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DEPT. OF 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

Consolidated Subcase Nos.
95-16445 (Farley) and
95-18409 (Gideon)

**AFFIDAVIT OF ANDREW J. WALDERA IN
SUPPORT OF MOTION FOR SUMMARY
JUDGMENT REGARDING CLAIM
NO. 95-18409**

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.

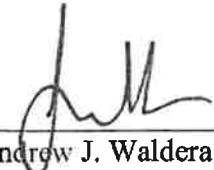
3. Attached hereto as **Exhibit A** is a true and correct copy/compilation of pertinent excerpts from the court reporter-certified trial transcript in *Gideon v. Farley*, Kootenai County, Idaho District Court Case No. CV28-20-2706 (the “Property Purchase Litigation”). The excerpts contain the direct, cross, and any re-direct testimony of: Jody Barden (North Idaho Pump Co.), Brian Farley (claimant of Claim No. 95-16445 and objector to Claim No. 95-18409), and Zach Horsley (Horsley Drilling, Inc.).

4. Attached hereto as **Exhibit B** is a true and correct copy of the *Declaration of Kathy Gideon In Support of Motion for Preliminary Injunction* (Jun. 29, 2023) filed in the Property Purchase Litigation concerning the breakdown of the Lower Well in April 2023.

5. Attached hereto as **Exhibit C** is a true and correct copy of the Gideon-Farley executed *RE-21 Real Estate Purchase and Sale Agreement*, dated April 28, 2019. Also attached is a true and correct copy of the parties’ executed *RE-11 Addendum* to the same, dated the same, but fully executed on May 3, 2019. These documents were stipulated admitted as Plaintiffs’ Exhibit No. 4 in the Property Purchase Litigation.

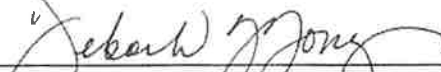
6. Attached hereto as **Exhibit D** is a true and correct copy of the Court’s *Memorandum Decision and Order Re: Plaintiffs’ Motion for Partial Summary Judgment* (Jan. 20, 2021) that, among other rulings, voided the legal effect and applicability of the May 31, 2019 First Amended CC&Rs against Parcel I (the Gideon property) in the Property Purchase Litigation.

FURTHER your affiant sayeth naught.

By 
Andrew J. Waldera

SUBSCRIBED AND SWORN to before me this 30th day of January, 2024.




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

CERTIFICATE OF SERVICE

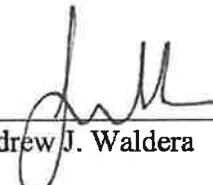
I HEREBY CERTIFY that on this 30th day of January, 2024, I caused a true and correct copy of the foregoing **AFFIDAVIT OF ANDREW J. WALDERA IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT REGARDING CLAIM NO. 95-18409** to be served by the method indicated below, and addressed to the following:

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

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

Travis L. Thompson
163 Second Avenue West
P.O. Box 63
Twin Falls, ID 83303-0063

☐ () U.S. Mail, Postage Prepaid
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Andrew J. Waldera

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

-oOo-

ARTHUR V. GIDEON and KATHERINE M. GIDEON, husband and wife,	}	Case No. CV28-20-2706
Plaintiff,		
vs.		
BRIAN T. FARLEY and PAMELA FARLEY, husband and wife,		
Defendant.		

Court Trial

AT: Kootenai County, Coeur d'Alene, Idaho

ON: June 6, 2022 - June 9, 2022

BEFORE: Honorable Richard S. Christensen, District Judge

APPEARANCES:

For the Plaintiff: Lukins & Annis, P.S.
By: Michael G. Schmidt, Esq.
601 E Front Avenue, Suite 303
Coeur d'Alene, Idaho 83814

For the Defendant: Campbell & Bissell
By: Michael S. Bissell, Esq.
Brandon E. Slaven, Esq.
820 W 7th Avenue
Spokane, Washington 99204

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DIRECT EXAMINATION

11:04:01 MR. SCHMIDT: Q. Mr. Barden, are you familiar
 11:04:02 with Brian Farley?
 11:04:14 A. Yes.
 11:04:15 Q. And briefly, how are you familiar with him?
 11:04:16 A. I've done a lot of work for him in the pump
 7 business.
 11:04:18 Q. And what about the Gideons? Are you familiar
 9 with the Gideons?
 11:04:20 A. Yes.
 11:04:21 Q. And how?
 11:04:22 A. Same: They bought the Farley property and
 13 I've done a bunch of work for them also.
 11:04:34 Q. Where do you work?
 11:04:35 A. I own North Idaho Pump.
 11:04:36 Q. And what is your position?
 11:04:37 A. We install water and sewer pumps and
 18 irrigation pumps and that, residential pumps.
 11:04:49 Q. Do you do any commercial work as well?
 11:04:50 A. Yes.
 11:04:51 Q. How long have you lived in the Coeur d'Alene
 22 area?
 11:04:53 A. I was born and raised here.
 11:04:54 Q. And how long have you been working in the well
 25 water/septic business?

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11:05:01 A. Roughly 30 plus years.
 11:05:02 Q. And how many different well systems have you
 3 worked on in that time?
 11:05:04 A. Thousands.
 11:05:05 Q. And would those all be in this area?
 11:05:06 A. Yes.
 11:05:07 Q. Are you familiar with the Idaho Department of
 8 Water Resources' well construction search application
 9 records?
 11:05:10 A. Yes.
 11:05:11 Q. And what are they?
 11:05:12 A. It's a record of a well log or it gives all
 13 the pertinent information on a well, such as the depth
 14 and the gallons per minute and the static and the
 15 description of the legal and...
 11:05:46 Q. And is that type of information helpful to a
 17 well system professional like yourself?
 11:05:48 A. Yes.
 11:05:49 Q. Why?
 11:05:50 A. Because it gives us all the information that
 21 we need to size the pump and do the necessary work on
 22 the well.
 11:05:53 Q. And is that type of information the
 24 information that you and other well experts would rely
 25 on in your work when you address water supply issues?

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11:06:01 A. Yes.
 11:06:02 Q. If you could turn to Exhibit No. 62, please.
 11:06:23 A. Sixty-two?
 11:06:24 Q. Towards the very back, yes. And these are
 5 from Exhibit A to Plaintiff's Second Amended Expert
 6 Witness Disclosure. So what is the well yield when
 7 you're — and I'm not asking you any questions about
 8 Exhibit 62 right now, but just generally what is the
 9 well yield?
 11:07:40 A. What is, in general, a well yield?
 11:07:41 Q. Uh-huh.
 11:07:42 A. The gallons per minute that the well produces.
 11:07:43 Q. And how does one perform a well yield test?
 11:07:44 A. Well, usually we would pump the column of
 15 water out of the well and then get down to where we try
 16 and match what is coming into the well and what's going
 17 out of the well.
 11:07:48 Q. Okay. And how long do you need to perform a
 19 test?
 11:07:20 A. Well, it depends. But typically, it would be
 21 a two-hour or a four-hour test. It may take longer to
 22 pump the column out.
 11:07:23 Q. And how does the depth and the size of the
 24 casing affect the length of time to do the test?
 11:07:25 A. Well, the casing holds about one and a half

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1 gallons per foot, and so we typically would want to pump
 2 that all out and the depth would be more water, just be
 3 more gallons.
 11:07:54 Q. And why do you need to pump the column out of
 5 water?
 11:08:06 A. Well, the column holds water that may not be
 7 water that's produced by the well, so it may just build
 8 up over time at a slow gallons per minute, and then —
 9 but that's not the true nature of the well, so until we
 10 pump it out and actually get to the flow, that will
 11 be — how we would do a well test.
 11:08:12 Q. Okay. So with respect to — well, first of
 13 all, can you — do you see the documents labeled A1 —
 11:08:14 A. Yes.
 11:08:15 Q. — through A7?
 11:08:46 A. Yes.
 11:08:47 Q. And what are those documents?
 11:08:48 A. Looks like a well report and a hydrofrack
 19 chart, and another well report, and another well report.
 11:08:20 Q. And who uses this information?
 11:09:21 A. Well, we definitely would, a homeowner would,
 22 or, you know, lots of people would use it.
 11:09:23 Q. Okay. Does the Idaho Department of Water
 24 Resources require that this information be filed?
 11:09:25 A. Yes, by the well driller.

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11:09:14 Q. And how do you find it?

11:09:22 A. Department of Water Resources or you can go on
3 their website or go down there to the Department of
4 Water Resources.

11:09:25 Q. And is the information contained in the
6 reports generally reliable?

11:09:34 A. Yes.

11:09:38 Q. Okay. And what area or region do these well
9 drillers reports relate to in Exhibit No. 62?

11:09:40 A. What region?

11:09:41 Q. Yeah. Relative to where the subject property
12 is, the Gideons' property.

11:09:53 A. This looks like the upper well, what we would
14 call the upper well.

11:09:55 Q. And you're referring to Exhibit A1?

11:09:56 A. A1.

11:09:57 Q. Okay. And the next one?

11:10:08 A. Looks like the hydrofrack report for the upper
19 well.

11:10:20 Q. Okay. And the next one?

11:10:21 A. It's the same charted hydrofracking report.

11:10:22 Q. And A4, the next one?

11:10:23 A. Looks like the lower well, I believe, by the
24 depth.

11:10:25 Q. And A5?

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11:10:41 A. A5, I believe, is the first well that was
2 drilled that was dry.

11:10:53 Q. And you refer to the first well. What are you
4 talking about there?

11:10:55 A. I'm sorry, the upper well that they first
6 drilled. I don't know how to say it.

11:11:07 Q. Is it –

11:11:18 A. Okay. I think it's the dry well, the first
9 dry well that he drilled.

11:11:10 Q. Is it the one that had – that you later
11 placed the pump in or is it one that is no longer there?

11:11:12 A. I believe it's one that's no longer there.

11:11:13 Q. Okay.

11:11:14 A. The 610.

11:11:15 Q. And A6, if you know which one that is.

11:11:16 A. Okay. Looks like the same one. I think I got
17 two of the same.

11:11:18 Q. Okay. And A7?

11:11:19 A. A7 looks like the upper well.

11:11:20 MR. SCHMIDT: Okay. And motion to admit
21 Exhibit 62.
(Plaintiffs' Exhibit 62 offered.)

11:11:22 MR. BISSELL: Objection, your Honor. It's –
24 there's lack of foundation. It's hearsay. The
25 certification of public records, there's no 902(11)

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1 notice given. There's nothing like that at all.

11:12:52 THE COURT: Mr. Schmidt?

11:12:53 MR. SCHMIDT: These are publicly available.
4 There's indicia of reliability. They do meet the
5 business records requirement. The person who creates
6 them is required to file them and record them. I do
7 believe that they meet the business records exception.

11:13:18 THE COURT: Well, the keeper of those business
9 records has to say that. The keeper of the business
10 records would have to testify or someone who has custody
11 of those records would have to testify.

11:13:42 MR. SCHMIDT: I believe that they are public
13 records of vital statistics as well, and that the other
14 exceptions rule under Idaho Rule of Evidence 803, they
15 have circumstantial guarantees of trustworthiness. They
16 concern a material fact, they're more probative than
17 other evidence obtainable through reasonable efforts,
18 and admission will best serve justice.

11:13:49 I also think that they qualify under 902(5),
20 an official publication. It's a publication purporting
21 to be issued by a public authority and it can be
22 confirmed by going to the website, and ancient records
23 as well. I believe that at least some of these are over
24 30 years old. But to the extent they aren't, they are
25 all quite old. And again, that would, I think, help get

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1 them admissible under the other exceptions requirement
2 because there are circumstantial guarantees of
3 trustworthiness.

11:14:24 MR. BISSELL: Your Honor, first of all, they
5 don't fall under 803(24). If they do, you got to give
6 notice to the other side. Secondly, all those other
7 things may apply, like they're over 30 years old, that
8 sort of thing, but you still have to have somebody
9 certify they're a authenticate copy of a public record.
10 They didn't do that. It's a simple thing to do; it
11 wasn't done.

11:14:42 MR. SCHMIDT: These documents were provided as
13 an exhibit as Exhibit A to the expert report of
14 Mr. Barden.

11:15:15 THE COURT: You have to ask more questions,
16 Mr. Schmidt. I'm going to sustain the objection at this
17 time.

11:15:18 MR. SCHMIDT: Q. Are these an official
19 publication issued by a public authority, Mr. Barden?

11:15:20 A. Yes.

11:15:21 Q. And can this information be confirmed by going
22 to the website that you earlier referenced?

11:15:23 A. Yes.

11:15:24 MR. SCHMIDT: Move again to admit under Rule
25 902(5).

11:15:31 (Plaintiffs' Exhibit 62 offered.) 11:15:32 THE COURT: Before we go any further, I need 3 to go to chambers – oh, I found it. 11:16:04 I don't believe these are a public – I don't 5 see this as official publication. It's not issued by a 6 public authority. These are filled out by well 7 drillers. They would have met the public records 8 exception if they had been certified, but they are not 9 certified. 11:17:50 MR. SCHMIDT: Exception No. 14 to hearsay, 11 then, records of documents that affect an interest in 12 property. 11:17:53 THE COURT: Exhibit – I'm sorry, is that 14 eight – 11:18:05 MR. SCHMIDT: Fourteen, subsection 14 of 16 806 – or 803, sorry. 11:18:37 THE COURT: I'll admit them. 11:18:48 MR. BISSELL: Your Honor, may I be heard? 11:18:49 THE COURT: You may. And you may put your 20 objection on the record. 11:18:51 MR. BISSELL: All right. First of all, your 22 Honor, we're talking about the hearsay, that's – we're 23 putting the cart before the horse. First they have to 24 be authenticated, and they're only self-authenticating 25 if they fall under one of the things under 902(4), and	293	1 correct? 11:20:42 THE COURT: Correct. 11:20:43 MR. BISSELL: Okay. Thank you, your Honor. 11:20:44 THE COURT: Thank you. 11:20:55 MR. SCHMIDT: Q. When did you first meet 6 Brian Farley? 11:20:57 A. About 19 – or 2017. 11:20:58 Q. And what were you contacted for? 11:21:09 A. Just to do some work on his property and he 10 was getting ready to sell, so we were going to try and 11 get the upper well functioning. 11:21:12 Q. Did he indicate whether or not he was having 13 any water supply issues? 11:21:14 A. Yes, he had. 11:21:15 Q. And about how many times did you work on the 16 well system while it was owned by Mr. Farley? 11:21:17 A. Probably half a dozen. 11:21:18 Q. What did Mr. Farley tell you about the wells 19 in the area of his property? 11:21:20 A. Water's hard to find and he finally had to go 21 down to a lower property to drill to find good water for 22 the house. 11:21:23 Q. And is that consistent with the well drillers 24 report logs? 11:21:25 A. Yes.	295
1 it talks about certified copy of public records, but 2 it's got to be certified. 11:19:53 And moreover, some of these documents, I mean, 4 they're made by well drillers. We don't know even who 5 did it. I guess it's a hydrofracturing log. There's 6 one that says Department of Ecology on it. That's why 7 you go through the process. I mean, it's set forth in 8 the rules here's what you do to get these certified 9 public records in. 11:19:10 THE COURT: I should make the exception as far 11 as the well drillers report. I will accept A2 and A3. 12 Court will sustain objection on – 11:19:43 MR. SCHMIDT: The objection is sustained as to 14 which portions? 11:19:45 THE COURT: The fracking, hydrofracturing log. 11:19:46 MR. SCHMIDT: Okay. 11:19:47 THE COURT: And the subsequent graph. 11:20:18 MR. BISSELL: Your Honor, I'm just a little 19 unclear of exactly what's in, what's out. If you can... 11:20:20 THE COURT: Yes. The Court's admitting the 21 exhibit, specifically what's referred to as page A1, A4, 22 A5, A6, and A7. 11:20:23 (Plaintiffs' Exhibit 62 (page A1, A4, A5, 24 A6, and A7) admitted.) 11:20:25 MR. BISSELL: One, four, five, six, and seven,	294	11:21:51 Q. And when we talk about the upper well, I know 2 you've been involved in this dispute and deposed. Do 3 you know which well we're referring to? 11:22:04 A. I believe that it is the Exhibit A6. 11:22:25 Q. But its location? 11:22:26 A. Oh, I'm sorry. Say again. 11:22:27 Q. Where is its location relative to the former 8 Farley residence, current Gideon residence? 11:22:39 A. It's just up off – just up by the house. Is 10 that what you mean? 11:22:41 Q. And the lower well is located where? 11:22:42 A. Approximately 2,000 feet below the house on 13 another piece of property. 11:22:44 Q. Okay. What did Mr. Farley tell you about the 15 upper well? 11:22:46 A. Well, that it was dry and that it was dry when 17 they drilled it. They tried to make it work and it 18 didn't, so they had it hydrofracked, and that's when we 19 came in after it was hydrofracked, to see if it had 20 worked and would make any more water. 11:23:21 Q. Did you – were you able to locate any records 22 of hydrofracking ever actually having occurred? 11:23:23 A. I've never seen it work. 11:23:24 Q. But did you find any records regarding 25 hydrofracking ever actually occurring on the upper well?	296

11:23:31 A. Yes. 11:23:32 Q. Okay. And were you able to evaluate whether 3 or not hydrofracking worked to make the well no longer a 4 dry well? 11:23:45 A. I don't think it worked on it. I can't 6 understand the hydrofrack's report, how he did it, but 7 it doesn't look like it made any more water, and I know 8 that it didn't pump any more water. 11:23:59 Q. If you'll turn to Exhibit 62, A1. And do you 10 see where it says the location of the well on the 11 paragraph 3? 11:24:12 A. Yes. 11:24:13 Q. And which well would this be, Exhibit A1? 11:24:14 A. I'm not sure by the lot and -- or the -- I 15 believe it's the upper well, the 700 footer. 11:24:56 Q. Okay. And what was the -- what was the 17 measured flow after it was drilled, or where is that 18 indicated on the well drillers report? 11:25:09 A. Up at -- 11 is the yield or gallons per 20 minute, and it shows a half to 1 gallon per minute. 11:25:21 Q. Okay. Would you describe that as a high yield 22 or a low yield? Where on the spectrum is that in terms 23 of -- 11:25:24 A. It's at the bottom. 11:25:25 Q. Is that a pretty --	297 1 knows. 11:26:32 THE WITNESS: Typically, the average gallons 3 per minute that a bank or a financial institution and 4 the magic -- kind of magic number that we look for is a 5 minimum of 5 gallons per minute. 11:26:46 MR. SCHMIDT: Q. Okay. 11:26:47 A. For household. 11:26:48 MR. BISSELL: Objection. That called for 9 hearsay and move to strike. 11:26:50 THE COURT: Overruled. 11:27:01 MR. SCHMIDT: Q. Did Mr. Farley ever mention 12 anything to you about dry wells that he had drilled? 11:27:13 A. Yes. 11:27:14 Q. What did he state? 11:27:15 A. He had a dry well before this well, the upper 16 well, which I wasn't aware of at the time, but he did 17 drill one before that also, before the upper well, which 18 is also dry. 11:27:39 Q. Okay. I want to talk about the lower well 20 history now. Did Mr. Farley talk to you about the lower 21 well? 11:27:22 A. Yes. 11:27:23 Q. And what did he tell you about its production 24 and history? 11:27:25 A. That it's a good well, that it's 5 gallons per
11:25:11 A. It's low, very low. 11:25:22 Q. Is that a useful amount of water? 11:25:23 A. No. 11:25:24 Q. Could a normal household sustain itself on 5 that much water? 11:25:26 A. No. 11:25:27 MR. BISSELL: Objection. Lack of foundation. 11:25:28 THE WITNESS: Probably not. 11:25:29 THE COURT: Hold on. Hold on a second. The 10 question was, "Is that a useful amount of water?" 11:25:31 "No." 11:25:32 And then, "Could a normal household sustain 13 itself?" Mr. Bissell objected at that point. There was 14 an answer. The answer is stricken. The objection 15 sustained unless you have anything else on that. 11:25:56 MR. SCHMIDT: Q. Would a household of, say, 17 four individuals who showers every day, does laundry, 18 waters a garden, would that be enough water to sustain 19 that type of use? 11:26:20 MR. BISSELL: Objection. Lack of foundation. 11:26:21 THE COURT: Sustained. 11:26:22 MR. SCHMIDT: Q. Do you know how much water 23 is typically required for a household to operate? 11:26:24 MR. BISSELL: Objection. Lack of foundation. 11:26:25 THE COURT: Overruled. He's asking if he	298 1 minute plus. 11:27:52 Q. If you'll turn to Exhibit 62, A-4. 11:28:03 Do you recognize that document? 11:28:04 A. Yes. 11:28:05 Q. And what is that? 11:28:16 A. It looks like the lower well. 11:28:17 Q. And what was its yield when it was drilled? 11:28:18 A. It says 2 to 3 gallons per minute. 11:28:29 Q. Okay. Did he tell you that he ever had this 10 well hydrofracked? 11:28:31 A. No. 11:28:32 Q. Have you seen anything in the government 13 records it having been hydrofracked? 11:28:34 A. No. 11:28:45 Q. Could you describe to the Court the well 16 system as it existed in 2017 when you were first 17 requested by Mr. Farley to do work on it? What was its 18 state when you arrived before you did any work on it? 11:28:59 A. The lower well was the only well that filled 20 the 3,000-gallon reservoir that fed the whole upper 21 house, the yard, and garden, and it was the prime well, 22 the only well that fed the residence. 11:29:23 Q. And how did it work vis-a-vis the cistern or 24 the reservoir? 11:29:25 A. Inside -- so the reservoir sits up at the 300

1 house and it has an electrical float that's just a set
2 of contacts that when the lower – when the float drops,
3 the contacts close, it sends a signal 2,000 feet down
4 the hill to the well site where there's a controller
5 that picks up the signal and fires the pump. And it's
6 that simple. It's either on or off by the float.
7 There's no other way to turn it on or off.

11:30:08 Q. Did Mr. Farley indicate whether the lower well
9 provided water to his residential property at that time?

11:30:09 A. Yes.

11:30:09 Q. And what did he say?

11:30:10 A. It was the only water to the property at that
13 time.

11:30:14 Q. And is that what your observation was as well?

11:30:15 A. Correct.

11:30:16 Q. Okay. Was the upper well hooked up to the
17 house at all?

11:30:18 A. It had been, it looked like at one time, but
19 it wasn't when we arrived and we actually hooked it back
20 up, so I believe it was hooked up at one time.

11:30:21 Q. Okay. Did you perform a well test on the
22 upper well to determine whether it was productive?

11:30:23 A. Yes, we attempted to.

11:30:24 Q. Okay. Could you describe what you did?

11:30:25 A. Well, we attempted to do a four-hour well test

11:32:51

Q. And where were you when he requested that he
2 draft this?

11:32:53

A. At my office. He came in to pay the bill and
4 asked if I would write him something up on the results
5 and we would just call it a two-hour test.

11:33:06

Q. And is – is this – could this letter be
7 misleading to somebody?

11:33:18

A. Yes.

11:33:19

Q. How?

11:33:19

A. Because it doesn't say that after two hours it
11 ran out of water.

11:33:19

Q. Did you know why Mr. Farley was requesting
13 that you draft this?

11:33:19

A. Yeah.

11:33:19

Q. Why?

11:33:19

A. For the sale of the property, to make it look
17 like it was a good well up at the house.

11:33:19

Q. How did you feel about drafting that letter?

11:33:19

A. I felt like crap, but I did it.

11:33:20

Q. What did Mr. Farley tell you about his plans
21 in 2017 regarding the upper property?

11:33:22

A. Well, he wanted to try and use the upper well
23 and keep the lower well for the sale – or for a sale.

11:34:24

Q. Would the upper well provide adequate water
25 for residential purposes?

1 and so we put our pump in, we started pumping, we pumped
2 the column of water out, got it down to nothing or out
3 of water, and then could never get it to recover to pump
4 any more out.

11:33:15 Q. How long did it take to pump the water column
6 out?

11:33:17 A. About two hours.

11:33:48 Q. If you'll turn to Exhibit 54, please. Do you
9 recognize Exhibit 54?

11:33:04 A. Yes.

11:33:06 Q. Did you type this letter?

11:33:06 A. I didn't type it, but I wrote it.

11:33:13 Q. And is what you wrote technically true?

11:33:14 A. It is technically true, but it's misleading.

11:33:15 Q. Is there information missing to make it
16 entirely true or to make it not misleading?

11:33:17 A. Yes.

11:33:18 Q. Why did you create – why did you type up
19 Exhibit 54?

11:33:20 A. Well –

11:33:21 Q. Wait. Did somebody request that you type it
22 up?

11:33:23 A. Brian asked me to write something up for the
24 test because we abandoned the four-hour test at the
25 time, and that was it.

11:34:11

A. No.

11:34:12

MR. BISSELL: Object. Lack of foundation.

11:34:13

THE COURT: Ask another question. Sustained.

11:34:24

MR. SCHMIDT: Q. What type of use could you

5 make with the volume of water that was being produced by
6 the upper well?

11:34:37

A. None.

11:34:58

Q. If you'll turn to Exhibit No. 26, please. And
9 this document has been already admitted as evidence.
10 It's the Amended Notice of Claim to Water Right. Do you
11 know what this reflects – or sorry, this water right
12 lists a place of use.

11:35:13

Is the place of use accurately listed for the
14 lower well?

11:35:15

A. No.

11:35:16

Q. And why is that not accurate?

11:35:17

A. Well, he's stating that it's for trough water
18 or stock water.

11:35:19

Q. And in working on this water system, did you
20 become familiar with the various components and where
21 everything was piped?

11:36:22

A. Yes.

11:36:23

Q. Okay. And why is that inaccurate?

11:36:24

A. Well, just the way that it's – the way that
25 the piping is that he – you can't pipe through a

1 trough. I mean, I don't understand what he was trying 2 to say anyway, but... 11:36:23 Q. Where was the lower well reflected in this – 11:36:24 A. The lower well at the bottom. 11:36:35 Q. Where was it pumping to? 11:36:36 A. To the very top at the house. 11:36:37 Q. And is that true during your – from 2017 when 8 you started working on the well up to when he sold the 9 property? 11:36:40 A. Yes. 11:36:41 Q. And how many times did you work on the 12 property again during that period? 11:36:43 A. Many times. 11:36:44 Q. Mr. Farley has claimed to have turned the 15 water off at the cistern from the lower well in 2017 16 just prior to closing. Do you have – based on your 17 technical expertise and your work on it, is that 18 accurate? 11:37:19 MR. BISSELL: Objection. Lack of foundation. 11:37:20 THE COURT: Overruled. 11:37:21 THE WITNESS: No, I don't believe it's 22 accurate. 11:37:23 MR. SCHMIDT: Q. Explain why that's not 24 accurate. 11:37:25 A. Because I don't see how he could shut off a	305 1 2 if it's pumped, it would come around and go down the 2 hill if that's where it had to go. 11:38:43 It's going to go to the easiest place, so well 4 number 1 and number 2 are tied together up at the top 5 outside of the reservoir and going to one pipe. 11:39:06 Q. There's been testimony that there's a hydrant 7 on parcel T, which is the parcel below the Gideons' 8 parcel. Are you familiar with what I'm talking about? 11:39:19 A. Yes. 11:39:10 Q. Okay. If you'd turn to Exhibit 33, please. 11 Are you there? 11:39:42 A. Yes. 11:39:43 Q. Okay. Do you recognize what's depicted in 14 Exhibit 33? 11:39:45 A. Yes. 11:39:46 Q. Okay. Where is the hydrant located on 17 parcel T? 11:39:48 A. Up in the – what would be the northeast 19 corner. 11:40:20 Q. So between the cistern and the lower well? 11:40:21 A. Yes. 11:40:22 Q. Where is the hydrant? 11:40:23 A. Yes, it's roughly halfway. 11:40:24 Q. Okay. And how does that – how does it get 25 its water? 307
1 valve and not – and have any control over the pump. 2 It's only controlled by a float which is on the other 3 side of the valve, and if the float went down with the 4 valve closed, you'd kill the pump. You'd deadhead the 5 pump. It would be pumping against a closed valve. And 6 then secondly, the way he has it piped on the outside, 7 if the well number 2 had water and actually came on, it 8 would actually just run down the pipe to well number 1 9 instead of going to the reservoir where it's supposed 10 to. 11:38:01 Q. Can you explain that in a little bit more 12 detail? 11:38:03 A. So typically – 11:38:04 Q. How do they come in? Explain that. How did 15 the water from the upper well and lower – 11:38:06 A. So typically, if you have two wells, even if 17 you're pumping to two reservoirs, you would have two 18 pipes going in, one from each well, and that way you 19 have individual flows and not fighting against each 20 other. 11:38:21 So the way this is piped in on the outside, 22 there's one pipe coming into the reservoir. Both wells 23 are piped in underground to that one pipe, and that one 24 pipe is higher or the highest point in the whole system. 25 So if you're pumping water from, let's say, well number	306 11:40:14 A. Well, the hydrant's only gravity fed from the 2 pipe that goes up to the reservoir, so the water starts 3 at the bottom, goes up through the piping, which is – 4 the hydrants just in that line, and then on up to the 5 reservoir, but it comes in above the waterline, so it 6 can't syphon. 11:40:37 Q. It comes into the reservoir above the 8 waterline? 11:40:39 A. The waterline comes in above – I'm sorry, the 10 inlet pipe comes in above the waterline. 11:40:41 Q. So it's dropping in from the air? 11:40:42 A. So there's air, a air gap. And that means 13 that the water can't syphon back out and down to the 14 hydrant, so the hydrant's not even live unless the pump 15 is on, other than what's gravity fed in the line. And 16 once that's gone, it's gone. 11:41:07 Q. Okay. And if the – if there were a ball 18 valve turned to the off position, would water be able to 19 flow out of the hydrant if the valve is closed at the 20 top by the cistern? 11:41:21 A. No. It would create a vacuum and prevent 22 water from coming back down the hill and just like 23 holding your thumb over a straw and picking it up out of 24 water, you're going to pull the water out, but it will 25 create it from syphoning with a closed valve. 308

11:42:41 Q. So under either one of those scenarios, either 2 pumping or, I guess, just opening it against a closed 3 valve, those are not viable ways to use the hydrant? 11:42:04 A. No. And there's no control of the pump at 5 all. So even if you turn the hydrant on and manually 6 jumpered the pump or made it come on, you still have no 7 control. It's just coming on wide open and whatever 8 pressure it has to build. There's no control at all. 11:42:29 Q. You've made mention of jump switches being 10 used to turn a pump on in your expert report. Could you 11 describe what a jump switch is? 11:42:32 A. Well, it's a jumper wire and it's just a piece 13 of wire bent in a U that allows us to make a contact, so 14 you're just touching the two terminals that would be 15 just like the float coming on, making a switch, making a 16 contact. 11:42:57 Q. Would you turn to Exhibit 52, please. 11:42:58 A. Fifty-two? 11:42:59 Q. Fifty-two. There's three pictures there. 11:43:20 A. Yes. 11:43:21 Q. Let me know when you've had a chance to look 22 at them. 11:43:23 A. Okay. 11:43:24 Q. What are those three pictures of? 11:43:25 A. The controls and jumper wires.	309	1 being used on the well controls? 11:44:12 A. Yes. 11:44:13 Q. And could you describe what that evidence was? 11:44:14 A. On the second picture, I don't know if I can 5 explain. So what we use this for is to jump the 6 contactor or the controller. And what it does is when 7 you put it on, you'll see a little spark, and when you 8 take it off, you'll see a little spark, and that's just 9 the contact being made but it leaves a burn. 11:44:40 Q. Is that -- 11:44:41 A. You can tell when it's been jumped or arced 12 because of the burn marks. 11:44:43 Q. Is that an acceptable -- does that do any 14 damage to the -- what are those switches called? 11:45:05 A. The BW controller. Yes. Well, just the arc 16 is not good. I mean -- 11:45:07 Q. Why isn't it good? 11:45:08 A. Well, because it's stray voltage. It's not a 19 solid contact, so it can damage them. It can very -- do 20 a lot of damage. 11:45:21 Q. There's been some reference to water being 22 pumped to a trough. Is there a trough located between 23 the lower well and the cistern? 11:45:24 A. No. 11:45:25 Q. Did you observe one at any point in time?
11:43:21 Q. And when were those taken? 11:43:22 A. Not too long ago, 6/10. 11:43:33 Q. Are you -- don't reference the exhibit. Do 4 you recall? 11:43:35 A. I'm sorry? 11:43:36 Q. Do you recall when they were taken? 11:43:37 A. Well, they were taken last time -- last couple 8 times I was down there. I don't know, honestly. 11:43:49 Q. Was it during the period of time that the -- 11:43:40 A. Oh, yes. 11:43:41 Q. That the Gideons owned the property? 11:43:42 A. Yes. 11:43:43 Q. And about how long ago? 11:43:44 A. Couple years ago maybe. 11:43:45 Q. Two years ago? 11:43:46 A. Yeah, three years ago. 11:43:47 Q. Okay. During the Gideons' ownership of the 18 property? 11:43:49 A. Correct. 11:44:20 Q. And what -- those jumper switches, are those 21 yours? 11:44:22 A. No. 11:44:23 Q. Do you know whose they are? 11:44:24 A. No. 11:44:25 Q. Did you see any evidence of jumper switches	310	11:45:41 A. No, not until they told me there was one 2 there. 11:45:53 Q. Okay. If you'll turn to Exhibit 57, please. 4 Do you recognize what that is? 11:46:05 A. Yes. 11:46:06 Q. What is it? 11:46:07 A. That's a water trough. 11:46:08 Q. And where is that located? 11:46:09 A. That's at the halfway frost-free hydrant. 11:46:10 Q. Okay. During your work on Mr. Farley's 11 property from 2017 up to 2019, was there a trough in 12 that location? 11:46:13 A. No. 11:46:14 Q. When you initially started doing work for the 15 Gideons, was there a trough in that location? 11:46:16 A. No. 11:46:17 Q. When you finally did observe a trough in that 18 location, were -- was there any indication that it had 19 been recently placed there? 11:46:20 A. Yes. 11:46:21 Q. And what was that -- what would that be? 11:46:22 A. Well, he propped it up on boards to make it 23 level and all the grass underneath of it was still 24 green. I mean there had never been watering. It's 25 never pushed into the ground. It's never settled, so it

1 was just placed there.

11:46:52 Q. And assuming that the valve at the cistern was
3 turned on, does using that trough without turning on the
4 pump cause any problems that -- at the cistern?

11:47:15 A. Yes.

11:47:16 Q. Could you describe what those problems are?

11:47:17 A. Well, whenever you drain the line, you
8 introduce air into a waterline, so if he's halfway down
9 the hill and he's pulling the water down to the trough,
10 it's inducing air, so now the pump comes on and it's
11 trying to push this air up and over the valleys because
12 nothing's -- it's not just straight up and down, the air
13 gets trapped. So when he does that it -- pump comes on,
14 it pushes all the air up, compresses the air and just
15 causes all kinds of icky stuff with the piping. You can
16 blow piping up with air trapped.

11:47:57 Q. So with Mr. Farley's desire to share this well
18 and to use it, is that attainable -- sorry, does that
19 work, a shared well system?

11:48:20 MR. BISSELL: Objection. Lack of foundation.
21 It's ambiguous.

11:48:22 MR. SCHMIDT: Can I restate my question?

11:48:23 THE COURT: You may. Go ahead.

11:48:24 MR. SCHMIDT: Q. As this system is
25 constructed, is sharing of water from this well system a

1 viable option?

11:48:12 A. No.

11:48:23 Q. Why not?

11:48:24 A. Because the way the well and the -- the
5 reservoir's at the top. The only way to share it evenly
6 would be to -- for the Gideons to have control of it, to
7 equaling it out, because every bit of it goes to the top
8 and if Brian wants to take it before he gets there, then
9 he can, so there's no feasible way to control either --
10 either way, other than just it pumps up to the reservoir
11 to the house, which is the way it's always been.

11:48:52 Q. If the Gideons are awarded this lower well in
13 this lawsuit and water rights pursuant to their
14 agreement, will the Gideons need access to the lower
15 well?

11:49:16 A. Absolutely.

11:49:17 Q. And is that a great need to have that access?

11:49:18 A. Yes.

11:49:19 Q. Why?

11:49:20 A. Because of the way it's been wired and, you
21 know, there's a lot of work that will have to be done.

11:49:22 Q. And how frequently are you being called to
23 address well issues for the Gideons?

11:49:24 A. Quite often. I mean, I've seen them twice in
25 one week, you know, to put in the two new controllers.

Q. Which we --

A. It's probably, you know, every other month at
3 least.

Q. Which week did you put in two new controllers?

A. Well, just three weeks ago.

Q. Three weeks ago you put in two new
7 controllers?

A. I came back in and came back a week later
9 after a storm and had to put another one in.

Q. And you talk about storms. How do storms
11 affect the switch?

A. Well, because we have a phone wire that's
13 2,000-feet long in the ground with splices, the way that
14 these controllers work is they -- I don't know if I can
15 explain it. But anyway, ground is a reference, if that
16 makes any sense. They're reading continuity through
17 ground. So any short, any lightning, any power surge,
18 any brown out, any arcing, can mess up the controller.
19 It fries them.

So typically, what we have seen up there is we
21 think it's lightning strikes anywhere and it gets the
22 phone line because it's not properly grounded and
23 installed and takes them out.

Q. Could it be anything else?

A. It could be the wiring at the source itself.

1 I mean, there's all kinds of things that it could be.

11:51:02 Q. Would the use of jumpers --

11:51:03 A. Jumpers, just the way that -- if you look at
4 the pictures of the controls, I don't know if I can go
5 say that, but the controls are a mess, electrically.

11:51:16 Q. The BW switches, are those going to be an
7 ongoing issue regarding their failure?

11:51:28 A. Yes.

11:51:29 Q. And are you aware of whether or not Mr. Farley
10 had those same issues?

11:51:31 A. Yes, he did.

11:51:32 Q. And did you talk with him about that?

11:51:33 A. Yes.

11:51:34 Q. Did he tell you anything about his purchasing
15 of those?

11:51:36 A. Well, he would actually buy them himself and
17 change him. He also told me that he actually fixed them
18 himself, which I don't know how he could, but...

11:51:49 Q. Would you consider that to be a material issue
20 that would -- that a buyer would want to know about if
21 they were purchasing a well system?

11:51:52 MR. BISSELL: Objection. It's beyond the
23 scope of this witness' expertise and he's not been
24 identified to testify to that, your Honor.

11:52:25 THE COURT: I think -- I'm going to sustain

1 the objection.

11:52:12 MR. SCHMIDT: Q. Did Mr. Farley make any
3 statements about who he wanted to sell his residential
4 property to?

11:52:25 A. He just made some general statements that he
6 wanted to – or he needed to find the right people to
7 sell it to.

11:52:28 Q. And in what context was that stated?

11:52:39 A. Well, in the – in – I guess the way I
10 remember it, what we were talking about was he was
11 having trouble finding people, or I asked him why he was
12 having trouble selling it, and he said that he wanted to
13 kind of pick the neighbor or pick his neighbor, and he
14 wanted to find the right people that he could deal with.

11:52:55 Q. And what did you take that to mean?

11:52:56 A. That he wanted to find somebody he could boss
17 around and tell them what they could and couldn't do up
18 there.

11:53:09 MR. SCHMIDT: I don't have any further
20 questions.

11:53:21 THE COURT: Cross.

11:53:22 MR. SCHMIDT: And I have my next witness that
23 I might need to call now depending on how long you're
24 planning on taking.

11:53:25 MR. BISSELL: It may take a bit. What are we

1 talking about, I guess?

11:53:22 MR. SCHMIDT: It's not quite 12:00 o'clock
3 yet.

11:53:24 THE COURT: Yes, 11:53.

11:53:35 MR. BISSELL: Can I go?

11:53:36 THE COURT: Are you asking to do something
7 right now?

11:53:38 MR. SCHMIDT: I want to call my next witness
9 if he's not going to take –

11:53:40 THE COURT: Oh, you mean call him on the
11 phone?

11:53:42 MR. SCHMIDT: On the phone.

11:53:43 THE COURT: Okay.

11:53:44 MR. BISSELL: Oh, okay.

11:53:45 MR. SCHMIDT: So we're not waiting.

11:53:46 THE COURT: We talk about calling witnesses to
17 the stand, and so, yes, you may step out of the
18 courtroom to call your next witness if this is going to
19 make things more efficient.

11:53:50 MR. SCHMIDT: Yes.

11:53:51 THE COURT: We'll take a brief recess.

11:53:52 (Recess.)

11:58:23 THE COURT: Back on the record in Gideon
24 versus Farley, CV28-20-2076. Court notes the presence
25 of counsel and the parties. You may start your

1 cross-examination.

11:58:22 MR. BISSELL: Thank you, your Honor. Before I
3 do that, I just want to put on the record, because I've
4 heard some talk with regard to it, to expressly state we
5 are not agreeing to adjudicate water rights. That's
6 come up a couple times during the testimony and I just
7 want to make it crystal clear again. I know the Court
8 doesn't have jurisdiction. I just want to be absolutely
9 clear.

11:58:40 THE COURT: Go ahead, Mr. Bissell.

11:58:41 MR. BISSELL: Okay.

11:58:42 CROSS-EXAMINATION

11:58:43 MR. BISSELL: Q. Now, Mr. Barden, you claim
14 you have an extensive history with the well system that
15 serves the residence, the subject residence, correct?

11:58:46 A. Yes.

11:58:47 Q. But that's starting in 2017, though, right?

11:58:48 A. Correct.

11:58:49 Q. Okay. And you don't know what was installed
20 or worked on prior to 2017, correct?

11:59:01 A. Correct.

11:59:02 Q. Nevertheless, you believe you know the system
23 inside and out, correct?

11:59:04 A. Correct.

11:59:05 Q. Okay. And based upon that extensive history

1 and knowing it inside and out, you provided a couple
2 declarations under penalty of perjury, correct?

11:59:03 A. Correct.

11:59:04 Q. Okay. And in the first – one of the things
5 you said in your first declaration is that you said
6 there was no ball valve, didn't you?

11:59:07 A. Correct.

11:59:08 Q. And your company installed that ball valve.

11:59:09 A. I don't believe we did.

11:59:10 Q. But you said there's no ball valve.

11:59:11 A. I didn't believe there was a ball valve, no.

11:59:12 Q. Okay. But we provided you pictures showing a
13 ball valve box and a ball valve, then you agreed, yes,
14 indeed, there's a ball valve.

11:59:15 A. There must be, yes.

11:59:16 Q. Okay. And while you acknowledged that the
17 ball valve existed, you've also stated that it was
18 completely buried and could not be turned on without
19 carefully excavating down through 3 feet of dirt; isn't
20 that what you've stated?

12:00:21 A. I believe it is 3 feet down in a valve box
22 that was buried.

12:00:23 Q. You testified in a declaration that it was all
24 dirt, all the way down to the valve, didn't you?

12:00:25 A. No, I don't believe that.

12:00:21 Q. Okay. 12:00:32 A. The valve is in a riser or in a valve box that 3 is buried. 12:00:54 Q. Okay. Take a look – take a look at 5 Exhibit 50, if you would. 12:01:16 And can you verify that's a second declaration 7 that you executed in this matter? 12:01:28 A. Yes. 12:01:29 Q. All right. Take a look at page 4, please, 10 paragraph 4. Well, let's go back to page 3 – or, yeah, 11 paragraph 3. And you see there in the paragraph where 12 you say, the last two paragraphs – sentences, "The 13 letter and pictures were then provided to me. None of 14 these pictures had previously been provided to 15 Plaintiffs or myself before April 14th, 2021." 12:01:56 Did I read that correctly? 12:01:57 A. Uh-huh. 12:02:08 Q. All right. Then go to the next page. 19 Paragraph 4, quote, "The pictures revealed that 20 approximately 3 feet below the surface of the soil a 21 ball valve was indeed installed," period. Because of 22 the depth of the valve and because it was completely 23 buried, it could not be turned" off – "on and off 24 without carefully excavating down to the valve through 3 25 feet of dirt," period. This type of excavation would be	321 1 haven't dug it up? 12:03:32 A. I still don't understand what you're asking. 12:03:38 Q. You understand what the top of the valve box 4 is? 12:03:45 A. Yeah. 12:03:46 Q. Okay. You know what the surface is? 12:03:47 A. Yeah. 12:03:48 Q. You don't know what the distance is between 9 the surface of the ground and the top of the valve box, 10 do you? 12:03:48 A. Correct. 12:03:49 Q. Okay. And you further testified in your – 13 one of your declarations, your first declaration, that 14 the hydrant on parcel T is gravity fed, and the only 15 water you could get to was limited to what's in the pipe 16 between the hydrant and the cistern; isn't that what you 17 said? 12:04:28 A. Correct. 12:04:29 Q. And then we provided you a photograph of water 20 coming out of the hydrant, didn't we? 12:04:29 A. Yeah. 12:04:29 Q. So then you testified in a second declaration 23 it is possible to use the hydrant by turning it on at 24 the wellhead, didn't you? 12:04:29 A. You can't turn the hydrant on from the
1 difficult and it would leave signs of excavation for 2 many months," period, close quote. 12:02:33 Did I read that correctly? 12:02:34 A. Yes. 12:02:35 Q. But it's not true; you don't have to excavate 6 down 3 feet of dirt to get down to the valve, do you? 12:02:36 A. To turn it off, you probably would. 12:02:48 Q. So you think the valve box is full of dirt to 9 this day? 12:02:49 A. No, the valve box wasn't full of dirt. 12:02:49 Q. Okay. 12:02:49 A. The top of the valve box was buried and you 13 could not reach the valve with your hand or anything 14 else to the ball valve, so you had to reach down there 15 to reach it. 12:02:56 Q. And the top of the box, the valve box, you 17 assume, is a few inches from the surface because you 18 haven't dug it up; isn't that true? 12:03:09 A. I know it was buried. 12:03:20 Q. You assume it's a few inches from the surface, 21 the top of the valve box, don't you? 12:03:22 A. I don't assume anything. I don't know what 23 you're asking. 12:03:24 Q. Isn't it true that you assume the top of the 25 valve box is a few inches from the surface because you	322 1 wellhead. 12:04:42 Q. Okay. You can turn it off, though, down at 3 the pump house, right? 12:05:04 A. No. 12:05:05 Q. Isn't that what the jumper things are for? 12:05:06 A. The jumper is to test the unit. 12:05:07 Q. Okay. 12:05:08 A. You're not supposed to turn it on or off, 9 period. 12:05:10 Q. But you can turn it on that way, can't you? 12:05:11 A. Yeah, you could fire it that way. 12:05:12 Q. Yeah, so look at your second declaration then, 13 page 5. 12:05:24 A. What page? 12:05:25 Q. Page 5. 12:05:26 A. Or what section or... 12:05:27 Q. Just page 5 right now. And so look at the top 18 of page 5 where it says, "Running the lower well to put 19 the waterline under pressure." Do you see that? 12:05:29 A. Uh-huh. 12:05:29 Q. It says, quote, "It is correct that if the 22 lower well is turned on at the well itself and the valve 23 at the cistern is turned to the closed position, it 24 would result in the well running and pumping water 25 through the open hydrant if it were also in the open

1 position." 12:05:52 Did I read that correctly? 12:05:53 A. Correct. 12:05:54 Q. Okay. 12:05:55 A. That's not normally how you would run 6 anything. That's not a normal anything. That would be 7 somebody manually going down there and – 12:06:08 MR. BISSELL: Your Honor, nonresponsive. Move 9 to strike, please. 12:06:10 THE COURT: You can ask him not to keep 11 talking. The last sentence will be stricken. 12:06:12 MR. BISSELL: Q. Now, in your first 13 declaration, you may recall you said that when you 14 actually tested the well on July 17th, 2017, after a 15 short period of time, a few minutes, it went completely 16 dry. 12:06:17 A. Correct. 12:06:18 Q. Is that what you said? 12:06:19 A. Yes. 12:06:20 Q. Okay. Then, in fact, you said that that told 21 you that its yield had not changed from its initial 22 drilling and testing, correct? 12:06:23 A. Correct. 12:06:24 Q. Which was one and a half to 1 gallon per 25 minute, correct?	325 12:08:11 Q. Okay. And then as of – at least as of May 2 28th, 2020, you felt – let me see. Let me strike that. 12:08:38 You've also stated that the well was producing 4 one and a half to 2 gallons per minute as of June 10th, 5 2019, haven't you? 12:08:56 A. Say again. 12:08:57 Q. You have also stated that the upper well was 8 producing one and a half to 2 gallons per minute as of 9 June 10th, 2019, correct? 12:09:10 A. No. 12:09:11 Q. Okay. Take a look at Exhibit 51. Is that a 12 letter you wrote, Mr. Barden? 12:09:13 A. Yes. 12:09:14 Q. And the date of that letter is – or statement 15 is May 28th, 2020, correct? 12:09:16 A. Correct. 12:09:17 Q. And if we go down to the fourth paragraph, it 18 says – wait, so this pertains to the upper well, 19 correct? 12:09:20 A. No, that's the lower well. 12:09:21 Q. So when you say, "Brian had" brought – 22 "bought several controls from us for the main lower 23 well. We had also worked on the upper well, which did 24 not make enough water for the house, one and a half to 2 25 gallons per minute on around 6/10/2019."
12:06:51 A. Correct. 12:06:52 Q. Okay. Let's take a look at that Exhibit 62. 3 I think it was 62. Yeah, A1, the well drillers report. 12:07:14 A. Okay. 12:07:15 Q. Would it be typical to submit a well drillers 6 report saying the volume is one half to one gallon per 7 minute if it ran dry after a couple of minutes? 12:07:28 A. Well, if it ran dry after two hours of pumping 9 it and we pumped the column out, and then it ran dry, 10 yes. 12:07:31 Q. You said "a few minutes" in your declaration. 12:07:32 A. I understand that. 12:07:33 Q. Okay. So that was wrong? 12:07:34 A. Yes. 12:07:35 Q. Okay. 12:07:36 A. It actually was part of the – that's why I 17 did the second one because the first one was not 18 correct. 12:07:39 Q. Well, actually, after you did the first one on 20 your first declaration, you saw Exhibit 54; isn't that 21 true? Take a look at that. That's your letter, right? 12:08:22 A. Correct. 12:08:23 Q. And it was after that that you signed a second 24 declaration, said it ran for two hours; isn't that true? 12:08:25 A. Correct.	326 12:10:01 A. That's just off of the well report. 12:10:02 Q. What? 12:10:03 A. That's just off of the well report. 12:10:04 Q. Okay. But you were stating in this letter – 12:10:05 A. I'm just reading it off the well report. 12:10:06 Q. Nevertheless – 12:10:07 THE COURT: Hold on. Hold on. We can't talk 8 over each other – 12:10:19 THE WITNESS: I'm sorry. 12:10:10 THE COURT: – Mr. Barden. Let him finish his 11 question; otherwise, it's very hard for the court 12 reporter. And, Mr. Bissell, let him finish his answer, 13 okay? 12:10:14 MR. BISSELL: I will, your Honor. Thank you. 15 Sorry. 12:10:16 THE COURT: Thank you. 12:10:17 MR. BISSELL: Q. Mr. Barden, it is 18 nevertheless the case that, on May 28th, 2020, you wrote 19 the statement that said the upper well produced one and 20 a half to 2 gallons per minute on or around 6/10/2019; 21 isn't that true? 12:10:22 A. That's correct. 12:10:23 Q. And as of June 18th, 2021, you did not know 24 whether or not the upper well was providing water to the 25 cistern, correct? 328

EXHIBIT A

12:10:51 A. Correct.
 12:10:52 Q. Now, your flat rate for conducting a well test
 3 was 500 bucks, right? Well, back in 2017.
 12:11:04 A. Possibly.
 12:11:05 Q. Okay. And you charged Mr. Farley for a well
 6 test, correct?
 12:11:17 A. Correct.
 12:11:18 Q. Okay. And he paid you for the well test?
 12:11:19 A. Correct.
 12:11:10 Q. Okay. And he asked you to write the letter
 11 that's Exhibit 54, right?
 12:11:12 A. Correct.
 12:11:13 Q. You voluntarily did so?
 12:11:14 A. Yep.
 12:11:15 Q. Did not threaten you?
 12:11:16 A. Nope.
 12:11:17 Q. Did not threaten to hold payment if you didn't
 18 write it, right?
 12:11:19 A. Nope.
 12:11:20 Q. He didn't intimidate you?
 12:11:21 A. Nope.
 12:11:22 Q. You knew he was planning to sell his house?
 12:11:23 A. Yep.
 12:11:24 Q. And but you felt the letter's misleading?
 12:11:25 A. Yes.

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12:15:14 A. Correct.
 12:15:22 Q. Is that correct? Okay.
 12:15:33 You don't know the source of water that the
 4 Farleys had between '95 and '99, correct?
 12:15:45 A. Correct.
 12:15:46 Q. And nobody – well, strike that.
 12:15:57 Do you recommend that buyers perform a well
 8 test before purchasing a property?
 12:15:59 MR. SCHMIDT: Objection. Goes beyond the
 10 scope of direct.
 12:15:59 THE COURT: Overruled.
 12:16:02 THE WITNESS: Yes.
 12:16:13 MR. BISSELL: Q. And Mr. Farley also told
 14 you, correct, that he thought he was going to have to
 15 deal with sharing the water from the lower well, didn't
 16 he?
 12:16:17 A. He had mentioned about sharing it, yes.
 12:16:18 Q. And we might have covered this, but just in
 19 case we didn't, there's lots of things that can cause a
 20 BW switch to fail, including lightning, power surge, low
 21 voltage, high voltage, or a break in the wire, correct?
 12:16:22 A. Correct.
 12:16:23 Q. Okay. Now, you testified earlier that you
 24 said banks like to see 5 gallons a minute, right?
 12:17:25 A. Well, banks, they won't loan – typically

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12:13:41 Q. But you nevertheless wrote it?
 12:13:42 A. Yes.
 12:13:13 Q. Mr. Barden, if you'll please turn to Exhibit
 4 EE.
 12:13:45 A. EE?
 12:13:46 Q. Yeah, EE, double E. Should be two – let's
 7 see, should be two pages.
 12:14:08 A. Okay.
 12:14:09 Q. All right. And can you identify what
 10 exhibit – this Exhibit EE is, Mr. Barden?
 12:14:11 A. It's just a letter that I wrote.
 12:14:12 Q. To Mr. Schmidt?
 12:14:13 A. Yes.
 12:14:14 Q. At his request, correct?
 12:14:15 A. Correct.
 12:14:16 Q. Okay. And let me just ask it this way: Is it
 17 correct -- so on or about September 10th, 2021, you were
 18 doing something for the Gideons, right?
 12:14:59 A. [Nods head].
 12:15:20 Q. Correct?
 12:15:21 A. Correct.
 12:15:22 Q. Okay. And so am I correct that the problem
 23 with the flow from a pump can be caused by too much
 24 water or air inducing into the line, pump cavitating, a
 25 number of problems?

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1 won't loan anything on less than 5 gallons per minute.
 12:17:12 Q. But you don't know if a home that is
 3 getting – can get by with less than five gallons per
 4 minute if it's a stored system for the water, correct?
 5 You don't know that?
 12:17:26 A. I don't know that.
 12:17:27 Q. Okay. But cisterns are common?
 12:17:28 A. Correct.
 12:17:29 Q. Okay. Have you ever read the Amended CC&Rs to
 10 see what they say about the lower well?
 12:17:31 A. No.
 12:17:42 Q. Now, I was a little confused here about
 13 what – your testimony earlier. So is it correct that
 14 the – the way the water gets in and out of the cistern
 15 is through a pipe near the top of the cistern?
 12:18:16 A. So the – actually, the cistern has another
 17 pump that pumps it out.
 12:18:18 Q. Okay.
 12:18:19 A. So it only comes in and would always pump it
 20 in over the top and drop so we have air gap.
 12:18:21 Q. Okay.
 12:18:22 A. So that no water could syphon that down.
 23 That's the point.
 12:18:24 Q. Because the water level's –
 12:18:25 A. Right. There's a huge difference in

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1 elevation.

12:18:32 Q. Okay.
 12:18:33 A. **So the reservoir's at the top.**
 12:18:54 Q. Do you know what a clapper valve is?
 12:18:55 A. **A flapper valve?**
 12:18:56 Q. Clapper.
 12:18:57 A. **Yes.**
 12:18:58 Q. What is that?
 12:18:59 A. **It's just a check valve or a -- it's just a**
 10 **flap. It's a one-way valve.**
 12:19:01 Q. So where is the check valve between the lower
 12 well and the cistern?
 12:19:13 A. **There is none. It's in the well.**
 12:19:14 MR. BISSELL: Okay. That's all I have, your
 15 Honor. Thank you.
 12:19:16 THE COURT: Redirect?
 12:19:17 MR. SCHMIDT: I don't have any questions, your
 18 Honor.
 12:19:19 THE COURT: All right. May this witness be
 20 excused?
 12:19:21 MR. SCHMIDT: Yes.
 12:19:22 MR. BISSELL: Sorry, I wasn't paying
 23 attention, your Honor.
 12:19:24 THE COURT: May the witness be excused?
 12:19:25 MR. BISSELL: Yes. Sorry, your Honor.

1 hand and be sworn.

12:47:52 PATRICIA ANN ELLIS,
 12:47:53 called as a witness herein,
 12:47:54 having been duly sworn on oath,
 12:47:55 testified as follows:
 12:48:06 THE COURT: If you have a seat there in the
 7 witness stand, Ms. Ellis. If you would state your full
 8 name and spell your last name for the record.
 12:48:19 THE WITNESS: Patricia Ann Ellis, E-L-L-I-S.
 12:48:10 THE COURT: Go ahead, Mr. Schmidt.
 12:48:11 **DIRECT EXAMINATION**
 12:48:12 MR. SCHMIDT: Q. Good afternoon, Ms. Ellis.
 13 I'm going to jump right into it so we can move forward
 14 with this. When did you begin working as a real estate
 15 agent?
 12:48:16 A. **1974.**
 12:48:17 Q. And how do you know the Gideons?
 12:48:18 A. **They were a referral to me from my broker at**
 19 **the time --**
 12:48:20 Q. And --
 12:48:21 A. **-- through Betty Zerba.**
 12:48:22 Q. And were you their real estate agent?
 12:48:23 A. **Yes.**
 12:48:24 Q. And did you find any properties for the
 25 Gideons to look at?

12:19:51 THE COURT: Thank you, Mr. Barden.
 12:19:52 THE WITNESS: Thank you.
 12:19:53 MR. SCHMIDT: Plaintiff is going to check to
 4 see if Patty Ellis, the real estate agent, is outside.
 5 I called Ms. Ellis at 11:55 and she indicated to me that
 6 it's about a 20-minute transit time to get here. I
 7 don't know if you want to take --
 12:20:58 THE COURT: It's kind of early to take the
 9 break; otherwise, it makes for a very long afternoon.
 10 We'll be in recess till she's here. Mr. Schmidt,
 11 contact the -- knock on the door when she comes in.
 12:21:12 MR. SCHMIDT: Will do.
 12:21:13 THE COURT: Thank you.
 12:21:14 (Recess.)
 12:44:51 THE COURT: We're back on the record in Gideon
 16 versus Farley, CV28-20-2706, about to call a new
 17 witness.
 12:47:18 MR. SCHMIDT: I want to apologize to the
 19 Court. I coordinated with Mr. Bissell, who indicated he
 20 was probably going to take around an hour with
 21 Mr. Barden. And on that basis, I contacted Ms. Ellis
 22 and he revised that to 30 to 40 minutes after that, but
 23 at any rate, my apologies. Ms. Ellis, could you please
 24 take the stand?
 12:47:25 THE COURT: Ma'am, would you raise your right

12:49:01 A. **Yes.**
 12:49:02 Q. Okay. What criteria were the Gideons looking
 3 for in a property, if you recall?
 12:49:14 A. **They wanted hopefully to find something out in**
 5 **the country with some acreage, and the home needed some**
 6 **special amenities so Kathy can continue her hobbies of**
 7 **quilting.**
 12:49:38 Q. Okay. And did you identify some properties
 9 for them to look at?
 12:49:40 A. **Yes.**
 12:49:41 Q. Okay. And at some point in time, I understand
 12 you forwarded Mr. Farley's property information to them;
 13 is that correct?
 12:49:44 A. **Yes.**
 12:49:45 Q. Okay. And how did you identify that property?
 12:49:46 A. **There was a price reduction in the Multiple**
 17 **Listing Service. Mr. Farley's property was reduced to**
 18 **899,000 and that was getting within the ballpark of what**
 19 **we -- our goal was.**
 12:50:20 Q. And who did you communicate with on Farley's
 21 side of the transaction?
 12:50:22 A. **I called the listing agent, Rob Elder.**
 12:50:23 Q. And did you schedule an appointment to look at
 24 this property?
 12:50:25 A. **Yes, I did.**

12:50:21 Q. Did you look at the property with the Gideons,
2 or how did that work?
12:50:23 A. The Gideons were in Ohio, so I went to preview
4 it with an appointment.
12:50:35 Q. And when you went to preview it, was
6 Mr. Farley there?
12:50:37 A. Yes.
12:50:38 Q. And what did he do?
12:50:49 A. He was very courteous and showed me the entire
10 home and the surrounding.
12:50:49 Q. Were you shown the property lines by
12 Mr. Farley?
12:50:53 A. Not at that time, no.
12:50:54 Q. Okay. Did he point them to you out – point
15 them out to you at that time or not?
12:51:06 A. I can't recall.
12:51:07 Q. Okay. So did you wind up putting in an offer
18 to purchase as a result of that – I forgot what you
19 called it – preliminary viewing?
12:51:20 A. Yes.
12:51:21 Q. Okay. And what were the terms of that with
22 respect to contingencies?
12:51:23 A. There was a contingency that they have a
24 successful closing on their home in Ohio. And, of
25 course, financing, and that Art and Kathy or one of them

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1 were during this second visit for you, first visit for
2 Art Gideon?
12:53:33 A. I vaguely remember – I have, to be noted, a
4 bad knee, so therefore, I did not walk down, but I'm
5 trying to remember that Art, and I think Rob was there
6 also, and Brian. They walked further down the hill, but
7 there was a lot of emphasis on showing how the well
8 system worked.
12:54:09 Q. Did you – were the property lines pointed out
10 to you from the top of the property or did you walk down
11 below? How – what's your recollection regarding how
12 the property lines were pointed out to you?
12:54:13 A. Just pointed out visually.
12:54:14 Q. And did he point out where – did he describe
15 where the property lines went with respect to where it
16 terminated down the hill, what the point of terminus
17 was?
12:54:48 A. I was not part of that conversation, so I
19 don't know what was said.
12:54:20 Q. Did you hear discussions regarding property
21 lines?
12:55:22 A. Yes.
12:55:23 Q. Okay. Were you aware whether or not there was
24 supposed to be a lot line adjustment?
12:55:25 A. Yes.

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1 would, by a certain date – I think it was the 5th –
2 would come out to view the property to see if it was
3 like I described.
12:51:54 Q. So if you would turn, please – well, I guess
5 so the offer was contingent on them viewing the
6 property?
12:52:07 A. Correct.
12:52:08 Q. Okay. If you would turn to Exhibit 4, please.
9 And what is Exhibit 4?
12:52:10 A. Exhibit 4 is the Real Estate Purchase and
11 Sales Agreement.
12:52:12 Q. And what's it dated?
12:52:13 A. It is dated April 28th, 2019.
12:52:14 Q. And this document's just signed by the
15 Gideons, but did Farley sign it too?
12:52:16 A. Yes.
12:52:17 Q. Okay. So after the Purchase and Sale
18 Agreement was entered into, did you have occasion to
19 view it with one of the Gideons?
12:52:20 A. Yes, with Art.
12:52:21 Q. Okay. And what happened in that viewing?
12:52:22 A. Mr. Farley was there and Art and I took a tour
23 of the home and the premises, the outbuildings, and he
24 liked what he saw.
12:53:25 Q. Did Mr. Farley show what the property lines

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12:55:01 Q. How was that supposed to work?
12:55:12 A. Mr. Farley represented to us that he was
3 working on a lot line adjustment to include the acreages
4 that – or the parcel that he represented to the real
5 estate people.
12:55:26 Q. Okay. So what did you do to confirm what the
7 boundaries would be?
12:55:38 A. We asked and eventually received from the
9 listing agent a parcel map that showed outlined area.
12:55:40 Q. If you would turn to Exhibit No. 12, please.
11 What is that?
12:56:02 A. This is – this appears to be an email to me
13 from Rob with an attachment.
12:56:14 Q. Okay. And what was this email in response
15 to – or, first of all, what is the attachment on the
16 last page?
12:56:17 A. I believe it's a copy of that parcel map that
18 was drawn.
12:56:19 Q. Okay. And did – so what did you request in
20 Exhibit No. 12?
12:56:21 A. I requested a copy of where the property lines
22 would be amended to.
12:57:23 Q. And why did you request that?
12:57:24 A. Because it was represented to us that there
25 would be a change.

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12:57:01 Q. Okay. And so this email was in response to
2 that request and who wrote the responsive email?
12:57:13 A. **This – yes, it was passed through Rob.**
12:57:14 Q. And who – is Rob Mr. Farley's agent?
12:57:25 A. **Yes.**
12:57:26 Q. And the attachment there, what does that
7 depict?
12:57:28 A. **Oh, I'm sorry. The attachment depicts that it**
9 **was a highlighted area of the change in the acreage.**
12:57:30 Q. Okay. And so did you convey that information
11 to the Gideons?
12:57:42 A. **Yes.**
12:57:43 Q. Okay. Were you relying on that information in
14 terms of what the boundaries of the properties were to
15 be?
12:57:56 A. **Yes.**
12:57:57 Q. Okay. Did you see need to have your own
18 survey done?
12:58:09 A. **That would have been entirely up to the**
20 **Gideons to request a survey. They seemed to acknowledge**
21 **that this was sufficient, not to spend extra money doing**
22 **a survey.**
12:58:23 Q. Did the Gideons have questions about the water
24 system and wells that provided water to this property?
12:58:25 A. **Yes.**

12:58:31 Q. Okay. And did you request information from
2 the seller related to the water system?
12:58:33 A. **Yes.**
12:58:34 Q. Okay. If you'll turn to Exhibit 5, please.
5 What is Exhibit 5?
12:59:06 A. **Exhibit 5 refers to where Mr. Farley had the**
7 **pumps and wells checked out in July of 2017.**
12:59:18 Q. And you reference wells plural. Was it your
9 understanding that there was one well or two wells
10 associated with the well system for the Farley property?
12:59:31 A. **It's a – I can't answer that yes or no. I'm**
12 **sorry. I knew it was a well system, and because I'm**
13 **kind of new to Idaho, cisterns and how the wells work,**
14 **I – it turned out to be two wells.**
12:59:56 Q. Okay. And the records for well repairs, do
16 they reference two wells?
01:00:07 A. **Yes.**
01:00:18 Q. Did Mr. Elder or Mr. Farley ever notify you
19 that the entirety of the lower well was not going to be
20 included in the sale?
01:00:21 A. **No.**
01:00:22 Q. Did they ever notify you that all water rights
23 associated with the lower well would not be included
24 with the sale?
01:00:25 A. **No.**

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01:00:31 Q. If you'll turn to Exhibit 3, please. Do you
2 recognize that document?
01:00:43 A. **Yes.**
01:00:44 Q. What is it?
01:00:45 A. **The Sellers Property Disclosure and Condition**
6 **Statement.**
01:00:57 Q. And as a real estate agent representing
8 buyers, do you rely on the Sellers Disclosure Statement?
01:00:59 A. **Yes, we do.**
01:01:00 Q. Were there any red flags associated with the
11 disclosures?
01:01:02 A. **No, sir.**
01:01:03 Q. On Gideon 2019, at the bottom right-hand
14 corner of Exhibit No. 5, if you'll turn the pages to
15 Gideon 2019, three-quarters of the way down where it
16 says, "Has the property been surveyed?" Do you see
17 that?
01:01:38 THE COURT: Did you say Exhibit 5?
01:01:49 MR. SCHMIDT: Exhibit 4.
01:01:20 MR. BISSELL: Exhibit 3?
01:01:21 MR. SCHMIDT: I'm sorry, Exhibit 3. I'm
22 sorry.
01:01:23 THE COURT: Let's go there again, Mr. Schmidt.
01:01:24 MR. SCHMIDT: Q. If you'll turn to Exhibit 3,
25 please. I think we identified this as the Property

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1 Disclosure Statement. So on Gideon 2019, do you see the
2 reference there to "Has the property been surveyed?"
01:02:43 A. **Yes, I see that.**
01:02:44 Q. Okay. And does it indicate that the property
5 was surveyed?
01:02:46 A. **No.**
01:02:47 Q. Okay. If the Farleys had disclosed that the
8 property had been surveyed, is that something you would
9 have requested to see?
01:02:50 A. **Yes.**
01:02:51 Q. And why?
01:03:02 A. **For verification of the changes.**
01:03:13 Q. Did Mr. Farley or his agent at any point in
14 time disclose to you that the Gideons would not receive
15 the full water rights associated with the lower well?
01:03:16 A. **No.**
01:03:37 Q. Was anything stated to you by Mr. Farley or
18 Mr. Elder that suggested the lower well would not be
19 going to the Gideons?
01:03:20 A. **No.**
01:03:21 Q. Did Mr. Farley or Mr. Elder state anything to
22 you that would suggest Mr. Farley would retain rights in
23 the lower well?
01:03:24 A. **No.**
01:03:25 Q. Did Mr. Farley or Mr. Elder state anything to

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1 you about Mr. Farley making recent filings with the
2 Idaho Department of Water Resources to change the place
3 of use of the water rights on the lower well?

01:04:04

A. No.

01:04:15

Q. Do you feel that you were misled by any of the
6 information that was provided to you by Mr. Farley or
7 Mr. Elder?

01:04:18

A. Yes.

01:04:19

Q. And what specifically, or how were you misled?

01:04:20

A. We felt that we were misled because there was
11 a process in action to make changes and we were not
12 notified in writing of what those were, whether they
13 were approximate changes and ideas or a copy of the
14 recording that he wanted to record.

01:04:50

Q. Are you talking about the first Amended CC&Rs
16 that he recorded prior to closing?

01:05:07

A. Yes.

01:05:08

Q. Okay. And in terms of the boundary line
19 depiction, was that misleading to you at all?

01:05:20

A. Yes.

01:05:21

Q. Was a record of survey or – was a record of
22 survey ever provided to you prior to closing of what the
23 boundary line adjustment was?

01:05:24

A. No.

01:05:25

Q. Were you made aware that one existed prior to

01:07:31

A. Oh, okay.

01:07:32

Q. That's the agency disclosure brochure that you
3 provided the Gideons, right?

01:07:34

A. Correct.

01:07:35

Q. And then if we look halfway down the first
6 page there, it says that the folks can become your
7 client by signing a buyer/seller representation agency
8 agreement, right?

01:07:59

A. Correct.

01:07:40

Q. And the Gideons did sign one, correct?

01:07:41

A. Correct.

01:07:42

Q. So they became clients?

01:08:43

A. That's right.

01:08:44

Q. Okay. And you had an obligation, then, to
15 exercise reasonable skill and care; is that correct?

01:08:46

A. That's right.

01:08:47

Q. And to promote their best interests in good
18 faith, honesty, and fair dealing?

01:08:19

A. Yes.

01:08:20

Q. And as part of that, if something was unclear
21 or ambiguous, you'd get it clarified, correct?

01:08:22

A. Correct, with knowledge.

01:08:23

Q. Okay. Back to that Exhibit 12, if you would.
24 That's in the other binder.

01:09:25

Did you – with regard to Exhibit 12 on the

1 closing?

01:05:32

A. No.

01:05:33

MR. SCHMIDT: I don't have any further

4 questions.

01:05:35

MR. BISSELL: Thank you. Ms. Ellis –

01:05:46

THE COURT: Hold on. Go ahead, Mr. Bissell.

01:06:07

CROSS-EXAMINATION

01:06:08

MR. BISSELL: Q. Good afternoon, Ms. Ellis.

9 But you knew that there was a lot – that Mr. Farley was
10 working on a lot line adjustment when you talked to him;
11 that's your testimony, correct?

01:06:12

A. Yes.

01:06:13

Q. Okay. Now, what is the word – what does
14 ambiguous mean to you?

01:06:25

A. Ambiguous?

01:06:26

Q. Yeah. What's that mean?

01:06:27

A. To me it means it's not self-explanatory.

01:06:38

Q. So you need more information to figure it out?

01:06:49

A. Right.

01:06:20

Q. Okay. Take a look at Exhibit TT, please. Are
21 you there, ma'am?

01:07:22

A. I believe so.

01:07:23

Q. That doesn't look like it. TT.

01:07:24

A. TT.

01:07:25

Q. Yeah.

1 first sentence – or the first page there it says –
2 from Mr. Elder, it says, "This is unofficial but very
3 close." Do you see that?

01:09:34

A. Uh-huh.

01:09:35

Q. Did you ever ask him what he meant by that?

01:09:36

A. I understood it.

01:09:37

Q. What do you understand it to mean?

01:09:38

A. Well, until something is actually done, it's
9 not official.

01:09:40

Q. Subject to change, right?

01:09:41

A. It could.

01:09:42

Q. Okay. Now, you believed that – I believe
13 this page 3 here, the drawing is ambiguous, right?

01:10:44

A. I really don't want to use that word other
15 than the fact that it was taken on face value that this
16 is how the property lines would end up.

01:10:27

Q. Well, in your deposition, you agreed it was
18 misleading and ambiguous, didn't you?

01:10:39

MR. SCHMIDT: Objection.

01:10:20

THE WITNESS: I don't think so.

01:10:21

MR. SCHMIDT: If he's going to question her
22 about her deposition, I'd ask she be given the
23 opportunity to review it.

01:10:24

MR. BISSELL: Q. So you don't think it's
25 ambiguous, correct?

01:10:41 A. No. 01:10:42 MR. BISSELL: Okay. Could I publish the 3 deposition of Ms. Ellis, please. 01:10:44 THE COURT: You may. 01:11:35 MR. BISSELL: Q. So if you look at – I think 6 if you look at your deposition, Ms. Ellis, is that your 7 deposition that was taken on June 23rd, 2021? 01:11:48 A. Yes. Yes, sir. 01:11:49 Q. Okay. And then if you can look at 10 Exhibit 7 [sic] there in your deposition and can confirm 11 that is the same as Trial Exhibit 12. 01:11:52 A. Okay. 01:12:03 Q. They're not tabbed. I know. You just got to 14 look in the back there until you run into Exhibit 67. 01:12:05 A. Exhibit 67? 01:12:06 Q. Yeah, be the tab on the bottom of the page. 01:12:17 A. Okay. Is this the home inspection you're 18 referring to? 01:12:29 Q. No, it should be the same as Exhibit 12, so it 20 should be the same email from Mr. Elder. Should be 21 Deposition Exhibit 67. 01:13:22 A. Okay. 01:13:23 Q. Did you find it? 01:13:24 A. Finally. 01:13:25 Q. Okay. So can we confirm that Trial Exhibit 12	349	01:14:51 "Answer: That that's not what the intended 2 boundary was to be transferred." 01:14:53 "Question: And so it -- that partial or 4 ambiguous disclosure that was made in Exhibit 67 5 required additional disclosure to avoid misleading you 6 and the Gideons, correct?" 01:15:07 And then drop down on line 4 on page 100 you 8 said, "Yes," correct? 01:15:19 A. Correct. 01:15:10 Q. So did you agree at the time that this photo, 11 Exhibit 12, was ambiguous? 01:15:42 A. I'd like to say – retract that and say, no, 13 because we relied on the information that was provided 14 to us – that was only provided to us at the time. 01:15:45 Q. So now you're saying it was not ambiguous? 01:15:46 A. Not ambiguous because we relied on the 17 information that was provided to us. 01:15:48 Q. Okay. But you never asked Mr. Elder what he 19 meant by unofficial or very close, did you? 01:16:20 A. Well, I understood him. 01:16:21 Q. You never asked Mr. Elder what he meant by 22 unofficial or very close, did you? 01:16:23 A. No. 01:16:24 Q. Now, until your deposition of last year, you 25 thought both wells were on the same – on the Gideons'
1 is the same as Deposition Exhibit 67? 01:13:42 A. [Nods head]. 01:13:43 Q. Okay. 01:13:44 THE COURT: You have to answer audibly, ma'am. 01:13:45 THE WITNESS: Yes. 01:13:46 MR. BISSELL: Q. Okay. Because we're going 7 to refer to your deposition transcript now, okay? 01:13:58 A. Okay. 01:13:59 Q. So now if you go back to page 99, are you 10 there? 01:14:16 A. Yes. 01:14:12 Q. Okay. All right. So now if you to 99 and 13 look starting at line 12 on page 99. 01:14:14 A. Uh-huh. 01:14:15 Q. Where there's a question from Mr. Schmidt. It 16 says, "Was this partial or approximate disclosure of 17 fact" – and I'm referring to Exhibit 67 – "was that 18 misleading to you?" Do you see where I'm at? 01:14:19 A. Uh-huh. 01:14:20 Q. Okay. "Answer: Was this misleading?" 01:14:21 "Question: Exhibit 67, the third page, which 22 is the depiction showing the boundaries of the 23 properties to be sold, was that misleading to you?" 01:14:24 And you said, "Answer: Yes." 01:14:25 Then: "Question: Why was it misleading?"	350	1 parcel, didn't you? 01:16:22 A. Yes. 01:16:23 Q. Okay. And you thought two wells were being 4 transferred because of the repair invoices that we 5 talked Exhibit 5, right? 01:16:36 A. Would you repeat that? 01:16:37 Q. Yes. You believed two wells were being 8 transferred at the property because of the repair 9 invoices mentioned two wells, Exhibit 5, correct? 01:16:40 A. Correct. 01:16:41 Q. Okay. And that's the sole reason you believed 12 two wells were being transferred; is that true? 01:16:43 A. That's true. 01:16:44 Q. Okay. Nothing in the MLS mentions two wells, 15 right? 01:17:06 A. It mentions private water system. 01:17:07 Q. Nothing in the MLS mentions two wells, does 18 it? 01:17:09 A. No. 01:17:20 Q. Nothing in the PSA says two wells, right? 01:17:21 A. No. 01:17:22 Q. If you would have known that the second well 23 was on a different parcel and was part of this sale, 24 would you have done an addendum? 01:17:25 A. Yes.

01:17:21 Q. Now, the disclosure statement -- oh, so 2 that -- go to Exhibit 3, please. 01:17:43 A. Okay. 01:17:44 Q. Are you there, ma'am? 01:17:45 A. I think so. 01:17:46 Q. It should be -- that's the disclosure 7 statement? 01:17:58 A. Yes, sir. 01:17:59 Q. Okay. And then -- all right. And now if we 10 go again to that page 3, so it's the Gideon 2019 that 11 Mr. -- I think Mr. Schmidt was asking about where it 12 says, "The well 3,000-gallon buried concrete reservoir." 13 See that on the top of page 3? 01:18:14 A. Yes. 01:18:15 Q. Okay. You found that to be ambiguous, didn't 16 you? 01:18:17 A. I found that to consist of the well, the 18 cistern, and whatever operates the cistern to all be of 19 the same transition. 01:18:20 Q. Can you please answer my question? You felt 21 that that's ambiguous, that representation, didn't you? 01:18:22 A. No. 01:18:23 Q. Okay. Take a look at page 111 of your 24 deposition, please. And let's see -- 01:19:25 THE COURT: Hold on a second, Counsel.	353	1 receipts from Mr. Farley's repairs and examination of 2 the wells done a year or so earlier. 01:21:23 Q. Okay. Let's look at Exhibit 4, please. And 4 when you get there, go to page 3, if you would, under 5 secondary inspection. Let me know when you're there. 01:21:56 A. Oh, I'm there. 01:21:57 Q. Okay. And so we have an X mark where it says, 8 "Domestic well water potability and/or productivity test 9 which shall be completed and notice provided within ten 10 business days." 01:22:01 Do you see that? 01:22:02 A. Yes. 01:22:03 Q. And it says "shall be completed," correct? I 14 just read that. It says "shall"? 01:22:15 A. "That the buyer reserves the right to conduct 16 those inspections within ten days." 01:22:17 Q. Does not it say that "the domestic well water 18 potability and/or productivity test which shall be 19 completed and notice provided within ten business days"? 20 That's what it says, right? 01:22:21 A. Yes. 01:22:22 Q. There's no addendum taken -- removing that as 23 a requirement, is there? 01:22:24 A. No, because -- 01:22:25 Q. Okay.
01:19:31 You may go ahead now. 01:19:32 MR. BISSELL: Thank you, your Honor. 01:20:13 Q. Take a look at page 111. Are you there again? 01:20:14 A. Uh-huh. 01:20:15 Q. So it starts out where -- we'll just go to 6 where it says line 22. Do you see where it says, "What 7 about the statements regarding the private system, 8 private well, and no shared well agreement? Were those 9 statements ambiguous and misleading to you?" 01:20:20 Do you see that? 01:20:31 A. Yes. 01:20:32 Q. Okay. And your answer was what? 01:20:33 A. I said, "Yes." 01:20:34 Q. Okay. And then he asked, "Would further 15 disclosures and clarification have helped to avoid 16 misleading you?" 01:20:47 And you answered, "Yes," correct? 01:20:48 A. Yes. 01:20:49 Q. But you didn't seek any additional 20 clarification from Mr. Elder, correct? 01:20:21 A. No. 01:20:22 Q. Okay. Do you know why there's no addendum 23 saying that there's not going to be a well test 24 performed? 01:21:25 A. Mr. Gideon and his wife chose to accept the	354	01:22:51 A. -- the Gideons -- we were provided the well 2 test and work done on those and the Gideons were willing 3 to accept those for the -- on behalf of that 4 information. 01:23:05 Q. Okay. The next line down there, page 3, 6 Exhibit 4, says that "A septic inspection required 7 plumbing which shall be completed and notice provided 8 within ten business days." 01:23:29 A. Correct. 01:23:40 Q. That wasn't done either, right? 01:23:41 A. We were provided with an invoice that the 12 septic had been cleaned and worked on within a 13 reasonable period of time and it was acceptable by the 14 Gideons. 01:23:55 Q. Now, at one point in time, your position was 16 you had seen the Amended CC&Rs prior to closing, right? 01:24:07 A. No, sir. 01:24:08 Q. Okay. Let's take a look at Exhibit Y. 01:24:19 A. Which book? 01:24:20 Q. That would be the one -- the one with the 21 letters. That's all I can say. 01:24:22 Now, you've seen this before, Ms. Ellis? 01:25:23 A. Days later. My fault. My computer crashed 24 for about five days there, nothing received or held 25 onto, was able to be retrieved.

01:25:21 Q. I understand that. But you testified in your 2 deposition that one of the two exceptions was the 3 Amended CC&Rs, isn't it? 01:25:34 A. It was the Amended CC&Rs, to my best of my 5 knowledge, based on the property line adjustment. 01:25:46 Q. And this is an email from First American to 7 you dated June 6th, the afternoon of first closing, 8 correct? 01:25:49 A. Correct. 01:25:49 Q. Okay. And you were not at either closing, 11 correct? 01:26:02 A. Correct. 01:26:13 MR. BISSELL: Your Honor, we'd move for 14 admission of Exhibit Y. We previously provided a 15 902(11) notice and filed it, that included the business 16 records affidavit from First American Title Company. (Defendants' Exhibit Y offered.) 01:26:47 THE COURT: Exhibit Y, is that what you're 19 talking about? 01:26:20 MR. BISSELL: Yes, I am. 01:26:21 MR. SCHMIDT: I'm going to object, your Honor. 22 The foundation hasn't been laid for the business records 23 exception. 01:26:24 THE COURT: Sustained. 01:27:05 MR. BISSELL: Okay. Well, give me a minute,	357 1 self-authenticating with the 902(11) notice which we 2 timely provided. 01:29:43 MR. SCHMIDT: I don't have that document in 4 front of me, but I do not recall that it had the written 5 declaration signed in the manner that, if falsely made, 6 would subject the maker to a criminal penalty in the 7 jurisdiction. 01:29:58 THE COURT: And this was number – which 9 number? 01:29:59 MR. BISSELL: Which number of what, your 11 Honor? 01:30:02 THE COURT: Well, I'm looking at – 01:30:03 MR. SCHMIDT: Exhibit – 01:30:04 THE COURT: Hold on. I'm looking at 15 Defendant/Counterclaimants' IRE 902(11) notice and 16 there's four separate documents. 01:30:17 MR. BISSELL: It's number 3, your Honor. 01:30:18 THE COURT: Okay. Thank you. Sworn upon 19 oath. It will be admitted. 01:30:20 MR. BISSELL: Thank you, your Honor. (Defendants' Exhibit Y admitted.) 01:30:21 MR. BISSELL: That's all I have, your Honor. 23 Thank you. 01:30:24 THE COURT: Any redirect? 25 359
1 your Honor. It's in the file, what we filed, because 2 it's in the affidavit. Your Honor, if I might direct 3 your attention to the document we filed on April 27th, 4 2022. It's Defendants'/Counterclaimants' IRE 902(11) 5 Notice, which, by the way, I never got a response to. 6 And you'll see that one of the documents attached 7 thereto is exhibit – I think it's 3. Let me verify. 8 Document No. 3 is the records custodian affidavit from 9 Mark Johnson at First American Title attaching this very 10 email that we're talking about, stating that's a 11 business record of First American, and it meets all the 12 criteria therein. 01:28:13 THE COURT: And this was filed when? 01:28:14 MR. BISSELL: This was filed on April 27th, 15 your Honor, at 10:28 a.m. 01:28:16 THE COURT: Of this year? 01:28:17 MR. BISSELL: That's correct. 01:29:08 THE COURT: Mr. Schmidt. 01:29:09 MR. SCHMIDT: I still don't believe it meets 20 the business records exception, your Honor. 01:29:21 THE COURT: I'm sorry, you said it was filed 22 April 27th? 01:29:23 MR. BISSELL: That's correct. 01:29:24 THE COURT: Oh, I see it now. Yes. 01:29:25 MR. BISSELL: And it becomes	358 01:30:51 REDIRECT EXAMINATION 01:31:02 MR. SCHMIDT: Q. Ms. Ellis, if you'll turn to 3 your deposition on pages 110 to 111, please. Is that 4 still in front of you? 110 to 111. 01:31:15 A. I have it. 01:31:16 Q. Okay. Mr. Bissell challenged you on the 7 ambiguous choice of words that he quoted from your 8 deposition on, but he omitted some important context 9 based on my prior statement. Looking at page 110 of the 10 deposition exhibit, beginning at line 23, I stated, "So 11 while I'm not authorized to direct you with respect to 12 what the law is, I'm going to give you a statement of 13 the law and Counsel can object. But in the law, a duty 14 to disclose arises if one makes – if one party makes a 15 partial or ambiguous statement that requires additional 16 disclosures to avoid misleading the other party. Do you 17 understand?" 01:32:08 And your response was, "Yes." 01:32:09 And so in that context, when you were 20 responding to my questioning and acknowledging that 21 things were ambiguous, was it based on that statement of 22 the law? 01:32:23 A. Yes. 01:32:24 Q. I'm sorry? 01:32:25 A. Yes. 360

01:32:21 MR. SCHMIDT: I don't have any further
2 questions.
01:32:23 THE COURT: Anything else?
01:32:24 MR. BISSELL: [Shakes head].
01:32:25 THE COURT: May this witness be excused?
01:32:26 MR. BISSELL: Yes, your Honor.
01:32:27 MR. SCHMIDT: Yes.
01:32:28 THE COURT: Thank you, Ms. Ellis. You're
9 excused.
01:32:30 THE WITNESS: Thank you.
01:32:31 THE COURT: Call your next witness,
12 Mr. Schmidt.
01:32:33 MR. SCHMIDT: Rob Elder.
01:32:34 THE COURT: Sir, would you come forward and be
15 sworn.
01:32:36 MR. SCHMIDT: May I approach?
01:32:37 THE COURT: You may. Mr. Elder.
01:32:38 MR. ELDER: Yes, sir.
01:32:39 THE COURT: If you'd come forward by the
20 witness stand, please.
01:32:41 ROBERT HENRY ELDER,
01:32:42 called as a witness herein,
01:32:43 having been duly sworn on oath,
01:32:44 testified as follows:
01:32:45 MR. BISSELL: Your Honor, could I have one

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01:34:51 THE COURT: Mr. Elder.
01:34:52 Mr. Schmidt, you had a question?
01:35:43 MR. SCHMIDT: Rob Elder, call him to the
4 stand.
01:35:45 THE COURT: Okay. Thank you. Mr. Elder, come
6 back, please.
01:35:57 He's been sworn. Okay. Would you state your
8 full name, spell your last name for the record.
01:36:09 THE WITNESS: Robert Henry Elder, E-L-D-E-R.
01:36:10 THE COURT: Okay. Go ahead, Mr. Schmidt.
01:36:11 MR. BISSELL: Your Honor, could I ask
12 Ms. Ellis to leave the courtroom? She's probably going
13 to be recalled.
01:36:14 THE COURT: You said she could be excused, so
15 she's been excused.
01:36:16 MR. BISSELL: Okay.
01:36:17 THE COURT: So she's — she can stay if she
18 wishes.
01:36:19 MR. SCHMIDT: Just a moment.
01:36:20 MR. BISSELL: My concern is she may be
21 recalled as a witness, your Honor. Not by me.
01:36:22 THE COURT: What? Not by you.
01:36:23 **DIRECT EXAMINATION**
01:36:24 MR. SCHMIDT: Q. Good afternoon, Mr. Elder.
01:36:25 **A. Good afternoon.**

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1 minute?
01:37:32 THE COURT: Sure.
01:37:33 MR. BISSELL: I might have been just a tad
4 premature.
01:37:45 THE COURT: Hold on, Mr. Elder.
01:37:46 MR. BISSELL: Can I reopen real quick the
7 cross just for five minutes, your Honor?
01:37:58 THE COURT: Of Ms. Ellis?
01:37:59 MR. BISSELL: Yes, of Ms. Ellis.
01:37:50 THE COURT: All right. Ms. Ellis, would you
11 come back to the stand, please. I'm sorry. You're
12 still under oath, ma'am.
01:38:03 **RE-CROSS EXAMINATION**
01:38:04 MR. BISSELL: Q. Sorry, Ms. Ellis. Real
15 quick here, it's your belief that the — you and the
16 Gideons reviewed the Amended CC&Rs just a few days after
17 closing, correct?
01:38:18 **A. Correct.**
01:38:19 MR. BISSELL: Okay. That's all I have, your
20 Honor. Thank you.
01:38:21 THE COURT: And Mr. — hold on. Hold on.
22 Mr. Schmidt, do you have anything?
01:38:23 MR. SCHMIDT: No further questions.
01:38:24 THE COURT: Okay. Thank you.
01:38:25 MR. BISSELL: Sorry about that.

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01:37:01 Q. How is it that you know Brian Farley and Pam
2 Farley?
01:37:03 **A. I was their agent and representing their home.**
01:37:04 Q. And how long have you known them?
01:37:15 **A. I would guess 20, 25 years.**
01:37:16 Q. And would you consider them friends of yours?
01:37:27 **A. Yes.**
01:37:28 Q. And during your listing of the subject
9 property, would you agree that you would meet with
10 Mr. Farley on occasion to have a beer or have dinner?
01:37:31 **A. We wouldn't have dinner, but we did meet, yes.**
01:37:32 Q. Okay. And you had some pretty friendly text
13 chat messages with one another unrelated to business and
14 other things, correct?
01:37:45 **A. Yes, I would hope so.**
01:37:46 Q. Okay. If you'll turn to Exhibit No. 11,
17 please. Do you recognize what that document is?
01:38:18 **A. I do.**
01:38:19 Q. And what is that?
01:38:20 **A. It is a outline of the subject property.**
01:38:21 Q. And was this part of the listing agreement and
22 listing package, to your knowledge?
01:38:23 **A. Yes.**
01:38:24 Q. And is it correct that the dark green line is
25 what you understood to be the property that was being

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1 sold?

01:38:32 A. Yeah. It's just a brush scope of what the
3 property – just to give someone an idea what it looks
4 like.

01:38:45 Q. Okay. Was this part of the listing package
6 and listing agreement that was disclosed – that was
7 advertised?

01:38:48 A. Yes.

01:38:49 Q. Okay. And when you sketched that line, is it
10 what you understood to be the property that was being
11 sold, the dark green line?

01:39:02 A. Yes.

01:39:13 Q. Isn't it correct that you did not talk about
14 recording anything prior to closing with Mr. Farley?

01:39:25 A. I need you to rephrase that. Record what?

01:39:26 Q. You didn't have any conversations about
17 recording anything associated with the property prior to
18 closing; is that correct?

01:39:39 A. No, that's incorrect.

01:39:40 Q. Okay. If – I would like to publish

21 Mr. Elder's deposition.

01:40:22 So before you open that, is it correct that
23 you did not talk with Brian Farley about recording the
24 amended Ridgetop Retreat Amended CC&Rs; is that correct
25 or incorrect?

01:41:51

And what was your answer?

01:41:52

A. "No."

01:41:53

Q. And I said, "So that would have – so that
4 wouldn't have been anything that you'd – that you would
5 have knowledge of to communicate to Patty Ellis,
6 correct?"

01:42:07

And your responses was what?

01:42:18

A. "No."

01:42:19

Q. Okay. And you eventually agree that that was
10 a correct statement down on line No. 12, correct?

01:42:21

A. Yes.

01:42:22

Q. Okay. Did you talk with Mr. Farley about him
13 recording boundary line adjustments prior to closing?

01:42:34

A. Yes.

01:42:35

Q. Okay. If you'd turn to page 38, line 21,
16 please. I asked you, "Did he" – Farley – "did he tell
17 you he intended to do boundary line adjustments prior to
18 closing?"

01:42:59

And what was your answer?

01:42:20

A. "No."

01:43:21

Q. Okay. If you'd look up here, please. Did
22 Mr. Farley provide you with legal descriptions for the
23 boundary line adjustments to be completed prior to
24 closing?

01:43:25

A. No.

01:40:31 A. No, we – yeah, we talked about it. Yes.

01:40:32 Q. Okay. If you would turn to page 37 of your
3 deposition, please.

01:40:34 A. I apologize, what page?

01:40:45 Q. Page 37.

01:40:56 THE WITNESS: Your Honor, I apologize. If I
7 may, may I go over and get my glasses? Unfortunately, I
8 need those these days.

01:40:59 THE COURT: Please do.

01:41:00 THE WITNESS: Thank you. Thank you. I'm
11 there, sir.

01:41:12 MR. SCHMIDT: Q. Okay. If you'll look at
13 line 23, and in this context looking back up to line 12
14 on page 37, we're talking about Mr. Farley: "Did
15 Mr. Farley ever explain to you why he formed a second
16 development?"

01:41:37 Do you see that up on line 13? I'm just
18 trying –

01:41:49 A. Yes.

01:41:20 Q. – to identify who the "he" is for this next
21 reading. We're talking about Mr. Farley here?

01:41:22 A. Sure.

01:41:23 Q. And so on line 23, I asked you, "Question:
24 Did you talk with him" – that's Mr. Farley – "about
25 recording amended Ridgetop Retreat Amended CC&Rs?"

01:43:11

Q. And so that wouldn't have been anything that
2 you could have communicated to Patty Ellis or my clients
3 because you didn't have the actual legal descriptions
4 prior to closing, correct?

01:43:25

A. No. Yeah, we were in the process of doing
6 that. She was fully aware of that.

01:43:47

Q. Did you discuss with Mr. Farley any work that
8 his attorney was doing prior to closing?

01:43:49

A. No. I'm sorry, with whom? I'm having a
10 little bit of a tough time hearing you. I apologize.

01:43:51

Q. Did you discuss with Mr. Farley any work that
12 his attorney was doing prior to closing?

01:43:53

A. Oh, yes. Mike Reagan was the attorney and he
14 was working on the documents, yes.

01:44:05

Q. If you'd turn to page 39 of your deposition
16 transcript, please. And then from line 18, I asked you,
17 "Question: Did you have any discussions with
18 Mr. Farley's attorney prior to closing?"

01:44:19

Answer?

01:44:20

A. "No."

01:44:21

Q. And "Question: Did you have any discussions
22 with Mr. Farley concerning work his attorney was doing
23 prior to closing?"

01:44:24

THE COURT: Slow down, Counsel. It's hard to
25 take all this down.

01:44:21 MR. SCHMIDT: I got excited. I'm sorry. 01:44:32 Q. And what was your answer about whether there 3 were any discussions with Mr. Farley – 01:44:34 A. "No." 01:44:35 Q. – concerning work his attorney was doing 6 prior to closing? 01:44:47 A. "No." 01:44:58 Q. You also didn't recall my clients stating that 9 they wanted the entirety of the pasture below the house, 10 did you? 01:45:01 A. No. 01:45:02 Q. Is that correct; you didn't recall them 13 seeking the entirety of the pasture? 01:45:14 A. Correct. 01:45:15 Q. Okay. I want to talk about the water system 16 and what was disclosed to my clients about that. What 17 was disclosed to my clients or their agent with respect 18 to the water system prior to or after the signing of the 19 purchase agreement? 01:45:20 A. Well, they would have had access, obviously, 21 to the listing agreement which listed the well and they 22 had access to the – details of the well, the cistern, 23 and the system that they saw when they did the 24 walk-through or she did the walk-through. 01:45:26 Q. If you turn to page 42 of your deposition.	369	01:47:41 Q. Page 41, line 23. 01:47:42 A. Thank you. 01:47:43 Q. So the question was, "If any work was done to 4 relocate the sewer and waterlines, that was not 5 disclosed to you, correct?" 01:47:56 And your answer was, "No." 01:47:57 And I followed up, "Correct? It was not 8 disclosed to you?" 01:48:09 And you said, "Correct." 01:48:10 Is that accurate? 01:48:11 A. Correct. Yes. 01:48:12 Q. And when we're talking about – so what was 13 disclosed to my clients or their agents with respect to 14 the water system prior to or after the signing of the 15 Purchase and Sale Agreement, your response was you have 16 no idea, you wouldn't have been party to that 17 conversation. 01:48:18 So is it your testimony that the disclosures 19 should have come from Patty Ellis instead of you and 20 Mr. Farley? 01:48:21 A. My answer, like I stated earlier, was that I 22 didn't know what her – their agent said to them. 23 Everything we had in the listing agreement identified 24 the well and the cistern and everything about it. 01:48:25 Q. And so was that the only disclosure regarding
1 And my question to you on line 9 – do you see that? 2 Question: "So your recollection what was disclosed to 3 my client or their agents with respect to the water 4 system prior to or after the signing of the Purchase and 5 Sale Agreement?" 01:46:36 And your response where it says "The Witness" 7 was what? 01:46:38 A. Let's see. I'm going down here. It says, "I 9 have?" 01:46:40 Q. So on line 16 your response was, "I have no 11 idea. I wouldn't have been a party to that 12 conversation." 01:46:46 Would you agree? 01:46:51 A. I think I must have thought that your question 15 was in relation to what they were having a conversation 16 with their agent, not with me, so I wouldn't know what 17 their agent told them. 01:47:08 Q. But the disclosures from your client to my 19 client, so let me start up on page 41, where I ask you 20 this question: "Question: So if any new 21 configuration – strike that. If any work was done to 22 relocate the sewer and waterlines, that was not 23 disclosed to you, correct?" 01:47:24 And your answer was what? 01:47:25 A. Which line were you referring to?	370	1 the system that was made to my client was what was in 2 the listing agreement? 01:48:53 A. Yes. We gave them an invoice later on, I 4 believe, of some of the improvements that Brian did in 5 replacing the pump in one of them. 01:49:06 Q. And that documentation included work on the 7 lower well, correct? 01:49:08 A. Yeah. It was commingled with the other well 9 that was on a different piece of property. 01:49:10 Q. But you didn't add anything to that to say, 11 hey, that lower well's not going to be – you don't get 12 rights to that lower well, did you? 01:49:13 A. Well, no, it was unnecessary. It wasn't ever 14 listed in the listing agreement. 01:49:15 Q. So it's your testimony that the listing 16 agreement is the only disclosure that you made regarding 17 what the water system was, and that you provided well 18 maintenance records that included the lower well and 19 never clarified that the lower well was not included as 20 part of the transaction, correct? 01:49:21 A. Correct. I shouldn't have had to. 01:49:22 Q. And why do you say that? 01:49:23 A. Because it wasn't part of the listing 24 agreement, sir. It's a different piece of property. 01:50:25 Q. And you testified that you wouldn't have

01:55:01 A. Yeah, I don't – I didn't communicate with the
2 Gideons. I communicated with their agent, sir.
01:55:13 Q. I want to talk about the survey. You weren't
4 aware that a survey had been conducted related to the
5 subject property, correct?
01:55:26 A. No.
01:55:27 Q. Is that correct or not correct?
01:55:28 A. Correct.
01:55:29 Q. So that's information that you could not pass
10 along to Patty Ellis either, correct?
01:55:39 A. Correct. It was in process.
01:55:42 Q. And did you know that at the time that it was
13 in the process?
01:55:44 A. Yeah, everybody did. We were working on
15 property line adjustment, if that's what you're speaking
16 about, long before the Gideons came into the picture.
01:55:47 Q. Turn to page 67 of your deposition, please. I
18 asked you, "Question: Do you recall any negotiations
19 regarding boundary adjustments with respect to the
20 subject property?"
01:56:21 And you answered, "No."
01:56:22 A. I apologize. Which line, sir?
01:56:23 Q. Page 67, line 19.
01:56:24 A. Thank you.
01:56:25 Q. I asked you, "Question: Do you recall any

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01:57:31 A. Oh, I'm sorry. I'm looking in this thing.
01:57:42 Q. Tab 3.
01:57:43 A. I got you. Yes, sir. I have it in front of
4 me.
01:57:55 Q. And is it correct that, in that disclosure,
6 your client did not indicate that a survey had been
7 conducted, correct?
01:58:08 A. Correct.
01:58:19 Q. Were you aware that the property was being
10 surveyed?
01:58:16 A. Was I aware?
01:58:16 Q. Yep.
01:58:16 A. Yes, everybody was aware.
01:58:16 Q. Okay. If you'd turn to page 79 of your
15 deposition, that's the different document. I asked
16 you – are you there, page 79?
01:58:47 A. Yes.
01:58:48 Q. Line 25, so the very bottom of page 79, I
19 asked you, question – and we're talking about the
20 disclosure here – "And further down under the 'Other
21 Disclosures' section, the Real Estate Disclosure Form
22 requests 'Has the property been surveyed since you owned
23 it?' Do you see where that's located?"
01:59:24 Your answer, "Yes."
01:59:25 A. Yes.

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1 negotiations regarding boundary adjustments with respect
2 to the subject property."
01:56:23 And you answered what?
01:56:34 A. "No."
01:56:35 Q. And the Purchase and Sale Agreement doesn't
6 have any terms addressed to boundary line adjustments
7 either, does it?
01:56:48 A. No.
01:56:49 Q. Is that correct or not correct?
01:56:49 A. Correct.
01:56:51 Q. On the Real Estate Disclosure Form, which is
12 Exhibit 3, your client did not indicate that a survey
13 had been conducted, correct?
01:56:54 A. I believe you are correct.
01:57:05 Q. Do you want to look at Exhibit 3?
01:57:06 A. I'll take your word for it, sir.
01:57:07 Q. If you want to flip Exhibit 3, you may.
01:57:18 A. I'm good.
01:57:19 Q. Is that what it states?
01:57:20 A. I guess I better flip there. What page is it
21 on, sir?
01:57:22 Q. Exhibit 3. It's in the book of exhibits, not
23 the deposition transcript.
01:57:24 A. A little direction, please. Where is it?
01:57:25 Q. It's in the three-ring binder.

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01:59:01 Q. "Question: And how did your client respond to
2 that?"
01:59:03 And you answered, "Said no," correct?
01:59:04 A. Correct.
01:59:05 Q. "Question: Okay. And, to your knowledge, had
6 the property been surveyed since Mr. Farley owned it?"
01:59:17 And your answer was what?
01:59:18 A. "I don't know."
01:59:19 Q. "Question: Did Mr. Farley disclose that it
10 had been surveyed?"
01:59:21 And your answer was what?
01:59:22 A. "Didn't recall, sir."
01:59:23 Q. And then I asked you, "Question: If he had,
14 would you have required that he amend this disclosure to
15 indicate that, yes, the property had been surveyed since
16 he owned it."
01:59:37 And your answer was what?
01:59:38 A. "Yes."
01:59:39 Q. "And why would you do that?"
01:59:40 And what was your answer?
01:59:41 A. "To be as accurate as possible in the property
22 condition report."
01:59:43 Q. And would you agree that the property
24 condition report was not accurate?
01:59:45 A. No, it was accurate.

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02:00:01 Q. And why was it accurate? 02:00:02 A. When we filled it out in 2018, it was accurate 3 for everything in the property. 02:00:14 Q. So you weren't aware of any survey prior to 5 closing; is that your testimony? 02:00:26 A. No. I know – when you asked me this 7 question, I was referring to prior to us working on 8 everything before the property line adjustment. I 9 didn't know whether he had the property surveyed ten 10 years ago. 02:00:31 Q. Okay. If you'd turn to page 172 of your 12 deposition. 02:00:513 A. Okay. 02:00:514 Q. Actually, go to page 171, line 20. Are you 15 there? Are you there at line 20? I'll read it. 02:01:016 A. Yes. 02:01:017 Q. "Question: Why was this survey that had 18 already been conducted prior to closing not disclosed 19 when it existed prior to closing? Why did you 20 provide – well, first of all, stick with that question. 21 Why was the survey not disclosed when it existed at the 22 time of the Purchase and Sale Agreement was entered into 23 at the time of closing?" 02:01:24 And your answer was what? 02:01:25 A. "I don't know."	381 1 did Patty," correct? 02:02:22 A. Yes. 02:02:23 Q. "Question: I don't think you can testify to 4 what my clients knew or what Patty knew, can you?" 02:02:35 "Answer: Not what your clients know because I 6 have no idea what their agent told them, but I can 7 honestly testify that Patty knew." 02:02:48 "Question: How did she know?" 02:02:59 "Answer: How did she know? Because we talked 10 about it, because that was the whole purpose of when we 11 looked at the property, walked the property. If you 12 visualize the property, you can see where what Brian was 13 doing made sense for the benefit of the buyers." 02:03:014 Did I read all of that accurately? 02:03:015 A. Yeah, benefit of the buyers. 02:03:016 Q. Okay. Initially, during your trial testimony 17 you testified that you didn't have any knowledge of 18 these things, and now in your deposition there towards 19 the end, it appears that you did have knowledge of those 20 things. Why at the beginning of your deposition did you 21 state that you didn't have knowledge? 02:03:22 A. I don't know why I answered those first 23 questions no. I was obviously mistaken. But, yeah, 24 everybody knew we were doing the property line 25 adjustment. Mike Reagan had been working on it forever, 383
02:01:21 Q. And then I asked you, "Question: Why did 2 you – why did you just approximate and provide to my 3 client the depiction instead of actually providing what 4 the real legals were?" 02:01:35 And your answer was, "Out of a courtesy to 6 help her because obviously she could have just gone on 7 Kootenai County website PropertySpace.com, Google, and 8 got all that information herself." 02:01:49 "Question: She couldn't see what the 10 to-be-adjusted boundaries were by doing that, though, 11 could she or could they?" 02:01:512 And your answer was, "No, I couldn't either." 02:01:513 Am I correct so far? 02:02:014 A. Correct. 02:02:015 Q. "Question: Yeah. So how could she know? Why 16 didn't you provide her with the actual legals?" 02:02:017 And your answer was, "I didn't have the 18 legals. I wasn't a party. That was between my client 19 and his attorney." 02:02:20 Did I read that accurately? 02:02:21 A. Yes. 02:02:22 Q. "Question: But you knew he was going and 23 making adjustments, and you knew that Mike Reagan was 24 working on it, didn't you?" 02:02:25 And then your answer was, "Everybody did, so	382 1 and that was part of the problem because, sadly, Mike 2 was dying of cancer and everything was taking longer 3 than it should have. But everybody knew, Patty knew 4 prior to her even showing the property. Everybody knew 5 we were in the process of doing a property line 6 adjustment. 02:04:07 Q. If you'd turn to Exhibit 3, please. Are you 8 there? 02:04:39 A. Yes, sir. 02:04:40 Q. And this is the Real Property Disclosure form, 11 which you've already talked about. But did you review 12 this with your client to ensure that it was accurate? 02:04:413 A. Yes. 02:04:414 Q. On the second page where it says, "Private 15 system, private well," do you see that? 02:04:516 A. Yes. 02:04:517 Q. So given this disclosure, would a purchaser of 18 the property be safe to assume that they're getting a 19 private system and a private well? 02:05:20 A. Yes. 02:05:21 Q. And is it correct that you or your client 22 never communicated to my client or their agent that they 23 were getting anything other than a private system and a 24 private well for their system, correct? 02:05:25 A. Correct. 384

02:05:21 Q. Do you have any opinions about Patty Ellis'
2 handling of the transaction one way or the other?
02:05:33 A. I mean no disrespect to Patty, but she's –
4 she could have handled, in my opinion, things much
5 better for her clients.
02:05:46 Q. If you'd turn to page 87 of your deposition,
7 please.
02:05:58 A. Eighty-seven?
02:05:59 Q. Eighty-seven.
02:06:10 A. Okay.
02:06:11 Q. Line 19. Are you there?
02:06:12 A. Yes, I am.
02:06:13 Q. Okay. "Question: Do you have any opinion
14 about Patty Ellis' handling of the transaction one way
15 or the other?"
02:06:16 And what was your answer?
02:06:17 A. "I do not."
02:06:18 Q. And do you have any opinion as to whether or
19 not she could have done anything differently in
20 connection with the transaction?
02:06:21 A. Whether she could have?
02:06:22 Q. Yes.
02:06:23 A. Absolutely.
02:06:24 Q. Okay. If you'd turn to page 88 or look down
25 at page 88, line 3. I asked you, "Question: So you

1 have no opinion as to whether or not she could have done
2 anything differently in connection with the transaction;
3 is that correct?"
02:06:44 And your answer was, "I can't speak for how
5 Patty should handle her deals."
02:06:46 Did I read that accurately?
02:06:47 A. Yes.
02:06:58 Q. Do you have an opinion as to whether or not
9 Ms. Ellis handled the transaction adequately?
02:07:10 A. Well, you know, honestly, again, you know, I
11 don't want to be disrespectful to her, but, no, she
12 didn't handle it correctly. I mean, there's a thousand
13 things that didn't get done on behalf of her clients
14 that I would have never done if I was their agent.
02:07:15 Q. Okay.
02:07:16 A. The well productivity test is probably the
17 biggest of all of them.
02:07:18 Q. Okay. Look on page 88. You should still be
19 there. Line 8, during your deposition I asked you,
20 "Question: My question is, do you have an opinion one
21 way or the other as to whether or not Patty handled the
22 transaction adequately?"
02:07:23 And your answer was, "I do not." Is that
24 correct?
02:07:25 A. Yes.

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02:07:31 Q. And I also asked you, "Question" – beginning
2 at line 12 – "Did she handle it poorly in your
3 opinion?"
02:07:44 And your answer was, "I don't have an answer
5 to that. That would be one, I guess, her clients should
6 probably answer, not me."
02:07:57 Did I read that accurately?
02:07:58 A. Yes.
02:08:09 Q. If you turn to Exhibit 45, please. Do you
10 recognize what Exhibit 45 is?
02:08:21 A. Amended Notice of Claim of Water Rights. No,
12 I don't recognize this. I mean, I know the document.
02:08:33 Q. Please reference the exhibit binder, not the
14 deposition, so Exhibit 45 from the binder.
02:08:45 A. Okay. I recognize Exhibit 45 as being a
16 Notice of Claim to a Water Right, amended.
02:08:57 Q. I believe you're looking at 44. If you would
18 turn –
02:08:59 A. Oh, I'm sorry. Okay. I'm at Exhibit 45. It
20 appears to be text thread.
02:09:21 Q. And who's that between?
02:09:22 A. I'm assuming "me" is Brian.
02:09:23 Q. Have you ever seen Exhibit 45 before, like
24 during your deposition?
02:09:25 A. I don't recall, but I am assuming that I have,

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1 sir.
02:09:32 Q. These have been admitted by stipulation.
3 Could you turn to Bates number Farley 278 in the bottom
4 right-hand corner.
02:09:55 A. I'm sorry, you want me to go to 278? Oh, I
6 see the numbers down there. Got it.
02:10:07 Q. Did you receive this text from Mr. Farley?
02:10:18 A. I'm assuming so, yes.
02:10:19 Q. And was this after closing occurred?
02:10:10 A. It was what?
02:10:11 Q. Was this after closing occurred?
02:10:12 A. What's the date on it?
02:10:13 Q. Do you know whether it was after closing
14 occurred?
02:10:25 A. Well, I wouldn't know that if I don't know
16 what the date is. I apologize. We closed – I don't
17 know.
02:10:38 Q. Can you read a date lightly underneath the –
19 or maybe at the beginning of the text? I think your
20 copy is the only copy with legible dates on these texts.
02:10:41 A. November 8th.
02:10:42 Q. So that would have been some months after
23 closing, correct?
02:10:44 A. Yes.
02:10:45 Q. And November 8th, 2019?

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02:11:01 A. Yes.

02:11:02 Q. Okay. Would you read, and not too quickly so

3 you don't outpace our court reporter, as I'm prone to do

4 sometimes, but could you read the text that you received

5 from Mr. Farley? I have a couple of questions to ask

6 you about it.

02:11:17 THE COURT: And sorry, Counsel, just 278 or

8 279?

02:11:19 MR. SCHMIDT: 278.

02:11:19 THE COURT: Okay.

02:11:21 THE WITNESS: 278. "Hi, Rob, I'll pass

12 tonight. This business is none" –

02:11:23 MR. SCHMIDT: Q. Slow down. She's trying to

14 keep up with court reporting.

02:11:35 A. Okay. I'm sorry.

02:11:36 "Hey, Rob, I'll pass tonight. This business

17 is none of Dan's business but is important for you to

18 keep in this loop because their piss plus F'ing

19 ignorant" – is that okay if I say F'ing – and stupid

20 and you know" that – "and you know what stupid can do

21 based on stupidity. I took everything I had over to my

22 attorney yesterday. Purchase and sale, property

23 condition addendums, Amended CC&Rs, closing package,

24 water rights, everything pertinent and he says we're

25 totally fine. If they had any actionable offense, it

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1 with their agent not performing her duties.

02:13:52 Q. Did you and Mr. Farley know that they were not

3 aware of certain aspects of the transaction that you two

4 were?

02:14:05 A. That the Gideons were unaware of?

02:14:16 Q. If the Gideons and Ms. Ellis, yes. Did you

7 believe that they were mistaken about some facts that

8 they were going to find out later on?

02:14:29 A. Absolutely not.

02:14:40 Q. So why are they going to figure something out

11 later on that would necessitate them going after her?

02:14:42 A. Well, I'm – I don't know how the Gideons feel

13 about not having the well test as an example not

14 performed, because obviously that's a big concern of why

15 we're all sitting here. That was identified in her

16 Purchase and Sale Agreement as needing to be done and it

17 did not get completed. Pretty big deal.

02:14:48 Q. At this point in time, would you agree that

19 you and Mr. Farley were aware that Ms. Ellis did not

20 uncover issues with the water system that were known to

21 Mr. Farley?

02:15:22 A. Well, if you're referring to were we aware

23 that she didn't do the test that she has to do, yes.

02:15:24 Q. Would you agree that Mr. Farley is aware of a

25 number of issues that Ms. Ellis did not uncover?

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1 would be against their own realtor and maybe the title

2 company if they didn't give them everything that was

3 recorded for that property, but that would be minimal.

4 Plus the Purchase and Sale Agreement states specifically

5 it is the buyer's responsibility to seek out and obtain

6 Amended CC&Rs, which pretty much leaves the title

7 company off the hook for that. Everything they're

8 complaining about is public record for all the world to

9 see, including their agent, right? And it was recorded

10 well before" closing – "well before the closing. Poor

11 old Patty so stupid she wouldn't follow through on the

12 well yield test, the well water quality test, never did

13 a radon, did not get them to sign my Kootenai Electric

14 easement, never did nothing for them really. Mary said

15 she didn't even bother to show up at closing, so here's

16 a person who sells real estate at her lunch hour and

17 after 5:00 and a \$900,000 deal isn't important to stop

18 at the title company for a few minutes. When the buyer

19 finds out what she did not do for them, or I should say,

20 figures it out, if I was them, I'd be coming after her."

02:13:21 Q. What did you interpret that last sentence to

22 mean, "when the buyer finds out what she did not do for

23 them, or I should say, figures it out, if I was them,

24 I'd be coming after her"?

02:13:25 A. Well, I would take that as them being upset

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02:15:21 MR. BISSELL: Objection. Calls for

2 speculation.

02:15:23 THE COURT: Sustained.

02:15:34 MR. SCHMIDT: Q. Were you aware that

5 Ms. Ellis had not uncovered a number of issues with the

6 property?

02:15:37 A. No.

02:15:48 Q. What was it that the Gideons were going to

9 figure out, if you know? It says "or should I say,

10 figures it out." What were they going to figure out

11 later on?

02:15:52 A. I have no idea. I think it was just a line in

13 a text. I guess it would obviously mean – to me, I

14 guess if you're asking me to speculate, that they would

15 figure out later on that their agent probably could have

16 done a better job for them. I don't know.

02:16:07 Q. The language in the text regarding did not

18 follow through on the well yield test, did not follow

19 through on the well yield test, so is that something

20 that she failed to figure out that the buyers were

21 eventually going to figure out?

02:16:22 A. I don't know. It was specified in the

23 Purchase and Sale Agreement that she wrote, that it was

24 to be performed and there was obviously a time of the

25 essence, a due-diligence time frame of getting that

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1 done. And I mean, again, no offense to anybody, but 2 you're selling a rural property. Water and sewer are 3 two pretty big deals. If I'm an agent, I'm making dang 4 sure my clients have water and I'm getting that well 5 tested every single time unless the clients tell me not 6 to. 02:16:57 Q. Did you hear Mr. Farley ever tell Art Gideon 8 that the wells produced plenty of water? Did you ever 9 hear that statement? 02:17:00 A. I don't know -- I don't recall that exact 11 conversation, but the well's been working for 20 years 12 providing great water for the whole Farley family. I 13 think the track record speaks for the proximity of the 14 well. 02:17:15 MR. SCHMIDT: I don't have any further 16 questions. 02:17:37 THE COURT: Cross. 02:17:38 CROSS-EXAMINATION 02:18:09 MR. BISSELL: Q. Get some background 20 information, Mr. Elder. Can you just -- briefly, what 21 was your education experience? 02:18:22 A. What was my what? 02:18:23 Q. Education experience, or what is your 24 education? 02:18:25 A. Beautiful high school of Coeur d'Alene, Idaho;	393 02:19:31 02:19:32 02:19:33 02:19:44 02:19:45 02:19:47 02:19:48 02:19:59 02:19:52 02:19:53 02:20:04 02:20:06 02:20:07 02:20:08 02:20:09 02:20:21 02:20:22 02:20:24 02:20:25	395 Q. Oh. And is a Ruby something similar to that? A. I'm sorry? Q. What's -- is a Ruby Award similar to that? A. Yeah, Ruby's a little bit less. Q. Okay. And do you belong to any associations 6 or chambers of commerce? A. Yes. Q. And what is that? A. I'm on the -- obviously, the Coeur d'Alene 10 Board of Realtors. I've been involved in the chamber my 11 whole adult life. Q. For chamber for Coeur d'Alene? A. Coeur d'Alene Chamber and Post Falls Chamber. Q. Okay. You're a member of the Idaho Realtors 15 Association? A. Yes. Q. And you work for Century 21? A. Correct. Q. Is there a geographic area you primarily work 20 in? A. Kootenai County, Idaho. Q. Okay. Have you been subject to any 23 disciplinary proceedings as a realtor? A. I'm sorry? Q. Have you been subject to any disciplinary
1 North Idaho College; and University of Idaho. 02:18:22 Q. Okay. And can you briefly run through your 3 employment experience? 02:18:34 A. I've been a restaurant owner my whole adult 5 life. Still own one. I've been in real estate for over 6 eight years now full time as well. 02:18:47 Q. Are you a licensed realtor? 02:18:48 A. I am. 02:18:49 Q. And when did you become licensed? 02:18:40 A. Actually, my mom knows the answer to that 11 because she texts me every year, so it's been eight 12 years ago, so it was 2000, what, '14? 02:18:56 Q. Okay. 02:18:57 A. June of '14, I believe. 02:19:05 Q. Have you received any awards for your work as 16 a realtor? 02:19:07 A. I have, yes. 02:19:08 Q. What would those be? 02:19:09 A. I've had multiple Centurion Awards. In the 20 top five in our office in the last two years, top 10 21 three years ago, four years ago top ten. I've had Ruby 22 awards. I've had top sales awards. 02:19:23 Q. What is a Centurion Award? 02:19:24 A. It's for -- if you -- it's your GPM over a 25 hundred -- certain amount of sales.	394 02:20:22 02:20:23 02:20:36 02:20:38 02:20:41 02:20:42 02:20:43 02:20:54 02:21:06 02:21:07 02:21:08 02:21:21 02:21:23 02:21:24 02:22:25	396 1 proceedings as a realtor? A. I have not. Knock on wood. Q. And what sort of transactions are you 4 handling? I'm talking about commercial, residential, 5 both. A. Yeah, I do both. I'm about 85 percent 7 residential, 15 percent commercial. Q. Okay. And about how many residential 9 transactions do you think you've been involved in 10 involving rural property? A. In my career? Q. Yeah. A. Hundreds. Q. Okay. And you typically represent buyers or 15 sellers or a mix? A. Both. Q. Okay. What is a private well system to you? A. Simply a private well is drill on a private 19 residence or acreage to supply water to that parcel or 20 home or house. Q. Would a shared well -- can that be a private 22 system? A. Yes. Q. And why is that? A. Anything that's not city or municipality type.

02:22:01 Q. Okay. So, Mr. Elder, can you look at
2 exhibit – well, hold on a second. Trying to make this
3 as...
02:23:14 Take a look at Exhibit I, please. Before we
5 go there, let me ask, when did you first list the
6 property?
02:23:37 A. When did I first what?
02:23:38 Q. List the property.
02:23:49 A. I'm away from that date. We listed it in
10 2017, I believe. I don't have that file exactly right
11 in front of me here.
02:23:49 Q. Okay. Then did you relist it in April of '18?
02:23:53 A. Yes.
02:23:54 Q. And then did that expire at some point and you
15 relisted again?
02:23:56 A. Yes.
02:23:57 Q. Okay.
02:23:58 A. I might be wrong on my year. I apologize. I
19 think we actually started it in 2018. I'm sorry.
02:24:20 Q. All right. Well, why don't – take a look at
21 Exhibit G.
02:24:22 I think we have a stipulation for that, your
23 Honor?
02:24:24 THE COURT: We do. It has been admitted.
02:24:25 MR. BISSELL: Q. Okay. And what is

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02:25:21 A. 5/1 of '18, sir.
02:25:22 Q. Okay. So now go to Exhibit I.
02:25:33 A. Exhibit I.
02:25:34 MR. BISSELL: I believe we have a stipulation
5 regarding this as well, your Honor?
02:25:46 THE COURT: That's correct.
02:25:47 MR. BISSELL: Okay.
02:25:48 THE COURT: It's been admitted.
02:25:49 MR. BISSELL: Q. Mr. Elder, what's Exhibit I?
02:25:50 A. It's RE-25 Seller's Property Condition
11 Disclosure Form.
02:25:52 Q. Okay. And so – and this was done in April
13 20th of '18, right?
02:26:04 A. Yes, sir.
02:26:05 Q. Okay. And if you go to the last page, if you
16 would, please, page 44.
02:26:17 A. I'm there.
02:26:18 Q. Okay. And there's Mr. Farley's signature on
19 April 20th, correct?
02:26:20 A. Yes.
02:26:21 Q. All right. And then you go down below where
22 folks are supposed to sign it. There's a part that
23 talks about Amended Disclosure Form. Do you see that?
02:26:24 A. Yes.
02:26:25 Q. All right. Did you ever have any – did you

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1 Exhibit G, Mr. Elder?
02:24:32 A. Amended and restated declaration of
3 established conditions of Amended CC&Rs.
02:24:34 Q. You got to look in the – we're talking about
5 the exhibit notebook now.
02:24:36 A. Okay. I'm sorry. Am I in the wrong one
7 again?
02:24:48 Q. Probably. It's Exhibit G.
02:24:49 A. G.
02:24:40 Q. Does that one have letters?
02:24:46 A. New Listing Form?
02:24:48 Q. Yes.
02:24:49 A. I'm sorry. Thank you.
02:24:54 Q. Okay. And what is Exhibit G?
02:24:56 A. This is a New Listing Form that we use
16 in-house that basically gives all the contact
17 information, when the listing is, the details of the
18 listing, showing instructions, sign locations. It's
19 really used for my assistants and staff to identify
20 deal – you know, identify all the pertinent things of
21 the property.
02:25:22 Q. Okay. So does that help you or recall when
23 you started your – listed this property?
02:25:24 A. Yes.
02:25:25 Q. Okay. And when would that be?

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1 ever discuss that provision with anybody that's down
2 below their signature?
02:26:53 A. No.
02:26:54 Q. Let me ask you – and then at some point in
5 time, did this initial listing expire?
02:27:06 A. Yes.
02:27:07 Q. So then you relisted?
02:27:08 A. Yes.
02:27:09 Q. Okay. And then if you go to – now we're
10 going to Exhibit 3.
02:27:31 A. It's back in the other book.
02:27:32 Q. Yeah.
02:27:43 A. Okay. I am there.
02:27:44 Q. Okay. And this Exhibit 3, that's another
15 disclosure statement. This date of Mr. Farley's
16 signature on it's the same, correct, April 20th, 2018?
02:27:57 A. Yes, sir.
02:28:08 Q. All right. And then up at the top, am I
19 correct there's just that 4 has just been changed to 11?
02:28:20 A. Yes.
02:28:21 Q. Okay. And if you go to Exhibit 1, that's the
22 MLS listing you created, right?
02:28:23 A. Yes.
02:28:24 Q. Okay.
02:28:25 A. Yes.

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02:28:31 Q. So if there were — if there are — were two
2 wells involved, would it change the listing at all?
02:28:43 A. Never.
02:28:44 Q. It would be the same whether there's one well
5 or two wells?
02:28:46 A. One well.
02:28:47 Q. And if there were two wells involved, would it
8 change the listing?
02:28:59 A. Absolutely.
02:28:50 Q. And how would it change it?
02:28:51 A. Well, we would identify it. Be like if you
12 had two houses or an extra barn or...
02:29:03 Q. Okay. And now with regard to the boundary
14 line adjustment that was ultimately done, was that
15 completed as of November 20th, 2018, boundary line
16 adjustment that was ultimately recorded?
02:29:47 A. No.
02:29:58 Q. Was there ever an addendum to the PSA change
19 in the legal description?
02:29:20 A. No.
02:30:21 Q. Was there ever an addendum to the PSA change
22 in the amount of property that was being conveyed?
02:30:23 A. No.
02:30:24 THE COURT: Ten minutes, Counsel.
02:30:25 MR. BISSELL: Okay, your Honor.

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02:31:31 Q. So how would one — one's looking at the
2 electronic listing, how do you get to that?
02:31:43 A. It's in the document section. There would be
4 seller disclosures, plats, aerials, property line,
5 anything like that.
02:31:56 Q. So somebody clicks on it, they would find it?
02:31:57 A. Uh-huh.
02:31:58 Q. Okay. And then take a look at Exhibit 12, and
9 we've already stated you provided that to Ms. Ellis,
10 right?
02:32:16 A. Yes.
02:32:12 Q. And if you look on page 1 of Exhibit 12 it
13 says its unofficial but very close?
02:32:14 A. Yes.
02:32:15 Q. What did you mean by that?
02:32:16 A. Well, I meant if she was having problems, if
17 she didn't know how to look it up on the Kootenai County
18 website or Property Space, I was trying to help her out
19 and send her just a brush scope of what the property
20 would look like. And so I took a highlighter and I
21 added a few things to what was there and said here's
22 what it's going to look like, and unofficial meant just
23 that. This isn't accurate. This is just to give you a
24 scope of what the general area of the property is.
02:32:25 Q. Did she ever ask you what you meant by that?

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02:30:11 Q. Did you have any discussions with Patty Ellis
2 regarding water rights?
02:30:13 A. No.
02:30:34 Q. Did you ever discuss having well tests
5 performed with Ms. Ellis?
02:30:36 A. Yes, when she identified it in the Purchase
7 and Sale Agreement.
02:30:38 Q. And what was the discussion?
02:30:49 A. Just she was going to have it tested. That
10 was just part of the things that she was asking, a
11 secondary inspection.
02:30:42 Q. And in your experience with regard to rural
13 properties, is that important?
02:30:54 A. Extremely.
02:30:55 Q. Why is that?
02:30:56 A. Because it's not city water; it's a private
17 well. And those of us who own wells, myself included,
18 it's important to know what those do.
02:31:09 Q. On Exhibit 12, you can turn to that. Well,
20 let me back up for a second. Exhibit 11, so I think you
21 said that was — that was on the listing?
02:31:22 A. Yes.
02:31:28 Q. And so was there any restriction on folks
24 accessing that?
02:31:25 A. No.

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02:32:41 A. No.
02:32:42 Q. Okay. And how long did it take you to do it?
3 The drawing Exhibit 12, how long did that take?
02:32:54 A. A minute.
02:32:55 Q. Okay. And would you agree that the — if we
6 look at — on Exhibit 11, that green line's above the
7 switchback corner, correct, to Derting Road?
02:33:18 A. Yeah, the orange one.
02:33:29 Q. Yeah. On Exhibit 11.
02:33:40 A. Yeah.
02:33:41 Q. And then on Exhibit 12, both your lines are
12 below the corner of the switchback, correct?
02:33:43 A. Correct.
02:33:44 Q. Now, in your industry, do you use aerial
15 photographs?
02:33:46 A. Every listing.
02:33:47 Q. Okay. Do you rely upon them as being
18 accurate?
02:33:59 A. No.
02:33:20 Q. Do you have any experience of your own in that
21 regard?
02:33:22 A. Yeah. Right now, yes. A little piece of lake
23 property that is off by almost 15 feet, and it was
24 surveyed in '71 by Meckel and Meckel, and so it's way
25 off.

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02:34:01	Q. And —	405	1	Ellis.	407
02:34:02	A. That's very common.		02:36:02	Q. Let me ask you stop there for a second. So	
02:34:03	Q. What is —		3	let's take it step by step.	
02:34:14	MR. SCHMIDT: Objection. Relevance. Not part	02:36:04	A. Okay.		
5	of any disclosure,	02:36:05	Q.	Did you go to the closing with Mr. Farley on	
02:34:16	THE COURT: I'll allow it.	6	June 7th?		
02:34:17	MR. SCHMIDT: Okay.	02:36:17	A. Yes.		
02:34:18	THE COURT: Overruled.	02:36:18	Q.	Okay. During the closing, during the	
02:34:29	MR. BISSELL: Q. So just to be clear, did	9	reviewing of the documents, did anyone say anything		
10	Ms. Ellis ask you any questions about Exhibit 12?	10	about the documents?		
02:34:41	A. No.	02:36:19	A. Yes.		
02:34:42	Q. Did she ask you any questions about Exhibit	02:36:42	Q. What?		
13	11?	02:36:43	A.	Mr. Farley pointed out that there was some	
02:34:44	A. No.	14	things that were incorrect in the documents.		
02:34:45	Q. Did Mr. Farley assist you in creating Exhibit	02:36:45	Q.	And what was he talking about?	
16	12?	02:36:46	A.	Legal description and the property line.	
02:34:47	A. No.	02:36:47	Q.	Did he reference the Amended CC&Rs?	
02:34:48	Q. Did he direct you to create it?	02:36:48	A.	Yes. And the Amended CC&Rs, yes.	
02:34:49	A. Did he what?	02:36:49	Q.	What about them?	
02:34:20	Q. Did he direct you to create it?	02:36:20	A.	I think they were not there.	
02:34:21	A. No.	02:36:21	Q.	Okay. And then so what did he say?	
02:34:22	Q. Did you tell him you had?	02:36:22	A.	Well, he asked where they were, and then I	
02:34:23	A. No.	23	don't remember exactly what.		
02:34:24	Q. Did you provide him a copy of it prior to	02:36:24	MR. SCHMIDT: Objection.		
25	closing?	02:36:25	THE COURT: Hold on.		
02:34:51	A. No.	406	02:36:51	MR. SCHMIDT: Objection. Hearsay as to what	408
02:34:52	Q. Did you tell him prior to closing you had	2	he said.		
3	provided a copy to the Gideons?	02:36:53	THE COURT: Sustained.		
02:34:54	A. No.	02:36:54	MR. BISSELL: Q. What happened next?		
02:35:05	Q. As far as you're aware, was Mr. Farley aware	02:36:55	A.	He asked Mary, her title officer, where they	
6	of the existence of Exhibit 12 prior to closing?	6	were.		
02:35:07	A. As far as I know, I would say, no.	02:37:07	MR. SCHMIDT: Same —		
02:35:18	Q. And you attended the closing on June 7th with	02:37:08	MR. BISSELL: You can't say what he said.		
9	Mr. Farley, correct?	02:37:09	MR. SCHMIDT: Same objection with respect to		
02:35:10	A. Yes.	10	testimony of what Mr. Farley said.		
02:35:11	Q. Okay. And do you typically attend the	02:37:01	THE COURT: Sustained.		
12	closings?	02:37:12	MR. BISSELL: Q. What happened after		
02:35:13	A. Every one of them.	13	Mr. Farley brought that to — mentioned the missing		
02:35:14	Q. And why is that?	14	Amended CC&Rs?		
02:35:15	A. Just making sure that the documents the title	02:37:15	A.	She agreed that the documents were not there.	
16	company has are correct. If there's any questions of my	02:37:16	Q.	Who is she?	
17	clients or concerns, I'm there to help answer or fix any	02:37:17	A.	Mary.	
18	problems that may occur.	02:37:18	Q.	Okay. Then what happened?	
02:35:19	Q. Okay. And at the closing, was there — did	02:37:19	MR. SCHMIDT: I'm going to object to what		
20	any discussion come up with regard to the Amended CC&Rs?	20	these people are saying to each other. We can have the		
02:35:21	A. Yes.	21	testimony —		
02:35:22	Q. What happened?	02:37:22	THE COURT: He didn't say what she said. She		
02:35:23	A. Well, there was a problem with, I think, the	23	just agreed that the documents were not there. She's		
24	legal description of the property lines and the title	24	agreeing that the documents were not there, so overruled		
25	officer stepped out and I believe, I think, called Patty	25	onto that — as to that question. Gentlemen, we got two		

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1 minutes.	02:39:21	MR. BISSELL: Okay.	
02:37:42 MR. BISSELL: Yes, your Honor.	02:39:32	(Evening recess.)	
02:37:43 Q. Then what did she do?	3		
02:37:44 A. She agreed, stood up, stepped out of the room.	4		
5 I'm assuming she made a phone call.	5		
02:37:56 Q. Let me stop you there. Then what happened?	6		
7 She steps out of the room. What's the next thing that	7		
8 happens?	8		
02:38:09 A. She told us she was going to call the clients	9		
10 or the clients' agents.	10		
02:38:11 MR. SCHMIDT: Objection. Hearsay.	11		
02:38:12 THE COURT: Sustained.	12		
02:38:13 MR. BISSELL: Q. She steps out of the room.	13		
14 What happens next? Does she come back into the room?	14		
02:38:15 A. Yes.	15		
02:38:16 Q. Okay. And then what happened?	16		
02:38:17 A. She said that she spoke –	17		
02:38:18 MR. SCHMIDT: Objection. Hearsay.	18		
02:38:19 MR. BISSELL: Effect on the hearer, your	19		
20 Honor.	20		
02:38:21 THE COURT: Okay. I'll allow it as to that,	21		
22 but it's not effect as to what might happen next. So	22		
23 you may go ahead.	23		
02:38:24 MR. BISSELL: Q. What happened?	24		
02:38:25 A. She came in and said that she had called – I	25		
	410		412
1 don't recall whether it was the agent or the clients.	02:39:31	IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT	
02:38:32 MR. SCHMIDT: Objection.	02:39:32	OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI	
02:38:43 THE WITNESS: And they asked –	02:39:33	–oOo–	
02:38:44 MR. SCHMIDT: He's stating what she said, who	02:39:34	ARTHUR V. GIDEON and KATHERINE M.)	
5 she called. I think that we need to have the actual	02:39:35	GIDEON, husband and wife,)	
6 speaker and the actual one who performed these with	02:39:36	Plaintiff,)	
7 personal knowledge testifying, not Mr. Elder. It's come	02:39:37	vs.)	Case No. CV28-20-2706
8 up a number of times.	02:39:38	BRIAN T. FARLEY and PAMELA FARLEY,)	
02:38:59 THE COURT: Well, we are at the hour. We need	02:39:39	husband and wife,)	
10 to stop.	02:39:40	Defendant.)	
02:39:11 MR. BISSELL: Okay.	02:39:41		
02:39:12 THE COURT: So if you wish to make an offer of	02:39:42	Court Trial - Day 3	
13 proof in the morning, you may.	02:39:43	AT: Kootenai County, Coeur d'Alene, Idaho	
02:39:14 MR. BISSELL: Okay, your Honor.	02:39:44	ON: June 8, 2022	
02:39:15 THE COURT: But –	02:39:45	BEFORE: Honorable Richard S. Christensen, District Judge	
02:39:16 MR. BISSELL: Can we revisit it in the	02:39:46	APPEARANCES:	
17 morning?	02:39:47	For the Plaintiff: Lukins & Annis, P.S.	
02:39:18 THE COURT: Well, Mr. Elder will have to come	02:39:48	By: Michael G. Schmidt, Esq.	
19 back. His testimony is not done at this time.	02:39:49	601 E Front Avenue, Suite 303	
02:39:20 MR. BISSELL: Oh, absolutely he will.	02:39:50	Coeur d'Alene, Idaho 83814	
02:39:21 THE COURT: Yes. And you can revisit in the	02:39:51	For the Defendant: Campbell & Bissell	
22 morning.	02:39:52	By: Michael S. Bissell, Esq.	
02:39:23 MR. BISSELL: Okay.	02:39:53	Brandon E. Slaven, Esq.	
02:39:24 THE COURT: I want to see counsel quickly in	02:39:54	820 W 7th Avenue	
25 chambers.	02:39:55	Spokane, Washington 99204	

02:41:01 June 8, 2022; 9:03 a.m. 02:41:02 PROCEEDINGS 09:03:03 THE COURT: Good morning, everyone. 09:03:04 MR. BISSELL: Good morning, your Honor. 09:03:05 MR. SCHMIDT: Good morning. 09:03:06 THE COURT: All right. At day 3 of Gideon 7 versus Farley, case number CV28-20-2706. The Court 8 notes the presence of counsel and the parties. Anything 9 to take up before we proceed? 09:03:10 MR. BISSELL: I don't think so, your Honor. 09:03:11 MR. SCHMIDT: No, your Honor. 09:03:12 THE COURT: All right. Mr. Elder, if you'd 13 come forward. And, sir, you are still under oath, okay? 14 If you'd have a seat there. 09:03:15 THE WITNESS: Thank you. 09:03:16 THE COURT: And we are beginning 17 cross-examination. 09:03:18 CROSS-EXAMINATION 09:03:19 MR. BISSELL: Q. So, Mr. Elder, I think we 20 ended yesterday where Ms. Spridgeon had walked back into 21 the room at closing. And then did the closing continue 22 at that point? 09:03:23 A. It did, but we hesitated a second. She 24 stepped out to call the buyers. 09:03:25 Q. But then when she came back in, did the	413	09:04:51 A. Just for that reason, it's the responsibility 2 of the buyer's agent to represent their client and the 3 buyer, and the buyer's agent to verify everything we 4 have in our listing package. 09:05:05 Q. Okay. Then go to Exhibit 3, please. 09:05:16 A. Yes, sir. 09:05:17 Q. All right. And so you're there? 09:05:18 A. Yes, sir. 09:05:19 Q. Okay. And then there's a table. Do you see 10 that on page 1? 09:05:21 A. Yes. 09:05:22 Q. All right. And so let's see. I think the 13 last three sentences of that paragraph above start with, 14 "This disclosure." Do you see that? "This disclosure 15 is not a warning." 09:05:36 A. Yes. 09:05:37 Q. Okay. Can you read that from there to the end 18 of the paragraph? 09:05:39 A. "This disclosure is not a warranty of any kind 20 by the seller or by any agent representing the seller in 21 this transaction. It is not a substitute for any 22 inspections. The buyer is encouraged to obtain his/her 23 own professional inspections." 09:05:24 Q. Okay. Then if you go to page 4 of Exhibit 3, 25 please. It's got a Bates number on the bottom Gideon
1 closing continue? Did Mr. Farley sign whatever he's 2 supposed to sign? 09:04:03 A. Correct. Yes. 09:04:04 Q. Okay. And then did everyone part company at 5 that point? Did he leave? 09:04:06 A. Yes. 09:04:07 Q. Did Ms. Spridgeon hand Mr. Farley anything? 09:04:08 A. Amended copy of the Amended CC&Rs that were 9 missing in the documents. 09:04:10 Q. Okay. Now, can you turn to Exhibit 1, please. 11 And that's the — that you have in front of you? 09:04:12 A. Yes, sir. 09:04:13 Q. And then you see in the top portion there 14 where it says contact information, right — or contract 15 information? 09:04:16 A. Yes. 09:04:17 Q. Okay. If you go down a little ways, it says, 18 "Private remarks." See that? 09:04:19 A. Yes. 09:04:20 Q. Okay. And then what's the last sentence 21 there? 09:04:22 A. "Buyer's agent to verify all information." 09:04:23 Q. And who put that in there? 09:04:24 A. I did. 09:04:25 Q. Why do you do that?	414	1 2021. Let me know when you're there. 09:06:12 A. Yeah, I am. 09:06:13 Q. Okay. And then there is the table on the top, 4 right? See that? 09:06:25 A. Yes. 09:06:26 Q. Okay. And underneath that table there's a 7 paragraph, starts, "Seller and buyer understand." Do 8 you see that? 09:06:29 A. I'm sorry, what line item are you on? 09:06:30 Q. So the second — the paragraph underneath the 11 table. 09:06:32 A. On 266? 09:06:33 Q. No. It's — the — it's Gideon 2021. Look at 14 the bottom right corner. It's page 4 of Exhibit 3. 09:06:45 THE COURT: Oh, of Exhibit 3. 09:06:46 THE WITNESS: I think I'm there. Page 4, 17 okay. 09:06:58 MR. BISSELL: Q. So Exhibit 3 is the 19 disclosure statement, right, that you were just reading 20 from on page 1? 09:06:21 A. Uh-huh. 09:06:22 Q. Okay. So now go to page 4. Let me know when 23 you're there. 09:07:24 A. I am there. Four, okay. 09:07:25 Q. And there's a table on top that says, "Other

1 disclosure section," right? See that? 09:07:12 A. I apologize, Counsel. I must be on the wrong 3 page here. It's Exhibit 4, right? 09:07:14 Q. No, three. Exhibit 3. 09:07:15 A. I apologize. That would help. Let me get 6 there. Sorry about that. 09:07:27 Q. It's all right. 09:07:28 A. All right. Page 4, I am there now, yes. 09:07:29 Q. Okay. And you see the table that says, "Other 10 disclosure section." 09:07:31 A. Yes. 09:07:32 Q. Okay. And if you drop down to the first large 13 paragraph, it says, "Seller and buyer understand." Do 14 you see that? 09:07:35 A. Yes. 09:07:36 Q. And then the next sentence starts out, "No 17 statement made." Do you see that? 09:07:48 A. Yes. 09:07:49 Q. Then the next sentence starts out, "Seller and 20 buyer also understand." Do you see that? 09:07:51 A. Yes. 09:07:52 Q. Please read that sentence. 09:07:53 A. "Seller and buyer also understand and 24 acknowledge that the seller in no way warranties or 25 guarantees the above information regarding the	417 1 you see that? 09:09:22 A. I do. 09:09:23 Q. Please read that paragraph slowly. 09:09:24 A. "Square footage verification. Buyer is aware 5 that any reference to the square footage of the real 6 property or improvements is approximate. The square 7 footage is material to the buyer and must be verified 8 during the inspection period." 09:09:49 Q. Okay. Now go to page 7. All right. And then 10 do you see paragraph 40? 09:10:01 A. Yes, sir. 09:10:02 Q. Do you see that? 09:10:03 A. I do. 09:10:04 Q. All right. Read that paragraph slowly, 15 please. 09:10:06 A. "Entire agreement. This agreement, including 17 any addendums or exhibits, constitutes the entire 18 agreement between the parties respecting the matters set 19 forth and supersedes all prior agreements between the 20 parties respecting such matters. This agreement may be 21 modified only by a written agreement signed by each of 22 the parties." 09:10:23 Q. Okay. And if you know that there's going to 24 be a boundary line adjustment done with regard to a 25 purchase, do you address that in any way with regard to
1 property." 09:07:52 Q. Okay. Now turn to Exhibit 4. 09:08:03 A. I am there, sir. 09:08:04 Q. Okay. And this is the Purchase and Sale 5 Agreement for the subject property, correct? 09:08:16 A. Correct. 09:08:17 Q. Okay. And then in the heading where it says, 8 "RE-21 Real Estate Purchase and Sale Agreement," do you 9 see where it's all caps, bold, starts out, "No 10 warranties." Do you see that? 09:08:21 A. I do. 09:08:22 Q. Please read that sentence. 09:08:23 A. "No warranties, including, without limitation, 14 any warranty of habitability, agreements" and – "or 15 representations not" exclusively "set forth herein shall 16 be binding upon either party." 09:08:47 Q. Okay. Try reading that again a little slower. 09:08:48 A. All right. Sorry. 09:08:49 Q. And I think you misstated some of the words. 09:09:20 A. Oh, sorry. I apologize. "No warranties," 21 comma, "including, without limitation, any warranty of 22 habitability, agreements or representations not 23 expressly set forth herein shall be binding upon either 24 party." 09:09:25 Q. Okay. Now go to page 4 and paragraph 13. Do	418 1 the Purchase and Sale Agreement? 09:10:42 A. Absolutely. It would be a condition. 09:10:43 Q. Okay. Would that be memorialized in any way? 09:10:54 A. In writing in the PSA. 09:10:55 Q. Okay. In an addendum? 09:10:56 A. I would include it initially in the 7 original – original Purchase and Sale Agreement. 09:11:08 Q. But could it be put in an addendum? 09:11:09 A. It could be put in an addendum, yes. 09:11:40 MR. BISSELL: That's all I have, your Honor. 11 Thank you. 09:11:02 THE COURT: Mr. Schmidt. 09:11:13 REDIRECT EXAMINATION 09:11:14 MR. SCHMIDT: Q. Mr. Elder, regarding the 15 boundary line adjustment, did you or did you not know 16 that there was supposed to be a boundary adjustment that 17 occurred prior to closing? 09:11:38 A. Yes, I did know. 09:11:49 Q. There's no mention of the boundary line 20 adjustment in the Purchase and Sale Agreement or the 21 addendum, is there? 09:11:22 A. No, because I did not write the Purchase and 23 Sale Agreement, sir. 09:11:24 Q. Is that correct, that there is not – 09:11:25 A. There is not. 420

09:11:41 Q. Okay. And you represented the seller in this 2 transaction? 09:11:53 A. Correct, yes. 09:11:54 Q. Did your client agree to do a boundary line 5 adjustment for my clients? 09:12:06 A. We were doing this boundary line adjustment 7 long before your clients came into the picture, so I 8 don't know whether he specific – I guess your question 9 was, did he specifically do it for your clients? 10 Eventually, yes, but we were working on it long before 11 they were the buyers. 09:12:16 Q. That was – but that was encompassed in the 13 agreement between the parties that there was going to be 14 a boundary line adjustment, yes or no? 09:12:16 A. Yes, everybody knew in advance. The real 16 estate agent knew in advance. Everybody knew it was 17 forthcoming. 09:12:18 Q. So would you agree that this document does not 19 contain the entire agreement of the parties? 09:12:20 A. The – 09:12:21 Q. Exhibit No. – 09:12:22 A. – RE-21? 09:12:23 Q. Exhibit No. 4, the Real Estate Purchase and 24 Sale Agreement. 09:12:25 A. Yes.	421 1 knowledge that it had been working for 20 years, 2 correct? 09:13:53 A. No. 09:13:54 Q. And in your deposition, you testified that you 5 knew about the boundary adjustment and said everybody 6 knew, correct? 09:14:07 A. Correct. 09:14:18 Q. But in your deposition, that testimony only 9 came after you had testified that you didn't know about 10 it at all and therefore couldn't convey any information 11 about it to Patty Ellis, correct? 09:14:22 MR. BISSELL: Your Honor, just like with my 13 witnesses, if he's going to question him about the 14 deposition, if it's appropriate, then he needs to have 15 it in front of him. But with a nonparty, he has to ask 16 him questions and he can impeach him, but he can't just 17 get into deposition testimony because it's convenient. 18 I guess my response – 09:14:49 THE COURT: Hold on. Oh, go ahead, 20 Mr. Schmidt. 09:14:21 MR. SCHMIDT: My response would be we read 22 through the deposition. If he wants to reference it, I 23 have no objection to providing it to him. 09:14:24 THE COURT: Well, let's give it back to him so 25 that he can see what you're referring to. 423
09:12:41 Q. It does not contain the entire agreement of 2 the parties, correct? 09:12:53 A. No, because, again, I didn't write that. It 4 was written by their agent. 09:12:55 Q. Is that correct? 09:12:56 A. Yes. 09:12:57 Q. Thank you. You testified yesterday that, 8 quote, "The well had been working for 20 years," end 9 quote. Do you recall that? 09:13:01 A. Yes. 09:13:01 Q. Which well are you referring to? 09:13:02 A. The only well, the main well on the property 13 for the house. 09:13:14 Q. Is that the upper well or the lower well? 09:13:15 A. The upper well. 09:13:16 Q. Okay. Do you know – or were you aware that 17 prior to 2017 there was not a pump in it and that Jody 18 Barden placed a pump in it in 2017? Were you aware of 19 that fact? 09:13:20 A. No, sir. 09:13:21 Q. And the basis of your knowledge that the upper 22 well had been allegedly working for 20 years was 23 Mr. Farley told you so, correct? 09:13:24 A. Correct. 09:13:25 Q. So you didn't have any independent personal	422 09:14:51 MR. SCHMIDT: I believe Madam Clerk still has 2 the deposition transcript for Rob Elder. 09:15:13 THE COURT: To the extent there was an 4 objection, that's sustained, but I think we're going to 5 cure that. 09:15:26 MR. SCHMIDT: Q. Do you have it? 09:15:27 A. I do. 09:15:28 Q. Okay. What's your explanation for this 9 conflicting testimony that you didn't know anything 10 about it and then everybody knew? How come that – how 11 can you reconcile that inconsistent testimony? 09:15:52 A. Well, obviously in the deposition I was 13 mistaken. I answered it incorrectly. 09:16:04 Q. If you'll turn to Exhibit 12, please. Are you 15 there? 09:16:26 A. Yes, sir. 09:16:27 Q. Yesterday you testified that Patty Ellis 18 didn't know how to look up the boundaries on Property 19 Space or Google, like it was a very simple thing to do. 20 Do you recall that? 09:16:21 A. Correct, yes. 09:16:22 Q. Okay. And you provided Patty Ellis the email 23 that is Exhibit 12 which attached the depiction of the 24 property boundaries, correct? 09:16:25 A. Yes. 424

09:16:41 Q. And I guess you acted like you were frustrated
2 that she wasn't capable of looking this up on the county
3 or Propertyspace.com or Google. Is that where — were
4 you frustrated that she couldn't look it up?
09:17:05 A. No, just trying to help her out.
09:17:16 Q. How would that help her out?
09:17:17 A. Because she asked me the question of where is
8 the property approximately, and I asked her if she had
9 looked it up, and she said she was having problems
10 finding it, so I sent it to her and just like I said in
11 my email, it was unofficial but very close.
09:17:31 Q. So why was the survey not disclosed when it
13 existed at the time that the Purchase and Sale Agreement
14 was entered into and at the time of closing?
09:17:45 MR. BISSELL: Objection. Argumentative, your
16 Honor.
09:17:47 THE COURT: Overruled.
09:17:48 THE WITNESS: I answer?
09:17:49 MR. SCHMIDT: Q. Yes.
09:17:20 A. Well, I think that, if memory served me
21 correctly, we were in a unique situation because the
22 attorney that was handling all of that was sadly going
23 through a battle with cancer and everything was delayed,
24 and we were waiting on all of those documents right up
25 until closing.

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09:19:31 Q. But a to-be-adjusted property line is not
2 depicted on anything, correct?
09:19:43 A. Correct.
09:19:44 Q. So how could she figure out what the
5 to-be-adjusted property line was? How was that helping
6 her?
09:19:47 A. Well, it would help her because she couldn't
8 figure out where the original acreage was, and she could
9 look at that and she could clearly see because we walked
10 the property. We talked to her about where the property
11 line adjustment was going to be so you could clearly
12 look at it and where the road was at. And as you can
13 see in your document, it would be pretty clear to have
14 somewhat of an understanding to explain to her clients
15 where it is.
09:20:16 Q. So you would agree that she couldn't figure
17 out from any of those sources what the actual boundary
18 line adjustment was going to be, correct?
09:20:19 A. I would agree she could not.
09:20:20 Q. Thank you. And it was your testimony that you
21 provided that map out of a courtesy to help her. I
22 believe that was your testimony.
09:20:23 A. Correct.
09:20:24 Q. If you weren't sure what the boundary was
25 going to be, how was it helpful to provide her something

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09:18:01 Q. If you'll turn to page 172 of your deposition.
09:18:12 A. Page 177 of what, sir?
09:18:13 Q. Page 172.
09:18:14 A. Of which book, sir? I have three here.
09:18:15 Q. Your deposition transcript, sir.
09:18:26 A. Okay. Thank you. I am there.
09:18:47 Q. Okay. Beginning at line 4, "Why did you" —
8 do you see that? So I asked you on this subject, "Why
9 did you — why did you just approximate and provide to
10 my client the depiction instead of actually providing
11 what the real legals were?"
09:18:51 And your answer was, "Out of a courtesy to
13 help her because obviously she could have just gone to
14 Kootenai County website, Propertyspace.com, Google, and
15 got all that information herself."
09:19:06 Did I read that correctly?
09:19:17 A. Correct, yes.
09:19:18 Q. Okay. She couldn't actually go to any of
19 those websites and figure out what the adjusted property
20 line was going to be, correct?
09:19:21 A. Of course she could.
09:19:22 Q. Explain how does that work.
09:19:23 A. If you go on Property Space or Kootenai County
24 website, it gives you a brush scope of any property line
25 that's listed or out there or not listed.

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1 that might be inaccurate?
09:20:42 A. So she could explain to her clients where the
3 approximate property was that they were interested in
4 buying.
09:20:55 Q. Did you expect her and her clients to rely on
6 that information?
09:20:57 A. I would hope not.
09:21:08 Q. What information could they rely on prior to
9 the boundary adjustment being completed?
09:21:09 A. The surveyed documents, having it surveyed
11 themselves, whatever made them comfortable with the
12 purchase.
09:21:13 Q. How would they know what to survey? They
14 hadn't been provided any information about what the
15 location of the boundary was.
09:21:16 A. The professional surveyor would have access to
17 all of that.
09:21:18 Q. Mr. Gideon's professional surveyor?
09:21:19 A. I apologize?
09:21:20 Q. Mr. Gideon's professional surveyor?
09:21:21 A. Whoever they hired as an expert person, like
22 an inspector or someone to look at their property and
23 verify the points and pins and what was going on.
09:21:24 Q. So my clients should have relied on
25 information that Mr. Gideon and his inspector held

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1 privately? 09:22:52 A. No. His inspector didn't have an expertise of 3 doing surveying, that I know of, if you're speaking to 4 the inspector they hired to just do the general 5 inspection of the home. 09:22:06 Q. You testified yesterday about your definition 7 of a private system or a private well system. Do you 8 recall that? 09:22:19 A. Yes, sir. 09:22:10 Q. And you testified that in your opinion a 11 shared well can be a private well; is that correct? 09:22:12 A. Yes. 09:22:13 Q. How is that so? 09:22:14 A. Well, if you and I are -- have property and we 15 have one well and we share it, and we don't have the 16 access to city water or city sewer, that would be a 17 shared well, in my opinion. 09:22:18 Q. Is that a private well if it's shared? 09:22:19 A. Absolutely. Because you and I would have had 20 to either purchase it or drill it. Anything that's just 21 not, you know, city. 09:22:22 Q. And so your testimony was in reference to 23 Exhibit 3, the RE-25 Disclosure, correct, where it says, 24 "Private well system." Go ahead and reference that, if 25 you like.	429 09:24:21 A. No. 09:24:22 Q. You wouldn't agree that what they received is 3 a shared system, correct? 09:24:24 A. Who are they sharing it with? It was an 5 individual well for that house unless they were sharing 6 it with the chickens or somebody. I don't know. 09:24:47 Q. You're Mr. Farley's real estate agent, 8 correct? 09:24:49 A. Yes, sir. 09:24:10 Q. You're his agent and he's your principal, 11 correct? 09:24:12 MR. BISSELL: Objection. Calls for a legal 13 conclusion. 09:24:14 THE WITNESS: My client, yes. 09:24:15 THE COURT: Overruled. 09:24:16 MR. SCHMIDT: Q. Did Mr. Farley tell you that 17 you should represent the property lines to be as 18 indicated in the email with the attached depiction? 09:25:09 A. Which email are you referring to? 09:25:20 Q. Exhibit No. 12. 09:25:21 A. No. That was, just again, out of courtesy to 22 Patty to help her understand to be able to explain to 23 her clients where the property lines were. 09:25:24 Q. My question is, did Mr. Farley tell you what 25 you should represent the property lines to be, or did 431
09:22:51 A. I am there. 09:23:02 Q. So you're reconciling what is an apparent 3 conflict in indicating that a private system can also be 4 a shared system -- 09:23:25 MR. BISSELL: Object to the point it's 6 argumentative, your Honor. 09:23:27 THE COURT: Let him finish his question, 8 Counsel. 09:23:29 MR. SCHMIDT: -- is that accurate? 09:23:10 MR. BISSELL: Object to the form. 11 Argumentative. 09:23:12 THE COURT: Overruled. 09:23:13 THE WITNESS: Yes. 09:23:14 MR. SCHMIDT: Q. On Exhibit 3 it also says 15 that there's no shared well agreement and it's not a 16 shared well. Can you reconcile that with what actually 17 occurred? 09:23:18 A. I don't understand your question. There was 19 never a shared well of any kind. It was individual well 20 for the house. 09:23:21 Q. How is the shared -- how is -- you would agree 22 that a shared well agreement was recorded and that it 23 was Mr. Gideon's testimony -- sorry, strike that. 09:24:24 Would you agree that what the Gideons received 25 was a shared well system?	430 1 you just decide for yourself what they were? 09:25:32 A. Well, I knew what -- where the property lines 3 were going to be, so together we obviously were on the 4 same page of what the property lines were being adjusted 5 to. 09:25:46 Q. So my question is, did Mr. Farley tell you 7 what you should represent the property lines to be or 8 did you just decide for yourself what they were? 09:25:59 A. Yes, he told me. We worked together on it. 09:25:10 Q. I believe yesterday you said that you just did 11 it on your own. Are you -- if that was your testimony 12 yesterday, would that be inaccurate now? 09:26:03 A. Well, I think you're sorting what we're 14 talking about. In my opinion, what I did on my own was 15 send to Patty to help her out, to give her a brush scope 16 with my highlighter what the property was going to look 17 like. 09:26:18 Q. But you worked with Mr. Farley to come up with 19 that exhibit, correct? 09:26:20 A. No, I did it on my own. 09:26:21 Q. Did Mr. Farley tell you -- well, I think that 22 you did testify to that. I'll move on and let the 23 record speak for itself. 09:26:24 And you were authorized as his agent to make 25 those representations regarding the boundary line how it 432

EXHIBIT A

1 was going to be adjusted, correct? <u>09:26:32</u> A. Yes. <u>09:26:43</u> Q. And were you authorized to speak on his behalf 4 about the property lines that you represented, where 5 they were going to be adjusted to, to my clients? <u>09:26:56</u> A. Yes. <u>09:26:57</u> MR. SCHMIDT: I don't have any further 8 questions. <u>09:26:59</u> THE COURT: Any recross? <u>09:26:59</u> MR. BISSELL: No, your Honor. <u>09:27:01</u> THE COURT: All right. May this witness be 12 excused? <u>09:27:03</u> THE WITNESS: Thank you, your Honor. <u>09:27:04</u> MR. BISSELL: Yes. <u>09:27:05</u> THE COURT: No – <u>09:27:06</u> MR. SCHMIDT: Yes. <u>09:27:07</u> THE COURT: Thank you. You may be excused, 18 Mr. Elder. <u>09:27:09</u> THE WITNESS: Thank you. <u>09:27:20</u> THE COURT: Call your next witness, 21 Mr. Schmidt. <u>09:27:22</u> MR. SCHMIDT: Plaintiffs call Pam Farley, your 23 Honor. <u>09:27:24</u> PAMELA JEAN FARLEY, <u>09:27:25</u> called as a witness herein,	433 1 was the last one to see him alive, correct? <u>09:29:22</u> A. Yes. <u>09:29:33</u> Q. And is it correct that Mr. Elder and 4 Mr. Farley would get together once in a while to have 5 lunches, dinners, or drinks? <u>09:29:46</u> A. Yes. <u>09:29:47</u> Q. Okay. Now I wanted to talk with you about the 8 properties at issue and any interest you might have in 9 those properties. So I understand that you purchased 10 the home while you were married to Mr. Farley, correct? <u>09:29:51</u> A. What home? <u>09:30:02</u> Q. You purchased the home on Derting Road that's 13 the subject of this dispute while you were married to 14 Mr. Farley, correct? <u>09:30:05</u> A. No. We purchased the property and built the 16 home. <u>09:30:17</u> Q. Okay. And the source of the funds to purchase 18 the property and build the home were funds that you and 19 Mr. Farley saved up while you were married, correct? <u>09:30:20</u> A. Yes. <u>09:30:21</u> Q. And when I took your deposition, you testified 22 that you considered yourself to be the owner of the 23 Ridgetop Retreat properties, that is, parcel I, S, T, 24 and V, correct? <u>09:30:25</u> A. Correct.
434 <u>09:27:24</u> having been duly sworn on oath, <u>09:27:52</u> testified as follows: <u>09:27:53</u> THE COURT: Ma'am, would you have a seat here 4 in the witness stand. <u>09:28:05</u> THE WITNESS: Right here? <u>09:28:06</u> THE COURT: Yes, ma'am. Right there. Pull up 7 that microphone a little closer to you and would you 8 state your full name and spell your last name. <u>09:28:19</u> THE WITNESS: Pamela Jean Farley, F-A-R-L-E-Y. <u>09:28:19</u> THE COURT: Go ahead, Mr. Schmidt. <u>09:28:19</u> DIRECT EXAMINATION <u>09:28:19</u> MR. SCHMIDT: Q. Good morning, Ms. Farley. I 13 just wanted to ask you some questions first about your 14 relationship with Rob Elder and your husband's 15 relationship with Mr. Elder, okay? <u>09:28:30</u> Did you and your husband attend social 17 functions about once a year with Mr. Elder? <u>09:28:48</u> A. Yes. <u>09:28:49</u> Q. And would you describe Brian Farley's 20 relationship with Mr. Elder as being a good 21 relationship? <u>09:29:02</u> A. Yes. <u>09:29:03</u> Q. And during our deposition, you offered up that 24 it was a particularly close relationship because you 25 lost a family member who worked for Mr. Elder, and he	436 <u>09:30:31</u> Q. Okay. And the Ridgetop Retreat properties 2 were acquired with funds earned during your marriage, 3 correct? <u>09:30:44</u> A. Yes. <u>09:30:45</u> Q. And you testified that you didn't ever agree 6 to relinquish or to get rid of your interest in any of 7 those properties to Brian Farley, correct? <u>09:30:58</u> A. That is not correct. I need to correct 9 myself. <u>09:31:09</u> MR. SCHMIDT: Okay. I want – may I approach? 11 I'd like to publish Ms. Farley's deposition. <u>09:31:12</u> THE COURT: You may. <u>09:31:43</u> MR. SCHMIDT: Q. If you'd turn to page 25 of 14 your deposition, and there should be four pages on each 15 individual paper page. Let me know when you're there. <u>09:31:56</u> A. I'm there. <u>09:31:57</u> Q. Okay. So on page 25, line 1 – sorry, just a 18 moment. I grabbed the wrong deposition transcript. <u>09:32:59</u> And I asked you on page 25, line 6, "Did you 20 ever agree to relinquish or get rid of your interest in 21 the properties to your husband?" <u>09:33:02</u> And your answer was, "No," correct? <u>09:33:03</u> A. That is correct. <u>09:33:04</u> Q. Okay. If you'd turn to Exhibit No. 18 in the 25 exhibit book. It's that binder there.

EXHIBIT A

09:33:21 A. Which one again? 09:33:22 Q. Exhibit 18 in the black binder. Yes. 09:33:23 Let me know when you're there. 09:33:34 A. I'm there. 09:33:35 Q. And would you agree that your name is listed 6 as a party on the Amended CC&Rs for the Ridgetop Retreat 7 Owners Association? 09:33:58 A. Yes. 09:33:59 Q. If you'll turn to Exhibit 3, please. Would 10 you agree – and what is that document? 09:34:11 A. Seller's Property Condition Disclosure Form. 09:34:12 Q. And up there at the top, who is listed as the 13 sellers? 09:34:14 A. Brian and Pamela Farley. 09:34:15 Q. Thank you. Now I want to turn to the – the 16 lower well. Do you know what I'm talking about when I 17 say the lower well? 09:34:18 A. Yes. 09:34:19 Q. And what is that? 09:34:20 A. It's a well on one of the properties that we 21 own. 09:34:22 Q. So I understand that you drilled a first well 23 for your property; is that accurate? 09:35:24 A. Yes. 09:35:25 Q. And where was that well drilled?	437	09:36:21 Did I read that accurately? 09:36:22 A. Yes. 09:36:23 Q. And so the purpose of drilling that second 4 well, would that second well be the lower well? 09:36:35 A. Yes. 09:36:36 Q. Was to get adequate water for irrigation, 7 correct? 09:36:38 A. Yes. 09:36:59 Q. So if the lower well were taken away, you 10 would not have adequate water to water as much as you 11 wanted to, correct? 09:37:02 A. I'm not sure. I can't be sure on that. 09:37:13 Q. Okay. If you'll turn to page 45 of your 14 deposition, please. Are you there, page 45, line 7? 09:37:15 A. Okay. Yes. 09:37:16 Q. Okay. I asked you, "Question: If the lower 17 well were taken away, would you have adequate water to 18 water as much as you wanted to?" 09:37:19 And your answer was, "Answer: Well, that's 20 why we drilled the well, for more irrigation." 09:37:21 "Question: So it's kind of a way of saying 22 yes, you would need more water? Would you need that 23 supplemental well in order to provide enough irrigation 24 so that you could water as much as you wanted to?" 09:37:25 And then there was an objection.
09:35:01 A. Behind our house in the pasture. 09:35:12 Q. In the pasture? 09:35:13 A. Uh-huh. 09:35:14 Q. And was the – that water was inadequate for 5 irrigation, so you fracked it, correct? 09:35:26 A. I believe so. I'm not quite sure. 09:35:27 Q. Turn to page 37 of your deposition, please. 8 On page 37 of your deposition, line 11, I asked you, 9 "Question: Okay. And so at some point, a decision was 10 made to frack the well to try and get more water; is 11 that correct?" 09:35:42 And you answered, "Yes." 09:35:43 Did I read that correctly? 09:35:44 A. Yes. 09:35:45 Q. "Question: Okay. So was there inadequate 16 water that drove that decision to frack to try and get 17 more water, or were you satisfied?" 09:36:08 There was an objection. 09:36:09 And then your answer was, "Maybe. Yes, it was 20 for – to get – to help with irrigation." Is that 21 accurate? 09:36:22 A. Yes. 09:36:23 Q. "Question: And what needed irrigated? 09:36:24 "Answer: Just the property, the lawns and all 25 around."	438	09:37:51 And then answer, "That's why we – that's why 2 we drilled it." 09:37:53 "Question: So correct?" 09:37:54 "Answer: For us, yes." 09:38:05 Did I read that accurately? 09:38:06 A. Yes. 09:38:07 Q. And so you need that lower well water to 8 irrigate your residential property in order to water as 9 much as you needed to, correct? 09:38:10 A. Yes. 09:38:11 Q. And did you consider the water system that was 12 servicing that residential property that you owned and 13 was sold to the Gideons, did you – you considered that 14 water system to be a private system, correct? 09:38:15 A. Yes. 09:38:16 Q. And that would include the lower well, 17 correct? 09:38:18 A. Yes. 09:38:19 Q. Do you recall the well going out at times? 09:38:20 A. If the pump, you know, had problems. 09:38:21 Q. How frequent did that occur? 09:39:22 A. Not very frequent. 09:39:23 Q. How many times a year? 09:39:24 A. Maybe a couple of times a year. 09:39:25 Q. Two, three, does – is that what a couple

1 means to you? 09:39:12 A. I would just say a couple, two. 09:39:13 Q. Okay. I wanted to talk with you about stock 4 watering. You understand what stock is, stock are? 09:39:25 A. Yes. 09:39:26 Q. Okay. Is it correct that the sole location 7 where stock was watered was just south of Derting Road 8 where it came out of a hydrant? 09:39:39 A. No. 09:39:40 Q. Okay. If you'd turn to page 51 of your 11 deposition, please. And I believe that there's an 12 Exhibit No. 3 with that deposition transcript near the 13 end. If you could kind of keep that place and look back 14 to Exhibit No. 3. 09:40:15 A. I'm sorry, I see – you point me – you want 16 me to be on page 51? 09:40:17 Q. Yes. Are you there? 09:40:18 A. Yes. 09:40:19 Q. Okay. And then there's an Exhibit 3 in there 20 as well? 09:40:21 A. Yes. 09:40:22 Q. Well, first of all, I believe you described – 09:40:23 THE COURT: Counsel, when you say "Exhibit 3 24 in there as well," are you talking about Exhibit 3 in 25 the deposition?	441 1 mean, I can tell it's a house, but I'm not really 2 sure – 09:42:13 Q. I asked you, "Would you mind putting a green 4 dot where the hydrant was that the hose was run from." 09:42:25 So do you see a green dot? 09:42:26 A. Yes. 09:42:27 Q. Is that where the hydrant was? 09:42:28 A. I do. Now I can see that, yes. 09:42:39 Q. Could you hold that up so the Court can see 10 where the green dot is, and the Court is Judge 11 Christensen. 09:42:312 THE COURT: Well, I can't quite see where the 13 green dot is, so if you want to – 09:42:414 MR. SCHMIDT: May I approach? 09:42:415 THE COURT: – come forward. 09:42:416 Okay. 09:43:017 MR. SCHMIDT: Q. And then you drew a blue 18 line along the course of where the hose was run from the 19 green hydrant – or from the hydrant or the green dot 20 down to where the horses watered, and you colored the 21 area the horses watered in orange, correct? 09:43:22 A. Yes. 09:43:23 Q. Okay. Could you hold that up and show the 24 Court what you're referencing? May I approach again? 09:43:25 THE COURT: You may. Well, where are you 443
09:40:41 MR. SCHMIDT: In the deposition, yes. 09:40:42 THE COURT: Okay. I just want to be clear. 09:40:43 MR. SCHMIDT: Q. If you could turn to 4 Exhibit 3 to the deposition, please. 09:40:55 A. I'm – 09:40:56 Q. Are there exhibits in the back of the 7 deposition? 09:41:08 A. I'm not sure where you're talking about. 09:41:19 Q. There should be a pink exhibit sticker that 10 says, "Exhibit 3." 09:41:11 A. Okay. Okay. 09:41:12 Q. And so I asked you, "Question: From a hydrant 13 that was located on the residential property, and that's 14 at a location, I guess, north of the house and north of 15 the well, correct, that's where the hydrant was?" 09:41:16 And you answered, "Behind the garage." 09:41:17 Could you show the Court where the hydrant was 18 that was utilized to water the stock that you were 19 testifying about? Just if you could hold up that 20 exhibit for the Court to see. 09:41:21 A. Where the hydrant was located? 09:41:22 Q. Yes. 09:42:23 A. Where this green spot is. I can't tell – 09:42:24 Q. So if you could – 09:42:25 A. I'm kind of unsure what I'm looking at. I	442 1 pointing to? 09:43:32 MR. SCHMIDT: Q. So green dot line, yellow is 3 where the horses watered. 09:43:34 A. That's orange. 09:43:35 Q. Or orange, sorry. 09:43:36 A. Uh-huh. 09:43:37 Q. Yes, okay. And at some point that hose went 8 away, and according to your husband, it was replaced by 9 a rigid pipe, but you were never aware that there was a 10 rigid pipe installed underground, correct? 09:44:11 A. No, I'm – he talked about it, but, no, I was 12 not. 09:44:13 Q. You aren't aware that there was a pipe running 14 underground to where the horses would get their water; 15 is that correct? 09:44:16 A. I don't recall. 09:44:17 Q. Can you see any evidence that there's a pipe 18 underground when you're on your property? 09:44:19 A. No. 09:44:20 Q. Running down to that location, you can't see 21 any evidence that there's a pipe, correct? 09:45:22 A. No. 09:45:23 Q. Is that correct? 09:45:24 A. Yes. 09:45:25 Q. Okay. And you testified that you only had two 444

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1 horses and four mules, correct? 09:45:12 A. Yes. 09:45:13 Q. And that you never had more than two horses 4 and four mules; is that correct? 09:45:25 A. Yes. 09:45:26 Q. And you also testified that you never leased 7 your property out to allow others to graze on it, 8 correct? 09:45:29 A. That's correct. 09:45:30 Q. And you also testified that the stock were not 11 grazed on any other locations on the Ridgetop Retreat 12 properties, correct? 09:45:33 A. Well, there was several pieces of property 14 that the – on that – like the different parcels that 15 they went to. 09:45:56 Q. Sure. And we went over that in your 17 deposition to define what those Ridgetop Retreat 18 properties were. I believe if you'll turn to Exhibit 1, 19 please. 09:46:20 THE COURT: And Exhibit 1, trial exhibit or 21 deposition exhibit? 09:46:22 MR. SCHMIDT: Sorry. Exhibit 1 to your 23 deposition. 09:46:24 THE WITNESS: Okay. 09:46:25 MR. SCHMIDT: Q. And what you circled in pink	445 09:48:41 09:48:45 09:48:46 09:48:47 09:48:48 09:48:49 09:48:49 09:49:14 09:49:15 09:49:16 09:49:18 09:49:19 09:49:20 09:49:21 09:49:25	447 MR. SCHMIDT: Well, this is going to take me a 2 bit too long, and I don't think it's that important 3 anymore, so I'm going to conclude with this witness, 4 your Honor. THE COURT: All right. MR. SCHMIDT: Thank you. THE COURT: Cross? MR. BISSELL: Thank you, your Honor. CROSS-EXAMINATION MR. BISSELL: Q. Ms. Farley, if you turn to 11 Exhibit B, please. That's the other – it's one to your 12 left, I think, the notebook to your left. No, it's 13 right – it's against the wall. Yep. Yep. Are you there? A. Yes. MR. BISSELL: Okay. I believe this is already 17 in evidence, your Honor? THE COURT: I'm sorry, which exhibit? MR. BISSELL: Exhibit B. THE COURT: Yes, it's admitted. MR. BISSELL: Q. And, Ms. Farley, this is a 22 quitclaim deed in 2016 from you to Brian Farley. And if 23 you look on Exhibit A for parcel I, S, T, and V, 24 correct? Do you see what I'm looking at? A. I was looking at – I'm looking at what
1 were identified to be the Ridgetop Retreat properties, 2 correct? 09:46:23 A. Yes. 09:46:24 MR. SCHMIDT: Okay. Could you show the Court, 5 please? If I may approach again? 09:46:46 THE COURT: Okay. 09:46:57 MR. SCHMIDT: Q. And so it was your testimony 8 that the stock were not grazed on any other locations in 9 the Ridgetop Retreat properties other than where the 10 yellow is, correct, on the exhibit? 09:47:04 A. On the yellow – 09:47:06 Q. Exhibit No. 3 that we were just looking at. 09:47:13 MR. BISSELL: I think objection. 14 Mischaracterized the testimony. She said orange, not 15 yellow. 09:47:26 MR. SCHMIDT: I keep getting that wrong. I 17 meant orange. 09:47:28 MR. BISSELL: Kind of significant. 09:47:30 THE COURT: I would – so it's orange? 09:47:32 MR. SCHMIDT: Orange. 09:47:34 Q. The orange line below Derting Road, that's 22 where you testified the stock were grazed, correct? 09:47:36 A. They were – that was one of the places. 09:47:38 Q. If you'll turn to page 56 of your deposition. 09:48:25 A. Okay.	446 09:49:52 09:49:53 09:49:54 09:50:06 09:50:07 09:50:08 09:50:09 09:50:10 09:50:11 09:50:14 09:50:15 09:50:37 09:50:38 09:51:23 09:51:24 09:51:25	448 1 exhibit? Q. So Exhibit B. A. Okay. Q. Okay? And it just says, "Quitclaim Deed" on 5 the top. Do you see that? A. Yes, I see that. Q. And that's from you, the grantor, right? A. Yes. Q. To Brian? A. Yes. Q. Right? Okay. And then if you look on the 12 last page of the exhibit, you'll see that this pertains 13 to parcel I, S, T, and V, correct? A. Yes. Q. Okay. Now, you did an errata to your 16 deposition, didn't you? A. Yes. Q. Okay. Take a look at page 52 of your 19 deposition, please. Okay. Now, if you look near the 20 back of the transcript portion of it, there should be 21 what's called an errata sheet. It kind of looks like 22 this. A. Okay. Q. I think it's before the exhibits. A. Before the exhibits?

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09:51:11 Q. Yeah. Should be the next page there, I think.
09:51:32 A. I'm sorry, I'm...
09:51:43 Oh, this?
09:51:44 Q. Did you find it?
09:51:55 A. Yes, I did.
09:51:56 Q. Okay. Let me show that -- if you could
7 just -- just point it to me so I can make sure you
8 get --
09:51:59 A. That one?
09:51:59 Q. Well, no, there should be an actual errata
11 sheet.
09:52:02 THE COURT: You can approach.
09:52:03 MR. BISSELL: Okay. Thank you, your Honor.
14 Well, it is not in there. Is there another...
09:52:05 Okay. May I have this marked, your Honor?
09:52:36 THE COURT: Sure.
09:52:37 MR. BISSELL: Okay.
09:52:38 THE COURT: I don't know what it is, but you
19 can have it marked.
09:52:40 MR. BISSELL: Well, I only have one. I have
21 the errata sheet that I would like to have marked as an
22 exhibit.
09:52:43 THE COURT: You can mark it as an exhibit.
09:52:44 MR. BISSELL: And then I'm going to have her
25 testify.

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0.9 55:4 **A. All right.**

0.9 55:42 **Q. Okay?** So on line 18, on page 52, it says,

3 "Okay." The question is, "Anywhere else that stock was

4 watered from either of the two wells or the 3,000-gallon

5 tank."

0.9 56:06 And your testimony in the written transcript

7 on page 52 is, "No."

0.9 56:08 Did you have a change in your errata sheet to

9 that? So you'll have to look where you said – page 52,

10 line 20.

0.9 56:19 **A. Yes, I did.**

0.9 56:19 **Q. What did you say?**

0.9 56:21 **A. I said – is that line –**

0.9 56:24 **Q. Twenty.**

0.9 56:26 **A. Twenty, that I needed to change it to -- it**

16 **reads, "No," but when I made the comment – or when I**

17 **testified, I was confused.**

0.9 56:48 **Q. And you were changing it to what?**

0.9 56:48 **A. To "yes."**

0.9 56:20 **MR. BISSELL:** May I approach, your Honor, to

21 take a look at that real quick?

0.9 56:22 **THE COURT:** Sure.

0.9 57:03 **MR. BISSELL:** I'm not sure she's on the right

24 area.

0.9 57:25 **THE WITNESS:** Yeah, I think I'm kind of

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09:53:51 (Defendants' Exhibit MMM marked.)

09:54:22 MR. BISSELL: Your Honor, would you like me to

3 show it to you and Counsel?

09:54:24 THE COURT: Well, you definitely got to show

5 it to Counsel first. And what is the exhibit letter?

09:54:36 MR. BISSELL: It's triple M, so three M, MMM.

09:54:57 Q. Ms. Farley, can you identify Exhibit MMM?

09:54:58 A. Yes.

09:54:59 Q. And what is that document?

09:55:00 A. It's corrections to some of the questions from

11 my deposition.

09:55:06 MR. BISSELL: Okay. Your Honor, I'd move for

13 admission of triple M.

09:55:08 (Defendants' Exhibit MMM offered.)

09:55:16 THE COURT: Mr. Schmidt?

09:55:16 MR. SCHMIDT: I guess I'd object. We don't

17 typically admit depositions. If Counsel wants to go

18 through it, I think that would be fine, but admission of

19 an exhibit, I don't think that's appropriate.

09:55:30 THE COURT: Court will admit Exhibit MMM.

09:55:31 MR. BISSELL: Thank you, your Honor.

09:55:32 (Defendants' Exhibit MMM admitted.)

09:55:33 MR. BISSELL: Q. Now, Ms. Farley, so let's go

24 back to 52 of your actual deposition, okay, not exhibit

25 right now?

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1 confused here.

09:57:02 THE COURT: We're not going to have – you got

3 to speak up even when you're questioning each other or

4 talking.

09:57:15 MR. BISSELL: Okay, your Honor.

09:57:16 Q. So if you look – I'm showing the witness the

7 second page of the exhibit, showing where it says, "Page

8 number, line number, reason for change," and then "reads

9 and should reads."

09:57:28 A. Okay.

09:57:28 Q. That's for each one. So each one you look at

12 page number, line number, and then we go from there,

13 okay?

09:57:34 A. Okay. Sorry.

09:57:36 Q. So what did you change your testimony to with

16 regard to page 52, line 20?

09:57:47 A. I changed it to "I don't know."

09:57:48 Q. Okay. Let's go to the next one in your actual

19 deposition where it says, line 21, "So the sole place

20 that stock was watered would be just south of Derting

21 Road; is that correct?"

09:58:02 And in the deposition you said, "Yeah."

09:58:03 Did you change that in your errata sheet?

09:58:24 A. Yes.

09:58:25 Q. And what did you change it to?

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09:58:10 A. To "no." 09:58:12 Q. Okay. Now we're going to move down to 53 on 3 your actual transcript, okay? 09:58:14 A. Uh-huh. 09:58:15 Q. When it says, "And how often was it that you 6 had more than two horses or more than four mules, if you 7 know?" 09:58:28 And your answer in your transcript is "never." 09:58:39 Did you change that? 09:58:40 A. Yes. 09:58:41 Q. And what did you change it to? 09:58:42 A. To "sometimes we had more than that." 09:58:43 Q. Okay. Now, on a scale of one to ten, how 14 involved were you attending to items such as well 15 drilling and supply issues? 09:58:46 A. One. 09:58:47 Q. In terms of one being the least knowledge, ten 18 meaning the most knowledge. 09:58:49 A. One. 09:58:50 Q. Okay. Also want to go to page 31 of your 21 deposition, and we're going to read through this, but 22 I'm going to read the questions and then you'll need to 23 read the answers, okay? 09:58:54 A. Okay. 09:58:55 Q. Let me know -- so we're in your actual	453	10:00:41 And your answer in your deposition was what? 10:00:42 A. "Two gallons a minute." 10:00:43 Q. And did you change that in your errata sheet? 10:00:54 A. Yes, I did. 10:00:55 Q. To what? 10:00:56 A. I was not sure -- "I don't know." 10:00:57 Q. Okay. And then going back to your transcript, 8 it says, "Is that what you had" -- so I'm on line 5 of 9 page 32, "Is that what you had hoped for or had you 10 hoped for more?" 10:01:09 And your answer was? 10:01:12 A. "I don't remember." 10:01:13 Q. And the question was, "Did that create any 14 situation where you needed to look for supplemental 15 water?" 10:01:16 And your answer was? 10:01:17 A. "No." 10:01:18 Q. Okay. From when you moved into the premises 19 in 1994, did you ever have any issues with the supply of 20 water? 10:01:21 A. No. 10:01:22 Q. Do you know when the upper well was or was not 23 used to provide water for the property? 10:01:24 A. No. 10:01:25 Q. Do you know where the lower well is
1 transcript. 09:59:42 A. Right. 09:59:43 Q. Page 31. So -- 09:59:54 THE COURT: There's a little feedback there, 5 Counsel, so if you'd pull that -- we can hear you. 09:59:56 MR. BISSELL: Okay. 09:59:57 THE COURT: If you can just pull that a little 8 further away. 09:59:59 MR. BISSELL: Yes, your Honor. 09:59:59 THE COURT: Thank you. 10:00:01 MR. BISSELL: Q. Page 31, line 5, "Question: 12 What was the water situation at the residential party -- 13 parcel when you decided to build in 1994?" 10:00:14 And your answer on line 9 is what? 10:00:15 A. "We dug a well." 10:00:16 Q. Okay. Then it says, "Did you do that before 17 or after you started building?" 10:00:18 And your answer was what? 10:00:19 A. "I don't remember." 10:00:20 Q. Okay. And then we get down to the bottom of 21 page 31, line 25, it says, "And when you dug a well, 22 what was the result of digging that well?" 10:00:23 And your answer was? 10:00:24 A. "We got water." 10:00:25 Q. And the question, then, was, "How much water?"	454	1 specifically located? 10:01:52 A. No. 10:02:03 Q. Do you know if you stopped using the upper 4 well or decommissioned it when the lower well was 5 drilled? 10:02:06 A. No. 10:02:17 Q. Do you know if the lower well is piped to the 8 storage tank? 10:02:19 A. I don't know. 10:02:20 Q. Do you know if there was ever a time when both 11 the lower well and upper well were pumping into the 12 cistern? 10:02:23 A. I don't know. 10:02:24 Q. Do you know if there was ever any well other 15 than the upper well providing water to the property? 10:02:36 A. I don't know. 10:02:47 Q. Do you recall the upper well ever going dry? 10:02:48 A. No. 10:02:49 Q. Did you ever have any portion of your lawn or 20 any trees die due to lack of water? 10:02:51 A. No. 10:03:02 Q. Did you ever have to time your usage of water 23 to keep from running out of water? 10:03:04 A. Well, the sprinklers were on timers. 10:03:05 Q. Okay. Are you aware of -- at the time of the

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? 10:03:14 A. No. 10:03:25 Q. Okay. Do you know that a survey was done on 6 your property? 10:03:27 A. Yes. 10:03:28 Q. Do you recall ever seeing survey stakes 9 south – on the south boundary area? 10:03:30 A. Yes. 10:03:31 Q. Do you know when those were first there? 10:03:32 A. No. 10:03:33 Q. Okay. Do you know whether the boundary line 14 of parcel I, that's your – the subject parcel, changed 15 prior to closing? 10:03:36 A. That it changed prior to closing? 10:04:07 Q. Yeah. 10:04:08 A. Yes. 10:04:09 MR. BISSELL: That's all I have, your Honor. 20 Thank you. 10:04:21 THE COURT: Any redirect? 10:04:22 REDIRECT EXAMINATION 10:04:23 MR. SCHMIDT: Q. Exhibit MMM. 10:04:24 A. Yes. 10:04:25 Q. Did you speak with your husband in order to	457 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. 10:06:00 MR. SCHMIDT: Q. Go ahead and answer. 10:06:01 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. 10:06:15 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? 10:06:18 A. Yeah, when I went through it. 10:06:19 MR. SCHMIDT: Okay. No further questions. 10:06:20 THE COURT: All right. Anything else? 10:06:21 MR. BISSELL: I have nothing, your Honor. 10:06:22 THE COURT: Okay. May this witness be 23 excused? 10:06:24 MR. SCHMIDT: Yes, your Honor. 10:06:25 MR. BISSELL: Yes, your Honor. 459
1 help you remember things more clearly? 10:04:22 MR. BISSELL: Objection, your Honor. That's 3 barred by the spousal privilege. 10:04:34 THE COURT: Mr. – 10:04:35 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. 10:04:50 THE COURT: But could you find an exception to 11 the spousal privilege? Are you saying there's an 12 exception? 10:04:56 MR. SCHMIDT: That's my argument. I'm not 14 aware of for sure if that's an exception, your Honor. 10:05:06 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. 10:05:19 THE WITNESS: No. 10:05:20 MR. SCHMIDT: Q. How was it that you went 21 about remembering to substantively change your testimony 22 the way that you did? 10:05:23 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	458 10:06:41 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. 10:07:19 BRIAN THOMAS FARLEY, 10:07:10 called as a witness herein, 10:07:11 having been duly sworn on oath, 10:07:12 testified as follows: 10:07:13 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 460

1 the 3,000-gallon reservoir on parcel I? 10:08:02 A. No. 10:08:13 Q. Okay. When did you drill the lower well? 10:08:14 A. 1999. 10:08:25 Q. Why? 10:08:26 A. Excuse me? 10:08:27 Q. Why did you drill the lower well? 10:08:28 A. To replace the upper well. 10:08:39 Q. Why did you need to replace the upper well? 10:08:40 A. The upper well had been damaged during 11 hydrofracturing. 10:08:42 Q. Why didn't you mention that it had been 13 damaged during hydrofracturing when I took your 14 deposition? 10:08:55 A. I couldn't say. 10:09:06 Q. After you drilled the lower well, did you run 17 a waterline up to your residence on parcel I? 10:09:18 A. Yeah. I ran a waterline up to the 19 3,000-gallon cistern. 10:09:20 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? 10:09:23 A. That is incorrect. 10:09:24 Q. And what's incorrect about that? 10:09:25 A. There was no supplementation. It was the sole	461 1 correct? 10:10:52 A. That's correct. 10:10:53 Q. And in your deposition, you testified that you 4 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 7 an electric bill pumping up to parcel I from the lower 8 well, correct? 10:11:19 A. That was one reason, yes. 10:11:40 Q. So you didn't want to incur an electrical bill 11 and you wanted to use it for stock water, correct? 10:11:42 A. Correct. 10:11:43 Q. And where were you using it for stock water? 10:11:44 A. On parcel T and parcel S. 10:11:45 Q. And where were you pulling it from to water 16 stock on parcel T and parcel S? 10:11:47 A. From the lower well. 10:11:48 Q. Where was it being dispersed from the 19 waterlines? 10:11:20 A. Well, there's a hydrant on T at a cross fence 21 on one of my pastures and there's a hydrant. 10:11:22 Q. Is that hydrant between the lower well and the 23 cistern? 10:11:24 A. That is correct. 10:11:25 Q. Okay.
1 source. 10:09:32 Q. Okay. Did you ever shut off the lower well 3 from providing water to the 3,000-gallon cistern? 10:09:54 A. Yes. 10:09:55 Q. When? 10:10:06 A. 2017. 10:10:07 Q. And why did you turn the water off in 2017? 10:10:18 A. Various reasons. I no longer needed it. 10:10:19 Q. Why didn't you need it any longer? 10:10:10 A. Well, I had recommissioned the upper well. 10:10:21 THE COURT: I'm sorry, I didn't hear your 12 answer. 10:10:23 THE WITNESS: I recommissioned the upper well. 10:10:24 MR. SCHMIDT: Q. And who recommissioned the 15 upper well for you? 10:10:36 A. I'm sorry, I'm having trouble hearing you. 10:10:37 Q. Who recommissioned the upper well for you? 10:10:38 A. Who recommissioned it? I did. 10:10:49 Q. In 2017? 10:10:20 A. Yes. 10:10:21 Q. Did Jody Barden do that work or did you do 22 that work? 10:10:23 A. North Idaho Pump are the ones that did some of 24 the work, yes. 10:10:25 Q. And that would be Jody Barden's company,	462 10:12:01 A. And there's a hydrant on S as well now. 10:12:02 Q. Is that the hydrant that your wife was just 3 testifying about that comes from the cistern and then 4 runs from the pipe under Derting Road and fills the 5 trough? 10:12:16 A. I couldn't see the exhibits and there's 7 several hydrants around the home and the barn, but it 8 sounds like it was the same one. 10:12:29 Q. But it comes from the cistern and then goes 10 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 15 turn off the water from the lower well to the cistern? 10:12:36 A. Well, there's two methods: Turn off the 17 breaker at the pump house next to the well, and there's 18 a ball valve that was installed in 2017 at the inlet of 19 the — what we called the cistern, and you can turn it 20 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 24 from the lower well when you turned it off, correct? 10:13:25 A. Turn the breaker off, the pump doesn't run no

1 matter what the floats may tell it to do, and if the 2 valve is shut off, no water can flow through the pipe. 3 That is correct. 10:13:44 Q. When you were selling your property to the 5 Gideons, did you notify them that water hadn't been used 6 to supplement the reservoir on the property that they 7 were buying for the past two years? 10:13:58 MR. BISSELL: Objection. Ambiguous. 10:13:59 THE WITNESS: I don't understand that 10 question. 10:13:51 THE COURT: Wait, wait, wait. Yeah, I'm going 12 to ask you to ask that again. I'll sustain. 10:14:03 MR. SCHMIDT: Q. Okay. So is it your 14 testimony that lower well water hadn't been used to fill 15 up the cistern for at least two years prior to when the 16 Gideons purchased the property? 10:14:17 A. I don't know about exactly two years, but that 18 would be correct. 10:14:29 Q. From the moment that you turned it off in 2017 20 until you turned it back on prior to closing, you didn't 21 turn – you didn't use it in the interim to fill up the 22 cistern, correct? 10:14:23 A. That's correct. 10:14:24 Q. And is it correct that you turned that water 25 back on – well, when did you turn the water back on by	465 10:16:21 10:16:33 10:16:57 10:16:50 10:17:03 10:17:15 10:17:19 10:17:22 10:17:23 10:17:24	467 Q. Your agreement with the Gideons to supply 2 water from the lower well to the cistern. A. Okay. The real property in the form of the 4 ground that the lower well was on and the real property 5 in the form of the water rights and all those elements 6 was not for sale and not included as a purchase. Q. I thought you said it was part of the deal. 8 When they bought the property, they got that water, 9 right? A. Deal is a broad term, Counselor. Yes, it's 11 part of the deal because it was added in as a shared use 12 and benefit contractually with the Amended CC&Rs, but... Q. Contractually with the Amended CC&Rs, could 14 you go into more detail there? A. Yeah. Whomever bought the home was getting 16 that well as, quote/unquote, backup, supplement, shared 17 use and benefit only from the Amended CC&Rs, which were 18 part of the deal. Q. And you told them that they were going to be 20 able to get that water prior to closing on the property, 21 correct? A. That's what the documents state, yes. Q. Is that what you told them personally? A. Yes. I told Arthur that and Patty Ellis that 25 personally.
1 turning the valve outside of the cistern? 10:14:52 A. Well, when their contingencies were satisfied 3 or not satisfied in this case and the – their financing 4 was in place, I knew I had a solid deal, I turned it 5 back on. 10:15:16 Q. So is it accurate that as of the date of 7 closing, the lower well water was supplementing the 8 3,000-gallon reservoir on the Gideons' property? 10:15:29 A. That is correct. 10:15:40 Q. And you agreed that that was part of the deal, 11 correct? 10:15:42 A. The lower well was part of the deal? Yes, it 13 was part of the deal. 10:15:44 Q. And you testified that you told the Gideons 15 that you would supplement from the lower well as an 16 inducement to get the Gideons to buy your property, 17 correct? 10:15:58 A. When you say I testified, what are you 19 referring to? 10:15:20 Q. Did you indicate that you – well, strike 21 that. I'll just move on. 10:16:02 So if it was part of the deal, don't my 23 clients have a right to the well and the water from the 24 well, at least in part at this moment? 10:16:25 A. Define deal.	466 10:17:51 10:17:53 10:17:54 10:18:06 10:18:19 10:18:42 10:18:43 10:18:46 10:18:47 10:18:59 10:18:20 10:18:21 10:19:02 10:19:02 10:19:25	468 Q. Is it your belief that the Gideons no longer 2 have a right to water from the lower well? A. That is my understanding, yes. Q. Okay. And what do you base that understanding 5 on? A. Them through you request that the ACC&Rs be 7 voided and Mr. – Judge Christensen did so January 20th, 8 2021. Q. You say the Amended CC&Rs, are you referring 10 to the Amended CC&Rs that included a shared well 11 agreement? A. That is correct. Q. And so since they were voided, it's your 14 position that they no longer have any rights that 15 existed that were stated in that document, correct? A. As per that document, yes. Q. Did my clients agree to the terms of the well 18 share agreement prior to closing? A. Prior to closing? Q. Yes. A. Yes. Q. You never provided them with a copy of the 23 well share agreement or the Amended CC&Rs prior to 24 closing, though, correct? A. Restate that, please.

10:19:11 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? 10:19:24 A. Myself, I did not. 10:19:25 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? 10:19:38 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. 10:19:51 Q. So it's your testimony that – strike that. 10:20:03 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? 10:20:16 A. Correct. 10:20:17 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 – 10:20:21 A. I recall the testimony. What you stated is 22 not accurate. 10:20:23 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? 10:23:33 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 Elder. The ball valve appears on those invoices and 9 this document – 10:24:00 Q. You – okay. 10:24:01 A. I was unaware that that kind of minutia detail 12 was an issue. 10:24:13 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? 10:24:27 A. No, I did not. 10:24:28 Q. Correct? 10:24:29 A. No, I did not. 10:24:20 MR. SCHMIDT: May I approach? I want to ask 21 you some questions about a declaration that you filed in 22 this matter. 10:24:23 THE COURT: You may. 10:25:24 MR. SCHMIDT: Q. If you would turn to 25 paragraph 10, please, Mr. Farley.
10:22:31 THE COURT: You may. 10:22:42 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. 10:22:06 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? 10:22:31 A. Yes, I see that. 10:22:32 Q. And June 7 is the date of closing, correct? 10:22:33 A. Yes, it is. 10:22:44 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 BWV switch. Did I read that accurately? 10:22:57 A. I'm going to page 11 now? 10:22:58 Q. Yep, at the top. 10:23:09 A. Yes, I see that. 10:23:20 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? 10:23:23 A. I don't believe that – I don't believe that 24 appears here. 10:23:25 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

1 to parcel S and T, correct? A. S and T already had the right and I amended the right to parcel I, correct. Q. But then you continued to supplement the reservoir with water from the well on parcel V in January of 2018, correct? A. I misstated that. I continued to have the right to supplement my reservoir with water from the well on parcel V, or perhaps a scrivener's error. Q. Sure. If you'd turn to paragraph 18 of the same document on page 4. You testified, "On April 26th, 2019, I toured parcel I with the Gideons' realtor Patty Ellis. During this tour, I informed her that parcel I was serviced by the upper well and there was another well on parcel V which would be included in the transaction and designated as a shared well after Meckel Engineering completed the boundary line adjustments and the first Amended CC&Rs are recorded." Did I read that accurately? A. Yes, sir. Q. So you represented that the -- the rights to water from the lower well were going to be included with the transaction, correct? A. I did not say that. That is not correct. There were no -- if we're -- if -- I guess you need to	473 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	475 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 to overrule the objection. Now you may answer, Mr. Farley. THE WITNESS: Thank you, sir. I never stated to Mr. Gideon he was getting one-half interest. I simply told him that the shared well was included in the transaction. There's no mention of any interest, one-half or any fragment of that in the Amended CC&Rs. It simply states priority shared use and benefit of the lower well. MR. SCHMIDT: Q. And again, you didn't consult with my clients on the terms of any Amended CC&Rs, correct? A. Consult with them? Q. Yeah. A. I'm not understanding -- I'm not sure what you're asking. Q. You just drafted up what you wanted the agreement to be and recorded it without talking with 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. Q. I guess. If we could turn to paragraph -- or if you could look at paragraph 21, please. You testified, "On May 2, 2020, Mr. Gideon arrived for a walk-through of parcel I with me. During this walk-through, I told Mr. Gideon about the lower well and my intent to include as part of the sale a priority one-half interest in the lower well." Did I read that accurately? A. Yes. Q. So Mr. Gideon was assuming at that point in time that he was going to get, at a minimum, at least a one-half priority right to the lower well, correct? MR. BISSELL: Objection. Calls for speculation. THE COURT: Overruled. THE WITNESS: Would you restate that, please? MR. SCHMIDT: Q. So based on your representation to Mr. Gideon, you would expect to receive a one-half priority interest in the lower well and the water, correct? MR. BISSELL: Restate the objection. He's asking for comment on Mr. Gideon's state of mind and expectations. THE COURT: No, he's asking you would expect.	474 10:31:11 10:31:24 10:31:25 10:31:26 10:31:38 10:31:39 10:31:41 10:31:42 10:31:43 10:31:44 10:31:56 10:31:58 10:32:20 10:32:21 10:32:24	476 A. I told Patty Ellis she could visit with Mr. Meckel and Mr. Rasor about any of these issues any time she wanted. Q. Okay. A. They have regular business hours. Q. Would you agree that, as of the date of 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 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 closing, the lower well was annexed to the water system? A. I can't answer that because I don't understand the definition of annex. Q. Okay. Was it physically connected to the water system? A. Yes, it was. Q. Was it a part of the larger system as of closing that -- at least a few days, maybe weeks before closing, was it a part of the water system? A. The lower well was connected to the cistern since 1999, so that would be a yes.

10:32:21 Q. And since 1999, it had been connected then,
2 correct?
10:32:23 A. That's correct.
10:32:24 Q. Okay. And it was intended to be a part of the
5 water system to benefit the Gideons as of closing,
6 correct?
10:32:37 A. Yes.
10:32:38 Q. And it was physically attached to the water
9 system and the cistern, correct?
10:32:40 A. As it is today, yes.
10:32:41 Q. And you told my clients that it would be
12 connected to it prior to closing, correct?
10:32:513 A. Yes.
10:32:514 Q. And you drafted and recorded documents giving
15 them a right in the lower well and the water, correct?
10:32:516 A. I gave them the contractual right with the
17 shared use and benefit, but no water right.
10:32:518 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?
10:32:521 A. Correct.
10:32:522 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

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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.
10:35:49 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.

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1 the other side of Derting Road and provides water,
2 correct?
10:32:53 A. Correct.
10:32:54 Q. And have you always used water at that
5 location from the lower well?
10:32:56 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.
10:32:514 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?
10:32:518 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.
10:32:523 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?

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10:36:11 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?
10:58:35 THE COURT: You may.
10:58:36 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.

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10:59:18 MR. BISSELL: Well, your Honor –
 10:59:22 MR. SCHMIDT: By Mr. Farley, sorry.
 10:59:28 MR. BISSELL: Your Honor, I don't think the
 4 hydrant on parcel S is part of this litigation. That's
 5 what this has to do with, from what I'm looking at.
 6 That's got nothing to do with what we're fighting about.
 10:59:37 THE COURT: Mr. Schmidt.
 10:59:38 MR. SCHMIDT: There are assertions in this
 9 complaint that are inconsistent with Mr. Gideon's
 10 testimony from just a few moments ago – sorry,
 11 Mr. Farley.
 10:59:42 THE COURT: With that representation, I'll
 13 give some leeway here, but we'll try to keep this tight,
 14 Mr. Schmidt.
 10:59:45 MR. SCHMIDT: Will do. Thank you, your Honor.
 11:00:06 Q. Mr. Farley, you've been handed a copy of a
 17 complaint that my clients were served with this morning.
 18 Do you recognize this document?
 11:00:09 A. No, I do not.
 11:00:20 Q. Okay. Did you instruct – are you pursuing a
 21 claim against my clients for declaratory judgment,
 22 nuisance, violation of various provisions of Idaho code,
 23 negligence, preliminary and permanent injunction?
 11:00:24 A. Yeah. I understand that I'm asking for an
 25 injunction to get my water rights – my water use,

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11:02:21 A. That's correct, yes.
 11:02:22 Q. Okay. If you'll turn to paragraph 18, the
 3 last sentence. You state, "The pipeline has been used
 4 by Plaintiff since its" –
 11:02:45 A. Hold on, Counsel. There is no 18, general
 6 allegations, I'm sorry.
 11:02:57 Q. Page 4, paragraph 18.
 11:03:08 A. Page 4? Okay.
 11:03:09 Q. Last sentence, you allege in your complaint,
 10 "The pipeline has been used by Plaintiff since its
 11 installation and was used continuously until the
 12 pipeline was cut and capped in the spring of 2021."
 Did I read that accurately?
 11:03:13 A. Yes.
 11:03:14 Q. Okay. I wanted to ask you some questions
 16 about your responses to Plaintiffs' first set of
 17 interrogatories and requests for production. I'll hand
 18 you a copy. If I may approach?
 11:03:59 THE COURT: You may.
 11:04:20 MR. SCHMIDT: Q. If you'd turn to your
 21 response to interrogatory No. 5, please, that's on page
 22 12.
 11:04:23 A. I'm sorry, page number 12?
 11:04:24 Q. Page 12.
 11:04:25 A. There.

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11:00:42 Q. Okay. If you'd turn to paragraph 9 of your
 3 complaint against my clients.
 11:00:54 A. That's on page what?
 11:01:05 Q. Two. You allege in your complaint at page 2,
 6 paragraph 9, "In approximately 1999, Plaintiffs
 7 installed a well on parcel V, lower well. Water was
 8 delivered from the lower well and conveyed to parcel S
 9 by temporary hose until Plaintiff installed a permanent
 10 pipeline and hydrant about eight to ten years ago.
 11 Since that time, Plaintiff has used the pipeline from
 12 the lower well through parcel I for beneficial use of
 13 water for stock water purposes on parcels S and T."
 11:01:44 Did I read that correctly?
 11:01:45 A. Yes, you did.
 11:01:46 Q. And so you say "since that time," are you
 17 referring to eight to ten years ago? You say "since
 18 that time," eight to ten years ago.
 11:02:09 A. Yeah, I'm unsure – I don't recall exactly
 20 when I installed the hydrant on that part. And since
 21 that time, it would not be accurate because of the
 22 period of time that the lower well was not being used to
 23 feed the hydrant – or the cistern.
 11:02:24 Q. So you would agree that what's stated in this
 25 complaint is inaccurate, correct?

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11:04:21 Q. Okay. Up at the top is the interrogatory. It
 2 asks you to identify and describe in detail all written
 3 and oral statements made by you to the plaintiffs
 4 concerning the upper well and requests some other
 5 information.
 11:04:46 And your response there, I'm reading from your
 7 paragraph 1, "On May 2, 2019, Mr. Farley, Patty Ellis,
 8 and Mr. Gideon met in person at the property and
 9 discussed various issues regarding the property,
 10 including the upper well and lower well. During this
 11 meeting, Mr. Farley informed Mr. Gideon that both wells
 12 provide water to the property and the lower well also
 13 provides water to another parcel. They discussed the
 14 gallons per minute and Mr. Farley said he never had
 15 issues with having adequate water and that Mr. Gideon
 16 will know the yield of the wells when he has the well
 17 tests done."
 11:05:18 So did I read that accurately so far?
 11:05:19 A. Yes, sir.
 11:05:20 Q. Okay. You represented to Mr. Gideon and
 21 Ms. Ellis that both wells provide water to the property,
 22 and the lower well also provides water to another
 23 parcel, correct?
 11:05:24 A. Correct.
 11:05:25 Q. And that's the present tense form of the verb

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1 provide as though it's providing it right now. Both
2 wells provide water to the property, correct?
11:05:53 A. We're talking about the subject property,
4 correct?
11:05:55 Q. Yes.
11:05:56 A. 23452. I – yes, present tense, I guess so.
7 Present tense, yes.
11:06:08 Q. Okay. And this was on May 2 of 2019, correct?
11:06:09 A. Yes.
11:06:10 Q. Wasn't it your testimony that you didn't turn
11 the water on at the cistern until just before closing,
12 with closing occurring on June 7th?
11:06:13 A. Yes.
11:06:14 Q. So as of May 2, the lower well provided water
15 to the subject property, correct?
11:06:16 A. Well, the – other than the fact that the ball
17 valve and the breaker was turned off, so I guess that
18 would be inaccurate by two or three weeks, perhaps, when
19 I turned the ball valve back on.
11:06:20 Q. So you stated that this was your conversation
21 on May 2, and that was when you actually met with them
22 at the property, correct?
11:07:23 A. That's correct, yes.
11:07:24 Q. And so if you said that the lower well
25 provides water, that sounds like it presently provides

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A. Correct.
Q. Okay.
A. Approximately 200 feet away from the house.
Q. So Exhibit 5, would you agree that those are
5 the well repair records that includes both the upper and
6 the lower well?
A. Let's see here. 2017, yes.
Q. And so prior to closing, and in connection
9 with the Gideons investigating whether or not they were
10 going to purchase the property, you sent records of the
11 repairs of both the lower and the upper well to Rob
12 Elder, your real estate agent, correct?
A. It goes beyond the repairs. This is the
14 recommissioning of the upper well.
Q. Would you agree that by doing that it implies
16 that they're getting water rights to the lower well?
A. Water rights, absolutely not.
Q. If you'd turn to page 236 of your deposition,
19 please. Are you there?
A. No.
Q. Page 236 of your deposition transcript.
A. My name is not Pamela Farley.
Q. I'm sorry. I thought you had it. My name is
24 not Robert Elder either.
THE CLERK: I do not have the deposition.

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1 water, doesn't it?
11:07:12 A. It does sound that way, yes.
11:07:13 Q. Okay. If you'd turn to Exhibit No. 5, please.
11:07:24 A. Where would I find that?
11:07:25 Q. In Plaintiffs' exhibits. It's one of those –
6 I think it's a black three-ring binder.
11:08:07 A. I believe I am there.
11:08:18 Q. Okay. One quick question before we dive in.
9 You never told Art or Kathy Gideon about the presence of
10 the buried line that ran through their property to
11 parcel S, correct?
11:08:12 A. No.
11:08:13 Q. What's not correct about that?
11:08:14 A. No, I never told them.
11:08:15 Q. Okay. And –
11:08:16 A. Sorry about that.
11:08:17 Q. – your spouse testified that you can't see it
18 when you're looking at the land and tell that it's
19 there; would you agree with that statement?
11:08:20 A. You can't see the pipeline, but you can
21 clearly see the hydrant from the kitchen and the nook
22 and the family room. You can't see the pipe because
23 it's underground.
11:08:24 Q. And hydrant is on the other side of Derting
25 Road on your property, correct?

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MR. SCHMIDT: My apologies, Mr. Farley. I
2 thought I had provided that already.
THE WITNESS: Accepted, Mr. Schmidt.
There we are. Repeat the page number, please.
MR. SCHMIDT: Q. 236.
A. I am there.
Q. Okay. During your deposition, I asked you,
8 question – so we're down at the very bottom, line 25.
9 "Question: So prior to closing, and in connection with
10 Gideons investigating whether or not they were going to
11 purchase the property, you sent records of the repairs
12 of both the lower and upper well to Rob Elder, your real
13 estate agent, correct?"
A. And I said, "Yes."
Q. "Question: Okay. Would you agree that that
16 implied both the upper well and the lower wells were
17 part of the deal?"
And you answered what?
A. "Yes."
It was implicit. It wasn't implied.
THE COURT: I'm sorry, did you say it was
22 implicit?
THE WITNESS: Implicit. Wasn't implied.
MR. SCHMIDT: Q. And then, "Question: And,
25 in fact, it was your testimony earlier that you told

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1 Patty that the lower well was going to be a part of the
2 deal, correct?"

11:12:23 And your answer was what?

11:12:34 A. "Yes."

11:12:35 And it was and – it was.

11:12:46 Q. And the disclosures that you provided

7 indicated it was a private well system and it was not a

8 shared well system, correct?

11:12:49 A. Which disclosure?

11:12:50 Q. Plaintiffs' Exhibit 3.

11:13:01 A. Is that the RE-25?

11:13:02 Q. Yes.

11:13:03 A. Yes. Repeat the question, please.

11:13:04 Q. The disclosures you provided indicated that it

15 was a private well system and it was not a shared well

16 system, correct?

11:13:17 A. That is correct.

11:13:18 Q. Okay. And there was never any clarification

19 to my clients, hey, we're not going to be giving you the

20 whole use of the lower well; that doesn't exist anywhere

21 in writing, does it?

11:13:22 A. Yes, it does.

11:13:23 Q. If you'll turn to page 238, please.

11:13:24 A. I'm sorry, I missed that number.

11:13:25 Q. 238 of your deposition transcript.

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1 asked is that it doesn't exist anywhere in writing, does

2 it?"

11:14:53 And you answered, "Answer: Well, it's in the

4 Amended CC&Rs."

11:14:55 "Question: Does it or doesn't it exist in

6 writing?"

11:15:07 "Answer: Yes, it's in the Amended CC&Rs."

11:15:08 And so it was your contention that the

9 disclosure was the Amended CC&Rs themselves during your

10 deposition, correct?

11:15:11 A. The disclosure that it was a shared well?

11:15:12 Q. Yes.

11:15:13 A. As well as my telling Mr. Gideon in person it

14 was a shared well, and Ms. Ellis, yes.

11:15:15 Q. And for the boundary line, it's your

16 information that Mike Reagan's files and Scott Rasor's

17 files were the disclosures; it's just that Patty Ellis

18 never called them to get those, correct?

11:15:19 A. That is my understanding she never did.

11:15:20 Q. And you weren't going to supply them yourself.

21 It was on Patty to figure that out and also figure that

22 out at closing, correct?

11:15:23 A. She represents her buyer, not me.

11:15:24 Q. Is that correct or not correct?

11:15:25 A. I don't – you'd have to repeat it.

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11:13:51 A. I'm there.

11:13:52 Q. Okay. Beginning at line 10, "Question: Prior

3 to closing, you sent records of repairs of both the

4 lower and upper wells to your real estate agent to

5 provide them to the Gideons. We've established that.

6 Would you agree that that implied that they were part of

7 the deal, the upper and lower wells?"

11:14:18 And your answer was what?

11:14:19 A. I'm sorry, I read ahead. What was – what

10 line were we on?

11:14:21 Q. And you answered "Yes," correct?

11:14:22 A. What line were we on? I read ahead. I'm

13 sorry, I wasn't following.

11:14:24 Q. Line 10.

11:14:25 A. Through 15.

11:14:26 Q. What I just read.

11:14:27 A. Okay. And I said, "Yes," at line 16. I see

18 that, yes.

11:14:29 Q. "Question," beginning at line 17, "Okay.

20 There was never any clarification, hey, we're not going

21 to be giving you the whole use of the lower well. That

22 doesn't exist anywhere in writing, does it?"

11:14:23 And what was your answer?

11:14:24 A. "And the converse is true as well."

11:14:25 Q. "Question: No, I didn't ask that. What I

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11:16:01 Q. You weren't going to supply them yourself. It

2 was on Patty to figure that out and also figure it out

3 at closing, correct?

11:16:04 A. Well, I wasn't going to supply two things

5 here. I'm not – no one is going to supply a

6 preliminary survey to a potential buyer nor a

7 preliminary half-finished document regarding a shared

8 well.

11:16:29 Q. Okay.

11:16:30 A. That's why I told her to go visit with them

11 and learn anything she wanted to know about those two

12 items we're discussing here.

11:16:33 Q. So if you'll turn – look to page 239 of your

14 deposition transcript at line 20. I asked you,

15 "Question: So where is anything in writing that

16 disclosed that you were withholding either water rights

17 or well rights to the lower well?"

11:16:58 There was an objection to form.

11:16:59 And your answer was, "Water rights would be in

20 writing with the Idaho Department of Water Resources,

21 and the information regarding the shared use and benefit

22 of the lower well would have been all over Mike Reagan's

23 files for a year prior to Gideons getting involved."

11:17:24 So by that response, I take it – first of

25 all, was that accurate what I read?

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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?

11:17:27 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.

11:17:38 Q. Those were never – no information from either

12 of those two was ever provided to my client prior to

13 closing, correct?

11:18:04 A. That's my understanding that Patty Ellis never

15 did anything about that.

11:18:06 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?

11:18:19 A. I just said yes, there was.

11:18:20 Q. And what was that?

11:18:29 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.

11:18:34 Q. What was your rendition of the boundary line

25 adjustment?

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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.

11:20:56 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

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11:18:31 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.

11:18:46 Q. You didn't testify about providing anything,

7 any rendition that you personally drew in your

8 deposition, did you?

11:18:59 A. I can't recall. I haven't looked at this

10 in –

11:19:01 Q. I want to talk about the well drilling

12 history.

11:19:03 A. – since March of 2021.

11:19:04 Q. So you drilled all of the wells on parcels I,

15 S, T, and V, correct?

11:19:16 A. There are no wells on T or S. I drilled three

17 wells, two on I and one on V.

11:19:28 Q. So you drilled the first well on your

19 residential property that went dry, correct?

11:19:30 A. In a matter of speaking, it was rendered

21 unusable. It was never dry.

11:19:32 Q. And you drilled a second well on that same

23 property that also went dry, correct?

11:19:34 A. That is not – I drilled the well, that part

25 is correct, but you're asking two questions.

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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?

11:22:27 Q. I'm speaking of the parcel that you sold to my

18 clients, parcel I.

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

11:22:30 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?

11:22:33 A. Yes, I did. There was – yes, there was a

24 time -- time lapse. It wasn't like the next day. It

25 was –

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11:22:41 Q. Okay. Wait until I ask a question before you 2 start answering. 11:22:53 A. Okay. 11:22:54 Q. You drilled a third well, then, the lower 5 well, down on parcel V, correct? 11:22:56 A. Yes, I did. 11:22:57 Q. Okay. And you ran it up to your residence to 8 add water to supply to the residence, correct? 11:23:09 A. Yes, it replaced the upper well. 11:23:10 Q. And – 11:23:11 A. That's correct. 11:23:12 Q. And you immediately fracked it -- 11:23:13 A. Let me -- 11:23:14 THE COURT: Let him finish his answer, 15 Counsel. 11:23:16 MR. SCHMIDT: Q. I asked if it was correct. 17 Is what you stated correct? 11:23:18 A. Which question? 11:23:19 Q. And you ran it up to your residence to add 20 water, correct? 11:23:21 A. Add water? 11:23:22 Q. Yes. 11:23:23 A. It was the sole source of water, yes. 11:23:24 Q. And you immediately fracked the lower well as 25 well, correct?	497	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. 11:26:46 Q. When did you place the Conex box there? 11:26:47 A. In 2017. 11:26:48 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
11:23:31 A. No, I did not. I freeze-fracked the lower 2 well, but it was not immediately. 11:23:43 Q. If you'll turn to Exhibit 29, please. 11:24:24 A. I'm there. 11:24:25 Q. Okay. Do you recognize Exhibit 29? 11:24:26 A. Yes, sir. 11:24:27 Q. Okay. And what is it? 11:24:38 A. This is an attachment to an email that I 9 recall sending to the Gideons on 9/11 of '19. 11:24:40 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? 11:24:54 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. 11:25:20 Q. Was that because they hadn't recognized that 21 what was going on; do you know? 11:25:22 A. I just assume -- 11:25:23 MR. BISSELL: Objection. Calls for 24 speculation -- I withdraw it. 11:25:25 THE WITNESS: I could only assume that they	498	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. 11:27:56 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 was pumping to the cistern without supporting any 2 auxiliary power draws, correct? 11:28:43 A. That would be the theory. 11:28:54 Q. Okay. So if you provided documents and bills 5 during the period of 2017 when you allege that you 6 turned off the valve at the cistern through the last 7 week of May, first week of June when you allege you 8 turned it on, that would not be an accurate 9 representation of the power that was consumed, correct? 11:29:10 A. I'm not sure I follow the question. 11:29:26 Q. When did you put the Conex box there again? 11:29:32 A. I put the box there in – when did I list 13 with – the first time? 11:29:44 Q. I believe your testimony just a moment ago was 15 2017. 11:29:46 A. It was in 2017. I was trying to be more 17 specific on the month. 11:29:58 Q. Okay. On Plaintiffs' Exhibit 29, which was 19 dated 6/24/19, but then you delivered it on September 20 11th, 2019, you state, "Then last year I placed a Conex 21 box at that address for moving storage and began to run 22 a couple of freezers off of that same panel." 11:30:23 A. Where – I'm looking at 29 again. 11:30:24 Q. Yep. 11:30:25 A. Can I look at that one?	501 11:31:41 MR. SCHMIDT: Okay. 11:31:42 Q. The period of time that you provided bills 3 for, so those bills were intended to represent when you 4 were only using the well pump so you could figure out, 5 hey, that's how much it cost me to pump water from the 6 lower well up to the cistern. And so that's what you 7 wanted to continue to charge them, correct? 11:32:18 A. No, that was my – that was my illustration to 9 suggest a dollar amount. I never set a dollar amount. 10 I suggested a dollar amount. 11:32:21 Q. If you'll turn to your deposition transcript 12 at page 133, please. 11:32:23 A. Okay. 11:32:24 Q. You stated there at line 9, "But I provided 15 them invoices, whatever months they may have been prior 16 to taking power for any other purpose, and then invoices 17 that were increased because of the increased usage, 18 there was no change in rate." 11:32:49 Did I read that accurately? 11:32:50 A. Yes. 11:32:51 Q. Okay. So you were trying to compare when 22 there were no other power for any other purpose, and 23 then you were going to compare it to when you added the 24 Conex boxes and started increasing your power usage, 25 correct? 503
11:30:21 Q. Yeah, look at Exhibit 29, the first page. 11:30:22 A. Okay. And what sentence? 11:30:33 Q. It's that first paragraph. You can read the 4 whole thing. 11:30:45 A. Yeah, I see that. 11:30:46 Q. So you testified that it was last year, so 7 that would have been 2018 that you placed the Conex box, 8 correct? 11:30:49 A. Yeah, that's incorrect. But that's what I 10 said, but that's incorrect. 11:30:51 Q. And that's what you testified to during your 12 deposition as well, correct? 11:30:53 A. Yes, I made an error there. I should have 14 caught that on my errata, but I did not. 11:31:15 Q. Then I asked you during your deposition if you 16 were pumping to parcel T during that time. And do you 17 recall what your response was? 11:31:18 A. I do not. 11:31:19 Q. If you'll turn to page 133 of your deposition 20 transcript, please. 11:31:21 A. Did you say 123? 11:31:22 Q. 133. 11:31:23 A. 133. I'm there. 11:31:24 THE COURT: Counsel, if you could clarify 25 "that period of time."	502 11:33:01 A. Yes. 11:33:12 Q. And what were the dates that you chose to use 3 to represent the cost prior to taking power for any 4 other purpose? You can go ahead and look at your 5 exhibits now, the pages behind the first page of 6 Exhibit 29. 11:33:37 A. Okay. 11:33:38 Q. And let's go – so the second page of 9 Exhibit 29, what is that? 11:33:40 A. Second page is a Kootenai Electric bill for 11 21550 Derting, which is the address for parcel V. 11:33:52 Q. Okay. And so this was the power usage from 13 the lower well and the Conex box because it's dated 14 5/20/2019, correct? 11:34:05 A. Yes, I have a note on here, "Last one prior to 16 closing." 11:34:17 Q. And so if – this included the power to the 18 well to pump up to parcel I and the Conex box, correct? 11:34:19 A. Yes. The Conex box was there, as were 20 freezers and other items. 11:34:21 Q. So for the period of April 20 to May 20, 2019, 22 the lower well was pumping to the cistern, correct? 11:34:23 A. Let's see here. 11:34:24 Q. Is that correct or not correct? 11:35:25 A. I can't determine that. 504

EXHIBIT A

11:35:11 Q. Why did you provide the second page of
2 Exhibit 29? What purpose did it serve?
11:35:23 A. To depict the difference in use, yes.
11:35:24 Q. The difference in use between what?
11:35:25 A. Of the well pump only and the additional use.
11:35:36 Q. Okay. Why don't you turn to the third page of
7 Exhibit 29. What purpose did -- and, first of all,
8 would you agree that the statement date is February 20
9 of 2019?
11:35:40 A. I'm sorry, what was those dates?
11:35:51 Q. February 20, 2019.
11:35:52 A. Statement date. I see that.
11:36:03 Q. And what purpose did this statement serve?
11:36:04 A. Mostly that there was a new -- this was an
15 auto pay and this was -- I think this was a notice of --
16 with the new monthly charge, it would be going forward.
11:36:17 Q. Was this supposed to represent the only --
18 sorry, this was supposed to represent the cost of the
19 lower well plus the additional things that you were
20 plugging into your electrical service, correct?
11:36:21 A. Yeah, the difference, I think.
11:36:22 Q. Uh-huh. And then the next page, which is a
23 statement date November 20, 2017, are you there?
11:36:24 A. Yes.
11:36:25 Q. What was this supposed to represent?

11:36:51 A. Well, let me go back and read my email. Okay.
11:37:32 Q. So what is this last page of Exhibit 29
3 supposed to represent?
11:37:34 A. It's supposed to represent the differences in
5 the usage.
11:37:46 Q. And this would -- this is dated November 20,
7 2017, so that would have been when it was just the lower
8 well pumping up to the cistern; is that accurate?
11:37:59 A. No.
11:37:50 Q. So you asked them to pay \$56 --
11:38:01 A. The Conex box -- the Conex box was there.
11:38:02 Q. That's not what your cover letter states. You
13 said, "Then last year I placed a Conex box at that
14 address for moving storage and began to run a couple of
15 freezers off that same parcel."
11:38:16 A. Yeah, it wasn't 2018. It was 2017.
11:38:17 Q. And so the \$56 at the time that you provided
18 this to the Gideons was intended to represent when the
19 lower well was pumping to the cistern without any
20 additional loads on it, correct?
11:38:21 A. Yeah, but that's not -- that's not right.
11:38:22 Q. Why isn't it right?
11:38:23 A. Because by that time, I had -- I had -- the
24 Conex went first, and at some point in time later I took
25 the -- I moved freezers and other items down there. I

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1 didn't do a very good job in my supporting documents
2 here for my email to them. But again, it was simply a
3 suggestion.
11:39:14 Q. If you'll turn to Exhibit 12, please. And
5 this is the email we've been discussing quite frequently
6 that forwarded the property boundary outlines. Do you
7 recognize it?
11:39:38 A. I'm there.
11:39:49 Q. Do you recognize it?
11:39:40 A. Yes.
11:39:41 Q. Okay. Instead of providing that sketch --
12 well, first of all, your real estate agent said that you
13 two worked on this together; is that accurate?
11:39:44 MR. BISSELL: Objection. That misstates the
15 evidence, your Honor.
11:39:56 THE COURT: Overruled.
11:39:57 THE WITNESS: Sorry, where are we? I have to
18 answer?
11:40:09 MR. SCHMIDT: Q. Yep.
11:40:20 A. No, I did not work on this with Rob Elder.
11:40:21 Q. So was his testimony inaccurate?
11:40:22 A. I think he corrected that testimony. Yeah,
23 that part of his testimony was inaccurate. Yes.
11:40:24 Q. Why didn't you provide a depiction from the
25 Meckel Engineering survey that showed precisely where

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1 the lines were?
11:40:22 A. You don't hand out temporary surveys that are
3 incomplete.
11:40:34 Q. Do you hand out inaccurate sketches that are
5 inaccurate instead; is that better?
11:40:46 MR. BISSELL: Objection. Argumentative.
11:40:47 THE COURT: That's argumentative. Sustained.
11:40:48 MR. SCHMIDT: Q. You didn't think that that
9 was your obligation to provide a more accurate
10 description of the property, correct?
11:40:51 A. I did provide them a more accurate
12 description; moreover, I showed everyone the survey
13 stakes that existed.
11:41:14 Q. When did you ever communicate to the Gideons
15 what the actual metes and bounds property description
16 was going to be, you personally?
11:41:17 A. On May 2nd, I -- it wasn't Gideons. It was
18 Gideon, because I never met Kathy until they moved in.
19 So on May 2nd, I showed Arthur exactly where it was.
11:41:20 Q. Well, that's -- that's different and new
21 compared to what you stated in your deposition. If you
22 could please turn to page 230 of your deposition. Are
23 you there on page 230?
11:41:24 A. No, I am not.
11:41:25 I am there now.

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11:42:01 Q. On line 60, and I asked you, "Question: Where 2 did you ever communicate to Gideons what their actual 3 metes and bounds property descriptions were going to 4 be?" 11:42:15 "Answer: Me personally?" 11:42:16 "Question: Yes." 11:42:17 "Answer: On the day of closing." 11:42:18 "Question: And prior to that, they had to 9 rely on a sketch of where the boundary was going." 11:42:20 "Answer: No, no, no." 11:42:21 And then I asked you, "Based on" – 11:42:22 And you said, "No, no, no." 11:42:23 And I said, "Question: Let me finish my 14 question. Prior to them closing, they had to rely on 15 sketches that were provided to them by your real estate 16 agent to know what the boundary adjustment was going to 17 be. And based on that, they agreed to go forward, 18 correct?" 11:42:39 You answered, "No." 11:42:40 And then I said, "Question: What's incorrect 21 about that statement?" 11:42:22 And you said – "What's incorrect about that 23 statement, compound or not?" 11:42:24 "Answer: Patty Ellis was made aware at the 25 existence of Scott Rasor and Mike Reagan and to take	509 11:44:21 11:44:32 11:45:06 11:45:17 11:45:30 11:45:31 11:45:46 11:45:47 11:45:48 11:45:20 11:45:22 11:45:23 11:46:25	CROSS-EXAMINATION MR. BISSELL: Q. Mr. Farley, Mr. Schmidt was 3 talking to you about – if you ever gave Gideons 4 anything, about the property boundary and the -- said 5 you did not and you said you did. Do you recall that? A. Yes, I – yeah, he asked me. Yes. Q. All right. Look – turn to your deposition 8 page 116, please. Go down to the bottom, when you get 9 there, line 23. A. I'm there. Q. All right. The question is, "Did you ever 12 provide them a depiction of what specific property was 13 being surveyed so that they knew what they were 14 acquiring prior to you recording the metes and bounds 15 descriptions prior to closing?" And your answer was, "Yes," correct? A. Yes. Q. "Question: How did you provide them that 19 depiction?" "Answer: Gave them a preliminary during the 21 course of the survey drawing," correct? A. Yes. Q. Okay. Take a look at Exhibit 46, please. And 24 I believe this is stipulated to, your Honor? THE COURT: Forty-six has been admitted.
1 every opportunity to visit them and verify everything 2 that was going on with regard to adding the parcel use 3 of the shared well as well as the survey." 11:43:04 So your testimony was you provided it on the 5 date of closing and that they should have received it 6 and reviewed it with their real estate agent, correct? 11:43:17 A. We're talking about a record of survey here; 8 is that what we're talking about? 11:43:29 Q. An actual metes and bounds description, an 10 accurate description of the property. 11:43:31 A. That would be a record of survey. That was 12 available – the finished product was available three 13 days before the date of closing, June 4th. 11:43:34 Q. You didn't provide it to my clients, did you? 11:43:36 A. Did I? 11:43:36 Q. Yes. 11:43:37 A. I'm not their agent. 11:43:48 Q. You expected their agent to go find that? 11:43:49 A. Absolutely. 11:43:20 MR. SCHMIDT: Okay. No further questions. 11:44:21 THE COURT: Cross. 11:44:22 MR. BISSELL: Just a few, your Honor. I'll 23 save the bulk of my stuff in our case, but I have a few 24 things. 25	510 11:46:11 11:46:12 11:46:24 11:46:26 11:46:38 11:46:40 11:46:41 11:46:43 11:46:56 11:47:07 11:47:39 11:47:22 11:48:23 11:48:24	512 THE WITNESS: I am there. MR. BISSELL: Q. What is Exhibit 46, 3 Mr. Farley? A. That is the aerial photograph that the – I 5 testified to in my deposition that I gave to Mr. Gideon. Q. Except the red line and the cross hatching you 7 added at your deposition, correct? A. Yeah. Mr. Schmidt handed this to me and asked 9 me to mark in the area of damage. Q. And what was – A. And the red line is much closer to the 12 boundary line adjustment than my original blue line. Q. So the drawing that you gave them shows them 14 getting less property than they actually got; is that 15 correct? A. That is correct. Q. Turn to 238, please. And starting at 238, 18 read lines 8 and 9. A. "Answer: I did not sell them the well, I did 20 not sell them the water rights, which is real property 21 in Idaho," referencing the lower well. Q. And then back to 231. A. I'm there. Q. Okay. I think Mr. Schmidt directed your 25 attention to page – or lines 13 through 19 on 231. Do

1 you see that? 11:48:12 A. Got wrong one. 231? 11:48:13 Q. Yep. 11:48:14 A. Line numbers again, please. 11:48:15 Q. Thirteen. I think you read 13 through 19 with 6 Mr. Schmidt. We're going to continue on from there. 11:48:27 A. Okay. 11:48:28 Q. All right? So line 20, "Question: You said 9 she was aware in a passive --" 11:48:40 "Answer: By me." 11:48:41 "Question: -- in a passive voice. How did 12 you make her or anybody else aware of all those things 13 that you just said." 11:48:44 And then read what you stated there starting 15 at 231, line 25. 11:48:46 A. "Answer: When she came up to the first 17 showing, for a first tour, and I was pointing out where 18 the property was going to be and that there's another 19 well over the hill, yada yada yada, I said, Mike 20 Reagan's doing the work on the CC&Rs adding the well, 21 and Scott Rasor is doing the work on the survey." 11:49:22 "Question: So you did tell the Gideons there 23 was going to be a well that was added, that somebody was 24 working on the survey?" 11:49:25 "A: By" -- "Answer: By way of telling their	513 11:50:41 11:50:53 11:51:06 11:51:07 11:51:23 11:51:24 11:51:25 11:51:27 11:51:28 11:51:29 11:51:21 11:52:22 11:52:24 11:52:25	515 A. Third set, that's the dec -- third set of 2 discovery, yes, I have that. 11:50:53 Q. Okay. And he indicated that you had not told 4 him about the ball valve. Do you recall that, 5 Mr. Schmidt in his questioning? 11:51:06 A. Yes, but I did. So, yes. 11:51:07 Q. And we see there in the response, so we're on 8 page 11 of that Plaintiffs' Third Set of Discovery 9 Requests, the last sentence says, "The remainder of 10 repairs Mr. Farley had performed on the interconnected 11 well system were outlined in Farley 000175 through 12 000182." 11:51:23 Did I read that correctly? 11:51:24 A. Yes, sir. 11:51:25 MR. BISSELL: Your Honor, may I approach and 16 have an exhibit marked? 11:51:27 THE COURT: Sure. 11:51:28 (Defendants' Exhibit NNN marked.) 11:51:29 MR. BISSELL: I got an extra one if you want 20 it, Judge. 11:51:21 THE COURT: Thank you. This is Exhibit NNN. 11:52:22 MR. BISSELL: Q. Mr. Farley, you've been 23 handed Exhibit NNN, correct? 11:52:24 A. Yes. 11:52:25 Q. Okay. And what is that exhibit?
1 agent. They were -- she -- he was not present," meaning 2 Arthur, "when she came up the first time. Only -- it 3 was just her and I." 11:49:24 Q. Okay. And then if you go back up to line 18, 5 when he -- excuse me, had previously said what's 6 incorrect about the statement, you reference there 7 starting at 15 again, that Patty Ellis was made aware of 8 the existence of Scott Rasor and Mike Reagan to take 9 every opportunity to visit them and verify everything 10 that was going on with regards to any of the parcel 11 use -- 11:49:51 THE COURT: Slow down, Counsel. 11:49:53 MR. BISSELL: Q. "Patty Ellis was made aware 14 of the existence of Scott Rasor and Mike Reagan to take 15 every opportunity to visit with them to verify 16 everything that was going on with regards to adding the 17 parcel use of the shared well as well as the survey," 18 correct? 11:50:49 A. Yes, that's what it says. 11:50:20 Q. Okay. Then the last thing at this time is, do 21 you recall that Mr. Schmidt had some questions for you 22 with regard to your Third Set of Discovery Requests -- 11:50:23 A. Yes. 11:50:24 Q. -- with Supplemental Responses. Do you still 25 have those?	514 11:52:31 11:53:06 11:53:18 11:53:19 11:53:21 11:53:22 11:53:23 11:53:25 11:53:26 11:53:27 11:53:20 11:53:23 11:53:24 11:53:25	516 A. Again, this is the 2017 invoices for the new 2 pump in the upper well and the new pump in the lower 3 well and associated pieces and parts. Actually, this 4 also includes -- in October 2017, I also replaced the 5 septic pump. 11:53:06 Q. And if you look on the bottom, those Bates -- 7 shows Bates numbers. Do you see those, 000179? 11:53:18 A. Yes, I do. 11:53:19 Q. And -- well, it starts out zero -- look at the 10 first page -- 000175, correct? 11:53:21 A. That's what I have. 11:53:22 Q. And what's the last page of Exhibit triple N? 11:53:23 A. Well, that's the booster pump. I also 14 replaced the booster pump. 11:53:25 Q. What's the last page? 11:53:26 A. Sorry, I have 182. 11:53:27 Q. Okay. And are these the documents that are 18 referenced in the Plaintiffs' Third Set of Discovery 19 Requests, Farley 175 through 182? 11:53:20 A. This has a 2019 date. I assume that it is, 21 yes, but this invoice would not have been invoice of 22 mine. This would have been an invoice of -- 11:53:23 Q. Mr. Farley -- 11:53:24 A. I'm sorry. 11:53:25 Q. -- the third response -- Plaintiffs' Third Set

1 of Discovery Requests mentions Farley document number 2 000175 through 000182, correct? 11:54:03 A. Yes. Going by the number, that is correct. 4 Sorry. 11:54:15 Q. Okay. Now, looking at triple N, Exhibit 6 triple N, is that Farley Bates number 000175 through 7 000182? 11:54:28 A. Yes, sir. 11:54:29 Q. Okay. Is that the same documents referenced 10 in Plaintiffs' Third Set of Discovery Requests? 11:54:41 A. Yes, it is. 11:54:42 MR. BISSELL: Okay. Your Honor, move for 13 admission of triple N. 11:54:44 (Defendants' Exhibit NNN offered.) 11:54:45 MR. SCHMIDT: No objection. 11:54:46 THE COURT: Triple N will be admitted. 11:54:47 MR. BISSELL: Thank you, your Honor. 11:54:48 (Defendants' Exhibit NNN admitted.) 11:54:49 MR. BISSELL: Q. Mr. Farley, turn to the 20 document, so it's the fifth page, I believe, of the 21 exhibit. It's Farley 000179. 11:54:52 A. I am there. 11:54:53 Q. Okay. And you see nine – the ninth item 24 down? You see it says one-quarter-inch Bronx valve, 25 ball valve.	517 1 recall. 11:56:42 Q. It looks like – where did you get it? Where 3 did you get the image? 11:56:44 A. From the – perhaps the Kootenai County 5 website. Since this has – it has addresses on them – 6 marked on my – my neighbor's home and my home. 11:56:57 Q. So you got it from the Kootenai County 8 website? 11:57:09 A. I'm guessing that's probably where it would be 10 since it has the addresses. 11:57:01 Q. And what date did you get it? 11:57:02 A. I do not know. 11:57:03 Q. But you allege that you provided it to my 14 clients prior to closing, correct? 11:57:15 A. Yeah, I gave it to Mr. Gideon on May 2nd. 11:57:16 Q. Okay. If you'll turn to Exhibit 14, please, 17 and keep your finger marked on Exhibit 46. 11:57:38 A. I am there. 11:57:49 Q. Okay. The county depiction that you present 20 in Exhibit 46 to be what you provided to Mr. Gideon 21 didn't exist on that date, did it? 11:58:22 A. Yes, it did. 11:58:23 Q. Well, the county before – before you recorded 24 the boundary line adjustments, it reflected page 2 of 25 Exhibit 14, I, S, T, and V, correct?	518 11:55:21 A. Yeah, inch-and-a-quarter Bronx port valve, 2 port ball valve TT. 11:55:23 Q. And is that the ball valve that was installed 4 at the cistern? 11:55:35 A. Yes, it is. 11:55:36 Q. And who installed that at the cistern? 11:55:37 A. Brad Potter and Jody's son-in-law who worked 8 for Jody at the time and his helper Kyle and myself. 11:55:49 Q. But that was North Idaho Pump that did it? 11:55:40 A. That is correct. 11:55:41 MR. BISSELL: That's all I have at this time, 12 your Honor. 11:55:43 THE COURT: Any redirect? 11:55:44 REDIRECT EXAMINATION 11:55:45 MR. SCHMIDT: Q. So a moment ago you read 16 from your deposition and – or you testified that you 17 gave my clients a preliminary; is that accurate? With 18 respect to a preliminary picture of what the property 19 boundaries were going to be, what were you referencing 20 when you said preliminary? 11:55:51 A. Your Exhibit 46, I believe. 11:55:52 Q. Okay. Where did you get Exhibit 46? 11:55:53 A. I crafted that myself. 11:55:54 Q. When? 11:55:55 A. Oh, probably in spring of 2018. I don't 520 11:58:11 A. That would probably come from the county also, 2 yes. 11:58:23 Q. Okay. And then they made the adjustment and 4 provided it to Ms. Gideon on January 2, 2020, correct? 11:58:35 A. Talking page 3? 11:58:36 Q. I'm talking the cover page January 2020. 11:58:37 A. The cover page, what about the cover page now? 11:58:38 Q. This was provided to Kathy Gideon by the 9 county and it provided a before and an after? 11:58:40 A. I see that, yes. 11:58:41 Q. Okay. And so what you've presented and 12 testified to the Court in Exhibit 46, you've testified 13 that this outline that you got from the county is what 14 you provided to Art Gideon, correct? 11:59:15 A. Forty-six, yes, I did. 11:59:16 Q. Okay. This didn't exist at the county as of 17 that date yet, though, did it? 11:59:28 A. Yes, it did. 11:59:29 Q. They had not adjusted the property boundaries 20 prior to you recording the boundary line adjustments, 21 did they? 11:59:22 A. That's correct. They did not. 11:59:23 Q. Okay. Where are the original boundary 24 adjustments on exhibit – or the original boundary lines 25 on Exhibit 46?
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11:59:41 A. I can see them. They're on Exhibit 46. The
2 original square boundary lines, I can see those.
12:00:03 Q. And then the lines depicting the lower portion
4 from the county, they hadn't created those as of – so
5 prior to closing – to closing, had they?
12:00:16 A. What do you want me to look at now?
12:00:17 Q. Exhibit 46.
12:00:18 A. The lower line, I created that line. I put
9 that line on there as I previously stated.
12:00:19 THE COURT: Counsel, can you clarify which
11 line?
12:00:12 MR. SCHMIDT: Q. Which line are you referring
13 to?
12:00:14 A. Well, you have the – I can't really say. I
15 guess it's a light blue line that runs due east and west
16 and nearly touches the corner of the orchard, and I
17 assume you're familiar with that, and then there's the
18 heavier blue line that I drew in, and then there's the
19 red line that you had me draw in. Does that help?
12:00:20 Q. You didn't testify about having drawn in that
21 lower line earlier, did you?
12:00:22 A. Yes, I did.
12:00:23 Q. Okay.
12:00:24 A. And you're comparing the plat map which is
25 different than the GIS mapping portion of the Kootenai

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Q. Okay. This line right here, right here.
A. Yes, sir.
Q. The line above the red line, who put that line
there?
A. I did.
Q. Okay. And you put the red line on when, at
your deposition?
A. That is correct.
Q. Okay. When's the first time you saw this
photo after closing?
A. I believe at my deposition.
MR. BISSELL: All right. That's all I have,
your Honor. Thank you.
THE COURT: Anything else?
MR. SCHMIDT: If I can just look at that
really quickly, I'll decide if I have any questions.
MR. BISSELL: Feel free to use my exhibit.
MR. SCHMIDT: Can I ask – can I ask questions
from here, your Honor?
THE COURT: Well, as long as Counsel wants to
come up and see – make sure he's able to see the same
thing.
MR. SCHMIDT: Okay.
REDIRECT EXAMINATION
MR. SCHMIDT: Q. It appears to me,

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1 County website that gives you the aerial photos.
12:00:22 Q. Would you agree that Exhibit NNN, the document
3 that was just introduced as an exhibit by your counsel,
4 it doesn't indicate anywhere that you turned anything
5 off at the cistern, correct?
12:00:36 A. Which was NNN?
12:00:47 Q. The numerous invoices from Jody Barden's
8 company.
12:00:59 A. I'm losing my place here. I'm sorry. Oh,
10 here it is.
12:00:51 Q. Exhibit NNN is the invoices from North Idaho
12 Pump.
12:02:03 A. Does that say I turned it off?
12:02:04 Q. Yes.
12:02:05 A. No, it wouldn't. This is a depiction of what
16 somebody did for me, not what I did in managing my...
12:02:17 MR. SCHMIDT: Okay. I don't have any further
18 questions.
12:02:19 THE COURT: Anything else?
12:02:20 MR. BISSELL: Yes, your Honor.
12:02:21 **RE-CROSS-EXAMINATION**
12:02:22 MR. BISSELL: Q. I just want to make things
23 crystal clear here if I could. Mr. Farley, this is
24 Exhibit 46, correct?
12:02:25 A. I recognize it.

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12:04:17
12:04:13
12:04:14
12:05:09
12:05:20
12:05:22

1 Mr. Farley, that this line does not continue down to
2 what was the former lower property line. Would you
3 agree that that's correct?
A. I'm going to repeat your question back to you
so I understand. You're asking where this line ends up,
this line I drew?
Q. Here's where I'm going. I believe that you
printed this off from the county after the boundary line
adjustment had been made and overlaid on this picture.
And so I'm asking you, I do not see a continued property
line down to what was formerly the southern boundary
line of your property. Do you see that?
A. I see a vestige of something there.
Q. Okay. And I also see pixelated lines here
that would appear to be from a computer as would appear
on the county website. Is it your contention that you
drew that and those pixelations are from your hand
drawing?
A. I don't understand pixelations.
Q. Looks like a bunch of boxes instead of a
square steady line.
A. Well, I guess I'm no expert on aerial
photographs, but – please don't take it away until I
explain. But I see the line that is also blurred and
dotted and so on, and continue that on, it's a heavy

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1 blue line. These are blue. And – 12:05:42 THE COURT: Speak up a little bit. 12:05:43 THE WITNESS: – what I drew is black. 12:05:44 MR. SCHMIDT: Q. I want to – 12:05:45 A. Which tells me I used a black pen. 12:05:46 MR. SCHMIDT: Okay. I want to let the Court 7 look at this and I'll be done with my questioning, okay? 12:05:48 THE WITNESS: Sure. 12:05:49 MR. BISSELL: Well, your Honor, I would say 10 this is not the actual exhibit. This is a blowup, so 11 saying that's actually accurate or reflects colors or 12 anything, that's completely inappropriate for a blowup 13 of something. It's purely demonstrative. 12:06:14 THE COURT: Well, you can save it for 15 argument, Counsel. 12:06:16 MR. SCHMIDT: No further questions. 12:06:17 THE COURT: Anything else? 12:06:18 MR. BISSELL: Nope. That's it, your Honor. 12:06:19 THE COURT: Okay. Mr. Farley, you may step 20 down. Next witness. 12:06:21 MR. SCHMIDT: Scott Rasor. I think he's out 22 here. 12:07:23 THE COURT: Sir, would you come forward and be 24 sworn. 12:07:25 SCOTT RASOR,	525	1 recognize what property is depicted there? 12:09:02 A. I do. 12:09:03 Q. And what property is that? 12:09:04 A. Well, it's Brian Farley's. 12:09:05 Q. Okay. 12:09:16 A. Among others. 12:09:17 Q. And is that before or after a boundary line 8 adjustment? 12:09:19 A. Before. 12:09:20 Q. Okay. Did you assist Mr. Farley with creating 11 a survey and new property descriptions to complete a 12 boundary line adjustment? 12:09:23 A. Yes, I did. 12:09:24 Q. And when was that, approximately? 12:09:45 A. So we were hired on June 27th, 2018. 12:09:46 Q. Okay. And when did you complete – well, 17 first of all – 12:09:58 MR. BISSELL: Your Honor, no disrespect to the 19 witness, but I believe he has documents he's reviewing 20 with these questions. 12:10:21 THE COURT: Mr. Rasor, while questions are 22 being asked, you need to rely on your own memory. If 23 you can't remember, you can answer that way and counsel 24 can help you with that matter, but you can't be looking 25 at your documents while you're answering.	527
12:07:21 called as a witness herein, 12:07:22 having been duly sworn on oath, 12:07:23 testified as follows: 12:07:34 THE COURT: Okay. If you have a seat there, 5 Mr. Rasor, and you can take your jacket off if you wish. 12:07:46 Sir, would you state your full name and spell 7 your last name for the record, please. 12:07:48 THE WITNESS: Scott Rasor, R-A-S-O-R. 12:07:59 THE COURT: Go ahead, Mr. Schmidt. 12:07:50 DIRECT EXAMINATION 12:07:51 MR. SCHMIDT: Q. Mr. Rasor, how do you know 12 Brian Farley? 12:08:03 A. I know him as a client. 12:08:04 Q. And what is your profession? 12:08:15 A. Professional land surveyor. 12:08:16 Q. Okay. And were you hired by Mr. Farley to 17 perform any work? 12:08:18 A. I was. 12:08:19 Q. And what did he ask you to do? 12:08:20 A. Boundary line adjustments. 12:08:21 Q. Okay. Are you familiar with parcel I and 22 adjusted parcel I? 12:08:23 A. I am. 12:08:24 Q. Okay. If you would turn, please, to Exhibit 25 14. Looking to the second page of Exhibit 14, do you	526	12:10:11 THE WITNESS: Okay. 12:10:12 THE COURT: Okay. 12:10:13 THE WITNESS: Thank you. 12:10:14 THE COURT: Not a problem. 12:10:15 MR. SCHMIDT: Q. So there's a dispute in this 6 case about when the boundary line – when your work to 7 create the boundary line adjustment for adjusted 8 parcel I was completed so that it could have been 9 provided to my clients to show them exactly what the 10 footprint of the property was that they were purchasing. 12:10:31 Do you understand what I just described? 12:10:42 A. Yeah. 12:10:43 Q. Okay. When did you complete the property 14 description for the adjusted parcel I? Can you recall 15 exactly without reference? 12:10:56 A. No, I can't. 12:10:57 Q. Okay. Would it assist you to refresh your 18 recollection if you were to consult your file for this 19 matter? 12:11:20 A. Yes. 12:11:21 Q. Okay. May the witness consult his file 22 briefly? 12:11:23 THE COURT: He can. 12:11:24 MR. SCHMIDT: Q. Go ahead. 12:11:25 A. What was the question again, please?	528

12:11:11 Q. When did you complete the legal description
2 for adjusted parcel I?
12:11:23 A. **September 25th, 2018.**
12:11:24 Q. If you'll turn to Exhibit No. 19, please. And
5 on the bottom right-hand corner of Exhibit No. 19,
6 there's Bates numbers. One is Gideon and then numbers.
7 If you could turn to Gideon 790, please.
12:11:28 A. **Okay.**
12:11:29 Q. Are you there?
12:11:40 A. **Yes.**
12:11:41 Q. Okay. What is reflected in Exhibit 19, Bates
12 number Gideon 790 to Gideon 791?
12:11:46 A. **That's the description I prepared for**
14 **parcel I.**
12:11:45 Q. And so that – this document in May of 2019
16 could have been provided to my clients, correct? I mean
17 it existed so that it could have been provided to my
18 clients?
12:11:49 A. **I don't know the relationship there, timing,**
20 **what --**
12:11:51 Q. Okay.
12:11:52 A. **What's going on with all that. I wasn't a**
23 **party to any of this transaction.**
12:11:54 Q. Sure. But at any rate, you had fully prepared
25 a complete legal description for adjusted parcel I?

12:11:51 A. **Yes.**
12:11:52 MR. SCHMIDT: Okay. No further questions.
12:11:53 THE COURT: Mr. Bissell.
12:11:54 MR. BISSELL: Thank you, your Honor.
12:11:55 **CROSS-EXAMINATION**
12:11:56 MR. BISSELL: Q. Let's see. Mr. Rasor, could
7 you please turn to – should be a book exhibit in front
8 of you -- Exhibit T. Should have a green label.
12:11:59 Can you tell me when you're there?
12:12:10 A. **Yep, I'm there.**
12:12:11 Q. Okay. And so this is the preliminary survey
12 that you did on or about September 26th, 2018, correct?
12:12:13 A. **It's a preliminary --**
12:12:14 Q. Right.
12:12:15 A. **-- record of survey, yes.**
12:12:16 Q. Of September 26th, 2018.
12:12:17 A. **Right.**
12:12:18 MR. BISSELL: Okay. And I think this is
19 stipulated, your Honor, for admission?
12:12:20 THE COURT: It is.
12:12:21 MR. BISSELL: Q. Okay.
12:12:22 THE COURT: It's admitted.
12:12:23 MR. BISSELL: Q. Preliminary means it's
24 subject to change, correct?
12:12:25 A. **Yes.**

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12:14:51 Q. Okay. And if we look at the top of – on the
2 first page, on the bottom right corner, we see parcel I,
3 correct?
12:15:04 A. **Yes.**
12:15:05 Q. Okay. And then north of that, just to the
6 north, there's that – a dashed line, correct?
12:15:17 A. **There is.**
12:15:18 Q. Okay. And is it correct that for – there was
9 a contemplation that that was going to be added into the
10 property, correct?
12:15:21 A. **We were instructed that that might be coming.**
12:15:32 Q. Okay.
12:15:33 A. **Yeah.**
12:15:34 Q. And – but ultimately – oh, so when you
15 drafted your preliminary survey, or let me call X –
16 Exhibit T, that's about the time you did the – your –
17 the legal description that we talked about earlier; is
18 that right?
12:15:49 A. **Yes.**
12:15:50 Q. Okay. And then but ultimately it turned out,
21 correct, that you didn't end up adding that north
22 section?
12:16:23 A. **That's correct.**
12:16:24 Q. Okay. So you just were – you were able to
25 stay, then, with your original preliminary survey,

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1 correct? You didn't adjust it any – I mean, you did do
2 a final survey?
12:16:13 A. **Correct.**
12:16:14 Q. But the legal description didn't change
5 because you didn't add up that north section that you
6 thought might be added in, right?
12:16:17 A. **Yes.**
12:16:28 MR. SCHMIDT: Objection. Ambiguous.
12:16:29 THE COURT: I'm a little confused as well
10 right now, Counsel. Can you ask those questions again?
12:16:31 MR. BISSELL: Okay.
12:16:32 THE COURT: So to that extent, I'm sustaining
13 the objection.
12:16:34 MR. BISSELL: Q. Ultimately, that section
15 across the north with the dotted line was not added into
16 the parcel I, correct?
12:16:47 A. **That's correct.**
12:16:48 Q. Okay. And if it would have been, the legal
19 description that we've talked about, that would have
20 changed, correct?
12:16:51 A. **Yes.**
12:16:52 Q. Okay. And was it – when was it when you
23 finally were told don't worry about adding that north
24 section in anymore; let's just final up what we have?
12:17:25 A. **Well, I think it was the same time when the**

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1 final – 12:17:22 Q. When the record of survey was done? 12:17:33 A. Well, the record of survey wasn't done until 4 June 4th of 2019 when it was recorded. That's because 5 there was still an outstanding issue. 12:17:46 Q. Okay. 12:17:48 A. With the adjoining parcel that Mr. Farley 8 owns. 12:17:49 Q. Okay. And so when were all the issues 10 resolved in terms of when the record of survey was 11 recorded, as far as you know? 12:17:51 A. That's the June 4th, 2019. 12:17:53 Q. Okay. And take a look at – just to make sure 14 we get this all straightened out, take a look at Exhibit 15 X. And is that the record of survey? 12:18:16 A. It is. 12:18:17 Q. Okay. That was recorded on June 4th, 2019? 12:18:18 A. Yes. 12:18:19 Q. Okay. Back to the preliminary survey, which 20 is Exhibit T. Now, when you – at the bottom of 21 Exhibit T – actually, bear with me just a sec. Help us 22 get oriented here. 12:19:23 All right. This is the September 26, 2018, 24 preliminary survey. Now, and I know we all can't see 25 it, just so we kind of get organized what's in front of	533	1 put your monument, you call it, correct? 12:20:42 A. That's correct. 12:20:43 Q. Okay. And then which is the iron rod stuck in 4 the ground and lath stakes, correct? 12:20:55 A. Yes. 12:20:56 Q. And describe those lath stakes. 12:21:07 A. They're 4-foot long piece of wood that's about 8 a quarter-inch thick and an inch-and-a-half wide driven 9 in so they stick up, depending on how far they're driven 10 in. Perhaps 3 feet. 12:21:11 Q. Three feet out of the ground? 12:21:12 A. Yes, with a piece of ribbon tied to it. 12:21:13 Q. Okay. 12:21:14 A. And perhaps have some identifying company name 15 or something on them. 12:21:16 Q. Okay. Can you take a look at exhibit – 12:21:17 A. Maybe even a point number corresponding to our 18 exact coordinates. 12:21:19 Q. Can you take a look at Exhibit OO, please. 12:21:20 Are you there? 12:21:21 A. I am. 12:22:22 Q. Okay. Is that what your stakes looked like? 12:22:23 A. Yes. 12:22:24 Q. Okay. And so – but now these circles right 25 here, these lower ones, were those staked too or those
1 you. But, Mr. Rasor, down here, this is where the 2 boundary line adjustment to the south was done, correct? 12:19:23 A. Correct. 12:19:24 Q. Okay. And there is little circles there. 5 What are those? 12:19:36 A. If you look at the legend, it will tell you. 7 The legend that corresponds to the circles, that's 8 where – if you look at the legend on the right side of 9 the drawing. 12:19:50 Q. Up here? 12:19:51 A. Yes. The circle that corresponds to the 12 symbols describes what those monuments are. 12:20:03 Q. Which is an iron rod driven into the ground; 14 is that correct? 12:20:05 A. Iron rod 5-inch diameter, 30 inches long with 16 a plastic cap. 12:20:17 Q. Okay. 12:20:18 A. Driven flush with the ground. 12:20:19 Q. Okay. 12:20:20 A. A wood lath is usually put next to it. 12:20:21 Q. Okay. And how – does this look like a blowup 22 of the bottom of that – what we were just looking at 23 right down here? 12:20:24 A. Yes, it is. 12:20:25 Q. Okay. And so each of these dots is where you	534	1 are in the road, they – right, the lower circles? 12:22:12 A. Those were also placed as part of a boundary 3 line adjustment for the parcel to the south that 4 Mr. Farley owns. 12:22:25 Q. But the ones that had the lath stakes, were 6 those – these up here on this list part of the line 7 here, here, here, here, here? 12:22:38 A. They would have all had them at one time. 12:22:39 Q. Okay. And when did you place those, at the 10 same time you monumented it? 12:22:41 A. 9/19/2018 exactly. 12:22:42 MR. BISSELL: Okay. That's all I have, your 13 Honor. Thank you. 12:23:04 THE COURT: Mr. Schmidt, do you have anything? 12:23:05 MR. SCHMIDT: Yeah, I have a couple questions. 16 Just one moment. 12:23:17 REDIRECT EXAMINATION 12:23:18 MR. SCHMIDT: Q. If you'd turn to Exhibit T. 19 When was Exhibit T created? 12:23:20 A. Before the date that it was set out. 12:23:21 Q. Before the date that it was recorded? 12:23:22 A. Work in progress. 12:23:23 Q. When would you consider Exhibit T to have been 24 finalized? 12:24:25 A. When the record of survey was recorded on June

EXHIBIT A

1 4th, 2019. 12:24:02 Q. Okay. Could you have provided that 3 preliminary map to Mr. Farley to present to the Gideons 4 after you had created – 12:24:15 A. It was for him to review. 12:24:16 Q. – after you had created Exhibit T? 12:24:27 A. It was for Mr. Farley's review, as far as I 8 was concerned. 12:24:29 Q. Okay. And did you make any adjustments to the 10 lower boundary line prior to closing? 12:24:31 A. No. 12:24:32 MR. SCHMIDT: Okay. No further questions. 12:24:33 MR. BISSELL: I have nothing, your Honor. 12:24:34 THE COURT: All right. May this witness be 15 excused? 12:24:46 MR. BISSELL: Yes. 12:24:47 MR. SCHMIDT: He may. 12:24:48 THE COURT: Thank you, Mr. Rasor. 12:24:49 THE WITNESS: Thank you. 12:24:50 MR. SCHMIDT: Plaintiffs call Zach Horsley. 12:25:01 THE COURT: Sir, would you come forward and be 22 sworn. 12:25:23 ZACHARY HORSLEY, 12:25:24 called as a witness herein, 12:25:25 having been duly sworn on oath,	537 1 spot we can. 12:26:42 Q. Okay. And what did you determine from looking 3 at the -- first of all, did you consult the well 4 drillers reports for the area? 12:26:55 A. Yeah. Yeah. Absolutely. You know, in an 6 area like this, the drilling is pretty unpredictable, so 7 looking at the well reports can help you, but it 8 isn't -- you know, it isn't -- it's tough to pick a spot 9 just based off of that. 12:27:10 You know, it's not quite like drilling in the 11 Rathdrum Prairie where all the wells in the area are the 12 same. We're drilling in solid shale in an area like 13 this and water runs through solid shale through 14 fractures in the path of least resistance, and hitting 15 those fractures is anybody's guess, really. 12:27:36 So, yes, we did look at the neighboring well 17 reports and, you know, took them for what they were 18 worth to us, which sometimes is a lot, sometimes not so 19 much. We knew this area was difficult for sure. 12:27:40 Q. Okay. 12:27:41 A. You know, looking at the neighboring. 12:27:42 Q. And did you determine a location to drill a 23 well? 12:27:54 A. Yeah. 12:27:55 Q. Okay.
12:25:21 testified as follows: 12:25:32 THE COURT: Okay. Sir, have a seat there in 3 the witness stand. If you'd state your full name, spell 4 your last name, please. 12:25:45 THE WITNESS: Zachary Horsley, H-O-R-S-L-E-Y. 12:25:46 THE COURT: Go ahead, Mr. Schmidt. 12:25:47 DIRECT EXAMINATION 12:25:48 MR. SCHMIDT: Q. Mr. Horsley, what's your 9 profession? 12:25:50 A. We drill water wells. 12:25:51 Q. When you say "we," do you work for a company? 12:25:52 A. Yeah. Just our -- it's been a family 13 business. 12:25:54 Q. Okay. Do you know the Gideons? 12:26:05 A. Just they hired us to drill them a water well. 12:26:06 Q. Okay. And did you go out to their property 17 and evaluate where to drill a well? 12:26:18 A. Yeah. Absolutely. 12:26:19 Q. Okay. And what did you do to make that 20 evaluation? 12:26:21 A. You know, we look at some stuff geologically, 22 the neighboring well reports, and we try to put it in a 23 spot that makes sense for power and running some stuff 24 like that, waterlines and things like that, so we try to 25 take into all that account and come up with the best	538 12:27:51 A. Yeah, drill a hole. 12:27:52 MR. SCHMIDT: If I may approach, your Honor? 12:27:53 THE COURT: You may. 12:28:14 MR. SCHMIDT: Q. I've provided you with a 5 map. Do you recognize the area depicted in this map? 12:28:26 A. Yeah. Let me try to figure out where north 7 is. Yeah. I mean, I know Derting Road pretty well. 8 Oh, there we go. 12:28:49 Q. So do you see where the Gideons' property is 10 at? 12:28:41 A. Yeah. It's the one just to the left of the 12 North Derting Road on the bottom. 12:28:43 Q. Okay. And would you mind drawing with this 14 orange marker where the well location is that you 15 drilled? 12:28:56 MR. BISSELL: Your Honor, I'd object to this 17 document. Number 1, it's never been disclosed. I don't 18 know why not. And if he's going to be drawing on it, it 19 certainly needs to be an exhibit beforehand. 12:29:20 THE COURT: You need to mark this, 21 Mr. Schmidt. 12:29:22 MR. SCHMIDT: Okay. What number are we on for 23 Plaintiffs' exhibits? 12:29:24 THE CLERK: I don't know. I don't have the 25 book.

12:29:21	MR. SCHMIDT: I believe we should be at 64.	541	1	more to the — that would be the north — the east.	543
12:29:22	(Plaintiffs' Exhibit 64 marked.)	12:33:02	2	MR. SCHMIDT: Q. How far to the east of the	
12:29:53	THE COURT: Counsel.	3	3	residence was it, a short distance or a long distance?	
12:29:54	MR. SCHMIDT: Yes.	12:33:14	4	A. It was a long distance —	
12:29:55	THE COURT: Just don't want to have	12:33:15	5	Q. Okay.	
6	conversations off the record.	12:33:16	6	A. — in my opinion.	
12:29:57	MR. SCHMIDT: Oh, I apologize. I put it on	12:33:17	7	Q. What happened when you drilled the first well?	
8	upside down.	12:33:28	8	MR. BISSELL: Your Honor, may I ask that we	
12:30:09	Q. So you have what's been marked Exhibit No. 64,	9	9	can see where the second well has been drawn on the	
10	and you testified that you recognize this to be the	10	10	drawing?	
11	property and the Gideons' home, and I would move to	12:33:41	11	THE COURT: Yes, please.	
12	admit Exhibit No. 64.	12:34:12	12	MR. SCHMIDT: Q. So how deep did you drill	
12:30:13	(Plaintiffs' Exhibit 64 offered.)	13	13	the first hole trying to find a well?	
12:30:14	MR. BISSELL: I'm not going to object to it,	12:34:14	14	A. We went a thousand feet.	
15	your Honor.	12:34:15	15	Q. And were you able to find any water?	
12:30:16	THE COURT: Sixty-four will be admitted.	12:34:16	16	A. No. I mean, we found a trace amount of water.	
12:30:17	(Plaintiffs' Exhibit 64 admitted.)	17	17	You know, under a half a gallon a minute, and it would	
12:30:18	THE COURT: Counsel, can you orient what's top	18	18	not come clean. It was orange and we developed on it	
19	of this exhibit?	19	19	for a long time trying to see if it would come clean and	
12:30:20	MR. SCHMIDT: The top, if you were to draw a	20	20	the little tiny bit that it made was not usable, viable.	
21	compass rose, the top would be north.	12:34:21	21	Q. Okay. So did you charge the Gideons for those	
12:30:22	THE COURT: Well, I'm just looking at — I	22	22	services?	
23	have it. There's lettering on it at the very top in the	12:34:23	23	A. I did, yeah.	
24	blue. Is that the top?	12:34:24	24	Q. And did they pay you?	
12:31:25	MR. SCHMIDT: Yes.	12:34:25	25	A. They did.	
12:31:01	THE COURT: Or is that the left side or the	542	12:34:51	Q. And did you try a second time?	544
2	right side of this document?	12:34:52	2	A. Yes.	
12:31:03	MR. SCHMIDT: That is the top.	12:35:03	3	Q. And what — how deep did you drill that well?	
12:31:04	THE COURT: Okay. Okay.	12:35:04	4	A. That was 1700 feet. I think the — if I can	
12:31:05	MR. SCHMIDT: So the top is north.	5	5	look, it's — I think it was 1764, I think.	
12:31:16	Q. So, Mr. Horsley, would you — could you put a	12:35:16	6	Q. Approximate is good enough.	
7	mark where you drilled the first well?	12:35:17	7	A. Yeah. Deep, very deep.	
12:31:18	A. Yes.	12:35:18	8	Q. And were you able to find any water?	
12:31:29	Q. And could you hold that up for all to see.	12:35:19	9	A. No. This one was probably worse, as far as it	
12:31:10	A. Yeah.	10	10	was under a quart, gallon or — per minute. Again, it	
12:31:11	Q. I'll take it around.	11	11	had a lot of orange coloring too, the little bit that	
12:31:12	THE COURT: Okay.	12	12	was coming up. Not a viable well.	
12:31:13	MR. SCHMIDT: Q. And did you drill a second	12:35:13	13	Q. And if you'd turn to Exhibit No. 37. There	
14	well to try and find water for the Gideons?	14	14	should be a black three-ring binder there. Can you see	
12:31:15	A. Yes.	15	15	it?	
12:31:16	Q. And where did you drill that one, if you	12:35:16	16	A. Yeah.	
17	recall?	12:35:17	17	Q. With the numbers, not the letters.	
12:31:18	A. I think — there's GPS points associated with	12:35:18	18	A. Okay. There's stuff on top of it.	
19	these too. I think this second one was done -- was down	12:36:19	19	Q. And if you'll turn to the last two pages of	
20	here.	20	20	Exhibit 37.	
12:31:21	MR. BISSELL: Can the witness speak up a bit,	12:36:21	21	A. Yeah, the invoices I created.	
22	your Honor?	12:36:22	22	Q. And are those the amounts that you charged the	
12:31:23	THE COURT: Yes.	23	23	Gideons and that they paid?	
12:31:24	THE WITNESS: Oh, yeah, sorry. I'm just	12:36:24	24	A. They did, yes.	
25	debating — I'm pretty sure that we drilled it down here	12:36:25	25	MR. SCHMIDT: No further questions.	

EXHIBIT A

1 have impact on any future sale of my property with two 2 parties having access to the same well. 12:41:43 Q. Okay. Do you have an opinion regarding 4 Mr. Farley's honesty and integrity and ability to tell 5 the truth? 12:41:56 A. I do. 12:41:57 Q. And what is that based upon, again, without – 12:41:58 A. Well, it's based on – 12:42:09 Q. – any specifics? 12:42:10 A. Shortly after purchasing our property in 2002, 11 I had a very close friend of mine, whose counsel I value 12 greatly, tell me – 12:42:13 MR. BISSELL: Objection, your Honor. He's 14 getting into specific instances. 12:42:15 THE COURT: Counsel, where are you going here? 12:42:16 MR. SCHMIDT: I asked him not to get into any 17 specific instances – 12:42:18 THE WITNESS: Oh, I'm sorry. 12:42:19 MR. SCHMIDT: Q. – and I will ask you again, 20 don't get into any specific instances. 12:42:21 A. I was going to basically say that this 22 friend – 12:42:23 Q. Don't worry about your friend. 12:42:24 A. Okay. 12:42:25 Q. Based on your interactions with Mr. Farley,	549 12:44:01 12:44:12 3 4 12:44:25 12:44:26 12:44:27 12:44:38 12:44:39 10 12:44:41 12:44:42 12:44:43 12:44:44 15 12:44:46 12:44:47 12:44:48 12:44:49 12:45:00 21 22 12:45:23 24 12:45:25	551 Q. What about his honesty? A. Well, I can't speak directly as to anything I've had directly involving him that would tell me he was not honest. Q. So is it just reputation then? A. Just reputation. MR. SCHMIDT: Okay. No further questions. MR. BISSELL: Nothing, your Honor. THE COURT: All right. Thank you, Mr. Day. Oh, may this witness be excused? MR. SCHMIDT: Yes. THE COURT: Okay. Thank you, Mr. Day. MR. SCHMIDT: Plaintiffs call Doug Hiller. THE COURT: Sir, would you stand and be sworn there. DOUGLAS ANDREW HILLER, called as a witness herein, having been duly sworn on oath, testified as follows: THE COURT: If you have a seat right there, Mr. Hiller. Thank you. And if you state your full name and spell your last name for the record. THE WITNESS: Douglas Andrew Hiller, H-I-L-L-E-R. THE COURT: Go ahead, Mr. Schmidt.
1 have you come to an opinion as to his honesty? 12:42:42 A. That and what I've heard from other neighbors, 3 I have come to an opinion, yes. 12:42:44 Q. And did that opinion weigh in on whether or 5 not you were willing to enter into a shared well 6 agreement arrangement with him? 12:42:57 A. Yes, it did. 12:43:08 Q. And is he somebody that you would trust? 12:43:19 A. No. 12:43:10 Q. And what is it about him that leads you to not 11 trust him? 12:43:12 A. Well, the best way that I think I can describe 13 my relationship with Brian Farley would be that for me 14 to consider an individual as a friend, I would have to 15 know that they're honest and have integrity, that 16 they're someone that I can count on for support and 17 guidance with my interest in mind; someone that is kind, 18 mindful of feelings of others and respectful of others; 19 but most importantly, I must be able to respect that 20 person for me to consider them as a friend. 12:44:21 Q. Uh-huh. And does Mr. Farley check any of 22 those boxes? 12:44:23 A. He does not meet my thresholds – 12:44:24 Q. Okay. 12:44:25 A. – for a friendship.	550 12:45:11 12:45:12 3 12:45:24 12:45:35 12:45:36 12:45:37 8 12:45:49 12:45:40 11 12:45:52 13 14 12:45:55 16 12:46:07 12:46:08 12:46:09 20 12:46:21 22 12:46:23 12:46:24 25	552 DIRECT EXAMINATION MR. SCHMIDT: Q. Good afternoon, Mr. Hiller. What's your address? A. 23373 North Derting Road. Q. And are you familiar with Mr. Gideon [sic]? A. I am. Q. And how close is your address to the property that he used to own that he sold to the Gideons? A. Right across the street, so – THE COURT: I think you asked were you familiar with Mr. Gideon. MR. SCHMIDT: Sorry, Mr. Farley. I've been doing that because I'm nervous. Sorry. With Mr. Farley. Q. How far away was it that you lived from Mr. Farley? A. Right across the street. Q. Okay. A. From my driveway, I could look and see his home. Q. Okay. And so did you have an opportunity to get to know Mr. Farley? A. A little bit. Q. Okay. When did you move to that address, that location?

12:46:11 A. August of '15, 2015. 12:46:12 Q. And have you had any interactions with 3 Mr. Farley? 12:46:24 A. Yes. 12:46:25 Q. And has he ever requested anything from you? 12:46:36 A. Yes. 12:46:37 Q. And could you describe what that was, what 8 that interaction was? 12:46:39 A. Sure. I received a phone call from him. He 10 asked me to meet him on the street because he had 11 something for me to sign. I went out there and he 12 handed me a quitclaim deed to sign to give over some of 13 my property after a survey – recent survey he had had 14 prior to selling to the Gideons. 12:47:05 Q. Okay. And what did he say? 12:47:06 A. Very confrontational. I said, "Well, Brian, I 17 can't sign this." I said, "I'm not just going to give 18 you my property." 12:47:19 And he said, "Well, that's going to put us at 20 odds with each other." 12:47:21 Q. And what did you take that to mean? 12:47:22 A. Just very confrontational. 12:47:23 Q. Did you end up signing it? 12:47:24 A. I brought it to an attorney, had it reviewed, 25 took longer than expected, received texts, emails from	553	12:48:31 Q. Okay. And through those interactions, have 2 you had an opportunity to form an opinion as to 3 Mr. Farley's propensity for truthfulness and honesty? 12:48:54 A. Through those? 12:48:55 Q. Or through any of your interactions with him. 12:48:56 A. Oh, sure. There was a letter that he sent 7 out. 12:49:08 MR. BISSELL: Objection, your Honor. 12:49:09 MR. SCHMIDT: Q. So don't – please don't get 10 into any specific instances. We've – 12:49:061 A. But, yes, through interactions, yeah, I would 12 not trust Mr. Farley. 12:49:163 Q. And in terms of on a scale of one to ten how 14 trustworthy he is, where – what would you – ten being 15 the most trustful, one being you can't trust anything he 16 says, where would you place him in terms of 17 trustworthiness? A ten? A one? A five? 12:49:318 A. Two. 12:49:319 MR. SCHMIDT: No further questions. 12:49:20 THE COURT: Anything, Mr. Bissell? 12:49:21 MR. BISSELL: No, your Honor. 12:49:22 THE COURT: May this witness be excused? 12:49:23 MR. SCHMIDT: He may. 12:49:24 THE COURT: Thank you, Mr. Hiller. 12:49:25 MR. SCHMIDT: Those are all the plaintiffs	555
1 Mr. Farley saying, "I'm going to get my attorney. 2 You're not signing this on purpose," and – 12:47:43 MR. BISSELL: Your Honor, we're getting into 4 specifics instances here again. 12:47:45 MR. SCHMIDT: We can stop there. 12:47:46 THE WITNESS: Okay. 12:47:57 MR. SCHMIDT: Q. Okay. Did this add property 8 to the parcel that became the Gideons'? 12:47:59 A. Yes – no, to Mr. Farley's new parcel that he 10 divided. 12:48:01 Q. Okay. 12:48:02 A. Or not divided but moved. 12:48:03 Q. Besides that interaction, what other 14 associations have you had with Mr. Farley that have 15 allowed you to get to know him? 12:48:16 A. Interactions through the board meetings. 12:48:17 Q. Board meetings of what? 12:48:18 A. Our HOA, sorry. 12:48:19 Q. Okay. 12:48:20 A. HOA board meetings. 12:48:21 Q. Anything else? 12:48:22 A. Committee – we had like a small – I think 23 there was six of us to start – came together to try and 24 move forward on getting our road repaired, and he was 25 part of that as well.	554	1 witnesses and we rest, your Honor. 12:49:52 THE COURT: All right. Well, this is a good 3 time to take our afternoon break, so we will do so. Let 4 me just ask – and we can be off the record here. (Recess.) 12:50:05 THE COURT: We are back on the record in 01:15:56 Gideon versus Farley, CV28-20-2706. The Court notes the 7 presence of counsel and the parties. Is Plaintiff ready 8 to begin? 01:16:010 MR. BISSELL: Yes, your Honor. I got one 11 preliminary thing. 01:16:012 THE COURT: Yes. 01:16:113 MR. BISSELL: With regard to the character 14 witnesses, those folks are kind of hard to get scheduled 15 and whatever, so I've got a couple – I don't think I'm 16 going to need them till tomorrow, but I've got them 17 coming in now, so if they come in, if they can actually 18 make it in, I'd like to call them whenever they can get 19 here, if that works, because I got to work around their 20 schedule. 01:16:21 THE COURT: Do you have any problem with that? 01:16:22 MR. SCHMIDT: I don't have any problem – 01:16:23 THE COURT: Okay. 01:16:24 MR. SCHMIDT: – with that. 01:16:25 THE COURT: Yeah.	556

01:16:31 MR. BISSELL: Okay. Thank you, your Honor. 01:16:32 THE COURT: Yeah. All right. 01:16:33 MR. BISSELL: So are we ready, your Honor? 01:16:34 THE COURT: We are. 01:16:35 MR. BISSELL: Okay. We'll call Mary 6 Spridgeon. 01:16:47 THE COURT: Okay. Ms. Spridgeon, would you 8 come forward and be sworn. 01:16:49 MARY SPRIDGEON, 01:16:49 called as a witness herein, 01:16:49 having been duly sworn on oath, 01:16:49 testified as follows: 01:16:51 THE COURT: If you have a seat there, 14 Ms. Spridgeon. And if you would state your full name 15 and spell your last name for the record. 01:17:06 THE WITNESS: My name is Mary Spridgeon, 17 S-P-R-I-D-G-E-O-N. 01:17:18 THE COURT: Go ahead, Mr. Bissell. 01:17:19 MR. BISSELL: Thank you, your Honor. 01:17:20 DIRECT EXAMINATION 01:17:21 MR. BISSELL: Q. How old are you, Mary? 01:17:22 A. Fifty-two. 01:17:23 Q. Or Ms. Spridgeon. Fifty-two, okay. Thank 24 you. 01:17:25 And you work in the escrow and title business,	557	01:18:11 Q. Okay. And how many closings do you think 2 you've been involved in in your career? 01:18:23 A. I'm unsure. 01:18:24 Q. More than 200? 01:18:35 A. Yes, thousands. 01:18:36 Q. Okay. Do you have any kind of licenses or 7 certifications? 01:18:38 A. We are not required to be licensed in the 9 state of Idaho, no. 01:18:40 Q. Okay. And you were the closing officer for 11 the transaction between the Gideons and Mr. Farley 12 regarding 23462 North Derting Road in 2019, correct? 01:18:51 A. Yes, I was. 01:18:54 Q. Okay. And closing was initially scheduled for 15 the 6th, correct? 01:19:06 A. Yes. 01:19:07 Q. Okay. And that didn't happen because the 18 Gideons discovered an issue with the survey; is that 19 correct? 01:19:20 A. Yes. 01:19:21 Q. Okay. And at any time after that, did you 22 speak with either the Gideons and telling them to the 23 effect that – 01:19:24 MR. SCHMIDT: Objection. Leading. If we can 25 get –
1 correct? 01:17:22 A. Yes, I do. 01:17:23 Q. Okay. And how long you been doing that? 01:17:24 A. Coming on 30 years. 01:17:25 Q. Okay. And who do you currently work for? 01:17:26 A. First American Title. 01:17:27 Q. Here in Coeur d'Alene? 01:17:28 A. Yes, sir. 01:17:29 Q. And how long have you worked there? 01:17:30 A. Twenty-five years. 01:17:31 Q. Okay. What is your – what's your official 12 job title? 01:17:33 A. Escrow officer. 01:17:34 Q. Okay. And can you briefly describe what your 15 job is, what you do? 01:17:36 A. I receive the Purchase and Sale Agreement. I 17 collect all the figures and the information on what's 18 going on on the property. I collect in all the funds; 19 prepare the settlement statement. If there's a lender 20 involved, I collect all the information from the lender. 21 I have buyers and sellers sign documents and record on 22 the transaction. 01:18:23 Q. So are you assigned transactions; is that how 24 that works? 01:18:25 A. Yes.	558	01:19:24 THE COURT: He hasn't gotten his whole 2 question out yet, Counsel. 01:19:23 MR. SCHMIDT: Okay. Sorry. Go ahead and 4 finish. Sorry. 01:19:35 MR. BISSELL: Q. Did you have any 6 conversations with the Gideons whether – regarding an 7 aerial photograph? 01:19:38 A. I couldn't tell you now. 01:19:49 Q. Would you ever – did you have a conversation 10 with the Gideons where they asked you or you told them 11 the photograph matched the survey? 01:19:42 A. So are we talking about – 01:19:51 Q. An aerial photograph. 01:19:54 A. – aerial photographs? No, I wouldn't tell 15 anybody that an aerial photograph matches the survey 16 because the – you're trying to lay an aerial photograph 17 on a round earth and that it may not match up – 01:20:08 Q. Okay. 01:20:09 A. – the way it's supposed to. 01:20:20 Q. And then ultimately the closing then happened 21 on the 7th, correct? 01:20:22 A. Yes. 01:20:23 Q. Okay. And then during the meeting – well, so 24 did the Gideons come in first? 01:20:25 A. Yes, the Gideons signed their paperwork first.

01:20:21 Q. Okay. And then Mr. Farley and his realtor
2 came in, Mr. Elder?
01:20:23 A. Yes.
01:20:24 Q. Okay. And during the meeting, did Mr. Farley
5 bring anything to your attention?
01:20:26 A. Yes. Mr. Farley told us that we were missing
7 the document for the CC&R document.
01:20:28 Q. The Amended CC&Rs?
01:20:29 A. Yes.
01:20:40 Q. Okay. And what did you do?
01:20:41 A. I asked my – I excused myself in the closing,
12 went to my title officer, asked her to date down the
13 file. We discovered that that was accurate, that we
14 were missing a document. I called the Gideons. I spoke
15 with Mr. Gideon and I told him that we had an additional
16 document that had been discovered as part of – as part
17 of closing. I explained to him the title of the
18 document and when it recorded and asked him what he
19 would like me to do at that point, if he wanted to move
20 forward.
01:21:21 Q. So you told him it was the Amended CC&Rs?
01:21:22 A. Yes.
01:21:23 Q. And what did he tell you to do?
01:21:24 A. I – he told me to go ahead and move forward.
25 He said that him and Mr. Farley were going to be meeting

1 out at the property and give a copy of the document to
2 Mr. Farley and he would deliver it to the Gideons.
01:21:33 Q. And when you had that conversation, were you
4 in the room with Mr. Farley or Mr. Elder?
01:21:45 A. No, I was in my office.
01:21:46 Q. Okay. So then what happened?
01:21:47 A. I gave the document to –
01:21:48 Q. Let me back up. Did you go back into the room
9 with Mr. Farley?
01:21:49 A. Yes. I'm sorry. Yes, I went back into the
11 closing room.
01:21:52 Q. Okay.
01:21:53 A. We completed the closing. We had the
14 conversation about giving the document to the Gideons,
15 and we moved forward with closing.
01:21:56 Q. And did you give Mr. Farley a copy of the
17 Amended CC&Rs?
01:21:58 A. I gave – yes, Mr. Farley had a copy of the
19 Amended CC&Rs.
01:22:00 Q. If the Gideons had told you they wanted to
21 stop the closing, would you have done so?
01:22:22 A. Yes.
01:22:23 MR. BISSELL: That's all I have, your Honor.
24 Thank you.
01:22:25 THE COURT: Mr. Schmidt?

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01:22:11 CROSS-EXAMINATION
01:22:22 MR. SCHMIDT: Q. So, Ms. Spridgeon, did you
3 provide the Gideons with copies of the new exceptions
4 based on the date down?
01:22:45 A. The CC&R – are we talking specifically about
6 the CC&R?
01:22:47 Q. Yes.
01:22:48 A. No, I did not give them a copy of that
9 document until a later date.
01:22:50 Q. Okay. And do you have knowledge one way or
11 the other whether or not Brian Farley provided the
12 Gideons with the first Amended CC&Rs?
01:22:53 A. No, I do not.
01:22:54 Q. Is that First American Title Company's policy
15 to deliver title documents through opposing parties in a
16 transaction?
01:23:17 A. If a party asks me to have something delivered
18 a certain way, I would do that, yes.
01:23:19 Q. Okay. You didn't provide the Gideons with
20 clarification of anything within the documents that was
21 the First Amended CC&Rs, correct?
01:23:22 A. I don't – the phone call that I made, I
23 didn't put in my notes that I provided them with any
24 information, so I couldn't tell you that I did.
01:23:25 Q. And you only spoke to the issue of the

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1 easement for the drain field when I spoke with Art on
2 the phone, correct?
01:23:43 A. Sorry. I'm thinking. I can't remember, but I
4 know there was a specific note in my notes. I put
5 something specific about exactly what I talked about,
6 and I can't remember what that said.
01:24:07 Q. Okay. Would it be out of the ordinary for you
8 to say, hey, our title found the easements for the drain
9 field, this is the document, it's been recorded now?
01:24:10 A. Yes, that would be out of ordinary for me to
11 say that.
01:24:32 Q. And you never read the First Amended CC&Rs
13 prior to providing them to Mr. Farley, correct?
01:24:44 A. No, I had not read the document. No.
01:24:45 Q. And that's true to this date as well, correct?
01:24:46 A. I read parts of it but not the entire – the
17 document in its entirety.
01:24:58 Q. So anything that you related to Art Gideon
19 would have just been the title and the date of
20 recording, correct?
01:25:01 A. It would have been whatever information the
22 title officer provided to me and then the recording
23 instrument number, the date of the recording and what
24 the title of the document was. So I have a typical
25 statement that I make every time that a situation like

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1 this would arise that I say to whoever it is that I need 2 to disclose that a new document has come of record, that 3 it – this is the document that recorded, this is the 4 instrument number, and this is the name of the document. 01:25:45 Q. And then at some point in late October of 6 2019, did you have occasion to speak with the Gideons 7 again? 01:25:58 A. I can't remember exactly the date, but the 9 Gideons did call me and said that they had some 10 concerns, that they wanted to come into our office to 11 meet. 01:25:512 Q. And is it correct that during your meeting 13 with the Gideons, they stated that they had not received 14 a copy of the first amendments – the first amendment to 15 the Amended CC&Rs? 01:26:16 A. I'm sorry, I can't recall. You know, I can't 17 recall. 01:26:18 Q. Do you recall having a discussion with the 19 Gideons about their surprise that there was a well share 20 agreement in the Amended CC&Rs? 01:26:21 A. They said that there was some concern about 22 what was happening between them and Mr. Farley. I do 23 remember that. But I – I don't remember the specific 24 exactly what they said. I'm sorry. 01:26:25 Q. Do you recall there – do you recall any	565 1 note. Yes. 01:28:22 Q. Okay. So at the top of FA8, would you mind 3 reading that for the record, please. 01:28:34 A. "Seller is signing at 8:00 a.m. this morning 5 and I plan to ask" – 01:28:36 THE COURT: I just need to stop you, 7 Ms. Spridgeon. This has not been admitted. 01:28:48 MR. SCHMIDT: Oh, I thought it had. Motion to 9 admit Exhibit BB. 01:28:410 (Plaintiffs' Exhibit BB offered.) 01:28:411 MR. BISSELL: We don't have an objection, your 12 Honor. 01:28:513 THE COURT: Okay. Thank you. BB will be 14 admitted. 01:28:515 MR. SCHMIDT: Thank you, your Honor. 01:28:516 (Plaintiffs' Exhibit BB admitted.) 01:28:517 THE COURT: I'm sorry. Go ahead. 01:28:518 MR. SCHMIDT: Thank you, Your Honor 01:28:519 Q. Go ahead and continue reading. Thank you, 20 Mary. 01:29:21 A. The seller is – I'm sorry, "The seller is 22 signing at 8:00 a.m. this morning and I plan to ask them 23 about the leach field, but I am hoping maybe you can 24 take a look at and let me know what you think. I will 25 be in the closing room right by Tricia's desk. Thank
566 1 concerns about the property boundaries of the property 2 that was conveyed to them? 01:26:53 A. I believe they did say something about the 4 property boundaries. 01:26:55 Q. And did you perceive that they were surprised 6 or upset about the property description that – the 7 property that they received at closing? 01:27:18 A. They were concerned about the situation 9 between them and Mr. Farley and about where things were. 10 Yes, I do remember that. 01:27:21 Q. If you would turn, please, to Exhibit BB and 12 the Bates number at the bottom right-hand corner is FA8. 01:27:413 A. You said BB, right? 01:27:414 Q. BB, yep. 01:27:515 A. Okay. 01:27:516 Q. First of all, do you recognize Exhibit BB to 17 be your notes from – your notes related to the 18 Gideon/Farley transaction? 01:28:419 A. Yes, I do. 01:28:520 Q. Okay. And when is it – when you receive a 21 call, is it your obligation to make notes of anything at 22 approximately the same point in time? 01:29:23 A. I try to make notes as soon as – yes, I try 24 to make notes at that same approximate time, but it 25 could end up being at a later time that I make that	568 1 you, Mary." 01:29:12 Q. And so who were you writing that to? 01:29:23 A. Would have been the title officer, which was 4 Kim May – Kim Gallagher. 01:29:25 Q. And then there's a follow-up note – or is 6 that the date that this was – the date and time that 7 you entered that into the system is June 7, 2019, at 8 9:58 a.m.? 01:29:39 A. That's what this says, yes. 01:29:410 Q. Okay. And then what's the entry underneath 11 that timestamp? 01:29:412 A. "Kim got us a copy of document 2695111, and 13 she said that was the document for the leach field. I 14 gave that document to the seller, who was signing this 15 morning from 8:00 to 9:00 a.m.," and he is – "and he is 16 taking it to the buyer. I called the buyer and told him 17 that the title officer said the document was what they 18 were looking for the leach field and asked him if he was 19 okay for us to record. Buyer said it was okay to record 20 and he would get the document from the seller. They 21 were meeting on the property." 01:30:22 Q. So would that be an accurate recitation of the 23 information that you provided – 01:30:24 A. Yes – 01:30:25 Q. – to Art Gideon?

01:30:21 A. – it would be, yes. If that's what I wrote
2 in my notes, that's what I would have said.
01:30:33 Q. And there's no mention of shared well
4 agreements that you would have noted to them?
01:30:35 A. No. I would have said exactly what I said I
6 said.
01:30:57 Q. And when the Gideons signed earlier, then when
8 Mr. Farley came in, they signed off on title, that
9 didn't include the exception for the Amended CC&Rs,
10 correct?
01:31:12 A. Correct.
01:31:16 Q. And so their policy didn't include an
13 exception for the Amended CC&Rs, correct?
01:31:18 A. The commitment that they initialed did not
15 include that, correct.
01:31:16 MR. SCHMIDT: I have no further questions.
01:31:17 MR. BISSELL: I have nothing, your Honor.
01:31:18 THE COURT: May this witness be excused?
01:31:19 MR. BISSELL: Yes.
01:31:20 MR. SCHMIDT: Yes.
01:31:21 THE COURT: All right. Thank you, ma'am. You
22 are excused.
01:31:23 THE WITNESS: Thank you.
01:31:24 MR. SCHMIDT: Thank you.
01:31:25 MR. BISSELL: We'll call Brian Farley, your

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01:33:21 Q. Did you ultimately start your own company?
01:33:22 A. Yes.
01:33:33 Q. Okay. And was it a framing company?
01:33:34 A. 1975, yeah.
01:33:35 Q. Okay.
01:33:36 A. Yeah.
01:33:37 Q. And how long was that framing company active?
01:33:48 A. Well, the framing company, along with custom
9 home building went from 1975 until 2008, and then I
10 retired upon the death of my youngest son.
01:33:51 Q. Okay. And then did you start back up again?
01:33:52 A. Yeah, I start – I retired for six or seven
13 years, and I started back up and continued to operate
14 the – kind of oversee, assisted my oldest boy in his
15 endeavors.
01:34:16 Q. And then did you ultimately fully retire from
17 the business?
01:34:18 A. Yes, I did.
01:34:19 Q. When was that?
01:34:20 A. 2014.
01:34:21 Q. Okay.
01:34:22 A. And then, of course, at a time I also did some
23 developing. I was a framer. I built several million
24 square feet of apartments.
01:34:25 Q. Okay. And you're married to Pam Farley,

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1 Honor.
01:31:32 THE COURT: Okay. Mr. Farley, would you come
3 forward. Mr. Farley, you are still under oath.
01:31:54 MR. BISSELL: I think – some of those folks
5 are going to try to be here at 2:00, your Honor, so to
6 give you a heads up.
01:32:07 THE COURT: Okay.
01:32:58 DIRECT EXAMINATION
01:32:09 MR. BISSELL: Q. All right. Mr. Farley, can
10 you briefly describe your education?
01:32:11 A. Graduated Granada Hills High, Los Angeles,
12 California, 1971.
01:32:13 Q. Okay. And then how about a recitation of your
14 occupation background?
01:32:35 A. Shortly thereafter, left for northern Arizona,
16 worked on the – I was the youngest employee on the
17 Flintstones Bedrock City near the south rim of the Grand
18 Canyon, and I left there and came to north Idaho in '72
19 and worked in construction, specifically as a framer.
20 In 1975, I started my company here.
01:33:21 Q. Was that Big Horn Builders?
01:33:22 A. No, that was Farley Framers, the proverbial
23 pickup truck and the one Skilsaw and one helper, and
24 then subsequently expanded my business, and for many
25 years I was licensed in seven or eight states.

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1 right?
01:34:32 A. Correct.
01:34:33 Q. And how long have you been married?
01:34:34 A. Supposed to know this, right? Forty-four
5 years.
01:34:46 Q. Okay. And where do you currently reside?
01:34:47 A. 3108 East Thrush Avenue – Thrush,
8 T-H-R-U-S-H, Post Falls, Idaho.
01:34:59 Q. And you're the one that sold the property to
10 the Gideons that we're talking about, right?
01:35:01 A. That is correct.
01:35:02 Q. Okay. And when did you purchase those
13 parcels – or let's see.
01:35:04 Did you purchase some parcels from Harold
15 Derting in 1992?
01:35:16 A. Yes, I did.
01:35:17 Q. And what did you purchase, sir?
01:35:18 A. Parcel known as I, S, T, and V.
01:35:19 Q. Okay. And those are the I's, the I we've been
20 talking about in this case, right?
01:35:21 A. Yeah, that would be 23452 North Derting Road.
01:35:22 Q. And was it all vacant land at the time?
01:35:23 A. Yes, it was.
01:35:24 Q. Okay. And in – so if you turn to Exhibit A,
25 and these are –

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01:36:11 A. I'm there.
 01:36:12 Q. Are you at Exhibit A, Mr. Farley?
 01:36:13 A. I am there.
 01:36:14 Q. Okay. And are these Amended CC&Rs you
 5 recorded with regard to Ridgetop Retreat Ranch Estates
 6 in 1992?
 01:36:27 A. Yes, they are.
 01:36:28 Q. And what is Ridgetop Retreat Ranch Estates?
 01:36:39 A. That is a entity, I guess you could say, that
 10 was created to facilitate for leach fields being on –
 11 for three parcels on one parcel.
 01:36:42 Q. Okay.
 01:36:50 A. It's basically easements.
 01:36:54 Q. And there's – there was testimony earlier
 15 that was a HOA. Is this setting up an HOA?
 01:37:06 A. No, there's no HOA for Ridgetop Retreat Ranch
 17 Estates.
 01:37:08 Q. Okay. And you ultimately built your home on
 19 parcel I, right?
 01:37:20 A. Correct.
 01:37:21 Q. And when was that?
 01:37:22 A. 1994.
 01:37:23 Q. And if you look at Exhibit B, which we looked
 24 at earlier today.
 01:37:25 A. Yes.

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1 throughout the whole course.
 01:38:42 Q. Where is that well located?
 01:38:53 A. Next to the cistern.
 01:38:54 Q. Okay. And was that – did that well ever
 5 produce any water?
 01:38:56 A. Yes, it did.
 01:38:57 Q. Okay. From when to when?
 01:39:08 A. It produced – it produced water to the air
 9 test, and I believe –
 01:39:10 Q. Let me put it this way: How long did you use
 11 that well?
 01:39:12 A. Oh, not long.
 01:39:13 Q. Okay. Why not?
 01:39:14 A. Because while endeavoring to get the casing
 15 in, they tried to put additional steel 4-inch casing,
 16 but within the 6-inch casing and the well collapsed.
 01:39:17 Q. Okay. So then what did you do?
 01:39:18 A. Mr. Houk, who – the water witch, he had
 19 already witched the entire top of the ridge. He witched
 20 it again and we selected another vein and we drilled
 21 well No. 2.
 01:39:22 Q. And is that what we refer to today as the
 23 upper well?
 01:39:24 A. Yes.
 01:39:25 Q. Okay. When did you drill that, the second

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01:37:31 Q. That's your wife Pam quitclaiming I, S, T, and
 2 V to you, correct?
 01:37:33 A. Correct.
 01:37:34 Q. In 2016?
 01:37:35 A. That is correct.
 01:37:36 Q. Okay. And when did you build your house on
 7 parcel I?
 01:37:58 A. Moved in Christmas Eve Day 1994.
 01:37:59 Q. Okay. And what was your source of water?
 01:37:59 A. What we are terming the upper well, which is
 11 west of the home behind the garage.
 01:38:02 Q. That was always your source of water?
 01:38:03 A. Yes.
 01:38:04 Q. Was there a prior well?
 01:38:05 A. Yes.
 01:38:06 Q. Tell me about – what was the source of the
 17 prior well? Why did you drill that?
 01:38:18 A. Well, I had hired a water witch that
 19 guaranteed 5 gallons a minute, and I had used him for
 20 other homes and he always fulfilled that obligation. He
 21 hired a well driller, Ponderosa Well Drilling, and they
 22 drilled a 700-foot well that had water in it, but they
 23 were unable to get the casing to the bedrock and they
 24 tried very hard to do so for a couple of days, pounding
 25 on that casing. I know this because I was present

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1 well then?
 01:39:52 A. In 1994.
 01:39:53 Q. Okay. And at some point did you make efforts
 4 to have that produce more water?
 01:40:05 A. Yes, I did.
 01:40:06 Q. What did you do?
 01:40:07 A. I had it hydrofractured.
 01:40:18 Q. And why were you wanting to get more water?
 9 For what purpose?
 01:40:18 A. Well, I always hoped to be able to irrigate my
 11 hayfield.
 01:40:19 Q. Were you ever able to do that?
 01:40:20 A. No.
 01:40:21 Q. Okay. And then so but after you hydrofracked
 15 it – so when was that in relation to when you drilled
 16 it, approximately?
 01:40:37 A. It was drilled in – it was online when we
 18 moved in, so it was drilled in the fall. We had to –
 19 it was a different well driller, the fall of '94, and
 20 then I believe I fracked in January of '95, actually.
 01:40:21 Q. Okay. But although it didn't – may not have
 22 produced enough irrigation, did it – did the yield
 23 increase?
 01:40:24 A. The – from hydrofracturing?
 01:40:25 Q. Yes.

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01:40:51 A. Yes, it did. 01:40:52 Q. Do you know how much? 01:41:03 A. No, I do not. 01:41:04 Q. Okay. And other than the pump, were there – 5 was there other equipment associated with your water 6 system? 01:41:07 A. Yes. There had been a 3,000-gallon cistern 8 installed from the get-go. 01:41:19 Q. And what else? 01:41:10 A. Oh, pressure tank in the home and water. 01:41:11 Q. Is the water purified? 01:41:12 A. Yeah. And a water purification system and 13 filters and UV light and charcoal filters. 01:41:14 Q. Okay. And the cistern's 3,000 gallons? 01:41:15 A. Correct. 01:41:16 Q. And why 3,000 gallons? 01:41:17 A. Well, that was, I guess, call a standard-issue 18 water reservoir available at the time from Wilbert 19 Vault. 01:41:20 Q. Okay. And why the purification system? 01:41:21 A. Because that well – the first two wells and 22 the lower well were contaminated with naturally 23 occurring E. coli. 01:41:24 Q. Okay. And then after fracking the upper well, 25 did you have any concerns with its longevity and	577	1 not, your Honor. It's a matter of what he was told 2 because it affects his subsequent actions. 01:43:03 THE COURT: I think that's what it's being 4 asked for, so overruled. 01:43:05 THE WITNESS: Continue? 01:43:16 MR. BISSELL: Q. What were you told that led 7 you to question the reliability and longevity of the 8 well? 01:43:19 A. Well, what I witnessed was the liner was 10 damaged during – when we first began pulling the liner 11 out, and I was told by Mr. Bartholomew that the liner 12 had fallen back down the hole and had broken and was 13 now – the broken liner was now blocking the well at 460 14 feet of a 700-foot-deep well. 01:43:15 Q. And so why did you have concerns about 16 reliability and longevity? 01:43:17 A. Because the casing and the liner no longer 18 overlapped, meaning that when we put the pump down in 19 there, it was exposed to raw earth. 01:44:20 Q. Okay. And so what – why was that – why did 21 that concern you? 01:44:22 A. Well, because – 01:44:23 Q. What were you told? 01:44:24 A. Because of the unstable nature of the 25 structure that we had just experienced previously on the
1 reliability? 01:42:02 A. Yes. 01:42:03 Q. And explain those. 01:42:04 A. Well, during the course – just getting 5 started on the fracking, you had to remove the 4-inch 6 PVC liner because you can't frack with that. 01:42:17 MR. SCHMIDT: I'm going to object that this 8 calls for expert testimony regarding well-drilling 9 processes and procedures. 01:42:10 THE COURT: He can testify as to what he saw, 11 what he knows personally. 01:42:12 THE WITNESS: Just to be clear – 01:42:13 THE COURT: Hold on. 01:42:14 THE WITNESS: I'm sorry. 01:42:15 THE COURT: Go ahead. Ask another question. 01:42:16 MR. BISSELL: Q. All right, your Honor. 17 Well, were you told something that raised concerns in 18 your mind about the longevity or reliability of the 19 well? 01:42:20 A. Yes, I was, and I was present for the process. 01:42:21 Q. And what were you told? 01:42:22 A. What happened was – 01:42:23 MR. SCHMIDT: I'm going to object, based on 24 that, hearsay. 01:42:25 MR. BISSELL: Doesn't matter if it's true or	578	1 well just a couple hundred feet away, that was a concern 2 that that would also cave in at some point. 01:44:33 Q. Okay. Now, if your house was on – your house 4 was on parcel I, correct? 01:44:35 A. Correct. 01:44:36 Q. So at this time, I'm talking about the 1994 7 time frame, what were you using parcels S, T, and V for? 01:44:58 A. Well, they were fenced and cross-fenced for 9 grazing my horses and timber productivity. 01:44:50 Q. Okay. And so the well that we've been talking 11 about, the upper well, was that the source of your water 12 for parcel I in 1994? 01:45:03 A. Yes, it was. 01:45:04 Q. Did you have any other source of water for 15 parcel I then? 01:45:06 A. None. 01:45:17 Q. Okay. And at some point, though, you drilled 18 the lower well, right? 01:45:19 A. Yes, I did. 01:45:20 Q. Okay. That we talked about. That's on parcel 21 V, right? 01:45:22 A. Yeah. 01:45:23 Q. Okay. 01:45:24 A. We witted that well also. 01:45:25 Q. Okay. And what was your purpose in drilling

1 that well? 01:46:22 A. Well, I, you know, lived in fear for those 3 years that the well would cave in, forever trapping my 4 pump and rendering that well dry at some point, and that 5 was probably primary. Plus, again, I had hoped to 6 irrigate my hayfield, and that well was more centrally 7 located to providing water for future residences on 8 parcels S, T, and V. 01:46:19 Q. And how far is the lower well from the house? 01:46:10 A. Oh, by road, a mile and a quarter, mile and a 11 half; and pipeline, 1800 feet to 2,000 feet. 01:46:12 Q. Okay. And did the lower well produce water? 01:46:13 A. Yes, it did. 01:46:14 Q. And how much? 01:46:15 A. I don't recall, but probably 2 to 3 gallons a 16 minute. 01:46:17 Q. And where did the pump come from for the lower 18 well? 01:46:19 A. The pump in the lower well. 01:46:20 Q. Where did -- so let me back up. 01:46:21 Did you put a pump in the lower well? 01:46:22 A. Yes, I did. 01:46:23 Q. Okay. Where did that pump come from? 01:46:24 A. It came out of -- the pump in the upper well 25 was removed and relocated to the lower well.	581	1 pipeline? 01:48:02 A. Yes, it was. 01:48:03 Q. And was that pipeline installed in 1999? 01:48:14 A. Yes, it was. 01:48:15 MR. SCHMIDT: Objection, your Honor. I would 6 like to hear the witness's testimony rather than the 7 leading questions. I think all those questions are 8 leading. 01:48:19 MR. BISSELL: They are, your Honor, but they 10 seem to be just kind of laying the foundation. 01:48:21 THE COURT: I'm going to overrule at this 12 time. Just go ahead. Just both, Mr. Bissell and 13 Mr. Farley, if you not try to talk over each other. 01:48:24 THE WITNESS: I'm sorry, your Honor. 01:48:25 THE COURT: That's all right. 01:48:26 MR. BISSELL: Q. Mr. Farley, is there -- so 17 back up for a second. 01:48:28 You installed the pipeline; is that correct? 01:48:29 A. Yes, I did. 01:48:30 Q. Okay. And is there a check valve in there 21 somewhere to keep the water from flowing down into the 22 well? 01:48:33 A. Yes, there is. 01:48:34 Q. And where is that? 01:48:35 A. At the bottom of the pipeline just before it	583
01:46:51 Q. And so why did you do that as opposed to 2 installing a separate pump? 01:47:03 A. Cost. Plus I was able to salvage the pump 4 that was -- that we were concerned may be trapped in a 5 cave-in of the structure. 01:47:16 Q. Okay. And when you drilled the lower well, 7 were you in a position financially over time to do 8 further improvements on the other parcels? 01:47:29 A. No, I did no further improvements. 01:47:31 Q. And what year was that, the lower well? 01:47:34 A. 1999. 01:47:36 Q. Okay. And you ran the waterline -- we've 13 already kind of covered this -- from the lower well to 14 the reservoir on parcel I, right? 01:47:46 A. Yes, I did that myself. 01:47:51 Q. And you did it yourself? 01:47:57 A. Yes. 01:47:58 Q. Okay. 01:47:59 A. With one of my laborers off one of my jobs. 01:47:20 Q. And there's a hydrant on T; is that correct? 01:47:21 A. That's correct. 01:48:22 Q. Okay. And does that hydrant come off the same 23 pipeline? 01:48:24 A. Yes, it does. 01:48:25 Q. Was it installed at the same time as the	582	1 enters the well casing, you trench beyond it and you put 2 a loop in it to help forestall the -- any water rushing 3 back down and there's a clapper valve, a one-way valve 4 that allows the water to go up the pipeline to the 5 cistern but does not allow it to go back into the well 6 casing. 01:49:27 Q. Okay. Has there ever been a time since you 8 installed the hydrant on parcel T that it has not been 9 operational? 01:49:30 A. No. 01:49:31 Q. After you drilled the lower well and moved the 12 pump from the upper well to it, was there any way to 13 pump water from the upper well? 01:49:44 A. No. 01:49:45 Q. And where did you use the water that was 16 pumped from the lower well? 01:50:07 A. I used it in five pastures, four corrals, 18 which would be on parcel I, S, and T. 01:50:29 Q. And how often through the years did -- would 20 you use the -- well, what would you use the hydrant on 21 parcel T for? 01:50:22 A. I use it for stock water and then I also used 23 it to irrigate a small -- referred to as a food plot on 24 parcel T. 01:50:25 Q. Okay. And how often did you use the water	584

1 from the lower well on parcel T? 01:50:52 A. Occasionally, sometimes I would -- well, it 3 would usually like once per year in the summer depending 4 on how I was managing my restoration grazing. Some 5 years I did not use it at all on parcel T. 01:51:16 Q. And how were you watering the stock? 01:51:17 A. Well, the hydrant was placed across the 8 cross-fence location, the T-fence location, which 9 became -- it wasn't cross-fenced when I placed it, but 10 it was eventually cross-fenced that way so you could put 11 one trough there and the stock could water from any one 12 of those three separate pastures, that they were 13 isolated in those pastures. 01:51:34 Q. So there was a trough? 01:51:35 A. Yes. 01:51:36 Q. Was that moveable? 01:51:47 A. Yes. 01:51:48 Q. Did you ever move it? 01:51:49 A. Yes. 01:51:50 Q. How often would you move it? 01:51:51 A. Well, I also have rights to the creek, and one 22 of my corrals in the bottom -- 01:51:53 MR. SCHMIDT: Objection. Nonresponsive. The 24 question was how often he moved it. 01:52:05 MR. BISSELL: How often --	585 01:53:01 A. Well, watching the market as you do, it 2 appeared that we were getting back up to the level of 3 sales of million-dollar homes off of water, and I wanted 4 to sell my home. 01:53:25 Q. Okay. And when was that that you decided to 6 do that? 01:53:27 A. 2017. 01:53:38 Q. And so what did you do to check it out? You 9 had this concern about the cave-in situation. What did 10 you do? 01:53:41 A. Well, the first thing I did is I made the 12 rounds to the different well drillers about drilling a 13 brand-new well. 01:53:54 Q. Okay. What did you find out? 01:53:55 A. It was expensive, plus -- 01:53:56 Q. Okay. 01:53:57 A. -- there was a discussion when the damage 18 occurred that perhaps that broken liner could be drilled 19 out but well drillers are -- have told me that they are 20 reluctant to drill on PVC. 01:54:01 Q. So then what did you do? You talked to folks 22 about a new well. Then what did you do? 01:54:23 A. Well, then eventually I thought, well, what 24 about the old well? Maybe I should check that, so I 25 pulled the cap off and I dropped a rock down there, and 587
01:52:01 THE COURT: Please ask the question again. 2 Please answer the questions, Mr. Farley. 01:52:03 MR. BISSELL: Q. How often did you move the 4 trough? 01:52:05 A. Whenever I was not using it at the hydrant on 6 T, so I can't say. 01:52:17 Q. Would you ever use the trough for water at any 8 location other than at the hydrant on parcel T? 01:52:29 A. Yes. 01:52:40 Q. And where else would you use it? 01:52:41 A. I had a corral on the bottom that was 12 separated from the creek, but I had water rights to pipe 13 water from the creek into that trough. 01:52:44 Q. Would you ever put the trough anywhere else? 01:52:45 A. Well, there's two locations down there that I 16 would use it from the bottom. 01:52:47 Q. Okay. And how would you fill it then? 01:52:48 A. Well, I had a pipe in the creek and, you know, 19 to head into my property with gravity flowing to the 20 trough. The trough would overflow and make its way back 21 into the creek. 01:52:52 Q. At some point did you decide to recommission 23 the upper well? 01:53:04 A. Yes. 01:53:05 Q. And why did you do that?	586 1 I found that the static level was very close to the 2 ground level, meaning there was a lot of water in that 3 column. 01:54:24 Q. And when you mean static level, you're talking 5 about the surface of the water? 01:54:30 A. Surface of the water in relation to the 7 surface of the ground. 01:54:38 Q. Then what did you do? 01:54:39 A. Well, then I got curious about maybe I could 10 resurrect that well. 01:54:41 Q. And then what did you do? 01:54:42 A. I contacted -- actually, he was the man that 13 went broke as Ponderosa Water Recovery Services, Scott 14 Barrett, and I had him come out. See, now we have new 15 technology. Now you can pull cable video cameras. 01:54:56 Q. What did you ask him to do? 01:54:57 A. I asked him to come out and he told me that 18 that existed. I didn't know. And I asked him to come 19 out and let's take a look down the hole. 01:55:00 Q. And did he do that? 01:55:01 A. Yes, he did. We did, yes. 01:55:02 Q. And what did he tell you? 01:55:03 A. He told me, and I was watching the screen as 24 well, we found out that what I had believed all those 25 years was not factual, that the liner was not broken. 588

01:55:21 Q. Okay. And so then what did you do?

01:55:22 A. When the liner – when the liner was sound,
3 what had happened is – while he was pulling the liner,
4 the well caved in on the lower end and trapped the liner
5 where it remains today.

01:55:46 Q. So what did you do then?

01:55:47 A. Well, I determined that the liner and the
8 casing were overlapping, so I decided to use that well
9 rather than drill a new well.

01:55:50 Q. Okay. And so then what did you do?

01:55:51 A. I gave up on the idea of drilling a brand-new
12 well and I contacted Mr. Barden.

01:55:53 Q. Okay. And then did you have North Idaho Pump
14 do some work for you?

01:55:55 A. The first thing I did before I invested any
16 money in is I paid North Idaho Pump \$500 to do an actual
17 well yield test at the wellhead.

01:55:58 Q. And did they do that?

01:55:59 A. Yes, they did.

01:56:00 Q. And what did they tell you that it showed?

01:56:01 A. They told me, and I witnessed this because I
22 was there the whole time, that it produced two and a
23 half gallons per minute and would do so as long as you
24 pumped it at two and a half gallons a minute.

01:56:25 Q. So was this in approximately July of 2017,

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01:57:51 THE COURT: All right. Thank you. Go ahead.

01:57:52 MR. BISSELL: Thank you, your Honor.

01:57:53 Q. Okay. So to get reset, who did you have come
4 look at the well again? Who was that, Ponderosa?

01:58:05 A. For the down-hole camera, yes.

01:58:06 Q. Okay. And then you had North Idaho Pump come
7 and do a test; is that correct?

01:58:18 A. A well test, correct.

01:58:19 Q. Okay. And you were there?

01:58:20 A. Yes, I was.

01:58:21 Q. All right. And you – did you tell them what
12 to do?

01:58:23 A. No.

01:58:24 Q. Did you tell them to stop the test at any
15 point?

01:58:26 A. No.

01:58:27 Q. Did they indicate to you at any time during
18 the test that they had any issues?

01:58:29 A. No.

01:58:30 Q. Okay. And so did you make a determination on
21 what you wanted to do based upon what they told you?

01:58:32 A. Yes.

01:58:33 Q. The yield.

01:58:34 A. Yes.

01:58:35 Q. And what did you decide to do?

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1 June, July?

01:56:52 A. June, July, that's correct.

01:56:53 Q. Did you tell them what to do, how to do the
4 test?

01:56:55 A. No.

01:56:56 Q. Did you tell North Idaho Pump when to stop the
7 test?

01:57:08 A. No, they explained – well, they put – it
9 wasn't – it was not a garden hose –

01:57:10 MR. SCHMIDT: Objection. It was a yes-or-no
11 question. It did invite a narrative and it's
12 nonresponsive.

01:57:13 THE COURT: Well, I don't think that's your
14 objection to make. Isn't it the – the questioning
15 party's objection as to nonresponsive.

01:57:16 MR. SCHMIDT: What's that?

01:57:17 THE COURT: It's the questioning party's
18 nonresponsive objection to make.

01:57:19 MR. SCHMIDT: Well, he's going into a
20 narrative then.

01:57:21 THE COURT: Okay. You may make that
22 objection. Mr. Farley, please answer the questions and
23 please don't go into a narrative, a long explanation,
24 unless your counsel is asking the same, okay?

01:57:25 THE WITNESS: Yes, sir.

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01:58:41 A. I decided to freeze-frack that well.

01:58:42 Q. Okay. And when did you do that then?

01:58:53 A. Just –

01:58:54 Q. Let me rephrase it. How long after you had it
5 looked at or the well test done did you freeze-frack it?

01:59:06 A. Within a few days, couple weeks.

01:59:07 Q. Okay. And then what did you do?

01:59:18 A. The next day after it was freeze-fracked, I
9 believe it was North Idaho Pump returned, and returned
10 and put a pump down the hole.

01:59:21 Q. Okay. And if you look at – and North Idaho
12 Pump did some work for you, right?

01:59:43 A. Yes.

01:59:44 Q. Take a look at Exhibit 5, please. And
15 actually, before we get to the detail of Exhibit 5, can
16 you say in general what did North Idaho Pump do?

02:00:17 A. Put a new pump down the hole. The existing
18 electrical line and – from the panels in the basement
19 were still there, just disconnected. The preexisting
20 inch-and-a-quarter poly pipeline from the wellhead to
21 the inlet area of the cistern were still there and they
22 had those reconnected as well.

02:00:23 Q. And this is all the upper well?

02:00:24 A. Yeah, and new pump controls put into the
25 basement of the house.

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02:00:41 Q. And did they do anything with regard to the 2 lower well? 02:00:43 A. Actually, the same day, they replaced the pump 4 in the lower well because it was having issues. It 5 wasn't working anymore. 02:00:56 Q. Okay. And then they billed you, correct? 02:00:57 A. Yes. 02:00:58 Q. And then are the invoices for that work 9 attached to Exhibit 5, the first three pages – well, 10 strike that. 02:01:41 Are pages 3 through 5 of Exhibit 5 the invoice 12 from North Idaho Pump for that work? 02:01:43 A. Yes, I've got Gideon 93, 94, and 95. 02:01:44 Q. Okay. And so let's just start on the first 15 one. See if we can run through this what was going on. 16 So in the first – so we're on Gideon 1993. That 17 references pulling the lower well pump, correct? 02:01:51 A. Yes. 02:01:51 Q. And then they put a new one-and-a-half 20 horsepower 5-gallon-per-minute pump in it, in the upper 21 well? 02:02:22 A. No, this is the lower well, the beginning of. 02:02:23 Q. Oh. 02:02:24 A. 1993 is the lower well. 02:02:25 Q. Got it. But then we go down to the next	593	1 hearsay and also Mr. Gideon is not an expert – or 2 sorry, Mr. Farley is not an expert who's been disclosed 3 as to how well systems work. 02:04:04 THE COURT: He can testify as to what he did. 5 Sustained on that basis. 02:04:16 MR. BISSELL: Q. So what were the reasons? 02:04:17 A. I thought I heard sustained. I'm sorry. 02:04:18 Q. Oh, okay. 02:04:29 A. I'm sorry. 02:04:40 Q. I'm just asking you – what was your purpose 11 for putting in the ball valve? 02:04:42 A. You – if I can't say what I know or what I'm 13 told, I don't know that I can answer. 02:04:44 Q. You can say what you were told that led to 15 your actions. 02:04:46 A. I have been told by hydrofrack and 17 freeze-frack experts that the best thing you can do for 18 a well that's been fracked is pump the you know what out 19 of it because that opens the fissures that have been 20 expanded and the cracks in the structure, the 21 underground structure. 02:05:22 MR. SCHMIDT: I'm going to object again. This 23 is him testifying about what occurs. If he installed a 24 pump, he can testify about that, but I do believe this 25 testimony is hearsay, and he's not an expert, and he	595
1 paragraph, they also put a pump in the upper well, 2 correct? 02:02:13 A. Yes. 02:02:24 Q. Okay. And then we go to page 3 – no, I'm 5 sorry, I keep saying that – the third page of the 6 invoice, which is the fifth page of the exhibit. And 7 that references the ball valve halfway down, right? 02:02:48 A. That is correct. 02:02:49 Q. And explain what that was. 02:02:50 A. Well, subsequent to the day that we all worked 11 together to put the pumps in, I had them install a ball 12 valve, and this was Brad Potter and the helper. I had 13 excavated the inlet myself so the connections could be 14 made and reconnection of the poly pipe and the switch 15 wire to the float switch for the upper well, and I had 16 them put in a – this ball valve downstream from the – 17 where the upper well pipe came in on the pipeline from 18 the lower well. 02:03:19 Q. And why did you want a valve put in? 02:03:20 A. Well, any time you have two sources like that, 21 it's always a good idea to be able to isolate them for 22 troubleshooting and repairs, and moreover, I've been 23 told by – every time I had a well fracked including 24 custom homes I built – 02:03:25 MR. SCHMIDT: I'm going to object based on	594	1 shouldn't be testifying. That's my objection. 02:05:12 MR. BISSELL: I can just move on, your Honor. 02:05:13 THE COURT: Okay. Go ahead. 02:05:14 MR. BISSELL: Q. All right. Mr. Farley, did 5 you take some photographs of what was going on with the 6 work? 02:05:27 A. Some. 02:05:28 Q. Okay. Turn to Exhibit MM, please. 9 Mr. Farley, can you identify MM, please, first page? 02:06:10 A. Yes. 02:06:11 Q. What is that – let me back up for a second. 02:06:12 There's pictures, these three pages of MM, are 13 these photographs that were taken by you? 02:06:14 A. Yes. 02:06:15 Q. And when were they taken? 02:06:16 A. I believe the exact date was July 7th, 2017. 02:06:17 Q. Okay. And do they accurately reflect the 18 actual conditions that are displayed in the photographs? 02:06:19 A. Yes, they do. 02:06:20 MR. BISSELL: Your Honor, move for the 21 admission of MM. 02:06:22 (Defendants' Exhibit MM offered.) 02:06:23 MR. SCHMIDT: No objection. 02:06:24 THE COURT: MM will be admitted. 02:06:25 (Defendants' Exhibit MM admitted.)	596

02:06:41 MR. BISSELL: Q. All right. Mr. Farley, tell
2 me what we're looking at in the first page of Exhibit
3 MM.

02:06:44 A. The background would be the east face of the
5 concrete cistern, and then we have the 4-inch corrugated
6 that is drainpipe for rain gutters. Upper right-hand
7 corner is conduit and telemetry wire side by side. And
8 below the drainpipe, which I put in, you can see the
9 gray direct-burial heavy electrical line that enters the
10 conduit, is concealed by the drain tile.

02:07:30 Moving down, you see the – the actual
12 connection from the inlet of the cistern and the poly
13 pipe that goes to the lower well and also the
14 direct-burial phone cable that is the telemetry wire
15 from the float switches within the cistern to the BW
16 switch on the panel that turns on the lower well pump.

02:08:07 Q. Okay. Now go to page –

02:08:08 A. And a tape measure.

02:08:09 Q. Okay. And now go – and this was – was this
20 before the work was done in there?

02:08:21 A. This was before the reconnection of the poly
22 pipe to the upper well.

02:08:23 Q. Okay. Now go to page 3 of Exhibit MM. We'll
24 come back to page 2, but go to page 3.

02:08:25 A. I'm there.

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1 and stacked them in there on top so I'd have access to
2 the ball valve, and then I backfilled it with a shovel.

02:10:03 Q. Okay.

02:10:14 A. And the green thing to the left would be the
5 lid to the valve boxes.

02:10:16 Q. Okay. Now go to Exhibit NN, please.

02:10:27 A. I'm there.

02:10:28 Q. Okay. And is this a photograph that was taken
9 by you?

02:10:30 A. Yes, same date.

02:10:31 Q. Of July of 2017?

02:10:32 A. Correct.

02:10:33 Q. Okay. And does it accurately reflect what is
14 depicted, the actual conditions accurately depicted in
15 this photograph?

02:10:46 A. Yes, that is.

02:10:47 MR. BISSELL: Your Honor, move for admission
18 of NN.

02:10:49 (Defendants' Exhibit NN offered.)

02:10:50 MR. SCHMIDT: No objection.

02:10:51 THE COURT: NN will be admitted.

02:10:52 (Defendants' Exhibit NN admitted.)

02:10:53 MR. BISSELL: Q. All right. So what are we
24 looking at there, Mr. Farley? Exhibit NN, please,
25 describe what that is.

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02:08:31 Q. And then explain – don't worry about the
2 wires. Explain what we see there with regards to the
3 pipes.

02:08:34 A. You see new galvanized fittings and, of
5 course, the concrete face of the 6-foot-tall cistern.
6 New galvanized fittings, then a T, which is below the
7 blue handle of the new ball valve, and below that T you
8 can see the coupling and the inch-and-a-quarter poly
9 pipe coming up out of the ground into that. That is the
10 supply from the upper well and then the ball valve, and
11 down to the bottom left corner of that is the poly pipe
12 to the lower well.

02:09:13 Q. And as we see in this picture, that valve is
14 on, correct?

02:09:15 A. That is correct.

02:09:16 Q. And so that valve's off. It – am I correct,
17 the water from the upper well can still get into the
18 cistern?

02:09:20 A. It can only go into the cistern.

02:09:20 Q. Okay. Then – oh, now we'll go back to page 2
21 of Exhibit MM and explain what we're looking at there.
22 Don't worry about the drainpipe.

02:09:23 A. Okay. After – those are my feet at the
24 bottom of the picture – or my boots, actually. After
25 Brad and Kyle left, I had provided my own valve boxes

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02:10:54 A. Tape measure and a Sharpie and a black mark on
2 the bellyband of the cistern building to assist me in
3 relocating the valve box, because after I got stuck –
4 got done stacking up the valve boxes, the lid ended up
5 at the bottom, as did the sod.

02:11:26 Q. Okay. How far down from the surface was that
7 then?

02:11:28 A. Oh, I suppose the sod's 4 inches thick.

02:11:29 Q. Okay. Now, was the lower – after this work
10 was completed that we've been talking about that North
11 Idaho Pump did, was the lower well providing water to
12 the cistern?

02:11:53 A. Well, at some point I shut the valve off and
14 the box.

02:11:55 Q. When did you do that?

02:11:56 A. I think I shut it off that day.

02:11:57 Q. Okay. Why did you keep it connected at all?

02:12:08 A. The lower well?

02:12:09 Q. Yeah.

02:12:20 A. Well, I guess a number of reasons: I needed
21 to get my water – you know, based on my water rights, I
22 needed to be able to get my water from my lower well
23 over to parcel S, and in contemplating selling, I
24 thought that I might want to include the lower well as
25 a – I guess what would be the term -- an additional

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1 source of water for parcel I. 02:13:52 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. 02:13:40 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? 02:14:20 A. Yeah, they had never provided -- 02:14:21 Q. Did you ask him to give anything? 02:14:22 A. Yes. 02:14:23 Q. Okay. 02:14:24 A. Sorry. 02:14:25 Q. Take a look at Exhibit 54, please. Okay. And	601	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. 02:16:49 Q. Between 1999 and 2017, what was the source of 11 water for the home on parcel I? 02:16:51 A. The lower well only. 02:16:51 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	603
1 do you recognize that? 02:14:52 A. Yes, sir. 02:14:53 Q. Okay. And is that the letter Jody gave you? 02:14:54 A. That is my well test report from Mr. Barden. 02:15:05 Q. And did you tell him what to say? 02:15:06 A. No. 02:15:17 Q. Did you ever have another well test done? 02:15:18 A. No. 02:15:29 Q. After turning off the ball valve, did you ever 10 allow the lower well to feed into the cistern again? 02:15:31 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. 02:15:56 Q. And how long was that on for then? 02:15:57 A. Oh, I don't know, a day, couple days. 02:15:58 Q. Okay. 02:15:59 A. Until the issue was resolved. 02:16:20 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? 02:16:24 A. The upper well. 02:16:25 Q. Okay. Was there any other source?	602	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. 02:18:24 THE WITNESS: Sure. 02:18:55 THE COURT: Who is your next witness? 02:18:56 MR. BISSELL: Mr. Cohen. 02:18:57 THE COURT: Cohen? 02:18:58 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	604

		605		607
	1	there in the witness stand. And if you'd pull that	02:21:01	MR. BISSELL: Okay. Thank you. And that's
	2	microphone or scooch up to that microphone. If you	2	all I have, sir.
	3	would state your full name and spell your last name,	02:21:03	THE WITNESS: How about honesty?
	4	please.	02:21:04	MR. BISSELL: Well, that's good too. Thank
02:19:25	5	THE WITNESS: Roger David Cohen, C-O-H-E-N.	5	you. That's all I have, your Honor.
02:19:36	6	THE COURT: Go ahead, Mr. Bissell.	02:21:16	THE COURT: Mr. Schmidt?
02:19:37		DIRECT EXAMINATION	02:21:17	MR. SCHMIDT: No questions. Thank you.
02:19:38	8	MR. BISSELL: Q. Good afternoon, Mr. Cohen.	02:21:18	THE COURT: Okay. May this witness be
	9	Thank you for being here. Could you state your age,	9	excused?
	10	sir?	02:21:10	MR. BISSELL: Yes, your Honor.
02:19:41	11	A. Eighty.	02:21:11	THE COURT: Thank you, Mr. Cohen.
02:19:42	12	Q. And where do you live, sir?	02:21:12	MR. BISSELL: Mr. Cohen, that's all I got.
02:19:43	13	A. Post Falls, Idaho.	02:21:13	THE COURT: Do you have another witness at
02:19:44	14	Q. Okay. Do you know Brian Farley?	14	this time?
02:19:45	15	A. For a long time.	02:21:15	MR. BISSELL: No. We'll get Mr. Farley again,
02:19:46	16	Q. And could you say how long?	16	your Honor. Thank you for that.
02:19:47	17	A. Since the '70s.	02:21:17	THE COURT: Sure. Mr. Farley, if you would
02:19:48	18	Q. And in what capacity have you known him?	18	step back to the stand and you're still under oath.
02:19:49	19	A. He was a builder and I was a kitchen cabinet	02:21:19	MR. BISSELL: I'm sorry, your Honor. I guess
	20	salesman.	20	we do.
02:19:21	21	Q. So you've had business relations with him?	02:21:21	THE COURT: Okay. Raise your right hand,
02:20:22	22	A. Definitely.	22	ma'am.
02:20:23	23	Q. Okay. And over how many years did you perform	02:21:23	PAMELA WILLIAMS,
	24	work for him?	02:21:24	called as a witness herein,
02:20:25	25	A. A lot.	02:21:25	having been duly sworn on oath,
		606		608
02:20:01	1	Q. I mean like...	02:22:01	testified as follows:
02:20:02	2	A. I didn't retire until '85 -- excuse me, '95.	02:22:02	THE COURT: If you have a seat right there in
	3	Excuse me, '95.	3	the witness stand, ma'am.
02:20:14	4	Q. Okay. Okay. And how many business	02:22:14	THE WITNESS: Right here?
	5	transactions you think you had with him?	02:22:15	THE COURT: Yes, ma'am. And if you'd pull
02:20:16	6	A. Dozens.	6	that microphone up towards you. And if you would state
02:20:17	7	Q. Okay. And based upon your interactions with	7	your full name and spell your last name.
	8	Mr. Farley, do you have an opinion of his character for	02:22:18	THE WITNESS: Pamela Williams,
	9	truthfulness or untruthfulness?	9	W-I-L-L-I-A-M-S.
02:20:31	10	A. I do.	02:22:10	THE COURT: Thank you. Go ahead, Mr. Bissell.
02:20:31	11	Q. And what is that opinion?	02:22:11	MR. BISSELL: Thank you, your Honor.
02:20:32	12	A. Based upon the fact that Brian was a -- when	02:22:12	DIRECT EXAMINATION
	13	he built houses they were specs, and he would get a	02:22:13	MR. BISSELL: Q. Good afternoon,
	14	price for me for the cabinets as he did from other subs	14	Ms. Williams. How old are you?
	15	for other things --	02:22:15	A. How old am I?
02:20:46	16	Q. Mr. Cohen, I hate to stop you. It's just an	02:22:16	Q. Yes.
	17	evidentiary thing. I can't have you go into any	02:22:17	A. Seventy-seven.
	18	specific instances of anything. It just has to be, do	02:22:18	Q. Okay. And where do you live, ma'am?
	19	you have an opinion as to his character of truthfulness	02:22:19	A. I live in Hayden, Idaho.
	20	or untruthfulness?	02:22:20	Q. And what's your specific address?
02:20:21	21	A. I do.	02:22:21	A. 25024 North Derting Road.
02:20:22	22	Q. And what is that opinion?	02:22:22	Q. Okay. And do you know Mr. Farley?
02:21:23	23	A. Excellent.	02:22:23	A. Yes.
02:21:24	24	Q. Okay. For truthfulness or untruthfulness?	02:22:24	Q. Well, let me back up. How long have you lived
02:21:25	25	A. For truthfulness.	25	at that address?

02:22:51 **A. Well, I've lived there five years. It was**
 2 **five years in April of this year.**
 02:22:53 **Q. Okay. And have you known Mr. Farley the**
 4 **entire time?**
 02:23:05 **A. Yes, and even before then.**
 02:23:06 **Q. Okay. And --**
 02:23:07 **A. I met him in the fall of 2012 when I looked at**
 8 **the property for sale, but I didn't move until 2017.**
 02:23:19 **Q. Okay. And have you had any business dealings**
 10 **with Mr. Farley?**
 02:23:41 **A. Well, I wouldn't say business dealings.**
 02:23:42 **Q. Okay.**
 02:23:43 **A. He -- when I was going to put part of my --**
 02:23:44 **MR. SCHMIDT: Objection.**
 02:23:45 **MR. BISSELL: Q. Got to stop you there,**
 16 **ma'am. I'm sorry. We just have some evidentiary rules**
 17 **when it comes to this sort of thing, okay?**
 02:23:48 **A. Okay.**
 02:23:49 **Q. So how many interactions would you say you've**
 20 **had with Mr. Farley over the last five years?**
 02:23:51 **A. Well, I would say a dozen or more.**
 02:23:52 **Q. Okay. And do you live in the same community**
 23 **of Mr. Farley?**
 02:23:54 **A. Not right now.**
 02:23:55 **Q. Okay. But did you?**

02:23:58 **A. Yes.**
 02:23:59 **Q. Okay. And so based upon your interactions**
 3 **with Mr. Farley, and do you have an opinion as to his**
 4 **character for truthfulness and untruthfulness?**
 02:24:15 **A. Truthfulness.**
 02:24:16 **Q. Okay.**
 02:24:17 **A. Yes.**
 02:24:18 **MR. BISSELL: Thank you. That's all I have,**
 9 **your Honor.**
 02:24:19 **THE COURT: Mr. Schmidt?**
 02:24:19 **MR. SCHMIDT: No questions.**
 02:24:19 **THE COURT: Thank you, ma'am. You may be**
 13 **excused.**
 02:24:19 **THE WITNESS: Okay.**
 02:24:19 **THE COURT: Thank you.**
 02:24:19 **MR. BISSELL: And now I'm ready for Mr. Farley**
 17 **again, your Honor.**
 02:24:19 **THE COURT: Okay. Mr. Farley, would you**
 19 **retake the stand. You are still under oath.**
 02:24:20 **THE WITNESS: Thank you, sir.**
 02:24:21 **MR. BISSELL: Q. All right. So, Mr. Farley,**
 22 **while the ball valve was closed, I don't know if I asked**
 23 **you this or not, did you use the water from the lower**
 24 **well for anything?**
 02:24:25 **A. Yes, I did.**

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02:24:51 **Q. Okay. For what?**
 02:24:52 **A. For watering my stock and irrigating my food**
 3 **plot.**
 02:25:04 **Q. Okay. And how did you -- how do you turn the**
 5 **pump on? How do you get water to it?**
 02:25:16 **A. Well, first you have to take the ATV or**
 7 **whatever up to the hydrant and lift the handle, and then**
 8 **you get into what we call the pump house, and you take**
 9 **the cover off of the switch box, and you press in on the**
 10 **contacts, and you hold the contacts in place with a pair**
 11 **of needle-nose vice grips.**
 02:25:32 **Q. And then what happens?**
 02:25:33 **A. The pump comes on, you go back up to the**
 14 **trough and you watch it until it's nearly full. You go**
 15 **back down to the pump house and you remove the**
 16 **needle-nose vice grips, and then you go back up and you**
 17 **close the handle to the hydrant.**
 02:25:58 **Q. Okay.**
 02:25:59 **A. That's for filling the trough.**
 02:25:59 **Q. Okay. And what about for -- you use it for**
 21 **other purposes?**
 02:26:02 **A. Yeah. I string out a garden hose and I have a**
 23 **Rainbird sprinkler on a tripod and you let it run enough**
 24 **until you feel like you've done enough irrigating.**
 02:26:25 **Q. Take a look at Exhibit 52, please. Let me**

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1 **know when you're there.**
 02:26:22 **A. I'm good.**
 02:26:23 **Q. All right. If you take a gander at those**
 4 **pictures. As you may remember, Mr. Barden talked about**
 5 **some of the jumper wires, and you can kind of see him**
 6 **pointing to them on page 2 of 52. See that?**
 02:26:48 **A. Yes.**
 02:26:48 **Q. Okay. Did you ever use jumper wires?**
 02:26:49 **A. No.**
 02:26:49 **Q. What did you use instead?**
 02:26:51 **A. A pair of needle-nose vice grips to hold the**
 12 **contact closed. You cannot see the contact in these**
 13 **pictures.**
 02:27:04 **Q. Do you know who made those jumper wires?**
 02:27:05 **A. Jody did.**
 02:27:06 **Q. How do you know?**
 02:27:07 **A. Because I watched him make them and use them**
 18 **to jumper the well when the BW was burnt out.**
 02:27:19 **Q. So you personally observed him --**
 02:27:20 **A. Yes, I did.**
 02:27:21 **Q. -- do that?**
 02:27:22 **You personally observed him do that?**
 02:27:23 **A. Yes.**
 02:27:24 **Q. Okay. Okay. Let's talk about this survey.**
 25 **So at some point you decided to have the parcels**

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1 surveyed, correct? 02:27:32 A. Yes. 02:27:33 Q. Okay. And why was that? 02:27:44 A. Parcel I, like some of the parcels in – can I 5 have a – give a narrative answer, or no? 02:27:46 Q. Well, go ahead. We'll see how it goes. Why 7 did you have a parcel surveyed? 02:27:58 A. Parcel I, like several parcels in Harold 9 Derting's old ranch, they're described by geographic 10 description only, not metes and bounds, and I realized 11 that if a subsequent buyer were to do – 02:28:02 Q. Let me stop you for a second. When you talked 13 about – or described by geographic description only, 14 are you talking about something that says the northeast 15 and the southwest? 02:28:16 A. Yeah. In this case it's the northeast of the 17 northeast of the southwest there – no, southwest to the 18 southwest to the northeast. I'm sorry, yes. 02:28:19 Q. All right. 02:28:20 A. That is correct. That is geographic 21 description. 02:28:22 Q. Okay. So go ahead. 02:28:23 A. I realized that if a buyer was to – were to 24 have an actual record of survey being familiar with the 25 situation and the entire section, Section 9, that that	613 1 14, can you tell me what you understood would be the 2 parcels affected by a survey? 02:30:13 A. I will go by the last four numbers of the 4 parcel assessors number which on I would be 4700. It 5 would affect 5000, which is, as you can see, two tax 6 numbers. It's S and T is – only had one parcel number. 7 They combined those for taxing. 02:30:48 Q. Okay. 02:30:49 A. It would affect 1500. It would affect 4200, 10 Mike Williams. It would affect 4400, and it would 11 affect 4650. 02:30:52 MR. SCHMIDT: I'm going to object here. This 13 is in the realm of expert testimony when we start to 14 talk about whose property it's going to affect, and we 15 don't even really understand what that means. 02:31:06 THE COURT: Sustained. 02:31:17 MR. BISSELL: Your Honor, I asked him his 18 understanding. 02:31:19 THE COURT: Yeah, what his understanding is, 20 so overruled. 02:31:21 MR. BISSELL: Q. Any others? 02:31:22 A. And because it would affect 4650, Mr. Hiller's 23 property, it would similarly affect 4600. 02:31:24 Q. Okay. So did you have an understanding, then, 25 if you would need something from those surrounding 615
1 would preclude my access to parcel T. 02:28:42 Q. Preclude your access from where? 02:28:53 A. From Derting Road. 02:28:54 Q. Oh, you mean preclude parcel T from accessing 5 Derting Road? 02:28:56 A. Correct. 02:28:57 Q. Okay. 02:28:58 A. Well, at that time it was S, but parcel S or 9 T. 02:29:00 Q. Okay. And so you hired Scott Rasor from 11 Meckel Engineering, who we heard from, to do the work, 12 right? 02:29:13 A. Yes. 02:29:14 Q. And you started in 2018? 02:29:15 A. Yes, I contacted him in June of 2018. 02:29:16 Q. Okay. And, you know, why don't we look at 17 Exhibit 14 and turn your attention to page 2 of 14. Let 18 me know when you're there. 02:29:59 A. I am there. 02:29:20 Q. Okay. So that's the – that's what we call 21 the before picture, right, before any surveys were done? 02:30:22 A. This plat? 02:30:23 Q. Yep. 02:30:24 A. Yes. 02:30:25 Q. Okay. So looking at that page 2 of Exhibit	614 1 property owners to have any kind of boundary line 2 adjustment take place? 02:31:43 A. Yes, I would. 02:31:44 Q. And what would you need for them, as you 5 understand? 02:31:46 A. As it turned out, the east to west boundaries 7 were fine because we were in the west half of section 9, 8 but the north and south boundaries were shifting 9 substantially, which was my concern of blocking my 10 access to parcel T. 02:32:01 Q. So what would you need from – did you 12 understand you would need from adjoining parcel owners 13 in order to be able to do the boundary line adjustment? 02:32:04 A. A quitclaim deed. 02:32:05 Q. Okay. And so did you understand that the 16 property parcel I was to extend into the – from – into 17 4200 to the north? 02:32:18 A. Yes, it did. 02:32:19 Q. And was that Mr. Williams' property? 02:32:20 A. Yeah, there's two Williams. That's Mr. Mike 21 Williams. 02:32:22 Q. Oh, okay. And did you – well, were you ever 23 able to get the quitclaim from him? 02:32:24 A. No, I was not. 02:32:25 Q. Okay. And did you observe the premises after 616

1 Mr. Rasor marked the southern boundary monumented – 02:33:22 A. Yes, sub – yes. 02:33:23 Q. Okay. Did you see any survey stakes? 02:33:24 A. Yes. 02:33:45 Q. Take a look at Exhibit OO, Mr. Farley. 02:33:56 A. There. 02:33:57 Q. Okay. Did you take that photograph? 02:33:58 A. Yes, I did. 02:33:59 Q. And when did you take it? 02:34:00 A. I believe I took that when I put those corral 11 panels up as a gate when I moved my horses up to the 12 pasture. That would have been in May or June of 2019. 02:34:13 Q. Okay. And does the – what we see in Exhibit 14 OO an accurate reflection of the actual conditions that 15 existed at the time you took the photograph? 02:34:36 A. Yes. 02:34:37 MR. BISSELL: Your Honor, I'd move for 18 admission of OO. 02:34:39 (Defendants' Exhibit OO offered.) 02:34:40 MR. SCHMIDT: No objection. 02:34:41 THE COURT: OO will be admitted. 02:34:42 (Defendants' Exhibit OO admitted.) 02:34:43 MR. BISSELL: Q. Okay. Mr. Farley, what do 24 we see in OO there, that wooden stake? What is that? 02:34:45 A. That is one of Mr. Rasor's typical survey	617 1 a couple weeks went by and I called him and left a 2 voicemail. I never heard from him so I just told 3 Mr. Reagan, I said, "You deal with him." 02:36:44 Q. And when was that, approximately, when you 5 talked to Mr. Reagan? 02:36:46 A. Oh, that would probably be in February 2019. 02:36:47 Q. But the record of survey wasn't filed until 8 about June, right? 02:36:59 A. June 4th, that's correct. 02:36:50 Q. And why is that? 02:36:51 A. Well, Mr. Williams never answered me. I never 12 heard from him. So as spring came and I was getting 13 more and more requests for showings and showings, I told 14 Mr. Reagan in April, I said, "I'm not going to wait for 15 Mr. Williams anymore. It's not going to make any 16 difference of three-tenths of an acre, and to go ahead 17 and tie this thing off." 02:37:18 Q. But it didn't happen until June. Why is that? 02:37:19 A. Well, Mr. Reagan was terminally ill with 20 cancer, and at times he would be unavailable due to 21 being hospitalized and sometimes he couldn't speak. The 22 cancer had metastasized to his lungs, through his brain 23 stem and his spine. And sometimes he'd be undergoing 24 chemo and would be unavailable. And Mr. Reagan had 25 always struggled with substances and he – one of the 619
1 stake he described with the orange and blue ribbons on 2 the stake, and then there's ribbons at the bottom. 3 Those ribbons are wrapped around the top of the 4 five-eighths rebar with the black and the yellow plastic 5 cap with his PLS number on it. 02:35:16 Q. And is that what all the stakes looked like? 02:35:17 A. Yes, sir. 02:35:28 Q. Did you ever remove any of survey stakes? 02:35:29 A. No. 02:35:40 Q. And as we've talked, it took a while before 11 the record of survey was finally recorded, correct? 02:35:42 A. Yes, it did. 02:35:43 Q. And what took so long? 02:35:44 A. Well, obtaining the quitclaim from Mr. Hiller 15 for the southwest corner, and that did not go down as he 16 said. But he wanted to consult an attorney; that took 17 sometime. And we spoke in wintertime. 02:35:58 And then I approached Mr. Williams. He came 19 up and met with me. We walked over through the snow to 20 the northern boundary line, and I explained it to him. 21 And he said, "Well, I understand I never really owned 22 that." The survey's been done. And he said he needed 23 to talk to someone at the title company, and I waited – 24 he understood that he would do it. He just needed to 25 talk to someone at the title company that he knew. And	618 1 ways he dealt with his impending death was he drank 2 quite a bit. 02:37:53 Q. So ultimately, why did it wait to get filed 4 until June 4th? 02:37:55 A. Because the work wasn't done by Mr. Reagan 6 until that time. 02:38:07 Q. Okay. 02:38:08 THE COURT: Counsel? 02:38:09 MR. BISSELL: Yes. 02:38:10 THE COURT: This is a good time to stop. 02:38:11 MR. BISSELL: Yep. Perfect for me too, your 12 Honor. Thank you. 02:38:13 THE COURT: All right. All right. Tomorrow, 14 hopefully the final day. How we looking at time? We're 15 off the record at this point. 02:38:16 (Evening recess.) 17 18 19 20 21 22 23 24 25 620

02:38:21 02:38:22 02:38:23 02:38:24 02:38:25 02:38:26 02:38:27 02:38:28 02:38:29 02:38:30 02:38:31 02:38:32 02:38:33 02:38:34 02:38:35 02:38:36 02:38:37 02:38:38 02:38:39 02:38:40 02:38:41 02:38:42 02:38:43 02:38:44 02:38:45 02:38:46 02:38:47 02:38:48 02:38:49 02:38:50 02:38:51 02:38:52 02:38:53 02:38:54 02:38:55 02:38:56 02:38:57 02:38:58 02:38:59 02:39:00 02:39:01 02:39:02 02:39:03 02:39:04 02:39:05 02:39:06 02:39:07 02:39:08 02:39:09 02:39:10 02:39:11 02:39:12 02:39:13 02:39:14 02:39:15 02:39:16 02:39:17 02:39:18 02:39:19 02:39:20 02:39:21 02:39:22 02:39:23 02:39:24 02:39:25	IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI —oOo— ARTHUR V. GIDEON and KATHERINE M. GIDEON, husband and wife, Plaintiff, vs. BRIAN T. FARLEY and PAMELA FARLEY, husband and wife, Defendant. Case No. CV28-20-2706 Court Trial - Day 4 AT: Kootenai County, Coeur d'Alene, Idaho ON: June 9, 2022 BEFORE: Honorable Richard S. Christensen, District Judge APPEARANCES: For the Plaintiff: Lukins & Annis, P.S. By: Michael G. Schmidt, Esq. 601 E Front Avenue, Suite 303 Coeur d'Alene, Idaho 83814 For the Defendant: Campbell & Bissell By: Michael S. Bissell, Esq. Brandon E. Slaven, Esq. 820 W 7th Avenue Spokane, Washington 99204	621 1 please. 2 THE WITNESS: Ramona Jean Olson, O-L-S-O-N. 3 THE COURT: Thank you. Go ahead, Mr. Bissell. 4 DIRECT EXAMINATION 5 MR. BISSELL: Q. Good morning, Ms. Olson. 6 Where do you live? 7 A. Hayden, Idaho, up on 22415 Derting Road. 8 Q. Is that near where Mr. and Mrs. Farley used to 9 live? 10 A. Yes, it is. 11 Q. Okay. How long have you lived there? 12 A. Five years. 13 Q. Okay. And do you know Mr. Farley? 14 A. Yes, I do. 15 Q. Have you had any business dealings with him? 16 A. Just interactions. 17 Q. Okay. And throughout that five-year period, 18 how many interactions or so do you think you've had 19 involving him? 20 A. Multiple. 21 Q. And during that time, had you formed an 22 opinion as to his character for truthfulness or 23 untruthfulness? 24 A. Yes. 25 Q. And what is that opinion?
02:39:26 02:39:27 02:39:28 02:39:29 02:39:30 02:39:31 02:39:32 02:39:33 02:39:34 02:39:35 02:39:36 02:39:37 02:39:38 02:39:39 02:39:40 02:39:41 02:39:42 02:39:43 02:39:44 02:39:45 02:39:46 02:39:47 02:39:48 02:39:49 02:39:50 02:39:51 02:39:52 02:39:53 02:39:54 02:39:55 02:39:56 02:39:57 02:39:58 02:39:59 02:40:00 02:40:01 02:40:02 02:40:03 02:40:04 02:40:05 02:40:06 02:40:07 02:40:08 02:40:09 02:40:10 02:40:11 02:40:12 02:40:13 02:40:14 02:40:15 02:40:16 02:40:17 02:40:18 02:40:19 02:40:20 02:40:21 02:40:22 02:40:23 02:40:24 02:40:25 02:40:26 02:40:27 02:40:28 02:40:29 02:40:30 02:40:31 02:40:32 02:40:33 02:40:34 02:40:35 02:40:36 02:40:37 02:40:38 02:40:39 02:40:40 02:40:41 02:40:42 02:40:43 02:40:44 02:40:45 02:40:46 02:40:47 02:40:48 02:40:49 02:40:50 02:40:51 02:40:52 02:40:53 02:40:54 02:40:55 02:40:56 02:40:57 02:40:58 02:40:59 02:41:00 02:41:01 02:41:02 02:41:03 02:41:04 02:41:05 02:41:06 02:41:07 02:41:08 02:41:09 02:41:10 02:41:11 02:41:12 02:41:13 02:41:14 02:41:15 02:41:16 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1 discussed this, but I just want to kind of set the
2 stage.
09:04:23 A. There.
09:04:24 Q. All right. And that's your notice of claim
5 for the water right for 16445, the lower well, correct?
09:04:36 A. Correct.
09:04:37 Q. If you look on the last page of that exhibit.
09:04:38 A. Yes.
09:04:39 Q. Is that a map you drew?
09:04:40 A. Yes, it is.
09:04:41 Q. Then on the top left there it says, "Point of
12 use," with a number ending 4700. What parcel is that
13 referring to?

09:04:54 A. That is parcel S – no, wait a minute.
09:05:15 Q. Look at Exhibit 14.
09:05:16 A. Yeah, I need the parcel numbers from you.
09:05:17 Q. Page 3 of Exhibit 14.
09:05:18 A. That's parcel I.
09:05:19 Q. Okay. And then we see the one on the right,
20 halfway down it ends in 5000. What parcel's that?
09:05:21 A. That's one parcel number for two parcels,
22 parcels S and T.
09:05:23 Q. And then at the very bottom where it says,
24 "The lower well," 7100, is that parcel V?
09:05:25 A. Parcel V, correct.

1 goes back and forth between the IDWR and the claimant, I
2 indicated a name change and a desire to change the point
3 of use.

09:06:54 Q. And then what happened?
09:06:55 A. That was in February 2018. I subsequently
6 learned that it was not the proper method of doing that.
09:07:07 Q. So did you file an Amended Notice of Claim?
09:07:08 A. Yeah, I did it in person at the IDWR office in
9 Coeur d'Alene.
09:07:10 Q. Okay. So go to Exhibit 26, please, which I
11 believe we've also discussed.
09:07:12 A. I'm there.
09:07:13 Q. Okay. And that – is that the Amended Notice
14 of Claim for the lower well?
09:07:15 A. Yes, it is.
09:07:16 Q. And when did you file that?
09:07:17 A. In January of 2019.
09:07:18 Q. Okay. And if you'll turn to the next page,
19 place of use, number 9 it says now northeast of the
20 southwest as part of the description, correct?
09:08:21 A. Yes.
09:08:22 Q. There's no PIN number provided, right?
09:08:23 A. No, not there.
09:08:24 Q. Who filled this document out?
09:08:25 A. Kaila Savage.

09:05:41 Q. Okay. So then you go back to the front page,
2 Exhibit 28, point of diversion – or line 4, parcel
3 7100, that's parcel V, the lower well, correct?
09:05:54 A. Correct.
09:05:55 Q. Then you go the next page, description place
6 of use, it says, "Parcel PIN numbers 4700," and that's
7 which parcel?
09:06:08 A. I.
09:06:09 Q. And then – and 5000, that's which parcel?
09:06:10 A. S and T.
09:06:11 Q. Okay. And there's no address given on line 13
12 for S and T, correct?
09:06:13 A. No, there is not.
09:06:14 Q. And why is that?
09:06:15 A. I don't believe there was one.
09:06:16 Q. You don't believe there was one. Is that what
17 you said? Just couldn't hear you.
09:06:18 A. Yeah, I don't believe there was one.
09:06:19 Q. Okay.
09:06:20 A. For either.
09:06:21 Q. And then at some point in time, did you take
22 action to change the point of use?
09:06:23 A. Yes.
09:06:24 Q. And what did you do?
09:06:25 A. On a notice of error reply form, I – that

09:08:01 Q. Of?
09:08:12 A. Tech for IDWR.
09:08:13 Q. Were you there?
09:08:14 A. Yes.
09:08:15 Q. Okay. Did you get a response from IDWR to
6 this Amended Notice of Claim?
09:08:27 A. Yes.
09:08:28 Q. Look at Exhibit double A, please. Let me know
9 when you're there.
09:08:40 A. There.
09:08:41 Q. Double A. And then there's a Bates number
12 526 – it's the bottom right corner, so it's about six
13 pages in. There's a number – a page of the Bates
14 number 526. Are you there?
09:09:15 A. Yes.
09:09:16 Q. Okay. And what is that document?
09:09:17 A. This is the IDWR director's recommendation to
18 the special master that my water rights are – need to
19 be decreed – are to be decreed.
09:09:20 Q. For the lower well?
09:09:21 A. And the points of use, yes.
09:09:22 MR. BISSELL: Okay. Your Honor, we'd move for
23 admission of 16445. We submitted this pursuant to a
24 902(11) notice.
09:09:25 (Defendants' Exhibit AA offered.)

09:09:51 MR. SCHMIDT: No objection.
09:09:52 THE COURT: Exhibit AA will be admitted.
09:09:53 (Defendants' Exhibit AA admitted.)
09:09:54 MR. BISSELL: Q. And then, Mr. Farley, if you
5 look down on the bottom of – well, the entire exhibit,
6 your Honor, or –
09:10:07 THE COURT: I thought that's what you were
8 asking.
09:10:19 MR. BISSELL: Well, I just want to make clear.
09:10:10 THE COURT: Exhibit AA.
09:10:11 MR. BISSELL: Yeah.
09:10:12 Q. So look – so we're on 526, so I'm at the
13 Bates number 526.
09:10:14 A. Yes.
09:10:15 Q. And do you see at the bottom where it says,
16 "Explanatory material"?
09:10:17 A. Yes.
09:10:18 Q. Okay. And it says, "Point of diversion," the
19 parcel number ending in 5000, and "place of use," the
20 parcel number ending in 7100. Do you see that?
09:10:21 A. Yes.
09:10:22 Q. So did that cause you any concern?
09:10:23 A. Yes.
09:10:24 Q. Why is that?
09:10:25 A. The point of use and the point of diversion

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1 or about April 27th, did you believe parcel I had any
2 rights to water from the lower well?
09:11:53 A. No.
09:12:04 Q. Did you ever tell the Gideons or anyone that
5 you were transferring them water rights for parcel I?
09:12:16 A. No.
09:12:17 Q. If you had intended to transfer the water
8 rights for the lower well to parcel I, would you have
9 also transferred the water rights to parcels S and T?
09:12:10 A. I'm confused.
09:12:11 Q. Would you have transferred the water rights
12 for parcels S and T to the lower well to the Gideons?
09:12:13 A. No.
09:12:14 Q. Okay. Let's go to – can you look at
15 Exhibit 3, please – or wait. Hold on.
09:13:16 Look at Exhibit I.
09:13:17 A. I'm there.
09:13:18 Q. Okay. And that's a disclosure statement dated
19 April 20th, 2018?
09:13:20 A. Yes.
09:13:21 MR. BISSELL: I think we've already talked
22 about this, your Honor, but I believe it's in by
23 stipulation?
09:13:24 THE COURT: I believe it is.
09:13:25 MR. BISSELL: Okay.

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1 parcel numbers are reversed.
09:10:42 Q. And so it's showing the point of diversion as
3 S and T; is that correct?
09:10:54 A. Yes.
09:10:55 Q. And it's showing point of use as parcel V?
09:10:56 A. Yes.
09:10:57 Q. Okay. There's no reference to parcel I on
8 this document?
09:11:09 A. No.
09:11:10 Q. Okay. And what did you do, then, when you got
11 this document with Bates number 526 when you noticed
12 that?
09:11:13 A. Well, using IDWR standard notice of error
14 reply form, I filled one of those out, and then I sent
15 it back to Ms. Savage at IDWR.
09:11:16 Q. And then what did they do?
09:11:17 A. They repaired it. They fixed it.
09:11:18 Q. Reversed them?
09:11:19 A. Well, they reversed it back to what they're
20 supposed to be.
09:11:21 Q. Okay. Are you aware of any document anywhere
22 that's showing that parcels S and T are not points of
23 use for water from the lower well?
09:11:24 A. No.
09:11:25 Q. And at the time that PSA was executed, so on

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09:13:41 Q. And is that your initials on the bottom,
2 Mr. Farley?
09:13:43 A. Yes.
09:13:44 Q. And the date is what?
09:13:55 A. April 20th, 2018.
09:13:56 Q. Okay. And as of April 20th, 2018, had there
7 even been a survey started on the property?
09:14:08 A. No.
09:14:09 Q. Okay. And if you go to page 3.
09:14:10 A. There.
09:14:11 Q. Where it says, "The private system, private
12 well," and that's checked. Do you see that?
09:14:13 A. Yes.
09:14:14 Q. And is there a private system, private well on
15 parcel I?
09:14:16 A. Yes, there is.
09:14:17 Q. And this April 20th disclosure statement, was
18 that part of an initial listing with Mr. Elder?
09:14:19 A. Yes, it was.
09:14:20 Q. Okay. And then that expired?
09:14:21 A. Yes.
09:14:22 Q. Okay. And – well, one more question on
23 Exhibit L. If you go back to that – or I, I, sorry.
24 Exhibit I.
09:14:25 A. Oh, I. I'm sorry.

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09:14:51 Q. Go to the last page.
 09:14:52 A. I'm still there.
 09:15:03 Q. So it's got a Bates number on the bottom
 4 Gideon 23.
 09:15:05 A. Yes.
 09:15:06 Q. And do you see under your signature there is a
 7 paragraph that says, "Amended Disclosure Form"?
 09:15:18 A. Yes.
 09:15:19 Q. Do you see that? Okay. Did anyone ever bring
 10 that to your attention?
 09:15:19 A. No.
 09:15:12 Q. Did you ever notice that when you signed this
 13 document?
 09:15:14 A. No.
 09:15:15 Q. Okay. So then you enter a new deal and then
 16 was there another disclosure statement?
 09:15:17 A. I believe we used the same one.
 09:15:18 Q. Turn to – now you can turn to Exhibit 3,
 19 please.
 09:15:20 THE COURT: Exhibit 3?
 09:15:21 MR. BISSELL: Yes, sir.
 09:15:22 THE WITNESS: I'm there.
 09:15:23 MR. BISSELL: Q. Okay. And if you look on
 24 the top of Exhibit 3, do you see the date there?
 09:15:25 A. Yes.

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1 the Amended CC&Rs would add to or detract from the value
 2 of the property?
 09:17:33 A. Added value.
 09:17:34 Q. Why is that?
 09:17:45 A. It was basically a gift of free water.
 09:17:46 Q. And as we've had testimony about, there was a
 7 boundary line adjustment being done, correct?
 09:17:58 A. Correct.
 09:17:59 Q. Okay. Did you believe the boundary line
 10 adjustment would add or subtract from the value of the
 11 property?
 09:18:02 A. Added value.
 09:18:03 Q. And why is that?
 09:18:04 A. More acreage.
 09:18:05 Q. Say that again.
 09:18:06 A. More acreage.
 09:18:07 Q. Okay.
 09:18:18 A. And I didn't raise the price.
 09:18:19 Q. Okay. And at some point in time, you met
 20 Patty Ellis on the property, correct?
 09:18:21 A. April the 20th, '19.
 09:18:22 Q. Okay. And did you discuss the boundary at any
 23 point with her?
 09:18:24 A. Yes.
 09:18:25 Q. And what was that discussion?

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09:16:01 Q. And does it look like that was changed from a
 2 4 to an 11?
 09:16:13 A. Yes.
 09:16:14 Q. Okay. Do you know who did that?
 09:16:15 A. Mr. Elder.
 09:16:36 Q. All right. And then if you go to Exhibit 1.
 09:16:47 A. There.
 09:16:48 Q. All right. And that's the – is that the MLS
 9 listing sheet for the property?
 09:16:50 A. Yes.
 09:16:51 Q. Okay. And it says under water, "Private
 12 system, private well." Do you see that?
 09:17:03 A. No. Where am I looking?
 09:17:04 Q. So you're on the bottom section under that
 15 table on the right side.
 09:17:16 A. Got it.
 09:17:17 Q. Of the third entry from the bottom.
 09:17:18 A. I see that.
 09:17:19 Q. Okay. "Private system, private well," do you
 20 see that?
 09:17:21 A. Yes.
 09:17:22 Q. And again, did the property have a private
 23 system, private well?
 09:17:24 A. Yes, it did.
 09:17:25 Q. Now, did you believe that the provisions of

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09:18:31 A. I told her about the adding of approximately
 2 three quarters of an acre that was not depicted in the
 3 MLS.
 09:18:44 Q. Did you tell her who was doing it?
 09:18:45 A. Yes, I did.
 09:18:46 Q. And who was that?
 09:18:47 A. Scott Rasor, Meckel Engineering.
 09:18:58 Q. Why did you give her his name?
 09:18:59 A. So she could verify what I was saying was
 10 truthful.
 09:18:51 Q. Okay. Did you have any discussions with her
 12 with regard to the water supply?
 09:19:03 A. Yes.
 09:19:04 Q. And what were those discussions?
 09:19:05 A. I told her about the addition of the second
 16 shared well.
 09:19:17 Q. Is that the lower well then?
 09:19:18 A. The lower well, yes.
 09:19:19 Q. Okay. Did you mention any other professionals
 20 other than Mr. Rasor that were helping you with regard
 21 to the property?
 09:19:22 A. Yes, I did.
 09:19:23 Q. And who was that?
 09:19:24 A. Mr. Mike Reagan, attorney.
 09:19:25 Q. And what was he doing?

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09:19:21 A. He was not only preparing the – amending the
2 existing CC&Rs to include the shared well agreement, but
3 he was coordinating with Mr. Rasor on the boundary line
4 adjustment.

09:19:35 Q. And did you give her – did you give Ms. Ellis
6 Mr. Reagan's name?

09:19:47 A. Yes, I did.

09:19:48 Q. And why did you do that?

09:19:49 A. So she could verify everything I was doing
10 that I was saying to her was truthful.

09:19:51 Q. Okay. And ultimately – turn – ultimately,
12 you executed a Purchase and Sale Agreement that the
13 Gideons sent to you, correct?

09:20:14 A. Yes, I did.

09:20:15 Q. Turn to Exhibit O, please.

09:20:16 A. I'm there.

09:20:17 Q. Okay. And I think we've – for everyone's
18 benefit, it's Exhibit 4 but has initials on it. So,
19 Mr. Farley, are those your initials on the bottom right
20 where it says, "Seller's initials"?

09:20:21 A. Page 1?

09:20:22 Q. Yeah.

09:20:23 A. Yes.

09:20:24 Q. Okay. And the date is what?

09:20:25 A. My initials are 4/29/19.

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1 that there was a shared well?

09:22:02 A. He was pleased.

09:22:13 Q. And did you go see the well?

09:22:14 A. I offered to take him to the lower well, the
5 leach field, all those elements, and, yes, I offered
6 to – I'm sorry.

09:22:27 Q. Well, did you and Mr. Gideon physically go to
8 the lower well?

09:22:39 A. No.

09:22:40 Q. Okay. Did you and Mr. Gideon physically walk
11 the boundaries to the property?

09:22:42 A. No.

09:22:43 Q. Okay. Did you and Mr. Gideon discuss the well
14 production?

09:22:45 A. He asked.

09:22:46 Q. What did he say?

09:22:47 A. He asked what the yields of the wells were.

09:22:48 Q. And what did you tell him?

09:22:49 A. I told him he would know when he did his well
20 tests.

09:23:21 Q. Did you discuss whether one could irrigate the
22 pastures and the hayfield?

09:23:23 A. Yes.

09:23:24 Q. What was that discussion?

09:23:25 A. Told him I was never able to irrigate the

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09:20:51 Q. Okay.

09:20:52 A. April 29th, '19.

09:20:53 Q. Okay. And if you go to Exhibit P.

09:21:04 A. Did you say T?

09:21:05 Q. P.

09:21:06 A. Okay. I'm there.

09:21:07 Q. And is that – what is that?

09:21:18 A. It's an RE-11 Addendum.

09:21:19 Q. Okay. Are you aware if there are any other
10 addendums to the Purchase and Sale Agreement, which is
11 Exhibit O and Exhibit 4?

09:21:12 A. I am not aware of any other exhibits – excuse
13 me, addendums.

09:21:14 Q. And then Mr. Gideon visited the property,
15 correct?

09:21:16 A. Yes.

09:21:17 Q. Okay. And did you discuss the water supply
18 with him?

09:21:19 A. Yes.

09:21:20 Q. And what did you tell him?

09:21:21 A. I told him the well that you're buying is in
22 the hayfield behind the garage and the kitchen, and the
23 shared well was over the hill down on the bottom of the
24 canyon, and I pointed in that direction.

09:22:25 Q. And what was his response to your statement

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1 hayfield.

09:23:12 Q. Did you ever tell him that the lower well
3 infrastructure was part of the sale?

09:23:14 A. No.

09:23:25 Q. Did you discuss the property boundary?

09:23:26 A. Yes.

09:23:27 Q. And what was that discussion?

09:23:28 A. I explained the addition of the – the extra
9 acres to the south.

09:23:40 Q. Did you point anything out to him?

09:23:41 A. Yeah. We took – we took a tour of the home
12 and the properties, and I was able to point to all the
13 new stakes and ribbons from the southwest corner to the
14 southeast corner.

09:23:45 Q. And where were you standing when this
16 occurred?

09:23:47 A. Well, on the sun decks in the yard and along
18 the fence line and along the orchard fence line.

09:24:09 Q. So –

09:24:20 A. That's adjacent to the hayfield.

09:24:21 Q. So approximately – if one was going to look
22 straight ahead, approximately how far away was that from
23 the nearest boundary, I guess?

09:24:24 A. 130 feet.

09:24:25 Q. 130 feet?

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09:24:11 A. Yeah.
 09:24:12 Q. Okay.
 09:24:13 A. To the nearest stake and ribbons.
 09:24:24 Q. And again, this was in early May?
 09:24:25 A. Yes.
 09:24:26 Q. And how high was the grass at that time?
 09:24:27 A. Four to 6 inches.
 09:24:38 Q. Is it usually about the same height every year
 9 in early May?
 09:24:39 A. Yes.
 09:24:41 Q. Take a look at Exhibit GG.
 09:25:02 A. GG?
 09:25:03 Q. Yeah.
 09:25:04 A. I am there.
 09:25:05 Q. Or, no, I'm sorry, triple G. I misled
 16 everyone.
 09:25:17 A. There.
 09:25:18 Q. Okay. And there's — should be four
 19 photographs. Is that what you see under GG?
 09:25:20 A. I have four.
 09:25:21 Q. Did you take these photographs?
 09:25:22 A. Yes, I did.
 09:25:23 Q. When did you take them?
 09:25:24 A. May 2nd, 2022.
 09:25:25 Q. Okay. And does —

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09:26:41 Q. The right side.
 09:26:52 A. A small portion, the edge had been mowed, but,
 3 no, the right side had not been mowed.
 09:26:54 Q. Okay. And just real quick, what's the third
 5 picture? What do we see in triple G?
 09:27:06 A. Another view of the same hayfield.
 09:27:17 Q. Okay. And the final picture?
 09:27:18 A. Another view from the southeast.
 09:27:19 Q. Okay.
 09:27:40 A. Looking northwest.
 09:27:41 Q. Are any of the stakes still present?
 09:27:42 A. The survey stakes up by Meckel?
 09:27:43 Q. Yeah. Let me reask that question. Are any of
 14 the lath stakes that Mr. Rasor stated he placed, are
 15 they still present to this day?
 09:28:06 A. Yes, they are.
 09:28:07 Q. Okay. Can you take a picture — or not a
 18 picture — take a look at Exhibit QQ, please.
 09:28:19 A. I'm there.
 09:28:20 MR. BISSELL: Your Honor, may I put this over
 21 there?
 09:28:22 THE COURT: Sure.
 09:28:23 MR. BISSELL: Q. All right. Mr. Farley, in
 24 QQ, we see a series of one, two, three, four pictures,
 25 correct?

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09:25:31 MR. SCHMIDT: Just a moment. Exhibit GG?
 09:25:32 MR. BISSELL: GGG, sorry.
 09:25:43 MR. SCHMIDT: Okay.
 09:25:44 MR. BISSELL: I'll wait till you get there.
 09:25:45 MR. SCHMIDT: Thank you. Go ahead.
 09:25:56 MR. BISSELL: Q. So again, when did you
 7 take — did you take these photographs, Mr. Farley?
 09:25:58 A. Yes, I did.
 09:25:59 Q. And when did you take them?
 09:25:59 A. May 2nd, 2022.
 09:25:59 Q. And does it accurately reflect the actual
 12 physical conditions on that day?
 09:26:03 A. Yes, they do.
 09:26:04 Q. Okay. And what do we see in the first picture
 15 of triple G?
 09:26:16 A. We see the subject property and we see the
 17 hayfield and some stakes I set for my logging road
 18 construction and a T post.
 09:26:19 Q. And let's go to the second page. And do you
 20 see that there's — is there a stake in the middle
 21 there, or you see the wooden stake?
 09:26:22 A. Yes.
 09:26:23 Q. So on the right side of that stake, had that
 24 been mowed or anything in the year at this point?
 09:26:25 A. The right side?

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09:28:51 A. Yes.
 09:29:02 Q. Okay. And did you take those pictures?
 09:29:03 A. Yes.
 09:29:04 Q. And when did you take them?
 09:29:15 A. April of 2022.
 09:29:16 Q. Of what year?
 09:29:17 A. 2022.
 09:29:18 Q. Okay. And do the pictures accurately reflect
 9 what we see on these pages?
 09:29:20 A. Yes.
 09:29:21 Q. I mean do they reflect what the actual
 12 conditions were?
 09:29:33 A. Yes, they do.
 09:29:34 MR. BISSELL: Your Honor, move for admission
 15 of QQ.
 09:29:36 (Defendants' Exhibit QQ offered.)
 09:29:37 MR. SCHMIDT: No objection.
 09:29:38 THE COURT: QQ will be admitted.
 09:29:39 (Defendants' Exhibit QQ admitted.)
 09:29:40 MR. BISSELL: Q. All right. Mr. Farley, what
 21 do we see in the first page of Exhibit QQ?
 09:29:42 A. That is the southeast — furthest southeast
 23 corner of parcel I.
 09:29:44 Q. And is that the last stake?
 09:29:45 A. That's the last stake. The thing to the right

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1 is a T post for the fence.
 09:30:02 Q. And so with the pointer, is this what you're
 3 talking about?
 09:30:04 A. Yes.
 09:30:05 Q. This point?
 09:30:06 A. Yes, that's it.
 09:30:17 Q. Okay. Go to the next page, please. And what
 8 do we see in this photograph?
 09:30:19 A. That is another one of Mr. Rasor's survey
 10 stakes.
 09:30:21 Q. And where is that located?
 09:30:22 A. That is approximate midpoint on the
 13 north/south line on the east line of parcel I.
 09:30:24 Q. So again, with the pointer, was that here?
 09:30:25 A. Yes.
 09:30:26 Q. Okay.
 09:30:27 A. Probably.
 09:30:28 Q. And go to the third page of Exhibit QQ. And
 19 what is that?
 09:30:29 A. That is a -- another one of Mr. Rasor's survey
 21 stakes.
 09:30:30 Q. And where is that located?
 09:30:31 A. That is at the southwest corner of I in the
 24 road right-of-way of Derting Road.
 09:30:32 Q. And because there's a number of them there,

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A. The lath stake, the tallest one, yes.

Q. The tallest one. And where is that? Where would that be on here, over here somewhere?

A. Stop. Right there. That's it.

Q. Okay. Now, did you give any -- Mr. Gideon anything about the boundary?

A. On May 2nd?

Q. Yeah.

A. Yes, I did.

Q. Take a look at Exhibit 46. Are you there?

A. Yes.

Q. Okay. And then ignoring the red crosshatches, are you absolutely certain -- or what is this?

A. This is an aerial view of the subject property.

Q. Okay. And yesterday I think you testified you gave this to Mr. Gideon. You recall that?

A. Yes.

Q. Are you absolutely certain that this Exhibit 46 is what you gave to Mr. Gideon?

A. No.

Q. Okay. Is it similar? Dissimilar?

A. Well, as it turns out, it's very similar to another one that I saw yesterday, I think. Yeah, yesterday.

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1 which -- where? Here?
 09:31:02 A. No.
 09:31:03 Q. Here?
 09:31:04 A. I believe so.
 09:31:05 Q. Okay.
 09:31:06 A. Sounds right.
 09:31:17 Q. And that one's laying on the ground, right?
 09:31:18 A. Yes.
 09:31:19 Q. Do you know how it got on the ground, or who
 10 pulled -- somebody pulled it out, obviously?
 09:31:21 A. Either that or they bumped it with their
 12 vehicle.
 09:31:23 Q. Okay.
 09:31:24 A. Or an elk may have run it over or...
 09:31:25 Q. Now let's go to the last page of QQ. And what
 16 do we see there?
 09:31:27 A. Well, there's multiple things going on.
 18 There's a steel rebar of mine that I set for my logging
 19 road, and couple of my shorter lath stakes I set for my
 20 logging road. You can see the cap, the yellow
 21 professional land survey cap that has the number on it,
 22 and there's a T post that Mr. Gideon had set. And then
 23 lastly, we have the survey stakes set by Meckel
 24 Engineering.
 09:32:25 Q. The lath stake?

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Q. No, I'm talking about is Exhibit 46 similar or dissimilar to what you gave Mr. Gideon?

A. Very similar.

Q. But you can't say for sure if Exhibit 46 is what you gave him?

A. No.

Q. Turn to -- let's see. Go to Exhibit 12, please. And then go to page 3 of Exhibit 12.

A. I am there.

Q. And that's the aerial photograph we've been discussing in this matter, correct?

A. I recognize it, yes.

Q. Okay. Did you provide this to Mr. Elder?

A. No.

Q. Did you help him create it?

A. No.

Q. Did he tell you he created it?

A. No.

Q. Did he tell you he sent it to anyone?

A. No.

Q. When's the first time you saw Exhibit 12?

A. During the course of this matter.

Q. Now if you'll go to Exhibit 5, please.

A. I'm there.

Q. All right. And take a look at the

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1 attachments. We've kind of looked at this stuff before, 2 I think. And these are invoices that you provided to 3 Mr. Elder to send to Ms. Ellis, right? 09:36:04 A. That is correct. 09:36:05 Q. Okay. And I don't know if we discussed -- and 6 we talked the other day about these invoices referenced 7 both work on both the upper and lower well, right? 09:36:38 A. Yeah, new pumps in both wells. 09:36:39 Q. Why did you provide information with regard to 10 both wells to Mr. Elder to provide to Ms. Ellis? 09:36:41 A. Well, both wells were part of this 12 transaction. 09:36:43 Q. In terms of what? 09:36:51 A. I was selling one and I was sharing -- shared 15 use and benefit of the lower well. 09:37:06 Q. And did you expect that a well test was going 17 to be performed as part of the transaction? 09:37:08 A. Yes. It was required by the seller -- or by 19 the buyer, excuse me. 09:37:20 Q. And did you -- where did you -- what well did 21 you expect that to be performed? 09:37:22 A. Both. 09:37:23 Q. Okay. Now we can move on to the Amended 24 CC&Rs. And first let me ask, though, you -- you 25 testified earlier that you made efforts to eliminate	649 09:38:51 09:39:02 09:39:04 09:39:05 09:39:17 09:39:18 09:39:19 09:39:22 09:40:18 09:40:19 09:40:20 09:40:21 09:40:23 09:40:24	651 A. Yes. Q. Approximately a week before the closing with 3 the Gideons? A. Eight days. Q. And why were -- why weren't they recorded 6 earlier? A. Various reasons. Q. And what are those reasons? A. In order to record these, they had to have 10 accurate legals and the legal description from accurate 11 record of survey, and that was not completed. Q. Okay. And let's just go through these in 13 general first, and then I'll ask more specific questions 14 if I need to. Just trying to talk about the general 15 purpose of these. So if you turn to page 19, section 2 16 utility easement, what were you attempting to do with 17 that? A. Page 19. Q. Exhibit 19, page 2, I'm sorry. A. Okay. Q. And it's got a number on the bottom. Well, 22 either Gideon 785 or FA625. A. I'm there. Q. And what were you trying to accomplish with 25 these utility easements?
1 parcel I as a place of use on the water right claim, 2 right? 09:38:03 A. I did. 09:38:04 Q. Okay. And then why were you, nevertheless, 5 going to share the water from the lower well with the 6 parcel I owners? 09:38:17 A. Well, it was an inducement to a buyer, for one 8 thing. 09:38:19 Q. And how did you plan on making that happen? 09:38:21 A. By creating -- by taking the existing 11 easements, CC&Rs recorded in '92 for the leach field, 12 and adding a shared well agreement to that document. 09:38:33 Q. So take a look at Exhibit -- I think 19's the 14 best one. 09:38:45 A. I'm there. 09:38:46 Q. All right. Now, we've been over these. These 17 are the Amended CC&Rs -- 09:38:48 A. Yes. 09:38:49 Q. -- correct? 09:38:50 A. Yes. 09:38:51 Q. You got to wait til I finish my question. 09:38:52 It's the Amended CC&Rs, correct? 09:38:53 A. Correct. 09:38:54 Q. Okay. And these were recorded on May 31st, 25 2019, correct?	650 09:40:24 09:40:34 09:40:47 09:40:48 09:40:50 09:40:52 09:41:03 09:41:17 09:41:20 09:41:21 09:41:24 09:41:25	652 A. I believe this was mirroring the existing 2 Pleasant View Ranch Estates HOA easements for the 3 purposes stated therein. Q. Okay. And then go to the next section, so the 5 next page of Exhibit 19, so it's the FA26 and Gideon 6 786. A. I'm there. Q. Drain field/leach field. And what were you 9 trying to accomplish with that? A. This was a restatement of the previous 11 existing leach field easement. Q. Why did you feel the need to restate it? A. Well, the leach fields for S, I, and T were in 14 one section of T, and there needed to be easements to 15 get the effluent to the actual drain fields which were 16 installed previous. Q. Okay. And then if we go to Section 4, that's 18 the -- on the next page, that's the wells section, 19 correct? A. Yes. Q. Okay. And spend a little more time on this 22 one. So Section A, there's a well located on parcel I. 23 That's the upper well, correct? A. Yes. Q. Then section B, there's a well located on

1 parcel V. That's the lower well, correct? 09:41:52 A. Yes. 09:42:03 Q. And then the Section C talks about the map 4 that's – it's Exhibit E, correct? 09:42:05 A. You said C. 09:42:06 Q. Yeah. 09:42:17 A. I see referencing Exhibit E, that must be the 8 map, yes. 09:42:19 Q. Okay. And then we go to Section D. And why 10 don't you read that? 09:42:26 A. "Adjusted" parcel – "parcels I and T have a 12 perpetual easement for ingress and egress" – 09:42:33 Q. Slow down just a bit. 09:42:34 A. I'm going to. 09:42:36 Q. Slow down. 09:42:36 A. I'm going to – "on the existing road from the 17 gate at the northwest corner of parcel V," as in Victor, 18 "which is the terminus point of North Derting Road to 19 the wellhead for operation and maintenance, including 20 snow plowing." 09:42:41 Q. So you're granting an easement to parcel I on 22 V, correct? 09:43:23 A. Yes. 09:43:24 Q. Okay. And then section E, read the first two 25 paragraphs – wait, hold on. First sentence.	653 1 parcel T, and adjusted parcel I, to serve said parcel V 2 well." 09:45:23 Q. So after you – what was your understanding 4 upon the filing of these of the ability of the owners of 5 parcel I to access the waterline down to the lower well? 09:45:36 A. If the water was needed, they had the use of 7 it. 09:45:48 Q. I'm talking about access the waterline. Would 9 they have ability to access the pipe? 09:45:40 A. That's the – yes, that's the purpose of that. 11 Yes. 09:45:42 Q. Okay. Is it your understanding that the 13 Amended CC&Rs would permit the owners of parcel T to 14 interfere with parcel I's use of the water? 09:46:15 A. Interfere, no. 09:46:16 Q. What was your understanding of the right of 17 the owners of parcel I to the use and benefit of the 18 water from the lower well before you recorded the 19 Amended CC&Rs? 09:46:20 A. I'm sorry. You have to restate that. 09:46:21 Q. What was your understanding of the rights of 22 the owners of parcel I to use and benefit the water from 23 the lower well before you recorded the Amended CC&Rs? 09:46:24 A. Myself as an owner, whatever I wanted to do 25 for subsequent buyer, nothing. 655
09:43:11 A. "This well is for domestic household livestock 2 and landscaping use only." 09:43:23 Q. Then the second sentence. 09:43:24 A. "In the event there is insufficient supply of 5 water for adjusted parcel I, adjusted parcel T should 6 abate the use of the water to adjusted parcel I, and 7 adjusted parcel" T will enjoy sole domestic – 09:43:48 Q. Back up. Read that closer. 09:43:59 A. Beginning with adjusted parcel T? 09:43:50 Q. Yes. 09:43:56 A. Should – "adjusted parcel T should abate the 12 use of water to adjusted parcel I, and adjusted parcel I 13 will enjoy sole domestic use of the well until such time 14 as there is an excess capacity for domestic use for 15 parcel I, at which time adjusted parcel T would again be 16 able to use the well." 09:44:17 Q. So why did you structure it so that adjusted 18 parcel I would have that use of the water over parcel T? 09:44:19 A. I guess as it's stated, because if there was a 20 problem with water on parcel I, they would have access 21 to the water coming from the point of diversion on 22 parcel T. 09:44:23 Q. Okay. And then F, read F. 09:44:24 A. "There is a waterline and electric line in the 25 easement over, under, and across parcel V, adjusted	654 09:46:51 Q. And what was your understanding of the right 2 of future owners of parcel I to the use and benefit of 3 the water from the lower well after you recorded the 4 Amended CC&Rs? 09:47:05 A. They had the right to use the water if it was 6 needed. 09:47:17 Q. Well, take a look back at page 4 of Exhibit 8 19. 09:47:29 A. Okay. 09:47:20 Q. And after it says – on the last line after it 11 says, "Adjusted parcel I," do you see that? 09:47:32 A. Yes. 09:47:33 Q. It says, "Will enjoy sole domestic use of the 14 well until such time as there is an excess capacity for 15 domestic use for adjusted parcel I, at which time 16 adjusted parcel T would again be able to use a well." 09:47:47 A. I see that. 09:47:58 Q. Did I read that correctly? 09:47:59 A. Yep. 09:47:20 Q. Okay. All right. Let's go to the closing. 21 And the closing you attended was on June 7th, correct? 09:48:22 A. Yes. 09:48:23 Q. Okay. And you attended with Mr. Elder, right? 09:48:24 A. Yes. 09:48:25 Q. Okay. And when you got in there, did you 656

1 observe anything missing? 09:48:22 A. Yes. 09:48:23 Q. What? 09:48:24 A. Mary Spridgeon did not have the Amended CC&Rs 5 in the closing package. 09:48:36 Q. Who was the one that noted those were missing? 09:48:37 A. It was I. 09:48:48 Q. Okay. And what did you do upon that 9 observation? 09:48:40 A. I informed her that those were missing. 09:48:46 Q. Why did you do that? 09:48:50 A. Well, it wasn't a complete package. I mean, 13 my buyers have a right to know everything about the 14 deal. 09:49:05 Q. And then what happened? 09:49:06 A. She acknowledged that it was not there and she 17 left the room. 09:49:18 Q. Okay. And then did she come back? 09:49:19 A. Yes, she did. 09:49:20 Q. And then what happened? 09:49:21 A. She had a copy of them with her and she told 22 me she had called the buyers. 09:49:23 MR. SCHMIDT: I'm going to object. Hearsay. 09:49:24 MR. BISSELL: Your Honor, this is being 25 offered to show the subsequent actions of Mr. Farley,	657 09:51:01 Q. Okay. And had you ever met or spoken to 2 Mrs. Gideon at that point in time? 09:51:13 A. Not until then. 09:51:14 Q. Okay. And what happened during that visit? 09:51:25 A. Well, first thing I did is I handed them a 6 copy of the ACC&Rs. 09:51:27 Q. Okay. Did you take anything out of the CC&Rs? 8 Did you remove pages? 09:51:39 A. No. 09:51:40 Q. Okay. And then what happened? 09:51:41 A. We took the tour. 09:51:42 Q. And describe the tour, please, in not 13 excruciating detail. Just general detail. 09:51:54 A. Went through the home, went through the yard, 15 went through the orchard, went into the barn again, the 16 henhouse. And I was informed that that was – she was 17 allergic to chickens; it was going to be something else. 18 We entered the cistern building and I noted that the 19 water was overflowing. 09:52:20 Q. Okay. 09:52:21 A. And I pointed it out and was – it was on top 22 of the – the concrete top of the cistern and told them 23 it was probably a stuck float and pointed out the fire 24 sprinkler abatement system I had on the roof and pointed 25 out the transfer switch for a generator in a power 659
1 not for the truth of the matter asserted. We've already 2 got that. 09:49:33 THE COURT: I'll let it – overrule it. 09:49:34 MR. BISSELL: Go ahead, Mr. Farley. 09:49:45 THE COURT: Overrule the objection, I should 6 say. 09:49:46 THE WITNESS: She told me she called the 8 buyers and spoke to Mr. Gideon and told her that she had 9 the document, and he asked – and asked him if he wanted 10 to proceed and to close, and he said yes, and that he 11 had requested that I would bring a copy with me to them 12 because I was – as soon as I was finished signing, I 13 was departing and driving straight up to the subject 14 property to do a walkabout and further explain, actually 15 to Mrs. Gideon, how things worked at the place. 09:50:16 MR. BISSELL: Q. Would you have executed the 17 closing documents if – without Ms. Spridgeon making 18 that statement to you about – let me rephrase that. 09:50:49 Would you have any issue with not continuing 20 with the closing if Ms. Spridgeon told you we're not 21 doing it right now? 09:50:22 A. Yes, I would not have closed. 09:50:23 Q. And so then did you see the Gideons later that 24 day? 09:51:25 A. Yes, I drove straight up there from closing.	658 1 outage. Showed them how to turn it on. I think it 2 maybe actually turned on, the fire sprinkler system on 3 the roof. Showed them how everything worked. There's a 4 lot of moving parts to that home. 09:52:55 Q. Okay. Now, with regard to the lower well and 6 the pump house -- in fact, take a look at RR, Exhibit 7 RR. 09:53:38 A. There. 09:53:39 Q. Okay. And did you take this picture which is 10 Exhibit RR? 09:53:41 A. Yes. 09:53:42 Q. Do you know when you took it? 09:53:43 A. Oh, was it April of 2022? 09:53:44 Q. Okay. And does the picture accurately reflect 15 the real-live conditions on that day? 09:53:46 A. Yes, it does. 09:53:47 MR. BISSELL: Okay. Your Honor, move for 18 admission of Exhibit RR. 09:53:59 (Defendants' Exhibit RR offered.) 09:53:20 MR. SCHMIDT: No objection. 09:53:21 THE COURT: RR is admitted. 09:53:22 (Defendants' Exhibit RR admitted.) 09:54:23 MR. BISSELL: Q. And what do we see in the 24 foreground of that picture, Mr. Farley, with the orange 25 sign? 660

EXHIBIT A

09:54:01 A. That is the wellhead of the lower well.
 09:54:02 Q. Okay. And then in the back, that little shed,
 3 what is that?
 09:54:14 A. That's what we refer to as the pump house that
 5 contains the controls and the electrical panel for...
 09:54:26 Q. Okay. And then in the back right, to the
 7 right of that pump house, it looks like there's a gate;
 8 is that correct what I see?
 09:54:39 A. Yeah, that is what's referred to as the
 10 terminus of Derting Road, my gate at the terminus of
 11 Derting Road in the ACC&Rs.
 09:54:39 Q. Okay. And is the -- are the gate and the pump
 13 house typically locked?
 09:54:44 A. Pump house is always locked, and the gate is
 15 quite often locked.
 09:54:56 Q. Okay. And so you got to get a key to get in
 17 there, right?
 09:54:58 A. You have to have a key to get in.
 09:55:09 Q. At some point did you give the Gideons --
 20 well, let me back up.
 09:55:21 Is the lock different on the pump house and on
 22 the gate?
 09:55:23 A. There's one lock on the pump house and that is
 24 the lock that I have a key to and so do the Gideons that
 25 was given to at closing. And the gate has two locks:

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1 saw the Gideons the day of closing, did you go to the
 2 lower well that day?
 09:56:43 A. Once again, I offered to take them to the
 4 lower well and the leach field, and the effluent line
 5 there is a anti-syphon valve that they needed to know
 6 about at the top of the hill, all these elements, and
 7 they declined.
 09:56:58 Q. Okay.
 09:57:09 A. And the corners of the property.
 09:57:10 Q. So you took them to the corners?
 09:57:11 A. No. I offered to take them to the northeast
 12 and northwest corners and they declined.
 09:57:13 Q. Okay. So moving on after closing. So did you
 14 have any discussions with the Gideons regarding -- well,
 15 regarding the property, I guess, or the boundaries, in
 16 the August of the same year?
 09:57:37 A. In August 2019?
 09:57:38 Q. Yes.
 09:57:39 A. Yes.
 09:57:40 Q. And how many?
 09:57:41 A. A few, I guess, would be the answer.
 09:57:42 Q. Let's take them one at a time.
 09:57:43 A. Okay.
 09:57:44 Q. When approximately was the first one?
 09:57:45 A. Well, the first week in August they had asked

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1 The Farley family lock and then the same lock that is on
 2 the pump house.
 09:55:23 Q. So just to be clear, one key will open both
 4 the gate and the pump house; is that correct?
 09:55:35 A. That is correct.
 09:55:36 Q. Okay. And at some point did you give the
 7 Gideons a key to the lower well area?
 09:55:48 A. Not the farm -- not the Farley family lock but
 9 the joint lock, yes.
 09:55:50 Q. Okay. And can one get in through the gate
 11 using either lock?
 09:55:52 A. That's correct.
 09:55:53 Q. The locks interlock?
 09:55:54 A. They're supposed to be in the loop of the
 15 chain, yes.
 09:55:56 Q. Okay. And have you ever changed the locks on
 17 the gate or the pump house since closing?
 09:56:18 A. No.
 09:56:19 Q. Is there any reason the Gideons couldn't
 20 access the lower well today if they chose to do so?
 09:56:21 A. No.
 09:56:22 Q. Did you ever prohibit them from accessing the
 23 lower well?
 09:56:24 A. No.
 09:56:25 Q. During the visit when you -- when you went and

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1 that I would come up and show them the boundaries and
 2 the corners.
 09:58:03 Q. Okay.
 09:58:04 A. Made an appointment with Arthur. I drove up
 5 there, 45-minute drive, he was not there. So again,
 6 there was another appointment with Arthur, I set with
 7 Arthur. I drove up there. He wasn't there. So on that
 8 day is when I noted that he had mowed over the survey --
 9 no, stakes.
 09:58:30 Q. Okay.
 09:58:31 A. And cut my side of the hayfield.
 09:58:32 Q. So when approximately was that in August?
 09:58:33 A. First week in August.
 09:58:34 Q. Okay. Well, did you -- at some point in
 15 August, did you speak with Mr. Gideon?
 09:58:46 A. Yes.
 09:58:47 Q. Okay. When and about what?
 09:58:48 A. Well, the --
 09:58:49 Q. Did you walk the boundaries with Mr. Gideon in
 20 August?
 09:58:51 A. This is still the first week in August. I set
 22 an appointment with Kathy for Arthur and she told me to
 23 always contact her because he was forgetful, and then I
 24 met with Mr. Gideon on the third attempt, and then we
 25 did some walking to the corners and boundaries, yes.

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09:59:11 Q. The corners of the parcel?
 09:59:22 A. Yes, the parcel I.
 09:59:23 Q. All the corners?
 09:59:24 A. Well, we didn't walk to the southeast because
 5 that was clearly visible from everywhere.
 09:59:36 Q. Okay.
 09:59:37 A. But as you pointed on the adjusted parcel I
 8 plat there, there's a lot going on on the southwest
 9 corner, so we went down the driveway, over to Derting,
 10 walked down Derting Road to that corner, and then we
 11 went north on the west line, crossed Derting, over the
 12 hill down into the timbered portion, and I showed him
 13 the northwest corner, and then we walked that line,
 14 thrashed through the brush and showed him the northeast
 15 corner, then we went up the steep hill, hit Derting Road
 16 where that one midpoint stake I had Mr. Razor set,
 17 showed him that point, and we walked Derting Road back
 18 to the driveway and back to the home.
 10:00:29 Q. What was -- why were you showing him the
 20 boundary? Did he ask you to?
 10:00:29 A. Yes.
 10:00:29 Q. Okay. And do you recall any conversation
 23 during this meeting?
 10:00:24 A. Well, conversation that this is this corner
 25 and that's this corner.

10:00:41 Q. Okay. Nothing else other than that that you
 2 recall?
 10:00:43 A. No, not really.
 10:00:54 Q. Okay. And then did you have a subsequent
 5 meeting with Mr. Gideon in August at the property?
 10:00:56 A. Yes, it wasn't a meeting. He confronted me.
 10:00:57 Q. Well, what was -- what was that?
 10:00:58 A. He was --
 10:00:59 Q. Strike that. When approximately was that
 10 compared to when the meeting you just talked about?
 10:00:59 A. A week or so later. Mid-August.
 10:00:59 Q. Okay. All right. So what happened?
 10:00:59 A. I was working on the fence, on the far
 14 southwest -- excuse me, southeast corner between the
 15 hayfield and one of my pastures, and he walked up to me
 16 and hollered at me, "You lied. You lied to me."
 10:00:59 Q. And what was he -- did you understand what he
 18 was talking about?
 10:00:59 A. Yeah. He had -- he had told me he was putting
 20 in a propane tank to feed his whole-house generator
 21 behind the garage and had asked if he trenched through
 22 the hayfield, if he would dig up the waterline to the
 23 hydrant back there, and I said, "As long as you stay in
 24 propane blind depth, you won't because that waterline is
 25 4 feet deep because I put it in with my children.

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10:02:01 And he said, "Well, I dug up my lawn
 2 sprinklers."
 10:02:03 And I said, "How is that my fault?"
 10:02:04 And we discussed Jody's open trench that had
 5 been open since July on my property and he said, "Jody's
 6 in the hospital."
 10:02:17 And I said, "He's not the only backhoe in
 8 town."
 10:02:19 And then he changed the subject, and then he
 10 looked to the -- now we were standing at the --
 11 pointer? -- I guess it doesn't matter. Still in the
 12 same location. He also asked about that southeast
 13 corner again. And I said, "Well, that's the" --
 10:02:44 Q. Hold on.
 10:02:45 A. Yeah.
 10:02:46 Q. This corner?
 10:02:47 A. He asked about that again. And I said, "Well,
 18 that's right there, Arthur. It's the same."
 10:02:49 And then there was a corridor fence that I had
 20 constructed that paralleled the eastern boundary.
 10:02:21 Q. So up here?
 10:02:22 A. No.
 10:02:23 Q. Oh.
 10:02:24 A. In the hayfield to the southeast.
 10:03:25 Q. Here, let me hand you the pointer.

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10:03:01 May I, your Honor?
 10:03:02 THE COURT: Yes.
 10:03:13 THE WITNESS: There's a corridor fence right
 4 here that was part of my corral, and that was put in so
 5 the horses could access these other four or five
 6 pastures without entering the hayfield because the
 7 hayfield's for hay and needs to grow, and that was still
 8 standing there and it went nowhere. It's about 20 feet
 9 off of that line, and he had asked me if that was his
 10 property line four or five times. And I explained, no,
 11 that's just -- well, I said, "You can do anything you
 12 want with that."
 10:03:43 "Can I take it down?"
 10:03:44 I said, "Yes."
 10:03:45 MR. BISSELL: Q. Okay.
 10:03:46 A. "You can do anything you want with that
 17 because it belongs to you."
 10:03:48 And then this line where the barbwire fence
 19 is, the no trespassing signs facing the parcel I and all
 20 the heavy timber and brush that belongs to Stimson was
 21 his property line.
 10:04:22 Q. Okay.
 10:04:23 A. So then we were standing here and he says,
 24 "Where's this corner again?"
 10:04:25 And I said, "Arthur, look at your feet."

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10:04:01 And he looked down and he was standing on the 2 yellow PLS plastic cap. And he says, "Oh, I thought it 3 went down to the road." 10:04:14 And I said, "No, Arthur, it never went down to 5 the road." 10:04:16 MR. SCHMIDT: I'm going to object to this 7 narrative. I think we need to – 10:04:28 MR. BISSELL: Okay. Can I have that? 10:04:29 MR. SCHMIDT: – have some questions so I can 10 object. 10:04:41 MR. BISSELL: Q. And then what happened? 10:04:42 THE COURT: Sustained. 10:04:43 MR. SCHMIDT: Thanks. 10:04:44 MR. BISSELL: Q. And then what happened? 10:04:45 A. I said, "You do realize that you have ran over 16 the new survey and cut my side of the hayfield?" 10:04:47 Q. And what did he say? 10:04:48 A. Nothing. 10:04:49 Q. Did you walk the boundary at all? 10:04:50 A. Yeah. I said, "Come on, I'll show you. It 21 should be easy to find." I said, "I'll show you the 22 pins. Should be easy to find. Just look for the 23 ground-up wooden stakes that you ground up with your 24 lawn mower." 10:04:55 Q. Okay.	669 10:05:51 10:05:52 10:05:53 10:05:54 10:05:55 10:06:06 10:06:08 10:06:09 10:06:11 10:06:12 10:06:18 10:06:19 10:06:20 10:06:22 10:06:24 10:06:25	671 A. Yes, I am. Q. Did you take this photograph? A. Yes, I did. Q. And when did you take it, approximately? A. In August of 2019. Q. And does it accurately reflect the actual 7 conditions of when you took it? A. Yes, it does. Q. And can you explain – your Honor, move for 10 admission of PP. (Defendants' Exhibit PP offered.) MR. SCHMIDT: I object based on relevance. 13 It's something that happened after everything occurred. 14 It doesn't have any tendency to make any fact involved 15 in this litigation that's probative more or less likely. 16 It's just a picture of a stake on the ground after 17 closing. THE COURT: Overruled. PP will be admitted. (Defendants' Exhibit PP admitted.) MR. BISSELL: Q. What do we see in PP, 21 Mr. Farley? A. We see one of Mr. Rasor's ground-up survey 23 stakes that used to be standing at that yellow PLS cap. Q. And on the – where on the drawing? A. That's it.
10:05:51 A. So we took a walk – 10:05:52 Q. Hold on. 10:05:03 MR. SCHMIDT: I'm going to object to further 4 questioning about this interaction – well, never mind. 5 Withdraw the objection. 10:05:06 MR. BISSELL: Q. Okay. And so then did you 7 walk the boundary? 10:05:18 A. Yes. 10:05:19 Q. Did you observe any stakes? 10:05:10 A. Yes. 10:05:16 Q. Take a look at Exhibit PP, please. 10:05:12 A. Is that Peter Peter? 10:05:13 Q. Yeah. Should be in the green – the green 14 notebook. 10:05:15 A. Got it. 10:05:16 MR. SCHMIDT: I'm going to object to further 17 questioning about, I guess, what happened here with the 18 stakes since there's no longer a trespassing claim. I 19 just don't see the relevance. 10:05:20 MR. BISSELL: Your Honor, it's highly 21 relevant. They're claiming they didn't know where the 22 survey was and he ran over the stakes. 10:05:23 THE COURT: Overruled. 10:05:24 MR. BISSELL: Q. So, Mr. Farley, PP, are you 25 there?	670 10:06:51 10:06:52 10:06:53 10:07:04 10:07:05 10:07:06 10:07:18 10:07:19 10:07:20 10:07:22 10:07:23 10:07:24 10:07:25 10:07:26 10:07:27 10:07:28 10:07:29 10:07:30 10:07:31 10:07:32 10:07:33 10:07:34 10:07:35 10:07:36 10:07:37 10:07:38 10:07:39 10:07:40 10:07:41 10:07:42 10:07:43 10:07:44 10:07:45 10:07:46 10:07:47 10:07:48 10:07:49 10:07:50 10:07:51 10:07:52 10:07:53 10:07:54 10:07:55 10:07:56 10:07:57 10:07:58 10:07:59 10:08:00 10:08:01 10:08:02 10:08:03 10:08:04 10:08:05 10:08:06 10:08:07 10:08:08 10:08:09 10:08:10 10:08:11 10:08:12 10:08:13 10:08:14 10:08:15 10:08:16 10:08:17 10:08:18 10:08:19 10:08:20 10:08:21 10:08:22 10:08:23 10:08:24 10:08:25	672 Q. Right here – A. Yes, it is. Q. Okay. Were there any other ground-up stakes? A. Yes. Q. Where? A. To the northwest of that, the next circle 7 along that line. Correct. Q. Okay. Okay. Any others? A. No. Q. Then – well, oh, so how – so you walk the 11 boundary, correct? A. We walked that stretch. Q. Okay. And then what happened? A. To the end of it, to the next circle. Q. And then what happened? A. He turned and walked away, went back to his 17 UTV and drove off. Q. Okay. And then did you have an interaction 19 with the Gideons in October of that year? A. Yes, I did. Q. Okay. And how did that come about? A. Arthur had contacted me and said he was having 23 trouble locating property markers. Q. Okay. And how did he contact you? A. I think he left me a voicemail, or perhaps a

		673		675
1	text. I don't remember exactly.	10:08:22	10:10:51	A. "Well, I'm unsure."
2	Q. If you look at Exhibit FF.	10:08:23	10:10:52	And I said, "Arthur, I'm not having this
3	A. Too many forms of communication these days.		3	conversation with you again unless you have the record
4	I'm there.		4	of survey in your hand."
5	Q. Okay. And what is FF?	10:08:45	10:11:05	Q. And then what happened?
6	A. That is a text from Arthur Gideon to myself on	10:08:56	10:11:06	A. He said that Kathy was bringing it down.
7	October 23rd, 2019.		10:11:07	Q. And did she?
8	MR. BISSELL: Your Honor, move for admission	10:09:08	10:11:08	A. Yes, she did.
9	of Exhibit FF.		10:11:19	Q. And then what happened?
10	(Defendants' Exhibit FF offered.)	10:09:08	10:11:10	A. We all met in the hayfield on their side and
11	MR. SCHMIDT: No objection.	10:09:10	11	they handed it, held it out, and looked at it.
12	THE COURT: FF is admitted.	10:09:12	10:11:12	Q. And then what happened?
13	(Defendants' Exhibit FF admitted.)	10:09:13	10:11:13	A. I noted that they had north and they were
14	MR. BISSELL: Q. Okay. Why don't you read	10:09:14	14	pointing and gesticulating. They couldn't figure it out
15	that Exhibit FF, Mr. Farley.		15	and "where is this corner," and meaning the southeast
16	A. "Hey, Brian, this is Art. I had a hard time	10:09:16	16	corner again. And I noticed that they had the north
17	finding a couple of the property markers. If you could		17	arrow on the plat pointed west.
18	stop by, maybe you can help me find him," meaning them.	10:09:18	10:11:18	Q. Okay. So did you orient it correctly?
19	I'm down here in the corner. Thanks, bye."	10:09:19	10:11:19	A. Yes. I rotated it to 90 degrees and I said,
20	Q. Okay. So then what did you do?	10:09:20	20	"Guys, north is that way and the corner you're looking
21	A. Well, I was already on my ATV because I was	10:09:21	21	for is this corner," and I'm pointing to the corner on
22	going to look for a elk and I contacted him back, and I		22	the survey. "This corner is that corner right there."
23	drove up to the area in question where we had the	10:09:23	10:11:23	Q. And then what happened?
24	you-lied-to-me conversation in August, but I had no idea	10:09:24	10:11:24	A. "Well, what about the rest of them?"
25	what corner he was referring to.	10:09:25	10:11:25	And I said, "Well, I think you've got them all
		674		676
1	Q. Okay. And then what happened?	10:09:51	1	marked with your T posts."
2	A. He came down there.	10:09:52	10:11:52	Q. And then what happened?
3	Q. And did you have a conversation?	10:10:03	10:11:53	A. We walked the boundary because you can't –
4	A. Yes.	10:10:04	4	you can't see the last monument at the end of that
5	Q. And what did he say?	10:10:05	5	stretch to the west from where we were standing.
6	A. He asked about the same southeast corner	10:10:06	10:12:16	Q. This way?
7	again.		10:12:17	A. No. Right there.
8	Q. What do you mean ask about it?	10:10:18	10:12:18	Q. Oh, okay.
9	A. He asked, "Where is this corner again?"	10:10:19	10:12:19	A. And so I walked over and – well, I said, "Did
10	Q. Okay. And then what happened?		10	you get the one where it ties into the fence?"
11	A. I pointed to it. I was just 30, 40 feet away.	10:10:16	10:12:21	And he didn't know and so we walked over
12	Q. Okay. And then –	10:10:12	12	there. And I said, "Yes, you have them all." I says –
13	A. I said, "That's your southeast corner,	10:10:13	13	and he's pointing at the plat.
14	Arthur."		10:12:14	He says, "Aren't there other points along
15	Q. And then what happened?	10:10:15	15	here?"
16	A. He wanted to talk about the rest of the round	10:10:16	10:12:16	And I said, "No. Do you see any other marks
17	circles along the boundary line adjustment.		17	on the plat?"
18	Q. Okay.	10:10:18	10:12:18	And there wasn't any other marks on the plat.
19	A. And by this time he had put up the T posts	10:10:19	10:12:19	Q. Okay. And did you have any further
20	where the wooden stakes used to be and the monuments		20	discussion?
21	that were also damaged by the mowing were still there.	10:10:21	10:12:21	A. Yes.
22	Q. Okay.	10:10:22	10:12:22	Q. And what was that?
23	A. And I stated, "It looks to me like you have	10:10:23	10:12:23	A. Then he got very angry and he said, "You are
24	them all."		24	using my water from my upper well to water your stock
25	Q. And what did he say?	10:10:25	25	across the road."

10:13:01 Q. And what did you say?
 10:13:02 A. And I said, "I don't think that's the case.
 3 That's not the case."
 10:13:04 Q. And what else?
 10:13:05 A. He said -- actually, he started the
 6 conversation, "You changed something after we closed."
 10:13:17 And I said, "What are you talking about?"
 10:13:18 And he says, "I talked to someone that knows
 9 about real estate and they said you can't do that."
 10:13:20 I said, "Nothing was changed, Arthur."
 10:13:21 And then he told me I was using the water from
 12 his upper well to my hydrant on parcel S across Derting
 13 Road.
 10:13:34 Q. Did you have any discussions about quantity of
 15 water?
 10:13:36 A. Quantity?
 10:13:37 Q. Quantity.
 10:13:38 A. No.
 10:13:39 Q. Well production?
 10:13:40 A. No.
 10:13:41 Q. Did you ask him about well production?
 10:13:42 A. Quantity I was using, no.
 10:13:43 Q. No.
 10:13:44 A. I asked them -- I said -- and they were very
 25 angry. They were yelling at me and calling me a liar

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1 front of me, and I had to walk around him and I exited
 2 the hayfield.
 10:15:23 Q. Okay. Did you follow up that meeting with an
 4 email?
 10:15:45 A. Yes, I did.
 10:15:46 Q. Please turn to Exhibit 47.
 10:15:47 Your Honor, I believe we have a stipulation
 8 with regard to 47. If I could get confirmation, please.
 10:16:09 THE COURT: It is. It's admitted.
 10:16:10 MR. BISSELL: Thank you, your Honor.
 10:16:11 THE WITNESS: I'm there.
 10:16:12 MR. BISSELL: Q. All right. And let's go to
 13 the first email first, so go to the second to last page
 14 of --
 10:16:15 A. I'm there.
 10:16:16 Q. So I guess it would be page 3 of Exhibit 47.
 17 And there's an email from you to Katherine Gideon dated
 18 October 27th, 2019, correct?
 10:16:19 A. I'm there.
 10:16:20 Q. Okay. Why don't you read that slowly, please.
 10:16:21 A. "Good morning, Gideons. Say, I would like to
 22 propose that we meet again to discuss as neighbors these
 23 issues that you raised last Tuesday. I believe that
 24 this may be useful to flesh out the situation since it
 25 would appear that you folks have been denied permanent

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1 and I screwed them. And I said, "Well, that's not true.
 2 Nothing was changed. I'm not using your upper well
 3 water." And I said, "What is driving this? I mean, are
 4 you having problems with water?"
 10:14:05 And they said, "No."
 10:14:06 Q. And was that the end of the meeting?
 10:14:17 A. No.
 10:14:18 Q. Then what happened?
 10:14:19 A. He -- let's see. He gave me a directive to
 10 bring my big backhoe up, my hydraulic excavator and dig
 11 up the waterline in his hayfield and cap that line.
 10:14:32 Q. And what did you --
 10:14:33 A. And I said, "Well, I'm not going to be doing
 14 that." I said, "You folks are confused. You need to
 15 follow the paper trail." And I also said that "If you
 16 think you're missing something, you need to visit with
 17 First American Title Company."
 10:14:58 I said, "If it was me, I would send a
 19 registered letter requesting" -- sorry.
 10:15:20 Q. And then what happened?
 10:15:21 A. I said, "You could send them a registered
 22 letter, go in and talk with them."
 10:15:23 And they were unrelenting, so they were very
 24 angry and I just -- so I said, "This conversation is
 25 over." And I went to exit and Mr. Gideon stepped in

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1 information," period. "In order to do so as neighbors,
 2 I would suggest that you may want to please consider
 3 ratcheting down the rhetoric, the name calling,
 4 accusations, and the issuance of directives towards
 5 myself. Today is out, as we have a family day as we
 6 have my son's and my niece's memorial litter pickup.
 7 Mondays are always nuts, so maybe Tuesday p.m. or
 8 Wednesday? Please advise. Thanks and best regards,
 9 Brian."
 10:17:40 Q. And did they respond to this email, that
 11 email?
 10:17:42 A. No.
 10:17:43 Q. All right. So did you send them another
 14 email?
 10:17:45 A. Yes, but I forgot something important about
 16 the October 23rd meeting.
 10:17:47 Q. Was there some other conversation that you
 18 didn't tell us about?
 10:17:49 A. Yes.
 10:17:20 Q. Okay. What else?
 10:17:21 A. Mr. Gideon was -- they were both so angry and
 22 carrying on, I said, "You know, if you're concerned
 23 about that small quantity of water I'm using across the
 24 road in my trough for my horses," I said, "why don't you
 25 place a lock on there?"

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10:18:01 Q. Okay.

10:18:02 A. And when I came back after dark, after looking

3 for an elk, I stopped and the lock was on there.

10:18:04 Q. All right. Let's go to the first page of

5 Exhibit 47.

10:18:16 A. Okay.

10:18:17 Q. And so again, so you did not hear from the

8 Gideons after your October 27th?

10:18:19 A. No, I waited three days and they didn't

10 respond.

10:18:21 Q. Okay. And so then you — did you send them

12 this October 30th email?

10:18:23 A. Yes, I did.

10:18:24 Q. And that's again from you to Katherine Gideon;

15 is that correct?

10:18:36 A. Correct.

10:18:37 Q. Okay. And just read the first paragraph,

18 please.

10:18:39 A. "Hey, Kathy, I am hopeful that it is you that

20 are receiving and digesting my emails because, first of

21 all, you asked me to communicate with you early on

22 because you told me that," quote/unquote, "Art is

23 forgetful," period. "I mean no disrespect, but boy,

24 howdy, that is the understatement of the day. How many

25 times have I discussed, described, provided drawings to

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1 poor memories on the buyers' side cannot be projected

2 onto the sellers' side."

10:20:43 Q. Okay. Thank you. Now switching topics a

4 little bit.

10:21:05 A. I'm going get a drink of water, Counselor, but

6 you can talk.

10:21:17 Q. So let's talk about when did you start moving

8 your belongings out of the premises.

10:21:29 A. In 2017.

10:21:40 Q. Okay. And what did you do with them?

10:21:41 A. I purchased a High Cube Conex box from Arrow

12 Construction Supply and placed it down at the creek.

10:21:43 Q. Okay. And now I think you testified

14 yesterday, or there was a question about you stating it

15 was — you said it was in 2018 before, correct?

10:21:46 A. In my dep I made an error and I off-the-cuff

17 said 2018 but it was actually 2017.

10:21:48 Q. And how did you verify that?

10:21:49 A. Because it didn't seem right when I reviewed

20 my dep multiple times, and then I went searching for an

21 invoice.

10:22:02 Q. Okay. Could you please turn to Exhibit F.

23 Let me know when you're there, please.

10:22:24 A. I am there.

10:22:25 Q. Okay. And what is that document?

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1 and walked with him, as well as your agent Patty Ellis

2 to property lines and corners that are clearly marked on

3 the ground and on paper with the public record, and here

4 we are six months later and he still," caps, "doesn't

5 get it."

10:19:16 Q. Okay. And then go to the second page and the

7 seventh paragraph down, please. It starts, "Apparently

8 you folks."

10:19:49 A. "Apparently you folks have chosen not to avail

10 yourself of my offer to meet as neighbors to discuss

11 this latest issue that you have raised, once again, some

12 five months after the fact that there existed some

13 diabolical conspiracy amongst the participants on the

14 sellers' side that caused the property to be, in some

15 fashion, misrepresented to yourselves."

10:20:06 Q. And then finally, if you drop down about four

17 paragraphs, there's a paragraph that starts, "There was

18 and remains." Can you read that?

10:20:19 A. "There was and remains full disclosure to not

20 only your agent and yourselves, but for that matter the

21 entire world, that is, it is all public record. Nothing

22 was done in," quote, "secret," close quote. "Nothing

23 was altered or changed," quote, "along the way," close

24 quote, "that damaged you folks in any way. Poor

25 performance and misunderstandings due to bad agents and

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10:22:41 A. That is the invoice for the Conex box I placed

2 down at my creek on parcel V.

10:22:53 MR. BISSELL: Your Honor, I'd move for

4 admission of Exhibit F.

10:22:55 (Defendants' Exhibit F offered.)

10:23:06 MR. SCHMIDT: No objection.

10:23:07 THE COURT: Exhibit F, as in Frank, will be

8 admitted.

10:23:09 (Defendants' Exhibit F admitted.)

10:23:10 MR. BISSELL: Q. So looking at Exhibit F,

11 that's dated — what's the date on there, Mr. Farley?

10:23:12 A. July 5th, 2017.

10:23:13 Q. So would it have been moved down to the lower

14 well the same day you purchased it?

10:23:15 A. No.

10:23:16 Q. When was it?

10:23:17 A. I don't recall, but it was during July.

10:23:18 Q. Of '17?

10:23:19 A. Yes.

10:23:20 Q. Okay. And then what did you do with it? What

21 did you use it for?

10:23:22 A. Well, the first thing — you know,

23 6,000-square-feet and a 2,000-square-foot barn is a lot

24 to move. First thing I did is I began clearing out my

25 garage — or excuse me, the barn first and then my

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1 garage and placing belongings in the Conex box.
 10:23:52 Q. Okay. And then did you plug anything down
 3 there?
 10:24:04 A. At that time, when I first set it up, I think
 5 I had three freezers in the garage that all had been
 6 moved went into the Conex box.
 10:24:17 Q. And since that time, have you ever not had
 8 things plugged in down at the lower well?
 10:24:19 A. No.
 10:24:10 Q. Does it vary what you have plugged in?
 10:24:16 A. It varies. I have several different elements
 12 that are plugged in, several vehicles and equipment with
 13 battery chargers, RV with a refrigerator/freezer,
 14 heating and air-conditioning and furnace, heaters in the
 15 Conex, air compressor.
 10:24:46 Q. Okay. Did you ever have any conversations
 17 with Mr. Gideon regarding rebuilding the pump house?
 10:24:58 A. Yes.
 10:24:59 Q. And when did that occur?
 10:24:20 A. About a month after they were settled in,
 21 which would have been the end of June.
 10:24:22 Q. And who instigated that conversation?
 10:25:23 A. Arthur had called me.
 10:25:24 Q. And what did he say?
 10:25:25 A. He said, "Hey, Brian, I went down to the lower

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10:26:41

A. From time to time there would be leaks; I
 2 fixed those. But in March of 2019, in preparation for
 3 creating my log deck at the top of parcel T, I put in
 4 new pipe and new telemetry wire and a section of those
 5 elements on parcel T.

10:27:06

Q. And did you complete that work before or
 7 after --

10:27:08

A. I relocated them out of the way because they
 9 were going to be dug up when I did my log deck.

10:27:10

Q. Okay. Did you perform that work before or
 11 after you entered into the Purchase and Sale Agreement
 12 with the Gideons?

10:27:13

A. Before.

10:27:14

Q. Okay. There was testimony from Mr. Gideon
 15 that you denied him access to your property to access
 16 the leach field. Do you recall that?

10:27:17

A. Yes.

10:27:18

Q. Describe what occurred.

10:27:19

A. I did not deny him access to his leach field.

10:27:20

Q. Okay. Did he want to cross parcel T to get to
 21 his leach field?

10:27:22

A. Yes. He attempted to cross where there was no
 23 easement to the leach field. Just randomly across my
 24 property.

10:28:25

Q. Okay. And what happened?

1 well today and the pump house looks like it's about
 2 ready to fall over."
 10:25:13 Q. Okay. And then what?
 10:25:14 A. I said, "Arthur, it's not going to fall over.
 5 It's just a plywood shack that has a concrete
 6 foundation. It's fine."
 10:25:27 Q. Okay. Did he say he wanted to rebuild it?
 10:25:38 A. Yeah. And then he said, "Well, would you be
 9 interested in rebuilding it with me?"
 10:25:40 Q. And what did you tell him?
 10:25:41 A. I said, "No, not at this time."
 10:25:42 Q. Did he say anything to the effect that I own
 13 the pump house and I'm going to rebuild it?
 10:25:44 A. No.
 10:25:45 Q. Now, there was some -- you did some work on
 16 the -- well, we've talked about the telemetry monitor.
 17 What is that?
 10:26:06 A. It's direct-burial phone cable that runs from
 19 the float switches -- the float switch for the lower
 20 well in the cistern down across parcel I, parcel S,
 21 and -- parcel S eventually -- not parcel S -- T to the
 22 pump house on V.
 10:26:23 Q. Okay. And then at some point did you do any
 24 work in -- at some point did you do some work on the
 25 pipeline and the telemetry line?

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10:28:01

A. This was the second inspection by Panhandle
 2 Health District, the actual -- of the actual leach
 3 field. The first inspection they did was a thousand
 4 feet away, but this was the second inspection of the
 5 failed drain field at the bottom of parcel T and Arthur
 6 and -- Panhandle told me that Arthur and Jody wanted to
 7 be there as well, and that was fine with me.

10:28:38

Q. And then what happened?

10:28:39

A. Well, they all arrived at my lower gate, which
 10 is the easement to the lower well only, and Arthur took
 11 the point and came up to the gate and I asked him, I
 12 said, "Arthur, are you here to work on the well?"

10:28:43

He said, "No, I'm here to see my leach field."

10:28:44

And I said, "Well, there's no" -- I said -- I
 15 asked him twice. I said, "Well, you're not going to
 16 work on the well today?"

10:29:17

He says, "No, I'm here to see my leach field."
 18 And he was actually pushing on the gate.

10:29:19

And I said, "There is no easement to the leach
 20 field here and you're going to need to use the
 21 easements" -- even though they were voided at this time,
 22 "You're going to need to use the easement to access your
 23 leach field."

10:29:24

Q. And then what happened?

10:29:25

A. Jody said, "Let's go back up to the top and

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1 use the easement, Arthur," and they departed.
 10:29:32 Q. Have you used any water from the lower well on
 3 parcel T since closing?
 10:29:34 A. Yes.
 10:29:35 Q. And how much would you estimate?
 10:29:46 A. I think I filled the water trough four times
 7 in the summer of 2021.
 10:29:48 Q. And how many gallons is that?
 10:29:49 A. I think it holds 150 gallons.
 10:29:50 Q. So 600 gallons, approximately –
 10:29:51 A. Yes.
 10:29:52 Q. – during 2021?
 10:29:53 Did you use it any other years; do you recall?
 10:30:04 A. I don't think I planted my food plot.
 10:30:05 Q. Well, let's just focus on the trough right
 16 now.
 10:30:07 A. Okay. Well, I don't think I used the trough
 18 there in 2020.
 10:30:19 Q. Okay. What about 2019?
 10:30:20 A. Possibly, but I don't believe so.
 10:30:21 Q. Okay. And then you mentioned a food plot.
 22 What is that?
 10:30:23 A. Well, the hydrant is located at the
 24 intersection of cross fence for upper and lower pastures
 25 on parcel T and a small quarter, half-acre parcel to the

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1 used that in 2021? We'll just take it by the year.
 10:31:42 A. I don't think I did.
 10:31:43 Q. Okay. Do you know –
 10:31:44 A. No, I didn't because I was logging and I was
 5 using the – since it's bare dirt, I was using it as my
 6 log landing. I brought hundreds of logs onto that land.
 10:31:57 Q. Okay. Did you irrigate it in 2020?
 10:32:08 A. I did not.
 10:32:09 Q. 2019?
 10:32:10 A. I did not.
 10:32:11 Q. 2018?
 10:32:12 A. Possibly.
 10:32:13 Q. Okay. Have you ever denied the Gideons the
 14 shared use and benefit of the water from the lower well?
 10:32:15 A. Never.
 10:32:16 Q. So even after the Amended CC&Rs were voided,
 17 did you deny them shared use and benefit from the lower
 18 well?
 10:32:19 A. To this day, they're basically the sole user
 20 of that water.
 10:32:21 Q. Has it ever been your intention to deny them
 22 the shared use and benefit of the lower well?
 10:32:23 A. No.
 10:32:24 Q. And why not?
 10:32:25 A. It was always my intention that they would

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1 southwest that is referred to as the food plot that was
 2 pasture for horses, or I would also plant a crop in
 3 there for the whitetail deer.
 10:30:44 Q. And did you do that at some point?
 10:30:55 A. At some point I planted it?
 10:30:56 Q. Yeah.
 10:30:57 A. Yes.
 10:30:58 Q. When?
 10:30:59 A. Some years.
 10:31:00 Q. Do you know – recall which years?
 10:31:01 A. Oh, going back 15, 20 years.
 10:31:02 Q. Okay. Has it been there then every year?
 10:31:03 A. Well, some years I would seed it and it would
 14 fail.
 10:31:15 Q. Okay.
 10:31:16 A. And some years I wouldn't seed it. Depends on
 17 the weather. You seed it in late summer so it's
 18 available for the deer in the fall and the winter.
 10:31:19 Q. Well, have you ever watered it?
 10:31:20 A. Yes.
 10:31:21 Q. And where did the water come from?
 10:31:22 A. You string a garden hose off of the hydrant on
 23 parcel T into there and I have a single Rainbird
 24 sprinkler on a tripod.
 10:31:25 Q. Okay. And do you recall – do you know if you

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1 have the shared use and benefit of the lower well if
 2 they needed it.
 10:32:43 Q. Is that why you filed the Amended CC&Rs?
 10:32:44 A. Yes, it is.
 10:32:45 Q. And the Gideons continue to pay you 56 bucks a
 6 month?
 10:32:57 A. Yes, they do.
 10:32:58 Q. Do you still intend on sharing the water with
 9 the Gideons regardless of the outcome of this
 10 litigation?
 10:33:01 A. Yes, but I don't –
 10:33:02 Q. Yes.
 10:33:03 A. – cash their checks.
 10:33:04 Q. Why don't you do that?
 10:33:05 A. Well, at one point Mr. Schmidt wanted to
 16 create a fight after that dollar amount, and I could see
 17 no sense in the parties spending hundred of dollars on
 18 lawyers for \$56 a month, so I just elected not to charge
 19 them anything, so the power's been free for them since
 20 January of 2020.
 10:33:21 Q. If you intended to sell the lower well with
 22 parcel I, would you have filed your amended water right
 23 claim removing parcel I as a point of use for the lower
 24 well?
 10:33:25 A. No.

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10:33:51 Q. Was there ever a time from 1994 to closing in
2 2019 when you did not have sufficient water to meet your
3 needs?
10:34:04 A. No.
10:34:15 MR. BISSELL: Your Honor, I'd just like a few
6 minutes to review my stuff here.
10:34:27 THE COURT: Sure.
10:35:48 MR. BISSELL: Q. Mr. Farley, we talked about
9 that in 2016 your wife quitclaimed the parcel I, S, T,
10 and V to you, right?
10:35:56 A. Yes.
10:35:56 Q. Okay. And since that time, have you dealt
13 with them as your separate property?
10:36:04 A. What was the question?
10:36:05 Q. Since that time, have you dealt with them as
16 if they were your separate property, the parcels?
10:36:07 A. Have I dealt with the parcels in that manner?
10:36:08 Q. Yes.
10:36:09 A. Yes.
10:36:20 MR. BISSELL: Okay. That's all I have, your
21 Honor. Thank you.
10:36:22 THE COURT: This is a good time to take our
23 morning break, so we'll do that and we'll be back for
24 cross-examination.
10:36:25 (Recess.)

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11:01:01 MR. BISSELL: I think it's 47 -- nope. It's
2 46, I think. Is that what you're talking about?
11:01:13 MR. SCHMIDT: Yeah.
11:01:14 MR. BISSELL: Forty-six, I believe.
11:01:15 MR. SCHMIDT: Q. So if you could turn to
6 Exhibit 46. Yesterday you testified that that was the
7 preliminary drawing that you handed to all parties and
8 real estate agents that came to view your property,
9 correct?
11:01:10 A. Correct.
11:01:11 Q. My question to you and asked you, are you
12 sure, and you were sure that it was yesterday, correct?
11:01:13 A. Correct.
11:01:14 Q. And, in fact, I handed you that exhibit during
15 your deposition and asked you to mark it up, correct?
11:01:16 A. I recall that, yes.
11:01:17 Q. And that deposition came from me. I printed
18 that out to provide to you, correct?
11:01:19 A. I do not know that.
11:02:20 Q. So --
11:02:21 A. There's two questions.
11:02:22 Q. What?
11:02:23 A. I think you asked two questions. It came from
24 you, yes. I do not know where you got it.
11:02:25 Q. Okay. But that is not what you presented to

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11:00:01 THE COURT: Back on the record in CV28-20-2706
2 after the break.
11:00:13 MR. SCHMIDT: Good morning, Mr. Farley.
11:00:24 THE COURT: Hold on a second.
11:00:25 MR. SCHMIDT: Oh, sorry.
11:00:26 THE COURT: Mr. Farley, as noted, you're still
7 under oath, okay?
11:00:28 THE WITNESS: Thank you, your Honor.
11:00:29 THE COURT: Go ahead, Mr. Schmidt.
11:00:40 CROSS-EXAMINATION
11:00:41 MR. SCHMIDT: Q. Good morning, Mr. Farley.
11:00:42 A. Good morning.
11:00:43 Q. I wanted to start off by asking you some
14 questions about that exhibit that we handed back and
15 forth that you testified about this morning as well. It
16 was Deposition Exhibit 29. Do you recall what I'm
17 referring to?
11:00:48 A. Yes.
11:00:49 Q. And yesterday you represented that that was --
11:00:20 MR. BISSELL: Your Honor, can we get the trial
21 exhibit number?
11:00:22 THE COURT: He said 29, I think. Deposition
23 exhibit, yes.
11:00:24 MR. SCHMIDT: What is the trial exhibit
25 number?

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1 all purchasers and their real estate agents, is it?
11:02:22 A. I cannot be certain, but it's very similar.
11:02:23 Q. You haven't produced any document in discovery
4 that you supplied to all purchasers and real estate
5 agents, have you?
11:02:36 A. I don't recall. I don't believe so.
11:02:37 Q. You've been pretty good at keeping records of
8 other things. Is there any reason why you don't have
9 that document anymore?
11:02:40 MR. BISSELL: Objection. Argumentative.
11:02:41 THE COURT: Overruled.
11:02:42 THE WITNESS: I must have given Mr. Gideon my
13 last one.
11:02:44 MR. SCHMIDT: Q. Okay. Yesterday you
15 testified that you could easily turn on and off that
16 ball valve at the cistern and control whether or not the
17 lower well would supplement the cistern on parcel I,
18 correct?
11:03:19 A. Correct.
11:03:20 Q. And so it was physically connected, the lower
21 well, to the cistern, correct?
11:03:22 A. Yes.
11:03:23 Q. And it would be considered part of the system,
24 correct?
11:03:25 A. Yes.

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11:03:31 Q. And you testified that you did, in fact, turn
2 it on and off on an as-needed basis for parcel I,
3 correct?
11:03:34 A. Yes.
11:03:45 Q. So would you agree that the lower well was
6 hooked up in a manner that provided a benefit to
7 parcel I even after you put a valve on it?
11:03:58 A. Yes.
11:03:59 Q. And would you agree that it was part of the
10 system from 2017, part of the water system from 2017 up
11 until the date of closing?
11:04:02 A. What was part?
11:04:06 Q. The lower well, the line, the ball valve, the
14 cistern, all part of a system that benefited parcel I, a
15 water system.
11:04:16 A. Yes.
11:04:17 Q. And would you agree that at the time of
18 severance, you had turned it on? At the time of
19 closing, you had already turned it on for a few days, at
20 least, correct?
11:04:29 A. Can you define severance, please?
11:04:32 Q. Closing.
11:04:33 A. At the time of closing, could you restate,
24 please?
11:04:35 Q. At the time of closing, you had turned on the

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11:05:41 A. That is correct.
11:05:52 Q. And you didn't tell them that you had done
3 that, correct?
11:05:54 A. No, I did not.
11:05:55 Q. You didn't tell them. You figured that they
6 should find that on the IDWR website, correct?
11:05:57 A. I didn't know what they were going to do, but
8 I did not tell them that I had changed my water rights
9 and reserved them the way they were reserved for myself.
11:06:00 Q. Do you understand that that partial disclosure
11 might be misleading to the Gideons, telling -- and I'll
12 describe the partial disclosure -- telling them they're
13 going to get the benefit from the water from the lower
14 well and not telling them that you had changed the water
15 rights in late January of 2019?
11:06:16 MR. BISSELL: Objection. Calls for
17 speculation on the mind of the Gideons.
11:06:18 MR. SCHMIDT: Q. Would you agree that that's
19 misleading, is my question?
11:06:20 THE COURT: Overruled.
11:06:21 THE WITNESS: I'm confused now.
11:06:22 MR. SCHMIDT: Q. What are you confused about?
11:06:23 A. Your question.
11:06:24 Q. Okay. Would you agree --
11:06:25 A. This was what -- I guess may I ask you a

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1 valve so as to provide water from the lower well to the
2 cistern for the benefit of parcel I, correct?
11:04:43 A. At a time -- at some time previous to closing,
4 yes, I did.
11:04:55 Q. And it was your intent that the Gideons should
6 have a right to that water from the lower well, correct?
11:04:56 A. They should have the use of that water, that
8 is correct.
11:05:09 Q. And that was because you represented to the
10 Gideons that they would receive water from the lower
11 well, correct?
11:05:12 A. That is correct.
11:05:13 Q. And that was your representation to the
14 Gideons that they would receive the benefit of the lower
15 well, correct?
11:05:16 A. Yes.
11:05:17 Q. And you never told them that you had changed
18 water rights so that the water rights did not reflect
19 that parcel I would benefit from the water from the
20 lower well, correct?
11:05:21 A. There was no -- there was no water rights from
22 the point of diversion on parcel V to change from parcel
23 I.
11:05:24 Q. Well, you had already changed them earlier
25 that year in late January of 2019, correct?

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1 question?
11:06:42 THE COURT: No.
11:06:43 MR. SCHMIDT: You can't.
11:06:44 Q. Would you agree it's misleading to tell the
5 Gideons you're going to give them the right to use water
6 from the lower well and not tell them that, on January
7 28th or 29th of 2019, you had changed the location of
8 the place of use associated with the water right for the
9 lower well?
11:07:00 A. I would not agree that that is misleading.
11:07:11 Q. Okay. Why don't you think that's misleading?
11:07:12 A. Something I did with regards to my water
13 rights five months before I met the Gideons, I don't
14 understand how that is misleading.
11:07:15 Q. But you didn't tell them you had changed the
16 water right, at any rate, correct?
11:07:17 A. I altered my water rights, no.
11:07:18 Q. Is that correct?
11:07:19 A. I did not tell them that there was no water --
20 that I changed the water rights, that's correct.
11:07:21 Q. And did you threaten to turn off the water at
22 any point in time to the Gideons, either yourself or
23 your attorney?
11:07:24 A. Did I threaten to turn off the water from the
25 lower well?

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11:07:43 Q. That you could cap it at any time you wanted?
 2 Did you make that statement, either through yourself or
 3 through your attorney at any point in time?
 11:07:54 A. I don't seem to recall that.
 11:08:05 Q. And there's nothing in writing stating that
 6 you're going to withhold the water rights, correct? I
 7 mean prior to the closing of this sale and this
 8 transaction, no writing exists stating that you were not
 9 going to transfer the water rights, correct?
 11:08:30 A. There's –
 11:08:31 Q. I'll start over.
 11:08:32 A. – two sense of water rights. You need to
 13 tell me which one you're talking about.
 11:08:44 Q. Okay. I'm talking about the lower well and
 15 all the water rights that are associated with it and the
 16 right to receive water on parcel I.
 11:08:57 A. There's nothing in writing?
 11:08:58 Q. Yes.
 11:08:59 A. Yes, there is.
 11:09:00 Q. And what is it that's in writing?
 11:09:01 A. That's all the documentation at the IDWR water
 22 rights.
 11:09:03 Q. Okay. But you didn't list anything in writing
 24 in connection with the Purchase and Sale Agreement
 25 saying you were going to withhold that, correct?

11:09:08 A. I'm confused – no, not – no, I did not.
 11:09:12 Q. There's no writing exists that says that,
 3 correct?
 11:09:14 A. That I provided?
 11:09:15 Q. Yes.
 11:09:26 A. No.
 11:09:27 Q. In the Purchase and Sale Agreement. And
 8 there's no other written agreement signed by the parties
 9 that agrees that you get to withhold water rights,
 10 correct?
 11:09:29 A. I'm thinking I can't withhold water rights
 12 from myself, but the answer, I guess, would be no.
 11:09:33 Q. Is that correct?
 11:09:34 A. Correct.
 11:09:35 Q. Okay. And did you reach an agreement – you
 16 allege that you talked about granting a priority
 17 interest to my clients. My clients, of course, dispute
 18 that. But did you reach any agreement on the terms of a
 19 well share agreement with my clients prior to closing?
 11:10:00 A. Yes.
 11:10:01 Q. What were those terms?
 11:10:02 A. The Amended CC&Rs.
 11:10:03 Q. Okay. But you've testified you didn't
 24 communicate those to the Gideons. You just let them
 25 discover them at closing and blamed Ms. Ellis; is that

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1 accurate?
 11:10:02 A. Yes, I think so.
 11:10:03 Q. Okay. So but they never signed off on any
 4 agreement or reached an agreement as to those terms,
 5 correct?
 11:10:06 A. They did on June 7th, yes.
 11:10:07 Q. As of June 7th, it's your position that they
 8 agreed to those terms in the Amended CC&Rs you recorded?
 11:10:09 A. Well, I believe so, yes.
 11:10:10 Q. You're thinking is that if they had decided to
 11 go forward with the transaction, not actually having
 12 received or reviewed them, that that constitutes their
 13 agreement?
 11:11:04 A. I think so, yes.
 11:11:05 Q. Okay. But you're the one who chose what terms
 16 to put into those Amended CC&Rs, correct?
 11:11:17 A. Yes.
 11:11:18 Q. You put those terms in without consulting my
 19 clients, correct?
 11:11:20 A. When I began that process, I had not – it was
 21 a year prior to meeting your clients.
 11:11:22 Q. So while you had an agreement to grant the
 23 Gideons water from the lower well in connection with
 24 your selling of the subject property, the specific terms
 25 that you unilaterally chose for the agreement, the

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1 shared well agreement portion, were not agreed upon and
 2 confirmed by my clients prior to closing, correct?
 11:11:53 A. If I understand your question, correct.
 11:12:04 I'm sorry I talked over you when you started
 5 your question and I apologize for that.
 11:12:06 Q. I want to talk about the hydrant that you have
 7 run – or the waterline that you've run from the cistern
 8 to parcel T below Derting Road, which used to be parcel
 9 S. Do you know what I'm talking about?
 11:12:10 A. No.
 11:12:11 Q. Okay. The hydrant that a lock was put on and
 12 then removed.
 11:12:13 A. That's still parcel S.
 11:12:14 Q. Okay. That is still parcel S, okay.
 11:12:15 A. That's correct.
 11:12:16 Q. Okay. So that line, the line that runs from
 17 the cistern to parcel S, do we know what we're talking
 18 about?
 11:12:19 A. Yes.
 11:12:20 Q. The one that you've brought a second lawsuit
 21 against my clients on.
 11:12:22 A. Yes.
 11:12:23 Q. Okay. We're talking about the same one now.
 11:12:24 Now, you do not have an express easement, that
 25 is to say, a written easement to transport and deliver

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1 water from the Gideons' cistern and run it through the
2 Gideons' property to the hydrant on parcel S –

11:13:03 MR. BISSELL: Objection, your Honor

11:13:04 MR. SCHMIDT: – do you?

11:13:15 MR. BISSELL: Oh, sorry. Objection. It's not
6 relevant. We're not discussing parcel S in this
7 transaction – or the hydrant on parcel S in this
8 lawsuit.

11:13:19 THE COURT: I think there was some –
10 something brought up on direct examination about the
11 hydrant and about the other lawsuit, and so I'm going to
12 allow it.

11:13:33 MR. SCHMIDT: Q. So you have no written
14 easement for that, correct?

11:13:35 A. It's my understanding that I do.

11:13:36 Q. There's a written easement? Nothing was –
17 okay. What – please explain. I haven't seen any
18 written easement, so explain what you're talking about.

11:13:49 A. Due to historical beneficial use, I have –
20 I've been informed by my water rights attorney that I
21 have an uncontrovertible statutory easement for that
22 pipeline to use my water on parcel S.

11:14:23 Q. Okay. And that's just because you have a
24 water right, is that your argument?

11:14:25 A. Yes. I have that water right, yes. That's a

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MR. BISSELL: Objection. Argumentative.

THE COURT: Overruled.

MR. BISSELL: Against the Gideons.

THE WITNESS: Yes, that's part of the

5 interconnected water system. All those elements play a
6 part.

MR. SCHMIDT: Q. I want to – if you could
8 turn to Exhibit 29, please.

A. I'm there.

Q. We went over this a little bit yesterday and
11 you revisited your testimony from yesterday today and
12 made some corrections. Would you agree?

A. Yes.

Q. That some of what you testified about
15 yesterday is not actually true, correct?

A. I don't – no, I don't recall, actually.

Q. So Exhibit 29, would you agree that that's
18 your June 24, 2019, letter to the Gideons forwarding
19 Kootenai Electric bills to justify how much you were
20 going to charge them for pumping water from the lower
21 well to the cistern?

A. Well, it actually transmitted to them on
23 September 11th of that year.

Q. But other than that, did I state that
25 accurately?

1 point of use for the water from the point of diversion
2 on parcel V.

11:14:23 Q. But there's no easement document filed with
4 the Kootenai County recorders office for transporting
5 water from the cistern to the trough location on parcel
6 S, correct?

11:14:37 A. Not that I'm aware of, no.

11:14:38 Q. So that is a correct statement?

11:14:39 A. Yes.

11:14:40 Q. And there's no easement document filed with
11 the Kootenai County recorders office for you to store
12 water on parcel I in the cistern either, is there?

11:14:43 A. You said with Kootenai County?

11:14:44 Q. Kootenai County recorders office.

11:14:45 A. Not that I'm aware of, no.

11:15:06 Q. And there's also no agreement or easement on
17 file with the Kootenai County recorders office addressed
18 to using the Gideons' power to pump water to the trough
19 location either, is there?

11:15:20 A. No.

11:15:21 Q. Is that correct?

11:15:22 A. That's correct.

11:15:23 Q. So to get water from the lower well to that
24 location on parcel S, you need the Gideons' electricity,
25 pump, and cistern to be part of that process, correct?

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A. It's a suggestion of how we could work out the
2 cost of them using the lower well pump, yes.

Q. Well, why is it a suggestion if – it was your
4 testimony earlier my clients had agreed to the terms of
5 your well share agreement that you recorded prior to
6 closing. Why are you negotiating if you already have an
7 agreement?

A. There are no dollar amounts in the ACC&Rs and
9 the shared well agreement. That needed to be worked out
10 with the parties.

Q. So in your testimony yesterday, you testified
12 that between 2017 and closing, you frequently used the
13 hydrant on parcel T, yesterday.

A. Well –

Q. Is that your testimony?

A. I occasionally used the hydrant on parcel T.

Q. So the electric bills that you provided on
18 September 11, 2019, dated June 24, 2019, were supposed
19 to reflect – well, let's revisit that date. Why did
20 you draft this in June and then wait until September to
21 deliver it?

A. Well, let's see. I started drafting it as,
23 you know – because as I stated, this issue of the cost
24 needed to be worked out between the parties, and then I
25 set it aside.

11:19:01 Q. You were aware that the Gideons had no idea
2 that there was a shared well agreement that had been
3 recorded just prior to closing, correct?

11:19:14 MR. BISSELL: Objection. Argumentative.

11:19:15 THE WITNESS: No, I was not aware.

11:19:16 THE COURT: Overruled. You may answer.

11:19:17 THE WITNESS: No, I was not aware of that.

11:19:18 MR. SCHMIDT: Q. So the delay in delivery,
9 was that to lessen the blow of giving them this bad
10 news?

11:19:41 MR. BISSELL: Objection. Argumentative.

11:19:42 THE COURT: Overruled.

11:19:43 THE WITNESS: Well – no.

11:19:44 MR. SCHMIDT: Q. No?

11:19:45 A. **There's no bad news contained in this.**

11:19:46 Q. And you provided a bill for power usage from
17 October 15, 2017, to November 20, 2017, correct? I'd
18 point your attention to Bates number Gideon 2074.

11:19:59 A. **Okay.**

11:19:20 Q. Are you there?

11:20:21 A. **Yes, I am.**

11:20:22 Q. And what was this page of Exhibit 29 intended
23 to reflect?

11:20:24 A. **I was trying to depict the difference in
25 the – in the monthly charges, which is an auto pay, so**

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11:21:51 A. **Correct.**

11:22:12 Q. And when you chose that date, the dates of the
3 bills to send to the Gideons, that was before this
4 dispute had erupted, correct?

11:22:25 A. **Yes.**

11:22:26 Q. At that point in time, there was no argument
7 over whether or not it was a private system, private
8 well yet, correct?

11:22:39 A. **Correct.**

11:22:40 Q. But you knew that my clients would find out
11 about these issues and that they would become upset,
12 didn't you?

11:22:43 MR. BISSELL: Objection. Argumentative.

11:22:44 THE COURT: I'm going to sustain on that.

11:22:45 MR. SCHMIDT: Q. Okay. Isn't that what you
16 wrote in your text to Rob Elder: "When the buyer finds
17 out what she did not do for them, or should I say,
18 figures it out, if I was them, I'd be coming after her."
19 That was your text to Mr. Elder, correct?

11:23:20 A. **Yes, she would be Patty Ellis and her would be
21 Patty Ellis, and I referenced her in that text.**

11:23:22 Q. But you knew my clients were going to find
23 something out? They were going to figure something out
24 and be mad at her, didn't you?

11:23:25 A. **It's pretty specific. It says what she did**

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1 they – Kootenai Electric picks a number and it's the
2 same every month. I was trying to depict the difference
3 between the number for the well only and the number
4 for – well, I think there was an increase in the – you
5 know, I can't recall it now, but I think there was an
6 increase that was made, perhaps a standard annual review
7 increase somewhere in the mix. And then also when I
8 began using the power for other purposes.

11:21:09 Q. So you testified that you turned off the valve
10 at the cistern in June of 2017 when North Idaho Pump
11 worked to install a pump on the upper well yesterday,
12 correct? Was that your testimony yesterday?

11:21:43 A. **No, I testified that they did the work in July
14 of 2017.**

11:21:45 Q. Okay. And so was it at that time that you
16 placed the valve and turned it off?

11:21:47 A. **The valve was placed in July 2017.**

11:21:48 Q. And that's when you turned it off, correct?

11:21:49 A. **I turned it off at some point in the summer of
20 2017, yes.**

11:21:21 Q. Okay. And so that bill that you sent from
22 October 15, 2017, to November 20, 2017, would have
23 reflected a time, according to your testimony, when no
24 water was being pumped to the cistern from the lower
25 well, correct?

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1 not do for them.

11:23:22 Q. On June 24 of 2019, my clients hadn't figured
3 it out yet, had they?

11:23:34 MR. BISSELL: Objection. Ambiguous.

11:23:35 THE COURT: Sustained.

11:23:46 MR. SCHMIDT: Q. So going back to your logic
7 for this billing, you provided bills for after you
8 hooked up the Conex freezers in 2017, correct?

11:23:59 A. **The date of the bill – the date of this –
10 this bill was after I had put – installed the Conex and
11 began using power for other purposes.**

11:24:02 Q. And so that was supposed to show you using
13 both the lower well pump and the freezer electricity,
14 correct?

11:24:15 A. **Well, at this time there was a lot more than
16 the three freezers.**

11:24:17 Q. Sure. But it was supposed to include the
18 well-pumping electricity, correct?

11:24:19 A. **That's what I was trying to depict was the
20 difference.**

11:24:21 Q. And you chose to present bills for the period
22 of April 20, 2019, to May 20, 2019, to show what that
23 combined usage was, didn't you? Go ahead and look at
24 Gideon 2072 if you want to look at it before you answer.

11:24:25 A. **Thank you.**

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11:24:41 **Yes.**

11:24:52 Q. And so is it your representation, then, that

3 at that point in time, which is prior to closing, that

4 the water was being pumped from the lower well to the

5 cistern for that entire period of time?

11:25:16 A. I'm sorry, could you restate that?

11:25:17 Q. Your representation with your letter in

8 providing this bill to show the combined well-pumping

9 electricity and additional-load electricity, your

10 representation to my clients is that the lower well was

11 using electricity to pump to the cistern, correct?

11:25:32 A. Yes.

11:25:33 Q. And was it pumping to the cistern at that

14 point in time?

11:25:45 A. Which point in time we talking about now?

11:25:56 Q. From April 20 to May 20, 2019, the date on

17 Gideon 2072.

11:26:08 A. No.

11:26:09 Q. Exhibit 29.

11:26:20 A. No.

11:26:21 Q. You sent this bill before the dispute arose,

22 correct?

11:26:23 A. Yes.

11:26:24 Q. If you'll turn to Exhibit 32, please, and I

25 want you to turn to the pages that show the electrical

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1 answer that question.

11:27:42 Q. Yesterday you talked about the upper well and

3 that you had some serious concerns about it, which led

4 you to drill the lower well. Do you recall your

5 testimony?

11:27:56 A. Yes.

11:27:57 Q. And you ended up abandoning the upper well for

8 18 years as a result of that, correct?

11:28:09 A. Yes.

11:28:10 Q. And then you started thinking about selling

11 the subject property parcel I; is that right?

11:28:12 A. Yes.

11:28:13 Q. And so you revisited the upper well, performed

14 some inspections and work, and determined that it's just

15 fine; is that correct?

11:28:16 A. Just fine? I determined that it was usable.

11:28:17 Q. When you say "usable" instead of "fine," why

18 would you draw that distinction?

11:28:19 A. Because I don't know – I don't – I don't

20 know.

11:28:21 Q. So it wasn't fine but it was usable?

11:28:22 A. I determined it was – okay. It was fine and

23 usable.

11:28:24 Q. And that's why you changed the place of use of

25 the lower well water right in late January of 2019,

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1 consumption.

11:26:32 A. I'm there.

11:26:33 MR. BISSELL: Your Honor, I object as this

4 being beyond the scope of direct. We never went into

5 this topic on my examination of Mr. Farley.

11:26:46 THE COURT: Well, I don't know exactly what's

7 going to be asked yet.

11:26:48 MR. BISSELL: Okay.

11:26:49 THE COURT: So overruled.

11:26:40 MR. SCHMIDT: Q. So with respect to hooking

11 up the freezers and consuming power, would you agree

12 that regardless of when the freezers were hooked up, the

13 summer usage of electricity bears a similar pattern to

14 the prior years, from 2014 all the way up to 2018?

11:27:15 MR. BISSELL: Now I'll object beyond the scope

16 of direct.

11:27:17 THE COURT: There was some talk about the

18 Conex and the freezers, so I'll allow it.

11:27:19 THE WITNESS: So can you restate that? I'm

20 not sure what...

11:27:21 MR. SCHMIDT: Q. The summer usage of the pump

22 is similar to the prior years before you hooked up the

23 Conex freezer, correct?

11:27:24 A. You know, that would take me some time to

25 analyze this and do the math, so I don't know that I can

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1 correct?

11:28:42 A. That's why I changed the – not necessarily.

11:29:03 Q. Well, didn't you determine that the upper well

4 would be fine for an occupant of the house to subsist on

5 in terms of water production?

11:29:06 A. Yes. Yes. Absolutely. Yes.

11:29:17 Q. And that's why you changed the place of use to

8 the lower well so that it no longer reflected benefiting

9 parcel I, correct?

11:29:10 A. I guess that would be one reason.

11:29:11 Q. And wasn't it also your testimony that if you

12 developed parcels S, T, or V, you knew you would need to

13 drill an additional well anyway?

11:29:14 A. I don't think I – I don't think that's

15 accurate.

11:29:16 Q. Yesterday, do you recall your testimony where

17 you stated that you wouldn't – you wouldn't use a

18 preliminary drawing from Meckel Engineering, that you

19 wouldn't provide that to my client? And why – first of

20 all, do you recall your testimony saying that?

11:30:21 A. I would not use a preliminary survey; that is

22 correct.

11:30:23 Q. And why wouldn't you do that?

11:30:24 A. Because a buyer may construe that as the final

25 survey, the record of survey. It's not complete. It's

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1 not done.
 11:30:22 Q. But then you testified that you handed a
 3 preliminary drawing to every realtor and buyer that
 4 appeared at your property, correct?
 11:30:35 A. Yes, I did.
 11:30:36 Q. What distinguishes a drawing from a survey
 7 that are preliminary?
 11:30:48 A. We're talking about an aerial photograph of
 9 the earth, the round earth versus a plat map that's
 10 going to be recorded in a legal document. It's common
 11 to use aerial photograph – every listing you look at
 12 online or in any fashion, they all use those aerial
 13 photos, and they all have disclaimers attached to them,
 14 that they're not to be relied upon.
 11:31:15 Q. Yesterday you went into a lot of detail
 16 regarding the work you did in 2017 on the upper well and
 17 the cistern. Do you recall that?
 11:31:28 A. Sure.
 11:31:29 Q. You testified about the valve, the T
 20 connection, turning off the valve. Do you remember
 21 those things?
 11:31:22 A. Yeah. I was describing what I was asked to
 23 describe, what was in the photographs, yes, I recall.
 11:31:24 Q. And you needed to dig through the grass and
 25 the soil to access the large riser and then get in there

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1 you recall that?
 11:33:22 A. Yes.
 11:33:23 Q. And you didn't describe any of the reasons or
 4 any of that information, did you?
 11:33:25 A. What reasons?
 11:33:36 Q. With respect to the valve that's become so
 7 important now.
 11:33:38 A. Without able to look at it, I can't say.
 11:33:59 Q. You also didn't disclose moving the water and
 10 electrical lines prior to closing, did you, in your list
 11 of work that you did –
 11:34:42 A. Perhaps not.
 11:34:43 MR. SCHMIDT: If I may approach, your Honor?
 11:34:44 THE COURT: You may.
 11:34:45 MR. BISSELL: May I ask what he's giving him?
 11:34:46 MR. SCHMIDT: I'm handing a copy of
 17 Plaintiffs' Third Set of Discovery Requests with
 18 Supplemental Responses thereto which were served on
 19 September 17, 2020, which I provided a copy to the Court
 20 and to Mr. Bissell yesterday.
 11:34:21 Q. So you didn't disclose moving the line –
 11:34:22 A. What was the question?
 11:34:23 Q. So looking at interrogatory No. 3, you didn't
 24 disclose –
 11:34:25 A. This is the page you opened it to?

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1 and turn off a ball valve to change the way that the
 2 system worked?
 11:31:43 A. Yeah. You need to lift the sod off the top of
 4 the valve box to open the valve box.
 11:31:55 Q. And then when you're done, rebury it and put
 6 the sod back on it?
 11:31:56 A. Well, you don't bury it. You just put the sod
 8 back on it.
 11:32:09 Q. So the sod sits right on top of the box?
 11:32:40 A. Yeah. When I stack the boxes in there, that's
 11 where it came out at.
 11:32:42 Q. In your response to interrogatory No. 3, which
 13 asked you to describe in detail all repairs,
 14 modifications, and/or changes you or your agents made to
 15 the interconnected well system between January 1, 2015,
 16 and June 7, 2019, you never disclosed that work that you
 17 described yesterday, did you?
 11:32:48 A. I don't recall.
 11:32:49 Q. You referenced a bunch of invoices, but that
 20 didn't describe this ball valve installation, did it?
 11:32:21 A. I don't know what invoices you're referencing.
 11:32:22 Q. The discovery that I handed you yesterday,
 23 interrogatory No. 3, it asked for a description of all
 24 repairs and changes made, the locations and the reasons
 25 why you made the repair, modification, and changes. Do

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11:34:51 Q. Yep.
 11:34:52 A. Okay.
 11:34:53 Q. So interrogatory – sorry, it's interrogatory
 4 No. 15.
 11:34:55 A. I'm on page 11.
 11:34:56 Q. If you'll turn to page 10, that's
 7 interrogatory No. 15 –
 11:35:08 A. Okay.
 11:35:09 Q. – where the question is.
 11:35:40 A. Okay.
 11:35:41 Q. Your answer is on page 11.
 11:35:42 A. Okay.
 11:35:43 Q. You didn't disclose moving the water and
 14 electrical lines prior to closing in response to that
 15 interrogatory, did you?
 11:35:46 A. Yes, I did. I would direct your attention to
 17 repair No. 1.
 11:35:48 Q. It says you repaired a leak in the waterline
 19 by replacing the waterline and electrical switch line.
 11:35:20 A. That's what I did.
 11:35:21 Q. But you moved the waterline and the electrical
 22 line, didn't you?
 11:35:23 A. Yes.
 11:35:24 Q. You didn't describe that?
 11:35:25 A. Okay.

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11:35:51 Q. Okay. According to Jody Barden, when you
2 rehooked up the well in 2017, he testified it was still
3 dry and that he didn't run the test for as long as it
4 needed to be run. You – I know you dispute that fact,
5 but if it turns out that that's true, would you agree
6 that you did not disclose to my clients that the upper
7 well was a dry well, was a nonproductive well?

11:36:58 A. I did not disclose it was a dry well because
9 it was not a dry well.

11:37:00 Q. And you never disclosed to my clients that
11 there was a signed survey from Scott Rasor dated
12 September 25, 2018, with an accurate real property
13 description before closing, correct?

11:37:14 MR. BISSELL: Objection. That assumes facts
15 not in evidence. It mischaracterizes the testimony of
16 Mr. Rasor.

11:37:27 THE COURT: He's just asking whether or not he
18 disclosed that or not. Overruled.

11:37:39 MR. BISSELL: Your Honor, may I be heard?

11:37:40 THE COURT: Sure.

11:37:41 MR. BISSELL: The argumentative portion is
22 he's stating that that was the final complete legal
23 description from Scott Rasor, and that's just absolutely
24 false.

11:37:45 THE COURT: It says signed survey.

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11:39:41 A. As Mr. Rasor testified and as I know, it was
2 not completed until June 4th, 2019.

11:39:53 Q. And you say completed in terms of that's when
4 you recorded it with the First Amended CC&Rs?

11:40:05 A. It was recorded by itself. It wasn't with
6 the – it was recorded on June 6th, not with the Amended
7 CC&Rs. That's a different date.

11:40:28 Q. But you used the same description that had
9 existed since September 25, 2018, correct?

11:40:40 A. It would appear so, but there was a quitclaim
11 done in January – December or January of 2018 or 2019.

11:40:42 Q. Would you agree – you can turn to Exhibit 12
13 now. Would you agree that Exhibit 12 misrepresents the
14 location of the boundaries of the real property that was
15 conveyed to the Gideons?

11:41:06 A. Yes, on all four sides.

11:41:07 Q. And your real estate agent testified that you
18 worked with him to create the map that was sent to Patty
19 on 5/8 of '19, Exhibit No. 12?

11:41:20 MR. BISSELL: Objection. Mischaracterizes
21 evidence and argumentative. That's not what was stated.

11:41:22 THE COURT: I'm going to overrule. Go ahead
23 and answer, if you know.

11:41:24 THE WITNESS: That's not what the realtor
25 said. He said the opposite.

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11:37:41 MR. BISSELL: Okay.

11:37:42 THE WITNESS: I'm sorry, where are we at now?

11:37:53 MR. SCHMIDT: Q. You didn't disclose the
4 existence of the September 25, 2018, signed legal
5 description for parcel I that my clients purchased prior
6 to closing, did you?

11:38:06 A. We're discussing the preliminary survey, no, I
8 did not.

11:38:09 Q. You call it a preliminary survey, but I'll
10 turn your attention to Plaintiffs' Exhibit 19. If you
11 could turn to that, please.

11:38:12 A. I'm there.

11:38:13 Q. And turn to Gideon 790, please.

11:38:14 A. My last page is FA63 – oh, I'm sorry, 790.
15 You said Gideon 798, correct?

11:38:16 Q. 790.

11:38:17 A. 7-9-0?

11:38:18 Q. 7-9-0.

11:38:19 A. I'm there.

11:38:20 Q. So this – you had had possession of this
21 document – or this survey had been completed since
22 September 25 of 2018 with my – with the parcel I
23 property description that was used at closing, correct?

11:38:24 A. No, that is not correct.

11:38:25 Q. What's not correct about that?

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11:41:41 MR. SCHMIDT: Q. What's your recollection of
2 what he said?

11:41:43 A. Said I did not work with him on this.

11:42:44 Q. In your testimony today with respect to
5 Exhibit 46, if you want to look at that one again, you
6 said that you were confused, as you testified yesterday,
7 when you stated that Exhibit 46 is what you handed out
8 to prospective purchasers and their agents, you said
9 that "it's very similar to another one I saw yesterday,"
10 is what I wrote in my notes here. It's what I heard.

11:43:11 What did you see that was very similar to that
12 yesterday?

11:43:13 A. You said I said that yesterday, and then you
14 said I said it yesterday with referencing today, so
15 I'm – I don't understand the question.

11:43:16 Q. So this morning when your attorney was – your
17 counsel was questioning you, you explained that Exhibit
18 46 is not what you handed to prospective purchasers,
19 correct?

11:44:20 A. I said it was, but I was uncertain – I
21 said – I said I did hand all my prospective purchasers
22 an aerial photograph that was very similar to this, but
23 I was unsure this was it.

11:44:24 Q. So I have in my notes very similar to another
25 one I saw yesterday. Did you see something similar

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1 yesterday that helped remind you that this –
11:44:22 A. I –
11:44:23 THE COURT: Hold on. Hold on.
11:44:24 THE WITNESS: Sorry.
11:44:35 THE COURT: Please, each of you don't talk
6 over each other. So ask your question again,
7 Mr. Schmidt.
11:44:48 MR. SCHMIDT: Q. You testified that you
9 thought Exhibit 46 was what you provided, but then
10 suggested that it – Exhibit 46 is very similar to
11 another one that you saw yesterday that somehow
12 triggered your memory that Exhibit 46 isn't what you
13 were handing out.
11:45:04 A. May not have been. Yes, I remember that.
11:45:06 Q. Okay. What is it that you saw that helped
16 trigger your memory?
11:45:07 A. I saw an enlargement on an easel and I saw
18 another aerial photograph about this size.
11:45:19 Q. What's the other aerial photograph that you
20 saw that's about that size?
11:45:21 A. I believe it's the one that Mr. Horsley
22 inaccurately marked the positions of the two new wells
23 he drew.
11:45:24 MR. SCHMIDT: No further questions.
11:45:25 THE COURT: Anything further, Mr. Bissell?

11:45:33 MR. BISSELL: Yes, your Honor.
11:45:42 REDIRECT EXAMINATION
11:45:43 MR. BISSELL: Q. Mr. Farley, Mr. Gideon – or
4 Schmidt asked you about the third set of discovery
5 requests and was talking about how you did not disclose
6 the ball valve. Do you recall that?
11:45:57 A. Yes.
11:45:58 Q. And you remember yesterday we talked – if you
9 look at the response to Plaintiffs' Third Set of
10 Discovery Requests.
11:46:06 A. And that's...
11:46:07 Q. It's – he would have handed it to you. It's
13 like that.
11:46:09 A. I was already on that, correct?
11:46:11 Q. It's not in a binder.
11:46:16 A. Third Set of Discovery Requests, page 11.
17 I've got that.
11:46:18 Q. Yeah. If you look at response, and the last
19 sentence of response says, quote, "The remainder of the
20 repairs Mr. Farley had performed on the interconnected
21 well system are outlined in Farley 175 through 182."
22 See that?
11:46:23 A. Yes.
11:46:24 Q. We already discussed those yesterday, right?
11:46:25 A. Yes.

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Q. And they mentioned ball valve, correct?
A. So 175 to 182 must be the invoices from North
Idaho Pump from 2017.
Q. And they mentioned the ball valve, correct?
A. Yes, it's there.
Q. Okay. And then you also mentioned that you
didn't talk about the pipeline, but he questioned you
about moving the pipeline during your deposition, didn't
he, Mr. Schmidt?
A. Yes. If you say so, yes.
Q. Okay. Let's take a look at your deposition
page 53.
A. Okay.
Q. Are you there?
A. My deposition?
Q. I don't have it.
A. I do have it.
Q. She's going to hand it to you. Just a sec.
A. Sorry. Where are we going here, Counsel?
Q. Go to page 53.
A. I'm there.
Q. Okay. Starting on line 22.
A. I'm there.
Q. Okay. It says, "Question: Did you make any
adjustments to the way – the way that the lines were

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1 run?"

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"Answer: From the original install?"
"Question: Yes."
Do you see that?
A. Yes.
Q. And then –
A. I remember now, yes.
Q. Okay. So in your deposition, did Mr. Schmidt
discuss with you regarding the pipeline and your moving
of it?
A. Yes.
Q. Okay.
A. I drew a depiction of that.
Q. Now go to page 223 of your deposition.
Mr. Schmidt was talking to you and asking you –
A. I'm there.
Q. – why you didn't – that you hadn't seen the
photograph that we've been talking about, and let's look
at your deposition here where he's asking you questions
and you explain that to him. Page 223, line 18 -- or
actually – yes. "Question: Okay. Prior to
purchasing, let's start there and then we'll go in a
moment. So prior to purchasing, had you provided them
with any descriptions of what their property was?"
And your answer was?

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11:49:11 A. "Yes." 11:49:12 Q. "Question: And in what way did you provide 3 that to them," question. 11:49:14 And your answer was? 11:49:15 A. "It was a similar aerial photo that had the 6 line – the approximate line much closer to what it 7 ended up being, and/or an interim work product from 8 Scott Rasor were based on Scott Rasor's work." 11:49:39 Q. And then it goes on – well, he says, line 3 10 on 224, "I don't recall seeing that in production." Do 11 you see that? 11:49:42 A. Yes. 11:49:43 Q. And then Mr. Hughbanks says, "Do you still 14 have it even?" 11:49:46 And what do you say? 11:49:46 A. "Probably not. I gave it to them, meaning the 17 Gideons." 11:49:48 Q. Okay. Would you consider turning a valve on 19 or off a change in the interconnected well system? 11:50:20 A. No. I mean, the kitchen sink's part of the 21 well system too and you turn that on and off several 22 times a day. 11:50:23 MR. BISSELL: That's all I have, your Honor. 11:50:24 THE COURT: Anything else? 11:50:25 MR. SCHMIDT: Nothing, your Honor.	729	1 First American Title on your claim? 11:51:52 A. I received the check only. 11:51:53 Q. Okay. Is the – is page 4 a copy of the check 4 you received from First American Title Company on your 5 claim? 11:52:16 A. No check. 11:52:17 Q. Are you on Exhibit KK? 11:52:28 A. Oh, I'm sorry. I'm on K. Okay. 11:52:49 Q. Okay. And so is that a copy of a check you 10 received from First American Title Company on your 11 claim? 11:53:12 A. No check. 11:53:13 Q. Can I approach there? 11:53:14 THE COURT: You may. I think I know what the 15 issue may be. There's – it's duplicated, the K is 16 duplicated on the front side but not on the backside. 11:53:17 MR. BISSELL: Q. KK, and then – turn to the 18 last page, sir. There you go. 11:53:19 A. That's – oh, oh, at the bottom. I'm sorry. 20 I was looking at the invoice. 11:53:21 Q. Okay. 11:53:22 A. Yes. Yes, that's a copy of the check. 11:53:23 Q. Okay. Just so we're clear, clear for the 24 record, Mr. Gideon, is page 4 of Exhibit KK a copy of a 25 check you received from First American Title Company on
11:50:11 THE COURT: All right. You may step down. 11:50:22 THE WITNESS: Thank you, sir. 11:50:23 THE COURT: Have any further witnesses? 11:50:34 MR. SCHMIDT: Art Gideon, your Honor. 11:50:35 THE COURT: Oh, wait a minute. 11:50:36 MR. BISSELL: Wait. 11:50:37 THE COURT: It's his case. 11:50:38 MR. BISSELL: Yeah. 11:50:39 MR. SCHMIDT: I'm sorry. I thought we were – 11:50:40 MR. BISSELL: But that's my next witness, so 11 go ahead. 11:50:42 THE COURT: Mr. Gideon, if you'd come forward. 13 You're still under oath. 11:50:44 THE WITNESS: Yes, your Honor. 11:50:45 MR. SCHMIDT: My apologies. I thought we had 16 established that he was the last witness. 11:50:57 DIRECT EXAMINATION 11:50:58 MR. BISSELL: Q. Okay. Mr. Gideon, could you 19 turn to Exhibit KK, please. 11:51:20 A. KK? 11:51:21 Q. Yep. 11:51:22 A. Okay. 11:51:23 Q. Okay. And if you could turn to the last two 24 pages. And is that the cover page and one of the 25 actual – copy of one of the checks you received from	730	1 your claim? 11:53:52 A. Yes, that's correct. 11:53:53 MR. BISSELL: Okay. Move for admission of 4 KKK. 11:54:05 THE COURT: KKK or KK? 11:54:06 MR. BISSELL: Oh, my gosh. KK, your Honor. 7 Sorry. 11:54:08 (Defendants' Exhibit KK offered.) 11:54:19 MR. SCHMIDT: Plaintiff has no objection to 10 the admission of Exhibit KK. 11:54:11 THE COURT: KK will be admitted. 11:54:12 (Defendants' Exhibit KK admitted.) 11:54:13 MR. BISSELL: Q. All right. Now, Mr. Gideon, 14 will you turn to LL. 11:54:15 A. Yes. 11:54:16 Q. Okay. And is LL a copy of another check you 17 received from First American Title Company on your 18 claim? 11:54:19 A. Yes, that's correct. 11:54:20 Q. Okay. Thank you. Okay. And so, Mr. Gideon, 21 you have a claim for – against Mr. Farley for \$400,000 22 for inadequate water, correct? 11:55:23 A. That's correct. 11:55:24 Q. And that is pertaining to not enough water 25 from June through September of 2021, correct?

12:13:41 MR. SCHMIDT: July 29, 28, 27ish is fine. 2 It's a long transcript, so I think it will take a couple 3 of weeks. Assuming we get the transcript July 9th, 30 4 days from today gives me two and a half weeks. 12:14:25 THE COURT: The last – 12:14:26 MR. SCHMIDT: Let's – 12:14:27 THE COURT: How about just have them August 8 1st, or is that too far? 12:14:29 MR. SCHMIDT: That works. 12:14:40 THE COURT: Okay. So your opening, closing 11 due August 1st. Fourteen days after that or do you need 12 more, Mr. Bissell? 12:14:43 MR. BISSELL: I think that will probably work. 14 I just want to double check something. Yeah, I can do 15 that. 12:15:06 THE COURT: What day is that? 12:15:07 MR. BISSELL: This would be the 15th, your 18 Honor. 12:15:09 THE COURT: And what day of the week is that? 12:15:20 MR. BISSELL: Oh, it's Monday. 12:15:21 THE COURT: Okay. Yes. Ten days afterwards? 12:15:22 MR. SCHMIDT: Yes. 12:15:23 THE COURT: Okay. So August 25th. All right. 24 And as stated, brief length is 40 pages. That includes 25 front to back, everything. And those briefs must be	745 1 25th, and findings of fact from both parties due August 2 1st? 12:17:33 THE COURT: Correct. 12:17:34 MR. BISSELL: Got it. Thank you. 12:17:35 THE COURT: Recitations to the record are 6 appreciated. 12:17:47 MR. BISSELL: Got it. 12:17:48 THE COURT: All right. Thank you, gentlemen. 12:17:59 MR. SCHMIDT: Thank you. 12:17:40 MR. BISSELL: Thank you, your Honor. 12:17:41 THE COURT: With that, we're in recess. 12:17:42 (Matter adjourned.) 13 14 15 16 17 18 19 20 21 22 23 24 25
1 double-spaced, just according to the Supreme Court 2 standards contained in the Idaho Appellate Rules as to 3 margins and otherwise. 12:16:04 MR. BISSELL: Your Honor, may I ask? So is 5 the plaintiff – they get two 40-page briefs? 12:16:06 THE COURT: Well, I'll give them 25 on the 7 closing and the rebuttal closing. 12:16:18 All right. Anything else, gentlemen? 12:16:39 MR. BISSELL: What about findings of fact? 10 How do you want to handle that? 12:16:41 THE COURT: Oh, they are separate from the 12 closings. So just as long as they're findings of fact, 13 I'll take a look at them. See how they are. 12:16:44 MR. BISSELL: What about the timing of those, 15 your Honor? 12:16:46 THE COURT: Oh, August 1st. 12:16:47 MR. BISSELL: For both; is that – okay. 12:16:48 THE COURT: Yeah. 12:16:49 MR. BISSELL: So make sure I have this right, 20 your Honor. Just make sure I'm clear. Plaintiffs 21 brief due August 1st, Defendant's brief August 14th – 12:17:22 THE COURT: 15th. 12:17:23 MR. BISSELL: 15th, yeah. Thanks for the 24 extra day. Would have been Sunday. Defendant's 25 rebuttal closing August – or Plaintiffs' – August	746 12:18:01 STATE OF IDAHO } 12:18:03 } SS: REPORTER'S CERTIFICATE 12:18:02 COUNTY OF KOOTENAI } 12:18:03 12:18:04 I, Keri Veare, a notary public and duly certified 5 court reporter in and for the State of Idaho, DO HEREBY 6 CERTIFY: 12:18:07 That the foregoing proceedings was taken on the 8 date and at the time and place herein stated; 12:18:09 That the foregoing is a true and correct 10 transcription, to the best of my ability, of my shorthand 11 notes taken down at said time and place in the 12 above-entitled litigation; 12:18:13 I FURTHER CERTIFY that I am not related to any of 14 the parties or attorneys to this litigation and have no 15 interest in the outcome of said litigation. 12:18:16 IN WITNESS WHEREOF, I have hereunto set my hand 17 and seal this 11th day of June, 2022. 12:18:18 12:18:19 12:18:20 12:18:21 12:18:03 12:18:22 23 24 25

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KERI J. VEARE, IDAHO CSR 675, CRR
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COEUR D'ALENE, IDAHO 83816-9000
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TO: Kootenai County Clerk

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

Plaintiff,

vs.

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

Defendant.

Case No. CV28-20-2706

NOTICE OF TRANSCRIPT LODGED

Notice is hereby given that on June 11, 2022, I
effiled 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.

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



Keri Veare, Court Reporter/Transcriber

cc: Counsel of Record, via email

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
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 KOOTENAI

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

Plaintiffs,

vs.

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

Defendant.

CASE NO. CV28-20-2706

**DECLARATION OF KATHY GIDEON
IN SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION**

KATHERINE M. GIDEON, being first duly sworn upon his oath, deposes and says:

1. I am a Plaintiff in the above matter. I am over the age of eighteen (18) years and make this Declaration upon my own personal knowledge and belief.

2. The only supply of water available to provide domestic water to our residence is the Lower Well.¹ This is because the Upper Well does not produce water. Our efforts to locate

¹ This Declaration uses the same terminology for wells and locations as has been developed throughout this litigation, including in Trial and this Court's "Memorandum or Decision" filed on October 21, 2022, e.g., "Upper Well," "Lower Well," "residence," etc.

other sources of water included attempting to drill wells at two other locations to depths of 1,000 ft. and 1,700 ft., but neither produced water.

Lower Well Issues

3. The supply of water from the Lower Well has been interrupted dozens of times since trial in this matter concluded. When that would occur, I would text Brian Farley to notify him of this and arrange for a well mechanic to assist us with determining the cause and necessary repairs needed to make it functional (other than when the cause was Brian Farley's use of water, which interferes with delivery of water to our cistern as Jody Barden explained at trial).

4. Sometimes when I texted Mr. Farley, the water would begin flowing within a few hours. Other times, we needed to purchase and replace the BW switches with our well mechanic.

5. On April 1, 2023, we again began having issues with delivery of water to our cistern. I texted Mr. Farley to notify him of the issue at 11:02 AM. At 12:04 PM, I observed that water was again flowing into our cistern and notified Mr. Farley of the same.

6. On April 4, 2023, I again noticed that no water was coming into our cistern. I texted Mr. Farley regarding the issue at 1:44 PM. After approximately three hours with no resolution of the issue, I texted him again at 4:37 PM, and requested permission to arrange a time to have their well mechanic inspect and repair the Lower Well. I did not receive any response overnight, so texted Mr. Farley the next morning (April 5) at 7:20 AM. I received a quick response from Mr. Farley stating only "I'll check it." I monitored the cistern until 9:00 PM and observed that no water was flowing into the cistern throughout the day (April 5).

7. The next morning (April 6) I checked the cistern, and confirmed that water was once again filling the cistern. I notified Mr. Farley of this at 7:33 AM via text. Mr. Farley texted

me to advise that he believed the pump was “struggling” and that we were “not getting full flow.” I confirmed this was correct. He suggested that the “pump may be on its way out.”

8. Later that same day (April 6), I checked the cistern and observed that no water was coming into the cistern as of 2:45 PM. I checked again at 4:30 PM and observed that air and water were coming into the cistern. I advised Mr. Farley of this via text at 4:31 PM.

9. The following day (April 7) I continually checked the cistern beginning at 7:49 AM, and continued to observe that air with some water were spitting into the cistern. I advised via text at 11:30 AM that “There must be a hydrant open causing my line to drain and spit air.” Half an hour later (12:00 PM) I checked the cistern again and observed that no water was coming into the cistern at all. I notified Mr. Farley of this at that time.

10. Mr. Farley responded by text stating that “The pump was running earlier today when I checked. It’s running now.”

11. I again checked the cistern less than 30 minutes later and observed that water was slowly coming in. I notified Mr. Farley of this via text.

12. The next day (April 8) I checked the cistern at 8:30 AM and observed that water was continuing to slowly come into the Cistern. I checked the cistern again that same day at 11:19 AM and observed that once again, no water was coming into the cistern. Mr. Farley texted to me indicating that a breaker had tripped, and that it should have water coming in again. I checked following that text at approximately 3:30 PM and observed that water was again flowing. I notified Mr. Farley of this at 3:30 PM.

13. The next day (April 9) I checked the cistern at 6:30 AM and observed water was coming into the cistern. I checked again at 9:50 AM and observed that, once again, no water was flowing into the Cistern. I notified Mr. Farley of this via text at 9:55 AM. At 1:09 PM that day

(April 9), I checked again and observed water flowing into the cistern. I notified Mr. Farley of this via text at 1:09 PM.

14. The next day (April 10) the cistern was checked at 11:30 AM and no water was coming into the cistern. I sent Mr. Farley a text informing him of this at 12:04 PM. Mr. Farley responded that he would “check it in a few....” When I returned home (from jury duty selection) at 5:17 PM, water was flowing into the cistern and I notified Mr. Farley of this via text.

15. The same issues continued to arise over the next day, and Mr. Farley texted with me about the issues. Water, or water and air would usually begin flowing a while after I texted Mr. Farley.

16. On April 12, 2023 I checked the cistern at 6:25 AM and observed that no water was flowing into the cistern. I notified Mr. Farley at 6:30 AM what was occurring. He did not respond. I notified him five times of this issue on April 12 (each time I checked the cistern) and he never responded.

17. The next day (April 13) the same thing occurred—no water. I notified Mr. Farley and received no response on April 13, 14, 15, 16, 17, 18 and 19. After eight days without water and no response from Mr. Farley, I texted Mr. Farley for the last time.

18. Mr. Farley’s last text (or any type of communication) with me was on April 11, 2023.

19. The last date that any water flowed from the Lower Well into the Cistern was April 11, 2023.

20. In total, I texted Mr. Farley four times seeking permission to bring a well pump contractor to investigate. I texted him on April 4 and 5 with such a request, but after texting water began flowing into the cistern. I also requested on April 18 and 19 for permission to

inspect with my well contractor, but did not receive any response. I learned the afternoon of April 18, 2023 that Travis Thompson (Mr. Farley's attorney) had informed my CSRBA attorney Andy Waldera that the well had been struck by something, which bent it and caused damage that may not be reparable.

21. I still have not received permission to inspect or repair, although I would like to do so since we are not receiving any water from the Lower Well and now need to pay to obtain and deliver water via truck deliveries.

22. Shortly before suffering the most recent water issues described above, I noticed that Mr. Farley had begun engaging in excavation work near the Lower Well using heavy equipment. Mr. Farley's presence and excavation work on the Lower Well Parcel corresponded with our water supply issues. I also observed approximately 12 loads of dirt being delivered by North Idaho Landscape Supplies to the location near the Lower Well ("Parcel V" as identified during trial). I observed that dirt delivery occurred on Friday, April 14th. I was unable to see exactly where the dirt was being placed or excavation was occurring. I also observed a bulldozer and large excavator on the property throughout the period in which we were experiencing water supply issues. I observed that this equipment was digging and pulling logs in the vicinity of the Lower Well on Parcel V.

23. Prior to Farley engaging in excavation work, the Lower Well had been delivering water to our cistern for several weeks without any issues. Once excavation began and Mr. Farley was present on Parcel V, we began experiencing the sporadic and inconsistent water flow from the Lower Well.

24. True and correct copies of the texts between Mr. Farley and me, as described above, are attached hereto as Exhibit A.

25. As of the date of this Declaration, I have still not received any response from Mr. Farley since April 11, 2023, nor has any water flowed into the cistern from the Lower Well.

Water Line Issues

26. Brian Farley has been excavating in the vicinity of the water line that delivers water from the Lower Well to the Cistern since approximately 2020. Presently, his excavation activities are right up to the easement at the top of the hill just past our property.

27. On April 23 of 2021, and again on May 7, 2021, I noticed that rocks approximately ½ inch in size had gotten into the water line and become stuck at the outlet of the water line where it pumps into the Cistern. I took pictures of the rocks on said dates, true and correct copies of which are attached hereto as **Exhibit B**.

28. We have also had to clean out a golf-ball sized clump of tree greenery from the inlet at the cistern. We are unsure how this tree greenery could enter the pipe other than by activities engaged in on Mr. Farley's property that would involve opening the water system somehow.

29. The presence of the rocks and tree greenery in the water line indicates that the water lines may have been opened or broken because of Mr. Farley's excavation or other activities. I need to be able to access and inspect the water line where it runs through Mr. Farley's Property in order to maintain the water line and ensure it has not been damaged, and to prevent it from being damaged if it appears it is at risk from Mr. Farley's excavation or other activities.

I certify under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct to the best of my knowledge, information and belief.

DATED: June 29, 2023

Katherine M. Gideon

Katherine M. Gideon

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of June 2023, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Michael S. Bissell
Campbell & Bissell
820 W. 7th Avenue
Spokane, Washington 99204
Email: mbissell@campbell-bissell.com

- | | |
|-------------------------------------|----------------------|
| ☐ | VIA FIRST CLASS MAIL |
| ☐ | VIA HAND DELIVERY |
| ☐ | VIA FACSIMILE |
| ☐ | VIA EMAIL |
| ☒ | VIA ICOURT |

Michael G. Schmidt

Michael G. Schmidt

Text message
4/1/23, 11:02 AM

Brian, if you are up on your lower property today, can you take a look and see if the lower well is on as we have no water coming into cistern. I will check in a couple hours and let you know if it starts coming in. Thank you.

4/1/23, 12:04 PM

We are now getting water back into cistern, thank you.

4/4/23, 1:44 PM

Brian, if you are up on your lower property today, can you take a look and see if the lower well is on as we have no water coming into cistern. I will check in a couple hours and let you know if it starts coming in. Thank you.

4/4/23, 4:37 PM

Brian, it has been almost three hours since I sent you the last message and no water has come into cistern. Have not heard back from you if you were able to check lower well. If you are not here, please let me know you are not checking it today. We will be calling Jody Barden to arrange a time to check lower well and let you know when the appointment will be - to request permission to come to lower well for service. Thank you. Kathy

4/5/23, 7:20 AM

Brian, are you going to respond to my texts about letting Jody Barden come down? Still have no water coming into cistern. Thank you.

I'll check it.

Thank you very much

4/6/23, 7:33 AM

Just checked cistern and we finally have water coming in.

4/6/23, 8:52 AM

Momin. Yes never heard back from you yesterday, should've been getting water since about 9 a.m.? Pump was running also at 3 ish and also this morning . I thought maybe you were in town or away for Easter

We did not have any water at all yesterday and evening (stopped checking at 9 PM. Checked at 7:25 AM today and water was coming in. Getting ~1 gallon per minute today. We are here in town.

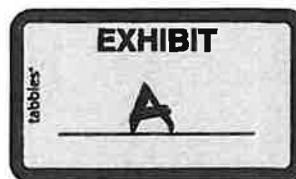


EXHIBIT B

I checked soon after I texted you yesterday and confirmed pump was on, ..and also later. Appeared pump was struggling But was pumping water...

Sounds like you are not getting full flow now?

Yes, not getting full flow now.

Sounds like something not right...pump may be on its way out....please keep an eye on it let me know your water levels

Ok

Thanx

4/6/23, 2:45 PM

Just letting you know that there is no water coming into cistern at 2:45 PM

4/6/23, 4:31 PM

Water and air just came flowing into cistern at 4:30 PM

4/7/23, 11:30 AM

Brian, have been checking cistern since 7:49 AM. Has been and still is continuing to be spitting air and water. There must be a hydrant open causing my line to drain and spit air.

12:00PM. We now have NO water coming into cistern

Hey Kathy.

I only have 2 hydrants. One has been closed for months. The other you destroyed my water line to that one so you could install your leach field.

The pump was running earlier today when I checked.
It's running now.

We did not have water at 12:00 PM and did not have water at 12:30 PM today. Now at 12:55 PM we slowly have water slowly coming into cistern. Thank you.



4/8/23, 11:22 AM

Today, 4-8-2023: Had water at 8:30 AM now at 11:19 AM no water

Morning.....pump was running when.i got here earlier, now it isn't....how full is the cistem?

About half full - just checked - are you saying it is not running now down below? No water coming into cistem at the moment

Yes...wasn't running & assumed wasn't calling for water ...let me check again when I'm back at the pumphouse again in a few...

Ok - thank you

Please check it now..should have water going in...breaker was tripped...

4/8/23, 3:30 PM

Yes - water flowing again - thank you!

That breaker should not be tripping like that..

4/9/23, 9:55 AM

Checked cistem at 6:30 AM and just checked again at 9:50 AM and we have no water coming in.

4/9/23, 1:09 PM

Just checked cistem- water is flowing in now. Thank you.

4/10/23, 12:04 PM

Checked cistem at 11:30 and No water is coming into cistem

I'll check it in a few....

Thank you

While u wait on me, Have you looked again since the first time?

Not checked since 11:30 - have to check when get back home

Am in jury duty now - phone to be off

K

Just was excused....

I'll be there in a minute to look

Pump running?

Thank you

Yes, running. If you could take a look when you return tell me what you see?
Thanx

Will do. Thank you.

4/10/23, 5 17 PM

Water is flowing into cistern now. Thank you.

4/11/23, 8:29 AM

Tuesday, 4-11-2023, 8:25 AM No water is coming into cistern

?? Pump is running

Water going in?

Water going in?

I am heading back outside

Sound off from yesterday, sorry
Yes - air and water coming in

Shouldn't be any air...sounds like pump or waterline issue..

4/12/23, 6:30 AM

Wednesday, 4-12-2023, 6:25 AM No water is coming into cistern

4/12/23, 8 37 AM

8:35 AM, still no water coming into cistern

4/12/23, 11:28 AM

11:27 AM. Just checked, still no water coming into cistern

4/12/23. 2 38 PM

2:36 PM Just checked again, still no water coming into cistern

4/12/23, 4:22 PM

Brian, I have texted you four times since 6:25 AM today (4/12/2023) without any response from you and still no water. Is the pump not running or breaker blown? Are you going to turn the water on or not? Thank you.

4/13/23, 6:27 AM

Thursday, 4/13/2023, 6:25 AM. Still no water coming into the cistern. Can you please check and see if the pump is running? Thank you.

4/13/23, 8:39 AM

Thursday, 4/13/2023, 8:25 AM, still no water coming into cistern

4/14/23, 7:55 AM

Friday, 4/14/2023, 7:45 AM, still no water coming into cistern

4/15/23, 6:49 AM

Saturday, 4/15/2023, 6:45 AM, still no water coming into cistern

4/16/23, 6:46 AM

Sunday, 4/16/2023, 6:40 AM still no water coming into cistern

4/17/23, 7:12 AM

Monday, 4/17/2023, 7:00 AM still no water coming into cistern

4/18/23, 7:21 AM

Tuesday, 4/18/2023, 7:20 AM No water coming into cistern

4/18/23, 3:03 PM

Brian, we have been without water coming into cistern for 7 days. You have not responded to my texts and so we need to have the lower well checked.
Jody Barden is available on Thursday, April 20, 2023 at 9:00 AM to check lower well. Will this be acceptable?

4/19/23, 6:20 AM

Wednesday, 4/19/2023, 6:10 AM. No water coming into cistern
Please let me know today if we can have Jody Barden come tomorrow (Thursday, 4/20/2023) at 9:00 AM onto your property and check the lower well. Thank you.

4/19/23, 3:45 PM

Brian, it is now 3:45 PM and I have not received any replies from my two requests to have Jody Barden come tomorrow morning (Thursday, 4/20/2023 at 9:00 AM) to check out the lower well. Seeing as I have not received permission from you, I am cancelling our appointment with him for tomorrow. Kathy

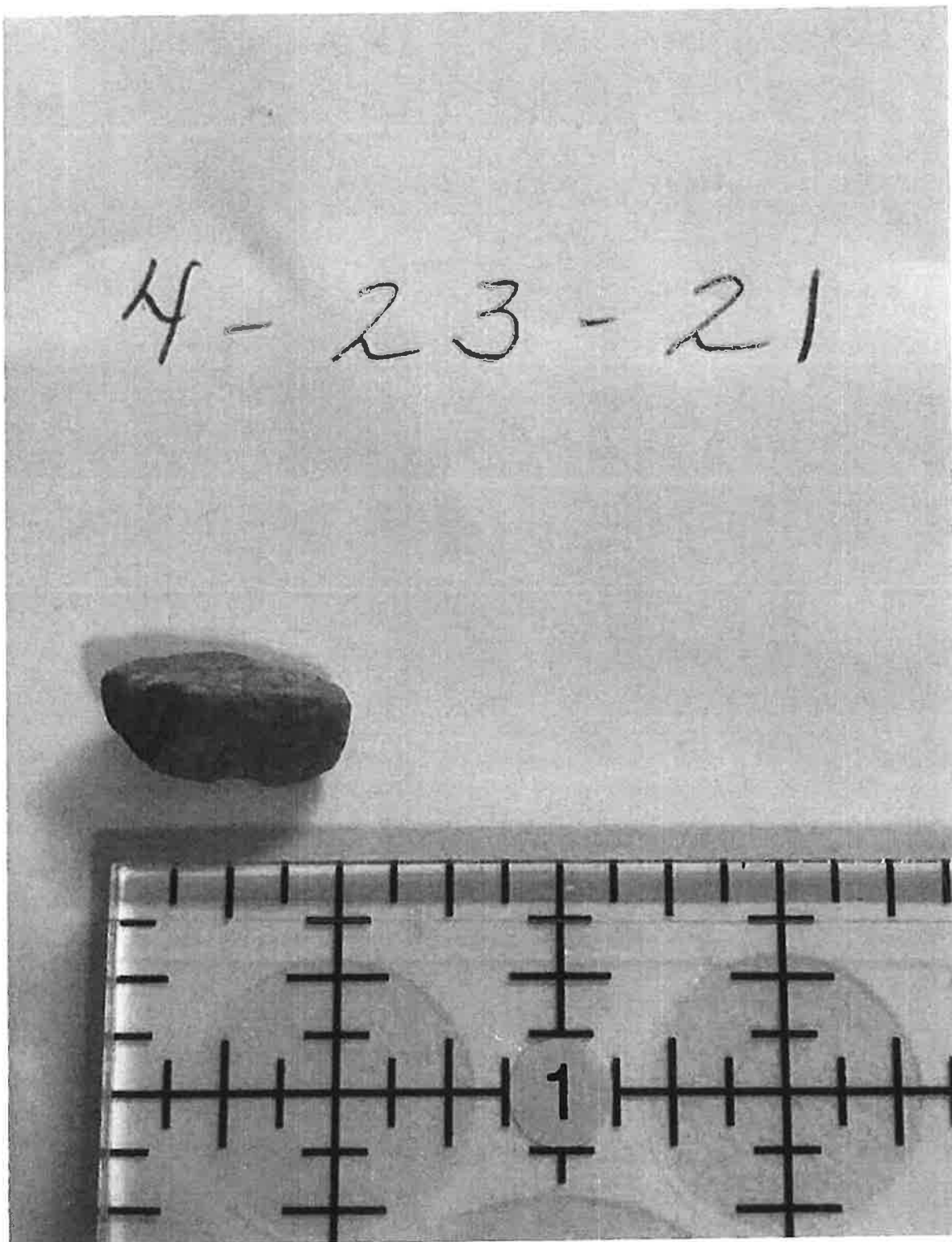


EXHIBIT B

EXHIBIT B

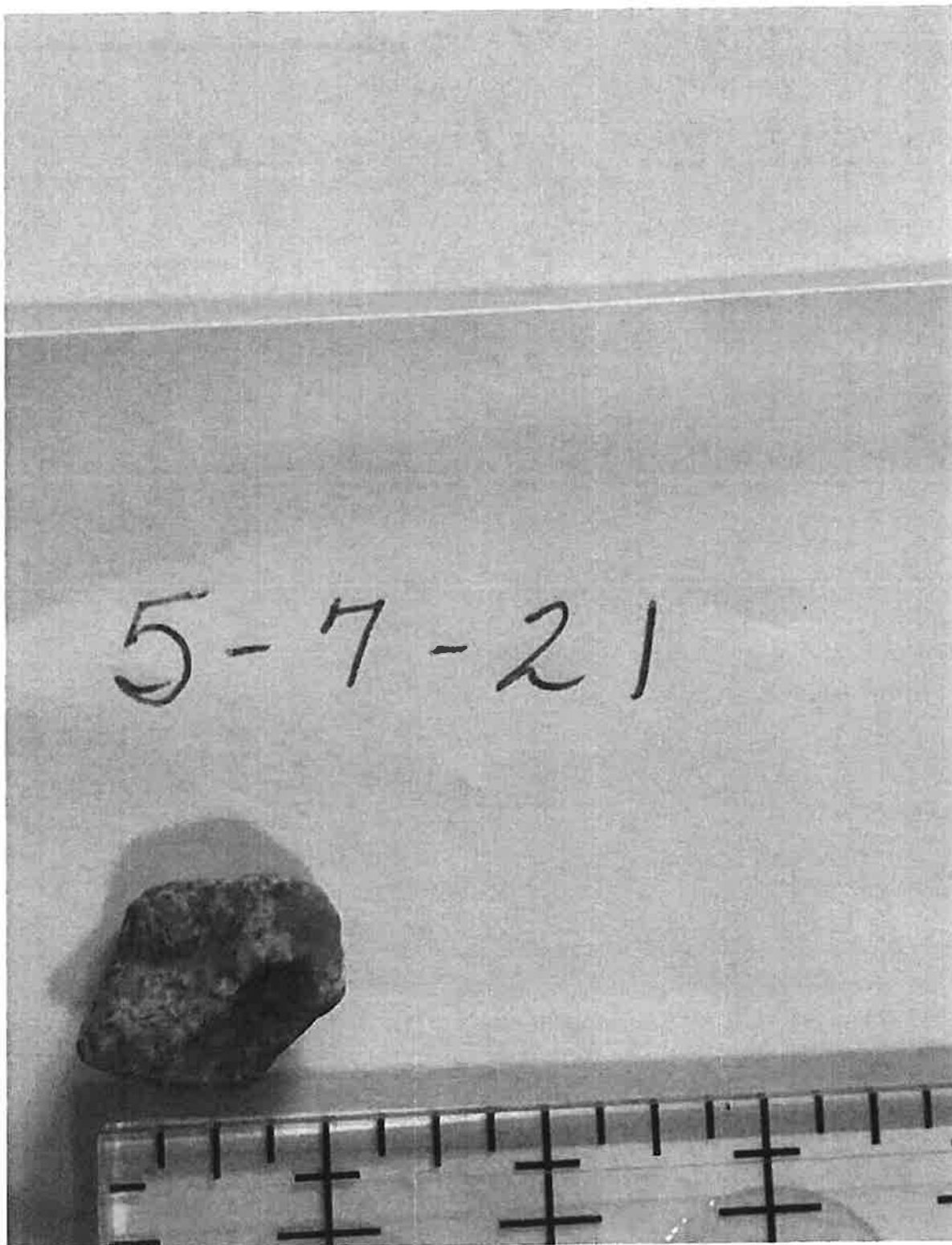


EXHIBIT B

PLAINTIFF'S EXHIBIT

4

Case No. CV28-20-2706
Trial Date: 9/7 - 9/9/2021



RE-21 REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS IS A LEGALLY BINDING CONTRACT. READ THE ENTIRE DOCUMENT, INCLUDING ANY ATTACHMENTS.
IF YOU HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING.

NO WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF HABITABILITY, AGREEMENTS
OR REPRESENTATIONS NOT EXPRESSLY SET FORTH HEREIN SHALL BE BINDING UPON EITHER PARTY.

JULY 2018 EDITION



Page 1 of 8

DATE April 28, 2019
ID# 18-12412
LISTING AGENCY Century 21 Beutler & Associates Office Phone # 208-765-5554 Fax #
Listing Agent Rob Elder E-Mail relder@21goldchoice.com Phone # 208-661-0800
SELLING AGENCY Professional Realty Services of Idaho Office Phone # 509-808-4822 Fax #
Selling Agent Patty Ellis E-Mail pattyllis52@gmail.com Phone # 208-512-1265

1. BUYER: Arthur V and Katherine M Gideon
(Hereinafter called "BUYER") agrees to purchase, and the undersigned SELLER agrees to sell the following described real estate hereinafter referred to as
"PROPERTY" COMMONLY KNOWN AS 23452 N Derting Road ID, Zip 83835 legally described as: SE-SE-NW 09 52N 03W
City Hayden County Kootenai
10.9 acres
OR Legal Description Attached as exhibit (Exhibit must accompany original offer and be signed or initialed by BUYER and SELLER.)

2. \$895,000.00 PURCHASE PRICE: Eight Hundred Ninety-five Thousand Dollars And Zero Cents
payable upon the following TERMS AND CONDITIONS (not including closing costs):

This offer is contingent upon the sale, refinance, and/or closing of any other property ☒ Yes ☐ No

3. FINANCIAL TERMS: Note: A+C+D+E must add up to total purchase price.

(A). \$5,000.00 EARNEST MONEY: Five Thousand Dollars And Zero Cents
BUYER hereby offers the above stated amount as Earnest Money which shall be credited to BUYER upon closing. Earnest Money is:

Evidenced by:	Held By:	Delivered:	Deposited:
☐ Cash	☐ Responsible Broker	☐ With Offer	☒ Upon Receipt and Acceptance
☒ Personal Check	☒ Closing Company	☒ Within 3 business days (three [3] if left blank) of acceptance.	☐ Upon Receipt Regardless of Acceptance
☐ Cashier's Check	☐ Other	☐ Other	☐ Other
☐ Wire Transfer			
☐ Note			
☐ Other			

THE RESPONSIBLE BROKER SHALL BE: Bette Zerba

(B). ALL CASH OFFER: ☒ NO ☐ YES If this is an all cash offer do not complete Sections 3C and 3D, fill blanks with "0" (ZERO). IF CASH OFFER, BUYER'S OBLIGATION TO CLOSE SHALL NOT BE SUBJECT TO ANY FINANCIAL CONTINGENCY. BUYER agrees to provide SELLER within 2 business days (five [5] if left blank) from the date of acceptance of this agreement by all parties written confirmation of sufficient funds and/or proceeds necessary to close transaction. Acceptable documentation includes, but is not limited to, a copy of a recent bank or financial statement.

Cash proceeds from another sale: ☒ Yes ☐ No
(C). \$300,000 NEW LOAN PROCEEDS: This Agreement is contingent upon BUYER obtaining the following financing:
FIRST LOAN of \$300,000.00 not including mortgage insurance, through ☐ FHA, ☐ VA, ☒ CONVENTIONAL, ☐ IHFA, ☐ RURAL DEVELOPMENT, ☐ OTHER with interest not to exceed 4.5% for a period of 30 year(s) at: ☒ Fixed Rate ☐ Other
In the event BUYER is unable, after exercising good faith efforts, to obtain the indicated financing, BUYER's Earnest Money shall be returned to BUYER.
SECOND LOAN of \$ through ☐ FHA, ☐ VA, ☐ CONVENTIONAL, ☐ IHFA, ☐ RURAL DEVELOPMENT, ☐ OTHER with interest not to exceed % for a period of year(s) at: ☐ Fixed Rate ☐ Other
LOAN APPLICATION: BUYER ☒ has applied OR ☐ shall apply for such loan(s). Within 2 business days (ten [10] if left blank) of final acceptance of all parties, BUYER agrees to furnish SELLER with a written confirmation showing lender approval of credit report, income verification, debt ratios, and evidence of sufficient funds and/or proceeds necessary to close transaction in a manner acceptable to the SELLER(S) and subject only to satisfactory appraisal and final lender underwriting. If an appraisal is required by lender, the PROPERTY must appraise at not less than PURCHASE PRICE or BUYER'S Earnest Money shall be returned at BUYER'S request unless SELLER, at SELLER'S sole discretion, agrees to reduce the purchase price to meet the appraised value. SELLER shall be entitled to a copy of the appraisal and shall have 24 hours from receipt thereof to notify BUYER of any price reduction. BUYER may also apply for a loan with different conditions and costs and requirements to the SELLER. FHA / VA: If terms and conditions of this Agreement are fulfilled, and the new loan does not increase the costs or requirements to the SELLER, BUYER shall not be obligated to complete the purchase of the PROPERTY described herein or to incur any penalty or forfeiture of Earnest Money deposits or otherwise unless BUYER has been given in accordance with HUD/FHA or VA requirements a written statement by the Federal Housing Commissioner, Veterans Administration or a Direct Endorsement lender selling forth the appraised value of the PROPERTY of not less than the sales price as stated in the contract. If such written confirmation required in 3(B) or 3(C) is not received by SELLER(S) within the strict time allotted, SELLER(S) may at their option cancel this agreement by notifying BUYER(S) in writing of such cancellation within business days (three [3] if left blank) after written confirmation was required. If SELLER does not cancel within the strict time period specified as set forth herein, SELLER shall be deemed to have accepted such written

BUYER'S Initials [Signature] Date 4-27-19 SELLER'S Initials [Signature] Date 4-27-19

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EXHIBIT C

PROPERTY ADDRESS: 23452 N Derting Rd., Hayden, Idaho 83835ID#: 18-12412

confirmation of lender approval or waived the right to receive written confirmation and shall be deemed to have elected to proceed with the transaction.
SELLER'S approval shall not be unreasonably withheld.

(D). \$ **ADDITIONAL FINANCIAL TERMS:**

- ☐ Additional financial terms are specified under the heading "OTHER TERMS AND/OR CONDITIONS" (Section 4).
☐ Additional financial terms are contained in a FINANCING ADDENDUM of same date, attached hereto, signed by both parties.

(E). \$590000 **APPROXIMATE FUNDS DUE FROM BUYERS AT CLOSING** (Not including closing costs): Cash at closing to be paid by BUYER at closing in GOOD FUNDS, includes: cash, electronic transfer funds, certified check or cashier's check.

4. **OTHER TERMS AND/OR CONDITIONS:** This Agreement is made subject to the following special terms, considerations and/or contingencies which must be satisfied prior to closing. This offer is contingent upon the successful closing of Buyers property located 2690 State Route 187, London, Ohio 43141 on or before June 7, 2019.

This offer is contingent upon the physical inspection of the property by the buyers on May 3, 2019. After the physical inspection should the buyers desire to purchase said property the Buyers will deposit an earnest money check in the amount of \$5,000.00 (Five thousand dollars) to the Title Company. This contingency will be considered removed. Subject to Seller's approval this offer shall be considered mutually accepted by all parties.

5. **ITEMS INCLUDED & EXCLUDED IN THIS SALE:** All existing fixtures and fittings that are attached to the PROPERTY are INCLUDED IN THE PURCHASE PRICE (unless excluded below), and shall be transferred free of liens. These include, but are not limited to, all seller-owned attached floor coverings, television wall mounts, satellite dish, attached plumbing, bathroom and lighting fixtures, window screens, screen doors, storm doors, storm windows, window coverings, garage door opener(s) and transmitter(s), exterior trees, plants or shrubbery, water heating apparatus and fixtures, attached fireplace equipment, awnings, ventilating, cooling and heating systems, all ranges, ovens, built-in dishwashers, fuel tanks and irrigation fixtures and equipment, that are now on or used in connection with the PROPERTY and shall be included in the sale unless otherwise provided herein. BUYER should satisfy himself/herself that the condition of the included items is acceptable. The terms stated in this section shall control over any oral statements, prior written communications and/or prior publications including but not limited to MLS listings and advertisements. Personal property described in a property disclosure report shall not be inferred as to be included unless specifically set forth herein. It is agreed that any item included in this section is of nominal value less than \$100.

(A). **ADDITIONAL ITEMS SPECIFICALLY INCLUDED IN THIS SALE:** Washer/Dryer HU, Wood Stove, Kitchen Refrigerator, Water Softener

(B). **ITEMS SPECIFICALLY EXCLUDED IN THIS SALE:** 48 Corral panels inclusive of supporting T-posts and clamps; All cattle panels inclusive of T-posts; All game feeders; Pheasant Brooder; Meter base east of barn; Exterior "bird house" light west of house; Potbelly stove in barn tack room.

6. **MINERAL RIGHTS:** Any and all mineral rights appurtenant to the PROPERTY and owned by SELLER are included in and are part of the sale of this PROPERTY, and are not leased or encumbered, unless otherwise agreed to by the parties in writing.

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

8. **TITLE CONVEYANCE:** Title of SELLER is to be conveyed by warranty deed, unless otherwise provided, and is to be marketable and insurable except for rights reserved in federal patents, state or railroad deeds, building or use restrictions, building and zoning regulations and ordinances of any governmental unit, and rights of way and easements established or of record. Liens, encumbrances or defects to be discharged by SELLER may be paid out of purchase money at date of closing. No liens, encumbrances or defects which are to be discharged or assumed by BUYER or to which title is taken subject to, exist unless otherwise specified in this Agreement.

9. **TITLE INSURANCE:** There may be types of title insurance coverages available other than those listed below and parties to this agreement are advised to talk to a title company about any other coverages available that will give the BUYER additional coverage.

(A). **PRELIMINARY TITLE COMMITMENT:** Within 5 business days (six [6] if left blank) of final acceptance of all parties, ☒ SELLER or ☐ BUYER shall furnish to BUYER a preliminary commitment of a title insurance policy showing the condition of the title to said PROPERTY. BUYER shall have 2 business days (two [2] if left blank) after receipt of the preliminary commitment, within which to object in writing to the condition of the title as set forth in the preliminary commitment. If BUYER does not so object, BUYER shall be deemed to have accepted the conditions of the title. It is agreed that if the title of said PROPERTY is not marketable, and cannot be made so within business days (two [2] if left blank) after SELLER'S receipt of a written objection and statement of defect from BUYER, then BUYER'S Earnest Money deposit shall be returned to BUYER and SELLER shall pay for the cost of title insurance cancellation fee, escrow and legal fees, if any.

(B). **TITLE COMPANY:** The parties agree that First American Title Company located at 1866 N. Lakewood Drive, Coeur d'Alene, Idaho 83814 shall provide the title policy and preliminary report of commitment.

BUYER'S Initials [Signature] Date 4-27-19

SELLER'S Initials () () Date

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(C). **STANDARD COVERAGE OWNER'S POLICY:** SELLER shall within a reasonable time after closing furnish to BUYER a title insurance policy in the amount of the purchase price of the PROPERTY showing marketable and insurable title subject to the liens, encumbrances and defects elsewhere set out in this Agreement to be discharged or assumed by BUYER unless otherwise provided herein. The risk assumed by the title company in the standard coverage policy is limited to matters of public record. BUYER shall receive a ILTA/ALTA Owner's Policy of Title Insurance. A title company, at BUYER's request, can provide information about the availability, desirability, coverage and cost of various title insurance coverages and endorsements. If BUYER desires title coverage other than that required by this paragraph, BUYER shall instruct Closing company in writing and pay any increase in cost unless otherwise provided herein.

(D). **EXTENDED COVERAGE LENDER'S POLICY (Mortgagee policy):** The lender may require that BUYER (Borrower) furnish an Extended Coverage Lender's Policy. This extended coverage lender's policy considers matters of public record and additionally insures against certain matters not shown in the public record. This extended coverage lender's policy is solely for the benefit of the lender and only protects the lender.

10. INSPECTION:

(A). BUYER chooses ☒ to conduct inspections ☐ not to conduct inspections. If BUYER chooses not to conduct inspections, skip Sections 10(B) and (C). If indicated, this contract is contingent upon BUYER'S approval of the condition of the PROPERTY and BUYER shall have the right to conduct inspections, investigations, tests, surveys and other studies at BUYER'S expense. BUYER is strongly advised to exercise these rights and to make BUYER'S own selection of professionals with appropriate qualifications to conduct inspections of the entire PROPERTY. BUYER shall keep the PROPERTY free and clear of liens; indemnify and hold SELLER harmless from all liability, claims, demands, damages and costs; and repair any damages arising from the inspections. SELLER shall make the PROPERTY available for inspection and agrees to accept the responsibility and expense for making sure all the utilities are turned on no later than 2 business days (two [2] if left blank) from acceptance for the inspection except for phone, cable and internet. No inspections may be made by any governmental building or zoning inspector or government employee without the prior consent of SELLER unless required by local law.

☐ This offer is subject to a short sale approval by a mortgage company, the timeframe(s) for completing inspections shall begin upon written approval of the short sale by the mortgage company and/or all lien holders.

(B) TIMEFRAME(S) FOR INSPECTIONS**1) PRIMARY INSPECTION:**

Buyer's inspection contingency allows a BUYER to conduct a general inspection of the PROPERTY which includes all aspects of the PROPERTY, including but not limited to neighborhood, conditions, zoning and use allowances, environmental conditions, applicable school districts and/or any other aspect pertaining to the PROPERTY or related to the living environment at the PROPERTY; hereinafter referred to as the Primary Inspection. Except for additional items or conditions specifically reserved in a Secondary Inspection below BUYER shall, within business days (five [5] if left blank) of acceptance, complete these inspections and give to SELLER written notice of disapproved items/conditions or written notice of termination of this Agreement based on an unsatisfactory inspection. Once BUYER delivers written notice to SELLER it shall end BUYER'S timeframe for inspections other than those specifically reserved in a Secondary Inspection below and is irrevocable regardless of if it was provided prior to the deadline stated above.

2) SECONDARY INSPECTION:

Items or conditions marked below, if any, allow BUYER the indicated additional time to conduct inspection of only those items or conditions. If not indicated below BUYER may still conduct these inspections but must do so under the 10(B)(1) Primary Inspection timeframe. 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. Once BUYER delivers written notice to SELLER it shall end BUYER'S timeframe for only that item/condition and is irrevocable regardless of if it was provided prior to the deadline stated below. Any notice provided under this subsection is unrelated to a notice provided under subsection 10(B)(1). BUYER shall be responsible for the cost of all indicated inspections unless otherwise noted in the Costs Paid By section or elsewhere herein. BUYER reserves the right to conduct the following inspections outside the Primary Inspection timeline:

- ☒ 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.
- ☒ Septic Inspection and required Pumping which shall be completed and notice provided within 10 business days (ten [10] if left blank) from acceptance.
- ☐ Survey which shall be completed and notice provided within business days (ten [10] if left blank) from acceptance.
- ☐ Other Inspection #1: which shall be completed and notice provided within business days (ten [10] if left blank) from acceptance.
- ☐ Other Inspection #2: which shall be completed and notice provided within business days (ten [10] if left blank) from acceptance.

(C). SATISFACTION/REMOVAL OF INSPECTION CONTINGENCIES:

Each following subsection shall apply to BUYER'S Primary Inspection and, if indicated in 10(B)(2) above, shall also apply independently and repeatedly to each item or condition for which BUYER reserved additional time. If no time was reserved for any additional item(s) there will be only one notice required. If additional time was reserved in 10(B)(2) there may be multiple notices.

1). If BUYER does not within the strict time period specified give to SELLER written notice of disapproved items/conditions or written notice of termination of this Agreement under the Primary Inspection or any particular 10(B)(2) reserved item, BUYER shall, for only that particular inspection or item/condition, conclusively be deemed to have: (a) completed applicable inspections, investigations, review of applicable documents and disclosures; (b) assumed all liability, responsibility and expense for repairs or corrections for that particular inspection or item/condition and (c) waived BUYER'S right to terminate based upon that particular item/condition. BUYER not providing one written notice shall not affect BUYER'S rights regarding other unrelated notices and inspections.

2). If BUYER does within the strict time period specified give to SELLER written notice of termination of this Agreement based on any unsatisfactory inspection, the parties will have no obligation to continue with the transaction and the Earnest Money shall be returned to BUYER.

BUYER'S Initials *[Signature]* Date *4-27-19*

SELLER'S Initials () () Date () ()

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ID#: 18-12412

3). If BUYER does within the strict time period specified give to SELLER written notice of disapproved items/conditions, it shall end BUYER'S timeframe for that particular inspection and is irrevocable. BUYER shall provide to SELLER pertinent section(s) of written inspection reports upon request, if applicable. Upon receipt of written notice SELLER shall have _____ business days (three [3] if left blank) in which to respond in writing. SELLER, at SELLER'S option, may agree to correct the items as requested by BUYER in the notice or may elect not to do so. If SELLER agrees in writing to correct the item/condition requested by BUYER, then said agreement will become a integral part of this contract. Otherwise, immediately upon a written response from SELLER that rejects BUYER'S requests, in whole or in part, said response is irrevocable and BUYER may proceed under 10(C)(4) below.

4). If SELLER does not agree to correct BUYER'S disapproved items/conditions within the strict time period specified, or SELLER does not respond in writing within the strict time period specified, then the BUYER has the option of either proceeding with the transaction without the SELLER being responsible for correcting the deficiencies stated in that particular notice, or giving the SELLER written notice within _____ business days (three [3] if left blank) that BUYER will not continue with the transaction and will receive the Earnest Money back. If BUYER does not give written notice of cancellation within the strict time period specified, BUYER shall conclusively be deemed to have elected to proceed with the transaction without the repairs or corrections stated in that particular notice. BUYER electing to proceed with the transaction under BUYER'S Primary Inspection or any single inspection reserved under 10(B)(2) shall not affect BUYER'S rights regarding other inspections reserved in 10(B)(2).

(D). Home Warranty Programs are available for purchase through a number of Home Warranty Companies.

11. **LEAD PAINT DISCLOSURE:** The subject PROPERTY [] is ☒ is not defined as "Target Housing" regarding lead-based paint or lead-based paint hazards. The term lead-based paint hazards are intended to identify lead-based paint and all residual lead-containing dusts and soils regardless of the source of the lead. If yes, BUYER hereby acknowledges the following: (a) BUYER has been provided an EPA approved lead-based paint hazard information pamphlet, "Protect Your Family From Lead in Your Home". (b) receipt of SELLER'S Disclosure of Information and Acknowledgment Form and have been provided with all records, test reports or other information, if any, related to the presence of lead-based paint hazards on said PROPERTY, (c) that this contract is contingent upon BUYER'S right to have the PROPERTY tested for lead-based paint hazards to be completed no later than _____ or the contingency will terminate, (d) that BUYER hereby ☐ waives ☐ does not waive this right, (e) that if test results show unacceptable amounts of lead-based paint on the PROPERTY, BUYER has the right to cancel the contract subject to the option of the SELLER (to be given in writing) to elect to remove the lead-based paint and correct the problem which must be accomplished before closing, (f) that if the contract is canceled under this clause, BUYER'S earnest money deposit shall be returned to BUYER. Additionally, if any structure was built before 1978 and is a residential home, apartment or child-occupied facility such as a school or day-care center, federal law requires contractors that disturb lead-based paint in that structure to provide the owner with a "Renovate Right" pamphlet. The contractor shall be certified and follow specific work practices to prevent lead contamination.

12. **MOLD DISCLAIMER:** BUYER is hereby advised that mold and/or other microorganisms may exist at the Property. Upon closing BUYER acknowledges and agrees to accept full responsibility and risk for any matters that may result from mold and/or other microorganisms and to hold SELLER and any Broker or agent representing SELLER or BUYER harmless from any liability or damages (financial or otherwise) relating to such matters.

13. **SQUARE FOOTAGE VERIFICATION:** BUYER IS AWARE THAT ANY REFERENCE TO THE SQUARE FOOTAGE OF THE REAL PROPERTY OR IMPROVEMENTS IS APPROXIMATE. IF SQUARE FOOTAGE IS MATERIAL TO THE BUYER, IT MUST BE VERIFIED DURING THE INSPECTION PERIOD.

14. **SELLER'S PROPERTY CONDITION DISCLOSURE FORM:** If required by Title 55, Chapter 25 Idaho Code SELLER shall within ten (10) calendar days after execution of this Agreement provide to BUYER or BUYER'S agent, "Seller's Property Condition Disclosure Form" or other acceptable form. BUYER has received the "Seller's Property Condition Disclosure Form" or other acceptable form prior to signing this Agreement: ☒ Yes ☐ No ☐ N/A

15. **COVENANTS, CONDITIONS AND RESTRICTIONS (CC&Rs):** As part of the BUYER'S inspection of the PROPERTY as set forth in Section 10, BUYER is responsible for obtaining and reviewing a copy of any CC&Rs which may affect the PROPERTY. BUYER shall have 5 _____ business days (five [5] if left blank) but in no event shall such time period exceed that time period set forth for inspections in Section 10, to review any CC&Rs that may affect the PROPERTY. Unless BUYER delivers to SELLER a written and signed objection to the terms of any applicable CC&Rs with particularity describing BUYER'S reasonable objections within such time period as set forth above, BUYER shall be deemed to have conclusively waived any objection to the terms of any CC&Rs affecting the PROPERTY, nothing contained herein shall constitute a waiver of BUYER to challenge CC&Rs directly with a homeowner's association after closing. If BUYER timely and reasonably objects to a term of the CC&Rs, this Agreement shall terminate, and the Earnest Money shall be returned to BUYER.

16. **SUBDIVISION HOMEOWNER'S ASSOCIATION:** BUYER is aware that membership in a Home Owner's Association may be required and BUYER agrees to abide by the Articles of Incorporation, Bylaws and rules and regulations of the Association. BUYER is further aware that the PROPERTY may be subject to assessments levied by the Association described in full in the Declaration of Covenants, Conditions and Restrictions. BUYER has reviewed Homeowner's Association Documents: ☐ Yes ☒ No ☐ N/A. Association fees/dues are \$10 to be disclosed _____ per _____. ☒ BUYER ☐ SELLER ☐ Shared Equally ☐ N/A to pay Association SET UP FEE of \$ _____ and/or ☐ BUYER ☒ SELLER ☐ Shared Equally ☐ N/A to pay Association PROPERTY TRANSFER FEES of \$ _____ and/or ☐ BUYER ☒ SELLER ☐ Shared Equally ☐ N/A to pay Association STATEMENT OF ACCOUNT FEE of \$ _____ at closing. Association Fees are governed by Idaho Code 55-116 and 55-1507.

17. **COSTS PAID BY:** The parties agree to pay the following costs as indicated below. None of the costs to be paid by the parties in this section creates an inspection or performance obligation other than strictly for the payment of costs unless otherwise stated. There may be other costs incurred in addition to those set forth below. Such costs may be required by the lender, by law, or by other circumstances. Requested tests/inspection reports as indicated below shall be provided to the other party within the time period specified in Section 10.

SELLER agrees to pay up to \$ _____ (\$0 if left blank) of lender required repair costs only.
BUYER or SELLER has the option to pay any lender required repair costs in excess of this amount.

BUYER'S Initials (WJL) Date 4-27-19

SELLER'S Initials (_____) (_____) Date _____

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JULY 2018 EDITION

RE-21 REAL ESTATE PURCHASE AND SALE AGREEMENT

Page 4 of 8

Serial#: 033277-100155-6419005

Revised by Idaho File 1, Professional Realty Services, ID: 1, gattullo52@gmail.com 1 8881025550

EXHIBIT C

PROPERTY ADDRESS: 23452 N Derting Rd., Hayden, Idaho 83835

ID#: 18-12412

Upon closing SELLER agrees to pay ☐ _____ % of the purchase price OR ☐ \$ _____ (dollar amount) (N/A if left blank) as a SELLER concession. This can be used toward lender-approved BUYER'S closing costs, lender fees, and prepaid costs which include but are not limited to those items in BUYER columns marked below. This concession can also be used for any other expense not related to financing at the BUYER's discretion.

	BUYER	SELLER	Shared Equally	N/A		BUYER	SELLER	Shared Equally	N/A
Appraisal Fee	x				Title Ins. Standard Coverage Owner's Policy		x		
Appraisal Re-Inspection Fee					Title Ins. Extended Coverage Lender's Policy - Mortgagee Policy	x			
Closing Escrow Fee			x		Additional Title Coverage				
Lender Document/Processing Fee	x				Domestic Well Water Polability Test Shall be ordered by: ☐ BUYER ☒ SELLER				
Tax Service Fee	x				Domestic Well Water Productivity Test Shall be ordered by: ☐ BUYER ☐ SELLER				
Flood Certification/Tracking Fee				x	Septic Inspections Shall be ordered by: ☐ BUYER ☒ SELLER				
Lender Required Inspections	x				Septic Pumping Shall be ordered by: ☐ BUYER ☒ SELLER				
Attorney Contract Preparation or Review Fee				x	Survey Shall be ordered by: ☐ BUYER ☐ SELLER				
					Professional Home Warranty			x	

18. OCCUPANCY: BUYER ☒ does ☐ does not intend to occupy PROPERTY as BUYER'S primary residence.

19. RISK OF LOSS OR NEGLECT: Prior to closing of this sale, all risk of loss shall remain with SELLER. In addition, should the PROPERTY be materially damaged by fire, neglect, or other destructive cause prior to closing, this agreement shall be voidable at the option of the BUYER.

20. WALK THROUGHS: The SELLER grants BUYER and any representative of BUYER reasonable access to conduct two walk through inspections of the PROPERTY NOT AS A CONTINGENCY OF THE SALE, but for the following stated purposes: first walkthrough shall be within _____ business days (three (3) if left blank) after the deadline for completion of repairs agreed to as a result of the Buyer's Inspection Contingency for the purpose of satisfying BUYER that any repairs agreed to in writing by BUYER and SELLER have been completed. The second walkthrough shall be within 3 _____ business days (three (3) if left blank) prior to close of escrow, for the purpose of satisfying BUYER that PROPERTY is in substantially the same condition as on the date this offer is made. The walk throughs stated herein are not a contingency of the sale which might allow termination, but rather for BUYER'S satisfaction. BUYER'S only recourse if unsatisfied is to notify SELLER who must correct or rectify the situation. SELLER shall make PROPERTY available for the walk throughs and agrees to accept the responsibility and expense for making sure all the utilities are turned on for the walk throughs except for phone, cable and internet. If BUYER does not conduct either of the walk throughs, BUYER specifically releases the SELLER and Broker(s) and their associates of any liability as to incomplete repairs and/or any changed conditions.

21. SINGULAR AND PLURAL terms each include the other, when appropriate.

22. FORECLOSURE NOTICE: If the PROPERTY described above is currently involved in a foreclosure proceeding (pursuant to Idaho Code §45-1506) any contract or agreement with the owner or owners of record that involves the transfer of any interest in residential real property, as defined in §45-525(5)(b), Idaho Code, subject to foreclosure must be in writing and must be accompanied by and affixed to RE-42 Property Foreclosure Disclosure Form.

23. MECHANIC'S LIENS - GENERAL CONTRACTOR DISCLOSURE STATEMENT NOTICE: BUYER and SELLER are hereby notified that, subject to Idaho Code §45-525 et seq., a "General Contractor" must provide a Disclosure Statement to a homeowner that describes certain rights afforded to the homeowner (e.g. lien waivers, general liability insurance, extended policies of title insurance, surety bonds, and sub-contractor information). The Disclosure Statement must be given to a homeowner prior to the General Contractor entering into any contract in an amount exceeding \$2,000 with a homeowner for construction, alteration, repair, or other improvements to real property, or with a residential real property purchaser for the purchase and sale of newly constructed property. Such disclosure is the responsibility of the General Contractor and it is not the duty of your agent to obtain this information on your behalf. You are advised to consult with any General Contractor subject to Idaho Code §45-525 et seq. regarding the General Contractor Disclosure Statement.

24. SALES PRICE INFORMATION: Pursuant to Idaho Code §54-2083(6)(d), a "sold" price of real property is not confidential client information.

25. TRANSMISSION OF DOCUMENTS: Facsimile or electronic transmission of any signed original document, and retransmission of any signed facsimile or electronic transmission shall be the same as delivery of an original. At the request of either the BUYER or SELLER, or the LENDER, or the Closing company, the BUYER and SELLER will confirm facsimile or electronic transmitted signatures by signing an original document.

BUYER'S Initials JSW LS Date 4-27-19

SELLER'S Initials (_____) (_____) Date _____

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RE-21 REAL ESTATE PURCHASE AND SALE AGREEMENT

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EXHIBIT C

PROPERTY ADDRESS: 23452 N Derting Rd., Hayden, Idaho 83835

ID#: 18-12412

26. WIRE TRANSFER WARNING: Electronic means of transferring money (i.e. ETF, wire transfer, electronic check, direct deposit, etc...) are subject to sophisticated cyber fraud attacks. These attacks are even more prevalent in real estate transactions due to the large sums of money being exchanged. BUYER is advised that Brokerage will not provide electronic transfer instructions by e-mail. Following money transfer instructions contained in an email from any party is inherently dangerous and should be avoided. BUYER agree that if BUYER use, or authorize the use of, electronic transfer of funds in a transaction they hereby hold the Brokerages, their agents, and the designated title and escrow company harmless from any and all claims arising out of inaccurate transfer instructions, fraudulent interception of said funds and/or any other damage relating to the conduct of third parties influencing the transfer process or stealing funds.

27. BUSINESS DAYS: A business day is herein defined as Monday through Friday, 8:00 A.M. to 5:00 P.M. in the local time zone where the subject real PROPERTY is physically located. A business day shall not include any Saturday or Sunday, nor shall a business day include any legal holiday recognized by the state of Idaho as found in Idaho Code §73-108. If the time in which any act required under this agreement is to be performed is based upon a business day calculation, then it shall be computed by excluding the calendar day of execution and including the last business day. The first business day shall be the first business day after the date of execution. If the last day is a legal holiday, then the time for performance shall be the next subsequent business day.

28. CALENDAR DAYS: A calendar day is herein defined as Monday through Sunday, midnight to midnight, in the local time zone where the subject real PROPERTY is physically located. A calendar day shall include any legal holiday. The time in which any act required under this agreement is to be performed shall be computed by excluding the date of execution and including the last day, thus the first day shall be the day after the date of execution. Any reference to "day" or "days" in this agreement means the same as calendar day, unless specifically enumerated as a "business day."

29. ATTORNEY'S FEES: If either party initiates or defends any arbitration or legal action or proceedings which are in any way connected with this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party reasonable costs and attorney's fees, including such costs and fees on appeal.

30. DEFAULT: If BUYER defaults in the performance of this Agreement, SELLER has the option of: (1) accepting the Earnest Money as liquidated damages or (2) pursuing any other lawful right and/or remedy to which SELLER may be entitled. If SELLER elects to proceed under (1), SELLER shall make demand upon the holder of the Earnest Money, upon which demand said holder shall pay from the Earnest Money the costs incurred by SELLER'S Broker on behalf of SELLER and BUYER related to the transaction, including, without limitation, the costs of title insurance, escrow fees, appraisal, credit report fees, inspection fees and attorney's fees; and said holder shall pay any balance of the Earnest Money, one-half to SELLER and one-half to SELLER'S Broker, provided that the amount to be paid to SELLER'S Broker shall not exceed the Broker's agreed-to commission. SELLER and BUYER specifically acknowledge and agree that if SELLER elects to accept the Earnest Money as liquidated damages, such shall be SELLER'S sole and exclusive remedy, and such shall not be considered a penalty or forfeiture. However, in the event the parties mutually agree in writing that the Earnest Money shall become non-refundable, said agreement shall not be considered an election of remedies by SELLER and the non-refundable Earnest Money shall not constitute liquidated damages; nor shall it act as a waiver of other remedies, all of which shall be available to SELLER; it may however be used to offset SELLER'S damages. If SELLER elects to proceed under (2), the holder of the Earnest Money shall be entitled to pay the costs incurred by SELLER'S Broker on behalf of SELLER and BUYER related to the transaction, including, without limitation, the costs of brokerage fee, title insurance, escrow fees, appraisal, credit report fees, inspection fees and attorney's fees, with any balance of the Earnest Money to be held pending resolution of the matter. If SELLER defaults, having approved said sale and fails to consummate the same as herein agreed, BUYER'S Earnest Money deposit shall be returned to him/her and SELLER shall pay for the costs of title insurance, escrow fees, appraisals, credit report fees, inspection fees, brokerage fees and attorney's fees, if any. This shall not be considered as a waiver by BUYER of any other lawful right or remedy to which BUYER may be entitled.

31. EARNEST MONEY DISPUTE / INTERPLEADER: Notwithstanding any termination or breach of this Agreement, BUYER and SELLER agree that in the event of any controversy regarding the Earnest Money and things of value held by Broker or closing company, Broker may reasonably rely on the terms of this Agreement or other written documents signed by both parties to determine how to disburse the disputed money. However, Broker or closing company shall not be required to take any action but may await any proceeding, or at Broker's or closing company's option and sole discretion, may interplead all parties and deposit any moneys or things of value into a court of competent jurisdiction and shall recover all costs which were incurred as a result of the dispute including, but not limited to, reasonable attorney's fees. If either parties' Broker incurs attorney's fees as a result of any Earnest Money dispute, whether or not formal legal action is taken, said Broker is entitled to recover actual fees incurred from either BUYER or SELLER.

32. COUNTERPARTS: This Agreement may be executed in counterparts. Executing an agreement in counterparts shall mean the signature of two identical copies of the same agreement. Each identical copy of an agreement signed in counterparts is deemed to be an original, and all identical copies shall together constitute one and the same instrument.

33. "NOT APPLICABLE" DEFINED: The letters "n/a," "N/A," "n.a." and "N.A." as used herein are abbreviations of the term "not applicable." Where this agreement uses the term "not applicable" or an abbreviation thereof, it shall be evidence that the parties have contemplated certain facts or conditions and have determined that such facts or conditions do not apply to the agreement or transaction herein.

34. SEVERABILITY: In the case that any one or more of the provisions contained in this Agreement, or any application thereof, shall be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

BUYER'S Initials MP KY Date 11-27-19

SELLER'S Initials () () Date

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JULY 2018 EDITION

RE-21 REAL ESTATE PURCHASE AND SALE AGREEMENT

Page 6 of 8

Serial#: 033277-100155-6419005

Prepared by: Patricia Ellis | Professional Realty Svcs ID | nativellie52@gmail.com | 8883025550

EXHIBIT C

PROPERTY ADDRESS: 23452 N Derting Rd., Hayden, Idaho 83835ID#: 18-12412

35. REPRESENTATION CONFIRMATION: Check one (1) box in Section 1 and one (1) box in Section 2 below to confirm that in this transaction, the brokerage(s) involved had the following relationship(s) with the BUYER(S) and SELLER(S).

Section 1:

- ☒ A. The brokerage working with the BUYER(S) is acting as an AGENT for the BUYER(S).
☐ B. The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S), without an ASSIGNED AGENT.
☐ C. The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S) and has an ASSIGNED AGENT acting solely on behalf of the BUYER(S).
☐ D. The brokerage working with the BUYER(S) is acting as a NONAGENT for the BUYER(S).

Section 2:

- ☒ A. The brokerage working with the SELLER(S) is acting as an AGENT for the SELLER(S).
☐ B. The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S), without an ASSIGNED AGENT.
☐ C. The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S) and has an ASSIGNED AGENT acting solely on behalf of the SELLER(S).
☐ D. The brokerage working with the SELLER(S) is acting as a NONAGENT for the SELLER(S).

Each party signing this document confirms that he has received, read and understood the Agency Disclosure Brochure adopted or approved by the Idaho real estate commission and has consented to the relationship confirmed above. In addition, each party confirms that the brokerage's agency office policy was made available for inspection and review. EACH PARTY UNDERSTANDS THAT HE IS A "CUSTOMER" AND IS NOT REPRESENTED BY A BROKERAGE UNLESS THERE IS A SIGNED WRITTEN AGREEMENT FOR AGENCY REPRESENTATION.

36. CLOSING: On or before the closing date, BUYER and SELLER shall deposit with the closing company all funds and instruments necessary to complete this transaction. Closing means the date on which all documents are either recorded or accepted by an escrow agent and the sale proceeds are available to SELLER. The closing shall be no later than (Date) June 7, 2019.

The parties agree that the CLOSING COMPANY for this transaction shall be First American Title Company

located at 1866 N Lakewood Drive, Coeur d'Alene, Idaho 83814

If a long-term escrow / collection is involved, then the long-term escrow holder shall be _____

37. POSSESSION: BUYER shall be entitled to possession ☒ upon closing or ☐ date _____ time 5:00 ☐ A.M. ☒ P.M.

38. PRORATIONS: Property taxes and water assessments (using the last available assessment as a basis), rents collected, interest and reserves, liens, encumbrances or obligations assumed, and utilities shall be prorated ☒ upon closing or as of ☐ date _____ BUYER to reimburse SELLER for fuel in tank ☐ Yes ☒ No ☐ N/A. Dollar amount may be determined by SELLER's supplier.

39. ASSIGNMENT: This Agreement and any rights or interests created herein ☐ may ☒ may not be sold, transferred, or otherwise assigned.

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

41. TIME IS OF THE ESSENCE IN THIS AGREEMENT.

42. AUTHORITY OF SIGNATORY: If BUYER or SELLER is a corporation, partnership, trust, estate, or other entity, the person executing this agreement on its behalf warrants his or her authority to do so and to bind BUYER or SELLER.

43. ACCEPTANCE: This offer may be revoked at any time prior to acceptance and is made subject to acceptance on or before (Date) May 27, 2019 at (Local Time in which PROPERTY is located) 5:00 ☐ A.M. ☒ P.M.

BUYER'S Initials (12) (18) Date 4-27-19

SELLER'S Initials _____ Date _____

PROPERTY ADDRESS: 23452 N Derting Rd., Hayden, Idaho 83835

ID#: 18-12412

44. BUYER'S SIGNATURES:

☐ SEE ATTACHED BUYER'S ADDENDUM(S): _____ (Specify number of BUYER addendum(s) attached.)☐ SEE ATTACHED BUYER'S EXHIBIT(S): _____ (Specify number of BUYER exhibit(s) attached.)☐ BUYER does currently hold an active Idaho real estate license. ☐ BUYER is related to agent.✓ BUYER Signature Arthur V GideonBUYER (Print Name) Arthur V GideonDate 4/27/19 Time 11:22 ☐ A.M. ☒ P.M.Phone # _____ Cell # (509) 521-6069Address 2690 State Route 187E-Mail av.kmgideon@frontier.comCity London State OH Zip 43140

Fax # _____

☐ BUYER does currently hold an active Idaho real estate license. ☐ BUYER is related to agent.✓ BUYER Signature Katherine M GideonBUYER (Print Name) Katherine M GideonDate 4-27-19 Time 11:23 ☐ A.M. ☒ P.M.Phone # _____ Cell # (614) 601-2130Address 2690 State Route 187E-Mail kathyg1956@gmail.comCity London State OH Zip 43140

Fax # _____

45. SELLER'S SIGNATURES: On this date, I/We hereby approve and accept the transaction set forth in the above Agreement and agree to carry out all the terms thereof on the part of the SELLER.

☐ SIGNATURE(S) SUBJECT TO ATTACHED COUNTER OFFER☐ SIGNATURE(S) SUBJECT TO ATTACHED ADDENDUM(S) # _____☐ SIGNATURE(S) SUBJECT TO ATTACHED EXHIBIT(S) # _____☐ SELLER does currently hold an active Idaho real estate license. ☐ SELLER is related to agent.

SELLER Signature _____

SELLER (Print Name) _____

Date _____ Time _____ ☐ A.M. ☐ P.M.

Phone # _____ Cell # _____

Address _____

E-Mail _____

City _____ State _____ Zip _____

Fax # _____

CONTRACTOR REGISTRATION # (if applicable) _____

☐ SELLER does currently hold an active Idaho real estate license. ☐ SELLER is related to agent.

SELLER Signature _____

SELLER (Print Name) _____

Date _____ Time _____ ☐ A.M. ☐ P.M.

Phone # _____ Cell # _____

Address _____

E-Mail _____

City _____ State _____ Zip _____

Fax # _____

CONTRACTOR REGISTRATION # (if applicable) _____

LATE ACCEPTANCE

If acceptance of this offer is received after the time specified, it shall not be binding on the BUYER unless BUYER approves of said acceptance within _____ calendar days (three (3) if left blank) by BUYER initialing HERE (_____) (_____) Date _____

If BUYER timely approves of SELLER's late acceptance, an initialed copy of this page shall be immediately delivered to SELLER.

PROPERTY ADDRESS: 23452 N Darting Rd., Hayden, Idaho 83835

ID#: 10-12412

44. BUYER'S SIGNATURES:

SEE ATTACHED BUYER'S ADDENDUM(S): _____ (Specify number of BUYER addendum(s) attached.)
SEE ATTACHED BUYER'S EXHIBIT(S): _____ (Specify number of BUYER exhibit(s) attached.)

☒ BUYER does currently hold an active Idaho real estate license. ☐ BUYER is related to agent.

BUYER Signature Arthur V Gideon BUYER (Print Name) Arthur V Gideon
 Date 4/27/19 Time 11:22 ☐ A.M. ☒ P.M. Phone # _____ Cell # (509) 521-6649
 Address 2690 State Route 187 E-Mail av.gideon@i.winter.com
 City London State OH Zip 43140 Fax # _____

☒ BUYER does currently hold an active Idaho real estate license. ☐ BUYER is related to agent.

BUYER Signature Katherine M. Gideon BUYER (Print Name) Katherine M Gideon
Date 4-27-19 Time 11:23 ☒ A.M. ☐ P.M. Phone # _____ Cell # (614) 601-2136
Address 2690 State Route 187 E-Mail kathyg1956@gmail.com
City London State OH Zip 43140 Fax # _____

46. SELLER'S SIGNATURES: On this date I/We hereby approve and accept the transaction set forth in the above Agreement and agree to carry out all the terms thereof on this part of the SELLER.

☐ SIGNATURE(S) SUBJECT TO ATTACHED COUNTER OFFER
☒ SIGNATURE(S) SUBJECT TO ATTACHED ADDENDUM(S) # 1
☐ SIGNATURE(S) SUBJECT TO ATTACHED EXHIBIT(S) #

☒ SELLER does currently hold an active Idaho real estate license. ☐ SELLER is related to agent.

BELLER Signature [Signature] SELLER (Print Name) Brian Baker
 Date 01/29/19 Time 8:30 PM Phone # _____ Call # _____
 Address 23452N DERRING E-Mail _____
 City Hydrex State IN Zip 46335 Fax # _____

CONTRACTOR REGISTRATION # (If applicable)

☐ SELLER does currently hold an active Idaho real estate license. ☐ SELLER is related to agent.

SELLER Signature _____ SELLER (Print Name) _____
 Date _____ Time _____ A.M. / P.M. Phone # _____ Cell # _____
 Address _____ E-Mail _____
 City _____ State _____ Zip _____ Fax # _____

CONTRACTOR REGISTRATION # (if applicable)

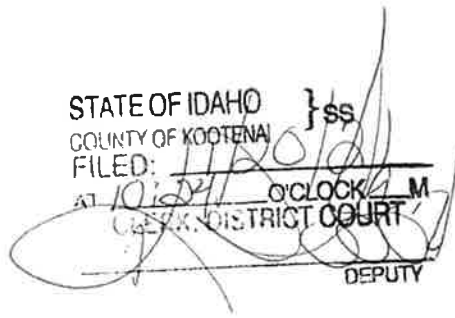
LATE ACCEPTANCE

If acceptance of this offer is received after the time specified, it shall not be binding on the BUYER unless BUYER approves of said acceptance within calendar days (three (3) if left blank) by BUYER initialing HERE 1 day.
 If BUYER timely approves of SELLER's late acceptance, an initialed copy of this page shall be immediately delivered to SELLER.

GIDEON000046

EXHIBIT C





**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: Plaintiffs' Motion
for Partial Summary
Judgment**

**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

Plaintiffs' (hereinafter "Plaintiffs" or "Gideons"¹) Motion for Partial Summary Judgment seeks to establish the following:

- Defendant (hereinafter "Defendant" or "Farley" when referring to Brian Farley and "Defendants" when referring to Brian and Pamela Farley) breached the purchase and sale agreement;
- The documents Farley recorded after the title inspection contingency are void;
- The documents Farley recorded after the title inspection contingency constitute a slander of title;
- Plaintiffs have an easement by implication from prior use to the lower well;
- The power, water, water rights, and infrastructure comprising the lower well are owned by Plaintiffs.

II. EVIDENTIARY OBJECTIONS

Plaintiffs object to certain portions of the Declaration of Brian Farley (filed 11/19/20).

When considering evidence presented in support of or opposition to a motion for summary judgment, a court can only consider material which would be admissible at trial. *Petricevich v. Salmon River Canal, Co.*, 92 Idaho 865, 869, 452 P.2d 362, 366 (1969); I.R.C.P. 56(e). Thus, if the admissibility of evidence presented in support of a motion for summary judgment is raised by objection by one of the parties, the court must first make a threshold determination as to the admissibility of the evidence "before proceeding to the ultimate issue, whether summary judgment is appropriate." *Bromley v. Garey*, 132 Idaho 807, 811, 979 P.2d 1165, 1169 (1999) (quoting *Ryan v. Beisner*, 123 Idaho 42, 45, 844 P.2d 24, 27 (Ct.App.1992)).

¹ When referring to the singular "Gideon," the Court is referring to Arthur Gideon.

Gem State Ins. Co. v. Hutchison, 145 Idaho 10, 14, 175 P.3d 172, 176 (2007).

A trial court's decision on a motion to strike is governed by an abuse of discretion standard. *E.g., Jensen v. State*, 139 Idaho 57, 61, 72 P.3d 897, 901 (2003).

The Court rules on Plaintiffs' objections as follows:

1. **¶ 9: Attached hereto as Exhibit C is a true and correct copy of my claim to the Idaho Dept. of Water Resources website, showing Parcels S, T and I had a shared interest in the Lower Well. This claim was subsequently granted.**

Plaintiffs argue that Ex. C is inadmissible hearsay and that Farley's assertions are legal conclusions. Exhibit C is subject to the hearsay exception for public records under I.R.E. 803(8). To the extent Farley states legal conclusions about what Ex. C shows, the Court disregards such legal conclusions and looks to Ex. C itself.

2. **¶ 10: In January of 2018, in anticipation of selling Parcel I, I filed an amendment with the IDWR transferring the point of use for the water from the Lower Well to Parcels S and T. In other words, at that time Parcel I had no right to the water from the Lower Well. Attached hereto as Exhibit D is a true and correct copy of a printout from the Idaho Dept. of Water Resources website, showing the amendment I filed.**

Plaintiffs argue that Ex. D is inadmissible hearsay and that the assertions are legal conclusions. Again, Exhibit D is subject to the hearsay exception for public records under I.R.E. 803(8). To the extent Farley states legal conclusions about what Ex. D shows, the Court disregards such legal conclusions and looks to Ex. D itself.

3. **¶ 12 (Plaintiffs identify as ¶ 11): Notably, the First Amended CC&R's could not be recorded until the boundary line adjustment was complete and recorded.**

Plaintiffs argue this is a legal conclusion. To the extent Farley states a legal conclusion, such conclusion is disregarded. The Court takes the statement as Farley explaining his reasoning behind his actions.

4. **¶ 14: The Disclosure Statement requires that I (the Seller) certify that the information is true and correct to the best of the [sic] my knowledge “as of the date signed by the Seller.”**

Defendants argue this is a legal conclusion. To the extent Farley states legal conclusions about what the Disclosure Statement shows, the Court disregards such legal conclusions and looks to the Disclosure Statement itself.

5. **¶ 16: When I filled out the Disclosure Statement, this was a true statement because Parcel I only had a right to the water from the Upper Well and the “private system” consisted of the connected 3,000-gallon concrete cistern and filtration system for the house.**

Plaintiffs argue this is a legal conclusion. To the extent Farley states a legal conclusion, such conclusion is disregarded. The Court takes the statement as Farley explaining his reasoning behind his actions.

6. **¶ 17: Parcel I did not have a shared well interest in the Lower Well at this time (as alleged by the Gideons) because the First Amended CC&Rs had not yet been recorded and the only point of use for the Lower Well were on Adjusted Parcels S and T. See Exhibit D.**

Plaintiffs argue this is a legal conclusion. To the extent Farley states a legal conclusion, such conclusion is disregarded. The Court takes the statement as Farley explaining his reasoning behind his actions.

7. **¶ 20: As of April 27, 2019, the only water rights appurtenant to Parcel I were to the Upper Well.**

Plaintiffs argue this is a legal conclusion. To the extent Farley states a legal conclusion, such conclusion is disregarded. The Court takes the statement as Farley explaining his reasoning behind his actions.

8. ¶ 24: Although Arthur Gideon claims that he “personally observed that Parcel I was served by the two wells,” this is impossible. Mr. Gideon could not “observe” the pipe which travels underground from the Lower Well to the Reservoir and I never exposed this pipe for Mr. Gideon during our walkthrough.

Plaintiffs argue this statement lacks foundation because the mere fact that Farley didn’t show Gideon buried pipes does not establish that Gideon could not have otherwise observed that the Property was served by two wells. On summary judgment, the Court does not judge the credibility of the testimony. Such statement simply illustrates an issue of fact as to whether Arthur Gideon observed that Parcel I was served by both wells.

9. ¶ 25: “... the First Amended CC&R’S contain the following... [paraphrasing content of a document]

Plaintiffs argue that the best evidence rule requires the Court consider the document itself rather than what Farley says about it. The Court will look to the First Amended CC&Rs to determine what is contained therein.

10. ¶ 26: [Statements about what the Gideons noticed at their first attempt at closing]

Plaintiffs argue the statements in ¶ 26 lack foundation for how Farley knew what the Gideons knew or didn’t know and what occurred at closing. Objection sustained.

11. ¶ 30: I was not willing to close until I was assured the Gideons agreed to do so without having a copy the First Amended CC&R’s. Ms. Spridgeon subsequently informed me that she had called the Gideons and they had told her to proceed with closing and that they would receive a copy of the First Amended CC&Rs later that day when I met them at Parcel I. In light of that information, I proceeded to close.

Plaintiffs argue this contains multiple levels of inadmissible hearsay. The statements by Ms. Spridgeon about the Gideons are taken to show the effect they had on Farley and Farley's willingness to close rather than for the truth of the matter asserted (whether the Gideons were in fact willing to proceed).

12. ¶¶ 33-34: [statements that Gideons paid a portion of the electric bill for the Lower Well even after dispute arose with Farley]

Plaintiffs argue this is irrelevant to any material issue. The Court finds such testimony not relevant to any material issue on this motion and will not consider it.

III. FACTS

This case revolves around a real property transaction. Plaintiffs purchased a parcel of property in Hayden from Defendants. *Declaration of Arthur Gideon*, ¶¶ 3-4 (filed 11/5/20). Defendants also own several other parcels in the vicinity. *Id.* at ¶ 5.

The property is actually serviced from two wells. *Id.* at ¶ 7. The "upper well" is located near Plaintiffs' residence and is connected to a 3,000 gallon concrete reservoir. *Id.* at ¶ 8. The "lower well" is located on one of Defendants' other parcels and is connected to the reservoir and Plaintiffs' property via a waterline. *Id.* at ¶ 9. Presently, both wells form a single, interconnected water system for Plaintiff's property. *Id.* at ¶ 10.

When Defendant listed the parcel for sale, he identified the water source as a "private system; private well" on the MLS listing service. *Id.* at ¶ 6. In connection with the listing, Defendants completed a RE-25 Seller's Property Condition Disclosure Form. *Id.* at ¶ 13. On the disclosure form, Defendants checked boxes indicating that domestic, landscape, and irrigation water were provided by a "private system." *Id.* at ¶ 14. In the other remarks section of the disclosure form, Defendant wrote "Well 3000 gal buried concrete reservoir." *Id.* at ¶ 14. Additionally on the disclosure form, Defendants checked

boxes indicating “no” for “shared well” and “shared well agreement.” *Id.* at ¶ 14. In another section of the disclosure form, Defendants checked boxes indicating that there were not “any conditions that may affect your ability to clear title such as ... restrictive covenants,” and that the property had not been surveyed since Defendants owned it. *Id.* at ¶ 15.

The parties entered into a purchase and sale agreement (“the Agreement”). *Id.* at ¶ 17, Ex. D. The Agreement contains the following relevant terms:

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

TITLE CONVEYANCE: Title of SELLER is to be conveyed by warranty deed, unless otherwise provided, and is to be marketable and insurable except for rights reserved in federal patents, state or railroad deeds, building or use restrictions, building and zoning regulations and ordinances of any governmental unit, and rights of way and easements established or of record. Liens, encumbrances or defects to be discharged by SELLER may be paid out of purchase money at date of closing. No liens, encumbrances or defects . . . to which title is taken subject to. Exist, unless otherwise specified in this Agreement.

PRELIMINARY TITLE COMMITMENT: Within 5 business days . . . of final acceptance of all parties, [x] SELLER . . . shall furnish to BUYER a preliminary commitment of a title insurance policy showing the condition of the title to said PROPERTY. BUYER shall have 2 business days . . . after receipt of the preliminary commitment within which to object in writing to the condition of the title as set forth in the preliminary commitment. If BUYER does not so object, BUYER shall be deemed to have accepted the conditions of the title. If BUYER does not so object, BUYER shall be deemed to have accepted the conditions of the title. It is agreed that if the title of said PROPERTY is not marketable and cannot be made so within [2] business days . . . after SELLER’S receipt of a written objection and statement of defect from BUYER, then BUYER’S Earnest Money deposit shall be returned to BUYER and SELLER shall pay for the cost of title insurance cancellation fee, escrow and legal fees, if any.

COVENANTS, CONDITIONS AND RESTRICTIONS (CC&Rs): As part of the BUYER'S inspection of the PROPERTY as set forth in Section 10, BUYER is responsible for obtaining and reviewing a copy of any CC&Rs which may affect the PROPERTY. BUYER shall have 5 business days . . . to review any CC&RS that may affect the PROPERTY. Unless BUYER delivers to SELLER a written and signed objection to the terms of any applicable CC&RS with particularity describing BUYER'S reasonable objections within such time period as set forth above, BUYER shall be deemed to have conclusively waived any objection to the terms of any CC&RS affecting the PROPERTY... If BUYER timely and reasonably objects to a term of the CC&RS, this Agreement shall terminate and the interest money shall be returned to BUYER.

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

See id., Ex. D.

After executing the Agreement, but prior to closing, Gideon inspected the property. *Id.* at ¶ 24. During the inspection,. Gideon alleges he asked Farley about the property's water sources, and Farley represented that the property was served by two wells, with the Upper well producing 2 gal/min and the lower well producing 5 gal/min. *Id.* at ¶ 27. Gideon personally observed that the property was served by the two wells, although such assertion is disputed. *Id.* at ¶ 28; *Declaration of Brian Farley*, ¶ 24 (filed 11/19/20).

As contemplated by the Agreement, within 5 days of the accepted offer, the Gideons received and reviewed a preliminary title commitment, which did not disclose that the lower well was shared, nor did it disclose any recently recorded CC&Rs (the most recent shown being the Pleasant View CC&Rs from 2017). *Declaration of Arthur Gideon*, ¶ 30-31. After that 5-day title inspection period but one week prior to closing, the Gideons

contend Farley recorded a set of First Amended CC&Rs on 5/31/19, which Plaintiffs contend had the following effects:

- Created a non-exclusive easement for utilities, ingress and egress easement along a strip of land 30' wide following the eastern boundary of the Property being purchased by the Gideons (identified as "Adjusted Parcel '1'"). *See Amended Complaint*, Ex. F, p. 2.
- Created a drainfield easement, the cost and maintenance of which was declared to be the sole responsibility of the owner or person using the easement. *Id.* at pp. 3-4.
- Created a shared-well system, requiring that the Gideon Parcel share the Lower Well with the owner of Adjusted Parcel "T" (Brian Farley owns that parcel). It also limited the water use to domestic household, livestock and landscaping. Further, it acknowledges an insufficient water supply to serve both users, and provides that when this occurs, Farley's use is supposed to abate so that the Gideon Parcel has exclusive use "until such time as there is an excess capacity for domestic use for Adjusted Parcel 'I' [Gideon Property] at which time Adjusted Parcel 'T' [Farley Property] would again be able to use the well." It further provides that the shared expenses would not be shared while the Gideons were exclusively using the well. *Id.* at pp. 4-5.
- Reserved (by implication, if not express) an easement to benefit Farley's property, because Farley's use of the well water pulls it from the Gideons' reservoir, which they believed would only serve their own purposes when they purchased the property. Now they are holding water for Farley's use, storage, and transportation through their property. *Id.* at pp. 4-5.
- Forces the Gideons to share equally with Farley the operational costs of the Lower Well, unless there is a period where Farley could not use it due to inadequate water. *Id.* at p. 5.
- Reserved a generic and general "access easement" for the benefit of the "Declarant" (Farley) so he can complete development. *Id.* at p. 5.
- Imposes on the Gideons an obligation to share responsibility for maintenance, repair and replacement of piping and electricity. *Id.* at p. 5.
- Imposes legal obligations on the Gideons to comply with the requirements, and threatens court enforcement for failure to adhere to requirements, as well as an award of attorney fees to the prevailing party. *Id.* at p. 6.

Declaration of Arthur Gideon, ¶ 35.

Closing occurred 6/7/19, and the Gideons took possession on that day. *Id.* at ¶¶ 37, 39. At closing, the Gideons received a copy of the preliminary title commitment, which did not show the First Amended CC&Rs as an exception. *Id.* at ¶ 38. On the same day,

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Farley met the Gideons to show them how to operate certain components, but did not disclose the First Amended CC&Rs and did not provide a copy to the Gideons. *Id.* at ¶ 40.

Farley delivered a copy of the First Amended CC&Rs for the first time at the end of July 2019. *Id.* at ¶ 41.

Defendant contends that in January 2018, he filed an IDWR amendment restricting use of the lower well to parcels S and T, so the Gideon parcel had no right to water from the lower well. *Declaration of Brian Farley*, ¶ 10, Ex. D. In June 2018, in anticipation of selling the Gideon parcel and developing the other lots, Farley began having lot lines adjusted and legal descriptions drafted by Meckel Engineering and Surveying. *Id.* at ¶ 11. At approximately the same time, Farley hired attorney Michael Reagan to draft the First Amended CC&Rs with the purpose of granting a shared interest in the lower well back to the Gideon parcel. *Id.* at ¶ 12. Farley contends the First Amended CC&Rs could not be recorded until the boundary line adjustment had been completed and recorded. *Id.*

Farley contends the information on the disclosure statement was true and correct as of the date signed. *Id.* at ¶ 14. Specifically, Farley indicated that Parcel I had a private system which, in the remarks section, he described it as “Well, 3,000 gal. Buried Concrete Reservoir.” Notably, Farley used the word “Well” to describe the single well on Parcel I. *Id.* at ¶ 15. Farley contends this was true when he signed the disclosure because Parcel I only had a right to the water from the Upper Well and the “private system” consisted of the connected 3,000-gallon concrete cistern and filtration system for the house. *Id.* at ¶ 16. Farley further contends the Gideon parcel did not have a shared well at that time because the First Amended CC&Rs had not yet been recorded and the only points of use for the

Lower Well were on Adjusted Parcels S and T. *Id.* at ¶ 17. Farley contends that the disclosure statement was not part of the Agreement.

During a tour with the Gideons' realtor, Patti Ellis, Farley alleges he informed Ellis that Parcel I was serviced by the Upper Well, and that there was another well on Parcel V which would be designated as a shared well after Meckel Engineering completed its boundary line adjustment and the First Amended CC&Rs were recorded. *Id.* at ¶ 18.

While the Agreement provided that all appurtenant water rights were included as part of the sale, Farley maintains that as of April 27, 2019, the only water right appurtenant to Parcel I was the Upper Well. *Id.* at ¶ 20.

During a walkthrough on 5/2/20 [*sic?*], Farley alleges he told Gideon about the existence of the Lower Well and his intent to include, as part of the sale, a priority one-half interest in the Lower Well. *Id.* at ¶ 21.

Farley states that boundary line adjustments were completed in late May 2019, and thereafter the First Amended CC&Rs were finalized and recorded 5/31/19. *Id.* at ¶ 25.

During closing on 6/7/19, Farley contends he realized the First Amended CC&Rs were not part of the title report and notified the title officer. *Id.* at ¶ 28-29. Farley alleges he was unwilling to close until he was assured the Gideons agreed to do so without a copy of the Amended CC&Rs, but the title officer represented that the Gideons had told her to proceed with closing and that they would receive a copy later that day when they met Farley at the property. *Id.* at ¶ 30. Farley then states he delivered the First Amended CC&Rs to the Gideons later that afternoon. *Id.* at ¶ 31.

IV. STANDARDS

Summary judgment is proper “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” I.R.C.P. 56(a). “When considering whether the evidence in the record shows that there is no genuine issue of material fact, the trial court must liberally construe the facts, and draw all reasonable inferences, in favor of the nonmoving party.” *Liberty Bankers Life Ins. Co. v. Witherspoon, Kelley, Davenport & Toole, P.S.*, 159 Idaho 679, 685, 365 P.3d 1033, 1039 (2016). The moving party has the burden of establishing there is no genuine issue of material fact. *Wattenbarger v. A.G. Edwards & Sons, Inc.*, 150 Idaho 308, 317, 246 P.3d 961, 970 (2010).

“If the moving party has demonstrated the absence of a question of material fact, the burden shifts to the nonmoving party to demonstrate an issue of material fact that will preclude summary judgment.” *Id.* (citations omitted). The nonmoving party must present evidence contradicting that submitted by the movant, and which demonstrates a question of material fact. *Kiebert v. Goss*, 144 Idaho 225, 228, 159 P.3d 862, 865 (2007). However, “[a] mere scintilla of evidence or only slight doubt as to the facts is not sufficient to create a genuine issue of material fact for the purposes of summary judgment.” *Wright v. Ada Cnty.*, 160 Idaho 491, 495, 376 P.3d 58, 62 (2016) (citing *Finholt v. Cresto*, 143 Idaho 894, 897, 155 P.3d 695, 698 (2007)).

The facts in the record are to be liberally construed in favor of the party opposing the motion. *G & M Farms v. Funk Irr. Co.*, 119 Idaho 514, 517, 808 P.2d 851, 854 (1991). The opposing party cannot rest upon mere allegations or denials, but the party’s response, by affidavits or otherwise, must set forth specific facts showing that there is a genuine issue

of material fact. *Smith v. Meridian Joint School District No. 2*, 128 Idaho 714, 719, 918 P.2d 583, 588 (1996); *G & M Farms*, 119 Idaho at 517, 808 P.2d at 854; *Edwards v. Conchemco, Inc.*, 111 Idaho 851, 853, 727 P.2d 1279, 1281 (Ct. App. 1986); I.R.C.P. 56.

“Ordinarily, this Court liberally construes all disputed facts and draws all reasonable inferences and conclusions supported by the record in favor of the nonmoving party.” *Hoffer v. Callister*, 137 Idaho 291, 293, 47 P.3d 1261, 1263 (2002). “However, where the evidentiary facts are undisputed and the trial court rather than a jury will be the trier of fact, summary judgment is appropriate, despite the possibility of conflicting inferences because the court alone will be responsible for resolving the conflict between those inferences.” *Id.*

V. ANALYSIS

A. Breach of Contract

“The elements for a claim for breach of contract are: (a) the existence of the contract, (b) the breach of the contract, (c) the breach caused damages, and (d) the amount of those damages.” *Safaris Unlimited, LLC v. Von Jones*, 158 Idaho 846, 850, 353 P.3d 1080, 1084 (2015).

“Interpretation of a contract begins with the document's language. The parties' intent should be ascertained from the contract's language.” *Greenwald v. Western Surety Co.*, 164 Idaho 929, 938 (2019) (citations omitted). “Interpreting an unambiguous contract is an issue of law subject to free review.” *Id.* at 939 (citation omitted). “[A] party's subjective intent is immaterial to the interpretation of the contract. Instead, courts will give full force and effect to the words of the contract without regard to what the parties of the contract thought it meant or what they actually intended it to mean.” *River Range, LLC v.*

Citadel Storage, LLC, 166 Idaho 592, 599 (2020). “Summary judgment is appropriate only when the district court finds the contract language unambiguous as a matter of law.” *Greenwald*, at 939 (citations omitted). “If the Court finds no ambiguity, the document must be construed in its plain, ordinary and proper sense, according to the meaning derived from the plain wording of the instrument. Interpretation of an unambiguous contract is a question of law and reviewed de novo. *River Range*, at 599 (citations omitted).

“Unless they are expressly reserved in the deed or it is clearly shown that the parties intended that the grantor would reserve them, appurtenant water rights pass with the land even though they are not mentioned in the deed and the deed does not mention ‘appurtenances.’” *Joyce Livestock Co. v. United States*, 144 Idaho 1, 14, 156 P.3d 502, 515 (2007). “[T]he inquiry is whether the water rights were expressly reserved in the deed conveying the land or whether there is clear evidence that the parties intended that the grantor would reserve them.” *Id.*

Plaintiffs argue that the rights to the lower well water were appurtenant to the property and were not reserved in the deed, so Defendants breached the Agreement by failing to convey the rights to the lower well. Defendants argue that Plaintiffs cannot show any breach because Defendants delivered exactly what the Agreement required.

1. ¶ 7 of the Agreement – Water Rights

The Agreement contained the following clause regarding water rights,

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

Amended Complaint, Ex. D (§ 7). Plaintiffs argue, “The water rights and well system that were being utilized for the Property before its sale, should have been included in the sale of the property according to the express language of the Agreement, as well as under Idaho law. Farley’s failure to convey these rights with the sale of the land constituted a breach of Paragraph 7 of the Agreement.” *Memorandum in Support of Plaintiffs’ MPSJ*, p. 16.

Defendants argue that prior to 5/31/19 (the date the First Amended CC&Rs were recorded), the Property did not have any claim or right to the water from the Lower Well. Defendants appear to assume they have shown as much (e.g., “As set forth above...” *Response to Plaintiff-Counter Defendant’s MPSJ*, p. 11). However, Defendants failed to provide argument or authority as to why the Property had no rights to the lower well when the Agreement was reached. Without citation to evidence or authority, Defendants argue, “Mr. Farley could have capped the water line at any time prior to May 31, 2019, without recourse, even if the Gideons owned Parcel I at the time.” *See Response*, p. 11.

Plaintiffs appear to assume that rights to the lower well were appurtenant to the property (so they would have transferred with the sale unless expressly reserved), but neither Plaintiffs nor Defendants have provided argument or authority to determine whether any rights to the lower well were “appurtenant” at the time of contracting. As such, Plaintiffs have failed to establish the absence of any genuine issue of material fact as to whether § 7 of the Agreement was breached when Defendants did not convey full rights to the lower well.

2. Title Provisions

The Agreement provided for conveyance by warranty deed:

TITLE CONVEYANCE: Title of SELLER is to be conveyed by warranty deed, unless otherwise provided, and is to be marketable and insurable

except for No liens, encumbrances or defects ... to which title is taken subject to, exists, unless otherwise specified in this Agreement.

Amended Complaint, Ex. D (¶ 8) (emphasis added). It also required Sellers to provide a preliminary title commitment, which then gave Buyers two (2) business days after receipt to object to any condition of title set forth therein. *Id.*, at ¶ 9(A). Additionally, it contemplated that buyers would have five (5) business days to review any CC&Rs and object thereto. *Id.*, at ¶ 15.

From these terms, Plaintiffs argue that the Agreement is unambiguous and required the parties to settle on the state of title within several days, and after such timelines passed, the title to be conveyed was conclusively settled. As such, Plaintiffs argue that when Farley recorded the First Amended CC&Rs after the Agreement was reached, he breached the Agreement.

Defendants have not provided argument or explanation as to why they contend the Title Conveyance clause was not breached when Farley recorded the First Amended CC&Rs after the Agreement was reached.

The Court finds there is no genuine dispute of material fact that Farley breached ¶¶ 8 and 9(A) of the Agreement when Farley recorded the First Amended CC&Rs after the Agreement was reached, yet failed to disclose as much to the Gideons, failed to provide copies within five (5) days, and failed to amend Farley's prior representations that no such encumbrances existed.

The Court further finds that the remedy for such breach shall be that the First Amended CC&Rs shall be void as to Parcel I, the property purchased by the Gideons.

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3. Disclosure form

Plaintiffs also argue that Defendants breached the Agreement via inaccurate and uncorrected disclosure statements.

Defendants first argue that the disclosure statement was not part of the Agreement as attached to the Amended Complaint as Ex. D, so it cannot constitute part of the Agreement. Defendants point to the integration clause, stating that only the terms of the Agreement and any exhibits or appendices thereto are binding on the parties and supercede any previous agreement. *See Amended Complaint*, Ex. D (¶ 40). Defendant then asserts that Plaintiffs failed to include the disclosure statement as part of the Agreement as alleged in the Amended Complaint, so it cannot be part of the Agreement.

Plaintiffs counter by asserting that the disclosure form (and its contents) are part of the Agreement via ¶ 14, which requires that sellers shall provide a disclosure form and represents that sellers have done so. Plaintiffs also note the requirement that “Transferor shall amend the disclosure statement prior to closing if transferor discovers any of the (the) information on the original statement has changed.” I.C. § 55-2513. Plaintiffs then assert without any specific authority that because the disclosure form was required by statute, the form also “automatically governs all Agreements to which the disclosure requirement applies.” *Reply to Defendant’s Response to Plaintiff/Counter-Defendants’ MPSJ*, p 9.

Second, Defendants appear to argue that even if the disclosure statement was part of the Agreement, it was not breached. Plaintiffs argue that the disclosure form represented that water for landscaping, domestic, and irrigation water was served by a “private system” and that there was no shared well or shared-well agreement. Plaintiffs contend this was false because the upper well is connected to the lower well and reservoir, so it is not a

private system, and because under the First Amended CC&Rs, the lower well is shared. Defendants emphasize that they used the singular word “well” rather than the plural, and at the time, the property only had rights to the upper well, which was not shared (not explained), so the disclosure form was accurate when it was completed.

The disclosure form also represented that there were not conditions affecting ability to clear title including restrictive covenants and that the property had not been surveyed during sellers’ ownership. Again, Defendants contend these statements were true when the form was completed. Defendants do not explain why the disclosure form was never amended after the First Amended CC&Rs were recorded.

The Court finds that the disclosure form itself was not a part of the integrated Agreement, so any breach thereof does not constitute a breach of the Agreement. Moreover, even if the disclosure form were deemed to be included in the Agreement, Plaintiffs have not shown the absence of any genuine issue of material fact as to whether such disclosures were inaccurate. Finally, even if there is a statutory requirement to amend a previously correct disclosure, Plaintiffs have not established that the failure to do so would constitute a breach of the Agreement.

B. Equitable Conversion

The doctrine of equitable conversion is a fiction resting upon the fundamental rule of equity that equity regards that as done which ought to be done. Under the doctrine, an equitable conversion takes place when a contract for the sale of real property becomes binding on the parties. The purchaser is then treated in equity as having an interest in realty, and the vendor an interest in personalty, that is, the right to receive the purchase money. The doctrine was originally applied in English jurisprudence in controversies between heirs and personal representatives of deceased persons to ascertain whether certain property of the decedent should be treated as realty or personalty in its devolution.

First Sec. Bank of Idaho, Nat. Ass'n v. Rogers, 91 Idaho 654, 657, 429 P.2d 386, 389 (1967).

Such doctrine has been applied in the case of executory land sale contracts, under which the seller holds legal title to the real property while the purchaser holds an equitable ownership interest. *See, e.g., Rush v. Anestos*, 104 Idaho 630, 661 P.2d 1229 (1983). This is so because "An installment land sale contract works an equitable conversion of the land. The land sale contract is said to place equitable ownership in the vendee with the vendor merely holding legal title as security for payment of the debt." *Id.*, at 633.

However, the transaction in this case was not a land sale contract, but rather a real estate purchase and sale agreement. *See Amended Complaint*, Ex. D. As distinguished from a land sale contract, under a real estate purchase and sale agreement, the seller/vendor does not retain legal title beyond closing. As such, the Court finds this case distinguishable from *Rush* and that the doctrine of equitable conversion does not apply in this case.

Alternatively, as explained above, Plaintiffs have failed to establish the absence of any genuine issue of material fact as to whether Defendants breached the Agreement by failing to convey full rights to the lower well. Although the Court found a breach of the title provisions in the section above, such finding does not establish that the Agreement required Defendants to convey full rights to the lower well. Therefore, Plaintiffs have not shown the absence of a genuine material fact as to whether Plaintiffs were entitled to receive full rights to the lower well. As such, summary judgment on Plaintiffs' equitable conversion claim is denied.

C. Slander of Title

"Slander of title requires proof of four elements: (1) publication of a slanderous statement; (2) its falsity; (3) malice; and (4) resulting special

damages.” *Porter v. Bassett*, 146 Idaho 399, 405, 195 P.3d 1212, 1218 (2008) (quoting *McPheters v. Maile*, 138 Idaho 391, 395, 64 P.3d 317, 321 (2003)). Slander is “[a] defamatory assertion expressed in a transitory form.” Black’s Law Dictionary 660 (3rd pocket ed. 2006). A “defamatory” statement is one “tending to harm a person’s reputation, [usually] by subjecting the person to public contempt, disgrace, or ridicule, or by adversely affecting the person’s business.” *Id.* at 188. “Malice has been generally defined by Idaho courts as a reckless disregard for the truth or falsity of a statement. An action will not lie where a statement in slander of title, although false, was made in good faith with probable cause for believing it.” *Hogg v. Wolske*, 142 Idaho 549, 557, 130 P.3d 1087, 1095 (2006) (internal citation omitted) (quoting *Weaver v. Stafford*, 134 Idaho 691, 701, 8 P.3d 1234, 1244 (2000)). Attorney fees and legal expenses incurred in removing a cloud from title constitute Special damages for purposes of a slander of title claim.

Weitz v. Green, 148 Idaho 851, 862 (2010).

Plaintiffs argue that after entering into the Agreement, Farley no longer possessed legal title, so when Farley recorded the First Amended CC&Rs, he published a false and slanderous statement with malice that resulted in damages. Plaintiffs assert the recorded First Amended CC&Rs are false and slanderous because Farley no longer held legal title after entering into the Agreement. Plaintiffs further argue that they were recorded with malice because the conveyance contradicted the terms of the Agreement and Idaho law.

Again, Plaintiffs appear to assume that the First Amended CC&Rs constitute a false and slanderous statement because Farley did not hold legal title to the relevant property at the time they were recorded. However, Plaintiffs have not presented any evidence or authority to establish that legal title to the property transferred to Plaintiffs as of the date the Agreement was entered into. Rather, “[b]efore a deed can operate as a valid transfer of title, there must be a delivery of the instrument.” *Crenshaw v. Crenshaw*, 68 Idaho 470, 475, 199 P.2d 264, 266 (1948). In a real property transaction via a purchase and sale

agreement, delivery of the deed occurs at closing, which had not yet occurred when Farley recorded the First Amended CC&Rs.

As such, Plaintiffs have failed to establish the absence of a genuine issue of material fact as to whether the recording of the First Amended CC&Rs was false and/or slanderous.

D. Quiet Title

Again, Plaintiffs' quiet title claim depends upon what the Agreement required and whether it was breached. Plaintiffs have failed to establish the absence of any genuine issue of material fact as to whether Defendants breached the Agreement by failing to convey full rights to the lower well. Therefore, summary judgment is denied as to Plaintiffs' quiet title claim.

E. Easement by Necessity

In order to establish the existence of an implied easement by necessity, the claimant "must prove '(1) unity of title and subsequent separation of the dominant and servient estates; (2) necessity of the easement at the time of severance; and (3) great present necessity for the easement.' " We have held that reasonable necessity is sufficient to satisfy the second element. Reasonable necessity is "something less than" great present necessity.

A reasonable necessity for an easement may exist even if the property is not landlocked. In determining whether reasonable necessity exists, the district court must "balance the respective convenience, inconvenience, costs, and other pertinent facts."

Machado v. Ryan, 153 Idaho 212, 219, 280 P.3d 715, 722 (2012) (internal citations omitted).

Plaintiffs seek an easement by necessity in order to access and maintain the lower well. However, Plaintiffs cite to no evidence establishing the necessity for the easement at the time of severance. Nor have Plaintiffs cited any evidence establishing a great present necessity for the easement. As such, Plaintiffs have failed to establish the absence of a

genuine issue of material fact as to the necessity of the easement at the time of severance and the present necessity for the easement.

VI. CONCLUSION

For the reasons and as set forth above, Plaintiffs' Motion for Partial Summary Judgment is granted in part and denied in part as follows:

- Breach of contract
 - Summary judgment is denied as to Plaintiffs' breach of contract claim based on ¶ 7 of the Agreement.
 - Summary judgment is granted as to Plaintiffs' breach of contract claim based on ¶¶ 8 and 9(A) of the Agreement. The remedy for such breach shall be that the First Amended CC&Rs shall be void as to Parcel I, the property purchased by the Gideons.
 - Summary judgment is denied as to Plaintiffs' breach of contract claim based on the disclosure form.
- Summary judgment is denied as to Plaintiffs' equitable conversion claim.
- Summary judgment is denied as to Plaintiffs' slander of title claim.
- Summary judgment is denied as to Plaintiffs' quiet title claim.
- Summary judgment is denied as to Plaintiffs' claim for easement by necessity.

SO ORDERED this 20th day of January, 2021.


Rich Christensen,
DISTRICT JUDGE

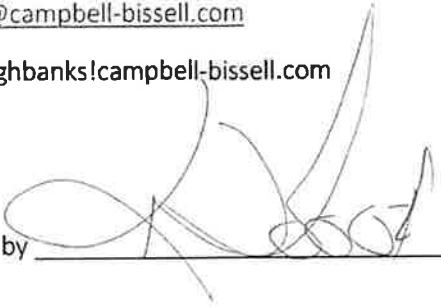
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JIM BRANNON, Clerk of the Court, by  Deputy Clerk