

Paying dearly for Winder's and Denney's attorney

Marty Trillhaase/Lewiston Tribune

Had the co-chairmen of Idaho's federal lands task force relied upon Attorney General Lawrence Wasden's office for legal advice, they might have paid \$54.37 an hour for staff time.

Of course, that means Sen. Chuck Winder, R-Boise, and former House Speaker Lawrence (Boss) Denney, R-Midvale, would have to accept what Wasden's team told them: That their dreams of suing the federal government into relinquishing its holdings within Idaho to the state government was up against more than two centuries of constitutional law, 200 years of court decisions, nearly 125 years of Idaho constitutional law and more than 200 years of congressional action.

Look not to judges for redress of grievances, Wasden's office said. If they want ownership of these lands, it's Congress Winder and Denney should be talking to.

Going to a gridlocked Congress for anything - let alone acquiring ownership of millions of acres of national forests and rangeland - is fraught with frustration.

Far easier, Winder and Denney decided, was hiring their own lawyer - former Bush-era Department of Interior chief legal officer William Myers III of Boise's Holland and Hart - to tell them what they want to hear.

"We hired legal counsel from outside of state government primarily because we didn't feel as the Legislature that we were getting the help that we needed from the attorney general's office, once they determined the legal prospects of the case against the federal government on this didn't have much merit," Winder told Montana lawmakers last month.

Ever since the bills have been piling up - \$41,726 and counting, all of it from a \$200,000 slush fund known as the Legislative Legal Defense fund controlled by House Speaker Scott Bedke, R-Oakley, and Senate President Pro Tem Brent Hill, R-Rexburg.

Using Idaho's public records act, conservationists have discovered working for Winder and Denney pays Myers \$410 an hour.

As in 56 times the minimum wage.

As in 64 percent more than Myers' Holland and Hart colleague B. Newal Squyres was paid when the Idaho Transportation Board opted for private counsel to defend itself against former Transportation Director Pam Lowe's wrongful termination lawsuit. Before the board cut Lowe a \$750,000 settlement check, it paid Squyres' firm \$614,647.

And where is this money going?

Poring over Myers' billing statements, here are some examples:

- About a year ago, Deputy Attorney General Steve Strack gently guided the panel through 19 decades and seven iterations of public lands debates.

"The lesson I took away was that where we saw progress in the past (in terms of transfer of land ownership) has been the result of congressional action," Strack said. "The limited litigation experience we have wasn't successful. We know Congress does respond when the states can make a compelling argument: The Carey Act was a great example of that."

Reviewing Strack's testimony - among other things - took Myers about 4.2 hours or \$1,722. At that rate, Strack could have kept on talking for 32 hours.

- Preparing for a public hearing took another 7.3 hours or \$2,993.
- A telephone conversation with an Elko County (Nevada) commissioner took 1.8 hours and cost \$738.
- Myers said he spent 3.3 hours - \$1,353 - looking over the Northwest Ordinance passed in 1787, the Equal Footing Doctrine, the Property Clause and the Enclave Clause of the U.S. Constitution (1789), the Idaho Admission Bill (1890), the Idaho Constitution (1890), the Taylor Grazing Act (1934) and the Federal Land Policy Management Act (1976).

In other words, Public Lands 101. A student studying natural resource policy at one of Idaho's institutions of higher learning might even be willing to deliver an analysis for free.

Of course, learning Public Lands 101 or listening to Wasden's advice involves facing reality.

For Winder and Denney, the price is too steep. - M.T.