

DISTRICT COURT - SRBA
Fifth Judicial District
County of Twin Falls-State of Idaho

AUG 5 2025

By

Deputy Clerk

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Attorney for Defendant Joshua A. McIntosh

IN THE DISTRICT COURT FOR THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In re SRBA

Case No. 39576

BRIAN CARPENTER and THERESA
CARPENTER,

Plaintiffs/Claimants,

vs.

ROCKIE WALKER and LEANNE
WALKER, husband and wife; JOSHUA
A. MCINTOSH,

Defendants/Respondents.

Subcase Nos. ~~74-733H, 74-733E~~ VM 00-39576

MOTION TO DISMISS

COMES NOW Defendant/Respondent Joshua A. McIntosh ("McIntosh"), by and through counsel, and hereby moves the Court to dismiss the *Motion to Remove Defendants' Water Rights, Bury Illegal Southwest Ditch, Reinstate Historic Water Delivery, Enjoin Citation, Refer Criminal Violations, and Refer Findings to Lemhi County Civil Court* (filed June 18, 2025) ("Carpenters'

Motion”) filed by Plaintiff/Claimants Brian Carpenter and Theresa Carpenter (“Carpenters”) under I.R.C.P. 12(b)(6), 12(b)(1), 12(b)(8) and 11.2(b)(1) as set forth below:

OVERVIEW

Carpenters, who become residents of Lemhi County in 2017, are challenging McIntosh’s water right, 74-733E, which was decreed on July 9, 2007.

Carpenters were sued on May 31, 2023, by their downstream neighbor McIntosh for disrupting the flow of water through a ditch. Lemhi Case No. CV30-23-0114. Carpenters then sued their upstream neighbors Rockie and Leanne Walker (“Walkers”) on June 28, 2023, for building a berm to stop wastewater flowing to the Carpenter Property. Lemhi Case No. CV30-23-0139. Seventh District Judge Stevan A. Thompson was assigned to oversee both cases.

Both matters were consolidated. Thompson has found in Walkers favor in their defenses to Carpenters. And, Thompson has through two summary judgment motions involving McIntosh determined that Carpenters did not have the legal right to interfere with the flow of water to McIntosh and that Carpenters have the obligation to maintain the ditch through their property. McIntosh has filed a third motion for summary judgment against Carpenters for monetary damages under Idaho Code § 42-902.

Carpenters in April of 2025 filed a motion for Judge Thompson to reconsider his previous decisions. Rather than waiting for that decision, which is under advisement, Carpenters have filed this action in hopes of sidestepping Judge Thompson. They also filed a motion to disqualify Judge Thompson which he denied.

Carpenters' filings before this Court are designed to second-guess the actions by the Lemhi County courts. Dismissal is appropriate with an award of attorney fees for filing this frivolous action under Idaho Code § 12-121.

LEGAL STANDARD

Under I.R.C.P. 12(b)(6), a matter may be dismissed for "failure to state a claim upon which relief can be granted. "

I.R.C.P. 12(b)(1) allows dismissal for "lack of subject-matter jurisdiction".

Under I.R.C.P. 12(b)(8), a matter may be dismissed by motion if "another action [is] pending between the same parties for the same cause."

In addition, I.R.C.P. 11.2(a)(1) bars "[i]n any action, if an application for any order or writ is denied in whole or in part, neither the party nor the party's attorney may make any subsequent application to any other judge, except by appeal to a higher court."

Finally, under Idaho Code § 12-121, "[i]n any civil action, the judge may award reasonable attorney's fees to the prevailing party or parties when the judge finds that the case was brought, pursued or defended frivolously, unreasonably or without foundation."

ARGUMENT

I. Carpenters' window to challenge McIntosh's water right has long expired and should be dismissed under I.R.C.P. 12(b)(6).

McIntosh's water right (74-733-E)¹ was decreed on July 9, 2007, through the SRBA process. Idaho Code § 42-1420(1) is specific in stating "[t]he decree entered in a general

¹ Carpenters have not provided McIntosh's water right to the Court for review. But, they cite to it in Carpenters' Motion, pg. 8.

adjudication is conclusive as to the nature and extend of all water rights in the adjudicated water system” The time to appeal McIntosh’s water right is set forth in I.A.R. 14(a) which provides for 42 days only. Such time period expired on August 20, 2007.

Thus, this action by Carpenters filed on June 18, 2025, is nearly 18 years too late and should be dismissed under I.R.C.P. 12(b)(6).

II. Carpenters’ legal bases for this action are not well grounded and the matter should be dismissed under I.R.C.P. 12(b)(1).

Carpenters have identified a wide array of Idaho Code provisions to justify this action. But, not one applies.

Idaho Code § 42-222 deals with changes in the point of diversion, place of use, period of use or nature of use. Carpenters’ Motion, pg. 2. None are implicated by Carpenters.

Carpenters direct the Court to Idaho Code §§ 42-1405 and 42-1412. Carpenters’ Motion, pg. 2. It is apparent Carpenters have not read either provision. Idaho Code § 42-1405 deals with the ability of five or more, or a majority of water users, or the attorney general to launch a general adjudication of a water system. This action is not a general adjudication. Idaho Code § 42-1412 provides for a process to object to the IDWR director’s report. None is at issue here.

Carpenters also point to Idaho Code §§ 42-1207 and 42-1102. Carpenters’ Motion, pg. 2. Neither are availing. Idaho Code § 42-1207 outlines a process for a property owner to relocate a ditch, canal or similar structure on their property owned by another through a notification process. Such is not relevant here. Carpenters claim that they didn’t give permission for a ditch to be relocated in the 1970s. What they fail to consider is that they didn’t buy their property until 2017.

Thus, they weren't the relevant party for any permission.

The connection to Idaho Code § 42-1102 is even more distant. That provision deals with right-of-ways to maintain ditches. But the connection to a claim to terminate McIntosh's water right is tangential at best.

Under I.R.C.P. 12(b)(1) Carpenters have failed to provide any basis of subject matter jurisdiction and should be dismissed on that ground.

III. Carpenters' Motion violates I.R.C.P. 12(b)(8).

a. Carpenters claims here are identical or nearly identical to the matters being heard now in Lemhi County.

Carpenters are desperate to use this Court to side-step the decisions and actions in the civil action in Lemhi County and the various criminal actions brought against Mr. Carpenter. The overlap is striking. The Court should invoke I.R.C.P. 12(b)(8) and dismiss.

Claim: "Grant permission to bury the illegal Southwest ditch on Carpenter property as it is not historic, did not exist prior to 2004, installed without written permission, violates DEQ setbacks, and is causing E-coli poisoning. Carpenters' well is 53 feet from the wastewater ditch, which would make the well compliant if the illegal ditch is buried." Carpenters' Motion, pg. 2.

Carpenters have made these same claims repeatedly before Judge Thompson. Attached is Exhibit "A" is a Carpenters' *Defendants Reply to Plaintiffs Memorandum in Support of Third Motion for Summary Judgment against McIntosh* ("Carpenters' Reply"). These very same claims are on page 2.

Claim: "Reinstate three historic water delivery ditches to our 5.01-acre pasture, restoring our 1893 water right (74-733G). Carpenters' are successors to Elmer Peters' 12.4 acres, Basin 74." Carpenters' Motion, pg. 2.

Again, this is an argument that Carpenters have tried to advance to Judge Thompson. It can be found on the bottom of page 8 and the top of page 9 of Carpenters' Reply.

Claim: "Enjoin or dismiss our Idaho Code § 18-4310 citation (issued June 6, 2025) pending resolution of our Rule 60(b)(3) motion in Lemhi County or this SRBA motion." Carpenters' Motion, pg. 2.

This refers to three misdemeanor criminal cases filed by the Lemhi County Prosecutor against Mr. Carpenter. Those cases are CR30-25-0263, CR30-25-0303, and CR30-25-0405.

Claim: "Refer Defendants' criminal violations, including Idaho Code §§ 18-5501, 18-7001, 18-4310, 41-293, 18-6710, and 18-7008, to the Twin Falls County Prosecutor and Idaho Department of Environmental Quality (DEQ) for investigation and potential prosecution." Carpenters' Motion, pg. 2.

Attached as Exhibit "B" is Carpenters' *Motion for Criminal Referral*. They previously asked Judge Thompson to refer for criminal prosecution charges against McIntosh and Walkers. Judge Thompson previously responded to that particular motion noting: "The Court cannot "refer" a matter for criminal prosecution, and the Court cannot itself bring criminal charges against any person as that would invade the province of the elected Prosecuting Attorney. The Court will preside over any felony criminal case brought in Lemhi County by the duly elected Lemhi County Prosecuting Attorney, but the Court will not and cannot exceed that limit role." *Order Re: Walkers' Motion for Summary Judgment on Express Easement and McIntosh's Second Motion for Summary Judgment*, pgs. 5-6, attached hereto as Exhibit "C".

Claim: "Refer the SRBA court's findings of fraud, ditch violations, and environmental harm to the Lemhi County civil court (Case No. CV30-23-0114) for consideration in our tort claims, noting that these findings will be submitted as evidence in Lemhi to compel damages and attorney fees due to Lemhi's lack of water rights expertise." Carpenters' Motion, pg. 2.

This is again, an attempt to end run around Judge Thompson. A quick review of Exhibit “A” will show these claims have previously been brought up in the Lemhi County Action.

b. The Court should apply the *Klaue* Standards and dismiss this matter as violating I.R.C.P. 12(b)(8).

Here, there is a final judgment between Carpenters and Walkers. But the Court has not rendered a final decision between Carpenters and McIntosh. Thus, the appropriate legal standard for consideration of a Rule 12(b)(8) motion is as follows:

The second test is whether the court, although not barred from deciding the case, should nevertheless refrain from deciding it. *See Wing*, 106 Idaho at 908, 684 P.2d at 310. The determination of whether to proceed with a case where a similar case is pending elsewhere, and has not gone to judgment, is discretionary, and will not be overturned absent an abuse of that discretion. *See Zaleha*, 129 Idaho at 533, 927 P.2d at 926; *Wing*, 106 Idaho at 908, 684 P.2d at 310. The Court of Appeals in *Diet Ctr., Inc. v. Basford*, 124 Idaho 20, 22–23, 855 P.2d 481, 483–84 (Ct.App.1993), suggested several guidelines for exercising such discretion:

In deciding whether to exercise jurisdiction over a case when there is another action pending between the same parties for the same cause, a trial court must evaluate the identity of the real parties in interest and the degree to which the claims or issues are similar. The trial court is to consider whether the court in which the matter already is pending is in a position to determine the whole controversy and to settle all the rights of the parties. Additionally, the court may take into account the occasionally competing objectives of judicial economy, minimizing costs and delay to litigants, obtaining prompt and orderly disposition of each claim or issue, and avoiding potentially inconsistent judgments.

Klaue v. Hern, 133 Idaho 437, 440, 988 P.2d 211, 214 (1999) (emphasis added) (citations omitted).

i. Identity of the Parties overlap

The Parties are Carpenters and McIntosh in both the Lemhi County action and in this action.

ii. Claims and Issues are Similar

As noted above, the claims brought in the Carpenters' Motion substantially overlap the issues they are advocating in Lemhi County.

iii. Lemhi Courts can resolve all outstanding matters and the rights of the Parties.

Given that Judge Thompson is considering Carpenters' motion for reconsideration right now, it is inconceivable how any of these matters will not be resolved in Lemhi County much quicker than this Court could engage the very same matters.

iv. Other factors weigh in favor of dismissal.

1. Judicial Economy

There is no reason for two courts to deal with the same issues raised by Carpenters on the civil side. And, of course, this Court has no role in directing or interfering with the criminal matters Mr. Carpenter faces in Lemhi County.

2. Minimize cost and delay

Given that Judge Thompson has taken under advisement the resolution of most of these matters, there is no savings in time or cost to open a second action here.

3. Obtain prompt and orderly disposition

As noted above, the current course in Lemhi County is mostly likely to result in a prompt resolution.

4. Will avoid potentially inconsistent judgments

This Court has a strong incentive to avoid this action in order not to contradict any decision

rendered by Judge Thompson.

IV. This case directly violates I.R.C.P. 11.2(a)(1).

I.R.C.P. 11.2(a)(1) prevents Carpenters from hopping to another Court if they disagree with Judge Thompson's rulings. That is exactly what they have done here. Their sole remedy is an appeal to the Idaho Supreme Court if they disagree with Judge Thompson's final decision which has not, as of this date, been rendered.

V. McIntosh should be awarded his attorney fees under Idaho Code § 12-121.

Under Idaho Code 12-121, a party is entitled to its attorney fees if an action is "brought, pursued or defended frivolously, unreasonably or without foundation." Here, the Carpenters brought an action that was far past the point of challenge, have not provided a valid legal basis for the action, and are in direct violation of I.R.C.P. 12(b)(8) and I.R.C.P. 11.2(a)(1).

The Idaho Supreme Court has been explicit that this provision can be used "for those elements of the case that were frivolous, unreasonable and without foundation." *Millard v. Talburt*, 173 Idaho 533, 544 P.3d 748 (2024) (quote citation omitted). McIntosh would suggest that Carpenters' bringing this matter before this Court easily meets that standard.

WHEREFORE, McIntosh requests that the Court dismiss this entire action and award attorney fees to McIntosh.

DATED: August 5, 2025

OLSEN TAGGART PLLC

/s/ Steven L. Taggart

STEVEN L. TAGGART

Attorney for the Joshua A. McIntosh

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 5, 2025, I caused to be filed the above referenced pleading with the Court and the following parties received notice through the following means:

Persons Served:

Method of Service:

M. Anthony Sasser
Sasser Law Office
sasserlawoffice@gmail.com

(X) Email

T.J. Budge
Elisheva M. Patterson
Racine Olson, PLLP
tj@racineolson.com
clisheva@racineolson.com

(X) Email

Brian and Theresa Carpenter
559 Highway 28
Salmon, ID 83467
briantofixit@gmail.com

(X) Via U.S. Mail & Email

/s/ Michelle J. Dover

Michelle J. Dover
Paralegal

UNITED STATES DISTRICT COURT OF THE SEVENTH JUDICIAL CIRCUIT
ST. LOUIS, MISSOURI, IN AND FOR THE DISTRICT OF COLUMBIA

JOHN A. MCINTOSH,

Defendant,

Plaintiff,

DEFENDANTS REPLY TO
PLAINTIFFS MEMORANDUM IN
SUPPORT OF THIRD MOTION FOR
SUMMARY JUDGEMENT AGAINST
MCINTOSH

BRIAN CARPENTER AND THERESA
CARPENTER, husband and wife,

Defendants,

BRIAN CARPENTER AND THERESA
CARPENTER, husband and wife,

Plaintiffs,

ROCKIE WALKER AND LEANNE
WALKER, husband and wife,

Defendants.

COMES NOW, the Defendants, BRIAN CARPENTER AND THERESA CARPENTER

and his wife (hereinafter "Carpenters"), by and through their Self-Representation, and

the Defendants, ROCKIE WALKER AND LEANNE WALKER, by and through their Self-Representation, and

the Plaintiff, Plaintiff John A. McIntosh (hereinafter "McIntosh"), personally, and

by and through their undersigned attorneys, and Defendants request the Court to grant the

1. DITCH BURIAL

- McIntosh's motion for summary judgment is denied. The record demonstrates that Plaintiff McIntosh and Defendant Walker have conspired to deprive Plaintiff McIntosh and Defendant Walker of their water rights by fabricating a new irrigation ditch and extending an illegal sewer system. The record demonstrates that, The fact that the Carpenters have not served separately as prima facie reason to deny McIntosh Summary Judgment.
- Historical Ditches from 1946 to 1994 and a water right established in 1892 confirm the Carpenters' long-standing irrigation rights, which Plaintiff and Walker seek to undermine through an illegally constructed ditch installed in 2006 by a prior property owner.
 - The 2006 ditch, located just four feet from the Carpenters' well, violates DEQ rules and has caused E. coli contamination, posing a direct threat to the Carpenters' health and property.
 - Plaintiff McIntosh received irrigation water from the Carpenters' system for 11 months post-purchase and for five years prior, contradicting claims of a new ditch entitlement. The so called Southwest main ditch is a complete fabrication not historical and illegal.
 - Defendant Walker's motive in burying historic ditches is to conceal an illegal sewer system, which Idaho law prohibits within 50 feet of an irrigation ditch, while Plaintiff McIntosh seeks to eliminate irrigation to facilitate an unauthorized below-ground sewer in a flood zone right next to Carpenters above the ground engineered sewer system.
 - Walker buried three historic ditches, including fabricating a Southwest ditch was the Main ditch theory, violating Idaho Code § 42-1207 and committing fraud, as supported by a 2004 Goodman photo to be addressed at the May 29 Rule 60(b) hearing.
 - The evidence reveals that Walker's burial of 3 historic ditches violates Idaho Code § 42-1207.

TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT IN SUPPORT OF MOTION FOR THIRD PARTY

McIntosh's Motion for Summary Judgment to be denied.

McIntosh's Motion for Summary Judgment

McIntosh's Motion for Summary Judgment seeks to establish that the Court should grant summary judgment as a matter of law. Plaintiff's memorandum mischaracterizes the evidence, overlooks disputed facts, and fails to meet the burden required under IRCP 56(c).

Defendant submits this reply to highlight the factual disputes and legal deficiencies in Plaintiff's motion, supported by the record and applicable law.

- Plaintiff's memorandum mischaracterizes the evidence, overlooks disputed facts, and fails to meet the burden required under IRCP 56(c). Defendant submits this reply to highlight the factual disputes and legal deficiencies in Plaintiff's motion, supported by the record and applicable law.

- McIntosh's Memorandum deals with his perception that his upstream neighbors, Carpenters, are interfering with his irrigation rights. McIntosh seeks a declaratory judgment, monetary damages and attorney fees. However, his claims fail as a matter of fact, law and evidence.

McIntosh should be focused on getting water from Walkers with the Carpenters as historically provided now the infrastructure is blocked instead McIntosh is conspiring with Walker to fraud the court. McIntosh received water from the Carpenters from Aug, 2021 until September 2022, (14 months), through the 14 inch culvert near the highway leaving Carpenters field.

- This motion seeks to fraud the court into believing that the Southwest ditch was historic.
- Attempting to gain a Declaratory Judgment and Monetary Judgment under Fraudulent Misrepresentations of the facts and evidence under code 42-902.
- These facts, supported by the record, establish genuine disputes of material fact that preclude summary judgment. Plaintiff's motion mischaracterizes the evidence and fails to meet the burden of demonstrating that fraud was not committed.

Defendant's Motion for Summary Judgment and Motion for Declaratory Judgment should be granted.

II. LEGAL STANDARD

Under Idaho Rule of Civil Procedure 56(c), summary judgment is appropriate only when "the moving party shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." The court must view the evidence and all reasonable inferences in the light most favorable to the non-moving party. *Anderson v. City of Pocatello*, 112 Idaho 176, 179, 731 P.2d 171, 172 (1986). If there is any evidence in the record that would permit a reasonable trier of fact to find in favor of the non-moving party, summary judgment must be denied. See *G & M Farms v. Pank Irrigation Co.*, 119 Idaho 514, 517, 808 P.2d 851, 854 (1991). Here, the Carpenters present substantial evidence of disputed facts regarding the alleged conspiracy, illegal ditch, and statutory violations, rendering summary judgment improper.

III. ARGUMENT

A. Genuine Issues of Fact Exist Regarding the Conspiracy to Disenfranchise the Carpenters

Carpenters show: (1) an agreement between two or more parties, (see Exhibit 245), to accomplish an unlawful objective, (see Exhibit 140) and 60(b) evidence. (3) with a unity of purpose, and (4) resulting damage, (110k in Attorney fees, 5k in property damage, 5.4k in hay loss). *McPheters v. Maile*, 138 Idaho 391, 64 P.3d 317 (2003). The Carpenters have raised sufficient evidence to demonstrate an issue of fact on each element:

- **Agreement and Unity of Purpose:** The record suggests coordination between McIntosh and Walker to fabricate a new Southwest ditch and bury historic ones, undermining the Carpenters' 1892 water right. Historical maps from 1946, part of the record, confirm the original irrigation configuration, which Painter's illegal 2006 ditch contradicts. McIntosh's receipt of water from the Carpenters' system for 11 months post-purchase and five years prior further undermines claims of a new ditch entitlement, suggesting a coordinated effort to misappropriate. Painter's drawing clearly shows that the Southwest ditch did not exist.

60(b) evidence in the 60(b) filing show the Goodman 2004 photo, and the 2006 photo of the

McIntosh 2006 photo, and the 2006 photo of the McIntosh 2006 photo, and the 2006 photo of the

no evidence of any such investigation.

The alleged conspiracy seeks to violate local, state and federal laws. The 2100 ditch, constructed without proper written permission and in violation of DEC rules (IDAPA 37.03.09(d) and IDAPA 58.01.03-12), and is located 4 feet from the Carpenters' well, causing E. coli contamination. Additionally, Walker's removal of historic ditches violates Idaho Code § 42-1207, which requires written permission for relocation or piping of irrigation facilities. These actions demonstrate intent to unlawfully alter the Carpenters' property rights which are supported by encumbrances.

- **Resulting Damage:** The Carpenters have suffered direct harm, including E. coli contamination of their well for over 2 years unknowingly, loss of historic irrigation rights, and exposure to Walkers illegal sewer system that travels through the illegal Southwest ditch and contaminates Carpenters well as surface water is 4 feet from Carpenter well. Causing financial (\$110 in fees), property damage, hay loss and health damages. These injuries are directly traceable to the actions of McIntosh and Walker for fabricating a fraudulent Southwest ditch theory that was not historic and illegal with full knowledge, continuing the E-coli contamination which is a Felony, 18-5501.

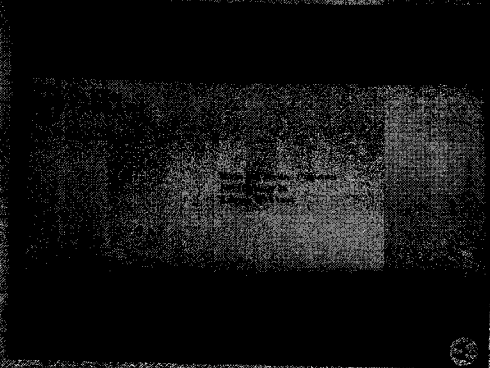
- **Disputed Fact #1:** Plaintiff's memorandum asserts that there is a violation of 42-902. Plaintiff claims, e.g., "that Carpenters removed a headgate". However, the record demonstrates genuine disputes of material fact that require resolution by a trier of fact:

- **DWR Headgate requirements: 42-701.** Installation and maintenance of controlling works and measuring devices by water appropriators — Procedure upon failure to install and maintain — Monitoring and reporting of diversions — Penalty for failure to comply — Enforcement procedure — Reporting fee. (1) The appropriators or users of any public waters of the state of Idaho shall submit to the satisfaction of the director of the department of water resources suitable headgates and measuring works at the point where the water is diverted. Each device shall be of such construction as to be easily inspected and kept closed by the Watermaster or other official in charge, and shall be subject to the inspection and control of the department of water resources at any time.

McIntosh has included deliberate fabrication which creates another dispute over the fact that the Carpenters own three green ditch gates purchased at the local Ranch Supply and have nothing to do with IDWR. Another fraud and deliberate misconduct, (see Exhibits 144-145), McIntosh would want the court to believe that the law applies to Carpenters private property. Unfortunately, this is McIntosh's greatest concern in his Third Motion for Summary Judgment. The Carpenters privately owned ranch property does not apply to the discretion of an elected water master elected by Walker and McIntosh with zero authority.

B. Mail Delivery: Rule 5(b)(2)(c) requires that each party entitled to service receive a copy of the document. Husband and wife are both pro se named parties as co-Defendants. In McIntosh case, opposing counsel must serve each party separately, even though they share the same address. Every single document filed from Jan 30, 2025 (Mrs. Carpenters self-representation date), is invalid and not served.

- 1.) Due Process has been violated by improper service denying fair notice, especially in this case involving collaborated financial abuse of a disabled person and valuable property like water rights.
- 2.) McIntosh cannot seem to get service by mail right and Exhibit 2A shows no post mark. Included in this mailing was McIntosh Objection to Motion to Reconsider. This filing violates I.R.C.P. Rule 7(b)(3)(a) and I.R.C.P. Rule 5(b)(2)(c). This Motion should be denied not only for no postmark, but for Rule 4(d)(2) as neither Mr. or Mrs. Carpenters has been served a single paper correctly as individuals pro se.



• Exhibit 2A

Exhibit 2B

- 3.) The above Exhibit 2B was not postmarked as well. This filing violates I.R.C.P. Rule 7(b)(3)(a) and I.R.C.P. Rule 5(b)(2)(c). The contents of this illegal mail delivery include McIntosh's Motion for Third Summary Judgment, Memorandum in Support of McIntosh's Third Motion for Summary Judgment, Declaration of Joshua A. McIntosh in Support of Third Motion for Summary Judgment, Motion to Shorten Time, and Notice of Hearing. These documents should be denied as there is no postmark to start the clock.
- 4.) Carpenters pro se as Husband and Wife separately did not sign a waiver for service. Under Rule 4(d)(4) Mrs. and Mr. Carpenter have not been served properly since representing themselves.
- 5.) Therefore, Proper service is required for the court to gain personal jurisdiction over a defendant or Plaintiff in this case. Since both Spouses were not served correctly, the court lacks jurisdiction over them, and filings (e.g., complaint, motions) against that spouse must be dismissed under I.R.C.P. Rule 12(b)(4) (insufficient process) or 12(b)(5) (insufficient service of process).

C. Dismissed for Improper Service: The court should dismiss all filings against (Carpenters) both

as they were improperly served, and the claims are indivisible (e.g., a joint obligation

to pay a debt) or otherwise inseparable (e.g., a joint obligation to pay a debt)

Walker as parties) and dismissing the case renders the case against the Carpenters moot. Confor's initial report did not know the Southwest ditch was a fraud to hide Walker's illegal sewer. Confor did not know of the DEQ violations. Confor wrote a supplemental report that is being ignorantly ignored. Another act of misconduct aimed at obstructing the Court.

F. Plaintiff's memorandum fails to address this evidence, instead relying on unsupported assertions of ditch legitimacy. The existence of historical photos, prior water delivery to McIntosh through Carpenters driveway next to the highway, and statutory violations creates an issue of fact on the conspiracy claim. These disputed facts, supported by photos and prior water delivery, preclude summary judgment.

F. The 2006 Southwest ditch Violates DEQ surface water Rules and Causes E. coli Contamination. Idaho DEQ rules (e.g. IDAPA 37.03.09(d) and IDAPA 58.01.03.17 prohibit irrigation ditches within certain distances of wells or sewers to prevent contamination. The 2006 ditch, constructed by a prior property owner and now championed by McIntosh, is four feet from the Carpenters' well, and within feet of Carpenters sewer, in clear violation of these standards. The resulting E. coli contamination constitutes a public health hazard and a direct injury to the Carpenters. Plaintiff's claim that the ditch is lawful ignores evidence of its illegal construction and ongoing harm. The DEQ violations and contamination are material facts in dispute, precluding summary judgment.

G. Violation of Idaho Code § 42-1207 by Walker's Burial of Historic Ditches. Idaho Code § 42-1207 governs the relocation or piping of irrigation facilities and requires written permission from the ditch owner or operator to ensure no interference with water flow or easement rights. Walker's burial of historic ditches, as alleged in the combined case, was done without the Lower Property Owners consent and disrupts Carpenter's 1892 water right, as evidenced by 1946 and 1994 photos. This statutory violation not only supports the conspiracy claim but also establishes an issue of fact for denying summary judgment, as the legality and impact of Walker's actions are in dispute.

McIntosh and Walker Raise the Issues.

The facts of McIntosh and Walker further underscore the conspiracy. Walker's illegal sewer system, which Idaho law prohibits within 50 feet of an irrigation ditch, by burying historic ditches, Walker avoids scrutiny of this violation. McIntosh, meanwhile, aims to eliminate irrigation to enable an unauthorized below-ground sewer in a flood zone, which conflicts with the Carpenters' above-ground engineered sewer. These motives, coupled with the timing of the illegal 2006 ditch and prior historic water delivery to McIntosh property, create a factual dispute about the intent behind their actions.

I. Plaintiff's Motion Ignores the Flood Zone Context.

The Carpenters' property lies in a flood zone, making the integrity of their above-ground sewer system critical. McIntosh's push for a below-ground sewer, facilitated by eliminating irrigation to the Carpenters, and Walker's illegal sewer proximity to the most recent buried ditch, (Painter Drawing), exacerbate the risk of environmental and property damage. These facts, tied to the conspiracy and statutory violations, are material and disputed, warranting denial of McIntosh's summary judgment.

IV. CONCLUSION

Plaintiff McIntosh's motion for summary judgment must be denied. Genuine issues of material fact exist regarding the alleged conspiracy between McIntosh and Walker to disenfranchise the Carpenters, the illegal construction of the 2006 Southwest ditch in violation of DEQ rules, the E. coli contamination of the Carpenters' well, the violation of Idaho Code § 42-1207, and the motives tied to illegal sewer systems. The historical photos from 1946, 1994, and most recent 2004 Goodman Photo, and the 1892 water right, and the record of prior water delivery to McIntosh further support the Carpenters' claims. These disputes require resolution by summary disposition due to the brand and value of the property. Accordingly, the Court should deny Plaintiff's motion due to proven material facts.

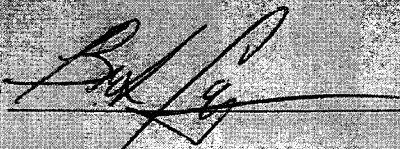
Carpen... and demand... to the client...

12/10/2025

Thank you for your consideration.

DATED this 19th day of May 2025.

Brian Carpenter



Theresa Carpenter



← [Icons] →



steelranch@custertel.net

12/10/2025

Brian

Here are pictures of our standard ditch gates. We have built thousands of them for homeowners in the Salmon and surrounding areas. We have not, however, sold any of them to Fish & Game or IDWR.

Please let me know if you have any questions.

Regards,

Annette Koerner

Owner - Steel & Ranch Center, Inc.

(208) 755-2923

3 Attachments - Scanned by Gmail



Description 1 Qty Price Tax
 12" x 12" x 12" x 12" 1 \$250.00
 12411
 Local Sales Tax \$25.00
 RECEIPT TOTAL \$275.00

CARD NO. 1234567890
 VISA
 Reference # 0000000000
 Merch ID # 1234567890

Signature
 I agree to pay above amount according to
 card
 issuer agreement (merchant agreement
 if credit voucher)

All returns must be accompanied by a receipt
 NO RETURNS on cut steel or fabricated items

Description 1 Qty Price Tax
 12" x 12" x 12" x 12" 1 \$250.00
 12411
 Local Sales Tax \$25.00
 RECEIPT TOTAL \$275.00

CARD NO. 1234567890
 VISA DEBIT
 Reference # 0000000000
 Merch ID # 1234567890

Signature
 I agree to pay above amount according to
 card
 issuer agreement (merchant agreement
 if credit voucher)
 NO RETURNS on cut steel or fabricated items

All returns must be accompanied by a receipt
 within 30 days
 NO RETURNS on cut steel or fabricated items

(Exhibits 144-145)

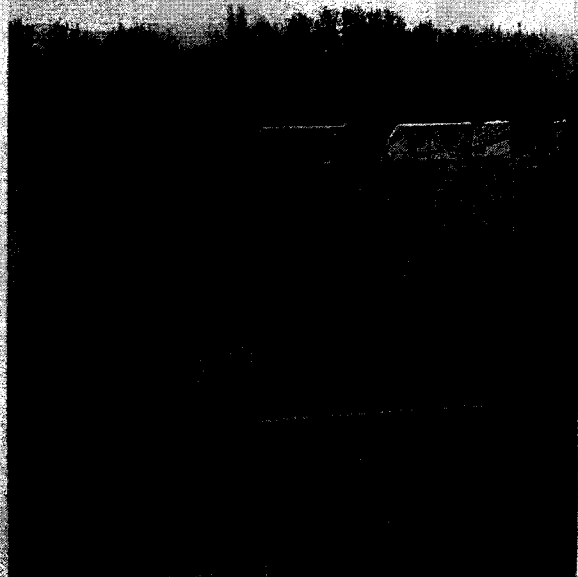


Exhibit 1A

machine illegally pumping water to grow planted grass after removing topsoil, extending the ditch
 that didn't exist. (Exhibit 118)



Excess dirt from altering the landscape (Exhibit 119) McIntosh Ditch did not extend through the high spot on the South corner as it was 2 feet higher. McIntosh Ditch was not continuous.



Mrs. Carpenter checking flood water on McIntosh property after Walker had cut the flow. (Exhibit 135) 2022.
McIntosh property flooding from the Carpenter 14 Inch culvert. (Exhibit 136) 2022 from Walker north ditch.

Total amount: \$ 200.00

Josh, Rick and I will be responsible for the cost of the water for the next year. We will be responsible for the cost of the water for the next year.

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Exhibit 145



(Exhibit

142) McIntosh original complaint photo showing well 4 feet from illegal irrigation ditch with surface water within 50 feet.

Date:

Based on the photos that you have submitted and the consultation that we had on the phone, there is no way to say if the ditch is not used for irrigation purposes. If the ditch in the photos were to be used for irrigation, septic pumps, sewer line and domestic well would not meet the required minimum separation distances to surface water per the Idaho Rules. The minimum separation distances by rule are as follows:

Domestic Well IDAPA 57.03.03.0

- 50ft. from permanent (more than six months) or intermittent (more than two months) surface water
- 25ft. from Canals, irrigation ditches or laterals, & other temporary (less than two months) surface water

Septic pump station and sewer line IDAPA 58.01.03.17:

- 25ft. from temporary surface water

Currently the domestic well appears to be within 10 feet of the ditch and the septic pumps are within 15-20 of the ditch.

Furthermore, in reviewing the water rights for your property and the neighboring properties, all the properties share a permitted point of diversion that is located approximately 0.3 miles to the southeast of your residence. There is no permitted point of diversion located on your property. Creating a point of diversion on your property without being permitted by the Idaho Department of Water Resources would not be allowed.

I hope that this answers your questions and let me know if there is anything further that I can assist you with.



Carlin Feisthamel, P.E. | Regional Engineering Manager

Idaho Department of Environmental Quality

900 N. Skyline Dr. Suite B, Idaho Falls ID 83402

Office: (208) 578-7651

Idaho Department of Environmental Quality Code (Exhibit 140)

DATED this 19th day of May 2025. Respectfully,


Brian Carpenter


Theresa Carpenter

19th day of May 2025.

Theresa Carpenter



Brian Carpenter



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