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DEPT. OF WATER RESOURCES

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

In Re CSRBA	)	Subcase Nos.: 95-16445 & 95-18409
	)	
	)	REPLY IN SUPPORT OF MOTION
	)	TO DISALLOW GIDEONS'
Case No. 49576	)	VERIFIED PETITION FOR COSTS
	)	AND ATTORNEY FEES
	)	
	)	

COMES NOW, Brian T. Farley ("Farley), claimant and objector in the above-referenced consolidated subcases, by and through undersigned counsel of record, and hereby submits this *Reply* regarding the *Verified Petition for Costs and Attorney Fees* ("Fees Petition") filed by claimants/objectors Arthur & Katherine Gideon ("Gideons") on February 6, 2025. This reply addresses the *Gideon Response to Farley's Motion to Disallow Petition for Costs and Fees* ("Gideon Resp.") filed on April 10, 2025. As explained below and in the original *Motion to Disallow Gideons' Petition for Costs and Attorney Fees* (Feb. 20, 2025) ("Motion"), Farley respectfully requests the Court to disallow the Gideons' request for costs and attorney fees.

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REPLY IN SUPPORT OF MOTION TO DISALLOW GIDEONS' PETITION

MAY 01 2025

ARGUMENT

The Gideons are pursuing an award of costs and attorney fees in these consolidated subcases claiming they are the sole prevailing party and should be awarded fees pursuant to contract and section 12-121. A fees award is a matter of discretion for this Court and is reviewed based upon an abuse of discretion standard. *See Sunnyside Park Utilities, Inc. v. Sorrells*, ___ Idaho ___, 2025 WL 1005835 at *7 (Apr. 4, 2025).

As explained in Mr. Farley's *Motion* and this *Reply*, the Gideons are not the sole prevailing party in these consolidated subcases, and they are not entitled to fees as a matter of contract. The parties' underlying real estate purchase and sale agreement (REPSA) does not displace the controlling warranty deed that did not include an attorneys fee provision. Since the unambiguous deed conveyed the underlying property and appurtenant water rights, as determined by this Court, the Gideons are prohibited from seeking fees on the merged REPSA. *See Rose v. Martino*, ___ Idaho ___, 562 P.3d 972, 989 (2025). Relying upon a line of breach of contract cases, the Gideons erroneously claim the deed does not apply and that the attorney fee provision in the REPSA is a future obligation that survives. A review of this precedent reveals otherwise and the Gideons cannot escape the Supreme Court's holding in *Rose*. As the CSRBA adjudicated the parties' water right claims, there was no breach of contract action that would trigger application of the REPSA's attorney fee provision. *Rose* is therefore dispositive and the Gideons' attempts to distinguish and minimize the merger doctrine's effect should be rejected.

Next, Mr. Farley raised legitimate questions of fact and law in these subcases and did not oppose the Gideons' summary judgment "frivolously, unreasonably, or without foundation." Consequently, the Court should deny the Gideons' requested costs and fees under section 12-121. Although the Court ultimately disagreed with Mr. Farley's position and granted summary

judgment to the Gideons, that does not mean Mr. Farley failed to raise good faith arguments reasonably based on the unique facts of this case. *See Garner v. Povey*, 151 Idaho 462, 468, 259 P.3d 608, 614 (2011).

Finally, if the Court decides to award fees to the Gideons, it should only authorize a “reasonable” fee as required by I.R.C.P. 54. For the reasons set forth in the *Motion*, the Gideons’ requested amount should be reduced to eliminate excessive time, identify a reasonable hourly rate, eliminate duplicate work, and eliminate all time related to the mediated settlement conference in order to set forth a reasonable fee under the circumstances. *See Motion* at 18-22. In sum, Mr. Farley respectfully requests the Court exercise its discretion and deny the Gideons’ petition for costs and attorneys fees accordingly.

I. The Gideons are Not the Sole Prevailing Party.

The Gideons believe that since they received a partial decree in subcase 95-18409 that warrants sole “prevailing party” status for the Court’s fees analysis. *Gideon Resp.* at 2-6. However, the Gideons omit the fact they also objected to IDWR’s recommendation for 95-18409 and their objection to the quantity element was unsuccessful.¹ *Compare Director’s Report 95-18409* (May 22, 2023) with *Standard Form 4 Motion to File Late Notice of Claim* (Jan. 31, 2023) and *Amended SFI Objection to 95-18409* (July 21, 2023). There is no question the Gideons did not “prevail” in the manner they requested, receiving a lesser authorized diversion rate for their domestic use. Moreover, the parties’ water rights are now linked by a “combined use” remark so the Gideons’ right cannot be used without regard to Mr. Farley’s use under 95-16445.

¹ The Gideons do not even reference the differences between their original claim, their objection, and the Department’s final recommendation for water right 95-18409.

Further, subcase 95-18409 was formally consolidated with subcase 95-16445 on July 11, 2023 and the cases proceeded together to partial decrees. In short, the “main issue” in these consolidated subcases ultimately concerned both water rights and their resulting partial decrees. Unlike the case relied upon by the Gideons, Farley exited the CSRBA with a water right. *See Thornton v. Pandrea*, 161 Idaho 301, 315, 385 P.3d 856, 870 (2016) (“Mr. Thornton lost both his own claim and the liability aspect of Clark’s counterclaim”).

The Gideons admit each party received a water right but claim Farley’s water right is something less and that he cannot receive a “victory out of an undisputed issue.” *Gideon Resp.* at 2. The Gideons overlook their late objection to 95-16445, the litigation that followed for the late claim 95-18409, and the fact the subcases were consolidated and proceeded through a single 706 Report and summary judgment proceeding. Following the filing of their summary judgment motion, the Gideons then served discovery requests on Mr. Farley questioning the basis of his water right claim no. 95-16445.² *See Ex. A (excerpts of the Gideons’ First Set of Discovery Requests to Brian T. Farley)*. Despite claiming no opposition to Mr. Farley’s water right, the Gideons were simultaneously pursuing a different position and who knows what would have happened had a trial occurred.

In short, the facts of what was happening on the ground during the litigation are far different than the story the Gideons are portraying for purposes of seeking their attorney fees now. The two subcases were intertwined from the start, and the “unclaimed” portion of 95-16445

² The parties extended the response deadline to the discovery requests following the outcome of the summary judgment motion. However, the fact the Gideons were still contesting 95-16445 at the time highlights the point that the consolidated subcases did not just concern 95-18409.

ultimately became water right claim 95-18409.³ The Gideons' attempt to assert the "main issue" of these consolidated subcases was just 95-18409 is therefore erroneous and should be rejected.

II. The CSRBA is Not a Breach of Contract Case.

The CSRBA is a general stream adjudication commenced pursuant to Idaho Code § 42-1406B ("Northern Idaho water rights adjudications"). The adjudication is a "quiet title" action to the water rights in the Coeur d'Alene-Spokane River Basin. *See also* I.C. § 6-401 ("all actions to adjudicate water rights . . . as against other water users shall be brought under the provisions of chapter 14, title 42, Idaho Code"). A water right claim decreed in the adjudication is a "real property" right. *See* I.C. § 55-101; *City of Blackfoot v. Spackman*, 162 Idaho 302, 309, 396 P.3d 1194, 1191 (2017); *In re SRBA (Basin-Wide Issue 17)*, 157 Idaho 385, 391, 336 P.3d 792, 798 (2014). Further, water rights are defined by their decreed elements. *See* 162 Idaho at 306, 336 P.3d at 1188.

The claims filed in these consolidated subcases were based upon exempt domestic and stockwater uses, and ownership of the underlying properties. *See generally*, notices of claim 95-16645 and 95-18409. The Gideons originally represented to this Court that they owned Mr. Farley's water right 95-16645 outright because they "purchased parcel no. 52N03W094700 from Mr. Farley on or about June 7, 2019 . . ." *See Objection to 95-16445* (July 23, 2020) (emphasis added). At about that same time the Gideons filed a *Notice of Change of Ownership* with IDWR for water right 95-17752. *See* Ex. N to 706 Report. In that notice the Gideons represented they acquired the water right on "June 7, 2019." *Id.*

Tellingly, the Gideons' evidence of "ownership" or the required "conveyance document" is the June 7, 2019 warranty deed attached to their signed ownership form. *See id.* In other

³ *See Memorandum Decision and Order on Gideons' Motion for Summary Judgment* at 8 ("The amended claim simply resulted in the Parcel I place of use and the associated purposes of use being unclaimed").

words, the Gideons have claimed ownership of the various water rights related to Parcel I based upon the warranty deed, not any purchase and sale agreement. *See Insight LLC v. Gunter*, 154 Idaho 779, 785, 302 P.3d 1052, 1058 (2012) (“A land-sale transaction concludes upon the delivery of the deed”); *see also, Brett v. Dooley*, 80 Idaho 237, 240, 327 P.3d 355, 357 (1958) (“there must be valid delivery of the instrument before the title transfers”).

As such, for the present fee dispute it is critical for the Court to recognize the type of case before it: 1) a water rights adjudication, i.e., quiet title case (not a breach of contract case); and 2) that the deed controls concerning the water rights. In short, the Gideons did not initiate these consolidated subcases by filing a complaint for breach of contract against Mr. Farley.⁴

A. The Idaho Supreme Court’s Decision in *Rose v. Martino* Prohibits the Gideons’ Attorney Fees Claim Based on the Prior Agreement.

The Gideons, perhaps recognizing the fatality of their argument based upon the *Rose* precedent, merely claim it is “inapplicable here” in a lone footnote. *See Gideon Resp.* at 9, n. 1. A quick recap of *Rose* is worthy of the Court’s review, as the decision squarely eliminates the Gideons’ claim for fees based upon the prior real estate purchase and sale agreement.

In *Rose*, after being sued for quiet title regarding a strip of land, the appellants (Roses) filed a third-party action against the couple they purchased the property from (respondents Martinos) for breach of warranty of title and breach of the covenant of seisin. 562 P.3d at 977. The district court denied the Roses’ motion for partial summary judgment on the breach of warranty claim and further denied the Martinos’ claim for attorneys fees, including the claim for fees based on a provision in the prior purchase and sale agreement. *See id.* at 981. The Roses

⁴ The CSRBA was initiated by the Idaho Department of Water Resources filing the commencement petition. *See* I.C. § 42-1406B; *see also, Commencement Order for the Coeur d’Alene-Spokane River Basin General Adjudication* (Nov. 12, 2008). The adjudication is not a breach of contract lawsuit between the Gideons and Mr. Farley.

appealed and the Martinos filed a cross-appeal on the attorneys fee issue and also sought fees on appeal pursuant to the agreement. *See id.* at 982.

Addressing the attorneys fee issue the Supreme Court expressly found:

The district court did not err when it determined, based on *Sells v. Robinson*, 141 Idaho 767, 775, 118 P.3d 99, 107 (2005), that the Roses' claim is based on a warranty deed and that the deed does not contain an attorney fee provision. In *Sells*, we declined to award attorneys fees under a term in the purchase and sale agreement **when the plaintiff's claims were based on the deed.** *Id.* The *Sells* case involved claims for timber trespass, conversion, and damages after the defendant logged part of the plaintiffs' property without permission. *Id.* at 770, 118 P.3d at 102. On appeal, the plaintiffs sought attorneys fees under Appellate Rule 41 and the purchase and sale agreement. *Id.* at 775, 118 P.3d at 107. We declined to award attorney fees on appeal because the claims at issue were not based on the purchase and sale agreement but were "based on the deed which has no attorney fee provision." *Id.* **Similar to the plaintiffs in *Sells*, in this case the Roses' claim is not based on the purchase and sale agreement but is based on the warranty deed, which does not contain an attorney fee provision.** Thus, it was not error for the district court to decline to award attorneys fees under the terms of the purchase and sale agreement.

563 P.3d at 989 (emphasis added).

The Gideons' water right claims in this adjudication are based on the June 7, 2019 warranty deed, not the purchase and sale agreement. *See e.g., Insight LLC*, 154 Idaho at 785, 302 P.3d at 1058. The Gideons have repeatedly argued their ownership of water right 95-18409 is based upon the unity of title and operation of law.

qFor example, the Gideons have represented the following throughout these subcases:

While Farley presumed that he could control the water right development and perfection from the Lower Well as a matter of contract, that water right development and perfection (ripening) **into a real property right appurtenant to the Gideon property occurred outside, and irrespective of any contract.**

Reply in Support of Gideon SF4 Motion to File Late Notice of Claim at 9 (emphasis added).

8. The parties' transaction closed on or about June 7, 2019. Tr. 470:12-13; *see also*, Report, Ex. N (Warranty Deed). Consistent with the PSA, the **controlling warranty deed** contained no water right-related withholdings or exclusions. Report, Ex. N. Instead, **the deed expressly conveyed Parcel I to Gideon "with appurtenances"** without qualification. Report, Ex. N.

* * *

While Farley presumed that he could control water right development and perfection from the Lower Well as a matter of contract and adjudication claim amendment in 2019, **that water right development and perfection ripening into a real property right appurtenant to the Gideon property occurred outside, long prior to, and irrespective of, any contract or adjudication form.**

* * *

In short, and in the absence of deed-based severance, Farley's development and use of the Lower Well on what is not the Gideon property (Parcel I) controls. . . . and there was no deed-based withholding and severance; instead, Gideon obtained the former Farley property together "with appurtenances" without qualification or reservation of anything water right-related. Report, including Ex. N.

See Memorandum in Support of Motion for Summary Judgment Regarding Claim No. 95-18409 at 7, 11, 15 (Jan. 30, 2024) (emphasis added).

At oral argument on the summary judgment motion, counsel for the Gideons emphasized that the deed completed the conveyance of the water right:

And so parol evidence of Farley's intent does not matter and cannot be used to modify, alter, or rewrite **the parties' contract and the consummation of the transaction through the deed.**

Now I grant you that the purchase and sale agreement of the deed speaks in terms of appurtenances or appurtenant to. The purchase and sale agreement does reference, specifically in Section 7, water rights and wells and water systems, but speaks to them in terms of appurtenances.

In this matter, what is now recommended as 18409 is by operation of law an appurtenance to the Gideon property for two reasons. **First, it is a product, a portion of base right 16445, that which was initiated, developed, and perfected under unity of title.**

Tr. p. 12, ln. 18 – p. 13, ln. 8 (Mar. 11, 2024 summary judgment hearing) (emphasis added).

In order for a water right to transfer as an appurtenance, you've got to have three pieces. One, the water right has to have a place of use on the ground that's being conveyed and a purpose of use on that ground.

Two, the grantor needs to own both the water right and the land that's being conveyed, unity of title.

And then, the third piece would be there is no evidence at the time of transfer that the parties intended for that water right to be withheld and retained by the grantor . . . **So in my mind, correct me if I'm wrong, appurtenancy is something that kind of lies in wait and really doesn't even matter until there's a conveyance; right?**

Tr. p. 29, ln. 16 – p. 30, ln. 14 (emphasis added).

My personal feeling is that the deed controls. Unless you know that there is not unity of title, the deed controls because Idaho Code Sections 42-220 and 42-101 and 55-101 are self-executing. **Once a water right is developed and perfected, it attaches to that property as a matter of statute.**

Tr. p. 85, lns. 12-17 (emphasis added).

At the hearing on the motion to alter or amend, the Gideons' counsel again argued that water right 95-18409 was established by law and passed with the conveyance of the property by the deed, and that the purchase and sale agreement was unnecessary for that determination:

Consequently, you, as at least I understand it, concluded, "It is not necessary to resort to extra deed evidence to clear up any uncertainty regarding the water right at issue, nor is there a dispute about the particular elements thereof. Rather, the dispute is whether the water right was or was not conveyed."

Again, that comes back to the appurtenance issue under 42-220 and 42-101, which you disposed of.

So what Gideon argued is not that the deed and its boilerplate language use of the term was ambiguous. Quite the contrary. It was entirely consistent with the purchase and sale agreement.

And only assuming arguendo that you disagreed, which I don't think you did, would you then consult the purchase and sale agreement.

Tr. p. 47, ln. 12 – p. 48, ln. 3 (July 23, 2024 motion to alter or amend hearing) (emphasis added).

But as we cited in our reply brief on summary judgment, no such ambiguity or lack of unity and title, no such circumstance exists here. Therefore, the typical course of appurtenances, **the deed's language, including all appurtenances unqualified and by operation of those statutes cited, gets you where you need to be.** There is no ambiguity. There is no uncertainty because of the unity of title.

Tr. p. 51, lns. 12 – 29 (emphasis added).

Again, all roads lead to the conveyance of 18409 to Gideon given the plain and unambiguous appurtenance language in the deed by operation of this unity of title, which you don't see them touch.

Tr. p. 54, lns. 4 – 7 (emphasis added).

In short, the Gideons have repeatedly argued that the water right and its conveyance were controlled by unity of title, operation of Idaho statutes, and the appurtenance provision in the deed. The Gideons' notice of claim for water right 95-18409 was based on the deed (Ex. N to the 706 Report), not the purchase and sale agreement.⁵ Based upon the Idaho Supreme Court's controlling precedent in *Rose v. Martino*, since there is no "attorneys fees" provision in the deed, the Gideons cannot recover on the merged purchase and sale agreement. *See also, Response to Brian Farley's Opening Brief on Challenge* at 16 ("The terms of the parties' REPSA did merge into the Warranty Deed—both unmistakably conveyed all appurtenances to Parcel I without reservation or qualification").

Despite this precedent and admission, the Gideons cobble together a strained argument based upon the "exception" to the merger doctrine analyzed in certain Idaho Court of Appeals decisions.⁶ As explained below, that precedent fails as each case concerns a failed future promise under the prior agreements, not the deeds. The Gideons wrongly assert that their fee

⁵ Although this Court and the Special Master referenced that the underlying REPSA was consistent with the warranty deed, that discussion was unnecessary and does not displace the controlling unambiguous language in the deed and the fact title to the property and water right transferred with the deed. *See Memorandum Decision and Order of Partial Decrees* at 10 ("that portion of the Lower Well water right recommended in subcase 95-18409 was conveyed to the Gideons as an appurtenance to Parcel I via the plain language of the warranty deed as a matter of law").

⁶ Counsel has not found a similar line of decisions issued by the Idaho Supreme Court. Since the distinguishing factor of filing a lawsuit on the agreement or the deed appears to resolve any conflict, it does not appear that the appellate courts have different precedents. To the extent any conflict does exist, the Idaho Supreme Court decisions control. *See Hausladen v. Knoche*, 159 Idaho 358, 362, 360 P.3d 367, 371 (Ct. App. 2015) ("Like the district court, we are bound to follow the decisions of the Supreme Court when there is a conflict between its decisions and ours").

request is a matter “of contract that is not controlled or affected by the parties’ Warranty Deed.”

Gideon Resp. at 6. To the contrary, as described above, the Gideons repeatedly argued their water right claim was “controlled” by the deed. There is no attorneys fee provision in the deed, and they did not sue Mr. Farley in the CSRBA for breach of contract.

Stated another way, the attorneys fee provision in the agreement is not a stand alone future promise that the Gideons can enforce independently apart from some other obligation under the agreement. If Mr. Farley failed to perform a promise under the agreement, the Gideons could file a breach of contract to enforce the agreement. However, that is not what is happening in the CSRBA where each party has filed independent water right claims, and the Gideons are not claiming Mr. Farley failed to convey the water right as promised.

The Gideons allege their “attorneys fee” claim on the purchase and sale agreement survives based upon an exception to the merger doctrine. *See Gideon Resp.* at 7. The Gideons mistakenly argue that since they were not trying to “upset or undermine the conveyance of land under the deed” and the water right claim did not “implicate title to possession of, quantity of, or the emblements of the land at issue,” that means they are free to pursue attorneys fees under the prior agreement as a stand-alone collateral stipulation.⁷ *Id.* at 9. The Gideons allege their claim falls within the “exception” on the theory their water right claim was “advanced and litigation

⁷ The Gideons argue the “water rights-related question was unrelated to, and does not upset, conveyance of title, possession, quantity, or the emblements of the land at issue, that question and the fee provision of the of the REPSEA applying to litigation over that question are collateral to, and independent of, the land title conveyance itself—immune from merger by operation of the Warranty Deed in this matter.” *Gideon Resp.* at 12. This argument is completely contrary to what they represented to the Court where they stated the water right was an “appurtenance” to Parcel I and passed with the conveyance of the land. Mr. Farley conveyed the land and all “appurtenances” which this Court concluded included water right 95-18409. The Gideons have no claim for breach of the purchase and sale agreement and have filed no action to that effect in the CSRBA. To now claim the water right is “unrelated” to the conveyance of the property after they succeeded on summary judgment on that very issue is prohibited by judicial estoppel. *See Herndon v. City of Sandpoint*, 172 Idaho 228, 239, 531 P.3d 1125, 1136 (2023) (“[the doctrine] is intended to prevent a litigant from playing fast and loose with the courts. . . . Judicial estoppel precludes a party from advantageously taking one position, then subsequently seeking a second position that is incompatible with the first”).

ensued defending and enforcing the ‘appurtenances’ language contained in the deed *consistent with* the provisions of the REPSA.” *Id.* at 10. These arguments completely miss the point on the substance of the CSRBA, the fact the water right was conveyed with the deed, and that without an attorneys fee provision in the deed, they have no lawful basis to seek fees based upon that merged agreement.⁸

Turning to the Idaho Court of Appeals decision in *Yates v. Hull Farms, Inc.*, __ Idaho __, 563 P.3d 1246 (2025), the case is distinguishable and does not support the Gideons argument here in the CSRBA. In that case Hull Farms entered into a purchase and sale agreement to acquire a large several thousand acre ranch from Yates in Custer County, Idaho. 536 P.3d at 1248. The parties executed an addendum in which Yates requested Hull Farms to set aside a five-acre parcel for Yates’ personal use, and a second addendum where the parties agreed Hull Farms would quitclaim the parcel to Yates after recording the survey of the parcel which Yates was responsible to obtain. *See id.* Yates transferred a warranty deed for the entire ranch to the title company which later transferred a special warranty deed to Hull Farms. *See id.* No survey had been completed and neither of the deeds mentioned the parcel to be set aside for Yates, nor did the deeds reference the agreement or its addenda. *See id.* The following year Yates completed the survey and demanded Hull Farms convey the five-acre parcel to him. Hull Farms refused and Yates sued for specific performance requiring Hull Farms to quitclaim the parcel to Yates “pursuant to the parties’ agreements in the PSA.” *Id.* (emphasis added). The district court held the prior agreement merged with the deeds and that Hull Farms could not rely upon the agreement to recover attorneys fees. *See id.*

⁸ The Gideons filed and pursued water right 95-18409, not Mr. Farley. As a party to the adjudication, Mr. Farley had a statutory right to file an objection and pursue his defenses and claims regarding the water right claim. *See* I.C. § 42-1411(5).

On appeal, the Court of Appeals reversed the district court and held that even though the agreement to convey the five-acre parcel back was unenforceable, the attorneys fee provision survived because Yates filed a breach of contract action. 536 P.3d at 1249-50. Addressing the facts and distinguishing *Sells* and *Rose*, the Court of Appeals explained:

However, the Court in *Sells* did not address merger as it related to the attorney fee issue, noting only that the claim in the case was not based on the purchase and sale agreement, but on the deeds themselves. *Id.* The Court did not intimate that attorney fees would not be appropriate had the claim been based on the purchase and sale agreement. Similarly, the Idaho Supreme Court in *Rose v. Martino* [citation omitted] recently held that neither party was entitled to attorney fees under the contract because the claim was based on “a breach of the warranty deed that did not contain an attorney fee provision.” . . . The Court stated: “Similar to the plaintiffs in *Sells*, in this case the Roses’ claim is not based on the purchase and sale agreement but is based on the warranty deed, which does not contain an attorney fee provision.” *Id.* Implicit in the rulings in *Sells* and *Rose* is that had the claims been based on the purchase and sale agreement, the court would have looked to the contract to determine an award of attorney fees, rather than the deed.

In this case, Yates’ claims were based on the PSA the district court determined to be unenforceable due to merger, not on the deeds.

* * *

Thus, Hull Farms contends, the doctrine of merger limits claims made to title, possession, quantity or emblements of land and not collateral stipulations or agreements, i.e., the usual intendments of a deed. Consequently, **the attorney fee provision in the PSA** was unaffected by the merger into the deeds, and **may be invoked in a case, such as here, where the claims are based on the PSA, not the deeds.**

The PSA reflected that Hull Farms promised it would later convey the Parcel to Yates once a legal description was determined. This promise was similar to the contract in *Katerman* in that the parties agreed on a future agreement, but because Yates never recorded a survey for the legal description, that future agreement never materialized. As such, the district court held that the PSA, as it related to the terms or description of the Parcel, was unenforceable due to a lack of a sufficient property description. . . . The PSA provided for an award of attorney fees to the prevailing party should there be any litigation surrounding the PSA. Consistent with *Hilbert*, and other authorities discussed above, **because the attorneys fee provision in the PSA did not merge into the deed, Yates based his claims on the PSA, and Hull Farms prevailed on the claim, Hull Farms is entitled to attorney fees under the PSA** even though the contract was

determined to be unenforceable. Therefore, the district court's denial of attorney fees under the PSA is reversed.

563 P.3d at 1249, 1251-52 (emphasis added).

The salient factor on the attorneys fee issue was the fact the lawsuit was initiated on the purchase and sale agreement, not the subsequent warranty deeds.⁹ Here, by contrast, the basis for the Gideons filing water right claims in the CSRBA is rooted squarely in the June 7, 2019 warranty deed, not the prior purchase and sale agreement. *See* Warranty Deed, Ex. N, 706 Report; Gideon *Standard Form 1 Objection* to 95-16445 (July 23, 2020) (“E. The Gideons purchased parcel no. 52N03W094700 from Mr. Farley on or about June 7, 2019”); *see* Gideon *Memorandum in Support of Standard Form 4 Motion to File Late Notice of Claim* at 1 (Jan. 31, 2023) (“This proposed late claim stems from a June 2019 residential real estate transaction . . .”).

Consequently, *Yates* and the Court of Appeals precedent is not controlling in this matter, and does not as the Gideons’ claim, provide any recognized exception to the merger doctrine. Since the water right claim is based upon the deed, and the deed does not include an attorneys fee provision, *Rose* controls and cuts off any claim to fees based upon the prior purchase and sale agreement.

The Gideons next wrongly argue that the REPSA fee provision is a “broad contingent future obligation” that survives past the deed. *Gideon Resp.* at 10. To the contrary, the fee provision only survives in the event the Gideons file a future suit on the REPSA. As noted above, the CSRBA is a not a breach of contract case. The Gideons have not filed a complaint in the CSRBA against Mr. Farley claiming he breached the REPSA. Rather, each party has filed and pursued their own water right claims to a partial decree. The fact Mr. Farley disputed the

⁹ This distinguishing factor is highlighted by the Appellant Hull Farms, Inc.’s brief which emphasized the underlying lawsuit was initiated on the PSA, not the deed. *See* Ex. B (highlighted excerpts of Appellant’s opening brief).

Gideons' claim and pursued his arguments to match his amended claim and the original Director's Reports does not transform the CSRBA subcases into a "breach of contract" action.

The Gideons' argument that the "attorneys fee" provision is similar to an ancillary contract promise that is not merged with, but instead, is unrelated to the deed and transfer of the land is flat wrong. The attorneys fee provision only applies in a lawsuit where the Gideons allege Farley breached a separate promise in the REPSA. Again, no such cause of action is before this Court. Moreover, the Gideons' subtle sleight of hand characterization that they "defended the deed as consistent with the REPSA" does not change the CSRBA into a breach of contract case.¹⁰ The determination of the water right claims, and the fact the transfer occurred as appurtenance set forth in the warranty deed, leaves nothing remaining of the REPSA in the adjudication. Therefore, the Court should deny the Gideons' request for attorneys fees on the basis of the prior agreement.

B. The SRBA *Sundance* Decision is Distinguishable and Not Controlling.

The Gideons rely upon the *Sundance* decision from the SRBA in support of their request for fees based upon the REPSA. See *Gideon Petition* at 8-9, *Gideon Resp.* at 13-16. Again, Mr. Farley disputes the applicability of the prior agreement's attorney fees provision as discussed above. Further, unlike the facts in *Sundance* which concerned a "commercial transaction," the

¹⁰ The Gideons allege that since these subcases do not address "title, possession, quantity, or emblems of the land," the merger doctrine is inapplicable and that the REPSA attorneys' fee provision is alive and well. *Gideon Resp.* at 16. But the water rights were conveyed as an "appurtenance" to the land by operation of the deed and statute. The Gideons argued for that very point throughout this litigation. They are not claiming Mr. Farley unlawfully withheld the water rights contrary to the agreement. Further, the attorneys fee provision in the REPSA is not a stand alone future obligation that the Gideons are claiming Mr. Farley breached, similar to the non-performance of promises not covered in the deeds in other cases. See e.g. *Jolley v. Idaho Securities, Inc.*, 90 Idaho 373, 384, 414 P.2d 879, 885 (1966) ("Where the covenants in the contract do not relate to the conveyance, but are collateral to and independent of the conveyance, they are not merged in the deed, in so far as the deed is only a part performance of the contract"). Stated another way, the Gideons admit they have no stand alone cause of action based on the REPSA's attorneys fee provision. See *Gideon Resp.* at 6 ("Gideon's cost and fee request is: . . . (b) not a standalone affirmative 'claim' for relief under applicable law").

Gideons have admitted their property purchase was for personal residential use. *See Memorandum in Support of Summary Judgment Regarding Claim No. 95-18409* at 1 (Jan. 30, 2024) (“the parties’ pending claims stem from a June 2019 residential real estate transaction between Gideon and Brian Farley”) (emphasis added).¹¹ Accordingly, regardless of any claim under the purchase and sale agreement, the fact the SRBA Court awarded fees to the prevailing party in *Sundance* pursuant to section 12-120(3) clearly distinguishes the facts in that case.¹²

The Gideons wrongly claim that the water rights in this case were conveyed equally by the REPSA and warranty deed, and that somehow puts the facts on par with the commercial transaction in *Sundance*. *See Gideon Resp.* at 15. Again, the water rights were transferred by the deed as an “appurtenance,” and since the deed controlled on that question, any claim resorting to the REPSA has no relevance. The fact they are “consistent” as the Gideons allege does not mean the REPSA stands on equal grounds or is dispositive for purposes of conveying the water right. Indeed, if the deed contained different language, i.e., reserving the water rights to the grantor, that would control over any conflicting provision in the REPSA. *See Sells v. Robinson*, 141 Idaho 767, 772, 118 P.3d 99, 104 (2005) (“The timber language in the REPSA does not constitute a collateral agreement relating to Timber rights, independent of the terms of the deed. Therefore,

¹¹ Idaho Code § 12-120(3) does not apply to residential real estate transactions. *See Treasure Valley Home Sols., LLC v. Chason*, 171 Idaho 655, 661-62, 524 P.3d 1272, 1278-79 (2023).

¹² To the extent the Special Master allowed the fees under the prior contract based upon reasoning contrary to controlling Idaho Supreme Court precedent (i.e., *Rose*), this Court has an obligation to disregard it. *See e.g., State v. Rawlings*, 159 Idaho 498, 506, 363 P.3d 339, 347 (2015) (“Rather, we simply expect lower courts, including the Court of Appeals, to follow decisions of this Court when there is a conflict between our decisions on an issue of law and those of the Court of Appeals”). The Special Master concluded that the “record underlying this final judgment shows that the determination of ownership of the water right was derived from the written Purchase and Sale Agreement.” *See Special Master’s Report and Recommendation re: Sundance Investments Ltd. Partnership’s Request for Attorneys Fees* at 9 (Subcase No. 63-3119A et al.; May 17, 2010). By contrast, the determination of the water rights ownership in this case turned on the warranty deed, not the prior purchase and sale agreement. *See Memorandum Decision* at 10 (“that portion of the Lower Well water right recommended in subcase 95-18409 was conveyed to the Gideons as an appurtenance to Parcel I via the plain language of the warranty deed as a matter of law”).

the terms of the REPSA merged into the deed, and only the deed's language should be considered by this Court . . .").

Further, the Gideons wrongly claim that Mr. Farley was not "successful" in the adjudication on the misrepresentation that "as pointed out by both IDWR and Gideon, Farley's use of 95-16445 is subordinate to Gideon's use of the 13,000 gpd block of water sourced from the Lower Well for domestic purposes." *Gideon Resp.* at 14. Nowhere did IDWR find or recommend that Mr. Farley's use of water is "subordinate to" the Gideons' first use of 13,000 gpd. The Gideons misread the combined use remarks and the effect on their domestic use. As explained by IDWR, the combined use remarks "would still allow claim no. 95-16445 to divert up to 13,000 gpd if water right no. 95-17752 was diverting the full 13,000 gpd for domestic use only, while limiting the stockwater use between both rights to 13,000 gpd since it is the same stock." *See* 706 Report at 14 (emphasis added). The partial decree for water right 95-18409 further provides that "the quantity of water decreed for this water right is not a determination of historical beneficial use." *See Partial Decree 95-18409* (Jan. 24, 2025). In other words the Gideons were not awarded some alleged 13,000 gpd "block of water" to the exclusion of Mr. Farley's stockwater use.¹³ While they cite their own briefs and claim Mr. Farley took "nothing from these proceedings" to bolster their *Sundance* analogy, their arguments on this issue are simply untrue.

¹³ The Gideons mistakenly refer to the domestic statute as an absolute quantity entitlement. Idaho Code § 42-111(1)(a) allows for the use of water for "homes . . . livestock and for any other purpose in connection therewith, if the total use is not in excess of thirteen thousand (13,000) gallons per day." The statute provides an upper limit authorization, not an absolute entitlement, particularly if the Gideons attempt to exclude Mr. Farley from using water under 95-16445. Indeed, the Gideons cannot "hoard" or stockpile water they cannot put to beneficial use. *See AFRD#2 v. IDWR*, 143 Idaho 862, 880, 154 P.3d 433, 451 (2007); *A&B Irr. Dist. v. Spackman*, 155 Idaho 640, 650, 315 P.3d 828, 838 (2013) ("The concept that beneficial use acts as a measure and limit upon the extent of a water right is a consistent theme in Idaho water law"). The partial decree makes clear that the total combined use under all water rights cannot exceed 13,000 gallons per day.

In sum, the Gideons' arguments related to the deed and the controlling precedent on *Rose* are without merit and should be rejected. Since the warranty deed that conveyed Parcel I and the appurtenant water rights does not include an attorneys fee provision, the prior REPSA's provision is extinguished by the merger doctrine. Moreover, the Gideons' claimed "exception" does not exist as the water right claims are based upon the deed, not the prior agreement. The Court should deny the Gideon's request for attorney fees on the prior agreement accordingly.

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

Although the Court denied Mr. Farley's objection to the Gideons' claim 95-18409, the arguments and defenses raised before the CSRBA were not frivolous, unreasonable, or without foundation. The Gideons dispute Mr. Farley's position, but responding to their summary judgment motion, and pursuing the right for further review of the Special Master's recommendations was allowed by Idaho's civil rules and AO1. In other words, exercising a lawful remedy is not an "abuse of process."¹⁴ See *Gideon Resp.* at 16.

The litigation over the exempt domestic/stockwater groundwater right in this matter was unique and highly factual based upon the complex history of the property development and subsequent sale of Parcel I. Stepping back, this was not a case concerning previously licensed or decreed water rights. The groundwater use had never been formally documented or recorded with IDWR. Whereas Mr. Farley pursued his water right claims (95-17752 and 95-16445) and received Director's Reports consistent with his good faith efforts to identify those rights with distinct parcels he was preparing to sell and retain, that arrangement was undone when the

¹⁴ The Gideons admit Mr. Farley had the right to file a motion to alter or amend and notice of challenge. See *Gideon Resp.* at 16, n. 7. While they disagree with his arguments, that does not transform those positions into an "abuse of process" or a frivolous case. If the case was so straightforward and "garden variety" as the Gideons suggest, then perhaps retaining multiple attorneys and spending countless hours pursuing their position was unnecessary. The Gideons cannot have it both ways on this point.

Gideons arrived. Mr. Farley worked with IDWR for over a year and they recommended water rights consistent with his understanding.

The Gideons' hyperbole regarding Mr. Farley's intent and arguments (i.e., "kitchen sink" and "threw at the wall trying to kill Right No. 95-18409") does not displace the truth that these subcases were complex and involved intricate facts and reasonable arguments that Mr. Farley believed should be resolved at trial. Mr. Farley's abandonment and proportionate split defenses included questions of material fact and application of Idaho law, they were not "specious" or "inconsistent." *Gideon Resp.* at 18. The fact Mr. Farley's position was not accepted does not mean that result demands an award of attorneys fees under section 12-121. Just the opposite, the Idaho Supreme Court has found that attorneys fees are not warranted when a novel legal theory is presented. *See Hall v. Exler*, 170 Idaho 835, 846, 517 P.3d 87, 96 (2022); *Glatte v. Hernandez*, 170 Idaho 481, 486, 512 P.3d 1104, 1109 (2022).

Finally, the Gideons misconstrue Mr. Farley's merger doctrine argument in a strained attempt to justify fees under section 12-121. Although Mr. Farley contended the deed was ambiguous as to what water rights passed with the conveyance of Parcel I given the unique posture and facts regarding his amended claim, the Court disagreed. *See Memorandum Decision* at 10-11. That result precludes the Gideons' request for fees on the prior REPSA per the Idaho Supreme Court's decision in *Rose*. *See Farley Motion* at 10-15. Mr. Farley is entirely within his rights to rely upon that precedent in defending against the present fees request. This is not an inconsistent position, it is a matter of relying upon the present facts and decisions in this case coupled with controlling precedent. Moreover, as explained above, it was the Gideons that repeatedly contended the deed was unambiguous and controlling throughout this litigation. Whereas that position now sinks their attorneys fee request on the REPSA, they have backed

away from it hoping to convince the Court it doesn't matter. The Court should see through this argument and deny it accordingly.

Mr. Farley's defenses, though denied, were not frivolous, unreasonable, or without foundation. Just because the Court granted the Gideons' summary judgment motion does not mean that Mr. Farley's position warrants an award of fees under the standard set forth for section 12-121. For the reasons set forth above, and in the *Motion*, Mr. Farley requests the Court to exercise its discretion and deny the Gideons' petition for attorney fees accordingly.

IV. The Court Should Deny the Gideons' Request for Unreasonable Fees.

The Gideons' attempt to brush off the Rule 54(e)(3) factors based upon the prior real estate agreement should be rejected outright. *See infra*, Argument Section II. Moreover, as admitted by the Gideons, if the Court chooses to award attorney fees based upon section 12-121, the fee must be "reasonable." *See Gideon Resp.* at 19.

The Gideons allege Mr. Schmidt's hourly rate in these subcases is "reasonable" solely based upon rates of "consulted colleagues" in unrelated non-water rights adjudication litigation. *See Gideon Resp.* at 19. That conversation is an insufficient basis to establish a "reasonable" billable rate in the CSRBA, including these consolidated subcases. Mr. Waldera's hourly rate of \$300 is stipulated as reasonable and whereas Mr. Schmidt has no water law specialty, his rate should be reduced to that same amount rate, or less, in the event fees are awarded.¹⁵ Moreover, the Gideons have no response to the fact Mr. Schmidt "duplicated" Mr. Waldera's work. Instead,

¹⁵ Mr. Waldera argues his rate "under-market" but provides no support or extrinsic evidence to back up this allegation. What is or is not a "market" or "reasonable" rate has not been sufficiently established by the Gideons. Simply relying upon "information and belief" through conversations with other attorneys in the Treasure Valley does not establish a "reasonable" billable rate for these subcases. If Mr. Waldera's rate is found to be reasonable, then that should establish a cap for any fees charged by Mr. Schmidt. Stated another way, the Gideons have not established that his higher rates are "reasonable" under the circumstances, particularly without evidence of comparable billable rates in the CSRBA for similarly experienced counsel.

the Gideons only point to Mr. Schmidt's "superior knowledge of the parties' Kootenai County proceedings" as justification for charging an additional \$20,000 in these subcases. *See Gideon Resp.* at 20; *Farley Motion* at 20. Consulting on related cases does not mean that attorneys can or should be awarded fees for doubling efforts here. At a minimum, billing for two attorneys for the same work is patently "unreasonable" in the context of awarding fees.

Finally, the Gideons disregard their competing claim, their objection to 95-18409, and blame all of their litigation expenses on Mr. Farley. *See Gideon Resp.* at 20. If the "action did not entail novel or difficult questions of law," it is difficult to understand why the Gideons needed to expend over \$100,000.00 in attorneys fees.¹⁶ *See e.g., Verified Petition for Costs and Attorneys Fees* at 15. It's one or the other, not both. Although the subcases were resolved on summary judgment and the Court denied Mr. Farley's notice of challenge, the unique facts and circumstances included reasonable defenses and questions of law and fact. The consolidated subcases and combined remarks reveal that the two water rights were related and ultimately each party was awarded a partial decree.

CONCLUSION

Mr. Farley filed water right claim 95-16445 that was ultimately decreed by this Court. The Gideons received water right 95-18409 as an unclaimed portion of Mr. Farley's water right through the conveyance of the property and its appurtenances by deed. Although Mr. Farley's

¹⁶ The Gideons allege their decreed water right 95-17752 "is functionally dry, useless, and 'greatly deficient,'" but they do not dispute Mr. Farley used water from that well between 2017-2019. They further do not dispute the fact that First American Title paid for two other attempted wells in unsuitable locations. What happened years ago is not dispositive of what could be produced from the Upper Well today in April 2025. *See Memorandum Decision* at 7 ("Sometime in 2017, it is undisputed that Farley shut the water off from the Lower Well water right so that the sole source of water for Parcels I and S was provided from the Upper Well water right"); *see Gideon Resp.* at 21; *Reply in Support of Late Claim* at 3, n. 3 (Apr. 3, 2023) ("That Gideon was paid \$79,848.51 by First American Title Company . . .") (emphasis added). The success of deepening or redrilling the Upper Well itself is an open question that the Gideons can't answer because they simply haven't tried. Relying upon contested facts from over 5 years ago doesn't address potential water availability today.

objection was unsuccessful, his arguments were not “frivolous, plainly fallacious, or unreasonable” based upon the unique facts of these consolidated subcases. Whereas the Gideons objected to the recommendation for water right 95-18409 as well, their objection to quantity was denied by IDWR and ultimately this Court. The combined use remarks further demonstrate the complexity and intricacies of these domestic water rights and warrant against granting the Gideons’ petition for costs and attorneys fees.

Mr. Farley raised substantial defenses based on the facts as well as novel questions of law, that, although rejected, provide a basis for the Court to exercise its discretion and deny the Gideons’ petition. For these reasons set forth above and contained in the *Motion*, Mr. Farley requests the Court grant the motion to disallow the Gideons’ costs and fees petition accordingly.

DATED this 29th day of April, 2025.

MARTEN LAW LLP



Travis L. Thompson

Attorneys for Brian T. Farley

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of April, 2025, I served true and correct copies of the foregoing **REPLY IN SUPPORT OF MOTION TO DISALLOW GIDEONS' VERIFIED PETITION FOR COSTS AND ATTORNEY FEES** by the method indicated below, and addressed to the following:

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

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

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

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

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

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

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

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

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

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

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

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



Travis L. Thompson

Exhibit A

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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)

**FIRST SET OF DISCOVERY REQUESTS TO
BRIAN T. FARLEY**

Arthur V. and Katherine M. Gideon (collectively “Gideon”), by and through undersigned counsel of record and pursuant to Rules 33 and 34 of the Idaho Rules of Civil Procedure, and Section C of the Court’s *Scheduling Order* (Nov. 17, 2023), hereby submit the following **FIRST SET OF DISCOVERY REQUESTS TO BRIAN T. FARLEY.**

GENERAL INSTRUCTIONS

1. Gideon requests that Farley answer the following interrogatories and requests for production separately and fully, in writing, under oath, and in accordance with Rules 26, 33, and 34 of the Idaho Rules of Civil Procedure, and produce the documents requested, either by providing Gideon with photocopies or by producing the responsive documents for inspection and copying, in accordance with Rules 26 and 34 of the Idaho Rules of Civil Procedure.

INTERROGATORY NO. 2: Please identify by full name, address, and telephone number each expert witness you intend to call at the trial of this matter. For each expert identified, please state in accordance with IRCP section 26(b)(4):

- (a) The subject matter on which each expert is expected to testify to;
- (b) The substance of the opinions to which the expert is expected to testify to; and
- (c) The underlying facts and data upon which the expert opinion(s) are based in conformity with IRE section 705.

INTERROGATORY NO. 3: Please identify by name, address, and telephone number each person other than those identified in Response to Interrogatory No. 2 that you intend to call to testify at the trial of this matter, and for each such person state in specific terms the matters to which such person is expected to testify to.

INTERROGATORY NO. 4: Please explain, in detail, the facts and circumstances supporting, in whole or in part, your Claims in subcase no. 95-16445.

INTERROGATORY NO. 5: Please explain, in detail, the facts and circumstances supporting, in whole or in part, your Objection in subcase no. 95-18409, including, without limitation, your contention that Right No. 95-18409 “should not exist.”

INTERROGATORY NO. 6: Please identify all persons with knowledge of the facts supporting your Claims in subcase no. 95-16445.

INTERROGATORY NO. 7: Please identify all persons with knowledge of the facts supporting your Objection in subcase no. 95-18409.

INTERROGATORY NO. 8: If you contend that any of the facts cited and/or relied upon in the Idaho Department of Water Resources’ *Supplemental Director’s Report Regarding*

Subcase Nos. 95-16445 & 95-18409 (Sept. 21, 2023) are in error, please identify the facts you assert are in error and explain, in detail, why you believe them to be erroneous.

INTERROGATORY NO. 9: If you contend that any of the recommendations contained in the Idaho Department of Water Resources' *Supplemental Director's Report Regarding Subcase Nos. 95-16445 & 95-18409* (Sept. 21, 2023) are erroneous, please explain in detail why you believe the recommendation(s) to be erroneous.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: Please produce all documents or records in your or your agents' possession that relate to the subject matter of this litigation.

REQUEST FOR PRODUCTION NO. 2: Please produce all records within your custody or control which you contend support your Claims in subcase no. 95-16445 and your Objection in subcase 95-18409.

REQUEST FOR PRODUCTION NO. 3: Please produce all records within your custody and control supporting, in whole or in part, your answer to Interrogatory No. 8, above.

REQUEST FOR PRODUCTION NO. 4: Please produce all records within your custody and control supporting, in whole or in part, your answer to Interrogatory No. 9, above.

REQUEST FOR PRODUCTION NO. 5: Please produce all records within your custody and control which relate to your communications with IDWR regarding any claimed and/or decreed water rights and/or water use related to this litigation.

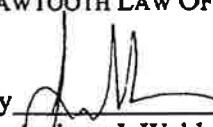
REQUEST FOR PRODUCTION NO. 6: Please produce all records within your custody and control which relate to any communications with Gideon regarding any water rights and use related to this litigation.

REQUEST FOR PRODUCTION NO. 7: Please produce all documents you intend to use at trial.

REQUEST FOR PRODUCTION NO. 8: Please produce all documents regarding the subject matter of this litigation which have been prepared or maintained by any expert witness, or potential expert witness.

DATED this 6th day of February, 2024.

SAWTOOTH LAW OFFICES, PLLC

By 

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of February, 2024, I caused a true and correct copy of the foregoing **FIRST SET OF DISCOVERY REQUESTS TO BRIAN T. FARLEY** to be served by the method indicated below, and addressed to the following:

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

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

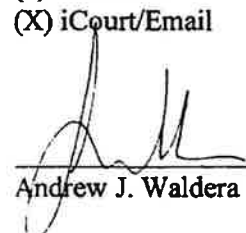

Andrew J. Waldera

Exhibit B

IN THE SUPREME COURT OF THE STATE OF IDAHO

BENJAMIN H. YATES, and CIRCLE PI, LLC,

Plaintiffs/Respondents,

v.

HULL FARMS, INC., an Idaho corporation,

Defendant/Appellant,

SUPREME COURT DOCKET NO:
51667-2024

CUSTER COUNTY DISTRICT COURT:
CV19-23-0042

APPELLANT'S BRIEF

Appeal from the Seventh District Court of Idaho
The Honorable Darren B. Simpson, Presiding

ATTORNEY FOR APPELLANT
Hull Farms, Inc.

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ATTORNEY FOR RESPONDENTS
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Circle Pi, LLC

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STATEMENT OF CASE

A. NATURE OF THE CASE

This case revolves around the sale and purchase of a 2,409-acre ranch, its brand and its components. Appellant Hull Farms, Inc. (“Hull Farms”) purchased the ranch for \$7,450,000, with \$3,000,000 down and the remaining amount financed through one of the sellers, Circle Pi, LLC (“Circle Pi”). Following a default on the financing, Circle Pi filed suit to foreclose. Hull Farms was able to pay off the financed obligation and the foreclosure action was dismissed. Respondents herein, Circle Pi and Benjamin Yates (“Yates” and together with Circle Pi, “Sellers”), then filed the present action, seeking to enforce a provision of the purchase and sale agreement for “[b]uyer to quick claim the 5 acres to be held out of closing upon establishing the legal description of said acreage.” Sellers filed a motion for summary judgment which the District Court denied while *sua sponte* entering summary judgment in favor of Hull Farms based upon the statute of frauds, *res judicata* and the doctrine of merger. Hull Farms filed a memorandum of costs and attorney’s fees, and the Sellers filed a motion to disallow. The District Court granted the motion to disallow, holding that it was not a commercial transaction. The District Court further held that, despite the Sellers filing suit to enforce the purchase and sale agreement, merger applied and therefore the attorney’s fees provision of the agreement was not applicable. Hull Farms appeals.

B. STATEMENT OF FACTS

As an introductory note to this section, the Record in this case can be somewhat confusing without context. Part of the defense in this case was *res judicata*, arguing that a prior foreclosure action barred the claims in this case. In order to substantiate that defense, several filings from the prior foreclosure action were submitted via declaration. For example, beginning on page 63 of the Record, the *Declaration of Greg Hull in Objection to Plaintiffs’ Motion for Summary Judgment*

Hull Farms then submitted a *Verified Memorandum of Costs and Fees*, seeking an award of both costs and attorney's fees. R. 274-289. Sellers filed a *Motion to Disallow Attorney's Fees* ("Motion to Disallow"), arguing that because Sellers were only seeking enforcement of the five-acre parcel provision of the PSA, the five acres were for household purposes and Idaho Code section 12-120(3) did not apply. R. 290-96. Sellers further argued that the attorney's fees provision of the PSA did not apply because the District Court had granted summary judgment on the basis of the doctrine of merger. R. 296. Finally, Sellers argued that Idaho Code §12-121 did not apply. R. 297-98.

At the hearing on Sellers' Motion to Disallow, Sellers represented that they were "not arguing...that the fees are unreasonable or that Hull Farms is not the prevailing party." Tr. p. 4, ll. 16-18.

The District Court issued its *Order Granting Plaintiff's Motion to Disallow Attorney Fees* (the "Order," found at R. 313-32), stating that the gravamen of the lawsuit was not a commercial transaction because "a commercial transaction, although arguably the source of what became Yates' claim, was neither integral to the claim nor the basis upon which Yates sought recovery." R. 326. In effect, the District Court parceled one provision of Addendum #7 and ruled that that it was a separate and distinct transaction that was not commercial, despite the overall commercial nature of the whole transaction. *See* R. 325-26.

The District Court further held that because it had ruled that the PSA merged into the deed, that the deed controlled the relationship between the parties and that the deed did not include an attorney fee provision. R. 328. Even though Sellers filed suit on the PSA and not on the deed, the District Court ruled that the deed's provisions determined whether attorney's fees were available. R. 327-28. The District Court also denied the request for attorney's fees under Idaho Code 12-121,

923 P.2d 434, 437 (1996). Appellate courts exercise free review over matters of law. *Lamprecht v. JORDAN, LLC*, 139 Idaho 182, 75 P.3d 743, 746 (2003).

A district court's denial of fees under Idaho Code Section 12-121 will not be overturned absent an abuse of discretion. As long as the court correctly perceived the issue as one of discretion, acted within the outer boundaries of its discretion, acted consistently with the legal standards applicable to the specific choices available to it, and reached its decision by the exercise of reason, we will not disturb the decision on appeal.

Erickson v. Erickson, 171 Idaho 352, 521 P.3d 1089, 1107 (2022).

ARGUMENT

Despite the facts that (1) Sellers filed suit to enforce the PSA, (2) the PSA contained an attorney's fees provision, (3) the claims arose from a commercial transaction, and (4) the claims were futile pursuant to long-standing precedents, the District Court declined to award Hull Farms its attorney's fees. This was in error and a clear abuse of discretion.

I. THE DISTRICT COURT ERRED BY DETERMINING THAT THE PSA'S ATTORNEY'S FEES PROVISION WAS NOT APPLICABLE TO THIS CASE.

The Sellers filed their suit to enforce the PSA and Hull Farms defended on various bases. The successful bases included the doctrine of merger, res judicata, and the statute of frauds. When Hull Farms sought an award of attorney's fees under the PSA, the District Court determined that, even though Sellers had filed suit to enforce the PSA, the deed controlled whether attorney's fees would be awardable under the doctrine of merger. The District Court erred by focusing on the successful defense instead of the claims asserted in determining whether a basis for attorney's fees applied.

Sellers filed a breach of contract claim to enforce the PSA. Sellers alleged that the parties entered into the PSA. R. 7. Sellers further alleged that the parties entered into Addendum #7 to the

PSA. *Id.* The five-acre provision the Sellers sought to enforce was contained in that Addendum #7 to the PSA. R. 7-8. This entire case was the Sellers' attempt to enforce the PSA.

The PSA contained an attorney's fees provision that stated that the prevailing party in any legal action connected to the PSA would be entitled to an award of attorney's fees. R. 72. That provision was confirmed in Addendum #7. R. 12 (referencing the PSA and stating "All other terms and conditions remain the same").

While Sellers were not successful in their claims, they filed suit on the PSA, which triggered the attorney's fees provision of that agreement. To put it into perspective, had the Sellers been successful in their claims, they would undoubtedly be entitled to an award of attorney's fees under the PSA. Because the PSA was invoked by the Sellers as the basis for their claims, Hull Farms is entitled to an award of attorney's fees under the PSA as the prevailing party.

This simple conclusion is not novel. In *Hilbert v. Hough*, 132 Idaho 203, 969 P.2d 836 (Ct. App. 1998), two purchasers entered into an agreement to purchase five acres from two sellers. Part of the agreement was that the exact five acres would be surveyed. *Id.* at 837. After the survey was completed, the sellers decided not to sell based on, at least on part, dissatisfaction with the proposed boundaries. *Id.* The purchasers filed suit, seeking specific performance of the contract. *Id.* The trial court granted summary judgment to the sellers on the basis that the agreement was unenforceable due to the incomplete property description. *Id.* at 837-38. On appeal, the Idaho Court of Appeals affirmed the trial court's decision. *Id.* at 839. Despite having found the agreement unenforceable, the Court of Appeals further determined that the seller was entitled to an award of attorney's fees on appeal pursuant to the purchase and sale agreement. *Id.* at 840. The Court noted:

The agreement between the [purchasers] and [sellers], with respect to attorney fees, provides as follows: "Should either of the parties institute litigation to determine any rights or duties under this agreement, the prevailing party will be entitled to costs, including reasonable attorney fees." The [purchasers] pursued this appeal,

challenging the district court's grant of summary judgment in favor of the [sellers]. The [sellers] have responded successfully and qualify as the prevailing party in this action. It is of no consequence that the underlying contractual obligation is unenforceable. A prevailing party may recover attorney fees even though no liability under a contract was established or where no contract was, in fact, ever formed. Thus, the [sellers] are entitled to an award of attorney fees on appeal.

Id.

In *Garner v. Bartschi*, 139 Idaho 430, 80 P.3d 1031, 1033 (2003), a buyer entered into an agreement with a seller to purchase real property. A couple of months later, the seller notified the buyer that she was repudiating and rescinding the agreement. *Id.* The buyer filed suit for specific performance, among other claims. *Id.* The trial court granted summary judgment to the seller on the basis that the property description did not satisfy the statute of frauds. *Id.* On appeal, the Idaho Supreme Court affirmed the decision that the property description was not legally enforceable. *Id.* at 1037. The seller had requested an award of fees on appeal "pursuant to the agreements and I.C. § 12-120(3)." *Id.* at 1039. The Idaho Supreme Court quoted *Hilbert*, stating "[i]t is of no consequence that the underlying contractual obligation is unenforceable. A prevailing party may recover attorney fees even though no liability under a contract was established or where no contract was, in fact, ever formed," and awarded attorney's fees pursuant to the parties' unenforceable agreement and Idaho Code Section 12-120(3). *Id.* at 1040.

In both *Hilbert* and *Garner*, the Idaho appellate courts awarded attorney's fees based upon the agreements underlying the plaintiffs' claims even though the defendants had proven that those agreements were not enforceable. This case is no different—Sellers brought suit to enforce the PSA and Hull Farms proved that those claims were not enforceable due to the doctrine of merger, statute of frauds, and *res judicata*.

Instead of following this Idaho case law, the District Court looked at one of Hull Farms's defenses to determine whether to apply the PSA's attorney fee provision. In doing so, the District

Court did not present any case law indicating that the issue of attorney's fees under a contract was dependent upon anything other than how the claims were brought. This was not only in conflict with how Idaho appellate courts have determined this specific issue, but also in conflict with Idaho appellate courts' long-standing focus on how claims are raised to resolve the question of whether attorney's fees are awarded.

Idaho appellate courts have consistently looked at how claims are alleged to determine whether attorney provisions apply. In *Sells v. Robinson*, 141 Idaho 767, 118 P.3d 99, 101-02 (2005), the sellers of real property entered into an agreement with defendant to sell 20 of their 30 acres with an easement and "timber rights on said easement...." Three days later, the sellers executed a warranty deed that deeded the 20 acres to the buyer, "together with an easement...for removal of the timber located thereon." 118 P.3d at 102. The buyer believed he had timber rights on the sellers' remaining 10 acres and, after he logged thereon, *sellers* sued for timber trespass *based upon the warranty deed. Id.* The *purchaser* defended with language from the purchase and sale agreement but the trial court ruled that the doctrine of merger applied to defeat purchaser's argument and awarded attorney's fees to sellers.

On appeal, the Idaho Supreme Court affirmed the trial court's application of merger, as well as the trial court's interpretation of the language contained in the deed. *Id.* at 104-06. For reasons that do not appear to be explained in the opinion, the Court affirmed the trial court's award of attorney's fees to the sellers,² but denied the sellers' request for attorney's fees on appeal, stating

² The Supreme Court specifically mentioned that sellers had sought an award of attorney's on appeal by way of the real estate purchase and sale agreement, and did "not cite to or argue any statute on appeal allowing an award of attorney's fees." Considering the underlying claim was for timber trespass under Idaho Code section 6-202, it would make sense that the attorney fees award at trial that was affirmed by the Supreme Court was under that code section. While it is unclear as to the reason why sellers did not pursue that code section on appeal, the Supreme Court made it clear that the sellers did not invoke that code section on appeal. This would explain the Supreme Court's affirmation of the trial court's award of fees while denying the request for fees on appeal. Another explanation would be that the buyer did not challenge that award on appeal.