

11-18-2011

Duspiva v. Fillmore Clerk's Record v. 1 Dckt. 38480

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LAW CLERK

1 6

(VOLUME 1)

IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

**GARY DUSPIVA dba GARY DUSPIVA
WELL DRILLING & DEVELOPMENT,**

Plaintiff-Appellant,

-vs-

**CLYDE FILLMORE, an individual and
JOHN FILLMORE, an individual,**

Defendants-Respondents.

Appealed from the District of the Third Judicial District
for the State of Idaho, in and for Canyon County

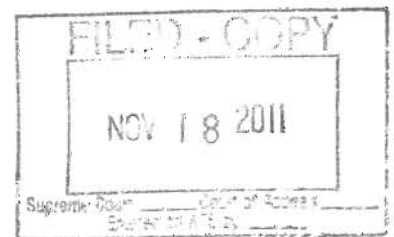
Honorable THOMAS J. RYAN, District Judge

Daniel V. Steenson
Jon C. Gould
RINGERT LAW CHTD.

Attorneys for Appellant

Bruce M. Smith
MOORE SMITH BUXTON & TURCKE, CHTD.

Attorney for Respondents



38480

GARY DUSPIVA dba GARY DUSPIVA
WELL DRILLING & DEVELOPMENT,

-VS-

CLYDE FILLMORE, an individual and
JOHN FILLMORE, an individual,

Supreme Court No. 38480

HONORABLE THOMAS J. RYAN, Presiding

Attorneys for Appellant

Attorney for Respondents

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Gary W Duspiva vs. Clyde Fillmore, etal.

Gary W Duspiva vs. Clyde Fillmore, John A Fillmore

Other Claims

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10/3/2008	New Case Filed-Other Claims	Thomas J Ryan
	Summons Issued (2)	Thomas J Ryan
	Filing: U - Fee for opening any other civil case not listed on the schedule Paid by: jon gould Receipt number: 0342093 Dated: 10/3/2008 Amount: \$88.00 (Check) For: Duspiva, Gary W (plaintiff)	Thomas J Ryan
12/8/2008	Acceptance of Service	Thomas J Ryan
1/15/2009	Filing: I7 - All Other Cases Paid by: Smith, Bruce M (attorney for Fillmore, Clyde) Receipt number: 0363507 Dated: 1/15/2009 Amount: \$58.00 (Check) For: Fillmore, Clyde (defendant)	Thomas J Ryan
	Answer and Counterclaim	Thomas J Ryan
	Motion for leave to amend complaint	Thomas J Ryan
1/27/2009	response to counterclaim	Thomas J Ryan
7/27/2009	Notice Of Proposed Dismissal Issued	Thomas J Ryan
8/7/2009	Motion to retain	Thomas J Ryan
	Affidavit in support of motion	Thomas J Ryan
8/12/2009	Order Retaining Case on Court Calendar	Thomas J Ryan
	Reviewed And Retained	Thomas J Ryan
	def's reponse to pltf's motion to retain on calendar	Thomas J Ryan
9/15/2009	Notice of Telephonic Scheduling Conference 10-15-09	Thomas J Ryan
	Hearing Scheduled (Conference - Telephone 10/15/2009 01:30 PM) Scheduling	Thomas J Ryan
10/15/2009	Hearing result for Conference - Telephone held on 10/15/2009 01:30 PM: Hearing Held - in chambers	Thomas J Ryan
10/21/2009	Amended Complaint Filed	Thomas J Ryan
10/23/2009	Mediation Order	Thomas J Ryan
	Hearing Scheduled (Jury Trial 08/23/2010 09:00 AM) 3 day	Thomas J Ryan
	Hearing Scheduled (Pre Trial 07/15/2010 11:00 AM)	Thomas J Ryan
	Order Setting Case for trial & Pt & Scheduling Order	Thomas J Ryan
11/25/2009	Petition for order of contempt and sanctions	Thomas J Ryan
	Affidavit of bruce smith	Thomas J Ryan
12/1/2009	Notice Of Hearing 12/17/2009	Thomas J Ryan
	Hearing Scheduled (Motion Hearing 12/17/2009 09:00 AM) defs contempt motion	Thomas J Ryan
12/3/2009	Motion to strike	Thomas J Ryan
	Memorandum in support of motion	Thomas J Ryan
	Affidavit of jon gould	Thomas J Ryan
	Notice Of Hearing 12/17/2009	Thomas J Ryan
12/11/2009	Response to pltf's memorandum in support of pltf's motion to strike	Thomas J Ryan
12/17/2009	Hearing result for Motion Hearing held on 12/17/2009 09:00 AM: Hearing Held defs contempt motion/ pltf's motion strike	Thomas J Ryan

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Gary W Duspiva vs. Clyde Fillmore, etal.

Gary W Duspiva vs. Clyde Fillmore, John A Fillmore

Other Claims

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12/17/2009	Hearing result for Motion Hearing held on 12/17/2009 09:00 AM: District Court Hearing Held Court Reporter: Kim Saunders Number of Transcript Pages for this hearing estimated: less than 100	Thomas J Ryan
1/20/2010	Memorandum Decision & Order RE: Contempt	Thomas J Ryan
2/8/2010	Notice of Intent to Take Default (fax)	Thomas J Ryan
2/11/2010	Answer to Amended Complaint and Counterclaim of Clyde Fillmore and John Fillmore (fax)	Thomas J Ryan
2/19/2010	response to 2/12/2010 counterclaim of clyde and john fillmore	Thomas J Ryan
2/22/2010	Notice of Service Re: Discovery	Thomas J Ryan
2/26/2010	Notice of disclosure of experts	Thomas J Ryan
3/16/2010	Notice Of Service	Thomas J Ryan
4/1/2010	Notice Of Service	Thomas J Ryan
4/29/2010	Disclosure of Plaintiff's Expert Witnesses	Thomas J Ryan
	Notice Of Service of Plaintiff's Responses to Defendants' First Requests for Production of Documents	Thomas J Ryan
	Notice Of Service of plaintiff's Answers to Defendants' First Set of Interrogatories	Thomas J Ryan
5/4/2010	Notice Of Taking Deposition john fillmore	Thomas J Ryan
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	Memorandum in Support of Plaintiff's Motion for Summary Judgment	Thomas J Ryan
	Notice Of Hearing 7-22-10	Thomas J Ryan
	Hearing Scheduled (Motion Hearing 07/22/2010 09:00 AM) plts motn for summ judg	Thomas J Ryan
7/1/2010	Order Resetting Case for Hearing	Thomas J Ryan
	Hearing result for Pre Trial held on 07/15/2010 11:00 AM: Hearing Vacated defs motn for summ judg	Thomas J Ryan

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Gary W Duspiva vs. Clyde Fillmore, etal.

Gary W Duspiva vs. Clyde Fillmore, John A Fillmore

Other Claims

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7/1/2010	Hearing result for Motion Hearing held on 07/22/2010 09:00 AM: Hearing Vacated plts motn for summ judg	Thomas J Ryan
	Hearing Scheduled (Motion Hearing 07/22/2010 01:30 PM) plts and defs motn for summ judg	Thomas J Ryan
7/8/2010	Affidavit of Thomas Neace (fax	Thomas J Ryan
	Def Response to Plt Memorandum in support of Plt Mo for Summary Judgment (fax	Thomas J Ryan
	Second Affidavit of Bruce M Smith (fax	Thomas J Ryan
7/9/2010	Brief in response to defendants motion for summary judgment	Thomas J Ryan
	Second Affidavit of gary duspiva	Thomas J Ryan
	Affidavit rob whitney	Thomas J Ryan
	Affidavit schuyler enochs	Thomas J Ryan
	Affidavit ron smith	Thomas J Ryan
	Second Affidavit jon gould	Thomas J Ryan
	defendants Motion in limine (fax)	Thomas J Ryan
	defendants Objection to submission by pltf in support of motion for summary judgment (fax)	Thomas J Ryan
	Notice Of Hearing 7/22/2010 (fax)	Thomas J Ryan
	Affidavit of tany hackett (fax)	Thomas J Ryan
7/12/2010	Pltf's Objection to submissions by defendant and motion to strike (fax)	Thomas J Ryan
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7/15/2010	Defendants' Motion for Leave to Shorten Time for Filing Affidavit of Tony Hackett	Thomas J Ryan
	Affidavit of Bruce M Smith in Support of Motion for Leave to Shorten Time for Filing Affidavit of Tony Hackett	Thomas J Ryan
	Notice Of Hearing 7-22-10	Thomas J Ryan
	Pre Trial Submissions by Clyde Fillmore and John Fillmore (fax)	Thomas J Ryan
	Defendants' Witness List (fax)	Thomas J Ryan
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7/16/2010	Reply Memorandum to Defendants' Response to Plaintiff's Memorandum in Support of Plaintiff's Motion for Summary Judgment	Thomas J Ryan
	Objection to defendants motion for leave to shorten time (fax)	Thomas J Ryan
	Affidavit rob whitney (fax)	Thomas J Ryan
7/19/2010	Plaintiff's Witnesses and Exhibits List	Thomas J Ryan
	Plaintiff's Pre-trial Statement and Facts	Thomas J Ryan
7/21/2010	third Affidavit of jon gould (fax)	Thomas J Ryan
	Defendants' Response to Plaintiff's Objection to Submissions by Defendant and Motion to Strike (fax)	Thomas J Ryan
7/22/2010	Hearing result for Motion Hearing held on 07/22/2010 01:30 PM: Hearing Held plts and defs motn for summ judg/defs motn for leave to shorten time to file affd	Thomas J Ryan

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Gary W Duspiva vs. Clyde Fillmore, etal.

Gary W Duspiva vs. Clyde Fillmore, John A Fillmore

Other Claims

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7/22/2010	Hearing result for Motion Hearing held on 07/22/2010 01:30 PM: Motion Denied plts and defs motn for summ judg - motion in limine was moot	Thomas J Ryan
	District Court Hearing Held Court Reporter: Kim Saunders Number of Transcript Pages for this hearing estimated: less than 100	Thomas J Ryan
7/23/2010	Plaintiff's Witness List (fax)	Thomas J Ryan
7/27/2010	Motion in Limine to Exclude Defendants' Expert Witnesses (fax)	Thomas J Ryan
7/28/2010	Motion in limine to exclude defendants expert witness	Thomas J Ryan
	Defendants Objection to plaintiff's witness list	Thomas J Ryan
8/2/2010	defendants response to pltf's motion in limine to exclude def's expert witness	Thomas J Ryan
8/16/2010	Hearing Scheduled (Motion Hearing 08/19/2010 01:30 PM) motn in limine re: expert witnesses TELEPHONIC	Thomas J Ryan
8/17/2010	Plaintiff's Stipulation to defendants exhibits (fax)	Thomas J Ryan
	Notice of telephone hearing	Thomas J Ryan
8/19/2010	Notice Of Service of Defendants' First Supplemental Response to Plaintiff's Interrogatory No. 3	Thomas J Ryan
	Defendants' Stipulation to Plaintiff's Exhibits	Thomas J Ryan
	Notice Of Service of Defendants' First Supplemental Response to Plaintiff's Interrogatory No 4	Thomas J Ryan
	Hearing result for Motion Hearing held on 08/19/2010 01:30 PM: Hearing Held motn in limine re: expert witnesses TELEPHONIC	Thomas J Ryan
	Hearing result for Motion Hearing held on 08/19/2010 01:30 PM: District Court Hearing Held Court Reporter: Kim Saunders Number of Transcript Pages for this hearing estimated: less than 100	Thomas J Ryan
8/23/2010	Affidavit Of Service	Thomas J Ryan
	Affidavit Of Service	Thomas J Ryan
	Hearing result for Court Trial held on 08/23/2010 09:00 AM: Court Trial Started 3 day	Thomas J Ryan
	Hearing result for Court Trial held on 08/23/2010 09:00 AM: District Court Hearing Held Court Reporter: am - none/ pm - Yvonne Hyde Gier Number of Transcript Pages for this hearing estimated: less than 500	Thomas J Ryan
8/24/2010	Hearing Held	Thomas J Ryan
	District Court Hearing Held Court Reporter: Debora Kreidler Number of Transcript Pages for this hearing estimated: less than 500	Thomas J Ryan
8/25/2010	Hearing Held - case under advisement	Thomas J Ryan
	District Court Hearing Held Court Reporter: Kim Saunders Number of Transcript Pages for this hearing estimated: less than 500	Thomas J Ryan

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Gary W Duspiva vs. Clyde Fillmore, etal.

Gary W Duspiva vs. Clyde Fillmore, John A Fillmore

Other Claims

Date		Judge
8/27/2010	Miscellaneous Payment: CD Copies Paid by: John Gould, Atty Receipt number: 0053970 Dated: 8/27/2010 Amount: \$12.50 (Cash)	Thomas J Ryan
9/1/2010	Transcript Filed - testimony of John Fillmore held on August 25, 2010	Thomas J Ryan
9/7/2010	Transcript Filed - Excerpt of 8/23/10 Court Trial	Thomas J Ryan
9/13/2010	Transcript Filed - testimony of Edward Squired held on August 25, 2010	Thomas J Ryan
9/17/2010	Plaintiff's closing argument	Thomas J Ryan
	Plaintiff's Closing Argument (fax)	Thomas J Ryan
9/24/2010	Closing Argument Brief of John Fillmore and Clyde Fillmore	Thomas J Ryan
10/1/2010	Plaintiff's reply to defendant's closing argument	Thomas J Ryan
10/18/2010	Findings of Fact and Conclusions of Law	Thomas J Ryan
11/3/2010	Def's Motion for atty fees and cost	Thomas J Ryan
	Def's Memorandum of Costs and Fees	Thomas J Ryan
	Affidavit of Bruce Smith	Thomas J Ryan
11/15/2010	Motion to disallow (fax)	Thomas J Ryan
11/23/2010	Notice Of Hearing 1-20-11	Thomas J Ryan
	Hearing Scheduled (Motion Hearing 01/20/2011 09:00 AM) defs motn for fees & costs	Thomas J Ryan
12/9/2010	Defendants reply to plaintiffs response to defendants motion for attorney fees and costs (fax)	Thomas J Ryan
12/13/2010	Judgment	Thomas J Ryan
	Civil Disposition entered for: Fillmore, Clyde, Defendant; Fillmore, John A, Defendant; Duspiva, Gary W, Plaintiff. Filing date: 12/13/2010 \$27,500.00	Thomas J Ryan
12/14/2010	Amended Notice of Hearing Re: Fees and Costs	Thomas J Ryan
	Hearing result for Motion Hearing held on 01/20/2011 09:00 AM: Hearing Vacated defs motn for fees & costs	Thomas J Ryan
	Hearing Scheduled (Motion Hearing 01/14/2011 01:30 PM)	Thomas J Ryan
12/22/2010	Amended Notice of Hearing 2/17/2011	Thomas J Ryan
	Hearing Scheduled (Motion Hearing 02/17/2011 09:00 AM) def motn atty fees/costs	Thomas J Ryan
12/30/2010	Application for Writ	Thomas J Ryan
	Affidavit of Bruce M Smith in support of Application	Thomas J Ryan
	Writ Issued Canyon	Thomas J Ryan
	Miscellaneous Payment: Writs Of Execution Paid by: Moore Smith Receipt number: 0080267 Dated: 12/30/2010 Amount: \$2.00 (Check)	Thomas J Ryan
1/24/2011	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Gould, Jon C (attorney for Duspiva, Gary W) Receipt number: 0084846 Dated: 1/24/2011 Amount: \$101.00 (Check) For: Duspiva, Gary W (plaintiff)	Thomas J Ryan
	Bond Posted - Cash (Receipt 84850 Dated 1/24/2011 for 200.00-Reporter Transcript	Thomas J Ryan
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	Appealed To The Supreme Court	Thomas J Ryan

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Gary W Duspiva vs. Clyde Fillmore, etal.

Gary W Duspiva vs. Clyde Fillmore, John A Fillmore

Other Claims

Date		Judge
2/7/2011	S C - Order Conditionally Dismissing Appeal	Thomas J Ryan
	Defendant's Request to Supplement Clerk's Record on Appeal (fax)	Thomas J Ryan
2/8/2011	Bond Posted - Cash (Receipt 88350 Dated 2/8/2011 for 436.80) (For Court Reporter - Kim Saunders)	Thomas J Ryan
	Bond Posted - Cash (Receipt 88352 Dated 2/8/2011 for 100.00)(for Clerks Record)	Thomas J Ryan
2/11/2011	Writ Returned \$4640.34	Thomas J Ryan
2/17/2011	Hearing result for Motion Hearing held on 02/17/2011 09:00 AM: Hearing Held def motn atty fees/costs - under advisement	Thomas J Ryan
	Hearing result for Motion Hearing held on 02/17/2011 09:00 AM: District Court Hearing Held Court Reporter: Kim Saunders Number of Transcript Pages for this hearing estimated: less than 100	Thomas J Ryan
	Case Taken Under Advisement	Thomas J Ryan
2/25/2011	Notice of certain costs and fees (fax)	Thomas J Ryan
3/9/2011	Memorandum Decision and Order Re: Attorney's Fees	Thomas J Ryan
	Civil Disposition entered for: Fillmore, Clyde, Defendant; Fillmore, John A, Defendant; Duspiva, Gary W, Plaintiff. Filing date: 3/9/2011 \$57,761.15 for fees and costs	Thomas J Ryan
3/18/2011	Defendants' Motion for Reconsideration of Award of Attorney Fees and Costs	Thomas J Ryan
	Memorandum in Support of Defendants' Motion for Reconsideration of Award of Attorney Fees and Costs	Thomas J Ryan
3/25/2011	Plaintiff's Response to Defendants' Motion for Reconsideration of Award of Attorney Fees and Costs (fax)	Thomas J Ryan
3/30/2011	Notice of Intent to take Motion for Reconsideration Under Advisement without Oral Argument	Thomas J Ryan
4/5/2011	Reply Brief on Defendants' Motion for Reconsideration of Award of Attorney Fees and Costs (fax)	Thomas J Ryan
4/13/2011	Bond Converted (Transaction number 6060 dated 4/13/2011 amount 436.80)	Thomas J Ryan
	Bond Converted (Transaction number 6061 dated 4/13/2011 amount 3.25)	Thomas J Ryan
4/20/2011	Memorandum Decision Upon Motion for Reconsideration	Thomas J Ryan

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Ryan

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Facsimile: (208) 342-4657

Attorneys for Plaintiff

F I L E D
A.M. 9:10 P.M.

OCT 03 2008

CANYON COUNTY CLERK
D. BUTLER, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

GARY DUSPIVA dba GARY DUSPIVA
WELL DRILLING & DEVELOPMENT,

Plaintiff,

vs.

CLYDE FILLMORE, an individual and
JOHN FILLMORE, an individual,

Defendants.

CASE NO. CV08-10463

COMPLAINT

COMES NOW the Plaintiff, Gary Duspiva dba Duspiva Well Drilling & Development (hereinafter "Plaintiff"), by and through his counsel, Ringert Law Chartered, and hereby bring this Complaint against the Defendants Clyde Fillmore and John Fillmore (hereinafter "Defendants"), and alleges and complains as follows:

GENERAL ALLEGATIONS

I.

Plaintiff is a licensed well driller in the State of Idaho operating under drillers license no. 395.

II.

Plaintiff is in the business of providing drilling services including installation and completion of wells in Idaho under the assumed name of Duspiva Well Drilling and Development.

III.

Defendant Clyde Fillmore resides at 23252 Homedale Road, Wilder, Canyon County, Idaho 83676.

IV.

Defendant John Fillmore, upon belief and information, owns the real property described as 23258 Homedale Road, Wilder, Canyon County, Idaho 83676 (hereinafter the "Property").

V.

Commencing in or about June, 2007, Defendants Clyde Fillmore and John Fillmore met with Plaintiff to discuss the cost of drilling a single family domestic well at the Property, potential drilling concerns including sand production, and location of proposed well on the Property.

VI.

Defendants John Fillmore and Clyde Fillmore entered into an oral agreement with Plaintiff whereby Plaintiff would supply the equipment and materials for well construction, install and complete a groundwater well in a thorough and workman like manner for the use and convenience of Defendant John Fillmore on the Property and Defendants promised payments and other amounts owed to Plaintiff for his drilling services.

VII.

Plaintiff and Defendant John Fillmore signed a "start card" on or about June 11, 2007, to initiate drilling activities under drilling permit no. D0047109 on the Property.

VIII.

On or about June 12, 2007, Plaintiff began drilling activities at the Property.

IX.

Plaintiff developed each water producing layer encountered during the drilling activities.

X.

After completing development at each water bearing layer, Plaintiff and Defendant Clyde Fillmore discussed the results of the development.

XI.

Defendant Clyde Fillmore authorized Plaintiff to continue drilling after each discussion following each development activity.

XII.

Plaintiff provided Defendant Clyde Fillmore with timely and accurate summaries of the drilling and well construction costs.

XIII.

On or about August 2, 2007, Defendant Clyde Fillmore paid Plaintiff \$10,000.00 for the drilling and well construction services provided by Plaintiff.

XIV.

On or about August 8, 2007, Plaintiff drilled to a depth of 836 feet below ground surface and encountered soil cuttings having a temperature of approximately 92 degrees Fahrenheit.

XV.

On or about August 16, 2007, an Application For Drilling Permit under drilling permit no. D0047109 for a low temperature geothermal well with a proposed maximum depth of over 1,000

feet was executed by Defendant John Fillmore.

XVI.

On or about September 13, 2007, Defendant Clyde Fillmore paid Plaintiff \$10,000.00 for the drilling and well construction services provided by Plaintiff.

XVII.

On or about October 10, 2007, Plaintiff completed well development activities.

XVIII.

On or about November 19, 2007, Plaintiff submitted a Completion Plan to IDWR for the Fillmore well that include two alternatives for well completion.

XIX.

In a letter dated April 25, 2008, from John Homan, Deputy Attorney General, State of Idaho, approved Alternative No. 2 subject to six (6) amendments to the previous conditions.

XX.

The approved Completion Plan required Plaintiff to provide Defendants with a cost estimate for well completion and a cost estimate for well abandonment.

XXI.

The approved Completion Plan required Defendants to provide Plaintiff with a decision to either complete the well or abandon the well within five (5) days of receipt of Plaintiff's plans and cost estimates.

XXII.

Plaintiff provided counsel for the Defendants with both a plan and cost estimate for abandonment and a plan and cost estimate for completion in a timely manner.

XXIII.

Defendants failed to respond to Plaintiff.

XXIV.

On or about June 11, 2008, Plaintiff informed Defendants that a stand-by drilling charge of \$750.00 per day beginning on June 3, 2008, until Defendants direct Plaintiff on whether to complete or abandon the well.

XXV.

As of October 1, 2008, Defendants had not instructed Plaintiff on whether to complete or abandon the well.

XXVI.

Although demands have been made upon Defendants, they have failed to pay the amounts they owe Plaintiff.

COUNT ONE (BREACH OF CONTRACT)

XXVII.

Plaintiffs reallege paragraphs 1 through 26 as though fully set forth hereat.

XXVIII.

Plaintiff has timely performed all of his obligations under the Agreement.

XXIX.

Defendant breached the above-referenced Agreement by their failure to pay for Plaintiff's services.

XXX.

Plaintiff has been damaged by Defendants' breach of contract in an amount to be determined

at trial, but in excess of the jurisdictional minimum of this Court.

REQUEST FOR ATTORNEY FEES

Plaintiffs have been required to retain the services of attorneys to prosecute this action, have retained the firm of Ringert Law, Chartered, and have agreed to pay said attorneys a reasonable attorneys fee. Defendant is responsible for the payment of Plaintiffs' attorneys fees pursuant to Idaho Code §§ 12-120 and/or 12-121 and/or I.R.C.P. 54, and any and all other applicable Idaho statutes and law. In the event of default, \$15,000.00 is a reasonable attorney fee.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendant as follows:

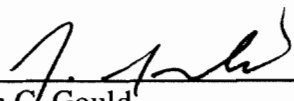
1. For an award of damages in favor of Plaintiffs in an amount to be determined at trial, but in no case to be less than \$25,000.
2. For an award of reasonable attorneys fees and costs in an amount to be determined by the Court;
3. For such other and further relief as the Court deems just.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury consisting of no less than twelve (12) jurors pursuant to I.R.C.P. 38(b).

DATED this 2 day of October, 2008.

RINGERT LAW CHARTERED

By: 
Jon C. Gould

BRUCE M. SMITH, ISB #3425
MOORE SMITH BUXTON & TURCKE, CHARTERED
Attorneys at Law
950 W. Bannock Street, Suite 520
Boise, ID 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202

Attorney for Defendant

F I L E D
A.M. 1:30 P.M.
JAN 15 2009

CANYON COUNTY CLERK
D. BUTLER, DEPUTY

ORIGINAL

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

GARY DUSPIVA dba GARY DUSPIVA
WELL DRILLING & DEVELOPMENT

Plaintiff,

vs.

CLYDE FILLMORE, an individual and
JOHN FILLMORE, an individual,

Defendants.

Case No. CV08-10463

**ANSWER AND
COUNTERCLAIM OF
CLYDE FILLMORE AND
JOHN FILLMORE**

COME NOW Defendants Clyde Fillmore and John Fillmore and answer Plaintiff's complaint as follows: Any allegations not specifically admitted are denied.

1. In response to paragraph 1, Defendants state that they do not have sufficient information to form a belief as to the truthfulness of the allegations and therefore deny the same. Notwithstanding the foregoing, Plaintiff represented to Defendants that he was a master well driller in the state.

ANSWER AND COUNTERCLAIM OF CLYDE AND JOHN FILLMORE- 1

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2. In response to paragraph 2, Defendants state that they do not have sufficient information to form a belief as to the truthfulness of the allegations and therefore deny the same
3. Admit.
4. Admit.
5. In response to paragraph 5, Defendants admit meeting with Plaintiff to generally discuss the drilling of a well. Defendants deny that paragraph 5 is a complete description of the conversation.
6. In response to paragraph 6, Defendants admit to entering into an oral agreement with Plaintiff for Plaintiff to drill a cold water domestic well. Defendants deny that paragraph 6 is an accurate description of the agreement. Specifically, the agreement with Plaintiff was for Plaintiff to drill a cold water domestic well not a geothermal well. Defendants also have no way of knowing what "other amounts" paragraph 6 refers to.
7. In response to paragraph 7, Defendant John Fillmore admits to signing a card which appeared to address Plaintiff's drilling a well. However, Plaintiff had prepared the document and presented it to John Fillmore for signing.
8. Admit.
9. In response to paragraph 9, Defendants are without sufficient information to form a belief as to the truthfulness of the allegations and therefore deny the same.
10. In response to paragraph 10, Defendants are without sufficient information to form a belief as to the truthfulness of the allegations and therefore deny the same.
11. In response to paragraph 11, Defendants are without sufficient information to form a belief as to the truthfulness of the allegations and therefore deny the same. Defendants

specifically deny that Plaintiff adequately or properly informed Defendants about the scope, extent, and costs of the drilling activities and well construction costs.

12. Denied.

13. Admit.

14. In response to paragraph 14, Defendants are without sufficient information to form a belief as to the truthfulness of the allegations and therefore deny the same.

15. In response to paragraph 15, Defendant John Fillmore admits that he signed an Application for Drilling Permit that had been prepared by Plaintiff. As to the remainder of the allegations, no response is needed in that the document speaks for itself. If a response is needed, the allegations are denied.

16. Admit.

17. Denied.

18. In response to paragraph 18, Defendants are without sufficient information to form a belief as to the truthfulness of the allegations and therefore deny the same.

19. In response to paragraph 19, no response is needed in that the document referred to is the best evidence and speaks for itself.

20. In response to paragraph 20, Defendants respond that the paragraph appears to refer to the letter referred in paragraph 19, to which no response is needed.

21. In response to paragraph 21, Defendants respond that the paragraph appears to refer to the letter referred in paragraph 19, to which no response is needed.

22. Denied.

23. Denied.

24. In response to paragraph 24, the allegations are Plaintiff's characterization of his actions to which no response is needed. If a response is needed, the allegations are denied. Defendants specifically deny that the agreement with Plaintiff included any provision for standby charges, and that the allegations in paragraph 24 constitute a breach of the agreement with Plaintiff.

25. Denied.

26. Denied.

27. In response to paragraph 27, Defendants respond as they responded to each and every previous paragraph.

28. Denied.

29. Denied.

30. Denied.

31. In response to Plaintiff's Request for Attorney Fees, Defendants deny that Plaintiff is entitled to any attorney fees and deny that \$15,000.00 is reasonable for award for a defendant.

32. In response to the Prayer for Relief, Defendants deny that Plaintiff is entitled to any relief and further that Plaintiff's Complaint fails to state a claim for relief.

II.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiff fails to state a claim for relief.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of unclean hands in that Plaintiff misrepresented his qualifications and skill in drilling a well and negligently or intentionally failed to disclose important information about the details of the drilling, the Plaintiff's discussions with IDWR, and the costs and regulatory requirements of a low temperature geothermal well.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by Plaintiff's fraud and misrepresentation concerning the cost and details of drilling the well, and Plaintiff's undisclosed communications with IDWR.

FOURTH AFFIRMATIVE DEFENSE

If Plaintiff is entitled to any damages, such damages are offset by the damages and costs incurred by Defendants.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in that the well Plaintiff drilled was illegal and Defendants did not contract for the drilling of an illegal well.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred due to failure of consideration in that Defendants did not get what they contracted with Plaintiff to receive.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in that Plaintiff assumed the risk of drilling in a manner that a low temperature geothermal aquifer was encountered and that the well construction did not comply with state law.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the negligence of Plaintiff in using inappropriate equipment for the type of drilling he attempted to do and in drilling into a low temperature geothermal conditions that Plaintiff knew he would be encountered.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in that Plaintiff failed to properly explain the costs and complexity of drilling a low temperature geothermal well.

TENTH AFFIRMATIVE DEFENSE

Plaintiff reserves the right to amend and/or add affirmative defenses as appropriate.

COUNTERCLAIM

COME NOW Counterclaimants Clyde Fillmore and John Fillmore and allege and claim against Gary Duspiva as follows:

1. Counterclaimant Clyde Fillmore is a resident of Canyon County, Idaho.
2. Counterclaimant John Fillmore is a resident of Canyon County, Idaho.
3. Counterdefendant Gary Duspiva represents and advertises himself as a master well driller and, upon information and belief, lives in Canyon County, Idaho. Duspiva provides drilling services in Canyon County, Idaho.
4. Pursuant to an oral agreement, Clyde Fillmore and John Fillmore retained Duspiva in 2007 to drill a cold water domestic well for a house on Homedale Road in Canyon County, Idaho.

5. During the course of drilling a well, Duspiva prepared and presented to John Fillmore for signing certain documents that are, upon information and belief, related to authorization for Plaintiff to drill a well pursuant to state law.
6. Duspiva started drilling the well in June, 2007.
7. During the course of drilling the well, Duspiva failed to adequately notify and inform the Fillmores about the drilling activities.
8. During the drilling of the well, Duspiva intentionally withheld important information about the details of the drilling activity including, but not limited to, that he had drilled into a low temperature geothermal aquifer in violation of IDWR rules and in direct contradiction of the application/permit to drill a cold water domestic well.
9. Duspiva represented to the Fillmores that they should not worry about the fact that he had drilled into the low temperature geothermal aquifer because Duspiva would take care of it with the Idaho Department of Water Resources.
10. Duspiva failed to communicate with and inform the Fillmores of all of Duspiva's discussions with the IDWR.
11. In drilling the well, both before starting and after drilling into the geothermal aquifer, Duspiva failed to inform the Fillmore's that Duspiva had already received warnings from the IDWR about drilling into low temperature geothermal aquifers.
12. In fact, Duspiva had received warnings about his improper drilling methods and drilling into low temperature geothermal aquifers on the Rohn well, the Enoch well, and the Riggs well, all of which are in the same vicinity as the well he was drilling for the Fillmores.

13. Duspiva, based on these previous drilling efforts, knew or should have known that he would encounter a geothermal aquifer in drilling a well for the Fillmores.
14. The cost and complexity of drilling a low temperature geothermal well is considerably more than drilling a cold water well, and Duspiva had an obligation to so inform the Fillmores which he did not do.
15. The regulatory requirements for drilling a low temperature geothermal well are more stringent than for drilling a cold water well, and Duspiva had an obligation to so inform the Fillmores which he did not do.
16. Duspiva drilled the well in a manner that violated IDWR rules.
17. Because of the manner Duspiva drilled the well, the costs of the well skyrocketed far beyond the cost associated with the type of well the Fillmores sought to have drilled.
18. Duspiva has demanded that the Fillmores pay him the costs of complying with the IDWR rules which Duspiva violated.
19. The Fillmores contracted for the drilling of a cold water domestic well, not a low temperature geothermal well.
20. A low temperature geothermal well does not serve the needs of John Fillmore and is not what he contracted for.
21. The Fillmores relied upon the representations of Duspiva as to the drilling of a well, and Duspiva failed to inform them of the costs associated with the drilling of the well and for complying with IDWR rules.
22. On September 15, 2008, Duspiva informed the IDWR that he did not intent to resume drilling activities on the well.

23. On September 29, 2008, Duspiva told IDWR he would not participate in any meeting to resolve the dispute over the well.
24. As a result of Duspiva's drilling into the geothermal aquifer, the IDWR issued an order on October 3, 2008, requiring a plan for abandoning the well.
25. As a result of the IDWR proceeding regarding Duspiva's drilling, the Fillmores were required to participate in a formal hearing at the IDWR and incurred costs and damages in doing so.
26. As part of the IDWR hearing, the IDWR prepared a November 6, 2008, Staff Memorandum that detailed Duspiva's actions with regard to drilling into the low temperature geothermal aquifer, the repeated warnings to him by the IDWR, and his failure to comply with IDWR rules. A copy of the Staff Memorandum (without attachments) is attached to and incorporated into this Complaint.
27. Duspiva had been warned by IDWR about his drilling techniques as they related to geothermal conditions.
28. As a result of Duspiva's misrepresentations, his failure to comply with IDWR rules, and his intentional and/or negligent actions in drilling a low temperature geothermal well, Duspiva caused actual damage to the Fillmores.

COUNT ONE

(BREACH OF CONTRACT AND UNJUST ENRICHMENT)

29. The Counterclaimants reallege paragraph 1-28 as if set forth in full.
30. Counterclaimants contracted with Counterdefendant to drill a cold water domestic well.
31. Counterdefendant failed to drill a well as contracted for.
32. The well drilled by Counterdefendants further failed to comply with IDWR rules.

33. As a result of Counterdefendant's actions, the IDWR required the well be abandoned.

34. As a result of the IDWR actions regarding abandoning the well, the Counterclaimants suffered damages which are as yet undetermined because the well has not yet been abandoned.

35. Counterdefendant having been paid \$20,000.00 for a well that was not as contracted for, has been unjustly enriched by \$20,000.00.

36. Counterclaimants are therefore entitled to rescind the original agreement and have returned to them all funds paid to Counterdefendants, and to have Counterdefendant pay for all damages suffered by Counterclaimants.

COUNT TWO

(VIOLATION OF CONSUMER PROTECTION ACT)

37. Counterclaimants reallege paragraph 1-36 as if set forth in full.

38. Counterdefendant misrepresented and held himself out as a master well driller.

39. However, Counterdefendant did not have the expertise as reflected and demonstrated by his failure to comply with well drilling requirements established by the State of Idaho through the Idaho Department of Water Resources.

40. Counterdefendant's work and service are services and actions as described in Idaho Code 48-602.

41. Counterclaimants are consumers who are not knowledgeable about well drilling techniques.

42. Counterdefendant engaged in acts and practices which are false, misleading, malicious, outrageous, and deceptive to the Counterclaimants in that Counterdefendant did not have

skills or expertise as represented, omitted or misrepresented important details about his activities, undertook to drill in violation of state law, and demanded that Counterclaimants pay for Counterdefendant's illegal actions including costs associated with attempting to correct the improperly drilled well.

43. Counterdefendant therefore violated, at a minimum, I.C. 48-603(17) and, upon information and belief, I.C. 48-603(16), and 48-603(c).

44. Pursuant to I.C. 48-608, Counterclaimants are entitled to void the original agreement or, in the alternative, recover actual damages which are known to be greater than \$1,000.00.

REQUEST FOR ATTORNEY FEES

45. Counterclaimants have been required to retain the service of counsel to prosecute this action and have agreed to pay counsel for such services. Counterdefendant is responsible for payment of such fees pursuant to I.C. 12-120, I.C. 12-121, and I.C. 48-608. In the event of default, \$10,000.00 is a reasonable fee.

PRAYER FOR RELIEF

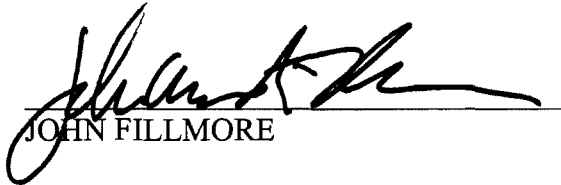
Counterclaimants pray for judgment against Counterdefendant as follows:

1. For an award of damages as established by proof at trial which amount is believed to be approximately \$12,000.00-\$15,000.00.
2. For an order voiding the agreement between Counterclaimants and Counterdefendant and ordering Counterdefendant to return all funds paid to Counterdefendant.
3. For an award of attorney fees and costs.
4. For such other relief as the Court deems appropriate in the circumstances.

DATED this 7 day of January, 2009.

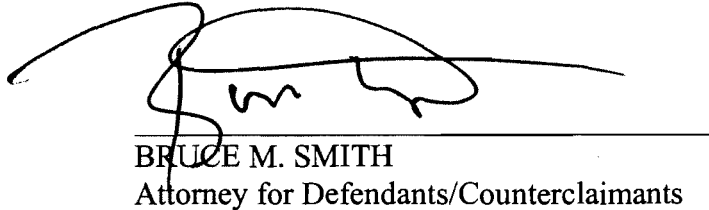
VERIFICATION

I hereby attest to the truthfulness of the claims made herein.



JOHN FILLMORE

MOORE SMITH BUXTON & TURCKE,
CHARTERED



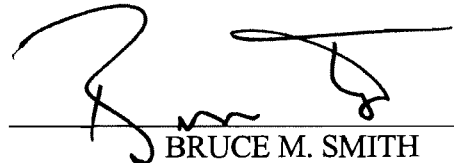
BRUCE M. SMITH
Attorney for Defendants/Counterclaimants

CERTIFICATE OF SERVICE

I hereby certify that on this 5 day of January, 2009, a true and correct copy of the foregoing ANSWER AND COUNTERCLAIM OF CLYDE AND JOHN FILLMORE was served upon the following by the method indicated below:

Jon C. Gould
RINGERT LAW CHARTERED
455 S. Third Street
P.O. Box 2773
Boise, ID 83701-2773
Telephone: (208) 342-4591
Facsimile: (208) 342-4657

☒ via U.S. MAIL
☐ via HAND DELIVERY
☐ via OVERNIGHT MAIL
☐ via FACSIMILE



BRUCE M. SMITH

Attorneys for Plaintiff

CANYON COUNTY CLERK
D. BUTLER, DEPUTY

000026

III. As to paragraphs 1, 2, 25, 34 and 41 of the Counterclaim, Plaintiff is without information to either confirm or deny the allegations contained therein, and therefore denies the same.

IV. As to paragraph 5 of the Counterclaim, Plaintiff denies that documents related to authorization for Plaintiff to drill a well pursuant to state law were prepared by Duspiva during the course of drilling a well.

V. As to paragraphs 7, 8, 9, 10, 12, 13, 14, 16, 17, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, 30, 32, 33, 35, 36, 38, 39, 42, 43, and 44 of the Counterclaim, Plaintiff denies the allegations contained therein.

VI. As to paragraph 11 of the Counterclaim, Plaintiff is without information to either confirm or deny the allegations contained therein, and therefore denies the same.

VII. As to paragraph 15 of the Counterclaim, Plaintiff admits that the regulatory requirements for drilling a low temperature geothermal well are more stringent than for drilling a cold water well. Plaintiff denies the remainder of the allegations contained therein.

VIII. As to paragraph 22 of the Counterclaim, Plaintiff admits that he did not "intend" on resuming drilling activities on the well because the Defendants/Counterclaimants failed, for over eight months, to inform Plaintiff on how they wished to proceed with well drilling activities, the Defendants/Counterclaimants failed to pay Plaintiff for his drilling services provided at their request, the Defendants/Counterclaimants informed the Plaintiff that they wished to have the well abandoned, and the drilling permit had expired.

IX. As to paragraph 31 of the Counterclaim, Plaintiff admits that the well was not completed. However, the well was not completed because the Defendants/Counterclaimants failed

to authorize Plaintiff to complete the well.

X. As to paragraph 38 of the Counterclaim, Plaintiff is a master well driller and therefore cannot make a misrepresentation about that fact. Therefore Plaintiff denies the allegation contained in the paragraph that he made a misrepresentation about being a master well driller.

XI. As to paragraph 40 of the Counterclaim, the allegation contains a legal conclusion and therefore Plaintiff denies the allegations contained therein.

XII. Plaintiff expressly denies any entitlement of Defendants to an award of attorneys' fees and costs, any damages, or any other relief whatsoever.

AFFIRMATIVE DEFENSES

I. Defendants' Counterclaim fails in whole or in part to state a claim on which relief can be granted against the Plaintiff and should be dismissed pursuant to Rule 12(b)(6) of the Idaho Rules of Civil Procedure.

II. Defendants' claims should be barred because Defendants have proceeded unjustly, unfairly and with unclean hands.

III. Defendants are estopped from asserting the claims set forth in Defendants' Counterclaim.

IV. Defendants have waived some or all of the claims set forth in Defendants' Counterclaim.

V. Defendants' actions contributed to their damages, if any.

VI. By identifying an issue as a "defense" herein, Plaintiff does not assume the burden of proof or persuasion not previously assigned to them under applicable law.

VII. Plaintiff hereby give notice to the Defendants and the Court that he may rely upon

additional defenses which become available and/or appear during discovery and, therefore, reserves his right to amend his Response to assert such additional defenses.

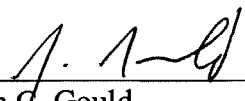
ATTORNEYS FEES

The Plaintiff has been required to retain the services of Ringert Law Chartered, and has and will continue to incur attorneys fees and legal costs in defense of this action. Plaintiff is entitled to recover their reasonable attorneys fees and legal costs incurred herein, pursuant to Idaho Code Sections 12-120 and 12-121, and the applicable provisions of the Idaho Rules of Civil Procedure.

WHEREFORE, Plaintiff Counterdefendant prays that judgment be entered for him on his claims and against Defendants/Counterclaimants; and for such other and further relief as may seem just and equitable.

DATED this 26 day of January, 2009.

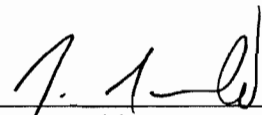
RINGERT LAW CHARTERED

By: 
Jon C. Gould

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26 day of January, 2009, I caused to be served a true and accurate copy of the foregoing document by U.S. mail, postage pre-paid to the following:

Bruce Smith
Moore Smith Buxton & Turke, Chtd
950 W. Bannock Street, Ste. 520
Boise, Idaho 83702



Jon C. Gould

completion of wells in Idaho under the assumed name of Duspiva Well Drilling and Development.

3. Defendant Clyde Fillmore resides at 23252 Homedale Road, Wilder, Canyon County, Idaho 83676.

4. Defendants own the real property described as 23258 Homedale Road, Wilder, Canyon County, Idaho 83676 (hereinafter the "Property").

5. Commencing on or about June 11, 2007, Defendants Clyde Fillmore and John Fillmore met with Plaintiff to discuss the cost of drilling a single family domestic well at the Property, potential drilling concerns including sand production, and location of proposed well on the property.

6. Defendants John Fillmore and Clyde Fillmore entered into an oral agreement with Plaintiff whereby Plaintiff would supply the equipment and materials for well construction, install and complete a groundwater well in a thorough and workman like manner for the use and convenience of Defendant John Fillmore on the Property and Defendants agreed to have Plaintiff initiate drilling services at a per foot of drilling cost and miscellaneous costs.

7. Plaintiff and Defendant John Fillmore signed a "start card" on or about June 11, 2007 to initiate drilling activities under drilling permit no. D0047109 on the Property.

8. On or about June 12, 2007, Plaintiff began drilling activities at the Property.

9. Plaintiff developed each water producing layer encountered during the drilling activities.

10. After completing development at each water bearing layer, Plaintiff and Defendant Clyde Fillmore discussed the results of the development.

11. Defendant Clyde Fillmore authorized Plaintiff to continue drilling after each

discussion following each development activity.

12. Plaintiff provided Defendant Clyde Fillmore with timely and accurate summaries of the drilling and well construction costs.

13. Defendant Clyde Fillmore never instructed Plaintiff to stop drilling.

14. On or about August 2, 2007, Defendant Clyde Fillmore paid Plaintiff \$10,000.00 for the drilling and well construction services provided by Plaintiff.

15. On or about August 8, 2008, Plaintiff drilled to a depth of 836 feet below ground surface and encountered soil cuttings having a temperature of approximately 92 degrees Fahrenheit.

16. On or about August 16, 2007, an Application For Drilling Permit under drilling permit no. D0047109 for a low temperature geothermal well with a proposed maximum depth of 1,000 feet plus was executed by Defendant John Fillmore.

17. On or about September 13, 2007, Defendant Clyde Fillmore paid Plaintiff \$10,000.00 for the drilling and well construction services provided by Plaintiff.

18. On or about October 10, 2007, Plaintiff completed well development activities.

19. The cost of drilling and well construction services completed by Plaintiff for Defendants was \$50,665.00.

20. On or about November 19, 2007, Plaintiff submitted a Completion Plan to IDWR for the Fillmore well that include two alternatives for well completion.

21. In a letter dated April 25, 2008, from John Homan, Deputy Attorney General, State of Idaho, approved Alternative No. 2 subject to six (6) amendments to the previous conditions.

22. The approved Completion Plan required Plaintiff to provide Defendants with a cost estimate for well completion and a cost estimate for well abandonment.

24. The approved Completion Plan required Defendants to provide Plaintiff with a decision to either complete the well or abandon the well within five (5) days of receipt of Plaintiff's plans and cost estimates.

25. Plaintiff provided counsel for the Defendants with both a plan and cost estimate for abandonment and a plan and cost estimate for completion in a timely manner.

26. Defendants failed to respond to Plaintiff.

27. On or about June 11, 2008, Plaintiff informed Defendants that a stand-by drilling charge of \$750.00 per day beginning on June 3, 2008 until Defendants direct Plaintiff on whether to complete or abandon the well.

28. As of October 1, 2008, Defendants had not instructed Plaintiff on whether to complete or abandon the well.

29. Although demands have been made upon Defendants, they have failed to pay the amounts they owe Plaintiff.

COUNT I - BREACH OF CONTRACT

30. Plaintiff realleges paragraphs 1 through 29 as though fully set forth hereat.

31. Plaintiff has timely performed all of his obligations under the Agreement.

32. Defendants breached the above-referenced Agreement by their failure to pay for Plaintiff's services.

33. Plaintiff has been damaged by Defendants' breach of contract in an amount to be determined at trial, but in excess of the jurisdictional minimum of this Court.

REQUEST FOR ATTORNEY FEES

Plaintiff has been required to retain the services of attorneys to prosecute this action, have

retained the firm of Ringert Law Chartered, and has agreed to pay said attorneys a reasonable attorneys fee. Defendants are responsible for the payment of Plaintiff's attorneys fees pursuant to Idaho Code §§ 12-120 and/or 12-121 and/or I.R.C.P. 54, and any and all other applicable Idaho statutes and law. In the event of default, \$15,000 is a reasonable attorney fee.

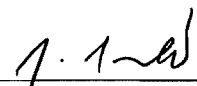
PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1. For an award of damages in favor of Plaintiff in an amount to be determined at trial, but in no case to be less than \$25,000.
2. For an award of reasonable attorneys fees and costs in an amount to be determined by the Court;
3. For such other and further relief as the Court deems just.

DATED this 20th day of October, 2009.

RINGERT LAW CHARTERED

By: 
Jon C. Gould

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of October, 2009, a true and correct copy of the foregoing was served upon all parties listed below by:

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> U. S. mail, postage prepaid | <input type="checkbox"/> express mail |
| <input type="checkbox"/> hand delivery | <input type="checkbox"/> facsimile |

Bruce Smith
Moore Smith Buxton & Turcke Chartered
950 W. Bannock, Ste. 520
Boise, Idaho 83702

Jon Q. Gould
Jon Q. Gould

FILED
A.M. 7:55 P.M.

OCT 23 2009

CANYON COUNTY CLERK
T. CRAWFORD, DEPUTY

THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

GARY DUSPIVA dba GARY DUSPIVA
WELL DRILLING & DEVELOPMENT,

Plaintiffs,

-vs-

CLYDE FILLMORE, an individual and
JOHN FILLMORE, an individual,

Defendants.

CASE NO. CV 2008-10463*C

ORDER SETTING CASE FOR
TRIAL AND PRETRIAL AND
SCHEDULING ORDER

IT IS HEREBY ORDERED that the above entitled matter is scheduled for a three (3) day jury trial before District Judge Thomas J. Ryan, at 9:00 A.M. on August 23-25, 2010, at the Canyon County Courthouse, Caldwell, Idaho. A pretrial conference is scheduled for July 15TH, 2010, at 11:00 A.M.

IT IS FURTHER ORDERED:

1. The Plaintiff shall disclose expert witnesses and comply with I.C.R.P. Rule 26(b)(4)A no later than February 15, 2010. The Defendant shall disclose expert witnesses and comply with I.C.R.P. 26(b)(4)A no later than March 15, 2010.
2. All discovery shall be completed no later than May 30, 2010.
3. The parties are ordered to proceed with alternative dispute

resolution/mediation per this Court's Order Referring Case to Mediation issued contemporaneously with this scheduling Order.

4. All pretrial motions are to have been filed and argued at least twenty-eight (28) days prior to trial.

5. All motions for summary judgment shall be filed and noticed in accordance with Rule 56, Idaho Rule of Civil Procedure.

6. All briefs filed by the parties shall not exceed twenty (20) pages.

7. All parties must file with the Court at least seven (7) days before pre trial conference:

A. A concise written statement of the theory of recovery or defense, the elements of that theory and supporting authorities.

B. A written list identifying stipulated facts, all witnesses and all exhibits to be introduced at trial with a statement whether the exhibit is stipulated admissible.

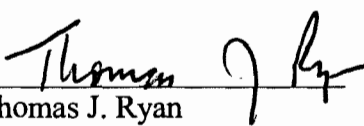
C. A written statement that the parties have discussed settlement or the use of extrajudicial procedures including alternative dispute techniques to resolve the dispute.

D. Proposed Jury Instructions and Verdict forms, if applicable.

8. Attorneys attending the pretrial conference must have authorization to enter into stipulations regarding factual issues and admission of exhibits.

9. Each party is hereby notified that noncompliance with this Order may result in the Court imposing sanctions.

DATED: 10/23/09


Thomas J. Ryan
District Judge

CERTIFICATE OF SERVICE

STATE OF IDAHO,)
) ss
COUNTY OF CANYON)

I HEREBY CERTIFY that a true and correct copy of the foregoing ORDER was forwarded to the following:


Jon C. Gould
RINGERT LAW, CHTD.
PO Box 2773
Boise, ID 83701-2773

Bruce M. Smith
Moore Smith Buxton & Turcke, Chtd.
920 W. Bannock St., Ste. 520
Boise, ID 83702

Either by depositing the same in the U.S. mail, first class postage prepaid, or by personal service.

DATED this 23 day of October, 2009.

William H. Hurst,
Clerk of the District Court


by Deputy Clerk of the Court

BRUCE M. SMITH, ISB #3425
MOORE SMITH BUXTON & TURCKE, CHARTERED
Attorneys at Law
950 W. Bannock Street, Suite 520
Boise, ID 83702
Telephone: (208) 331-1800
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Attorney for Defendant

F I L E D
A.M. *h.75* P.M.
NOV 25 2009
CANYON COUNTY CLERK
D. BUTLER, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

GARY DUSPIVA dba GARY DUSPIVA
WELL DRILLING & DEVELOPMENT

Plaintiff,

vs.

CLYDE FILLMORE, an individual and
JOHN FILLMORE, an individual,

Defendants.

Case No. CV08-10463

**PETITION FOR ORDER OF
CONTEMPT AND SANCTIONS**

COME NOW Defendants Clyde Fillmore and John Fillmore (Fillmores) pursuant to I.R.C.P. 75, and petition this Court for an order of contempt and sanctions against Plaintiff/Respondent Gary Duspiva for violation of the Court's October 23, 2009 Mediation Order.¹ This Petition is filed as a nonsummary proceeding pursuant to I.R.C.P. 75(c).

Plaintiff/Respondent Duspiva (Duspiva) filed a complaint against Clyde and John Fillmore on October 2, 2008 alleging a breach of contract over Duspiva's efforts to drill a well

¹ This petition does not seek sanctions against counsel for Plaintiff because Defendants are not aware of facts related to counsel's efforts related to the mediation. However, Defendants reserve all rights as against Plaintiff's counsel should the evidence reveal that counsel knew or was aware of the circumstances which form the basis of this petition.

for the Fillmores. The Fillmores filed an answer and counterclaim against Duspiva on December 8, 2008. On July 27, 2009, the Canyon County Clerk issued a Notice of Proposed Dismissal for failure to prosecute. Plaintiff's counsel filed an affidavit in support of his motion to retain the case on the calendar asserting, in part, that Plaintiff was "...considering alternatives that would avoid litigation." *See* Affidavit of Counsel in Support of Motion to Retain Case on the Calendar, dated August 1, 2009. Fillmores responded that they thought the case should be dismissed. On August 11, 2009, the Court issued an order retaining the case on the Court's calendar. On October 15, 2009, the Court conducted a scheduling conference during which the Court recommended and the Plaintiff and Defendants agreed that this case was appropriate for mediation. The Court indicated to the parties that former Chief Justice Linda Trout was available to help the parties with mediation. Both parties agreed to mediation with Justice Trout as mediator.

On October 23, 2009, the Court issued a Mediation Order that ordered in part:

2. Upon request of the parties, the Court has appointed Linda Copple Trout, Senior Judge, to serve as mediator. The parties are to contact Justice Trout and schedule the mediation within thirty (30) days of the date of this order.

3. All named parties and any unnamed party claiming an interest in the case, or their agents with full authority to settle, together with the attorneys responsible for handling the Trial in this case are ordered to be present for the entire mediation conference pursuant to I.R.C.P. 16(k)(10) unless otherwise excused by the mediator or the Court upon showing of good cause.

In order to get mediation under way, counsel for Petitioners and counsel's staff contacted Plaintiff's counsel and Justice Trout to select a mutually agreeable date for Justice Trout, counsel, and the parties. November 19, 2009, was agreed upon. Fillmores' counsel scheduled the mediation to begin at 1:00 p.m. However, upon advice from Justice Trout that more time

would increase the likelihood of a successful mediation, the mediation period was rescheduled to begin at 10:00 a.m. Justice Trout sent a letter to both parties confirming the mediation date, the process, and included a request for information and confidential mediation statements to help her understand the issues. She committed to helping the parties reach resolution. See Exhibit 1, letter of November 1, 2009. Justice Trout informed the parties that:

An essential ingredient of a successful settlement conference is the presence of the parties. I expect the parties to be present to make the settlement conference effective, rather than simply being available by telephone.

Fillmore, through counsel, prepared a Confidential Mediation Statement for Justice Trout. On November 18-19, 2009, Fillmores' counsel prepared offices and materials for the mediation. Fillmores' counsel met with the Fillmores in advance of the mediation to prepare for their meeting with Justice Trout.

Justice Trout arrived for the mediation in advance of the 10:00 a.m. start time. Plaintiff/Respondent did not show up at 10:00 a.m. and did not arrive until approximately 10:15-10:20 a.m. Because Plaintiff was late, Justice Trout proceeded to discuss mediation with the Fillmores, indicated that she had read their materials, was prepared to proceed, and made several factual inquiries. Justice Trout informed the Fillmores that she was committed to taking as much time as necessary to resolve the matter.

When Plaintiff arrived, Justice Trout met with Plaintiff and his counsel. The mediation process continued through lunch until about 2:00 p.m. when Justice Trout returned from a session with the Plaintiff to inform the Fillmores that Plaintiff had suddenly announced that he had scheduled another appointment and "was leaving". Further, Plaintiff indicated to Justice Trout that he would not compromise nor negotiate his claim against the Fillmores. Plaintiff and his counsel abruptly left about 2:20-2:30 p.m. thus ending the mediation process. Plaintiff's

departure had a very detrimental impact on the Fillmores who thought that the mediation process would allow the parties to try to settle. Previous attempts to even discuss resolution with the Plaintiff had been completely unsuccessful due to Plaintiff's attitude and refusal to discuss anything other than a demand for "payment in full."

The Fillmores, through counsel, did all the work necessary to conduct the mediation including contacting Justice Trout and Plaintiff to coordinate scheduling, providing facilities for the mediation, providing lunch and other accommodations, and reviewing and submitting key documents to Justice Trout for her review and preparation. Justice Trout had reviewed these materials and was fully prepared for the mediation. For the Plaintiff to agree to mediation yet schedule a conflicting meeting in advance without notice to the Fillmores, the Court, and Justice Trout is egregious conduct. For Plaintiff to take the position during the short time that he was present for the mediation that he would not compromise or even discuss resolution of the case and then just walk out demonstrates contempt of the Court and the judicial process. Such behavior justifies sanctions and reimbursement of the expenses incurred by those who did comply with the Court's order.

The Fillmores incurred approximately \$3,066.03 in costs and fees in preparing for and participating in the mediation. *See* Affidavit of Bruce M. Smith. These costs were incurred in good faith in an effort to avoid the cost and disruption of litigation. The Fillmores came to the mediation fully prepared to participate and indicated to Justice Trout that they would be willing to compromise to reach resolution. Plaintiff's bad faith participation in the mediation and unexcused violation of the Court's order justifies that Plaintiff be held in contempt and ordered to reimburse the Fillmores for the costs and fees they incurred to participate in the mediation. If

the Fillmores succeed on this petition, the Court should also award them fees and costs pursuant to I.R.C.P. 75(m) and I.C. §7-610.

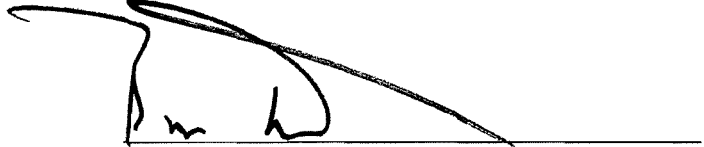
CONCLUSION

The Plaintiff's behavior in agreeing to mediation, scheduling a conflicting meeting at the same time as the mediation, walking out of the mediation, and failure to mediate in good faith demonstrates contempt of the Court's order.

The Fillmores request that the Court sanction the Plaintiff by requiring him to reimburse the Fillmores for the costs they incurred for the mediation. The Fillmores further request that the Court stay further proceedings until this petition proceeding is concluded and the Plaintiff pays any costs the Court orders reimbursed. Finally, if Justice Trout incurred any costs, the Plaintiff should reimburse Justice Trout.

Respectfully Submitted this 24 day of November, 2009.

MOORE SMITH BUXTON & TURCKE,
CHARTERED

A handwritten signature in black ink, appearing to read 'B. M. Smith', is written over a horizontal line.

Bruce M. Smith
Attorney for Petitioner Fillmores

CERTIFICATE OF SERVICE

I hereby certify that on this 27 day of November, 2009, a true and correct copy of the foregoing **Petition for Order of Contempt and Sanctions** was served upon the following by the method indicated below:

Jon C. Gould
RINGERT LAW CHARTERED
455 S. Third Street
P.O. Box 2773
Boise, ID 83701-2773
Telephone: (208) 342-4591
Facsimile: (208) 342-4657

☒ via U.S. MAIL
☐ via HAND DELIVERY
☐ via OVERNIGHT MAIL
☐ via FACSIMILE



BRUCE M. SMITH

THE STATE OF IDAHO
SUPREME COURT



LINDA COPPLE TROUT
Chief Justice (Ret.)

SUPREME COURT BUILDING
P.O. BOX 83720
BOISE, IDAHO 83720-0101

November 6, 2009

Mr. Jon C. Gould
PO Box 2773
Boise, ID 83701-2773

Mr. Bruce M. Smith
920 W Bannock Street, Ste. 520
Boise, ID 83702

RE: *Duspiva v. Fillmore*
Case No. CV 2008-10463*C

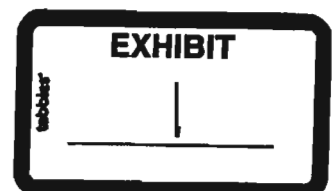
Counsel:

The mediation conference in this case as been scheduled for **Thursday, November 19, 2009, beginning at 1:00 p.m.** We will meet at the law firm of Moore, Smith, Buxton & Turcke, Chtd., 920 W. Bannock Street, Ste. 520 in Boise. I will be prepared to devote whatever time is necessary to explore with you and your clients the possibility of settlement.

In order to prepare for the conference, I would appreciate receiving from each of you any pleadings, briefing or other information that you think will help me understand the issues presented. In addition, at least one week prior to the date set for the conference, please send me your confidential settlement statements indicating the following:

1. the principal legal or factual issues presented by the case;
2. your evaluation of the strengths and weaknesses of your client's case;
3. the state of negotiations (including last offers); and
4. what you think would be a fair settlement of the case.

Feel free to expand on any of these if you think it would assist me in helping you settle the case. You can mail the information to me at the above address.



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November 6, 2009

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An essential ingredient of a successful settlement conference is the presence of the parties. I expect the parties to be present to make the settlement conference effective, rather than simply being available by telephone. I also expect that the parties present at the conference will have full settlement authority.

Typically I begin the mediation with a joint session at which I can outline the process and my role. It is also my opportunity to ask questions and get clarification about the facts or issues. If you and your clients feel that meeting individually with me would further the settlement process, I am happy to do that and to offer my thinking on the issues as well. If there are reasons to vary this process, please let me know ahead of time. Throughout this process, my effort will be to facilitate, not force, a settlement.

No recording of the discussions at the conference will be permitted, but you may make written notes. The settlement conference and all documents prepared by the parties for me will be confidential. When the process has been completed, I will destroy all records of the conference, including the settlement statements of the parties and the notes or other documents I have prepared. I will not discuss the meeting with any other person.

If settlement is not reached by the end of the time we have available, I will simply advise the district court that the case did not settle. If you think a further meeting with me would be beneficial, I'm happy to discuss that with you.

Thank you for your assistance and I look forward to meeting with you on November 19.

Yours truly,

Mailed without signature to avoid delay.

Linda Copple Trout
Senior Judge

LCT:jh

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the mediation was to take the position that he would not compromise or even discuss resolution of the case and then “walk out” of the mediation. Defendants argue that this demonstrates contempt of the Court and the judicial process. In addition, defendants argue that failure to obtain permission to leave violates the court order. The defendants believe that the behavior justifies sanctions and reimbursement of the expenses and attorney fees incurred to prepare and participate. The motion does not specify what sanctions the Court should impose should the Court find the plaintiff in contempt, only that there should be an award of attorney fees and costs pursuant to I.R.C.P. 75 (m).

The plaintiff responds by filing a motion to strike portions of defense counsel’s affidavit and by affidavit of his counsel. Plaintiff contends that, in addition to hearsay objections, confidential mediation communications have been disclosed and therefore, Plaintiff requests an order striking those portions from Defendant’s motion. Further, counsel for the plaintiff informed the Court that his client did participate in a meaningful manner and that he was given permission to leave when it appeared that the parties were at an impasse.

CONCLUSIONS OF LAW & ANALYSIS

Disobedience of any lawful judgment, order or process of the court is one of the acts of contempt defined in the Idaho Code. I.C. §7-601 (5).

Idaho Rule of Civil Procedure 75 governs all contempt proceeding brought in connection with a civil lawsuit. The matter before this Court is a nonsummary proceeding commenced by a motion and affidavit.

A civil contempt sanction can be imposed in a criminal case, and a criminal contempt sanction can be imposed in a civil case. *Camp v. East Fork Ditch Co., Ltd.*, 2002, 55 P.3d 304, 137 Idaho 850.

Commencement of a nonsummary proceeding is governed by Rule 75 (c). The defendants’ motion and affidavit appear to comply with Rule 75 (c)(2) & (3).

Rule 75 (f) requires the Court to advise the alleged contemnor of the charge of contempt, the possible sanctions; his right to remain silent; right to a trial; and right to confront the witnesses against him.

The possible sanctions are both civil and criminal. A civil sanction could be imposed requiring the plaintiff to comply with the Order to mediate. A criminal sanction could be as set

forth in I.C. §7-610. The Court may impose a fine not exceeding \$5,000.00 or he may be imprisoned not exceeding five (5) days, or both.

At the initial appearance, the plaintiff shall admit or deny the contempt. The motion to strike and the affidavit of counsel appear to deny the contempt. Accordingly, Rule 75 (g) (2) requires the Court to set this matter for trial. A court trial is all that is required pursuant to Rule 75 (i)(1). The standard of proof is a preponderance of evidence in order for the Court to impose a civil sanction. The standard is beyond a reasonable doubt in order for the Court to impose a criminal sanction.

Thus, unless the plaintiff admits contempt, the Court is required to set the matter for trial. If the Court finds contempt has occurred, only then can it consider costs and attorney fees pursuant to Rule 75 (m).

The trial of this alleged contempt would necessarily require the testimony of the mediator, Linda Copple Trout. This is problematic in three ways. First, she was not compensated for her work as a mediator and essentially conducted the mediation in her capacity as a senior judge at no cost to the parties. Secondly, requiring her testimony conflicts with Rule 16 (j) (8) which provides that the mediator and the Court shall maintain no contact or communication, with only certain limited exceptions. Testimony at a contempt trial does not fall within any of the enumerated exceptions. Finally, communications in mediation are supposed to remain confidential.

If the Court found by a preponderance of the evidence that contempt occurred, the only civil sanction applicable to this case would be to order the plaintiff back to the mediation. Of course, the Court could then consider an award of costs and attorney fees.

Rather than treat this matter as a contempt proceeding as requested by the defendants, the Court is of the opinion that I.R.C.P. 16(i) is applicable. Pursuant to I.R.C.P. a trial court has authority to sanction parties for non-compliance with pretrial orders. I.R.C.P. 16(i); *Edmunds v. Kraner*, 142 Idaho 867, 872-873, 136 P.3d 338, 343-344 (2006), citing *S. Idaho Prod. Credit Ass'n. v. Astorquia*, 113 Idaho 526, 528, 746 P.2d 985, 987 (1987). The imposition of such sanctions is committed to the discretion of the trial court. *Id.*

The Court notified the parties of its decision to proceed pursuant to I.R.C.P. 16(i) and

both parties presented oral argument on the issue. Disclosure of mediation communications was limited to the procedural aspects of the mediation. Therefore, the Court held that based on the information presented in oral argument, there was no reason for the Court to disqualify itself.

Following oral argument, the Court notified the parties that based on the evidence presented; the Court was unable to make a determination of whether there was substantial compliance with the mediation order. Therefore, the Court held that it could not presently award sanctions pursuant to I.R.C.P. 16(i) and that it would reserve the issue of attorneys fees associated with the mediation pending the resolution of the case. Attorneys fees associated with the mediation will likely be awarded to the prevailing party in the case. The award of attorney fees in general will need to be argued and briefed by the parties following the conclusion of this case.

In addition, the Court held that both parties should share the responsibility of the costs associated with the mediation. Per the affidavit submitted by counsel for the defendants the total costs for the mediation was \$125.53.

ORDER

IT IS HEREBY ORDERED, and this does ORDER, that Defendant's Petition for Order of Contempt and Sanctions is DENIED. Further, that Plaintiff shall reimburse the defendant's for one-half of the mediation costs.

Dated this 16th day of January, 2010.

Thomas J. Hy-
District Judge

CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing to be served upon the following via U.S. Mail, postage prepaid, facsimile transmission or by hand delivery:


JOHN C. GOULD
RINGERT LAW CHARTERED
455 S. Third Street
P.O. Box 2773
Boise, ID 83701-2773

BRUCE M. SMITH
MOORE SMITH BUXTON & TURCKE, CHARTERED
950 W. Bannock Street, Suite 520
Boise, ID 83702

Date

1-20-10

Deputy Clerk



FILED
AM 2:25 P.M.

FEB 11 2010

CANYON COUNTY CLERK
TEARLS, DEPUTY

BRUCE M. SMITH, ISB #3425
 MOORE SMITH BUXTON & TURCKE, CHARTERED
 Attorneys at Law
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 Telephone: (208) 331-1800
 Facsimile: (208) 331-1202

Attorney for Defendant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

GARY DUSPIVA dba GARY DUSPIVA
 WELL DRILLING & DEVELOPMENT

Plaintiff,

vs.

CLYDE FILLMORE, an individual and
 JOHN FILLMORE, an individual,

Defendants.

Case No. CV08-10463

**ANSWER TO AMENDED
 COMPLAINT AND
 COUNTERCLAIM OF CLYDE
 FILLMORE AND JOHN
 FILLMORE**

COME NOW Defendants Clyde Fillmore and John Fillmore and answer Plaintiff's
 Amended Complaint as follows: Any allegations not specifically admitted are denied.

1. In response to paragraph 1, Defendants state that they do not have sufficient information to form a belief as to the truthfulness of the allegations and therefore deny the same. Notwithstanding the foregoing, Plaintiff represented to Defendants that he was a master well driller in the state.

ANSWER TO AMENDED COMPLAINT AND COUNTERCLAIM OF CLYDE AND JOHN FILLMORE- 1

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2. In response to paragraph 2, Defendants state that they do not have sufficient information to form a belief as to the truthfulness of the allegations and therefore deny the same
3. Admit.
4. Denied.
5. In response to paragraph 5, Defendants admit meeting with Plaintiff to generally discuss the drilling of a well. Defendants deny that paragraph 5 is a complete description of the conversation.
6. In response to paragraph 6, Defendants admit to entering into an oral agreement with Plaintiff for Plaintiff to drill a cold water domestic well. Defendants deny that paragraph 6 is an accurate description of the agreement. Specifically, the agreement with Plaintiff was for Plaintiff to drill a cold water domestic well not a geothermal well. Defendants also have no way of knowing what "miscellaneous costs" paragraph 6 refers to.
7. In response to paragraph 7, Defendant John Fillmore admits to signing a card which appeared to address Plaintiff's drilling a well. However, Plaintiff had prepared the document and presented it to John Fillmore for signing. John Fillmore had no knowledge of well drilling requirements associated with the card.
8. Admit.
9. In response to paragraph 9, Defendants are without sufficient information to form a belief as to the truthfulness of the allegations and therefore deny the same.
10. In response to paragraph 10, Defendants are without sufficient information to form a belief as to the truthfulness of the allegations and therefore deny the same.
11. In response to paragraph 11, Defendants are without sufficient information to form a belief as to the truthfulness of the allegations and therefore deny the same. Defendants

specifically deny that Plaintiff adequately or properly informed Defendants about the scope, extent, and costs of the drilling activities and well construction costs or the impacts of drilling into a geothermal aquifer.

12. Denied.

13. In response to paragraph 13, Defendant Clyde Fillmore admits he never instructed Plaintiff to stop drilling but Plaintiff was drilling without instructions anyway.

14. Admit.

15. In response to paragraph 15, Defendants are without sufficient information to form a belief as to the truthfulness of the allegations and therefore deny the same.

16. In response to paragraph 16, Defendant John Fillmore admits that he signed an Application for Drilling Permit that had been prepared by Plaintiff. As to the remainder of the allegations, no response is needed in that the document speaks for itself. If a response is needed, the allegations are denied.

17. Admit.

18. Denied.

19. Denied.

20. In response to paragraph 20, Defendants are without sufficient information to form a belief as to the truthfulness of the allegations and therefore deny the same.

21. In response to paragraph 21, no response is needed in that the document referred to is the best evidence and speaks for itself.

22. In response to paragraph 22, Defendants respond that the paragraph appears to refer to the letter referred in paragraph 21, to which no response is needed.

23. Defendants note there is no paragraph 23 within the Amended Complaint.

24. In response to paragraph 24, Defendants respond that the paragraph appears to refer to the letter referred in paragraph 21, to which no response is needed.

25. Denied.

26. Denied.

27. In response to paragraph 27, the allegations are Plaintiff's characterization of his actions to which no response is needed. If a response is needed, the allegations are denied. Defendants specifically deny that the agreement with Plaintiff included any provision for standby charges, and that the allegations in paragraph 27 constitute a breach of the agreement with Plaintiff. Defendants understood that Plaintiff had dropped this claim, and therefore no answer is required.

28. Denied.

29. Denied.

30. In response to paragraph 30, Defendants respond as they responded to each and every previous paragraph.

31. Denied.

32. Denied.

33. Denied.

34. In response to Plaintiff's Request for Attorney Fees, Defendants deny that Plaintiff is entitled to any attorney fees and deny that \$15,000.00 is reasonable for award for a defendant.

35. In response to the Prayer for Relief, Defendants deny that Plaintiff is entitled to any relief and further that Plaintiff's Complaint fails to state a claim for relief.

II.

AFFIRMATIVE DEFENSESFIRST AFFIRMATIVE DEFENSE

Plaintiff fails to state a claim for relief.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of unclean hands in that Plaintiff misrepresented his qualifications and skill in drilling a well and negligently or intentionally failed to disclose important information about the details of the drilling, the Plaintiff's discussions with IDWR, and the costs and regulatory requirements of a low temperature geothermal well.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by Plaintiff's fraud and misrepresentation concerning the cost and details of drilling the well, and Plaintiff's undisclosed communications with IDWR.

FOURTH AFFIRMATIVE DEFENSE

If Plaintiff is entitled to any damages, such damages are offset by the damages and costs incurred by Defendants.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in that the well Plaintiff drilled was illegal and Defendants did not contract for the drilling of an illegal well.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred due to failure of consideration in that Defendants did not get what they contracted with Plaintiff to receive.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in that Plaintiff assumed the risk of drilling in a manner that a low temperature geothermal aquifer was encountered and that the well construction did not comply with state law.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the negligence of Plaintiff in using inappropriate equipment for the type of drilling he attempted to do and in drilling into a low temperature geothermal aquifer that Plaintiff knew would be encountered.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in that Plaintiff failed to properly explain the costs and complexity of drilling a low temperature geothermal well.

TENTH AFFIRMATIVE DEFENSE

There was no meeting of the minds with regard to any agreement between Plaintiff and Defendants, and therefore, no contract was formed.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff reserves the right to amend and/or add affirmative defenses as appropriate.

COUNTERCLAIM

COME NOW Counterclaimants Clyde Fillmore and John Fillmore and allege and claim against Gary Duspiva as follows:

1. Counterclaimant Clyde Fillmore is a resident of Canyon County, Idaho.
2. Counterclaimant John Fillmore is a resident of Canyon County, Idaho.

3. Counterdefendant Gary Duspiva represents and advertises himself as a master well driller and, upon information and belief, lives in Canyon County, Idaho. Duspiva provides drilling services in Canyon County, Idaho.
4. Pursuant to an oral agreement, Clyde Fillmore and John Fillmore retained Duspiva in 2007 to drill a cold water domestic well for a house on Homedale Road in Canyon County, Idaho.
5. During the course of drilling a well, Duspiva prepared and presented to John Fillmore for signing certain documents that are, upon information and belief, related to authorization for Plaintiff to drill a well pursuant to state law.
6. Duspiva started drilling the well in June, 2007.
7. During the course of drilling the well, Duspiva failed to adequately notify and inform the Fillmores about the drilling activities.
8. During the drilling of the well, Duspiva intentionally withheld important information about the details of the drilling activity including, but not limited to, that he had drilled into a low temperature geothermal aquifer in violation of IDWR rules and in direct contradiction of the application/permit to drill a cold water domestic well.
9. Duspiva represented to the Fillmores that they should not worry about the fact that he had drilled into the low temperature geothermal aquifer because Duspiva would take care of it with the Idaho Department of Water Resources.
10. Duspiva failed to communicate with and inform the Fillmores of all of Duspiva's discussions with the IDWR, Duspiva's history of problems with drilling into the geothermal aquifer, and the IDWR's problems and notice to Duspiva about drilling into low temperature geothermal aquifers.

11. In drilling the well, both before starting and after drilling into the geothermal aquifer, Duspiva failed to inform the Fillmore's that Duspiva had already received warnings from the IDWR about drilling into low temperature geothermal aquifers.
12. In fact, Duspiva had received warnings about his improper drilling methods and drilling into low temperature geothermal aquifers on the Rohn well, the Enoch well, and the Riggs well, all of which are in the same vicinity as the well he was drilling for the Fillmores.
13. Duspiva, based on these previous drilling efforts, knew or should have known that he would encounter a geothermal aquifer in drilling a well for the Fillmores.
14. The cost and complexity of drilling a low temperature geothermal well is considerably more than drilling a cold water well, and Duspiva had an obligation to so inform the Fillmores which he did not do.
15. The regulatory requirements for drilling a low temperature geothermal well are more stringent than for drilling a cold water well, and Duspiva had an obligation to so inform the Fillmores which he did not do.
16. Duspiva drilled the well in a manner that violated IDWR rules.
17. Because of the manner Duspiva drilled the well, the costs of the well skyrocketed far beyond the costs associated with the type of well the Fillmores sought to have drilled.
18. Duspiva has demanded that the Fillmores pay him the costs of complying with the IDWR rules which Duspiva violated.
19. The Fillmores proposed to contract for the drilling of a cold water domestic well, not a low temperature geothermal well.

20. A low temperature geothermal well does not serve the needs of John Fillmore and is not what he sought to have Duspiva drill.
21. The Fillmores relied upon the representations of Duspiva as to the drilling of a well, and Duspiva failed to inform them of the costs associated with the drilling of the well and for complying with IDWR rules.
22. On September 15, 2008, Duspiva informed the IDWR that he did not intent to resume drilling activities on the well.
23. On September 29, 2008, Duspiva told IDWR he would not participate in any meeting to resolve the dispute over the well.
24. As a result of Duspiva's drilling into the geothermal aquifer, the IDWR issued an order on October 3, 2008, requiring a plan for abandoning the well.
25. As a result of the IDWR proceeding regarding Duspiva's drilling, the Fillmores were required to participate in a formal hearing at the IDWR and incurred costs and damages in doing so.
26. As part of the IDWR hearing, the IDWR prepared a November 6, 2008, Staff Memorandum that detailed Duspiva's actions with regard to drilling into the low temperature geothermal aquifer, the repeated warnings to him by the IDWR, and his failure to comply with IDWR rules. A copy of the Staff Memorandum (without attachments) is attached to and incorporated into this Complaint.
27. Duspiva had been warned by IDWR about his drilling techniques as they related to geothermal conditions.

28. As a result of Duspiva's misrepresentations, his failure to comply with IDWR rules, and his intentional and/or negligent actions in drilling a low temperature geothermal well, Duspiva caused actual damage to the Fillmores.

COUNT ONE

(BREACH OF CONTRACT AND UNJUST ENRICHMENT)

29. The Counterclaimants reallege paragraph 1-28 as if set forth in full.
30. Counterclaimants proposed to contract with Counterdefendant to drill a cold water domestic well.
31. Counterdefendant failed to drill a well as proposed.
32. The well drilled by Counterdefendants further failed to comply with IDWR rules.
33. As a result of Counterdefendant's actions, the IDWR required the well be abandoned.
34. As a result of the IDWR actions regarding abandoning the well, the Counterclaimants suffered damages by having to pay for certain costs associated with the abandonment.
35. If Counterdefendant had not drilled into the geothermal aquifer, Counterclaimants would not have incurred costs associated with abandonment of the well.
36. Counterdefendant having been paid \$20,000.00 for a well that was not as proposed, has been unjustly enriched by \$20,000.00.
37. Counterclaimants are therefore entitled to rescind the original agreement and have returned to them all funds paid to Counterdefendants, and to have Counterdefendant pay for all damages suffered by Counterclaimants.

COUNT TWO

(VIOLATION OF CONSUMER PROTECTION ACT)

38. Counterclaimants reallege paragraph 1-36 as if set forth in full.

39. Counterdefendant misrepresented and held himself out as a master well driller.
40. However, Counterdefendant did not have the expertise as reflected and demonstrated by his failure to comply with well drilling requirements established by the State of Idaho through the Idaho Department of Water Resources.
41. Counterdefendant's work and service are services and actions as described in Idaho Code 48-602.
42. Counterclaimants are consumers who are not knowledgeable about well drilling techniques.
43. Counterdefendant engaged in acts and practices which are false, misleading, malicious, outrageous, and deceptive to the Counterclaimants in that Counterdefendant did not have skills or expertise as represented, omitted or misrepresented important details about his activities, undertook to drill in violation of state law, and demanded that Counterclaimants pay for Counterdefendant's illegal actions including costs associated with attempting to correct the improperly drilled well.
44. Counterdefendant therefore violated, at a minimum, I.C. 48-603(17) and, upon information and belief, I.C. 48-603(16), and 48-603(c).
45. Pursuant to I.C. 48-608, Counterclaimants are entitled to void the original agreement or, in the alternative, recover actual damages which are known to be greater than \$1,000.00.

REQUEST FOR ATTORNEY FEES

46. Counterclaimants have been required to retain the service of counsel to prosecute this action and have agreed to pay counsel for such services. Counterdefendant is responsible for payment of such fees pursuant to I.C. 12-120, I.C. 12-121, and I.C. 48-608. In the event of default, \$10,000.00 is a reasonable fee.

**PRAYER FOR RELIEF**

Counterclaimants pray for judgment against Counterdefendant as follows:

1. For an award of damages as established by proof at trial which amount is believed to be approximately \$12,000.00-\$15,000.00.
2. For an order voiding the agreement between Counterclaimants and Counterdefendant and ordering Counterdefendant to return all funds paid to Counterdefendant.
3. For an award of attorney fees and costs.
4. For such other relief as the Court deems appropriate in the circumstances.

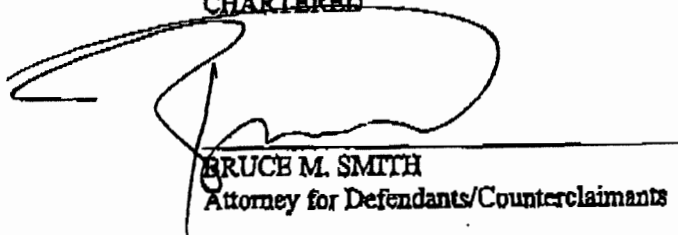
DATED this 11 day of February, 2010.

VERIFICATION

I hereby attest to the truthfulness of the claims made herein.


JOHN FILLMORE

MOORE SMITH BUXTON & TURCKE,
CHARTERED


BRUCE M. SMITH
Attorney for Defendants/Counterclaimants

ANSWER TO AMENDED COMPLAINT AND COUNTERCLAIM OF CLYDE AND JOHN FILLMORE- 12

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of February, 2010, a true and correct copy of the foregoing ANSWER AND COUNTERCLAIM OF CLYDE AND JOHN FILLMORE was served upon the following by the method indicated below:

Jon C. Gould
RINGERT LAW CHARTERED
455 S. Third Street
P.O. Box 2773
Boise, ID 83701-2773

X via U.S. MAIL
 via HAND DELIVERY
 via OVERNIGHT MAIL
X via FACSIMILE

Facsimile: (208) 342-4657



BRUCE M. SMITH

JON C. GOULD (ISB #6709)
RINGERT LAW CHARTERED
455 S. Third Street, P.O. Box 2773
Boise, Idaho 83701-2773
Telephone: (208) 342-4591
Facsimile: (208) 342-4657

F I L E D
A.M. / P.M.
FEB 19 2010 ✓

CANYON COUNTY CLERK
D. BUTLER, DEPUTY

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

GARY DUSPIVA dba GARY DUSPIVA
WELL DRILLING & DEVELOPMENT,

Plaintiff,

vs.

CLYDE FILLMORE and JOHN FILLMORE,

Defendants.

)
)
) CASE NO. CV08-10463
)
)

) **RESPONSE TO FEBRUARY 12, 2010**
) **COUNTERCLAIM OF CLYDE**
) **AND JOHN FILLMORE**
)
)
)
)
)

COMES NOW the Plaintiff/Counterdefendant, Gary Duspiva dba Duspiva Well Drilling & Development (hereinafter "Plaintiff"), by and through his counsel, Ringert Law Chartered, and hereby Responds to the Counterclaim filed by the above-listed Defendants as follows:

INTRODUCTORY ALLEGATIONS

I. Plaintiff hereby denies each allegation contained in Defendants' Counterclaim unless specifically admitted herein.

II. As to paragraphs 3, 4, 6, and 30 of the Counterclaim, Plaintiff admits the allegations contained therein.

III. As to paragraphs 1, 2, 20, 25, 34, 41 and 42 of the Counterclaim, Plaintiff is without information to either confirm or deny the allegations contained therein, and therefore denies the same.

IV. As to paragraph 5 of the Counterclaim, Plaintiff denies that documents related to authorization for Plaintiff to drill a well pursuant to state law were prepared by Duspiva during the course of drilling a well.

V. As to paragraphs 7, 8, 9, 10, 12, 13, 14, 16, 17, 18, 19, 21, 23, 24, 25, 26, 27, 28, 31, 32, 33, 35, 36, 37, 39, and 43 of the Counterclaim, Plaintiff denies the allegations contained therein.

VI. As to paragraph 11 of the Counterclaim, Plaintiff is without information to either confirm or deny the allegations contained therein, and therefore denies the same.

VII. As to paragraph 15 of the Counterclaim, Plaintiff admits that the regulatory requirements for drilling a low temperature geothermal well are more stringent than for drilling a cold water well. Plaintiff denies the remainder of the allegations contained therein.

VIII. As to paragraph 22 of the Counterclaim, Plaintiff admits that he did not "intend" on resuming drilling activities on the well because the Defendants/Counterclaimants failed, for over eight months, to inform Plaintiff on how they wished to proceed with well drilling activities, the Defendants/Counterclaimants failed to pay Plaintiff for his drilling services provided at their request, the Defendants/Counterclaimants informed the Plaintiff that they wished to have the well abandoned, and the drilling permit had expired.

IX. As to paragraph 31 of the Counterclaim, Plaintiff admits that the well was not completed. However, the well was not completed because the Defendants/Counterclaimants failed to authorize Plaintiff to complete the well.

X. As to paragraph 39 of the Counterclaim, Plaintiff is a master well driller and therefore cannot make a misrepresentation about that fact. Therefore Plaintiff denies the allegation contained in the paragraph that he made a misrepresentation about being a master well driller.

XI. As to paragraphs 40, 44, and 45 of the Counterclaim, the allegations contain legal conclusion and therefore Plaintiff denies the allegations contained therein.

XII. Plaintiff expressly denies any entitlement of Defendants to an award of attorneys' fees and costs, any damages, or any other relief whatsoever.

AFFIRMATIVE DEFENSES

I. Defendants' Counterclaim fails in whole or in part to state a claim on which relief can be granted against the Plaintiff and should be dismissed pursuant to Rule 12(b)(6) of the Idaho Rules of Civil Procedure.

II. Defendants' claims should be barred because Defendants have proceeded unjustly, unfairly and with unclean hands.

III. Defendants are estopped from asserting the claims set forth in Defendants' Counterclaim.

IV. Defendants have waived some or all of the claims set forth in Defendants' Counterclaim.

V. Defendants' actions contributed to their damages, if any.

VI. By identifying an issue as a "defense" herein, Plaintiff does not assume the burden of proof or persuasion not previously assigned to them under applicable law.

VII. Plaintiff hereby give notice to the Defendants and the Court that he may rely upon additional defenses which become available and/or appear during discovery and, therefore, reserves

his right to amend his Response to assert such additional defenses.

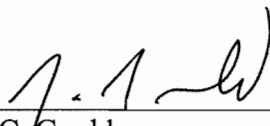
ATTORNEYS FEES

The Plaintiff has been required to retain the services of Ringert Clark Chartered, and has and will continue to incur attorneys fees and legal costs in defense of this action. Plaintiff is entitled to recover their reasonable attorneys fees and legal costs incurred herein, pursuant to Idaho Code Sections 12-120 and 12-121, and the applicable provisions of the Idaho Rules of Civil Procedure.

WHEREFORE, Plaintiff Counterdefendant prays that judgment be entered for him on his claims and against Defendants/Counterclaimants; and for such other and further relief as may seem just and equitable.

DATED this 18th day of February, 2010.

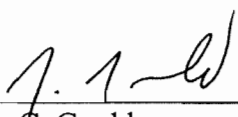
RINGERT LAW CHARTERED

By: 
Jon C. Gould

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the foregoing document was sent by mail, postage prepaid, to the following on this 18th day of February, 2010:

Bruce M. Smith
Moore Smith Buxton & Turcke, Chtd.
950 W. Bannock Street, Suite 520
Boise, Idaho 83702


Jon C. Gould

BRUCE M. SMITH, ISB #3425
MOORE SMITH BUXTON & TURCKE, CHARTERED
Attorneys at Law
950 W. Bannock Street, Suite 520
Boise, ID 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202

Attorney for Defendants

F I L E D
A.M. 1220 P.M.

JUN 18 2010

CANYON COUNTY CLERK
J HEIDEMAN, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

GARY DUSPIVA dba GARY DUSPIVA
WELL DRILLING & DEVELOPMENT

Plaintiff,

vs.

CLYDE FILLMORE, an individual and
JOHN FILLMORE, an individual,

Defendants.

Case No. CV08-10463

**AFFIDAVIT OF JOHN
FILLMORE IN SUPPORT OF
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

State of Idaho)
) ss.
County of Canyon)

John Fillmore, being first duly sworn, sayeth as follows:

1. My name is John Fillmore. I am an adult over the age of 18 years, and I am of sound mind. I am a resident of Canyon County, Idaho, and make the following statements based upon my own personal knowledge.

2. I have reviewed the Affidavit of Clyde Fillmore, my father.

**AFFIDAVIT OF JOHN FILLMORE IN SUPPORT OF
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT - 1**

ORIGINAL

000070

3. There are references in his affidavit to my having signed a "Start Card/Permit" and a special permit for a low temperature geothermal well.

4. I am a carpenter by trade and at the time of our discussions with Gary Duspiva about drilling a cold water domestic well on my property, I knew very little, if anything, about the requirements for well drilling. I, like my father, depended on the information and recommendations of Mr. Duspiva.

5. Specifically with regard to signing either permit, I recall that the permits were incomplete when I signed them at Mr. Duspiva's direction. I signed them because he represented the permits were necessary for him to drill the well. A copy of the Start Card/Permit is attached hereto as Exhibit 1. The LTG permit is attached hereto as Exhibit 2.

6. At no time did Mr. Duspiva inform me of the ramifications, costs, or requirements for a low temperature geothermal well. I had no way of knowing the nature and affect of such a well and would not enter into a contract if I had been informed as to these matters. I believe the facts surrounding the effect of a LTG well would be material to any agreement to construct such a well.

7. In my opinion, Mr. Duspiva has sought to maximize his payment by drilling as deeply as he could without regard to the cost or the intent of me and my father in requesting that he drill a domestic well.

8. Mr. Duspiva's disregard is evidenced by his refusal to even continue meeting with IDWR and my father to figure out a solution to the problem caused by his illegal drilling.

9. I have observed my father's and mother's pain and suffering as a result of the way Mr. Duspiva has dealt with this matter. They are very upset at Mr. Duspiva's treatment of them,

his total disregard for the effect of his actions, and his refusal to accept responsibility for his actions in drilling an illegal well.

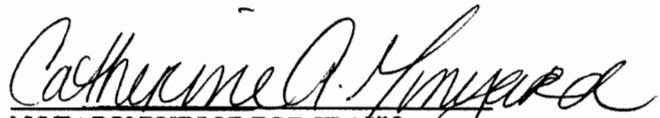
Further your affiant sayeth not.

Dated this 15 day of June, 2010.


JOHN FILLMORE

SUBSCRIBED AND SWORN to before me this 15 day of June, 2010.




NOTARY PUBLIC FOR IDAHO
Residing at: Nampa, ID
My Commission Expires: 04/15/2016

**AFFIDAVIT OF JOHN FILLMORE IN SUPPORT OF
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT - 3**

000072

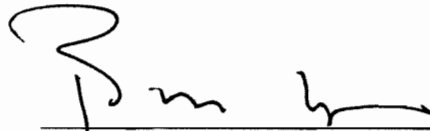
CERTIFICATE OF SERVICE

I hereby certify that on this 17 day of June, 2010, a true and correct copy of the foregoing AFFIDAVIT OF JOHN FILLMORE IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT was served upon the following by the method indicated below:

Jon C. Gould
RINGERT LAW CHARTERED
455 S. Third Street
P.O. Box 2773
Boise, ID 83701-2773

Facsimile: (208) 342-4657

☐ via U.S. MAIL
☒ via HAND DELIVERY
☐ via OVERNIGHT MAIL
☐ via FACSIMILE



BRUCE M. SMITH

Manufactured by
Alexander Clark Business Forms
Boise, Idaho - (208) 322-0611

Form 235-3, 6/2004

900285-847154

Idaho Dept. of Water Resources

Write Tag Number Here

Start Card/Permit - Single Family Domestic Well Only

D0047109

(Cold Water less than 85 degrees F.)

1. Owner's Name (please print): JOHN FILLMORE
 2. Owner's Mailing Address: 23258 HOMEDALE ROAD
 City: WILDER State: ID Zip Code: 83676 Telephone (208) 919-4085
 3. Proposed Well Location: Twp. 03N, Rge. 04W, Sec. 6, SE 1/4 SW 1/4 SE 1/4
 Gov't Lot No. _____ County GANNON Lat. _____: _____: _____ Long. _____: _____: _____
 Street Address of Well Site 23258 HOMEDALE ROAD City WILDER

Must give at least name of road + Distance to Road or Landmark

Lot _____ Block _____ and Subdivision _____

4. Are all adjacent septic tanks and drain fields accurately located? By Property Owner: Yes [] No [] By Health District: Yes [] No []

5. Well Construction Information:

A. ☒ New well [] Replace [] Deepen [] Modify Previous well #: _____ B. Proposed Casing Dia. 6" C. Proposed Maximum Depth: 2006. Construction Start Date: 12 JUN 2007 Well Driller: GARY DUSPIVA Driller's Lic. No. 395

8. The Driller hereby accepts the terms and conditions of the Start Card/Permit.

Driller's Signature: _____ Date: 11 JUN 2007

9. The Well Owner affirms to have read this Start Card/Permit, validates its accuracy and accepts the conditions.

Owner's Signature: _____ Date: 6/11/07

CONDITIONS FOR USE OF START CARD:

1. This permit authorizes the construction or modification of one domestic well for a single-family residence. *Not on chyn. city. web.* businesses, or dwellings may be connected to this well without a valid water right. Limited to irrigation of 1/4 acre lawn/g
2. This form must be complete, including the prepaid tag number and signature of the driller. The owner should sign the reviewing these conditions. Mailing must take place no less than 72 hours prior to construction (Dept. address below), to the Dept. prior to commencing construction. The start construction date shall be no more than 10 days after, the Dept permit. An incomplete form will not be considered a valid permit to drill.
3. This permit does not constitute an approval of the District Health Department or the Idaho Department of Health and be drilled a minimum distance of 100' from a drain field. Domestic wells must be drilled a minimum of 50' from a septic t
4. Only Well Drillers licensed in Idaho may use a Start Card for construction of a well. The driller shall maintain a copy c well I.D tag at the drilling site during construction.
5. This drilling permit does not authorize trespass on the land of another party.
6. This drilling permit does not constitute other local, county, state or federal approvals, which may be required for construction of a well.
7. This drilling permit does not represent a right to divert and use the water of the State of Idaho.
8. If a bottom hole temperature of 85 F. or greater is encountered, well construction shall cease and the well driller shall contact the Department immediately.
9. Idaho Code, S 55-2201 - 55-2210 requires the applicant and/or his contractors to contact "Digline" (Digline is a one-call center for utility notification) not less than 2 working days prior to the start of any excavation for this project. The "Digline" Number for your area is 1-800-342-1585.
10. The stainless steel I. D. tag must be welded to the well casing upon completing the well and must remain permanently attached above ground level for the life of the well. Other tags may be added following a repair or modification of the well. The well driller is responsible for permanently attaching the I.D. tag to the casing upon completing the well. The well tag shall be attached by welding at least 3 sides or using Four (4) stainless steel, closed-end pop rivets.
11. A start card is not valid for drilling in Areas of Drilling Concern, Critical Groundwater Areas, Groundwater Management Areas or Areas Identified by the Department as Contaminated.
12. The possession of a well tag does not authorize construction of a well.
13. Any well being replaced by a new well, shall be properly abandoned by the well driller prior to removing the drilling equipment, unless otherwise authorized by the department.

Effective Feb. 1, 2005

Your Start Card/Application and Tag purchase may be submitted to one of the following offices:

Western Region
Idaho Department of Water Resources
2735 Airport Way Boise, ID 83705-5062
Phone: (208) 334-2190 Fax: (208) 334-2348

Northern Region
Idaho Department of Water Resources
1910 Northwest Blvd., STE 210 Coeur d'Alene, ID 83814-2615
Phone: (208) 769-1450 Fax (208) 769-1454

Eastern Region
Idaho Department of Water Resources
900 North Skyline Drive STE A Idaho Falls, ID 83402-1718
Phone: (208) 525-7161 Fax: (208) 525-7177

Southern Region
Idaho Department of Water Resources
1341 Fillmore Street, STE 200 Twin Falls, ID 83301-3380
Phone: (208) 736-3033 Fax (208) 736-3037

EXHIBIT

1

000074

Aug. 14. 2007 1:50PM

Idaho Dept. of Water Resources

No. 8901 P. 1

63
Form 235-1
10/1/03

Drilling Permit No. 91 283-847154
Drilling Permit I.D. Tag No. D0047109
Water Right Permit No. _____
Injection Permit No. _____

State of Idaho
Department of Water Resources

APPLICATION FOR DRILLING PERMIT
(FOR THE CONSTRUCTION OF A WELL)

1. Owner (please print): JOHN FILLMORE
2. Mailing Address: 23258 HOMEDALE ROAD
City: WILDER State: ID Zip Code: 83676 Telephone (208) 919-4085
3. Proposed Well Location: Twp. 03N Rge. 04W Sec. 06 SE 1/4 SW 1/4 SE 1/4;
Gov't Lot No. _____ County GANYON Lat. _____: _____: _____ Long. _____: _____: _____
Street Address of Well Site 23258 HOMEDALE ROAD City WILDER
Give at least name of road + Distance to Road or Landmark
Lot, block and subdivision _____

4. Proposed Use of Well:

☒ DOMESTIC: The use of water for homes, organization camps, public campgrounds, livestock and for any other purpose in connection therewith, including irrigation of up to 1/4 acre of land, if the total use is not in excess of 13,000 gpd; or any other uses, if the total use does not exceed a diversion rate of 0.04 cfs and a diversion volume of 2500 gpd.

Domestic does not include water for multiple ownership subdivisions, mobile home parks, commercial or business establishments, unless the use does not exceed a diversion rate of 0.04 cfs and a diversion volume of 2500 gpd.

NON-DOMESTIC: ☐ Irrigation ☐ Municipal ☐ Industrial
☐ Livestock ☐ Test ☐ Other _____
Type _____ Number Hd. _____ (Describe)

☐ INJECTION

☐ MONITORING: A well bore schematic and map is required for each blanket permit. No. of proposed wells: _____

5. Well Construction Information:

A. ☒ New well ☐ Modify ☐ Replace
B. Proposed Casing Diameter 6" Proposed Maximum Depth 1000+
C. Anticipated bottom hole temperature: 85
☐ 85 F or less (Cold Water Well) ☒ 85 F to 212 F (Low Temp. Geo. Well) ☐ 212 F. or more (Geothermal Well)

6. Construction Start Date: 12 JUNE 2007

7. Anticipated Well Driller: GARY DUSPIVA Driller's Lic. No. 395
NOTE: The actual well driller must be identified prior to drilling.

8. Applicant's Signature: [Signature] Date 8/16/07
Address (if different than owner): _____

City: _____ State: _____ Zip Code: _____ Telephone: _____

Title: owner (Owner, Firm Representative, Other)

*See specific conditions

000075



RECEIVED
AUG 20 2007
WATER RESOURCES
WESTERN REGION

ACTION OF THE DEPARTMENT OF WATER RESOURCES

This Permit is

Approved

Date

8-20-2007

If approved, this permit authorizes the construction or modification of a well subject to the following conditions. **READ CAREFULLY!**

GENERAL CONDITIONS:

1. This drilling permit is valid for two (2) months from the above approval date for the start of construction and is valid for one(1) year from the approval date for completion of the well unless an extension has been granted.
2. This permit does not constitute an approval of the District Health Department or the Idaho Department of Health and Welfare, which may be required before construction of the well. All wells must be drilled a minimum distance of 100 feet from a drain field. Domestic and Public Water Supply wells must be drilled a minimum of 50 feet and 100 feet respectively from a septic tank.
3. The well shall be constructed by a driller currently licensed in the State of Idaho who must maintain a copy of the drilling permit at the drilling site.
4. Approval of this drilling permit does not authorize trespass on the land of another party.
5. This permit does not constitute other local, county, state or federal approvals, which may be required for construction of a well.
6. This drilling permit does not represent a right to divert and use the water of the State of Idaho. If the well being drilled is associated with approved water right(s) use of the well must comply with conditions of said water right(s).
7. If a bottom hole temperature of 85 or greater is encountered, well construction shall cease and the well driller and the well owner shall contact the Department immediately.
8. Idaho Code, S 55-2201 - 55-2210 requires the applicant and/or his contractors to contact "Digline" (DigLine is a one-call center for utility notification) not less than 2 working days prior to the start of any excavation for this project. The "DigLine" Number for your area is 1-800-342-1585.
9. Please be advised that this drilling permit should be considered and treated as a preliminary permit. If you are in disagreement with this preliminary permit you have fourteen (14) days of the service date of this permit to petition the Department for reconsideration pursuant to Section 67-5243, Idaho Code.
10. The well tag for the drilling permit/start card shall be securely and permanently attached to the well casing through welding or by the use of four closed end domed stainless steel pop rivets. The tag attachment will be done at the time of completion of the well, and prior to removing the drill rig from the drill site.

SPECIFIC CONDITIONS:

Well construction shall be consistent with Rule 30 of IDAPA 37.03.09

The driller and well owner shall submit a completion plan/prospectus for IDWR review prior to completing this well.

Signature of Authorized Department Representative

Sr. WR Agent
Title

Receipt No.

Presold

Received by

Fee

Date

EXTENSION OF DRILLING PERMIT

Extension approved by

Approval Date

This extension expires:

F I L E D
A.M. 1220 P.M.

JUN 18 2010

CANYON COUNTY CLERK
J HEIDEMAN, DEPUTY

BRUCE M. SMITH, ISB #3425
MOORE SMITH BUXTON & TURCKE, CHARTERED
Attorneys at Law
950 W. Bannock Street, Suite 520
Boise, ID 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202

Attorney for Defendants

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

GARY DUSPIVA dba GARY DUSPIVA
WELL DRILLING & DEVELOPMENT

Plaintiff,

vs.

CLYDE FILLMORE, an individual and
JOHN FILLMORE, an individual,

Defendants.

Case No. CV08-10463

**AFFIDAVIT OF CLYDE
FILLMORE IN SUPPORT OF
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

State of Idaho)
) ss.
County of Canyon)

Clyde Fillmore, being first duly sworn, sayeth as follows:

1. My name is Clyde Fillmore. I am an adult over the age of 18 years, and I am of sound mind. I am a resident of Canyon County, Idaho, and make the following statements based upon my own personal knowledge.

**AFFIDAVIT OF CLYDE FILLMORE IN SUPPORT OF
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT - 1**

000077

ORIGINAL

2. In 2007, I discussed with Gary Duspiva that I would like him to drill a cold water domestic well on a lot where my son John would build his home.

3. Mr. Duspiva markets and holds himself as a certified well driller, a certified pump installer, and a Master Ground Water Contractor. He claims to be a member of the National Ground Water Association, the Pacific Northwest Groundwater Association, and the Idaho Ground Water Association.

4. I am retired. My son John is a carpenter. At the time I was talking to Mr. Duspiva, neither of us knew much of anything about well drilling. We completely relied upon Mr. Duspiva's representations as to his abilities and qualifications and recommendations in the process of having a domestic well drilled.

5. As a result of our June discussions, Mr. Duspiva agreed to drill a cold water domestic well for \$32.50 a foot.

6. On or about June 11, 2007, Mr. Duspiva set up his drill rig and started drilling.

7. As part of the process for drilling, Mr. Duspiva informed us of the need for a "Start Card/Permit". I had never heard of this before Mr. Duspiva told us about it and presented a form for my son to sign, which he did. The form was not completely filled out when John signed it at Mr. Duspiva's request. A copy of the form is attached to this affidavit. As I later learned, the Start Card/Permit was for a well with a maximum depth of 200 feet. The permit had a number of conditions or requirements for drilling activities. It required that if a bottom hole temperature of 85 °F or greater was encountered, the driller was to stop drilling and contact the Department of Water Resources.

8. Mr. Duspiva continued drilling from June into August, 2007. During the time he was drilling, Mr. Duspiva periodically talked to me about the drilling, but only when I approached him to inquire about progress. He did not provide much, if any, detail but always said he had not found sufficient water. When I asked him what he recommended, he always said he should drill deeper. Because neither John nor I know anything about well drilling, I had no way of knowing where Mr. Duspiva's "recommendations" would lead.

9. On August 9, 2007, the relationship with Mr. Duspiva became somewhat tense. He had not kept me informed about what he was doing. I told him I wanted to know what he was doing, what he was charging, and other details. He gave me a set of handwritten notes which indicated he wanted to charge different rates for drilling at different depths, had charges for certain items such as a "shoe" and a "seal" and indicated charges for over forty-two hours of something called "air development". The note indicated he was trying to charge over \$22,000.00 for his work.

10. The notes also indicated that he had already drilled to 836 feet.

11. Mr. Duspiva also said that because he had not yet produced water that he needed to continue drilling deeper. At this point, I was very frustrated that Mr. Duspiva had not kept me better informed, but felt that I had no choice but to accept his recommendations.

12. The August 9, 2007, meeting was important for another reason. I did not know that on that day Mr. Duspiva contacted the IDWR to inform them that the bottom hole temperature was already in excess of 85° F and had been for over 200 feet.

13. On or about August 16, 2007, Mr. Duspiva informed my son and me that there were some issues related to the well he had been drilling and whether it complied with IDWR

rules. He told us not to worry because he would get a "variance" that would allow the well to be completed. He presented John with another incomplete form to sign. This permit as we later learned was required because the well was a hot water well.

14. Mr. Duspiva never informed me or John about the ramifications of the well being a "low temperature geothermal" (LTG) well. He did not explain the costs of such a well, the special standards the well must meet, that he was supposed to stop drilling and contact the IDWR when the temperature reached 85 °F, or that a \$20,000.00 bond was required. He did not inform us that there was a special rule, Rule 30, that imposed these requirements for a LTG well.

15. It was only when Mr. Rob Whitney of the IDWR explained the details of what the state's rules are for a LTG (low temperature geothermal) well that I understood the problems Mr. Duspiva's actions had created.

16. As I learned through a series of meetings with IDWR and MR. Duspiva, a LTG well is considerably more complex and costly and must meet a number of design criteria designed to protect geothermal water.

17. For instance, I learned that these wells must have a seal to protect against the exchange of cold and hot water, and a special \$20,000 bond is required. The well must comply with IDWR Rule 30, a copy of which is attached. Mr. Duspiva never informed me of these requirements or the costs associated with them. In fact, he never mentioned Rule 30.

18. The IDWR refused to grant Mr. Duspiva a variance from the requirements of Rule 30 and instead required that a plan be submitted to show the well would be completed in compliance with the rule or that the well would be properly abandoned under IDWR oversight. The IDWR issued a Preliminary Order to this effect and held a hearing on the circumstances

surrounding the drilling of the well. The IDWR also required a staff report on the matter be prepared to document what had happened in this matter. A copy of the staff report is attached as Exhibit 1.

19. Among other things, the staff report revealed that Mr. Duspiva had done the exact same thing in at least three other instances in the vicinity of the well he was drilling on my son's property. Mr. Duspiva had started a cold water domestic well using a "Start Card", then kept drilling deeper until he hit geothermal conditions. After the wells went into the LTG aquifer, Mr. Duspiva would seek a variance so he would not have to comply with Rule 30. The IDWR had repeatedly warned Mr. Duspiva about doing this and had made him fix one of the wells. Mr. Duspiva had never disclosed this to me.

20. Mr. Duspiva continued to argue with the IDWR and objected to the hearing and to the preparation of a staff report.

21. The IDWR informed Mr. Duspiva and me that because the well did not comply with Rule 30, it had to be completed so that it complied with Rule 30 or abandoned.

22. In response to the IDWR's direction, Mr. Duspiva eventually came up with a plan that he said would bring the well into compliance with Rule 30 or would allow it to be abandoned. Mr. Duspiva did not consult with me as he came up with the plan. When I saw it after it was prepared, I had a number of questions about it. However, Mr. Duspiva refused to disclose details about the plan, including the actual costs and who was to do the work.

23. I eventually learned that Mr. Duspiva was proposing to hire a number of subcontractors to either try to bring the well into compliance or to abandon it. Mr. Duspiva continued to refuse to reveal the names of the subcontractors, what they would do, or what their

fees would be. Mr. Duspiva, however, expected me to pay whatever costs he incurred trying to bring the well into compliance or in abandoning it.

24. The IDWR tried to convince me and Mr. Duspiva to keep working to develop a plan for the well. Mr. Duspiva then refused to meet further with me or with the IDWR despite my request that he continue to try to resolve the matter.

25. When Mr. Duspiva refused to continue working towards resolution, I proposed to the IDWR that the Department should hire a well driller to close the well, and that I would pay one-half and Mr. Duspiva would pay one-half. Although he resisted this proposal at first, Mr. Duspiva eventually paid one-half the cost of closing the well.

26. The well was closed by Down Rite Drilling at a cost of \$12,875.00 under the oversight of IDWR. Mr. Duspiva had said the same work would cost at least \$20,000.

27. I learned from the IDWR staff report a number of things about Mr. Duspiva's activities. Mr. Duspiva had illegally drilled over 200' beyond the depth at which the bottom hole temperature exceeded 85°F. He did not stop drilling or notify the IDWR when he hit the 85°F limit. Nor did he say anything to me or to John. He did not inform me or John about the requirements for a LTG well or how the IDWR rules applied to the well. He did not inform us that he had already been warned at least three times about not doing what he had done in our situation. Despite holding himself out as a Master Ground Water Contractor and as a certified well driller, he failed to inform us that he was personally incapable of actually completing the well so it would comply with IDWR rules or abandoning it without hiring other companies that he, in turn, demanded we pay for. Because of Mr. Duspiva's wrongful and illegal drilling of the well and failure to notify the IDWR when he hit LTG conditions, followed by the IDWR

requirement to abandon the well using another well driller, I incurred damages of \$6,437.00 plus my legal fees. These were the fees I paid to IDWR for one-half of the cost of abandonment.

28. I was very unhappy with Mr. Duspiva because I did not contract with Mr. Duspiva to drill a low temperature geothermal well or to violate IDWR rules. The well was over 1100 feet deep and had water of 102°. This is not what I requested.

29. I lost all confidence in Mr. Duspiva's representations, his competence to drill a well as requested, or to comply with IDWR rules. I was particularly disappointed that he refused to even work toward resolution of the problem or to accept any responsibility for his actions and refused to disclose information about what it would take to fix the well. He took the position that no matter how poorly he performed or whatever the cost to correct his mistakes, that I was responsible for paying to correct them.

30. For customers such as John or me, who are inexperienced at the details of well drilling or the associated regulations of the IDWR, this has been a profoundly disturbing process. Mr. Duspiva's refusal to help work out the problems he caused with the IDWR and us, his refusal to disclose the details of his plans to correct the problems with the well, while at the same time demanding that we pay for his mistakes, has been intensely painful to our family. Mr. Duspiva never mentioned, much less advised me, that there was a possibility of hitting geothermal water if he drilled too deeply. I did not even know what geothermal water was or that it was so regulated. Yet he had already encountered these LTG conditions in at least three wells in the vicinity of my son John's property. The IDWR noted that Mr. Duspiva should have known that if he went as deep as he did on this well, he would hit LTG conditions.

31. Because Down Rite Drilling did a very good job at closing the well and cooperated with the IDWR in making sure the closure was done correctly, I asked Down Rite to drill a cold water domestic well. Down Rite located a well site only 40' from the place where Mr. Duspiva was drilling. Down Rite drilled a 320' well that produces a large volume of cold water that more than meets my son's needs for a domestic well. The Down Rite well cost \$18,525.00. One of the things Down Rite did was install a screen in the well. Mr. Duspiva refuses to use a screen when he drills wells. It is now my understanding that use of screen is a standard technique in well drilling.

32. Mr. Duspiva claims to have spent \$50,665.00 on the well. Mr. Duspiva has now sued me and John for \$30,665.00 for his work on the illegal well because I had already paid him \$20,000.00 as a deposit on his work.

Mr. Duspiva now claims that I contracted for him to drill a low temperature geothermal well. We did not. That was never our agreement with Mr. Duspiva. Nor did we agree to pay anything other than \$32.50 a foot for a cold water domestic well which we obviously did not get. We did not agree to allow Mr. Duspiva to hire other companies to do his work. If Mr. Duspiva has properly informed me of the details associated with a LTG well, including the cost and regulatory requirements, I would never have contracted with him to do that because that is not what we wanted or asked for. Nor could we afford such a well. However, we never had a chance to even consider these items because Mr. Duspiva had already drilled into the LTG conditions before we learned all of this information from the IDWR. I did not have any understanding of the nature, extent, or effect of having a LTG well and would certainly consider such facts to be material to any agreement to have a well drilled.

33. Based on his actions, I do not believe Mr. Duspiva knew or cared about what I had asked him to do. My impression is that Mr. Duspiva, because he charged "by the foot" only sought to drill as deep as possible regardless of the consequences because it netted him more money. His history of repeatedly extending shallow domestic wells into LTG conditions would seem to be evidence of this. According to IDWR records, he had already done this three times in the area near where he was drilling the well on my son's property.

34. Because of Mr. Duspiva's actions, I have been damaged financially and emotionally. I paid him \$20,000.00 to drill a cold water domestic well. He did not do so. I had to pay \$6,437.00 to close the illegal well he drilled because of IDWR requirements. Mr. Duspiva has been unjustly enriched as to these amounts because he did not perform as requested and the well abandonment costs were directly related to his violation of IDWR rules. Mr. Duspiva hit the 85° limit at approximately 585 feet according to the IDWR investigation. Yet he continued drilling without notifying the IDWR. By the time IDWR was informed of the situation, Mr. Duspiva was 200' beyond the depth at which he was authorized to drill. Because the well was illegal, I do not believe I owe him an additional \$30,665.00 or the \$20,000.00 already paid to him. Because the LTG well was illegally drilled, it was not what I requested, and I had relied on Mr. Duspiva's recommendations, I am asking the Court to require Mr. Duspiva to return the \$20,000.00 and to not allow Mr. Duspiva to sue me and John for \$30,665.00.

Further your affiant sayeth not.

Dated this 16 day of June, 2010.

Clyde Fillmore
CLYDE FILLMORE

SUBSCRIBED AND SWORN to before me this 16 day of June, 2010.



Catherine A. Myard
NOTARY PUBLIC FOR IDAHO
Residing at: Nampa, ID
My Commission Expires: 04/15/2016

**AFFIDAVIT OF CLYDE FILLMORE IN SUPPORT OF
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT - 10**

000086

CERTIFICATE OF SERVICE

I hereby certify that on this 17 day of June, 2010, a true and correct copy of the foregoing AFFIDAVIT OF CLYDE FILLMORE IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT was served upon the following by the method indicated below:

Jon C. Gould
RINGERT LAW CHARTERED
455 S. Third Street
P.O. Box 2773
Boise, ID 83701-2773

Facsimile: (208) 342-4657

☐ via U.S. MAIL
☒ via HAND DELIVERY
☐ via OVERNIGHT MAIL
☐ via FACSIMILE



BRUCE M. SMITH

29

MEMORANDUM

Date: November 6, 2008
To: Gary Spackman, Hearing Officer
From: Rob Whitney *[Signature]*

RE: Staff Memorandum, Fillmore/Duspiva LTG well

Background

The Department of Water Resources (Department) received a "Start Card" drilling permit for construction of the Fillmore well on June 11, 2007 (D0047109). All Well Drillers that use Start Cards to obtain drilling approval(s) must comply with the policies and procedures for their use and the associated conditions of approval. Start Card drilling authorizations are limited to construction of single family residential, six inch (6"), cold water wells.

The start card submitted by Duspiva for the Fillmore well described a 6" well with a proposed maximum depth of 200 feet. As described, this proposal appeared reasonable given the number and locations of other cold water domestic wells drilled in the same general area. Condition no. 8 of the Start Card permit (standard condition for all drilling permits) required immediate notification of the Department and cessation of drilling if a bottom hole temperature (BHT) over 85 degrees F was encountered. Encountering LTG resources at a depth of 200 feet was not likely to occur in this area, however, the chances of LTG encounter significantly increase at depths over 500 feet.

Attached is a memorandum dated May 13, 2008 (Attachment I). The memorandum was directed at IDWR administrators to provide some background information regarding Duspiva's past history of drilling wells to depths or in areas where encounter with Low Temperature Geothermal Resources (LTG) were likely to occur.

I have had several discussions with Mr. Duspiva regarding his encounters with LTG resources, his well construction practices ("drill and drive"), and how the Administrative Rules do not recognize driving casing into the ground as an approved method of sealing wells and more specifically, sealing LTG wells. Mr. Duspiva has continually expressed his disagreement with the 85 degree limit established by State Law. I. C. § 42-230 (1) and § 42-233.

Attachment II is a copy of the well log filed by Duspiva for a well that he drilled for Jim Rohn. This well is located about two (2) miles east-southeast of the Fillmore well (Exhibit A) and was drilled pursuant to a "Start Card" drilling permit. The Rohn well encountered LTG resources (BHT 102 degrees F) and was drilled to a depth of over 1300 feet. I recall providing a verbal warning to Duspiva for constructing this LTG well without complying with applicable Rules. I also recall extending a similar caution to Duspiva after he drilled a well for Schuyler Enochs in 2001 to a depth of 865 feet and encountered LTG resources (Attachment III). The Enochs well is located about five (5) miles east-northeast of the Fillmore well.



Attachment IV is a warning letter dated November 6, 2006 sent to Duspiva by John Westra, and Duspiva's written response dated November 12, 2006. The letter to Duspiva was necessitated by his drilling of a LTG well for Lorelle Riggs pursuant to a "Start Card" drilling permit that proposed construction of a "cold water well" and the associated violation(s) of applicable requirements, specifically Rule 30, IDAPA 37.03.09. This letter provided Mr. Duspiva with a "final opportunity" to comply with the applicable requirements in lieu of a formal enforcement action by the Department. Repair of the Riggs well was completed in June of 2007, approximately seven (7) months after John Westra's request, and only a few days prior to starting construction of the Fillmore well.

Fillmore Well

According to my records, Mr. Duspiva called on August 9, 2007 to report that the Fillmore well had exceeded 85 degrees BHT (91 degrees according to Duspiva). By that time the well had been drilled to a depth of 836 feet and casing set at 691.5 feet. According to information submitted by Duspiva and additional temperature data collected by Department staff, the down-hole temperature exceeded 85 degrees F between 500 feet and 600 feet. Duspiva did not contact the Department until he had penetrated the LTG aquifer by at least 200 feet. The subject of Duspiva's call was not surprising considering that the depth of the well had exceeded the proposed depth by at least 600 feet and the nearby Rohn well (1333 ft. deep) encountered a BHT of 102 degrees F. Therefore, Duspiva should have been aware of the potential to encounter LTG water in this area and should have conveyed this information to the property owner.

When a well driller notifies the Department that a well has encountered LTG resources, standard protocol is to require the driller and owner to 1) Submit information detailing the current state of well construction including down-hole temperature information 2) Submit a drilling prospectus for completion or abandonment of the well consistent with Rule 30 (IDAPA 37.03.09) and 3) Initiate the process to secure any required well owner and additional driller bonding. These requirements were conveyed to the owner and driller after the Department had been notified that the subject well encountered the LTG resource.

As requested, Duspiva faxed an "as built" diagram on August 9, 2007 showing details of the current well construction and temperature information which included a request for variance and a request to drill deeper (Exhibit B). Mr. Duspiva and I had several telephone conversations regarding proper completion of the well. In response, Duspiva submitted a faxed document on August 15, 2008 that detailed a proposal for completing the well and additionally requested some unspecified "variance" citing "Domestic use Statute 42-227." Mr. Duspiva provided verbal argument that Rule 30 should not apply because it was a "domestic" well. In our initial conversations, Mr. Duspiva and I discussed the requirements of Rule 30, just as we had on the previous well he drilled and was required to repair (Riggs well). The two well completion proposals dated August 15 and August 29 (Exhibit C) submitted and signed by the driller showed some intent to comply with LTG construction requirements in that both proposed the sealing of casing with cement to separate the LTG water from the upper "cold water." Duspiva's arguments that Department staff verbally approved his requests for variance are without merit.

The Department did not officially act on the August 15 or 29 proposals because of the open ended request for variance and that, according to Duspiva, the final well depth had not yet been determined which made it difficult for him to commit to a final completion plan. The Department cannot take action on a proposal for completion or repair until specific details of the work have been determined. At Duspiva's request(s), the Department conditionally allowed him to continue drilling as he had already encountered the LTG aquifer and was insistent on drilling to a depth he felt the well should be completed to eliminate the production of sand and satisfy his customer's needs. Mr. Duspiva was again reminded that the well must meet an appropriate standard as intended by Rule 30 if completed within the LTG aquifer. Duspiva has been a licensed driller in the State of Idaho for over 30 years and is responsible for understanding and complying with all applicable laws and rules. It is the responsibility of the licensed driller to communicate with the property owner in order to 1) complete the well in a manner that will prevent waste and contamination and 2) satisfy the well owner's needs.

The extent of the Department's communication with Fillmore is limited. I initially talked with John and Clyde Fillmore after becoming aware that the driller had encountered LTG resources. My original call(s) intended to ensure that the property owner had been informed by the well driller of the now applicable requirements to complete a LTG well. In my discussions with the Fillmores, I am left with the impression that they felt they were not adequately informed by their well driller as to the complexity of completion, and the significant increase in the associated costs of completing a LTG well. The driller should have communicated the potential to encounter LTG resources to his customer prior to starting construction (or at least after exceeding the proposed depth) since he had encountered them in the nearby well drilled for the Rohns. The specific details related to the driller's communication with the property owner could be ascertained through questioning of both John and Clyde Fillmore and Gary Duspiva.

Conclusions

Section 42-235 of the Idaho Code requires the driller or owner to obtain a drilling permit prior to constructing a well. The stated purpose of this requirement is to "protect the public health, safety and welfare and the environment, and to prevent the waste of water or mixture of water from different aquifers." The Department is the regulatory authority appointed to issue drilling permits, driller licenses, and regulate the proper construction of wells in Idaho.

Administrative Rules suggest that the Well Driller and the Property Owner have some joint responsibility to properly complete or abandon a well. Rule 25.01.a, states in part that:

"The well driller and property owner are charged with the responsibility of taking whatever steps might be necessary in any unique situation to guard against waste and contamination of the ground water resources."

Only a Licensed Well Driller is authorized to construct a well in Idaho, and all licensed well drillers are expected to have a comprehensive knowledge of Administrative Rules and State Laws that govern the construction and use of wells. The property owner must depend on the well

driller to communicate the applicable requirements related to the construction of their well in order to be able to make informed decisions when necessary. The property owner is not authorized to perform any construction activities that physically cause the well to be drilled. The property owner may be responsible contractually to compensate a licensed well driller accordingly for his services. The Department of Water Resources does not have statutory authority to determine the extent of a consumer's financial obligation for the construction of a well. However, it is reasonable for the Department to expect that the Licensed Well Driller who originally started construction of a well, and was determined to not be in compliance with applicable rules, participate to an equitable degree (financially or in-kind) to satisfy the obligation to construct or abandon the well consistent with State Law and Administrative Rules.

The Department has provided sufficient time for the parties to properly complete or abandon the well. The contractual dispute between the parties in this case will likely have to be resolved outside of the Department's authority. Due to the expiration of the Drilling Permit, the deteriorated relationship of the parties, and the unwillingness of the driller to provide any additional work to complete or abandon the well until he is paid in full, the Department has concluded that abandonment is the only available and economically viable option remaining. The Department is the regulatory authority charged with the responsibility of administering Laws and Rules for the construction, abandonment, and use of wells and would be remiss to allow this incomplete well to continue to compromise the ground water of the State.

Attached as "Exhibit D" are the bid specifications and several bids solicited by the Department to properly abandon the well. The Department deemed it necessary to request formal bid proposals to obtain more representative numbers than those supplied in the earlier estimates. The Department intends to proceed with contracting a licensed well driller to abandon the Fillmore well consistent with the Department's Preliminary Order dated October 3rd, 2008. The bid will be awarded based on both cost and availability of the contractor to perform the work.

MEMORANDUM

Date: 5-13-2008

To: Dave Tuthill, Gary Spackman
From: Rob Whitney

RE: Gary Duspiva and LTG Wells

In preparation for our meeting with Mr. Duspiva on 5-14-2008, I am providing you and Gary with this memo and background information detailing some history leading up to the Fillmore LTG well issue.

A letter from Jon Gould (council for Duspiva) dated 2-22-08 details events specifically related to the Fillmore project. The letter, in my opinion, unfairly criticizes Department staff and provides only Duspiva's perspective on what has occurred. The letter alleges that Department staff gave various verbal waivers of Administrative Rules and subsequently blind-sided Duspiva with an approved drilling permit bearing "specific conditions" that were imposed after the fact. The specific conditions placed on drilling permits to construct LTG wells are duplicated for clarification on an approved drilling permit. These conditions and construction requirements apply regardless of any duplication in the specific conditions if a well is LTG.

Duspiva's track record for incidentally encountering LTG water, while drilling cold water domestic wells was established several years ago. Duspiva received at least two verbal warnings for various violations related to LTG wells, once in 2001 (Enochs well, 865 ft deep) and again in 2005 (Rohn well 1333 ft deep). In April of 2006, Duspiva submitted a Start Card to construct a cold-water residential well (Riggs well) near Givens Hot Springs. The log submitted for the well reported that LTG water had been encountered. John Westra sent a letter of warning (attached) and required the well to be repaired to meet the applicable standard for a LTG well, specifically Rule 30 of IDAPA 37.03.09. Repair of the Riggs LTG well was completed on June 6, 2007 (seven (7) months after Westra's request). The Start Card for the Fillmore (cold-water, 200 ft well) was submitted on June 11, 2007. Additionally, the Fillmore well is in the same area (within a few miles) of the well drilled for Rohms (2004, 1333 ft deep, 108 degrees F).

000092

Form 238-7
6/02

IDAHO DEPARTMENT OF WATER RESOURCES
WELL DRILLER'S REPORT

RECEIVED
MAY 17 2005

ATTACHMENT II PAGE 1 OF 3
Page 1 of 2

Office Use Only	
Well ID No.	396742
Inspected by	
Twp	Rge Sec
1/4	1/4 1/4
Lat:	Long:

1. WELL TAG NO. D 0031518

DRILLING PERMIT NO. 826115

Water Right or Injection Well No. _____

2. OWNER:

Name Jim or Cyndie Rohn

Address 7833 Valley Flores Dr.

City West Hills State Calif 91304-

6104

3. LOCATION OF WELL by legal description:

You must provide address or Lot, Blk, Sub. or Directions to well.

Twp. 03 North ☒ or South ☐

Rge. 04 East ☐ or West ☒

Sec. 09 1/4 SE 1/4 NE 1/4

Gov't Lot _____ County Canyon

Lat: _____ Long: _____

Address of Well Site 16647 Plum Rd. Caldwell

City Caldwell

(Give at least name of road - Distance to Road or Landmark)

Lt. _____ Blk. _____ Sub. Name _____

4. USE:

☒ Domestic ☐ Municipal ☐ Monitor ☐ Irrigation
☐ Thermal ☐ Injection ☐ Other _____

5. TYPE OF WORK check all that apply

(Replacement etc.)

☒ New Well ☐ Modify ☐ Abandonment ☐ Other _____

6. DRILL METHOD:

☐ Air Rotary ☒ Cable ☐ Mud Rotary ☐ Other _____

7. SEALING PROCEDURES

Seal Material	From	To	Weight / Volume	Seal Placement Method
Perma Plug	1	20	800#	Placed indry
Bentonite				Annular space

Was drive shoe used? ☒ Y ☐ N Shoe Depth(s) 1081 1/2'

Was drive shoe seal tested? ☒ Y ☐ N How? Bailed down

8. CASING/LINER:

Diameter	From	To	Gauge	Material	Casing	Liner	Welded	Threaded
6"	+1 1/2'	1081 1/2'	2.25	Steel	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
					<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
					<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Length of Headpipe _____ Length of Tailpipe _____

Packer ☐ Y ☐ N Type _____

9. PERFORATIONS/SCREENS PACKER TYPE

Perforation Method _____

Screen Type & Method of Installation _____

From	To	Slot Size	Number	Diameter	Material	Casing	Liner
						<input type="checkbox"/>	<input type="checkbox"/>
						<input type="checkbox"/>	<input type="checkbox"/>
						<input type="checkbox"/>	<input type="checkbox"/>

10. FILTER PACK

Filter Material	From	To	Weight / Volume	Placement Method

11. STATIC WATER LEVEL OR ARTESIAN PRESSURE:

267 ft. below ground Artesian pressure _____ lb.

Depth flow encountered _____ ft. Describe access port or control devices: _____

Well Cap

12. WELL TESTS:

☒ Pump ☒ Bailer ☒ Air ☐ Flowing Artesian

Yield gal./min.	Drawdown	Pumping Level	Time
35	78	345	3 1/2 Days
10	13	280	1 Hr
30	83	350 est	14.6

Water Temp. 97

Bottom hole temp. 102

Water Quality test or comments: 3 grains some Gas, Iron odor

Depth first Water Encounter 108

13. LITHOLOGIC LOG: (Describe repairs or abandonment)

Bore Dia.	From	To	Remarks: Lithology, Water Quality & Temperature	Y	N
10	0	2	Soil		X
10	2	5	Hardpan		X
10	5	16	Multicolor Sand & Gravel		X
10	16	20	Light Brown Sandy Clay		X
6	20	108	Light Brown Sandy Clay		X
6	108	115	Multicolor Sand	X	
6	115	142	Yellow Clay		X
6	142	144	Brown Sand	X	
6	144	185	Yellow Clay Sticky		X
6	185	185	Water Crack	X	
6	185	232	Yellow Clay Sticky		X
6	232	234	Brown Fine Sand	X	
6	234	243	Brown Clay		X
6	243	306	Blue Clay		X
6	306	307	Black Sand Tested N/Good	X	
6	307	340	Blue Clay		X
6	340	345	Black Sand	X	
6	345	405	Blue Clay Sticky		X
6	405	409	Black Sand	X	
6	409	412	Blue Clay Hard		X
6	412	418	Black Sand Fine	X	
6	418	436	Blue Clay Sticky		X
6	436	436	Black Sand Fine	X	
6	436	450	Blue Clay		X
6	450	453	Black Sand Fine	X	
6	453	502	Blue Clay Soft		X
6	502	521	Black Sand	X	
6	521	544	Blue Clay Sticky		X
6	544	545	Black Sand	X	
6	545	595	Blue Clay		X
6	595	612	Black Sand	X	
6	612	625	Blue Clay		X
6	625	635	Black Sand	X	

Completed Depth 1230' 45 gal. Pea Gravel (Measurable)

Date: Started 13 Nov 2004

Added 17 Apr 2005

14. DRILLER'S CERTIFICATION

We certify that all minimum well construction standards were complied with at the time the rig was removed.

Gary Duspiva Well Drilling

Company Name & Development Firm No. 395

Principal Driller Gary Duspiva Date 14 May 05

and _____ Date _____

Driller or Operator II _____ Date _____

Operator I Arac Duspiva Date 14 May 05

Principal Driller and Rig Operator Required.

Operator I must have signature of Driller/Operator II.

FORWARD WHITE COPY TO WATER RESOURCES

000093

Form 238-7
6/02

IDAHO DEPARTMENT OF WATER RESOURCES
WELL DRILLER'S REPORT

Office Use Only			
Well ID No.			
Inspected by			
Twp	Rge	Sec	
1/4	1/4	1/4	
Lat	:	Long	:

1. WELL TAG NO. D 0031518
DRILLING PERMIT NO. _____
Water Right or Injection Well No. _____

2. OWNER:
Name Jim or Cyndie Rohn
Address 7833 Valley Flores Dr.
City West Hills State Calif Zip 91304
6104

3. LOCATION OF WELL by legal description:
You must provide address or Lot, Blk, Sub. or Directions to well.
Twp. 03 North ☒ or South ☐
Rge. 04 East ☐ or West ☒
Sec. 09 1/4 SE 1/4 NE 1/4
Gov't Lot _____ County Canyon
Lat: : : Long: : :
Address of Well Site 16647 Plum Rd.
City Caldwell
LL. _____ Blk. _____ Sub. Name _____

4. USE:
☒ Domestic ☐ Municipal ☐ Monitor ☐ Irrigation
☐ Thermal ☐ Injection ☐ Other _____

5. TYPE OF WORK check all that apply (Replacement etc.)
☒ New Well ☐ Modify ☐ Abandonment ☐ Other _____

6. DRILL METHOD:
☐ Air Rotary ☒ Cable ☐ Mud Rotary ☐ Other _____

7. SEALING PROCEDURES

Seal Material	From	To	Weight / Volume	Seal Placement Method
Perma Plug	1	20	800#	Placed Dry in
Bentonite				Annular Space

Was drive shoe used? ☒ Y ☐ N Shoe Depth(s) 1081 1/2'
Was drive shoe seal tested? ☒ Y ☐ N How? Bailed down

8. CASING/LINER:

Diameter	From	To	Gauge	Material	Casing	Liner	Welded	Threaded
6"	+1 1/2'	1081 1/2'	.25	Steel	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Length of Headpipe _____ Length of Tailpipe _____
Packer ☐ Y ☐ N Type _____

9. PERFORATIONS/SCREENS PACKER TYPE

Perforation Method _____
Screen Type & Method of Installation _____

From	To	Slot Size	Number	Diameter	Material	Casing	Liner
						<input type="checkbox"/>	<input type="checkbox"/>
						<input type="checkbox"/>	<input type="checkbox"/>
						<input type="checkbox"/>	<input type="checkbox"/>

10. FILTER PACK

Filter Material	From	To	Weight / Volume	Placement Method

11. STATIC WATER LEVEL OR ARTESIAN PRESSURE:

267 ft. below ground Artesian pressure _____ lb.
Depth flow encountered _____ ft. Describe access port or control devices:
Well Cap

12. WELL TESTS:

Yield gal/min.	Drawdown	Pumping Level	Time
35	78	345	3 1/2 Days
10	13	280	1 Hr.
30	83	350 est	14.6

Water Temp. 97 Bottom hole temp. 102
Water Quality test or comments: 3 grains some Gas, Iron
& Odor _____ Depth first Water Encounter 108

13. LITHOLOGIC LOG: (Describe repairs or abandonment)

Bore Dia.	From	To	Remarks: Lithology, Water Quality & Temperature	Y.	N
6	635	665	Blue Clay Hard Sandy		X
6	665	682	Blue Clay Hard		X
6	682	684	Black Sand Fine	X	
6	684	690	Blue Clay Hard		X
6	690	705	Black Sand Fine	X	
6	705	722	Blue Clay		X
6	722	751	Black Sand Fine	X	
6	751	783	Black Sandstone	X	
6	783	825	Blue Clay		X
6	825	838	Black Sandstone	X	
6	838	885	Blue Clay		X
6	885	885	Black Sand	X	
6	885	930	Light Blue Clay		X
6	930	930	Black Sand	X	
6	930	960	Light Blue Clay		X
6	960	960	Black Sand	X	
6	960	992	Light Blue Clay		X
6	992	994	Black Sand Fine	X	
6	994	1033	Blue Clay		X
6	1033	1034	Black Sand Fine	X	
6	1034	1287	Blue Clay Sticky		X
6	1287	1308	Blue Clay w/ water cracks	X	
6	1308	1333	Blue Clay Sticky		X

Completed Depth 1230' 45gal. Pea Gravel (Measurable)
Date: Started 13 Nov 2004 Added _____ Completed 17 Apr 2005

14. DRILLER'S CERTIFICATION

(We certify that all minimum well construction standards were complied with at the time the rig was removed.)
Gary Duspiva Well Drilling
Company Name & Development Firm No. 395
Principal Driller Gary Duspiva Date 14 May 05
and
Driller or Operator II _____ Date 14 May 05
Operator I Arac Duspiva Date 14 May 05
Principal Driller and Rig Operator Required.
Operator I must have signature of Driller/Operator II.

FORWARD WHITE COPY TO WATER RESOURCES

000094

Nov 13 04 08:34a

Duspiva Well Drilling

A - HMENT II PAGE 3 OF 3

1 2 722 5304

p.1

Form 235-3, 6/2004

603

Idaho Dept. of Water Resources

886105-826115
Write Tag Number Here

Start Card/Permit - Single Family Domestic Well Only

00031518

(Cold Water less than 85 degrees F.)

1. Owner's Name (please print): Jim or Cyndie ROHN
2. Owner's Mailing Address: 7833 VALLEY FLORES DR
City: WANT HILLS State: CALIF Zip Code: 91304-6104 Telephone: (818) 999 3661
3. Proposed Well Location: Twp. 3N, Rge. 4W, Sec. 9, 1/4 SE 1/4 NE 1/4
Gov't Lot No. _____ County GANYON Lat. _____ Long. _____
Street Address of Well Site 16647 PLUM RD. City CALDWELL

Must give at least name of road + Distance to Road or Landmark

Lot _____ Block _____ and Subdivision _____

4. Are all adjacent septic tanks and drain fields accurately located? By Property Owner: Yes [] No [] By Health District: Yes [] No []

5. Well Construction Information:

A. ☒ New well ☐ Replace ☐ Deepen ☐ Modify Previous well # _____ B. Proposed Casing Dia. 6" C. Proposed Maximum Depth: 600

6. Construction Start Date: 13 Nov 2004 7. Well Driller: GARY DUSPIVA Driller's Lic. No. 395

8. The Driller hereby accepts the terms and conditions of the Start Card/Permit.

Driller's Signature: [Signature] Date: 12 Nov 2004

9. The Well Owner affirms to have read this Start Card/Permit, validates its accuracy and accepts the conditions.

Owner's Signature: [Signature] Date: 12 Nov 2004

CONDITIONS FOR USE OF START CARD:

- This permit authorizes the construction or modification of one domestic well for a single-family residence. No additional residences, businesses, or dwellings may be connected to this well without a valid water right.
- This form must be complete, including the prepaid tag number and signature of the driller. The owner should sign the start card after reviewing these conditions. Mailing must take place no less than 72 hours prior to construction (Dept. address below), hand delivered or faxed to the Dept. prior to commencing construction. The start construction date shall be no more than 10 days after the Department receives the permit. An incomplete form will not be considered a valid permit to drill.
- This permit does not constitute an approval of the District Health Department or the Idaho Department of Health and Welfare. All wells must be drilled a minimum distance of 100' from a drain field. Domestic wells must be drilled a minimum of 50' from a septic tank.
- Only Well Drillers licensed in Idaho may use a Start Card for construction of a well. The driller shall maintain a copy of the Start Card and the well I.D. tag at the drilling site during construction.
- This drilling permit does not authorize trespass on the land of another party.
- This drilling permit does not constitute other local, county, state or federal approvals, which may be required for construction of a well.
- This drilling permit does not represent a right to divert and use the water of the State of Idaho.
- If a bottom hole temperature of 85° F. or greater is encountered, well construction shall cease and the well driller shall contact the Department immediately.
- Idaho Code, § 55-2201 - 55-2210 requires the applicant and/or his contractors to contact "Digline" (Digline is a one-call center for utility notification) not less than 2 working days prior to the start of any excavation for this project. The "Digline" Number for your area is 1-800-342-1585.
- The stainless steel I. D. tag must be welded to the well casing upon completing the well and must remain permanently attached above ground level for the life of the well. Other tags may be added following a repair or modification of the well. The well driller is responsible for permanently attaching the I.D. tag to the casing upon completing the well. The well tag shall be attached by welding at least 3 sides or using four (4) stainless steel, closed-end pop rivets.
- A start card is not valid for drilling in Areas of Drilling Concern, Critical Groundwater Areas, Groundwater Management Areas or Areas Identified by the Department as Contaminated.
- The possession of a well tag does not authorize construction of a well.
- Any well being replaced by a new well, shall be properly abandoned by the well driller prior to removing the drilling equipment, unless otherwise authorized by the department.

EFFECTIVE June 1, 2004

Your Start Card/Application and Tag purchase may be submitted to any of the following offices:

Western Region
Idaho Department of Water Resources
2715 Airport Way Boise, ID 83705-0082
Phone: (208) 334-2190 Fax: (208) 334-2348

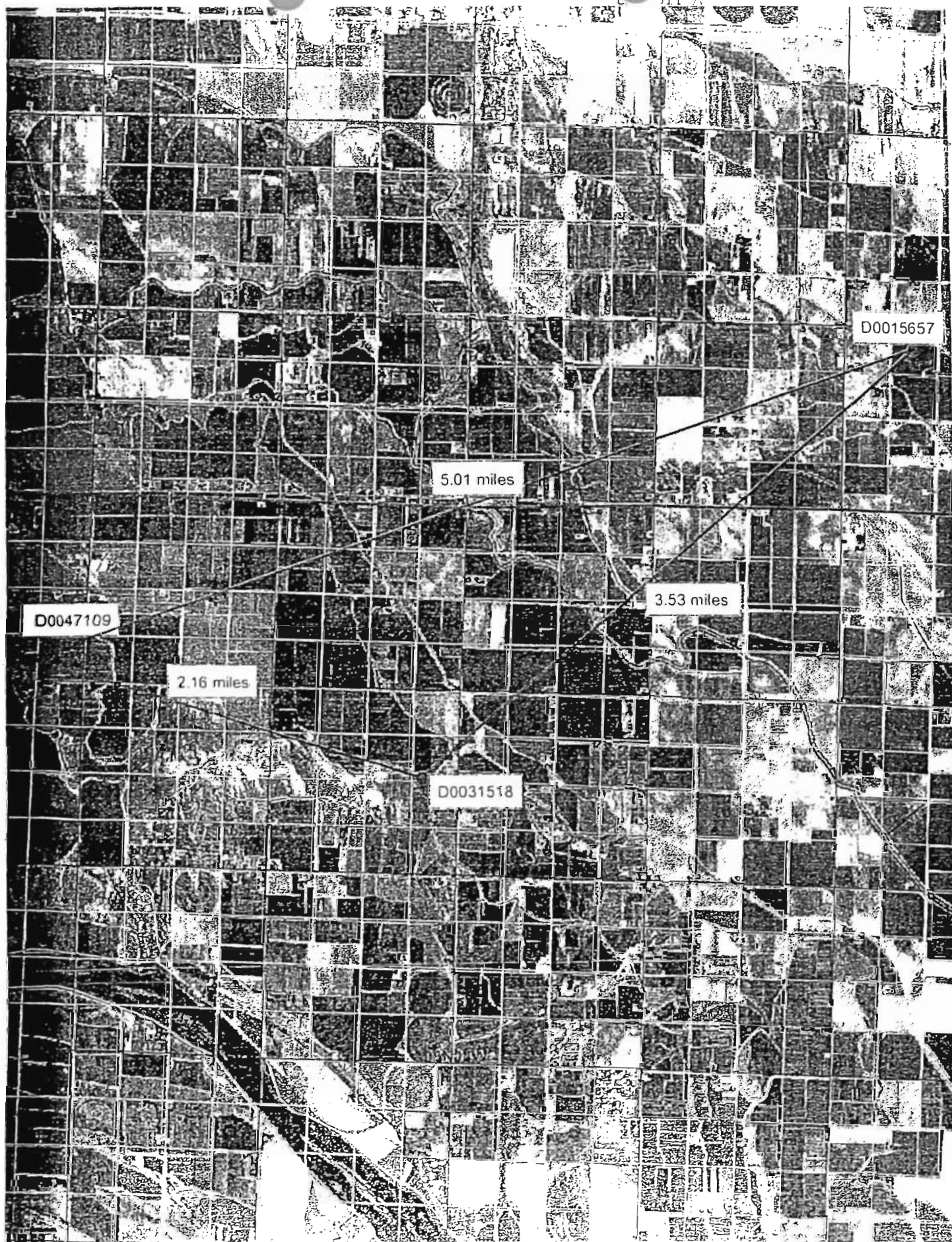
Northern Region
Idaho Department of Water Resources
1910 Northwest Blvd., Ste 210 Coeur d'Alene, ID 83814-2615
Phone: (208) 769-1450 Fax: (208) 769-1454

Eastern Region
Idaho Department of Water Resources
800 North Skyline Drive STE A Idaho Falls, ID 83402-1718
Phone: (208) 525-7161 Fax: (208) 525-7177

Southern Region
Idaho Department of Water Resources
13411 Shoshone Street, Ste 200 Twin Falls, ID 83301-3300
Phone: (208) 736-3033 Fax: (208) 736-3037

FAX

000095



000096

Form 236-7
11/97IDAHO DEPARTMENT OF WATER RESOURCES
WELL DRILLER'S REPORT

768431

Office Use Only			
Inspected by _____			
Twp _____	Rge _____	Sec _____	
1/4 _____		1/4 _____	
Lat _____		Long _____	

1. WELL TAG NO. D 0015657

DRILLING PERMIT NO. _____
Other IDWR No. _____

2. OWNER:

Name Schuyler Enochs
Address 18785 Weitz Rd.
City Caldwell State ID Zip 83607

3. LOCATION OF WELL by legal description

Sketch map location must agree with written location.

RECEIVED

JUN 19 2001

Twp. <u>04</u>		North <input checked="" type="checkbox"/> or South <input type="checkbox"/>
Rge. <u>04</u>		East <input type="checkbox"/> or West <input type="checkbox"/>
Sec. <u>36</u>		1/4 <u>NE</u> 1/4 <u>NW</u> 1/4
Gov't Lot _____		County <u>Canyon</u>
Lat _____		Long _____
Address of Well Site <u>same as above</u>		
City _____		

(Give at least name of road or Distance to Road or Landmark)

Lt. _____ Blk. _____ Sub. Name _____

4. USE:

☒ Domestic ☐ Municipal ☐ Monitor ☐ Irrigation
☐ Thermal ☐ Injection ☐ Other _____

5. TYPE OF WORK check all that apply (Replacement etc.)

☒ New Well ☐ Modify ☐ Abandonment ☐ Other _____

6. DRILL METHOD

☐ Air Rotary ☒ Cable ☐ Mud Rotary ☐ Other _____

7. SEALING PROCEDURES

SEAL/FILTER PACK		AMOUNT		METHOD
Material	From To	Sacks or Pounds		
Perma Plug	1 14	250#		Outside 10"
Bentonite	0 32	550#		Between 10" & 6" Casing

Was drive shoe used? ☒ Y ☐ N Shoe Depth(s) 854'Was drive shoe seal tested? ☒ Y ☐ N How? Bailed down

8. CASING/LINER: 10" Casing left in place

Diameter	From To	Gauge	Material	Casing	Liner	Welded	Threaded
10"	+2" 30"	.25	Steel	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6"	+1' 3" 854'	.25	Steel	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Length of Headpipe _____ Length of Tailpipe _____

9. PERFORATIONS/SCREENS

Perforations _____ Method _____
Screens _____ Screen Type _____

From To	Slot Size	Number	Diameter	Material	WATER RESOURCES
					WESTERN REGION

10. STATIC WATER LEVEL OR ARTESIAN PRESSURE:

98 ft. below ground Artesian pressure _____ lb.
Depth flow encountered _____ ft. Describe access port or control devices: Well Cap

11. WELL TESTS:

☒ Pump ☒ Bailor ☒ Air ☐ Flowing Artesian

Yield gal/min.	Drawdown	Pumping Level	Time
29	100	198	3
28	60	158	1
30	65	163 est	6.5

Water Temp. 86.2 Bottom hole temp. 88Water Quality test or comments: 3 grainsDepth first Water Encounter 14

12. LITHOLOGIC LOG: (Describe repairs or abandonment)

Bore Dia.	From To	Remarks: Lithology, Water Quality & Temperature	r	n
10	0 3	Soil		X
10	3 5	Hard Pan		X
10	5 14	Multicolor Gravel & Sand		X
10	14 27	Multicolor Gravel & Sand	X	
10	27 32	Light Brown Clay		X
6	32 35	Light Brown Clay		X
6	35 91	Brown Clay w/ Fine Sand		X
6	91 91	Water Crack	X	
6	91 114	Brown Sandy Clay		X
6	114 116	Dark Brown Sand	X	
6	116 134	Light Brown Clay		X
6	134 136	Light Brown Sand w/ Clay	X	
6	136 155	Light Brown Clay w/ Sand		X
6	155 160	Light Brown Sand w/ Clay	X	
6	160 170	Light Brown Clay		X
6	170 172	Brown Sand	X	
6	172 178	Black Sand	X	
6	178 198	Blue Clay		X
6	198 200	Black Sand Heaving	X	
6	200 212	Blue Clay		X
6	212 218	Black Sand Dev. No G. Sandy	X	
6	218 232	Blue Clay		X
6	232 233	Black Sand F. Dev. N/G Sandy	X	
6	233 254	Blue Clay		X
6	254 254	Black Sand	X	
6	254 274	Blue Clay		X
6	274 274	Black Sand w/ Clay	X	
6	274 296	Blue Clay		X
6	296 296	Black Sand w/ Clay	X	
6	296 307	Blue Clay		X
6	307 307	Black Sand Fine	X	
6	307 325	Blue Clay		X

Continued Page 2

Completed Depth 856' (Measurable)Date: Started 4 April 2001 Completed 22 May 2001

13. DRILLER'S CERTIFICATION

We certify that all minimum well construction standards were complied with at the time the rig was removed.

Company Name Gary Duspiwa Well Drilling & Development Firm No. 395Firm Official Gary Duspiwa Date 18 June 2001

and

Driller or Operator _____ Date _____

(Sign once if Firm Official & Operator)

FORWARD WHITE COPY TO WATER RESOURCES

000097



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

November 6, 2006

JAMES E. RISCH
Governor

KARL J. DREHER
Director

Aric Duspiva
Gary Duspiva
Duspiva Well Drilling
25050 Pet Lane
Parma, ID 83660

RE: Completion and Repair of Low Temperature Geothermal Well drilled for
Lorelle Riggs (well tag # D0047107)

Dear Messrs. Duspiva:

The Idaho Department of Water Resources (Department) has reviewed the well driller's report submitted by your company on October 11, 2006 for the construction of the above referenced well. The report, signed by Gary Duspiva as principal driller and Aric Duspiva as the drill rig operator, indicated a water temperature of 91 degrees F and that the well flows at the surface.

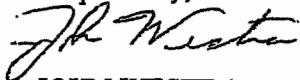
State Law defines any well with a bottom hole temperature greater than 85 degrees F is considered a "Low Temperature Geothermal Resource Well" (LTG). Construction of all LTG wells must comply with Rule 30 of IDAPA 37.03.09 and with any conditions of the approved drilling permit.

Authorization for the construction of this well was granted through the Start Card permit process and specifically allowed the construction of a cold-water (bottom hole temperature 85 degrees F or less) single-family domestic well. The groundwater in the area where this well was constructed commonly exceeds 85 degrees. Accordingly, condition No. 8 of the drilling permit required the immediate cessation of drilling and consultation with the Department if a bottom hole temperature greater than 85 degrees F was encountered. Department staff has given you verbal warnings in the past regarding your company's previous failure to comply with applicable LTG well construction rules.

I am writing to provide you with a final opportunity to voluntarily comply with the requirements of Rule 30 of the well construction standards in lieu of a formal enforcement action by the Department. Please submit a detailed drilling prospectus to the Department for review and indicate how this well will be constructed, repaired or properly abandoned to meet all applicable requirements. Additionally, you are required to provide a down-hole temperature survey performed by a qualified professional, submit information regarding down-hole temperatures encountered during drilling, and indicate

how these measurements were made. The Department requires your plan for repair, completion or abandonment and other required information within 10 days of the date of this letter. The required remedial work may not commence until the Department determines that your proposed course of corrective action will comply with applicable Rules. Failure to comply with these requirements may be cause for the Department to initiate an administrative enforcement action pursuant to Section 42-1701b Idaho Code. Please contact me at this office if you have questions regarding this letter.

Respectfully,



JOHN WESTRA
Western Region Manager

cc: Galloway, Homan

Gary Duspiva

25050 Pet Lane

Parma, Idaho 83660-7037

Phone 208 722-5304

Cell 208 899-3131

License No. 395



MENT IV PAGE 3 OF 10

Page 1 of 5

AWD

12 Nov. 2006

State of Idaho Department of Water Resources
Western Region 2735 Airport Way, Boise, Idaho 83705-5082

Dear John Westra, Western Region Manager:

Reason: Well Drilled for Lorelle Riggs (Well tag # D0047107)

Response to your letter dated 6 Nov. 2006. I started working for Lorelle Riggs on 24 July 2006 to see if by air development I could improve the production of a 3 inch Flowing Well. The Well would produce 22 Gallon per minute at a 40 foot Pumping level. The temperature at the end of the test was 96 degrees. The Well is too small to install a pump inside the casing. I suggested that a new Well be Drilled. Lorelle wanted a COLD WATER WELL to provide water for the water to air heat pump for Air conditioning and other Domestic uses.

I told Lorelle to obtain Well Logs from the Western Region office of the Department of Water Resources that were close as possible by legal description to Her Property. On 25 July 2006 Denise from the Western office sent Me 4 Well Log at Lorelle request (See 1 to 5 page of ATTACHMENTS). I was looking for the possibility of Drilling a shallow cold water well. I figured that the 3 inch Well was about 500 foot deep. The Well logs confirmed that was ^{probably} the case because of the 85 degrees at 382 feet on the Darrell Van Kleck Well and information on the other logs. I did not measure the 3 inch Well, being concerned about size and possible depth and size of the probe (WEIGHT) it would take to measure it. If I got the probe hung up or stuck I might ruin the Well and this was there only source of Water. I took the Logs as being accurate and figured that I could if necessary go to about 350 foot and still be less than 85 degrees and a lot cooler than 96 degrees. I was hoping that by 125 foot I would have water and the volume needed approximately 10 to 12 gallon per minute.

I contacted Lorelle and agreed to try drilling a Well of a cooler temperature and as shallow as possible. (See 6 to 7 page of ATTACHMENTS)

31 Aug 2006 a Start Card was filled out at the time I was given a Legal

continued to page 2

000101

Gary Duspiva

25050 Pet Lane

Parma, Idaho 83660-7037

Phone 208 722-5304

Cell 208 899-3131

License No. 395



Page 2 of 5

AUD

Description that I found out later was totally wrong when reviewing the well logs. As soon as I realized it was wrong I called the Western Region office and ask if I needed to send in a corrected Start Card. I was told to correct it on the Well Log. I did make a mistake on the Well Log and put Range 02 West instead of 03 West the rest of the Description I believe is now correct. I found the mistake in reviewing the other Well Logs and the change I made on My copy of the Start Card. I'm willing to submit a Amended Well Log if needed. I listed from the cover over the 3 inch Well a Department of Water Resources Stainless Steel Tag GPS Site A0003130.

The new Well was drilled with a 18 foot surface seal in Dry Multicolor Gravel and Sand. I didn't fine any water in this layer or I might have tried to Develop it. Bentonite was used to Drill the open hole surface seal down 18 foot. Two bags 50 lbs each were poured in the bottom Dry. The 6 inch casing 20+ foot with drive shoe was placed and driven into the Bentonite in the bottom of the bore hole. Then 250 lbs were added to complete the surface seal. The reason there is only 31½ foot of casing in this Well was to take any water that might show up in thin Blue ^{Clay} Cracks. Potable Water was added to drill this Well (Cable Tool) down to 65 foot. This was the first water in this Well. This Blue Clay Crack very thin produced ½ gallon per minute. We still had to add Potable Water to Drill with. A hard spot at 120 foot was found which may or may not had water in it. At the most it might of had ¼ to ½ of a gallon per minute. The Drilling was continued down still adding Potable Water because the to layers would not support the Drilling process. At 202 foot another Crack was found in the Blue Clay and was able to support the Drilling. I wasn't satified that we had enough water to supply the need of the customer. We Drilled to 251 foot looking for an actual sand layer which none was found. I also wanted to give Lorelle an update on what we had. I bailed on the Well An thought there might be enough water to run the water to air heat pummp needing a least 6 gallon per minute. Next step was to put the air pipe in the Well to develop it for Volume that would be sand Free.

continued to page3

000102

Gary Duspiva

25050 Pet Lane

Parma, Idaho 83660-7037

Phone 208 722-5304

Cell 208 899-3131

License No. 395



Page 3 of 5

AWD

After 1½ hours hardness and temperature was checked. To my Surprise the Well was already 91 degrees. Did not fit any of the logs I had reviewed. I told Lorelle that we could not Drill any deeper and would leave the rig set until I made contact with Rob Whitney Inspector for Western Region. Lorelle wasn't happy with the Temperature and thought that it wouldn't work. I suggested we set a temporary pump to see if the cooler water would help and further check sand. Marsing Hardware and Pump set the pump. The cap pressure was 4 lbs at that time. It seem to make the heat pump work on the air conditioning.

I was gone for a week to meetings in Eastern Idaho. On Monday 11 Sept. 2006 I called Rob Whitney and left him a message on his Cell Phone. His message said that he would be out of the office that week. I did comply with Condition NO. 8 by not drilling any deeper and trying to make contact with Rob. I thought that he would get back and let me know if I needed to do any further work. *SEE ATTACHMENT PAGES*

On 7 Oct 2006 I filled out the Well log and sent it in with an accurate Temperature on it as I always do along with other information because I realize how important it is, and in this case I don't feel the temperatures on three of the Well Logs were even close and would like a survey performed on them.

I surprised when I opened your letter John on 8 Nov 2006 and find the tone of the letter and the finality of it no contact from Rob Whitney. I thought that I and Rob had a good working relationship and always took His advice seriously. I still would be more than happy to work with Him on this Well and into the future. I do appreciate you John Westra for giving Me the opportunity to keep a clean record and not affect our future relationship.

I understand statute 42-227 gives the People of the state of Idaho a right to a domestic WELL Hot or Cold. I also understand that Rule 30 may come into play in some situations. I have as you can see I have been

continued^{to} page 4

000103

Gary Duspiva
25050 Pet Lane

Parma, Idaho 83660-7037

Phone 208 722-5304

Cell 208 899-3131

License No. 395



Gary
Duspiva

Page 4 of 5

AWO

contact with Lorelle Riggs and have kept Her informed on what is going on in this matter.

I was very concerned after reading your letter. I left Rob 2 messages 2nd a little more detail on the afternoon of the 8 of Nov 2006. John I left you a message the same afternoon 8 nov 2006 and haven't heard from you maybe you were out of the office. Rob replied to My message on 9 Nov 2006 at 5:19 p.m. on My Home phone stating that He would be in the office on Monday. 10 Nov 2006 in the Morning at 8:43 A.M. Friday Rob Whitney called and WE had a discussion about the letter. Also about the events that lead up to the letter Mainly not returning My call on 11 Sept 2006. I Also told Him that I was Willing^{to} bring this Well in compliance. I made suggestions about the Well And how I might fix it. I also ask if My intial fixes were not to the departments liking I wouldn't be considered a Smart Ass. Rob told Me it be a process of looking at My suggestion and either excepting or rejecting to a satifactory concluison. Rob said that the 10 day clock would stop as We moved forward in working this out. He also wrote you a E-mail stating He had talk to Me.

As with your letter I will on Monday 13 Nov 2006 be deleivering a Copy of My letter to Chuck Galloway and John Homan at the main office. I also have some materials to pickup at the Main office. I will be in the Western Office in the afternoon to meet with Rob and provide Him and you with this letter and a copy of Detailed Drilling Prospectus. I hope you will be able to read this letter while I'm there. If you have any questions Call My Cell Phone 899-3131.

Detailed Drilling Prospectus

First a Temperature Survey I have lined up a qualified professional that Rob approved of Dale Dickson Of Owhyee Sewer and Pump who has been in the Pump business alot of years from the Homedale area. Dale requested and I agreed that Rob be present when the Temperature was run. WE are both able to work with his scheduale.

continued to page 5

000104

Gary Duspiva

25050 Pet Lane

Parma, Idaho 83660-7037

Phone 208 722-5304

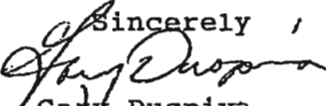
Cell 208 899-3131

License No. 395



Page 5 of 5

The survey would be to make sure the Well hasn't been running for several days before the test. Then while running the test try and keep the flow to a minimum Check every 10 foot from top to the bottom. If the Department needs more information let Me Know. With of the survey report to the Department I wait for comments back. If this was not satisfactory or the needed more work. The next step would pull the 6 inch casing out and not driving it down because it might ^{not} make a seal at the shoe. Also a steel liner example would not allow a enough room for a seal between the two casings. Next enlarge the surface seal to 12 inches down to 23 feet into the Blue Clay. Go back with 8 inch .250 thick casing with a Drive Shoe take down past 120 foot or more until a seal at the Drive Shoe was made. The flow would be stopped with the drill cutting or Bentonite to check the seal. If a seal was not obtained then take 8 inch casing to about 195 foot. Next put in 4 inch casing with a 8 inch packer at the bottom .that would give room to seal between the 8 inch and the 4 inch. the 4 inch will still be big enough to install a pump. I'm not stuck on any one idea on this Well and will work with the customer and the Department to settle this matter. I also request that the customer bond be waived on this Well.

Sincerely,

 Gary Duspiva

cc: Galloway, Homan, Whitney

000105

Sep 11 06 07:00a

Gary Duspiva Well Drilling 1 208 722 5304

p.1 of 1

first rec'd
B-30-06 57

Manufactured by
Alexander Clark Business Forms
Boise, Idaho (208) 322-0611

897675-844325

Form 235-3, 6/2004

corrected

Idaho Dept. of Water Resources

Write Tag Number Here

00047107

Start Card/Permit - Single Family Domestic Well Only

(Cold Water less than 85 degrees F.)

1. Owner's Name (please print): LORELE RICA
2. Owner's Mailing Address: 10012 STATE HWY 70
City: HELPA State: ID Zip Code: 83641 Telephone: (208) 989 2094
3. Proposed Well Location: Twp. 01 N, Rge. 03 W, Sec. 17, 1/4 1/4 NE 1/4
Gov't Lot No. County CUMING Lat. 43 : 25 : 702 Long. 116 : 42 : 999
Street Address of Well Site SAME AS ABOVE City _____
Must give at least name of road + Distance to Road or Landmark
Lot _____ Block _____ and Subdivision _____
4. Are all adjacent septic tanks and drain fields accurately located? By Property Owner: Yes ☒ No ☐ By Health District: Yes ☐ No ☒
5. Well Construction Information: GPS SITE A0003130 OLD WELL 34
A. ☒ New well ☐ Replace ☐ Deepen ☐ Modify Previous well # _____ B. Proposed Casing Dia. 6 C. Proposed Maximum Depth: 125'
6. Construction Start Date: Aug 06 7. Well Driller: GARY DUSPIVA Driller's Lic. No. 395
8. The Driller hereby accepts the terms and conditions of the Start Card/Permit.
Driller's Signature: [Signature] Date: 30 AUG
9. The Well Owner affirms to have read this Start Card/Permit, validates its accuracy and accepts the conditions.
Owner's Signature: LORELE RICA Date: Aug 31-06

CONDITIONS FOR USE OF START CARD:

1. This permit authorizes the construction or modification of one domestic well for a single-family residence. No additional residences, businesses, or dwellings may be connected to this well without a valid water right. Limited to irrigation of 1/2 acre lawn/garden and 13,000 gpd.
2. This form must be complete, including the prepaid tag number and signature of the driller. The owner should sign the start card after reviewing these conditions. Mailing must take place no less than 72 hours prior to construction (Dept. address below), hand delivered or faxed to the Dept. prior to commencing construction. The start construction date shall be no more than 10 days after the Department receives the permit. An incomplete form will not be considered a valid permit to drill.
3. This permit does not constitute an approval of the District Health Department or the Idaho Department of Health and Welfare. All wells must be drilled a minimum distance of 100' from a drain field. Domestic wells must be drilled a minimum of 50' from a septic tank.
4. Only Well Drillers licensed in Idaho may use a Start Card for construction of a well. The driller shall maintain a copy of the Start Card and the well I.D tag at the drilling site during construction.
5. This drilling permit does not authorize trespass on the land of another party.
6. This drilling permit does not constitute other local, county, state or federal approvals, which may be required for construction of a well.
7. This drilling permit does not represent a right to divert and use the water of the State of Idaho.
8. If a bottom hole temperature of 85 F. or greater is encountered, well construction shall cease and the well driller shall contact the Department immediately.
9. Idaho Code, § 55-2201 - 55-2210 requires the applicant and/or his contractors to contact "Digline" (Digline is a one-call center for utility notification) not less than 2 working days prior to the start of any excavation for this project. The "Digline" Number for your area is 1-800-342-1585.
10. The stainless steel I. D. tag must be welded to the well casing upon completing the well and must remain permanently attached above ground level for the life of the well. Other tags may be added following a repair or modification of the well. The well driller is responsible for permanently attaching the I.D. tag to the casing upon completing the well. The well tag shall be attached by welding at least 3 sides or using Four (4) stainless steel, closed-end pop rivets.
11. A start card is not valid for drilling in Areas of Drilling Concern, Critical Groundwater Areas, Groundwater Management Areas or Areas Identified by the Department as Contaminated.
12. The possession of a well tag does not authorize construction of a well.
13. Any well being replaced by a new well, shall be properly abandoned by the well driller prior to removing the drilling equipment, unless otherwise authorized by the department.

Effective Feb. 1, 2005

Your Start Card/Application and Tag purchase may be submitted to one of the following offices:

Western Region
Idaho Department of Water Resources
2735 Airport Way Boise, ID 83705-8082
Phone: (208) 334-2190 Fax: (208) 334-2348

Northern Region
Idaho Department of Water Resources
1910 Northwest Blvd., STE 210 Coeur d'Alene, ID 83814-2615
Phone: (208) 769-1450 Fax: (208) 769-1454

Eastern Region
Idaho Department of Water Resources
900 North Skyline Drive STE A Idaho Falls, ID 83402-1718
Phone: (208) 525-7161 Fax: (208) 525-7177

Southern Region
Idaho Department of Water Resources
1341 Fairmore Street, STE 200 Twin Falls, ID 83301-3360
Phone: (208) 736-3033 Fax: (208) 736-3037

000106

Form 238-7
6/02IDAHO DEPARTMENT OF WATER RESOURCES
WELL DRILLER'S REPORT

Office Use Only
Well ID No. 414497
Inspected by _____
Twp _____ Rge _____ Sec _____
1/4 _____ 1/4 _____ 1/4 _____
Lat: : : Long: : :
☐ Pump ☒ Bailer ☒ Air ☐ Flowing Artesian

1. WELL TAG NO. D 0047107
DRILLING PERMIT NO. _____
Water Right or Injection Well No. _____

2. OWNER:

Name Lorelle Riggs
Address 10812 State Hy 78
City Melba State Id Zip 83641

3. LOCATION OF WELL by legal description:

You must provide address or Lot, Blk, Sub. or Directions to well.

Twp. 01 North ☒ or South ☐
Rge. 03 East ☐ or West ☒
Sec. 17 SW 1/4 NE 1/4 NE 1/4
Gov't Lot _____ County Owyhee
Lat: 43 : 25: 702 Long: 116: 42: 999
Address of Well Site Same as above

(Give at least name of road - Distance to Road or Landmark)
City _____
Lt. _____ Blk. _____ Sub. Name _____

4. USE:

☒ Domestic ☐ Municipal ☐ Monitor ☐ Irrigation
☐ Thermal ☐ Injection ☐ Other _____

5. TYPE OF WORK check all that apply (Replacement etc.)

☒ New Well ☐ Modify ☐ Abandonment ☐ Other _____

6. DRILL METHOD:

☐ Air Rotary ☒ Cable ☐ Mud Rotary ☐ Other _____

7. SEALING PROCEDURES

Seal Material	From	To	Weight / Volume	Seal Placement Method
3/8 Perma Plug				In annular
Bentonite Dry	5	81	1500#	spaced poured

Was drive shoe used? ☒ Y ☐ N Shoe Depth(s) 90 1/2'
Was drive shoe seal tested? ☒ Y ☐ N How? Bailed Down

8. CASING/LINER:

Diameter	From	To	Gauge	Material	Casing	Liner	Welded	Threaded
6"	1'3"	90'	6.25	Steel	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Length of Headpipe _____ Length of Tailpipe _____
Packer ☐ Y ☐ N Type _____

9. PERFORATIONS/SCREENS PACKER TYPE

Perforation Method _____

Screen Type & Method of Installation _____

From	To	Slot Size	Number	Diameter	Material	Casing	Liner
						<input type="checkbox"/>	<input type="checkbox"/>
						<input type="checkbox"/>	<input type="checkbox"/>

10. FILTER PACK

Filter Material	From	To	Weight / Volume	Placement Method

11. STATIC WATER LEVEL OR ARTESIAN PRESSURE:

ft. below ground _____ Artesian pressure 7 1/2 lb.
Depth flow encountered _____ ft. Describe access port or control devices: _____

Sandwich Well Cap

(Sanitary well seal
(Compression Type))

FORWARD WHITE COPY TO WATER RESOURCES

12. WELL TESTS:

Yield gal./min.	Drawdown	Pumping Level	Time
34	67	67	1
33	90	90	3

Water Temp. 97.34 Bottom hole temp. 97.34Water Quality test or comments: 1 grains some Iron & OdorDepth first Water Encounter 65

13. LITHOLOGIC LOG: (Describe repairs or abandonment)

Bore Dia.	From	To	Remarks: Lithology, Water Quality & Temperature	Water	Y	N
10	0	2	Soil			X
10	2	10	Brown Clay			X
10	10	22	Multicolor Gravel & Sand			X
10	22	24	Brown Clay			X
10	24	65	Blue Gray Clay Hard			X
10	65	65	Water Crack 1/2 gal per min	X		
10	65	81	Blue Gray Clay Hard		X	
6	81	120	Blue Gray Clay Hard		X	
6	120	120	Hard area		X	
6	120	202	Blue Gray Clay Hard		X	
6	202	202	Water Crack			X
6	202	295	Blue Gray Clay Hard		X	
6	295	295	Water Crack			X

RECEIVED

JUN 12 2007

WATER RESOURCES
WESTERN REGIONCompleted Depth 295' (Measurable)Date: Started 31 Aug 2006 Completed 9 Jun 2007

14. DRILLER'S CERTIFICATION

We certify that all minimum well construction standards were complied with at the time the rig was removed.

Gary Duspiva Well
Company Name Drilling & Development Firm No. 395

Principal Driller Gary Duspiva Date 10 Jun 07
and
Driller or Operator II _____ Date _____

Operator I _____ Date _____

Principal Driller and Rig Operator Required.
Operator I must have signature of Driller/Operator II.

000107

Aug 09 07 08:50p

G.

Duspiva Well Drilling

EXHIBIT B PAGE 1 OF 2

722 5304

P.100

PAGE 1 of 2

Gary Duspiva

25050 Pet Lane

Parma, Idaho 83660-7037

Phone 208 722-5304

Cell 208 899-3131

License No. 395

ATTENTION!

ROB WHITNEY

WE
DRILLING & DEV.

Gary
Duspiva



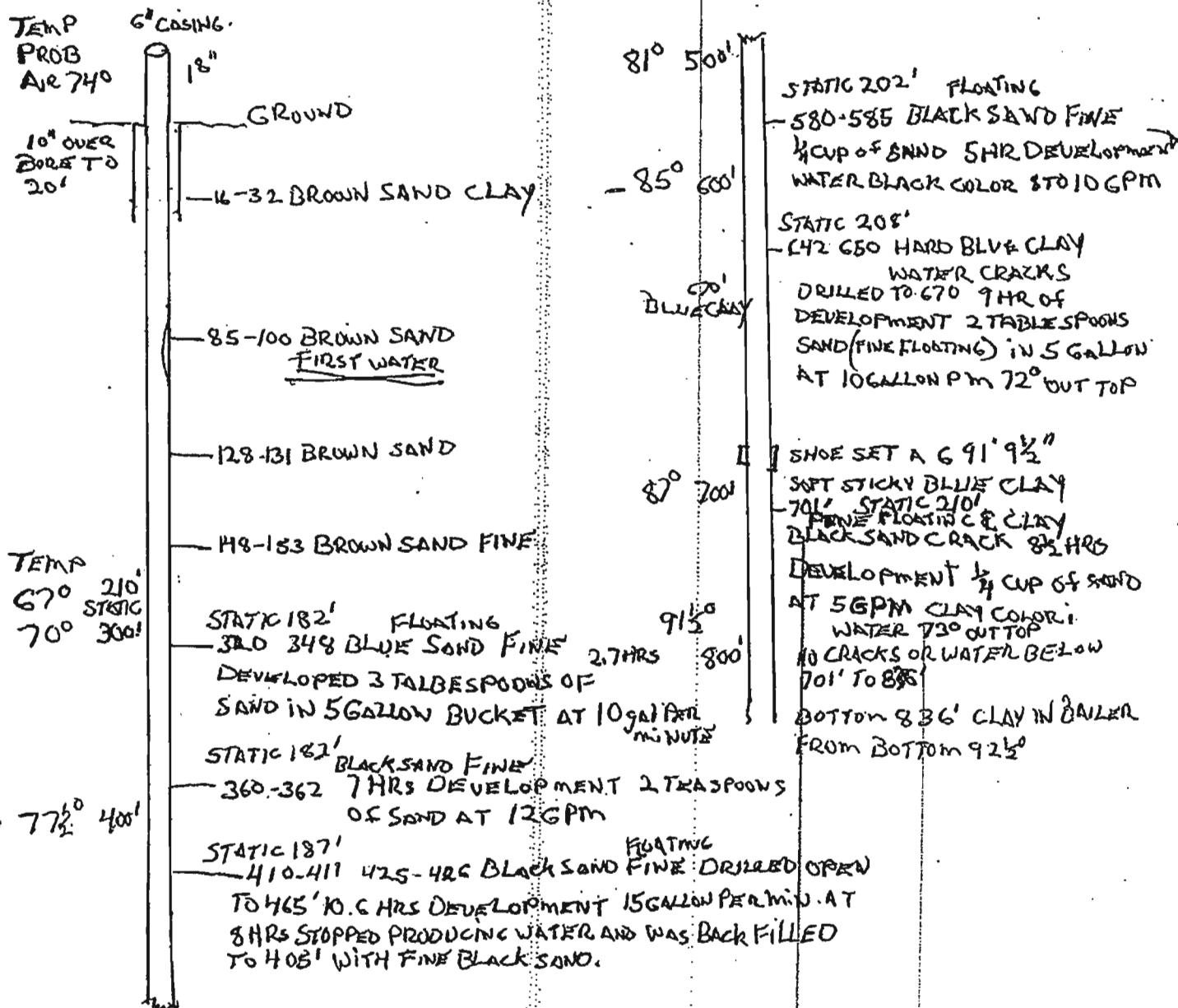
9 AUG 2007

WELL JOHN FILLMORE

PERMIT NO D0047109

TWP. 03 NORTH RANGE 04 WEST SECTION 6 SE 1/4 SW 1/4 SE 1/4

REQUEST FOR VARIANCE FOR DOMESTIC WELL + 85°



000109

Aug 09 07 08:50p

GL Duspiva Well Drilling 1 20 722 5304

EX T B PAGE 2 OF 2

P.200

PAGE 2 OF 2

Gary Duspiva

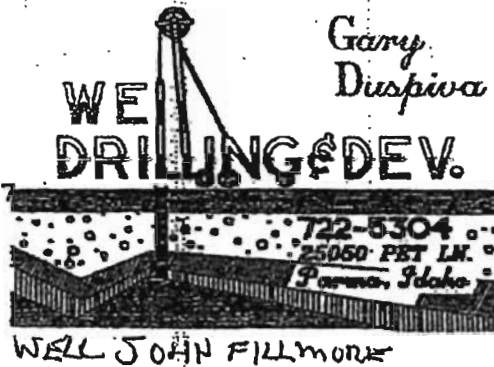
25050 Pet Lane

Parma, Idaho 83660-7037

Phone 208 722-5304

Cell 208 899-3131

License No. 395



ROD

THERE IS NO WATER FROM 701' TO 836' I REQUEST THAT BEING A DOMESTIC WELL THAT I BE ALLOW TO DRILL DEEPER TO MAKE A WELL IF POSSIBLE. THE CASING WILL PROBABLY BE ADVANCED TO A TIGHT SET BETWEEN 750' AND 800'. IF NO STOPPING PLACE IS FOUND IT WILL BE TAKEN TO 836' INTO UNDRILLED CLAY TO SEAL. THEN DRILL OPEN HOLE UNTIL THE NEXT WATER I FOUND.

I THIS AREA MOST OF THE WELL HAVE SAND PROBLEMS. I HAVE SPENT ALOT OF EFFORT AT EACH LAYER TRYING TO MAKE THIS FINE BLACK FLOAT SAND WORK. PAST EXPERIENCE I HAVE ALWAYS BEEN ABLE TO COME UP WITH A STABLE LAYER

Sincerely
Gary Duspiva M6WC

000110

Gary Duspiva

25050 Pet Lane

Parma, Idaho 83660-7037

Phone 208 722-5304

Cell 208 899-3131

License No. 395

ATTENTION:
ROB WHITNEYWE
DRILLING & DEV.Gary
Duspiva

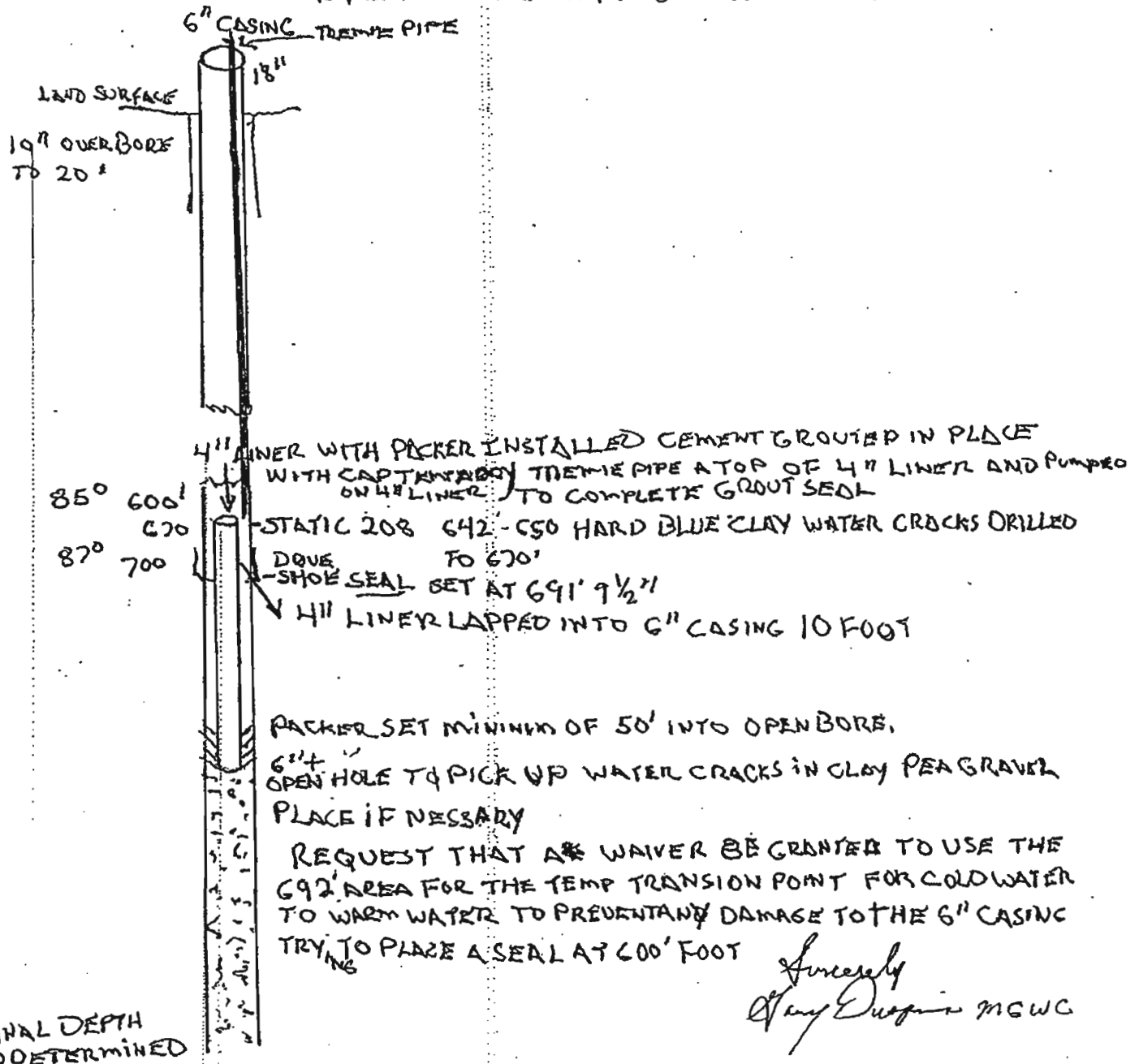
PAGE 1 OF 1

15 AUG 2007

WELL JOHN FILLMORE DOMESTIC USE STATE 42-227
PERMIT NO D0047109

TWP 03 NORTH RANGE 04 WEST SECTION 6 SE 1/4 SW 1/4 SE 1/4

REQUEST FOR VARIANCE FOR DOMESTIC WELL +850

Sincerely
Gary Duspiva MSWC

000111

Aug 29 07 09:44p

Gary

Duspiva Well Drilling

1 208 722

EX 1 C PAGE 2 OF 2
04 P.1040

ATTENTION SHERP

Gary Duspiva

25050 Pet Lane

Parma, Idaho 83660-7037

Phone 208 722-5304

Cell 208 899-3131

514 5252

License No. 395

WE
DRILLING & DEV.

Gary Duspiva CONTINING INFORMATION
FOR ROB WHITNEY

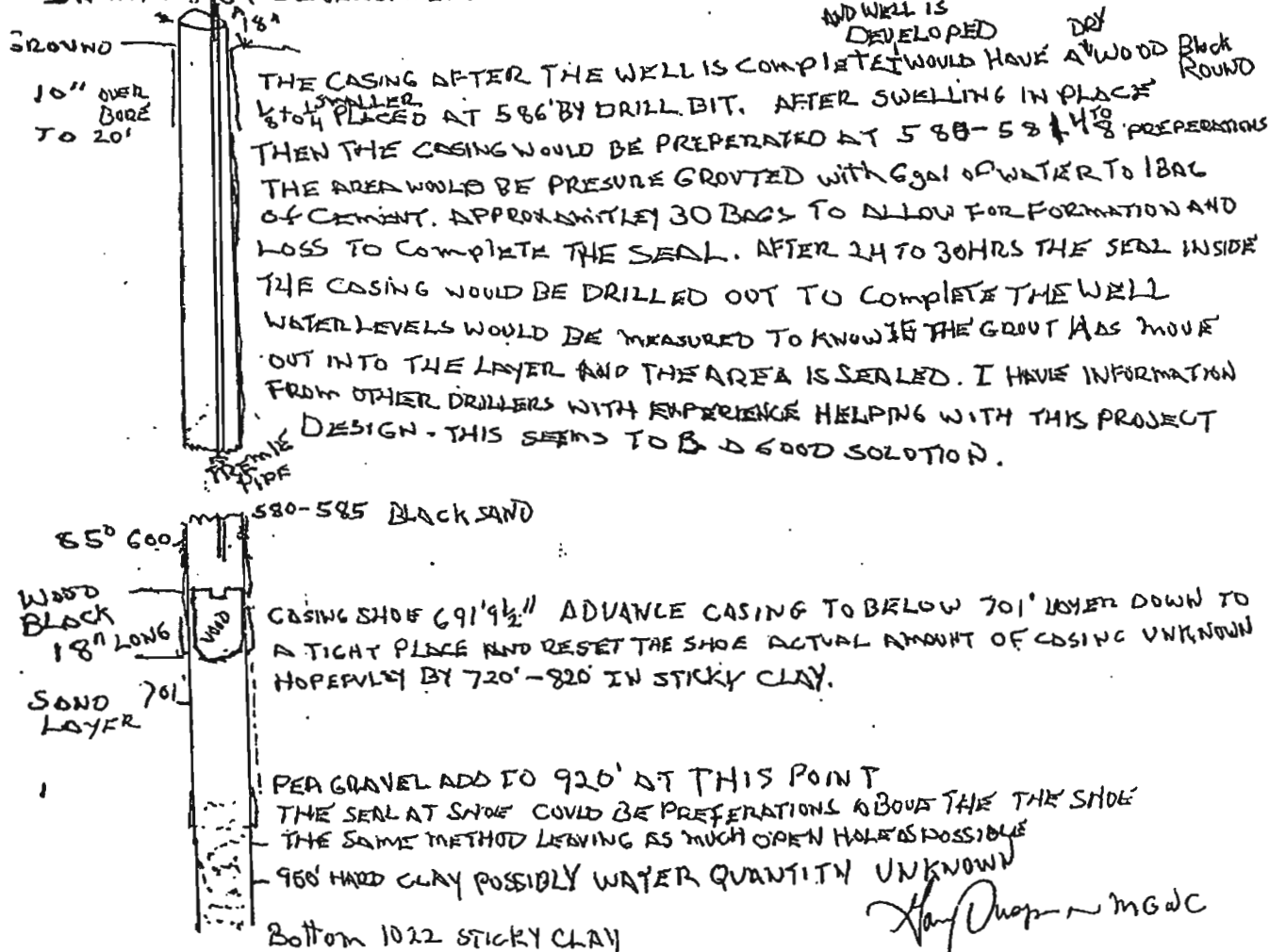
29 AUG 2007



WELL JOHN FILLMORE DOMESTIC USE STATEWIDE
PERMIT NO D0047109

TWP 03 NORTH RANGE 04 WEST SECTION 06 SE 1/4 SW 1/4 SE 1/4

ADDITIONAL INFORMATION TO HELP COMPLETE THIS WELL. IT IS SANDY VERY FINE
AN CLAY COLOR THAT WON'T CLEAN UP. A LAYER AT 701' IS THE PROBLEM. THE
C" CASING NEEDS TO BE ADVANCE TO SEAL THIS LAYER OUT TO BE ABLE TO CHECK
WATER DEEPER IN THIS WELL. IN DEVELOPING THE SAND BACK FILLED TO 840'
IN 11 HOURS OF DEVELOPMENT.



000112

**REQUEST FOR BID PROPOSAL
FOR
ABANDONMENT OF A LOW TEMPERATURE
GEOTHERMAL WELL**

Bid Open Date: 10-17-2008

Bid Close Date: 10-21-2008

Bid To: The Idaho Department of Water Resources

Bid For: Abandonment of a Low Temperature Geothermal Well (LTG) located at 23258

Homedale Rd., Wilder, ID 83676 (Twp. 3N, Rge. 4W, Sec. 6, SW of the SE)

Contact: Rob Whitney, IDWR Western Region, 2735 Airport Way, Boise, ID 83705
(208) 334-2190

Bid Specifications:

Abandonment of this well shall be consistent with applicable State Law and Administrative Rules related to LTG wells (reference IDAPA 37.03.09.030.07).

The bid proposal shall detail all materials and labor costs associated with proper abandonment of this well.

It is anticipated that the 6" well casing will require perforation at appropriate intervals and neat cement grout, positively placed in a volume that will completely fill the entire well and any existing void space behind the casing.

Calculation of the estimated volume of neat cement required based on an 8" diameter (on average) well bore and allowing for 50% additional to completely fill the well suggest that approximately 22 cubic yards of neat cement grout will be needed. Bids should be based on this amount of grout material plus equipment and time to install. In the event that additional grout is necessary to properly complete the abandonment, payment for time and material not included in the selected bid can be billed at the respective bid rates as a change order.

Existing well construction:

The well is currently incomplete and does not meet the required standards for construction of a LTG well.

The well was constructed with a cable tool using a "drill and drive" method to install six (6) inch nominal well casing (.250 wall) to a depth of approximately 1085 feet below ground.

The approximate total depth of the existing well bore is 1115 feet below ground.

The temperature in the well bore was reported to exceed 85 degrees F at approximately 600 feet below ground.

000113

Down Right Drilling & Pump Inc.

6025 Little Freeze Out Rd.
Caldwell, ID 83607
Ph 208-454-3098 Fax 454-0010

Quote

Date	Quote #
10/17/2008	D19878

Name / Address
Clyde Filmore/IDWR

		Rep	Project
		SK	
Description	Qty	Total	
Drill Rig Hours	12	3,000.00	
Equipment Rental	1	1,000.00	
Neat Cement (cu/yd)	22	5,500.00	
Cement Pumping	1	2,000.00	
Price to abandon 1,115' well. Perforate 6" casing at appropriate locations, and pump entire well w/neat cement by use of a tremie pipe.			
Any additional labor or materials will require a change order and will be discussed at time of need.			
Please call if you have any questions!		Total	\$11,500.00

000114

10-20-08

Bid to
Idaho Department of Water Resources
Rob Whitney.

Located 23258 Homedale Road
Wilder Id. 83676

Perforate 6" casing, pump cement from
bottom up. 22 yards cement.

L.S. \$13,500⁰⁰

Ken Stevens

Stevens & Sons

#153

**COONSE WELL DRILLING &
PUMP COMPANY, INC.**P O BOX 2389
EAGLE, ID 83616

Phone # 208-454-0190

Fax # 208-454-2743

ESTIMATE

DATE	ESTIMATE NO.
10/20/2008	1205

ESTIMATE FOR:IDAHO DEPARTMENT OF WATER RESOURCES
ATTN: ROB WHITNEY
2735 AIRPORT WY
BOISE, ID 83705

		PROJECT	
		FILMORE	
QTY	DESCRIPTION	UNIT PRICE	TOTAL
1	MOBILIZATION/DEMOBILIZATION	750.00	750.00
8	RIG TIME	180.00	1,440.00
100	PERFORATION CHARGE 6" CASING	10.00	1,000.00
22	YDS CEMENT/GROUT MATERIALS	250.00	5,500.00T
1	CONCRETE PUMP RENTAL	1,250.00	1,250.00T
1	MISC MATERIALS	750.00	750.00T
1,000	1 1/4" SCH80 PVC PIPE	1.65	1,650.00T
12	LABOR	110.00	1,320.00
	IDAHO STATE SALES TAX	6.00%	549.00
QUOTE IS BASED ON 22 YDS NEAT CEMENT		TOTAL	\$14,209.00

UNIT PRICES REFLECT CURRENT MARKET VALUE AND ARE SUBJECT TO CHANGE.

000116

RIVERSIDE INC. CURRENT

111 South Roswell Blvd.
Box 720
Parma, ID 83660

Quote

Customer No.: IDWR

Quote No.: 14215

Quote To: IDWR

2735 AIRPORT WAY
BOISE, ID 83705

Ship To: IDWR

2735 AIRPORT WAY
BOISE, ID 83705

Date			Ship Via		F.O.B.		Terms	
10/21/08					Origin		1/3 DOWN BALANCE ON COMPLETION	
Purchase Order Number			Sales Person				Required	
							10/21/08	
Quantity			Item Number	Description	Unit Price	Amount		
Required	Shipped	P.O.						
1				MOB DEMOB	750.00	750.00		
10				PERF. 6" CASING APP. 10 HR.	250.00	2500.00		
10				INSTALL 2" GROUT PIPE AND PUMP GROUT APP. 10 HR	255.00	2550.00		
1000				2" PIPE	4.50	4500.00		
22				NEAT CEMENT GROUT APP. 22 YARDS	300.00	6600.00		
				THANKS KEVIN				
Quote subtotal						15900.00		
Quote total						15900.00		

Thank You

000117



DENNIS PHIPPS WELL DRILLING INC.

12440 KARCHER ROAD • NAMPA, ID 83651**(208) 465-4444 | FAX (208) 465-4465**

October 21, 2008

Idaho Department of Water Resources

2735 Airport Way

Boise, Id. 83705-5082

(208) 334-2190

(208) 334-2348 fax

Below is the bid you requested for complete well abandonment of a low temperature geothermal well located at 23258 Homedale Rd., Wilder, Id. 83676.

Move-in & Setup of Cabletool	\$1,000.00 each	\$ 1,000.00
1115' grouting well	\$ 10.00 per ft.	\$11,150.00
550 bags of cement grout	\$ 12.00 per bag	\$ 6,600.00
grout machine rental	\$ 500.00 each	\$ 500.00
10 hrs. perforate 6" at (1000', 800', 600', 400', 200') for 10' at each spot	\$ 150.00 per hr.	\$ 1,500.00

Estimated total for abandoning well..... \$20,750.00

Call soon to schedule a drilling date. If you have any further questions regarding this estimate, please feel free to call me. You can reach me at the office, or you may call me on my cell phone, 941-1164 or my partner, Mark 941-1960. I look forward to doing business with you.

Thank you,

Dennis L. Phipps: co-owner of Dennis Phipps Well Drilling Inc.
dlp/mb

000118

**BID SCHEDULE OF ITEMS AND PRICES
DEPARTMENT OF WATER RESOURCES
ABANDONMENT OF A LOW TEMPERATURE
GEOTHERMAL WELL (LTG)
LOCATED @ 23258 HOMEDALE RD., WILDER, ID 83676**

Item	Description	Estimated Quantity	Unit	Unit Price	Total Amount
1	Mobilization / Demobilization	1	LS	\$ 2,000.00	\$ 2,000.00
1	Well Abandonment	1115	LF	\$ 20.00	\$ 22,300.00
2	Cement	22	CY	\$ 200.00	\$ 4,400.00
3	Pump Truck	1	LS	\$ 1,500.00	\$ 1,500.00
Total:					\$ 30,200.00

Submitted by:

Sherry Young

Signature

Vice President

Title

Treasure Valley Drilling & Pump, Inc.

Company

PO Box 547 Weiser, ID 83672

Address

560

Idaho Well Contractors License

(208) 465-6100

Telephone Number

000119

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of November, 2008, a true and correct copy of ~~the foregoing document~~ described below was served on the following as noted:

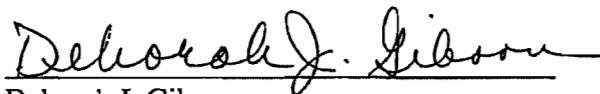
Document(s) Served: Staff Memorandum

JON C. GOULD
RINGERT LAW CHARTERED
455 SOUTH THIRD STREET
P.O. BOX 2773
BOISE, ID 83701-2773

(x) U.S. Mail, Postage Prepaid
() Facsimile
() E-mail: jon@ringertlaw.com

BRUCE SMITH
MOORE SMITH BUXTON & TURCKE, CHTD.
950 WEST BANNOCK ST., SUITE 520
BOISE, ID 83702

(x) U.S. Mail, Postage Prepaid
() Facsimile
() E-mail: bms@msbtlaw.com



Deborah J. Gibson
Administrative Assistant
Water Management Division

JON C. GOULD (ISB #6709)
RINGERT LAW CHARTERED
455 S. Third Street
P. O. Box 2773
Boise, Idaho 83701-2773
Telephone: (208) 342-4591
Facsimile: (208) 342-4657

Attorneys for Plaintiff

F I L E D
1153 A.M. P.M.

JUN 25 2010

CANYON COUNTY CLERK
J HEIDEMAN, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

GARY DUSPIVA dba GARY DUSPIVA
WELL DRILLING & DEVELOPMENT,

Plaintiff,

vs.

CLYDE FILLMORE, an individual and
JOHN FILLMORE, an individual,

Defendant.

Case No. CV 08-10463

**AFFIDAVIT OF GARY
DUSPIVA**

STATE OF IDAHO)
) ss.
County of ADA)

Gary Duspiva, being first duly sworn upon his oath, deposes and says that:

1. I make this affidavit based upon my own personal knowledge and belief of the facts contained herein.
2. I am a well driller holding Idaho driller's license no. 395.
3. I had a operators licences in 1976 and obtained my driller's license in 1981.

AFFIDAVIT OF GARY DUSPIVA - Page 1

ORIGINAL

000121

4. I have drilled and completed 342 wells as a licensed driller.
5. I am a Master Ground Water Contractor ("MGWC"), the highest level of certification in well construction and pump installation.
6. MGWC certification is attained by passing a series of exams and working full-time in the industry for five years.
7. I am the first and only MGWC in Idaho and one of 80 in the United States.
8. I am the past president of the Idaho Ground water Association and current member of its continuing education program.
9. I have completed 392 hours of continuing education credits.
10. I sat on the legislative committee for the Idaho Water Users Association for five years.
11. Over the years I have developed a standard protocol when drilling and completing wells.
12. When meeting with a potential customer I defined my drilling costs, review the proposed well location, and address questions and concerns.
13. I inform my customers that my goal is to provide the customer with a well that is free of sand, produces adequate water for the owner and that I use the criteria of a pinch of sand in five gallons of well water to determine if a water bearing zone was adequate for well completion.
14. I inform my customers that I do not set screens in my wells.
15. I inform my customers that I do not guarantee water quality or quantity of a well.

16. After being hired and before drilling, I complete as much as possible of the applicant portion of the Idaho Department of Water Resources ("IDWR") start card/permit ("Start Card"). I obtain any unknown information from the customer and then have the customer and I sign the start card.
17. After the executed Start Card has been submitted to IDWR, I begin drilling.
18. I develop any potential water bearing layer I encounter.
19. After each development, I inform the customer of the results including the characteristics of the water, the volume of sand per five gallons of water, and the rate of development in gallons per minute.
20. I provide the customer with my recommendation as to whether the water bearing layer would make a good well.
21. The customer then makes the determination on how to proceed.
22. In April, 2007, Clyde Fillmore contacted me to see if I would drill and complete a well on his son's property.
23. I informed Clyde that I was rebuilding my drill rig and I had one customer waiting for a well.
24. On June 9, 2007, I informed Clyde that I was available to begin drilling.
25. Clyde accepted my offer to drill and complete a well for him. We arranged to meet on June 11, 2007 at Clyde's shop on his property.
26. I met with Clyde and John Fillmore on June 11, 2007, at Clyde's shop.

27. During the meeting Clyde explained that his well was producing sand which was destroying a pump every four years. Clyde did not want sand to be an issue with John's well.
28. Clyde also informed me that he would be paying me for my drilling services and John Fillmore would be the owner of the well.
29. I informed Clyde and John that I charged \$32.50 per foot up to 400 feet for cased hole and \$21 per foot for uncased hole. I also informed them that my rates increases \$2 per foot every 100 feet after 400 feet.
30. I also informed Clyde and John that I charged \$350 for the first three hours of each development and \$65 dollars for each subsequent hour.
31. I informed Clyde and John of the charges for the drive shoe, well cap, permits, and sealing materials.
32. I gave John the Start Card with applicant information, driller information, proposed well information and start date information already completed. Both John and I signed the Start Card. Attached hereto as Exhibit 1 is a true and correct copy of the Start Card.
33. Clyde, John and I walked to the proposed well location. I informed them that the open trenches needed to be filled in, I did not want sprinkler irrigation water on my drill rig or my supplies while I was on site, and I wanted my drill area free of lumber or other debris.
34. John then drove me to my drill rig.

35. I returned to the well location with my drill rig but did not set up on the location because the trenches needed to be filled in.
36. I submitted the Start Card to IDWR that evening.
37. On June 12, 2007, I arrived on the Fillmore property with my drilling supplies and water. I positioned the drill rig over the well location and began drilling.
38. I worked nearly seven days a week drilling this well.
39. I would see Clyde Fillmore almost on a daily basis because of the proximity of his driveway to the well site.
40. I would discuss the drilling progress with Clyde a couple of times a week.
41. I would always stop work to speak with Clyde or John if they approached me.
42. I developed every potential water bearing layer encountered. Attached hereto as Exhibit 2 is a summary of the water bearing layers that were developed.
43. After developing each layer, I provided the results to Clyde, usually in his shop, and made a recommendation on the viability of the water bearing layer for well supply. Sometimes those conversations last over an hour.
44. The water bearing layers encountered, except the layer between 1115 and 1130 feet below ground surface (bgs), were not adequate for well completion.
45. After providing Clyde with the development results, he always told me that he was committed and drilling continued.
46. At no time did Clyde or John ever tell me to stop drilling.

47. On or about August 8, 2008, I drilled to a depth of 836 feet and measured a temperature of approximately 92 degrees Fahrenheit in clay cuttings removed from the bailer.
48. I attempted but could not satisfactorily develop the water bearing zone at 700 feet bgs because of excessive sand production. The water encountered had a temperature of 73 degrees.
49. I informed Clyde that the cuttings were warm and that if we were to continue drilling then I would need to contact Rob Whitney (IDWR).
50. I proposed perforating the casing between 642 and 650 feet bgs and completing the well as is but warned Clyde that if the layer collapsed the well would be ruined.
51. Clyde told me to contact Rob Whitney.
52. On August 9, 2007, I notified Rob Whitney that low temperature geothermal ("LTG") conditions had been encountered while drilling.
53. I informed Rob Whitney that I wanted to continue drilling in order to complete the well.
54. To continue drilling, a long form drilling permit application was required by IDWR because the well would be a LTG well.
55. On August 9, 2007, I relayed the information I received from Rob Whitney to Clyde at the shop.
56. On August 9, 2007, I provided Clyde with a written bill for my services to date (\$32,191.00). Attached hereto as Exhibit 3 is a true and correct copy of the invoice.

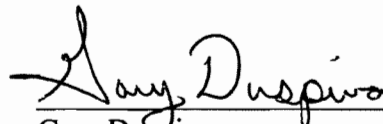
- with owner*
\$22,191.00. Clyde informed me the "we are getting close on the budget." Attached hereto as Exhibit 3 is a true and correct copy of the Start Card.
57. On August 16, 2007, I provided a long form drilling permit application (no. 900285-847154) to John Fillmore to execute. The information required to be submitted by the applicant was completed prior to providing John with the permit application which included a proposed maximum well depth of 1000+ feet, driller's name, owner's name, and that the well will be a low temperature geothermal well (85 to 212° F).
 58. John Fillmore executed the long form permit application on August 16, 2007 and I submitted it with IDWR.
 59. IDWR received and approved the permit application on August 20, 2007. Attached hereto as Exhibit 4 is a true and correct copy of approved drilling permit no. 900285-847154. The blue and red ink was not on the application I submitted.
 60. Drilling permit no. 900285-847154 contained the condition that the "driller and well owner shall submit a completion plan/prospectus for IDWR review prior to completing this well."
 61. After receiving authorization from IDWR, I continued drilling on August 29, 2007.
 62. I was able to seal the casing at 1,091.75 feet bgs on or about September 24, 2007.
 63. After the development at 1,130 when casing was set at 1,971.75, I told Clyde that air development may not provide accurate indication of sand at higher pump rates.
 64. I recommended test pumping the well which Clyde agreed.

65. Clyde arrange to have Idaho Power provide a power source and hire Dale Dickson to conduct the pump test.
66. I conducted a pump test with Dale Dickson beginning on September 30, 2007.
67. I informed Clyde that the well would produce 17.6 gpm with a static level at 221 feet bgs and pumping level 309 feet bgs. The water temperature was 86 degrees and relatively sand free when the test ended on October 10, 2007.
68. On October 10, 2007, drilling activities were done and the development of a satisfactory water bearing layer was complete. At no time during the drilling and development process did Clyde or John tell me to stop working.
69. In October, 2007, I retained counsel. At this point the Fillmores became unresponsive and refused to assist in well completion.
70. On November 13, 2007, I submitted a completion plan to IDWR proposing two alternative plans to complete the well.
71. By letter dated November 26, 2007, IDWR approved the second alternative to complete the well subject to conditions. Attached hereto as Exhibit 5 is a true and correct copy of the November 26, 2007 letter I received.
72. On January 17, 2008, IDWR notified the Fillmores and I that action must be taken to either complete the well or abandon the well within the next 30 days.
73. John Homan ("Homan"), Deputy Attorney General, State of Idaho, approved Alternative No. 2 subject to six (6) amendments to the previous conditions.

74. John Fillmore failed to inform me of his selection to either abandonment or well completion.
75. From June 1, 2007 until November 1, 2008, I worked diligently to fulfill my portion of the agreement with Clyde and John Fillmore.
76. I have never withdrawn my offers to abandon or complete the Fillmore Well.
77. Neither Clyde nor John Fillmore ever told me to stop working on the well.
78. I did not charge the Fillmores for my time or costs I incurred working on this well after October 10, 2007.

Further your affiant sayeth naught.

DATED this 24 day of June, 2010.

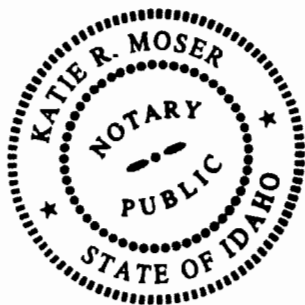


Gary Duspiva

STATE OF IDAHO)
)ss.
County of Ada)

On this 24 day of June, 2010, before me, the undersigned, a notary public in and for said state, personally appeared Gary Duspiva, known to me to be the individual that executed the foregoing affidavit, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.



Katie R. Moser
Notary Public for FD
Residing at Oasis, ID
My Commission Expires: 2/20/17

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24th day of June, 2010, I caused a true and correct copy of the foregoing document to be served by the method indicated below, and addressed to the following:

Bruce Smith
Moore Smith Buxton & Turcke, Chtd.
950 W. Bannock Street, Suite 520
Boise, Idaho 83702

() U.S. Mail, Postage Prepaid
☒ Hand Delivery
() Overnight Mail
() Facsimile

J. C. Gould
Jon C. Gould

EXHIBIT 1

Form 235-3, 6/2004

Idaho Dept. of Water Resources

Write Tag Number Here

Start Card/Permit - Single Family Domestic Well Only

D0047109

(Cold Water less than 85 degrees F.)

1. Owner's Name (please print): JOHN FILLMORE
2. Owner's Mailing Address: 23258 HOMEDALE ROAD
City: WILDER State: ID Zip Code: 83676 Telephone: (208) 919-4085
3. Proposed Well Location: Twp. 03N, Rge. 04W, Sec. 6, SE 1/4 SW 1/4 SE 1/4
Gov't Lot No. _____ County GANYON Lat. _____: _____: _____ Long. _____: _____: _____
Street Address of Well Site 23258 HOMEDALE ROAD City WILDER

Must give at least name of road + Distance to Road or Landmark

Lot _____ Block _____ and Subdivision _____

4. Are all adjacent septic tanks and drain fields accurately located? By Property Owner: Yes [] No [], By Health District: Yes [] No []

5. Well Construction Information:

A. ☒ New well [] Replace [] Deepen [] Modify Previous well #: _____ B. Proposed Casing Dia. 6" C. Proposed Maximum Depth: 200

6. Construction Start Date: 12 JUN 2007 Well Driller: GARY DUSPINA Driller's Lic. No 395

8. The Driller hereby accepts the terms and conditions of the Start Card/Permit.

Driller's Signature: Gary Duspina Date: 11 JUN 2007

9. The Well Owner affirms to have read this Start Card/Permit, validates its accuracy and accepts the conditions.

Owner's Signature: John Fillmore Date: 6/11/07

CONDITIONS FOR USE OF START CARD:

1. This permit authorizes the construction or modification of one domestic well for a single-family residence. No additional residences, businesses, or dwellings may be connected to this well without a valid water right. Limited to irrigation of 1/2 acre lawn/garden and 13,000 gpd.

2. This form must be complete, including the prepaid tag number and signature of the driller. The owner should sign the start card after reviewing these conditions. Mailing must take place no less than 72 hours prior to construction (Dept. address below), hand delivered or faxed to the Dept. prior to commencing construction. The start construction date shall be no more than 10 days after, the Department receives the permit. An incomplete form will not be considered a valid permit to drill.

3. This permit does not constitute an approval of the District Health Department or the Idaho Department of Health and Welfare. All wells must be drilled a minimum distance of 100' from a drain field. Domestic wells must be drilled a minimum of 50' from a septic tank.

4. Only Well Drillers licensed in Idaho may use a Start Card for construction of a well. The driller shall maintain a copy of the Start Card and the well I.D. tag at the drilling site during construction.

5. This drilling permit does not authorize trespass on the land of another party.

6. This drilling permit does not constitute other local, county, state or federal approvals, which may be required for construction of a well.

7. This drilling permit does not represent a right to divert and use the water of the State of Idaho.

8. If a bottom hole temperature of 85 F. or greater is encountered, well construction shall cease and the well driller shall contact the Department immediately.

9. Idaho Code, S 55-2201 - 55-2210 requires the applicant and/or his contractors to contact "Digline" (Digline is a one-call center for utility notification) not less than 2 working days prior to the start of any excavation for this project. The "Digline" Number for your area is 1-800-342-1585.

10. The stainless steel I. D. tag must be welded to the well casing upon completing the well and must remain permanently attached above ground level for the life of the well. Other tags may be added following a repair or modification of the well. The well driller is responsible for permanently attaching the I.D. tag to the casing upon completing the well. The well tag shall be attached by welding at least 3 sides or using four (4) stainless steel, closed-end pop rivets.

11. A start card is not valid for drilling in Areas of Drilling Concern, Critical Groundwater Areas, Groundwater Management Areas or Areas identified by the Department as Contaminated.

12. The possession of a well tag does not authorize construction of a well.

13. Any well being replaced by a new well, shall be properly abandoned by the well driller prior to removing the drilling equipment, unless otherwise authorized by the department.

Effective Feb. 1, 2005

Your Start Card/Application and Tag purchase may be submitted to one of the following offices:

Western Region
Idaho Department of Water Resources
735 Airport Way Boise, ID 83705-5082

Eastern Region
Idaho Department of Water Resources
200 N. 1st St. Boise, ID 83724

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EXHIBIT 2

Air Development Results

	<u>Depth</u>	<u>Time</u>	<u>Results</u>
1.	320	2.7 hrs	3 tablespoons sand per 5 gal at 10 gpm
2.	360	7 hrs	2 teaspoons per sand 5 gal. at 12 gpm
3.	465	10.6 hrs	Well filled with sand to 405 ft and stopped producing water after 8 hrs; fine black sand; out
4.	580	5 hrs	1/4 cup sand per 5 gal at 8-10 gpm; water black floating sand, 3-5 minutes settle in five gal bucket
5.	670	9 hrs	2 tablespoons sand per 5 gal at 10 gpm, 72 degrees
6.	701	8.5 hrs	1/4 cup sand per 5 gal at 5 gpm, clay color, 73 degrees
7.	922	6.3 hrs	1/2 teaspoon sand per 5 gal at 10 gpm, blue clay color
8.	937	2.1 hrs	1/2 teaspoon sand per 5 gal at 8 gpm, blue clay color
9.	1122	11.1 hrs	1 teaspoon sand per 5 gal at 15 gpm, blue clay color
10.	1130	3.8 hrs	1 teaspoon sand per 5 gal at 15 gpm, blue clay color, casing added
11.	1130	2.1 hrs	1/2 teaspoon sand per 5 gal at 15 gpm, blue clay color, casing added
12.	1130	20.7 hrs	1/4 teaspoon of sand per 5 gal at 20 gpm, casing added to final depth, seal created. At 17.6 gpm well was clean. Likely good layer but needed to be test pumped.

EXHIBIT 3

WEST Noon 9 AUG 2007

SHEET

Cost @
Foot

0-400'	32.50	13000.00
400-500'	34.50	3450.00
500-600'	36.50	3650.00
600-692'	38.50	3542.00
692-700'	27.00	Open hole 216.00
700-800	29.00	2900.00
800-836	31.00	1116.00

SHAPE 50.00 CAP 50.00 PUMP 80.00 580.00

SURFACE SEAL 400.00

AIR DEVELOPMENT 350.00 3475

85.00 ADDITIONAL HOURS

320'	2.7 HR MIN	350.00
360'	7.0 HR	670.00
400'	10.6 HR	2410.00
580'	5.1 HR	486.00
670'	9.0 HR	740.00
836'	8.5 HR	707.00

TOTAL

32,191.00
10000.00
→ 22,191.00

EXHIBIT 4

63
Form 235-1
10/1/03

Drilling Permit No. 96-847154Drilling Permit I.D. Tag No. D0047109

Water Right Permit No. _____

Injection Permit No. _____

State of Idaho
Department of Water Resources

APPLICATION FOR DRILLING PERMIT
(FOR THE CONSTRUCTION OF A WELL)

1. Owner (please print): JOHN FILLMORE2. Mailing Address: 23258 HOMEDALE ROADCity: WILDER State: ID Zip Code: 83676 Telephone (RSB) 919-40853. Proposed Well Location: Twp. 03N Rge. 04W Sec. 06 SE 1/4 SW 1/4 SE 1/4;Gov't Lot No. _____ County GANYON Lat. _____: _____: _____ Long. _____: _____: _____Street Address of Well Site 23258 HOMEDALE ROAD City WILDER

Give at least name of road + Distance to Road or Landmark

Lot, block and subdivision _____

4. Proposed Use of Well:

☒ DOMESTIC: The use of water for homes, organization camps, public campgrounds, livestock and for any other purpose in connection therewith, including irrigation of up to 1/4 acre of land, if the total use is not in excess of 13,000 gpd; or any other uses, if the total use does not exceed a diversion rate of 0.04 cfs and a diversion volume of 2500 gpd.

Domestic does not include water for multiple ownership subdivisions, mobile home parks, commercial or business establishments, unless the use does not exceed a diversion rate of 0.04 cfs and a diversion volume of 2500 gpd.

NON-DOMESTIC: ☐ Irrigation ☐ Municipal ☐ Industrial
☐ Livestock ☐ Test ☐ Other _____
Type _____ Number Hd. _____ (Describe)

☐ INJECTION☐ MONITORING: A well bore schematic and map is required for each blanket permit. No. of proposed wells: _____

5. Well Construction Information:

A. ☒ New well ☐ Modify ☐ ReplaceB. Proposed Casing Diameter 6" Proposed Maximum Depth 1000+

C. Anticipated bottom hole temperature:

☐ 85 F or less

(Cold Water Well)

☒ 85 F to 212 F
(Low Temp. Geo. Well)

☐ 212 F. or more
(Geothermal Well)

6. Construction Start Date: 12 JUNE 20077. Anticipated Well Driller: GARY DUSPINADriller's Lic. No. 395

NOTE: The actual well driller must be identified prior to drilling.

8. Applicant's Signature: [Signature]Date 8/16/07

Address (if different than owner): _____

City: _____ State: _____ Zip Code: _____ Telephone: _____

Title: owner RECEIVED

(Owner, Firm Representative, Other)

*See specific conditions

AUG 20 2007

WATER RESOURCES
WESTERN REGION

000138

ACTION: THE DEPARTMENT OF WATER RESOURCES

This Permit is

Approved

Date

8-20-2007If approved, this permit authorizes the construction or modification of a well subject to the following conditions. **READ CAREFULLY!****GENERAL CONDITIONS:**

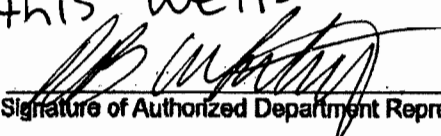
1. This drilling permit is valid for two (2) months from the above approval date for the start of construction and is valid for one (1) year from the approval date for completion of the well unless an extension has been granted.
2. This permit does not constitute an approval of the District Health Department or the Idaho Department of Health and Welfare, which may be required before construction of the well. All wells must be drilled a minimum distance of 100 feet from a drain field. Domestic and Public Water Supply wells must be drilled a minimum of 50 feet and 100 feet respectively from a septic tank.
3. The well shall be constructed by a driller currently licensed in the State of Idaho who must maintain a copy of the drilling permit at the drilling site.
4. Approval of this drilling permit does not authorize trespass on the land of another party.
5. This permit does not constitute other local, county, state or federal approvals, which may be required for construction of a well.
6. This drilling permit does not represent a right to divert and use the water of the State of Idaho. If the well being drilled is associated with approved water right(s) use of the well must comply with conditions of said water right(s).
7. If a bottom hole temperature of 85 or greater is encountered, well construction shall cease and the well driller and the well owner shall contact the Department immediately.
8. Idaho Code, § 55-2201 - 55-2210 requires the applicant and/or his contractors to contact "Digline" (DigLine is a one-call center for utility notification) not less than 2 working days prior to the start of any excavation for this project. The "DigLine" Number for your area is 1-800-342-1585.
9. Please be advised that this drilling permit should be considered and treated as a preliminary permit. If you are in disagreement with this preliminary permit you have fourteen (14) days of the service date of this permit to petition the Department for reconsideration pursuant to Section 67-5243, Idaho Code.
10. The well tag for the drilling permit/start card shall be securely and permanently attached to the well casing through welding or by the use of four closed end domed stainless steel pop rivets. The tag attachment will be done at the time of completion of the well, and prior to removing the drill rig from the drill site.

SPECIFIC CONDITIONS:

Well construction shall be consistent with Rule 30 of IDAPA 37.03.09

The driller and well owner shall submit a completion plan/prospectus for IDWR review prior to completing this well.

Signature of Authorized Department Representative



Title

Sr. WR Agent

Receipt No.

Presold

Received by

Fee

Date

EXTENSION OF DRILLING PERMIT

Extension approved by

Approval Date

This extension expires:

EXHIBIT 5



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Web Site: www.idwr.idaho.gov

November 26, 2007

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

Gary Duspiva
Gary Duspiva Well Drilling Lic. No. 395
25050 Pet Lane
Parma, ID 83660

RE: Completion Plan for John Fillmore LTG well (Tag No. D0047109)

Dear Mr. Duspiva,

This letter acknowledges receipt of your plan (prospectus) for completion of the referenced Low Temperature Geothermal Well (LTG). The proposed plan was received on November 19, 2007. Pursuant to Rule 30.01.b of the Well Construction Standards Rules, a drilling prospectus "shall be submitted to and approved by the Director" prior to construction of any LTG well. The prospectus and subsequent well construction are the responsibility of the well driller and the well owner.

Your initial submittal of a "Start Card" (June 11, 2007) to construct a "cold water" well that would not exceed 200 feet in depth has been superceded by the August 20, 2007 approval of a drilling permit for construction of a LTG well, following your notification to the Department that the bottom hole temperature of the well had exceeded 85 degrees F.

Alternative no. 1 is hereby denied. Under Rule 25.13, a well is not considered "complete" until 1) the well meets all required standards for construction or has been properly abandoned and 2) the drilling equipment has been removed from the well site. This alternative is highly speculative and contemplates a waiver of nearly all of the applicable construction standards related to sealing of cold-water wells and LTG wells. The waiver provision of Rule 30.03.c only applies to the open or producing interval of a well, below the last casing string, and after rigorous testing has occurred. The open interval below the casing in this well is not currently in dispute.

In contrast, **Alternative no. 2** recognizes the lack of an existing seal in an annular space around the well casing. Annular seals are required to prevent mixing or waste of water outside the casing. In this instance, existing rules require all casing strings to be sealed with neat cement their entire length in a minimum 1 inch annular space (borehole 2" greater than O.D. of casing). Alternative 2 is approved subject to the following conditions:

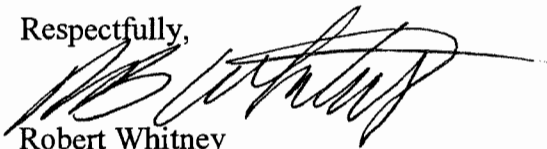
- 1) A plan for the testing or verification of the extent and adequacy of the cement grouting procedure shall be proposed prior to and employed following the procedure.

000141

- 2) If it is determined that the cementing procedure was inadequate to ensure protection of the resource, other remedial work may be required including complete and permanent abandonment of the well.
- 3) The well driller acknowledges the risk associated with Alternative no. 2 and shall increase the company bond to \$20,000
- 4) The well owner acknowledges the risk associated with Alternative no. 2 and shall secure a cash or surety bond in the amount of \$20,000 effective until completion or abandonment of the well and for 1 year following completion of the well (if completed).

Following successful completion of the proposed cement grouting process, the Department may issue a waiver of applicable requirements if it appears that the ground water resources will be protected against waste and contamination. A specific waiver request signed by the driller and well owner shall be submitted to the Department for consideration, if the well is completed for use. If you elect to proceed with the "Alternative 2" plan as approved herein, please provide notice of your intent to proceed including the driller's and well owner's acknowledgements along with evidence of the required bonds. The Department requires initiation of remedial action for the proper repair or abandonment of this well within 30 days of the date of this letter. Failure to comply with these requirements may be cause for the Department to issue a Notice of Violation and seek civil penalties as provided by law. Please contact me at this office if you have questions concerning this letter.

Respectfully,




Robert Whitney
Sr. Water Resource Agent

cc: Jon Gould, Esq., Clyde Fillmore, John Fillmore, Tom Neace

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of November, 2007, the attached *original* letter was mailed to the person(s) listed below:


Denise Buffington
Administrative Assistant

Gary Duspiva
Gary Duspiva Well Drilling Lic. No. 395
25050 Pet Ln
Parma ID 83660

Copies mailed to:

Jon Gould, Esq.
Ringert Clark Chartered
455 S 3rd St
Boise ID 83702

Clyde Fillmore
23252 Homedale Rd
Wilder ID 83676

John Fillmore
25995 Lon Davis Rd
Parma ID 83660

Tom Neace
Idaho Department of Water Resources
322 Front St
PO Box 83720
Boise ID 83720

BRUCE M. SMITH, ISB #3425
 MOORE SMITH BUXTON & TURCKE, CHARTERED
 Attorneys at Law
 950 W. Barnock Street, Suite 520
 Boise, ID 83702
 Telephone: (208) 331-1800
 Facsimile: (208) 331-1202

Attorney for Defendants

7-22 R
 FILED
 A.M. 4:55 P.M.

JUL 08 2010

CANYON COUNTY CLERK
 T. CRAWFORD, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

GARY DUSPIVA dba GARY DUSPIVA
 WELL DRILLING & DEVELOPMENT

Plaintiff,

vs.

CLYDE FILLMORE, an individual and
 JOHN FILLMORE, an individual,

Defendants.

Case No. CV08-10463

AFFIDAVIT OF THOMAS NEACE

State of Idaho)
) ss.
 County of Canyon)

I, Thomas Neace, being first duly sworn, sayeth as follows:

1. I am an employee of the Idaho Department of Water Resources (IDWR) and through my employment with the Department I am familiar with the Notice of Violation dated February 23, 2009, and the Rescission of Notice of Violation dated April 17, 2009 attached to this affidavit.

AFFIDAVIT- 1

ORIGINAL

2. The Notice of Violation was issued to Mr. Gary Duspiva for the reason set forth in the letter; specifically the Department determined that he violated state law and Administrative Rules of the IDWR in the drilling of a well for John Fillmore.

3. The Department agreed to rescind the Notice of Violation based on Mr. Duspiva's agreement to comply with the procedures outlined in the April 17, 2009 letter, including Mr. Duspiva's agreement to the Suspension of his Start Card privileges for one year. In the Department's view, the required procedures outlined in the April 17, 2009, letter would result in minimizing the likelihood that Mr. Duspiva would violate the state law and IDWR rules as set out in the Notice of Violation for the John Fillmore Well.

4. The rescission was agreed to by the Department because of Mr. Duspiva's agreement to comply with the procedures and suspension set out in the letter, not because the Department found that Mr. Duspiva had not violated state statutes and Department rules. The requirements in the April 17, 2009, letter were imposed to deter Mr. Duspiva from violating state statutes and Department rules in the future.

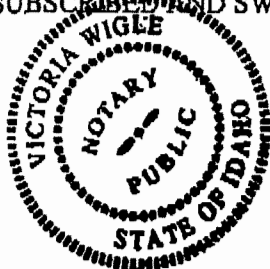
5. To the best of my knowledge, Mr. Duspiva has not requested reinstatement of his Start Card privileges and the suspension remains in place.

Further your affiant sayeth not.

Dated this 6TH day of July, 2010.

Thomas F. Moore

SUBSCRIBED AND SWORN to before me this 6TH day of July, 2010.



Victoria Wigle
NOTARY PUBLIC FOR IDAHO
Residing at: Boise
My Commission Expires: 6/22/16

AFFIDAVIT-2

CERTIFICATE OF SERVICE

I hereby certify that on this 8 day of July, 2010, a true and correct copy of the foregoing **AFFIDAVIT OF THOMAS NEACE** was served upon the following by the method indicated below:

Jon C. Gould
RINGERT LAW CHARTERED
455 S. Third Street
P.O. Box 2773
Boise, ID 83701-2773

Facsimile: (208) 342-4657

☐ via U.S. MAIL
☐ via HAND DELIVERY
☐ via OVERNIGHT MAIL
☐ via FACSIMILE



BRUCE M. SMITH

AFFIDAVIT- 3

000146



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTTILL, JR.
Director

NOTICE OF VIOLATION

February 23, 2009

Gary Duspiva
Gary Duspiva Well Drilling & Development
25050 Pet Lane
Parma ID, 83660-7037

RE: Notice of Violation No. 395-1-W-2009

Dear Mr. Duspiva:

The purpose of this letter is to notify you of a violation of State Law and Administrative Rule attributed to you and your drilling company. This violation is associated with a well you attempted to drill for John Fillmore located at 23258 Homedale Road Wilder, Idaho.

The violation attributed to you and your drilling company is identified as follows:

Failure to comply with condition of approval no. 8 of the Start Card drilling permit submitted to the Idaho Department of Water Resources (Department) on June 11, 2007.

The above violation occurred at the time you drilled into the Low Temperature Geothermal (LTG) aquifer and failed to immediately notify the Department as required by condition of approval no.8. Drilling continued an additional 200 feet or more before notification was provided to the Department. I.C. § 42-235 provides that a driller is subject to the enforcement procedures of I.C. § 42-1701B for drilling permit related violations. IDAPA 37.03.09 Rule 045.02.a. provides that the drilling permit authorizes construction of a well in compliance with the conditions of the permit.

Because the well was never completed and has since been properly decommissioned, the Department will not seek payment of any civil penalty as redress for this violation. However, the Department does hereby suspend your Start Card privileges for a period of not less than one (1) year from the date of this Notice of Violation (NOV).

Your start card privileges may be considered for reinstatement following the one-year suspension and upon your company's satisfactory compliance with all applicable well construction Rules and Laws.



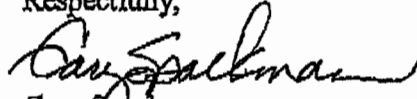
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Page 2

Notice of Violation No. 395-1-W-2009

A written request must be submitted to this office before the Department will consider reinstatement of your start card privileges. This NOV is issued pursuant to section 42-1701B, Idaho Code. You may request a compliance conference concerning this NOV, provided the request is made within 14 days of receiving this notice. Please contact me at this office if you have questions regarding this NOV or if you would like to schedule a compliance conference.

Respectfully,



Gary Spackman,
Administrator, Water Management Division
IDWR

CC: John Westra, Western Region Manager

000148



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Web Site: www.idwr.idaho.gov

April 17, 2009

C. L. "BUTCH" OTTER
GovernorDAVID R. TUTHILL, JR.
Director

Gary Duspiva
Gary Duspiva Well Drilling & Development
25050 Pet Lane
Parma ID, 83660-7037

RECEIVED

APR 20 2009

Fingert Law Chartered

RE: Rescission of Notice of Violation No. 395-1-W-2009

Dear Mr. Duspiva:

The purpose of this letter is to recapture issues discussed in the Compliance Conference held on April 2, 2009. The Department hereby agrees to rescind the Notice of Violation issued on February 23, 2009. Additionally, this letter requires that Gary Duspiva take all necessary precautions to avoid reoccurring well construction problems associated with encountering Low Temperature Geothermal (LTG) resources. Specifically, the Department intends to prevent the inadequate construction of LTG wells initially proposed to be cold water residential wells. You have established a history of submitting Start Cards authorizing construction of cold water residential wells to reasonable depths and thereafter notifying the Department that the authorized well has exceeded the proposed maximum depth and consequently encountered LTG resources. As discussed at the April 2, 2009 Compliance Conference, you agreed to provide the Department with information sufficient to assure that reoccurrence of situations like those experienced on the Fillmore well will be prevented in the future.

Jon Gould's letter dated April 8, 2009, sent on your behalf, outlines procedures and precautions that you will take when drilling to avoid problems that have occurred with other LTG wells drilled by you in the past including the Fillmore well. The outlined procedures include 1) monitoring of bottom hole temperatures during drilling 2) recording of drilling conditions encountered on a field log 3) immediate contact with the Department if LTG conditions are encountered and 4) if the property owner wishes to complete a well into a LTG aquifer, an amended drilling permit application will be submitted to the Department in a timely manner. Please note that these procedures are already required of all Licensed Drillers pursuant to Administrative Rules. The Department provides the following additional directives and cautions to you and your drilling company when a drilling permit is approved to construct any cold water well:

- 1) Every attempt must be made to complete and develop the well in a cold water aquifer. This includes employing industry standard practices such as installation of well screens or filter packed intakes in cases where sand production may be an issue and considering the use of water treatment systems such as water softeners, filters, or deionizers if water quality is problematic.
- 2) If LTG conditions are encountered during construction of a cold water well, construction shall cease immediately and the effective approval of the drilling will become invalid. If it is determined that



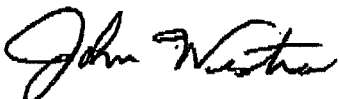
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the drilled hole or the well casing has penetrated the LTG aquifer to the extent that unauthorized comingling of LTG and cold aquifers may occur, the well must be partially or completely abandoned as may be specifically required by the Department.

- 3) If the Department receives a new application for a drilling permit to complete a LTG well, the drilling permit will not be processed until a) the property owner has secured an approved water right for the use of LTG water b) all supporting information and associated requirements including an acceptable drilling prospectus, proper bonding by the owner and the driller are documented and received by the Department and c) the driller can demonstrate to the satisfaction of the Department that the well can and will be completed consistent with Rule 30 of IDAPA 37.03.09.

The Department acknowledges that you have agreed to suspension of your Start Card privileges for at least one (1) year. If after the effective suspension, you wish to have these privileges reinstated please direct a written request for reinstatement to this office.

Respectfully,



John Westra,
Western Region Manager

cc: John Homan, Tom Neace, Jon Gould

ORIGINAL

BRUCE M. SMITH, ISB #3425
 MOORE SMITH BUXTON & TURCKE, CHARTERED
 Attorneys at Law
 950 W. Bannock Street, Suite 520
 Boise, ID 83702
 Telephone: (208) 331-1800
 Facsimile: (208) 331-1202

Attorney for Defendant

FILED 7-22-10
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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

GARY DUSPIVA dba GARY DUSPIVA
 WELL DRILLING & DEVELOPMENT

Plaintiff,

vs.

CLYDE FILLMORE, an individual and
 JOHN FILLMORE, an individual,

Defendants.

Case No. CV08-10463

**SECOND AFFIDAVIT OF
 BRUCE M. SMITH**

COMES NOW Bruce M. Smith and declares as follows:

1. I am counsel for the Defendants John and Clyde Fillmore and make these statements based on my own personal knowledge.
2. Attached are true and correct copies of the following documents related to this matter.
 - (a) Excerpts from the deposition of Mr. Gary Duspiva, attached hereto as Exhibit A.
 - (b) The following letters which I sent to counsel for Mr. Duspiva.:
 1. January 16, 2008 attached hereto as Exhibit B1.

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2. May 12, 2008, attached hereto as Exhibit B2
 3. May 28, 2008, attached hereto as Exhibit B3.
 4. July 1, 2008, attached hereto as Exhibit B4.
 5. September 30, 2008, hereto as Exhibit B5.
 6. October 8, 2008, hereto as Exhibit B6.
 7. October 27, 2008, hereto as Exhibit B7.
- (c) Down Right Drilling & Pump, Inc. estimate for drilling dated July 21, 2008, attached hereto as Exhibit C.
- (d) Well driller's log dated August 9, 2007, attached hereto as Exhibit D.
- (e) IDWR Notice of Violation, attached hereto as Exhibit E.
- (f) IDWR Rescission of Notice of Violation, attached hereto as Exhibit F.

Further your affiant sayeth naught.

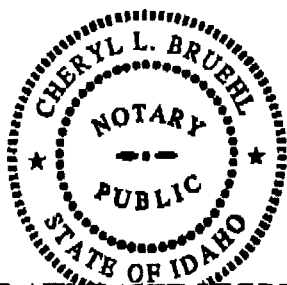
Dated this 8 day of July, 2010.

MOORE SMITH BUXTON & TURCKE,
CHARTERED



Bruce M. Smith
Attorney for Defendants

SUBSCRIBED AND SWORN to before me this 8th day of July, 2010.



NOTARY PUBLIC FOR IDAHO
Residing at: Boise, Idaho
My Commission Expires: 03/27/13

SECOND AFFIDAVIT OF BRUCE M. SMITH - 2

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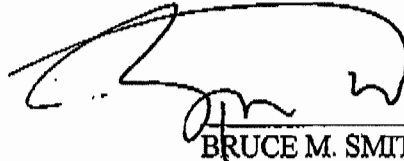
CERTIFICATE OF SERVICE

I hereby certify that on this 8 day of July, 2010, a true and correct copy of the foregoing **SECOND AFFIDAVIT OF BRUCE M. SMITH** was served upon the following by the method indicated below:

Jon C. Gould
RINGERT LAW CHARTERED
455 S. Third Street
P.O. Box 2773
Boise, ID 83701-2773

☒ via U.S. MAIL
☐ via HAND DELIVERY
☐ via OVERNIGHT MAIL
☐ via FACSIMILE

Facsimile: (208) 342-4657



BRUCE M. SMITH



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1 you what's been marked as Deposition Exhibit 3. I'll
 2 represent for the record that's a copy of Rule 30 Well
 3 Drilling Standards Rules for the Department of Water
 4 Resources. Have you ever seen that before?
 5 A. Yes.
 6 Q. What is it?
 7 A. Rule 30.
 8 Q. Okay. You understand it?
 9 A. Yes.
 10 Q. Do you understand all the provisions of it?
 11 A. Yes.
 12 Q. Okay. Did the well that you drill for
 13 Mr. Duspiva -- or, excuse me, Mr. Fillmore up to this
 14 April 28th letter you're talking about, comply with this
 15 rule?
 16 A. I submitted a long form on August 16th for a
 17 low temperature geothermal well, and I was given the
 18 authorization to continue to drill a low temperature
 19 geothermal well.
 20 Q. And did that low temperature geothermal well
 21 comply with this rule? I mean, did you follow this?
 22 A. I requested a variance.
 23 Q. Okay. Why did you request a variance?
 24 A. To be able to complete the well.
 25 Q. Okay. So you requested a variance because it

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1 didn't comply with Rule 30, correct?
 2 A. I don't know that.
 3 Q. Did you just request a variance for the heck of
 4 it?
 5 A. No.
 6 Q. Well, if it was in compliance with Rule 30, why
 7 did you request a variance?
 8 A. Because it states in Rule 30 you can request a
 9 variance.
 10 Q. But if it was already in compliance, why did
 11 you have to request a variance? I don't understand.
 12 A. You would have to ask the Department.
 13 Q. You're the one that filed for the variance. I
 14 assume there was a reason for filing for the variance. I
 15 would conclude from doing that, that you needed the
 16 variance in order to comply with Rule 30?
 17 A. 'Cause we had to change from a start card to a
 18 long form permit.
 19 Q. So you had to get a variance to file a long
 20 form permit? Is that your testimony?
 21 A. Yes.
 22 Q. Mr. Duspiva, help me understand Rule 30. Where
 23 in Rule 30 does it say to comply with this rule you have
 24 to file a long form permit?
 25 MR. GOULD: I'm just going to oppose an ongoing

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1 objection to --
 2 MR. SMITH: Sure.
 3 MR. GOULD: -- any question that require
 4 interpretation of a rule or law.
 5 MR. SMITH: Well, Mr. Gould, for the record
 6 Mr. Duspiva said he understands Rule 30.
 7 MR. GOULD: Okay. I'm just --
 8 MR. SMITH: He can --
 9 MR. GOULD: I'm just letting the record --
 10 MR. SMITH: Okay.
 11 MR. GOULD: -- realize I'm filing a continuous
 12 objection to any question that requires Mr. Duspiva to
 13 make a conclusion or interpretation of a rule or law.
 14 MR. SMITH: Even though he said he understands
 15 Rule 30.
 16 MR. GOULD: That's what -- I've stated my
 17 objection.
 18 MR. SMITH: Okay.
 19 MR. GOULD: And you can --
 20 MR. SMITH: Fair enough.
 21 MR. GOULD: -- object to my objection if you
 22 want.
 23 Q. (BY MR. SMITH) Okay. So where in Rule 30 doe
 24 it say to comply with Rule 30 you have to file a long form
 25 application?

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1 A. Well, any time you get above 85, you got to
 2 file a long form for a low temperature geothermal well.
 3 Q. I want you to look in Rule 30 and tell me where
 4 that is.
 5 A. Right in 01 it says: Drillers constructing low
 6 temperature geothermal resource wells of temperature mor
 7 than 85 degrees and less than 212 degrees must be
 8 qualified under the Well Driller Licensing Rules.
 9 Q. I don't see any reference to long form
 10 applications. Is it in there?
 11 A. It's a request of the Department.
 12 Q. So it's not in Rule 30, is it?
 13 A. I would guess that's your interpretation.
 14 Q. Well, you're looking at it. You just point out
 15 to me whatever section it's in. You said in order to --
 16 your testimony was, I needed to file a variance because I
 17 needed to use a long form application to comply with
 18 Rule 30. I'm asking you where in Rule 30 that is? It's
 19 not my interpretation. You're the one that said it. You
 20 tell me where it is.
 21 A. I would state it's a policy of the Department.
 22 Q. But it's not in Rule 30, is it? That was my
 23 question.
 24 A. I would answer it's a policy of the Department
 25 to file a long form when you're over 85 degrees.

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1 MR. GOULD: Yeah. I have --

2 MR. SMITH: So all these documents from the
3 Department that says, Mr. Duspiva, this rule -- this well
4 does not comply with Rule 30, are wrong?

5 MR. GOULD: Show them to us. I mean, I haven't
6 seen --

7 MR. SMITH: I'm just asking you as a general.

8 MR. GOULD: Yeah.

9 MR. SMITH: You're saying that when the
10 Department says this well doesn't comply with Rule 30 and
11 you better come up with a plan to fix it, that the
12 Department was wrong; that that well was not in compliance
13 with Rule 30 at that time? Is that what -- is that the
14 position of the parties in this case?

15 MR. GOULD: The problem, I think, that -- the
16 communication breakdown is that Rule 30 talks about
17 construction of a well and what needs to be done for the
18 well to be complete. And, see, we never got to that. We
19 were never -- it's never been finalized. And when you
20 draw -- when you begin to drill any well, there's no
21 surface seal, but that's required. And so, in essence,
22 what you're saying is, hey, there's no surface seal --

23 MR. SMITH: Okay.

24 MR. GOULD: -- and the driller says, hey, I'm
25 only ten feet down.

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1 MR. SMITH: Okay.

2 MR. GOULD: You know.

3 MR. SMITH: But, Jon, do you know what the
4 question's related to? I understand you want to argue
5 your case --

6 MR. GOULD: I'm not arguing my case.

7 MR. SMITH: I'm trying --

8 MR. GOULD: I'm trying to --

9 Q. (BY MR. SMITH) I'm trying to ask the questions
10 of your witness. Okay? And I asked him, why did you file
11 a variance? For what were you seeking a variance for
12 Rule 30? And he said the casing requirement. That's it.
13 That's all he's testified is -- and if I'm incorrect,
14 Mr. Duspiva, you please testify. What were you seeking a
15 variance from? And if it's only for the casing
16 requirement, that's fine. I understand that answer. I'm
17 trying to give you a chance to explain, were you seeking a
18 variance for anything else?

19 A. Under Rule 4 there would be a waiver for
20 sealing requirement.

21 Q. Okay. So you are seeking a variance from
22 casing and sealing?

23 A. Yes.

24 Q. Okay. Thank you. Really, that's all we were
25 trying to get to. And just to clarify, you weren't

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1 seeking a waiver of any of the bonding requirements?

2 A. I did request at one meeting a waiver for the
3 customer's bonding requirement.

4 Q. Did you put that in writing as a waiver
5 request -- as a variance request?

6 A. No.

7 Q. Okay. And what was the Department's response
8 to that?

9 A. No response.

10 Q. Okay. At what point did you hit a bottom hole
11 temperature of 85 degrees?

12 A. The temperature log says 585.

13 Q. Okay. And what does Rule 30 say about that?

14 A. Eighty-five is low temperature geothermal.

15 Q. Doesn't Rule 30 say that when you hit a bottom
16 hole temperature of 85 degrees, you'll stop drilling and
17 notify the Department?

18 A. Yes.

19 Q. Okay. And did you do that?

20 A. Yes.

21 Q. At what level did you hit 85 degrees bottom
22 hole temperature?

23 A. At 836 the cuttings were 892, but there was no
24 water.

25 Q. Did you not hit a bottom hole temperature of

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1 85 degrees at 600 feet?

2 A. The water was not 85 degrees at 600 feet.

3 Q. Mr. Duspiva, let me rephrase -- let me just ask
4 the question again. Did you get a bottom hole temperature
5 of 85 degrees at 600 feet?

6 A. Not initial.

7 Q. What do you mean not initial?

8 A. The water at development -- in that area it
9 didn't show 85 degrees.

10 Q. So all the records that we have here that
11 show -- in the files and everything else that show
12 85 degrees at 600 feet are incorrect?

13 A. No.

14 Q. Are they correct?

15 A. Yes.

16 Q. Okay. So you hit 85 degrees at 600 feet?

17 A. Yes.

18 Q. Didn't you, in fact, notify the Department when
19 you were at 836 feet?

20 A. Yes.

21 Q. And didn't the Department conclude that you had
22 drilled 200 feet further after you had hit the 85 degrees?

23 A. Interpretation is water, not cuttings.

24 Q. Didn't the Department conclude that you had
25 drilled 200 feet beyond 85 degree bottom hole temperature?

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1 A. No.
 2 Q. Did the Department just ignore it?
 3 A. I can't speak for the Department.
 4 MR. GOULD: Objection.
 5 Q. (BY MR. SMITH) But, anyway, the Department
 6 didn't require anything?
 7 A. That's what I just stated.
 8 Q. Okay. Now, you drilled each of those three
 9 wells we just talked about, Enochs, Riggs, and Roan,
 10 correct?
 11 A. Yes.
 12 Q. How far are those wells from Mr. Fillmore's?
 13 A. Probably five miles, I would guess, two of
 14 them, and one of them is over ten miles.
 15 Q. Okay. But in that area, you had no way of
 16 knowing that if you went to a thousand feet, that you
 17 might hit low temperature geothermal?
 18 A. Qualify that a little closer.
 19 Q. Well, you drilled those three wells in that
 20 vicinity that you described. And my question is, that you
 21 had no idea that if you went to a thousand feet or so in
 22 the Fillmore well, that you would hit low temperature
 23 geothermal?
 24 A. It was a possibility.
 25 Q. So you were aware of that?

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1 A. Yeah.
 2 Q. Okay.
 3 A. But the Riggs' well was only 251 foot.
 4 Q. Okay. It was only a 250-foot well?
 5 A. Yes.
 6 Q. So you hit geothermal at 250 feet?
 7 A. Yes.
 8 Q. Did you notify the Department when you hit the
 9 geothermal?
 10 A. Yes.
 11 Q. And that's when they went back and made you
 12 correct that well?
 13 A. Yes.
 14 Q. Okay. But the Department -- the Department
 15 did -- I don't want to mischaracterize it, but they warned
 16 you about using start cards to do a shallow well, then
 17 drilling until you hit geothermal, correct?
 18 A. Yes.
 19 Q. Mr. Duspiva, I think -- actually, I think
 20 Mr. Gould told me this, but you don't use screens in your
 21 wells?
 22 A. No.
 23 Q. Why is that? Why do you not use screens?
 24 A. They're a hindrance.
 25 Q. I don't understand. A hindrance to what?

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1 A. Because of the higher iron content of the
 2 layers, they will eventually encrust over.
 3 Q. So are you saying they don't produce water for
 4 sufficient periods of time or something else?
 5 A. After a long period of time as thin as screens
 6 as you have -- as thin -- as fine a slot as the screen is
 7 and the minerals and the iron and the water, they will
 8 eventually encrust over.
 9 Q. Okay. Can you fix them?
 10 A. I don't set screens, so I don't know.
 11 Q. Okay. I'm aware of other well drillers that do
 12 use screens. Are they being negligent in using screens?
 13 MR. GOULD: Objection.
 14 THE WITNESS: Everybody drills wells
 15 differently, so I can't answer that.
 16 Q. (BY MR. SMITH) Okay. But you've never used a
 17 screen?
 18 A. No.
 19 Q. How long have screens been around?
 20 A. I have no idea.
 21 Q. Okay. So you never -- have you ever
 22 investigated the use of screens?
 23 A. I've studied them.
 24 Q. Okay. And it's your conclusion that the use of
 25 screens is just improper? Is that a fair

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1 characterization?
 2 A. Not the style of well I like to drill.
 3 Q. Okay. You don't like to drill a well with a
 4 screen?
 5 A. Yes.
 6 Q. Okay. What's the screen do?
 7 A. Encrusts over.
 8 Q. No. What's the function -- what's the purpose
 9 of the screen?
 10 A. Well, it's a Band-Aid.
 11 Q. A Band-Aid for what?
 12 A. To keep sand out.
 13 Q. Okay. So if you use a screen, you're trying to
 14 keep sand out of your well?
 15 A. Supposedly.
 16 Q. Supposedly. Does that mean it doesn't work?
 17 A. Not got enough experience with screens to tell
 18 you.
 19 Q. Okay. Have you ever talked to anybody about
 20 using screens?
 21 A. I've seen information and listened to people
 22 talk about them.
 23 Q. Have you ever considered using them?
 24 A. No.
 25 Q. Okay. If you'd used a screen in this well,

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1 great.

2 MR. GOULD: It was answered three times. We
3 can go back on the record if you'd like to have it
4 repeated.

5 Q. (BY MR. SMITH) So when Mr. Bartholomew -- you
6 don't have any -- excuse me. Let me start over. You
7 don't have any idea how much Mr. Bartholomew was going to
8 cost to do this work, correct?

9 A. Approximate.

10 Q. Approximately what?

11 A. I don't retain that number, Bruce.

12 Q. Okay. But regardless, you were going to pass
13 those costs along to Mr. Fillmore?

14 A. Yes.

15 Q. Okay. No matter what they were?

16 A. Yes.

17 Q. Did you ever tell Mr. Fillmore what it was
18 going to cost?

19 A. On page 2.

20 Q. Okay. Now, we'll get to that. But did you
21 ever tell Mr. Fillmore about Mr. Bartholomew and what it
22 would cost?

23 A. There was no opportunity to talk to him.

24 Q. Okay. I take that as a no. But the purpose of
25 Mr. Pack -- or, excuse me, Mr. Bartholomew's work was to

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1 bring the well into compliance with Rule 30; is that
2 correct? Am I understanding that correct?

3 A. Yes.

4 Q. Mr. Duspiva, looking at -- I'm still on this
5 same document. Looking at the -- do you see the estimated
6 cost of completion 50,665? Okay? Item A says cost to
7 drill the well is 50,665. Do you see that?

8 A. Yes.

9 Q. Looking down at number C, the cost to seal the
10 annular space, \$30,000, correct?

11 A. Yes.

12 Q. So this domestic well would have cost \$80,000,
13 correct?

14 A. No.

15 Q. Okay. Go ahead and explain it then.

16 A. You didn't include B.

17 Q. Now we'll get to that. I'm talking about the
18 actual cost of the well was 80,000. We're not looking at
19 offsets or anything else. The cost of doing this well
20 would have been \$80,000?

21 A. No. Because you're not taking D out. So it
22 would have been \$70,000.

23 Q. Okay. It would have been 70,000 if you had
24 knocked off \$10,000. Okay. Is that correct?

25 A. Yes.

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1 Q. Okay. Do you see the cost to seal the annular
2 space, \$30,000?

3 A. Yes.

4 Q. What is that cost? Where does that cost come
5 from? Break it down for me.

6 A. Okay. It would have been -- see if it's
7 described in number two. There would have been --

8 Q. No. Excuse me. I don't want you to answer
9 questions that I'm not asking. We can go -- I want to
10 help you with the answer. I want to -- what I'm looking
11 for is who's doing the work, and what cost is associated
12 with it to come up with the \$30,000. So if you need to go
13 through the itemization that's on the first page, I
14 understand. You see what I'm getting at? I want to
15 understand where the \$30,000 came from, and what it
16 consists of. So if you can answer that for me, I'd
17 appreciate it.

18 A. I can't answer it at this time, 'cause I don't
19 have the documents in front of me.

20 Q. Well, was the \$30,000 Mr. Bartholomew's work?

21 A. No.

22 Q. Whose was it?

23 A. It's the combination of my work and
24 Mr. Bartholomew's work.

25 Q. Okay. If you don't know Mr. Bartholomew's

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1 amount, how much of it was yours?

2 A. I don't retain those figures, because I've got
3 to fill the well to 600 feet, and then I've got to clean
4 it back out and redevelop it.

5 Q. So on this \$30,000 it was going to cost, you
6 can't tell me how much was Mr. Bartholomew, and how much
7 was you?

8 A. Not at this time.

9 Q. Was it based on a --

10 A. Per hour.

11 Q. -- rate per hour?

12 A. Yes.

13 Q. For both of you?

14 A. My part was based on a cost. I don't remember
15 the formula I used.

16 Q. Okay. Did you ever convey the formula to
17 Mr. Fillmore?

18 A. No.

19 Q. But you expected him to pay the \$30,000, or
20 whatever it cost?

21 A. Yes.

22 Q. Okay. And it could have been more than 30,000?

23 A. Or less.

24 Q. Okay. It could have been more?

25 A. Or less.

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1 Q. Okay. And so you were going to -- under item
2 D, you were going to throw in \$10,000 worth of your time?

3 A. Yes.

4 Q. Okay. But it was your position that
5 Mr. Fillmore would pay for all of this without any idea
6 what the total would be?

7 A. Yes.

8 Q. So we knew we had a 70,000-dollar well minimum,
9 and it would only go up from that; is that correct?

10 A. Up by -- what do you mean?

11 Q. It will cost more -- it would cost at least
12 \$70,000 or more?

13 A. Or less.

14 Q. No. It's already at 50, plus 80, minus your
15 ten -- or 50, plus 30, which is 80, minus your ten. You
16 said that's 70?

17 MR. GOULD: He actually stated that the 30 was
18 an estimate, and it could be more or less.

19 MR. SMITH: Okay.

20 MR. GOULD: Okay? So --

21 MR. SMITH: But he also testified it was 70.
22 That was the estimate.

23 MR. GOULD: Yeah. It's an estimate --

24 MR. SMITH: Okay.

25 MR. GOULD: -- and it could be -- he's

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1 testified that it could be more or less --

2 MR. SMITH: Okay.

3 THE WITNESS: -- depending on what that 30 was.

4 MR. SMITH: Okay.

5 MR. GOULD: That's an unknown.

6 Q. (BY MR. SMITH) Okay. So, anyway, you didn't
7 know what it was going to cost, but you just expected
8 Mr. Fillmore to pay it no matter what it was; is that
9 correct?

10 A. Yes.

11 Q. Okay.

12 A. Minus the 10,000.

13 Q. Do you have some documents that can help us
14 understand what Mr. Bartholomew's costs were? You
15 mentioned you don't have those papers in front of you, but
16 do you have them?

17 A. I think I can find them.

18 MR. SMITH: Okay. Mr. Gould, can we have an
19 agreement that you will provide those to me?

20 MR. GOULD: Yeah. I'll try to get them.

21 Q. (BY MR. SMITH) Okay. Was anybody else's costs
22 besides you and Mr. Bartholomew included in that 30,000?

23 A. The cost of water from Homedale.

24 Q. Okay. Anything else?

25 A. I would have to look at the documents to see if

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1 there was anything else.

2 Q. Okay.

3 A. Grout.

4 Q. So, Mr. Duspiva, is it your position that no
5 matter what this well cost, and no matter what the reason
6 for that cost, that Mr. Fillmore had to pay that?

7 A. Yes.

8 Q. So if you screwed up something, Mr. Fillmore
9 would pay for that?

10 MR. GOULD: Objection, speculation.

11 Q. (BY MR. SMITH) Is that your position?

12 A. There was nothing screwed up.

13 Q. No. I said if you screwed up.

14 A. If and but the whole world would have a but
15 full of nuts.

16 Q. But if you did something wrong, you still
17 expected the cost to be carried by Mr. Fillmore; is that
18 correct?

19 A. No.

20 Q. Okay. So when you go out to drill this well
21 and you seek the variance and don't get it, and then you
22 have to come back in to have additional work done because
23 you didn't get a variance, that cost is supposed to be
24 carried by Mr. Fillmore; is that correct?

25 A. I don't understand the question.

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1 Q. Okay. Let's put it this way. Let's go through
2 this methodically then. Mr. Pack -- or Mr. Bartholomew is
3 coming in to do this work in order to comply with Rule 30,
4 correct?

5 A. Yes.

6 Q. And you have to comply with Rule 30, correct?

7 A. Right.

8 Q. So you sought a variance so you wouldn't have
9 to comply with Rule 30, correct?

10 A. No.

11 Q. You sought a variance so that you would not
12 have to incur these particular costs under Rule 30,
13 correct?

14 A. No.

15 Q. So why is Mr. Bartholomew working? Why are yo
16 hiring him?

17 A. To comply with Rule 30.

18 Q. And isn't that your obligation to comply with
19 Rule 30?

20 A. It's part of the well.

21 Q. Isn't it your obligation to comply with
22 Rule 30?

23 A. It's a joint venture between the customer and
24 the driller.

25 Q. Okay. But under your scenario here you're

EXH 1

EXH 2

EXH 3

EXH 4

EXH 5

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1 saying the well owner pays all the costs to comply with
2 Rule 30; isn't that correct?

3 A. No. It's stated there under D.

4 Q. That's your credit. Okay. But this work is
5 being done in order to comply with Rule 30. Are you --
6 let me rephrase this. Are you saying that Mr. Fillmore
7 violated Rule 30?

8 A. At no point has anybody violated Rule 30 and
9 the well was never completed. So I can't say that Rule 30
10 was ever violated.

11 Q. Okay. But this work is being done in order to
12 comply with Rule 30, correct?

13 A. To complete the well.

14 Q. Yeah. And your idea is that Mr. Fillmore pays
15 that except you're going to credit \$10,000 against that?

16 A. Right.

17 Q. Okay. So if it costs \$200,000 to comply with
18 Rule 30 to do this work --

19 MR. GOULD: Objection, speculation.

20 MR. SMITH: -- and you credited 10,000,
21 Mr. Fillmore would pay 190,000? Is that a fair way of
22 putting it?

23 THE WITNESS: No.

24 Q. (BY MR. SMITH) No?

25 A. Okay. Never let that happen.

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1 Q. Okay. I thought you testified that
2 Mr. Fillmore had to pay no matter what. Is that --

3 MR. GOULD: I object.

4 MR. SMITH: -- did I misunderstand that?

5 MR. GOULD: You're creating situations that are
6 completely speculative. Okay. And --

7 MR. SMITH: I'm trying to rephrase the
8 testimony that I thought I heard, is that Mr. Fillmore was
9 responsible for paying no matter what. Did I
10 misunderstand that, Jon?

11 MR. GOULD: I think you're taking it out of
12 context. Okay? If the well would have cost ten million,
13 I don't think we would be here today.

14 MR. SMITH: How about nine million?

15 MR. GOULD: Can we take a short break?

16 MR. SMITH: Sure.

17 (A brief recess was taken.)

18 Q. (BY MR. SMITH) Okay. We're still looking at
19 this cost to complete. I'm going to summarize this to
20 make sure I'm not misunderstanding. What you're saying
21 it would cost at least 50,665, and then plus or minus 30,
22 is that correct, item C? It would cost 30,000 to do the
23 seal?

24 A. Yes.

25 Q. Okay. And then you deducted the deposit from

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1 Mr. Fillmore of 20, and you threw in a 10,000-dollar cost
2 share from you. So the total then, it says, 50,665. Is
3 that the final cost of the well?

4 A. Final cost estimate.

5 Q. Okay. Could it be less?

6 A. Yes.

7 Q. How could it be less?

8 A. Depending on the time spent by Mr. Bartholomew
9 putting in the seal. His time is based on a base plus
10 hours rig time.

11 Q. But you're starting off under item A at 50,665,
12 and then we're adding anything for Mr. Bartholomew, and
13 anything for yourself. Isn't that going to make it more
14 than 50,665?

15 A. Yes.

16 Q. So when I'm saying total down there, what does
17 total refer to?

18 A. Well, it's just the way the math was done. So
19 you got to add the deposit back to it, so that would make
20 it -- with these numbers as they stand, it would make it a
21 70,665-dollar well.

22 Q. Okay. Do you drill a lot of 70,000-dollar
23 domestic wells?

24 A. No.

25 Q. Okay. Do you think that's a reasonable amount

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1 for a domestic well?

2 A. I don't know if you can put reasonable on
3 any -- cost of any well.

4 Q. Not figured in here is the cost of the bond
5 that low temperature geothermal wells require. And the
6 Department proposed a 20,000-dollar bond, correct?

7 A. Yes.

8 Q. And who is going to pay that?

9 A. Mr. Fillmore.

10 Q. So that would have been \$90,000 then, correct?
11 He'd pay \$70,665 plus \$20,000 for the well -- for the
12 bond?

13 A. That doesn't have to be a cash bond.

14 Q. Okay. But he's got to pay something for the
15 bond. How much would the bond -- how would he get that?
16 How much would it cost?

17 A. I understand around \$450.

18 Q. Okay.

19 A. For one year.

20 Q. Okay. Did you ever talk to Mr. Fillmore about
21 the cost of a geothermal well?

22 A. Well, when we did the August 9th, we did it and
23 he understood it would cost more, so we went on down.

24 Q. No. I'm talking about these additional costs
25 of complying with Rule 30 to get the -- to use the low

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1 satisfactory means of sealing the well?

2 A. It was considered.

3 Q. Did the Department respond to that particular
4 item?

5 A. They let me to continue to drill is the best
6 way I can answer that.

7 Q. But was the plug associated with drilling or
8 abandoning the well?

9 A. Sealing the well. Putting in a temperature
10 seal, excuse me.

11 Q. So where -- maybe I misunderstand. So where
12 would the wooden plug go?

13 A. It's to hold the -- okay, to define this, you
14 put in your -- you put in your perforations -- first you
15 put in your plug, it expands, you put in your
16 perforations, and then you pump the grout in. And then
17 when the grout is set and complete, it's all drilled back
18 out.

19 Q. Okay. So the wooden plug would be an
20 alternative to putting cement in the bottom, to do another
21 type of plug?

22 A. Right.

23 Q. Was there a concrete plug? Is that what was
24 envisioned at one time?

25 ~~A. Perforations with grout pumped out through --~~

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1 the plug was to keep the grout from going to the bottom of
2 the well.

3 Q. Yeah. And the plug was made of what?

4 A. Wood.

5 Q. But the other -- I mean, if the wood wasn't
6 acceptable, what were you going to use for a plug?

7 A. As the later document stated, sand from
8 1130 feet all the way to 600 feet.

9 Q. Okay. So you didn't pump sand in?

10 A. Yeah.

11 Q. Okay. Were there any other subcontractors
12 involved beside Mr. Bartholomew and Mr. Winebarger?

13 A. No.

14 MR. SMITH: Okay. Will you mark this as
15 Exhibit 5.

16 (Deposition Exhibit No. 5 was
17 marked for identification.)

18 Q. (BY MR. SMITH) Mr. Duspiva, I'm going to hand
19 you what's marked as Deposition Exhibit 5. Do you
20 recognize that document?

21 A. Yes.

22 Q. And what is it?

23 A. Appears to be a Notice Of Violation, but it's
24 missing page 2.

25 Q. Okay. And you're right. But, anyway, this was

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1 the Notice Of Violation the Department sent to you about
2 violating Rule 30; isn't that correct?

3 A. Their contention.

4 Q. And it says that you failed to comply with
5 condition of approval number eight of the start card,
6 correct?

7 A. Yes.

8 Q. You recall in Mr. Fillmore's deposition we had
9 a copy of the original permit, the start card?

10 A. Right.

11 Q. Who filled that out?

12 A. I did.

13 Q. Okay. And then you gave it to Mr. John
14 Fillmore to sign; is that correct?

15 A. Yes.

16 Q. And let me just -- to speed it up, just
17 paraphrase. But if you look down at that one, two, three,
18 fourth paragraph, it's talking about, he failed to notify
19 them after hitting the 85-degree bottom hole temperature,
20 correct? And it says: Drilling continued an additional
21 200 more feet before notification was provided to the
22 Department.

23 A. Do you have the document that goes with this?

24 Q. I don't. I got to tell you, I got this out of

25 ~~the documents you gave me. So if there was a second~~

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1 page --

2 A. There's a rescission of this notice of
3 violation.

4 Q. Oh, no, no, no. I know -- that's a separate
5 document.

6 A. It pertains to this document.

7 Q. Yes. But this Notice Of Violation was because
8 you failed to notify them about going past the 85-degree
9 bottom hole temperature, correct?

10 A. But this -- but this was rescinded.

11 Q. I know. But that's what this Notice Of
12 Violation was about, correct?

13 A. This is not a valid document.

14 Q. Mr. Duspiva, I know you want to argue about it,
15 but I'm just trying to verify that that's what this
16 document is about. Okay. It's a Notice Of Violation
17 referring to failure to comply with approval number eight
18 of the start card, correct?

19 A. This Notice Of Violation was rescinded, and
20 that's it.

21 Q. Well, the notice was issued to you, correct?

22 A. And it was rescinded.

23 Q. Okay. Did your start card approval -- were
24 they suspended?

25 A. As part of the agreement.

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1 Q. As part of what agreement?
 2 A. Well -- and I didn't agree with it. But I no
 3 longer use start cards.
 4 Q. Okay. So those privileges were suspended. But
 5 in this Notice Of Violation it only says for one year.
 6 Have they been reinstated?
 7 A. I no longer use start cards.
 8 Q. Okay.
 9 A. This is not a valid document 'cause it's been
 10 rescinded. They agreed that my contention was correct and
 11 rescinded the NOV.
 12 Q. Okay. Mr. Duspiva, when we were talking
 13 about -- this morning I asked you about your credentials.
 14 One of the cards you gave me dealt with the -- was there a
 15 card that dealt with master ground water contractor? Was
 16 that one of the documents?
 17 A. Yes.
 18 Q. What is that?
 19 A. It's a national designation.
 20 Q. Of what?
 21 A. Of your drilling experience.
 22 Q. How do you get it?
 23 A. You go through -- if you look at Exhibit I and
 24 go through the back of, it tells the tests you have to
 25 take and get a passing score on all those designated

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1 deals, and then you sit for a four-hour written exam.
 2 Q. And you took those tests and sat for that exam?
 3 A. Yes.
 4 Q. When did you pass that exam?
 5 A. December 2007. Does that sound right?
 6 Probably December 2006.
 7 Q. '6. Okay. So a four-hour exam. Looking at
 8 Exhibit I and it's -- is this the -- I'll point to the
 9 bottom card. It's a certified by NGWA. Is that the card
 10 you're talking about?
 11 A. Yeah, National Ground Water Association.
 12 Q. Okay. And then you're certified in every one
 13 of these items on the back of that card, A through O; is
 14 that correct?
 15 A. Yes.
 16 Q. Okay. And explain to me what's involved in the
 17 certification. You have courses; is that correct?
 18 A. Basically, your knowledge of drilling, and then
 19 you take tests to check your knowledge.
 20 Q. Is it a one-time test?
 21 A. Yes.
 22 Q. It's just one test for all of it?
 23 A. Well, each one of those letters is a test.
 24 Q. So A through O each has its own individual
 25 test?

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1 A. Yes. And then there's a general test. I don't
 2 know if it's listed there to start with.
 3 Q. There's no general test on -- so when you say
 4 December 2006, that was the general test?
 5 A. No. That was the master ground water test.
 6 These tests were probably over -- probably a six-year
 7 period from A through O.
 8 Q. Okay. So do you -- let me ask it. Do you pass
 9 or fail the test?
 10 A. Yes.
 11 Q. Did you pass the test the first time?
 12 A. Not all of them.
 13 Q. Describe for me how that testing went. I mean,
 14 how many times did you take them?
 15 A. Some of them I took twice.
 16 Q. Did you take any of them more than twice?
 17 A. Not that I remember.
 18 Q. Okay. How about the general test? Did you
 19 take it --
 20 A. Twice.
 21 Q. Twice. Okay.
 22 A. It's a 50 essay question test.
 23 Q. Okay. So when you get this certification, what
 24 does that mean? What does that allow you to do?
 25 A. Wear a green jacket.

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1 Q. I apologize. I'm not -- I don't catch that
 2 one.
 3 A. Well, that's -- it's --
 4 Q. It's a green jacket -- that's what passing all
 5 these tests and getting all the experience gets you is a
 6 green jacket?
 7 A. Yeah. Like the Masters golf -- it's --
 8 Q. Those guys make a lot of money for that green
 9 jacket. I don't know if you do or not.
 10 A. No. It's pride and accomplishment.
 11 Q. Okay.
 12 A. You're supposed to advertise it. But it's more
 13 of a personal accomplishment.
 14 Q. Okay.
 15 A. But the green jacket's nice. There's 80 of us
 16 out of 3500.
 17 Q. Anybody else in the State have it?
 18 A. No. I'm the first one.
 19 MR. SMITH: Mark that one as Exhibit 6.
 20 (Deposition Exhibit No. 6 was
 21 marked for identification.)
 22 Q. (BY MR. SMITH) Mr. Duspiva, I want to ask you
 23 some questions about the Ground Water Association. If
 24 you'll look back at page 7 of this document. Have you
 25 seen this document before, what's marked as Exhibit 6?

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1 A. Yes.

2 Q. Okay. And for the record, it's a document
3 filed by your attorney. It's a request for compliance
4 conference. And if you look back at page 7, it talks
5 about additional sanctions being warranted. In there it
6 talks about the Idaho Ground Water Associate. I assume
7 that means association?

8 A. Yes.

9 Q. What is the Ground Water Association?

10 A. Members of drilling and pump and manufacturers
11 and suppliers in the State of Idaho.

12 Q. Okay. And are you still a member?

13 A. Yes.

14 Q. Okay. Mr. Gould wrote in there -- and if
15 you'll bear with me on this -- these are things that
16 caught my attention when I was going through the document
17 It says you no longer are a board member, you're not on
18 the education committee, or the legislative committee.

19 A. That is incorrect. I am on the continuing
20 education committee.

21 Q. Okay. Are you on the board?

22 A. No.

23 Q. Are you on the legislative committee?

24 A. No. That was with the Idaho Water Users.

25 Q. Okay. Got you. And it says if you receive a

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1 Notice Of Violation, you would lose your MDWC status. Do
2 you see that?

3 A. Yes.

4 Q. It goes on. It says: Consequences of the
5 Fillmore well and Mr. Duspiva are significant, include
6 loss of work, damage to your reputation, loss of positions
7 of influence, costs incurred in resolving -- what is all
8 of this referring to? All of this is tied to the Fillmore
9 well. Did you lose your board seat because of the
10 Fillmore well issue?

11 A. I can't tell you that. It's a voted position.

12 Q. Well, the way this thing is written, it says
13 since beginning work on the Fillmore well. And then it
14 goes over and says: The consequence of the Fillmore well
15 on Mr. Duspiva are significant. If you read this
16 document, it says, because of the Fillmore well, these
17 things happened. And I'm asking you -- I don't understand
18 this. These are arguments that you presented to the
19 Department with regard to this NOV. Did the Fillmore well
20 issue have these effects?

21 MR. GOULD: Objection. It's requiring Gary to
22 speculate.

23 THE WITNESS: I can tell you the loss of
24 work --

25 MR. SMITH: Okay.

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1 THE WITNESS: -- because of indecision.

2 MR. SMITH: Okay.

3 THE WITNESS: The well was completed in
4 October. And due to requests, I was not able to move the
5 rig until November of -- I believe November 2008.

6 Q. (BY MR. SMITH) And why couldn't you move it?

7 A. 'Cause the well wasn't complete.

8 Q. Didn't you go through that issue with the
9 Department to get permission to remove it?

10 A. Yes.

11 Q. And didn't the Department tell you that they
12 weren't prohibiting you from moving the well --

13 A. The issue was --

14 Q. -- or the rig, excuse me?

15 A. The issue was I had to give them a specific
16 date that I would be back.

17 Q. But you were allowed to remove that rig
18 correctly --

19 A. No.

20 Q. -- correct?

21 A. No.

22 Q. Oh, you weren't?

23 A. No.

24 Q. Is it still there?

25 A. No.

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1 Q. So you did remove it?

2 A. Yes. At the Department's request.

3 Q. Okay. What's this damage to reputation
4 assertion refer to?

5 A. Well, lack of work. It's around -- amongst the
6 drillers, this well.

7 Q. In what sense? What do you mean?

8 A. Well, just normal hearsay comments.

9 Q. To what effect? What do you mean? I don't
10 understand what you're saying. What comments are being
11 made?

12 A. Well, I don't hear them, so I don't know.

13 MR. GOULD: Objection. Again, you're asking
14 for speculation.

15 MR. SMITH: I'm asking him if he knows.

16 MR. GOULD: Okay.

17 MR. SMITH: If he doesn't know, that's fine.

18 Q. (BY MR. SMITH) Do you know if it is damage to
19 your reputation as opposed to enhancing your reputation?

20 A. It's probably damaged it. It hasn't enhanced
21 it.

22 Q. And why has it been damaging?

23 MR. GOULD: Objection -- an ongoing objection.

24 MR. SMITH: Jon, you wrote this.

25 MR. GOULD: Okay. But this is a --

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1 MR. SMITH: You said this is a damage --
 2 MR. GOULD: -- document. This isn't for the
 3 deposition, you know.
 4 MR. SMITH: Sure it is.
 5 MR. GOULD: This document wasn't written for --
 6 you know, this isn't --
 7 MR. SMITH: Is it accurate?
 8 MR. GOULD: I think this is speculation.
 9 MR. SMITH: Is it accurate?
 10 MR. GOULD: I'm not going to answer that.
 11 MR. SMITH: Is it inaccurate then?
 12 MR. GOULD: I'm not going to answer that.
 13 Okay? I'm objecting because you're asking my client to
 14 speculate. Okay?
 15 MR. SMITH: About what?
 16 MR. GOULD: About what other people think,
 17 about what board consequences may or may not have
 18 resulted, what the community may or may not think.
 19 MR. SMITH: Okay.
 20 MR. GOULD: It's speculative.
 21 Q. (BY MR. SMITH) Have you heard any specific
 22 comments, Mr. --
 23 A. No.
 24 Q. Okay. Have you lost a position of influence as
 25 a consequence of the Fillmore well?

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1 A. Possibly.
 2 Q. Okay. Which position would that be?
 3 A. Probably the board and legislative committee.
 4 Q. Okay. This refers to, you have modified your
 5 drilling protocol. What does that mean?
 6 A. I now have a written contract.
 7 Q. Okay. When it says modified drilling protocol,
 8 are your modified drilling protocols now different from
 9 they were -- different from the way they were when you
 10 drilled the Fillmore well?
 11 A. I haven't drilled enough wells since then to
 12 really answer that question, other than I will no longer
 13 drill a well that's over 85 degrees, even though I have a
 14 bond for it.
 15 Q. Is that the modification and protocol that is
 16 referred to here you think?
 17 A. Probably.
 18 Q. Okay.
 19 MR. GOULD: That was Exhibit 6?
 20 MR. SMITH: It was, uh-huh.
 21 Q. (BY MR. SMITH) Mr. Duspiva, one of documents
 22 asked you to bring referred to meetings with the director
 23 of Department of Water Resources. Have you had some
 24 meetings with the director of the Department of Water
 25 Resources since this litigation ensued?

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1 A. I believe there was a meeting on the 10th of
 2 May, and then I believe the meeting with all the
 3 Department was on the 13th of May in the conference room.
 4 There was some discussion with the director in July before
 5 the Water Source Board meeting in Coeur d'Alene.
 6 Q. July of 2009?
 7 A. Legislation passed last year. That'd be -- I
 8 believe 2008.
 9 Q. Okay.
 10 A. Verbal only.
 11 Q. And were those meetings related to this
 12 litigation?
 13 A. No.
 14 Q. Were they related to the issue of the Fillmore
 15 well?
 16 A. I requested that the director give the
 17 Fillmores the right to the well, leave it as it was.
 18 Q. Does that mean without the seal?
 19 A. Yes.
 20 Q. Without the casing -- no, excuse me, just
 21 without the seal, that was it?
 22 A. Right.
 23 Q. And what did the director say?
 24 A. He wouldn't answer the question. I also asked
 25 him about their noncompliance of some of the rules they

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1 had in place on Artesian and stuff that they've never
 2 complied with. That was mainly the gist of it.
 3 Q. You mean like shutting down Artesian -- illegal
 4 Artesian wells?
 5 A. No. The definition of Artesian. Artesian is
 6 flowing well -- in the water law, as you well know, the
 7 definition of Artesian in the licensing rule --
 8 construction rules is anything that raises above the layer
 9 you find it in.
 10 Q. Right. You were seeking to have that changed
 11 or interested in it?
 12 A. Well, I was asking why they didn't follow their
 13 own rules.
 14 Q. That's probably a fair question.
 15 MR. SMITH: Jon, I've got a number of documents
 16 here that -- I mean, are you okay continuing, or would you
 17 prefer to come back --
 18 MR. GOULD: How long -- how much time are you
 19 going to need?
 20 MR. SMITH: Tell you what. Let me -- I haven't
 21 had a break yet.
 22 MR. GOULD: Yeah.
 23 MR. SMITH: Let me take a break and I'll talk
 24 to Clyde and Dee and then -- we'll do that. Why don't
 25 you-all take a break.

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1 (A brief recess was taken.)
 2 (Deposition Exhibit No. 7 was
 3 marked for identification.)
 4 Q. (BY MR. SMITH) Mr. Duspiva, I've handed you
 5 what's marked as Deposition Exhibit 7. Have you ever seen
 6 that document before?
 7 A. Yes.
 8 Q. Okay. It's a letter from your counsel to me.
 9 Mr. Duspiva, we've talked before -- earlier about this
 10 cost of abandonment versus completion questions. If you'd
 11 turn back to page 2 on this thing. This is a letter sent
 12 January 15, 2008, and it says cost of abandonment,
 13 \$20,000. That's the same number you gave me in the
 14 May 5th letter. Okay?
 15 A. Right.
 16 Q. Do you recall that?
 17 A. Yeah.
 18 Q. And you said -- I have in my notes here, it
 19 says, please ask Gary what the breakdown on this is. And
 20 you can't tell me; is that correct?
 21 A. Right.
 22 Q. Okay. Well completion, January 2008, you're
 23 telling us that it cost \$58,000 -- this is after \$20,000
 24 have been paid to you, but another \$58,000 to complete the
 25 well. Is that -- that's what this letter says, correct?

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1 A. Yes.
 2 Q. What is that 58,000 based on?
 3 A. The paragraph above.
 4 Q. Well, I know. But who's doing the work?
 5 A. This would have been a subcontractor.
 6 Q. And who would that have been?
 7 A. Alan Winebarger. That required pulling the
 8 casing completely and completely redrilling the well.
 9 Q. So that 58,000 is solely Alan Winebarger?
 10 A. There would probably have been some of my help
 11 involved in that.
 12 Q. But most of it is him?
 13 A. Probably a good percentage of it. But that
 14 deal's off the table.
 15 Q. It's off the table now. But on January 15,
 16 2008, this was what you were proposing?
 17 A. Right.
 18 Q. Okay. In essence, you were just going to
 19 redrill the well again. So we would have a 58 and then a
 20 56. We'd have a 114,000-dollar well; is that correct?
 21 A. I don't remember how all the figures went
 22 together on that.
 23 Q. Well, let's put it this way. You've already
 24 testified today that it was 50,665?
 25 A. Right.

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1 Q. Okay. And now you're proposing another 58,000
 2 on top of that. It's 114,665?
 3 A. If your math is correct.
 4 Q. Okay. That's what you were proposing?
 5 A. Right. But it was never --
 6 Q. Does that seem reasonable?
 7 A. I don't have a problem with it.
 8 Q. Okay. Did Mr. Fillmore ever -- did
 9 Mr. Fillmore ever talk to you -- strike that. Let me
 10 start over. You and Mr. Fillmore never had an agreement
 11 to drill a low temperature geothermal well, did you?
 12 A. Yes, we did.
 13 Q. You did?
 14 A. Yes.
 15 Q. When did that occur?
 16 A. On the 16th of August.
 17 Q. And tell me about that then.
 18 A. That's the long form.
 19 Q. That was a form, if I recall correctly, to
 20 submit a permit to the Department to continue drilling the
 21 well?
 22 A. Right. And John Fillmore signed it.
 23 Q. And that's the form that you filled out and
 24 gave to John, correct?
 25 A. Right.

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1 Q. And did you tell him at the time what a low
 2 temperature geothermal well cost?
 3 A. I told him there was implications to it.
 4 Q. Did you tell him what those implications were?
 5 A. Good percentage of them.
 6 Q. Like what?
 7 A. Well, that there was additional cost going
 8 deeper and such.
 9 Q. The cost -- the perforator costs you mean?
 10 A. Right.
 11 Q. Yeah. But, I mean, that cost associated with a
 12 low temperature geothermal well?
 13 A. Well, there was additional costs. But there
 14 was no way of knowing because of the Department of Water
 15 Resources' track record in the past.
 16 Q. Did you talk to him about that, of the
 17 Department's positions in the past?
 18 A. Yes.
 19 Q. What did you tell him?
 20 A. Well, that generally because it was a domestic
 21 well, there generally wasn't an issue and they didn't --
 22 they generally didn't require the bond.
 23 Q. What about the sealing? Did you talk to John
 24 about that?
 25 A. Well, see, I didn't know what the Department

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1 was going to require at that time.

2 Q. So at this point in time -- this is August 16,
3 2008?

4 A. '7.

5 Q. '7. Okay. You've already drilled into the
6 geothermal aquifer, correct?

7 A. Geothermal clay, not aquifer.

8 Q. You were in a low temperature geothermal
9 situation, correct?

10 A. Right.

11 Q. And you didn't see the need to inform the
12 Fillmores about the ramifications of that, other than to
13 say that there were some ramifications; is that correct?

14 A. I told them to the best of my knowledge at the
15 time of what it was about.

16 Q. Did you think you didn't have to comply with
17 Rule 30 at that point?

18 A. I requested a variance and got no kickback from
19 the Department.

20 Q. So you took the chance of getting the variance
21 and advising the Fillmores to go further into the
22 geothermal; is that correct?

23 A. Yes.

24 Q. And if that had proved right, then you'd gotten
25 the variance, but if it was wrong, then the Fillmores had

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1 to pay for it. Is that the way you viewed it?

2 A. See, I don't understand that question because
3 we got approval from the Department to complete it to meet
4 Rule 30.

5 Q. We're talking about the cost of it on
6 August 16th. Let me put it this way. Let's look at it
7 from a different perspective. You recommended to the
8 Fillmores, did you not, to keep going deeper?

9 A. Yes.

10 Q. And they accepted your recommendations,
11 correct?

12 A. Yes.

13 Q. And they accepted those recommendations without
14 any explanation from you as to the ramifications of being
15 in a low temperature geothermal aquifer, correct?

16 MR. GOULD: Objection.

17 THE WITNESS: I disagree with that.

18 Q. (BY MR. SMITH) Well, how were they supposed to
19 know about it if you didn't tell them?

20 MR. GOULD: Objection. I thought he answered
21 that he did tell them there were ramifications.

22 THE WITNESS: And they also talked to Rob
23 Whitney.

24 Q. (BY MR. SMITH) And Rob informed them about the
25 low temperature geothermal?

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1 A. Yes.

2 Q. This was after you were in the geothermal
3 situation, correct? I mean, this is all history. This is
4 all after the fact, correct?

5 A. Right. The well could have been abandoned at
6 that time.

7 Q. But they would have had to pay for it?

8 A. The services so much per foot.

9 Q. Well, we're talking about abandonment costs.

10 Abandonment costs you never talked to them about at the
11 beginning, did you?

12 A. I believe there was some discussion about
13 abandonment.

14 Q. Like what?

15 A. There would be a cost to abandonment.

16 Q. When did you talk to them about that?

17 A. Well, probably in the time that we were making
18 the transition.

19 Q. Transition -- you're going to have to
20 explain --

21 A. Transition from the start card to the long
22 form.

23 Q. Mr. Duspiva, this is after you're in the
24 geothermal aquifer.

25 A. I wasn't in an aquifer.

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1 Q. Well, you were in a geothermal situation. You
2 were in a situation where you had to comply with Rule 30,
3 correct, at that point?

4 A. If I continued.

5 Q. Or if you abandoned?

6 A. No. Rule 30 didn't apply.

7 Q. Rule 30 doesn't apply with regard to
8 abandonment?

9 A. Because the well at that time could have been
10 abandoned without -- would have been abandoned
11 differently.

12 MR. GOULD: And, Bruce, I don't think we're
13 going to -- I think you're going to have a lot more
14 than --

15 MR. SMITH: Yeah. Jon, I think you're right.

16 If these are the kind of answers to questions I'm going to
17 get, you're right. We got a lot more to go through.

18 MR. GOULD: Okay.

19 MR. SMITH: So let's just continue the
20 deposition until -- Jon and I will figure out another time
21 to do this. Thank you.

22 (The deposition was adjourned at 6 p.m.)

23 (Signature requested.)

24
25

MOORE SMITH BUXTON & TURCKE, CHARTERED

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* Also admitted in California
* Also admitted in Colorado
* Also admitted in New Mexico
* Also admitted in Oregon
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* Also admitted in Washington

January 16, 2008

Jon C. Gould
Ringert Clark Chartered
455 South Third Street
Boise, ID 83701

Re: Fillmore Well

Dear Jon:

Thanks for your January 15, 2008 letter regarding the situation with the well. I had requested an explanation of the details of options available to assess the situation. In order to reach any resolution of the matter, it is important that the options be thoroughly explained. The detail provided regarding the well completion alternative does not provide sufficient information to consider its viability.

I also need to clarify and have clarified a few items. First, in talking to my clients, I learned that they contracted with Mr. Duspiva to have a domestic house well developed. They did not and do not want a low temperature geothermal well. They need a useable, cold water domestic well, so that objective should be agreed upon as we proceed. If the existing well cannot be repaired to achieve that objective, it will not be acceptable.

Abandonment Alternative

This alternative is pretty well described, but it would be helpful to have a breakdown on costs associated with the effort. Also, I assume this proposal has been deemed acceptable by IDWR. If abandonment is undertaken, I understand the cost would be borne by Mr. Duspiva. Any casing that is salvageable from the existing well should be available to my clients since they have paid approximately \$20,000 which includes materials such as the casing.



Jon C. Gould
January 17, 2006
Page 2

Well Completion Alternative

This alternative, estimated at \$58,000, needs much more detail to allow it to be considered. My clients would like a breakdown of costs associated with each aspect of the work. Also, if any of the work is to be subcontracted, that should be spelled out in detail, e.g., who, for what type of work, when, and cost. The objective of this alternative should be to produce a cold water domestic well of sufficient production capacity to serve my clients' needs. Therefore, the design and details of the construction should be set out in detail. For example, it is not clear if "redrilling" includes going back to the full depth of the well such that the result is a low temperature geothermal well. My clients do not want a geothermal well. All they need is a cold water domestic well. Also, it would be necessary to know depth, the casing, location of screens, etc., so that my clients know they have a suitably constructed well. Therefore, please send a cost breakdown as well as an explanation of the well that is being proposed. Given the situation that has developed thus far, my clients would want assurance and a warranty in writing that the well construction meets IDWR requirements. In fact, we may want to propose having the well drilling overseen and the well inspected by IDWR prior to acceptance by my clients.

Until we know more about the details of the design and assured completion of a usable, cold water domestic well acceptable to IDWR and my clients, it is hard to discuss financial arrangements for any continuing work. However, \$78,000 for a domestic well goes far beyond what is reasonable in terms of cost. My client is willing to negotiate a reasonable result if they get the type of well they asked to have constructed. Thanks.

Sincerely yours,

MOORE SMITH BUXTON & TURCKE, CHTD.



Bruce M. Smith

BMS/ds

cc: Client

000167

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= Also admitted in Utah
‡ Also admitted in Washington

May 12, 2008

Jon C. Gould
Ringier Clark Chartered
455 South Third Street
Boise, ID 83701

Re: Duspiva

Dear Jon:

Your letter of May 5, 2008, arrived the afternoon after we talked. My client is disappointed in Mr. Duspiva's response. The Fillmores have been cooperative in allowing Mr. Duspiva time to rectify his problems with the IDWR and the well. However, their cooperation is not producing much results. As Mr. Fillmore has indicated in the past, unless the IDWR is satisfied and agrees to a remedy for fixing the well, it is of little use to see if something can be worked out between the Fillmores and Mr. Duspiva.

As I understand your letter, the cost of closing the well and the cost of completing it are exactly the same. The coincidence is a bit interesting. However, it appears Mr. Duspiva actually is proposing that completing the well be based on actual costs and materials for sealing the annular space. By limiting Mr. Duspiva's "contribution," he appears to leave open ended the remaining costs which he appears to suggest will be paid by the Fillmores. Thus, this approach appears to be nothing more than asking Mr. Fillmore to pay for fixing the well that Mr. Duspiva improperly drilled. Mr. Fillmore was very explicit that the total costs and a breakdown of costs must be explained. The estimates for the cost of completion and closure both fail to provide that information. There is no mention at all of the water quality and temperature issues.

The Fillmores had asked for a domestic well but, to date, they do not have one. They did not want a geothermal well. They are not accepting ownership of the existing well unless the problems are corrected, the well can serve as a domestic well, and a reasonable price is agreed upon.



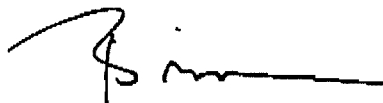
000168

Jon C. Gould
May 13, 2008
Page 2

It also seems that the cost of closure is quite high. Given the lack of detail and information in the estimates, some effort should be made to make sure either option is properly estimated in terms of cost and performance. Therefore, Mr. Fillmore is requesting that a bid from a qualified, independent driller be secured by Mr. Duspiva for both closure and completion. In obtaining bids, please make sure there is sufficient detail to understand who is doing the work, the work being done, and the cost.

Sincerely yours,

MOORE SMITH BUXTON & TURCKE, CHTD.



Bruce M. Smith

BMS/ds

cc: John Homan - IDWR
Client

000169

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* Also admitted in Washington

May 28, 2008

Jon C. Gould
Ringert Clark Chartered
455 South Third Street
Boise, ID 83701

Re: Duspiva Well

Dear Jon:

My client has tried to be as cooperative as possible about this matter, but the inability to obtain information from Mr. Duspiva is extremely frustrating. While I appreciate the difficult circumstances Mr. Duspiva is in, trying to resolve them through the Fillmores is not reasonable. Mr. Fillmore's needs were quite simple. He had engaged Mr. Duspiva to drill a domestic well. Mr. Fillmore relied on Mr. Duspiva to use good judgment on getting the well drilled. Maybe because the equipment was not the right equipment or maybe because of other reasons, but Mr. Fillmore still does not have a usable well. What we now have is a low temperature geothermal well drilled to unreasonable depth, with questionable water quality, and that does not meet IDWR requirements. No one could reasonably suggest Mr. Duspiva has met his obligations. Yet your May 13 and May 15 letters suggest that Mr. Duspiva expects the Fillmores to accept ownership of the incomplete and improperly drilled well, pay \$30,000 over what they've already paid, and to make a decision on fixing the well or abandoning it in order for Mr. Duspiva to comply with IDWR's directions. In other words, Mr. Duspiva wants Mr. Fillmore to pay to fix Mr. Duspiva's problems. That is not going to happen. Mr. Duspiva created these circumstances, not the Fillmores.

Mr. Fillmore has asked for some straight forward information and the details of what Mr. Duspiva is suggesting as a fix to this situation. We can't get basic information. Solely because of Mr. Duspiva's refusal to acknowledge the problems and properly respond to reasonable requests, he now finds himself at odds with the IDWR and the Fillmores. It is clear from the lack of response to Mr. Fillmore's requests that Mr. Duspiva does not intend to comply with his contract regarding the well, will still not provide necessary information, and would like to be able to continue trying to solve his problems using Mr. Fillmore's money.



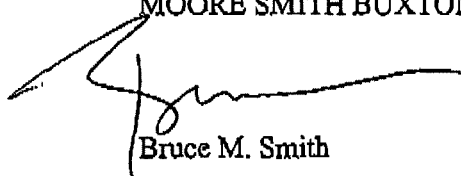
000170

Jon C. Gould
May 28, 2008
Page 2

Mr. Fillmore is going to find another driller to drill a domestic well. As to Mr. Duspiva's well, Mr. Fillmore is not going to accept ownership because it is not what he requested and does not even meet IDWR standards for a well. This situation is akin to buying a car, and having someone bring you a chassis with four wheels, then asking you to keep paying while they try to build a car that complies with regulatory requirements. You can't drive the chassis, you have no idea what might eventually be the end product, and you can't get the information to be able to make a decision. Yet you are asked to pay for the seller to keep trying. Mr. Fillmore is requesting that Mr. Duspiva abandon the well at his expense in compliance with IDWR requirements and is willing to continue to allow access to do so. Mr. Fillmore also is requesting a return of the \$20,000.00 Mr. Fillmore has paid Mr. Duspiva since Mr. Duspiva has not provided Mr. Fillmore with a well that meets his needs. It's unfortunate that it has come to this point, but Mr. Duspiva's handling of the matter dictates this as the only reasonable outcome. I remain appreciative of your help and cooperation.

Sincerely yours,

MOORE SMITH BUXTON & TURCKE, CHTD.



Bruce M. Smith

BMS/ds

cc: John Homan - IDWR
Client

000171

MOORE SMITH BUXTON & TURCKE, CHARTERED

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* Also admitted in Washington

July 1, 2008

Jon C. Gould
Ringert Clark Chartered
455 South Third Street
Boise, ID 83701

Re: Duspiva Well

Dear Jon:

This is a follow up to my letter of June 2, 2008, and the trespass issue raised therein. The intent of the notice to Mr. Duspiva is to make clear that if he needs to go onto the Fillmore property he should notify Mr. Fillmore in advance of doing so. Further, if he does go onto the property, he is not to be doing anything which contradicts direction or order from the IDWR. In short, the purpose of the notice was to make certain Mr. Duspiva does not go on the Fillmore property to undertake any work or other action which contradicts direction from IDWR.

This matter does not seem to be moving towards resolution. The main obstacle appears to be Mr. Duspiva's refusal to provide detailed information about his proposals to Mr. Fillmore and the IDWR. Mr. Duspiva cannot expect either Mr. Fillmore or the IDWR to approve Mr. Duspiva taking some action that is unidentified in terms of viability or cost. Mr. Duspiva, as I understand his position, believes he can do anything and Mr. Fillmore will pay for it. As I have previously indicated, that is not going to happen. Most of the problems that the parties now seem to be dealing with stem from Mr. Duspiva's drilling on his own to a depth where he encountered low temperature geothermal water, then seeking to have his action justified by IDWR after the fact. Now that the IDWR is indicating Mr. Duspiva must go back and correct the drilling, Mr. Duspiva believes he can do so and Mr. Fillmore just has to keep paying for Mr. Duspiva to fix the drilling problems. And, as stated above, Mr. Duspiva refuses to explain the details and costs he expects Mr. Fillmore to pay for. Apparently, Mr. Duspiva now wants to hire another well driller from North Idaho to travel to Boise to fix the well. Why, if Mr. Duspiva is a licensed well driller, can he not fix the well? I don't believe Mr. Duspiva told Mr. Fillmore that Mr. Duspiva was not able to drill the well correctly. This is an extremely frustrating situation that is exacerbated by Mr. Duspiva's refusal to provide information. I would urge you to please



000172

Jon C. Gould
July 1, 2008
Page 2

have him reconsider the situation and explain the details of his proposal to Mr. Fillmore and the IDWR.

Sincerely yours,

MOORE SMITH BUXTON & TURCKE, CHTD.

Sent without signature
to avoid delay.

Bruce M. Smith

BMS/ds

cc: Client
Rob Whitney
John Homan

000173

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= Also admitted in Utah
* Also admitted in Washington

September 30, 2008

Jon C. Gould
Ringert Clark Chartered
455 South Third Street
Boise, ID 83701

Re: Duspiva Well

Dear Jon:

I have received a couple of letters from you that seem to miscomprehend the current situation, so I want to clarify it for Mr. Duspiva. One issue you raised relates to removal of the drill from Mr. Fillmore's property. You indicated that Mr. Duspiva does not intend to do any more work, will not close the well, or do anything else to help resolve the situation. As far as Mr. Fillmore is concerned, removal of the drill is between Mr. Duspiva and the IDWR. As I believe we have discussed on several occasions, if IDWR allows Mr. Duspiva to remove the drill, Mr. Fillmore does not object. However, Mr. Duspiva should do so in a way that does not cause damage to or liability to Mr. Fillmore. Mr. Duspiva should comply with IDWR direction and rules. If Mr. Duspiva intends to remove the drill, Mr. Fillmore simply requests reasonable notice that Mr. Duspiva is coming onto the Fillmore property.

As for the stand by charges, the reason Mr. Duspiva has not removed the drill is because IDWR apparently will not let him do so. To try to hold Mr. Fillmore responsible for those types of problems goes beyond reason. If Mr. Duspiva wants to move the drill, see the IDWR.

In terms of trying to resolve what has become a complete mess, the IDWR has asked Mr. Duspiva and Mr. Fillmore to meet with the IDWR. Mr. Fillmore has agreed to meet and has indicated he is willing to help resolve this. I now understand Mr. Duspiva refuses to meet and further, refuses to participate or help address the problem. Instead Mr. Duspiva continues to argue with the IDWR and threatens to sue Mr. Fillmore. Jon, we are requesting that you try to



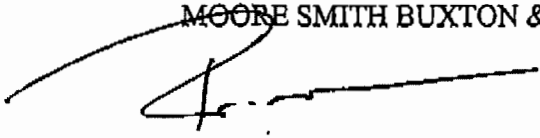
000174

Jon C. Gould
September 30, 2008
Page 2

get Mr. Duspiva to meet with Mr. Fillmore and the IDWR. Without some degree of cooperation, there is no way to address the problems.

Sincerely yours,

MOORE SMITH BUXTON & TURCKE, CHTD.



Bruce M. Smith

BMS/ds

cc: Client
Rob Whitney
John Homan

000175

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* Also admitted in Washington

October 8, 2008

Jon C. Gould
Ringert Clark Chartered
455 South Third Street
Boise, ID 83701

Re: Duspiva Well

Dear Jon:

Following up on our conversation this morning, I am asking that Mr. Duspiva agree to meet with Mr. Fillmore and the IDWR to try to resolve this matter. I do not intend to cross examine Mr. Duspiva. The fact is we have a very contentious dispute that necessitates that we try to resolve it without litigation. The IDWR is a critical party. My client has already committed to helping to resolve the matter and is willing to meet. We need Mr. Duspiva's cooperation. Simply taking the position that "I did nothing wrong" and refusing to even meet to discuss the matter is unreasonable and not good faith. The fact is there is an 1100 foot geothermal well that does not comply with IDWR rules. My client did not want a geothermal well. We need to figure out how to deal with the problem. So I would ask you to have Mr. Duspiva reconsider having a meeting. We need his cooperation.

Also, please send me a copy of his proposal to abandon the well. His proposal, as I recall, was considerably more expensive than the IDWR estimates (\$33,000.00 versus \$8,500.00), and there is still the question of the details of Mr. Duspiva's proposal. I am willing to have my client re-examine it. However, refusing to disclose information about the proposal is not reasonable. There is no aspect of the proposal that should be hidden or concealed. Also, I would like a copy of the well log which I do not believe has been provided.



000176

Jon C. Gould
October 8, 2008
Page 2

Mr. Fillmore asked me to review the complaint you have filed and advise him about accepting service. Please send me a copy of the complaint. As you requested, a copy of the IDWR bid for abandonment from Down Rite Drilling and Pump Inc. is enclosed.

Sincerely yours,

MOORE SMITH BUXTON & TURCKE, CHTD.



Bruce M. Smith

BMS/ds

cc: Client
R. Whitney
J. Homan
G. Spackman

000177

MOORE SMITH BUXTON & TURCKE, CHARTERED

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MICHAEL C. MOORE**of Counsel*

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* Also admitted in Washington

October 27, 2008

Jon C. Gould
Ringert Law Chartered
455 South Third Street
Boise, ID 83701

Re: Duspiva Well

Dear Jon:

In a recent phone call, I asked that you forward to me the proposals Mr. Duspiva had for completion/abandonment of the well. I have not received them so could you please do so when you get the chance. Please note this is a request for information and not an acknowledgment that Mr. Fillmore has accepted ownership of the well.

In my May 12, 2008 letter to you, I noted that the details of Mr. Duspiva's proposals at that time were not provided. Specifically, it appears that Mr. Duspiva wanted to use other contractors to do the work. As I have explained numerous times, it is imperative and reasonable that Mr. Duspiva provide the details including identifying any contractors to be used and how costs would be allocated and determined. Previously, you have indicated Mr. Duspiva refuses to provide that information. However, this is another request that he do so. If you provide the information as requested, I will discuss it with my client. However, continued refusal to provide the information leaves little opportunity to resolve this.

I want to make sure that there is no misunderstanding about Mr. Duspiva's position on this matter. His position as set out in your May 5, 2008 letter is that his proposal and estimated cost of the domestic well is \$80,665.00-whether abandoned or completed. Further, that cost is not fixed but could go higher, and, regardless of the final amount, Mr. Fillmore is obligated to pay including all the costs associated with other contractors that Mr. Duspiva proposes to retain.



000178

Jon C. Gould
October 27, 2008
Page 2

Further, there is no information on whether the quality of the geothermal water is suitable for drinking, and Mr. Duspiva refuses to test for or provide that information.

Please confirm that this is Mr. Duspiva's position. If I am incorrect, please explain. Again, we request that the details and breakdown of Mr. Duspiva's proposals be provided. Further, as noted in my September 30, 2008, letter to you, Mr. Fillmore does not object to Mr. Duspiva's removal of the drill from the property so long as he does not cause damage to the property or liability to Mr. Fillmore. Please provide written confirmation as to whether Mr. Duspiva is going to or has removed the drill.

Sincerely yours,

MOORE SMITH BUXTON & TURCKE, CHTD.



Bruce M. Smith

BMS/ds

cc: Client
R. Whitney
J. Homan
G. Spackman

000179



Estimate

NAME / ADDRESS

Clyde Filmore

DATE

7/21/2008


TERMS

PROJECT

20% 10 Net 30

abandonment

PHONE

QTY	DESCRIPTION	CASH PRICE	LIST PRICE	TOTAL LIST
12	Drill Rig Hours, Abandonment	250.00	312.50	3,750.00
1	Tool Rental, Perf	1,000.00	1,250.00	1,250.00
12	Cement (cu. yd.)	250.00	312.50	3,750.00
1	Cement Pumping	1,500.00	1,875.00	1,875.00
TOTAL OF ESTIMATE BEFORE DISCOUNT				10,625.00
20% CASH DISCOUNT IF PAID WITHIN TEN DAYS!			-20.00%	-2,125.00
ESTIMATE VALID FOR THIRTY DAYS!				
				
Please call if you have any questions!		DISCOUNTED TOTAL		\$8,500.00

JUL 8 2010 4:20PM
07/08/2010 04:20:30p

MOORE SMITH BUXION

Duspiva Well Drilling 1

BIT B NO. 1021 OF 2 33/31
722 5304

P.2010

PAGE 2 OF 2

Gary Duspiva

25050 Pet Lane

Parma, Idaho 83660-7037

Phone 208 722-5304

Cell 208 899-3131

License No. 395

ROB



WELL JOHN FILLMORE

9 AUG 2007

THERE IS NO WATER FROM 701' TO 836' I REQUEST THAT BEING A DOMESTIC WELL THAT I BE ALLOW TO DRILL DEEPER TO MAKE A WELL IF POSSIBLE. THE CASING WILL PROBABLY BE ADVANCED TO A TIGHT SET BETWEEN 750' AND 800'. IF NO STOPPING PLACE IS FOUND IT WILL BE TAKEN TO 836' INTO UNDRILLED CLAY TO SEAL. THEN DRILL OPEN HOLE UNTIL THE NEXT WATER I FOUND.

I THIS AREA MOST OF THE WELL HAVE SAND PROBLEMS. I HAVE SPENT ALOT OF EFFORT AT EACH LAYER TRYING TO MAKE THIS FINE GLASS FLOAT SAND WORK. PAST EXPERIENCE I HAVE ALWAYS BEEN ABLE TO COME UP WITH A STABLE LAYER.

Sincerely
Gary Duspiva MGWC

000182



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.govC. L. "BUTCH" OTTER
GovernorDAVID R. TUTHILL, JR.
Director**NOTICE OF VIOLATION**

February 23, 2009

Gary Duspiva
Gary Duspiva Well Drilling & Development
25050 Pet Lane
Parma ID, 83660-7037

RE: Notice of Violation No. 395-1-W-2009

Dear Mr. Duspiva:

The purpose of this letter is to notify you of a violation of State Law and Administrative Rule attributed to you and your drilling company. This violation is associated with a well you attempted to drill for John Fillmore located at 23258 Homedale Road Wilder, Idaho.

The violation attributed to you and your drilling company is identified as follows:

Failure to comply with condition of approval no. 8 of the Start Card drilling permit submitted to the Idaho Department of Water Resources (Department) on June 11, 2007.

The above violation occurred at the time you drilled into the Low Temperature Geothermal (LTG) aquifer and failed to immediately notify the Department as required by condition of approval no.8. Drilling continued an additional 200 feet or more before notification was provided to the Department. I.C. § 42-235 provides that a driller is subject to the enforcement procedures of I.C. § 42-1701B for drilling permit related violations. IDAPA 37.03.09 Rule 045.02.a. provides that the drilling permit authorizes construction of a well in compliance with the conditions of the permit.

Because the well was never completed and has since been properly decommissioned, the Department will not seek payment of any civil penalty as redress for this violation. However, the Department does hereby suspend your Start Card privileges for a period of not less than one (1) year from the date of this Notice of Violation (NOV).

Your start card privileges may be considered for reinstatement following the one-year suspension and upon your company's satisfactory compliance with all applicable well construction Rules and Laws.

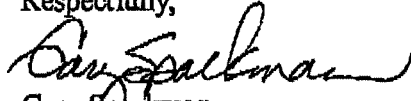


Page 2

Notice of Violation No. 395-1-W-2009

A written request must be submitted to this office before the Department will consider reinstatement of your start card privileges. This NOV is issued pursuant to section 42-1701B, Idaho Code. You may request a compliance conference concerning this NOV, provided the request is made within 14 days of receiving this notice. Please contact me at this office if you have questions regarding this NOV or if you would like to schedule a compliance conference.

Respectfully,



Gary Spackman,
Administrator, Water Management Division
IDWR

CC: John Westra, Western Region Manager

000184



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Web Site: www.idwr.idaho.gov

April 17, 2009

C. L. "BUTCH" OTTER
GovernorDAVID R. TUTHILL, JR.
Director

Gary Duspiva
Gary Duspiva Well Drilling & Development
25050 Pet Lane
Parma ID, 83660-7037

RECEIVED
APR 20 2009
Ringart Law Chartered

RE: Rescission of Notice of Violation No. 395-1-W-2009

Dear Mr. Duspiva:

The purpose of this letter is to recapture issues discussed in the Compliance Conference held on April 2, 2009. The Department hereby agrees to rescind the Notice of Violation issued on February 23, 2009. Additionally, this letter requires that Gary Duspiva take all necessary precautions to avoid reoccurring well construction problems associated with encountering Low Temperature Geothermal (LTG) resources. Specifically, the Department intends to prevent the inadequate construction of LTG wells initially proposed to be cold water residential wells. You have established a history of submitting Start Cards authorizing construction of cold water residential wells to reasonable depths and thereafter notifying the Department that the authorized well has exceeded the proposed maximum depth and consequently encountered LTG resources. As discussed at the April 2, 2009 Compliance Conference, you agreed to provide the Department with information sufficient to assure that reoccurrence of situations like those experienced on the Fillmore well will be prevented in the future.

Jon Gould's letter dated April 8, 2009, sent on your behalf, outlines procedures and precautions that you will take when drilling to avoid problems that have occurred with other LTG wells drilled by you in the past including the Fillmore well. The outlined procedures include 1) monitoring of bottom hole temperatures during drilling 2) recording of drilling conditions encountered on a field log 3) immediate contact with the Department if LTG conditions are encountered and 4) if the property owner wishes to complete a well into a LTG aquifer, an amended drilling permit application will be submitted to the Department in a timely manner. Please note that these procedures are already required of all Licensed Drillers pursuant to Administrative Rules. The Department provides the following additional directives and cautions to you and your drilling company when a drilling permit is approved to construct any cold water well:

- 1) Every attempt must be made to complete and develop the well in a cold water aquifer. This includes employing industry standard practices such as installation of well screens or filter packed intakes in cases where sand production may be an issue and considering the use of water treatment systems such as water softeners, filters, or deionizers if water quality is problematic.
- 2) If LTG conditions are encountered during construction of a cold water well, construction shall cease immediately and the effective approval of the drilling will become invalid. If it is determined that



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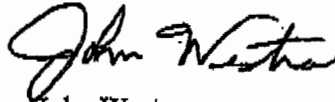
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the drilled hole or the well casing has penetrated the LTG aquifer to the extent that unauthorized comingling of LTG and cold aquifers may occur, the well must be partially or completely abandoned as may be specifically required by the Department.

- 3) If the Department receives a new application for a drilling permit to complete a LTG well, the drilling permit will not be processed until a) the property owner has secured an approved water right for the use of LTG water b) all supporting information and associated requirements including an acceptable drilling prospectus, proper bonding by the owner and the driller are documented and received by the Department and c) the driller can demonstrate to the satisfaction of the Department that the well can and will be completed consistent with Rule 30 of IDAPA 37.03.09.

The Department acknowledges that you have agreed to suspension of your Start Card privileges for at least one (1) year. If after the effective suspension, you wish to have these privileges reinstated please direct a written request for reinstatement to this office.

Respectfully,



John Westra,
Western Region Manager

cc: John Homan, Tom Neace, Jon Gould

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