



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

**I.**  
**BACKGROUND**

On May 19, 2023, the Petitioners filed a *Petition for Judicial Review* along with a *Motion for Stay*, a *Motion to Compel*, a *Motion for Injunctive Relief*, a *Motion for Order to Show Cause*, and a *Motion for Expedited Decision*. The Respondents as well as members of the Surface Water Coalition filed *Motions to Dismiss* the *Petition for Judicial Review* on the basis the Court lacks subject matter jurisdiction over the matter.<sup>1</sup> Following hearing, the Court entered an *Order* granting the *Motions to Dismiss*. A *Judgment* dismissing the *Petition* was entered on June 2, 2023.

On June 15, 2023, the Respondents filed a *Memorandum of Costs* seeking an award of attorney fees in the amount of \$8,440.00 against the Petitioners. On June 16, 2023, Intervenors American Falls Reservoir District #2 and Minidoka Irrigation District filed a *Memorandum of Costs* seeking an award of attorney fees and costs in the amount of \$3,290.76 against the Petitioners.<sup>2</sup> On that same date, Intervenors A&B Irrigation District, Burley Irrigation District, Milner Irrigation District, North Side Canal Company, and Twin Falls Canal Company filed a

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<sup>1</sup> The term “Surface Water Coalition” refers collectively to Intervenors A&B Irrigation District, Burley Irrigation District, Milner Irrigation District, North Side Canal Company, Twin Falls Canal Company, American Falls Reservoir District #2, and Minidoka Irrigation District.

<sup>2</sup> The total requested award of \$3,290.76 is broken down into a request of \$140.76 in costs and \$3,150.00 in attorney fees.

*Memorandum of Costs* seeking an award of attorney fees and costs in the amount of \$8,013.26 against the Petitioners.<sup>3</sup> The Petitioners filed *Objections* to the requests.

## II. ANALYSIS

### A. Attorney Fees.

The parties seek awards of attorney fees under Idaho Code § 12-117(1). That code section provides for fees to the prevailing party where the Court finds “that the nonprevailing party acted without a reasonable basis in fact or law.” 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 1159, 1165 (2012). In this case, the Petitioners raised due process concerns pertaining to the hearing process utilized by the Director for an administrative hearing that was set to commence on June 6, 2023. These concerns included issues related to the timing and notice of the hearing, as well as concerns with certain discovery limitations imposed by the Director. The Court found the Director’s process provided due process consistent with the exigencies of the circumstances and the Director’s duty to timely administer water rights in priority. That said, the due process issues presented legitimate questions for this Court to address. The Court finds the due process issues were not frivolous or made without a reasonable basis in fact or law. Therefore, an award of attorney fees under Idaho Code § 12-117 is not warranted.

Additionally, the Respondents seek an award of attorney fees under Idaho Code § 12-121. The Idaho Supreme Court has held that “[a]ttorney’s fees are not available under Idaho Code section 12-121 on petitions for judicial review . . . .” *In Re Idaho Workers Compensation Bd.*, 167 Idaho 13, 24, 467 P.3d 377, 388 (2020). As such, the request for fees under Idaho Code § 12-121 is denied.

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<sup>3</sup> The total requested award of \$8,013.26 is broken down into a request of \$140.76 in costs and \$7,872.50 in attorney fees.

**B. Costs.**

Intervenors American Falls Reservoir District #2 and Minidoka Irrigation District seek costs in the amount of \$140.76 attributable to filing fees. Intervenors A&B Irrigation District, Burley Irrigation District, Milner Irrigation District, North Side Canal Company, and Twin Falls Canal Company also seek costs in the amount of \$140.76 attributable to filing fees. Court filing fees, including any fees incidental to electronic filing, actually paid, are recoverable as a matter of right to the prevailing party. I.R.C.P. 54(d)(1)(C) & I.A.R. 40. The Court finds the Intervenors to be prevailing parties in this matter as they were successful on their *Motion to Dismiss*. Therefore, the Court finds that (1) Intervenors American Falls Reservoir District #2 and Minidoka Irrigation District are entitled to an award of costs in the amount of \$140.76, and (2) Intervenors A&B Irrigation District, Burley Irrigation District, Milner Irrigation District, North Side Canal Company, and Twin Falls Canal Company are entitled to an award of costs in the amount of \$140.76.

**C. Hearing.**

In an exercise of its discretion, the Court under Idaho Rule of Civil Procedure Rule 7(b)(3)(F) finds that oral argument on the issue of fees and costs is unnecessary. This case was dismissed in its early stages for lack of subject matter jurisdiction and the Court is familiar with the limited proceeding which have been undertaken in this matter.

**III.**

**ORDER**

THEREFORE, BASED ON THE FOREGOING, THE FOLLOWING ARE HEREBY  
ORDRED:

1. The Respondents' request for an award of attorney fees is denied.
2. Intervenors American Falls Reservoir District #2 and Minidoka Irrigation District request for an award of attorney fees is denied.
3. Intervenors A&B Irrigation District, Burley Irrigation District, Milner Irrigation District, North Side Canal Company, and Twin Falls Canal Company request for an award of attorney fees is denied.

4. Intervenor American Falls Reservoir District #2 and Minidoka Irrigation District are entitled to an award of costs in the amount of \$140.76 as against the Petitioners.

5. Intervenor A&B Irrigation District, Burley Irrigation District, Milner Irrigation District, North Side Canal Company, and Twin Falls Canal Company are entitled to an award of costs in the amount of \$140.76 as against the Petitioners.

DATED: August 4, 2023.

  
\_\_\_\_\_  
ERIC J. WILDMAN  
District Judge

**CERTIFICATE OF SERVICE**

I certify that on this day I served a copy of the attached to:

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Date: 8/4/2023

Trent Tripple  
Clerk of the Court

By Eric Rowell  
Deputy Clerk

