

3-11

RECEIVED

MAR 14 2011

DEPARTMENT OF
WATER RESOURCES

Roger D. Ling, ISB #1018
P.O. Box 623
Rupert, Idaho 83350
Telephone: (208) 434-2717
Facsimile: (208) 436-6804
Attorneys for A&B Irrigation District et al.

W. Kent Fletcher, ISB #2248
FLETCHER LAW OFFICE
P.O. Box 248
Burley, Idaho 83318
Telephone: (208) 678-3250
Facsimile: (208) 878-2548
Attorneys for Minidoka Irr. Dist.

John A. Rosholt, ISB #1037
John K. Simpson, ISB #4242
Travis L. Thompson, ISB #6168
Paul L. Arrington, ISB #7198
BARKER ROSHOLT & SIMPSON LLP
P.O. Box 485
Twin Falls, Idaho 83303-0485
Telephone: (208) 733-0700
Facsimile: (208) 735-2444
Attorneys for A&B Irrigation District et al.

C. Thomas Arkoosh, ISB #2253
CAPITOL LAW GROUP PLLC
P.O. Box 32
Gooding, Idaho 83330
Telephone: (208) 934-8872
Facsimile: (208) 934-8873
Attorneys for AFRD #2

**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. 1-217, 1-218, 1-4024, and 1-4025
	)	(Minidoka Power Rights)
	)	
Case No. 39576	)	Subcase Nos. 1-2068 and 1-4054
	)	(Palisades Power Rights)
	)	
	)	SWC JOINT RESPONSE TO STATE OF
	)	IDAHO'S MOTION TO STRIKE
	)	
	)	

COME NOW, A&B Irrigation District, American Falls Reservoir District #2, Burley
Irrigation District, Falls Irrigation District, Milner Irrigation District, Minidoka Irrigation
District, North Side Canal Company, and Twin Falls Canal Company (the "Coalition"), by and
through counsel of record, and hereby responds to the State of Idaho's *Motion to Strike* filed on
March 3, 2011. For the reasons set forth below the Court should deny the State's motion.

RESPONSE

The Court issued its *Memorandum Decision and Order on Challenge* in these subcases on February 9, 2011. The Coalition filed a timely joint motion to reconsider on February 22, 2011, mistakenly citing I.R.C.P. 11(a)(2)(B). The State of Idaho filed a motion to strike the Coalition's reconsideration motion on March 3, 2011. The Coalition filed an amended motion and memorandum in support on March 8, 2011.

The State of Idaho's motion is moot. *See Freeman v. Idaho Dept. of Correction*, 138 Idaho 872, 875 (Ct. App. 2003) ("the controversy must be live at the time of the court's hearing. . . . If, however, the issues presented are no longer live and if the parties lack a legally cognizable interest in the outcome, those issues are not justiciable, but are moot and thereby preclude review."). Since the Coalition filed an amended motion and supporting memorandum on March 8, 2011, the State of Idaho does not have any grounds to substantiate its motion to strike. Although Rule 11(a)(2) was not the proper rule to cite in seeking reconsideration of the Court's *Memorandum Decision*, the rules provided for reconsideration through Rule 59(e). The Coalition corrected this mistake in its amended motion.

The State of Idaho further alleged the Coalition's motion should be struck because it did not comply with I.R.C.P. 7(b)(1). Again, the State's motion is moot. In its amended motion the Coalition identified the issues for reconsideration and requested the Court to amend its *Memorandum Decision* accordingly. Moreover, the Coalition filed a memorandum in support, further identifying the grounds and relief sought. Neither the State, nor any other party, can complain of "surprise or prejudice" since the Coalition amended its motion and the State will have an opportunity to respond, both in writing and at oral argument. *See Nanney v. Linella*, 130 Idaho 477, 481-82 (Ct. App. 1997).

In sum, the State cannot show that the Coalition's motion contains any "insufficient defense or any redundant, immaterial, impertinent, or scandalous matter" that should be stricken under Rule 12(f). *See e.g., Davenport v. Idaho Dept. of Env. Quality*, 469 F. Supp.2d 861, 883 (D. Idaho 2006) ("[A]s a general rule, motions to strike based on Rule 12(f) are viewed with disfavor and are not frequently granted."), opinion withdrawn in part on reconsideration 2007 WL 914191. Accordingly, the State's motion to strike should be denied.

Since the Coalition's amended motion has a reasonable basis and foundation, the State cannot prevail in its request for attorneys fees. *See* I.C. § 12-121. The Court should similarly deny the State's request for attorneys fees associated with filing its motion to strike.

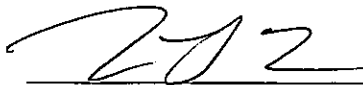
DATED this 11th day of March, 2011.

CAPITOL LAW GROUP PLLC



Roger D. Ling

*Attorney for A&B Irrigation District,
Burley Irrigation District and Falls
Irrigation District*



Tom Arkoosh

*Attorneys for American Falls Reservoir
District #2*

FLETCHER LAW OFFICES



W. Kent Fletcher

Attorneys for Minidoka Irrigation District

BARKER ROSHOLT & SIMPSON LLP



John K. Simpson
Travis L. Thompson
Paul L. Arrington

*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 11th day of March, 2010, I served a true and correct copy of the foregoing **SWC JOINT RESPONSE TO STATE OF IDAHO'S MOTION TO STRIKE** on the following by the method indicated:

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

☐ U.S. Mail, Postage Prepaid
☒ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☐ Email

Natural Resources Division Chief
State of Idaho
Attorney General's Office
P.O. Box 44449
Boise, Idaho 83711-4449

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☒ Email

United States Department of Justice
Environment & Natural Resources Div.
550 West Fort St., MSC 033
Boise, Idaho 83724

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☒ Email

IDWR Repository
P.O. Box 83720
Boise, Idaho 83720-0098

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☐ Email

Jerry Rigby
25 N. 2nd E.
P.O. Box 250
Rexburg, Idaho 83440-0250

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☒ Email

Randy C. Budge
Candice M. McHugh
Racine Olson
101 S. Capitol Blvd, Suite 208
Boise, Idaho 83702

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☒ Email

Regional Director – PN Region
U.S. Bureau of Reclamation
1150 N. Curtis Rd., Suite 100
Boise, Idaho 83706-1234

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☒ Email

Adam DeVoe
Brownstein, Hyatt, Farber & Schreck LLP
410 17th Street, 22nd Flr.
Denver, Colorado 80202

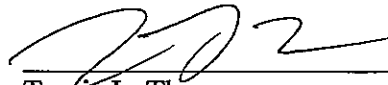
☐ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☒ Email

Josephine P. Beeman
409 W. Jefferson St.
Boise, Idaho 83702

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☒ Email

James C. Tucker
Idaho Power Company
P.O. Box 70
Boise, Idaho 83707

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☒ Email



Travis L. Thompson