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DEPT. OF WATER RESOURCES

Attorneys for Arthur V. and Katherine M. Gideon

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

In Re CSRBA  
Case No. 49576

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

**RESPONSE TO BRIAN FARLEY'S  
OPENING BRIEF ON CHALLENGE**

Arthur and Katherine Gideon ("Gideon" or the "Gideons"), by and through undersigned counsel of record and pursuant to the Court's *Challenge Scheduling Order* (Sept. 4, 2024), and CSRBA *Amended Administrative Order 1* ("AO1"), Section 18, hereby submit this response to *Brian Farley's Opening Brief on Challenge* (Oct. 18, 2024) ("Challenge Open"). For the reasons discussed herein, and based on the record materials contained in Subcase No. 95-18409, which record materials are incorporated by reference herein, the Presiding Judge should uphold and affirm the Special Master's *Report and Recommendation* (Mar. 19, 2024) ("SJ Order") and his *Order Granting in Part and Denying in Part Farley's Motion to Alter or Amend* (Aug. 9, 2024) ("MAA Order") with respect to Right No. 95-18409.<sup>1</sup>

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<sup>1</sup> Gideon's focus remains the ultimate recommendation and decree of Right No. 95-18409. *Response to Farley's Motion to Alter or Amend Special Master's Memorandum Decision/Report & Recommendation* (Jul. 16, 2024) ("MAA Response"), pp. 3-4. Attached hereto as Exhibit A is

## A. STANDARD OF REVIEW

### 1. On Challenge

Gideon agrees that AO1, Section 10 (Special Masters), and Idaho Rule of Civil Procedure 53(j) govern this Court's review on challenge. Gideon also agrees that *Dorsey v. Dorsey*, 172 Idaho 667, 535 P.3d 1040 (2023) is instructive to the Presiding Judge's scope of review here. Gideon disagrees, however, with the insinuation that *Dorsey* somehow displaces or undermines the plain language of Rule 53(j), under which the Presiding Judge "must accept" the master's findings of fact unless they are "clearly erroneous." *Dorsey* does no such thing.<sup>2</sup>

The Court's evidentiary review at this stage is to independently determine whether the special master's findings of fact are supported by substantial and competent evidence. If the special master's findings are supported by substantial and competent evidence, then: (a) those findings of fact are not clearly erroneous; and (b) the Presiding Judge must accept and adopt the findings as presented. I.R.C.P. 53(j); *Dorsey*, 172 Idaho at 679-680, 535 P.3d at 1052-1053 (while the scope of the district court's evidentiary review must be "careful" and "independent," that review is simply to "determine whether the recommendations of [the] special master are clearly erroneous," and further noting that subsequent appellate review will not disturb a district court's adoption of a special master's findings upon determination that those findings are "supported by substantial and competent evidence"); see also, *Order on Challenge (Consolidated Issues) of "Facility Volume" Issue and "Additional Evidence" Issue*, SRBA Subcase Nos. 39-02708 et al. (Dec. 29, 1999)

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the Court's *CSRBA Subcase Summary Report* for Subcase No. 95-18409 for purposes of identifying and cataloguing the record materials Gideon incorporates by reference herein.

<sup>2</sup> For example, the *Dorsey* Court quoted with approval *City of Pocatello v. Idaho*, 152 Idaho 830, 275 P.3d 845 (2012), in part, for the proposition that "[t]he district court [is] to accept the special master's findings of fact unless they [are] clearly erroneous." *Dorsey*, 172 Idaho at 677, 535 P.3d at 1050.

(“Facility Volume Order”), pp. 22 (“[T]he District Court must accept a special master’s findings of fact unless they are clearly erroneous.”).<sup>3</sup> While Rule 53 does not instruct “how” this Court is to review the special master’s findings, Presiding Judge review of the “documents, affidavits, [ ] other papers, [and] . . . the transcript of proceedings” suffices. *Dorsey*, 172 Idaho at 679-680, 535 P.3d at 1052-1053.

Whether findings of fact are “clearly erroneous” turns upon whether the findings of fact are supported by “substantial and competent evidence.” *Gill v. Viebrock*, 125 Idaho 948, 951, 877 P.2d 919, 922 (1994). Evidence is “substantial and competent” if a reasonable mind would accept and rely upon it when determining whether a disputed point of fact has been proven. *Miller v. Callear*, 140 Idaho 213, 216, 91 P.3d 1117, 1120 (2004). Substantial and competent evidence is more than a mere scintilla of evidence, but less than a preponderance. *Hope v. Indus. Special Indem. Fund*, 157 Idaho 567, 570, 338 P.3d 546, 549 (2014). The mere presence of conflicting evidence does not render that relied upon by the trier of fact unsubstantial or incompetent. *Higley v. Woodard*, 124 Idaho 531, 534, 861 P.2d 101, 104 (Ct. App. 1993). This Court consistently notes:

**Substantial does not mean that the evidence was uncontradicted.** All that is required is that the evidence be of sufficient quantity and probative value that reasonable minds *could* conclude that the finding – whether it be by a jury, trial judge, or special master – was proper. It is not necessary that the evidence be of such quantity or quality that reasonable minds must conclude, only that they *could* conclude. Therefore, **a special master’s findings of fact are properly rejected only if the evidence is so weak that reasonable minds could not come to the same conclusion the special master reached.**

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<sup>3</sup> This standard is consistently applied without error by this Court. See, e.g., *Memorandum Decision and Order on Challenge and Order of Partial Decree (Wood v. Troutt)*, SRBA Subcase No. 65-05663B (May 9, 2002) (“Troutt Order”); *Memorandum Decision and Order on Challenge and Order of Partial Decrees*, SRBA Subcase Nos. 55-10288B, et al. (Jan. 3, 2005) (“55-10288B Order”); *Memorandum Decision and Order on Challenge (Whitted’s Claims) and Order of Recommitment*, SRBA Subcase No. 63-07539 (Sept. 2, 2009) (“Whitted Order”); and *Memorandum Decision and Order on Challenge and Order of Partial Decree*, SRBA Subcase No. 02-2318A (*Wilkerson*) (Aug. 29, 2011) (“Wilkerson Order”).

*See, e.g.,* Troutt Order, p. 6, n. 1, *citing Mann v. Safeway Stores, Inc.*, 95 Idaho 732, 518 P.2d 1194 (1974) and *Evans v. Hara's Inc.*, 123 Idaho 473, 849 P.2d 934 (1993) (emphasis in original and added); 55-10288B Order, p. 7, n. 2; and Whitted Order, p. 8, n. 1.

The party challenging a special master's findings of fact bears the burden of showing error, *and the reviewing court views the evidence in the light most favorable to the prevailing party.* *Memorandum Decision and Order on Challenge*, Subcase No. 02-200 (Nov. 20, 2012), pp. 3-4. Ultimately, the special master's conclusions of law are not binding on the Presiding Judge, though they are expected to be persuasive. *Higley*, 124 Idaho at 534, 861 P.2d at 104.

## **2. Summary Judgment**

Though acknowledging that this Court in this bench trial setting may draw probable inferences arising from undisputed evidentiary facts in this matter (Open, p. 5, 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 motion for summary judgment seemingly attempts to handcuff the special master's (and now the Presiding Judge's) fact-finding discretion.

The parties already endured a 4-day bench trial in Kootenai County before Judge Christensen from June 6 to June 9, 2022. *See, e.g.,* Waldera Affidavit (Jan. 31, 2023), Ex. F ("Christensen MDO"); Waldera Affidavit (Jan. 30, 2024), Ex. A ("Tr."). Dozens of trial exhibits and hundreds of pages of sworn testimony have been taken, admitted, and considered, and the weighing of witness credibility performed. *Id.* The Presiding Judge need not (and should not) re-plow that ground 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.*

In this bench trial setting the special master (and now the Presiding Judge), 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.* 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.

For the reasons discussed below, the special master’s findings and conclusions are correct 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 (and special master-recommended) Right No. 95-18409 are undisputed.

**B. The Special Master Did Not Infringe Upon or Restrict Farley’s Right to “Extinguish” Portions of Water Right 95-16445; Farley Merely Failed to Do So as a Matter of Law**

Farley’s “extinguishment” arguments rely on an amended claim form and assertions of his latent, purported subjective intent and understandings of communications with IDWR in relation

to that amended claim form. Challenge Open, pp. 6-12. What he ignores—fatally to his detriment—is the fully vested, perfected, and appurtenant water right he created when he drilled the Lower Well in March 1999, plumbed it to his cistern and home on what is now the Gideon property, and beneficially used the water therefrom for domestic and stock-watering purposes for nearly two decades under (and by operation of) Idaho Code Sections 42-111, 42-227, 42-101, and 42-220. *See, e.g., Memorandum in Support of Summary Judgment* (Jan. 30, 2024) (“SJ Open”), pp. 9-15; *see also, Claimant Gideon’s Reply in Support of Motion for Summary Judgment Re Claim No. 95-18409* (Mar. 4, 2024) (“SJ Reply”), pp. 5-22, and MAA Response, pp. 4-9.

As the special master correctly noted, Farley “fails to identify [ ] a legal mechanism or theory whereby the amendment of a claim . . . somehow works to contemporaneously extinguish the water right”; that the special master “[was] unaware of any legal authority that would result in a water right (or a portion thereof) that was claimed and then subsequently unclaimed to become non-existent at the time of unclaiming.” SJ Order, pp. 6-8. Neither Gideon, nor the special master argued or held, respectively, that Farley could not remove and consolidate the 13,000 gpd block of water he originally claimed in 2009 under his unity of title; rather, both argued and held that Farley did not do what he purportedly intended to do through his CSRBA claim amendment alone.

Farley’s options were to: (a) expressly sever and withhold the portion of then-Right No. 95-16445 from the Gideon transaction; (b) complete a statutorily-compliant application for transfer under Idaho Code Section 42-222, consistent with Idaho Code Section 42-108 consolidating the 13,000 gpd block of water by changing its place of use and modifying its purpose of use (i.e., consolidating the place of use entirely upon Farley’s remaining landholdings and omitting the former “domestic” use in favor of “stockwater” use only); or (c) amend his initial claim in this adjudication to address his place of use and purpose of use modifications without the Gideons

filing a competing adjudication claim thereto, thereby preserving the uses of water sourced from the Lower Well appurtenant to Parcel I (the Gideon property).

Farley did not expressly sever and withhold the portion of base Right No. 95-16445 appurtenant to the Gideon property given his patent failure to satisfy the bilateral knowledge and intent requirements of *Russell v. Irish*, 20 Idaho 194, 118 P. 501 (1911) and its progeny, including *Joyce Livestock Co. v. United States*, 144 Idaho 1, 156 P.3d 502 (2007). *See, e.g.*, SJ Reply, pp. 13-22; SJ Order, pp. 14-15.

Farley did not file or otherwise complete a statutorily-compliant water right transfer application. *Compare* SJ Open, p. 12, SJ Reply, p. 12 (including n. 4), MAA Response, pp. 6-7 (including n. 3), and *Supplemental Director's Report Re Subcase Nos. 95-16445 & 95-18409* (Sept. 21, 2023) ("Report") (all asserting and demonstrating this fact) to *Response in Opposition to Claimant Gideon's Motion for Summary Judgment Re Claim No. 95-18409* (Feb. 23, 2024) ("SJ Opposition"), pp. 4; 8-12 (all relying on the same IDWR documents and actions argued in Farley's Challenge Open (pp. 7-8) citing to one page in isolation in absence of a complete multipage application "Water Right Part 2A Report" as having "transfer[ed] any water right associated with the Lower Well solely for his retained use on Parcels S and T").<sup>4</sup> Instead, Farley concedes that no other water right-related documentation exists. Tr. at 701:5-702:14; SJ Order, p. 13.

And, importantly, no partial decree fixing the elements of 2019 Amended Claim 95-16445 or otherwise disallowing Gideon Claim 95-18409, nor final unified decree foreclosing claims has yet entered in the CSRBA—a point argued, un rebutted and noted by the special master. *See, e.g.*,

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<sup>4</sup> Accomplished transfer under Idaho Code Section 42-1425 was not available to Farley via claim amendment in 2019 because the statute foreclosed that opportunity as of January 1, 2006 for purposes of the north Idaho adjudications, including the CSRBA, commenced under Idaho Code Section 42-1406B. *See* I.C. § 42-1425(2).

MAA Response, pp. 7-8 (including n. 5), SJ Order, pp. 7-8, and MAA Order, pp. 3-4. This point was not lost on the Presiding Judge as early as the late claim proceedings in this matter. SJ Open, p. 14 (the Presiding Judge noting that though Farley filed his amended claim in 2019, there was no prior final decree modifying the water right elements based on the amended claim; rather the Court's focus was upon the pertinent elements of what is now Right No. 95-18409 as those water right elements were historically developed, came into existence, and as "originally established").

The special master did not interfere with Farley's right to dispose of or dispossess the water right(s) appurtenant to Parcel I (now the Gideon property). Challenge Open, p. 10. Instead, Farley freely negotiated his disposition of Parcel I and all of that parcel's "appurtenances" including, without limitation, "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" for \$895,000. SJ Reply, pp. 5-12 and MAA Response, pp. 8-9; 12-16. And Farley cannot now, through latent, unilateral, and self-serving assertions of "intent," alter or modify the express terms of the parties' real estate transaction upon learning that his attempted water right sleight-of-hand shell games did not have the legal effect he desired. MAA Response, pp. 14-15.<sup>5</sup>

IDWR did not disregard Farley's actions. Challenge Open, p. 8. *See* SJ Reply, pp. 3-5; *see also*, Report, *generally*. IDWR, the Court's independent expert and technical assistant under Idaho Code Sections 42-1410(1), 42-1401B, and 42-1412(4), determined the facts material to its examination of the development and use of Right No. 95-18409. Farley's unilateral and self-serving intent was not (and is not) material to IDWR's inquiry. Likewise, the special master did

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<sup>5</sup> Farley said it best in his *Opposition to Gideons' Motion to File Late Notice of Claim* (Mar. 15, 2023): "***The informal advice of a disinterested regulator does not cure the responsibility which was incumbent upon the Gideons and their counsel.***" *Id.*, pp. 9-11 (emphasis added). The same applies to Mr. Farley and his purported understandings and agency blame and scapegoating. Challenge Open, p. 8, n. 4.

not disregard or discount Farley's actions. Challenge Open, p. 12. Instead, the special master took note of the repeated inconsistency of Farley's litigation assertions and his actions on the ground. *See, e.g.*, SJ Order, pp. 8-9 (noting the "peculiar" and inconsistent posture of Farley's contentions); *see also, id.*, p. 10 ("Mr. Farley cannot assert that he abandoned the Parcel I portion of the water right from the Lower Well, while simultaneously facilitating the delivery and use of water from the Lower Well to Parcel I"); MAA Order, p. 4 (Farley incongruously asserts that actions taken during the CSRBA (a judicial proceeding) are immediately effective in the absence of any judicial proceeding-based determination of the same); and MAA Order, pp. 6-7 (Farley "cannot have it both ways"; he cannot continue using the 13,000 gpd block of water claimed under the 2009 base right, while at the same time asserting that he relinquished possession of the same via abandonment).

There is no need to proceed to trial to dwell on Farley's latent, unilateral, and subjective intent that cannot as a matter of law: (a) satisfy the bilateral/mutual intent and understanding water right severance and withholding requirements of *Joyce Livestock* and related authorities; (b) unwind the real property right and appurtenance that Right No. 95-18409 is on Parcel I (the Gideon property) in the absence of a CSRBA partial decree, final unified decree, or statutorily-compliant water right transfer process; or (c) vary or alter (through the introduction of impermissible parol evidence) the express and unambiguous terms of the parties real estate purchase and sale transaction and the Warranty Deed.

Again, "substantial" evidence does not mean uncontradicted evidence, and there is a difference between disputed facts, and disputed *material* facts. 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).

### C. Attempted Water Right Concentration and Consolidation is Not Abandonment

Farley's water right abandonment arguments are specious. Challenge Open, pp. 12-15. Farley lacked the requisite intent to abandon, and his actions on the ground (including ongoing use of the 13,000 gpd block of water at issue) defeat the possibility. SJ Order, pp. 9-10 (ongoing use of the water at issue fails the cessation of use element necessary to satisfy a water right abandonment); *see also*, MAA Order, pp. 5-7.

Gideon addressed and disposed of Farley's water right abandonment arguments at length and respectfully directs the Presiding Judge to those arguments to avoid needless repetition here. *See* SJ Reply, pp. 22-27; *see also*, MAA Response, pp. 9-12. Nevertheless, even a cursory review of Farley's own assertions and arguments demonstrate the complete lack of intent and action to abandon. Where there is **zero** demonstrated intent or action on the front end, there cannot possibly be "clear and convincing" evidence of abandonment on the back end.

There is **zero** evidence of intent or action to abandon any portion of the 13,000 gpd block of water claimed under Farley's 2009 Claim not only because there was no cessation of use, but because Farley expressly states that his goal was to continue using the water at issue, albeit consolidated entirely on his remaining property (Parcels S and T) after completion of the Gideon transaction. *See, e.g.*, SJ Opposition, p. 4 (emphasis added) (" . . . **Mr. Farley understood [ ] that he was accomplishing a transfer** of any water rights associated with the Lower Well solely **for his retained use** on Parcels S and T"); *Motion to Alter or Amend Special Master's Memorandum Decision / Report & Recommendation* (Apr. 29, 2024) ("MAA"), p. 11 (emphasis added) ("**Mr. Farley clearly had the intent to keep any and all water rights to the Lower Well for his exclusive use on the property he retained**, as evidenced by all of his actions taken in 2018 and 2019 for his amended claim process . . ."); and MAA, p. 17 and Challenge Open, p. 13, both citing Farley's

Notice of Error Reply (emphasis added) (demonstrating that Farley “*wished to change the water right . . . purpose* [for the Lower Well] to stockwater only, *and the place of use* to Parcels S and T only . . .”).<sup>6</sup>

Absent Gideon’s competing claim for Right No. 95-18409, Farley would have retained the entirety of the 13,000 gpd he initially claimed in 2009 for stockwater use on his remaining property. “Keeping” and “changing” the base water right elements documented in his 2009 Claim (and developed and perfected by his diversion and use of water from the Lower Well beginning in March 1999) is not abandonment, it is a “transfer.” SJ Opposition, p. 4 (quoted above).

If there was true abandonment of the water right originally claimed, there would be no viable 2019 Amended Claim, no viable competing Gideon claim to 95-18409, and no September 2023 IDWR Report recommending any portion of the 13,000 gpd block of water to anyone. If Farley intended to, and did, abandon former Right No. 95-16445 in 2017 as he said he did, then he had no subsequent reason throughout 2018 and 2019 to work with IDWR in an effort to “change,” “rearrange,” “consolidate,” or “concentrate” the Lower Well-sourced water for ongoing use on his remaining Parcels S and T. Once abandoned, there would be nothing to “change,” “rearrange,” “consolidate,” or “concentrate.”<sup>7</sup>

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<sup>6</sup> Farley’s citations to *Sears v. Berryman* and *Chill v. Jarvis* underscore these points in support of Gideon. Challenge Open, pp. 12-13. There must be “actual relinquishment or surrender of the water right”; a total “relinquishment of possession.” Farley carefully chooses his words at this Challenge stage, asserting that he “removed” and “relinquished” the domestic and stockwater use on Parcel I. *Id.*, pp. 13-14. But to what end? To, in his words, take that water and “change” its purpose and place of use; to “keep” that water for his ongoing and “exclusive use on the property he retained.” So, what water right (what 13,000 gpd block of water) did Farley actually relinquish, surrender, and abandon in its totality?

<sup>7</sup> As noted by this Presiding Judge before, abandonment of water rights requires “both the intent to abandon *and the actual surrender or relinquishment of the water right.*” Wilkerson Order, p. 10, *citing Joyce Livestock* (emphasis added). Attempts to “consolidate” the underlying 13,000 gpd block of water on Parcels S and T did not “relinquish” any part of the 13,000 gpd base right block of water. Further, Farley’s prosecution of his competing 2019 Amended Claim for the

There is no genuine dispute of material fact on these issues, Farley himself admits as much. In no way shape or form does Farley meet the “clear and convincing” evidence requirements needed to establish water right abandonment in this matter and summary judgment was properly granted in this regard.<sup>8</sup>

**D. The Parties’ Warranty Deed is Unambiguous and Farley’s Attempts to Re-Write the Transaction Fail as a Matter of Law**

Farley contends that his intent concerning the parties’ real estate transaction with respect to Right No. 95-18409 matters because the Warranty Deed is ambiguous. Challenge Open, pp. 15-

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entirety of the same 13,000 gpd block of water previously embodied by his 2009 Claim during his unity of title “is highly probative of [his] intent with respect to [that 13,000 gpd block of water].” *Id.*, p. 17. The pendency of Farley’s “active claim . . . belie[s] any assertion of an intent . . . to abandon the claim.” *Id.*, p. 19. Last, it appears that this Presiding Judge agrees that “abandonment does not apply when the party asserting abandonment”—Farley via installation and purported use of the ball valve in 2017—“is responsible for preventing the use of the water right.” *Id.*, p. 17 (this Presiding Judge “disagreeing” with contrary arguments that circumstances regarding how use of a water right is/was prevented raise genuine issues of material fact precluding a grant of summary judgment). And, finally, Farley’s own restoration of Lower Well water use on Parcel I immediately prior to the Gideon closing (MDO, p. 5, FOF 19) undoes any abandonment he asserts he completed. *Id.*, p. 11 (citation omitted) (“The resumption of use doctrine also applies to abandonment . . . the . . . doctrine originated as a defense to abandonment.”). As Farley testified: from that day forward, the Gideons were “basically the sole user of that water.” Tr. at 465:13-466:13; 470:12-13; 476:14-477:13; 600:9-601:1; and 691:13-692:20.

<sup>8</sup> Farley attempts to manufacture a “genuine dispute” by incomplete citation to Gideon counsel’s remarks during the MAA hearing. Challenge Open, p. 15, n. 12. When taken in context and read as a whole, undersigned counsel’s remarks regarding Farley’s “highly debatable and questionable” evidence of intent is weighed against Farley’s requirements to meet the “clear and convincing” evidentiary standards applicable to *both* his water right severance and withholding claims and his water right abandonment claims. Unless Farley can point to “unequivocal”—“beyond a shadow of a doubt”-type evidence, his severance and withholding and abandonment claims fail as a matter of law. Undersigned counsel then provided repeated examples where the record evidence in this matter did not match or support Farley’s briefing-based arguments. *Transcriber’s Transcript* (Jul. 23, 2024) (“MAA Tr.”), at 31:1-33:25. On the abandonment point in particular, undersigned counsel made clear that Farley’s own filings and statements make clear that he did not abandon a “damn thing.” Instead, Farley sought to “concentrate” and consolidate” the 13,000 gpd block of water at issue—Farley “spent a year and a half to two years playing his shell games trying to consolidate and concentrate that which he supposedly abandoned. This is not an abandonment case. This is a [water right] transfer case.” *Id.*, at 40:17-43:1.

19. He then takes issue with the special master's finding that the Warranty Deed is not ambiguous even though it was, to the special master, "uncertain." *Id.*, p. 15. The Warranty Deed consummating the parties' purchase and sale while, admittedly, boilerplate in its "appurtenances" language is not ambiguous. And even if it were, Farley cannot as a matter of law rewrite the parties' REPSA. SJ Reply, pp. 5-15; *see also*, MAA Response, pp. 12-16.

The deed's rote, but unqualified, conveyance of all "appurtenances" to Parcel I (the Gideon property) is not ambiguous in this matter by operation of Idaho Code Sections 42-101, 42-111, 42-220, and 42-227, combined with the historical development and use of Right No. 95-18409 on Parcel I, its lack of transfer or severance and withholding, *and, most importantly, Farley's unity of title at the time of conveyance*. Farley's unity of title is important because while it would be "paradoxical" and "non-sensical" to characterize a water right as appurtenant to the land on which it is used when there is no unity of title between the water right owner and the underlying landowner, it would be equally "paradoxical" and "non-sensical" to characterize a water right as not being appurtenant to the land on which it is used where, as here, there was unity of title. SJ Reply, pp. 9-10, *citing* 55-10288B Order, pp. 15-16, in turn *citing*, Clesson S. Kinney, *Kinney on Irrigation and Water Rights*, § 1020 (2<sup>nd</sup> Ed. 1912) (emphasis added) (where there is unity of title between the water and the land, "the doctrine is well settled . . . that a water right used in connection with a certain tract of land . . . where necessary for the beneficial enjoyment of the land . . . become[s] [an] appurtenance[ ] to the land"; *only in situations where there is not unity of title does an "arguable" ambiguity arise prompting "an examination of the intent of the grantor . . . to determine if the water right was transferred"*).<sup>9</sup>

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<sup>9</sup> Farley erroneously relies on this Court's *Memorandum Decision and Order Granting Summary Judgment*, Subcase Nos. 63-31194A and 63-31194B) (Jul. 8, 2009) ("McKay Order") for the proposition that a boilerplate, general appurtenance clause begets deed/conveyance

Sections 42-227 and 42-111 make clear that one develops and perfects (i.e., “acquires” in statutory terms) a fully-vested groundwater-sourced water right for domestic purposes “by withdrawal and use.” Sections 42-101 and 42-220 make clear that the right developed and perfected under the Sections 42-227 and 42-111 become (and are) appurtenances to the land on which the water is beneficially used (in this case Parcel I). I.C. § 42-101 (“...the right to the use of any of the public waters which have heretofore been . . . beneficially applied . . . shall become the complement of, or one of the appurtenances of, the land . . . to which . . . said water is being applied”); *see also*, I.C. § 42-220 (“ . . .all 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.”).<sup>10</sup> *Accord also Hunt v. Bremer*, 47 Idaho 490, 493, 276 P. 964, 965 (1929) (absent “any clause or stipulation” of reservation or withholding, a deed conveying land “together with appurtenances” conveys or “transfer[s] all water rights appurtenant thereto at the

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ambiguity creating a question of fact over intent that cannot be decided on summary judgment. Challenge Open, pp. 15-17 (including n. 14). Farley’s citation is misplaced because the ambiguity initially addressed arose under assertions of *lack of unity of title* between the water right owner (McKay) and the landowners (McKay and 12 other co-tenants). As noted above, unity of title, or the lack thereof, is a crucial analytical factor. Here there was unity of title. Therefore, there is no ambiguity, and the McKay Order is inapposite for Farley’s purposes at best.

Moreover, the McKay Order still granted summary judgment in favor of the grantee (Sundance) because there could be no reasonable dispute over what was meant by the phrase “water rights . . . used on the Property” under the parties’ purchase and sale agreement. Ultimately the special master, and the Presiding Judge after him, did not allow McKay to inject his subjective assertions of intent (i.e., impermissible parol evidence) to undermine the “with appurtenances” language of the underlying deeds or the express terms of the parties’ purchase and sale agreement. The same logic applies here, assuming that the Court looks beyond the undisputed unity of title present in this case. Thus, if anything, the McKay Order supports the Gideons’ arguments in this matter.

<sup>10</sup> Right No. 95-18409 comes under operation of Idaho Code Section 42-220 because it is a water right “confirmed under the provisions of this chapter”—namely, Idaho Code Section 42-227.

time of its execution”).<sup>11</sup>

The special master consistently reached the correct “unambiguous” legal conclusion while clarifying the nature of the “uncertainty” he perceived—that the uncertainty was merely “academic” without impact to the end legal outcome. *See and compare*, SJ Order, pp. 10-14 (“ . . . In [ ] subcase [95-18409], it is an academic exercise to note that the Warranty Deed, on its face, does not identify the appurtenances which it purports to convey. As a practical (rather than academic) matter, there is no uncertainty regarding the water right that is at issue (i.e., a water right from the Lower Well for domestic and stockwater uses on Parcel I . . .”); MAA Tr., at 47:6-54:10 (“ . . . I used the word uncertain, which to me is not the same as ambiguous. It simply means that when there’s just boilerplate language, you kind of have to go, okay, what are the - - you have to look outside the [deed] and see what are the appurtenances . . . I’m trying to just get to this distinction between an uncertainty . . . versus ambiguity, which to me means subject to two different interpretations”); and MAA Order, pp. 8-9 (emphasis in original) (“ . . . Mr. Farley conflates the word “uncertain” with the word “ambiguous” . . . just to be as clear as possible, this Special Master concludes that **the Warranty Deed is not ambiguous.**”).

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<sup>11</sup> This Presiding Judge seemingly agrees. *See* Wilkerson Order, pp. 20-21 (a warranty deed that is silent as to water rights but that includes an unqualified general appurtenance clause—as is the case in this matter—conveys all water rights appurtenant to the land conveyed by operation of Idaho Code Section 42-220 at a minimum). And, even in the absence of an appurtenance clause, “the general rule in Idaho is that unless expressly reserved all appurtenant water rights transfer along with the property.” *Id.*, at p. 21, *citing Joyce Livestock Co.*

Farley further argues that any use of Lower Well water on Parcel I (the Gideon property) post-closing was intended to be “permissive” only going forward by operation of Amended CC&Rs. Challenge Open, p. 14 (including n. 10). This Presiding Judge’s Wilkerson Order also disposes of this argument by operation of the Warranty Deed’s unqualified appurtenance clause. Wilkerson Order, pp. 20-21 (a subsequent and unqualified deed-based appurtenance clause controls over subsequent grantor assertions of conveyance of something less such as the mere permissive use of a water right by temporary agreement or license).

Farley seeks to rewrite and relitigate the terms of the parties' deal upon learning the failed legal effect of his 2018-2019 amended claim shuffling. To do so violates the plain, unambiguous, and fully-integrated terms of the Farley-Gideon REPSA, and the plain and unambiguous terms of the Warranty Deed. *Howard v. Perry*, 141 Idaho 139, 141, 106 P.3d 465, 467 (2005) (an integrated contract is complete on its face and cannot be modified parol evidence of one party's subjective intent)<sup>12</sup>; *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"), and *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).

Farley did not sever and withhold; he did not complete a statutorily-compliant transfer; no partial or final unified decree issued prior the Gideon's filing competing claim for the unclaimed portion of Claim No. 95-16445; and Farley certainly did not abandon the 13,000 gpd block of water at issue that is now recommended as Right Nos. 95-16445 (Farley) and 95-18409 (Gideon). Farley's citation to *Sells v. Robinson*, 141 Idaho 767, 772, 118 P.3d 99, 104 (2005) is correct where, as here, the REPSA and the deed are consistent with each other (*i.e.*, where the instruments do not contradict one another giving rise to any possibility of ambiguity). Challenge Open, p. 17. The terms of the parties' REPSA did merge into the Warranty Deed—both unmistakably conveyed all appurtenances to Parcel I without reservation or qualification.<sup>13</sup> By operation of Idaho Code

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<sup>12</sup> Parol evidence of intent is inadmissible and, therefore, fails the summary judgment admissibility requirements of Rule 56(c)(4).

<sup>13</sup> The special master did not "overlook" the fact that the Warranty Deed existed. Challenge Open, p. 17 (including n. 15). Despite acknowledging that the REPSA "could only be modified by written agreement signed by the parties," Farley obtusely contends that the Warranty Deed signed

Sections 42-101, 42-111, 42-220, and 42-227, combined with the historical development and use of Right No. 95-18409 on Parcel I, there can be no reasonable dispute over the legal conclusion that what is now recommended as Right No. 95-18409 was (and remains) one of the “appurtenances” conveyed. Farley’s latent and self-serving assertions of intent (i.e., impermissible parol evidence) simply matter not.<sup>14</sup>

**E. Neither IDWR, nor the Special Master Erred by Recommending Right 95-18409 With the Statutory Quantity Entitlement of 13,000 GPD Under Idaho Code Section 42-111**

The ongoing evolution of Farley’s “two exempt domestic water rights” (or “wells”) arguments would make Darwin proud. However, every generation succumbs to natural selection over their inherent lack of fitness.

Farley’s “two exempt domestic water rights” arguments started as an attempt to kill Gideon Claim No. 95-18409 outright. *Response in Opposition to Claimant Gideons’ Motion to File Late*

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by him alone somehow “modified” the parties’ REPSA. It did no such thing because it was not a “written agreement *signed by the parties*” (plural). And, regardless, this is not an issue because the Warranty Deed conveyed all appurtenances, including Right No. 95-18409 as an undisputed appurtenance. The two instruments operated entirely consistent with one another—there is no ambiguity whatsoever to address.

<sup>14</sup> The same would be true of any Gideon attempts to rewrite the parties’ transaction. MAA Response, p. 15 (emphasis in original) (“[t]he REPSA is the best and only admissible evidence of the Gideon’s intent with respect [to] the conveyance and ownership of Right No. 95-18409 . . . [j]ust like Farley, the Gideons bound themselves to its terms absent a separate, subsequent signed writing by the parties that does not exist. The Gideons can no more alter or vary the REPSA’s terms than Farley can.”). Consequently, Farley’s criticism of Gideon’s reliance on the REPSA and its integration clause as the best and lone-admissible evidence of their intent in the transaction are misplaced and incorrect as a matter of law. Challenge Open, p. 19.

Moreover, Farley’s assertion that Gideon “did not present facts of what their intent was” outside of their reliance on the plain and unambiguous terms of the REPSA are inaccurate. Challenge Open, p. 19. Gideon did present facts of their intent of the transaction—namely that they were conveyed, and now own, all appurtenances to Parcel I including, without limitation, Right No. 95-18409 just like the REPSA and the Warranty Deed plainly provide. MAA Response, pp. 15-16.

*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”). Farley contended that Gideon’s late claim motion must be denied as a matter of law on the grounds that no set of facts could cure or circumvent operation of Idaho Code Section 42-111 barring multiple domestic exempt wells, thereby failing the meritorious position requirements of then-applicable Rule 55. *Id.*, p. 7-8 (emphasis in original and added) (“ . . . ***[T]he Gideons do not have any legal basis or ‘meritorious position’ to claim a second constitutional use domestic water right . . . as defined in section 42-111 . . . [w]ithout a justiciable controversy, the Gideons have no ‘good cause’ and the Court should deny their motion . . . Since the Gideons cannot have ‘multiple’ de minimis domestic water rights to satisfy a single domestic use on their property, they have no legal position to pursue a late claim*”).**

The Presiding Judge roundly rejected Farley’s legal arguments under Idaho Code Section 42-111:

[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 . . .”

SJ Reply, pp. 32-33, *citing* Hearing Audio (Apr. 18, 2023), at 41:11-43:47 (emphasis added). The special master did the same. *Compare and accord*, SJ Reply, pp. 27-33 and SJ Order, pp. 15-17. Idaho Code Section 42-111 does not preclude the ownership of more than one domestic exempt

well and water right, provided that the combined daily use of water does not exceed the statutory quantity of 13,000 gpd. SJ Reply, pp. 29-31; *see also*, SJ Order, pp. 16-17.

Likewise, there is no dispute that the Upper Well (and, therefore, Right No. 95-17752) is functionally useless, thereby requiring Gideon use of the Lower Well under Right No. 95-18409. SJ Reply, pp. 27-29. Farley drilled the Lower Well for fear that the Upper Well was failing—himself identifying it as a “dry” well. Report, Att. D. *Id.* Judge Christensen entertained several days of witness testimony, weighed witness credibility, waded through dozens of trial exhibits, and arrived at pointed findings of fact that: (a) the Upper Well was “essentially a dry well”; (b) the Upper Well was “greatly deficient”; (c) the Upper Well only yields between 0.5 and 1.0 gpm “and that such is not a useful amount of water”; and (d) Farley knew (and concealed) that the now-Gideon property relies upon the Lower Well “for the vast bulk of its water supply.” Christensen MDO, pp. 3-4 (FOF 4 and 12), 12-13, and 20; *see also* Report, Att. K (Upper Well Log noting meager 0.5 -1.0 gpm yield). Farley’s ongoing assertion that the Gideons “have no need for a second exempt domestic water right” is as baseless as it is insulting. Farley’s own water right shell games led to this result. He claimed Right No. 95-17752 despite knowing that the Upper Well was functionally useless and he tries to leverage and use his deception as a sword?<sup>15</sup>

Now Farley’s “two domestic exempt wells” argument has subtly evolved into an inquiry and challenge of historical beneficial use under Idaho Code Section 42-1412(6). MAA, p. 13;

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<sup>15</sup> As Judge Christensen expressly found, Farley repeatedly: “stray[ed] from honesty in fact”; made “misleading and false statements”; and “misrepresented the water supply for the Property.” Christensen MDO, pp. 3-4, 8, 12-13, and 20. Farley further “misrepresented the fact that the Lower Well was to be shared” as opposed to belonging to Gideon alone. *Id.*, p. 21; and *accord* Tr. at 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”) and 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”).

Challenge Open, pp. 19-20.<sup>16</sup> However, the argument fails because the Legislature has spoken. The Idaho legislature, for public policy reasons important to it, statutorily set the quantity of water allowable under Idaho Code Section 42-111 (*i.e.*, 13,000 gpd for the uses meeting the definition of “domestic purposes” under Idaho Code Section 42-111(a)).

The Legislature is presumed to know the law at the time of statutory enactment and amendment (including the legal concepts of “beneficial use” and “waste”), 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, 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).<sup>17</sup>

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<sup>16</sup> Procedurally, Gideon questions the ripeness of this “beneficial use” argument because as near as they can tell, it first arose at the motion to alter or amend stage of these proceedings. *See, e.g., Facility Volume Order*, pp. 20-21. This Court reviews a motion to alter or amend consistent with Rule 52(b). The Rule “is not intended to allow parties to advance new legal theories or relitigate the merits of a case. *Id.* at 20 (citations omitted). In other words, a motion to alter or amend “does not provide a mechanism for advancing new legal theories and/or evidence that was discoverable during the pendency of the action.” *Id.*, at 21. There is no reason why Farley’s beneficial use/waste arguments could not have been raised during the underlying summary judgment proceedings as an additional, alternative argument. They are not based on any newly discovered evidence, nor any recent change in the law.

<sup>17</sup> 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 Section of 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. 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 standardized and 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

This Court, in long-recognition of this legislative prerogative (i.e., consistent with Idaho Code Section 42-111), has issued hundreds (more likely several thousands) of partial decrees for de minimis domestic and stockwater rights describing the quantity of the rights as 13,000 gpd notwithstanding the fact that “the quantity of water decreed for this water right is not a determination of historical beneficial use.”<sup>18</sup> These same propositions (statutory 13,000 gpd quantity decreed in the absence of further beneficial use examination) apply to domestic water rights bearing instantaneous diversion rates of 0.04 cfs, 0.03 cfs, all the way down to 0.01 cfs. *See* Exhibit B hereto, specifically, domestic purpose Right Nos. 95-12241 (0.04 cfs); 95-10214 (0.03 cfs); 95-10680 (0.01 cfs).<sup>19</sup> Finally, various of the CSRBA Court partial decrees contained in

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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.

<sup>18</sup> Attached hereto as Exhibit B are true and correct copies of CSRBA partial decrees entered in favor of Mr. Farley and several of his and the Gideon’s neighbors in the Derting Road corridor in Hayden, Idaho containing the statutory 13,000 gpd quantity, coupled with the Court’s acknowledgement that its judgment is not a determination of historical beneficial use. These partial decrees would not exist if Farley’s contentions in this regard were correct.

Perhaps, Farley would like to revisit his domestic and stockwater Right No. 95-16444 for an examination of historical beneficial use? Or, maybe, his pending stockwater claim under 95-16445? Such an examination likely would not be an impermissible collateral attack on the partial decree for Right No. 95-16444 because, after all, the judgment “is not a determination of historical beneficial use.”

Gideon requests that this Court take judicial notice of Exhibits B 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 questioned consistent with IRE 201(b)(2)—namely records from this Court’s own files maintained in the CSRBA. Gideon seeks judicial notice to the extent the Court finds these facts relevant as raised in Farley’s Challenge Open. These additional facts bear on the correctness and implications of Farley’s assertions, and are raised for the limited purpose of directly replying to the same.

<sup>19</sup> Farley asserts that a beneficial use examination is required here because IDWR and the special master failed to dig deeper in light of the atypical diversion rate of 0.02 cfs under 95-18409

Exhibit B hereto provide examples of combined use remarks not to exceed 13,000 gpd despite multiple uses (domestic and stockwater). *Id.*, specifically, Right Nos. 95-12328 and 95-16444. Not surprisingly, Gideon Right No. 95-17752 contains similar combined use remarks to ensure that their use of domestic exempt water under Idaho Code Section 42-111 does not exceed the 13,000 gpd quantity making the use statutorily exempt no matter the use and no matter the number of wells.

Farley presents no credible factual or legal arguments under his asserted application of Idaho Code Sections 42-104, 42-111, or 42-1412(6), or related authorities. His ongoing attempts to distract and obfuscate in an effort to rewrite the express terms of the Gideon transaction continue to fall flat.

**F. Farley's "Proportionate Share" Contention Should be Disregarded as Untimely and Fails on the Merits Anyway**

The special master, through a reasoned exercise of discretion, properly declined to consider Farley's tardy proportionate share arguments. MAA Order, p. 9. Farley seemingly (and incorrectly) suggests that: (a) application of the special master's discretion in this regard applies to late attempts to introduce new evidence only; and (b) *Dorsey* somehow alters the long-standing precedent of this Court, or the application of Rules 52, 53, or 59. Challenge Open, pp. 22-23.

Whether to grant a motion to alter or amend is left to the sound discretion of the special master, and his decision is reviewed under the "manifest abuse of discretion standard." Facility Volume Order, p. 21. In the context of motions to alter or amend, this Court correctly notes that Rule 52 does not allow the introduction of new evidence or the introduction of "new legal theories" based on evidence already in the record. Facility Volume Order, p. 21 (citations omitted).

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as opposed to the more typical 0.04 cfs. Challenge Open, p. 20. Exhibit B hereto, and IDWR's Report demonstrate otherwise.

Therefore, “[t]here can be no manifest abuse of discretion” where a special master disallows the introduction of new evidence “and/or” the advancement of “new legal theor[ies]” that were otherwise available at the trial (or, in this case, summary judgment) phase of the proceedings. *Id.* (citations omitted) (emphasis added) (“Simply stated, the Rule does not provide a mechanism *for advancing new legal theories and/or evidence that was discoverable during the pendency of the action . . .*”).

Here, the special master did not manifestly abuse his discretion because Farley concedes that: (a) his “proportionate share” arguments were not based on new evidence; and (b) it is an “alternative argument raised *after* the special master granted summary judgment . . .” Challenge Open, p. 22 (emphasis added). Farley’s “proportionate share” argument existed before the alter or amend phase, and he was obligated to present the argument—even in the alternative—before the alter or amend phase. Farley conflates the Rule 53-based “clearly erroneous” evidentiary standard at issue in *Dorsey* and the Rule 59-based “manifest abuse of discretion” standard at issue here. *See, e.g., Lowe v. Lym*, 103 Idaho 259, 646 P.2d 1030 (Ct. App. 1982).<sup>20</sup>

Nevertheless, and to the extent that the Presiding Judge feels compelled to address Farley’s “proportionate share” arguments on the merits, Gideon respectfully directs him to their MAA Response, pages 17-20. The “proportionate share” or “split” method of water rights division applies to irrigation rights, but finds no application in the context of domestic water rights. *Crow* and *Silverstein* (irrigation water right proportionate division cases) offer no instruction here

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<sup>20</sup> As reiterated by this Court in the Facility Volume Order, “the standards of I.R.C.P. 59(e) [are] instructive in the context of a motion to alter or amend a special master’s findings of fact and conclusions of law” even though Rule 59 “[does] not literally apply because a prior judgment is not entered at the special master stage of the proceeding . . . I.R.C.P. 52(b) more appropriately applie[s] . . . [h]owever, the applicable [Rule 52] standard is effectively the same.” Facility Volume Order, p. 20, citing *In Re SRBA Subcases 36-00061, 36-00062, and 36-00063, Memorandum Decision and Order on Challenge* (Sept. 27, 1999).

because the quantity entitlement of de minimis domestic water rights is a matter of statute born of type of use (“domestic use”) irrespective of the number of acres one might own. Under Section 42-111, domestic uses are entitled to upwards of 13,000 gpd no matter whether one owns 1 acre or 1,000 acres. The statutory quantity (13,000 gpd) is tied to the dwelling home, and it is undisputed that the lone dwelling at issue tied to the domestic use historically developed and perfected is owned by Gideon—conveyed to Gideon with “all appurtenances” without reservation or qualification.<sup>21</sup>

As discussed in Section E above, the Legislature has spoken and Idaho Code Section 42-111 expressly and specifically governs the water quantity question under the Gideons’ domestic purpose of use. *See, e.g., Verska v. St. Alphonsus Reg’l Med. Ctr.*, 151 Idaho 889, 895, 265 P.3d 502, 508 (2011) (courts enforce statutes as written based on their plain language, the courts do not have the authority to revise statutes); *see also, Valiant Idaho, LLC v. JV, LLC*, 164 Idaho 280, 289, 429 P.3d 168, 177 (2018) (as between the general quantity and duty of one miner’s inch per acre of irrigation water codified at Idaho Code Section 42-220 and the separate and different 13,000 gpd authorized under Idaho Code Section 42-111, Section 42-111 prevails in the context of domestic use under the “basic tenet of statutory construction [ ] that the more specific statute or section addressing the issue controls”). IDWR understands and agrees with this statutory domestic

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<sup>21</sup> Contrary to Farley’s assertions otherwise, the 13,000 gpd domestic use statutory entitlement is precisely among the property interests and rights Gideon purchased from Farley by operation of the Warranty Deed and by operation of Idaho Code Section 42-111. It is Farley, not Gideon, who cannot have it “both ways” in derogation of Idaho Code Sections 42-101, 42-220, 42-227, and 42-111, or in derogation of Idaho Constitution Article XV, Section 3 given the low yield of the Lower Well. MAA Response, pp. 17-18. Gideon purchased Farley’s former home and the domestic water right appurtenant to that home and its adjacent property.

quantity entitlement, and the constitutional domestic use preference—which is why it took great care in crafting its combined use limitation remarks. Report, pp. 13-15.<sup>22</sup>

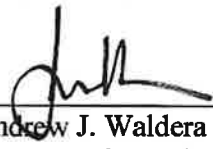
Farley is not entitled to any portion of the Gideon’s 13,000 gpd domestic use entitlement. Holding otherwise would eviscerate the constitutional domestic use preference and eviscerate the plain language of Idaho Code Sections 42-227 and 42-111.

### G. CONCLUSION

For the foregoing, Gideon respectfully requests that the Presiding Judge uphold the special master’s recommendations of Right 95-18409 as issued. Farley’s ongoing attempts at deceptive sleight-of-hand should not be rewarded. Farley’s IDWR/adjudication claim paper-based shell games did not match the truth and reality of his actions on the ground. The Department was not fooled. The special master was not fooled. And this Court should not allow itself to be fooled.

DATED this 31<sup>st</sup> day of October, 2024.

SAWTOOTH LAW OFFICES, PLLC

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

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<sup>22</sup> Gideon acknowledges their prior citation to *Crow* for the proposition that 2009 Claim “base” right 95-16445 should be “shared” accordingly. SJ Reply, p. 13. In retrospect, the citation was less than precise. The purpose of the citation was to split the “base” right (2009 Claim 95-16445) between the parties based on their respective *uses of water* sourced from the Lower Well, not the acreage of their respective landholdings post-closing (*i.e.*, to separate out the Gideon’s domestic use entitlement upon their purchase of the one and only home where that use was developed, perfected, and perpetuated by Farley under his unity of title). This intention is made clear by Gideon’s stated agreement with IDWR’s Report findings (SJ Reply, pp. 13, 25-26, and 33) and their domestic use contentions under Idaho Code Sections 42-227 and 42-111 (SJ Reply, pp. 29-33—Gideon “seek[s] only the single, aggregate volume of 13,000 gpd that is allowed them under Idaho Code Sections 42-227 and 42-111(a) . . . IDWR acted and recommended accordingly via the use of combined use limitations . . . Gideon suggested such an approach on their Late Claim Reply, and IDWR took that approach several months later in its Report”).

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31<sup>st</sup> day of October, 2024, I caused a true and correct copy of the foregoing **RESPONSE TO BRIAN FARLEY'S OPENING BRIEF ON CHALLENGE** to be served by the method indicated below, and addressed to the following:

Clerk of the Court  
CSRBA  
253 3<sup>rd</sup> Ave. North  
P.O. Box 2707  
Twin Falls, ID 83303-2707

☐ 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  
E tthompson@martenlaw.com

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

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

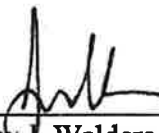
☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile  
☐ iCourt/Email

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

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

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

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

  
\_\_\_\_\_  
Andrew J. Waldera

# CSRBA

## SUBCASE SUMMARY REPORT 95-18409

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CSRBA  
10-23-2024

SUBCASE SUMMARY REPORT

HTML12

SUBCASE: 95-18409      FILE#: 01006  
 CLAIMANT: GIDEON, ARTHUR V  
 23452 N DERTING RD

HAYDEN      ID      83835  
 STATUS: CHALLENGE SET      SPECIAL MASTER: WILDMAN, ERIC J  
 WATER SOURCE: GROUND WATER  
 ISSUES: NAME AND ADDRESS  
 SOURCE  
 QUANTITY  
 PRIORITY DATE  
 POINT(S) OF DIVERSION  
 PURPOSE(S) OF USE  
 PERIOD OF YEAR  
 PLACE OF USE  
 0

### \*\*\*\* PARTIES INVOLVED \*\*\*\*

|                            |                           |
|----------------------------|---------------------------|
| ARTHUR V GIDEON            | C ATTY: ANDREW J WALDERA  |
| BRIAN T FARLEY             | O ATTY: TRAVIS L THOMPSON |
| ARTHUR V & KATHERINE M GID | O ATTY: ANDREW J WALDERA  |
| KATHERINE M GIDEON         | C ATTY: ANDREW J WALDERA  |

### \*\*\*\* ROA ENTRIES \*\*\*\*

|                   |                                                                                                                                |                        |
|-------------------|--------------------------------------------------------------------------------------------------------------------------------|------------------------|
| <u>01-31-2023</u> | MOTION FOR LATE CLAIM                                                                                                          | MG 04-19-2023          |
| <u>01-31-2023</u> | NOTICE OF CLAIM FILED                                                                                                          |                        |
| <u>01-31-2023</u> | GIDEON MEMORANDUM IN SUPPORT OF STANDARD FORM 4 MOTION TO FILE LATE NOTICE OF CLAIM                                            |                        |
| <u>01-31-2023</u> | AFFIDAVIT OF ANDREW J WALTERS IN SUPPORT OF GIDEON'S STANDARD FORM 4 MOTION TO FILE LATE NOTICE OF CLAIM                       |                        |
| <u>01-31-2023</u> | NOTICE SETTING HEARING ON MOTION TO FILE LATE HS                                                                               | 04-18-2023 0130(PT)    |
| <u>03-15-2023</u> | RESPONSE IN OPPOSITION TO CLAIMANT GIDEONS' MOTION TO FILE LATE NOTICE OF CLAIM                                                | 03-15-2023             |
| <u>03-15-2023</u> | DECLARATION OF TRAVIS L THOMPSON IN SUPPORT OF RESPONSE IN OPPOSITION TO CLAIMANT GIDEONS' MOTION TO FILE LATE CLAIM           | 03-15-2023             |
| <u>03-15-2023</u> | DECLARATION OF MICHAEL S BISSELL IN SUPPORT OF RESPONSE IN OPPOSITION TO CLAIMANT GIDEONS' MOTION TO FILE LATE NOTICE OF CLAIM | 03-15-2023             |
| <u>03-30-2023</u> | REPLY IN SUPPORT OF GIDEON STANDARD FORM 4 MOTION TO FILE LATE NOTICE OF CLAIM                                                 | 03-30-2023             |
| <u>04-18-2023</u> | HEARING HELD ON MOTION TO FILE LATE CLAIM                                                                                      | HH 04-18-2023 0130(PT) |
| <u>04-18-2023</u> | MINUTES                                                                                                                        |                        |
| <u>04-19-2023</u> | ORDER GRANTING MOTION FOR LATE CLAIM                                                                                           |                        |
| <u>04-19-2023</u> | LATE CLAIM FORWARDED TO IDWR                                                                                                   | 04-19-2023             |
| <u>05-22-2023</u> | DIRECTOR'S REPORT FILED                                                                                                        |                        |
| <u>05-22-2023</u> | NOTICE OF FILING DIRECTOR'S REPORT                                                                                             |                        |
|                   | OBJECTIONS DUE                                                                                                                 | 7/21/23                |
|                   | RESPONSES DUE                                                                                                                  | 9/19/23                |
| <u>05-22-2023</u> | HEARING IF UNOBTected                                                                                                          | 11/21/23               |
|                   |                                                                                                                                | 8B 07-21-2023 0400(PT) |
|                   |                                                                                                                                | RB 09-19-2023 0400(PT) |
|                   |                                                                                                                                | HV 11-21-2023 0130(PT) |



|                   |                                                                                                                                                                     |                        |
|-------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|
| <u>06-30-2023</u> | OBJ 01 F/B FARLEY, BRIAN                                                                                                                                            | RB 09-19-2023 0001     |
| <u>07-11-2023</u> | NOTICE SETTING SCHEDULING CONFERENCE                                                                                                                                | SS 10-03-2023 0900(PT) |
| <u>07-21-2023</u> | FAXED: OBJ 02 F/B GIDEON, ARTHUR & KATHERINE                                                                                                                        | RB 09-19-2023 0002     |
| <u>07-21-2023</u> | AMENDED OBJ 03 F/B GIDEON,                                                                                                                                          | RB 09-19-2023 0003     |
| <u>09-21-2023</u> | SUPPLEMENTAL DIRECTOR'S REPORT                                                                                                                                      |                        |
| <u>10-03-2023</u> | SCHEDULING CONFERENCE HELD                                                                                                                                          | SH 10-03-2023 0900(PT) |
| <u>10-03-2023</u> | MINUTES                                                                                                                                                             |                        |
| <u>10-04-2023</u> | ORDER SETTING MANDATORY SETTLEMENT<br>CONFERENCE AND APPOINTING SPECIAL MASTER<br>BILYEU AS SETTLEMENT MODERATOR                                                    | LS 11-08-2023 0800(PT) |
| <u>11-17-2023</u> | TRIAL SCHEDULING ORDER                                                                                                                                              | TV 04-10-2024 0800(PT) |
|                   | PRETRIAL CONFERENCE                                                                                                                                                 | PV 04-03-2024 0130(PT) |
|                   | DISCOVER COMPLETION DEADLINE                                                                                                                                        | DV                     |
|                   | SUMMARY JUDGMENT HEARING                                                                                                                                            | HV 02-28-2024 0900(PT) |
| <u>01-30-2024</u> | MOTION FOR SUMMARY JUDGMENT REGARDING<br>CLAIM 95-18409                                                                                                             | MG 03-19-2024          |
| <u>01-30-2024</u> | LDGD: MEMORANDUM IN SUPPORT OF MOTION FOR<br>SUMMARY JUDGMENT REGARDING CLAIM 95-18409                                                                              |                        |
| <u>01-30-2024</u> | AFFIDAVIT OF ANDREW J WALDERA IN SUPPORT OF<br>MOTION FOR SUMMARY JUDGMENT REGARDING<br>CLAIM 95-18409                                                              |                        |
| <u>02-02-2024</u> | NOTICE OF SERVICE OF FIRST DISCOVERY REQUESTS                                                                                                                       |                        |
| <u>02-09-2024</u> | NOTICE OF SERVICE                                                                                                                                                   |                        |
| <u>02-09-2024</u> | 1ST AMENDED SCHEDULING ORDER                                                                                                                                        |                        |
|                   | RESPONSE BRIEF ON SUMMARY JUDGMENT MOTION                                                                                                                           | RB 02-23-2024 0400(PT) |
|                   | REPLY BRIEF ON SUMMARY JUDGMENT MOTION                                                                                                                              | YB 03-04-2024 0400(PT) |
|                   | HEARING ON SUMMARY JUDGMENT                                                                                                                                         | HS 03-11-2024 0900(PT) |
|                   | DISCOVERY COMPLETE                                                                                                                                                  | ZV 03-29-2024 0400(PT) |
|                   | PRETRIAL CONFERENCE SET                                                                                                                                             | PV 04-03-2024 0130(PT) |
|                   | TRIAL SET                                                                                                                                                           | TV 04-10-2024 0800(PT) |
| <u>02-23-2024</u> | RESPONSE IN OPPOSITION TO CLAIMANT GIDEONS'<br>MOTION FOR SUMMARY JUDGEMENT NO 95-18409                                                                             | 02-23-2024             |
| <u>02-23-2024</u> | DECLARATION OF TRAVIS L THOMPSON IN SUPPORT<br>OF RESPONSE IN OPPOSITION TO CLAIMANT<br>GIDEONS' MOTION FOR SUMMARY JUDGEMENT<br>REGARDING CLAIM NO 95-18409        |                        |
| <u>02-23-2024</u> | DECLARATION OF BRIAN T FARLEY IN SUPPORT OF<br>RESPONSE IN OPPOSITION TO GIDEONS' MOTION<br>FOR SUMMARY JUDGMENT                                                    |                        |
| <u>03-04-2024</u> | CLAIMANT GIDEONS' REPLY IN SUPPORT OF MOTION<br>FOR SUMMARY JUDGEMENT REGARDING CLAIM NO<br>95-18409                                                                | 03-04-2024             |
| <u>03-05-2024</u> | NOTICE OF INTENT OF COUNSEL FOR GIDEONS TO<br>APPEAR REMOTELY AT SUMMARY JUDGEMTN HEARING                                                                           |                        |
| <u>03-11-2024</u> | HEARING HELD ON SUMMARY JUDGMENT                                                                                                                                    | HH 03-11-2024 0900(PT) |
| <u>03-11-2024</u> | MINUTES                                                                                                                                                             |                        |
| <u>03-12-2024</u> | NOTICE OF TAKING DEPOSITION DUCES TECUM OF<br>CRAIG SAXTON                                                                                                          |                        |
| <u>03-12-2024</u> | SECOND DECLARATION OF TRAVIS L THOMPSON IN<br>SUPPORT OF RESPONSE IN OPPOSITION TO<br>CLAIMANT GIDEONS' MOTION FOR SUMMARY<br>JUDGEMENT REGARDING CLAIM NO 95-18409 |                        |
| <u>03-19-2024</u> | MEMORANDUM DECISION AND ORDER ON GIDEONS'<br>MOTION FOR SUMMARY JUDGMENT                                                                                            |                        |
| <u>03-19-2024</u> | REPORT & RECOMMENDATION OF MASTER                                                                                                                                   | CB 04-29-2024          |
| <u>03-19-2024</u> | NOTICE OF ISSUANCE - MASTERS R&R                                                                                                                                    |                        |
| <u>03-19-2024</u> | CERTIFICATE OF MAILING - MASTER R&R                                                                                                                                 |                        |
| <u>03-19-2024</u> | MASTER WAS: 705 BOOTH, THEODORE R.                                                                                                                                  |                        |
| <u>03-22-2024</u> | NOTICE TO VACATE DEPOSTION DUCES TECUM OF<br>CRAIG SAXTON                                                                                                           |                        |
| <u>04-29-2024</u> | MOTION TO ALTER OR AMEND SPECIAL MASTER'S<br>MEMORANDUM DECISION/REPORT & RECOMMENDATION<br>ASSIGNED MASTER WAS: 129 WILDMAN, ERIC J                                | MF 04-29-2024          |
| <u>04-29-2024</u> | DECLARATION OF BRIAN T FARLEY IN SUPPORT OF<br>MOTION TO ALTER OR AMEND                                                                                             |                        |
| <u>04-29-2024</u> | DECLARATION OF TRAVIS THOMPSON IN SUPPORT OF<br>MOTION TO ALTER OR AMEND                                                                                            |                        |
| <u>05-09-2024</u> | NOTICE SETTING HEARING ON MOTION TO ALTER OR<br>AMEND                                                                                                               | HV 06-25-2024 1230(PT) |

|                   |                                                                                                                    |                        |
|-------------------|--------------------------------------------------------------------------------------------------------------------|------------------------|
| <u>05-22-2024</u> | HEARING RESET ON MOTION TO ALTER OR AMEND                                                                          | HV 07-09-2024 1200(PT) |
| <u>06-24-2024</u> | STIPULATION TO MOVE HEARING ON MOTION<br>TO ALTER OR AMEND                                                         | MG 06-24-2024          |
| <u>06-24-2024</u> | HEARING ON MOTION TO ALTER OR AMEND                                                                                | HS 07-23-2024 1230(PT) |
| <u>07-16-2024</u> | RESPONSE TO FARLEY'S MOTION TO ALTER OR AMEND<br>SPECIAL MASTER'S MEMORANDUM DECISION /<br>REPORT & RECOMMENDATION | 07-16-2024             |
| <u>07-23-2024</u> | HEARING HELD ON MOTION TO ALTER/AMEND                                                                              | HH 07-23-2024 1230(PT) |
| <u>07-23-2024</u> | MINUTES                                                                                                            |                        |
| <u>08-09-2024</u> | ORDER GRANTING IN PART AND DENYING IN PART<br>FARLEY'S MOTION TO ALTER OR AMEND                                    |                        |
| <u>08-23-2024</u> | BRIAN FARLEY'S NOTICE OF CHALLENGE<br>ASSIGNED MASTER WAS: 705 BOOTH, THEODORE R                                   | CF 08-23-2024          |
| <u>09-04-2024</u> | CHALLENGE SCHEDULING ORDER                                                                                         | HS 12-12-2024 0130(PT) |
| <u>09-27-2024</u> | REPORTER'S TRANSCRIPT LODGED                                                                                       |                        |
| <u>10-18-2024</u> | LDGD: BRIAN FARLEY'S OPENING BRIEF ON<br>CHALLENGE                                                                 |                        |

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

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

In Re CSRBA  
Case No. 49576

PARTIAL DECREE PURSUANT TO  
I.R.C.P. 54(b) FOR

Water Right 95-10264

NOV - 8 2019

By

Clerk

Deputy Clerk

NAME AND ADDRESS: KATHRYN HENDERSON  
MICHAEL HENDERSON  
21394 DERTING RD  
HAYDEN LAKE, ID 83835

SOURCE: GROUND WATER

QUANTITY: 0.04 CFS

The quantity of water under this right shall not exceed 13,000  
gallons per day.

PRIORITY DATE: 10/01/1986

POINT OF DIVERSION: T52N R03W S09 SESW Within Kootenai County

PURPOSE AND  
PERIOD OF USE:

PURPOSE OF USE  
Domestic

PERIOD OF USE  
01-01 TO 12-31

QUANTITY  
0.04 CFS

Domestic use is for 1 home.

PLACE OF USE: Domestic Within Kootenai County  
T52N R03W S09 SESW

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.

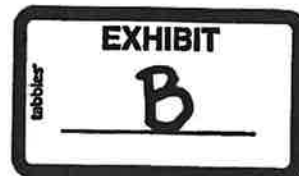
THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS  
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT  
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY  
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE  
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

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. Schildman  
Presiding Judge of the  
Coeur d'Alene-Spokane River Adjudication

CSRBA -PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b)  
Water Right 95-10264



Page 1  
Jun-24-2019

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 95-12241

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

NOV - 8 2019

By \_\_\_\_\_

Clerk

Deputy Clerk

NAME AND ADDRESS: DENISE R BOREN  
WILLIAM B BOREN  
PO BOX 825  
HAYDEN, ID 83835

SOURCE: GROUND WATER

QUANTITY: 0.04 CFS

The quantity of water under this right shall not exceed 13,000  
gallons per day.

PRIORITY DATE: 12/31/2006

POINT OF DIVERSION: T52N R03W S09 SENW Within Kootenai County

| PURPOSE AND PERIOD OF USE: | PURPOSE OF USE | PERIOD OF USE  | QUANTITY |
|----------------------------|----------------|----------------|----------|
|                            | Domestic       | 01-01 TO 12-31 | 0.04 CFS |

Domestic use is for 1 home.

PLACE OF USE: Domestic T52N R03W S09 SENW Within Kootenai County

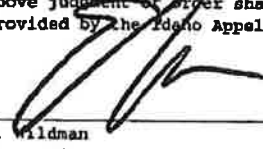
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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  
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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

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NOV 22 2019  
DEPARTMENT OF  
WATER RESOURCES

DISTRICT COURT - CSRBA  
DISTRICT OF THE  
TWIN FALLS Fifth Judicial District  
County of Twin Falls - State of Idaho

NOV - 8 2019

By \_\_\_\_\_ Clerk  
\_\_\_\_\_  
Deputy Clerk

Page 1  
Jun-24-2019

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NOV 05 2024

DEPT. 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

|                                       |              |
|---------------------------------------|--------------|
| DISTRICT COURT - CSRBA                |              |
| Fifth Judicial District               |              |
| County of Twin Falls - State of Idaho |              |
| NOV - 8 2019                          |              |
| By _____                              | Clerk        |
|                                       | Deputy Clerk |

In Re CSRBA )  
Case No. 49576 )

PARTIAL DECREE PURSUANT TO  
I.R.C.P. 54(b) FOR  
Water Right 95-10302

NAME AND ADDRESS: HAROLD JAY MADDOX  
PAMELA J MADDOX  
24476 N DERTING RD  
HAYDEN, ID 83835-7941

SOURCE: GROUND WATER

QUANTITY: 0.04 CFS

The quantity of water under this right shall not exceed 13,000  
gallons per day.

PRIORITY DATE: 04/01/1999

POINT OF DIVERSION: T52N R03W S09 SWNE Within Kootenai County

|                               |                             |                |          |
|-------------------------------|-----------------------------|----------------|----------|
| PURPOSE AND<br>PERIOD OF USE: | PURPOSE OF USE              | PERIOD OF USE  | QUANTITY |
|                               | Domestic                    | 01-01 TO 12-31 | 0.04 CFS |
|                               | Domestic use is for 1 home. |                |          |

PLACE OF USE: Domestic T52N R03W S09 SWNE Within Kootenai County

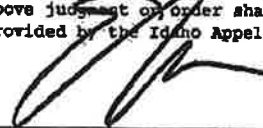
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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).

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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

RECEIVED

NOV 05 2024

DEPT. OF WATER RESOURCES

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

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

NOV - 8 2019

By \_\_\_\_\_ Clerk  
Deputy Clerk

In Re CSRBA  
Case No. 49576

PARTIAL DECREE PURSUANT TO  
I.R.C.P. 54(b) FOR  
Water Right 95-10548

NAME AND ADDRESS: JAMES DAY  
ROSE E DAY  
24102 N DERTING RD  
HAYDEN, ID 83835

SOURCE: GROUND WATER

QUANTITY: 0.04 CFS

The quantity of water under this right shall not exceed 13,000  
gallons per day.

PRIORITY DATE: 05/19/2006

POINT OF DIVERSION: T52N R03W S09 SENE Within Kootenai County

PURPOSE AND

PERIOD OF USE:

PURPOSE OF USE  
Domestic

PERIOD OF USE  
01-01 TO 12-31

QUANTITY  
0.04 CFS

Domestic use is for 1 home.

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

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

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NOV 05 2024

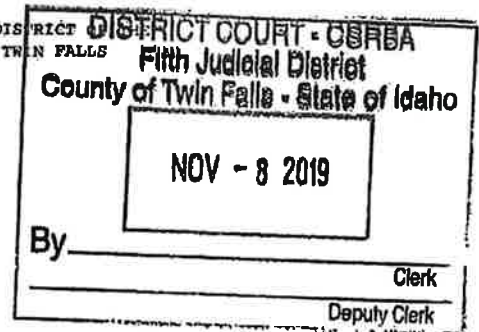
DEPT. OF WATER RESOURCES

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
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 95-12328



NAME AND ADDRESS: PAMELA J FLORY  
25024 N DERTING RD  
HAYDEN, ID 83835-7888

SOURCE: GROUND WATER

QUANTITY: 0.04 CFS

The quantity of water under this right shall not exceed 13,000  
gallons per day.

PRIORITY DATE: 07/17/1996

POINT OF DIVERSION: T52N R03W S09 NENW Within Kootenai County

PURPOSE AND  
PERIOD OF USE:

| PURPOSE OF USE | PERIOD OF USE  | QUANTITY |
|----------------|----------------|----------|
| Stockwater     | 01-01 TO 12-31 | 0.02 CFS |
| Domestic       | 01-01 TO 12-31 | 0.04 CFS |

Domestic use is for 1 home.

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

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  
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judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

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

RECEIVED

NOV 05 2024

DEPT. OF WATER RESOURCES

2020 DEC 01 PM 02:00  
DISTRICT COURT - CSRBA  
TWIN FALLS CO., IDAHO  
FILED

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 )  
 ) PARTIAL DECREE PURSUANT TO  
 ) I.R.C.P. 54(b) FOR  
Case No. 49576 )  
 ) Water Right 95-16444

RECEIVED

DEC 10 2020

DEPARTMENT OF  
WATER RESOURCES

NAME AND ADDRESS: BRIAN T FARLEY  
PO BOX 1836  
HAYDEN LAKE, ID 83835-1836

SOURCE: GROUND WATER

QUANTITY: 0.04 CFS

The quantity of water under Right Nos. 95-9252 and 95-16444  
shall not exceed 13,000 gallons per day.

PRIORITY DATE: 09/30/2006

POINT OF DIVERSION: T52N R03W S09 SESW Within Kootenai County

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

Domestic use is for 1 home.

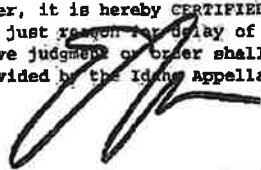
|               |               |      |                        |
|---------------|---------------|------|------------------------|
| PLACE OF USE: | Stockwater    |      | Within Kootenai County |
|               | T52N R03W S09 | SESW |                        |
|               | Domestic      |      | Within Kootenai County |
|               | T52N R03W S09 | SESW |                        |

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  
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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

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NOV 05 2024

DEPT. OF WATER RESOURCES

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NOV 22 2019

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

PARTIAL DECREE PURSUANT TO  
I.R.C.P. 54(b) FOR  
Water Right 95-10680

|                                                                                            |              |
|--------------------------------------------------------------------------------------------|--------------|
| DISTRICT COURT - CSRBA<br>Fifth Judicial District<br>County of Twin Falls - State of Idaho |              |
| NOV - 8 2019                                                                               |              |
| By _____                                                                                   | Clerk        |
|                                                                                            | Deputy Clerk |

NAME AND ADDRESS: KENT COSSAIRT  
SUSAN COSSAIRT  
22415 N CORBIN HILL RD  
HAYDEN, ID 83835

SOURCE: GROUND WATER

QUANTITY: 0.01 CFS

The quantity of water under this right shall not exceed 13,000  
gallons per day.

PRIORITY DATE: 09/13/2001

POINT OF DIVERSION: T52N R03W S09 NENW Within Kootenai County

|                               |                            |                                 |                      |
|-------------------------------|----------------------------|---------------------------------|----------------------|
| PURPOSE AND<br>PERIOD OF USE: | PURPOSE OF USE<br>Domestic | PERIOD OF USE<br>01-01 TO 12-31 | QUANTITY<br>0.01 CFS |
|-------------------------------|----------------------------|---------------------------------|----------------------|

Domestic use is for 1 home.

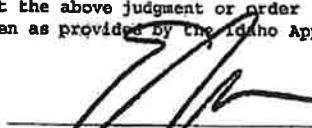
PLACE OF USE: Domestic T52N R03W S09 NENW Within Kootenai County

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  
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