

Thomas J. Budge, ISB No. 7465
RACINE OLSON NYE BUDGE &
BAILEY, CHARTERED
Post Office Box 1391
201 E. Center Street
Pocatello, Idaho 83204-1391
208-232-6101 – Telephone
208-232-6109 – Fax

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DEPARTMENT OF
WATER RESOURCES

*Attorney for Cedron Irrigation, LLC, Teton Rainbow Ranches, Inc.,
Trees, Inc., Mahogany Ranch Holdings, and Al Shiver*

**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,
22-11639, 22-13853

**OBJECTORS' RESPONSE TO
PETITION FOR RECONSIDERATION**

Cedron Irrigation, LLC, Teton Rainbow Ranches, Inc., Trees, Inc., Mahogany Ranch Holdings, and Al Shiver (collectively, the "Objectors") submit this response to the *Petition for Reconsideration* (the "Petition") filed July 13, 2012, by Michael L. Reid. For the reasons set forth below, the Petition should be denied, and the Objectors should be awarded their attorney fees incurred in responding to the Petition.

I. The Petition fails to comply with the Idaho Rules of Civil Procedure.

Rule 5(a) of the Idaho Rules of Civil Procedure requires that "every pleading ... shall be served upon each of the parties affected thereby." Rule 5(b) requires that service upon represented parties be made upon their attorney by hand-delivery, mail, fax, or electronic means if consented to in writing. Rule 5(f) requires the party making the service to attach a certificate stating the date and manner of service and the name and address of the person served. The Petition complies with none of these.

Counsel for the Objectors has not received service of the Petition as required by Rule 5(a). The Petition was brought to his attention only after receiving the Court's *Order of Reference Appointing Special Master Brigitte Bilyeu* in subcase 22-13212 dated

July 13, 2012, which contains a footnote that the Petition had been filed and retained by the Presiding Judge. The Petition does not contain a certificate of service as required by Rule 5(f). There is a hand-written note on the Petition that reads “email – TJ Budge,” but Rule 5(b) does not permit service by email, and counsel for the Objectors has not received service of the Petition via email. Thus, the Petition has not been served as required by the Idaho Rules of Civil Procedure.

While the rules governing service of process could be viewed as technical, they are not unimportant, nor are they difficult to understand or comply with. The Objectors bring this up because it typifies the lack of attention to the Idaho Rules of Procedure, SRBA Administrative Order 1, and Idaho law that led to Mr. Reid being ordered to pay a small portion of the attorney fees incurred by the Objectors. Although Mr. Reid has been heavily involved in numerous SRBA subcases, has participated in dozens of hearings and even gone to trial, he has rarely if ever bothered to reference the Idaho Rules of Civil Procedure, SRBA Administrative Order 1, or Idaho law. This approach continues to cause the Objectors to incur needless litigation expenses.

II. The Special Master did not abuse discretion in awarding attorney fees.

Rule 11(a) of the Idaho Rules of Civil Procedure 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.” It requires the person filing any motion “to perform a pre-filing 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 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. When reviewing awards of attorney fees made by Special Masters, the Presiding Judge of this Court has applied the same standard, reversing the award only if the Special Master abused discretion. *Memo Decision and Order on Challenged (Whitted's Claims)*, Subcase No. 63-07539, at 11 (Sep. 2, 2009).

Special Master Bilyeu's decision requires Mr. Reid to pay only a small portion of the attorney fees that the Objectors have incurred in responding to the barrage of motions and other pleadings filed in the SRBA by Mr. Reid over the last half-decade. The award of fees relates to only three of those pleadings which clearly violate Rule 11(a)(1). Attached hereto as ***Exhibits A and B***, respectively, are copies of the *Objectors' Response to Motion to Set Aside Verdict* and *Objectors' Response to Notice of Appeal* which contain arguments showing the impropriety of the pleadings for which fees were awarded. While Mr. Reid may disagree with that decision, the Petition fails to even allege that Special Master Bilyeu acted arbitrarily, capriciously, or abused her discretion in awarding attorney fees. Instead of alleging any particular error, the Petition merely recounts the arguments that Mr. Reid has made numerous times before as to why his water right should have a 1901 priority date instead of a 1904 priority date. These arguments were thoroughly considered and rejected by Special Master Bilyeu, and there is no need to address the specifics of these arguments again. However, a few of the Petition's many inaccuracies and mischaracterizations do warrant a response.

First, the Petition alleges that Mr. Reid was granted permission as part of the settlement to argue again—after failing four times previously—for a 1901 priority date. (Petition at 1.) This allegation is not only false, but the opposite is true. At the time of the settlement Mr. Reid expressed the desire to again seek a 1901 priority date; however, he was required to give that up as part of the settlement, the whole purpose of the settlement being to put an end to litigation of Paradise Springs water rights. Accordingly, the letter prepared by the IDWR outlining the terms of the settlement, a copy of which is attached hereto as ***Exhibit C***, says nothing of Mr. Reid seeking or receiving a 1901 priority date. And parties to the settlement confirmed at oral argument before Special Master Bilyeu that no such deal was made as part of the agreement.

Second, the Petition claims that Mr. Reid's purported right to seek a 1901 priority date is outlined in a written settlement agreement that Mr. Budge prepared, that Mr. Reid signed, but that he "could not find." (Petition at 2.) The Petition asserts that "Mr. Budge had typed up the agreement and although he promised to make copies and forward those copies to the state and me, he had not done this." *Id.* Mr. Reid cannot find this purported written agreement because it does not exist. The terms of the settlement are outlined in the letter prepared by the IDWR attached hereto as *Exhibit C*. There was never a separate agreement signed by the parties.

Third, the Petition claims that attorney fees shouldn't be awarded because it is really the attorneys for the Objectors and IDWR who are at fault for Mr. Reid filing pleadings that violate Rule 11(a)(1). The Petition contends that "their actions are the only reason I had to file any of these motions. In fact, Mr. Budge has only himself to blame for having to write any responses to my motions, for if he had forwarded the settlement agreement to Mrs. Courtney, she should have been able to prepare the SF-5 correctly and there would have been no reason to dissolve the settlement agreement the first place, and then no reason for any motions." (Petition at 3.) This argument is an affront to Rule 11(a)(1) which provides that it is Mr. Reid's signature and that constitutes his certification that the subject pleadings are "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).

Fourth, the Petition claims that attorney fees shouldn't be awarded because, "As a *pro se* participant, I deserve a little latitude as far as specific procedures." (Petition at 6.) This statement is painfully ironic, since the legal expenses incurred by the Objectors would have been far less had Mr. Reid spent his own money to obtain the advice of an attorney (as the Objectors have done) to represent him, undertaken at his own expense—as the Objectors have done—to hire an attorney to represent him, as that would have avoided the improper pleadings being filed in the first place. Moreover, his argument contradicts Idaho law, which provides that "*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).

Finally, Mr. Reid claims that attorney fees should not be awarded against him because he "do[es] not believe Mr. Budge ever invoiced his clients for the amounts he al-

leges, and even if he did, I don't believe they were paid." (Petition at 5.) He offers as support for this statement ... nothing. Apparently Mr. Reid thinks attorneys work for free and that his reckless filings have no consequence on other parties. Suffice it to say that the Objectors have spent tens of thousands of dollars over the last four years responding to pleading after pleading filed by Mr. Reid, nearly all of which have been denied and many of which had no basis in fact or law.

The Petition is in large part nothing more than "a second bite at the apple" to make arguments that have been rejected numerous times before. Mr. Reid's false assertions, mistaken recollections, and misunderstandings of Idaho law do not make Special Master Bilyeu's award of attorney fee decision arbitrary, capricious, or an abuse of discretion. Her decision should be sustained.

III. The Objectors should be awarded their reasonable attorney fees incurred in responding to the Petition.

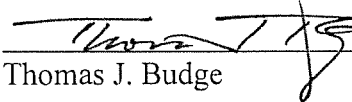
The most upsetting aspect of the Petition is that it once again forces the Objectors to incur needless litigation expenses. Finally the Objectors received a small recompense for the unnecessary and substantial expenses that Mr. Reid has caused them, only to have it wiped out by having to respond to the Petition, unless they are awarded the fees incurred in responding. As explained above, the Petition fails to even allege that Special Master Bilyeu's decision is arbitrary, capricious, or an abuse of discretion. It is based on false assertions for which Mr. Reid provides no factual support, and arguments that contradict Idaho law. It does not meet the benchmark requirement that all pleadings be "well grounded in fact and [] warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law." I.R.C.P. 11(a)(1). Therefore, the Objectors respectfully ask this Court to award the fees they incurred in responding to the Petition. Given that a hearing may be held on the Petition, counsel for the Objectors will wait to submit an affidavit of attorney fees until after the Court rules on this request.

CONCLUSION

For the foregoing reasons, the Objectors ask this Court to deny the Petition and to award the Objectors attorney fees incurred in responding to the Petition.

RESPECTFULLY SUBMITTED this 23rd day of July, 2012.

RACINE OLSON NYE BUDGE
& BAILEY, CHARTERED


Thomas J. Budge

CERTIFICATE OF SERVICE

I CERTIFY that on this 23rd day of July, 2012, the above **Objector's Response to Petition for Reconsideration** was served in the following manner:

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

☒ U.S. Mail/Postage Prepaid
☐ Facsimile
☐ Overnight Mail
☐ Hand Delivery

IDWR Document Depository
PO Box 83720
Boise, Idaho 83720-0098

☒ U.S. Mail/Postage Prepaid
☐ Facsimile
☐ Overnight Mail
☐ Hand Delivery

Michael L. Reid
550 S 450 W
Victor, ID 83455

☒ U.S. Mail/Postage Prepaid
☐ Facsimile
☐ Overnight Mail
☐ Hand Delivery

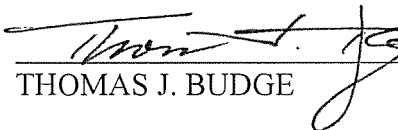
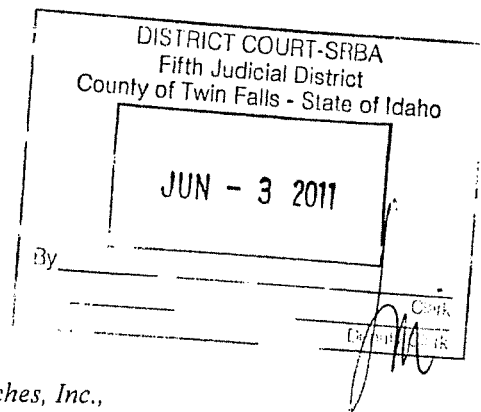

THOMAS J. BUDGE

EXHIBIT A

Objectors' Response to Motion to Set Aside Verdict

Thomas J. Budge, ISB No. 7465
RACINE OLSON NYE BUDGE &
BAILEY, CHARTERED
Post Office Box 1391
201 E. Center Street
Pocatello, Idaho 83204-1391
208-232-6101 - Telephone
208-232-6109 - Fax

*Attorneys for Cedron Irrigation, LLC, Teton Rainbow Ranches, Inc.,
Trees, Inc., Mahogany Ranch Holdings, and Al Shiver*



**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.

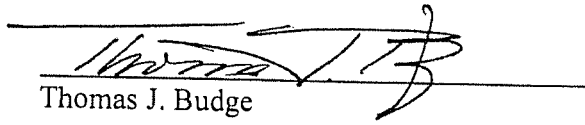
While Mr. Reid's litigation of seemingly every water right in his corner of Teton Valley has been at little or no financial cost to him, it has imposed an enormous financial burden on the Objectors who have had to hire legal counsel to help them defend against his claims that in many instances have been 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

- ☒ U.S. Mail/Postage Prepaid
- ☐ Facsimile
- ☐ Overnight Mail
- ☐ Hand Delivery

IDWR Document Depository
PO Box 83720
Boise, Idaho 83720-0098

- ☒ U.S. Mail/Postage Prepaid
- ☐ Facsimile
- ☐ Overnight Mail
- ☐ Hand Delivery

Michael L. Reid
550 S 450 W
Victor, ID 83455

- ☒ U.S. Mail/Postage Prepaid
- ☐ Facsimile
- ☐ Overnight Mail
- ☐ Hand Delivery

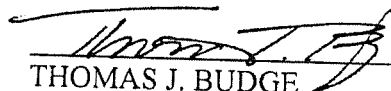

THOMAS J. BUDGE

EXHIBIT B

Objectors' Response to Notice of Appeal

Thomas J. Budge, ISB No. 7465
RACINE OLSON NYE BUDGE &
BAILEY, CHARTERED
Post Office Box 1391
201 E. Center Street
Pocatello, Idaho 83204-1391
208-232-6101 – Telephone
208-232-6109 – Fax

*Attorney for Cedron Irrigation, LLC, Teton Rainbow Ranches, Inc.,
Trees, Inc., Mahogany Ranch Holdings, and Al Shiver*

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
APR 23 2012	
By _____	Clerk
_____	Deputy Clerk

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. 22-11639

**OBJECTORS' RESPONSE TO
NOTICE OF APPEAL**

As the world turns. There is no end, it seems, to the saga that is Mike Reid's effort to improve his water rights from Paradise Springs through the SRBA. After going to trial on Mr. Reid's water rights in 2009, entering into a settlement agreement in 2010, and yet still having to defend five—yes, five¹—subsequent motions filed by Mr. Reid attempting to undo the settlement (to his benefit, of course), the Objectors (Cedron Irrigation, LLC, Teton Rainbow Ranches, Inc., Trees, Inc., and Al Shiver) are now required to respond to his *Notice of Appeal* ("*Appeal*") filed March 23, 2012. As with other of Mr. Reid's pleadings, the *Appeal* has no legal basis, and is an abuse of the SRBA process and of the Objectors. For the reasons that follow, the *Appeal* must be denied, and the Objectors should be awarded their attorney fees under Rule 11 of the Idaho Rules of Civil Procedure.

BACKGROUND

¹ *Motion to Set Aside Verdict*, Subcase 22-13212 (May 4, 2011); *Motion to File Amended Claim*, Subcase 22-13853 (October 24, 2011); *Motion to File Late Objection*, Subcase 22-13211 (December 21, 2011); *Motion for Late Objection*, Subcase 22-13853; *Objection to Amended Director's Report*, Subcase Nos. 22-13853, 22-116369, 22-13509 and 22-13854.

A review of the history of SRBA claim number 22-11639 is important. Mr. Reid filed an amended claim for this water right in 2001, claiming a priority date of July 21, 1969, a diversion rate of 0.59 cfs, and a place of use of 35.6 acres. A copy of that claim is attached hereto as Exhibit A. It was decreed with the elements as claimed on November 24, 2008, a copy of which is attached as Exhibit B. In February of 2009, Mr. Reid filed a *Motion to Set Aside Partial Decree and Allow the Filing of a Late Objection* along with a *Standard Form 1 Objection*, copies of which are attached as Exhibit C, asserting that water right 22-11639 should be disallowed. No response has been filed objecting to the request that it be disallowed.

A trial was held in September of 2009 on another water right claim of Mr. Reid's (22-13212) that covers the same place of use as 22-11639. The Objectors were parties to that trial. Since they did not disagree with the partial decree entered for 22-11639 or the motion to have it disallowed, it was not directly at issue at the trial. Nonetheless, the evidence presented at trial is the same evidence that would be presented in a trial of water right 22-11639. Importantly, the Court ruled that only 4.5 acres of Mr. Reid's were irrigated prior to 1969. The trial resulted in water right 22-13212 being decreed with a 1904 priority date for 4.5 acres.

Since water right 22-13212 provides water for only 4.5 acres, Mr. Reid was no longer interested in having water right 22-11639 disallowed, as it would be needed to irrigate the rest of his property. Mr. Reid did not withdraw his motion to set aside the partial decree, but the Objectors stipulated on the record at a hearing held December 7, 2011, that they did not object to the elements contained in the partial decree entered in 2008.

Accordingly, the partial decree attached to the *Special Master's Report and Recommendation* issued on March 15, 2012, is identical to the partial decree entered in 2008, with one immaterial exception. The 2008 partial decree contains the following condition:

The rights listed below are limited to the irrigation of a combined total of 35.6 acres in a single irrigation season. Combined Right Nos.: 22-11639, 22-13212, 22-13503.

Water right 22-13503 was subsequently disallowed. Therefore, it was removed from the partial decree attached to the recent *Special Master's Report and Recommendation* which reads as follows:

Right Nos. 22-11639 and 22-13212 are limited to the irrigation of a combined total of 35.6 acres in a single irrigation season.

Besides removing the reference to 22-13503, the partial decree entered in 2008 and the partial decree attached to the *Special Master's Report and Recommendation* are identical.

ARGUMENT

I. The *Appeal* fails to state a claim upon which relief can be granted.

Water right 22-11639 was partially decreed with the elements that were claimed. Mr. Reid's motion to set aside the partial decree was for the purpose of having it be disallowed. No objections have been filed. Thus, the options available to this Court are to either (a) deny the motion, in which case the partial decree entered in 2008 stands, or (b) grant the motion, in which case water right 22-11629 is disallowed. The *Appeal* asks this Court to do something else.

The *Appeal* argues that water right no. 22-11639 should be decreed with a priority date of 6/1/1904. (*Appeal* at 1.) This Court is incapable of granting that request. The *Notice of Claim* filed by Mr. Reid for 22-11639 claims a priority date of July 21, 1969 (*see Exhibit A*), the partial decree entered in 2008 states the same priority date (*see Exhibit B*), and Mr. Reid has not filed an amended claim for an earlier priority date.

Mr. Reid could have properly filed a motion to alter or amend requesting that water right 22-11639 be disallowed. In contrast, he does not have a legal basis to file a motion to alter or amend requesting an earlier priority date than he claimed.

II. The Objectors should be awarded their attorney fees pursuant to Rule 11 of the Idaho Rules of Civil Procedure.

Rule 11(a)(1) of the Idaho Rules of Civil Procedure 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.

Mr. Reid’s election to represent himself *pro se* carries with it the obligation to comply with Rule 11(a)(1): “*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 *Appeal* 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).

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 Court shall impose sanctions either “upon motion or upon its own initiative.” *Id.* The decision to award attorney fees under Rule 11(a)(1) is left to the 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.

The Court should require Mr. Reid to pay the Objectors’ attorney fees in responding to his *Appeal* as well as to his *Motion to Set Aside Verdict* filed in 22-13212 on May 4, 2011, and *Motion to File Amended Notice of Claim* filed in subcase 22-13853 October 24, 2011. Each is addressed as follows.

A. *Appeal.*

As explained above, Mr. Reid’s *Appeal* requests relief that this Court is not able to provide. Had Mr. Reid taken the time to review his own pleadings in this subcase—his subcase—as well as AO1, or spent money to obtain the advice of an attorney (as the Objectors have done), he would have realized that there is no legal basis to seek an earlier priority date without having filed an amended claim. The Objectors question whether his failure to do so was deliberate since Basin 22 is now closed to further SRBA Claims. In any case, the *Appeal* has no reasonable basis in law, and has only added to the litigation expense that Mr. Reid continues to wrongfully impose upon the Objectors.

B. Motion to Set Aside Verdict.

Last spring Mr. Reid filed a *Motion to Set Aside Verdict* seeking a 1901 priority date for water right 22-13212. Because this Court had already rejected the very same argument on numerous prior occasions, the Objectors filed a response brief asking that their attorney fees be awarded “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 a legal foundation.” *Objectors’ Response to Motion to Set Aside Verdict*, Subcase 22-13212 (June 3, 2011) at 1 (emphasis added). This Court entered an order that denied the Objectors’ fee request under Idaho Code §12-121, but failed to address their request under Rule 11(a)(1). *Order Continuing Motion to Set Aside Partial Decree and Denying Fees*, Subcase 22-13212 (September 19, 2011) (the “*Order*”)

Rule 11(a)(1) is a separate basis for an award of attorney fees from Idaho Code § 12-121. It focuses on discreet pleadings as opposed to the case as a whole. The inquiry is “whether a pleading, or motion or other signed document is sanctionable” *Landvik ex rel Landvik v. Herbert*, 130 Idaho 54 (Ct. App. 1997) (emphasis added). As explained in *State of Alaska ex rel. Sweat v. Hansen*, Rule 11(a)(1) “does not exist to duplicate Section 12-121,” but rather “serves a separate, cognizable purpose, focusing on discreet pleading abuses or other types of litigative misconduct within the overall course of a lawsuit.” 116 Idaho 927, 929 (Ct. App. 1989).

The Court denied the Objectors’ request for attorney fees under Idaho Code § 12-121 on the basis that it applies “only when a court finds that the case was brought, pursued, or defended frivolously, unreasonably or without foundation,” and that in this case “the priority issue was just one portion of the case, and just one part of the *Motion to Alter and Amend*.” *Order* at 4 (emphasis added). However, the Court did rule that “the issue on priority date to be without foundation since the issue was disposed of on summary judgment, at trial, on a *Motion to Alter or Amend* and in the *Partial Decree* which was not appealed.” *Id.* (emphasis added). Accordingly, the Court should have ordered Mr. Reid to pay the Objectors’ attorney fees under Rule 11(a)(1).

The Objectors did not spend the money required to prepare and file a motion for reconsideration because at the hearing on the *Motion to Set Aside Verdict*, Mr. Reid stated on the record that he would pay the Objectors’ attorney fees, and he subsequently sent an

email to the Objectors' attorney, a copy of which is attached hereto as Exhibit D, confirming that he would in fact pay the fees. Based on that representation, the Objectors sought to minimize their litigation expenses by not filing a petition for reconsideration. But—surprise!—once the deadline had passed to petition for reconsideration, Mr. Reid reneged on his promise and refused to pay any of the Objectors fees.

C. Motion to Amend Claim.

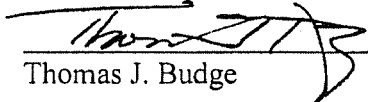
On October 24, 2011, Mr. Reid filed a *Motion to Amend Claim* in subcase 22-13853. However, he failed to file an amended claim form as required by AO1 Rule 4. Moreover, Mr. Reid had no authority to file the amended claim since he is not the claimant of water right 22-13853. This forced the Objectors to participate in a hearing on December 22, 2011, to oppose the frivolous motion. This again added to the substantial financial burden Mr. Reid has imposed upon the Objectors. Because the motion had no legal foundation, Rule 11(a)(1) instructs the Court to award the Objectors' attorney fees or otherwise sanction the inappropriate pleading.

CONCLUSION

For the foregoing reasons, the Objectors ask this Court to deny the *Appeal* and pursuant to Rule 11(a)(1) to award their attorney fees incurred in responding to the *Appeal*, the *Motion to Set Aside Verdict*, and the *Motion to Amend Claim*.

RESPECTFULLY SUBMITTED this 20th day of April, 2011.

RACINE OLSON NYE BUDGE
& BAILEY, CHARTERED


Thomas J. Budge

CERTIFICATE OF SERVICE

I CERTIFY that on this 20th day of ^{April 2012}~~May, 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

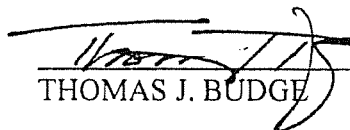
- ☒ U.S. Mail/Postage Prepaid
- ☐ Facsimile
- ☐ Overnight Mail
- ☐ Hand Delivery

IDWR Document Depository
PO Box 83720
Boise, Idaho 83720-0098

- ☒ U.S. Mail/Postage Prepaid
- ☐ Facsimile
- ☐ Overnight Mail
- ☐ Hand Delivery

Michael L. Reid
550 S 450 W
Victor, ID 83455

- ☒ U.S. Mail/Postage Prepaid
- ☐ Facsimile
- ☐ Overnight Mail
- ☐ Hand Delivery


THOMAS J. BUDGE

THIS CLAIM IS PREPARED AS A WORD-PROCESSING DOCUMENT ONLY
PENDING RECEIPT OF SIGNED AMENDED CLAIM.

ELECTRONIC DATABASE WILL NEED TO BE UPDATED WHEN SIGNED CLAIM
IS RECEIVED

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

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576

Ident. Number 22-11639
Date Received: 10/4/88
Receipt No: E002891
Received By:

AMENDED

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

AMENDED

1. Name of Claimant(s)

MICHAEL L REID

450 W 550 S
VICTOR, ID 83455

2. Date of Priority: 07/21/1969

3. Source: ~~PARADISE~~ SPRINGS Trib. to: TETON RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
04N	45E	30	SW NE NW	TETON	

5. Description of diverting works:

DIVERSION DAM TO DITCH TO PUMP

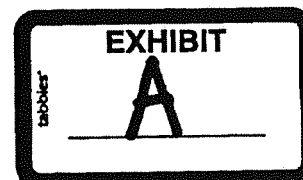
6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	4/15	10/31	0.59	

7. Total Quantity Appropriated is:
0.59 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses:



10. Place of use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
04N	45E	30	SE	NW	IRRIGATION	35.6
					Section Acres	35.6
					Total Acres	35.6

11. Place of use in counties: TETON

12. Do you own the property listed above as place of use? Yes

13. Other Water Rights Used:

14. Remarks:

THIS RIGHT REPRESENTS A PORTION OF 22-4104. CLAIM A22-11537 IS FOR THE REMAINING PORTION OF 22-4104

CLAIM AMENDED 3/2001 TO REFLECT PROPORTIONATE SHARE OF ORIGINAL RIGHT AND TO ADJUST SEASON OF USE. AMENDED CLAIM ALSO SHOWS NEW OWNERS PER NOTICE OF CHANGE OF OWNERSHIP.

15. Basis of Claim: Beneficial Use

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not _____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Individuals:

I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s): M/L R-2

Date: 3/13/01 ^{4/13/01 Mr}

State of ~~Idaho~~ Colorado

County of Larimer

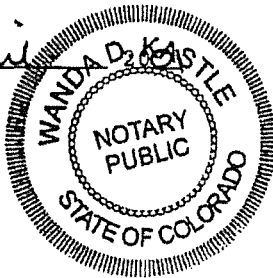
SS.

Date: 4/13/01

4/13/2001

Subscribed and sworn (or affirmed) before me this 13th day

of April



Wanda D. Kastle

Notary Public

Residing at

415. College Ave 102, Fort Collins, CO

My commission Expires

5/12/01

80524

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

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 22-11639

PAGE 1
Oct-24-2008

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

Subcase No. 22-11639

Case 39576

MOTION TO SET ASIDE
PARTIAL DECREE AND ALLOW THE
FILING OF A LATE OBJECTION

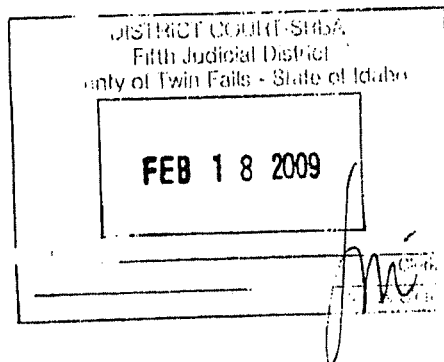
Just prior to January 1, 2009, I received a partial decree for my claim, water right number 22-11639. I called Michael Holliday to ask him if this had been decreed as additional water on top of my other rights. It appears to both he and I that this is the case, and that it has been recommended as additional water to my other claims.

This is not correct. This claim was filed by Don LeRoy Miller in an attempt to quantify the water use that had been going on here on his and my properties. When he arrived to file on the JJ Miller right, #22-405, the IDWR claims assistant did not allow him to file on the Miller right as it was misdecreed onto another piece of land entirely. What Don Miller had as evidence that day was electrical records proving that a pump was permanently installed in 1969 to irrigate lands on his place and mine. The IDWR claims assistant assigned a priority date of 1969 to this right for lack of any other evidence and Don let it go at that.

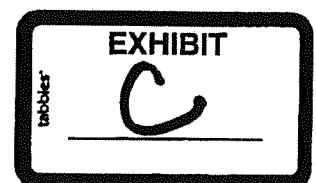
The truth is, that beginning in the late 1950's, a tractor pump was used to irrigate much of the original JJ miller homestead. In 1963 a permanent electrical pump was installed to irrigate the north half of that homestead, leaving the tractor pump to run as necessary on Don's and my properties. In 1969, a permanent electrical pump was installed to irrigate Don's and my properties.

All of the pumping that was done onto the JJ Miller homestead was done with water right 22-405, decreed to JJ Miller for the lands he filed on on 5-23-1901. Only a small, 8 acre piece in the NW of the NW of Section 30, T4N R45E, qualifies for a new water right, and actually I always thought of this as a small expansion of the Miller right.

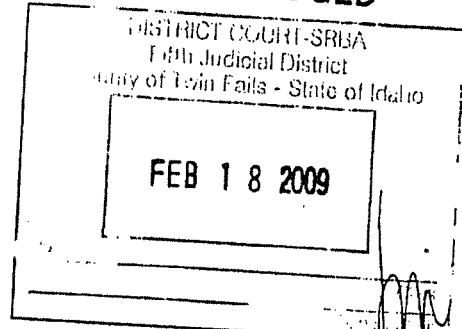
I explained this all to Trent Galbraith but there must have been some misunderstanding, both on my part and his. Because of this misunderstanding, I must ask the court to disallow my claim to right 22-11639. The only water ever used on my place was from 22-405, and my other claims cover this.



MILIT-0
Michael L Reid
2-15-09
(208) 354 8024



LODGED



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

A. Subcase 22-11639
(Insert water right number)

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Michael Reid
Address: 550 S 450 W
Victor 83455
Daytime Phone: 208 354 8024

Name & Address of Attorney, if any:

C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: Michael Reid
Address: 550 S 450 W
Victor 83455

D. I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

1. ☐ **Name and Address**
Should be: _____
2. ☐ **Source**
Should be: _____
3. ☐ **Quantity**
Should be: _____
4. ☒ **Priority Date**
Should be: _____
5. ☐ **Point of Diversion**
Should be: _____
6. ☐ **Instream Flow Beginning and Ending Point**
Should be: _____
7. ☐ **Purpose(s) of Use**
Should be: _____
8. ☐ **Period of Year**
Should be: _____
9. ☐ **Place of Use**
Should be: _____
10. ☐ **I object because:**
 - ☒ This water right Should not exist:
 - ☐ This water right was not recommended, but Should be recommended with the elements described above.

E. REASONS SUPPORTING OBJECTIONS(S): See attached letter

INSTRUCTIONS FOR MAILING

You must mail the objection, to the Clerk of the court. FAX filings will not be accepted. You must also send a copy to all the parties listed below in the Certificate of Mailing.

G. CERTIFICATE OF MAILING

I certify that on 7-18-09, 2009, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

Name: Michael Reid
Address: 5508 450 W
Victor 83455

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

United States Department of Justice
Environment & Nat'l Resources Div
550 W Fort Street, MSC 033
Boise, ID 83724

Chief, Natural Resources Division
Office of Attorney General
PO Box 44449
Boise, ID 83711-4449

MIC Reid
Signature of objector or attorney
mailing on Objector's behalf

F.

VERIFICATION (must be completed)

State of Idaho)
)ss.
County of Teton)

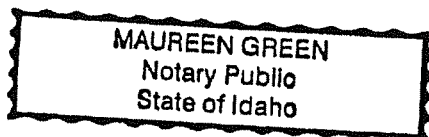
Michael L Reid, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

MIL Reid
(Signature of person filing objection)

(Attorney signing in representative capacity)

Subscribed and sworn to before me on: February 17, 2009



Maureen Green
Notary Public for State of Idaho - Teton Co
Residing at: Teton Co
My Commission Expires: 08/05/14

T. J. Budge

From: paradisespringsfarm@gmail.com on behalf of Mike Reid
<mreid@paradisespringsfarm.com>
Sent: Friday, September 30, 2011 6:48 PM
To: T. J. Budge
Subject: your bill

Hey TJ,

Sorry about the late reply. The Post Office has had infinite trouble in delivering my mail this summer. I just got your bill last week. I thought to call, then I thought to email, I couldn't decide but I think this is best. At the settlement discussions, I made it clear that I wasn't settling unless I got to argue the priority date again. We talked about this for some time, as you may remember. I offered to pay for the time it would take you to defend against this argument. You explained that since you would have to be at the hearing anyway, and since you had already prepared this argument in the past, that it would not be necessary for me to pay you because we were talking about quote "5 minutes." Imagine how I felt when I got your bill, what with the 2 hour conference with Todd and the re write.

If you send me that same bill again, I will pay it. My neighbor once told me, with respect to water, that you should always give a guy the chance to do the right thing, and so I'm giving you that chance before you send me the next bill. I still am more than happy to pay you for an hour or whatever it really took you, and if this isn't satisfactory, I will pay the amount on the first bill but I will remember this in color, no matter what you decide.

I haven't seen a ruling from the hearing yet, if it doesn't go my way and I have to transfer I'm of a mind to rescind our agreement, FYI.

Mike

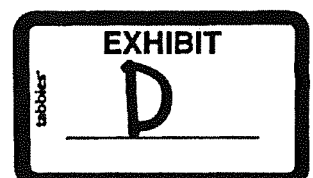


EXHIBIT C

IDWR Letter



State of Idaho

DEPARTMENT OF WATER RESOURCES

Eastern Region, 900 North Skyline Drive, Suite A • Idaho Falls, Idaho 83402-1718
Phone: (208) 525-7161 • Fax: (208) 525-7177 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

January 24, 2011

Dear Claimant:

As you may recall a settlement conference was recently held in Idaho Falls in hopes that the disputes regarding the water right claims from Paradise Springs could be resolved. At the settlement conference the parties in attendance and the Idaho Department of Water Resources reached a tentative agreement. However, final settlement is contingent upon additional action by the parties. The purpose of this letter is to let you know what further action needs to be taken in order to bring closure to the Paradise Springs subcases in the Snake River Basin Adjudication ("SRBA").

The table below lists the amounts agreed upon during the settlement conference followed by the tasks that need to be completed before the settlement can be finalized. Please find your subcase(s) below and take the appropriate action. IDWR would be happy to help you through the process if you need assistance, as appropriate. Because of the global nature of the settlement of Paradise Springs, SF5 settlement documents will be prepared once the late claims and amended claims are ready for resolution. In other words, all the subcases are tied together and are anticipated to progress through the SRBA resolution process as a group.

<u>Claim number</u>			<u>Owner</u>	<u>Decreed Acres</u>	<u>Beneficial Use Acres</u>	<u>Decreed Quantity</u>	<u>Beneficial Use Quantity</u>
22	587	A	KUNZ, LARELL A	25		0.35	
22	12714	B	SUSAN C ALDEEN TRUST	7.8		0.11	
22	13211		MILLER, DON LE ROY	8.5	3.3	0.17	0.07
22	13212		REID, MICHAEL L	26	9.6	0.52	0.19
22	13511		TETON RAINBOW RANCHES	72		1	
22	13586		RICHARDSON, ANDREW J	23.5	8.5	0.47	0.17
22	13853		MILLER, CHESTER H; MILLER, REX H	16.5	6.5	0.33	0.13
22	13854		RICHARDSON FAMILY PROPERTIES LLC	17	14	0.24	0.38
22	13509		FRED MILLER TRUST	25.5	9.5	0.51	0.19

22-587A. No need to amend the claim. Only needs to sign SF5.

22-12714B. Needs to amend claimed flow rate to 0.11 cfs.

JAN 26 2011
AM 10 07

22-13211. No need to amend claim. Only needs to sign SF5. It is my understanding that the objectors to this subcase seek a subordination remark limiting a delivery call on this right to 7.6 acres and .17 cfs. Additionally, needs to set aside 22-11537, the 1969 beneficial use right, and sign an SF5 for .07 cfs and 3.3 acres.

22-13212. Needs to move to set aside and amend claim for 0.52 cfs. Eventual recommendation for -13212 will contain a subordination remark limiting a delivery call on this right to 4.5 acres and 0.16 cfs. Will receive SF5 on 22-11639 for 9.6 acres and 0.19 cfs as the beneficial use claim.

22-13511. No need to amend claim. Only needs to sign SF5.

22-13586. Needs to amend claimed flow rate to 0.47 cfs. This right is governed, in part, by the stipulation filed December 2009. Consistent with that stipulation, the eventual recommendation for -13586 will contain the following subordination remark: This water right shall not be permitted to make a delivery call against water right nos. 22-13135, 22-13961, 22-13962, 22-13963, 22-13964, 22-2280E, 22-2296B, 22-2296D, and 22-13681, and their progeny. Needs to file a new beneficial use claim for 8.5 acres and 0.17 cfs.

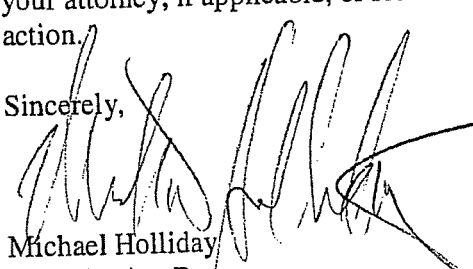
22-13853. Needs to amend claimed flow rate to 0.33 cfs and file a new beneficial use claim for 6.5 acres and 0.13 cfs.

22-13854. This right is governed, in part, by the stipulation filed December 2009. Needs to file a new beneficial use claim for 14 acres and 0.38 cfs.

22-13509. Consistent with the Amended Director's Report filed in July 2010, the eventual recommendation for -13509 will contain the following subordination remark: This water right shall not be permitted to make a delivery call against water right nos. 22-13135, 22-13961, 22-13962, 22-13963, 22-13964, 22-2280E, 22-2296B, 22-2296D, and 22-13681, and their progeny. Needs to file a new beneficial use claim for 9.5 acres and 0.19 cfs.

The next status conference on these subcases is set for February 2, 2011, at 9:30 a.m., during which Special Master Bilyeu agreed to hear motions to amend claims. Motions for late claims need to be heard by Judge Wildman. If you have questions about any of this, please contact your attorney, if applicable, or feel free to give me a call. Thanks in advance for your prompt action.

Sincerely,



Michael Holliday
Adjudication Bureau
Senior Water Right Agent