

**IN THE UNITED STATES DISTRICT FOR  
DISTRICT OF KANSAS**

RURAL WATER DISTRICT NO. 4	)	
DOUGLAS COUNTY, KANSAS	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 07-CV-2463-JAR-DJW
	)	
CITY OF EUDORA, KANSAS,	)	<b>JURY TRIAL DEMANDED</b>
	)	
Defendant.	)	

**PLAINTIFF’S SECOND RENEWED MOTION FOR ATTORNEYS  
FEES AND COSTS**

**COMES NOW** the Plaintiff, Rural Water District No. 4, Douglas County, Kansas (“Douglas-4”) and renews its *Motion for Attorneys Fees and Costs* (Doc. 391) incorporating herein by reference said Motion (Doc. 391), Douglas-4’s *Reply to City of Eudora, Kansas’ Memorandum In Opposition to Plaintiff’s Motion for Award of Attorney’s Fees and Costs* (Doc. 398); *Memorandum in Support of Plaintiff’s Motion for Award of Attorney Fees and Costs* (Doc. 399) (and supporting exhibits, Doc. 399-2 to Doc. 399-66); *Plaintiff’s Statement of Consultation* (Doc. 400); and *Plaintiff’s Supplemental Motion for Fees and Costs* (Doc. 402) (and supporting exhibits, Doc. 402-2 to 402-4); *Plaintiff’s Reply to Defendant’s Objection to Plaintiff’s Motion for Attorney Fees and Costs* (Doc. 406) (and supporting exhibits 406-2 to 406-5); *Plaintiff’s Renewed Motion for Attorney’s Fees and Costs* (Doc. 410); and *Plaintiff’s Second Supplemental Motion for Fees and Costs* (Doc. 415).

In support of its Renewed *Motion*, Douglas-4 states:

1. A verdict for the plaintiff and assessing defendant \$23,503.00 in damages was returned by the Jury on May 28, 2009. (See *Clerk’s Courtroom Minute Sheet—Civil Jury*, filed

May 28, 2009 as Document 387.) The Verdict form, itself, was also filed, as Document 390, on May 28, 2009.

2. On June 11, 2009, Douglas-4 filed *Plaintiff's Motion for Award of Attorney's Fees and Costs*, Doc. 391.

3. On June 26, 2009, Douglas-4 filed its *Bill of Costs* requesting that the Clerk tax costs in the amount of \$53,930.24 against the Defendant. The Plaintiff also advised that it sought an award pursuant to § 1988 and 28 U.S.C. § 2201, *et seq.*, and the same costs should not be awarded under both applications.

4. On July 8, 2009, Douglas-4 filed *Plaintiff's Reply to the City of Eudora, Kansas' Memorandum in Opposition to Plaintiff's Motion for Award Attorney's Fees and Costs* (Doc. 398).

5. On July 10, 2009, Douglas-4 filed its *Memorandum in Support of Plaintiff's Motion for Award of Attorney's Fees* (Doc. 399), as well as *Plaintiff's Statement of Consultation* (Doc. 400).

6. On July 16, 2009, Douglas-4 filed *Plaintiff's Supplemental motion for Fees and Costs* (Doc. 402).

7. On July 31, 2009, Douglas-4 filed *Plaintiff's Reply to Defendant's Objections to Plaintiff's Motion for Attorney's Fees and Costs* (Doc. 406).

8. On September 2, 2009, the Court entered its *Memorandum and Order Granting Permanent Injunction* (Doc. 409).

9. With the entry of the *Memorandum and Order Granting Permanent Injunction* (Doc. 409), the Court adjudicated all claims of the parties, and all the parties' rights and liabilities.

10. On September 16, 2009, Douglas-4 filed *Plaintiff's Renewed Motion for Attorney's Fees and Costs* (Doc. 410).

11. On September 30, 2009, Douglas-4 filed *Plaintiff's Second Supplemental Motion for Fees and Costs* (Doc. 415).

12. On January 11, 2010, the Court entered an *Order* (Doc. 446) denying Douglas-4's Motion for Attorney's Fees and Costs (Doc. 391) and its Supplemental documentation (Docs. 402, 410 and 415) without prejudice, with allowance to renew such motion(s) within fourteen (14) days of the Tenth Circuit decision and mandate.

13. The Tenth Circuit has not rendered a decision or mandate, but on August 31, 2010, this Court made a text only entry (Doc. 447), denying Defendant's Motion for Directed Verdict (Doc. 380), granting Douglas-4's Motion for Order Granting Injunction (Doc. 397), referencing the Order entered at Doc. 409 and terminating Plaintiff's Motion in Limine (Doc. 301). The Court also had an entry made on the docket dated September 2, 2009 (entered September 1, 2010) noting "civil case terminated – per chambers request (mb)".

14. Douglas-4 views the August 31, 2010 entry (Doc. 447) as unneeded but perhaps helpful confirmation that the September 2, 2009 Order Granting Permanent Injunction (Doc. 409) was a final appealable judgment. Accordingly, Douglas-4 views the Court's Order of January 11, 2010 (Doc. 446, referenced in Paragraph 12, above) as controlling.

15. However, because the Defendant may erroneously argue at a future time that in order to maintain its right to seek attorneys fees and costs, as set forth above, Plaintiff is required once again to renew its motions and other pleadings regarding those attorneys fees and costs within 14 days of the entry of Document 447, Douglas-4 therefore precautionarily renews its *Motion for Attorneys Fees and Costs* (Doc. 391) incorporating herein by reference said Motion

(Doc. 391), Douglas 4's *Reply to City of Eudora, Kansas' Memorandum In Opposition to Plaintiff's Motion for Award of Attorney's Fees and Costs* (Doc. 398); *Memorandum in Support of Plaintiff's Motion for Award of Attorney Fees and Costs* (Doc. 399) (and supporting exhibits, Doc. 399-2 to Doc. 399-66); and *Plaintiff's Statement of Consultation* (Doc. 400); *Plaintiff's Supplemental Motion for Fees and Costs* (Doc. 402) (and supporting exhibits, Doc. 402-2 to 402-4); *Plaintiff's Reply to Defendant's Objection to Plaintiff's Motion for Attorney Fees and Costs* (Doc. 406) (and supporting exhibits 406-2 to 406-5); *Plaintiff's Renewed Motion for Attorney's Fees and Costs* (Doc. 410); and *Plaintiff's Second Supplemental Motion for Attorney's Fees and Costs* (Doc. 415) all pursuant to Rule 54(d) of the Federal Rules of Civil Procedure. By making this renewal, Douglas-4 hopes to foreclose at least one argument that Defendant otherwise may make, once Douglas-4 renews its motion for attorneys fees and costs within 14 days following the Tenth Circuit's entering a mandate in this case as previously permitted by order of this Court.

#### **PRAYER**

WHEREFORE, Plaintiff Douglas-4 prays the Court will award Douglas-4 its attorney's fees and costs as requested and supported by *Plaintiff's Motion for Attorneys Fees and Costs* (Doc. 391); Douglas-4's *Reply to City of Eudora, Kansas' Memorandum In Opposition to Plaintiff's Motion for Award of Attorney's Fees and Costs* (Doc. 398); *Memorandum in Support of Plaintiff's Motion for Award of Attorney Fees and Costs* (Doc. 399) (and supporting exhibits, Doc. 399-2 to Doc. 399-66); *Plaintiff's Statement of Consultation* (Doc. 400); *Plaintiff's Supplemental Motion for Fees and Costs* (Doc. 402) (and supporting exhibits, Doc. 402-2 to 402-4); *Plaintiff's Reply to Defendant's Objection to Plaintiff's Motion for Attorney Fees and Costs* (Doc. 406) (and supporting exhibits 406-2 to 406-5); *Plaintiff's Renewed Motion for*

*Attorney's Fees and Costs* (Doc. 410); *Plaintiff's Second Supplemental Motion for Attorney's Fees and Costs* (Doc. 415); and this Motion, *Plaintiff's Second Renewed Motion for Attorney's Fees and Costs* all pursuant to Rule 54(d) of the Federal Rules of Civil Procedure, and for such other and further relief as the Court deems appropriate under the circumstances.

Respectfully submitted,

/s/ John W. Nitcher

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**CERTIFICATE OF SERVICE**

I do hereby certify that on the 9<sup>th</sup> day of September, 2010, this document was electronically filed with the Clerk of the Court using the ECF system for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrants:

John Nitcher	<a href="mailto:jnitcher@rilinglaw.com">jnitcher@rilinglaw.com</a>
Steven M. Harris	<a href="mailto:steve.harris@1926blaw.com">steve.harris@1926blaw.com</a> , <a href="mailto:phyllis@1926blaw.com">phyllis@1926blaw.com</a>
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David R. Frye	<a href="mailto:dfrye@lathroptgage.com">dfrye@lathroptgage.com</a>

I do hereby certify that on the 9<sup>th</sup> day of September, 2010, I caused to be mailed a true and correct copy of the above and foregoing instrument to the following non CM/ECF participant with proper postage fully prepaid thereon.

Douglas County Rural Water District No. 4  
Scott D. Schultz  
1768 North 700 Road  
BALDWIN CITY Kansas 66006

/s/ John W. Nitcher

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