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WATER RESOURCES

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**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 Nos.: 95-16445 & 95-18409
)
) **BRIAN FARLEY'S MOTION TO**
) **DISALLOW GIDEONS' VERIFIED**
) **PETITION FOR COSTS AND**
) **ATTORNEY FEES**
)
)
)

COMES NOW, Brian T. Farley ("Farley), claimant and objector in the above-referenced consolidated subcases, by and through undersigned counsel of record, and pursuant to I.R.C.P. 54 submits this *Motion to Disallow the Verified Petition for Costs and Attorney Fees* ("Fees Petition") filed by claimants/objectors Arthur & Katherine Gideon ("Gideons") on February 6, 2025. Farley objects to the Gideons' petition and respectfully requests the Court disallow their request for costs and attorney fees for the reasons set forth below.

SCANNED

FEB 25 2025

MOTION TO DISALLOW GIDEONS' PETITION FOR COSTS AND ATTORNEY FEES

FACTUAL & PROCEDURAL BACKGROUND

The Court is familiar with the underlying facts and procedure in these consolidated subcases. However, a brief recap is worthy to emphasize the complexity and unique aspect of this matter that concerned multiple domestic water rights and parcels, and a landowner's actions before the Idaho Department of Water Resources ("IDWR") to claim such rights as intended.

Brian Farley purchased a development consisting of four contiguous parcels lettered "I," "S," "T," and "V" in Kootenai County in 1992. Mr. Farley built a home and drilled a well ("Upper Well") on Parcel I in 1994. The Upper Well was connected to a 3,000 gallon cistern (located on Parcel I) that delivered water to the home. Mr. Farley drilled a second well ("Lower Well") on Parcel V in 1999. The Lower Well was connected to a hydrant for stockwater use on Parcel T and continued on to the cistern located on Parcel I. Mr. Farley also installed a separate line from the cistern on Parcel I continuing over to provide stockwater by way of another hydrant on Parcel S.

In 2009 Mr. Farley filed water right claim 95-16445 for domestic, stockwater, and irrigation purposes. Mr. Farley used water from the Lower Well on his property (Parcels I, S, and T) between 1999 and 2017. In 2017 Mr. Farley began only using water from Upper Well on Parcels I and S, and shut off the water from the Lower Well. In early 2018 Mr. Farley initiated efforts to clarify and identify the water rights associated with his four parcels in preparation for a future sale of Parcel I and the home. Later that year Mr. Farley listed his home and Parcel I for sale. Throughout 2018 and early 2019 Mr. Farley had several communications and meetings with IDWR adjudication staff.

Mr. Farley documented his intent through the formal *Notice of Error Reply* process, an amended water right claim for 95-16445, and a separate claim specifically for Parcel I from the

Upper Well through water right claim 95-17752 that took place in 2018 and 2019. During his work with IDWR agents the Department even provided Mr. Farley with a “Application for Transfer of Water Right Part 2A” water right report for 95-16445. *See Ex. F to Farley Dec.* (Feb. 23, 2024). The Director then issued final director’s reports that accurately represented Mr. Farley’s contemplated water use and intent for the water rights associated with his properties. Importantly, the separate waterline from the cistern to Parcel S was retained so that Mr. Farley could continue to use water from the Lower Well as identified in his amended claim and recommended by IDWR in the February 2019 Director’s Report.

Farley and the Gideons entered into a Purchase and Sale Agreement for the home and Parcel I on April 29, 2019. Mr. Farley also completed the *First Amended Covenants, Conditions and Restrictions* that identified the Lower Well as a “shared use and benefit” and priority use for Parcel I in the event of insufficient supply for all four parcels. The Amended CC&Rs were recorded and provided to the Gideons’ escrow officer prior to closing. Mr. Farley also turned the water back on from the Lower Well before closing in early June (in compliance with the Amended CC&Rs) and specifically so that stockwater could resume flowing to Mr. Farley’s retained Parcel S pursuant to water right 95-16445.

Over a year following IDWR’s recommendation for water right 95-16445 in February 2019, the Gideons were granted leave to file a late objection in September 2020. *See Bench Order Granting Motion to File Late Objection.* In that objection the Gideons alleged the following against Mr. Farley’s claim 95-16445:

1. The name address should be: Arthur V. Gideon and Katherine M. Gideon
2. The purpose of use should be: Stockwater and Domestic
3. The place of use should be: Parcel No. 52N03W094700

See Gideons’ SF1 Objection to 95-16445 (July 23, 2020).

In their reasons supporting the objection, the Gideons made the following representations to the Court:

- (1) Mr. Farley is not entitled to water right no. 95-16445. The Gideons purchased parcel no. 52N03W947000 from Mr. Farley on or about June 7, 2019. Mr. Farley represented to the Gideons that the well associated with water right no. 95-16445 was for the exclusive use and benefit of the parcel they purchased from him. Thus, water right 96-16445 belongs to the Gideons. The Gideons object to Mr. Farley's continued claim to or use of this water right.

See id. at 3 (emphasis added).

The Gideons claimed water right 95-16645 in its entirety through their objection, seeking to oust Mr. Farley of any continued stockwater use that had been lawfully claimed and recommended by IDWR. The subcase was then stayed until the fall of 2022 while separate litigation concerning the property sale continued in the Kootenai County District Court. *See Order Staying Litigation* (Oct. 15, 2020); *Bench Order Lifting Stay* (Nov. 29, 2022).

When the stay was lifted the parties held two scheduling and status conferences with Special Master Booth in December 2022. *See* 12/13/2022 Minutes; 12/22/2022 Minutes. Following the latter conference, Mr. Waldera described the following events in his affidavit supporting the motion to file late notice of claim:

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.

See Affidavit of Andrew J. Waldera at 3 (Jan. 31, 2023).

In other words, this matter was no “garden variety” domestic water right case and contained various intricacies and layers of procedural complexity. The Gideons filed their motion to file late notice of claim, the water right claim for 95-18409, and other supporting materials on January 31, 2023. *See Gideons SF4 Motion to File a Late Notice of Claim* (95-18409). In the notice of claim, the Gideons’ claimed 0.04 cfs for domestic purposes and 0.02 cfs for stockwater purposes without any annual volume limitation. *See Notice of Claim* at 1 (95-18409). The Gideons further averred, under penalty of perjury, that they held a separate domestic water right 95-17752, “but well is essentially dry.”¹ *See id.* at 2.

Despite Mr. Farley’s response opposing the motion to file the late claim, as authorized by CSRBA rules of procedure, the Court granted the Gideons’ motion after hearing. *See Order Granting Motion for Late Claim* (Apr. 19, 2023). The Director’s report for water right 95-18409 was issued on May 22, 2023 and Mr. Farley filed a timely objection on June 30, 2023. The Gideons also filed an amended objection to their water right claim 95-18409, alleging the following:

Quantity should be: instantaneous diversion rate of 0.04 cfs as claimed.

Place of Use should be: should also include T52N, R03W, BM, S9, NESW due to lot line adjustment.

See Amended SF1 Objection to 95-18409 at 2 (July 21, 2023).

On July 11, 2023, Special Master Booth entered a bench order formally consolidating the two subcases 95-16445 and 95-18409 and directing IDWR to prepare a supplemental director’s

¹ Since this matter was decided on summary judgment the current state of the Upper Well and whether the Gideons are or could beneficially use water from water right 95-17752 is unknown. We simply don’t know what “essentially dry” may mean as of February 2025. It is also undisputed that Mr. Farley used water from the Upper Well from 2017-2019. Mr. Farley was present when the well was tested and pumped 2.5 gallons per minute. *See Farley Dec.* at 3 (Feb. 23, 2024). It is also undisputed that the Gideons did not have the well tested when they purchased the property. *See Ex. S to 706 Report, Order* at 20 (“the Court notes that the REPSA allowed for a well productivity test and Gideons failed to take advantage of the same”).

report (706 Report). *See* 07/11/2023 Minutes. IDWR issued its report for both water rights 95-16445 and 95-18409 on September 21, 2023. After the parties discussed and requested a moderated settlement opportunity, the Special Master then ordered a mandatory settlement conference. *See Order Setting Mandatory Settlement Conference and Appointing Special Master Bilyeu as Settlement Moderator* (Oct. 4, 2023). Following the unsuccessful settlement conference, Special Master Booth issued a trial scheduling order on November 17, 2023. The Gideons filed a motion for summary judgment on January 30, 2024.² Mr. Farley filed a brief and supporting declarations in opposition on February 23, 2024. Mr. Farley thoroughly described the claim process before IDWR, his intentions for the water rights, and how IDWR recommended the water rights consistent with those intentions in the spring of 2019. *See Farley Dec.* (Feb. 23, 2024). The Gideons filed a reply and the motion was subsequently heard on March 11, 2024.

Following the oral argument, Special Master Booth received inaccurate ex parte property information and expert witness testimony from IDWR.³ *See Declaration of Travis L. Thompson in Support of Motion to Alter or Amend* and attached exhibits (Apr. 29, 2024). That information was not disclosed to any party or formally published in any amended director's report.

² Counsel for the Gideons represents “that this action did not entail novel or difficult questions of law” but that “significant time and attention devoted to this matter was largely out of undersigned counsel’s control.” *See Fees Petition* at 15. However, the Gideons filed the motion for summary judgment, supporting memorandum, affidavit and exhibits that totaled over 180 pages. *See Gideons Motion et al.* (Jan. 30, 2024). The Gideons then filed a 34-page “reply” brief along with additional attached exhibits. *See Gideons’ Reply* (Mar. 5, 2024). Finally, the Gideons’ counsel used up the majority of a laborious 3-hour summary judgment hearing arguing the motion before the Special Master. In other words, although counsel now claims the case was not “novel” or “difficult,” the hours spent on just the motion for summary judgment, the reply, and oral argument apparently demonstrate otherwise. *See Ex. A to Fees Petition* (Invoice Nos. 24775, 25091, and 1065) (total over \$30,000.00). It appears counsel charged over 50 hours of time (i.e. over a full week) for the “reply” brief alone. *See id.* If these consolidated subcases were so clear-cut and simple surely it would not take an experienced attorney like Mr. Waldera over a week to prepare a “reply” in support of the original motion. The Gideons cannot have it both ways for purposes of their fees petition.

³ In undersigned counsel’s nearly 25 years of practice in the state, he has never experienced a court taking ex parte evidence (from a court appointed expert or otherwise) following an oral argument, not disclose that communication and information to the parties, and then rely upon the same, at least in part, for a decision. This action was part of the basis for Mr. Farley’s *Motion to Alter or Amend* and further highlights the unique aspect of these consolidated subcases that warrants against awarding attorneys fees.

Special Master Booth issued the summary judgment decision and recommended partial decrees for both water rights 95-16445 and 95-18409 on March 19, 2024. The Gideons' claimed complete ownership of 95-16445 was denied through this decision and they did not challenge it thereafter. Further, the Special Master did not recommend Gideons' claimed quantity of 0.04 cfs for water right 95-18409, and instead recommended a lesser diversion rate of 0.02 cfs. The Gideons did not challenge this decision either. In other words, the Gideons did not obtain everything they were asking for through both their claim and amended objection to 95-18409 and their objection to Farley's claim 95-16445.

Mr. Farley filed a timely motion to alter or amend on April 29, 2024, as authorized by the CSRBA rules of procedure.⁴ Since the matter was resolved on a recommended summary judgment, it was appropriate to seek further review by the Presiding Judge who was responsible for a final decision as the ultimate trier of fact. *See Dorsey v. Dorsey*, 172 Idaho 667, 687, 535 P.3d 1040, 1060 (2023). Further, given the mistaken place of use recommendation for 95-16445 based upon erroneous information from IDWR, Mr. Farley was obligated to file the motion to alter or amend. Special Master Booth heard the motion on July 23, 2024 and issued the order granting the motion in part, and denying the motion in part on August 9, 2024. Farley then filed a notice of challenge and the Court issued its *Memorandum Decision and Order of Partial Decrees* on January 25, 2025 ("Order"). The Presiding Judge recognized and reviewed the Special Master's Report pursuant to the standards set forth in *Dorsey*. *See Order* at 5. The Gideons then filed their *Fees Petition* on February 6, 2025.

⁴ Mr. Farley was required by the court's rules of procedure to file a motion to alter or amend in order to seek further review on challenge by the Presiding Judge. *See Amended CSRBA AOI* § 18.c ("Any Party who first filed or participated in a *Motion to Alter or Amend* before the Special Master may file a *Notice of Challenge* to the decision . . .") (emphasis added).

ARGUMENT

I. The Gideons Did Not Completely Prevail in These Consolidated Subcases.

Idaho follows the “American Rule” which provides that “each litigant pays his own attorney’s fees, win or lose, unless a statute or contract provides otherwise.” *Miller Trustee of Glem Miller and Cynthia Anderson Revocable Living Trust v. Rocking Ranch No. 3 Property Owners’ Assn., Inc.*, 173 Idaho 285, 541 P.3d 1279, 1291 (2024) (“*Miller*”). The Supreme Court further confirmed that “a party needs to prevail in order to be entitled to attorney fees.” *Id.*

The Gideons seek an award of costs and attorney fees in this matter pursuant to Rule 54(d)(1)(B) and 54(e). *See Fees Petition* at 2. The CSRBA Court’s determinations and award of such fees under the rule are discretionary. *See* I.R.C.P. 54(d)(1)(B); *Miller*, 541 P.3d at 1284 (“the decision to award attorney fees and costs lies with the discretion of the trial court”).

The Gideons claim they are the sole “prevailing party” in these consolidated subcases because they received a partial decree for water right claim 95-18409. *See Fees Petition* at 3. Yet, they fail to acknowledge that the Court decreed a diversion rate less than what they claimed, i.e. 0.02 cfs versus 0.04 cfs, the place of use is less than what was alleged in the amended objection, and that the water right is limited to a combined total volume with two other water rights, 95-17752 and 95-16445.⁵ Moreover, the Gideons’ claimed complete ownership of water right 95-16445 was rejected. The Gideons’ objection to Mr. Farley’s water right claim 95-16445 was similarly rejected.

Since these subcases were consolidated and each party received a partial decree, at most the prevailing party analysis is a split decision. Although Farley’s response to the motion for

⁵ The Gideons reference their “initial objection” in a footnote only and then claim they “adopted and successfully prosecuted” the IDWR’s recommendation in the 706 Report as if that was their original claim all along. *See Fees Petition* at 3, n. 2. The fact IDWR recommended and the Court decreed something different than the Gideons claimed shows they did not completely prevail as argued.

summary judgment was denied, that does not mean the Gideons solely prevailed. After all, the Gideons initially claimed sole ownership of water right 95-16445, which was soundly rejected by IDWR and this Court. This is not simply a “superficial” win as the Gideons suggest. See *Fees Petition* at 5. Instead, this Court decreed Mr. Farley a water right, a real property interest under Idaho law, that the Gideons alleged should not exist. See I.C. § 55-101; *Clear Springs Foods, Inc. v. Spackman*, 150 Idaho 790, 797, 252 P.3d 71, 78 (2011). At most, each party prevailed in part in these consolidated subcases. *Smith v. Mitton*, 140 Idaho 893, 903, 104 P.3d 367, 377 (2004) (“When both parties are partially successful, it is within the court's discretion to decline an award of attorney fees to either side”).

The unique status of these subcases should be taken into account in this analysis as well. The exempt beneficial use aspect of a de minimis domestic and stockwater right is novel since the water rights were not previously decreed or licensed. The water right did not exist in any IDWR, water district, or court record. There was no water right number associated with the use until Mr. Farley filed his initial claim in 2009. Mr. Farley later claimed the water rights as he intended they did and would exist with the two separate wells (Upper and Lower) that had been developed. IDWR agreed with Mr. Farley, assisted in the amended claim process, and further issued recommendations as Mr. Farley intended in the spring of 2019. The Gideons proceeded on their theories after-the-fact, filing both a late objection and late claim well over a year after they purchased the property in 2019. Clearly, these consolidated subcases were intertwined and intermixed enough that fees should not be awarded. See *Kantor v. Kantor*, 160 Idaho 810, 824, 379 P.3d 1080, 1094 (2016) (“In the consolidated cases Robert prevailed on his jurisdictional challenge in Docket No. 42980. However, Sondra prevailed in challenging the district court's imposition of sanctions in Docket No. 41946. Considering the mixed results of the consolidated

cases, we hold that there has been no prevailing party on appeal”); *see also*, *Green River Ranches, LLC v. Silva Land Co., LLC*, 162 Idaho 184, 188, 395 P.3d 804, 808 (2017) (“When both parties are partially successful, it is within the court’s discretion to decline an award of attorney fees to either side”).

The fact that Mr. Farley did not succeed in the Court’s decision as to what he intended with the domestic use portion of the right from the Lower Well, even though IDWR’s initial recommendations represented otherwise, demonstrates a unique set of facts and circumstances that does not justify an award of attorneys fees. Again, as the Gideons only prevailed in part in these consolidated subcases, they do not satisfy the standard under Idaho’s civil rules. *See* I.R.C.P. 54(d)(1)(B). Mr. Farley respectfully requests the Court to exercise its discretion and deny the Gideons’ request for costs and attorneys fees accordingly.

II. The REPSA Merged with the Warranty Deed Therefore the Gideons Have no Legal Basis to Claim Attorneys Fees Under its Provisions.

The CSRBA is a general stream adjudication to determine the nature, extent and priority of the rights of users of surface and ground water within the basin. *See* I.C. § 42-1406B. The adjudication is not a contract case. The Gideons erroneously argue the Court can award fees under “contract,” in this case, under the real estate purchase and sale agreement (REPSA) entered into between the parties. *Fees Petition* at 5-8. The Gideons misunderstand and misrepresent governing Idaho real estate law on this issue.⁶

⁶ The Gideons allege Farley made “frivolous” and “unreasonable” arguments in these subcases, *see Fees Petition* at 13, yet the Gideons’ failure to acknowledge controlling Idaho precedent on the merger doctrine. Instead, the Gideons conflate the REPSA and Warranty Deed as if they were “one” document. This assertion could similarly be found to constitute a “frivolous” argument. *See Fees Petition* at 7 (“the parties’ REPSA governed the terms of their real estate purchase and sale transaction and the subsequent Warranty Deed was both unambiguous and entirely consistent with the REPSA”). Moreover, the Gideons make these contradictory arguments despite prior admissions of merger to this Court. *See Response to Brian Farley’s Opening Brief on Challenge* at 16 (“The terms of the parties’ REPSA did merge into the Warranty Deed . . .”). At a minimum, the Gideons should be judicially estopped from arguing their present changed position. *See Carter Dental, P.A. v. Carter*, 173 Idaho 984, 551 P.3d 1225, 1233-34 (2024).

Under the well-established merger doctrine, the Gideons cannot recover fees under the REPSA. “[T]he acceptance of a deed to premises generally is considered as a merger of the agreements of an antecedent contract into the terms of the deed.” *Jolley v. Idaho Sec., Inc.*, 90 Idaho 373, 382, 414 P.2d 879, 884 (1966). Consequently, **“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.” *Id.* (emphasis added). Notably, despite their present argument, the Gideons previously admitted the prior agreement merged into the deed:

The terms of the parties’ REPSA did merge into the Warranty Deed—both unmistakably conveyed all appurtenances to Parcel I without reservation or qualification.

Response to Brian Farley’s Opening Brief on Challenge at 16 (emphasis added).

A party that has accepted a deed cannot bring a claim under a real estate purchase agreement and therefore cannot recover attorney fees under that agreement, despite the agreement’s fee provision. *Fuller v. Dave Callister*, 150 Idaho 848, 856, 252 P.3d 1266, 1274 (2011). Accordingly, the Court cannot award Gideon fees under the REPSA. The Gideons’ attempt to mix the “real estate purchase and sale transaction and the subsequent Warranty Deed” should therefore be rejected by this Court. *See Fees Petition* at 7.

Further, In the recent *Rose v. Martino* decision, the Idaho Supreme Court reaffirmed the merger doctrine and its application to a claim for attorney fees pursuant to a prior purchase and sale agreement for real property. ___ Idaho ___, 2025 WL 223791 (Idaho Jan. 17, 2025). At issue in *Rose* was whether a warranty deed contained adequate reference to a boundary line agreement, such that the deed accurately described the property conveyed. The Supreme Court reversed the district court’s denial of Plaintiff’s motion to strike extrinsic evidence, which included the purchase and sale agreement for the property. The Court held that the deed was

unambiguous and under the merger doctrine, as articulated in *Jolley* and *Fuller*, the district court erred when it considered the purchase and sale agreement as extrinsic evidence to the deed. *Id.* at *8. Under the same principle, the Court affirmed the district court's denial of an attorney fees claim pursuant to an attorney fees provision in the purchase and sale agreement, holding that the claim "is not based on the purchase and sale agreement but is based on the warranty deed, which does not contain an attorney fee provision." *Id.* at *12.

The Gideons' claim for fees in this matter necessarily arises out of the Warranty Deed, not the REPSA, unless the sole exception to the merger doctrine applies. There is no merger "where under the contract the rights are conferred collaterally and independent of the deed; there being no presumption that the party in accepting the deed intends to give up the covenants of which the deed is not a performance or satisfaction." *Jolley*, 90 Idaho at 382. However, "[w]here the right claimed under the contract would vary, change, or alter the agreement in the deed itself, *or inherent 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.*" *Id.*

Here, the Gideons concede that the exception does not apply and that under the merger doctrine any claims under the REPSA have been extinguished. "As the Court is aware (and squarely held), the parties' REPSA governed the Terms of their real estate purchase and sale transaction and **the subsequent Warranty Deed was both unambiguous and entirely consistent with the REPSA.**" *Fees Petition* at 7 (emphasis added). This Court, as the Gideons note, reached the same conclusion: "[T]he warranty deed that conveyed Parcel I from Farley to the Gideons is unambiguous" as to the conveyance of the disputed water rights. *See Order* at 10. The Court further found that the warranty deed and Section 7 of the REPSA were in accord. *Id.*

Accordingly, the REPSA is a “prior contract covering the same subject-matter” and therefore merged into the Warranty Deed. Gideon’s claim for relief falls solely under the Warranty Deed, which does not contain an attorneys fees provision. *See* Ex. A.⁷ The Gideons not only fail to acknowledge the merger doctrine, which is dispositive here, but they cite no cases to avoid its consequences. Instead, all of the cases the Gideons rely upon for contractual attorney fees address contracts that have not merged into a subsequent deed, as the REPSA has here. Therefore, these cases have no applicability to Gideons’ claim for relief and are irrelevant. *See Farm Credit Bank of Spokane v. Wissel*, 122 Idaho 565, 568, 836 P.2d 511, 514 (1992), *overruled by Miller*, 173 Idaho 285, 541 P.3d 1279 (2024) (attorney fee provision in farm lease); *Bank of Idaho v. Colley*, 103 Idaho 320, 322, 647 P.2d 776, 778 (Ct. App. 1982) (attorney fee provision in loan guarantee agreement); *Axelrod as Tr. of David W. Axelrod Fam. Tr. dated June 13, 2017 as restated on Sept. 28, 2018 v. Reid Ltd. P’ship*, 173 Idaho 961, 551 P.3d 777 (2024) (attorney fee provision in settlement agreement).

Finally, these consolidated subcases are distinguishable from the award of fees in the SRBA Court decision the Gideons cite. *See Fees Petition* at 8. Contrary to the Gideons’ argument, the *Sundance* subcases are hardly analogous to the present subcases. *Sundance* concerned two claims for the same water right associated with a commercial sod farm, as well as a commercial landlord/tenant relationship. *See Memorandum Decision and Order Granting Motion for Summary Judgment* at 1-2 (Subcases 63-31194A and 63-31194B) (July 8, 2009). Following a summary judgment decision, Sundance requested attorneys fees pursuant to I.C. §§ 12-120(3) and 12-121, and also pursuant to the purchase and sale agreement. *See Special Master’s Report and Recommendation Re: Sundance Investments Ltd. Partnership’s Request for*

⁷ The warranty deed is part of the record attached to the Gideons’ change of ownership form. *See* Ex. N to 706 Report. Mr. Farley’s has attached it as an exhibit to this motion as well for the Court’s convenience.

Attorney Fees (Subcase Nos. 63-31194A and 63-31194B (May 17, 2010) (“*Sundance Fees Report*”).

In analyzing Sundance’s request for fees, the Special Master noted that the parties claimed ownership of the same water right and that since the right was decreed to Sundance and McKay’s claim was disallowed, Sundance solely prevailed. *See Sundance Fees Report* at 5. Here, on the other hand, both the Gideons and Farley were decreed separate water rights. There was no single prevailing party.

Further, the Special Master concluded that the action involved a “commercial transaction” and therefore Sundance was entitled to recover fees pursuant to I.C. § 12-120(3). The Special Master specifically found the “gravamen of the action was a contractual relationship memorialized in the Purchase and Sale Agreement.” *Sundance Fees Report*. at 6. The Gideons do not allege and are not seeking attorneys fees under section 12-120(3), and they do not claim any commercial contractual relationship with Mr. Farley. Finally, although the Special Master also found Sundance was entitled to fees under the purchase and sale agreement in those subcases as an additional basis, the decision contains no analysis or evidence of any objection related to the merger doctrine and legal effect of the subject deeds. To the extent the Special Master’s decision conflicts with existing Idaho Supreme Court precedent (i.e. *Martino*) regarding the merger doctrine, *see supra*, the Court should disregard it.

Further, here the Gideons claimed ownership of water right 95-18409 through the “controlling Warranty Deed.” *See Memorandum in Support of Motion for Summary Judgment Regarding Claim No. 95-18409* at 7, 15 (Jan. 30, 2024). The Gideons later admitted that the REPSA merged into the Warranty Deed. *See Response to Brian Farley’s Opening Brief on Challenge* at 16. In the Gideons’ objection to Farley’s claim 95-16445 the Gideons alleged

complete ownership based upon their “Notice of Change of Ownership” filed on or about June 15, 2020, and the purchase that closed “on or about June 7, 2019.” *See SF1 Objection to 95-16445* at 2-3. The Gideons’ Notice of Change of Ownership tellingly only included the “Warranty Deed” for evidence of ownership, not the REPSA. *See* Ex. N to IDWR 706 Report (Sept. 21, 2023). The deed, not the REPSA, conveyed the property and any appurtenant water rights to the Gideons.

In short, *Sundance* is distinguishable and unpersuasive for purposes of the Gideons’ *Fees Petition* and does not support an attorneys fees award under the facts of these consolidated subcases. As the prior purchase and sale agreement merged with the Warranty Deed, as admitted by the Gideons on challenge, and the deed does not contain an attorneys fee provision, the Gideons cannot recover under a “contract” theory under I.R.C.P. 54(e)(1). *See* Ex. A. For the reasons set forth above, the Court should deny the Gideons request for fees under their alleged contract theory.

III. The Court Should Deny the Gideons’ Request for Fees under I.C. § 12-121.

The Gideons alternatively seek attorney fees pursuant to section 12-121 which allows an award “when the judge finds that the case was brought, pursued or defended frivolously, unreasonably or without foundation.” I.C. § 12-121. The Gideons argue that Mr. Farley’s arguments in these consolidated subcases were “calculated attempts to dodge and obfuscate the straightforward application of blackletter law.” *Fees Petition* at 10.

To the contrary, Mr. Farley raised legitimate questions based upon the unique facts of these subcases, including questions of intent and issues of fact that are typically not resolved on summary judgment. Further, where a claim or defense “is supported by a good faith argument for the extension or modification of the law in Idaho,” an award of fees under section 12-121 is

not warranted. *See Allstate Ins. Co. v. Mocabey*, 133 Idaho 593, 600, 990 P.2d 1204, 1211 (2009).

Mr. Farley's objection to 95-18409 and opposition to the Gideons' summary judgment motion, though unsuccessful before the Court, was not unreasonable, frivolous, or plainly fallacious. *See Wing v. Amalgamated Sugar Co.*, 106 Idaho 905, 911, 684 P.2d 307, 313 (Ct. App. 1984), *overruled on other grounds by NBC Leasing Co. v. R&T Farms, Inc.*, 112 Idaho 500, 733 P.2d 721 (1987).

The Gideons do not show that Mr. Farley made "unreasonable," "frivolous," or "plainly fallacious" arguments in this case. Instead, the Gideons dispute a single citation to the *Bothwell* case, an isolated misquote of section 42-108, a challenge to the Gideons' ability to beneficially use two domestic water rights for the same purpose, and their disagreement with the proportionate split argument based upon Supreme Court precedent. *See Fees Petition* at 10-13. Contrary to what the Supreme Court has instructed, the Gideons overlook the "forest" for the "trees" when assessing Mr. Farley's arguments raised in these consolidated subcases and the unique and novel facts underlying the parties' water right claims. *See Millard v. Talburt*, 544 P.3d 748, 763 (Idaho 2024) ("We have previously held that a district court should take a holistic view of the entire litigation when awarding attorney fees pursuant to section 12-121").

First, as explained above in the background section, these consolidated subcases were not a "garden variety" domestic water right claim case. The beneficial use water rights were not recorded with any court or agency until this adjudication. The facts concerned Mr. Farley's history of water use on the properties, multiple wells, specific intent with property sold and retained, and his successful work with IDWR over the course of several years to properly claim separate water rights.

Moreover, legitimate questions of actual beneficial use of two water rights for the same purpose is a viable question to be raised in the adjudication where the Court is required to determine the nature and extent of the rights to be decreed. *See* I.C. § 42-1420. The fact the parties now hold separate decreed water rights to be used in conjunction with each other, without determining historic beneficial use, is a complicating factor that adds to the novel and unique facts of these consolidated subcases. Although the Court did not accept Mr. Farley's arguments does not mean they were frivolous. *See McCann v. McCann*, 152 Idaho 809, 823, 275 P.3d 824, 838 (2012) ("Attorney fees under [section] 12-121 are not warranted where a novel legal question is presented"); *Gulf Chem. Employees Fed. Credit Union v. Williams*, 107 Idaho 890, 893, 950 P.2d 262, 265 (Ct. App. 1997) ("A claim is not necessarily frivolous simply because the district court concludes it fails a matter of law").

Mr. Farley's opposition to the Gideons' claim and motion for summary judgment contained fairly debatable issues based on the facts of these subcases, hence they were not frivolous or without foundation. *See Garner v. Povey*, 151 Idaho 462, 468, 259 P.3d 608, 614 (2011). Indeed, Mr. Farley thoroughly documented and explained his amended claim process, the fact he intended the Upper Well water right to pass with the conveyance of Parcel I, and how he intended to reserve any water rights from the Lower Well with the property he was retaining.

The doctrine of abandonment was fairly raised where the criteria for the defense were met in 2017 when Mr. Farley shut off water to Parcel I coincident with his intent to not claim any water from the Lower Well for that parcel. *See Farley Dec.* at 6 (Feb. 23, 2024) ("25. My intention in amending and separating the claims for the Lower Well and Upper Well was to have the Upper Well and any associated water right for Parcel I, and the water right for the Lower Well for stockwater use only for Parcels S and T"). IDWR even provided Mr. Farley with a

“Part 2A Transfer Report” documenting how his water right 95-16445 was viewed by the agency in the spring of 2019. *See id.* at 7. In other words, what would a reasonable person expect when presented with this information from the Department that had carried out his intent for the water rights associated with the various parcels. At a minimum, a reasonable and fairly debatable issue existed under these facts.

Finally, the Supreme Court’s precedent from *Crow et al.* could easily apply to any type of water right, not just an irrigation water right. Where a party conveys a portion of a property and does not identify the water rights in the deed, the Idaho Supreme Court has found that the appurtenant water rights are split proportionally. The fact the prior cases concerned irrigation water rights does not mean the concept only applies to such rights. The legal premise is based upon the property transfer and deed without clarifying language. The fact this Court did not agree the premise should apply to domestic water rights does not mean the argument was “frivolous” or “plainly fallacious.”

Again, given the unique facts of these consolidated subcases, the premise is fairly debatable and could have been extended. As such, the Court should deny the Gideons’ request for fees under section 12-121 accordingly.

IV. Any Attorneys Fees, if Awarded, Should be Reduced to a Reasonable Amount.

In the event the Court determines in its discretion to award the Gideons’ attorneys fees under section 12-121, the fees must be “reasonable.” *See* I.C. § 12-121. Indeed, a court is not required to automatically award the full amount sought. *See Lowery v. Board of County Com’rs for Ada County*, 115 Idaho 64, 68, 764 P.2d 431, 435 (Ct. App. 1988). The criteria for analyzing such fees are set forth in I.R.C.P. 54(e)(3) as follows:

- A. the time and labor required;
- B. the novelty and difficulty of the questions;

- C. the skill requisite to perform the legal service properly and the experience and ability of the attorney in the particular field of law;
- D. the prevailing charges for like work;
- E. whether the fee is fixed or contingent;
- F. the time limitations imposed by the client or the circumstances of the case;
- G. the amount involved and the results obtained;
- H. the undesirability of the case;
- I. the nature and length of the professional relationship with the client;
- J. awards in similar cases;
- K. the reasonable cost of automated legal research (Computer Assisted Legal Research), if the court finds it was reasonably necessary in preparing a party's case;
- L. any other factor which the court deems appropriate in a particular case.

I.R.C.P. 54(e)(3).

If the Court awards attorneys fees, it need not address all of the factors in writing but must indicate they were considered. *See Hurtado v. Land O'Lakes, Inc.*, 153 Idaho 13, 23, 278 P.3d 415, 425 (2012). Mr. Farley offers the following in response to the factors addressed by the Gideons:

Mr. Farley accepts the representation that the Gideons had an express agreement to compensate counsel on an hourly basis. *Fees Petition* at 14. Counsel claims the case did not entail "novel or difficult" questions of law and that "significant time and attention devoted to this matter was largely out of undersigned counsel's control." While Mr. Farley contends these consolidated subcases present unique and novel issues associated with a beneficial use domestic water right, Farley disputes the reasonableness of the time incurred in this matter by Gideons' multiple attorneys.

Based upon the invoices submitted with the *Fees Petition* at Exhibit A, it appears the Gideons' counsel generally charged the following for the various motions and stages of this case:

Andy Waldera:

2022/23	- Initial Investigations and Motion for Late Claim	\$ 12,120.00 (40 hrs)
2023	- Reply for Late Claim / Argument / Other	\$ 9,060.00 (30.2 hrs)
2023	- Mediation related work / conferences	\$ 7,030.00 (23.4 hrs)
2024	- Summary Judgment Motion / Affidavit	\$ 8,130.00 (27.1 hrs)
2024	- Discovery / Other trial Prep	\$ 4,470.00 (14.9 hrs)
2024	- Reply Brief / Summary Judgment Argument	\$16,800.00 (56 hrs)
2024	- Alter or Amend / Challenge Response / Arguments	\$27,330.00 (91.1 hrs)

Mike Schmidt:

2022-2025	- Review and Duplicate Work for Above	\$20,091.00 (55.4 hrs)
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The Gideons' attorneys represent to have over 20-years legal experience each, however Mr. Schmidt does not identify any specialty in water rights-related matters as Mr. Waldera does. *See Fees Petition* at 15. Mr. Waldera's hourly rate (\$300/hr) is represented to be comparable to prevailing charges for like work. Counsel for Mr. Farley does not dispute that representation or the reasonableness of Mr. Waldera's hourly rate. However, Mr. Schmidt's rate (\$350-\$385/hr) exceeds a comparable hourly rate (including Mr. Waldera's by 15-23%). Mr. Schmidt's rate is unreasonable under the circumstances, particularly since he does not claim to have any specialty in water rights matters. *See Fees Petition* at 15. The fact the Idaho Supreme Court awarded fees in an unrelated appeal with rates ranging from \$300-350/hr does not affect this analysis or what is being requested by the Gideons from this Court as it only supports Mr. Waldera's hourly rate (\$300/hr). Nothing in that decision supports a higher hourly rate for a less experienced attorney that did not perform the substantive work in these consolidated subcases. If anything, the Court should reduce Mr. Schmidt's proposed rate to something less than Mr. Waldera.

The attorneys fees requested are unreasonably high given the amount of time expended by counsel and the fact Mr. Schmidt's charged time appears to only duplicate Mr. Waldera's work in these subcases. *See Craft Wall of Idaho, Inc. v. Stonebraker*, 108 Idaho 704, 706, 701 P.2d 324, 326 (Ct. App. 1985) ("A court is permitted to examine the reasonableness of the time

and labor expended by the attorney under I.R.C.P. 54(e)(3)(A) and need not blindly accept the figures advanced by the attorney”). For example, it appears that Mr. Schmidt charged the Gideons for all status conferences and hearings before the CSRBA Court that were handled by Mr. Waldera. Certainly the duplication was unnecessary and unreasonable for purposes of awarding attorneys fees. Further, charging for all emails regarding scheduling and updates appears to be unnecessarily duplicative as well. At a minimum, the Court should not award fees for the same matter when only one attorney actually performed the task (i.e. arguing a motion).

Next, it appears that Gideons’ counsel charged approximately 70 hours or more (est. \$21,000.00) related to filing and securing approval related to the motion for late claim. Whereas Mr. Farley amended his water right claim no. 95-16445, and IDWR accepted and recommend his amendment, the Gideons chose to file the additional late claim after consulting with IDWR regarding what they believed was a better procedure. The Gideons’ choice to file the late water right claim is not something that should be held against Mr. Farley for purposes of an attorneys fees award. Further, this was done despite the fact the Gideons already held a partial decree for a de minimus domestic and stockwater right. *See Partial Decree 95-17752*. The Gideons claimed the “Upper Well” was useless, but we do not know its current status and nothing prevented the Gideons from replacing that well to exercise their existing decreed water right. Moreover, the Gideons objected to IDWR’s initial recommendation for water right 95-18409, and what was ultimately decreed was less than what the Gideons claimed (i.e. 0.02 cfs vs. 0.04 cfs quantity, different place of use). In other words, the Gideons did not secure anything more than what they claimed and in fact received something less than what their amended objection sought.

Apart from the above, the Gideons’ counsel charged approximately \$7,000.00 for legal services associated the mediated settlement conference the parties participated in during the fall

of 2023. Although unsuccessful, the parties attempted to mediate their dispute with Special Master Bilyeu (the court appointed mediator). The parties participated on their own volition in good faith, and requested the settlement conference. Special Master Booth ordered the conference after the parties requested it at a status conference following issuance of the 706 Report. As such, any fees associated with the mediation were not necessary for purposes of litigating these consolidated subcases.

Finally, although the Gideons obtained a partial decree for water right 95-18409, Mr. Farley similarly obtained a partial decree for water right 95-16445. The Gideons objected to Mr. Farley's claim at the outset and claimed complete ownership of the right, a position that was denied. The parties' subcases were consolidated and each prevailed on their own claim.

Counsel for Mr. Farley is unaware of any awards in cases similar to this one. Although unique and novel, it does not appear that the consolidated subcases regarding contested domestic and stockwater rights would warrant an award of attorneys fees over \$112,000.00 as claimed in the *Fees Petition*. Although the matter was resolved on summary judgment, and Mr. Farley received partial relief on his motion to alter or amend, and the challenge was denied, the fees requested appear to exceed a reasonable time and have unnecessary duplication by other counsel.

At a minimum, if the Court awards attorneys fees, it should: 1) reduce Mr. Schmidt's hourly rate to \$300/hr or less; 2) eliminate all fees for duplicate work charged by Mr. Schmidt; 3) remove any and all time billed related to the late claim motion 95-18409; 4) remove any and all time billed related to the settlement conference; and 5) reduce the amount requested to a reasonable fee under the circumstances.

CONCLUSION

Contrary to the Gideons' parting shot, the "entirety of the parties water right claims" did not arise under the real estate purchase and sale agreement. *Fees Petition* at 17. Instead, the Gideons' claim no. 95-18409 originated, as claimed, by Mr. Farley's diversion and beneficial use in 1999 and the conveyance of the property through the Warranty Deed in 2019. The Gideons argued at great lengths that their claim arose solely by Mr. Farley's actions and his actual conveyance of the property "with appurtenances." *See Memorandum in Support of Motion for Summary Judgment* at 11-15; *Reply in Support of Motion for Summary Judgment* at 8-12; *Response to Brian Farley's Opening Brief on Challenge* at 12-17. The Gideons also expressly represented the prior agreement merged into the deed. *See Response on Challenge* at 16. Since there is no "attorneys fees" provision in the deed, the merger doctrine plainly applies and precludes the Gideons from an award of fees based upon contract. *See Ex. A.*

Finally, Mr. Farley raised legitimate arguments that were not "frivolous" or "plainly fallacious" to warrant an award of fees under section 12-121. Both parties prevailed in part in these consolidated subcases and given the unique facts and circumstances each party should be responsible for their own fees and costs. The law does not support the Gideons' request for fees and costs and the Court should disallow the petition accordingly.

DATED this 20th day of February, 2025.

MARTEN LAW LLP


Travis L. Thompson

Attorneys for Brian T. Farley

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of February, 2025, I served true and correct copies of the foregoing **BRIAN FARLEY'S MOTION TO DISALLOW GIDEONS' VERIFIED PETITION FOR COSTS AND ATTORNEY FEES** by the method indicated below, and addressed to the following:

Clerk of the Court
CSRBA
253 3rd Ave. North
P.O. Box 2707
Twin Falls, Idaho 83303-2707

☐ U.S. Mail, postage prepaid
☒ Hand Delivery
☐ Facsimile
☐ Overnight Mail
☐ Email

Andy Waldera
Sawtooth Law Office
1101 W. River St., Suite 110
Boise, Idaho 83702

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Facsimile
☐ Overnight Mail
☒ Email

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

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Facsimile
☐ Overnight Mail
☐ Email

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 83720
Boise, Idaho 83720-0010

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Facsimile
☐ Overnight Mail
☐ Email

United States Dept. of Justice
Environment & Natural Resources Division
550 W Fort Street, MSC 033
Boise, Idaho 83724

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Facsimile
☐ Overnight Mail
☐ Email

Michael G. Schmidt
Lukins & Annis, PS
601 E. Front Ave., Suite 303
Coeur d'Alene, Idaho 83814

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Facsimile
☐ Overnight Mail
☒ Email



Travis L. Thompson

Exhibit A

RECORDING REQUESTED BY
First American Title Company

AND WHEN RECORDED MAIL TO:
First American Title Company
1866 North Lakewood Drive
Coeur d'Alene, ID 83814

JIM BRANNON 4 P 2696466000
KOOTENAI COUNTY RECORDER
MRR 6/10/2019 4:15 PM
REQ OF FIRST AMERICAN TITLE -
KOOTENAI
RECORDING FEE: \$15.00 DD
Electronically Recorded

Space Above This Line for Recorder's Use Only

WARRANTY DEED

File No.: **729939-C (ms)**

Date: **June 03, 2019**

For Value Received, **Brian T. Farley, an unmarried man, who also appears of record as Brian Farley as his sole and separate property**, hereinafter called the Grantor, hereby grants, bargains, sells and conveys unto **Arthur V. Gideon and Katherine M. Gideon, husband and wife**, hereinafter called the Grantee, whose current address is **23452 N. Derting Road, Hayden, ID 83835**, the following described premises, situated in **Kootenai County, Idaho**, to-wit: **Legal Description attached hereto as Exhibit A, and by this referenced incorporated herein.**

SUBJECT TO all easements, right of ways, covenants, restrictions, reservations, applicable building and zoning ordinances and use regulations and restrictions of record, and payment of accruing present year taxes and assessments as agreed to by parties above.

TO HAVE AND TO HOLD the said premises, with its appurtenances, unto the said Grantee, and to the Grantee's heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that the Grantor is the owner in fee simple of said premises; that said premises are free from all encumbrances except current years taxes, levies, and assessments, and except U.S. Patent reservations, restrictions, easements of record and easements visible upon the premises, and that Grantor will warrant and defend the same from all claims whatsoever.

Date: 06/03/2019

Warranty Deed
- continued

File No.: 729939-C (ms)



Brian T. Farley

STATE OF Idaho)
ss.
COUNTY OF Kootenai)

On this 7 day of June, 2019, before me, a Notary Public in and for said State, personally appeared **Brian T. Farley**, known or identified to me to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same.





Notary Public for the State of Idaho
Residing at: Athol, Idaho
My Commission Expires: 04/02/2020

EXHIBIT A

A PART OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER AND THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 9, TOWNSHIP 52 NORTH, RANGE 3 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO; MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE CENTER QUARTER SECTION CORNER (SOUTHEAST CORNER OF SAID SOUTHEAST QUARTER OF THE NORTHWEST QUARTER), MONUMENTED WITH AN IRON ROD, 30 INCHES LONG, 5/8 INCH DIAMETER, WITH AN ALUMINUM CAP, 2-1/2 INCHES DIAMETER, MARKED PLS 6374, ACCORDING TO THE CORNER PERPETUATION AND FILING RECORD RECORDED AS INSTRUMENT NUMBER 1767664; FROM WHICH THE SOUTH QUARTER SECTION CORNER, MONUMENTED WITH AN IRON ROD, 5/8 INCH DIAMETER, WITH A PLASTIC CAP, MARKED PLS 4194, ACCORDING TO CORNER PERPETUATION AND FILING RECORD FORM RECORDED AS INSTRUMENT NUMBER 1765758, BEARS SOUTH 0°11'12" EAST, A DISTANCE OF 2668.49 FEET;

THENCE SOUTH 0°10'24" EAST , A DISTANCE OF 190.26 FEET ALONG THE EAST LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER TO AN IRON ROD, 30 INCHES LONG, 5/8 INCH DIAMETER, WITH A PLASTIC CAP MARKED PLS 6374;

THENCE SOUTH 85°13'00" WEST, A DISTANCE OF 100.42 FEET TO AN IRON ROD, 30 INCHES LONG, 5/8 INCH DIAMETER, WITH A PLASTIC CAP MARKED PLS 6374;

THENCE NORTH 30°10'56" WEST, A DISTANCE OF 124.35 FEET TO AN IRON ROD, 30 INCHES LONG, 5/8 INCH DIAMETER, WITH A PLASTIC CAP MARKED PLS 6374;

THENCE NORTH 69°49'13" WEST, A DISTANCE OF 194.32 FEET TO AN IRON ROD, 30 INCHES LONG, 5/8 INCH DIAMETER, WITH A PLASTIC CAP MARKED PLS 6374;

THENCE SOUTH 88°39'45" WEST, A DISTANCE OF 31.97 FEET TO AN IRON ROD, 30 INCHES LONG, 5/8 INCH DIAMETER, WITH A PLASTIC CAP MARKED PLS 6374;

THENCE NORTH 79°57'37" WEST, A DISTANCE OF 284.40 FEET TO AN IRON ROD, 30 INCHES LONG, 5/8 INCH DIAMETER, WITH A PLASTIC CAP MARKED PLS 6374;

THENCE NORTH 0°10'55" WEST, A DISTANCE OF 638.20 FEET ALONG THE WEST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER TO AN IRON ROD, 30 INCHES LONG, 5/8 INCH DIAMETER, WITH A PLASTIC CAP MARKED PLS 6374, AT THE SE-NW 1/64;

THENCE SOUTH 89°49'05" EAST, A DISTANCE OF 656.29 FEET ALONG THE NORTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER TO AN IRON ROD, 30 INCHES LONG, 5/8 INCH DIAMETER, WITH A PLASTIC CAP MARKED PLS 6374, AT THE C-S-N 1/64;

THENCE SOUTH 0°11'12" EAST, A DISTANCE OF 660.84 FEET ALONG THE EAST LINE OF THE

Date: 06/03/2019

Warranty Deed
- continued

File No.: 729939-C (ms)

**SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER TO THE
POINT OF BEGINNING.**