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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	)	
	)	Subcase Nos. 01-00217, 01-00218,
	)	01-04024, and 01-04025
Case No. 39576	)	(Minidoka Power Rights)
	)	
	)	Subcase Nos. 01-02068 and 01-04054
	)	(Palisades Power Rights)
	)	
	)	MEMORANDUM IN SUPPORT OF
	)	MOTION TO STRIKE
	)	

The State of Idaho, by and through the undersigned deputy attorney general, hereby submits is memorandum in support of its motion to strike filed concurrently herewith.

I. DISCUSSION

The SWC's *Joint Motion for Reconsideration* should be stricken on its face for the

following reasons: (A) Idaho Rule of Civil Procedure 11(a)(2)(B) does not allow reconsideration of final judgments; and (B) the SWC's motion fails to comply with the requirements of Idaho Rule of Civil Procedure 7(b)(1).

A. IDAHO RULE OF CIVIL PROCEDURE 11(a)(2)(B) DOES NOT ALLOW THE SWC TO MOVE FOR RECONSIDERATION OF THE FINAL JUDGMENT DATED FEBRUARY 9, 2011.

A motion for reconsideration of a memorandum decision and order certified as a final judgment cannot be brought under Idaho Rule of Civil Procedure 11(a)(2). Rule 11(a)(2) provides that a "motion for reconsideration of any **interlocutory orders** of the trial court may be made at any time before the entry of final judgment but not later than fourteen (14) days after the entry of the final judgment." I.R.C.P. 11(a)(2) (emphasis added). The Court's February 9, 2011 *Memorandum Decision and Order on Challenge* was not, however, an interlocutory order.

The Court expressly certified its *Order* as a **final judgment** pursuant to Idaho Rule of Civil Procedure 54(b):

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct **that the above judgment or order shall be a final judgment** upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules

Memorandum Decision and Order on Challenge, In re SRBA Case No. 39576, Subcase No. 01-00217 et al. at 30 (Idaho 5th Dist. Ct. Feb. 9, 2011) (emphasis added). Since the Court certified the *Order* a final judgment by the Rule 54(b) certificate, the *Order* cannot be considered an interlocutory order. *See Straub v. Smith*, 145 Idaho 65, 71, 175 P.3d 754, 760 (2007) ("[A] party may only make a motion to reconsider interlocutory orders or orders entered after the entry of final judgment."). Accordingly, the SWC's motion for reconsideration under Rule 11(a)(2),

which only applies to “interlocutory orders of the trial court,” is not appropriate. This Court came to the same conclusion in subcase nos. 29-00271 et al., finding: “Since the *Order* is deemed a final judgment by the Rule 54(b) certificate, it is no longer an interlocutory order. As such, a motion to reconsider under Rule 11(a)(2) , which only applies to “interlocutory orders of the trial court,” is not appropriate.” *Order on Motion to Alter or Amend (City of Pocatello)*, In re SRBA Case No. 39576, Subcase No. 29-00271 et al. at 5 (Idaho 5th Dist. Ct. Feb. 9, 2011). Where the Court cannot grant any relief under the rule supporting the SWC’s *Joint Motion for Reconsideration*, the motion should be stricken.

B. THE SWC’S MOTION FOR RECONSIDERATION VIOLATES IDAHO RULE OF CIVIL PROCEDURE 7(b)(1) BY FAILING TO STATE EITHER THE PARTICULAR GROUNDS SUPPORTING THE MOTION OR THE RELIEF REQUESTED THEREIN.

Idaho Rule of Civil Procedure 7(b)(1) requires that all motions “shall state with particularity the grounds therefor” and “shall set forth the relief or order sought.” I.R.C.P. 7(b)(1). Idaho courts have established that “[t]his requirement of particularity is ‘real and substantial,’ and good practice ‘demands that the basis of a motion and the relief sought shall be clearly stated’ so that the other party will not suffer surprise and prejudice.” *Nanney v. Linella, Inc.*, 130 Idaho 477, 481–82, 943 P.2d 67, 71–72 (Ct. App. 1997), *quoting Patton v. Patton*, 88 Idaho 288, 292, 399 P.2d 262, 264 (1965). The SWC’s motion satisfies neither the “particularity” nor the “relief or order sought” criteria of Rule 7(b).

The SWC’s motion provides no “particularity” regarding the grounds for its motion. It sets forth neither the elements of the Court’s *Order* sought to be reconsidered nor the grounds upon which reconsideration is sought. Instead, the motion matter-of-factly states that it will file a memorandum in support of the motion within 14 days of the hearing.

Moreover, the SWC’s motion makes no mention of the relief being requested. The

responding parties are therefore left to guess as to which elements of the relief provided in the Court's *Order* are being sought to be reconsidered and how the SWC seeks to amend that relief.

Since the SWC's motion fails to satisfy both the "particularity" and the "relief or order sought" criteria of Rule 7(b), the motion should be stricken.

C. -- THE STATE IS ENTITLED TO ATTORNEY FEES AND COSTS.

Where the SWC's motion was brought and pursued unreasonably and without foundation, the State is entitled to the reasonable attorney fees pursuant to Idaho Rule of Civil Procedure 54(e)(1) and Idaho Code § 12-121. As set forth above, both the plain language of Idaho Rule of Civil Procedure 11(a)(2)(B), and the case law interpreting the rule, make it clear that a motion for reconsideration cannot be brought against a final judgment. The SWC's motion, therefore, is not supported in fact or warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law. Accordingly, the State is entitled to attorney fees in responding to this unwarranted and unreasonable motion.

II. CONCLUSION

There is no basis under Idaho Rule of Civil Procedure 11(a)(2)(B) for reconsideration of the Court's February 9, 2011 *Memorandum Decision and Order on Challenge*. In addition, the SWC's motion satisfies neither the "particularity" nor the "relief or order sought" criteria of Idaho Rule of Civil Procedure 7(b). Accordingly, the SWC's motion should be stricken, and the State should be awarded attorney fees for having responded to this unsupportable motion.

RESPECTFULLY SUBMITTED this 3rd day of March 2011.

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LAWRENCE G. WASDEN
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CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

A handwritten signature in black ink, appearing to read 'D. Stanish', written over a horizontal line.

DAVID I. STANISH
Deputy Attorney General

CE CERTIFICATE OF SERVICE

I certify that on this 3rd day of March 2011, I caused to be served the original and copies of the **MEMORANDUM IN SUPPORT OF MOTION TO STRIKE** on the following persons by the methods indicated:

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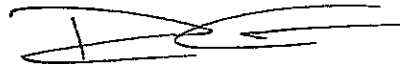
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