

RECEIVED

APR 24 2023

DEPARTMENT OF
WATER RESOURCES

Form No. 42-1409-2 (Internet 5/17)

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

JAN 31 2023

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLSIN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE COEUR D'ALENE-SPOKANE RIVER
BASIN WATER SYSTEM

CIVIL CASE NUMBER: 49576

Claim ID: 95-18401

Date Received: 4.24.23

Receipt No: C116021

Claim Fee: 25.00 By: KM

Clerk
Deputy Clerk

NOTICE OF CLAIM TO A WATER RIGHT

ACQUIRED UNDER STATE LAW

For Domestic and/or Stockwater Purposes

Where Daily Use is less than 13,000 gallons per day

Please type or print clearly

- Name of claimant(s) Arthur V. and Katherine M. Gideon Phone (509) 521-6069
Mailing address 23452 N. Derting Road, Hayden, ID 83835-7883 Zip _____
Street or Box City State
Email address (optional) _____
- Date of priority: (Only one per claim) 03/31/1999 (Explain priority date selected in Remarks)
Month/Day/Year (YYYY)
- Source of water supply (Check one) Ground Water (✓) or Other () (a) _____
which is tributary to (b) _____
- Location of point of diversion is: Township 52 N, Range 03 W, Section 9,
SE 1/4 of SW 1/4, or Govt. Lot _____ BM, County of Kootenai;
Parcel no. _____
Additional points of diversion, if any: _____
If available, GPS coordinates: _____
- Description of diverting works (wells, pumps, spring boxes, pipelines, etc.) including the dates of any changes or enlargements in use, the dimensions of the diversion works as constructed and as enlarged and the depth of each well.
Approximately 300 foot deep well, 1.5 hp pump, to approximately 2,000 feet of water line plumbed to 3,000
gallon concrete cistern serving residence and residential parcel.
- Water is claimed for the following: (limited to domestic and/or stockwater uses - see page 1 of the instructions)

	Month/Day	Month/Day	cfs (✓) or AFY ()
For <u>Domestic</u> purposes from <u>1/1</u> to <u>12/31</u> amount <u>0.04</u>			
For <u>Stockwater</u> purposes from <u>1/1</u> to <u>12/31</u> amount <u>0.02</u>			
- Total quantity claimed 0.04 cfs (✓) or AFY ()
- Non-irrigation uses. Describe fully. (Domestic: give number of homes; Stockwater: list number and kind)
One home and up to 12 head mixed horses and cattle.

9. Location of place of use is: Township 52 N, Range 03 W, Section 9,
SE 1/4 of NW 1/4, Govt. Lot _____ BM, Parcel no. _____

If different than shown in Item 4

for (check one) Domestic (✓) Stock () Domestic and Stock ()

Additional places of use, if any same POU for stockwater use

10. In which county(ies) are lands listed above as place of use located? Kootenai

11. Do you own the property listed above as place of use? Yes (✓) No ()

If the answer is No, describe in Remarks below the authority you have to claim this water right.

12. Describe any other water rights used at the same place and for the same purposes as described above.

95-17752 – but well is essentially dry

or None ()

13. Remarks (include an explanation of the priority date selected):

Well drilled in March 1999 to replace two 1994-vintage prior wells serving the property that went/are effectively dry producing approximately 0.5 gpm.

14. Basis of claim (check one) Beneficial Use (✓) Posted Notice () License () Permit () Decree ()

Court _____ Decree Date _____ Plaintiff v. Defendant _____

If applicable provide IDWR Water Right Number _____

15. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notices in the Coeur d'Alene-Spokane River Basin Water System Adjudication."

(b.) I/We do () do not (✓) wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Individuals: I/We do solemnly swear or affirm under penalty of perjury that the statements contained in the foregoing document are true and correct.

Signature of Claimant (s)

Arthur V. Gideon
Katherine M. Gideon

Date: 01/26/23

Date: 01/26/2023

For Organizations: I do solemnly swear or affirm under penalty of perjury that I am, and that I have signed the foregoing document in the space below as the

_____ of _____
Agent's title (Please print) Name of organization (Please print)

and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent _____ Date _____

Printed Name of Authorized Agent _____

16. Notice of Appearance:

Notice is hereby given that I, (please print) Andrew J. Waldera, will be acting as attorney at law of behalf on the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below.

Signature

[Signature]

Date Jan. 31, 2023

Address Sawtooth Law Offices, PLLC, 1101 W. River Street, Suite 110, Boise, ID 83702

Name of claimant(s) Arthur V. and Katherine M. Gideon

Claim ID _____

Idaho Department of Water Resources Receipt

Receipt ID: C116027

Payment Amount	\$25.00	Date Received	4/24/2023	Region	STATE
----------------	---------	---------------	-----------	--------	-------

Payment Type	Check	Check Number	11027
--------------	-------	--------------	-------

Payer SAWTOOTH LAW OFFICE, PLLC

Comments NOTICE OF CLAIM TO A WATER RIGHT
CIVIL CASE NUMBER #49576
FOR: ARTHUR V. AND KATHERINE M. GIDEON
WR CLAIM OR PARCEL # 95-18409
FOR: CSRBA
THE COEUR D'ALENE-SPOKANE RIVER BASIN WATER SYSTEM

Fee Details

Amount	Description	PCA	Fund	Fund Detail	Subsidiary	Object
\$25.00	NORTHERN ID ADJUDICATION FILING FEE	75503	0337	1		1155



Signature Line (Department Representative)

RECEIVED

FEB 09 2023

DEPARTMENT OF
WATER RESOURCES

**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	95-18409
	)		(Insert water right number)
	)		
	)		STANDARD FORM 4
Case No. 49576	)		
	)		
	)		MOTION TO FILE A LATE NOTICE OF
	)		CLAIM

INSTRUCTIONS

This form is used to file a late Notice of Claim in a reporting area where the Director's Report has been filed. Forms may be obtained from the CSRBA Court, the Idaho Department of Water Resources (IDWR), or you may copy or reproduce this blank form.

The water right number for your late Notice of Claim must be indicated above in the blank space following "Subcase." To obtain your water right number, contact the Idaho Department of Water Resources. You must use a **separate form for each** late Notice of Claim.

By filing a Motion to File a Late Notice Claim, you certify that it is well-grounded in fact; is warranted by existing law or a good-faith argument for the extension, modification or reversal of existing law; and is not filed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation.

☒ I have read *CSRBA Administrative Order 1*, Rules of Procedure.

SCANNED

FEB 09 2023

My name is Arthur and Katherine Gideon

My address is 23452 N. Derting Road, Hayden, ID 83835-7883

My phone number is: work _____ Home 509-521-6069

☒ I am an attorney representing Arthur and Katherine Gideon

My name is Andrew J. Waldera of Sawtooth Law Offices, PLLC

My address is 1101 W. River Street, Suite 110, Boise, ID 83702

My phone number is 208-629-7447

☒ I did not file a Notice of Claim to the use of water in the CSRBA because:

Please see objection filed in Subcase No. 95-16445; please also see
memorandum and affidavit in support filed herewith.

☐ I filed a Notice of Claim and elected to defer judicial proceedings on my domestic or stock watering use. I desire to reinstate my Notice of Claim for domestic or stock watering use.

☒ I am providing legal and factual documentation for my claimed use of water. You must describe these documents and attach a readable copy. (You do not need to fill this out if you are reinstating a Notice of Claim for domestic or stock watering use, but you must attach a copy of your Notice of Claim.)

Please see attached Notice of Claim, supporting memorandum,
and affidavit.

A Motion to File Late Notice of Claim will require a hearing before the Presiding Judge.

Follow these instructions regarding the hearing on the motion.

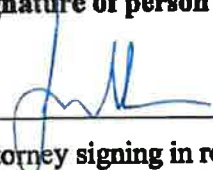
- 1. Contact the Clerk of the CSRBA Court at (208) 736-3011 to request a hearing date and time.**
- 2. Fill in the following information:**

**This motion will be heard on April 18, 2023 at 1:30 p.m. Pacific Time
(insert date and time)
at the CSRBA Courthouse, 253 Third Avenue North, Twin Falls, Idaho.**

I have attached:

- ☒ **A fully completed Notice of Claim (available from IDWR).**
- ☒ **A claim filing fee for a domestic and stock watering use. IDWR may charge this fee pursuant to I.C. §42-1414. To determine this amount, contact IDWR at (800) 451-4129. I have enclosed a check payable to: State of Idaho Department of Water Resources in the amount of \$ 25.00.**
- ☐ **A claim filing fee and a late claim fee for those claims other than domestic or stock watering use for which a notice of claim was not filed. To determine this amount, contact IDWR at (800) 451-4129. I have enclosed a check payable to: State of Idaho Department of Water Resources in the amount of \$ _____.**

(Signature of person filing motion)



(Attorney signing in representative capacity)

INSTRUCTIONS FOR MAILING

You must mail the Motion, to the Clerk of the court. **FAX filings will not be accepted.**
You must also send a copy to all the parties listed below in the Certificate of Mailing.

CERTIFICATE OF MAILING

I certify that on January 31st, 20²³, I mailed the original and copies of this Motion, including all attachments, to the following persons:

1. Original to:

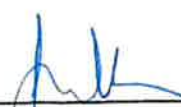
Clerk of the District Court
Coeur d'Alene-Spokane River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

United States Department of Justice
Environment & Nat'l Resources Div
550 W Fort Street, MSC 033
Boise, ID 83724

Chief, Natural Resources Division
Office of Attorney General
State of Idaho
PO Box 83720
Boise, ID 83720-0010



Signature of Movant or attorney
mailing on Movant's behalf

**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 COEUR D'ALENE-SPOKANE RIVER
BASIN WATER SYSTEM**

CIVIL CASE NUMBER: 49576

Claim ID: _____

Date Received: _____

Receipt No: _____

Claim Fee: _____ By: _____

**NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW
For Domestic and/or Stockwater Purposes
Where Daily Use is less than 13,000 gallons per day**

Please type or print clearly

1. Name of claimant(s) Arthur V. and Katherine M. Gideon Phone (509) 521-6069
Mailing address 23452 N. Derting Road, Hayden, ID 83835-7883 Zip _____
Street or Box _____ City _____ State _____
Email address (optional) _____
2. Date of priority: (Only one per claim) 03/31/1999 (Explain priority date selected in Remarks)
Month/Day/Year (YYYY)
3. Source of water supply (Check one) Ground Water (✓) or Other () (a) _____
which is tributary to (b) _____
4. Location of point of diversion is: Township 52 N, Range 03 W, Section 9,
SE 1/4 of SW 1/4, or Govt. Lot _____ BM, County of Kootenai;
Parcel no. _____
Additional points of diversion, if any: _____
If available, GPS coordinates: _____
5. Description of diverting works (wells, pumps, spring boxes, pipelines, etc.) including the dates of any changes or enlargements in use, the dimensions of the diversion works as constructed and as enlarged and the depth of each well.
Approximately 300 foot deep well, 1.5 hp pump, to approximately 2,000 feet of water line plumbed to 3,000
gallon concrete cistern serving residence and residential parcel.
6. Water is claimed for the following: (limited to domestic and/or stockwater uses - see page 1 of the instructions)

		Month/Day	Month/Day	cfs (✓) or AFY ()
For	<u>Domestic</u>	<u>1/1</u>	<u>12/31</u>	<u>0.04</u>
For	<u>Stockwater</u>	<u>1/1</u>	<u>12/31</u>	<u>0.02</u>
7. Total quantity claimed 0.04 cfs (✓) or AFY ()
8. Non-irrigation uses. Describe fully. (Domestic: give number of homes; Stockwater: list number and kind)
One home and up to 12 head mixed horses and cattle.

SCANNED

FEB 09 2023

9. Location of place of use is: Township 52 N, Range 03 W, Section 9,

SE 1/4 of NW 1/4, Govt. Lot _____ BM, Parcel no. _____

If different than shown in Item 4

for (check one) Domestic (☒) Stock (☐) Domestic and Stock (☐)

Additional places of use, if any same POU for stockwater use

10. In which county(ies) are lands listed above as place of use located? Kootenai

11. Do you own the property listed above as place of use? Yes (☒) No (☐)

If the answer is No, describe in Remarks below the authority you have to claim this water right.

12. Describe any other water rights used at the same place and for the same purposes as described above.

95-17752 – but well is essentially dry or None (☐)

13. Remarks (include an explanation of the priority date selected):

Well drilled in March 1999 to replace two 1994-vintage prior wells serving the property that went/are effectively dry producing approximately 0.5 gpm.

14. Basis of claim (check one) Beneficial Use (☒) Posted Notice (☐) License (☐) Permit (☐) Decree (☐)

Court _____ Decree Date _____ Plaintiff v. Defendant _____

If applicable provide IDWR Water Right Number _____

15. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notices in the Coeur d'Alene-Spokane River Basin Water System Adjudication."

(b.) I/We do (☐) do not (☒) wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Individuals: I/We do solemnly swear or affirm under penalty of perjury that the statements contained in the foregoing document are true and correct.

Signature of Claimant (s) Arthur V. Gideon Date: 01/26/23

Katherine M. Gideon Date: 01/26/2023

For Organizations: I do solemnly swear or affirm under penalty of perjury that I am, and that I have signed the foregoing document in the space below as the

_____ of _____
Agent's title (Please print) Name of organization (Please print)

and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent _____ Date _____

Printed Name of Authorized Agent _____

16. Notice of Appearance:

Notice is hereby given that I, (please print) Andrew J. Waldera, will be acting as attorney at law of behalf on the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below.

Signature [Signature] Date Jan. 31, 2023

Address Sawtooth Law Offices, PLLC, 1101 W. River Street, Suite 110, Boise, ID 83702

Name of claimant(s) Arthur V. and Katherine M. Gideon Claim ID _____

RECEIVED

FEB 09 2023

DEPARTMENT OF
WATER RESOURCES

Andrew J. Waldera, ISB No. 6605
SAWTOOTH LAW OFFICES, PLLC
1101 W. River Street, Suite 110
Boise, ID 83702
T (208) 629-7447
F (208) 629-7559
E andy@sawtoothlaw.com

Attorneys for Claimants
Arthur and Katherine Gideon

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
Case No. 49576

Subcase No. 95-18409

**GIDEON MEMORANDUM IN SUPPORT OF
STANDARD FORM 4 MOTION TO FILE LATE
NOTICE OF CLAIM**

**I.
INTRODUCTION**

This proposed late claim stems from a June 2019 residential real estate transaction between Arthur and Katherine Gideon (“Gideon”), and Brian Farley (“Farley”). Farley sold Gideon his former residence and approximately 10 acres of land known as 23452 N. Derting Road, Hayden, Idaho (“Gideon Property”), which property prior to sale was part of larger contiguous landholdings owned by Farley.

The Gideon Property has been, and remains, supplied domestic and stockwater from a well known by the parties in CSRBA Subcase No. 95-16445 as the “Lower Well” located on a portion of the remaining Farley property. A dispute arose between the parties as part of their real estate transaction regarding ownership and their respective uses of the Lower Well. That dispute

SCANNED

FEB 09 2023

is being litigated as Kootenai County Case No. CV28-20-2706 (“Property Purchase Litigation”), the ultimate outcome of which is dependent upon this Court’s determination of the parties’ respective water right entitlements developed (or not) in the Lower Well.

For procedural reasons, the Idaho Department of Water Resources (“IDWR”) recommended to Gideon and to this Court in Subcase No. 95-16445 that Gideon file a competing late notice of claim rather than proceeding based upon their pending objection alone. The Gideon motion is the result of that IDWR recommendation.

II. FACTS

For water right claiming purposes, this matter began with Farley’s 2009 Notice of Claim to a Water Right, filed July 16, 2009 (“Claim”). At the time of the Claim, Farley was the sole owner of what would become the Gideon Property (including the residence), and contiguous neighboring lands. *Affidavit of Andrew J. Waldera in Support of Gideon’s Standard Form 4 Motion to File Late Notice of Claim* (“Counsel Aff.”), Ex. A. The Claim noted that the Lower Well was drilled in March of 1999 to “replace” two prior wells once serving the residential portion of the property since 1994 that “went dry.” *Id.* The Claim contained a map roughly depicting the “plumbing” of the Lower Well, and its connection to “My Residence” (now the Gideon residence). *Id.* The Claim sought a water right for domestic, stockwater, and irrigation purposes of use. *Id.*

During the latter half of 2017, Farley was considering selling his residence and approximately 10 acres of his larger landholdings. Counsel Aff., Ex. B at 472:11-473:3. In response, Farley filed an Amended Notice of Claim to a Water Right with IDWR on January 25, 2019 (“Amended Claim”). Counsel Aff., Ex. C. The Amended Claim modified the place of use

and purpose of use of the original 2009 Claim to reflect only stockwater use on property Farley planned on retaining separate from what later became the Gideon Property. *Id.*

While Farley's Amended Claim modified these water right elements on paper, the plumbing on the ground (*i.e.*, service to the Gideon Property connected to the Lower Well) remained. Between 1999 and 2017 (at the least), the Lower Well was the "sole source" of water to the Gideon Property, connected to a 3,000 gallon cistern on the Gideon Property serving the residence and its acreage. Counsel Aff., Ex. B at 460:19-462:1; 476:6-477:13; 495:1-497:23; and 603:10-12. This remained the case post-closing on the Gideon sale in June 2019, and Gideon continues to use (and service) the Lower Well to this day. *Id.* Though there remain disputes between Gideon and Farley over the ownership and use of the Lower Well (particularly their competing uses of the same), the relevant facts surrounding those disputes can be debated, if necessary, during subsequent CSRBA proceedings should Gideon's late claim motion be granted.

Related to the disputes concerning the ownership and use of the Lower Well, and any water rights sourced therefrom, Gideon successfully filed a late objection to Farley's Amended Claim on September 8, 2020. Counsel Aff., Ex. D. Gideon objected to the elements of ownership, purpose of use, and place of use asserting themselves as the owners of the Lower Well and any water right entitlements sourced therefrom. *Id.*

Shortly after Gideon's late objection was granted and filed, the parties agreed to stay the Subcase No. 95-16445 proceedings to focus on the parallel-pending Property Purchase Litigation. Special Master Booth entered the stay order on October 15, 2020. Counsel Aff., Ex. E.

Ultimately, the parties completed a 4-day bench trial before the Honorable Richard S. Christensen, Kootenai County District Judge, in the Property Purchase Litigation. On October 21, 2022, Judge Christensen issued his *Memorandum Decision and Order Re: Bench Trial* (“MDO”) addressing various of the claims pending between the parties concerning their real property transaction. With respect to the parties’ disputes over ownership and use of the Lower Well, Judge Christensen stated that the fashioning of potential remedies under the parties’ purchase and sale agreement presented a bit of a “‘chicken or egg’ conundrum.” Counsel Aff. Ex. F, p. 10. Judge Christensen noted that this Court possessed exclusive jurisdiction over Farley’s pending Amended Claim, ultimately deciding that “the Court, cannot at this time, award any damages or equitable remedies on matters relative to water in, and from, the Lower Well unless the CSRBA court ultimately grants water rights to the Gideons from such point of diversion.” *Id.*, p. 11.

After receipt of the MDO, Farley counsel in Subcase No. 95-16445 requested a status conference to, among other things, lift the stay order. Undersigned counsel was engaged by Gideon around this time (October 27, 2022) and began participating in these proceedings. Counsel Aff., ¶ 9.

Undersigned counsel participated in the November 28, 2022 status conference and the December 22, 2022 scheduling conference. Counsel Aff., ¶ 9-10. During these conferences, various procedural questions were discussed, including the posture and status of the pleadings on file. *Id.* Undersigned counsel openly questioned and sought confirmation that Gideon claims to all or a portion of the Farley Amended Claim could be litigated using the late objection on file as a viable vehicle. *Id.* The parties and the Special Master were satisfied that the late objection challenging the ownership, purpose of use, and place of use of the Amended Claim should be

sufficient though noting, with IDWR's input, that the matter would proceed in the absence of any Director's Report recommendation in the absence of a Gideon claim (*i.e.*, there was lingering question over what IDWR's expert testimony would or could be concerning Gideon uses of the Lower Well based on the presence of an objection pleading alone). *Id.*

After setting a trial schedule and pre-trial deadlines, undersigned counsel was contacted by IDWR lead deputy attorney general Garrick Baxter on or about December 27, 2022. Counsel Aff., ¶ 11. Mr. Baxter informed undersigned counsel of discussions he had with Special Master Booth and Farley counsel, and that we should all be expecting the Court to set another status conference to further discuss procedural anomalies of concern to IDWR in Subcase No. 95-16445. *Id.*

IDWR expressed continuing concern over Gideon using their pending objection as a form of competing claim to the Farley Amended Claim. Counsel Aff., ¶ 11. IDWR thought it better and cleaner procedure for Gideon to file a competing late claim triggering additional IDWR investigation and recommendation in the form of a Director's Report. *Id.* Thus, during the follow-up scheduling conference held January 5, 2023, Gideon committed to filing this motion seeking a late claim essentially competing against the Farley Amended Claim pending in Subcase No. 95-16445. The proposed late claim seeks the adjudication of a Gideon-owned water right for domestic and stockwater purposes sourced from the Lower Well serving the Gideon Property.

III. LEGAL STANDARD

Motions to file late notices of claim are reviewed under the I.R.C.P. 55 "good cause" standard. *CSRBA Administrative Order 1*, § 4.d(3)(d) ("AO1"). "Good cause" requires a

showing that the claim is meritorious—that the claim raises a “real justiciable controversy.” *Bach v. Miller*, 148 Idaho 549, 553, 224 P.3d 1138, 1141-42 (2010) (citations omitted).

Other considerations under the “good cause” standard in the context of a late notice of claim include whether: (1) the claimant engaged in deliberate, intentional conduct willfully creating the need to file the late claim; and (2) potential opponents of the claim would be prejudiced. *See, e.g., Dorian v. Keane*, 153 Idaho 371, 373-374, 283 P.3d 118, 120-121 (Ct. App. 2012) (citations omitted); *see also, Memorandum Decision and Order on Challenge; Subcase No. 47-16433, et al.* (Mar. 22, 2005), pp. 5-6. The weight to apply to the foregoing two criteria is left to the discretion of the Court, and it should reflect “the unique facts and circumstances presented.” *Baldwin v. Baldwin*, 114 Idaho 525, 527, 757 P.2d 1244, 1246 (Ct. App. 1988).

IV. ARGUMENT

Gideon respectfully submits that their motion for late claim should be granted because each of the Rule 55 criteria noted above are met.

A. The Proposed Late Claim Is Meritorious

Rule 55 does not require a party to prove that it will prevail on its claims; rather a claim is considered meritorious where there is sufficient basis to warrant further examination of the claim on its merits. *Hawkes v. Sparks*, 108 Idaho 917, 920, 702 P.2d 1377, 1380 (Ct. App. 1985) (citations omitted). The moving party “is not required to present evidence” in support of the claims, but the movant must plead factual details with sufficient particularity. *Dorian*, 153 Idaho at 374, 283 P.3d at 121 (citations omitted). Gideon’s proposed late claim is meritorious.

First, Gideon pled each of the elements required by Idaho Code Section 42-1411(2) with particularity in their proposed late claim. Second, use of the Lower Well as claimed by Gideon

and Farley originally is based on the constitutional method of appropriation, perfected by diversion from a natural source (groundwater) and application to a legally recognized beneficial use (or, in this case, uses of *de minimis* domestic and stockwater) as allowed under Idaho Code Sections 42-227 and 42-111.

As Farley's 2009 Claim and Property Purchase Litigation sworn testimony demonstrates, water from the Lower Well was the "sole source" of water, no matter the purpose, used on the Gideon Property from 1999 to 2017. To the extent use of the water on the Gideon Property sourced from the Lower Well ceased in 2017 (a point of dispute among the parties), that cessation was fleeting because use resumed on the Gideon Property at least as of June 2019 and continues to this day. Consequently, Gideon has a water right-based interest in the Lower Well, perfected by over two decades of diversion and domestic and stockwater use on the Gideon Property as authorized by statute.

Gideon has pled sufficient facts and, though not required, has presented evidence in the context of this memorandum and the corresponding Affidavit of Counsel demonstrating that their proposed claim warrants further examination on its merits.

B. The Need To File The Late Notice Of Claim Arose From The Need To Address Procedural Concerns Ultimately Determined By IDWR—The Late Claim Is Not The Product Of Intentional Or Dilatory Conduct

As discussed above, Gideon already satisfied the applicable "good cause" standard when filing their pending objection in Subcase No. 95-16445 in September 2020. Their objection challenges Farley's ownership, place of use, and purpose of use under his Amended Claim resulting from the parties' 2019 real estate purchase transaction. Because the "good cause" standard was met at the time of Gideon's late objection, it should also be met now through this

housekeeping process of converting that valid objection to a mirror late claim for IDWR investigation and recommendation purposes.

Subcase No. 95-16445 was stayed for just over two years (from October 15, 2020 to November 29, 2022) while the parties litigated the Property Purchase Litigation through trial, with the trial court ultimately reaching a point where it was not willing to fully and finally address damages or potential equitable remedies for fear of intruding on the exclusive jurisdiction of this Court. Gideon was not deliberate and willful in any delay; rather their late objection passed muster and they diligently prosecuted the Property Purchase Litigation through trial and Judge Christensen's MDO in June and October 2022, respectively.

Upon lifting of the stay in Subcase No. 95-16445 on November 29, 2022, the parties were prepared to proceed to trial having agreed to a trial date and pre-trial deadline scheduling until IDWR recommended that it would be in the parties' best interests to reframe the pleadings through a Gideon late claim rather than proceeding solely under their pending (2020) objection. These "state of the pleadings" discussions have been ongoing since November 2022, and Gideon is acting upon IDWR's January 5, 2023 recommendation to keep this matter moving as quickly as the Court's Docket Sheet procedure will allow.

In sum, the proposed late claim is a product of the parties' discussions upon lifting of the stay in Subcase No. 95-16445 for fear that failure to reframe the pleadings would lead to greater and more time consuming difficulties down the road in that matter. The proposed late claim is not the product of any wrongfully intentional or dilatory conduct on the part of Gideon.

C. No Prejudice Should Result From The Late Claim, If Granted

While on its face Subcase No. 95-16445 appears to have dragged on considerably since its inception in 2019, over two years of that delay resulted from the parties' agreed-upon stay and

their focus on the Property Purchase Litigation. Granting Gideon's late claim should not prejudice either party. The parties only recently (December 2022) received a trial date and worked through pre-trial scheduling. Discovery had yet to commence. For all intents and purposes, Subcase No. 95-16445 is still in its comparative infancy because of the prior stay.

Beyond Gideon and Farley, granting the late claim should not prejudice other parties to the adjudication either. To date, Gideon and Farley are the only parties to Subcase No. 95-16445, and though there is chance that the proposed late claim will draw additional fire in the way of objections from others, that likelihood is low. This is because Farley's Amended Claim and the Gideon's prospective late claim are small, *de minimis* domestic and stockwater claims seeking diversion of no more than 13,000 gallons of water per day from a private, discrete well system in a comparatively sparsely populated area (neighboring rural homesites and landholdings are multiple acres as opposed to densely-packed residential lots in more urban settings).

Gideon appreciates that the Court's Docket Sheet procedure will add additional delay at least to the front end of the ultimate disposition of Subcase No. 95-16445. But a bit more initial delay on the front end coming off of a two-year stay to make sure that the operative pleadings are correct for IDWR's claims investigation and recommendation process, as well as its expert witness capacity in any trial(s) that may occur in this Court, is worth the trouble. Both sides (Gideon and Farley) should prefer that these matters be addressed and fully and finally decided on their merits in as efficient and cohesive a process as possible going forward. Neither side should want procedural anomalies to cloud and undermine the ultimate outcome of these proceedings.

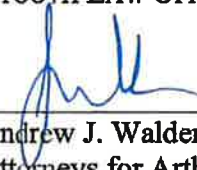
In exercising discretion under the Rule 55 “good cause” standard, courts are mindful of the overarching and well-settled policy that cases should be decided on their merits. And, should the Court for some reason find this proposed late claim a close call, Gideon respectfully submits that the Court should err on the side of allowing the competing water right claims to the Lower Well be decided on their merits. *Meyers v. Hansen*, 148 Idaho 283, 287, 221 P.3d 81, 85 (2009). This is particularly true here where the final outcome of the related Property Purchase Litigation, and the time and resources that went into that multi-year litigation, depends upon the water right findings of this Court.

**V.
CONCLUSION**

For the foregoing, Gideon respectfully requests leave of the Court to file their Late Notice of Claim of a Water Right having met the applicable Rule 55-based “good cause” standard.

DATED this 31st day of January, 2023.

SAWTOOTH LAW OFFICES, PLLC

By 

Andrew J. Waldera
Attorneys for Arthur V. and Katherine M.
Gideon

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of January, 2023, I caused a true and correct copy of the foregoing **GIDEON MEMORANDUM IN SUPPORT OF STANDARD FORM 4 MOTION TO FILE LATE NOTICE OF CLAIM** to be served by the method indicated below, and addressed to the following:

Director
Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098

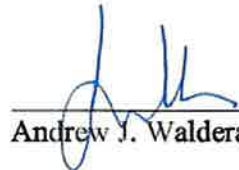
☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☐ iCourt/Email

US Department of Justice
Environment & Natural Resources Division
550 W. Fort Street, MSC 033
Boise, ID 83724

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☐ iCourt/Email

Chief, Natural Resources Division
Office of Attorney General
State of Idaho
PO Box 83720

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☐ iCourt/Email



Andrew J. Waldera

Andrew J. Waldera, ISB No. 6605
SAWTOOTH LAW OFFICES, PLLC
1101 W. River Street, Suite 110
Boise, ID 83702
T (208) 629-7447
F (208) 629-7559
E andy@sawtoothlaw.com

Attorneys for Claimants
Arthur and Katherine Gideon

RECEIVED

FEB 09 2023

DEPARTMENT OF
WATER RESOURCES

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
Case No. 49576

Subcase No. 95-18409

**AFFIDAVIT OF ANDREW J. WALDERA IN
SUPPORT OF GIDEON'S STANDARD FORM 4
MOTION TO FILE LATE NOTICE OF CLAIM**

STATE OF IDAHO)
) ss.
County of Ada)

Andrew J. Waldera, having been duly sworn upon oath, deposes and states as follows:

1. I am over the age of 18 years, and make this affidavit based upon my personal knowledge.
2. I am one of the attorneys representing Claimants Arthur and Katherine Gideon in the above-captioned action. I have access to the files in this matter, and make this affidavit based upon my own personal knowledge regarding the matters addressed herein.
3. Attached hereto as **Exhibit A** is a true and correct copy of the original Notice of Claim to a Water Right filed by the Brian and Pam Farley Living Trust, filed July 16, 2009.

SCANNED
FEB 09 2023

4. Attached hereto as **Exhibit B** is a true and correct copy of excerpts of the certified trial transcript in Kootenai County Case No. CV28-20-2706 between Arthur and Katherine Gideon (plaintiffs) and Brian and Pamela Farley (defendants), defined in the memorandum filed contemporaneously herewith as the “Property Purchase Litigation.” The cited testimony is that of Brian Farley.

5. Attached hereto as **Exhibit C** is a true and correct copy of the Amended Notice of Claim to a Water Right filed by Brian Farley, filed January 25, 2019.

6. Attached hereto as **Exhibit D** is a true and correct copy of the Standard Form 1 Objection filed by the Gideons dated July 20, 2020 (“Objection”). The Gideon’s Standard Form 7 Motion to File Late Objection was granted by the CSRBA Court on September 8, 2020.

7. Attached hereto as **Exhibit E** is a true and correct copy of the *Order Staying Litigation* (Oct. 15, 2020) entered by Special Master Booth in Subcase No. 95-16445.

8. Attached hereto as **Exhibit F** is a true and correct copy of the Kootenai County District Judge Christensen’s *Memorandum Decision and Order Re: Bench Trial* (Oct. 21, 2022).

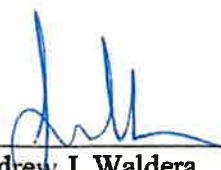
9. Undersigned counsel was retained by Arthur and Katherine Gideon on October 27, 2022, to serve as co-counsel in these (CSRBA) proceedings. I have participated in the status and scheduling conferences occurring from that date forward, with the exception of a scheduling conference held on December 13, 2022. My failure to participate in that scheduling conference was the result of technical difficulties during which I was unable to connect to the electronic Zoom platform by phone while traveling. The Gideons were represented during that scheduling conference by co-counsel Michael Schmidt—their counsel in the Property Purchase Litigation.

10. During the status and scheduling conferences I participated in to date, various procedural questions were discussed regarding the status of the pleadings in Subcase No. 95-16445. Of most interest to me was whether the Gideon's pending Objection challenging the Farley-claimed elements of ownership, purpose of use, and place of use was a satisfactory vehicle to serve, essentially, as a competing notice of claim from the Gideons—basically whether by operation of the Objection, the Court could decree a water right from the Lower Well in the Gideon's name for the use of water occurring on the Gideon Property. Ultimately, the parties and the Court were satisfied that the Objection would be sufficient, though acknowledging that the subcase would proceed without the benefit of additional IDWR investigation and recommendation (Director's Report) in relation to the Gideon's water use. IDWR questioned what its expert witness capacity would be at trial, but the parties set a trial date and scheduled pre-trial deadlines and proceeded forward.

11. After setting a trial schedule and pre-trial deadlines on December 22, 2022, undersigned counsel was contacted by IDWR lead deputy attorney general Garrick Baxter on or about December 27, 2022. Mr. Baxter informed me of discussions he had with Special Master Booth and Farley counsel, and that another status conference would be forthcoming in order for the parties to further discuss the procedural anomalies of concern to IDWR in Subcase No. 95-16445. IDWR was concerned with the Gideons using their pending Objection as a form of competing claim to the Farley Amended Claim. IDWR thought it better and cleaner procedural practice for the Gideons to file a competing late claim triggering additional IDWR investigation and recommendation in the form of a Director's Report. During the follow-up scheduling conference held January 5, 2023, Gideon committed to filing a motion for late claim to compete against the Farley Amended Claim pending in Subcase No. 95-16445. Gideon's late

claim would seek the adjudication of a Gideon-owned water right for domestic and stock water purposes sourced from the Lower Well serving the Gideon Property.

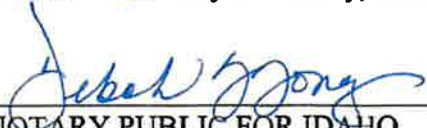
FURTHER your affiant sayeth naught.



Andrew J. Waldera
Attorneys for Arthur V. and Katherine M.
Gideon

SUBSCRIBED AND SWORN to before me this ^{31st} 30th day of January, 2023.





NOTARY PUBLIC FOR IDAHO
Residing at Boise, Idaho
My Commission Expires 10/10/2025

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of January, 2023, I caused a true and correct copy of the foregoing **AFFIDAVIT OF ANDREW J. WALDERA IN SUPPORT OF GIDEON'S STANDARD FORM 4 MOTION TO FILE LATE NOTICE OF CLAIM** to be served by the method indicated below, and addressed to the following:

Director
Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098

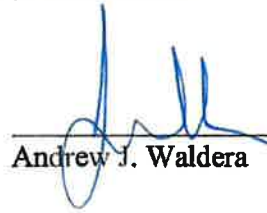
☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☐ iCourt/Email

US Department of Justice
Environment & Natural Resources Division
550 W. Fort Street, MSC 033
Boise, ID 83724

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☐ iCourt/Email

Chief, Natural Resources Division
Office of Attorney General
State of Idaho
PO Box 83720

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☐ iCourt/Email



Andrew J. Waldera

EXHIBIT A

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 COEUR D' ALENE-SPOKANE RIVER
BASIN WATER SYSTEM
RECEIVED

CIVIL CASE NUMBER: 49576
Ident. Number 95-16445
Date Received: 07/16/09
Receipt No: NO21358
Received By: N. Steading

JUL 16 2009

**NOTICE OF CLAIM
TO A WATER RIGHT
ACQUIRED UNDER STATE LAW**

IDWR/North
Please type or print clearly

1. Name of Claimant (s) BRUNT & FARLEY LIVING TRUST Phone (208) 772-1822
Mailing Address POB 1836 HAYDEN ID ZIP 83835
Street or Box City State
2. Date of Priority (Only one (1) per claim) MARCH 7 1999
Month Day Year (YYYY)

3. Source of water supply (Check one) Ground Water ☒ or Other () (a) _____
which is tributary to (b) _____

4. a. Location of Point of Diversion is: Township S2N, Range 03W, Section 09,
SE, 1/4 of SW, 1/4 Govt. Lot _____, BM., County of KOOTENAI

Parcel (PIN) no. S2N03W097100

Additional points of diversion if any: _____

If available, GPS Coordinates _____

b. If instream flow, beginning point of claimed instream flow is:

Township _____, Range _____, Section _____, 1/4 of _____, 1/4

Govt. Lot _____, BM., County of _____

ending point is: Township _____, Range _____, Section _____, 1/4 of _____, 1/4

Govt. Lot _____, BM., County of _____

5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc), including the dates of any changes or enlargements in use, the dimensions of the diversion works as constructed and as enlarged and the depth of each well.

300' well w 18" of 6" casing 4" PVC liner to bottom
1 1/2 HP pump to 1" galv pipe to poly pipe 2000' to 3000 gal
concrete reservoir to PVC to 80 gal press tank in my residence
and orchard + garden "freeze broke in July 2008. This well
"replaced" 2 previous 700' wells that went dry, drilled + used in
in June 1994

SCANNED

III 16 2009

6. Water is claimed for the following purposes:

(both dates are inclusive MM-DD)

(cfs)

(acre feet)

For DOMESTIC purposes from 0101 to 1231 amount 0.04 or _____

For STOCKWATER purposes from 0101 to 1231 amount 0.02 or _____

For IRRIGATION purposes from 0501 to 1115 amount 0.15 or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 0.21 (cfs) and/or (b) _____ (acre feet)

8. Non-Irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock, Etc.) DOMESTIC (HOME ORCHARD, CHICKEN, STOCKWATER 12 CATTLE AND OR HORSES)

9. Description of place of use:

a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.

b. If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

Twn	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
52N	034	09								S				S					
										D									
										S									

Parcel (PIN) no(s) 52N03W094700, 52N03W095000 Total number of acres irrigated 75

10. In which county (ies) are lands listed above as place of use located? KOOTENAI

11. Do you own the property listed above as place of use? Yes (X) No ()

If your answer is No, describe in Remarks below the authority you have to claim this water right.

12. Describe any other water rights used at the same place and for the same purposes as described above.

or None AN

13. Remarks: ADDRESS OF POINT OF USE (RESIDENCE) 23452 N. DARTING RD, HAYDEN IDAHO 83835

Last Name FARLEY TRUST

Identification No. _____

ANNED

JUL 16 2009

14. Basis of Claim (Check One) Beneficial Use (X) Posted Notice () License () Permit () Decree ()

Court _____ Decree Date _____ Plaintiff v. Defendant _____

If applicable provide IDWR Water Right Number _____

15. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notices in the Coeur d'Alene-Spokane River Basin Adjudication." (b.) I/We do (X) do not () wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: ONE PHOTO

For Individuals: I/We do solemnly swear or affirm under penalty of perjury that the statements contained in the foregoing document are true and correct.

Signature of Claimant (s) [Signature] Date: 07/30/09

Date: _____

For Organizations: I do solemnly swear or affirm under penalty of perjury that I am

_____ of _____
Title Organization

that I have signed the foregoing document in the space below as

_____ of _____
Title Organization

and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent _____ Date _____

Title and Organization _____

16. Notice of Appearance:

Notice is hereby given that I, _____, will be acting as attorney at law of behalf of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below.

Signature _____ Date _____

Address _____

Last Name _____ Identification No. _____

JUL 18 2009

FAMILY TRUST

MY RETIREMENT

POINT OF USE
PIN 52N03W09700

NW1/4

NE1/4

PIN 52N03W09500

PIN 52N03W09700

WELL LOCATION

SW1/4

NW1/4

NE1/4

NW1/4

EXHIBIT B

1

1 IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
2 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI
3
4 ARTHUR V. GIDEON and KATHERINE M. GIDEON, husband and wife,
5
6 Plaintiff,
7 vs. Case No. CV28-20-2706
8 BRIAN T. FARLEY and PAMELA FARLEY, husband and wife,
9 Defendant.
10
11 Court Trial
12
13 AT: Kootenai County, Coeur d'Alene, Idaho
14 ON: June 6, 2022 - June 9, 2022
15 BEFORE: Honorable Richard S. Christensen, District Judge
16 APPEARANCES:
17 For the Plaintiff: Lukins & Annis, P.S.
18 By: Michael G. Schmidt, Esq.
19 601 E Front Avenue, Suite 303
20 Coeur d'Alene, Idaho 83814
21 For the Defendant: Campbell & Bissell
22 By: Michael S. Bissell, Esq.
23 Brandon E. Slaven, Esq.
24 820 W 7th Avenue
25 Spokane, Washington 99204

2

INDEX

INDEX OF EXAMINATIONS

PLAINTIFF'S WITNESSES:	PAGE
ARTHUR GIDEON	
Direct Examination by Mr. Schmidt	14
Cross-Examination by Mr. Bissell	99
Further Cross-Examination by Mr. Bissell	164
Redirect Examination by Mr. Schmidt	175
KATHERINE MARIE GIDEON	
Direct Examination by Mr. Schmidt	179
Continued Direct Examination by Mr. Schmidt	223
Voir Dire Examination by Mr. Bissell	235
Cross-Examination by Mr. Bissell	272
JODY JAMES BARDEN	
Direct Examination by Mr. Schmidt	285
Cross-Examination by Mr. Bissell	319
PATRICIA ANN ELLIS	
Direct Examination by Mr. Schmidt	335
Cross-Examination by Mr. Bissell	346
Redirect Examination by Mr. Schmidt	360
Recross-Examination by Mr. Bissell	362
ROBERT HENRY ELDER	
Direct Examination by Mr. Schmidt	363
Cross-Examination by Mr. Bissell	393
Cross-Examination by Mr. Bissell	413
Redirect Examination by Mr. Schmidt	420
PAMELA JEAN FARLEY	
Direct Examination by Mr. Schmidt	434
Cross-Examination by Mr. Bissell	447
Redirect Examination by Mr. Schmidt	457
BRIAN THOMAS FARLEY	
Direct Examination by Mr. Schmidt	460
Cross-Examination by Mr. Bissell	511
Redirect Examination by Mr. Schmidt	518
Recross-Examination by Mr. Bissell	522
Redirect Examination by Mr. Schmidt	523

25

3

SCOTT RASOR	
Direct Examination by Mr. Schmidt	526
Cross-Examination by Mr. Bissell	530
Redirect Examination by Mr. Schmidt	536
ZACHARY HORSLEY	
Direct Examination by Mr. Schmidt	538
JAMES CAROL DAY	
Direct Examination by Mr. Schmidt	546
DOUGLAS ANDREW HILLER	
Direct Examination by Mr. Schmidt	552
DEFENDANT'S WITNESSES:	
MARY SPRIDGEON	
Direct Examination by Mr. Bissell	557
Cross-Examination by Mr. Schmidt	563
BRIAN FARLEY	
Direct Examination by Mr. Bissell	570
Resumed Direct Examination by Mr. Bissell	624
Cross-Examination by Mr. Schmidt	694
Redirect Examination by Mr. Bissell	726
ROGER DAVID COHEN	
Direct Examination by Mr. Bissell	605
PAMELA WILLIAMS	
Direct Examination by Mr. Bissell	608
RAMONA JEAN OLSON	
Direct Examination by Mr. Bissell	623
ARTHUR GIDEON	
Direct Examination by Mr. Bissell	730
PLAINTIFFS' REBUTTAL WITNESSES:	
ARTHUR GIDEON	
Direct Examination on Rebuttal by Mr. Schmidt	735
KATHERINE MARIE GIDEON	
Direct Examination on Rebuttal by Mr. Schmidt	739

25

4

1 DEFENDANTS' SURREBUTTAL WITNESSES:

2 [None]

INDEX OF EXHIBITS

PLAINTIFF'S EXHIBITS:	PAGE
Exhibits 3, 4, 5, 6, 7, 8, 10, 14, ...	9
18, 19, 25, 26, 28, 29, 30, 32,	
33, 35, 37, 39, 42, 44, 45, 46,	
47, 53, 54, 55, 56, 59 - Admitted	
by Stipulation	
Exhibit 9 - Offered	35
Exhibit 9 - Offered	201
Exhibit 9 - Admitted	201
Exhibit 12 - Offered	41
Exhibit 12 - Admitted	41
Exhibit 13 - Offered	47
Exhibit 13 - Admitted	47
Exhibit 15 - Offered	56
Exhibit 15 - Offered	57
Exhibit 15 (Pages 1 - 3) - Admitted	57
Exhibit 15 (Page 4) - Reoffered	58
Exhibit 15 - Reoffered	215
Exhibit 15 - Readmitted	215
Exhibit 16 - Offered	213
Exhibit 16 - Admitted	214
Exhibit 17 - Offered	63
Exhibit 17 - Admitted	64
Exhibit 20 - Offered	96
Exhibit 20 (Page 1) - Admitted	96
Exhibit 22 - Offered	97
Exhibit 22 - Admitted	98
Exhibit 24 - Offered	193
Exhibit 24 - Admitted	193

25

1	Exhibit 27 - Offered	230
2	Exhibit 27 - Rejected	232
3	Exhibit 31 - Offered	245
4	Exhibit 31 - Offered	246
5	Exhibit 31 - Admitted	246
6	Exhibit 40 - Offered	258
7	Exhibit 40 - Admitted	259
8	Exhibit 41 - Offered	260
9	Exhibit 41 - Admitted	260
10	Exhibit 61 - Admitted by	10
11	Stipulation	
12	Exhibit 62 - Offered	290
13	Exhibit 62 - Offered	293
14	Exhibit 62 (page A1, A4, A5, A6, ...	294
15	and A7) - Admitted	
16	Exhibit 64 - Marked	541
17	Exhibit 64 - Offered	541
18	Exhibit 64 - Admitted	541

DEFENDANTS' WITNESSES:

16	Exhibits A, B, C, D, E, G, H, I, ...	12
17	K, L, M, O, P, Q, R, T, U, W, X,	
18	DD, GG, II, UU, VV, BBB, CCC, DDD,	
19	EEE, FFF - Admitted by Stipulation	
20	Exhibit F - Offered	684
21	Exhibit F - Admitted	684
22	Exhibit N - Offered	101
23	Exhibit N - Admitted	102
24	Exhibit Y - Offered	357
25	Exhibit Y - Admitted	359
26	Exhibit AA - Offered	628
27	Exhibit AA - Admitted	629
28	Exhibit BB - Offered	567
29	Exhibit BB - Admitted	567

1	Exhibit FF - Offered	673
2	Exhibit FF - Admitted	673
3	Exhibit JJ - Offered	149
4	Exhibit JJ - Offered	149
5	Exhibit JJ - Admitted	150
6	Exhibit KK - Offered	159
7	Exhibit KK - Offered	732
8	Exhibit KK - Admitted	732
9	Exhibit MM - Offered	596
10	Exhibit MM - Admitted	596
11	Exhibit NN - Offered	599
12	Exhibit NN - Admitted	599
13	Exhibit OO - Offered	617
14	Exhibit OO - Admitted	617
15	Exhibit PP - Offered	671
16	Exhibit PP - Admitted	671
17	Exhibit QQ - Offered	644
18	Exhibit QQ - Admitted	644
19	Exhibit RR - Offered	660
20	Exhibit RR - Admitted	660
21	Exhibit TT - Offered	103
22	Exhibit TT - Admitted	103
23	Exhibit HHH - Offered	174
24	Exhibit HHH - Admitted	174
25	Exhibit LLL - Marked	110
26	Exhibit LLL - Offered	110
27	Exhibit LLL - Admitted	110
28	Exhibit MMM - Marked	450
29	Exhibit MMM - Offered	450
30	Exhibit MMM - Admitted	450
31	Exhibit NNN - Marked	515
32	Exhibit NNN - Offered	517
33	Exhibit NNN - Admitted	517

5

1 June 6, 2022, 9:00 a.m.

PROCEEDINGS

THE COURT: This is the time set for the matter of Gideon versus Farley, CV28-20-2706. Are the parties ready to proceed?

MR. BISSELL: Yes, your Honor.

MR. SCHMIDT: Yes, your Honor.

THE COURT: Very well. The Court notes the presence of counsel. And are both your clients here?

MR. SCHMIDT: Yes, your Honor.

MR. BISSELL: Yes, your Honor.

THE COURT: All right. Great. And the presence of the parties. We had some discussions about time and what the status of the day will look like. We will take a break at 10:30 and then my note, probably a break – there will be a 20-minute break and then a break about 1:10, and then we'll proceed in that fashion throughout the week.

The Court has decided on a 60/40 split on a time and the Court will use the clock on the computer in front of me as the time. With that, does either party have any – anything to take up prior to that?

MR. SCHMIDT: Our exhibits, do you want to handle the –

MR. BISSELL: There was another exhibit too,

6

your Honor, or – if you go through them, we can talk about them when we get there.

THE COURT: Okay. We'll do that. The Court is thankful for the parties getting together and taking a look at the exhibits and seeing what we can – what they could agree to; therefore, the Court will put on the record what exhibits were stipulated to.

In taking up the plaintiffs' exhibit list first, it is number 1 – and I want the parties to note an objection or state if that's not what they meant. Just interrupt, is what I'm saying, as we go through these. Stipulating to one, two, five –

MR. BISSELL: Were three and four also, your Honor, we're going to do because that's what we were talking about?

THE COURT: Okay.

MR. BISSELL: We are going to 3L and 4 and O and E, all of those together, we're fine with three and four coming in too.

THE COURT: All right. Mr. Schmidt.

MR. SCHMIDT: Okay. Great. Thank you.

THE COURT: So three, four, five, six, seven, eight, ten, 14. There was – some of these you listed, Mr. Bissell, with – you had stipulated if the date is established. I'm not allowing those in right now,

7

8

1 sale to the Gideons, were you aware of any development
2 Brian — Mr. Farley was doing to prepare the other
3 parcels for sale?

10:00:14

A. No.

10:00:20

Q. Okay. Do you know that a survey was done on
6 your property?

10:00:27

A. Yes.

10:00:28

Q. Do you recall ever seeing survey stakes
9 south — on the south boundary area?

10:00:30

A. Yes.

10:00:31

Q. Do you know when those were first there?

10:00:32

A. No.

10:00:33

Q. Okay. Do you know whether the boundary line
14 of parcel I, that's your — the subject parcel, changed
15 prior to closing?

10:00:36

A. That it changed prior to closing?

10:00:37

Q. Yeah.

10:00:38

A. Yes.

10:00:39

MR. BISSELL: That's all I have, your Honor.

20 Thank you.

10:00:41

THE COURT: Any redirect?

10:00:42

REDIRECT EXAMINATION

10:00:43

MR. SCHMIDT: Q. Exhibit MMM.

10:00:44

A. Yes.

10:00:45

Q. Did you speak with your husband in order to

1 husband and wife are presumed to be confidential under
2 evidence rules unless there's some indication to the
3 contrary.

10:05:34

THE COURT: He's not asking about what the
5 statement was. He's asking was there conversation. The
6 question was, "How was it that you went about
7 remembering to substantially change your testimony the
8 way you did?" And she can answer that without saying
9 what was said. She can answer it. Overruled.

10:06:40

MR. SCHMIDT: Q. Go ahead and answer.

10:06:41

A. No. I'm the one that told him that I was very
12 nervous that day, and I — there was some things that I
13 said that I wasn't — I was confused, so I would say —
14 I would say, no, on that one.

10:06:45

Q. Okay. So after a period of time, you read
16 through it and made those changes that you just went
17 through with Mr. Bissell, correct?

10:06:48

A. Yeah, when I went through it.

10:06:49

MR. SCHMIDT: Okay. No further questions.

10:06:50

THE COURT: All right. Anything else?

10:06:51

MR. BISSELL: I have nothing, your Honor.

10:06:52

THE COURT: Okay. May this witness be
23 excused?

10:06:54

MR. SCHMIDT: Yes, your Honor.

10:06:55

MR. BISSELL: Yes, your Honor.

1 help you remember things more clearly?

10:00:22

MR. BISSELL: Objection, your Honor. That's
3 barred by the spousal privilege.

10:00:34

THE COURT: Mr. —

10:00:35

MR. SCHMIDT: If he assisted her with
6 correcting her testimony, I think that that's relevant,
7 and I don't think that that's covered by it. I think
8 that this is — it impacts the veracity of her
9 testimony.

10:00:40

THE COURT: But could you find an exception to
11 the spousal privilege? Are you saying there's an
12 exception?

10:00:43

MR. SCHMIDT: That's my argument. I'm not
14 aware of for sure if that's an exception, your Honor.

10:00:45

THE COURT: And the question was, "Did you
16 speak to your husband in order to help you remember
17 things more clearly?" He's not asking what was said, so
18 I will allow that question. You may answer.

10:00:49

THE WITNESS: No.

10:00:50

MR. SCHMIDT: Q. How was it that you went
21 about remembering to substantively change your testimony
22 the way that you did?

10:00:53

MR. BISSELL: Your Honor, I again object.
24 This is just a back-door way of getting into it. The
25 Supreme Court was clear that statements between a

10:05:43

THE COURT: All right. You may be excused,
2 ma'am. Thank you.

10:06:53

THE WITNESS: Thank you.

10:07:04

MR. SCHMIDT: Plaintiffs call Brian Farley.

10:07:05

THE COURT: Brian Farley?

10:07:06

MR. SCHMIDT: Yes.

10:07:07

THE COURT: Mr. Farley, would you come forward
8 and be sworn.

10:07:10

BRIAN THOMAS FARLEY,
called as a witness herein,
having been duly sworn on oath,
testified as follows:

10:07:11

THE COURT: Sir, would you state your full
14 name and spell your last name, please.

10:07:15

THE WITNESS: Brian Thomas Farley, F, as in
16 Frank, A-R-L-E-Y.

10:07:17

THE COURT: Go ahead, Mr. Schmidt.

10:07:18

DIRECT EXAMINATION

10:07:19

MR. SCHMIDT: Q. Good morning, Mr. Farley. I
20 just want to jump right into the meat here. Is it your
21 testimony that the lower well was always used to
22 supplement the 3,000-gallon reservoir, or cistern, as we
23 sometimes call it?

10:07:24

A. I'm sorry, repeat that, please.

10:08:25

Q. Was the lower well always used to supplement

1 the 3,000-gallon reservoir on parcel I?

10:07:02

A. No.

10:07:13

Q. Okay. When did you drill the lower well?

10:07:14

A. 1999.

10:07:25

Q. Why?

10:07:26

A. Excuse me?

10:07:27

Q. Why did you drill the lower well?

10:07:28

A. To replace the upper well.

10:07:39

Q. Why did you need to replace the upper well?

10:07:40

A. The upper well had been damaged during

11 hydrofracturing.

10:07:42

Q. Why didn't you mention that it had been

13 damaged during hydrofracturing when I took your

14 deposition?

10:07:55

A. I couldn't say.

10:07:56

Q. After you drilled the lower well, did you run

17 a waterline up to your residence on parcel I?

10:07:58

A. Yeah. I ran a waterline up to the

19 3,000-gallon cistern.

10:07:59

Q. And then you used the lower well to supplement

21 your upper well in the cistern at that location from

22 1999 until you sold it to the Gideons, correct?

10:08:03

A. That is incorrect.

10:08:04

Q. And what's incorrect about that?

10:08:05

A. There was no supplementation. It was the sole

1 correct?

10:10:52

A. That's correct.

10:10:53

Q. And in your deposition, you testified that you wanted to use the lower well for stock water, correct?

10:11:05

A. Yes.

10:11:06

Q. And it was your testimony, why run and incur an electric bill pumping up to parcel I from the lower well, correct?

10:11:19

A. That was one reason, yes.

10:11:20

Q. So you didn't want to incur an electrical bill and you wanted to use it for stock water, correct?

10:11:22

A. Correct.

10:11:23

Q. And where were you using it for stock water?

10:11:24

A. On parcel T and parcel S.

10:11:25

Q. And where were you pulling it from to water stock on parcel T and parcel S?

10:11:27

A. From the lower well.

10:11:28

Q. Where was it being dispersed from the waterlines?

10:11:29

A. Well, there's a hydrant on T at a cross fence on one of my pastures and there's a hydrant.

10:11:32

Q. Is that hydrant between the lower well and the cistern?

10:11:34

A. That is correct.

10:11:35

Q. Okay.

1 source.

10:07:32

Q. Okay. Did you ever shut off the lower well from providing water to the 3,000-gallon cistern?

10:07:54

A. Yes.

10:07:55

Q. When?

10:07:56

A. 2017.

10:07:57

Q. And why did you turn the water off in 2017?

10:07:58

A. Various reasons. I no longer needed it.

10:07:59

Q. Why didn't you need it any longer?

10:08:00

A. Well, I had recommissioned the upper well.

10:08:01

THE COURT: I'm sorry, I didn't hear your

12 answer.

10:08:02

THE WITNESS: I recommissioned the upper well.

10:08:03

MR. SCHMIDT: Q. And who recommissioned the upper well for you?

10:08:04

A. I'm sorry, I'm having trouble hearing you.

10:08:05

Q. Who recommissioned the upper well for you?

10:08:06

A. Who recommissioned it? I did.

10:08:07

Q. In 2017?

10:08:08

A. Yes.

10:08:09

Q. Did Jody Barden do that work or did you do

22 that work?

10:08:10

A. North Idaho Pump are the ones that did some of

24 the work, yes.

10:08:11

Q. And that would be Jody Barden's company,

A. And there's a hydrant on S as well now.

10:12:04

Q. Is that the hydrant that your wife was just testifying about that comes from the cistern and then runs from the pipe under Derting Road and fills the trough?

10:12:16

A. I couldn't see the exhibits and there's several hydrants around the home and the barn, but it sounds like it was the same one.

10:12:29

Q. But it comes from the cistern and then goes under Derting Road to water parcel S, right?

10:12:31

A. That is correct.

10:12:32

Q. And it comes from the cistern?

10:12:33

A. Correct.

10:12:34

Q. Did you ever turn — first of all, how did you turn off the water from the lower well to the cistern?

10:12:35

A. Well, there's two methods: Turn off the breaker at the pump house next to the well, and there's a ball valve that was installed in 2017 at the inlet of the — what we called the cistern, and you can turn it off there also.

10:13:21

Q. How did you turn it off?

10:13:22

A. Both locations.

10:13:23

Q. So the water couldn't get into the cistern from the lower well when you turned it off, correct?

10:13:25

A. Turn the breaker off, the pump doesn't run no

10:1:13 Q. You never provided them with a copy of the
2 Amended CC&Rs that included the well share agreement
3 prior to closing, though, correct?

10:1:24 A. Myself, I did not.

10:1:25 Q. So in terms of whether or not they would have
6 agreed to what you included in those, you didn't know if
7 they agreed to that or not, correct?

10:1:38 A. Oh, I do know they agreed to it because I
9 discussed it with Mr. Gideon and Ms. Ellis. Let me
10 restate that. They never objected to the shared use of
11 the benefit of the lower well.

10:1:42 Q. So it's your testimony that — strike that.

10:2:43 So it's your testimony that you turned off a
14 ball valve outside of the cistern that allowed the lower
15 well water to run into it in 2017, correct?

10:2:46 A. Correct.

10:2:47 Q. Okay. Jody Barden testified that the upper
18 well also ran into the waterlines, and then went into
19 the well behind — or ahead of the ball valve. Do you
20 recall that testimony? So if you turned off —

10:2:51 A. I recall the testimony. What you stated is
22 not accurate.

10:2:53 MR. SCHMIDT: Okay. I'm going to ask you some
24 questions about responses to discovery. And if I may
25 approach, your Honor?

469

1 it? Wouldn't you agree?

10:23:32 A. A change to the system?

10:23:38 Q. You don't ever indicate that you installed a
4 valve at the cistern in 2017, do you?

10:23:45 A. That was all disclosed prior to closing just
6 after the offer was made and Jody Barden's invoices from
7 2017 that were provided to Patty Ellis from my realtor
8 Rob Eider. The ball valve appears on those invoices and
9 this document —

10:24:40 Q. You — okay.

10:24:41 A. I was unaware that that kind of minutia detail
12 was an issue.

10:24:43 Q. So you didn't indicate that you turned the
14 water off at the cistern in 2017 and you didn't indicate
15 that you turned the water back on prior to closing in
16 your response to interrogatory No. 15?

10:24:47 A. No, I did not.

10:24:48 Q. Correct?

10:24:49 A. No, I did not.

10:24:50 MR. SCHMIDT: May I approach? I want to ask
21 you some questions about a declaration that you filed in
22 this matter.

10:24:53 THE COURT: You may.

10:25:24 MR. SCHMIDT: Q. If you would turn to
25 paragraph 10, please, Mr. Farley.

471

10:2:31 THE COURT: You may.

10:2:42 MR. SCHMIDT: Q. I've handed you Plaintiffs'
3 Third Set of Discovery Requests with Supplemental
4 Responses, and I want you to turn to your response to
5 interrogatory No. 15. That's on page 10.

10:2:06 The Gideons asked in interrogatory 15, "Please
7 describe in detail all repairs, modifications, and/or
8 changes you or your agents made to the interconnected
9 well system between January 1, 2015, and June 7 of 2019;
10 is that accurate?"

10:2:41 A. Yes, I see that.

10:2:42 Q. And June 7 is the date of closing, correct?

10:2:43 A. Yes, it is.

10:2:44 Q. And you indicate in your response initially at
15 the top of page 11 that once or twice a year you would
16 replace the BVV switch. Did I read that accurately?

10:2:56 A. I'm going to page 11 now?

10:2:58 Q. Yep, at the top.

10:2:09 A. Yes, I see that.

10:2:20 Q. Where in your response to interrogatory No. 15
21 do you talk about the change you made to the water
22 system where you turned off the valve at the cistern?

10:2:23 A. I don't believe that — I don't believe that
24 appears here.

10:2:25 Q. That's a change to the system, though, isn't

470

10:25:11 A. Can I have a page number, please?

10:25:12 Q. Page 3. Now, you filed a declaration in
3 opposition to our motion for summary judgment in
4 November of 2020, correct?

10:25:35 A. I'm sorry, could you repeat that?

10:25:36 Q. Do you recall signing a declaration that was
7 filed on November 19, 2020, in this lawsuit?

10:25:48 A. Not specifically, but I'm sure I did.

10:25:49 Q. Okay. Well, let's — it's in the records of
10 the Court, so we'll just leave it at that.

10:26:01 And you testified in paragraph 10 that "In
12 January of 2018, in anticipation of selling parcel I, I
13 filed an amendment with the IDWR transferring the point
14 of use for the water from the lower well to parcel S and
15 T; in other words, at the time parcel I had no right to
16 the water from the lower well. Attached hereto as
17 Exhibit D is a true and correct copy of a printout from
18 the Idaho Department of Water Resources website showing
19 the amendment I filed. However, because I was the owner
20 of all the parcels and wells, I continued to supplement
21 my reservoir with water from the well on parcel V."

10:26:22 Did I read that accurately?

10:26:23 A. Yes, you did.

10:26:24 Q. Okay. So you filed an amendment with the IDWR
25 and took the water right from parcel I and attributed it

472

1 to parcel S and T, correct?

10:27:02 A. S and T already had the right and I amended
3 the right to parcel I, correct.

10:27:14 Q. But then you continued to supplement the
5 reservoir with water from the well on parcel V in
6 January of 2018, correct?

10:27:27 A. I misstated that. I continued to have the
8 right to supplement my reservoir with water from the
9 well on parcel V, or perhaps a scrivener's error.

10:27:40 Q. Sure. If you'd turn to paragraph 18 of the
11 same document on page 4. You testified, "On April 26th,
12 2019, I toured parcel I with the Gideons' realtor Patty
13 Ellis. During this tour, I informed her that parcel I
14 was serviced by the upper well and there was another
15 well on parcel V which would be included in the
16 transaction and designated as a shared well after Meckel
17 Engineering completed the boundary line adjustments and
18 the first Amended CC&Rs are recorded."

10:27:49 Did I read that accurately?

10:27:50 A. Yes, sir.

10:27:51 Q. So you represented that the — the rights to
22 water from the lower well were going to be included with
23 the transaction, correct?

10:27:54 A. I did not say that. That is not correct.
25 There were no — if we're — if — I guess you need to

10:30:11

10:30:12

10:30:13

10:30:14

10:30:27

10:30:54

10:30:57

10:30:58

10:31:09

10:31:21

10:31:24

10:31:25

THE WITNESS: I never stated —

THE COURT: Hold on. Hold on.

THE WITNESS: Oh, I'm sorry.

THE COURT: I need to continue, so I'm going
5 to overrule the objection. Now you may answer,
6 Mr. Farley.

THE WITNESS: Thank you, sir. I never stated
8 to Mr. Gideon he was getting one-half interest. I
9 simply told him that the shared well was included in the
10 transaction. There's no mention of any interest,
11 one-half or any fragment of that in the Amended CC&Rs.
12 It simply states priority shared use and benefit of the
13 lower well.

MR. SCHMIDT: Q. And again, you didn't
15 consult with my clients on the terms of any Amended
16 CC&Rs, correct?

A. Consult with them?

Q. Yeah.

A. I'm not understanding — I'm not sure what
20 you're asking.

Q. You just drafted up what you wanted the
22 agreement to be and recorded it without talking with
23 them about it, correct?

A. It was drafted when I met them.

Q. You didn't provide them with a copy, correct?

1 define the word "rights" for me, please.

10:28:02 Q. I guess. If we could turn to paragraph — or
3 if you could look at paragraph 21, please. You
4 testified, "On May 2, 2020, Mr. Gideon arrived for a
5 walk-through of parcel I with me. During this
6 walk-through, I told Mr. Gideon about the lower well and
7 my intent to include as part of the sale a priority
8 one-half interest in the lower well."

10:28:29 Did I read that accurately?

10:28:40 A. Yes.

10:28:41 Q. So Mr. Gideon was assuming at that point in
12 time that he was going to get, at a minimum, at least a
13 one-half priority right to the lower well, correct?

10:28:54 MR. BISSELL: Objection. Calls for
15 speculation.

10:28:56 THE COURT: Overruled.

10:28:57 THE WITNESS: Would you restate that, please?

10:28:58 MR. SCHMIDT: Q. So based on your
19 representation to Mr. Gideon, you would expect to
20 receive a one-half priority interest in the lower well
21 and the water, correct?

10:30:22 MR. BISSELL: Restate the objection. He's
23 asking for comment on Mr. Gideon's state of mind and
24 expectations.

10:30:25 THE COURT: No, he's asking you would expect.

10:31:18

10:31:24

10:31:25

10:31:26

10:31:28

10:31:30

10:31:38

10:31:39

10:31:41

10:31:42

10:31:43

10:31:44

10:31:56

10:31:58

10:31:59

10:32:00

10:32:01

10:32:02

10:32:03

10:32:04

10:32:05

10:32:06

10:32:07

10:32:08

10:32:09

A. I told Patty Ellis she could visit with
2 Mr. Meckel and Mr. Rasor about any of these issues any
3 time she wanted.

Q. Okay.

A. They have regular business hours.

Q. Would you agree that, as of the date of
7 closing, the lower well was annexed to the water system?

A. I'm sorry, annexed?

Q. Would you agree that, as of the date of
10 closing, the lower well was annexed to the water system?

A. No.

Q. It was a part of the water system, correct?

A. No, because I don't understand the question.

Q. Okay. Would you agree that, as of the date of
15 closing, the lower well was annexed to the water system?

A. I can't answer that because I don't understand
17 the definition of annex.

Q. Okay. Was it physically connected to the
19 water system?

A. Yes, it was.

Q. Was it a part of the larger system as of
22 closing that — at least a few days, maybe weeks before
23 closing, was it a part of the water system?

A. The lower well was connected to the cistern
25 since 1999, so that would be a yes.

10:31:21 Q. And since 1999, it had been connected then,
2 correct?
10:31:23 A. That's correct.
10:31:24 Q. Okay. And it was intended to be a part of the
5 water system to benefit the Gideons as of closing,
6 correct?
10:31:37 A. Yes.
10:31:38 Q. And it was physically attached to the water
9 system and the cistern, correct?
10:31:40 A. As it is today, yes.
10:31:41 Q. And you told my clients that it would be
12 connected to it prior to closing, correct?
10:31:43 A. Yes.
10:31:44 Q. And you drafted and recorded documents giving
15 them a right in the lower well and the water, correct?
10:31:46 A. I gave them the contractual right with the
17 shared use and benefit, but no water right.
10:31:48 Q. In order to use the lower well water on your
19 hydrant that goes down underneath Derting Road, it needs
20 to run through the cistern, correct?
10:31:51 A. Correct.
10:31:52 Q. So water from the lower well gets pumped into
23 the cistern, and if you go down below Derting Road to
24 turn on a hydrant, it comes from the cistern and runs
25 through – underneath the ground and then comes up on

10:35:21 A. That is correct.
10:35:22 Q. And so you're taking water from the upper well
3 that you have no right or interest in, correct? Part of
4 the water you're getting comes from the Gideons' cistern
5 and the Gideons' pumps that their electricity is paying,
6 correct?
10:35:47 A. And my water as well comes out of that
8 cistern, correct.
10:35:48 Q. You're talking about if you have an interest
10 in the lower well and the water rights?
10:35:51 A. If I have an interest in the lower well?
10:35:52 Q. Yes.
10:35:53 A. Yes, I have an interest in the lower well.
14 Yes.
10:35:55 Q. That's what we're litigating. So I wanted to
16 ask you some questions about –
10:36:07 THE COURT: Counsel, it's – we should take
18 time for a morning break at this time.
10:36:09 MR. SCHMIDT: Okay.
10:36:20 THE COURT: I don't know; how much time do you
21 have left?
10:36:22 MR. SCHMIDT: Probably an hour.
10:36:23 THE COURT: Yeah. So we should probably take
24 a break at this time.
10:36:25 MR. SCHMIDT: Okay.

1 the other side of Derting Road and provides water,
2 correct?
10:31:53 A. Correct.
10:31:54 Q. And have you always used water at that
5 location from the lower well?
10:31:56 A. I used water at that location from the upper
7 well from 1994 until 1999, and then from 1999 going
8 forward, I used – until 2017, I used the water from the
9 lower well all the way up the hill through the cistern
10 across the road to parcel S to that hydrant, and then
11 from 2017 to 2019, I used the water from the upper well
12 into the cistern to go to the hydrant across the road on
13 parcel S.
10:31:58 Q. So it's your testimony that, from 2017 to
15 shortly before closing, the water that you used on
16 parcel S that ran under the road, that that was
17 exclusively from the upper well; is that correct?
10:31:59 A. Yes. And to continue to this day – well,
19 until I abated in October of 2019, I continued to use
20 the water from the upper well – lower well through the
21 pipeline into the cistern through the pipe across the
22 road to parcel S to that hydrant.
10:32:03 Q. So you're using commingled water from the
24 lower well and the upper well at that hydrant location
25 on your parcel S?

10:36:19 THE COURT: All right. And we will do so.
10:36:22 (Recess.)
10:57:53 THE COURT: Back on the record in case number
4 CV28-20-2706. The Court notes the presence of counsel
5 and the parties. You may go ahead, Mr. Schmidt, with
6 the continued examination of Mr. Farley. Mr. Farley,
7 you're still under oath.
10:58:18 MR. SCHMIDT: Thank you. So my clients were
9 served with a complaint out in the waiting room this
10 morning before court, and I wanted to go over some –
11 it's Brian Farley versus Arthur Gideon and Katherine
12 Gideon. And I just – I wanted to ask a few questions
13 about the assertions in this complaint. If I may
14 approach?
10:58:45 THE COURT: You may.
10:58:46 MR. BISSELL: Your Honor, I don't know how
17 that's – I object on the basis of relevance.
10:58:48 THE COURT: What would that be, the relevance
19 here?
10:58:50 MR. SCHMIDT: It concerns water rights. It
21 concerns the lower well, the cistern, and the hydrant
22 that runs through my client's parcel to parcel T,
23 formerly parcel S, and it has allegations related to the
24 prior history of the lower well and its use by
25 Mr. Gideon.

11:17:11 A. Yes, sir.
 11:17:12 Q. And by that response, I take it that you're
 3 standing firm on your belief that my clients needed to
 4 contact your attorney and your surveyor to figure out
 5 what was going on? You were — you and Mr. Elder were
 6 not going to provide that, correct?

11:17:26 A. Well, I did provide Mr. Gideon a — my
 8 rendition of the boundary line adjustment when I met
 9 him. And with regards to the Amended CC&Rs, like I
 10 said, Mike Reagan had that.

11:17:51 Q. Those were never — no information from either
 12 of those two was ever provided to my client prior to
 13 closing, correct?

11:17:04 A. That's my understanding that Patty Ellis never
 15 did anything about that.

11:17:06 Q. Was my — was anything provided by you or your
 17 agent to my clients or their agent in writing that
 18 concerned those things?

11:17:19 A. I just said yes, there was.

11:17:20 Q. And what was that?

11:17:21 A. I handed Mr. Gideon my rendition of the
 22 boundary line adjustment, as I did every other potential
 23 buyer that came and toured my home.

11:17:24 Q. What was your rendition of the boundary line
 25 adjustment?

11:19:41 Q. Okay. Turn to Exhibit 28, please. This is
 2 your Notice of Claim to Water Right from — from 2009,
 3 correct?

11:20:14 A. Yes, it is.

11:20:15 Q. And that's your handwriting on it, correct?

11:20:16 A. That is me.

11:20:27 Q. And on the last page, that's your signature
 8 signing under penalty of perjury that what is contained
 9 in that document is true and accurate, correct?

11:20:40 A. Yes, it is.

11:20:41 Q. Looking at the bottom of Exhibit 28, first of
 12 all, to refresh our recollection, this Exhibit 28
 13 concerns the lower well, correct?

11:20:44 A. Yes, that is the water right for the lower
 15 well.

11:20:46 Q. And there at the very bottom in your
 17 handwritten shrift there, you say, "This well replaced
 18 two previous 700-foot wells that went dry," comma,
 19 "drilled" plus use in June 1994." Did I read that
 20 correctly?

11:21:21 A. I think it says "use began in June 1994."

11:21:22 Q. Okay. Other than that, did I read it
 23 correctly?

11:21:24 A. Yes.

11:21:25 Q. Okay. So when you drilled that well, you

11:17:31 A. Well, you had me mark it out on my deposition.
 2 You had me mark red line that was actually farther south
 3 than what I had drawn, and hatch it in for the area
 4 where he trespassed and incurred treble damages cutting
 5 my side of the hayfield.

11:17:46 Q. You didn't testify about providing anything,
 7 any rendition that you personally drew in your
 8 deposition, did you?

11:17:59 A. I can't recall. I haven't looked at this
 10 in —

11:17:01 Q. I want to talk about the well drilling
 12 history.

11:17:03 A. — since March of 2021.

11:17:04 Q. So you drilled all of the wells on parcels I,
 15 S, T, and V, correct?

11:17:16 A. There are no wells on T or S. I drilled three
 17 wells, two on I and one on V.

11:17:28 Q. So you drilled the first well on your
 19 residential property that went dry, correct?

11:17:20 A. In a matter of speaking, it was rendered
 21 unusable. It was never dry.

11:17:22 Q. And you drilled a second well on that same
 23 property that also went dry, correct?

11:17:24 A. That is not — I drilled the well, that part
 25 is correct, but you're asking two questions.

1 immediately decided to frack it to try and get more
 2 water production, correct?

11:21:43 THE COURT: Which well are we talking about?

11:21:44 MR. SCHMIDT: The lower well. We're talking
 5 about the well that is the subject of Exhibit 28.

11:21:46 THE WITNESS: No, that is not correct.

11:21:57 MR. SCHMIDT: Q. Okay. I'm sorry. Let's
 8 talk about the well that's on the residential parcel and
 9 Judge Christensen caught this. Regarding the second
 10 well that you drilled on your residential parcel, you
 11 immediately decided to frack it and try and get more
 12 water production, correct?

11:22:13 A. Mr. Schmidt, you have to be more clear.
 14 There's four residential parcels we've been discussing
 15 here. They're all residential parcels and two of them
 16 have wells on them, so which one are you speaking of?

11:22:24 Q. I'm speaking of the parcel that you sold to my
 18 clients, parcel I.

11:22:29 A. Okay. Please continue.

11:22:20 Q. So the second well that you drilled on parcel
 21 I, you immediately decided to frack it and try to get
 22 more water production, correct?

11:22:23 A. Yes, I did. There was — yes, there was a
 24 time — time lapse. It wasn't like the next day. It
 25 was —

11:2:48 Q. Okay. Wait until I ask a question before you
2 start answering.
11:2:53 A. Okay.
11:2:54 Q. You drilled a third well, then, the lower
5 well, down on parcel V, correct?
11:2:56 A. Yes, I did.
11:2:57 Q. Okay. And you ran it up to your residence to
8 add water to supply to the residence, correct?
11:2:59 A. Yes, it replaced the upper well.
11:2:60 Q. And --
11:2:61 A. That's correct.
11:2:62 Q. And you immediately fracked it --
11:2:63 A. Let me --
11:2:64 THE COURT: Let him finish his answer,
15 Counsel.
11:2:66 MR. SCHMIDT: Q. I asked if it was correct.
17 Is what you stated correct?
11:2:68 A. Which question?
11:2:69 Q. And you ran it up to your residence to add
20 water, correct?
11:2:71 A. Add water?
11:2:72 Q. Yes.
11:2:73 A. It was the sole source of water, yes.
11:2:74 Q. And you immediately fracked the lower well as
25 well, correct?

11:2:81 A. No, I did not. I freeze-fracked the lower
2 well, but it was not immediately.
11:2:83 Q. If you'll turn to Exhibit 29, please.
11:2:84 A. I'm there.
11:2:85 Q. Okay. Do you recognize Exhibit 29?
11:2:86 A. Yes, sir.
11:2:87 Q. Okay. And what is it?
11:2:88 A. This is an attachment to an email that I
9 recall sending to the Gideons on 9/11 of '19.
11:2:90 Q. Okay. And were you trying to determine the
11 amount that you were going to charge the Gideons for
12 their electrical usage to power the pump on the lower
13 well?
11:2:94 A. I was trying to instigate a conversation to
15 agree upon an amount of what that monthly fee would be
16 because we were three months into their ownership, and
17 they have yet to bring the issue up that they need to
18 pay for their portion of the power down there as
19 provided for in the Amended CC&Rs.
11:2:99 Q. Was that because they hadn't recognized that
21 what was going on; do you know?
11:2:102 A. I just assume --
11:2:103 MR. BISSELL: Objection. Calls for
24 speculation -- I withdraw it.
11:2:105 THE WITNESS: I could only assume that they

1 had not read their closing package.
11:25:32 MR. SCHMIDT: Q. So in order to arrive at
3 that \$56 per-month figure, how did you determine you
4 would calculate that?

11:25:45 A. Well, it wouldn't have been fair to charge
6 them for the Conex box that I actually set there in 2017
7 because I began moving my contents of my barn and my
8 garage to the Conex box in July of 2017. And I had -- I
9 think at the time I had three freezers that had been
10 relocated from the barn to the Conex box, so would not
11 have been fair to charge them for that.

11:26:12 And prior to that use, really the only use of
13 the power was to run the 5-gallon-minute pump in the
14 well -- the lower well. There was other incidental use
15 too, but that was pretty much it.

11:26:16 Q. When did you place the Conex box there?

11:26:17 A. In 2017.

11:26:18 Q. Okay. So is it correct that you -- that to
19 arrive at that figure, you took months when the only use
20 of power was the well pump pumping up to the cistern?

11:27:21 A. That's what I tried to depict with my
22 attachments of Kootenai Electric, this documentation
23 that there was -- there was a difference.

11:27:24 Q. So those electrical bills should reflect when
25 the lower well pump was actually pumping up to the

1 cistern, correct? Without looking at those documents,
2 is that what you intended to show them?

11:27:43 A. I'm not supposed to look at the documents?

11:27:44 Q. I want you to testify from your memory before
5 you start looking at what your documents are.

11:27:50 MR. BISSELL: Your Honor, I object to the
7 question. The witness is trying to give him an answer.
8 He's got to give him an opportunity to give him one.

11:27:59 THE COURT: Well, the witness is looking at
10 some documents, and he's not to look at the documents.
11 He's just to answer the question if he can.

11:28:02 MR. SCHMIDT: Q. Please answer the question
13 from your own recollection, sir, without looking at the
14 documents, please.

11:28:15 THE WITNESS: So am I not to look at the
16 documents, your Honor?

11:28:17 THE COURT: You are not right now.

11:28:18 THE WITNESS: I'm sorry. You have to restate
19 the question.

11:28:20 MR. SCHMIDT: Q. So to arrive at that figure,
21 you took months when the only use of power was the well
22 pump pumping up to the cistern, correct?

11:28:23 A. That was my intent.

11:28:24 Q. And so the documents that you provided to the
25 Gideons should reflect time periods when the lower well

1 source of water for parcel I.

02:12:52 Q. Okay. How difficult is it to turn it on and
3 off, the ball valve?

02:13:04 A. You just turn it off and on like a faucet on a
5 kitchen sink.

02:13:06 Q. Okay. And so after you turned off the ball
7 valve, what was the source of the water for the house at
8 that point?

02:13:19 A. The upper well and also for parcel S.

02:13:30 Q. Now, eventually, did you pay North Idaho Pump
11 for the work?

02:13:42 A. Yes, I did.

02:13:43 Q. And how did you do that?

02:13:44 A. Jody said it was – for him it was a large
15 invoice and he said that he would give me a discount for
16 cash, and I walked in and I counted out the
17 hundred-dollar bills in his office.

02:13:48 Q. Okay. And did you ask him to give anything to
19 document the well test?

02:13:50 A. Yeah, they had never provided –

02:13:51 Q. Did you ask him to give anything?

02:13:52 A. Yes.

02:13:53 Q. Okay.

02:13:54 A. Sorry.

02:13:55 Q. Take a look at Exhibit 54, please. Okay. And

02:16:21 A. No.

02:16:22 Q. Was there ever a time – well, let me ask it
3 this way, first of all. So between 1994 and 1999, the
4 water for parcel I was from where?

02:16:35 A. The upper well only.

02:16:46 Q. During that period of time, did you ever have
7 a time when you did not have water sufficient for your
8 needs?

02:16:49 A. No.

02:16:40 Q. Between 1999 and 2017, what was the source of
11 water for the home on parcel I?

02:16:52 A. The lower well only.

02:16:53 Q. And at any time did you ever have – did you
14 not have sufficient water for your needs?

02:17:05 A. No.

02:17:06 Q. And between 2017 and closing, did you ever
17 have a time when you did not have sufficient water for
18 your needs?

02:17:19 A. No.

02:17:20 Q. And during the time that the ball valve was
21 closed, so I'm talking – so this would be after July
22 2017, were you using the water from the lower well
23 anywhere for any purpose?

02:17:24 A. Yes.

02:17:25 MR. BISSELL: I'm just about to a good stop

1 do you recognize that?

02:17:52 A. Yes, sir.

02:17:53 Q. Okay. And is that the letter Jody gave you?

02:17:54 A. That is my well test report from Mr. Barden.

02:17:55 Q. And did you tell him what to say?

02:17:56 A. No.

02:17:57 Q. Did you ever have another well test done?

02:17:58 A. No.

02:17:59 Q. After turning off the ball valve, did you ever
10 allow the lower well to feed into the cistern again?

02:18:01 A. At one point I had a – I had a BW blowout, I
12 think in 2018, and in order to properly troubleshoot the
13 system and run the well, I took a shovel and lifted the
14 sod off the lid and opened the lid and turned the valve
15 back on.

02:18:06 Q. And how long was that on for then?

02:18:07 A. Oh, I don't know, a day, couple days.

02:18:08 Q. Okay.

02:18:09 A. Until the issue was resolved.

02:18:10 Q. So during that time, I don't know if I asked
21 you this already, but I guess I'll ask you again. After
22 you closed the ball valve from the lower well in 2017,
23 what was the source of water for parcel I?

02:18:24 A. The upper well.

02:18:25 Q. Okay. Was there any other source?

1 here and I'd like to bring in the other witnesses that
2 are here if I could?

02:17:53 THE COURT: Are you about there or are you
4 there?

02:17:55 MR. BISSELL: No, I'm just about there.

02:18:06 THE COURT: Okay.

02:18:07 MR. BISSELL: Okay. I'm not done. It's just
8 a good breaking spot.

02:18:09 THE COURT: I understand.

02:18:10 MR. BISSELL: Actually, I'm there. Yeah. Can
11 I bring in the...

02:18:12 THE COURT: Mr. Farley, if you would step off
13 the stand at this time and bring in the other witnesses.

02:18:14 THE WITNESS: Sure.

02:18:15 THE COURT: Who is your next witness?

02:18:16 MR. BISSELL: Mr. Cohen.

02:18:17 THE COURT: Cohen?

02:18:18 MR. BISSELL: Yes, C-O-H-E-N.

02:19:09 THE COURT: Mr. Cohen, would you come forward
20 and be sworn.

02:19:21 ROGER DAVID COHEN,

02:19:22 called as a witness herein,

02:19:23 having been duly sworn on oath,

02:19:24 testified as follows:

02:19:25 THE COURT: Sir, would you have a seat right

03:51:51

03:51:51

03:51:51

03:51:51

03:51:51

03:51:51

KERI J. VEARE, IDAHO CSR 675, CRR
PO BOX 9000
COEUR D'ALENE, IDAHO 83816-9000
kveare@kcgov.us

03:51:51

03:51:51

03:51:51

03:51:51

03:51:51

03:51:51

03:51:51

03:51:51

03:51:51

03:51:51

03:51:51

03:51:51

03:51:51

TO: Kootenai County Clerk

ARTHUR V. GIDEON and KATHERINE M.)
GIDEON, husband and wife,)

Plaintiff,)

vs.)

Case No. CV28-20-2706

BRIAN T. FARLEY and PAMELA FARLEY,)
husband and wife,)

Defendant.)

03:51:51

03:51:51

03:51:51

NOTICE OF TRANSCRIPT LODGED

Notice is hereby given that on June 11, 2022, I
e-filed an Original Transcript entitled "COURT TRIAL," held
June 6, 2022, to June 9, 2022, totaling 748 pages, for the
above-referenced matter with the clerk.

03:51:51

03:51:51

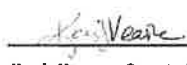
03:51:51

A Certified Copy has been emailed to:
LUKINS & ANNIS, P.S.
Campbell & Bissell

03:51:51

03:51:51

03:51:51


Keri Veare, Court Reporter/Transcriber

03:51:51

03:51:51

03:51:51

cc: Counsel of Record, via email

EXHIBIT C

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 COEUR D'ALENE-SPOKANE RIVER
BASIN WATER SYSTEM

CIVIL CASE NUMBER: 49576

Claim ID: 95-16445

Date Received: _____

Receipt No: NO21358

Claim Fee: _____ By: _____

RECEIVED

JAN 25 2018

IDWR/NORTH

Please type or print clearly

Amended
NOTICE OF CLAIM TO A WATER RIGHT

ACQUIRED UNDER STATE LAW

For Domestic and/or Stockwater Purposes

Where Daily Use is less than 13,000 gallons per day

1. Name of claimant(s) BRIAN T FARLEY Phone (208) 772-1822
Mailing address PO BOX 1836 HAYDEN LAKE ID Zip 83835
Street or Box City State
Email address (optional) _____
2. Date of priority: (Only one per claim) 3/31/1999 (Explain priority date selected in Remarks)
Month/Day/Year (YYYY)
3. Source of water supply (Check one) Ground Water (✓) or Other () (a) _____
which is tributary to (b) _____
4. Location of point of diversion is: Township 52N, Range 03W, Section 9,
SE 1/4 of SW 1/4, or Govt. Lot _____ BM, County of KOOTENAI;
Parcel no. 52N03W097100
Additional points of diversion, if any: _____
If available, GPS coordinates: _____
5. Description of diverting works (wells, pumps, spring boxes, pipelines, etc.) including the dates of any changes or enlargements in use, the dimensions of the diversion works as constructed and as enlarged and the depth of each well.
PIPED TO WATER TROUGH
6. Water is claimed for the following: (limited to domestic and/or stockwater uses - see page 1 of the instructions)
For STOCKWATER purposes from 01/01 to 12/31 amount 0.02 cfs (✓) or AFY ()
For _____ purposes from _____ to _____ amount _____
7. Total quantity claimed 0.02 cfs (✓) or AFY ()
8. Non-irrigation uses. Describe fully. (Domestic: give number of homes; Stockwater: list number and kind)
STOCKWATER FOR 12 MIXED STOCK

9. Location of place of use is: Township 52N, Range 03W, Section 9,
NE 1/4 of SW 1/4, Govt. Lot _____ BM, Parcel no. KOOTENAI

If different than shown in Item 4

for (check one) Domestic () Stock (✓) Domestic and Stock ()

Additional places of use, if any _____

10. In which county(ies) are lands listed above as place of use located? KOOTENAI

11. Do you own the property listed above as place of use? Yes (✓) No ()

If the answer is No, describe in Remarks below the authority you have to claim this water right.

12. Describe any other water rights used at the same place and for the same purposes as described above.

_____ or None (✓)

13. Remarks (include an explanation of the priority date selected):

14. Basis of claim (check one) Beneficial Use (✓) Posted Notice () License () Permit () Decree ()

Court _____ Decree Date _____ Plaintiff v. Defendant _____

If applicable provide IDWR Water Right Number _____

15. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notices in the Coeur d'Alene-Spokane River Basin Water System Adjudication."

(b.) I/We do () do not (✓) wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Individuals: I/We do solemnly swear or affirm under penalty of perjury that the statements contained in the foregoing document are true and correct.

Signature of Claimant (s) [Signature] Date: 012519

Date: _____

For Organizations: I do solemnly swear or affirm under penalty of perjury that I am, and that I have signed the foregoing document in the space below as the

_____ of _____
Agent's title (Please print) Name of organization (Please print)

and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent _____ Date _____

Printed Name of Authorized Agent _____

16. Notice of Appearance:

Notice is hereby given that I, (please print) _____, will be acting as attorney at law of behalf on the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below.

Signature _____ Date _____

Address _____

Name of claimant(s) BRIAN T FARLEY Claim ID _____

MEMORANDUM

Date: March 15, 2021

From: Craig L Saxton

RE: Date Received Stamp on AMENDED NOTIC OF CLAIM 95-16445

It was brought to IDWR's attention that the date stamp on the AMENDED NOTICE OF CLAIM 95-16445 was in error. The date stamp on the amended claim indicated that the claim was received on 1/25/2018. However, all other information, indicated that the claim was actually received on 1/25/2019.

After looking into it, I was able to confirm to my satisfaction that the date stamp indicating that the claim was received in 2018 was in error.

When searching the document in IDWR's document management system, PCDocs, we can see that the claim was profiled into the document management system on 1/25/2019 by Kalla Savage. Ms. Savage was a Water Resource Agent working out of the Northern Region office of IDWR at the time. In addition, the claim was signed on 1/25/2019.

Based on this evidence, I updated the date stamp on the amended claim by crossing through "2018" and writing in "2019", in red ink. Then adding my initials and today's date:

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE COEUR D'ALENE-SPOKANE RIVER
BASIN WATER SYSTEM

CIVIL CASE NUMBER: 49576

Claim ID: 95-16445

Date Received:

Receipt No: No21358

Claim Fee: By:

RECEIVED

Amended
NOTICE OF CLAIM TO A WATER RIGHT

JAN 25 2018

2019 (45 3-15-2021)
IDWR/NORTH

ACQUIRED UNDER STATE LAW
For Domestic and/or Stockwater Purposes
Where Daily Use is less than 13,000 gallons per day

Please type or print clearly

PCDocs search results as of 3/15/2019:

ension > WATERRIGHTS > Quick Searches > 95,16445

Options View

Doc #	Document Name	Application	Author Name	Document Date	Created
867908	AMENDED NOTICE OF CLAIM 95-16445	ACROBAT	Kella Savage	1/25/2019	1/25/2019
867941	NOTICE OF ERROR REPLY LETTER	ACROBAT	Kella Savage	1/28/2019	1/28/2019
936042	MOTION TO FILE LATE OBJECTION	ACROBAT	Lori Harris	7/23/2020	8/3/2020
936043	SF1 OBJECTION	ACROBAT	Lori Harris	8/8/2020	8/3/2020
936044	ORDER SETTING HEARING	ACROBAT	Lori Harris	7/23/2020	8/3/2020
938649	SF2 RESPONSE TO OBJECTION	ACROBAT	Lori Harris	9/1/2020	9/3/2020
938650	BRYAN FARLEY'S RESPONSE TO MOTION TO ...	ACROBAT	Lori Harris	9/1/2020	9/3/2020
942680	ORDER STAYING LITIGATION	ACROBAT	Lori Harris	10/15/2020	10/19/2020
938244	NOTICE OF APPEARANCE	ACROBAT	Saxton, Craig	8/25/2020	8/27/2020
821804	95-16445 NOTICE OF CLAIM	ACROBAT	Water Rights Security	7/13/2009	10/17/2017
821805	DATE OF PRIORITY LETTER	ACROBAT	Water Rights Security	4/20/2012	10/17/2017
841402	COVER LTR W/NOTICE OF ERROR	ACROBAT	Water Rights Security		5/16/2018
841406	NOTICE OF ERROR	ACROBAT	Water Rights Security		5/16/2018
841884	CHANGE OF OWNERSHIP LETTER	ACROBAT	Water Rights Security	5/21/2018	5/21/2018
845913	OWNERSHIP CHANGE	ACROBAT	Water Rights Security	5/31/2018	6/22/2018
849102	EMAIL CORRESPONDENCE	ACROBAT	Water Rights Security	7/14/2018	8/3/2018

* = Required

* Document Name: AMENDED NOTICE OF CLAIM 95-16445 # 867908

* Profile Author: KSAVAGE ... Kella Savage

Document Author: FARLEY

Document Date: 1/25/2019 Created: 1/25/2019 Kella Savage

Received Date: 1/25/2019

* Function ID: WTR-AJ ... Adjudications

* Process ID: AJGEN ... Adjudication General

Topic: ...

* Document Type: NIA ... Northern Idaho Adjudication

* Record Series: WRGT-AJ ... Water Rights AJ

SRBA Basin/Wide #: ...

Water Right ID: ...

* WR Basin #: 95 ...

* Seq/Suffix #: 16445 ...

Transfer ID: ...

Transfer #: ...

Basin #: ...

Old Transfer #: ...

Basin PL: ...

Description: ...

Application: ACROBAT ... Adobe Acrobat

< > Profile Preview Viewer Versions Where Used Related Contents

EXHIBIT D

RECEIVED

JUL 27 2020

DEPARTMENT OF
WATER RESOURCES

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

Case No. 49576

A. Subcase 95-16445

(Insert water right number)

STANDARD FORM 1
OBJECTION

Please print or type the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Arthur V. Gideon and Katherine M. Gideon

Address: 23452 N. Derting Road

Hayden Idaho 83835-7883

Daytime Phone: 509-521-6069

Name & Address of Attorney, if any:

Michael G. Schmidt

Lukins & Annis, P.S.

601 E. Front Ave., Ste. 303

Coeur d'Alene Idaho 83814

C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: Brian T. Farley

Address: P.O. Box 1836

Hayden Lake, Idaho 83835-1836

D. I object to the following elements or general provision as recommended in the Director's Report. (Please check the appropriate box(es)).

1. ☒ **Name and Address**
Should be: Arthur V. Gideon and Katherine M. Gideon
2. ☐ **Source**
Should be: _____
3. ☐ **Quantity**
Should be: _____
4. ☐ **Priority Date**
Should be: _____
5. ☐ **Point of Diversion**
Should be: _____
6. ☐ **Instream Flow Beginning and Ending Point**
Should be: _____
7. ☒ **Purpose(s) of Use**
Should be: Stockwater and Domestic
8. ☐ **Period of Year**
Should be: _____
9. ☒ **Place of Use**
Should be: T52N R03W S09 SENW
Place of Use Parcel No.: 52N03W094700
10. ☐ **General Provision** ☐ Individual Water Right ☐ All Water Rights
☐ Should not be recommended.

☐ This general provision was not recommended but should be recommended as described below.
Should be: _____

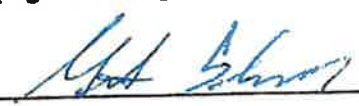
☐ General provision was recommended but should be modified as described below.
Should be: _____

11. ☐ I object because the recommendation contains an accomplished transfer under Idaho Code § 42-1425 resulting in injury to my water right(s) and/or enlargement of the original right.
12. ☐ I object because:
- ☐ This water right should not exist.
- ☐ This water right was not recommended, but should be recommended with the elements described above.

E. REASONS SUPPORTING OBJECTION(S): _____

- (1) Mr. Farley is not entitled to water right no. 95-16445. The Gideons purchased parcel no. 52N03W094700 from Mr. Farley on or about June 7, 2019. Mr. Farley represented to the Gideons that the well associated water right no. 95-16445 was for the exclusive use and benefit of the parcel they purchased from him. Thus, water no. 95-16445 belongs to the Gideons. The Gideons object to Mr. Farley's continued claim to or use of this water right.
- (2) Water right no. 95-16445 has historically provided and presently provides domestic and stockwater to parcel no. 52N03W094700. This historical and present use is not reflected in the director's report.
- (3) Mr. and Mrs. Gideon object to the explanatory material identifying the place of use as parcel no. 52N03W097100. The place of use should be parcel no. 52N03W094700 and the use should include both domestic and stockwater.

(Signature of person filing objection)


(Attorney signing in representative capacity)

INSTRUCTIONS FOR MAILING

You must mail the Objection, to the Clerk of the court. FAX filings will not be accepted. You must also send a copy to all the parties listed below in the Certificate of Mailing.

F. CERTIFICATE OF MAILING

I certify that on July 20, 2020, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to: Clerk of the District Court
Coeur d'Alene-Spokane River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

Name: Brian T. Farley
Address: P.O. Box 1838
Hayden Lake, ID 83835-1838

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

United States Department of Justice
Environment & Nat'l Resources Div
550 W Fort Street, MSC 033
Boise, ID 83724

Chief, Natural Resources Division
Office of Attorney General
State of Idaho
PO Box 83720
Boise, ID 83720-0010


Signature of Objector or attorney
mailing on Objector's behalf

EXHIBIT E

MICHAEL G. SCHMIDT, ISB# 6911
LUKINS & ANNIS, P.S.
601 E. Front Ave., Ste. 303
Coeur d'Alene, Idaho 83814
Telephone: (208) 667-0517
Fax: (208) 664-4125
mschmidt@lukins.com
schristman@lukins.com

RECEIVED

OCT 19 2020

DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - CSRBA Fifth Judicial District County of Twin Falls - State of Idaho	
OCT 15 2020	
By _____	Clerk
_____	Deputy Clerk

Attorneys for Arthur and Katherine Gideon

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

In Re CSRBA

Case No. 49576

ORDER STAYING LITIGATION

Subcase No. 95-16445

THIS MATTER having come before the Court upon Arthur Gideon and Katherine Gideon's Motion to File Late Objection, which was heard by the Court at 9:00 a.m. P.T. on September 8, 2020. The Gideons were represented by attorney Michael Schmidt, the IDWR was represented by Craig Saxton, Jennifer Wendel, and Evan Roda, and Brian Farley was represented by attorney Sarah Higer.

For the reasons set forth in the hearing, the Motion is hereby granted. Further, based upon the agreement reached at said hearing, Subcase No. 95-16445 is stayed pending resolution of a related underlying lawsuit between Arthur and Katherine Gideon and Brian Farley in Kootenai County Case No. CV28-20-2706 ("Underlying Lawsuit"). The parties are ordered to update this Court when the Underlying Lawsuit is resolved.

The parties stipulated to the elements of water rights, Subcase No. 95-17752, and the Special Master's Report for Water Right 95-17752 was filed with this Court on October 13, 2020.

IT IS HEREBY ORDERED:

That Subcase No. 95-16445 is stayed pending resolution of the Underlying Lawsuit.


Special Master
Coeur d'Alene-Spokane River Adjudication

CLERK'S CERTIFICATE OF MAILING

I certify that a true and correct copy of this Order was mailed on Oct. 15, 2020
2020, with sufficient first-class postage to the following:

BRIAN T. FARLEY
PO BOX 1836
HAYDEN LAKE, ID 83835-1836
Phone: 208-772-1822

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

ARTHUR V. GIDEON
KATHERINE M. GIDEON
23452 N. DERTING RD.
HAYDEN LAKE, ID 83835-7883
Phone: 509-521-6069

MICHAEL G. SCHMIDT
LUKIND & ANNIS, P.S.
601 E. FRONT AVE. STE. 303
COEUR D'ALENE, ID 83814
Phone: 208-667-0517

SARAH W. HIGER
TRAVIS L. THOMPSON
BARKER ROSHOLT & SIMPSON, LLP
PO BOX 485
TWIN FALLS, ID 83303-485
Phone: 208-733-0700


Deputy Clerk

EXHIBIT F

Filed: 10/21/2022 14:48:25
First Judicial District, Kootenai County
Jim Brannon, Clerk of the Court
By: Deputy Clerk - Booth, Kathy

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

**ARTHUR V. GIDEON and KATHERINE
M. GIDEON, husband and wife,**

Plaintiffs,

v.

**BRIAN T. FARLEY and PAMELA
FARLEY, husband and wife,**

Defendants.

Case No. CV28-20-2706

**MEMORANDUM
DECISION AND ORDER
RE: BENCH TRIAL**

**BRIAN T. FARLEY and PAMELA
FARLEY, husband and wife,**

Counterclaimants,

v.

**ARTHUR V. GIDEON and KATHERINE
M. GIDEON, husband and wife,**

Counter Defendants.

//

//

I. INTRODUCTION

This case is about a rural residential real property transaction gone sour. This case came before the Court for trial June 6th-9th, 2022. Plaintiffs brought a passel of claims that included the following:

1. Violation of Idaho's Property Condition Disclosure Act;
2. Fraud by misrepresentation;
3. Fraud by omission/non-disclosure;
4. Breach of contract and the covenant of good-faith and fair dealing;
5. Quiet title;
6. Implied easement/easement by necessity;
7. Declaratory relief;
8. Violation of the Idaho Consumer Protection Act; and
9. Attorney fees.

Defendant, Brian T. Farley, originally filed counterclaims for trespass, damage to property, and nuisance. However, at trial, counsel for Farley informed the Court that Farley was no longer pursuing such counterclaims. The Court considers such counterclaims withdrawn as of June 6th, 2022.

II. FINDINGS OF FACT.

1. The Gideons purchased an approximate 10 acre parcel of land (hereinafter "the Property"), located at 23452 Derting Road, Hayden, ID, from Brian Farley. The Property was one of 4 contiguous parcels owned by Farley and his wife, Pam. However, in 2016, Pam quitclaimed her interest in the Property and all the other parcels owned by Farleys to her husband.

2. The Property parcel was known as "Parcel I." Lying immediately to the south of the Property are Parcels S and T. South of Parcel T is Parcel V.

3. Farley constructed a residence on the Property in 1994.

4. Farley drilled two different wells on the Property in 1994. The first well did not produce, so a second well was drilled which became known as "the Upper Well." This well pumped into a 3000-gallon cistern. Farley came to believe this Upper Well was, or could become, unreliable and decided to drill another well approximately 1800 feet from his residence on Parcel V. This well became known as the "Lower Well" and was connected to the cistern at his residence by underground water lines through Parcels V and T and onto Parcel I. Farley had a standpipe/hydrant emanating from the water lines on Parcel T for the purpose of stock watering and irrigating a small food plot.

5. In 2009, Farley claimed a water right for domestic, stockwater, and irrigation purposes with the Lower Well as the point of diversion for Parcels I, S, and T. Farley later amends this claim of water right in 2019, changing the point of use to just Parcels S and T.

6. In 2017, Farley recommissions the Upper Well. He then installs a valve leading from the Lower Well to the cistern and shuts off the supply of the Lower Well to the cistern. At this time, only the Upper Well is providing water to the cistern for the residence located on Parcel I.

7. In April 2018, Farley contacts a real estate agent (Rob Elder) to begin the process of selling the residence and property known as Parcel I. In so doing, Farley fills out the RE-25 Seller's Property Condition Disclosure Form ("Seller's Form"). Farley enters the following on the water supply section of the Seller's Form:

WATER SOURCE & TYPE SECTION	Public System (Municipal/County)	Community System	Private System (Well, Cistern, etc.)	Other/Unknown
Drainage Water Provided By:			X	WELL
Landscape Water Provided By:			X	3500 GAL BURIED
Irrigation Water Provided By:			X	CANOE RESERVOIR
	Yes	No	Do Not Know	Other/Unknown
Shared Well		X		
Shared Well Agreement		X		

8. In the "Other Disclosure Section" of the Seller's Form, Farley sets forth the following:

OTHER DISCLOSURES SECTION	Yes	No	Do Not Know	Comments
Are there any conditions that may affect your ability to clear title such as encroachments, easements, zoning violations, lot line disputes, restrictive covenants, etc.?		X		
Has the property been conveyed since you owned it?		X		

9. The Seller's Form is signed and dated by Farley on April 20, 2018.

10. In June 2018, Farley engaged the services of a surveyor, Mr. Scott Rasor, to make boundary line adjustments to Parcels I, S, and T. Mr. Rasor had a preliminary record of survey performed by September 26, 2018. *See Exhibit T.* A final record of survey of this boundary line adjustment was recorded June 4, 2019. *See Exhibit Z.*

11. On April 27, 2019, Gideons made a written offer to purchase the Property in the amount of \$895,000, subject to inspection and other terms and conditions as contained in the RE-21 Real Estate Purchase and Sale Agreement (REPSA). Said offer was accepted by Farley, with conditions, on April 29th. Gideons signed the RE-11 Addendum to the REPSA on May 3, 2019.

12. On May 3, 2019, Arthur Gideon met with Farley and Gideons' real estate agent, Patty Ellis, at the Property to inspect the same. During this inspection visit Mr. Farley informed Mr. Gideon that the Property was served by two wells, the Upper Well and the Lower Well.

13. At the May 3, 2019 inspection meeting, Mr. Gideon was informed as to where the lot lines were located. However, Mr. Gideon did not take the time to walk the corners of the Property.

14. Mr. Gideon informed Mr. Farley that the south edge of the Property as shown in the original listing was not acceptable to the Gideons as it cut-off ½ of a pasture area, the whole of which extended down to Derting Rd. Farley replied that a boundary adjustment line would occur to include additional land that was marked by survey stakes placed by the surveyor, Scott Rasor.

15. Mr. Gideon testified that he could not see the stakes because the grass was three feet high at the time. Farley testified that during early May the grass is generally 4-6" high. Mr. Farley's rendition of grass height in early May in Kootenai County is more credible than Mr. Gideon's.

16. The Gideons' real estate agent, Patty Ellis, requested an aerial photo of the adjusted boundary line from Mr. Farley's real estate agent, Rob Elder. Elder provided a photo of the area demarcated by silver, brown, and orange lines. It was sent via email with the statement, "unofficial but very close." *See Exhibit 13.*

17. The Gideons did not have the Property surveyed.

18. The REPSA set forth that the Gideons reserved the right to conduct a "Domestic Well Water Potability and/or Productivity Test which shall be completed and notice provided within 10 business days ... from acceptance." *Exhibit 4, ¶ 10(2).* The Gideons did not avail themselves of the same.

19. Mr. Farley turned the water on from the Lower Well to the cistern sometime after the Gideons entered into the REPSA but before closing. The Property was now being served by both the Lower and Upper Wells.

20. Prior to the parties entering into the REPSA, Mr. Farley engaged the services of a local attorney, Mike Reagan, to draft an amended set of CC&Rs that affected the Property. *See Exhibit 19.* These amended CC&Rs were finalized and recorded on Mr. Farley's behalf on May 31st, only 6 days prior to when closing was to occur. The Gideons were not informed of these amended CC&Rs prior to closing.

21. At the initial closing date on June 6th, 2019, the Gideons found the documents showing the Property lines did not properly show any adjustment to the Property boundaries. At that time the closing was put on hold. The next day (June 7th), the Gideons came to the title company office to sign the closing documents and did so. Subsequently, Mr. Farley came in to sign, but prior to doing so, he informed the title officer in charge of the closing, Mary Spridgeon, that the closing documents did not include the amended CC&Rs. Ms. Spridgeon then called Mr. Gideon and asked if the Gideons still wished to move forward with the closing. Mr. Gideon indicated they would. Mr. Gideon stated to Ms. Spridgeon that she should have Mr. Farley deliver the amended CC&Rs to the Gideons.

22. Mr. Farley did not present the Gideons with a copy of the amended CC&Rs until late July or early August 2019, well after the closing date. The amended CC&Rs affected the Property in various ways such as by setting forth a shared well and cistern for the Property (the Upper and Lower Wells); creating a drainfield easement; and reserved easements to benefit Farley's other parcels.

23. In the early stages of this litigation, Gideons filed a motion for partial summary judgment seeking to void the amended CC&Rs as they applied to the Property. For the reasons set forth in this Court's prior Memorandum Decision and Order Re: Plaintiffs' Motion for Partial Summary Judgment, filed 01/20/21, the amended CC&Rs were voided as the Property.

III. ANALYSIS OF PLAINTIFFS' CLAIMS

A. Liability of Pamela Farley

This suit was brought against both Brian Farley and Pamela Farley, husband and wife. However, the evidence shows that Pamela Farley had quitclaimed her interest in the Property well before the sale to the Gideons (2016). Plaintiffs' presented no evidence that Pamela Farley made any representation during the time of the parties' negotiations for the sale of the Property or after the transaction for the sale of the Property closed. Accordingly, Pamela Farley bears no liability in this matter and is dismissed from this action.

B. Idaho Property Condition Disclosure Act Claim

The Idaho Property Condition Disclosure Act, I.C. § 55-2501, *et. seq.*, requires sellers of residential property to make certain mandatory disclosures. Farley filled out an original RE 25 Seller's Disclosure Form and signed the same on April 20, 2018. *Exhibit 1*. Subsequently, Farley's real estate agent, Rob Elder, updated the same in November by overwriting the "4" (for April) to make it look like an "11." Farley did not re-sign the form. No other representations on the form were changed. Gideons relied on the latter form in purchasing the Property (*Exhibit 3*). The Act requires that "[e]ach disclosure required in this chapter and each act which may be performed in making the disclosure shall be made in good faith. ..., [G]ood faith means honesty in fact, in the conduct of the transaction." I.C. § 55-2516.

The points of contention with the Seller's Disclosure Form lies in two specific areas, the issue of the well and water supply, and the issue surrounding the survey and property boundaries.

1. Wells and Water Supply

As set forth above, Farley marked boxes in the "Water Source and Type Section" that indicated the water supply for the residence was supplied by a "Private System (Well, Cistern,

etc.).” Gideons take issue with the term “private.” Presumably, they interpret “private” as something solely within the control of one household. However, when looking at the other choices to mark on the Seller’s Disclosure Form, that being “Public System” or “Community System,” the choice of “private system” appears to be the most appropriate. The Court does not find misrepresentation by Farley for marking the “Private System” box in the Seller Disclosure Form.

Where Farley strays from “honesty in fact” is by marking the “No” boxes when asked about a “Shared Well” and a “Shared Well Agreement.” Farley knew all along he would continue to use the Lower Well for his pasture and stock watering. Farley had, previous to entering into the REPSA, filed an “Amended Notice of Claim to A Water Right” with the CSRBA (the Water Court) on January 25, 2019. *Exhibit 26*. This was a change from Farley’s “Notice of Claim to Water Right” filed in 2009. *Exhibit 28*. It was a change in the type of use (from “domestic,” “stockwater,” and “irrigation” to simply “stockwater”). This was a material change. Additionally, Farley had his attorney draft “First Amended CC&Rs” which addressed the sharing of the Lower Well. The Court finds that by not disclosing the fact that the Lower Well was to be shared with other parcels, Farley misrepresented the water supply for the Property in the Seller Disclosure Form. Idaho Code § 55-2513 mandates, “Transferor shall amend the disclosure statement prior to closing if transferor discovers any of [the] information on the original statement has changed.” *Id.* (brackets in original). Farley neglected to do so, and as such violated the Idaho Property Condition Disclosure Act.

Gideons also claim that Farley neglected to inform them on the Sellers’ Disclosure Form of the well and water problems associated with the quantity of water and the issues with a BW switch.¹ However, there is nothing in the Seller’s Disclosure Form that directly addresses such

¹ A “BW switch” is a low voltage electrical relay that informs the well pump to activate.

issues. As such, the Court does not find the same to be a violation of the Idaho Property Condition Disclosure Act.

2. Survey

Gideons claim Farley violated the Idaho Property Condition Disclosure Act by not informing them of the survey performed by Scott Rasor of Meckel Engineering that adjusted the boundaries of the lower pasture area. The “Other Disclosures” section of the Seller’s Disclosure Form asks the following questions:

“Are there any conditions that may affect your ability to clear title such as encroachments, easements, zoning violations, lot line disputes, restrictive covenants, etc.?)”

and,

“Has the property been surveyed since you owned it?”

To each of these questions Farley marked the “No” box. Such response was not completely true. At the time of Gideons making the offer on the Property and receiving the Sellers Disclosure Form the final survey was not recorded, as there was a preliminary survey completed by Scott Rasor as early as September 25, 2018. Additionally, the final survey was recorded on June 4th, 2019, just days prior to closing. Farley knew the Property was being surveyed at his direction and to mark the Seller’s Disclosure Form otherwise was incorrect. However, Farley had pointed out survey stakes to Mr. Gideon at the May 3rd inspection meeting. Farley also informed Gideons’ real estate agent to contact both his attorney and the surveyor regarding the property line adjustment. Such actions mitigate in favor of finding no violation of the Idaho Condition Property Disclosure Act as to the survey issue.

//

//

3. Damages

The Idaho Property Condition Disclosure Act sets forth a limited remedy section. Idaho Code § 55-2517 reads as follows:

No transfer, subject to this chapter, shall be invalidated solely because of the failure of any person to comply with any provision of this chapter. However, any person who willfully or negligently violates or fails to perform any duties prescribed by any provision of this chapter shall be liable in the *amount of actual damages suffered by the transferee*.

Id. (emphasis added). “‘Actual damages’ is defined broadly as an ‘amount awarded to a complainant to compensate for a proven injury or loss,’ and is synonymous with compensatory damages, tangible damages, and real damages.” *Eller v. Idaho State Police*, 165 Idaho 147, 156, 443 P.3d 161, 170 (2019) (citing Actual damages, BLACK'S LAW DICTIONARY (8th Ed. 2004)).

As to the misleading non-disclosure of the “shared well,” the remedy should be that Gideons have the sole use of the Lower Well, as there was nothing to indicate in the REPSA or the Disclosure Form that they would be sharing any of the wells. But this is not the type of remedy set forth under the Property Condition Disclosure Act, which allows for “actual damages.” Gideons have not set forth the damages particular to a “shared well.”

Additionally, this case suffers from a “chicken or egg” conundrum. As has been set forth from the early stages of this litigation, this Court does not have jurisdiction over the issue of water rights as the same are being litigated in the CSRBA (Coeur d’Alene-Spokane River Basin Adjudication). The quiet title statute specifically requires that actions to adjudicate water rights shall be brought under chapter 14, title 42:

An action may be brought by any person against another who claims an estate or interest in real or personal property adverse to him, for the purpose of determining such adverse claim, *provided that all actions to adjudicate water rights and obtain a decree as to water source, quantity, point of diversion, place of use, nature of use,*

period of use, and priority as against other water users shall be brought under the provisions of chapter 14, title 42, Idaho Code.

I.C. § 6-401 (emphasis added). I.C. § 42-1406B provides the CSRBA court with exclusive jurisdiction over water right claims filed in that general stream water rights adjudication. *See* I.C. § 42-1406B(2) (“Unless otherwise ordered by the supreme court, special jurisdiction for the water rights general adjudications authorized by this section shall reside in the Snake River Basin Adjudication district court of the fifth judicial district of the state of Idaho, in and for the county of Twin Falls.”).

On motion of the Gideons, the water rights case has been stayed. *See CSRBA Subcase No. 95-16445, Order Staying Litigation, filed 10/15/20*. This creates a strange dynamic wherein this Court’s decision on matters collateral to the water rights is contingent on a decision in the CSRBA court that grants water rights to the Gideons. Thus, the Court cannot, at this time, award any damages or equitable remedies on matters relative to the water in, and from, the Lower Well unless the CSRBA court ultimately grants water rights to the Gideons from such point of diversion.

C. Fraud by Misrepresentation, Omission, and Non-Disclosure

In their Third Amended Complaint, Gideons make several overlapping claims relative to the well system and the boundary lines. They are denominated as fraud by misrepresentation, fraud by omission/non-disclosure, and the above Idaho Property Condition Disclosure Act violations. Gideons, in their closing brief, argue the fraud claims together. As has been set forth numerous times in Idaho case law, a party seeking recovery under a theory of fraud or misrepresentation must allege and prove by clear and convincing evidence the following elements:

To establish fraud or misrepresentation, a party must prove each of the following elements: (1) a statement or representation of fact; (2) its falsity; (3) its materiality; (4) the speaker's knowledge about its falsity or ignorance of its truth; (5) the speaker's intent that there be reliance; (6) the hearer's ignorance of the falsity

of the statement; (7) reliance by the hearer; (8) justifiable reliance; and (9) resultant injury.

Choice Feed, Inc. v. Montierth, 168 Idaho 124 at 141, 481 P.3d 78 at 95 (2020) (quoting *Budget Truck Sales v. Tilley* 163 Idaho 841 at 847, 419 P.3d 1139 at 1145 (2018)).

“Omission of information may constitute fraud when a duty to disclose exists.” *Knudsen vs J.R. Smploi Company*, 168 Idaho 256 at 268, 483 P.3d 313 at 325 (2021). Such a duty to disclose arises,

(1) if there is a fiduciary or other similar relationship of trust and confidence between the two parties; (2) in order to prevent a partial statement of the facts from being misleading; or^[2] (3) if a fact known by one contracting party and not the other is so vital that if the mistake were mutual the contract would be voidable, and the party knowing the fact also knows that the other does not know it.

Id. (quoting *Humphries v. Becker*, 159 Idaho 728, 736, 366 P.3d 1088, 1097 (2016)) (footnote added).

Under the fraud/omission/non-disclosure claims, the issues are whether there was fraud committed by Farley regarding water and well matters and the Property boundaries.

1. Water and Well Representation/Omissions and/or Non-Disclosures

Farley represented that both the Upper and Lower Wells would provide water to the Property. He represented to the Gideons that the Upper Well would produce 2 gallons per minute (g.p.m.) and the Lower Well would produce 5 g.p.m. Mr. Jody Barden of North Idaho Pump testified that the Upper Well was tested in 2017 and was essentially a dry well. Indeed, Farley knew that the Upper Well was not producing and the Property was reliant on the Lower Well for the vast bulk of its water supply. Pursuant to the third factor of a duty to disclose as set forth in *Humphries*, the Court does find that Farley had a duty to disclose, as the water supply was a fact

² The Court notes that in Farley's Closing Argument, this particular citation to *Humphries* contained the conjunctive “and” as opposed to the disjunctive “or,” leading one to believe that all 3 elements are required to find a duty disclose. Such is not the requirement of *Humphries*.

vital to the agreement. Farley also knew that Gideons did not know that the Upper Well was greatly deficient. However, it is the eighth factor of proving fraud that prevents the Gideons from prevailing on the fraud and misrepresentation claims. That is, the justifiable reliance factor. In the REPSA the parties agreed to the following:

BUYER shall, within each timeframe stated below, complete the inspections indicated and give to SELLER written notice of the disapproved item/condition or written notice of termination of this Agreement based on an unsatisfactory inspection of that item/condition.... BUYER reserves the right to conduct the following inspections outside the Primary Inspection timeline:

X Domestic Well Water Potability and/or Productivity Test which shall be completed and notice provided within 10 business days (ten[10] if left blank) from acceptance.

Exhibit 4, p. 3, ¶ 10(B)(2).

Gideons had full opportunity to inspect the well production and all the components of the well. Such would be the reasonable course of action when making a purchase of real property and residence in a rural area. Gideons reliance on invoices of work done on the wells and well components in 2017 (*Exhibit 5*), that did not even provide a production reading, was not justifiable reliance. As such, Gideons failed to meet the burden of clear and convincing evidence on their claims of misrepresentation and fraud by omission/non-disclosure.

2. Property Boundary (the amount of land conveyed)

Gideons assert Farley defrauded them as to the boundaries of the Property. Such claim is based largely on an aerial photo provided via email to the Gideons through their real estate agent (Patty Ellis) by Farley's real estate agent, Rob Elder. *See Exhibit 12*. In the body of the email, Mr. Elder states, "This is unofficial but very close." *Id.* The photo shows the Property outlined in orange, brown, and silver highlights. Such highlights are less than exacting.

As set forth in the findings above, Mr. Gideon did not walk the Property boundaries when meeting with Farley during the early May inspection of the Property, nor did his real estate agent. From a point near the residence, Farley had pointed out the survey stakes that were placed on the lower pasture by the surveyor Scott Rasor. If Mr. Gideon could not see where those stakes were located, it became incumbent upon him to look for the same. Additionally, the REPSA set forth that the Gideons were purchasing 10.9 acres, which is essentially what they received.³ There was also evidence that prior to the May inspection, Farley had informed Gideons' realtor that if there were questions regarding the .75 acres he was adding to the existing property then she should discuss the same with the surveyor, Mr. Rasor of Meckel Engineering. She failed to do the same.

Similar to the unjustifiable reliance with the well and water issues set forth above, Gideons claim of relying on an inexact aerial photo without taking the necessary steps to physically inspect the Property boundaries during the inspection phase of the transaction leads to a similar conclusion. The failure to show that it was a justifiable reliance of claimed misrepresentations, leads to a similar conclusion that the Gideons have not sustained the burden of proof as to all the elements of fraud and such claims as to the Property boundaries fail.

D. Breach of Contract and the Covenant of Good Faith and Fair Dealing

Gideons claim that Farley breached the terms of the REPSA in regard to the amount of property conveyed, the water rights, and appurtenant well components. As stated *infra*, issues relative to the Lower Well and its component parts will have to wait on the decision of the CSRBA litigation.

³ The RESPA noted the purchase was for 10.9 acres. *Exhibit 4*. The Assessor's Office map shows the Property at 10.8854 acres. Such difference computes to 637 sq. ft. This is not the difference the Gideons are seeking and is *de minimis* in comparison to their requested relief of the full amount of the south pasture to Derting Rd.

Gideons also claim that the parties agreed upon the sale and transfer of the entirety of the lower pasture down to Derting Road as represented in *Exhibit 12*. Again, this is the aerial photo with the set of three different highlights. The legal description in the warranty deed sets forth and transfers something less. Gideons claim fails for two reasons. The prime reason for the failure of Gideons claim is the Merger Doctrine applies to this real property transaction.

It is a well established rule of law that prior stipulations are merged in the final and formal contract executed by the parties, and this rule applies to a deed or a mortgage based upon a contract to convey. When a deed is delivered and accepted as performance of the contract to convey, the contract is merged in the deed. **Though the terms of the deed may vary from those contained in the contract, the deed alone must be looked to determine the rights of the parties.**

....
... Where the right claimed under the contract would vary, change, or alter the agreement in the deed itself, or inheres in the very subject-matter with which the deed deals, a prior contract covering the same subject-matter cannot be shown as against the provisions of the deed.

....
In the absence of fraud, mistake, etc., the following stipulations in contracts for the sale of real estate are conclusively presumed to be merged in a subsequently delivered and accepted deed made in pursuance of such contract, to wit: (1) Those that inhere in the very subject-matter of the deed, such as title, possession, emblements, etc.; (2) those carried into the deed and of the same effect; (3) those of which the subject-matter conflicts with the same subject-matter in the deed. In such cases, the deed alone must be looked to in determining the rights of the parties.

Lee v. Willow Creek Ranch Ests. No. 2 Subdivision Homeowners' Ass'n, Inc., 164 Idaho 396, 400, 431 P.3d 4, 8 (2018) (bold emphasis and omissions in the original, italicized emphasis added) (quoting *Jolley v. Idaho Securities, Inc.*, 90 Idaho 373, 382–83, 414 P.2d 879, 884 (1966)). Under the merger doctrine, “any claim for relief must be based on the covenants or agreements contained in the deed, not the covenants or agreements as contained in the prior agreement.” *Jolley*, 90 Idaho at 382.

A secondary reason is that the breach of contract based on the REPSA fails for lack of mutual meeting of the minds. There simply was no specific language as to the exact legal

description contained in the REPSA. It describes the Property being conveyed as “legally described as SE-SE-NW 09 52N 03W 10.9 acres.” Such is an aliquot parts description that if based on the quarter-quarter-quarter description would generally set forth a plot of 10 acres. This is further modified by the term “10.9 acres.” It is less than precise. One could not know what was being transferred without resorting to parole evidence. However, the warranty deed is precise and contains a distinctive metes and bounds description. Gideons claim for breach of contract as to the amount of land transferred is denied.

E. Quiet Title; Implied Easement/Easement By Necessity; Declaratory Relief

These claims all appear to seek the same relief. It is essentially the relief requested as follows:

- A declaration that Gideons own the Lower Well, including any and all components, parts, systems, and structures associated with and/or necessary to the operation of the Lower Well, and quieting title to the Lower Well in the Gideons.
- A declaration declaring that the Gideons hold an implied easement or easement by necessity for ingress, egress, and utilities to the Lower Well and all associated infrastructure.

Plaintiffs' Third Amended Complaint at 18-19, Plaintiffs' Post-Trial Brief, p. 26.

These claims are all dependent upon the decision of the CSRBA court. Only by way of example, Gideons' claim of an implied easement may fail if the water court determines Gideons have no right to the water in the Lower Well. However, the outcome may well be different if Gideons are awarded water rights to the Lower Well. The parties must await the decision of the water court for this Court to proceed on these claims.

//

//

//

F. Consumer Protection Act Claims

1. Analysis of Claim

The question arises as to whether Gideons have the benefit of, and whether Farley is subject to, the protections and prohibitions of the Idaho Consumer Protection Act, I.C. § 48-601, *et. seq.*

“The purpose of the [ICPA] is to protect both consumers and businesses against unfair methods of competition and unfair or deceptive acts and practices in the conduct of trade or commerce, and to provide efficient and economical procedures to secure such protection.” I.C. § 48-601. “[T]he Act must be liberally construed to effect the legislative intent.” *Pierce v. McMullen*, 156 Idaho 465, 474, 328 P.3d 445, 454 (2014). Acts or practices declared unlawful by the ICPA include “[e]ngaging in any act or practice which is otherwise misleading, false, or deceptive to the consumer.” I.C. § 48-603(17). “[P]roof of intention to deceive is not required for finding that an act is unfair or deceptive.” *Duspiva v. Fillmore*, 154 Idaho 27, 32, 293 P.3d 651, 656 (2013). “[T]he offending party must be a person who ‘knows, or in the exercise of due care should know, that he has in the past, or is’ committing an act or practice declared unlawful by Idaho Code section 48-603.” *Swafford v. Huntsman Springs, Inc.*, 163 Idaho 209, 213, 409 P.3d 789, 793 (2017) (quoting I.C. § 48-603). “[C]laims brought under the ICPA must be based on a contractual relationship.” *Doble v. Interstate Amusements, Inc.*, 160 Idaho 307, 309, 372 P.3d 362, 364 (2016); *see also Taylor v. McNichols*, 149 Idaho 826, 846, 243 P.3d 642, 662 (2010) (“In order to have standing under the [ICPA], the aggrieved party must have been in a contractual relationship with the party alleged to have acted unfairly or deceptively.”).

Tricore Invs., LLC v. Est. of Warren through Warren, 168 Idaho 596, 617–18, 485 P.3d 92, 113–14 (2021).

As was previously addressed by this Court on Defendants Motion to Dismiss and Motion for Summary Judgment, *White v. Mock*, 140 Idaho 882, 890–91, 104 P.3d 356, 364–65 (2004) contains language suggesting that Idaho’s consumer protection act (CPA) does not apply to the sale of a private residence:

We agree with the distinction noted by the district court between the sale of one's residence versus the sale of other property and accordingly hold the Idaho

Consumer Protection Act applicable to the Mocks' sale of investment property. We affirm the district court.

White v. Mock, 140 Idaho at 890–91. However, *White* does not establish that the Idaho CPA does not apply to the sale of a private residence, and any such conclusion would be dicta because the property in *White* was “investment property.” Thus, *White* only establishes that the Idaho CPA applies to the sale of investment real property.

As such, this Court applied principles of statutory interpretation to decide whether the Idaho Consumer Protection Act applies to the private sale of a residence.

The objective of statutory interpretation is to derive the intent of the legislative body that adopted the act. Statutory interpretation begins with the literal language of the statute. Provisions should not be read in isolation, but must be interpreted in the context of the entire document. The statute should be considered as a whole, and words should be given their plain, usual, and ordinary meanings. It should be noted that the Court must give effect to all the words and provisions of the statute so that none will be void, superfluous, or redundant. When the statutory language is unambiguous, the clearly expressed intent of the legislative body must be given effect, and the Court need not consider rules of statutory construction.

Melton v. Alt, 163 Idaho 158, 162–63, 408 P.3d 913, 917–18 (2018).

The statutory definitions include Farley’s offering and advertising his home for sale, whether or not Farley is in the business of selling real property and whether or not the home is investment property. Farley is clearly a “person” within the definition found at I.C. § 48–602(1). The terms “Trade” and “Commerce” are defined to “mean the advertising, offering for sale, selling, leasing, renting. . . of goods or services or distributing goods or services, either to or from locations within the state of Idaho, or directly or indirectly affecting the people of this state.” I.C. § 48–602(2). The Act further defines “Goods” to “*mean any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value wherever situated, including certificates or coupons exchangeable for such goods.*” I.C. § 48–602(6) (emphasis added).

Farley advertised his home for sale by listing the home with the MLS and hired a real estate agent to represent them in the advertising, showing, and transaction. Under the statutory definitions, Farley is subject to the act because Farley “advertised,” “offered for sale,” and “sold” “goods” “from within the State of Idaho.”

Gideons maintain that Farley engaged in “unfair methods and practices” under the ICPA, specifically under I.C. § 48-603(17), which reads as set forth in the above quote from *Tricore Invs.* The Gideons claim the following:

- a. Farley represented no survey had been conducted for the Property being conveyed to the Gideons.
- b. Farley represented he would convey the Property according to verbal descriptions and a map depiction that was inaccurate.
- c. Farley represented the wells produced adequate water.
- d. Farley represented the well system was a private, non-shared system with no shared well agreement.
- e. Farley advertised the sale of the land and water system with no intent to sell them as represented and advertised.

Plaintiffs' Post-Trial Brief, p. 27. The Court addresses each of these alleged “unfair methods and practices” as follows:

a. The Survey

Again, Gideons allege Farley misled them by marking the disclosure form that no survey had been done on the Property. This was only partially true. The survey was “in progress” at the time Gideons received the disclosure statement. However, as set forth above, Farley pointed out survey stakes to Mr. Gideon, which Mr. Gideon said he could not see from where he was standing, yet did not walk to where he would have been able to view the survey stakes. Also, Farley informed Gideon’s agent, Patty Ellis, that she could contact both his attorney and his surveyor if she had any questions. Specifically, Reagan (the attorney) was working with Rasor (the surveyor) on the boundary line issue. Ellis made no such inquiries on behalf of her principles, the Gideons.

For purposes of this ICPA claim, such pointing to the survey stakes and informing Gideons' real estate agent to contact Farley's attorney and surveyor mitigate against finding a violation of the ICPA. The Court finds no violation of the ICPA on this "no survey" issue.

b. Conveyance of Property According to Verbal and Map Descriptions

Again, Gideons claim that Farley misrepresented the boundary line adjustment. However, the map outlined by Farley's real estate agent, Rob Elder, was not represented as the actual boundary. In addition, as stated, Farley pointed out the survey stakes but Mr. Gideon declined to walk the Property. The Court finds no violation of the ICPA on this issue.

c. Representation that the Wells Produced Adequate Water

This is a matter of dispute. Farley stated he never had issues with having adequate water from the Lower Well. Farley had informed Gideons that the Lower Well produced 5 g.p.m. and the Upper Well produced 2 g.p.m. However, Jody Barden, a well and pump repairman called by the Gideons, testified he worked on the Farley wells prior to the sale of the Property at the behest of Farley. Barden testified the Upper Well was essentially a very low producing well of 0.5-1.0 g.p.m. and that such is not a useful amount of water. Barden also stated that the yield of the Lower Well was only 2-3 g.p.m.

Contradicting this claim of low water yield is Defendant's Exhibit HHH, which appears to be a demand letter from Gideon's counsel dated February 27, 2020, wherein counsel explicitly stated, "The productivity of the Lower Well and the Upper Well is not the problem." In this letter, Gideons' counsel claims the issue is one of a "shared well" which wasn't disclosed.

Again, the Court notes that the REPSA allowed for a well productivity test and Gideons failed to take advantage of the same. The Court finds Gideons have not met their burden under the ICPA on the issue of water production.

d. Private, Non-Shared System with No Shared Well Agreement

Here, it is clear that Farley misrepresented the fact that the Lower Well was to be shared.

The disclosure form was marked as follows:

WATER SOURCE & TYPE SECTION	Public System (City, Township, etc.)	Community System	Private System (Well, Cistern, etc.)	Other Source
Domestic Water Provided By			X	WELL
Landscape Water Provided By			X	3000 GAL BURIED
Irrigation Water Provided By			X	CONCRETE RESERVOIR
Shared Well	Yes	☒	Do Not Know	Other Source
Shared Well Agreement		☒		

Such was a misleading and false statement pursuant to the ICPA.

e. Failure to Sell Land and Water System as Represented and Advertised

The Court reasserts its rulings as set forth in subsections (b) and (d) above.

2. Damages

I.C. § 48-608(1) sets forth the remedy available to a private party injured by a violation of the ICPA:

Any person who purchases ... goods ... and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act or practice declared unlawful by this chapter, may treat any agreement incident thereto as voidable or, in the alternative, may bring an action to recover actual damages or one thousand dollars (\$1,000), whichever is the greater; ...

Id.

Gideons seek the amount of \$489,157.28 as set forth in their Post-Trial Brief on pages 10-11. The bulk of this claim is a \$400,000 value that Mrs. Gideon attributed to "an inadequate and unreliable water supply." *Plaintiffs' Post-Trial Brief*, p. 11. This was Mrs. Gideon's owner's opinion as to how much the Property was devalued by the water situation.

“As a general rule, the owner of property may testify as to its value.” *Taysom v. Taysom*, 82 Idaho 58, 64, 349 P.2d 556, 560 (1960). However, “damages are to be proven with reasonable certainty.” *Greenfield Fam. Tr. v. Olive Fountain Land Co., LLC*, 516 P.3d 96, 105 (Idaho 2022) (quoting *Raymond v. Idaho State Police*, 165 Idaho 682, 687, 451 P.3d 17, 22 (2019)). The Court finds that such amount set forth for the reduction in value of the Property is without adequate foundation or basis and rejects this amount.

Gideons also seek the sum of \$79,848.51 for the necessity of having to drill two new wells on the Property with accompanying site preparation (road into well sites). However, as Mrs. Gideon testified, the Gideons were reimbursed this amount by First American Title. The Gideons are not entitled to double recovery for the same alleged damages. Idaho Code § 6-1606 reads, in part, as follows:

In any action for personal injury *or property damage*, a judgment may be entered for the claimant only for damages which exceed amounts received by the claimant from collateral sources as compensation for the personal injury *or property damage*,...

Id. (emphasis added). “The statute's purpose is to prevent double recovery.” *McCandless v. Pease*, 166 Idaho 865, 882, 465 P.3d 1104, 1121 (2020).

The remaining amount of damages, \$9,308.77, is all related to work performed on the well pump and its associated electrical system both at the Lower Well and at the cistern, the Court finds that such sum is attributable to the sharing of the Lower Well with Farley and therefore awards such amount (\$9,308.77) under the ICPA claim.

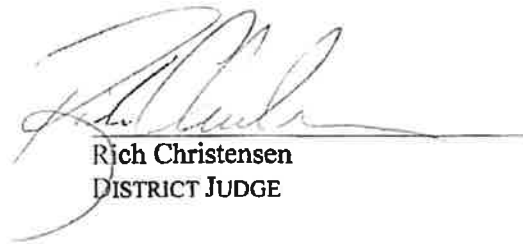
IV. CONCLUSION

For the reasons and as set forth above,

- Pamela Farley bears no liability in this matter and is dismissed from this action;
- No damages are awarded on the Idaho Property Condition Disclosure Act claims;

- Gideons claim of fraud by misrepresentation, omission, and non-disclosure fails for lack of justifiable reliance;
- Gideons claim for breach of contract as to the amount of land transferred is denied;
- This Court must await the decision of the water court to proceed on the quiet title; implied easement/easement by necessity; and declaratory relief claims;
- The Court finds Farley to have violated the Idaho Consumer Protection Act and awards Gideons the sum of \$9,308.77 as damages for such violation.

SO ORDERED this 21st day of October, 2022.



Rich Christensen
DISTRICT JUDGE

I certify the foregoing was delivered as follows:

Michael Schmidt – mschmidt@lukins.com

Michael Bissell – mbissell@campbell-bissell.com

Corey Shuirman – cmetzner@lukins.com

Brandon Slaven – bslaven@campbell-bissell.com

Sheena Cristman – Christman.sheena@gmail.com

JIM BRANNON, Clerk of the Court, by

Deputy Clerk

10/21/22

05/22/2023

**IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW**

RIGHT NUMBER: 95-18409

NAME AND ADDRESS: ARTHUR V GIDEON
23452 N DERTING RD
HAYDEN ID 83835

KATHERINE M GIDEON
23452 N DERTING RD
HAYDEN ID 83835-7883

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 0.020 CFS

The quantity of water under right nos. 95-16445, 95-17752 and 95-18409 shall not exceed 13,000 gallons per day.

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

PRIORITY DATE: 03/31/1999

POINT OF DIVERSION: T52N R03W S9 SESW Within KOOTENAI County

PURPOSE AND
PERIOD OF USE:PURPOSE OF USEPERIOD OF USEQUANTITY

DOMESTIC

01/01 12/31

0.020 CFS

STOCKWATER

01/01 12/31

0.020 CFS

PLACE OF USE:

STOCKWATER in KOOTENAI County

T52N R03W S09 SENW

DOMESTIC in KOOTENAI County

T52N R03W S09 SENW

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

The quantity of water decreed for this water right is not a determination of historical beneficial use.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

Stockwater use is for 12 cattle and/or horses.

Right No. 95-16445 is also diverted through the point of diversion described above.

Parcel No. 52N03W097100 for Point of Diversion
Parcel No. 52N03W095000 for Place of Use.

DIRECTOR'S REPORT

Water Right No. 95-18409

DISTRICT COURT - CSRBA Fifth Judicial District County of Twin Falls - State of Idaho	
MAY 22 2023	
By _____	Clerk
_____	Deputy Clerk

In Re CSRBA
Twin Falls County Civil Case No. 49576

Report to the CSRBA District Court

**Prepared by the Idaho Department of Water Resources
Gary Spackman, Director
Craig Saxton, Manager, Adjudication Section**

May 22nd, 2023

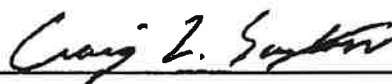
DESCRIPTIVE SUMMARY

This is a Director's Report submitted by the Director of the Idaho Department of Water Resources.

DISCUSSION

Pursuant to the *Order Granting Late Notice of Claim* issued by the Honorable Eric J. Wildman on April 19, 2023, the Director submits for filing with the Court a Director's Report for the aforementioned subcase (see attached print-out).

Respectfully submitted this 22nd day of May, 2023.



CRAIG L. SAXTON
Manager, Adjudication Section

CERTIFICATE OF SERVICE

I certify that on May 22, 2023, I served the original and/or copies of this Director's Report – Water Right No. 95-18409, including all attachments, to the following persons by delivering the original and/or copies, as follows:

Original to:

Clerk of the District Court
Idaho Water Adjudications Court
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707

☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☒ Facsimile
☐ E-Mail

Copy to:

Arthur and Katherine Gideon
Represented by:
Andrew J Waldera
Sawtooth Law Offices PLLC
1101 W. River Street, Suite 110
PO Box 7985
Boise, ID 83707

☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☐ Facsimile

Brian T. Farley
Represented by:
Travis L. Thompson
163 Second Avenue West
PO Box 63
Twin Falls, ID 83303-0064

☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☐ Facsimile

IDWR Repository
P.O. Box 83720
Boise, ID 83720-0098

☐ Overnight Mail
☐ Regular Mail
☒ Hand-Delivered
☐ Facsimile

Kootenai County Courthouse
PO BOX 9000
Coeur d'Alene, ID 83814

☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☐ Facsimile

Chief, Energy and Natural Resources Division
Office of the Attorney General
State of Idaho
PO Box 83720
Boise, Idaho 83720-0010

☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☐ Facsimile

U.S. Department of Justice
Environment and Natural Resources Division
550 West Fort Street, MSC 033
Boise, Idaho 83724

☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☐ Facsimile

John Harris
Signature of Person Mailing Document

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 95-18409

NAME AND ADDRESS: ARTHUR V GIDEON
23452 N DERTING RD
HAYDEN ID 83835

KATHERINE M GIDEON
23452 N DERTING RD
HAYDEN ID 83835-7883

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 0.020 CFS

The quantity of water under right nos. 95-16445, 95-17752 and 95-18409 shall not exceed 13,000 gallons per day.

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

PRIORITY DATE: 03/31/1999

POINT OF DIVERSION: T52N R03W S9 SESW Within KOOTENAI County

PURPOSE AND

PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	DOMESTIC	01/01 12/31	0.020 CFS
	STOCKWATER	01/01 12/31	0.020 CFS

PLACE OF USE:

STOCKWATER in KOOTENAI County
T52N R03W S09 SENW
DOMESTIC in KOOTENAI County
T52N R03W S09 SENW

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

The quantity of water decreed for this water right is not a determination of historical beneficial use.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

Stockwater use is for 12 cattle and/or horses.

Right No. 95-16445 is also diverted through the point of diversion described above.

Parcel No. 52N03W097100 for Point of Diversion
Parcel No. 52N03W095000 for Place of Use.

SCANNED

State of Idaho
Department of Water Resources
Adjudication Recommendation
95-18409



0 0.05 0.1 0.2 Miles

-  Place Of Use Boundary
-  Townships
-  PLS Sections
-  Quarter Quarters
-  Point of Diversion



Date: May 17, 2023

To: File 95-18409

From: Craig L. Saxton

RE: Combined use limits for CSRBA claim 95-18409

Claim 95-18409 (*Gideon D&S Lower well*) claims the same elements as listed on Gideon's decreed right 95-17752 (*Gideon D&S Upper Well*), but with the southern point of diversion and a 3/31/1999 priority date.

95-18409 (*Gideon D&S Lower well*) claims the same 3/31/1999 priority date recommended to Farley under 95-16445 (*Farley Stock Lower well*).

Combined Limit Discussion:

Volume Conditions

When the 1999 well was drilled and connected to the existing system, the 1999 domestic and stock water right was established. That 1999 right is represented by 95-16445 (*Farley Stock Lower well*) and 95-18409 (*Gideon D&S Lower well*). Thus, there should be a 13,000 gpd limit between 95-16445 and 95-18409.

The partial decree 95-17752 (*Gideon D&S Upper Well*) includes a remark simply limiting 95-16445 (*Farley Stock Lower well*) & 95-17752 (*Gideon D&S Upper Well*) to 13,000 gpd:

QUANTITY:	0.04 CFS
The quantity of water under Right Nos. 95-17752 and 95-16445 shall not exceed 13,000 gallons per day.	

However, the recommendation for 95-16445 (*Farley Stock Lower well*) contains a set of combined use limits that are intended to:

- Recognize that the Stockwater use under 95-16445 (1994) was established separately than the domestic and stock water use under 95-17752 (1999), and
- Prevent injury to 95-16445 (*Farley Stock Lower well*) if the full 13,000 gpd is diverted for domestic use under 95-17752 (*Gideon D&S Upper Well*). The below conditions would still allow 95-16445 (*Farley Stock Lower well*) to divert up to 13,000 gpd if 95-17752 (*Gideon D&S Upper Well*) was diverting the full 13,000 gpd for domestic use only, while limiting the stockwater use between both rights to 13,000 gpd since it is the same stock.

The quantity of water under Right Nos. 95-16445 and 95-17752 for stockwater use shall not exceed 13,000 gallons per day. (emphasis added)

The quantity of water under this right (95-16445) shall not exceed 13,000 gallons per day. (WR number added)

Despite the separate stock only combined use limit on 95-16445, because of the existing combined use limit on the Partial Decree for 95-17752, and with the understanding that 95-16445 (*Farley Stock Lower well*) and 95-18409 (*Gideon D&S Lower well*) were developed together as one right (same priority date), it is not appropriate to single out a "stockwater only" combined use condition on the recommendation for 95-18409.

Rate:

Claim 95-18407 claimed Domestic use for 0.04 cfs and stockwater use for 0.02 cfs, with a maximum diversion rate of 0.04 cfs. However, the well driller report for the recommended POD for 95-16445 and 95-18409 lists a yield of 2-3 GPM.

The recommendation for 95-16445 lists a diversion rate of 0.02 cfs. Acknowledging that the capacity on the well driller report might not accurately reflect the capacity of the current diversion, it does not support the claimed total diversion rate of 0.04 cfs (18 gpm). The recommendation of 0.02 cfs (9 gallons per minute) is consistent with the recommendation for 95-16445 and appears to more closely reflect the system capacity than the rate claimed. Claim 95-18409 is recommended with a total diversion rate of 0.02 cfs and includes a combined limit of 0.02 cfs between 95-16445 and 95-18409. Additional information would be required to recommend a greater diversion rate.

WELL DRILLER'S REPORT 76610

Office Use Only
 Inspected by _____
 Twp _____ Rge _____ Sec _____
 _____ 1/4 _____ 1/4 _____ 1/4
 Lat: : : Long: : :

sketch map location must agree with written location

844

A 4x4 grid with a vertical line separating the first two columns. The top is labeled 'N' and the bottom 'S'. An 'X' is in the bottom-left cell of the second column.

Twp. 52 ☒ North or ☐ South
Rge. 03 ☐ East or ☒ West
Sec. 09 ☐ 1/4 SE ☐ 1/4 SW ☐ 1/4

Gov't Lot County KOOTENAI

Lat: : : Long: : :

Address of Well Site DERTING RD
City CHILCO

(Give at least name of road + Distance to Road or Landmark)

Lt.	Bk.	Sub. Name
-----	-----	-----------

☒ Domestic ☐ Municipal ☐ Monitor ☐ Irrigation
☐ Thermal ☐ Injection ☐ Other _____

5. TYPE OF WORK check all that apply (Replacement, etc.)

☒ New Well ☐ Modify ☐ Abandonment ☐ Other

6. DRILL METHOD

☒ Air Rotary ☐ Cable ☐ Mud Rotary ☐ Other

7. SEALING PROCEDURES

SEAL/FILTER PACK			AMOUNT	METHOD
Material	From	To	Sacks or Pounds	
BENTONITE	0	18	8 BAGS	DRY

Was drive shoe used? ☐ Y ☐ N Shoe Depth(s)

Was drive shoe seal tested? ☐ Y ☐ N How? _____

8. CASING/LINER:

Diameter	From	To	Gauge	Material	Casing	Liner	Welded	Threaded
6	+2	18	.250	STEEL	☒	☐	☒	☐
4	-5	295	.160	PVC	☐	☒	☐	☐

Length of Headpipe _____ Length of Tailpipe _____

9. PERFORATIONS/SCREENS

☒ Perforations Method SKILLSAW

☐ Screens	Screen Type
----------------------------------	-------------

From	To	Slot Size	Number	Diameter	Material	Casing	Line
240	260	1/8X4	70	4	PVC	☐	☒
280	300	1/8X4	70	4	PVC	☐	☒

10. STATIC WATER LEVEL OR ARTESIAN PRESSURE:

5 ft. below ground Artesian pressure _____ lb.

Depth flow encountered 25 ft. Describe access port or control devices:

52N 3W 9

11. WELL TESTS:

☐ Pump ☐ Bailer ☒ Air ☐ Flowing Artesian

Yield gal./min.	Drawdown	Pumping Level	Time
2-3 GPM			

Water Temp.	Bottom Hole Temp
-------------	------------------

Water Quality test or comments:

Depth first Water encountered 25'

12. LITHOLOGIC LOG: (Describe repairs or abandonment)

[illegible]

13. DRILLER'S CERTIFICATION

I/We certify that all minimum well construction standards were complied with at the time the rig was removed.

Firm Name 4128 WellService, Inc. Firm No. 448

Firm Official Mu R. G. Date 2/23/99

and *11.3.11*

Supervisor or Operator [Signature] Date 2/23/99

(Sign Once if Firm Official and Operator)

(Louie Hanner)