

10-14-2011

# Buckskin Properties, Inc. v. Valley County Clerk's Record v. 4 Dckt. 38830

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Vol. 4 of 4

SUPREME COURT NO. 38830-2011 VOL. IV

LAW CLERK

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

**COPY**

BUCKSKIN PROPERTIES, INC., an Idaho Corporation;  
TIMBERLINE DEVELOPMENT, LLC, an Idaho Limited Liability  
Corporation,

PLAINTIFFS/APPELLANTS and

CROSS-RESPONDENTS

VS.

VALLEY COUNTY, A Political Subdivision of the State of Idaho

DEFENDANT/RESPONDENT and

CROSS-APPELLANT

*Appealed from the District Court of the Fourth Judicial District of the State of Idaho, in and for Valley County.*

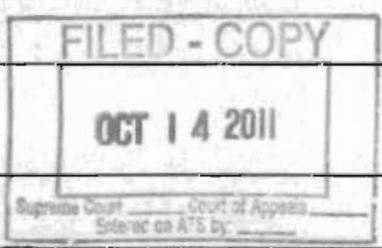
*Honorable Michael R. McLaughlin, District Judge, Presiding*  
*Victor Villegas*

*Attorney for Appellants/Cross-Respondents*

*Matthew C. Williams, Christopher Meyer & Martin Hendrickson*

*Attorney for Respondent/Cross-Appellant*

Filed this \_\_\_\_\_ day of \_\_\_\_\_, 20



Clerk

By: \_\_\_\_\_

Deputy

**38830**

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

BUCKSKIN PROPERTIES, INC., an Idaho  
Corporation; TIMBERLINE DEVELOPMENT)  
LLC, an Idaho Limited Liability )  
Company,

Plaintiffs/Appellants, )

-vs-

VALLEY COUNTY, A POLITICAL )  
SUBDIVISION OF THE STATE OF )  
IDAHO, )

Defendant/Respondent. )

) Case No. CV-2009-554\*C

) Supreme Court No. 38830-2011

**CLERK’S RECORD ON APPEAL**

Appeal from the District Court of the Fourth Judicial District of the  
State of Idaho, in and for the County of Valley.

Honorable Michael R. McLaughlin, District Judge  
Presiding

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ARCHIE N. BANBURY, CLERK  
BY *J. Garrison* DEPUTY

JAN 28 2011

Case No. \_\_\_\_\_ Inst. No. \_\_\_\_\_  
Filed \_\_\_\_\_ A.M. 5:00 P.M.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF VALLEY

BUCKSKIN PROPERTIES, INC., an Idaho  
Corporation, and TIMBERLINE  
DEVELOPMENT, LLC, an Idaho Limited  
Liability Company,

Case No. CV 2009-554

AFFIDAVIT OF  
MATTHEW C. WILLIAMS

Plaintiffs,

v.

VALLEY COUNTY, a political subdivision  
of the State of Idaho,

Defendant.

State of Idaho            )  
                                   ) ss.  
 County of Valley        )

MATTHEW C. WILLIAMS, being first duly sworn upon oath, deposes and states:

i.                    I am an attorney licensed to practice law in the state of Idaho. I make this Affidavit based upon personal knowledge and to the best of my information and belief.

ii.                   I am the Prosecuting Attorney for Valley County (the "County"), the Defendant in the above-captioned civil action.

iii.                  The amount being sought in the litigation, the large firm representing the Plaintiff, and the potential ramifications of the suit itself required this case be put at the top of my priorities. After initially answering the case, my other duties as Prosecuting Attorney did not allow me to give this case the time and attention it needed. Association with counsel was needed to properly defend Valley County in the case.

iv.                  This case called for the assistance of outside counsel qualified to address a broad range of state and federal constitutional issues as well as associated procedural and jurisdictional issues. In my experience, it is necessary to look to the Boise market to obtain counsel qualified to handle litigation of this sort. For these reasons, and upon my urging, the County retained the firm of Givens Pursley LLP to serve as lead counsel in this matter.

v.                    I remained involved throughout the course of this litigation on a consultation, strategy, and review basis, and have been a signatory to all significant pleadings. However, in order to avoid potential redundancy in billing, the County is not seeking recovery of attorney fees associated with my role in this litigation.

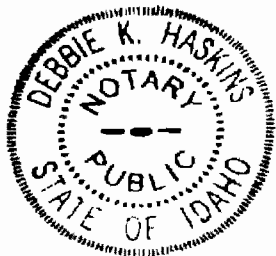
I declare under penalty of perjury that the foregoing is true and correct.

DATED this 27<sup>th</sup> day of January, 2011.



Matthew C. Williams

Subscribed and sworn to before me this 27<sup>th</sup> day January, 2011.



Notary Public for Idaho

Residing at: Cascade, Idaho

My Commission Expires: 6/10/2012

**CERTIFICATE OF SERVICE**

I hereby certify that on the \_\_\_\_\_ day of January, 2011, a true and correct copy of the foregoing was served upon the following individual(s) by the means indicated:

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF VALLEY

BUCKSKIN PROPERTIES, INC., an Idaho  
Corporation, and TIMBERLINE  
DEVELOPMENT, LLC, an Idaho Limited  
Liability Company,

Plaintiffs,

v.

VALLEY COUNTY, a political subdivision  
of the State of Idaho,

Defendant.

Case No. CV 2009-554

VALLEY COUNTY'S MEMORANDUM OF  
COSTS AND STATEMENT IN SUPPORT

AMCHIE N. SANDUMY, CLERK  
By Johnson Deputy

JAN 31 2011

Case No. \_\_\_\_\_ Inst. No. \_\_\_\_\_  
Filed \_\_\_\_\_ A.M. 2:33 P.M.

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COMES NOW, Defendant Valley County ("County"), by and through its undersigned attorneys of record, and, pursuant to I.R.C.P. Rule 54, hereby submits its *Memorandum of Costs and Statement in Support* ("Memorandum"). Defendant seeks recovery of \$666.00 in costs as a matter of right, \$697.00 in discretionary costs, and \$56,165 in attorney fees, for a total of \$57,528.00. The County seeks recovery of said costs and fees against Plaintiffs Buckskin Properties, Inc. and Timberline Development, LLC jointly and severally.

Pursuant to Idaho R. Civ. P. 54(e)(5), the Memorandum of Costs is supported by the *Affidavit of Christopher H. Meyer, Affidavit of Martin C. Hendrickson, Affidavit of Matthew C. Williams*, and the *Affidavit of Murray D. Feldman* which are submitted herewith. A Statement in Support follows the Memorandum of Costs.

After this document was prepared, but before it was filed,

**MEMORANDUM OF COSTS**

**I. COSTS AS A MATTER OF RIGHT UNDER RULE 54(D)(1)(C)**

Court filing fees .....	\$0
Service of pleading .....	\$0
Witness fees (\$20 per day).....	\$0
Travel expenses of witnesses (\$.30/mile) .....	\$0
Certified documents .....	\$0
Exhibits (up to \$500) .....	\$0
Bond premiums.....	\$0
Expert witness fees (up to \$2,000 per expert).....	\$0
Reporting and deposition transcripts .....	\$618
Copies of deposition transcripts.....	\$48
Total .....	\$666

**II. DISCRETIONARY COSTS UNDER RULE 54(D)(1)(D)**

Photocopying costs .....	\$392
Conference call charges .....	\$110
Messenger service.....	\$20
Courier service .....	\$35
Binder costs.....	\$28
Travel of counsel to attend depositions .....	\$87

Electronic research (Westlaw) ..... \$25  
Total ..... \$697

**III. ATTORNEY FEES UNDER IDAHO CODE §§ 12-117 AND/OR 12-121, AS PROVIDED UNDER RULE 54(E)(5)**

Attorney fees ..... \$56,165

**STATEMENT IN SUPPORT**

**I. COSTS INCURRED WERE NECESSARY AND REASONABLY INCURRED.**

As the prevailing party, the County is entitled to recovery of costs listed under section I of the Memorandum of Costs as a matter of right. As documented in the accompanying Affidavits, these costs were necessary and reasonably incurred.

Costs listed under section II of the Memorandum of Costs are discretionary and should be awarded because they, too, were necessary and reasonably incurred. "Discretionary costs under Rule 54(d)(1)(D) can include travel expenses along with other expenses such as photocopying, faxes, postage, and long distance telephone calls." *Wooley Trust v. DeBest Plumbing, Inc.*, 133 Idaho 180, 187, 983 P.2d 834, 841 (1999) (citing *Automobile Club Ins. Co. v. Jackson*, 124 Idaho 874, 880, 865 P.2d, 965, 971 (1993)). The need for travel expenses totaling \$87 is explained in the Affidavit of Martin C. Hendrickson. The Affidavit of Christopher H. Meyer explains the need for other costs identified as discretionary costs.

**II. COSTS AND ATTORNEY FEES SHOULD BE AWARDED PURSUANT TO IDAHO CODE §§ 12-117 AND/OR 12-121.**

**A. The standards under Idaho Code § 12-117 and 12-121 are functionally identical.**

The County seeks attorney fees under both Idaho Code § 12-117 and Idaho Code § 12-121.

Under Idaho Code § 12-117, prevailing parties in actions involving a state agency or local government and a private entity as adverse parties may recover their costs and attorney fees

where they can show that the non-prevailing party acted “without a reasonable basis in fact or law.”<sup>1</sup>

Idaho Code § 12-121, in contrast, reads like a pure, English-style prevailing party statute. It is modified, however, by Idaho R. Civ. P. 54(e)(1), which states: “Provided, attorney fees under section 12-121, Idaho Code, may be awarded by the court only when it finds, from the facts presented to it, that the case was brought, pursued or defended frivolously, unreasonably or without foundation.”

While these two standards read differently, there is little if any difference between them in application. Indeed, our appellate courts have equated the two standards. *Total Success Investments, LLC v. Ada County Highway Dist.* (“*Total Success II*”), 148 Idaho 688, 695, 227 P.3d 942, 949 (Ct. App. 2010); *Ada County Highway Dist. v. Total Success Investments, LLC* (“*Total Success I*”), 145 Idaho 360, 372, 179 P.3d 323, 335 (2008); *Jenkins v. Barsalou*, 145 Idaho 202, 207, 177 P.3d 949, 954 (2008); *Nation v. State, Dep’t of Correction*, 144 Idaho 177, 194, 158 P.3d 953, 970 (2007). Accordingly, the discussion of fee awards under Idaho Code § 12-117 (see section II.B at page 4) below will include some case law arising under section 12-121.

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<sup>1</sup> The statute provides: “(1) Unless otherwise provided by statute, in any administrative proceeding or civil judicial proceeding involving as adverse parties a state agency or political subdivision and a person, the state agency or political subdivision or the court, as the case may be, shall award the prevailing party reasonable attorney’s fees, witness fees and reasonable expenses, if it finds that the nonprevailing party acted without a reasonable basis in fact or law.” Idaho Code § 12-117(1) (emphasis supplied).

This statute was amended in 2010, 2010 Idaho Sess. Laws ch. 29, to change the result obtained in *Rammell v. ISDA*, 147 Idaho 415, 210 P.3d 523 (2009). The amendment restored the prior law, which is that attorney fees may be awarded in administrative proceedings, not just court proceedings. Accordingly, prior precedent remains valid. Subsequent decisions interpreting the 2010 amendment (e.g., *Laughy v. Idaho Dep’t of Transportation*, 2010 WL 4297807 (Nov. 1, 2010); *Smith v. Washington County*, 2010 WL 5093625 at \*4 (Idaho Dec. 15, 2010) (replacing earlier opinion)) have held that the amendment bars recovery in judicial review proceedings. However, that has no bearing on this matter, which is a civil action.

**B. The County is entitled to fees under Idaho Code 12-117.**

**1. The statute is intended to deter litigation like that brought by Plaintiffs.**

This case satisfies the threshold requirements in Idaho Code § 12-117: the case is a civil action involving a governmental entity and private entities as adverse parties, and the County prevailed. All that remains is to establish that the Plaintiffs pursued the matter without a reasonable basis in fact or law.

The Idaho Supreme Court has often described the purpose of this statute: “First, it serves ‘as a deterrent to groundless or arbitrary agency action; and [second, it provides] a remedy for persons who have borne unfair and unjustified financial burdens defending against groundless charges or attempting to correct mistakes agencies never should have made.’” *Reardon v. Magic Valley Sand and Gravel, Inc.*, 140 Idaho 115, 118, 90 P.3d 340, 343 (2004) (brackets original) (quoting *Rincover v. State of Idaho, Dep’t of Finance*, 132 Idaho 547, 549, 976 P.2d 473, 475 (1999), and *Bogner v. State Dep’t of Revenue and Taxation*, 107 Idaho 854, 859, 693 P.2d 1056, 1061 (1984)). These goals are important, because they are often discussed by the Court in explaining what actions constitute pursuing an action “without a reasonable basis in fact or law.” Indeed, the language on the importance of deterrence and appropriate remedies has been quoted 20 times by Idaho’s appellate courts.

These words are particularly applicable here. The County and its taxpayers have endured a costly and unnecessary legal challenge that should never have been brought in the first instance. Deterrence of such unwarranted lawsuits is particularly important when, as here, the law was clear from the outset that Plaintiffs had no viable cause of action, and this was made plain to them by the County early in the litigation.

**2. Attorney fee awards under section 12-117 are mandatory.**

It is important to underscore that, unlike other attorney fee provisions, section 12-117 does not entail an exercise of discretion. The Idaho Supreme Court has noted on numerous occasions that, where the requirements of the statute are met, an award of attorney fees is mandatory. “This Court has further noted that Idaho Code § 12-117 is not a discretionary statute; but it provides that the court *shall* award attorney fees where the state agency did not act with a reasonable basis in fact or law in a proceeding involving a person who prevails in the action.” *Rincover v. State of Idaho, Dep’t of Finance*, 132 Idaho 547, 549, 976 P.2d 473, 475 (1999) (emphasis original). “The statute is not discretionary but provides that the court must award attorney fees where a state agency did not act with a reasonable basis in fact or in law in a proceeding involving a person who prevails in the action.” *Fischer v. City of Ketchum*, 141 Idaho 349, 356, 109 P.3d 1091, 1098 (2005).

**3. Litigation in the face of controlling facts and settled precedent justifies an attorney fee award.**

The most common successful defense to an attorney fee requests under section 12-117 is that the non-prevailing party raised issues of first impression. There are dozens of such cases. *E.g., Lake CDA Investments, LLC v. Idaho Dep’t of Lands*, 149 Idaho 274, 284-85, 233 P.3d 721, 731-32 (2010). The flip side, however, is equally compelling. Where parties ignore settled precedent, as the Plaintiffs did here, they are subject to a mandatory award of fees under section 12-117. The Idaho Supreme Court has ruled that failure to address controlling appellate decisions and failure to address factual or legal findings of the district court equates to pursuing litigation without a reasonable basis in fact or law. *Waller v. State of Idaho, Dep’t of Health and Welfare*, 146 Idaho 234, 240, 192 P.3d 1058, 1064 (2008). Other examples of parties paying the price for ignoring settled precedent are found in *Excell Construction, Inc. v. Idaho Dep’t of*

*Commerce and Labor*, 145 Idaho 783, 793, 186 P.3d 639, 649 (2008) (attorney fees awarded against agency that failed to apply a case whose relevant facts were “virtually indistinguishable”), and *Gallagher v. State*, 141 Idaho 665, 669, 115 P.3d 756, 760 (2005) (attorney fees may be awarded when “the law is well-settled”).<sup>2</sup>

**4. Plaintiffs refused to acknowledge controlling facts and precedent under the statute of limitations.**

Plaintiffs find themselves in a position similar to that of the non-prevailing parties in the cases just cited. Like those parties, Plaintiffs here failed to address key facts and controlling legal precedent. Their treatment of the statute of limitations issue, which became the deciding issue in the case, can only be described as bereft of logic or foundation. Plaintiffs doggedly pursued their argument that they were within the 4-year statute of limitations because a single payment was made on December 15, 2005. This required ignoring the earlier actions—notably the undisputed fact that they satisfied the requirements of the Capital Contribution Agreement (including conveyance of real property interests) at the time of final plat approval on October 25, 2004. See County’s Opening Brief at 7 and Reply Brief at 7-8. Even at oral argument, Plaintiffs declined to grapple with this fundamental obstacle to their lawsuit.

In addition to ignoring the key facts of the case, Plaintiffs ignored controlling precedent establishing that the clock begins to run from the day the loss becomes apparent—even if the full extent of the loss is not yet known. *McCuskey v. Canyon County Comm’rs* (“*McCuskey II*”), 218 Idaho 213, 217, 912 P.2d 100, 104 (1996) (citing *Tibbs v. City of Sandpoint*, 100 Idaho 667, 671, 603 P.2d 1001, 1005 (1979)). Remarkably, Plaintiffs cited *McCuskey* to the Court, but refused

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<sup>2</sup> The same holds true under Idaho Code § 12-121. “Attorney fees are awardable if an appeal does no more than simply invite an appellate court to second-guess the trial court on conflicting evidence, or if the law is well settled and appellant has made no substantial showing that the district court misapplied the law.” *Johnson v. Edward*, 113 Idaho 660, 662, 747 P.2d 69, 71 (1987).

to acknowledge the case's plain holding. Plaintiff's brief at 18-19. It is hard to imagine a more clear-cut case of pursuing litigation without a reasonable basis.

In *State of Idaho v. Estate of Joe Kaminsky*, 141 Idaho 436, 439-40, 111 P.3d 121, 124-25 (2005), the Court quoted the dual purposes of the statute recited above and declared that both were violated. "The action was groundless because the Department clearly waited too long to present its claim. . . . It is appropriate to discourage such action. Further, the Department's action placed an unjustified financial burden on the Estate." *Id.* The same can be said here.

Ironically, the very case that hung the Plaintiffs on the statute of limitations, *McCuskey II*, also compels an attorney fee award. In that case the plaintiff claimed a temporary taking from the time Canyon County issued a stop work order to the time the Idaho Supreme Court voided the controlling ordinance in *McCuskey v. Canyon County* ("*McCuskey I*"), 123 Idaho 657, 851 P.2d 953 (1993). The *McCuskey II* Court dismissed the inverse condemnation claim as time barred, concluding, based on *Tibbs v. City of Sandpoint*, 100 Idaho 667, 603 P.2d 1001 (1979), that the statute of limitations began to run at the time of the stop work order not the subsequent decision vindicating the plaintiff. Accordingly, the Court awarded attorney fees to Canyon County.<sup>3</sup> "This Court clearly established the time when a cause of action accrues in an inverse condemnation claim in *Tibbs*. . . . *McCuskey* has provided no 'substantial' showing that the district court misapplied the rule elucidated in these cases with his particular claim and has

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<sup>3</sup> The fee award in *McCuskey II* was made under Idaho Code § 12-121, not § 12-117, which, at the time, was a one-way street and did not allow counties to obtain fee awards against private parties. As noted in section II.A at page 3, however, the standards under the two statutes are essentially identical.



given no compelling reason to deviate from the rule we have established.” *McCuskey II*, 128 Idaho at 218, 912 P.2d at 105.<sup>4</sup>

Exactly the same can be said here. There was no novel question of law. There were no unusual facts. This was a textbook statute of limitations case controlled by *Tibbs*, *McCuskey II*, and other settled authority. Accordingly, this is a textbook case for an award of attorney fees.

**5. Plaintiffs also lacked a reasonable basis to resist other defenses.**

This Court found it unnecessary to reach most of the other defenses raised by the County (e.g., the failure to plead section 1983, the dual *Williamson County*<sup>5</sup> defenses, mootness, ripeness, the voluntary nature of Plaintiffs’ action, and a host of equitable defenses).<sup>6</sup> Although

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<sup>4</sup> In *Covington v. Jefferson County*, 137 Idaho 777, 782, 53 P.3d 828, 833 (2002), the Court distinguished *McCuskey II* in denying attorney fees to Jefferson County. The Court declared, “However, we find the Covingtons have made some valid arguments relating to their claim for inverse condemnation, which demonstrates that the appeal is not frivolous or unreasonable.” This was an apparent reference to a fairly complex debate over whether a land use action authorizing a hot mix plant (which in turn emits odors that travel to the plaintiffs’ property) is a physical or regulatory taking. The complexity of the constitutional issues raised in *Covington* stands in contrast to the cut and dried statute of limitations and other defenses presented by the County. The case at bar is also distinguishable from *Gibson v. Ada County*, 142 Idaho 746, 756, 133 P.3d 1211, 1221 (2006), *cert. denied*, 549 U.S. 994 (2006), *rehearing denied*, 549 U.S. 1159 (2007), where the Court denied attorney fees despite the plaintiff blowing the statute of limitations because it found, “She made a good faith argument based on relevant authority that the statute of limitations was tolled.” Plaintiffs here have cited no relevant authority that supports their position.

<sup>5</sup> *Williamson County Regional Planning Comm’n v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985).

<sup>6</sup> Not only did they fail to present relevant authority on these issues, Plaintiffs ignored controlling authority offered by the County and misrepresented those authorities they did cite. Here are two examples drawn from the County’s reply brief: “Plaintiffs fail even to address the settled Ninth Circuit precedent on this point in *Azul-Pacifico, Inc. v. City of Los Angeles*, 973 F.2d 704, 705 (9th Cir. 1992), the authorities relied on in *Azul-Pacifico*, or subsequent cases such as *Golden Gate Hotel Ass’n v. City and County of San Francisco*, 18 F.3d 1482 (9th Cir. 1994).” County’s Reply Brief at 3. “Plaintiffs cite *Davis v. Passman*, 442 U.S. 228 (1979), for the proposition that due process claims may be brought directly under the U.S. Constitution and that § 1983 is not the only means of raising these matters. Plaintiffs misrepresent the holding in this case. *Davis* involved a suit by a congressional staffer alleging discrimination protected by the

the Court did not rule on them, the other defenses were compelling and appropriately raised by the County. The Plaintiffs' pursuit of its case in the face of these defenses, without any effective response to those defenses, can also be described as acting without a reasonable basis in fact or law.

It is, by the way, appropriate for the Court to consider issues presented in the litigation in addition to those upon which it ruled or addressed in dictum. In *Gibson v. Ada County Sheriff's Office*, 147 Idaho 491, 211 P.3d 100 (2009), the Court awarded attorney fees under Rule 11.1 to the Sheriff's office citing a litany of erroneous claims which the Court found unnecessary to address in the opinion on the merits, even in dicta, but which were taken into account nonetheless for purposes of Rule 11.1.<sup>7</sup>

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Fifth Amendment. The Court specifically noted that she could not bring her suit under § 1983, because, as in *Bivens*, no state actor was involved." County's Reply Brief at 5-6. Another example is the Plaintiffs' insistence, in defiance of black letter law, that this case alleged not a regulatory taking but a physical taking. Yet another is Plaintiffs' insistence that this is a contract case controlled by the 5-year statute of limitations.

<sup>7</sup> It is unclear why the Sheriff's office did not also seek attorney fees under section 12-117. But that should not matter. The law is clear that the Court should consider the party's conduct as a whole in determining whether its actions were reasonable. This obligation to consider the case as a whole can cut either way, of course. In two recent cases, the Court has recited language seemingly favorable to the non-prevailing party. "When deciding whether the case was brought, pursued, or defended frivolously, unreasonably, or without foundation, the entire course of the litigation must be taken into account. Thus, if there is a legitimate, triable issue of fact, attorney fees may not be awarded under I.C. § 12-121 even though the losing party has asserted factual or legal claims that are frivolous, unreasonable, or without foundation." *McGrew v. McGrew*, 139 Idaho 551, 562, 82 P.3d 833, 844 (2003) (citation omitted). The *McGrew* case presented mixed results where "both parties prevailed in part"; hence, it was appropriate to deny attorney fees. *Id.* In the case at bar, Plaintiffs are left without any "triable issue"; their entire case has been thrown out. In *Michalk v. Michalk*, 148 Idaho 224, 235, 220 P.3d 580, 591 (2009), the Court cited *McGrew* (paraphrasing its holding in broad terms favorable to the non-prevailing party), but nevertheless awarded attorney fees owing to the non-prevailing party's failure to amend an earlier appeal from the magistrate. This failure, said the Court, meant that the trial court had no choice but to rule against her. Both these cases support the County's position here. In order to get the benefit of the *McGrew/Michalk* rule, the non-prevailing party must demonstrate some success on some "triable issue of fact" and must not leave the district

This Court found it unnecessary to rule on Plaintiffs' federal claims, the exclusivity of section 1983, and the *Williamson County* issues. "Here, Plaintiffs have not made a claim pursuant to 42 U.S.C. § 1983. However, they were not required to do so because they have a valid claim pursuant to the State constitution." Memorandum Decision at 4. A fair review of that law, however, shows that Plaintiffs' federal claims did not have a leg to stand on. Yet they insisted on the validity of those claims all the way through oral argument. As a result, the County continued to incur attorney fees defending these claims.

Much the same can be said for the voluntary nature of the Plaintiffs' actions, giving rise to a strong defense under *KMST, LLC v. County of Ada*, 138 Idaho 577, 581, 67 P.3d 56, 60 (2003). Here, too, the Plaintiffs refused to acknowledge or meaningfully address the fact that it was the developers themselves who first offered to make road payments in their initial application and, in any event, never objected. Instead, they pursued expensive discovery that did nothing to alter this basic fact.

Finally, Plaintiffs never meaningfully addressed the series of equitable arguments presented by the County.

As it turns out, Plaintiffs' case was taken down by one bullet—the statute of limitations. But the fact that they were facing an insurmountable hail of fire is also a factor that should be taken into account in awarding attorney fees to the County.

**C. The County may also be eligible for an award under Idaho Code § 12-121.**

For all the reasons cited above, the Court should award attorney fees under section 12-121 as well. The County acknowledges that, as a practical matter, the section 12-121 claim does

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court with no choice but to deny all the claims due to a pleading failure. Merely prevailing on one of multiple defenses to Plaintiffs' claims is insufficient to defeat an attorney fee award.

not appear to add anything to the analysis or to the relief.<sup>8</sup> The County includes this seemingly redundant claim for purposes of completeness in the event that, for some reason, section 12-117 were found to be unavailable.

There is a line of authority holding that, if section 12-117 is available, it is exclusive and section 12-121 is unavailable. *Potlatch Educ. Ass'n v. Potlatch School Dist. No. 285*, 148 Idaho 630, 635, 226 P.3d 1277, 1282 (2010). Inexplicably, on many other occasions, the Court has applied both sections 12-117 and 12-121. *E.g.*, *Total Success I* and *Total Success II*. We are unable to reconcile these two lines of cases. In any event, we have included the claim under section 12-121 out of an abundance of caution.

### III. ATTORNEY FEES WERE NECESSARY AND REASONABLY INCURRED.

In addition to the costs discussed in section I at page 2, attorney fees incurred by the County also were necessary and reasonable. The County took the initiative to reduce the cost of litigation by filing its Motion for Summary Judgment. In briefing the motion, it presented its arguments fully and fairly so as to invite a meaningful response from the Plaintiffs.

The County and its counsel sought to keep their attorney fees as low as possible. In so doing, however, they did not sacrifice the quality of the lawyering provided, nor are they expected to do so under Idaho Code §§ 12-117 or 12-121. After all, a great deal is at stake in this litigation, particularly considering that these Plaintiffs are not the only ones so situated. The reasonableness of the attorney fees charged is supported by the accompanying Affidavits.

Idaho R. Civ. P. 54(e)(3) sets out criteria for the Court to consider in determining the amount of attorney fees to award. Those factors are addressed below.

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<sup>8</sup> The only difference between the statutes of which the County is aware is that section 12-121 entails an exercise of discretion. Consequently, on appeal, the reviewing court reviews section 12-121 claims under an abuse of discretion standard. In contrast, appellate courts freely review section 12-117 claims. *Total Success II*, 148 Idaho at 695, 227 P.3d at 949.

1. Time and labor required: The actual time spent by the County's attorneys on this matter is set forth in detail in the Affidavit of Christopher H. Meyer and the exhibits thereto. It is reasonable under the circumstances. See also Affidavit of Murray D. Feldman.

2. The novelty and difficulty of the questions involved: The issues presented in this case are of significant public concern, implicating the ability of local governments to conduct their affairs in the context of settled expectations. If local governments may be forced to repay road fees years after the money is spent, their ability to budget will be jeopardized. Moreover, had Plaintiffs prevailed, the precedent established by this case would attract multiple other litigations by those seeking to undo past deals. Rather than presenting this as a simple inverse condemnation under state law, they raised a broader range of claims and alternative forms of relief including, notably, federal damage claims. This, in turn, led to more complex legal defenses under section 1983, etc. Although the County provided an extensive and thorough explanation in its brief as to why these claims and arguments failed, Plaintiffs have continued to pursue in them. Even after the Court's decision was rendered, Plaintiffs have engaged in further strategic maneuvers requiring the County to incur further legal costs.

3. The skill requisite to perform the legal services properly and the experience and ability of the attorney: As set forth in the discussion of the previous factor, this case presented significant and complex issues of administrative law, constitutional law, statutory interpretation, and civil procedure. Messrs. Meyer and Hendrickson have extensive experience in the fields of law pertinent to this litigation, as detailed in their respective Affidavits. The County is not seeking recovery of attorney fees for Mr. Williams.

4. Prevailing charges for like work: Fees charged by Messrs. Meyer and Hendrickson are at or below the prevailing charges for like work by attorneys of their caliber.

This statement is supported by the Affidavit of Murray D. Feldman. Mr. Meyer's hourly fee of \$280 per hour was discounted from his regular rate as an accommodation to Valley County. Work performed by other attorneys at Givens Pursley was limited to brief strategic consultations. To the extent possible, costs were reduced by employing paralegals for document management.

5. Whether the fee is fixed or contingent: Outside counsel for the County charged a fixed hourly fee for their work. Accordingly, no upward adjustment for a contingent fee is appropriate.

7. Time limitations imposed by the client or the circumstances: There were no particular time limitations that would support either an increase or decrease of the attorney fee.

8. The amount involved and the results obtained: The results obtained were entirely successful for the County. The amount charged was proportionate to the stakes involved and the complexity of the litigation.

10. The undesirability of the case: No adjustment to the attorney fees is necessary based on this factor.

11. The nature and length of the professional relationship with the client: No adjustment to the attorney fees is necessary based on this factor.

12. Awards in similar cases: Counsel for the County are not aware of awards in similar cases other than the case of *Schaefer v. City of Sun Valley*, Case No. CV-06-882 (Idaho, Fifth Judicial Dist. July 3, 2007) (declaring unconstitutional Sun Valley's affordable housing fee). A copy of the *Judgment* entered in at case is attached hereto as Exhibit 3. In that case, the plaintiff prevailed and was awarded attorney fees in the amount of \$60,703 in addition to other costs. Counsel for the plaintiff in that case were Christopher H. Meyer and Martin C. Hendrickson. That fee award was based on Mr. Meyer's hourly fee in 2006 of \$230 per hour.

This is one of the three cases mentioned in the briefing in the case at bar.<sup>9</sup> The County described the case at bar as a “copycat” lawsuit based on these earlier impact fee cases. These three cases are not a direct parallel, of course, because they were decided on the merits and did not present the defenses that were the subject of the County’s Motion for Summary Judgment. But they do reflect the typical level of attorney involvement in cases of this nature.

See also the Affidavit of Murray D. Feldman, another experienced Idaho attorney who has obtained attorney fee recoveries in land use cases.

On balance, these factors support an award of the attorney fees charged to the County in this matter, as set out in the Memorandum of Costs above.

DATED this 28<sup>th</sup> day of January, 2011.

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<sup>9</sup> The second was *Cove Springs Development, Inc. v. Blaine County*, Case No. CV2008-22 (Idaho, Fifth Judicial Dist., June 3, 2008) (declaring unlawful and unconstitutional various exaction and comprehensive plan ordinance provisions). This case, also litigated by Christopher H. Meyer and Martin C. Hendrickson, was settled following the District Court’s favorable decision on the merits. The third was litigated by Victor Villegas and was resolved in favor of his client. *Central Bd. of Realtors, Inc. v. City of McCall*, Case No. CV 2006-490-C (Idaho, Fourth Judicial Dist., Feb. 19, 2008).

VALLEY COUNTY PROSECUTING ATTORNEY

By: Christopher H. Meyer for  
Matthew C. Williams

GIVENS PURSLEY LLP

By: Christopher H. Meyer  
Christopher H. Meyer

By: Martin C. Hendrickson  
Martin C. Hendrickson

Attorneys for Defendant



**CERTIFICATE OF SERVICE**

I hereby certify that on the 28<sup>th</sup> day of January, 2011, a true and correct copy of the foregoing was served upon the following individual(s) by the means indicated:

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\_\_\_\_\_  
Christopher H. Meyer

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Attorneys for Defendant

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF VALLEY

BUCKSKIN PROPERTIES, INC., an Idaho  
Corporation, and TIMBERLINE  
DEVELOPMENT, LLC, an Idaho Limited  
Liability Company,

Plaintiffs,

v.

VALLEY COUNTY, a political subdivision  
of the State of Idaho,

Defendant.

ARCHIE N. BANBURY, CLERK  
By J. Garrison Deputy  
JAN 31 2011

Case No. \_\_\_\_\_ Inst. No. \_\_\_\_\_  
Filed \_\_\_\_\_ A.M. 2:33 P.M.

Case No. CV 2009-554

AFFIDAVIT OF  
CHRISTOPHER H. MEYER

State of Idaho            )  
                                  ) ss.  
County of Ada            )

CHRISTOPHER H. MEYER, being first duly sworn upon oath, deposes and states:

1. I am an attorney licensed to practice law in the state of Idaho. I make this Affidavit based upon personal knowledge and to the best of my information and belief.
2. I am a partner in the firm of Givens Pursley LLP which represents Defendant Valley County (the "County") in the above-captioned civil action.
3. I am admitted to practice in Idaho, Colorado (inactive), and the District of Columbia (inactive), as well as numerous federal courts.
4. I hold a J.D. degree, cum laude, from the University of Michigan Law School (1981) and an A.B. degree in economics, magna cum laude, from the University of Michigan School of Literature, Science and the Art (1977). During my undergraduate years, I was named a James B. Angell Scholar and was awarded the Osterweil Prize in Economics.
5. For the year 2011, I was selected by *Best Lawyers in America*® as the top natural resources lawyer in Idaho. I have been listed in the *Best Lawyers in America*® since 2006 (listed in each four practice areas), in *Chambers USA*'s listing of America's leading lawyers for business since 2008 (highest ranking, "Band 1"), in *Mountain States Super Lawyers*® since 2007, in *Who's Who Legal, the International Who's Who for Environmental Lawyers* since 2010 (one of only eight lawyers named in Idaho), and as a fellow in the honorary society, *Litigation Counsel of America*, since 2010. Martindale-Hubbell has awarded me its highest ranking ("AV") in each year since 1994.
6. I have authored numerous articles and am a regular speaker at legal forums throughout the nation.

7. The Idaho Yearbook Directory (2001) named me as “a key figure in Idaho water law” and “centrally located in the world of Idaho public affairs.”

8. I began my practice of law with the National Wildlife Federation in Washington, D.C. in 1981. From 1984 through 1991, I was an Associate Professor Adjoint with the University of Colorado School of Law in Boulder where I taught seminars in advanced water law, environmental law, and negotiation. During that time, I also litigated environmental cases for the National Wildlife Federation’s legal clinic at the law school, where I was employed.

9. I have practiced law with Givens Pursley LLP in Idaho for the last twenty years. During that time, I have handled numerous cases in state and federal courts throughout Idaho and elsewhere. I have also represented a variety of clients at the administrative level before planning and zoning commissions, cities, and counties. I have also played a significant role in shaping legislation in Idaho, including the 1992 amendments to the Idaho Administrative Procedure Act and the Municipal Water Rights Act of 1996.

10. My practice emphasizes land use (including zoning, permitting, and impact fees). I also practice in the areas of water law, road and public access law, and environmental and natural resources law. My practice includes extensive experience in constitutional and administrative law.

11. Further information about my professional background, including litigation experience and publications, is included in my resume, which is attached hereto as Exhibit 1.

12. I billed the time I spent on this matter at a rate of \$280.00 per hour. This reflects a discount on my regular billing rate. This discount was provided as an accommodation to Valley County.

13. During the relevant time period, I was the lead attorney working on this matter. I was assisted by Martin C. Hendrickson and, on occasion, by other attorneys and staff as reflected in the itemized billing sheets for this matter that are attached hereto as Exhibit 2.

14. In addition me, the other attorneys and paralegals from Givens Pursley who assisted on this matter are identified on the billing sheets as follows:

*Martin C. Hendrickson.* Mr. Hendrickson's credentials are described in his separate Affidavit. Mr. Hendrickson billed at \$200 per hour.

*Jeffrey C. Fereday.* Mr. Fereday is a partner at Givens Pursley and has been practicing law in Washington, DC, Colorado, and Idaho for over twenty years, with particular expertise in natural resources litigation. Mr. Fereday billed at a reduced rate of \$280 per hour.

*Justin A. Steiner.* Mr. Steiner is an associate at Givens Pursley whose practice concentrates in litigation. Mr. Steiner billed at \$160 per hour.

*Alison S. Berriochoa.* Ms. Berriochoa is a paralegal whose assistance was required in connection with discovery, much of which was initiated by Plaintiffs. Her work made case management more efficient and thereby reduced attorney fees. Ms. Berriochoa billed at \$100 per hour.

15. While serving as lead counsel, I consulted with other members of this firm and delegated where appropriate to other partners and associates in order to minimize litigation expense and take advantage of specialization.

16. The rates charged for the time spent by Givens Pursley LLP attorneys and staff on this action are at or below the prevailing charges for like work in Valley County, Idaho and throughout the State when undertaken on a fixed fee agreement.

17. During the course of this proceeding, I and others representing the County made every effort to communicate forthrightly with counsel for the Plaintiffs in order to avoid surprise and unnecessary litigation costs.

18. Because of the importance of the questions involved in this case, including the potential for further litigation by those similarly situated, and the complexity of the federal law issues pressed by the Plaintiffs, this case required a considerable amount of time as well as specialized expertise in the areas of land use, administrative law, constitutional law, and civil procedure.

19. The costs and attorney fees displayed in Exhibit 2 reflect a summary of the monthly billing statements provided by Givens Pursley to the County in connection with this matter.

20. I exercised my professional judgment in reviewing all monthly billings to ensure that charges were reasonable, necessary, and appropriate. Where appropriate, I reduced or wrote off attorney time spent on the matter where I felt that the time could not be justified on the basis of the work produced.

21. With the assistance of staff, I prepared the Memorandum of Costs submitted on behalf of the County herewith. The Memorandum of Costs (which includes attorney fees as well as other costs) is based on the detailed billing summary set out in Exhibit 2. The Memorandum of Costs is accurate and complete to the best of my knowledge.

22. The non-attorney-fee costs reflected in Exhibit 2 were necessary and reasonable. The courier charges (\$35) and messenger charges (\$20) were necessary for transmitting correspondence and pleadings to the Court in order to meet filing deadlines. Photocopying costs (\$392) and binder costs (\$28) were required primarily for copying in connection with pleadings and extensive discovery documents. Conference call charges (\$110) were necessitated by the

need to coordinate among co-counsel and County staff. Electronic research (\$25) was necessary in order to make legal research more efficient. Most electronic research (except for \$25) was written off as a courtesy to the County.

23. In two instances, costs related to certain depositions were split between this case and another case (*White v. Valley County*, Case No. 1:09-cv-00494, U.S. Dist. Court for the Dist. of Idaho). The *White* case involved the same attorneys and very similar issues. Accordingly, a single set of depositions served for both matters. Specifically, costs for travel to the depositions and costs for reporting and deposition transcripts were divided equally between these two cases. This is reflected in the detailed statement by the number "0.50" in the column labeled "quantity."

24. Total attorney fees charged in this matter (through January 24, 2011) were \$56,165. This includes \$12,679 in fees incurred after issuance of the Court's decision on January 7, 2011. Of that \$12,679, fees in the amount of \$8,879 are associated with the County's efforts to recover costs and attorney fees. This work included additional research necessitated by recent court decisions and legislative amendments to Idaho § 12-117 and its interaction with Idaho Code § 12-121. The balance of post-January 7, 2011 fees is associated with motion practice, largely driven by the Plaintiffs.

25. I served as lead counsel in the cases of *Schaefer v. City of Sun Valley*, Case No. CV-06-882 (Idaho, Fifth Judicial Dist. July 3, 2007), and *Cove Springs Development, Inc. v. Blaine County*, Case No. CV2008-22 (Idaho, Fifth Judicial Dist., June 3, 2008). My partner, Martin C. Hendrickson, assisted in both cases. The description of those cases (including the attorney fees awarded in the *Schaefer* matter) set out in *Valley County's Memorandum of Costs and Supporting Statement* is accurate. A true and correct copy of the *Judgment* entered in the *Schaefer* case is attached hereto as Exhibit 3.

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 28<sup>th</sup> day of January, 2011.

Christopher H. Meyer  
Christopher H. Meyer

Subscribed and sworn to before me this 28<sup>th</sup> day January, 2011.



Caralea Hopingardner  
Notary Public for Idaho  
Residing at: Bose, ID  
My Commission Expires: 5/21/2016

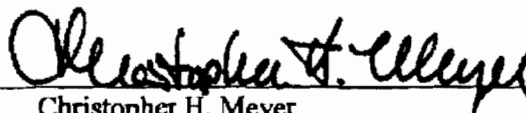


**CERTIFICATE OF SERVICE**

I hereby certify that on the 28<sup>th</sup> day of January, 2011, a true and correct copy of the foregoing was served upon the following individual(s) by the means indicated:

Jed Manwaring  
Victor Villegas  
Evans Keane LLP  
1405 West Main  
P.O. Box 959  
Boise, ID 83701-0959  
jmanwaring@evanskeane.com  
vvillegas@evanskeane.com

- |                                     |                            |
|-------------------------------------|----------------------------|
| <input checked="" type="checkbox"/> | U.S. Mail, postage prepaid |
| <input type="checkbox"/>            | Express Mail               |
| <input type="checkbox"/>            | Hand Delivery              |
| <input type="checkbox"/>            | Facsimile                  |
| <input checked="" type="checkbox"/> | E-Mail                     |

  
\_\_\_\_\_  
Christopher H. Meyer

**INDEX TO EXHIBITS**

- Exhibit 1:     Resume of Christopher H. Meyer
- Exhibit 2:     Billing Summary
- Exhibit 3:     Judgment in *Schaefer* case

**EXHIBIT 1: RESUME OF CHRISTOPHER H. MEYER**

**CHRISTOPHER H. MEYER**  
GIVENS PURSLEY *LLP*  
601 W. Bannock Street  
Boise, Idaho 83702  
Direct: 208-388-1236  
Email: [chrismeyer@givenspursley.com](mailto:chrismeyer@givenspursley.com)



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#### PROFESSIONAL PROFILE

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For three decades, Christopher H. Meyer has been a leader in the fields of water, land use (zoning, impact fees, and related matters), road and public access, environmental, and constitutional law. He is described in the Idaho Yearbook Directory as “centrally located in the world of Idaho public affairs” and “a key figure in Idaho water law.” He has served for over a decade as President of the Idaho Environmental Forum. Before joining Givens Pursley in 1991, Chris taught water law and negotiation at the University of Colorado Law School. Prior to that, he practiced environmental law in Washington, D.C. Chris has written extensively on natural resource law subjects and lectures on a variety of legal topics. Chris has broad experience in transactions involving land use and water rights. He also has extensive litigation experience and has played a significant role in shaping legislation.

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#### LEGAL EMPLOYMENT

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**Givens Pursley LLP, Boise, Idaho.**  
Partner. August 1991 to present.

**University of Colorado Law School, Boulder, Colorado.**  
Associate Professor Adjoint. August 1984 to July 1991. Held this teaching position while serving as counsel to NWF Natural Resources Clinic. Taught seminars in advanced water law, environmental law, and negotiation.

**National Wildlife Federation, Washington, D.C.**  
Counsel. May 1981 to July 1984.

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#### PROFESSIONAL RECOGNITION

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**Best Lawyers in America (since 2006)**

- In 2011, named the top lawyer in Idaho (“Lawyer of the Year”) for natural resources
- Recognized in four categories: water law, land use & zoning law, natural resources, and environmental law

**Mountain States Super Lawyers (since 2007)**

- Energy and natural resources law

**Chambers USA (since 2008)**

- Band 1 (highest ranking) for natural resources and environment

**Martindale-Hubbell (since 1994)**

- Highest ranking (“AV”)

**Who’s Who Legal: The International Who’s Who of Environment Lawyers (since 2010)**

- One of only eight lawyers recognized in Idaho

**Litigation Counsel of America (since 2010)**

- Fellow in honorary society composed of less than one-half of one percent of American lawyers

**Marquis’ Who’s Who in the World, Who’s Who in America, and Who’s Who in American Law**

**Idaho Yearbook Directory (2001)**

- Described as a “key figure in Idaho water law” and “centrally located in the world of Idaho public affairs”
- Listed among top 100 most influential Idahoans

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**EDUCATION**

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**University of Michigan, School of Law**

Juris Doctor, 1981

- cum laude

**University of Michigan**

Degree in economics, 1977

- high distinction (magna cum laude)
- Phi Beta Kappa
- James B. Angell Scholar
- honors program in economics, class honors
- Osterweil Prize in Economics

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**SELECTED LITIGATION**

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*In Re SRBA*, Case No. 39576, Subcase Nos. 29-00271 et al. (Idaho, Fifth Judicial Dist., Nov. 9, 2009 and April 12, 2010) (upholding position of clients regarding alternative points of diversion in City of Pocatello municipal water rights litigation) (now on appeal to Idaho Supreme Court).

*Sopatyk v. Lemhi County*, Case No. CV-07-402 (Idaho, Seventh Judicial Dist., Oct. 22, 2009) (upholding County’s validation of Anderson Creek Road) (now on appeal to Idaho Supreme Court).

*In Re SRBA*, Case No. 39576, Subcase Nos. 63-02779 et al. (Idaho, Fifth Judicial Dist., June 3, 2009), Subcase Nos. 63-02449 et al. (Fifth Judicial Dist., May 20, 2009) (secured partial decrees for each of the City of Nampa’s water rights).

*Galli v. Idaho County*, 146 Idaho 155, 191 P.3d 233 (2008) (amicus brief in public access case).

*Cove Springs Development, Inc. v. Blaine County*, Case No. CV2008-22 (Idaho, Fifth Judicial Dist., June 3, 2008) (declaring unlawful and unconstitutional various exaction and comprehensive plan ordinance provisions).

*Schaefer v. City of Sun Valley*, Case No. CV-06-882 (Idaho, Fifth Judicial Dist. July 3, 2007) (declaring unconstitutional Sun Valley’s affordable housing fee).

*American Falls Reservoir Dist. No. 2 v. Idaho Dep’t of Water Resources*, 143 Idaho 862, 154 P.3d 433 (2007) (conjunctive management of ground and surface water).

*Chisholm v. Idaho Department of Water Resources*, 142 Idaho 159, 125 P.3d 515 (2005) (water rights—local public interest).

*Davisco Foods Int’l, Inc. v. Gooding County*, 141 Idaho 784, 118 P.3d 116 (2005) (land use).

*Farrell v. Board of County Comm’rs of Lemhi County*, 138 Idaho 378, 64 P.3d 304 (2002) (public road access—the Indian Creek Road case).

*Potlatch Corp. v. United States*, 134 Idaho 916, 12 P.3d 1260 (2000) (wilderness water rights).

*State v. Hagerman Water Right Owners, Inc.*, 130 Idaho 727, 947 P.2d 400 (1997) (partial forfeiture water rights case).

*Fremont-Madison Irrigation Dist. v. Idaho Ground Water Appropriators, Inc.*, 129 Idaho 454, 926 P.2d 1301 (1996) (interpretation of water right amnesty statute).

- State, ex rel. Higginson v. United States*, 128 Idaho 246, 912 P.2d 614 (1995) (constitutionality of SRBA amendments – water law).
- Nebraska v. Rural Electrification Administration*, 23 F.3d 1336 (8th Cir. 1994), aff'g, 1993 WL 662353 (D. Neb. 1993) (scope of environmental trust's authority to litigate).
- Sierra Club v. Yeutter*, 991 F.2d 1405 (10<sup>th</sup> Cir. 1990) (federal reserved water rights – amicus brief).
- State v. Morros*, 766 P.2d 263 (Nev. 1988) (instream flows recognized under state law).
- Catherland Reclamation Dist. v. Lower Platte North Natural Resources Dist.*, 433 N.W.2d 161 (Neb. 1988) (water rights and state endangered species act).
- Hitchcock and Red Willow Irrigation Dist. v. Lower Platte North Natural Resources Dist.*, 410 N.W.2d 101 (Neb. 1987) (right to build water project).
- Tulalip Tribes of Washington v. FERC*, 732 F.2d 1451 (9th Cir. 1985) (hydropower licensing).
- Escondido Mutual Water Co. v. La Jolla Band of Mission Indians*, 466 U.S. 765 (1984) (mitigation for hydroelectric developments on public lands).
- National Wildlife Fed'n v. Marsh*, 568 F. Supp. 985 (D.D.C. 1983) (administrative law under NEPA).
- Sporhase v. Nebraska ex rel. Douglas*, 458 U.S. 941 (1982) (ban on water export in violation of commerce clause) (brief available at 1982 WL 608572).

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#### LEGISLATION

- Local Public Interest Amendments (water rights), 2003 Idaho Sess. Laws ch. 298, codified at Idaho Code § 42-202B(3), 42-203A(5), 42-222(1), 42-240(5), 42-1763.
- Idaho Municipal Water Rights Act, 1996 Idaho Sess. Laws ch. 297, codified at Idaho Code § 42-202(2), 42-202B, 42-217("4."), 42-219(1) & (2), 42-222(1), 42-223(2), 43-335, 43-338).
- Idaho Administrative Procedure Act, logical outgrowth rule, Idaho Code § 67-5227.

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#### PUBLICATIONS

- Meyer, *Municipal Water Rights and the Growing Communities Doctrine*, *The Water Report* (Mar. 15, 2010).
- Fereday, Meyer & Creamer, *Water Law Handbook: The Acquisition, Use, Transfer, Administration, and Management of Water Rights in Idaho*, Givens Pursley (2010).
- Allen, Meyer, Nelson & Lee, *Idaho Land Use Planning Handbook*, Givens Pursley (2010).
- Meyer, *Road Law Handbook: Road Creation and Abandonment Law in Idaho*, Givens Pursley (2010).
- Meyer, *Ethics Handbook: Ethical Considerations for the Client and Lawyer in Idaho*, Givens Pursley (2010).
- Meyer, *An Introduction to the Law of Interstate Water Allocation: From Compacts to Common Sense*, Law Seminars International (2009).
- Meyer, *Interstate Water Allocation*, *The Water Report* (Aug. 15, 2007).
- Meyer, Idaho Chapter Author for *Brownfields Law and Practice*, Matthew Bender & Co., Inc. (2004) (named *Best Law Book of the Year* by the American Association of Publishers).
- Meyer, *A Comprehensive Guide to Redeveloping Contaminated Property* (Idaho Chapter), American Bar Association (2002).
- Meyer, *The Federal Reserved Water Rights Doctrine in a Skeptical Age*, 39 *American Law Institute – American Bar Assn.* 219 (2001).

- Meyer, *All I Really Need To Know About Legal Ethics I Learned in Law School*, 43 *The Advocate* (Idaho Bar Assn.) 15 (2000).
- Allen, Humberger, Honhorst & Meyer, *Land Use Law in Idaho*, National Business Institute (1999).
- Meyer, *Aquifer Storage and Recovery in Idaho*, University of Idaho (1999).
- Meyer, *Complying with Environmental and Special Use Regulations*, in *LAND USE LAW IN IDAHO*, National Business Institute (1999).
- Meyer, *Municipal Water Rights in Idaho: The Growing Communities Doctrine and Its Recent Codification*, Northwest Water Law & Policy Project (1996).
- Meyer, *Small Handles on Big Projects: The Federalization of Private Undertakings*, 41 *Rocky Mountain Mineral Law Institute* 5-1 (1995).
- Meyer, *Instream Flows: Integrating New Uses and New Players into the Prior Appropriation System*, in *INSTREAM FLOW PROTECTION IN THE WEST*, Natural Resource Law Center (1993).
- Meyer, *Water Conservation: Looks Can Deceive*, in *RIVER VOICES* (1993).
- Meyer, *Instream Flows: Coming of Age in America*, in *PROCEEDINGS OF THE WESTERN REGIONAL INSTREAM FLOW CONFERENCE* (1989).
- Meyer, *Western Water Law: The New Frontier*, in *AUDUBON WILDLIFE REPORT* (1989).
- Meyer, *New Developments in Water Rights on Public Lands: Federal Rights and State Interests*, paper presented at conference sponsored by the Natural Resource Law Center, University of Colorado School of Law, *Water as a Public Resource: Emerging Rights and Obligations* (1987).
- Meyer, *Navigating the Wetlands Jurisdiction of the Army Corps of Engineers*, 9 *Resource L. Notes* 3, Natural Resources Law Center (1986).
- Meyer, Two papers published in *Winning Strategies for Rivers: Proceedings of the Tenth Annual National Conference on Rivers*, American Rivers Conservation Council (1985).
- Osann, Campbell, Meyer, & Allemang, *Shortchanging the Treasury: The Failure of the Department of the Interior to Comply with the Inspector General's Audit Recommendations to Recover the Costs of Federal Water Projects*, National Wildlife Federation (1984).
- Anderson, Campbell & Meyer, *Solving the Water Crisis*, V-7 Policy Report 9, the Cato Institute (1983).
- Meyer, *Sporhase v. Nebraska: A Spur to Better Water Resource Management*, 1 *Envtl. Forum* 28, Environmental Law Institute (1983).
- Burwell & Meyer, *A Citizen's Guide to Clean Air and Transportation: Implications for Urban Revitalization*, U.S. Environmental Protection Agency (1980).
- Meyer, *The Effects of Labor Organization on the Functional Distribution of Income in Manufacturing Industries in the United States for the Years 1948 through 1972*, Senior Honors Thesis, University of Michigan (1978).

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**BAR MEMBERSHIPS**

Member of the bars of Idaho, Colorado, and the District of Columbia.  
Admitted to practice in federal courts in the District of Columbia, Eighth, Ninth, and Tenth Circuits.

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**PERSONAL**

██████████, in Springfield, Missouri.  
Married to Karen A. Meyer. One child, C. Andrew Meyer.

Appendix to Resume of Christopher H. Meyer - Speaking Engagements, Papers, and Testimony

Sponsor	Conference, Publication or Hearing	Title of Presentation, Paper or Testimony	Location	Date
Idaho Environmental Forum	Boise River Conference	(Moderated panel on the future of water in the Treasure Valley)	Boise, ID	August 11, 2010
National Business Institute	Road and Public Access Law	(Co-taught full-day seminar with Paul A. Turke and Jennifer A. Stevens)	Boise, ID	July 19, 2010
Urban Land Institute	Water Rights and Urban Development	(Moderator)	Boise, ID	May 1, 2010
American Bar Association Section of Environment, Energy, and Resources	28th Annual Water Law Conference: Whose Spigot is It?	Municipal Water Rights in Idaho (reported in 13 U. Denver Water L. Rev. 463, 484 (2010))	San Diego, CA	February 18-19, 2010
National Business Institute	Land Use Law: Current Issues in Subdivision, Annexation and Zoning	Judicial Review of the Land Use Decision	Boise, ID	December 7, 2009
Law Seminars International	Resolving Interstate Water Conflicts	Methods of Interstate Water Allocation and What's Currently in Place in the Pacific Northwest (Program co-chair and speaker)	Spokane, WA	September 21-22, 2009
National Business Institute	Practical Guide to Zoning and Land Use Law	Ethics in Zoning and Land Use Law	Boise, ID	September 14, 2009
National Business Institute	Navigating Local Land Use Laws and Approval Processes	Appealing the Local Land Use Decision	Boise, ID	June 2, 2009
Law Seminars International	Idaho Water Law 2009	(Program co-chair)	Boise, ID	May 7-8, 2009
Givens Pursley LLP	Conflicts of Interest and the Retainer Agreement	(In-house CLE)	Boise, ID	December 16, 2008
National Business Institute	Land Use Law: Current Issues in Subdivision, Annexation and Zoning	Be Alert to the Legal and Practical Considerations of Annexation	Boise, ID	December 9, 2008
Idaho Water Users Association	25th Annual Water Law and Resource Issues Seminar	Ethical Considerations Applicable to the Water Lawyer	Boise, ID	November 6-7, 2008
National Business Institute	Practical Guide to Zoning and Land Use Law	Litigation Update: Affordable Housing "Linkage" and "Inclusionary" Fees	Boise, ID	September 16, 2008
Law Seminars International	Idaho Water Law	Prospects for Resolving Water Issues Between Idaho and Washington (Program co-chair and speaker)	Coeur d'Alene, ID	May 15-16, 2008
American Bar Association Section of Environment, Energy, and Resources	26th Annual Water Law Conference	Interstate Conflicts Over Shared Groundwater Basins (Moderator for panelists: James H. Davenport, John Leahy & Roger Patterson) (reported in 11 U. Denver Water L. Rev. 389 (2008))	San Diego, CA	February 21-22, 2008
The Seminar Group	Creating Environmental Capital	The Marketplace for Water Rights	Boise, ID	February 7-8, 2008
National Business Institute	Land Use Law: Current Issues in Subdivision, Annexation and Zoning	Legal and Practical Considerations of Annexation and Areas of Impact	Boise, ID	December 10, 2007
Idaho Water Users Association	25th Annual Water Law and Resource Issues Seminar	Ethical Considerations Applicable to the Water Lawyer	Boise, ID	November 6-7, 2007
National Business Institute	Road and Access Law: Successfully Handling Disputes	(Co-taught half-day seminar with Paul A. Turke)	Boise, ID	October 30, 2007
National Business Institute	Practical Guide to Zoning and Land Use Law	Current Case Law and Legislative Update	Boise, ID	September 17, 2007
Envirotech Publications, Inc.	The Water Report	Interstate Water Allocation		August 15, 2007
National Business Institute	Fundamentals of Water Law	(Co-taught full-day seminar with John M. Marshall and Phillip J. Rassier)	Boise, ID	July 10, 2007
Law Seminars International	Washington Water Law (16th Annual Conference)	Idaho and Washington Adjudications	Seattle, WA	June 4-5, 2007
Law Seminars International	Idaho Water Law	(Program co-chair)	Boise, ID	May 24-25, 2007
Lorman Education Services	Large-Scale Developments in Idaho's Treasure Valley	(Co-taught full-day seminar with John M. Marshall and Mark Ryan)	Boise, ID	May 9, 2007



Appendix to Resume of Christopher H. Meyer - Speaking Engagements, Papers, and Testimony

Sponsor	Conference, Publication or Hearing	Title of Presentation, Paper or Testimony	Location	Date
National Business Institute	Water Rights and Water Quality in Idaho	(Co-taught full-day seminar with John M. Marshall and Mark Ryan)	Boise, ID	February 15, 2007
Idaho Water Users Association	69th Annual Convention	(Toastmaster)	Boise, ID	January 23-25, 2007
National Business Institute	Land Use Law: Current Issues in Subdivision, Annexation and Zoning	Legal and Practical Considerations of Annexation	Boise, ID	December 7, 2006
National Business Institute	5th Annual Road and Access Law in Idaho	(Co-taught full-day seminar with Paul A. Turke)	Boise, ID	November 2, 2006
National Business Institute	Fundamentals of Water Law	(Co-taught full-day seminar with John M. Marshall and Phillip J. Rassier)	Boise, ID	July 11, 2006
Idaho State Bar Business & Corporate Law Section	Business Issues in Complex Commercial Real Estate Transactions Using Limited Liability Companies	Conflicts of Interest at Formation and Thereafter	Boise, ID	May 4, 2008
Lorman Education Services	A Year In The Life Of A Development Deal In Idaho: Land Use Impacts On Real Estate Transactions	(Role-play lawyer in representation of developer clients)	Boise, ID	April 20, 2006
National Business Institute	Road and Access Law in Idaho: Researching and Resolving Access Disputes	(Co-taught full-day seminar with Paul A. Turke)	Boise, ID	November 11, 2005
National Business Institute	Protecting Water Rights and Quality in Idaho	(Co-taught full-day seminar with John M. Marshall and Mark Ryan)	Boise, ID	October 7, 2005
Canyon County Farm Bureau; Canyon Agricultural Foundation Education; Albertson College of Idaho; Idaho Smart Growth; Land Trust; Black Canyon Irrigation District; U.S. Bureau of Reclamation	The Cost of Growth	Interaction of the Law of Water Rights and the Law of Planning and Zoning	Caldwell, ID	September 7, 2005
National Business Institute	Practical Guide to Zoning and Land Use Law in Idaho	The law of Annexation	Boise, ID	May 3, 2005
Lorman Education Services	A Year In The Life Of A Development Deal: Land Use Impacts On Real Estate	(Role-play lawyer in representation of developer clients)	Boise, ID	April 7, 2005
National Business Institute	Fundamentals of Water Law in Idaho: Protecting Water Rights, Use and Quality	(Co-taught full-day seminar with Phillip J. Rassier)	Boise, ID	March 10, 2005
National Business Institute	Idaho Land Use: Current Issues in Subdivision Annexation and Zoning Law	(Co-taught full-day seminar with Gary G. Allen and Daborah H. Nelson)	Boise, ID	December 8, 2004
National Business Institute	Land Use Planning and Eminent Domain in Idaho	(Co-taught full-day seminar with Gary G. Allen)	Boise, ID	June 4, 2004
National Business Institute	Fundamental of Water Law in Idaho: Protecting Water Rights Use and Quality	(Co-taught full-day seminar with Phillip J. Rassier)	Boise, ID	February 17, 2004
National Business Institute	Road and Access Law in Idaho: How to Research and Resolve Access Disputes	(Co-taught full-day seminar with Paul A. Turke)	Boise, ID	August 19, 2003
National Business Institute	Fundamentals of Water Law in Idaho: Protecting Water Rights, Use and Quality	(Co-taught full-day seminar with Phillip J. Rassier)	Boise, ID	February 18, 2003
Idaho State Bar Association, Natural Resources Section	Debate	Public Interest Considerations in Water Rights and Water Transfers	Boise, ID	January 15, 2003

Appendix to Resume of Christopher H. Meyer - Speaking Engagements, Papers, and Testimony

Sponsor	Conference, Publication or Hearing	Title of Presentation, Paper or Testimony	Location	Date
Idaho Environmental Forum		New Strategies for Water Transfers in the ESPA	Boise, ID	November 12, 2002
Idaho Water Users Association	College of Water Law Seminar	The Local Public Interest: Is It Time for a Change?	Boise, ID	November 7, 2002
Idaho Association of Commerce and Industry		Water Wars in the New Millennium: Practical Paths to Sound Water Policy	Twin Falls, ID	September 12, 2002
National Business Institute		(Co-taught entire seminar with Paul A. Turke)	Boise, ID	August 1, 2002
Compass, IDWR and University of Idaho	Treasure Valley Water Summit (2-day seminar)	A Critical Look at Our Water Future	Boise, ID	January 14, 2002
National Business Institute	Seminar	(Co-taught full-day seminar with Phillip J. Rassier)	Boise, ID	January 8, 2002
American Law Institute - American Bar Association	Federal Lands Law Conference	Paper presented entitled, "Federal Reserved Water Rights in a Skeptical Age" (available on Westlaw)	Salt Lake City, UT	October 18-19, 2001
National Business Institute	Seminar	Fundamentals of Water Law in Idaho	Boise, ID	August 24, 2000
Idaho Department of Environmental Quality and U.S. Environmental Protection Agency	Environmental Considerations in Land Development	A Critical Re-Evaluation of Idaho's Brownfields Programs	Boise, ID	August 21, 2000
Idaho Senate Committee on Transportation	Hearing on S.B. 1500, the R.S. 2477 Road Bill	Statement of Christopher H. Meyer	Boise, ID	March 2, 2000
Idaho State Bar Association, Water Law Section	Idaho Water Seminar Series, University of Idaho	Public Interest Considerations in Idaho Water Law	Boise, ID	February 29, 2000
Idaho Water Users Association	Annual Water College	The Scope of the Local Public Interest in Idaho Water Rights Transactions	Boise, ID	December 2, 1999
Association of Idaho Cities	Annual Meeting	The Impact of Federal Reserved Water Rights on Idaho Municipalities	Sun Valley, ID	November 5, 1999
Idaho Water Resources Research Institute	Connections '99	The Emerging Law Governing Aquifer Storage and Recovery	Boise, ID	September 28, 1999
National Business Institute	Intensive Review of Idaho Water Law	(Co-taught full-day seminar with Phillip J. Rassier)	Boise, ID	August 31, 1999
Idaho State Bar Association	Annual Meeting	Municipal Water Law	Coeur d'Alene, ID	July 15, 1999
Idaho Law Foundation	Annual Conference	Marketing Contaminated Properties	Boise, ID	April 20, 1999
Fourth District Bar Association	Spring Case Review	The Battle Over Federal Reserved Water Rights	Boise, ID	April 15, 1999
National Business Institute	Land Use Law Update in Idaho	Complying with Environmental and Special Use Regulation	Boise, ID	March 4, 1999
Idaho Water Users Association	15th Annual Water Law & Resources Seminar	Competition for Idaho Water: Some Observations and Cautions	Boise, ID	November 19, 1998
Idaho Rural Water Association	1998 Annual Technical Training Conference	Water Rights for Municipalities and Small Distributors	Boise, ID	November 18, 1998
Idaho Environmental Law Compliance, Government Institutes	Water and the Environment	Boise's Short and Long Term Water Availability	Boise, ID	October 19, 1998
University of Idaho	Video link with Idaho campuses	An Introduction to Current Water Law Issues	Boise, ID	September 15, 1997
American Water Works Association, Pacific Northwest Section	Annual Meeting	Municipal Water Rights in Idaho	Boise, ID	May 7, 1997
Association of Idaho Cities	Annual Meeting	Idaho's Growing Communities Doctrine: Strategies for Municipal Water Providers	Post Falls, ID	June 21, 1996
Lewis & Clark Law School	2nd Annual Water Policy Conference, <i>The Northwest's Water Resources: A Question of Federal, Tribal, State &amp; Local Control</i>	Municipal Water Demand, Economic Development, and Environmental Impacts	Portland, OR	May 10, 1996

Appendix to Resume of Christopher H. Meyer - Speaking Engagements, Papers, and Testimony

Sponsor	Conference, Publication or Hearing	Title of Presentation, Paper or Testimony	Location	Date
Rocky Mountain Mineral Law Foundation	41st Annual Rocky Mountain Mineral Law Institute	Small Handles on Big Projects: The Federalization of Private Undertakings	Sun Valley, ID	July 20, 1995
University of Nevada at Reno	Truckee River Conference	The Nuts and Bolts of Instream Flow Protection	Reno, NV	April 27, 1995
National Fish & Wildlife Foundation, and Ford Foundation		Western Water - Issues and Approaches for the 1990s	Washington, DC	May 26, 1994
Idaho River United		Conjunctive Management of Ground and Surface Water	Boise, ID	March 19, 1994
Idaho Association of Soil Conservation Districts	Water Quality 2000	The Public Trust Doctrine and Private Property Rights	Boise, ID	January 23-26, 1994
American Rivers	The Future of America's Rivers	Federal Reserved Water Rights	Washington, DC	November 4-7, 1993
CLE International	Conference	Program Co-Chairman and speaker on Endangered Species Act	Boise, ID	May 13-14, 1993
University of Idaho College of Law		Environmental Protection and Water Rights Management	Boise, ID	April 2, 1993
U.S. Fish and Wildlife Service	Seminar	Instream Flow Protection in Idaho	Boise, ID	December 3, 1992
National Governors Association		Practical Problems in Water Conservation	Boise, ID	October 6, 1992
	Western Land Use Conference	Water Law Today	Boise, ID	September 12, 1992
Idaho Bar Association, Water Law Section	Annual Meeting	The Basics of Western Water Law	Coeur d'Alene, ID	July 23, 1992
Idaho Water Users Association		Consumptive Uses and Instream Flows - An Emerging Water Law Doctrine	McCall, ID	July 10, 1992
Montana Wildlife Federation	1992 Annual Meeting	Instream Flow Update	Anaconda, MT	May 1-3, 1992
The Wilderness Society	Desert Conference XIV	Perspectives on Water Issues	Malheur Field Station, OR	April 25, 1992
American Fisheries Society, Idaho Chapter	Annual Meeting	An Overview of Prior Appropriation and the Public Trust Doctrine	McCall, ID	March 12, 1992
Idaho Law Foundation, University of Law Review, Idaho State Bar Association, Water Law Section	Conference	The Basics of Western Water Law	Boise, ID	February 20, 1992
Lewis & Clark College, WaterWatch of Oregon	Conference	The Quantity/Quality Dilemma: Three Dimensional Problems in a Two Dimensional Doctrine	Portland, OR	February 22, 1991
Colorado House Committee on Agriculture, Livestock and Natural Resources	Hearing on H.B. 1172 (the "Can and Will Bill") and H.B. 1019 (the "Instream Flow Bill")	Statement of Christopher H. Meyer	Denver, CO	February 13, 1991
American Fisheries Society, Wildlife Society, Arizona and New Mexico Chapters	Annual Meeting	Western Water and Wildlife	Farmington, NM	February 1, 1991
Colorado Association of Commerce and Industry	Conference	Incorporating Changing Values into the Water Allocation System	Denver, CO	January 11, 1991
CEAT-Techlaw	Bi-Annual Conference	Federal Regulation of Water Resources	Golden, CO	December 13, 1990
Clean Water Action	Colorado Environmental Forum for the 90s - Panel Discussion	When Will Coloradans See a Wilderness Bill?	Denver, CO	October 13, 1990
Texas Department of Agriculture		Fitting Water Conservation into the Prior Appropriation Doctrine	Austin, TX	October 6, 1990
Colorado Endowment for the Humanities	Conference	Surgery on the Prior Appropriation Doctrine: Can the Patient be Saved?	FL Collins, CO	September 8, 1990
Governor Richard D. Lamm and Governor George A. Sinner		Participant in "Western Regional Principals Meeting" re policy options affecting the West	Beaver Creek, CO	August 13-14, 1990
Natural Resources Law Center	"Changes Uses of Water in the West" Conference	"Approaches to Area of Origin Protection in the West" debate	Boulder, CO	June 7, 1990

Appendix to Resume of Christopher H. Meyer - Speaking Engagements, Papers, and Testimony

Sponsor	Conference, Publication, or Hearing	Title of Presentation, Paper or Testimony	Location	Date
Army Corps of Engineers, and Army JAG Corps Natural Resources Law Center	1990 Water Law Symposium	The Role of the States in National Environmental Policy	Scottsdale, AZ	May 17, 1990
		Reservoir Storage Rights and Instream Flows: Are Instream Rights Submersible?	Boulder, CO	April 21, 1990
Colorado State University	"Hydrology Days" Conference	New Directions for Western Water	Ft. Collins, CO	April 11, 1990
Colorado Senate Committee on Agriculture and Natural Resources	Hearing on Wilderness Water Rights	Statement of Christopher H. Meyer	Denver, CO	March 28, 1990
Colorado Water Conservation Board	Hearing on Inundation of Instream Flow Water Rights	Statement of Christopher H. Meyer	Denver, CO	February 26, 1990
Colorado House Committee on Agriculture, Livestock and Natural Resources	Hearing on Basin of Origin Protection	Statement of Christopher H. Meyer	Denver, CO	February 15, 1990
University of Denver Law School	Conference	Water: In the Wake of Two Forks (Panel with Governor Roy Romer)	Denver, CO	November 17, 1989
Midland Lutheran College	GTE Lectureship on Science, Technology and Human Values	Crisis in the Heartland: Human Values in a Changing Rural Landscape	Fremont, NE	November 14, 1989
Trout Unlimited	Instream Flow Conference	The Politics of Instream Flow (Panel with Senator Wallop and Representative Owen)	Jackson, WY	October 20, 1989
Colorado Water Congress	14th Annual Colorado Water Workshop	Instream Flow Protection and the Public Interest in Water Quality	Gunnison, CO	July 24, 1989
University of Montana	11th Public Land Law Conference	Participant in debate on "Instream Flow Protection in the West"	Missoula, MT	April 28, 1989
National Wildlife Federation	Annual Meeting	Western Water Law: Showdown at the River	Washington, DC	March 18, 1989
Lewis & Clark College of Law	7th Annual Western Public Law Conference	Water Rights: Natural Flow Revisited	Eugene, OR	March 3, 1989
National Park Service and American Rivers	"Celebrate America's Rivers" Conference	Using Water Rights to Protect Rivers (Moderator)	Washington, DC	November 19, 1988
U.S. Fish and Wildlife Service	Short Course	Section 404 and State Water Allocation	Denver, CO	November 17, 1988
Colorado Water Resources Research Institute	Luncheon	Colorado's Instream Flow Program: A Call for Perestroika	Denver, CO	October 18, 1988
Colorado Bar Association	Annual Meeting	Panel discussion on "The Public Trust in Water Allocation"	Colorado Springs, CO	September 29, 1988
Nebraska Wildlife Federation	Annual Meeting	The Struggle for the Platte River	Lincoln, NE	September 17, 1988
Colorado Environmental Education Project	Candidate's Workshop	Water Issues	Denver, CO	September 2, 1988
Colorado Water Congress	13th Annual Colorado Water Workshop	The Market-based Approach and Instream Uses: Unexplored Potential and Unresolved Problems	Gunnison, CO	July 11, 1988
Wyoming Wildlife Federation	Annual Meeting	The Platte: Saving the River from Ourselves	Gillette, WY	April 16, 1988
Natural Resources Law Center	Conference	Colorado Wilderness: Prognosis for the Future	Boulder, CO	April 1, 1988
National Audubon Society	Spring River Conference	The Catherland Project: A Progress Report on the Platte River	Kearney, NE	March 26, 1988
ELS Career Opportunities Symposium	Panel	Charting a Career in the Environment (Moderator)	Boulder, CO	November 11, 1987
University of Denver College of Law	"Water Marketing 1987" Conference	Panel discussion on "Third Party Effects and the Public Interest"	Denver, CO	October 8, 1987
Colorado Bar Association	Annual Meeting	Should the Acquisition of Instream Flow Rights be Limited to the Colorado Water Conservation Board?	Colorado Springs, CO	September 17, 1987
Energy Resource Educators	Second Annual Conference	An Overview of Colorado Water Issues	Denver, CO	July 12, 1987
Natural Resources Law Center	Conference	New Developments in Water Rights on Public Lands: Federal Rights and State Interests	Boulder, CO	June 2, 1987

**Appendix to Resume of Christopher H. Meyer - Speaking Engagements, Papers, and Testimony**

Sponsor	Conference, Publication or Hearing	Title of Presentation, Paper or Testimony	Location	Date
Colorado Senate Committee on Agriculture and Natural Resources	Hearing on S.B. 212 to Amend Colorado's Instream Flow Law	Statement of Christopher H. Meyer	Denver, CO	May 28, 1987
Subcommittee on Environmental Protection of the U.S. Senate Committee on Environment and Public Works	Hearing on Reauthorization of the Endangered Species Act	Statement of Christopher H. Meyer	Washington, DC	April 7, 1987
American Rivers Conservation Council	12th Annual National Conference	Lead workshop entitled, "Endangered Species in America's Rivers: New Rules for an Old Game"	Washington, DC	April 4, 1987
Lower Platte South Water Conservancy District		Update on the Platte River Joint Management Study	Sterling, CO	November 24, 1986
Colorado Water Congress	11th Annual Colorado Water Workshop	Colorado's Wilderness: Like a Fish Out of Water?	Gunnison, CO	July 30, 1986
Western States Water Council	Summer Meeting	Water for Fish and Wildlife: Challenges for the Present, Recommendations for the Future	Ashland, OR	July 23-25, 1986
Subcommittee on Public Lands of the U.S. House Committee on Interior and Insular Affairs	Hearing on Wilderness Water Rights	Statement of Christopher H. Meyer	Washington, DC	June 10, 1986
University of Colorado	Conference on Alternative Career Paths	Changing the World for Pay	Boulder, CO	May 1, 1986
Western Area Power Administration	"Electric Power and the Environment" Conference	Hydropower in the 80s: The Rules are Changing	Lakewood, CO	April 30, 1986
American Rivers Conservation Council	11th Annual National Conference	Instream Flows: Time for Reckoning	Washington, DC	April 5, 1986
Colorado State University	Natural Resources Day	Wildlife and Water Law	Ft. Collins, CO	March 28, 1986
National Wildlife Federation	Annual Meeting	Western Water Law in Transition: Confrontation or Accommodation?	Seattle, WA	March 22, 1986
Boulder County Bar Association	Continuing Legal Education	United States v. Riverside Bayview Homes: Navigating the Corps' Wetlands Jurisdiction	Boulder, CO	March 8, 1986
PLAN-Boulder	Luncheon	A Turning Point in Western Water	Boulder, CO	February 21, 1986
Nebraska Wildlife Federation	Annual Meeting	The Struggle for the Platte River	Kearney, NE	October 12, 1985
Colorado Water Congress	Workshop on Endangered Species and Western Water Law	Resolving Conflicts in the Platte River Basin	Denver, CO	September 20, 1985
University of Colorado, Wilderness Study Group	Debate on Environmental Strategy	Ecotage vs. Playing the Game	Boulder, CO	April 22, 1985
American Rivers Conservation Council	10th Annual National Conference	Lead workshop entitled, "Western Water Rights"	Washington, DC	March 30, 1985
Subcommittee on Energy Conservation and Power of the U.S. House Committee on Energy and Commerce	Hearing on Hydroelectric Relicensing Legislation	Statement of Christopher H. Meyer and David Conrad	Washington, DC	May 17, 1984
American Rivers Conservation Council	9th Annual National Conference	Head to Head with FERC	Washington, DC	April 1, 1984
The Energy Bureau	Small-scale Hydropower Conference	Panel discussion on regulatory issues	Washington, DC	March 21, 1984
Subcommittee on Public Lands and Reserved Water of the U.S. Senate Committee on Energy and Natural Resources	Hearing on Local River Conservation Act	Statement of Christopher H. Meyer	Washington, DC	March 6, 1984
Subcommittee on Conservation, Credit, and Rural Development of the U.S. House Committee on Agriculture	Hearing on Effects of Inter-basin Water Transfers	Statement of Christopher H. Meyer	Washington, DC	June 15, 1983
Congressional Research Service	Energy Planning for U.S. Insular Areas	Hydropower Licensing Reform and the Environment	Washington, DC	May 12, 1983
The Energy Bureau	Small-scale Hydropower Conference	Panel discussion on the Federal Power Act	Washington, DC	May 2, 1983
The Cato Institute	Water Resources Allocation Symposium	Solving the Water Crisis	Washington, DC	April 14, 1983

Appendix to Resume of Christopher H. Meyer - Speaking Engagements, Papers, and Testimony

Sponsor	Conference, Publication or Hearing	Title of Presentation, Paper or Testimony	Location	Date
River Conservation Fund	Conference	Can Our Rivers Survive PURPA?	Washington, DC	April 8, 1983
The Energy Bureau	Small-scale Hydropower Conference	Panel discussion on the Federal Energy Regulatory Commission	Washington, DC	September 21, 1982
Subcommittee on Transportation of the U.S. Senate Appropriations Committee	Hearing on Urban Mass Transportation Administration Appropriations	Statement of Edward R. Osann and Christopher H. Meyer	Washington, DC	April 17, 1980
Subcommittee on Transportation of the U.S. House Appropriations Committee	Hearing on Urban Mass Transportation Appropriations	Statement of Christopher H. Meyer	Washington, DC	April 15, 1980
Subcommittee on Housing and Urban Affairs of the U.S. Senate Committee on Banking, Housing, and Urban Affairs	Hearing on Urban Mass Transportation Authorizations	Statement of Christopher H. Meyer	Washington, DC	March 19, 1980

**EXHIBIT 2: ITEMIZED BILLING SHEETS**

Valley County / Buckskin Properties Litigation 10915-2

Date	TimeKeeper	Hours	Rate	Total	Description
5/21/2010	Christopher H. Meyer	2.50	280.00	700.00	Review administrative materials and prepare discovery responses.
5/23/2010	Christopher H. Meyer	4.10	280.00	1,148.00	Review documents; compile timeline and prepare discovery responses.
5/24/2010	Christopher H. Meyer	3.80	280.00	1,064.00	Continue review of documents, timeline, and discovery responses.
5/25/2010	Christopher H. Meyer	8.80	280.00	2,464.00	Review and compilation of administrative records; respond to discovery requests.
5/26/2010	Martin Hendrickson	2.50	200.00	500.00	Work on objections to discovery requests.
5/26/2010	Christopher H. Meyer	1.50	280.00	420.00	Telephone conference with city engineer re discovery; office conference with Martin Hendrickson re discovery; coordination with Matt Williams re same.
5/27/2010	Christopher H. Meyer	0.70	280.00	196.00	Coordination and follow-up re discovery (Buckskin); [REDACTED]
5/28/2010	Martin Hendrickson	2.10	200.00	420.00	Conference with C. Meyer re: discovery; review emails re: status of discovery deadlines; continue work on objections and responses.
5/28/2010	Christopher H. Meyer	0.20	280.00	56.00	Coordination with Martin Hendrickson re discovery.
6/1/2010	Martin Hendrickson	0.40	200.00	80.00	Call to Matt Williams re: draft discovery responses; write to Matt Williams re: same; exchange emails with Matt Williams re: meeting to discuss objections and responses.
6/2/2010	Martin Hendrickson	3.60	200.00	720.00	Work on discovery responses; review documents from client for inclusion in discovery responses; conference with Matt Williams and Cynda Herrick re: discovery responses and location of additional records; review email from Matt Williams re: other road development agreements.
6/3/2010	Christopher H. Meyer	1.60	280.00	448.00	Office conference with Martin Hendrickson re discovery responses; review and edit responses.
6/3/2010	Martin Hendrickson	2.00	200.00	400.00	Review emails from client re: discovery responses and files; review additional documents from client; revise discovery responses.
6/4/2010	Martin Hendrickson	2.50	200.00	500.00	Review additional documents from client for potential production in discovery; revise discovery responses.
6/7/2010	Christopher H. Meyer	0.30	280.00	84.00	Follow-up review and coordination re discovery.
6/7/2010	Martin Hendrickson	0.60	200.00	120.00	Make final revisions to discovery responses.
6/28/2010	Jeffrey C. Fereday	0.40	280.00	112.00	Review issues concerning strategy for Rule 11 motion.
7/6/2010	Alison S. Berriochoa	2.90	100.00	290.00	Review of P&Z files for Phase 1-6 in preparation of assembling chronology notebook; organize electronic documents for Phases 1-6.
7/8/2010	Alison S. Berriochoa	0.30	100.00	30.00	Update document timeline.
7/9/2010	Martin Hendrickson	2.50	200.00	500.00	Work on objections and responses to discovery requests.
7/11/2010	Martin Hendrickson	2.40	200.00	480.00	Review client files re: application and work on discovery responses.
7/14/2010	Alison S. Berriochoa	1.80	100.00	180.00	Update document index.
7/19/2010	Alison S. Berriochoa	0.50	100.00	50.00	Update document index.
7/20/2010	Alison S. Berriochoa	0.90	100.00	90.00	Complete document index.
7/26/2010	Martin Hendrickson	0.50	200.00	100.00	Draft expert witness disclosure.
7/28/2010	Alison S. Berriochoa	2.60	100.00	260.00	Organize all documents from phases 1-6 in chronologic order.
8/1/2010	Christopher H. Meyer	0.70	280.00	196.00	Review and prepare for status conference on Buckskin.



8/2/2010	Martin Hendrickson	3.20	200.00	640.00	Conference with C. Meyer and M. Williams re: status of discovery and conference with court; telephonic conference with court re: status of case; work on discovery requests to Plaintiffs and list of deposition witnesses.
8/2/2010	Christopher H. Meyer	1.00	280.00	280.00	Pre-meeting with Martin Hendrickson & Matt Williams; participate in status conference; follow up re discovery.
8/3/2010	Alison S. Berriochoa	0.30	100.00	30.00	Finalize timeline and documents in preparation of assembling C. Meyer working copy.
8/3/2010	Martin Hendrickson	1.50	200.00	300.00	Work on discovery requests to plaintiffs.
8/13/2010	Martin Hendrickson	0.70	200.00	140.00	Continue work on discovery requests to plaintiffs.
8/16/2010	Martin Hendrickson	1.20	200.00	240.00	Review email from C. Meyer re: discovery requests; review CUP application and work on additional discovery requests.
8/16/2010	Christopher H. Meyer	0.80	280.00	224.00	Review discovery to Buckskin.
8/18/2010	Alison S. Berriochoa	0.90	100.00	90.00	Organize electronic record of documents received from client.
9/10/2010	Martin Hendrickson	2.20	200.00	440.00	Review deposition notices and requested documents; conference with Matt Williams and C. Meyer re: depositions and preparation of witnesses, review of records; review materials produced by Parametrix in response to subpoena.
9/12/2010	Christopher H. Meyer	6.10	280.00	1,708.00	Research and draft statement of material facts in support of motion for summary judgment (Buckskin).
9/12/2010	Martin Hendrickson	0.30	200.00	60.00	Exchange emails and conference with C. Meyer re: procedural requirements for summary judgment motion.
9/13/2010	Christopher H. Meyer	0.20	280.00	56.00	Coordination with Martin Hendrickson re Buckskin motion for SJ and related matters.
9/14/2010	Martin Hendrickson	3.00	200.00	600.00	Prepare for meetings with deposition witnesses; exchange emails with M. Williams re: preparation meetings; review emails between opposing counsel and M. Williams re: review of files; write to Doug at Parametrix re: CIP document; conference with M. Williams and Phil Davis re: deposition preparation.
9/15/2010	Christopher H. Meyer	2.20	280.00	616.00	Further work on Statement of Material Facts Not in Dispute.
9/17/2010	Martin Hendrickson	1.20	200.00	240.00	Conference with M. Williams and Frank Eld re: deposition preparation; conference with C. Meyer re: drafting summary judgment motion.
/2010	Christopher H. Meyer	4.10	280.00	1,148.00	Draft brief in support of motion for summary judgment; edit statement of material facts.
9/19/2010	Martin Hendrickson	3.50	200.00	700.00	Review and revise summary judgment materials.
9/20/2010	Martin Hendrickson	1.20	200.00	240.00	Conference with Gordon Cruikshank re: deposition preparation.
9/21/2010	Martin Hendrickson	2.80	200.00	560.00	Conference with Cynda Herrick re: deposition preparation and issues; continue work on memorandum in support of motion for summary judgment.
9/22/2010	Justin A. Steiner	1.30	160.00	208.00	Research Attorney-Client Privilege issues related to former employee waiving privilege.
9/22/2010	Martin Hendrickson	5.30	200.00	1,060.00	Travel to Cascade; deposition of Gordon Cruikshank; deposition of Phil Davis; conference with Matt Williams re: status. (Time split 50-50 with White Cloud.)
9/23/2010	Martin Hendrickson	5.00	200.00	1,000.00	Conference with Matt Williams re: status and deposition issues; deposition of Cynda Herrick; deposition of Frank Eld; return travel from Cascade. (Time split 50-50 with White Cloud.)

9/23/2010	Justin A. Steiner	1.70	160.00	272.00	Continued research re: attorney/client privilege and former employee waiving privilege and remedial action permissible; Draft email to M. Hendrickson re: conclusion of research.
9/27/2010	Martin Hendrickson	2.20	200.00	440.00	Continue work on summary judgment memorandum.
9/29/2010	Martin Hendrickson	3.60	200.00	720.00	Continue work on brief in support of motion for summary judgment and supporting affidavits.
11/2/2010	Martin Hendrickson	3.60	200.00	720.00	Review materials submitted by Plaintiffs in response to motion for summary judgment.
11/3/2010	Martin Hendrickson	5.60	200.00	1,120.00	Study materials filed by Plaintiffs in opposition to motion for summary judgment; outline issues for reply brief; research Idaho cases involving [REDACTED]
11/4/2010	Martin Hendrickson	5.70	200.00	1,140.00	Continue research and drafting of reply brief in support of motion for summary judgment; [REDACTED]
11/5/2010	Martin Hendrickson	2.30	200.00	460.00	Continue drafting reply brief in support of motion for summary judgment; research federal court case law on [REDACTED]
11/7/2010	Martin Hendrickson	3.50	200.00	700.00	Continue work on reply brief in support of motion for summary judgment.
11/7/2010	Christopher H. Meyer	7.40	280.00	2,072.00	Research and draft reply brief on motion for summary judgment.
11/8/2010	Martin Hendrickson	3.70	200.00	740.00	Continue work on reply brief in support of motion for summary judgment; conference with opposing counsel re: deposition transcripts and hearing; conference with M. Williams re: status of brief and hearing; conference with C. Meyer re: issues in reply brief, date and location of hearing.
11/8/2010	Christopher H. Meyer	7.70	280.00	2,156.00	Research and draft reply brief in support of motion for summary judgment.
11/9/2010	Martin Hendrickson	7.00	200.00	1,400.00	Continue work on reply brief in support of motion for reconsideration; research case law applying [REDACTED]; research Idaho cases requiring [REDACTED]; draft stipulation for hearing in Ada County and motion to exceed page limit and orders.
11/9/2010	Christopher H. Meyer	6.20	280.00	1,736.00	Research and draft reply brief on motion for summary judgment.
11/10/2010	Martin Hendrickson	2.50	200.00	500.00	Continue work on reply brief in support of motion for summary judgment; review emails from client and co-counsel re: brief and hearing.
11/10/2010	Christopher H. Meyer	3.90	280.00	1,092.00	Final round of edits on reply brief on MSJ.
11/11/2010	Martin Hendrickson	0.50	200.00	100.00	Draft email to judge re: stipulation for hearing in Ada County; review email from judge re: same; conference with C. Meyer re: oral argument; call to opposing counsel confirming new location and date; draft amended notice of hearing.
11/18/2010	Martin Hendrickson	0.40	200.00	80.00	Review scheduling order and upcoming deadlines for pretrial actions; write to M. Williams re: same and postponing trial date.
11/19/2010	Martin Hendrickson	0.70	200.00	140.00	Conference with opposing counsel re: pretrial deadlines; draft stipulation and order to modify scheduling order.
12/3/2010	Martin Hendrickson	1.60	200.00	320.00	Review briefs and issues for oral argument on summary judgment motion; conference with C. Meyer re: same.
12/4/2010	Martin Hendrickson	0.20	200.00	40.00	Exchange emails with C. Meyer re: preparation for oral argument on summary judgment motion.
12/4/2010	Martin Hendrickson	0.20	200.00	40.00	Review email from C. Meyer re: statement of facts; reply to C. Meyer re: same.

12/5/2010	Christopher H. Meyer	5.30	280.00	1,484.00	Prepare for oral argument.
12/6/2010	Christopher H. Meyer	8.00	280.00	2,240.00	Prepare for and attend oral argument; brief email to co-counsel.
12/14/2010	Christopher H. Meyer	0.40	280.00	112.00	Follow-up research re judge's request.
1/6/2011	Martin Hendrickson	1.10	200.00	220.00	Conference with opposing counsel re: deadline for witness lists and exhibits; work on exhibit and witness lists.
1/7/2011	Alison S. Berriochoa	1.50	100.00	150.00	Draft Valley County Trial Exhibit List; begin draft of Valley County Trial Witness List
1/7/2011	Christopher H. Meyer	2.30	280.00	644.00	Review decision granting motion for summary judgment; telephone and office conferences with co-counsel re decision and follow-up actions.
1/7/2011	Martin Hendrickson	2.30	200.00	460.00	Continue work on witness and exhibit lists; review decision granting summary judgment in favor of Valley County; conference with C. Meyer re: decision; conference with C. Meyer and M. Williams re: same.
1/9/2011	Christopher H. Meyer	1.10	280.00	308.00	Research attorney fee recovery.
1/10/2011	Christopher H. Meyer	1.70	280.00	476.00	Research and draft motion for attorney fees.
1/10/2011	Christopher H. Meyer	2.00	280.00	560.00	Review motion for partial summary judgment filed today by plaintiffs; coordination with co-counsel re response to motion for partial summary judgment.
1/11/2011	Martin Hendrickson	0.50	210.00	105.00	Conference with C. Meyer re: standards for attorneys fees and procedural questions on plaintiffs' motions.
1/11/2011	Christopher H. Meyer	6.20	280.00	1,736.00	Additional research on attorney fee motion (e.g. attempt to reconcile conflicting authority re interaction of 12-117 and 12-121).
1/11/2011	Martin Hendrickson	2.00	210.00	420.00	Review plaintiffs' motion for summary judgment and to vacate trial; draft motion for entry of judgment and proposed judgment.
1/11/2011	Christopher H. Meyer	0.90	280.00	252.00	Further discussion with co-counsel re strategy for responding to motion for partial summary judgment.
1/12/2011	Christopher H. Meyer	0.40	280.00	112.00	Review email from Matt Williams re strategic issue; telephone conference with Martin Hendrickson re same; discussions with co-counsel re opposing counsel's request for status conference.
1/12/2011	Christopher H. Meyer	0.40	280.00	112.00	Further research and drafting on motion for attorney fees.
1/13/2011	Martin Hendrickson	0.80	200.00	160.00	Review and revise County's response to Plaintiffs' motion for partial summary judgment; conference with C. Meyer re: same and motion for entry of judgment.
1/13/2011	Christopher H. Meyer	6.00	280.00	1,680.00	Telephone conference with Martin Hendrickson re motion for entry of judgment and coordination with opposing counsel re status conference; draft response to motion for partial summary judgment.
1/14/2011	Christopher H. Meyer	4.40	280.00	1,232.00	Further research and drafting re attorney fee motion.
1/14/2011	Christopher H. Meyer	0.90	280.00	252.00	Review Plaintiffs' objection to motion for entry of judgement; coordination with co-counsel re that objection.
1/15/2011	Christopher H. Meyer	2.50	280.00	700.00	Research and draft attorney fee motion (review all attorney fee cases involving blowing the statute of limitations).
1/17/2011	Martin Hendrickson	0.40	210.00	84.00	Review Plaintiffs' response to motion for entry of judgment; review correspondence from Chris Meyer re: same.
1/17/2011	Christopher H. Meyer	6.00	280.00	1,680.00	Edits to motion for attorney fees.
1/17/2011	Martin Hendrickson	0.20	210.00	42.00	Conference with C. Meyer re: issues for fee request.

1/18/2011	Martin Hendrickson	1.80	200.00	360.00	Review and revise memorandum of costs and statement in support; conference with C. Meyer re: attorney fee request; work on affidavit in support of attorney fee request; review and edit affidavits of Meyer and Feldman in support of attorney fees.
1/18/2011	Christopher H. Meyer	5.10	280.00	1,428.00	Prepare draft affidavits for Chris Meyer, Murray Feldman, and Matt Williams; edits to memorandum of costs; discussions with martin Hendrickson re same.
1/21/2011	Christopher H. Meyer	1.80	280.00	504.00	Edits to affidavits in support of Memorandum of Costs; edits to memorandum.
1/22/2011	Christopher H. Meyer	0.70	280.00	196.00	Coordination with co-counsel re review of draft memorandum of costs and accompanying affidavits; prepare issues list and send email re response to motion for reconsideration.
1/24/2011	Christopher H. Meyer	1.00	280.00	280.00	Review Plaintiffs' Memorandum In Support of Motion for Reconsideration; prepare email to Matt Williams laying out confidential strategy recommendation.
				<b>56,165.00</b>	

Givens Pursley L.P.  
Costs Listing

Report Run: 1/28/2011 11:37:31AM  
By: Anita Facer

ProVantage W/P 11

Costs dated from Jan 1 1900 thru Jan 28 2011

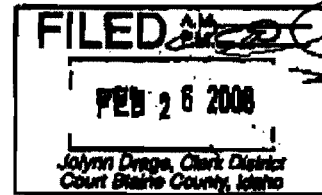
Cost Type	Auth. By	Entered By	Entry Date	Tran. Date	Cost Type	Quantity	Rate	Amount	Cost Type Subtotal	Status	
Binder Costs	nh1	Valley County / Buckskin Properties Litigation ( 10915 / 2 )	12/7/2010	12/9/2010	Binder Costs	5.00	5.57	27.85	27.85	Billed	
Client Electronic Research	LINDSAY	Valley County / Buckskin Properties Litigation ( 10915 / 2 )	12/8/2010	11/30/2010	Client Electronic Research	1.00	6.79	6.79		Billed	
	LINDSAY	Valley County / Buckskin Properties Litigation ( 10915 / 2 )	November Westlaw Research Charges [MCH]	1/6/2011	12/31/2010	Client Electronic Research	1.00	18.19	18.19	24.98	Billed
Copy Expense	LINDSAY	Valley County / Buckskin Properties Litigation ( 10915 / 2 )	December Westlaw Research [MCH]	8/16/2010	7/6/2010	Copy Expense	1.00	48.34	48.34	48.34	History
Courier Service	LINDSAY	Valley County / Buckskin Properties Litigation ( 10915 / 2 )	Ascensio - Scanning, B&W Blowbacks	12/15/2010	11/30/2010	Courier Service	1.00	35.28	35.28	35.28	Billed
Deposition Transcripts	LINDSAY	Valley County / Buckskin Properties Litigation ( 10915 / 2 )	Action Counters - Express Courier Service 11/10/10	8/30/2010	8/23/2010	Deposition	0.50	168.48	84.25		Billed
	LINDSAY	Valley County / Buckskin Properties Litigation ( 10915 / 2 )	M&M Court Reporting - Frank W. Eld Deposition	9/30/2010	9/23/2010	Duplicate Transcript	0.50	41.00	20.50		Billed
	LINDSAY	Valley County / Buckskin Properties Litigation ( 10915 / 2 )	M&M Court Reporting - Frank W. Eld Deposition	9/30/2010	9/22/2010	Deposition	0.50	241.15	120.58		Billed
	LINDSAY	Valley County / Buckskin Properties Litigation ( 10915 / 2 )	M&M Court Reporting - F. Phillip Davis Deposition	9/30/2010	9/22/2010	Deposition	0.50	378.45	187.73		Billed
	LINDSAY	Valley County / Buckskin Properties Litigation ( 10915 / 2 )	M&M Court Reporting - Gordon L. Cruickshank Deposition	9/30/2010	9/22/2010	Duplicate Transcript	0.50	80.50	40.25		Billed
	LINDSAY	Valley County / Buckskin Properties Litigation ( 10915 / 2 )	M&M Court Reporting - Gordon L. Cruickshank Deposition	9/30/2010	9/23/2010	Deposition	0.50	327.81	163.91	517.70	Billed
Messenger Service	KC1	Valley County / Buckskin Properties Litigation ( 10915 / 2 )	M&M Court Reporting - Cynda M. Herrick Deposition	8/23/2010	8/23/2010	Messenger Service	1.00	10.00	10.00		History
	KC1	Valley County / Buckskin Properties Litigation ( 10915 / 2 )	Victor Villegas - Evans Keane	11/18/2010	11/10/2010	Messenger Service	1.00	10.00	10.00	20.00	Billed
Photocopies	nh1	Valley County / Buckskin Properties Litigation ( 10915 / 2 )	Messenger Service [Victor Villegas - Evans Keane]	3/15/2010	3/12/2010	Photocopies	15.00	0.15	2.25		History
	nh1	Valley County / Buckskin Properties Litigation ( 10915 / 2 )		5/3/2010	5/4/2010	Photocopies	5.00	0.15	0.75		History
	nh1	Valley County / Buckskin Properties Litigation ( 10915 / 2 )		5/5/2010	5/4/2010	Photocopies	6.00	0.15	0.90		History
	nh1	Valley County / Buckskin Properties Litigation ( 10915 / 2 )		5/7/2010	5/6/2010	Photocopies	4.00	0.15	0.60		History
	nh1	Valley County / Buckskin Properties Litigation ( 10915 / 2 )		6/8/2010	6/7/2010	Photocopies	45.00	0.15	6.75		History

Chesem Parley LLP  
Celia Loring

AF1	Valley County / Buttekin Properties Litigation (10915/2)	6/14/2010	6/14/2010	Photocopies	41.00	0.18	8.15	History
AF1	Valley County / Buttekin Properties Litigation (10915/2)	6/14/2010	6/14/2010	Photocopies	1.00	0.16	0.15	History
AF1	Valley County / Buttekin Properties Litigation (10915/2)	6/14/2010	6/14/2010	Photocopies	8.00	0.16	0.90	History
AF1	Valley County / Buttekin Properties Litigation (10915/2)	6/22/2010	6/21/2010	Photocopies	8.00	0.15	1.20	History
AF1	Valley County / Buttekin Properties Litigation (10915/2)	7/7/2010	7/6/2010	Photocopies	199.00	0.15	29.35	History
AF1	Valley County / Buttekin Properties Litigation (10915/2)	7/8/2010	7/7/2010	Photocopies	652.00	0.16	82.80	History
AF1	Valley County / Buttekin Properties Litigation (10915/2)	7/8/2010	7/7/2010	Photocopies	32.00	0.15	4.80	History
AF1	Valley County / Buttekin Properties Litigation (10915/2)	7/8/2010	7/7/2010	Photocopies	242.00	0.15	36.30	History
AF1	Valley County / Buttekin Properties Litigation (10915/2)	7/30/2010	7/29/2010	Photocopies	3.00	0.15	0.45	History
AF1	Valley County / Buttekin Properties Litigation (10915/2)	7/30/2010	7/27/2010	Photocopies	5.00	0.16	0.75	History
AF1	Valley County / Buttekin Properties Litigation (10915/2)	8/24/2010	8/23/2010	Photocopies	24.00	0.15	3.60	History
AF1	Valley County / Buttekin Properties Litigation (10915/2)	8/27/2010	8/26/2010	Photocopies	15.00	0.15	2.25	History
AF1	Valley County / Buttekin Properties Litigation (10915/2)	11/4/2010	11/3/2010	Photocopies	43.00	0.15	6.45	History
AF1	Valley County / Buttekin Properties Litigation (10915/2)	11/4/2010	11/2/2010	Photocopies	323.00	0.16	48.45	History
AF1	Valley County / Buttekin Properties Litigation (10915/2)	11/10/2010	11/9/2010	Photocopies	485.00	0.16	69.75	History
AF1	Valley County / Buttekin Properties Litigation (10915/2)	11/12/2010	11/10/2010	Photocopies	256.00	0.16	38.40	History
AF1	Valley County / Buttekin Properties Litigation (10915/2)	11/12/2010	11/10/2010	Photocopies	128.00	0.16	19.20	History
AF1	Valley County / Buttekin Properties Litigation (10915/2)	11/12/2010	11/10/2010	Photocopies	80.00	0.15	9.00	History
AF1	Valley County / Buttekin Properties Litigation (10915/2)	11/15/2010	11/12/2010	Photocopies	4.00	0.15	0.60	History
AF1	Valley County / Buttekin Properties Litigation (10915/2)	11/17/2010	11/16/2010	Photocopies	3.00	0.16	0.75	History
AF1	Valley County / Buttekin Properties Litigation (10915/2)	11/17/2010	11/16/2010	Photocopies	4.00	0.15	0.60	History
AF1	Valley County / Buttekin Properties Litigation (10915/2)	11/18/2010	11/17/2010	Photocopies	8.00	0.15	0.80	History
AF1	Valley County / Buttekin Properties Litigation (10915/2)	11/18/2010	11/17/2010	Photocopies	43.00	0.15	6.45	History
AF1	Valley County / Buttekin Properties Litigation (10915/2)	11/18/2010	11/17/2010	Photocopies	5.00	0.16	0.90	History
AF1	Valley County / Buttekin Properties Litigation (10915/2)	12/8/2010	12/4/2010	Photocopies	24.00	0.15	3.60	History
AF1	Valley County / Buttekin Properties Litigation (10915/2)	12/8/2010	12/4/2010	Photocopies	24.00	0.15	3.60	History
AF1	Valley County / Buttekin Properties Litigation (10915/2)	12/7/2010	12/6/2010	Photocopies	7.00	0.15	1.05	History
AF1	Valley County / Buttekin Properties Litigation (10915/2)	8/2/2010	8/1/2010	Telephone Charges	1.00	110.00	110.00	History
AF1	Valley County / Buttekin Properties Litigation (10915/2)	9/24/2010	9/24/2010	Travel Costs	0.50	77.80	38.80	History
AF1	Valley County / Buttekin Properties Litigation (10915/2)	12/7/2010	11/23/2010	Travel Costs	0.50	86.12	48.06	History
AF1	Valley County / Buttekin Properties Litigation (10915/2)			Report Total			1383.96	

**EXHIBIT 3: *SCHAEFER* JUDGMENT**

Christopher H. Meyer [ISB No. 4461]  
 Martin C. Hendrickson [ISB No. 5876]  
**GIVENS PURSLEY LLP**  
 601 West Bannock Street  
 P.O. Box 2720  
 Boise, Idaho 83701-2720  
 Office: (208) 388-1200  
 Fax: (208) 388-1300  
 www.givenspursley.com  
*Attorneys for Plaintiffs/Counterdefendants Phil and Lynn Schaefer*



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

**PHIL AND LYNN SCHAEFER,**  
  
 Plaintiffs/Counterdefendants,  
  
 v.  
  
**CITY OF SUN VALLEY,**  
  
 Defendant/Counterclaimant.

Case No.: CV-06-882

**JUDGMENT**

**THIS MATTER** having come before the Court upon the Motions for Summary Judgment filed by Plaintiffs and the Defendant, and this Court having issued its Decision on Summary Judgment on July 3, 2007, in favor of the Plaintiffs;

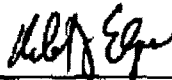
**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Summary Judgment is granted in favor of the Plaintiffs and the City of Sun Valley's Motion for Summary Judgment is **DENIED**; and the Plaintiffs are entitled to a refund from the Defendant in the amount of \$11,989.97.

The Court, having considered the Plaintiffs' Memorandum of Costs and Requests for Attorneys' Fees, the Defendant's objection thereto, and the arguments of the parties, it is hereby



ORDERED, ADJUDGED AND DECREED that Plaintiffs are awarded attorneys' fees in the amount of \$60,703.00 and costs in the amount of \$88.00 for a total amount of \$60,791.00, plus interest at the statutory rate of 10% annually from and after the date of Judgment.

DATED: February 25, 2008

  
\_\_\_\_\_  
Honorable Robert J. Elgee  
District Judge

**CLERK'S CERTIFICATE OF SERVICE**

I hereby certify that on this 20 day of February 2008, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Christopher H. Meyer  
Martin C. Hendrickson  
Givens Puraley LLP  
601 W. Bannock Street  
P.O. Box 2720  
Boise, ID 83701

U.S. Mail  
 Overnight Mail  
 Hand Delivery  
 Fax

Geoffrey M. Wardle, Esq.  
Hawley Troxell Ennis & Hawley  
877 W. Main Street, Suite 1000  
P.O. Box 1617  
Boise, ID 83701-1614

U.S. Mail  
 Overnight Mail  
 Hand Delivery  
 Fax

Rand L. Peebles, Esq.  
Hawley Troxell Ennis & Hawley  
540 North 2nd Avenue  
P.O. Box 297  
Ketchum, ID 83340-0297

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 Overnight Mail  
 Hand Delivery  
 Fax

*[Handwritten signature]*

Matthew C. Williams, ISB #6271  
Valley County Prosecuting Attorney  
P.O. Box 1350  
Cascade, ID 83611  
Telephone: (208) 382-7120  
Facsimile: (208) 382-7124  
mwilliams@co.valley.id.us

Christopher H. Meyer, ISB #4461  
Martin C. Hendrickson, ISB #5876  
GIVENS PURSLEY LLP  
601 W. Bannock St.  
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Boise, Idaho 83701-2720  
Telephone: 208-388-1200  
Facsimile: 208-388-1300  
chrismeyer@givenspursley.com  
mch@givenspursley.com

Attorneys for Defendant

ARCHIE N. BANBUHY, CLERK  
By J. Garrison Deputy  
JAN 31 2011

Case No. \_\_\_\_\_ Inst. No. \_\_\_\_\_  
Filed \_\_\_\_\_ A.M. 1:33 P.M.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF VALLEY

BUCKSKIN PROPERTIES, INC., an Idaho  
Corporation, and TIMBERLINE  
DEVELOPMENT, LLC, an Idaho Limited  
Liability Company,

Plaintiffs,

v.

VALLEY COUNTY, a political subdivision  
of the State of Idaho,

Defendant.

Case No. CV 2009-554

**AFFIDAVIT OF  
MARTIN C. HENDRICKSON**

State of Idaho        )  
                          ) ss.  
County of Ada        )

MARTIN C. HENDRICKSON, being first duly sworn upon oath, deposes and states:

1. I am an attorney licensed to practice law in the state of Idaho. I make this Affidavit based upon personal knowledge and to the best of my information and belief.
2. I am a partner in the firm of Givens Pursley LLP which represents Defendant Valley County (the "County") in the above-captioned civil action.
3. I am admitted to practice in Idaho, the United States District Court for the District of Idaho, and the Ninth Circuit Court of Appeals.
4. I hold a J.D. degree, magna cum laude, from Texas Tech University School of Law (1998) and a Bachelor of Science degree from the University of Idaho (1994).
5. In 2009 and 2010, I was listed as a "Rising Star" by *Mountain States Super Lawyers*®. I am "peer review rated" by Martindale-Hubbell.
6. Prior to joining Givens Pursley LLP in 2005, I was an associate at the Boise law firm of Moore, Baskin & Parker, where I practiced in the areas of civil litigation defense and civil rights defense.
7. During my practice at Givens Pursley LLP, I have handled numerous cases in state and federal courts throughout Idaho in a variety of commercial and real estate related matters. My areas of practice include civil litigation, administrative law, civil rights, land use, and constitutional law.
8. I billed the time I spent on this matter at a rate of \$200.00 per hour. This is my regular billing rate, as reflected in the itemized billing sheets for this matter that are Exhibit 2 to the Affidavit of Christopher H. Meyer.

9. The time entries on the itemized billing sheets for this matter that are Exhibit 2 to the Affidavit of Christopher H. Meyer accurately reflect the work that I completed on this matter.

10. The rates charged for the time spent by Givens Pursley LLP attorneys and staff on this action are at or below the prevailing charges for like work in Valley County, Idaho and throughout the State when undertaken on a fixed fee agreement.

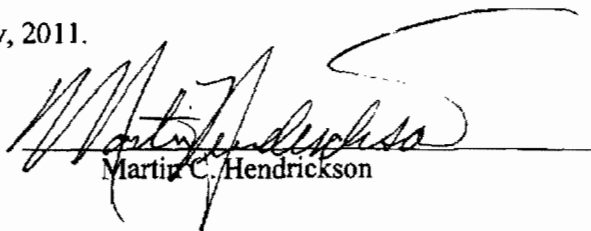
11. Included in Valley County's Memorandum of Costs is a request for travel expenses that I incurred in traveling from Boise to Cascade to defend depositions of County officials and employees. Those depositions were taken by the Plaintiffs over two consecutive days and required my attendance as counsel for Valley County in this action. The travel expenses related to those depositions were necessary and exceptional costs that were reasonably incurred by the County.

12. During the course of this proceeding, I and others representing the County made every effort to communicate forthrightly with counsel for the Plaintiffs in order to avoid surprise and unnecessary litigation costs.

13. Because of the importance of the questions involved in this case, including the potential for further litigation by those similarly situated, and the complexity of the federal law issues pressed by the Plaintiffs, this case required a considerable amount of time as well as specialized expertise in the areas of land use, administrative law, constitutional law, and civil procedure.

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 28<sup>th</sup> day of January, 2011.

  
Martin C. Hendrickson

Subscribed and sworn to before me this 28<sup>th</sup> day January, 2011.



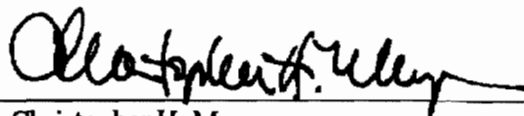
Lisa A. Hughes  
Notary Public for Idaho  
Residing at: Base Id  
My Commission Expires: 3-22-2013

**CERTIFICATE OF SERVICE**

I hereby certify that on the 28<sup>th</sup> day of January, 2011, a true and correct copy of the foregoing was served upon the following individual(s) by the means indicated:

Jed Manwaring  
Victor Villegas  
Evans Keane LLP  
1405 West Main  
P.O. Box 959  
Boise, ID 83701-0959  
jmanwaring@evanskeane.com  
vvillegas@evanskeane.com

- U.S. Mail, postage prepaid
- Express Mail
- Hand Delivery
- Facsimile
- E-Mail



Christopher H. Meyer

Matthew C. Williams, ISB #6271  
Valley County Prosecuting Attorney  
P.O. Box 1350  
Cascade, ID 83611  
Telephone: (208) 382-7120  
Facsimile: (208) 382-7124  
mwilliams@co.valley.id.us

Christopher H. Meyer, ISB #4461  
Martin C. Hendrickson, ISB #5876  
GIVENS PURSLEY LLP  
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Post Office Box 2720  
Boise, Idaho 83701-2720  
Telephone: 208-388-1200  
Facsimile: 208-388-1300  
chrismeyer@givenspursley.com  
mch@givenspursley.com

Attorneys for Defendant

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF VALLEY

BUCKSKIN PROPERTIES, INC., an Idaho  
Corporation, and TIMBERLINE  
DEVELOPMENT, LLC, an Idaho Limited  
Liability Company,

Plaintiffs,

v.

VALLEY COUNTY, a political subdivision  
of the State of Idaho,

Defendant.

AMCHIE N. DANBUHY, CLERK  
By *[Signature]* Deputy  
JAN 31 2011

Case No. \_\_\_\_\_ Inst. No. \_\_\_\_\_  
Filed \_\_\_\_\_ A.M. 2:35 P.M.

Case No. CV 2009-554

AFFIDAVIT OF  
MURRAY D. FELDMAN



State of Idaho            )  
                                  ) ss.  
County of Ada            )

MURRAY D. FELDMAN, being first duly sworn upon oath, deposes and states:

1. I am an attorney licensed to practice law in the state of Idaho. I make this Affidavit based upon personal knowledge and to the best of my information and belief.
2. I am a partner in the firm of Holland & Hart LLP. From 2001 to 2003 I headed Holland & Hart's firm-wide environmental practice group. I currently serve as the administrative (managing) partner for the Boise office of my firm, overseeing the activities of 36 attorneys, 9 legal assistants, and 29 support staff.
3. I have been admitted to practice in Idaho, Colorado, and California (inactive status), as well as before numerous federal district courts and the United States Courts of Appeal for the Fifth, Ninth, and Tenth Circuits.
4. I hold a J.D. degree from the University of California, Berkeley Boalt Hall School of Law (1988), an M.S. degree in Wildland Recreation Management from the University of Idaho College of Natural Resources (1985), and a B.S. degree with high honors from the University of California, Berkeley (1982).
5. I have been listed in the *Best Lawyers in America*® since 2000, in *Chambers USA*'s listing of America's leading lawyers for business since 2006, in *Mountain States Super Lawyers*® since 2007, and in *Who's Who Legal, the International Who's Who for Environmental Lawyers* since 2010 (one of only eight lawyers named in Idaho). I have authored numerous law review articles and other publications, and I am a regular speaker at legal forums throughout the nation.

6. I have practiced law in Idaho since 1990. During that time, I have handled numerous cases in state and federal courts throughout Idaho and elsewhere. I have also represented a variety of clients at the administrative level before the U.S. Environmental Protection Agency, the Interior Board of Land Appeals, the United States Forest Service, the Idaho Department of Environmental Quality, the Idaho Department of Agriculture, the Idaho Outfitters and Guides Licensing Board, the Idaho Department of Fish and Game, and the Idaho Department of Water Resources. I have litigated a number of local-land use and planning and zoning related matters in the Idaho state courts, including *Castaneda v. Brighton Corp.*, 950 P.2d 1262, 130 Idaho 923 (1998); *Dirk Dunham v. Ada County Highway District*, No. CV-OC-00-05122 (Idaho 4th Jud. Dist. May 17, 2002); *Ben Gnesa and Barry Wood v. State of Idaho, DEQ*, Case Nos. CV-02-00716 (Idaho 5th Jud. Dist. Feb. 3, 2003); *Neighborhood Preservation Ass'n, Inc. v. Ada County Highway District*, No. CV OC 05-00938D (Idaho 4th Jud. Dist. Sept. 2005); *Ada County Highway District v. City of Boise City*, Case No. CV OC 0614386 (Idaho 4th Jud. Dist. Dec. 22, 2006); *Sandpoint Independent Highway District v. Board of County Commissioners of Bonner County*, 71 P.3d 1034, 138 Idaho 8837 (2003); and *SavethePlateau.org. v. Ada County*, Case No. OC-0702034 (Idaho 4th Jud. Dist. Jan. 7, 2008). I have also handled planning and zoning matters before various local boards, including those in Ada and Canyon counties and before the City of Boise and City of Eagle. Many of these state-level local land-use and planning and zoning cases have involved claims of and defenses to attorney fee recoveries. I have also been involved in numerous cases involving attorney fee claims at the federal judicial and administrative level, including *Greater Owyhee Legal Defense v. U.S. Department of Defense*, 889 F. Supp. 1295 (D. Idaho 1995); *Idaho Sporting Congress v. Computrol, Inc.*, 952 F. Supp. 690 (D. Idaho 1996); *Davis Mountains Trans-Pecos Heritage Ass'n v. Federal Aviation Administration*, 116 Fed. Appx. 3 (5th Cir. 2004); *St. John's Organic*

*Farm v. Gem County Mosquito Abatement District*, 574 F.3d 1054 (9th Cir. 2009); and *James G. Katsilometes v. Bureau of Land Management*, IBLA 2003-160 (Order Nov. 3, 2004).

7. Further information about my professional background, including litigation experience and publications, is included in my resume, which is attached hereto as Exhibit 1.

8. I have reviewed the Court's *Memorandum Decision Re: Defendant's Motion for Summary Judgment* dated January 7, 2011, together with the key briefing in the case leading to the decision. I also have reviewed a draft of *Valley County's Memorandum of Costs and Statement in Support*, together with the referenced supporting affidavits and exhibit. Finally, I have discussed with Christopher H. Meyer the course of proceedings and actions taken by the Plaintiffs and Defendant in this litigation.

9. Although the state statute of limitations issue was relatively straightforward, the litigation also presented a variety of other issues, particularly those involving federal and state constitutional claims and associated procedural and jurisdictional issues, as well as discovery. These issues demanded experienced litigation counsel familiar with this specialized area. Likewise, the merits of the case called for assistance of counsel familiar with the specialized area of impact fees and their constitutionality under state and federal law. Mr. Meyer is a highly regarded expert in these areas. From my review of the court's decision, the underlying briefing, and the time sheets of the Defendant's outside counsel submitted in support of the attorney fee motion, the work performed by Mr. Meyer and his co-counsel and legal assistant was reasonable and necessary. In my experience there are only a small number of law firms in the state and few in Valley County (especially ones that would not be conflicted out of representing the County) that are available to handle this range of issues.

10. I am familiar with the current hourly rates generally charged by attorneys litigating matters such as this one in Idaho. For these types of proceedings, lawyers in the Boise,

Idaho market generally charge hourly rates ranges between \$180 and \$450. During the time period in 2009 and 2010 when this case was litigated, my billing rates for this type of litigation were in the range of \$335 to \$425 per hour.

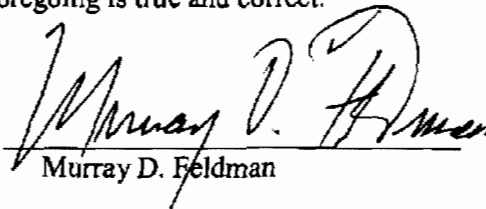
11. I am familiar with the qualifications, experience, and abilities of Christopher H. Meyer and his law firm, Givens Pursley LLP. I know of Mr. Meyer's work and reputation from his presentations at Continuing Legal Education conferences, his written materials for those presentations, his publication of articles, his work managing the Idaho Environmental Forum, and my involvement in matters where his firm was also representing clients. I believe that the hourly rate charged by Mr. Meyer in this matter (\$280/hour) is reasonable, indeed toward the lower end of the range in light of the nature of this litigation, the stakes involved, and his abilities, skills, and experience in these matters, and his total years of practice and experience.

12. I have reviewed the rates charged by other counsel at Givens Pursley LLP who performed work in this matter. I believe, based on my experience and knowledge and what I personally charge similarly situated clients in similar matters, that those rates are reasonable and are at or below current hourly rates charged in the market for litigated matters involving land use exactions with associated, administrative and constitutional law dimensions.


13. I have reviewed the total amounts of the attorney fees requested to be awarded in this matter by Valley County. In my opinion, the total requested attorney fees represent a reasonable charge for the work performed given the nature of the matter, the effort required, the stakes involved, and the issues required to be addressed.

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 27th day of January, 2011.

  
Murray D. Feldman

Subscribed and sworn to before me this 27<sup>th</sup> day January, 2011.

  
Notary Public for Idaho  
Residing at: Boise, Idaho  
My Commission Expires: 7-20-2016



**CERTIFICATE OF SERVICE**

I hereby certify that on the 28<sup>th</sup> day of January, 2011, a true and correct copy of the foregoing was served upon the following individual(s) by the means indicated:

Jed Manwaring  
Victor Villegas  
Evans Keane LLP  
1405 West Main  
P.O. Box 959  
Boise, ID 83701-0959  
jmanwaring@evanskeane.com  
vvillegas@evanskeane.com

- U.S. Mail, postage prepaid
- Express Mail
- Hand Delivery
- Facsimile
- E-Mail

  
\_\_\_\_\_  
Christopher H. Meyer

5014322\_1.DOC

**EXHIBIT 1: RESUME OF MURRAY D. FELDMAN**

## MURRAY D. FELDMAN

### Partner – Boise Office

Environmental  
Natural Resources  
Environmental Litigation  
Wildlife  
Public Lands  
Global Climate Change  
Geothermal  
Endangered Species

(208) 342-5000  
mfeldman@hollandhart.com



### Experience

Mr. Feldman's practice includes endangered species, environmental impact assessment, environmental permitting, public lands, and environmental insurance. He has represented regulated community interests and others in Endangered Species Act and National Environmental Policy Act litigation and administrative proceedings in the Pacific Northwest, New Mexico, Nevada, Colorado, Texas, Michigan, and Alabama. He also represents clients on land-use, contaminated site cleanup, and air and water quality issues.

Mr. Feldman was lead counsel in a significant federal court case concerning the adequacy of environmental analyses for competing military and public uses of over 3.2 million acres of public land in southwestern Idaho. He was also lead counsel for interests challenging the Department of Defense's and Department of Transportation's NEPA compliance for military training activities in west Texas, which resulted in the first U.S. Fifth Circuit Court of Appeals ruling in over 20 years to set aside an agency's environmental impact statement decision. He has represented clients in several groundwater contamination and remediation cases. At the administrative level, Mr. Feldman has represented clients before the Environmental Protection Agency, Idaho Department of Environmental Quality, the Interior Board of Land Appeals, and the United States Forest Service.

He has significant experience with the major federal laws affecting natural resources and environmental matters, including the Endangered Species Act; NEPA; Federal Land Policy and Management Act; National Forest Management Act; and National Park Service Organic Act. He also advises clients on permitting issues under the Clean Water Act, Clean Air Act, and other federal and state environmental programs.

Mr. Feldman has been admitted to practice in California, Colorado, and Idaho, and before the U.S. Courts of Appeals for the Fifth, Ninth and Tenth Circuits and the federal district courts for the District of Idaho and the Western District of Texas. Prior to joining Holland & Hart, he served as a law clerk to Justice George Lohr of the Colorado Supreme Court. He has been listed in the *Best Lawyers in America*® since 2000, in *Chambers USA*'s listing of America's leading lawyers for business since 2006, and in *Mountain States Super Lawyers* since 2007. From 2001-2003, he headed Holland & Hart's firmwide environmental practice group. He is currently the administrative partner for the firm's Boise Office.



## **Honors**

- Volunteer Lawyer of the Year, Land and Water Fund of the Rockies, 1992
- Celebrating Natural Resources Award (for contributions to interdisciplinary natural resource management), University of Idaho College of Natural Resources, 2004

## **Professional and Civic Activities**

- Board Member and Past President (2007-2008), East Boise Little League
- Past Chair (2008), Idaho State Bar, Environment and Natural Resources Law Section
- Member, Steering Committee, Idaho Environmental Forum
- Former President (2004-2006), University of Idaho College of Natural Resources Alumni Board of Trustees

## **Publications and Speaking Engagements**

"Taking A Harder Look At Direct, Indirect, And Cumulative Impacts," Rocky Mountain Mineral Law Foundation NEPA Special Institute (Oct. 2010).

"Give PECE a Chance: Evaluating Conservation Programs to Avoid Endangered Species Act Listings," 53 Rocky Mountain Mineral Law Institute 21-1 (2010) (co-author).

"Endangered Species Act Law, Policy, and Perspectives (2d edition)," ABA Section of Environment, Energy, and Resources (2010) (peer reviewer).

"Consideration of Climate Change in NEPA and ESA Processes," 45 Rocky Mountain Mineral Law Foundation Journal 325 (2008) (lead author).

"Of Hard Looks, Reason, and Agency Expertise: Shifting Standards for Implementing NEPA's Scientific Analysis Requirements," 53 Rocky Mountain Mineral Law Institute 8-1 (2007) (lead author).

"Suggestions On How To Improve The Endangered Species Act," The INGAA Foundation, Inc., Report No. F-2007-06 (November 2007) (co-author).

"Photography and the Environment," *The Advocate* (Idaho State Bar publication), June/July 2007, at 42.

"Storm Water Enforcement Response and Settlement Strategies," 21 *Natural Resources & Environment* 17 (Spring 2007) (lead author).

"Our National Wild and Scenic Rivers System," 20 *Natural Resources & Environment* 10 (Fall 2005) (lead author).

"Application of the 'Best Scientific Data Available' Standard in the Endangered Species Act," 16 *Tulane Environmental Law Journal* 387 (2003) (co-author).

"The Growing Importance of Critical Habitat for Species Conservation," 16 *Natural Resources & Environment* 88 (Fall 2001) (lead author).

"Growing Recreational Conflicts on the Public Lands," *The Advocate* (Idaho State Bar publication), March 2001, at 14-16.

"Redefining Critical Habitat for Anadromous Fish in Central Idaho," in *Proceedings of High Altitude Revegetation Workshop No. 14*, Colorado State University (Info. Series No. 91 August 2000) (lead author).

### **Education**

University of California, Berkeley, Boalt Hall School of Law (J.D. 1988)  
Associate Editor, *Ecology Law Quarterly*

University of Idaho (M.S. 1985)  
Wildland Recreation Management (College of Natural Resources)

University of California, Berkeley (B.S. 1982)  
Conservation of Natural Resources  
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University of California, Berkeley (B.S. 1982)  
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Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF VALLEY

BUCKSKIN PROPERTIES, INC. an  
 Idaho Corporation, and TIMBERLINE  
 DEVELOPMENT, LLC, an Idaho Limited  
 Liability Company,

Plaintiff,

vs.

VALLEY COUNTY, a political subdivision  
 of the State of Idaho.

Defendant.

Case No. CV-2009-554-C

MOTION TO DISALLOW COSTS  
AND ATTORNEY FEES

COME NOW Plaintiffs, by and through their attorneys of record, Evans Keane, LLP, and pursuant to Rule 54(d)(6) and 54(e)(6) of the Idaho Rules of Civil Procedure, hereby files this *Motion to Disallow Attorney Fees and Costs*, and asks the Court to enter an order disallowing attorney fees in their entirety and discretionary costs requested by Defendant in *Valley County's Memorandum of Costs and Statement in Support* filed in connection with this action. This

Motion is made for the reason that the Defendant is not entitled to attorney fees as a matter of law.

A Memorandum in Support of Plaintiffs' Motion to Disallow Attorney Fees and Costs will be filed pursuant to the time required in I.R.C.P. 7(b)(3).

Oral argument is requested.

DATED this 11<sup>th</sup> day of February, 2011.

EVANS KEANE LLP

By Victor Villegas  
Victor Villegas, Of the Firm  
Attorneys for Plaintiffs

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 11 day of February, 2011, a true and correct copy of the foregoing document was served by first-class mail, postage prepaid, and addressed to; by fax transmission to; by overnight delivery to; or by personally delivering to or leaving with a person in charge of the office as indicated below:

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Attorneys for Plaintiffs

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Plaintiff,

vs.

VALLEY COUNTY, a political subdivision  
 of the State of Idaho.

Defendant.

Case No. CV-2009-554-C

PLAINTIFFS' MEMORANDUM IN  
 OPPOSITION TO VALLEY  
 COUNTY'S MEMORANDUM OF  
 COSTS AND STATEMENT IN  
 SUPPORT

Plaintiffs, by and through their attorneys of record, Evans Keane, LLP, and pursuant to Rule 54(d)(6) of the Idaho Rules of Civil Procedure, files their *Memorandum in Opposition to Valley County's Memorandum of Costs and Statement in Support*, and asks the Court to enter an order disallowing attorney fees in their entirety and discretionary costs requested by *Defendant in Valley County's Memorandum of Costs and Statement in Support* filed in connection with this action.

## ARGUMENT

### **I. Valley County is not Entitled to an Award of Attorney Fees Under Idaho Code Section 12-117 or Section 12-121.**

Valley County filed a Memorandum of Costs and Statement in Support seeking a total award of costs and attorney fees in the amount of \$57,528.00. For the reasons set forth below, Valley County is not entitled to an award of costs, whether as a matter of right or discretionary, nor is Valley County entitled to an award of its attorney fees.

#### **A. Valley County is not Entitled to an Award of Attorney Fees Under Idaho Code Section 12-117.**

##### **1. Plaintiffs' Pursuit of their Claims against Valley County was in Good Faith and was not without a Reasonable Basis in Fact or Law.**

Idaho Code section 12-117 provides in a judicial proceeding involving a governmental entity such as Valley County, the prevailing party is entitled to an award of reasonable attorney fees if the Court finds that the other party acted without a reasonable basis in fact or law. The purpose of this statute is: (1) to deter arbitrary or groundless action by the government agency; and (2) to provide a remedy for financial burdens attempting to correct mistakes made by the governmental agency. *Reardon v. Magic Valley Sand and Gravel, Inc.*, 140 Idaho 115, 118, 90 P.3d 340, 343 (2004). A party acts without a reasonable basis in fact or law only when the party's pursuit of its claims is frivolous, without foundation or unreasonable. *Karr v. Bermeosolo*, 142 Idaho 444, 449, 129 P.3d 88, 93 (2005).

Plaintiffs pursued their claims against Valley County in good faith and with a reasonable basis in fact and law. The Court's holdings in its January 7, 2011 Memorandum Decision Re: Defendant's Motion for Summary Judgment ("Memorandum Decision") confirm that Plaintiff pursued their claims in good faith. Plaintiffs' claims are all based on Valley County's illegal practice of requiring developers to pay road development fees in violation of Idaho Impact Fee Act. In rejecting Valley County's defense for failure to exhaust administrative remedies, the

Court found that Valley County acted outside its authority in charging impact fees. See Memorandum Decision, pp. 6-7. The Court also agreed with Plaintiffs that they had no obligation to pay the illegal impact fees under protest or had any reason to question the requirement under Valley County's LUDO to pay the illegal impact fees at the time of their application. See *Id.* at p. 7. This is because Valley County failed to comply with the procedures of IDIFA in the first place. *Id.* Plaintiffs clearly pursued their claims in good faith.

Valley County erroneously argues that Plaintiffs did not act with a reasonable basis in fact or law because Plaintiffs had no viable claim from the outset of the litigation due to the statute of limitations for inverse condemnation claims. See Valley County's Memorandum of Costs and Statement in Support ("Memorandum of Costs"), p. 4. This position is incompatible with the Court's finding that Valley County failed to follow IDIFA in charging Plaintiffs the illegal impact fees. It is also incompatible with established Idaho law on the issue of accrual of an inverse condemnation claim. "The actual date of taking, although not readily susceptible to exact determination, is to be fixed at the point in time at which the impairment, of such a degree and kind as to constitute a substantial interference with plaintiff's property interest, *becomes apparent.*" *Wadsworth v. Dept. of Transp.* 128 Idaho 439, 442, 915 P.2d 1, 4 (Idaho,1996) (emphasis added). A party cannot maintain an inverse condemnation action unless there has actually been a taking of property. *KMST, LLC v. County of Ada*, 138 Idaho 577, 581, 67 P.3d 56, 60 (2003). Valley County's arguments that Plaintiffs' inverse condemnation claims were clearly outside of the statute of limitations is unpersuasive on the question of whether Plaintiffs acted without a reasonable basis in fact or law.

Valley County's primary argument in favor of attorney fees is that it was allegedly clear from the outset that Plaintiffs' inverse condemnation claim was outside the statute of limitations. Valley County's own briefing in support of its motion for summary judgment, page 14,



demonstrates that was not the case. Valley County claims the statute of limitations for inverse condemnation accrued when Plaintiffs filed their application on April 1, 2004 or when P&Z recommended approval on May 17, 2004 or when the CUP was finally approved on July 12, 2004 or when the CUP was issued on July 14, 2004. The County also points to when Plaintiffs signed the Capital Contribution Agreement pertaining to Phase 1 of their development on July 26, 2004 and the Road Development Agreement September 26, 2005, for subsequent phases. Yet, the Court did not point to or acknowledge that any of these dates triggered the statute of limitation on the inverse condemnation claim. The Court recognized the matter was one subject to disputed facts and settled on an entirely different date, October 25, 2004, the date Plaintiffs dedicated a right of way under the Capital Contribution Agreement, as the date the statute of limitations began to run. Based on Valley County's erroneous assertions of when the inverse condemnation claim accrued, the issue was not clear or obvious.

While Plaintiffs respectfully disagree that the statute of limitations began to run for Phases 2 and 3 on that date and have filed a Motion for Reconsideration on that issue, the Court's holding illustrates that the accrual date was less than clear and less than apparent from the outset of this litigation. And contrary to Valley County's assertions, Plaintiffs' counsel acknowledged at the summary judgment hearing that a claim for the dedication of the right of way under the Capital Contribution Agreement was outside the statute of limitations. No such concession was made, however, with regard to the illegal impact fees paid by Plaintiffs during subsequent phases of the development. The fact that there are genuine, good faith arguments with regard to the legally appropriate accrual date of the inverse condemnation claim is even more obvious in light of Idaho precedent on this matter.

Plaintiffs strongly disagree with Valley County's reading of *McCuskey v. Canyon Cnty Comm'rs*, 128 Idaho 213, 912 P.2d 100 (1996) and *McCuskey's* application to this case.

*McCuskey* held "[t]he time of taking occurs, and hence the cause of action accrues, as of the time that the full extent of the plaintiff's loss of use and enjoyment of the property becomes apparent." *Id.*, at 217, 912 P.2d at 104. As set forth in Plaintiffs' Motion to Reconsider, the application of *McCuskey* and the accrual of an inverse condemnation claim could not be better illustrated than in this case. Plaintiffs could not have known the extent of their property loss until they applied for final plat of subsequent phases. Furthermore, Plaintiffs never would have incurred any loss of their property through inverse condemnation unless they followed through with obtaining final plat on the subsequent phases. Finally, as illustrated by Valley County's undisputed act of more than doubling the illegal impact fee charged to the last phases of their development, Plaintiffs could not have known the extent of the taking of their property at the time they dedicated a right of way for Phase 1. See Feb. 12, 2007, CIP West Roseberry Area, attached as Exhibit G to the Affidavit of Joseph Pachner on file with the Court. Therefore, the accrual date of the Plaintiffs' claim for inverse condemnation did not clearly eliminate their claim, and as Plaintiffs assert in their Motion for Reconsideration, their inverse condemnation claims for all but the right of way dedication are timely.

Valley County's position and asserted application of *McCuskey* would require Plaintiffs to engage in piecemeal litigation at the risk of being barred from later claims when the County unilaterally and arbitrarily more than doubled the illegal impact fee charged. This is not required under Idaho law to recover for inverse condemnation. *C&G, Inc. v. Canyon Cty Highway Dist.*, 139 Idaho 140, 144, 75 P.3d 194, 198 (2003). For all of these reasons there was no clear cut, bright line rule from the outset of this litigation supporting Valley County's position on the claim for inverse condemnation or accrual of the claim for statute of limitations purposes.

Valley County's assertion in its Memorandum of Costs that Plaintiffs lacked a reasonable basis to resist Valley County's other defenses is equally without merit. Plaintiffs met head-on

every defense and assertion made by Valley County in its motion for summary judgment. As an example, Valley County recites its defense based on section 1983. Valley County even quotes this Court's holding that Plaintiffs were not required to pursue their claims under section 1983 because Plaintiffs had a valid claim under the State constitution. Valley County then boldly states that under federal law, Plaintiffs' federal claims had no leg to stand on, but provides no basis for that position. Importantly, section 1983 was not a required avenue for a federal claim in this matter. Such was actually a frivolous defense and added to the fees incurred by Valley County. Additionally, the County fails to address any other federal claim alleged by Plaintiffs in asserting its claim to an award of attorney fees and how or why the Plaintiffs' unreasonably pursued those claims. Valley County is not entitled to attorney fees simply by arriving at self-serving conclusions.

The County's citation to *KMST, LLC v. Ada County*, 138 Idaho 577, 67 P.3d 56 (2003) for the proposition that Plaintiffs had no cause of action because they voluntarily paid the illegal impact fees and, as a result, the County is entitled to an award of fees and costs, is likewise unavailing. Plaintiffs and a number of other developers forced to pay the same illegal impact fee disputed that the illegal impact fees were paid voluntarily via affidavits submitted to this Court. This Court likewise recognized that there was no way for Plaintiffs to know at the time of their application that the requirement in Valley County's LUDO to pay impact fees was illegal under IDIFA. See Memorandum Decision, p. 7. Valley County's continuing insistence that Plaintiffs made the illegal impact fee payments voluntarily is bordering on silly and certainly does not support its claim to costs and fees in this matter.

Finally, as Valley County sets forth in its Memorandum of Costs, one of the most common reasons for disallowing attorney fees is when a matter of first impression is before the Court. While it is certainly true that our Idaho Supreme Court has decided a number of cases

involving the issue of inverse condemnation and accrual of a claim for statute of limitation purposes, the County cannot point to one case involving a claim for inverse condemnation in a multi-phase development. As set forth in Plaintiffs' Motion for Reconsideration also before the Court, their development involved multiple phases and required separate approvals from the County to file final plat. The Plaintiffs' rights with regard to an inverse condemnation claim could not have been set or established if or until a final decision was sought from the County. Without clear guidance on this particular issue, Valley County cannot say that this case did not involve a matter of first impression. Absent established case law on the issue of when a cause of action accrues for a claim of inverse condemnation in a multi-phase development, this is a matter of first impression. Therefore, Valley County's claim for attorney fees should be disallowed on this basis as well.

**B. Valley County is not Entitled to an Award of Attorney Fees Under Idaho Code Section 12-121.**

For the same reasons set forth above, Valley County is not entitled to an award of costs or fees under Idaho Code section 12-121. Under this section, a prevailing party is entitled to an award of attorney fees. I.C. § 12-121. Rule 54 clarifies that attorney fees are awarded only when a claim is pursued or defended frivolously, unreasonably or without merit. I.R.C.P. 54(e)(1). Attorney's fees awards under section 12-121 are discretionary. *Chisholm v. Twin Falls County*, 139 Idaho 131, 136, 75 P.2d 185, 190 (2003). Plaintiffs recognize and agree, however, as set forth by the County, that Idaho Code section 12-117 is the only applicable attorney fees provision in matters involving government entities.

**II. Valley County is not Entitled to an Award of Costs.**

Based on the unresolved motions and related matters pending before the Court, the County's motion for costs is premature and should be rejected. Furthermore, Valley County seeks an award of discretionary costs for photocopying costs, conference call charges, messenger

service, courier service, binder costs, and travel to attend depositions. None of the costs sought are allowable under the applicable standard.

The process for considering an allowance of discretionary costs is contained in I.R.C.P. 54(d)(1)(D), which states, in relevant part, that discretionary costs: "may be allowed upon a showing that said costs were necessary and exceptional costs reasonably incurred, and should in the interest of justice be assessed against the adverse party".

Valley County has not provided this Court with an explanation or an adequate showing why the discretionary costs should be awarded. The costs claimed as discretionary costs are merely identified in the Affidavit of Christopher H. Meyer in paragraphs 22 and 23. There is no showing that these costs were necessary and exceptional. They are costs commonly associated with litigation similar to this matter and, therefore, are not exceptional costs.

**III. The Attorney Fees sought by Valley County were not Reasonably Incurred.**

The attorney fees award sought by Valley County is excessive and should be disallowed. The attorney fees and costs requested by the County must be reasonable and any decision with regard to awarding fees must consider the factors identified in Idaho Rule of Civil Procedure 54(e)(3). These factors include, among others, the prevailing charges for like work. I.R.C.P. 54(e)(3)(D). The hourly rate charged by Valley County's chosen outside counsel is excessive given that this matter was brought and pursued in Valley County. As a result, Valley County's attorney fee request should be disallowed or significantly reduced.

In considering the prevailing charges, the Court should consider the the relevant geographic area, not the prevailing rate charged by a particular segment of the legal community. *Lettunich v. Lettunich*, 141 Idaho 425, 435, 111 P.3d 110, 120 (2005). This, however, is exactly what Valley County's outside counsel asks this Court to do in awarding it attorney fees. The County's lead counsel, Mr. Meyer, indicates in his paragraph 12 affidavit that his hourly rate

charged in this matter is \$280 per hour, after a significant reduction in his usual rate as an accommodation to the County. To support this rate, Valley County provides the affidavit of Murray D. Feldman, a partner at the law firm of Holland & Hart. Mr. Feldman states in paragraph 10 of his affidavit that "[f]or these proceedings, lawyers in the Boise, Idaho market generally charge hourly rates between \$180 and \$450. During the time period in 2009 and 2010 when this case was litigated, my billing rates for this type of litigation were in the range of \$335 to \$425 per hour."

According to the firm's website ([hollandhart.com](http://hollandhart.com)), Holland & Hart is a 400 attorney law firm and its Boise office alone is significantly larger than most law firms in Idaho. While Mr. Meyer's hourly rate is typically more than \$280 and while Mr. Feldman may charge his clients \$335 to \$425 per hour, this is not proper evidence of the prevailing charges for the relevant geographic area under Rule 54(c)(3) or the Idaho Supreme Court's directive in *Letunich*. Rather, Valley County is asking for attorney fees based on rates charged by the largest firms in Idaho. This is specifically prohibited under *Letunich*. Importantly, Mr. Feldman specifies that the charges he considers typical are typical for the Boise, Idaho Market. He makes no mention of the Valley County market. Interestingly, the affidavit of Matt Williams, the Valley County prosecutor, is likewise silent as to the prevailing rate charged by Valley County attorneys or the rates Valley County has paid to Valley County attorneys in other matters. This is a matter likely within Mr. Williams' direct knowledge.

On the other hand, Plaintiffs' lead counsel, Jed W. Manwaring, with more experience in complex civil litigation matters than the County's counsel, charges Plaintiffs an hourly rate of \$225. While the County may exercise its discretion in hiring legal counsel to defend against its illegal acts, it is not entitled to claim an award of attorney fees in an extreme excess of the prevailing geographical rate for attorneys in Valley County. Since Valley County's attorney fees

are not in-line with the prevailing charges for the geographic area, the County's request for attorney fees should be disallowed or significantly reduced.

**CONCLUSION**

For the reasons stated above Plaintiffs request that this Court deny *Valley County's Memorandum of Costs and Statement in Support.*

DATED this 11 day of February, 2011.

EVANS KEANE LLP

By Victor Villegas  
Victor Villegas, Of the Firm  
Attorneys for Plaintiffs

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 11<sup>th</sup> day of February, 2011, a true and correct copy of the foregoing document was served by first-class mail, postage prepaid, and addressed to; by fax transmission to; by overnight delivery to; or by personally delivering to or leaving with a person in charge of the office as indicated below:

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Case No. \_\_\_\_\_ Inst. No. \_\_\_\_\_  
Filed 11 25 A.M. \_\_\_\_\_ P.M.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF VALLEY

BUCKSKIN PROPERTIES, INC., an Idaho  
Corporation, and TIMBERLINE  
DEVELOPMENT, LLC, an Idaho Limited  
Liability Company,

Plaintiffs,

v.

VALLEY COUNTY, a political subdivision  
of the State of Idaho,

Defendant.

Case No. CV 2009-554

**VALLEY COUNTY'S RESPONSE TO  
MOTION FOR RECONSIDERATION**



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## INTRODUCTION

This is Defendant Valley County's ("County") response to *Plaintiffs' Motion for Reconsideration/Amendment* ("Reconsideration Motion") and *Memorandum in Support of Plaintiffs' Motion for Reconsideration/Amendment* ("Reconsideration Memorandum") both dated January 21, 2011.

In addition to the Reconsideration Motion, Plaintiffs Buckskin Properties, Inc. and Timberline Development, LLC ("Plaintiffs") have filed a *Motion for Partial Summary Judgment* and *Plaintiffs' Objection to Valley County's Motion for Entry of Judgment filed January 13, 2011*. They re-trace much of same ground again in their *Motion to Disallow Costs and Attorney Fees* and *Plaintiffs' Memorandum in Opposition to Valley County's Memorandum of Costs and Statement in Support*

All of Plaintiffs' post-decision filings share a common theme. They seek to re-hash the same issues that they have briefed, argued, and lost, all the while driving up attorney fees and wasting the Court's time. This is old ground. Plaintiffs' continued churning of this case should be taken into account in consideration of the County's pending Memorandum of Costs.

In their Reconsideration Motion, Plaintiffs press two basic points. First, they contend that the Court should have engaged in a separate statute of limitations analysis for each of the three phases of the development. Second, they repeat the arguments they have made before with respect to the state's five-year statute of limitations.

## ARGUMENT

### **I. PLAINTIFFS' MOTION IS PROPERLY PRESENTED UNDER RULE 11(A)(2)(B).**

At the outset of their Reconsideration Memorandum, Plaintiffs go through contortions to justify why their motion is proper under either Idaho R. Civ. P. 11(a)(2)(B) or 59(e). Their argument is both wrong and unnecessary.

Plaintiffs have every right to file a motion for reconsideration under Rule 11(a)(2)(B), but not for the reasons they say. The rule authorizes motions with respect to “interlocutory orders.” The Court’s *Memorandum Decision Re: Defendant’s Motion for Summary Judgment* (“Decision”) dated January 7, 2011 is an interlocutory order for the simple reason that it was issued before entry of judgment. *See, Johnson v. Lambros*, 143 Idaho 468, 147 P.3d 100 (Ct. App. 2006). Plaintiffs’ contention that it is interlocutory because the Court failed to adjudicate all of Plaintiffs’ claims is wrong. The Court did adjudicate them all; it threw them all out because the Plaintiffs violated the statute of limitations. But that does not make it a final judgment. It is an order, not a judgment. *See Idaho R. Civ. P. 54(a)*.

As for Plaintiffs’ reference to Rule 59(e), that rule allows for amendment of a judgment, and, as of today, there is no judgment to amend. Consequently, Rule 59(e) has no applicability here.

**II. THE FOUR-YEAR STATUTE OF LIMITATIONS RAN ON ALL PHASES OF THE DEVELOPMENT AS SOON AS PLAINTIFFS BECAME AWARE THAT A FEE WOULD BE IMPOSED.**

The Meadows has been developed in phases.<sup>1</sup> Plaintiffs insist that the Court is required to separately address the statute of limitations for each phase, and that the statute has run only on Phase 1. This is wrong, and the reason is simple. Plaintiffs knew on or before October 25, 2004 that they would have to pay a fee on all phases.

As the Court recognized in its Decision Memorandum, it makes no difference when a particular fee is quantified or when it is actually paid. The clock begins running when “the full

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<sup>1</sup> Phase 1 was subject to the Capital Contribution Agreement of July 26, 2004. Phases 2 and 3 were subject to the Road Development Agreement of September 26, 2005. The parties have not yet entered into a development agreement regarding Phases 4-6. Phases 1-3 have gone to final plat. Phases 4-6 have not.

extent of the plaintiff's loss of use and enjoyment of the property becomes apparent." *McCuskey v. Canyon County Comm'rs* ("*McCuskey II*"), 128 Idaho 213, 217, 912 P.2d 100, 104 (1996).

The Idaho Supreme Court's reference to "full extent" in *McCuskey II* does not mean that the damages must be quantified, just that the plaintiff be aware of the impending loss. *McCuskey II* was a temporary taking case. The Court rejected McCuskey's argument that the taking did not occur until it could be quantified. "Moreover, it is well settled that uncertainty as to the amount of damages cannot bar recovery so long as the underlying cause of action is determined." *McCuskey II*, 128 Idaho at 218, 912 P.2d at 105.

The law on this is consistent and settled. In another case decided the same year, the Idaho Supreme Court explained that the statute begins to run "when the impairment was of such a degree and kind that substantial interference with Wadsworth's property interest became apparent." *Wadsworth v. Idaho Department of Transportation*, 128 Idaho 439, 443, 915 P.2d 1, 5 (1996). In *Rueth v. State*, 103 Idaho 74, 79, 644 P.2d 1333, 1338 (1982), the Idaho Supreme Court held that the statute ran on the date of a meeting between parties at which time there was "recognition of the severity of the problem." In another case, the Court has explained, "The actual date of taking, although not readily susceptible to exact determination, is to be fixed at the point in time at which the impairment, of such a degree and kind as to constitute a substantial interference with plaintiffs' property interest, became apparent." *Tibbs v. City of Sandpoint*, 100 Idaho 667, 671, 603 P.2d 1001, 1005 (1979) (inverse condemnation based on airport expansion). In yet another case, the Idaho Supreme Court ruled that the statute of limitations on inverse condemnation ran from the day the plaintiffs were compelled to enter into a mineral lease with the state, not the time they made payments to the state under the lease. "We affirm the district court's determination that the full extent of the Harrises' loss of use and enjoyment of the

property became apparent when they entered into the Mineral Lease. At that point in time, the impairment constituted a substantial interference with their property interest because they signed an agreement promising to pay royalties and rents on the sand and gravel. Therefore, the Harrises are barred from recovering under their inverse condemnation claim by I.C. § 5-224.” *Harris v. State, ex rel. Kempthorne*, 147 Idaho 401, 405, 210 P.3d 86, 90 (2009).

In light of these precedents, the County is at a loss to understand why Plaintiffs continue to harp on this. It became apparent to Plaintiffs at some time in 2004 (more than four years before the Complaint was filed on December 1, 2009) that the County intended to charge a road improvement fee on all phases.

How was this apparent? In many ways.<sup>2</sup> First, on March 29, 2004, Plaintiffs themselves included a Proposed Capital Contribution Agreement in their application filed with the Planning and Zoning Commission.<sup>3</sup> The paragraph on “Road Improvements” says “Developer agrees to pay a road impact fee as established by Valley County. Currently this fee has been set by the Valley County Engineer at \$1,870.00 per equivalent single-family residential unit. . . .” This was reflected as well in the Impact Report also attached to the Application. Exhibit A to Appendix C and Appendix D to Exhibit 2 to *Affidavit of Cynda Herrrick in Support of Motion for Summary Judgment* (Oct. 14, 2010). Thus, by their very own statements, Plaintiffs knew about the road fees even before they filed their Application.

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<sup>2</sup> The items listed below are a subset of the events documenting that Plaintiffs were aware from the outset that a road improvement fee would be imposed on all phases of their development. Others are discussed in *Valley County’s Opening Brief in Support of Motion for Summary Judgment* dated October 14, 2010.

<sup>3</sup> The Application is dated “March 2004” on the footer. The cover letter is dated March 24, 2004. The “Acceptance” by Jack Charters is dated March 29, 2004. Mr. Charters also signed the Application on March 29, 2004. The Application was actually filed on April 1, 2004.

Second, Plaintiffs entered into a Capital Contribution Agreement for Phase 1 on July 26, 2004. Exhibit 1 to *Affidavit of Cynda Herrrick in Support of Motion for Summary Judgment* (Oct. 14, 2010). This Agreement set out the formula that would be applied on a per unit basis (\$1,844). From this, Plaintiffs easily could determine what the fee was likely to be on subsequent phases.

Third, On October 25, 2004, Plaintiffs actually conveyed the property (via final plat approval) to the County, as required for Phase 1. Exhibit 15 to *Affidavit of Cynda Herrrick in Support of Motion for Summary Judgment* (Oct. 14, 2010). This was the date that the Court determined started the limitations clock “[a]t the very latest.” Memorandum Decision at 5.

Fourth, on September 26, 2005, Plaintiffs entered into a Road Development Agreement for Phases 2 and 3.<sup>4</sup> In this agreement, they agreed to pay cash of \$232,160, based on \$1,844 per single family lot and \$1,383 per apartment unit. Again, it was easy for Plaintiffs to look down the road to Phases 4-6. Each of these four events occurred more than four years before the Complaint was filed on December 1, 2009. Accordingly, the Court was correct in dismissing the entire Complaint.

It is thus inescapable: If Plaintiffs knew they had a takings problem with Phases 1, 2, and 3 (the fees for which were quantified more than four years before the Complaint was filed), they must also have known that they had a problem with Phases 4-6. It is irrelevant, for purposes of the statute of limitations, that the actual payment for Phases 2 and 3 was made later, or that the quantity of the fee for Phases 4-6 has not yet been determined. It is equally irrelevant that

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<sup>4</sup> On its face, this agreement refers only to Phase 2. That is because Phase 2 was later renamed Phases 2 and 3, but this reference was not updated to reflect this. See Minutes of September 23, 2005, reproduced in Exhibit 18 to *Affidavit of Cynda Herrrick in Support of Motion for Summary Judgment* (Oct. 14, 2010) (“Has been a confusion because of changing Phase II’s name [which] is now called Phase II and Phase III.”)

Plaintiffs conceivably might decide not to proceed with subsequent phases; they still have a cause of action as soon as it is apparent that their right to develop is unlawfully restricted. Finally, Plaintiffs' contention that a takings claim as to Phases 2-6 would not accrue until a payment was made is simply and profoundly wrong.<sup>5</sup> The Court acted correctly in dismissing Plaintiffs' entire case.

As the County repeatedly has pointed out, it is now considering what to do going forward, in light of this and other litigation challenging development fees.<sup>6</sup> All options are on the table. Accordingly, the County contends that the litigation vis-à-vis Phases 4-6 is not ripe. But if it is ripe, it became ripe in early 2004 when the County began applying its road improvement fee formula. Accordingly, the statute has run in any event.

### III. THE FIVE-YEAR STATUTE OF LIMITATIONS IS INAPPLICABLE.

Plaintiffs contend that Count 1 of their Complaint sounds in contract, making it subject to the state's statute of limitations for contract actions. This statute sets a five-year deadline for "[a]n action based upon any contract, obligation or liability founded upon an instrument in writing." Idaho Code § 5-216 (emphasis supplied).

Before going further, it may be enough to point out that Plaintiffs have mischaracterized Count 1. In fact, nothing in Count 1 (or any other count) sounds in contract. For starters, Count 1 is entitled "Declaratory Relief – Violation of State Law and State and Federal Constitutions."

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<sup>5</sup> Ignoring all the case law, Plaintiffs continue to make assertions like this: "Until Plaintiffs actually paid the money, there was no taking." Reconsideration Memorandum at 5.

<sup>6</sup> "Indeed, the County is now undergoing a complete review of its policies regarding permitting of new developments and is exploring the enactment of a new IDIFA-compliant ordinance that would moot any claims with respect to future development agreements." *Valley County's Opening Brief in Support of Motion for Summary Judgment*, at 25 (Oct. 14, 2010). See also, *Valley County's Statement of Material Facts in Support of Motion for Partial Summary Judgment*, ¶¶ 62 and 63 (Oct. 14, 2010); *Affidavit of Cynda Herrick in Support of Motion for Summary Judgment*, ¶¶ 37 and 38 (Oct. 14, 2010).



Paragraph 18 complains about the County's "practice" of imposing fees on developers.

Paragraph 19 complains that the County has not complied with IDIFA and that money collected "amounts to an unauthorized tax." Paragraph 20 also complains that monies collected "constitute an unauthorized tax." Paragraph 21 complains that because of these violations, the County cannot force "developers to pay monies under the guise of a Road Development Agreement and/or Capital Contribution Agreement." In other words, the County's actions are illegal in spite of the contracts, not because of the contracts. Moreover, none of the prayers for relief involve either breach or invalidation of the agreements.

In sum, ignoring the words of their own Complaint, Plaintiffs now contend that Count 1 seeks declaratory relief that the development agreements "are illegal and void." Reconsideration Memorandum at 6. This is simply not so. Plaintiffs' contract theory is plainly an afterthought—an effort to re-cast the Complaint in a way that was never intended.

The Court properly rejected such semantic gamesmanship. The Court rightly looked to the nature of this case—which is plainly a takings case. "In determining the nature of the actions for limitations purposes, it is the substance or gravamen of the action, rather than the form of the pleading, that controls. In other words, in determining which statute of limitations governs an action, the court looks to the reality and essence of the action, and not to its name." 51 Am. Jur 2d *Application of Statutes of Limitation* § 91 (2000).<sup>7</sup>

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<sup>7</sup> Another example of the need to look past the plaintiff's characterization of the case to its true basis is found in *City of McCall v. Buxton*, 146 Idaho 656, 201 P.3d 629 (2009). In that case, the City sued its attorneys for malpractice. It also included a claim for unjust enrichment, seeking return of the money paid to its attorneys. This Court dismissed that latter claim, stating, "Although styled as a claim of unjust enrichment, Count Six is clearly premised upon legal malpractice." *Buxton*, 146 Idaho at 663, 201 P.3d at 636. The Idaho Supreme Court upheld that portion of the District Court's decision.

The Court was also correct in declining to apply the five-year statute because “this is not an action for breach of contract.” Memorandum Decision at 6 n.1. Plaintiffs concede that they have not plead breach of contract, but insist the statute is not limited to breach of contract. Reconsideration Memorandum at 7. Yet they point the Court to not a single case supporting this conclusion. What case law is out there does not support their position.

The Idaho Court of Appeals provided this definitive summary in 2008:

Pursuant to I.C. § 5-216, an action upon any contract, obligation or liability founded upon an instrument in writing must be filed within five years. A cause of action for breach of contract accrues upon breach for limitations purposes.

*Cuevas v. Barraza*, 146 Idaho 511, 198 P.3d 740 (Idaho Ct. App. 2008) (emphasis supplied).

This is consistent with the black letter law on the subject:

The statute of limitations begins to run in civil actions on contracts from the time the right of action accrues. This is usually the time the agreement is breached, rather than the time the actual damages are sustained as a consequence of the breach.

51 Am. Jur. 2d *Limitation of Actions* § 160 (2000) (emphasis supplied).

Plaintiffs’ position is further demolished by the fact that they are alleging there was no valid contract. In *Thompson v. Ebbert*, 144 Idaho 315, 318, 160 P.3d 754, 757 (2007), the Court found that contract statute of limitations was inapplicable because the contract at issue was void *ab initio*. In other words, if Plaintiffs’ theory of the case is that there was no valid contract, this is not an action “upon a contract.” Instead, this is an action based on alleged constitutional and statutory violations, and is therefore subject to the four-year statute.

Plaintiffs seem to believe that if a case’s facts involve a contract, it is a suit “upon a contract.” This is not the case. For example, the case of *Mason v. Tucker and Assoc.*, 125 Idaho 429, 871 P.2d 846 (Ct. App. 1994), involved a single transaction (a court reporter’s failure to prepare an accurate transcript) and various claims based on that event: section 1983, fraud,

negligence, tortious interference, and breach of contract. The Court carefully applied a different statute of limitations to each claim, applying the contract statute of limitations only to the claim for breach of contract. The fact that a contract governed the entire action of the court reporter did not turn the rest of the case into a case "upon a contract."

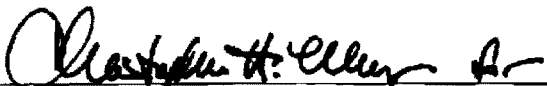
An analogy might illustrate. If someone made a contract to kill another person and then did so, the resulting homicide could give rise to a criminal prosecution and a wrongful death action—but not a suit upon a contract. The problem with the killing is not that the contract was breached, but that it was carried out. In the case at bar, Plaintiffs' contention that this is a case "upon a contract" is no less absurd.

#### CONCLUSION

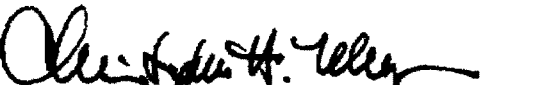
Plaintiffs' Reconsideration Motion accomplishes nothing but more stirring of an old pot. They have offered nothing new and nothing helpful to the Court. Their motion should be denied.

DATED this 28<sup>th</sup> day of February, 2011.

VALLEY COUNTY PROSECUTING ATTORNEY

By:   
Matthew C. Williams

GIVENS PURSLEY, LLP

By:   
Christopher H. Meyer

By:   
Martin C. Hendrickson

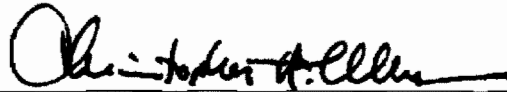
Attorneys for Defendant

**CERTIFICATE OF SERVICE**

I hereby certify that on the 28<sup>th</sup> day of February, 2011, a true and correct copy of the foregoing was served upon the following individual(s) by the means indicated:

Jed Manwaring  
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- U.S. Mail, postage prepaid
- Express Mail
- Hand Delivery
- Facsimile
- E-Mail



Christopher H. Meyer

Buckskin Properties, Inc, etal. vs. Valley County Political Sub. of State of Idaho

Buckskin Properties, Inc, Timberline Development LLC vs. Valley County Political Sub. of State of Idaho

## Other Claims

Date		Judge
12/1/2009	New Case Filed - Other Claims	Michael McLaughlin
	Filing: A - All initial civil case filings of any type not listed in categories B-H, or the other A listings below Paid by: Christie Moore Receipt number: 0014724 Dated: 12/1/2009 Amount: \$88.00 (Check) For: Buckskin Properties, Inc (plaintiff)	Michael McLaughlin
	Complaint Filed	Michael McLaughlin
	Summons Issued	Michael McLaughlin
	Summons: Document Service Issued: on 12/1/2009 to Valley County, A Political Sub of State of Idaho; Assigned to Private Server. Service Fee of \$0.00.	Michael McLaughlin
	Plaintiff: Buckskin Properties, Inc Appearance Victor S. Villegas	Michael McLaughlin
	Plaintiff: Timberline Development LLC Appearance Victor S. Villegas	Michael McLaughlin
	Affidavit Of Service	Michael McLaughlin
	Summons: Document Returned Served on 12/1/2009 to Valley County, A Political Sub of State of Idaho; Assigned to Private Server. Service Fee of \$0.00.	Michael McLaughlin
12/21/2009	Answer	Michael McLaughlin
	Defendant: Valley County, A Political Sub of State of Idaho Appearance Valley County Prosecutor	Michael McLaughlin
1/7/2010	Demand for Jury Trial	Michael McLaughlin
	Hearing Scheduled (Status 02/24/2010 04:15 PM) Court Call	Michael McLaughlin
	Notice of Telephonic Status Conference Under I.R.C.P. 16(a) & 16(b)	Michael McLaughlin
2/24/2010	Scheduling Order For Trial & Further Proceedings	Michael McLaughlin
	Hearing Scheduled (Jury Trial 01/24/2011 09:00 AM)	Michael McLaughlin
	Hearing result for Status held on 02/24/2010 04:15 PM: Hearing Held Court Call - not on the record	Michael McLaughlin
	Hearing Scheduled (Pretrial Conference 12/06/2010 01:00 PM) CourtCall	Michael McLaughlin
	Hearing Scheduled (Status 08/02/2010 11:00 AM) CourtCall - Review how case is coming along re: trial	Michael McLaughlin
3/29/2010	Notice Of Service - Plaintiffs' First Set of Interrogatories and Requests for Production of Documents to Defendant	Michael McLaughlin
4/6/2010	Application for Preliminary Injunction	Michael McLaughlin
	Affidavit of Mike Mailhot in Support of Application for Preliminary Injunction	Michael McLaughlin
4/19/2010	Objection to Application for Preliminary Injunction	Michael McLaughlin
	Affidavit of Cynda Herrick	Michael McLaughlin
4/21/2010	Hearing Scheduled (Hearing Scheduled 05/05/2010 01:30 PM) Application For Preliminary Injunction	Michael McLaughlin
	Notice Of Hearing	Michael McLaughlin
4/30/2010	Supplemental Affidavit of Mike Mailhot in Support of Plaintiff's Application for Preliminary Injunction	Michael McLaughlin
5/4/2010	Notice Of Appearance	Michael McLaughlin

## Other Claims

Date		Judge
5/4/2010	Defendant: Valley County Political Sub. of State of Idaho Appearance Christopher H. Meyer	Michael McLaughlin
5/5/2010	Preliminary Injunctive Order	Michael McLaughlin
5/10/2010	Hearing result for Hearing Scheduled held on 05/05/2010 01:30 PM: District Court Hearing Held Court Reporter: None Number of Transcript Pages for this hearing estimated: 9 minute hearing	Michael McLaughlin
6/10/2010	Notice Of Service - Defendant's Response To Plaintiffs 1st Set of Interrogatories & Requests for Production Of Documents	Michael McLaughlin
6/21/2010	Plaintiffs' Designation of Expert Witnesses	Michael McLaughlin
7/23/2010	Affidavit Of Service - Bessie J Wagner	Michael McLaughlin
7/26/2010	County's disclosure of expert witnesses	Michael McLaughlin
8/4/2010	Hearing result for Status held on 08/02/2010 11:00 AM: Hearing Held CourtCall - Review how case is coming along re: trial	Michael McLaughlin
	Hearing result for Status held on 08/02/2010 11:00 AM: District Court Hearing Held Court Reporter: None Number of Transcript Pages for this hearing estimated: 13 minute hearing	Michael McLaughlin
8/10/2010	Continued (Jury Trial 01/25/2011 09:00 AM) 5 day trial	Michael McLaughlin
8/24/2010	Notice of service	Michael McLaughlin
9/30/2010	Hearing Scheduled (Motion for Summary Judgment 11/17/2010 04:00 PM)	Michael McLaughlin
10/14/2010	Affidavit of Cynda Herrick in Support of Motion for Summary Judgment	Michael McLaughlin
	Valley County's Statement of Material Facts in Support of Motion for Summary Judgment	Michael McLaughlin
	Valley County's Motion for Summary Judgment	Michael McLaughlin
	Valley County's Opening Brief in Support of Motion for Summary Judgment	Michael McLaughlin
10/15/2010	Notice Of Hearing	Michael McLaughlin
	Plaintiff's Motion to File Brief Exceeding Twenty-Five (25) Pages	Michael McLaughlin
10/21/2010	Notice of service	Michael McLaughlin
10/29/2010	Order Allowing Plaintiff's Motion to File Brief Exceeding Twenty-Five (25) Pages	Michael McLaughlin
11/2/2010	Ptfs' Memorandum in Opposition to Def's Motion for Summary Judgment filed 10/14/10	Michael McLaughlin
	Affidavit of Dan Brumwell	Michael McLaughlin
	Affidavit of DeMar Burnett	Michael McLaughlin
	Affidavit of Robert Fodrea	Michael McLaughlin
	Affidavit of Rodney Higgins	Michael McLaughlin
	Affidavit of Steve Loomis	Michael McLaughlin
	Affidavit of Mike Mailhot	Michael McLaughlin
	Affidavit of Larry Mangum	Michael McLaughlin
	Affidavit of John Millington	Michael McLaughlin

Buckskin Properties, Inc, etal. vs. Valley County Political Sub. of State of Idaho

Buckskin Properties, Inc, Timberline Development LLC vs. Valley County Political Sub. of State of Idaho

## Other Claims

Date		Judge
11/2/2010	Affidavit of Joseph Pachner	Michael McLaughlin
	Affidavit of Henry Rudolph	Michael McLaughlin
	Affidavit of Anne Seastrom	Michael McLaughlin
	Affidavit of Matt Wolff	Michael McLaughlin
11/9/2010	Valley County's Motion To Enlarge Page Limitation	Michael McLaughlin
	Affidavit Of Victor Villegas In Opposition To Summary Judgment	Michael McLaughlin
	Valley County's Amended Motion To Enlarge Page Limitations	Michael McLaughlin
11/10/2010	Order Granting Valley County's Motion to Enlarge Page Limitations	Michael McLaughlin
	Valley County's Reply Brief in Support of Motion for Summary Judgment	Michael McLaughlin
11/12/2010	Stipulation To Move Summary Judgment Hearing From Valley County to Ada County	Michael McLaughlin
	Amended Notice Of Hearing	Michael McLaughlin
11/15/2010	Hearing result for Pretrial Conference held on 12/06/2010 01:00 PM: Continued CourtCall	Michael McLaughlin
	Continued (Pretrial Conference 12/06/2010 01:00 PM)	Michael McLaughlin
	Hearing Scheduled (Motion for Summary Judgment 12/06/2010 01:00 PM)	Michael McLaughlin
	Amended Order Granting Valley County's Motion To Enlarge Page Limitations	Michael McLaughlin
11/19/2010	Stipulation to modify scheduling order	Michael McLaughlin
11/24/2010	Order Granting Stipulation to Modify Scheduling Order	Michael McLaughlin
12/6/2010	Hearing result for Motion for Summary Judgment held on 12/06/2010 01:00 PM: District Court Hearing Held Court Reporter: Number of Transcript Pages for this hearing estimated: 78 minute hearing	Michael McLaughlin
	Hearing result for Pretrial Conference held on 12/06/2010 01:00 PM: Hearing Held	Michael McLaughlin
	Hearing result for Motion For Summary Judgment held on 12/06/2010 01:00 PM: Case Taken Under Advisement	Michael McLaughlin
1/7/2011	Memorandum Decision Re: Defendant's Motion For Summary Judgment	Michael McLaughlin
	Hearing result for Jury Trial held on 01/25/2011 09:00 AM: Hearing Vacated 5 day trial	Michael McLaughlin
1/10/2011	Motion for Partial Summary Judgment	Michael McLaughlin
1/11/2011	Motion to Vacate Trial Date and Request for Status	Michael McLaughlin
1/13/2011	Valley County's Motion For Entry Of Judgment	Michael McLaughlin
	Valley County's Response To Motion For Partial Summary Judgment	Michael McLaughlin
1/14/2011	Plaintiffs' Objection to Valley County's Motion For Entry Of Judgment Filed January 13, 2011	Michael McLaughlin
1/18/2011	Hearing Scheduled (Motion for Partial Summary Judgment 02/17/2011 03:00 PM)	Michael McLaughlin
1/21/2011	Plaintiff's Motion for Reconsideration/Amendment	Michael McLaughlin

Buckskin Properties, Inc, etal. vs. Valley County Political Sub. of State of Idaho

Buckskin Properties, Inc, Timberline Development LLC vs. Valley County Political Sub. of State of Idaho

## Other Claims

Date		Judge
1/21/2011	Memorandum in Support of Plaintiffs' Motion for Reconsideration/Amendment	Michael McLaughlin
	Notice Of Hearing	Michael McLaughlin
1/27/2011	Notice Of Hearing	Michael McLaughlin
1/28/2011	Affidavit of Matthew C. Williams	Michael McLaughlin
1/31/2011	Valley County's Memorandum of Costs & Statement in Support	Michael McLaughlin
	Affidavit of Christopher H. Meyer	Michael McLaughlin
	Affidavit of Martin C. Henrickson	Michael McLaughlin
	Affidavit of Murray D. Feldman	Michael McLaughlin
2/1/2011	Stipulation To Move February 17, 2011 Motions Hearing From Valley County to Ada County	Michael McLaughlin
2/8/2011	Order Granting Stipulation to Move Feb. 17, 2011 Motions Hearing From Valley County to Ada County	Michael McLaughlin
	Continued (Motion for Partial Summary Judgment 03/11/2011 01:00 PM) Motion for Reconsideration/Amendment and Def's Motion for Entry of Judgment--Moved to Ada Co.	Michael McLaughlin
2/14/2011	Notice of Hearing	Michael McLaughlin
2/15/2011	Motion to Disallow Costs and Attorneys Fees	Michael McLaughlin
	Plaintiff's Memorandum in Opposition to Valley County's Memorandum of Costs and Statements in Support	Michael McLaughlin
3/1/2011	Valley County's Response to Motion for Reconsideration	Michael McLaughlin
	Valley County's Response to Motion To Disallow Costs & Attorney Fees	Michael McLaughlin
3/9/2011	Valley County's Reply in Support of Motion for Entry of Judgment	Michael McLaughlin
	Affidavit of Cynda Herrick Regarding Resolution 11-6	Michael McLaughlin
3/11/2011	Hearing result for Motion for Partial Summary Judgment held on 03/11/2011 01:00 PM: Interim Hearing Held Motion for Reconsideration/Amendment and Def's Motion for Entry of Judgment, Memo. for Costs and Fees	Michael McLaughlin
	Case Taken Under Advisement	Michael McLaughlin
3/28/2011	Notice of Supplemental Authority	Michael McLaughlin
4/11/2011	Memorandum Decision (1) Ptf's Motion for Partial Summary Judgment; (2) Def's Motion for Entry of Judgment; (3) Ptf's Motion for Reconsideration/Amendment; (4) Ptf's Motion to Dissallow Costs & Attorneys Fees	Michael McLaughlin
4/13/2011	Ptfs' Objection to Valley County's Proposed Judgment	Michael McLaughlin
	Response to Ptfs' Objection to Proposed Judgment	Michael McLaughlin
4/19/2011	Judgment	Michael McLaughlin
	STATUS CHANGED: Closed	Michael McLaughlin
	Civil Disposition entered for: Valley County Political Sub. of State of Idaho, Defendant; Buckskin Properties, Inc, Plaintiff; Timberline Development LLC, Plaintiff. Filing date: 4/19/2011	Michael McLaughlin



Buckskin Properties, Inc, etal. vs. Valley County Political Sub. of State of Idaho

Buckskin Properties, Inc, Timberline Development LLC vs. Valley County Political Sub. of State of Idaho

## Other Claims

Date		Judge
4/19/2011	Civil Disposition entered for: Valley County Political Sub. of State of Idaho, Defendant; Buckskin Properties, Inc, Plaintiff; Timberline Development LLC, Plaintiff. Filing date: 4/19/2011 Plaintiff shall pay V.C. \$666.00	Michael McLaughlin
5/25/2011	Estimate Of Transcript Cost	Michael McLaughlin
	Estimate Of Clerk's Record Cost	Michael McLaughlin
5/26/2011	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Villegas, Victor S. (attorney for Buckskin Properties, Inc) Receipt number: 0002375 Dated: 5/26/2011 Amount: \$101.00 (Credit card) For: Buckskin Properties, Inc (plaintiff)	Michael McLaughlin
	Filing: Technology Cost - CC Paid by: Villegas, Victor S. (attorney for Buckskin Properties, Inc) Receipt number: 0002375 Dated: 5/26/2011 Amount: \$3.00 (Credit card) For: Buckskin Properties, Inc (plaintiff)	Michael McLaughlin
	Bond Posted - Cash (Receipt 2377 Dated 5/26/2011 for 1913.25)	Michael McLaughlin
	STATUS CHANGED: inactive	Michael McLaughlin
	Appealed To The Supreme Court	Michael McLaughlin
	NOTICE OF APPEAL	Michael McLaughlin
6/3/2011	Letter to Court Reporter Vanessa Gosney Re: Transcript of 12/06/10 for Supreme Court	Michael McLaughlin
	Letter to Penny Tardiff Re: Transcript of 3/11/11 for Supreme Court	Michael McLaughlin
6/15/2011	Notice of Cross-Appeal	Michael McLaughlin
	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Matthew C. Williams Receipt number: 0002680 Dated: 6/16/2011 Amount: \$.00 (Cash) For: Valley County Political Sub. of State of Idaho (defendant)	Michael McLaughlin

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF VALLEY

BUCKSKIN PROPERTIES, INC., ETAL,            )  
  )  
                          Plaintiffs/Appellants,    )  
  )  
  )  
-vs-    )  
  )  
  )  
VALLEY COUNTY, A POLITICAL                    )  
SUBDIVISION OF THE STATE OF                    )  
IDAHO,    )  
  )  
  )  
                          Defendant/Respondent.    )  
\_\_\_\_\_  )

Supreme Court No. 38830-2011

Case No. CV-2009-554\*C

CLERK'S CERTIFICATE OF APPEAL

Appeal From: Fourth Judicial District, Valley County  
Honorable Michael R. McLaughlin, Presiding

Court Case No.: CV-2009-554\*C

Order or Judgment Appealed From: Memorandum Decision Re: Def's Motion for  
Summary Judgment filed 1/7/11; Memorandum Decision filed 4/11/11; and  
Judgment filed 4/19/11

Counsel for Plaintiffs/Appellants: Victor Villegas  
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1405 West Main, P.O. Box 959  
Boise, ID 83701-0959  
PH: (208) 384-1800

Counsel for Defendant/Respondent: Matthew C. Williams  
Valley Co. Prosecutor  
219 No. Main, P. O. Box 1350  
Cascade, ID 83622  
PH: (208) 382-7120

And Christopher Meyer & Martin Hendrickson  
Givens Pursley  
601 W. Bannock St., P. O. Box 2720  
Boise, ID 83701-2720  
PH: (208) 388-1200

Appealed By: Buckskin Properties and Timberline Development

Appealed Against: Valley County

Notice of Appeal Filed: 05/26/11

Notice of Cross-Appeal Filed: NA

Appellate Fee Paid: Yes

Request for Additional Reporter's Transcript Filed: NA

Request for Additional Record Filed: No

Name of Reporter: Vanessa Gosney(12/06/10 Hrng)	Penny Tardiff(03/11/11 Hrng)
c/o Hon. Timothy Hanson	c/o Hon. Darla Williamson
Ada County Courthouse	Ada County Courthouse
200 W. Front St.	200 W. Front St.
Boise, ID 83702	Boise, ID 83702

Was Reporter's Transcript Requested: Yes

DATED this 8th day of June, 2011.

ARCHIE N. BANBURY, CLERK

By:           **A/ F. GARRISON**            
Deputy Clerk

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF VALLEY

BUCKSKIN PROPERTIES, INC., an Idaho  
Corporation; TIMBERLINE DEVELOPMENT)  
LLC, an Idaho Limited Liability )  
Company, )

Plaintiffs/Appellants, )  
Cross Respondents, )

Supreme Court No. 38830-2011

Case No. CV-2009-554\*C

-vs-

VALLEY COUNTY, A POLITICAL )  
SUBDIVISION OF THE STATE OF )  
IDAHO, )

Defendant/Respondent, )  
Cross-Appellant. )

**AMENDED**  
CLERK'S CERTIFICATE OF APPEAL

Appeal From: Fourth Judicial District, Valley County  
Honorable Michael R. McLaughlin, Presiding

Court Case No.: CV-2009-554\*C

Order or Judgment Appealed From: Memorandum Decision Re: Def's Motion for  
Summary Judgment filed 1/7/11; Memorandum Decision filed 4/11/11; Judgment  
filed 4/19/11; **and Plaintiff's Motion to Disallow Costs & Attorney Fees  
filed on 4/11/11**

Counsel for Plaintiffs/Appellants, Victor Villegas  
Cross-Respondents: Evans Keane  
1405 West Main, P.O. Box 959  
Boise, ID 83701-0959  
PH: (208) 384-1800

Counsel for Defendant/Respondent, Matthew C. Williams  
Cross-Appellant: Valley Co. Prosecutor  
219 No. Main, P. O. Box 1350  
Cascade, ID 83622  
PH: (208) 382-7120

And

Christopher Meyer & Martin Hendrickson  
Givens Pursley  
601 W. Bannock St., P. O. Box 2720  
Boise, ID 83701-2720  
PH: (208) 388-1200

Appealed By: Buckskin Properties and Timberline Development

Appealed Against: Valley County

Notice of Appeal Filed: 05/26/11

**Notice of Cross-Appeal Filed: 6/15/11**

Appellate Fee Paid: Yes

Request for Additional Reporter's Transcript Filed: NA

Request for Additional Record Filed: No

Name of Reporter: Vanessa Gosney(12/06/10 Hrng)	Penny Tardiff(03/11/11 Hrng)
c/o Hon. Timothy Hanson	c/o Hon. Darla Williamson
Ada County Courthouse	Ada County Courthouse
200 W. Front St.	200 W. Front St.
Boise, ID 83702	Boise, ID 83702

Was Reporter's Transcript Requested: Yes

DATED this 16th day of June, 2011.

ARCHIE N. BANBURY, CLERK

By:           /s/ F. GARRISON            
Deputy Clerk

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF VALLEY

BUCKSKIN PROPERTIES, INC., an Idaho Corporation; TIMBERLINE DEVELOPMENT LLC, an Idaho Limited Liability Company,	)	Case No. CV-2009-554*C
Plaintiffs/Appellants,	)	
Cross Respondents,	)	CLERK'S CERTIFICATE OF EXHIBITS
-vs-	)	
VALLEY COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF IDAHO,	)	Supreme Court No. 38830-2011
Defendant/Respondent.	)	
Cross-Appellants.	)	

I, ARCHIE N. BANBURY, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Valley, do hereby certify that the following is a list of the exhibits, offered or admitted and which have been lodged with the Supreme Court or retained as indicated:

<u>DESCRIPTION</u>	<u>SENT/RETAINED</u>
Affidavit of Cynda Herrick filed 10/14/10	Sent as Exhibit
Affidavit of Victor Villegas filed 11/9/10	Sent as Exhibit

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 7 day of June, 2011.

ARCHIE N. BANBURY,  
Clerk of the District Court

By: J. Garrison, Deputy

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE

BUCKSKIN PROPERTIES, INC., an Idaho)	)	Case No. CV-2009-554*C
Corporation; TIMBERLINE DEVELOPMENT)	)	
LLC, an Idaho Limited Liability )	)	
Company,	)	
	)	
Plaintiffs/Appellants,	)	
Cross Respondents,	)	CLERK'S CERTIFICATE
	)	TO RECORD
-vs-	)	
	)	
VALLEY COUNTY, A POLITICAL )	)	Supreme Court No.38830-2011
SUBDIVISION OF THE STATE OF )	)	
IDAHO,	)	
	)	
Defendant/Respondent.	)	
_____	)	

I, ARCHIE N. BANBURY, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Valley, do hereby certify that the foregoing Record in this cause was compiled and bound under my direction and contains true and correct copies of all pleadings, documents and papers designated to be included under Rule 28, IAR, the Notice of Appeal, any Notice of Cross-Appeal, and any additional documents requested to be included.

I do further certify that all documents, x-rays, charts and pictures offered or admitted as exhibits in the above entitled cause, if any, will be duly lodged with the Clerk of the Supreme Court along with the Court Reporter's Transcript and Clerk's Record as required by Rule 31 of the Idaho Appellate Rules.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed

the seal of the said Court this 7 day of June,  
2011.

ARCHIE N. BANBURY  
Clerk of the District Court

By J Garrison  
Deputy



IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
 STATE OF IDAHO, IN AND FOR THE COUNTY OF VALLEY

BUCKSKIN PROPERTIES, INC., an Idaho Corporation; TIMBERLINE DEVELOPMENT LLC, an Idaho Limited Liability Company,	) ) )	
Plaintiffs/Appellants, Cross Respondents,	) ) )	Supreme Court No. 38830-2011  Case No. CV-2009-554*C
-vs-	) ) )	
VALLEY COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF IDAHO,	) ) )	CLERK'S CERTIFICATE OF SERVICE
Defendant/Respondent, Cross-Appellant.	) ) )	

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I, ARCHIE N. BANBURY, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Valley, do hereby certify that I have personally served or mailed, by United States Mail, postage prepaid, one copy of the Clerk's Record and any Reporter's Transcript to each of the Attorneys of Record in this cause as follows:

MATTHEW C. WILLIAMS VALLEY COUNTY PROSECUTOR INTERDEPARTMENTAL MAIL	VICTOR VILLEGAS EVANS KEANE 1405 WEST MAIN BOISE, ID 83701-0959
---	--

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 8th day of ~~June~~ <sup>September</sup>, 2011.

ARCHIE N. BANBURY, CLERK

By J. Garrison  
Deputy

TO: CLERK OF THE COURT  
IDAHO SUPREME COURT  
451 WEST STATE STREET  
BOISE, IDAHO 83702

ARCHIE N. BANBURY, CLERK

By J. Garrison Deputy

JUL 21 2011

Case No. \_\_\_\_\_ Inst. No. \_\_\_\_\_

Filed 10:16 A.M. \_\_\_\_\_ P.M.

BUCKSKIN PROPERTIES, INC, )  
 ) Supreme Court No.  
 ) 38830-2011  
 )  
 ) Plaintiff-Respondent, )  
 vs. ) Case No. CR-09-554-C  
 )  
 ) VALLEY COUNTY, )  
 )  
 ) Defendant-Appellant. )  
 )

**NOTICE OF TRANSCRIPT LODGED**

Notice is hereby given that on July 5, 2011, I lodged a transcript 60 pages of length for the above-referenced appeal with the District Court Clerk of the **County of Ada** in the Fourth Judicial District.

**HEARING DATES INCLUDED:**

December 6, 2010

Vanessa S. Gosney  
Vanessa S. Gosney, Official Court Reporter

July 5, 2011  
Date

TO: CLERK OF THE COURT IDAHO SUPREME COURT

451 WEST STATE STREET, BOISE, IDAHO 83702

ARCHIE N. BANBURY, CLERK

By Garrison Deputy

SEP 08 2011

Case No. \_\_\_\_\_ Inst. No. \_\_\_\_\_

Filed 11:21 A.M. \_\_\_\_\_ P.M.

BUCKSKIN PROPERTIES INC., an )  
Idaho Corporation, and )  
TIMBERLINE DEVELOPMENT, LLC, )  
an Idaho Limited Liability )  
Company, )

Plaintiffs/Appellants, )

vs. )

VALLEY COUNTY, a political, )  
subdivision of the State of )  
Idaho. )

Defendant/Respondent. )

) Supreme Court  
) Docket No. 38830-2011  
)

) Case No. CR-2009-554C  
)

) NOTICE OF TRANSCRIPT  
) LODGING  
)

NOTICE OF TRANSCRIPT LODGED

Notice is hereby given that on September 7th, 2011,  
I lodged transcript(s) of the following hearing(s):

**Hearing, March 11, 2011, of 50 pages,** for the  
above-referenced appeal with the District Court Clerk of the  
County of Valley in the Fourth Judicial District.

Kasey A. Redlich

Kasey A. Redlich,  
Certified Court Reporter

9/7/11

Date