

Brian Carpenter and Theresa Carpenter
559 Highway 28
Salmon, Idaho 83404
Telephone: (208) 580-8380
Self-Represented for Defendants Carpenter

LEMHI COUNTY DISTRICT COURT
FILED 5-11-2025
TIME 8:45 AM
LEMHI COUNTY CLERK
BY [Signature] DEPUTY

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

JOSHUA A. MCINTOSH,

Plaintiff,

v.

BRIAN CARPENTER AND THERESA
CARPENTER, husband and wife,

Defendants.

Case No. CV30-23-0114

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

BRIAN CARPENTER AND THERESA
CARPENTER, husband and wife,

Plaintiffs,

v.

ROCKIE WALKER AND LEANNE
WALKER, husband and wife,

Defendants.

COMES NOW, the Defendants, BRIAN CARPENTER AND THERESA CARPENTER, husband and wife, (hereinafter "Carpenters"), by and through their Self Representation, hereby respectfully submits this reply to Plaintiffs Memorandum in support of their Motion for Third Summary Judgment, Plaintiff Joshua A. McIntosh (hereinafter "McIntosh"), pursuant to Idaho Rule of Civil Procedure 56. For the reasons set forth below, Defendants request that the Court deny Plaintiff's Motion for Third Summary Judgment.

DEFENDANTS OBJECTION TO PLAINTIFFS MEMORANDUM IN SUPPORT OF MOTION FOR THIRD SUMMARY JUDGEMENT - 1

I INTRODUCTION

Plaintiff McIntosh's motion for summary judgment relies on a distorted narrative that ignores critical evidence of a conspiracy between Plaintiff McIntosh and Defendant Walker to disenfranchise Defendant Carpenters by fabricating a new irrigation ditch and concealing an illegal sewer system. The record demonstrates that. The fact that the Carpenter' have not been served separately as pro se is also reason to deny McIntosh Summary Judgment.

- Historical photos 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 combined cases reveal that Walker's burial of 3 historic ditches violates Idaho Code §

42-1207, further evidencing a coordinated effort to harm the Carpenters' property rights.

- Plaintiff McIntosh's Motion for Summary Judgment should be denied because genuine issues of material facts exist that preclude summary judgment, and Plaintiff is not entitled to 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, (11 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.

II. LEGAL STANDARD

Under Idaho Rule of Civil Procedure 56(c), summary judgment is appropriate only when "the movant 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, 174 (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. Funk 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 rewrite history. Painter's drawing clearly shows that the Southwest ditch did not exist.

The new evidence in the 60(b) filing show the Goodman 2004 photo, and the 1994 USGS

photo irrefutably confirm that no such Southwest ditch existed.

- **Unlawful Objective:** The alleged conspiracy seeks to violate Idaho water law and DEQ regulations. The 2006 ditch, constructed without proper written permission and in violation of DEQ setback rules, IDAPA 37.03.09(d) and IDAPA 58.01.03.17, and is located four feet from the Carpenters' well, causing E. coli contamination. Additionally, Walker's burial 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:

- **IDWR Headgate requirements: 42-701.** Installation and maintenance of controlling works and measuring devices by water appropriators — Procedure upon failure to install and maintain — Measuring and reporting of diversions — Penalty for failure to comply — Enforcement procedure — Report filing fee. (1) The appropriators or users of any public waters of the state of Idaho shall maintain to the satisfaction of the director of the department of water resources suitable headgates and controlling works at the point where the water is diverted. **Each device shall be of such construction that it can be locked and kept closed by the Watermaster or other officer in charge, and shall also**

DEFENDANTS OBJECTION TO PLAINTIFFS MEMORANDUM IN SUPPORT OF MOTION FOR THIRD SUMMARY JUDGEMENT - 5

be of such construction as to regulate the flow of water at the diversion point.

- There is only one lockable headgate installed and maintained by IDWR at the L-8 diversion as they refer to a paid by the State Water Master not an elected person with mental issues. McIntosh has included deliberate fabrication which creates another dispute of material fact. 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 have 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. Carpenter has not been served a single paper correctly as individuals pro se.

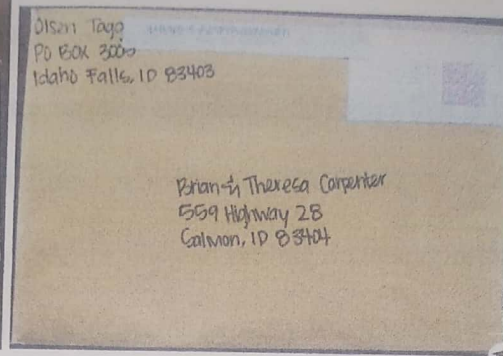


Exhibit 2A

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. Dismissal for Improper Service: The court should dismiss all filings against (Carpenters), both spouses as both were improperly served, and the claims are indivisible (e.g., a joint obligation

requiring both as parties) and dismissing one spouse renders the case against the other untenable.

D. Contors water report did not know the Southwest ditch was a fraud to hide Walkers illegal sewer. Contor did not know of the DEQ violations. Contor wrote a supplemental report that is being intentionally ignored. Another act of misconduct aimed at obstructing the Court.

E. 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 independent basis for denying summary judgment, as the legality and impact of Walker's actions

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remain contested per the Rule 60(B) filing.

H. Motives of McIntosh and Walker Raise fraud Issues.

The motives of McIntosh and Walker further underscore the conspiracy. Walker seeks to conceal an 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 fraud and misconduct. Accordingly, the Court should deny Plaintiff's motion due to proven perpetuated fraud

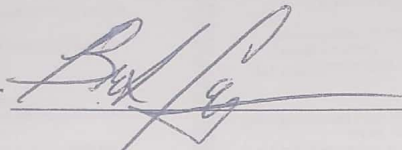
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and allow Carpenters Attorney fees and damages due to the blatant misconduct and fraud in the amount of \$120400.00

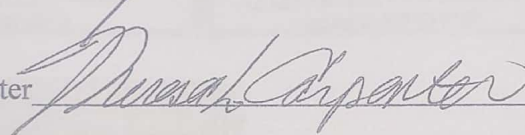
Thank you for your consideration,

DATED this 19th day of May 2025.


Brian Carpenter



Theresa Carpenter



← 📎 ⌚ 🗑️ 📧 ⌚ 📌 📎 📄 ⋮ 6 of 6 < >

 steelranch@custertel.net Feb 8, 2024, 1:58 PM ☆ 😊 ↩ ⋮

to me ▾

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) 756-2923

3 Attachments • Scanned by Gmail



5/11/2017 3:57 PM Sales Receipt #69067

Merchant Copy
REPRINTED

Steel & Ranch Center, Inc.
2006 Main Street
Salmon, ID 83467
(208) 756-2923 phone

Description 1	Qty	Price	Ext Price
12" Headgate - Manui2 each		\$125.00	\$250.00
13417			
		Subtotal	\$250.00
Local Sales Tax		6 % Tax	+ \$15.00
		RECEIPT TOTAL:	\$265.00

Credit Card \$265.00 XXXX9480
Visa Expiry Date XXXX
Reference # 0000006003 Auth# 115678
Merchant # ***26112

Signature _____

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

All re* must be accompanied by a receipt
NO RE* on cut steel or fabricated items

6/9/2017 4:59 PM Sales Receipt #69482

Merchant Copy
REPRINTED

Steel & Ranch Center, Inc.
2006 Main Street
Salmon, ID 83467
(208) 756-2923 phone

Description 1	Qty	Price	Ext Price
12" Headgate - Manui1 each		\$125.00	\$125.00
13417			
		Subtotal	\$125.00
Local Sales Tax		6 % Tax	+ \$7.50
		RECEIPT TOTAL:	\$132.50

Credit Card \$132.50 XXXX9480
VISA DEBIT Expiry Date XXXX
Reference # 0000000029 Auth# 105983
Merchant # ***26112

Signature _____

I agree to pay above amount according to
card
issuer agreement (merchant agreement
if credit voucher)
AID: A0000000031010

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

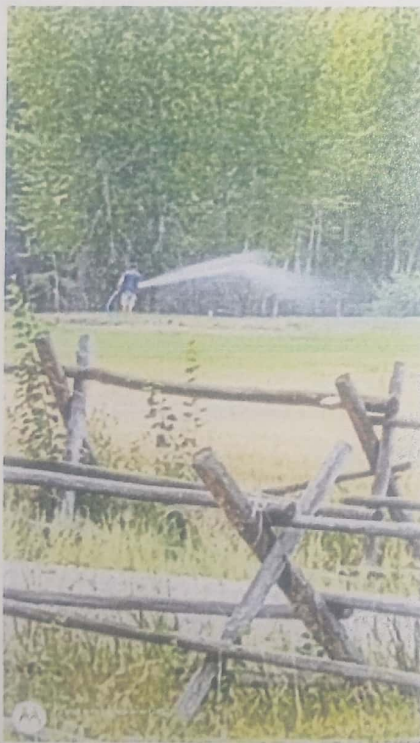


Exhibit 1A

McIntosh 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.

Pruett -	5243.24
Adams.	48.60
McIntosh	227.04
Carpenter	210.84
Walker	194.64
Say	275.64
Total Assessment	\$1200.00

Rick and Arny will open an account at the Eastern Idaho Credit Union for this association. All assessments must be paid in full by April 1 to receive allotted water.

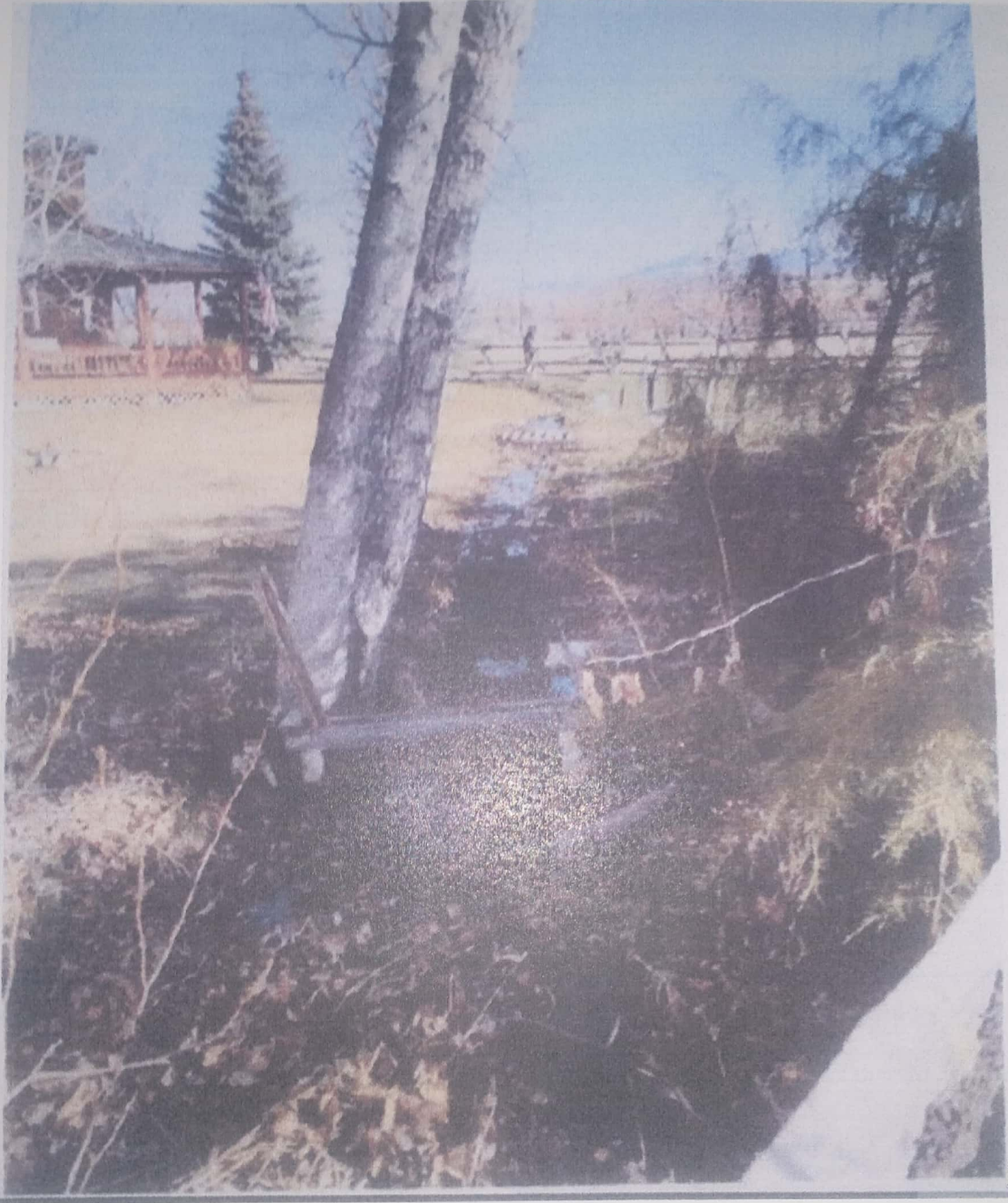
Josh shared a hand drawn map that he received from the IDWR that shows the main ditch as we know it running behind our houses parallel to the river.

Ditch Maintenance - the association will work together to clear the diversion of all debris the Weekend of March 24, 25, 26. Josh has a backhoe and Rick has a dump truck, the cost to cover will be for their fuel. It was noted that Josh, Becky and Rick received no water last year.

Water schedule rotation starting Apr 1 - McIntosh 8 days on, Adams 1 day on, Pruett, 2 days on, Carpenter 4 days on, Walker 3 days on, Say 1 day on, so forth. Calendar sent to all association members.

Chairman Pruett adjourned meeting at 7:15 pm.

Exhibit 145



(Exhibit

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

Ditch and separation distances

1 message

Carlin Feisthmel <Carlin.Feisthmel@deq.idaho.gov>
 To: "briantofixit@gmail.com" <briantofixit@gmail.com>

Thu, Jan 30, 2025 at 4:40 PM

Brian,

Based on the pictures that you have submitted and the conversation that we had on the phone, there is currently a dry ditch that is not used for irrigation purposes. If the ditch in the photos were to be used for irrigation purposes the 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 distance by rule are as follows:

Domestic Well IDAPA 37.03.09.d.

- 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 Feisthmel, P.E. | Regional Engineering Manager

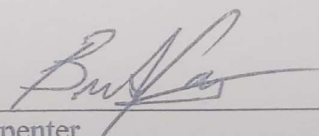
Idaho Department of Environmental Quality

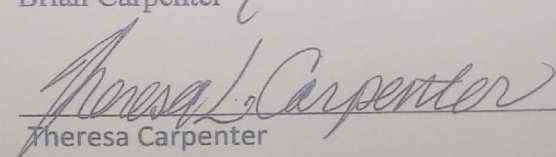
900 N. Skyline Dr. Suite B, Idaho Falls ID 83402

Office: (208) 528-2651

Department of Environmental Quality Code (Exhibit 140)

DATED this 19th day of May 2025. Respectfully,


 Brian Carpenter

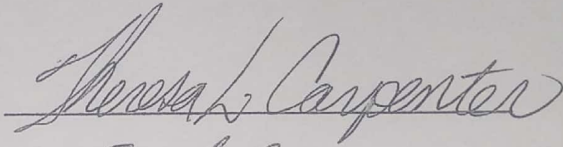

 Theresa Carpenter

CERTIFICATE OF SERVICE


I hereby certify that I caused a true and correct copy of the foregoing document to be served upon the following persons as set forth below.

DATED this 19th day of May 2025.

Theresa Carpenter



Brian Carpenter



Thomas J. Budge, Esq. RACINE OLSON,
Elisheva M. Patterson
201 E. Center St. P.O. Box 1391
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tj@racineolson.com
elisheva@racineolson.com

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☐ Fax
☐ Hand Delivery
☐ E-file

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