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*Attorneys for A&B Irrigation District, Burley  
Irrigation District, Milner Irrigation District,  
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**

CITY OF POCATELLO, CITY OF IDAHO  
FALLS, 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 SHOSHONE, CITY  
OF WENDELL, BINGHAM GROUND  
WATER DISTRICT, BONNEVILLE-  
JEFFERSON GROUND WATER  
DISTRICT, and MCCAIN FOODS USA,  
INC.,

Petitioners,

vs.

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

Respondents.

and

**Case No. CV01-23-8258**

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

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,

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 Company in the above-entitled action.
2. To the best of my knowledge and belief, the items of costs and attorney fees 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).

<b>COSTS AND FEES</b>	
Court Filing Fees	\$140.76
Attorney Fees	\$4,866.00

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 applications 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. I am familiar with the prevailing rates for attorney fees of attorneys with similar legal background and experience in matters involving water law in the State of Idaho.

5. 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.

6. Idaho Rules 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).

7. 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).

8. Under that determination, the Intervenor is 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).

9. On June 2, 2023 this Court issued an Order denying relief Petitioners sought in their complaint, namely the *Petition for Writ of Mandamus* and the *Petition for Writ of Prohibition*.

10. On June 14, 2023, this Court entered a *Judgment* dismissing Petitioner’s *Complaint for Declaratory Relief, Petition for Writ of Prohibition, and Petition for Writ of Mandamus*.

Because the Petitioners’ complaint was denied and their action dismissed, the clear result is that the Intervenors and the Department are the prevailing parties.

11. Intervenors are further allowed to recover attorney fees under I.C. § 12-117.

12. 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).

13. 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.

14. 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).

15. Such is the case here where Petitioners failed to exhaust their administrative remedies as required by I.C. § 42-1701A(3).
16. 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. *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”).
17. The Petitioner’s 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.
18. Petitioners acted without a reasonable basis in law and Intervenors were required to expend financial resources as a result.
19. Because Intervenors are allowed to recover attorney fees under I.C. § 12-117, they have a statutory right to recover attorney fees as costs under I.R.C.P. 54(e)(5).
20. Intervenors are also allowed to recover attorney fees under I.C. § 12-121.
21. Idaho Code section 12-121 provides:  
  
In any civil action, the judge may award reasonable attorney's fees to the prevailing party or parties when the judge finds that the case was brought, pursued or defended frivolously, unreasonably or without foundation.

I.C. § 12-121.

22. The Idaho Supreme Court has clarified “Attorney fees under section 12-121 are available in civil actions where a complaint is filed....” *3G AG LLC v. Idaho Dep’t of Water Res.*, 170 Idaho 251, 267, 509 P.3d 1180, 1196 (2022). Petitioners filed a complaint requesting declaratory judgment and extraordinary relief through writs of prohibition and mandate.

23. Because Petitioners are well aware of the statutory requirements requiring the exhaustion of remedies in I.C. § 42-1701A and failed to exhaust those remedies before bring this action, Petitioners’ case was brought “frivolously, unreasonably” and “without foundation.”

24. Accordingly, this Court should award Intervenor’s attorney’s fees under I.C. § 12-121.

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

DATED this 16<sup>th</sup> 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 16<sup>th</sup> 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.

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/s/ Jessica Nielsen  
Jessica Nielsen  
Assistant for Travis L. Thompson



**EXHIBIT A**

CASE CV01-23-8258

DATE	DESCRIPTION OF WORK PERFORMED	HOURS	AMOUNT
5/23/2023	Review Procedural Orders, new case filed in Ada County by Cities.	1.0	\$250.00
5/24/2023	Review Cities latest Complaint, issues for response.	1.5	\$375.00
5/26/2023	Discuss research assignment regarding Idaho Rule of Civil Procedure 72, research Rule 72 issue, draft email memo regarding the same.	4.8	\$1,056.00
5/26/2023	Zoom with S. Nelson regarding order to show cause research.	.30	\$75.00
5/31/2023	Call with G. Baxter regarding court hearing.	.40	\$100.00
5/31/2023	Finalize and file Petition to Intervene and supporting documents in 8258 case.	2.0	\$500.00
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 8187)	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 8187)	2.15	\$537.50
6/1/2023	Attend District Court hearing on IGWA and Cities' request for injunctive relief. (Split with 8187)	2.35	\$587.50
6/7/2023	Meeting with G. Baxter regarding attorney fees in court cases. (Split with 8187)	.3	\$37.50
6/15/2023	Prepare Memorandum of Costs, Declaration, Brief and Motions. (Split with 8187)	3.0	\$660.00
<b>TOTALS</b>		20.4	\$4,866.00

Hours 7.8 x \$220.00 = \$1,716.00

Hours 12.6 x \$250.00 = \$3,150.00