

03-15-1997 Yakima WA – Huber and Mestaz - FF PSD Rescue Attempt Canal Siphon

http://engine_14.tripod.com/memorium.html

Washington	1997	Russett S. "Rusty" Hauber	City of Yakima Fire Department
Washington	1997	Charlie "JR" Mestaz	Yakima County Search & Rescue Company

Divers Association

Yakima Fire Department

http://www.thediversassociation.com/index.php?/incidents/&sortby=col_7&sortdirection=desc

March 15, 1997

Rusty Hauber - American, aged 34, One of a two man (Mestaz) fire team trying to rescue two divers (Rhode/Eberle) from a 2210 long, 13 foot diameter irrigation tunnel, their lights were seen returning to the entrance but they failed to surface, they were pulled out by two stand-by divers. They had run out of air, drowned. Quadruple fatality (Rhode, Eberle, Mestaz)

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MARCH, 1997 WASHINGTON (credit unknown)

The first Yakima City Firefighter to die in the line of duty in the department's 110-year-history.

Two volunteer search-and-rescue divers, Rusty Hauber and Charlie "J.R." Mestaz, died in a rescue attempt in a water-filled canal siphon. The half-mile long, 104-foot deep tube is used to carry water through uneven terrain. Rusty Hauber, 34, and search and rescue diver, Charlie Mestaz, 37, dove into the underground Roza Canal siphon near Zillah to search for two irrigation divers who had failed to surface. Authorities said Hauber was dead when backup divers pulled him from the water.

Mestaz, a volunteer Moxee firefighter, died at a Yakima hospital. He was pulled from the siphon with Hauber, but never regained consciousness.

Eberle and Rhode, whose bodies were recovered days later, were contracted to remove abandoned cars from the siphon.

The tragedy began when Marty Rhode, 33, and John Eberle, 41 both professionals, went into the tunnel-like canal to attach cables to submerged vehicles so they could be pulled from the canal before the start of irrigation season. They failed to surface. The county's rescue team was called to the siphon after John Eberle and Marty Rhode failed to return to the surface after an hour under water.

Hauber and Mestaz acted responsibly during the rescue attempt and were the county dive team's most-highly trained members. They reportedly knew the distance, depth and how far down the other divers had traveled. Hauber and Mestaz were pulled back to the mouth of the tunnel by two backup divers when they failed to return at the specified time. Each had been under water less than 40 minutes and carried what should have been enough air to last an hour.

Their scuba tanks were empty, however. It also appeared the divers may have been sharing air from a backup tank that Mestaz routinely carried with him on emergency dives into confined quarters. That tank also appeared empty. The waterway, known as a siphon because it takes the canal down the side of a canyon and back up the other, drops 100 feet and stretches nearly a half mile. As is customary, the irrigation district had hired Rhodes and Eberle to dive into the 95-mile canal's seven siphons to attach cables to abandoned or stolen cars trapped inside. Joy-riders routinely dump stolen cars in the canal, and the swift current washes them out of sight.

Periodically, divers have to clear the cars if the tunnel section, or siphon, is to work properly. The tunnel is about 13 feet by 15 feet and is U-shaped. It descends underground at an angle, then emerges on the other side of the valley floor.

"At least one, if not both of those men, had been in that same siphon before," said Ron Van Gundy, manager of the Roza Irrigation District. "This (diving operation) has been reasonably routine for a number of years."

The fatalities mark the first time irrigation-district divers have died while clearing debris from Roza Canal siphons, Van Gundy said. Hauber, a former mechanic who became a full-time Yakima firefighter three years ago, is the first Yakima firefighter to perish in the line of duty in at least 40 years. He is survived by a wife and two children. Mestaz, a Moxee mechanic who was named East Valley Firefighter of the Year in 1995, has a wife and daughter. The tragedy began Saturday morning, March 14, when Rhode, of Zillah, and Eberle, of Grandview, broke through ice at the opening of the 13-foot-tall irrigation tube and plunged into its cold waters.

The concrete, underground canal -- called a siphon -- is used to carry water through uneven terrain. The divers had been hired by the Roza Irrigation District to locate and remove vehicles that had been driven into the 95-mile canal system. Eberle and Rhode planned to reach a depth of 104 feet. The night before, they used a computer program to determine the amount of air they would need. Eberle had two tanks of air, Rhode just one. Without communication gear, the divers told irrigation workers at the scene to call 911 if they weren't back within 45 minutes to an hour.

About an hour after they descended, irrigation workers telephoned for help. Yakima firefighter Hauber, and Moxee volunteer firefighter Mestaz, -- members of the 12-man Yakima County Search and Rescue dive team -- were sent to the scene and went underwater. Two other members of the rescue dive team were in their scuba gear and waiting at the water's surface. Mestaz and Hauber clipped onto a steel cable the previous divers had deployed to hook onto vehicles lodged in the siphon.

Mestaz had extra air. Hauber and Mestaz failed to surface after 28 minutes underwater and were retrieved by fellow divers about 200 feet from the surface.

Hauber died at the scene; Mestaz died in a Yakima hospital.

3 Divers Killed In Zillah Irrigation-Canal Accident

<http://community.seattletimes.nwsources.com/archive/?date=19970316&slug=2529137>

March 16, 1997 *Seattle Times Staff: Seattle Times News Services*

ZILLAH, Yakima County - Two professional divers were missing and presumed drowned yesterday in an underground stretch of an irrigation canal, and one of the two divers sent to rescue them was killed.

The second rescue diver, Charlie Mestaz, was pulled from the Roza Canal by two more divers and hospitalized in critical condition.

The divers were operating in a tubular section of the canal which drops about 100 feet over a quarter-mile. Yakima County Undersheriff Lane Roberts said the section, called a siphon, was built to prevent the water from cascading.

The canal section is about 20 miles south of Yakima.

Divers must swim in the dark amid strong water pressure.

"It's dangerous diving," Roberts said. "You don't just drop your weight belt to come back up."

The missing divers, Marty Rhode and John Eberle, were hired by the Roza Irrigation District to attach cables to a submerged vehicle to pull it out of the canal, Roberts said.

Authorities were called when they failed to surface on schedule.

The rescue divers, volunteer firefighter Mestaz and Rusty Hauber, 34, a Yakima firefighter, went into the canal shortly after noon. When they failed to surface on time, two more divers went in and got them out.

TWO DIVERS PRESUMED DROWNED, THIRD DEAD IN IRRIGATION CANAL

<http://www.apnewsarchive.com/1997/Two-divers-presumed-drowned-third-dead-in-irrigation-canal/id-1439c67d8d286c3126984babbdecf15d>

Mar. 16, 1997 AP, Associated Press

ZILLAH, WASH. ZILLAH, Wash. (AP) _ Two professional divers were missing and presumed drowned Saturday in an underground stretch of an irrigation canal, and one of the two divers sent to rescue them was killed.

The second rescue diver, Charlie Mestaz, was pulled from the Roza Canal by two more divers and hospitalized in critical condition.

``We have no idea how four divers with such experience got into this problem," said Yakima County Undersheriff Lane Roberts. ``That's why we are not sending anybody else in there."

The canal section is about 20 miles south of Yakima. The arid region of south-central Washington was turned into farmland by federal irrigation projects; at this time of year, divers often clear canals of debris before the irrigation season begins.

The divers were operating in a tubular section of the canal which drops about 100 feet over a quarter-mile. Roberts said the section, called a siphon, was built to prevent the water from cascading.

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Authorities were called when they failed to surface on schedule.

The rescue divers, volunteer firefighter Mestaz and Rusty Hauber, 34, a Yakima firefighter, went into the canal shortly after noon. When they failed to surface on time, two more divers went in and got them out.

Hauber was pronounced dead at a hospital. Mestaz was at Providence Hospital in Yakima with undisclosed injuries, the sheriff's department said.

Sheriff Doug Blair said Hauber and Mestaz were both wearing tanks that should have given each about an hour of air. Divers went in after them after about 40 minutes.

``Their tanks were empty when they came up," Blair said. ``They should have had more than sufficient air for the time they were down. ... We just know that they ran out of air. We don't know why."

Officials hope to drain the canal to locate the missing divers, a procedure that could take up to four days.

Blair said an investigation is under way to determine what caused the accidents. No one answered the telephone at the irrigation district offices Saturday night.

Questions Remain About Irrigation Canal Deaths

<https://www.newspapers.com/newspage/24882184/>

March 17, 1997 AP

ZILLAH, Wash. (AP) — Divers may attempt today to recover the bodies of two divers who presumably drowned in the murk of an underground irrigation canal. The vast subterranean canal claimed the lives of three divers total on Saturday, and left one in a coma on life support in a Yakima hospital. Divers from the Tri-Cities will decide if they want to risk going after the bodies of two irrigation district workers who are believed dead, said Yakima County Undersheriff Lane Roberts. Investigators said no cause has been established for the diving disaster.

"We may never know what happened down there," said Adrian Jacobs, chief of the Moxee Fire Department, told the Yakima Herald-Republic on Sunday.

Charlie Mestaz, 37, one of two rescue divers pulled from an underground portion of the canal Saturday, was in critical condition in a Yakima hospital Sunday. He is a volunteer firefighter from Moxee.

Meanwhile, an autopsy confirmed drowning as the cause of death of Rusty Hauber, 34, a Yakima firefighter who was Mestaz' diving partner, Yakima County Coroner Leonard Birkinbine said.

The incident began when two professional divers went into the dark, subterranean canal Saturday morning to retrieve submerged vehicles, and failed to surface. The two volunteer search and rescue divers went after them, and also ran into trouble and had to be pulled from the water. Their air tanks were empty. The bodies of the

two original divers — Marty Rhode and John Eberle — are still missing in the underground canal.

Officials say there is no chance they are alive. "There is absolutely no potential of that," Roberts said, because the tunnel has no dry areas where an air pocket could form.

Sheriff Doug Blair has said Hauber and Mestaz should have had enough air for the time they were underwater, but when rescuers found them their tanks were empty. Among the questions investigators are trying to answer is why the divers would consume so much air in so short a period of time, Blair has said.

The Yakima County team of eight divers has been devastated by the loss of two comrades, Roberts said. The underground section — known as a siphon — is being drained, but still has some water in it, he said. A team from the Kennewick Fire Department will likely rappel into the tunnel to make sure it is free of methane gas before divers go in, Roberts said.

Rhode and Eberle, working for the Roza Irrigation District, entered the canal Saturday morning, trying to attach cables to submerged vehicles so they could be pulled from the canal before the start of irrigation season. The irrigation district hired them to dive into the 95-mile canal's seven siphons to attach cables to stolen cars trapped inside.

Joyriders routinely dump stolen cars in the canal, said Ron Van Gundy, manager of the Roza Irrigation District. "At least one, if not both of those men, had been in that same siphon before," Van Gundy said Sunday. "This (diving operation) has been reasonably routine for a number of years.

"The two volunteer divers from the Yakima County search and rescue team went in about noon. When they failed to resurface, two more rescue divers went in and pulled out Hauber and Mestaz.

The canal section is about 20 miles south of Yakima, in an arid region of south-central Washington that was turned into farmland by huge federal irrigation projects. The divers were operating in an underground, tubular section of the canal which drops about 100 feet over a distance of some 2,500 feet, Yakima Fire Chief Al Chronister said.

The tube was built to prevent the water from cascading. Divers must swim in the dark amid strong water pressure. The tube is 13 feet tall, but plunges to a depth of 100 feet below the ground, Chronister said.

"It's a very deep; dangerous dive;" he said. "It's one of the more dangerous dives you could ever make.

"Hauber will likely be buried on Thursday, Chronister said. He had a wife and two children and had been with the Yakima Fire Department for three years. He had been a volunteer search and rescue diver for a decade. With the fire department, Hauber specialized in highly technical rescue operations, Chronister said. "Who else is going to do that stuff?"

Chronister said. "If something happens to somebody, they call the fire department. "If we are called, we are prepared to respond," he said.

He is the first Yakima firefighter to perish in the line of duty in at least 40 years, Chronister said. Mestaz, a Moxee mechanic, has a wife and daughter. Jacobs, the Moxee fire chief, said he helped Mestaz load his dive gear Saturday.

"The last thing I said to him was, 'Be careful — those siphons scare the hell out of me,'" Jacobs said.

2 divers presumed dead; rescue diver also perishes

<http://www.deseretnews.com/article/549338/2-divers-presumed-dead-rescue-diver-also-perishes.html?pg=all>

March 17, 1997

Two professional divers were missing and presumed drowned Saturday in an underground stretch of an irrigation canal, and one of the two divers sent to rescue them was killed.

The second rescue diver, Charlie Mestaz, was pulled from the Roza Canal by two more divers and hospitalized in critical condition. "We have no idea how four divers with such experience got into this problem," said Yakima County Undersheriff Lane Roberts. "That's why we are not sending anybody else in there."

The canal section is about 20 miles south of Yakima. The arid region of south-central Washington was turned into farmland by federal irrigation projects; at this time of year, divers often clear canals of debris before the irrigation season begins.

Canal Diving `Intimidating' -- Two Bodies Are Recovered From Siphon

<http://community.seattletimes.nwsourc.com/archive/?date=19970318&slug=2529386>

March 18, 1997 By Joseph **Rose** *Yakima Herald-Republic*

ZILLAH, Yakima County - The search for two missing Roza Irrigation District divers ended late yesterday when their bodies were recovered from frigid water at the bottom of a deep, cavelike canal siphon.

But other than the bodies of Marty Rhode of Zillah and John Eberle of Grandview, Yakima County, missing since Saturday, the half-mile underground siphon yielded little more than darkness, echoes and questions.

Yakima County Search and Rescue officials said they had no new clues why the underground siphon, used as a dump for stolen cars, turned into a death trap that killed three and left one in a coma.

"We're still dealing with a lot of unknowns," said Sheriff Doug Blair.

Charlie "J.R." Mestaz, 37, one of two rescue divers deployed to find Rhode and Eberle, remained in critical condition and on life support at Providence Yakima Medical Center. His longtime diving partner, Rusty Hauber, 34, drowned Saturday.

Investigators are trying to unravel what happened during the rescue attempt, when Mestaz and Hauber apparently ran out of air on their way to the surface - their searchlights visible from the surface as they ascended.

Yesterday, those at the siphon included diving experts and friends of the victims. The experts speculated the men might have miscalculated the amount of air needed or had faulty gear or perhaps tried to surface too quickly.

"Obviously, something was missing or something wasn't followed," said Dan Foley, crew leader of Kennewick-based Columbia Basin Dive and Rescue, a specialized diving crew picked to find the divers.

But people acquainted with the dead divers dismissed such conjecture. They said all four were highly experienced, careful about checking equipment and obvious risk.

Hauber, a Yakima firefighter for the past three years, was "the best. He did a lot of the (fire department's) training for things like quick water rescue," said friend and fellow firefighter Rod Vetsch.

Although Hauber may have been one of the most experienced divers in Central Washington, no one at the canal knew whether he was experienced with a deep, dark and enclosed environment like the siphon.

Depth gauges carried by the divers showed they had descended 100 feet, the siphon's deepest point. Their aluminum tanks had been drained.

Training and lake diving might not have been enough, according to members of the Kennewick dive team, which specializes in rescues in confined spaces underwater.

"There's a big difference here," said diver Mark Allen, who along with Neil Hines found Rhode and Eberle. "This is like being in a hole with your eyes closed and only one way in and one way out."

An independent Pierce County diving-investigation team took photos inside the siphon and inspected equipment used by Eberle and Rhode, but did not comment.

The reinforced concrete siphon is one of seven in the 72,000-acre Roza Irrigation District.

Without them, construction of the main canal would have been more expensive and less efficient and would have exposed farmers to interrupted water supplies, according to federal Bureau of Reclamation officials.

Brian Person, the bureau's Yakima field-office manager, said the north Zillah siphon, known as Siphon 4, is 2,210 feet long and 100 feet below the surface at its lowest point. The siphon opening is 13 feet in diameter and has a capacity to carry water at the rate of 1,100 cubic feet per second.

"These siphons have served their purpose but are terribly dangerous while in operation," Person said. "People should stay away from them.

Authorities said the tragedy might have been averted if Rhode, 33, and Eberle, 42, had entered the siphon on its east end. Instead, they entered through the west side with steel cables they were going to secure to the cars.

When they didn't surface after an hour, Roza employees called for help. No backup divers were at the scene.

Sheriff Blair said the men thought the twisted wreckage of three cars was trapped in the deepest portion of the siphon, which descends one side of a canyon before leveling out for about 400 feet and ascending the canyon's other side.

However, the cars were actually near the east mouth, submerged in only a few feet of water, Blair said.

The three vehicles were pulled out yesterday afternoon. Roza officials said it was the first time since its construction in 1939 that the siphon had been drained.

Retrieving the bodies took most of the day. First, firefighters rappelled into the dry portion of the siphon to check for methane gas and search for the missing divers. They found neither. Six hundred sixty feet from the siphon's western portal, they encountered water.

Hours later, the retrieval team brought the bodies to the mouth of the siphon. Autopsies are expected to be completed today, authorities said.

Hines and Allen said they found Rhode and Eberle floating in about 8 to 10 feet of water, their diving equipment still attached.

"It was an uneasy feeling," Allen said of the frigid and dark depths of the siphon.

"It's extremely intimidating," Hines said. "It's hard to describe until you're inside that thing."

A funeral service will be held at 1 p.m. Thursday at the Sundome Stadium in Yakima.

Accounts for the victims' families have been set up at the Yakima Valley Credit Union. Donations may be sent to P.O. Box 2922, Yakima, WA 98907. For more information, call (509) 452-7524.

03-18-1997 Charlie "JR" Mestaz - Yakima WA FF PSD OOA Tunnel Rescue Attempt

American, aged 37. One of a two man (Hauber) fire team trying to rescue two divers (Rhode/Eberle) from a 2210 long, 13 foot diameter irrigation tunnel, their lights were seen returning to the entrance but they failed to surface, they were pulled out by two stand-by divers. They had run out of air, **Charlie "JR" Mestaz died in hospital three days later**. Quadruple fatality.

Charlie Mestaz was honored on the [National Fallen Firefighters Memorial](#) in Emmitsburg, Maryland

Age:	36
Rank:	Firefighter
Classification:	Volunteer
Incident date:	Mar 15, 1997
Date of death:	Mar 18, 1997
Cause of death:	Caught or Trapped
Nature of death:	Asphyxiation
Activity type:	Search and Rescue
Emergency duty:	Yes
Duty type:	On-Scene Non-Fire
Fixed property use:	Outdoor Property

Rescue Diver Remembered In Yakima Memorial Service

<http://www.spokesman.com/stories/1997/mar/21/rescue-diver-remembered-in-yakima-memorial-service/>

MARCH 21, 1997 **By From Staff And Wire Reports**

Hundreds of people gathered Thursday to remember a diver who died trying to rescue two other divers who had drowned while attempting to remove submerged vehicles from a murky irrigation canal.

Yakima firefighters donned their dark blue dress uniforms to pay tribute to Rusty Hauber, the first city firefighter to die in the line of duty in the department's 110-year-history.

Local dignitaries addressed the memorial service audience at the Yakima SunDome. Hauber, 34, and another search and rescue diver, Charlie Mestaz, dove into the underground Roza Canal siphon near Zillah on Saturday to search for two irrigation divers who had failed to surface. Authorities said Hauber was dead when backup divers pulled him from the water.

"We're like a big family and losing Rusty was like losing a member of that family," Yakima Fire Department spokesman Tony Sloan said Wednesday. "We've never had to deal with something so traumatic, something quite like this before."

A memorial service for Mestaz, 37, was set for Saturday at a local high school. Mestaz, a volunteer Moxee firefighter, died Tuesday at a Yakima hospital. He was pulled from the siphon with Hauber, but never regained consciousness.

Authorities still don't know the circumstances that led to the deaths of the two irrigation divers, John Eberle, 41, of Grandview, and Marty Rhode, 33, of Zillah. Eberle was buried Thursday and Rhode was to be buried today.

The tragedy began when Rhode and Eberle, both professionals, went into the tunnel-like canal to attach cables to submerged vehicles so they could be pulled from the canal before the start of irrigation season. They failed to surface.

Mistakes Doomed Divers -- Some Experts Blame Deaths On Bent Rules

<http://community.seattletimes.nwsourc.com/archive/?date=19970324&slug=2530383>

March 24, 1997 *AP*

YAKIMA - Basic safety practices apparently weren't followed by the four professional divers who died after they dived deep inside an underground irrigation canal, The Yakima Herald-Republic reported yesterday.

Killed were irrigation-district divers Marty Rhode and John Eberle, and volunteer search-and-rescue divers Rusty Hauber and Charlie "J.R." Mestaz, who went in after them March 15 in the canal near Zillah.

Each diver ran out of air. Apparently, incorrect calculations were made about the amount of air required for a cold-water dive into an underground canal that

dropped some 100 feet in elevation over a distance of nearly half a mile, the story by reporter Jeremy Meyer said.

State and federal workplace codes for commercial diving operations also appear to have been breached, the newspaper said. For instance:

- A dive team wasn't on standby at the scene for the initial dive.
- None of the men was tethered to what divers consider a tended safety line.
- Just two of the divers had a reserve air supply.
- The divers had no way to communicate with people on the surface.

"They may have done this 100 times before, but they were violating safety precautions, and it was the law of averages," said John Ritter, president of Divers Technology Institute, a Seattle-based commercial dive school.

"It's bound to catch up with you. Unfortunately, someone got killed," Ritter said.

The rate of air use changes with the depth of the dive, Ritter said. The deeper you go, the faster you use air.

Near the surface, the typical diver with 80 cubic feet of air in his or her tanks has about 80 minutes worth of breathing time at a relaxed rate. But for every 33 feet a diver descends, that time is cut in half, he said.

Cold water can make a diver consume air more quickly because he is breathing faster.

The state Department of Labor and Industries is investigating the deaths. The tragedy began when Rhode, 33, of Zillah, and Eberle, 42, of Grandview, broke through ice at the opening of the 13-foot-tall irrigation tube and plunged into its cold waters. The concrete, underground canal - called a siphon - is used to carry water through uneven terrain. The irrigation system was not operating when the divers entered the siphon.

The divers had been hired by the Roza Irrigation District to find and remove vehicles that had been driven into the 95-mile canal system over the winter. Eberle and Rhode planned to reach a depth of 104 feet. The night before, they used a computer program to determine the amount of air they would need.

Eberle had two tanks of air, Rhode just one.

Without communication gear, the divers told irrigation workers at the scene to call 911 if they weren't back within 45 minutes to an hour.

About an hour after they descended, irrigation workers telephoned for help.

Yakima firefighter Hauber, 34, and Moxee volunteer firefighter Mestaz, 36 - members of the 12-man Yakima County Search and Rescue dive team - were sent to the scene and went underwater.

Two other members of the rescue-dive team were in their scuba gear and waiting at the water's surface.

Mestaz and Hauber clipped onto a steel cable the previous divers had deployed to hook onto vehicles lodged in the siphon. But they didn't carry another safety line. They also had no means to communicate with topside crews. And only Mestaz had extra air.

When, after 28 minutes, Hauber and Mestaz failed to surface, another team of divers went in and retrieved them 200 feet in from the entrance.

Hauber died at the scene. The bodies of Rhode and Eberle were found the next day. Mestaz died Tuesday in a Yakima hospital.

State investigators will examine whether each employer did everything it could to ensure the safety of its employees, said Labor and Industries spokesman Bill Ripple.

Sheriff Doug Blair said, "I have neither the expertise or the desire to second-guess what went wrong. That's why we're doing the investigations. We want to come up with something concrete."

Regardless of the conclusions, Ron Van Gundy, manager of the irrigation district, said the practice of clearing the siphon will likely change.

"We're going to come up with a different way of doing things in the future," Van Gundy said.

Dive experts around the nation say the accident could have been avoided if the irrigation district had used commercially trained divers.

"Obviously (the irrigation district) should have hired commercial divers who are set up for that kind of dive," said Randall Cummings, western chapter chairman of the Association of Dive Contractors, a nonprofit group dedicated to enhancing safety within the commercial-diving industry.

The Divers Technology Institute in Seattle trains commercial divers who work underwater on nuclear-power plants, bridges, dams and offshore oil operations.

Commercial divers have been trained through special commercial dive schools or through the military. No commercial diving certification process exists, but industry officials say one will be in place by this summer.

Officials with the Yakima County Sheriff's Department and the irrigation district didn't know the exact levels of training for any of the divers in the March 15 accident.

However, the four all appear to have been trained in recreational diving. One recreational dive group, the Professional Association of Dive Instructors, said it had certified Hauber, Eberle and Rhode at various levels over the years.

Recreational diving is taught mainly through scuba shops. Once students pass the courses and successfully complete a set number of dives, they receive certification, allowing them to fill their tanks with air and buy equipment.

Cummings said a commercial dive team would not have entered the irrigation canal siphon with scuba gear. It was too deep, penetration into the tunnel was too long and an easy ascent to the surface wasn't available.

That dive required a hose to connect divers with an air supply on the surface, plus a communications system, he said.

Obvious miscalculations were made in the amount of air needed, he added.

Safety Violations Cited In Deaths Of 4 Divers Calculations Wrong On Air, For Instance, Newspaper Reports

<http://www.spokesman.com/stories/1997/mar/24/safety-violations-cited-in-deaths-of-4-divers/>

MARCH 24, 1997

Some answers are starting to emerge in the tragic deaths of four scuba divers last weekend.

The Yakima Herald-Republic reported Sunday that it appeared basic safety practices for commercial diving weren't followed as the men dived deep inside an underground irrigation canal near Zillah.

Killed on March 15 were commercial divers Marty Rhode and John Eberle, and volunteer search-and-rescue divers Rusty Hauber and Charlie "J.R." Mestaz, who went in after them.

Each diver ran out of oxygen. Apparently, incorrect calculations were made about the amount of air required for a cold-water dive into an underground canal that dropped some 100 feet in elevation over a distance of nearly half a mile, the newspaper said.

State and federal workplace codes for commercial diving operations also appear to have been breached, the newspaper said. For instance:

A dive team wasn't on standby at the scene for the initial dive.

None of the men was tethered to what divers consider a tended safety line. Just two of the divers had reserve air.

The divers had no way to communicate with people on the surface.

"They may have done this 100 times before, but they were violating safety precautions and it was the law of averages," said John Ritter, president of Divers Technology Institute, a Seattle-based commercial dive school.

"It's bound to catch up with you. Unfortunately, someone got killed," Ritter said. The state Department of Labor and Industries is investigating.

The tragedy began Saturday morning, March 14, when Rhode, 33, of Zillah, and Eberle, 42, of Grandview, broke through ice at the opening of the 13-foot-tall irrigation tube and plunged into its cold waters. The concrete, underground canal - called a siphon - is used to carry water through uneven terrain.

The divers had been hired by the Roza Irrigation District to locate and remove vehicles that had been driven into the 95-mile canal system over the winter.

Eberle and Rhode planned to reach a depth of 104 feet. The night before, they used a computer program to determine the amount of air they would need.

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Dive experts around the nation say the accident could have been avoided if the irrigation district had used commercially trained divers.

"Obviously (the irrigation district) should have hired commercial divers who are set up for that kind of dive," said Randall S. Cummings, Western Chapter chairman of the Association of Dive Contractors, a non-profit group dedicated to enhancing safety within the commercial diving industry.

The Divers Technology Institute in Seattle trains commercial divers who work underwater on nuclear power plants, bridges, dams and offshore oil operations. Ritter, its president, said recreational divers continually are hired for dangerous commercial work.

Commercial divers have been trained through special commercial dive schools or through the military. No commercial diving certification process exists.

Officials with the Yakima County sheriff's department and the irrigation district didn't know the exact levels of training for any of the divers in the March 15 accident.

However, the four all appear to have been trained in recreational diving. One recreational dive group, the Professional Association of Dive Instructors, said it had certified Hauber, Eberle and Rhode at various levels over the years.

Cummings said a commercial dive team would not have entered the irrigation canal siphon with scuba gear. It was too deep, penetration into the tunnel was too long and an easy ascent to the surface wasn't available, he said. The dive required a hose to connect divers with an oxygen supply on the surface, plus a communications system, he said.

Fines issued for violations in Zillah drownings

<http://www.wa.gov/lni/pa/zillah.htm>

June 30, 1997 Bill Ripple

YAKIMA-The Department of Labor and Industries has cited and fined the Roza Irrigation District of Yakima \$37,900 for violating worker safety rules in connection with the drowning deaths of two divers in an irrigation canal siphon near Zillah last March 15.

A total of six divers were involved in the tragedy that also claimed the lives of two search-and-rescue divers. The department's investigation into the activities of the other divers is continuing.

The incident involved two divers employed by the irrigation district who drowned while attempting to clear abandoned auto debris from the half-mile long underground siphon. Four rescue divers responded to the accident after the two initial divers failed to surface. Two of the rescue divers also were overcome as they attempted to locate the original divers.

When they, too, failed to surface, two additional divers entered the frigid water. They found the second set of divers and returned to the surface, but one of the second set of divers had drowned and the other died days later without regaining consciousness. The bodies of the original Roza divers were retrieved after the siphon was drained.

L&I is required by law to investigate workplace fatalities for potential violations of occupational safety and health standards and for identification of additional worker protection needs.

The scope of the primary investigation into the tragedy focused on the two irrigation district employees after investigators were unable to establish an employee-employer relationship for the others. Based on information developed during the investigation, the department is continuing an investigation into the overall operation of the Yakima County Sheriff's Office dive team.

The irrigation district was cited for a total of 10 serious violations of rules regulating commercial diving and confined-space entry -- Washington Administrative Codes (WAC) 296-37 and 296-62, respectively. Penalties totaling \$37,900 were imposed. The employer has 15 working days from the date of receipt to appeal.

Specifically, Roza was cited under the commercial diving standard for:

- Failing to ensure that the dive team members had the necessary experience or training for a "permit-required confined space entry" dive. Failing to ensure that a designated person who had experience and training in the assigned diving operation was in charge. (\$4,200)
- Failing to develop and maintain a "safe practice manual" (including a copy of the commercial dive standard) and have it available at the dive location for each dive team member. (\$4,200)
- Failing to ensure that the planning of the siphon diving operation took the following aspects into account (\$4,200):
 - Diving mode (in that open circuit self-contained underwater breathing apparatus is an unsatisfactory mode for extensive permit-required confined space penetration.
 - Surface and underwater conditions and hazards.
 - Breathing gas supply (including reserves), in that air volumes

utilized by the divers were inadequate by volume.
- Emergency procedures.

- Failing to ensure that divers engaged in enclosed or physically confined spaces were line-tended. Failing to have a decompression chamber available for a no-compression scuba diving at depths greater than 100 feet. Failing to have a diver stationed at the underwater point of entry when diving is conducted in enclosed or physically confining space and have a positive means of communication with diver/divers within the space. (\$4,200)
- Failing to keep and have records required by the standard. (\$100)

Under the confined-space standard, the employer was cited for:

- Failing to implement a written confined-space program for entry into the irrigation canal siphon. Failing to recognize and evaluate the siphon as a permit-required confined space. Failing to implement practices and procedures necessary for safe entry into the permit-required confined space. Failing to evaluate the workplace to determine if any spaces are permit-required confined spaces. Failing to inform exposed employees about confined-space hazards by posting danger signs or other means. Failing to take measures to prevent unauthorized entry into a permit-required confined space. (\$4,200)
- Failing to provide communications equipment necessary to comply with requirements of the standard. Specifically, failing to ensure that the divers were wearing full-body harnesses along with a lifeline. Failing to provide a dry suit to protect a diver from near-freezing water. (One of the divers wore a wet suit). Failing to ensure that the divers had an adequate air supply. Failing to ensure that the divers used lighting equipment sufficient for the divers to see well enough to work safely and exit the space quickly in an emergency. Failing to develop and implement procedures for rescuing divers from permit-required confined spaces - the divers failed to use full-body harnesses to which retrieval lines could be attached. (\$4,200)
- Failing to complete a confined-space entry permit prior to the entry. (\$4,200)
- Failing to train the divers so they had the understanding, knowledge and skill necessary to work safely in a permit-required confined space. (\$4,200)

- Failing to ensure that the divers were provided with a means of communicating with attendants who could monitor the status of the divers and alert the divers to evacuate if needed. (\$4,200)

Labor and Industries is an Equal Opportunity and Affirmative Action employer. The department complies with all federal rules and regulations and shall not discriminate on the basis of race, color, national origin, sex, creed, marital status, sexual orientation, age, disabled, disabled or Vietnam-era veteran, religion or disability as defined by applicable state and/or federal statutes or regulations.

Washington State Department of Labor and Industries

Judge refuses to dismiss lawsuit over diver deaths in irrigation canal

http://flash.oregonlive.com/cgi-bin/or_nview.pl?/home1/wire/AP/Stream-Parsed/OREGON_NEWS/o1766_PM_WA--DiversDie

02/09/00 The Associated Press

YAKIMA, Wash. (AP) -- A second judge has refused to dismiss an \$8 million wrongful death lawsuit against the Roza Irrigation District over the drowning of four divers near Zillah.

Yakima County Superior Court Judge Michael Schwab ruled Tuesday there was not enough evidence that Marty Rhode was working as a Roza employee at the time of his death to justify dismissal.

A Roza lawyer, Mike Nelson, argued that Rhode's survivors were awarded death benefits by the state Department of Labor and Industries because the agency determined he had been working as an irrigation district employee.

Employers are immune from wrongful death lawsuits if they provide worker's compensation benefits through insurance accounts with the state agency.

Tom Bothwell, a lawyer for Susan Rhode, said her husband was working for John Eberle, a friend who was under contract with Roza to clear debris from an irrigation siphon.

Last April, Superior Court Heather Van Nuys said a jury should determine whether Rhode was working as a Roza employee when he died.

The case is scheduled for trial March 27.

On March 15, 1997, Rhode and Eberle entered a half-mile long, 100-foot-deep siphon to remove submerged debris. When they failed to surface, two Yakima County search and rescue divers, J.R. Mestaz and Rusty Hauber, died in a rescue attempt.

A lawsuit filed by the family of Rusty Hauber against Roza and Yakima County is scheduled for trial later this year.

Labor & Industries closes diver drowning probe

<http://www.tri-cityherald.com/news/oldnews/1997/0827.html#anchor596187>
8/27/97 By STACI A. WEST Herald staff writer

Poor training and planning doomed two Yakima County Sheriff's rescue divers who died along with two commercial divers in a Zillah irrigation canal in March.

That is the decision of the state Department of Labor and Industries, which just completed its investigation of the fatal diving accident. The agency decided it did not have jurisdiction over the attempted rescue because the rescue divers were volunteers. However, the regional administrator has sent a stern letter to the Yakima County Sheriff.

"They just flat blew it," said Reuel Paradis, L&I regional administrator for Central and Eastern Washington. "It was preventable had management had all the pieces in place. In this incident, we don't believe every possible (safety precaution) was taken."

Paradis told Sheriff Doug Blair in a letter Tuesday the sheriff's department will not be cited. If the divers had died while recovering a body for the sheriff's office, then L&I would have had jurisdiction, Paradis said. L&I has offered to work with area search and rescue teams to make sure the tragedy does not repeat itself.

It was the most severe occupational injury case ever in Eastern Washington.

On March 15, commercial divers M. John Eberle, 41, of Grandview and Marty Rhode, 34, of Sunnyside drowned after diving into a 2,300-foot-long irrigation canal that reached 104 feet under Cheyne Road near Zillah. They were searching for abandoned vehicles in the 13-foot-diameter underground siphon for Roza Irrigation District.

Two divers with Yakima County Search and Rescue, Charlie "J.R." Mestaz, 37, of Moxee, and Rusty Hauber, 34, Yakima, died while trying to rescue the commercial divers. When Mestaz and Hauber did not surface within 40 minutes, a third pair of divers went in.

Paradis also blamed supervisors who allegedly did not understand the hazards posed by the siphon's murky, nearly freezing water and confined space. The irrigation canal should have been considered a type of cave, which requires extra precautions for divers, Paradis said.

In his letter, Paradis said all four rescue divers were undertrained and underequipped.

Emergency supervisors apparently did not properly calculate the amount of air or decompression time divers would need, the letter said.

"There is no evidence they had any of these things calculated in their dive plan," Paradis said Tuesday. "People were being driven by adrenaline and not by good planning."

L&I has fined the Roza Irrigation District \$37,900 for 10 violations of worker safety involving the commercial divers' deaths. Those divers did not wear lifelines, were not experienced in cave diving and ran out of air. The district has appealed the penalties.

Sheriff Blair was out of town Tuesday and had not seen the letter from Paradis. Chief Criminal Deputy Stew Graham said he doesn't understand why the agency sent the letter if it doesn't have jurisdiction.

"We thank the agency for their concern," Graham said. "The sheriff had many of the same concerns and addressed them early on."

After the deaths, Blair announced the search and rescue team would no longer do rescues for overdue swimmers and instead would consider all drowning situations as a body recovery. He also plans to contract with a local professional diver to train the sheriff's divers, Graham said.

The Zillah accident should have been treated as a recovery of bodies, Paradis said. It had been two hours since anyone had seen bubbles from the commercial divers' tanks. By then, the commercial divers could not have been revived if they were pulled from the water.

Two days after the diving accident, Columbia Basin Dive Rescue members from the Tri-Cities recovered the divers' bodies. They spent nearly four hours planning who would go into the canal and how, said Neil Hines, dive rescue president.

Divers followed strict rules and checklists on what to do in confined-space dives. And each diver wore a full-body harness attached to a lifeline.

"There's so many things when you go into a confined space that you have to follow," Hines said. "You can only go with what your capabilities are. They didn't do anything by the book."

Paradis agreed in his letter. "Diving activities ... are arguably the most dangerous activities expected and undertaken by search and rescue team members," he wrote. "It is critical for the dive team members to have the highest levels of training and equipment."



UnderWater Magazine

<http://www.diveweb.com/uw/archives/arch/uw-sp97.06.htm>

Article reprints: Spring 1997

- **"A Tragedy in Central Washington" By Dee Hoffmann**
- **"How Many Divers Have to Die?" By Randall S. Cummings**
- **"ADC Responds"**

"A Tragedy in Central Washington"

By Dee Hoffmann

Four divers are dead; the result of a job and subsequent rescue attempt gone wrong. The tragedy began Saturday, March 15 when two recreationally-trained scuba divers entered a half-mile long, underground, water-filled tunnel to complete some work for a local irrigation district. They were without a standby-diver, without a tended line, without communications, and without surface supplied air. After the divers failed to emerge, two rescue scuba divers went down - only to meet the same deadly fate.

To bring water to local farmland, the 95-mile Roza Irrigation Canal in Central Washington traverses canyons and valleys by means of seven underground siphons. Abandoned and stolen cars are routinely dumped in the canal, and the swift water washes them into the inverted siphons or underground pipelines. The divers were hired by the Roza Irrigation District to hook tow lines to the cars that were trapped inside the 13-foot tall siphon tunnels.

On this fateful day, the canal was dry, but the underground siphon Number Four was dangerously full of cold 40-degree, murky water. The divers broke through ice at the mouth of the cave-like tunnel and descended into the 2,310-ft. long, 104-ft. deep siphon. They carried one tank of air each and a shared emergency tank. Although one diver was dressed in a drysuit, the other diver wore a wetsuit which is inadequate for cold water diving. It was only when they did not return after an hour that rescue workers were called.

The rescue scuba divers also apparently underestimated the hazards of diving the deep, cold, confined space. They dove with the same amount of air as the first team, and without a safety line or communications. After they failed to return, a

third team of divers was sent in to pull them out from the tunnel. The preceding rescue divers, like the first two divers, had tragically run out of air and perished. These deaths have brought to light questions about the district's hiring of recreational scuba divers to perform commercial work and the divers' lack of commercial diving training. Questions have also surfaced about safety practices.

"This was an accident waiting to happen," said John Ritter of Divers Institute of Technology, an accredited commercial dive school. "Recreational divers continue to be hired for work which they are unqualified to perform. Some contracts or bid requests simply stipulate that the worker must be a certified diver. Certified for what? The training and certification a recreational diver obtains differs greatly from the hundreds of training hours a commercial diver receives."

Three recreational dive training agencies, PADI, NAUI, and YMCA, clearly maintain that diving certification under their auspices should not be considered adequate training for underwater commercial work.

Even more troubling is the fact that the divers failed to follow safety regulations, and it cost them their lives. As set forth by the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA), the Safety Standards for Commercial Diving Operations includes a combination of specific, functional and situational requirements.

According to the standards, "scuba diving shall not be conducted at depths deeper than 100 feet or outside the no-decompression limits unless a decompression chamber is ready for use." The depth of this dive was 104 feet; the nearest decompression chamber was more than 100 miles away.

The standards continue that scuba diving shall not be conducted "in enclosed or physically-confining spaces unless line-tended." Neither the divers sent down to do the work nor the rescue divers were tethered to another dive team member on the surface.

All four divers are reported to have died from the lack of air. The regulations require that each diver must carry a reserve breathing gas supply, however only one member from each team had an emergency tank. It was apparent that they had also miscalculated the amount of air they would need.

When conducting a commercial diving operation the regulations require a minimum of three persons on the dive team, the designated person in charge (diving supervisor), diver, and tender. When operations planning reveals any form of underwater hazard, or when diving in excess of 100 feet or involving in-water decompression, a standby diver must be added to the dive team as a fourth member. An additional diver must be stationed at the underwater point of entry when diving is conducted in enclosed or confined spaces, and a positive means of communication must exist with the diver(s) within that space.

None of the divers had any means of communication. In fact, there was no one with any diving experience monitoring topside when the first divers went into the water. With deadly consequences, the minimum manning requirement under OSHA's current commercial diving standard was not followed.

"A commercial dive team would not have entered the irrigation canal siphon with scuba gear, without communications, and without adequate dive team personnel," says Randy Cummings, district dive coordinator for the U.S. Army Corps of Engineers in The Dalles, OR. "The dive was too deep, penetration into the siphon was too long, and a diver couldn't make an easy ascent to the surface."

"A dive of this magnitude," Cummings continued, "would probably have a six-man crew, a recompression chamber on site, surface-supplied air, communications, a primary working diver to hook the tow lines to the vehicles and one or two other divers tending him along the way."

Municipalities and other agencies should take heed by recognizing the dangerous liability of hiring a recreational diver to do commercial diving work. OSHA regulations state that an employer obligation exists for compliance with all provisions of the diving standards.

Furthermore, personnel requirements under OSHA 1910.401(a)(1) specifies "each dive team member shall have the experience or training necessary to perform assigned tasks in a safe and healthful manner." Given the fact that recreational diving agencies state that their certification does not qualify a diver to do commercial work, it follows that municipalities and agencies who hire recreational divers or cite recreational diving certification as a criteria for employment may face possible OSHA violations.

"Although this catastrophe was the result of a series of bad judgements, the ultimate responsibility for the tragedy falls upon the district, the people who hired these divers," comments Tim Beaver of Global Diving & Salvage. "They should have known better than to hire unqualified personnel. Their alleged ignorance was the first fatal error in the disastrous chain of events."

Is it an issue of ignorance? According to Beaver, the practice of using recreational divers is grossly underreported and widespread. "Sometimes they get away with it, but several times a year unqualified, untrained divers lose their lives. How many people are have to get killed before it stops?"

Did the issue of cost savings enter into the district's decision to hire unqualified divers? "In order to do a job of this magnitude with any degree of safety," Beaver explains, "it is going to be very expensive. And the risks to divers may still be too great."

In hindsight, perhaps the district should have simply dewatered the tunnel, as they finally did to recover the first two divers' bodies. That would have been a reasonable decision and one practiced by other irrigation districts. The canal was empty and not servicing the farmland this time of year.

Future litigation regarding this incident will be closely watched by those in the industry. "The real tragedy in this accident will be if no one learns from it," Beaver concludes.

"How Many Divers Have to Die?"

By Randall S. Cummings

The recent tragic diving accident in Central Washington didn't have to happen. While I don't want to try to second guess the decision-making leading up to the accident from a hundred miles away, there are some issues that must be addressed so that we can have the opportunity to learn from this tragedy. Unfortunately, this incident is not an isolated case. Every year several scuba divers in this country lose their lives in very similar accidents.

It's very common for small municipalities (irrigation & utility districts, cities, counties, etc.) and organizations in the private sector, to routinely employ recreationally trained scuba divers to perform diving activities that are clearly commercial in nature. Often, this is a result of ignorance of the risks involved with underwater activities. Diving operations may be such a small percentage of their overall maintenance picture that it's not reasonable to expect the organization to train someone to be able to understand diving operations and the options available to minimize risks. Sometimes it's simply a matter of choosing to take the inexpensive way out.

Commercial diving operations do seem expensive when compared to a recreational diver out to make a fast buck. But, the reason they're more expensive is because they're trained, equipped and experienced for this type of hazardous work. Dozens of dive jobs exactly like this are performed without mishap every day across the United States. You don't read about them because, while they are hazardous, they are performed by experienced dive organizations that understand and minimize the risks. I can guarantee you that when the dust settles from this accident, the cost of using scuba divers instead of a commercial diving organization will seem like small change indeed.

Public safety officials should take a hard look at this accident, also. "Rescue diver" has been a misnomer for many years. While there may be an occasional need for public safety personnel trained in open water rescue diving techniques, there clearly needs to be limitations on their use. Many dive rescue teams are not specifically trained or equipped for "penetration" type diving, contaminated

environment diving or the additional hazards of decompression diving used at greater depths.

The vast majority of "rescue" diving is simply body recovery, important, but absolutely not worth risking additional lives. In this accident, the initial rescue divers were obviously not trained well enough to recognize the great hazards associated with this undertaking. A proper understanding of the conditions and timing by the original rescue divers would have indicated that help was clearly too little and too late. The only thing worse than killing two divers is killing four.

Many mistakes were made on that Saturday. From the decision to use divers instead of draining the canal in the first place, hiring untrained recreational divers to perform commercial work, not having adequate surface support personnel (standby safety divers, diving supervisor, etc.), using untethered divers, lack of communications between divers and topside crew; the list can go on and on.

Unfortunately, the rescue divers made many of the same mistakes. The intent of this is to point out that many times fatal accidents aren't simply a result of one mistake. They're a chain of incorrect decisions. Sometimes, all you have to do to "break the fatal chain," is make one appropriate decision somewhere along the way.

I sincerely hope this incident helps influence people to consider the risks inherent to commercial diving operations and the consequences of using untrained, inexperienced scuba divers. And, I hope that the many recreational scuba divers that might consider doing this kind of work, think to themselves, "There, but for the grace of God, go I." Those of us that work in the commercial diving industry shudder when we learn of accidents like this. Our deepest sympathies are extended to the families and friends of these divers.

Randy Cummings, a professional diving safety supervisor, manages the underwater operations for the U.S. Army Corps of Engineer District in Portland, Oregon.

ADC responds

It has come to our attention that we have all most probably missed a major ingredient related to conformity to 1910 and safety.

1910.410(a)(1) states that "Each dive team member shall have the experience or training necessary to perform assigned tasks in a safe and healthful manner." The extent and degree of experience or training is left nebulous and not thereafter amplified.

However, letters obtained by ADC and furnished to all members, committee members, and published in UnderWater magazine, state:

NAUI (September 7, 1995)

"The official position of NAUI is that personnel training courses and resulting certification endorsed by this organization are intended solely for the practice of recreational diving. NAUI certification does not entitle an individual (unless other formal commercial diving training has been received as set forth in ANSI/ACDE 01-1993) to conduct commercial diving operations."

PADI (January 7, 1997)

"It is our opinion that individuals who hold PADI certification credentials and wish to enter into a commercial diving employment situation (i.e. underwater work including umbilical, light or heavy weight equipment, etc.) would need to demonstrate documentation or additional specialized training and expertise to do so safely.

Recreational diving certification by PADI alone should not be considered as adequate training in bidding for underwater work of the nature described in your standards of operation."

YMCA (October 31, 1995)

"The recreational dive industry has established a criteria for a minimum standard of instruction and through its secretariat, RSTC (Recreational SCUBA Training Council), this standard was adopted by ANSI. The commercial dive industry has established a criteria for a minimum standard of instruction and through its secretariat, ACDE (Association of Commercial Diving Educators), this standard was adopted by ANSI. The need for two different standards is as a result of entirely different training objectives, recreational and commercial. These standards are for the safety of the student plus define the level of certification the diver can safely perform."

"The YMCA SCUBA Program is dedicated to training recreational divers. We recognize and support the clear distinction of recreational diving and commercial diving as set forth by the standards in which they are trained. A YMCA recreational diving certificate does not represent the training required to safely perform in the commercial diving industry."

In light of the above it would be ADC's opinion that these three letters essentially and specifically state that training conducted by those organizations - or their extended presence - is well defined as not meeting the criteria of 1910.401(a)(1) and thus serve to clarify the intent of 1910.401. If that logic is followed, then it appears evident that OSHA does in fact have recourse to specifically preclude the

use of recreationally trained divers in commercial activity, and to cite those who use such divers.

Court Forbids Widow's Lawsuit in Diver's Death

<http://www.yakima-herald.com/article/276221509346541.news>

11-01-02 By TOM ROEDER - AKIMA HERALD-REPUBLIC

The widow of a rescue diver who died along with three others in a 1997 accident and failed rescue attempt near Zillah cannot sue Yakima County, the state Supreme Court ruled Thursday.

Traci Hauber sued Yakima County in 1998, alleging the county's negligence contributed to the death of her husband, Yakima firefighter Rusty Hauber. A series of court rulings, including Thursday's unanimous opinion, derailed the lawsuit. The courts found the county is immune from Hauber's damage claim.

Hauber, 34, and fellow diver J.R. Mestaz, 36, a Moxee volunteer firefighter, died after they dived into a Roza Irrigation District siphon in an attempt to rescue a pair of divers who had earlier entered the half-mile-long, 100-foot-deep underground canal to remove an abandoned car. Hauber and Mestaz perished in the water-filled tunnel along with the divers they tried to save, Marty Rhode of Zillah and John Eberle of Grandview.

A year after the accident, Traci Hauber sued Yakima County and the Roza Irrigation District, claiming negligence. After the failed rescue attempt, a state Department of Labor and Industries investigation found that Hauber and Mestaz were inadequately trained. The agency didn't issue citations or fines, saying it lacked jurisdiction.

The suit against the irrigation district remains alive, but the part involving the county was thrown out by Thursday's decision.

Traci Hauber's attorney said he will now continue his pursuit of unspecified damages from the irrigation district. That action had been on hold pending the Supreme Court decision.

"I just hope that sooner or later we can get some justice for Mrs. Hauber," her attorney, Seattle's Duncan Turner, said Thursday.

The court based its ruling in favor of the county on a state law that gives counties immunity from lawsuits brought by search and rescue volunteers injured or killed while on a mission.

"It was a terrible tragedy," Yakima County Prosecuting Attorney Ron Zirkle said of the accident. "But the law sets out what her remedies are. It's not that she doesn't get anything ... she just can't sue the county."

The high court sided with Zirkle, finding that even though Rusty Hauber was an on-duty Yakima firefighter, he was functioning as a search and rescue volunteer for the county, and therefore the suit was not allowed. Hauber was the first Yakima city firefighter to die in action.

The volunteers are eligible for state and federal disability and death benefits, but survivors cannot bring a wrongful death action. Traci Hauber and the couple's two children have received state and federal death benefits.

Traci Hauber argued that her husband joined the rescue attempt as a firefighter working for the county under a mutual aid agreement. In that scenario, she could have sued the county.

After Eberle and Rhode were trapped in the tunnel, a search and rescue coordinator for the Yakima County Sheriff's Office called Rusty Hauber at the Yakima Fire Department and asked for his help, court papers said. The firefighter's boss let him go on the search and rescue mission and told him that he was working under a mutual aid agreement, court papers said.

"We recognize that Hauber's battalion chief believed that Hauber was responding to a mutual aid call," Justice Tom Chambers wrote in the court's opinion. "Unfortunately, the chief's subjective belief is not enough to impose liability on the county."

The court found that no mutual aid agreement for search and rescue operations existed on paper.

And since Rusty Hauber was outside the city of Yakima and was engaged in work outside the scope of his normal duties, he was functioning as a volunteer, the court found.

Zirkle said he's satisfied with existing protections for search and rescue volunteers and doesn't think the county should enter into additional mutual aid agreements that would let those in Hauber's situation sue.

"I think the law as it exists is fair," Zirkle said.

The only other lawsuit from the four deaths, brought against the irrigation district by the family of Marty Rhode, was settled in 2000 for an undisclosed amount.

Judge refuses to dismiss lawsuit over diver deaths in irrigation canal

http://flash.oregonlive.com/cgi-bin/or_nview.pl?/home1/wire/AP/Stream-Parsed/OREGON_NEWS/o1766_PM_WA--DiversDie

02/09/00 The Associated Press

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Tom Bothwell, a lawyer for Susan Rhode, said her husband was working for John Eberle, a friend who was under contract with Roza to clear debris from an irrigation siphon.

Last April, Superior Court Heather Van Nuys said a jury should determine whether Rhode was working as a Roza employee when he died.

The case is scheduled for trial March 27.

On March 15, 1997, Rhode and Eberle entered a half-mile long, 100-foot-deep siphon to remove submerged debris. When they failed to surface, two Yakima County search and rescue divers, J.R. Mestaz and Rusty Hauber, died in a rescue attempt.

A lawsuit filed by the family of Rusty Hauber against Roza and Yakima County is scheduled for trial later this year.

Appeals court upholds dismissal of Yakima County from lawsuit

http://web.kitsapsun.com/archive/2001/07-26/0070_appeals_court_upholds_dismissal_o.html

Jul 26th, 2001 Sun | Local The Associated Press

YAKIMA - A widow with two children cannot sue Yakima County in the death of her husband, a search-and-rescue diver who drowned in a canal with three other divers in 1997, a state appeals court ruled.

Rusty Hauber, a Yakima city firefighter, was a volunteer registered diver for the Yakima County Search and Rescue team.

He and another search-and-rescue diver, J.R. Mestaz, died trying to save two contract divers, John Eberle and Marty Rhode, when they failed to emerge from a half-mile-long, 100-foot-deep underground canal near Zillah.

Rhode and Eberle had been hired by the Roza Irrigation District to hook and remove submerged cars and other debris that had been dumped into the canal.

Subj: Re: [divingaccidents] Two brothers killed in diving accident in Utah

10.1.2003

Date: 10/2/2003 3:16:56 PM Central Daylight Time

From: jerryehlich@aol.com

Reply-to: divingaccidents@yahoogroups.com

To: divingaccidents@yahoogroups.com

There was a similar terrible event in Eastern Washington State in 1977. Two divers who attempted a rescue also died.

Note: "commercial diver" in this case means they were getting some sort of compensation. It does not mean they were using appropriate technique, gear or had the adequate training.

...

Poor training and planning doomed two Yakima County Sheriff's rescue divers who died along with two commercial divers in a Zillah irrigation canal tube in March, 1977

That is the decision of the state Department of Labor and Industries, which just completed its investigation of the fatal diving accident. The agency decided it did not have jurisdiction over the attempted rescue because the rescue divers were volunteers. However, the regional administrator has sent a stern letter to the Yakima County Sheriff.

"They just flat blew it," said Reuel Paradis, L&I regional administrator for Central and Eastern Washington. "It was preventable had management had all the pieces in place. In this incident, we don't believe every possible (safety precaution) was taken."

On March 15, commercial divers M. John Eberle, 41, of Grandview and Marty Rhode, 34, of Sunnyside drowned after diving into a 2,300-foot-long irrigation canal that reached 104 feet under Cheyne Road near Zillah. They were searching for abandoned vehicles in the 13-foot-diameter underground siphon for Roza Irrigation District.

Two divers with Yakima County Search and Rescue, Charlie "J.R." Mestaz, 37, of Moxee, and Rusty Hauber, 34, Yakima, died while trying to rescue the commercial divers. When Mestaz and Hauber did not surface within 40 minutes, a third pair of divers went in.

Paradis also blamed supervisors who allegedly did not understand the hazards posed by the siphon's murky, nearly freezing water and confined space. The irrigation canal should have been considered a type of cave, which requires extra precautions for divers, Paradis said.

In his letter, Paradis said all four rescue divers were undertrained and underequipped.

Emergency supervisors apparently did not properly calculate the amount of air or decompression time divers would need, the letter said.

"There is no evidence they had any of these things calculated in their dive plan," Paradis said Tuesday. "People were being driven by adrenaline and not by good planning."

L&I has fined the Roza Irrigation District \$37,900 for 10 violations of worker safety involving the commercial divers' deaths. Those divers did not wear lifelines, were not experienced in cave diving and ran out of air. The district has appealed the penalties.

Sheriff Blair was out of town Tuesday and had not seen the letter from Paradis. Chief Criminal Deputy Stew Graham said he doesn't understand why the agency sent the letter if it doesn't have jurisdiction.

"We thank the agency for their concern," Graham said. "The sheriff had many of the same concerns and addressed them early on."

After the deaths, Blair announced the search and rescue team would no longer do rescues for overdue swimmers and instead would consider all drowning situations as a body recovery. He also plans to contract with a local professional diver to train the sheriff's divers, Graham said.

The Zillah accident should have been treated as a recovery of bodies, Paradis said. It had been two hours since anyone had seen bubbles from the commercial divers' tanks. By then, the commercial divers could not have been revived if they were pulled from the water.

Two days after the diving accident, Columbia Basin Dive Rescue members from the Tri-Cities recovered the divers' bodies. They spent nearly four hours planning who would go into the canal and how, said Neil Hines, dive rescue president.

FACTS

Rusty Hauber, a city of Yakima fire fighter and registered emergency search and rescue (S&R) dive team volunteer, was one of the rescue divers who died during the rescue mission in the Roza Canal. Hauber had been a Yakima city fire fighter since 1996, and a registered member of Yakima County S&R since 1992. Hauber died attempting to rescue John Eberle and Marty Rhode who were privately employed by the Roza Irrigation District to clean rubbish and abandoned cars out of a deep irrigation canal. It is not unusual for abandoned vehicles to be driven into the canal and collect in siphons that carry the water underground to depths that exceed 100 feet. The Roza Irrigation District must regularly clear debris from siphons.

Eberle and Rhode entered the Roza Canal near Zillah, Washington. They did not surface when planned, and the district called 911. The 911 dispatcher alerted the local fire department, which forwarded the call to the Yakima County S&R coordinator, County Sheriff's Deputy George Town. Deputy Town determined that an S&R dive team response was needed and summoned members of the Yakima County S&R dive team for an emergency mission. After first trying Hauber at home, he reached Hauber on duty at Yakima Fire Station One. Hauber requested and received permission from his battalion chief to respond to the call. The battalion chief first confirmed that there was a formal request for Hauber's assistance. Hauber offered to go off duty, but the chief declined, saying something like; "You are going as a Fire Department employee. This is a mutual aid call. You will represent the fire department." Clerk's Papers (CP) at 606.

After returning home to retrieve his diving equipment, Hauber met the S&R dive team at the Roza canal siphon near Zillah, which is outside Hauber's fire fighting district. Hauber and another S&R diver, police officer J.R. Mestaz, entered the canal siphon about an hour later. Not long afterwards, observers on the shore saw the divers' lights wink out; a minute later, air bubbles ceased to appear. Two backup divers were sent in, and both S&R divers were recovered. Hauber was pronounced dead at the scene, Mestaz died in the hospital three days later. Rhode's and Eberle's bodies were retrieved the next day.

A year later Hauber's estate and widow (collectively, the estate) filed a wrongful death suit against Yakima County and the Roza Irrigation District. The estate contends, among other claims, that there was inadequate planning, equipment, and safety preparation for the dives given the temperature, visibility, current, depth, and confined space within the canal siphon. Because the rescue was started long after the air carried by Rhode and Eberle would have been exhausted, the estate contends the mission should have been treated as a body recovery. The county moved for and received dismissal of all claims based on statutory immunity under RCW 38.52.190. The trial court judge certified this case for immediate review under RAP 2.3(b) and stayed the claims against Roza Irrigation District pending the outcome of this appeal. The Court of Appeals affirmed the trial judge, finding as a matter of law that the county was entitled to statutory immunity. *Hauber v. Yakima County*, 107 Wn. App. 437, 27 P.3d 257 (2001). We granted review, and affirm.

ANALYSIS

Summary judgment is reviewed de novo with all inferences taken in favor of the nonmoving party. *Reid v. Pierce County*, 136 Wn.2d 195, 201, 961 P.2d 333

(1998). Ultimately, only one issue is before this court: whether Yakima County is entitled to immunity.

S&R volunteers are entitled by statute to compensation for injury or death arising out of volunteer missions. RCW 38.52.260, .010(4). Compensation is calculated according to the Workers' Compensation Act, chapter 51.32 RCW. RCW 38.52.290. The mission must be a distinct assignment "to achieve a set of tasks related to an incident . . . or search and rescue operation that occurs under the direction and control of a local authorized official." WAC 118-04-060(10). Deputy Town was such an official, and there is no dispute that the rescue attempt was such a mission. See CP at 561-62.

S&R volunteers are barred by statute from bringing suit against "the state, . . . the agency, . . . the local organization for emergency management . . . , or . . . the county or city . . . for an injury or death arising out of . . . activities as an emergency worker." RCW 38.52.190. The legislature clearly intended to forge a compromise similar to the one in the Industrial Insurance Act, Title 51 RCW. The S&R volunteer is assured sure and certain relief; the local emergency management organization enjoys immunity from tort claims by volunteers for their injuries.

While the Industrial Insurance Act immunizes most employers from job related negligence suits, fire fighters and police officers, because of the vital and dangerous nature of their work, are provided extra protection and are allowed to both collect workers' compensation and bring job related negligence suits against their employers. RCW 51.04.010, RCW 41.26.281. If Hauber had been killed as a fire fighter, he might have had a negligence suit against his employer. In effect, the estate argues that Yakima County has stepped into the shoes of Hauber's employer for the purposes of this immunity waiving statute, and Hauber is therefore entitled to sue the county.

Local governments and emergency management organizations, such as fire departments and sheriff's offices, may formally enter into various types of agreements, such as mutual aid agreements and emergency management plans, to respond to each other's emergencies. See generally RCW 38.52.070; chapter 118-30 WAC. Workers rendering "outside aid" under these agreements are entitled to all of the statutory protections they would normally enjoy. RCW 38.52.080.1 Since one of those statutory protections enjoyed by fire fighters is the right to sue their own employers for negligence resulting in on the job injuries, the estate argues that statutory protection must transfer by act of statute and apply to waive the immunity that would otherwise be enjoyed by the county under RCW 38.52.190. We disagree.

Hauber was both an S&R volunteer and a fire fighter. If Hauber had responded to the call as a fire fighter or pursuant to a mutual aid agreement, he may have been entitled to bring suit against the city for negligence under RCW 41.26.281 by application of RCW 38.52.080. If he responded as an S&R volunteer, the county has immunity pursuant to RCW 38.52.190.

We find that there are two ways the estate could establish that Hauber was acting as a fire fighter at the time of his death: (1) if he was acting within his regular duties within the normal geographic area, or (2) if he responded pursuant to a mutual aid agreement. We examine each in turn.

Regular Duties

First, the estate argues that diving was one of Hauber's normal duties as a city fire fighter. Hauber was a member of the fire department's Technical Rescue Team, which is trained to do still water and swift water rescue. However, diving is not a normal duty of the Yakima City Fire Department. The estate does provide some evidence that underwater and enclosed space rescue may have been performed by Yakima fire fighters, which may have been sufficient to overcome summary judgment had Hauber's death occurred within the fire district on a fire fighting mission. We need not decide this because Hauber fails to meet the second prong of the test; it is undisputed that the rescue at Roza Irrigation District was 20 miles outside the Yakima City Fire Department's territorial jurisdiction. Hauber was not performing his regular duties within his normal geographic work area; therefore, we reject this argument and turn to the estate's other contentions.

Mutual Aid Agreements

Second, the estate argues that Hauber was acting pursuant to a mutual aid agreement, and therefore his right to sue was preserved despite any contrary statutory authority. Fire fighters injured while responding to calls outside their normal jurisdiction pursuant to a mutual aid agreement lose none of their regular privileges. RCW 38.52.080(1). We have carefully reviewed the purported mutual aid agreements and conclude that none applies to these facts.

A mutual aid agreement is an arrangement for reciprocal emergency management aid and assistance between local emergency management organizations and public and private agencies in specific circumstances. Former RCW 38.52.0902 (providing that mutual aid and interlocal agreements will be in accordance with statutory requirements and actual agreements contracted between parties). The specific type of mutual aid promised must be addressed. Id; RCW 38.52.091; see also RCW 39.34.030 (requiring agreements between local governments to state the parties, duration, structure, purpose, financing, methods, and the assistance to be provided). The Legislature clearly intended for such agreements to be formal and specific. See also WAC 118-30-060 (detailing requirements for emergency management plans and mutual aid plans).

Governmental entities may enter into different agreements to render aid to one another under specific circumstances. RCW 38.52.070. For example, many of the fire departments and cities in the Yakima Valley have entered into a formalized Emergency Medical Mutual Aid Agreement to provide emergency fire fighting, medical, and hazardous waste response assistance to one another. CP at 644-67. No search and rescue, water rescue, or diving activities are included in the agreement. Even if there had been, Yakima County Fire District No. 5 (the district in which the Roza incident took place and a signatory to the agreement) did not request mutual aid from Hauber's fire department; the county S&R dispatcher requested Hauber's participation in an emergency mission. Fire districts are independent governmental entities, and agreements between the fire departments do not bind the counties generally.³

The estate argues that the Yakima Valley Comprehensive Emergency Management Plan (YVCEMP) is a mutual aid agreement. We disagree. The YVCEMP pledges mutual assistance and coordinates responses to natural and man-made disasters between most governmental agencies in Yakima County in the case of acute overwhelming emergencies, such as nuclear war and volcanic eruption. In fact, the YVCEMP specifically references mutual aid plans and agreements

among its signing members, undercutting the estate's argument that it is itself a mutual aid agreement. It states that the Emergency Services Council (an organizational unit created by the plan) "shall review and recommend for adoption emergency services and mutual aid plans and agreements . . . as are necessary to implement such plans and agreements." CP at 150.

Mutual aid agreements, by contrast, are specific contracts between local emergency management organizations and public and private agencies agreeing to assist one another in specific circumstances. See former RCW 38.52.090(1) (providing that mutual aid will be in accordance with agreements and directing the development of a form contract). The type of mutual aid promised must be addressed. *Id.* Further, binding mutual aid agreements pledge reciprocal aid; the YVCEMP contains no promise for promise exchanges. See, e.g., *Higgins v. Egbert*, 28 Wn.2d 313, 317-18, 182 P.2d 58 (1947); accord former RCW 38.52.090, RCW 38.52.091; RCW 39.34.030.4

There is no relevant mutual aid agreement. Rusty Hauber gave his life to save another. If police and fire fighters are to receive the same protections for their voluntary services as they receive for their normal duties, statutory reform or a formal mutual aid agreement is required. It may well be that law enforcement officers and fire fighters, because of the risks unique to their work, should be accorded this extra protection when responding to county S & R requests. But to provide such protection to Hauber, the S&R must have entered into formal mutual aid agreements with his employer. It did not. Because we find no mutual aid agreement existed, summary judgment was appropriate.

We recognize that Hauber's battalion chief believed that Hauber was responding to a mutual aid call. Unfortunately, the chief's subjective belief is not enough to impose liability upon the county. The estate argues that the fire department log noted Hauber as out on a mutual aid call. This is likely due to a different usage of the term among the fire fighting professionals involved who apparently used "mutual aid" to refer to any request for assistance from outside their jurisdiction, rather than responses pursuant to a formalized mutual aid agreement. See CP at 42 (Dep. of Rocky Dean Willette).

We therefore hold that Hauber was not responding pursuant to a mutual aid agreement.⁵

POTENTIAL STATUTORY CONFLICT

The estate argues that RCW 38.52.080(1) (which guarantees that city and county employees retain their rights and privileges whenever they render aid outside the scope of their normal employment) and RCW 38.52.190 (which limits emergency workers' claims to workers' compensation) are in conflict. We disagree. If Hauber had been responding under a mutual aid agreement to fight a fire or provide other prior-agreed-upon emergency services in the Zillah area, and he was injured because of the local fire department's negligence, he would have a viable claim under RCW 38.52.080(1). If RCW 38.52.080(1)'s use of "outside" is understood to be geographic, there is no conflict. RCW 38.52.080(1) says:

Whenever the employees of any political subdivision are rendering outside aid pursuant to the authority contained in RCW 38.52.070 such employees shall have the same powers, duties, rights, privileges, and immunities as if they

were performing their duties in the political subdivisions in which they are normally employed.

(Emphasis added.) The preceding statute also uses "outside" geographically:

Each political subdivision of this state is hereby authorized and directed to establish a local organization or to be a member of a joint local organization for emergency management in accordance with the state comprehensive emergency management plan and program Each local organization or joint local organization for emergency management shall perform emergency management functions within the territorial limits of the political subdivision within which it is organized, and, in addition, shall conduct such functions outside of such territorial limits as may be required pursuant to the provisions of this chapter.

RCW 38.52.070(1) (emphasis added). Reasonably read, RCW 38.52.080(1) maintains the rights and privileges of those who are rendering emergency aid within the scope of their employment but outside the territorial boundaries of their political subdivision (1) in response to a mutual aid agreement, or (2) in response to their employer's order as part of an emergency management plan response. We find no conflict.

CONCLUSION

We affirm the trial court and the Court of Appeals, and remand for further proceedings among the remaining parties consistent with this opinion. We grant Yakima County's request for reasonable fees under RAP 18.1 and costs under RAP 14.2.

WE CONCUR:

1 "Whenever the employees of any political subdivision are rendering outside aid pursuant to the authority contained in RCW 38.52.070 such employees shall have the same . . . privileges . . . as if they were performing their duties in the political subdivisions in which they are normally employed." RCW 38.52.080.

2 Former RCW 38.52.090 was substantially replaced by RCW 38.52.091 in 1997. See Laws of 1997, ch. 195, § 1.

3 The county asserts, and the estate does not refute, that the Yakima fire districts are independent government entities such as those organized under Chapter 52.02 RCW, and not subdivisions of other government entities. We assume without deciding that this is true.

4 Other mutual aid agreements submitted by the estate are inapplicable. Several emergency management services in and around Yakima have entered into a mutual aid agreement to provide assistance to one another in case of "mass casualty incidents, multiple emergencies, or medical responses beyond the capabilities of local agencies." CP at 642. Even assuming the two fire departments are bound by this (difficult to determine in the absence of full signature pages), single dive rescues were not covered, and Yakima County itself is not a signatory to this agreement.

5 The estate also argues that WAC 118-04-080, which provides for the automatic registration of government employees who are required to perform emergency duties as a normal part of their job, preserves Hauber's RCW 41.26.281 rights when acting as an S&R volunteer. We disagree. The regulation merely facilitates registration for state employee emergency personnel and directs which compensation plan will cover injuries. Cf. *Hauber v. Yakima County*, 107 Wn. App. 437, 440, 27 P.3d 257 (2001). It does not convert emergency workers under one statute to government employees under another. Other WAC provisions cited do not help the petitioner.

Hauber (Traci), Petitioner, v. County of Yakima, Respondent, No. 71618-8

HAUBER v. COUNTY OF YAKIMA

https://www.leagle.com/decision/200128427P3d257_1271/HAUBER%20v.%20COUNTY%20OF%20YAKIMA

No. 19458-2-III.

27 P.3d 257 (2001)

107 Wash.App. 437

Traci HAUBER, individually, as Personal Representative of the Estate of Rusty Hauber, and as guardian of Tyson Scott Hauber and Tori Lee Hauber, minor children, Appellant, v. COUNTY OF YAKIMA, a political subdivision of the State of Washington, Respondent, Roza Irrigation District, a Washington corporation; and John Does 1 through 10, Defendants.

Court of Appeals of Washington, Division 3, Panel Two.

July 24, 2001.

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- [Citing Case](#)

Attorney(s) appearing for the Case

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SCHULTHEIS, J.

Compensation for an emergency worker who dies while performing emergency services is limited by statute to the benefits allowed under chapter 38.52 RCW. RCW 38.52.190, .260, .290. The chapter prohibits additional recovery from the county that registered the emergency worker or that directed his or her activities. RCW 38.52.190. If, however, a city, county, or state employee performs the emergency duties as a normal part of his or her job, or if the employee is responding under the provisions of a mutual aid agreement, he or she is not covered by the compensation provisions of chapter 38.52 RCW. WAC-118-04-080.

Rusty Hauber was a registered volunteer diver for the Yakima County Search and Rescue team. He was also a City of Yakima fire fighter. While on duty as a fire fighter, Mr. Hauber was called to a search and rescue emergency mission and died while diving. His widow sued Yakima County and other entities. On a motion for summary judgment, the trial court dismissed Ms. Hauber's claims against the county, concluding that chapter 38.52 RCW immunizes the county from any claims other than the benefits afforded by the statute. On appeal, Ms. Hauber contends issues of material fact preclude summary judgment. In particular, she contends the record shows that Mr. Hauber responded to the emergency as an employee of the city and in response to a mutual aid call from the county. We find that the record does not support her claims, and affirm.

FACTS

Pursuant to RCW 38.52.070, the political subdivisions in Yakima County developed the Yakima Valley Comprehensive Emergency Management Plan.¹ The purpose of the plan ^[27 P.3d 259] was to coordinate services to respond to "natural and man-made disasters." Clerk's Papers (CP) at 162. According to the plan, "[l]ocally organized and trained volunteer groups will provide the majority of specialized emergency manpower resources." CP at 258. One of the emergency services created was Yakima County Search and Rescue (S & R), a group of volunteer registered emergency workers under the

supervision and control of the sheriff's office. RCW 38.52.400(1). A subdivision of the S & R is the dive team, whose volunteer members are required to work for an emergency response organization such as a fire or police department.

Mr. Hauber registered as a member of the S & R dive team in 1992 and served as a volunteer on S & R missions from that date until his death. While he was on duty as a fire fighter for the city, Mr. Hauber was on at least one other occasion called out on an S & R mission.

On Saturday morning, March 15, 1997, two divers entered an irrigation siphon in the Roza Irrigation District to clean out debris, including abandoned vehicles. When the divers had not returned to the surface after an hour, an assistant manager for the irrigation district called 911. The 911 dispatcher called Yakima County Fire District 5 just before 11 a.m. and reported the incident. Fire District 5 then called the county sheriff's office and requested the S & R dive team to respond. The dive team leader was George Town, a sergeant in the county sheriff's office. Sergeant Town began calling the members of Mr. Hauber's dive team. He called Mr. Hauber's home and was told by Ms. Hauber that Mr. Hauber was on duty at the city fire station. When Sergeant Town called the fire station, he asked Mr. Hauber's supervisor, Battalion Chief Richard Andring, if Mr. Hauber could go on the dive. Chief Andring asked if this was a formal request. Sergeant Town said yes and Chief Andring gave permission for Mr. Hauber to respond.

Mr. Hauber left in his personal vehicle, picked up his diving gear at his home, and drove to the siphon. He met with another member of his dive team, J.R. Mestaz, at around 12:30 P.M. and they entered the siphon in their dive suits to attempt to recover the bodies of the other divers. Mr. Hauber and Mr. Mestaz agreed to return to the surface in 30 minutes. In less than that time, the crew on shore noticed that air bubbles had ceased to appear, and backup divers were sent to find out what happened. The backup divers first brought up Mr. Mestaz and then Mr. Hauber, who was declared dead about an hour later. Mr. Mestaz died two or three days later.

Ms. Hauber, as the personal representative of her husband's estate, received federal benefits for the line-of-duty death of a fire fighter and state Department of Labor and Industries death benefits. In May 1997 she filed a claim pursuant to chapter 38.52 RCW for damage to Mr. Hauber's diving suit. The claim form stated that the claimant had to be a registered emergency worker pursuant to chapter 38.52 RCW and had to be working under emergency management authority at the time of the damage. The state Emergency Management Division paid the claim in September 1997.

On October 22, 1998, Ms. Hauber filed suit against Yakima County and the Roza Irrigation District for wrongful death and negligence.² The county moved for summary judgment dismissal of all claims against it in May 2000. After a hearing, the court granted the motion and dismissed Ms. Hauber's claims against the county as precluded by chapter 38.52 RCW. Judgment was entered for the county with attorney fees assessed against Ms. Hauber. This appeal followed.

[27 P.3d 260]

DISCUSSION

The question before this court is whether the trial court erred in concluding as a matter of law that Mr. Hauber was not working as a city fire fighter responding to a mutual aid request at the time of his death, but was an emergency worker volunteering for the county S & R team. If Mr. Hauber was an emergency worker, then his survivors could not recover anything from the county beyond the compensation provided in chapter 38.52 RCW. RCW 38.52.190. No Washington cases interpret or apply this provision.

The Washington Emergency Management Act, chapter 38.52 RCW, was enacted by the Legislature to ensure administration of state and federal programs providing preparation for disasters, to preserve the lives and property of the people of the state, and to ensure adequate support for search and rescue operations. RCW 38.52.020(1). To those ends, the statute authorizes the creation of local organizations for emergency management; provides for mutual aid among the political subdivisions of the state; and provides compensation for emergency workers who suffer injury, economic harm, or death. RCW 38.52.020(1)(a), (c), (d). An emergency worker is defined by the statute as any person (1) registered with a local emergency management organization or the department of community development and who holds an identification card for the purpose of engaging in authorized emergency management activities; or (2) employed by the state, city, county, or town who is called upon to perform emergency management activities. RCW 38.52.010(4).

Yakima County's S & R team was created pursuant to the comprehensive emergency management plan and the team was placed under the supervision of the sheriff's office. Mr. Hauber registered as an emergency worker in 1992 and received an identification card. RCW 38.52.010(4). The director of the Yakima Valley Office of Emergency Management declared that Mr. Hauber was properly registered and carrying a valid card on the day he died. Ms. Hauber argued that Mr. Hauber's card was valid only for three years and was never re-issued, but the witness supporting this assertion also stated that although cards are usually re-issued every

three years, they remain valid beyond that time because the holder's number remains the same. Even viewing the evidence in the light most favorable to Ms. Hauber— as we must in review of a summary judgment—we find no real dispute that Mr. Hauber was a properly registered emergency worker and a member of the county S & R team. CR 56; *DeYoung v. Providence Med. Ctr.*, [136 Wn.2d 136](#), 140, [960 P.2d 919](#) (1998).

Compensation is provided to an emergency worker for any injury or death arising out of and occurring in the course of his or her activities as an emergency worker. RCW 38.52.260. The amount of the emergency worker's compensation will be no greater than the amount allowable under the Workers' Compensation Act, chapter 51.32 RCW. RCW 38.52.290. If the emergency worker is eligible for benefits under another compensation plan, and receives those benefits, then he or she will not receive compensation under chapter 38.52 RCW. RCW 38.52.340. However, if the compensation from another plan is less than would have been available under chapter 38.52 RCW, the emergency worker is entitled to receive the deficiency under this chapter. RCW 38.52.340.

In order to qualify for compensation under chapter 38.52 RCW, the emergency worker must have been participating in an authorized mission under the direction and control of an authorized official. WAC 118-04-300(2). "Mission" is defined as "a distinct assignment of personnel and equipment to achieve a set of tasks related to an incident, emergency, disaster, or search and rescue operation that occurs under the direction and control of a local authorized official." WAC 118-04-060(10). The S & R dive on March 15, 1997 clearly qualified as a mission for the purposes of chapter 38.52 RCW. Two ways an official is "authorized" are (1) if he or she is recognized in a local comprehensive emergency management plan as an S & R official, or (2) if he or she is the chief law enforcement official of a county, city, or town. WAC 118-04-060(1). Sergeant George Town of the county sheriff's department

[27 P.3d 261]

was the dive team leader and was duly authorized to direct the mission on March 15, 1997.

Employees of the state or any political subdivision are not eligible for compensation as emergency workers if, during an emergency, "they are performing their normal duties in the geographic area they are normally assigned to work or in another geographic area under the provisions of a mutual aid agreement." WAC 118-04-080(2)(b). Whether a particular registered emergency worker is entitled to compensation under chapter 38.52 RCW is crucial to the application of the statute's limited immunity provision:

Except as provided in this chapter, an emergency worker and his dependents shall have no right to receive compensation from the state, from the agency, from the local organization for emergency management with which he is registered, or from the county or city which has empowered the local organization for emergency management to register him and direct his activities, for an injury or death arising out of and occurring in the course of his activities as an emergency worker.

RCW 38.52.190. Similar to the compromise of rights found in Washington's Industrial Insurance Act, Title 51 RCW, the emergency management act ensures compensation for claims that have no common law liability, in exchange for an emergency worker's lower rate of recovery. *See Dennis v. Dep't of Labor & Indus.*, [109 Wn.2d 467](#), 469, [745 P.2d 1295](#) (1987) (workers' compensation). The emergency worker is guaranteed sure and certain relief, while the local organization for emergency management is protected from liability beyond the compensation provided in the statute. *Id.* at 470, [745 P.2d 1295](#); RCW 38.52.190.

In this case, there is no dispute that Mr. Hauber was participating in an authorized mission at the time of his death. The pivotal question is whether he participated as a fire fighter doing his normal duties in his normal geographic area or responding to a mutual aid request, or whether he participated as an emergency worker registered with the S & R dive team.

I. Normal duties in the normal geographic work area. In response to the county's motion for summary judgment, Ms. Hauber argued that diving was one of Mr. Hauber's normal duties as a city fire fighter. Mr. Hauber was a member of the fire department's Technical Rescue Team. Ms. Hauber submitted the team's training materials on still water and swift water rescue to show that Mr. Hauber was expected to use his diving skills in water rescue for the city. These materials do not support her case, however. Diving is not included as a technical skill for the fire department rescue team. At one point in the still water rescue manual it states, "we are not dive team people," and the description of the swift water rescue techniques does not mention diving. CP at 612, 618. Mr. Hauber never dived for the fire department. The one other time he dived while he was on duty at the fire department was when he participated in another S & R dive team mission. He owned his diving equipment and he kept it either at home or in his private car.

Ms. Hauber admits that the Roza Canal where Mr. Hauber lost his life is outside the city fire department's jurisdiction. Although she contends it was not uncommon for him to respond to a mutual aid request in that area—pursuant to the mutual aid agreement among the city and county fire departments—she produces no evidence that the Roza Canal was in his normal geographic work area. In short, Ms. Hauber fails to bring forth evidence to create a question of fact

regarding Mr. Hauber's duties as a city fire fighter. *DeYoung*, 136 Wash.2d at 140, 960 P.2d 919. She provides no specific evidence that Mr. Hauber's normal work duties included diving outside the city limits.

II. Outside the normal geographic work area, but in response to a mutual aid agreement. Ms. Hauber contends Mr. Hauber responded to the March 1997 emergency pursuant to the city fire department's mutual aid agreement with county Fire District 5. She also argues that the Yakima Valley Comprehensive Emergency Management Plan constitutes a mutual aid agreement between the city and the county.

[27 P.3d 262]

The record shows that the city fire department entered into mutual aid agreements with several counties for emergency medical services and with cities and towns in Yakima County for fire suppression and emergency medical services. These mutual aid agreements generally complied with former RCW 38.52.090(2) (1995), which required a written agreement containing certain provisions.³ These agreements do not, however, provide for anything other than fire suppression and emergency medical services. No search and rescue, water rescue, or diving activities are included in the agreements.

Further, Ms. Hauber provides no credible evidence that Fire District 5 actually requested mutual aid from the city fire department. She presents dispatch records showing a 911 call that indicates Fire District 5 requested mutual aid from the city fire department, but she fails to explain why the records show that the request came at 2:52 P.M., four hours after the original 911 call was received by Fire District 5 and half an hour after Mr. Hauber was declared dead. The battalion chief of Fire District 5 stated that he did not initiate a mutual aid call to the city fire department, but that he asked the dispatcher to notify the county sheriff's office that the S & R team was needed.

Outside the mutual aid agreements for emergency medical services and fire suppression, Ms. Hauber presents no other documents that constitute mutual aid agreements relevant to this action. As the trial court found, the Yakima Valley Comprehensive Emergency Management Plan is not a mutual aid agreement. The plan provides a framework for joint operation of emergency services in the event of "natural disaster and man-caused disaster." CP at 152. One of the duties of the plan's emergency services council is to "review and recommend for adoption emergency services and mutual aid plans and agreements and such resolutions and rules and regulations as are necessary to implement such plans and agreements." CP at 150. Services provided to the cities and towns participating in the plan include coordination of operational activities and plans; effective utilization of resources within and outside the Yakima Valley; recruitment of volunteers

and compensation for their injuries; and public information and warning programs. The clear intent of the plan is to coordinate and fund emergency services among the political subdivisions of the Yakima Valley area. It provides no promises exchanged for promises on specific mutual aid terms that would constitute a binding mutual aid agreement. *See Higgins v. Egbert*, 28 Wn.2d 313, 317-18, 182 P.2d 58 (1947) (bilateral contract formation).

A defendant is entitled to summary judgment when he or she shows an absence of evidence supporting an issue material to the plaintiff's case. *Las v. Yellow Front Stores, Inc.*, 66 Wn.App. 196, 198, 831 P.2d 744 (1992). After the defendant challenges the sufficiency of the evidence regarding an essential element, the inquiry shifts to the plaintiff, who must set forth specific facts showing that a genuine issue exists. *Young v. Key Pharmaceuticals, Inc.*, 112 Wn.2d 216, 225-26, 770 P.2d 182 (1989). Ms. Hauber fails to provide specific evidence that Mr. Hauber responded to the S & R dive team mission as a city fire fighter doing his normal duties in his normal geographic work area or as a city fire fighter complying with a mutual aid agreement. Consequently, the trial court did not err in granting the county's motion for summary judgment on this basis. CR 56(c); *Kruse v. Hemp*, 121 Wn.2d 715, 722, 853 P.2d 1373 (1993).

Alternatively, Ms. Hauber contends she is not subject to the immunity of RCW 38.52.190 because that provision conflicts with her rights under RCW 38.52.080. According to RCW 38.52.080(1),

[27 P.3d 263]

[w]henever the employees of any political subdivision are rendering outside aid pursuant to the authority contained in RCW 38.52.070 such employees shall have the same powers, duties, rights, privileges, and immunities as if they were performing their duties in the political subdivisions in which they are normally employed.

Ms. Hauber contends Mr. Hauber was in effect a "loaned servant" for the county, and pursuant to RCW 41.26.281, he maintained a right to sue the borrowing employer for the excess of his damages over the amount he received from workers' compensation.⁴ This argument is unpersuasive.

When two statutes appear to conflict, the more specific statute prevails. *In re Estate of Kerr*, 134 Wn.2d 328, 337, 949 P.2d 810 (1998). RCW 38.52.080(1) guarantees city and county employees that they will maintain their general duties and rights whenever they render aid outside their normal employment. RCW 38.52.190, however, specifically limits the emergency worker's compensation to what is provided in the chapter. The specific nature of this provision

preponderates over the general rights found in RCW 38.52.080(1). Moreover, Mr. Hauber was not a "loaned servant" because no employment relationship existed between him and the county. *See Smick v. Burnup & Sims*, 35 Wn.App. 276, 277-78, 666 P.2d 926(1983). By all accounts, Mr. Hauber was a volunteer for the S & R dive team. Ms. Hauber presents no evidence to show that Mr. Hauber consented to an employment relationship with the county when he responded to the S & R mission. *Id.* at 278,666 P.2d 926 (the test for an employment relationship for the purposes of workers' compensation); *see also Jackson v. Harvey*, 72 Wn.App. 507, 515, 864 P.2d 975 (1994). Summary judgment was appropriate on this basis as well.

ATTORNEY FEES AND COSTS

Yakima County requests reasonable attorney fees under RAP 18.1 and costs under RAP 14.2. As the prevailing party on appeal, the county is entitled to statutory attorney fees and costs. RAP 14.2, 14.3, 18.1.

Affirmed.

BROWN, A.C.J., and KATO, J., concur.

Foot Notes

1. Former RCW 38.52.070(1) (1986) provided in part that: Each political subdivision of this state is hereby authorized and directed to establish a local organization for emergency management in accordance with the state emergency management plan and program.... Each local organization for emergency management shall perform emergency management functions within the territorial limits of the political subdivision within which it is organized, and, in addition, shall conduct such functions outside of such territorial limits as may be required pursuant to the provisions of this chapter.
2. The complaint is not contained in the record.
3. Former RCW 38.52.090 was repealed and RCW 38.52.091 was created effective July 27, 1997. Laws of 1997, ch. 195, § 1. Ms. Hauber contends the statute's writing requirements apply only to mutual aid agreements between states, noting that the "Authorization" provision specifically relates only to the constitutional support for compacts with another state. The statute clearly provided, however, that all arrangements must comply with the requirements of the two "compacts" contained in the provision, one for civil defense and disaster, and the other for mutual aid. Former RCW 38.52.090(2) (1995).
4. Under RCW 41.26.281, any member of the Washington Law Enforcement Officers' and Fire Fighters' Retirement System Act who has been injured by the negligent act or omission of a governmental

employer may receive benefits under the statute and may sue the employer for any excess of damages over the benefits.

Supreme Court of the State of Washington

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Opinion Information Sheet

Docket Number: 71618-8
Title of Case: Traci Hauber
v.
County of Yakima
File Date: 10/31/2002
Oral Argument Date: 06/13/2002

SOURCE OF APPEAL

Appeal from Superior Court,
Yakima County;
98-2-02627-7
Honorable Michael Schwab, Judge.

JUSTICES

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Concurring: Gerry L. Alexander
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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

TRACI HAUBER, individually, as)
Personal Representative of the Estate)
of Rusty Hauber, and as Guardian of)
Tyson Scott Hauber and Tori Lee)
Hauber, minor children,)
)
Petitioner,)
)
v.) No. 71618-8
)
YAKIMA COUNTY, a political)
subdivision of the State of Washington,)
)
Respondent,) En Banc
)
and)
)
ROZA IRRIGATION DISTRICT, a)
Washington corporation, and JOHN)
DOES 1 through 10,)
)
Defendants.) Filed October 31, 2002
)

CHAMBERS, J. A total of six underwater divers were involved in a tragedy; four died. Two divers employed by the Roza Irrigation District drowned while attempting to clear abandoned auto debris from a half-mile long underground siphon. Two rescue divers responded after the first two divers failed to surface. The two rescue divers also failed to return to the surface, and two more divers recovered the rescue divers. We are asked to determine if Yakima County has statutory immunity against suits brought by Emergency Search and Rescue volunteers who are also professional fire fighters. We conclude that under the facts of this case, the county is entitled to immunity and affirm the trial court and the Court of Appeals.

FACTS

Rusty Hauber, a city of Yakima fire fighter and registered emergency search and rescue (S&R) dive team volunteer, was one of the rescue divers who died during the rescue mission in the Roza Canal. Hauber had been a Yakima city fire fighter since 1996, and a registered member of Yakima County S&R since 1992. Hauber died attempting to rescue John Eberle and Marty Rhode who were privately employed by the Roza Irrigation District to clean rubbish and abandoned cars out of a deep irrigation canal. It is not unusual for abandoned vehicles to be driven into the canal and collect in siphons that carry the water underground to depths that exceed 100 feet.

The Roza Irrigation District must regularly clear debris from siphons. Eberle and Rhode entered the Roza Canal near Zillah, Washington. They did not surface when planned, and the district called 911. The 911 dispatcher alerted the local fire department, which forwarded the call to the Yakima County S&R coordinator, County Sheriff's Deputy George Town.

Deputy Town determined that an S&R dive team response was needed and summoned members of the Yakima County S&R dive team for an emergency mission. After first trying Hauber at home, he reached Hauber on duty at Yakima Fire Station One. Hauber requested and received permission from his battalion chief to respond to the call. The battalion chief first confirmed that there was a formal request for Hauber's assistance. Hauber offered to go off duty, but the chief declined, saying something like; 'You are going as a Fire Department employee. This is a mutual aid call. You will represent the fire department.' Clerk's Papers (CP) at 606.

After returning home to retrieve his diving equipment, Hauber met the S&R dive team at the Roza canal siphon near Zillah, which is outside Hauber's fire fighting district. Hauber and another S&R diver, police officer J.R. Mestaz, entered the canal siphon about an hour later. Not long afterwards, observers on the shore saw the divers' lights wink out; a minute later, air bubbles ceased to appear. Two backup divers were sent in, and both S&R divers were recovered. Hauber was pronounced dead at the scene, Mestaz died in the hospital three days later. Rhode's and Eberle's bodies were retrieved the next day.

A year later Hauber's estate and widow (collectively, the estate) filed a wrongful death suit against Yakima County and the Roza Irrigation District. The estate contends, among other claims, that there was inadequate planning, equipment, and safety preparation for the dives given the temperature, visibility, current, depth, and confined space within the canal siphon. Because the rescue was started long after the air carried by Rhode and Eberle would have been exhausted, the estate contends the mission should have been treated as a body recovery. The county moved for and received dismissal of all claims based on statutory immunity under RCW 38.52.190. The trial court judge certified this case for immediate review under RAP 2.3(b) and stayed the claims against Roza Irrigation District pending the outcome of this appeal. The Court of Appeals affirmed the trial judge, finding as a matter of law that the county was entitled to statutory immunity. *Hauber v. Yakima County*, 107 Wn. App. 437, 27 P.3d 257(2001). We granted review, and affirm.

Analysis

Summary judgment is reviewed de novo with all inferences taken in favor of the nonmoving party. *Reid v. Pierce County*, 136 Wn.2d 195, 201, 961 P.2d 333 (1998). Ultimately, only one issue is before this court: whether Yakima County is entitled to immunity.

S&R volunteers are entitled by statute to compensation for injury or death arising out of volunteer missions. RCW 38.52.260, .010(4).

Compensation is calculated according to the Workers' Compensation Act, chapter 51.32 RCW. RCW 38.52.290. The mission must be a distinct assignment 'to achieve a set of tasks related to an incident . . . or search and rescue operation that occurs under the direction and control of a local

authorized official.' WAC 118-04-060(10). Deputy Town was such an official, and there is no dispute that the rescue attempt was such a mission. See CP at 561-62.

S&R volunteers are barred by statute from bringing suit against 'the state, . . . the agency, . . . the local organization for emergency management . . . , or . . . the county or city . . . for an injury or death arising out of . . . activities as an emergency worker.' RCW 38.52.190. The legislature clearly intended to forge a compromise similar to the one in the Industrial Insurance Act, Title 51 RCW. The S&R volunteer is assured sure and certain relief; the local emergency management organization enjoys immunity from tort claims by volunteers for their injuries.

While the Industrial Insurance Act immunizes most employers from job related negligence suits, fire fighters and police officers, because of the vital and dangerous nature of their work, are provided extra protection and are allowed to both collect workers' compensation and bring job related negligence suits against their employers. RCW 51.04.010, RCW 41.26.281. If Hauber had been killed as a fire fighter, he might have had a negligence suit against his employer. In effect, the estate argues that Yakima County has stepped into the shoes of Hauber's employer for the purposes of this immunity waiving statute, and Hauber is therefore entitled to sue the county.

Local governments and emergency management organizations, such as fire departments and sheriff's offices, may formally enter into various types of agreements, such as mutual aid agreements and emergency management plans, to respond to each other's emergencies. See generally RCW 38.52.070; chapter 118-30 WAC. Workers rendering 'outside aid' under these agreements are entitled to all of the statutory protections they would normally enjoy. RCW 38.52.080.1

Since one of those statutory protections enjoyed by fire fighters is the right to sue their own employers for negligence resulting in on the job Injuries, the estate argues that statutory protection must transfer by act of statute and apply to waive the immunity that would otherwise be enjoyed by the county under RCW 38.52.190. We disagree.

Hauber was both an S&R volunteer and a fire fighter. If Hauber had responded to the call as a fire fighter or pursuant to a mutual aid agreement, he may have been entitled to bring suit against the city for negligence under RCW 41.26.281 by application of RCW 38.52.080. If he responded as an S&R volunteer, the county has immunity pursuant to RCW 38.52.190.

We find that there are two ways the estate could establish that Hauber was acting as a fire fighter at the time of his death: (1) if he was acting within his regular duties within the normal geographic area, or (2) if he responded pursuant to a mutual aid agreement. We examine each in turn.

Regular Duties

First, the estate argues that diving was one of Hauber's normal duties as a city fire fighter. Hauber was a member of the fire department's Technical Rescue Team, which is trained to do still water and swift water rescue. However, diving is not a normal duty of the Yakima City Fire Department. The estate does provide some evidence that underwater and enclosed space rescue may have been performed by Yakima fire fighters, which

may have been sufficient to overcome summary judgment had Hauber's death occurred within the fire district on a fire fighting mission. We need not decide this because Hauber fails to meet the second prong of the test; it is undisputed that the rescue at Roza Irrigation District was 20 miles outside the Yakima City Fire Department's territorial jurisdiction. Hauber was not performing his regular duties within his normal geographic work area; therefore, we reject this argument and turn to the estate's other contentions.

Mutual Aid Agreements

Second, the estate argues that Hauber was acting pursuant to a mutual aid agreement, and therefore his right to sue was preserved despite any contrary statutory authority. Fire fighters injured while responding to calls outside their normal jurisdiction pursuant to a mutual aid agreement lose none of their regular privileges. RCW 38.52.080(1). We have carefully reviewed the purported mutual aid agreements and conclude that none applies to these facts.

A mutual aid agreement is an arrangement for reciprocal emergency management aid and assistance between local emergency management organizations and public and private agencies in specific circumstances. Former RCW 38.52.0902 (providing that mutual aid and interlocal agreements will be in accordance with statutory requirements and actual agreements contracted between parties). The specific type of mutual aid promised must be addressed. *Id*; RCW 38.52.091; see also RCW 39.34.030 (requiring agreements between local governments to state the parties, duration, structure, purpose, financing, methods, and the assistance to be provided). The Legislature clearly intended for such agreements to be formal and specific. See also WAC 118-30-060 (detailing requirements for emergency management plans and mutual aid plans). Governmental entities may enter into different agreements to render aid to one another under specific circumstances. RCW 38.52.070. For example, many of the fire departments and cities in the Yakima Valley have entered into a formalized Emergency Medical Mutual Aid Agreement to provide emergency firefighting, medical, and hazardous waste response assistance to one another. CP at 644-67. No search and rescue, water rescue, or diving activities are included in the agreement. Even if there had been, Yakima County Fire District No. 5 (the district in which the Roza incident took place and a signatory to the agreement) did not request mutual aid from Hauber's fire department; the county S&R dispatcher requested Hauber's participation in an emergency mission. Fire districts are independent governmental entities, and agreements between the fire departments do not bind the counties generally.³

The estate argues that the Yakima Valley Comprehensive Emergency Management Plan (YVCEMP) is a mutual aid agreement. We disagree. The YVCEMP pledges mutual assistance and coordinates responses to natural and man-made disasters between most governmental agencies in Yakima County in the case of acute overwhelming emergencies, such as nuclear war and volcanic eruption. In fact, the YVCEMP specifically references mutual aid plans and agreements among its signing members, undercutting the estate's argument that it is itself a mutual aid agreement. It states that the Emergency Services Council (an organizational unit created by the plan) 'shall review and recommend for adoption emergency services and mutual aid plans and agreements . . . as are necessary to implement such plans and agreements.' CP at 150.

Mutual aid agreements, by contrast, are specific contracts between local emergency management organizations and public and private agencies agreeing to assist one another in specific circumstances. See former RCW 38.52.090(1) (providing that mutual aid will be in accordance with agreements and directing the development of a form contract). The type of mutual aid promised must be addressed. *Id.* Further, binding mutual aid agreements pledge reciprocal aid; the YVCEMP contains no promise for promise exchanges. See, e.g., *Higgins v. Egbert*, 28 Wn.2d 313, 317-18, 182 P.2d 58 (1947); accord former RCW 38.52.090, RCW 38.52.091; RCW 39.34.030.4 There is no relevant mutual aid agreement. Rusty Hauber gave his life to save another. If police and fire fighters are to receive the same protections for their voluntary services as they receive for their normal duties, statutory reform or a formal mutual aid agreement is required. It may well be that law enforcement officers and fire fighters, because of the risks unique to their work, should be accorded this extra protection when Responding to county S & R requests. But to provide such protection to Hauber, the S&R must have entered into formal mutual aid agreements with his employer. It did not. Because we find no mutual aid agreement existed, summary judgment was appropriate.

We recognize that Hauber's battalion chief believed that Hauber was responding to a mutual aid call. Unfortunately, the chief's subjective belief is not enough to impose liability upon the county. The estate argues that the fire department log noted Hauber as out on a mutual aid call. This is likely due to a different usage of the term among the firefighting Professionals involved who apparently used 'mutual aid' to refer to any request for assistance from outside their jurisdiction, rather than responses pursuant to a formalized mutual aid agreement. See CP at 42 (Dep. of Rocky Dean Willette).

We therefore hold that Hauber was not responding pursuant to a mutual aid agreement.⁵

Potential Statutory Conflict

The estate argues that RCW 38.52.080(1) (which guarantees that city and county employees retain their rights and privileges whenever they render aid outside the scope of their normal employment) and RCW 38.52.190 (which limits emergency workers' claims to workers' compensation) are in conflict. We disagree. If Hauber had been responding under a mutual aid agreement to fight a fire or provide other prior-agreed-upon emergency services in the Zillah area, and he was injured because of the local fire department's negligence, he would have a viable claim under RCW 38.52.080(1).

If RCW 38.52.080(1)'s use of 'outside' is understood to be geographic, there is no conflict. RCW 38.52.080(1) says:

Whenever the employees of any political subdivision are rendering outside aid pursuant to the authority contained in RCW 38.52.070 such employees shall have the same powers, duties, rights, privileges, and immunities as if they were performing their duties in the political subdivisions in which they are normally employed.

(Emphasis added.) The preceding statute also uses 'outside' geographically:

Each political subdivision of this state is hereby authorized and directed to establish a local organization or to be a member of a joint local organization for emergency management in accordance with the state comprehensive emergency management plan and program Each local organization or joint local organization for emergency management shall perform emergency management functions within the territorial limits of the political subdivision within which it is organized, and, in addition, shall conduct such functions outside of such territorial limits as may be required pursuant to the provisions of this chapter.

RCW 38.52.070(1) (emphasis added). Reasonably read, RCW 38.52.080(1) maintains the rights and privileges of those who are rendering emergency aid within the scope of their employment but outside the territorial boundaries of their political subdivision (1) in response to a mutual aid agreement, or (2) in response to their employer's order as part of an emergency management plan response. We find no conflict.

Conclusion

We affirm the trial court and the Court of Appeals, and remand for further proceedings among the remaining parties consistent with this opinion. We grant Yakima County's request for reasonable fees under RAP 18.1 and costs under RAP 14.2.

WE CONCUR:

1 'Whenever the employees of any political subdivision are rendering outside aid pursuant to the authority contained in RCW 38.52.070 such employees shall have the same . . . privileges . . . as if they were performing their duties in the political subdivisions in which they are normally employed.' RCW 38.52.080.

2 Former RCW 38.52.090 was substantially replaced by RCW 38.52.091 in 1997. See Laws of 1997, ch. 195, sec. 1.

3 The county asserts, and the estate does not refute, that the Yakima fire districts are independent government entities such as those organized under Chapter 52.02 RCW, and not subdivisions of other government entities. We assume without deciding that this is true.

4 Other mutual aid agreements submitted by the estate are inapplicable. Several emergency management services in and around Yakima have entered into a mutual aid agreement to provide assistance to one another in case of 'mass casualty incidents, multiple emergencies, or medical responses beyond the capabilities of local agencies.' CP at 642. Even assuming the two fire departments are bound by this (difficult to determine in the absence of full signature pages), single dive rescues were not covered, and Yakima County itself is not a signatory to this agreement.

5 The estate also argues that WAC 118-04-080, which provides for the automatic registration of government employees who are required to perform emergency duties as a normal part of their job, preserves Hauber's RCW 41.26.281 rights when acting as an S&R volunteer. We disagree. The regulation merely facilitates registration for state employee emergency personnel and directs which compensation plan will cover injuries. Cf. Hauber v. Yakima County, 107 Wn. App. 437, 440, 27

P.3d 257 (2001). It does not convert emergency workers under one statute to government employees under another. Other WAC provisions cited do not help the petitioner.