12-13-2010

Rocky Mountain Power v. Jensen Augmentation Record Dckt. 37998

In the Supreme Court of the State of Idaho

LAW CLERK

ROCKY MOUNTAIN POWER, a division of PacifiCorp, an Oregon corporation,

Plaintiff-Respondent,

v.

STANLEY K. JENSEN and CATHERINE C. JENSEN, as trustees of the STANLEY AND CATHERINE JENSEN FAMILY LIVING TRUST;

Defendants-Appellants,

and

STEWART A. JENSEN; BRIAN D. PEARSON; and JOHN DOES 1-20,

Defendants.

ORDER GRANTING REQUEST FOR ADDITION TO THE RECORD

Supreme Court Docket No. 37998-2010
Oneida County Docket No. 2009-4

PLAINTIFF'S/RESPONDENT'S REQUEST FOR ADDITION TO THE RECORD was filed by counsel for Respondent on December 2, 2010. Therefore, good cause appearing,

IT HEREBY IS ORDERED that PLAINTIFF'S/RESPONDENT'S REQUEST FOR ADDITION TO THE RECORD be, and hereby is, GRANTED and the augmentation record shall include the documents listed below, file stamped copies of which accompanied this Motion:

1. Opposition to Defendants' Motion for Reconsideration, file-stamped June 18, 2010; and
2. Affidavit of Counsel in Opposition to Defendants' Motion for Reconsideration, file-stamped June 18, 2010.

DATED this 13th day of December 2010.

AUGMENTATION RECORD

For the Supreme Court

Karel A. Lehrman, Chief Deputy Clerk for
Stephen W. Kenyon, Clerk

cc: Counsel of Record

In the Supreme Court of the State of Idaho

ROCKY MOUNTAIN POWER, a division of PacifiCorp, an Oregon corporation, Plaintiff-Respondent, v. STANLEY K. JENSEN and CATHERINE C. JENSEN, as trustees of the STANLEY AND CATHERINE JENSEN FAMILY LIVING TRUST; Defendants-Appellants, and STEWART A. JENSEN; BRIAN D. PEARSON; and JOHN DOES 1-20, Defendants.	ORDER GRANTING REQUEST FOR ADDITION TO THE RECORD Supreme Court Docket No. 37998-2010 Oneida County Docket No. 2009-4

PLAINTIFF'S/RESPONDENT'S REQUEST FOR ADDITION TO THE RECORD was filed by counsel for Respondent on December 2, 2010. Therefore, good cause appearing,

IT HEREBY IS ORDERED that PLAINTIFF'S/RESPONDENT'S REQUEST FOR ADDITION TO THE RECORD be, and hereby is, GRANTED and the augmentation record shall include the documents listed below, file stamped copies of which accompanied this Motion:

1. Opposition to Defendants' Motion for Reconsideration, file-stamped June 18, 2010; and
2. Affidavit of Counsel in Opposition to Defendants' Motion for Reconsideration, file-stamped June 18, 2010.

DATED this 13th day of December 2010.

For the Supreme Court

Karel A. Lehrman, Chief Deputy Clerk for
Stephen W. Kenyon, Clerk

cc: Counsel of Record

VAN COTT, BAGLEY, CORNWALL & MCCARTHY
Stephen K. Christiansen (Idaho Bar No. 8032)
36 South State Street, Suite 1900
Post Office Box 45340
Salt Lake City, Utah 84111-1478
Telephone: (801) 532-3333
Facsimile: (801) 534-0058

Franklin N. Smith (Idaho Bar No. 1333)
510 "D" Street
P.O. Box 2249
Idaho Falls, Idaho 83403-2249
Telephone: (208) 524-3700
Facsimile: (208) 522-8618

Attorneys for Plaintiff Rocky Mountain Power

IN THE SIXTH JUDICIAL DISTRICT IN AND FOR

ONEIDA COUNTY, STATE OF IDAHO

ROCKY MOUNTAIN POWER, a division of PacifiCorp, an Oregon corporation, Plaintiff, vs. STANLEY K. JENSEN and CATHERINE C. JENSEN, as Trustees of the STANLEY AND CATHERINE JENSEN FAMILY LIVING TRUST; STEWART A. JENSEN; BRIAN C. PEARSON; and JOHN DOES 1-20, Defendants.	**OPPOSITION TO DEFENDANTS' MOTION FOR RECONSIDERATION** Civil No. CV-2009-4 Honorable Robert C. Naftz

The Defendants' Motion for Reconsideration is not well taken and should be denied. Rule 11(a)(2) provides no grounds for relief from a final judgment. The Idaho

appellate courts treat such improperly designated reconsideration motions as Rule 59(e) motions to alter or amend, which do not allow additional evidence to be considered. When additional evidence is proffered, Idaho courts analyze the motion under Rule 60(b), but reject evidence that was reasonably available to the movant before the entry of judgment. Defendants do not properly analyze the case under these standards and could not prevail under any standard given the record in this case. Moreover, the affidavits and letter submitted with the motion come from witnesses not timely identified under the Court's Rule 16 scheduling order, lack appropriate foundation, and are irrelevant and inadmissible. The defendants also cannot make out a business damages claim at this late date under the plain terms of the business damages statute. The Court should deny this motion on all grounds.

LEGAL STANDARDS

Citing I.R.C.P. 11(a)(2)(b), the defendants have moved this Court to reconsider its final disposition of the case granting summary judgment in favor of plaintiff Rocky Mountain Power. However, I.R.C.P. 11(a)(2)(B) is only a mechanism for a court to reconsider ***interlocutory*** or ***post-judgment*** orders, not final decisions:

> A motion for reconsideration of any **interlocutory orders** of the trial court may be made at any time before the entry of final judgment but not later than fourteen (14) days after the entry of the final judgment. A motion for reconsideration of any order of the trial court **made after entry of final judgment** may be filed within fourteen (14) days from the entry of such order . . . .

I.R.C.P. 11(a)(2)(B) (emphasis added). The Supreme Court holds that this plain language means what it says: "A motion for reconsideration under Rule 11(a)(2)(B) only

applies to orders made **before and after** the entry of a final judgment, **not to the final judgment itself.**" Shelton v. Shelton, 148 Idaho 560, 225 P.3d 693, 700 n.4 (2009) (citations omitted, emphasis added).

When asking a trial court to reconsider its final judgment, the proper motion to bring is a Rule 59(e) motion to alter or amend the judgment. Straub v. Smith, 145 Idaho 65, 71, 175 P.3d 754, 760 (2007). Because the Idaho Rules do not allow the filing of a motion to reconsider an order granting summary judgment, such motions if filed should be treated as motions to alter or amend under Rule 59(e). Willis v. Larsen, 110 Idaho 818, 821, 718 P.2d 1256, 1259 (Idaho Ct. App. 1986).

However, a motion to alter or amend is not a blank slate to start the case over, but rather "a mechanism to correct legal and factual errors occurring in proceedings before it." Slaathaug v. Allstate Ins. Co., 132 Idaho 705, 707, 979 P.2d 107, 109 (1999). Consequently, motions to alter or amend "must of necessity ... be directed to the status of the case as it existed when the court rendered the decision upon which the judgment is based." Lowe v. Lym, 103 Idaho 259, 260, 646 P.2d 1030, 1034 (1982). New evidence may not be presented with a motion to alter or amend a judgment. Johnson v. Lambros, 143 Idaho 468, 471, 147 P.3d 100, 103 n.3 (2003).

If new evidence is offered, the motion is treated as a motion for relief from final judgment under Rule 60(b) and the standards of that rule must be met. Savage Lateral Ditch Water Users Ass'n v. Pulley, 125 Idaho 237, 245, 869 P.2d 554, 562 (1993).

Finally: "Pro se litigants are not accorded any special consideration simply because they are representing themselves and are not excused from adhering to procedural rules." In re SRBA, 35217, 2010 WL 1980433 (Idaho May 19, 2010) (citations omitted).

ARGUMENT

POINT I

DEFENDANTS' MOTION SHOULD BE DENIED UNDER A PROPER APPLICATION OF THE IDAHO RULES OF CIVIL PROCEDURE.

A. The Defendants' Motion for Reconsideration is Not Proper Under Rule 11(a)(2)(B).

Under Rule 11(a)(2)(B), the defendants are not entitled to the relief they seek. That rule applies only to **interlocutory** orders **or** orders issued by the court **following** entry of the final judgment, **but not to the final judgment itself**. Shelton v. Shelton, 148 Idaho 560, 225 P.3d 693, 700 n.4 (2009) (citations omitted); *see also* I.R.C.P. 11(a)(2)(B) and I.R.C.P. 59(e). This Court's resolution of all claims by summary judgment did not constitute either an "interlocutory" or a "post-judgment" order, but was a final decision for which Rule 11(a)(2)(B) reconsideration is inappropriate. See Willis v. Larsen, 110 Idaho 818, 821, 718 P.2d 1256, 1259 (Idaho App. 1986). The defendants' motion should therefore be treated as a motion to alter or amend under Rule 59(e). Id.

B. The Defendants Are Not Entitled to Relief Under Rule 59(e).

Because the Court correctly ruled on Rocky Mountain Power's Motion for Summary Judgment, the defendants' motion is not supportable under I.R.C.P. 59(e).

The purpose of Rule 59(e) is to provide a trial court with a mechanism to "correct legal and factual errors." Slaathaug v. Allstate Ins. Co., 132 Idaho 705, 707, 979 P.2d 107, 109 (1999). However, the Court's review is of "the status of the case as it existed when the court rendered the decision upon which the judgment is based." Lowe v. Lym, 103 Idaho 259, 260, 646 P.2d 1030, 1034 (1982).

In this case, the Court made no legal or factual errors. Indeed, the defendants do not even argue that the Court erred based on the record it had at the time of the summary judgment motion. Nor could they. There was no record evidence on summary judgment from which the defendants could obtain a verdict, and the defendants do not argue that there was. Rather, the defendants correctly state the standard that was properly applied by the Court in granting Rocky Mountain Power's Motion for Summary Judgment:

> "When a motion for summary judgment has been supported by either depositions, affidavits, or other evidence, the adverse party may not rest upon the mere allegations or denials contained in parties' pleadings, but must by affidavits or otherwise provide facts showing there is a genuine issue of material fact for trial."

Defs' Memo. p. 3 (emphasis added), quoting I.R.C.P. 56(e). That is exactly what occurred in this case. Rocky Mountain Power offered evidence of the fair market value of the easement through the affidavits of two independent appraisers, which the defendants failed to refute with admissible facts. The Court acted properly by considering the admissible evidence on file and of record when it granted summary judgment.

The entirety of the defendants' motion to reconsider is based rather on new evidence submitted after the entry of judgment. New evidence may not, however, be presented with a motion to alter or amend a judgment. Johnson v. Larnbros, 143 Idaho 468, 471, 147 P.3d 100, 103 n.3 (2003).

Regardless how this Court considers a Rule 59(e) challenge, it should be denied.

C. **The Defendants Do Not Meet the Standard to Present New Evidence Under Rule 60(b).**

When new evidence is offered after entry of a final judgment, as here, the motion should be treated as a motion for relief from a final judgment under Rule 60(b). See Savage Lateral Ditch Water Users Ass'n v. Pulley, 125 Idaho 237, 245, 869 P.2d 554, 562 (1993). The defendants fail to address or meet the standards of this rule as well.

New evidence offered in support of a Rule 60(b)(2) motion for relief from a final judgment must be "newly discovered evidence." I.R.C.P. 60(b)(2). The instant case fits within the rule of Savage Lateral Ditch Water Users Ass'n v. Pulley, 125 Idaho 237, 245, 869 P.2d 554, 562 (Idaho 1993), in which the Supreme Court refused to allow new affidavits in support of a motion to alter or amend an order of summary judgment because the evidence was available before judgment:

> Even if this motion was treated as one properly brought under Rule 60(b), there is no evidence in the record that appellants demonstrated good cause for admission nor did the appellants specify any grounds for relief.
>
> These affidavits were not 'newly discovered' evidence in the usual sense under Rule 60(b)(2), *i.e.*, they did not disclose information in existence at the time of trial but not discoverable with due diligence, nor did they present other reasons justifying the relief requested. See I.R.C.P. 60(b)(6).

Id. (citations omitted). The defendants here likewise seek to offer untimely affidavits without showing that there is good cause under Rule 60(b) for the Court to consider the new evidence. The evidence proffered in support of the motion does not disclose any information that was either unknown or undiscoverable by due diligence before entry of the judgment. Nor have the movants demonstrated any of the other numbered grounds for relief under Rule 60(b). See I.R.C.P. 60(b)(1)-(6).

In sum, the motion, construed as a Rule 60(b) motion, fails on its face.

D. **The Motion Fails Under Any of the Civil Procedural Rules.**

Even if the Court were to consider this a proper Motion for Reconsideration under Rule 11(a)(2)(B), the motion still fails under this and all other procedural rules. The defendants in essence present one argument: "Defendants were and are not trained attorneys and were unaware of the requirements and methods of properly responding to a motion for summary judgment." (Defs.' Motion for Reconsideration, p. 1.) The defendants claim that "[h]ad Defendants had the assistance of counsel, [the] facts would have been presented in a proper form for the Court's consideration." Id., p. 2; see also Aff. of Stanley K. Jensen ¶¶ 21, 22; & Aff. of Catherine C. Jensen ¶¶ 22, 23.

This argument fails legally and factually. Legally, the decision to proceed pro se does not relieve a party of complying with any procedural rules. As noted by the Court in its decision granting summary judgment, it is well established that a pro se litigant is held to the same standards as one who is represented by counsel: "Pro se litigants are

not accorded any special consideration simply because they are representing themselves and are not excused from adhering to procedural rules." Memorandum Decision and Order, p. 9, quoting Michalk v. Michalk, 148 Idaho 224, 220 P.3d 580, 585 (2009), reh'g denied (Nov. 20, 2009) (citations omitted). The Supreme Court has reaffirmed this principle in a case decided since the issuance of this Court's decision. See In re SRBA, 35217, 2010 WL 1980433 (Idaho May 19, 2010).

Factually, these defendants had ample opportunity to obtain counsel if they had wanted to do so. As mentioned to the Court at the summary judgment hearing, Rocky Mountain Power representatives repeatedly advised the defendants that they could and should retain an attorney to represent their interests and present their claims and defenses in this case. If the Court considers any evidence at this post-judgment juncture, the Court should consider the following:

At the outset of the pre-litigation negotiation process with these landowners, Rocky Mountain Power sent a statutory advice of rights letter dated July 16, 2008, which included a Statement of Property Owners' Rights Under Idaho Condemnation Laws advising as follows: "You have the right to consult with an attorney at any time during this process." A copy of that letter is attached to the affidavit of counsel as Exhibit A.

On August 19, 2008, Rocky Mountain Power followed up with another letter, further stating:

> You have the right to consult with an attorney at any time during the acquisition process. In cases in which Rocky Mountain Power condemns

> property and you are able to establish that just compensation exceeds the last amount timely offered by Rocky Mountain Power by ten percent (10%) or more, Rocky Mountain Power may be required to pay your reasonable costs and attorney's fees.

That letter further contained an enclosure outlining property owners' rights under Idaho Code § 7-711(2), which concludes by stating: "You have the right to consult with an attorney." Copies of the August 19, 2008 letter and enclosure, together with the certified mail return receipt, are attached to the affidavit of counsel as Exhibit B.

On February 12, 2009, counsel for Rocky Mountain Power sent a letter to Mr. Jensen addressing certain of Mr. Jensen's concerns. The letter included the following statement: "[W]e strongly encourage you to hire independent legal counsel to explain your rights and remedies to you." A copy of the February 12, 2009 letter is attached to the affidavit of counsel as Exhibit C.

On March 19, 2009, in connection with a then-proposed amendment to the Occupancy Agreement, counsel for Rocky Mountain Power sent another letter to Mr. and Mrs. Jensen, which stated: "As before, I urge you to consult with legal counsel regarding these issues"; and "Again, if you have any questions, please let me know or consult with an attorney of your choosing." A copy of the March 19, 2009 letter is attached to the affidavit of counsel as Exhibit D.

On July 2, 2009, Rocky Mountain Power's attorney sent Mr. Jensen a letter which stated, in part: "I again strongly urge you to retain a lawyer and/or certified appraiser who can advise you as to the proper methodology and value involved here"

and "Again, I urge you to consult a lawyer to advise you on this subject." A copy of that letter is attached to the affidavit of counsel as Exhibit E.

In spite of numerous and repeated admonitions throughout the course of this dispute for the defendants to hire counsel, they did not. That was their choice, which they were entitled to make; but they cannot now be heard to complain about it. At the hearing on the Motion for Summary Judgment held on March 12, 2010, Mr. Jensen appeared pro se, and repeated his determination to proceed pro se. This Court gave him every opportunity to be heard. The Court was very careful to assure that Mr. Jensen could submit whatever he wanted and to present whatever he wanted in support of his motion. Following a full hearing on the matter, the Court issued its decision, which states in relevant part:

> While this Court does not doubt Mr. Jensen's good intentions and efforts, those efforts do not change the fact that the Defendants did not actually submit any evidence this Court could legally consider in its determination regarding summary judgment. The Defendants simply did not comply with the Idaho Rules of Civil Procedure. As a pro se litigant, Mr. Jensen is held to the same standards and rules that every attorney in this jurisdiction is required to follow. ... [T]he Defendants failed to submit any affidavits or other admissible evidence in opposition to the Plaintiff's request for summary judgment. ... Thus, since the Defendants have failed to meet their burden pursuant to Rule 56, this Court must grant the Plaintiff's Motion for Summary Judgment.

Order, pp. 9-10.

The defendants are not now entitled to have a final judgment amended or set aside based on their failure to avail themselves of counsel in this matter sooner. To now claim—after an unfavorable judgment was entered—that their decision not to retain an

attorney is a valid basis for reconsidering the final judgment is indefensible under Rule 11(a)(2)(B) or any other rule. To hold otherwise would be to allow pro se litigants to eat their cake and have it too.

Undoing the Court's valid judgment at this late date would prejudice this plaintiff, not to mention waste precious judicial resources. Rocky Mountain Power has been diligent from the commencement of this dispute. It has complied with all pre-litigation statutory requirements; it timely commenced litigation when the parties reached an impasse; it was diligent in discovery; it timely met all scheduled deadlines; and it properly moved for summary judgment at the close of discovery. The dispute has dragged on nearly two years now, at ratepayers' expense. In contrast to Rocky Mountain Power, these defendants have not been diligent in asserting viable claims but have ignored repeated suggestions to obtain legal counsel and now seek to start this case over from square one – including apparently, starting over with new claims, witness identification, and discovery, after enormous expense already incurred by Rocky Mountain Power. That would be an unjust and unfair punishment to a plaintiff that has been diligent from day one. There is no authority cited that would support it.

In sum, there is no good cause for a reconsideration of this matter, regardless of the standard to be applied. The Court and the plaintiff gave these defendants every benefit of the doubt over an extended period before final disposition of this matter. The Court should firmly deny the Motion for Reconsideration.

POINT II

THE AFFIDAVITS AND LETTER SUBMITTED BY DEFENDANTS ARE IRRELEVANT AND INADMISSIBLE AND DO NOT CONSTITUTE GROUNDS FOR DISTURBING THE COURT'S JUDGMENT.

The defendants' motion fails for the foregoing reasons. Additionally, the defendants do not suggest that this Court committed error in its summary judgment ruling, let alone prejudicial error required under I.R.C.P. 61 for modification of the judgment – nor could they. Instead, they simply ask the Court to allow them to start this case all over.

In support of this idea, the defendants submit for the first time affidavits and a letter that purport to speak to the fair market value of the defendants' property. However, the affidavits and letter are irrelevant to the determination of the Motion for Reconsideration, and are inadmissible for any other purpose.

None of the parties who signed the affidavits or letter were identified by the Jensens as expert witnesses on Defendant's Witness Disclosure Statement filed under the Court's scheduling order. Therefore, they are precluded from offering expert testimony in this matter. See Edmunds v. Kraner, 142 Idaho 867, 873, 136 P.3d 338, 344 (2006) (expert witnesses not disclosed by date established by trial court were properly excluded). Nor have these defendants shown good cause under I.R.C.P. 6(b) or 16(b) for extending the time, long after the fact, in which to designate new witnesses.

The letter submitted by Lorinda Seamons is wholly inadmissible. As an unsworn statement, it is "entitled to no probative weight in passing on motions for summary

judgment." Tri State Land Co., Inc. v. Roberts, 131 Idaho 835, 839, 965 P.2d 195, 199 (Idaho Ct. App. 1998). Further, the letter speculates about future value *in the event the property were subdivided into lots.* *See* Seamons letter. The fact is that the property was not subdivided into lots as of the valuation date, is not presently subdivided, and never has been subdivided, making Ms. Seamons' conclusions as to future market value of this property wholly speculative and irrelevant. See Eagle Sewer Dist. v. Hormaechea, 109 Idaho 418, 420, 707 P.2d 1057, 1059 (Idaho Ct. App. 1985).

The affidavits of Larry Oja and Jeffrey [last name illegible] regarding land values offer conclusory statements only, and are not supported by any documentary evidence. They lack an adequate foundation for their statements. They also fail to recognize that property which is the subject of eminent domain proceedings is to be valued as of the date the summons is issued. Idaho Code § 7-712. The affidavits do nothing to acknowledge or provide relevant dates linking purported transactions to the taking, or to otherwise establish the relevance of the discussions submitted to the Court. They therefore fail wholly to provide relevant evidence of the fair market value of the easement as of the statutory valuation date. Additionally, they contravene the Best Evidence Rule in describing land transactions that are the subjective of written documentation. See Idaho Code § 9-411 (providing in pertinent part that "[t]here can be no evidence of the contents of a writing other than the writing itself"); State v. Rosencrantz, 110 Idaho 124, 130, 714 P.2d 93, 99 (Idaho Ct. App. 1986); see also I.R.E. 1002. They are inadmissible and should not be considered.

The defendants themselves submit affidavits that simply re-state information that was already provided to Rocky Mountain Power's appraisers, or could have been, in formulating fair market value conclusions. Thus, the defendants' evidence as to land value has already been considered in the appraisals that underlie the Court's judgment. The defendants had the chance to hire their own appraiser and further had the chance to provide input to Rocky Mountain Power's appraisers. The defendants do not themselves offer an appraisal or appraised value.

Furthermore, the defendants' non-land-value evidence lacks foundation and is inadmissible. A goodly portion of the defendants' new affidavits relate to claims for business damages that are unrecoverable as a matter of law. See infra Part III. Even so, the arguments they do make lack foundation: the defendants complain about being unable to farm areas without a showing that they have been farming those areas; the defendants provide no basis for the business numbers they invoke; the defendants invoke issues that are immaterial and irrelevant to the just compensation determinations decided by the Court; the defendants show no linkage to fair market value or constitutional just compensation. Most telling, the defendants provide no good cause for relieving them from their own prior determination to handle this case themselves.

In sum, the defendants fail to establish that this case should be re-opened and re-litigated. The Court should reject the motion for reconsideration in the interests of justice.

POINT III

THE DEFENDANTS' CLAIMS FOR DAMAGES TO THEIR BUSINESS OPERATIONS ARE UNTIMELY.

Lastly, the defendants endeavor to claim business losses by virtue of the existence of the easement. (Aff. of Stanley K. Jensen ¶¶ 12, 15, 16 & 19; Aff. of Catherine C. Jensen ¶¶ 12, 15, 16 & 19.) Those arguments, however, are not timely or properly brought, and may not now be considered by the Court.

A property owner may only claim business damages in accordance with the business damages statute, Idaho Code § 7-711(2)(B). Under that statute, a property owner who claims business damages must meet certain procedural requirements, including submitting a written business damage claim to the plaintiff by certified mail, return receipt requested, within ninety (90) days after service of the summons and complaint for condemnation. The claim must include an explanation of the nature, extent and amount of the claimed damages that has been prepared by a certified public accountant or business damage expert familiar with the operation of the claimant's business and is supported by copies of the property owner's business records. Id. The business damage claim must be clearly segregated from the property owner's claim for severance damages. Id. If a property owner fails to meet these requirements, the Court must strike the business damage claim unless a good faith justification is provided by the property owner. Id. § (ii).

The defendants failed on summary judgment and have failed again on reconsideration to make a showing on any of these mandatory requirements. They did

not because they cannot. Their claims for business damages must be stricken by the Court under governing law and cannot properly form the basis for a reconsideration.

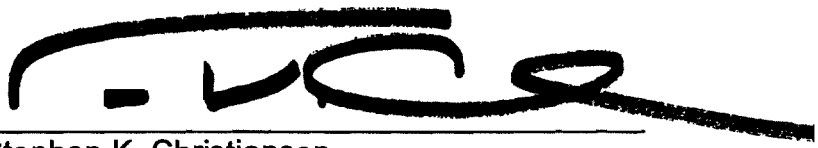
CONCLUSION

The issue now before the Court is more than one of technical compliance. It is one of fundamental fairness. This Court's proceedings do matter; they should not be lightly undertaken and then challenged after the fact. They must be taken seriously the first time and should not be re-litigated.

These defendants have been more than fairly compensated. They received more than the highest just compensation established by two independent appraisals and determined by the Court. They received every benefit of the doubt. They have never obtained or presented an appraisal of their own despite two years in which to do so. They received substantial monies to devote to the issues they now improperly raise.

This case represents the last piece of litigation in the State of Idaho on this power line. The Court should not send this public utility back to square one to start over at this late date. The Court was more than fair to these landowners. The landowners have been justly compensated and were freely able to make determinations for themselves as guaranteed to them as citizens of this state and nation. They should not be heard now to reverse course and ask the Court to save them from themselves. The case law from the Supreme Court holds just the opposite. Substantial justice calls for a resolute denial of the defendants' Motion for Reconsideration confirming closure of this case.

DATED this 17th day of June, 2010.



Stephen K. Christiansen
Franklin N. Smith
Attorneys for Rocky Mountain Power

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of June, 2010, I served a true and correct copy of the foregoing **OPPOSITION TO DEFENDANTS' MOTION FOR RECONSIDERATION** upon the following, by overnight courier, addressed as follows:

Adam J. McKenzie, Esq.
McKenzie & McKenzie, P.A.
102 North State Street – Suite 1
Preston, ID 83263

Stewart A. Jensen
214 Aerie Lane
Elko, NV 89801

Brian C. Pearson
11603 Jordan Farms Road
Riverton, UT 84095

Honorable Robert C. Naftz
Bannock County Courthouse
P.O. Box 4847
Pocatello, ID 83205

VAN COTT, BAGLEY, CORNWALL & MCCARTHY
Stephen K. Christiansen (Idaho Bar No. 8032)
36 South State Street, Suite 1900
Post Office Box 45340
Salt Lake City, Utah 84111-1478
Telephone: (801) 532-3333
Facsimile: (801) 534-0058

Franklin N. Smith (Idaho Bar No. 1333)
510 "D" Street
P.O. Box 2249
Idaho Falls, Idaho 83403-2249
Telephone: (208) 524-3700
Facsimile: (208) 522-8618

Attorneys for Plaintiff Rocky Mountain Power

IN THE SIXTH JUDICIAL DISTRICT IN AND FOR

ONEIDA COUNTY, STATE OF IDAHO

ROCKY MOUNTAIN POWER, a division of PacifiCorp, an Oregon corporation, Plaintiff, vs. STANLEY K. JENSEN and CATHERINE C. JENSEN, as Trustees of the STANLEY AND CATHERINE JENSEN FAMILY LIVING TRUST; STEWART A. JENSEN; BRIAN C. PEARSON; and JOHN DOES 1-20, Defendants.	**AFFIDAVIT OF COUNSEL IN OPPOSITION TO DEFENDANTS' MOTION FOR RECONSIDERATION** Civil No. CV-2009-4 Honorable Robert C. Naftz

Undersigned counsel for the plaintiff hereby affirms on oath and personal knowledge that attached hereto are true and correct copies of the following documents submitted in opposition to the defendants' Motion for Reconsideration:

Exhibit A: Rocky Mountain Power's statutory advice of rights letter to the defendants herein dated July 16, 2008, which included a Statement of Property Owners' Rights Under Idaho Condemnation Laws.

Exhibit B: Rocky Mountain Power's letter of August 19, 2008, to the defendants herein, containing an enclosure outlining property owners' rights under Idaho Code § 7-711(2), together with the certified mail return receipt.

Exhibit C: Correspondence dated February 12, 2009, from undersigned counsel for Rocky Mountain Power to Stanley K. Jensen, defendant herein, which has been redacted to eliminate reference to a settlement figure proposed by the defendant.

Exhibit D: Correspondence dated March 19, 2009, from undersigned counsel for Rocky Mountain Power to the defendants herein.

Exhibit E: Correspondence dated July 2, 2009, from undersigned counsel for Rocky Mountain Power to Stan Jensen, defendant herein, which has been redacted to eliminate reference to a settlement figure proposed by the plaintiff.

STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)

DATED this 17th day of June, 2010.

Stephen K. Christiansen

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

Notary Public

NOTARY PUBLIC
NICALEE NELSON
Commission #576230
My Commission Expires
November 4, 2012
State of Utah

CERTIFICATE OF SERVICE

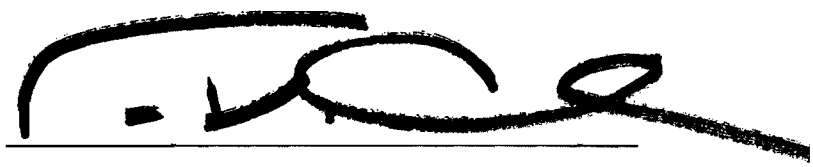
I hereby certify that on the 17th day of June, 2010, I served a true and correct copy of the foregoing **AFFIDAVIT OF COUNSEL IN OPPOSITION TO DEFENDANTS' MOTION FOR RECONSIDERATION** upon the following, by overnight courier, addressed as follows:

Adam J. McKenzie, Esq.
McKenzie & McKenzie, P.A.
102 North State Street – Suite 1
Preston, ID 83263

Stewart A. Jensen
214 Aerie Lane
Elko, NV 89801

Brian C. Pearson
11603 Jordan Farms Road
Riverton, UT 84095

Honorable Robert C. Naftz
Bannock County Courthouse
P.O. Box 4847
Pocatello, ID 83205



ROCKY MOUNTAIN POWER
A DIVISION OF PACIFICORP

Right of Way Department
1407 W North Temple, Suite #110
Salt Lake City, Utah 84116

July 16, 2008

Mr. Stanley and Catherine Jensen
6858 N. Old Highway 191
Malad, ID 83252

Re: Rocky Mountain Power Transmission Line Project - Populus to Ben Lomond Right-of-Way Acquisition

Dear Mr. & Mrs. Jensen:

You have likely heard about the transmission line that Rocky Mountain Power is building to bring the electricity necessary to keep up with growth and economic development in Idaho and the west. Rocky Mountain Power recognizes and appreciates that property owners whose land(s) may be affected are anxious to understand many things associated with the project.

It is likely your property will be impacted to some degree by the project. Rocky Mountain Power wants to provide you the opportunity to discuss the project, ask questions, express concerns, and understand the process for acquiring property or easement rights.

While open houses and other public hearings have been held to help inform the general public regarding the project, it is clear that meeting with individual property owners is the best method of addressing each owners' questions and concerns.

Right of Way Agents representing Rocky Mountain Power have started negotiations with land owners on various portions of the project. Because the transmission line is nearly ninety (90) miles in length and traverses hundreds of property ownerships, the process of personally contacting every property owner will necessarily require some time to complete. A Right of Way Agent from Electrical Consultants Inc. (ECI), representing Rocky Mountain Power, will contact you within the next three months to provide additional details about how this project may impact you and answer any questions you may have.

A statement of property owners' rights under Idaho condemnation laws is enclosed.

A number of property owners have expressed a desire to meet with a Right of Way Agent early in the process. It is our desire to respond as quickly as possible to such requests. You may contact a Right of Way Agent at ECI to make inquires, or to initiate discussions or negotiations by calling (801) 292-9954 and requesting to speak to Jerry Hanson (ECI Right of Way Project Manager) or Keith Corry (ECI Lead Right of Way Agent).

We look forward to the opportunity to meet with you.

Regards,

H. Dudley

Harold Dudley
Property Agent
Rocky Mountain Power Right of Way Services

ROCKY MOUNTAIN POWER
A DIVISION OF PACIFICORP

STATEMENT OF PROPERTY OWNERS' RIGHTS UNDER IDAHO CONDEMNATION LAWS

Rocky Mountain Power is beginning construction of a new electric transmission line that will run from the Populus, Idaho substation to the Ben Lomond substation near Brigham City, Utah. The new transmission line will require a corridor 150 feet wide in order to protect the public and insure the safety and reliability of the transmission system. This notice is directed to Idaho property owners whose properties lie within the new transmission line corridor. The purpose of this notice is to advise you of your rights under Idaho law during the negotiations to acquire property for the transmission line, and in any subsequent condemnation proceedings that may be necessary.

Rocky Mountain Power has the power under the constitution and the laws of the State of Idaho and the United States to take private property for public use. This power is generally referred to as the power of "eminent domain" or condemnation. The power can only be exercised when:

- The property to be taken is needed for a public use authorized by Idaho law;
- The taking of the property is necessary to such use;
- The property taken must be located in the manner which will be most compatible with the greatest public good and the least private injury.

We will negotiate with you in good faith to purchase the property interest to be taken and to settle with you for any other damages that may result to the remainder of your property.

The value of your property is to be determined based upon its highest and best use.

You are entitled to be paid for any diminution in the value of your remaining property which is caused by the taking of a portion of your property for our transmission line. This compensation, called "severance damages," is generally measured by comparing the value of the property before the taking and the value of the property after the taking.

If the negotiations to purchase the property and settle damages are unsuccessful, you are entitled to assessment of compensation and damages from a court, jury or referee as provided by Idaho law.

Until a condemnation action is filed, we will provide you, at your request, a copy of all appraisal reports or market data valuations that we have obtained concerning your property. Once a condemnation action is filed, the Idaho rules of civil procedure will govern the disclosure of appraisals.

You have the right to obtain your own appraisal or consult with an appraiser of your choosing at any time during the acquisition process. However, this will be at your cost and expense.

You may take up to thirty (30) days to respond to our initial purchase offer.

You have the right to consult with an attorney at any time during this process.

Rocky Mountain Power is committed to dealing with you fairly and in good faith throughout this process.

ROCKY MOUNTAIN POWER
A DIVISION OF PACIFICORP

August 19, 2008

U.S. CERTIFIED MAIL – POSTAGE PREPAID

Stanley & Catherine Jensen
6858 N. Old Hwy 191
Malad, ID 83252

PSL- 38, 38R, 39, 39R

RE: Rocky Mountain Power Transmission Line Project – Populus to Ben Lomond Right of Way Acquisition / Statement of Property Owners' Rights Under Idaho Condemnation Laws

Dear Stanley & Catherine Jensen:

Rocky Mountain Power is beginning construction of a new electric transmission line that will run from the Populus, Idaho substation to the Ben Lomond substation near Brigham City, Utah. The new transmission line will require a corridor 150 feet wide in order to protect the public and insure the safety and reliability of the transmission system. This notice is directed to Idaho property owners whose properties lie within the new transmission line corridor. The purpose of this notice is to advise you of your rights under Idaho law during the negotiations to acquire property for the transmission line, and in any subsequent condemnation proceedings that may be necessary.

Rocky Mountain Power has the power under the constitution and the laws of the State of Idaho and the United States to take private property for public use. This power is generally referred to as the power of "eminent domain" or condemnation. The power can only be exercised when:

- The property to be taken is needed for a public use authorized by Idaho law;
- The taking of the property is necessary to such use;
- The property taken must be located in the manner which will be most compatible with the greatest public good and the least private injury.

Rocky Mountain Power must negotiate with you, the property owner, in good faith to purchase the property sought to be taken and/or to settle with you for any other damages which might result to the remainder of your property.

The owner of private property to be acquired by the condemning authority is entitled to be paid for any diminution in the value of your remaining property which is caused by the taking and the use of the property taken proposed by Rocky Mountain Power. This compensation, called "severance damages," is generally measured by

ROCKY MOUNTAIN POWER
A DIVISION OF PACIFICORP

comparing the value of the property before the taking and the value of the property after the taking.

Damages are assessed according to Idaho Code.

The value of the property to be taken is to be determined based upon the highest and best use of the property.

If the negotiations to purchase the property and settle damages are unsuccessful, you are entitled to assessment of damages from a court, jury or referee as provided by Idaho law.

You have the right to consult with an appraiser of your choosing at any time during the acquisition process at your cost and expense.

Rocky Mountain Power shall deliver to you, upon request, a copy of all appraisal reports and/or market data valuations concerning your property prepared by Rocky Mountain Power. Once a complaint for condemnation is filed, the Idaho rules of civil procedure control the disclosure of appraisals and market data valuations.

You have the right to consult with an attorney at any time during the acquisition process. In cases in which Rocky Mountain Power condemns property and you are able to establish that just compensation exceeds the last amount timely offered by Rocky Mountain Power by ten percent (10%) or more, Rocky Mountain Power may be required to pay your reasonable costs and attorney's fees. The court will make the determination whether costs and fees will be awarded.

This summary of rights is deemed delivered when sent by United States certified mail, postage prepaid, addressed to the person or persons shown in the official records of the county assessor as the owner of the property. A second copy will be attached to the appraisal report and/or market data valuation at the time it is delivered to you.

Rocky Mountain Power or any of its agents or employees shall not give you any timing deadline as to when you must respond to Rocky Mountain Power's initial offer which is less than thirty (30) days. A violation of the this requirement shall render any action pursuant to Chapter 7, Eminent Domain, of Title 7, Idaho Code, null and void.

Under section 7-711(2)(b), Idaho Code, damages may be assessed in a condemnation action for damages to a business. In order to recover for damages to a business, the property sought to be taken by Rocky Mountain Power must constitute a part of a larger parcel, the business must be owned by the person whose lands are sought to be taken or be located upon adjoining lands owned or held by such person, the business must have more than five (5) years' standing, and the taking of a portion of the property and the construction of the improvement in the manner proposed by Rocky Mountain Power must cause the damages. Business damages pursuant to section 7-711(2)(b) are not available if the loss can reasonably be prevented by a relocation of the business or by taking steps that a reasonably prudent person would take, or for damages caused by temporary business interruption due to construction. Compensation for business damages shall not be duplicated in the compensation otherwise available to the property owner under paragraphs (1) and (2)(a) of section 7-

ROCKY MOUNTAIN POWER
A DIVISION OF PACIFICORP

711, Idaho Code. Section 7-711(2)(b), Idaho Code, sets forth the procedures an owner claiming business damages must take, and the timing thereof, in the event the negotiations to purchase the property and settle damages are unsuccessful and an action in condemnation is filed by Rocky Mountain Power.

Nothing in this summary of your rights changes the assessment of damages set forth in section 7-711, Idaho Code.

Please expect a representative of Rocky Mountain Power to contact you as Rocky Mountain Power proceeds with its negotiations with property owners along the new transmission line corridor.

Sincerely,

ROCKY MOUNTAIN POWER

ADDITIONAL RIGHTS OF IDAHO PROPERTY OWNERS IN CONDEMNATION PROCEEDINGS

Under section 7-711(2), Idaho Code, if the property sought to be condemned constitutes a part of a larger parcel, the court, jury or referee in a condemnation proceeding may award to you:

(a) the damages which will accrue to the portion not sought to be condemned, by reason of its severance from the portion sought to be condemned, and the construction of the improvement in the manner proposed by the plaintiff; and

(b) the damages to any business qualifying under this subsection having more than five (5) years' standing which the taking of a portion of the property and the construction of the improvement in the manner proposed by the plaintiff may reasonably cause. The business must be owned by the party whose lands are being condemned or be located upon adjoining lands owned or held by such party. Business damages under this subsection shall not be awarded if the loss can reasonably be prevented by a relocation of the business or by taking steps that a reasonably prudent person would take, or for damages caused by temporary business interruption due to construction; and provided further that compensation for business damages shall not be duplicated in the compensation otherwise awarded to the property owner for damages pursuant to subsections (1) and (2)(a) of section 7-711, Idaho Code.

i) If the business owner intends to claim business damages under this subsection, the owner, as defendant, must submit a written business damage claim to the plaintiff within ninety (90) days after service of the summons and complaint for condemnation. The plaintiff's initial offer letter or accompanying information must expressly inform the defendant of its rights under this subsection, and must further inform the defendant of its right to consult with an attorney.

(ii) The defendant's written claim must be sent to the plaintiff by certified mail, return receipt requested. Absent a showing of a good faith justification for the failure to submit a business damage claim within ninety (90) days, or an agreed extension by the parties, the court shall strike the defendant's claim for business damages in any condemnation proceeding.

(iii) The business damage claim must include an explanation of the nature, extent, and monetary amount of such claimed damages and must be prepared by the owner, a certified public accountant, or a business damage expert familiar with the nature of the operations of the defendant's business. The defendant shall also provide the plaintiff with copies of the defendant's business records that substantiate the good faith offer to settle the business damage claim. The business damage claim must be clearly segregated from the claim for property damages pursuant to subsections (1) and (2)(a) of this section 7-711, Idaho Code.

(iv) As used in this subsection, the term "business records" includes, but is not limited to, copies of federal and state income tax returns, state sales tax returns, balance sheets, and profit and loss statements for the five (5) years preceding which are attributable to the business operation on the property to be acquired, and other records relied upon by the business owner that substantiate the business damage claim.

(v) The plaintiff's good faith in failing to offer compensation for business damages shall not be contested at a possession hearing held pursuant to section 7-721, Idaho Code, if the defendant has not given notice of its intent to claim business damages prior to the date of filing of the motion that initiates the proceeding under that section.

You have the right to consult with an attorney.

SENDER: COMPLETE THIS SECTION

- ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- ■ Print your name and address on the reverse so that we can return the card to you.
- ■ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Stanley & Catherine Jensen Family
Trust Dated 05-27-08
6858 N Old Hwy 191
MALAD, ID 83252 PSL-38

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Stanley K Jensen ☐ Agent ☐ Addressee

B. Received by (Printed Name) STANLEY K JENSEN
C. Date of Delivery 8-20-08

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service lab) 7007 2680 0002 5919 0831

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

U.S. Postal Service
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
For delivery information visit our website at www.usps.com®

Postage	$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$

Postmark Here

Sent To
Street, Apt. or PO Box #
City, State, ZIP+4

Stanley & Catherine Jensen Family
Trust Dated 05-27-08
6858 N Old Hwy 191
MALAD, ID 83252 PSL-38

PS Form 38

7007 2680 0002 5919 0831

STEPHEN K. CHRISTIANSEN
Direct Dial: 801.237.0456
email: schristiansen@vancott.com

VANCOTT

February 12, 2009

Mr. Stanley K. Jensen
6858 North Old Highway 191
Malad, ID 83252

Re: Rocky Mountain Power Easement
Parcel Nos. RP0284-200 and RP0285-600
ECI Nos. PSL-38 & PSL-39

VANCOTT, BAGLEY, CORNWALL & MCCARTHY, P.C.
ESTABLISHED 1874

Dear Mr. Jensen:

Thank you for talking with us recently and explaining your concerns related to the easement. We have looked into the items that were discussed. This letter is provided in an attempt to negotiate a settlement with you, and is not admissible as evidence pursuant to Rule 408 of the Idaho Rules of Evidence. Rocky Mountain Power is very interested in reaching a settlement with you; therefore, we strongly encourage you to hire independent legal counsel to explain your rights and remedies to you.

Gate. As you know, Rocky Mountain Power has agreed to lock your gate when it leaves your property.

Road Improvements. You expressed an interest in knowing the types of materials that will be used to improve the roads, specifically the drainage and the type of surfacing material that will be used. Although Rocky Mountain Power's representatives have determined where the road will be located, the construction specifications have not been done yet. Rocky Mountain Power will rely on the expertise of its contractor to determine how the road will be built, which the contractor cannot do until the weather improves. The contractor will contact you before they come to your property, and will be available to explain the road improvements that will be made and answer any questions you have.

Feed. You said that representatives from Rocky Mountain Power agreed to compensate you for cattle feed for times when the cattle need to be kept off the pasture land near the easement site. Rocky Mountain Power does not have any evidence that any of its activities so far have required the cattle to be moved. If you have evidence that any of Rocky Mountain Power's activities required the cattle to be moved, we would appreciate receiving that information.

Rocky Mountain Power wants to make a fair settlement with you for the easement. Although Rocky Mountain Power can continue its project under the terms of the occupancy agreement and the judge's order, ultimately Rocky Mountain Power will need to obtain a permanent easement. Rocky Mountain Power would prefer to settle the terms of the easement and the payment amount with you rather than continue to litigate the matter.

2300 W. SAHARA AVENUE
SUITE 800
LAS VEGAS, NEVADA
89102 USA
T 702.436 0008
F 801.237.0806
WWW.VANCOTT.COM

LAW OFFICES
SALT LAKE CITY
OGDEN
PARK CITY
LAS VEGAS

MEMBER
LEX MUNDI
THE WORLD'S LEADING ASSOCIATION OF INDEPENDENT LAW FIRMS

VANCOTT

You mentioned that you do not want to discuss final compensation for the easement because you do not know what future damages may occur. Payment for the easement and payment for future damages are two separate issues. If we reach an agreement regarding payment for the easement, Rocky Mountain Power would remain liable to you to the full extent allowed by law for all future damages resulting from its use of the easement. Rocky Mountain Power is committed to keeping the damages to your land to a minimum, since it is in your best interests and its best interests to do so. However, if you incur any damages in the future, you may submit any evidence of those damages to Rocky Mountain Power.

Rocky Mountain Power acknowledges that you have offered to sell the easement for $ [redacted]. As you know, the payment made to you when you signed the occupancy agreement was based on an appraisal of the fair market value of the easement. If you can provide an appraisal from a certified appraiser that supports a higher amount of compensation, we would be happy to review the appraisal and consider a greater amount of compensation.

REDACTED

If you would like to discuss this matter, please feel free to call.

Sincerely,

Stephen Christiansen

Stephen K. Christiansen*
Heidi K. Gordon**

Enclosures
cc: R. Jeffrey Richards, Esq.
Harold Dudley
Jerry J. Hanson

*Admitted in Idaho, Utah, and Nevada
**Admitted in Utah

D

STEPHEN K. CHRISTIANSEN
Direct: 801 237.0456
schristiansen@vancott.com

VANCOTT

March 18, 2009

VIA FEDERAL EXPRESS

Stanley & Catherine Jensen
6858 North Old Highway 191
Malad, ID 83252

Dear Mr. & Mrs. Jensen:

I appreciate speaking with you, Stan, on the telephone the other day. As I indicated, a realignment of poles on property north of yours has necessitated a slight realignment of the overhang easement on your property. The realignment is shown in the materials I am providing you. Please let me know if you have any questions regarding the same. I will answer them or get you in touch with someone who can.

The overhang realignment results in an additional 0.138 acres of property within the easement area. Rocky Mountain Power proposes an amendment to the occupancy agreement to address this revision. A proposed form of amendment to the occupancy agreement is included for your review.

In connection with this amendment, Rocky Mountain Power will pay you an additional $500.00. This amount has been calculated based on the percentage of the total appraisal allocated to the overhang (35%). Thirty-five percent of the total amount paid for occupancy ($215,630.00) is $56,700.00 for 21.68 acres affected by the overhang. This is $3,481.12 per acre paid for the overhang area. When this per-acre amount is multiplied by 0.138 acres, the result is $480.00, which I have rounded up to $500.00. This payment will be made without any prejudice to your right to claim more in the pending lawsuit.

If you have any questions about this, please let me know and I will address them. If the occupancy amendment appears satisfactory, please sign the same where indicated and return it to me in one of the enclosed self-addressed stamped envelopes. I will then order the check from Rocky Mountain Power and remit the same to you. As before, I urge you to consult with legal counsel regarding these issues.

Lastly, I have enclosed an Amended Complaint in the pending litigation that will be filed with the court. The Amended Complaint sets forth for the court the realignment issue so that compensation can be determined based on the revised design. To avoid formal service of process, I am enclosing an Acceptance of Service as we discussed. Please sign and date the same where indicated and return it to me in the other of the enclosed self-addressed stamped envelopes. I have included an extra copy of the Acceptance of Service for your records as well. This does not bind you to anything in the

VANCOTT, BAGLEY, CORNWALL & MCCARTHY, P.C.

ESTABLISHED 1874

36 S. STATE STREET
SUITE 1900
SALT LAKE CITY, UTAH
84111-1478 USA
T 801.532.3333
F 801.534.0058
WWW.VANCOTT.COM

LAW OFFICES
SALT LAKE CITY
OGDEN
PARK CITY
LAS VEGAS

LEX MUNDI
THE WORLD'S LEADING ASSOCIATION OF INDEPENDENT LAW FIRMS

Amended Complaint but rather indicates that you received a copy of the Amended Complaint and that formal service of the papers by a process server is not necessary. Again, if you have any questions, please let me know or consult with an attorney of your choosing.

Thank you.

Sincerely,

Stephen K. Christiansen

SKC:jsh
Enclosures

STEPHEN K. CHRISTIANSEN
Direct: 801 237.0456
schristiansen@vancott.com

VANCOTT

July 2, 2009

Stan Jensen
6858 North Old Highway 191
Malad, Idaho 83252

Dear Mr. Jensen:

I received your letter and a copy of your filing with the Court. With respect to your letter, the fact that multiple attorneys and appraisers decline to agree with the values you attempt to assign to the easement is a strong indicator of the unreasonableness of your numbers. I again strongly urge you to retain a lawyer and/or certified appraiser who can advise you as to the proper methodology and value involved here.

With respect to access and gate issues, as raised in your court filing, the contractor building the project, PTTP, met with you and opened a dialogue early in this process. I encourage you to raise construction logistics concerns with them directly and promptly rather than let them grow or fester over extended periods. We have attempted and will attempt to address your concerns. In this instance, PTTP is best situated to do so since it has a contractual obligation with Rocky Mountain Power to address construction issues.

Please note that the occupancy monies paid to you far exceeded the appraised value of Rocky Mountain Power's easement and were more than adequate to address any ongoing concerns you may have, including feed, until a final resolution of this case can be reached. Your decision to use over $200,000.00 to pay farm debt as opposed to any other expenses is between you and your financial institution and was not dictated by Rocky Mountain Power.

Lastly, with respect to feed specifically, my earlier discussions with you did not result in a final resolution of this issue. We are not on the same page as to the number of head, the relevant time frames, or the appropriate compensation for the feed, nor have we received any documentation to back up any claim. These are alleged damages that are part of your compensation case against Rocky Mountain Power and remain to be resolved. Again, I urge you to consult a lawyer to advise you on this subject. Nevertheless, as I have indicated before, we are willing to negotiate this issue but the basis for any resolution must be reasonable and supportable. In the spirit of an attempted compromise, Rocky Mountain Power offers to pay $ to resolve any and all outstanding feed issues. This is a Rule 408 settlement offer.

REDACTED

VANCOTT, BAGLEY, CORNWALL & MCCARTHY, P.C.

ESTABLISHED 1874

36 S. STATE STREET
SUITE 1900
SALT LAKE CITY, UTAH
84111-1478 USA
T 801.532.3333
F 801.534.0058
WWW.VANCOTT.COM

LAW OFFICES
SALT LAKE CITY
OGDEN
PARK CITY
LAS VEGAS

VANCOTT

Please contact me to discuss and/or if you have any follow up questions.

Sincerely,

Stephen K. Christiansen

SKC:jsh
cc: Jeff Richards
Harold Dudley
Frank Smith
Heidi Gordon