

¹Friday, August 27, 2021

RECEIVED

AUG 30 2021

DEPARTMENT OF
WATER RESOURCES

Re: Withdrawal of WR Nos. 95-04360 & 95-17842

Attn: Special Master Booth, et al.

In lieu of a Consent Agreement made with Mr. & Mrs. Robert and Sandra Jones we, Colby G. Kingsbury and Erin M. Kingsbury, formally withdrawal objections against water right numbers 95-04360 & 95-17842. On this day we hand delivered this document of withdrawal to Mr. & Mrs. Jones.

Kind Regards,

Colby G. Kingsbury

A handwritten signature in cursive script, appearing to read "Colby G. Kingsbury", written over a horizontal line.

Erin M. Kingsbury

A handwritten signature in cursive script, appearing to read "Erin M. Kingsbury", written over a horizontal line.

After Recording Return To:
Gregory M. George
Macomber Law, PLLC
1900 Northwest Blvd., Ste. 110
Coeur d'Alene, Idaho 83814

RECORDING FEE: \$31.00

AG



CONSENT AGREEMENT

THIS CONSENT AGREEMENT ("Agreement") is made and entered into as of the date on which all parties have signed this Agreement (the "Effective Date"), by and between **ROBERT F. JONES and SANDRA V. JONES**, husband and wife (collectively the "Joneses"), and **COLBY G. KINGSBURY and ERIN M. KINGSBURY**, husband and wife (collectively the "Kingsburys"). The Joneses and Kingsburys may be referred to in this Agreement collectively as the "parties" or individually as a "party."

RECITALS

- a) The Joneses own the parcel of real property in Kootenai County, Idaho legally described on **Exhibit "A"** attached hereto incorporated herein (the "Jones Property");
- b) The Kingsburys own the parcel of real property in Kootenai County, Idaho legally described on **Exhibit "B"** attached hereto and incorporated herein (the "Kingsbury Property");
- c) The Jones Property and the Kingsbury Property adjoin one another;
- d) The Kingsburys have filed Water Right Claim No. 95-17842 with the Idaho Department of Water Resources ("IDWR"). This claim pertains to Water Right No. 95-4360, which is currently allotted solely to the Joneses. The Kingsburys have contested that said Water Right No. 95-4360 should be allotted solely to the Joneses, as the Kingsburys wish to use irrigation water from Water Right No. 95-4360 to serve the Kingsbury Property;
- e) The parties desire to resolve existing claims and issues pertaining to water rights and the delivery of irrigation water on their respective properties;
- f) The Joneses wish to assist the Kingsburys in obtaining irrigation water for the Kingsbury Property, and the parties have explored various options to provide irrigation water to the Kingsbury Property;
- g) The parties previously entered a "Consent Agreement Framework" outlining the terms of settlement for the issues addressed in this Agreement. The parties now enter this Agreement to formalize the agreement reflected in said "Consent Agreement Framework."

NOW THEREFORE, in consideration of the promises and covenants herein contained, including the parties' acceptance of the recitals above, the parties hereby agree as follows:

1. **Withdrawal of Water Right Claim.** Immediately upon mutual execution of this Agreement, the Kingsburys shall withdraw, with prejudice, any and all claims filed with IDWR for any right to irrigation water from Spring Branch Creek, specifically including (without limitation) Water Right Claim No. 95-17842.

2. **Kingsburys' Relinquishment of Easement and Share in Water System.** The Kingsburys hereby permanently disclaim and relinquish all rights and interests they have in the Jones Property and any fixtures on the Jones Property pursuant to that certain "Grant of Share in Water System and Grant of Easement" filed for record in the Kootenai County Recorder's Office as Instrument No. 1182401 on May 11, 1990.

3. **Joneses' Relinquishment of Deed to Well and Grant of Easement.** In accordance with the terms and provisions of Section 4 of this Agreement, the Joneses will disclaim and relinquish all rights and interests they have in the Kingsbury Property the well and well components on the Kingsbury Property pursuant to that certain "Deed to Well and Grant of Easement" filed for record in the Kootenai County Recorder's Office as Instrument No. 1182402 on May 11, 1990.

4. **Payment and Development of New Water Source.** In accordance with the following conditions, the Kingsburys shall make payment to the Joneses and the Joneses shall develop a new water source for the Jones Property:

- (a) At the time of signing this Agreement, the Kingsburys shall make a down payment to the Joneses in good funds in the amount of Five Thousand Dollars and Zero Cents (\$5,000.00);
- (b) The Joneses shall be allowed until the date that is one (1) year from the Effective Date of this Agreement (the "Completion Date") to develop a new domestic water source for the Jones Property;
- (c) On the Completion Date (or on the next business day following the Completion Date if the Completion Date falls on a Saturday, Sunday, or legal holiday), the Kingsburys shall make payment to the Joneses in good funds in the amount of Twenty Thousand Dollars and Zero Cents (\$20,000.00) and the Joneses shall, upon receiving said payment, record appropriate documentation in the Kootenai County Recorder's Office to permanently disclaim and relinquish all rights and interests they have in the Kingsbury Property pursuant to that certain "Deed to Well and Grant of Easement" filed for record in the Kootenai County Recorder's Office as Instrument No. 1182402 on May 11, 1990;
- (d) The obligations of the parties under subsection 4(c) of this Agreement shall automatically become null and void if either party sells its respective real property described in this Agreement before the Completion Date.
- (e) The Joneses shall refund the Kingsburys' \$5,000.00 down payment referenced in subsection 4(a) of this Agreement if and only if: (i) the Joneses do not incur any expenses in developing a new domestic water source for the Jones Property before

the Completion Date; or (ii) the Joneses do not complete the development of a new domestic water source for the Jones Property by the Completion Date. The Joneses shall make any refund required by this subsection 4(e) by ten (10) days after the Completion Date.

5. **Notification of IDWR.** Within twenty (20) days of the payment and recording of documentation as set forth in subsection 4(c) of this Agreement, the parties shall notify IDWR of the change in ownership to effect the proper adjustment to IDWR's records for Water Right No. 95-11157.

6. **Heirs, Successors, and Assigns.** The terms of this Agreement and all documents executed, filed, or recorded in connection with this Agreement shall be binding upon the heirs, successors, and assigns of the parties.

7. **Headings.** The headings contained in this Agreement are for illustrative purposes only and shall not affect the meaning or interpretation of this Agreement.

8. **Severability.** In case any provision in this Agreement shall be held invalid, illegal or unenforceable by any court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

9. **Counterparts.** This Agreement may be signed in counterparts, each of which shall constitute an original and which together shall constitute the same single instrument.

10. **Attorney's Fees, Jurisdiction, and Venue.** This Agreement shall be construed in accordance with the laws of the State of Idaho. The venue for any legal action or proceeding arising from this Agreement shall be the First Judicial District Court in and for the County of Kootenai. The prevailing party in any action brought to enforce or interpret any right or obligation arising under this Agreement shall be entitled to recover its reasonable attorney's fees and costs in addition to any other relief deemed appropriate by the Court.

11. **Construction.** The parties agree that this Agreement is the result of negotiations between the parties and hereby expressly waive the application of any rule of law to the effect that this Agreement shall be construed against the party who (or whose attorney) prepared this Agreement.

12. **Entire Agreement.** This Agreement constitutes the entire agreement among the parties and their respective heirs, administrators, executors, trustees, corporate parents, corporate subsidiaries, corporate affiliates, successors, predecessors, assigns, directors, officers, insurers, attorneys, agents, employees, and transferees, and each of them, and shall be binding upon and inure to the benefit of the executors, administrators, personal representative, heirs, successors and assigns of each. This Agreement supersedes all prior memoranda, correspondence, conversations, and negotiations. This Agreement may not be modified except by a written instrument signed by the parties and filed for record at the Kootenai County Recorder's Office.

Signatures on Following Page

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the dates set forth below.

Robert F. Jones
Robert F. Jones

Colby G. Kingsbury
Colby G. Kingsbury

Date signed: 8-11-2021

Date signed: 08/09/2021

Sandra V. Jones
Sandra V. Jones

Erin M. Kingsbury
Erin M. Kingsbury

Date signed: 8/11/21

Date signed: 08/09/2021

STATE OF Idaho)
) ss.
County of Kootenai)

On this 11 day of Aug, 2021, before me
Katy Battista, personally appeared **ROBERT F. JONES**, known or
identified to me (or proved to me on the oath of _____), to be
the person whose name is subscribed to the within instrument, and acknowledged to me that
he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal
the day and year in this certificate first above written.



Katy Battista
Notary Public for the State
of: Idaho
Residing at Rayndrum
My Commission Expires Aug 25, 2024

Acknowledgments Continue on Following Page

STATE OF Idaho)
) ss.
County of Kootenai)

On this 11 day of Aug, 2021, before me Katy Battista, personally appeared **SANDRA V. JONES**, known or identified to me (or proved to me on the oath of _____), to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



[Signature]
Notary Public for the State
of: Idaho
Residing at Rathdrum
My Commission Expires Aug. 23, 2024

STATE OF IDAHO)
) ss.
County of Kootenai)

On this 9th day of August, 2021, before me Loann Emy, personally appeared **COLBY G. KINGSBURY**, known or identified to me (or proved to me on the oath of IDAHO DL), to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



[Signature]
Notary Public for the State
of: IDAHO
Residing at Post Falls
My Commission Expires 11/14/2023

Acknowledgments Continue on Following Page

STATE OF IDAHO)
) ss.
County of Kootenai)

On this 9th day of August, 2021, before me
Lozan Erny, personally appeared **ERIN M. KINGSBURY**, known or
identified to me (or proved to me on the oath of IDAHO DI), to be
the person whose name is subscribed to the within instrument, and acknowledged to me that
she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal
the day and year in this certificate first above written.



Lozan Erny
Notary Public for the State
of: IDAHO
Residing at Post Falls
My Commission Expires 11/14/2023

EXHIBITS A-B ON FOLLOWING TWO PAGES

EXHIBIT "A"

Legal Description of Jones Property

A parcel of land in the Southeast Quarter of the Northeast Quarter of Section 25, Township 52 North, Range 5 West, Boise Meridian, Kootenai County, State of Idaho, described as follows:

Beginning at a point 527.09 feet North of the Southwest corner of the Southeast Quarter of the Northeast Quarter; thence

East 55.75 feet to the TRUE POINT OF BEGINNING; thence

East parallel to the South boundary line of said Southeast Quarter of the Northeast Quarter 220.53 feet; thence

South 100.49 feet; thence

North 51°56'20" East 120.95 feet; thence

North 82°45'45" East 110.35 feet; thence

South 180.48 feet; thence

West 325.90 feet; thence

South 41°05' West 166.89 feet; thence

North 1°56'30" East 317.68 feet to the TRUE POINT OF BEGINNING.

EXHIBIT "B"

Legal Description of Kingsbury Property

A parcel of land in the Southeast Quarter of the Northeast Quarter of Section 25, Township 52 North, Range 5 West, Boise Meridian, Kootenai County, State of Idaho, described as follows:

BEGINNING at the Southwest corner of the Southeast Quarter of the Northeast Quarter; thence

Along the West line of said Southeast Quarter of the Northeast Quarter, North 00°29'20" East, 807.09 feet to an iron rod; thence

Crossing the County Road, South 89°16'40" East, 53.25 feet to an iron rod on the East side right-of-way of the County Road, which is the POINT OF BEGINNING; thence

Continuing South 89°16'40" East, 422.04 feet to an iron rod; thence

South 00°39'25" East, 289.50 feet to a point in an existing roadway; thence

Continuing along said roadway, South 82°45'45" West, 110.35 feet to a point; thence

Continuing along said roadway, South 51°56'20" West, 120.95 feet to a point; thence

North 100.49 feet to an iron rod; thence

North 89°16'40" West, 220.53 feet to an iron rod on the East side of the right-of-way line of the County road; thence

Along said right-of-way line, North 00°01'20" West, 280.00 feet to an iron rod, which was the TRUE POINT OF BEGINNING.