

LAWRENCE G. WASDEN
ATTORNEY GENERAL

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

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District Court - SRBA Fifth Judicial District In Re: Administrative Appeals County of Twin Falls - State of Idaho	
NOV 12 2010	
By _____	Clerk
_____	Deputy Clerk

Attorneys for the Respondents/Defendants

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

BLUE LAKES TROUT FARM,)
 INC.,)
)
 Petitioner/Plaintiff,)
)
 vs.)
)
 GARY SPACKMAN, in his official)
 capacity as Interim Director of the Idaho)
 Department of Water Resources,)
 and the IDAHO DEPARTMENT)
 OF WATER RESOURCES,)
)
 Respondents/Defendants.)
 _____)

Case No. CV-WA-2010-19823

**AFFIDAVIT OF GARRICK BAXTER
IN SUPPORT OF RESPONDENTS'
MEMORANDUM OF COSTS AND
ATTORNEY FEES**

STATE OF IDAHO)
) ss.
 County of Ada)

I, GARRICK L. BAXTER, being first duly sworn, depose and say:

1. I am a Deputy Attorney General representing the Respondents in this case. I am a competent adult over the age of eighteen years, and the statements made herein are based upon my own personal knowledge and belief of the events described.

2. An itemization of attorneys' fees, including the date that the services were rendered, the personnel providing the services, the type of service, the time expended, and the total dollar charge, is attached as Exhibit A to this Affidavit. Based upon the review and information described below, to the best of my knowledge and belief, Exhibit A accurately summaries the work this office performed and the time this office expended in defending this matter.

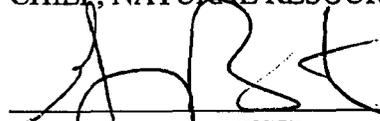
3. The hourly rate set forth in Exhibit A is based upon the policy of the Attorney General as set forth in the Idaho Attorney General's Employee Handbook, and is consistent with the Boise market rate for attorneys with equal years experience and awards in recent cases. A true and correct copy of the Idaho Attorney General's Policy on Recovery of Attorney Fees and Costs is attached as Exhibit B to this Affidavit. The hourly rate for an attorney with 6-10 years experience is \$110.00 per hours. I have practiced law in Idaho for 9 years. Chris Bromley, another Deputy Attorney General representing the Respondents in this case, has practiced law in Idaho for 8 years.

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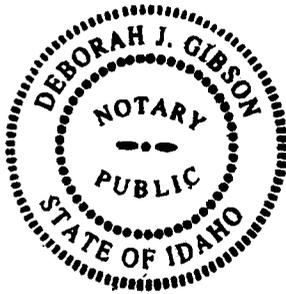
DATED this 12th day of November, 2010.

LAWRENCE G. WASDEN
Attorney General
CLIVE J. STRONG
Deputy Attorney General
CHIEF, NATURAL RESOURCES DIVISION



GARRICK L. BAXTER
Deputy Attorney General
Idaho Department of Water Resources

SUBSCRIBED AND SWORN To before me this 12th day of November, 2010.





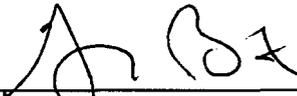
NOTARY PUBLIC FOR IDAHO
Residing at Parma, Idaho
Commission Expires: 8/10/2015

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of November, 2010, I caused a true and correct copy of the foregoing AFFIDAVIT OF GARRICK BAXTER to be filed with the Court and served on the following parties by the indicated methods:

<p><i>Original to:</i> SRBA Court 253 3rd Ave. North P.O. Box 2707 Twin Falls, ID 83303-2707</p>	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Email
<p>Daniel V. Steenson Charles L. Honsinger S. Bryce Farris RINGERT LAW CHARTERED 455 South 3rd P.O. Box 2773 Boise, ID 83701-2773 dan@ringertclark.com clh@ringertclark.com bryce@ringertclark.com</p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
<p>Randall C. Budge Candice M. McHugh Thomas J. Budge RACINE OLSON P.O. Box 1391 Pocatello, ID 83204-1391 rcb@racinelaw.net cmm@racinelaw.net tjb@racinelaw.net</p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
<p>John K. Simpson Travis L. Thompson BARKER ROSHOLT & SIMPSON, LLP P.O. Box 485 Twin Falls, ID 83303 jks@idahowaters.com tlt@idahowaters.com</p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email

<p>Jeffrey C. Fereday Michael C. Creamer Michael P. Lawrence GIVENS PURSLEY LLP P.O. Box 2720 Boise, ID 83701-2720 mcc@givenspursley.com jeffereday@givenspursley.com</p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
<p>Michael S. Gilmore Deputy Attorney General Idaho Attorney General's Office P.O. Box 83720 Boise, ID 83720-0010 (208) 334-2830 mike.gilmore@ag.idaho.gov</p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
<p>Justin May MAY SUDWEEKS & BROWNING LLP 1419 W. Washington Boise, ID 83702 jmay&may-law.com</p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
<p>Robert E. Williams WILLIAMS MESERVY LOTH SPEICH LLP 153 E. Main St. P.O. Box 168 Jerome, ID 83338-0168 rewilliams@cablone.net</p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
<p>Allen Merritt Cindy Yenter IDWR –Western Region 1341 Fillmore St., Ste 200 Twin Falls, Id 83301-3033 allen.merritt@idwr.idaho.gov cindy.yenter@idwr.idaho.gov</p>	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email



GARRICK L. BAXTER
Deputy Attorney General

EXHIBIT A

IDAHO ATTORNEY GENERAL'S OFFICE
 Natural Resources Division
 Idaho Department of Water Resources
 322 East Front Street
 P.O. Box 83720
 Boise, ID 83720-0098

RE: WRIT OF MANDATE, BLUE LAKES TROUT FARM, INC. v. IDWR

Nov. 12, 2010
 CV-2010-19823

ATTORNEY FEES

Date	Atty	Description	Time	Total
10/12/2010	GLB	Contact SRBA Court to request copies of Writ documents filed by Blue Lakes; Review <i>Order Denying Petition for Alternative Writ of Mandate</i> ; Conf. with Client.	1.2	132.00
10/12/2010	CMB	Service by Blue Lakes with <i>Complaint</i> and Writ documents; review Writ documents.	.3	33.00
10/13/2010	GLB	Review <i>Complaint</i> and Writ documents; Research <i>Answer</i> .	2.3	253.00
10/13/2010	CMB	Receipt of Clear Springs support memorandum; review of documents.	.2	22.00
10/21/2010	CMB	Review and discuss Blue Lakes and Clear Springs filings with GLB.	1.0	110.00
10/21/2010	GLB	Conf. with CMB.	.3	33.00
10/24/2010	GLB	Research and draft <i>Answer</i> ; Research and draft <i>Memorandum in Opposition to Application for Peremptory Writ of Mandate</i> .	3.5	385.00
10/25/2010	GLB	Research and draft <i>Memorandum in Opposition to Application for Peremptory Writ of Mandate</i> .	4.5	495.00
10/26/2010	GLB	Revise <i>Motion in Opposition to Peremptory Writ of Mandate</i> ; Draft <i>Affidavit of Garrick Baxter</i> ; Conf. with CMB.	6.4	704.00
10/26/2010	CMB	Review and discuss IDWR <i>Answer</i> and <i>Memorandum in Opposition to Application for Peremptory Writ of Mandate</i> .	1.0	110.00
10/27/2010	GLB	Revise and finalize <i>Answer</i> ; Finalize <i>Memorandum in Opposition to Application to Peremptory Writ of Mandate</i> ; Revise and finalize <i>Affidavit of Garrick Baxter</i> ; Conf. with Client.	5.1	561.00
10/28/2010	CMB	Review <i>Affidavit of Charles Brockway</i> ; Discuss affidavit with Allan Wylie; Prepare <i>Affidavit of Allan Wylie</i> .	1.0	110.00
10/28/2010	CMB	Review <i>Second Affidavit of Bryce Farris</i> and Blue Lakes' <i>Response Memorandum</i> ; Conf. with GLB.	.7	77.00
10/28/2010	GLB	Prepare for hearing; Review <i>Affidavit of Charles Brockway</i> ; Review <i>Second Affidavit of Bryce Farris</i> and	2.0	220.00

EXHIBIT A*Blue Lakes' Response Memorandum; Conf. with CMB.*

10/28/2010	GLB	Travel to Twin Falls; Present IDWR argument before Court; Return travel to Boise.	6.5	715.00
10/28/2010	CMB	Travel to Twin Falls; Attend argument; Assist with argument; Return travel to Boise.	6.5	715.00
Total Fees:			<u>42.50</u>	<u>\$4,675.00</u>

Summary of Attorney Fees

Timekeeper	Hours	Hourly Rate	Total
Garrick L. Baxter	31.80	\$110.00	3,498.00
Chris M. Bromley	10.70	\$110.00	1,177.00

COSTS

Copying Costs: 207 pages (including *Answer, Memorandum in Opposition, Affidavit of Garrick Baxter, Affidavit of Allan Wylie*) x 9 sets = 1863 pages x \$.05 (copy price per page) = \$93.15

Postage for serving *Answer, Memorandum in Opposition, Affidavit of Garrick Baxter* on 10/27/2010: \$4.90 per envelope x 7 = \$34.30.

Postage for serving *Affidavit of Allan Wylie* on 10/28/2010: \$.44 per envelope x 7 = \$3.08

The total cost for postage: \$37.38.

Total costs: \$93.15 copies + \$37.38 postage = \$130.53

EXHIBIT B

19.0 RECOVERY OF ATTORNEY FEES AND COSTS

It is the policy of the OAG to seek the award of attorney fees whenever the State or one of its agencies is a prevailing party in litigation or is otherwise entitled to attorney fees. Additionally, it is the policy of the OAG to seek the maximum recovery of costs available under the appropriate rule or statute. Certain client-agencies may have policies that dictate a waiver of attorney fees.

In litigation, where there is the possibility of an award of attorney fees, the Deputy Attorney General who is counsel of record on the case shall keep accurate time records. It is imperative that all time records be kept on a *contemporaneous* basis and that they be accurate because, at the conclusion of the case, the attorney of record will be required to submit an affidavit to the court stating that the time records submitted are accurate and were made contemporaneously with the work performed.

For those attorneys defending federal civil rights actions, it is important to keep accurate time records, even when the State is not likely to be the prevailing party. The best defense to a plaintiff's request for attorney fees is to show the court the amount of time spent defending the matter. If accurate and contemporaneous time records are not kept, the State cannot present this type of defense when the attorney's fee bill is argued.

Based upon a study of the market rates charged by local firms and fee awards in recent cases, the following hourly rates have been established for this office:

Attorney General	\$175.00 Per Hour
Attorneys with More than Twenty Years' Experience	\$150.00 Per Hour
Attorneys with 11-20 Years' Experience	\$125.00 Per Hour
Attorneys with 6-10 Years' Experience	\$110.00 Per Hour
Attorneys with 0-5 Years' Experience	\$95.00 Per Hour
Law Clerks and Paralegals	\$50.00 Per Hour

Last Change: March 11, 2005