IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

DAVE NELSON and LOY PEHRSON, et al.,

Plaintiffs,

v.

BIG LOST RIVER IRRIGATION DISTRICT, Board of Directors, RICHARD REYNOLDS, CHARLIE HUGGINS, KENT HARWOOD, JOEL ANDERSON, and BRUCE WARNER; IDAHO DEPARTMENT OF WATER RESOURCES and KARL J. DREHER, Director,

Defendants.

BIG LOST RIVER IRRIGATION DISTRICT,

Counter Claimant,

v.

DAVE NELSON and LOY PEHRSON, et al.,

Counter Defendants.

Case No. CV-05-91

OPINION, DECISION, AND ORDER ON PLAINTIFF'S MOTION FOR RECONSIDERATION

I.
FACTUAL AND PROCEDURAL BACKGROUND

Defendant Big Lost River Irrigation District ("BLRID") holds storage water rights in the Mackay Reservoir on the Big Lost River. Defendant BLRID Board of Directors ("Board")

administers the delivery of storage water to the patrons in the district. Plaintiffs Dave Nelson and Loy Pehrson are patrons of the BLRID who use storage water for irrigation along the upper reaches of the Big Lost River. There are 62 additional plaintiffs named in this action most of whom divert storage water for irrigation along the upper reaches of the Big Lost River.

The BLRID delivers water from the Mackay Reservoir to its patrons through a series of 16 diversions from the river. The Big Lost River area has large gravel deposits and porous soils, which allow water to seep into the ground. The loss of water is referred to as conveyance loss or "shrink." The upper reaches of the Big Lost River experience significantly less shrink, if any, compared to the lower reaches where shrink is substantial.

In 2005, the Board considered changing the shrink calculation because patrons on the lower reaches of the Big Lost River were not receiving their allotment of storage water. This had become a particular problem through a number of drought years, beginning in the late 1990s. On April 30, 2005, the Board considered a motion to apply shrink universally among the patrons. (*Id.*, Ex. G.) However, no decision was made at that time. The Board considered the motion again on May 5, 2005, and approved the universal shrink motion.

On July 28, 2005, Plaintiffs initiated the present action. BLRID filed a Motion for Order of Dismissal and Motion for Summary Judgment on January 30, 2006. Plaintiffs filed a Cross-Motion for Summary Judgment on February 13, 2006, seeking summary judgment on all claims and the counterclaim.

The Court held a hearing on the motion to dismiss, motions for summary judgment, motion to strike, and motion to intervene on February 27, 2006. At the hearing, the Court denied the motion to intervene due to the late request and the close proximity to the trial. On April 6, 2006, the Court issued a memorandum decision denying BLRID's motion to dismiss. Since the

parties seek a declaratory judgment of an IDWR administrative rule, the Court ordered that IDWR must be joined as a party pursuant to Idaho Code ("I.C.") § 67-5278(2) and Idaho Rule of Civil Procedure (IRCP") 19(a)(1). The Court instructed that it would consider the motions for summary judgment after IDWR was joined and had an opportunity to respond to the motions.

The Court granted BLRID's Motion for Summary Judgment on November 17, 2006. Plaintiffs filed their Motion for Reconsideration of that opinion on December 1, 2006 and that motion went up for hearing on February 5, 2007. At that time, the Court took the motion under advisement. After considering the Court's file, pleadings, admissions, affidavits, and the argument of counsel, the Court renders the following opinion on the Motion for Reconsideration.

II.
RECONSIDERATION STANDARD

Idaho Rule of Civil Procedure 11(a)(2)(B) provides the authority for a district court to reconsider and vacate interlocutory orders so long as final judgment has not yet been ordered. *Telford v. Mart Produce, Inc.*, 130 Idaho 932, 950 P.2d 1271 (1998). See also *Sammis v. Magnetek, Inc.*, 130 Idaho 342, 346, 941 P.2d 314, 318 (1997) and *Farmers Nat'l Bank v. Shirey*, 126 Idaho 63, 68, 878 P.2d 762, 767 (1994). "The decision to grant or deny a request for reconsideration generally rests in the sound discretion of the trial court." *Jordan v. Beeks*, 135 Idaho 586, 592, 21 P.3d 908, 914 (2001). *See also Watson v. Navistar Int'l Transp. Corp.*, 121 Idaho 643, 827 P.2d 656 (1992); *Slaathaug v. Allstate Ins. Co.*, 132 Idaho 705, 979 P.2d 107 (1999). On a motion for reconsideration pursuant to I.R.C.P. 11(a)(2)(B), the trial court should take into account any new facts presented by the moving party that bear on the correctness of the interlocutory order. *Coeur d'Alene Mining Co. v. First Nat'l Bank*, 118 Idaho 812, 823, 800 P.2d 1026, 1037 (1990); *Jordan*, 135 Idaho at 592, 21 P.3d at 914. A party filing a motion to reconsider pursuant to Rule 11(a)(2)(B) carries the burden of bringing to the trial court's

attention the new facts. *Id.*; See also *Devil Creek Ranch, Inc. v. Cedar Mesa Reservoir & Canal Co.*, 126 Idaho 202, 879 P.2d 1135 (1994).

The Court in *Jordan* concluded that "the district court was provided with no new facts to create an issue for trial, and thus there was no basis upon which to reconsider its summary judgment order." *Id.* The Idaho Court of Appeals interpreted this holding in *Jordan* by stating:

> [*Jordan*] does not stand for the proposition that a court given no new evidence with a motion for reconsideration has nothing to reconsider; it merely recognizes that if a trial court's conclusions were correct on the previous record, and it does not thereafter receive any information that would change its previous ruling, there is no basis for it to overturn its initial decision.

Johnson v. Lambros, 143 Idaho 468, 147 P.3d, 100, 105 (Ct. App. 2006). The failure to present new facts does not, of itself, preclude reconsideration. Rather, reconsideration is improper in the face of a lack of any new information that would alter a trial court's correct conclusions.

III.
ANALYSIS

In their Brief in Support of Motion for Reconsideration, Plaintiffs fail to present new information creating an issue for trial; therefore, there is no basis upon which to reconsider the Court's November order granting summary judgment to BLRID.

Each of Plaintiffs' arguments dispute the Court's interpretation of the law as it applies to the facts, but in none of those arguments is there a presentation of new facts that would alter the legal outcome of the analysis. Absent the presentation of new facts, reconsideration requires something beyond a reiteration of previous argument, now custom-tailored to address the Court's opinion. Nothing has been submitted in support of the present motion that persuades the Court that the grant of summary judgment was incorrect. If the parties are dissatisfied with the Court's reasoning, the proper course of action is to take it up on appeal.

IV.
CONCLUSION

The Court is satisfied that the reasoning and subsequent ruling in the Opinion, Decision, and Order on Defendant Big Lost River Irrigation District's Motion for Summary Judgment and Plaintiff's Cross-Motion for Summary Judgment are sound. Therefore, the Motion for Reconsideration is DENIED.

IT IS SO ORDERED.

Dated this 13 day of March, 2007.

Jon J. Shindurling
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of March, 2007, I served a true and correct copy of the foregoing OPINION, DECISION, AND ORDER ON PLAINTIFF'S MOTION FOR RECONSIDERATION upon the parties listed below by mailing, with the correct postage thereon, or by causing the same to be delivered to their courthouse boxes.

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