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DEPT. OF WATER RESOURCES

**DISTRICT COURT - SRBA
Fifth Judicial District
County of Twin Falls-State of Idaho****AUG 12 2025**

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Attorney for Defendant Joshua A. McIntosh

By _____

Clerk

Deputy Clerk

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

In re SRBA

Case No. 39576

**BRIAN CARPENTER and THERESA
CARPENTER,**

Plaintiffs/Claimants,

vs.

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

Defendants/Respondents.

Subcase Nos. 74-733H, 74-733E

**MOTION TO DEEM CARPENTERS
IN VIOLATION OF I.R.C.P. 11**

COMES NOW Defendant/Respondent Joshua A. McIntosh ("McIntosh"), by and through counsel, and hereby asks the Court to enter an Order, with appropriate sanctions, against Plaintiff/Complainants Brian Carpenter and Theresa Carpenter ("Carpenters") for repeated violations of I.R.C.P. 11(b) in this case.

SCANNED**AUG 20 2025**

Dr. J. H. ...
...
...



By

...

...

OVERVIEW

Rule 11 should rarely be invoked. But, Carpenters have crossed the line in their filings with this Court. Under I.R.C.P. 11(b)(1) and (b)(2) bars putting before a Court matters merely to harass or to make legal contentions that are unsupported. Both have occurred here.

McIntosh asks the Court to sanction Carpenters by:

- 1) Striking their pleadings in this matter in their entirety and,
- 2) Require that Carpenters reimburse McIntosh for the expense of dealing with their unsupported filings by awarding to McIntosh attorney fees and costs.

APPLICABLE LAW

Carpenters are pro se litigants. Under Idaho law “[p]ro se litigants are held to the same standards and rules as those represented by an attorney.” *Twin Falls Cnty. v. Coates*, 139 Idaho 442, 445, 80 P.3d 1043, 1046 (2003) citing *Golay v. Loomis*, 118 Idaho 387, 797 P.2d 95 (1990).

As such, Carpenters are subject to the standards of I.R.C.P. 11(b) which provides in the relevant portions:

(b) Representations to the Court. By presenting to the court a pleading, written motion, or other paper, whether by signing, filing, or submitting, or later advocating it, an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(emphasis added).

If found to have violated those standards, then the Court can impose a wide array of sanctions under I.R.C.P. 11(c):

(c) Sanctions.

(1) *In General.* If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court must impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. A law firm may be held jointly responsible for a violation committed by its partner, associate, or employee.

(2) *Motion for Sanction.* A motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b). The motion must be served under Rule 5, but it must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets. If warranted, the court may award to the prevailing party on the motion, reasonable expenses, including attorney's fees and costs incurred for the motion.

(3) *On the Court's Initiative.* On its own, the court may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated Rule 11(b).

(4) *Nature of the Sanction.* The sanction imposed under this rule may include an order to pay to 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. The sanction may also include nonmonetary directives.

(5) *Vexatious Litigant.* In addition to any other sanction available under this rule, the court may also refer to the administrative district judge the question of whether to declare a person to be a vexatious litigant pursuant to Idaho Court Administrative Rule 59 and for relief under that rule.

(6) *Requirements for an Order.* An order imposing a sanction must describe the sanctioned conduct and explain the basis for the sanction.

ARGUMENT

McIntosh contends that the following citations in Carpenters' *Motion to Remove Defendants' Water Rights, Bury Illegal Southwest Ditch, Reinstate Historic Water Delivery, Enjoin Citation, Refer Criminal Violations, and Refer Findings to Lemhi County Civil Court* (filed June 18, 2025) ("Carpenters' Motion") and *Plaintiffs' Opposition to Defendant Joshua A. McIntosh's Motion to Dismiss* (filed August 11, 2025) ("Carpenters' Opposition") either 1) do not support the proposition for which they are cited, 2) do not exist or 3) nonsensical on a factual basis. Any of these prongs violates Rule 11.

In addition, this entire action violates I.R.C.P. 12(b)(6), 12(b)(1) and I.R.C.P. 11(2)(a)(1) as stated in McIntosh's *Motion to Dismiss* (filed August 5, 2025).

The reality is that Carpenters' filings are designed merely to harass and increase the cost of litigation, in particular given this is their second bite at the apple, having brought most of the same claims in Lemhi County.

Each of the following are grounds for invoking Rule 11 against Carpenters. For each the specific citations set forth there is a subsequent analysis of the content:

1. **"Jurisdiction: The SRBA court has exclusive authority to adjudicate water rights and resolve ditch disputes affecting water delivery (I.C. § 42-1405, I.C. § 42-1412). By proving fraud and violations, the SRBA can revoke Walkers' and McIntosh' water rights (I.C. § 42-222), order the Southwest ditch buried as a trespass (I.C. § 6-202)"** Carpenters' Motion, pg. 2.

Analysis: None of these statutes are relevant. Idaho Code § 42-1405 deals with the power of the IDWR director to trigger a general adjudication for a water system, not a dispute between limited parties. Idaho Code § 42-1412 is the objection process in district court to a director's report. Idaho Code § 42-222 only deals with a petition to IDWR and procedure to change the "point of

diversion, place of use, period of use or nature of use” for an individual water user. Idaho Code § 6-202 deals with civil trespass onto someone else’s land. It has nothing to do with a change in a ditch back in the 1970s or, as Carpenters’ claim, the early 2000s.

2. “Remove Defendants’ water rights (74-733H, 74-733E) for fraud, perjury, and violations of Idaho water laws, 42-1207, and 42-1102.” Carpenters’ Motion, pg. 2.

Analysis: Idaho Code § 42-1207 is provision that states that where a property owner is burdened by another’s ditch, canal or buried pipe, if they modify or move, they are required to get written permission of the ditch owner. Carpenters, who acquired their property in 2017, argue they, somehow, have to give written permission for a ditch that was rerouted in the 1970s or at least by the early 2000s. But, this statute doesn’t apply because each owner of the L8 Lateral Association, of which Carpenters are members, is required to care for the portion of the ditch on their property, ie. it is a ditch that they have partial ownership of. As such, the statute doesn’t apply. Idaho Code § 42-1102 deals with right-of-ways for maintaining water conduits. Which unconnected to any claim by Carpenters.

3. “Refer Defendants’ criminal violations, including §§ 18-5501, 18-7001, 18-4310, 41-293, 18-6710, and 18-7007, to the Twin Falls County Prosecutor and Idaho Department of Environmental Quality (DEQ) for investigation and potential prosecution.” Carpenters’ Motion, pg. 2.

Analysis: The fundamental problem with this request is that Courts don not refer matters for criminal prosecution, except in the most limited of circumstances. They adjudicate alleged crimes that prosecutors place before them. Regardless, the cited statutes do not apply. Idaho Code § 18-5501 deals with someone who willfully poisons someone. Carpenters allege E-Coli in their well but have never claimed Mr. McIntosh put anything deliberately in it. Idaho Code § 18-7001

involves a malicious injury to real or personal property. How a fight over Carpenters diverting a ditch rather than providing water to McIntosh is connected to that is unknown. The reference to Idaho Code § 18-4310 is ironic, because it deals with neglect to deliver water. Mr. Carpenter is the only party who has been charged with that (he now has three criminal cases brought against him by the Lemhi County Prosecutor). Idaho Code § 41-293 involves insurance fraud. Mr. McIntosh does not have an insurance company involved in his case against Carpenters. The two strangest are Idaho Code §§ 18-6710 and 18-8007, which cover the use of telecommunication to harass and leaving a scene of accident. As neither has occurred, the citations are unrelated. Overall, none of these claimed criminal violations apply to Mr. McIntosh.

4. **"This motion is supported by Supplemental Affidavit #2 and exhibits (A-K), aligns with our Rule 60(b)(3) motion in Lemhi County Case No. CV30-23-0114 per Berg v. Kendall, 147 Idaho 571, 212 P.3d 1001 (2009), and is designed to be irrefutable in Plaintiffs' favor by leveraging unassailable evidence and legal authority."** Carpenters' Motion, pgs. 2-3.

Analysis: The citation to *Berg v. Kendall* is puzzling. It does deal with a 60(b) motion but under (b)(1) and (b)(6), not Carpenters' claimed basis of 60(b)(3). The case deals with the failures of a guardian ad litem in representing a minor. The connection here is not discernable.

5. **"McIntosh's Fraudulent Actions: After purchasing the property in 2021, McIntosh perpetuated Walker's fraud by concealing Walkers' illegally buried ditches and obtaining an illegal below-ground sewer permit in a flood zone (Exhibit H), using Walker's unadjudicated judgment to mislead the Idaho Transportation Department for illegal access, Lemhi County Health and Building Departments, despite separate cases for substantive purposes, violating Idaho Code § 18-7001 (Exhibit H, HI- H3). A calculated gamble to avoid a 50k above the ground sewer cost for a 1 000 SQ/ft. house."** Carpenters' Motion, pg. 4.

Analysis: Carpenters assert McIntosh, in obtaining a sewer permit from Eastern Idaho

Public Health, somehow, engaged in some sort of illegal activity, mislead the Idaho Department of Transportation in getting access off of a state highway and got a building permit from Lemhi County, in some undefined way, inappropriately. Of note, such were issued over the past year or so and Carpenters never timely objected to any of the permits in the statutory period. Idaho Code § 18-7001 involves a malicious injury to real or personal property. How obtaining a permit through a legal process amounts to “malicious injury” is an absurd stretch.

6. **“McIntosh's Sewer Permit: McIntosh fraudulently obtained a below-ground sewer permit in a flood zone (Exhibit H), breaching IDAPA 58.01.17 by misrepresenting compliance, using Walker's unadjudicated judgment to deceive authorities, violating Idaho Code § 18-7001 (Exhibit H), possible insurance fraud, I.C. § 41-293, if McIntosh obtained liability insurance under fraud or Fann Bureau filings show representation as interests were aligned. (Can be produced at Prosecutors' request, a large number of filings.”** Carpenters' Motion, pgs. 6-7.

Analysis: Much of this is indecipherable. But, IDAPA 58.01.17 deals with use of recycled water, not sewer permits. As noted above, the link of any of this to “malicious injury” to property under Idaho Code § 18-7001 is a reach. The odd claim of insurance fraud, considering McIntosh has never made an insurance claim on any matter involving Carpenters, is just outlandish.

7. **“The motion details intentional omissions and misrepresentations regarding historic ditches (including the 1946 ditch, Highway ditch, and Carpenter lower pasture ditch), violations of Idaho Code §§ 42-1207 (interference with ditches) and 42-1102 (right-of-way for ditches), ...”** Carpenters' Opposition, pg. 2.

Analysis: Neither cited statute is relevant. Idaho Code § 42-1207 outlines a process for a property owner to relocate a ditch, canal or similar structure on their property owned by another through a notification process. Carpenters claim that they didn't give permission for a ditch to be relocated in the 1970s or early 2000s. But, they didn't buy their property until 2017. The

connection to Idaho Code § 42-1102 is even more distant. That provision deals with right-of-ways to maintain ditches. Carpenters have identified no violation of any such right-of-way.

8. **“McIntosh has appeared in this action via his Notice of Appearance filed August 5, 2025, and filed the instant Motion to Dismiss without seeking joinder or formal intervention under I.R.C.P. 19 or 20.”** Carpenters’ Opposition, pg. 2.

Analysis: I.R.C.P. 19 and 20 deal with required and permissive joinder of parties. As Carpenters specifically brought McIntosh into this action, there is no reason for McIntosh to file or seek joinder or himself or any other party.

9. **“Plaintiffs contend this action is properly before the SRBA Court as an independent action for fraud on the court under I.R.C.P. 60(d)(3), which is not time-barred and falls within the SRBA's exclusive jurisdiction over water right adjudications under Idaho Code § 42-1401A et seq.”** Carpenters’ Opposition, pg. 2.

Analysis: Carpenters have failed to read Idaho Code § 42-1401A(5) or (8) which define a general adjudication as to all rights in a water system or a private one that binds parties participating. There is no basis for the SRBA having jurisdiction over a dispute between property owners on a ditch where the issue is who can use it (which is the nature of the dispute between Walkers, Carpenters and McIntosh). The claim of fraud is ridiculous with respect to McIntosh. Carpenters are challenging Walkers’ water claim from 2011, alleging fraud. But McIntosh didn’t even purchase his ground until 2021, a decade later. The link is beyond tenuous.

10. **“More critically, it constitutes fraud on the court, allowing an independent action under I.R.C.P. 60(d)(3), which has no time limit. See Thiel v. Goyings, 166 Idaho 790, 796, 463 P.3d 1270, 1276 (2020) (fraud on the court includes intentional misrepresentations undermining judicial integrity, with no statute of limitations).”** Carpenters’ Opposition, pg. 3.

Analysis: This is a made-up case. *Thiel v. Goyings* is not an Idaho case. The citation of 166 Idaho 790 is *Interest of Doe 1*, 166 Idaho 788, 464 P.3d 1 (Ct. App. 2020). It deals with a

narrative report in the termination of parental rights. 463 P.3d 1270 is a Hawaiian case, *Makila Land Co., LLC v. Heirs*. It deals with a quiet title action and inherited interests. The case name *Thiel v. Goyings* is for a Michigan one, 939 N.W.2d 152 (Mich. 2019). It deals with the covenants in a modular home community. There simply is no Idaho case at either of the citations or the name that says there is no statute of limitation on bringing fraud before a court. This is fabrication on Carpenters' part.

- 11. "This fraud directly affects the SRBA decree's validity, as it misled the court on competing rights under Idaho Code § 42-1405." Carpenters' Opposition, pg. 4.**

Analysis: This code section is completely irrelevant. It deals with the ability of the IDWR director to trigger a general adjudication for all users of a water system. There is not as single word in that statute that tracks this statement.

- 12. "The SRBA has exclusive jurisdiction over water right adjudications and post-decree challenges for fraud under Idaho Code § 42-1412 (amendments for errors/fraud) and § 42-1401A." Carpenters' Opposition, pg. 4.**

Analysis: Carpenters make bold claims about Idaho Code § 42-1212. But, that statute deals with the director's report and challenges of that in district court. There is no reference to errors in general or fraud in particular.

WHEREFORE, McIntosh requests that the Court strike Carpenters pleadings in this matter and award costs and fees to McIntosh.

DATED: August 12, 2025

OLSEN TAGGART PLLC

/s/ Steven L. Taggart

STEVEN L. TAGGART

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 12, 2025, I caused to be filed the above referenced pleading with the Court and the following parties received notice through the following means:

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