

# City of Hailey

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## PRESS RELEASE

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On Monday night, after reviewing the long history of this controversial annexation, the Hailey City Council voted to appeal the Cutters Decision to the Federal 9<sup>th</sup> Circuit Court of Appeals.

As part of the annexation of Cutters Subdivision, Hailey and the Cutters developer entered into an Annexation Agreement in 2006. The Annexation Agreement provided that the developer would pay Hailey \$3,787,500 in several installments.

The developer filed a Chapter 11 Bankruptcy in 2011 and sued Hailey challenging the legality of certain provisions of the Annexation Agreement that he had negotiated and signed. The developer requested the Bankruptcy Court declare that it did not owe the City any additional monies but stated it was not seeking a refund of the previously paid annexation fees. Mountain West Bank also sued the City seeking an order that its lien had priority over Hailey's lien.

The Bankruptcy Court concluded that Hailey was not entitled to collect any further monies from the developer, but dismissed Mountain West Bank's lawsuit. The Bankruptcy Court judgment states that the developer may not seek a refund of any of the annexation fees previously paid to Hailey or recover any water rights transferred to Hailey and that Hailey had a first priority lien position. Hailey and Mountain West Bank appealed to the Federal District Court. On March 31, 2014, the District Court affirmed the Bankruptcy Court's rulings.

Hailey believes the federal court incorrectly applied state law and did not give appropriate weight to the Annexation Agreement the developer had negotiated and signed. Had the city known that the developer did not intend to pay the very fees to which he had agreed, annexation of Old Cutters would never have occurred.

The court's decision, if not reversed, will have significant impact on past and future annexations in Hailey and throughout the State of Idaho. For these reasons, an appeal is appropriate.

Notwithstanding these reasons, however, the City of Hailey was willing to move on and conclude this matter and proposed to the developer that the City of Hailey pay all attorney's fees and costs to the developer provided the parties sign a mutual release, thereby avoiding any possibility of future litigation. Unfortunately, the developer rejected this proposal and announced his intention to seek further compensation from the City in excess of \$700,000.

The Mayor and City Council believe that is in the best interests of the citizens of Hailey to conclude all litigation involving the subdivision with a mutual release. At present this does not appear to be possible because of the developer's demands.