

1 THE HONORABLE JOHN C. COUGHENOUR
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

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11 JOHN VAN BUSKIRK, et al.,
12 Plaintiffs,
13 v.
14 CONOCOPHILLIPS, INC., a foreign
15 corporation; and INTALCO ALUMINUM
16 CORPORATION, a foreign corporation,
17 Defendants.

CASE NO. C06-1220-JCC

ORDER

18 This matter comes before the Court on Defendants ConocoPhillips' and Intalco
19 Aluminum Corporation's Motion for Costs Pursuant to Fed.R.Civ. P. 54(d) (Dkt. No. 92),
20 Plaintiffs' Opposition (Dkt. No. 95), and Defendants' Reply (Dkt. No. 97). The Court has
21 carefully considered these papers, their supporting declarations and exhibits, and the balance of
22 relevant materials in the case file, and has determined that oral argument is not necessary. For
23 the reasons explained below, the Court hereby DENIES Defendants' motion.

24 **I. BACKGROUND**

25 Plaintiffs are a group of homeowners from a Puget Sound-fronting community near
26 Ferndale, WA. (Am. Compl. 1–6 (Dkt. No. 4).) Plaintiffs initiated this case by filing a

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1 complaint against Defendants asserting state causes of action, both statutory and common-law,
2 based on erosion to Plaintiffs' beachfront properties allegedly caused by Defendants' business
3 operations. (Compl. (Dkt. No. 1).) On November 10, 2009, this Court entered summary
4 judgment in favor of Defendants based on Plaintiffs' collective inability to prove the amount of
5 the erosion to their properties allegedly caused by Defendants. (Order (Dkt. No. 90).)

6 On November 30, 2009, Defendants filed the present motion, which seeks costs
7 pursuant to Federal Rule of Civil Procedure 54(d). Defendants filed with the Court a Bill of
8 Costs totaling \$35,619.50 (Dkt. No. 94), which represents Defendants' costs for deposition
9 transcripts and the attendance of a court reporter at the depositions of all individual Plaintiffs
10 and Plaintiffs' four experts. (*See* Degginger Decl. (Dkt. No. 93).)

11 **II. DISCUSSION**

12 Federal Rule of Civil Procedure 54(d)(1) states that "costs--other than attorney's fees--
13 should be allowed to the prevailing party" unless a federal statute, rule or court order provides
14 otherwise. Although Rule 54 creates a presumption for the award of costs to prevailing parties,
15 a court has discretion to decline to award costs when it explains why, under the circumstances
16 of the case, such award would be inappropriate or inequitable. *Save Our Valley v. Sound*
17 *Transit*, 335 F.3d 932, 944–945 (9th Cir. 2003); *Ass'n of Mexican-American Educators v. State*
18 *of California*, 231 F.3d 572, 591, 593 (9th Cir. 2000). Such circumstances may include: the
19 losing party's limited financial resources, *see National Org. for Women v. Bank of Cal.*, 680
20 F.2d 1291, 1294 (9th Cir. 1982); misconduct on the part of the prevailing party, *see National*
21 *Info. Servs.*, 51 F.3d 1470, 1472 (9th Cir. 1995); and the importance and complexity of the
22 issues, *see Save Our Valley*, 335 F.3d at 945.

23 The Court denies Defendants' requested transcript costs due to the narrow basis for its
24 granting of summary judgment, the burden that such costs would impose on a group of private
25 homeowners, and the inequity of placing the entirety of such costs on Plaintiffs, whose case
26 was dismissed on an issue of proof rather than merit.

1 **III. CONCLUSION**

2 For the foregoing reasons, Defendant's Motion for Costs (Dkt. No. 92) is DENIED.

3 DATED this 28th day of April, 2010.

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A handwritten signature in black ink, reading "John C. Coughenour", is written over a horizontal line. The signature is cursive and stylized.

John C. Coughenour
UNITED STATES DISTRICT JUDGE