IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

NORTH IDAHO BUILDING CONTRACTORS ASSOCIATION, an Idaho non-profit corporation; TERMAC CONSTRUCTION, INC., an Idaho corporation, on behalf of itself and all others similarly situated; and JOHN DOES 1-50, whose true names are unknown Plaintiffs, vs. CITY OF HAYDEN, an Idaho municipality Defendant.	CASE NO. CV-12-2818 MEMORANDUM DECISION ON DEFENDANT'S THIRD MOTION FOR SUMMARY JUDGMENT

The hearing on Defendant City of Hayden's third motion for summary judgment was held on June 14, 2016, before the Honorable Cynthia K.C. Meyer. Defendant was represented by Christopher H. Meyer of GIVENS PURSLEY, LLP. North Idaho Building Contractors Association was represented by Jason Risch of RISCH ♦ PISCA, PLLC. Defendant's Motion for Summary Judgment is granted in part and denied in part.

I. FACTS AND PROCEDURAL HISTORY

This case arises from a fee charged by the City of Hayden ("Defendant") to connect users to the city sewer system. Plaintiff's Memorandum After Remand ("Plaintiff's Memorandum") at 2. The fee was challenged by the North Idaho Building Contractors Association ("Plaintiff") based on whether Defendant could raise revenue through the fee to expand the existing sewer system. *Id*. Defendant filed a Motion for Summary Judgment in October of 2012 and the motion was heard before the Honorable Benjamin Simpson on March 19, 2013.

Defendant was granted summary judgment and Plaintiff appealed the decision to the Idaho Supreme Court on October 23, 2013. The Supreme Court vacated the grant of summary judgment and remanded the case for further proceedings on February 27, 2015. *North Idaho Bldg. Contractors Ass'n v. City of Hayden ("NIBCA")*, 158 Idaho 79, 343 P.3d 1086 (2015). Following that decision Defendant filed a Motion for Summary Judgment on September 18, 2015. Plaintiff filed its Motion for Summary Judgment on January 19, 2016. Oral Argument was heard on February 16, 2016. This Court issued its Memorandum Decision and Order on February 26, 2016, denying Defendant's Motion for Summary Judgment and granting Plaintiff's Motion for Summary Judgment.

However the narrow issue reached in this Court's prior decision only resolved the issue of whether Defendant had the authority to impose the fee that it did. This Court determined that Defendant did not have the authority to impose the fee and, further, that Defendant could not justify the fee after the fact of its imposition. On April 26, 2016, this Court granted Defendant leave to file a third motion for summary judgment. Defendant argues that Plaintiff's failure to file a notice of claim under the Idaho Tort Claims Act ("ITCA"), in conjunction with Idaho Code § 50-219, serves to bar Plaintiff's state and federal claims for damages. Defendant's Third Motion for Summary Judgment at 11, 18. Plaintiff argues that they provided notice sufficient to

satisfy the provision of the ITCA and failure to file a notice of claim cannot serve to bar any federal claims. Plaintiff's Response at 2-3. Oral argument on Defendant's Third Motion for Summary Judgment was heard before the Honorable Cynthia K.C. Meyer on June 14, 2016.

II. Discussion

A. Summary Judgment Standard

Summary judgment is appropriate "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Idaho Rule of Civil Procedure 56(c). "Once the movant has established a prima facie case that, on the basis of uncontroverted facts, the movant is entitled to judgment, the opposing party must set forth specific facts showing that there is a genuine issue for trial and cannot merely rest on the pleadings." *McVicker v. City of Lewiston*, 134 Idaho 34, 37 (2000), (citing Idaho Rule of Civil Procedure 56(e)); *Theriault v. A.H. Robins Co. Inv.*, 108 Idaho 303, 306 (1985).

> When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of that party's pleadings, but the party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the party does not so respond, summary judgment, if appropriate, shall be entered against the party.

Idaho Rule of Civil Procedure 56(e).

"In order to survive a motion for summary judgment, the non-moving party must 'make a showing sufficient to establish the existence of an element essential to that party's case on which that party will bear the burden of proof at trial.'" *Jones v. Starnes*, 150 Idaho 257, 259, 245 P.3d 1009, 1012 (2011), (quoting *Badell v. Beeks*, 115 Idaho 101, 102, 765 P.2d 126, 127 (1988)). A motion for summary judgment will not be granted where there are unresolved issues of material fact. *McKinley v. Fanning*, 100 Idaho 189, 190, 595 P.2d 1084, 1086 (1979). Where reasonable

people could reach different conclusions when presented with the evidence then the motion must be denied. *Finholt v. Cresto*, 143 Idaho 894, 896-97, 155 P.3d 695, 697-98 (2007). In order to withstand summary judgment the nonmoving party must "submit more than just conclusory assertions that an issue of material fact exists to withstand summary judgment. A mere scintilla of evidence or only slight doubt as to the facts is not sufficient to create a genuine issue of material fact for the purposes of summary judgment." *Id*. When deciding whether to grant summary judgment the court must draw reasonable inferences in favor of the non-moving party, however, the non-moving party cannot rest upon mere speculation. *Id*.

B. A Party Must Comply with the Idaho Tort Claims Act ("ITCA") in Order to Bring a Civil Claim against a Municipal Corporation.

"Compliance with the Idaho Tort Claims Act's notice requirement is a mandatory condition precedent to bringing suit, the failure of which is fatal to a claim, no matter how legitimate." *McQuillen v. City of Ammon,* 113 Idaho 719, 747 P.2d 741, 744 (1987) (citing Idaho Code § 6–908). The ITCA, found at Idaho Code § 6–901 *et seq*., was enacted in 1971. Idaho Code § 6-901. "The Act abrogates sovereign immunity and renders a governmental entity liable for damages arising out of its negligent acts or omissions." *Lawton v. City of Pocatello,* 126 Idaho 454, 458, 886 P.2d 330, 334 (1994). "Generally, the ITCA makes governmental entities subject to liability for money damages under specified circumstances." *Athay v. Stacey,* 146 Idaho 407, 419, 196 P.3d 325, 337 (2008). In order to bring a lawsuit against a governmental entity under the ITCA, a plaintiff must comply with the ITCA's notice requirements. *Smith v. City of Preston,* 99 Idaho 618, 620, 586 P.2d 1062, 1064 (1978). Pursuant to the ITCA:

> All claims against a political subdivision [subdivision] arising under the provisions of this act and all claims against an employee of a political subdivision for any act or omission of the employee within the course or scope of his employment shall be

> presented to and filed with the clerk or secretary of the political subdivision within one hundred eighty (180) days from the date the claim arose or reasonably should have been discovered, whichever is later. I.C. § 6–906.
>
> Not all actions are covered by the ITCA. Instead, the ITCA covers any "claim," which it defines as "any written demand to recover money damages from a governmental entity or its employee which any person is legally entitled to recover under this act as compensation for the negligent or otherwise wrongful act or omission of a governmental entity or its employee when acting within the course or scope of his employment." I.C. § 6–902(7).

Van v. Portneuf Med. Ctr., 147 Idaho 552, 557, 212 P.3d 982, 987 (2009)

Further, Idaho Code § 50-219 provides: "[a]ll claims for damages against a city must be filed as prescribed by chapter 9, title 6, Idaho Code." Idaho Code § 50-219. Though the ITCA relates specifically to tort claims, the Idaho Supreme Court has construed Idaho Code § 50–219 "to require that a claimant must file a notice of claim for all damage claims, tort or otherwise, as directed by the filing procedure set forth in I.C. § 6–906 of the [ITCA]." *Sweitzer v. Dean,* 118 Idaho 568, 572, 798 P.2d 27, 31 (1990). Such a notice "shall be presented to and filed with the clerk or secretary of the political subdivision within one hundred eighty (180) days from the date the claim arose or reasonably should have been discovered, whichever is later." Idaho Code § 6–906. A claim is "any written demand to recover money damages from a governmental entity. . . ." Idaho Code § 6–902(7). The claim must be timely filed with the clerk or secretary, and must provide the following:

> All claims presented to and filed with a governmental entity shall accurately describe the conduct and circumstances which brought about the injury or damage, describe the injury or damage, state the time and place the injury or damage occurred, state the names of all persons involved, if known, and shall contain the amount of damages claimed, together with a statement of the actual residence of the claimant at the time of presenting and filing the claim and for a period of six (6) months immediately prior to the time the claim arose.

Idaho Code § 6–907.

"No claim or action shall be allowed against a governmental entity . . . unless the claim has been presented and filed within the time limits prescribed by [the ITCA]." Idaho Code § 6–908. *See also Newlan v. State,* 96 Idaho 711, 716, 535 P.2d 1348, 1353 (1975) (holding "compliance with a notice of claim requirement is mandatory and without such compliance a suit may not be maintained"). "The primary function of notice under the ITCA is to put the government entity on notice that a claim against it is being prosecuted and thus apprise it of the need to preserve evidence and perhaps prepare a defense." *Blass v. County of Twin Falls,* 132 Idaho 451, 452–53, 974 P.2d 503, 504–05 (1999) (internal quotation marks omitted) (quoting *Smith v. City of Preston,* 99 Idaho 618, 621, 586 P.2d 1062, 1065 (1978)). Notice also provides the parties an opportunity for an amicable resolution of their differences. *Farber v. State,* 102 Idaho 398, 401, 630 P.2d 685, 688 (1981).

In *BHA Investments, Inc. v. City of Boise*, 141 Idaho 168, 108 P.3d 315 (2004), the Idaho Supreme Court held that failure to comply with the requirements of the ITCA served as a bar to the plaintiff's state law claims. *BHA*, 141 Idaho at 175, 108 P.3d at 322. The facts of *BHA* are similar to the facts of the present case. In *BHA* the City of Boise imposed what was determined to be an impermissible fee for the transfer of a liquor license. *Id*., at 171, 108 P.3d at 318. In that case, as here, the Court determined that the defendant did not have the authority to impose the fee. *Id*. However, the Court determined that the plaintiff's failure to specifically conform to the strictures of the ITCA served as an absolute bar to the plaintiff's state law claims. *Id*.

Defendant contends that Plaintiff did not file notice pursuant to the ITCA and Idaho Code § 50-219. Third Motion for Summary Judgment at 14. Defendant argues that failure to properly provide notice under the ITCA serves as an absolute procedural bar to Plaintiff's state claims.

Id., at 13. Defendant asserts all of Plaintiff's state law claims filed more than 180 days after the cause of action accrued are untimely. *Id*.

Plaintiff argues that it has met the requirements of the ITCA through "two years of negotiation leading up to this case." Plaintiff's Response at 2. Plaintiff avers that although it did not file a notice of tort claim strictly conforming to the requirements of the ITCA during the pendency of this action, they have provided the necessary information to Defendant regarding the nature of Plaintiff's claims. *Id*. Further, Plaintiff cites *BHA* for the proposition that strict compliance with the ITCA is not a prerequisite for proceeding on the instant cause of action. *Id*.

There can be no question that compliance with the ITCA is a predicate for proceeding against a governmental entity. Moreover, when read in conjunction with Idaho Code § 50-219, Plaintiff was required to comply with the provisions of the ITCA in order to proceed on its state law claims for damages against the City of Hayden. Plaintiff's arguments do not reflect the current state of the law in Idaho. The case law in opposition to Plaintiff's argument is legion. *See Alpine Village Co. v. City of McCall*, 154 Idaho 930, 3003 P.3d 617 (2013) (holding failure to strictly comply with the ITCA acts as a procedural bar and deprives a plaintiff the opportunity to assert a claim); *BHA Investments*, 141 Idaho at 175, 108 P.3d at 315 (finding failure to strictly comply with provisions of the ITCA barred plaintiff's state law claims); *Sweitzer v. Dean*, 118 Idaho 568, 572, 798 P.2d 27, 31 (1990) (concluding the language contained in Idaho Code § 50–219 requires a claimant to file a notice of claim for all claims as directed by the filing procedure set forth in the ITCA, otherwise they will be precluded from bringing a cause of action).

In the present case Plaintiff did not file a notice of claim in compliance with the ITCA. Whether Plaintiff discussed the claim with Defendant is of little import. What is clear from the case law is that strict compliance with the provisions of the ITCA is a requirement to proceed upon a claim such as the one before this Court. The failure to do so acts as a procedural bar and

this Court cannot entertain such a claim absent compliance with the ITCA. Therefore, the Court determines as a matter of law, that Plaintiff has failed to properly provide notice according to the ITCA and Idaho Code § 50-219. Thus, Defendant's motion for summary judgment as to Plaintiff's state law damage claims is granted.

C. Federal Takings Claim

The Idaho Supreme Court has adopted the United States Supreme Court's test set forth in *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172, 105 S.Ct. 3108, 87 L.Ed.2d 126 (1985) (hereinafter *Williamson County*), for determining whether an inverse condemnation claim is ripe under Idaho state law. *See City of Coeur d'Alene v. Simpson*, 142 Idaho 839, 136 P.3d 310, 316–17 (Idaho 2006).

In *Williamson County* the Supreme Court established two tests for plaintiffs alleging a taking of their property under the federal constitution. "First, the claim must be ripe and the plaintiff must have availed herself of all opportunities for administrative relief." *Id.*, at 186–87. Second, the plaintiff must employ any state procedures for inverse condemnation and be denied compensation. *Id.*, at 194. Under the first test, the Supreme Court held that "a claim that the application of governmental regulations effects a taking of property is not ripe until the government entity charged with implementing the regulations has reached a final decision regarding application of the regulations to the property at issue." *Id.*, at 186. Under this test, the plaintiff must demonstrate that she "availed [herself] of the opportunities . . . to obtain administrative relief by requesting either a variance . . . or a waiver from [the complained of regulation or policy]." *Id.*, at 187 (quoting *Hodel v. Virginia Surface Mining & Reclamation Assn., Inc.*, 452 U.S. 264 (1981)).

i. Under the first Williamson County test a final decision was rendered at the time of exaction.

"The ripeness analysis of *Williamson County* applies to physical takings, but in a modified form." *Daniel v. Cty. of Santa Barbara*, 288 F.3d 375 (9th Cir. 2002). The first requirement of a final decision is automatically satisfied at the time of the physical taking. *See Hall v. City of Santa Barbara*, 833 F.2d 1270, 1281 n. 28 (9th Cir.1986) (holding where there has been a "physical invasion, the taking occurs at once, and nothing the city can do or say after that point will change that fact."), *overruled on other grounds by Yee v. City of Escondido,* 503 U.S. 519, 112 S.Ct. 1522, 118 L.Ed.2d 153 (1992). If the exactions "were physical takings, the finality requirement was automatically satisfied at the time of the exactions." *Daniel*, 288 F.3d at 382.

In *BHA* the Court determined that "[m]oney is clearly property that may not be taken for public use without the payment of just compensation." *BHA Investments*, 141 Idaho at 172, 108 P.3d at 319 (citing *Brown v. Legal Found. Of Wash.*, 538 U.S. 263, 123 S.Ct. 1406 (2003). The Court then explained: "the taking of money is different, under the Fifth Amendment, from the taking of real or personal property." *Id*. (quoting *San Remo Hotel L.P. v. City and County of San Francisco*, 41 P.3d 87, 106 (2002)).

All takings are not created equally. Generally, a regulatory scheme that prohibits an owner from using its private property is a regulatory taking. *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 535 U.S. 302, 122 S. Ct. 1465, (2002). However, when a governmental entity acquires private property, including money, it is treated as a physical taking. *Id.* In *Tahoe-Sierra* the Court held:

> This longstanding distinction between acquisitions of property for public use, on the one hand, and regulations prohibiting private uses, on the other, makes it inappropriate to treat cases involving physical takings as controlling precedents for

> the evaluation of a claim that there has been a "regulatory taking," and vice versa. For the same reason that we do not ask whether a physical appropriation advances a substantial government interest or whether it deprives the owner of all economically valuable use, we do not apply our precedent from the physical takings context to regulatory takings claims. Land-use regulations are ubiquitous and most of them impact property values in some tangential way—often in completely unanticipated ways. Treating them all as *per se* takings would transform government regulation into a luxury few governments could afford. By contrast, physical appropriations are relatively rare, easily identified, and usually represent a greater affront to individual property rights.

Tahoe-Sierra Pres. Council, Inc., 535 U.S. at 323-24, 122 S. Ct. at 1479 (internal citations omitted).

Defendant argues that there was no final decision in the present case because Plaintiff failed to seek a regulatory takings analysis. Third Motion for Summary Judgment at 26. Plaintiff argues that this case is inapposite from the cases cited by Defendant because it does not involve a regulatory taking pursuant to a municipality's exercise of zoning laws. Plaintiff's Response at 3.

The claim presented is not a regulatory taking, nor is it a taking of real property. The taking is not a prohibition on private use pursuant to a regulatory scheme. The taking in the present case involved money. It was the Defendant's imposition of an impermissible tax without authority that constitutes the taking in the present case. There is no Idaho case law on point regarding the issue presented. However, as noted, the Ninth Circuit has found that in situations of a physical taking, a final decision has been rendered at the time of the exaction. It would be inappropriate to apply regulatory takings analysis to the present matter to determine if a final decision had been rendered. Defendant effected a physical taking at the time it exacted the impermissible fee.

This Court determines the present issue is a physical taking not a regulatory taking. Therefore, at the time Defendant exacted the impermissible fee, a taking occurred and a final decision was rendered. Therefore, the Court determines Plaintiff's cause of action satisfies the first test under *Williamson County*.

ii. Under the second prong of Williamson County failure to comply with the notice requirement of the ITCA or Idaho Code § 50-219 cannot serve as a bar for a claim based on the Takings Clause in the Constitution of the United States.

In order for a claim to be ripe under the second prong of Williamson County a party must "seek compensation through the procedures the state has provided for doing so." *Williamson County*, 473 U.S. at 194. However, notice-of-claim requirements imposed by state law do not apply to federal claims, even if they are brought in state court. *Felder v. Casey,* 487 U.S. 131, 108 S.Ct. 2302 (1988). In *BHA* the Idaho Supreme Court held:

> A state's notice-of-claim statute which provides that no action may be brought or maintained against a state government subdivision unless claimant provides written notice within a certain period of time is preempted when a federal civil rights action is brought in state court.' Therefore, the failure to comply with the notice requirements of the [ITCA] does not bar their claims based upon the Takings Clause in the Constitution of the United States.

BHA Investments, 141 Idaho at 175-76, 108 P.3d at 322-23.

Defendant argues Plaintiff's takings cause of action is not ripe under *Williamson County* because Plaintiff has failed to exhaust state remedies. Defendant's Third Motion for Summary Judgment at 30. Defendant argues that where Plaintiff has failed to timely present a state law claim, Plaintiff has forfeited the federal claim. *Id.* Defendant asserts that Plaintiff's failure to file a notice of claim under the ITCA is a de facto forfeiture of Plaintiff's federal takings claim. Defendant relies on *Alpine Village v. City of McCall*, 154 Idaho 930, 303 P.3d 617 (2013), and the companion case, *Hehr v. City of McCall*, 155 Idaho 92, 305 P.3d 536 (2013), for the

conclusion that Plaintiff has failed to exhaust state remedies, therefore, Plaintiff's federal claim cannot be ripe. Defendant's Third Motion for Summary Judgment at 30.

Plaintiff cites *BHA* for the proposition that failing to comply with the notice requirement of the ITCA does not serve as a bar to Plaintiff's federal claims. Plaintiff's Response at 4. Further, Plaintiff does not concede that the notice provided was insufficient under the ITCA. *Id*., at 2. Moreover, Plaintiff argues that case law cited by Defendant is distinguishable from the facts of the present case.

In *Alpine Village* and *Hehr*, the Court considered whether a plaintiff's federal takings claims were properly dismissed based on the failure of the plaintiffs to seek compensation through available state remedies. *Alpine Village*, 154 Idaho at 938, 303 P.3d at 625; *Hehr*, 155 Idaho at 99, 305 P.3d at 542. The Court determined, in both cases, that the plaintiffs had failed to utilize state remedies to seek compensation; therefore, plaintiffs' federal claims were not ripe under the second prong of *Williamson County*. *Alpine Village*, 154 Idaho at 939, 303 P.3d at 626; *Hehr*, 155 Idaho at 99, 305 P.3d at 542.

However, *Alpine Village* and *Hehr* are distinguishable from the present action. Both of those cases involved a regulatory taking of real property. Moreover, the Court determined that in each case the parties had the opportunity to request compensation statutorily provided under the Local Land Use Planning Act (LLUPA). *Alpine Village*, 154 Idaho at 939, 303 P.3d at 626; *Hehr*, 155 Idaho at 99, 305 P.3d at 542. LLUPA provides a party subject to a regulatory taking with an opportunity to challenge the proposed regulation through judicial review. Idaho Code 67-8003; *see also Buckskin Properties, Inc. v. Valley Cnty.*, 154 Idaho 486, 496, 300 P.3d 18, 28 (2013). The Court's decision in both cases was predicated on the failure of the plaintiffs to utilize the statutory remedy provided for the regulatory taking of real property under LLUPA, not on the failure to file a notice of claim under the ITCA. *Alpine Village*, 154 Idaho at 939, 303

P.3d at 626; *Hehr*, 155 Idaho at 99, 305 P.3d at 542.

The federal Takings Clause is not held captive to state notice of claim statutes. Its underpinnings are founded in the United States Constitution. Plaintiff did not have the opportunity to utilize any state remedies that could be said to be analogous to LLUPA for the taking in the present case. Defendant's argument is unpersuasive and unsupported in the law cited to this Court. Defendant's argument is predicated on regulatory taking analysis that does not apply to the present case. It is clear from both federal and state law that Plaintiff's failure to file a notice of claim under the ITCA cannot serve as a bar to Plaintiff's federal takings cause of action. Therefore, this Court determines that Plaintiff's federal takings claim is not barred by the ripeness test under the second prong of *Williamson County*. Defendant's motion for summary judgment as to Plaintiff's federal claims is denied.

D. Statute of Limitations

Both parties concede that the applicable statute of limitations for any remaining federal law damage claims is two years from the filing of the complaint. In the present case the complaint was filed on June 4, 2012. Therefore, the Court determines that any claims arising before June 4, 2010, are barred by the applicable statute of limitations. Defendant's motion for summary judgment as to claims arising before June 4, 2010, is granted.

E. Equitable Defenses

"Unjust enrichment occurs where a defendant receives a benefit which would be inequitable to retain without compensating the plaintiff to the extent that retention is unjust." *Vanderford Co. v. Knudson,* 144 Idaho 547, 557, 165 P.3d 261, 271 (2007). "The substance of an action for unjust enrichment lies in a promise, implied by law, that a party will render to the person entitled thereto that which in equity and good conscience belongs to the latter." *Smith v. Smith*, 95 Idaho 477, 484, 511 P.2d 294, 301 (1973). "The elements of unjust enrichment are

that (1) a benefit is conferred on the defendant by the plaintiff; (2) the defendant appreciates the benefit; and (3) it would be inequitable for the defendant to accept the benefit without payment of the value of the benefit." *Teton Peaks Inv. Co., LLC v. Ohme*, 146 Idaho 394, 398, 195 P.3d 1207, 1211 (2008). Quantum meruit is the appropriate recovery under a contract implied in fact. *Peavey v. Pellandini*, 97 Idaho 655, 658, 551 P.2d 610, 613 (1976). A contract implied in fact exists where there is no express agreement but the parties' conduct evidences an agreement. *Id.* (quoting *Continental Forest Prod., Inc. v. Chandler Supply Co.*, 95 Idaho 739, 518 P.2d 1201 (1974)).

Defendant has cited to no case law in support of the equitable defense of unjust enrichment or quantum meruit pursuant to a takings claim. This Court could find no Idaho case law supporting such a defense, nor could it find any other jurisdiction where such a defense was used. As a matter of first impression Defendant's equitable defenses must fail.

First, whether a benefit was conferred upon the Plaintiff by Defendant is largely a matter in dispute. There is no question that Defendant imposed an impermissible fee upon Plaintiff, but there is little to demonstrate what benefit was provided and what the value of that benefit was. Certainly the expansion of the city's sewer system serves as a benefit to the public as a whole, but not so certain is what benefit was received by Plaintiff. Moreover, it is precisely this conduct that lies at the heart of the present issue. Specifically, a tax is a forced contribution by the public at large to meet public needs. *See Brewster v. City of Pocatello*, 115 Idaho 502, 768 P.2d 765 (1988).

Defendant seeks to justify the forced contribution by claiming that it is providing a benefit to Plaintiff. It is axiomatic then that a governmental entity may impose any tax it wishes so long as it provides, in its own view, some benefit to the public at large. This Court cannot imagine a scenario where the defense of unjust enrichment would serve to condone such

behavior. There is a single, finely wrought procedure for the imposition of fees such as the one in the instant case. That procedure was not followed. It cannot be justified after they fact by claiming that equity demands retention of the ill-gotten fees. Second, it has not been shown that Plaintiff appreciates the benefit. It could be argued the very nature of this case demonstrates some dissonance with the benefit so conferred. Finally, whether it is inequitable for the Plaintiff to accept the benefit without payment of the value of said benefit is not an issue. The Plaintiff cannot accept the benefit, because the party benefitting from the fee is not the current user, rather it is a future user. The fee at issue was based not on the cost of that portion of the system utilized, but the cost of the expansion. The benefit cannot be realized by the party paying the fee because they will never use that portion of the system that they paid for.

Quantum meruit depends on a finding that a contract is implied in fact and is a properly a question for the trier of fact. *Pellandini,* 97 Idaho at 658, 551 P.2d at 613. Such a determination is not appropriate in a motion for summary judgment. Therefore, Defendant's motion for summary judgment based on the equitable defenses of unjust enrichment and quantum meruit is denied.

III. CONCLUSION

Plaintiff failed to file a notice of claim pursuant to the ITCA and Idaho Code § 50-219. This failure precludes Plaintiff from proceeding on all state law claims for damages. However, failure to file a notice of claim under state law does not serve as a bar to a claim based upon the Takings Clause in the Constitution of the United States. The relevant statute of limitations for federal claims is two years before the cause of action was filed. Defendant's equitable defenses do not sound in the present case.

ORDER:

Based upon the foregoing and good cause appearing therefore,

IT IS HERBY ORDERED, Defendant's Third Motion for Summary Judgment is granted in part and denied in part.

DATED: This ___ day of July, 2016.

BY THE COURT:

_____
Cynthia K.C. Meyer
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of July, 2016, I caused, to be served, a true and correct copy of the foregoing document as addressed to:

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