



COMES NOW, the Idaho Department of Water Resources (“IDWR”), and hereby submits *IDWR’s Response to Astorquia’s Motion to Disallow Respondent’s Memorandum of Costs and Attorney Fees*.

## I. BACKGROUND

On May 7, 2013, the Court issued a *Memorandum Decision and Order* (“Order”) in the current case. In the Order, the Court awarded IDWR its attorney fees stating:

The Court finds that [IDWR] is the prevailing party in this matter. The Court further finds that [Astorquia] acted without a reasonable basis in fact or law in pursuing this judicial review proceeding. . . . Therefore, the Court in its discretion finds that an award of attorney fees to [IDWR] is warranted under Idaho Code § 12-117(1).

*Order* at 16.

In response to the award of attorney fees, IDWR filed *Respondent’s Memorandum of Costs and Attorney Fees* (“Memo of Costs”) on May 17, 2013, which detailed the time IDWR spent preparing for this case and associated allowable costs. Petitioner Frank Astorquia (“Astorquia”) filed *Petitioner Astorquia’s Motion to Disallow Respondent’s Memorandum of Costs and Attorney Fees* (“Motion to Disallow”) on June 3, 2013. Astorquia asserts in the Motion to Disallow that the amount of attorney fees requested in the Memo of Costs is not reasonable for two reasons: 1) because IDWR did not have counsel present at the March 13, 2012, IDWR administrative hearing; and 2) because IDWR attended the April 8, 2013, oral argument in Twin Falls in person, instead of using video teleconference. *Motion to Disallow* at 2.

## II. STANDARD

The Court’s discretionary determination of the reasonableness of attorney fees is directed by the legal standards listed in I.R.C.P. 54(e)(3). *Kelly v. Hodges*, 119 Idaho 872, 876, 811 P.2d 48, 52 (Ct. App. 1991). The factors the Court should consider are:

- (A) The time and labor required.
- (B) The novelty and difficulty of the questions.
- (C) The skill requisite to perform the legal service properly and the experience and ability of the attorney in the particular field of law.
- (D) The prevailing charges for like work.
- (E) Whether the fee is fixed or contingent.
- (F) The time limitations imposed by the client or the circumstances of the case.
- (G) The amount involved and the results obtained.
- (H) The undesirability of the case.
- (I) The nature and length of the professional relationship with the client.
- (J) Awards in similar cases.
- (K) The reasonable cost of automated legal research (Computer Assisted Legal Research), if the court finds it was reasonably necessary in preparing a party's case.
- (L) Any other factor which the court deems appropriate in the particular case.

I.R.C.P. 54(e)(3).

### III. ARGUMENT

#### **A. Astorquia fails to state with particularity the grounds for disallowing attorney fees.**

I.R.C.P. 7(b)(1) requires that motions “state with particularity the grounds therefore.” The particularity requirement is “real and substantial, and good practice demands that the basis of a motion and the relief sought shall be clearly stated so that the other party will not suffer surprise or prejudice.” *Nanney v. Linella, Inc.*, 130 Idaho 477, 481, 943 P.2d 67, 71 (Ct. App. 1997) (internal quotation marks and citations omitted). Astorquia’s Motion to Disallow fails to clearly explain how not having counsel present at the March 13, 2012, hearing has unreasonably impacted the amount of time IDWR attorneys spent on this case. IDWR is left to speculate why awarding attorney fees based on 83.2 hours is unreasonable. Without more particular reasoning behind Astorquia’s statements, IDWR cannot reasonably respond to all the possible reasons not having an attorney at the March 13, 2012, hearing would be unreasonable.

**B. The amount of time IDWR spent preparing for this case was reasonable.**

The absence of counsel at the March 13, 2012, administrative hearing does not affect the reasonableness of time spent working on this case. It is uncommon for counsel representing IDWR to attend administrative hearings conducted by IDWR. Additionally, not having an attorney present at the March 13, 2012, hearing did not have an impact on the time needed to prepare the brief or oral argument. This case has a long and complicated procedural history with judicial and administrative proceedings dating back to 2002. Having an attorney present at the March 13, 2012, administrative hearing would not have alleviated the need to review the record nor would it have hastened the time needed for that review. Addressing the numerous issues and complex legal arguments raised in Astorquia's brief was the largest contributing factor to the time spent preparing IDWR's brief and oral argument. This time was spent researching and addressing, among other issues, constitutional arguments, jurisdictional issues and administrative proceedings dating back to the early 1980's. Again, having counsel present at the March 13, 2012, hearing would not have reduced the amount of time needed to research and write the brief or prepare for oral argument.

**C. It is reasonable for IDWR to attend oral argument in person.**

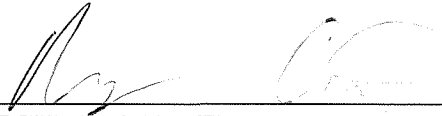
Having counsel attend the oral argument in Twin Falls on April 8, 2013, in person is a reasonable use of time. As mentioned above, this case has a long procedural history as well as complex issues and legal arguments. Given the novel nature of the arguments and the unique case history, it was reasonable for IDWR's counsel to decide to attend the hearing in person. Astorquia cites no authority for the proposition that costs associated with attending a hearing in person are unreasonable if some other method of appearance is also allowed.

#### IV. CONCLUSION

Astorquia has not stated with particularity how not having an attorney present at the March 13, 2012, hearing makes a percentage of the time spent preparing for this case unreasonable. Further, not having an attorney at the March 13<sup>th</sup> hearing did not affect the reasonableness of the time spent preparing for the case. Additionally the time spent travelling to Twin Falls for the April 8, 2013, oral argument was not unreasonable to include in calculating attorney fees. Due to the reasonableness of the attorney fees asserted, IDWR respectfully requests that all attorney fees are allowed.

DATED this 21<sup>st</sup> day of June, 2013.

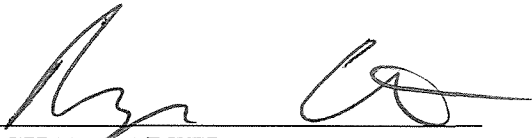
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21<sup>st</sup> day of June, 2013, I caused a true and correct copy of the foregoing IDWR'S RESPONSE TO ASTORQUIA'S MOTION TO DISALLOW RESPONDENT'S MEMORANDUM OF COSTS AND ATTORNEY FEES to be filed with the Court and served on the following parties by the indicated methods:

<i>Original to:</i> Fifth Judicial District Court 253 3rd Ave. North P.O. Box 2707 Twin Falls, ID 83303-2707	<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
Josephine P. Beeman BEEMAN & ASSOCIATES, P.C. 409 West Jefferson Street Boise, ID 83702 jo.beeman@beemanlaw.com	<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

  
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