

DISTRICT COURT-SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho

MAY - 5 2010

By _____

Clerk
Deputy Clerk

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

) Subcase Nos.: 63-32533
)
)
) **MEMORANDUM OF COSTS &**
) **AFFIDAVIT OF PAUL L.**
) **ARRINGTON IN SUPPORT OF**
) **WILDER IRRIGATION**
) **DISTRICT'S CLAIM FOR AWARD**
) **OF COSTS AND ATTORNEY'S**
) **FEES**
)

STATE OF IDAHO)
) ss.
County of Twin Falls)

1. I am an attorney of record representing the Objector, Wilder Irrigation District ("Wilder") in this matter, and make the following affidavit upon my personal knowledge of the pertinent costs and accounting records associated with this action.

MEMORANDUM OF COSTS & AFFIDAVIT OF PAUL L. ARRINGTON IN SUPPORT OF WILDER IRRIGATION DISTRICT'S CLAIM FOR AWARD OF COSTS AND ATTORNEY'S FEES

correct copies of the supporting itemized invoices listing the costs and fees incurred are attached hereto.

3. Wilder is the prevailing party in this action. This court issued its *Memorandum Decision and Order on Challenge and Order of Partial Decree*, on April 21, 2010, denying the Claimants', Bill Aten, Joe Aten, Maria L. Morales and Matthew Aten's, *Challenge* to Special Master Booth's *order Denying Claimant's Motion to Alter or Amend*.

4. In the *Order of Partial Decree*, the Court included a certification pursuant to Idaho Rule of Civil procedure 54(b), indicating that the *Oder of Partial Decree* is a Final Judgment. Since the Court denied the Claimant's *Challenge*, Wilder is the prevailing party.

5. Idaho Code § 12-121 provides that the Court may award attorneys fees in any civil action to the prevailing party. The Supreme Court, in *Bedke v. City of Oakley*, Case No. 35217 (Mar. 18, 2010), upheld this Court's award of attorney's fees to the City of Oakley and against a *pro se* litigant where that litigant failed to provide any "meaningful rebuttal" to the Special Master's analysis. According to the *Bedke* Court, this failure to provide any rebuttal evidence warranted attorney's fees at the district court level as well as on appeal to the Supreme Court because the claimants had pursued their claims frivolously and unreasonably.

6. Idaho Rule of Civil Procedure 54(d)(1) provides that a prevailing party is entitled to an award of certain costs as a matter of right, and that the Court may award other costs in its discretion if the moving party demonstrates that the costs were necessary and exceptional costs, necessarily incurred, and should in the interest of justice be assessed against the adverse party.

7. Wilder did not incur any costs should be awarded to Wilder as a matter of right pursuant to I.R.C.P. 54(d).

8. Wilder requests an award of the following discretionary costs, as they were necessarily incurred in the Defendants' defense of this action.

<u>SERVICES</u>	<u>CHARGES</u>
Photocopies	\$ 17.40
Postage	\$ 11.63
Total Discretionary Costs	\$ 29.03

9. As the prevailing party, Wilder is entitled to an award of attorney's fees pursuant to Idaho Rule of Civil Procedure 54(e)(1) and Idaho Code § 12-121. In responding to Claimants' *Challenge*, Wilder incurred legal fees between December 1, 2001 and March 31, 2010 in a total amount of \$2186.50. All of these fees were incurred in reviewing, researching, briefing and arguing Wilder's response to the Claimants' *Challenge*. Attorneys fees associated with Wilder's objection and responding to claimants' positions taken before the special master are not claimed in this Memorandum of costs. This fee request is limited to the fees incurred after the Special Master's final decision.

These costs do not represent the attorney's fees accrued in the preparation and filing of this Affidavit of counsel in support of an award of costs and fees, any other necessary pleadings associated with the filing of the Affidavit, as well as any eventual hearing that may be held on the Wilder's request for an award of costs and fees. Counsel for Wilder estimates that this additional work will cost approximately \$500.00. Therefore, Wilder requests an award of attorney's fees in the amount of \$2,686.50 as the prevailing party in this action. A copy of the itemized invoices for services provided to Wilder for their opposition to the Claimant's *Challenge* are attached as Exhibit A, pursuant to Idaho Rule of Civil Procedure 54(e)(5).

10. The I.R.C.P. 54(e)(3) factors that are relevant to an award of attorney's fees in this case include (A) the time and labor required, (B) the novelty and difficulty of the questions, (C) the skill required to properly perform the legal service and the experience and ability of the particular attorney, (D) the prevailing charges for like work, (E) whether the fee was fixed or contingent, (G) the amount involved and the result obtained, (J) awards in similar cases, and (L) any other factor the which the court deems appropriate to its inquiry in this particular case.

The time and labor spent in defending this action has been reasonable and commensurate with the level of difficulty of the issues arising out of the litigation. The time and effort expended to prepare Wilder's opposition to the *Challenge*, including researching the claims, and drafting the pleadings, was not excessive. The billing agreement entered into between Wilder and counsel was for the time spent on the project to be billed hourly at the rate of \$135/hr for Paul L. Arrington, an associate in the firm, and the rate of \$170/hr for Albert P. Barker, the supervising partner. These are reasonable rates and comparable to the rates of other attorneys of similar experience practicing in the area. In the end, Wilder prevailed in its opposition to the *Challenge*.

11. THEREFORE, Wilder, as the prevailing party in this action, pursuant to the applicable Idaho Rules of Civil Procedure, and Idaho Code § 12-121, requests an Order of this Court awarding it attorney's fees and costs in the total amount of \$2,715.53.

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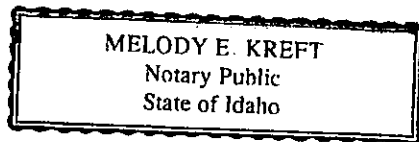
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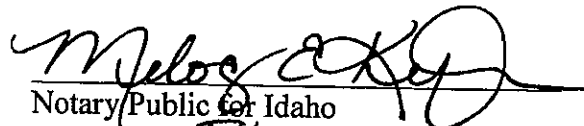
DATED this 5th day of May, 2010.

BARKER ROSHOLT & SIMPSON LLP


Paul L. Arrington
Attorneys for Wilder Irrigation District

SUBSCRIBED AND SWORN to before me this 5th day of May, 2010.




Notary Public for Idaho
Residing at: Filer
Commission Expires: 2/8/13

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of May, 2010, I caused to be served a true and correct copy of the foregoing **MEMORANDUM OF COSTS & AFFIDAVIT OF PAUL L. ARRINGTON IN SUPPORT OF DEFENDANTS' CLAIM FOR AWARD OF COSTS AND ATTORNEY'S FEES** by the method indicated below, and addressed to each of the following:

Filed with the Court via HAND DELIVERY.

Bill Aten 21737 Case Ln. Wilder, ID 83676	Joe Aten, Matthew Aten and Maria L. Morales 30588 Peckham Rd. Wilder, ID 83676
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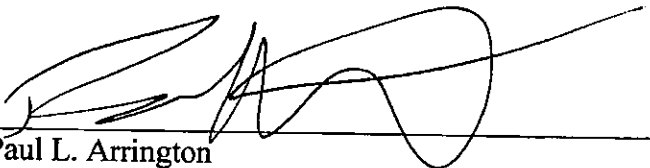

Paul L. Arrington

Exhibit A

Barker Rosholt & Simpson LLP

ALBERT P. BARKER
JOHN A. ROSHOLT
JOHN K. SIMPSON
TRAVIS L. THOMPSON
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December 08, 2009

Tax ID# 82-0532497

Wilder Irrigation District
P.O. Box 416
Caldwell ID 83605

Invoice # 14235

Professional Services

	<u>Hrs/Rate</u>	<u>Amount</u>
11/2/2009 APB Telephone conference with S. Meade regarding easements.	0.20 170.00/hr	34.00
11/3/2009 APB Attend Board meeting.	1.00 170.00/hr	170.00
11/11/2009 APB Review and work on settlements.	0.20 170.00/hr	34.00
11/17/2009 APB Review water right application regarding Epsom Drain; telephone conference with T. Page regarding possible objection.	0.40 170.00/hr	68.00
For professional services rendered		<u>\$306.00</u>
Additional Charges :		
11/6/2009 BRS Copying cost		1.10
BRS Postage for Basin 63 Drain Objection matter.		1.05
11/9/2009 SMD Parking expense re: IWRB Meeting on 11/3 and 11/4/09 (split w/other clients).		2.86
Total additional charges		<u>\$5.01</u>
Total amount of this bill		<u>\$311.01</u>
Previous balance		\$2,543.05

BARKER ROSHOLT & SIMPSON LLP

Wilder Irrigation District
Invoice #14235

Page 2

	<u>Amount</u>
Accounts receivable transactions	
11/4/2009 Payment - Thank You. Check No. 10692	<u>(\$2,543.05)</u>
Total payments and adjustments	<u>(\$2,543.05)</u>
Balance due	<u>\$311.01</u>

Barker Rosholt & Simpson LLP

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January 12, 2010

Tax ID# 82-0532497

Wilder Irrigation District
P.O. Box 416
Caldwell ID 83605

Invoice # 14348

Professional Services

	<u>Hrs/Rate</u>	<u>Amount</u>
12/1/2009 APB Telephone conference with Board of Directors.	0.30 170.00/hr	51.00
12/11/2009 APB Review Aten document filed with the Court.	0.20 170.00/hr	34.00
PLA Telephone call with J. Aten regarding Special Master's denial of the motion to alter or amend; draft e-mail to APB.	0.60 135.00/hr	81.00
12/18/2009 PLA Review letter from J. Aten to SRBA; e-mail discussion with APB.	0.30 135.00/hr	40.50
12/21/2009 PLA Telephone call with SRBA Court regarding J. Aten filing.	0.20 135.00/hr	27.00
For professional services rendered		<u>\$233.50</u>
Previous balance		\$311.01
Accounts receivable transactions		
12/16/2009 Payment - Thank You. Check No. 10721		<u>(\$311.01)</u>
Total payments and adjustments		<u>(\$311.01)</u>
Balance due		<u>\$233.50</u>

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February 10, 2010

Tax ID# 82-0532497

Wilder Irrigation District
P.O. Box 416
Caldwell ID 83605

Invoice # 14504

Professional Services

	<u>Hrs/Rate</u>	<u>Amount</u>
1/5/2010 APB Attend Board meeting.	1.40 170.00/hr	238.00
1/6/2010 SMD Attend State Water Plan Subcommittee Meeting.	0.50 140.00/hr	70.00
1/8/2010 SMD Draft and send comments to draft T.V. Camp Plan.	0.90 140.00/hr	126.00
1/11/2010 APB Attend prehearing conference (D. Benedetti)	1.00 170.00/hr	170.00
1/19/2010 APB Telephone conference with G. Batt regarding CAMP representation.	0.30 170.00/hr	51.00
1/27/2010 APB Draft nomination letter to CAMP; telephone conference with T. Uhling; telephone conference with G. Butt; telephone conference with D. Paulsen.	0.70 170.00/hr	119.00
1/29/2010 APB Telephone conference with D. Paulsen.	0.20 170.00/hr	34.00
For professional services rendered		<u>\$808.00</u>
Additional Charges :		
1/6/2010 BRS Postage		0.61
Total additional charges		<u>\$0.61</u>

BARKER ROSHOLT & SIMPSON LLP

Wilder Irrigation District
Invoice #14504

Page 2

	<u>Amount</u>
Total amount of this bill	\$808.61
Previous balance	\$233.50
Accounts receivable transactions	
1/25/2010 Payment - Thank You. Check No. 10758	(\$233.50)
Total payments and adjustments	(\$233.50)
Balance due	<u>\$808.61</u>

Barker Rosholt & Simpson LLP

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March 08, 2010

Tax ID# 82-0532497

Wilder Irrigation District
P.O. Box 416
Caldwell ID 83605

Invoice # 14583

Professional Services

	<u>Hrs/Rate</u>	<u>Amount</u>
2/2/2010 APB Attend board meeting.	1.50 170.00/hr	255.00
2/14/2010 APB Draft memo to N. Semanko regarding bill to correct 43-202 regarding bonds for directors.	0.20 170.00/hr	34.00
2/16/2010 APB Review proposed legislation regarding insurance for directors.	0.30 170.00/hr	51.00
For professional services rendered		<u>\$340.00</u>
Additional Charges :		
2/1/2010 APB Fax sent to Gibbons Scott and Dean LLP.		1.40
Total additional charges		<u>\$1.40</u>
Total amount of this bill		<u>\$341.40</u>
Previous balance		\$808.61
Accounts receivable transactions		
2/23/2010 Payment - Thank You. Check No. 10785		<u>(\$808.61)</u>
Total payments and adjustments		<u>(\$808.61)</u>

BARKER ROSHOLT & SIMPSON LLP

Wilder Irrigation District
Invoice #14583

Page 2

Balance due

Amount

\$341.40

Barker Rosholt & Simpson LLP

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April 12, 2010

Tax ID# 82-0532497

Wilder Irrigation District
P.O. Box 416
Caldwell ID 83605

Invoice # 14712

Professional Services

		<u>Hrs/Rate</u>	<u>Amount</u>
3/2/2010 APB	Telephone conference with D. Paulsen; telephone conference with Board of Directors; telephone conference with R. Platt.	1.20 170.00/hr	204.00
3/4/2010 PLA	Read Statement of Issues from J. Aten for waste water objection 63-32533; outline issue; discuss with APB; begin drafting response.	1.30 135.00/hr	175.50
3/15/2010 PLA	Begin drafting response to Challenge of Special Master's Recommendation in the J. Aten subcases.	3.30 135.00/hr	445.50
3/16/2010 APB	Review and revise Response to Aten.	1.00 170.00/hr	170.00
	PLA Revise opposition to challenge on Special Master Recommendation in J. Aten Subcases; e-mail to APB.	2.50 135.00/hr	337.50
3/17/2010 APB	Review and work on Response to Aten.	0.40 170.00/hr	68.00
	PLA Revise Challenge in response to comments from APB; legal research; e-mail to APB; finalize and file.	2.20 135.00/hr	297.00
3/25/2010 APB	Review Aten response; telephone conference with P. Arrington regarding Aten.	0.50 170.00/hr	85.00
	PLA Review J. Aten's Reply in support of Objection; email to APB; discuss with APB.	0.60 135.00/hr	81.00
3/30/2010 SMD	Work on analysis memo for State Water Plan revisions.	1.10 140.00/hr	154.00

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Wilder Irrigation District
Invoice #14712

Page 2

	<u>Hrs/Rate</u>	<u>Amount</u>
3/31/2010 SMD Continue work on SWP memo.	0.70 140.00/hr	98.00
For professional services rendered		<u>\$2,115.50</u>
Additional Charges :		
3/17/2010 BRS Copying cost regarding Response to Challenge.		13.50
BRS Postage regarding Response to Challenge.		9.73
3/26/2010 BRS Postage regarding Challenge documents to Mr. Case regarding 63-32533.		1.90
BRS Copying cost regarding Challenge documents to Mr. Case regarding 63-32533.		3.90
Total additional charges		<u>\$29.03</u>
Total amount of this bill		<u>\$2,144.53</u>
Previous balance		\$341.40
Accounts receivable transactions		
3/11/2010 Payment - Thank You. Check No. 10803		<u>(\$341.40)</u>
Total payments and adjustments		<u>(\$341.40)</u>
Balance due		<u>\$2,144.53</u>

Barker Rosholt & Simpson LLP

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May 05, 2010

Tax ID# 82-0532497

Wilder Irrigation District
P.O. Box 416
Caldwell ID 83605

Invoice # 14767

Professional Services

	<u>Hrs/Rate</u>	<u>Amount</u>
4/1/2010 SMD Continue work on SWP memo.	1.10 140.00/hr	154.00
4/2/2010 PLA Hearing on J. Aten Challenge to Special Master's Report; prepare for hearing.	2.10 135.00/hr	283.50
SMD Continue work on SWP memo.	0.30 140.00/hr	42.00
4/5/2010 APB Telephone conference with P. Arrington regarding Aten.	0.20 170.00/hr	34.00
SMD Continue work on SWP memo.	1.20 140.00/hr	168.00
4/6/2010 APB Telephone conference with Board of Directors.	0.40 170.00/hr	68.00
SMD Continue work on SWP memo.	0.80 140.00/hr	112.00
4/7/2010 SMD Continue work on SWP memo.	1.00 140.00/hr	140.00
4/8/2010 SMD Continue work on SWP memo; meet with G. Batt and A. Barker regarding TV CAMP.	1.00 140.00/hr	140.00
4/11/2010 SMD Work on SWP memo.	0.70 140.00/hr	98.00

BARKER ROSHOLT & SIMPSON LLP

Wilder Irrigation District
Invoice #14767

Page 2

	<u>Hrs/Rate</u>	<u>Amount</u>
4/12/2010 SMD Work on SWP memo.	1.10 140.00/hr	154.00
4/14/2010 SMD Continue work on SWP memo.	0.10 140.00/hr	14.00
4/15/2010 SMD Continue work on SWP memo.	0.80 140.00/hr	112.00
4/16/2010 SMD Complete SWP memo and sent to co-counsel; discuss with counsel.	0.40 140.00/hr	56.00
4/22/2010 PLA Read order on Aten Challenge before Judge Wildman; mail to client.	0.20 135.00/hr	27.00
4/28/2010 PLA Review appellate procedure rules; telephone call with J. Aten regarding Judge Wildman's decision and appeal options.	0.70 135.00/hr	94.50
4/29/2010 APB Review Aten decision and forward to D. Paulsen.	0.30 170.00/hr	51.00
For professional services rendered		<u>\$1,748.00</u>
Additional Charges :		
4/16/2010 SMD Copying cost		2.50
SMD Copying cost for colored copies		3.80
4/22/2010 BRS Copying cost regarding Memo Decision in 63-32533 to Vern at Wilder Irrigation District.		1.00
4/23/2010 BRS Postage regarding Memo Decision in 63-32533 to Vern at Wilder Irrigation District.		1.22
Total additional charges		<u>\$8.52</u>
Total amount of this bill		<u>\$1,756.52</u>
Previous balance		\$2,144.53
Accounts receivable transactions		
4/19/2010 Payment - Thank You. Check No. 10830		<u>(\$2,144.53)</u>
Total payments and adjustments		<u>(\$2,144.53)</u>
Balance due		<u>\$1,756.52</u>