

Lindsay Watkins, *Pro Hac Vice*
lindsay.watkins@acslawyers.com
Kristina Southwell, *Pro Hac Vice*
Kristina.southwell@acslawyers.com
AHLERS CRESSMAN & SLEIGHT PLLC
1325 Fourth Avenue, Suite 1850
Seattle, WA 98101
Telephone: (206) 287-9900
Facsimile: (206) 934-1139

John H. Guin, ISB #5753
john@guinlaw.com
Law Office of John H. Guin, PLLC
PO Box 31210
Spokane, WA 99223
Telephone: (509) 443-0709

Attorneys for Strider Construction Co., Inc.

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

STRIDER CONSTRUCTION CO. INC.,

Plaintiff,

vs.

IDAHO WATER RESOURCE BOARD,

Defendant.

Case No. CV01-22-10932

DECLARATION OF KRISTINA
SOUTHWELL IN SUPPORT OF
PLAINTIFF'S OPPOSITION TO
DEFENDANT'S MOTION TO ORDER
RETURN OF STATE PROPERTY

I, Kristina Southwell, testify as follows:

1. I am one of the counsel of record for Plaintiff Strider Construction Co., Inc. in the above-captioned matter. I am over the age of eighteen, competent to testify, and have personal knowledge of the matters herein.
2. After exchanging written correspondence with counsel for IWRB (Jennifer Reinhardt-Tessmer) over certain written discovery responses, Ms. Reinhardt-Tessmer and I agreed to hold a

meet and confer conference to discuss the discovery issues. This meet and confer occurred on March 29, 2023 via a Teams call.

3. In advance of the scheduled meet and confer, I received an email from Ms. Reinhardt-Tessmer asking whether Strider had retained any samples of the J-seals.

4. During the meet and confer conference on March 29, 2023, I acknowledged receipt of Ms. Reinhardt-Tessmer's email and confirmed that Strider did in fact have a sample of a piece of old J-seal and a piece of new J-seal in its possession. I told Ms. Reinhardt-Tessmer that Strider would make the samples available for inspection and testing by IWRB at a mutually agreeable time and place, as required by discovery rules, pursuant to (what I assumed) would be a forthcoming request from IWRB.

5. During the conference I recall Ms. Reinhardt-Tessmer asking where Strider's office was located and expressing concern over traveling there, to which I indicated that inspection could occur at some other "mutually agreeable" location. There was no accusation that the sample was "stolen state property" or any indication that it was not subject to typical discovery procedures.

6. Attached at **Exhibit A** is a true and correct copy of the full email thread between myself and Ms. Reinhardt-Tessmer that ensued after our meet and confer.

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

DATED: This 2nd day of June, 2023 at Seattle, WA.

By: 
Kristina Southwell

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of June, 2023, a true and correct copy of the within and foregoing instrument was served upon:

Garrick L. Baxter, ISB #6301

Garrick.baxter@idwr.idaho.gov

Meghan M. Carter, ISB #8863

Meghan.carter@idwr.idaho.gov

Steven B. Andersen, ISB #2618

sandersen@kmclaw.com

Jennifer Reinhardt-Tessmer, ISB #7432

jtessmer@kmclaw.com

*Attorney for Defendant Idaho Water
Resource Board*

- Via U.S. Mail
- Via Legal Messenger
- Via Federal Express
- Via Facsimile
- Via iCourt E-File and Serve**

DATED: This 2nd day of June, 2023.

/s/ John H. Guin

EXHIBIT A

Kristina Southwell

From: Kristina Southwell
Sent: Monday, May 1, 2023 3:23 PM
To: Jennifer Reinhardt-Tessmer; Madison Hyland
Cc: Carter, Meghan; john@guinlaw.com; Steven Andersen; Lindsay Watkins; Carolyn McCutchan
Subject: Re: Strider v. Idaho Water Resource Board, Case No. CV01-22-10932, Meet and Confer

Jennifer,

These questions should be raised through the formal discovery process, not by email among counsel.

Thanks,



Kristina Southwell | Attorney
kristina.southwell@acslawyers.com

AHLERS CRESSMAN & SLEIGHT PLLC

Direct: 206.388.1880 | Cell: 206.799.7793 | Conference: 888.827.9225 Code: 633189
1325 4th Ave Suite 1850
Seattle, WA 98101
www.acslawyers.com

This message contains information which may be confidential and privileged. Unless you are the addressee (or authorized to receive e-mail correspondence on behalf of the addressee), you may not use, copy or disclose to anyone this message or any information contained in this message. If you have received this message in error, please advise the sender by reply e-mail at kristina.southwell@acslawyers.com, and delete this message.

From: Jennifer Reinhardt-Tessmer <jtessmer@kmclaw.com>
Sent: Friday, April 28, 2023 7:43 AM
To: Kristina Southwell <kristina.southwell@acslawyers.com>; Madison Hyland <mhyland@kmclaw.com>
Cc: Carter, Meghan <Meghan.Carter@idwr.idaho.gov>; john@guinlaw.com <john@guinlaw.com>; Steven Andersen <sandersen@kmclaw.com>; Lindsay Watkins <lindsay.watkins@acslawyers.com>; Carolyn McCutchan <carolyn.mccutchan@acslawyers.com>
Subject: RE: Strider v. Idaho Water Resource Board, Case No. CV01-22-10932, Meet and Confer

Kristina,

Can you please tell me: 1) When your client removed the J-seal; 2) what he did with the balance of the old J-seals; 3) where the J-seal has been, specifically, since its removal 3) if there is anything else he removed from the worksite?; and 4) when your office was made aware of the possession of the J-seal?

Thank you.

KIRTON | McCONKIE
Jennifer Reinhardt-Tessmer
Shareholder
d 208.370.3323
c 208.957.3939

From: Kristina Southwell <kristina.southwell@acslawyers.com>
Sent: Tuesday, April 18, 2023 1:08 PM
To: Jennifer Reinhardt-Tessmer <jtessmer@kmclaw.com>; Madison Hyland <mhyland@kmclaw.com>
Cc: Carter, Meghan <Meghan.Carter@idwr.idaho.gov>; john@guinlaw.com; Steven Andersen <sandersen@kmclaw.com>; Lindsay Watkins <lindsay.watkins@acslawyers.com>; Carolyn McCutchan <carolyn.mccutchan@acslawyers.com>
Subject: Re: Strider v. Idaho Water Resource Board, Case No. CV01-22-10932, Meet and Confer

CAUTION: EXTERNAL

Jennifer,

Our position, based on the Contract, is that the J-seal is not state property, and under the discovery rules there is no obligation to give IWRB or your office physical possession of the seal. Strider is preserving the seal, as is its obligation. I have repeatedly offered to discuss finding a mutually agreeable time and place for IWRB to have access to the seal for inspection and testing, which meets Strider's obligations under the discovery rules. For those reasons, a motion by IWRB would be unsuccessful. I'll also point out that there has not been an actual discovery request made for the seal. Nor has IWRB indicated that it has engaged an expert to perform testing.

The appropriate course of action here is for IWRB to make a formal discovery request and discuss a time and place to inspect the seal once it has engaged an expert.



Kristina Southwell | Attorney
kristina.southwell@acslawyers.com

AHLERS CRESSMAN & SLEIGHT PLLC
Direct: 206.388.1880 | Cell: 206.799.7793 | Conference: 888.827.9225 Code: 633189
1325 4th Ave Suite 1850
Seattle, WA 98101
www.acslawyers.com

This message contains information which may be confidential and privileged. Unless you are the addressee (or authorized to receive e-mail correspondence on behalf of the addressee), you may not use, copy or disclose to anyone this message or any information contained in this message. If you have received this message in error, please advise the sender by reply e-mail at kristina.southwell@acslawyers.com, and delete this message.

From: Jennifer Reinhardt-Tessmer <jtessmer@kmclaw.com>
Sent: Tuesday, April 18, 2023 11:54 AM
To: Kristina Southwell <kristina.southwell@acslawyers.com>; Madison Hyland <mhyland@kmclaw.com>
Cc: Carter, Meghan <Meghan.Carter@idwr.idaho.gov>; john@guinlaw.com <john@guinlaw.com>; Steven Andersen <sandersen@kmclaw.com>; Lindsay Watkins <lindsay.watkins@acslawyers.com>; Carolyn McCutchan <carolyn.mccutchan@acslawyers.com>
Subject: RE: Strider v. Idaho Water Resource Board, Case No. CV01-22-10932, Meet and Confer

Kristina –

The J-seal is the State of Idaho's property, and we are requesting its return. Based on our conversation, my understanding is that you believed the J-seal was being kept at your client's office. We aren't comfortable with this. If it

is not returned, we will be filing our motion to compel. As I noted, we will certainly safely preserve for any future inspections.

KIRTON | M^CONKIE
Jennifer Reinhardt-Tessmer
Shareholder
d 208.370.3323
c 208.957.3939

From: Kristina Southwell <kristina.southwell@acslawyers.com>
Sent: Wednesday, April 12, 2023 8:06 PM
To: Jennifer Reinhardt-Tessmer <jtessmer@kmclaw.com>; Madison Hyland <mhyland@kmclaw.com>
Cc: Carter, Meghan <Meghan.Carter@idwr.idaho.gov>; john@guinlaw.com; Steven Andersen <sandersen@kmclaw.com>; Lindsay Watkins <lindsay.watkins@acslawyers.com>; Carolyn McCutchan <carolyn.mccutchan@acslawyers.com>
Subject: RE: Strider v. Idaho Water Resource Board, Case No. CV01-22-10932, Meet and Confer

CAUTION: EXTERNAL

Hi Jennifer,

There is only one of the original j-seals and one of the new j-seals. Since there is only one, care must be taken to preserve the evidence. Strider is not comfortable with mailing given the risk of loss or damage.

I suggest that IWRB make a formal discovery request regarding the j-seal. Then we can decide on a mutually agreeable time and place for IWRB to inspect the j-seal so that there is no risk of loss or damage to the evidence.

Thanks,

Kristina Southwell | Attorney
kristina.southwell@acslawyers.com
AHLERS CRESSMAN & SLEIGHT PLLC
Direct: [206.388.1880](tel:206.388.1880) | Cell: [206.799.7793](tel:206.799.7793) | Conference: [888.827.9225](tel:888.827.9225) Code: [633189](tel:633189)
1325 4th Ave Suite 1850
Seattle, WA 98101
www.acslawyers.com

This message contains information which may be confidential and privileged. Unless you are the addressee (or authorized to receive e-mail correspondence on behalf of the addressee), you may not use, copy or disclose to anyone this message or any information contained in this message. If you have received this message in error, please advise the sender by reply e-mail at kristina.southwell@acslawyers.com, and delete this message.

----- Original message -----

From: Jennifer Reinhardt-Tessmer <jtessmer@kmclaw.com>
Date: 4/12/23 1:32 PM (GMT-08:00)
To: Kristina Southwell <kristina.southwell@acslawyers.com>, Madison Hyland <mhyland@kmclaw.com>
Cc: "Carter, Meghan" <Meghan.Carter@idwr.idaho.gov>, john@guinlaw.com, Steven Andersen <sandersen@kmclaw.com>, Lindsay Watkins <lindsay.watkins@acslawyers.com>, Carolyn McCutchan <carolyn.mccutchan@acslawyers.com>
Subject: RE: Strider v. Idaho Water Resource Board, Case No. CV01-22-10932, Meet and Confer

Kristina,

Can you please advise if your office will mail the j-seals. Thanks.

KIRTON | M^CONKIE

Jennifer Reinhardt-Tessmer

Shareholder

d 208.370.3323

c 208.957.3939

From: Jennifer Reinhardt-Tessmer

Sent: Wednesday, April 5, 2023 12:52 PM

To: Kristina Southwell <kristina.southwell@acslawyers.com>; Madison Hyland <mhyland@kmclaw.com>

Cc: Carter, Meghan <Meghan.Carter@idwr.idaho.gov>; john@guinlaw.com; Steven Andersen <sandersen@kmclaw.com>; Lindsay Watkins <lindsay.watkins@acslawyers.com>; Carolyn McCutchan <carolyn.mccutchan@acslawyers.com>

Subject: RE: Strider v. Idaho Water Resource Board, Case No. CV01-22-10932, Meet and Confer

Kristina,

That doesn't equate to ownership for Strider. Regardless, we want to inspect the j-seals, and shouldn't have to travel to Strider's business in WA. It makes the most sense to mail them to our office. We'll continue to preserve them. If you won't mail them, we will file a motion to compel.

Jennifer

KIRTON | McCONKIE

Jennifer Reinhardt-Tessmer

Shareholder

d 208.370.3323

c 208.957.3939

From: Kristina Southwell <kristina.southwell@acslawyers.com>

Sent: Tuesday, April 4, 2023 6:03 PM

To: Jennifer Reinhardt-Tessmer <jtessmer@kmclaw.com>; Madison Hyland <mhyland@kmclaw.com>

Cc: Carter, Meghan <Meghan.Carter@idwr.idaho.gov>; john@guinlaw.com; Steven Andersen <sandersen@kmclaw.com>; Lindsay Watkins <lindsay.watkins@acslawyers.com>; Carolyn McCutchan <carolyn.mccutchan@acslawyers.com>

Subject: RE: Strider v. Idaho Water Resource Board, Case No. CV01-22-10932, Meet and Confer

CAUTION: EXTERNAL

The specs call for removal and disposal of the old J-seals – See Section 01 20 00 1.03(B)(13). Nothing indicates that IWRB intended to retain ownership of items it directed to be removed and disposed of.



Kristina Southwell | Attorney

kristina.southwell@acslawyers.com

AHLERS CRESSMAN & SLEIGHT PLLC

Direct: 206.388.1880 | Cell: 206.799.7793 | Conference: 888.827.9225 Code: 633189

1325 4th Ave Suite 1850

Seattle, WA 98101

www.acslawyers.com

This message contains information which may be confidential and privileged. Unless you are the addressee (or authorized to receive e-mail correspondence on behalf of the addressee), you may not use, copy or disclose to anyone this message or any information contained in this message. If you have received this message in error, please advise the sender by reply e-mail at kristina.southwell@acslawyers.com, and delete this message.

From: Jennifer Reinhardt-Tessmer <jtessmer@kmclaw.com>
Sent: Tuesday, April 4, 2023 11:12 AM
To: Kristina Southwell <kristina.southwell@acslawyers.com>; Madison Hyland <mhyland@kmclaw.com>
Cc: Carter, Meghan <[Meghan.Carter@idwr.idaho.gov](mailto: Meghan.Carter@idwr.idaho.gov)>; john@guinlaw.com; Steven Andersen <sandersen@kmclaw.com>; Lindsay Watkins <lindsay.watkins@acslawyers.com>; Carolyn McCutchan <carolyn.mccutchan@acslawyers.com>
Subject: RE: Strider v. Idaho Water Resource Board, Case No. CV01-22-10932, Meet and Confer

Kristina,

We want to inspect the J-seal, and it's the State's property, so we're asking you to return it. We'll certainly continue to retain it and make it available for further inspection by your client/expert. I don't understand how you can contest it's the State's property. Can you please explain your position?

KIRTON | M^CONKIE
Jennifer Reinhardt-Tessmer
Shareholder
d 208.370.3323
c 208.957.3939

From: Kristina Southwell <kristina.southwell@acslawyers.com>
Sent: Monday, April 3, 2023 12:41 PM
To: Jennifer Reinhardt-Tessmer <jtessmer@kmclaw.com>; Madison Hyland <mhyland@kmclaw.com>
Cc: Carter, Meghan <[Meghan.Carter@idwr.idaho.gov](mailto: Meghan.Carter@idwr.idaho.gov)>; john@guinlaw.com; Steven Andersen <sandersen@kmclaw.com>; Lindsay Watkins <lindsay.watkins@acslawyers.com>; Carolyn McCutchan <carolyn.mccutchan@acslawyers.com>
Subject: RE: Strider v. Idaho Water Resource Board, Case No. CV01-22-10932, Meet and Confer

CAUTION: EXTERNAL

I'm sorry Jennifer I do not recall hearing you say that you believed the J-seal was your client's property during our call. My understanding was that we were talking about inspection of physical evidence under the discovery rules. It sounds like you are not making a discovery request, but rather taking the position that the old J-seal is IWRB property that Strider should not have possession of. Can you please explain your basis or authority for that position?



Kristina Southwell | Attorney
kristina.southwell@acslawyers.com

AHLERS CRESSMAN & SLEIGHT PLLC
Direct: 206.388.1880 | Cell: 206.799.7793 | Conference: 888.827.9225 Code: 633189
1325 4th Ave Suite 1850
Seattle, WA 98101
www.acslawyers.com

This message contains information which may be confidential and privileged. Unless you are the addressee (or authorized to receive e-mail correspondence on behalf of the addressee), you may not use, copy or disclose to anyone this message or any information contained in this message. If you have received this message in error, please advise the sender by reply e-mail at kristina.southwell@acslawyers.com, and delete this message.

From: Jennifer Reinhardt-Tessmer <jtessmer@kmclaw.com>
Sent: Wednesday, March 29, 2023 11:57 AM
To: Kristina Southwell <kristina.southwell@acslawyers.com>; Madison Hyland <mhyland@kmclaw.com>
Cc: Carter, Meghan <[Meghan.Carter@idwr.idaho.gov](mailto: Meghan.Carter@idwr.idaho.gov)>; john@guinlaw.com; Steven Andersen <sandersen@kmclaw.com>; Lindsay Watkins <lindsay.watkins@acslawyers.com>; Carolyn McCutchan <carolyn.mccutchan@acslawyers.com>
Subject: RE: Strider v. Idaho Water Resource Board, Case No. CV01-22-10932, Meet and Confer

Kristina,

That's fine if it takes longer than April 6th to supplement. I ask that you supplement by April 17th. I'm sorry if our discussion about the J-seals was not clear. I inquired how they were being preserved and you said in your client's office. When you said you would make them available for inspection, I said, but I believe they are our property. In saying they were our property, I intended to convey, we would want them returned as opposed to being made available. If this is something your client objects to returning, please confirm.

KIRTON | M^CCONKIE
Jennifer Reinhardt-Tessmer
Shareholder
d 208-370-3323

From: Kristina Southwell <kristina.southwell@acslawyers.com>
Sent: Wednesday, March 29, 2023 12:51 PM
To: Jennifer Reinhardt-Tessmer <jtessmer@kmclaw.com>; Madison Hyland <mhyland@kmclaw.com>
Cc: Carter, Meghan <[Meghan.Carter@idwr.idaho.gov](mailto: Meghan.Carter@idwr.idaho.gov)>; john@guinlaw.com; Steven Andersen <sandersen@kmclaw.com>; Lindsay Watkins <lindsay.watkins@acslawyers.com>; Carolyn McCutchan <carolyn.mccutchan@acslawyers.com>
Subject: RE: Strider v. Idaho Water Resource Board, Case No. CV01-22-10932, Meet and Confer

CAUTION: EXTERNAL

Jennifer,

Thanks for the meet and confer and email. Strider will provide responses to Interrogatories 29 and 30 and supplement Interrogatory 6. Strider will also provide additional production. But as I stated during our call, it may take more time and not be complete by the April 6 deadline given in your letter.

During our call I did confirm that Strider has one old J-seal and one new J-seal at their office. You asked that we preserve them, and we discussed finding a time and place for IWRB or its representatives to inspect them. We did not discuss mailing the seals to your offices or your position that the seals are property of the State.



Kristina Southwell | Attorney
kristina.southwell@acslawyers.com

AHLERS CRESSMAN & SLEIGHT PLLC

Direct: 206.388.1880 | Cell: 206.799.7793 | Conference: 888.827.9225 Code: 633189
1325 4th Ave Suite 1850

Seattle, WA 98101
www.acslawyers.com

This message contains information which may be confidential and privileged. Unless you are the addressee (or authorized to receive e-mail correspondence on behalf of the addressee), you may not use, copy or disclose to anyone this message or any information contained in this message. If you have received this message in error, please advise the sender by reply e-mail at kristina.southwell@acslawyers.com, and delete this message.

From: Jennifer Reinhardt-Tessmer <jtessmer@kmclaw.com>
Sent: Wednesday, March 29, 2023 11:29 AM
To: Madison Hyland <mhyland@kmclaw.com>; Kristina Southwell <kristina.southwell@acslawyers.com>
Cc: Carter, Meghan <[Meghan.Carter@idwr.idaho.gov](mailto: Meghan.Carter@idwr.idaho.gov)>; john@guinlaw.com; Steven Andersen <sandersen@kmclaw.com>
Subject: RE: Strider v. Idaho Water Resource Board, Case No. CV01-22-10932, Meet and Confer

Kristina,

Thank you for taking the time to meet and confer today regarding the issues outlined in the attached correspondence. Per our discussion, our office will anticipate supplemental responses to IWRB's Interrogatory 6, 29 and 30, and IWRB will withdraw Interrogatory 28. Additionally, Strider will supplement RFPs including 4, 7, 15 with any responsive documents it may locate. Generally, IWRB will supplement its responses going forward as necessary.

With reference to the old J-seals, you informed me Strider has them at their office. Given that the seals are property of the state, we request that you mail the J-seals to our law office, along with documentation of the chain of custody, which we will maintain.

I appreciate your cooperation in this matter.

Jennifer

KIRTON | M^CCONKIE
Jennifer Reinhardt-Tessmer
Shareholder
d 208-370-3323

From: Madison Hyland <mhyland@kmclaw.com>
Sent: Thursday, March 23, 2023 4:25 PM
To: Kristina.Southwell@acslawyers.com
Cc: Carter, Meghan <[Meghan.Carter@idwr.idaho.gov](mailto: Meghan.Carter@idwr.idaho.gov)>; john@guinlaw.com; Steven Andersen <sandersen@kmclaw.com>; Jennifer Reinhardt-Tessmer <jtessmer@kmclaw.com>
Subject: Strider v. Idaho Water Resource Board, Case No. CV01-22-10932, Meet and Confer

Ms. Southwell,

Please find the attached letter from Jennifer Reinhardt-Tessmer.

Thanks,

KIRTON | M^CCONKIE
Boise Office
1100 W Idaho Street #930
Boise Office, ID 83702
kmclaw.com

Madison Hyland
Legal Assistant
d 208.370.3328
mhyland@kmclaw.com

CONFIDENTIALITY NOTICE: This communication may contain attorney-client privileged information. If you received this communication in error, please alert me by replying to this email and delete it immediately. Do not misuse or transmit the information to anyone. Thank you.