

Andrew J. Waldera, ISB No. 6608
SAWTOOTH LAW OFFICES, PLLC
1101 W. River Street, Suite 110
Boise, ID 83702
T (208) 629-7447
F (208) 629-7559
E andy@sawtoothlaw.com

Attorneys for Arthur V. and Katherine M. Gideon

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DEPARTMENT OF
WATER RESOURCES

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

In Re CSRBA
Case No. 49576

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

**CLAIMANT GIDEONS' REPLY IN SUPPORT
OF MOTION FOR SUMMARY JUDGMENT
REGARDING CLAIM NO. 95-18409**

Claimants Arthur and Katherine Gideon (collectively “Gideon”), by and through undersigned counsel of record and pursuant to *Amended CSRBA Administrative Order 1—Rules of Procedure* (Mar. 4, 2015) (“AO1”), Sections 1(a) and 1(b), Idaho Rule of Civil Procedure (“Rule”) 56, and the Court’s *First Amended Scheduling Order* (Feb. 9, 2024), hereby submit this memorandum in reply to objector Brian Farley’s (“Farley”) *Response in Opposition to Claimant Gideons’ Motion for Summary Judgment Regarding Claim No. 95-18409* (Feb. 23, 2024) (“Response”) in the above-captioned subcases.

I. ARGUMENT

A. In This Bench Trial Setting the Special Master Has More Latitude to Decide This Matter on Summary Judgment Than Farley Suggests

Though acknowledging that this Court may draw probable inferences arising from undisputed evidentiary facts in this matter (*see* Response, p. 6, citing *Losee v. Idaho Co.*, 148 Idaho 219, 220 P.3d 575 (2009)), the remainder of Farley’s rendition of the applicable standard of review regarding Gideon’s pending motion for summary judgement seemingly attempts to handcuff the Special Master’s fact-finding discretion. The parties have already endured a 4-day bench trial in Kootenai County from June 6 to June 9, 2022. Dozens of trial exhibits and hundreds of pages of sworn testimony (including the weighing of witness credibility) has already occurred. The parties need not (and should not) relive that experience here.

There is a difference between disputed facts, and disputed ***material*** facts. Not all facts are material. *See, e.g., Rife v. Long*, 127 Idaho 841, 849, 908 P.2d 143, 151 (1995) (“[a] material issue of fact . . . is one that is relevant to an element of the claim or defense and whose existence might affect the outcome of the case”). And, summary judgment is appropriate where there is no genuine dispute “as to any material fact” as opposed to disputed facts in general. I.R.C.P. 56(a).

Summary judgment is precluded only where “***reasonable people*** could reach different conclusions from the evidence.” *See, e.g., Good v. Harry’s Dairy, LLC*, 166 Idaho 483, 488, 461 P.3d 765, 770 (2020) (citation omitted) (emphasis added). A mere “scintilla of evidence or slight doubt as to a material fact” is not enough to defeat summary judgment. *Id.* Where there are no genuine issues of material fact, then all that remains are questions of law. *Id.*

Farley asserts that conflicting evidentiary facts must be viewed in favor of the non-moving party (*i.e.*, Farley). Response, p. 7. Ordinarily, this would be true but for this bench trial setting.

This is where the concept of material facts (those bearing upon an element of a claim or defense) matter, when reviewed in conjunction with the “reasonable person” test discussed above. Again, not all facts are material, and not all conflicting inferences or conclusions are reasonable.

In this bench trial setting the Special Master, as the trier of fact, is permitted to wade through conflicting inferences to arrive at “the most probable inferences” where the record “reasonably supports the inferences drawn.” *Beus v. Beus*, 151 Idaho 235, 238, 254 P.3d 1231, 1234 (2011). The ordinarily liberal favoring of the non-moving party in terms of disputed facts and inferences does not apply here. *Id.*

For the reasons discussed below, summary judgment is appropriate in this matter because: (a) Farley’s unilateral actions, subjective intent, and belief alone do not a genuine issue of material fact make; and (b) the material facts concerning the historical development, use, and perfection of IDWR-recommended Water Right No. 95-18409 are undisputed.

B. Farley’s Contention that Gideon Continues Bearing the Ultimate Burden of Persuasion Presupposes that He Has Successfully Rebutted the Applicable Presumption of Correctness Afforded the *Supplemental Director’s Report Regarding Subcase Nos. 95-16445 & 95-18409* (Sept. 21, 2023) (“Report”)

Gideon will not re-plow the arguments contained in Section III.B of their *Memorandum in Support of Motion for Summary Judgment Regarding Claim No. 95-18409* (Jan. 30, 2024) (“Memo”) here. And, Gideon does not quarrel with the proposition that the prima facie status of the Report constitutes a rebuttable evidentiary presumption. Response, pp. 7-8; *see also, State v. Hagerman Water Right Owners, Inc.*, 130 Idaho 736, 745, 947 P.2d 409, 418 (1997).

However, as the objector to the recommendation of Right No. 95-18409, Farley bears the burden of coming forward with evidence rebutting the correctness of the Report as to all issues raised in his objection that Right No. 95-18409 “should not exist.” Farley bears the burden of “bursting the bubble”—the burden of introducing “substantial evidence of the nonexistence” of

facts contained and relied upon in the Report. *See* IDAHO CODE § 42-1411(5); *see also*, *Hagerman Water Right Owners, Inc.*, 130 Idaho at 745-746, 947 P.2d at 418-419.

The record belies Farley’s contentions that: (a) the Report fails to contain or consider “important documentation and facts” pertaining to: (i) Farley’s amendment of his July 2009 Notice of Claim to Water Right No. 95-16445 (“2009 Claim”), (ii) his January 2019 Amended Notice of Claim to Water Right No. 95-16445 (“2019 Amended Claim”), and (iii) the claiming, and ultimate disposition of, his January 2019 Notice of Claim to Water Right No. 95-17752 (“Claim 17752”); and (b) “the process and intent [of] Mr. Farley” matters (*i.e.*, is relevant and material) to the consideration of Right No. 95-18409. Response, p. 8.

Clearly, IDWR was aware of, reviewed, and considered the operative water right claims and documents submitted by Farley. *See* Report, Exs. D through M. The simple fact of the matter is that what are, apparently, “important documentation and facts” to Farley were not equally important to IDWR; or at least the documentation and facts did not apply in a manner affecting the outcome of the Report’s ultimate recommendation of Right No. 95-18409.

This matters because IDWR (not Farley) is charged with examination of the applicable water system and claims thereto (including the conduct of fact-finding hearings if necessary). IDAHO CODE § 42-1410(1). And, IDWR (not Farley), is the Court’s independent expert and technical assistant when submitting recommendations concerning the development, use, and existence of Right No. 95-18409 for purposes of this adjudication. IDAHO CODE §§ 42-1401B and 42-1412(4).

In this instance, IDWR considered the operative Farley water right documents, among other evidence the agency deemed relevant, and concluded that it obtained the “full and adequate disclosure of the facts” necessary to recommend Right No. 95-18409 as it did. IDAHO CODE § 42-

1410(1). And as alluded to above, and discussed in Section I.C below, Farley’s subjective intent and beliefs alone are insufficient to defeat Gideon’s pending motion.

IDWR did not drop the ball, or miss something. The facts and circumstances concerning the historical development and use of Right No. 95-18409, sourced from the Lower Well and plumbed to the Gideon cistern and home, are what they are (*see* Memo, Section II), and they are unrebutted by Farley’s Response. Those same unrebutted facts are relied upon by IDWR in its Report. *See* Report, pp. 9-15. What factual evidentiary bubble does Farley’s Response burst? What material facts did Farley dispute and disprove concerning the historical development and use of Right No. 95-18409 on the Gideon property? None. Farley’s disagreement with the outcome of the Report lies not in the material facts on the ground, but rather in his subjective and erroneous thoughts and beliefs—thoughts and beliefs that fail the parol evidence rule, and the applicable legal standards contained in *Joyce Livestock Co. v. United States*, 144 Idaho 1, 156 P.3d 502 (2007).

C. Farley’s Unity of Title, and His Diversion and Use of Lower Well Water on the Now Gideon Property for Domestic Purposes Created a Legal Appurtenance to the Gideon Property Correctly Recommended as Right No. 95-18409 in the Report—Farley’s Subjective Intent Is Immaterial and Merged Out of Existence

As discussed in Gideon’s Memo (pp. 6-7), Gideon and Farley entered into, and completed, a real estate purchase transaction under an express RE-21 Real Estate Purchase and Sale Agreement (Waldera Aff., Ex. C) (the “PSA”) and corresponding Warranty Deed (Report, Ex. N). For its part, the PSA expressly included in the transaction “any and all water rights including but not limited to water systems, wells . . . appurtenant to the PROPERTY . . . unless otherwise agreed to by the parties in writing.” PSA § 7. The subsequent Warranty Deed, consistent with the PSA, conveyed from Farley to Gideon all “appurtenances” to the “premises” legally described in Exhibit

A to the deed, without qualification (at least none applying to the property's "appurtenances"). Report, Ex. N.

The parties' PSA identified the "PROPERTY" as "23452 N Derting Road" in Hayden, Kootenai County, Idaho 83835. PSA, § 1. The PSA additionally legally located/described the "PROPERTY" as the "SE-SE-NW 09 52N 03W." *Id.*

The PSA further contained an express integration/merger clause providing that the PSA was the "entire agreement" between the parties "superseding" any and all prior agreements potentially existing between them concerning the transaction. PSA, § 40. If there was to be a change to the terms of the deal contained in the PSA, that change could only be accomplished via a subsequent "written agreement signed by each of the parties." *Id.* No such subsequent written agreement exists. *See, e.g.,* Memo, pp. 10-13 (Gideon had no prior knowledge of Farley's amended CCRs, which violated the PSA and were judicially voided therefor with respect to the Gideon property; Gideon had no knowledge of Farley's 2019 Amended Claim filed with IDWR prior to execution of the parties' PSA; and Farley concedes that no other signed writings exist between the parties modifying the express terms of the PSA).

Farley's "severance" defense rests entirely upon the intent "exception to the deed-based reservation set forth . . . in *Joyce Livestock Co. v. United States*, 144 Idaho 1, 156 P.3d 502 (2007)." Response, pp. 9-14. However, Farley can only reach the "or"-based *Joyce* exception if he can first get past the express and unambiguous merger/integration clause of the parties' underlying PSA. Farley's subjective (and latent) intent alone is insufficient both in terms of the PSA and the *Joyce* exception. Both the PSA and the *Joyce* exception require the bilateral intent and agreement of ***both*** parties to the transaction, not just one or the other.

1. Farley's Subjective Intent Alone Cannot Defeat the Plain Terms of the PSA Given His Unity of Title

Gideon acknowledges that ambiguity can arise in water right conveyances where the transactional documents and deeds rely on boilerplate “appurtenances” language when there is no unity of title. *See, e.g., Joyce Livestock Co., generally* (the place of use and the place of appurtenance are not the same on federal grazing allotments in the context of stockwater claims—the place of use is on leased federal land, while the appurtenant property is the rancher’s private patented/base property). But, these lease/contract-based ambiguities do not exist here given Farley’s unity of title when the entirety of Right No. 95-16445 (now split into Nos. 95-16445 and 95-18409) came into existence in 1999. Farley’s 2009 Claim says it all. And, because of this unity of title, what is now Right No. 95-18409 was an “appurtenance” passing with the parties’ PSA and the subsequent Warranty Deed.

When originally claimed in 2009 under Farley’s unified title, Right No. 95-16445 included multiple purposes of use (domestic and stockwater) on multiple pieces of property (Kootenai County PIN Nos. 94700 and 95000) sourced from the Lower Well located on Kootenai County Parcel No. 97100. Report, Ex. D (the 2009 Claim). The domestic portion of the right flowed into and through a “3,000 gal concrete reservoir” plumbed to an “80 gal press tank in [Farley’s] residence.” *Id.*, § 5. The domestic use was for “1 home”; the Farley “residence” located at “23452 N. Derting Rd, Hayden Idaho 83835.” *Id.*, §§ 8, 9, and 13.

These narrative descriptions of the purposes of use and the places of use were further confirmed by a labeled map annotated by Farley and submitted with the 2009 Claim. Report, Ex. D. That map (aerial image) expressly and consistently identified the domestic “point of use” on Parcel No. “94700” with arrows pointing to “my residence” (which home is clearly visible on the aerial image), and a diagram of the location of the Lower Well on Parcel No. “97100” together

with the plumbing connecting that “Well” to the (“my”) “residence” located on Parcel No. “94700.” *Id.*

Notably, the Farley-annotated map that is part of the 2009 Claim (executed and submitted sworn under penalty of perjury) makes clear, as does the map contained at Report Attachment V, that there is only one home located on any of Parcel Nos. 94700, 95000, or 97100 (the residence is clearly located on Parcel No. 94700 only). And there is only one 3,000 gallon concrete cistern plumbed to the Lower Well (that which is located on Parcel No. 94700), which also happens to be the one and only cistern plumbed to the residence located on the same parcel. Waldera Aff., Ex. A (“Tr.”)¹ at 300:15-22 (Barden) (“The lower well was the only well that filled the 3,000-gallon reservoir that fed the whole upper house, yard, and garden, and it was the prime well, the only well that fed the residence,”); *see also, id.* at 573:18-22, 577:4-19, 580:17-581:25, 584:11-14, 603:10-12, 696:14-25, 697:5-16 (Farley) (Farley built his home on Parcel I in 1994; in addition to the well pump, the residential “water system” included the 3,000 gallon cistern “from the get-go”; the pump from the dry Upper Well was removed and moved into the lower well and plumbed to the residential system; the Lower Well was the only water supply to his home from at least 1999-2017). In fact, the Lower Well is plumbed and connected in a manner that its output is governed and controlled by float switches and telemetry located in/at the cistern located on the now Gideon property. Tr., 300:23-301:15, 305:3-306:5, 309:9-311:20 (Barden) (explaining the system configuration and use of cistern-based float switches and the apparent use of “jumper wires” to override the cistern float controls to obtain water); 597:11-16, 610:21-612:13 (Farley) (confirming the same cistern-based float switch system, but that he would override the cistern-based controls

¹ As in Gideon’s Memo, all Property Purchase Litigation trial transcript citations are to the sworn testimony of Brian Farley unless identified otherwise.

with needle-nosed vice grips—not “jumper wires”—from time to time to obtain water at his stockwater hydrant).

“The doctrine is well settled in States of the arid region that a water right used in connection with a certain tract of land . . . become[s] appurtenant[t] to the land, provided that they are owned by the same parties.” *Memorandum Decision and Order on Challenge*, Subcase Nos. 55-10288B, *et al.* (Apr. 25, 2000), pp. 15-16, *citing*, Clesson S. Kinney, *Kinney on Irrigation and Water Rights*, § 1011 (2nd Ed. 1912). This “well-settled” doctrine is expressly codified in Idaho Code Sections 42-220 and 42-101. *See* IDAHO CODE § 42-220 (emphasis added) (“[A]ll rights to water confirmed under the provisions of this chapter . . . **shall become appurtenant to, and shall pass with a conveyance of, the land** for which the right of use is granted”); *see also*, IDAHO CODE § 42-101 (emphasis added) (“[S]uch right **shall become** the complement of, or **one of the appurtenances of, the land** or other thing to which, through necessity, said water is being applied”).

There is no debate or dispute that Right No. 95-18409 exists and is confirmed by Idaho Code Title 42, Chapter 2 (or, in the parlance of Idaho Code Section 42-220: “confirmed under the provisions of this chapter”). This is because Idaho Code Section 42-227, together with Idaho Code Section 42-111(a), and the provisions of Idaho Code Section 42-201(1) (*see* Memo, pp. 11 and 13, including Note 4) plainly provide that “[r]ights to groundwater for such domestic purposes may be acquired by [mere] withdrawal and use”—by the “excavation and opening of wells and the withdrawal of water therefrom.”

Gideon acknowledges that former Presiding Judge Wood found it “paradoxical and nonsensical to characterize [a] water right as being ‘appurtenant’ to the land on which the water is being used” where there is no unity of title. *Memorandum Decision and Order on Challenge*,

Subcase Nos. 55-10288B, *et al.* (Apr. 25, 2000), pp. 15-16. Gideon further acknowledges that Kinney does the same. *Id.*, citing, Clesson S. Kinney, *Kinney on Irrigation and Water Rights*, § 1020 (2nd Ed. 1912) (distinguishing the circumstances where there is unity of title and where there is not unity of title). But here, where there was unity of title at the time Right No. 95-18409 was developed and came into existence under Idaho Code Sections 42-227 and 42-111 in March 1999, the self-executing “appurtenance” provisions of Idaho Code Sections 42-220 and 42-101 govern.

Assuming *arguendo* that the Court does not find the “appurtenance” question conclusively answered by operation of Idaho Code Sections 42-220 and 42-101 in this unity of title case—which it should—Right No. 95-18409 was still an “appurtenance” that passed with the parties’ real estate transaction for the simple reason that there was, and remains, only one cistern (including only one set of cistern-related Lower Well electrical control float switches) and one residence located on any of Parcel Nos. 94700, 95000, or 97100 (the original place of use identified in the 2009 Claim): the cistern and the home located on Parcel No. 94700; the cistern and home located at “23452 N. Derting Rd, Hayden Idaho 83835”; the cistern and home located in the “SE-SE-NW 09 52N 03W”; and the cistern and home located on the Farley-created map (complete with arrows identifying the home and the “point of use”) that was part of his 2009 Claim (which certain and specific location, improvements, and appurtenances are now the Gideon property).² Because

² These facts are further confirmed by Farley’s prior Property Purchase Litigation trial testimony (Tr., 625:4-18) and Farley’s trial Exhibits K and M (the operative November 2018 MLS listing and marketing forms) appended as **Exhibit A** hereto. These exhibits were admitted by stipulation. *See* Tr., at p. 5 (noting Defendants exhibits offered and admitted). Gideon requests that this Court take judicial notice of Exhibits K and M attached hereto under Idaho Rule of Evidence (“IRE”) 201(c)(2). IRE 201(d) provides that courts may take judicial notice at any stage of the proceeding. The exhibits are subject to judicial notice because the facts contained within it can accurately and readily be determined from sources whose accuracy cannot reasonably be

there could be no other “domestic” (*i.e.*, home-related) place of use under the unified 2009 Claim, the place of use of what is now Right No. 95-18409 is unambiguous and readily ascertainable with certainty—like the irrigation place of use (purchase and sale agreement-based water “used on” language) encountered by this Special Master in his *Memorandum Decision and Order Granting Motion for Summary Judgment; Special Master’s Report and Recommendation*, Subcase Nos. 63-31194A and 63-31194B (Jul. 8, 2009) (“Order”).³

That lone home, cistern (and float switches), and its immediate surroundings was the *only* place where a “domestic” use water right could be initiated, developed, and perfected under Idaho Code Sections 42-227, 42-111, and 42-1411(2)(h) beginning in March 1999. Consequently, while the generic terms or phrases “appurtenances” or “appurtenant to” can give rise to ambiguities under certain circumstances, those circumstances do not exist here because: (a) there was unity of title when the right came into existence; and (b) the “domestic” purpose can only exist on Parcel No. 94700 where the home is located.

Because Right No. 95-18409 was (and remains) an “appurtenance” to what is now the Gideon property, Farley is bound by the plain and unambiguous language of the PSA and the Warranty Deed. Farley’s declaration espousing his unilateral, subjective intent to withhold and sever does not, itself, create a genuine issue of material fact capable of defeating summary judgment. Order, p. 11. The parties’ PSA was an integrated contract by operation of its merger

questioned consistent with IRE 201(b)(2)—namely the certified trial transcript of sworn testimony from, and trial exhibits admitted in, the Property Purchase Litigation.

³ The Order was not challenged, and Presiding Judge Melanson independently reviewed this Special Master’s analysis of the issues, agreed with them, and adopted them as his own. *See, e.g., Final Order Disallowing Water Right Claim; Water Rights: 63-31194A (Sundance Investments, Ltd. Partnership)* (Oct. 15, 2009).

clause, and further required that any alteration of its terms could only occur via a subsequent writing executed by the parties. PSA § 40.

Section 7 of the PSA expressly included “any and all” water rights “appurtenant to” the “PROPERTY” owned by Farley at the time of contracting. The PSA was complete on its face. And, Farley’s understanding or intent is inadmissible and cannot be considered to contradict, vary, alter, add to, or detract from the terms of the PSA. Order, p. 11, *citing Howard v. Perry*, 141 Idaho 139, 141, 106 P.3d 465, 467 (2005) (applying the parole evidence rule); *see also, AED, Inc. v. KDC Invs., LLC*, 155 Idaho 159, 165, 307 P.3d 176, 182 (2013) (in integrated contracts, the parties’ intent “must be determined solely from the language of the agreement”). In sum, the plain terms of the PSA and the Warranty Deed speak for themselves.

Just because Farley attempted to reform the “domestic” portion of former base right 95-16445 under his 2019 Amended Claim does not mean that what is now Right No. 95-18409—developed, perfected, and claimed under unity of title as a portion of the 2009 Claim base right by operation of Idaho Code Sections 42-227 and 42-111—was no longer “appurtenant to” what is now the Gideon property. Again, the place of use of the “domestic” portion of the 1999 base right is undisputed, and that place of use (Farley’s former home and surrounding acreage) is readily ascertainable with certainty, and located wholly on the land conveyed to Gideon. Farley never transferred the domestic water use to other land, and no decree has yet entered fully and finally adjudicating (fixing) the elements of amended claim 95-16445 or otherwise disallowing Right No. 95-18409.⁴

⁴ As discussed at page 12 of Gideon’s Memo, Farley did not comply with the mandatory, application-based transfer provisions of Idaho Code Section 42-222. And he likewise cannot claim an accomplished transfer under his 2019 Amended Claim because Idaho Code Section 42-1425

This case presents nothing exotic. Report-recommended Right Nos. 95-16445 and 95-18409 are nothing more than the parties' shares of former base (unified title) Right No. 95-16445 (total volume of 13,000 gpd) consistent with *Crow v. Carlson*, 107 Idaho 461, 467, 690 P.2d 916, 922 (1984) (citation omitted) ("A division of a tract of land to which water is appurtenant, without segregating or reserving the water right, works a division of such water right in proportion as the land is divided"). IDWR agrees. *See Report, generally.*⁵

2. Farley's Subjective Intent Alone Fails the *Joyce* Exception

To the extent that Farley's arguments survive the PSA and deed-based "appurtenance" principles above, Farley still fails to defeat Gideon's motion for summary judgment. This is

foreclosed that ability as of January 1, 2006 for purposes of the north Idaho adjudications, including this one, commenced under Idaho Code Section 42-1406B. IDAHO CODE § 42-1425(2).

⁵ The *Declaration of Brian T. Farley in Support of Response in Opposition to Gideons' Motion for Summary Judgment* (Feb. 23, 2024), like his trial testimony in the Property Purchase Litigation (*see, e.g.*, Tr., 477:16-17 ("I gave [Gideon] the contractual right with the shared use and benefit [of the Lower Well], but no water right"); 626:21-627:17 (Farley's notice of error reply and 2019 Amended Claim "change[d] the point of use" of the Lower Well); and 466:6-467:25 (Gideon use of the Lower Well was part of the "deal," but only insofar as the amended CC&Rs allowed because the water right "elements" were not for sale; rather the ongoing contractual "use and benefit" of the Lower Well water on the Gideon property is what remained), are littered with legal conclusions and misstatements of applicable law and this Court should disregard the same for that (legal conclusion) purpose. "A lay witness is never permitted to give his opinion on a question of law." *Hawkins v. Chandler*, 88 Idaho 20, 26, 396 P.2d 123, 126 (1964) (citing 20 Am.Jur., Evidence, § 799; 32 C.J.S. Evidence § 453). This said, and as discussed *ad nauseum* herein, Farley's testimony clearly demonstrates his consistent intent, and house property selling point, that the superior production yield of the Lower Well (as compared to the Upper Well) was part of the "deal," that Lower Well water use on Parcel I (the Gideon property) was always intended to continue notwithstanding the contents of the documents filed/lodged with IDWR (*e.g.*, his prior notice or error reply and his 2019 Amended Claim). Regardless, the Court's expert witness IDWR, clearly disagrees. *See Report, generally.*

because Farley’s assertion of the *Joyce* exception (Response, pp. 9-14) is legally incomplete and fatally deficient as a result.⁶

Despite correctly quoting the pertinent *Joyce* holdings (Response, p. 9), Farley rests the entirety of his severance arguments on the generalized statement that “a water right passes with the realty to which it is appurtenant unless there is intention to the contrary.” Response, p. 10 (emphasis in original), *quoting Bothwell v. Keefer*, 53 Idaho 658, 662, 27 P.2d 65, 66 (1933). This generalized statement is quoted correctly, but it is an incomplete statement of the law. Simply put, evidence of Farley’s subjective (*i.e.*, unilateral) intent alone does not satisfy the requirements of *Joyce*, nor does it satisfy the legal precedent upon which the *Bothwell* statement is based.

In its entirety, the *Joyce* severance intention exception requires clear evidence of the ***bilateral intent*** of the parties that the grantor would reserve and sever the subject water right(s). The subjective intent of one or the other is legally insufficient. *Joyce Livestock Co.*, 144 Idaho at 14, 156 P.3d at 515 (emphasis added) (“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 . . . the inquiry is whether there is ***clear evidence that the parties intended that the grantor would reserve them.***”). The Court in *Joyce* continued: “The deeds conveyed the

⁶ Gideon did not “overlook” the potential application of the “or”-based *Joyce* exception. Response, p. 9. Instead, Gideon addressed the lack of the *Joyce*-required bilateral “meeting of the minds between Farley and Gideon” regarding severance. Memo, pp. 12-13. And, Gideon likewise addressed the concept (and import) of Farley’s unity of title—a concept entirely absent from Farley’s Response. Memo, pp. 5-6 (Disputed Fact No. 5 describing the historical development and use of Lower Well water on the Gideon property, and the original (2009) adjudication claiming of the same under Farley’s sole property ownership), 11-13 (same, including Farley’s perfection of the domestic component of the water right claims ending), and 14 (highlighting Judge Wildman’s severance thoughts in light of Farley’s 2009 Claim and his actual development and use of the Lower Well water under “Farley’s unified property ownership as the prior water right elements [came into existence] and [were] ‘originally established’”).

land and, under the law, any appurtenances including water rights . . . [n]o separate writing or express mention of the water rights was required by the statute of frauds . . . [however] a separate writing would be required if there had been an attempt to convey the water rights separately.” *Id.* (emphasis added).⁷ The *Joyce* exception does not read that “the *grantor* intended that the grantor would reserve them”; rather the exception reads “that *the parties* intended that the grantor would reserve them.”

The *Joyce* Court’s separate use of the specific and particular terms “parties” and “grantor” demonstrates the distinction and need for clear evidence of bilateral, as opposed to unilateral, intent for withholding and severance to occur. The “parties” to a transaction are not the “grantor” alone. And, reading and applying *Joyce* as Farley does impermissibly renders the *Joyce* Court’s bilateral intent and “separate writing” requirements meaningless.

This bilateral intention/agreement requirement is consistently confirmed pre-*Joyce* and post-*Joyce*, including by the judicial precedent underpinning the incomplete and generalized *Bothwell* statement upon which Farley relies. For example, the Court in *Molony v. Davis*, 40 Idaho 443, 233 P. 1000 (1925) acknowledged that while water rights may be severed and conveyed separate from the land, such severance “*may only be done where such was the intention of the parties to the conveyance.*” *Molony*, 40 Idaho at 449, 233 P. at 1001 (emphasis added). This is not the intention of the grantor or the grantee, alone, on their respective side of a transaction; rather there must be clear evidence of “the intention of the parties” to the transaction plural. And it is upon this bilateral intent holding that the *Bothwell* Court made its incomplete and generalized

⁷ Note that this *Joyce*-based “separate writing” requirement dovetails with the same subsequent express “written agreement” requirement of Section 40 of the parties’ PSA (the integration clause).

statement. *See Bothwell*, 53 Idaho at 662, 237 P.2d at 66 (citing *Molony* for the proposition that “a water right passes with the realty to which it is appurtenant unless there is intention to the contrary”). Clearly, *Molony*, requires more than one-sided intent.

Even if Farley were to argue that *Bothwell* modified the holding of *Molony*, that argument would fail because *Joyce*: (a) plainly restored the bilateral “parties” intent requirement (to the extent the standard needed restored); and (b) expanded upon that bilateral intent with the “separate writing” requirement in 2007. *Joyce Livestock Co.*, 144 Idaho at 14, 156 P.3d at 515. And the *Joyce* “clear evidence” of bilateral intent standard has carried through ever since. *See, e.g., Bagley v. Thomason*, 149 Idaho 799, 803, 241 P.3d 972, 976 (2010) and *Eagle Creek Irrigation Co. v. A.C.&C.E. Invs., Inc.*, 165 Idaho 467, 476, 447 P.3d 915, 924 (2019) (both quoting *Joyce* for the proposition that appurtenant water rights pass with the land “unless . . . expressly reserved in the deed ***or it is clearly shown that the parties intended that the grantor would reserve them***”).⁸

The next consideration under the *Joyce* exception is what type of evidence rises to the level of “clear evidence.” While the *Joyce* Court did not particularly expand upon this evidentiary standard, it did offer an example—an express “separate writing.” *Joyce Livestock Co.*, 144 Idaho at 14, 156 P.3d at 515. In some cases, “clear evidence” has been interpreted to require “substantial and competent” evidence—something more than “some evidence.” *See, e.g., Flying A Ranch, Inc.*

⁸ A careful review of applicable precedent demonstrates that *Joyce* did not restore anything, that the bilateral intent requirement has existed all along. *Joyce* additionally cites *Silverstein v. Carlson*, 118 Idaho 456, 797 P.2d 856 (1990) for the proposition. *Joyce Livestock Co.*, 144 Idaho at 14, 156 P.3d at 515. The *Silverstein* Court relies on (quotes) *Russell v. Irish*, 20 Idaho 194, 118 P. 501 (1911) for the same. And, *Russell* leaves no doubt regarding the bilateral intent requirement. *Russell*, 20 Idaho at 199, 118 P. 501 at 502 (emphasis added) (“This conveyance would carry with it the water right appurtenant to the land at the time of conveyance, unless it was specifically reserved in the deed ***or it could be clearly shown that it was known to both parties that the water right was not intended to be conveyed.***”). Let that sink in: severance cannot occur unless it is clearly shown that “it was ***known to both parties***” that severance would occur.

v. County Comm'rs, 157 Idaho 937, 941-942, 342 P.3d 649, 653, 654 (2015). “Substantial and competent” evidence is that which “a reasonable mind might accept as adequate to support a conclusion.” *See, e.g., Roe v. Doe (In re Doe)*, 143 Idaho 188, 191, 141 P.3d 1057, 1060 (2006).

In others, including those involving the attempted modification of water rights, the “clear evidence” standard has been held to mean “clear and convincing” evidence. *See A&B Irr. Dist. v. Idaho Dep’t Water Res.*, 153 Idaho 500, 517, 284 P.3d 225, 242 (2012) (citing with approval the use of the clear and convincing evidence standard in the water right “modification” cases of *Crow v. Carlson*, 107 Idaho 461, 690 P.2d 916 (1984) and *Gilbert v. Smith*, 97 Idaho 735, 552 P.2d 1220 (1976), and applying the same clear and convincing evidence standard to the delivery call-based injury analysis pending before it). “Clear and convincing” evidence is a heightened standard, something more than substantial and competent; it is evidence that “indicat[es] that the thing to be proved is highly probable or reasonably certain.” *Roe*, 143 Idaho at 191, 141 P.3d at 1060.

In this instance, Gideon submits that the water right modification-related “clear and convincing” evidence standard applies because Farley’s 2019 Amended Claim attempts to modify the purpose and place of use elements of the perfected and vested 1999 base right initiated, developed, and perfected under unity of title pursuant to Idaho Code Sections 42-227 and 42-111. Regardless, and no matter which evidentiary standard the Court applies in this matter (either substantial and competent, or clear and convincing), there is no evidence, let alone “clear” evidence, that Farley and the Gideons (the “parties”—plural—“to the transaction”) intended that Farley (the grantor) would sever and retain what is now Right No. 95-18409.

Farley’s Response (pp. 10-17 in particular) is littered to citations to what he did, what he thought, who he met with at IDWR, etc. What you do not find are citations or references to: what Farley *and* Gideon did; what Farley *and* Gideon discussed; what Farley *and* Gideon together

understood; or what Farley *and* Gideon agreed to do—citations and references to what the *parties*, as opposed to Farley alone, did, discussed, understood, and otherwise intended *and* ultimately agreed to do with respect to the Lower Well water used for domestic purposes on the now Gideon property. You do not find these joint, bilateral intent and knowledge citations and references because they do not exist. Tr. 698:17-699:9 (“ . . . I did not tell [the Gideons] that I had changed my water rights and reserved them the way they were reserved for myself”), 700:15-20 (“ . . . I did not tell them that there was no water [from the Lower Well] - - that I changed the water rights, that’s correct”), and 701:14-702:14 (no other written withholding/severance agreements between the parties exist); *see also*, Waldera Aff., Ex. D, p. 16 (Farley recorded the amended CC&Rs without disclosure or update to Gideon in violation of the parties’ PSA). And, it is further undisputed that no Section 42-222-based transfer application was ever filed either. Tr. 701:23-702:14 (no other writings exist). And, there can be no post-January 1, 2006 accomplished transfer under Idaho Code Section 42-1425 either.

Instead, Farley relies upon the public nature of IDWR and the Court’s websites for what Gideon *might* be able to find; that Gideon failed to perform adequate due diligence; and that Farley had no duty, let alone ability, to notify folks (Gideon) who he had yet to ever meet. Response, pp. 13-14. Why would (or should) Gideon consult the IDWR or Court websites when the parties’ April 2019 PSA expressly provided that all appurtenant “water rights . . . wells . . . and water systems” were included in the transaction without reservation or qualification? Likewise, why would (or should) Gideon do so after Farley expressly represented to Art Gideon and agent Patty Ellis during the property site inspection on May 2, 2019 that “*both wells*,” (the Upper and Lower Well) “*provide water to the property* and the lower well also provides water to another parcel?” Tr. 484:7-24; *see also*, *id.*, 649:9-15 (Farley provided well-related O&M records and invoices

regarding **both** the Upper and the Lower Well to his real estate agent (Elder) to provide to Gideon's agent (Ellis) because "both wells were part of [the] transaction . . . I was selling one and I was sharing – shared use and benefit of the lower well"). And, why would (or should) Gideon do so after Farley expressly represented that the residential water supply was "adequate," and that the "yield of the **wells**" would be confirmed when tested? Tr., 484:7-24 (emphasis added). Judge Christensen expressly found the same representations in his *Memorandum Decision and Order Re: Bench Trial* (Oct. 21, 2022) (Report, Ex. S) ("MDO"), p. 4 (FOF No. 12) and p. 12, respectively ("During [the site] inspection visit Mr. Farley informed Mr. Gideon that the Property was served by two wells, the Upper Well and the Lower Well"; "Farley represented that both the Upper and Lower Wells would provide water to the Property").

When asked during trial whether he (Farley) represented to Mr. Gideon and Ms. Ellis that both the Upper and Lower wells supplied water to the property under the parties' PSA, Mr. Farley repeatedly responded in the affirmative. *See, e.g.*, Tr. 484:6-24. Whether on direct, cross, or redirect-examination during trial, Farley consistently responded that the Lower Well would be used for the benefit of the Gideon property, and he represented that it would continue to serve the Gideon parcel as part of the parties' real estate transaction. *See, e.g.*, Tr. 466:12-13 ("The lower well was part of the deal? Yes, it was part of the deal"); 477:4-13 (The Lower Well was physically connected to what would become the Gideon Property and it would continue to "benefit" that property as of closing); 461:16-462:6, 600:17-601:1, 603:10-12, and 650:4-8 (the Lower Well remained connected to the future Gideon Property because when "contemplating selling," Farley decided that the Lower Well would be "an additional source of water for Parcel I"—"an

inducement to a buyer,” and, again, the Lower Well was the “only source of water for the home on Parcel I [PIN 94700—the now Gideon property] between at least 1999 and 2017”).⁹

Despite the assertions of his purported severance intention now, Farley’s sworn testimonial intensions more contemporaneous with the 2019 Gideon transaction are far different. For example, and though voided with respect to operation against the Gideon property for lack of required prior disclosure and subsequent PSA amendment, a primary point of the tardy and undisclosed amended CC&Rs recorded approximately one week prior to closing was to implement Farley’s intent that the Gideon property (“Adjusted parcel I”) not only use the Lower Well, but that the Gideon property would enjoy first priority and exclusive domestic use of the Lower Well. Tr., 656:1-19 (“Adjusted parcel I [w]ill enjoy sole domestic use of the [Lower] [W]ell until such time as there is excess capacity for domestic use for adjusted parcel I, at which time adjusted parcel T would again be able to use the well.”). *See also, Declaration of Michael S. Bissell in Support of Response in Opposition to Claimant Gideons’ Motion to File Late Notice of Claim*; Subcase No. 95-18409 (Mar. 15, 2023), ¶ 3 and Ex. A. And further to this point, Farley plainly and unequivocally testified: “***It was always my intention that [Gideon] would have the shared use and benefit of the lower well*** if they needed it”; that Gideon should have use of the Lower Well water on their property—that that express “representation” was made from Farley to them. Tr., 691:13-692:2 and 697:5-698:16 (emphasis added).

The fact of the matter, and as Judge Christensen previously noted, Farley was less than forthcoming in his dealings with Gideon. At a minimum, Farley “misrepresented the water supply for the Property in the Seller Disclosure Form,” thereby violating Idaho Code Section 55-2513.

⁹ During trial Farley confirmed that Parcel I is otherwise known as PIN 94700, and that the home he sold Gideon was located thereon. Tr., 461:16-19; 573:18-22; 625:4-18, and 626:5-8.

MDO, p. 8.¹⁰ Judge Christensen further held that Farley’s undisclosed water right filings and amendments were a “material change” to the parties’ transaction. *Id.* Likewise, Farley knew that the Upper Well was “essentially a dry well,” and that the now-Gideon property “was reliant on the Lower Well for the vast bulk of its water supply.” MDO, p. 12; *see also*, Tr., 304:4-7 (Barden) (when asked what type of use one could make with the meager-at-best flow of water produced by the Upper Well, Farley-retained (and later Gideon-used) well pump contractor Jody Barden plainly answered: “None.”). These matters and documents were “vital” to the parties’ agreement, and Farley knew that Gideon did not know that the Upper Well was “greatly deficient.” *Id.*, pp. 12-13. Finally, it was also clear to Judge Christensen that Farley “misrepresented the fact that the Lower Well was to be shared” as opposed to belonging to Gideon alone—a “misleading and false statement” in violation of the Idaho Consumer Protection Act. *Id.*, p. 21.

The foregoing testimony and judicial findings and conclusions are merely a handful of Farley’s conflicting “intentions,” and of his several admissions against interest. That Farley blames Gideon for a lack of due diligence after his misrepresentation upon misrepresentation speaks volumes. Farley’s own, one-sided intentions regarding Right No. 95-18409 were muddled and confusing at best, and “misleading and false” (in the words of Judge Christensen) at worst. There is no “clear evidence” of a water right severance meeting of the minds (bilateral intent and express subsequent agreement) between Farley and Gideon in this matter, let alone clear and convincing evidence of any such agreement. There is no “separate writing,” and Farley’s express representations to Gideon regarding the operation and use of the Lower Well, including the

¹⁰ Contrary to his assertion otherwise (Response, p. 13), Farley absolutely owed Gideon a clear legal duty to properly disclose and describe the water supply system for the now-Gideon property, including the existence, nature, and purpose of his 2019 Amended Claim. Judge Christensen already held as much.

ongoing existence and use of the interconnected plumbing on the ground pre- and post-closing clearly demonstrate the opposite.

In sum, what Farley did, said, thought, and felt on his side of the transaction absent consideration of, and input and subsequent express agreement from, Gideon does not matter. Response, p. 14 (“In summary, Mr. Farley intended that . . .”). Holding otherwise violates the *Joyce* clear evidence of bilateral intent and agreement requirements,¹¹ and impermissibly rewrites the parties’ PSA and Warranty Deed. *See, e.g., Howard*, 141 Idaho at 141, 106 P.3d at 467 (an integrated contract is complete on its face and cannot be modified parol evidence of one party’s subjective intent); *see also, Caldwell Land and Cattle, LLC v. Johnson Thermal Sys.*, 165 Idaho 787, 806, 452 P.3d 809, 828 (2019) (citations omitted) (“[W]hile intent of the parties may inform the interpretation of a contract, it does not allow a court to rewrite its terms”; courts do not possess the roving power to rewrite contracts).

D. What Was Farley’s Intent—Withhold and Sever for Ongoing Use Elsewhere, or Relinquish and Abandon So That the Water Right No Longer Exists—Which is It?

So on the one hand, Farley contends that he severed and withheld what is now Right No. 95-18409. Response, pp. 9-14. And on the other, he whipsaws that “clear intent” by arguing that clear and convincing evidence demonstrates that “beginning in 2018” he abandoned the domestic and incidental stockwater component of the right on the Gideon property—that he “eliminated that right.” Response, pp. 15-17. Which is it? Assuming that he cannot prevail on his severance arguments, Farley would rather later take the position that what is now Right

¹¹ Really the *Russell* requirement that it be “clearly shown that it was known to both parties” that the otherwise appurtenant water right “was not intended to be conveyed.” *Russell*, 20 Idaho at 199, 118 P. at 502 (emphasis added).

No. 95-18409 does not exist so that nobody can use it. Farley’s abandonment arguments are incredibly incongruous at best, and spiteful at worst.

Gideon does not quarrel with Farley’s rendition of the basic law of abandonment insofar as the authorities are cited—the cases speak for themselves. But, abandonment (like forfeiture) is disfavored in the law. *See, e.g., Graham v. Leek*, 65 Idaho 279, 288, 144 P.2d 475, 479 (1943) (“Abandonments and forfeitures are not favored”).

Once again, Farley’s latent and self-serving statements of his “intent” alone are not enough to carry the day. Intent must be accompanied by clear and convincing evidence of unequivocal acts consistent with/implementing the intent to abandon—acts performed with “certainty and clarity.” *Gilbert v. Smith*, 97 Idaho 735, 739, 552 P.2d 1220, 1224 (1976). Where the evidence of alleged abandonment is in “substantial conflict,” a finding of abandonment fails because of the lack of certainty and clarity required. *Gilbert*, 97 Idaho at 739-740, 552 P.2d at 1224-1225.¹² And as discussed at length in Section C.2 above, and Memo, pp. 6 (Undisputed Fact No. 6) and 9-10, Farley fails the requisite (1) clear intent, *and* (2) “unequivocal” and “decisive acts” necessary to actually relinquish and surrender (*i.e.*, complete abandonment of) what is now Right No. 95-18409.

Farley’s IDWR/adjudication claim paper-based shell games did not match the truth and reality of his actions on the ground, nor his representations to Gideon regarding their right to the

¹² Gideon acknowledges that the “substantial conflict” cited in *Gilbert* arose from the evidence presented by opposing witnesses of competing appropriators. But, the concept also applies here just based on Farley’s own internally inconsistent and muddled assertions of intent, and his own conflicting actions on the ground. “Unequivocal acts” are those that “leave no doubt”; those that are “unquestionable.” *See Merriam Webster’s Collegiate Dictionary*, 10th Ed. (1995).

ongoing use of the Lower Well water on their property (Parcel I; PIN 94700). If Farley truly intended to, and did, abandon what is now Right No. 95-18409, why did he:

- Argue his intent to “segregate and retain [the] water rights to the Lower Well” for use only on the property he retained (Response, pp. 8-14);
- Leave the Lower Well plumbed to the Gideon cistern and, in turn, plumbed to the residence sold to Gideon, which connective plumbing and use continues “as it is today [June 2022]” (Tr. 476:14-477:13, 600:9-601:1, 649:9-15, 697:1-16, 697:25-698:16);
- Expressly represent to Gideon that the Lower Well water would continue to serve the Gideon property post-closing—that the use of the Lower Well in the Gideon home was “part of the deal” (Tr. 466:6-13, 467:7-25, 484:6-24; 698:9-16; MDO, p. 4 (FOF No. 12) and p. 12);
- Discuss and share Lower Well yield productivity data, and historical repair records with Gideon (Tr. 484:1-24, 487:4-14, 649:9-15);
- Turn on the ball valve resuming the flow of water from the Lower Well to the now-Gideon home prior to closing, and abet that ongoing “sole use” of that water from closing until at least April 2023 (MDO, p. 5, FOF 19 (the Gideon property is served by both the Upper and Lower Wells pre- and post-closing); Waldera Aff, Ex. D, p. 6 (“both wells form a single, interconnected water system for the [Gideon] property”); Tr., 300:15-22 (Barden) (“The lower well was the only well that filled the 3,000-gallon reservoir that fed the whole upper house, yard, and garden, and it was the prime well, the only well that fed the residence,”); Tr., 465:19-466:13; Tr., 691:13-692:2 (“to this day they’re basically the sole user of that [Lower Well] water”); Tr. 697:25-698:16 (it was Farley’s intent that Gideon should have the use of the Lower Well water); Report, p. 13 (“When the Lower Well was drilled in 1999, it was connected to the existing system that supplied a 3000-gallon cistern at the Gideon’s home . . . Once the Lower Well was connected, both the Upper Well and the Lower Well supplied water to the cistern supplying the home); and Waldera Aff., Ex. B (demonstrating ongoing Gideon use of Lower Well water on their property until mid-April 2023));
- Bill Gideon \$56 per month post-closing for the electricity associated with pumping water from the Lower Well to the Gideon home (Tr. 498:8-19, 692:5-7);
- Retain and pay for the services of legal counsel (Mike Reagan) to draft amended CC&Rs perpetuating the *priority* and “exclusive” domestic use of Lower Well water on Parcel I (the Gideon property), recording the same on May 31, 2019 (Tr. 493:2-10, 650:16-651:1, 652:17-653:2, 654:11-22, 656:1-19; MDO, p. 6 (FOF No. 20); and

- Testify under oath that “It was always my intention that [Gideon] would have the shared use and benefit of the lower well if they needed it” (Tr. 691:21-692:2)?

If Farley believed that there was no domestic water right existing any longer on Parcel I (what would become the Gideon property) “beginning in 2018” and culminating upon the filing of his 2019 Amended Claim, why did any of the foregoing occur? There would be no reason to discuss any ongoing rights to the Lower Well with Gideon, there would be no reason to share Lower Well yield data; there would be no reason to open the ball valve restoring the flow and use of Lower Well water in the Gideon home; there would be no reason to bill Gideon \$56 per month for use of the Lower Well pump pumping water up to their home; and there would be absolutely no reason whatsoever to retain legal counsel to draft and record amended CC&Rs to provide exclusive ***and priority*** “domestic” water use from the Lower Well in the Gideon home where there was no legal basis or right to do so (*i.e.*, no reason whatsoever to retain legal counsel to draft and record legal documents providing rights to use something that no longer existed—to draft a work of pure legal fiction). Even Farley did not follow the so-called “intent” of his IDWR and adjudication filings. His actions on the ground tell a different story—one that makes it impossible to satisfy the clear and convincing evidence of unequivocal acts needed to abandon a water right—acts of “certainty and clarity”—acts that “leave no doubt” and that are “unquestionable.”¹³

Farley did not abandon what is now Right No. 95-18409. As the Report makes clear, recommended Right Nos. 95-16445 and 95-18409 are comprised of the ***same*** 13,000 gpd volume

¹³ The timing of Farley’s abandonment argument here is further telling. If Farley clearly abandoned the water right as he now asserts, he surely would have argued as much during the late claim proceedings in an effort to kill claim no. 95-18409 as a matter of law as he attempted to do under his Idaho Code Section 42-111-based “multiple exempt wells” arguments discussed in Section I.E below. But, Farley’s *Response in Opposition to Claimant Gideons’ Motion to File a Late Notice of Claim* (Mar. 15, 2023) contains no such abandonment-based arguments.

of water. Report, pp. 13-14 (“When the Lower Well was drilled in 1999, it was connected to an existing system that supplied a 3,000-gallon cistern at the Gideon’s home which had previously been only supplied by the Upper Well. Once the Lower Well was connected, both the Upper Well and the Lower Well supplied water to the cistern supplying the home . . . Connecting the Lower Well to the system was a new appropriation of water and the March 31, 1999, priority domestic and stockwater right was developed.”). This is why the Department took care in recommending the combined use limitations that it did—limiting all of the water “system”-related rights (95-16445, 95-17752, and 95-18409) to the same, combined 13,000 gpd volume of water. Report, pp. 14-15.

Farley has abandoned no part of that 13,000 gpd volume of water—he merely seeks to keep the entirety of that volume of water for himself through sleight-of-hand attempting to erase the long-standing and legally perfected “domestic” use portion of that daily volume of water. The Department was not fooled, and this Court should not be either. Report, p. 14 (crafting combined use limits to “prevent injury” to 95-16445, but protecting and preserving the domestic use of the same 13,000 gpd under 95-18409 in the Gideon (formerly Farley) home: “The below conditions would still allow claim No. 95-16445 to divert up to 13,000 gpd *if* water right No. 95-17752 was diverting the full 13,000 gpd for domestic use only”).¹⁴

¹⁴ As Judge Christensen already correctly found, the Upper Well is a dry and useless well—“greatly deficient.” MDO, pp. 3, 12-13, and 20; *see also*, Tr. (Barden testimony) at 297:13-20, 304:4-7, and Report, Ex. K. As a result, Right No. 95-17752 is not worth the paper it is written on, and not a real-world factor in the Director’s Report. The Upper Well and, therefore, Right No. 95-17552, has not, and will not, divert any meaningful quantity of water, let alone the 13,000 gpd domestic entitlement. Consequently, the contingent “if” scenario cited in the Report regarding the diversion and use of 95-16445 will not trip, and domestic use of Right No. 95-18409 will be superior to that of 95-16445. This is what Farley seeks to avoid after Judge Christensen voided the amended CC&Rs as against the Gideon property. Farley was content to allow ongoing Gideon use of the Lower Well so long as it was on his controlled terms, but not otherwise. *See*, Note 5,

There is no additional trial needed on this issue. It already occurred in June 2022, and the trial transcript and Judge Christensen's MDO speak for themselves. Farley did not abandon the 13,000 gpd volume of water forming a part of the domestic right that is now Right No. 95-18409. To the contrary, the undisputed evidentiary record is clear that he marketed it, perpetuated it, billed for it, and purposefully used it as a buyer "inducement" (his own words, and nobody else's).

E. Farley's "Multiple Exempt Wells" Contentions Violate Applicable Canons of Statutory Construction and Judge Wildman Already Disposed of the Same

Buried at the end of his Response (pages 17-19), Farley recycles his "multiple exempt well" arguments already raised and rejected during the late claim proceedings held on Right No. 95-18409. Though not wanting to wade back into prior arguments on this issue for fear of suggesting that Farley's arguments in this regard bear weight, Gideon re-plows this ground to conclusively demonstrate that Farley's arguments are dead on arrival.

As explained in Gideon's prior *Reply in Support of Gideon Standard Form 4 Motion to File Late Notice of Claim (Replying to Farley's Response in Opposition)* (Mar. 30, 2023) ("Late Claim Reply"):

These foregoing water source and supply scarcity findings were ***confirmed by Judge Christensen in the Property Purchase Litigation and remain undisputed today***:

Farley drilled two different wells on the [Gideon] Property in 1994. The first well did not produce, so a second well was drilled which became known as 'the Upper Well.' This well pumped into a 3,000-gallon cistern. Farley came to believe this Upper Well was, or could become, unreliable and decided to drill another well . . . known as the 'Lower Well' [which] was connected to the cistern at his residence . . . Mr. Farley informed Mr. Gideon that the Property was served by two wells, the Upper Well and the

above. Farley's intent that Lower Well water use on Parcel I (PIN 94700) for domestic purposes would continue (as it actually did continue on the ground pre-and post-closing) has never wavered.

Lower Well . . . Farley represented that both the Upper and Lower Wells would provide water to the Property. He represented to the Gideons that the Upper Well would produce 2 gallons per minute (g.p.m.) and the Lower Well would produce 5 g.p.m. ***Mr. Jody Barden of North Idaho Pump testified that the Upper Well was tested in 2017 and was essentially a dry well. Indeed, Farley knew that the Upper Well was not producing and the [Gideon] Property was reliant on the Lower Well for the vast bulk of its water supply . . . the Court does find that Farley had a duty to disclose, as the water supply was a fact vital to the [REPSA]. Farley also knew that Gideons did not know that the Upper Well was greatly deficient . . . the Upper Well was essentially a very low producing well of 0.5-1.0 g.p.m. and that such is not a useful amount of water.*** Barden also stated that the yield of the Lower Well was only 2-3 g.p.m.

Waldera Aff., Ex. F (Judge Christensen MDO Re: Bench Trial), pp. 3-4 (Finding of Fact Nos. 4 and 12); 12-13; and 20.

Farley's contentions that Gideon's late claim is not meritorious and fails as a matter of law under Idaho Code Section 42-111 fall flat. ***While true that Gideon obtained a partial decree for Water Right No. 95-17752, that water right sourced from the Upper Well is useless—a functionally “dry” and “greatly deficient” well in the words of Jody Barden and Judge Christensen, respectively. Gideon does not seek multiple domestic exempt water rights for use on their single property. They merely seek an outcome where they gain access to, and continuing use of, the only producing well serving their property and home since 1999—served by a water system that is plumbed to both wells via a single 3,000 gallon cistern located on the Gideon property and owned, operated, and maintained by Gideon.***

If that means exiting the adjudication with two domestic water rights, 95-17752 and 95-18409, each containing a combined use limitation of no more than the diversion and use of 13,000 gpd pursuant to Idaho Code Section 42-111, that is one possibility. Another is abandonment of Right No. 95-17752 altogether in favor of new right 95-18409 (which is easily achievable between the parties and IDWR via a Standard Form 5 stipulated settlement). Yet another possibility is the amendment of Right No. 95-17752 to add the Lower Well as an additional (alternative) point of diversion. If more procedural housekeeping is necessary to achieve the end outcome sought based on the facts and merits of the case so be it. ***Even the Court's partial decree for right no. 95-17752 recognizes this Lower Well connection to the overall water system serving the Gideon's property under the following combined use remark: “The quantity of water under Right Nos. 95-17752 and 95-16445 shall not exceed 13,000 gallons per day.” Thompson Dec., Ex. E. The Upper Well and the***

Lower Well are conjoined in a single system, and the Lower Well provides the “vast bulk” of the water supply to the Gideon property.

Id., pp. 11-12 (emphasis added).

Farley’s ongoing arguments attempting to leverage Right No. 95-17752 are specious. The Upper Well is dry and useless.¹⁵ Farley, unfortunately, pulled the wool over Gideon’s eyes at least with respect to the Upper Well and the utility of Right No. 95-17752. As discussed in Section I.C.2 above, Judge Christensen expressly found that Farley: “stray[ed] from honesty in fact”; made “misleading and false statements”; and “misrepresented the water supply for the Property.” MDO, pp. 3-4, 8, 12-13, and 20. And it is Farley who now ironically seeks to invoke the *equitable* powers of this Court? Response, p. 17.

As represented in the above-quoted briefing passage, Gideon does not seek to stack multiple domestic rights on their property. They seek only the single, aggregate volume of 13,000 gpd that is allowed them under Idaho Code Sections 42-227 and 42-111(a). Gideon suggested that this could (and should) be accomplished though the inclusion of combined use remarks. IDWR agreed. Report, pp. 13-15. And, Gideon did not (and does not) object to the combined use limitations recommended.

Regardless of the equities, Farley’s “multiple exempt wells” argument fails as a matter of law because there is no prohibition against one having multiple domestic wells within Idaho Code Section 42-111. The statute defines “domestic purposes” or “domestic uses,” in pertinent part as:

¹⁵ Again, and as noted above, well pump contractor Jody Barden was crystal clear on this point. Tr., 304:4-7 (when asked what type of use one could make with the meager-at-best flow of water (0.5 to 1.0 gpm) produced by the Upper Well, Barden plainly answered: “None.”). Judge Christensen agreed. MDO, pp. 3, 12-13, and 20 (the Upper Well was “greatly deficient” and the Gideon property relies upon the Lower Well for the “vast bulk” of its water supply); *see also*, Report, Ex. K (Upper Well well log).

“the use of water for *homes . . . livestock* and for any other purpose in connection therewith, *including irrigation* of up to one-half (1/2) acre of land, *if the use is not in excess of thirteen thousand (13,000) gallons per day.*” IDAHO CODE § 42-111(a) (emphasis added). By its express terms, the domestic use limitation is purpose of use and quantity/volume driven, it is not source or point of diversion numbers-driven. This daily quantity/volume-driven limitation applies to Right No. 95-18409 at issue here—initiated, developed and perfected under Idaho Code Section 42-227. IDAHO CODE § 42-111(a) (stating that the definitions of “domestic purposes” and “domestic uses” apply to (“for purposes of”) Section 42-227, among others).

And, contrary to Farley’s erroneous arguments, subsection (3) of the statute expressly contemplates the possibility of one owning and using “*multiple water rights* for domestic uses or domestic purposes.” IDAHO CODE § 42-111(3) (emphasis added). The only caveat or restriction being that the “multiple water rights for domestic uses or domestic purposes . . . not be established or exercised *in a manner* to satisfy a single combined water use or purpose *that would not itself come within the definition of a domestic use or purpose under this section* . . . [a single combined use] that does not meet the exemption of section 42-227 . . .” *Id.* (emphasis added). The plain language of the statute provides that one can establish multiple domestic water rights provided that the use (or “exercise”) of the rights in combination does not occur in a manner exceeding the total aggregate volume of 13,000 gpd (or used “in a manner” that does not “come within the definition of a domestic use or purpose” as defined in the statute).

In this case, Gideon seeks use of ground water for: (a) a single, owner-occupied home; (b) incidental livestock watering; and (c) irrigation of no more than one-half (1/2) acre *up to a total combined volume of 13,000 gpd*. These use parameters (each of the purposes of use and the daily combined quantity/volume limitation across all of the uses) expressly meet the plain terms of the

statutory umbrella definition of “domestic purposes” and “domestic uses” contained in Section 42-111(a). Said differently, any livestock and/or irrigation use exceeding 13,000 gpd, or the irrigation of more than one-half (1/2) acre would not be domestic-exempt. But they are domestic-exempt provided that: (a) those otherwise separate, legally-recognized beneficial uses are associated with a home; **and** (b) the total quantity/volume of water diverted on a daily basis of all of the uses in combination does not exceed 13,000 gpd—it is the 13,000 gpd combined use limitation that makes the otherwise separate uses of water a singular “domestic use” water right. IDWR acted and recommended accordingly via the use of combined use limitations across all of Right Nos. 95-16445, 95-17752, and 95-18409. Report, pp. 13-15. Gideon suggested such an approach in their Late Claim Reply, and IDWR took that approach several months later in its Report.

Conversely, Farley’s contentions require one to impermissibly read terms into the statute (e.g., an express prohibition against “multiple wells” or “multiple rights” or “multiple points of diversion”) that do not exist. *State v. Osborn*, 165 Idaho 627, 629, 449 P.3d 419, 429 (2019) (“Statutory interpretation begins with the statute’s plain language . . . This Court considers the statute as a whole, and gives words their plain, usual, and ordinary meaning.”).¹⁶ The Legislature is presumed to know the law at the time of statutory amendment, and even if the plain language of a statute is written in a socially or otherwise unsound manner, “the power to correct it is legislative, not judicial.” *See, e.g., Parker v. Wallentine*, 103 Idaho 506, 511, 650 P.2d 648, 653 (1982), *overruled in part on other grounds by Verska v. St. Alphonsus Reg’l Med. Ctr.*, 151 Idaho 889,

¹⁶ The same applies to Farley’s reading of Idaho Code Section 42-227. While the statute uses the plural term “wells” throughout, it does not once use the singular term “well.” Instead, Section 42-227 relies on the definitions found in Section 42-111 because it concerns itself with the use and development of groundwater (the “excavation and opening of wells and the withdrawal of water therefrom”) for “domestic purposes” without defining the terms “domestic purposes” internally.

265 P.3d 502 (2011) and *In re Estate of Miller*, 143 Idaho 565, 567, 149 P.3d 840, 842 (2006), respectively; *see also*, *Verska v. St. Alphonsus Reg'l Med. Ctr.*, 151 Idaho 889, 895, 265 P.3d 502, 508 (2011) (courts do not have the authority to revise statutes).¹⁷

The parties presented these same arguments to Judge Wildman during Gideon's late claim hearing on April 18, 2023, during which Farley argued that Gideon's proposed late claim could not be granted *as a matter of law* because the use of/reliance upon "multiple exempt wells" in derogation of Idaho Code Sections 42-111 and 42-227. *See, e.g., Response in Opposition to Claimant Gideons' Motion to File Late Notice of Claim*; Subcase No. 95-18409 (Mar. 15, 2023), pp. 5-8 (arguments predicated upon Idaho Code Section 42-111, among other authorities, and Gideon's alleged "unlawful[] attempt[s] to secure multiple water rights for a single domestic use on their property"); *see also*, April 18, 2023 hearing audio on Gideon's *Standard Form 4 Motion to File Late Notice of Claim* (95-18409) ("Hearing Audio") at 41:11-43:47.¹⁸

Judge Wildman pointedly rejected Farley's arguments in this regard (undersigned counsel quoting as near as possible in pertinent part in the absence of a written transcript):

¹⁷ On this "law at the time of statutory amendment" note, the addition of the daily volume limitations of subsections 1(a) and (b) (13,000 gpd and 2,500 gpd, respectively) of current Section 42-111 occurred in 1990. The statute did not contain a daily volumetric limitation prior to 1990. *See* H.B. No. 461, 1990 Idaho Sess. Laws, ch. 319, § 1. And, subsection (3) was added to Section 42-111 in 1995. *See* S.B. No. 1255, 1995 Idaho Sess. Laws, ch. 233, § 1. The daily volumetric limitations were enacted in 1990 to provide "uniform definitions of domestic purposes"—to provide an objective benchmark against which "domestic" uses would be measured. H.B. No. 461, 1990 Idaho Sess. Laws, ch. 319, § 1. And, subsection (3) was added to "clarify" what domestic-exempt uses are versus those that must otherwise comply with the mandatory application for permit process of Title 42, Chapter 2 (*i.e.*, those "combined water use[s] or purpose[s] that would not itself come within the definition of a domestic use or purpose under this section"). S.B. No. 1255, 1995 Idaho Sess. Laws, ch. 233, § 1.

¹⁸ Gideon renews and relies upon their prior request that the Special Master take judicial notice of the hearing audio recording under I.R.E. 201 for the same reasons and authorities cited in Note 5 of their Memo.

[W]ith respect to multiple domestic rights [under Section 42-111] serving one residence . . . as a general matter the purpose of the statute and its restrictions were to prevent single home domestic use from circumventing the limitation imposed by the statutes . . . *I can't find as a matter of law that multiple wells are prohibited as long as the combined use of the wells comes within the definition of domestic use . . . the issue of multiple wells could be addressed through the use of a combined limitation remark . . . particularly under the circumstances here where the Upper Well is failing to produce or you're using the Lower Well as a supplement . . .* under the statute that the issue of multiple wells can be addressed under the facts and circumstances of this case . . . for those reasons I find that Gideon has satisfied the good cause standard and the Court will grant leave to file the late claim . . .”

Hearing Audio, at 41:11-43:47 (emphasis added).

For the foregoing, Farley’s “multiple exempt wells” arguments are unavailing and cannot, as a matter of law, defeat Gideon’s pending motion for summary judgment. The arguments violate the plain language of the applicable statutes, and Judge Wildman already disposed of the same.

II. CONCLUSION

For the foregoing, Gideon respectfully requests that this Court grant summary judgment in their favor by adopting IDWR’s Report-based recommendation of Right No. 95-18409. Farley did not withhold and sever the same, and he cannot rewrite or undermine the plain and unambiguous terms of the parties’ PSA and subsequent Warranty Deed. Farley’s thoughts, beliefs, and intents alone do not defeat the fully-integrated PSA and deed, and his thoughts, beliefs, and intents alone do not satisfy the bilateral intent and subsequent agreement *Joyce* “or”-based exception that has been the law under *Russell* since 1911 at least.

Additionally, the record demonstrates that Farley did not abandon the 13,000 gpd volume of water of which Right No. 95-18409 is a part. While his own intent and actions are muddled at best—certainly not rising to the level of clear and convincing evidence necessary to successfully abandon—that 13,000 gpd volume of water is alive and well through Farley’s attempted sleight-

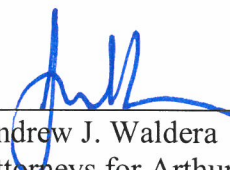
of-hand 2019 Amended Claim. He cannot have it both ways—Farley cannot clearly intend that Parcel I (the Gideon property) would continue to receive the use and benefit of the Lower Well on the one hand, but on the other attempt to amend away the domestic purpose and place of use elements of the water rights only to later try restoring them contractually under the amended CC&Rs. These CC&Rs-related, and internally inconsistent thought processes and actions on the ground alone, defeat Farley’s abandonment assertions.

And, finally, Farley’s recycled Section 42-1111-based “multiple exempt wells” arguments gain no more traction now than they did when Judge Wildman rejected them in April 2023. IDWR’s Report clearly and concisely explains and disposes of this matter, and Farley has adduced no evidence disproving any of the material facts investigated and found therein.

Should this Court deny Gideon’s pending motion, Gideon respectfully requests that the Court highlight what issues and evidence needing presentation remain for trial because this record is already voluminous—having been developed before Judge Christensen in the Kootenai County Property Purchase Litigation. Frankly, but respectfully, Gideon cannot fathom what additional issues, testimony, or evidence could possibly remain for trial here.

DATED this 4th day of March, 2024.

SAWTOOTH LAW OFFICES, PLLC

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of March, 2024, I caused a true and correct copy of the foregoing **CLAIMANT GIDEONS' REPLY 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

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

Michael G. Schmidt
Lukin & Annis, P.S.
601 E. Front Avenue, Suite 303
Coeur d'Alene, ID 83814

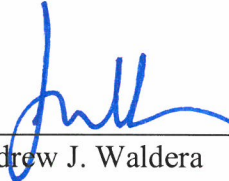
☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☒ iCourt/Email

Michael S. Bissell
Brandon Slaven
Campbell & Bissell, PLLC
820 W. 7th Avenue
Spokane, WA 99204

☐ 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
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☒ iCourt/Email



Andrew J. Waldera

Trial Exhibit K

**Coeur d'Alene Multiple Listing Service
Residential Data Form - Main Listing Fields**

Listing Type: S1 - Site Built < 2 Acre, S2 - Site Built > 2 Acre, S3 - Site Built Leased Land, M1 - Manufactured < 2 Acre, M2 - Manufactured > 2 Acre,
M3 - Manufactured Leased Land, TH - Townhouse, CO - Condo, WF - Res Waterfront, WS - Sec Res Waterfront, WC Waterfront Condo, WL - Waterfront Leased Land

Address Information

House #	St Dir	Street Name	St Type	Unit #	City	State	Zip Code	County
23452	N	Dertling Rd			Hayden	Id	83835	Kooleani

Contract Information

Begin Date	Expire Date	List Price	Type of Contract - select one:
Nov 20, 2018	May 20, 2019	\$949,000.00	☒ Exclusive Right to Sell, Full Service
			☐ Exclusive Right to Sell, Limited Service
			☐ Exclusive Agency, Full Service
			☐ Exclusive Agency, Limited Service

Non-Agent	Buyer-Broker	Variable	☐ Yes
Fee: 3	%/\$ Fee: 3	%/\$ Rate Commission	☒ No

General Property Description - Entry Required for Each Bolded Item

Bldg Style: ☐ Single Level ☐ Dbl Wide Manuf ☐ Daylight Single Level ☐ Trp Wide Manuf ☒ Multi Level ☐ Float Home ☐ Multi Story ☐ Pallo Home ☐ Split Entry ☐ Sgl Lev w/Bonus ☐ Tri-Level ☐ Round Home ☐ Sgl Wide Manuf ☐ A-Frame Basement: ☒ Yes ☐ No Connecting Walls or Zero Lot Line: ☐ Yes ☒ No Garage/Carport: ☐ None <table border="1"> <tr> <td></td> <td># of Stalls</td> <td></td> <td># of Stalls</td> </tr> <tr> <td>Att Garage</td> <td>5</td> <td>Att Carport</td> <td></td> </tr> <tr> <td>Det Garage</td> <td></td> <td>Det Carport</td> <td></td> </tr> <tr> <td>Inset Garage</td> <td></td> <td></td> <td></td> </tr> </table>		# of Stalls		# of Stalls	Att Garage	5	Att Carport		Det Garage		Det Carport		Inset Garage				Total Bedrooms 5 Total Bathrooms 2.5 + .5 Approx Total Sq Ft: 5103 Below Grade Sq Ft Total 1405 1 st Level Sq Ft Total 2946 2 nd Level Sq Ft Total 3 rd Level Sq Ft Total Sq Ft Source: ☐ Agent Measure ☐ Assessor/Tax Roll ☐ Other ☐ Appraisal ☐ Builder Plans ☒ Owner ☐ Estimated Lot Dimensions: 660 X 660 Lot Acreage: 10.99 Yr Built: 1994 New Construction: ☒ No ☐ Yes, Completed ☐ Yes, To Be Built ☐ Yes, Under Construction Est. Completion Date: Builder Name: (required if New Construction)	Subject to Short Sale: ☐ Yes, Apv'd ☐ Yes, Not Apv'd ☒ No REO/Bank Owned: ☐ Yes ☒ No Lot Type 1: ☐ Duplex/Multi-family ☐ Manuf Home Lot ☐ PUD ☐ Common Ground ☒ Residential ☐ Commercial ☐ Agricultural ☐ Timberland ☐ Recreation ☐ Golf Course Lot ☐ Leasehold ☐ Fractional Interest Occupant: ☐ Caretaker ☐ Tenant ☐ Spec/Model ☐ Vacant ☐ Under Construction ☒ Owner Lot type 2: ☐ Comm Waterfront ☐ Creek ☐ Lakefront ☐ Pond ☐ Riverfront ☐ Secondary Waterfront ☐ Wetlands ☐ Lake/River View ☐ Vacation Lake/River Name: Frontage: Bay:
	# of Stalls		# of Stalls															
Att Garage	5	Att Carport																
Det Garage		Det Carport																
Inset Garage																		

Legal & Taxes

Legal Description: SE-SE-NW 09 52N 03W Tax Bill/Serial# 145456 Tax Parcel# 52N03W094700 School District Lakeland - 272 Zoning 534 Imp res rural trac	Taxes: \$5,605.00 Year: 2017 Taxes Reflect: up to 2 ☐ No Exmp ☐ Solid Waste Fee ☒ HO Exmp ☐ Ag Ex ☒ Timber Ex ☐ Circuit Breaker ☐ Lot Only ☐ Estimate ☐ Not Yet Recorded ☐ Larger Parcel Manufactured Home Taxed as: ☐ Pers Prop ☐ Real Prop
---	--

- Seller(s) have read the foregoing listing form & accompanying Details/Room Input Form and agrees to hold the Coeur d'Alene Association of REALTORS®, Inc., and the Coeur d'Alene Multiple Listing Service, Inc. harmless from any and all claims and/or liability for damages arising from incorrect or undisclosed information provided by the Seller(s) to the Broker(s). Seller(s) agree(s) to indemnify the above individuals and organizations from any and all costs and/or liability, including attorney's fees in defending any such action, in regards to the information provided by Seller(s) concerning the subject property.
- Execution of this data form & accompanying details/room input form confirms that the undersigned seller(s) have executed concurrently a listing agreement as identified above with the undersigned REALTOR®, Seller(s) grant consent to inclusion of the information thereon into the Coeur d'Alene Multiple Listing Service, Inc. database for dissemination to MLS participants/subscribers and to advertising in an electronic advertising medium. Seller(s) understand that the information provided thereon may be included in statistical data which is made available to MLS participants/subscribers for use in market analyses or valuations.

Seller Signature		Date	11/20/18
Seller Signature		Date	
Agent Signature		Date	11-20-18

Please Print	
List Agent Name	Rob Elder
Co-List Agent Name	
Office Name	Century 21 Beutler & Associates

Coeur d'Alene Multiple Listing Service, 2017

Residential Data Input Pg 1 of 3

Serial#: 028562-200154-2762255

Prepared by: Rob Elder | Century 21 Beutler & Associate | relder@21goldchoice.com | 2087655554

GIDEON000012

Kootenai County Case No.: CV28-20-2706
Arthur V. Gideon, et ux. v. Brian T. Farley, et al.
Defendants/Counterclaimant Exhibit No.: K
Trial Date: 6/6/2022

Property Address: 23452 N Derling Rd

Directions:

North HWY 95, right on Garwood Rd, left on Rimrock Rd, right on Corbin Hill, right on Derling Rd, home one mile up Derling on left.

Public Remarks:

This custom built home with breathtaking panoramic views from every room inclusive of Mt. Spokane & much more. Enjoy the privacy of this pristine ridge-top ten acre retreat with endless miles of National Forest close at hand. Design built with timeless craftsmanship by award winning Builder/Owner Brian Farley, it delivers 5103 sq.ft, a open 3-pantry kitchen, adjoining family room, breakfast nook, formal dining. Main floor master & en suite bath, fireplace at jetted companion tub, his/her shower, custom walk in closet, main floor great room/"man cave", den, game & bonus rooms. Garage is a over sized true 5 car, 12' RV door. A 48X60 "horseman's" barn & attached 16'X36' lean-to includes a heated lac room, 2 lofts, hay manger, illuminated corral, dog kennels & hen house. Immaculate landscaping, water fall feature, basalt boulders, fruit orchard, garden & pasture/hayfield. This "sportsman's dream" property offering country living elegance Ideal for horses & livestock has just to many custom features to list. CHECK OUT OUR VIDEO!

Private Remarks:

No sign. List of exclusions in documents. Homeowner or listing agent to be present at all showings. Buyers agent to verify all information.

CC&R's ☒ Yes ☐ No
HO Association: ☒ Yes ☐ No If Yes: Fee Amount? \$125.00 Payable ☐ Mo ☐ Yr ☒ Qtr
☒ Setup/Transfer Fee? Gov Doc on File? ☐ Yes ☒ No Name _____
HO Fee Includes: Road maintenance
Non-Mortgage Lien:
☐ Yes ☒ No Balance _____ For _____
LID: ☐ Yes ☒ No Balance _____ For _____
Other: _____
Flood Zone: ☐ Yes ☒ No ☐ Unknown Aircraft Flight Zone: ☐ Yes ☐ No ☒ Unknown
Fire Protection Dist: ☒ Yes - Name Northern Lakes ☐ No ☐ Unknown

SEC # 09

TWN # 52

RNG # 03

Senior Community
Housing

☐ 55+

☐ 62+

Personal property Included: _____

Real property Excluded: _____

Main House Room/Area Info	LivRm	DinRm	Kitch	Fam Rm/ GR Rm	MBR	Bdrm	Bath	1/2 Ba	Laun	Other
Bsmt						2	1			2
1st Fl	1	1	1	1	1		1	2	1	2
2nd Fl										1
3rd Fl										

Seller Initials GF

Date 4/24/18

Agent Initials DF

Date

11/20/10

Coeur d'Alene Multiple Listing Service, 2017

Residential Data Input Pg 2 of 3

Serial#: 028562-200154-2762255

Prepared by: Rob Elder | Century 21 Boulter & Associates | reldor@21goldchoice.com | 2087655554

GIDEON000013

Residential Detail Input Form may not be used for Farm/Ranch listing

Note: If heading is bold, at least 1 entry is req'd

Property Address: 23452 N Derting Rd

Other Rooms: ☒ Bonus ☒ Den ☒ Formal DR ☒ Family ☒ Office ☒ Craft ☒ Mud Rm ☐ Sun Rm ☐ Theater ☐ Wine Cellar ☒ Storage ☐ Loft ☒ Mst Bdrm Suite ☒ Main Fl Utilities ☒ Main Fl Mstr Bdrm Add'l Living Quarters: Bdrms _____	Exterior Amenities: ☐ Covered Patio ☐ Covered Deck ☐ Covered Porch ☐ Curbs ☐ Dock/Boat Slip ☒ Exterior Lighting ☒ Fence ☒ Fruit Trees ☒ Garden ☒ Area Gazebo ☒ Handicap Access ☒ Horse Facility ☒ Landscaping ☒ Lawn ☒ Lawn sprinkler sys ☒ Open Deck ☒ Open Patio ☒ Pasture ☒ Paved Parking ☐ Pergola ☐ Pool, Above Ground ☐ Pool, Inground ☒ Rain Gutters ☒ RV parking ☒ Satellite Dish ☒ Sidewalks ☐ Spa/hot tub ☐ See Remarks	Fuel Type: ☒ Electric ☐ Gas ☒ Propane ☐ Kerosene ☐ Solar ☐ Oil ☐ Coal ☒ Wood ☐ Pellet ☐ Geothermal ☐ Off Grid ☐ None Heat Type: ☒ Forced Air Furnace ☐ Baseboard ☐ Radiant ☐ Hot water ☐ Radiant Wall ☐ Stove ☐ Fireplace ☒ Heat Pump ☐ Geothermal Ht Pump ☐ Furnace ☐ None Add'l Buildings: ☒ Barn ☐ Det. Shop ☒ Storage ☒ Garden Shed ☐ Greenhouse ☐ 2nd Garage ☐ 2nd Carport ☐ Boat House ☐ Guest House ☒ Pump House ☐ Cabana ☐ Hangar ☐ See Remarks	Foundation: ☐ Brick/Block ☐ Cinder Block ☒ Concrete ☐ Metal ☐ Pier Block ☐ Rock ☐ Slab ☐ Treated Wood ☐ Wood Construction: ☐ Brick/Block ☐ Concrete ☒ Frame ☐ Insul R Value Wall R 19 Ceiling R 44 ☐ Log Home ☐ Manufactured ☐ Mobile ☐ Pole ☐ Post & Beam ☐ Remodeled Yr of Rem _____ Exterior: ☐ Aluminum ☐ Asbestos ☒ Brick ☐ Cedar ☐ Cement Block ☐ Concrete Drivelt ☒ Fiber Cement ☐ Hardboard ☒ Lap Siding ☐ Log ☐ Redwood ☐ Pressboard ☐ Shingle ☐ Steel ☐ Stone ☐ Stucco ☐ T1-11 ☐ Tyvek ☐ Vinyl ☐ Wood ☐ Other	Roof: ☐ Aluminum ☒ Comp Shingle ☐ Concrete ☐ Metal ☐ Rolled Comp ☐ Roller Rubber ☐ Shake ☐ Tar ☐ Tile ☐ Wood Shingle Road: ☐ Paved ☒ Gravel ☐ Dirt ☐ Public Maintained ☒ Private Maintained ☐ None-See Remarks Water: ☐ City ☐ Community System Name _____ ☐ Community Well ☐ Creek ☐ Irrigation water Irrig Water Name: _____ ☐ Lake ☒ Private System ☒ Private Well ☐ Spring ☐ Transfer Fee ☐ None Sewer: ☐ Cesspool ☐ City Sewer ☐ Community System ☐ HUI/CAP Fee Due ☐ Lagoon ☐ Lift Station ☐ Private Sewer System ☒ Septic System ☐ None Green Certification: ☐ Energy Star® Cert. ☐ Built Green Cert. ☐ Lead Certified Green Features: ☐ Countertops ☐ Flooring ☐ Windows ☐ Appliances	Terms Considered: ☒ Cash ☐ Assume ☐ Seller financing ☐ FHA ☐ HomePath ☐ Conventional ☐ RD/Farm Home ☐ Idaho Housing ☐ Trade ☐ Lease Option ☐ Vets Admin ☐ 1031 ☐ Subj to Short Sale ☐ Auction ☐ See Remarks Showing Instr: ☐ Showing Time Online ☒ Call Listing Office ☐ Call Listing Agent ☐ Office Showing Svc # _____ ☐ Call Tenant Tenant # _____ ☒ Call Owner Owner # 661-1218 ☐ Appointment Only ☐ List Agent Present ☐ Key at List Office Lockbox: ☐ Combination ☒ Supra ☐ Risco ☐ CBS Code ☐ Boat Access Only ☐ Vacant ☐ Beware of Animals ☐ Time Restrictions ☐ See Remarks ☐ See Website MH Park Requires: ☐ Lease Agreement ☐ Background Check ☐ Credit Check ☐ Deposit Manager Name: _____ Manager Phone: _____ Manuf. Home Info: Class _____ Manufacturer: _____ Home Size: _____ Lot Rent: _____ Lot Rent Includes: _____
--	--	---	--	--	--

INTERNET AUTHORIZATION - Check options chosen:

Display listing on Internet. ☒ Yes ☐ No

Display listing address on Internet. ☒ Yes ☐ No

Export to IDX sites: ☒ Yes ☐ No

Export to realtor.com: ☒ Yes ☐ No

INTERNET AUTHORIZATION FOR VIRTUAL OFFICE WEBSITES.

SELLER ☐ does ☒ does not allow data to be used in Automatic Valuation Models (AVMs).

SELLER ☐ does ☒ does not agree to allow blogging and or consumer comments.

Seller Initials RE Date 11/21/18

Agent Initials RE Date 11/21/18

Coeur d'Alene Multiple Listing Service, 2017

Residential Data Input Pg 3 of 3

Serial#: 028562-200154-2762255

Prepared by: Rob Elder | Century 21-Bouler & Associate | rolder@21goldchoice.com | 2087655554

GIDEON000014

Trial Exhibit M



23452 N DERTING RD
Hayden, Idaho 83835
5895,900
Site Built > 2 Acres
MLS#:18-12412
Area: 06 - NE Kootenai County
Grid #: 320
Total Bedrooms: 5
Total Bathrooms: 3
Total SqFt: 5,103
Lot Acres: 10.9
Year Built: 1994

Check out our video on this custom built home with breathtaking panoramic views from every room inclusive of Mt. Spokane & much more. Enjoy the privacy of this pristine ridge-top just under 11 acre retreat with endless miles of National Forest close at hand. Design built with timeless craftsmanship by award winning Builder/Owner. It delivers 5,103 sq. ft, an open 3-pantry kitchen, adjoining family room, breakfast nook, & formal dining. Main floor master & en suite bath, fireplace at jetted companion tub, his/her shower, custom walk-in closet, main floor great room/"man cave", den, game & bonus rooms. Garage is an over sized true 5 car, 12' RV door.

List Agent: Rob Elder 208-661-0800 elder@21goldchoice.com
Listing Office: Century 21 Boullor & Associates 208-765-5554

Contract Information

Begin Date:	11/26/2018	Status Change Date:	11/26/2018	Status:	Active
Original List Price:	\$975,000	REO:	No	Days On Market:	151
Buyer Agent Fee:	3%	Short Sale:	No		
Non-Agent Fee:	3%	Type of Contract:	Exclusive Right to Sell, Full Service		
Property Type:	Residential				

Showing Instructions: Call Listing Office; Supra Lockbox

Terms Considered: Cash; Conventional

Private Remarks: No sign. List of exclusions in documents. Homeowner or listing agent to be present at all showings. Buyers agent to verify all information.

Legal & Taxes

Taxes:	\$5,605	Taxes Reflect:	Timber Exemption, HomeOwner's Exemption	AIN/Tax Bill #:	145456
for Tax Year:	2017	Subdivision:	N/A	Tax Parcel #:	52N03W094700
School District:	Lakeland - 272	Misc:	Sec 9, Twn 52, Rng 3WBM	Zoning:	RES
County:	Kootenai			Kootenai Co Property Class:	534- Imp res rural tract

Legal Description: SE-SE-NW 09 52N 03W

Directions: North Hwy 95, right on Garwood Road, left on Rimrock Road, right on Corbin Hill, right on Derting Road, home one mile up Derting on left

General Property Description

Style:	Multi-level, French Country	Total SqFt:	5,103	Year Built:	1994
Basement:	Yes, Part Size	SqFt B:	1,405	New Construction:	No
Cnct Wall/0 lot line:	No	SqFt I:	2,946	Garage/Carport #:	4+ Car, Att Garage
Lot Type I:	Residential	SqFt Source:	Assessor/Tax Roll		
RealTOR.COM Type:	Residential - Single Family	Occupant:	Owner		

Main House Rooms/Areas	Agr SqFt	Living Rm	Dining Rm	Kitchen	Fam Rm/GR Rm	Master Bdrm	Bdrm	Bath	1/2 Ba	Laundry Rm/Area	Other	Other Rooms
Basmt	1,405				1		2	1			2	Bonus Room: 1
1st Fl	2,946	1	1	1	1	1	1	1	2	1	2	Den/Library: 1
2nd Fl							1				1	Formal Dining: 1
3rd Fl												Family Rm: 1
												Office: 1
												Craft Rm: 1

View	Territorial; Mountain	Interior Amenities	Burglar Alarm; Central Air; Fireplace; Gas Fireplace; Gas Stove; Intercom System; Jetted Tub; Skylights; Washer/Dryer IU; Wood Stove	Construction	Frame; Wall Insul R Value: 19; Ceiling R Value Insu: 44
Lot Features	Level; Open; Sloping; Southern Exposure	Kitchen Amenities	Breakfast Bar; Kitchen Island; Kitchen Peninsula	Foundation	Concrete
Exterior Amenities	Exterior Lighting; Fence; Fruit Trees; Garden Area; Handicap Access; Horse Facility; Landscaping; Lawn; Lawn Sprinkler Sys; Open Deck; Open Patio; Pasture; Paved Parking; Rain Gutters; RV Parking; Satellite Dish; Sidewalks	Appliances	Wall Oven; Cook Top; Refrigerator; Dishwasher; Trash Compactor; Microwave; Disposal; Water Softener; Gas Hot Water; Propane Hot Water	Exterior	Brick; Fiber Cement; Lap Siding
Additional Buildings	Barn; Storage; Garden Shed	Fuel	Electric; Propane; Wood	Roof	Comp Shingle
Property Subject To	CC&Rs: Yes Homeowners Assoc: Yes Non-Atty Liens: None UD: None	Heat	Forced Air; Heat Pump	Road	Gravel; Private Maintained
		Flooring	Carpet; Hardwood floors; Laminate; Tile; Vinyl	Water	Private System; Private Well
		Basement Details	Part Size Finished	Sewer	Septic System
		Real Prop Excluded	See Documents	Miscellaneous	Flood Zone: No Aircraft Flight Zone: Unknown Fire Protection Dist: Yes Fire Protection Name: Northern Lakes

Information is deemed to be reliable, but is not guaranteed. © 2019 ULS and 21G. Prepared by Patty Elin on Friday, April 20, 2019 7:20 PM. The information on this sheet has been made available by the MLS and may not be the listing of the provider.

Kootenai County Case No.: CV28-20-2706
Arthur V. Gideon, et ux. v. Brian T. Farley, et al.

Defendants/Counterclaimant Exhibit No.: M
Trial Date: 6/6/2022