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DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - CSRBA Fifth Judicial District County of Twin Falls - State of Idaho	
AUG 09 2024	
By _____	VM Clerk
_____ Deputy Clerk	

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

In Re CSRBA) Subcase Nos. 95-16445 and 95-18409
Case No. 49576)
) ORDER GRANTING IN PART AND
) DENYING IN PART FARLEY'S
) MOTION TO ALTER OR AMEND
)

On April 29, 2024, Brian T. Farley, through his attorneys of record, filed his *Motion to Alter or Amend Special Master's Memorandum Decision / Report and Recommendation* ("MAA"). As set forth herein, Mr. Farley's *Motion* is **granted in part and denied in part**.

APPLICABLE LEGAL STANDARD

In their *Response to Farley's Motion to Alter or Amend Special Master's Memorandum Decision / Report and Recommendation* ("Gideon Response") the Gideons correctly set forth the applicable standard of review to be used in analyzing a motion to alter or amend brought pursuant to section 18 of the *Amended CSRBA Administrative Order 1 Rules of Procedure* (March 4, 2015). This Special Master adopts the Gideons' statement thereof.

ANALYSIS

I. Kootenai County parcel number 52N03W09S000 encompasses both Parcel T and Parcel S.

In footnote number 3 of the March 19, 2024, *Memorandum Decision and Order on Gideons' Motion for Summary Judgement* ("Order"), this Special Master stated that

Kootenai County parcel number 52N03W095000 only corresponded to what has been referred to in these proceedings as “Parcel T.” This is incorrect. Kootenai County parcel number 52N03W095000 encompasses both Parcel T and Parcel S. After the July 23, 2024, hearing on Mr. Farley’s *MAA*, the parties and the representative from IDWR agreed that the “explanatory material” field of IDWR’s database shall include the following language.

Place of Use Parcel No. 52N03W095000, Parcels S and T of Pleasant View Ranch Estates Site Development, Kootenai County Inst. No. 968133

In accordance with the foregoing, Mr. Farley’s *MAA* is **granted** regarding this “explanatory material” issue, and the **Order** is hereby amended to correct the erroneous statement that Parcel S does not lie within Kootenai County parcel number 52N03W095000. This Special Master requests that IDWR include the above-stated language in its database under the “explanatory material” field.

II. Prior to conveying the land and appurtenant water rights to the Gideons, Mr. Farley had the right to eliminate / extinguish his water right; he simply failed to do so.

Mr. Farley’s *MAA* requests that the **Order** be amended regarding these two findings: “The finding that Farley had no legal right to **extinguish** a portion of his own property right (i.e. domestic/stock water right from the Lower Well on Parcel I)” and “The finding that Farley could not amend his water right claim 95-16445 and **eliminate** domestic and stockwater use on Parcel I as allowed by Idaho law. *MAA* at 2 (emphasis added). Mr. Farley elaborates that:

The Special Master concluded that Farley’s “omission” of the place of use and domestic / stockwater purpose of use for Parcel I “did not have the effect of contemporaneously eliminating such uses from the water right or transferring such uses elsewhere.” *Decision* at 8. In other words, the Special Master’s finding gives no effect to a claimant’s legal right to amend a water right claim in the adjudication as well as the right to eliminate or extinguish a property interest if the owner so chooses. *See* I.C. § 42-1409A.

MAA at 10. Mr. Farley's contention that the **Order** abrogated his legal right to eliminate / extinguish a portion of his water right, or that he could not amend his claim to eliminate / extinguish the domestic and stockwater use on Parcel I, is incorrect. As succinctly stated by the Gideons, "[t]he Order does no such thing." *Gideon Response*, p. 5. Until the time of the closing of the real estate transaction when the real property and its appurtenances were transferred to the Gideons, Mr. Farley had the legal right to amend his claim (which he did), and as one of the sticks in his bundle, he had the right to eliminate / extinguish his water right or any portion thereof. The **Order** simply holds that based on the undisputed facts in the record, and as a matter of law, Mr. Farley did not eliminate / extinguish the portion of his water right that he previously established for domestic and stockwater use on Parcel I.

A water right is incorporeal, so unlike a piece of personal property, there is nothing that can be physically destroyed. In order for an owner of a water right to become a former owner, the water right can be: 1) conveyed to someone else (which does not eliminate); 2) abandoned (eliminates); 3) forfeited through 5 years of non-use pursuant to I.C. § 42-222 (eliminates but possibly subject to resumption of use); or 4) decreed as disallowed by a court (eliminates). Regarding abandonment, Mr. Farley sets forth those arguments in Section III of his *MAA*, which is addressed in Section III of this Order. The actions Mr. Farley took with the stated goal of eliminating / extinguishing the subject portion of 95-16445 occurred within the context of a judicial proceeding (i.e. the CSRBA). Therefore, let us examine the processes whereby an existing water right can be eliminated / extinguished via judicial proceeding.

In a general stream adjudication in Idaho such as the CSRBA, there are numerous water rights and/or water right claims that ultimately get decreed by the court as "disallowed." This happens in one of two ways. One way is where the court, during the pendency of the adjudication, enters a partial decree of disallowance for a numbered water right / claim. The other way is through a "catch-all" in the final unified decree that will essentially state that any water rights that remain unclaimed at the time the final unified decree is entered, are disallowed (with some exceptions).

Regarding the “catch-all” means of disallowing unclaimed water rights; this pathway has been foreclosed as to the right to use water for domestic and stockwater purposes on Parcel I by the filing of a claim by the Gideons.

The other way that Mr. Farley could have conceivably pursued to utilize the CSRBA judicial proceeding to ultimately result in eliminating / extinguishing the subject portion of the right would have been to seek a partial decree from the court disallowing the domestic and stockwater use on Parcel I. Mr. Farley’s *Amended Notice of Claim* did not specifically plead for a decree of disallowance of the Parcel I portion of his claim. Mr. Farley mistakenly believed that his goal of eliminating / extinguishing said portion of his water right was completed upon his filing of his *Amended Notice of Claim* which omitted domestic and stockwater use on Parcel I. It was not. Completion of this process would have required a partial decree specifically disallowing that portion of the water right. This pathway has also been foreclosed because the Parcel I portion of the water right was still in existence at the time of closing, it was conveyed to the Gideons as an appurtenance to the land, and the Gideons have filed a claim for the same.

Mr. Farley’s actions and corresponding intent¹ that he claims resulted in the elimination / extinguishment of the subject portion of 95-16445 took place within the confines of the CSRBA judicial proceeding. However, Mr. Farley’s elimination / extinguishment theory of the case does not rely on a final judicial determination. To the contrary, Mr. Farley asserts that his elimination / extinguishment was fully effectuated prior to any judicial determination of the same.

To summarize, the **Order** makes no finding that Mr. Farley did not have the right to eliminate / extinguish a portion of water right 95-16445. The **Order** simply finds that Mr. Farley did not exercise such right in a manner that effectuated his stated goal of eliminating / extinguishing the subject portion of 95-16445. Accordingly, the **Order** needs no alteration or amendment regarding Mr. Farley’s elimination / extinguishment theory. Mr. Farley’s *MAA* is **denied** with respect to this issue.

¹ If Mr. Farley had asserted disallowance of the Parcel I portion of 95-16445 in his *Amended Notice of Claim*, and pursued an uncontested partial decree of such disallowance, his intent would not have been a relevant factor. However, he would have had to complete this process before he conveyed said portion of the water right to the Gideons as an appurtenance to the land.

III. The *Order* correctly concludes, as a matter of law, that Mr. Farley had not abandoned the Parcel I portion of water right 95-16445.

The question of whether an owner of a water right has abandoned the right is one of intent. Idaho law requires such intent to be demonstrated by clear and convincing evidence of unequivocal acts. Simply demonstrating non-use of the water is not a sufficient basis, by itself, to underpin a factual finding of intent to abandon. *Jenkins v. State, Dep't of Water Res.*, 103 Idaho 384, 389, 647 P.2d 1256, 1261 (1982). The “unequivocal acts” demonstrating intent to abandon² that Mr. Farley relies upon are: 1) he filed an *Amended Notice of Claim*³ for 95-16445 (January 25, 2019)⁴ in which he omitted the domestic and stockwater use that he previously claimed for Parcel I; 2) he contemporaneously filed a new claim for the Upper Well (95-17752) (January 25, 2019); 3) He filed a *Notice of Error Reply* with IDWR indicating that the purpose of use should be stockwater only, and the place of use should be Parcels S and T only; 4) he installed⁵ and closed a ball valve in 2017 on the water line that conveys water to the cistern from which the residence on Parcel I receives water; and 5) Mr. Farley prepared handwritten notes indicating that he eliminated Parcel I from the place of use for 95-16445.

The crux of the holding in the *Order* regarding abandonment is that for an abandonment to occur, there must be cessation of use under the right alleged to have been abandoned. Once abandoned, post-abandonment use of water under the water right cannot, by definition, occur because the water right no longer exists. But the undisputed

² This Special Master notes that Mr. Farley’s stated intent to abandon the water right for use on Parcel I is directly controverted by his statement that “[i]t was my intent that Parcel I would have ‘shared use’ of water from the Lower Well only pursuant to the Amended CC&Rs.” *Farley Opp. Dec.*, p. 8, ¶33.

³ Mr. Farley’s *Amended Notice of Claim*, which is a pleading in a court case, does not state a cause of action for abandonment. Mr. Farley urges that his pleading demonstrates unequivocal evidence of his intent to abandon a portion of water right 95-16445, despite not specifically mentioning abandonment therein.

⁴ The date stamp on the Amended Notice of Claim for water right 95-16445 appears to be in error. On the signature page, Mr. Farley dated his signature as “012519.” The date stamp on the first page should probably read “January 25, 2019.”

⁵ In his *Declaration*, Mr. Farley states that he “had North Idaho Pump install . . . a ball valve on the waterline from the Lower Well at the cistern inlet that would allow me to turn off the water to the cistern. I shut the water off from the Lower Well in 2017 . . .” *Farley Opp. Dec.*, p 3, ¶ 10. Mr. Farley contends that his turning-off the ball valve constitutes his relinquishment of the water right. If Mr. Farley’s intent was relinquishment, why did he have a ball valve installed at all as opposed to disconnecting, capping, or eliminated the pipe? In other words, why did he install a ball valve if he intended that once he turned it off, it would never be turned back to the “on” position?

facts in this case are that Mr. Farley turned the ball valve back on shortly before closing, thus sending water from the Lower Well to the cistern for domestic and stockwater use on Parcel I. The delivery of water from the Lower Well to the cistern continued until the Lower Well was damaged in the spring of 2023. *See Farley Opp. Dec.*, pp.8-9, ¶¶ 35-36.

Mr. Farley asserts that the use of water from the Lower Well on Parcel I subsequent to his alleged abandonment was by permission. Permission to use what, exactly? Permission for the Gideons to illegally divert and use water from the Lower Well? Mr. Farley cannot legally give permission to use the waters of the State of Idaho without a valid water right. Conversely, if the permission given by Mr. Farley for use of water from the Lower Well on Parcel I was in fact permission to use water right 95-16445 on Parcel I, then that definitively disposes of his assertion that he permanently ceased using water and relinquished possession of the subject water right. Mr. Farley cannot have it both ways. In any event, and irrespective of any “permission” given by Mr. Farley, the undisputed facts in the record show that Mr. Farley caused and facilitated the use of water to occur on Parcel I after his asserted relinquishment in 2017.

Relinquishment of possession is a necessary element of abandonment. *Chill v. Jarvis*, 50 Idaho 531, (1931). Cessation of use of water is a necessary component of relinquishment of possession of a water right. The fact that Mr. Farley closed the ball valve for a period of time between 2017 and 2019 and then reopened it around the time of closing⁶ does not fulfill the necessary component of cessation of use. Upon re-opening of the valve, the water that thereby flowed from the Lower Well to the cistern for use on Parcel I was water diverted pursuant to Mr. Farley’s valid and unabandoned water right 95-16445. There was no permanent cessation of use of the water, ergo there was no relinquishment of possession of the water right.

Mr. Farley argues that because his abandonment was completed in 2017 at the moment he shut off the ball valve, any actions he took after that moment cannot be considered for purposes of determining whether there was an abandonment. As explained below, this is incorrect.

⁶ Nor does the closing and subsequent re-opening of the ball valve meet the standard for an unequivocal act demonstrating intent. Opening and then closing the ball valve is, by definition, equivocal.

First, it is important to keep in mind the thing asserted to have been abandoned is a water right, and not simply the physical water that would be divertible and usable under that right. Water is a physical thing; a water right is an incorporeal thing. Abandonment occurs when the owner of a water right intends to forevermore give-up, surrender, or relinquish the right. Cessation of the use of water under that right is a necessary component of abandonment, but cessation alone is not enough. It must be coupled with conduct that unequivocally demonstrates intent. The actions and conduct of the person alleged to have abandoned a water right, either supporting or contradicting an intent to abandon, could occur subsequent to the time that relinquishment is alleged to have occurred. As a hypothetical, let's assume that sometime after Mr. Farley closed the ball valve (which is the point in time he claims the relinquishment occurred), but before he conveyed the land to the Gideons, he had cut and capped the pipe, or even dug it up and obliterated it. Would Mr. Farley not be seeking to present such post-relinquishment evidence in support of his abandonment theory?

The undisputed evidence of Mr. Farley's conduct after the time he claims to have relinquished the water right shows that he turned the ball valve back on prior to the closing of the real estate transaction. *Farley Opp. Dec.*, pp 8-9, ¶ 35. Also, the evidence shows that he caused to be drafted and recorded (On May 31, 2019) Amended Covenants, Conditions, and Restrictions, with the intent that "any water provided to Parcel I by the Lower Well would only be a shared use and benefit" *Farley Opp. Dec.* p. 8, ¶32. This undisputed evidence demonstrates that Mr. Farley ceased using the physical thing (water) in 2017 and resumed its use in 2019. But as to his alleged intent to abandon the incorporeal thing (the water right), his turning off and then turning back on the ball valve is equivocal at best. In addition, this evidence shows that permanent cessation of use, which is a necessary component of abandonment, did not occur.

The undisputed and properly considered evidence in the record in these subcases demonstrates that water use on Parcel I was temporarily stopped for a period of time between 2017 and 2019, but use was resumed when Mr. Farley turned the ball valve on during the week of closing. There has been no permanent cessation of use, and hence no abandonment. Mr. Farley's *MAA* is **denied** regarding this issue.

IV. The Warranty Deed is not ambiguous. Mr. Farley conflates the word “uncertain” with the word “ambiguous.”

Mr. Farley asserts that the *Order* improperly found “that [he] is precluded from putting on admissible evidence of intent regarding what water rights were intended to be conveyed in the ambiguous deed because of the integration clause in the real estate purchase and sale agreement with the Gideons.” *MAA*, p. 2. Mr. Farley’s argument relies on his assertion that the Warranty Deed is ambiguous. Mr. Farley goes so far to say that it is “undisputed” that the warranty deed is ambiguous. *MAA*, p. 18. To the contrary, the Gideons fiercely dispute this assertion, and the *Order* does not find that the Warranty Deed is ambiguous. However, just to be as clear as possible, this Special Master concludes that **the Warranty Deed is not ambiguous.**

The Warranty Deed is not subject to more than one interpretation (i.e. it is not ambiguous), and therefore there is no need to examine extrinsic evidence to ascertain the intent of the parties. The *Order* simply notes that the Warranty Deed does not specifically describe the appurtenances that it is conveying. In other words, the Warranty Deed conveys certain appurtenances, but because said appurtenances are not described in writing on the face of the Warranty Deed, it is theoretically necessary to garner information from outside the four corners of the Warranty Deed as to what those appurtenances are. Although the *Order* contains a brief discussion regarding the uncertainty (not ambiguity) inherent in deeds that do not describe appurtenances with particularity, the identity of the water rights involved in the Farley-Gideon land transaction is not an issue. In this case, the appurtenant water rights were easily identified by the parties by looking at what water rights had been created for use on the property purchased by the Gideons.

It is undisputed that water right 95-16445 as originally created by Mr. Farley by his diversion and use of water from the Lower Well had a place of use on Parcel I, and that by operation of law that water right became appurtenant to the property. The theoretical uncertainty caused by the lack of particularized descriptions in the Warranty Deed, the answer to which is easily discovered with certainty (i.e. **ascertained**), is not an ambiguity to be resolved by looking to the intent of the parties. An ambiguity yields

uncertainty because, by definition an ambiguity is subject to being understood in two or more possible ways. Silence can also yield uncertainty, but not for the same reason as ambiguity. The Warranty Deed is not ambiguous and therefore it would be improper to inquire further into Mr. Farley's intent by means of examining extrinsic evidence at trial.

In accordance with the foregoing, and with the clarification of the **Order** that the Warranty Deed is not ambiguous, Mr. Farley's *MAA* is **denied** regarding this issue.

V. This Special Master declines to address Mr. Farley's assertion that the water rights should be split in proportion to the land ownership of the respective parties.

Mr. Farley asserts that if water right 95-16445 is to be split between himself and the Gideons, the split should be proportionate to their respective land ownership. Under this novel legal theory, upon division of a parcel of land with an appurtenant domestic or stockwater right, the water right would be apportioned according to the areas of land after such division. Mr. Farley seeks to extend the proportional split method used for irrigation water rights, and set forth in *Crow v. Carlson*, 107 Idaho 461, 690 P.2d 916 (1984), to domestic and stockwater rights. This legal theory is being raised for the first time in these subcases in Mr. Farley's *MAA*.

Mr. Farley's new legal theory, if adopted by the CSRBA District Court, could potentially have significant future ramifications that extend beyond the confines of these two subcases, including changing the methods and procedures currently and historically used by IDWR when dealing with divisions of land that have appurtenant domestic or stockwater rights. An issue such as this would be better suited to being raised at an earlier stage of proceeding, with a longer deliberative process. Accordingly, in an exercise of discretion, this Special Master declines to address Mr. Farley's "proportional split" legal theory in these subcases. *See Order on Challenge (Consolidated Issues) of "Facility Volume" Issue and "Additional Evidence" Issue*, SRBA Subcase Nos. 39-02708 et. al., p.21 (December 29, 1999).

In accordance with the foregoing, Mr. Farley's *MAA* is **denied** regarding this issue.

RENEWED RECOMMENDATION

In accordance with the foregoing, this Special Master RECOMMENDED that the CSRBA District Court **grant** the Gideons' *Motion for Summary Judgment Regarding Claim No. 95-18409* by means of issuing a **partial decree** for water right 95-18409 with the elements as set forth in the *Recommendation for Partial Decree Pursuant to I.R.C.P. 54(b)*, previously issued on March 19, 2024.

IT IS ALSO RECOMMENDED that the CSRBA District Court issue a **partial decree** for water right 95-16445 with the elements as set forth in the *Recommendation for Partial Decree Pursuant to I.R.C.P. 54(b)*, previously issued on March 19, 2024.

Dated August 9, 2024



THEODORE R. BOOTH
Special Master
Coeur d'Alene-Spokane River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER GRANTING IN PART AND DENYING IN PART FARLEY'S MOTION TO ALTER OR AMEND was mailed on August 09, 2024, with sufficient first-class postage to the following:

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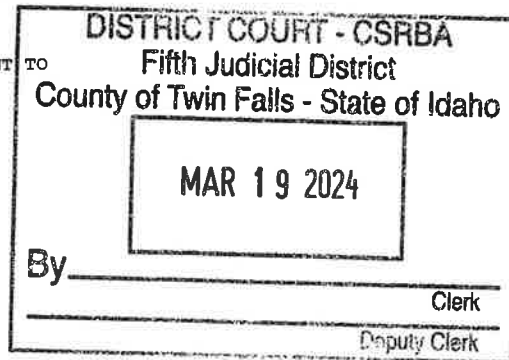
DIRECTOR OF IDWR
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A large, stylized handwritten signature in black ink, likely belonging to the Deputy Clerk, is written over the signature line.

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)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 95-18409



NAME AND ADDRESS: ARTHUR V GIDEON
KATHERINE M GIDEON
23452 N DERTING RD
HAYDEN, ID 83835-7883

SOURCE: GROUND WATER

QUANTITY: 0.02 CFS

The quantity of water under right nos. 95-16445, 95-17752 and
95-18409 shall not exceed 13,000 gallons per day.
Right Nos. 95-16445 and 95-18409 are limited to a total combined
diversion rate of 0.02 cfs.

PRIORITY DATE: 03/31/1999

POINT OF DIVERSION: T52N R03W S09 SESW Within Kootenai County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Domestic	01-01 TO 12-31	0.02 CFS
	Stockwater	01-01 TO 12-31	0.02 CFS

PLACE OF USE:	Stockwater		Within Kootenai County
	T52N R03W S09	SENE	
	Domestic		Within Kootenai County
	T52N R03W S09	SENE	

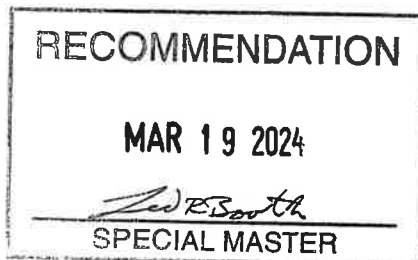
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance
with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a
final judgment and that the court has and does hereby direct that the above judgment or order shall be a final
judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.



Eric J. Wildman
Presiding Judge of the
Coeur d'Alene-Spokane River Adjudication