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North Side Canal Company and Twin Falls
Canal Company*

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

IDAHO GROUND WATER
APPROPRIATORS, INC., BONNEVILLE-
JEFFERSON GROUND WATER
DISTRICT, and BINGHAM GROUND
WATER DISTRICT,

Petitioners,

vs.

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

Respondents,

and

CITY OF POCATELLO, CITY OF BLISS,
CITY OF BURLEY, CITY OF CAREY,
CITY OF DECLO, CITY OF DIETRICH,
CITY OF GOODING, CITY OF
HAZELTON, CITY OF HEYBURN, CITY
OF JEROME, CITY OF PAUL, CITY OF
RICHFIELD, CITY OF RUPERT, CITY OF

Case No. CV01-23-8187

**DECLARATION OF TRAVIS L.
THOMPSON AND MEMORANDUM OF
ATTORNEY FEES AND COSTS**

SHOSHONE, CITY OF WENDELL, A&B IRRIGATION DISTRICT, BURLEY IRRIGATION DISTRICT, MILNER IRRIGATION DISTRICT, NORTH SIDE CANAL COMPANY, TWIN FALLS CANAL COMPANY, AMERICAN FALLS RESERVOIR DISTRICT #2, MINIDOKA IRRIGATION DISTRICT, and MCCAIN FOODS USA, INC.,

Intervenors.

IN THE MATTER OF DISTRIBUTION OF WATER TO VARIOUS WATER RIGHTS HELD BY AND FOR THE BENEFIT OF A&B IRRIGATION DISTRICT, AMERICAN FALLS RESERVOIR DISTRICT NO. 2, BURLEY IRRIGATION DISTRICT, MILNER IRRIGATION DISTRICT, MINIDOKA IRRIGATION DISTRICT, NORTH SIDE CANAL COMPANY, AND TWIN FALLS CANAL COMPANY

I, Travis L. Thompson, hereby declare and state as follows:

1. I am an attorney of record for A&B Irrigation District, Burley Irrigation District, Milner Irrigation District, North Side Canal Company, and Twin Falls Canal Company in the above-entitled action.
2. To the best of my knowledge and belief, the items of costs and attorney fees incurred by the Intervenors set forth in this Memorandum are correct and the costs claimed are in compliance with Idaho Rules of Procedure (I.R.C.P.) 54 (d) and (e).

COSTS AND FEES	
Court Filing Fees	\$140.76

Attorney Fees	\$7,872.50
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3. Factors to be considered:

3.1. The time and labor required: The time and labor required are itemized on Exhibit A.

3.2. Novelty and difficulty of the questions: This case involved an expedited defense of motions and petitions necessary for purposes of water right administration during the 2023 irrigation season. The case involved a significant review of statutes, rules, and case law pertaining to the jurisdiction of the Idaho Department of Water Resources and other matters regarding motions in district court.

3.3. Experience and ability of attorney: Travis L. Thompson was licensed to practice law in the State of Idaho in 2000 and since the early 2000's has represented irrigation entities in various matters, including litigation, and has significant experience in litigation.

3.4. Prevailing charges for like work: In this matter, the Intervenors agreed to pay Travis L. Thompson Two Hundred Fifty Dollars (\$250.00) per hour and associates working on the matter Two Hundred Twenty Dollars (\$220.00) per hour. It is believed by the undersigned to be customary and reasonable charge per hour for the attorneys in the area with similar experience.

3.5. Fixed or contingent: The Intervenors agreed to pay counsel the hourly rates described above.

3.6. Time limitations: There were no unusual time limitations in this case.

3.7. Amount involved and results obtained: The case did not involve an "amount"; rather it involved defending against an attempt to stay a pending administrative action

that was set to occur before any water right administration occurred during the 2023 irrigation season. The Intervenor obtained favorable decisions dismissing the action before the District Court.

3.8. Undesirability of the case: The case is not particularly undesirable.

3.9. Nature and length of professional relationship with client: Travis L. Thompson has represented Milner, NSCC, and TFCC for approximately twenty-two years (22) years and has represented A&B and BID for approximately fifteen (15) years.

3.10. Awards in similar cases: The undersigned is unaware of the amounts of awards in similar cases.

3.11. Automated legal research: No cost claimed.

4. These fees were all necessarily incurred in the representation of the Intervenor in this matter. The time and labor required was reasonable given the timing and urgency of this matter and the exigencies of conjunctive administration during the 2023 irrigation season.
5. Idaho Rule of Civil Procedure direct that “costs are allowed as a matter of right to the prevailing party or parties, unless otherwise ordered by the court.” I.R.C.P. 54(d)(1)(A).
6. The Idaho Supreme Court has found “[t]he determination of the prevailing party in a lawsuit is guided by Rule 54(d)(1)(B) of the Idaho Rules of Civil Procedure...” *Advanced Med. Diagnostics, LLC v. Imaging Ctr. of Idaho, LLC*, 154 Idaho 812, 814, 303 P.3d 171, 173 (2013).
7. Under that determination, the Intervenor are a prevailing party in this matter, as defined by the Idaho Rules of Civil Procedure, “[i]n determining which party to an action is a prevailing party and entitled to costs, the trial court must, in its sound discretion, consider

the final judgment or result of the action in relation to the relief sought by the respective parties.” I.R.C.P. 54(d)(1)(B).

8. On June 2, 2023 this Court issued an Order granting the Intervenors’ *Motion to Dismiss the Petition* and entered a Judgment dismissing Petitioners’ *Petition for Judicial Review*. Because the Intervenors’ pleading was granted by the Court and the Petitioners’ pleading was denied, the clear result is that the Intervenors were a prevailing party.
9. Intervenors are further allowed to recover attorney fees under I.C. § 12-117.
10. Section 12-117(1) provides:

Unless otherwise provided by statute, **in any proceeding involving** as adverse parties a **state agency or a political subdivision and a person**, the state agency, political subdivision or **the court** hearing the proceeding, including on appeal, **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.

I.C. § 12-117(1) (emphasis added).

11. This matter involves as adverse parties an “agency” a “political subdivision” and a “person.” I.C. § 12-117 (6)(c)(d) &(f). The Idaho Department of Water Resources was an adverse party to the Petitioners, and Intervenors participated as “respondents” with similar interests of the agency.
12. The Idaho Supreme Court has clarified “[t]he reason for awarding attorney fees under section 12-117(1) in *Castringo*, on which *Rangen* relies, was that the nonprevailing party failed to follow well-defined ‘statutory procedures’ for appealing separate appraisals.” *3G AG LLC v. Idaho Dep’t of Water Res.*, 170 Idaho 251, 266, 509 P.3d 1180, 1195 (2022).
13. Such is the case here where Petitioners failed to exhaust their administrative remedies as required by I.C. § 42-1701A(3).

14. As Intervenors argued in their *Motion to Dismiss* “it is well settled that the administrative remedy provided by section 42-1701A(3) must be exhausted before this Court can consider any petition for judicial review.” *Surface Water Coalition’s Response in Opposition to Ground Water Districts’ Motions/Memorandum in Support of Motion to Dismiss*, at 14 (referencing *Park v. Banbury*, 143 Idaho 576, 578, 149 P.3d 851, 853 (2006) (“Pursuit of statutory administrative remedies is a condition precedent to judicial review”); *see also, Hartman v. Canyon County*, 170 Idaho 666, 516 P.3d 90, 94 (2022) (“If an administrative remedy is provided by statute, relief must first be sought by exhausting such remedies before the courts will act”).
15. The Petitioners’ action was subsequently dismissed for “failure to exhaust their administrative remedies.” *Order Granting Motions to Dismiss*, at 2. As noted by this Court at hearing, the issues raised are “not new” to either this Court or these parties. *See June 1, 2023 Hearing Transcript*, at 12, ln. 1. Notably, the Petitioners had a similar petition dismissed late last year where they had requested an administrative hearing, and prior to that hearing, had filed a premature petition for judicial review. *See Order Granting Motion to Dismiss, IGWA v. IDWR*, Ada County Dist. Ct., Fourth Jud. Dist., Case No. CV27-22-945 (Dec. 8, 2022).
16. Petitioners acted without a reasonable basis in law and Intervenors were required to expend financial resources as a result.
17. Because Intervenors are allowed to recover attorney fees under I.C. § 12-117, they have a statutory right to recover attorney fees under I.R.C.P. 54(e)(5).

I certify under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

DATED this 16th day of June, 2023.

MARTEN LAW LLP

/s/ Travis L. Thompson

Travis L. Thompson

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

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of June, 2023, the foregoing was filed electronically using the Court’s e-file system, and upon such filing the following parties were served electronically.

<p>Director Gary Spackman Garrick Baxter Sarah Tschohl Idaho Dept. of Water Resources 322 E Front St. Boise, ID 83720-0098 *** service by electronic mail file@idwr.idaho.gov gary.spackman@idwr.idaho.gov garrick.baxter@idwr.idaho.gov sarah.tschohl@idwr.idaho.gov</p>	<p>Matt Howard U.S. Bureau of Reclamation 1150 N. Curtis Rd. Boise, ID 83706-1234 *** service by electronic mail only mhoward@usbr.gov emcgarry@usbr.gov</p>	<p>Tony Olenichak IDWR – Eastern Region 900 N. Skyline Dr., Ste. A Idaho Falls, ID 83402-1718 *** service by electronic mail only tony.olenichak@idwr.idaho.gov</p>
<p>T.J. Budge Elisheva M. Patterson Racine Olson, PLLP P.O. Box 1391 Pocatello, ID 83204-1391 *** service by electronic mail only tj@racineolson.com elisheva@racineolson.com</p>	<p>Sarah A. Klahn Diane Thompson Somach Simmons & Dunn 2033 11th Street, Ste. 5 Boulder, CO 80302 *** service by electronic mail only sklahn@somachlaw.com dthompson@somachlaw.com</p>	<p>David Gehlert ENRD – DOJ 999 18th St. South Terrace, Ste. 370 Denver, CO 80202 *** service by electronic mail only david.gehlert@usdoj.gov</p>
<p>Rich Diehl City of Pocatello P.O. Box 4169 Pocatello, ID 83201 *** service by electronic mail only rdiehl@pocatello.us</p>	<p>Robert E. Williams Williams, Meservy & Larsen LLP P.O. Box 168 Jerome, ID 83338 *** service by electronic mail only rewilliams@wmlattys.com</p>	<p>Corey Skinner IDWR – Southern Region 650 Addison Ave. W., Ste. 500 Twin Falls, ID 83301 *** service by electronic mail only corey.skinner@idwr.idaho.gov</p>
<p>Robert L. Harris Holden, Kidwell PLLC P.O. Box 50130 Idaho Falls, ID 83405 *** service by electronic mail only rharris@holdenlegal.com</p>	<p>Kathleen Carr US Dept Interior, Office of Solicitor Pacific Northwest Region, Boise 960 Broadway, Ste. 400 Boise, ID 83706 *** service by electronic mail only kathleenmarion.carr@sol.doi.gov</p>	<p>Candice McHugh Chris Bromley McHugh Bromley, PLLC 380 South 4th Street, Ste. 103 Boise, ID 83702 *** service by electronic mail only cbromley@mchughbromley.com cmchugh@mchughbromley.com</p>

EXHIBIT A

CASE CV01-23-8187

DATE	DESCRIPTION OF WORK PERFORMED	HOURS	AMOUNT
5/21/2023	Review Ground Water Users Complaints, Motions and Declarations seeking to enjoin Fifth Order hearing, research Basin 37 decisions, emails with counsel.	3.2	\$800.00
5/22/2023	Call with K. Fletcher and G. Baxter regarding lawsuits filed by Ground Water Users.	.75	\$187.50
5/22/2023	Calls with J. Simpson regarding new lawsuits filed by Ground Water Users.	.40	\$100.00
5/24/2023	Review notices of hearing regarding three cases concerning Fifth Order and discovery order.	.30	\$75.00
5/25/2023	Call with G. Baxter regarding court cases.	.40	\$100.00
5/26/2023	Call with G. Baxter regarding hearings on 6/1.	.40	\$100.00
5/27/2023	Work on response to Ground Water Districts Motions and Brief in case 8187, call with J. Simpson, email counsel.	6.5	\$1,625.00
5/28/2023	Work on response/motions in Ground Water District case 8187, emails with counsel.	6.0	\$1,500.00
5/30/2023	Finalize Motions, Supporting Memorandum for Ground Water District 8187 case, file, call with G. Baxter, review IDWR filings.	3.5	\$875.00
5/31/2023	Review court filings, work on outline for argument.	1.0	\$250.00
6/1/2023	Preparation for court hearings, review motions and pleadings, work on argument outline. (Split with 8258)	1.6	\$400.00
6/1/2023	Court hearings on cases filed by IGWA and Cities at SRBA Court regarding methodology order hearing. (Split with 8258)	2.15	\$537.50
6/1/2023	Attend District Court hearing on IGWA and Cities' request for injunctive relief. (Split with 8258)	2.35	\$587.50
6/7/2023	Meeting with G. Baxter regarding attorney fees in court cases. (Split with 8258)	.3	\$37.50
6/15/2023	Prepare Memorandum of Costs, Declaration, Brief and Motions. (Split with 8258)	3.0	\$660.00
TOTALS		31.85	\$7,872.50

Hours 3.0 x \$220.00 = \$660.00

Hours 28.85 x \$250.00 = \$7,212.50