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Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LEMHI**

RUSSELL KOZACEK,

Plaintiff,

vs.

ANN HELTSLEY aka ANN NOYES and
RICK HELTSLEY,

Defendants.

)
)
) Case No.: CV-2010-154
) **AFFIDAVIT OF**
) **RUSSELL KOZACEK**
)

STATE OF IDAHO

)
Ss.

County of Lemhi

)

RUSSELL KOZACK, being duly sworn, on oath, deposes and says:

1. I am the Plaintiff in the above entitled matter. I make this Affidavit based on my personal knowledge as to the facts of the matter. I am competent to testify herein.
2. I own real property in Lemhi County, Idaho. Attached hereto as Exhibit "A" is a true and correct copy of a Warranty Deed to property that I own.
3. Defendant Ann Heltsley owns property continuous to mine. Attached hereto as Exhibit "B" is a true and correct copy of the Warranty Deed owned by Defendant, Ann Heltsley.

Affidavit of Russell Kozacek

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AUG 25 2011
Department of Water Resources
Eastern Region

4. In 1983, I built part of a fence between defendant, Ann Heltsley's property and mine. Ann Heltsley with the assistance of Mr. Bobby Jenkins, built part of the fence separating our properties. Since 1983, defendant Ann Heltsley and I both treated the fence as the property line. I informed Defendant, Ann Heltsley that the property line has existed since 1983. Attached hereto as Exhibit "C" is a true and correct copy of the letter I sent to defendant, Ann Heltsley indicating the true boundaries.

5. Defendant, Ann Heltsley claims that the real property as defined by the fence line is not on the legal property line. Attached hereto is Exhibit "D" a true and correct copy of the letter sent to me from Defendant, Ann Heltsley indicating a survey had been completed.

6. Since 1983, I have used my side of the boundary fence and property to grow crops and to feed my livestock. I have irrigated my side of the property for growing crops. Defendant Ann Heltsley knows that I utilize my property to grow crops. Attached hereto is Exhibit "E" a true and correct copy of the letter sent to me from Defendant, Ann Heltsley regarding harvesting of my hay crop.

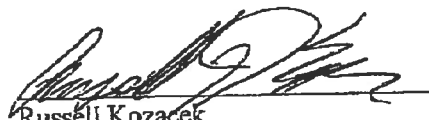
7. Defendant, Ann Heltsley has utilized her side of the property for her own purposes.

8. From 1983 until 2009, defendant, Ann Heltsley did not dispute that the fence line was the boundary between my property and her property.

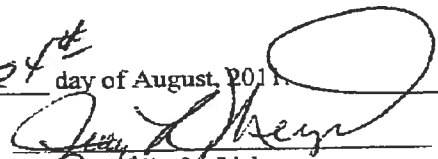
9. In October, 2009, defendant Ann Heltsley removed the fence that partitioned my real property from the property of Defendant Ann Heltsley. Prior to removing the partition fence between properties, Defendant did not give me any notice in writing of her intent to remove the fence. I did not consent, nor do I consent to the removal of the boundary fence that has existed for more than twenty-seven (27) years.

10. I maintained livestock and grew crops on my property until the Defendant, Ann Heltsley removed the boundary fence. Since that time, I have been required to pay others to feed and care for my livestock. I have been damaged as a result of Defendant, Ann Heltsley's wrongful destruction of the boundary fence.

Dated this 24 day of August, 2011.


Russell Kozacek

SUBSCRIBED AND SWORN TO before me this 24th day of August, 2011.


Notary Public for Idaho

Residing at:

My Commission Expires: 7/30/15