

RECEIVED

AUG 20 2025

DEPT. OF WATER RESOURCES

Brian Carpenter and Theresa Carpenter

559 Highway 28

Salmon, Idaho 83404

Telephone: (208) 580-8380

Self-Represented for Plaintiff/Defendants Carpenter

DISTRICT COURT - SRBA
Fifth Judicial District
County of Twin Falls-State of Idaho

AUG 14 2025

By

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

BRIAN CARPENTER AND THERESA
CARPENTER

Plaintiff,

v.

ROCKIE WALKER AND LEANNE
WALKER, husband and wife,

Defendants.

IN RE: SRBA Case No. 39576

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

PLAINTIFFS' OPPOSITION TO
DEFENDANT JOSHUA A. MCINTOSH'S
MOTION TO DISMISS

COME NOW, Plaintiffs Brian Carpenter and Theresa Carpenter, appearing pro se, and hereby oppose Defendant Joshua A. McIntosh's Motion to Dismiss filed on August 5, 2025, pursuant to Idaho Rules of Civil Procedure (I.R.C.P.) 12(b)(1), 12(b)(6), 12(b)(8), and 11.2(a)(1). This opposition is supported by the attached Joint Affidavit of Brian Carpenter and Theresa

SCANNED

PLAINTIFFS' OPPOSITION TO DEFENDANT JOSHUA A. MCINTOSH'S MOTION TO DISMISS

AUG 20 2025

Carpenter, the original Motion to File a Claim of Fraud and accompanying Affidavit filed on June 3, 2025, and the legal arguments set forth below. Plaintiffs request that the Court deny the Motion to Dismiss in its entirety and proceed to a hearing on the merits of the fraud claim on September 16, 2025.

I. INTRODUCTION AND FACTUAL BACKGROUND

Plaintiffs filed their Motion to File a Claim of Fraud on June 3, 2025, alleging fraudulent misrepresentation by Defendants Rockie Walker and LeAnne Walker in their 2011 SRBA application for water right 74-733H. 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), civil conspiracy with Joshua A. McIntosh to conceal these violations, and resulting harms including disenfranchisement of Plaintiffs' water right 74-733G (an 1892/1893 priority right as successors to Elmer Peters) and E. coli contamination in Plaintiffs' domestic well. Although McIntosh is not named as a primary defendant in the original motion, he is explicitly referenced as a co-conspirator in the civil conspiracy allegations (see Affidavit at ¶¶ Civil Conspiracy with McIntosh), where he is accused of conspiring with the Walkers to fabricate the Southwest wastewater ditch theory to conceal illegal actions in order to obtain illegal building, sewer permits in a flood zone. 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. 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. McIntosh's property (433 feet wide by 475 feet deep in a flood zone) cannot comply with DEQ setbacks (Exhibits Z1-Z2), and the Southwest Ditch was illegally created post-2004 without written permission under Idaho Code § 42-1207 ("Ditches... shall not be constructed or changed without the written permission of the owner or owners of the lands to be crossed by such ditch...") and expanded beyond its footprint under Idaho Code § 42-1102 ("The footprint of a ditch shall not be increased... maintenance of ditches is the responsibility of the ditch owners [downstream water right holders], not the

property owners"), as shown by Idaho Public Health Department photos (Exhibit J-J2, attached, proving no Southwest ditch existed on Carpenter property prior to 2006) and 2004 Goodman photos (Exhibit F1-F3, referenced in 60(b) as F-F2, attached, proving no Southwest ditch existed on Carpenter property in 2004). The unopposed 60(b) motion in the related Lemhi County case (Exhibit G, attached) and fraud evidence (Exhibits H, Z, J-J2, Q1-Q4, attached) demonstrate likelihood of success.

II. LEGAL STANDARD

A motion to dismiss under I.R.C.P. 12(b)(6) tests the sufficiency of the pleadings, and dismissal is improper if the complaint states a claim upon which relief can be granted, viewing all facts in the light most favorable to the plaintiff. I.R.C.P. 12(b)(6); *Heck v. City of Idaho Falls*, 149 Idaho 689, 691, 239 P.3d 434, 436 (2010). For lack of subject matter jurisdiction under 12(b)(1), the court examines whether it has authority over the subject matter. I.R.C.P. 12(b)(1). Under 12(b)(8), dismissal for another pending action requires identical parties, claims, and issues. *Klaue v. Hern*, 133 Idaho 437, 440, 988 P.2d 211, 214 (1999). Rule 11.2(a)(1) prohibits judge-shopping after a denial but does not apply here as no prior denial exists in the related Lemhi County case on these specific SRBA fraud claims.

III. ARGUMENT

A. The Motion States a Valid Claim for Relief Under I.R.C.P. 60(b)(3) and 60(d)(3), Precluding Dismissal Under 12(b)(6) McIntosh argues the claim is time-barred because water right 74-733E was decreed in 2007, and appeals must occur within 42 days under Idaho Appellate Rule 14(a). However, this ignores that Plaintiffs' motion is not an appeal but a claim for relief from judgment based on fraud, misrepresentation, and misconduct under I.R.C.P. 60(b)(3). 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). The allegations detail extrinsic fraud: Walkers' perjurious 2011 SRBA application omitted known ditches serving other rights (Exhibits A-F), violating Idaho Code §

18-5401 (perjury), and conspired with McIntosh to bury ditches without consent, violating §§ 42-1207 and 42-1102. This fraud directly affects the SRBA decree's validity, as it misled the court on competing rights under Idaho Code § 42-1405. Relief includes revocation of 74-733H (and potentially 74-733E if conspiracy proven) for non-compliance. McIntosh's decree is implicated via conspiracy, creating a genuine issue for trial. Dismissal is improper.

B. The SRBA Court Has Exclusive Subject Matter Jurisdiction, Precluding Dismissal Under 12(b)(1) McIntosh claims no legal basis under cited statutes (e.g., §§ 42-222, 42-1405, 42-1412, 42-1207, 42-1102). This mischaracterizes the motion. 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. Rule 60(b)(3) and 60(d)(3) provide procedural relief. Sections 42-1207 and 42-1102 support the substantive violations warranting revocation, as interference with ditches without consent voids compliance. Jurisdiction exists; dismissal is unwarranted.

C. No Identical Pending Action Exists, Precluding Dismissal Under 12(b)(8) McIntosh invokes the Klaue factors, claiming overlap with Lemhi County Case No. CV30-23-0114. However, the Lemhi case involves downstream interference and maintenance obligations, not SRBA fraud in adjudication. Parties differ (McIntosh is plaintiff there, conspirator here); claims differ (tort/damages vs. fraud/revocation); no risk of inconsistency as SRBA findings can inform Lemhi via referral. Judicial economy favors SRBA resolution of water right validity. See Klaue, 133 Idaho at 440. Dismissal is inappropriate.

D. Rule 11.2(a)(1) Does Not Apply, as No Prior Denial Exists on These Claims Rule 11.2(a)(1) bars subsequent applications after a denial. Here, no denial occurred in Lemhi on SRBA fraud; Plaintiffs' April 2025 reconsideration motion there is unrelated to adjudication fraud. This is not judge-shopping but proper forum selection for SRBA-specific relief. **E. Service Violations by McIntosh and Walkers' Counsel Warrant Sanctions and Affect Related Case** McIntosh's counsel (Taggart) and Walkers' counsel (Budge) have violated I.R.C.P. 5(b) by serving one document addressed to both Plaintiffs without separate service on Theresa Carpenter as a distinct pro se party. Rule 5(b)(1) requires service on each unrepresented party: "When these rules require or

allow service on a party, and the party is not represented by an attorney, service must be made on the party." I.R.C.P. 5(b)(1). For mailing under 5(b)(2)(C), service must ensure each party receives notice. Joint mailing to spouses at one address may suffice if both are notified, but here, refusal to serve separately prejudices Theresa as a separate plaintiff. This affects CV30-23-0114 similarly, warranting sanctions under I.R.C.P. 11 and referral. Plaintiffs request the Court order separate service and deny the motion as improperly served.

IV. CONCLUSION

The Motion to Dismiss must be denied. Plaintiffs request oral argument on September 16, 2025, costs, and such other relief as just.

DATED this 11th day of August, 2025

Respectfully submitted,

Brian Carpenter

Self-Represented Pro Se

Theresa Carpenter

Self-Represented Pro Se

Exhibits Attached: R (Arrest Report/Warrant, August 7, 2025), M1-M4 (July 11, 2025, Order), D1-D7 (E. coli Tests, July 9, 2024–June 11, 2025), E (flood zone), H (Sewer Permit #144028), Z (Sewer Permit Requirements), Z1-Z2 (Lemhi County Parcel Maps, August 6, 2025), A1-A3, B1-B4 (Historical USGS photos and Bockleman testimony with hand drawn map), J-J2 (2006 Sewer Inspection Photos from Idaho Public Health Department), F1-F3 (2004 Goodman Photos, referenced in 60(b) as F-F2), F (60(b) Motion against Walker, July 14, 2025), T (Venue Motion, July 31, 2025), U (Preliminary Injunction Motion against McIntosh, July 31, 2025), S (Summary Judgment Motion against McIntosh, July 31, 2025), Q1-Q4 (Damage Calculations), G (Civil Court Docket CV30-23-0114, August 8, 2025) showing filings. Cases referenced are filed in Icourt to save space. Copies for F, T U, S, and G can be provided if requested.

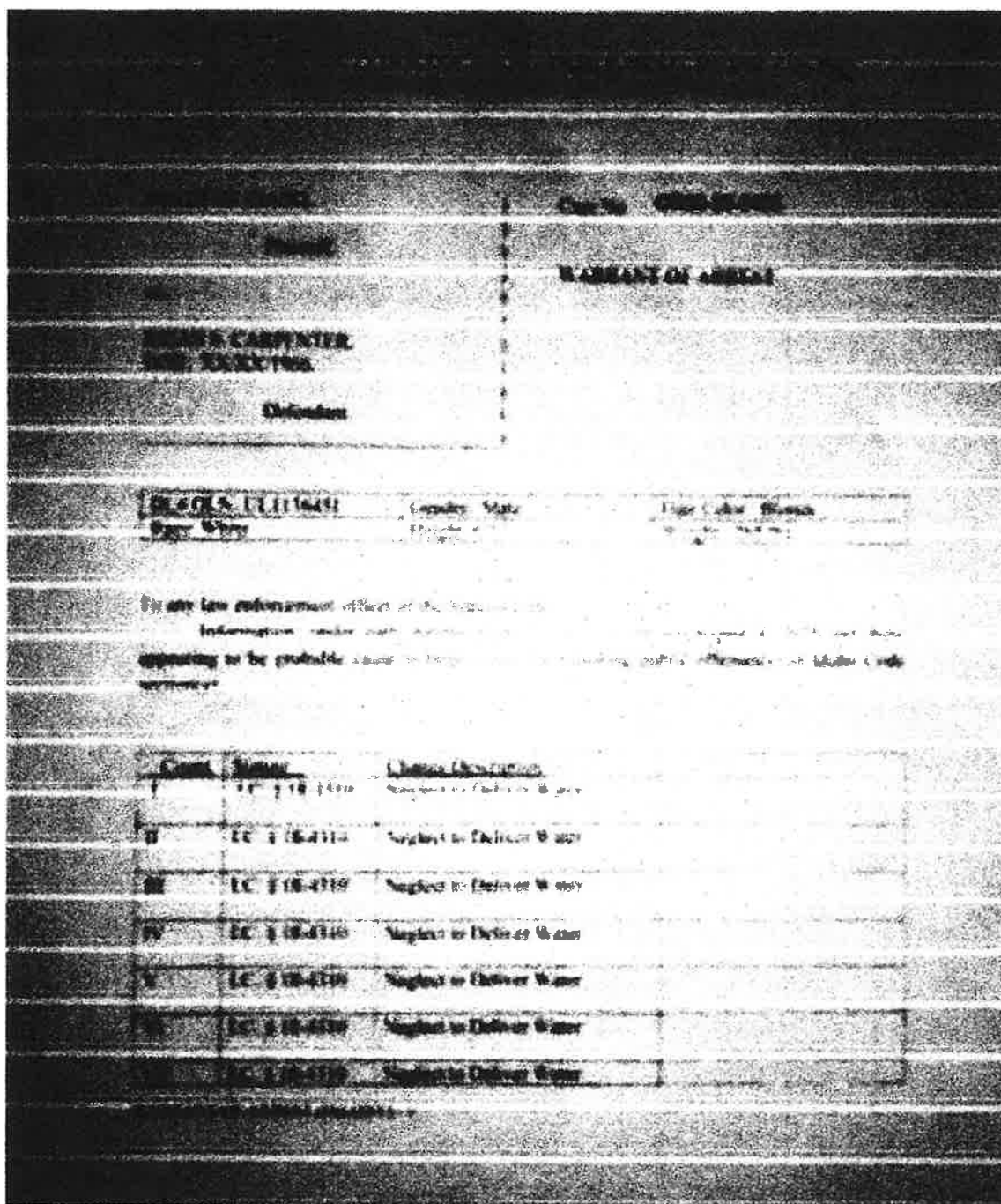


Exhibit R:

8-9-25


MAGISTRATE JUDGE

RETURN OF SERVICE

I HEREBY CERTIFY that I received this Warrant on or about _____ and served it
on the defendant on the _____ day of _____, 2025, at _____ p.m.

Dated: _____

(Signature)

(Typed Printed Name)

PLAINTIFFS' OPPOSITION TO DEFENDANT JOSHUA A. MCINTOSH'S MOTION TO DISMISS

Exhibit R p2.:

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,

Case No.: CV30-23-0114

BRIAN CARPENTER and THERESA
CARPENTER, husband and wife,

Defendants.

ORDER RE: MCINTOSH'S MOTION
FOR CONTEMPT

BRIAN CARPENTER and THERESA
CARPENTER, husband and wife,

Plaintiffs,

ROCKIE WALKER and LEANNA
WALKER, husband and wife

Defendants.

I. INTRODUCTION

This matter is before the Court pursuant to Joshua McIntosh's Motion to Hold Carpenters in Contempt filed on July 3, 2025, the Carpenters' Response to Plaintiff's Motion for Contempt filed on July 7, 2025, the Carpenters' Motion to Dismiss Plaintiff's Motion to Hold Carpenters in Contempt filed on July 9, 2025 claiming improper service among other things, the Carpenters Motion to Stay Contempt Proceedings Pending Resolution of Rule 60(b) Motion Against Rockie Walker and Leanna Walker filed on July 9, 2025.

II. ANALYSIS

Instead of being an opposition to the contempt with a legally cognizable defense, this apparent filing appears to simply restate the growing list of alleged errors that the Carpenters plan to appeal. As such, there is no action to take on this filing.

ORDER RE: MCINTOSH'S MOTION FOR CONTEMPT

Page 1 of 4

Exhibit M1: p.1

For clarity of the record on the Carpenters' Motions in requests, there is an equally viable argument presented among the many documents the Carpenters have filed in response to this Motion for Contempt. E.R.C.P. 36(c) does not require service pursuant to E.R.C.P. 4 for McIntosh to enforce contempt. Instead, E.R.C.P. 36(c)(4) simply requires that "[t]he responses must be served" generally. E.R.C.P. 36(c)(4) governs service for a party, which both Brian and Patricia Carpenter are, and requires service in compliance with Rule 5(b), which only requires mailing the document to the Carpenters' address. The Carpenters appear to be construing Rule 5(b)(1) which requires personal service for non-parties with its literal verbiage in this scenario. Rule 5(b)(1). Additionally, the Court does not send notice setting a parties' motion for hearing, so the Court has not failed to provide the Carpenters with timely notice of the hearing McIntosh set on McIntosh's Motion for Contempt.

The contempt action and the Rule 5(b) motion have no connection. The judgment that was entered related to the Walkers has no bearing on whether the Carpenters have interfered with the delivery of mail to McIntosh. There is no basis to stay the contempt proceedings based upon the Rule 5(b) arguments. The claim that the contempt is just a "distraction" from the real issues in this case is simply unavailing.

Nonetheless, McIntosh's Motion for Contempt is fundamentally flawed. McIntosh appears to have a misunderstanding of the Court's role and authority on the claims McIntosh has filed. For a declaratory judgment, the Court simply determines and pronounces rights of the parties. If McIntosh was seeking some affirmative relief in the form of an order of the Court directing certain actions to be taken based upon these rights the Court determined, McIntosh could have included a claim for an injunction. However, McIntosh failed to do so. The Court simply determined the rights

¹ There is an Motion for Relief from Judgment that has been filed against the judgment. That motion does not constitute relief under Rule 5(b).

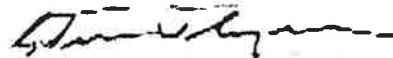
of each party as part of McIntosh's costs for declaratory relief. As such, there is no order from this Court that ordered certain actions from the lawyers for McIntosh to now seek contempt for failing to follow this order.

III. CONCLUSION

As such, McIntosh's Motion to Dismiss Contempt is DISMISSED. The hearing that was set for July 15, 2025 at 2:30 is hereby VACATED. There is nothing in this matter now properly noticed up to be heard by the Court on July 15, 2025, so the Court will not take up this case on that day.

IT IS SO ORDERED.

Dated: **7/11/2025 2:23:31 PM**


Steven H. McQuinn, District Judge

CERTIFICATE OF SERVICE

I hereby certify that on this APR 11 2025 10:25 PM, I did send a true and correct copy of the foregoing document upon the parties listed below in the manner indicated.

Brian Carpenter
Theresa Carpenter

[X] US Mail

550 State Highway 28
Salmon, ID 83467
[X] Email: briantofixit@gmail.com

Steven L. Taggart
Attorney for Joshua A. McIntosh

[X] Email: staggart@stentaggart.com

M. Anthony Sassev
Doreen J. Hudler
Elizabeth M. Petersen
Attorneys for Rex A. and Lucene Walker

[X] Email: sassevlawoffice@gmail.com
dj@mcintoshen.com
etahew@mcintoshen.com

Clerk of the District Court
Lemhi County Idaho

By *Anna Eagle*
Deputy Clerk



ORDER RE: M. SASSSEV'S MOTION FOR CONTEMPT

Exhibit M4 : p.4 Court Order 7-11-2025

Exhibit D1-D7:

Client Name: <u>SEAN CARPENTER</u>		Date: <u>7-7-2014</u>		Location: <u>LEWIS</u>	
Condition of Transport: <u>Sealed</u>		Report Results To: <u>BRAD F. F. CARPENTER</u>		Phone: <u>208-580-8380</u>	

Teton Microbiology

Public Water System
Private System

Preserved With Sodium Thiosulfate

TETON MICROBIOLOGY LABORATORY ID: 11009649
 300 N. Freeman Ave Idaho Falls, ID 83401
 Office: 208-520-6077 Fax: 208-522-7797

Client Sample Number	Lab Sample Number	Sample Type Code	Sampling Location	Time Collected	Chlorine residual PPM	Original Sample Date	Total Coliforms		Escherichia coli	
							Standard Count	Reported	Standard Count	Reported
	2407166		SEAN CARPENTER	7/7/14			9223B-PA	P	9223B-PA	P
							9223B-PA		9223B-PA	
							9223B-PA		9223B-PA	
							9223B-PA		9223B-PA	
							9223B-PA		9223B-PA	

Chain-of-Custody Information

DATE/TIME RECEIVED	7/7/14	ANALYST	J. F.
DATE/TIME ANALYZED	7/8/14	STATION	SEAN CARPENTER
DATE/TIME REAP	7/10/14	LAB ID	11009649

Exhibit D1

Name: <u>John Paul</u> Date: <u>7-11-2014</u>		 Teton Microbiology ☐ Public Water System ☐ Private System Preserved With Sodium Thiosulfate TETON MICROBIOLOGY LABORATORY ID: ID00969 300 S. Fremont Ave. Idaho Falls, ID 83401 Office: 208-529-8077 - Fax: 208-522-3797 tetonmicro.com		Billing Address:	
Address: <u>John Paul</u>				Email:	
Phone:				Fax:	
Report Results To: <u>John Paul</u> <u>John Paul</u>		Teton Microbiology Laboratory ID: ID00969			

Client Sample Number	Lab Sample Number	Sample Type Code	Sampling Location	Time Collected	Chlorine residual PPM	Original Sample Date	Total Coliforms		Escherichia Coli	
							Method Code	Result	Method Code	Result
	245724401		Hydroponic tank	10:00 AM			9223B-PA		9223B-PA	A
	↓ 02		Hydroponic tank	10:00 AM			9223B-PA		9223B-PA	F
							9223B-PA		9223B-PA	
							9223B-PA		9223B-PA	
							9223B-PA		9223B-PA	

Chain of Custody Information				Signature: <u>[Signature]</u> Date: <u>7-11-2014</u>			
Signature: <u>[Signature]</u> Date: <u>7-11-2014</u>				Signature: <u>[Signature]</u> Date: <u>7-11-2014</u>			
Signature: <u>[Signature]</u> Date: <u>7-11-2014</u>				Signature: <u>[Signature]</u> Date: <u>7-11-2014</u>			

DATE TIME RECEIVED: <u>7-11-2014</u>		TIME: <u>10:00</u>		SUPERVISOR: <u>[Signature]</u>	
DATE TIME ANALYZED: <u>7-11-2014</u>		TIME: <u>10:00</u>		LAB ID: <u>ID00969</u>	

Exhibit D2

Name: <u>Ruby L. Cooper</u> Address: <u>Terry 520 4024</u> City: <u>Idaho Falls</u>		Teton Microbiology 2 Public Water System 1 Private System 1 Recycled With Sodium Hypochlorite		Billing Address: Email: Phone: Fax:	
Condition of Transport: ☐ Cool ☐ Warm ☐ Hot ☐ Dry ☐ Wet		TETON MICROBIOLOGY LABORATORY ID: ID00969 100 S. Freeman Ave Idaho Falls, IDAHO 83401 Office: 208-529-0077 Fax: 208-522-3797 tetonmicro.com			
Report Route to:					
Please Specify:					

Client Sample Number	Lab Sample Number	Sample Type Code	Sampling Location	Time Collected	Chlorine residual PPM	Original Sample Date	Total Coliforms		Escherichia Coli	
							MPN/100 ml	CFU/100 ml	MPN/100 ml	CFU/100 ml
	240939201	S	100 ft	11:45			9223B-PA	?	9223B-PA	A
A	↓ 02	S	DOE	11:55			9223B-PA	A	9223B-PA	A
							9223B-PA		9223B-PA	
							9223B-PA		9223B-PA	
							9223B-PA		9223B-PA	

☐ Sewer Sample ☐ Groundwater Sample ☐ Wastewater Sample
☐ Environmental ☐ Industrial ☐ Recycled Water ☒ Other: (A) Original Tap

Chain of Custody Information

Requested by: <u>Terry L. Cooper</u> Title: <u>PA</u>	Approved by: <u>[Signature]</u> Title: <u>PA</u>	Date: <u>5-21-20</u>	Time: <u>12:00</u>	Location: <u>DOE</u>	Remarks:
---	--	----------------------	--------------------	----------------------	----------

DATE/TIME RECEIVED	5-21-20	ANALYST	J. R.	REMARKS
DATE/TIME ANALYZE	5/21/20	SUPERVISOR		
DATE/TIME READ	5/21/20	LAB ID #	ID00969	

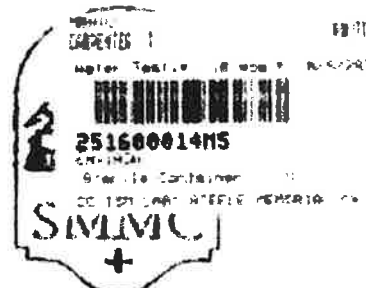
Exhibit D4

P O BOX 700 - SALMON, ID 83487 - (208)756-5641 - FAX (208)756-5743

Diagnostical Analysis of Drinking Water Request Form

Phosphorus 100 mg 100% **100% 100%**

☐ Public Drinking Water System ☐ Private Drinking Water		PWS ID No.: PWS Only: If repeat sample Date of original positive: Address:	
Public Water System Name: Customer: Agency Name:		Address:	
Mailing Address: City:		Mailing Address: City:	
State:		State:	
Zip:		Zip:	
Telephone:		Telephone:	
Fax:		Fax:	
E-mail:		E-mail:	
Additional copy of report sent to:		Additional copy of report sent to:	
Mailing Address:		Mailing Address:	
City:		City:	
State:		State:	
Zip:		Zip:	
Sample collected by:		Sample collected by:	
Person transporting sample to lab:		Person transporting sample to lab:	
Condition of transport:		Condition of transport:	
☐ Cooled ☐ Carrier		☐ Cooled ☐ Carrier	
☐ Heat ☐ Other		☐ Heat ☐ Other	

[illegible]

FLD - Random Surveys

Ref. - National Security

A - Other Request

19 - ~~UNCLASSIFIED~~ (S)

U. Upstream Flood

C - Construction/Repairs

D. Damschroder, Manager

2 - Enforcement (power of custody required)

Phone Call Documentation

01/28/2007 - Computerized search activities & test results obtained (

Date/Time Received	Initials	Date/Time Analyzed	Initials
10-9-05	DM/109	10-10-05	DM/109
Testing performed at State Merit Medical Center Killeen Water records will be maintained for 7 years and then destroyed		Date/Time Reported	Initials
		10-10-05	DM/109

Exhibit D7



Exhibit E

Exhibit F: 60(b) Motion against Walker filed 7-14-2025 Court Record

Exhibit T: Motion to Expedite Ruling on Change of Venue and Request for Transfer to a Neutral Judge filed 7-31-2025 Court Record

Exhibit U Preliminary Injunction against McIntosh filed 7-31-2025 Court Record

APPLICATION-Subsurface Sewage Disposal

Public Health
Water Pollution Division

Site No. _____ Date 5/8/2011

Form No. 1500-10 Pages 2

Receipt # 144028 (Collect Fee Only)

Project # RP21N23E304205 **Area** 4.9

Property Address (if available) 45122908 - 117.785959 Cor. Salinas **Tax Code** 83467

Legal Description: Township _____ Range _____ Section _____ County Los Angeles

Subdivision N/A **Lot** N/A **Block** N/A

Directions (street address): Highway 28 East to Salinas, Westward
542 Highway 28 & 559 Highway 28, property on the South side
of Hwy 28

Applicant's Name: Josh & Rachel McTurk **Date:** _____

Mailing Address: 11722 E. 2nd Hwy **Phone #** 909-608-1379

City: Temecula Hills **Date:** 5/8 **Tax Code:** 83401

Applicant is: ☒ Landowner ☐ Contractor ☐ Installer ☐ Other _____

Owner's Name: Josh & Rachel McTurk **Phone #** 909-608-1379

Mailing Address: 11722 E. 2nd Hwy **Date:** 5/8 **Tax Code:** 83401

City: Temecula Hills **Date:** 5/8 **Tax Code:** 83401

Type of Sewage Treatment:		☒ None	☐ Septic Tank/Septic	☐ Pumpout	☐ Full Scale
Proposed Usage:		☒ Residential	☐ Commercial	☐ Other (See Note #1)	
Is Current Use for Sewage?		☐ Large Scale (See Note #2)	☐ Small Scale (See Note #2)	☐ Other	
Is there an existing structure on the property?		☐ Yes	☒ No	Year Built: <u>N/A</u>	
Number of Residential Units on property: <u>1</u>		Number of Buildings: <u>1</u>			
Is there a septic tank on the property?		☐ Yes	☒ No	Septic Tank Capacity: <u>1000</u>	
Is there a sewer line on the property?		☐ Yes	☒ No	Public Sewer: <u>N/A</u>	
Is there a storm sewer on the property?		☐ Yes	☒ No	Storm Sewer: <u>N/A</u>	
Is there a water line on the property?		☐ Yes	☒ No	Water Line: <u>N/A</u>	
Is there a gas line on the property?		☐ Yes	☒ No	Gas Line: <u>N/A</u>	
Is there a telephone line on the property?		☐ Yes	☒ No	Telephone Line: <u>N/A</u>	

Date: 5/8/11

PLAINTIFFS' OPPOSITION TO DEFENDANT JOSHUA A. MCINTOSH'S MOTION TO DISMISS



Exhibits Z1-Z2:



Scanned with CamScanner

*Scanned with CamScanner

Exhibit A1

8 A. Beats me. It was on his property. I
9 didn't care.

10 Q. And then the other ditch that went
11 between his house and the river, is that the one that
12 you described as being approximately 3 feet wide and
13 about 3 or 4 feet deep?

14 A. Correct.

15 Q. And that -- full of water, do you know
16 where it went after it went behind his home?

17 A. No. I do not.

18 Q. Okay. But in the -- boy, thirteen years
19 that you were there, those ditches all existed for
20 that period of time?

21 A. Yes. I wanted to fill them in, but --

22 Q. Why did you want to fill them in?

23 A. Because I wanted all this area flat up
24 here, versus Ghillie (phonetic) humps in there that
25 the ditches were on.

Exhibit A1B

1 pond, I'm familiar with what you're talking about.
2 and these guys, I believe, have too.

3 So when the water was coming in the pond
4 and going out of the pond, wasn't it substantially
5 the same flow? I mean, what did pulling the headgate
6 do other than dump --

7 A. Dump all the water in the pond except
8 for lowest point.

9 Q. Okay. All right. So you mentioned
10 there were three ditches. The one that went along
11 the river?

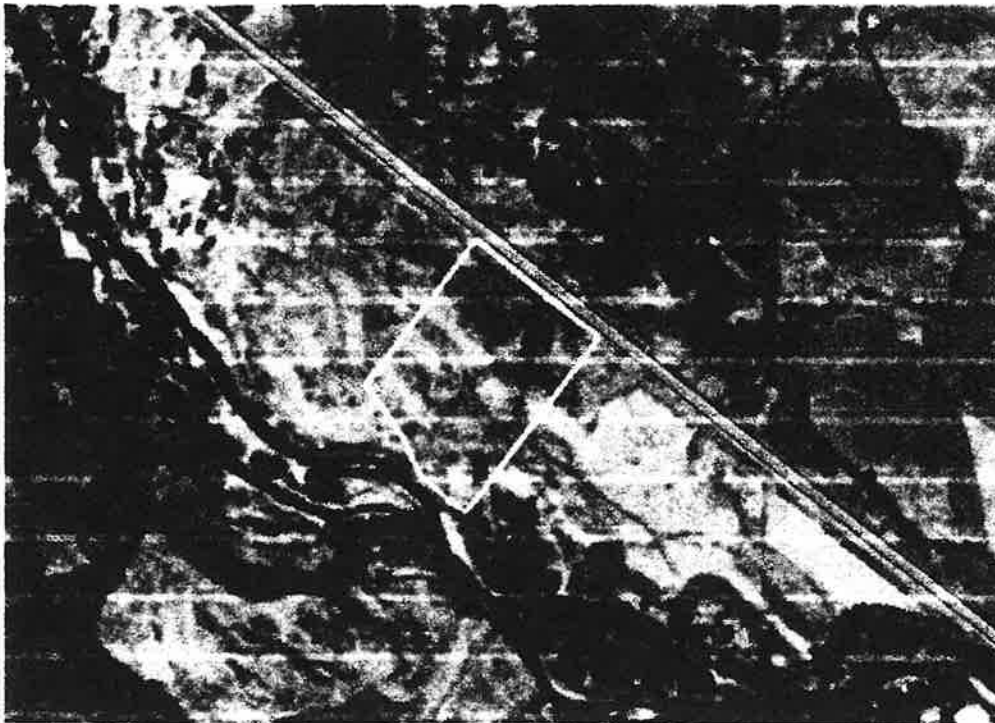
12 A. Right.

13 Q. And one that would have swung, I guess,
14 to the north?

15 A. The one, I guess, that dissected the
16 property in half, if you want to call it; but it
17 wasn't really half, but what got irrigated was pretty
18 much half. And that was what I would call a major
19 ditch, maybe as wide as this table and deep, because
20 I'd clean it out. And that would run through to
21 Rockie's property. And then there was another little
22 ditch that came up and headed up towards maybe half
23 of his front yard, and there was another one that
24 went down towards the highway --

25 Q. Okay.

Exhibit A1C



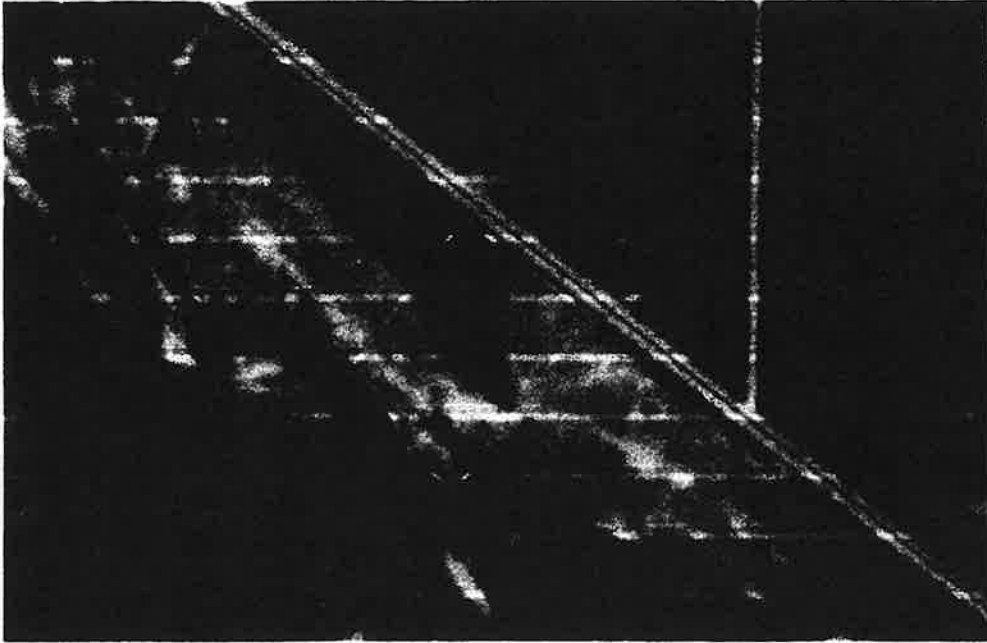
Attachment C-104
USGS 1946 Image

--- HWY 28
POU 74-733G

Exhibit A2



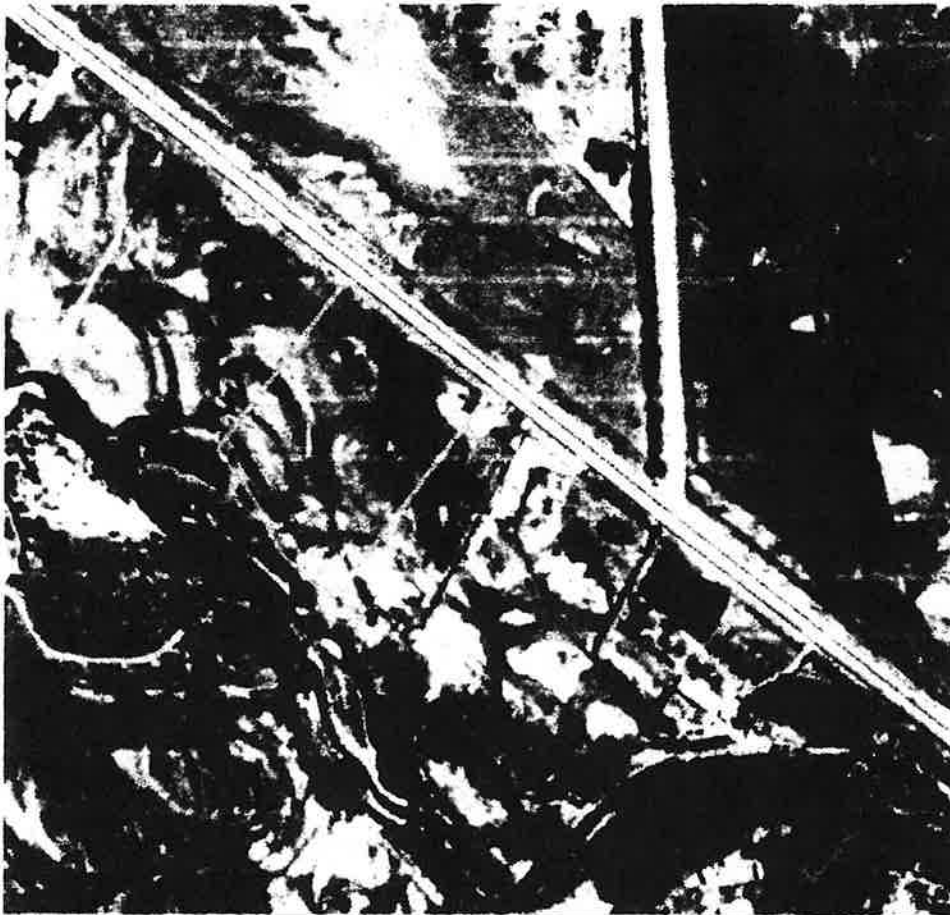
Exhibit A3: close up



Attachment C-104
USGS 1953 Image

HWY 28
POU 74-733G

Exhibit B1



Attachment C-104
USGS 1994 Image

HWY 28
POU 74-733G

Exhibit B2



Exhibit B3: close up 1994 USGS



Exhibit B4: close up 1994 USGS

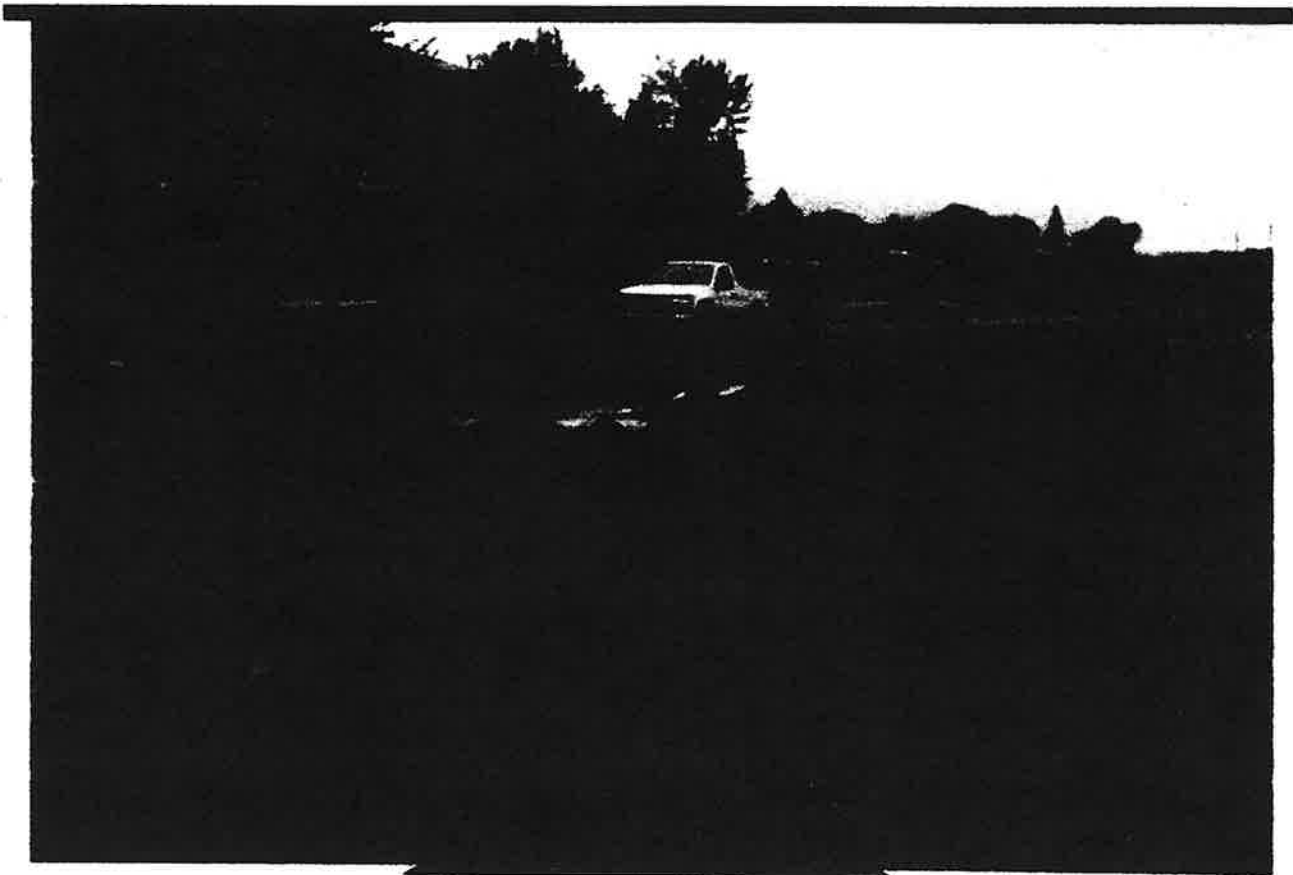


Exhibit J

12/21/2005

ON-SITE EVALUATION

Date(s) On Site Evaluations Conducted. 3/15/08
Travel Time associated with evaluation. 30
Inspection Time associated with evaluation. 30

CURRENT LAND USE: PASTURE

SITE SUITABILITY:

Slope: Does slope prohibit installation of proposed system? Yes ☐ No ☒

Soil Types:

Based on SCS maps.

Type A B C Unacceptable

Based on Engineering Report.

Type A B ☒ C Unacceptable

Based on Test Hole.

Type A ☒ B C Unacceptable

Test Hole Information:

Depth of Test hole.

6'

Predominant soil type observed. *To 3'

Bedrock encountered. No

Any ground water encountered.

Yes 4 1/2'

Other concerns.

Effective Soil Depth. Has sufficient soil depth below bottom of proposed system to meet rules? ☒ Yes ☐ No

Depth to nearest Groundwater 3' (muddy) Depth to nearest impermeable layer. 3'

Separation Distances: (Property has sufficient area for system and replacement to meet all separation requirements?)

Well location (owners property)

Yes No

Nearest neighbor's well ☒ Yes ☐ No

Water Distribution lines

Yes No

Downslope Cut or Scarp ☒ Yes ☐ No

Temporary Surface Waters

Yes No

Property lines. ☒ Yes ☐ No

Permanent or Intermittent Surface Water

Yes No

Exhibit J1

1 message

Pati Waddell <PWaddell@epih.idaho.gov>

Fri, Nov 15, 2024 at 9:03 AM

To: "briantofoto@gmail.com" <briantofoto@gmail.com>

Cc: Keliye Johnson <kjohnson@epih.idaho.gov>, Melinda Fuentes-Mobo <MFuentes-Mobo@epih.idaho.gov>, "Marty R. Anderson" <marty@eastidaholaw.net>, James Corbett <jcorbett@epih.idaho.gov>, "kim@eastidaholaw.net" <kim@eastidaholaw.net>

Good morning,

Per your request, I am attaching all the information we have on file for the septic system installed at 559 Highway 28 in Salmon.

If you have any questions, please feel free to email or call me at the numbers below.

Thank you,

Pati Waddell

Administrative Assistant

Main: (208) 523-5382

Desk: (208) 533-3124



From: Keliye Johnson <kjohnson@epih.idaho.gov>

Sent: Friday, November 15, 2024 8:37 AM

Exhibit J2

Photos Claim 01273333012022092201

briantofixit • 12/10/2022 11:51 AM

Bart,

Thank you for your time. As you can see the ditch by the river did not exist from 1946-2004. Then after the house, well and sewer were installed and passed all clearance inspections in 2005, the South ditch was constructed by prior owner 20 years ago illegally. I am being sued frivolously.

Brian Carpenter

8 Attachments • Scanned by Gmail



Exhibit Q1: page 1

Re: The ditch I am being sued over never existed.

briantofixit • 12/10/2022 11:51 AM

I found this yesterday at the building department. Gary Goodman. This is more evidence, a photo of 2004. There is no ditch prior to Painter. It's all a complete fabrication. So in other words, and I'm trying to be nice and not hurt anyone's feelings, the ditch Painter built after sewer inspection is illegal as he built the ditch right over the top of the sewer lines. There is a 50 ft rule from any sewer lines.

These are the facts. The lawsuit against me is frivolous and has no standing. So a ditch never existed prior to Painter and after Painter was illegal. It was just a catch ditch that was not continuous. They are busted and should go to jail for insurance fraud because they knew prior.

BC

On Fri, Jan 10, 2025, 11:30 AM Bart Crofoot <brcrofoot@idffins.com> wrote

Hey Brian, I forwarded it to Jon and Nannette for an update. Perhaps they will call you direct, or maybe respond to me. If they respond to me I will pass on the information as to where claims are at.

Thanks

Bart Crofoot

Agent

208-756-3335 office

brcrofoot@idffins.com

www.idffins.com



Farm Bureau Insurance

1000 West 10th Street, Suite 1000, Boise, ID 83702

Exhibit Q2: page 2

RE: The ditch I am being sued over never existed.  Inbox x

B

Bart Crofoot     

RE: The ditch I am being sued over never existed.    

Hey Brian

A Trevor Mackinson (lawyer) reached out to me asking me questions about the claim that you had me submit. I sent over the photos you sent me and did my best to explain it to him. Which I believe I understand so no worries there. I do believe he was the one that handled the past claim (same issue) that was denied previously. Do what you want but you might reach out to explain to him again for reinforcement of what you are talking about, etc.

Regarding the Ecol: If you remember there were 2 claims

1. Was a first party claim entered onto your policy
2. A claim filed against your Neighbor Rocky Walker

Mr. Reid (adjuster) says he visited the sight (your home) in response for the first party claim and said he relayed the information the policy does NOT extend coverage for this type of damage. You wife when she was in my office asking why Farm Bureau hasn't done anything yet regarding The well. The reason they haven't done anything is they have determined that is a NON covered claim for both claims. SO at this point they are NOT going to do anything. Which honestly, I don't think any homeowner's policy would cover that. Insurance policies do cover lots of things, but there is plenty of situations NO homeowners' policies cover. I have looked through the policy multiple times trying to see where I could get it covered but just not finding anything. I have spoken with Mr. Reid several times trying to see if there is a way, but he is confident it's a not covered claim. AT this point I don't believe He will be changing his mind on if it is a covered claim or not.

Brian, do you have lawyer representation regarding this gathered on your own you had mentioned lawyer fees. So, does that mean you have lawyer representation?

Bart Crofoot
Agent
208-756-3335 office


Exhibit Q3:

RE: Fwd:   Farm Bureau x

B

Bart Crofoot     

RE: Fwd:    

Hey Brian,

Sorry I was out a couple of days, I hope all is going well for you, and you are enjoying the fall and transition into winter.

You say two claims currently I can find one on your policy currently?

Do you mean two claims as in the following:

1. A claim of general liability ON Rocky Walker policy saying he flooded your well and contaminated it with Ecol.
2. A claim on your policy for a contaminated well.

Are those the two claims you are talking about? if so notice only the second one would show up on your policy showing a claim.

And it shows closed.

Is this not what you have been told?

If there is something you would like to shed light on additionally please reach out the adjuster that was assigned that claim. I believe it was Jon Reid.

Thanks

Bart Crofoot

Exhibit Q4:

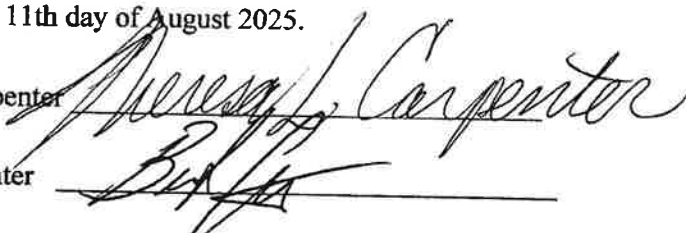
CERTIFICATE OF SERVICE

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 11th day of August 2025.

Theresa Carpenter

Brian Carpenter



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