

RECEIVED

OCT 02 2025

DEPT. OF WATER RESOURCES

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

SEP 22 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 SRBA

Case No. 39576

) Subcase Nos. 74-733H and 74-733E
)
) ORDER DENYING THE CARPENTERS'
) MOTIONS
)
) ORDER DENYING MCINTOSH'S
) MOTION TO DEEM CARPENTERS IN
) VIOLATION OF I.R.C.P. 11
)
)
)

I.

BACKGROUND

A. Walkers' water right.

On March 11, 2011, Rockie and LeeAnn Walker filed a claim for water right 74-733H in the Snake River Basin Adjudication ("SRBA"). The claim sought to divert .04 cfs from the Lemhi River for the irrigation of 1.4 acres in Lemhi County. The claim was based on a prior decree (i.e., the Lemhi Decree) and sought a priority date of October 4, 1893.

The Director of the Idaho Department of Water Resources issued a director's report on November 23, 2011. The Director's Report contained a recommendation that the claim be decreed to the Walkers. No objections to the recommendation were filed by any party. On May 16, 2012, the Court entered a partial decree for the water right authorizing the Walkers to divert .04 cfs from the Lemhi River for the irrigation of 1.4 acres in Lemhi County with an October 4, 1893, priority date. The partial decree was certified by the Court as a final judgment under Idaho Rule of Civil Procedure 54(b). No appeal was taken from entry of the partial decree, and the time for doing so has expired.

ORDER DENYING MOTIONS

S:\ORDERS\Motions to Set Aside\Carpenter\Order Denying Motion to Set Aside Partial Decree.docx

SCANNED

- 1 -

OCT 02 2025

B. McIntosh's water right.

Joshua McIntosh's predecessor, James Mount, filed a claim for water right 74-733E in the SRBA. The claim sought to divert .14 cfs from the Lemhi River for the irrigation of 4.9 acres in Lemhi County. The claim was based on a prior decree (i.e., the Lemhi Decree) and sought a priority date of October 4, 1893.

The Director subsequently issued a Director's Report containing a recommendation for the claim. He recommended the claim be decreed to Mount. No objections to the recommendation were filed by any party. On July 9, 2007, the Court entered a partial decree for the water right authorizing Mount to divert .14 cfs from the Lemhi River for the irrigation of 4.9 acres in Lemhi County with an October 4, 1893, priority date. The partial decree was certified by the Court as a final judgment under Idaho Rule of Civil Procedure 54(b). No appeal was taken from entry of the partial decree, and the time for doing so has expired. Ownership of water right 74-733E was transferred to McIntosh in 2022.

C. Final Unified Decree.

On August 26, 2014, the Court entered the Final Unified Decree in the SRBA. The Final Unified Decree completed the adjudication and is a final judgment under Idaho Rule of Civil Procedure 54(a). Water rights 74-733H and 74-733E were memorialized in the Final Unified Decree. No appeal was taken from entry of the Final Unified Decree, and the time for doing so has expired.

D. Carpenters' Motions.

The Carpenters' predecessors, Gregory and Kathryn Painter, were parties to the SRBA.¹ They filed a claim for water right 74-733G in the SRBA, and ultimately received a partial decree for that water right. The partial decree authorizes the diversion of .13 cfs from the Lemhi River for the irrigation of 4.4 acres with a October 4, 1893, priority. The Carpenters' subsequently acquired water right 74-733G. On June 4, 2025, the Carpenters, acting pro se, filed a Motion to File a Claim of Fraud in the SRBA, followed by an Amended Motion to File Claim of Fraud on August 14, 2025. Additionally, on June 20, 2025, the Carpenters filed a Motion to Remove

¹ "The Carpenters" refers to Brian Carpenter and Theresa Carpenter.

Defendants' Water Rights, Bury Illegal Southwest Ditch, Reinstate Historic Water Delivery, Enjoin Citation, Refer Criminal Violations, and Refer Findings to Lemhi County Civil Court in the SRBA. Among other things, the motions filed by the Carpenters request that this Court revoke and disallow water right 74-733H held by the Walkers, and revoke and disallow water right 74-733E held by McIntosh. The Walkers and McIntosh oppose the Motions. Additionally, McIntosh has filed a Motion to deem the Carpenters in violation of Idaho Rule of Civil Procedure 11 as well as a Motion to Dismiss. A hearing on the motions was held before the Court on September 16, 2025.

II. ANALYSIS

This action was filed in the SRBA Court. The SRBA Court is a court of limited jurisdiction. Most of the causes of action in the Carpenters' Motions are outside the jurisdiction of this Court. Post-decree enforcement actions, easement and disputes over conveyance systems, with limited exceptions, are outside the jurisdiction of the SRBA Court. Criminal allegations are also outside this Court's limited jurisdiction. The Court notes that the Carpenters have sought similar relief, with the exception of setting aside the partial decrees, in the Lemhi County District Court. The cases before the Lemhi County District Court are still pending. However, the Carpenters' request to set aside the partial decrees for water right 74-733H and 74-733E is properly before the SRBA Court. The water rights at issue were decreed and incorporated into the SRBA Final Unified Decree. The time for appeal has long since expired. Prior to the Court even reaching the merits of the Carpenters' action to disallow these water rights, the partial decrees and the final unified decree must first be set aside in accordance with the appropriate standard.² Accordingly, the Court's analysis begins with this first step.

² To be clear, setting aside the partial decrees and reopening the final unified decree does not result in the disallowance of any water rights. Rather, it simply allows the movant to file a late objection to the claims and the Court to conduct proceedings on the objections. There also appears to be a misunderstanding regarding the legal basis for the disallowal of a water right claim. It would require a showing that the right was never validly appropriated according to law, was abandoned, was forfeited, or was transferred off the place of use at some point. The water rights at issue represent portions of a larger right that was decreed in the Lemhi Adjudication and claimed as split portions of that right in the SRBA. Therefore, the rights were previously established. There has been no allegation that the rights were never validly appropriated or were abandoned, forfeited, or transferred off the place of use. The remedy sought is for alleged misconduct unrelated to whether the water rights validly exist.

More than thirteen years after the partial decree for water right 74-733H was entered, and more than eighteen years after the partial decree for water right 74-733E was entered, the Carpenters ask this Court to set aside those decrees, reopen those subcases, and disallow those water right claims. The partial decrees entered for those water rights were certified by the Court as final judgments under Idaho Rule of Civil Procedure 54(b). Thus, the threshold issue is whether the Carpenters have set forth sufficient grounds to set aside those partial decrees for the purpose of seeking the relief sought in their motions. The Carpenters assert they are entitled to set aside the partial decrees under Idaho Rule of Civil Procedure 60(b)(3) and 60(d)(3).

A. Rule 60(b)(3).

Idaho Rule of Civil Procedure 60 governs relief from a judgment. Rule 60(b)(3) applies in cases of fraud. The Carpenters assert the Walkers acquired water right 74-733H after making a fraudulent misrepresentation in the notice of claim filed for that water right. In the notice of claim, the Walkers checked the box “None” when asked to describe “any other water rights used at the same place and for the same purposes as described above.” The Carpenters assert this was a fraudulent misrepresentation “as the historic 1946 ditch and the Highway ditch, buried by the Walkers in 2008 and earlier, served other water rights, including the Claimants’ and those of three other lower-priority holders” Amended Motion to File a Claim of Fraud, p.2 (Aug. 14, 2025). With respect to McIntosh, the Carpenters assert he engaged in certain fraudulent actions beginning in 2021. Specifically, that at certain times McIntosh “perpetuated Walker’s fraud by concealing Walker’s illegally buried ditches and obtaining an illegal below-ground sewer permit in a flood zone. . . .” among other things. Motion to Remove Defendants’ Water Rights, p.4 (June 20, 2025).

The Court finds the Carpenters’ Rule 60(b)(3) argument to be untimely. Rule 60(c)(1) provides that a motion under Rule 60(b)(3) must be made “no more than 6 months after the entry of the judgment. . . .” Here, the partial decrees entered for water rights 74-733H and 74-733E were issued in 2012 and 2007 respectively. The fraud alleged by the Carpenters occurred in 2011, when the Walkers filed their notice of claim. Therefore, the alleged fraud by the Walkers was known or should have been known prior to the issuance of the partial decree for water right 74-733H. Yet the issue of the alleged fraud was not raised prior to the issuance of the partial decrees. Nor was it raised within 6 months following the issuance of the decrees. Rather, it is

being raised for the first time before this Court in 2025. It follows the Carpenters are not entitled to set aside the partial decrees under Idaho Rule of Civil Procedures 60(b)(3) as a matter of law.

In addition to the untimeliness, the conduct pled in support of the allegation of fraud on its face does not support fraud. The allegation is that the Walkers checked the “None” box in their notice of claim form in response to the question of whether other water rights are used in the same claimed place of use for the same purpose of use. This question pertains to whether the claimant is using other water rights on the claimed place of use such as supplemental groundwater rights, water shares, etc... The question does not pertain to conveyance systems, shared or otherwise. There is no allegation that the Walkers or anyone else was using additional water rights on the same claimed place of use for the same purpose of use. Further, the Department as well as the Court was aware the water rights claimed were split from an original parent right and apportioned among the divided properties. This is evidenced by the letter suffix on the water right numbers. Accordingly, checking the box “None” was appropriate under the circumstances and in so doing neither the Department nor the Court was misled. Hence, the facts as pled do not support any colorable argument for establishing fraud.

B. Rule 60(d)(3).

Idaho Rule of Civil Procedure 60(d)(3) recognizes that courts have the inherent power “to set aside a judgment for fraud upon the court.” The Idaho Supreme Court has directed the term “fraud upon the court” contemplates more than interparty misconduct and, in Idaho, has been held to require more than perjury or misrepresentation by a party or witness” *Compton v. Compton*, 101 Idaho 328, 334, 612 P.2d 1175, 1181 (1980). It has further directed that a “fraud upon the court” will be found only in the presence of such “tampering with the administration of justice” as to suggest “a wrong against the institutions set up to protect and safeguard the public.” *Id.* “The party asserting a claim of fraud on the court must establish that an unconscionable plan or scheme was used to improperly influence the court’s decision and that such acts prevented the losing party from fully and fairly presenting its case or defense.” *Rae v. Bunce*, 145 Idaho 798, 801, 186 P.3d 654, 657 (2008). The decision to grant or deny a request for relief from an order or judgment under Rule 60 is committed to the sound discretion of the trial court. *Cf., Waller v. State, Dept. of Health and Welfare*, 146 Idaho 234, 237–38, 192 P.3d 1058, 1061–62 (2008).

The alleged misrepresentation made by the Walkers in their 2011 notice of claim does not meet the “fraud upon the court” requirements set forth by the Idaho Supreme Court.³ It is not an unconscionable plan or scheme used to improperly influence the Court. Additionally, the Court finds the Carpenters and their predecessors had ample opportunity to timely raise the issue of any alleged fraudulent misrepresentations pertaining to the Walkers’ and/or McIntosh’s notices of claim in the SRBA. If the Carpenters or their predecessors disagreed with any aspect of the Director’s recommendations for those claims, they were required to file a timely objection to the same. I.C. § 42-1412(1). They did not. If the Carpenters or their predecessors disagreed with any aspect of the partial decrees issued by the Court with respect to water rights 74-733H and 74-733E, they were required to timely file a notice of appeal. I.A.R. 14. They did not. If the Carpenters or their predecessors disagreed with any aspect of the Final Unified Decree entered in the SRBA, they were required to timely file a notice of appeal. I.A.R. 14. They did not. If the Carpenters or their predecessors believed a fraudulent misrepresentation was made by the Walkers resulting in the issuance of the partial decree for water right 74-733H in 2012, they were required to bring a Rule 60(b)(3) motion within six months of the decrees issuance. They did not.

The Carpenters and their predecessors had ample opportunity to fully and fairly present their case pertaining to alleged issues of fraud relating to the water right claims filed by the Walkers and McIntosh in the SRBA. Rather than timely raising such issues, they sat on their arguments for over thirteen years prior to bringing them to this Court. Permitting them to set aside the partial decrees for water rights 74-733H and 74-733E at this late stage undermines the finality in a partial decree.

In an exercise of discretion, the Court finds the Carpenters’ request to set aside the partial decrees for water rights 74-733H and 74-733E under Rule 60(d)(3) is denied. As the Carpenters have failed to set forth sufficient grounds to set aside the partial decrees for water rights 74-733H and 74-733E, those subcases may not be reopened and relitigated at this time. It follows the Carpenters’ motions must be denied.

³ The Carpenters do not assert that any action by McIntosh was a “fraud upon the court.” The alleged fraudulent actions alleged of McIntosh occurred far after the entry of the partial decrees for water rights 74-733H and 74-733E.

C. The Court need not reach the alternate legal theories advanced by McIntosh and the Walkers.

In addition to the Rule 60 arguments, McIntosh and the Walkers raise alternate legal theories as to why the Carpenters' motions should be denied. As the Court has denied the Carpenters' motions on the basis they have failed to set forth sufficient grounds to set aside the partial decrees for water rights 74-733H and 74-733E, it does not reach those alternate theories. Likewise, it does not reach McIntosh's Motion to Dismiss.

D. Attorney fees and Rule 11.

McIntosh and the Walkers seeks an award of attorney fees under Idaho Code § 12-121. The Idaho Supreme Court has held with respect to Idaho Code § 12-121 that "[i]n normal circumstances, attorney fees will only be awarded when this court is left with the abiding belief that the appeal was brought, pursued or defended frivolously, unreasonably or without foundation." *Reed v. Reed*, 160 Idaho 774, 780, 379 P.3d 1042, 1048 (2016). In this case, the Court finds the Carpenters have presented the court with legitimate questions for the Court to address in relation to Rule 60. The Court does not find the issue of whether the partial decrees should be set aside under the facts and circumstances presented here to be frivolous or without foundation. Therefore, the Court in an exercise of its discretion declines to award attorney fees to McIntosh or the Walkers in this proceeding.

On August 12, 2025, McIntosh filed a motion to deem the Carpenters in violation of Idaho Rule of Civil Procedure 11. The power to impose sanctions under Rule 11 is exercised narrowly. *Young v. Williams*, 122 Idaho 649, 654, 837 P.2d 324, 329 (Ct.App.1992). It is "a court management tool and is not a broad compensatory law." *Id.* It does not provide sanctions "for negligent strategic decisions or for choosing an unsuccessful theory of law." *Id.* Rather, it may provide sanctions for the filing of pleadings "interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." *Id.* Here, for the reasons stated in its denial of the requests for attorney fees, the Court does not find the Carpenters' motions to be filed for an improper purpose. And, the Court does not find the issue of whether the partial decrees should be set aside under the facts and circumstances presented here to be frivolous or without foundation. Therefore, the Court in an exercise of discretion will deny McIntosh's motion to deem the Carpenters in violation of Rule 11.

III.
ORDER

Therefore, IT IS ORDERED that the Carpenters' Amended Motion to File Claim of Fraud is hereby denied.

IT IS FURTHER ORDERED that the 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 is hereby denied.

IT IS FURTHER ORDERED that McIntosh's Motion to Deem Carpenters in Violation of I.R.C.P. 11 is hereby denied.

DATED: 9/22/25.



ERIC J. WILDMAN
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I hereby certify that true and correct copies of the ORDER TO CLERK REGARDING FILING, ORDER DENYING THE CARPENTERS' MOTIONS, and ORDER DENYING MCINTOSH'S MOTION TO DEEM CARPENTERS IN VIOLATION OF I.C.R.P 11 were mailed on September 22, 2025, by first-class mail to the following:

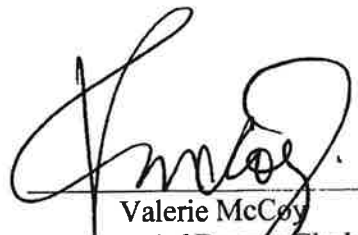
Brian Carpenter
559 Highway 28
Salmon, ID 83467

Theresa Carpenter
559 Highway 28
Salmon, ID 83467

Steven L. Taggart
Olsen Taggart, PLLC
PO Box 3005
Idaho Falls, ID 83403

Thomas J. Budge, Esp.
Elisheva M. Patterson
Racine Olson
201 E. Center St
PO Box 1391
Pocatello, ID 83204

M. Anthony Sasser
Sasser Law Office
110 S 8th Ave
Pocatello, ID 83201


Valerie McCoy
Chief Deputy Clerk

