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DEPT. OF WATER RESOURCES

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

JAN 24 2025

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 CSRBA

) Subcase Nos. 95-16445 & 95-18409

)

Case No. 49576

) **MEMORANDUM DECISION AND ORDER OF
PARTIAL DECREES**

)

)

I.

FINDINGS OF FACT

A. Purchase and sale of agreement.

Prior to June 2019, Brian Farley owned four contiguous parcels of real property in Kootenai County, Idaho. Those four parcels will be referred to herein as Parcel I, Parcel S, Parcel T, and Parcel V. In June of 2019, Farley entered into a real estate purchase and sale agreement with Arthur and Katherine Gideon. In the agreement, Farley agreed to sell Parcel I to the Gideons. Parcel I consists of an approximate 10-acre parcel of land with a residence located thereon. Farley retained ownership of Parcel S, Parcel T, and Parcel V, all of which lie to the immediate south of Parcel I.

B. Upper Well and Lower Well.

Prior to the sale, two wells serviced Parcel I, Parcel S, and Parcel T. The first was drilled on Parcel I in 1994. The Court will refer to this well as the "Upper Well." The Upper Well pumps into a 3000-gallon cistern located on Parcel I. The second well was drilled in 1999. It is located on Parcel V. The Court will refer to this well as the "Lower Well." The Lower Well pumps into the same 3000-gallon cistern located on Parcel I by way of underground water lines through Parcel V and Parcel T. Thus, both wells provide water to the cistern. Water from the cistern has historically provided water for domestic and stockwater uses on Parcel I, as well as water for stockwater use on Parcel S and Parcel T.

C. Water right claim 95-16445.

Prior to the sale of Parcel I, Farley filed a notice of claim for water right 95-16445 in the Coeur d'Alene-Spokane River Basin Adjudication ("CSRBA").¹ The claim, which was filed on July 16, 2009, is a groundwater claim for the diversion of 0.21 cfs for domestic, stockwater, and irrigation purposes in Kootenai County. The claimed priority date is March 31, 1999. The claimed point of diversion is the Lower Well. The claimed place of use is Parcel I, Parcel S, and Parcel T.

On January 25, 2018, Farley filed an amended notice of claim for water right 95-16445. The amended claim is a groundwater claim for the diversion of .02 cfs for stockwater purposes in Kootenai County. The claimed priority date is still March 31, 1999. The claimed point of diversion is still the Lower Well. The claimed place of use was modified to only include Parcel S and Parcel T. Thus, the amended claim removed domestic and irrigation as claimed purposes of use, and removed Parcel I as a claimed place of use.

On February 25, 2019, the Director of the Idaho Department of Water Resources issued a Director's Report recommending that water right 95-16445 be decreed to Farley. The Director recommended the claim be decreed with the place of use and purpose of use described in the amended claim. Objections to the recommendation were due by July 15, 2019. No objections were filed. However, on July 23, 2020, the Gideons filed a motion to file a late objection. The Court granted the motion. The Gideons filed their late objection asserting that water right claim 95-16445 should be decreed in their names. Their objection also asserted that purpose of use should include domestic use and that the place of use should include Parcel I.

D. Water right claim 95-18409.

The Gideons subsequently filed a competing late claim in subcase no. 95-18409. The Gideons' claim is a groundwater claim for the diversion of .04 cfs for domestic and stockwater purposes in Kootenai County. The claimed priority date is March 31, 1999. The claimed point of diversion is the Lower Well. The claimed place of use is Parcel I. On May 22, 2023, the

¹ The Claim was original filed by the Brian & Pamela Farley Living Trust. However, Farley filed a notice of change in water right ownership with the Idaho Department of Water Resources on June 1, 2018. The notice changes ownership of the water right claim from Brian & Pamela Farley Living Trust to Mr. Farley.

Director issued a Director's Report recommending that water right 95-18409 be decreed to the Gideons. He recommended the claim be decreed with the place of use and purpose of use described in the claim. Farley filed an objection to the recommendation, asserting the water right should not exist.² Thus, each party claims a beneficial use water right from the Lower Well and each party has filed an objection to the others' claim.

E. Supplemental Director's Report.

On September 21, 2023, the Director filed a Supplemental Director's Report. The Director notes that the Gideons' claim for 95-18409 "described the water right elements that were removed from [Farley's] claim no. 95-16449 when it was amended on January 25, 2019." Supplemental Director's Report, p.8. Namely, domestic use for one home and stockwater use on Parcel I.

As the claimed water rights divert from the same well, the Supplemental Director's Report recommended that combined use limitations be placed on the two claims. As to flow rate of water diverted, it recommended the following limitation:

The recommendations for claim nos. 95-16445 and 95-18409 both are individually limited to a maximum diversion rate of 0.02 cfs. Both water rights are diverted from the same well, which has a system capacity of 0.02 cfs. Therefore, the recommendation for both rights includes the following combined use condition:

Right Nos. 95-16445 and 95-18409 are limited to a total combined diversion rate of 0.02 cfs.

Supplemental Director's Report, p.13. As to the volume of water diverted, it recommended that "the quantity of water under right nos. 95-16445, 95-17752, and 95-18409 shall not exceed 13,000 gallons per day."³ *Id.* at 15.

F. Motion for summary judgment, motion to alter or amend, and challenge.

² The Gideons also filed an objection to the recommended quantity and place of use.

³ The Gideons have received a partial decree for water right 95-17752 in the CSRBA, which authorizes the diversion of .04 cfs of groundwater for domestic use from the Upper Well. That water right is not at issue in this proceeding.

On January 30, 2024, the Gideons filed a motion for summary judgment in subcase no. 95-18409. The motion sought the Court's decree of their water right claim as recommended in the Supplemental Director's Report as a matter of law. Farley opposed the motion.

The Special Master issued his decision on March 19, 2024, recommending the Gideons' motion be granted. The Special Master concluded:

Based upon the undisputed material facts in the record regarding water right claim 95-18409, this Special Master concludes that the Gideons have met their burden to show that there are no genuine disputes as to any material facts, and therefore the Gideons are entitled to judgment as a matter of law. Specifically, as matters of law, this Special Master concludes that: 1) Mr. Farley did not, prior to closing, eliminate the domestic and stockwater purposes of use on the "Parcel I" place of use; 2) Mr. Farley did not, prior to closing, abandon the domestic and stockwater purposes of use on the "Parcel I" place of use; and 3) At the time of closing, Mr. Farley was the owner of the existing but unclaimed portion of water right 95-16445 that was for domestic and stockwater purposes of use on Parcel I. Because there was unity of title between the land and the existing but unclaimed water right, said water right was appurtenant to the land and therefore was conveyed to the Gideons via the Warranty Deed. There is no admissible and clear evidence that the parties intended otherwise.

Memorandum Decision and Order on Gideons' Motion for Summary Judgment, p.17. The Special Master therefore recommended the claims be decreed as set forth in the Supplemental Director's Report.

Farley filed a motion to alter or amend the Special Master's decision on April 29, 2024. The Gideons opposed the motion. The Special Master issued an Order Granting in Part and Denying in Part the motion. The Special Master granted the motion for the purpose of correcting a limited factual error contained in his decision.⁴ The Special Master denied the motion as to all other issues. Farley timely filed a notice challenging (1) the Special Master's Memorandum Decision and Order on Gideons' Motion for Summary Judgment dated March 19, 2024, and (2) the Special Master's Order Granting in Part and Denying in Part Farley's Motion to Alter or Amend dated August 9, 2024. The parties briefed the issues raised on challenge. A hearing on challenge was held before the Court on December 12, 2024.

⁴ The factual issue pertained to the fact that Kootenai County parcel number 52N03W09S000 encompasses both Parcel S and Parcel T. The Special Master had found that parcel number only corresponded to Parcel T.

G. Kootenai County Case CV28-20-2706.

Meanwhile, in April 2020, the Gideons filed a complaint asserting various causes of action against Farley related to the purchase and sale agreement in Kootenai County Case CV28-20-2706. A bench trial was held in that case June 6th-9th, 2022. Various facts related to the construction and use of the Upper Well and Lower Well were presented to the court at trial. A true and correct copy of pertinent excerpts from the court reporter-certified trial transcript in that case is included in the above-captioned subcases as Exhibit A to the Affidavit of Andrew Waldera filed on January 30, 2024. Likewise, the district court's Memorandum Decision and Order Re: Bench trial entered in that case on October 21, 2022, is included in the record in these subcases as Attachment S to the Director's Supplemental Director's Report.

II.

STANDARD OF REVIEW

A. Challenge.

A district court is required to adopt a special master's findings of fact unless they are clearly erroneous. I.R.C.P. 53(j); *Rodriguez v. Oakley Valley Stone, Inc.*, 120 Idaho 370, 377, 816 P.2d 326, 333 (1991). In determining whether findings of fact are clearly erroneous, a reviewing court "inquires whether the findings of fact are supported by substantial and competent evidence." *Gill v. Viebrock*, 125 Idaho 948, 951, 877 P.2d 919, 922 (1994). The district court's review is not limited to the parties' objections to the special master's report. *Dorsey v. Dorsey*, 172 Idaho 667, 680, 535 P.3d 1040, 1053 (2023). The district court has a heightened obligation to review a special master's report as compared to its review of a magistrate court's findings of fact on an appeal. *Id.* As the appointment of a special master does not displace the district court's role as the ultimate trier of fact, "a district court's obligation upon review of a special master's recommendations is to conduct an 'independent' and 'careful review' of the record in addition to objections brought to its attention by counsel." *Id.* at 680-681, 535 P.3d at 1053-1054.

The special master's conclusions of law, however, are not binding upon a reviewing court, although they are expected to be persuasive. *Higley v. Woodard*, 124 Idaho 531, 534, 861 P.2d 101, 104 (Ct. App. 1993). This permits the district court to adopt the special master's

conclusions of law only to the extent they correctly state the law. *Id.* Accordingly, a reviewing court's standard of review of the special master's conclusions of law is one of free review. *Id.*

B. Summary judgment.

This matter comes before the Court on challenge by way of summary judgment. Summary judgment is properly granted when the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. I.R.C.P. 56(c). Where the case will be tried without a jury, the district court, as the trier of fact, is entitled to draw the most probable inferences from the undisputed evidence properly before it and grant the summary judgment motion in spite of the potential of conflicting inferences. *P.O. Ventures, Inc. v. Loucks Family Irrev. Trust*, 144 Idaho 233, 237, 159 P.3d 870, 874 (2007). The burden of demonstrating the absence of a genuine issue of material fact, and that summary judgment is proper as a matter of law, is on the moving party. *McCorkle v. Northwestern Mut. Life Ins. Co.*, 141 Idaho 550, 554, 112 P.3d 838, 842 (Ct. App. 2005).

C. Court's Independent Review of Record.

Consistent with the standard of review of a special master's report the Court has conducted a review of the record in this case independent of the findings of fact and conclusions of law set forth in the special master's report and recommendation.

**III.
ANALYSIS**

A. Abandonment.

The abandonment of a water right is a common law concept. The abandonment of water rights requires both the intent to abandon and the actual surrender or relinquishment of the water right. *Joyce Livestock Co. v. U.S.*, 144 Idaho 1, 15, 156 P.3d 502, 516 (2007). Further, "[t]he intent to abandon a water right must be evidence by clear, unequivocal and decisive acts and mere non-use is not per se abandonment." *Id.* In *Crow v. Carlson*, 107 Idaho 461, 467, 690 P.2d 916, 922 (1984), the Idaho Supreme Court distinguished between abandonment and forfeiture.

Abandonment is a common law doctrine involving the occurrence of (1) an intent to abandon and (2) an actual relinquishment or surrender of the water right. Forfeiture, on the other hand, is predicated upon the statutory declaration that all rights to use water are lost where the appropriator fails to make beneficial use of the water for a continuous five- year period. I.C. § 42-222(2).

...
While under the doctrine of forfeiture mere non-use of water for a sufficient period of time may be sufficient to bring about a loss of water rights, abandonment is more difficult to prove than forfeiture, in that mere non-use does not result in abandonment. Rather, the party alleging abandonment must prove by clear and convincing evidence that the owner of the water right intended to abandon that right.

Id. at 467, 690 P.2d at 922. Abandonment is disfavored in the law. *Sagewillow, Inc. v. Idaho Dept. of Water Resources*, 138 Idaho 831, 836, 70 P.3d 669, 674 (2002).

From 1994 through 1999, it is undisputed that the Upper Well provided all the water used on Parcel I. Farley Dec., ¶5. That use created a beneficial use water right associated with the Upper Well with respect to Parcel I. I.C. §§ 42-227 & 42-111. From 1999 through 2017, it is undisputed that the Lower Well provided all the water use on Parcel I. Farley Dec., ¶6. That use created a beneficial use water right associated with the Lower Well with respect to Parcel I. Sometime in 2017, it is undisputed that Farley shut the water off from the Lower Well water right so that the sole source of water for Parcels I and S was provided from the Upper Well water right.⁵ Farley Dec. ¶10. Sometime after the Gideons entered into the purchase and sale agreement, but before closing on June 7, 2019, it is undisputed that Farley turned back on the water from the Lower Well, so that both it and the Upper Well water right were providing water to Parcel I:

- Q. And is it correct that you turned that water back on – well, when did you turn the water back on [from the Lower Well] by turning the valve outside of the cistern?
- A. Well, when their contingencies were satisfied or not satisfied in this case and the – their financing was in place, I knew I had a solid deal, I turned it back on.
- Q. So is it accurate that as of the date of closing, the lower well water was supplementing the 3,000-gallon reservoir on the Gideons' property?

⁵ The water supply was shut off via the closing of a valve. The conveyance system from the lower well to the to the cistern remained in place.

A. That is correct.

Affidavit of Andrew J. Waldera, Ex. A, pp.465-466.

Thus, the uncontroverted facts establish that the Lower Well water right was created by Farley in 1999 with respect to Parcel I. Water under the Lower Well water right was used on Parcel I from 1999 through 2017. Therefore, no abandonment of the Lower Well water right occurred prior to 2017. Farley asserts he subsequently abandoned the Lower Well water right by (1) turning off water from the Lower Well to Parcel I sometime in 2017 until he turned it back on prior to the June 7, 2019, closing, and (2) working with IDWR agents between June 2018 and January 2019 to finalize the amended claim in CSRBA subcase 95-16445, thereby removing domestic and irrigation as claimed purposes of use and removing Parcel I as a claimed place of use. The Court disagrees.

As to the non-use of the Lower Well water right beginning sometime in 2017, Farley cannot legally achieve abandonment given his use of water from the Lower Well did not cease. *See e.g., Joyce Livestock Co.*, 144 Idaho at 15, 156 P.3d at 516 (the abandonment of a water right requires the actual surrender or relinquishment of the water right through non-use). Although Farley turned off the Lower Well water right to Parcel I for some period of time in 2017, it is undisputed he turned it back on prior to closing. Thus, the undisputed facts establish Farley did not surrender or relinquish the Lower Well water right through non-use as a matter of law. To the contrary, Farley claimed the full amount of the Lower Well water right in the CSRBA under amended claim no. 95-16445 for stockwater purposes on Parcel S and Parcel T. The amended claim seeks the original March 31, 1999, priority date. The amended claim establishes Farley intended to continue using water under the Lower Well water right, not abandon it. Therefore, Farley has not established that he has surrendered or relinquished the Lower Well water right as a matter of law.⁶

⁶ The Court also notes that at the closing on June 7, 2019, the Gideons were informed of the existence of Amended CC&Rs prepared and recorded on Farley's behalf. Gideons proceeded with the closing despite not having the opportunity to review the document. Gideons were not presented with a copy of the Amended CC&Rs until after the closing. The Amended CC&Rs were declared void in the Kootenai County Case CV28-20-2706 case for reasons not relevant to this decision. However, the Amended CC&Rs provided for the shared use of the lower well by Parcel I and Parcel T. In the event the upper well failed to produce sufficient water to Parcel I, Parcel T would cease use of the lower well and Parcel I would have exclusive use of the lower well until such time as there was an excess water supply sufficient to allow Parcel T to resume shared use. A copy of the Amended CC&Rs is attached as Exhibit H to the Declaration of Brian T. Farley in Support of Response in Opposition to Gideon's Motion for Summary Judgment. Farley stated that it was his "intent that Parcel I would have 'shared use' of the water from the Lower Well only pursuant to the Amended CC&Rs." Declaration of Brian T. Farley, p. 8.

As to the filing of the amended claim, the same does not establish abandonment. As stated above, filing such an amended claim shows that Farley has not surrendered or relinquished the right. At best, it shows an intent to transfer the right as to the purpose of use and place of use elements. As to purpose of use, it shows an intent to transfer the right by removing domestic use as an authorized use. As to place of use, it shows an intent to remove Parcel I from the authorized place of use. However, filing an amended claim in the CSRBA does not consummate a transfer under Idaho law.⁷ In this case, the Gideons have objected to the amended claim. And, they have filed a competing claim to the Lower Well water right. Therefore, the filing of the amended claim does not have the legal effect of effectuating an abandonment of the Lower Well water right or a transfer of the Lower Well water right. For these reasons, the Court finds that Farley did not abandon the Lower Well water right prior to the sale of Parcel I to the Gideons.

In the alternative, even if Farley did abandon the Lower Well water right sometime between 2017 and 2019, Farley resumed use of the right prior to the sale of Parcel I. Abandonment is disfavored under the law. *Sagewillow, Inc.*, 138 Idaho at 836, 70 P.3d at 674. As such, Idaho recognizes the resumption of use doctrine applies to abandonment. *In Re SRBA Case No. 39576, Subcase No. 02-2318A, Amended Memorandum Decision and Order on Challenge (Wilkerson)*, pp. 9-11 (Oct. 31, 2011) (citing Justice Kidwell's concurrence in *Sagewillow* 138 Idaho at 846, 70 P.3d at 684, wherein he recognized resumption of use is a common law defense to abandonment). Under that doctrine, abandonment is not effective if "use of water is resumed prior to the claim of right by a third party." *Id.* at 842, 70 P.3d at 680. *See also In Re SRBA Case No. 39576, Subcase No. 02-2318A, Memorandum Decision and Order on Challenge (Poulton v. Rose)*, p. 16 (Feb. 27, 2008)(resumption of use doctrine applies to abandonment). Here, it is undisputed that after turning off the Lower Well water right in 2017, Farley turned it back on prior to closing, thereby resuming use. There is no evidence of a claim of right by a third party prior to resumption. Therefore, it follows Farley did not abandon the Lower Well water right prior to the sale of Parcel I to the Gideons as a matter of law.

⁷ Generally, Idaho Code § 42-222 governs water right transfers. It requires that any person who desires to make a change to the point of diversion, place of use, period of use, or nature of use of a water right shall make application to the Department for approval of such change. I.C. § 42-222(1). It is undisputed that Farley has not filed an Idaho Code § 42-222 application for transfer with the Department for the Lower Well water right.

B. That portion of the Lower Well water right recommended in subcase 95-18409 was conveyed to the Gideons as an appurtenance to Parcel I.

A water right, once established, becomes an appurtenance to the land on which water under the right is beneficially used. I.C. §§ 42-101 & 42-220. A water right appurtenant to a parcel of land is conveyed with the land unless it is “expressly reserved in the deed or it is clearly shown that the parties intended that the grantor would reserve [it].” *Joyce Livestock Co. v. U.S.*, 144 Idaho 1, 14, 156 P.3d 502, 515 (2006). Appurtenant water rights “pass with the land even though they are not mentioned in the deed and the deed does not mention ‘appurtenances.’” *Id.* Thus,

the inquiry is not whether there is evidence indicating that the grantor intended to convey the water rights with the land. Rather, the inquiry is whether the water rights were expressly reserved in the deed conveying the land or whether there is clear evidence that the parties intended that the grantor would reserve them.

Id.

In this case, the warranty deed that conveyed Parcel I from Farley to the Gideons is unambiguous. It states that the real property is being conveyed “with its appurtenances.” The Lower Well water right is an appurtenance to Parcel I. It is not expressly reserved in the deed. Nor is there clear evidence shown that the parties intended Farley would reserve it. Therefore, that portion of the Lower Well water right recommended in subcase 95-18409 was conveyed to the Gideons as an appurtenance to Parcel I via the plain language of the warranty deed as a matter of law. Likewise, the parties’ purchase and sale agreement unambiguously provides as follows:

7. WATER RIGHTS: Any and all water rights including but not limited to water systems, wells, springs, lakes, streams, ponds, rivers, ditches, ditch rights, and the like, if any, appurtenant to the PROPERTY and owned by SELLER are included in and are a part of the sale of this PROPERTY, and are not leased or encumbered, unless otherwise agreed by the parties in writing.

Purchase and Sale Agreement, §7.⁸ It is undisputed that there were no other written and signed agreements between the parties wherein expressly reserving the Lower Well water right. Therefore, that portion of the Lower Well water right recommended in subcase 95-18409 was

⁸ A copy of the parties’ purchase and sale agreement is attached as Exhibit C to the Affidavit of Andrew J. Waldera in Support of Motion for Summary Judgment filed January 30, 2024.

conveyed to the Gideons as an appurtenance to Parcel I via the plain language of the purchase and sale agreement as a matter of law.

As the language of both the warranty deed and the purchase and sale agreement is plain and unambiguous, the Court does not reach the subjective intent of Farley. *See e.g., Cristo Viene Pentecostal Church v. Paz*, 144 Idaho 304, 308, 160 P.3d 743, 747 (2007) (“if the language of the contract is unambiguous, then its meaning and legal effect must be determined from its words”). In addition, the Court notes the purchase and sale agreement contains a merger clause providing:

40. ENTIRE AGREEMENT: This Agreement including any addendums or exhibits, constitutes the entire Agreement between the parties respecting the matters set forth and supersedes all prior Agreements between the parties respecting such matters. This Agreement may be modified only by a written agreement signed by each of the parties.

Purchase and Sale Agreement, §40. Therefore, the purchase and sale agreement and its addendum constitute the parties’ entire agreement as a matter of law.

C. Idaho Code § 42-111(3) does not prohibit water right claim 95-18409.

Farley argues Idaho law prohibits the servicing of a domestic use from multiple wells.

The Court disagrees. Idaho Code § 42-111(3) governs this issue. It provides as follows:

Multiple water rights for domestic uses or domestic purposes, as defined in this section, shall not be established or exercised in a manner to satisfy a single combined water use or purpose that would not itself come within the definition of a domestic use or purpose under this section. The purpose of this limitation is to prohibit the diversion and use of water, under a combination of domestic purposes or domestic uses as defined in this section, to provide a supply of water for a use that does not meet the exemption of section 42-227, Idaho Code, and is required to comply with the mandatory application and permit process for developing a right to the use of water pursuant to chapter 2, title 42, Idaho Code.

I.C. § 42-111(3). This statute applies only to uses of water for domestic purposes which fall outside the definition of domestic use. Domestic use is defined in pertinent part as “the use of water for homes . . . including irrigation of up to one-half (1/2) acre of land, if the total use is not in excess of thirteen thousand (13,000) gallons per day . . .” I.C. § 42-111(1)(a).

The Gideons seek two water rights in the CSRBA for domestic use associated with Parcel I. The Gideons have received a partial decree for water right 95-17752 in the CSRBA, which

authorizes the diversion of .04 cfs of groundwater for domestic use from the Upper Well. They now seek water right claim no. 95-18409 for the diversion of .04 of groundwater for domestic use from the Lower Well. With respect to claim no. 95-18409, the Director has recommended the partial decree for that right include a combined use limitation remark. It states: "The quantity of water under right nos. 95-16445, 95-17752 and 95-18409 shall not exceed 13,000 gallons per day." Therefore, the Court finds the prohibition set forth in Idaho Code § 42-111(3) does not apply as a matter of law as the two water rights fall within the statutory definition of domestic use as a result of the combined use remark.

D. Farley's proportional split argument.

Last, Farley asserts that water right claims 95-16445 and 95-18409 should be split based upon property ownership based on what was conveyed to the Gideons under the purchase and sale agreement. The Court disagrees. The proportionate split method of water rights division has been recognized by the Idaho Supreme Court as applied to irrigation rights where a parcel of irrigation land is split from a larger contiguous parcel. *Crow v. Carlson*, 107 Idaho 461, 690 P.2d 916 (1984). However, this case does not involve an irrigation right. It involves *de minimis* domestic and stockwater rights.

De minimis domestic and stockwater water rights refer to a specific category of rights defined by statute. I.C. §§ 42-1401A (4) and (11). To qualify as a *de minimis* water right, a water right must meet certain criteria which place limitations on the scope of the purpose of use, quantity or both. *Id.* Water rights for *de minimis* domestic and stockwater use occupy a unique status in the law. They differ from water rights for other uses in legally meaningful ways. These differences are observed in many areas, including the acquisition, adjudication and administration of such rights.⁹

⁹ For instance, the Legislature has afforded various *de minimis* domestic and stockwater uses special exemptions in the area of acquisition. It has exempted the use of ground water for domestic purposes from the permitting and licensing procedures required for other uses. I.C. § 42-227. The instream use of water for stockwatering purposes is likewise exempted. I.C. § 42-113(1). These exemptions evidence the Legislature's acknowledgement that water rights for *de minimis* water uses, due to their unique nature and limited impact, are treated differently than water rights for other uses. Differences are also visible in the area of adjudication, where *de minimis* domestic and stockwater rights enjoy the unique legal position of being deferrable in the CSRBA. Twin Falls County Case No. 49576, *Order Establishing Procedures for the Adjudication of De Minimis Domestic and Stockwater Claims* (Nov. 12, 2008).

This Court has held that the unique legal status of *de minimis* rights is perhaps most apparent in the area of administration:

The unique legal status of *de minimis* rights is perhaps most apparent in the area of administration. It begins with Idaho's Constitution, which grants water rights for domestic purposes preference over other water uses in times of shortage.¹⁰ Idaho Const. Art. XV, § 3. It continues with Idaho's Rules for Conjunctive Management of Surface and Ground Water Resources ("CM Rules"), which broadly exempt *de minimis* ground water rights from conjunctive administration:

A delivery call shall not be effective against any ground water right used for domestic purposes regardless of priority date where such domestic use is within the limits of the definition set forth in Section 42-111, Idaho Code, nor against any ground water right used for stock watering where such stock watering use is within the limits of the definition set forth in Section 42-1401A(11), Idaho Code; provided, however, this exemption shall not prohibit the holder of a water right for domestic or stock watering uses from making a delivery call, including a delivery call against the holders of other domestic or stockwatering rights, where the holder of such right is suffering material injury.

IDAPA 37.03.11.020.11. The Idaho Supreme Court has upheld the constitutionality of this exemption against a facial challenge. *American Falls Reservoir Dist. No. 2 v. IDWR*, 143 Idaho 862, 880-881, 154 P.3d 433, 451-452 (2007) ("AFRD#2").

As a result of their unique status, the circumstances in which *de minimis* rights may be subject to priority administration are limited. Broadly removed from consideration is the most complex and litigious category of priority administration – conjunctive administration where the senior is a non-*de minimis* water right holder. IDAPA 37.03.11.020.11. This leaves very limited categories of conjunctive administration where the Director may have to actively administer *de minimis* water rights based on priority. These include administration between two *de minimis* water right holders and administration where the senior injured party is a *de minimis* water right holder. These categories of administration rarely occur. *2nd Aff. of Carter Fritschle*, ¶5. When they do, they simply do not involve the same complexities as other categories of priority administration. *Id.* The quantities of water involved, and any resulting material injury, will necessarily be very small (i.e., *de minimis*). Likewise, the number of water users involved will be small. If there is a finding of material injury, the amount of curtailment and/or mitigation required to cure that injury will be on an extremely limited scale as compared to other categories of priority administration. As set forth below, the Director certainly has the experience and expertise, given these realities, to properly administer *de minimis* water rights based on his CSRBA recommendations.

¹⁰ The preference contemplates that if it is exercised, junior domestic water right holders must compensate seniors for any taking of their water. Idaho Const. Art. XV, § 3.

Twin Falls County Case No. 49576, In Re CSRBA, Subcase No. 00-40001, Memorandum Decision, pp.5-6 (March 7, 2016).

As a result of their unique status, especially as pertaining to administration, *de minimis* water rights have historically been recommended and decreed in Idaho's general stream adjudications with a specific rate of diversion under the quantity element, coupled with the remark "[t]he quantity of water under this right shall not exceed 13,000 gallons per day." In conjunction, the following remark is generally included under the other provisions element: "[t]he quantity of water decreed for this water right is not a determination of historical beneficial use." Decreeing these rights in this way is appropriate given the unique legal status of *de minimis* rights. It is also sufficient for the Director to accomplish priority administration in the limited situations where such administration of *de minimis* rights may occur under the law. Therefore, the Court does not find *Crow* to be controlling as to those rights. For the reasons stated herein, the Court finds that the Director's recommendations as set forth in the Supplemental Director's Report, including the recommended combined use remarks, are appropriate.

IV. ORDER

Therefore, IT IS ORDERED that the Court adopts the Special Master's recommendation that the above-captioned water right be decreed with the elements as set forth in the *Special Master's Recommendation for Partial Decree* attached to the *Special Master Report and Recommendation*.

IT IS SO ORDERED.

DATED: 1/24/25.



ERIC J. WILDMAN
Presiding Judge
Coeur d'Alene-Spokane River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the MEMORANDUM DECISION AND ORDER OF PARTIAL DECREES was mailed on January 24, 2025, with sufficient first-class postage to the following:

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