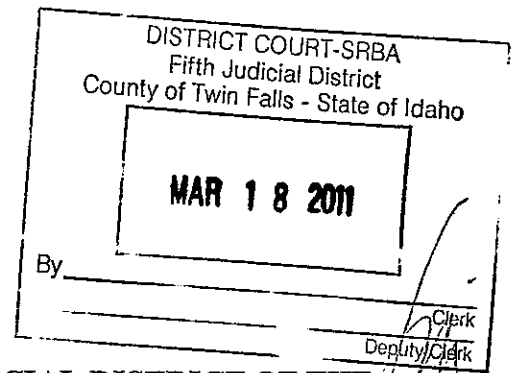


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DEPARTMENT OF
WATER RESOURCES



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. 01-217, 01-218, 01-4024 and 01-4025
Case No. 39576) (Minidoka Power Rights)
)
) Subcase Nos. 01-2068 and 01-4054
) (Palisades Power Rights)
)
) ORDER ON MOTION TO STRIKE AND
) REQUEST FOR ATTORNEY'S FEES AND
) COSTS
)

I.

BACKGROUND

1. On February 9, 2011, this Court entered a *Memorandum Decision and Order on Challenge* ("*Memorandum Decision*") in this matter, which is deemed a final judgment by way of a Rule 54(b) Certificate.

2. On February 22, 2011, 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 (collectively, the "Surface Water Coalition" or "SWC") filed a *Motion for Reconsideration* under Rule 11(a)(2)(B) requesting that this Court reconsider the *Memorandum Decision*.

3. On March 3, 2011, the State of Idaho filed a *Motion to Strike* the *Motion for Reconsideration* on the grounds that it was procedurally improper. The State's *Motion to Strike* also contained a request for attorney's fees and costs associated with responding to the *Motion for Reconsideration* under Idaho Rule of Civil Procedure

54(e)(1) and Idaho Code § 12-121. The State additionally filed a *Motion for Expedited Hearing* requesting that its *Motion to Strike* be heard on an expedited basis.

4. On March 8, 2011, the SWC filed an *Amended Motion for Reconsideration* along with a supporting *Memorandum* and the *Affidavit of Travis L. Thompson Re: SWC'S Amended Joint Motion for Reconsideration*. The *Amended Motion* amended the SWC's prior *Motion* from a Rule 11(a)(2)(B) *Motion* to a Rule 59(e) *Motion*.

5. On March 11, 2011, the SWC filed its *Response to State of Idaho's Motion to Strike*.

6. On March 16, 2011, the State of Idaho filed its *Reply Memorandum in Support of Motion to Strike*.

7. A hearing on the State's *Motion for Expedited Hearing* and *Motion to Strike* was held before this Court on March 18, 2011.¹

II.

ANALYSIS

At the hearing on the *Motion to Strike* the Court made the following rulings from the bench: (1) the Court will treat the *Motion for Reconsideration* timely filed by the SWC on February 22, 2011 as a Rule 59(e) motion to alter or amend the judgment; (2) the Court will not consider affidavits or new evidence submitted in support of the *Motion for Reconsideration*; (3) the Court will not consider new arguments made in the *Motion for Reconsideration* not raised in the parties' briefing on *Challenge*; and (4) the State's requests for attorney's fees and costs are denied.

The rationale behind the Court's decision to treat the timely February 22, 2011 *Motion for Reconsideration* as a Rule 59(e) motion to alter or amend the judgment is that the relief requested under a Rule 11(a)(2)(B) motion and a Rule 59(e) is essentially the same, where as is the case here, the *Memorandum Decision* contains a Rule 54(b) Certification. The result is that the *Memorandum Decision* is the final judgment. A

¹ At the hearing the Court granted the State's request for expedited hearing on the grounds that no party filed any opposition to the State's *Motion for Expedited Hearing*.

request to reconsider the *Memorandum Decision* and a request to alter or amend the judgment in such instances are essentially the same requests, as both ask the court to reconsider, alter or modify the same document.

The Court notes that there has been confusion in the past regarding if and when certain orders and memorandum decisions are final judgments under the Idaho Rules of Civil Procedure. In 2010, Rule 54(a) was amended to define the term “Judgment” as “a separate document entitled ‘Judgment’ or ‘Decree’” for the purposes of avoiding such confusion. However given the unique circumstances of the SRBA – being one lawsuit containing numerous subcases – the SRBA Court is not in a position to issue a separate Rule 54(a) final judgment/decree in every subcase and utilizes the Rule 54(b) Certification in a manner not generally utilized in other non-SRBA cases. As a result it is not unusual for issues to arise in the SRBA as to whether a Rule 11(a)(2)(B) motion or a Rule 59(e) motion should be filed following the issuance of a memorandum decision or order containing a Rule 54(b) Certificate in a given subcase.

The Court also notes that Idaho Courts have previously upheld the decisions of trial courts to treat a motion for reconsideration as a motion to amend judgment where the filing of a motion for reconsideration was not procedurally proper. *See e.g., Obray v. Mitchell*, 98 Idaho 533, 538, 567 P.2d 1284, 1289 (1977) (holding, “the district court correctly treated appellant’s petition [for reconsideration] as a motion to alter or amend judgment pursuant to I.R.C.P. 59(e)”); *Ross v. State*, 141 Idaho 670, 115 P.3d 761 (Ct. App. 2005) (stating, “a motion to reconsider a dismissal order properly should be treated as a motion to alter or amend a judgment under I.R.C.P. 59(e) if the motion was timely filed”).

In this case the SWC timely filed a *Motion for Reconsideration* in the above-captioned matter on February 22, 2011. While the SWC erred in citing Rule 11(a)(2)(B) as the authority for its motion, this Court in its discretion will treat the *Motion* as a Rule 59(e) motion. This is not a case where the SWC is trying to bootstrap an untimely motion that seeks entirely different relief to a timely filed motion as was the case in *O’Neil v. Schuckardt*, 116 Idaho 507, 777 P.2d 729 (1989), which is relied upon by the State. Ordinarily, a significant distinction between a Rule 11(a)(2)(B) motion and a Rule 59(e) motion is the ability of the Court to consider additional evidence in conjunction

with a Rule 11(a)(2)(B) motion. However this distinction does not exist in this case where SRBA procedural rules prohibit the Court from considering new evidence on Challenge. As such, the scope of the available relief under either motion is essentially the same in the SRBA.

Since, for the reasons stated above, requests to reconsider the *Memorandum Decision* and to alter or amend the judgment are essentially the same in substance under this particular set of circumstances, the Court finds no harm or prejudice to the other parties resulting from the Court's decision to treat the timely *Motion for Reconsideration* as a Rule 59(e) motion.

Also for the above-stated reasons and pursuant to Rule 59(e) no new evidence may be presented in conjunction with a motion to alter or amend. *Johnson v. Lambros*, 143 Idaho 468, 472 (Ct. App. 2006). As a result, this Court will not consider the *Affidavit of Travis L. Thompson Re: SWC'S Amended Joint Motion for Reconsideration* filed in the above-captioned matter on March 8, 2011 in conjunction with the *Motion*.

III.

ORDER

THEREFORE THE FOLLOWING ARE HEREBY ORDERED:

1. The State of Idaho's *Motion to Strike* is hereby denied;
2. The State of Idaho's requests for attorney's fees and costs associated with the *Motion for Reconsideration* are hereby denied.
3. The *Affidavit of Travis L. Thompson Re: SWC'S Amended Joint Motion for Reconsideration* filed in the above-captioned matter on March 8, 2011, is hereby stricken and will not be considered by the Court in conjunction with its *Motion for Reconsideration*.

DATED: March 18, 2011.


ERIC J. WILDMAN
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER ON MOTION TO STRIKE AND REQUEST FOR ATTORNEY'S FEES AND COSTS was mailed on March 18, 2011, with sufficient first-class postage to the following:

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ORDER

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