICATE OF SERVICE**

I hereby certify that on the 16 day of November, 2011, I served a true and correct copy of **AFFIDAVIT OF BRIAN CRUMB** by the method indicated below, and addressed to the following:

Susan P. Weeks  
James, Vernon & Weeks, PA  
1626 Lincoln Way  
Coeur d'Alene, ID 83814  
Fax: (208) 664-1684

- Regular mail
- Certified mail
- Overnight mail
- Facsimile
- Interoffice Mail
- Hand Delivered

Jennifer Jenkins  
JENNIFER JENKINS

**Copper Creek Environmental Land Clearing, LLC.**

**PROPOSAL**

P.O. Box 1031  
 Post Falls, Idaho 83877  
 Phone (208) 699-2838 Fax (208) 773-9627

**DATE:** September 19, 2011  
**Proposal** 118-11

**BILL TO:**

Bremer LLC.  
 9456 N. McGuire Rd.  
 Post Falls, ID 83854  
 208-777-8485

**FOR:** Reclaim north side of property

**Attn:** Gary

DESCRIPTION	HOURS	RATE	AMOUNT
Reclaim north side of property adjacent Hayden Ave. for approximately 500' where water line was ran down south side of Hayden Ave. Includes bringing land back to grade, compacting and sloping ditch to proper spec. All excess material to be hauled off site. Seed and fertilize ground with native mix. ***Includes all labor, materials, and equipment to complete task***			\$ - 56,820.00
<b>SUBTOTAL</b>			\$ 56,820.00
<b>TAX RATE</b>			0.00%
<b>SALES TAX</b>			-
<b>DISCOUNT</b>			
<b>TOTAL</b>			\$ 56,820.00

Thank you for the opportunity to bid your project. No start date can be set without written approval from owner.



ARTHUR M. BISTLINE  
1423 N. Government Way  
Coeur d'Alene, Idaho 83814  
(208) 665-7270  
(208) 665-7290 (fax)  
arthurmooneybistline@me.com  
ISB: 5216

STATE OF IDAHO  
COUNTY OF KOOTENAI } SS  
FILED:

2011 NOV 16 PM 4:19

630  
CLERK DISTRICT COURT  
*Sanl Crumb*  
DEPUTY

Attorney for Plaintiffs

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

BREMER, LLC., an Idaho limited liability  
company, and KGG PARTNERSHIP,

Plaintiffs,

vs.

EAST GREENACRES IRRIGATION  
DISTRICT,

Defendant.

Case No. CV11-1921

PLAINTIFFS' MOTION FOR  
SUMMARY JUDGMENT

The above named Plaintiffs, BREMER, LLC. and KGG PARTNERSHIP, by and through their attorney of record, Arthur M. Bistline, and pursuant to IRCP 56, move this Court to enter summary judgment declaring the line extension Defendant required Plaintiffs to install to be an illegal tax and reserving the issue of damages for trial.

This Motion is based on all pleadings on file herein and specifically upon the Affidavit of Gary Bremer, Scott Jones, and Brian Crumb, and upon the supporting Memorandum filed concurrently herewith.

DATED this 16<sup>th</sup> day of November, 2011.



ARTHUR M. BISTLINE  
Attorney for Plaintiffs



**CERTIFICATE OF SERVICE**

I hereby certify that on the 16 day of November, I served a true and correct copy of the following PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT by the method indicated below, and addressed to the following:

Susan P. Weeks  
JAMES, VERNON & WEEKS, PA  
1626 Lincoln Way  
Coeur d'Alene, ID 83814

- Regular mail
- Certified mail
- Overnight mail
- Facsimile to (208) 664-1684
- Interoffice Mail
- Hand Delivered

  
JENNIFER JENKINS

STATE OF IDAHO  
COUNTY OF KOOTENAI } SS  
FILED:

2011 NOV 16 PM 4:27 642

CLERK DISTRICT COURT  
DEPUTY  
*[Signature]*

ARTHUR M. BISTLINE  
1423 N. Government Way  
Coeur d'Alene, Idaho 83814  
(208) 665-7270  
(208) 665-7290 (fax)  
arthurmooneybistline@me.com  
ISB: 5216

Attorney for Plaintiffs

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

BREMER, LLC., an Idaho limited liability  
company, and KGG PARTNERSHIP,

Plaintiffs,

vs.

EAST GREENACRES IRRIGATION  
DISTRICT,

Defendant.

Case No. CV11-1921

PLAINTIFFS' MEMORANDUM IN  
SUPPORT OF MOTION FOR SUMMARY  
JUDGMENT

COMES NOW, the above named Plaintiffs, BREMER, LLC, and KGG PARTNERSHIP,  
by and through their counsel of record, Arthur M. Bistline, and hereby submits the following  
Memorandum in Support of Motion for Summary Judgment:

**FACTS**

Plaintiff Bremer, LLC, owns FMI-EPS, LLC, which operates a foam insulation business  
in Post Falls, Idaho, on property also owned by Plaintiff KGG Partnership.<sup>1</sup> Bremer and KGG  
have some common owners<sup>2</sup> and will be referred to collectively hereinafter as "Bremer".

In 2007, Bremer, LLC, constructed a building for FMI-EPS, LLC's business use.<sup>3</sup> For its  
water needs, Bremer hooked-up to the East Greenacres Irrigation District (hereinafter

<sup>1</sup> Affidavit of Gary Bremer at 3.

<sup>2</sup> Affidavit of Gary Bremer at 4.

<sup>3</sup> Affidavit of Gary Bremer at 5.

“Greenacres”)<sup>4</sup> which required Bremer to engineer the connection from Bremer’s building/site to the Greenacres system. Bremer retained Scott Jones (hereinafter “Jones”) to engineer the project.<sup>5</sup> During the engineering process, a Greenacres representative informed Jim Nirk of Nirk Excavating, who Bremer hired to excavate the project, that Bremer would be required to extend the main water line across its property in order to hook up the system.<sup>6</sup> They also informed Jones that the line extension was related to a looping project they wished to accomplish with the line.<sup>7</sup>

After learning of Greenacres requirement, Bremer contacted its attorney Brett Schlotthauer.<sup>8</sup> Bremer attempted to negotiate with Greenacres to eliminate the additional requirement, however when negotiations failed to progress, Bremer was forced to install the line extension in order to complete the project and mitigate its damages.<sup>9</sup> Greenacres finally approved Jones’ extension design, however, during installation, Greenacres District Manager Ron Wilson informed Jim Nirk on the Bremer site that further modifications were required.<sup>10</sup> The line extension project has cost Bremer \$48,340.00 (excluding Brett Schlotthauer’s fees)<sup>11</sup> so far and will take \$56,820.00<sup>12</sup> to complete.

Bremer filed suit on March 4, 2011, to recoup the costs of this line extension.

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<sup>4</sup> Id at 5.

<sup>5</sup> Affidavit of Scott Jones at 3 and Affidavit of Gary Bremer at 6.

<sup>6</sup> Affidavit of Scott Jones at 4 and Affidavit of Gary Bremer at 7.

<sup>7</sup> Affidavit of Scott Jones at 4 and 5.

<sup>8</sup> Affidavit of Gary Bremer at 7.

<sup>9</sup> Affidavit of Gary Bremer at 8.

<sup>10</sup> Affidavit of Gary Bremer at 10.

<sup>11</sup> Id at 10..

<sup>12</sup> Affidavit of Brian Crumb at 4 and Aff of Gary Bremer at 11.

## ARGUMENT

I. Greenacres had no Constitutional or Legislative authority to require Bremer to extend the main system line to benefit all the users of that system

A. Summary of Argument

Greenacres requires those in its irrigation district to extend water lines across their properties for the benefit of the entire water system. These improvements would otherwise be provided for out of revenue raised by Greenacres. The issue is whether Greenacres can raise revenue for purposes of improvements to its system by forcing one individual land owner to pay the cost of the improvements. The answer is no because the statutory scheme by which Greenacres can raise revenue for its purposes does not allow such a thing.

Greenacres by-laws provide the following:

Mainline extensions shall be required so as to provide for proper present or future circulation of water within the system, as determined by the Board of Directors. This requirement shall make it necessary for the landowner to extend lines to a designated point determined by the Board of Directors

Greenacres is a municipal corporation in terms of its ability to collect revenue and fees. Idaho's Constitution limits the ability of municipalities to impose fees and taxes to raise revenue. Governmental functions which benefit the entire population (police, schools, roads, etc) must be imposed in an equal manner upon all citizens through general taxes. Requiring one land owner to provide for improvements which benefit all users of the system is not allowed.

Greenacres requirement that Bremer extend the lines across his property for the benefit of the entire system is an illegal tax and Bremer is entitled to summary judgment that awards him damages occasioned by the imposition of this tax as may be proved at trial.

**B. Greenacres can generate revenue only if authorized to do so by the Idaho Legislature.**

An irrigation district is considered a quasi-municipality for purposes of its ability to raise revenue. Barker v. Wagner, 96 Idaho 214, 217, 526 P.2d 174, 177 (1974). Municipalities do not have the ability to impose taxes or fees, absent authority from the legislature. “Thus, under Dillon's Rule, a municipal corporation may exercise only those powers granted to it by either the state constitution or the legislature and the legislature has absolute power to change, modify or destroy those powers at its discretion.” Caesar v. State, 101 Idaho 158, 160, 610 P.2d 517, 519 (1980) citing State v. Steunenberg, 5 Idaho 1, 4, 45 P. 462, 463 (1896).

Two provisions of the Idaho Constitution would allow Greenacres to raise revenue; the municipal taxation section - Idaho Constitution, Article VII, §6; and the police power section - Idaho Constitution, Article XII, §2. Neither of the above sections grant Greenacres the authority to require an individual user to construct improvements for the benefit of the whole system.

1. The municipal taxation section, Idaho Constitution, Article VII, §6, only allows a municipality to raise revenue in a manner authorized by the legislature and the legislature has not authorized irrigation districts to require individual landowners to provide improvements which benefit all users of the system.

Article VII, §6 of the Idaho Constitution provides that the legislature may invest municipal corporations with the power to tax. It states:

The legislature shall not impose taxes for the purpose of any county, city, town, or other municipal corporation but may by law invest in the corporate authorities thereof, respectively, the power to assess and collect taxes for all purposes of such corporation.

“Although the state legislature may not pass local laws for the assessment and collection of taxes, it may by law invest in municipal corporations, the power to assess and collect taxes for all purposes of such corporations”, City of Lava Hot Springs v. Campbell, 125 Idaho 768, 769, 874

P.2d 576, 580 (1994). “However, that taxing authority is not self-executing and is limited to that taxing power given to the municipality by the Legislature, Idaho Building Contractors Association v. City of Coeur d’Alene, 126 Idaho 740, 742, 890 P.2d 326, 328 (1985). “It is limited by what taxing power the legislature authorizes in its implementing legislation, Sun Valley Co. V. City of Sun Valley, 109 Idaho 424, 427, 708 P.2d 147, 150 (1985). Nothing in Idaho Code Title 43 pertaining to irrigation districts authorizes irrigation districts to require one land owner to provide for capital improvements which benefit the entire system.

The legislature has provided Greenacres with several different options for raising revenue to provide for capital improvements such as at the line extension here:

- a. To issue its revenue bonds to finance, in whole or in part, the cost of the acquisition, construction, reconstruction, improvement, betterment or extension of any works pursuant to Idaho Code §43-401 or I.C. §43-1909(d); or
- b. Call a special election to submit the issue of whether or not a proposed construction project should be pursued to the election, I.C. §43-329 and if approved, then levy an assessment pursuant to I.C. §43-330; or
- c. Enter into a contract with a private land owner for the construction of a pressurized system for the proper distribution of irrigation water. I.C. §43-330A; or
- d. To assess special assessments when the subdivision of land within the district has not made adequate provision for the proper distribution of water within its boundaries, or when an owner of irrigation works fails to maintain those works or when 50% of the owners within a tract of land request that the board

provide for the proper distribution of water thereto or to any tract therein.

§43-331; or

- e. To utilize reserves accumulated through the collection of hook-up fees and use fees authorized by Idaho Code 43-701(4) or 43-1905 and Viking Const., Inc. v. Hayden Lake Irr. Dist., 149 Idaho 187, 197, 233 P.3d 118, 128 (2010).

None of the forgoing statutory provisions allow Greenacres to require an individual landowner to provide for improvements which benefit the entire system. And in fact, the statutory scheme recognizes that an irrigation district must levy assessments proportionately and can only require landowners to pay for capital line improvements which are specifically related to the fact that the landowner is utilizing the system.

Both Idaho Code 43-701(4) and Idaho Code 43-1905 allow Greenacres to levy assessments. I.C. 43-701(4) provides, “[t]he amount of said assessment designated operation and maintenance fund shall be spread upon all the lands in the district and **shall be proportionate to the benefits received** by such lands growing out of the maintenance and operation of said works of said district.” I.C. 43-1905 in relevant part provides, “[i]n addition [...] such irrigation district may, in connection with any contract with the United States [...] for the construction, operation or maintenance of a domestic water system, [...] provide for the apportionment of benefits and make charges for either or both, including the levy of an annual assessment, on any bases permitted or required by the Federal Reclamation Law and by such contract, [...], **which are to be proportional, as nearly as practicable,** to the relative repayment ability of the various sized operating units in single ownership, to which irrigation service is provided.

Idaho Code 43-330 which provides for the construction of improvements after the majority of voters approve the improvements provides, “[t]he cost of construction shall be

apportioned by the board to the lands within the boundaries described in the petition, so that each acre of irrigable land therein shall be assessed and required to pay the same amount.” If the district enters into a contract with a private owner pursuant to I.C. 43-330A and B, then the contract must apportion the cost of the construction against the parcel or parcels which are to be benefitted by the contracts, I.C. 43-330B(1). Also, if a pumping station is installed, then its costs must also be apportioned to the parcels which will be served by the pumping station. I.C. 43-330B(6). Similarly, if the district utilizes I.C. 43-331 for improvements, the district is authorized to “...levy and collect an assessment upon all tracts specially benefitted thereby.”

Greenacres did not utilize any of the aforementioned statutory procedures for the construction of the line improvements in question, therefore, the municipal taxation section, Idaho Constitution, Article VII, §6, did not authorize Greenacres to exact the line improvements from Bremer. Furthermore, any interpretation of the relevant statutes that would authorize Greenacres to require the type of line extension at issue here would render the statute's not Constitutional.

Statutes should be interpreted to be Constitutional when possible. Urban Renewal Agency of City of Rexburg v. Hart, 148 Idaho 299, 300-301, 222 P.3d 467, 468 - 469 (2009). Because the line extension benefitted all the users of the water system equally, the exaction was a tax and, Article VII, Section 5 of the Idaho Constitution requires that “[a]ll taxes shall be uniform upon the same class of subjects within territorial limits, of the authority levying the tax,…” Park v. Banbury, 143 Idaho 576, 578, 149 P.3d 851, 853 (2006). Requiring one land owner to bear the entire tax for an improvement which benefits all is not “uniform” taxation. Interpreting Greenacres authorizing legislation to allow such a thing would be to interpret it to be unconstitutional. Bremer is of the class of subject who are the users of the Greenacres water



system and he was the only user of that system required to pay the tax of the installation of the line extensions in question.

The Municipal taxation section of the Idaho Constitution does not authorize Greenacres to require the type of line extension in question. Likewise, the police power section, Idaho Constitution, Article XII, §2, does not authorize this conduct because the by-law in question does not speak to regulation and benefits all members equally.

2. Greenacres' By-Law in question is not a regulatory fee because the By-Law has no regulatory provision and benefits all members equally.

The police power provision of the Idaho Constitution, Article XII, §2, contains the following grant of police powers to municipalities:

Any county or incorporated city or town may make and enforce, within its limits, all such local police, sanitary and other regulations as are not in conflict with its charter or with the general laws.

This provision does not include the ability to tax. "A city or village cannot, in the exercise of its police power, levy taxes", State v. Nelson, 36 Idaho 713, 722, 213 P. 358, 361 (1923). However, it does allow a municipality to collect fees incidental to the enforcement of the regulation. "In addition, under its police powers, the municipality may provide for the collection of revenue incidental to the enforcement of that regulation, Idaho Building Contractors Association v. City of Coeur d'Alene, 126 Idaho 740, 742, 890 P.2d 326, 328 (1985). Under its police power, a municipality may lawfully charge an incidental fee to pay for the enforcement of a regulation that is targeted in some identifiable way to a particular user.

A regulatory fee targets the individual and makes that person pay the administrative costs of the regulatory program. The regulatory fee must bear some reasonable relation to the costs of enforcing the regulation.

Such police power regulation may provide for the collection of revenue incidental to the enforcement of that regulation... If municipal regulations are to be held validly enacted under the police power, funds generated thereby must bear some reasonable relationship to the cost of enforcing the regulation.

Brewster v. City of Pocatello, 115 Idaho 502, 504, 768 P.2d 765, 767 (1998).

“However, if the fee or charge is imposed primarily for revenue raising purposes, it is in essence a general tax and can only be upheld under the power of taxation”, Idaho Building Contractors Association v. City of Coeur d'Alene, 126 Idaho 740, 743, 890 P.2d 326, 329 (1985). In this case, the Greenacres by-law provision which requires individual landowners to extend lines for the benefit of the system is a tax, and not a fee, because it has no regulatory provisions and it benefits all the users of the system.<sup>13</sup> The provision of Greenacres by laws in question is a tax because it benefits the entire system equally and is unrelated to regulation.

In the Nelson case, supra, The Idaho Supreme Court recognized the difference between a regulatory fee and an illegal disguised tax:

It is quite clear that the ordinance in question in the instant case was enacted for the purpose of raising revenue only, first because by its terms it so provides, and secondly, **it has no provisions of regulation.** A license that is imposed for revenue is not a police power regulation, but a tax, and can only be upheld under the power taxation.

State v. Nelson, 36 Idaho 713, 722, 213 P. 358, 361 (1923).

Also, in the Brewster case, supra, the Idaho Supreme Court was not fooled by the fact that the city of Pocatello denominated a tax as a “street restoration and maintenance fee” – the same tax its citizens had repeatedly rejected.

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<sup>13</sup> Affidavit of Phil Hart at 4.

We view the essence of the charge at issue here as imposed on occupants or owners of property for the privilege of having a public street abut their property. In that respect it is not dissimilar from a tax imposed for the privilege of owning property within the municipal limits of Pocatello. The privilege of having the usage of city streets which abuts ones property, is in no respect different from the privilege shared by the general public in the usage of public streets.

Brewster v. City of Pocatello, 115 Idaho 502, 504, 768 P.2d 765, 767 (1998).

Later in Idaho Building Contractors Association v. City of Coeur d'Alene, 126 Idaho 740, 742, 890 P.2d 326, 328 (1985), the City of Coeur d'Alene's development impact fee did not survive judicial scrutiny. The Court is consistent that if a fee is to provide for services enjoyed by the entire community is really a disguised tax:

Similarly, the assessment here is no different than a charge for the privilege of living in the City of Coeur d'Alene. It is a privilege shared by the general public which utilizes the same facilities and services as those purchasing building permits for new construction. **The impact fee at issue here serves the purpose of providing funding for public services at large, and not to the individual assessed, and therefore is a tax** (emphasis supplied).

126 Idaho at 744,890 P.2d at 330

Here, the By-Law in question has no stated regulatory purpose and specifically provides that it is a requirement imposed for the, "...proper present or future circulation of water within the system." It has no stated regulatory purpose and is patently a requirement imposed for the benefit of the entire system. It is, therefore, a tax and one that, as set forth above, is not authorized by the Idaho Constitution.

**CONCLUSION**

The line extensions that Greenacres required Bremer to install benefited the entire Greenacres water system and are a tax. This tax is not authorized by the statutory scheme which authorizes Greenacres to collect revenue and could not be authorized by any statutory scheme as it would be unconstitutional. The exaction was an illegal tax and Bremer is entitled to summary judgment declaring the same, reserving the issue of damages for trial.

DATED this 16<sup>th</sup> day of November, 2011.



ARTHUR M. BISTLINE  
Attorney for Plaintiffs

**CERTIFICATE OF SERVICE**

I hereby certify that on the 16 day of November, I served a true and correct copy of the following PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT by the method indicated below, and addressed to the following:

Susan P. Weeks  
JAMES, VERNON & WEEKS, PA  
1626 Lincoln Way  
Coeur d'Alene, ID 83814

- Regular mail
- Certified mail
- Overnight mail
- Facsimile to (208) 664-1684
- Interoffice Mail
- Hand Delivered

  
JENNIFER JENKINS

Susan P. Weeks, ISB # 4255  
James, Vernon & Weeks, P.A.  
1626 Lincoln Way  
Coeur d'Alene, ID 83814  
Telephone: (208) 667-0683  
Facsimile: (208) 664-1684

*Attorneys for Defendant*

STATE OF IDAHO  
COUNTY OF KOOTENAI  
FILED

2011 NOV 17 PM 4:07

CLERK DISTRICT COURT

*Patty Bayler*  
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

BREMER, LLC., an Idaho limited liability  
company, and KGG PARTNERSHIP,

Plaintiffs,

EAST GREENACRES IRRIGATION  
DISTRICT,

Defendant.

CASE NO. CV-11-1921

MOTION FOR SUMMARY JUDGMENT

COMES NOW Defendant East Greenacres Irrigation District, by and its attorney of record, Susan P. Weeks of the firm James, Vernon & Weeks, P.A. of Coeur d'Alene Idaho, and moves this Court pursuant to Rule 56 of the Idaho Rules of Civil Procedure, for an Order granting Summary Judgment.

This motion is supported by the Memorandum In Support of Motion for Summary Judgment, the Affidavit of Ron Wilson and the Affidavit of Susan P. Weeks filed concurrently with this motion. Oral argument is requested.

DATED this 17 day of November, 2011.

JAMES, VERNON & WEEKS, P.A.

By *Susan P. Weeks*  
Susan P. Weeks

CERTIFICATE OF SERVICE

I hereby certify that on the 17<sup>th</sup> day of November, 2011, I caused to be served a true and correct copy of the foregoing instrument by the method indicated below, and addressed to the following:

Arthur Bistline  
1423 N. Government Way  
Coeur d'Alene, ID 83814

- U.S. Mail
- Hand Delivered
- Overnight Mail
- Telecopy (FAX) (208) 665-7290

Susan P. Weeks

Susan P. Weeks, ISB # 4255  
James, Vernon & Weeks, P.A.  
1626 Lincoln Way  
Coeur d'Alene, ID 83814  
Telephone: (208) 667-0683  
Facsimile: (208) 664-1684

*Attorneys for Defendant*

STATE OF IDAHO  
COUNTY OF KOOTENAI  
FILED

2011 NOV 17 PM 4:07

CLERK DISTRICT COURT  
*Patty Bailey*  
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

BREMER, LLC., an Idaho limited liability  
company, and KGG PARTNERSHIP,

Plaintiffs,

EAST GREENACRES IRRIGATION  
DISTRICT,

Defendant.

CASE NO. CV-11-1921

MEMORANDUM IN SUPPORT OF  
MOTION FOR SUMMARY JUDGMENT

Bremer, LLC is an Idaho limited liability company. KGG Partnership is an assumed business name for a partnership between Kelley Trowbridge, Gary Bremer and Glenda Bremer. East Greenacres Irrigation District ("District") is an Idaho irrigation district organized pursuant to Title 43, Idaho Code. This matter involves a claim by Bremer, LLC and/or KGG Partnership that a water main extension which East Greenacres Irrigation District required it to install constituted an illegal hook up fee because: (1) the extension was unrelated to the value of the system capacity used by Plaintiffs, and (2) the improvements were wholly unrelated to Plaintiffs' use of Defendant's irrigation system. (Paragraph 7 of Plaintiffs' Complaint).

I. UNDISPUTED MATERIAL FACTS

1. The District operates a single pressurized irrigation system that delivers both irrigation and potable water to its members through its works.

2. The McGuire Industrial Park subdivision was recorded in Book J of Plats, Page 66 and 66A, Records of Kootenai County, Idaho on August 16, 2004 at the request of Double “B” Ranch and KGG Partnership. This plat subdivided Tracts 6, 7, 8, 9 and 10, Greenacres Plat No. 4, as recorded in Book B of Plats, Page 55, Records of Kootenai County, Idaho. The plat contained a sanitary restriction imposed by Panhandle Health District. *See Weeks Affidavit Exhibit A.*
3. On April 30, 2008, a re-plat of the McGuire Industrial Park, designated as McGuire Industrial Acres subdivision, was recorded on April 30, 2008, in Book K of Plats, Page 144 and 144A, Records of Kootenai County, Idaho at the request of Double “B” Ranch and KGG Partnership. This subdivision re-platted Lots 1 and 2 of the McGuire Industrial Park. The plat contained a sanitary restriction imposed by Panhandle Health District. This re-plat caused Lot 2 to have frontage on both McGuire Road and Hayden Avenue and made Lot 1 much smaller. *See Weeks Affidavit Exhibit B.*
4. On April 21, 2010, Bremer Subdivision was recorded Book K of Plats, Page 287 and 287A, Records of Kootenai County, Idaho at the request of KGG Partnership. This subdivision divided Lot 2 into two lots. These lots were designated as Lots A and B, Block 1, Bremer subdivision. Lot A fronted McGuire Road and Lot B fronted Hayden Avenue. *See Weeks Affidavit Exhibit C.*
5. Tracts 6, 7, 8, 9 and 10 Greenacres Plat No. 4, and the subsequent subdivisions of these Tracts, lay within the boundaries of East Greenacres Irrigation District. *See Wilson Affidavit.*



6. On March 4, 2008, a representative for Bremer, LLC, Jim Nirk, appeared before the District Board and verbally informed the Board and District Manager, Ron Wilson, that Gary Bremer needed approval of a connection to the District's water system for new construction related to Foam Molders for a portion of property that fronted Hayden Avenue. The District informed Mr. Nirk that engineered plans and DEQ approval for construction were needed before the District would grant conceptual approval of plans. *See Wilson Affidavit.*
7. On March 18, 2008, District staff met with Gary Bremer regarding extension of the water main on Hayden Avenue to accommodate a new industrial facility for Foam Molders. The industrial facility needed hydrants with proper fire flow pressure. *See Wilson Affidavit.*
8. On April 3, 2008, Panhandle Health District wrote to Emmett Burley regarding the McGuire Industrial Acres re-plat indicating it would grant plat approval when the District issued a "will serve" letter committing to serving water to both lots 1 and 2 of the re-plat. *See Wilson Affidavit Exhibit A.*
9. On April 17, 2008, the District forwarded a previous will serve letter from April 10, 2006 issued in connection with the first subdivision, McGuire Industrial Park, and inquired if it satisfied Panhandle Health District's will serve letter requirement. This previous letter indicated a main line extension to improve service was required along Hayden Avenue in order to serve the subdivision that was proposed by Emmett Burley. *See Wilson Affidavit Exhibit B.*

10. On May 2, 2008, Scott Jones, an engineer representing KGG Partnership, was provided the District's standard application for conceptual review of a project for use within McGuire Industrial Park. *See Wilson Affidavit Exhibit C.*
11. On May 5, 2008, Mr. Jones submitted engineered plans to DEQ for the pipeline extension project. On the same date, Mr. Jones submitted engineered plans to the District. *See Wilson Affidavit Exhibit D and E.*
12. On May 6, 2008, the Board of Directors granted conceptual approval for the water main extension. By letter dated May 7, 2008, Mr. Jones was informed of the approval. *See Wilson Affidavit Exhibit F.*
13. On May 13, 2008, the District issued a will serve letter to DEQ indicating that a water main extension was being proposed to improve service along Hayden Avenue. *See Wilson Affidavit G.*
14. On May 16, 2008, the water main extensions construction plans were submitted to Idaho Department of Environmental Quality (DEQ) by Mr. Jones. *See Wilson Affidavit H.*
15. By letter dated June 17, 2008, DEQ wrote to Gary Bremer disapproving the proposed extension project, which consisted of construction of approximately 800 feet of 8-inch PVC water main in Hayden Avenue as well as an 8-inch fire supply line to serve the parcel. DEQ noted the project appeared to be an extension of a previously approved water main extension issued to Emmett Burley on November 28, 2007. DEQ noted that Mr. Burley had not finalized his project with DEQ and that it needed the record drawings. DEQ also informed Gary Bremer that the

- design engineer had to demonstrate that the water system was capable of meeting minimum fire flow requirements at the extension. *See Wilson Affidavit Exhibit I.*
16. Without the water main extension on Hayden Avenue, the District would have been unable to meet minimum fire flow requirements for the new construction utilizing the existing hook up on McGuire. *See Wilson Affidavit.*
  17. By letter dated June 27, 2008, DEQ informed KGG Partnership that it had received a letter from the local fire authority stating it had received evidence that the required fire flows had been met. Based upon this letter, DEQ withdrew its disapproval of the project and approved the plans for construction. *See Wilson Affidavit Exhibit J.*
  18. By letter dated September 19, 2008, Mr. Jones submitted as-built project plans (engineered plans showing actual construction components of the works) for both Emmett Burly and Gary Bremer to the District, along with a request that the District forward an approved copy to DEQ. The as-builts showed two fire hydrants had been installed to service the new factory building. *See Wilson Affidavit. See Wilson Affidavit Exhibit K.*
  19. By letter dated September 19, 2008, the District provided Mr. Jones with its pressure tests of the new line extension that served the new construction. *See Wilson Affidavit Exhibit L.*
  20. On September 26, 2008, the District informed DEQ that it approved the construction as a continuation of a 2007 extension. *See Wilson Affidavit Exhibit M.*

21. On October 31, 2008, Foam Molders paid a domestic connection fee of \$2,250 and an irrigation connection fee of \$600 (for a total of \$2,850). *See Wilson Affidavit.*
22. By letter dated December 11, 2008, DEQ informed the District that all requirements under the Idaho Rules for Public Drinking Water Systems were completed. *See Wilson Affidavit Exhibit N.*
23. By letter dated July 22, 2009, the District received notice from Empire Surveying and Consulting, Inc. that Gary Bremer was applying to subdivide Lot 2 of McGuire Industrial Acres, requesting a will serve letter for the new parcel, and an affirmative statement that no water main extensions would be required to serve the subdivision. *See Wilson Affidavit Exhibit O.*
24. By letter dated August 7, 2011, the District responded to the will serve request. *See Wilson Affidavit Exhibit P.*
25. On September 1, 2009, the District received notice that KGG Partnership (Gary Bremer) was subdividing Lot 2, Block 1 of McGuire Industrial Acres into two (2) lots and requesting comments. The narrative provided with the subdivision application indicated that “The necessary infrastructure for the development of Lot 2, including parking, water and septic system has been installed on Lot 2 for industrial use.” The county materials showed a significant structural improvement on proposed Lot B facing Hayden Avenue. Included in the county packet were the District’s May 13, 2008 will serve letter, the District’s September 26, 2008 approval of the constructed water main extension along Hayden Avenue and the District’s August 7, 2009 letter that no water main extension was required

for service to the newly subdivided parcel given the previous extension. *See* Wilson Affidavit Exhibit Q.

26. On September 2, 2009, the District received a letter from Panhandle Health District that it would grant final plat approval on the condition that the District provide a will serve letter. *See* Wilson Affidavit Exhibit R.
27. On September, 22, 2009, the District informed Kootenai County that there were no conflicts in granting the requested subdivision and indicating it had no further comments on the subdivision. *See* Wilson Affidavit Exhibit S.
28. On April 12, 2010, the District sent yet another will serve letter to Empire Surveying & Consulting, Inc. committing to serve the lots in Bremer subdivision. *See* Wilson Affidavit Exhibit V.
29. Neither Plaintiff filed a tort claim with the District.

I. STANDARD FOR GRANT OF SUMMARY JUDGMENT

Summary judgment is appropriate if the pleadings, affidavits, and discovery documents on file with the court, read in a light most favorable to the nonmoving party, demonstrate no material issue of fact such that the moving party is entitled to a judgment as a matter of law. *See* I.R.C.P. 56(c); *Badell v. Beeks*, 115 Idaho 101, 102, 765 P.2d 126, 127 (1988). The burden of proving the absence of material facts is upon the moving party. *See* *Petricevich v. Salmon River Canal Co.*, 92 Idaho 865, 452 P.2d 362 (1969).

The adverse party, however, "may not rest upon the mere allegations or denials of his pleadings, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." I.R.C.P. Rule 56(e); *see also* *Anderson v. City of Pocatello*, 112 Idaho 176, 731 P.2d 171 (1987). In other words, the moving party is entitled to a judgment when the nonmoving party fails to make a showing sufficient to establish the existence of an element essential to that party's case on which that party will bear the burden of proof at trial. *See* *Badell*, 115 Idaho at 102, 765 P.2d at 127 (citing *Celotex v. Catrett*, 477 U.S. 377, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986)).

*Baxter v. Craney*, 135 Idaho 166, 16 P.3d 263 (2000).

## II. A Water Main Extensions does not Constitute a Connection Fee

Through the years, the Supreme Court has struggled with how to characterize an irrigation district. Irrigation districts have been characterized as various entities by the Supreme Court. The struggle arises because irrigation districts are not political subdivisions of the state of Idaho, and have no ability to tax its members, unlike a water and sewer district or a highway district. Early on, irrigation districts were described as “not a public service corporation” in the strict sense, but rather a mutual co-operative corporation organized not for profit but to distribute water to its members for use within the district. *Nampa & Meridian Irr. Dist. v. Briggs*, 27 Idaho 84, 147 P. 75 (1915). It has been held that they are, strictly speaking, not a “municipal corporation”, but a “quasi-municipal corporation” operating its irrigation system in proprietary capacity, and any municipal powers thereof are only incidental. *Tingwall v. King Hill Irrig. Dist.*, 66 Idaho 76, 155 P.2d 605 (1915). It has been held that an “irrigation district, while exercising certain governmental powers, is brought into existence for private benefit of landowners within its limits; it owns and operates its irrigation system in a proprietary rather than public capacity, and assumes and must bear burdens of property ownership.” *Eldridge v. Black Canyon Irr. Dist.*, 55 Idaho 443, 43 P.2d 1052 (1935). Irrigation districts have been characterized as a quasi public corporation for which no stock is issued. *Hale v. McCammon Ditch Co.*, 72 Idaho 478, 244 P.2d 151 (1951). The Supreme Court has also characterized an irrigation district as a unit and a legal entity holding title to its property and water rights in trust for uses and purposes set forth in its statutes. *Bradshaw v. Milner Low Lift Irr. Dist.*, 85 Idaho 528, 381 P.2d 440 (1963). In *Brizendine v. Nampa Meridian Irrigation Dist.*, 97 Idaho 580, 548 P.2d 80 (1976), the Supreme Court again wrestled with the characterization of an irrigation district and whether the Idaho Torts Claim Act applied. The Court held it was not a public

corporation for such purposes. (Following this decision, the Idaho legislature amended the Tort Claims Act to include irrigation districts within its purview.) Regardless of the characterizations given an irrigation district by our courts, the rulings have consistently recognized that its powers, obligations and duties emanate from Title 42.

Plaintiffs contend that the District's requirement that it construct a water main extension to service its industrial building off of Hayden Avenue constituted an illegal hook up fee because the extension was unrelated to the value of the system capacity used by Defendants and the improvements. In making this argument, the Plaintiffs misconstrue its obligations under irrigation district statutes.

Idaho Code provides two mechanisms for an individual to obtain an extension of an irrigation district's system to service a parcel. The first mechanism is encompassed within I.C. § 43-328-330, and requires the holder of title of property within the district to petition the board of directors for construction of any improvement for the efficient irrigation of lands within the district. If this route is taken, and the Board approves the petition, an election is held, and the benefited parcel is assessed the cost of the improvement.

In the event the land is subdivided land within the District, a contract may be entered into with the owner of the parcel proposed for development. Idaho Code § 43-330A provides "[w]hen a parcel of land lying within an irrigation district has been subdivided and the owner or owners of the entire parcel propose to develop that parcel or any of the tracts therein for residential, commercial, industrial or municipal use, the board of directors of the district may enter into a contract with the owner or owners of the entire parcel, or of any tract therein, for the construction of a pressurized system for the proper distribution of irrigation water to the parcel or

to the designated tracts within the parcel.” The agreement reached in this matter was that the applicant would be responsible for construction of the improvements to serve the parcel.

It is clear from the provisions of I.C. §43-330A through 43-330G that the legislature intended that the District would have the power to require landowners who subdivided agricultural lands for residential, commercial, industrial or municipal use to pay for the cost of extension of a pressurized system. Such requirement was unrelated to use of system capacity (as is the case with a connection fee). Therefore, Defendant is entitled to summary judgment.

II. Plaintiffs Failed to File a Tort Claim

It is unclear from the complaint whether Plaintiffs intended to claim that Defendant breached a duty owed to them. However, to the extent such claim is included in the pleadings, Idaho Code § 6-906 required the Plaintiffs to file a tort claim, which was not done. Thus, any tort claims are barred.

DATED this 15<sup>th</sup> day of November, 2011.

JAMES, VERNON & WEEKS, P.A.

BY:   
Susan P. Weeks

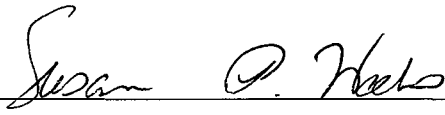


CERTIFICATE OF SERVICE

I hereby certify that on the 17<sup>th</sup> day of November, 2011, I caused to be served a true and correct copy of the foregoing instrument by the method indicated below, and addressed to the following:

Arthur Bistline  
1423 N. Government Way  
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\_\_\_\_\_

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Facsimile: (208) 664-1684

*Attorneys for Defendant*

STATE OF IDAHO }  
COUNTY OF KOOTENAI } SS  
FILED

2011 NOV 17 PM 4:08

CLERK DISTRICT COURT

*Patty Beasley*  
DEPUTY PB

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

BREMER, LLC., an Idaho limited liability  
company, and KGG PARTNERSHIP,

Plaintiffs,

EAST GREENACRES IRRIGATION  
DISTRICT,

Defendant.

CASE NO. CV-11-1921

AFFIDAVIT OF RON WILSON IN  
SUPPORT OF DEFENDANT'S MOTION  
FOR SUMMARY JUDGMENT

STATE OF IDAHO                    )  
  : ss.  
County of Kootenai                )

RON WILSON, being first duly sworn upon oath, deposes and says:

1. I am the manager of East Greenacres Irrigation District. I am over the age of 18 years and competent to testify as a witness herein. The matters stated herein are within my personal knowledge.

1. Tracts 6, 7, 8, 9 and 10 Greenacres Plat No. 4, and the subsequent subdivisions of these tracts consisting of McGuire Industrial Park, McGuire Industrial Acres and Bremer, lay within the boundaries of East Greenacres Irrigation District.

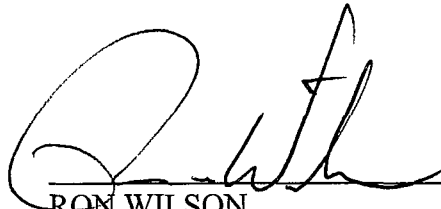
2. On March 4, 2008, a representative for Bremer, LLC, Jim Nirk, appeared before the Board of Directors and verbally informed the Board and myself that Gary Bremer needed approval for a connection to the District's water system because it was expanding into the new area created in the subdivision along that portion of property that fronted Hayden Avenue. Mr. Nirk was told that engineered plans and DEQ approval for construction were needed before the District would grant conceptual approval of plans.
3. On March 18, 2008, I met with Gary Bremer regarding extension of the water main on Hayden Avenue to accommodate his new industrial facility for Foam Molders.
4. The industrial facility that was being constructed required hydrants with proper fire flow pressure. The existing connection to the facility that fronted McGuire road would not meet this requirement. Without the water main extension on Hayden Avenue, the District would have been unable to meet minimum fire flow requirements for the new construction utilizing the existing hook up that served the existing building on McGuire.
5. During the course of reviewing a subdivision, the District regularly receives copies of communication from other parties related to the project which the District considers in determining whether to allow a member to connect to the irrigation system. The District also retains copies of all communications sent by it and received by it. The records submitted with this affidavit are kept in the ordinary course of the District's business. All records provided herein were

retrieved from the District's business records and are true and correct copies of such records.

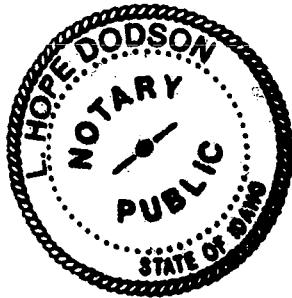
6. Attached hereto as Exhibit "A" is a copy of a letter dated April 3, 2008 from Panhandle Health District to Emmett Burley and copied to the District.
7. Attached hereto as Exhibit "B" is a copy of a letter dated April 17, 2008 from the District to Panhandle Health District.
8. Attached hereto as Exhibit "C" is a May 2, 2008 facsimile transmittal from the District to Scott Jones.
9. Attached hereto as Exhibit "D" is a copy of a letter dated May 5, 2008, from Scott Jones to DEQ and copied to the District.
10. Attached hereto as Exhibit "E" is a copy of a letter dated May 5, 2008, from Scott Jones to the District.
11. On May 6, 2008, the Board of Directors granted conceptual approval for the water main extension.
12. Attached hereto as Exhibit "E" is a copy of a May 7, 2008 letter from the District to Scott Jones.
13. Attached hereto as Exhibit "G" is a copy of a May 13, 2008 letter from the District to Idaho Department of Environmental Quality (DEQ).
14. Attached hereto as Exhibit "H" is a letter of transmittal dated May 16, 2008 letter from Scott Jones to DEQ and copied to the District.
15. Attached hereto as Exhibit "I" is a copy of a letter dated June 17, 2008 from DEQ to Gary Bremer and copied to the District.


16. Attached hereto as Exhibit "J" is a copy of a letter dated June 27, 2008 from DEQ to KGG Partnership and copied to the District.
  17. Attached hereto as Exhibit "K" is a copy of a letter dated September 19, 2008, from Scott Jones to the District.
  18. Attached hereto as Exhibit "L" is a copy of a facsimile transmission dated September 19, 2008 from the District to Scott Jones.
  19. Attached hereto as Exhibit "M" is a copy of a letter dated September 26, 2008 from the District to DEQ.
  20. On October 31, 2008, Foam Molders paid a domestic connection fee of \$2,250 and an irrigation connection fee of \$600 (for a total of \$2,850) for connection to the Hayden main line.
  21. Attached hereto as Exhibit "N" is a copy of a letter dated December 11, 2008, from DEQ to the District.
  22. Attached hereto as Exhibit "O" is a copy of a letter dated July 22, 2009, from the Empire Surveying and Consulting, Inc. to the District.
  23. Attached hereto as Exhibit "P" is a copy of a letter dated August 7, 2011 from the District to Empire Surveying and Consulting.
  24. Attached hereto as Exhibit "Q" is a copy of a packet of materials from Kootenai County Planning and Zoning to the District.
  25. Attached hereto as Exhibit "R" is a copy of a letter dated September 2, 2009 from Panhandle Health District to the District.
  26. Attached hereto as Exhibit "S" is a copy of a September, 22, 2009 letter from the District to Kootenai County.
-

27. Had the Hayden Avenue water main extension not been previously completed, the District would have informed Kootenai County in the September 22, 2009 comment letter that each lot would be required to have its own service connection and meters and that a Hayden Avenue water main extension would be required to serve Lot B.
28. Attached hereto as Exhibit "T" is a copy of an April 12, 2010 letter from the District to Empire Surveying & Consulting, Inc.
29. Neither Plaintiff in this suit have filed a tort claim with the District.

  
\_\_\_\_\_  
RON WILSON

SUBSCRIBED AND SWORN to before me this 16 day of November, 2011.



  
\_\_\_\_\_  
Notary Public for Idaho;  
Residing at: Coeur d'Alene  
Commission Expires: 3-16-17

CERTIFICATE OF SERVICE

I hereby certify that on the 17<sup>th</sup> day of November, 2011, I caused to be served a true and correct copy of the foregoing instrument by the method indicated below, and addressed to the following:

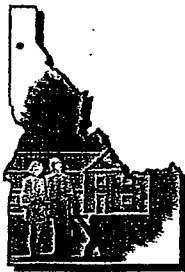
Arthur Bistline  
1423 N. Government Way  
Coeur d'Alene, ID 83814

- U.S. Mail
- Hand Delivered
- Overnight Mail
- Telecopy (FAX) (208) 665-7290

Christine Elmore







Public Health

# PANHANDLE HEALTH DISTRICT

*Healthy People in Healthy Communities*

ENVIRONMENTAL HEALTH

2195 IRONWOOD CT.  
COEUR D'ALENE, IDAHO 83814  
(208) 415-5200  
<http://www2.state.id.us/phd1>

April 3, 2008

Emmet Burley  
P.O. Box 786  
Spokane Valley, WA 99037

COPY

RE: MCGUIRE INDUSTRIAL ACRES REPLAT

To All Concerned:

The industrial subdivision known as McGuire Industrial Acres consisting of 2 lots on 15.675 acres located in Township 51 North, Range 5W West, Section 21 within Kootenai County in the State of Idaho has been reviewed by Panhandle Health District (PHD). PHD will grant final plat approval when the following conditions are satisfied:

- The water source must be stated on the plat as part of the owner's certificate block as required by Idaho Code §50-1334.
- Two signature blocks must be included on the plat for Panhandle Health District, one to approve the plat and one to lift the sanitary restrictions as required by Idaho Code §50-1326 to §50-1329.
- Blue-line copies of the plat including signature page(s) must be supplied to PHD.
- PHD receives a letter from the water purveyor (EAST GREENACRES IRRIGATION DISTRICT), stating they will continue to serve both lots 1 and 2.

If the above conditions are satisfied PHD will lift the sanitary restrictions when the final plat/mylar is signed. Please note that plat approval does not guarantee these lots are buildable. If you have any questions or require additional information please call Panhandle Health District.

Sincerely,

Nathan Church  
Environmental Health Specialist

Cc: Jon Monaco-Empire Surveying, P.O. Box 12, Hayden, ID 83815  
East Greenacres Irrigation District



\* \* \* Communication Result Report ( Apr. 17. 2008 3:15PM ) \* \* \*

1) East Greenacres Irrigation Dist  
2)

Date/Time: Apr. 17. 2008 3:14PM

File No.	Mode	Destination	Pg(s)	Result	Page Not Sent
2902	Memory TX	4155201	P. 2	OK	

Reason for error  
 E. 1) Hang up or line fail  
 E. 2) Busy  
 E. 3) No answer  
 E. 4) No facsimile connection  
 E. 5) Exceeded max. E-mail size

### FACSIMILE TRANSMITTAL



EAST GREENACRES IRRIGATION DISTRICT  
 2722 N. MCGUIRE RD., POST FALLS, IDAHO 83854  
 OFFICE HOURS 8:00-NOON, 12:30-4:30 MON. - FRI.  
 PHONE 208-773-7579 - FAX 773-3476

TO:  
 NAME: Chuech DATE: 4/17/08  
 ORGANIZATION: Panhandle Health District  
 FAX# 208-415-5201

RE: McGuire Industrial Park  
 PAGES (INCLUDING THIS COVER) 2

- PLEASE ACKNOWLEDGE THIS FAX
- FOR YOUR INFORMATION
- AS PER YOUR REQUEST
- PLEASE REPLY

COMMENTS: While this "will serve" letter work for Emmett Buckley.

[Signature]

*4/18/08*  
*Spoke w/ Nate*  
*this would satisfy*  
*his needs to re-*  
*plant the project*  
*for Emmett Buckley.*  
*Ron*

# FACSIMILE TRANSMITTAL



EAST GREENACRES IRRIGATION DISTRICT

2722 N. McGUIRE RD., POST FALLS, IDAHO 83854

OFFICE HOURS 8:00-NOON, 12:30-4:30 MON. - FRI.

PHONE 208-773-7579 - FAX 773-3476

TO:

NAME: Church DATE: 4/17/08

ORGANIZATION: Panhandle Health District

FAX # 208-415-5201

RE: McGuire Industrial Park

PAGES (INCLUDING THIS COVER) 2

- PLEASE ACKNOWLEDGE THIS FAX
- FOR YOUR INFORMATION
- AS PER YOUR REQUEST
- PLEASE REPLY

COMMENTS: Will this "Will Serve" Letter  
Work for Emmet County.



EAST GREENACRES IRRIGATION DISTRICT

N2722 McGUIRE ROAD • POST FALLS, IDAHO 83854 • (208) 773-7679

April 10, 2006

Mr. Daniel G. Remmick, P. E.  
Idaho Division of Environmental Quality  
2110 Ironwood Parkway  
Coeur d'Alene, ID 83814

RE: McGuire Industrial Park

Dear Daniel:

The McGuire Industrial Park is located in the NW ¼ of Section 21, T.51N., R.5 W, B. M., Kootenai County, Idaho, and is within the boundary of East Greenacres Irrigation District and is eligible to receive domestic water from our system.

We have the capacity, willingness and intent to serve the McGuire Industrial Park.

Although mainlines are in place to serve most of the Park, an extension is currently being proposed to improve service along Hayden Avenue. This extension will be an extension of our system and subject to applicable State and District requirements.

Sincerely,



Paul Baker  
Manager  
East Greenacres Irrigation District

PB:vb

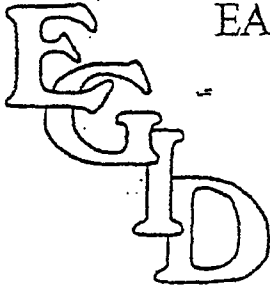
cc: Scott Jones, P. E.  
Rob Eachon, Panhandle Health District  
Bill Melvin, City of Post Falls

---

**EXHIBIT C**

---

# FACSIMILE TRANSMITTAL



EAST GREENACRES IRRIGATION DISTRICT

2722 N. McGUIRE RD., POST FALLS, IDAHO 83854

OFFICE HOURS 8:00-NOON, 12:30-4:30 MON. - FRI.

PHONE 208-773-7579 - FAX 773-3476

COPY

TO:

NAME: Scott Jones DATE: 5/2/08

ORGANIZATION: EXC

FAX# 509-292-0659

RE: GARY W / FMI

PAGES (INCLUDING THIS COVER) ~~2~~ 3

- PLEASE ACKNOWLEDGE THIS FAX
- FOR YOUR INFORMATION
- AS PER YOUR REQUEST
- PLEASE REPLY

COMMENTS: Please complete the attached form when submitting the Diggs.

ROY WILSON

\* \* \* Communication Result Report ( May. 2. 2008 2:17PM ) \* \* \*

1) East Greenacres Irrigation Dist  
2)

Date/Time: May. 2. 2008 2:16PM

File No.	Mode	Destination	Pg(s)	Result	Page Not Sent
3186	Memory TX	15092920659	P. 3	OK	

COPY

Reason for error  
 E. 1) Hang up or line fail  
 E. 2) Busy  
 E. 3) No answer  
 E. 4) No facsimile connection  
 E. 5) Exceeded max. E-mail size

FACSIMILE TRANSMITTAL



EAST GREENACRES IRRIGATION DISTRICT

2722 N. McGUIRE RD., POST FALLS, IDAHO 83854

OFFICE HOURS 8:00-NOON, 12:30-4:30 MON. - FRI

PHONE 208-773-1579 - FAX 773-3476

TO:

NAME: Scott Jones DATE: 5/2/08

ORGANIZATION: Exc

FAX# 509-292-0659

RE: GARY W / FMT

PAGES (INCLUDING THIS COVER) 3

- PLEASE ACKNOWLEDGE THIS FAX
- FOR YOUR INFORMATION
- AS PER YOUR REQUEST
- PLEASE REPLY

COMMENTS: Please complete the Attached Form when Submitting the Docs

Paul Wilson





EAST GREENACRES IRRIGATION DISTRICT

2722 N. McGUIRE RD. • POST FALLS, IDAHO 83854 • (208) 773-7579 • FAX 773-3476

APPLICATION FOR CONCEPTUAL REVIEW

COPY

FOR OFFICE USE ONLY
SCHEDULED BOARD MEETING

(Date) (Location) (Time)

Date: \_\_\_\_\_

APPLICANT INFORMATION:

Name: \_\_\_\_\_ Phone #: \_\_\_\_\_ Fax #: \_\_\_\_\_

Address: \_\_\_\_\_ Email Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Contact: \_\_\_\_\_ Phone #: \_\_\_\_\_ Fax #: \_\_\_\_\_

ENGINEER INFORMATION:

Company: \_\_\_\_\_

Phone #: \_\_\_\_\_ Fax #: \_\_\_\_\_

Address: \_\_\_\_\_ Email Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Eng./Contact: \_\_\_\_\_ Phone #: \_\_\_\_\_ Fax#: \_\_\_\_\_

SITE INFORMATION:

JOB NAME: \_\_\_\_\_

- ◆ Include 1 copy of a conceptual plan
◆ Include a narrative describing the project

Assessor's Parcel #: \_\_\_\_\_

(over)

COPY

General Location: \_\_\_\_\_

\_\_\_\_\_

Description of Project: \_\_\_\_\_

\_\_\_\_\_

Proposed Number of Lots (Estimate): \_\_\_\_\_

Existing Zoning: \_\_\_\_\_

Current Land Use: \_\_\_\_\_

Surrounding Land Use: \_\_\_\_\_

---

**EXHIBIT D**

---

# Scott E. Jones & Associates

PO Box 358, Colbert, WA 99005-0358

Phone (509)710-9177

Fax (509)292-0659

scottejones@hotmail.com

May 5, 2008

Ron Wilson, Manager  
East Greenacres Irrigation District  
2722 N. McGuire Road  
Post Falls, ID 83854

Phone: 208-773-7579

COPY

RE: **2008 McGuire Industrial Park Water Pipeline Extension Project**

Dear Ron:

Attached, please find four copies of the engineered plans for the above named project.

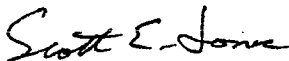
The existing 10-foot Roadway, Drainage and Utility Easement has been shown as per Recorded Plat.

The developer for this project is Mr. Gary Bremer, FMI-EPS, LLC, 9456 N. McGuire Road, Post Falls, ID 83854 Phone: 208-777-8485.

I am sending two copies of this project to Gary Gaffney of the DEQ.

Please call or email me immediately if you have any questions or concerns.

Sincerely,



Scott E. Jones, P.E.  
Principal Engineer

Attached: (4) Copies of Plans

Cc: Gary Bremer

---

**EXHIBIT E**

---

# Scott E. Jones & Associates

PO Box 358, Colbert, WA 99005-0358

Phone (509)710-9177

Fax (509)292-0659

scottejones@hotmail.com

May 5, 2008

Gary J. Gaffney, P.E.  
State of Idaho Department of Environmental Quality  
2110 Ironwood Parkway  
Coeur d'Alene, Idaho 83814-2648

Phone: 208/769-1422

COPY

RE: **2008 McGuire Industrial Park Water Pipeline Extension Project**

Dear Gary:

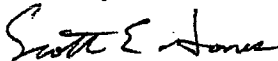
Attached, please find two copies of the engineered plans for the above named project. This project is expected to be installed as an extension of the 2007 project on the same line.

The developer for this project is Mr. Gary Bremer, FMI-EPS, LLC, 9456 N. McGuire Road, Post Falls, ID 83854 Phone: 208-777-8485.

Identical plan sets have been submitted to Ron Wilson, Manager of East Green Acres Irrigation District for concurrent review. Please send a copy of your review approval to him at 2722 N. McGuire Road, Post Falls, ID 83854 Phone: 208-773-7579.

Please call or email me immediately if you have any questions or concerns.

Sincerely,



Scott E. Jones, P.E.  
Principal Engineer

Attached: (2) Copies of Plans and Specifications

Cc: Gary Bremer  
Ron Wilson, Manager, E.G.I.D.



---

**EXHIBIT F**

---

# EAST GREENACRES IRRIGATION DISTRICT

2722 N. McGUIRE RD. • POST FALLS, IDAHO 83854 • (208) 773-7579 • FAX 773-3476

May 7, 2008

COPY

Mr. Scott E. Jones, P. E.  
P. O. Box 358  
Colbert, WA 99005

RE: 2008 McGuire Industrial Park Water Pipeline Extension Project

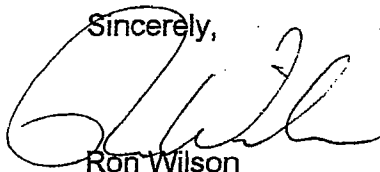
Dear Mr. Jones:

The Board of Directors of East Greenacres Irrigation District granted conceptual approval for the 2008 McGuire Industrial Park Water Pipeline Extension Project at their regular meeting on May 7, 2008. The project is located in the NW ¼ of Section 21, T.51N., R.5W of B.M., Kootenai County, Idaho.

The approval is contingent upon the following:

- 1) Provide East Greenacres Irrigation District the required easements naming the United States.
- 2) Understanding that a portion of this parcel lies within an area of Class 6 soils limiting the amount of irrigable land available.

Sincerely,



Ron Wilson  
Manager  
East Greenacres Irrigation District

RW:vb

cc: Mr. Gary Bremer, FMI-EPS, LLC  
9456 N. McGuire Road  
Post Falls, ID 83854



---

**EXHIBIT G**

---

# EAST GREENACRES IRRIGATION DISTRICT

2722 N. McGUIRE RD. • POST FALLS, IDAHO 83854 • (208) 773-7579 • FAX 773-3476

May 13, 2008

Mr. Gary J. Gaffney, P. E.  
Idaho Division of Environmental Quality  
2110 Ironwood Parkway  
Coeur d'Alene, ID 83814

RE: 2008 McGuire Industrial Park Extension Project

Dear Gary:

The McGuire Industrial Park is located in the NW ¼ of Section 21, T.51N., R.5W, B.M., Kootenai County, Idaho, and is within the boundary of East Greenacres Irrigation District and is eligible to receive domestic water from our system.

We have the capacity, willingness and intent to serve the McGuire Industrial Park

Although mainlines are in place to serve most of the Park, an extension is currently being proposed to improve service along Hayden Avenue. This extension will be an extension of our system and subject to applicable State and District requirements.

Sincerely,



Jim Sappington  
Chief of Field Operations  
East Greenacres Irrigation District

JS:vb

cc: Scott Jones, P. E.  
Nate Church, Panhandle Health District  
Bill Melvin, City of Post Falls  
Gary Bremer, F.M.I.- EPS, LLC

D

5

---

**EXHIBIT H**

---

COPY

Log # \_\_\_\_\_  
(DEQ Use Only)

Letter of Transmittal

Date: 5-16-08

To: DEQ Engineering Staff

Project Title: 2008 McGuire Industrial Park Water Piping Project

NOTE: Please check here if this is a new name for the project  Old name: \_\_\_\_\_

Project Description: MAINLINE EXTENSION ALONG HAYDEN

City / County: Kootenai County

Water Purveyor: EAST GREENACRES IRRIGATION DISTRICT

Sewer Purveyor: -

Please include will-serve letter with submittal of construction plans

Owner / Developer Name: GARY BREMER, FMI-EPS, LLC

Address / City / State / Zip: 9456 N. McGuire RD.

Phone / Email: 208-777-8485

Project Type: (please check one)  
 Water & Sewer  Water Only  Sewer Only  
 Wastewater Treatment  Water Treatment  
 Other \_\_\_\_\_

Plan Type: (please check one)  
 Construction Plans/Specs  Asbuilts  
 Revised Construction  Revised Asbuilts  
 Engineering Report  
 Planning Apps for Comment Only (General / P&Z / etc)

# of Connections: 1

Water Project Description:  
 New Water System/Source  
 Water System Improvements  
 Water System Extension

Sewer Project Description:  
 New Sewer System  
 Sewer System Improvements  
 Sewer System Extension

SCOTT E JONES, PE / Scott E. Jones & Assoc. 509-292-0659  
Engineer Contact and Company Name

Note: Please submit this transmittal form with the applicable checklist(s) (found on the DEQ website: [http://www.deq.state.id.us/water/assist\\_business/engineers/checklists.cfm](http://www.deq.state.id.us/water/assist_business/engineers/checklists.cfm)) and one set of plans/specs. (Please disregard the instruction to send 3 sets of plans.) Thank you.

---

**EXHIBIT I**

---



STATE OF IDAHO  
DEPARTMENT OF  
ENVIRONMENTAL QUALITY

COPY

2110 Ironwood Parkway • Coeur d'Alene, Idaho 83814 • (208) 769-1422

C.L. "Butch" Otter, Governor  
Toni Hardesty, Director

June 17, 2008

Gary Bremer  
FMI-EPS, LLC  
9456 McGuire Rd  
Post Falls, ID 83854

**RE: McGuire Industrial Park Water Pipeline Project**

Dear Mr. Bremer:

Plans and specifications submitted by Scott Jones, P.E. to DEQ on May 16, 2008 have been reviewed. The project involves the construction of approximately 800 feet of 8-inch PVC water main in Hayden Avenue as well as an 8-inch fire supply line to serve the McGuire Industrial Park. This project appears to be an extension of the McGuire Industrial Park previously approved by DEQ in a letter to Emmet Burley dated November 28, 2007. At this time, DEQ has not received record drawings for the extension approved on November 28, 2007. Please have these provided as soon as possible.

Before this project can be approved by DEQ for construction, DEQ must receive a letter from the local fire authority establishing the minimum fire flows and durations needed for this project. In addition, the design engineer must demonstrate that the water system is capable of meeting the minimum fire flow requirements at this extension.

At this time, DEQ has not received record drawings for the extension approved on November 28, 2007. Section 39-118(3) of Idaho Code requires that record plans and specifications based on information provided by the construction contractor and field observations made by the engineer or the engineer's designee be submitted to DEQ within thirty (30) days of completion of construction. Please have these record drawings provided as soon as possible.

If you should have any questions, please do not hesitate to call.

Sincerely,

A handwritten signature in black ink, appearing to read "Matt Plaisted".

Matt Plaisted, EIT

c: Scott Jones, Scott E. Jones & Associates, PO Box 358, Colbert, WA 99005-0358  
Jim Sappington, EGID  
Nate Church, PHD  
File: EGID PWS (#10447\_EGID PWS)

---

**EXHIBIT J**

---



STATE OF IDAHO  
DEPARTMENT OF  
ENVIRONMENTAL QUALITY

COPY

2110 Ironwood Parkway • Coeur d'Alene, Idaho 83814 • (208) 769-1422

C.L. "Butch" Otter, Governor  
Toni Hardesty, Director

June 27, 2008

Gary Bremer  
FMI-EPS, LLC  
9456 McGuire Rd  
Post Falls, ID 83854

RE: **McGuire Industrial Park Water Pipeline Project**

Dear Mr. Bremer:

In a letter dated June 17, 2008, DEQ disapproved plans and specifications for the construction of approximately 800 feet of 8-inch water main to serve the McGuire Industrial Park. The disapproval letter asked for a letter from the local fire authority stating the required fire flows as well as evidence that these flows could be met. We have received a letter from Larry Boatwright of Kootenai County Fire and Rescue stating that the water system has adequate flows to meet their fire flow requirements. The reasons for disapproval have been addressed to DEQ's satisfaction.

The plans and specifications have been reviewed and are hereby **approved** for construction purposes in accordance with the Idaho Rules for Public Drinking Water Systems and Section 39-118 of Idaho Code.

Inspection of construction activities approved herein must be done by an Idaho licensed Professional Engineer (P.E.) or by someone under the direct supervision of a P.E.

If any material deviations to this accepted design are necessary, the design engineer must secure DEQ approval of the changes prior to implementation of the changes.

Within thirty (30) days of completion of construction, Section 39-118(3) of Idaho Code requires that record plans and specifications based on information provided by the construction contractor and field observations made by the engineer or the engineer's designee be submitted to DEQ. The record drawings must depict the actual construction of facilities. The record drawing submittal must be made to DEQ by the engineer representing the public agency or regulated public utility, if the resultant facilities will be owned and operated by a public agency or regulated public utility; or by the design engineer or owner designated substitute engineer, if the constructed facilities will not be owned and operated by a public agency or regulated public utility. Such submittal by the professional engineer must confirm material compliance with the approved plans or disclose any material deviations therefrom.

If construction is not completed within one year of the date of this letter, the DEQ construction approval expires. An extension may be granted if the design engineer submits a written request that DEQ re-approve the plans and specifications.

Sincerely,

*Matt Plaisted*  
Matt Plaisted, EIT *by M.*

c: Scott Jones, Scott E. Jones & Associates, PO Box 358, Colbert, WA 99005-0358  
Jim Sappington, EGID  
Nate Church, PHD  
File: EGID PWS (#10447\_EGID PWS)



---

**EXHIBIT K**

---

# Scott E. Jones & Associates

PO Box 358, Colbert, WA 99005-0358

Phone (509)710-9177

Fax (509)292-0659

scottejones@hotmail.com

September 19, 2008

Ron Wilson, Manager  
East Greenacres Irrigation District  
2722 N. McGuire Road  
Post Falls, ID 83854

Phone: 208-773-7579

COPY

**RE: McGuire Industrial Park Water Pipeline Extension Project**

Dear Ron:

Attached, please find four copies of the As-Builts for the above named project.

The two developers for this project are:

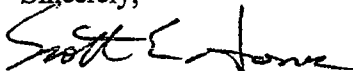
Emmett Burly Phone: 509-981-9573  
Double B Ranch, PO Box 780, Spokane Valley, WA 99037

Gary Bremer Phone: 208-777-8485  
FMI-EPS, LLC, 9456 N. McGuire Road, Post Falls, ID 83854

Please send an approved copy of this project to Gary Gaffney of the DEQ.

Please call or email me immediately if you have any questions or concerns.

Sincerely,



Scott E. Jones, P.E.  
Principal Engineer

Attached: (4) Copies of As-Builts

Cc: Emmett Burley  
Gary Bremer

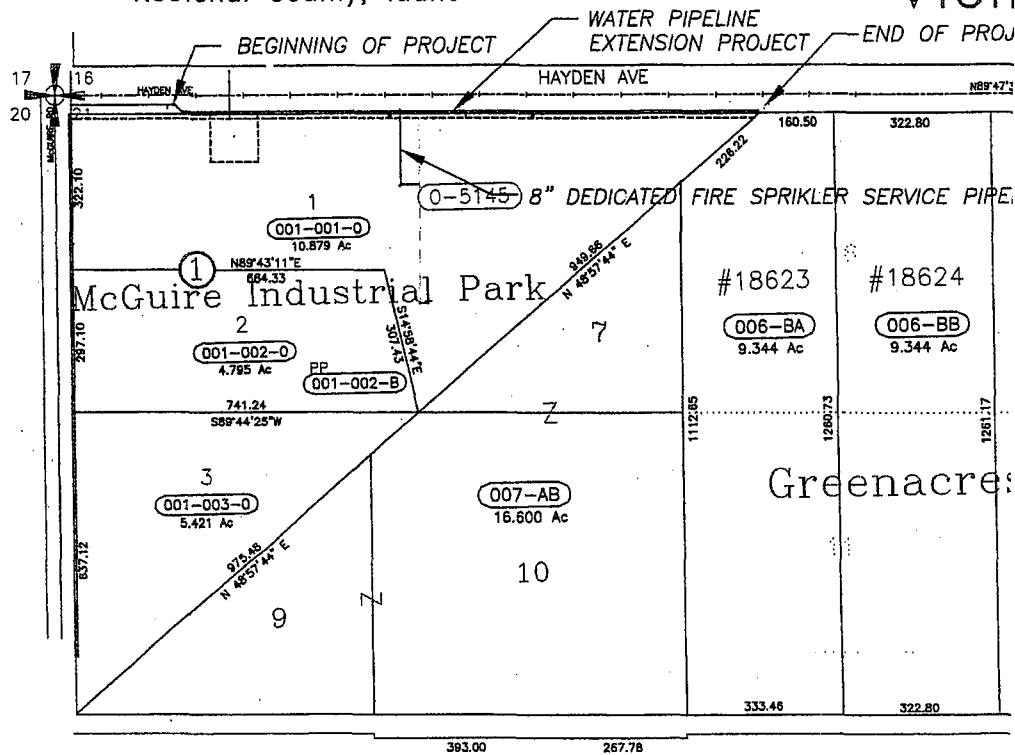
Mc  
Water P  
En

6	5	4	3	2	1
7	8	9	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

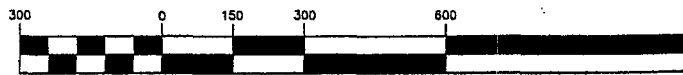


N2 NW4 Sec 21, T51N, R5W B.M.  
Kootenai County, Idaho

Vicinity

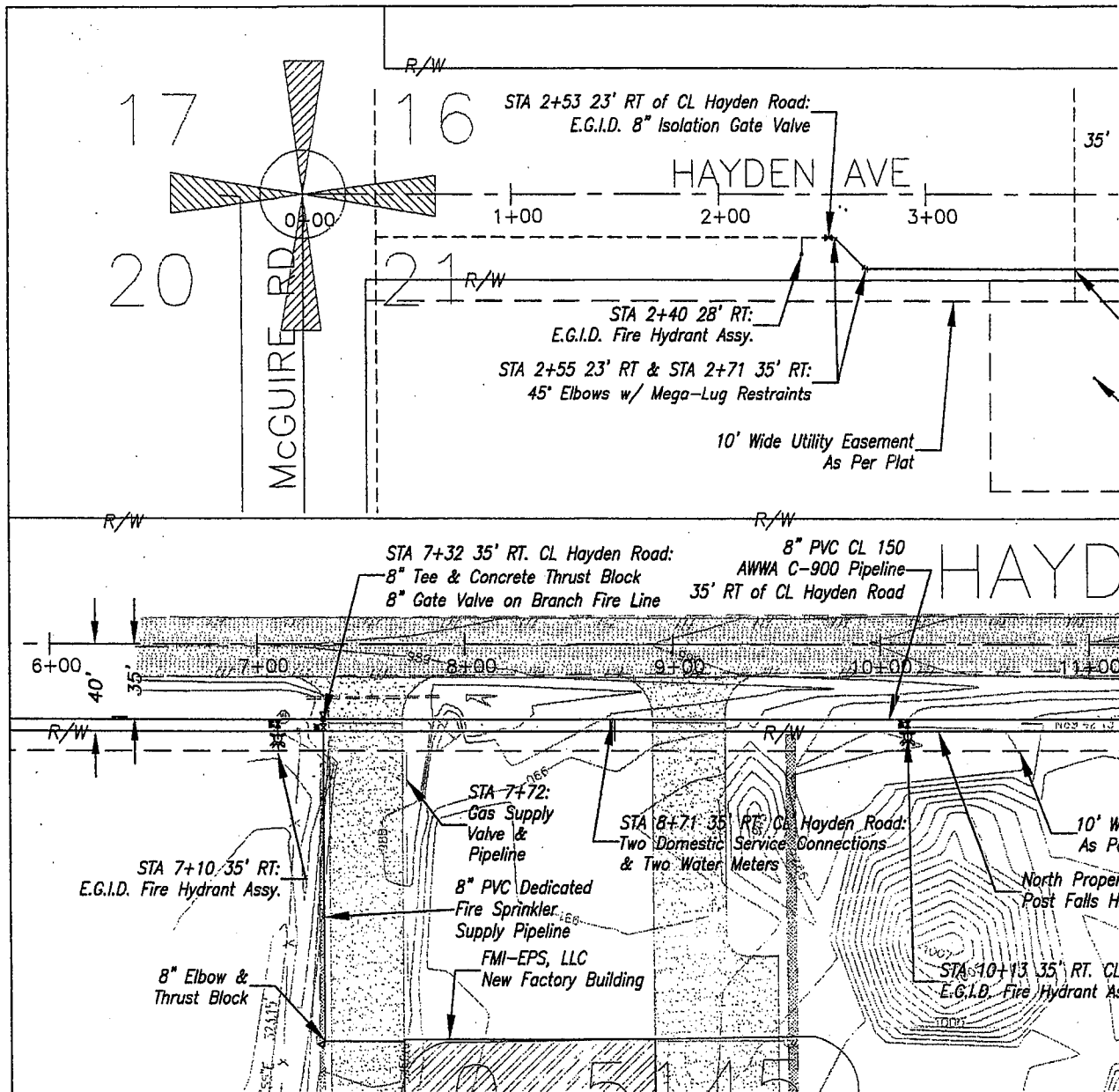


GRAPHIC SCALE



( IN FEET )

2011-1921 1/4 inch = 300 ft.



**NOTE:**  
 Contour elevations shown are assumed by the surveyor.  
 Actual elevations may be obtained by adding 1,139' to these assumed elevations.

**GRAPHIC SCALE**



---

**EXHIBIT L**

---

# FACSIMILE TRANSMITTAL



EAST GREENACRES IRRIGATION DISTRICT

2722 N. MCGUIRE RD., POST FALLS, IDAHO 83854

OFFICE HOURS 8:00-NOON, 12:30-4:30 MON. - FRI.

PHONE 208-773-7579 - FAX 773-3476

COPY

TO:

NAME: SCOTT JONES DATE: 9-19-08

ORGANIZATION: \_\_\_\_\_

FAX # 1-509-292-0659

RE: \_\_\_\_\_

PAGES (INCLUDING THIS COVER) 4

- PLEASE ACKNOWLEDGE THIS FAX
- FOR YOUR INFORMATION
- AS PER YOUR REQUEST
- PLEASE REPLY

COMMENTS: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

TEST START 9:00 A.M.

EAST GREENACRES IRRIGATION DISTRICT  
PRESSURE TEST

PROJECT NAME: MCGUIRE INDUSTRIAL PARK

DATE OF TEST: 9-11-08

PIPE DIAMETER(S): 8"

LENGTH OF PIPE PER DIAMETER:

NUMBER OF JOINTS PER DIAMETER:

WORKING PRESSURE OF LINE: 100 PSI

TIME DURATION OF TEST: 2 HRS

TEST PRESSURE: 150 PSI

FORMULA FOR ALLOWABLE LEAKAGE:

$$\frac{(D) (N) \sqrt{P}}{7400}$$

GALLONS OF WATER USED

TO MAINTAIN TEST PRSSURE: 0

ALLOWABLE LEAKAGE PER HOUR:

TEST LEAKAGE PER HOUR: 0

TEST PASSED FAILED:

CALCULATIONS: PASSED

COPY

Water System Name East Greenacres Irr. Distr.		PWS ID No. 1280064 RE
Collector Jim Sappington	Date Collected 08/25/2008	County Kootenai
Report Results To: Jim Sappington East Greenacres Irr. Distr. N. 2650 McGuire Road Post Falls, ID 83854		
Phone #: (208) 773-7579		Fax #: (208) 773-3476
E-mail:		

COLIFORM BACTERIA ANALYSIS REPORT  
CONTAMINANT ID# 3100

Type of System: Public  
Type of Sample: Non-Compliance Sample  
ATL Order No.: 2008080461

Water system info must be fully filled out or samples will not be run.  
Private samples need not have PWS# or Chlorine residual.  
Your sample will be analyzed for TOTAL COLIFORMS unless you specify analysis under Remarks.

Laboratory Name  
**ATL**  
Accurate Testing Labs, LLC  
7950 Meadowlark Way  
Coeur d'Alene, ID 83815  
Phone (208) 762 8378  
Fax (208) 762 9082  
Web site: www.accuratetesting.com  
E-mail: info@accuratetesting.com  
Lab EPA ID No.: ID00912

COPY

For PWS only, if this is a repeat sample, mark the date of the ORIGINAL POSITIVE SAMPLE.

Sample Number	Sample Type	Sample Location	For multiple Systems: PWS ID No. and Water System Name	Time Collected	Chlorine Residual PPM	Sample Original Date	TOTAL COLIFORMS Method: 9223B-PA	ESCHERICHIA COLI. Method: 9223B-PA
91382	C-Constructi	Hayden - East		09:50:			Absent	Absent
91383	C-Constructi	Hayden - South		10:00:			Absent	Absent
91384	C-Constructi	Hayden - West		10:10:			PRESENT	Absent

Sample Transportation by (Name): Jim Sappington	Date/Time: 08/25/2008 13:28:	Analyst: WM	Date Analyzed: 08/26/2008
Sample Received by (Name): JM	Date/Time: 08/25/2008 13:28:	Supervisor: Rhena Cooper	
Remarks:		Date Reviewed:	

8-26-08 *[Signature]*

FROM ACCURATE TESTING LAB 208 762 9082

8-26-2008 4:48PM





COPY

COLIFORM BACTERIA ANALYSIS REPORT  
CONTAMINANT ID# 3100

Laboratory Name  
**ATL**  
Accurate Testing Labs, LLC  
7950 Meadowlark Way  
Coeur d'Alene, ID 83815  
Phone (208) 762 8378  
Fax (208) 762 9082  
Web site: www.accuratetesting.com  
E-mail: info@accuratetesting.com  
Lab EPA ID No.: ID00912

Water System Name East Greenacres Irr. Distr.		PWS ID No. 1280064 RE
Collector Jim Sappington	Date Collected 08/27/2008	County Kootenai
Report Results To: Jim Sappington East Greenacres Irr. Distr. N. 2650 McGuire Road Post Falls, ID. 83854		
Phone #: (208) 773-7579	Fax #: (208) 773-3478	
E-mail:		

Type of System: Public  
Type of Sample: Non-Compliance Sample  
ATL Order No.: 2008080530

Water system info must be fully filled out or samples will not be run.  
Private samples need not have PWS# or Chlorine residual.  
Your sample will be analyzed for TOTAL COLIFORMS unless you specify analysis under Remarks.

For PWS only, if this is a repeat sample, mark the date of the ORIGINAL POSITIVE SAMPLE.

Sample Number	Sample Type	Sample Location	For multiple Systems: PWS ID No. and Water System Name	Time Collected	Chlorine Residual PPM	Sample Original Date	TOTAL COLIFORMS Method: 9223B-PA	ESCHERICHIA COLI. Method: 9223B-PA
91519	C-Constructi	Hayden - East		12:50:	0		Absent	Absent
91520	C-Constructi	Hayden - South		13:15:	0		PRESENT	Absent
91521	C-Constructi	Hayden - West		13:00:	0		Absent	Absent

Sample Transportation by (Name): Jim Sappington	Date/Time: 08/27/2008 14:00:	Analyst: AR	Date Analyzed: 08/28/2008
Sample Received by (Name): JM	Date/Time: 08/27/2008 14:00:	Supervisor: Rhena Cooper	
Remarks:		Date Reviewed: 8.28.08 <i>[Signature]</i>	

P. 1  
FROM ACCURATE TESTING LAB 208 762 9082  
9-28-2008 7:18PM



Water System Name East Greenacres Irr. Distr.		PWS ID No. 1280064 RE
Collector Jim Sappington	Date Collected 08/29/2008	County Kootenai
Report Results To: Jim Sappington East Greenacres Irr. Distr. N. 2650 McGuire Road Post Falls, ID 83854		
Phone #: (208) 773-7579	Fax #: (208) 773-3476	
E-mail:		

COLIFORM BACTERIA ANALYSIS REPORT  
CONTAMINANT ID# 3100

Type of System: Public  
Type of Sample: Non-Compliance Sample  
ATL Order No.: 2008080568

Water system info must be fully filled out or samples will not be run.  
Private samples need not have PWS# or Chlorine residual.  
Your sample will be analyzed for TOTAL COLIFORMS unless you specify analysis under Remarks.

Laboratory Name  
**ATL** **COPY**  
Accurate Testing Labs, LLC  
7950 Meadowlark Way  
Coeur d'Alene, ID 83815  
Phone (208) 762 8378  
Fax (208) 762 9082  
Web site: www.accuratetesting.com  
E-mail: info@accuratetesting.com  
Lab EPA ID No.: ID00912

For PWS only, if this is a repeat sample, mark the date of the ORIGINAL POSITIVE SAMPLE.

Sample Number	Sample Type	Sample Location	For multiple Systems: PWS ID No. and Water System Name	Time Collected	Chlorine Residual PPM	Sample Original Date	TOTAL COLIFORMS Method: 9223B-PA	ESCHERICHIA COLI. Method: 9223B-PA
91608	C-Constructi	Hayden - East		10:50:	0.00		Absent	Absent
91609	C-Constructi	Hayden - West		10:45:	0.00		Absent	Absent

Sample Transportation by (Name):	Jim Sappington	Date/Time: 08/29/2008 11:12:	Analyst: WM	Date Analyzed: 08/30/2008
Sample Received by (Name):	JM	Date/Time: 08/29/2008 11:12:	Supervisor: Rhena Cooper	
Remarks:	Date Reviewed:			9-2-08 <i>[Signature]</i>



COPY

Water System Name East Greenacres Irr. Distr.		PWS ID No. 1280064 RE
Collector Jim Sappington	Date Collected 09/25/2008	County Kootenai
Report Results To: Jim Sappington East Greenacres Irr. Distr. N. 2650 McGuire Road Post Falls, ID 83854		
Phone #: (208) 773-7579		Fax #: (208) 773-3476
E-mail:		

COLIFORM BACTERIA ANALYSIS REPORT  
CONTAMINANT ID# 3100

Type of System: Public  
Type of Sample: Non-Compliance Sample  
ATL Order No.: 2008090482

Laboratory Name  
**ATL**  
Accurate Testing Labs, LLC  
7950 Meadowlark Way  
Coeur d'Alene, ID 83815  
Phone (208) 762 8378  
Fax (208) 762 9082  
Web site: www.accuratetesting.com  
E-mail: info@accuratetesting.com  
Lab EPA ID No.: ID00912

Water system info must be fully filled out or samples will not be run.  
Private samples need not have PWS# or Chlorine residual.  
Your sample will be analyzed for TOTAL COLIFORMS unless you specify analysis under Remarks.

For PWS only, if this is a repeat sample, mark the date of the ORIGINAL POSITIVE SAMPLE.

Sample Number	Sample Type	Sample Location	For multiple Systems: PWS ID No. and Water System Name	Time Collected	Chlorine Residual PPM	Sample Original Date	TOTAL COLIFORMS Method: 9223B-PA	ESCHERICHIA COLL Method: 9223B-PA
92644	C-Construct	F.M.I Fire Line		10:00:			Absent	Absent
92645	C-Construct	IMMAC. East		14:35:			Absent	Absent
92646	C-Construct	IMMAC. North		14:45:			Absent	Absent
92647	C-Construct	IMMAC. South West		11:10:			PRESENT	PRESEN
92648	C-Construct	IMMAC. North West		10:55:			Absent	Absent

Sample Transportation by (Name):	Jim Sappington	Date/Time: 09/26/2008 13:05:	Analyst: WM	Date Analyzed: 09/27/2008
Sample Received by (Name):	WM	Date/Time: 09/26/2008 13:05:	Supervisor: Rhena Cooper	
Remarks:				Date Reviewed: 9-27-08 <i>W</i>

P.1

FF ACCURATE TESTING LAB 208 762 8378

9-29-208 9:06AM





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**EXHIBIT M**

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# EAST GREENACRES IRRIGATION DISTRICT

2722 N. McGuire RD. POST FALLS, IDAHO 83854 (208) 773-7579 FAX (208) 773-3476

September 26, 2008

Matthew Plaisted, EIT  
Dept. of Environmental Quality  
2110 Ironwood Parkway  
Coeur d' Alene, ID 83814-2648

COPY

RE: 2008 McGuire Industrial Park Water Pipeline Extension Project

Dear Mr. Plaisted

We have received record drawings for the McGuire Road Project. The plans have been certified by Scott E. Jones, P.E. and dated September 19, 2008. The plans reflect newly constructed water mainline, fire hydrant and individual services and connections to our existing distribution system. The plans appear to accurately reflect the actual construction we observed in our inspections.

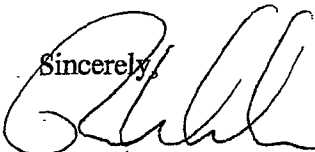
Please accept this letter as **approval** for the 2008 McGuire industrial Park Pipeline Extension Project in accordance with the Idaho Rules for Public Drinking Water systems and Section 39-118.

*Please note this project is an extension or continuation of 2007 McGuire Industrial Park Water Pipeline Extension Project although two separate projects, the plans have been submitted as (1) one.*

Please find enclosed a copy of the Engineer's Certified drawings for your records

Should you have any further comments or questions please do not hesitate to contact our office.

Sincerely,



Ron Wilson  
District Manager

Cc : Scott E. Jones - Scott E. Jones & Associates  
Nate Church - Panhandle Health Department

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**EXHIBIT N**

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STATE OF IDAHO  
DEPARTMENT OF  
ENVIRONMENTAL QUALITY

2110 Ironwood Parkway • Coeur d'Alene, Idaho 83814 • (208) 769-1422

C.L. "Butch" Otter, Governor  
Toni Hardesty, Director

December 11, 2008

Ron Wilson, District Manager  
East Greenacres Irrigation District  
2722 N McGuire Rd  
Post Falls, ID 83854  
[ron.egid@idemail.com](mailto:ron.egid@idemail.com)

COPY

**RE: Acceptance of the 2007 and 2008 McGuire Industrial Park Water Pipeline Projects**

Dear Mr. Wilson:

This letter is intended to acknowledge that in the two letters dated September 26, 2008 East Greenacres Irrigation District (EGID) approved and accepted responsibility for the new water mains associated with the two projects referenced above. This notice completes the requirements in the Idaho Rules for Public Drinking Water Systems for these water main extensions.

In our September 26, 2008 letter to Gary Bremer with FMI-EPS, LLC we had accepted the record drawings as prepared by Scott Jones, P.E for the same two projects.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary J. Gaffney".

Gary J. Gaffney, P.E.  
[gary.gaffney@deq.idaho.gov](mailto:gary.gaffney@deq.idaho.gov)

c: Gary Bremer, [gary@fmi-eps.com](mailto:gary@fmi-eps.com)  
Scott Jones, Scott E. Jones & Associates [scottjones@hotmail.com](mailto:scottjones@hotmail.com)  
Jim Sappington, [jim.egid@idemail.com](mailto:jim.egid@idemail.com)  
(#10670 with plans in EGID PWS file)

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**EXHIBIT O**

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July 22, 2009

East Greenacres Irrigation Dist.  
2722 N. McGuire Rd.  
Post Falls, ID 83854

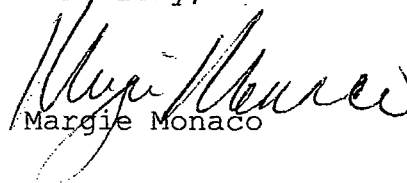
**RE: BREMER, L.L.C.**

Gentlemen,

Please find the enclosed copy concerning the above referenced subdivision short plat for your review. Panhandle Health District and the Dept. of Environmental Quality will request that we provide a letter from you stating that water will be available to all lots and that no water main extensions will be required to service this subdivision. Please review as soon as possible and send your response letter to Panhandle Health District and DEQ with a copy to this office.

Thank you for your assistance and response concerning this subdivision. Should you have any questions, please do not hesitate to contact our office.

Sincerely,

  
Margie Monaco

Enc.  
2065-091.ltr

COPY

MINOR/ PRELIMINARY SUBDIVISION & PUD APPLICATION
Kootenai County Building and Planning Department

Subdivision / PUD Name BREMER, L.L.C.

Application for: Minor Subdivision X Major Subdivision (prelim) PUD (prelim)

No. of acres 10.675 No. of lots 2 Parcel # O-K144-001-002-0

Sec. 21 Twp. 51N Rng. 5W Zoning District

Comp Plan designation ACI? Flood zone? Yes No

Directions to site US 95 NORTH TO HAYDEN AVE. WEST ON HAYDEN AVE TO MCGUIRE ROAD AND THE SITE ON SOUTH SIDE OF HAYDEN AVE AND EAST OF MCGUIRE ROAD

KGG PARTNERSHIP (GARY BREMER) 777-8485

Applicant Name Phone E-mail
9456 N. MCGUIRE ROAD POST FALLS ID 83854
Address City State Zip

Property Owner(s) Names Phone E-mail

Address City State Zip
EMPIRE SURVEYING & CONSULTING, INC. 772-8581 eseinc@verizon.net

Engineer/ surveyor Phone E-mail
PO BOX 12 HAYDEN ID 83835
Address City State Zip

Contact Person (select one): o Owner o Applicant x Engineer / Surveyor

APPLICATION REQUIREMENTS

Note: Please refer to the applicable ordinance(s) for a complete list of application requirements. One complete application packet must be provided for the County and for each reviewing agency/ organization. Required enclosures for agency packets shown with a ☆.

Application Requirements:

Table with 2 columns of requirements and checkboxes for 'Req'd' and 'Rcv'd'. Items include APPLICATION FORM, APPLICATION FEES, TITLE REPORT, LARGE PLAT/ PLAN, SMALL PLAT/ PLAN, SURROUNDING AREA MAP, PHOTOS, NARRATIVE, GROUNDWATER REPORT, CONCEPTUAL STORM. PLAN, CONCEPTUAL ENG. PLAN, TRAFFIC IMPACT STUDY, GEOTECHNICAL ANALYSIS, WETLAND DELINEATION, EXISTING RESOURCES MAP, NOTORIZED AUTHORIZATION, OTHER.

Agency Letters (STAFF):

Table with 2 columns of agency letters and checkboxes for 'Req'd' and 'Rcv'd'. Agencies include FIRE DISTRICT KOOTENAI COUNTY, HIGHWAY DISTRICT POST FALLS, IDAHO TRANS. DEPT., PANHANDLE HEALTH DIST., DEQ, WATER DISTRICT EAST GREENACRES, SEWER DISTRICT INDIVIDUAL, SCHOOL DISTRICT, CITY, KOOT. COUNTY WEEDS. DEPT., ID. DEPT OF FISH AND GAME, ID. DEPT. OF WATER RES., ARMY CORPS OF ENGINEERS, COEUR D'ALENE TRIBE, OTHER.

I hereby authorize the Kootenai County Building and Planning Department to enter onto and inspect the property that is the subject of this application.

Property owners signatures Date Date

03-14-06

---

**EXHIBIT P**

---



**EAST GREENACRES IRRIGATION DISTRICT**

2722 North McGuire Road Post Falls, Idaho 83854 • (208) 773-7579

August 7, 2009

COPY

Margie Monaco  
Empire Surveying & Consulting, INC.  
P.O. Box 12  
Hayden, ID 83835-0012

RE: McGuire Industrial Park

Dear Ms. Monaco

I have received your letter dated July 22, 2009 concerning the above referenced subdivision, requesting a will serve for this subdivision. The approval for the project(s) has been given by EGID and DEQ. Please review the attached approval letters that are on file with the prospective agencies. Additionally I have attached the "Will Serve" provided by EGID dated May 13, 2008.

Therefore, the following McGuire Industrial lots currently being served, Lot 1, Lots A / B.. Lot 3 is not currently receiving water, however it is eligible to receive water without a mainline extension.

Should you have any further comments or questions please do not hesitate to contact our office.

Sincerely

Ron Wilson  
District Manager  
[ron@eastgreenacres.org](mailto:ron@eastgreenacres.org)

c. Gary Gaffney, P.E. DEQ  
Nate Church PHD

---

Fax: (208) 773-3476 • [Eastgreenacres.org](http://Eastgreenacres.org)



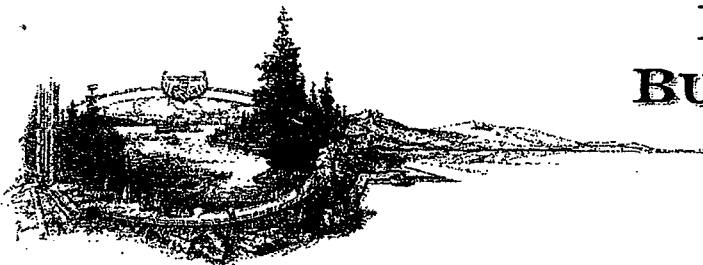
2

2

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**EXHIBIT Q**

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# KOOTENAI COUNTY BUILDING & PLANNING DEPARTMENT

September 1, 2009

TO: Avista  
Bonneville Power Administration  
Post Falls Highway District  
Department of Environmental Quality  
Kootenai County Fire & Rescue  
Panhandle Health District  
East Greenacres Irrigation District ✓  
Kootenai County Noxious Weed Department  
Kootenai County Building Department  
Cities of Post Falls, Hayden & Rathdrum

COPY

FROM: Mel Palmer, Planner I  
mpalmer@kcgov.us *mp*

RE: Case No. MIN09-0018, Bremer, LLC  
Request for comments

The Applicant is requesting to subdivide Lot 2, Block 1 of McGuire Industrial Acres into two (2) lots. The parcel (Lot 2 Block 1) consists of approximately 10.6745 acres located in the Industrial zone. The parcel was originally a part of the McGuire Industrial Park Plat, recorded on August 16, 2004 and most recently a part of the McGuire Industrial Acres Replat, recorded on April 30, 2008. See Exhibits S-11 and S-13.

Lot A is proposed to be approximately 4.795 acres and Lot B is proposed to be approximately 5.879 acres. Lots A & B are developed. Access to Lot A will be via an existing private driveway off McGuire Rd. and access to Lot B will be via an existing private driveway off Hayden Ave. East Greenacres Irrigation District is currently serving the existing buildings on Lots A & B. Septic service will be provided via existing private septic systems.

Parcel Number: 0-K144-001-002-0

Serial Number: 312529

Applicant/Owner: KGG Partnership (Gary Bremer)  
9456 N. McGuire Road, Post Falls, ID 83854

Applicants  
Representative: Empire Surveying & Consulting, Inc.  
PO Box 12, Hayden, ID 83835

PHONE (208) 446-1070 • FAX (208) 446-1071

451 GOVERNMENT WAY • P.O. BOX 9000 • COEUR D'ALENE, ID 83816-9000

COPY

Property Description: *Legal Description:* McGuire Industrial Acres, Lot 2 Block 1 in Section 21, Township 51 North, Range 05 West.

Property Location: The subject parcel is located on the southeast corner of McGuire and Hayden Ave. on the northwest side of Kootenai County.

Attached is the information submitted by the Applicant relative to this request. Should you require additional information, please contact this office. (Exhibits: A-1, Application; A-3, Narrative; A-4, 8 x 11 Preliminary Plat Map; A-11, Photos; (A-5, Large Plat Map – Post Falls Highway District only); (PA-1 through PA-5 – East Greenacres Irrigation District, Idaho Department of Environmental Quality and Panhandle Health District only); S-14, ProVal Information; S-15, Assessor's Maps)

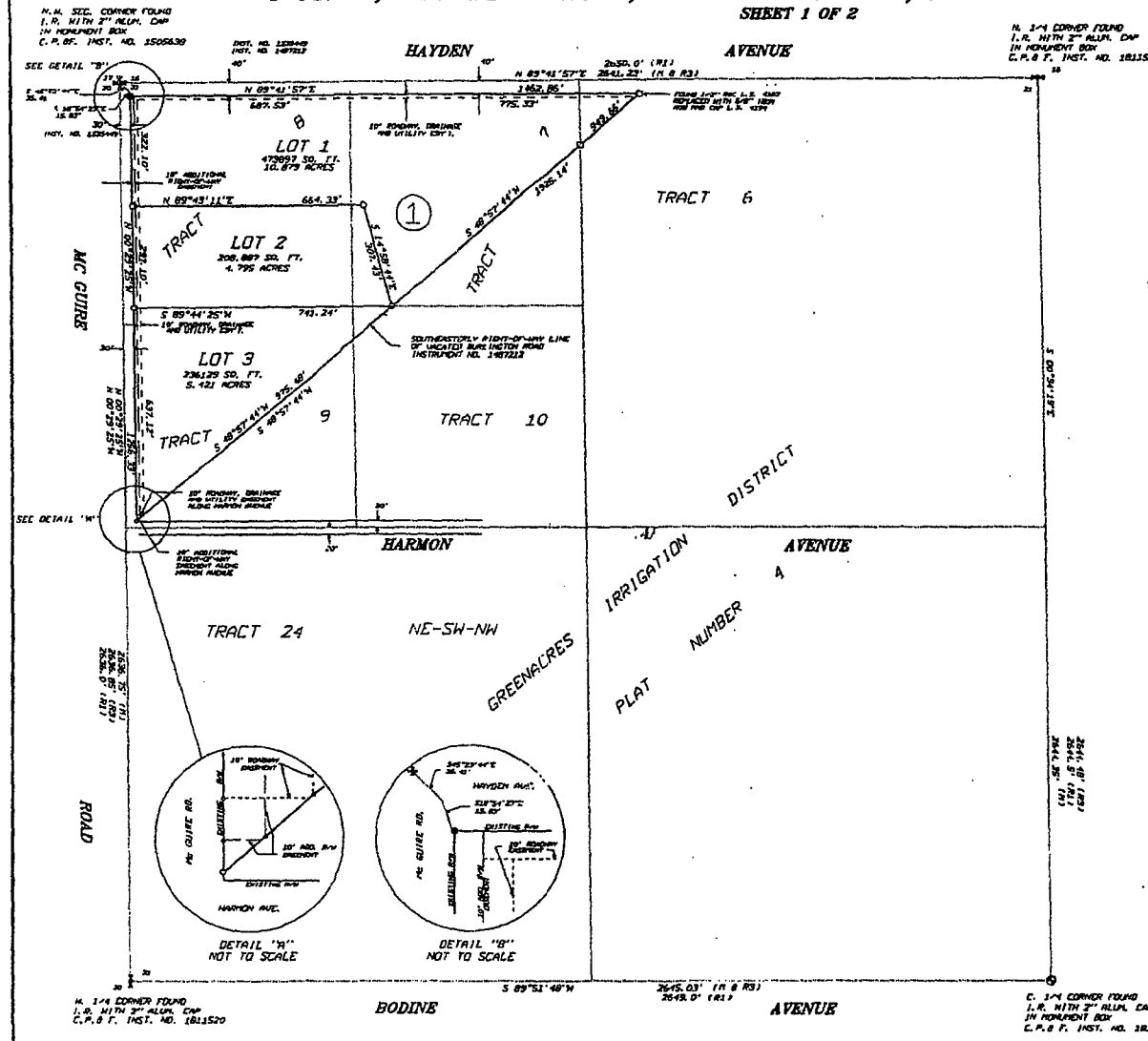
Please review this request and provide comments regarding this application within 30 days. If you have no comments, please advise us accordingly. Thank you for your assistance and cooperation.

cc: Empire Surveying & Consulting, Inc.

COPY

MC GUIRE INDUSTRIAL PARK Book J Page 66  
SUBDIVISION OF A PORTION OF TRACTS 6,7,8,9 AND 10, GREENACRES PLAT NO. 4 RECORDED IN  
BOOK B AT PAGE 55, LOCATED IN THE N.W. 1/4 OF SECTION 21, TOWNSHIP 51  
NORTH, RANGE 5 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO

SHEET 1 OF 2



LEGEND

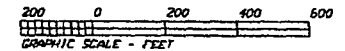
- DENOTES SET 5/8" IRON ROD WITH P.L.S. 4194 CAP
- DENOTES SET 5/8" IRON ROD WITH P.L.S. 4194 CAP
- DENOTES FOUND 3/4" IRON ROD WITH P.L.S. 4194 CAP
- DENOTES SET 2" X 36" IRON PIPE MARKED INITIAL PDH MC GUIRE INDUSTRIAL PARK
- ▲ DENOTES CALCULATED POSITION NOTHING SET
- (M) DENOTES MEASUREMENT THIS SURVEY
- (R) DENOTES MEASUREMENT OF RECORD
- OTHERS AS NOTED

REFERENCE

- 11 GREENACRES IRRIGATION DISTRICT PLAT NO. 4 BOOK B AT PAGE 55.
- 21 E.S.F. RECORD OF SURVEY RECORDED IN BOOK 11 AT PAGE 238A.
- 31 SURVEY RECORD OF SURVEY RECORDED IN BOOK 18 AT PAGE 267.
- 41 E.S.F. RECORD OF SURVEY RECORDED IN BOOK 21 AT PAGE 175.
- 51 KOOTENAI CO. SURVEYORS SURVEY RECORDED IN BOOK 20 AT PAGE 247.

BASIS OF BEARING

NORTH 89°41'57" EAST BETWEEN THE NORTHWEST CORNER AND THE NORTH 1/4 CORNER OF SECTION 21 PER R-3.



NOTES

- 11 THE ATTORNEY HAS NOT MADE TO SHOW ALL PHYSICAL FEATURES OF THE PROPERTY. PRESUMPTIVE DISSENTS OR DISSENTS OF RECORD OR IN VIEW.



**EMPIRE SURVEYING CONSULTANTS** P.O. BOX 12 HAYDEN LAKE, ID. 83835  
(208) 772-8581  
(208) 772-8582 FAX

PROJECT NO.	858-0261	DATE	10-20-2003
CLIENT	EMPIRE	CREATED BY	J.P.S.
DATE	6-12-2003	SCALE	1" = 200'

DOUBLE R BENCH CO. DISTRICT BUREAU

5.11



COPY

MC GUIRE INDUSTRIAL PARK Book J Page 60ft  
SUBDIVISION OF A PORTION OF TRACTS 6,7,8,9 AND 10, GREENACRES PLAT NO. 4 RECORDED IN  
BOOK B AT PAGE 55, LOCATED IN THE N.W. 1/4 OF SECTION 21, TOWNSHIP 51  
NORTH, RANGE 5 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO

OWNERS CERTIFICATE

SHEET 2 OF 2

WHICH ALL NOW BY THESE PRESENTS THAT DOUBLE "B" RANCH, A PARTNERSHIP AND KGG PARTNERSHIP, A PARTNERSHIP ARE THE RECORD OWNERS OF THE FOLLOWING DESCRIBED REAL PROPERTY, TO-WIT:  
A TRACT OF LAND BEING A PORTION OF TRACTS 6, 7, 8, 9 AND 10, GREENACRES PLAT NO. 4 AS RECORDED IN BOOK "B" OF PLATS AT PAGE 55, LOCATED IN THE NORTHWEST 1/4 OF SECTION 21, TOWNSHIP 51 NORTH, RANGE 5 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO AND BEING DESCRIBED BY METES AND BOUNDS AS FOLLOWS:  
COMMENCING AT A POINT 1000 FEET AND MEASURED 600 FEET ALONG THE NORTHWEST CORNER OF SECTION 21;  
THENCE, SOUTH 45° 25' 44" WEST, A DISTANCE OF 35.41 FEET TO THE NORTHWEST CORNER OF TRACT 6, GREENACRES PLAT NO. 4;  
THENCE, SOUTH 18° 54' 25" WEST, A DISTANCE OF 15.00 FEET TO THE INTERSECTION OF THE SOUTH RIGHT-OF-WAY LINE OF HAYDEN AVENUE WITH THE EAST RIGHT-OF-WAY LINE OF KOSCIUSKO ROAD AND THE POINT OF BEGINNING;  
THENCE, ALONG THE SOUTH RIGHT-OF-WAY LINE OF HAYDEN AVENUE, NORTH 89° 41' 57" EAST, A DISTANCE OF 480.86 FEET;  
THENCE, SOUTH 48° 57' 44" WEST, A DISTANCE OF 1325.14 FEET TO THE INTERSECTION WITH THE EAST RIGHT-OF-WAY LINE OF KOSCIUSKO ROAD;  
THENCE, ALONG THE EAST RIGHT-OF-WAY OF KOSCIUSKO ROAD, NORTH 00° 29' 35" WEST, A DISTANCE OF 125.35 FEET TO THE POINT OF BEGINNING AND CONTAINING 31,000 ACRES OF LAND, MORE OR LESS.  
SAID OWNERS HAVE CHOSSEN THE SAME TO BE PLATTED INTO LOTS AND BLOCK TO BE KNOWN AS "KOSCIUSKO INDUSTRIAL PARK".  
SUBJECT TO EXISTING EASEMENTS OF RECORD OR IN USE.  
DEDICATING EASEMENTS SHOWN ON THE FACE OF THE PLAT.  
DOMESTIC WATER SHALL BE SUPPLIED TO THE LOTS PLATTED HEREON BY THE EAST GREENACRES IRRIGATION DISTRICT.  
SANITARY SEWER FOR THIS PLAT IS TO BE PROVIDED BY INDIVIDUAL SEPTIC AND DRAINFIELD SYSTEM.  
IN WITNESS WHEREOF WE DO HEREBY AFFIX OUR SIGNATURES AND OFFICIAL SEALS THIS 11th DAY OF August 2008

DOUBLE "B" RANCH KGG PARTNERSHIP  
Errett Burley, Partner  
Helen H. Burley, Partner  
Richard E. Britter, Partner  
Lynn B. Britter, Partner

STATE OF Idaho  
COUNTY OF Kootenai  
ON THIS 11th DAY OF August 2008, BEFORE ME, JULIA WHITE, I HAVE UNOBSERVED NOTARY PUBLIC FOR THE STATE OF IDAHO, PERSONALLY APPROVED ERRETT BURLEY AND HELEN H. BURLEY, HUSBAND AND WIFE, JOHNSON IDENTIFIED TO ME TO BE PARTNERS IN THE PARTNERSHIP OF DOUBLE "B" RANCH, AND THE PARTNERS AND SUBSCRIBED SAID PARTNERSHIP NAME TO THE FOREGOING OWNERS CERTIFICATE, AND ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME IN SAID PARTNERSHIP NAME.  
JULIA WHITE  
NOTARY PUBLIC  
STATE OF IDAHO

STATE OF Washington  
COUNTY OF Kootenai  
ON THIS 15th DAY OF July 2008, BEFORE ME, JULIA WHITE, I HAVE UNOBSERVED NOTARY PUBLIC FOR THE STATE OF IDAHO, PERSONALLY APPROVED ERRETT BURLEY AND LYNN B. BRITTER, HUSBAND AND WIFE, JOHNSON IDENTIFIED TO ME TO BE PARTNERS IN THE PARTNERSHIP OF DOUBLE "B" RANCH, AND THE PARTNERS AND SUBSCRIBED SAID PARTNERSHIP NAME TO THE FOREGOING OWNERS CERTIFICATE, AND ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME IN SAID PARTNERSHIP NAME.  
JULIA WHITE  
NOTARY PUBLIC  
STATE OF IDAHO

STATE OF WA  
COUNTY OF SE  
ON THIS 14th DAY OF July 2008, BEFORE ME, JULIA WHITE, I HAVE UNOBSERVED NOTARY PUBLIC FOR THE STATE OF IDAHO, PERSONALLY APPROVED KELLY THOMPSON, JOHNSON IDENTIFIED TO ME TO BE A PARTNER IN THE PARTNERSHIP OF KGG PARTNERSHIP, AND THE PARTNER AND SUBSCRIBED SAID PARTNERSHIP NAME TO THE FOREGOING OWNERS CERTIFICATE, AND ACKNOWLEDGED TO ME THAT SHE EXECUTED THE SAME IN SAID PARTNERSHIP NAME.  
JULIA WHITE  
NOTARY PUBLIC  
STATE OF IDAHO

COUNTY SURVEYOR'S APPROVAL

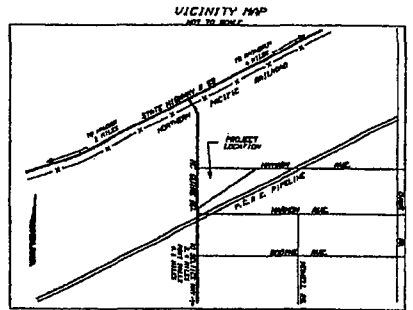
I HEREBY CERTIFY THIS 11th DAY OF August 2008 THAT I HAVE EXAMINED THIS SUBDIVISION PLAT AND APPROVED THE SAME.  
[Signature]  
COUNTY SURVEYOR

KOOTENAI COUNTY COMMISSIONERS APPROVAL

THIS PLAT HAS BEEN APPROVED AND RECOMMENDED BY THE BOARD OF COUNTY COMMISSIONERS OF KOOTENAI COUNTY, IDAHO THIS 11th DAY OF August 2008.  
[Signature]  
CHAIRMAN BOARD OF COUNTY COMMISSIONERS

HEALTH DISTRICT APPROVAL

A SANITARY RESTRICTION ACCORDING TO IDAHO CODE 30-1308 TO 30-1308 IS IMPOSED ON THIS PLAT, AND BUILDING, INSTALLATION OF SANITARY SHALL BE ERRECTED UNTIL SANITARY RESTRICTION REQUIREMENTS ARE SATISFIED AND LIFTED.  
THIS PLAT APPROVED THIS 9th DAY OF July 2008.  
[Signature]  
PERMITS HEALTH DISTRICT 1  
SANITARY RESTRICTION IS HEREBY SATISFIED AND LIFTED THIS 11th DAY OF July 2008.  
[Signature]  
PERMITS HEALTH DISTRICT 1



State of Idaho County of Kootenai  
COUNTY RECORDER'S CERTIFICATE

FILED THIS 11th DAY OF August 2008, 10:30 O'CLOCK P.M. IN BOOK J, OF PLATS ON PAGE 60, 60A, AT THE REQUEST OF Double "B" Ranch KGG Partnership  
Trest# 1895067  
[Signature]  
COUNTY CLERK RECORDER  
Doreen J. English

COUNTY TREASURER'S AFFIDAVIT

I HEREBY CERTIFY THIS 11th DAY OF August 2008 THAT THE RECORDED TAXES ON THE HEREIN SUBDIVIDED LAND HAVE BEEN PAID THROUGH November 30, 2008.  
[Signature]  
COUNTY TREASURER  
[Signature]  
COUNTY CLERK

POST FALLS HIGHWAY DISTRICT APPROVAL

THIS PLAT HAS BEEN EXAMINED AND IS HEREBY APPROVED BY THE POST FALLS HIGHWAY DISTRICT THIS 11th DAY OF July 2008.  
[Signature]

SURVEYOR'S CERTIFICATE

I, JON P. POWELL, PROFESSIONAL LAND SURVEYOR NO. 4194, DO HEREBY CERTIFY THAT THIS PLAT OF "MC GUIRE INDUSTRIAL PARK" AND THEREIN SHOWN ARE ACCURATE SURVEY MADE ON THE GROUND UNDER MY DIRECT SUPERVISION AND ACCURATELY REPRESENTS THE POINTS PLATTED THEREON AND IS IN CONFORMITY WITH THE IDAHO CODE RELATING TO PLATS AND SURVEYS.  
I FURTHER CERTIFY THAT THE OWNERS CERTIFICATE SHOWN HEREON CONTAINS A TRUE AND ACCURATE DESCRIPTION OF THE LAND HEREIN SUBDIVIDED. ALL SURVEYS WERE PERFORMED UNDER THE DIRECTION OF THE OWNERS.  
[Signature]  
JON P. POWELL, P.L.S. 4194



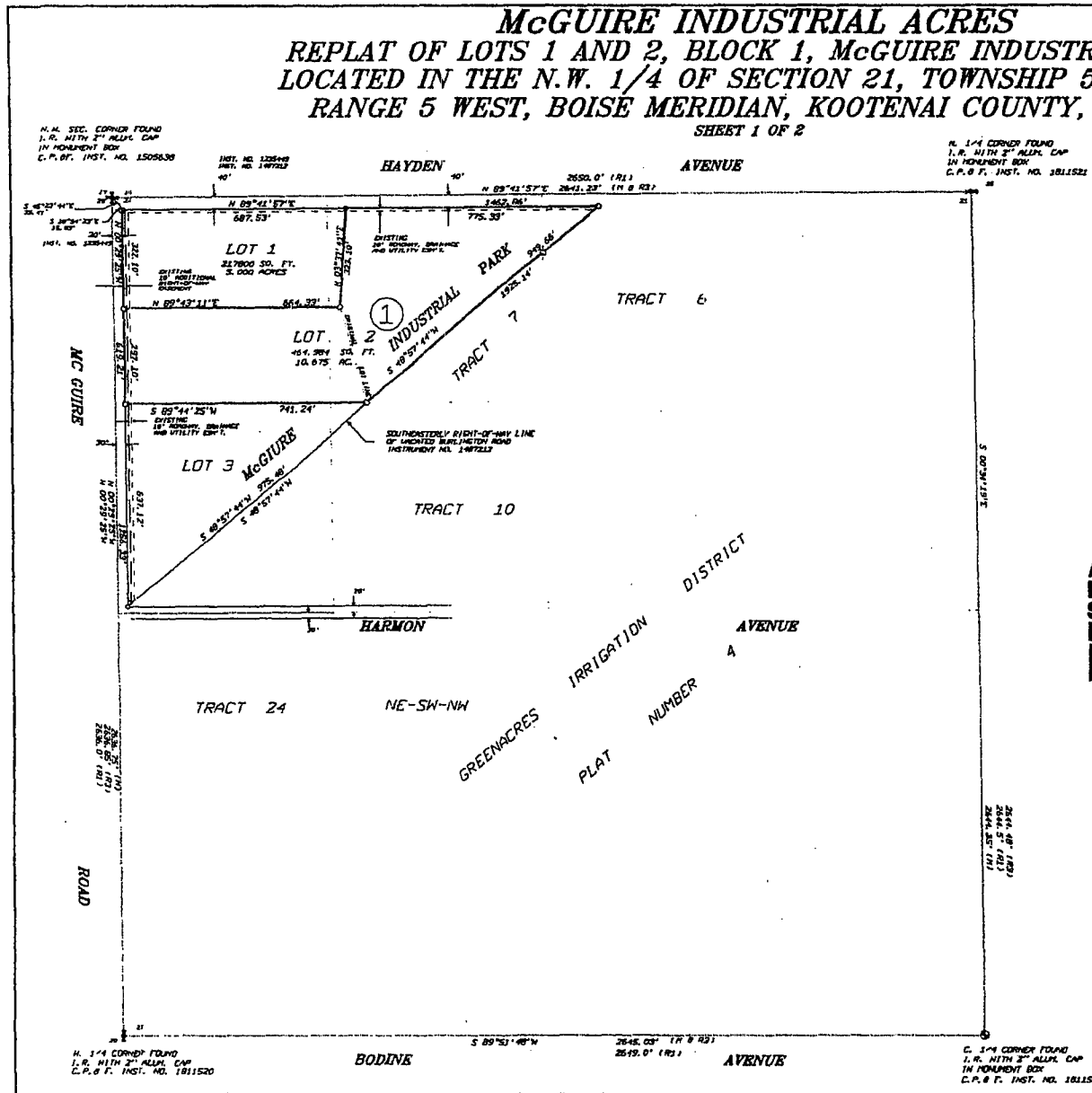
EMPIRE SURVEYING CONSULTANTS  
P.O. BOX 12  
HAYDEN LAKE, ID. 83835  
(208) 772-8581  
(208) 772-8582 FAX  
SUBD. OF A PORTION OF TRACTS 6, 7, 8, 9 AND 10, GREENACRES PLAT NO. 4 RECORDED IN BOOK B AT PAGE 55, LOCATED IN THE N.W. 1/4 OF SECTION 21, TOWNSHIP 51 NORTH, RANGE 5 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO.  
PROJECT NO. KGG-0702  
COORDINATE FILE: ESSENER FILE: LENS: 25 27  
DATE: 8-11-2008  
DRAWN BY: P.C.C.  
CHECKED BY: J.P.P.  
REVIEWED BY: [Signature]  
DATE: 8-11-2008  
SCALE: AS SHOWN  
SHEET: 2 OF 2

COPY

**McGUIRE INDUSTRIAL ACRES**  
**REPLAT OF LOTS 1 AND 2, BLOCK 1, McGUIRE INDUSTRIAL PARK**  
**LOCATED IN THE N.W. 1/4 OF SECTION 21, TOWNSHIP 51 NORTH**  
**RANGE 5 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO**

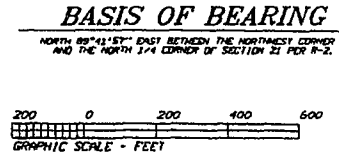
Book K Page 144  
 Ins # 2156894000

SHEET 1 OF 2



- LEGEND**
- ⊙ DENOTES SET 5/8" IRON ROD WITH P.L.S. 4194 CAP
  - DENOTES FOUND 5/8" IRON ROD WITH P.L.S. 4194 CAP
  - ⊠ DENOTES FOUND 1/2" IRON ROD WITH P.L.S. 4192 CAP
  - DENOTES FOUND 2" X 36" IRON PIPE MARKED INITIAL P.O.I. McGUIRE INDUSTRIAL PARK
  - △ DENOTES CALCULATED POSITION NOTHING SET
  - (1) DENOTES RE-MEASUREMENT THIS SURVEY
  - (12) DENOTES RE-MEASUREMENT OF RECORD OTHERS AS NOTED

- REFERENCE**
- 1) GREENACRES IRRIGATION DISTRICT PLAT NO. 4 BOOK 8 AT PAGE 55.
  - 2) E.S.F. RECORD OF SURVEY RECORDED IN BOOK 11 AT PAGE 230A.
  - 3) DUBITSCH RECORD OF SURVEY RECORDED IN BOOK 18 AT PAGE 367.
  - 4) E.S.F. RECORD OF SURVEY RECORDED IN BOOK 21 AT PAGE 179.
  - 5) KOOTENAI CO. SURVEYORS SURVEY RECORDED IN BOOK 20 AT PAGE 247.
  - 6) McGUIRE INDUSTRIAL PARK RECORDED IN BOOK 12 AT PAGE 60.



**EMPIRE SURVEYING CONSULTANTS**  
 P.O. BOX 12  
 HAYDEN LAKE, ID. 83835  
 (208) 772-8581  
 (208) 772-8582 FAX

REPLAT OF LOTS 1 AND 2, BLOCK 1, McGUIRE INDUSTRIAL PARK RECORDED IN BOOK 1 AT PAGE 66, LOCATED IN THE N.W. 1/4 OF SECTION 21, TOWNSHIP 51 NORTH, RANGE 5 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO			
PROJECT NO.	EMPLOYER	DATE	SCALE
ESL-0701	ASG-2101	ASNOTOIA	1/8, 20, 60-63, 67
DATE	PREP BY	DRAWN BY	REVISIONS
11-29-2007	P.C.C.	J.C.P.	1
PURVEY BY THE SURVEYOR			SCALE: 3" = 200'
ERRATA: A. BRANCH, C.R. DEWITT, BOULEVARD			

5-13

COPY

MC GUIRE INDUSTRIAL ACRES  
REPLAT OF LOTS 1 AND 2, BLOCK 1, McGUIRE INDUSTRIAL PARK  
LOCATED IN THE N.W. 1/4 OF SECTION 21, TOWNSHIP 51 NORTH,  
RANGE 5 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO

Book K Page 144A  
Ins# 2156894000

OWNERS CERTIFICATE

SHEET 2 OF 2

KNOW ALL MEN BY THESE PRESENTS THAT DOUBLE "B" PARTNERSHIP, A PARTNERSHIP AND THE RECORD OWNERS OF THE FOLLOWING DESCRIBED REAL PROPERTY, TO-WIT:  
A TRACT OF LAND BEING LOTS 1 AND 2, BLOCK 1, McGUIRE INDUSTRIAL PARK AS RECORDED IN BOOK K OF PLATS AT PAGE 84, LOCATED IN THE NORTHWEST 1/4 OF SECTION 21, TOWNSHIP 51 NORTH, RANGE 5 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO AND BEING DESCRIBED BY METES AND BOUNDS AS FOLLOWS:  
BEGINNING AT A POINT 3" IRON PIPE AND BRASS CAP MARKING THE NORTHWEST CORNER OF LOT 1, BLOCK 1, McGUIRE INDUSTRIAL PARK;  
THENCE, ALONG THE NORTH LINE OF LOT 1, NORTH 89° 41' 57" EAST, A DISTANCE OF 1462.06 FEET TO A FOUND IRON ROD AND PLS 43/64 CAP MARKING THE NORTHWEST CORNER OF LOT 1;  
THENCE, ALONG THE SOUTHWESTERLY LINE OF LOT 1, SOUTH 88° 57' 44" WEST, A DISTANCE OF 349.66 FEET TO A FOUND IRON ROD AND PLS 43/64 CAP MARKING THE SOUTHWEST CORNER OF LOT 1;  
THENCE, ALONG THE SOUTH LINE OF LOT 2, SOUTH 89° 41' 25" WEST, A DISTANCE OF 741.24 FEET TO A FOUND IRON ROD AND PLS 43/64 CAP MARKING THE SOUTHWEST CORNER OF LOT 2;  
THENCE, ALONG THE WEST LINE OF LOTS 1 AND 2, NORTH 89° 29' 25" WEST, A DISTANCE OF 618.21 FEET TO THE POINT OF BEGINNING AND CONTAINING 15.673 ACRES OF LAND, MORE OR LESS.  
SAID OWNERS HAVE CAUSED THE SAME TO BE PLATTED INTO LOTS AND BLOCK TO BE KNOWN AS "McGUIRE INDUSTRIAL ACRES".  
SUBJECT TO EXISTING EASEMENTS OF RECORD OR IN USE.  
DOMESTIC WATER SHALL BE SUPPLIED TO THE LOTS PLATTED HEREON BY THE EAST GREENACRES IRRIGATION DISTRICT.  
SANITARY SEWER FOR THIS PLAT IS TO BE PROVIDED BY INDIVIDUAL SEPTIC AND DRAINFIELD SYSTEM.

COUNTY SURVEYOR'S APPROVAL

I HEREBY CERTIFY THIS PLAT TO BE IN ACCORDANCE WITH THE REQUIREMENTS OF IDAHO CODE AND THE KOOTENAI COUNTY SURVEYOR'S OFFICE AND APPROVE SAME FOR FILING.  
REGISTERED LAND SURVEYOR  
969  
BOISE, IDAHO  
JAN 20 2008  
BOISE AND COUNCIL BLUFFS

COUNTY RECORDER'S CERTIFICATE

FILED THIS 30th DAY OF April 2008 AT 10:00 A.M. IN BOOK K OF PLATS AT PAGE 84-85 AT THE REQUEST OF Double "B" Ranch and KGG Partnership. Fee \$115  
Dore Engle  
KOOTENAI COUNTY RECORDER

COUNTY TREASURER'S CERTIFICATE

I HEREBY CERTIFY THIS PLAT TO BE IN ACCORDANCE WITH THE REQUIREMENTS OF IDAHO CODE AND THE KOOTENAI COUNTY TREASURER'S OFFICE AND APPROVE SAME FOR FILING.  
Christina Thomas  
KOOTENAI COUNTY TREASURER/Chief Deputy

KOOTENAI COUNTY COMMISSIONERS APPROVAL

THIS PLAT HAS BEEN APPROVED AND ACCEPTED BY THE BOARD OF COUNTY COMMISSIONERS OF KOOTENAI COUNTY, IDAHO THIS 22nd DAY OF April 2008.  
DAVIDSON BOARD OF COUNTY COMMISSIONERS

POST FALLS HIGHWAY DISTRICT APPROVAL

THIS PLAT HAS BEEN EXAMINED AND IS HEREBY APPROVED BY THE POST FALLS HIGHWAY DISTRICT THIS 22nd DAY OF Feb 2008.  
Dore Engle  
POST FALLS HIGHWAY DISTRICT

HEALTH DISTRICT APPROVAL

A SANITARY RESTRICTION ACCORDING TO IDAHO CODE 80-1306 TO 80-1309 IS IMPOSED ON THIS PLAT, NO BUILDING, SHEDDING OR SHEDS TO BE ERRECTED UNTIL SANITARY RESTRICTION REQUIREMENTS ARE SATISFIED AND LIFTED.  
THIS PLAT APPROVED THIS 22nd DAY OF April 2008.  
KOOTENAI HEALTH DISTRICT  
SANITARY RESTRICTION IS HEREBY SATISFIED AND LIFTED THIS 22nd DAY OF April 2008.  
NRC/ML  
KOOTENAI HEALTH DISTRICT

SURVEYOR'S CERTIFICATE

I, JON P. MONACO, PROFESSIONAL LAND SURVEYOR NO. 4194, DO HEREBY CERTIFY THAT THIS PLAT OF "McGUIRE INDUSTRIAL ACRES" WAS DRAWN FROM AN ACTUAL SURVEY MADE BY ME UNDER MY DIRECT SUPERVISION AND ACCURATELY REPRESENTS THE POINTS PLATTED THEREON AND IS IN CONFORMITY WITH THE IDAHO CODE RELATING TO PLATS AND SURVEYS.  
I FURTHER CERTIFY THAT THE OWNERS' CERTIFICATE SHOWN HEREON CONTAINS A TRUE AND ACCURATE DESCRIPTION OF THE LAND HEREIN SUBDIVIDED. ALL SURVEYS WERE PERFORMED AT THE REQUEST OF THE OWNERS.  
Jon P. Monaco 4/22/08  
JON P. MONACO, P. L. S. 4194

DOUBLE "B" PARTNERSHIP  
DIRECTOR: [Signature]  
MEMBER: [Signature]  
MEMBER: [Signature]  
MEMBER: [Signature]

KGG PARTNERSHIP  
KELLY KRONHOLZ, PARTNER

STATE OF Idaho  
COUNTY OF Kootenai

ON THIS 22nd DAY OF April 2008 BEFORE ME, Notary Public for the State of Idaho, personally appeared EDWYD C. SWITZER, known or identified to me to be one partner in the partnership of Double "B" Ranch, and the partners who subscribed said partnership have to the foregoing instrument, and acknowledged to me that they executed the same in their partnership name.  
NOTARY PUBLIC  
RESIDING AT: [Address]  
COMMISSION EXPIRES: [Date]



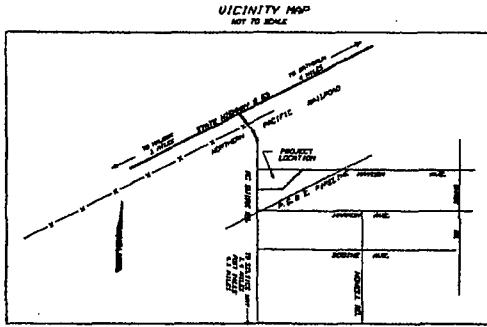
STATE OF Idaho  
COUNTY OF Kootenai

ON THIS 22nd DAY OF April 2008 BEFORE ME, Notary Public for the State of Idaho, personally appeared KELLY KRONHOLZ, known or identified to me to be one partner in the partnership of KGG Partnership, and the partner who subscribed said partnership have to the foregoing instrument, and acknowledged to me that they executed the same in their partnership name.  
NOTARY PUBLIC  
RESIDING AT: [Address]  
COMMISSION EXPIRES: [Date]



STATE OF Idaho  
COUNTY OF Kootenai

ON THIS 22nd DAY OF April 2008 BEFORE ME, Notary Public for the State of Idaho, personally appeared HAYDEN LAKE, known or identified to me to be one partner in the partnership of East Greenacres Irrigation District, and the partner who subscribed said partnership have to the foregoing instrument, and acknowledged to me that they executed the same in their partnership name.  
NOTARY PUBLIC  
RESIDING AT: Hayden Lake  
COMMISSION EXPIRES: [Date]



EMPIRE SURVEYING CONSULTANTS  
P.O. BOX 12  
HAYDEN LAKE, ID. 83835  
(208) 772-8581  
(208) 772-8582 FAX

PROJECT NO.	438-0701	COMMISSION FILE#	65807018	NOTES FILE#		LENS		
DATE	11-18-2007	DRAWN BY	P.C.C.	CHECKED BY	J.P.D.	REVISIONS	20-29	
SURVEY AT THE REQUEST OF:	DOUBLE "B" RANCH AND EDWYD SWITZER						SCALE	AS SHOWN

COPY

**RE: NARRATIVE/REVIEW – BREMER, L.L.C. - SUBDIVISION OF LOT 2,  
BLOCK 1, MCGUIRE INDUSTRIAL ACRES, KOOTENAI COUNTY, IDAHO**

Empire Surveying and Consulting has reviewed the topographic features and the published hydrogeologic information for the subject property. This report presents this background information to assist in subdivision of Lot 2.

PROPOSED DEVELOPMENT

The property is a subdivision of existing Lot 2, Block 1 McGuire Industrial Acres. Lot 2 will be subdivided into two (2) lots. Lot 2 will be changed to two (2) lots, Lot "A" will be 4.795 acres and Lot B will be 5.879 acres. Lots A and B are developed. Expanded development of Lot B has recently been completed in accordance with Kootenai County ordinances. The necessary infrastructure for the development of Lot 2, including parking, water and septic system has been installed on Lot 2 for industrial use. Lot A has an existing structure on the property with improvements, all of which will be on the proposed boundaries of Lot A.

SITE CONDITIONS

The subject property is located at the southeast corner of McGuire and Hayden Avenue on the northwest side of Kootenai County. Lots A and B access from McGuire Road and Hayden Avenue, respectively. The natural ground surface on the property slopes downward from southeast to northwest. The slopes are very gently sloping. The maximum relief across the property is 7 feet or less than 5%. The vegetation consists of grassland and deciduous bushes, native grasses and weeds.

ROADWAY ACCESS

Lots A and B access McGuire Road and Hayden Avenue respectively from existing private paved driveways.

SEPTIC SYSTEMS

Both Lots A and B have existing drainfields. The drainfield for Lot B was recently installed and approved by Panhandle Health District.

DOMESTIC WATER SUPPLY

Domestic water is supplied to both lots by East Greenacres Irrigation District. All water lines have been installed to serve the existing buildings on Lots A and B.

COPY

WETLANDS

The on-site soils appear to be Kootenai-Bonner Association according to the Kootenai County soil survey. Standing water was not observed on the subject property at the time of the site reconnaissance. It is unlikely jurisdictional wetlands exist on the subject property due to the soil conditions and the slope of the natural ground surface.

SENSITIVE AREAS

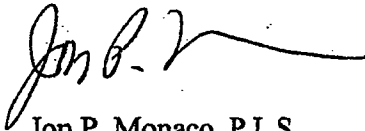
The subdivision has natural slopes of 5% or less and does not have sensitive areas defined within the Kootenai County subdivision ordinance.

CONCEPTUAL STORM WATER PLAN

During construction of existing industrial structures, outbuildings and driveways, best management practices were employed to prevent off-site transport of sediment during the construction process. Best management practices included silt fences, straw bale dikes and sedimentation ponds. The site improvements were designed to collect and treat storm water run-off in accordance with the Kootenai County standards and best management practices.

We are available to answer questions you may have regarding this report or to provide additional services as needed.

EMPIRE SURVEYING & CONSULTING, INC.



Jon P. Monaco, P.L.S.

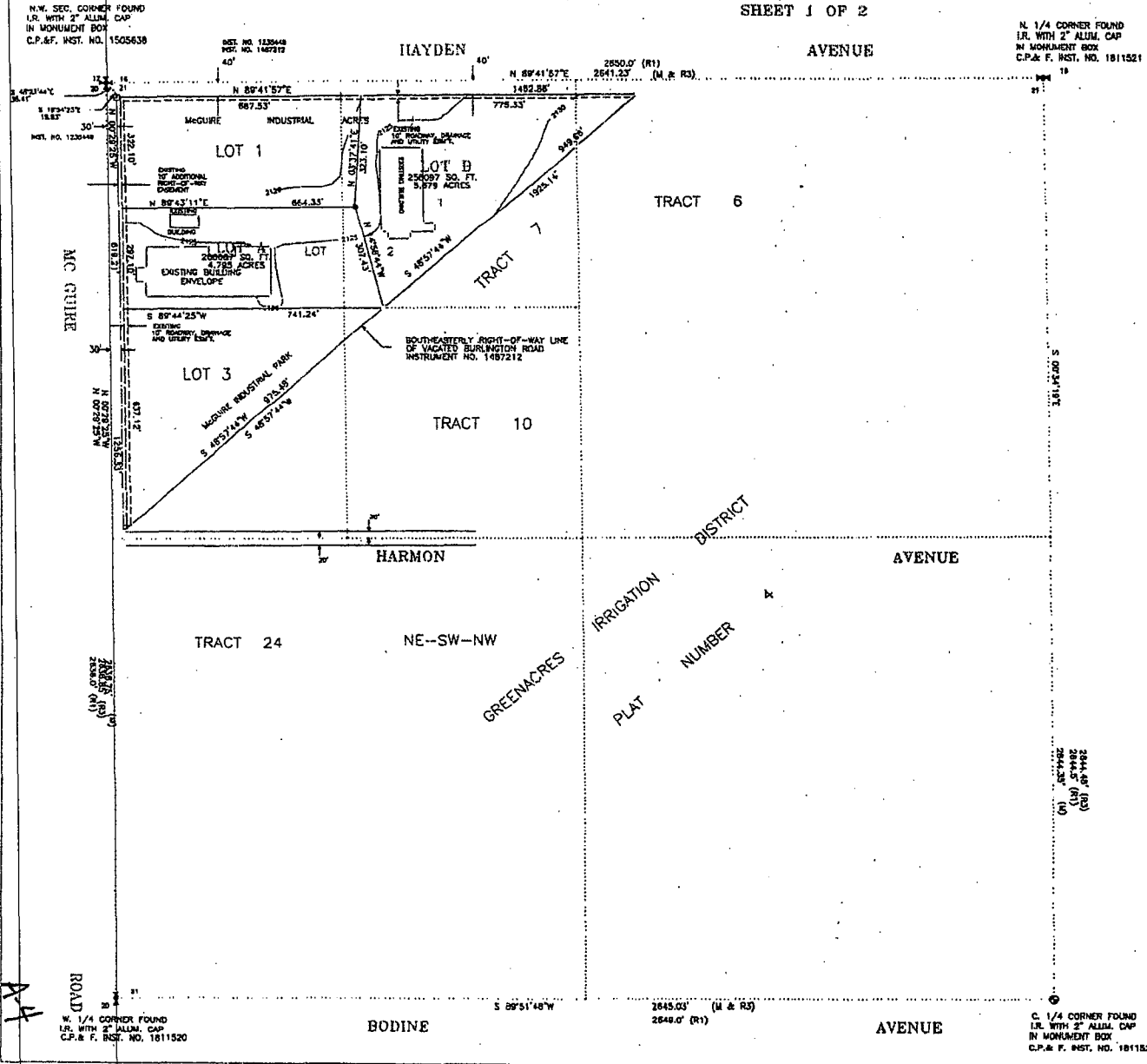
7/17/09  
2065-091.nar



**BREMER, L.L.C.**  
**SUBDIVISION OF LOT 2, BLOCK 1, McGUIRE INDUSTRIAL ACRES,**  
**LOCATED IN THE N.W. 1/4 OF SECTION 21, TOWNSHIP 51 NORTH,**  
**RANGE 5 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO**

**COPY**

SHEET 1 OF 2



N.W. SEC. CORNER FOUND  
 I.R. WITH 2" ALUM. CAP  
 C.P. & F. INST. NO. 1505638

INST. NO. 123048  
 INST. NO. 148797

N. 1/4 CORNER FOUND  
 I.R. WITH 2" ALUM. CAP  
 IN MONUMENT BOX  
 C.P. & F. INST. NO. 1811521

S 17°24'23"E  
 18.82'  
 INST. NO. 123048

N 89°41'57"E  
 2850.0' (R1)  
 2641.23' (M & R3)

MC GUIRE  
 ROAD

MC GUIRE  
 ROAD

S 89°41'57"E  
 1482.86'

BOISE  
 MERIDIAN

2848.03' (M & R5)  
 2648.0' (R1)

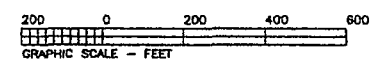
N. 1/4 CORNER FOUND  
 I.R. WITH 2" ALUM. CAP  
 C.P. & F. INST. NO. 1811520

C. 1/4 CORNER FOUND  
 I.R. WITH 2" ALUM. CAP  
 IN MONUMENT BOX  
 C.P. & F. INST. NO. 1811522

- LEGEND**
- DENOTES SET 5/8" IRON ROD WITH P.L.S. 4194 CAP
  - DENOTES FOUND 5/8" IRON ROD WITH P.L.S. 4194 CAP
  - DENOTES FOUND 1/2" IRON ROD WITH P.L.S. 4182 CAP
  - DENOTES FOUND 2" X 3/8" IRON PIPE MARKED INITIAL POINT
  - DENOTES INDUSTRIAL PARK
  - DENOTES CALCULATED POSITION NOTHING SET
  - (M) DENOTES MEASUREMENT THIS SURVEY
  - (R) DENOTES MEASUREMENT OF RECORD
  - OTHERS AS NOTED

- REFERENCE**
- 1) GREENACRES IRRIGATION DISTRICT PLAT NO. 4 BOOK 8 AT PAGE 55.
  - 2) E.S.F. RECORD OF SURVEY RECORDED IN BOOK 11 AT PAGE 238A.
  - 3) DURRICH RECORD OF SURVEY RECORDED IN BOOK 18 AT PAGE 287.
  - 4) E.S.E. RECORD OF SURVEY RECORDED IN BOOK 21 AT PAGE 178.
  - 5) KOOTENAI CO. SURVEYORS SURVEY RECORDED IN BOOK 20 AT PAGE 247.
  - 6) McGUIRE INDUSTRIAL PARK RECORDED IN BOOK "J" AT PAGE 88.
  - 7) McGUIRE INDUSTRIAL ACRES RECORDED IN BOOK "K" AT PAGE 144.

**BASIS OF BEARING**  
 NORTH 89°41'57" EAST BETWEEN THE NORTHWEST CORNER  
 AND THE NORTH 1/4 CORNER OF SECTION 21 PER R-2.



<b>EMPIRE SURVEYING CONSULTANTS</b>		P.O. BOX 12 HAYDEN LAKE, ID. 83835 (208) 772-8581 (208) 772-8582 FAX	
SUBDIVISION OF LOT 2, BLOCK 1, McGUIRE INDUSTRIAL ACRES LOCATED IN THE N.W. 1/4 OF SECTION 21, TOWNSHIP 51 NORTH, RANGE 5 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO			
PROJECT NO. 2025-091	COORDINATE FILE SSE-2101	SERIES FILE 2025021A	ACRES 18,28.60-63.67
DATE 07/17/08	DRAWN BY P.C.C.	CHECKED BY J.P.M.	SHEET 1 of 2
SURVEY BY THE RECORD OR K.G.G. PARTNERSHIP		SCALE 1" = 200'	

**BREMER, L.L.C.**  
**SUBDIVISION OF LOT 2, BLOCK 1, McGUIRE INDUSTRIAL ACRES**  
**LOCATED IN THE N.W. 1/4 OF SECTION 21, TOWNSHIP 51 NORTH,**  
**RANGE 5 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO**

**COPY**

SHEET 2 OF 2

**OWNERS CERTIFICATE**

KNOW ALL MEN BY THESE PRESENTS THAT KGG PARTNERSHIP IS THE RECORD OWNER OF THE FOLLOWING DESCRIBED REAL PROPERTY, TO-WIT:

A TRACT OF LAND BEING LOT 2, BLOCK 1, McGUIRE INDUSTRIAL ACRES AS RECORDED IN BOOK "K" OF PLATS AT PAGE 144, LOCATED IN THE NORTHWEST 1/4 OF SECTION 21, TOWNSHIP 51 NORTH, RANGE 5 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO AND BEING DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A FOUND 5/8" IRON ROD AND PLS 4194 CAP MARKING THE MOST NORTHERLY NORTHWEST CORNER OF LOT 2, BLOCK 1, McGUIRE INDUSTRIAL ACRES;

THENCE, ALONG THE NORTH LINE OF LOT 2, NORTH 00° 41' 57" EAST, A DISTANCE OF 775.33' FEET TO A FOUND IRON ROD AND PLS 4194 CAP MARKING THE NORTHEAST CORNER OF LOT 2;

THENCE, ALONG THE SOUTHEASTERLY LINE OF LOT 2, SOUTH 48° 57' 44" WEST, A DISTANCE OF 949.86 FEET TO A FOUND IRON ROD AND PLS 4194 CAP MARKING THE SOUTHEAST CORNER OF LOT 2;

THENCE, ALONG THE SOUTH LINE OF LOT 2, SOUTH 89° 44' 25" WEST, A DISTANCE OF 741.24 FEET TO A FOUND IRON ROD AND PLS 4194 CAP MARKING THE SOUTHWEST CORNER OF LOT 2;

THENCE, ALONG THE WEST LINE OF LOT 2, NORTH 00° 28' 23" WEST, A DISTANCE OF 297.10 FEET TO A FOUND 5/8" IRON ROD AND PLS 4194 CAP MARKING THE MOST WESTERLY NORTHWEST CORNER OF LOT 2;

THENCE, NORTH 89° 43' 11" EAST, A DISTANCE OF 854.30' TO A SET 5/8" IRON ROD AND PLS 4194 CAP;

THENCE, NORTH 03° 32' 41" EAST, A DISTANCE OF 323.10' TO THE POINT OF BEGINNING AND CONTAINING 10.675 ACRES OF LAND, MORE OR LESS.

SAID OWNERS HAVE CAUSED THE SAME TO BE PLATTED INTO LOTS AND BLOCK TO BE KNOWN AS "BREMER, L.L.C."

SUBJECT TO EXISTING EASEMENTS OF RECORD OR IN VIEW.

DOMESTIC WATER SHALL BE SUPPLIED TO THE LOTS PLATTED HEREON BY THE EAST GREENACRES IRRIGATION DISTRICT.

SANITARY SEWER FOR THIS PLAT IS TO BE PROVIDED BY INDIVIDUAL SEPTIC AND DRAINFIELD SYSTEM.

KGG PARTNERSHIP

KELLEY TROWBRIDGE, PARTNER

STATE OF \_\_\_\_\_ )  
 COUNTY OF \_\_\_\_\_ ) SS.

ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_, BEFORE ME \_\_\_\_\_, THE UNDERSIGNED NOTARY PUBLIC FOR THE STATE OF \_\_\_\_\_, PERSONALLY APPEARED KELLEY TROWBRIDGE, KNOWN OR IDENTIFIED TO ME TO BE A PARTNER IN THE PARTNERSHIP OF KGG PARTNERSHIP, AND THE PARTNER WHO SUBSCRIBED SAID PARTNERSHIP NAME TO THE FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO ME THAT SHE EXECUTED THE SAME IN SAID PARTNERSHIP NAME.

NOTARY PUBLIC  
 RESIDING AT: \_\_\_\_\_  
 COMMISSION EXPIRES: \_\_\_\_\_

**COUNTY SURVEYOR'S APPROVAL**

I HEREBY CERTIFY THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_, THAT I HAVE EXAMINED THIS SUBDIVISION PLAT AND APPROVED SAME FOR FILING.

KOOTENAI COUNTY SURVEYOR



**COUNTY RECORDER'S CERTIFICATE**

I HEREBY CERTIFY THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_, AT \_\_\_\_\_ O'CLOCK \_\_\_\_\_ M., IN BOOK \_\_\_\_\_ OF PLATS ON PAGE \_\_\_\_\_ AT THE REQUEST OF \_\_\_\_\_

KOOTENAI COUNTY RECORDER

**COUNTY TREASURER'S CERTIFICATE**

I HEREBY CERTIFY THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_, THAT THE REQUIRED TAXES ON THE HEREIN DESCRIBED LAND HAVE BEEN PAID THROUGH \_\_\_\_\_

KOOTENAI COUNTY TREASURER

**POST FALLS HIGHWAY DISTRICT APPROVAL**

THIS PLAT IS HEREBY APPROVED AND ACCEPTED BY THE POST FALLS HIGHWAY DISTRICT THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

CHAIRMAN POST FALLS HIGHWAY DISTRICT

**KOOTENAI COUNTY COMMISSIONERS APPROVAL**

THIS PLAT HAS BEEN APPROVED AND ACCEPTED BY THE BOARD OF COUNTY COMMISSIONERS OF KOOTENAI COUNTY, IDAHO THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

CHAIRMAN BOARD OF COUNTY COMMISSIONERS

**HEALTH DISTRICT APPROVAL**

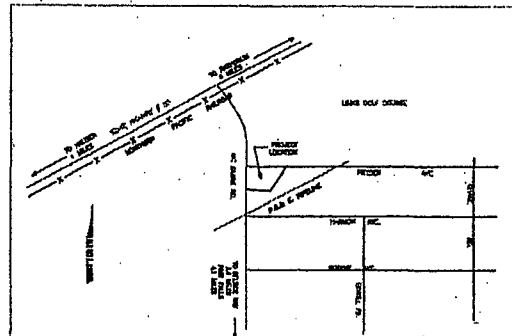
A SANITARY RESTRICTION ACCORDING TO IDAHO CODE 20-1328 TO 20-1329 IS IMPOSED ON THIS PLAT. NO BUILDING, DWELLING OR SHELTER SHALL BE ERRECTED UNTIL SANITARY RESTRICTION REQUIREMENTS ARE SATISFIED AND LIFTED.

THIS PLAT APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

PANHANDLE HEALTH DISTRICT I  
 SANITARY RESTRICTION IS HEREBY SATISFIED AND LIFTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

PANHANDLE HEALTH DISTRICT I

VICINITY MAP  
 SEE TO SHEET



**SURVEYOR'S CERTIFICATE**

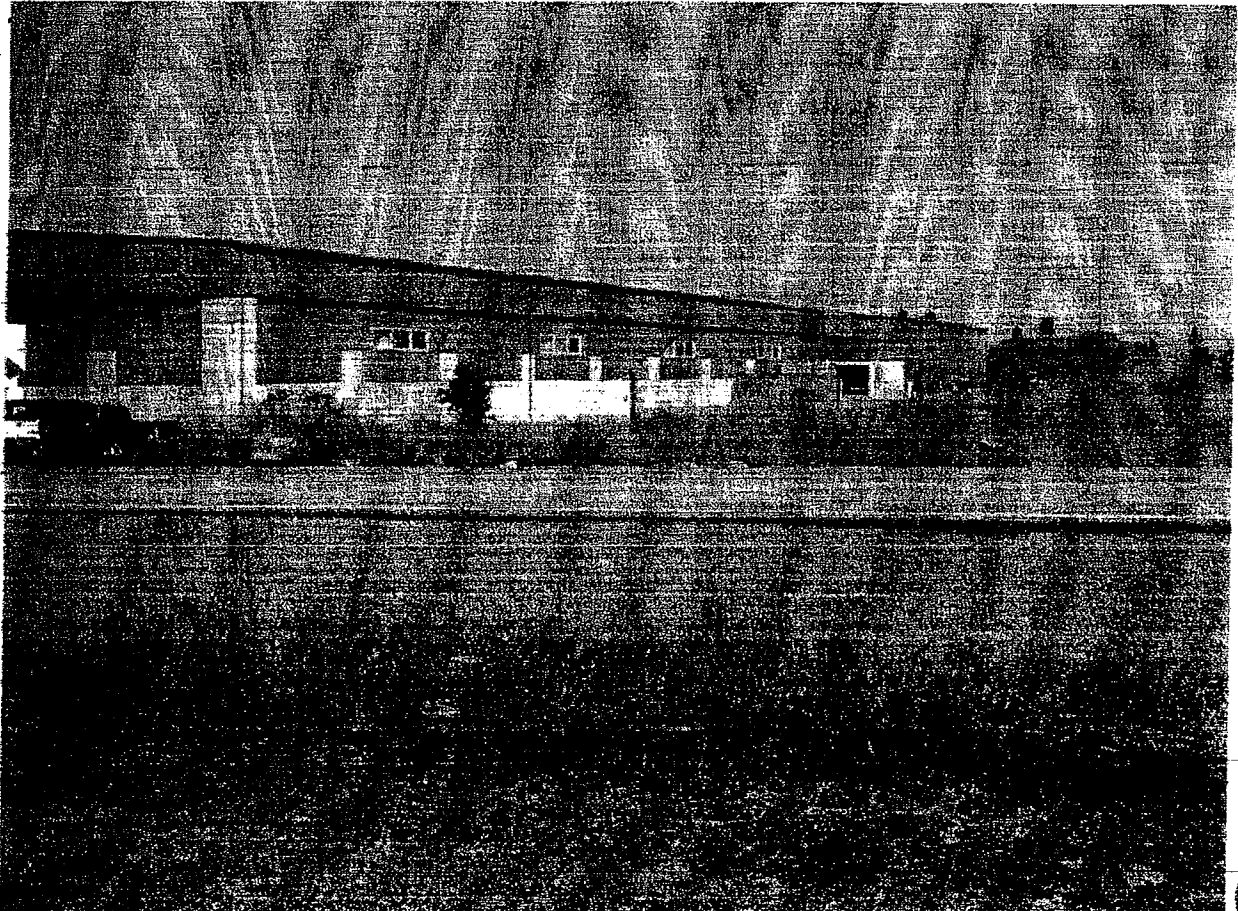
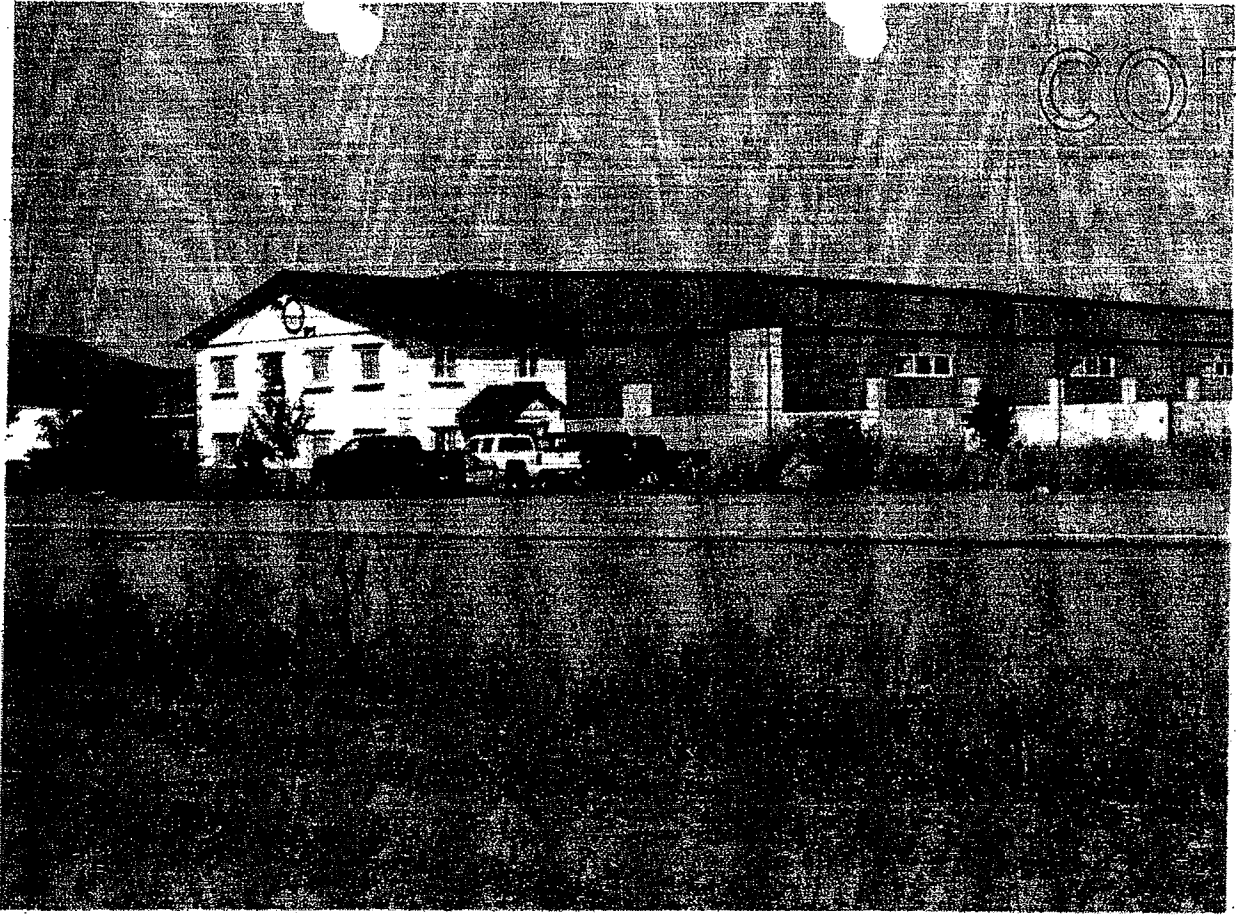
I, JON P. MONACO, PROFESSIONAL LAND SURVEYOR NO. 4194, DO HEREBY CERTIFY THAT THIS PLAT OF BREMER, L.L.C. WAS DRAWN FROM AN ACTUAL SURVEY MADE ON THE GROUND UNDER MY DIRECT SUPERVISION AND ACCURATELY REPRESENTS THE POINTS PLATTED THEREON AND IS IN CONFORMITY WITH THE IDAHO CODE RELATING TO PLATS AND SURVEYS.  
 I FURTHER CERTIFY THAT THE OWNERS' CERTIFICATE SHOWN HEREON CONTAINS A TRUE AND ACCURATE DESCRIPTION OF THE LAND HEREIN SUBDIVIDED. ALL SURVEYS WERE PERFORMED AT THE REQUEST OF THE OWNERS.

JON P. MONACO, P.L.S. 4194



<b>EMPIRE</b> <b>SURVEYING</b> <b>CONSULTANTS</b>	P.O. BOX 12 HAYDEN LAKE, ID. 83835 (208) 772-8581 (208) 772-8582 FAX
	SUBDIVISION OF LOT 2, BLOCK 1, McGUIRE INDUSTRIAL ACRES LOCATED IN THE N.W. 1/4 OF SECTION 21, TOWNSHIP 51 NORTH, RANGE 5 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO
PROJECT NO. 2082-091	DEVELOPER KGG PARTNERSHIP
DATE 07/07/09	SCALE P.C.G. P.M.
NAME OF THE PROPERTY ON WHICH THIS PLAT IS TO BE RECORDED KGG PARTNERSHIP	NO. OF SHEETS 2

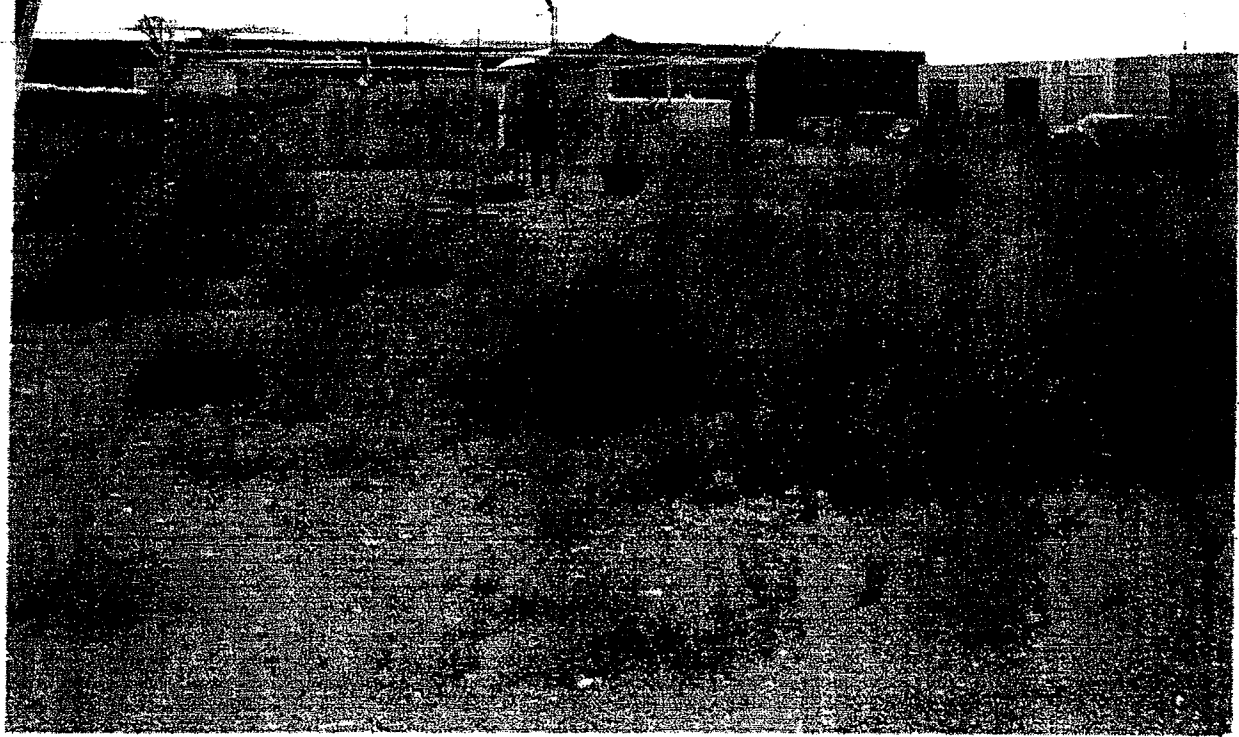
COPY



A-11



COPY





EAST GREENACRES IRRIGATION DISTRICT

2722 N. McGUIRE RD. • POST FALLS, IDAHO 83854 • (208) 773-7579 • FAX 773-3476

COPY

May 13, 2008

Mr. Gary J. Gaffney, P. E.  
Idaho Division of Environmental Quality  
2110 Ironwood Parkway  
Coeur d'Alene, ID 83814

RE: 2008 McGuire Industrial Park Extension Project

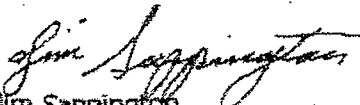
Dear Gary:

The McGuire Industrial Park is located in the NW ¼ of Section 21, T.51N., R.5W, B.M., Kootenai County, Idaho, and is within the boundary of East Greenacres Irrigation District and is eligible to receive domestic water from our system.

We have the capacity, willingness and intent to serve the McGuire Industrial Park

Although mainlines are in place to serve most of the Park, an extension is currently being proposed to improve service along Hayden Avenue. This extension will be an extension of our system and subject to applicable State and District requirements.

Sincerely,

  
Jim Sappington  
Chief of Field Operations  
East Greenacres Irrigation District

JS:vb

cc: Scott Jones, P. E.  
Nate Church, Panhandle Health District  
Bill Melvin, City of Post Falls  
Gary Bremer, F.M.I.- EPS, LLC

PA-1

**EAST GREENACRES IRRIGATION DISTRICT**

2722 N. McGuire RD. POST FALLS, IDAHO 83854 (208) 773-7579 FAX (208) 773-3476

September 26, 2008

COPY

Matthew Plaisted, EIT  
Dept. of Environmental Quality  
2110 Ironwood Parkway  
Coeur d' Alene, ID 83814-2648

RE: 2008 McGuire Industrial Park Water Pipeline Extension Project

Dear Mr. Plaisted

We have received record drawings for the McGuire Road Project. The plans have been certified by Scott E. Jones, P.E. and dated September 19, 2008. The plans reflect newly constructed water mainline, fire hydrant and individual services and connections to our existing distribution system. The plans appear to accurately reflect the actual construction we observed in our inspections.

Please accept this letter as approval for the 2008 McGuire industrial Park Pipeline Extension Project in accordance with the Idaho Rules for Public Drinking Water systems and Section 39-118.

*Please note this project is an extension or continuation of 2007 McGuire Industrial Park Water Pipeline Extension Project although two separate projects, the plans have been submitted as (1) one.*

Please find enclosed a copy of the Engineer's Certified drawings for your records

Should you have any further comments or questions please do not hesitate to contact our office.

Sincerely,



Ron Wilson  
District Manager

Cc : Scott E. Jones - Scott E. Jones & Associates  
Nate Church - Panhandle Health Department

PA-2

**EAST GREENACRES IRRIGATION DISTRICT**

---

2722 N. McGuire RD. POST FALLS, IDAHO 83854 (208) 773-7579 FAX (208) 773-3476

September 26, 2008

COPY

Matthew Plaisted, EIT  
Dept. of Environmental Quality  
2110 Ironwood Parkway  
Coeur d' Alene, ID 83814-2648

RE: 2007 McGuire Industrial Park Water Pipeline Extension Project

Dear Mr. Plaisted

We have received record drawings for the McGuire Road Project. The plans have been certified by Scott E. Jones, P.E. and dated September 19, 2008. The plans reflect newly constructed water mainline and connections to our existing distribution system. The plans appear to accurately reflect the actual construction we observed in our inspections.

Please accept this letter as approval for the 2007 McGuire industrial Park Pipeline Extension Project in accordance with the Idaho Rules for Public Drinking Water systems and Section 39-118.

Please find enclosed a copy of the Engineer's Certified drawings for your records

Should you have any further comments or questions please do not hesitate to contact our office.

Sincerely,



Ron Wilson  
District Manager

Cc: Scott E. Jones - Scott E. Jones & Associates  
Nate Church - Panhandle Health Department



STATE OF IDAHO  
DEPARTMENT OF  
ENVIRONMENTAL QUALITY

COPY

2110 Ironwood Parkway • Coeur d'Alene, Idaho 83814 • (208) 769-1422

C.L. "Butch" Otter, Governor  
Toni Hardesty, Director

December 11, 2008

Ron Wilson, District Manager  
East Greenacres Irrigation District  
2722 N McGuire Rd  
Post Falls, ID 83854  
[ron.esid@gmail.com](mailto:ron.esid@gmail.com)

RE: **Acceptance of the 2007 and 2008 McGuire Industrial Park Water Pipeline Projects**

Dear Mr. Wilson:

This letter is intended to acknowledge that in the two letters dated September 26, 2008 East Greenacres Irrigation District (EGID) approved and accepted responsibility for the new water mains associated with the two projects referenced above. This notice completes the requirements in the Idaho Rules for Public Drinking Water Systems for these water main extensions.

In our September 26, 2008 letter to Gary Bremer with FMI-EPS, LLC we had accepted the record drawings as prepared by Scott Jones, P.E for the same two projects.

Sincerely,

Gary J. Gaffney, P.E.  
[gary.gaffney@deq.idaho.gov](mailto:gary.gaffney@deq.idaho.gov)

- c: Gary Bremer, [Gary@fmi-eps.com](mailto:Gary@fmi-eps.com)
- Scott Jones, Scott E. Jones & Associates [scottejones@hotmail.com](mailto:scottejones@hotmail.com)
- Jim Sappington, [jim.esid@gmail.com](mailto:jim.esid@gmail.com)  
(#10670 with plans in EGID PWS file)

PA4



EAST GREENACRES IRRIGATION DISTRICT

2722 North McGuire Road Post Falls, Idaho 83854 • (208) 773-7579

August 7, 2009

COPY

Margie Monaco  
Empire Surveying & Consulting, INC.  
P.O. Box 12  
Hayden, ID 83835-0012

RE: McGuire Industrial Park

Dear Ms. Monaco

I have received your letter dated July 22, 2009 concerning the above referenced subdivision, requesting a will serve for this subdivision. The approval for the project(s) has been given by EGID and DEQ. Please review the attached approval letters that are on file with the prospective agencies. Additional I have attached the "Will Serve" provided by EGID dated May 13, 2008.

Therefore, the following McGuire Industrial lots currently being served, Lot 1, Lots A / B.. Lot 3 is not current receiving water, however it is eligible to receive water without a mainline extension.

Should you have any further comments or questions please do not hesitate to contact our office.

Sincerely

Ron Wilson  
District Manager  
[ron@eastgreenacres.org](mailto:ron@eastgreenacres.org)

c. Gary Gaffney, P.E. DEQ  
Nate Church PHD

Fax: (208) 773-3476 • [Eastgreenacres.org](http://Eastgreenacres.org)

PA 5

ADMINISTRATIVE INFORMATION

PARCEL NUMBER  
OK1440010020

Parent Parcel Number

Property Address  
14182 W HAYDEN AVE

Neighborhood  
24 COUNTY NORTH, COMMERCIAL

Property Class  
339 339- Ind Imp rural subdiv

TAXING DISTRICT INFORMATION

Jurisdiction

Area 601

District 073000

OWNERSHIP

KGG PARTNERSHIP  
9456 N MCGUIRE RD  
POST FALLS, ID 83854

MCGUIRE INDUSTRIAL ACRES, LT 2 BLK 1 2151N05W

Tax ID 312592

TRANSFER OF OWNERSHIP

Date			
05/12/2008	KGG PARTNERSHIP		Doc #: 2158649
04/30/2008	KGG PARTNERSHIP	50	Bk/Pg: R. 144
		50	

Printed 08/31/2009 Card No. 1 of 1

# INDUSTRIAL

### VALUATION RECORD

Assessment Year	01/01/2009
Reason for Change	Reval/MktAdj
VALUATION	L 290777
Market Value	B 0
	I 290777

# COPY

### LAND DATA AND CALCULATIONS

Zoning	Land Type	Rating	Measured	Table	Prod. Factor	Base Rate	Adjusted Rate	Extended Value	Influence Factor	Value
		Soil ID	ACREAGE	-or-	Depth Factor					
		Actual Frontage	Effective Frontage	Effective Depth	Square Feet					
Legal Acres: 10.6745	1 Commercial/Industrial	16T24	2.0000		1.00	40000.00	40000.00	80000		80000
	2 Commercial/Industrial	C8T24	8.4311		1.00	25000.00	28000.00	210777		210777
	3 Waste					0.00	0.00	0		0

Supplemental Cards

MEASURED ACREAGE 10.6745

Supplemental Cards

TRUE TAX VALUE 290777

Supplemental Cards 290777  
TOTAL LAND VALUE

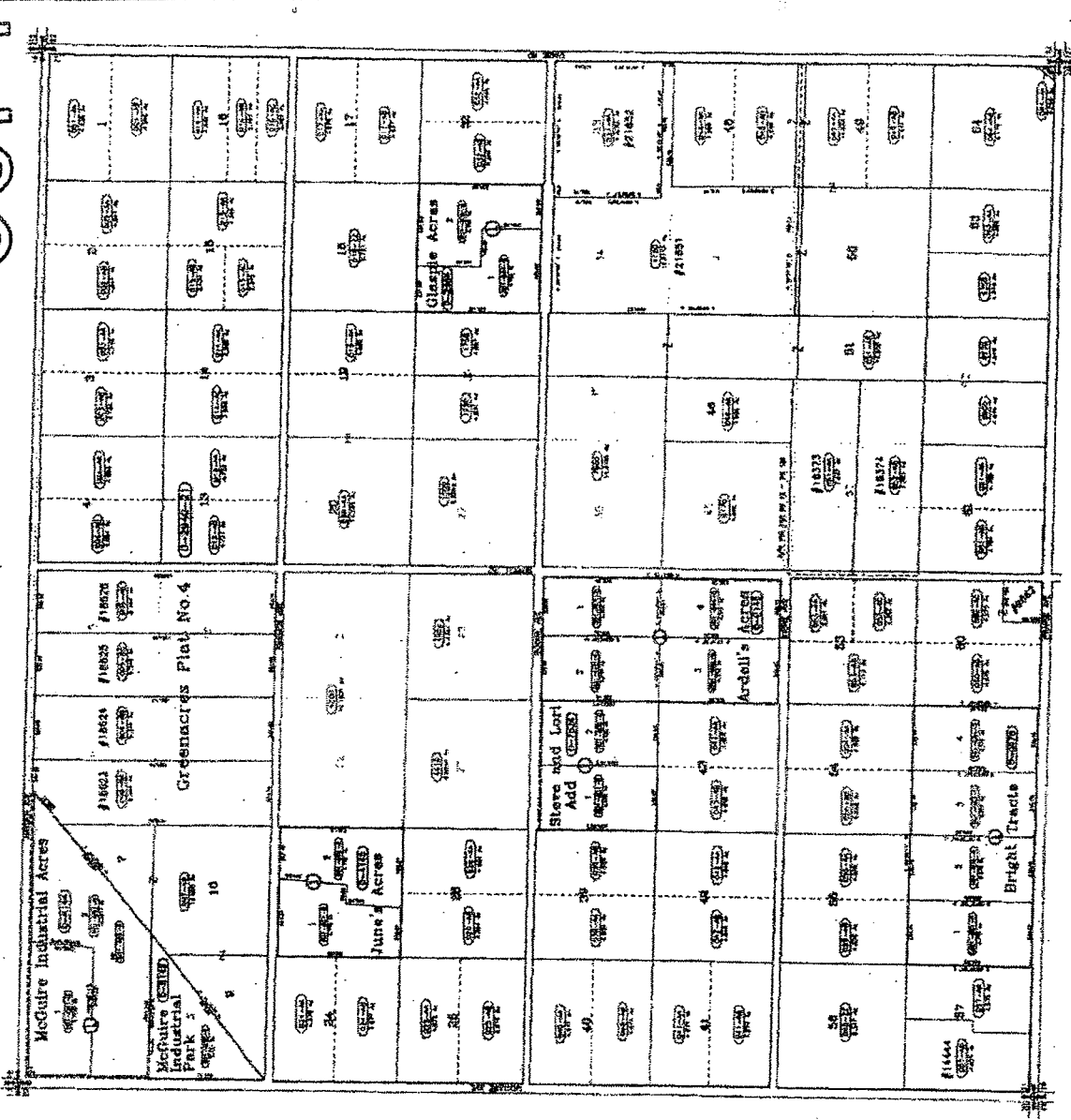
IMP: IMPROVEMENT INFORMATION  
PP on real account 212219  
LAND: LAND INFORMATION  
New plat for 2009 from 256472  
Net square feet is 454,378  
Improvement requires 2 acres  
RY07: REVAL  
LHW-07/08V

S-1A

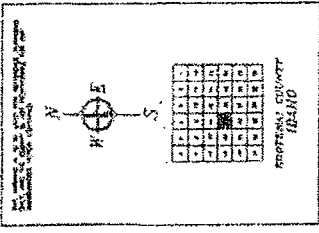


COPY

Sec. 21 Twp. 51 N. R. 5 W.B.M.



Sec. 21 Twp. 51 N. R. 5 W.B.M.



ARCHIVE REVISIONS
DATE REVISIONS
BY
REASON

Table with columns for date and description of segregation revisions.

5-15

COPY

MINOR/ PRELIMINARY SUBDIVISION & PUD APPLICATION
Kootenai County Building and Planning Department

Subdivision / PUD Name BREMER, L.L.C.
Application for: Minor Subdivision [X] Major Subdivision (prelim) PUD (prelim)
No. of acres 10.675 No. of lots 2 Parcel # O-K144-001-002-0
Sec. 21 Twp. 51N Rng. 5W Zoning District
Comp Plan designation ACI? Flood zone? Yes No
Directions to site US 95 NORTH TO HAYDEN AVE. WEST ON HAYDEN AVE TO MCGUIRE ROAD AND THE SITE ON SOUTH SIDE OF HAYDEN AVE AND EAST OF MCGUIRE ROAD

Property Owner(s) Names: KGG PARTNERSHIP (GARY BREMER) 777-8485
Applicant Name: GARY BREMER Phone: 777-8485 E-mail:
Address: 9456 N. MCGUIRE ROAD POST FALLS ID 83854
City: State: Zip:
Property Owner(s) Names: EMPIRE SURVEYING & CONSULTING, INC. Phone: 772-8581 E-mail: eseinc@verizon.net
Address: HAYDEN ID 83835
City: State: Zip:
Contact Person (select one): [X] Engineer / Surveyor

APPLICATION REQUIREMENTS

Note: Please refer to the applicable ordinance(s) for a complete list of application requirements. One complete application packet must be provided for the County and for each reviewing agency/ organization. Required enclosures for agency packets shown with a star.

Application Requirements:

Table with 4 columns: Item, Req'd, Rcv'd, Item, Req'd, Rcv'd. Includes rows for APPLICATION FORM, FEES, TITLE REPORT, PLAT/ PLAN, PHOTOS, NARRATIVE, GROUNDWATER REPORT, CONCEPTUAL STORM. PLAN, etc.

Agency Letters (STAFF):

Table with 4 columns: Agency, Req'd, Rcv'd, Agency, Req'd, Rcv'd. Includes rows for FIRE DISTRICT KOOTENAI COUNTY, HIGHWAY DISTRICT POST FALLS, IDAHO TRANS. DEPT., etc.

I hereby authorize the Kootenai County Building and Planning Department to enter onto and inspect the property that is the subject of this application.

Property owners signatures: Gary D Bremer Partner Date 8/17/09

---

**EXHIBIT R**

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# PANHANDLE HEALTH DISTRICT

*Healthy People in Healthy Communities*

## ENVIRONMENTAL HEALTH

8500 N. ATLAS ROAD  
HAYDEN, IDAHO 83835  
<http://www.phd1.idaho.gov>

September 2, 2009

Bremer, LLC  
KGG Partnership  
9456 N. McGuire Rd.  
Post Falls, ID 83854

RE: Bremer, LLC

To All Concerned:

COPY

The residential subdivision known as Bremer, LLC consisting of 2 lots on 10.68 acres located in Township 51N Range 05W, Section 21 within Kootenai County in the State of Idaho has been reviewed by Panhandle Health District (PHD). PHD will grant final plat approval when the following conditions are satisfied:

- If the project is going to require either water main extensions, PHD must receive a letter from the Department of Environmental Quality (DEQ) or a Qualified Licensed Professional Engineer (QLPE)\* stating water services for Bremer, LLC meet the State of Idaho Standards.
- PHD must receive a letter from East Greenacres Water District (the water purveyor designated on the application) stating they have the capacity and willingness to supply water to both lots. If the proposed subdivision can be provided with water services via installation of service lines off of existing mains, request that the water purveyor also include a statement that there is no need to extend or replace the existing water mains to serve any lot in the development.
- The water source must be stated on the plat as part of the owner's certificate block as required by Idaho Code §50-1334.
- Two signature blocks must be included on the plat for Panhandle Health District, one to approve the plat and one to lift the sanitary restrictions as required by Idaho Code §50-1326 to §50-1329.
- All shallow injection wells (drywells) must be registered with PHD and corresponding fees paid.
- Blue-line copies of the plat including signature page(s) must be supplied to PHD.

PHD will lift the sanitary restrictions when the final plat/mylar is signed. Please note that plat approval does not guarantee these lots are buildable. If you have any questions or require additional information please call Panhandle Health District.

PHD recommends that the suitable drainfield sites are located on the face of the plat. It is the owners' responsibility to protect and preserve the approved drainfield and replacement areas at all times.

\*specific QLPE language necessary to lift the sanitary restrictions.

Sincerely,

Kristina Keating  
Registered Environmental Health Specialist

cc: Kootenai County Technical Services  
DEQ  
East Greenacres Water District  
Empire Surveying and Consulting, Inc.

Bonnars Ferry (208) 267-5558, Kellogg (208) 786-7474, Sandpoint (208) 265-6384, St. Maries (208) 245-4556

---

**EXHIBIT S**

---



**EAST GREENACRES IRRIGATION DISTRICT**

2722 North McGuire Road Post Falls, Idaho 83854 • (208) 773-7579

September 22, 2009

COPY

Mel Palmer, Planner I  
Kootenai County Building and Planning Department  
451 Government Way  
P.O. Box 9000  
Coeur D'Alene, ID 83816-9000

*File*

Subject: Case No. MIN09-0018, Bremer, LLC

Dear Mr. Palmer

I have received the application and exhibits pertaining to the request to subdivide Lot 2, Block 1 of McGuire Industrial Acres into (2) lots. My review has determined there are no known conflicts. Therefore, at this time East Greenacres Irrigation District has no further Comments.

Should you have any further questions regarding this matter please do not hesitate to contact our office.

Sincerely

Ron Wilson  
District Manager  
[Ron@eastgreenacres.org](mailto:Ron@eastgreenacres.org)

Fax: (208) 773-3476 • [Eastgreenacres.org](http://Eastgreenacres.org)

---

**EXHIBIT T**

---



**EAST GREENACRES IRRIGATION DISTRICT**

2722 North McGuire Road Post Falls, Idaho 83854 • (208) 773-7579

April 12, 2010

COPY

John Manaco  
Empire Surveying & Consulting, INC.  
P.O.Box 12  
Hayden, ID 83835-0012

RE: Case No. MIN09-0018, Bremer, LLC

Dear Mr. Monaco

The McGuire Industrial Park also referenced as Bremer LLC is located in the NW1/4 of section 21, T.51N. R.5W, B.M, Kootenai County, Idaho, and is within the boundary of East Greenacres Irrigation District and is eligible to receive domestic water from our system.

We have the capacity, and the willingness to serve the above referenced Case No. MIN09-0018.

Should you have any questions please do not hesitate to contact me.

Sincerely

A handwritten signature in black ink, appearing to read 'Ron Wilson', written over a white background.

Ron Wilson  
District Manager  
[Ron@eastgreenacres.org](mailto:Ron@eastgreenacres.org)

CC: Jay Loveland, PHD, [jloveland@phd1.idaho.gov](mailto:jloveland@phd1.idaho.gov)

---

Fax: (208) 773-3476 • [Eastgreenacres.org](http://Eastgreenacres.org)



Susan P. Weeks, ISB # 4255  
James, Vernon & Weeks, P.A.  
1626 Lincoln Way  
Coeur d'Alene, ID 83814  
Telephone: (208) 667-0683  
Facsimile: (208) 664-1684

*Attorneys for Defendant*

STATE OF IDAHO }  
COUNTY OF KOOTENAI } SS  
FILED:

2011 NOV 17 PM 4: 08

CLERK DISTRICT COURT

*Patty Bailey*  
DEPUTY *118*

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

BREMER, LLC., an Idaho limited liability  
company, and KGG PARTNERSHIP,

Plaintiffs,

EAST GREENACRES IRRIGATION  
DISTRICT,

Defendant.

CASE NO. CV-11-1921

AFFIDAVIT OF WEEKS IN SUPPORT OF  
DEFENDANT'S MOTION FOR SUMMARY  
JUDGMENT

STATE OF IDAHO                    )  
  : ss.  
County of Kootenai                )

SUSAN P. WEEKS, being first duly sworn upon oath, deposes and says:

1. I am one the attorney for Defendants in the above matter. I am over the age of 18 years and competent to testify as a witness herein. The matters stated herein are within my personal knowledge.

2. Attached hereto as Exhibit "A" is a true and correct copy of the McGuire Industrial Park subdivision as recorded in Book J of Plats, Page 66 and 66A, Records of Kootenai County, Idaho. (The parties agreed that certified copies were not required.)

3. Attached hereto as Exhibit "B" is a true and correct copy of McGuire Industrial Acres subdivision, as recorded on April 30, 2008, in Book K of Plats, Page 144 and 144A, Records of Kootenai County, Idaho.

4. Attached hereto as Exhibit "C" is a true and correct copy of Bremer subdivision as recorded Book K of Plats, Page 287 and 287A, Records of Kootenai County, Idaho.

Susan P. Weeks  
SUSAN P. WEEKS

SUBSCRIBED AND SWORN to before me this 16<sup>th</sup> day of November, 2011.



Deborah Hylton  
Notary Public for Idaho;  
Residing at: KOOTENAI COUNTY  
Commission Expires: 10-16-12

CERTIFICATE OF SERVICE

I hereby certify that on the 17<sup>th</sup> day of November, 2011, I caused to be served a true and correct copy of the foregoing instrument by the method indicated below, and addressed to the following:

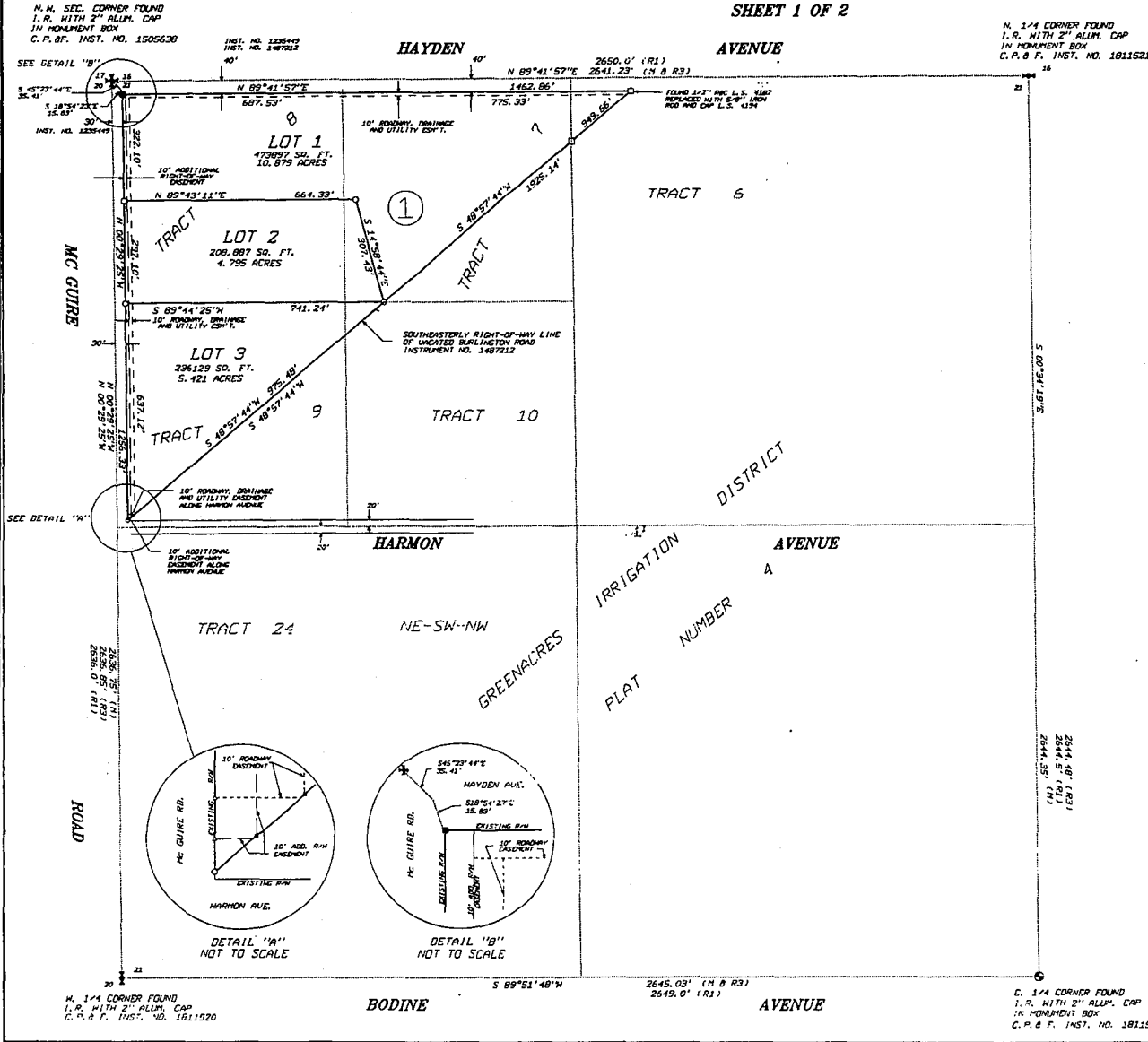
Arthur Bistline  
1423 N. Government Way  
Coeur d'Alene, ID 83814

- U.S. Mail
- Hand Delivered
- Overnight Mail
- Telecopy (FAX) (208) 665-7290

Susan P. Weeks

**MC GUIRE INDUSTRIAL PARK** Book J Page 66  
**SUBDIVISION OF A PORTION OF TRACTS 6,7,8,9 AND 10, GREENACRES PLAT NO. 4 RECORDED IN**  
**BOOK B AT PAGE 55, LOCATED IN THE N.W. 1/4 OF SECTION 21, TOWNSHIP 51**  
**NORTH, RANGE 5 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO**

SHEET 1 OF 2



**LEGEND**

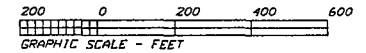
- DENOTES SET 5/8" IRON ROD WITH P.L.S. 4194 CAP
- DENOTES FOUND 5/8" IRON ROD WITH P.L.S. 4194 CAP
- DENOTES FOUND 1/2" IRON ROD WITH P.L.S. 4194 CAP
- DENOTES SET 2" X 36" IRON PIPE MARKED INITIAL POINT MC GUIRE INDUSTRIAL PARK
- △ DENOTES CALCULATED POSITION NOTHING SET
- (M) DENOTES MEASUREMENT THIS SURVEY
- (R) DENOTES MEASUREMENT OF RECORD
- OTHERS AS NOTED

**REFERENCE**

- 1) GREENACRES IRRIGATION DISTRICT PLAT NO. 4 BOOK B AT PAGE 55.
- 2) E.S.F. RECORD OF SURVEY RECORDED IN BOOK 11 AT PAGE 239A.
- 3) DURTSCH RECORD OF SURVEY RECORDED IN BOOK 18 AT PAGE 267.
- 4) E.S.F. RECORD OF SURVEY RECORDED IN BOOK 21 AT PAGE 179.
- 5) KOOTENAI CO. SURVEYORS SURVEY RECORDED IN BOOK 20 AT PAGE 247.

**BASIS OF BEARING**

NORTH 89°41'57" EAST BETWEEN THE NORTHWEST CORNER AND THE NORTH 1/4 CORNER OF SECTION 21 PER A-2.



**NOTES**

- 1) THE ATTEMPT WAS NOT MADE TO SHOW ALL PHYSICAL FEATURES OF THE PROPERTY, PRESCRIPTIVE EASEMENTS OR EASEMENTS OF RECORD OR IN USE.



**EMPIRE SURVEYING CONSULTANTS**  
 P.O. BOX 12  
 HAYDEN LAKE, ID. 83835  
 (208) 772-8581  
 (208) 772-8582 FAX

SUBD. OF A PORTION OF TR. 6, 7, 8, 9, 10, GREENACRES PLAT NO. 4 RECORDED IN BOOK B AT PAGE 55, LOCATED IN THE N.W. 1/4 OF SECTION 21, TOWNSHIP 51 NORTH, RANGE 5 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO				
PROJECT NO.	COORDINATE FILE	FOOTER FILE	DATE	SCALE
656-0301	656-9101	6560301A	11-11-2003	16, 28, 60-63, 67
DATE: 6/19/2003	DRAWN BY: J. P. M.	CHECKED BY: J. P. M.	DATE: 11/11/2003	SHEET: 1
DRAWN AT THE REQUEST OF: DOUBLE B BRANCH C/O SMITTY HURLEY			SCALE: 1" = 200'	SHEET: 2

**EXHIBIT A**

**MC GUIRE INDUSTRIAL PARK** Book J Page 60ft  
**SUBDIVISION OF A PORTION OF TRACTS 6,7,8,9 AND 10, GREENACRES PLAT NO. 4 RECORDED IN BOOK B AT PAGE 55, LOCATED IN THE N.W. 1/4 OF SECTION 21, TOWNSHIP 51 NORTH, RANGE 5 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO**

**OWNERS CERTIFICATE**

SHEET 2 OF 2

KNOW ALL MEN BY THESE PRESENTS THAT DOUBLE "B" RANCH, A PARTNERSHIP AND KGG PARTNERSHIP, A PARTNERSHIP ARE THE RECORD OWNERS OF THE FOLLOWING DESCRIBED REAL PROPERTY, TO-WIT:

A TRACT OF LAND BEING A PORTION OF TRACTS 6, 7, 8, 9 AND 10, GREENACRES PLAT NO. 4 AS RECORDED IN BOOK "B" OF PLATS AT PAGE 55, LOCATED IN THE NORTHWEST 1/4 OF SECTION 21, TOWNSHIP 51 NORTH, RANGE 5 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO AND BEING DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING AT A FOUND IRON ROD AND ALUMINUM CAP MARKING THE NORTHWEST CORNER OF SECTION 21;

THENCE, SOUTH 45° 23' 44" EAST, A DISTANCE OF 35.41 FEET TO THE NORTHWEST CORNER OF TRACT 8, GREENACRES PLAT NO. 4;

THENCE, SOUTH 38° 54' 23" EAST, A DISTANCE OF 15.83 FEET TO THE INTERSECTION OF THE SOUTH RIGHT-OF-WAY LINE OF HAYDEN AVENUE WITH THE EAST RIGHT-OF-WAY LINE OF MC GUIRE ROAD AND THE POINT OF BEGINNING;

THENCE, ALONG THE SOUTH RIGHT-OF-WAY LINE OF HAYDEN AVENUE, NORTH 09° 41' 57" EAST, A DISTANCE OF 1462.06 FEET;

THENCE, SOUTH 48° 57' 44" WEST, A DISTANCE OF 1925.14 FEET TO THE INTERSECTION WITH THE EAST RIGHT-OF-WAY LINE OF MC GUIRE ROAD;

THENCE, ALONG THE EAST RIGHT-OF-WAY OF MC GUIRE ROAD, NORTH 00° 29' 26" WEST, A DISTANCE OF 1256.35 FEET TO THE POINT OF BEGINNING AND CONTAINING 21.095 ACRES OF LAND, MORE OR LESS.

SAID OWNERS HAVE CAUSED THE SAME TO BE PLATTED INTO LOTS AND BLOCK TO BE KNOWN AS "MC GUIRE INDUSTRIAL PARK";

SUBJECT TO EXISTING EASEMENTS OF RECORD OR IN UIDA.

DEDICATING EASEMENTS SHOWN ON THE FACE OF THE PLAT.

DOMESTIC WATER SHALL BE SUPPLIED TO THE LOTS PLATTED HEREON BY THE EAST GREENACRES IRRIGATION DISTRICT.

SANITARY SEWER FOR THIS PLAT IS TO BE PROVIDED BY INDIVIDUAL SEPTIC AND DRAINFIELD SYSTEM.

IN WITNESS, WHEREOF WE DO HEREBY AFFIX OUR SIGNATURES AND OFFICIAL SEALS THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2003

DOUBLE "B" RANCH  
 Emmett Burley  
 Emmett Burley PARTNER  
 Helen H. Burley  
 Helen H. Burley PARTNER  
 Lynn B. Britter  
 Lynn B. Britter PARTNER

KGG PARTNERSHIP  
 Kelley Trumbull  
 Kelley Trumbull PARTNER

STATE OF Idaho  
 COUNTY OF Kootenai  
 ON THIS 14th DAY OF July, 2003, BEFORE ME, Julia White, NOTARY PUBLIC FOR THE STATE OF Idaho, PERSONALLY APPEARED EMMETT BURLEY AND HELEN H. BURLEY, HUSBAND AND WIFE, KNOWN OR IDENTIFIED TO ME TO BE PARTNERS IN THE PARTNERSHIP OF DOUBLE "B" RANCH, AND THE PARTNERS WHO SUBSCRIBED SAID PARTNERSHIP NAME TO THE FOREGOING OWNERS CERTIFICATE, AND ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME IN SAID PARTNERSHIP NAME.

Julia White  
 NOTARY PUBLIC  
 RESIDING AT: 855 FINE  
 COMMISSION EXPIRES: 12-17-04

STATE OF Washington  
 COUNTY OF Spokane  
 ON THIS 15 DAY OF July, 2003, BEFORE ME, Julia White, THE UNDERSIGNED NOTARY PUBLIC FOR THE STATE OF Washington, PERSONALLY APPEARED RICHARD E. BRITTER AND LYNN B. BRITTER, HUSBAND AND WIFE, KNOWN OR IDENTIFIED TO ME TO BE PARTNERS IN THE PARTNERSHIP OF DOUBLE "B" RANCH, AND THE PARTNERS WHO SUBSCRIBED SAID PARTNERSHIP NAME TO THE FOREGOING OWNERS CERTIFICATE, AND ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME IN SAID PARTNERSHIP NAME.

Julia White  
 NOTARY PUBLIC  
 RESIDING AT: MEYER  
 COMMISSION EXPIRES: 12-17-04

STATE OF WA  
 COUNTY OF Sp  
 ON THIS 14th DAY OF July, 2003, BEFORE ME, Julia White, THE UNDERSIGNED NOTARY PUBLIC FOR THE STATE OF WA, PERSONALLY APPEARED KELLEY TRUMBULL, KNOWN OR IDENTIFIED TO ME TO BE A PARTNER IN THE PARTNERSHIP OF KGG PARTNERSHIP, AND THE PARTNER WHO SUBSCRIBED SAID PARTNERSHIP NAME TO THE FOREGOING OWNERS CERTIFICATE, AND ACKNOWLEDGED TO ME THAT SHE EXECUTED THE SAME IN SAID PARTNERSHIP NAME.

Julia White  
 NOTARY PUBLIC  
 RESIDING AT: Sp, WA  
 COMMISSION EXPIRES: 12-17-04

**COUNTY SURVEYOR'S APPROVAL**

I HEREBY CERTIFY THIS 21st DAY OF July, 2003 THAT I HAVE EXAMINED THIS SUBDIVISION PLAT AND APPROVED THE SAME.

*David J. English*  
 COUNTY SURVEYOR  
 KOOTENAI COUNTY, IDAHO  
 7/21/03

**KOOTENAI COUNTY COMMISSIONERS APPROVAL**

THIS PLAT HAS BEEN APPROVED AND ACCEPTED BY THE BOARD OF COUNTY COMMISSIONERS OF KOOTENAI COUNTY, IDAHO THIS 21st DAY OF July, 2003.

*Richard A. Pugh*  
 CHAIRMAN BOARD OF COUNTY COMMISSIONERS

**HEALTH DISTRICT APPROVAL**

A SANITARY RESTRICTION ACCORDING TO IDAHO CODE SS-1326 TO SS-1329 IS IMPOSED ON THIS PLAT. NO BUILDING, DWELLING OR SHELTER SHALL BE ERECTED UNTIL SANITARY RESTRICTION REQUIREMENTS ARE SATISFIED AND LIFTED.

THIS PLAT APPROVED THIS 9th DAY OF July, 2003.  
*Janita S. Sorensen*  
 PANHANDLE HEALTH DISTRICT I  
 SANITARY RESTRICTION IS HEREBY SATISFIED AND LIFTED THIS 9th DAY OF July, 2003.  
*Janita S. Sorensen*  
 PANHANDLE HEALTH DISTRICT I

State of Idaho County of Kootenai  
**COUNTY RECORDER'S CERTIFICATE**

FILED THIS 14th DAY OF AUGUST, 2003 AT 4:30 O'CLOCK P.M. IN BOOK 51 OF PLATS ON PAGE 60, 61, 62 AT THE REQUEST OF Double B Ranch KGG Partnership  
 Inst # 1995067  
 Daniel J. English by DMacione  
 KOOTENAI COUNTY RECORDER  
 Daniel J. English

**COUNTY TREASURER'S AFFIDAVIT**

I HEREBY CERTIFY THIS 14th DAY OF July, 2003 THAT THE REQUIRED TAXES ON THE HEREIN SUBDIVIDED LAND HAVE BEEN PAID THROUGH December 31, 2003

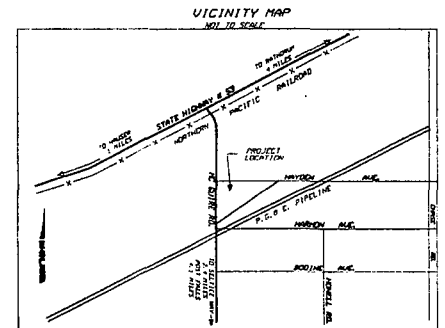
Richard Aug. 16, 2004  
*James Thomas*  
 Chief Deputy  
*Laurie Thomas*  
 KOOTENAI COUNTY TREASURER Chief Deputy

**POST FALLS HIGHWAY DISTRICT APPROVAL**

THIS PLAT HAS BEEN EXAMINED AND IS HEREBY APPROVED BY THE POST FALLS HIGHWAY DISTRICT THIS 15th DAY OF July, 2003.  
*John P. Monaco*  
 CHAIRMAN POST FALLS HIGHWAY DISTRICT

**SURVEYOR'S CERTIFICATE**

I, JON P. MONACO, PROFESSIONAL LAND SURVEYOR NO. 4194, DO HEREBY CERTIFY THAT THIS PLAT OF "MC GUIRE INDUSTRIAL PARK" WAS DRAWN FROM AN ACTUAL SURVEY MADE ON THE GROUND UNDER MY DIRECT SUPERVISION AND ACCURATELY REPRESENTS THE POINTS PLATTED THEREON AND IS IN CONFORMITY WITH THE IDAHO CODE RELATING TO PLATS AND SURVEYS.  
 I FURTHER CERTIFY THAT THE OWNERS CERTIFICATE SHOWN HEREON CONTAINS A TRUE AND ACCURATE DESCRIPTION OF THE LAND HEREIN SUBDIVIDED. ALL SURVEYS WERE PERFORMED UNDER THE DIRECTION OF THE OWNERS.  
*Jon P. Monaco* 7/1/04  
 JON P. MONACO, P. L. S. 4194



**EMPIRE SURVEYING CONSULTANTS** P.O. BOX 12 HAYDEN LAKE, ID. 83835  
 (208) 772-8581  
 (208) 772-8582 FAX

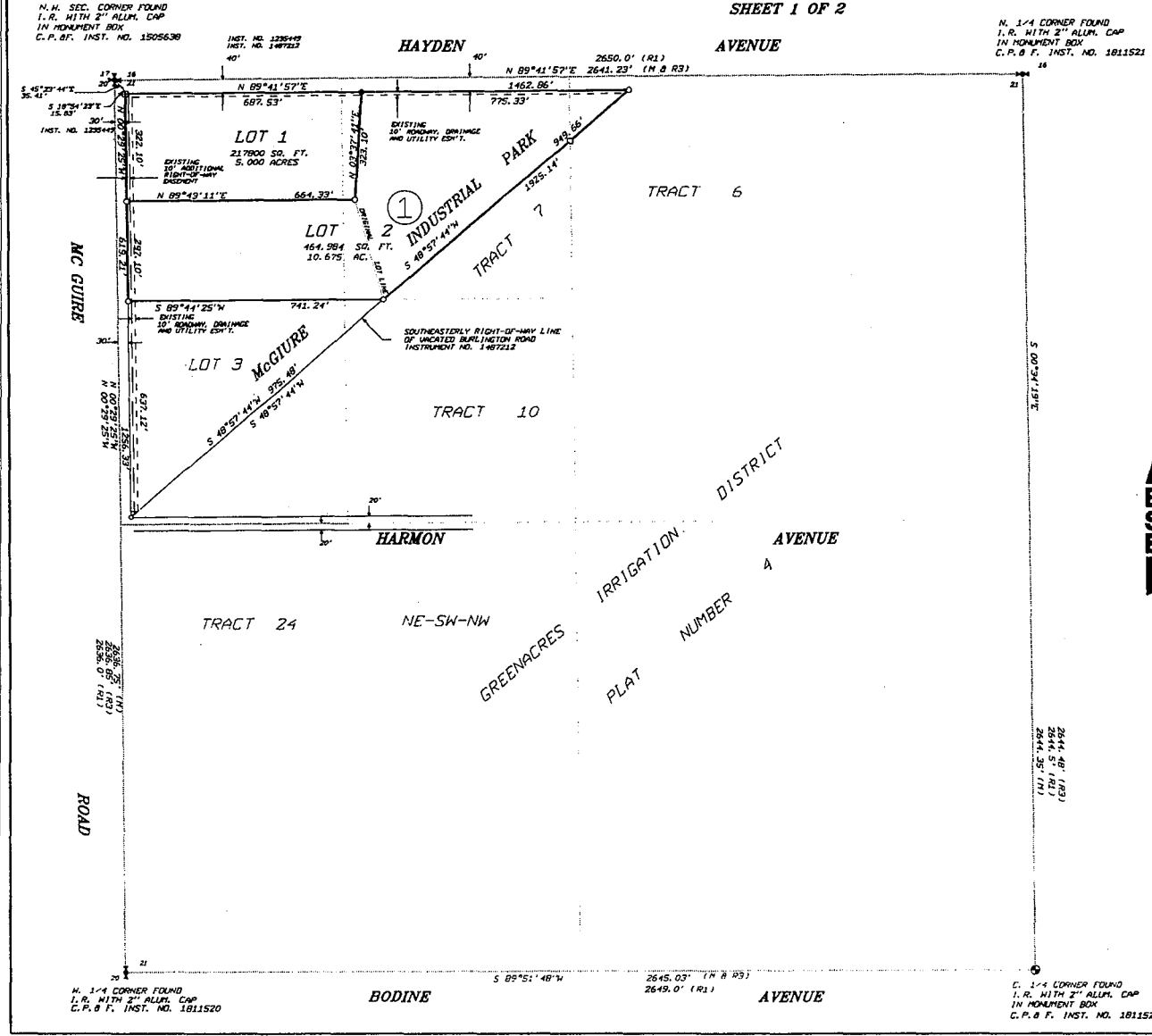
SUBD. OF A PORTION OF TR. 7, 8, 9, 10, GREENACRES PLAT NO. 4 RECORDED IN BOOK B AT PAGE 55, LOCATED IN THE N.W. 1/4 OF SECTION 21, TOWNSHIP 51 NORTH, RANGE 5 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO

PROJECT NO:	656-0201	COORDINATE FILE:	6560301R	SHEET NO:	29, 29
DATE:	8/19/2003	DRAWN BY:	J.P.M.	REVISIONS:	
SURVEY AT THE REQUEST OF:	DOUBLE "B" RANCH C/O EMMETT BURLEY	CHECKED BY:	J.P.M.	SCALE:	NO SCALE

**McGUIRE INDUSTRIAL ACRES**  
**REPLAT OF LOTS 1 AND 2, BLOCK 1, McGUIRE INDUSTRIAL PARK**  
**LOCATED IN THE N.W. 1/4 OF SECTION 21, TOWNSHIP 51 NORTH**  
**RANGE 5 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO**

Book K Page 144  
 Ins # 2156894000

SHEET 1 OF 2



**LEGEND**

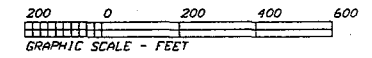
- DENOTES SET 5/8" IRON ROD WITH P.L.S. 4194 CAP
- DENOTES FOUND 5/8" IRON ROD WITH P.L.S. 4194 CAP
- DENOTES FOUND 1/2" IRON ROD WITH P.L.S. 4182 CAP
- ⊠ DENOTES FOUND 2" X 36" IRON PIPE MARKED INITIAL POINT
- Mc GUIRE INDUSTRIAL PARK
- △ DENOTES CALCULATED POSITION NOTHING SET
- (M) DENOTES MEASUREMENT THIS SURVEY
- (R) DENOTES MEASUREMENT OF RECORD
- OTHERS AS NOTED

**REFERENCE**

- 1) GREENACRES IRRIGATION DISTRICT PLAT NO. 4 BOOK B AT PAGE 55.
- 2) E.S.F. RECORD OF SURVEY RECORDED IN BOOK 11 AT PAGE 238A.
- 3) DURTSCH RECORD OF SURVEY RECORDED IN BOOK 18 AT PAGE 267.
- 4) E.S.F. RECORD OF SURVEY RECORDED IN BOOK 21 AT PAGE 179.
- 5) KOOTENAI CO. SURVEYORS SURVEY RECORDED IN BOOK 20 AT PAGE 247.
- 6) McGUIRE INDUSTRIAL PARK RECORDED IN BOOK "J" AT PAGE 66.

**BASIS OF BEARING**

NORTH 89°41'57" EAST BETWEEN THE NORTHWEST CORNER AND THE NORTH 1/4 CORNER OF SECTION 21 PER R-2.



**EMPIRE SURVEYING CONSULTANTS** P.O. BOX 12  
 HAYDEN LAKE, ID. 83835  
 (208) 772-8581  
 (208) 772-8582 FAX

REPLAT OF LOTS 1 AND 2, BLOCK 1, McGUIRE INDUSTRIAL PARK RECORDED IN BOOK 11 AT PAGE 66. LOCATED IN THE N.W. 1/4 OF SECTION 21, TOWNSHIP 51 NORTH, RANGE 5 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO

PROJECT NO. 846-9701	COORDINATE FILE: 846-9701	DATE: 11/19/2007	DRAWN BY: P.C.C.	CHECKED BY: J.P.M.	DATE: 11/19/2007	SCALE: 1" = 200'
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EXHIBIT B

# MC GUIRE INDUSTRIAL ACRES

## REPLAT OF LOTS 1 AND 2, BLOCK 1, McGUIRE INDUSTRIAL PARK LOCATED IN THE N.W. 1/4 OF SECTION 21, TOWNSHIP 51 NORTH, RANGE 5 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO

Book K Page 144A  
Ins # 2156894000

### OWNERS CERTIFICATE

SHEET 2 OF 2

KNOW ALL MEN BY THESE PRESENTS THAT DOUBLE "B" RANCH, A PARTNERSHIP AND KGG PARTNERSHIP, A PARTNERSHIP ARE THE RECORD OWNERS OF THE FOLLOWING DESCRIBED REAL PROPERTY, TO-WIT:

A TRACT OF LAND BEING LOTS 1 AND 2, BLOCK 1, McGUIRE INDUSTRIAL PARK AS RECORDED IN BOOK "K" OF PLATS ON PAGE 66, LOCATED IN THE NORTHWEST 1/4 OF SECTION 21, TOWNSHIP 51 NORTH, RANGE 5 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO AND BEING DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A FOUND 2" IRON PIPE AND BRASS CAP MARKING THE NORTHWEST CORNER OF LOT 1, BLOCK 1, McGUIRE INDUSTRIAL PARK;

THENCE, ALONG THE NORTH LINE OF LOT 1, NORTH 89° 41' 57" EAST, A DISTANCE OF 1462.96 FEET TO A FOUND IRON ROD AND PLS 4194 CAP MARKING THE NORTHEAST CORNER OF LOT 1;

THENCE, ALONG THE SOUTHEASTERLY LINE OF LOT 1, SOUTH 48° 57' 44" WEST, A DISTANCE OF 549.66 FEET TO A FOUND IRON ROD AND PLS 4194 CAP MARKING THE SOUTHWEST CORNER OF LOT 2;

THENCE, ALONG THE SOUTH LINE OF LOT 2, SOUTH 89° 44' 25" WEST, A DISTANCE OF 741.24 FEET TO A FOUND IRON ROD AND PLS 4194 CAP MARKING THE SOUTHWEST CORNER OF LOT 2;

THENCE, ALONG THE WEST LINE OF LOTS 2 AND 1, NORTH 00° 29' 25" WEST, A DISTANCE OF 619.21 FEET TO THE POINT OF BEGINNING AND CONTAINING 15.675 ACRES OF LAND, MORE OR LESS.

SAID OWNERS HAVE CAUSED THE SAME TO BE PLATTED INTO LOTS AND BLOCK TO BE KNOWN AS "McGUIRE INDUSTRIAL ACRES".

SUBJECT TO EXISTING EASEMENTS OF RECORD OR IN VIEW.

DOMESTIC WATER SHALL BE SUPPLIED TO THE LOTS PLATTED HEREON BY THE EAST GREENACRES IRRIGATION DISTRICT.

SANITARY SEWER FOR THIS PLAT IS TO BE PROVIDED BY INDIVIDUAL SEPTIC AND DRAINFIELD SYSTEM.

DOUBLE "B" RANCH  
KGG PARTNERSHIP

*Emmett Burley*  
EMMETT BURLEY, PARTNER  
*Helen H. Burley*  
HELEN H. BURLEY, PARTNER  
*Richard E. Switzer*  
RICHARD E. SWITZER, PARTNER

*Kelley Trombidge*  
KELLEY TROMBIDGE, PARTNER

STATE OF Idaho  
COUNTY OF Kootenai

ON THIS 5 DAY OF APRIL, 2008, BEFORE ME Richard E. Switzer THE UNDERSIGNED NOTARY PUBLIC FOR THE STATE OF Idaho, PERSONALLY APPEARED EMMETT BURLEY AND HELEN H. BURLEY, KNOWN OR IDENTIFIED TO ME TO BE PARTNERS IN THE PARTNERSHIP OF DOUBLE "B" RANCH, AND THE PARTNERS WHO SUBSCRIBED SAID PARTNERSHIP NAME TO THE FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME IN SAID PARTNERSHIP NAME.

NOTARY PUBLIC  
RESIDING AT: C.O.A.  
COMMISSION EXPIRES: 1-24-2011



STATE OF Idaho  
COUNTY OF Kootenai

ON THIS 5 DAY OF APRIL, 2008, BEFORE ME Richard E. Switzer THE UNDERSIGNED NOTARY PUBLIC FOR THE STATE OF Idaho, PERSONALLY APPEARED RICHARD E. SWITZER, KNOWN OR IDENTIFIED TO ME TO BE ONE PARTNER IN THE PARTNERSHIP OF DOUBLE "B" RANCH, AND THE PARTNER WHO SUBSCRIBED SAID PARTNERSHIP NAME TO THE FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME IN SAID PARTNERSHIP NAME.

NOTARY PUBLIC  
RESIDING AT: C.O.A.  
COMMISSION EXPIRES: 1-24-2011



STATE OF Idaho  
COUNTY OF Kootenai

ON THIS 27 DAY OF APRIL, 2008, BEFORE ME Marie Monico THE UNDERSIGNED NOTARY PUBLIC FOR THE STATE OF Idaho, PERSONALLY APPEARED KELLEY TROMBIDGE, KNOWN OR IDENTIFIED TO ME TO BE A PARTNER IN THE PARTNERSHIP OF KGG PARTNERSHIP, AND THE PARTNER WHO SUBSCRIBED SAID PARTNERSHIP NAME TO THE FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO ME THAT SHE EXECUTED THE SAME IN SAID PARTNERSHIP NAME.

NOTARY PUBLIC  
RESIDING AT: HAYDEN LAKE  
COMMISSION EXPIRES: 10-21-12



### COUNTY SURVEYOR'S APPROVAL

I HEREBY CERTIFY THIS 22 DAY OF APRIL, 2008 THAT I HAVE EXAMINED THIS SUBDIVISION PLAT AND APPROVED SAME FOR FILING.

*Bruce Anderson*  
KOOTENAI COUNTY SURVEYOR



### COUNTY RECORDER'S CERTIFICATE

I FILED THIS 30 DAY OF April, 2008 AT 2:43 O'CLOCK P.M. IN BOOK K OF PLATS ON PAGE 144 KGA AT THE REQUEST OF Double "B" Ranch and KGG Partnership. Fee \$115.

*Dan Enslin*  
KOOTENAI COUNTY RECORDER

### COUNTY TREASURER'S CERTIFICATE

I HEREBY CERTIFY THIS 28 DAY OF April, 2008, THAT THE REQUIRED TAXES ON THE HEREIN DESCRIBED LAND HAVE BEEN PAID THROUGH December 31, 2007.

*Deanna Thomas*  
KOOTENAI COUNTY TREASURER Deputy

### KOOTENAI COUNTY COMMISSIONERS APPROVAL

THIS PLAT HAS BEEN APPROVED AND ACCEPTED BY THE BOARD OF COUNTY COMMISSIONERS OF KOOTENAI COUNTY, IDAHO THIS 22 DAY OF April, 2008.

*[Signature]*  
CHAIRMAN BOARD OF COUNTY COMMISSIONERS

### POST FALLS HIGHWAY DISTRICT APPROVAL

THIS PLAT HAS BEEN EXAMINED AND IS HEREBY APPROVED BY THE POST FALLS HIGHWAY DISTRICT THIS 28 DAY OF Feb, 2008.

*[Signature]*  
CHAIRMAN POST FALLS HIGHWAY DISTRICT

### HEALTH DISTRICT APPROVAL

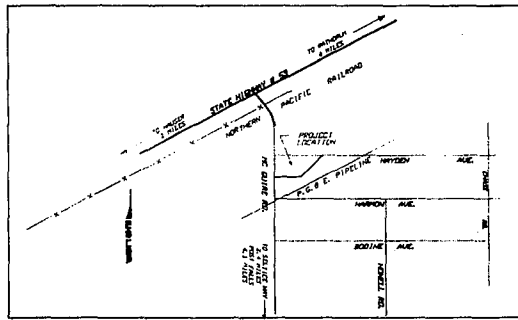
A SANITARY RESTRICTION ACCORDING TO IDAHO CODE 50-1326 TO 50-1329 IS IMPOSED ON THIS PLAT, NO BUILDING, DWELLING OR SHELTER SHALL BE ERRECTED UNTIL SANITARY RESTRICTION REQUIREMENTS ARE SATISFIED AND LIFTED.

THIS PLAT APPROVED THIS 28 DAY OF April, 2008.

SANITARY RESTRICTION IS HEREBY SATISFIED AND LIFTED THIS 28 DAY OF April, 2008.

*[Signature]*  
PARMOUTH HEALTH DISTRICT I

VICINITY MAP  
NOT TO SCALE



### SURVEYOR'S CERTIFICATE

I, JON P. MONACO, PROFESSIONAL LAND SURVEYOR NO. 4194, DO HEREBY CERTIFY THAT THIS PLAT OF "McGUIRE INDUSTRIAL ACRES" WAS DRAWN FROM AN ACTUAL SURVEY MADE ON THE GROUND UNDER MY DIRECT SUPERVISION AND ACCURATELY REPRESENTS THE POINTS PLATTED THEREON AND IS IN CONFORMITY WITH THE IDAHO CODE RELATING TO PLATS AND SURVEYS.

I FURTHER CERTIFY THAT THE OWNERS' CERTIFICATE SHOWN HEREON CONTAINS A TRUE AND ACCURATE DESCRIPTION OF THE LAND HEREIN SUBDIVIDED. ALL SURVEYS WERE PERFORMED AT THE REQUEST OF THE OWNERS.

*Jon P. Monaco* 2/20/08  
JON P. MONACO, P.L.S. 4194

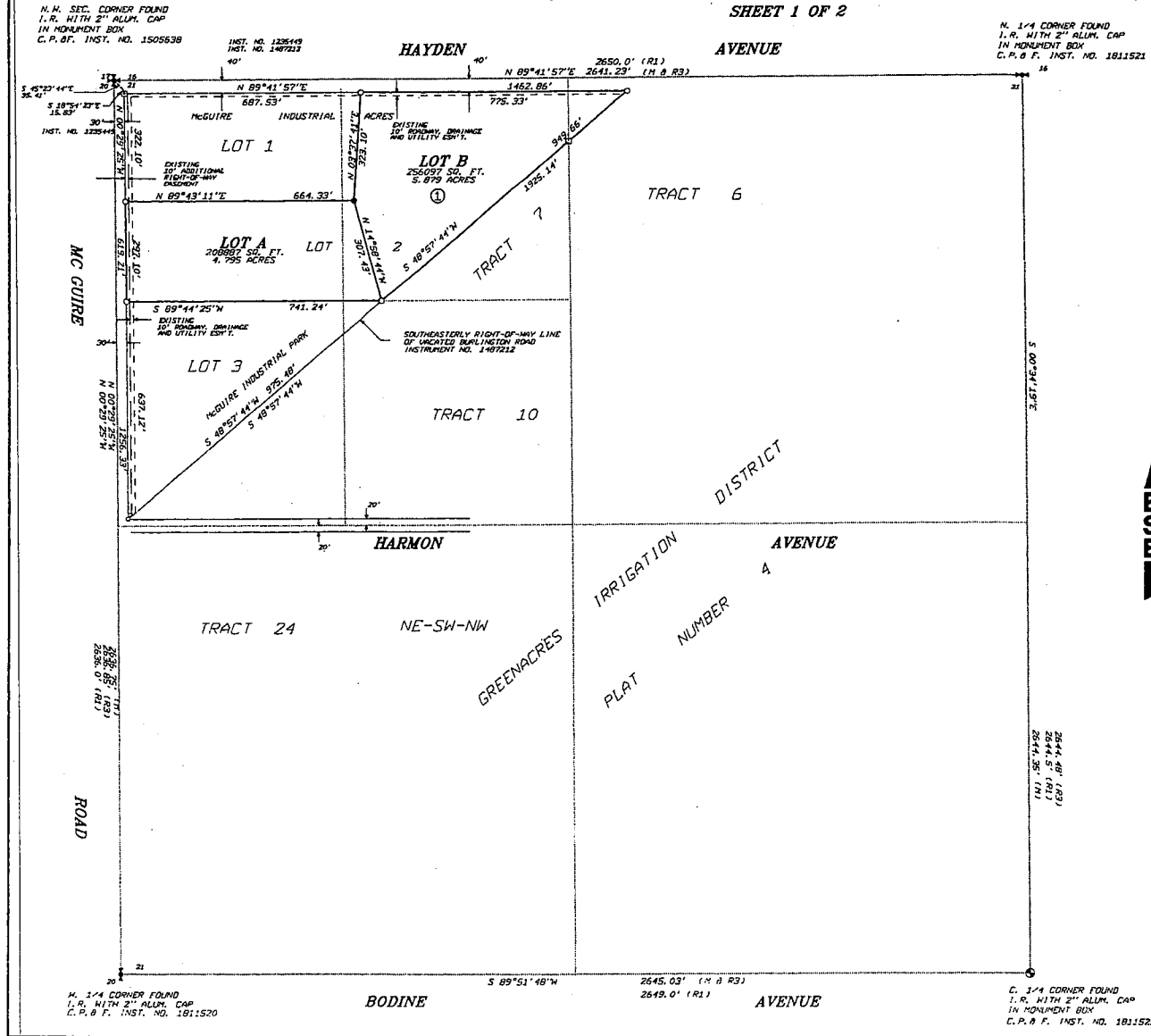


<b>EMPIRE SURVEYING CONSULTANTS</b>	P.O. BOX 12 HAYDEN LAKE, ID. 83835	
	(208) 772-8581	
	(208) 772-8582 FAX	
REPLAT OF LOTS 1 AND 2, BLOCK 1, McGUIRE INDUSTRIAL PARK RECORDED IN BOOK J AT PAGE 66, LOCATED IN THE N.W. 1/4 OF SECTION 21, TOWNSHIP 51 NORTH, RANGE 5 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO		
PROJECT NO. 656-0701	COORDINATE FILE: 656-2101	SHEET FILE: 65607018
DATE: 11/19/2007	DRAWN BY: P.C.C.	CHECKED BY: J.P.M.
SURVEY AT THE REQUEST OF: DOUBLE "B" RANCH C/O EMMETT BURLEY	REVISIONS: 28, 29	SCALE: NO SCALE

**BREMER**  
**SUBDIVISION OF LOT 2, BLOCK 1, McGUIRE INDUSTRIAL ACRES,**  
**LOCATED IN THE N.W. 1/4 OF SECTION 21, TOWNSHIP 51 NORTH,**  
**RANGE 5 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO**

Book K Page 287  
 Inst # 2262246000

SHEET 1 OF 2



**LEGEND**

- DENOTES SET 5/8" IRON ROD WITH P. L. S. 4194 CAP
- DENOTES FOUND 5/8" IRON ROD WITH P. L. S. 4194 CAP
- DENOTES FOUND 1/2" IRON ROD WITH P. L. S. 4182 CAP
- ▣ DENOTES FOUND 2" X 36" IRON PIPE MARKED INITIAL PDJ McGUIRE INDUSTRIAL PARK
- △ DENOTES CALCULATED POSITION NOTHING SET
- (M) DENOTES MEASUREMENT THIS SURVEY
- (R) DENOTES MEASUREMENT OF RECORD
- OTHERS AS NOTED

**REFERENCE**

- 1) GREENACRES IRRIGATION DISTRICT PLAT NO. 4 BOOK 8 AT PAGE 55.
- 2) E. S. F. RECORD OF SURVEY RECORDED IN BOOK 11 AT PAGE 238A.
- 3) DURTSCHI RECORD OF SURVEY RECORDED IN BOOK 18 AT PAGE 267.
- 4) E. S. F. RECORD OF SURVEY RECORDED IN BOOK 21 AT PAGE 179.
- 5) KOOTENAI CO. SURVEYORS SURVEY RECORDED IN BOOK 20 AT PAGE 247.
- 6) McGUIRE INDUSTRIAL PARK RECORDED IN BOOK "X" AT PAGE 65.
- 7) McGUIRE INDUSTRIAL ACRES RECORDED IN BOOK "X" AT PAGE 144.

**BASIS OF BEARING**

NORTH 89°41'57" EAST BETWEEN THE NORTHWEST CORNER AND THE NORTH 1/4 CORNER OF SECTION 21 PER P-2.



**EMPIRE SURVEYING CONSULTANTS**  
 P.O. BOX 12  
 HAYDEN LAKE, ID. 83835  
 (208) 772-8581  
 (208) 772-8582 FAX

SUBDIVISION OF LOT 2, BLOCK 1, McGUIRE INDUSTRIAL ACRES LOCATED IN THE N.W. 1/4 OF SECTION 21, TOWNSHIP 51 NORTH, RANGE 5 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO			
PROJECT NO.	COORDINATE FILE:	SCREEN FILE:	DATE:
206S-091	656-9101	206S091A	07-17-09
DRAWN BY:	CHECKED BY:	DATE:	REVISIONS:
P. C. C.	J. P. M.		16, 25, 60-63, 69
SURVEY AT THE REQUEST OF:			SCALE:
K. S. G. PARTNERSHIP			1" = 200'

EXHIBIT C

**BREMER**  
**SUBDIVISION OF LOT 2, BLOCK 1, McGUIRE INDUSTRIAL ACRES**  
**LOCATED IN THE N.W. 1/4 OF SECTION 21, TOWNSHIP 51 NORTH,**  
**RANGE 5 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO**

Book K Page 287A  
 Int # 2262246000

SHEET 2 OF 2

**OWNERS CERTIFICATE**

KNOW ALL MEN BY THESE PRESENTS THAT KGG PARTNERSHIP IS THE RECORD OWNER OF THE FOLLOWING DESCRIBED REAL PROPERTY, TO-WIT:

A TRACT OF LAND BEING LOT 2, BLOCK 1, McGUIRE INDUSTRIAL ACRES AS RECORDED IN BOOK "K" OF PLATS AT PAGE 144, LOCATED IN THE NORTHWEST 1/4 OF SECTION 21, TOWNSHIP 51 NORTH, RANGE 5 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO AND BEING DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A FOUND 5/8" IRON ROD AND PLS 4194 CAP MARKING THE MOST NORTHERLY NORTHWEST CORNER OF LOT 2, BLOCK 1, McGUIRE INDUSTRIAL ACRES;

THENCE, ALONG THE NORTH LINE OF LOT 2, NORTH 89° 41' 57" EAST, A DISTANCE OF 775.39' FEET TO A FOUND IRON ROD AND PLS 4194 CAP MARKING THE NORTHEAST CORNER OF LOT 2;

THENCE, ALONG THE SOUTHEASTERLY LINE OF LOT 2, SOUTH 48° 57' 44" WEST, A DISTANCE OF 949.66 FEET TO A FOUND IRON ROD AND PLS 4194 CAP MARKING THE SOUTHEAST CORNER OF LOT 2;

THENCE, ALONG THE SOUTH LINE OF LOT 2, SOUTH 89° 41' 25" WEST, A DISTANCE OF 741.24 FEET TO A FOUND IRON ROD AND PLS 4194 CAP MARKING THE SOUTHWEST CORNER OF LOT 2;

THENCE, ALONG THE WEST LINE OF LOT 2, NORTH 00° 29' 20" WEST, A DISTANCE OF 397.10 FEET TO A FOUND 5/8" IRON ROD AND PLS 4194 CAP MARKING THE MOST WESTERLY NORTHWEST CORNER OF LOT 2;

THENCE, NORTH 89° 43' 11" EAST, A DISTANCE OF 664.33' TO A SET 5/8" IRON ROD AND PLS 4194 CAP;

THENCE, NORTH 03° 39' 41" EAST, A DISTANCE OF 323.10' TO THE POINT OF BEGINNING AND CONTAINING 10.678 ACRES OF LAND, MORE OR LESS.

Said owners have caused the same to be platted into lots and block to be known as "BREMER".

SUBJECT TO EXISTING EASEMENTS OF RECORD OR IN VIEW.

DOMESTIC WATER SHALL BE SUPPLIED TO THE LOTS PLATTED HEREON BY THE EAST GREENACRES IRRIGATION DISTRICT.

SEWERAGE FOR THIS PLAT IS TO BE PROVIDED BY INDIVIDUAL SEPTIC AND DRAINFIELD SYSTEM.

KGG PARTNERSHIP  
*Kelley Tronridge*  
 KELLEY TRONDRIDGE, PARTNER

STATE OF IDAHO  
 COUNTY OF KOOTENAI ) SS.

ON THIS 15 DAY OF April, 2010, BEFORE ME Margie Monaco THE UNDERSIGNED NOTARY PUBLIC FOR THE STATE OF IDAHO, PERSONALLY APPEARED Kelley Tronridge, WHOM ON IDENTIFIED TO ME TO BE A PARTNER IN THE PARTNERSHIP OF KGG PARTNERSHIP, AND THE PARTNER WHO SUBSCRIBED SAID PARTNERSHIP NAME TO THE FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO ME THAT SHE EXECUTED THE SAME IN SAID PARTNERSHIP NAME.

Margie Monaco  
 NOTARY PUBLIC  
 RESIDING AT: Hayden  
 COMMISSION EXPIRES: 10/21/2012



CONSENT TO RECORDATION  
 IN WITNESS WHEREOF, U.S. BANK NATIONAL ASSOCIATION, UNDER THOSE CERTAIN DEEDS OF TRUST COVERING THE REAL PROPERTY SHOWN HEREON DATED MAY 29, 2008 AND RECORDED JULY 24, 2008, AS INSTRUMENT NUMBER 216987000 AND RECORDED JUNE 15, 2009, AS INSTRUMENT NUMBER 2216919000, RECORDS OF KOOTENAI COUNTY, IDAHO, HAVE HERETO SET THEIR SIGNATURES AS EVIDENCE OF THEIR CONSENT TO THE SUBDIVISION OF THE SUBJECT PROPERTY AND TO THE RECORDATION OF THIS PLAT.

THIS 15 DAY OF April, 2010  
 U.S. BANK NATIONAL ASSOCIATION  
 BY: Robert Siddaway  
 ROBERT SIDDAWAY,  
 VICE PRESIDENT

STATE OF IDAHO  
 COUNTY OF KOOTENAI ) SS.

ON THIS 15 DAY OF April, 2010 BEFORE ME Margie Monaco, THE UNDERSIGNED NOTARY PUBLIC FOR THE STATE OF IDAHO, PERSONALLY APPEARED ROBERT SIDDAWAY, WHOM ON IDENTIFIED TO ME TO BE THE VICE-PRESIDENT WHO EXECUTED THE FOREGOING INSTRUMENT ON BEHALF OF SAID CORPORATION, AND ACKNOWLEDGED TO ME THAT SAID CORPORATION EXECUTED THE SAME.

Margie Monaco  
 NOTARY PUBLIC  
 RESIDING AT: Hayden  
 COMMISSION EXPIRES: 10/21/2012



**COUNTY SURVEYOR'S APPROVAL**

I HEREBY CERTIFY THIS 15 DAY OF April, 2010, THAT I HAVE EXAMINED THIS SUBDIVISION PLAT AND APPROVED SAME FOR RECORDING.



**KOOTENAI COUNTY COMMISSIONERS APPROVAL**

THIS PLAT HAS BEEN APPROVED AND ACCEPTED BY THE BOARD OF COUNTY COMMISSIONER'S OF KOOTENAI COUNTY, IDAHO THIS 15 DAY OF April, 2010.

*[Signature]*  
 CHAIRMAN BOARD OF COUNTY COMMISSIONER'S

**HEALTH DISTRICT APPROVAL**

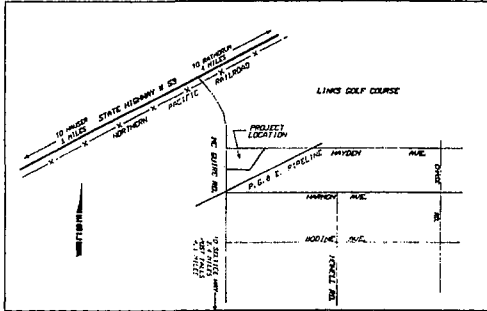
A SANITARY RESTRICTION ACCORDING TO IDAHO CODE 50-1326 TO 50-1329 IS IMPOSED ON THIS PLAT. NO BUILDING, DWELLING OR SHELTER SHALL BE ERRECTED UNTIL SANITARY RESTRICTION REQUIREMENTS ARE SATISFIED AND LIFTED.

THIS PLAT APPROVED THIS 3 DAY OF April, 2010.

*[Signature]*  
 SANITARY RESTRICTION IS HEREBY SATISFIED AND LIFTED THIS 13 DAY OF April, 2010.

*[Signature]*  
 PARANAHLE HEALTH DISTRICT I

VICINITY MAP  
 NOT TO SCALE



**COUNTY RECORDER'S CERTIFICATE**

RECORDED THIS 21 DAY OF April, 2010 AT 10:48 O'CLOCK A.M., IN BOOK K OF PLATS ON PAGE 287, 287A AT THE REQUEST OF KGG Partnership  
 Instrument Number 2262246000

Jim English  
 KOOTENAI COUNTY RECORDER  
 Daniel J. English Fee \$11.00

**COUNTY TREASURER'S CERTIFICATE**

I HEREBY CERTIFY THIS 19 DAY OF April, 2010 THAT THE REQUIRED TAXES ON THE HEREIN DESCRIBED LAND HAVE BEEN PAID THROUGH 31 Dec 2009.

*[Signature]*  
 KOOTENAI COUNTY TREASURER

**POST FALLS HIGHWAY DISTRICT APPROVAL**

THIS PLAT IS HEREBY APPROVED AND ACCEPTED BY THE POST FALLS HIGHWAY DISTRICT THIS 20 DAY OF April, 2010.

*[Signature]*  
 CHAIRMAN POST FALLS HIGHWAY DISTRICT

**SURVEYOR'S CERTIFICATE**

I, JON P. MONACO, PROFESSIONAL LAND SURVEYOR NO. 4194, DO HEREBY CERTIFY THAT THIS PLAT OF "BREMER" WAS DRAWN FROM AN ACTUAL SURVEY MADE ON THE GROUND UNDER MY DIRECT SUPERVISION AND ACCURATELY REPRESENTS THE POINTS PLATTED THEREON AND IS IN CONFORMITY WITH THE IDAHO CODE RELATING TO PLATS AND SURVEYS. I FURTHER CERTIFY THAT THE OWNERS' CERTIFICATE SHOWN HEREON CONTAINS A TRUE AND ACCURATE DESCRIPTION OF THE LAND HERETIN SUBDIVIDED. ALL SURVEYS WERE PERFORMED AT THE REQUEST OF THE OWNERS.

JON P. MONACO, P. L. S. 4194



**EMPIRE SURVEYING CONSULTANTS**  
 P.O. BOX 12  
 HAYDEN LAKE, ID. 83835  
 (208) 772-8581  
 (208) 772-8582 FAX

SUBDIVISION OF LOT 2, BLOCK 1, McGUIRE INDUSTRIAL ACRES			
PROJECT NO.	COMPILED BY	DATE	REVISIONS
2008-051	556-9101	07-27-09	25, 29
DATE	DRAWN BY	CHECKED BY	SCALE
07-27-09	P.C.C.	J.P.M.	AS SHOWN
SURVEY AT THE REQUEST OF: K.G.G. PARTNERSHIP			SCALE: NO SCALE



Susan P. Weeks, ISB # 4255  
 James, Vernon & Weeks, P.A.  
 1626 Lincoln Way  
 Coeur d'Alene, ID 83814  
 Telephone: (208) 667-0683  
 Facsimile: (208) 664-1684

*Attorneys for Defendant*

CLERK OF DISTRICT COURT  
 COUNTY OF KOOTENAI, ID  
 FILED

2011 NOV 08 PM 4:52

CLERK DISTRICT COURT  
*Paul Crumpler*  
 DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

BREMER, LLC., an Idaho limited liability  
 company, and KGG PARTNERSHIP,

Plaintiffs,

EAST GREENACRES IRRIGATION  
 DISTRICT,

Defendant.

CASE NO. CV-11-1921

AFFIDAVIT OF JIM SAPPINGTON IN  
 RESPONSE TO PLAINTIFFS' MOTION  
 FOR SUMMARY JUDGMENT

STATE OF IDAHO )  
 : ss.  
 County of Kootenai )

JIM SAPPINGTON, being first duly sworn upon oath, deposes and says:

1. I am the Superintendent of Operations and Maintenance for East Greenacres Irrigation District. I am over the age of 18 years and competent to testify as a witness herein. The matters stated herein are within my personal knowledge.
2. I am familiar with the parcel of property owned by one of Gary Bremer's businesses which is fronted by Hayden Avenue and is the subject of this litigation.
3. An industrial building was constructed on this parcel in approximately 2008.

SAPPINGTON AFFIDAVIT IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT: 1

4. I have personal knowledge of the conditions imposed by Kootenai County Fire and Rescue with respect to fire protection for this building.
5. As part of its approval, Kootenai County Fire & Rescue required that the building be serviced by two fire hydrants, one on each side of the building, and that the building include a fire sprinkler system.
6. East Greenacres Irrigation District requires that fire hydrants be located in a public right of way. Additionally, a water mainline source is necessary for proper rate of flow and water pressure for the hydrant to be effective in fighting a fire.
7. At the time the construction was proposed, the existing water main dead ended on Hayden Avenue at the Emmett Burley parcel immediately west of the Bremer parcel. In order to obtain service from East Greenacres Irrigation District for this parcel, including the fire hydrants and sprinkler system required by Kootenai County Fire & Rescue, it was necessary to extend the existing 8" water main in Hayden Avenue east to the Bremer parcel.
8. The water main was extended approximately 800 lineal feet by Gary Bremer's business to service the building.
9. The water main extension constructed by Gary Bremer's contractor dead-ended near the east end of the Bremer parcel.
10. Approximately 2 ½ years after the water main was extended to service the Bremer parcel, East Greenacres Irrigation District extended the water main to connect it to another main line within the water system, which is known as "looping" the line. East Greenacres Irrigation District paid for this extension of the water main and did all the construction work associated with the extension. Although the District

SAPPINGTON AFFIDAVIT IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT: 2

attempts to loop its lines wherever feasible, Mr. Bremer was not required to extend the water main extensions for the purpose of facilitating a loop line. All property owners of subdivided parcels are required to extend the water mainline across their parcel to obtain service. A looped water system is one in which the distribution lines within the water system are interconnected so as to remove any dead-end distribution lines. Looping the line adds the benefit of equalizing pressure within the entire system and provides redundancy. In the looped system, water can flow from more than one direction. A fire-flow demand or large-demand use on a dead-end main can only draw water through a single line, and the flow may be further restricted by the line length and pipe size. When repairs are made on a dead-end line, the entire line has to be taken out of service, which may mean that customers will be out of water for a while and affected hydrants will hold little or no water for fire protection. Also, the flushing required to maintain water quality on dead-end systems can result in waste of water and takes the line out of service while it is flushed.

11. I have been told that Bremer's expert, Philip Hart, has informed the Court that "Mr. Bremer also told me that the new building was built on a lot next to a property that he already owned and had water service to." If this statement is offered to contemplate that water service to the new facility could have been extended east from McGuire to the rear of the new building fronting Hayden, it is wrong. The Bremer's existing building fronted McGuire along its western boundary and was located southwest of the new building. The new building was constructed to front Hayden Avenue along its northern boundary and was situated

northeast of the existing building. To supply water to the new building adequate to support the fire hydrants and sprinkler system from the McGuire mainline, it would have required the mainline be extended east through the Bremer property to the rear of the new building with an extension out to Hayden Avenue for placement of the hydrants. Water mainlines are required to be placed in the public right of way wherever possible because it facilitates future distribution system additions and extensions by eliminating the need to acquire easements across private land for extensions of the water main and reduces the cost of operation and maintenance because it is easier to access a distribution line in a public rights of way and eliminates encroachment issues. East Greenacres Irrigation District has a written policy that mainline extensions shall provide for proper present and future circulation of water. Allowing subdivided parcels to extend mainlines through private property to the rear of a property to provide service does not meet this policy and is not proper. Attached hereto as Exhibit "A" is a true and correct copy of the District's bylaws and policies.

12. The proper method of providing service to the new facility was to extend the existing water mainline in Hayden Avenue east to the Bremer parcel.
13. To the extent that Mr. Hart is conveying an opinion of Mr. Bremer that the existing water service connection to the McGuire building could have been extended and interconnected to the Hayden Avenue building, this opinion is misleading. While the buildings could have physically been connected by a continuation of the 1" service line, the existing service line was inadequate to provide either the water flow or water pressure necessary to supply either

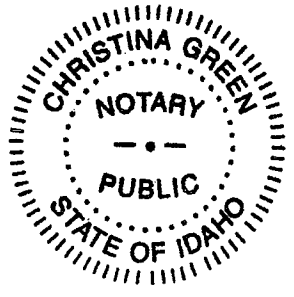
adequate flow or adequate pressure for operation of the building sprinkler system required by Kootenai County Fire & Rescue. Further, the hydrants could not be connected to a 1" service line. The hydrants require at least a 6" water main for proper functioning. Further, a 1" service line would not provide adequate water supply or pressure to operate both a building fire suppression system and two fire hydrants. The only mechanism to achieve compliance with Kootenai County Fire & Rescue's requirements was through use of a water mainline.

14. I am aware that Philip Hart has provided the expert opinion that the water use by Plaintiff would not compromise the quality of service delivery to current users of the water system or impose substantial additional costs upon them. Assuming this opinion is rendered in connection with the new facility on Hayden Avenue, the extension of the water main to provide water service to the new facility did not impact the ability of the District to deliver water service to its other members, and did not impact the quality of service delivered to its other members, and does not impose substantial additional cost on other members. However, had the water mainline extension been financed by the District at no cost to Bremer, it would have imposed substantial additional costs upon existing customers without any benefit to them because the existing members would have been financing and subsidizing an extension to service a new subdivision which provided no benefit to anyone other than the property owners within the subdivision. Further, had the District allowed the mainline to have been constructed through the Bremer parcel, it would have burdened other users of the system because it would have increased the cost of operation and maintenance, which increased cost is carried by all

members of the district in the assessment levied against them for operation and maintenance of the system.

  
JIM SAPPINGTON

SUBSCRIBED AND SWORN to before me this 30<sup>th</sup> day of November, 2011.



Christina Green  
Notary Public for Idaho;  
Residing at: Post Falls  
Commission Expires: July 31, 2015

CERTIFICATE OF SERVICE

I hereby certify that on the 30<sup>th</sup> day of November, 2011, I caused to be served a true and correct copy of the foregoing instrument by the method indicated below, and addressed to the following:

Arthur Bistline  
1423 N. Government Way  
Coeur d'Alene, ID 83814

- U.S. Mail
- Hand Delivered
- Overnight Mail
- Telecopy (FAX) (208) 665-7290

Christine Elmore



EAST GREENACRES IRRIGATION DISTRICT

BYLAWS AND POLICIES

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EXHIBIT A

# EAST GREENACRES IRRIGATION DISTRICT

## Post Falls, Idaho

### PREAMBLE - Revised 03-03-09

The East Greenacres Irrigation District is a quasi municipality whose primary function is to provide irrigation water to approximately 5,340 acres of irrigable land within the District boundaries at a maximum rate of 6.4 gallons per minute, per acre, during normal years. It is also the function of the District to provide domestic, municipal and industrial water to those within the District boundaries and within the capacity of the system.

Prior to January 1, 1977, the East Greenacres Irrigation District's water supply came from Twin Lakes and it became quite critical in dry years. To minimize irrigation shortages the District maximized the lake's drawdown. This resulted in conflicts between the District and lakeshore homeowners. Litigation between the two parties resulted in a 1969 ruling by the Idaho First District Court that the use of water from Twin Lakes should be limited to a drawdown of four feet. This judgment was upheld by the Idaho Supreme Court in 1970. This reduced the irrigation water supply by about one-half of the average requirement. Under these conditions the Twin Lakes storage would have been depleted by about July 15, and in some years by June.

On the completion of the well complex and pipe distribution system constructed by the United States Bureau of Reclamation, the Irrigation District no longer used Twin Lakes water. This change permits Twin Lakes to be used exclusively for recreation and fish and wildlife enhancement.

### BYLAWS

The District shall be governed by the applicable federal laws, state laws, by the repayment contract between East Greenacres Irrigation District and the United States Bureau of Reclamation (USBR), and by the following:

#### Section I - Board of Directors

(A) The District, as provided for in the Idaho Code - Title 43, shall have five directors whose term of office shall be for three calendar years, following their election on the first Tuesday of November. Each Director shall own land and reside within the division for which he is elected.

(1) A division, numbers one (1) through five (5), has been made within the District boundaries by acreage for purpose of five divisions from which directors

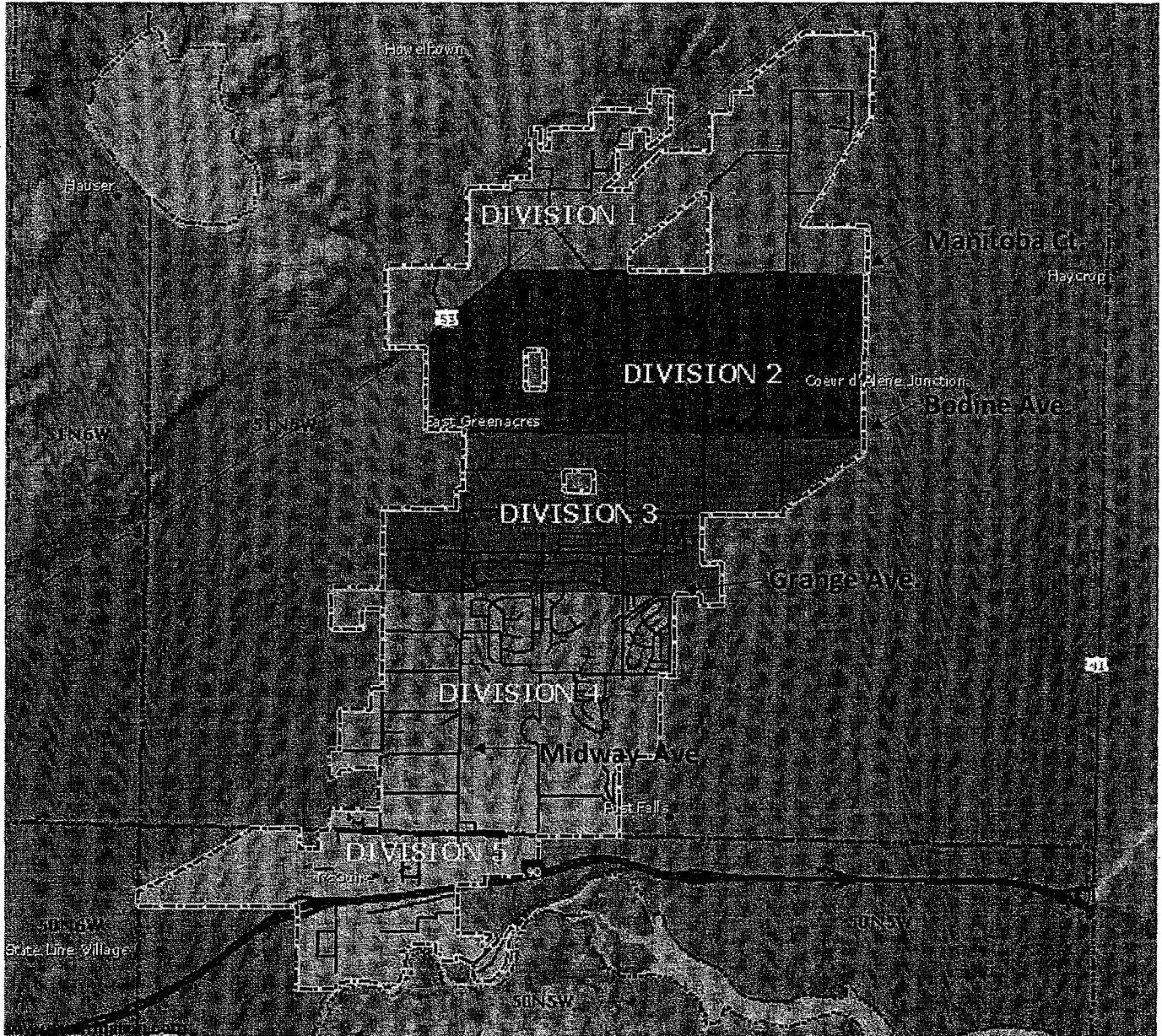
are elected.

- (2) Voting in any Irrigation District election shall be in accordance with the Idaho Code, Title 43-111, and the general election code of the State of Idaho. A District elector must be a person who is at least eighteen (18) years of age, a citizen of the United States, who owns land within the District, and is a resident of the County in which the Irrigation District is located.
  - (3) Written nominations for the office of director, must be signed by at least twelve (12) electors, and filed with the Clerk of the board of the District not less than twenty (20) days nor more than forty (40) days before the date of election.
  - (4) All matters pertaining to the election of Board member(s) shall be as provided for in the Idaho Code, Title 43.
- (B) On the first Tuesday of January the Board of Directors shall meet, and after old business, organize as a Board, affirm newly elected members and elect a President from their number, and appoint a Secretary and Treasurer to hold office at the pleasure of the Board.
- (C) The regular monthly meeting of the Board of Directors shall be held at the office on North McGuire Road, Post Falls, Idaho at 7:00 p.m. The meetings will be held on the first Tuesday of each month, unless previously announced, as provided by State Statute. If a board meeting falls on a holiday, the meeting will be moved to the following Tuesday of that month. (Amended 4-01-2008)
- (D) The fiscal year of the East Greenacres Irrigation District shall commence the first day of January and end the thirty-first day of December of each and every year.
- (E) An annual budget will be compiled by the Manager, from previous years information and adopted by the Board of Directors upon their approval.
- (F) Signature cards on checking, savings, and other bank/savings accounts shall be signed by the Secretary of the Board, the Treasurer of the Board, and the Manager, with any two signatures required for monetary transactions of the District. (Amended 4-01-2008)

## **Section II - Manager and District Employees**

- (A) The board selects a manager to serve at the pleasure of

# East Greenacres Irrigation District



## Directors Division Map

### Divisions 1-5

the Board. The manager is the chief administrative officer, and is responsible to the board of directors for efficient administration of the affairs of the District. The Board shall also hire a clerk of the board who shall serve at the pleasure of the Board.

- (A) All employees are employed by the District subject to the terms and policies set forth by the District in the Employee Policies.
- (B) The Manager shall be responsible for District compliance with IDAPA 58.01.08 (Idaho Rules for Public Drinking Water System) System Classification and License Requirements of Operators.

### **Section III - Equipment**

- (A) District equipment shall not be used for purposes other than those pertinent to the administration, operations, maintenance and repair of the property of the District. No individual's personal property shall be stored on District property unless pertaining to District operation.

### **Section IV - Resolution of Problems**

- (A) It is the privilege of any landowner or water user to bring before the District board of directors, at any regular meeting of the board, any problems relating to water service or District operations, provided that said landowner or water user has first presented the problem to the manager of the District. The board may require the landowner to put in writing the nature of their problem and intention to appear before the Board at a certain time in order that all facts may be before the Board at the time of their appearance before the Board.

### **Section V - Annexation**

- (A) Petitions for annexation of lands into the District or exclusion from the District must comply with Idaho Code and other relevant statutes. Approval for annexation or exclusion must be granted by the Board of Directors and the Secretary of the Interior of the United States, pursuant to the contract between the District and the United States and relevant federal statutes.

### **Section VI - Nepotism**

- (A) It is the policy of the board of directors that the District manager shall not employ an immediate relative of his/her, nor an immediate relative of a member of the board of directors.

## Section VII - Irrigation and Domestic Water

### (A) Irrigation Season and Irrigation Water Delivery

- (1) The normal irrigation season will be from May 1 to October 1. A maximum of two (2) acre feet per acre will be provided for the yearly irrigation assessment and/or water service contract. The water allowed before an overage charge is incurred will be proportional to the number of acres and/or portions of an acre under assessment or contract.
- (2) All irrigation deliveries will be metered. Should any irrigation meter not operate because of vandalism or normal maintenance problems, the usage for the meter will be computed on similar recorded usage from prior records for that delivery.
- (3) A landowner of irrigable lands may be allowed to purchase additional irrigation deliveries. Payment must be received and both a contract and an easement properly executed in advance of any construction.
- (4) All landowners must use a control valve of a proper size and type approved by the District on each delivery. All control valves must be in proper working order prior to the commencement of irrigation season in order to have irrigation water turned on. No quick-closing valves, 2" diameter or larger, will be permitted as control valves in the District.
- (5) All irrigation water services shall be equipped with a backflow prevention device. No water will be served by the District until the devices are properly installed. Backflow prevention assemblies shall be inspected and tested annually for functionality by an Idaho Licensed tester. The District may discontinue service to any facility where suitable backflow protection has not been provided for a cross connection. (IDAPA 58.01.08)
- (6) Each property owner shall be responsible for any damage to the District's facilities by his livestock or equipment, or misuse.
- (7) Should the demand for irrigation water exceed the capacity of the system, each water user will be required to irrigate at the no more than 6.4 gallons per minute per acre.
- (8) The right of delivery of water is appurtenant to the

parcel of land and cannot be independently transferred from that parcel.

- (9) Only lands classified as irrigable by the U.S. Bureau of Reclamation can be irrigated. However, lands which have been cleared to irrigable status may be issued a temporary irrigation water service contract.
- (10) Irrigation water for agricultural purposes may be delivered to lands outside the District boundaries on a temporary and interruptible basis, at the discretion of the board of directors. A yearly renewable contract must be executed and the per acre irrigation charge paid for that acreage in advance of any water delivery.

(B) Domestic Water

- (1) All domestic deliveries will be metered. Should a delivery not operate because of vandalism or normal maintenance problems, the usage for the meter may be computed on similar recorded usage from prior records for that delivery.
- (2) Each domestic delivery shall be allowed 10,000 gallons of water per month, with additional usage being recorded as overage.
- (3) Each individual residence shall be required to pay a hookup fee. Each individual residence shall be metered. Individual homes owned by the same party and located on the same parcel of land shall be served by individual metered deliveries. The landowner will be billed the minimum monthly rate for each residence and allowed 10,000 gallons per month for each. The landowner will be held responsible for the monthly charge and any overage which may accumulate. Each individual delivery shall be installed at a standard fee which will include the hookup fee. The landowner shall also pay for all costs associated with removing and replacing paved surfaces or curbing, and/or sidewalks.

All new services will be locked off until normal service is requested and billing has been initiated. Services will be unlocked and regular billing initiated during the District's regular office hours, Monday thru Friday, and then only after the property owner has signed the contract for service and paid

the required fees.

Any residence found to be in violation of this bylaw shall be subject to immediate disconnect.

- (4) A landowner may purchase, so long as the capacity and efficiency of the system permits and the provisions of the USBR contract and the State and Federal regulations and statutes permit, additional domestic water deliveries upon obtaining the approval of the District, paying the costs of such installation or installations, and properly executing the contract and easement for such installations, in advance of any construction of new facilities.
- (5) Each landowner shall be responsible for any necessary repairs to the domestic line, delivery, and meter serving his property, due to the water user's mistreatment or abuse of the same. Protection from freezing shall be the responsibility of the District unless the meter box lid or insulation is disturbed by the water user, resulting in the meter and piping being damaged. In such case, any necessary repair costs will be the responsibility of the water user.
- (6) Domestic Water Outside District Boundaries - No domestic water shall be served outside EGID boundaries except in an emergency situation.

#### **Section VIII - Water Charges**

##### (A) Irrigation Assessment

- (1) The District shall levy an annual irrigation assessment, as determined at the annual budget hearing, against each irrigable acre and fraction thereof and shall require payment of the operation and maintenance assessment whether or not irrigation water is used. (Amended 4-01-2008)
- (2) On one acre of irrigable land or less, a minimum irrigation assessment charge for one acre will be made only if an irrigation delivery is installed on the property. If an irrigation service is not installed, a separate administration assessment will be made which will cover the District's costs for assessments and the administration costs associated with small parcels of land. The administration assessment charge will also be determined at the annual budget hearing.



- (3) Prior to delivery of water to a user, all delinquent assessments must be paid including any penalties, interest, and overage charges, which may have accrued. Minimum operations and maintenance and construction charges are payable as specified on yearly assessment notices.
- (4) Irrigation assessment charges are billed annually and, except for overages, due in advance. The regular annual bill shall be sent out at the beginning of November of each year. The first half of the assessment with overages is due by December 20<sup>th</sup> With the second half due June 20<sup>th</sup>.
- (5) Irrigation Water Rates:  
  
Up to 2.5' of water = Yearly irrigation assessment rate.  
Over 2.5' of water = 120% yearly irrigation assessment rate.
- (6) Should a landowner use irrigation water when his assessment is not paid, the delivery will be locked and a reconnection charge made (amount to be determined at the annual budget hearing.)

(B) Domestic

- (1) Board of Directors shall establish a base charge for 10,000 gallons per month plus an overage rate applicable to the domestic water users at the yearly budget meeting. Domestic charges are billed quarterly and, except for overages, in advance. The regular quarterly bill shall be sent out at the beginning of each quarter. Unpaid domestic water charges become past due and delinquent on the first day of the month immediately following the quarter in which the domestic water charges are incurred. **A late fee of \$15.00 (\$5.00 per month) will be charged on all delinquent accounts effective July 10, 2009. (Approved at 5-5-09 Board meeting.)**
- (2) Domestic water services will be terminated after due notice and opportunity for hearing when any domestic water charges remain unpaid sixty (60) days after the date of delinquency.
- (3) A re-connection fee of thirty dollars (\$30.00) must be paid to restore domestic water service after termination of domestic water service due to failure to pay past due and delinquent domestic water charges or due to failure to otherwise comply with District

policies and regulations.

- (4) A certified mailing fee of ten dollars (\$10.00) must be paid by the water user, when notice is sent to the water user with respect to past due and delinquent domestic water charges or failure to otherwise comply with District policies and regulations. Certified mailing fees imposed for notification of past due and delinquent domestic water charges must be paid before any terminated service is restored by the District. Partial payments will not be accepted after shut off notices are mailed.
- (5) Reasonable efforts shall be made to provide all affected parties with both a due notice of turn off of domestic water service and an opportunity for a hearing before the Board prior to the termination of domestic water service due to failure to pay past due and delinquent domestic water charges or due to failure to otherwise comply with District policies and regulations.
- (6) Any Board hearing requested will be held at the regular monthly meeting of the Board of Directors no later than the third month of the quarter in which the notice of termination is sent by certified mail.
- (7) Domestic rates for water used in business or manufacturing are based upon the service meter size with overage rates the same as those charged for domestic users. The domestic rate will be determined at the annual budget meeting.
- (8) Only landowners will be billed and will be solely responsible for their domestic account(s). Renters or lessees will not be billed.

(C) Fees for State or Federal legislation

- (1) The District shall collect all taxes or fees required by State or Federal legislation.

**Section IX - Care of Delivery System**

- (A) Burning weeds near the District's structures is prohibited unless done with the District's consent.
- (B) Access lids or valves to irrigation or domestic deliveries may be locked at the discretion of the District or by request of the landowner.
- (C) Repairs to the pipelines or deliveries will be made by the

District. Disturbed area will be left covered by topsoil or gravel, whichever is appropriate.

**Section X - Cross Connection Control**

- (A) For the purpose of protecting the health of consumers receiving water from the District, the District will follow requirements as provided in the current Idaho Administration Rules on Cross Connection Control.
- (B) No water service connection from this District's water system shall be installed or maintained unless the District's water supply is protected, as determined by the District to be necessary, by backflow prevention devices. The installation or maintenance of a cross connection which will endanger the quality of this District's water supply is prohibited. New domestic water services for other than single family dwellings will require the installation of an approved reduced pressure zone backflow prevention assembly. Backflow prevention assemblies shall be inspected and tested annually for functionality by an Idaho Licensed tester. The District may discontinue service to any facility where suitable backflow protection has not been provided for a cross connection. (IDAPA 58.01.08)

**Section XI - Address and Ownership Changes**

- (A) The current mailing address of each property owner shall be furnished to the District in advance of the delivery of water, and in case of change of ownership, the District must be notified of the name(s) of the new owner(s) and their current mailing address along with a sufficient legal description of the subject property transferred, to properly identify the same.

**Section XII - RRA**

- (A) Certification form(s) must be filled out by all persons, organizations, corporations, and Governmental agencies, which own or lease irrigable land. Landowners whose total irrigable land owned or leased, both directly and through entities, totals 240 acres or less westwide are exempt from certification requirements. All required form(s) will be filed with the District before irrigation water is served.
- (B) All persons, organizations, corporations, and governmental agencies which lease land to or from another individual or entity, should inform the lessees or lessors of their obligation to certify or report. If either the lessee or

lessor fails to report, the eligibility of the land to receive irrigation water will be jeopardized.

- (C) If ownership or leasing arrangements change in some way, the district office must be notified within fifteen (15) days of the change and submit new certification form(s) within thirty (30) days of that change.

#### **Section XIII - Combined Accounts**

- (A) A District landowner may combine his owned or leased farming units (farming units shall mean land which is being used for agricultural purposes) into one combined irrigation water account. A party strictly leasing farm units may also combine those units into a combined water account. All combining of accounts must be done by request to the District in writing and prior to April 1, of each year in which those farm units are to be combined. In the case of parties strictly combining leased farm units, the lessee will establish an actual billing account for any overage on combined accounts. All combined accounts shall be given full credit for the total acre feet of water paid for under the minimum O&M charge for that combined account. Each combined account must be approved by the Board of Directors and signed by owners of all parcels involved.

#### **Section XIV - Water Service Contracts**

- (A) Individuals requesting land be provided irrigation water through Water Service Contract, as provided for in Bylaws Section VII (A) (7) and Policies Section III (A) shall apply yearly in writing prior to March. All parties owning land to be serviced through the contract shall sign the request.

#### **Section XV - Right-of-Way**

- (A) The USBR has exercised its rights to obtain and utilize rights-of-way, easements, and land in the location and construction of the pipelines, pumps, controls, roads, reservoirs and other works of the system. It has reserved in perpetuity for itself, and for the District, sufficient easements to adequately and satisfactorily operate, maintain, repair, construct and reconstruct the facilities works. All landowners, water users, and the general public shall refrain from encroachment in any manner on these lands and easements.
- (B) No water user shall plant, construct or erect, or cause to be planted, constructed or erected, any tree, dwelling,

outbuilding or other obstruction on or over any easements of the District, unless approved by the board of directors and/or the United States as applicable. Any person in violation shall be required to remove such tree, dwelling or other structure or obstruction to enable the District to perform necessary maintenance or repair. If, upon reasonable notice to the owner, such obstruction is not removed, the District shall incur no liability for any damage sustained by such obstruction or encroachment.

- (C) The easement and rights-of-ways are not to be used as public thoroughfares. The general public does not have the right to free access to service roads of the District.

#### **Section XVI - System Modification and Addition**

- (A) A licensed engineer in the State of Idaho at the cost of the landowner will design all systems additions and modifications. Plans will be provided to the District for approval by the United States Bureau of Reclamation, the East Greenacres Irrigation District manager, board of directors, and, at their discretion, an independent licensed engineer. The landowner must also submit plans to the State of Idaho, Division of Environmental Quality, and any other agencies as appropriate.
- (B) Whenever a landowner requests system additions or modifications, they shall be designed and constructed at the landowner's expense. The landowner will provide the necessary easement to the United States to ensure access to all constructed facilities.
- (C) Drawings including plan, profile, and detail sheets showing alignments, grades, locations, pipelines and necessary details must be provided to the District for approval prior to installation. Easements for pipelines or other structures shall be recorded prior to service of installation. The District's decisions regarding materials used, method of installation, etc. shall be final. The District shall be provided as-built plans and digital copies when projects are completed.
- (D) All extensions or modifications of the District's system shall comply with the current "Idaho Standards for Public Works Construction", and the District's Construction Specifications and Standard Drawings.
- (E) All phases of construction of facilities that may become a part of East Greenacres Irrigation District's distribution system will be inspected by District personnel at the District's discretion. No facilities will be accepted without inspection and no inspection shall be made before

the Board of Directors has given final approval of construction plans.

- (F) Upon the Engineer's certification and acceptance of the as-built plans by the Department of Environmental Quality, and the landowners execution and recording of the necessary easements, the owner will convey the modifications and extensions to East Greenacres Irrigation District.
- (G) Approval of project plans by the board of directors will be null and void if construction has not begun within 12 months, or the project has not been completed within 24 months. Each stage or multiple phase project shall be completed within the time frame approved by the board of directors or the approval will be nullified. Once a plan's approval has become void, resubmittal will be required.

#### **Section XVII - Bylaw Reviewing and Changes**

- (A) Each year, beginning at the regular February meeting, the board of directors will read and review the Bylaws and Policies of the District.
- (B) Amendment(s) to the Bylaws will be read three (3) times before adoption.
- (C) Policies may be adopted or revised at any board meeting.

**EAST GREENACRES IRRIGATION DISTRICT**  
**Post Falls, Idaho**

**POLICIES - Revised 3-02-10**

**Section I - Policies of the District**

The general policies of the District are drawn from the experience of the Bureau of Reclamation's operations and other operating irrigation districts, and represent the best judgment of the District's board of directors and management. As experience is gained through the actual operation of the District, these policies will be revised, added to, or portions deleted, as sound judgment dictates. The board of directors reserves the right to approve or deny any request for variance to these bylaws and policies.

**Section II - Domestic Water**

- (A) Hookup fees will be charged for each new domestic service installed. In those cases where the District provides the installation of a service, the fee charged before construction begins is a total of hook-up fees and material, labor and equipment costs.
- (B) Mainline extensions shall be required so as to provide for proper present or future circulation of water within the system, as determined by the board of directors. This requirement shall make it necessary for the landowner to extend lines to a designated point determined by the Board of Directors.
- (C) Mainline pipe grids of 1/2 mile by 1/2 mile of ten (10) inch diameter shall be installed.

Proposed mains shall be looped in grids of 1,320 feet by 1,320 feet.

In commercial or industrial and residential areas, the minimum main size shall be eight (8) inches in diameter.  
(Amended 3-2-2010)

- (D) No more than a single fire hydrant will be allowed on a 6" dead end line.
- (E) Domestic overages from leaks - If the overage results from a leak in the owners line, the overage may be adjusted to a reduced usage rate. The adjustments will be applied only if the leak is repaired within 90 days of discovery.  
(Amended 4-4-2006)
- (F) Domestic Vacation Rates - Any party not requiring use of

their home or business domestic service for a period of one month or more may request their account be charged vacation rate for that period. Any water used during the vacation rate period will be charged at the domestic overage rate in effect. Any service on vacation rate may be locked off by the District.

- (G) Residential - Single Family Dwelling Units. A single family dwelling unit is a single family residence designed and used as a residence for one family. This includes houses, mobile homes and each unit in a building designed for more than one family, such as a duplex or apartment structure. In the case where a building contains multiple single family dwelling units a hookup fee will be paid for each dwelling unit.
- (H) Mobile Home Parks - Each lot or parcel of land within the park boundaries shall be served domestic water by individual meters when lots are individually owned. When lots are owned by one common landowner and rented or leased, they may be served by a common meter, with board approval. Each dwelling will be subject to a hookup fee prior to water service, unless otherwise approved by the board of directors. For mobile home parks where all lots are under common ownership, and are served through a common meter, only occupied lots will be charged a monthly fee.

The owner of the park must indicate on the Quarterly Report the number of spaces in use on the 15th of each month and submit the report to the District by the 20th of March, June, September and December, respectively. Failure to provide the required records by the specified date will result in a billing for all usable spaces. The District reserves the right to inspect and verify the unit count at any time.

- (I) Common areas shall be serviced and will be served only after an account with the association or corporation is established and the appropriate installation and hookup fees have been paid. In some instances, irrigation water may be available.
- (J) Building - Any building used for other than residential use, such as a commercial or industrial application, shall be metered and require a hookup fee.
- (K) Recreational Vehicle Parks - Temporary rental spaces where recreational vehicles are placed and temporarily maintained for dwelling purposes. RV Parks may be served by one delivery and metered with the approval of the board of directors. A recreational vehicle is a vehicular-type



unit primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. The basic entities are: travel trailer, camping trailer, truck camper, fifth wheel trailer and motorhome. Billing to RV Parks shall be based on the existing domestic water rates.

- (L) Any land being served either domestic or irrigation water must have deliveries installed on the parcel being served.
- (M) Multiple Building Complex - Each commercial unit of a multiple building complex shall be metered. A multiple building complex is a group of structures, which share the same lot, access and/or parking facilities.

### **Section III - Irrigation**

- (A) Irrigation Water Outside District Boundaries - Irrigation water for agricultural purposes may be delivered to lands outside the District boundaries on a temporary and interruptible basis. A yearly renewable contract must be executed and the per acre irrigation charge paid for that acreage in advance of any water delivery. All such water service contracts must be approved by the Board of Directors. Any overages incurred shall be the responsibility of the person requesting a water service contract.
- (B) Hookup Fees - A one-time hookup fee will be charged for each new irrigation service installed. This charge is above the actual costs for the labor, equipment, materials, and overhead involved in the installation.
- (C) Any delivery relocation by a present owner will not require payment of a hookup fee.
- (D) Requests for assessment changes, based on the size of property, must be accompanied by documentation from the assessor or a licensed surveyor in the State of Idaho. The landowner or the District may initiate the request.
- (E) If a landowner uses irrigation water when his Assessment is unpaid, the irrigation delivery will be locked and a reconnection fee charged.
- (F) Any modification to the normal irrigation season, requested by the landowner, must be agreed to in writing and approved by the District, bearing the signatures of the District and the water user. In the event a modification exists, the water user shall be responsible and agrees to reimburse the District for any damage to the

delivery assembly caused by freezing. The District reserves the right to make the final decision as to the cause of the damage and the cost of the necessary repairs, including labor. It must be understood that, as a recipient of service from East Greenacres Irrigation District, the water user must contribute an effort to protect and prevent damage to the District deliveries and equipment. Requests for early turn on or late turn off will only be accepted for parcels containing a minimum of four (4) acres and must be filed at the District office by April 10 and requests for late turn off must be filed by September 20. Requests made after these dates will not be considered.

- (G) No booster pumps designed to increase pressure or flow will be allowed on irrigation services.
- (H) Effective November 1, 2005, no irrigation water will be served to Class 6 land, as determined by the U. S. Bureau of Reclamation, which has not been served irrigation water through a water service contract within the past 5 years. (Amended 11-1-2005)

#### **Section IV - Access to Easement and Rights-of-Way**

- (A) Should the District have difficulty in having unobstructed access to irrigation or domestic deliveries, the manager is authorized to notify the landowner in writing that corrective measures are required. At that time, a meeting between the landowner and District personnel is encouraged. The landowner will be given adequate time for installing the gate or other access to the delivery. Should the owner fail to comply within the allotted time, service may be terminated, or not initiated.

#### **Section V - Fire Hydrants**

- (A) Any party rendering a hydrant in any way inoperable by the raising of grade, placement of obstruction, or any other means will be required to remove the obstruction or pay for modifications needed to bring the hydrant within accepted standards.

#### **Section VI - Firelines**

- (A) Fees for firelines connected to District water lines are determined by the water line size. Fee billings are quarterly, in advance, and payable within that quarter.
- (B) All firelines shall be valved at the mainline, and the owner shall install and maintain, as minimum required protection, an approved double check valve assembly.

- (C) Firelines may be disconnected because of nonpayment of fees or a request by the landowner. A letter confirming the disconnection will be sent to the landowner with a copy to the appropriate fire protection district.

#### **Section VII - Yearly Audit**

- (A) A yearly audit shall be presented to the Board of Directors at a regular public meeting, as nearly as possible to the 10th of February of each year.

#### **Section VIII - Annual Budget, Hearing(s), and Approval**

- (A) The manager of the District, from previous year's records and information will compile an annual budget.
- (B) The fourth Tuesday of each August, the board of directors will hold an Annual Budget Hearing. Legal notice will appear in a local paper in the form of a Public Notice of the Hearing. The proposed budget will be reviewed and tentative rates for irrigation and domestic purposes will be established. Should the need arise, and revisions are asked for, the Board will continue the Budget Hearing at a following date.
- (C) On the first Tuesday of September, the Board of Directors will adopt a Budget for the following year. Legal notice will appear in a local paper in the form of a Public Notice of the adopting of the budget on that meeting date, for the benefit of interested landowners. At this meeting, the Board will also correct assessment acreage for any landowner showing evidence that their acreage assessment is incorrect.

#### **Section IX - Finance Committee**

- (A) A Financial Committee shall update and advise the board of directors on a regular basis. The committee shall consist of the District Manager and the Clerk of the Board. A board member may be appointed to the committee at the regular January board meeting each year. (Amended 3-2-2010)

#### **Section X - Board of Directors and Manager**

- (A) The Board of Directors and manager may hold annually a special meeting to review the District's contract with the United States and tour the District facilities.
- (B) The District will pay all travel expenses, lodging, and actual lost wages and any pertinent fees relative to any

board authorized meeting.

**Section XI - Bad Checks**

- (A) A \$20.00 charge will be made for any check returned. From that time forward, the account will be put on a cash-only basis, at the discretion of the Office Manager. (Amended 3-2-2010)

**Section XII - Policy Changes**

- (A) Policies may be revised, added to, or portions deleted, as sound judgment dictates.

**Section XIII - Penalties, Fines, and Fees**

- (A) Penalty of 2% and interest of 1% per month will be charged to delinquent irrigation accounts.
- (B) A mailing fee of \$10.00 will be charged whenever it becomes necessary to send certified notices due to delinquent balances in excess of \$50.00.
- (C) **A late fee of \$15.00 (\$5.00 per month) will be charged on all delinquent domestic accounts effective July 10, 2009. (Approved at 5-5-09 Board meeting.)**

**Section XIV - Service Fees**

- (A) Service calls to shut off water at customer request may be subject to a \$20.00 service charge.
- (B) If a landowner requests a service call during non regular business hours the owner may be charged a \$75.00 service call fee should the need for the call not be related to District owned facilities.
- (C) An hourly labor rate of \$45.00 per man hour.

**Section XV - Construction and Bulk Water**

- (A) Construction and bulk water is available at Well Site #1 during the normal irrigation season (May 1 to October 1). The minimum fee per load shall be \$5.00. Bulk water provided to Public Water Supplies shall be limited to 30 consecutive calendar days annually.

**Section XVI - Fee Schedules**

- (A) Domestic Hookup Fees per unit.
  - 1" Service DM&I..... 2,250.00
  - 1 1/2" Service DM&I..... 3,000.00

2"	Service DM&I.....	5,000.00
3"	Service DM&I.....	10,000.00
4"	Service DM&I.....	20,000.00
6"	Service DM&I.....	40,000.00

(B) Domestic Rate

3/4 & 1"	Service...\$36.00/qtr.	for 30,000 gallons
1 1/2" & 2"	Service.72.00/qtr.	for 30,000 gallons
3"	Service.....	108.00/qtr. for 30,000 gallons
4"	Service.....	144.00/qtr. for 30,000 gallons
6"	Service.....	180.00/qtr. for 30,000 gallons

(C) Domestic Overage Charges per unit.

Next 90,000 gal@	\$0.75/1,000 gallons
Next 600,000 gal@	\$0.50/1,000 gallons
over 720,000 gal@	\$0.25/1,000 gallons

(D) Domestic Overage Due to Leak

\$.10 per 1,000 gallons (Amended 4-4-2006)

(E) Domestic and Irrigation Reconnection Fees

- (1) Domestic - \$30.00 reconnection fee is charged when water is turned off for non-payment.
- (2) Irrigation - \$30.00 reconnection is charged when an irrigation delivery is locked due to use of water when Assessment is unpaid.

(F) Irrigation Hookup Fees

1"	\$600.00
2"	700.00
3"	800.00
4"	900.00
6"	1000.00

(G) Yearly Irrigation Assessment

- (1) \$20.00/acre (Allows 2.0 acre ft. of water/acre or 87,120 cubic feet per acre.  
\$7.00 Administrative Assessment on 1 acre or less without delivery service.

(H) Irrigation Overage Charge

0 - 2.0 acre ft/acre	Base
2.0 - 2.5 acre ft/acre	100%
2.5 - More	120%

(I) Fireline Fees

- (1) Up to and including 6" line - \$90.00/qtr. billed quarterly in advance.

8" line - \$105.00/qtr. billed quarterly in advance.

**XVII - IRRIGATION WATER RATES**

(A) Full cost Irrigation Assessment required by the  
Reclamation Reform Act.

Block I	\$177.00
Block II	\$179.00

**XVIII - WATER SERVICE CONTRACT RATES**

(A) 20.00/acre - Inside and Outside District

Susan P. Weeks, ISB # 4255  
James, Vernon & Weeks, P.A.  
1626 Lincoln Way  
Coeur d'Alene, ID 83814  
Telephone: (208) 667-0683  
Facsimile: (208) 664-1684

*Attorneys for Defendant*

STATE OF IDAHO } SS  
COUNTY OF KOOTENAI }  
FILED

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CLERK DISTRICT COURT  
*Paul Cunningham*  
DEPUTY  
PB

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

BREMER, LLC., an Idaho limited liability  
company, and KGG PARTNERSHIP,

Plaintiffs,

EAST GREENACRES IRRIGATION  
DISTRICT,

Defendant.

CASE NO. CV-11-1921

DEFENDANT'S MEMORANDUM IN  
OPPOSITION TO PLAINTIFFS' MOTION  
FOR SUMMARY JUDGMENT

Bremer, LLC and KGG Partnership (collectively "Bremer") filed a cross motion for summary judgment in this matter, claiming that they were entitled to summary judgment because: (1) East Greenacres Irrigation District ("District") has no constitutional or legislative authority to require Bremer to extend the water main because the extension provided a benefit to all users of the system; and (2) the District's bylaw pertaining to line extensions has no regulatory provisions and benefits all members equally, and therefore constitutes a tax. The District responds as follows.

I. Disputed Facts

Bremer presents the Affidavit of Philip Hart in support of its motion for summary judgment. This affidavit is presented as the "assessment of the water line required by East Greenacres Irrigation District." This affidavit lacks foundation for rendering an expert

DEFENDANT'S MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR  
SUMMARY JUDGMENT: 1

opinion in this matter. The only qualification in the affidavit to establish Mr. Hart as an expert is that he served on the board of directors of a water district for seven years. Serving on a board of directors of an entity does not qualify one to provide expert opinions regarding the construction of a water system. Therefore, this affidavit should be disregarded.

Should the Court decide to rely upon Mr. Hart's opinion, such opinion adds nothing in support of the Plaintiffs' motion. Mr. Hart recites to the information he relied upon in arriving at his expert opinion as information that there was a water main extension to serve the Bremer parcel which was later extended to form a "loop" within the irrigation system.<sup>1</sup> (Mr. Hart expresses no indication of who extended the waterline to provide for looping.) Mr. Hart indicates that Mr. Bremer told him that he had a building with water service on a lot next to the lot where the new building was constructed. Mr. Hart indicates he served on the board of directors of a water district for 7 years and knows that water districts attempt to loop their system whenever possible. From these matters, Mr. Hart arrives at the opinion that a looped system provides a benefit to all users of the entire system because it equalizes pressure within the system and increases flows at any point within a loop. Mr. Hart also provides the expert opinion, without providing any support, that delivery of water to the facility operated by Plaintiff does not impact the quality of water service or impose substantial additional cost of water to other users of the system.

The affidavit of Gary Bremer is also presented in support of the Plaintiffs' motion for summary judgment. Mr. Bremer's affidavit indicates his contractor informed him he would be required to extend the water main across his property in order to hook up to the District's system, and expresses the conclusory opinion that the improvements had nothing to do with

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<sup>1</sup> There is a dispute as to the amount of line installed by Bremer. The as-builts prepared by Bremer's project engineer (submitted with the affidavit of Ron Wilson) indicate it was less than 1,500 lineal feet, as does the affidavit of Jim Sappington. However, this disputed fact is not material to the present motion.



his company's hook-up to the system. (Mr. Bremer provides no explanation of how he expected to receive water to the parcel without a water mainline extension.)

Plaintiffs also provide the affidavit of Scott Jones, the engineer who was hired to engineer the extension of the mainline to the company's new building.<sup>2</sup> This affidavit indicates that Mr. Jones met with officials of the District who informed him it was the District's requirement that the line be extended across the subject property. In a separate paragraph, this affidavit indicates that Mr. Jones "gained the understanding" that the extension was incident to a plan to loop the line. (Jones Affidavit, Paragraph 5.) This assertion is not supported by foundation. Where Mr. Jones "gained this understanding" is not disclosed, and it is not set forth in the previous paragraph of the affidavit of matters discussed with the District staff. Thus, this conclusory statement lacks foundation and should be disregarded.

Plaintiffs conclude from the above facts that:

- The mainline extension did not benefit Bremer; and
- the mainline extension was done to facilitate a system loop and was unrelated to serving Bremer's parcel with water.

In response, the Court is provided with the Affidavit of Jim Sappington. This affidavit disputes Mr. Bremer's allegation that the mainline extension was unnecessary to provide service to Bremer's new building. It also clarifies that the extension was required irrespective of the District's subsequent actions two and half years later to loop the system.

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<sup>2</sup> At present, this affidavit is not notarized. It was agreed between the parties that it could be submitted without a notary as long as a notarized affidavit was substituted in before the hearing.

II. The District had Statutory Authority to require Bremer to Extend the Water Main

Bremer's argument for summary judgment is based upon a couple of incorrect premises.

First, Bremer claims the District is a municipal corporation in terms of its ability to collect revenue and fees, limited by Dillon' Rule, and the District's ability to impose fees and taxes to raise revenue must be imposed in an equal manner upon all citizens through general taxes.

"However, an irrigation district's primary purpose is the acquisition and operation of an irrigation system as a business enterprise for the benefit of its shareholders." *Brizendine v. Nampa Meridian Irr. District*, 97 Idaho 580, 588, 548 P.2d 80 (1976) (citing *Barker v. Wagner*, 96 Idaho 214, 526 P.2d 174 (1974); *Lewiston Orchards Irrig. Dist. v. Gilmore*, 53 Idaho 377, 23 P.2d 720 (1933)). Irrigation Districts also perform this distinct purpose separate from the limitations addressing revenue, fees and taxes as govern municipalities.

An irrigation district's power to raise revenue is not limited by the Idaho constitution as postulated by Bremer. Rather, the legislature may not collect revenues for the benefit of an irrigation district by imposing taxes without violating the provisions of art. 7, Section 6 of the Idaho Constitution. *Oregon Shortline R.R. v. Pioneer Irrigation District*, 16 Idaho 578, 102 P. 904 (1909); *Gem Irrigation District v. Van Deusen*, 31 Idaho 779, 176 P. 887 (1918). Rather, an irrigation district must collect revenues as authorized in its enabling statutes.

Further, irrigation districts do not operate through the collection of general taxes. Rather, the operation and maintenance budget of an irrigation system is financed through assessment of its members, and not through a general tax. Title 42, Chapter 7. The irrigation district infrastructure is financed based upon assessments to the properties that benefit from the improvement of the system.

Irrigation districts are organized for the benefit of water users only, and they raise funds to finance their operations through assessments of water users. The assessments are levied on the basis of benefits received by the land. The benefit assessments imposed by irrigation districts are similar to special assessments for improvement purposes which have been held not to be a tax within the uniformity requirements of the Idaho Constitution.

Moreover, art. 8 § 3 requires,

'(P)rovisions shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal . . .'

Since art. 8 § 3 speaks in terms of taxes and since benefit assessments are not taxes, art. 8 § 3 applies to general governmental entities, not entities such as irrigation districts which derive their funds from benefit assessments.

*Barker v. Wagner*, 96 Idaho 214, 217, 526 P.2d 174 (1974),

Bremer also argues that the District is limited by Dillon's rule, a rule which provides that a municipal corporation may exercise only those powers granted to it by either the state constitution or the legislature and the legislature has absolute power to change, modify or destroy those powers at its discretion. In *Viking v. Hayden Lake Irrig. Dist.*, 149 Idaho 187, 233 P.3d 118 (2010), our Supreme Court analyzed the constitutional provisions that empowered municipalities to impose rates and charges for public works projects (water and sewer) as compared to an irrigation district's statutory authority to set rates and charges. *Viking Construction* argued that the legislature's enactment of legislation authorizing an irrigation district's power to impose rates and charges to provide revenue for a separate domestic water system operated by the Hayden Lake Irrigation District was unconstitutional because it was not authorized by the Idaho Constitution. In rejecting this proposition, our Supreme Court observed:

In *Loomis*, this Court stated, "The Idaho Constitution, art. 8, § 3 allows municipalities to impose rates and charges to provide revenue for public works projects, and pursuant to this section of the Constitution, the Idaho legislature enacted the Idaho Revenue Bond Act, codified at I.C. § 50-1027 through § 50-1042." 119 Idaho at 437-38, 807 P.2d at 1275-76. *Viking* argues that because this Court has held that Article 8, § 3, does not apply to irrigation districts, *Barker v. Wagner*, 96 Idaho

214, 218, 526 P.2d 174, 178 (1974), there is no constitutional basis for the legislature enacting Idaho Code § 43-1909(e), part of the Irrigation District Bond Act.

“Our State Constitution is a limitation, not a grant of power, and the Legislature has plenary powers in all matters, except those prohibited by the Constitution.” *Rich v. Williams*, 81 Idaho 311, 323, 341 P.2d 432, 439 (1959). Article 8, § 3, is not a grant of power; it is a limitation on the power of subdivisions of the State to incur indebtedness. Therefore, there did not need to be any constitutional provision authorizing the legislature to enact the Irrigation District Bond Act, including Idaho Code § 43-1909(e).

The same analysis extends to the current case. There is no constitutional provision that prohibits the legislature from providing that an irrigation district may require a landowner to pay for an extension of the system to serve a subdivided parcel of property. Rather, the issue is what, if any, statutory authority the legislature has granted to an irrigation district to require an owner of a parcel of property to pay for an addition or extension to the system works.

Bremer claims the legislature provided the District with several different options for raising revenue to provide for capital improvements, such as the mainline extension involved in this case. Bremer is partially correct in its recitation of statutory authority that the District has with respect to its irrigations system. However, the citations to Title 43, Chapter 19 (Irrigation District Domestic Water System Revenue Bond Act) are inapplicable to this case. This chapter of the irrigation code only applies to irrigation districts that have constructed a separate domestic water system. East Greenacres Irrigation District only has one irrigation system, thus Chapter 19 is inapplicable to the present case.

Unlike municipal systems which are paid for and expanded through the collection of taxes, irrigation systems construction was funded by the members, either directly through capital contributions, or more commonly, through monies borrowed, usually from the U.S. Bureau of Reclamation. On bureau loans, the money is paid back through bond assessments. Thus, whenever land is subdivided and new irrigation system infrastructure is required, there is no

taxing mechanism that allows revenues to be raised to pay for the extension as argued by Bremer. The Idaho legislature recognized this difference in funding mechanisms between an irrigation district and other governmental entities and provided a mechanism for irrigation districts whereby extensions to newly created subdivisions would be paid for by the owners of the land benefiting from the extension. This mechanism is provided for in the provisions of I.C. § 43-330A *et seq.*

Bremer acknowledges that I.C. § 43-330A allows the District to enter into a contract with a private land owner for the construction of a pressurized system for the proper distribution of irrigation water. Bremer fails to acknowledge that this statute equally applies to subdivided parcels that seek water for residential, commercial or industrial uses as is the circumstance in the present case. Rather, Bremer stands resolute in their position that the mainline extension was required merely to allow the irrigation district to loop its system.

Bremer maintains that this statute is inapplicable in the present case because they perceive that the extension equally benefitted other users of the system due to the subsequent looping of this line by the system, which would have equalized water pressure to the benefit of all users of the system. This argument ignores the fundamental statutory scheme that owners of subdivided land are required to bear the cost of their own infrastructure, and other parcels that are not benefited by the extension are not assessed such cost. Bremer maintains that because the District eventually looped the line after it was constructed that the reasonable inference is that the mainline extension was actually intended as a system improvement designed for the benefit of all users, and not installed for the benefit of the subdivided parcel. This inference is not reasonable (or even a probable inference) given the evidence in this case.

The evidence in the record shows that Bremer is connected to the mainline extension. Further, it demonstrates that a mainline extension to Bremer was necessary to provide the fire protection measures required by Kootenai County Fire & Rescue. Thus, the mainline extension benefited Bremer's subdivided parcel.

Under the statutory scheme the legislature put in place, owners of subdivided parcels are required to finance the infrastructure for service to the subdivided parcel, regardless of whether the District later loops the line. The mere fact that the District later chose to loop the line to improve quality to its members, including Bremer, does not detract from the fact that the extension was required to service Bremer's subdivided parcel, and as such, the District was authorized to require Bremer to pay for the extension.

Bremer's contention that the entire system benefited equally from this extension and therefore such extension should be deemed a system improvement rather than a mainline extension to a subdivided parcel is equally without merit. The existing system was already serving the members. The extension was necessitated by the subdivision of the Bremer parent parcel. Thus, the reasonable inference is that Bremer was the primary beneficiary of the line extension. Any benefit gained by the subsequent looping of the system two and a half years later is merely incidental. Thus, the statute required the District required that Bremer construct such extension at Bremer's expense, and not the expense of other members of the District.

Bremer also takes issue with the District's policy that mainline extensions be constructed in a manner as to provide for proper present or future circulation of water within the system. The "by-law" cited by Bremer is actually a policy of the District, not a by-law. *See Sappington Affidavit in Response to Plaintiffs' Motion for Summary Judgment.* However, it is the policy of the District that any mainline extension must be constructed in a manner that provides for proper

present or future circulation of water within the system. It is not inappropriate for an irrigation district to require that any mainline extension of its system allow for proper water circulation. Further, in addressing service to a subdivided parcel, I.C. § 42-330A provides that “the board of directors of the district may enter into a contract with the owner or owners of the entire parcel, or of any tract therein, for the construction of a pressurized system for the proper distribution of irrigation water to the parcel or to the designated tracts within the parcel.” Thus, the legislature gave the board the authority to set standards in the construction of a pressurized system to attain proper distribution of water.

Idaho Code § 43-330B provides that the owner of the benefited parcel is required to pay for the improvement, although the District has the option of partially funding the initial construction and collecting the financed amount from the owner (which is contrary to the powers of a municipal corporation, which is prohibited by Article VIII, Section 3 from extending its full faith and credit for the benefit of a third party.) Idaho Code §43-330C indicates the contract can require that the owners be responsible for the construction. Once constructed, the system becomes the property of the District. I.C. §43-330E. Thus, the legislature has allowed for the actions taken by the District in this matter.

Bremer contends the general assessment provisions of I.C. § 43-701 prohibit charging Bremer for the extension of the main to serve its parcel because this statute requires the amount assessed to a landowner to be proportionate to the benefit received by such parcel of land. This argument demonstrates a lack of understanding of the statutory scheme developed by the legislature with respect to irrigation districts. Idaho Code § 43-701 provides that an irrigation district may collect an assessment for *maintaining and operating* the works of the district, which must be spread proportionally among the benefited lands. It does not address construction of

improvements to the system. Construction of improvements is addressed in Chapter 3 of Title 43.

It is clear from the provisions of I.C. §§ 43-330A through 43-330G that the legislature granted the District the power to require landowners of subdivided agricultural lands requesting service for residential, commercial, industrial or municipal use to bear for the cost of extension of a pressurized system to serve the subdivided parcel. Therefore, the District is entitled to summary judgment on this issue.

Bremer claims the District did not utilize the provisions of I.C. §§ 43-330A through 43-330G in connection with this extension. This allegation is incorrect. The District set forth its terms and conditions for provision of water to Bremer's parcel, which included the requirement that the extension be built to District standards at the owner's cost. According to Bremer, Bremer's former lawyer (Bent Schlotthauer) tried to negotiate different terms which were rejected by the District. Bremer acknowledges he accepted the District's terms and moved forward with the construction of improvements. Bremer now claims he was coerced into this agreement because it would have cost him approximately \$6,000 per day had he not moved forward with the agreement. (It is unclear from Bremer's affidavit the source of these costs). Bremer points to no unlawful threat or unlawful coercion by the District that would invalidate the agreement. Bremer could have chosen to not move forward with the project. Upon weighing the benefits of the construction against the costs of the construct of the extension, Bremer chose to accept the terms of the agreement and construct the extension in order to obtain water for the subdivided parcel. The fact that Bremer now regrets that decision is not a basis for invalidating the agreement. *See generally KMST, LLC v. County of Ada*, 138 Idaho 577, 67 P.3d 56 60 (2003).



### III. The Line Extension Requirement does not Constitute a Tax

Bremer also argues that the mainline extension was an exaction and tax because it benefitted all users of the water system equally. Bremer claims he was the same class as all other members of the District and he was not taxed uniformly with those members. This contention relies upon Bremer's claim that he gained no benefit from the line extension that wasn't gained by everyone else. However, it is undisputed that Bremer gained water service to his subdivided parcel, a benefit that everyone else already had, thus there was no benefit to the other members of the District to extend the water main to provide service to Bremer's subdivided parcel. In fact, had the District extended the water mainline for Bremer's benefit without assessing the benefit to the benefitted lands, it would have violated its statutes because it would have assessed members for a cost that did not benefit their parcel.

Idaho Code § 43-300A *et seq.* is constitutional and does not violate either Art. VII, Section 5 or Art. XII, Section 2 of the Idaho Constitution. Bremer claims it is unconstitutional for the irrigation district to require the owner of a subdivided parcel to construct the infrastructure to service their own parcel because they are a landowner, the same as other landowners in the district. However, they are not similarly situated. Rather, owners of parcels created by subdivision to which service has not been extended are a separate class of subjects. They have not paid for the infrastructure that is servicing their land. The mainline extensions will benefit only their parcel(s). Therefore, it is constitutional for the legislature to require such parcel owners to pay for the construction of infrastructure that benefits their parcel.

### III. The District's Construction Standards Policy is not a Tax

Bremer also presents an argument that the by-law (which is actually a policy on construction standards) is an illegal tax because it charges a fee that is not incidental to the

enforcement of a regulation. Bremer apparently deems it a “fee” because it sets a standard for construction, of the mainline extension. Thus, Bremer’s attenuated argument is that the construction requirement was not authorized by statute and costs money, and therefore the construction standard constitutes a fee, which is actually a tax because it is unrelated to regulating use of the system, but rather imposed to gain system improvements at the expense of one landowner.

The District’s policy on construction standards requires that the mainline extension has to be constructed to allow for proper present and future circulation of water in a location designated by the Board. This policy merely reiterates the provisions of I.C. § 43-330A which allows the District to enter into an agreement with the owner of a subdivided parcel for the owner to construct an extension of the mainline that allows for the proper distribution of water. This regulation relates to the police powers of the district. The district is charged to provide “proper distribution” of water and is therefore required to plan for present as well as future circulation.

To summarize the argument previously presented, the irrigation district statutes allow irrigation districts to require owners of subdivided parcels to pay for the extension of its works to service the parcels created by subdivision. Since the requirement is allowed by the statute, the requirement is not a fee. Our Supreme Court has analyzed this circumstance in an analogous situation involving a statute that allowed imposition of a fee for garbage service (even though the user did not have garbage service), and held:

We exercise free review over the construction of a statute. *Lopez v. State, Industrial Special Indemnity Fund*, 136 Idaho 174, 30 P.3d 952 (2001). If the statutory language is unambiguous, we merely apply the statute as written. *Id.* If it is ambiguous, then we attempt to ascertain the legislative intent. *Id.* When doing so, we may examine the language used, the reasonableness of proposed interpretations, and the policy behind the statute. *Id.*

*Waters Garbage v. Shoshone County*, 138 Idaho 648, 650, 67 P.3d 1260, 1262 (2003).

The statutory language in this circumstance is unambiguous. The owner(s) of a parcel in a subdivided parcel that seek to obtain water for residential, commercial or industrial uses from an irrigation district can be required by the irrigation district to construct the extension of the irrigation system to their subdivided parcel at their own expense. This requirement originates from the statutes, not from a regulation of the District. Bremer has presented no evidence that the irrigation district charged a fee for reviewing the engineering plans or work associated with the extension. Thus, Bremer has presented no evidence of a regulatory fee charged by the District in connection with their extension of the mainline to service their subdivided parcel.

For the reasons set forth herein, Plaintiffs' motion for summary judgment should be denied.

DATED this 30<sup>th</sup> day of November, 2011.

JAMES, VERNON & WEEKS, P.A.

BY:   
Susan P. Weeks

CERTIFICATE OF SERVICE

I hereby certify that on the 30<sup>th</sup> day of November, 2011, I caused to be served a true and correct copy of the foregoing instrument by the method indicated below, and addressed to the following:

Arthur Bistline  
1423 N. Government Way  
Coeur d'Alene, ID 83814

- U.S. Mail
- Hand Delivered
- Overnight Mail
- Telecopy (FAX) (208) 665-7290



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 BISTLINE LAW, PLLC  
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 ISB: 5216

STATE OF IDAHO }  
 COUNTY OF KOOTENAI } SS  
 FILED }  
 SK #235  
 2011 NOV 30 PM 1:52

CLERK DISTRICT COURT  
 Deputy Patty Bailey  
 DEPUTY

Attorney for Plaintiff

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

BREMER, LLC., an Idaho limited liability  
 company, and KGG PARTNERSHIP,

Plaintiffs,

vs.

EAST GREENACRES IRRIGATION DISTRICT,

Defendant.

Case No. CV11-1921

PLAINTIFFS' RESPONSE TO  
 DEFENDANTS MOTION FOR  
 SUMMARY JUDGMENT

COMES NOW, the above named Plaintiffs, BREMER, LLC, and KGG PARTNERSHIP,  
 (hereinafter "Bremer") by and through their counsel of record, Arthur M. Bistline, and hereby submits  
 the following Response to Defendants Motion for Summary Judgment:

- I. Greenacres did not comply with the Idaho Code it alleges authorized it to force Bremer to install the main line extension and those code sections would not have authorized that action anyway because the property was already receiving adequate water services from Greenacres.

East Greenacres Irrigation District (hereinafter "Greenacres") relies on Idaho Code 43-330A-G for its authority to require the line extension at issue. Those code sections do not authorize the District to require Plaintiffs to install the line extension in question. The subdivision in question had already been developed and provided a proper distribution of water. No competent evidence is before this Court to indicate that Bremer's new building constructed in 2007 would not have proper fire flows without the line extension.

Greenacres is attempting to justify its exaction of this line extension by boot strapping itself into Idaho Code 43-330 A, et seq. Clearly the District did not in 2008 believe that it was authorized pursuant to I.C. 43-330A, et seq. to require Bremer to pay for this line extension, because it did not comply with any of those statutes. Idaho Code 43-330A states that Greenacres can enter into a contract. This contract must be written as it also must be recorded. I.C. 43-330D. The contract further must contain certain terms. I.C. 43-330B. No written contract exists in this case. Greenacres did not utilize this code section to extract this line extension and even if it had wanted to, it could not have because the property in question already had a pressurized system for the, "...proper distribution of irrigation water..."

Idaho Code 43-330A provides:

When a parcel of land lying within an irrigation district has been subdivided and the owner or owners of the entire parcel propose to develop that parcel or any of the tracts therein for residential, commercial, industrial or municipal use, the board of directors of the district may enter into a contract with the owner or owners of the entire parcel, or of any tract therein, for the construction of a pressurized system for the proper distribution of irrigation water to the parcel or to the designated tracts within the parcel.

Greenacres argument is that, "without the water main extension on Hayden Avenue, the District would have been unable to meet minimum fire flow requirements for the new construction utilizing the existing hook up that served the existing building on McGuire."<sup>1</sup> This is a critical factual issue and is unsupported by any admissible, competent evidence.

Whether or not the 2007 new construction is the reason the main line extension was required is critical because if the mainline extension was a result of the usage of the new building, then Greenacres would be within its rights to require Bremer to pay for it. The "proper distribution" of water within Bremer's subdivision would require that minimum fire flows be met, so Idaho Code 43-330B would

---

<sup>1</sup>Affidavit of Ron Wilson at 4.

allow the main line extension to be imposed against property owners in the subdivision, namely, Bremer. However, nothing before this Court establishes that proper fire flow was not available to the Bremer property other than the inadmissible and highly suspect statement from Ron Wilson, Greenacres' District's Manager, that minimum fire flow could not be achieved without the mainline extension.

As set forth in Bremer's motion to strike, any allegation by Mr. Wilson that the main line extension was required to provide Bremer's new facility with fire flow should be stricken as unsupported by foundation and should be disregarded as highly improbable. In re Doe 142 Idaho 594, 598, 130 P.3d 1132, 1136 (2006) Nothing else in Greenacres submissions supports a finding that Bremer could not achieve proper fire flow without the line extension. All Greenacres supporting documents refer to the line extension, but not one states the extension was required for proper fire flow.

More importantly, the Affidavit of Bob Skelton of Advanced Fire Systems, Inc., who designed the fire protection system, establishes that no main line extension was required in order to provide fire flow for the system his company designed for the new construction. Fire flow is one of the most important factors in designing a fire protection system. Advanced evaluated the existing fire flow and determined that it was sufficient without a main line extension. Advanced's plan was approved by the State Fire Marshall on May 29, 2008, and that approved plan did not involve a main line extension to provide adequate fire flow.

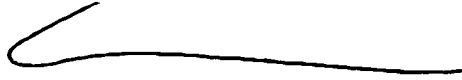
In this case, Greenacres did not act pursuant to Idaho Code 43-330A et seq. when it required Bremer to install the main line extension and Greenacres has not provided any proof that the mainline extension was required to provide proper water service to Bremer's new building. Greenacres is not entitled to summary judgment on that point. At bare minimum, there is a dispute of fact as to whether or not Greenacres had the right pursuant to Idaho Code 43-330A et seq. to require Bremer to bear the

entire cost of the mainline extension because a dispute of fact exists as to whether the system without the main line extension could provide the proper fire flow. Plaintiffs do not thereby concede that any material issue of fact exists regarding its motion for summary judgment.

II. Bremer's action does not sound in tort so the tort claims act does not apply.

Bremer's claim is that the requirement that Bremer extend the main lines for the benefit of the entire system is an illegal tax. The suit to recover an illegal tax is not a tort action. "Later, the principle became established that when personal property was taken by distress in satisfaction of an illegal tax, the owner of the property might recover back the money *in an action of indebitatus assumpsit for money had and received.* Greenwade v. Idaho State Tax Com'n, 119 Idaho 501, 506, 808 P.2d 420, 425 (Ct. App. 1991) *citing* 72 Am.Jur.2d, *State and Local Taxation* §§ 1059, 1060, 1077 (1974).

DATED this 30<sup>th</sup> day of November, 2011.



ARTHUR M. BISTLINE  
Attorney for Plaintiffs

**CERTIFICATE OF SERVICE**

I hereby certify that on the 30 day of November, 2011, I served a true and correct copy of PLAINTIFFS' RESPONSE TO DEFENDANTS MOTION FOR SUMMARY JUDGMENT by the method indicated below, and addressed to the following:

Susan P. Weeks  
James, Vernon & Weeks, PA  
1626 Lincoln Way  
Coeur d'Alene, ID 83814  
Fax: (208) 664-1684

- Regular mail
- Certified mail
- Overnight mail
- Facsimile
- Interoffice Mail
- Hand Delivered

  
Jennifer Jenkins



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arthurmooneybistline@me.com  
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STATE OF IDAHO }  
COUNTY OF KOOTENAI } SS  
FILED: }  
*SR #2011*  
2011 NOV 30 PM 2:02

CLERK DISTRICT COURT  
*Patty Barclay*  
DEPUTY

Attorney for Plaintiffs

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

BREMER, LLC., an Idaho limited liability  
company, and KGG PARTNERSHIP,

Plaintiffs,

vs.

EAST GREENACRES IRRIGATION  
DISTRICT,

Defendant.

Case No. CV11-1921

PLAINTIFFS' MEMORANDUM IN  
SUPPORT OF MOTION TO STRIKE  
AFFIDAVIT OF RON WILSON

COMES NOW, the above named Plaintiffs, BREMER, LLC, and KGG PARTNERSHIP,  
(hereinafter "Bremer"), by and through their counsel of record, Arthur M. Bistline, and hereby  
submits the following Memorandum in Support of Motion to Strike Affidavit of Ron Wilson:

Ron Wilson's (hereinafter "Wilson") Affidavit at paragraph 4 contains the following  
statements which should be stricken from the record:

"The existing connection to the facility that fronted McGuire road  
would not meet this [fire flow] requirement. Without the water  
main extension on Hayden Avenue, the District would have been  
unable to meet minimum fire flow requirements required for the  
new construction utilizing the existing hook up that served the  
existing building on McGuire."

This statement is unsupported by any foundation. Wilson does not state the he has personal knowledge of the flow capabilities of the Greenacres main line or how he developed the this opinion.

I.R.C.P. 56(e) requires that affidavits submitted on a motion for summary judgment must 'set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.' I.R.C.P. 56(e). The affiant must have personal knowledge of the facts contained within the affidavit and statements within it cannot be conclusory or speculative.

Suhadolnik v. Pressman 254  
P.3d 11, 17 (2011)

Wilson's opinion regarding the fire flow would not be admissible in evidence without more foundation regarding how he developed that opinion. Furthermore, this is clearly expert testimony and Wilson has not provided any foundation for this Court to determine if this opinion is admissible into evidence.

Idaho Rule of Evidence 702 governs admissibility of expert testimony. It provides: "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." I.R.E. 702. "In order to be admissible under I.R.E. 702, the expert's testimony must assist the trier of fact to understand the evidence or to determine a fact that is in issue." *Chapman v. Chapman*, 147 Idaho 756, 760, 215 P.3d 476, 480 (2009).

State v. Ellington 253 P.3d  
727, 740 (2011)

The technical evidence in this case is whether the existing flow on the Bremer property could provide for the proper fire flow for Bremer's new building. Clearly an opinion on this subject is technical evidence and Wilson has provided no foundation for his ability to render an opinion on this subject.

In determining whether expert testimony is admissible, a court must evaluate "the expert's ability to explain pertinent scientific principles and to apply those principles to the formulation of his or her opinion." *Ryan*, 123 Idaho at 46, 844 P.2d at 28. Admissibility, therefore, depends on the validity of the expert's reasoning and methodology, rather than his or her ultimate conclusion. *Id.* at 46-47, 844 P.2d at 28-29.

Coombs v. Curnow 148  
Idaho 129, 140, 219 P.3d  
453, 464 (2009)

Wilson has provided no explanation at all for his opinion that Bremer's new facility could not be provided proper fire flow for Bremer's new building. Wilson has not provided any explanation for how he is even qualified to say that Bremer's new building could not receive adequate fire flow. Wilson's opinion on this subject is not admissible.

Wilson's opinion that the existing system - without the main line extension -- could not provide adequate fire flow for Bremer's new construction is unsupported by any foundation and should be stricken from the record.

DATED this 30<sup>th</sup> day of November, 2011.



ARTHUR M. BISTLINE  
Attorney for Plaintiffs

**CERTIFICATE OF SERVICE**

I hereby certify that on the 30 day of November, I served a true and correct copy of the following PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION TO STRIKE AFFIDAVIT OF RON WILSON by the method indicated below, and addressed to the following:

Susan P. Weeks  
JAMES, VERNON & WEEKS, PA  
1626 Lincoln Way  
Coeur d'Alene, ID 83814

- Regular mail
- Certified mail
- Overnight mail
- Facsimile to (208) 664-1684
- Interoffice Mail
- Hand Delivered

  
JENNIFER JENKINS

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arthurmooneybistline@me.com  
 ISB: 5216

STATE OF IDAHO }  
 COUNTY OF KOOTENAI } SS  
 FILED: *SR #254*  
 2011 NOV 30 PM 2: 35

CLERK DISTRICT COURT  
*Patty Bayley*  
 DEPUTY *PB*

Attorney for Plaintiffs

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

BREMER, LLC., an Idaho limited liability  
 company, and KGG PARTNERSHIP,

Plaintiffs,

vs.

EAST GREENACRES IRRIGATION  
 DISTRICT,


Defendant.

Case No. CV11-1921

PLAINTIFFS' MOTION TO STRIKE  
 AFFIDAVIT OF RON WILSON

Plaintiffs, BREMER, LLC., an Idaho limited liability company, and KGG PARTNERSHIP, by and through its attorney of record, Arthur M. Bistline, move this Court to strike the following portions of Ron Wilson's Affidavit filed in support of Defendant East Greenacres Irrigation District's motion for summary judgment at paragraph 4, second and third sentences. This motion is based on supporting memorandum filed concurrently herewith.

DATED this 30<sup>th</sup> day of November, 2011.

  
 \_\_\_\_\_  
 ARTHUR M. BISTLINE  
 Attorney for Plaintiffs

**CERTIFICATE OF SERVICE**

I hereby certify that on the 30 day of November, I served a true and correct copy of the following PLAINTIFFS' MOTION TO STRIKE AFFIDAVIT OF RON WILSON by the method indicated below, and addressed to the following:

Susan P. Weeks  
JAMES, VERNON & WEEKS, PA  
1626 Lincoln Way  
Coeur d'Alene, ID 83814

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 JENNIFER JENKINS

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STATE OF IDAHO  
 COUNTY OF KOOTENAI } SS  
 FILED: *SR #439*  
 2011 DEC -1 AM 9:21

CLERK DISTRICT COURT  
*Robby Baskin*  
 DEPUTY *JB*

Attorney for Plaintiff

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

BREMER, LLC., an Idaho limited liability  
 company, and KGG PARTNERSHIP,

Plaintiffs,

vs.

EAST GREENACRES IRRIGATION DISTRICT,

Defendant.

Case No. CV11-1921

AFFIDAVIT OF BOB SKELTON

STATE OF WASHINGTON )  
 ) ss.  
 County of Spokane )

I, Bob Skelton, having been first duly sworn, upon oath depose and state that:

1. I am over the age of eighteen (18) and an individual residing in the State of Washington.
2. I am employed by Advanced Fire Systems, Inc, (hereinafter "Advanced") in Spokane, Washington. Advanced has designed fire protection systems for Gary Bremers' companies facilities located in Hayden and McGuire in Post Falls, Idaho. I have met Gary Bremer on more than one occasion and toured his facility as well as provide more than one fire protection system for that facility.

3. In 2008, Advanced designed a system for the additional facility constructed on the subject property to which Mr. Wilson refers in his Affidavit at paragraphs 2, 3 and 4.
4. I have extensive experience in designing fire protection services and was involved with the Bremer project. Obviously, one of the most important fact which must be known to design a fire protection system is the flow capabilities of the water supply. More so in this case as Bremer's facility is working with foam insulation which requires a lot, for lack of a better term, of water for fire protection purposes.
5. When Advanced was contacted for the new building at the Bremer facility, Advanced contacted the East Greenacres Irrigation District (hereinafter "Greenacres") to obtain the fire flow information to utilize in the fire protection plan. Greenacres referred us to the local fire district to obtain the flow information as the local fire district was the entity who tests the hydrants and records the flow information.
6. The local fire district provided the flow information to Advanced. Advanced designed a fire protection system based on that existing fire flow. The fire protection plan did not require any main line extension of Greenacres' system in order to provide for the proper fire flow.
7. The State Fire Marshall approved Advanced's fire protection system on May 29, 2008. The plan approved did not provide for any extension of Greenacres main water lines.
8. Attached hereto as Exhibit "A" is a true and correct copy of the corner of the State Fire Marshall's approved plan which is too large to attach, but will be provided to Plaintiff's Counsel for summary judgment hearing.




Dated this 30 day of November, 2011.

  
\_\_\_\_\_  
Bob Skelton

SUBSCRIBED AND SWORN before me this 30 day of November, 2011.

**MELISSA L SKELTON**  
**NOTARY PUBLIC**  
**State of Washington**  
**Commission Exp. 11-09-2014**

  
Notary in and for Advanced Fire Systems Inc  
Residing at: Spokane, WA  
Commission Expires: 11/09/2014

**CERTIFICATE OF SERVICE**


I hereby certify that on the 1 day of ~~November~~ <sup>December</sup>, 2011, I served a true and correct copy of AFFIDAVIT OF BOB SKELTON by the method indicated below, and addressed to the following:

Susan P. Weeks  
James, Vernon & Weeks, PA  
1626 Lincoln Way  
Coeur d'Alene, ID 83814  
Fax: (208) 664-1684

- Regular mail
- Certified mail
- Overnight mail
- Facsimile
- Interoffice Mail
- Hand Delivered

  
\_\_\_\_\_  
JENNIFER JENKINS

FITTINGS.

  
 APPROVAL STAMP  
 STATE OF IDAHO  
 PLANS ACCEPTED SUBJECT TO COMMENTS AND  
 CHANGES INDICATED IN TRANSMITTAL LETTER. INSTALLA-  
 TION IS SUBJECT TO A FIELD INSPECTION.  
 REVIEWED BY: *M. L. S.*  
 DATE: *5-29-08*

BREMER LLC  
 9456 N. MCGUIRE ROAD  
 POST FALLS, IDAHO 83854

Job Number: SC-0000

Date: 04/23/2008 Drawn: M.L.S. Page 2 of 2

IDAHO STA

STATE OF IDAHO  
COUNTY OF KOOTENAI  
FILED 392

2011 DEC -6 PM 2:57

CLERK DISTRICT COURT  
DEPUTY

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ISB: 5216

Attorney for Plaintiffs

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

BREMER, LLC., an Idaho limited liability  
company, and KGG PARTNERSHIP,

Plaintiffs,

vs.

EAST GREENACRES IRRIGATION  
DISTRICT,

Defendant.

Case No. CV11-1921

PLAINTIFFS' MEMORANDUM IN  
SUPPORT OF MOTION TO STRIKE  
AFFIDAVIT OF JIM SAPPINGTON

COMES NOW, the above named Plaintiffs, BREMER, LLC, and KGG PARTNERSHIP,  
(hereinafter "Bremer"), by and through their counsel of record, Arthur M. Bistline, and hereby  
submits the following Memorandum in Support of Motion to Strike Affidavit of Jim Sappington:

When deciding a motion for summary judgment, a court will only consider evidence  
contained in affidavits and depositions which is based upon personal knowledge and would be  
admissible at trial Antim v. Fred Meyer Stores, Inc. 251 P.3d 602, 607 (Ct. App.2011) Many  
portions of Mr. Sappington's affidavit would not be admissible at trial for many reasons and  
should not be considered on summary judgment.

Jim Sappington's (hereinafter "Sappington") Affidavit at paragraph 7 contains the  
following statements which should be stricken from the record:

“In order to obtain service from East Greenacres Irrigation District for this parcel, including the fire hydrants and sprinkler system required by Kootenai County Fire & Rescue, it was necessary to extend the existing 8” water main in Hayden Avenue east to the Bremer parcel.”

Sappington has not been identified as an expert in this case. Sappington's opinion regarding the fire flow would not be admissible in evidence without more foundation regarding how he developed that opinion. Furthermore, this is clearly expert testimony and Sappington has not provided any foundation for this Court to determine if this opinion is admissible into evidence.

Idaho Rule of Evidence 702 governs admissibility of expert testimony. It provides: “If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.” I.R.E. 702. “In order to be admissible under I.R.E. 702, the expert's testimony must assist the trier of fact to understand the evidence or to determine a fact that is in issue.” *Chapman v. Chapman*, 147 Idaho 756, 760, 215 P.3d 476, 480 (2009).

*State v. Ellington* 253 P.3d  
727, 740 (2011)

The technical evidence in this case is whether the existing flow on the Bremer property could provide for the proper fire flow for Bremer's new building and whether an extension of the main line was required to achieve that. Clearly an opinion on this subject is technical evidence and Sappington has provided no foundation for his ability to render an opinion on this subject.

Sappington has provided no explanation at all for any of his above referenced opinions. In determining whether expert testimony is admissible, a court must evaluate “the expert's ability to explain pertinent scientific principles and to apply those principles to the formulation of his or her opinion.” *Ryan*, 123 Idaho at 46, 844 P.2d at 28. Admissibility, therefore, depends on the validity of the expert's reasoning and methodology, rather than his or her ultimate conclusion. *Id.* at 46-47, 844 P.2d at 28-29.

*Coombs v. Curnow* 148  
Idaho 129, 140, 219 P.3d  
453, 464 (2009)

Furthermore, Sappington has not been identified as an expert witness in this case and his opinion would be inadmissible based on a lack of disclosure.

For the same reasons, Sappington's Affidavit at the following paragraphs should be also be stricken.

Paragraph 10 contains the following statements which should be stricken from the record:

"A looped water system is one in which the distribution lines within the water system are interconnected so as to remove any dead-end distribution lines. Looping the line adds the benefit of equalizing pressure within the entire system and provides redundancy. In the looped system water can flow from more than one direction. A fire-flow demand or large-demand use on a dead-end main can only draw water through a single line, and the flow may be further restricted by the line length and pipe size. When repairs are made on a dead-end line, the entire line has to be taken out of service, which may mean that customers will be out of water for a while and affected hydrants will hold little or no water for fire protection. Also, the flushing required to maintain water quality on dead-end systems can result in waste of water and takes the line out of service while it is flushed."

Paragraph 11 contains the following statements which should be stricken from the record:

"If this statement is offered to contemplate that water service to the new facility could have been extended east from McGuire to the rear of the new building fronting Hayden, it is wrong.."

"To supply water to the new building adequate to support the fire hydrants and sprinkler system from the McGuire mainline, it would have required the mainline be extended east through the Bremer property to the rear of the new building with an extension out to Hayden Avenue for placement of the hydrants. Water mainlines are required to be placed in the public right of way wherever possible because it facilitates future distribution system additions and extensions by eliminating the need to acquire easements across private land for extensions of the water main and reduces the cost of operation and maintenance because it is easier

to access a distribution line in a public right of way and eliminated encroachment issues.”

“Allowing subdivided parcels to extend mainlines through private property to the rear of a property to provide service does not meet this policy and is not proper.”

Paragraph 12 contains the following statements which should be stricken from the record:

“The proper method of providing service to the new facility was to extend the existing water mainline in Hayden Avenue east to the Bremer parcel.”

Paragraph 13 contains the following statements which should be stricken from the record:

“To the extent that Mr. Hart is conveying an opinion of Mr. Bremer that the existing water service connection to the McGuire building could have been extended and interconnected to the Hayden Avenue building, this opinion is misleading. While the buildings could have physically been connected by a continuation of the 1” service line, the existing service line was inadequate to provide either the water flow or water pressure necessary to supply either adequate flow or adequate pressure for operation of the building sprinkler system required by Kootenai County Fire & Rescue. Further, the hydrants could not be connected to a 1” service line. The hydrants require at least a 6” water main for proper functioning. Further, a 1” service line would not provide adequate water supply or pressure to operate both building fire suppression system and two fire hydrants. The only mechanism to achieve compliance with Kootenai County Fire & Rescue’s requirements was through use of a water mainline.”

Paragraph 14 contains the following statements which should be stricken from the record:

“... because the existing members would have been financing and subsidizing an extension to service a new subdivision which provided no benefit to anyone other than the property owners within the subdivision. Further, had the District allowed the mainline to have been constructed through the Bremer parcel, it would have burdened other users of the system because it would have increased the cost of operation and maintenance, which increased cost is carried by all members of the district in the assessment levied against them for operation and maintenance of the system.”

Sappington's opinion that the existing system - without the main line extension -- could not provide adequate fire flow for Bremer's new construction is unsupported by any foundation and should be stricken from the record.

DATED this 6<sup>th</sup> day of December, 2011.

  
ARTHUR M. BISTLINE  
Attorney for Plaintiffs

**CERTIFICATE OF SERVICE**

I hereby certify that on the 6<sup>th</sup> day of December, I served a true and correct copy of the following PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION TO STRIKE AFFIDAVIT OF JIM SAPPINGTON by the method indicated below, and addressed to the following:

Susan P. Weeks  
JAMES, VERNON & WEEKS, PA  
1626 Lincoln Way  
Coeur d'Alene, ID 83814

- Regular mail
- Certified mail
- Overnight mail
- Facsimile to (208) 664-1684
- Interoffice Mail
- Hand Delivered

  
JENNIFER JENKINS

STATE OF IDAHO  
COUNTY OF KOOTENAI  
FILED 392

2011 DEC -6 PM 2:56

CLERK DISTRICT COURT

*Arthur M. Bistline*  
DEPUTY

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Attorney for Plaintiffs

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

BREMER, LLC., an Idaho limited liability  
company, and KGG PARTNERSHIP,

Plaintiffs,

vs.

EAST GREENACRES IRRIGATION  
DISTRICT,

Defendant.

Case No. CV11-1921

PLAINTIFFS' MOTION TO STRIKE  
AFFIDAVIT OF JIM SAPPINGTON

Plaintiffs, BREMER, LLC., an Idaho limited liability company, and KGG PARTNERSHIP, by and through its attorney of record, Arthur M. Bistline, move this Court to strike the following portions of Jim Sappington's Affidavit filed in response to Plaintiffs' Motion for Summary Judgment at paragraphs 7, 10, 11, 12, 13, and 14, as outlined and based upon the supporting memorandum filed concurrently herewith.

DATED this 6<sup>th</sup> day of December, 2011.

*Arthur M. Bistline*

ARTHUR M. BISTLINE  
Attorney for Plaintiffs



**CERTIFICATE OF SERVICE**

I hereby certify that on the 6<sup>th</sup> day of December, I served a true and correct copy of the following PLAINTIFFS' MOTION TO STRIKE AFFIDAVIT OF JIM SAPPINGSTON by the method indicated below, and addressed to the following:

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*Attorneys for Defendant*

STATE OF IDAHO  
COUNTY OF KOOTENAI  
FILED: *RS*

2011 DEC -7 PM 2:46

CLERK DISTRICT COURT

*Sherry Hill*  
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

BREMER, LLC., an Idaho limited liability  
company, and KGG PARTNERSHIP,

Plaintiffs,

EAST GREENACRES IRRIGATION  
DISTRICT,

Defendant.

CASE NO. CV-11-1921

DEFENDANT'S REPLY MEMORANDUM  
IN SUPPORT OF DEFENDANT'S MOTION  
FOR SUMMARY JUDGMENT

In response to Defendant's motion for summary judgment, Bremer claims that "[t]he subdivision in question had already been developed and provided a proper distribution of water." Bremer also claims that the District lacked statutory authority to accept the system constructed by Plaintiffs.

I. UNDISPUTED MATERIAL FACTS

Plaintiffs do not dispute the following facts. It is undisputed that the subject parcel of property was subdivided into McGuire Industrial Park on August 16, 2004 by Double B Ranch and KGG Partnership and that the plat contained a statement in the owner's certificate that domestic water would be supplied by East Greenacres Irrigation District. (Weeks Affidavit Exhibit A). It is undisputed that Double B Ranch and KGG Partnership replatted the acreage on April 2008. (Weeks Affidavit Exhibit B). It is undisputed that in April 2008 Panhandle Health

District informed Emmett Burley (one of the signers on the plat) in order to obtain final plat approval that the plat had to identify the District as the water source and that a will serve letter had to be received from the District. (Wilson Affidavit, Exhibit A.) It is undisputed that on April 17, 2008 the District forwarded a previous letter dated April 10, 2006 wherein the District informed Panhandle Health District that it had the intent and water capacity to serve the McGuire Industrial Park but that an extension to the water mainline along Hayden Avenue was needed, (Wilson Affidavit, Exhibit B.)

It is undisputed that Jim Nirk appeared before the Board on behalf of Gary Bremer seeking permission for a connection to the District's water system. It is undisputed that Mr. Nirk was informed that engineered plans for the connection had to be submitted by Mr. Bremer to the District for review and approval. (Wilson Affidavit, ¶2).

It is undisputed an engineer, Scott Jones, submitted engineered plans dated May 5, 2008 to the District, identifying the developer of the project as Gary Bremer, for a water pipeline extension project to accomplish the connection to the District's system. (Wilson Affidavit, Exhibit D.)

It is undisputed that by letter dated May 5, 2008, Scott Jones also submitted engineered plans for the water pipeline extension project to DEQ, and identified the project as an extension of the 2007 project on the same line (the Hayden mainline). (Wilson Affidavit Exhibit E.) It is undisputed that on May 7, 2008, the District approved Bremer's proposed extension to the line to provide service to Bremer's new facility. (Wilson Affidavit Exhibit F.) It is undisputed that the Letter of Transmittal from Scott Jones to DEQ, dated May 16, 2008, identified the project as "2008 McGuire Industrial Park Water Pipeline Project" and identified the project description as

“mainline extension along Hayden”. Mr. Jones identified the plans as “construction plans/specs” and the water project description as “water system extension”. (Wilson Affidavit Exhibit G.)

It is undisputed that following review of the project proposal, by letter dated June 17, 2008, DEQ wrote to Gary Bremer regarding its review of the submitted plans. This letter described the submittal as: “The project involves the construction of approximately 800 feet of 8-inch PVC water main in Hayden Avenue as well as an 8-inch fire supply line to serve the McGuire Industrial Park. This project appears to be an extension of the McGuire Industrial Park previously approved by DEQ in a letter to Emmett Burley dated November 28, 2007.” This letter also informed Mr. Bremer that before the construction project could be approved by DEQ that the local fire authority had to send a letter to it establishing minimum fire flows and durations needed for the project and the design engineer had to demonstrate that the water system was capable of meeting the minimum fire flow requires at this extension and disapproved the plans and specifications for the mainline extension pending this information. (Emphasis added.)(Wilson Affidavit, Exhibit I.) It is undisputed that on June 27, 2008, DEQ wrote Mr. Bremer indicating that it had obtained information from Kootenai County Fire and Rescue that the District’s existing system had adequate flows to meet Kootenai County Fire and Rescue’s fire flow requirements and approving construction of the mainline extension. This letter also required that record plans of the construction (“as-builts”) be submitted within 30 days of completion of construction.

It is undisputed that Scott Jones submitted as-builts to the District by letter dated September 19, 2008 and requested a copy be sent to DEQ. This letter indicated that the developers of the project were Emmett Burly (sic) and Gary Bremer. (The as-builts included the 2007 extension that was to be built Emmett Burley for another lot in the project, which was

referenced in the June 17, 2008 DEQ letter.) The 2 page as-builts identified the project as "McGuire Industrial Park Water Pipeline Extension As-built". The project notes indicated that the project was an extension of an existing 8" water line and that the lots served now had fire hydrants and included a dedicated 8" fire sprinkler system feed to the new building. The second page of the as-builts showed the two fire hydrants in the right of way on either side of a building identified on the as-builts as "FMI-EPS, LLC New Factory Building", and an 8" PVC Dedicated Fire Sprinkler Supply Pipeline connecting from the 8" water main to the new building. (Wilson Affidavit, Exhibit K.)

II. The Legislature Intended Developers to Pay for Extensions of a Pressurized System to Serve the Subdivided Parcel for Industrial and Commercial Purposes

There is no dispute that the parcel in question was a subdivided parcel. There is no dispute that the pressurized system was extended. There is no dispute that the use of water by Plaintiffs is for industrial and/or commercial use. Despite these undisputed facts, Plaintiffs allege the District is trying to boot strap its actions into Idaho Code § 43-330A *et seq.* to justify the exaction of a line extension that was installed for use of all members of the District. This argument ignores the factual context of this case, the authority granted to irrigation districts by statute and Idaho case law. It also misperceives the District's argument on summary judgment.

Idaho Code Section 43-304 gives the board the power to manage and conduct the business and affairs of the District. Included in those powers is the right to acquire by purchase, condemnation or other legal means works constructed and being constructed by private owners. Idaho Code Section 43-316 provides that legal title to all property acquired under the provisions of Title 43 vests in the irrigation district. Thus, the District had the right to acquire the extension constructed by Gary Bremer.

Further, the District had statutory authority to require that an owner of a subdivided parcel to bear the cost of construction of an extension of the water system to serve the subdivided parcel. In *Bradshaw v. Milner Low Lift Irr. Dist.*, 85 Idaho 528, 547, 381 P.2d 440 (1963) our Supreme Court held that a condition to an annexation that the owners of new lands annexed into the district bear the cost of acquiring water for such lands; and the cost for enlarging, equipping and extending the system for the irrigation of those lands was a valid, enforceable condition of annexation. This case also held that the imposition of such costs on the existing members of the District would have violated the existing members' constitutional rights.

The same is true here even though it was an extension to serve subdivided lands as opposed to an extension to serve annexed lands. Idaho Code provides that the District may (but is not required) to enter into a contract with the owners of the parcel for the construction of a pressurized system for the proper distribution of irrigation water for residential, commercial, industrial or municipal purposes to subdivided lands. The subsequent sections deal with paying off the construction costs if the construction is done pursuant to an installment contract. However, nothing in the code precludes the District from accepting a system constructed by a parcel owner of a subdivided parcel upon completion of construction.

It is clear the legislature intended development to pay for the cost of extensions for the benefit of subdivided land. Plaintiffs try and avoid this clear intent by arguing that it was only intended to apply if there was a written, recorded contract. However, it is clear that the statutory provisions regarding recording a written contract (I.C. § 43-330D) was not intended to assist landowners of subdivided lands in avoiding paying the cost of system extensions for their benefit as argued by Plaintiffs. Rather, it is clear this section was intended to cause the contract to be recorded so as to run with the land and allow the District to assess future landowners for the

costs who were not a party to the contract. In conclusion, the legislature clearly gave the District the authority to require owners of subdivided lands who desired service to pay for extension of infrastructure to service the subdivided parcel as long as the extension was for a pressurized service for residential, commercial, industrial or municipal purposes.

### III. There are no Disputed Material Facts that Precludes Summary Judgment for the District

Plaintiffs argue the subdivision in question had already been developed and provided a proper distribution of water. There are no facts in the record to support this allegation.

It is undisputed that Bremer requested a connection to the District's system. Bremer's representative was tasked by the District with providing an engineering concept plan on how that connection would be achieved. This plan was presented by Bremer's engineer to the District and DEQ to meet not only the District's requirements, but Kootenai Fire & Rescue and DEQ's requirements. The plan as submitted by Bremer's engineer included an 800' mainline extension in Hayden Avenue, two fire hydrants in Hayden Avenue, and an 8" dedicated supply line extending from the mainline extension to the fire sprinkler system in the new building. Bremer's engineer did not propose an extension of the existing 1" service line from the McGuire building to accomplish these tasks. Thus, Wilson's and Sappington's affidavits that the mainline extension was required to service the subdivided parcel merely corroborates the proposal submitted by Bremer's engineer. Bremer studiously avoids addressing in any of its pleading the fact that its own engineer proposed the mainline extension as the appropriate method to connect to the District's water system to meet DEQ's and Kootenai Fire & Rescue's requirements with respect to fire flows.

Plaintiffs try to manufacture a disputed material fact by submitting the affidavit of Bob Skelton. Mr. Skelton discusses the flow capabilities of the District's entire water system. Mr.

Skelton testifies that he needed the flow information for the water system (not the Bremer building) and contacted the District for that information. Mr. Skelton testifies the District directed him to Kootenai County Fire & Rescue to obtain historical flow information regarding the hydrants on the system. (The new hydrants for the system were only a conceptual design at that point, so the flow information was historical.) Mr. Skelton concludes that Kootenai County Fire & Rescue supplied the historical flow information for the water system and he designed the system based upon that flow information. Mr. Skelton concludes that his plan, approved by the fire marshal, did not include an extension of the main water lines. Mr. Skelton omits the plan with his affidavit.

While Mr. Skelton's affidavit is technically correct it does not address whether the fire suppressions system designed by Mr. Skelton was intended to be serviced by the mainline extension designed by Mr. Jones. The answer to that question lies in Scott Jones' plan submittal and as-builts. Mr. Jones design included an 8" dedicated water line from the mainline to the building to operate the fire suppression system designed by Advanced Fire Systems, Inc. Thus, even though Mr. Skelton's design may not have included a mainline extension, the engineer hired by Bremer and assigned the task of actually presenting an engineered plan to the District and DEQ to meet all agency requirements included a mainline extension along Hayden Avenue as the option to accomplish the task at hand.

#### IV. The District is Entitled to Summary Judgment Pursuant to Existing Case Law

Plaintiffs now disavow their own proposal, claiming in their cross-motion for summary judgment that it was an unnecessary condition imposed upon them by the District which they did not protest because of the economic loss that delay in the project would have caused. Our Supreme Court has specifically rejected such a tactic in *KMST, LLC v. County of Ada*, 138 Idaho



577, 581, 67 P.3d 56, 60 (2003). Therein, the developer proposed a dedication of a road and construction of the road to obtain approval of a subdivision, knowing that Ada County highway district staff would recommend it to the Board. After approval and completion of the subdivision, KMST sued the highway district, claiming the highway district had taken its property without compensation because the road was a system improvement, and therefore an exaction. The Supreme Court rejected this argument, noting that the decision to dedicate land for the road and to build the road was included in the application and was done to expedite the project, and having voluntarily made the decision to dedicate and improve the street to speed approval of its development, KMST could not come back and claim its property was taken. The same is true here. Mr. Bremer testified he made the decision based upon financial factors to construct the line to avoid delay in the permitting process. Under the *KMST* holding, Plaintiffs are precluded from now claiming the District took its property.

#### V. Conclusion

The law requires that the owner of a subdivided parcel in an irrigation district bear the cost of an extension of the pressurized water system if the use is for residential, industrial, commercial, or municipal purposes. Plaintiffs attempt to avoid this requirement by claiming they already had water service. However, no facts in the record support this claim. Further, Plaintiffs' own engineer designed the extension specifically to service the new building on the subdivided parcel. Thus, the evidence in the record is contrary to Plaintiffs' claims. Thus, the

District should be granted summary judgment.

DATED this 7<sup>th</sup> day of December, 2011.

JAMES, VERNON & WEEKS, P.A.

BY: *Susan P. Weeks*  
Susan P. Weeks

CERTIFICATE OF SERVICE

I hereby certify that on the 7<sup>th</sup> day of December, 2011, I caused to be served a true and correct copy of the foregoing instrument by the method indicated below, and addressed to the following:

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*Attorneys for Defendant*

STATE OF IDAHO  
COUNTY OF KOOTENAI  
FILED 923 JK

2011 DEC -7 PM 2:45

CLERK DISTRICT COURT

DEPUTY *Shirley H. Adams*

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

BREMER, LLC., an Idaho limited liability  
company, and KGG PARTNERSHIP,

Plaintiffs,

EAST GREENACRES IRRIGATION  
DISTRICT,

Defendant.

CASE NO. CV-11-1921

DEFENDANT'S RESPONSE TO  
PLAINTIFFS' MOTIONS TO STRIKE  
PORTIONS OF THE AFFIDAVITS OF JIM  
SAPPINGTON AND RON WILSON

Plaintiffs filed two separate motions to strike portions of the affidavits of Ron Wilson and Jim Sappington. The following is Defendant's response to these motions.

**Jim Sappington:** Plaintiff moves to strike paragraphs 7 and 12 of Sappington's affidavit wherein Sappington testified in order to provide the requested service to the Bremer parcel, including the fire hydrants and sprinkler system, it was necessary to extend the existing 8" water main in Hayden Avenue to the Bremer parcel, and that the extension utilized in this project was the proper method of providing service to the new facility, and consisted of an extension of the water mainline in Hayden Avenue east to the Bremer parcel. Plaintiffs contend that this testimony constitutes an expert opinion that is not supported by adequate foundation to establish Mr. Sappington as an expert. However, this testimony is not based upon an expert opinion of Mr. Sappington. This testimony is based upon the information provided to the District by

Bremer's engineer, Scott Jones, as set forth in Ron Wilson's affidavit. Mr. Bremer's agent, Jim Nirk, requested approval from the District to connect to the District's water system. Mr. Nirk was informed that an engineered plan for making the connection had to be submitted before approval would be granted. Mr. Bremer's engineer *submitted to the District and DEQ a construction plan that included a mainline extension along Hayden Avenue and fire hydrants and a dedicated line to service a fire suppression sprinkler system required by Kootenai County Fire & Rescue as the proper method to extend service to the Bremer parcel.* Mr. Sappington's testimony in paragraph 7 and 12 is based upon the submittal to the District by Mr. Bremer's engineer. As such, it is not an expert opinion unsupported by adequate foundation. It is an opinion based upon a statement by the party opponent's engineer/agent, which was provided to the District with the intent that the District rely upon it. Paragraph 12 of Sappington's affidavit merely reiterates that the proper method of extending service to the Bremer parcel *identified by Bremer's engineer* was to extend the existing mainline in Hayden Avenue.

Plaintiffs also contend Sappington's explanation of a looped water system in paragraph 10 is an expert opinion that lacks adequate foundation to qualify Sappington to provide the testimony. The qualifications of Sappington exceed those of Philip Hart, tendered as an expert by Plaintiffs on looping, whose only qualification indicated in the affidavit was that he sat on the Board of Directors of a water district for seven years and knows districts try to loop their lines where possible. In contrast, Mr. Sappington identifies his qualifications as those of the Operations and Maintenance Superintendent of the District. He is not expressing opinions in Paragraph 10 and 11. Rather, he is testifying from personal knowledge of the operation of the system at issue in this matter and the District's requirements for the configuration of that system.

regarding placement of water mainline. Thus, his testimony in paragraph 10 and 11 should be considered in proceedings on the cross motions for summary judgment.

Sappington's testimony in paragraph 11 addresses a configuration that is inferred in Mr. Hart's affidavit (from a hearsay statement of Mr. Bremer allegedly made to Mr. Hart) upon which no opinion is rendered by Mr. Hart. The testimony explains why Scott Jones' configuration was the proper configuration given the District's requirement that mainlines lie within public rights of way. As the operations and maintenance superintendent, Mr. Sappington has personal knowledge of the District's configuration requirements, as well as the reasons behind those requirements.

Similarly, paragraph 13 of Sappington's affidavit addresses a matter inferred in Mr. Hart's affidavit upon which no opinion is rendered by Mr. Hart. Mr. Hart infers that Mr. Bremer informed him that his needs could have been met by an interconnection between the buildings of the existing 1" service line. In response to this inference, Sappington testifies that a 1" service line connection was physically possible between the buildings but would not have met the design requirements provided by Mr. Jones. This knowledge is within Mr. Sappington's personal knowledge. Further, Sappington's testimony that the District requires that fire hydrants be placed in the public right of way is not an expert opinion and is within his personal knowledge. Sappington's testimony that the hydrants require at least a 6" watermain for proper functioning is within his personal knowledge. Further, Sappington has personal knowledge that a 1" pipeline does not provide the same rate of flow of water as an 8" pipeline. (In fact, most people know that the smaller the pipe, the less water that will flow through it.) Sappington also has personal knowledge that the larger the pipe circumference, the more pressure is associated with the pipeline. Sappington also has personal knowledge (as do most lay people) that a 1" round pipe

will not fit snugly into a 6" hole, and absent a snug fit, a liquid will not flow through (i.e. the testimony of Sappington that it is not possible to attach a hydrant designed for a 6" pipeline onto a 1" line and achieve the desired water flow and pressure.) Therefore, the testimony in paragraph 13 is proper.

Paragraph 14 of the Mr. Sappington testimony goes directly to Sappington's job duties of operation and maintenance of the water system. Sappington testifies that only Bremer obtained a benefit from the mainline extension to service the Bremer parcel. As the operations superintendent, Sappington has personal knowledge of which parcels are served by the components of the water system. Sappington also has personal knowledge of the time and expense related to operation and maintenance of the water system. Therefore, his testimony that mainline extensions on private property increase the burden to other users of the system by virtue of increased cost of operation and maintenance is admissible.

**Ron Wilson:** Turning next to Ron Wilson's affidavit, the portions to which Plaintiffs object should not be stricken. In particular, Plaintiffs contend paragraph 4 should be stricken as not being supported by foundation. However, the foundation for this statement is the engineered plans submitted to the District by Scott Jones, as well as the communications regarding these engineered plans, which are contained as exhibits to Wilson's affidavit. Thus, as can be seen from Exhibits D - L, Wilson's opinion is formed based upon statements made by Bremer's agent, engineer Scott Jones, and the plans and as-builts submitted by Mr. Jones. The system designed by Mr. Jones to accommodate the requirements of DEQ and Kootenai County Fire & Rescue was an 8" mainline extension along Hayden Avenue, to which two hydrants were attached and from which an 8" dedicated line extended from the mainline to the building to support the fire suppression system. These are the improvements Mr. Jones proposed were

necessary to connect to the District's system and meet Mr. Bremer's needs for fire flow and fire suppression. Thus, Wilson's testimony that the 1" service line was inadequate to serve the new facility was based upon personal knowledge of the engineered plans submitted by Bremer's own engineer. Therefore, this testimony should not be stricken.

DATED this 7<sup>th</sup> day of December, 2011.

JAMES, VERNON & WEEKS, P.A.

BY: Susan P. Weeks  
Susan P. Weeks

CERTIFICATE OF SERVICE

I hereby certify that on the 7<sup>th</sup> day of December, 2011, I caused to be served a true and correct copy of the foregoing instrument by the method indicated below, and addressed to the following:

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Christine Elmore

STATE OF IDAHO  
COUNTY OF KOOTENAI  
FILED: *JCC* *JCC*

2011 DEC -8 AM 8:10

CLERK DISTRICT COURT

*Sherry Hull*  
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Attorney for Plaintiffs

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

BREMER, LLC., an Idaho limited liability  
company, and KGG PARTNERSHIP,

Plaintiffs,

vs.

EAST GREENACRES IRRIGATION  
DISTRICT,

Defendant.

Case No. CV11-1921

PLAINTIFFS' REPLY TO DEFENDANT'S  
MEMORANDUM IN OPPOSITION TO  
PLAINTIFFS' MOTION FOR SUMMARY  
JUDGMENT

COMES NOW, Plaintiffs, BREMER, LLC., an Idaho limited liability company, and  
KGG PARTNERSHIP, by and through their attorney of record, ARTHUR M. BISTLINE, and  
hereby files its reply to Defendant's Memorandum in Opposition to Plaintiffs' Motion for  
Summary Judgment as follows:

- 1. No dispute of fact exists that the parcel in question was already provided the proper distribution of water so no statutory authority exists to support requiring Bremer to install the main line extensions in question

East Greenacres Irrigation District (hereinafter "Greenacres") and Plaintiff Bremer  
agreed that, "...an irrigation district must collect revenues as authorized in its enabling statutes,"<sup>1</sup>  
and the dispositive issue is "...what, if any, statutory authority the legislature has granted to an

<sup>1</sup> Defendant's Memorandum in Opposition to Plaintiffs' Motion for Summary Judgment (Defendant's response) at 4.



irrigation district to require an owner of a parcel of property to pay for an addition to extension to the system works."<sup>2</sup>

The only statutory authority relied upon by Greenacres is Idaho Code 43-330A et seq. First, Greenacres cannot prove compliance with any of the required statutory procedures of those code sections and should not be allowed to rely on them retroactively. Second, Idaho Code 43-330A is not ambiguous and allows Greenacres to require the developer to provide for the infrastructure "... for the construction of a pressurized system for the proper distribution of irrigation water to the parcel or to the designated tracts within the parcel." I.C. §43-330A .

So the question is whether or not Bremer's adjustment of the lot lines within the existing subdivision coupled with the construction of an additional building required the construction of system improvement to provide for "...the proper distribution of irrigation water to the parcel" (i.e., whether or not the improvements required of Bremer were directly relation to his use of the system).

Greenacres is trying to create an issue of fact on this issue by providing testimony that the improvements were required because of Bremers' use of the system. Bremer has moved this Court to strike that testimony on the grounds, amongst other things, that it is expert testimony and none of it has ever been disclosed. Bremers' complaint states that "said improvements were wholly unrelated to Plaintiffs use of Defendants water system..." The issue that Greenacres is trying to introduce expert testimony has been an issue in this case from the inception -- whether Bremers' use of the system what necessitated the line extension at issue. Greenacres identified Rob Tate of Tate Engineering as its expert but did not have him provide any opinion on this issue. This Court should not allow Greenacres to create an issue of fact by the admission of undisclosed, expert testimony which lacks any foundation.

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<sup>2</sup> Defendants response at 6.

Furthermore, and without waiving the objections to Sappington's affidavit, that affidavit establishes that the line improvements had in fact nothing to do with the proper distribution of water to the parcel in question, but were preferences of Greenacres regarding the installation of main lines for . Those "preferences" were for the benefit of the whole system, and had nothing to do with Bremer. Sappington states, "If this statement [by Phil Hart] is offered to contemplate that water service to the new facility could have been extended east from McGuire to the rear of the new building fronting Hayden, it is wrong."<sup>3</sup> Sappington then clarifies that is it not "wrong" it is just not what Greenacres would prefer, as he clearly tells the Court how it could be done and why they did not want it done that way.

Sappington clearly tells the Court how Bremer could have utilized the water main already within the parcel. "To supply water to the new building adequate to support the fire hydrants and sprinkler system from McGuire mainline, it would have required the mainline be extended east (sic) through the Bremer property to the rear of the new building with an extension out to Hayden Avenue for placement of the hydrants."<sup>4</sup> Therefore, the parcel was provided with infrastructure for the proper distribution of water I.C. 43-330A does not apply.

Greenacres did not want Bremer to provide the required improvements as described by Sappington because the water mainlines are required to be placed in the public right of way wherever possible.<sup>5</sup> Water mainlines are required to be placed in the public right of way wherever possible because it facilitates future distribution system additions and extensions for a variety of reasons.<sup>6</sup> This logic makes sense, however, that does not equate to Bremer having to pay for what makes sense for Greenacres to do. Future distribution system additions are a

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<sup>3</sup> Sappington Affidavit at 11.

<sup>4</sup> Id.

<sup>5</sup> Id.

<sup>6</sup> Id.

benefit to the entire system and have nothing to do with the fact that Bremer constructed a new facility.

What would have made sense here is for Greenacres to have approached Bremer and offered to pay the difference in his project cost occasioned by Greenacres preferences for the location of the main line. Greenacres did not do this, and did not enter any agreement with Bremer regarding the line extension in question. Alternatively, it forced Bremer to do the line extension if Bremer wanted to use the system. The parcel was already provided the proper flow of water so Idaho Code 43-330A et seq. did not allow Greenacres to impose this requirement on Bremer.

II. Bremer did not propose this line extension so Bremer is not stuck with paying for it just because he went forward with his project and chose to deal with Greenacres later.

Greenacres cites KMST, LLC v. County of Ada, 138 Idaho 577, 582, 67 P.3d 56, 61 (2003) for the proposition that Bremer chose to go forward with his project and thus cannot complain that Greenacres conditioned approval of his new use of the system on the contested line extensions. First of all, this issue was not raised on summary judgment and should not be considered. State v. Rubbermaid Inc., 129 Idaho 353, 356, 924 P.2d 615, 618 (1996).

Without waiving the objection, the reliance on KMST is misplaced. The KMST Court expressly held that the holding of that case does not apply to the situation where an illegal condition is imposed by the supervisory authority.

We are not holding that there was no taking simply because KMST built the public street before challenging that requirement in court. We are holding that there was no taking because KMST itself proposed that it would construct and dedicate the street as part of its development. We express no opinion as to whether a developer who contends that a condition of approval amounts to an unconstitutional taking of property must litigate that issue before proceeding with the development. Id at 582, 61

KMST only applies if the developer is the one who proposes the condition. This is not what occurred here. If Bremer had not capitulated to this illegal exaction, he would have been faced with an economic penalty of \$6,000 per day<sup>7</sup> while he took this issue through the Courts and Greenacres would rightfully be accusing Bremer of failing to mitigate its damages.

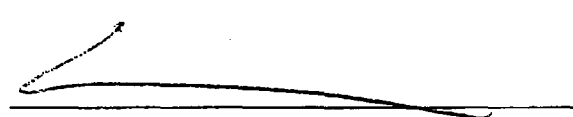
### CONCLUSION

It is clear that Greenacres is for the first time being told that their "policy" of requiring land owners to provide for mainline extensions is not legal so Greenacres is attempting to boot strap its self into Idaho Code 43-330A et seq. Greenacres did not comply with any of the requirements of those code sections, the foremost of which is a consensual agreement. Holding a commercial enterprise hostage unless it agrees an illegal line extension is not a consensual agreement.

More importantly, the evidence is undisputed that the parcel in question was already had infrastructure for the proper distribution of water so Idaho Code 43-330A et seq does not even apply.

This Court should grant Greenacres motion for summary judgment.

DATED this 27<sup>th</sup> day of December, 2011.

  
ARTHUR M. BISTLINE  
Attorney for Plaintiffs

<sup>7</sup> Affidavit of Gary Bremer in support of motion for summary judgment filed November 16<sup>th</sup>, 2011 at 9.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 7<sup>th</sup> day of December, I served a true and correct copy of the following PLAINTIFFS' REPLY TO DEFENDANT'S MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT by the method indicated below, and addressed to the following:

Susan P. Weeks  
JAMES, VERNON & WEEKS, PA  
1626 Lincoln Way  
Coeur d'Alene, ID 83814

- Regular mail
- Certified mail
- Overnight mail
- Facsimile to (208) 664-1684
- Interoffice Mail
- Hand Delivered

  
JENNIFER JENKINS

STATE OF IDAHO  
COUNTY OF KOOTENAI  
FILED 8/8 LSS  
9/0

ARTHUR M. BISTLINE  
1423 N. Government Way  
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(208) 665-7270  
(208) 665-7290 (fax)  
arthurmooneybistline@me.com  
ISB: 5216

2011 DEC -8 AM 8:10

CLERK DISTRICT COURT

*Shirley Huggins*  
DEPUTY

Attorney for Plaintiffs

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

BREMER, LLC., an Idaho limited liability  
company, and KGG PARTNERSHIP,

Plaintiffs,

vs.

EAST GREENACRES IRRIGATION  
DISTRICT,

Defendant.

Case No. CV11-1921

PLAINTIFFS' SUPPLMENTAL MOTION  
TO STRIKE PORTIONS OF AFFIDAVIT  
OF JIM SAPPINGTON AND RON WILSON

COMES NOW, Plaintiffs, BREMER, LLC., an Idaho limited liability company, and  
KGG PARTNERSHIP, by and through their attorney of record, ARTHUR M. BISTLINE, and  
hereby moves this Court to strike portions of the Affidavits of Jim Sappington and Ron Wilson.  
This motion is based on supporting memorandum filed concurrently herewith.

DATED this 7<sup>th</sup> day of December, 2011.



ARTHUR M. BISTLINE  
Attorney for Plaintiffs

**CERTIFICATE OF SERVICE**

I hereby certify that on the 7<sup>th</sup> day of December, I served a true and correct copy of the following PLAINTIFFS' SUPPLMENTAL MOTION TO STRIKE PORTIONS OF AFFIDAVIT OF JIM SAPPINGTON AND RON WILSON by the method indicated below, and addressed to the following:

Susan P. Weeks  
JAMES, VERNON & WEEKS, PA  
1626 Lincoln Way  
Coeur d'Alene, ID 83814

- Regular mail
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- Hand Delivered

  
JENNIFER JENKINS

STATE OF IDAHO  
COUNTY OF KOOTENAI  
FILED: 8/8 105 90

2011 DEC -8 AM 8:10

CLERK DISTRICT COURT  
*[Signature]*  
DEPUTY

ARTHUR M. BISTLINE  
1423 N. Government Way  
Coeur d'Alene, Idaho 83814  
(208) 665-7270  
(208) 665-7290 (fax)  
arthurmooneybistline@me.com  
ISB: 5216

Attorney for Plaintiffs

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

BREMER, LLC., an Idaho limited liability  
company, and KGG PARTNERSHIP,

Plaintiffs,

vs.

EAST GREENACRES IRRIGATION  
DISTRICT,

Defendant.

Case No. CV11-1921

PLAINTIFFS' MOTION TO SHORTEN  
TIME

COMES NOW, Plaintiffs, BREMER, LLC., an Idaho limited liability company, and  
KGG PARTNERSHIP, by and through their attorney of record, ARTHUR M. BISTLINE, and  
hereby moves this Court for an Order to shorten the time for notice of its Motion to Strike  
Affidavit of Jim Sappington and Supplemental Motion to Strike Portions of Affidavit of Jim  
Sappington and Ron Wilson pursuant to I.R.C.P. 6.

DATED this 7<sup>th</sup> day of December, 2011.

*[Signature]*  
ARTHUR M. BISTLINE  
Attorney for Plaintiffs



**CERTIFICATE OF SERVICE**

I hereby certify that on the 7<sup>th</sup> day of December, I served a true and correct copy of the following PLAINTIFFS' MOTION TO SHORTEN TIME by the method indicated below, and addressed to the following:

Susan P. Weeks  
JAMES, VERNON & WEEKS, PA  
1626 Lincoln Way  
Coeur d'Alene, ID 83814

- Regular mail
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- Overnight mail
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- Hand Delivered

  
JENNIFER JENKINS

STATE OF IDAHO  
COUNTY OF KOOTENAI } SS  
FILED: 8/8 9/10

ARTHUR M. BISTLINE  
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(208) 665-7270  
(208) 665-7290 (fax)  
arthurmooneybistline@me.com  
ISB: 5216

2011 DEC -8 AM 8:10

CLERK DISTRICT COURT  
Sherry Huff  
DEPUTY

Attorney for Plaintiffs

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

BREMER, LLC., an Idaho limited liability  
company, and KGG PARTNERSHIP,

Plaintiffs,

vs.

EAST GREENACRES IRRIGATION  
DISTRICT,

Defendant.

Case No. CV11-1921

PLAINTIFFS' MEMORANDUM IN  
SUPPORT OF SUPPLMENTAL MOTION  
TO STRIKE PORTIONS OF AFFIDAVIT  
OF JIM SAPPINGTON AND RON WILSON

COMES NOW, the above named Plaintiffs, BREMER, LLC, and KGG PARTNERSHIP, (hereinafter "Bremer"), by and through their counsel of record, Arthur M. Bistline, and hereby submits the following Memorandum in Support of Supplemental Motion to Strike Portions of Affidavit of Jim Sappington and Ron Wilson:

The legal authorities cited in Bremer's prior motions to strike are incorporated here as if set forth in full. In addition, in support of the contention that Mr. Sappington is offering expert testimony, Bremer points out that Sappington is attempting to impeach the testimony of Bremer's expert.

A. Jim Sappington

1. **Paragraph 7, second sentence:** "In order to obtain service from East Greenacres Irrigation District for this parcel, including the fire hydrants and sprinkler system required by Kootenai County Fire and Rescue, it was necessary to extend the existing 8" water main in Hayden Avenue east to the Bremer Parcel."

**Objections:** Lack of foundation and hearsay. This statement would not come into evidence because the process of laying the foundation for personal knowledge would elicit hearsay regarding the statements of the Kootenai County Fire and Rescue.

2. **Paragraph 13, second sentence:** "While the buildings could have physically been connected by a continuation of the 1" service line, the existing service line was inadequate to provide either the water flow or water pressure necessary to supply either adequate flow or adequate pressure for operation of the building sprinkler system required by Kootenai County Fire & Rescue."

**Objections:** Lack of foundation and hearsay. This statement would not come into evidence because the process of laying the foundation for personal knowledge would elicit hearsay regarding the statements of the Kootenai County Fire and Rescue.

3. **Paragraph 13, six sentence:** "The only mechanism to achieve compliance with Kootenai County Fire & Rescue's requirements was through use of a water mainline."

4. **Objections:** Lack of foundation and hearsay. This statement would not come into evidence because the process of laying the foundation for personal knowledge would elicit hearsay regarding the statements of the Kootenai County Fire and Rescue.

B. Ron Wilson

1. **Paragraph 4.** "The industrial facility being constructed required hydrants with proper fire flow pressure. The existing connection to the facility that fronted McGuire road would not meet this [fire flow] requirement. Without the water main extension on Hayden Avenue, the District would have been unable to meet minimum fire flow requirements required for the new construction utilizing the existing hook up that served the existing building on McGuire."
2. **Objections:** Lack of foundation and hearsay. This statement would not come into evidence because the process of laying the foundation for personal knowledge would elicit hearsay regarding the statements of the Kootenai County Fire and Rescue.

DATED this 7<sup>th</sup> day of December, 2011.



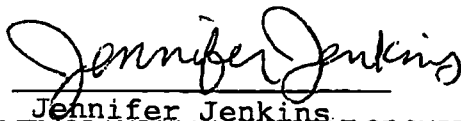
ARTHUR M. BISTLINE  
Attorney for Plaintiffs

**CERTIFICATE OF SERVICE**

I hereby certify that on the 7<sup>th</sup> day of December, I served a true and correct copy of the following PLAINTIFFS' SUPPLEMENTAL MOTION TO STRIKE PORTIONS OF AFFIDAVIT OF JIM SAPPINGTON AND RON WILSON by the method indicated below, and addressed to the following:

Susan P. Weeks  
JAMES, VERNON & WEEKS, PA  
1626 Lincoln Way  
Coeur d'Alene, ID 83814

- Regular mail
- Certified mail
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- Facsimile to (208) 664-1684
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- Hand Delivered



Jennifer Jenkins

<b>Description</b>	CV 2011-1921 Bremer vs East Greenacres 20111213 Motions for Summary Judgment Judge Haynes Clerk Suzi Sverdsten Court Reporter Laurie Johnson		
<b>Date</b>	12/13/2011	<b>Location</b>	1K-COURTROOM9
<b>Time</b>	<b>Speaker</b>	<b>Note</b>	
03:40:35 PM	Judge	PA-Art Bistline DA-Susan Weeks	
03:41:26 PM		Plt's motion to strike affds. Cross motions for SJ.	
03:42:36 PM	DA	The 2nd motion came at such short notice that I didn't have time to respond. Prejudicial to my client.	
03:43:23 PM	PA	Believe Court would take matter under advisement, would give DA time to respond.	
03:43:47 PM	Judge	What authority?	
03:43:53 PM	PA	Rule 6, just additional grounds.	
03:44:26 PM	Judge	Discretion of the Court. Perimeters include striking the supplemental motion and denying the motion to shorten time and I do that. No good cause show by Plt for not including this grounds in original motion to strike. Inefficient use of court time. Turn to original motion to strike.	
03:46:14 PM	PA	Main issue of the 2 affds is lack of foundation for the statements they are making, how they know what they are saying.	
03:47:02 PM	DA	Foundation comes from Plt's agents own statements. Their own engineer submitted the plans. DEQ wrote back to entities saying they reviewed the plans and needed supplemental info and they met fireflow. Some of it is just common sense.	
03:48:54 PM	PA	They are relying on my client's engineers plans. They are saying those plans were required.	
03:50:35 PM	Judge	Whether to strike is discretion of the Court. Court reviewed records and heard arguments. Sufficient foundations for affirmations. Not ruling if expert testimony or lay opinion. Foundation for statements and helpful to the Court. Motions to Strike Affidavits are denied. Defs to present order. Turn to SJ, plts first.	
03:53:34 PM	PA	Cross motions mismatch.	
03:53:52 PM	Judge	I need some facts about how this looked on the ground and by the parties. Hear def's motion for SJ first then.	
03:54:58 PM	DA	Draws diagram.	
03:55:59 PM	Judge	Need quick recess to review matter.	



<u>03:56:15 PM</u>	Judge	Back on the record.
<u>04:02:30 PM</u>	DA	McGuire runs north and south, Hayden runs east and west and terminates at McGuire at this point. Prior to the Bremer extension, it terminated at lot 1. Subdivided 3 times. Lots 1, 2 and 3. Then redone into McGuire Industrial Acres. Lot 2 subdivided into a and b. Bremer had existing bldg and 1 inch line served the bldg. Mr. Nerk wanted to connect. ECP submitted by applicant's engineer. Needed dedicated fireline and the hydrants. Undisputed bldg didn't exist. Undisputed 8 in. fireline needed. Undisputed that they needed the extension. Went from a project improvement to a system improvement.
<u>04:10:45 PM</u>	PA	We agree on just about everything in case. Have to have statutory authority. What statutory authority are they looking at for what they did. 43 330 says if you do a subdivision and it requires water in ground, you have to pay for it. Was already a subdivision, just adjusting lot lines and added a building. Jim Sappington tells us you could have serviced bldg on lot b with the line on lot a, but we don't like to do that, better if we have main line in the public right of way. But doesn't equate to Mr. Bremer has to pay for it all.
<u>04:16:05 PM</u>	Judge	Sappington affd said you can't attach 8 in line to 1 in line?
<u>04:16:27 PM</u>	PA	You can do that, just down size. 2 parts of his affd. Talks about a 4 in line.
<u>04:17:23 PM</u>	DA	Facts in evidence. Mr. Nerk was told to bring an engineer plan on how the connection would meet the requirements. Their engineer didn't submit plan to take existing line to new bldg. Only evidence from bldg a to b is a statement by Mr. Bremer. Concept plan of their own engineer.
<u>04:23:17 PM</u>	PA	Fire design guy, the argument that the district has to maintain the 8 in line, they don't, Bremer does.
<u>04:28:10 PM</u>	DA	Affd of Skelton, he prepared 4/23. Engineer submitted plan after that. 8 in dedicated fireline included. Jim Nerk went to a board mtg and said we want to connect. Minutes reflect he was told to come back with a plan.
<u>04:32:34 PM</u>	PA	Main line or not a main line doesn't rely on the size. Objecting to any idea that we can rule on this case that Ms. Weeks rely in her reply.
<u>04:33:29 PM</u>	Judge	Will take matter under advisement.
<u>04:33:57 PM</u>		
<u>04:33:58 PM</u>	End	

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Susan P. Weeks, ISB # 4255  
James, Vernon & Weeks, P.A.  
1626 Lincoln Way  
Coeur d'Alene, ID 83814  
Telephone: (208) 667-0683  
Facsimile: (208) 664-1684

STATE OF IDAHO }  
COUNTY OF KOOTENAI } SS  
FILED: 1-3-12  
AT 4:40 O'CLOCK P M  
CLERK, DISTRICT COURT  
DEPUTY

*Attorneys for Defendant*

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

BREMER, LLC., an Idaho limited liability  
company, and KGG PARTNERSHIP,

Plaintiffs,

EAST GREENACRES IRRIGATION  
DISTRICT,

Defendant.

CASE NO. CV-11-1921

ORDER DENYING PLAINTIFF'S MOTION  
TO STRIKE PORTIONS OF THE  
AFFIDAVITS OF JIM SAPPINGTON AND  
RON WILSON

THIS MATTER came before the Court for hearing on December 13, 2011. The Court  
having considered the pleadings on file and heard the argument of counsel, and enunciated its  
ruling on the record;

NOW THERE, IT IS HEREBY ORDERED that Plaintiff's Motion to Strike Portions of  
the Affidavits of Jim Sappington and Ron Wilson are denied.

DATED this 3 day of January, 2012.

Lansing L. Haynes  
Lansing L. Haynes  
District Judge

ORDER DENYING PLAINTIFF'S MOTION TO STRIKE PORTIONS OF THE AFFIDAVIT  
OF JIM SAPPINGTON AND RON WILSON: 1

CERTIFICATE OF SERVICE

I hereby certify that on the 3 day of Jan, 2012, I caused to be served a true and correct copy of the foregoing instrument by the method indicated below, and addressed to the following:

Arthur Bistline  
1423 N. Government Way  
Coeur d'Alene, ID 83814

Susan P. Weeks, ISB # 4255  
James, Vernon & Weeks, P.A.  
1626 Lincoln Way  
Coeur d'Alene, ID 83814

- U.S. Mail
- Hand Delivered
- Overnight Mail
- Telecopy (FAX) (208) 665-7290
- U.S. Mail
- Hand Delivered
- Overnight Mail
- Telecopy (FAX) (208) 664-1684

Suzi Herdster

2574



ARTHUR BISTLINE  
 BISTLINE LAW, PLLC  
 1423 N. Government Way  
 Coeur d'Alene, Idaho 83814  
 (208) 665-7270  
 (208) 665-7290 (fax)  
arthurmooneybistline@me.com  
 ISB: 5216

STATE OF IDAHO }  
 COUNTY OF KOOTENAI } SS  
 FILED: *SR #952*  
 2012 JAN -5 AM 9:46

CLERK DISTRICT COURT  
*Paul Thompson*  
 DEPUTY *PS*

Attorney for Plaintiff

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

BREMER, LLC., an Idaho limited liability  
 company, and KGG PARTNERSHIP.

Case No. CV11-1921

Plaintiffs.

AFFIDAVIT OF SCOTT JONES

vs.

EAST GREENACRES IRRIGATION DISTRICT.

Defendant.

STATE OF Washington )  
 ) ss.  
 County of Kitsap )

1. Scott Jones, having been first duly sworn, upon oath depose and state that:

1. I am over the age of eighteen (18) and an individual residing in the State of Washington.
2. I am a professional engineer and the sole proprietor of my business.
3. I was retained by Plaintiff, Gary Bremer, acting on behalf of one of his business entities, in 2008 to engineer a connection from one of the company's facilities to the East Greenacres Water District System.
4. During that time, I met with various representatives and agents of the East Greenacres Water District (hereinafter "Greenacres") who informed me that Greenacres was requiring their main line to be extended all the way across the subject property.

AFFIDAVIT OF SCOTT JONES

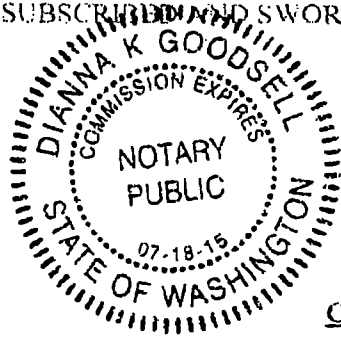
-1-

5. I gained the understanding that Greenacres wanted the line extended incident to its plan to loop the line.

Dated this 16 day of November, 2011.

*Scott E. Jones*  
SCOTT JONES, P.E.

SUBSCRIBED AND SWORN before me this 4<sup>th</sup> day of ~~November~~ <sup>Jan</sup> 2011.



*Dianna K Goodsell*  
Notary in and for WELLS FARGO  
Residing at: KITSAP COUNTY, WASHINGTON  
Commission Expires: 07/18/2015

**CERTIFICATE OF SERVICE**

I hereby certify that on the 5<sup>th</sup> day of January, 2012, I served a true and correct copy of AFFIDAVIT OF SCOTT JONES by the method indicated below, and addressed to the following:

Susan P. Weeks  
James, Vernon & Weeks, PA  
1626 Lincoln Way  
Coeur d'Alene, ID 83814  
Fax: (208) 664-1684

- Regular mail
- Certified mail
- Overnight mail
- Facsimile
- Interoffice Mail
- Hand Delivered

*Hannah Dammm*  
HANNAH DAMM

STATE OF IDAHO )  
 County of Kootenai )<sup>ss</sup>  
 FILED 6-13-12  
 AT 5:00 O'clock P M  
 CLERK OF THE DISTRICT COURT  
*[Signature]*  
 Deputy Clerk

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
 STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI**

<b>BREMER, LLC., an Idaho limited liability company, and KGG PARTNERSHIP</b>	)	
	)	<b>CASE NO. CV2011-1921</b>
<b>Plaintiffs,</b>	)	<b>MEMORANDUM DECISION</b>
	)	<b>AND ORDER GRANTING</b>
<b>vs.</b>	)	<b>DEFENDANT'S MOTION FOR</b>
	)	<b>SUMMARY JUDGMENT</b>
<b>EAST GREENACRES IRRIGATION DISTRICT,</b>	)	
	)	
<b>Defendant.</b>	)	
_____	)	

Arthur Bistline, Attorney for Plaintiffs.  
 Susan P. Weeks, Attorney for Defendant.

Defendant's Motion for Summary Judgment GRANTED;  
 Plaintiffs' Motion for Summary Judgment DENIED.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

East Greenacres Irrigation District (the "District") operates a pressurized irrigation system that delivers irrigation and potable water to its members.

The McGuire Industrial Park subdivision was recorded in Book J of Plats, Page 66 and

66A, Records of Kootenai County, Idaho, on August 16, 2004; the plat subdividing Tracts 6, 7, 8, 9 and 10, Greenacres Plat No. 4, as recorded in Book B of Plats, Page 55, Records of Kootenai County, Idaho. The plat contained a sanitary restriction imposed by Panhandle Health District.

On April 30, 2008, a re-plat of the McGuire Industrial Park, designated as McGuire Industrial Acres subdivision, was recorded in Book K of Plats, Page 144 and 144A, Records of Kootenai County, Idaho, at the request of Double "B" Ranch and KGG Partnership ("KGG"); this subdivision re-platted Lots 1 and 2 of the McGuire Industrial Park so that Lot 1 was made smaller, and Lot 2 had frontage on both McGuire Road and Hayden Avenue. The Plat contained a sanitary restriction imposed by Panhandle Health District.

On April 21, 2010, Bremer subdivision was recorded in Book K of Plats, Page 287 and 287A, Records of Kootenai County, Idaho, at the request of KGG, dividing Lot 2 into two lots. These lots were designated Lots A and B, Block 1, Bremer subdivision. Lot A fronted McGuire Road and Lot B fronted Hayden Avenue.

On March 4, 2008, a representative for Bremer, LLC ("Bremer"), Jim Nirk, appeared before the District Board and verbally informed the Board and District Manager, Ron Wilson, that Bremer needed approval of a connection to the District's water system for new construction of a foam materials manufacturing building on what became Lot B fronting Hayden Avenue. The District informed Mr. Nirk that engineered plans and DEQ approval for construction were needed before the District would grant conceptual approval of plans.

On March 18, 2008, District staff met with Gary Bremer regarding extension of the water main on Hayden Avenue to accommodate the proposed industrial facility. Bremer was informed that the facility needed hydrants with proper fire flow pressure.

On April 3, 2008, Panhandle Health District wrote to Emmett Burley regarding the

McGuire Industrial Acres re-plat indicating it would grant plat approval when the District issued a “will serve” letter committing to serving water to both Lots 1 and 2 of the re-plat. The District had previously committed to serving water in connection with the first subdivision, with a requirement that a main line extension was required along Hayden Avenue to serve the proposed subdivision.

On May 2, 2008, Scott Jones, an engineer representing KGG, was provided the District’s standard application for conceptual review of a project for use within McGuire Industrial Park and on May 5, 2008, Mr. Jones submitted engineered plans for the pipeline extension to both DEQ and the District. The District Board of Directors approved the water main extension the next day, and issued a “will serve” letter to DEQ indicating that a water main extension was being proposed to improve service along Hayden Avenue. On May 16, 2008, the water main extension construction plans were submitted to DEQ by Mr. Jones.

DEQ disapproved the proposed extension project in June of 2008, and noted that the design engineer needed to demonstrate that the water system was capable of meeting minimum fire flow requirements; however, later in June DEQ informed KGG that local fire authority had affirmed that the plans met minimum fire flow requirements. DEQ then approved the construction plans as did the District.

On October 31, 2008, a domestic connection fee of \$2,250.00 and an irrigation fee of \$600.00 was paid.

The District received notice on July 22, 2009, that Bremer was applying to subdivide Lot 2 and was requesting a “will serve” letter for the new parcel. That “will serve” request was granted on August 7, 2009.

On September 1, 2009, the District received notice that KGG (Bremer) was subdividing Lot 2, with a proposed structural improvement on what was to become Lot B facing Hayden Avenue.

Panhandle Health District approved the final plat on September 2, 2009, pending a “will serve” letter from the District. That “will serve” was sent April 12, 2010. Plaintiffs completed the main line extension for the Lot 2 manufacturing building.

Plaintiffs filed a complaint against the District on March 4, 2011, alleging that the required improvements were unrelated to Plaintiffs’ use of the District water system, and amounted to an illegal hook-up fee. Plaintiffs sought compensation for the costs of the water line extension. Plaintiffs called these costs an illegal tax. Defendant filed its Answer on June 1, 2011, and a jury trial was scheduled for March 19, 2012.

Plaintiffs filed a Motion for Summary Judgment and supporting Memorandum on November 16, 2011. Defendant filed its Motion for Summary Judgment and supporting Memorandum on November 17, 2011. The Court considered the affidavits filed by both parties, and heard oral argument on December 13, 2011. The matter was taken under advisement.

## II. STANDARDS

Summary judgment is appropriate if the pleadings, affidavits and discovery documents on file with the court, read in a light most favorable to the non-moving party, demonstrate no material issue of fact such that the moving party is entitled to a judgment as a matter of law I.R.C.P. 56(c). Where a jury has been requested, the non-moving party is to be given the benefit of all favorable inferences which might be reasonably drawn from the evidence. *Roell v. City of Boise*, 130 Idaho 197, 938 P.2d 1237 (1997).

## III. DISCUSSION

An irrigation district is a quasi-municipal corporation operating an irrigation system in proprietary capacity, and any municipal powers thereof are only incidental. *Tingwall v. King Hill*

*Irrig. Dist.*, 66 Idaho 76, 155 P.2d 605 (1915). An irrigation district exists for the private benefit of landowners within its limits, and operates its irrigation system in a proprietary capacity. *Eldridge v. Black Canyon Irrig. Dist.*, 55 Idaho 443, 43 P.2d 1052 (1935).

Idaho Code provides two mechanisms for an individual to obtain an extension of an irrigation district's system to service a parcel. The first mechanism is encompassed with I.C. § 43-328 thru § 43-330. These sections require a property owner within the district to petition the board of directors for construction of any improvement for the efficient irrigation of lands within the district. If this route is taken, and the board of directors approves the petition, an election is held, and the benefited parcel is assessed the cost of the improvement.

In the event the land is subdivided land within the district, a contract may be entered into with the owner of the parcel proposed for development. I.C. § 43-330A provides:

[W]hen a parcel of land lying within an irrigation district has been subdivided and the owner or owners of the entire parcel propose to develop that parcel or any of the tracts therein for residential, commercial, industrial or municipal use, the board of directors of the district may enter into a contract with the owner or owners of the entire parcel, or of any tract therein for the construction of a pressurized system for the proper distribution of irrigation water to the parcel or to the designated tracts within the parcel.

This Court finds that Plaintiffs reached such an agreement with the District; an agreement in which Plaintiffs were responsible for construction of the improvements to serve the parcel. The Idaho Legislature intended that irrigation districts have the power to require landowners who subdivide to pay for the costs extending the pressurized water system to the improved parcel.

Plaintiffs have argued that the applicable statutes cited above require that any agreement for a landowner to pay for construction of a water line improvement to serve the landowner's parcel be in writing. That is true, and in the instant case no such written agreement exists. However, Plaintiffs did enter into the agreement cited above and did voluntarily bear the costs of the system

improvement to benefit their parcel. If Plaintiffs were being sued by Defendant for unpaid construction costs, the lack of a written agreement would possibly be a material circumstance to consider. But Plaintiffs' Complaint in this matter is not that Defendant failed to follow the statutory requirements for a binding agreement; rather, Plaintiffs' legal position is that Defendant operated to impose an illegal tax on Plaintiffs by requiring Plaintiffs to bear the costs of the system improvement to benefit Plaintiffs' parcel.

#### IV. CONCLUSION

Idaho Code allows an irrigation district to require landowners under the instant circumstances to bear the construction costs of irrigation system improvements designed to benefit a landowners subdivided and improved parcel. That is exactly what happened in this case. There exist no genuine issues of material fact by which a reasonable jury could find the amount expended by Plaintiffs to effect the improvement of their parcel to be unrelated to Plaintiffs' use of the District's water system, and therefore an illegal tax or illegal hook-up fee. Defendant is entitled to judgment in its favor as a matter of law. Defendant's Motion for Summary Judgment is granted; Plaintiffs' Motion for Summary Judgment is denied. Defendant is directed to provide a judgment to this Court consistent with this decision and order.

**DATED** this 13 day of January, 2012.

Lansing L. Haynes  
Lansing L. Haynes, District Judge




**CERTIFICATE OF MAILING**

I hereby certify that on the 13 day of January, 2012 a true and correct copy of the foregoing was faxed to:

Arthur M. Bistline  
Attorney at Law  
1423 N. Government Way  
Coeur d'Alene, ID 83814  
Fax: 208-665-7290

Susan P. Weeks  
James, Vernon & Weeks, P.A.  
1626 Lincoln Way  
Coeur d'Alene, ID 83814  
Fax: 208-664-1684

Clifford T. Hayes  
Clerk of the District Court

By:   
Deputy Clerk

3240

ARTHUR M. BISTLINE  
1423 N. Government Way  
Coeur d'Alene, Idaho 83814  
(208) 665-7270  
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arthurmooneybistline@me.com  
ISB: 5216

STATE OF IDAHO  
COUNTY OF KOOTENAI } SS  
FILED:

2012 JAN 23 PM 4:02

CLERK DISTRICT COURT 488  
DEPUTY  
*[Signature]*

Attorney for Plaintiffs

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

BREMER, LLC., an Idaho limited liability  
company, and KGG PARTNERSHIP,

Plaintiffs,

vs.

EAST GREENACRES IRRIGATION  
DISTRICT,

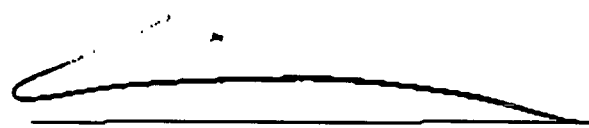
Defendant.

Case No. CV11-1921

PLAINTIFFS' MOTION TO RECONSIDER

COMES NOW, Plaintiffs, BREMER, LLC., an Idaho limited liability company, and  
KGG PARTNERSHIP, by and through their attorney of record, ARTHUR M. BISTLINE, and  
hereby moves this Court to reconsider its Memorandum Decision and Order Granting  
Defendant's Motion for Summary Judgment dated January 13, 2012. This Motion is based on  
I.R.C.P. 11, and will be supported by briefing within two (2) weeks. Oral argument is requested  
hereon.

DATED this 23<sup>rd</sup> day of January, 2012.



ARTHUR M. BISTLINE  
Attorney for Plaintiffs

**CERTIFICATE OF SERVICE**

I hereby certify that on the 23<sup>rd</sup> day of January, I served a true and correct copy of the following PLAINTIFFS' MOTION TO RECONSIDER by the method indicated below, and addressed to the following:

Susan P. Weeks  
JAMES, VERNON & WEEKS, PA  
1626 Lincoln Way  
Coeur d'Alene, ID 83814

- Regular mail
- Certified mail
- Overnight mail
- Facsimile to (208) 664-1684
- Interoffice Mail
- Hand Delivered

*Jennifer Jenkins*  
JENNIFER JENKINS

ARTHUR M. BISTLINE  
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(208) 665-7270  
(208) 665-7290 (fax)  
arthurmooneybistline@me.com  
ISB: 5216

STATE OF IDAHO  
COUNTY OF KOOTENAI  
FILED: <sup>SS</sup>

#210 dlu

2012 JAN 30 PM 5: 39

CLERK DISTRICT COURT

DEPUTY

Attorney for Plaintiffs

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

BREMER, LLC., an Idaho limited liability  
company, and KGG PARTNERSHIP,

Plaintiffs,

vs.

EAST GREENACRES IRRIGATION  
DISTRICT,

Defendant.

Case No. CV11-1921

PLAINTIFFS' MEMORANDUM IN  
SUPPORT OF MOTION TO RECONSIDER

COMES NOW, Plaintiffs, BREMER, LLC., an Idaho limited liability company, and  
KGG PARTNERSHIP, by and through their attorney of record, ARTHUR M. BISTLINE, and  
hereby submits its Memorandum in Support of its Motion to Reconsider filed January 23, 2012.

The Court has found that Bremer and the East Greenacres Irrigation District (herein after  
"District") reached an agreement pursuant to Idaho Code 43-330A in that Bremer would bear the  
cost of mainline extensions. The Court is correct that the "...Idaho Legislature intended that  
irrigation districts have the power to require landowners who subdivide to pay for the costs  
extending the pressurized water system to the improved parcel," but only if the extension is  
necessary for the, "...proper distribution of irrigation water to the parcel or to the designated tracts  
within the parcel. Idaho Code §43-330A.

In order for the District to utilize the power given to it by Idaho Code §43-330A, a factual condition must exist -- the parcel or tracts within the parcel must be lacking the infrastructure for proper distribution of water, i.e., the required improvements must be directly related to the proposed subdivision. This is consistent with the holding of *Dolan v. City of Tigard*, 512 U.S. 374, 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994) which requires the governmental agency to "...make an individualized determination that the required dedication of property to public use is related both in nature and extent to the impact of the proposed development." *KMST, LLC v. County of Ada*, 138 Idaho 577, 581, 67 P.3d 56, 60 (2003).

Whether the mainline extensions were required to provide for the proper distribution to Bremer's property for the subdivision is a factual question that cannot be resolved on summary judgment because the evidence is conflicting. Ron Wilson testified that the line extensions were required to provide proper fire flow for Bremer's facility. If left unchallenged, the District may be entitled to summary judgment as proper fire flow would be an aspect of proper distribution of water.<sup>1</sup> However, this fact was directly challenged by the District's other affiant Jim Sappington as well as by Plaintiffs' affiant Bob Skelton. As set forth in Bremer's reply, Jim Sappington testified that Bremer could have modified his existing system to serve his building, but that doing it the way the District wanted was better for the maintenance of the line, etc. Bob Skelton, however, testified that the fire protection plan did not require any mainline extensions.

Whether or not the line extensions were required for the proper distribution of water to the Bremer property is a question of fact that cannot be resolved on summary judgment.

---

<sup>1</sup> Without waving any argument related to the lack of any following of the required formalities.

DATED this 30<sup>th</sup> day of January, 2012.



ARTHUR M. BISTLINE  
Attorney for Plaintiffs

**CERTIFICATE OF SERVICE**

I hereby certify that on the 30 day of January, I served a true and correct copy of the following PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION TO RECONSIDER by the method indicated below, and addressed to the following:

Susan P. Weeks  
JAMES, VERNON & WEEKS, PA  
1626 Lincoln Way  
Coeur d'Alene, ID 83814

- Regular mail
- Certified mail
- Overnight mail
- Facsimile to (208) 664-1684
- Interoffice Mail
- Hand Delivered

  
JENNIFER JENKINS

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 James, Vernon & Weeks, P.A.  
 1626 Lincoln Way  
 Coeur d'Alene, ID 83814  
 Telephone: (208) 667-0683  
 Facsimile: (208) 664-1684

*Attorneys for Defendant*

STATE OF IDAHO  
 COUNTY OF KOOTENAI  
 FILED: *BDAS*

2012 MAR -8 PM 3: 33

CLERK DISTRICT COURT  
*Paul Cunningham*  
 DEPUTY  
*PB*

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

BREMER, LLC., an Idaho limited liability  
 company, and KGG PARTNERSHIP,

Plaintiffs,

EAST GREENACRES IRRIGATION  
 DISTRICT,

Defendant.

CASE NO. CV-11-1921

MEMORANDUM IN RESPONSE TO  
 PLAINTIFFS' MOTION FOR  
 RECONSIDERATION

Bremer, LLC and KGG Partnership (collectively "Bremer") filed a motion for reconsideration, claiming a factual dispute should have precluded the trial court from entering summary judgment in this matter. Specifically, Bremer claims there is disputed material fact under Idaho Code § 43-330A. This statute requires:

When a parcel of land lying within an irrigation district has been subdivided and the owner or owners of the entire parcel propose to develop that parcel or any of the tracts therein for residential, commercial, industrial or municipal use, the board of directors of the district may enter into a contract with the owner or owners of the entire parcel, or of any tract therein, for the construction of a pressurized system for the proper distribution of irrigation water to the parcel or to the designated tracts within the parcel.

Bremer does not dispute that their parcel of land lies within an irrigation district. They do not dispute that it was subdivided. They do not dispute that the owner(s) proposed to develop the parcel for industrial use. They do not seek a reconsideration of this Court's ruling that there was

an oral agreement between the District and the owner of the parcel to provide the parcel water through its pressurized system. Bremer does not even argue that an extension was not necessary for providing the new building on the parcel with water, as it is undisputed it did not have water service. Rather, Bremer claims that whether the system as constructed was necessary for the *proper* distribution of irrigation water is a material fact that can't be resolved at summary judgment.

It is undisputed that there was no building on the parcel at the time Bremer approached the District seeking a connection to the irrigation system to service the new facility, and that Bremer's own engineer designed the extension that ultimately was put in place to service the parcel. Bremer also claims that the Skelton affidavit contradicts that the system as constructed by them was necessary for the proper distribution of irrigation water to the parcel. In presenting this affidavit, Bremer implicitly seeks to impeach its own engineer. Further, the affidavit does not create a material disputed fact.

Further, this argument is without merit. The undisputed facts are that Bremer requested a connection to the irrigation system and was directed by the District to prepare and provide to the District an engineered plan for the connection to the irrigation system. Bremer presented a plan to the District. The District accepted the plan. Bremer can't now avoid an agreed term of the contract by claiming the plan for providing water to the new facility proposed by his engineer was not a term that provided for the proper distribution of water.

Bremer also claims that the Court should analyze this matter under the rubric of *Dolan v. City of Tigard*, 512 U.S. 374, 114 S.Ct. 2309, 19 Led.2d 304 (1994). This case has no applicability to the present matter. The District did require a dedication of Bremer's property for



zoning approval. Thus, there is no taking. Rather, the District negotiated a contract with Bremer to provide water for a new industrial facility on a subdivided parcel.

DATED this 8<sup>th</sup> day of March, 2012.

JAMES, VERNON & WEEKS, P.A.

BY: Susan P. Weeks  
Susan P. Weeks

CERTIFICATE OF SERVICE

I hereby certify that on the 8<sup>th</sup> day of March, 2012, I caused to be served a true and correct copy of the foregoing instrument by the method indicated below, and addressed to the following:

Arthur Bistline  
1423 N. Government Way  
Coeur d'Alene, ID 83814

- U.S. Mail
- Hand Delivered
- Overnight Mail
- Telecopy (FAX) (208) 665-7290

Christine Elmore

ARTHUR M. BISTLINE  
BISTLINE LAW, PLLC  
1423 N. Government Way  
Coeur d'Alene, ID 83814  
(208) 665-7270  
(208) 665-7290 (fax)  
abistline@povn.com  
ISB: 5216

STATE OF IDAHO  
COUNTY OF KOOTENAI  
FILED: 151 533 933

2012 MAR 13 PM 1:40

CLERK DISTRICT COURT  
*Bob DeGruy*  
DEPUTY  
*AK*

Attorney for Petitioner

FIRST JUDICIAL DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF  
THE STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

BREMER, LLC., An Idaho limited liability  
company, and KGG PARTNERSHIP,

Plaintiffs,

vs.

EAST GREENACRES IRRIGATION  
DISTRICT,

Defendant.

Case No: CV 11-1921

REPLY IN SUPPORT OF MOTION TO  
RECONSIDER

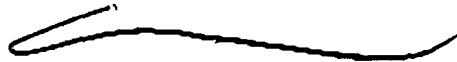
To the extent that East Greenacres is arguing now that Bremer was bound to the plans he submitted as the contractor was in KMST, LLC, v. County of Ada, 138 Idaho 577, 67 P.3d 56 (2003), that argument is objected as it was not raised on summary judgment. Without waiving the objection, the record is not clear on what plans were submitted when, but, more importantly, even if Bremer did submit the plans with the line extension, that is not a proposal from Bremer to do the line extensions, it is Bremer doing as he was directed by East Greenacres if he wanted to utilize its system to begin operations in his new building. At least a question of fact exists as to what Bremer agreed to do as his affidavit clearly sets forth he did not want to expend the money for the line extensions, but had to in order to begin operations.

East Greenacres states that "Bremer does not even argue that an extension was not necessary for providing the new buildings on the parcel with water, as it is undisputed it did not have water service." This is exactly what Bremer is disputing. The factual question on summary

judgment is whether or not the line extensions were required to provide water to the new building. It is undisputed that Bremer could have provided water to his new building by extending his existing mainline, "...east through the Bremer property to the rear of the new building..."<sup>1</sup> It is at least a question of fact as to whether or not the subject mainline extensions were required because of Bremer's subdivision and new building.

Idaho Code §43-330A cannot be interpreted to allow East Greenacres to require the landowner to do whatever it wants if the landowner subdivides. Such an interpretation would be unconstitutional based on Dolan v. City of Tigard, 512 U.S. 374, 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994) which requires the governmental agency to "...make an individualized determination that the required dedication of property to public use is related both in nature and extent to the impact of the proposed development." KMST, LLC v. County of Ada, 138 Idaho 577, 581, 67 P.3d 56, 60 (2003).

DATED this 13<sup>th</sup> day of March, 2012.



ARTHUR M. BISTLINE

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<sup>1</sup> Affidavit of Sappington at page 4.

CERTIFICATE OF SERVICE

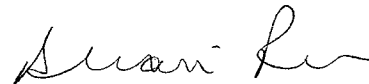
I hereby certify that on the 13<sup>th</sup> day of March, 2012, I served a true and correct copy of the following NOTICE OF HEARING by the method indicated below, and addressed to the following:

Susan P. Weeks  
JAMES, VERNON & WEEKS, PA  
1626 Lincoln Way  
Coeur d'Alene, ID 83814

- Hand-delivered
- Regular mail
- Certified mail
- Overnight mail
- Facsimile to (208)664-1684
- Interoffice Mail

BY:   
Arthur M. Bistline

<b>Description</b>		CV 2011-1921 Bremer LLC vs East Greenacres Irrigation District 20120314 Motion to Reconsider Judge Haynes Court Reporter NONE Clerk Shari Rohrbach	
<b>Date</b>		3/14/2012	<b>Location</b>
			1K-COURTROOM9
<b>Time</b>		<b>Speaker</b>	<b>Note</b>
04:06:15 PM	J	Calls, Ms Weeks and Mr Bistline present.	
04:06:38 PM	Bistline	If a landowner subdivides that doesn't give the district the ability have him do anything they want. There has to be an authority. The intent of the statute 42-33a. In our case, we already had water on the property. The question is whether the subdivion required the mainline extension in order to provide water to subdivision. That can't be resolved on a summary judgment.	
04:08:51 PM	Weeks	It comes down to material fact on the matter. The Bremers went to the district and said they wanted the District to provide water to a building. The District said how do you propose we provide the water, they came back with a proposal. The District did not give the proposal. There was an agreed term. Now they come back and say there could have been a better way. Here, there was a direct negotiation, and everybody performed according to it and now we're being brought into court. I don't think a reconsideration is appropriate.	
04:11:07 PM	Bistline	The file is clear that the line extension was there or they wouldn't get water. It wasn't their idea, it was required to be submitted in order to get water. An agreement can't be coerced. The real issue is a question of fact under 443a.	
04:12:59 PM	J	The Court is ready to rule today. The Court recognizes it's governed by Rule 11. There are no new facts presented. No new theories of law presented. The Court finds the facts and the laws presented are the same as at summary judgment. The Court agrees with defendant there are not genuine issues of material fact. PL applied for subdivision, applied for water. The record supports the def saying what is your proposal? The record is bare of the PL having any proposal. Instead the record shows the PL showed the plan for extending the main line. Court finds there are no issues of material fact, the action was acceded to by the PL. Deny the Motion for Reconsideration, defense to prepare an Order and Judgment.	
04:16:55 PM	Weeks	We'll get that to the Court.	



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Susan P. Weeks, ISB # 4255  
James, Vernon & Weeks, P.A.  
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Facsimile: (208) 664-1684

STATE OF IDAHO  
COUNTY OF KOOTENAI  
FILED: <sup>5</sup>SS

2012 MAR 23 AM 9:47

CLERK DISTRICT COURT

*Cathy Victor*  
DEPUTY

*Attorneys for Defendant*

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

BREMER, LLC., an Idaho limited liability  
company, and KGG PARTNERSHIP,

Plaintiffs,

EAST GREENACRES IRRIGATION  
DISTRICT,

Defendant.

CASE NO. CV-11-1921

ORDER GRANTING DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT

THIS MATTER came before the Court on Plaintiff's Motion for Summary Judgment and Defendant's Cross Motion for Summary Judgment on December 13, 2011. The Court having heard the argument of counsel, being fully advised in the premises, and having issued its Memorandum Decision and Order Granting Defendant's Motion for Summary Judgment,

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. Plaintiff's Motion for Summary Judgment is denied.
2. Defendant's Motion for Summary Judgment is granted. The case is dismissed in its entirety with prejudice.

DATED this 22 day of March, 2012

*Lansing L. Haynes*  
Lansing L. Haynes  
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 23 day of March, 2012, I caused to be served a true and correct copy of the foregoing instrument by the method indicated below, and addressed to the following:

Arthur Bistline  
1423 N. Government Way  
Coeur d'Alene, ID 83814

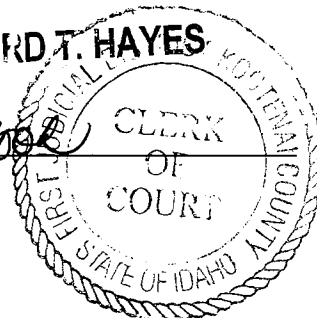
- U.S. Mail
- Hand Delivered
- Overnight Mail
- Telecopy (FAX) (208) 665-7290 <sup>121</sup> <sub>D2</sub>

Susan P. Weeks, ISB # 4255  
James, Vernon & Weeks, P.A.  
1626 Lincoln Way  
Coeur d'Alene, ID 83814

- U.S. Mail
- Hand Delivered
- Overnight Mail
- Telecopy (FAX) (208) 664-1684 <sup>122</sup> <sub>D2</sub>

CLIFFORD T. HAYES

*Clifford T. Hayes*



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(208) 665-7270  
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arthurmooneybistline@me.com  
ISB: 5216

STATE OF IDAHO  
COUNTY OF KOOTENAI } SS  
FILED: *BS #978*  
2012 APR -6 PM 4: 22

CLERK DISTRICT COURT  
*Paul Cunningham*  
DEPUTY

Attorney for Plaintiffs

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

BREMER, LLC., an Idaho limited liability  
company, and KGG PARTNERSHIP,

Plaintiffs,

vs.

EAST GREENACRES IRRIGATION  
DISTRICT,

Defendant.

Case No. CV11-1921

PLAINTIFFS' MOTION TO ALTER OR  
AMEND THE JUDGMENT AND/OR TO  
SET ASIDE THE JUDGMENT AND TO  
CONSIDER ADDITIONAL EVIDENCE

COMES NOW, Plaintiffs, BREMER, LLC., an Idaho limited liability company, and KGG PARTNERSHIP, by and through their attorney of record, ARTHUR M. BISTLINE, and hereby moves this Court for an Order 1) Altering the Judgment entered in this matter by vacating the same and/or 2) Vacating the Judgment and consider the additional evidence submitted by Plaintiff in opposition to Defendant's motion for summary judgment.

This motion is based on Idaho Rules of Civil Procedure 59 and 60, and upon the Affidavits of Brent Schlotthauer and Gary Bremer filed in support hereof and together herewith.

DATED this 6<sup>th</sup> day of April, 2012.

ARTHUR M. BISTLINE  
Attorney for Plaintiffs



**CERTIFICATE OF SERVICE**

I hereby certify that on the 6<sup>th</sup> day of April, I served a true and correct copy of the following **PLAINTIFFS' MOTION TO ALTER OR AMEND THE JUDGMENT AND/OR TO SET ASIDE THE JUDGMENT AND TO CONSIDER ADDITIONAL EVIDENCE** by the method indicated below, and addressed to the following:

Susan P. Weeks  
JAMES, VERNON & WEEKS, PA  
1626 Lincoln Way  
Coeur d'Alene, ID 83814

- Regular mail
- Certified mail
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- Facsimile to (208) 664-1684
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JENNIFER JENKINS

ARTHUR M. BISTLINE  
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(208) 665-7270  
(208) 665-7290 (fax)  
arthurmooneybistline@me.com  
ISB: 5216

STATE OF IDAHO  
COUNTY OF KOOTENAI } SS  
FILED: *BD #978*  
2012 APR -6 PM 4:22  
CLERK DISTRICT COURT  
*[Signature]*  
DEPUTY *pb*

Attorney for Plaintiffs

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

BREMER, LLC., an Idaho limited liability  
company, and KGG PARTNERSHIP,

Plaintiffs,

vs.

EAST GREENACRES IRRIGATION  
DISTRICT,

Defendant.

Case No. CV11-1921

MEMORANDUM IN SUPPORT OF  
PLAINTIFFS' MOTION TO ALTER OR  
AMEND THE JUDGMENT AND/OR TO  
SET ASIDE THE JUDGMENT AND TO  
CONSIDER ADDITIONAL EVIDENCE

COMES NOW, Plaintiffs, BREMER, LLC., an Idaho limited liability company, and  
KGG PARTNERSHIP, by and through their attorney of record, ARTHUR M. BISTLINE, and  
hereby submits its Memorandum in Support of its Motion to Alter or Amend the Judgment  
and/or to Set Aside the Judgment and to Consider Additional Evidence filed concurrently  
herewith.

A Judgment can be vacated pursuant to I.R.C.P. 59 or 60(b). First Sec. Bank v. Neibaur,  
98 Idaho 598, 603, 570 P.2d 276, 281 (1977). The Judgment in this matter should be vacated  
because it is based on grounds not raised by East Greenacres Irrigation District (hereafter  
"Greenacres") on summary judgment and material issue of fact prevent the granting of summary  
judgment on the issue upon which summary judgment was granted.

“Rule 59 was designed to allow the trial court either on its own initiative or on motion by the parties to correct errors both of fact and law that had occurred in its proceedings. It thereby provided a mechanism to circumvent appeal.” First Sec. Bank v. Neibaur, 98 Idaho 598, 603, 570 P.2d 276, 281 (1977). In this matter, Greenacres moved for summary judgment on the grounds that it was “...clear from the provisions of I.C. §43-330A through 43-330G that the legislature intended that the District would have the power to require landowners who subdivided agricultural lands for residential, commercial, industrial or municipal use to pay for the cost of extension of a pressurized system.”<sup>1</sup> The Court’s final ruling was not based on Idaho Code §43-330A, but based instead on what is known as the “voluntary payment rule.”

At the hearing on Plaintiffs’ motion to reconsider, the Court clarified that it was not ruling on the ability of Greenacres to statutorily require Bremer to construct the line improvements, but that Bremer had agreed to the improvements so Bremer cannot now complain. This Court stated, “Therefore this Court finds there are to be no issues of material fact as to whether this was a proper action by the defendant because the action was acceded to by the plaintiffs and therefore, no cause of action lies at this point. . . .” This is a ruling based on the voluntary payment rule and that rule was not raised on summary judgment by Greenacres.

Under the voluntary payment rule, “...a person may not-by way of set-off, counterclaim, or direct action-recover money that he or she voluntarily paid with full knowledge of all the facts and without any fraud, duress or extortion, although no obligation to make such payment existed. Med. Recovery Services, LLC v. Carnes, 148 Idaho 868, 871, 230 P.3d 760, 763 (Ct. App. 2010) citing Breckenridge v. Johnston, 62 Idaho 121, 133, 108 P.2d 833, 838 (1940); Chinchurreta v. Evergreen Management Inc., 117 Idaho 591, 593, 790 P.2d 372, 374 (Ct.App.1989); McEnroe v. Morgan, 106 Idaho 326, 335, 678 P.2d 595, 604 (Ct.App.1984). This rule/issue was not raised

<sup>1</sup> Greenacres Memorandum In Support of Motion for Summary Judgment at page 10.

on summary judgment so it should not be the basis for granting summary judgment. Thomson v. Idaho Ins. Agency, Inc., 126 Idaho 527, 530, 887 P.2d 1034, 1037 (1994). However, even if the Court finds that the matter was raised, then material issues of fact exist which prevent granting summary judgment to Greenacres.

The voluntary payment rule does not apply if the payment was coerced or made under duress. Med. Recovery Services, LLC v. Carnes, 148 Idaho 868, 871, 230 P.3d 760, 763 (Ct.App.2010). "The law governing economic duress is well settled. The party claiming economic duress must prove that it involuntarily accepted the terms offered by the other party, that the circumstances permitted no other alternative, and that the circumstances were the result of coercive acts of the other party. Isaak v. Idaho First Nat. Bank, 119 Idaho 988, 989, 812 P.2d 295, 296 (Ct. App. 1990) aff'd, 119 Idaho 907, 811 P.2d 832 (1991) citing Lomas & Nettleton Co. v. Tiger Enterprises, 99 Idaho 539, 585 P.2d 949 (1978). The existence of duress is a question of fact. Mountain Elec. Co. v. Swartz, 87 Idaho 403, 410, 393 P.2d 724, 729 (1964). The evidence before the Court clearly creates a question of fact as to whether Bremer agreed to construct the line improvement under duress.

Gary Bremer's original Affidavit filed November 16, 2010, clearly establishes that when he was told of the line extension requirement, he contacted his attorney to negotiate with Greenacres and that those negotiations made no progress.<sup>2</sup> Bremer further explains he was coerced into installing the line because it would have cost him \$6,000 per day if he did not. The alternatives provided to Bremer were to either forgo water and thus the use of his new building at an expense of \$6,000 per day or capitulate and attempt to recover the money which he was required to pay for the line extension. This is sufficient to create a question of fact as to whether Bremer's payment was "voluntary" for purposes of the rule. If the evidence before the Court

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<sup>2</sup> Affidavit of Gary Bremer at 8.

from the original summary judgment proceeding is insufficient to create a question of fact, then Bremer should be allowed to enter additional evidence on the subject because it was not raised on summary judgment and Bremer's mistakenly believed that the Court's initial ruling was based on Idaho Code §43-330-A, et seq.

Idaho Rule of Civil Procedure 60(b)(1) permits a Court to vacate a Judgment and allow additional evidence based on mistake, surprise or excusable neglect. "Erroneous and misleading acts by the court or the opposing party are plainly among the circumstances that merit consideration." State, Dept. of Law Enforcement By & Through Cade v. One 1990 Geo Metro, VIN 2C1MR2464L6012694, 126 Idaho 675, 681, 889 P.2d 109, 115 (Ct. App. 1995). Bremer is certainly not suggesting that either the Court or counsel did anything to intentionally mislead Bremer, however, nothing in Greenacres motion for summary judgment implicated the voluntary payment rule and Bremer reasonably misinterpreted this Court's initial opinion to rely upon Idaho Code §43-330A. Had Bremer known that the Court was relying on the voluntary payment rule, Bremer would have submitted the additional evidence on that subject in support of his motion to reconsider which he now asks this Court to consider.

This Court initial Memorandum cites to Idaho Code §43-330A and then states, "[t]his Court finds that Plaintiffs reached such an agreement with the District; an agreement in which Plaintiffs were responsible for construction of the improvements to serve the parcel. The Idaho Legislature intended that irrigation districts have the power to require landowners who subdivide to pay for the costs extending the pressurized water system to the improved parcel." The Court's ruling mimics Greenacres argument in its memorandum in support of summary judgment. Then later in the conclusion this Court states, "Idaho Code allows an irrigation district to require landowners under the instant circumstances to bear the construction costs..." Given this

language, Bremer was reasonably confused about this Court's initial ruling and Bremer should be allowed to submit the additional evidence which he has on this issue. The additional evidence clearly creates a question of fact as to whether Bremer's acquiesce to Greenacres demands was a product of economic duress. Had Bremer decided to fight Greenacres at the time and forego operation of his business, this case would be about failure to mitigate his damages, rather than about the voluntary payment rule.

Based on the foregoing and the supporting Affidavits of Gary Bremer and Brent Schlotthauer, this Court should vacate the Judgment entered in this matter and re-schedule the same for trial.

DATED this 6<sup>th</sup> day of April, 2012.




ARTHUR M. BISTLINE  
Attorney for Plaintiffs

**CERTIFICATE OF SERVICE**

I hereby certify that on the \_\_\_ day of April, I served a true and correct copy of the following MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION TO ALTER OR AMEND THE JUDGMENT AND/OR TO SET ASIDE THE JUDGMENT AND TO CONSIDER ADDITIONAL EVIDENCE by the method indicated below, and addressed to the following:

Susan P. Weeks  
JAMES, VERNON & WEEKS, PA  
1626 Lincoln Way  
Coeur d'Alene, ID 83814

- Regular mail
- Certified mail
- Overnight mail
- Facsimile to (208) 664-1684
- Interoffice Mail
- Hand Delivered

  
JENNIFER JENKINS

ARTHUR BISTLINE  
BISTLINE LAW, PLLC  
1423 N. Government Way  
Coeur d'Alene, Idaho 83814  
(208) 665-7270  
(208) 665-7290 (fax)  
arthurmooneybistline@me.com  
ISB: 5216

STATE OF IDAHO  
COUNTY OF KOOTENAI, SS  
FILED: [Signature]

2012 APR -6 PM 4:23

CLERK DISTRICT COURT  
[Signature]  
DEPUTY

Attorney for Plaintiff

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

BREMER, LLC., an Idaho limited liability  
company, and KGG PARTNERSHIP,

Plaintiffs,

vs.

EAST GREENACRES IRRIGATION DISTRICT,

Defendant.

Case No. CV11-1921

AFFIDAVIT OF GARY BREMER IN  
SUPPORT OF MOTION TO ALTER OR  
AMEND

STATE OF IDAHO )  
                          ) ss.  
County of Kootenai )

I, Gary Bremer, having been first duly sworn, upon oath depose and state that:

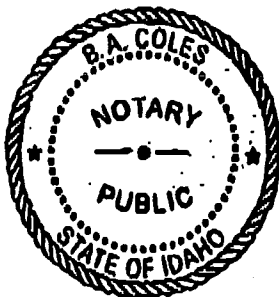
- 1. I am over the age of eighteen (18) and an individual residing in the State of Idaho.
- 2. I am the managing member of Bremer, LLC, Plaintiff, in this action and familiar with the facts and circumstances surrounding this matter and am competent to testify as to the matters herein contained.
- 3. During the process of working with the East Greenacres Water District regarding water service for my new building, I was informed that my new building would not be provided with water unless and until I agreed to pay for a line extension of the District's main line.

4. This line extension had nothing at all to do with the fact that my building or subdivision would be utilizing the District's water and I objected to the same by means of directing my attorney Brent Schlotthauer to negotiate with the District to eliminate this requirement.
5. When Mr. Schlotthauer informed me that the District would not budge on this requirement, I was left with the choice of litigating with the District to establish that it could not make me install this line extension or capitulating to the requirement under duress and coercion and then seek the return of the sums later. Given that my company had considerable sums invested in the new building and that I estimated it would cost me around \$6,000 per day to not operate the building, I had no choice but to capitulate to the demand and later seek the return of the sums expended to the District.
6. I never voluntarily agreed to provide for this line extension and was coerced into doing so by the District's illegal and unlawful threat to deny my business water if I did not.

Dated this 5<sup>th</sup> day of April, 2012.

*Gary Bremer*  
 Gary Bremer  
 Bremer, LLC, Manager/Member

SUBSCRIBED AND SWORN before me this 5<sup>th</sup> day of April, 2012.



B.A. Coles  
 Notary in and for Idaho  
 Residing at: Hayden  
 Commission Expires: 05-21-17



**CERTIFICATE OF SERVICE**

I hereby certify that on the 6<sup>th</sup> day of April, 2012, I served a true and correct copy of **SECOND AFFIDAVIT OF GARY BREMER IN SUPPORT OF MOTION TO ALTER OR AMEND** by the method indicated below, and addressed to the following:

Susan P. Weeks  
James, Vernon & Weeks, PA  
1626 Lincoln Way  
Coeur d'Alene, ID 83814  
Fax: (208) 664-1684

- Regular mail
- Certified mail
- Overnight mail
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- Hand Delivered

  
 \_\_\_\_\_  
 JENNIFER JENKINS

language, Bremer was reasonably confused about this Court's initial ruling and Bremer should be allowed to submit the additional evidence which he has on this issue. The additional evidence clearly creates a question of fact as to whether Bremer's acquiesce to Greenacres demands was a product of economic duress. Had Bremer decided to fight Greenacres at the time and forego operation of his business, this case would be about failure to mitigate his damages, rather than about the voluntary payment rule.

Based on the foregoing and the supporting Affidavits of Gary Bremer and Brent Schlotthauer, this Court should vacate the Judgment entered in this matter and re-schedule the same for trial.

DATED this 6<sup>th</sup> day of April, 2012.




ARTHUR M. BISTLINE  
Attorney for Plaintiffs

**CERTIFICATE OF SERVICE**

I hereby certify that on the \_\_\_ day of April, I served a true and correct copy of the following MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION TO ALTER OR AMEND THE JUDGMENT AND/OR TO SET ASIDE THE JUDGMENT AND TO CONSIDER ADDITIONAL EVIDENCE by the method indicated below, and addressed to the following:

Susan P. Weeks  
JAMES, VERNON & WEEKS, PA  
1626 Lincoln Way  
Coeur d'Alene, ID 83814

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JENNIFER JENKINS



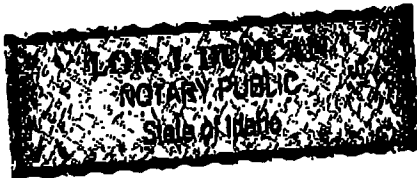
4. On March 12, 2008, I spoke with Mr. Bremer and we discussed litigation with Greenacres regarding this extension and that it would take a lot of time.
5. On March 12, 2008, I discussed this issue with Ron Wilson at the Water District's Office.
6. Mr. Wilson stated that service would not be provided to Foam Molders until such time as Foam Molder's agreed to construct an \$80,000 main line extension on behalf of the Water District. Mr. Wilson indicated that such a demand was not consistent with past practices, yet the District intended to treat all applications in this manner moving forward.
7. I requested that the District allow me the opportunity to review its file pertaining to this matter. My request was denied on the grounds that no such file existed.
- 8) I then inquired as to the legal authority that would support such a request. Given the fact that the District's demand was not consistent with past practices, Mr. Wilson and the District were not able to provide any such legal authority, yet instead made some form of general reference to the District's Bylaws and Section VII (B)(4) and Section XVI thereof.
- 9) Mr. Bremer's company could not utilize the facility it had just expended considerable capital sums to construct without water from Greenacres. Mr. Bremer and I discussed the costs of interruption of his business if litigation was instituted against Greenacres because of this line extension requirement before hooking up to the water supply. We specifically discussed that the requirement was illegal, but it would take a very long time to work its way through the legal system. The only logical course was to capitulation to the demand, and then institute suit after the fact.

Dated this 4<sup>th</sup> day of April, 2012.



Brent Schlotthauer

SUBSCRIBED AND SWORN before me this 4 day of April, 2012.



Luis Runcan  
Notary in and for Idaho  
Residing at: Coeur d'Alene  
Commission Expires: 05-24-16

**CERTIFICATE OF SERVICE**

I hereby certify that on the 6<sup>th</sup> day of April, 2012 I served a true and correct copy of **AFFIDAVIT OF BRENT SCHLOTTHAUER** by the method indicated below, and addressed to the following:

Susan P. Weeks  
James, Vernon & Weeks, PA  
1626 Lincoln Way  
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- Interoffice Mail
- Hand Delivered

Jennifer Jenkins

Jennifer Jenkins

Susan P. Weeks, ISB # 4255  
James, Vernon & Weeks, P.A.  
1626 Lincoln Way  
Coeur d'Alene, ID 83814  
Telephone: (208) 667-0683  
Facsimile: (208) 664-1684

STATE OF IDAHO  
COUNTY OF KOOTENAI } SS  
FILED: *SP #24*  
2012 APR 23 PM 2: 22

CLERK DISTRICT COURT  
*Paul Crump*  
DEPUTY

*Attorneys for Defendant*

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

BREMER, LLC., an Idaho limited liability  
company, and KGG PARTNERSHIP,

Plaintiffs,

EAST GREENACRES IRRIGATION  
DISTRICT,

Defendant.

CASE NO. CV-11-1921

MEMORANDUM IN OPPOSITION TO  
PLAINTIFFS' MOTION TO ALTER OR  
AMEND THE JUDGMENT AND/OR TO  
SET ASIDE THE JUDGMENT AND TO  
CONSIDER ADDITIONAL EVIDENCE

Bremer requests this Court alter or amend the judgment entered or set aside the judgment entered in the present case and consider additional evidence, pursuant to Rules 59 or 60(b), I.R.C.P.. Rule 59 is inapplicable as it applies to motions for new trial based upon irregularities at trial or the discovery of new evidence that could not have been introduced at trial. Rule 60(a) allows relief from a judgment. It appears that Bremer seeks relief from the judgment based upon subsection (1) (mistake, inadvertence, surprise, or excusable neglect) and subsection (2) (newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b)).

Bremer claims that the Court granted summary judgment based upon the "voluntary payment rule" applied to a contract setting. Bremer claims the District did not argue a valid contract existed in its motion for summary judgment. Bremer further claims that even if the

MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION TO ALTER OR AMEND  
THE JUDGMENT AND/OR TO SET ASIDE THE JUDGMENT AND TO CONSIDER  
ADDITIONAL EVIDENCE

validity of the contract was raised by the District at summary judgment, there is newly discovered material issues of fact that require the reversal of the summary judgment.

In its motion for summary judgment, the District presented undisputed facts that Bremer had entered into an agreement with the District to construct the water main extension. The District argued that Idaho Code gave it the authority to enter into such an agreement, and therefore the construction of the line was not an illegal hook up fee, but rather a contract for construction of the main line as authorized by statute. The Court agreed with this position, finding the District had the legal authority by statute to enter into a construction contract with Bremer, and therefore the water line construction was not a connection fee as argued by Bremer, but rather a contract for construction.

Bremer now contends that his agreement to the contract was obtained through coercion. Bremer points to statements by Bremer in his affidavit, and now new evidence he proposes the Court consider by way of the affidavit testimony of Brent Schlotthauer. The "new evidence" that Schlotthauer's affidavit would introduces is: (1) the District's manager, Ron Wilson, did not provide Schlotthauer (an attorney) with legal authority for its actions and indicated the District was treating all applications moving forward in the same manner; and (2) Schlotthauer and his client, Gary Bremer, discussed Schlotthauer's (mistaken) belief that the construction agreement was illegal, but Bremer decided to move forward with the contract because the delay caused by litigation would have caused him to lose future projected profits.

The new affidavit adds nothing that was not already before the court. Mr. Bremer already had placed in evidence his testimony that he moved forward with the contract because he felt at the time of the negotiations that delay caused by negotiating a different contract was too costly. As to Schlotthauer's affidavit testimony that he believed the District lacked legal

authority to negotiate a contract in connection with the extension and so advised his client, this testimony is a legal conclusion with which this Court has already disagreed, and adds no newly discovered facts to assist the Court in deciding this matter. The only new evidence that could be gleaned from Schlotthaur's affidavit is that Wilson either did not fully comprehend or was unable to enunciate to Schlotthaur's satisfaction the basis of the District's legal authority for requiring the extension in his discussions with Schlotthauer. However, this fact does not create a material dispute of fact. It is undisputed that Bremer entered into an agreement to extend the main.

Bremer also claims he didn't comprehend that the District was arguing in its summary judgment that there existed a contract between the parties for the main line extension. In the initial undisputed material facts presented by the District, the District set forth that it required the main line extension, and had previously required a similar extension of Emmett Burley on the same water main. Wilson Affidavit, Exhibits A, B and I. The District argued fully that its legal authority pursuant to I. C. § 43-330A encompassed a right to require a water line extension contract between itself and Bremer. The District's initial memorandum specifically stated: "The agreement reached in this matter was that the applicant would be responsible for construction of the improvements to serve the parcel."

In its reply memorandum, specifically responding to Mr. Bremer's testimony in his affidavit that he only agreed to pay for the line construction to avoid delay, the District answered: "Plaintiffs now disavow their own proposal, claiming in their cross-motion for summary judgment that it was an unnecessary condition imposed upon them by the District which they did not protest because of the economic loss that delay in the project would have caused. Our Supreme Court has specifically rejected such a tactic in *KMST, LLC v. County of*



*Ada*, 138 Idaho 577, 581, 67 P.3d 56, 60 (2003). Therein, the developer proposed a dedication of a road and construction of the road to obtain approval of a subdivision, knowing that Ada County highway district staff would recommend it to the Board. After approval and completion of the subdivision, KMST sued the highway district, claiming the highway district had taken its property without compensation because the road was a system improvement, and therefore an exaction. The Supreme Court rejected this argument, noting that the decision to dedicate land for the road and to build the road was included in the application and was done to expedite the project, and having voluntarily made the decision to dedicate and improve the street to speed approval of its development, KMST could not come back and claim its property was taken. The same is true here. Mr. Bremer testified he made the decision based upon financial factors to construct the line to avoid delay in the permitting process. Under the *KMST* holding, Plaintiffs are precluded from now claiming the District took its property." Thus, the contract issue was raised and briefed by the District, and responded to by Bremer. Therefore, there are no grounds under 60(b)(1) to alter or amend the judgment entered by this court based upon surprise.

Turning to Bremer's second ground for relief from the judgment, Bremer claims there is a disputed material fact whether the district obtained Bremer's agreement based upon fraud, duress or extortion. Bremer claims that there is a material question of fact whether he voluntarily accepted the terms because the circumstances permitted no other alternatives. Bremer claims because his attorney was unable to negotiate different terms with the District and because projected lost profits caused by delay in the project of \$6,000 per day, he had no choice but to agree to the District's terms, thereby placing him under duress. As noted in the holding of *Med. Recovery Services, LLC v. Carnes*, 148 Idaho 868, 230 P.3d 760 (Ct.App. 2010) cited as authority by Bremer: "Duress, coercion, or compulsion has been found when the payor made the

MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION TO ALTER OR AMEND  
THE JUDGMENT AND/OR TO SET ASIDE THE JUDGMENT AND TO CONSIDER

ADDITIONAL EVIDENCE 4  
ADD: C:\MAGB\Projects\CashGreenacres Irrigation District


payment on an unjust demand in order to prevent being deprived of an immediate and extreme necessity." The District had a right to enter into a contract with Bremer to construct the improvements. Thus, there is no unjust demand in this case.

The same case held: "Payment is also considered coerced 'when it is made to avoid the loss of a necessity or to prevent an injury to a person, business, or property that is different from and disproportionately greater than the unlawful demand.'" Bremer's projected losses from delays in construction do not constitute immediate and extreme necessity, nor did they arise from an unlawful demand. Further, they are not different from the lawful demand made. Additionally, Bremer had an attorney doing his negotiation. There was no duress in this matter. Rather, there was an agreement which Bremer now wishes to avoid. Given the holding of *KMST*, Bremer should not be allowed to avoid his own agreement.

DATED this 23<sup>rd</sup> day of April, 2012.

JAMES, VERNON & WEEKS, P.A.

BY:

  
Susan P. Weeks

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of April, 2012, I caused to be served a true and correct copy of the foregoing instrument by the method indicated below, and addressed to the following:

Arthur Bistline  
1423 N. Government Way  
Coeur d'Alene, ID 83814

- U.S. Mail
- Hand Delivered
- Overnight Mail
- Telecopy (FAX) (208) 665-7290

Christine Elmore

ARTHUR BISTLINE  
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(208) 665-7270  
(208) 665-7290 (fax)  
arthurmooneybistline@me.com  
ISB: 5216

STATE OF IDAHO  
COUNTY OF KOOTENAI } SS  
FILED: *SR #752*  
2012 APR 26 PM 1:57

CLERK DISTRICT COURT  
*Paul Crump*  
DEPUTY

Attorney for Plaintiffs

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

BREMER, LLC., an Idaho limited liability  
company, and KGG PARTNERSHIP,

Plaintiffs,

vs.

EAST GREENACRES IRRIGATION  
DISTRICT,

Defendant.

Case No. CV11-1921

REPLY MEMORANDUM IN SUPPORT OF  
PLAINTIFFS' MOTION TO ALTER OR  
AMEND THE JUDGMENT AND/OR TO  
SET ASIDE THE JUDGMENT AND TO  
CONSIDER ADDITIONAL EVIDENCE

COMES NOW, Plaintiffs, BREMER, LLC., an Idaho limited liability company, and  
KGG PARTNERSHIP, by and through their attorney of record, ARTHUR M. BISTLINE, and  
hereby submits its Reply Memorandum in Support of its Motion to Alter or Amend the Judgment  
and/or to Set Aside the Judgment and to Consider Additional Evidence.

I. I.R.C.P. 59 applies to all proceedings before the Trial Court, not just irregularities  
occurring at trial.

East Greenacres Irrigation District (hereinafter "Greenacres") argues that I.R.C.P. 59  
does not apply because it only applies to requests for new trial based on irregularities at trial or

the discovery of new evidence that could not have been introduced at trial.<sup>1</sup> No case has ever held that I.R.C.P. 59 only applies if a trial occurred. "Rule 59 was designed to allow the trial court either on its own initiative or on motion by the parties to correct errors both of fact and law that had occurred in its proceedings. It thereby provided a mechanism to circumvent appeal."

First Sec. Bank v. Neibaur, 98 Idaho 598, 603, 570 P.2d 276, 281 (1977). No trial occurred in the Neibaur case and that case makes clear that if the time frames for filing a Rule 59 motion have not run, then litigants should use that Rule to correct errors occurring at the District level. First Sec. Bank v. Neibaur, 98 Idaho 598, 603, 570 P.2d 276, 281 (1977).

## II. Bremer did not voluntarily agree to the line extension.

On summary judgment, Greenacres did not argue that Bremer voluntarily entered into an agreement to provide for the main line extension. Greenacres argued it could require Bremer to enter into this kind of agreement. Bremer concedes that Greenacres can require a land owner to construct improvements in order to utilize the water distribution system, provided that it is required for the proper distribution of the water to Bremer's parcel. This Court ruled that it did not matter if the main line was required for the proper distribution of water because Bremer acceded to Greenacres demand. The question of fact is whether this accession was voluntary or coerced.

Greenacres argues that there is no question of fact as to whether this agreement was coerced because coercion requires an unlawful demand and the demand was not unlawful because Greenacres has the right to enter into this type of agreement and because this Court found, "... the District had the legal authority by statute to enter into a construction contract with

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<sup>1</sup> Response Brief at 1.

Bremer,..."<sup>2</sup> Bremer concedes that Greenacres can enter into this type of agreement, but it can only force this kind of agreement if the improvements were required for the proper distribution of water.

If the improvements were required for the proper distribution of water, the subject of the motion to reconsider, then the agreement is not coerced because the demand was not unlawful. If the contrary is true, then the agreement was coerced, or at least a question of fact exists in that regard. Either way, this Court expressly did not rule on whether or not Greenacres demand for this mainline extension was proper.

Greenacres also relies upon the KMST, LLC v. County of Ada, 138 Idaho 377, 67 P.3d 56 (2003) for the proposition that a developer cannot agree to something and then later challenge it in Court. The Court expressly did not rule on that question. The Court in KMST found that the developed had proposed the unlawful condition. Nothing in the record here indicates that Bremer proposed the line extension and it is clear that Greenacres required it.


Greenacres argues Bremer was not faced with immediate injury if he refused to accede to Greenacres demands. On the contrary, Bremer was faced with \$6,000 per day he was shut down. This case has been pending for 415 days as of the date of the writing of this reply. If Bremer would have not acceded to Greenacres demands, his loss would be in excess of \$2,490,000. This loss clearly would have been disproportionately greater than the unlawful demand to construct the \$80,000 line extension as is required for a finding of coercion. Med. Recovery Services, LLC v. Carnes, 148 Idaho 868, 872, 230 P.3d 760, 764 (Ct. App. 2010).

Based on the foregoing this Court should vacate the Judgment entered in this matter and re-schedule the same for trial.

---

<sup>2</sup> Response Brief at 2.

DATED this 26<sup>th</sup> day of April, 2012.



ARTHUR M. BISTLINE  
Attorney for Plaintiffs

**CERTIFICATE OF SERVICE**

I hereby certify that on the \_\_\_ day of April, I served a true and correct copy of the following REPLY MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION TO ALTER OR AMEND THE JUDGMENT AND/OR TO SET ASIDE THE JUDGMENT AND TO CONSIDER ADDITIONAL EVIDENCE by the method indicated below, and addressed to the following:

Susan P. Weeks  
JAMES, VERNON & WEEKS, PA  
1626 Lincoln Way  
Coeur d'Alene, ID 83814

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- Interoffice Mail
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HANNAH DAMM

<b>Description</b>	CV 2011-1921 Bremer vs East Greenacres 20120427 Motion to Alter or Set Aside Judgment Judge Haynes Clerk Suzi Sverdsten Court Reporter Anne Brownell		<i>Suzi Sverdsten</i>
<b>Date</b>	4/27/2012	<b>Location</b>	1K-COURTROOM9
<b>Time</b>	<b>Speaker</b>	<b>Note</b>	
<u>08:50:18 AM</u>	Judge	Present PA-Art Bistline DA-Susan Weeks	
<u>09:02:29 AM</u>	PA	In their opening brief on SJ they didn't argue he agreed, but they can force him. First affd of Bremer was he agreed under coercion. Economic compulsion to agree to it. Court said I'm not ruling on that, that you agreed to it. Issue of taking additional evidence. In light of way matter involved, appropriate to consider further evidence.	
<u>09:05:47 AM</u>	DA	Disagree with his positions. Original causes of action pled is this is illegal connection fee, we said it is a contract pursuant to code section. Mr. Bremer wanted service to a bldg that wasn't built yet. Proposal provided. District accepted his proposal and he constructed it. E. Greenacres required the extension. Agreement and Bremer proposed it. No coercion. He was building a building. Deny Motion to Alter or Amend Jdmt or to consider additional evidence.	
<u>09:10:30 AM</u>	PA	Strikes me about argument is lots of facts. It was a requirement to do what I want or not operate. Line extension was a requirement, no voluntary agreement.	
<u>09:12:18 AM</u>	Judge	\$6000 a day?	
<u>09:12:27 AM</u>	PA	His building was complete and ready and he needed water. Bolding company with big machines.	
<u>09:13:04 AM</u>	Judge	Motion to Alter Jdmt or Set Aside for Additional Evidence, Rule 59E was considered. Court does not consider additional evidence. Court agrees with defense analysis. No issues of genuine or material fact that this was illegal tax and parties agreed to legal contractual agreement. No legal or factual error in Jdmt. 60(b)(1). New evidence does not est. any mistake made to allow relief. Court denies motion. DA to submit order.	
<u>09:17:25 AM</u>			
<u>09:17:25 AM</u>	End		

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ARTHUR BISTLINE  
BISTLINE LAW, PLLC  
1423 N. Government Way  
Coeur d'Alene, Idaho 83814  
(208) 665-7270  
(208) 665-7290 (fax)  
arthurmooneybistline@me.com  
ISB: 5216

STATE OF IDAHO  
COUNTY OF KOOTENAI } SS  
FILED:  
19366  
2012 MAY -4 PM 3:40

CLERK DISTRICT COURT  
*Shirley Huffman*  
DEPUTY

Attorney for Plaintiffs

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

BREMER, LLC., an Idaho limited liability  
company, and KGG PARTNERSHIP,

Plaintiffs,

vs.

EAST GREENACRES IRRIGATION  
DISTRICT,

Defendant.

Case No. CV11-1921

NOTICE OF APPEAL

Plaintiffs/Appellants appeal from the First Judicial District, the Honorable Lansing Haynes presiding.

I. Judgments and Orders Appealed

- A. The Memorandum Decision and Order Granting Defendant's Motion for Summary Judgment filed January 13, 2012.
- B. The decision made on the record at the December 13, 2011, hearing denying Plaintiffs' Motion to Strike.
- C. The decision made on the record at the March 14, 2012, denying Plaintiffs' Motion to Reconsider.

D. The decision made on the record at the April 27, 2012, denying Plaintiffs' Motion to Alter or Amend and/or to Consider Additional Evidence.

II. Issues on Appeal

- A. Did the Trial Court error by concluding that Defendant could require Plaintiffs to install the disputed main line extensions because those extensions were required for the proper distribution of water to Plaintiffs' property?
- B. Did the Trial Court error by concluding that Plaintiffs voluntarily agreed to install the disputed main line extensions?

III. Statement of Jurisdiction

A. The matter is a final and appealable pursuant to Idaho Appellate Rule 11(a)(1).

IV. The transcripts of the following hearings are requested:

- a. Hearing for Motion for Summary Judgment, December 13, 2011;
- b. Hearing for Motion to Reconsider, March 14, 2012; and
- c. Hearing for Motion to Alter or Set Aside Judgment, April 27, 2012.

V. A standard record is requested together with:

1. Plaintiff's Expert Witness Disclosure filed on September 9<sup>th</sup>, 2011
2. Defendant's Expert Witness Disclosure filed on October 21<sup>st</sup>, 2011
3. Affidavit of Gary Bremer filed on November 16<sup>th</sup>, 2011
4. Affidavit of Philip Hart filed on November 16<sup>th</sup>, 2011
5. Plaintiff's Memorandum In Support Of Motion for Summary Judgment filed on November 16<sup>th</sup>, 2011
6. Affidavit of Brian Crumb filed on November 16<sup>th</sup>, 2011
7. Plaintiff's Motion for Summary Judgment filed on November 16<sup>th</sup>, 2011

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9. Memorandum In Support Of Motion for Summary Judgment filed November 17<sup>th</sup>, 2011
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12. Plaintiff's Response to Defendants Motion for Summary Judgment filed November 30<sup>th</sup>, 2011
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14. Plaintiffs' motion to Strike affidavit of Ron Wilson filed November 30<sup>th</sup>, 2011
15. Affidavit of Jim Sappington in Response to Plaintiffs Motion for Summary Judgment filed November 30<sup>th</sup>, 2011
16. Defendants Memorandum in Opposition to Plaintiffs Motion For Summary Judgment filed November 30<sup>th</sup>, 2011
17. Affidavit of Bob Skelton filed December 1<sup>st</sup>, 2011
18. Plaintiff's Memorandum in Support of Motion to Strike Affidavit of Jim Sappington filed December 6<sup>th</sup>, 2011
19. Plaintiff's Motion to Strike Affidavit of Jim Sappington filed December 6<sup>th</sup>, 2011
20. Defendants Reply Memorandum in Support of Defendants Motion for

Summary Judgment file December 7<sup>th</sup>, 2011

21. Defendants Response to Plaintiff's Motions to Strike Portions of the Affidavits of Jim Sappington & Ron Wilson filed December 7<sup>th</sup>, 2011
22. Plaintiffs Reply to Defendants Memorandum in Opposition to Plaintiff's Motion for Summary Judgment filed December 8<sup>th</sup>, 2011
23. Plaintiffs Memorandum in Support of Supplemental Motion to Strike Portions of Affidavit of Jim Sappington and Ron Wilson filed December 8<sup>th</sup>, 2011
24. Plaintiffs' Supplemental Motion to Strike Portions of Affidavit of Jim Sappington and Ron Wilson filed December 8<sup>th</sup>, 2011
25. Plaintiffs' Motion to Shorten time filed December 8<sup>th</sup>, 2011
26. Order Denying Plaintiff's Motion to Strike Portions of the Affidavits of Jim Sappington and Ron Wilson filed January 3<sup>rd</sup>, 2012
27. Affidavit of Scott Jones filed January 5<sup>th</sup>, 2012
28. Memorandum Decision and Order Granting Defendant's Motion for Summary Judgment filed January 13<sup>th</sup>, 2012
29. Plaintiff's Motion to Reconsider filed January 23<sup>rd</sup>, 2012
30. Plaintiffs' Memorandum In Support Of Motion to Reconsider filed January 30<sup>th</sup>, 2012
31. Memorandum in Response to Plaintiffs Motion for Reconsideration filed March 8<sup>th</sup> 2012
32. Reply in Support of Motion to Reconsider filed March 13<sup>th</sup>, 2012
33. Plaintiffs Motion to Alter or Amend the Judgment and/or to Set Aside

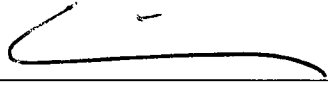
- the Judgment and to Consider Additional Evidence filed April 6<sup>th</sup>, 2012
34. Memorandum In Support Of Plaintiff's Motion to Alter or Amend the Judgment and/or to Set Aside The Judgment and to Consider Additional Evidence filed April 6<sup>th</sup>, 2012
35. Affidavit of Gary Bremer in Support of Motion to Alter or Amend filed April 6<sup>th</sup>, 2012
36. Affidavit of Brent Schlotthauer filed April 6<sup>th</sup>, 2012
37. Memorandum in Opposition to Plaintiffs Motion to Alter or Amend the Judgment and/or to Set Aside the Judgment and to Consider Additional Evidence filed April 26<sup>th</sup>, 2012
38. Reply Memorandum in Support of Plaintiffs Motion to Alter or Amend the Judgment and/or to Set Aside the Judgment and to Consider Additional Evidence filed April 26<sup>th</sup>, 2012

VI. Certification of Attorney

- A. Service of the Notice of Appeal has been served on the Court Reporter.
- B. The estimated fees for the reporter's transcript have been paid.
- C. All appellate filing fees have been paid.
- D. Service of this Notice of Appeal has been filed on all parties.

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DATED this 4<sup>th</sup> day of May, 2012.



Arthur M. Bistline  
Attorney for Plaintiffs

**CERTIFICATE OF SERVICE**

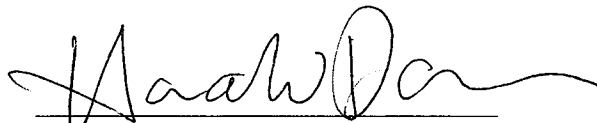
I hereby certify that on the 4<sup>th</sup> day of May, I served a true and correct copy of the following NOTICE OF APPEAL by the method indicated below, and addressed to the following:

Susan P. Weeks  
JAMES, VERNON & WEEKS, PA  
1626 Lincoln Way  
Coeur d'Alene, ID 83814

- Regular mail
- Certified mail
- Overnight mail
- Facsimile to (208) 664-1684
- Interoffice Mail
- Hand Delivered

Laurie Johnson, 446-1132  
(Jamie Johnson 446-1224)  
Judge Haynes' Court Reporter

- Regular mail
- Certified mail
- Overnight mail
- Facsimile
- Interoffice Mail
- Hand Delivered



HANNAH DAMM

ARTHUR BISTLINE  
BISTLINE LAW, PLLC  
1423 N. Government Way  
Coeur d'Alene, Idaho 83814  
(208) 665-7270  
(208) 665-7290 (fax)  
arthurmooneybistline@me.com  
ISB: 5216

STATE OF IDAHO } SS  
COUNTY OF KOOTENAI }  
FILED: # 691 dlu  
2012 MAY 22 PM 12: 22  
CLERK DISTRICT COURT  
DEPUTY *Henry Hoffman*

Attorney for Plaintiffs

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

BREMER, LLC., an Idaho limited liability  
company, and KGG PARTNERSHIP,

Plaintiffs,

vs.

EAST GREENACRES IRRIGATION  
DISTRICT,

Defendant.

Case No. CV11-1921

AMENDED NOTICE OF APPEAL

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Haynes presiding.

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the Judgment and to Consider Additional Evidence filed April 6<sup>th</sup>, 2012

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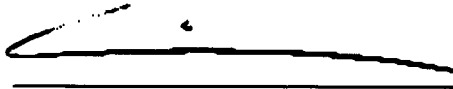
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- C. All appellate filing fees have been paid.
- D. Service of this Notice of Appeal has been filed on all parties.

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DATED this 22<sup>nd</sup> day of May, 2012.



Arthur M. Bistline  
Attorney for Plaintiffs

**CERTIFICATE OF SERVICE**

I hereby certify that on the 22<sup>nd</sup> day of May, I served a true and correct copy of the following AMENDED NOTICE OF APPEAL by the method indicated below, and addressed to the following:

Susan P. Weeks  
JAMES, VERNON & WEEKS, PA  
1626 Lincoln Way  
Coeur d'Alene, ID 83814

- Regular mail
- Certified mail
- Overnight mail
- Facsimile to (208) 664-1684
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Laurie Johnson, 446-1132  
(Jamie Johnson 446-1224)  
Judge Haynes' Court Reporter

- Regular mail
- Certified mail
- Overnight mail
- Facsimile
- Interoffice Mail
- Hand Delivered

  
HANNAH DAMM

2012 JUN -1 PM 4:12

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF IDAHO

*[Handwritten Signature]*  
CLERK OF DISTRICT COURT

STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

BREMER, LLC, an Idaho limited liability  
company; and KGG PARTNERSHIP,

Case No.: CV-11-1921

Plaintiffs,

FINAL JUDGMENT

vs.

EAST GREENACRES IRRIGATION  
DISTRICT,

Defendant.

All issues and claims in this matter, **excluding costs and attorney's fees**, have now been addressed in this matter. For the purposes of comporting with I.R.C.P. 54(a) and 58(a), this Court now enters its Final Judgment.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that all claims for relief, excluding costs and attorney's fees, asserted by or against all parties in this action are now addressed.

IT IS FURTHER ORDERED that Plaintiffs' claims, which are the only claims in this litigation, are hereby dismissed with prejudice.

ENTERED this 31 day of May 2012.

*Lansing L. Haynes*  
\_\_\_\_\_  
LANSING L. HAYNES, District Judge

CERTIFICATE OF SERVICE


On this    /    day of ~~May~~ <sup>June</sup>, 2012, a true and correct copy of the foregoing FINAL JUDGMENT was mailed in the U.S. Mails, postage prepaid, sent via interoffice mail, or sent via facsimile, addressed to the following:

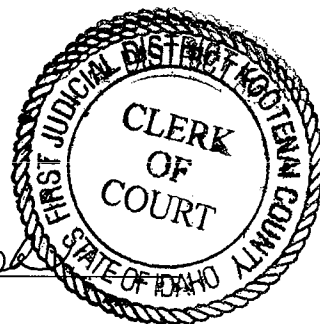
Arthur M. Bistline, Esq.  
Bistline Law  
1423 N. Government Way  
Coeur d'Alene, ID 83814  
Fax: 208-665-7290 772 02  
E-mail: [arthurmooneybistline@me.com](mailto:arthurmooneybistline@me.com)  
*Attorney for Plaintiffs*

Susan P. Weeks, Esq.  
James, Vernon & Weeks, P.A.  
1626 Lincoln Way  
Coeur d'Alene, ID 83814  
Fax: 208-664-1684 774 02  
*Attorney for Defendant*

Clifford T. Hayes  
Clerk of the District Court

By:

  
Deputy Clerk



IN THE SUPREME COURT OF THE STATE OF IDAHO

Bremer, LLC, an Idaho Limited Liability Company, and KGG Partnersip )  
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 Plaintiffs-Appellants )  
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 VS )  
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 East Greenacres Irrigation District )  
 )  
 )  
 Defendant-Respondent )  
 )  
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Supreme Court Docket-39942-2012  
Kootenai County Docket-2011-1921

CLERK'S CERTIFICATE OF SERVICE

I, Clifford T. Hayes, Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Kootenai, do hereby certify that I have personally served or mailed, by United States mail, one copy of the Clerk's Record to the attorneys of record in this cause as follows:

Arthur Mooney Bistline  
1423 N Government Way  
Coeur d'Alene, ID 83814

Susan P Weeks  
1626 Lincoln Way  
Coeur d'Alene, ID 83814

IN WITNESS WHEREOF, I have unto set my hand and affixed the seal of the said Court this 15<sup>th</sup> day of July, 2012.

Clifford T. Hayes  
Clerk of District Court

By: *Sherry Hultgren*



IN THE SUPREME COURT OF THE STATE OF IDAHO

Bremer, LLC, an Idaho Limited Liability Company, and KGG Partnersip )  
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 Plaintiffs-Appellants )  
 )  
 VS )  
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 East Greenacres Irrigation District )  
 )  
 )  
 Defendant-Respondent )  
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 \_\_\_\_\_ )

Supreme Court Docket-39942-2012  
Kootenai County Docket-2011-1921

I, Clifford T. Hayes, Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Kootenai, do hereby certify that the above and foregoing record in the above entitled cause was compiled and bound under my direction as, and is a true, full and correct record of the pleadings and documents under Rule 28 of the Idaho Appellate Rules.

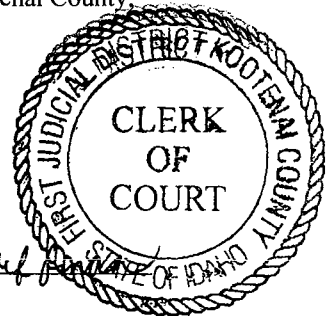
I further certify that no exhibits were offered in this case.

I certify that the Attorneys for the Plaintiff/Appellant and Defendants/Respondents were notified that the Clerk's Record was complete and ready to be picked up, or if the attorney is out of town, the copies were mailed by U.S. mail, postage prepaid on the 15<sup>th</sup> day July, 2012

I do further certify that the Clerk's Record will be duly lodged with the Clerk of the Supreme Court.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court at Kootenai County Idaho this 15<sup>th</sup> day July, 2012.

CLIFFORD T. HAYES  
Clerk of the District Court



By: Sherry Blue  
Deputy Clerk

5