

10-26-2010

# Enriquez v. Idaho Power Co. Clerk's Record Dckt. 37812

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LAW CLERK

Vol. 1 of 2

IN THE  
SUPREME COURT  
OF THE  
STATE OF IDAHO

SUPREME COURT NO. 37812-2010  
DISTRICT COURT NO. CV-09-34

ISABEL ENRIQUEZ,

Plaintiff/Appellant

Vs.

IDAHO POWER COMPANY

Defendant/Respondent

Appealed from the District Court of the Fifth Judicial District  
of the State of Idaho, in and for  
Minidoka County

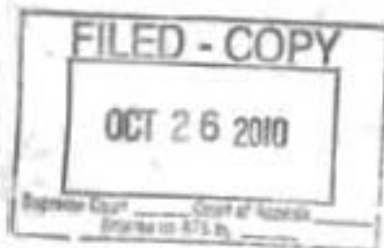
Honorable JONATHAN P. BRODY, District Judge

Kent D. Jensen, KENT D. JENSEN LAW OFFICE,  
P.O. Box 276 Burley, ID. 83318  
Attorney for Appellant, Isabel Enriquez

J. Nick Crawford, BRASSEY, WETHERELL & CRAWFORD  
203 W. Main St. Boise, ID. 83701-1009  
Attorney for Respondent, Idaho Power Company

Filed this 20 day of Sept, 2010.

Duane Smith, Clerk  
Santos Garza, Deputy



37812

**IN THE  
SUPREME COURT  
OF THE  
STATE OF IDAHO**

**Supreme Court Docket No.  
Minidoka County Case No.**

**37812-2010  
CV-2009-34**

ISABEL ENRIQUEZ,  
Plaintiff/Appellant,  
vs.

IDAHO POWER COMPANY,  
Defendant/Respondent.

---

Appealed from the district Court of the Fifth Judicial District  
of the State of Idaho  
in and for Minidoka County

**Honorable JONATHAN P. BRODY, District Judge**

Kent D. Jensen, KENT D. JENSEN LAW OFFICE, P.O. Box 276, Burley, ID. 83318

Attorney for Appellant, ISABEL ENRIQUEZ

J. Nick Crawford, BRASSEY, WETHERELL & CRAWFORD, 203 W. Main St.  
Boise, ID. 83701-1009

Attorney for Respondent, IDAHO POWER COMPANY

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## Isabel Enriquez vs. Idaho Power Company

Date	Code	User		Judge
1/16/2009	NCOC	SANTOS	New Case Filed - Other Claims	John M. Melanson
	APPR	SANTOS	Plaintiff: Enriquez, Isabel Appearance Through Attorney Kent D. Jensen	John M. Melanson
		SANTOS	Filing: A - Civil Complaint for more than \$1,000.00 Paid by: Jensen, Kent D. (attorney for Enriquez, Isabel) Receipt number: 0000349 Dated: 1/16/2009 Amount: \$88.00 (Check) For: Enriquez, Isabel (plaintiff)	John M. Melanson
	CHJG	SANTOS	Change Assigned Judge	Michael R. Crabtree
	SMIS	SANTOS	Summons: Summons Issued on 1/16/2009 to Idaho Power Company; Assigned to Private Service. Service Fee of \$0.00.	Michael R. Crabtree
3/20/2009		SANTOS	Filing: 17 - All Other Cases Paid by: Crawford, J Nick (attorney for Idaho Power Company) Receipt number: 0002128 Dated: 3/20/2009 Amount: \$58.00 (Check) For: Idaho Power Company (defendant)	Michael R. Crabtree
	NOTC	SANTOS	Notice of Service	Michael R. Crabtree
	ANSW	SANTOS	Answer and demand for Jury Trial	Michael R. Crabtree
4/2/2009	SMRT	JANET	Summons Returned - Patrick A. Harrison for Idaho Power Company	Michael R. Crabtree
	MISC	JANET	Return of Service - Summons served 2-27-09	Michael R. Crabtree
4/14/2009	MISC	SANTOS	Request for Trial Setting	Michael R. Crabtree
4/21/2009	MISC	SANTOS	Counsel for the Plaintiff's Available dates for Trial	Michael R. Crabtree
	NOTC	SANTOS	Notice of Service	Michael R. Crabtree
4/29/2009	HRSC	SANTOS	Hearing Scheduled (Jury Trial 05/19/2010 09:00 AM)	Michael R. Crabtree
	HRSC	SANTOS	Hearing Scheduled (Pretrial Conference 04/12/2010 01:30 PM)	Michael R. Crabtree
5/5/2009	PTOR	SANTOS	Scheduling Order Notice of Trial Setting and Initial Pretrial Order	Michael R. Crabtree
6/3/2009	NOTC	SANTOS	Notice Of Service	Michael R. Crabtree
6/9/2009	NOTC	SANTOS	Notice of Service	Michael R. Crabtree
7/22/2009	NOTC	SANTOS	Notice of Taking Deposition Duces Tecum of Plaintiff	Michael R. Crabtree
7/27/2009	NOTC	SANTOS	Notice of Service	Michael R. Crabtree
8/21/2009	NOTC	SANTOS	Amended Notice of Taking Deposition Duces Tecum of Plaintiff	Michael R. Crabtree
8/26/2009	MISC	SANTOS	Request for Inspection	Michael R. Crabtree
	NOTC	SANTOS	Notice of Intent to Take Default	Michael R. Crabtree
12/23/2009	CHJG	JANET	Change Assigned Judge (batch process)	
1/28/2010	NOTC	SANTOS	Notice of Deposition Duces Tecum of Jeff Mitton	Jonathan Brody
2/8/2010	MISC	SANTOS	Disclosure of Expert Witness and Supplemental Discovery	Jonathan Brody

Isabel Enriquez vs. Idaho Power Company

Date	Code	User		Judge
2/12/2010	HRSC	SANTOS	Hearing Scheduled (Motion For Address and Telephone Number 02/23/2010 11:00 AM) Motion to Exclude Expert Witness	Jonathan Brody
	MOTN	SANTOS	Defendant's Motion to Exclude Plaintiff's Expert	Jonathan Brody
	MEMO	SANTOS	Memorandum in support of Def Motion to Exclude Plaintiff's Expert	Jonathan Brody
	AFFD	SANTOS	Affidavit of J. Nick Crawford in Support of Def Motion to Exclude Pltff Expert	Jonathan Brody
2/16/2010	ORDR	SANTOS	Order to Shorten Time for Hearing	Jonathan Brody
2/17/2010	NOTC	SANTOS	Notice of Taking Duces Tecum Deposition Pursuant to Rule 30(b)(6)	Jonathan Brody
2/18/2010	NOTC	SANTOS	Amended Notice of Taking Duces Tecum Deposition Pursuant to rule 30(b)(6)	Jonathan Brody
	MISC	SANTOS	Amended Subpoena Duces Tecum Pursuant to rule 30(b)(6)	Jonathan Brody
	NOTC	SANTOS	Notice of Duces Tecum Deposition	Jonathan Brody
	NOTC	SANTOS	Second Amended Notice of Taking Duces Tecum Deposition Pursuant to Rule 30(b)(6)	Jonathan Brody
2/19/2010	MISC	SANTOS	Objection to Motion to Exclude Expert Witness and Memorandum in Support of Objection	Jonathan Brody
	AFFD	SANTOS	Affidavit of Kent Jensen	Jonathan Brody
2/23/2010	DENY	SANTOS	Hearing result for Motion held on 02/23/2010 11:00 AM: Motion Denied Motion to Exclude Expert Witness	Jonathan Brody
	CMIN	SANTOS	Court Minutes Hearing type: Motion to Exclude Expert Witness Hearing date: 2/23/2010 Time: 3:57 pm Courtroom: Court reporter: Maureen Newton Minutes Clerk: Santos Garza Tape Number: Party: Idaho Power Company, Attorney: J Crawfor Party: Isabel Enriquez, Attorney: Kent Jensen	Jonathan Brody
3/12/2010	NOTC	SANTOS	Notice of Service	Jonathan Brody
3/15/2010	NOTC	SANTOS	Notice of Taking Deposition Duces Tecum of Lawrence Kamm	Jonathan Brody
	NOTC	SANTOS	Notice of Service of Medical Records and Exhibit 1	Jonathan Brody
3/17/2010	NOTC	SANTOS	Notice of Taking Deposition Duces Tecum of Lawrence Kamm	Jonathan Brody
3/22/2010	ORDR	SANTOS	Order	Jonathan Brody
4/5/2010	MOTN	SANTOS	Motion in Limine	Jonathan Brody
	STMT	SANTOS	Pretrial Statement	Jonathan Brody
4/6/2010	MEMO	SANTOS	Defendant Idaho Power Pretrial Memorandum	Jonathan Brody

## Isabel Enriquez vs. Idaho Power Company

Date	Code	User		Judge
4/6/2010	HRSC	SANTOS	Hearing Scheduled (Pretrial Conference 04/27/2010 11:00 AM)	Jonathan Brody
	HRSC	SANTOS	Hearing Scheduled (Motion 04/27/2010 11:00 AM) Plaintiff's Motion in Limine	Jonathan Brody
		SANTOS	Notice Of Hearing	Jonathan Brody
4/7/2010	NOTC	SANTOS	Notice of hearing	Jonathan Brody
	MEMO	SANTOS	Defendant Idaho Power Company Pre-Trial Memorandum	Jonathan Brody
4/8/2010	NOTC	SANTOS	Amended Notice of Hearing	Jonathan Brody
4/9/2010	NOTC	SANTOS	Notice of service	Jonathan Brody
4/14/2010	MISC	JANET	Opposition to plaintiff's Motion in Limine	Jonathan Brody
4/16/2010	NOTC	JANET	Notice of service	Jonathan Brody
4/21/2010	MISC	SANTOS	Defendant's Expert Witness Disclosure	Jonathan Brody
4/22/2010	NOTC	SANTOS	Notice of Deposition of Adam Alexander	Jonathan Brody
4/23/2010	NOTC	JANET	Notice of desposition of Bryan Hobson	Jonathan Brody
4/27/2010	CMIN	SANTOS	Court Minutes Hearing type: Motion Hearing date: 4/27/2010 Time: 11:04 am Courtroom: District Courtroom-1 Court reporter: Maureen Newton Minutes Clerk: Santos Garza Tape Number: Party: Idaho Power Company, Attorney: J Crawford Party: Isabel Enriquez, Attorney: Kent Jensen Party: Idaho Power Company, Attorney: J Crawford Party: Isabel Enriquez, Attorney: Kent Jensen	Jonathan Brody
	DENY	SANTOS	Hearing result for Motion held on 04/27/2010 11:00 AM: Motion Denied Plaintiff's Motion in Limine	Jonathan Brody
	HRHD	SANTOS	Hearing result for Pretrial Conference held on 04/27/2010 11:00 AM: Hearing Held Mr. Crawford to appear via telephone	Jonathan Brody
5/12/2010	AFFD	SANTOS	Affidavit of Service	Jonathan Brody
	MISC	SANTOS	Defendant's Exhibit and Witness List	Jonathan Brody
	MISC	SANTOS	Defendant's Requested Jury Instructions and Special Verdict Form	Jonathan Brody
	MISC	SANTOS	Trial Brief	Jonathan Brody
	MISC	SANTOS	(Plaintiff's) Jury Instructions	Jonathan Brody
5/13/2010	MISC	SANTOS	Plaintiff's Witness and Exhibit Lists	Jonathan Brody
	MISC	SANTOS	Defendant's Supplemental Exhibit and Witness List	Jonathan Brody
5/14/2010	HRSC	SANTOS	Hearing Scheduled (Motion 05/18/2010 09:00 AM) Motion in Limine	Jonathan Brody
	NOTC	SANTOS	Second Amended Notice of Hearing	Jonathan Brody

## Isabel Enriquez vs. Idaho Power Company

Date	Code	User		Judge
5/18/2010	CMIN	SANTOS	Court Minutes Hearing type: Motion Hearing date: 5/18/2010 Time: 9:01 am Courtroom: District Courtroom-1 Court reporter: Maureen Newton Minutes Clerk: Santos Garza Tape Number: Party: Idaho Power Company, Attorney: J Crawford Party: Isabel Enriquez, Attorney: Kent Jensen	Jonathan Brody
	HELD	SANTOS	Hearing result for Motion held on 05/18/2010 09:00 AM: Motion Held Motion in Limine	Jonathan Brody
5/19/2010	JTST	SANTOS	Hearing result for Jury Trial held on 05/19/2010 09:00 AM: Jury Trial Started	Jonathan Brody
	CMIN	SANTOS	Court Minutes Hearing type: Jury Trial Hearing date: 5/19/2010 Time: 8:56 am Courtroom: District Courtroom-1 Court reporter: Maureen Newton Minutes Clerk: Santos Garza Tape Number: Party: Idaho Power Company, Attorney: J Crawford Party: Isabel Enriquez, Attorney: Kent Jensen	Jonathan Brody
	HRSC	SANTOS	Hearing Scheduled (Jury Trial 05/20/2010 09:00 AM)	Jonathan Brody
	LODG	SANTOS	Lodged Jury Panel	Jonathan Brody
	LODG	SANTOS	Lodged Attorney Preemptory Challenges	Jonathan Brody
	MISC	SANTOS	Court's Preliminary Jury Instructions	Jonathan Brody
5/20/2010	CMIN	SANTOS	Court Minutes Hearing type: Jury Trial 2nd Day Hearing date: 5/20/2010 Time: 9:09 am Courtroom: District Courtroom-1 Court reporter: Maureen Newton Minutes Clerk: Santos Garza Tape Number: Party: Idaho Power Company, Attorney: J Crawford Party: Isabel Enriquez, Attorney: Kent Jensen	Jonathan Brody
	MISC	SANTOS	Defendant's Objection to Plaintiff's Proposed Jury Instructions REW: IPSA Loquitur	Jonathan Brody
5/21/2010	FJDE	SANTOS	Judgment	Jonathan Brody
6/3/2010	MOTN	SANTOS	Defendant's Motion for Costs	Jonathan Brody
	MEMO	SANTOS	Verified Memorandum in Support of Defendant's Motion for Costs	Jonathan Brody
	MOTN	SANTOS	Defendant's Motion for Costs	Jonathan Brody
	MEMO	SANTOS	Verified Memorandum in Support of Defendant's Motion for Costs	Jonathan Brody

## Isabel Enriquez vs. Idaho Power Company

Date	Code	User		Judge
6/4/2010	HRSC	SANTOS	Hearing Scheduled (Motion 06/22/2010 01:30 PM) by telephone Mr. Crawford to initiate	Jonathan Brody
	NOTC	SANTOS	Notice of hearing	Jonathan Brody
6/10/2010	NOTC	SANTOS	Notice of hearing	Jonathan Brody
6/16/2010	MISC	SANTOS	Objection to Costs	Jonathan Brody
6/17/2010		SANTOS	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Jensen, Kent D (attorney for Enriquez, Isabel) Receipt number: 0004646 Dated: 6/17/2010 Amount: \$101.00 (Check) For: Enriquez, Isabel (plaintiff)	Jonathan Brody
	MISC	SANTOS	Estimate of Transcript	Jonathan Brody
	APSC	SANTOS	Notice of Appeal	Jonathan Brody
6/22/2010	MEMO	SANTOS	Memorandum In Support to Objection to Costs	Jonathan Brody
	CMIN	SANTOS	Court Minutes Hearing type: Motion Hearing date: 6/22/2010 Time: 1:46 pm Courtroom: District Courtroom-1 Court reporter: Maureen Newton Minutes Clerk: Santos Garza Tape Number: Party: Idaho Power Company, Attorney: J Crawford Party: Isabel Enriquez, Attorney: Kent Jensen	Jonathan Brody
	HRHD	SANTOS	Hearing result for Motion held on 06/22/2010 01:30 PM: Hearing Held by telephone Mr. Crawford to initiate	Jonathan Brody
6/28/2010	MISC	SANTOS	SC Document Clerk's Record/Reporter's TranscriptSuspended	Jonathan Brody
	ORDR	SANTOS	Order Conditionally Dismissing Appeal	Jonathan Brody
6/29/2010	ORDR	SANTOS	Order on Motion for Costs	Jonathan Brody
	DEOP	SANTOS	Memorandum Decision on Motion for Costs	Jonathan Brody
7/14/2010	NOTC	JANET	SC Notice of appeal filed (docket #37812-2010)	Jonathan Brody
7/20/2010	JDMT	SANTOS	Amended Judgment	Jonathan Brody
	BNDC	SANTOS	Bond Posted - Cash (Receipt 5295 Dated 7/20/2010 for 100.00)	Jonathan Brody



FILED-DISTRICT COURT  
CASE # \_\_\_\_\_

2009 JAN 16 AM 8:59

DUANE S. [Signature], CLERK  
DEPUTY

1 Kent D. Jensen (ISB #4424)  
Kent D. Jensen Law Office, P. C.  
2 2042 Overland  
P.O. Box 276  
3 Burley, Idaho 83318  
Telephone: (208) 878-3366  
4 Fax:(208) 878-3368  
Attorneys for Plaintiff

ORIGINAL

5  
6 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
7 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

8 ISABEL ENRIQUEZ ,

9 Plaintiff,

10 vs.

11 IDAHO POWER COMPANY,

12 Defendant

Case No.: CV 2008-34

COMPLAINT AND DEMAND FOR JURY TRIAL

13  
14 COMES NOW, the plaintiff, by and through his attorney of record, Kent D. Jensen, and  
15 for his complaint against the defendant states as follows:

16 I.

17 Plaintiff has been a resident of the state of Idaho for the past six months, and continues to  
18 be a resident of said state.

19 II.

20 The defendant is a public utility duly licensed and conducting business within the state of  
21 Idaho. The defendant has been a resident of said state for the past six months.

22 III.

23 That the primary business of the defendant is to provide electrical power and service to  
24 its customers in the state of Idaho.

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IV.

That on September 25, 2007, the plaintiff was employed with Jentzsch-Kearl Farms performing farm labor for his employer. The plaintiff's duties included irrigation of crops, and other duties such as assisting in the harvest potatoes, sugar beets, and other crops grown by the plaintiff's employer.

V.

On September 25, 2007, the Plaintiff was engaged in said services for his employer. The plaintiff was given the responsibility for removing the potato leaves in preparation for harvesting potatoes. While performing said duties, the plaintiff was in a tractor pulling an implement designed to remove potato vines and leaves. As the plaintiff approached the part of the field where the irrigation mainline is located, the plaintiff stepped down from the tractor to remove a small section of telescoping pipe used to connect the wheel lines to the underground mainline and risers.

VI.

That as the plaintiff approached the aluminum pipe, he knelt down to pick up the same, and was struck by a jolt of electricity. The force of the electricity threw him backward and rendered him unconscious for a brief period of time.

VII.

That when the plaintiff regained consciousness, he returned to the tractor he was driving and called for assistance. In the tractor, the plaintiff noticed the source of the electrical shock, which was a powerline which had broken and fallen to the ground.

VIII.

That the defendant has a duty of care to maintain the power lines in good repair and to

1 failing to repair, and warn of the dangers of the fallen electrical line.

2 IX.

3 That because of the defendant's negligence, the plaintiff has been injured in an amount in  
4 excess of \$10,000, which includes medical damages, as well as damages for pain and suffering.  
5 The plaintiff has incurred medical expenses for the treatment of severe injuries incurred as a  
6 result of the defendant's negligence.

7 X.

8 That because of the defendant's negligence, the plaintiff was damaged by loss of work.

9 XI.

10 That the Plaintiff petitions the court for an award of attorney fees and costs pursuant to  
11 Idaho code 12-120 and 12-121 for the prosecution of this action.

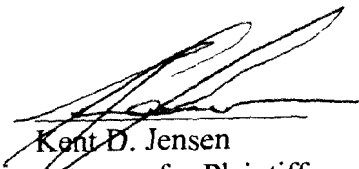
12 XII.

13 That the Plaintiff demands that this matter be set for a jury trial.

14 WHEREFORE, the plaintiff prays at the court award him the following relief:

- 15 1. The Plaintiff petitions the court for payment of his damages and payment of his  
16 medical expenses.  
17 2. The Plaintiff petitions the court for an award for pain and suffering.  
18 3. The plaintiff petitioned the court for payment of attorney fees and costs.  
19 4. The plaintiff prays that the court award him all such other relief under law and equity  
20 to which he is entitled.

21  
22 DATED this 17<sup>th</sup> day of October, 2008.

23   
24 Kent D. Jensen  
25 Attorney for Plaintiff



ORIGINAL

FILED-DISTRICT COURT  
CASE # \_\_\_\_\_

2009 MAR 20 PM 3:01

DUANE [Signature] CLERK  
DEPUTY

J. Nick Crawford, ISB No. 3220  
BRASSEY, WETHERELL & CRAWFORD, LLP  
203 W. Main Street  
P.O. Box 1009  
Boise, Idaho 83701-1009  
Telephone: (208) 344-7300  
Facsimile: (208) 344-7077

Attorneys for Idaho Power Company

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA**

ISABEL ENRIQUEZ,

Plaintiff,

vs.

IDAHO POWER COMPANY,

Defendant.

Case No. CV 200<sup>9</sup>~~8~~-34

**NOTICE OF SERVICE**

NOTICE IS HEREBY GIVEN that on the 18<sup>th</sup> day of March, 2009, **DEFENDANT'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS**, together with a copy of this *Notice of Service*, were served upon:

Kent D. Jensen  
2042 Overland  
P.O. Box 276  
Burley, Idaho 83318

by depositing the same in the United States mail, postage prepaid, in an envelope addressed to said attorneys at their last known address set forth above.

DATED this 18<sup>th</sup> day of March, 2009.

BRASSEY, WETHERELL & CRAWFORD, LLP

By Ben Richman, For  
J. Nick Crawford, Of the Firm  
Attorneys for Idaho Power Company

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 18<sup>th</sup> day of March, 2009, I served a true and correct copy of the foregoing NOTICE OF SERVICE upon each of the following individuals by causing the same to be delivered by the method and to the addresses indicated below:

Kent D. Jensen  
2042 Overland  
P.O. Box 276  
Burley, Idaho 83318

U.S. Mail, postage prepaid  
 Hand-Delivered  
 Overnight Mail  
 Facsimile (208) 878-3368

Ben Richman, For  
J. Nick Crawford

ORIGINAL

FILED-DISTRICT COURT  
CASE # \_\_\_\_\_

2009 MAR 20 PM 3:01

DUANE S. ... CLERK  
*[Signature]* DEPUTY

J. Nick Crawford, ISB No. 3220  
BRASSEY, WETHERELL & CRAWFORD, LLP  
203 W. Main Street  
P.O. Box 1009  
Boise, Idaho 83701-1009  
Telephone: (208) 344-7300  
Facsimile: (208) 344-7077

Attorneys for Idaho Power Company

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA**

ISABEL ENRIQUEZ,

Plaintiff,

vs.

IDAHO POWER COMPANY,

Defendant.

Case No. CV 2008<sup>9</sup>-34

**ANSWER AND DEMAND FOR JURY  
TRIAL**

Fee: \$58.00

Category: I(1)(a)

COMES NOW the above-captioned Defendant Idaho Power Company, by and through its counsel, J. Nick Crawford of the firm Brassey, Wetherell, & Crawford, and answers Plaintiff's Complaint as follows:

**FIRST DEFENSE**

Plaintiff's Complaint fails to state a claim against this Defendant upon which relief can be granted.

**SECOND DEFENSE**

**I.**

Defendant denies each and every allegation of Plaintiff's Complaint not herein expressly and specifically admitted.

**II.**

Defendant is without sufficient information or belief to either admit or deny the allegations of Paragraph I of Plaintiff's Complaint and therefore denies the same. Defendant admits it is a public utility duly licensed and conducting business within the State of Idaho. Defendant admits that part of its business is to provide electrical power and service to its customers in the State of Idaho. Defendant admits that on or about September 25, 2007, Plaintiff was employed with Jentzsch-Kearl Farms performing farm labor for his employer. Defendant is without sufficient information or belief to either admit or deny the remainder of the allegations of Paragraph IV of Plaintiff's Complaint and therefore denies the same.

**THIRD DEFENSE**

Plaintiff is not the real party in interest with respect to all or part of his claim, contrary to Idaho Rule of Civil Procedure 17.

**FOURTH DEFENSE**

Plaintiff was guilty of negligent and careless misconduct at the time of and in connection with the matters and damages alleged, which misconduct on his part proximately caused and contributed to said events and resultant damages, if any.

**FIFTH DEFENSE**

Plaintiff is barred from recovery in whole or in part for failure to mitigate damages.



**SIXTH DEFENSE**

There exists no proximate causation and/or causation between any alleged act or alleged breach of duty or warranty by this answering Defendant and all or some of Plaintiff's alleged damages.

WHEREFORE, this Defendant prays that Plaintiff take nothing by this Complaint, that the Complaint herein be dismissed, and that Defendant be awarded his costs of suit, reasonable attorney fees pursuant to Idaho Code §§ 12-120 and 12-121, and Idaho Rule of Civil Procedure 54, and such other and further relief as the Court deems just.

**DEFENDANT DEMANDS A TRIAL BY JURY AS TO ALL ISSUES**

DATED this 18<sup>th</sup> day of March, 2009.

BRASSEY, WETHERELL & CRAWFORD, LLP

By *J. Nick Crawford*, For  
J. Nick Crawford, Of the Firm  
Attorneys for Idaho Power Company

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 18<sup>th</sup> day of March, 2009, I served a true and correct copy of the foregoing ANSWER AND DEMAND FOR JURY TRIAL upon each of the following individuals by causing the same to be delivered by the method and to the addresses indicated below:

Kent D. Jensen  
2042 Overland  
P.O. Box 276  
Burley, Idaho 83318

U.S. Mail, postage prepaid  
 Hand-Delivered  
 Overnight Mail  
 Facsimile (208) 878-3368

*J. Nick Crawford*, For  
J. Nick Crawford

STATE OF IDAHO )  
                  ) ss.  
COUNTY OF Ada )

2009 APR -2 PM 2:21

I, Kent D. Jensen Jr., being duly sworn, depose and state:

*[Signature]*  
DEPUTY

1. That I am past the age of majority;
2. That I make this Affidavit of my own personal knowledge;
3. That on the 27th day of February, 2009, your affiant did

serve copies of the Summons and Complaint, to Idaho Power Company's Agent, , by hand-delivering copies at 1220 W Idaho Street, Boise, Idaho.

DATED this 3<sup>rd</sup> of March, 2009.

*[Signature]*  
\_\_\_\_\_

Kent D. Jensen Jr.

SUBSCRIBED AND SWORN to before me this 3<sup>rd</sup> day of March, 2009.

*[Signature]*  
\_\_\_\_\_  
Notary Public for State of Idaho  
Residing at: Burley, Idaho  
My Commission expires: 10-08-2010

Notary Public  
Emilia M. Jensen  
State of Idaho

1  
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FILED IN COURT  
CASE CR-2009-34

2009 APR -2 PM 2:21

*DUANE S. ...*  
DEPUTY

1 Kent D. Jensen (ISB #4424)  
2 Kent D. Jensen Law Office, P. C.  
3 2042 Overland  
4 P.O. Box 276  
5 Burley, Idaho 83318  
6 Telephone: (208) 878-3366  
7 Fax:(208) 878-3368  
8 Attorneys for Plaintiff

ORIGINAL

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

8 ISABEL ENRIQUEZ ,  
9 Plaintiff,

Case No.: CV <sup>209</sup>2008-34

SUMMONS

10 vs.

11 IDAHO POWER COMPANY,  
12 Defendant

13 TO: PATRICK A HARRISON  
14 CURRENT AGENT OF IDAHO POWER COMPANY

15 NOTICE: YOU HAVE BEEN SUED BY THE ABOVE-NAMED PLAINTIFF. THE COURT MAY ENTER  
16 JUDGMENT AGAINST YOU WITHOUT FURTHER NOTICE UNLESS YOU RESPOND WITHIN TWENTY  
17 (20) DAYS.

18 READ THE INFORMATION BELOW

19  
20 You are hereby notified that in order to defend this lawsuit, an appropriate written  
21 response must be filed with the above-designated court within twenty (20) days after service of  
22 this Summons on you. If you fail to so respond, the Court may enter judgment against you, as  
23 demanded by the Plaintiff in the Complaint.

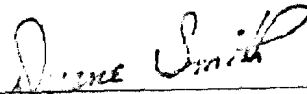
24 Copies of the Complaint are served with this Summons. If you wish to seek the advice or  
25 representation by an attorney in this matter, you should do so promptly so that your written  
response, if any, may be filed in time and other legal rights protected.

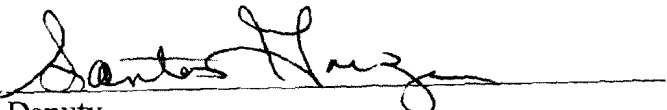
1 An appropriate written response requires compliance with Rule 10(a)(1) and other Idaho  
2 Rules of Civil Procedure and shall also include:

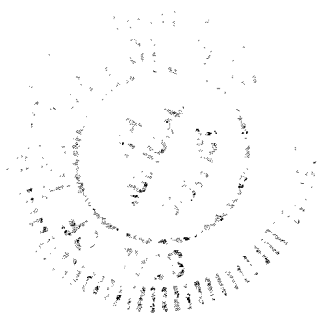
- 3 1. The title and number of this case.  
4 2. If your response is an answer to the Complaint, it must contain admissions or denials  
5 of the separate allegations of the Complaint and other defenses you may claim.  
6 3. Your signature, mailing address and telephone number, or the signature, mailing  
7 address and telephone number of your attorney.  
8 4. Proof of mailing or delivery of a copy of your response to Plaintiff's attorney, as  
9 designated above.

10 To determine whether you must pay a filing fee with your response, contact the clerk of  
11 the above-named court.

12  
13 DATED this 16 day of <sup>January</sup>~~October~~, 2008.

14  
15   
16 Clerk

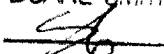
17  
18   
19 Deputy



FILED-DISTRICT COURT  
CASE # \_\_\_\_\_

J. Nick Crawford. ISB No. 3220  
BRASSEY, WETHERELL & CRAWFORD, LLP  
203 W. Main Street  
P.O. Box 1009  
Boise, Idaho 83701-1009  
Telephone: (208) 344-7300  
Facsimile: (208) 344-7077

2009 APR 14 AM 9:35

DUANE SMITH, CLERK  
 DEPUTY

Attorneys for Idaho Power Company

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA**

ISABEL ENRIQUEZ,

Plaintiff,

vs.

IDAHO POWER COMPANY,

Defendant.

Case No. CV 2009-34

**REQUEST FOR TRIAL SETTING**

COMES NOW Defendant Idaho Power Company by and through its counsel of record, and requests a trial setting in the above entitled matter and in support thereof would respectfully show the court as follows:

1. Type of Action: Civil
2. Defense requests a trial by jury;
3. Estimated time required for trial: 3 days
4. Name and address of opposing counsel:

Kent D. Jensen  
2042 Overland  
P.O. Box 276  
Burley, Idaho 83318

5. Unavailable dates for Defendant's counsel:

January 4-6, 12-14, 2010  
February 2-5, 9-11, 22-24, 2010  
March 3-7, 23-25, 2010  
April 5-7, 19-21, 2010

6. Name of member of firm who will try the case:

J. Nick Crawford

7. Parties have not agreed to proceed with less than 12 jurors;

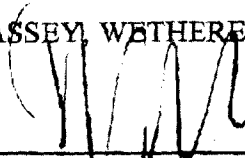
8. Pre-trial hearing is requested by the Defendant;

9. Discovery in this matter is not completed and is in its earliest stages.

DATED this 13<sup>th</sup> day of April, 2009.

BRASSEY, WETHERELL & CRAWFORD, LLP

By

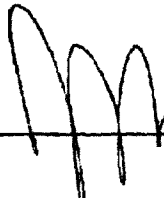
  
\_\_\_\_\_  
J. Nick Crawford, Of the Firm  
Attorneys for Idaho Power Company

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this \_\_\_\_ day of April, 2009, I served a true and correct copy of the foregoing REQUEST FOR TRIAL SETTING upon each of the following individuals by causing the same to be delivered by the method and to the addresses indicated below:

Kent D. Jensen  
2042 Overland  
P.O. Box 276  
Burley, Idaho 83318

U.S. Mail, postage prepaid  
 Hand-Delivered  
 Overnight Mail  
 Facsimile (208) 878-3368

  
\_\_\_\_\_  
J. Nick Crawford

2009 APR 21 AM 10: 21

DUANE SMITH, CLERK  
86 DEPUTY

ORIGINAL

1 Kent D. Jensen (ISB #4424)  
Kent D. Jensen Law Office, P. C.  
2 2042 Overland  
P.O. Box 276  
3 Burley, Idaho 83318  
Telephone: (208) 878-3366  
4 Fax:(208) 878-3368  
Attorneys for Plaintiff

5  
6 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
7 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

8 ISABEL ENRIQUEZ ,

Case No.: CV 2009- 34

9 Plaintiff,

NOTICE OF SERVICE

10 vs.


11 IDAHO POWER COMPANY,

12 Defendant

13  
14 PLEASE TAKE NOTICE that Kent D. Jensen on behalf of the plaintiff, Isabel Enriquez and  
15 pursuant to Idaho Rules of Civil Procedure, has served upon defendant, Idaho Power Company,  
16 the Plaintiff's First Set of Interrogatories and Request for Production of Documents, along with  
17 this Notice of Service by depositing copies in an envelope, postage prepaid addressed as follows:  
18

19 J. Nick Crawford  
PO Box 1009  
20 Boise, ID 83701-1009

21 DATED this 17 day of April, 2009.

22  
23   
24 Kent D. Jensen  
Attorney for Plaintiff

25  
SCANNED

FILED  
CASE

2009 MAY -4 AM 11:05

DUNE  
*zle*  
DEPUTY

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR MINIDOKA COUNTY**

★ ★ ★ ★ ★

ISABEL ENRIQUEZ,  Plaintiff, Vs  IDAHO POWER COMPANY,  Defendant,	CASE NO. 2009-34  <b>SCHEDULING ORDER, NOTICE OF TRIAL SETTING AND INITIAL PRETRIAL ORDER</b>	
--	---	--

Pursuant to I.R.C.P. 16 and 40, **IT IS HEREBY ORDERED:**

1. **TRIAL:** This case is set for a **JURY TRIAL** to begin at 9:00 a.m., **MAY 19, 2010**, in the District Courtroom, Sherman Bellwood Judicial Building, Rupert, Idaho. A total of 3 (THREE) days have been reserved. On the first day of trial, counsel shall report to the Court's chambers at 8:30 a.m. for a brief status conference. Unless otherwise ordered, except on the first and last day of trial, counsel can expect proceedings will convene at 9:00 a.m. daily, noon recess at 11:45 a.m., afternoon session begins at 1:30 p.m. with adjournment at 4:45 p.m. The court will take a 15-20 minute recess each morning at approximately 10:15 a.m. and an afternoon recess of the same length at approximately 3:15 p.m.



2. **Civil trial settings are subject to being vacated in order for criminal cases to be heard. The Court will make an effort to advise the parties of this as well in advance of trial as possible.**

3. **ALTERNATE JUDGES:** Notice is hereby given that the presiding judge listed below intends to utilize the provisions of I.R.C.P. 40(d)(1)(G). Notice is also given that if there are multiple parties, any disqualification pursuant to I.R.C.P. 40(d)(1)(A) is subject to prior determination under I.R.C.P. 40(d)(1)(C). The panel of alternate judges consists of the following judges who otherwise have not been disqualified in this action: Judges Bevan, Butler, Stoker, Elgee, Higer, Hurlbutt, Meehl, Melanson, and Wood.

4. **PRETRIAL CONFERENCES:** The pre-trial conference will be conducted pursuant to I.R.C.P. 16 at 1:30 P.M., APRIL 12, 2010. Counsel for each party is to complete a "Pre-Trial Memorandum" pursuant to Rule 16(d) for the final pre-trial conference. The memorandum shall be filed with the Clerk no later than seven (7) days before the pre-trial conference. A Judge's copy is to be provided to the presiding judge's chambers that same date, by fax (208-878-1010). In addition, counsel for the plaintiff will submit an "Element Sheet" that sets forth the elements of each claim the plaintiff(s) must prove in order to prevail. This "Element Sheet" will be similar to a final "issue" instruction given to juries (see IDJI 1.40 through 1.41.4.3). Counsel for the defendant(s) shall submit an "Element Sheet" as specified above regarding affirmative defenses, if any. In the event counterclaims and /or cross-claims have been filed, an "Element Sheet"

should also be submitted by respective counsel for each of the parties, setting forth the elements of each of those claims.

5. **PRE-TRIAL MOTIONS:** All motions to join parties or amend the pleadings (except motions pertaining to punitive damages under I.C. §6-1604) must be filed and heard so as not to require the continuance or vacation of the trial date, and in no event less than ninety (90) days before the date set for trial. All motions for summary judgment and motions to add claims for punitive damages pursuant to I.C. §6-1604 must be filed and served so as to be heard not later than sixty (60) days before the date set for trial. All other non-dispositive pre-trial motions (including, but not limited to motions *in limine*) must be filed and scheduled for hearing not less than fourteen (14) days before the date set for trial. Exceptions will be granted infrequently, and only when justice so requires.

6. **MOTIONS FOR SUMMARY JUDGMENT:** All Motions for summary judgment must be accompanied by a memorandum which includes a concise statement of each material fact upon which the moving party claims there is no genuine issue, and which shall include a specific reference to that portion of the record at or by which such fact is proven or established. Any party opposing a motion for summary judgment shall, not later than fourteen (14) days prior to hearing, serve and file any affidavits and opposing brief(s). The opposing brief shall identify the specific factual matters as to which the non-moving party contends there are genuine issues of fact requiring denial of the motion, including a specific reference to the portion of the record which supports the claim that a genuine issue of fact exists. In ruling upon any summary judgment motion,

the Court may assume that the facts as claimed by the moving party are conceded to exist without dispute except and to the extent the non-moving party shall have controverted them. Any reply brief must be lodged at least seven (7) days prior to hearing.

7. **SCHEDULING AND HEARINGS:** Absent an order shortening time, all motions must be filed and served at least fourteen (14) days prior to hearing. A "judge's copy" of any memoranda or affidavits is to be provided to the presiding judge's chambers by fax (208-878-1010). All such copies of documents shall be clearly stamped or marked as "JUDGE'S COPY" in the lower left-hand corner of the document. As a matter of courtesy, counsel are expected to contact the Court's Deputy Clerk, Ms. Santos Garza (phone 208-436-9041) to schedule hearings, and to confirm the availability of opposing counsel to proposed hearing dates. As an accommodation to out-of-town counsel and parties, hearings on any pre-trial motion (except motions for summary judgment or hearings at which testimony is to be offered) may be conducted by telephone conference call pursuant to I.R.C.P. 7(b)(4). Counsel requesting a hearing by telephone conference call will be responsible for arranging for placement of the call, joining any and all opposing counsel who wish to participate by telephone, and bear the cost thereof. Arrangements for telephone conference calls must be pre-arranged no later than the Wednesday preceding the date of the proposed status conference.

8. **DISCOVERY AND DISCOVERY DISPUTES:** The Court will not entertain any discovery motion unless accompanied by a written certification, signed by counsel, which confirms that a reasonable effort has been made to voluntarily resolve the dispute with opposing counsel. A party's obligation to fully and timely respond to

discovery requests is distinct from any obligation imposed by this order, and no party may rely upon this Order or any deadline it imposes as justification for failing to timely respond to discovery requests or to supplement prior responses.

9. **DISCOVERY CUT-OFFS:** Absent a stipulation to the contrary, all discovery shall be propounded and served such that responses are due no later than thirty (30) days before trial. Any supplemental responses a party is required to make pursuant to I.R.C.P. 26(e) or the terms of an earlier discovery request shall also be served at least thirty (30) days before trial. Any supplementation of discovery required by the rule shall be made in a timely manner.

10. **WITNESS DISCLOSURES:** Each party shall disclose the existence and identity of intended or potential expert or lay witnesses to the extent required by interrogatories or other discovery requests propounded by another party. There is no independent duty to disclose expert or lay witnesses except as required to adequately respond to discovery requests or supplement prior responses. If discovery requests seeking disclosure of expert witnesses are propounded, a plaintiff upon whom such requests are served shall, in good faith, disclose the existence and identity of potential or intended expert witnesses at the earliest opportunity, and in no event later than one hundred-twenty (120) days before trial. A defendant upon whom such requests are served shall, in good faith, identify any potential or intended expert witnesses at the earliest opportunity, and in no event later than seventy-five (75) days before trial.

Any party upon whom discovery is served who intends or reserves the right to call any expert witness in rebuttal or sur-rebuttal shall, in good faith, identify such experts at

the earliest opportunity, and in no event later than forty-two (42) days before trial. Any party upon whom discovery requests are served seeking disclosure of lay witnesses shall, in good faith, disclose the identity of all such witnesses at the earliest opportunity, and in no event later than forty-two (42) days before trial. Absent a showing of good cause and a lack of unfair prejudice to any other party, any witness who has not been timely disclosed will not be permitted to testify upon objection made at trial by the aggrieved party.

**11. EXHIBITS AND EXHIBIT LISTS:** When and to the extent required to respond to interrogatories, requests for production or other discovery requests propounded by another party, a party must identify and disclose any documentary, tangible or other exhibits that party intends or reserves the right to offer at trial. Absent a showing of good cause and a lack of unfair prejudice to all other parties, any exhibit which has not been timely disclosed will be excluded upon objection by the aggrieved party at trial. Without regard to whether discovery concerning a party's exhibits has been propounded, not less than seven (7) days prior to trial, each party shall:

(A) lodge with the Clerk a completed exhibit list together with one complete, duplicate marked set of that party's proposed exhibits for the Judge's use during trial; and

(B) deliver to counsel for each other party a copy of the completed exhibit list and duplicate copy of that party's marked exhibits. The exhibit list and duplicate copies need not include exhibits which will be offered solely for the purpose of impeachment. Unless otherwise ordered, the plaintiff shall identify

exhibits beginning with number "1" and the defendant shall utilize exhibits beginning with letter "A."

**12. AUDIO VISUAL AND OTHER EQUIPMENT:** Counsel are expected to notify the Court no later than the pretrial conference of any need for audio-visual or other special equipment. The Court provides a portable television and VHS-format VCR, CD player and an easel and podium. Counsel may furnish and utilize any additional equipment but must make all such equipment available for use by opposing counsel. Counsel who furnish their own equipment should make appropriate arrangements to set it up in advance so that prolonged delays are not required.

**13. JURY INSTRUCTIONS:** Jury instructions and verdict forms requested by a party shall be prepared in conformity with I.R.C.P. 51(a), and shall be filed with the Clerk (with copies to the presiding judge's chambers) at least seven (7) days before trial. Counsel shall also include a CD computer disc containing the instructions for use by the court, in Word format. Requested instructions not timely submitted may not be included in the court's preliminary or final charge. Parties may submit additional or supplemental instructions to address unforeseen issues or disputes arising during trial. To the extent possible, proposed instructions and verdict forms shall be printed in size 12 "Times New Roman" fonts. The court has prepared "stock" instructions (pre- and post-proof), copies of which can be obtained upon request. The parties may submit and request additional pre-and post-proof stock instructions.

**14. TRIAL BRIEFS:** The Court encourages (but does not require) the submission of trial briefs which address important substantive or evidentiary issues each

party expects to arise during trial. Any trial briefs shall be prepared, exchanged between the parties, and lodged with the Clerk (with copies to the presiding judges' chambers) at least ten (10) days prior to trial.

15. **PROPOSED FINDINGS AND CONCLUSIONS:** If the trial is to the Court without a jury, each party shall, within fourteen (14) days after trial, file with the Clerk (with copies to the presiding judge's chambers) and serve upon all other parties Proposed Findings of Fact and Conclusions of Law which support that party's position concerning the appropriate resolution of the case. The submissions should be electronic, either on CD or by e-mail to the Court's Deputy Clerk, in Word format.

16. **REQUEST TO VACATE TRIAL SETTING:** In setting cases for trial, the Court has taken into account the needs of the parties and the case, availability and convenience of counsel, as well as its own personnel, facilities and the interests of counsel and parties in other pending cases. A request to vacate or continue an existing trial setting works inconveniences and hardships on the Court, its staff and other litigants, and impairs the Court's ability to efficiently manage its docket and calendar. For these reasons, requests (including stipulations) to vacate or continue a trial will be granted only in the face of unusual and unforeseen circumstances, and when the interests of substantial justice to the litigants so require. Any party requesting *or stipulating* to vacate a trial setting must submit a specific written statement concerning the reasons for the request, and must certify, in writing, that the request or stipulation has been discussed with the parties represented by counsel, and such parties have no objection to the request or stipulation. An order granting a request to vacate or continue a trial setting may be

conditioned upon specific terms that the court deems just (including orders that the requesting party or attorney reimburse other parties or their attorneys for attorneys fees incurred for preparation which must be repeated or expenses advanced in anticipation of the trial setting which cannot be avoided or recovered). An order vacating or continuing a trial setting shall not serve to alter the deadlines set forth in this scheduling order, and unless otherwise stipulated or ordered, the specific calendar dates associated with any deadlines set forth in this scheduling order shall remain in force and shall be adjusted in reference to the new or amended trial date.

17. **SANCTIONS FOR NON-COMPLIANCE**: A failure to comply with this order or the deadlines it imposes in a timely manner subjects a non-compliant party and/or counsel to an award of sanctions pursuant to I.R.C.P. 16(i) and/or other applicable rules, statutes or case precedent.

DATED this 29<sup>th</sup> day of April, 2009.



Michael R. Crabtree, District Judge



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 4 day of <sup>May</sup>~~April~~, 2009, she caused a true and correct copy of the foregoing SCHEDULING ORDER, NOTICE OF TRIAL SETTING AND INTIAL PRETRIAL ORDER to be served upon the following persons in the following manner:


Kent D. Jensen  
ATTORNEY AT LAW.  
P.O. Box 276  
Burley, ID. 83318

( x ) First Class Mail  
( ) Hand Deliver  
( ) Facsimile # \_\_\_\_\_

J. Nick Crawford  
BRASSEY, WETHERELL &  
CRAWFORD, LLP.  
P.O. Box 1009  
Boise, ID. 83701-1009

( x ) First Class Mail  
( ) Hand Deliver  
( ) Facsimile # \_\_\_\_\_

Dated this 4 day of <sup>May</sup>~~April~~, 2009.

  
\_\_\_\_\_  
Santos Garza, Deputy Clerk

FILED  
CASE #

2009 JUN -3 AM 10:29

DUANE [Signature] CLERK  
DEPUTY

J. Nick Crawford, ISB No. 3220  
BRASSEY, WETHERELL & CRAWFORD, LLP  
203 W. Main Street  
P.O. Box 1009  
Boise, Idaho 83701-1009  
Telephone: (208) 344-7300  
Facsimile: (208) 344-7077

Attorneys for Idaho Power Company

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA**

ISABEL ENRIQUEZ,

Plaintiff,

vs.

IDAHO POWER COMPANY,

Defendant.

Case No. CV 2009-34

**NOTICE OF SERVICE**

NOTICE IS HEREBY GIVEN that on the 3rd day of June, 2009, **DEFENDANT'S**

**RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES AND REQUESTS**

**FOR PRODUCTION OF DOCUMENTS**, together with a copy of this *Notice of Service*, were

served upon:

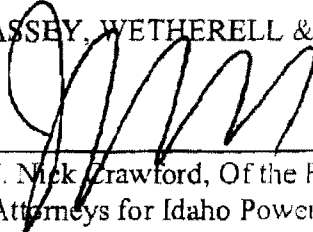
Kent D. Jensen  
2042 Overland  
P.O. Box 276  
Burley, Idaho 83318

by depositing the same in the United States mail, postage prepaid, in an envelope addressed to said attorneys at their last known address set forth above.

DATED this 31<sup>st</sup> day of June, 2009.

BRASSEY, WETHERELL & CRAWFORD, LLP

By

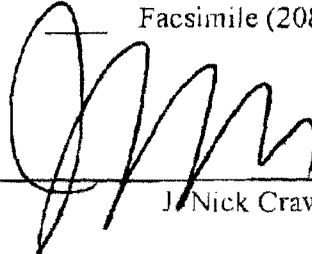
  
\_\_\_\_\_  
J. Nick Crawford, Of the Firm  
Attorneys for Idaho Power Company

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 31<sup>st</sup> day of June, 2009, I served a true and correct copy of the foregoing NOTICE OF SERVICE upon each of the following individuals by causing the same to be delivered by the method and to the addresses indicated below:

Kent D. Jensen  
2042 Overland  
P.O. Box 276  
Burley, Idaho 83318

- U.S. Mail, postage prepaid
- Hand-Delivered
- Overnight Mail
- Facsimile (208) 878-3368

  
\_\_\_\_\_  
J Nick Crawford

FILED IN DISTRICT COURT  
CASE # \_\_\_\_\_

2009 JUN -9 AM 10:31

DUANE [Signature] CLERK  
DEPUTY

ORIGINAL

1 Kent D. Jensen (ISB #4424)  
Kent D. Jensen Law Office, P. C.  
2 2042 Overland  
P.O. Box 276  
3 Burley, Idaho 83318  
Telephone: (208) 878-3366  
4 Fax:(208) 878-3368  
Attorneys for Plaintiff

5  
6 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
7 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

8 ISABEL ENRIQUEZ ,

Case No.: CV 2009- 34

9 Plaintiff,

NOTICE OF SERVICE

10 vs.

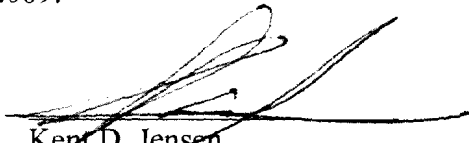
11 IDAHO POWER COMPANY,

12 Defendant

13  
14 PLEASE TAKE NOTICE that Kent D. Jensen on behalf of the plaintiff, Isabel Enriquez and  
15 pursuant to Idaho Rules of Civil Procedure, has served upon defendant, Idaho Power Company,  
16 Answers to Defendant's First Set of Interrogatories and Request for Production of Documents,  
17 along with this Notice of Service by depositing copies in an envelope, postage prepaid addressed  
18 as follows:  
19

20 J. Nick Crawford  
PO Box 1009  
21 Boise, ID 83701-1009

22 DATED this 5<sup>th</sup> day of June, 2009.

23  
24   
25 Kent D. Jensen  
Attorney for Plaintiff

J. Nick Crawford, ISB No. 3220  
BRASSEY, WETHERELL & CRAWFORD, LLP  
203 W. Main Street  
P.O. Box 1009  
Boise, Idaho 83701-1009  
Telephone: (208) 344-7300  
Facsimile: (208) 344-7077

Attorneys for Idaho Power Company

FILED-COURT CLERK  
CASE # \_\_\_\_\_

2009 JUL 21 PM 4:59

DUANNE [Signature] DEPUTY

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA**

ISABEL ENRIQUEZ,

Plaintiff,

vs.

IDAHO POWER COMPANY,

Defendant.

Case No. CV 2009-34

**NOTICE OF TAKING DEPOSITION  
DUCES TECUM OF PLAINTIFF**

TO: Isabel, Plaintiff; and his attorney of record.

YOU WILL PLEASE TAKE NOTICE that Defendant will take the testimony, on oral examination, of Plaintiff Isabel Enriquez, before a representative of M & M Court Reporting Service, court reporters and notaries public for the State of Idaho, or before another officer qualified to administer oaths, on Friday, September 4, 2009 at 9:00 a.m., and continuing thereafter from day to day as the taking of said deposition may be adjourned, at the offices of Kent Jensen located at 2042 Overland, Burley, Idaho.

Said deponent is further requested to bring with him to said deposition the following:

1. Any and all exhibits you may use at the trial of this matter.

FILED DATE: 2009-07-27  
CASE # \_\_\_\_\_

2009 JUL 27 PM 10:16

DUANE [Signature] CLERK  
DEPUTY

1 Kent D. Jensen (ISB #4424)  
2 Kent D. Jensen Law Office, P. C.  
3 2042 Overland  
4 P.O. Box 276  
5 Burley, Idaho 83318  
6 Telephone: (208) 878-3366  
7 Fax:(208) 878-3368  
8 Attorneys for Plaintiff

9  
10  
11 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
12 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

13 ISABEL ENRIQUEZ ,

Case No.: CV 2009- 34

14 Plaintiff,

NOTICE OF SERVICE

15 vs.

16 IDAHO POWER COMPANY,

17 Defendant

18 PLEASE TAKE NOTICE that Kent D. Jensen on behalf of the plaintiff, Isabel Enriquez and  
19 pursuant to Idaho Rules of Civil Procedure, has served upon defendant, Idaho Power Company,  
20 Supplemental Answers to Interrogatories and Documents, along with this Notice of Service by  
21 depositing copies in an envelope, postage prepaid addressed as follows:  
22

23 J. Nick Crawford  
24 PO Box 1009  
25 Boise, ID 83701-1009

DATED this 24<sup>th</sup> day of July, 2009.

[Signature]  
Kent D. Jensen  
Attorney for Plaintiff

FILED-DISTRICT COURT  
CASE # \_\_\_\_\_

J. Nick Crawford, ISB No. 3220  
BRASSEY, WETHERELL & CRAWFORD, LLP  
203 W. Main Street  
P.O. Box 1009  
Boise, Idaho 83701-1009  
Telephone: (208) 344-7300  
Facsimile: (208) 344-7077

2009 AUG 21 AM 11:12

DUANE [Signature] CLERK  
DEPUTY

Attorneys for Idaho Power Company

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA**

ISABEL ENRIQUEZ,

Plaintiff,

vs.

IDAHO POWER COMPANY,

Defendant.

Case No. CV 2009-34

**AMENDED NOTICE OF TAKING  
DEPOSITION DUCES TECUM OF  
PLAINTIFF**

TO: Isabel, Plaintiff; and his attorney of record.

YOU WILL PLEASE TAKE NOTICE that Defendant will take the testimony, on oral examination, of Plaintiff Isabel Enriquez, before a representative of M & M Court Reporting Service, court reporters and notaries public for the State of Idaho, or before another officer qualified to administer oaths, on Wednesday, September 23, 2009 at 10:00 a.m., and continuing thereafter from day to day as the taking of said deposition may be adjourned, at the offices of Kent Jensen located at 2042 Overland, Burley, Idaho.

Said deponent is further requested to bring with him to said deposition the following:

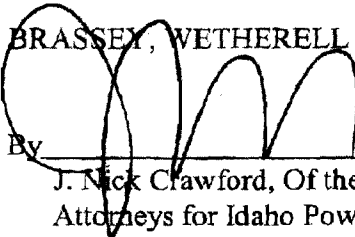
1. Any and all exhibits you may use at the trial of this matter.

- 2. Any and all medical records of Plaintiff.
- 3. Any and all documents relative to Plaintiff's claim for damages.

YOU ARE HEREBY REQUESTED to have said deponent present for the taking of such deposition at the time and place indicated above, and you are hereby invited to attend and take such part in the examination of the witness as you may deem advisable and proper.

DATED this 21<sup>st</sup> day of August, 2009.

BRASSEY, WETHERELL & CRAWFORD, LLP



By \_\_\_\_\_  
 J. Nick Crawford, Of the Firm  
 Attorneys for Idaho Power Company

**CERTIFICATE OF SERVICE**

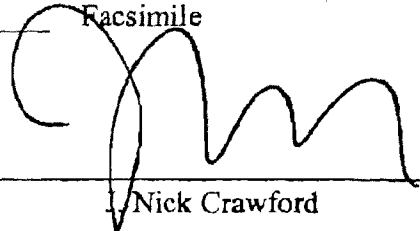
I HEREBY CERTIFY that on this 21<sup>st</sup> day of August, 2009, I served a true and correct copy of the foregoing AMENDED NOTICE OF TAKING DEPOSITION DUCES TECUM OF PLAINTIFF upon each of the following individuals by causing the same to be delivered by the method and to the addresses indicated below:

Kent D. Jensen  
 2042 Overland  
 P.O. Box 276  
 Burley, Idaho 83318

- U.S. Mail, postage prepaid
- Hand-Delivered
- Overnight Mail
- Facsimile (208) 878-3368

M & M Court Reporting Service, Inc.  
 421 W. Franklin Street  
 P.O. Box 2636  
 Boise, Idaho 83701-2636

- U.S. Mail, postage prepaid
- Hand-Delivered
- Overnight Mail
- Facsimile



\_\_\_\_\_  
 J. Nick Crawford



FILED-DISTRICT COURT  
CASE # \_\_\_\_\_

2009 AUG 26 AM 10:11

DUANE [Signature] CLERK  
DEPUTY

ORIGINAL

1 Kent D. Jensen (ISB #4424)  
2 Kent D. Jensen Law Office, P. C.  
3 2042 Overland  
4 P.O. Box 276  
5 Burley, Idaho 83318  
6 Telephone: (208) 878-3366  
7 Fax:(208) 878-3368  
8 Attorneys for Plaintiff

9 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
10 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

11 ISABEL ENRIQUEZ ,

Case No.: CV 2009- 34

12 Plaintiff,

REQUEST FOR INSPECTION

13 vs.


14 IDAHO POWER COMPANY,

15 Defendant

16 TO: IDAHO POWER COMPANY and its attorney J. Nick Crawford

17 COMES NOW, the Plaintiff by and through his attorney of record, Kent D. Jensen, and  
18 pursuant to Idaho Rule of Civil Procedure 34(a) and does hereby request that the defendant allow  
19 the plaintiff and/or his attorney to enter upon the property of the defendant to inspect,  
20 photograph, handle, and to conduct all such other business has been a be necessary to prepare for  
21 the prosecution of this case by examination of said section of sprinkler pipe which came in  
22 contact with electricity and the same which the Plaintiff handled or attempted to handle on the  
23 date of the accident.


24 DATED this 24th day of August, 2009.

25   
Kent D. Jensen  
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this 20<sup>th</sup> day of August, 2009, I served the foregoing document upon the defendant by depositing a copy thereof in the United States Mail, postage prepaid, addressed as follows:

J. Nick Crawford  
PO Box 1009  
Boise, ID 83701-1009

  
Kent D. Jensen  
Attorney for Plaintiff

1  
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1 Kent D. Jensen (ISB #4424)  
2 Kent D. Jensen Law Office, P. C.  
3 2042 Overland  
4 P.O. Box 276  
5 Burley, Idaho 83318  
6 Telephone: (208) 878-3366  
7 Fax:(208) 878-3368  
8 Attorneys for Plaintiff

FILED  
CASE #  
2010 JAN 28 AM 10:00  
DURAN  
DEPUTY

6 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
7 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

8 ISABEL ENRIQUEZ ,

Case No.: CV 2009- 34

9 Plaintiff,

NOTICE OF DEPOSITION DUCES TECUM  
OF JEFF MITTON

10 vs.

11 IDAHO POWER COMPANY,

12 Defendant

13 TO: JEFF MITTON

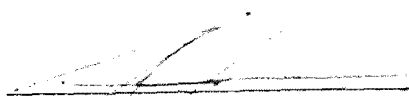
14 YOU ARE HEREBY commanded to appear for your deposition to be taken before a  
15 Certified Court Reporter and Notary Public at the building of Idaho Power at 599 W 300 S  
16 Heyburn, Idaho, on **February 5<sup>th</sup>, at 1:30 P.M.**, at which time and place you are notified to  
17 appear and take such part in the examination as may deem proper.

18 You are notified to bring with you to the deposition the following:

- 19 a. All records pertaining to any repairs of the wire in question and other repairs on wires  
20 in adjacent lines  
21 b. Procedures manuals regarding broken lines  
22 c. To have the pipe in question for this case at the site of this deposition

23 This deposition shall be taken pursuant to the Rules of civil procedure and is taken both  
24 for discovery purposes and for use at hearing.  
25

1 Dated this 27<sup>th</sup> day of January, 2010

2  
3   
4 Kent D. Jensen 4424  
5 Attorney for Plaintiff

6 CERTIFICATE OF SERVICE

7 I hereby certify that on the 27<sup>th</sup> day of January 2010, I served the foregoing document  
8 by depositing a copy thereof in the United States Mail, postage prepaid, addressed as follows:

9 J. Nick Crawford  
10 PO Box 1009  
11 Boise, ID 83701-1009

12 M&M Court Reporting  
13 PO 2636  
14 Boise, ID 83701-2636  
15 Fax: 208-345-8800

16  
17  
18  
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20  
21  
22  
23  
24  
25   
Kent D. Jensen

FILED-CV  
CASE #

2010 FEB -8 AM 10:33

DUANE ... DEPUTY  
*[Signature]*

1 Kent D. Jensen (ISB #4424)  
2 Kent D. Jensen Law Office, P. C.  
3 2042 Overland  
4 P.O. Box 276  
5 Burley, Idaho 83318  
6 Telephone: (208) 878-3366  
7 Fax:(208) 878-3368  
8 Attorneys for Plaintiff

9 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
10 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

11 ISABEL ENRIQUEZ ,

Case No.: CV 2009- 34

12 Plaintiff,

DISCLOSURE OF EXPERT WITNESS AND  
SUPPLEMENTAL DISCOVERY

13 vs.

14 IDAHO POWER COMPANY,

15 Defendant

16 COMES NOW, a Plaintiff, by and through his attorney of record, and gives notice to the  
17 court that the Plaintiff has retained Lawrence Kamm as an expert witness in this case. The  
18 appropriate documentation establishing Mr. Kamm's qualifications to serve as an expert in this  
19 case are attached to this notice.

20 DATED this 4<sup>th</sup> day of February, 2010.

*[Signature]*  
Kent D. Jensen  
Attorney for Plaintiff

21 CERTIFICATE OF MAILING

22 I hereby certify that on the 4<sup>th</sup> day of February, 2010, I served the foregoing Counsel  
23 for the foregoing document by depositing a copy thereof in the United States Mail, postage  
24 prepaid, addressed as follows:

25 J. Nick Crawford  
PO Box 1009  
Boise, ID 83701-1009

*[Signature]*  
Kent D. Jensen

## LAWRENCE KAMM

619-224-3494 Phone *Electrical & Mechanical Engineer & Expert Witness* 1515 Chatsworth Blvd.  
619-224-3495 FAX California License E 5897 San Diego CA 92107-3724

e-mail: [ljamm@ljamm.com](mailto:ljamm@ljamm.com)

website: <http://www.ljamm.com/home.htm>

---

4 February 2010

Kent D. Jensen Law Office, P.C.  
2042 Overland  
P.O. Box 276  
Burley, ID 83318

**Re: J. Isabel Enriquez Accident 09/25/2007**

Dear Mr. Jensen:

This is my analysis and opinion of the electric shock received by Mr. Enriquez on 09/25/2007.

My qualifications are: California Professional Engineer License E 5897, Bachelor's degree in electrical engineering from Columbia University, and Master's degree in electrical engineering from Polytechnic Research Institute (now part of NYU). My experience as a consultant and expert witness is listed in web site [www.ljamm.com/forensic.htm](http://www.ljamm.com/forensic.htm) and my full CV is in web site [www.ljamm.com/resume.htm](http://www.ljamm.com/resume.htm).

It is agreed that Mr. Enriquez received an electric shock by contact with an irrigation pipe that was in contact with a power wire that was, at some time, broken. It is also agreed that the power wire had been connected from the utility only to an irrigation pump and that the pump was switched off.

It is alleged that Mr. Enriquez raised the pipe until it touched the wire, connecting it to ground via Mr. Enriquez body, thereby drawing an arc which burned through the wire, causing the divided wire to fall to the ground, the power end of the wire arcing to the fallen pipe at several places.

Exhibit 1 shows the two ends of the wire break. The power end shows the effect of arcing but the load end does not. If the break had been caused by an arc to the pipe, both ends would show the effect of arcing. Therefore the break could not have been caused by an arc but must have been from some other cause. The pipe could not have been connected to the power end until the wire had broken and the power end dropped on the pipe. Not until then could touching the pipe cause a shock.

As soon as the power end touched the pipe a ground current occurred via the pipe as demonstrated by the pipe burns and some matching wire burns. This ground current could be immediately detected by utility's instruments and the wires immediately de-energized, which would have prevented the shock when Mr. Enriquez touched the pipe.

*Lawrence Kamm*      *4 February 2010*

Lawrence Kamm

J. Nick Crawford, ISB No. 3220  
John M. Howell, ISB No. 6234  
BRASSEY, WETHERELL & CRAWFORD, LLP  
203 W. Main Street  
P.O. Box 1009  
Boise, Idaho 83701-1009  
Telephone: (208) 344-7300  
Facsimile: (208) 344-7077

Attorneys for Idaho Power Company

FILED-CLERK  
CASE #

2010 FEB 12 PM 12:17

D. J. [Signature]  
DEPUTY

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA**

ISABEL ENRIQUEZ,

Plaintiff,

vs.

IDAHO POWER COMPANY,

Defendant.

Case No. CV 2009-34

**DEFENDANT'S MOTION TO  
EXCLUDE PLAINTIFF'S EXPERT**

COMES NOW the above-captioned Defendant, by and through its counsel of record, J. Nick Crawford of the firm Brassey, Wetherell & Crawford, and moves this Court for its Order to exclude the testimony of Plaintiff's expert Lawrence Kamm. This Motion is based upon the pleadings on file herein, the Memorandum in Support and the Affidavit of J. Nick Crawford, submitted herewith.

DATED this 10th day of February, 2010.

BRASSEY, WETHERELL & CRAWFORD, LLP

By

[Signature]  
J. Nick Crawford, Of the Firm

Attorneys for Idaho Power Company

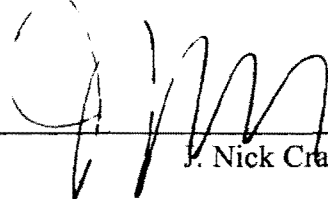


**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 10<sup>th</sup> day of February, 2010, I served a true and correct copy of the foregoing **DEFENDANT'S MOTION TO EXCLUDE PLAINTIFF'S EXPERT** upon each of the following individuals by causing the same to be delivered by the method and to the addresses indicated below:

Kent D. Jensen  
2042 Overland  
P.O. Box 276  
Burley, Idaho 83318

U.S. Mail, postage prepaid  
 Hand-Delivered  
 Overnight Mail  
 Facsimile (208) 878-3368

  
\_\_\_\_\_  
J. Nick Crawford

J. Nick Crawford, ISB No. 3220  
John M. Howell, ISB No. 6234  
BRASSEY, WETHERELL & CRAWFORD, LLP  
203 W. Main Street  
P.O. Box 1009  
Boise, Idaho 83701-1009  
Telephone: (208) 344-7300  
Facsimile: (208) 344-7077

2010 FEB 12 11:12:17

CLERK  
2010

Attorneys for Idaho Power Company

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA**

ISABEL ENRIQUEZ,

Plaintiff,

vs.

IDAHO POWER COMPANY,

Defendant.

Case No. CV 2009-34

**MEMORANDUM IN SUPPORT OF  
DEFENDANT'S MOTION TO  
EXCLUDE PLAINTIFF'S EXPERT**

COMES NOW the Defendant, by and through its counsel of record, Brassey, Wetherell & Crawford, and respectfully submits this Memorandum in Support of Defendant's Motion to Exclude Plaintiff's Expert.

**I. INTRODUCTION**

This Motion is made to exclude the testimony of Plaintiff's expert, Mr. Kamm, on the grounds that Plaintiff's disclosure of Mr. Kamm is untimely and insufficient. On March 18, 2009, Defendants propounded to Plaintiff a number of written discovery requests geared toward discovery information about any expert witness Plaintiff intended to utilize. Plaintiff responded that the

information would be supplemented. The Court's Scheduling Order required Plaintiff to respond to discovery directed at expert witnesses "at the earliest opportunity", but not later than January 19, 2010 (120 days prior to trial). On February 8, 2010, Defendant received Plaintiff's Disclosure of Expert Witness and Supplemental Discovery (hereinafter "Plaintiff's Disclosure"). Plaintiff's Disclosure provided notice that Plaintiff had retained Lawrence Kamm as an expert and further provided a short report from Mr. Kamm dated February 4, 2010.

Pursuant to the Court's Scheduling Order, the absolute deadline to disclose expert witnesses and respond to any discovery directed at experts was January 19, 2010. Plaintiff's Disclosure is untimely. Accordingly, Defendant requests the Court to exclude Mr. Kamm as an expert witness.

## **II. PERTINENT FACTS AND PROCEDURAL HISTORY**

The Court's Scheduling Order addresses expert witness disclosures. In pertinent part, the Order reads as follows:

**10. WITNESS DISCLOSURES:** Each party shall disclose the existence and identity of intended or potential expert or law witnesses to the extent required by interrogatories or other discovery requests propounded by another party. There is no independent duty to disclose expert or law witnesses except as required to adequately respond to discovery requests or supplement prior responses. If discovery requests seeking disclosure of expert witnesses are propounded, a plaintiff upon whom such requests are served shall, in good faith, disclose the existence and identity of potential or intended expert witnesses at the earliest opportunity, and in no event later than one hundred-twenty (120) days before trial.

Court's Scheduling Order dated April 29, 2009.

On March 18, 2009, Defendant propounded to Plaintiff its First Set of Interrogatories and Requests for Production of Documents. Defendant received Plaintiff's responses on June 10, 2009. The discovery requests related to expert witnesses, and Plaintiff's responses, are set forth as follows:

**INTERROGATORY NO. 4:** With respect to the persons you intend to call at the trial of this cause, please state the general nature of the facts to which they will testify.

**ANSWER TO INTERROGATORY NO. 4:** Isabel Enriquez will testify that when he got out of the tractor he saw a pipe, and as he bent down to pick it up he received an electric shock. Bret Browning was the first person to come, and he saw the pipe and the broken line. Jose Enriquez, who was working in those fields, will testify that he was one of the first persons that came to the accident scene, and saw the broken wire and the pipe.

**INTERROGATORY NO. 5:** State the name and address of each person whom Plaintiff expects to call as an expert witness at the trial; and for each such person, state the subject matter on which the expert is expected to testify, and state the substance of the facts and opinions to which the expert is expected to testify.

**ANSWER TO INTERROGATORY NO. 5:** The plaintiff will supplement this answer as soon as an expert is chosen.

**INTERROGATORY NO. 6:** If the expert witness identified in the above Interrogatory is to render an opinion in this action, please set forth the underlying facts or data supporting or tending to support the opinion as required by Rule 705 of the Idaho Rules of Evidence.

**ANSWER TO INTERROGATORY NO. 6:** See answer to Interrogatory Number 5.

**INTERROGATORY NO. 7:** For each person expected to be called as an expert witness, state in capsule summary the qualifications and background of the individual.

**ANSWER TO INTERROGATORY NO. 7:** See answer to Interrogatory Number 5.

**REQUEST FOR PRODUCTION NO. 6:** Any and all reports prepared by persons who may or will testify as expert witnesses on behalf of Plaintiff at the trial of this action.

[no response provided]

Affidavit of J. Nick Crawford in Support of Defendant's Motion to Exclude Plaintiff's Expert,  
Exhibit "A".

On February 8, 2010, Defendant received Plaintiff's Disclosure, which provides notice that Plaintiff has retained Lawrence Kamm as an expert witness and further provided a report from Mr. Kamm.

### **III. ARGUMENT & AUTHORITY**

The Court's Scheduling Order does not mandate, in and of itself, expert witness disclosures. Instead, the Court leaves it to the parties to obtain information about the adverse party's expert via discovery. The Court's Order requires, *inter alia*, a party to respond to discovery directed at expert witnesses in good faith, at the earliest opportunity, and, for the Plaintiff, "in no event later than" January 19, 2010. The Court's Order further reads, "Absent a showing of good cause and a lack of unfair prejudice to any other party, any witness who has not been timely disclosed will not be permitted to testify upon objection made at trial by the aggrieved party." Hence, the burden is placed upon the party that made the untimely disclosure to explain good cause for the late disclosure and the lack of unfair prejudice upon the objecting party.

Here, there is no question that Plaintiff's Disclosure is untimely. The Disclosure is dated February 4, 2010 and was received by Defendant February 8, 2010. This case stems from an accident that took place on or about September 25, 2007. Further, discovery was served upon Plaintiff on March 18, 2009. Hence, it is unclear why Plaintiff's Disclosure is untimely.

Moreover, Plaintiff's Disclosure is insufficient as it does not disclose the facts or data underlying Mr. Kamm's opinion. Interrogatory No. 6 specifically requested Plaintiff to produce all of the underlying facts or data supporting or tending to support the opinion as required by Rule 705 of the Idaho Rules of Evidence. Plaintiff's Disclosure simply attaches Mr. Kamm's report. The report provides minimal (at best) underlying facts or data. Other than a reference to "Exhibit 1", there is no indication of where Mr. Kamm obtained any data relied that he relied upon or that support

his opinions. "Exhibit 1" is not attached to Mr. Kamm's report, hence Defendant is left to guess as to what is "Exhibit 1".

Rule 26 of the Idaho Rules of Civil Procedure imposes a continual duty to seasonably update interrogatory responses. *See Clark v. Klein*, 137 Idaho 154, 157, 45 P.3d 810, 813 (2002) (discussing I.R.C.P. 26(e)). As such, witnesses may be excluded where responses to interrogatories are not appropriately supplemented. *Id.*; *see also Radmer v. Ford Motor Co.* 120 Idaho 86, 90, 813 P.2d 897, 901 (1991) (citation omitted) (stating that the "failure to meet the requirements of Rule 26 results in exclusion of the proffered evidence."). Further, the absence of a legitimate excuse or explanation for a late disclosure provides an additional basis for exclusion. *Bramwell v. South Rigby Canal Co.*, 136 Idaho 648, 652, 39 P.3d 588, 592 (2001); *Clark v. Raty*, 137 Idaho 343, 347, 48 P.3d 672, 676 (Ct. App. 2002). Notably, an opposing party is not required to compel the substance of witness testimony. *Clark v. Klein*, 137 Idaho at 160, 45 P.3d at 816 n.1. The underlying rationale for the rule is that effective cross-examination requires advance preparation. *Id.* at 157, 45 P.3d at 813.

In *Clark v. Klein*, the District Court allowed a defense witness to testify even though the substance of her testimony was not properly disclosed in answer to a propounded interrogatory. 137 Idaho at 156, 45 P.3d at 812. The trial court allowed the witness to testify because she was included on the defendant's witness list, and because the plaintiff neither chose to depose her nor filed a motion to compel a response to the interrogatory. *See id.* at 160, 45 P.3d at 816 n.1. On appeal, the Idaho Supreme Court overturned the district court's decision, holding the interrogatory should have been answered and that a motion to compel is not required to exclude a witness under Rule 26. *See id.*

Likewise, in *Bramwell*, the district court issued a pretrial order that required disclosure of witnesses 30 days prior to trial. 136 Idaho at 652, 39 P.3d at 592. Two of the plaintiffs' witnesses were not disclosed until 12 days before trial. *See id.* The district court excluded any direct testimony by these witnesses and the plaintiffs subsequently appealed. *See id.* On appeal, the Idaho Supreme Court upheld the District Court's decision because there was "no legitimate excuse" for the untimely disclosure. *Id.*

Not only has the Plaintiff failed to seasonably supplement the answers to interrogatories regarding expert opinions, but they failed to provide any response until over two weeks after the Court imposed deadline. The impression Plaintiff has given throughout this litigation is that he would not call any expert witnesses. This was solidified in Defendant's view after the expert witness disclosure deadline passed without any filing by Plaintiff. It was not until February 8, 2010, that Defendant learned for the first time that Plaintiff intended to call an expert witness at trial.

Plaintiff's untimely disclosure places Defendant at an unfair disadvantage. *See, i.e., Clark*, 137 at 157, 45 P.3d at 813. Failure to exclude Mr. Kamm will reward Plaintiff's untimely and insufficient disclosure.

#### IV. CONCLUSION

Based on the foregoing, Defendant respectfully requests the Court grant Defendant's Motion to Exclude Plaintiff's Expert.

DATED this 10<sup>th</sup> day of February, 2010.

BRASSEY WETHERELL & CRAWFORD, LLP

By \_\_\_\_\_

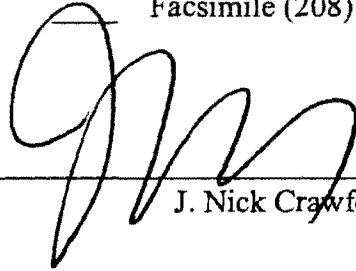
J. Nick Crawford, Of the Firm  
Attorneys for Idaho Power Company

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 10<sup>th</sup> day of February, 2010, I served a true and correct copy of the foregoing **MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION TO EXCLUDE PLAINTIFF'S EXPERT** upon each of the following individuals by causing the same to be delivered by the method and to the addresses indicated below:

Kent D. Jensen  
2042 Overland  
P.O. Box 276  
Burley, Idaho 83318

- U.S. Mail, postage prepaid
- Hand-Delivered
- Overnight Mail
- Facsimile (208) 878-3368



---

J. Nick Crawford



J. Nick Crawford, ISB No. 3220  
John M. Howell, ISB No. 6234  
BRASSEY, WETHERELL & CRAWFORD, LLP  
203 W. Main Street  
P.O. Box 1009  
Boise, Idaho 83701-1009  
Telephone: (208) 344-7300  
Facsimile: (208) 344-7077

Attorneys for Idaho Power Company

FILED  
2009 FEB 12 11:12 AM  
CLERK OF DISTRICT COURT  
BOISE, IDAHO  
*[Signature]*

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA**

ISABEL ENRIQUEZ,  
  
Plaintiff,

vs.

IDAHO POWER COMPANY,  
  
Defendant.

Case No. CV 2009-34

**AFFIDAVIT OF J. NICK  
CRAWFORD IN SUPPORT OF  
DEFENDANT'S MOTION TO  
EXCLUDE PLAINTIFF'S EXPERT**

STATE OF IDAHO    )  
                              : ss.  
County of Ada     )

J. NICK CRAWFORD, being first duly sworn upon oath, deposes and states as follows:

1. That I am the attorney of record for Defendant, I am over the age of eighteen years and am a U.S. citizen. I offer the following testimony upon personal knowledge.

2. That attached hereto as Exhibit "A" is a true and correct copy of Plaintiff's Answers to Defendant's Interrogatories and Request for Production of Documents.

SCANNED

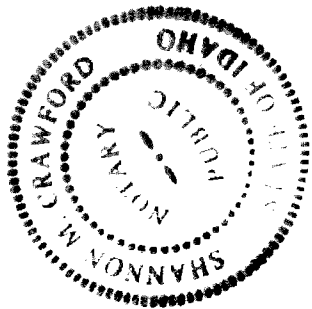
FURTHER YOUR AFFIANT SAITH NAUGHT.

Dated this 10<sup>th</sup> day of February, 2010.

By [Signature]  
J. NICK CRAWFORD

SUBSCRIBED AND SWORN to before me this 10<sup>th</sup> day of February, 2010.

[Signature]  
Notary Public for Idaho  
Residing at Boise, Idaho.  
Commission expires: 3-3-2012



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 10<sup>th</sup> day of February, 2010, I served a true and correct copy of the foregoing **AFFIDAVIT OF J. NICK CRAWFORD IN SUPPORT OF DEFENDANT'S MOTION TO EXCLUDE PLAINTIFF'S EXPERT** upon each of the following individuals by causing the same to be delivered by the method and to the addresses indicated below:

Kent D. Jensen  
2042 Overland  
P.O. Box 276  
Burley, Idaho 83318

- U.S. Mail, postage prepaid
- Hand-Delivered
- Overnight Mail
- Facsimile (208) 878-3368

[Signature]  
J. Nick Crawford

1 Kent D. Jensen (ISB #4424)  
Kent D. Jensen Law Office, P. C.  
2 2042 Overland  
P.O. Box 276  
3 Burley, Idaho 83318  
Telephone: (208) 878-3366  
4 Fax:(208) 878-3368  
Attorneys for Plaintiff

ORIGINAL

RECEIVED

JUN 16 2009

5 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
6 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

7 ISABEL ENRIQUEZ ,

Case No.: CV 2009- 34

8 Plaintiff,

PLAINTIFF'S FIRST SET OF  
INTERROGATORIES AND REQUEST FOR  
PRODUCTION OF DOCUMENTS

9 vs.

10 IDAHO POWER COMPANY,

11 Defendant

12 COMES NOW the plaintiffs, through their attorney of record, Kent D. Jensen, submit the  
13 following Plaintiffs' Answers to Defendant's Interrogatories and Request for Production of  
14 Documents, and they state as follows:

15 **INTERROGATORY NO. 1:** Please state your full name, date of birth and Social  
16 Security number. Include within your Answer any maiden names, other married names or  
17 aliases you have used or been known by in your lifetime.

18 **ANSWER TO INTERROGATORY NO. 1:** The plaintiff's name is Isabel Enriquez-  
19 Garcia; he is also known as Isabel Enriquez, his address is 1693 N 1775 W, Paul, Idaho; he was  
20 born [REDACTED]; for security reason he doesn't want to provide his social security number.

21 **INTERROGATORY NO. 2:** Please state the name, address and telephone number of  
22 each and every person known to you or your attorneys who has any knowledge of, or who  
23 purports to have any knowledge of, any of the facts of this case. By this Interrogatory we seek  
24  
25

EXHIBIT

51 "A"

1 the names, addresses and telephone numbers of all witnesses who have any knowledge of any  
2 fact pertinent to damages and/or liability.

3 **ANSWER TO INTERROGATORY NO. 2:** Plaintiff may call any of the individuals  
4 listed in his answer to Interrogatory number 3.

5 **INTERROGATORY NO. 3:** Please state the names, addresses and telephone numbers  
6 of all persons you intend to call as factual witnesses at the trial of this case.

7 **ANSWER TO INTERROGATORY NO. 3:** The plaintiff may call the following as  
8 factual witnesses:

Name	Address	Phone Number
Isabel Enriquez	1693 N 1775 W, Paul, Idaho	208-430-1925
Jose Enriquez	Bliss, Idaho	312-4186
Bret Browning	236 W Wayne St, Paul Idaho	208-438-4375
Minidoka Sheriff Department	Rupert, Idaho	208-434-2320

9  
10  
11  
12  
13 **INTERROGATORY NO. 4:** With respect to the persons you intend to call at the trial  
14 of this cause, please state the general nature of the facts to which they will testify.

15 **ANSWER TO INTERROGATORY NO. 4:** Isabel Enriquez will testify that when he  
16 got out of the tractor he saw a pipe, and as he bent down to pick it up he received an electric  
17 shock. Bret Browning was the first person to come, and he saw the pipe and the broken line. Jose  
18 Enriquez, who was working in those fields, will testify that he was one of the first persons that  
19 came to the accident scene, and he saw the broken wire and the pipe.

20 **INTERROGATORY NO. 5:** State the name and address of each person whom Plaintiff  
21 expects to call as an expert witness at the trial; and for each such person, state the subject matter  
22 on which the expert is expected to testify, and state the substance of the facts and opinions to  
23 which the expert is expected to testify.  
24  
25

1           **ANSWER TO INTERROGATORY NO. 5:** The plaintiff will supplement this answer  
2 as soon as a expert is chosen.

3           **INTERROGATORY NO. 6:** If the expert witness identified in the above Interrogatory  
4 is to render an opinion in this action, please set forth the underlying facts or data supporting or  
5 tending to support the opinion as required by Rule 705 of the Idaho Rules of Evidence.

6           **ANSWER TO INTERROGATORY NO. 6:** See answer to Interrogatory Number 5.

7           **INTERROGATORY NO. 7:** For each person expected to be called as an expert  
8 witness, state in capsule summary the qualifications and background of the individual.

9           **ANSWER TO INTERROGATORY NO.7:** See answer to Interrogatory Number 5.

10           **INTERROGATORY NO. 8:** Please identify in full and complete detail each and every  
11 document, writing or other physical evidence which you intend to offer as an exhibit in the trial  
12 of this matter. If you will do so without a motion to produce, please attach a copy of said  
13 exhibits to your answers to these Interrogatories.

14           **ANSWER TO INTERROGATORY NO. 8:** At this time, the plaintiff has not identified  
15 each and every exhibit that he intends to introduce as evidence in this trial. However, the  
16 defendant can expect that the plaintiff will take exhibits from the medical records, police reports,  
17 and other pertinent documents which have been accumulated and developed in this litigation.  
18 Also documents currently in the possession of the plaintiff particularly attached to these answers  
19 to interrogatories and request for production of documents may be considered as exhibits in the  
20 trial this matter.

21           **INTERROGATORY NO. 9:** Please state in complete and full detail your version of  
22 how this accident occurred.

23           **ANSWER TO INTERROGATORY NO. 9:** On September 20 5, 2007, the plaintiff was  
24 driving a tractor pulling an implement which was beating the leaves and vines off of the potatoes  
25

1. in preparation for harvesting. As the Plaintiff approached the section of the field where the  
2. irrigation mainline is buried, he noticed a section of sprinkler pipe lying across the rows. Mr.  
3. Enriquez stopped the tractor, so that he could move the sprinkler pipe out of the way. Mr.  
4. Enriquez approached the sprinkler pipe and as he kneeled down to grab the sprinkler pipe, he  
5. was shocked and thrown backwards. Mr. Enriquez briefly lost consciousness, and when he  
6. recovered, he returned to the tractor. At that point he also noticed that he was injured. He called  
7. his supervisor Mr. Browning, who came to his location. At that point, he could see that an  
8. electrical wire servicing the irrigation pumps was on the ground. When Mr. Browning arrived,  
9. Mr. Enriquez warned him not to come closer because of the downed wire. Eventually police and  
10. rescue crews arrived, as well as workers from Idaho Power to shut down the electricity to the  
11. area. Mr. Enriquez was then taken by hospital and eventually by life flight to the University of  
12. Utah Hospital.

13. **INTERROGATORY NO. 10:** In your Complaint you allege that the Defendant was  
14. negligent and his negligence was a proximate cause of the accident. Please state each and every  
15. fact and theory of law which supports this allegation.

16. **ANSWER TO INTERROGATORY NO. 10:** Plaintiff sets forth his theory of the case,  
17. as well as supporting facts, in his complaint in this matter. The theory of the case furthermore, is  
18. attorney work product of Mr. Enriquez' attorney, and is thus protected from disclosure.

19. **INTERROGATORY NO. 11:** Please describe each and every statement, oral or  
20. written, made by any employee, agent, or representative of the Defendant other than given in  
21. discovery proceedings, which relates to any of the issues involved in this action.

22. **ANSWER TO INTERROGATORY NO. 11:** The only statement given by Mr.  
23. Enriquez was to a police officer soon after the accident. Police officer asked Mr. Enriquez as if  
24. he had lifted the pipe up to touch the wire and he said no. Additional Mr. Enriquez was asked by  
25. medical personnel about what had happened, and he stated that he had bent down to move the

1 sprinkler pipe when he was shocked. The plaintiff is unaware of any other statements which  
2 may have been given by other individuals with regard to any investigation of this case.

3 **INTERROGATORY NO. 12:** Please set forth in detail a full and complete itemization  
4 of all special damages claimed by you in this action.

5 **ANSWER TO INTERROGATORY NO. 12:**

6 **INTERROGATORY NO. 13:** Please describe in full and complete detail all of the  
7 particulars of bodily injuries, symptoms, complaints and impairments of your health and physical  
8 and mental well-being you now have or have had which you allege resulted from the accident  
9 referred to in your Complaint.

10 **ANSWER TO INTERROGATORY NO. 13:** The plaintiff suffered burns to his  
11 posterior torso, right hand, left hand, left lower extremity, right foot, left foot, and the top of his  
12 head. These burns were the result of 1150 V passing through his body. There were exit wounds  
13 on Mr. Enriquez' left knee and both feet. The burns, particularly the exit wound required skin  
14 grafts in order to provide appropriate healing for the injuries. The most serious of Mr. Enriquez'  
15 wounds was that on his right foot, it was approximately 10 cm in diameter and very deep. Skin  
16 grafts were applied to both feet as well as Mr. Enriquez' right knee. The plaintiff further  
17 discovered that he had diabetes, of which he did not have any symptoms before the accident.

18 **INTERROGATORY NO. 14:** To the best of your knowledge, or that of your attorney,  
19 has any doctor advised you or your attorney as to the diagnosis and/or prognosis of any of your  
20 injuries? If so, please state:

- 21
- 22 (a) The doctor or doctors so advising;
  - 23 (b) The diagnosis and/or prognosis made; and
  - 24 (c) Which injuries you have been advised are probably temporary and/or  
25 permanent, if any.

1           **ANSWER TO INTERROGATORY NO. 14:** The skin grafts placed on Mr. Enriquez  
2 have a good prognosis for healing. However, the skin graphs have produced scars. Furthermore,  
3 the plaintiff discovered that he had a diabetic condition, which he did not believe was present  
4 prior to the accident.

5           **INTERROGATORY NO. 15:** Have you ever, before or after the date of the accident  
6 involved in this lawsuit, been involved in any type of accident or occurrence resulting in any  
7 injury of any kind to your person? If so, describe each such accident or occurrence in full detail,  
8 telling when, where and how the same occurred, and give a full description of the consequences  
9 of the accident or occurrence, and a full description of the injuries or physical impairment you  
10 suffered therefrom, stating whether or not any disability resulting therefrom continued at the date  
11 of this accident, plus a statement of the names of all persons who were involved in the same.

12           **ANSWER TO INTERROGATORY NO. 15:** The plaintiff has not been involved in  
13 any other accidents prior to this accident.

14           **INTERROGATORY NO. 16:** Please describe in detail all sports, hobbies and athletics  
15 in which you engaged or which you pursued prior to the accident herein, and subsequent thereto,  
16 and with respect to each such sport, hobby or athletic activity, please advise whether you are now  
17 enjoying or engaging in the same in any respect; and if so, describe just how this is so; and if you  
18 have discontinued participation in the same, please state when and under what circumstances you  
19 did so discontinue your activities.

20           **ANSWER TO INTERROGATORY NO. 16:** The plaintiff did not engage in any other  
21 activities except work, as he works about 14 to 16 hours per day.

22           **INTERROGATORY NO. 17:** If you claim to have been unable to work as a result of  
23 the alleged accident, please state:  
24

25           (a)     The specific dates upon which you were unable to work; and



1 (b) The reasons you did not work; that is, specify whether you were confined  
2 to bed or whatever other cause prevented you from working.

3 **ANSWER TO INTERROGATORY NO. 17:** The plaintiff was unable to work from  
4 September 25, 2007 to March 24, 2008. The plaintiff was unable to work, as he needed  
5 sufficient time for his burns to heal. Given that the plaintiff is involved in farm work, and some  
6 of the injuries were to the bottom of his feet, there was little work that he could do because of his  
7 injuries.

8 **INTERROGATORY NO. 18:** Please set forth the name and address of each and every  
9 employer you have had before and since the date of the accident referred to in your Complaint.  
10 Also include in your answer to this Interrogatory the name of your immediate supervisor or  
11 supervisors for each employer you have had.

12 **ANSWER TO INTERROGATORY NO. 18:** The Plaintiff has worked for Jentzsch-  
13 Kearl Farms located in Rupert, Idaho. This is the same employer for whom he was working at  
14 the time of the accident and the same employer for whom he is working at this time.

15 **INTERROGATORY NO. 19:** Please set forth your gross income and net income for  
16 the past five years, or in lieu thereof you may attach true copies of your federal income tax  
17 returns for said years to your answers to these Interrogatories.

18 **ANSWER TO INTERROGATORY NO. 19:** See attached copies of income tax  
19 returns.  
20

21 **INTERROGATORY NO. 20:** Please set forth your gross income and net income for  
22 the present year up to the date of your answers to these Interrogatories.

23 **ANSWER TO INTERROGATORY NO. 20:** See attached income tax returns.

24 **INTERROGATORY NO. 21:** Please give the names and addresses of each and every  
25 hospital, clinic or other medical institution of any kind in which you have been treated, cared for,

1 examined, x-rayed, or otherwise served since the date of the accident referred to in your  
2 Complaint.

3 **ANSWER TO INTERROGATORY NO. 21:** Mr. Enriquez was examined at the  
4 University of Utah in Salt Lake City, Utah; Rupert Memorial hospital, in Rupert, Idaho, these are  
5 the basic care providers which treated him for his injuries.

6 **INTERROGATORY NO. 22:** Please set forth the name and address of every physician  
7 or doctor, psychologist, psychiatrist, chiropractor or other practitioner of the healing arts you  
8 have been treated by or consulted with in regard to the injuries you allegedly suffered in the  
9 accident referred to in your Complaint. In answering this Interrogatory, please specify the  
10 number of times you have seen each practitioner listed in your answer, and for each practitioner  
11 set forth the date of each consultation, examination or visit.

12 **ANSWER TO INTERROGATORY NO. 22:** the Plaintiff was examined by different  
13 physicians and other healthcare providers while at the University of Utah hospital. The principal  
14 doctor caring for him at that time was Dr. Jeffrey Saffle. The Plaintiff has attached the medical  
15 records, and the defendant can secure the names and addresses of all treating physicians from  
16 those medical records.

17 **INTERROGATORY NO. 23:** If you are now receiving or have ever received any  
18 disability pension, income or insurance or any worker's compensation from any agency,  
19 company, person, corporation, estate or government. please state:

- 20
- 21 (a) The nature of any such payment;
  - 22 (b) The date you received such income;
  - 23 (c) For what injuries or disability you received it and how such injury  
24 occurred or disability arose;
  - 25 (d) By whom paid;

1 (e) Whether or not you now have any present disability as a result of such  
2 injuries or disability;

3 (f) If so, the nature and extent of such disability;

4 (g) Whether or not you had any disability at the time of the incident referred  
5 to in your Complaint, and if so, the nature and extent of such disability.

6 **ANSWER TO INTERROGATORY NO. 23:** The plaintiff received workers  
7 compensation and benefits paid by the state industrial fund. The Plaintiff received temporary  
8 disability payments commencing after the accident on September 25, 2007. The defendant does  
9 not have a current disability as a result of the accident.

10 **INTERROGATORY NO. 24:** In your Complaint, do you contend that you have lost  
11 wages as a result of the incident which forms the basis of this lawsuit? If so, please set forth  
12 each and every fact upon which this allegation is based, setting forth the amount of lost wages  
13 claimed.

14 **ANSWER TO INTERROGATORY NO. 24:** The plaintiff has lost wages, as workers  
15 compensation insurance did not pay for his total wages due to him. Temporary disability  
16 payments for workers compensation only cover 66% of an individual's wages, and the worker's  
17 compensation insurance company has a subrogation on this case to recuperate that money.

18 **INTERROGATORY NO. 25:** In your Complaint, do you contend that as a result of the  
19 accident herein you have incurred hospital and medical expenses? If so, please set forth each  
20 and every fact upon which this allegation is based, setting forth the amount of hospital and  
21 medical expenses claimed.

22 **ANSWER TO INTERROGATORY NO. 25:** See list of medical expenses.

23 **INTERROGATORY NO. 26:** Please give the names and addresses of each and every  
24 hospital, clinic or other medical institution of any kind in which you have been treated, cared for,  
25

1 examined, x-rayed or have otherwise been confined or served, prior to the date of the accident  
2 which forms the subject matter of this litigation.

3 **ANSWER TO INTERROGATORY NO. 26:** The plaintiff has no been treated by any  
4 doctors before the accident.

5 **INTERROGATORY NO. 27:** Please set forth the name and address of each and every  
6 psychologist, psychiatrist, chiropractor, physician, doctor or practitioner of the healing arts by  
7 whom you have been treated, examined or with whom you have consulted in regard to any  
8 injuries of any kind to your person which you have suffered or suffered prior to the accident  
9 which forms the subject matter of this litigation. In answering this Interrogatory, please specify  
10 the number of times you have seen each doctor listed in your answer, and for each doctor set  
11 forth the date of each consultation, examination or visit, and the nature thereof and for what  
12 injury or condition you sought treatment.

13 **ANSWER TO INTERROGATORY NO. 27:** The plaintiff has not suffered any injuries  
14 before the accident.

15 **INTERROGATORY NO. 28:** If, prior or subsequent to the accident which forms the  
16 subject matter of this litigation, you have been a plaintiff or defendant in any other litigation,  
17 including any worker's compensation proceeding, please state the name and address of each and  
18 every court or other adjudicative body wherein said complaint was filed, denote the names of the  
19 parties to said proceedings, the number assigned to the particular litigation, and state generally  
20 what that litigation consisted of and the disposition thereof.

21 **ANSWER TO INTERROGATORY NO. 28:** The plaintiff has not been involved in  
22 any other litigation prior to this lawsuit.

23 **INTERROGATORY NO. 29:** Have you entered into a release, settlement agreement,  
24 compromise, covenant or any other type of agreement with any person, firm or corporation as a  
25

1 result of the accident referred to in your Complaint? If so, please set forth the name and address  
2 of the person, firm or corporation, the type of agreement or instrument by which you  
3 compromised, settled or released any claims, the date thereof, and the amount of consideration  
4 received by you for the same.

5 **ANSWER TO INTERROGATORY NO. 29:** The plaintiff has not compromised or  
6 settled any other claims prior to this lawsuit.

7 **INTERROGATORY NO. 30:** Was there an insurance agreement under which any  
8 person carrying on an insurance business was liable to satisfy part or all of the Plaintiff's original  
9 claim? If so, please state:

- 10 (a) The name of the insurance company issuing said policy;
- 11 (b) The policy number;
- 12 (c) The effective coverage dates;
- 13 (d) The named insured on the policy;
- 14 (e) The type of policy; i.e., liability, etc.;
- 15 (f) The applicable policy limits; and
- 16 (g) Whether there is any contention by the insurance company or any of its

17 representatives that there was no coverage under the policy. If there is such a contention, please  
18 state:

- 19 (1) The nature of the contention; and
- 20 (2) By whom the contention is being made.

21 **ANSWER TO INTERROGATORY NO. 30:** The state insurance fund has a paid for  
22 medical expenses, as well as temporary disability payments as a result of this accident. State  
23 insurance fund is claiming subrogation for the expenditures they have made.  
24  
25

1           **INTERROGATORY NO. 31:** Please set forth the names and addresses of each and  
2 every pharmacy where you have had prescriptions filled within ten (10) years prior to the date of  
3 the accident which forms the subject matter of this litigation, to the present.

4           **ANSWER TO INTERROGATORY NO. 31:** The plaintiff did not have any  
5 prescriptions before the accident.

6                           **REQUESTS FOR PRODUCTION OF DOCUMENTS**

7           **REQUEST FOR PRODUCTION NO. 1:** All state and federal income tax returns filed  
8 by Plaintiff for the five years preceding the date of the accident set forth in Plaintiff's Complaint,  
9 and produce all income tax returns filed by Plaintiff since the date of the accident referred to in  
10 Plaintiff's Complaint.  
11

12           **REQUEST FOR PRODUCTION NO. 2:** Each and every document, exhibit or item of  
13 tangible evidence Plaintiff intends to introduce at the trial of this matter.

14           **REQUEST FOR PRODUCTION NO. 3:** Any and all photographs, drawings or other  
15 representations relating to the subject accident or Plaintiff's claim for damages as a result thereof.

16           **REQUEST FOR PRODUCTION NO. 4:** Each and every document which supports or  
17 tends to support any claim made by Plaintiff for lost wages or reduction in wage earning  
18 capacity.       **REQUEST FOR PRODUCTION NO. 5:** Each and every document which

19 supports or tends to support Plaintiff's claims for medical expense, both past and future.  
20

21           **REQUEST FOR PRODUCTION NO. 6:** Any and all reports prepared by persons who  
22 may or will testify as expert witnesses on behalf of Plaintiff at the trial of this action.

23           **REQUEST FOR PRODUCTION NO. 7:** Any and all statements obtained from  
24 persons with knowledge of the subject accident or the damages which Plaintiff has allegedly  
25 sustained as a result thereof.

1           **REQUEST FOR PRODUCTION NO. 8:** Any and all insurance claims or statements  
2 filed in connection with the alleged accident which forms the subject matter of Plaintiff's  
3 Complaint.

4           **REQUEST FOR PRODUCTION NO. 9:** Please produce or make available for  
5 inspection and copying a complete set of your pharmaceutical records from each and every  
6 pharmacy listed in Answer to Interrogatory No. 31. In lieu of providing a complete set of your  
7 pharmaceutical records, you may execute the enclosed Authorization to Release Medical  
8 Information attached hereto and return it to this office.

9           **REQUEST FOR PRODUCTION NO. 10:** Please produce all medical records for  
10 Plaintiff, including but not limited to bills, memoranda, histories, medical charts, reports, notes,  
11 office records, test results, x-rays and x-ray reports, CT scans and CT reports, MRI's and MRI  
12 reports, generated or utilized by any individual or institutional physician, psychologist,  
13 psychotherapist, psychiatrist, chiropractor, therapist, radiologist, or practitioner of the healing  
14 arts of any kind whatsoever who has examined, treated, tested, consulted with or cared for  
15 Plaintiff in any manner whatsoever in connection with any and all physical, mental or emotional  
16 pain, injury, discomfort, disfigurement, or disability allegedly sustained by Plaintiff prior to or as  
17 a result of, or subsequent to, the incident which forms the basis of the above-captioned lawsuit.  
18


19           **REQUEST FOR PRODUCTION NO. 11:** In addition to producing documents  
20 responsive to Request No. 10 above, please completely fill out and sign the Authorizations to  
21 Release Medical Information attached hereto as Exhibit A, and incorporated by reference, and  
22 return them to my office.  
23

24           **REQUEST FOR PRODUCTION NO. 12:** Please produce your employment and/or  
25 personnel files from any and all employers you have had within ten (10) years prior and

1 subsequent to the date of the accident referred to in your Complaint. This should include, but is  
2 not limited to, all records, reports and/or documentation concerning your employment history  
3 with each employer, past and present, concerning information on wages and/or salary; employee  
4 benefits such as health insurance, overtime pay, sick leave, pension benefits and the like;  
5 applications for employment; job performance, warnings and/or termination documentation; pre-  
6 employment physicals; promotions; disciplinary actions; time sheets; and any accidents or  
7 worker's compensation claims filed while in their employ.

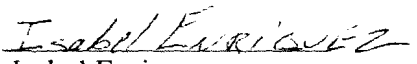
8  
9 **REQUEST FOR PRODUCTION NO. 13:** Please produce any and all photographs of  
10 Plaintiff's vehicle taken after the accident at issue herein and before any repairs were made to  
11 such vehicle.

12  
13 DATED this *5th* day of *May*, 2009.

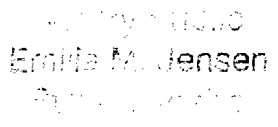
14  
15   
16 Kent D. Jensen  
17 Attorney for Plaintiff

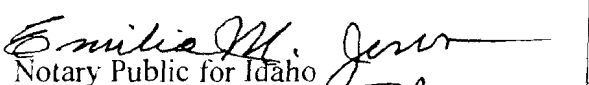
18 STATE OF IDAHO )  
19 ) ss.  
20 County of Cassia )

21 Isabel Enriquez, being first duly sworn according to law, deposes and states that he has  
22 read the foregoing documents and knows the contents thereof and the facts stated therein and he  
23 believes the same to be true.

24   
25 Isabel Enriquez

26 SUBSCRIBED AND SWORN To before me this *4<sup>th</sup>* day of June, 2009.

27  
28   
29 Emilia M. Jensen  
30 Notary Public

31   
32 Notary Public for Idaho  
33 Residing at Burley, Idaho  
34 My Commission Expires: 10-08-2010



FILED  
CASE

2010 FEB 17 PM 2:46

DEPUTY

J. Nick Crawford  
BRASSEY, WETHERELL & CRAWFORD, LLP  
203 West Main Street  
P.O. Box 1009  
Boise, Idaho 83701-1009  
Telephone: (208) 344-7300  
Facsimile: (208) 344-7077  
Idaho State Bar No. 3220

Attorneys for Idaho Power Company

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA**

ISABEL ENRIQUEZ,

Plaintiff,

vs.

IDAHO POWER COMPANY,

Defendant.

Case No. CV 2009-34

**NOTICE OF TAKING DUCES  
TECUM DEPOSITION PURSUANT  
TO RULE 30(b)(6)**

PLEASE TAKE NOTICE that Defendant will take the testimony, on oral examination of a representative or representatives of **JENTZSCH-KEARL FARMS** before a representative of M & M Court Reporting Service, court reporters and notaries public for the State of Idaho, or before another officer qualified to administer oaths, on **Thursday, February 25, 2010, at 11:00 a.m.**, and continuing thereafter from day to day as the taking of said deposition may be adjourned, at the offices of **Idaho Power Operations Center, 13510 Oakley Ave., Burley, Idaho.**

**Jentzsch-Kearl Farms** is required pursuant to Idaho Rule of Civil Procedure 30(b)(6) to designate one or more officers, directors, or managing agents or other persons who consent to testify on its behalf concerning all of the matters identified below.

**Areas of Inquiry:**

1. All information pertaining to Mr. Isabel Enriquez' employment with Jentzsch-Kearl Farms.
2. All information pertaining to Jentzsch-Kearl Farms' general corporate structure, organization, policies and procedures, as they pertain to Mr. Enriquez' training and employment, and the retention policy of any such records generated as a result. Specifically, Defendant is seeking all information regarding policies and training provided to Mr. Enriquez related to working around electrical power sources and the lifting of pipes and other equipment around electrical power sources.
3. All matters as they pertain to the subject matter of this litigation.

**Documents Requested:**

Defendant requests the deponent produce and make available for inspection and/or photocopying all records and documentation as follows:

1. Mr. Isabel Enriquez' complete employment/personnel file(s), including but not limited to his resumes and/or applications for employment and documentation regarding any pre-employment physicals, training, wages and/or salary amounts, overtime pay, sick leave, leave of absence, pension benefits, wage earnings increase and/or promotions, time sheets and/or other documentation regarding time worked, job performance reviews, warnings and/or disciplinary actions, accidents and/or worker's compensation claims. This request not only calls for documents

in the custody, control and/or possession of the deponent, but also all documents in the custody, control and/or possession of deponent's employees, representatives, agents and attorneys.

The words "records," "documentation" and "documents" mean all tangible, recorded or graphic matters; however, produced and/or reproduced, pertaining to Mr. Enriquez' employment with Jentzsch-Kearl Farms.

You are hereby invited to attend and participate, as you deem appropriate.

This deposition shall be taken pursuant to the Idaho Rules of Civil Procedure.

DATED this 17<sup>th</sup> day of February, 2010.

BRASSEY, WETHERELL & CRAWFORD, LLP

By 

J. Nick Crawford, Of the Firm  
Attorneys for Idaho Power Company

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 17<sup>th</sup> day of February, 2010, I served a true and correct copy of the foregoing NOTICE OF TAKING DUCES TECUM DEPOSITION PURSUANT TO RULE 30(b)(6) upon each of the following individuals by causing the same to be delivered by the method and to the addresses indicated below:

Kent D. Jensen  
2042 Overland  
P.O. Box 276  
Burley, Idaho 83318

U.S. Mail, postage prepaid  
 Hand-Delivered  
 Overnight Mail  
 Facsimile (208) 878-3368

Justin May  
1419 w. Washington  
Boise, Idaho 83702

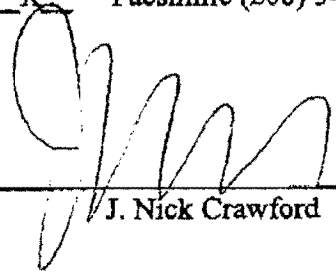
U.S. Mail, postage prepaid  
 Hand-Delivered  
 Overnight Mail  
 Facsimile (208) 342-7278

Jentzsch-Kearl Farms  
20511 F. Street  
Rupert, Idaho 83350

U.S. Mail, postage prepaid  
 Hand-Delivered (7 days after)  
 Overnight Mail  
 Facsimile

M & M Court Reporting Service, Inc.  
421 W. Franklin Street  
P. O. Box 2636  
Boise, Idaho 83701

U.S. Mail, postage prepaid  
 Hand-Delivered  
 Overnight Mail  
 Facsimile (208) 345-8800

  
\_\_\_\_\_  
J. Nick Crawford

FILED IN  
CASE #

2010 FEB 18 PM 1:29

DUPLICATE DEPUTY  
*[Signature]*

J. Nick Crawford  
BRASSEY, WETHERELL & CRAWFORD, LLP  
203 West Main Street  
P.O. Box 1009  
Boise, Idaho 83701-1009  
Telephone: (208) 344-7300  
Facsimile: (208) 344-7077  
Idaho State Bar No. 3220

Attorneys for Idaho Power Company

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA**

ISABEL ENRIQUEZ,

Plaintiff,

vs.

IDAHO POWER COMPANY,

Defendant.

Case No. CV 2009-34

**NOTICE OF DUCES TECUM  
DEPOSITION**

TO: PLAINTIFF and his attorneys of record.

YOU WILL PLEASE TAKE NOTICE that Defendant will take the testimony, on oral examination, of **BRENT BROWNING**, before a representative of M & M Court Reporting, court reporters and notaries public for the State of Idaho, or before another officer qualified to administer oaths, on **March 9, 2010, 2010, at 12:00 p.m.**, and continuing thereafter from day to day as the

taking of said deposition may be adjourned, at the offices of **Idaho Power Operations Center, 599 W. 300 S., Heyburn, Idaho.**

Said deponent is further requested to bring with him or her to said deposition, **any and all documents reflecting any work policy regarding the lifting of irrigation pipes around electrical power lines.**

All parties, entities or individuals privy to or in any way using or disclosing Plaintiff's protected health information in conjunction with this deposition shall comply with all federal and state laws and regulations, including HIPAA regulations, with regard to the confidentiality of such protected health information.

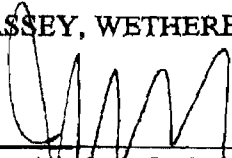
You are hereby invited to attend and take such part in the examination of the witness as you deem advisable and proper.

This deposition shall be taken pursuant to the Idaho Rules of Civil Procedure.

DATED this 18<sup>th</sup> day of February, 2010.

BRASSEY, WETHERELL & CRAWFORD, LLP

By

  
\_\_\_\_\_  
J. Nick Crawford, Of the Firm  
Attorneys for Idaho Power Company

FILED-DISTRICT COURT  
CASE #

2010 FEB 18 AM 10:42

DUANE S. [Signature] DEPUTY

J. Nick Crawford  
BRASSEY, WETHERELL & CRAWFORD, LLP  
203 West Main Street  
P.O. Box 1009  
Boise, Idaho 83701-1009  
Telephone: (208) 344-7300  
Facsimile: (208) 344-7077  
Idaho State Bar No. 3220

Attorneys for Idaho Power Company

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA**

ISABEL ENRIQUEZ,

Plaintiff,

vs.

IDAHO POWER COMPANY,

Defendant.

Case No. CV 2009-34

**AMENDED SUBPOENA DUCES  
TECUM PURSUANT TO RULE  
30(b)(6)**

THE STATE OF IDAHO TO:

Jentsch-Kearl Farms  
20511 F Street  
Rupert, Idaho 83350

YOU ARE HEREBY COMMANDED

- to appear in the Court at the place, date and time specified below to testify in the above case.
- to appear at the place, date and time specified below to testify at the taking of a deposition in the above case.

[ X ] to produce or permit inspection and copying of the following documents or objects, including electronically stored information, at the place, date and time specified below.

Mr. Isabel Enriquez' complete employment/personnel file(s), including but not limited to his resumes and/or applications for employment and documentation regarding any pre-employment physicals, training, wages and/or salary amounts, overtime pay, sick leave, leave of absence, pension benefits, wage earnings increase and/or promotions, time sheets and/or other documentation regarding time worked, job performance reviews, warnings and/or disciplinary actions, accidents and/or worker's compensation claims. This request not only calls for documents in the custody, control and/or possession of the deponent, but also all documents in the custody, control and/or possession of deponent's employees, representatives, agents and attorneys.

The words "records," "documentation" and "documents" mean all tangible, recorded or graphic matters; however, produced and/or reproduced, pertaining to Mr. Enriquez' employment with Jentzsch-Kearl Farms.

[ ] to permit inspection of the following premises at the date and time specified below.

PLACE DATE AND TIME:

**IDAHO POWER OPERATIONS CENTER**  
**599 W. 300 S.**  
**Heyburn, Idaho 83336**

February 25, 2010 at 11:00 a.m. (Mountain Time)

You are further notified that if you fail to appear at the place and time specified above, or to produce or permit copying of inspection as specified above that you may be held in contempt of Court and that the aggrieved party may recover from you the sum of \$100 and all damages which the party may sustain by your failure to comply with this Subpoena.

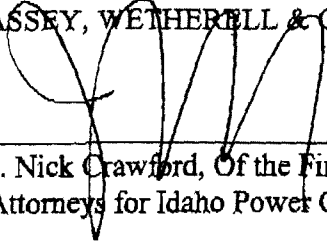
By order of the Court.

As an officer of the Court, pursuant to Rule 45(a), (b) and (d), this 18th day of February, 2010.

DATED this 18th day of February, 2010.

BRASSEY, WETHERELL & CRAWFORD, LLP

By

  
\_\_\_\_\_  
J. Nick Crawford, Of the Firm  
Attorneys for Idaho Power Company



NOTIFICATION STATEMENT

STATE OF IDAHO )
) ss.
County of Ada )

J. NICK CRAWFORD, having been first duly sworn upon oath, deposes and says as follows:

1. That I am an attorney duly licensed to practice law within the State of Idaho and I am a member of the law firm of Brassey, Wetherell & Crawford, attorneys for Defendants in the above-entitled action.

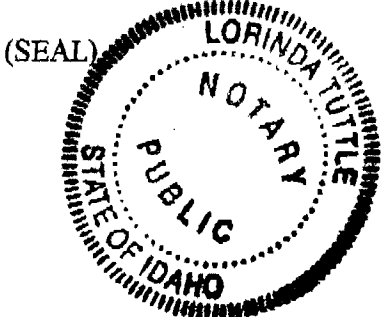
2. That, in accordance with I.R.C.P 45(b), I have served a copy of said Subpoena and a Notice of Taking Deposition Pursuant to Rule 30(b)(6) upon opposing counsel seven (7) days prior to service upon the above-named party.

DATED this 17th day of February, 2010.

BRASSEY, WETHERELL & CRAWFORD

By [Signature]
J. Nick Crawford, Of the Firm
Attorneys for Idaho Power Company

SUBSCRIBED AND SWORN to before me this 17th day of February, 2010.



[Signature]
Notary Public for Idaho
Residing at Boise, Idaho
My Commission Expires: 3/05/2015

FILED D.E.  
CASE #

2010 FEB 18 AM 10:42

DUCES TECUM DEPUTY  
*[Signature]*

J. Nick Crawford  
BRASSEY, WETHERELL & CRAWFORD, LLP  
203 West Main Street  
P.O. Box 1009  
Boise, Idaho 83701-1009  
Telephone: (208) 344-7300  
Facsimile: (208) 344-7077  
Idaho State Bar No. 3220

Attorneys for Idaho Power Company

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA**

ISABEL ENRIQUEZ,

Plaintiff,

vs.

IDAHO POWER COMPANY,

Defendant.

Case No. CV 2009-34

**AMENDED NOTICE OF TAKING  
DUCES TECUM DEPOSITION  
PURSUANT TO RULE 30(b)(6)**

PLEASE TAKE NOTICE that Defendant will take the testimony, on oral examination of a representative or representatives of JENTZSCH-KEARL FARMS before a representative of M & M Court Reporting Service, court reporters and notaries public for the State of Idaho, or before another officer qualified to administer oaths, on Thursday, February 25, 2010, at 11:00 a.m., and continuing thereafter from day to day as the taking of said deposition may be adjourned, at the offices of Idaho Power Operations Center located at 599 W. 300 S., Heyburn, Idaho.

Jentzsch-Kearl Farms is required pursuant to Idaho Rule of Civil Procedure 30(b)(6) to designate one or more officers, directors, or managing agents or other persons who consent to testify on its behalf concerning all of the matters identified below.

Areas of Inquiry:

1. All information pertaining to Mr. Isabel Enriquez' employment with Jentzsch-Kearl Farms.
2. All information pertaining to Jentzsch-Kearl Farms' general corporate structure, organization, policies and procedures, as they pertain to Mr. Enriquez' training and employment, and the retention policy of any such records generated as a result. Specifically, Defendant is seeking all information regarding policies and training provided to Mr. Enriquez related to working around electrical power sources and the lifting of pipes and other equipment around electrical power sources.
3. All matters as they pertain to the subject matter of this litigation.

Documents Requested:

Defendant requests the deponent produce and make available for inspection and/or photocopying all records and documentation as follows:

1. Mr. Isabel Enriquez' complete employment/personnel file(s), including but not limited to his resumes and/or applications for employment and documentation regarding any pre-employment physicals, training, wages and/or salary amounts, overtime pay, sick leave, leave of absence, pension benefits, wage earnings increase and/or promotions, time sheets and/or other documentation regarding time worked, job performance reviews, warnings and/or disciplinary actions, accidents and/or worker's compensation claims. This request not only calls for documents

in the custody, control and/or possession of the deponent, but also all documents in the custody, control and/or possession of deponent's employees, representatives, agents and attorneys.

The words "records," "documentation" and "documents" mean all tangible, recorded or graphic matters; however, produced and/or reproduced, pertaining to Mr. Enriquez' employment with Jentzsch-Kearl Farms.

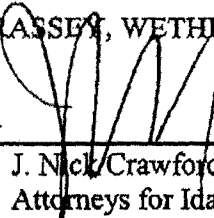
You are hereby invited to attend and participate, as you deem appropriate.

This deposition shall be taken pursuant to the Idaho Rules of Civil Procedure.

DATED this 16<sup>th</sup> day of February, 2010.

BRASSEY, WETHERELL & CRAWFORD, LLP

By

  
\_\_\_\_\_  
J. Nick Crawford, Of the Firm  
Attorneys for Idaho Power Company

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 18<sup>th</sup> day of February, 2010, I served a true and correct copy of the foregoing **AMENDED NOTICE OF TAKING DUCES TECUM DEPOSITION PURSUANT TO RULE 30(b)(6)** upon each of the following individuals by causing the same to be delivered by the method and to the addresses indicated below:

Kent D. Jensen  
2042 Overland  
P.O. Box 276  
Burley, Idaho 83318

U.S. Mail, postage prepaid  
 Hand-Delivered  
 Overnight Mail  
 Facsimile (208) 878-3368

Justin May  
1419 w. Washington  
Boise, Idaho 83702

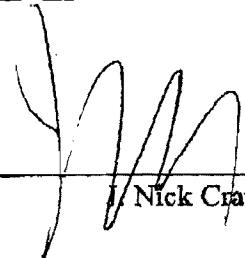
U.S. Mail, postage prepaid  
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 Overnight Mail  
 Facsimile (208) 342-7278

Jentsch-Kearl Farms  
20511 F. Street  
Rupert, Idaho 83350

U.S. Mail, postage prepaid  
 Hand-Delivered (7 days after)  
 Overnight Mail  
 Facsimile

M & M Court Reporting Service, Inc.  
421 W. Franklin Street  
P. O. Box 2636  
Boise, Idaho 83701

U.S. Mail, postage prepaid  
 Hand-Delivered  
 Overnight Mail  
 Facsimile (208) 345-8800

  
\_\_\_\_\_  
Nick Crawford

FILED-CLERK OF DISTRICT COURT  
CASE #

2010 FEB 18 PM 1:20

DUANE J. ... DEPUTY  
*[Signature]*

J. Nick Crawford  
BRASSEY, WETHERELL & CRAWFORD, LLP  
203 West Main Street  
P.O. Box 1009  
Boise, Idaho 83701-1009  
Telephone: (208) 344-7300  
Facsimile: (208) 344-7077  
Idaho State Bar No. 3220

Attorneys for Idaho Power Company

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA**

ISABEL ENRIQUEZ,

Plaintiff,

vs.

IDAHO POWER COMPANY,

Defendant.

Case No. CV 2009-34

**SECOND AMENDED NOTICE OF  
TAKING DUCES TECUM  
DEPOSITION PURSUANT TO RULE  
30(b)(6)**

PLEASE TAKE NOTICE that Defendant will take the testimony, on oral examination of a representative or representatives of JENTZSCH-KEARL FARMS before a representative of M & M Court Reporting Service, court reporters and notaries public for the State of Idaho, or before another officer qualified to administer oaths, on **March 9, 2010, at 11:00 a.m.**, and continuing thereafter from day to day as the taking of said deposition may be adjourned, at the offices of Idaho Power Operations Center located at 599 W. 300 S., Heyburn, Idaho.

Jentzsch-Kearl Farms is required pursuant to Idaho Rule of Civil Procedure 30(b)(6) to designate one or more officers, directors, or managing agents or other persons who consent to testify on its behalf concerning all of the matters identified below.

Areas of Inquiry:

1. All information pertaining to Mr. Isabel Enriquez' employment with Jentzsch-Kearl Farms.
2. All information pertaining to Jentzsch-Kearl Farms' general corporate structure, organization, policies and procedures, as they pertain to Mr. Enriquez' training and employment, and the retention policy of any such records generated as a result. Specifically, Defendant is seeking all information regarding policies and training provided to Mr. Enriquez related to working around electrical power sources and the lifting of pipes and other equipment around electrical power sources.
3. All matters as they pertain to the subject matter of this litigation.

Documents Requested:

Defendant requests the deponent produce and make available for inspection and/or photocopying all records and documentation as follows:

1. Mr. Isabel Enriquez' complete employment/personnel file(s), including but not limited to his resumes and/or applications for employment and documentation regarding any pre-employment physicals, training, wages and/or salary amounts, overtime pay, sick leave, leave of absence, pension benefits, wage earnings increase and/or promotions, time sheets and/or other documentation regarding time worked, job performance reviews, warnings and/or disciplinary actions, accidents and/or worker's compensation claims. This request not only calls for documents

in the custody, control and/or possession of the deponent, but also all documents in the custody, control and/or possession of deponent's employees, representatives, agents and attorneys.

The words "records," "documentation" and "documents" mean all tangible, recorded or graphic matters; however, produced and/or reproduced, pertaining to Mr. Enriquez' employment with Jentzsch-Kearl Farms.

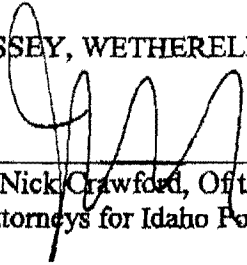
You are hereby invited to attend and participate, as you deem appropriate.

This deposition shall be taken pursuant to the Idaho Rules of Civil Procedure.

DATED this 18<sup>th</sup> day of February, 2010.

BRASSEY, WETHERELL & CRAWFORD, LLP

By

  
\_\_\_\_\_  
J. Nick Crawford, Of the Firm  
Attorneys for Idaho Power Company



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 18th day of February, 2010, I served a true and correct copy of the foregoing **SECOND AMENDED NOTICE OF TAKING DUCES TECUM DEPOSITION PURSUANT TO RULE 30(b)(6)** upon each of the following individuals by causing the same to be delivered by the method and to the addresses indicated below:

Kent D. Jensen  
2042 Overland  
P.O. Box 276  
Burley, Idaho 83318

U.S. Mail, postage prepaid  
 Hand-Delivered  
 Overnight Mail  
 Facsimile (208) 878-3368

Justin May  
1419 w. Washington  
Boise, Idaho 83702

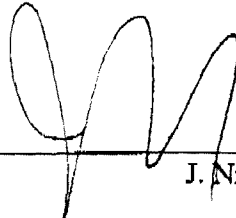
U.S. Mail, postage prepaid  
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 Overnight Mail  
 Facsimile (208) 342-7278

Jentzsch-Kearl Farms  
20511 F. Street  
Rupert, Idaho 83350

U.S. Mail, postage prepaid  
 Hand-Delivered (7 days after)  
 Overnight Mail  
 Facsimile

M & M Court Reporting Service, Inc.  
421 W. Franklin Street  
P. O. Box 2636  
Boise, Idaho 83701

U.S. Mail, postage prepaid  
 Hand-Delivered  
 Overnight Mail  
 Facsimile (208) 345-8800



J. Nick Crawford

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 18<sup>th</sup> day of February, 2010, I served a true and correct copy of the foregoing NOTICE OF DUCES TECUM DEPOSITION upon each of the following individuals by causing the same to be delivered by the method and to the addresses indicated below:

Kent D. Jensen  
2042 Overland  
P.O. Box 276  
Burley, Idaho 83318

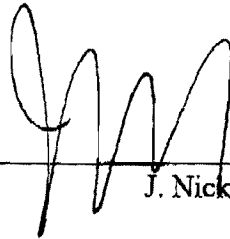
U.S. Mail, postage prepaid  
 Hand-Delivered  
 Overnight Mail  
 Facsimile (208) 878-3368

Brent Browning  
236 West Wayne  
Paul, Idaho 83347

U.S. Mail, postage prepaid  
 Hand-Delivered (7 days after)  
 Overnight Mail  
 Facsimile

M & M Court Reporting Service, Inc.  
421 W. Franklin Street  
P. O. Box 2636  
Boise, Idaho 83701

U.S. Mail, postage prepaid  
 Hand-Delivered  
 Overnight Mail  
 Facsimile (208) 345-8800



\_\_\_\_\_  
J. Nick Crawford

2010 FEB 19 PM 1:04

CLERK  
*Ge*  
DEPUTY

1 Kent D. Jensen (ISB #4424)  
Kent D. Jensen Law Office, P. C.  
2 2042 Overland  
P.O. Box 276  
3 Burley, Idaho 83318  
Telephone: (208) 878-3366  
4 Fax:(208) 878-3368  
Attorneys for Plaintiff

5  
6 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
7 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

8 ISABEL ENRIQUEZ ,  
9 Plaintiff,

Case No.: CV 2009- 34

AFFIDAVIT OF KENT D. JENSEN

10 vs.

11 IDAHO POWER COMPANY,  
12 Defendant


13  
14 Kent D. Jensen being duly sworn deposes and states:

15 1. That I am the attorney representing the Plaintiff in this matter.

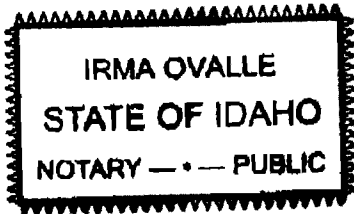
16 2. That in preparing for the deposition of Jeff Mitton, certain aspects of the evidence  
17 portrayed by photographs and the report of Mr. Mitton, raised questions regarding the  
18 prosecution of this case which could only be answered through an expert witness. Mr. Mitton's  
19 deposition was scheduled for February 5, 2010. Mr. Kamm was contacted by my office and  
20 copies of the photographs and other reports were forwarded to him for his analysis Mr. Kamm  
21 made his analysis and then a report was returned to us, which was then forwarded on to  
22 defendant's counsel and notice of Mr. Kamm as an expert witness was filed with the court.


23 3. The disclosure of Mr. Kamm was not intended to cause delay or prejudice to the  
24 defendant in this matter.

25 Nothing further saith your affiant.

  
Kent D. Jensen 4424  
Attorney for Plaintiff

SUBSCRIBED AND SWORN to before me this 19 day of February, 2010.

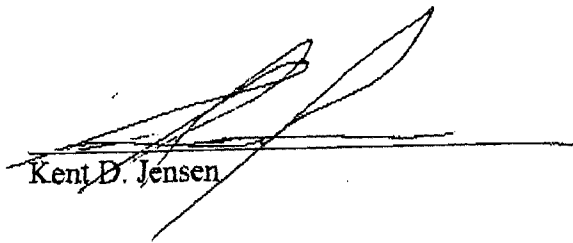


  
Notary Public for State of Idaho  
Residing at: Burley ID  
My Commission expires: 2/17/2016

CERTIFICATE OF SERVICE

I hereby certify that on the 20 day of February 2010, I served the foregoing document by fax and by depositing a copy thereof in the United States Mail, postage prepaid, addressed as follows:

J. Nick Crawford  
PO Box 1009  
Boise, ID 83701-1009  
Fax; 208-344-7077

  
Kent D. Jensen

2010 FEB 19 PM 1:04

Deputy  
*[Signature]* DEPUTY

1 Kent D. Jensen (ISB #4424)  
2 Kent D. Jensen Law Office, P. C.  
3 2042 Overland  
4 P.O. Box 276  
5 Burley, Idaho 83318  
6 Telephone: (208) 878-3366  
7 Fax:(208) 878-3368  
8 Attorneys for Plaintiff

6 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
7 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

8 ISABEL ENRIQUEZ ,

Case No.: CV 2009- 34

9 Plaintiff,

OBJECTION TO MOTION TO EXCLUDE  
EXPERT WITNESS AND MEMORANDUM  
IN SUPPORT OF OBJECTION

10 vs.

11 IDAHO POWER COMPANY,

12 Defendant

13  
14 IN THIS MATTER, the Defendant has objected to the late disclosure of the Plaintiff's  
15 expert witness, Lawrence Kamm. The court's pretrial orders states that all expert witnesses must  
16 be disclosed 120 days before trial. According to the Plaintiff's calculations as date fell on January  
17 19, 2010. The disclosure by the Plaintiff in this matter of Mr. Kamm was dated February 4, 2010,  
18 and was filed by the court on February 8<sup>th</sup>, 2010, and received by the defendant on February 8,  
19 2010. Trial in this case is set to commence on May 19<sup>th</sup>, 2010.

20 As stated in *Noble v. Ada County Elections Board*, 135 Idaho 495, 500 20 P.3d 679, 684  
21 (2000), the Idaho Supreme Court stated that in "Idaho, two general rules guide a trial court in  
22 imposing sanctions. The trial court "must balance the equities by comparing the culpability of the  
23 disobedient party with the resulting prejudice to the innocent party" and consider whether lesser  
24 sanctions would be effective. *Roe v. Doe*, 129 Idaho 663, 668, 931 P.2d 657, 662 (Ct.App.1996)  
25 (quoting *Southern Idaho Prod. Credit Ass'n v. Astorquia*, 113 Idaho 526, 532, 746 P.2d 985, 990

SCANNED  
85

1 (1987)). Furthermore, the court must address this issue exercising his discretion, acting with the  
2 outer boundaries of its discretion, according to appropriate legal standards, and that it reached its  
3 decision through an exercise of reason. *Priest v. Landon*, 135 Idaho 898, 26 P.3d 1235 (Ct. App.  
4 2001).

5 In this case, in preparation for the deposition of Mr. Jeff Mitton, and in further analysis of  
6 Defendant's theory of the accident, the Plaintiff determined that an expert witness would be  
7 necessary to analyze this accident and provide testimony at trial. Mr. Kamm made his analysis of  
8 the matter and supplied a report to the Plaintiff which was forwarded to the Defendant and notice  
9 of the disclosure was filed nearly simultaneously. As stated above, the court is to balance the  
10 equities with regard to the disobedient party and the resulting prejudice to the innocent party. In  
11 this matter, at the time of the disclosure, there were 94 days before trial in this case. This is not  
12 an instance, where the disclosure of expert witness is coming on the eve of trial, which would  
13 leave Defendant little time to respond to the opinion of the expert witness. The defendant has  
14 over three months in order to respond and retainer on expert witness, if they so choose.

15 Moreover, the court's order states that Defendant would have to disclose any expert  
16 witness 75 days before trial. The defendant was still have time to make such a disclosure prior to  
17 the court's deadline. At any rate, Plaintiff would agree that the deadline could be extended for the  
18 defendant to disclose any expert's witnesses they may have.


19 In this matter, exclusion of Plaintiff's expert witness would be a sanction which exceeds  
20 the prejudice to the defendant in this case. The disclosure of Mr. Kamm, although late, was not  
21 excessively late to the point of where the prejudice to the defendant is so great that the defendant  
22 and its counsel can claim surprise and they would be unable to prepare an adequate response to  
23 Mr. Kamm's proposed testimony. If the court believes that there is prejudice, the Plaintiff would  
24 be willing to continue the trial to allow Defendant sufficient time to respond to the disclosure of  
25 Mr. Kamm.

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CONCLUSION

It is therefore respectfully submitted that the court should deny the Defendant's motion to exclude expert witness based upon the foregoing.


Dated this 20<sup>th</sup> day of February, 2010

  
Kent D. Jensen 4424  
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 20<sup>th</sup> day of February 2010, I served the foregoing document by fax and by depositing a copy thereof in the United States Mail, postage prepaid, addressed as follows:

J. Nick Crawford  
PO Box 1009  
Boise, ID 83701-1009  
Fax; 208-344-7077

  
Kent D. Jensen

COURT MINUTES

FILED IN CASE

2010 FEB 23 PM 4:24

Deputy Clerk

CV-2009-0000034

Isabel Enriquez vs. Idaho Power Company

Hearing type: Motion to Exclude Expert Witness

Hearing date: 2/23/2010

Time: 11:07 am

Judge: Jonathan Brody

Courtroom: IN CHAMBERS

Court reporter: Maureen Newton

Minutes Clerk: Santos Garza

Party: Idaho Power Company, Attorney: John Howell

Party: Isabel Enriquez, Attorney: Kent Jensen

Court calls case set for Motion to Exclude expert witness; Counsels present via telephone

Mr. Howell addresses pleadings deal with prejudice; untimely is only a couple of weeks; due disclosure; relying on briefs filed

Mr. Jensen addresses re: prejudice; willing to continue trial

Court inquires; Mr. Howell needs time to get outside expert; wants to keep trial date; strict deadlines; within 30 days; Mr. Jensen would not hold to deadline

Court trial set for May 19<sup>th</sup> Court ruling violations of scheduling order, cites Idaho case law exclusion of expert, not remedy; Interest to extend the deadline to 30 days prior to trial date  
Mr. Jensen no objections

Court April 19<sup>th</sup> will not continue trial now but will consider if need be at a later date; denying motion and extending PT set for April 12<sup>th</sup>

Nothing further 11:19

SCANNED



FILED  
CASE #

2010 MAR 12 AM 10:10

DUNN  
DEPUTY

1 Kent D. Jensen (ISB #4424)  
2 Kent D. Jensen Law Office, P. C.  
3 2042 Overland  
4 P.O. Box 276  
5 Burley, Idaho 83318  
6 Telephone: (208) 878-3366  
7 Fax: (208) 878-3368  
8 Attorneys for Plaintiff

9  
10  
11 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
12 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

13 ISABEL ENRIQUEZ ,

14 Plaintiff,

15 vs.

16 IDAHO POWER COMPANY,

17 Defendant


Case No.: CV 2009- 34

NOTICE OF SERVICE

18 PLEASE TAKE NOTICE that Kent D. Jensen on behalf of the plaintiff, Isabel Enriquez and  
19 pursuant to Idaho Rules of Civil Procedure, has served upon defendant, Idaho Power Company,  
20 the Plaintiff's Second Set of Interrogatories and Request for Production of Documents, along  
21 with this Notice of Service by depositing copies in an envelope, postage prepaid addressed as  
22 follows:

23 J. Nick Crawford  
24 PO Box 1009  
25 Boise, ID 83701-1009

DATED this 10 day of March, 2010.

  
Kent D. Jensen  
Attorney for Plaintiff

J. Nick Crawford  
BRASSEY, WETHERELL & CRAWFORD, LLP  
203 W. Main Street  
P.O. Box 1009  
Boise, Idaho 83701-1009  
Telephone: (208) 344-7300  
Facsimile: (208) 344-7077

FILED-DISTRICT COURT  
CASE # \_\_\_\_\_  
2010 MAR 15 PM 3:16  
DUNNE, CLERK  
DEPUTY

Attorneys for Idaho Power Company

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA**

ISABEL ENRIQUEZ,

Plaintiff,

vs.

IDAHO POWER COMPANY,

Defendant.

Case No. CV 2009-34

**NOTICE OF TAKING DEPOSITION  
DUCES TECUM OF LAWRENCE  
KAMM**

TO: Plaintiffs; and their counsel of record.

YOU WILL PLEASE TAKE NOTICE That Defendant will take the testimony, on oral examination, of **LAWRENCE KAMM**, before a representative of Shelburne Sherr, court reporters and notaries public for the State of California, or in case of their inability to act or be present before another officer qualified to administer oaths, on **Friday, March 19, 2010, at 11:00 a.m.** of said day, and continuing thereafter from day to day as the taking of said deposition may be adjourned, at Shelburne Sherr located at 501 West Broadway, Suite 1330, San Diego, California 92101; (619) 234-9100.

The deponent has been requested to bring with him to said deposition, and introduce into evidence, the following:

1. Any and all documents, items or things reviewed by him or provided to him to review in formulating his opinions in this matter.
2. Any document, item, or thing provided to him or which he has reviewed in any fashion which sets forth facts relative to this case.
3. Each and every document or other item of tangible evidence which supports or tends to support any opinion held by him or to be rendered by him relative to this case.
4. Any and all reports prepared by him or any other person who may or will testify as expert witnesses on behalf of Plaintiffs at the trial of this action.
5. A current curriculum vitae and/or resume.
6. Any and all documents, notes, items or things setting forth any findings or opinions he has or has had in this case.

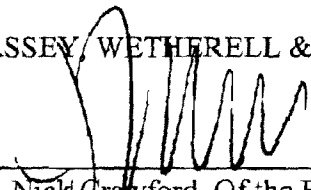
You are hereby invited to attend and participate, as you deem appropriate.

This deposition shall be taken pursuant to the Idaho Rules of Civil Procedure.

DATED this 15<sup>th</sup> day of March, 2010.

BRASSEY, WETHERELL & CRAWFORD, LLP

By



\_\_\_\_\_  
 J. Nick Crawford, Of the Firm  
 Attorneys for Idaho Power Company

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 15<sup>th</sup> day of March, 2010, I served a true and correct copy of the foregoing NOTICE OF TAKING DEPOSITION DUCES TECUM OF LAWRENCE KAMM upon each of the following individuals by causing the same to be delivered by the method and to the addresses indicated below:

Kent D. Jensen  
2042 Overland  
P.O. Box 276  
Burley, Idaho 83318

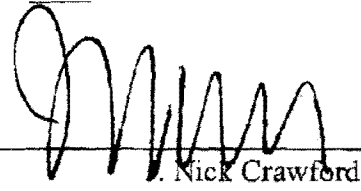
- U.S. Mail, postage prepaid
- Hand-Delivered
- Overnight Mail
- Facsimile (208) 878-3368

Honorable Michael R. Crabtree  
1459 Overland Avenue  
Burley, Idaho 83318

- U.S. Mail, postage prepaid
- Hand-Delivered
- Overnight Mail
- Facsimile

Shelburne Sherr  
501 West Broadway, Suite 1330  
San Diego, California 92101  
rita@sscourtreporters.com

- U.S. Mail, postage prepaid
- Hand-Delivered
- Overnight Mail
- Facsimile
- Email



\_\_\_\_\_  
Nick Crawford

FILED DISTRICT COURT  
CASE #

2010 MAR 15 AM 9:33

DUR 26 DEPUTY

1 Kent D. Jensen (ISB #4424)  
Kent D. Jensen Law Office, P. C.  
2 2042 Overland  
P.O. Box 276  
3 Burley, Idaho 83318  
Telephone: (208) 878-3366  
4 Fax:(208) 878-3368  
Attorneys for Plaintiff

5  
6 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
7 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

8 ISABEL ENRIQUEZ ,

Case No.: CV 2009- 34

9 Plaintiff,

NOTICE OF SERVICE OF MEDICAL  
RECORDS AND EXHIBIT 1

10 vs.

11 IDAHO POWER COMPANY,

12 Defendant

13  
14 PLEASE TAKE NOTICE that Kent D. Jensen on behalf of the plaintiff, Isabel Enriquez and  
15 pursuant to Idaho Rules of Civil Procedure, has served upon defendant, Idaho Power Company,  
16 Isabel Enriquez' medical records and a copy of Exhibit 1 related to the Expert's report by  
17 depositing copies in an envelope, postage prepaid addressed as follows:

18  
19 J. Nick Crawford  
PO Box 1009  
20 Boise, ID 83701-1009

21 DATED this 12<sup>th</sup> day of March, 2010.

22  
23 

24 Kent D. Jensen  
Attorney for Plaintiff

FILED-109 P. 1000  
CASE #

2010 MAR 17 PM 4:50

DURNE... CLERK  
*[Signature]* DEPUTY

J. Nick Crawford  
BRASSEY, WETHERELL & CRAWFORD, LLP  
203 W. Main Street  
P.O. Box 1009  
Boise, Idaho 83701-1009  
Telephone: (208) 344-7300  
Facsimile: (208) 344-7077

Attorneys for Idaho Power Company

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA**

ISABEL ENRIQUEZ,

Plaintiff,

vs.

IDAHO POWER COMPANY,

Defendant.

Case No. CV 2009-34

**NOTICE OF TAKING DEPOSITION  
DUCES TECUM OF LAWRENCE  
KAMM**

TO: Plaintiffs; and their counsel of record.

YOU WILL PLEASE TAKE NOTICE That Defendant will take the testimony, on oral examination, of **LAWRENCE KAMM**, before a representative of Shelburne Sherr, court reporters and notaries public for the State of California, or in case of their inability to act or be present before another officer qualified to administer oaths, on **Friday, March 19, 2010, at 11:00 a.m.** of said day, and continuing thereafter from day to day as the taking of said deposition may be adjourned, at Shelburne Sherr located at 501 West Broadway, Suite 1330, San Diego, California 92101; (619) 234-9100.

The deponent has been requested to bring with him to said deposition, and introduce into evidence, the following:

1. Any and all documents, items or things reviewed by him or provided to him to review in formulating his opinions in this matter.
2. Any document, item, or thing provided to him or which he has reviewed in any fashion which sets forth facts relative to this case.
3. Each and every document or other item of tangible evidence which supports or tends to support any opinion held by him or to be rendered by him relative to this case.
4. Any and all reports prepared by him or any other person who may or will testify as expert witnesses on behalf of Plaintiffs at the trial of this action.
5. A current curriculum vitae and/or resume.
6. Any and all documents, notes, items or things setting forth any findings or opinions he has or has had in this case.

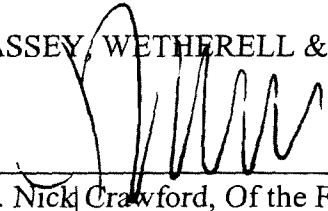
You are hereby invited to attend and participate, as you deem appropriate.

This deposition shall be taken pursuant to the Idaho Rules of Civil Procedure.

DATED this 15<sup>th</sup> day of March, 2010.

BRASSEY, WETHERELL & CRAWFORD, LLP

By \_\_\_\_\_

  
J. Nick Crawford, Of the Firm  
Attorneys for Idaho Power Company

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 15<sup>th</sup> day of March, 2010, I served a true and correct copy of the foregoing NOTICE OF TAKING DEPOSITION DUCES TECUM OF LAWRENCE KAMM upon each of the following individuals by causing the same to be delivered by the method and to the addresses indicated below:

Kent D. Jensen  
2042 Overland  
P.O. Box 276  
Burley, Idaho 83318

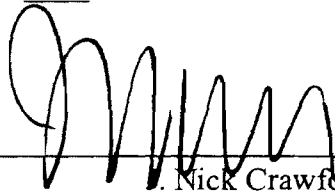
U.S. Mail, postage prepaid  
 Hand-Delivered  
 Overnight Mail  
 Facsimile (208) 878-3368

Honorable Michael R. Crabtree  
1459 Overland Avenue  
Burley, Idaho 83318

U.S. Mail, postage prepaid  
 Hand-Delivered  
 Overnight Mail  
 Facsimile

Shelburne Sherr  
501 West Broadway, Suite 1330  
San Diego, California 92101  
[rita@sscourtreporters.com](mailto:rita@sscourtreporters.com)

U.S. Mail, postage prepaid  
 Hand-Delivered  
 Overnight Mail  
 Facsimile  
 Email



\_\_\_\_\_  
Nick Crawford



FILED-057-10006  
CASE # \_\_\_\_\_

2010 MAR 22 AM 10:53

DUANE J. ... DEPUTY  
*[Signature]*

1 Kent D. Jensen (ISB #4424)  
Kent D. Jensen Law Office, P. C.  
2 2042 Overland  
P.O. Box 276  
3 Burley, Idaho 83318  
Telephone: (208) 878-3366  
4 Fax:(208) 878-3368  
Attorneys for Plaintiff

5  
6 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
7 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

8 ISABEL ENRIQUEZ ,

Case No.: CV 2009- 34

9 Plaintiff,

ORDER

10 vs.

11 IDAHO POWER COMPANY,

12 Defendant

13  
14 The court being advised in the law and in the premises, and after having heard argument  
15 on the motion before the court to exclude expert witness, the court issues the following order:

16 IT IS HEREBY ORDERED that the Defendant's deadline for disclosure of its expert  
17 witness shall be extended to 30 days prior to trial.

18 IT IS HEREBY ORDERED that all other pretrial deadlines shall be extended to April  
19 19<sup>th</sup>, 2010.

20  
21 Dated this 22<sup>nd</sup> day of March, 2010

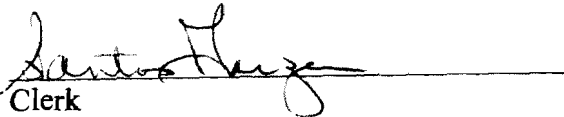
22 *[Signature]*  
23 District Judge  
24  
25

CLERKS'S CERTIFICATE OF SERVICE

I hereby certify that on the 22 day of March 2010, I served the foregoing document by depositing a copies thereof in the United States Mail, postage prepaid, addressed as follows:

J. Nick Crawford  
PO Box 1009  
Boise, ID 83701-1009  
Fax; 208-344-7077

Kent D. Jensen  
PO Box 276  
Burley, ID 83318

  
Clerk

2010 APR -5 PM 3:01

DUANE [Signature] DEPUTY

1 Kent D. Jensen (ISB #4424)  
2 Kent D. Jensen Law Office, P. C.  
3 2042 Overland  
4 P.O. Box 276  
5 Burley, Idaho 83318  
6 Telephone: (208) 878-3366  
7 Fax:(208) 878-3368  
8 Attorneys for Plaintiff

9  
10 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
11 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

12 ISABEL ENRIQUEZ ,  
13  
14 Plaintiff,

Case No.: CV 2009- 34

PRETRIAL STATEMENT

15 vs.

16 IDAHO POWER COMPANY,  
17  
18 Defendant

19 COMES NOW the Plaintiff, pursuant to Idaho Rules of Civil Procedure 16(e) and  
20 provides a court with their pretrial statement.

21 1. At this time the Plaintiff has produced all exhibits to opposing counsel that may be  
22 introduced at trial. Should other exhibits become available said exhibits will be produced to  
23 opposing counsel on a timely basis.

24 2. At this time there have been no settlement negotiations between the parties.

25 3. All discovery has been or will be completed at this time.

4. At this point, the Plaintiffs has submitted interrogatories to the Defendants and  
received answers the first set of interrogatories, but a second set of interrogatories have  
not been answered at the time that this document was created.

5. The estimated length of trial should be approximately three days.

6. This case was initiated by the Plaintiff to secure for the recovery of damages sustained  
by the Plaintiff as a result of an electrocution accident which occurred on September 21<sup>st</sup>, 2007.

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- (a) There are no contemplated amendments to the pleading at this time.
- (b) There are no admissions or stipulations as agreed to by either of the parties.
- (c) The Plaintiffs may introduce the following exhibits:

- Medical records and billings
- Photographs taken of the scene of the accident
- Photographs of the plaintiff's injuries
- Investigative reports
- Depositions of the Isabel Enriquez, Jeff Mitton, Brent Browning, Joe Kearn and Lawrence Kamm
- 25 foot length of connecting sprinkler pipe related to this case

(d) At this time, all issues of fact and law remain to be litigated at trial.

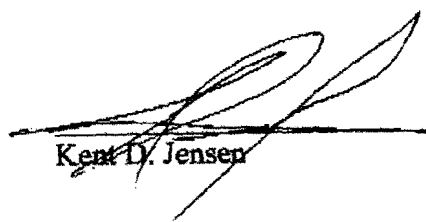
7. The Defendant may call the following witnesses:

- Isabel Enriquez
- Brent Browning
- José Enriquez
- Lawrence Kamm
- Doctors listed in medical records

CERTIFICATE OF MAILING

I hereby certify that on the 5<sup>th</sup> day of April, 2010, I served the foregoing Counsel for the foregoing document by depositing a copy thereof in the United States Mail, postage prepaid, addressed as follows:

J. Nick Crawford  
PO Box 1009  
Boise, ID 83701-1009

  
\_\_\_\_\_  
Kent D. Jensen

2010 APR -5 AM 8:33

DUPLICATE DEPUTY  
*She*

1 Kent D. Jensen (ISB #4424)  
Kent D. Jensen Law Office, P. C.  
2 2042 Overland  
P.O. Box 276  
3 Burley, Idaho 83318  
Telephone: (208) 878-3366  
4 Fax:(208) 878-3368  
Attorneys for Plaintiff

5  
6 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
7 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

8 ISABEL ENRIQUEZ ,  
9 Plaintiff,

Case No.: CV 2009- 34

MOTION IN LIMINE


10 vs.

11 IDAHO POWER COMPANY,  
12 Defendant

13  
14 COMES NOW, the Plaintiff, by and through his attorney of record, who does hereby  
15 petition this court for an order requiring the defendant, to produce and bring to the Minidoka  
16 County Courthouse on the first day of trial in this matter the sprinkler pipe that the Defendant  
17 alleges that the Plaintiff lifted into the electrical wires on the date of the accident.

18 The Plaintiff further petitions this court for an order allowing the jury and the court to  
19 leave the confines of the court room in order to view a demonstration to be presented by the  
20 Plaintiff with regard to the mechanics and ability of the Plaintiff to lift the sprinkler pipe as  
21 alleged by the Defendants. The Plaintiff desires to present evidence and argument for this  
22 motion.

23 *nd*  
day of April, 2010

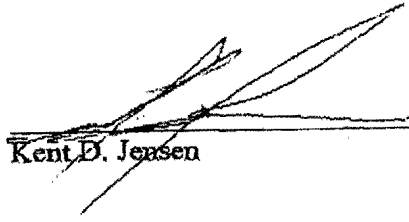
24   
25 Kent D. Jensen 4424  
Attorney for Plaintiff

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CERTIFICATE OF SERVICE

I hereby certify that on the 2<sup>nd</sup> day of April 2010, I served the foregoing document by fax and by depositing a copy thereof in the United States Mail, postage prepaid, addressed as follows:

J. Nick Crawford  
PO Box 1009  
Boise, ID 83701-1009  
Fax: 208-344-7077

  
\_\_\_\_\_  
Kent D. Jensen

FILED-DISTRICT COURT  
CASE #

2010 APR -6 AM 8:44

DUANE  
CLERK  
DEPUTY

J. Nick Crawford, ISB No. 3220  
BRASSEY, WETHERELL & CRAWFORD, LLP  
203 W. Main Street  
P.O. Box 1009  
Boise, Idaho 83701-1009  
Telephone: (208) 344-7300  
Facsimile: (208) 344-7077

Attorneys for Idaho Power Company

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA**

ISABEL ENRIQUEZ,

Plaintiff,

vs.

IDAHO POWER COMPANY,

Defendant.

Case No. CV 2009-34

**DEFENDANT IDAHO POWER  
COMPANY'S PRE-TRIAL  
MEMORANDUM**

COMES NOW, the above-captioned Defendant Idaho Power Company, and provides the following Pre-trial Memorandum in accordance with Idaho Rules of Civil Procedure 16(d) and 16(e).

1. Counsel have produced for examination by all other parties all exhibits required to be produced, except at this point in time discovery is not complete, and Defendant Idaho Power is in the process of supplementing discovery which will involve the production of additional documents which may be used as exhibits. In addition, Defendant Idaho Power has not disclosed experts, as the expert disclosure date for Defendant Idaho Power is April 19. Defendant Idaho Power anticipates that additional exhibits will be generated out of that expert disclosure.

2. Counsel at this point in time have not discussed settlement.

Apr 05 2010 3:38PM HP LASERJET 3330

P. 2

3. Pre-trial discovery procedures have not been completed as Defendant Idaho Power will be supplementing discovery responses and has a second set of discovery requests from Plaintiff which have yet to be responded to. In addition, Defendant Idaho Power will be disclosing experts on April 19 and additional discovery may be involved attendant to that disclosure of experts.

4. Supplemental answers to Interrogatories have not yet been filed.

5. The trial of this matter is now scheduled for three days. A jury has been demanded.

6. Form of proposed order for pre-trial conference:

A. **A concise description of the nature of the action:** This is a claim for negligence brought by Plaintiff against Defendant contending that one of Defendant's power lines had broken and fallen to the ground and had energized an irrigation pipe with which Plaintiff came in contact, causing his injuries. Defendant denies Plaintiff's claim.

B. **Statement of all claims:** see above.

C. **Any admissions or stipulation of the parties:** Defendant admits this was its power line. Defendant admits it is a public utility duly licensed to conduct business in the State of Idaho. Defendant admits that part of its business is to provide electrical power and services to its customers in the State of Idaho. Defendant admits that Plaintiff was employed with Jentsch-Kearl Farms performing farm labor for his employer at the time of the accident.

D. **Any amendments to pleadings and any issues of law abandoned by any party:**  
None known by Defendant.

E. **Statement of issues of fact which remain to be litigated:** How Plaintiff was injured, the nature and extent of Plaintiff's injuries and whether Plaintiff was negligent in causing his injury. Defendant contends that the injury was caused when Plaintiff lifted an irrigation pipe into the power lines.



Apr 05 2010 3:38PM HP LASERJET 3330

P. 3

**F. Statement of the issues of law which remain to be litigated: Was Defendant negligent? Was Plaintiff Negligent?**

**G. Orders on all matters which will expedite the trial: This answering Defendant is not aware of any orders on matters which would expedite the trial.**

**H. A descriptive list of all exhibits proposed to offered into evidence:**

1. Plaintiff's medical records;
2. Any and all exhibits produced at depositions;
3. Police report;
4. Photographs of the accident scene and the pipe and power lines involved in the accident;
5. Sentry archive data report;
6. Idaho Power Public Property Damage or Public Injury Report;
7. Map of Paul 043 recloser demonstrating patrols and repairs done in 2001, 2004, 2008 and 2009.
8. Dispatch records for Paul 043 recloser dated September 25, 2007;
9. Public inspection profile for 2004.
10. There may be additional exhibits which are identified in supplemental discovery responses and in expert disclosures.

**I. Provision that counsel shall not offer any exhibits at trial other than identified above: Counsel may have other exhibits identified in discovery in this matter and through expert disclosures which may need to be further identified for use at trial.**

**J. A list of witnesses:**

1. Jeff Mitton

Apr 05 2010 3:38PM HP LASERJET 3330

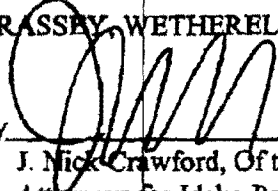
P. 4

- 2. Chad Hafer
- 3. Dan Kindig, Minidoka County Sheriff's Office
- 4. Joe Kearl
- 5. Brent Browning
- 6. Bryan Hobson
- 7. Plaintiff
- 8. Bill Strickland
- 9. Mark Turner

Other witnesses may be identified as discovery in this matter is not yet complete. In addition, Defendant has yet to identify expert witnesses.

DATED this 5th day of April, 2010.

BRASSEY, WETHERELL & CRAWFORD, LLP

By  \_\_\_\_\_  
 J. Nick Crawford, Of the Firm  
 Attorneys for Idaho Power Company

**CERTIFICATE OF SERVICE**

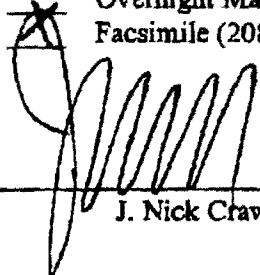
I HEREBY CERTIFY that on this 5<sup>th</sup> day of April, 2010, I served a true and correct copy of the foregoing DEFENDANT IDAHO POWER COMPANY'S PRE-TRIAL MEMORANDUM upon each of the following individuals by causing the same to be delivered by the method and to the addresses indicated below:

Kent D. Jensen  
2042 Overland  
P.O. Box 276  
Burley, Idaho 83318

- U.S. Mail, postage prepaid
- Hand-Delivered
- Overnight Mail
- Facsimile (208) 878-3368

Honorable Michael R. Crabtree  
1459 Overland Avenue  
Burley, Idaho 83318

- U.S. Mail, postage prepaid
- Hand-Delivered
- Overnight Mail
- Facsimile (208) 878-1010



J. Nick Crawford

**ORIGINAL**

FILED-DISTRICT COURT  
CASE # \_\_\_\_\_

2010 APR -7 PM 2:47

DUAL SIGNATURE CLERK  
510 DEPUTY

J. Nick Crawford, ISB No. 3220  
BRASSEY, WETHERELL & CRAWFORD, LLP  
203 W. Main Street  
P.O. Box 1009  
Boise, Idaho 83701-1009  
Telephone: (208) 344-7300  
Facsimile: (208) 344-7077

Attorneys for Idaho Power Company

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA**

ISABEL ENRIQUEZ,

Plaintiff,

vs.

IDAHO POWER COMPANY,

Defendant.

Case No. CV 2009-34

**DEFENDANT IDAHO POWER  
COMPANY'S PRE-TRIAL  
MEMORANDUM**

COMES NOW, the above-captioned Defendant Idaho Power Company, and provides the following Pre-trial Memorandum in accordance with Idaho Rules of Civil Procedure 16(d) and 16(e).

1. Counsel have produced for examination by all other parties all exhibits required to be produced, except at this point in time discovery is not complete, and Defendant Idaho Power is in the process of supplementing discovery which will involve the production of additional documents which may be used as exhibits. In addition, Defendant Idaho Power has not disclosed experts, as the expert disclosure date for Defendant Idaho Power is April 19. Defendant Idaho Power anticipates that additional exhibits will be generated out of that expert disclosure.

2. Counsel at this point in time have not discussed settlement.

3. Pre-trial discovery procedures have not been completed as Defendant Idaho Power will be supplementing discovery responses and has a second set of discovery requests from Plaintiff which have yet to be responded to. In addition, Defendant Idaho Power will be disclosing experts on April 19 and additional discovery may be involved attendant to that disclosure of experts.

4. Supplemental answers to Interrogatories have not yet been filed.

5. The trial of this matter is now scheduled for three days. A jury has been demanded.

6. Form of proposed order for pre-trial conference:

A. **A concise description of the nature of the action:** This is a claim for negligence brought by Plaintiff against Defendant contending that one of Defendant's power lines had broken and fallen to the ground and had energized an irrigation pipe with which Plaintiff came in contact, causing his injuries. Defendant denies Plaintiff's claim.

B. **Statement of all claims:** see above.

C. **Any admissions or stipulation of the parties:** Defendant admits this was its power line. Defendant admits it is a public utility duly licensed to conduct business in the State of Idaho. Defendant admits that part of its business is to provide electrical power and services to its customers in the State of Idaho. Defendant admits that Plaintiff was employed with Jentsch-Kearl Farms performing farm labor for his employer at the time of the accident.

D. **Any amendments to pleadings and any issues of law abandoned by any party:**  
None known by Defendant.

E. **Statement of issues of fact which remain to be litigated:** How Plaintiff was injured, the nature and extent of Plaintiff's injuries and whether Plaintiff was negligent in causing his injury. Defendant contends that the injury was caused when Plaintiff lifted an irrigation pipe into the power lines.

F. **Statement of the issues of law which remain to be litigated:** Was Defendant negligent? Was Plaintiff Negligent?

G. **Orders on all matters which will expedite the trial:** This answering Defendant is not aware of any orders on matters which would expedite the trial.

H. **A descriptive list of all exhibits proposed to offered into evidence:**

1. Plaintiff's medical records;
2. Any and all exhibits produced at depositions;
3. Police report;
4. Photographs of the accident scene and the pipe and power lines involved in the accident;
5. Sentry archive data report;
6. Idaho Power Public Property Damage or Public Injury Report;
7. Map of Paul 043 recloser demonstrating patrols and repairs done in 2001, 2004, 2008 and 2009.
8. Dispatch records for Paul 043 recloser dated September 25, 2007;
9. Public inspection profile for 2004.
10. There may be additional exhibits which are identified in supplemental discovery responses and in expert disclosures.

I. **Provision that counsel shall not offer any exhibits at trial other than identified above:** Counsel may have other exhibits identified in discovery in this matter and through expert disclosures which may need to be further identified for use at trial.

J. **A list of witnesses:**

1. Jeff Mitton

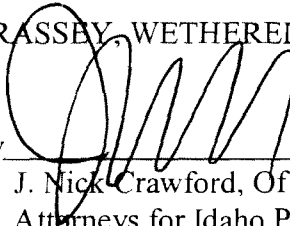
2. Chad Hafer
3. Dan Kindig, Minidoka County Sheriff's Office
4. Joe Kearn
5. Brent Browning
6. Bryan Hobson
7. Plaintiff
8. Bill Strickland
9. Mark Turner

Other witnesses may be identified as discovery in this matter is not yet complete. In addition, Defendant has yet to identify expert witnesses.

DATED this 5<sup>th</sup> day of April, 2010.

BRASSEY, WETHERELL & CRAWFORD, LLP

By



J. Nick Crawford, Of the Firm  
Attorneys for Idaho Power Company

**CERTIFICATE OF SERVICE**

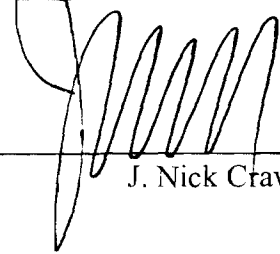
I HEREBY CERTIFY that on this 5th day of April, 2010, I served a true and correct copy of the foregoing DEFENDANT IDAHO POWER COMPANY'S PRE-TRIAL MEMORANDUM upon each of the following individuals by causing the same to be delivered by the method and to the addresses indicated below:

Kent D. Jensen  
2042 Overland  
P.O. Box 276  
Burley, Idaho 83318

- U.S. Mail, postage prepaid
- Hand-Delivered
- Overnight Mail
- Facsimile (208) 878-3368

Honorable Michael R. Crabtree  
1459 Overland Avenue  
Burley, Idaho 83318

- U.S. Mail, postage prepaid
- Hand-Delivered
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- Facsimile (208) 878-1010



---

J. Nick Crawford



FILED IN DISTRICT COURT  
CASE # \_\_\_\_\_

2010 APR -9 PM 1:57

DUANE G. ... DEPUTY  
*SG*

J. Nick Crawford, ISB No. 3220  
BRASSEY, WETHERELL & CRAWFORD, LLP  
203 W. Main Street  
P.O. Box 1009  
Boise, Idaho 83701-1009  
Telephone: (208) 344-7300  
Facsimile: (208) 344-7077

Attorneys for Idaho Power Company

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA**

ISABEL ENRIQUEZ,

Plaintiff,

vs.

IDAHO POWER COMPANY,

Defendant.

Case No. CV 2009-34

**NOTICE OF SERVICE**

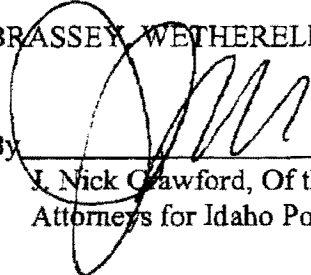
NOTICE IS HEREBY GIVEN that on the 9th day of April, 2010, **DEFENDANT'S ANSWERS AND RESPONSES TO PLAINTIFF'S SECOND SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS**, together with a copy of this *Notice of Service*, were served upon:

Kent D. Jensen  
2042 Overland  
P.O. Box 276  
Burley, Idaho 83318

by depositing the same in the United States mail, postage prepaid, in an envelope addressed to said attorneys at their last known address set forth above.

DATED this 9th day of April, 2010.

BRASSEY WETHERELL & CRAWFORD, LLP

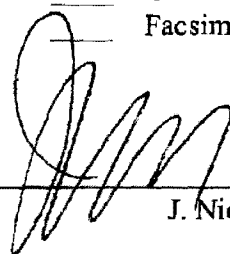
By  \_\_\_\_\_  
J. Nick Crawford, Of the Firm  
Attorneys for Idaho Power Company

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 9th day of April, 2010, I served a true and correct copy of the foregoing NOTICE OF SERVICE upon each of the following individuals by causing the same to be delivered by the method and to the addresses indicated below:

Kent D. Jensen  
2042 Overland  
P.O. Box 276  
Burley, Idaho 83318

- U.S. Mail, postage prepaid
- Hand-Delivered
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- Facsimile (208) 878-3368

  
\_\_\_\_\_  
J. Nick Crawford

J. Nick Crawford, ISB No. 3220  
 John M. Howell, ISB No. 6234  
**BRASSEY, WETHERELL & CRAWFORD, LLP**  
 203 W. Main Street  
 P.O. Box 1009  
 Boise, Idaho 83701-1009  
 Telephone: (208) 344-7300  
 Facsimile: (208) 344-7077

FILED DISTRICT COURT  
 CASE # \_\_\_\_\_  
 2010 APR 14 PM 4:23  
 DUANE S. [Signature] DEPUTY

Attorneys for Idaho Power Company

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA**

ISABEL ENRIQUEZ,  
 Plaintiff,

vs.

IDAHO POWER COMPANY,  
 Defendant.

Case No. CV 2009-34

**OPPOSITION TO PLAINTIFF'S  
 MOTION IN LIMINE**

COMES NOW, the Defendant, by and through its counsel of record, Brassey, Wetherell & Crawford, respectfully submits this Opposition to Plaintiff's Motion in Limine.

Defendant objects to Plaintiff's request to allow the jury to view a demonstration of the subject sprinkler pipe outside the confines of the courtroom. Plaintiff's request, if granted, carries with it the high probability that prejudice, confusion, waste of time, or delay may result. Plaintiff's Motion in Limine is extremely brief and does not provide any detail as to what Plaintiff seeks to do with the subject pipe other than provide a demonstration to the jury. The subject pipe is in the possession of the Defendant and available to the Plaintiff. In order to alleviate any potential issues that might arise from a live demonstration to the jury, Defendant would suggest that Plaintiff videotape the demonstration prior to trial with Defendant's counsel present. To the extent Defendant

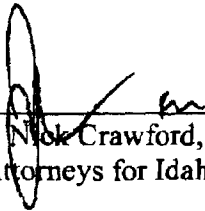
would have any objections to the demonstration, such objections could be raised with the Court prior to trial, thereby resolving any evidentiary issues that might arise with respect to Plaintiff's proposed demonstration. Otherwise, Defendant would object to a live demonstration on the grounds of Idaho Rule of Evidence 403. In summary, when applying the Rule 403 balancing test, the danger of unfair prejudice, confusion of the issues, undue delay, or misleading the jury would substantially outweigh any probative value of the proposed demonstration.

Defendants would note that because Plaintiff's Motion in Limine provides very little detail as to the proposed demonstration, Defendant is unable to articulate an objection to any specific aspect of the demonstration. Therefore, Defendant reserves the right to provide additional argument to support its opposition. Nonetheless, Defendant's position is that the proposed demonstration could result in problems which could be avoided by videotaping the demonstration ahead of trial and resolving any potential evidentiary issues that might arise prior to trial and outside the presence of the jury.

DATED this 14<sup>th</sup> day of April, 2010.

BRASSEY, WETHERELL & CRAWFORD, LLP

By

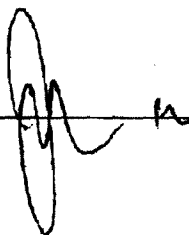
  
\_\_\_\_\_  
J. Nick Crawford, Of the Firm  
Attorneys for Idaho Power Company

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 14<sup>th</sup> day of April, 2010, I served a true and correct copy of the foregoing **OPPOSITION TO PLAINTIFF'S MOTION IN LIMINE** upon each of the following individuals by causing the same to be delivered by the method and to the addresses indicated below:

Kent D. Jensen  
2042 Overland  
P.O. Box 276  
Burley, Idaho 83318

- U.S. Mail, postage prepaid
- Hand-Delivered
- Overnight Mail
- Facsimile (208) 878-3368




---

J. Nick Crawford

FILED IN DISTRICT COURT  
CASE # \_\_\_\_\_

J. Nick Crawford, ISB No. 3220  
BRASSEY, WETHERELL & CRAWFORD, LLP  
203 W. Main Street  
P.O. Box 1009  
Boise, Idaho 83701-1009  
Telephone: (208) 344-7300  
Facsimile: (208) 344-7077

2010 APR 16 PM 4:47

DUANE S. [Signature] DEPUTY

Attorneys for Idaho Power Company

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA**

ISABEL ENRIQUEZ,

Plaintiff,

vs.

IDAHO POWER COMPANY,

Defendant.

Case No. CV 2009-34

**NOTICE OF SERVICE**

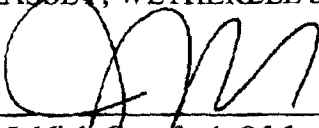
NOTICE IS HEREBY GIVEN that on the 16<sup>th</sup> day of April, 2010, DEFENDANT'S FIRST SUPPLEMENTAL RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS, together with a copy of this *Notice of Service*, were served upon:

Kent D. Jensen  
2042 Overland  
P.O. Box 276  
Burley, Idaho 83318  
(208) 878-3368

by transmitting the same via facsimile to the fax number listed above.

DATED this 16th day of April, 2010.

BRASSEY, WETHERELL & CRAWFORD, LLP

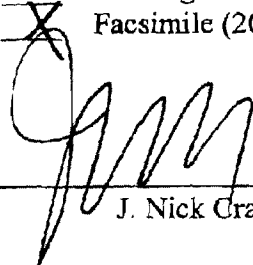
By   
\_\_\_\_\_  
J. Nick Crawford, Of the Firm  
Attorneys for Idaho Power Company

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 16th day of April, 2010, I served a true and correct copy of the foregoing NOTICE OF SERVICE upon each of the following individuals by causing the same to be delivered by the method and to the addresses indicated below:

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\_\_\_\_\_  
J. Nick Crawford

ORIGINAL

J. Nick Crawford, ISB No. 3220  
BRASSEY, WETHERELL & CRAWFORD, LLP  
203 W. Main Street  
P.O. Box 1009  
Boise, Idaho 83701-1009  
Telephone: (208) 344-7300  
Facsimile: (208) 344-7077

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2010 SEP 21 11:11  
D. J. ...  
30 ...

Attorneys for Idaho Power Company

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA**

ISABEL ENRIQUEZ,

Plaintiff,

vs.

IDAHO POWER COMPANY,

Defendant.

Case No. CV 2009-34

**DEFENDANT'S EXPERT WITNESS  
DISCLOSURE**

COMES NOW the above-captioned Defendant Idaho Power Company, by and through its counsel of record, and identifies the following experts for trial:

1. Bryan Hobson, P.E. Mr. Hobson is employed as an engineer in the Twin Falls office of Idaho Power. A copy of his report in this matter has previously been provided. He will testify in accordance with all of the matters set forth in the report, including factual matters regarding his investigation as well as the opinions and conclusions set forth therein. He will testify to the design and operation of the power line system at issue, as well as the operation of the R-10 recloser and its design as well. He will testify to his opinion that the accident could not have happened in the manner in which Plaintiff describes.



2. Adam Alexander, Ph.D. A copy of Dr. Alexander's report and curriculum vitae is attached hereto. He will testify in accordance with such report. He will testify to the totality of the factual analysis he has completed and all of the items he has reviewed and tested as set forth in his report. He will testify to the background information he gathered, his review of all of the evidence involved in this matter, his review of documents, the photographs that he took, his research as set forth in his report and he will testify as to the opinions he reached as a result of his investigation as set forth in his report. Print copies of the photographs attached to his report will follow.

DATED this 14<sup>th</sup> day of April, 2010.

BRASSEY, WETHERELL & CRAWFORD, LLP

By 

\_\_\_\_\_  
J. Nick Crawford, Of the Firm  
Attorneys for Idaho Power Company

**CERTIFICATE OF SERVICE**

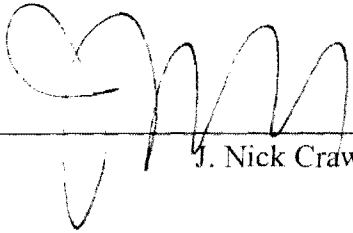
I HEREBY CERTIFY that on this 19<sup>th</sup> day of April, 2010, I served a true and correct copy of the foregoing DEFENDANT'S EXPERT WITNESS DISCLOSURE upon each of the following individuals by causing the same to be delivered by the method and to the addresses indicated below:

Kent D. Jensen  
2042 Overland  
P.O. Box 276  
Burley, Idaho 83318

- U.S. Mail, postage prepaid
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Honorable Michael R. Crabtree  
1459 Overland Avenue  
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- Facsimile

  
\_\_\_\_\_  
J. Nick Crawford



**Aleksander & Associates, P.A.**  
**Research and Consulting Forensic Engineers**

---

*Privileged and Confidential Information  
For the Purpose of Research or Litigation, Do Not Copy or Disseminate*

October 19, 2009

Mr. J. Nick Crawford  
Brassey, Wetherell & Crawford, LLP  
203 W Main Street  
Post Office Box 1009  
Boise Idaho, 83701

Ph 208.344.7300  
Fax 208.344.7077

Ref: Enriquez v. Idaho Power Company  
AAPA 100329

Dear Mr. Crawford,

I have concluded the site investigation, and have made a verbal report to you of my findings. As a follow on assignment I have been asked to prepare this preliminary report.

PRELIMINARY REPORT  
Enriquez v. Idaho Power Company

## **1 BACKGROUND**

Aleksander & Associates P.A. was retained on or about March 29, 2010 to assist in the investigation of a near-electrocution incident that occurred on September 25, 2007 at 10:58 am near Paul Idaho. The individual in the incident was identified as the plaintiff, Isabel Enriquez. He claimed to have been injured as a result of trying to pick up an irrigation pipe lying in an open field, in the course of performing his work.

I, Adam K. Aleksander arrived at the Idaho Power Facility (599 W 300 S Hayburn ID) near Burley Idaho at 11:40 am 01APR10. At that time I had no specific knowledge of the incident, nor had I seen any documents, photos, files or reports related to the incident.

I interviewed Jefferey Del Mitton, an Idaho Power Co. employee who had been dispatched to the scene on the morning of the incident. He identified the general location, the orientation of the field, the dispatch to the scene, and his actions to secure scene safety.

I then inspected the irrigation pipe and wire cable segments held as evidence in the warehouse of the Idaho Power Facility. The pipe ends and the wire segments were labeled with yellow Idaho Power Co. tags, attached by means of wire ties. The tags were not removed during the inspection.

I measured the pipe, recorded the features of the pipe, the various marks and burns on the pipe, examined the wires, and recorded these elements by means of field notes and photographs.

Jeffery Del Mitton then led me to the field where the incident occurred, located some 9.2 miles North West of the Idaho Power Facility, at 42.667250 N, 113.838083 W. Mr. Mitton identified the overhead wire splice and the irrigation pipe riser that mark the incident cite. He located the approximate irrigation pipe position, and that of the tractor at the scene.

The inspection was concluded at 1700 hr. On 02APR10 I reviewed the photos and file documents provided by Mr. Crawford at his offices.

## **2 INVESTIGATION**

### *The Site*

The incident occurred in an open field, planted in potatoes. The field is approximately 0.42 miles North to South, and 0.32 miles East to West, and is bounded by 850 West Rd, and 300 North Rd. in Minidoka County. There is a feedlot on the East boundary, and the field is bisected by a 19.9 KV Idaho Power Co. power line that runs West to East. The four wires (3 phases plus a neutral) are strung on poles that are approximately 320 feet on centers, and are approximately 23 feet above the grade. The power line is fed from switchgear approximately 0.25 miles West of the site, and energizes pump equipment East of the site.

There is a buried irrigation pipe under the power line, with risers that protrude above the grade. These are spaced about 50 feet apart, and provide attachment points for irrigation equipment that is used in these fields.

There are no obstructions, trees buildings, or other features that prevent a clear view of the area.

### *The Irrigation Pipe*

The irrigation pipe is made of aluminum, with a nominal diameter of 3 inches, a wall thickness of 0.060 inches, and an overall length of 25.9 feet. The pipe weighs approximately 20 pounds. One end is fitted with a band and latch connection device, the other end is open.

Although there is a slight bow to the overall pipe, the pipe is essentially straight, with no significant deformities, and appears intact, other than the arc-flash damage.

### *Arc-Flash Marks*

There are arc-flash burn marks on the pipe surface, as well as arc-flash through holes, concentrated on the ends.

For the purposes of the report the following terms are used:

#### **Pipe Ground End:**

The end of the pipe that contacted the ground, the pipe end is open. Labeled as "East End" and "Ground End" and "Do Not Discard".

#### **Pipe Line End:**

The end of the pipe that contacted the overhead wire, the pipe end has a band and latch. The latch is tagged "Line End" and "Do not Discard".

Arc-flash damage is concentrated in the first three and a half feet from the Ground End, and in the last two feet at the Line End. These are documented in the notes and photographs. An examination of the entire length of the pipe, all around the circumference, showed no other arc-flash damage, except for the areas marked "hand" by a prior investigator.

The arc-flash marks at the Ground End are either round holes that penetrate the pipe, or are round weld puddles of melted metal.

The arc-flash marks at the Wire End are either holes that penetrate the pipe, or weld puddles on the surface, and include one prominent seven inch section of arc-flash burn due to a sliding contact. There are also prominent arc-flash marks on the latch mechanism.

#### *Hand Marks*

There are discolored areas at approximately 5.7 feet and 6.7 feet from the Ground End of the pipe. The pattern is consistent in size and shape with a hand palm and finger contact, and a microscopic examination shows multiple arc-flash burns and pits on the pipe surface. The contact areas are offset by approximately 180 degrees.

#### *Transmission Wire Cable Segments*

There were two tagged transmission wire cable segments attached to the pipe by means of electrical tape. These were removed from the pipe and examined independently. The short section (about a foot) was labeled "West Side". The end near the tag was arc-flash burned through. The end away from the tag was cut with a wire cutter.

The long section (about three feet) was labeled "East Side". The end near the tag was arc-flash burned through. The end away from the tag was cut with a wire cutter. There was a discontinuous arc-flash burn along the wire section caused by sliding contact, that extended for about 24 inches.

The long and short segments were removed from the transmission lines by Idaho Power at the time of the incident and subsequent repairs. Idaho Power tagged these cable segments to indicate their orientation at the scene.

The transmission cable used on this installation is called is #4ASCR. The transmission cables are made up of multiple individual aluminum wires wrapped around a core consisting of a single steel wire.

A microscopic examination of the burned ends of both cable segments clearly identified the characteristic bead formed on the end of the individual wires by molten metal. Also, the opposite (cut) end of each cable was microscopically examined. The use of cable or wire cutters was confirmed, as the tool marks were clearly visible across the cut ends.

#### *Site Investigation*

The approximate location of the pipe and the tractor was marked in the field by Jeffrey Mitton by means of traffic cones. The irrigation riser was identified. The transmission cable splice point was identified. The height of the transmission line above grade was measured and recorded at approximately 23 feet.

#### *Testing*

A test was performed at the Idaho Power building to determine if there was any impediment to lifting the pipe. Although the pipe is long, it is relatively light, and can be readily handled by one person of average stature and strength. The pipe can be raised well above the horizontal, even when grasped by only the last six feet, without contacting the ground.

In a subsequent test at the office of Aleksander & Associates P.A., a similar exemplar three inch irrigation pipe was also lifted. By placing one end in contact with the ground the pipe (in this case a 20 foot segment) was easily raised to a full vertical position. Note was made of the hand positions. These hand positions were at approximately 5 and 6 feet above the pipe end, and were separated by about 180 degrees. This position also allowed the vertical shaking of the pipe, in a motion that would assist in dislodging any dirt or debris lodged in the pipe. It was also noted that the knees, and the head were in close proximity to the pipe. Biomechanical and ergonomic adjustments for the stature of the Plaintiff (Height 170 cm (5'-7) weight 111.8 kg (246 lb)) were considered.

### 3 DOCUMENTS

The following documents were read or reviewed during the preparation of this report.

#### Depositions

Isabel Enriquez  
Jeffrey Del Mitton  
Larry Kamm  
Brent Browning  
Joseph Kerl

#### File Reports

Defendant's Responses to Plaintiff's First Set of Interrogatories  
Minidoka County Sheriff's Incident Report  
Intermountain Claims Statements Brent Browning, Joe Kerl  
Trip Close Activity Report 9/25/2007  
Idaho Power Work Order 27268788 & Report  
Univ of Utah Hospital Operative Report & Burn Diagrams  
Univ of Utah Hospital Discharge Summary  
HSE Working Safely near overhead power lines  
Idaho Power / Idaho PUC Letter  
Weather Data  
Idaho EMS Report  
Minidoka Memorial Hospital ER Report  
Hospital Photos B&W Injuries to Plaintiff Enriquez  
Lawrence Kamm Report 4 Feb2010  
Idaho Power Report Bryan Hobson

#### Photos

Idaho Power Site Photos 09-25-2007  
Bryan Hobson Photos  
Chad Hafer Photos (Duplicates of Idaho Power photos)  
Jeff Mitton Photos (with Duplicates)

Although this list is believed to be accurate, this report incorporates other files and photos that were reviewed in the offices of Brassey Wetherell & Crawford LLP, and may be relied upon.

#### **4 PLAINTIFF ASSERTIONS**

Plaintiff Enriquez.

In his deposition, he admits that he lost consciousness, and that he has only fragmentary and unclear recollections of the event (pp 37-40). He cannot recall a power line on the ground (pp 42) on his arrival at the irrigation pipe, or any movement of a line on the ground (pp 73) but does recall lines down after he re-entered the tractor to await help (pp 45). He reports burns to his hands, head, and shoulders, and left knee, and feet. (pp 53-54).

Plaintiff's Expert Kamm

Kamm did not inspect the incident site, nor did he look at the actual cable wire segments and irrigation pipe prior to issuing his report dated 4 February 2010. In his deposition (3/1910) Kamm admits that he relies on photographs (pp12) as the basis of his opinions in this case.

Kamm admits he has no information as to where the irrigation pipe burn marks are located along the pipe (pp 25-26 "I don't know, I don't know" ).

Kamm relies on the concept that one side of the cable in the photographs shows burn damage and the other does not (pp14-15) based solely on his interpretation of a photograph. His entire theory is that an unknown cause (pp 21 LL14) caused the wire to break, and that it fell to the ground, resulting in burn damage to one end, damage to the pipe, damage to the plaintiff, and yet went unnoticed by the Idaho Power instrumentation and protective relay system.

Kamm goes on to say that if the pipe were in fact to be lifted into the wire (something he calls "an untrue scenario" pp 16 LL 25) both ends would show burn marks and fall to the ground (pp 17).

Kamm either did not know that specific timestamp records exist of the instant that the ground fault occurred or of the trip of relay Paul 43-R-10 (pp 28 LL 23 to pp 31). Kamm also dismissed the deposition testimony of Jeff Mitton (Mitton depo pp 50 LL 1) and the documentary photographic evidence (Hafer Photos) that neither end of the downed cable was in contact with the irrigation pipe.

Kamm also admits there would be burn marks on both of the plaintiff's hands only if he touched the pipe with both hands simultaneously (pp 28 LL1).

#### **5 Discussion**

The literature is replete with articles that point out the dangers of working under power lines and means to mitigate the hazard. In a Washington State study (Public Health Rep. 1985 May-Jun; 100(3): 325-328.) from 1950 to 1979, 23 farmers were killed by electrocution while working near irrigation pipes that came into contact with overhead electrical lines. In the period of 1970-79 there were 15 irrigation pipe-associated (IPA) electrocutions among farmers and 15 among farm workers. There are many more similar cases, some of which are attached in the appendix.

The reason persons lift pipes overhead is two fold. Primarily it is to shake out debris, dirt, vermin, and other things that can plug up a line. Secondly, the aluminum irrigation pipes are light enough to do so. Otherwise there is no reason not to hold the pipe horizontal when moving, especially in an open field.

As is often the case in accidents, the likely answer as to why it happened relies on a strong statistical base of prior similar events, and the physical evidence, rather than on conjectures, made up stories, "it just happened" unsupported theories, and plain misrepresentations.

After carefully considering all the physical evidence, the site photos, and documents in the case, this investigation can only deduce and conclude that the Plaintiff lifted the pipe into the power lines. In fact, all the physical, timestamp, and damage evidence specifically supports the following fact pattern:

a) Until 10:58:49 am on 25SEP2007 there was no power problem, per the Idaho Power timestamp (Sentry Archive Data Trip Close Activity Report 9/25/2007 Substation Paul, Feeder Paul-043, Sentry ID Number 52557 Device R-10 ).

b) At 10:58:49.695 am a fault occurred tripping R-10 and starting an automatic shut-down/ restart/ shutdown/ restart/ final shutdown sequence that absolutely disconnected power to that line section by 10:58:54.297, a total period of 4.602 seconds.

Per the Idaho Power Log :

Power OFF	at 10:58:49.695
Power ON	for 0.698 sec duration
Power OFF	for 1.927 sec duration
Power ON	for 0.415 sec duration
Power OFF	at 10:58:54.297 until reset by Idaho Power at 12:45 pm.

(note: 0.xxx time is milliseconds)

c) Just prior to 10:58:49 am Plaintiff Enriquez approached the pipe, bent down to pick it up and positioned the "Ground" end against the soil, to bring the pipe into a near vertical position.

d) His hands were in simultaneous contact with and on opposite sides of the pipe, separated by about one vertical foot, as he planned to shake the pipe up and down to clear debris from the pipe. The pipe was in close proximity to his head, his knees, and his feet were on the ground.

e) Plaintiff Enriquez held the pipe as it made a sliding contact with the live 19.9 KV line and triggered an instantaneous explosive arc-flash event.

f) The marks on the "Line" end of the pipe coincide with the sliding contact mark on the long "East" line segment.

g) A final burn through occurred, most likely at the latch mechanism as it caught on the line. This may have occurred on the first "ON" interval after the initial contact.

h) The arc-flash current went through the pipe and went to ground at the "Ground" end of the pipe, as evidenced by numerous holes blown through the lower two feet of pipe. The weeds and vines provided arc paths to ground causing the pattern of holes at the "Ground" end. Note the burns in the weeds/vines/soil at the "Ground" end only.

i) Some of the arc energy shunted through the plaintiff, burning his hands and exiting through the medial aspects of his feet. The exit wounds through the feet were significantly larger than the entry wounds through the head, hands and knees, as is consistent and expected in electrical arc-flash injuries.

j) Some of the energy went through his head, and some through his left knee. The preponderance of the energy likely went through the metal pipe to ground. A direct shock of 19.9 KV is rarely survivable, even with fast acting protective relays.

k) The plaintiff lost consciousness and likely suffered some short term memory loss. An electrical shock through the head can cause unconsciousness and memory loss.



l) The line separated and fell to the ground, away from contact with the pipe. Both the EAST and WEST ends of the line were burned at the separation point. Both EAST and WEST ends were completely de-energized.

m) The Plaintiff regained consciousness and observed the fallen lines after he sat down in the cab of the tractor.

n) The record indicates that at 11:30 AM 25SEP07 911 call, at 11:45 EMT on scene, IP on scene.

o) Idaho Power repair crews isolate the system, cut off the burned cable ends to preserve the evidence. The cable ends, and the pipe are tagged and stored. Power was restored at 12:45 pm.

## 6 ILLUSTRATIONS

As a part of this investigation photographs were taken of the irrigation pipe, the cable segments, and the site location. These are appended and included as a part of this report. Furthermore, site evidentiary photographs taken by others on the day of the incident are included as part of this report.

The following illustrations are presented for clarity.

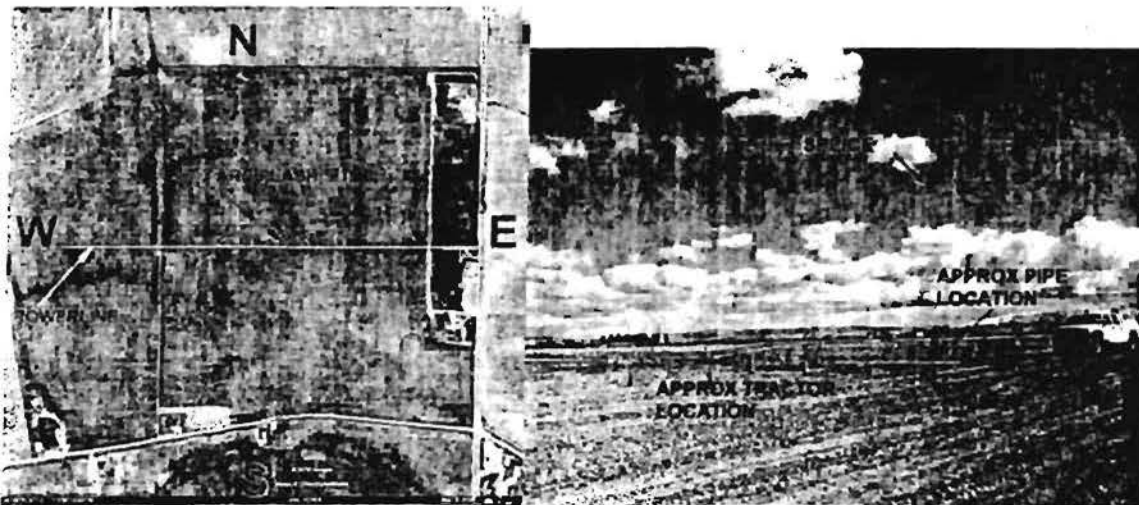


Photo 001

Potato Field at 300 North Rd and 850 West Rd near Paul, Idaho.



Photo 002  
Clear distinction between arc-flash burned wires and wires cut with cable cutters.

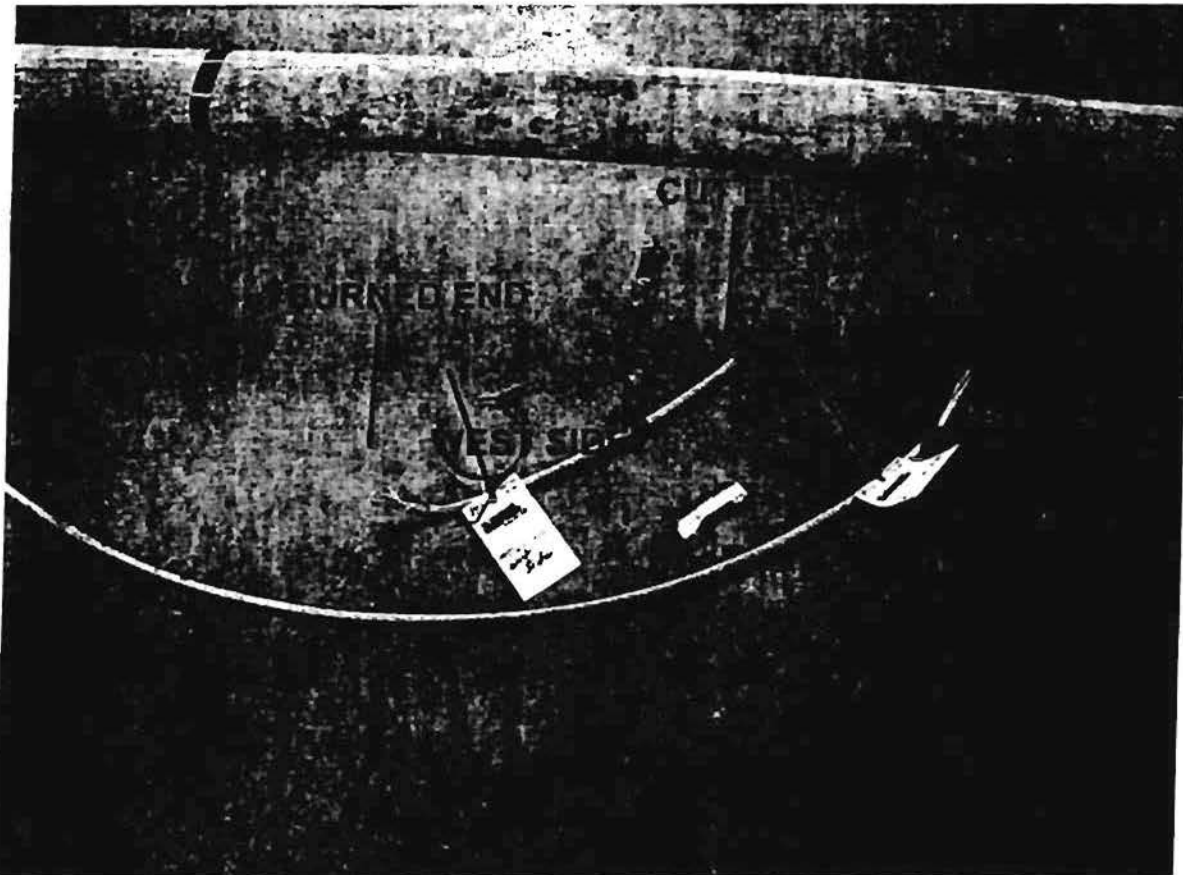


Photo 003  
East Side and West Side cable sections showing burned and cuts ends.

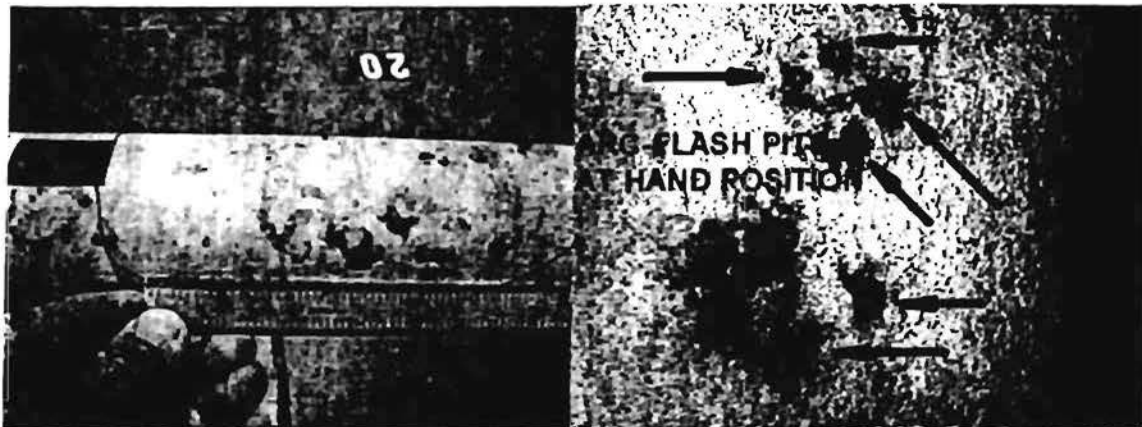


Photo 004  
Hand contact area showing detail of arc-flash pits in pipe surface.

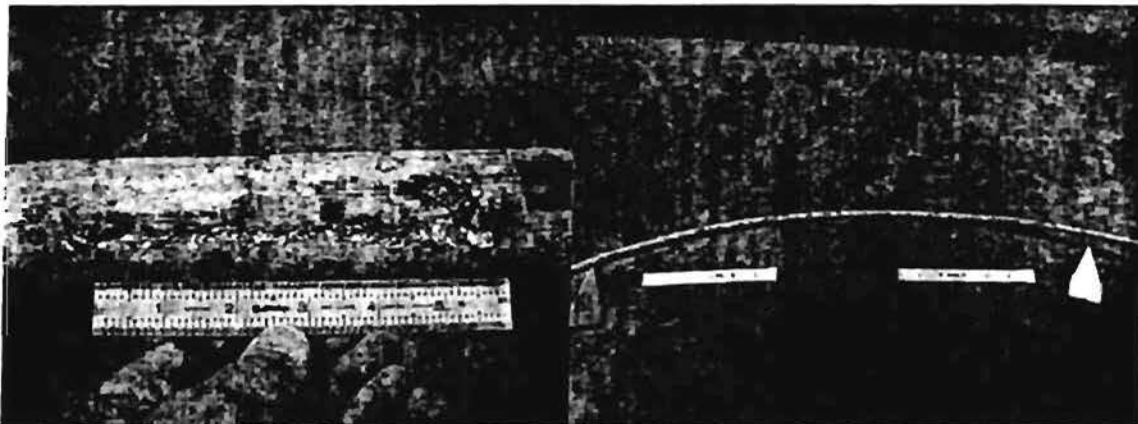


Photo 005  
Extended arc-flash burns on pipe and corresponding arc-flash burns on cable due to sliding contact.

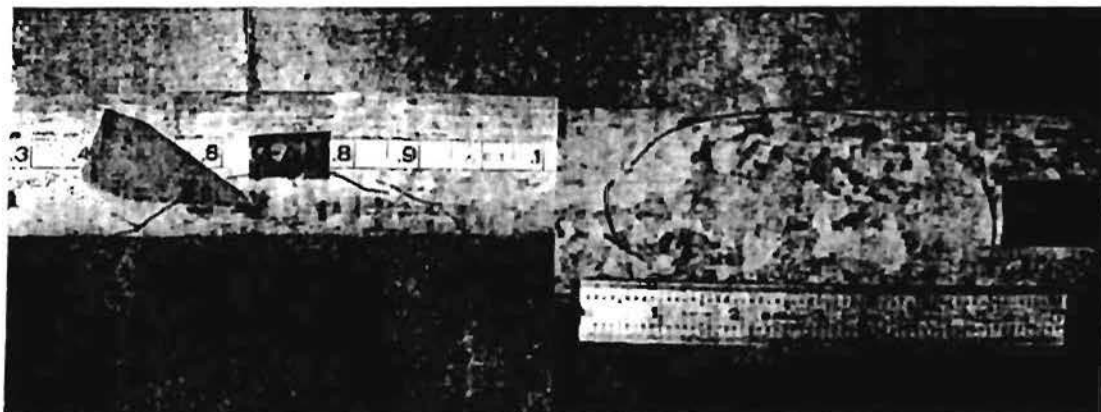


Photo 006  
Hand positions at 5.7 feet from ground end starting at 0 Degrees, and at 6.75 feet at 180 degrees.

## **7 CORE OPINIONS**

The following are the core opinions of Adam K. Aleksander PhD PE CSP, and are based on the review of the case documents, independent investigation, site investigation, detailed evidence inspection, the above discussions, testing, and are based on experience, education and engineering knowledge to a high degree of engineering certainty.

- a) The Plaintiff and his expert do not present a coherent theory, as it is entirely unsupported by the evidence.
- b) The Plaintiff and his expert lack any logical explanation whatsoever for the pattern of events.
- c) The Plaintiff likely suffered neurological deficits that in concert with an unknown period of unconsciousness make his recollection of events factually unreliable.
- d) The Plaintiff's expert Kamm failed to adequately investigate the site, the physical evidence, the photographs, and came to unsupportable and unfounded conclusions and opinions.
- e) The Plaintiff's expert Kamm based his entire theory and opinion(s) on a flawed and erroneous observation, with no engineering foundation or evidence, and should be thrown out.
- f) On September 25, 2007 at 10:58 am the Plaintiff picked up the irrigation pipe to dislodge debris and made contact with the overhead power line energized at 19.9 KV.
- g) The physical evidence, documentary evidence, photographic evidence, engineering and testing analysis, all support the conclusion that the Plaintiff placed the pipe into the overhead power line.

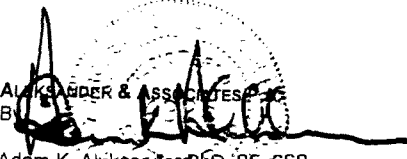
## **8 FURTHER RESEARCH**

This preliminary report was and is based on information that is known to ALEKSANDER & ASSOCIATES, P.A. (AAPA) and it's principal investigator, Adam K. Aleksander at the present time. It is the understanding of AAPA that the parties are continuing to try and discover information. AAPA may therefore learn additional information which will lead AAPA to revise or supplement this report, and AAPA expressly reserves the right to do so. In addition, AAPA reserves the right to revise and supplement this report based upon information that may hereafter be provided to AAPA, or which becomes available to AAPA through continued investigation, research or study.

**9 SUPPLEMENT**

AAPA reserves the right to revise and supplement this report in order to clarify, add, or complete questions or statements at deposition, or at the request of counsel for clarification, organization or completeness of any matters pertaining to this investigation or report.

Sincerely,

  
ALEKSANDER & ASSOCIATES, P.A.  
B  
Adam K. Aleksander PhD, PE, CSP

Adam K. Aleksander PhD, PE, CSP

Sr / AKA

cc: File B1

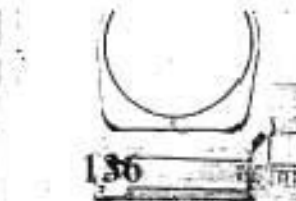
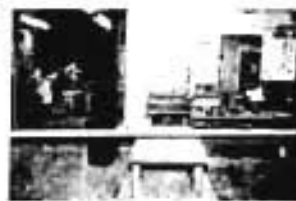
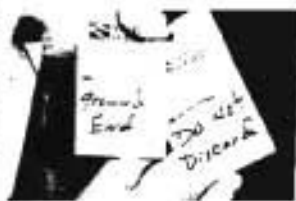
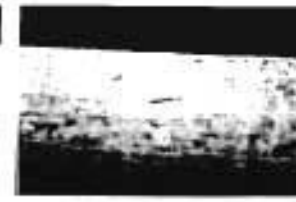
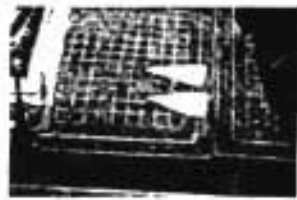
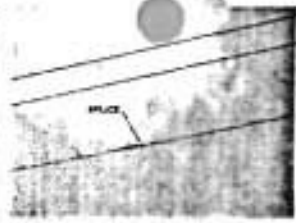
Encl: AAPA Site Photos

State of Idaho # 4925

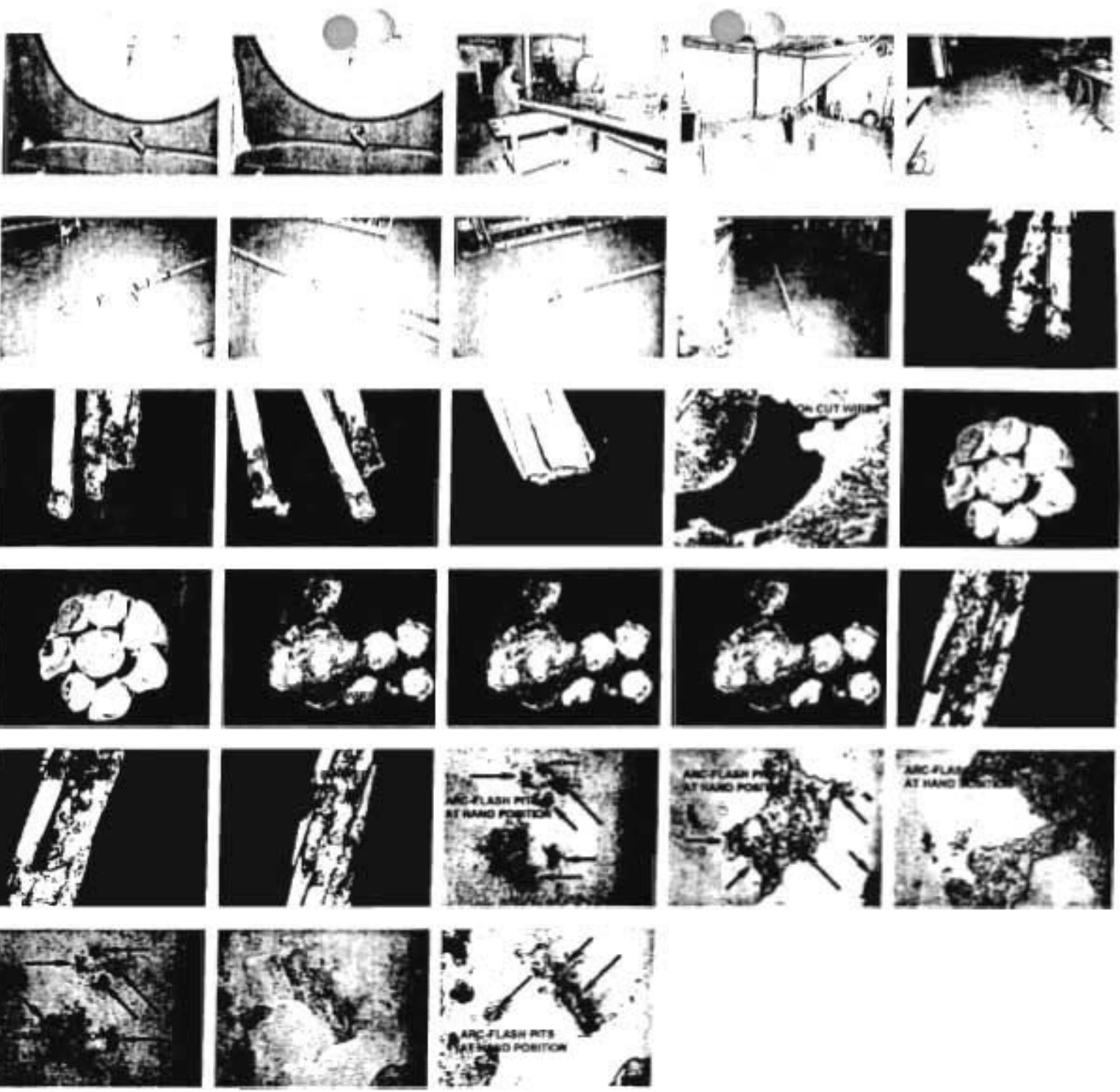
Licensed Registered Professional Engineer













## ADAM K. ALEKSANDER, Ph.D., P.E., C.S.P.

**Education**

- 1995 Ph.D., **Texas A & M University**, College Station, TX  
Industrial Engineering, Major: Human Factors Engineering, Safety Engineering
- 1980 Master of Engineering, **University of Colorado**, Boulder, CO.  
Major: Mechanical Engineering Design and Economic Evaluation
- 1972 Bachelor of Science, Mechanical Engineering, **California State University, San Jose, CA.**  
Major: Machine Design, (Society of Automotive Engineers Achievement Award)
- 1995 Industrial Fire Fighting Certificate, Brayton Field Training Center, **Texas A&M University**
- 1985 Business Law Course, Boise State University, Boise, ID
- 1964 Loyola High School, Montreal, P.Q., Canada

**Experience**

Diversified Engineering background with specific experience in Manufacturing, Cost Analysis, Consulting Engineering, Engineering Sales, Project Management, Product Development, Research, Lecturing, and Technical / Litigation Investigations of accidents and equipment failures.

- Precision Energy Services Inc., Hayden ID,** November 2006 to present  
Vice President Engineering & Research
- Aleksander & Associates, P. A.** Boise, ID March 1987 to present  
President, Principal Consulting Engineer  
Technical Studies and Forensic Investigations
- Texas A&M University,** College Station, TX January to May 1995  
Lecturer, Department of Industrial Engineering Faculty  
System Safety Engineering
- Conveyor Engineering Inc.** Boise, ID July 1980 to March 1987  
Manager of Business Development, Project Engineer, Project Manager  
Engineered Heavy Material Handling Systems for the Mining and Forest Industries  
Engineering Investigator, Investigations of Accidents and Failures
- AMF - Head Division,** Boulder, CO November 1972 to June 1980  
Senior Manufacturing Engineer, Ski and Tennis Products
- Container Corporation of America, Inc.** Santa Clara, CA September 1971 to October 1972  
Jr. Engineer, Maintenance Engineering Group, Recycled Paper Kraft Board Plant

**Professional Affiliations**

Affiliate Associate Professor, Department of Mechanical Engineering, University of Idaho  
Licensed Professional Engineer, 1984, State of Idaho ME #4925,  
Licensed Professional Engineer, 1999, State of Utah, #381067  
Certified Safety Professional, 1994, CSP #12285, Board of Certified Safety Professionals  
American Society of Mechanical Engineers, Member since 1982  
Human Factors and Ergonomics Society, Member since 1991  
Institute of Industrial Engineers, Member since 1995  
Society of Automotive Engineers, Member since 2003  
National Society of Professional Engineers, Member since 1984  
American Academy of Forensic Sciences, Fellow; Secretary, Program Chair, Engineering Sciences Section  
Chairman 2000, Awards Chair 2004, Secretary, Member, AAFS Good Forensic Practices Committee 1999-2002  
AAFS Engineering Sciences Section Andrew Payne Special Achievement Award 2004  
AAFS Engineering Sciences Section Founder's Award 2010  
American Society of Safety Engineers, Professional Member, since 1996

National Academy of Forensic Engineers, Senior Member, since 1996  
 ASTM Subcommittee Member, E-30 Forensic Sciences, 1997-2005, E30.05 Subcommittee Chairman 2005-2008  
 ASTM Main Committee E-58 Forensic Engineering, Chairman, and Charter Founding Member 2008-2010

### **Publications and Presentations**

"**Estimating of Manufacturing Joint Costs**", Technical Paper MM80-912 Society of Manufacturing Engineers, 1980, reprinted in "Manufacturing Cost Estimating", P.F.Ostwald, SME ISBN 0872630536  
 "**Explosion of a Hydro-Pneumatic Storage Tank**", presented at American Academy of Forensic Sciences, February 1990  
 "**Collapse of a Conveyor Structure, and a Conveyor Nip Point Fatality**" paper presented at American Academy of Forensic Sciences, February 1991  
 "**Human Factors and Forensic Engineering**" paper presented at American Academy of Forensic Sciences, February 1994  
 "**Visual Correctness via a PC; A Model for Visual Courtroom Presentations**" paper presented at American Academy of Forensic Sciences, February 1995  
 "**Glare Mitigation in Night Driving Using Partially-Tinted Lenses**", 1995 Dissertation, Texas A&M University Paper Presented at Vision in Vehicles VII Conference, Marseilles, France, September 1997  
 "**PRT, Perception Reaction Time, Fact or Fiction**", paper presented at AAFS, February 1997  
 Invited Speaker at Iowa State University/Stark rpx seminar on "**Perception, Reaction and Conspicuity in Driving**", Iowa City IA, November 1997, published 2003.  
 Invited Speaker at Idaho Trial Lawyers Association seminar on "**Technology and Persuasion**", Moscow ID, Nov. 1997  
 "**New Perspectives in Forensic Engineering; Convergence of Design, Ergonomics, and Safety Engineering**" paper presented at American Academy of Forensic Sciences, February 1998  
 "**A Human Factors Approach to Risk Management**" Invited speaker, Risk Insurance Mgmt Society, Sun Valley Id, Aug. 1999  
 "**Homicide by Water Injection**", paper presented at American Academy of Forensic Sciences, February 1999  
 "**Skin Penetration by Water Jet**" presented at International Academy of Forensic Sciences, Aug. 1999, AAFS Feb 2000.  
 "**Applied Industrial Ergonomics**" Two day seminar presented for University of Idaho, Mar. '00, in Boise ID.  
 "**Forensic Engineering and Ethics, Us vs. Them**" Invited speaker Idaho Society of Prof. Engineers meeting Apr. 2000  
 "**Ergonomics Issues in Workers Comp**" Invited speaker, Penland/Lorimer seminar, June '00, Boise ID.  
 "**Designing Safe Products for Consumers and Industry**" Two day seminar presented for Univ. of Idaho, June 2000.  
 "**Geothermal Plants and Forced Outage Analysis Methodologies**" Geothermal Resources Council Annual Meeting, San Francisco CA September 2000  
 "**Forensic Engineering Issues in Glare Environments**" NAFE Seminar, San Diego CA Jan. 2005, published in NAFE Journal 2007  
 "**Go Cart Fatality**" paper presented at American Academy of Forensic Sciences, New Orleans, February 2005  
 "**Forensic Engineering Analysis of TASER Product Liability Issues**" NAFE Seminar, Chicago IL Jul 2005  
 "**Third World Chlorine System Safety Issues**" Chlorine Institute Seminar, Tampa FL, Jan. 2006  
 "**Forensic Engineering Analysis of TASER Issues and Safety Warnings**" American Academy of Forensic Sciences, Seattle, February 2006  
 "**Defective Jack Causes Fatal Collapse of Overpass Falsework**" American Academy of Forensic Sciences, Seattle, February 2006  
 "**Human Factors: Industrial Incidents**", in Wiley Encyclopedia of Forensic Science, Jamieson, A., Moenssens, A., (eds). John Wiley & Sons Ltd., Chichester, UK, pp1483-1495, 2009

### **Forensic Engineering Technical Investigations 1972-2010**

- **Investigations** of engineering systems and components, to determine proximate cause of failure, and contributing factors, equipment failures, manufacturing anomalies, accidents, event reconstruction, technical interpretation of documents, drawings, and testimony, documentation, photography, and exhibit preparation.
- **Services** include photogrammetry, microscopy, x-ray, and laboratory disassembly and testing, engineering tests, experimental design and statistical analysis. Tests provided include headlamp and tail lamp filament analysis, metallurgical fracture analysis, photo and video documentation and analysis.

**Product Liability** (design, manufacturing and marketing defects, involving damage, injury or fatality)

Go cart nip point fatality, washing machine amputation, amputations in punch presses, hydro-pneumatic tank explosion, agricultural truck amputation, airport conveyors, biscuit cutter, amusement rides, water-jet fatality, slips & trips, lead rope snap, exercise machine failure, document burn injuries, folding chair collapse, concrete anchor system, nail gun injury, prosthesis bolt failure, steam iron electrocution, pool light burn, design of warnings and instructions, automotive failures and crash related phenomena, measurement of ECDs (TASER®).

**Equipment Failures** (proximal cause of failure with contributing factors)

Farm equipment, failed engines, mining conveyors, power plant systems, belt conveyors, potato processing system, sewer line, tire shredder processing analysis, failed brake die, failed conveyor bearing, RV axle repair failure, trailer suspension system failure, trailer separation, dump truck telescoping cylinder failure, brake system, headlight filament analysis, service station gasoline tank leak, bicycle tube failures, Tub Grinder track defect, hay press system dual amputation, hay press system hydraulic system, Steam Turbine Generator building fire C&O, Heat Exchanger System failure, Potato Piler Hydraulics, Tub Grinder Fire.

**Construction, OSHA, and Safety Engineering.** (regulatory and safety issues)

Falling loads, construction crushing accident, tank cleanout confined space injury, ladder falls, construction claims, compactor fatality, roof collapse fatality, forklift fatality, Lock Out Tag Out Failure, falling object, 13.8KV Arc Flash.

**Human Factors, Visibility, Ergonomics, and General Research Issues** (product usability, warnings, perception), highway visibility, night visibility, bicycle accidents, Plant OSHA Safety Analysis, Human Factors and Safety Analysis of Peroxide Facility, Five part plant wide Ergonomics Program, ECD Warnings development (TASER®) .

**Sports Related Experience**

Experienced cyclist, skier, kayaker and sailor. Senior Alpine Patroller, Member National Ski Patrol, Bogus Basin Alpine Patroller of the Year, 2007, Current CPR card, Outdoor Emergency Care Instructor, Outdoor Emergency Transportation Instructor, Secretary and Board of Directors Bogus Basin Ski Patrol, volunteer Special Olympics Winter Games, Bogus Basin ID Feb 2009, 2010 Winter Olympic Games Vancouver Canada, Medical Services, Ski Patrol-Athlete Care Feb 2010.

**Confidential Projects for Clients**

Significant projects have been undertaken for confidential clients, working with their attorneys on sensitive research issues. 1995-2007

**Industrial Projects 1971-2010**

2009	Investigation of 13.8KV arc flash injury incident at utility, investigation of conveyor belt failure.
2007/9	Chlorine gas dispensing system for plant seawater cooling system, design, furnish, install, and train.
2007	Support in litigation issues at power plant construction sites, demolition of thermal stack at U of Idaho.
2006/7	Chlorine system ton container on-site storage system, secure modular transportation system proposal.
2005	Conveyor material failure, Scale and Feeder calibration, Chlorine Transportation Risk Assessment, Quezon, PI
2005	Refinery Delayed Coker Unit Safety Analysis
2005	Taser ECD Related Research and Design of Warnings and Instructions
2005	Power Plant ASTM coal sampling D&F, and data systems, Quezon, PI
2004	Power Plant Chlorination system analysis HAZOP and PSM RPM Program, Quezon, PI
2003	Completion of hazardous gas monitoring and site safety systems at shaft well development project. SS, UT
2002	Research and design coordination of proposed geothermal plant Vapor Recovery Unit systems. Continued methane safety responsibility at Cogeneration well development project. SS, UT
2001	Planning and execution of penetrating a sealed 1000ft vertical methane filled mineshaft, with instrumentation, video and data acquisition, sample recovery and site safety coordination. Site project coordination with client attorney, city, state and federal regulatory agencies. SS, UT
2000	Investigations of geothermal plant anomalies and recuperator performance studies, NV, and sorbent limestone production studies for CFB plants, UT. Performance evaluation of geothermal plant VRU system. Investigation of ESP precipitator performance issues at RB waste wood plant., CA
1999-01	Investigation of water utilization at power plant in Utah, modeling, well issues, study of proposed opening of a sealed mineshaft.
1996-98	Cogeneration power plant, research issues related to EPA, DOJ actions, and analysis of plant performance problems related to sorbent quality and material handling, \$1.5+ M project award for Pilot Plant and related plant modification projects. Coal barn storage analysis, CA.
1986	Developed conceptual and proposal documents, administered design and furnish contracts for \$1 M Pegasus and Rochester gold ore heap leach crushing and conveying projects near Lovelock, NV. Developed application software for CEMA belt conveyor calculations (still in use 2006).

- 1985-86 Project Manager, Dillingham-Cerrillos Dam Project, Puerto Rico, managed engineering design and furnishing of \$3.5 M dollars of material handling equipment, structural steel, conveyors, foundations and primary crusher concrete structure, MCC's, control panels, programmable control system, including 14,000 hours of engineering design effort.
- 1985 Project Engineer, site installation of vortex shedding modifications to a 200 ft. bent structure at the Caballo mine, Gillette, WY.
- 1984-85 Project Engineer, Chino Mines Conveyor System Study to resolve dynamic loading problems.
- 1984 Project Engineer, Conceptual Design, Proposal, and Award of \$.9 M wood chip conveyor system at Longview Fibre Co. LV, WA.
- 1980 Capital Cost study and technical evaluation of proposed reaction injection ski molding (RIM) system and equipment selection for new products.
- 1979-80 Responsible for the redesign of all ski tooling to critical molding parameters developed through quality control data.
- 1972-80 On the hill ski, boot, and binding technical tester, AMF-Head Manufacturing and R&D Engineering.
- 1977-78 Designed an automated production system for polyurethane ski foam cores, with individual air actuated mold assemblies in a recirculating curing oven.
- 1977 Redesign of plant water cooling and heating systems.
- 1975-77 Complete redesign of forty hydraulic press cavities used to manufacture fiber reinforced plastic (FRP) skis. Development of measurement methods and statistical process controls which substantially changed traditional molding operations concepts. Commendation letter. Design of ski production machines and fixtures.
- 1971 Paper Mill expansion CCA-Santa Clara, CA Jr engineer, supervised mill pump piping and kraft board sheeter equipment installations.

This document issued to: Nick Crawford BW&C LLC Date: 29MAR10 File: 100329

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2 Kent D. Jensen Law Office, P. C.  
3 2042 Overland  
4 P.O. Box 276  
5 Burley, Idaho 83318  
6 Telephone: (208) 878-3366  
7 Fax: (208) 878-3368  
8 Attorneys for Plaintiff

2010 APR 22 AM 11:39

DUANE  
DEPUTY

ORIGINAL

6 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
7 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

8 ISABEL ENRIQUEZ ,

9 Plaintiff,

10 vs.

11 IDAHO POWER COMPANY,

12 Defendant

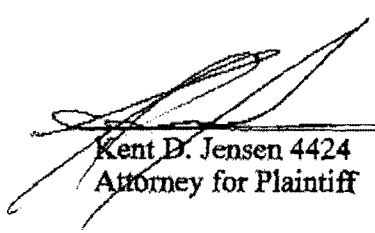
Case No.: CV 2009- 34

NOTICE OF DEPOSITION OF ADAM  
ALEXANDER

14 TO: ADAM ALEXANDER, PH.D.

15 YOU ARE HEREBY commanded to appear for your deposition to be taken before a  
16 Certified Court Reporter and Notary Public at the building of Brassey, Wetherell & Crawford,  
17 204 W Main Street, Boise Idaho April 26, 2010 at 8:30 A.M, at which time and place you are  
18 notified to appear and take such part in the examination as may deem proper.

19 Dated this 22<sup>nd</sup> day of April, 2010

21   
22 Kent D. Jensen 4424  
23 Attorney for Plaintiff  
24  
25

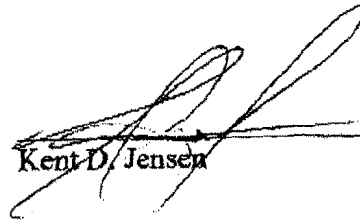
CERTIFICATE OF SERVICE

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I hereby certify that on the 27<sup>th</sup> day of April 2010, I served the foregoing document by depositing a copy thereof in the United States Mail, postage prepaid, addressed as follows:

J. Nick Crawford  
PO Box 1009  
Boise, ID 83701-1009

M&M Court Reporting  
PO 2636  
Boise, ID 83701-2636  
Fax: 208-345-8800

  
Kent D. Jensen

1 Kent D. Jensen (ISB #4424)  
2 Kent D. Jensen Law Office, P. C.  
3 2042 Overland  
4 P.O. Box 276  
5 Burley, Idaho 83318  
6 Telephone: (208) 878-3366  
7 Fax:(208) 878-3368

2010 APR 23 AM 10:39

DUANE S. JENSEN  
DEPUTY

8 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
9 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

6 ISABEL ENRIQUEZ ,

Case No.: CV 2009- 34

7 Plaintiff,

NOTICE OF DEPOSITION OF BRYAN  
HOBSON

8 vs.

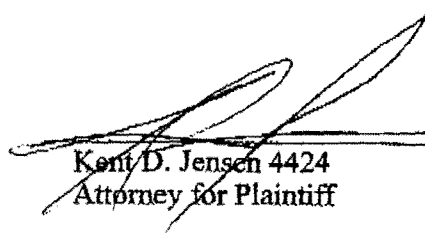
9 IDAHO POWER COMPANY,

10 Defendant

11 TO: BRYAN HOBSON P.E.

12 YOU ARE HEREBY commanded to appear for your deposition to be taken before a  
13 Certified Court Reporter and Notary Public at the building of Idaho Power at 599 W 300 S  
14 Heyburn, Idaho, on April 27<sup>th</sup>, at 9:30 A.M, at which time and place you are notified to appear  
15 and take such part in the examination as may deem proper.

16 Dated this 25<sup>th</sup> day of April, 2010

17  
18   
19 Kent D. Jensen 4424  
Attorney for Plaintiff

20 CERTIFICATE OF SERVICE

21 I hereby certify that on the 25<sup>th</sup> day of April 2010, I served the foregoing document by  
22 depositing a copy thereof in the United States Mail, postage prepaid, addressed as follows:

23 J. Nick Crawford  
24 PO Box 1009  
25 Boise, ID 83701-1009

M&M Court Reporting  
PO 2636  
Boise, ID 83701-2636  
Fax: 208-345-8800

  
Kent D. Jensen



COURT MINUTES

CV-2009-0000034

Isabel Enriquez vs. Idaho Power Company

Hearing type: Motion

Hearing date: 4/27/2010

Time: 11:04 am

Judge: Jonathan Brody

Courtroom: District Courtroom-1

Court reporter: Maureen Newton

Minutes Clerk: Santos Garza

Party: Idaho Power Company, Attorney: J Crawford

Party: Isabel Enriquez, Attorney: Kent Jensen

Party: Idaho Power Company, Attorney: J Crawford

Party: Isabel Enriquez, Attorney: Kent Jensen

Court calls case will take up the Pretrial matter first; both counsels present;

Mr. Jensen addresses the court re: exhibits and witnesses; anticipates 4-5 witnesses;

Defense has the same amount; Court addresses the voir dire process; instruction will be put as to the ban of cell phones;

Mr. Crawford addresses the exhibit as to the "pipe"; Court will tie into the Motion in Limine;

Court; any motions as to qualified witnesses? None by Counsels;

Court takes up the Motion in Limine: two separate issues; 1 the pipe and 2 the demonstration;

Mr. Jensen addresses his motion; Court inquires as to basis of demonstration;

FILED  
CASE

2010 APR 27 PM 1:

DEPUTY

SCANNED

Mr. Crawford addresses his objection; interest of discovery needs to see and opportunity to respond;

Court inquires;

Mr. Jensen responds;

Court inquires further;

Mr. Jensen responds; re: a matter of physics;

Mr. Crawford needs to see prior to the Jury;

Court addresses demonstration; procedure video taped prior; Court rules not granting motion needing more information; cites rule 403; the demonstration being done live is unfair prejudice; will not deny without prejudice; require a proposed demonstration video tape;

Counsels agree and understand Court's Instructions

Jury instructions due by 10<sup>th</sup> and Court will have preliminary instructions to parties;

Nothing further 11:25

2010 MAY 12 11:14:07

**AFFIDAVIT OF SERVICE**

*Dea Shanahan*  
NOTARY PUBLIC

**IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF IDAHO  
IN AND FOR THE COUNTY OF MINIDOKA**

Case Number: CV 2009-34

Plaintiff:  
**ISABEL ENRIQUEZ**

Service Documents:  
**TRIAL SUBPOENA**

vs.

Defendant:  
**IDAHO POWER COMPANY**

Received by Aardvark Legal Support Service on the 5th day of May, 2010 at 1:48 pm to be served on **BRENT BROWNING, 236 WEST WAYNE, PAUL, ID 83347.**

I, **Lea Shanahan**, being duly sworn, depose and say that on the **6th day of May, 2010** at **1:15 pm**, I:

Personally delivered a true and correct copy(ies) of the **TRIAL SUBPOENA**, upon the named defendant **BRENT BROWNING**, personally and in person. Service was effected in the County of **MINIDOKA**, State of **IDAHO**, at **BIO-FLORA NW, 75 S 200 W, RUPERT, ID 83350.**

I am a citizen of the United States, over eighteen (18) years of age, a resident of Twin Falls County, Idaho and not a party to the action or related to any of the parties in the above entitled action.

*Lea Shanahan*

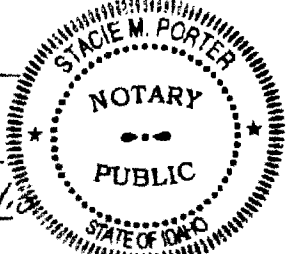
**Lea Shanahan**  
Process Server

**Aardvark Legal Support Service**  
P.O. Box 408  
Jerome, ID 83338  
(208) 644-1444

Our Job Serial Number: 2010001587

Subscribed and sworn to before me on this the 6th day of May, 2010 by the Affiant/Process Server who is personally known to me.

*Stacie M Porter*  
Notary Public



Residing at: *Twin Falls*

My Commission Expires: *9/30/10*

**SCANNED**

J. Nick Crawford, ISB No. 3220  
BRASSEY, WETHERELL & CRAWFORD, LLP  
203 W. Main Street  
P.O. Box 1009  
Boise, Idaho 83701-1009  
Telephone: (208) 344-7300  
Facsimile: (208) 344-7077

2010 MAY 12 11:03 AM

CLERK OF DISTRICT COURT  
MINIDOKA COUNTY

Attorneys for Idaho Power Company

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA**

ISABEL ENRIQUEZ,

Plaintiff,

vs.

IDAHO POWER COMPANY,

Defendant.

Case No. CV 2009-34

**DEFENDANT'S EXHIBIT AND  
WITNESS LIST**

COMES NOW the above-captioned Defendant, by and through its counsel of record, and disclose the following list of exhibits and witnesses for use at trial:

**A. Exhibits**

1. Plaintiff's medical records;
2. Any and all exhibits produced at depositions;
3. Police report;
4. Minidoka County Sheriff Incident Report
5. Photographs of the accident scene and the pipe and power lines involved in the

accident;

6. Sentry archive data report;
7. Idaho Power Public Property Damage or Public Injury Report;
8. Map of Paul 043 recloser demonstrating patrols and repairs done in 2001, 2004, 2008

and 2009.

9. Dispatch records for Paul 043 recloser dated September 25, 2007;
10. Public inspection profile for 2004.
11. Idaho Power Work Order Construction Report
12. Bryan Hopson detailed schematic map of this area where the accident happened

which sets out the power grid as well as the accident site.

13. Report of Bryan Hobson
14. Report of Adam Aleksander.
15. Photographs by Adam Aleksander
16. Photographs by Jeff Mitton
17. Photographs by Chad Hafer
18. Video of Jeff Mitton lifting irrigation pipe

**B. Witnesses:**

1. Dr. Adam Aleksander
2. Brent Browning
3. Bill Strickland.
4. Alan Tanner
5. Bryan Hobson, P.E.
6. Jeff Mitton.
7. Chad Hafer

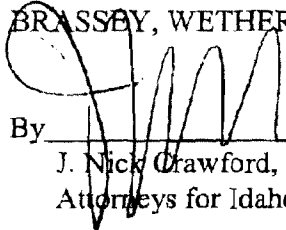
8. Dan Kindig, Minidoka County Sheriff's Office

9. Joe Kearl

Defendant reserves the right to use any and all exhibits and witnesses previously identified in discovery, as well as any and all documents previously identified in discovery, as well any and all exhibits identified by Plaintiff.

DATED this 12th day of May, 2010.

BRASSEY, WETHERELL & CRAWFORD, LLP

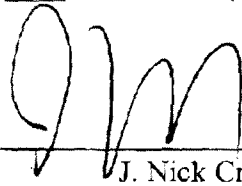
By   
J. Nick Crawford, Of the Firm  
Attorneys for Idaho Power Company

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 12th day of May, 2010, I served a true and correct copy of the foregoing DEFENDANT'S EXHIBIT AND WITNESS LIST upon each of the following individuals by causing the same to be delivered by the method and to the addresses indicated below:

Kent D. Jensen  
2042 Overland  
P.O. Box 276  
Burley, Idaho 83318

- U.S. Mail, postage prepaid
- Hand-Delivered
- Overnight Mail
- Facsimile (208) 878-3368

  
J. Nick Crawford

1 Kent D. Jensen (ISB #4424)  
2 Kent D. Jensen Law Office, P. C.  
3 2042 Overland  
4 P.O. Box 276  
Burley, Idaho 83318  
Telephone: (208) 878-3366  
Fax:(208) 878-3368  
Attorneys for Plaintiff

ORIGINAL

FILED  
CASE  
2010 MAY 12 PM 4:03  
DURAND  
DEPUTY

5 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
6 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

7 ISABEL ENRIQUEZ ,

Case No.: CV 2009- 34

8 Plaintiff,

TRIAL BRIEF

9 vs.

10 IDAHO POWER COMPANY,

11 Defendant

12  
13 FACTS

14 On September 25, 2007, Mr. Enriquez was given an assignment by his employer,  
15 Jentzch-Kearl Farms, to drive farm equipment on a farm known as the Patterson place. At that  
16 time, the Patterson place was planted in potatoes. In preparation for harvest which was ongoing  
17 at this farm, Mr. Enriquez was given the task of beating the leaves off of the potato plants. In  
18 order to accomplish this task, Mr. Enriquez used one of his employer's tractors to which an  
19 additional piece of farm equipment was attached for pulling through the fields and removing the  
20 potato vines and leaves.

21 The potato rows in this particular farm ran from north to south. In the approximate  
22 midsection of the farm, an irrigation pump was installed which delivered irrigation water to an  
23 underground mainline irrigation pipe. This underground pipe had risers which came up out of the  
24 ground at regular intervals running in an east-west direction. The farm workers during the year  
25 irrigation season would attach the wheel line sprinklers to the risers, which were then opened to

1 deliver water to the wheel lines for your irrigating potatoes. Above the underground mainline  
2 and the risers, electrical lines owned and maintained by the defendant, Idaho Power traverse the  
3 field directly over the underground mainline and risers to deliver electricity to the irrigation  
4 pump. Each of the electrical lines carries 19,900 Volts.

5         As Mr. Enriquez approached the mainline on September 25, 2007, he noticed that there  
6 was a section on sprinkler pipe directly in his path. The sprinkler pipe in question is a 25'11"  
7 piece of pipe which was used to run from the wheel lines to the risers. Mr. Enriquez stopped the  
8 tractor and approached the sprinkler pipe which was laying in an east-west direction directly  
9 under the power lines. As Mr. Enriquez kneeled down, he was shocked and knocked  
10 unconscious. When he came to, he got back up into the tractor and called for assistance. At that  
11 time, he noticed that one of the overhead power lines had broken and fallen down. His  
12 supervisor, Brett Browning, was the first one to arrive on the scene, and Mr. Enriquez warned  
13 him about the downed power line. Eventually emergency personnel and a crew from Idaho  
14 Power arrived and Mr. Enriquez was taken to the hospital. Eventually Mr. Enriquez was life  
15 flighted to the University of Utah Hospital for further treatment. His injuries consisted of burns  
16 on his hands, knees, shoulders, and head. The worst of the injuries was on his foot, where the  
17 electricity blew a hole out the bottom of his foot which required skin grafting another medical  
18 intervention.  
19


20         In the standard Idaho jury instructions, anyone who is generated or transmitting  
21 electricity is assigned a duty to exercise the "highest degree of care to avoid injury to persons or  
22 property." Although this case concerns the general principles of negligence, and the Plaintiff  
23 has the burden of proving by a preponderance that the Defendant was negligent, the doctrine of  
24 *res ipsa loquitur* is also applicable to prove the Defendant's negligence. The power lines in this  
25



1 case were under the exclusive control of the Defendant and the injury would not have resulted  
2 except for the negligence of the defendant.<sup>1</sup>

3 The Defendant relies upon a theory that the Plaintiff raised sprinkler pipe up into the  
4 power lines and thus caused his own injuries. However, the Plaintiff will demonstrate at trial that  
5 this is highly unlikely based upon his experience, and the difficulty of accomplishing such a task.  
6  
7 Mr. Enriquez will further present testimony and evidence that the line was already broken and in  
8 contact with the ground and the sprinkler pipe before he touched it. Further testimony will be  
9 developed through Mr. Enriquez' expert witness which shall indicate that the Defendant's  
10 equipment did not detect the break in the line and thus Mr. Enriquez was injured as a result of  
11 this negligence.

12 Dated this 24 day of May, 2010

13  
14   
15 Kent D. Jensen 4424  
16 Attorney for Plaintiff

17 CERTIFICATE OF SERVICE

18 I hereby certify that on the 24 day of May 2010, I served the foregoing document by  
19 fax and by depositing a copy thereof in the United States Mail, postage prepaid, addressed as  
20 follows:

21 J. Nick Crawford  
22 PO Box 1009  
23 Boise, ID 83701-1009  
24 Fax: 208-344-7077

25   
Kent D. Jensen

<sup>1</sup> *Harper v. Hoffman*, 95 Idaho 933, 523 P.2d 536 (1974); *Faust v. Benton County Public Utility District Number 1*, 13 Wash. App. 473, 535 P.2d 854 (Div. 3 1975).

FILED  
CASE

2010 MAY 12 PM 4:03

DUPLICATE DEPUTY

ORIGINAL

Kent D. Jensen #4424  
JENSEN LAW OFFICE  
2042 Overland Ave.  
P.O. Box 276  
Burley, Idaho 83318  
Telephone: (208) 878-3366  
Facsimile: (208) 878-3368

Attorney for Plaintiff

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO IN AND FOR THE COUNTY OF MINIDOKA**

ISABEL ENRIQUEZ,

Plaintiff,

vs.

IDAHO POWER COMPANY,


Defendant.

Case No. CV 2009-34

JURY INSTRUCTIONS

COMES NOW the Plaintiff, Isabel Enriquez, by and through his attorney of record, Kent D. Jensen, 2042 Overland Ave, Burley Idaho, and submits Jury Instructions numbered 1 (One), to 18 (Eighteen).

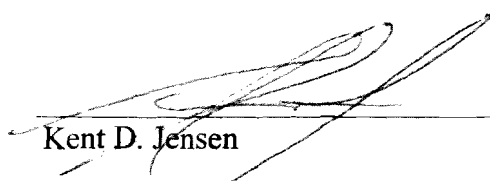
DATED this 12<sup>th</sup> day of May, 2010.

  
Kent D. Jensen

**CERTIFICATE OF SERVICE**

I hereby certify that on the 12<sup>th</sup> day of May, 2010, I served the foregoing document by fax and by depositing a copy thereof in the United States Mail, postage prepaid, addressed as follows:

J. Nick Crawford  
PO Box 1009  
Boise, ID 83701-1009  
Fax; 208-344-7077

  
Kent D. Jensen

**INSTRUCTION NO. 1**

**There are certain things you must not do during this trial:**

- 1. You must not associate in any way with the parties, any of the attorneys or their employees, or any of the witnesses.**
- 2. You must not discuss the case with anyone, or permit anyone to discuss the case with you. If anyone attempts to discuss the case with you, or to influence your decision in the case, you must report it to me promptly.**
- 3. You must not discuss the case with other jurors until you retire to the jury room to deliberate at the close of the entire case.**
- 4. You must not make up your mind until you have heard all of the testimony and have received my instructions as to the law that applies to the case.**
- 5. You must not contact anyone in an attempt to discuss or gain a greater understanding of the case.**
- 6. You must not go to the place where any alleged event occurred.**

IDJI 1.03 – Admonition to jury

GIVEN \_\_\_\_\_  
MODIFIED \_\_\_\_\_  
REFUSED \_\_\_\_\_  
COVERED \_\_\_\_\_  
OTHER \_\_\_\_\_

**INSTRUCTION NO. 2**

**The following facts are not in dispute:**

**That the Plaintiff, Isabel Enriquez, received an electrical shock on September 25, 2007, from power lines belonging to the Defendant, Idaho Power which caused Mr. Enriquez physical injuries requiring medical treatment for burns.**

IDJI 1.07 – Facts not in dispute

GIVEN \_\_\_\_\_  
MODIFIED \_\_\_\_\_  
REFUSED \_\_\_\_\_  
COVERED \_\_\_\_\_  
OTHER \_\_\_\_\_

**INSTRUCTION NO. 3**

**In deciding this case, you may not delegate any of your decisions to another or decide any question by chance, such as by the flip of a coin or drawing of straws. If money damages are to be awarded or percentages of fault are to be assigned, you may not agree in advance to average the sum of each individual juror's estimate as the method of determining the amount of the damage award or percentage of negligence.**

IDJI 1.09 – Quotient verdicts

GIVEN \_\_\_\_\_  
MODIFIED \_\_\_\_\_  
REFUSED \_\_\_\_\_  
COVERED \_\_\_\_\_  
OTHER \_\_\_\_\_

**INSTRUCTION NO. 4**

**If it becomes necessary during your deliberations to communicate with me, you may send a note signed by one or more of you to the bailiff. You should not try to communicate with me by any means other than such a note.**

**During your deliberations, you are not to reveal to anyone how the jury stands on any of the questions before you, numerically or otherwise, unless requested to do so by me.**

IDJI 1.11 – Communications with court

GIVEN \_\_\_\_\_  
MODIFIED \_\_\_\_\_  
REFUSED \_\_\_\_\_  
COVERED \_\_\_\_\_  
OTHER \_\_\_\_\_

**INSTRUCTION NO. 5**

**When I say that a party has the burden of proof on a proposition, or use the expression "if you find" or "if you decide," I mean you must be persuaded that the proposition is more probably true than not true.**

IDJI 1.20.1 – Burden of proof – preponderance of evidence

GIVEN \_\_\_\_\_  
MODIFIED \_\_\_\_\_  
REFUSED \_\_\_\_\_  
COVERED \_\_\_\_\_  
OTHER \_\_\_\_\_

**INSTRUCTION NO. 6**

**Evidence may be either direct or circumstantial. Direct evidence is evidence that directly proves a fact. Circumstantial evidence is evidence that indirectly proves the fact, by proving one or more facts from which the fact at issue may be inferred.**

**The law makes no distinction between direct and circumstantial evidence as to the degree of proof required; each is accepted as a reasonable method of proof and each is respected for such convincing force as it may carry.**

IDJI 1.24.2 – Circumstantial evidence with definition

GIVEN \_\_\_\_\_  
MODIFIED \_\_\_\_\_  
REFUSED \_\_\_\_\_  
COVERED \_\_\_\_\_  
OTHER \_\_\_\_\_



**INSTRUCTION NO. 7**

**The plaintiff has the burden of proof on each of the following propositions:**

- 1. That on September 25, 2007;**
- 2. Isabel Enriquez received an electrical shock from power lines belonging to the defendant, Idaho Power;**
- 3. that the electrical shock was the result of negligence on behalf of the defendant, Idaho Power and their failure to detect and repair the power line;**
- 4. and that the plaintiff, Isabel Enriquez was damaged as a result of the accident.**

**If you find from your consideration of all the evidence that each of these propositions has been proved, then your verdict should be for the plaintiff. If you find from your consideration of all the evidence that any of these propositions has not been proved, then your verdict should be for the defendant.**

IDJI 1.40.2 – Charging instruction plaintiffs case, general verdict

GIVEN \_\_\_\_\_  
MODIFIED \_\_\_\_\_  
REFUSED \_\_\_\_\_  
COVERED \_\_\_\_\_  
OTHER \_\_\_\_\_

**INSTRUCTION NO. 8**

**The plaintiff has the burden of proof on each of the following propositions:**

- 1. The defendant was negligent.**
- 2. The plaintiff was injured.**
- 3. The negligence of the defendant was a proximate cause of [the injury to the plaintiff.**
- 4. The elements of damage and the amounts thereof.**

**If you find from your consideration of all the evidence that each of these propositions has been proved, your verdict should be for the plaintiff. However, if you find that any of these propositions has not been proved, then the plaintiff has not met the burden of proof required and your verdict should be for the defendant.**

IDJI 1.40.4 – Special format for charging instruction, negligence case, no comparative or affirmative defenses. For use with general verdict without special interrogatories.

GIVEN \_\_\_\_\_  
MODIFIED \_\_\_\_\_  
REFUSED \_\_\_\_\_  
COVERED \_\_\_\_\_  
OTHER \_\_\_\_\_

**INSTRUCTION NO. 9**

**It was the duty of the defendant, before and at the time of the occurrence, to use ordinary care for the safety of the plaintiff.**

IDJI 2.00.1 - Duty of care - defendant

GIVEN \_\_\_\_\_  
MODIFIED \_\_\_\_\_  
REFUSED \_\_\_\_\_  
COVERED \_\_\_\_\_  
OTHER \_\_\_\_\_

**INSTRUCTION NO. 10**

**A person generating or transmitting electricity has a duty to exercise the highest degree of care to avoid injury to persons or property.**

IDJI 2.06 – Duty of care – electrical transmission

GIVEN \_\_\_\_\_  
MODIFIED \_\_\_\_\_  
REFUSED \_\_\_\_\_  
COVERED \_\_\_\_\_  
OTHER \_\_\_\_\_

INSTRUCTION NO. 11

When I use the word "negligence" in these instructions, I mean the failure to use ordinary care in the management of one's property or person. The words "ordinary care" mean the care a reasonably careful person would use under circumstances similar to those shown by the evidence. Negligence may thus consist of the failure to do something which a reasonably careful person would do, or the doing of something a reasonably careful person would not do, under circumstances similar to those shown by the evidence. The law does not say how a reasonably careful person would act under those circumstances. That is for you to decide.

IDJI 2.20 – Definition of negligence

GIVEN \_\_\_\_\_  
MODIFIED \_\_\_\_\_  
REFUSED \_\_\_\_\_  
COVERED \_\_\_\_\_  
OTHER \_\_\_\_\_

**INSTRUCTION NO. 12**

**If the plaintiff proves that the instrumentality or mechanism which caused the injury or damage in this case was under the control or management of the defendant, and further proves that in the normal course of events the injury or damage would not have happened in the absence of negligence, then you may find from these facts that the defendant was negligent in causing the injury or damage in this case.**

IDJI 2.26 – Res Ipsa Loquitur

GIVEN \_\_\_\_\_  
MODIFIED \_\_\_\_\_  
REFUSED \_\_\_\_\_  
COVERED \_\_\_\_\_  
OTHER \_\_\_\_\_

INSTRUCTION NO. 13

**When I use the expression "proximate cause," I mean a cause which, in natural or probable sequence, produced the complained injury, loss or damage, and but for that cause the damage would not have occurred. It need not be the only cause. It is sufficient if it is a substantial factor in bringing about the injury, loss or damage. It is not a proximate cause if the injury, loss or damage likely would have occurred anyway.**

IDJI 2.30.1 - Proximate cause - "but for" test

GIVEN \_\_\_\_\_  
MODIFIED \_\_\_\_\_  
REFUSED \_\_\_\_\_  
COVERED \_\_\_\_\_  
OTHER \_\_\_\_\_

**INSTRUCTION NO. 14**

**By giving you instructions on the subject of damages, I do not express  
any opinion as to whether the plaintiff is entitled to damages.**

SECTION 9.00 - DAMAGES

IDJI 9.00 – Cautionary instruction on damages

GIVEN \_\_\_\_\_  
MODIFIED \_\_\_\_\_  
REFUSED \_\_\_\_\_  
COVERED \_\_\_\_\_  
OTHER \_\_\_\_\_



## INSTRUCTION NO. 15

If the jury decides the plaintiff is entitled to recover from the defendant, the jury must determine the amount of money that will reasonably and fairly compensate the plaintiff for any damages proved to be proximately caused by the defendant's negligence.

The elements of damage the jury may consider are:

**A. Non-economic damages**

1. The nature of the injuries;
2. The physical and mental pain and suffering, past and future;
3. The impairment of abilities to perform usual activities;
4. The disfigurement caused by the injuries;
5. The aggravation caused to any preexisting condition.

**B. Economic damages**

1. The reasonable value of necessary medical care received and expenses incurred as a result of the injury [and the present cash value of medical care and expenses reasonably certain and necessary to be required in the future];
2. The reasonable value of the past earnings lost as a result of the injury;
3. The present cash value of the future earning capacity lost because of the injury, taking into consideration the earning power, age, health, life expectancy, mental and physical abilities, habits, and disposition of the plaintiff, and any other circumstances shown by the evidence.

4. The reasonable value of necessary services provided by another in doing things for the plaintiff, which, except for the injury, the plaintiff would ordinarily have performed [and the present cash value of such services reasonably certain to be required in the future];

5. [Any other specific item based upon the evidence.]

Whether the plaintiff has proved any of these elements is for the jury to decide.

IDJI 9.01 – Damage instruction for injuries to plaintiff – general case

GIVEN \_\_\_\_\_  
MODIFIED \_\_\_\_\_  
REFUSED \_\_\_\_\_  
COVERED \_\_\_\_\_  
OTHER \_\_\_\_\_

**INSTRUCTION NO. 16**

**During your deliberations, you will be entitled to have with you my instructions concerning the law that applies to this case, the exhibits that have been admitted into evidence and any notes taken by you in the course of the trial proceedings.**

**If you take notes during the trial, be careful that your attention is not thereby diverted from the witness or his testimony; and you must keep your notes to yourself and not show them to other persons or jurors until the jury deliberations at the end of the trial.**

IDJI 1.01 – Deliberation procedures

GIVEN \_\_\_\_\_  
MODIFIED \_\_\_\_\_  
REFUSED \_\_\_\_\_  
COVERED \_\_\_\_\_  
OTHER \_\_\_\_\_

**INSTRUCTION NO. 17**

**On retiring to the jury room, select one of your number as a foreman, who will preside over your deliberations.**

**Appropriate forms of verdict will be submitted to you with any instructions. Use only the ones conforming to your conclusions and return the others unused.**

**A verdict may be reached by three-fourths of your number, or nine of you. If your verdict is unanimous, your foreman alone will sign it; but if nine or more, but less than the entire jury, agree, then those so agreeing will sign the verdict.**

**As soon as you have completed and signed the verdict, you will notify the bailiff, who will then return you into open court.**

IDJI 1.15.1 Completion of verdict form – general verdict

GIVEN \_\_\_\_\_  
MODIFIED \_\_\_\_\_  
REFUSED \_\_\_\_\_  
COVERED \_\_\_\_\_  
OTHER \_\_\_\_\_

**INSTRUCTION NO. 18**

**I have given you the rules of law that apply to this case. I have instructed you regarding matters that you may consider in weighing the evidence to determine the facts. In a few minutes counsel will present their closing arguments to you and then you will retire to the jury room for your deliberations.**

**Each of you has an equally important voice in the jury deliberations. Therefore, the attitude and conduct of jurors at the beginning of the deliberations are important. At the outset of deliberations, it is rarely productive for a juror to make an emphatic expression of opinion on the case or to state how he or she intends to vote. When one does that at the beginning, one's sense of pride may be aroused and there may be reluctance to change that position, even if shown that it is wrong. Remember that you are not partisans or advocates, but you are judges. For you, as for me, there can be no triumph except in the ascertainment and declaration of the truth.**

**Consult with one another. Consider each other's views. Deliberate with the objective of reaching an agreement, if you can do so without disturbing your individual judgment. Each of you must decide this case for yourself; but you should do so only after a discussion and consideration of the case with your fellow jurors.**

IDJI 1.13 – Concluding remarks

GIVEN \_\_\_\_\_  
MODIFIED \_\_\_\_\_  
REFUSED \_\_\_\_\_  
COVERED \_\_\_\_\_  
OTHER \_\_\_\_\_

J. Nick Crawford, ISB No. 3220  
John M. Howell, ISB No. 6234  
BRASSEY, WETHERELL & CRAWFORD, LLP  
203 W. Main Street  
P.O. Box 1009  
Boise, Idaho 83701-1009  
Telephone: (208) 344-7300  
Facsimile: (208) 344-7077

2010 MAY 12 8:00 AM

Durham  
CLERK

Attorneys for Idaho Power Company

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA**

ISABEL ENRIQUEZ,

Plaintiff,

vs.

IDAHO POWER COMPANY,

Defendant.

Case No. CV 2009-34

**DEFENDANT'S REQUESTED JURY  
INSTRUCTIONS AND SPECIAL  
VERDICT FORM**

COMES NOW the above-captioned Defendant, by and through its counsel of record, Brassey, Wetherell & Crawford, and hereby submit the following requested jury instructions and Special Verdict Form (attached hereto at Exhibit "A") based on IDJI.2d. Defendant reserves the right to add, delete, modify or supplement this list.

1. IDJI 2d Instruction No. 1.00
2. IDJI.2d Instruction No. 1.01
3. IDJI.2d Instruction No. 1.02
4. IDJI.2d Instruction No. 1.03
5. IDJI.2d Instruction No. 1.05
6. IDJI 2d Instruction No. 1.07

SCANNED

- 7. IDJI.2d Instruction No. 1.09
- 8. IDJI.2d Instruction No. 1.11
- 9. IDJI.2d Instruction No. 1.13
- 10. IDJI.2d Instruction No. 1.15.2
- 11. IDJI.2d Instruction No. 1.17
- 12. IDJI.2d Instruction No. 1.20.1
- 13. IDJI.2d Instruction No. 1.24.2
- 14. IDJI.2d Instruction No. 1.41.4.1
- 15. IDJI.2d Instruction No. 1.41.4.2
- 16. IDJI.2d Instruction No. 1.43.1
- 17. IDJI.2d Instruction No. 2.00.2
- 18. IDJI 2d Instruction No. 2.20
- 19. IDJI.2d Instruction No. 2.30.2
- 20. IDJI.2d Instruction No. 9.00
- 21. IDJI.2d Instruction No. 9.01
- 22. IDJI.2d Instruction No. 9.12
- 23. IDJI.2d Instruction No. 9.14

DATED this 12th day of May, 2010.

BRASSEY, WETHERELL & CRAWFORD, LLP

By \_\_\_\_\_

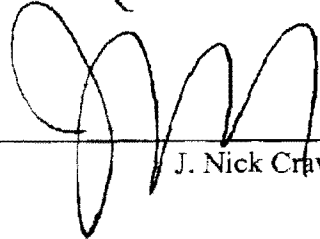
J. Nick Crawford, Of the Firm  
Attorneys for Idaho Power Company

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 12th day of May, 2010, I served a true and correct copy of the foregoing **DEFENDANT'S REQUESTED JURY INSTRUCTIONS AND SPECIAL VERDICT FORM** upon each of the following individuals by causing the same to be delivered by the method and to the addresses indicated below:

Kent D. Jensen  
2042 Overland  
P.O. Box 276  
Burley, Idaho 83318

- U.S. Mail, postage prepaid
- Hand-Delivered
- Overnight Mail
- Facsimile (208) 878-3368




---

J. Nick Crawford



J. Nick Crawford, ISB No. 3220  
 BRASSEY, WETHERELL & CRAWFORD, LLP  
 203 W. Main Street  
 P.O. Box 1009  
 Boise, Idaho 83701-1009  
 Telephone: (208) 344-7300  
 Facsimile: (208) 344-7077

Attorneys for Idaho Power Company

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA**

ISABEL ENRIQUEZ,

Plaintiff,

vs.

IDAHO POWER COMPANY,

Defendant.

Case No. CV 2009-34

**SPECIAL VERDICT FORM**

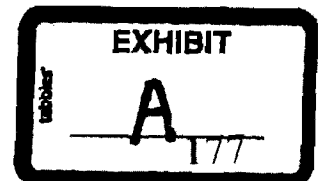
We, the Jury, answer the Special Interrogatories as follows:

QUESTION NO. 1. Was the Defendant Idaho Power negligent, and if so, was this negligence a proximate cause of Plaintiff's injuries?

Answer: Yes \_\_\_ No \_\_\_.

If you answered the above question "No," then you are done. Sign the verdict as instructed and advise the bailiff. If you answered the above question "Yes," continue to the next question.

QUESTION NO. 2. Was the Plaintiff negligent, and if so, was this negligence a proximate cause of his own injuries?



Answer: Yes \_\_\_ No \_\_\_.

If you answered "No" to Question No. 2, then you will not answer Question No. 3, but will next answer Question No. 4.

If you answered "Yes" to both prior questions, then answer Question No. 3.

You are now to compare the negligence of the parties. Insert in the answer to Question No. 3 the percentage of negligence you find attributable to each party. Your percentages must total 100%.

QUESTION NO. 3. We find that the parties contributed to the cause of the accident in the following percentages:

- (a) The Defendant Idaho Power Company \_\_\_\_\_ %
- (b) The Plaintiff Isabel Enriquez \_\_\_\_\_ %

TOTAL MUST EQUAL 100 %"

If the percentage of fault you assigned to the Plaintiff is equal to or greater than the percentage of fault you assigned to the Defendant, you are done. Sign the verdict and advise the bailiff. If the percentage of fault you assigned to the Plaintiff is less than the percentage you assigned to the Defendant, answer the next question.

QUESTION NO. 4. What is the total amount of damages sustained by the Plaintiff as a result of the accident?

Answer: We assess Plaintiff's damages as follows:

- 1. Economic Damages, as defined in the instructions \$ \_\_\_\_\_
- 2. Non -economic Damages, as defined in the instructions \$ \_\_\_\_\_

You should include in your answer to Question No. 4 the total amount of all monetary damages which you find from the evidence was sustained by the Plaintiff.

DATED this \_\_\_ day of May, 2010.

Sign the verdict form and inform the Bailiff you are done.

\_\_\_\_\_  
FOREPERSON

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

FILED  
CASE

2010 MAY 13 AM 8:57

DURRANT  
*JD* DEPUTY

J. Nick Crawford, ISB No. 3220  
BRASSEY, WETHERELL & CRAWFORD, LLP  
203 W. Main Street  
P.O. Box 1009  
Boise, Idaho 83701-1009  
Telephone: (208) 344-7300  
Facsimile: (208) 344-7077

Attorneys for Idaho Power Company

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA**

ISABEL ENRIQUEZ.

Plaintiff,

vs.

IDAHO POWER COMPANY,

Defendant.

Case No. CV 2009-34

**DEFENDANT'S SUPPLEMENTAL  
EXHIBIT AND WITNESS LIST**

COMES NOW the above-captioned Defendant, by and through its counsel of record, and disclose the following list of exhibits and witnesses for use at trial:

**A. Exhibits**

1. Plaintiff's medical records;
2. Any and all exhibits produced at depositions;
3. Police report;
4. Minidoka County Sheriff Incident Report
5. Photographs of the accident scene and the pipe and power lines involved in the

accident;

6. Sentry archive data report;
7. Idaho Power Public Property Damage or Public Injury Report;
8. Map of Paul 043 recloser demonstrating patrols and repairs done in 2001, 2004, 2008 and 2009;
9. Dispatch records for Paul 043 recloser dated September 25, 2007;
10. Public Inspection Profile for 2004;
11. Idaho Power Work Order Construction Report;
12. Bryan Hobson detailed schematic map of this area where the accident happened which sets out the power grid as well as the accident site;
13. Report of Bryan Hobson;
14. Report of Adam Aleksander;
15. Photographs by Adam Aleksander;
16. Photographs by Jeff Mitton;
17. Photographs by Chad Hafer;
18. Video of Jeff Mitton lifting irrigation pipe;
19. Portions of the power line;
20. Irrigation pipe.

**B. Witnesses:**

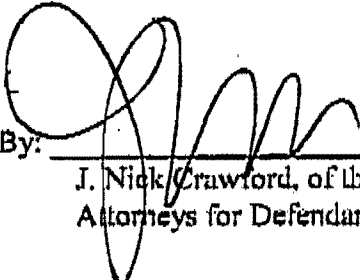
1. Dr. Adam Aleksander
2. Brent Browning
3. Bill Strickland.
4. Alan Tanner
5. Bryan Hobson, P.E.

- 6. Jeff Mitton.
- 7. Chad Hafer
- 8. Dan Kindig, Minidoka County Sheriff's Office
- 9. Joe Kcarl

Defendant reserves the right to use any and all exhibits and witnesses previously identified in discovery, as well as any and all documents previously identified in discovery, as well any and all exhibits identified by Plaintiff.

DATED this 12th day of May, 2010.

**BRASSEY, WETHERELL & CRAWFORD**

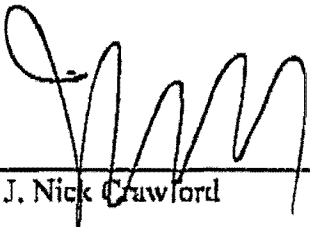
By:   
 \_\_\_\_\_  
 J. Nick Crawford, of the firm  
 Attorneys for Defendant

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 12th day of May, 2010, I served a true and correct copy of the foregoing DEFENDANT'S SUPPLEMENTAL EXHIBIT AND WITNESS LIST upon each of the following individuals by causing the same to be delivered by the method and to the addresses indicated below:

Kent D. Jensen  
 2042 Overland  
 P.O. Box 276  
 Burley, Idaho 83318

- U.S. Mail, postage prepaid
- Hand-Delivered
- Overnight Mail
- Facsimile (208) 878-3368

  
 \_\_\_\_\_  
 J. Nick Crawford

2010 MAY 13 AM 9:29

DURHAM COUNTY CLERK  
DEPUTY

1 Kent D. Jensen (ISB #4424)  
Kent D. Jensen Law Office, P. C.  
2 2042 Overland  
P.O. Box 276  
3 Burley, Idaho 83318  
Telephone: (208) 878-3366  
4 Fax: (208) 878-3368  
Attorneys for Plaintiff

5  
6 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

7 ISABEL ENRIQUEZ ,

8 Plaintiff,

9 vs.

10 IDAHO POWER COMPANY,

11 Defendant

Case No.: CV 2009- 34

WITNESS AND EXHIBIT LISTS

12  
13 COMES NOW, a Plaintiff, by and through his attorney of record, and discloses the  
14 following List of Exhibits and Witness List:

15 List of Exhibits:

- 16 1. Pictures Pictures taken by Jeff Mitton  
17 2. Pictures taken by Bob Wageman  
18 3. Pictures taken by Chad Harfer  
19 4. Emergency Room Report and Pictures 45 to 47  
20 5. List of Medical Expenses and Loss of Work  
21 6. Medical Records- Skin Grafts  
22 5. Video of Isabel Enriquez Lifting the Pipe

23 Witnesses List:


- 24 1. Isabel Enriquez  
25 2. Lawrence Kamm

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- 3. Jose Enriquez
- 4. Jeff Mitton
- 5. Bret Browning
- 6. Joe Kearn
- 7. Laurie Crawford from State Insurance Fund
- 8. Dr. Lane Hansen – Medical Doctor

The plaintiff reserves the right to use any and all exhibits and witnesses previously identified and in discovery, as well as any and all documents previously identified in discovery.


DATED this 15<sup>th</sup> day of May, 2010.

  
 Kent D. Jensen  
 Attorney for Plaintiff

**CERTIFICATE OF MAILING**

I hereby certify that on the 15<sup>th</sup> day of May, 2010, I served the foregoing Counsel for the foregoing document by depositing a copy thereof in the United States Mail, postage prepaid, addressed as follows:

J. Nick Crawford  
 PO Box 1009  
 Boise, ID 83701-1009

  
 Kent D. Jensen



COURT MINUTES

FILED  
CASE

2010 MAY 18 AM 9:57

CV-2009-0000034

Isabel Enriquez vs. Idaho Power Company

Hearing type: Motion

Hearing date: 5/18/2010

Time: 9:01 am

Judge: Jonathan Brody

Courtroom: District Courtroom-1

Court reporter: Maureen Newton

Minutes Clerk: Santos Garza

Party: Idaho Power Company, Attorney: J Crawford

Party: Isabel Enriquez, Attorney: Kent Jensen

DUNN  
SG  
DEPUTY

Court calls case set for Motion in Limine; both Counsels present in person;

Mr. Jensen addresses the Court re: video; has a copy for Mr. Crawford; asks the Court to admit the video with Plaintiff as the demonstrator;

Court asks re: interpreter; Court will have the Court interpreter Mr. Nevarez;

Mr. Crawford addresses the Court re: video; has no problem if both videos are admitted;

No objection from both Counsels if the Court reviews both videos; will review in Chambers;

Court marks the CD as Joint Exhibit 1;

Court in recess 9:20

9:36 Court back on the record; reviews the CD re: illustration of accident; Video will be allowed; and both versions will be allowed;

SCANNED  
185

Mr. Crawford addresses the exhibits and witnesses for tomorrow; asks for pipe to be allowed to be visible in the Courtroom;

Court addresses the physical aspect of the pipe; logistics of the witnesses; proposed preliminary instructions for the first 6 instructions, given to Counsels; jury selection instructions;

In recess 9:50

FILED  
CASE #

2010 MAY 19 PM 1:16

DUANE S. CLERK  
*sl* DEPUTY

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO IN AND FOR THE COUNTY OF MINIDOKA**

ISABEL ENRIQUEZ,

Plaintiff,

v.  
IDAHO POWER COMPANY,

Defendant.

Case No. CV-2009-34

---

**ISABEL ENRIQUEZ v. IDAHO POWER COMPANY PRELIMINARY JURY  
INSTRUCTIONS**

---

**INSTRUCTION NO. 1**

**There are certain things you must not do during this trial:**

- 1. You must not associate in any way with the parties, any of the attorneys or their employees, or any of the witnesses.**
- 2. You must not discuss the case with anyone, or permit anyone to discuss the case with you. If anyone attempts to discuss the case with you, or to influence your decision in the case, you must report it to me promptly. Discussion of the case includes discussing the case on the internet. That means do not post anything about the case or your service on any websites, social networking sites, message boards, or by email.**
- 3. You must not discuss the case with other jurors until you retire to the jury room to deliberate at the close of the entire case.**
- 4. You must not make up your mind until you have heard all of the testimony and have received my instructions as to the law that applies to the case.**
- 5. You must not contact anyone in an attempt to discuss or gain a greater understanding of the case.**
- 6. You must not go to the place where any alleged event occurred.**
- 7. During this trial do not make any investigation of this case or inquiry outside the courtroom on your own.**

8. Do not consult any books, dictionaries, encyclopedias or any other source of information unless I specifically authorize you to do so. This includes internet resources of any kind. Do not do any internet research concerning the case.

9. These admonitions are part of the reason for the rule prohibiting cell phones and other devices. It is becoming common to have a small device that facilitates communication and electronic research. Those beneficial things can easily be improperly used in a trial and is why we are asking that all jurors, witnesses, attorneys, and spectators leave them in the car or at home.

## **INSTRUCTION NO. 2**

**During your deliberations, you will be entitled to have with you my instructions concerning the law that applies to this case, the exhibits that have been admitted into evidence and any notes taken by you in the course of the trial proceedings.**

**If you take notes during the trial, be careful that your attention is not thereby diverted from the witness or his testimony; and you must keep your notes to yourself and not show them to other persons or jurors until the jury deliberations at the end of the trial.**

**INSTRUCTION NO. 3**

**The corporation involved in this case is entitled to the same fair and unprejudiced treatment that an individual would be under like circumstances. You should decide this case with the same impartiality that you would use in deciding a case between individuals.**

**INSTRUCTION NO. 4**

**Whether a party has insurance is not relevant to any of the questions you are to decide. You must avoid any inference, speculation or discussion about insurance.**



**INSTRUCTION NO. 5**

**Any statement by me identifying a claim of a party is not evidence in this case. I have advised you of the claims of the parties merely to acquaint you with the issues to be decided.**

**INSTRUCTION NO. 6**

**If during the trial I may say or do anything which suggests to you that I am inclined to favor the claims or position of any party, you will not permit yourself to be influenced by any such suggestion. I will not express nor intend to express, nor will I intend to intimate, any opinion as to which witnesses are or are not worthy of belief; what facts are or are not established; or what inferences should be drawn from the evidence. If any expression of mine seems to indicate an opinion relating to any of these matters, I instruct you to disregard it.**

COURT MINUTES

FILED  
CASE #  
2010 MAY 19 PM 4:05  
DUPLICATE DEPUTY

CV-2009-0000034

Isabel Enriquez vs. Idaho Power Company

Hearing type: Jury Trial

Hearing date: 5/19/2010

Time: 9:00 am

Judge: Jonathan Brody

Courtroom: District Courtroom-1

Court reporter: Maureen Newton

Interpreter: Robert Nevarez

Minutes Clerk: Santos Garza

Party: Idaho Power Company, Attorney: J Crawford

Party: Isabel Enriquez, Attorney: Kent Jensen

Court calls case set for Jury trial; Counsels agree to start a few minutes early; Court asks for the Roll call absent are: Anthony Archuleta, Maddie Ball, Lindsey Davis, Charles Logan, Salvador Perez, Curtis Stewart,

Judge asks the Bailiff to have the Sheriff contact the persons that were a no show;

Court reads the Court script; parties are introduced; Court gives the first jury instructions; re: electronic devises; Clerk swears in the jury panel for Voir Dire; Baliliff calls 23 names; Cali Wilson, Ty West, Jared Boley, Jed Thomas, Ron Clawson, Bruce Bagnall, Nikki Sayer, Linda Parker, Nile Bohan, Laurie Copmann, Jackie Peterman, Antonio Clawson, Vanessa Baker, Pedro Alejandro, Mary Anderson, Kenneth Mong, Mara Haub, Amy Butterfield, Amy Davis, Roger Facer, Clifton Booth, Heather Reed, Mandi Wilson;

Court asks questions of the 23 jurors; asked and answered; Laurie Crawford has been added as a witness that has been stipulated; and Alan Tanner as witness for the defense; Court continues with questioning; Court excuses Mandi Wilson; replacement, Kori Lloyd;

9:57 Court takes recess

SCANNED  
195

10:15 Court back in session; All parties stipulate that all jurors in the box and accounted for; Court advises that Mr. Antonio Chacon was stipulated to be excused; Barry Pate is called; Court questions new replacements;

Mr. Jensen performs voir dire; 10:41 Mr. Jensen continues;

10:49 Mr. Crawford performs voir dire;

Court asks for the Preemptory challenges;

Plaintiff: Vanessa Baker, Barry Pate, Amy Butterfield, Bruce Bagnall, Heather Reed

Defense: Laurie Copmann; Mara Haub, Nile Bohon, Pedro Alejandro, Kenneth Mong; Court excuses the challenged jurors'; Jury panel is selected Cali Wilson, Ty West, Jared Boley, Jed Thomas, Ron Clawson, Mary Anderson, Nikki Sayer, Linda Parker, Amy Davis, Roger Facer, Jackie Peterson, Clifton Booth, Kory Lloyd, Panel is sworn in by the Clerk;

11:30 Juror is excused to the jury room;

Court inquires re: the jury instructions, both Counsels agree; Mr. Jensen inquires regarding the defense witness Laurie Crawford; Mr. Crawford explains to the exhibits labeled the same as the Plaintiff; both Counsels agree that the majority are similar; nothing further

11:35 Court in recess

1:06 Court back on the record; Mr. Jensen addresses the Court; Jury Panel brought in; Counsels stipulate the panel is present and in assigned seats; court addresses the process of the trial; Court reads the Jury Instructions 1 thru 6.

1:14 Mr. Jensen makes opening statement;

1:20 Mr. Crawford makes opening statement;

1:36 Plaintiff calls witness; Lawrence Joseph Kamm; witness is sworn in by Clerk; Mr. Jensen questions witness; witness cites education and experience; continues questioning;

1:59 Mr. Crawford objects; withdraw; hearsay;

2:03 Court calls for a 10 minute break;

2:16 Court back in session; Jury is brought in; Parties stipulate that the panel is present and in their assigned seats; Mr. Jensen continues questioning of the witness, Lawrence Joseph Kamm;

2:22 Mr. Crawford objects, testimony not disclosed; Court excuses Jury Panel; Court addresses the objection; Mr. Crawford refers to defendant's exhibit J2; Court reviews the

Exhibit J2; Mr. Jensen addresses the report and points made by the witness in deposition; references page 33 and 34 of deposition; Court questions Counsels; Mr. Jensen answers; Mr. Crawford addresses the disclosure issue; Court cites case law in re: late disclosure; Court needs further review of deposition as to rule; Counsels have no objection;

Court instructs Mr. Jensen to continue without the Jury present; Mr. Jensen questions Mr. Kamm;

Mr. Crawford questions witness, outside of the Jury present; Mr. Crawford withdraws his objection;

Jury is brought in; Counsels stipulate that the Jury is present and in their assigned seats;

Mr. Jensen continues questioning of witness;

2:52 Mr. Crawford objects; sustained, Mr. Crawford objects; sustained; Mr. Jensen continues questioning; witness asks to review the report for purpose of refreshing memory; Mr. Jensen enters Defendants Exhibit E-3 stipulated by both Counsel, <sup>Admitted</sup> so marked by Clerk; Mr. Jensen continues questioning;

2:58 Mr. Crawford cross-examines witness; 3:00 Mr. Jensen objects, over-ruled; Mr. Crawford offers Deposition ; refers to page #16; continues; Mr. Crawford enters photograph into evidence Defendant's Exhibit J1 stipulated to by both Counsels, Court enters into admission;

3:14 Court calls afternoon break;

3:33 Court back in session; Jury is brought in; Parties stipulate that the jury is present and in their assigned seats; Mr. Crawford continues cross-examination of witness; refers to exhibit K1; refers to Deposition page #22; continues questioning;

3:46 nothing further; Mr. Jensen re-directs witness; nothing further;

3:53 Mr. Crawford re- cross-examines;

Witness is excused

3:57 Plaintiff calls witness Brett Browning; witness is sworn in by Clerk; Mr. Jensen questions; Mr. Jensen refers to Defendant's Exhibit C Photograph of field; counsels stipulate; Court admits;

4:06 Mr. Crawford objects; overruled; Mr. Jensen continues; offers Defendant's Exhibit 39, picture of tractor; no objection from Counsels, Court Admits exhibit #39; Mr. Crawford objects; sustained; re-phrases question; Mr. Crawford objects; sustained; re-phrases; objection as to foundation; Court over-rules; nothing further

4:16 Mr. Crawford cross-examines witness; refers to photograph of the tractor; refers to Defendant's Exhibit G1; moves to admit no objection Court admits Defendant's Exhibit G1; Mr. Jensen objects to question, here-say; Court is over-ruled; Mr. Crawford continues cross-examination; nothing further

4:26 Mr. Jensen re-directs; Mr. Crawford objects; Court over-rules; nothing further 4:29 Mr. Crawford re-cross examines; witness is excused;

4:31 Court in recess for the day;

J. Nick Crawford, ISB No. 3220  
John M. Howell, ISB No. 6234  
BRASSEY, WETHERELL & CRAWFORD, LLP  
203 W. Main Street  
P.O. Box 1009  
Boise, Idaho 83701-1009  
Telephone: (208) 344-7300  
Facsimile: (208) 344-7077

FILED  
CASE

2010 MAY 20 AM 9:34

DUPLICATE  
*[Signature]*  
DEPUTY

Attorneys for Idaho Power Company

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA**

ISABEL ENRIQUEZ,

Plaintiff,

vs.

IDAHO POWER COMPANY,

Defendant.

Case No. CV 2009-34

**DEFENDANT'S OBJECTION TO  
PLAINTIFF'S PROPOSED JURY  
INSTRUCTION RE: RES IPSA  
LOQUITUR**

COMES NOW, the Defendant, by and through its counsel of record, Brassey, Wetherell & Crawford, and hereby submits this Objection to Plaintiff's Proposed Jury Instruction Re: Res Ipsa Loquitur.

**I. INTRODUCTION**

Plaintiff has proposed a jury instruction based upon *res ipsa loquitur*. In order for *res ipsa* to apply in this case, Plaintiff must prove (1) that the subject power line was under the exclusive control of Defendant and (2) that the Plaintiff's injury would not have happened in the absence of negligence. See IDJI2d 2.26. As explained herein, Plaintiff cannot meet either element and, therefore, the jury should not be given an instruction based upon *res ipsa loquitur*.

## II. ARGUMENT & AUTHORITY

*Res ipsa loquitur*, a Latin phrase meaning “the thing speaks for itself,” is a legal doctrine which allows the jury to draw an inference of negligence when certain conditions are shown to exist. “*Res ipsa loquitur*, if applicable to the facts of a particular case, creates an inference of the breach of the duty imposed and replaces direct evidence with a permissive inference of negligence.” *Christensen v. Potratz*, 100 Idaho 352, 355, 597 P.2d 595, 598 (1979). Two elements must be positively shown to exist in order for the doctrine to apply. These two elements are commonly stated as (1) the agency or instrumentality causing the injury must be under the exclusive control of the defendant; and (2) the circumstances must be such that common knowledge and experience would justify an inference that the accident would not have happened in the absence of negligence. *See id.*; *Brizendine v. Nampa-Meridian Irr. Dist.*, 97 Idaho 580, 548 P.2d 80 (1976); *Harper v. Hoffman*, 95 Idaho 933, 523 P.2d 536 (1974). The mere happening of an accident in itself is not enough to hold a defendant liable. Rather, Plaintiff bears the burden of showing “that the cause of the injury point to the defendant’s negligence.” *Christensen*, 100 Idaho at 355, 597 P.2d at 598 (citing Restatement (Second) of Torts, s 328 D, comments e, f, and g; Prosser, Torts, s 39 (4th ed. 1971)).

It is not enough that plaintiff’s counsel can suggest a possibility of negligence. The evidence must sustain the burden of proof by making it appear more likely than not. The inference must cover all of the necessary elements of negligence, and must point to a breach of the defendant’s duty. The mere fact of the presence of a banana peel on a floor may not be sufficient to show that it has been there long enough for reasonable care to require the defendant to discover and remove it; but if it is ‘black, flattened out and gritty,’ the conclusion may reasonably be drawn. It is for the court to determine, in the first instance, whether reasonable men on the jury may draw it.

Prosser, Torts, § 39, p. 212, 213 (1971).



Plaintiff has submitted a proposed jury instruction which seeks to instruct the jury on the doctrine of *res ipsa loquitur*. IDJI2d 2.26 reads as follows:

If the plaintiff[s] prove[s] that the instrumentality or mechanism which caused the injury or damage in this case was under the control or management of the defendant[s], and further prove[s] that in the normal course of events the injury or damage would not have happened in the absence of negligence, then you may find from these facts that the defendant[s] [was/were] negligent in causing the injury or damage in this case.

The evidence in this case demonstrates that it would be improper to instruct the jury on the doctrine of *res ipsa loquitur*. Plaintiff has failed to satisfy each of the requisite elements of the doctrine. The power lines at issue were not in the exclusive control of Idaho Power. Further, the injury could have occurred in the absence of Idaho Power's negligence.

In *Hansen v. City of Pocatello*, the trial court declined to apply the doctrine of *res ipsa loquitur*. On appeal, the Idaho Supreme Court affirmed. In *Hansen*, plaintiff sustained injuries as a result of stepping on a water meter lid located on a public sidewalk. The water meter's lid was loose and when plaintiff stepped on it, the lid flipped up causing plaintiff to fall into the water meter box. Plaintiff asserted the City was negligence in failing to secure the lid; however, plaintiff could not establish any direct evidence of negligence. The evidence presented indicated possible causes for the loose lid other than the City's negligence, such as a third person loosening the lid. The trial court determined *res ipsa loquitur* did not apply because the water meter lid was not under the exclusive control of the City and due to the fact that the lid could have become loose due to something other than the City's negligence. 145 Idaho 700, 702, 184 P.3d 206, 208 (2008).

In *Citizens Inc. Co. v. Detroit Edison*, the Michigan Court of Appeals upheld the trial court's decision not to apply the doctrine of *res ipsa loquitur* based upon the plaintiff's inability to prove exclusive control and that the injury would not have occurred in the absence of defendant's negligence. In *Citizens*, plaintiff asserted that a fire was caused as a result of a downed power line

due to defendant's negligence. The trial court refused to apply the doctrine of *res ipsa loquitur* and granted a directed verdict on the basis that, *inter alia*, plaintiff did not establish defendant's negligence was the cause of the downed power line. The evidence at trial indicated that power lines break in the absence of negligence as a result of things such as high winds, lightning strikes, and acts of God. *See Citizens Ins. Co. v. Detroit Edison*, 2001 WL 672174, 2 (Mich.App. 2001). The court also concluded that the power lines were not in the exclusive control of defendant because they were subject to "outside forces". *Id.*

In *Schwartz v. City of San Antonio ex rel. City Public Service Bd. of San Antonio*, the Texas Court of Appeals upheld the trial court's decision to not apply the doctrine of *res ipsa loquitur*. *Schwartz* is particularly applicable to the case at bar as it involved the electrocution of plaintiff who touched a chain link fence that was electrified by a downed power line. The relevant portion of the holding is as follows:

In order to rely on the doctrine of *res ipsa loquitur*, a plaintiff must produce evidence from which the jury can conclude, by a preponderance of the evidence, that both the "type of accident" and "control" factors are present. *Mobil Chem.*, 517 S.W.2d at 252; *Soto v. Tex. Indus., Inc.*, 820 S.W.2d 217, 219 (Tex.App.-Fort Worth 1991, no writ). Here, Rodriguez did not present any evidence that if a fence is electrified, the power company must necessarily be negligent. We recognize that in certain cases, a plaintiff can rely upon general knowledge to prove that the accident in question is the type of accident that does not ordinarily happen in the absence of negligence. *See Mobil Chem.*, 517 S.W.2d at 252; *Soto*, 820 S.W.2d at 219. This, however, is not one of those cases. As discussed previously, what a power company's practices and procedures should be, or what industry standards are, when a circuit breaker within an electrical distribution is tripped is not within a person's general knowledge. Therefore, we cannot say that because the fence was electrified, CPS must have necessarily acted negligently. *See Aguilar v. Trujillo*, 162 S.W.3d 839, 850 (Tex.App.-El Paso 2005, pet. denied) (holding that the doctrine of *res ipsa* was inapplicable because the plaintiff did not present evidence that groundwater contamination ordinarily does not occur in the absence of negligence); *Soto*, 820 S.W.2d at 220 (holding the trial court did not abuse its discretion in denying a *res ipsa loquitur* instruction when

the plaintiffs “presented no expert knowledge that concrete walls do not ordinarily fall in the absence of negligence” and general knowledge could not support that contention). Because the doctrine of *res ipsa loquitur* does not apply, the trial court did not err in granting the no-evidence motion for summary judgment.

*Schwartz v. City of San Antonio ex rel. City Public Service Bd. of San Antonio*, 2006 WL 285989, 5 (Tex.App.-San Antonio 2006).

While there are no Idaho reported cases that address the application of *res ipsa loquitur* in a case involving a downed power line, Idaho case law reveals clearly that the doctrine may not be applied when there are other potential causes of the injury complained of.

In *S.H. Kress Co. v. Godman*, the plaintiff's boiler exploded after having been repaired by defendant's repairman. The Idaho Supreme Court noted:

It is also necessary that the cause of the injury point to the defendant's negligence. Restatement (Second) of Torts, *supra*, comments e, f, and g; Prosser, Torts, § 39 (4th ed. 1971). In this case there are other probable explanations of the cause of the boiler's explosion including the appellant's negligence in the control of maintenance of the boiler. For this reason the trial court correctly concluded that the doctrine of *res ipsa loquitur* is inapplicable to the facts of this case.

95 Idaho 614, 617, 515 P.2d 561, 564 (1973).

The Idaho Supreme Court also considered the doctrine in *Christensen, supra*, in which the plaintiff was sleeping in defendant's camper when a gas explosion occurred, resulting in his injuries. The Court noted:

[W]here there are other possible explanations of the cause of an explosion, it is necessary that the plaintiff must present sufficient evidence pointing to the defendant's negligence as a cause of the injury, in order to apply *res ipsa loquitur* to that defendant. Where any one of a number of persons, wholly independent of each other, may be responsible for an injury, the case is one for affirmative proof and not for presumption by way of *res ipsa loquitur*.

100 Idaho at 355-56, 597 P.2d 595.

It is never enough for the plaintiff to prove merely that he has been injured by the negligence of someone unidentified. Even though there is beyond all possible doubt negligence in the air, it is still necessary to bring it home to the defendant. On this too the plaintiff has the burden of proof by a preponderance of the evidence; and in any case where it is clear that it is at least equally probable that the negligence was that of another, the court must direct the jury that the plaintiff has not proved his case.

Prosser, Torts, § 39, p. 218 (1971).

Other Idaho authority further defeats the application of the doctrine in this case. *See, e.g., Le'Gall v. Lewis County*, 129 Idaho 182, 187-188, 923 P.2d 427, 432-433 (1996) (affirming trial court's decision to decline a *res ipsa loquitur* jury instruction where a non-party had control over the cause of the fire, a base board heater, and based upon the fact that a fire can happen even if no one is negligent) (citing *Jerome Thriftway Drug, Inc.* at 619, 717 P.2d at 1037 ("Our common knowledge and experience ... would not justify the inference that the [fire] would not have happened in the absence of negligence in that there are many possible causes for a building fire in the absence of negligence.")); *see also Western Stockgrowers Ass'n v. Edwards*, 126 Idaho 939, 941, 894 P.2d 172, 174 (Ct. App. 1995) (affirming trial court's rejection of *res ipsa loquitur* because evidence established the fire could have been caused absent negligence).

Notably, Idaho has the following jury instruction: "A person generating or transmitting electricity has a duty to exercise the highest degree of care to avoid injury to persons or property."

IDJI2d.2.06. In analyzing a power company's duty, the Idaho Supreme Court stated as follows:

We have held that the highest degree of care must be exercised by those engaged in generation and transmission of electric energy. *Probart v. Idaho Power Co.*, 74 Idaho 119, 258 P.2d 361 (1953). However, we have also found that this duty is not absolute. We do not require a power company to guard against all *possibilities*, rather we require the company to reasonably guard against *probabilities*. *Id.* at 128, 258 P.2d at 366 (citing *Le Vonas v. Acme Paper Board Co.*, 184 Md. 16, 40 A.2d 43 (1944); *Webb v. Louisiana Power & Light Co.*, 199 So. 451 (La.Ct.App.1940); *Oklahoma Gas & Electric Co. v. Wilson*, 172 Okl. 540, 45 P.2d 750 (1935); *Hauser v.*

*Pacific Gas & Elec. Co.*, 133 Cal.App. 222, 23 P.2d 1068 (1933)).

*Orthman v. Idaho Power Co.*, 126 Idaho 960, 962, 895 P.2d 561, 563 (1995).

Given the Court's holding in *Orthman*, it would appear that *res ipsa loquitur* is not applicable because Idaho Power's duty has been expressly defined. This is akin to medical malpractice cases where the doctrine of *res ipsa loquitur* is not applied due to the specific duty and requisite proof set forth in Idaho Code §§ 6-1012 and 6-1013. See *Kolln v. Saint Luke's Reg'l Med. Ctr.*, 130 Idaho 323, 334, 940 P.2d 1142, 1153 (1997) (holding that in light of I.C. § 6-1012 the doctrine of *res ipsa loquitur* may no longer be used in medical malpractice cases). The Court explained the justification for its holding was made based upon the legislature's intent to limit the exposure of health care providers and to make their liability more definable by a requirement for direct proof of departure from a community standard of practice. *Id.* (quoting 1976 Idaho Sess. Laws 277). An analogy can be made that IDJI.2d defines the standard of care for a power company just as Idaho Code defines the standard of care for health care providers. Thus, just as with medical malpractice, *res ipsa loquitur* is not applicable in cases against power companies.

Here, Plaintiff has failed to establish that the downed power line was caused by Idaho Power's negligence. The power line could have broke as a result of high winds, animals, or an act of God. In other words, the broken power line could have occurred in the absence of any negligence by Idaho Power. Further, the power lines were not in the exclusive control of Idaho Power as they are subject to outside forces. Accordingly, the doctrine of *res ipsa loquitur* is inapplicable to the case at bar.

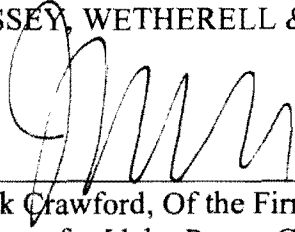
### III. CONCLUSION

Wherefore, based upon the foregoing reasons, as well as the papers and pleadings of record and the evidence presented at trial, Defendant objects to Plaintiff's proposed jury instruction based

upon the doctrine of *res ipsa loquitur*.

DATED this 20<sup>th</sup> day of May, 2010.

BRASSEY, WETHERELL & CRAWFORD, LLP

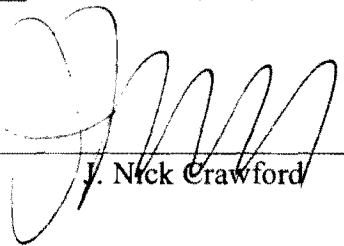
By   
\_\_\_\_\_  
J. Nick Crawford, Of the Firm  
Attorneys for Idaho Power Company

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 20<sup>th</sup> day of May, 2010, I served a true and correct copy of the foregoing DEFENDANT'S OBJECTION TO PLAINTIFF'S PROPOSED JURY INSTRUCTION RE: RES IPSA LOQUITUR upon each of the following individuals by causing the same to be delivered by the method and to the addresses indicated below:

Kent D. Jensen  
2042 Overland  
P.O. Box 276  
Burley, Idaho 83318

U.S. Mail, postage prepaid  
 Hand-Delivered  
 Overnight Mail  
 Facsimile (208) 878-3368

  
\_\_\_\_\_  
J. Nick Crawford

COURT MINUTES

FILED: 2010 MAY 20  
CASE: 09-0000034

2010 MAY 20 P.M. 3:05

CV-2009-0000034

Isabel Enriquez vs. Idaho Power Company

Hearing type: Jury Trial 2nd Day

Hearing date: 5/20/2010

Time: 9:09 am

Judge: Jonathan Brody

Courtroom: District Courtroom-1

Court reporter: Maureen Newton

Interpreter: Robert Nevarez

Minutes Clerk: Santos Garza

Party: Idaho Power Company, Attorney: J Crawford

Party: Isabel Enriquez, Attorney: Kent Jensen

Deputy Clerk  
*[Signature]*  
DEPUTY

**9:07** Court calls case; Jury Trial Day #2; outside of Jury; Mr. Jensen has one late disclosure exhibit; argues for admittance; Court inquires relevance; Mr. Crawford responds; Court addresses late disclosure and relevance; Court will not allow, may be rebuttal evidence; no testimony allowed without foundation;

**9:15** Jury Panel brought in; Parties stipulate that the panel is present and seated in their assigned seats;

Mr. Jensen calls witness, Laurie Crawford, witness is sworn in by the Clerk; Mr. Jensen questions; moves to admit Plaintiff's Exhibit E Document 2, no objection, Court admits Exhibit E Document 2; nothing further

Mr. Crawford cross-examines;

Mr. Jensen re-directs; nothing further witness is excused

Mr. Jensen calls Isabel Enriquez as witness; witness is sworn in by Clerk; Mr. Jensen questions witness through interpreter, Robert Nevarez; refers to a photograph Plaintiff's

207  
SCANNED

Exhibit A #3; continues questioning; plaintiff draws a diagram of the field; continues questioning; Record reflects the Plaintiff is removing his shoes and socks and demonstrating his injuries; continues questioning;

re: to video , Mr. Crawford has no objection, both Counsels waive as to content of audio; Court recognizes video as Joint Exhibit 1 and Mr. Crawford reminds only part of the video is being shown; Mr. Jensen continues questioning; Court Record reflects Mr. Enriquez portion and stopped prior to the second half of the video being shown; Mr. Jensen continues; nothing further;

**10:15** Court takes a 15 minute recess;

**10:34** Court back in session Parties stipulate that the panel is present and in their assigned seats; Mr. Jensen moves to admit Exhibit A picture 3; Exhibit D Doc 1 picture 45 and 46 and 47; Exhibit F doc # 3 and Plaintiff's drawing to be lodged as Court exhibit 4; no objection by Mr. Crawford; Court admits all exhibits; nothing further

**10:39** Mr. Crawford cross-examines; refers to Exhibit F; Defendant's Exhibit L; continues questioning; nothing further

**10:48** Mr. Jensen re-directs; nothing further;

**10:54** Mr. Crawford re- cross-examination; nothing further;

**10:54** Mr. Jensen re-directs; nothing further; witness is excused and

Mr. Crawford advises the Court that his witnesses are scheduled till 1:00 p.m.

Jury is excused until 1:00 p.m.

Court addresses a juror #3 attire; will allow Counsels to challenge if needed;

Mr. Crawford addresses the Court; moves as to no negligence to the defendant; moves for direct verdict;

Mr. Jensen responds; cites case law; asks for the matter to go to the Jury

Court questions Mr. Jensen; quotes from case law; Mr. Jensen responds

Court inquires re: Mr. Kamm's testimony; Mr. Jensen responds; Mr. Crawford responds; Mr. Jensen nothing further to state;

Court will take motion under advisement; will review testimony of Mr. Kamm's; before ruling; no objection from Counsel's

**11:30** Court in recess



**1:22** Court is back in session;

Court summarizes the expert testimony of Mr. Kamm; Mr. Jensen agrees; directs questions to Mr. Jensen; Mr. Jensen responds; nothing further;

**1:39** Mr. Crawford addresses the Court;

**1:43** Court addresses Counsels; jury instruction, case cited by the Plaintiff; re: exclusive control; negligence of the Defendant; breach of duty; standard of care; substantial evidence; directive verdict; **2:01** Mr. Jensen interjects; **2:05** Mr. Crawford responds; **2:05** Mr. Jensen responds; asks for the case to go to the Jury;

**2:07** Court cites specific evidence; direct evidence needed; breach of duty; Court will grant the motion for Idaho Power; will bring the Jury in and excuse; Mr. Crawford to prepare Judgment;

**2:11** Court addresses the Jury panel; re: Motion for Directive Verdict; and granted in favor of the Defendant, Idaho Power Company; final instruction given to the Jury Panel; proper to discuss case if choose too;

Nothing further 2:15

FILED  
CASE #

2010 MAY 21 AM 11:50

DUANE B. [Signature] DEPUTY

J. Nick Crawford, ISB No. 3220  
BRASSEY, WETHERELL & CRAWFORD, LLP  
203 W. Main Street  
P.O. Box 1009  
Boise, Idaho 83701-1009  
Telephone: (208) 344-7300  
Facsimile: (208) 344-7077

Attorneys for Idaho Power Company

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA**

ISABEL ENRIQUEZ,

Plaintiff,

vs.

IDAHO POWER COMPANY,

Defendant.

Case No. CV 2009-34

**JUDGMENT**

The above-referenced matter having come before the Court for trial on May 19-20, 2010, and at the close of Plaintiff's case, the Court having considered all of Plaintiff's evidence, and considering Plaintiff's evidence in the light most favorable to Plaintiff, and considering a standard under Rule 50 by which the Defendant admits the truth of all of Plaintiff's evidence, and the Court having granted Defendant's Motion for Directed Verdict pursuant to Idaho Rule of Civil Procedure 50;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Defendant have judgment against Plaintiff. The Court reserves for future proceedings whether either party is entitled to an award of costs.

DATED this 21<sup>st</sup> day of May, 2010.

Jonathan Brody  
HONORABLE JONATHAN BRODY  
DISTRICT JUDGE

**CLERK'S CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 21 day of May, 2010, I served a true and correct copy of the foregoing JUDGMENT upon each of the following individuals by causing the same to be delivered by the method and to the addresses indicated below:

Kent D. Jensen  
2042 Overland  
P.O. Box 276  
Burley, Idaho 83318

- U.S. Mail, postage prepaid
- Hand-Delivered
- Overnight Mail
- Facsimile (208) 878-3368

J. Nick Crawford  
Brassey, Wetherell & Crawford  
203 W. Main Street  
P.O. Box 1009  
Boise, Idaho 83701-1009

- U.S. Mail, postage prepaid
- Hand-Delivered
- Overnight Mail
- Facsimile

Debra Stang  
Deputy Clerk

FILED  
CASE

2010 JUN 03 PM 4:52

DUPLICATE  
*[Signature]* CLERK  
DEPUTY

J. Nick Crawford, ISB No. 3220  
John M. Howell, ISB No. 6234  
BRASSEY, WETHERELL & CRAWFORD, LLP  
203 W. Main Street  
P.O. Box 1009  
Boise, Idaho 83701-1009  
Telephone: (208) 344-7300  
Facsimile: (208) 344-7077

Attorneys for Idaho Power Company

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA**

ISABEL ENRIQUEZ,  
Plaintiff,

vs.

IDAHO POWER COMPANY,  
Defendant.

Case No. CV 2009-34

**DEFENDANT'S MOTION FOR COSTS**

COMES NOW Defendant Idaho Power Company, by and through its counsel of record, Brassey, Wetherell & Crawford, pursuant to Idaho Rule of Civil Procedure 54(d) and asks the Court to award costs incurred in this matter. This Motion is supported by the papers and pleadings of record and the Verified Memorandum in Support of Defendant's Motion for Costs filed contemporaneously herewith.

DATED this 3rd day of June, 2010.

BRASSEY, WETHERELL & CRAWFORD, LLP

By

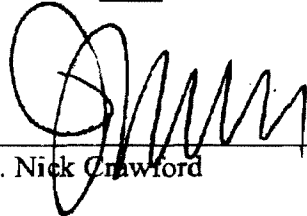
*[Signature]*  
J. Nick Crawford, Of the Firm  
Attorneys for Idaho Power Company

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 31<sup>st</sup> day of June, 2010, I served a true and correct copy of the foregoing **DEFENDANT'S MOTION FOR COSTS** upon each of the following individuals by causing the same to be delivered by the method and to the addresses indicated below:

Kent D. Jensen  
2042 Overland  
P.O. Box 276  
Burley, Idaho 83318

- U.S. Mail, postage prepaid
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- Overnight Mail
- Facsimile (208) 878-3368




---

J. Nick Crawford

J. Nick Crawford, ISB No. 3220  
John M. Howell, ISB No. 6234  
BRASSEY, WETHERELL & CRAWFORD, LLP  
203 W. Main Street  
P.O. Box 1009  
Boise, Idaho 83701-1009  
Telephone: (208) 344-7300  
Facsimile: (208) 344-7077

2010 JUN 03 PM 1:52

DURNE... DEPUTY  
*[Signature]*

Attorneys for Idaho Power Company

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA**

ISABEL ENRIQUEZ,  
Plaintiff,

vs.

IDAHO POWER COMPANY,  
Defendant.

Case No. CV 2009-34

**VERIFIED MEMORANDUM IN  
SUPPORT OF DEFENDANT'S  
MOTION FOR COSTS**

STATE OF IDAHO )  
                  : ss.  
COUNTY OF ADA )

J. NICK CRAWFORD, being first duly sworn upon oath, deposes and states as follows:

1. That your Affiant is over the age of eighteen years and is competent to make this Affidavit and does so based upon personal knowledge.
2. That your Affiant is the attorney of record for Defendant and offers the following testimony upon personal knowledge and upon the accounts, records and ledgers kept by Affiant's law firm in the ordinary course of business. This verified Memorandum is made pursuant to Idaho Rules of Civil Procedure 54(d).

3. That to the best of your Affiant's knowledge and belief, all of the costs and disbursements listed below were necessarily and reasonably incurred in litigating this matter in good faith and that none of the costs were incurred to vex, harass or annoy the Plaintiff. The costs were not incurred for the purpose of increasing the Plaintiff's costs. The costs as set forth below are true and accurate and are presented to the Court in compliance with the Idaho Rules of Civil Procedure.

4. Defendant seeks discretionary costs on the basis that the costs were exceptional. Namely, Plaintiff retained an expert witness from California which required your Affiant to travel to California in order to take Plaintiff's expert's deposition. Such costs were the result of Plaintiff's decision to retain an expert from California, thus making the costs associated with the deposition exceptional. Similarly, many of the travel costs were exceptional in that they were incurred as the direct result of Plaintiff's actions such as the video taping of the pipe. In addition, the nature of the electrical issues and inquiries made the expert costs exceptional. Finally, Plaintiff's inability to meet his burden of proof establishes grounds in and of itself that the costs incurred by Defendant were exceptional.

5. That attached hereto at Exhibit "A" is a true and correct copy of your Affiant's firm's Statement of Account created in the normal and ordinary course of business. The Statement of Account reflects costs incurred herein.

6. That attached hereto at Exhibit "B" are true and correct copies of invoices received from Aleksander & Associates, P.A. Adam Aleksander, Ph.D. was the Defendant's retained expert. He testified at deposition and was expected to testify in Defendant's case-in-chief. In addition to Dr. Aleksander's charges set forth in the attached invoices, Dr. Aleksander was also paid a retainer in the amount of \$3,000. This retainer was in addition to the fees he generated.

7. That Defendant obtained a directed verdict in this case on the basis, *inter alia*, that Plaintiff was unable to meet his burden of establishing a prima facie case against Defendant. As such, and pursuant to Rule 54, Defendant is the prevailing party and entitled to costs as set forth herein.

**A. COSTS ALLOWED AS A MATTER OF RIGHT UNDER I.R.C.P. 54(d)(1)(C)**

1.	Court filing fees: Answer Rule 54(d)(1)(C)(1)	\$ 58.00	
2.	Service fees Rule 54(d)(1)(C)(2)		
	- Aardvark Legal Support - Service Fee for Brent Browning Deposition attendance	\$ 40.00	
	- Aardvark Legal Support - Service Fee for Jentzsch-Kearl	\$ 80.00	
	- Aardvark Legal Support - Service Fee for Brent Browning Trial attendance	\$ 100.00	
	- Bulldog Legal Support - Service Fee for Joe Kearl	\$ 95.00	
3.	Exhibits for Trial Rule 54(d)(1)(C)(6)		
	FedEx Kinko's	\$ 74.23	} 395 <sup>35</sup>
	FedEx Kinko's	\$ 93.90	
	FedEx Kinko's	\$ 61.91	
	FedEx Kinko's	\$ 16.30	
	FedEx Kinko's	\$ 41.44	
	FedEx Kinko's	\$ 107.57	

These charges were incurred for exhibits to be utilized at trial and mainly were for photographs to be used in Defendant's case-in-chief.

4.	Reasonable Expert Witness Fees Rule 54(d)(1)(C)(8)	\$ 2,000.00
	Aleksander & Associates, P.A. was retained by Defendant as an expert in this case. Adam Aleksander, Ph.D. was deposed by Plaintiff and was prepared to testify in Defendant's case-in-cheir. A copy of Dr. Aleksander's invoices are attached hereto at Exhibit "B".	
5.	Deposition charges. Rules 54(d)(1)(C)(9) and (10)	
	- M&M Court Reporting - Deposition of of Isabel Garcia	\$ 399.73



- Jerry Cuevas Interpreting Services	\$ 265.50
- M&M Court Reporting - Deposition of Jeff Mitton	\$ 127.47
- M&M Court Reporting - Deposition of Joseph Kearn	\$ 157.84
- M&M Court Reporting - Deposition of Brent Browning	\$ 206.86
- Shelburne Sherr Court Reporters, Inc. - Deposition of Lawrence Kamm	\$ 733.51
- M&M Court Reporting - Deposition of Adam Aleksander, Ph.D.	\$ 108.86
- M&M Court Reporting - Deposition of Bryan Hobson	\$ 93.70

**Total costs claimed as a matter of right: \$ 4,861.82**

**B. DISCRETIONARY COSTS ALLOWED UNDER I.R.C.P. 54(d)(1)(D)**

1. Additional Fees of Adam Aleksander, Ph.D. \$ 24,499.66  
Copies of Dr. Aleksander's invoices are attached hereto at Exhibit "B". In addition, as noted above, Dr. Aleksander was also paid a \$3,000 retainer. Thus, the total amount of Dr. Aleksander's fees was \$26,499.66. The additional fees requested as discretionary costs are Dr. Aleksander's fees less the \$2,000 allowed as a matter of right.
  
2. Cost of Travel
  - J. Nick Crawford - Travel to Burley for Sprinkler Pipe Inspection \$ 164.63
  - J. Nick Crawford - Travel to Burley for the Deposition of the Plaintiff \$ 179.30
  - J. Nick Crawford - Travel to Twin Falls for the deposition of Jeff Mitton \$ 163.00
  - J. Nick Crawford - Travel to Burley \$ 101.50
  - J. Nick Crawford - Travel to San Diego for the deposition of Lawrence Kamm \$ 626.80
  - J. Nick Crawford - Travel to and From Burley, Idaho for expert Inspection \$ 163.00
  - J. Nick Crawford - Travel to and from Burley and Rupert, Idaho For the deposition of Bryan Hobson and Pretrial Conference \$ 161.00
  - J. Nick Crawford - Travel to Burley for Video of attempts to lift Pipe \$ 163.00
  - J. Nick Crawford - Travel to Burley and lodging for trial \$ 372.56
  
3. Federal Express charges. \$ 18.19  
Delivery Service to Minidoka County Clerk 3-30-09

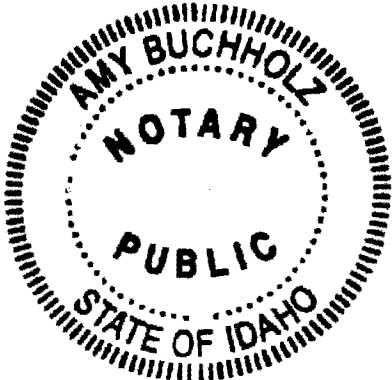
**Total discretionary costs claimed: \$ 26,612.64**  
**TOTAL COSTS CLAIMED: \$ 31,474.46**

FURTHER YOUR AFFIANT SAITH NAUGHT.

BRASSEY WETHERELL & CRAWFORD, LLP

By [Signature]  
J. Nick Crawford, Of the Firm  
Attorneys for Defendant

SUBSCRIBED AND SWORN to before me this 3rd day of June, 2010.



[Signature]  
Notary Public for Idaho  
Residing at Kuna, Idaho  
Commission expires: 9-24-2013

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 3rd day of June, 2010, I served a true and correct copy of the foregoing **VERIFIED MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION FOR COSTS** upon each of the following individuals by causing the same to be delivered by the method and to the addresses indicated below:

Kent D. Jensen  
2042 Overland  
P.O. Box 276  
Burley, Idaho 83318

- U.S. Mail, postage prepaid
- Hand-Delivered
- Overnight Mail
- Facsimile (208) 878-3368

[Signature]  
J. Nick Crawford

LAW OFFICE  
BRASSEY, WETHERELL & CRAWFORD, LLP  
Tax I.D. # 84-1370958

**STATEMENT OF ACCOUNT**

June 3, 2010

Idaho Power Company  
P.O. Box 70  
Boise, Idaho 83707

File #: 3017-001  
Invoice #: Enriquez

RE: Enriquez v. Idaho Power Company

**ADVANCED COSTS**

	<u>Description</u>	<u>Payee (if applicable)</u>	
3/16/09	Answer	District Court	58.00
3/30/09	Delivery Service/Messenger - Minidoka County Clerk 3-19-09	Federal Express	18.19
5/1/09	Reproductions of 8.5 x 11 photographs - 172 @ .59 ea (plus tax)	FedEx Kinkos	107.57
9/17/09	Travel to Burley 9-15-09 for sprinkler pipe inspection - 326 miles @ \$.505/mile	J. Nick Crawford	164.63
10/6/09	Travel to Burley 9-23-09 for	J. Nick Crawford	179.30



June 3, 2010

Page #: 2  
 Invoice #: Enriquez  
 File #: 3017-001

deposition of Plaintiff 326 @  
 0.55

	Interpreting services 9-23-09 - Burley, ID	Jerry Cuevas Interpreting Services	265.50
10/12/09	Transcripts - deposition of Isabel Garcia	M & M Court Reporting Service	399.73
2/17/10	Travel to Twin Falls/Burley 2-5/10 to meet with Bryan Hobson for deposition of Jeff Mitton - 326 @ 0.50	J. Nick Crawford	163.00
2/23/10	Transcripts - Deposition of Jeff Mitton	M & M Court Reporting Service	127.47
3/5/10	Service fee - Brent Browning	Aardvark Legal Support Services	40.00
	Service fee - Jentzsch-Kearl Farms	Aardvark Legal Support Services	80.00
3/11/10	Travel to Burley 3/9/10 - 203 miles @ \$.50/mile	J. Nick Crawford	101.50
3/15/10	Air fare to San Diego 3-19-10 for deposition of Plaintiff's expert (Lawrence Kamm)	J. Nick Crawford	626.80
3/19/10	Transcripts - Deposition of Joseph Kearl	M & M Court Reporting Service	157.84
	Transcripts - Deposition of Brent Browning	M & M Court Reporting Service	206.86
4/1/10	Travel to and from Burley, Idaho for expert inspection 326 @ 0.50	J. Nick Crawford	163.00

---

**BRASSEY, WETHERELL & CRAWFORD, LLP**

203 West Main Street, P. O. Box 1009, Boise, ID 83701-1009 - (208) 344-7300

Tax I.D. # 84-1370958

June 3, 2010

Page #: 3  
 Invoice #: Enriquez  
 File #: 3017-001

4/14/10	Deposition transcript of Lawrence Kamm	Shelburne Sherr Court Reporters, Inc.	733.51
4/28/10	Travel to Burley/Rupert 4-27-10 for deposition of Bryan Hobson and Pretrial Conference 322 @ 0.50	J. Nick Crawford	161.00
5/5/10	Transcripts - deposition of Adam Aleksander, Ph.D.	M & M Court Reporting Service	108.86
5/12/10	Exhibits for trial	FedEx Kinko's	93.30
5/13/10	Service fee - Brent Browning	Aardvark Legal Support Services	100.00
	Travel to Burley 5-12-10 for video of attempts to lift pipe and meeting with Chad Hafer - mileage - 326 @ 0.50	J. Nick Crawford	163.00
	Copies of exhibits at Kinko's on 5-12-10	J. Nick Crawford	74.23
5/14/10	Exhibit preparation	FedEx Kinko's	61.91
5/17/10	Trial exhibits - photographs	FedEx Kinko's	16.30
5/18/10	Photographs for use as exhibits at trial	FedEx Kinko's	41.44
5/19/10	Transcripts - Deposition of Bryan Hobson	M & M Court Reporting Service	93.70
6/1/10	Service Fees - Joe Kearl	Bulldog Legal Support	95.00

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**BRASSEY, WETHERELL & CRAWFORD, LLP**

203 West Main Street, P. O. Box 1009, Boise, ID 83701-1009 - (208) 344-7300

Tax I.D. # 84-137095K

June 3, 2010

Page #: 4  
Invoice #: Enriquez  
File #: 3017-001

6/2/10	Travel expenses to Burley 5/18-19/10 - Lodging, meals and mileage (326 @ \$.50/mile)	J. Nick Crawford	372.56
--------	---	------------------	--------

<b>TOTAL COSTS DUE</b>	<b>\$4,974.20</b>
------------------------	-------------------

ALEKSANDER & ASSOCIATES, P.A. <b>RECEIVED</b> Consulting Engineers PO BOX 140558 BOISE, IDAHO 83714 TEL (208) 321-0200 FAX (208) 321-0300		<b>APR 21 2010</b>																																																						
<b>INVOICE</b>																																																								
TO: J. Nick Crawford Brassey, Wetherell & Crawford, LLP 203 W Main Street Post Office Box 1009 Boise, Idaho 83701		Date 4/20/2010 Invoice No. 100329-1																																																						
RE: Case No. CV 8008-34 AAPA PN100329	Total <span style="border: 1px solid black; padding: 2px;">\$13,302.16</span>																																																							
For: Professional services and as listed below.	Federal ID No. 82-0489622																																																							
<table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;"><u>Item</u></th> <th style="text-align: left;"><u>Date</u></th> <th style="text-align: left;"><u>Description</u></th> <th style="text-align: right;"><u>Hours</u></th> <th colspan="2"></th> </tr> </thead> <tbody> <tr> <td>1</td> <td>3/29/10.</td> <td>Adam K. Aleksander - Consulting Re: Enriquez v Idaho Power Company</td> <td style="text-align: right;">47.00</td> <td></td> <td></td> </tr> <tr> <td></td> <td></td> <td>(See attached Time Log and Expense Sheet)</td> <td></td> <td></td> <td></td> </tr> <tr> <td colspan="3" style="text-align: right;">Total Current Work</td> <td style="text-align: right;"><u>47.00</u></td> <td style="text-align: right;"><u>Rate</u></td> <td style="text-align: right;"><u>Amount</u></td> </tr> <tr> <td></td> <td></td> <td></td> <td style="text-align: right;">47.00</td> <td style="text-align: right;">270.00</td> <td style="text-align: right;">12,690.00</td> </tr> <tr> <td>2</td> <td>4/1/2010</td> <td>Expenses - Fuel</td> <td></td> <td></td> <td style="text-align: right;">52.34</td> </tr> <tr> <td></td> <td></td> <td style="padding-left: 20px;">Meal</td> <td></td> <td></td> <td style="text-align: right;">16.82</td> </tr> <tr> <td></td> <td></td> <td>Mileage - 362 Miles @1.50 per = 543.00</td> <td></td> <td></td> <td style="text-align: right;">543.00</td> </tr> <tr> <td colspan="5" style="text-align: right;">TOTAL</td> <td style="text-align: right;"><u>\$ 13,302.16</u></td> </tr> </tbody> </table>			<u>Item</u>	<u>Date</u>	<u>Description</u>	<u>Hours</u>			1	3/29/10.	Adam K. Aleksander - Consulting Re: Enriquez v Idaho Power Company	47.00					(See attached Time Log and Expense Sheet)				Total Current Work			<u>47.00</u>	<u>Rate</u>	<u>Amount</u>				47.00	270.00	12,690.00	2	4/1/2010	Expenses - Fuel			52.34			Meal			16.82			Mileage - 362 Miles @1.50 per = 543.00			543.00	TOTAL					<u>\$ 13,302.16</u>
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TOTAL					<u>\$ 13,302.16</u>																																																			
TERMS: Net 15 DAYS. Overdue accounts will be charged 0493% per day (18% APR).																																																								



ALEKSANDER & ASSOCIATES, P.A.					
CONSULTING ENGINEERS					
PO Box 140558 Boise Idaho 83714 (208) 321-0200					
	Project Crawford/Idaho Power - Irrigation Pipe		File:	100329	
	Date: 4/20/10		AA Use:	TL1	
	Name: Adam K. Aleksander		Invoice:	100329-1	
Date		Description	Hours	Rate	Amount
40266	Mon	Sent CV and Fee to Nick Crawford	n/c	270	0
40267	Tue	Research Irrigation Pipe Electrocutions	3	270	810
40267	Tue	Confirm availability for TH	0	270	0
40268	Wed	Mobilize prepare equipment	2	270	540
40269	Thu	Leave Office 0830am - Return 0845pm	12.5	270	3375
40269	Thu	Demobilize, redact data	2	270	540
40270	Fri	Leave Office 1:30 Return 5:00 Read File	3.5	270	945
40270	Fri	Receive Retainer, Depos, Request Docs	0	270	0
40273	Mon	Review Kamm Depo	0.75	270	202.5
40274	Tue	Locate Site, Review Enriquez, Milton Depos 4:45 - 6:45	2	270	540
40275	Wed	Disc re need documents for report, possible trial 26May10	0.25	270	67.5
40276	Thu	Start report, label photos, complete ID Power form	1.5	270	405
40281	Tue	Review docs and photos from BW&C	1	270	270
40282	Wed	Start Writing Report	3	270	810
40283	Thu	Writing Report	9.5	270	2565
40284	Fri	Finalize Report deliver to NC, add addendums 11:00 - 5:00	6	270	1620
40284	Fri	Advised trial FRI 21 May 10.	0	270	0
			47		12690



**ALEKSANDER & ASSOCIATES, P.A.**  
**CONSULTING ENGINEERS**

Weekly Expenses: 1-Apr-10

Date: 20-Apr-10 File: \_\_\_\_\_  
 Name: Adsm Aleksander Approved: \_\_\_\_\_  
 Signed: \_\_\_\_\_ Invoice: 100329-1

EXPENSES CHARGED	28-Mar Sun	29-Mar Mon	30-Mar Tue	31-Mar Wed	1-Apr Th	2-Apr Fr	3-Apr Sat	Total
Lodging								0.00
Meals					16.82			16.82
								0.00
								0.00
								0.00
Air								0.00
Auto								0.00
Fuel					52.34			52.34
								0.00
								0.00
Misc								0.00
<b>CHRG subtotal</b>					<b>69.16</b>			<b>\$69.16</b>
<b>CASH</b>								
Meals								0.00
								0.00
								0.00
								0.00
								0.00
Company Vehicle								0.00
Tips								0.00
Parking								0.00
<b>CASH subtotal</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>\$0.00</b>

Distribution \_\_\_\_\_  
 Project Cost Cntr: \_\_\_\_\_

Purpose of trip:  
 On Site Investigation.

Other Expenses:	Sun	Mon	Tue	Wed	Th	Fr	Sat	Total
Mileage					543.00			543.00
								0.00
U.S. Mail								0.00
Fedex								0.00
Shipping								0.00
								0.00
Photo Supplies								0.00
Perk Supplies								0.00
Tools								0.00
Repairs								0.00
<b>Expense subtotal</b>	<b>0.00</b>	<b>0.00</b>		<b>0.00</b>	<b>543.00</b>	<b>0.00</b>	<b>0.00</b>	<b>\$543.00</b>

Comments: \_\_\_\_\_

Charge Total:	69.16
Cash Total:	0.00
Other Exp. Total:	543.00
<b>Week Total:</b>	<b>\$612.16</b>

Advance to Employee: \_\_\_\_\_  
 Paid By Employee: \_\_\_\_\_  
 Paid by A&A: \_\_\_\_\_  
 Refund to Employee: \_\_\_\_\_  
 Refund Due A&A: \_\_\_\_\_

ALEKSANDER & ASSOCIATES, P.A.  
Consulting Engineers  
PO BOX 140558  
BOISE, IDAHO 83714  
TEL (208) 321-0200  
FAX (208) 321-0300

**INVOICE**

TO: Idaho Power Company  
Attn: Ann Wilde  
PO Box 70  
Boise, Idaho 83707

Date 6/1/2010  
Invoice No. 100329-2

RE: Enriquez v. Idaho Power Company  
AAPA PN100329

Total **\$10,197.50**

For: Professional services and as listed below.

Federal ID No. 82-0489622

Item	Date	Description	Amount
1	22-Apr-10	Adam K. Aleksander - Consulting Re: Enriquez v Idaho Power Company (See attached Time Log)	9,687.50
2	20-May-10	Expenses Mileage - 340 Miles @ 1.50 per = 510	510.00

TOTAL **\$10,197.50**

TERMS: Net 15 DAYS. Overdue accounts will be charged 0433% per day (18% APR)

1 Kent D. Jensen (ISB #4424)  
Kent D. Jensen Law Office, P. C.  
2 2042 Overland  
P.O. Box 276  
3 Burley, Idaho 83318  
Telephone: (208) 878-3366  
4 Fax:(208) 878-3368  
Attorneys for Plaintiff

FILED-2010 JUN 16 AM 8:47  
CASE #

2010 JUN 16 AM 8:47

DUNN S. DEWICK  
DEPUTY

5 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

6 ISABEL ENRIQUEZ ,

Case No.: CV 2009- 34

7 Plaintiff,

OBJECTION TO COSTS


8 vs.

9 IDAHO POWER COMPANY,

10 Defendant

11 COMES NOW, the Plaintiff, and does hereby file and give notice of its objection to the  
12 Defendant's request for costs. Specifically, the Plaintiff objects to the discretionary costs of  
13 \$26,612.64 has been excessive and unjustified under the circumstances. The plaintiff objects to  
14 the \$24,499.66 in expert witness costs to be paid to Adam Aleksander as being excessive. The  
15 Plaintiff further argues that other costs such as service fees and other discretionary costs are  
16 likewise excessive and should not be allowed by the court. The Plaintiff desires present evidence  
17 and argument in support of this objection.

18 Dated this 16 day of June, 2010

19   
20 Kent D. Jensen 4424  
Attorney for Plaintiff

21 CERTIFICATE OF SERVICE

22 I hereby certify that on the 16 day of June 2010, I served the foregoing document by  
23 fax and by depositing a copy thereof in the United States Mail, postage prepaid, addressed as  
follows:

24 J. Nick Crawford  
PO Box 1009  
25 Boise, ID 83701-1009  
Fax: 208-344-7077

  
Kent D. Jensen

OBJECTION TO COSTS 1

SCANNED  
227

1 Kent D. Jensen 4424  
2 Kent D. Jensen Law Office  
3 2042 Overland Ave.  
4 P.O. Box 276  
5 Burley, Idaho 83318

FILED  
CASE #  
2010 JUN 17 AM 10:13  
DURAN  
DEPUTY

ORIGINAL

6 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
7 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

7 ISABEL ENRIQUEZ,  
8 Plaintiff,  
9 vs.  
10 IDAHO POWER,  
11 Defendant

Case No.: CV 2009-34\*D  
NOTICE OF APPEAL

12 TO: THE ABOVE NAMED RESPONDENT, IDAHO POWER AND THE PARTY 'S  
13 ATTORNEY, NICK CRAWFORD 203 WEST MAIN BOISE, IDAHO, 83701 AND THE  
14 CLERK OF THE ABOVE ENTITLED COURT.

15 NOTICE IS HEREBY GIVEN THAT:

- 16 1. The above named appellant, Isabel Enriquez appeals against the above named  
17 respondent to the Idaho Supreme Court from the decision rendering a directed verdict on May  
18 20<sup>th</sup>, 2010, by the Honorable John Brody.  
19  
20 2. That the party has the right to appeal to the Idaho Supreme Court, and the judgment  
21 described in paragraph 1 above is appealable under an pursuant to Idaho Appellate Rule 11  
22 (a)(4).  
23 3. The appellants appeal the decision of the district court, wherein the court ruled in  
24 favor of the defendant on its motion for a directed verdict.  
25 4. There has been no order sealing any portion of the record in this case.  
5. (a) Is a reporter's transcript requested? Yes.

SCANNED  
228

1 (b) The appellant requests the preparation of the following portions of the  
2 reporter's transcript:

3 The entire reporter's standard transcript as defined in Idaho Appellate Rule 25 (a)

4 6. The appellant has no request to include additional documents in the Clerk's record in  
5 addition to those automatically included under Idaho Appellate Rule 28.

6 7. I certify:

7 (a) that a copy of this notice of appeal has been served on the reporter.

8 (b) That the clerk of the district court has been paid the estimated fee for preparation of  
9 the reporter's transcript.

10 (c) That the estimated fee for preparation of the clerk's or agency's record has been or  
11 will be paid.

12 (d) That the appellate filing fee has been paid.

13 (e) That service has been made upon all parties required to be served pursuant to Rule 20.

14 Dated this 16<sup>th</sup> day of June, 2010.

15   
16 Kent D. Jensen

17 **CERTIFICATE OF SERVICE**

18 I hereby certify that on this 16<sup>th</sup> day of June, 2010, I caused to be served a true and correct  
19 copy of the foregoing document by depositing copies in the US Postal Service, postage prepaid,  
addressed as follows:

20 J. Nick Crawford  
21 PO Box 1009  
Boise, ID 83701-1009

Maureen Messley  
Minidoka County Courthouse  
PO Box 368  
Rupert, ID 83350

22 Stephen Kenyon  
23 Clerk of the Supreme Court  
24 P.O. Box 83720  
Boise, ID 83720-0101

25   
Kent D. Jensen

FILED-10  
CASE #

2010 JUN 17 PM 4:35

DUANNE S. [Signature] CLERK  
DEPUTY

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

\*\*\*\*\*

ENRIQUE )  
 )  
v. )  
 )  
IDAHO POWER )  
\_\_\_\_\_ )

CASE NO. CV 09-34  
Estimate of Transcript

I, Maureen Newton, hereby estimate the cost of preparing a transcript of the trial of Enrique v. Idaho Power, held May 19 and 20, 2010 to be 165 pages @ 3.25 per page for a total of \$536.25, and hereby request that this be paid to the aforesaid court reporter before preparation of transcript, and this to be mailed to the Maureen Newton, at P.O. Box 132, Heyburn, Idaho 83336. This estimate is for the standard transcript on appeal, not including voir dire, openings and closings.

DATED this, the 17th day of June, 2010.

Maureen Newton, CSR #321

SCANNED

1 Kent D. Jensen (ISB #4424)  
Kent D. Jensen Law Office, P. C.  
2 2042 Overland  
P.O. Box 276  
3 Burley, Idaho 83318  
Telephone: (208) 878-3366  
4 Fax: (208) 878-3368  
Attorneys for Plaintiff

FILED  
CASE #

2010 JUL 22 AM 8:34

DUANE S. [Signature]  
DEPUTY

5 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

6 ISABEL ENRIQUEZ ,

7 Plaintiff,

8 vs.

9 IDAHO POWER COMPANY,

10 Defendant

Case No.: CV 2009- 34

MEMORANDUM IN SUPPORT TO  
OBJECTION TO COSTS

11  
12 Costs up by the Defendant are excessive in this case. Specifically, the costs for the  
13 defendant's expert witness are not justified. In analyzing the breakdown of the cost sought by the  
14 defendant's expert witness, there are number of questions which cast doubt upon the viability of  
15 the cost. For instance, there is a charge for 12.5 hours for which it is stated that the expert left the  
16 office at 8:30 AM and returned at 8:45 PM, with no explanation as to what was done during this  
17 time period. Likewise, there is a charge for 3.5 hours for which there is a statement which says  
18 "leave office 1:30 return 5:00 read file". Once again there is no explanation for what services  
19 were rendered during this time period. Next, there is a charge for "start writing report" for three  
20 hours and finally, a charge of 9.5 hours for writing the report.


21  
22 The report issued by the defendant's expert is seven pages long. One of the pages lists the  
23 reports and depositions, as well as photographs reviewed by the expert. The balance of the report  
24 contains copies of photographs, some of which the expert took and other photographs which  
25 have already been taken by other individuals. It is hard to see how total of 12.5 hours could have  
been devoted to the writing of this report.

OBJECTION TO COSTS 1

1           Additionally, the Plaintiff objects to the assessment of .50 cents per mile for travel set  
2 forth in the claim for discretionary costs. Under Idaho Rule of Civil Procedure 54 (d) (1) (C) (4)  
3 travel expenses for witnesses are assessed at .30 cents per mile again this cost is excessive.  
4 Likewise, there are service costs for witnesses which are assessed at \$40 for one service fee on  
5 Brent Browning but \$80 for service fees for Jentzsch-Kearl, yet there is no explanation for these  
6 fees. There is an additional fee from Bulldog Legal Support for Joe Kearl for \$95. These costs  
7 are inconsistent and seem to be excessive as they are either duplicative, or disparate in the way  
8 that they are assessed.  
9

10           Finally, an award of discretionary costs is governed by the discretion of the court in this  
11 matter. *Edwards v. Donart*, 115 Idaho 687, 778 P. 2d 809 (1989). When awarding costs under  
12 such circumstances, the court should take into account the ability of the party to pay for the  
13 costs, as well as the deterrent effect that such costs may have upon other individuals. *McPherson*  
14 *v. Employees Pension Plan of American Reinsurance Company*, 33 F.3d 253 (3<sup>rd</sup> Cir. 1994). In  
15 this matter, awarding the cost sought by the Defendant in this case would be a substantial burden  
16 upon the Plaintiff and would have a chilling effect on other litigation that would be brought  
17 before this court. Consequently, the Plaintiff petitions this court to deny the Defendant's  
18 application for discretionary costs.

19           Dated this 22 day of June, 2010

20  
21   
22 Kent D. Jensen 4424  
23 Attorney for Plaintiff  
24  
25



CERTIFICATE OF SERVICE

1  
2 I hereby certify that on the 22<sup>nd</sup> day of June 2010, I served the foregoing document by  
3 fax and by depositing a copy thereof in the United States Mail, postage prepaid, addressed as  
4 follows:

5 J. Nick Crawford  
6 PO Box 1009  
7 Boise, ID 83701-1009  
8 Fax: 208-344-7077

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
  
Kent D. Jensen

COURT MINUTES

FILED U.S. DISTRICT COURT  
CASE #

2010 JUN 22 PM 1:57

DUANE C. CLERK  
*SLB* DEPUTY

CV-2009-0000034

Isabel Enriquez vs. Idaho Power Company

Hearing type: Motion

Hearing date: 6/22/2010

Time: 1:46 pm

Judge: Jonathan Brody

Courtroom: District Courtroom-1

Court reporter: Linda Ledbetter

Minutes Clerk: Santos Garza

Party: Idaho Power Company, Attorney: J Crawford

Party: Isabel Enriquez, Attorney: Kent Jensen

Court calls case; Mr. Crawford and Mr. Jensen present via telephone;

Mr. Crawford addresses the Court

Mr. Jensen addresses the Court

Court questions Mr. Crawford re: expert witnesses; asked and answered;

Mr. Jensen has rebuttal; renews position to objection;

Court takes under advisement;

Nothing further 1:46

SCANNED



**IDAHO SUPREME COURT**

Clerk of the Courts  
(208) 334-2210



FILED  
CASE #

**IDAHO COURT OF APPEALS**

2010 JUN 28

P.O. Box 83720

Boise, Idaho 83720-0101

Duane Smith  
*De* DEPUTY

DUANE SMITH, CLERK  
Attn: SANTOS  
MINIDOKA COUNTY COURTHOUSE  
PO BOX 368  
RUPERT, ID 83350

**CLERK'S RECORD/REPORTER'S TRANSCRIPT SUSPENDED**

Docket No. 37812-2010

ISABEL ENRIQUEZ v.  
IDAHO POWER  
COMPANY

Minidoka County District Court  
#2009-34

The CLERK'S RECORD/REPORTER'S TRANSCRIPT is **SUSPENDED** until further notification from this office.

REASON FOR SUSPENSION: SUSPENDED TO 7-16-10 FOR PAYMENT OF FEES.

For the Court:  
Stephen W. Kenyon  
Clerk of the Courts

06/25/2010 DB

SCANNED



Clerk of the Courts  
(208) 334-2210

2010 JUL 14 PM 4:03

P.O. Box 83720  
Boise, Idaho 83720-0101

DUANE SMITH  
DEPUTY

DUANE SMITH, CLERK  
Attn: SANTOS  
MINIDOKA COUNTY COURTHOUSE  
PO BOX 368  
RUPERT, ID 83350

**NOTICE OF APPEAL FILED (T)**

Docket No. 37812-2010      ISABEL ENRIQUEZ v.      Minidoka County District Court  
IDAHO POWER COMPANY      #2009-34

A NOTICE OF APPEAL in the above-entitled matter was filed in this office on JUNE 22, 2010. The DOCKET NUMBER shown above will be used for this appeal regardless of eventual Court assignment.

The CLERK'S RECORD and REPORTER'S TRANSCRIPT(S) must be filed in this office on or before OCTOBER 10, 2010.

The REPORTER'S TRANSCRIPT(S) MUST BE LODGED with the District Court Clerk or Agency **\*\*35 DAYS PRIOR\*\*** to the date of filing in this office.

THE REPORTER SHALL FILE A NOTICE OF LODGING WITH THIS COURT.

THE FOLLOWING TRANSCRIPTS (PURSUANT TO I.A.R. 25) SHALL BE LODGED:

JURY TRIAL 5-19-10 thru 5-20-10

For the Court:  
Stephen W. Kenyon  
Clerk of the Courts

07/13/2010 DB

SCANNER 237

FILED ...  
CASE ...

2010 JUN 29 PM 3:16

DUTY ... DEPUTY  
*[Signature]*

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF MINIDOKA

ISABEL ENRIQUEZ,  
  
Plaintiff,  
  
v.  
IDAHO POWER COMPANY,  
  
Defendant.

Case No. CV-2009-34

---

MEMORANDUM DECISION ON MOTION FOR COSTS

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On June 22, 2010, this court heard the Motion for Costs of Idaho Power Company (hereinafter “the defendant”). The defendant was represented by J. Nick Crawford of Brassey, Wetherell & Crawford, LLP, who appeared by telephone. Kent Jensen of Kent D. Jensen Law Office, P.C. appeared by telephone for Isabel Enriquez (hereinafter “the plaintiff”). After reviewing the submissions and arguments of the parties, the court finds and orders as follows:

**I. BACKGROUND**

The parties tried this suit before a jury starting on May 19, 2010. At the conclusion of plaintiff’s case-in-chief on May 20, 2010, the defendant moved for and the court granted a directed verdict on the grounds that plaintiff had failed to introduce evidence of negligence of the defendant and that *res ipsa loquitor* did not apply to a case where expert testimony is necessary on the issue of causation.

The defendant has moved for an award of costs pursuant to Idaho Rule of Civil Procedure 54(d). Defendant argues that it is entitled to costs in the following amounts:

- (1) Costs as a matter of right pursuant to I.R.C.P.  
54(d)(1)(C).....\$4,861.82
- (2) Discretionary costs pursuant to I.R.C.P.  
54(d)(1)(D).....\$26,612.64

The plaintiff objected to defendant’s memorandum of costs, arguing that the amounts claimed for expert witness fees in addition to those recoverable as a matter of right were excessive, that travel expenses claimed were at a rate higher than that allowable, and that fees for service of process were excessive or duplicative. Finally, the plaintiff argued that the court should not award discretionary costs because of plaintiff’s inability to pay and the potential chilling effect that such an award could have on litigation of similar incidents in the future.

## II. LEGAL STANDARDS

A prevailing party in a civil action is entitled to certain costs as a matter of right. I.R.C.P. 54(d)(1)(C). Other costs are a matter of discretion for the court and may be granted upon a showing that such costs were necessary and exceptional costs reasonably incurred that should be assessed against the other party in the interest of justice. I.R.C.P. 54(d)(1)(D).

Whether to award discretionary costs to the prevailing party is within the sound discretion of the trial court. *Fish v. Smith*, 131 Idaho 492, 493, 960 P.2d 175, 176 (1998). In determining whether to award discretionary costs, the court may evaluate whether costs are exceptional within the context of the nature of the case. *City of McCall v. Seubert*, 142 Idaho 580, 588-89, 130 P.3d 1118, 1126-27 (2006).

## III. ANALYSIS

The defendant was the prevailing party since the court granted its motion for directed verdict at the conclusion of the plaintiff's case. See I.R.C.P. 54(d)(1)(B). As the prevailing party, the defendant is entitled to certain costs as a matter of right. I.R.C.P. 54(d)(1)(C).

The defendant has established to the court's satisfaction that it is entitled to the following costs as a matter of right:

1. Court filing fee: \$58.00
  2. Cost of service of process: \$315.00
  3. Reasonable expert witness fees for experts testifying at trial or in a deposition: \$2,000.00
  4. Costs of exhibits (posters): \$395.35
  5. Cost of deposition reporting and transcripts: \$2,093.47
- TOTAL: \$4,861.82

See I.R.C.P. 54(d)(1)(C).



In addition, the defendant claims \$26,612.64 in discretionary costs. The defendant argues that the plaintiff's retention of an expert witness who lives in California made its travel costs to depose the expert exceptional. Defendant further argues that the nature of this case—that it dealt with complex issues in the field of electrical engineering—made exceptional its expert witness costs in excess of the \$2,000 allowable as a matter of right. Finally, the defendant argues the court should award its counsel's travel expenses since defendant's counsel was caused to travel from Boise to Burley as a direct result of the actions of plaintiff's counsel.

Hiring of a non-resident expert witness is not exceptional for local attorneys in cases of this type. Further, the defendant could have chosen not to depose the plaintiff's expert, as deposition of experts is not mandatory.

Similarly, the additional expert witness fees claimed as discretionary costs are not exceptional, since such fees are routine costs associated with modern litigation overhead, especially when a case involves electricity and a shock to a human being. *See Total Success Invs., LLC v. Ada County Highway Dist.*, 148 Idaho 688, 674, 227 P.3d 942, 948 (Ct. App. 2010). In determining whether such additional expert witness fees are exceptional, the court also notes that the defendant is an electric company and could easily be involved in other cases that present similar issues to those presented in this case.

Finally, the travel expenses of defendant's counsel are not exceptional costs as such costs are also routine costs associated with modern litigation overhead. *Id.*

The defendant has not established to the court's satisfaction that any of the amounts claimed as discretionary costs were necessary and exceptional costs reasonably

incurred that should be assessed against the plaintiff. *See* I.R.C.P. 54(d)(1)(D).

Therefore, the court declines to award any such costs.

**IV. CONCLUSION**

The defendant is entitled to an award of costs as a matter of right in the amount of \$4,861.82.

Dated: 6/29/10

Signed: Jonathan Brody  
Jonathan Brody, District Judge

FILED IN DISTRICT COURT  
CASE # \_\_\_\_\_

2010 JUN 29 PM 3:15

CLERK  
*gpo* DEPUTY

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO IN AND FOR THE COUNTY OF MINIDOKA**

ISABEL ENRIQUEZ,	)	
	)	
	)	
	)	
Plaintiff,	)	
	)	
	)	
v.	)	Case No. CV-2009-34
IDAHO POWER COMPANY,	)	
	)	
	)	
Defendant.	)	
	)	
	)	

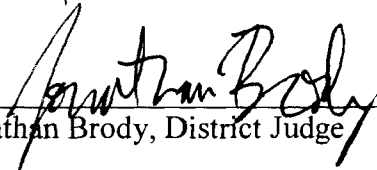
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**ORDER ON MOTION FOR COSTS**

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Pursuant to this court's Memorandum Decision on Motion for Costs, the defendant's motion for costs is granted in part. IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the plaintiff pay to the defendant costs to which the defendant is entitled as a matter of right in the amount of \$4,861.82.

Dated: 6/29/10

Signed:   
Jonathan Brody, District Judge

J. Nick Crawford, ISB No. 3220  
BRASSEY, WETHERELL & CRAWFORD, LLP  
203 W. Main Street  
P.O. Box 1009  
Boise, Idaho 83701-1009  
Telephone: (208) 344-7300  
Facsimile: (208) 344-7077

FILED  
2010 JUL 29 AM 11:31  
D. J. ...  
*Sp* ...

Attorneys for Idaho Power Company

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA**

ISABEL ENRIQUEZ,  
  
Plaintiff,

vs.

IDAHO POWER COMPANY,  
  
Defendant.

Case No. CV 2009-34

**AMENDED JUDGMENT**

The above-referenced matter having come before the Court for trial on May 19-20, 2010, and at the close of Plaintiff's case, the Court having considered all of Plaintiff's evidence, and considering Plaintiff's evidence in the light most favorable to Plaintiff, and considering a standard under Rule 50 by which the Defendant admits the truth of all of Plaintiff's evidence, and the Court having granted Defendant's Motion for Directed Verdict pursuant to Idaho Rule of Civil Procedure 50;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Defendant have judgment against Plaintiff and that costs be awarded to Defendant in the amount of FOUR THOUSAND EIGHT HUNDRED SIXTY-ONE Dollars and 82/00 (\$4,861.82).

DATED this 20<sup>th</sup> day of July, 2010.

  
\_\_\_\_\_  
HONORABLE JONATHAN BRODY  
DISTRICT JUDGE

**CLERK'S CERTIFICATE OF SERVICE**


I HEREBY CERTIFY that on this 20 day of July, 2010, I served a true and correct copy of the foregoing AMENDED JUDGMENT upon each of the following individuals by causing the same to be delivered by the method and to the addresses indicated below:

Kent D. Jensen  
2042 Overland  
P.O. Box 276  
Burley, Idaho 83318

U.S. Mail, postage prepaid  
 Hand-Delivered  
 Overnight Mail  
 Facsimile (208) 878-3368

J. Nick Crawford  
Brassey, Wetherell & Crawford  
203 W. Main Street  
P.O. Box 1009  
Boise, Idaho 83701-1009

U.S. Mail, postage prepaid  
 Hand-Delivered  
 Overnight Mail  
 Facsimile

  
\_\_\_\_\_  
Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

\* \* \* \* \*

<p><b>ISABEL ENRIQUEZ,</b></p> <p><b>Appellant/Plaintiff,</b></p> <p><b>vs.</b></p> <p><b>IDAHO POWER COMPANY</b></p> <p><b>Respondent/Defendant.</b></p> <hr/> <p>STATE OF IDAHO )</p> <p style="padding-left: 150px;">)ss.</p> <p>County of Minidoka )</p>	<p>)</p> <p>) <b>Supreme Court No. 37812-2010</b></p> <p>)</p> <p>) <b>District Court No. CV-2009-34*D</b></p> <p>)</p> <p>) <b>CLERK'S CERTIFICATE TO</b></p> <p>) <b>RECORD</b></p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>
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I, DUANE SMITH, Clerk of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Minidoka, do hereby certify that the above and foregoing record in the above-entitled case was compiled and bound under my direction, and is a true and correct record of the pleadings and documents that are automatically required under Rule 28 of the Idaho Appellate Rules, as well as those requested by counsel.

I FURTHER CERTIFY that the Notice of Appeal was filed on the 17<sup>TH</sup> day of June, 2010

DUANE SMITH  
Clerk of the District Court

By: *Santos Garza*  
Santos Garza, Deputy Clerk



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

\* \* \* \* \*

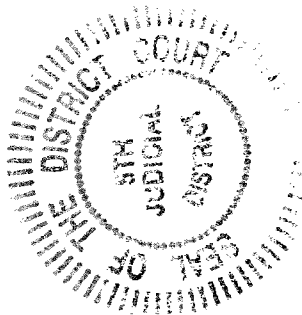
<b>ISABEL ENRIQUEZ,</b>	)	<b>Supreme Court No. 37812-2010</b>
	)	
Plaintiff/Appellant,	)	<b>District Court No. CV-2009-34*D</b>
vs.	)	
	)	<b>CLERK'S CERTIFICATE OF</b>
<b>IDAHO POWER COMPANY,</b>	)	<b>SERVICE</b>
	)	
Defendant/Respondent.	)	
_____		

I, Santos Garza, Deputy Clerk of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Minidoka, do hereby certify that I have personally served or mailed by United States Mail, postage prepaid, one copy of the Clerk's Record to each of the parties or their attorney of record as follows:

Kent D. Jensen  
KENT D. JENSEN LAW OFFICE  
P. O. Box 276  
Burley, ID 83318

J. Nick Crawford  
BRASSEY, WETHERELL & CRAWFORD  
203 w. Main St.  
Boise, ID 83701-1009

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court in Rupert, Idaho, the 20 day of Sept, 2010.



DUANE SMITH  
Clerk of the District Court

By: Santos Garza  
Santos Garza, Deputy Clerk



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF MINIDOKA

ISABEL ENRIQUEZ  
Appellant/Plaintiff,

SUPREME COURT CASE NO. 37812-2010

DIST. CT. CASE NO. CV-2009-34\*D

vs.

**CERTIFICATE OF CLERK  
RE: EXHIBITS**

IDAHO POWER COMPANY  
Respondent/Defendant,

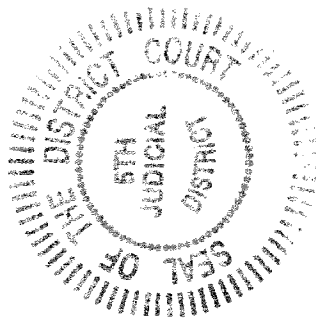
STATE OF IDAHO )  
                          ) ss.  
County of Minidoka )

I, DUANE SMITH, Clerk of the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Minidoka, do hereby certify that I am sending the following exhibits:

**SEE ATTACHED EXHIBIT SUMMARY**

That the Exhibit are on file in my office and are part of the record on appeal in the above-entitled cause and are being sent to the Clerk of the Supreme Court with the Clerk's Record on Appeal, as required by Rule 31 of the Idaho Appellate Rules.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Rupert, Idaho, this 20 day of Sept, 2010.



DUANE SMITH  
Clerk of the District Court (SEAL)  
By: Santos Garza  
Santos Garza, Deputy Clerk

Number	Description	Result	Storage Location Property Item Number	Destroy Notification Date	Destroy or Return Date
1	Joint Exhibit #1 DVD of Accident Re-Enactment	Admitted			
		Assigned to:	[none] Both counsels		
2	Defendant's Exhibit E-3 Report of Idaho Power Comapny	Admitted			
		Assigned to:	[none] Stipulated by both Counsels		
3	Defendant's Exhibit J-1 Photograph of exhibit K1a To Deposition of Mr. Kamm	Admitted			
		Assigned to:	[none] Stipulated by both Counsels		
4	Defendant's Exhibit # C Picture #36 Picture of the Field	Admitted			
		Assigned to:	[none] Stipulated by both Counsels		
5	Exhibit C # 39 Photograph of the Tractor	Admitted			
		Assigned to:	[none] Stipulated by both Counsels		
6	Defendant's Exhibit # G1, photgraph of Tractor;	Admitted			
		Assigned to:	Idaho Power Company		
7	Plaintiff's Exhibit # E Doc. 2 Breakdown of Benefits	Admitted			
		Assigned to:	Jensen, Kent D., 4424		
8	Plaintiff's Exhibit A # 3 Photograph of Tractor	Offered			
		Assigned to:	Jensen, Kent D., 4424		
10	Defendant's Exhibit # L Idaho EMS Report	Admitted			
		Assigned to:	Idaho Power Company		
12	defendant's Exhibit # D Doc. 1 picture 45, 46 and 47	Admitted			
		Assigned to:	Jensen, Kent D., 4424		
13	Defendant's Exhibit # F Doc3	Admitted			
		Assigned to:	Jensen, Kent D., 4424		