

III. ANALYSIS

A. Jurisdiction.

A threshold issue is whether the Court has jurisdiction over the City's *Petition*. The legislature has vested the Department with jurisdiction over Idaho Code § 42-222 water right transfers. It is a basic tenet of administrative law that where an agency has exclusive jurisdiction over a matter, the parties to a contested case must ordinarily await a final order before resorting to the courts. I.C. § 67-5270(3). A final order is one "that resolves all issues, or the last unresolved issue, presented in the contested case so that it constitutes a final determination of the rights of the parties." *Williams v. State Bd. of Real Estate Appraisers*, 149 Idaho 675, 678, 239 P.3d 780,783 (2010). "If issues necessary for a final determination of the parties' rights remain unresolved, there is no final order." *Id.* In addition, the doctrine of exhaustion generally requires that a matter "run the full gamut of administrative proceedings before an application for judicial relief may be considered." *Regan v. Kootenai County*, 140 Idaho 721, 724, 100 P.3d 615, 618 (2004); I.C. § 67-5271(1). The doctrines of finality and exhaustion stand for the general proposition that if there is no final order in a contested case there is no exhaustion of the administrative remedy or right to judicial review.

The legislature has provided a limited exception to the doctrines of finality and exhaustion. Idaho Code § 67-5271(2) provides that "[a] preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency action would not provide an adequate remedy." In this case, it is undisputed that neither the doctrine of finality nor the doctrine of exhaustion has been satisfied. The administrative proceeding on the City's application has not run its course. The Director has not issued a final order and the City's application is pending unresolved. Notwithstanding, the City asserts that judicial review is proper under Idaho Code § 67-5271(2). The Court disagrees.

Examination of the case establishes that judicial review of the final order to be ultimately issued by the Director in the administrative proceeding provides the City with an adequate remedy. The City complains that the Director erred in denying its motion to dismiss Spartan's protest. Additionally, it complains that he further erred in denying its request to exclude all evidence regarding well 44 from the administrative hearing. Each of these issues can properly be raised and addressed on judicial review following issuance of a final order. That there is no

impediment to raising these issues on review of a final order is telling proof that judicial review of the final order is an adequate remedy.

The Court notes that expenses and delay incident to an administrative hearing do not justify immediate review of an interlocutory order under Idaho Code § 67-5271(2). All parties seeking review of an interlocutory order could qualify if expenditure of time and resources in the administrative proceeding rendered judicial review of a final order an inadequate remedy. However, such considerations do not warrant the premature interference with the agency process. The Idaho Supreme Court “long ago recognized that ‘the adequacy of a remedy is not to be tested by the convenience or inconvenience of the parties to a particular case. If such a rule were to obtain, the law of appeals might as well be abrogated at once.’” *Rufener v. Shaud*, 98 Idaho 823, 825, 573 P.2d 142, 144 (1977). The City has not shown that waiting for a final order would work any hardship on it aside from the expense and delay associated with the administrative hearing. It has not established that any penalties will accrue, or that it will be required by the Department to take any detrimental action in the interim.³ Therefore, the fact that the Director remanded the matter to the hearing officer does not entitle the City to review under Idaho Code § 67-5271(2).

The City argues that “if the agency decision is adverse to Pocatello, the City must appeal that decision under a deferential standard of review—even if the basis for the adverse decision was beyond the proper scope of the transfer proceeding in the first place.” *Reply Br.*, 3. This Court disagrees with the City’s position. If the basis for an adverse final order is beyond the proper scope of the proceeding, then the City will be able to raise that argument on judicial review of the final order. The same standard of review will be applicable whether the issue is raised now or following a final order. Either way, the City will have to establish that the Director acted in a manner that violates I.C. § 67-5279(3) and that one of its substantial rights was prejudiced. Furthermore, the same relief will be available to the City under either scenario. I.C. § 67-5279. That said, it is clear that review of a final order following hearing will provide a more complete remedy than a premature review, as all issues regarding the transfer application

³ The Supreme Court has allowed judicial review of an interlocutory order where the agency’s “decision to continue the case was the functional equivalent of a stay order of undetermined duration, and while not an express denial of the Hospital’s application, leaves the Hospital unremunerated for its substantial expenditures . . . for an indefinite and potentially lengthy period of time.” *Univ. of Utah Hosp. v. Twin Falls County*, 122 Idaho 1010, 1013, 842 P.2d 689, 692 (1992). Such circumstances do not exist here.

may then be raised and determined. Moreover, the issues the City now raises may ultimately be mooted by the Director's final decision.

In summary, the Court finds that judicial review of a final order will provide the City with an adequate remedy. All issues now raised can be adequately raised and considered at that time if they are not ultimately mooted by the Director's final decision. Therefore, this suit is premature and must be dismissed.

B. The Court does not reach the remaining issues.

The City raises a variety of additional issues in its *Petition*. The Court expresses no opinion on those issues as it lacks jurisdiction over the City's *Petition* for the reasons set forth in this decision.

C. Attorney fees.

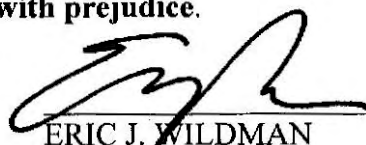
The Respondents and Intervenor seek an award of attorney fees under Idaho Code §12-117. The decision to grant or deny a request for attorney fees under Idaho Code § 12-117 is left to the sound discretion of the court. *City of Osburn v. Randel*, 152 Idaho 906, 908, 277 P.3d 353, 355 (2012). The Idaho Supreme Court has instructed that attorney fees under Idaho Code §12-117 will not be awarded against a party that presents a "legitimate question for this Court to address." *Kepler-Fleenor v. Fremont County*, 152 Idaho 207, 213, 268 P.3d 159, 1165 (2012). The Court holds that the City has presented legitimate issues pertaining to this Court's jurisdiction over its petition. The Court does not find the City's arguments on this issue to be frivolous or unreasonable. Therefore, the Court in an exercise of its discretion denies the Respondents' and Intervenor's requests for attorney fees.

IV.

ORDER

Therefore, based on the foregoing, IT IS ORDERED that the City of Pocatello's *Petition for Judicial Review* is hereby dismissed with prejudice.

Dated June 4, 2018


ERIC J. WILDMAN
District Judge

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER DISMISSING PETITION FOR JUDICIAL REVIEW was mailed on June 04, 2018, with sufficient first-class postage to the following:

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