

ORIGINAL

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IN THE SUPREME COURT OF THE STATE OF IDAHO

CITY OF BLACKFOOT;

Petitioner-Appellant,

vs.

GARY SPACKMAN, in his official capacity
as Director of the Idaho Department of Water
Resources, and **THE IDAHO DEPARTMENT
OF WATER RESOURCES;**

Respondents-Respondents,

and

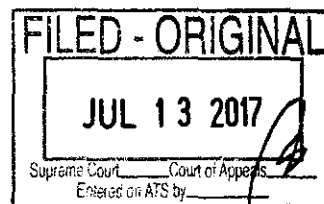
**A&B IRRIGATION DISTRICT, BURLEY
IRRIGATION DISTRICT, MILNER
IRRIGATION DISTRICT, NORTH SIDE
CANAL COMPANY, TWIN FALLS CANAL
COMPANY, AMERICAN FALLS
RESERVOIR DISTRICT #2, and
MINIDOKA IRRIGATION DISTRICT,**

Intervenors-Respondents.

**Supreme Court Docket No. 44207-
2016**

**(Bingham County Case No. CV-2015-
1687)**

**INTERVENOR RESPONDENTS'
A&B IRRIGATION DISTRICT ET
AL.S' REPLY IN SUPPORT OF
MEMORANDUM OF COSTS AND
ATTORNEYS FEES**



**IN THE MATTER OF APPLICATION FOR
PERMIT NO. 27-12261 IN THE NAME OF
THE CITY OF BLACKFOOT.**

COME NOW, Intervenor-Respondents, A&B Irrigation District, Burley Irrigation District, Milner Irrigation District, North Side Canal Company, Twin Falls Canal Company, by and through counsel of record Barker Rosholt & Simpson LLP, and hereby submit this *Reply in Support of Memorandum of Costs and Attorneys Fees*. This *Reply* addresses the *Objection and Memorandum in Support of Objection* (memorandum hereinafter referred to as “*Objection*”) filed by the City of Blackfoot (dated July 6, 2017). For the reasons set forth below, the Court should deny the objection and grant the costs and attorneys fees claimed by the Intervenor consistent with Idaho Code § 12-117(1), I.A.R. 40 and 41, and this Court’s June 20, 2017 Opinion.

REPLY

Contrary to Idaho’s appellate rules the Appellant spends much of its *Objection* asking the Court to reconsider its decision to award the Intervenor attorneys fees in the first place. *Compare* I.A.R. 41 *with* I.A.R. 42. The Appellant did not file a petition for rehearing. Consequently, there is no basis for the Court to reconsider its decision to award the Intervenor’s attorneys fees. The Court should disregard that part of the *Objection* accordingly.

Next, the Appellant alleges the attorneys fees should be disallowed because: 1) they are unreasonable; and 2) the *Thompson Affidavit* did not address the I.R.C.P. 54(e)(3) factors. Each argument is addressed below.

The Appellant insinuates that the Intervenor’s claimed attorneys fees are “unreasonably excessive” and therefore at odds with what is allowed under Idaho Code § 12-117(1). *Objection* at 8. To the contrary, Exhibit A to the *Thompson Affidavit* provides the necessary detail as to the

time spent on responding and participating in the appeal on behalf of the Intervenors. Attorneys with Barker Rosholt & Simpson LLP spent approximately 40 hours in analyzing, researching, briefing, and arguing the appeal. The hours spent on the appeal were reasonable given the issues involved. Indeed, the hours spent on the appeal were less than the hours spent by the attorneys for the Idaho Department of Water Resources (IDWR) in a recent appeal where attorneys fees were awarded as claimed. See Exhibit A to *Amended Affidavit of Garrick L. Baxter in Support of Memorandum of Costs and Fees* (identifying about 77 hours time spent) (*Rangen v. IDWR*, Idaho Supreme Court Docket No. 42722-2015, dated March 16, 2016). Analyzing and writing an appellate brief takes time. Counsel for the Intervenors carefully and efficiently researched and responded as required. The hours spent were reasonable and the charges incurred were not excessive. In sum, the Appellant points to nothing to show that the hours and fees incurred were “unreasonable” or in violation of any provision of Idaho Code § 12-117(1).

Next, the Appellant argues the *Thompson Affidavit* is deficient for not addressing the I.R.C.P. 54(e)(3) factors. Again, the Appellant’s argument is misplaced and fails to recognize the requirements of I.A.R. 41. Nothing in the appellate rule requires a party that is awarded fees to submit an affidavit addressing the Rule 54 factors. Instead, the rule provides that “the claim for attorney fees . . . shall be accompanied by an affidavit setting forth the method of computation of the attorneys fees claimed.” I.A.R. 41. The *Thompson Affidavit* and accompanying Exhibit A describes the time spent on each matter, the hourly rate (total cost divided by time spent), and the total fees claimed. Clearly, the Intervenors’ memorandum of costs and fees follows the appellate rule’s requirements.

Ignoring the applicable rule, the Appellants instead argue that Rule 54(e)(3) applies. *Objection* at 6-7. The Appellant relies upon two decisions addressing attorneys fees at the

district court level. See *Johannsen v. Utterbeck*, 146 Idaho 423 (2008); *Sun Valley Potato Growers, Inc. v. Texas Refinery Corp.*, 139 Idaho 761 (2004). While it is true that a district court must consider the Rule 54 factors, there is no similar obligation on the Supreme Court at the appellate level. Indeed, neither case addressed an award of attorney fees by the Supreme Court pursuant to I.A.R. 41. Hence, the cases are inapplicable to the present matter and provide no meritorious support for the Appellant's *Objection*. The Court should deny the *Objection* accordingly.

However, even if the Court finds that the Rule 54 factors are necessary, the Intervenor has filed the *Declaration of Travis L. Thompson* which sets forth analysis under each referenced factor. The information addresses the deficiencies alleged in the *Objection* and provides additional analysis showing the requested attorneys fees are reasonable and should be awarded as claimed. In sum, the Intervenor respectfully request the Court to deny the Appellant's *Objection* and award the claimed costs and fees.

DATED this 13th day of July, 2017.

BARKER ROSHOLT & SIMPSON LLP



Travis L. Thompson

Attorneys for A&B Irrigation District, Burley Irrigation District, Milner Irrigation District, North Side Canal Company, Twin Falls Canal Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13th day of July, 2017, I served true and correct copies of the foregoing upon the following by the method indicated:

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