

**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)	ORDER ON MOTION FOR RULE
)	11 SANCTIONS; AND CONFIRMING
Case No. 39576)	WITHDRAWAL OF MOTION TO
)	ALTER OR AMEND
_____)	SUBCASE NOS.: 29-4491 AND 29-13557
)	

I. PROCEDURAL BACKGROUND

The SRBA District Court issued a *Partial Decree* for water right 29-4491 on June 1, 2004 and a *Partial Decree* for 29-13557 on June 28, 2004. On March 9, 2005, Harrison Moon and Debbie Sluder sent a letter to the SRBA Court asking the court to set aside both *Partial Decrees*. The SRBA District Court issued an *Order of Reference to Special Master Brigitte Bilyeu* on March 9, 2005. The March 9, 2005 letter was treated as a *Motion to Set Aside Partial Decrees*. A hearing on the *Motion to Set Aside* was held March 30, 2005. The *Motion* was denied. *Special Master's Report and Recommendation that Partial Decree Not be Set Aside* (Subcase 29-4491, 29-13557)(April 22, 2005). Harrison Moon and Debbie Sluder filed a *Motion to Alter or Amend Special Master's Recommendation* on May 23, 2005. Charles and Jennie Winter filed a *Response to Motion to Alter or Amend Special Master's Recommendation; Motion for Rule 11 Sanctions* seeking costs and attorney fees. Harrison Moon and Debbie Sluder withdrew their *Motion to Alter or Amend* on June 13, 2005. *Notice to Withdraw Motion to Alter or Amend Special Master's Recommendation*. A hearing on the *Motion for Rule 11 Sanctions* was held on June 22, 2005.

II. STANDARD OF REVIEW

Idaho Rule of Civil Procedure 11(a)(1) provides that all pleadings and motions must be signed, and that the signature certifies that “after reasonable inquiry it is well grounded in fact and is 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). A trial court must consider whether there was a reasonable inquiry into the facts prior to filing. *Hanf v. Syringa Realty, Inc.*, 120 Idaho 364, 369, 816 P.2d 320, 325 (1991). It is in the discretion of the court whether to grant sanctions under Rule 11. *Sun Valley Shopping Ctr. V. Idaho Power*, 119 Idaho 87, 94 (1991). The appropriate focus of the court in considering such sanctions is whether a proper investigation upon reasonable inquiry was made. *Id.*; *Durrant v. Christensen*, 117 Idaho 70, 74, 785 P.2d 634, 638 (1990).

III. FACTS

Water Right 29-04491

Charles and Jennie Winter filed a claim to water right 29-04491 in May of 2001. The Idaho Department of Water Resources filed a *Director’s Report* July 11, 2003 recommending 29-04491 with a quantity of .05 cfs. Objections to *Director’s Reports* in Basin 29 were due on November 14, 2003. An *Objection* was filed by Charles and Jennie Winter on November 14, 2003. No other objections were filed to 29-04491. A *Motion to File Amended Notice of Claim* was filed October 31, 2003 seeking to change the claimed priority date to June 20, 1916 and to change the quantity. (The amended claim sought .08 cfs which is less than the original .14 claimed, but greater than the .05 cfs recommended in the original *Director’s Report*.) A hearing on the *Motion to File Amended Claim* was held. There was no opposition to the motion, and the motion was granted. An *Amended Director’s Report* was filed February 6, 2004 and reported on the SRBA docket sheet. The objection deadline was also placed on the docket sheet. The quantity increased from .05 cfs to .08 cfs. The priority date was changed from June 25, 1916 to June 20, 1916.

No objections were filed to the *Amended Director’s Report*. After the deadlines for objections had passed, a ***Special Master’s Report and Recommendation; Findings of Fact and Conclusions of Law*** was issued on April 12, 2004.

Water Right 29-13557

Meanwhile, Harrison Moon and Debbie Sluder filed a claim to water right 29-13557 on April 29, 2003. An *Objection* was filed by Charles and Jennie Winter on November 14, 2003. An Initial Hearing was held in Pocatello on April 22, 2004. At the Initial Hearing, the parties and IDWR informed the court that they had reached a settlement. A *Standard Form 5; Stipulated Elements of a Water Right* was filed for 29-13557 on April 22, 2004. A ***Special Master's Report and Recommendation; Findings of Fact and Conclusions of Law*** was issued May 25, 2004. Subsequently, an ***Order of Partial Decree*** was issued by the Presiding Judge of the SRBA. No challenges or appeals were filed. However, on March 9, 2005, Harrison Moon and Debbie Sluder filed a letter asking that the ***Partial Decrees*** for both 29-13557 and 29-04491 be set aside. An *Affidavit of Allen Ruberry* and an *Affidavit of Ernest Carlsen* were filed in support of the *Motion to Set Aside the Partial Decrees*. Mr. Ruberry explained that he is a Senior Water Resource Agent for IDWR who provided information to the parties while they worked on a settlement agreement during the Initial Hearings on April 22, 2004. Mr. Ruberry states that he was not aware that the *Director's Report* for 29-04491 had been amended at the time of the Initial Hearings.

IV. ANALYSIS

Idaho Rule of Civil Procedure 11(a)(1) establishes when it is appropriate to grant costs and attorney fees. A trial court may, in its discretion, grant such costs and fees where it determines that a party failed to conduct a proper investigation upon reasonable inquiry. *Sun Valley Shopping Ctr. V. Idaho Power*, 119 Idaho 87 (1991).

I.R.C.P. 11 imposes a duty of investigation as to both law and fact. The rule places an affirmative duty on attorneys or parties to conduct a reasonable inquiry into the viability of a pleading before it is signed. *Durrant v. Christensen*, 117 Idaho 70, 74, 785 P.2d 634, 638 (1990). Whether the duty to investigate has been met depends on the circumstances of the case. All that is required is an investigation that is timely and reasonable under the circumstances. The investigation need not be carried to a point of certainty, but it must be reasonable.

A. Timing

I.R.C.P. 11 requires that a party must reasonably determine the validity of a claim before asserting it. A pleading or motion may not be filed first and the basis investigated thereafter.

Riggins v. Smith, 126 Idaho 1017, 895 P.2d 1210 (1995). In the case at bar, Mr. Moon and Ms. Sluder investigated the factual circumstances prior to the *Motion to Set Aside Partial Decrees* as shown by the filing of the *Affidavit of Allen Ruberry* and the *Affidavit of Ernest Carlsen* submitted in support of the *Motion to Set Aside the Partial Decrees*. Additionally, Mr. Moon's citation to Rule 11(a) and discussion of Rule 60(b) demonstrates an investigation prior to the filing of the *Motion to Alter or Amend*.

B. Reasonableness Requirement

The Idaho Supreme Court has not endorsed any specific factors for determining whether an investigation or inquiry was reasonable. This Special Master finds that under the circumstances, the inquiry into the facts and law prior to filing the *Motion to Alter or Amend* was sufficient to comply with the requirements of Rule 11. Mr. Moon and Ms. Sluder interviewed Mr. Allen Ruberry and Mr. Ernest Carlsen prior to filing the *Motion to Alter or Amend*. The facts gleaned from the affidavits of Mr. Ruberry and Mr. Carlson provided the factual basis for the *Motion to Set Aside Partial Decrees* and the *Motion to Alter or Amend*. Additionally, it appeared from Mr. Moon's argument on June 22, 2005 that he had read Rule 60(b), Rule 11, and the *Special Master's Report and Recommendation*. The *Motion to Alter or Amend* was preceded by sufficient investigation into the law and facts

V. CONCLUSION

Although this Special Master ultimately ruled that the six-month deadline imposed under most of the subparts of Rule 60(b) applied, the facts in this case were certainly sufficient for a good faith argument for consideration of Rule 60(b)(5). Subsection 5 of the rule allows for motions made beyond six months. Rule 60(b)(5) provides for setting aside a *Partial Decree* where: "[I]t is no longer equitable that the judgment should have prospective application." In this instance, IDWR apparently provided information to Mr. Moon during settlement discussions that was outdated. The information related to a subcase involving both Mr. Moon and Ms. Sluder and the Winters. Given the historic reliance by parties on such information, it was reasonable for Mr. Moon to urge the court to set aside the *Partial Decrees* after the six-month period. However, this Special Master ultimately determined that given the notice of *Partial Decrees* provided in the SRBA, the six-month deadline did apply. Thus, this Special Master held the *Partial Decrees* should not be set aside. However, this Special Master finds no violation of Rule 11(a).

Accordingly, IT IS ORDERED THAT no costs and fees are imposed, and the withdrawal of the *Motion to Alter or Amend* is confirmed.

Dated July _____, 2005.

BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

