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Attorneys for Defendants Gary Spackman and
the Idaho Department of Water Resources

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

D.L. EVANS BANK,

Plaintiff,

vs.

BALLENTYNE DITCH COMPANY,
LIMITED; THOMAS MECHAM RICKS,
GARY SPACKMAN, IN HIS OFFICIAL
CAPACITY AS THE DIRECTOR OF THE
IDAHO DEPARTMENT OF WATER
RESOURCES; AARON RICKS, DIRECTOR
OF BALLENTYNE DITCH COMPANY;
SHAUN BOWMAN, DIRECTOR OF
BALLENTYNE DITCH COMPANY; JOE
KING, DIRECTOR OF BALLENTYNE
DITCH COMPANY; STEVE SNEAD,

Case No. CV-OC-2013-17406

**MOTION AND MEMORANDUM FOR
ATTORNEY FEES**

DIRECTOR OF BALLENTYNE DITCH
COMPANY,

Defendants.

COMES NOW Defendants, the Idaho Department of Water Resources (“IDWR”) and Gary Spackman in his official capacity as the Director of IDWR (collectively referred to herein as “IDWR”), by and through their undersigned attorneys of record, and submit this *Motion and Memorandum for Attorney Fees (“Motion”)*. This *Motion* is supported by *IDWR’s Memorandum in Support of Attorney Fees* and the *Affidavit of Meghan Carter*.

IDWR is entitled to its reasonable attorney fees in this matter. D.L. Evans Bank (“DL Evans”) failed to exhaust its administrative remedies pursuing this case that has no reasonable basis in law or fact. Because the IDWR has been forced to defend against an action that has no reasonable basis in law or fact, IDWR is entitled to an award of its attorneys’ fees pursuant to Idaho Code § 12-117.

BACKGROUND

In 2008, DL Evans entered into a promissory note with Defendant Thomas Mecham Ricks (“Ricks”), which was secured by a deed of trust. *Amended Complaint ¶¶ 11 & 12*. Ricks defaulted on the promissory note and DL Evans initiated foreclosure proceedings. *Amended Complaint ¶¶ 16 & 18*. DL Evans claims the foreclosure of property includes shares in the Ballentyne Ditch Company (“Ballentyne”), entitling DL Evans to receive water from Ballentyne. *Amended Complaint ¶ 21*. Ricks denies DL Evans’ claim. *Answer of Defendant Thomas M. Ricks to Amended Complaint ¶ 21*. Ballentyne refuses to deliver water to the property in

question without a court order. *Answer of Defendants' Ballentyne Ditch Company, Aaron Ricks, Shaun Bowman, Joe King and Steve Snead to Amended Complaint and Re-stated Complaint for Interpleader* ¶ 9.

In 2013, DL Evans petitioned IDWR to force Ballentyne to deliver water to the foreclosed property. Exhibit D, attached to *Affidavit of Chris M. Bromley in Support of Defendant Thomas M. Ricks' Motion and Memorandum for Change of Venue* (Sept. 2, 2014) ("Petition"). IDWR issued a preliminary order ("Order") denying the Petition which became final on June 26, 2013. Exhibit E, attached to *Affidavit of Chris M. Bromley in Support of Defendant Thomas M. Ricks' Motion and Memorandum for Change of Venue* (Sept. 2, 2014). DL Evans commenced this lawsuit on September 25, 2013, and amended its complaint to include IDWR on July 28, 2014. In its *Complaint*, DL Evans asked the Court to issue an injunction or a writ of mandamus to compel IDWR to comply with its statutory duties and force Ballentyne to deliver water to the foreclosed property. *Complaint* at 11. In IDWR's answer it brought to DL Evans' attention that DL Evans did not exhaust its administrative remedies. *IDWR's Answer to Complaint* at 7.

IDWR filed a *Motion to Dismiss* and a hearing on the matter was held February, 19, 2015. This Court issued an order granting IDWR's *Motion to Dismiss*, holding DL Evans failed to exhaust its administrative remedies to obtain judicial review of IDWR's *Order*. *Memorandum Decision and Order on Motions for Summary Judgment*, at 24, Ada County Case No. 2013-17406 (March 18, 2015). The Court noted the majority of issues DL Evans raised against IDWR should have been resolved through reconsideration or appeal of IDWR's *Order* and the Court is without jurisdiction to address DL Evans' mandamus and injunctive relief requests. *Id.* at 25.

APPLICABLE STATUTE

Idaho Code § 12-117(1) provides:

Unless otherwise provided by statute, in any administrative proceeding or civil judicial proceeding involving as adverse parties a state agency or political subdivision and a person, the state agency or political subdivision or the court, as the case may be, shall award the prevailing party reasonable attorney's fees, witness fees and other reasonable expenses, if it finds that the nonprevailing party acted without a reasonable basis in fact or law.

STANDARD OF REVIEW

An award of attorney fees under Idaho Code § 12-117 is not discretionary. *Sunnyside Indus. and Professional Park, LLC v. Eastern Idaho Public Health Dist.*, 147 Idaho 668, 671, 214 P.3d 654, 657 (Idaho App. 2009) (citing *Rincover v. State, Dept. of Fin.*, 132 Idaho 547, 549, 976 P.2d 473, 475 (1999)). Under Idaho Code § 12-117, the Court shall award attorney fees to a prevailing party if the Court finds that the nonprevailing party acted without a reasonable basis in fact or law. Idaho Code § 12-117(1); *In re Estate of Elliott*, 141 Idaho 177, 184, 108 P.3d 324, 331 (2005). The purpose of Idaho Code § 12-117 is two-fold: First, it serves as a deterrent to groundless or arbitrary action; and second, it provides a remedy for persons who have borne unfair and unjustified financial burdens defending against groundless charges. *See Reardon v. Magic Valley Sand and Gravel, Inc.*, 140 Idaho 115, 118, 90 P.3d 340, 343, (2004).

ARGUMENT

- A. IDWR is entitled to attorneys' fees because IDWR is the prevailing party and DL Evans acted without a reasonable basis in fact or law.**

A prevailing state agency shall be awarded reasonable attorney's fees if the nonprevailing party acted without "a reasonable basis in fact or law." Idaho Code § 12-117(1). This sets up a two-part test. First, the Court must determine if IDWR is the prevailing party. Second, the Court must determine if DL Evans acted without "a reasonable basis in fact or law."

IDWR is the Prevailing Party.

In its *Complaint*, DL Evans asked this Court to issue an injunction or a writ of mandamus to compel IDWR to comply with its statutory duties and force Ballentyne to deliver water to the foreclosed property. This Court granted IDWR's *Motion to Dismiss* citing DL Evans' failure to exhaust its administrative remedies. There can be no question IDWR is the prevailing party in this case.

DL Evans acted without a reasonable basis in fact or law.

DL Evans acted without a reasonable basis in fact and law because it pursued this case against IDWR without either seeking reconsideration of IDWR's *Order* or appealing it directly to the district court. DL Evans' *Petition* to IDWR raised the exact issues it brought before this Court in its *Complaint*. IDWR put DL Evans on notice in *IDWR's Answer to Complaint*, that DL Evans had failed to exhaust its administrative remedies, and DL Evans continued to pursue its case against IDWR. An award of attorney's fees under Idaho Code § 12-117 is appropriate where a party cannot point to authority authorizing a court to take jurisdiction of a case. In *Giltner Dairy, LLC v. Jerome County*, the Idaho Supreme Court held that the award of attorney fees to Jerome County under Idaho Code § 12-117 was appropriate where the dairy "could not point to any statute authorizing judicial review." *Giltner Dairy, LLC v. Jerome County*, 145 Idaho 630, 181 P.3d 1238 (2008)(partially overruled by *Neighbors for Responsible Growth v.*

Kootenai County, 147 Idaho 173, 207 P.3d 149 (2009)¹). Similarly, as this Court recognized, DL Evans cannot point to any authority which grants the Court jurisdiction of the matter. Instead of pursuing the administrative remedies available to it, DL Evans brought a separate lawsuit and did not include IDWR until well after the deadlines to pursue those remedies had past. Further, DL Evans pursued the case even after it was informed it failed to exhaust its administrative remedies. This attempt to avoid pursuing administrative remedies is the very type of “groundless or arbitrary” action that Idaho Code § 12-117 was created to serve as a deterrent against. Because DL Evans’ actions in this case lack a basis in law or fact, IDWR is entitled to its attorney fees.

CONCLUSION

The State of Idaho does not as a matter of course request an award of attorney’s fees. The State decided to seek attorney fees here because of the frivolous nature of this action. As this Court recognized, the suit brought against IDWR failed to exhaust administrative remedies. *Memorandum Decision and Order on Motions for Summary Judgment*, at 24. Because IDWR has been forced to expend money and resources to defend against this action even after pointing out the case has no reasonable basis in law or fact, IDWR is entitled to an award of attorneys fees pursuant to Idaho Code § 12-117.

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¹ The award of attorney fees to Respondent Golf Ranch in *Giltner* was subsequently overruled by the Idaho Supreme Court in *Neighbors for Responsible Growth v. Kootenai County*, 147 Idaho 173, 207 P.3d 149 (2009). However, the Court in *Neighbors* did not reverse the award of attorney fees to Respondent Jerome County under Idaho Code § 12-117.

RESPECTFULLY SUBMITTED this 3rd day of April 2015.

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Chief, Natural Resources Division

A handwritten signature in black ink, appearing to read 'Meghan Carter', is written over a horizontal line.

MEGHAN CARTER
JOHN HOMAN
GARRICK L. BAXTER
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Idaho Department of Water Resources

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of April 2015, I caused a true and correct copy of the foregoing document to be filed with the Court and served on the following parties by the indicated methods:

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