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Department of Water Resources

Attorneys for Charles & Jennie Winter

**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

Case No. 39576

Subcase: 29-04491 & 29-13557

**RESPONSE TO MOTION TO
ALTER OR AMEND SPECIAL
MASTER'S RECOMMENDATION;
MOTION FOR RULE 11
SANCTIONS**

COMES NOW, Charles and Jennie Winter (the "Winters"), by and through their attorneys of record, Givens Pursley LLP, and hereby submit the following response to the Motion to Alter or Amend Special Master's Recommendation filed by Harrison Moon and Debbie Sluder on May 23, 2005, and move the Court, pursuant to Idaho Rule of Civil Procedure 11, for the imposition of sanctions against Mr. Moon and Ms. Sluder ("Claimants").

**I.
Facts/Procedure**

In June of 2004, after the parties had engaged in lengthy negotiations, the Court entered partial decrees for Water Rights 29-04491 and 29-13557. These partial decrees were entered pursuant to the parties' stipulation. Over eight months later, on March 9, 2005, Claimants moved the Court to set aside the two partial decrees because the Idaho Department of Water

**RESPONSE TO MOTION TO ALTER OR AMEND SPECIAL MASTER'S
RECOMMENDATION; MOTION FOR RULE 11 SANCTIONS - 1**

Resources allegedly provided Claimants with inaccurate or incomplete information during the settlement negotiations.

The Winters objected to Claimants' Motion to Set Aside the Partial Decrees by properly pointing out that Idaho Rule of Civil Procedure 60(b) required that any Motion to Set Aside a final judgment (such as partial decree) be brought within six months after the judgment is entered. Under Rule 60(b), the only grounds for setting aside a judgment that may be brought outside of the six months following entry of judgment, is if the judgment (decree) is void, i.e., the Court either lacked subject matter jurisdiction or personal jurisdiction to enter the judgment (decree). Claimants never argued that the instant partial decrees suffered from a jurisdictional defect.

Following a hearing on the Motion to Set Aside on March 30, 2005, this Court entered its Recommendation on April 22, 2005. The Special Master's Recommendation applied Rule 60(b) to the Claimants' Motion to Set Aside and concluded that the motion was untimely. Rule 60(b) precluded the Court from considering the substance of the Claimant's untimely Motion to Set Aside.

On May 23, 2005, despite the Court's succinct holding that their Motion to Set Aside was time barred, Claimants filed their Motion to Alter or Amend Special Master's Recommendation based on the following grounds: "1. Insufficient time allowed to argue our case (10 min.) 2. Faxed evidence may not have been properly presented. 3. Additional evidence requested from Idaho Dept. of Water Resources."

II. Argument

I. Rule 60(b) Controls This Matter, Regardless of Any Evidence or the Amount of Any Evidence Presented by Claimants.

Unless Claimants present evidence that this Court was without proper personal or subject matter jurisdiction to hear this matter and enter the partial decrees at issue, Idaho Rule of Civil Procedure 60(b) unequivocally, absolutely and finally disposes of this matter and leaves the Special Master's Partial Decrees in place, as was recognized and recommended by the Special Master in her Recommendation entered on April 22, 2005.

The fact that Claimants assert that they were not provided enough time to argue their case or that certain evidence was not properly considered is completely irrelevant. Claimants could be permitted to argue for hours on end and present reams of evidence to the Court, but that will not change the fact that their Motion to Set Aside was untimely under Rule 60(b)—end of story.

MOTION FOR RULE 11 SANCTIONS

Idaho Rule of Civil Procedure 11(a)(1) provides:

The signature of an attorney or party constitutes a certificate that the attorney or party has read the pleading, motion or other paper; that to the best of the signer's knowledge, information, and belief after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(Emphasis added). A party is required to perform a prefiling inquiry into both the facts and the law involved to satisfy the affirmative duty imposed by Rule 11. "Reasonableness under the circumstances" is the appropriate standard to apply under I.R.C.P. Rule 11. *Koehn v. Riggins*, 126 Idaho 1017, 1021, 895 P.2d 1210, 1214 (1995).

If Claimants had merely taken the time to read Rule 60(b) in the first instance, they never would have filed their Motion to Set Aside Partial Decrees. This first error may be excusable, but once the Special Master issued a succinct decision finding the Claimants' Motion to Set Aside Partial Decrees was untimely under Rule 60(b), Claimants no longer have a basis to claim

ignorance or mistake. It is beyond cavil that at the time they filed the instant Motion to Alter or Amend Special Master's Recommendation, Claimants knew that Rule 60(b) controlled this issue and that no additional evidence or additional time to argue their case would make a difference in the outcome. Yet, they still filed the current motion.

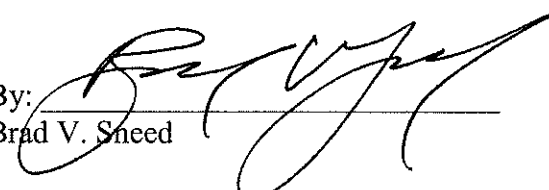
Under the circumstances present on May 23, 2005, Claimants did not conduct a proper (any?) investigation upon reasonable inquiry into whether their Motion to Alter or Amend Special Master's Recommendation was warranted by existing law. Additionally, based on the Special Master's straightforward Recommendation, it can reasonably be inferred that Claimants filed the Motion to Alter or Amend Special Master's Recommendation only as a means to harass the Winters, delay the process or needlessly increase the cost of litigation—something Claimants are not concerned with because they are acting *pro se*.

Based on the foregoing arguments, Rule 11(a)(1) sanctions against Claimants are warranted. *Koehn*, 126 Idaho at 1021, 895 P.2d at 1214. The Winters request that the Court impose sanctions against Claimants in the form of payment of all attorney's fees and costs incurring by the Winters in responding to Claimants' Motion to Alter or Amend Special Master's Recommendation and bringing the instant Motion for Sanctions.

The Winters request that their Motion for Rule 11 Sanction be calendared for hearing contemporaneously with the Claimants' Motion to Alter or Amend Special Master's Recommendation—June 22, 2005, at 10a.m.

DATED this 3rd day of June, 2005.

GIVENS PURSLEY LLP

By: 
Brad V. Sneed

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of June, 2005, I served a true and correct copy of the foregoing by delivering the same to each of the following individuals by the method indicated below, addressed as follows:

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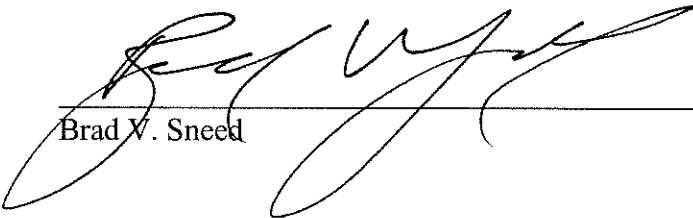
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