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DEPARTMENT OF
WATER RESOURCES

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG (ISB No. 2207)
Deputy Attorney General
Chief, Natural Resources Division

DAVID I. STANISH (ISB No. 7310)
Deputy Attorney General
P.O. Box 44449
Boise, Idaho 83711-4449
Telephone: (208) 334-2400
Facsimile: (208) 854-8072

Counsel 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	)	
	)	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)
	)	
	)	REPLY MEMORANDUM IN
	)	SUPPORT OF MOTION TO STRIKE
	)	

I. PROCEDURAL BACKGROUND

On February 9, 2011, the Court entered its *Memorandum Decision and Order on Challenge*.

On February 22, 2011, the Surface Water Coalition (SWC)¹ filed its *Joint Motion for*

¹ 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.

Reconsideration “pursuant to Idaho Rule of Civil Procedure 11(a)(2)(B).”

On March 3, 2011, the State moved to strike the SWC’s *Joint Motion for Reconsideration* 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).

On March 8, 2011, the SWC filed its *Joint Amended Motion for Reconsideration*, seeking relief under Idaho Rule of Civil Procedure 59(e). The SWC concurrently filed its *Joint Notice of Appeal*.

On March 11, 2001, the SWC filed its *Joint Response to State of Idaho’s Motion to Strike*, arguing that the State’s motion became moot as a result of the SWC’s March 8 pleadings.

II. DISCUSSION

The deficiencies in the SWC’s pleadings are jurisdictional and cannot be ignored. The SWC’s Rule 59(e) motion was filed after the 14-day filing deadline, and the Idaho Rules of Civil Procedure do not allow for any extension of time or any piggybacking onto previously filed motions. *See* I.R.C.P. 6(b); *O’Neil v. Schuckardt*, 116 Idaho 507, 777 P.2d 729 (1989). Moreover, the SWC failed to move the Court for leave to amend its previously-filed motion as required by the Idaho Rules of Civil Procedure, and the Court has no jurisdiction to consider such a motion to amend now that the SWC filed its *Notice of Appeal*. *See* I.R.C.P. 7(b)(1), 54(b)(2); I.A.R. 13(b). The SWC’s argument that it simply made a “mistake” in filing the wrong motion cannot cure these jurisdictional deficiencies, and thus, the SWC’s *Joint Motion for Reconsideration* and the SWC’s *Joint Amended Motion for Reconsideration* should both be stricken for lack of subject matter jurisdiction.

A. STANDARD OF REVIEW

The issue of subject matter jurisdiction is so fundamental to the propriety of a court’s

actions that parties cannot waive, consent to, or be estopped from asserting as a defense, a lack of subject matter jurisdiction. *See State v. Urrabazo*, 150 Idaho 158, ___, 244 P.3d 1244, 1249 (2010); *State v. Armstrong*, 146 Idaho 372, 374, 195 P.3d 731, 733 (Ct. App. 2008). Furthermore, courts have a *sua sponte* duty to ensure subject matter jurisdiction, and judgments and orders made without subject matter jurisdiction are void and subject to collateral attack. *See State v. Urrabazo*, 150 Idaho 158, ___, 244 P.3d 1244, 1249 (2010); *see also* I.R.C.P. 12(g)(4).

B. IDAHO RULE OF CIVIL PROCEDURE 6(b) DOES NOT ALLOW AN EXTENSION OF TIME FOR FILING A RULE 59(e) MOTION TO ALTER OR AMEND.

The SWC's Rule 59(e) motion is untimely on its face. Under Rule 59(e), all motions to alter or amend are required to be filed within "fourteen (14) days after entry of judgment." I.R.C.P. 59(e). Rule 6(b) clearly and unambiguously states that the time for filing a Rule 59(e) motion cannot be enlarged:

Enlargement. When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the parties, by written stipulation, which does not disturb the orderly dispatch of business or the convenience of the court, filed in the action, before or after the expiration of the specified period, may enlarge the period, or the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by previous order or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; **but the time may not be extended for taking any action under Rules 50(b), 52(b), 59(b), (d), (e), and 60(b) except to the extent and under the conditions stated in them.**

I.R.C.P. 6(b) (emphasis added). The SWC's Rule 59(e) motion was filed on March 8, more than 27 days after the entry of final judgment on February 9. Pursuant to the requirements of Rule 6(b), the SWC's Rule 59(e) motion is untimely and the Court has no jurisdiction to consider the motion.

Furthermore, the untimely Rule 59(e) motion cannot piggyback onto the previously-filed

Rule 11(a)(2)(B) motion for purposes of complying with the filing deadline. The Idaho Supreme Court rejected the application of the relation-back argument to motions in *O'Neil v. Schuckardt*, 116 Idaho 507, 777 P.2d 729 (1989). In that case, the defendants filed a timely motion for judgment notwithstanding the verdict. One month later, the defendants moved to amend their JNOV motion to include a motion for a new trial, which was otherwise untimely. The Court rejected the defendant's attempt to piggyback the untimely motion for new trial onto the previously-filed JNOV motion, finding that neither Rule 6(b) nor Rule 15(c) provides such relief:

Clearly, a motion for new trial was not filed within ten days after judgment was entered. The attempt to piggyback a late filed motion for new trial by amending a timely motion for judgment notwithstanding the verdict is not supported by our rules of civil procedure. I.R.C.P. 6(b) does not allow for the extension of the time for filing a motion for new trial. We also reject the argument of respondents that I.R.C.P. 15(c) would permit the filing of the motion for new trial to relate back to the filing of the motion for judgment notwithstanding the verdict. I.R.C.P. 15(c) allows an "amended pleading" to relate back to the date of the original pleading, if the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth in the original pleading. . . . Motions are not pleadings in the sense used in I.R.C.P. 15(c). Therefore, I.R.C.P. 15(c) has no application to the amendment of motions. If the motion to amend the motion for judgment notwithstanding the verdict had been granted, then the motion for remittitur or new trial would not have related back to the date the motion for judgment notwithstanding the verdict was filed or served.

Id. at 509, 731. The SWC's March 8 "amended" motion is nothing more than an effort to circumvent the requirement that a Rule 59(e) motion must be filed within 14 days after the judgment was entered, which in this case was on February 9. Pursuant to Rule 6(b) and the Idaho Supreme Court in *O'Neil v. Schuckardt*, the SWC's Rule 59(e) motion is untimely and the Court has no jurisdiction to consider the motion.

C. IDAHO APPELLATE RULE 13(b) DIVESTS THE COURT OF ANY JURISDICTION TO CONSIDER A PROPERLY FILED MOTION TO AMEND.

The SWC's response to the State's *Motion to Strike* wrongfully assumes that the SWC properly amended its February 22 motion, when in fact, the SWC failed to move the Court for

leave to amend the February 22 motion as required by the Idaho Rules of Civil Procedure. *See* I.R.C.P. 7(b)(1). In its March 8 *Joint Amended Motion for Reconsideration*, the SWC stated matter-of-factly that it was amending its February 22 motion: “[The SWC] . . . by and through counsel of record, and pursuant to Idaho Rule of Civil Procedure 7(b)(1) hereby jointly amends its motion for reconsideration” *SWC’s Joint Amended Motion for Reconsideration* at 2. Rule 7(b)(1) does not provide for amendments to previously-filed motions, however; it only provides for the filing of motions themselves. Accordingly, the SWC’s March 8 “amended” motion can only be considered as a new, independent motion, which as discussed above is untimely on its face.²

To the extent the SWC now moves the Court for leave to amend the Rule 11(a)(2)(B) motion that the SWC “mistakenly” filed, the Court is without jurisdiction to consider any such motion to amend because the SWC has already filed its *Notice of Appeal*. Under Civil Rule 54(b)(2), once the SWC filed its *Notice of Appeal* the Court was divested of all jurisdiction over this action except as provided specifically by Appellate Rule 13: “If a Rule 54(b) Certificate is issued on a partial judgment and an appeal is filed, the trial court shall lose all jurisdiction over the entire action, except as provided in Rule 13 of the Idaho Appellate Rules.” I.R.C.P. 54(b)(2). There are no exceptions in Appellate Rule 13 that would allow the Court to consider a motion to amend at this point in the proceedings. *See H & V Engineering, Inc. v. Idaho State Bd. of Professional Engineers and Land Surveyors*, 113 Idaho 646, 648, 747 P.2d 55, 57 (1987) (“Once a notice of appeal has been perfected the district court is divested of jurisdiction and the proceedings are stayed during the pendency of the appeal.”). Having filed its *Notice of Appeal*,

² Any argument that the March 8 motion relates-back to, or piggybacks onto, the February 22 motion for filing deadline purposes is immaterial because the SWC’s March 8 motion stands on its own under Rule 7(b)(1).

the SWC cannot now seek to amend the motions it currently has before the Court.³

D. THE STATE IS ENTITLED TO ATTORNEY FEES AND COSTS.

Because the SWC's February 22 and March 8 motions were brought—and continue to be pursued—unreasonably and without foundation, the State is entitled to reasonable attorney fees pursuant to Idaho Rule of Civil Procedure 54(e)(1) and Idaho Code § 12-121. As set forth above and as set forth in the State's *Memorandum in Support of Motion to Strike*, the plain language of the Idaho Rules of Civil Procedure and Idaho Appellate Rules, as well as the case law interpreting those rules, make it clear that the SWC's February 22 and March 8 motions are 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 these unsupported motions.

III. CONCLUSION

On February 22, the SWC filed a Rule 11(a)(2)(B) motion for reconsideration. On March 8, the SWC then filed a Rule 59(e) motion to alter or amend after the requisite 14-day filing deadline. The SWC attempted to circumvent that filing deadline by describing its March 8 motion as an “amendment” to the February 22 motion. The Rules of Civil Procedure do not allow, however, enlargements of time for filing Rule 59(e) motions or “amended” motions to relate-back to previously-filed motions for timeliness purposes. In any event, the SWC failed to seek leave of the Court to amend its February 22 motion as required by the Rules of Civil Procedure, and the Court has no jurisdiction under the Appellate Rules to consider such a motion to amend now that the SWC filed its *Notice of Appeal*. The Court's rules and the Court's jurisdiction cannot be ignored, and therefore, the State's *Motion to Strike* should be granted and

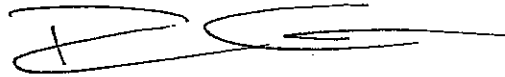
³ In the event the Court finds that the SWC may move to amend its February 22 motion, the timeliness and relation-back principles discussed above would nonetheless divest this Court of jurisdiction to consider the merits of a Rule 59(e) motion at this time.

the State should be awarded attorney fees for having to respond to these unsupportable motions.

RESPECTFULLY SUBMITTED this 16th day of March 2011.

LAWRENCE G. WASDEN
Attorney General

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

CERTIFICATE OF SERVICE

I certify that on this 16th day of March 2011, I caused to be served the original and copies of the **REPLY MEMORANDUM IN SUPPORT OF MOTION TO STRIKE** on the following persons by the methods indicated:

1. Original to:

CLERK OF THE DISTRICT COURT
SNAKE RIVER BASIN ADJUDICATION
253 THIRD AVENUE NORTH
PO BOX 2707
TWIN FALLS, ID 83303-2707

☐ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☒ Facsimile: (208) 736-2121
☒ Electronic Mail:
ewildman@srba.state.id.us;
pharrington@srba.state.id.us

2. Copies to:

IDAHO POWER COMPANY
Represented by:
JAMES C TUCKER
IDAHO POWER CO
PO BOX 70
BOISE, ID 83707

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile:
☒ Electronic Mail:
JTucker@idahopower.com

IDAHO POWER COMPANY
Represented by:
ADAM DEVOE
BROWNSTEIN HYATT ET AL
410 17TH STREET, SUITE 2200
DENVER, CO 80202

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile:
☒ Electronic Mail:
adevoe@bhfs.com

AMERICAN FALLS RESERVOIR
Represented by:
C THOMAS ARKOOSH
301 MAIN ST
PO BOX 32
GOODING, ID 83330

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile:
☒ Electronic Mail:
tarkoosh@capitolawgroup.net

ABERDEEN AMERICAN FALLS GWD
BINGHAM GWD
BONNEVILLE JEFFERSON GWD
CAREY VALLEY GWD
IGWA INC
JEFFERSON CLARK GWD
MADISON GWD
MAGIC VALLEY GWD

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile:
☒ Electronic Mail:
cmm@racinelaw.net

NORTH SNAKE GWD

Represented by:
CANDICE MCHUGH
101 CAPITOL BLVD., STE. 208
BOISE, ID 83702

CITY OF POCATELLO

Represented by:
JOSEPHINE P BEEMAN
409 W JEFFERSON ST
BOISE, ID 83702

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile:
☒ Electronic Mail:
jo.beeman@beemanlaw.com

A&B IRRIGATION DISTRICT
BURLEY IRRIGATION DISTRICT
FALLS IRRIGATION DISTRICT

Represented by:
ROGER D LING
615 H ST
PO BOX 396
RUPERT, ID 83350-0396

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile:
☒ Electronic Mail:
rdl@idlawfirm.com

MILNER IRRIGATION DIST
NORTH SIDE CANAL COMPANY
TWIN FALLS CANAL COMPANY

Represented by:
TRAVIS THOMPSON
113 MAIN AVE W, STE 303
PO BOX 485
TWIN FALLS, ID 83303-0485

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile:
☒ Electronic Mail:
tlt@idahowaters.com

MINIDOKA IRRIGATION DISTRICT

Represented by:
W KENT FLETCHER
1200 OVERLAND AVE
PO BOX 248
BURLEY, ID 83318

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile:
☒ Electronic Mail: wkf@pmt.org

NEW SWEDEN IRRIGATION DISTRICT
FREMONT-MADISON IRR DIST
VARIOUS AMERICAN FALLS
SPACEHOLDERS

Represented by:
JERRY R. RIGBY
25 N 2ND E
PO BOX 250

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile:
☒ Electronic Mail: jrigby@rex-law.com

REXBURG, ID 83440-0250

USDI BUREAU OF RECLAMATION
Represented by:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile:

UNITED STATES OF AMERICA
REGIONAL DIRECTOR PN REGION
BUREAU OF RECLAMATION PN-3100
1150 N CURTIS RD STE 100
BOISE, ID 83706-1234

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile:

DAVID W. GEHLERT
ASSISTANT ATTORNEY GENERAL
ENV'T & NAT'L RESOURCES
UNITED STATES DEPT OF JUSTICE
1961 STOUT STREET, 8TH FLOOR
DENVER, CO 80294

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile:
☒ Electronic Mail:
David.Gehlert@usdoj.gov

IDWR DOCUMENT DEPOSITORY
PO BOX 83720
BOISE, ID 83720-0098

☐ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile:
☒ Statehouse Mail



DAVID I. STANISH
Deputy Attorney General