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JUN 21 2021
IDWR / NORTH

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WITHDRAWAL OF PROTEST

Application for ☑ **Transfer** ☐ **Permit** ☐ **Amendment of Permit** **No.** 83543

In the Name of Jarred and Jessica Holz
Applicant

Name of Protestant: Nancy Miller

Represented by: _____

I hereby withdraw my protest to the above referenced matter. All of my issues of protest have been addressed and/or resolved.

☐ My withdrawal is not conditional.

Or

☑ My withdrawal is conditioned on the following:

Settlement agreement attached.

Nancy Miller — Protestant — _____
Signature of Protestant or Representative — Title — Date

Instrument # 889345
NEZ PERCE COUNTY
6-1-2021 09:23:50 AM No. of Pages: 7
Recorded for : NANCY MILLER *
PATTY WEEKS Fee: 28.00
Ex-Officio Recorder Deputy R Lewis
Index to: AGREEMENT/MISC

WATER USE AGREEMENT

This Water Use Agreement is made and entered into this 26th day of May 2021 2021, by and among James R. Miller and Nancy J. Miller, husband and wife, hereinafter called Miller, and Jarred M. Holz and Jessica R. Holz, hereinafter called Holz.

WHEREAS, Miller is the owner of the following described real property situate in the County of Nez Perce, State of Idaho, to-wit:

See attached Exhibit "A"

WHEREAS, Miller is the owner of Domestic Water Right No. 85-11198 with a priority date of June 15, 1929 which has high connectivity with, and is affected by, the amount of water flow in Little Canyon Creek and Miller has been diverting, appropriating and using water from Domestic Water Right No. 85-11198 source to serve Miller's real property above-described;

WHEREAS, Holz is the owner of the following described real property situate in the County of Nez Perce, State of Idaho, to-wit:

See attached Exhibit "B"

WHEREAS, Holz is the owner of Domestic Water Right No 85-15799 with a priority date of February 14, 1957 and Domestic Water Right No. 85-15800 with a priority date June 1, 1959 and Holz intends to divert, appropriate and use water from Little Canyon Creek to serve Holz real property above described;

WHEREAS, Little Canyon Creek has seasonal flow and has low flow during the summer months;

WHEREAS, Miller's point of diversion is down stream from Holz' point of diversion;

and

* NANCY MILLER
40880 LITTLE CANYON RD
PECK, ID 83545

WHEREAS, the parties wish to evidence in writing their intent for use and operation of their respective water rights above-described.

NOW, THEREFORE, the parties agree as follows:

1. The parties agree that Holz may fill a storage pond during the early irrigation season when Little Canyon Creek has high flow. Holz intends to use the water in the storage pond during the low water months of Little Canyon Creek.

2. In the event that Miller has a water shortage, Miller shall notify Holz in person or in writing of said water shortage and Holz will immediately cease pumping water from Little Canyon Creek.

3. The parties shall then work together to determine the cause of Miller's water shortage.

4. In the event it is determined that Miller's water shortage is caused by Holz pumping water from Little Canyon Creek, Holz shall cease all pumping until such time as the water level of Little Canyon Creek increases so as to not cause a water shortage to Miller.

5. Miller shall determine when a sufficient level of water is flowing in Little Canyon Creek and shall notify Holz in writing or in person that the water has increased in an amount to not interfere with Miller's water right.

6. In the event a dispute occurs as to the cause of water shortage or resumption of water flow, either party may consult the Idaho Department of Water Resources and request that agency make a determination regarding cause of water shortage or resumption of water flow.

7. Consulting the Idaho Department of Water Resources shall not preclude either party pursuing any and all lawful actions and remedies against the other in law or in equity regarding this matter.

8. This Water Use Agreement shall be binding upon and inure to the benefit of the heirs and assigns of the parties hereto and shall be appurtenant to the parcels of real property owned by the parties hereto.

10. In the event of any action brought to enforce any of the terms of this Water Use Agreement, the successful party shall be entitled to recover, in addition to the costs and disbursements provided by law, a reasonable attorney's fee.

IN WITNESS WHEREOF, the parties hereto have executed this agreement this 26th day of May, 2021

James R. Miller

Nancy J. Miller

STATE OF IDAHO)
) ss.
County of Nez Perce)

On this 26th day of May, 2021, before me, a notary public in and for the State of Idaho, personally appeared James R. Miller and Nancy J. Miller, known or identified to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they 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.

Gayle Miller
Notary Public in and for Idaho
Commission Expires: 9-17-24

GAYLE MILLER NOTARY PUBLIC Comm No. 34588 STATE OF IDAHO

Jarred M. Holz

Jessica R. Holz

STATE OF IDAHO)
) ss.
County of Nez Perce)

On this 28th day of May, 2021, before me, a notary public in and for the State of Idaho, personally appeared Jarred M. Holz and Jessica R. Holz, known or identified to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they 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.

Gayle Miller
Notary Public in and for Idaho
Commission Expires: 9-17-24

GAYLE MILLER
NOTARY PUBLIC
Comm No. 34586
STATE OF IDAHO

889345

EXHIBIT "A"

41072

MICROFILM NO.
623014

INDEXED
FILMED
DELIVERED ( )
MAILED ( )

A

QUITCLAIM DEED

For Value Received

James R. Miller, a married man

do hereby convey, release, remise and forever quit claim unto

James R. Miller and Nancy J. Miller, husband and wife

whose current address is

RT 1 BOX 104
PECK, IDAHO 83545

the following described premises, to-wit:

SITUATE IN THE COUNTY OF NEZ PERCE, STATE OF IDAHO, TO-WIT:

A part of the Northeast Quarter of Section 14, Township 36 North, Range 1 West of the Boise Meridian, more particularly described as follows:

Commencing at an iron pipe marking the Northeast corner of said Section 14; thence West a distance of 1,317.06 feet to an iron pin marking the Northwest corner of the Northeast Quarter of the Northeast Quarter of said Section 14; thence South 41° 11' 11" East a distance of 525.82 feet to a nail in the center of a County road. Said nail being the True Point of Beginning. Thence South 72° 30' 33" East a distance of 124.94 feet to an iron pin; thence South 3° 36' 38" East along an existing fence a distance of 450.81 feet to an iron pin in a fence corner; thence continuing along an existing fence: North 73° 16' 42" West 175.48 feet to an iron pin; thence North 67° 56' 52" West 168.46 feet to an iron pin; thence North 43° 09' 25" West 105.98 feet to an iron pin; thence North 28° 10' 23" West a distance of 115.86 feet to the center of a County road; thence along the center of said County road: North 68° 35' 25" East a distance of 215.16 feet to the beginning of a curve to the left having a central angle of 53° 33' 36" and a radius of 172.34 feet; thence along said curve Northeasterly a distance of 161.10 feet to a nail in the center of said County road and the True Point of Beginning, Nez Perce County, Idaho.

together with their appurtenances.

Dated: July 29, 1997

James R. Miller

James R. Miller

STATE OF IDAHO, COUNTY OF
On this 30th day of July, 1997, before me, a notary public in and for said State, personally appeared James R. Miller**

known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

Tony L. A.
Notary Public
Residing at Lewiston, Idaho
Comm. Expires March 13, 2001

TONY L. AMAYA
NOTARY PUBLIC
STATE OF IDAHO

INST. NO. 623014
FILED FOR RECORD
FEE 3.00 REG. BY
1997 AUG -4 P 3 52
BETTY J. WILSEY
RECORDER, NEZ PERCE CO. ID.
BY Lorman DEPUTY

ALLIANCE TITLE

Furnished by the
ALLIANCE
TITLE & ESCROW CORP.

Instrument # 866509
NEZ PERCE COUNTY, IDAHO
05-08-2019 02:17:18 PM No. of Pages: 4
Recorded for: ALLIANCE TITLE - LEWISTON OFFI
PATTY WEEKS Fee: $15.00
Ex-Officio Recorder Deputy Lindsey Eberhardt
Index to: WRNTY/QCD (101)
Electronically Recorded by Simplifile

WARRANTY DEED

FOR VALUE RECEIVED, DALLAS JOAN HUNTER,

THOMAS BRIAN WARGI, a married man as his sole and separate property, in equal shares, Grantors, do hereby grant, bargain, sell and convey unto JARRED M. HOLZ and JESSICA R. HOLZ, SAME PERSON AS JESSICA HOLZ, A MARRIED COUPLE, Grantees, whose address is 501 S. Wickham Fen Way, Boise, ID 83709

the following described premises situated in Nez Perce County, State of Idaho, to-wit:

Part of the Southwest one-Quarter of the Southwest one-Quarter of Section 12 and part of the Northwest one-Quarter of the Northwest one-Quarter of Section 13, Township 36 North, Range 1 West, Boise Meridian, in Nez Perce County, State of Idaho more particularly described as follows:

BEGINNING at the Southwest corner of Section 12 marked by a 1.5" diameter iron pipe; thence North 00°24'52" East, along the West of Section 12, a distance of 23.92 feet to a survey spike on the centerline of Little Canyon Road, being the point of curve of a non tangent curve to the left, of which the radius point lies
North 11°33'07" West, a radial distance of 299.9 feet thence Easterly along said centerline, along the arc, through a central angle of 07°31'23", a distance of 39.39 feet; thence
North 70°55'30" East, along said centerline, a distance of 97.11 feet to a point of curve to the right having a radius of 549.98 feet and a central angle of 18°17'00" thence Easterly along said centerline, along the arc, a distance of 175.50 feet; thence
North 89°12'30" East, along said centerline, a distance of 180.27 feet to a point of curve to the left having a radius of 399.99 feet and a central angle of 15°38'00"; thence Easterly along said centerline, along the arc, a distance of 109.14 feet; thence
North 73°34'30" East, along said centerline, a distance of 30.99 feet to a point of curve to the right having a radius of 299.99 feet and a central angle of 07°26'47"; thence Easterly along said centerline, along the arc, a distance of 38.99 feet to a survey spike; thence
South 00°09'35" East, a distance of 1,327.42 feet to the center of Little Canyon Creek also being the Nez Perce County, Lewis County Line; thence North 74°54'32" West, along said centerline, a distance of 115.08 feet; thence
North 73°20'23" West, along said centerline, a distance of 141.78 feet; thence
North 64°20'04" West, along said centerline, a distance of 109.34 feet; thence
North 61°21'24" West, along said centerline, a distance of 186.32 feet; thence
North 61°14'59" West, along said centerline, a distance of 170.28 feet to the West line of Section 13; thence
North 00°11'25" West along the West line of Section 13 a distance of 905.93 feet to the TRUE POINT OF BEGINNING.

Subject an easement for utility purposes over a strip of land 10 feet in width directly adjacent and southerly of the existing road right of way being 25 feet southerly of the centerline as described above.

EXHIBIT "B"

SUBJECT TO rights of the State of Idaho in and to that portion of said premises, if any, lying in the bed or former bed of the Little Canyon Creek, if it is navigable.

SUBJECT TO any question of location, boundary or area related to the Little Canyon Creek, including, but not limited to, any past or future changes in it.

SUBJECT TO any prohibition or limitation on the use, occupancy, or improvements of the Land resulting from the rights of the public, appropriators, or riparian owners to use any waters, which may now cover the Land or to use any portion of the Land which is now or may formerly have been covered by water.

SUBJECT TO the right of use, control, or regulation by the United States of America in exercise of power over navigation.

SUBJECT TO any difference in the mean high water line of the Little Canyon Creek and the meander line as shown by government survey.

SUBJECT TO any rights, interests or easements in favor of the public which exist or are claimed to exist over any part of the Land covered by water.

SUBJECT TO any adverse claim based on the assertion that some portion of said Land is now, or at any time has been within the boundaries of the Little Canyon Creek or by reason of the fact or claim that any portion or portions thereof have been rendered un-navigable by artificial means, or has accreted to such portions so created.

SUBJECT TO ditch, road and public utility easements as the same may exist over said premises.

SUBJECT TO rights of the public in and to that portion of the premises lying within Little Canyon Road.

SUBJECT TO The interest of The Clearwater Valley Railroad Company Disclosed by Instrument
Recorded: December 21, 1898.
Book 65, Page 494
The exact location is not disclosed of record

SUBJECT TO reservations and exceptions in the United States Patent, and in the act authorizing the issuance thereof.
Recorded: February 7, 1905.
Book: 55 at Page: 402
Official Records: Nez Perce County.

SUBJECT TO easements reservations and dedications, as shown on record of survey.
Recorded: September 10, 2018
Instrument No.: 861073