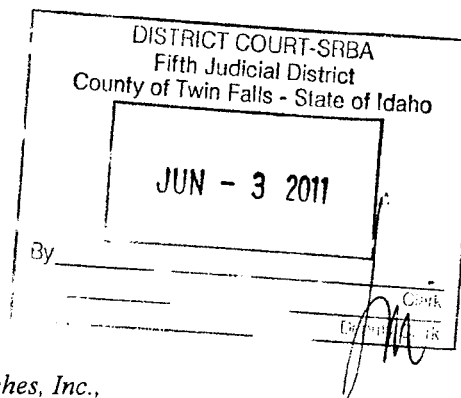


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**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re SRBA

Case No. 39576

Subcase Nos. 22-13212

**OBJECTORS' RESPONSE TO
MOTION TO SET ASIDE VERDICT**

Cedron Irrigation, LLC, Teton Rainbow Ranches, Inc., Trees, Inc., Mahogany Ranch Holdings, and Al Shiver¹ (collectively, the "Objectors") submit this response to the *Motion to Set Aside Verdict* (the "*Motion*") filed May 4, 2011, by the claimant, Mike Reid. For the reasons that follow, the *Motion* should be denied to the extent it seeks an earlier priority date for water right no. 22-13212, and the Objectors should be awarded their attorney fees pursuant to Idaho Code § 12-121 and/or Rule 11(a)(1) of the Idaho Rules of Civil Procedure because the *Motion* has been brought unreasonably and without any legal foundation.

A. The *Motion* should be denied to the extent it seeks an earlier priority date.

The *Motion* asks the Court to set aside the partial decree for water right number 22-13212 (entered on October 18, 2010) in order to 1) modify the flow rate and 2) obtain an earlier priority date. As part of a settlement agreement between all Paradise Springs water users, the Objectors do not contest the *Motion* to the extent it seeks an increased flow rate, provided that any increase in rate is subordinate to junior-priority groundwater rights. However, the Objectors adamantly oppose Mr. Reid's attempt to improve his priority date improved, as that was not part of the set-

¹ Al Shiver is the current owner of Water Right No. 22-13135, formerly owned by Wally Rothgeb.

tlement, the issue was already litigated and decided at trial, and there is no legal basis for him raising that argument again now.

The Objectors have already gone to trial in this subcase and incurred significant legal expenses to prevent Mr. Reid from obtaining the 1901 priority date that he requests in the *Motion*. The arguments Mr. Reid makes for an earlier priority date in the *Motion* are the very same arguments he made on summary judgment, in his pre-trial brief, in his post-trial brief, and in his petition for reconsideration. Mr. Reid has cited no law or rule of procedure supporting his renewed attempt to improve his priority date. Indeed, there is none. Therefore, the *Motion* should be denied to the extent it seeks an earlier priority date for water right number 22-13212.

B. The Objectors should be awarded their attorney fees from having to defend against Mr. Reid's unfounded attempt to improve his priority date.

Idaho Code §12-121 provides that “[i]n any civil action, the judge may award reasonable attorney’s fees to the prevailing party or parties.” This statute has been construed to warrant an award of attorney fees where the court finds that the case has been “brought, pursued or defended frivolously, unreasonably or without foundation.” *Landvik v. Herbert*, 130 Idaho 54, 61 (Ct. App. 1997) (internal quotations omitted). A case is frivolous if it is “not supported in fact or warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law.” Idaho Code § 12-123.

Rule 11(1)(a) of the Idaho Rules of Civil Procedure similarly protects against unnecessary litigation by requiring every pleading, motion or other paper to be “well grounded in fact and [] warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.” Rule 11(a) requires the person filing any motion “to perform a prefiling inquiry into both the facts and the law involved.” *Koehn v. Riggins*, 126 Idaho 1017, 1021 (1995). A showing of subjective bad faith is not necessary to justify the imposition of sanctions under Rule 11(a)(1). *Durrant v. Christensen*, 117 Idaho 70, 74 (1990). Rather, the issue is simply whether the claim is warranted based on “the relevant facts and law that reasonably could have been acquired at the time the document was submitted to the court.” *Landvik*, 130 Idaho at 61.

For any filing that does not comply with rule 11(a)(1), the court “shall impose upon the person who signed it ... an appropriate sanction, which may include an order to pay the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney’s fee.” I.R.C.P. 11(a)(1) (emphasis

added.) The decision to award attorney fees under Idaho Code § 12-121 or rule 11(a)(1) is left to the sound discretion of the trial court, and is subject to reversal only if there has been an abuse of discretion. *Luce v. Marble*, 142 Idaho 264, 274 (2005); *Landvik*, 130 Idaho at 61.

Mr. Reid's election to represent himself *pro se* carries with it the obligation to read the rules governing the practice of law before Idaho's courts, and to comply with them: "*Pro se* litigants are held to the same standards and rules as those represented by an attorney." *Golden Condor, Inc. v. Bell*, 112 Idaho 1086, 1089 (1987). His signature on the *Motion* constitutes his certification that "after reasonable inquiry it is well-grounded in fact and is warranted by existing law or a good-faith extension, modification, or reversal of existing law." I.R.C.P. 11(a)(1).

The *Motion* is not warranted by existing law or by a good faith argument for the modification of existing law. As mentioned above, the arguments made in the *Motion* are the same arguments made by Mr. Reid (and rejected by this Court) on summary judgment, at trial, and on reconsideration. As mentioned above, the *Motion* fails to cite any Idaho rule of procedure, statute, or court decision that justifies Mr. Reid's renewed attempt to improve his priority date more than a year and a half after the trial and more than six months after the partial decree was entered. The simple fact is that there is no legal justification for the renewed attempt.

Given the lack of any legal support for the *Motion*, it is quite obvious that Mr. Reid either failed to perform a reasonable inquiry to determine whether the *Motion* is warranted by existing law, or recognized the lack of legal basis but filed the *Motion* anyway. Had he taken the time to read the Idaho Rules of Civil Procedure or spent a small amount of time with an attorney he would certainly have realized that there is no legal basis for again seeking an earlier priority date for water right number 22-13212. Instead, he continues to litigate with reckless abandon, without any legal basis, and in violation of the settlement agreement he participated in.

While Mr. Reid's litigation of seemingly every water right in his corner of Teton Valley has been at little or no financial cost to him, it has imposed an enormous financial burden on the Objectors who have had to hire legal counsel to help them defend against his claims that in many instances have been without any legitimate factual or legal basis. The Objectors entered into the settlement agreement with the other Paradise Springs water users in order to avoid further litigation expenses. A key component of the settlement was Mr. Reid's commitment to refrain from further litigation with respect to his or other Paradise Springs water rights.

Had Mr. Reid only sought to modify his diversion rate (pursuant to the settlement) without also seeking an earlier priority date (in violation of the settlement) the Objectors would not have had to file this response. Now, however, the Objectors have incurred not only the cost of putting together the settlement, but also the additional litigation expenses that the settlement was designed to avoid.

Because there is no legal basis for Mr. Reid again attempting to improve his priority date, the Objectors are entitled to an award of their attorney fees incurred in defending against the *Motion*, pursuant to Idaho Code § 12-121 and Rule 11(a)(1) of the Idaho Rules of Civil Procedure. It is time to stop the bleeding.

RESPECTFULLY SUBMITTED this 2nd day of ^{June}~~May~~, 2011.

RACINE OLSON NYE BUDGE
& BAILEY, CHARTERED


Thomas J. Budge

CERTIFICATE OF SERVICE

I CERTIFY that on this 2nd day of June, 2011, the above **Objector's Response to Motion to Set Aside Verdict** was served in the following manner:

Deputy Clerk
Snake River Basin Adjudication
PO Box 2707, 253 Third Avenue N.
Twin Falls, Idaho 83303

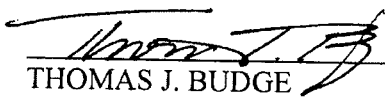
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- ☐ Facsimile
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THOMAS J. BUDGE