

COPY

RECEIVED

JUL 30 2008

DEPARTMENT OF
WATER RESOURCES

LAWRENCE G. WASDEN
Attorney General

STEVEN L. OLSEN
Deputy Attorney General
Chief, Civil Litigation Division

KARL T. KLEIN (ISB # 5156)
MICHAEL C. ORR (ISB # 6720)
SHASTA KILMINSTER-HADLEY (ISB # 7889)
Deputy Attorneys General
700 W. State Street – 2nd Floor
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-2400
Attorneys for the State of Idaho

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

In Re SRBA

Case No. 39576

)
) Consolidated Subcase No. 00-92023 (92-23)
)

) **STATE OF IDAHO'S CITATION OF**
) **SUPPLEMENTAL AUTHORITY**
) **REGARDING USE OF RULE 12(f)**
) **TO STRIKE A MOTION FOR**
) **SUMMARY JUDGMENT**
)
)

The State of Idaho provides the following supplemental citations of authority that Rule 12(f) authorizes only the striking of "pleadings," not "motions." This supplementation is intended to be illustrative, not exhaustive. *Petaway v. City of New Haven Police Department*, 541 F.Supp.2d 504, 507 (D.Conn. 2008) (denying Rule 12(f) motion to strike summary judgment motion on ground that Rule 12(f) applies to

“pleadings”); *Latino Quimica-Amtex S.A. v. Akzo Nobel Chemicals B.V.*, 2005 WL 2207017, *10 (S.D.N.Y. Sept. 8, 2005) (“Fed.R.Civ.P. 12(g) does not authorize the Court to ‘strike’ any portion of Defendants’ opposition brief, as the arguments raised do not, despite Plaintiffs’ suggestion, constitute a ‘defense or objection’ within the meaning of that Rule”); *Wilson v. City of Des Moines*, 338 F.Supp.2d 1008, 1023 n.19 (S.D.Iowa 2004) (denying Rule 12(f) motion to strike summary judgment motion on ground that Rule 12(f) applies to “pleadings”); *Milk Drivers, Dairy and Ice Cream Employees, Laundry and Dry Cleaning Drivers, Clerical and Allied Workers, Local Union No. 387 v. Roberts Dairy*, 219 F.R.D. 151, 152 - 53 (S.D.Iowa 2003) (same); *Sharpe v. MCI Telecommunications Corp.*, 19 F.Supp. 2d 483, 487 (E.D.N.C. 1998) (same); *E.E.O.C. v. Admiral Maintenance Service, L.P.*, 174 F.R.D. 643, 645-47 (N.D.Ill. 1997) (same); *Cobb v. Monarch Finance Corp.* 913 F.Supp. 1164, 1181 (N.D.Ill. 1995) (same); *Int’l Longshoremen’s Ass’n, S.S. Clerks Local 1624, AFL-CIO v. Virginia Intern. Terminals, Inc.*, 904 F.Supp. 500, 504 (E.D.Va. 1995) (same); *Jones v. City of Topeka*, 764 F.Supp. 1423, 1425 (D.Kan. 1991) (same); *Beaulieu v. Ludeman*, 2008 WL 2498241, *28 -*29 (D.Minn. June 18, 2008) (denying Rule 12(f) motion to strike a motion to dismiss on ground that Rule 12(f) applies to “pleadings”).

DATED this 29th day of July 2008.

LAWRENCE G. WASDEN
Attorney General

STEVEN L. OLSEN
Deputy Attorney General
Chief, Civil Litigation Division

/

/

/

/

/

KARL T. KLEIN
MICHAEL C. ORR
SHASTA KILMINSTER-HADLEY
Deputy Attorneys General

Michael C. Orr

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of July 2008, I caused a true and correct copy of the foregoing to be served on the following parties by the indicated methods:

Original to Clerk of the SRBA Court
253 Third Avenue North
P.O. Box 2707
Twin Falls, Idaho 83303-2707

- ☐ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☒ Facsimile: 208-736-2121

Idaho Power Company
Represented by:
James C. Tucker
P.O. Box 70
1221 W. Idaho
Boise, ID 83707

- ☒ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☒ Facsimile: 208.388.6935
- ☒ E-mail: jtucker2@idahopower.com

Idaho Power Company
Represented by:
James S. Lochhead
Mark J. Mathews
Michael A. Gheleta
Michelle C. Kales
Brownstein Hyatt Farber Shreck
410 17th Street, Ste. 2200
Denver, CO 80202-4432

- ☒ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☒ Facsimile: 303.223.0904
- ☒ E-mail: mgheleta@bhfs.com
- ☒ E-mail: jlochhead@bhfs.com

Idaho Power Company
Represented by
John K. Simpson
Shelley M. Davis
1010 W. Jefferson, Suite 102
Boise, ID 83701-2139

- ☐ U.S. Mail
- ☒ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☒ Facsimile: 208.344.6034
- ☒ E-mail: smd@idahowaters.com

IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-0098

- ☐ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: _____
- ☒ Statehouse Mail

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, Idaho 83720-4449

- ☐ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: _____
- ☒ Not Applicable

United States Department of Justice
Environment & Natural Resources
Division
550 West Fort Street
MSC 033
Boise, ID 83724

- ☒ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: _____

Randall C. Budge
Candice M. McHugh
Racine Olson Nye Budge & Bailey,
Chartered
P.O. Box 1391
Pocatello, Idaho 83204-1391

- ☒ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: _____
- ☒ E-mail: cmm@racinelaw.net

Josephine Beeman
Beeman & Associates, P.C.
409 W. Jefferson Street
Boise, Idaho 83702

- ☒ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: _____
- ☒ E-mail: jo.beeman@beemanlaw.com

