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**IN THE DISTRICT COURT FOR THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

STRIDER CONSTRUCTION CO., INC.,

Plaintiff,

vs.

IDAHO WATER RESOURCE BOARD,

Defendant.

Case No. CV01-22-10932

**DEFENDANT’S MOTION FOR A JURY
TRIAL AND OPPOSITION TO
PLAINTIFF’S MOTION TO STRIKE**

COMES NOW Defendant, Idaho Water Resource Board (“IWRB”), by and through its counsel of record, Kirton McConkie, and hereby moves for a jury trial pursuant to Idaho Rule of
**DEFENDANT’S MOTION FOR A JURY TRIAL AND OPPOSITION TO PLAINTIFF’S
MOTION TO STRIKE - 1**

Civil Procedure 39(b) and opposes Plaintiff's Motion to Strike Jury Trial.

IWRB filed its Answer and Counterclaim on August 23, 2022 and received Plaintiff, Strider Construction Inc.'s ("Strider"), Answer to IWRB's Counterclaim on September 14, 2022. Kirton McConkie, outside counsel of record for IWRB, was retained and filed a notice of appearance on October 6, 2023, after the time passed to make a demand for a jury trial as of right under Idaho Rule of Civil Procedure 38(b). Notwithstanding I.R.C.P. 38(b), a trial court has discretion to allow a jury trial on any or all issues upon the motion of a party pursuant to I.R.C.P. 39(b). Idaho R. Civ. P. 39(b); *Farmers Nat. Bank v. Shirey*, 878 P.2d 762, 770 (Idaho 1994). Due to timing, outside counsel did not have the opportunity to review the issues in this matter and make the necessary request before the deadline. Further, maintaining a jury trial in this case, during the early stages of discovery, would cause no undue delay or prejudice to Strider. Therefore, IWRB is requesting the Court to exercise its discretion to order that a jury trial be had on all triable issues pursuant to Idaho Rule of Civil Procedure 39(b).

PROCEDURAL HISTORY

1. Strider filed its Complaint against IWRB on July 29, 2022.
2. IWRB filed its Answer and Counterclaim to Strider's Complaint on August 23, 2022.
3. Strider filed its Answer to IWRB's Counterclaim on September 14, 2022.
4. Pursuant to Idaho Rule of Civil Procedure 38(b), both parties had until September 28, 2022 to make a demand for a jury trial as of right on any or all triable issues.
5. IWRB's current outside counsel of record, Kirton McConkie, was retained and filed its notice of appearance in this case for the Defendant on October 6, 2022, after the 38(b) deadline had passed.

6. On November 16, 2023, the Court issued the governing Scheduling Order setting the matter for a jury trial commencing on November 27, 2023.

7. The Scheduling Order further provides that written discovery is due September 11, 2023, supplemental responses to written discovery are due October 16, 2023, and any non-dispositive motions (including motions *in limine*) are due October 30, 2023.

ARGUMENT

When no demand for a jury trial is made within the timeframe set forth by Idaho Rule of Civil Procedure 38(b), “the court may, on motion, order a jury trial on any issue for which a jury might have been demanded.” I.R.C.P. 39(b). Motions for a jury trial under Rule 39(b), “should be granted in that absence of any showing of delay to the nonmoving party in transferring the case to the jury docket, or that judicial time will be wasted because it is too late to fill the vacancy left on the nonjury docket.” *R. E. W. Const. Co. v. Dist. Ct. of Third Jud. Dist.*, 88 Idaho 426, 443 (1965) (quoting 2B Barron & Holtzoff, Federal Practice and Procedure, 66 § 892, n. 22). “It is essential, that upon a request for trial of issues by a jury, even after the time for demand for jury has elapsed, that the trial court liberally exercise its discretion in this regard to carry out the designed purpose of the Idaho Rules of Civil Procedure.” *R.E.W. Const. Co.*, 88 Idaho at 443 (*citing* H. Henry, Annotation: 64 A.L.R.2d 506).

Outside counsel for IWRB was retained and appeared after the deadline passed to demand a jury trial as of right. However, after evaluation of the Plaintiff’s claims and IWRB’s counterclaim, a jury trial is requested. Granting IWRB’s motion for a jury trial will not cause undue delay or prejudice to Strider, as the Scheduling Order currently governing the case sets it for a jury trial. Further, the matter is in the early stages of initial discovery without depositions even having commenced. This motion is made well in advance of the closure of discovery and

certainly in advance of any pre-trial motions that would be influenced by the existence of a jury. Because of these reasons, IWRB requests that this Court grant its Motion for a Jury Trial.

CONCLUSION

Because outside counsel of record was retained and appeared after the I.R.C.P. 38(b) deadline for demanding a jury trial as of right, and the delay in requesting a jury trial will not pose any prejudice to the Plaintiff, IWRB requests the Court grant Defendant's motion for a jury trial pursuant to I.R.C.P. 39(b) and deny Strider's Motion to Strike Jury Trial.

DATED this 15th day of March 2023.

KIRTON McCONKIE

/s/ Jennifer Reinhardt-Tessmer
Jennifer Reinhardt-Tessmer
Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of March 2023, a true and correct copy of the foregoing was served by the method indicated below, and addressed to the following:

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