

Palmer, Cherie

From: Tod Geidl [TodG@cmd-law.com]
Sent: Friday, September 07, 2012 4:34 PM
To: Palmer, Cherie
Cc: Jeannine Bounds
Subject: Jim & Ella Dilling / Water Permit No. 85-15685
Attachments: Complaint.pdf; Memorandum Opinion & order.pdf; Order Confirming Arbitration Award.pdf; Order of Dismissal With Prejudice.pdf

Hi Cherie,

Please find attached the documents from the Quiilen v. Dilling case wherein Quiilen's challenged the water agreement between the parties and lost. After proceeding with a court ordered arbitration on several non-water issues, the lawsuit between the parties was dismissed with prejudice. In light of the Court's decision, I'm not sure how Quiillens could get a condition imposed on the Dillings' water permit that is contrary to the terms of the water agreement, obtained without a timely protest and a hearing. I appreciate any assistance you can give to clear this up. If you have any questions about the court filings or need more information, please feel free to give me a call. Thanks.

--
Tod D. Geidl
Creason, Moore, Dokken & Geidl PLLC
1219 Idaho Street
P.O. Drawer 835, Lewiston, ID 83501

Phone 208-743-1516
Fax 208-746-2231

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PATTY O. WEEKS
CLERK OF THE DIST. COURT

JENNY LANDRUS

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

RAYMOND and JULIE QUILLEN,
husband and wife,

Plaintiffs,

v.

JAMES and ELLA DILLING,
husband and wife,

Defendants.

)
)
) Case No. CV 07-01652
)
)
)

) **ORDER OF DISMISSAL**
) **WITH PREJUDICE**
)
)
)
)

Based on the Stipulation to Dismiss With Prejudice filed by the parties, and good cause appearing therefore,

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the claims and counterclaims of all parties are **DISMISSED** with prejudice with each party bearing their own costs and attorney fees incurred in this action.

DATED this 1st day of March, 2011.

CARL B. KERRICK

JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 1st day of March, 2011, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

W. Jeremy Carr Clark and Feeney 1229 Main Street P. O. Drawer 285 Lewiston, ID 83501	☐ U.S. Mail ☒ Hand Delivered <i>-messenger</i> ☐ Overnight Mail ☐ Telecopy
Tod D. Geidl Creason, Moore & Dokken 1219 Idaho Street PO Drawer 835 Lewiston, ID 83501-0835	☐ U.S. Mail ☒ Hand Delivered <i>-messenger</i> ☐ Overnight Mail ☐ Telecopy

CLERK OF THE COURT

By: **JENNY LANDRUS**
Deputy

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PATTY O. WEEKS
CLERK OF THE DISTRICT COURT
DEPUTY

Creason, Moore, & Dokken, PLLC

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

RAYMOND and JULIE QUILLEN,
husband and wife,

Plaintiffs,

v.

JAMES and ELLA DILLING, husband
and wife,

Defendants.

CASE NO. CV 2007-01652

MEMORANDUM OPINION
AND ORDER ON PLAINTIFFS'
MOTION FOR SUMMARY
JUDGMENT

This matter came before the Court on the Plaintiffs' Motion for Summary Judgment, filed on February 10, 2010. The Plaintiffs were represented by William Jeremy Carr, of the firm Clark and Feency. The Defendants were represented by Tod Geidl, of the firm Creason, Moore, Dokken & Geidl. The Court heard oral argument on this matter on April 6, 2010.¹ The Court, having heard the argument of counsel and being fully advised in the matter, hereby renders its decision.

¹ The Court heard argument on the Plaintiffs' motion for summary judgment at the April 6, 2010 hearing; however, the Court declined to rule on the issue at that time due to the procedural posture of the case. The Court instead recharacterized the Plaintiffs' motion as a motion to withdraw Count I of the Complaint, which was granted by the Court. After sidebar with Court and counsel, all parties agreed that it was appropriate for the Defendants to file an Answer and Counterclaim in the action, followed by an Answer to the Counterclaim filed by the Plaintiffs. Once these matters were filed, the Court then could consider the Plaintiffs' motion for summary judgment fully submitted to the Court. Because the matter was fully argued on April 6, 2010, there was no need to schedule argument at a later date.

COPY

BACKGROUND

This lawsuit was initiated by the Quillens on August 3, 2007, nearly four years after they purchased property from their neighbors, the Dillings, in September, 2003. *See Affidavit of Raymond Quillen; Affidavit of James Dilling Re: Defendants' Response to Plaintiffs' Motion for Summary Judgment.* The Dillings originally owned the entire parcel of property prior to selling approximately five acres to the Quillens. *Id.* At the time of conveyance, an integrated water system was in place to distribute water to both parcels. Each party has a well located upon their property, and the wells on both parcels supply "domestic, livestock, agricultural, and irrigation water" to both parcels. *Affidavit of Raymond Quillen, Exhibit C* (hereinafter "Water Use and Maintenance Agreement"). The parties entered into a Water Use and Maintenance Agreement at the time of conveyance, for purposes of defining the parties' rights with respect to the use, operation, and maintenance of the wells. At the time the parties entered into the Water Use and Maintenance Agreement, neither party had applied for or received a water permit from the State of Idaho. *Affidavit of Raymond Quillen.*

Procedurally, the Plaintiffs initially sought a breach of contract claim with regard to the Water Use and Maintenance Agreement; however, this claim was withdrawn. As a result, the Defendants filed an Answer and Counterclaim in this matter, seeking to enforce the Water Use and Maintenance Agreement entered into by the parties with respect to the operation of the wells on the parties' respective properties. Currently before the Court is the Plaintiffs' Motion for Summary Judgment, which argues the Water Use and Maintenance Agreement is an illegal contract, therefore it is void and

unenforceable as a matter of law. *See Plaintiffs' Motion for Summary Judgment, filed February 10, 2010.*

SUMMARY JUDGMENT STANDARD

Summary judgment should be granted where there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. I.R.C.P. 56(c). In determining whether summary judgment is appropriate, the court must construe the pleadings, depositions, admissions, and affidavits in a light most favorable to the nonmoving party. *Conway v. Sonntag*, 141 Idaho 144, 146, 106 P.3d 470, 472 (2005), citing *Infanger v. City of Salmon*, 137 Idaho 45, 44 P.3d 1100 (2002).

When a motion for summary judgment is "supported by a particularized affidavit, the opposing party may not rest upon bare allegations or denials in his pleadings," but must set forth "specific facts" showing a genuine issue. I.R.C.P. 56(e); *Verbillis v. Dependable Appliance Co.*, 107 Idaho 335, 337, 689 P.2d 227, 229 (Ct. App. 1984). A "mere scintilla" of evidence or only a "slight doubt" as to the facts is insufficient to withstand summary judgment. *Corbridge v. Clark Equipment Co.*, 112 Idaho 85, 87, 730 P.2d 1005, 1007 (1986), citing *Snake River Equip. Co. v. Christensen*, 107 Idaho 541, 691 P.2d 787 (Ct. App. 1984); *see also Jenkins v. Boise Cascade Corp.*, 141 Idaho 233, 238, 108 P.3d 380, 385 (2005).

Finally, the initial burden of establishing the absence of a genuine issue of material fact is on the moving party, and once this burden is met, it is incumbent upon the non-moving party to establish an issue of fact regarding that element. *Yoakum v. Hartford Fire Ins. Co.*, 129 Idaho 171, 923 P.2d 416 (1996).

ANALYSIS

The Plaintiffs argue that the Water Use and Maintenance Agreement is an illegal contract, thus, as a matter of law the agreement is void and unenforceable. When the parties entered into the Water Use and Maintenance Agreement, neither party had a water permit which allowed them to use the groundwater from their wells for "domestic, livestock, agricultural, and irrigation purposes for Parcel A and B." *Affidavit of Raymond Quillen*, at 3.

I.C. § 42-226 declares in pertinent part that "[a]ll ground waters in this state are declared to be the property of the state, whose duty it shall be to supervise their appropriation and allotment to those diverting the same for beneficial use." I.C. § 42-229 sets forth the methods of appropriation of ground water, and requires in most instances that a permit be obtained.

The right to the use of ground water of this state may be acquired only by appropriation. Such appropriation may be perfected by means of the application permit and license procedure as provided in this act; provided, however, that in the event an appropriation has been commenced by diversion and application to beneficial use prior to the effective date of this act it may be perfected under such method of appropriation. All proceedings commenced prior to the effective date of this act for the acquisition of rights to the use of ground water under the provisions of sections 42-201--42-225, Idaho Code, may be completed under the provisions of said sections and rights to the use of ground water may be thereby acquired. But the administration of all rights to the use of ground water, whenever or however acquired or to be acquired, shall, unless specifically excepted herefrom, be governed by the provisions of this act.

I.C. § 42-229. While permits are generally required for water appropriation in this state,

I.C. § 42-227 specifically exempts the use of wells for domestic purposes from the permit requirement.

The excavation and opening of wells and the withdrawal of water therefrom for domestic purposes shall not be subject to the permit

requirement under section 42-229, Idaho Code; providing such wells and withdrawal devices are subject to inspection by the department of water resources and the department of environmental quality and providing further that the drilling of such wells shall be subject to the licensing provisions of section 42-238, Idaho Code. Rights to ground water for such domestic purposes may be acquired by withdrawal and use.

I.C. § 42-227. "Domestic purposes" is statutorily defined at I.C. § 42-111:

(1) For purposes of sections 42-221, 42-227, 42-230, 42-235, 42-237a, 42-242, 42-243 and 42-1401A, Idaho Code, the phrase "domestic purposes" or "domestic uses" means:

(a) The use of water for homes, organization camps, public campgrounds, livestock and for any other purpose in connection therewith, including irrigation of up to one-half (1/2) acre of land, if the total use is not in excess of thirteen thousand (13,000) gallons per day, or

(b) Any other uses, if the total use does not exceed a diversion rate of four one-hundredths (0.04) cubic feet per second and a diversion volume of twenty-five hundred (2,500) gallons per day.

(2) For purposes of the sections listed in subsection (1) of this section, domestic purposes or domestic uses shall not include water for multiple ownership subdivisions, mobile home parks, or commercial or business establishments, unless the use meets the diversion rate and volume limitations set forth in subsection (1)(b) of this section.

I.C. § 42-111.

In the present case, the Water Use and Maintenance Agreement is not in violation of Idaho law based upon the parties agreement to share the water from both wells. The uses of the water system fit within the broad definition of "domestic purposes" as set forth in I.C. § 42-111.

The Plaintiffs correctly assert that illegal contracts are looked upon with disfavor in Idaho. When the consideration for a contract explicitly violates a statute, the contract is illegal and will not be enforced by the court.

Idaho has long disallowed judicial aid to either party to an illegal contract. *McShane v. Quillin*, 47 Idaho 542, 547, 277 P. 554, 559 (1929) ("No principle in law ... is better settled than that which, with certain exceptions, refuses redress to either party to an illegal contract."). An

illegal contract is one that rests on illegal consideration consisting of any act or forbearance which is contrary to law or public policy. *Quiring v. Quiring*, 130 Idaho 560, 566, 944 P.2d 695, 701 (1997). Generally, when the consideration for a contract explicitly violates a statute, the contract is illegal and unenforceable. *Barry v. Pac. W. Constr., Inc.*, 140 Idaho 827, 832, 103 P.3d 440, 445 (2004). In most cases, the court will leave the parties to an illegal contract as it finds them. *Id.*

Farrell v. Whiteman, 146 Idaho 604, 609, 200 P.3d 1153, 1158 (2009). However, courts narrowly construe statutory prohibitions when considering whether a contract is illegal.

Since the consequences of a court finding a contract to be illegal are harsh, only those contracts which involve consideration that is expressly prohibited by the relevant prohibitory statute are void. See *Miller v. Haller*, 129 Idaho 345, 352, 924 P.2d 607, 614 (1996) (holding that a referral agreement did not violate a statute prohibiting agreements to share fees in exchange for medical referrals because it did not involve sharing or splitting fees, which was the activity expressly barred by the statute); *Johnson v. Delane*, 77 Idaho 172, 177, 290 P.2d 213, 216 (1955) (holding that engineer's actions were not "practicing professional engineering in this state" because the services were performed in Washington). Such statutes must be narrowly construed, and only those contracts violating express provisions thereof will be deemed illegal.

Id. at 609, 200 P.3d at 1158.

The Water Use and Maintenance Agreement does not involve consideration that is expressly prohibited by the statutes which address the use of groundwater in the State of Idaho. The statutes in question allow the use of groundwater for domestic purposes, without the requirement of a permit. Consequently, the Court finds that the Water Use and Maintenance Agreement is not an illegal contract.

Moreover, according to the Water Use and Maintenance Agreement, "the provisions of Idaho Code Section 7-901 et seq, shall apply to the arbitration proceedings." *Water Use and Maintenance Agreement*, at 4. I.C. § 7-901 states, "A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the

parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract." Having determined that the contract in question is not an illegal contract, the provisions of the Uniform Arbitration Act, I.C. §§ 7-901-7-922, are applicable in the case at hand.

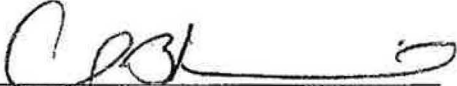
CONCLUSION

The parties to the lawsuit at hand are neighbors. The parties entered into a Water Use and Maintenance Agreement at the time the Defendants sold property to the Plaintiffs, for purposes of effectuating the use of both wells for each party's water use needs. The Plaintiffs are seeking summary judgment, arguing the Water Use and Maintenance Agreement is an illegal contract that cannot be enforced. Based upon the domestic purposes exception which allows the use of groundwater without a permit, the Plaintiffs' motion for summary judgment is denied.

ORDER

The Plaintiffs' Motion for Summary Judgment is hereby DENIED.
IT IS SO ORDERED.

Dated this 12th day of July 2010.


CARL B. KERRICK – District Judge

CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing MEMORANDUM OPINION AND ORDER ON PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT was:

_____ faxed this _____ day of July, 2010, or

X hand delivered via court basket this 13th day of July, 2010, or

_____ mailed, postage prepaid, by the undersigned at Lewiston, Idaho, this _____ day of July, 2010, to:

W. Jeremy Carr
Clark and Feeney
P.O. Drawer 285
Lewiston, ID 83501

Tod D. Geidl
Creason, Moore, Dokken & Geidl
P.O. Drawer 835
Lewiston, ID 83501

PATTY O. WEEKS, CLERK

By: 

Deputy



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 1st day of March, 2011, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

W. Jeremy Carr Clark and Feeney 1229 Main Street P. O. Drawer 285 Lewiston, ID 83501	☐ U.S. Mail ☒ Hand Delivered - <i>messenger</i> ☐ Overnight Mail ☐ Telecopy
Tod D. Geidl Creason, Moore & Dokken 1219 Idaho Street PO Drawer 835 Lewiston, ID 83501-0835	☐ U.S. Mail ☒ Hand Delivered - <i>messenger</i> ☐ Overnight Mail ☐ Telecopy

CLERK OF THE COURT

By: **JENNY LANDRUS**
Deputy

RECEIVED

JAN 19 2011

W. JEREMY CARR
ATTORNEY
208-743-9516

IN THE MATTER OF THE ARBITRATION OF

RAYMOND and JULIE QUILLEN, husband and
wife,

Claimants/Counter-Respondents,

vs.

JAMES and ELLA DILLING, husband and wife,

Respondents/Counter-Claimants.

ARBITRATION AWARD

(Re: Nez Perce County Case No. CV 07-1652)

I, THE UNDERSIGNED ARBITRATOR, having been so designated pursuant to the Arbitration Submission Agreement (hereinafter "Arbitration Agreement") entered into between the Parties in July, 2010, and having heard the testimony of the duly sworn witnesses, and having considered the exhibits, evidence, proofs, allegations, and argument submitted by Mr. W. Jeremy Carr, Counsel for Raymond and Julie Quillen (hereinafter "Claimants"), and Tod D. Geidl, Counsel for James and Ella Dilling (hereinafter "Respondents"), at the Arbitration Hearing conducted on December 9, 2010, in the Offices of Creason, Moore, Dokken & Geidl, in Lewiston, Idaho, and having conducted a view of the premises on the date of the Arbitration Hearing, and being advised by e-mail correspondence dated December 28, 2010, from Mr. Geidl, that Counsel had no further proofs to offer, or witnesses to be heard, and being satisfied that the record was complete, and having hereby declared the hearing closed, do FIND and AWARD as follows:

I. INTRODUCTION

This arbitration, arising out of the above-referenced civil dispute, involves a Water Use and Maintenance Agreement (hereinafter "Agreement") that was entered into between the Parties in 2003, in conjunction with the Claimants purchase of approximately five acres of land from the Respondents. The Arbitration Agreement provides, among other things, that the cost of arbitration is to be borne equally by the Parties, that the undersigned is to determine whether either Party is entitled to recover costs and attorney fees, and that the hearing and production of evidence would be governed by R-30, 31 and 32 of the AAA Commercial Arbitration Rules and Mediation Procedures.

II. FACTS

In 2007, the Claimants brought an action against the Respondents who sold them approximately five acres of land in 2003, which land adjoins that of the Respondents. Originally, the Respondents owned the entire parcel of land which, at the time of the sale, had a water system in place. Both parcels had a well located thereon, and each well supplied water to both parcels. The parties entered into the Agreement to define their respective rights concerning the use maintenance, and operation of the water system. Over the years, certain disputes have arisen concerning the use of the water system, some of which have been resolved, and some of which have been submitted to arbitration for resolution. Currently, there exists a dispute as to how the Respondents will access the water system located on Claimants property. Under the

terms of the Agreement, the Parties have mutual reciprocal easements for ingress and egress over the respective parcels of land to maintain the water system. In the past, the Respondents have accessed the well on Claimants property by a "ridge trail" behind the home of Claimants (by ATV or by foot); by a lane between the two parcels from Respondents property past the front of Claimants home (which lane was blocked by Claimants, thus denying Respondents access over the lane); and by public road around the Claimants home.

With reference to the lane access, the Claimants land is situated such that keeping the lane open and unblocked will prohibit the Claimants from utilizing the land to locate a planned structure thereon. The lay of the land is such that the location in question is one of the few, if not the only, reasonable location on Claimants property upon which the structure may be constructed.

The water system located on Claimants property is, in part, located in a shed owned by Claimants. In addition to water system components, the Claimants stored personal property in the shed and locked the same. In so doing, Respondents were, on occasion, denied access to certain components of the water system necessary to maintain the same. At this time, as a result of certain modifications to the water system by Claimants, the Respondents have full access to the well pump controls on the outside of the shed.

Prior to the hearing on this matter, the Claimants unreasonably failed to reimburse Respondents for certain expenses reasonably incurred in conjunction with the water system, which expenses, under Section Two of the Agreement, Claimants were required to pay one-third of. Shortly prior to the Arbitration Hearing, Claimants paid the same with interest.

The Claimants incurred attorney fees (not with current Counsel), to secure a water permit. Claimants did not notify Respondents that they were doing so, and did not notify

Respondents who they were retaining as Counsel. Respondent independently secured a water permit without knowing that Counsel for Claimants had, or may have, secured a permit.

DECISION

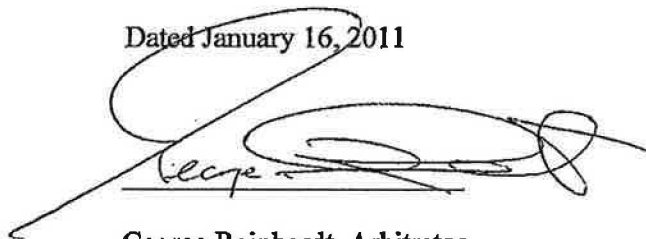
- I. With reference to access by Respondents over Claimants land to maintain the water system as permitted under the terms of the Agreement, the Claimants may do so on the public road around the Claimants home, and not over the "ridge trail", and not over the lane between the two homes. Although the public road access is a longer distance to the well than the other two routes, it is certainly the most reasonable route when considering the impact on the Claimants peaceful use and enjoyment of their land. Furthermore, access via the public road places no significant burden on Respondents whatsoever, and clearly imposes the least intrusive burden on Claimants property compared to any other route of access.
- II. With reference to access to the shed, the Claimants may lack the same, in that, as set forth above, the Respondents now have full access to the well pump controls from the outside of the shed. Although it should go without saying, the Respondents are entitled to have reasonable and unfettered access to the water system for the purposes set forth in the Agreement. If circumstances arise for example, which make it impossible to fix the water system without entering the shed, they may do so. Likewise, if circumstances develop such that the Respondents do not have access to the water system via the public road, another

reasonable route may be utilized. Again, it should go without saying that if such circumstances develop, the reasonable course of conduct will be to make efforts to contact the Claimants before doing anything. However, at this point in time, access via the public road shall be the point of access, and access to the shed shall be by permission only.

- III. With reference to attorney fees incurred by Claimants to secure the water permit, the Respondents are not obligated to pay for any portion of the same.
- IV. Neither Claimants nor Respondents are entitled to an award of costs or attorney fees for the prosecution and defense of this action.
- V. Claimants and Respondents must equally share the costs of arbitration.

This award is in full settlement of all claims submitted to this arbitration.

Dated January 16, 2011

A handwritten signature in black ink, appearing to read "George Reinhardt", is written over a horizontal line. The signature is stylized with a large loop at the end.

George Reinhardt, Arbitrator

Certificate of Service

I certify that on January 17, 2011, a true copy of the foregoing was mailed to each of the following:

Tod D. Geidl
Creason, Moore & Dokken PLLC
P.O. Box Drawer 835
Lewiston, ID 83501

W. Jeremy Carr
Clark & Feeney
PO Box 285
Lewiston, Idaho 83501

A handwritten signature in black ink, appearing to read "George Reinhardt", with a large, loopy flourish above it.

George Reinhardt, Arbitrator

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W. JEREMY CARR
CLARK and FEENEY
Attorneys for Plaintiff
The Train Station, Suite 201
13th and Main Streets
P. O. Drawer 285
Lewiston, Idaho 83501
Telephone: (208)743-9516

PATTY O. WEEKS
CLERK OF THE DIST. COURT

PAMELA SCHNEIDER
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

RAYMOND and JULIE QUILLEN,
husband and wife,

Plaintiff,

vs.

JAMES and ELLA DILLING,
husband and wife,

Defendant.

Case No. **CV07 01652**

COMPLAINT

COMES NOW the plaintiff, by and through their attorney of record, and for a cause of action
against the defendants, complains and alleges as follows:

FACTUAL ALLEGATIONS

1. The plaintiffs, Raymond and Julie Quillen are residents of the State of Idaho and owners of
certain land in Nez Perce County, Idaho; which is described as follows:

That part of Section 7, Township 36 North, Range 3 West of the Boise Meridian, Nez
Perce County, Idaho more particularly described as follows:

Commencing at the Southwest corner of the Northwest Quarter of said Section 7; thence
North 89°57' East along the South line of the North One-Half of said Section 7 a
distance of 2911.60 feet to a point on the West line of the Arrow Highline Road; thence
North 18°23' East along said West line a distance of 331.00 feet; thence North 43°23'
East along said West line a distance of 233.58 feet; thence North 63°11' West 500.00
feet; thence North 42°07' East 383.42 feet; thence South 69°24'03" West 364.69 feet;
thence South 79°01'34" West 173.00 feet; thence North 2°59' West 246.76 feet; thence
South 63°28' West 107.04 feet; thence North 71°32' West 281.79 feet; thence North
10°08' West 1069.30 feet; thence North 56°48'45" East 157.91 feet to the TRUE

COMPLAINT - 1

Case Assigned to:
CARL B. KERRICK

COPY

LAW OFFICES OF
CLARK AND FEENEY
LEWISTON, IDAHO 83501

PLACE OF BEGINNING; thence North 66°31'15" East 209.04 feet; thence North 77°34' East 197.27 feet; thence South 80°28'47" East 160.53 feet to a point on the West line of Arrow Highline Road; thence South 24°28' East along said West line a distance 280.25 feet; thence South 59°25' West, 187.54 feet; thence South 43°55' West, 103.75 feet; thence North 86°07' West, 76.55 feet; thence South 48°49' West, 127.65 feet; thence North 39°40' West, 130.97 feet; thence North 50°50' West, 164.13 feet; thence North 0°41' West, 123.91 feet; thence North 27°56' West, 86.62 feet to the PLACE OF BEGINNING.

2. The defendants James and Ella Dilling, are residents of the State of Idaho and owners of certain land in Nez Perce County, Idaho, which is described as follows:

See attached here to as Exhibit "A"

3. The plaintiffs have a well on their property which is connected to a water system that supplies water to both the plaintiffs' and the defendants' property.

4. The defendants have a well on their property which is connected to a water system that supplies water to both the defendants' and plaintiffs' property.

5. On or about September 12, 2003, the parties entered into a Water Use and Maintenance Agreement to define their respective rights and obligations for the use, operation, and maintenance of the wells and water systems located on their property. A copy of the Water Use and Maintenance Agreement is attached, Marked Exhibit "B," and incorporated by reference.

6. Section One of said Water Use and Maintenance Agreement states the following:

In general, Quillen will use the water from the Well on Parcel A for both irrigation and domestic purposes. Dilling will use the water from the Well on Parcel B for irrigation purposes and a share of the water from the Well on Parcel A for domestic purposes.

7. The well on Parcel A is located on plaintiffs' property.

8. The well on Parcel B is located on defendants' property

COUNT 1

9. Plaintiffs reallege all foregoing allegations.

10. Defendants have been using water from the well on Parcel A for irrigation purposes.

11. Defendants use of the water from the well on Parcel A is in violation of the Water Use and Maintenance Agreement.

12. As a result of the defendants' wrongful acts, plaintiffs have suffered damages in an amount to be proven at trial.

13. As a direct result of defendants' actions, plaintiffs have suffered special damages in an amount to be proven at trial. Plaintiffs have suffered an increase in their water bill due to defendants' unlawful actions.

14. Unless restrained by this court, defendants will continue to unlawfully withdraw water from the well located on plaintiffs property for irrigation purposes in violation of the Water Use and Maintenance Agreement.

COUNT 2

15. Plaintiffs reallege all foregoing allegations.

16. The well located on defendants property and the well located on plaintiffs are believed to be connected to the same water aquifer or underground water basin.

17. Since May or June 2007, defendants have withdrawn great quantities of water from such basin or aquifer, far more than is necessary for reasonable use of the overlying land. Such withdrawals of water have greatly diminished the water quality of the well located on plaintiffs property, and have prevented the well located on plaintiffs property from providing plaintiffs with water for their domestic purposes.

18. Unless restrained by this court, defendants will continue to withdraw such unreasonable quantities of water from the underground basin or water aquifer, and plaintiffs will be irreparably damaged by such withdrawals.

COUNT 3

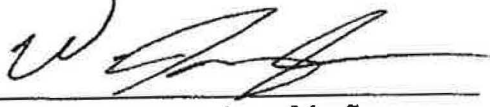
1 Plaintiffs have been required to retain legal counsel in this matter and are entitled to recover their
2 fees under the Water Use and Maintenance Agreement and I.C. §12-121. The sum of \$1500 is a fair and
3 reasonable sum for attorney's fees if this matter is uncontested.

4 WHEREFORE, plaintiff respectfully prays for judgment against the defendant as follows:

- 5 1. For judgment for breach of contract in an amount to be proven at trial;
- 6 2. For statutory pre-judgment interest;
- 7 3. The court issue a temporary injunction pending the hearing of this action restraining
8 defendants, and all persons acting through or under defendants, from continuing such wrongful and
9 unreasonable withdrawal of water underlying the lands described in this complaint;
- 10 4. On final hearing of this case, such temporary injunction be made permanent;
- 11 5. For an award of plaintiff's costs and attorneys' fees pursuant to the Water Use and
12 Maintenance Agreement and I.C. §12-121;
- 13 6. For such further relief as the court deems proper.

14 DATED this 2nd day of August, 2007.

15
16 CLARK and FEENEY

17
18 By 
19 W. Jeremy Carr, an associate of the firm.
20 Attorneys for Plaintiff.
21
22
23
24
25
26

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

1 RAYMOND QUILLEN, being first duly sworn on oath, deposes and says:

2 That he is one of the Plaintiffs above named, that he has read the foregoing complaint, and the
3 contents thereof and the facts stated therein are true to the best of his knowledge, information and belief.
4

5 Raymond Quillen
6 RAYMOND QUILLEN

7 SUBSCRIBED and SWORN to before me, this 2nd day of August, 2007.



Elizabeth Bielenberg
Notary Public in and for the state of
Idaho, residing at Lewiston.
My Commission expires: 2-10-09

Parcel 1

That part of Section 7 of Township 36 North, Range 3 West, B.M., Nez Perce County, Idaho, more particularly described as follows: Commencing at the Southwest corner of the NW¼ of said Section 7; thence N. 89°57' E. along the South line of the North one-half of said Section 7 a distance of 2911.60 feet to a point on the West line of Arrow Highline Road; thence N. 18°23' E. along said West line a distance of 331.00 feet; thence N. 43°23' E. along said West line a distance of 233.58 feet; thence N. 63°11' W., 500.00 feet; thence N. 42°07' E., 383.42 feet; thence S. 69°24'03" W., 364.69 feet; thence S. 79°01'34" W., 173.00 feet; thence N. 2°59' W., 246.76 feet; thence S. 63°28' W., 107.04 feet; thence N. 71°32' W., 281.79 feet; thence N. 10°08' W., 455.19 feet; thence N. 76°22' E., 165.57 feet; thence N. 11°51' W., 261.79 feet; thence N. 67°23' E., 130.66 feet to the true place of beginning; thence continue N. 67°23' E., 493.04 feet; thence S. 59°25' W., 187.54 feet; thence S. 43°55' W., 103.75 feet; thence N. 86°07' W., 76.55 feet; thence S. 48°49' W., 127.65 feet; thence N. 39°40' W., 77.19 feet to the true place of beginning.

Parcel 2

That part of Section 7, Township 36 North, Range 3 West of Boise Meridian, described as follows:

Commencing at the Southwest corner of the Northwest Quarter of said Section 7; thence North 89°57' East along the South line of the North one-half of said Section 7, a distance of 2911.60 feet to the West line of Arrow Highline Road; thence North 18°23' East along the West line of said road a distance of 331.00 feet; thence North 43°23' East along the West line of said road a distance of 233.58 feet; thence North 63°11' West a distance of 500.0 feet; thence North 42°07' East a distance of 383.42 feet; thence South 69°24'03" West a distance of 364.69 feet; thence South 79°01'34" West a distance of 173.00 feet; thence North 2°59' West a distance of 246.76 feet to the True Place of Beginning thence continue North 2°59' West a distance of 194.84 feet; thence South 87°41'21" West (previously described as being South 87°43' West) a distance of 112.98 feet to an existing iron pin; thence North 1°52'08" West a distance of 40.78 feet (previously described as being North 2°17' West 40.0 feet); thence North 34°15'54" East a distance of 294.89 feet (previously described as being North 34°14' East 296.67 feet); thence North 29°23'14" East a distance of 176.30 feet (previously described as being North 29°24' East 180.0 feet); thence South 76°22' West a distance of 587.88 feet; thence South 10°08' East a distance of 455.19 feet; thence South 71°32' East a distance of 281.79 feet; thence North 63°28' East a distance of 107.04 feet to the True Place of Beginning.

TOGETHER WITH the right of ingress and egress over and across roads as they now exist and traverse from the above described parcel to the Arrow Highline Road.

EXHIBIT A

Return Address:

David R. Risley
Randall, Blake & Cox, P.A.
P.O. Box 446
Lewiston, ID 83501

WATER USE AND MAINTENANCE AGREEMENT

Grantors: James R. Dilling aka Jim Dilling and Ella Dilling, husband and wife

Grantees: Raymond D. Quillen, a single man and Julie Marie Ridgeway, a single woman

THIS AGREEMENT made and entered into this 12th day of September, 2003, by and between JAMES R. DILLING aka JIM DILLING AND ELLA DILLING, husband and wife (hereafter "DILLING") and RAYMOND D. QUILLEN, a single man AND JULIE MARIE RIDGEWAY, a single woman (hereinafter "QUILLEN")

WHEREAS, QUILLEN has contracted to purchase a parcel of property situated in Nez Perce County, State of Idaho, more particularly described on Exhibit A (hereinafter referred to as Parcel A) pursuant to the terms of a Residential Purchase and Sale Agreement dated July 10, 2003; and

WHEREAS, DILLING is currently the owner of a parcel of real estate situated in Nez Perce County, State of Idaho, and more particularly described on Exhibit B (hereinafter referred to as Parcel B) attached hereto and incorporated herein by this reference; and

WHEREAS, a water system including a well with a pump drilled on Parcel A which supplies domestic, livestock, agricultural, and irrigation water to both Parcel A and Parcel B (Well 1); a second well with a pump on Parcel B which supplies domestic, livestock,

agricultural, and irrigation water to both Parcel A and Parcel B (Well 2); underground water lines on both Parcel A and Parcel B; pressure tanks and two holding tanks, hydrants for fire protection; and a pump house facility located on Parcel B all of which make and comprise the Wells and Water System; and

WHEREAS, QUILLEN and DILLING wish to enter into this Agreement to define their respective rights and obligations for the use, operation, and maintenance of the Wells and Water System located upon and serving Parcels A and B; and

NOW, THEREFORE, IN CONSIDERATION of the mutual conditions and covenants contained herein the parties agree as follows:

SECTION ONE

WATER RIGHTS AND EASEMENT

The parties hereby agree that QUILLEN and DILLING have an irrevocable, perpetual, and exclusive right to the use of the Wells and Water System including, but not limited to, water from the wells located on Parcels A and B in amounts reasonably necessary to satisfy the needs for domestic, livestock, agricultural, and irrigation purposes for Parcels A and B. The parties further agree that DILLING and QUILLEN will have and hereby grant one to the other mutual reciprocal easements for use of the Wells and Water System including, without limitation, for ingress and egress over and across Parcels A and B to repair, replace, and maintain the Wells and Water system, including the wells and all water lines, the tanks, the pump, the hydrants and all other items reasonably necessary to provide water to Parcels A and B.

This easement shall run with the land and be for all legal purposes related to the use of the Wells and Water System.

In general, QUILLEN will use the water from the Well on Parcel A for both irrigation and domestic purposes. DILLING will use the water from the Well on Parcel B for irrigation purposes and a share of the water from the Well on Parcel A for domestic purposes. However, this allocation may be changed by mutual agreement as needed to meet the needs of the parties or to deal with water supply or system issues. If the parties cannot reach agreement, any disagreements as to source, use or allocation of water shall be subject to Arbitration in accordance with Section Five of this agreement.

SECTION TWO

COSTS AND EXPENSES FOR WELLS AND WATER SYSTEM

DILLING and QUILLEN each agree that they shall pay for repair, maintenance, and operation, and upkeep of the wells, water lines, and other property and equipment associated with the water system on the property in a 1/3 to 2/3 ratio with DILLING paying 2/3 and QUILLEN paying 1/3.

SECTION THREE

SUBSEQUENT USER

DILLING and QUILLEN agree that the right to the use of water from the Wells and Water System located on Parcels A and B, in an amount reasonably necessary to satisfy the needs for domestic, livestock, agricultural, and irrigation purposes of Parcels A and B is exclusive and appurtenant to the land herein described as Parcels A and B. In the event either Parcel A or B is transferred without reconveyance of any easement granted and terminating this Agreement, the selling party shall require that the subsequent owner of Parcel A or B agree in writing to be bound by the terms and conditions of this Agreement, including the obligation to

pay the costs and expenses for the operation, maintenance, and repair of the Wells and Water system as provided in Section Two of this Agreement.

SECTION FOUR

FAILURE TO PAY EXPENSES

In the event that either DILLING or QUILLEN fails to pay for the expenses for the Wells and Water system as provided in Section Two of this Agreement, then the other party, shall have the right, but not the obligation, to advance monies for said expenses or removing liens resulting from the failure to pay said expenses, and shall be repaid by the defaulting party a reasonable amount expended together with interest at the rate of 12% per annum from the date of the expenditure until the date of payment.

SECTION FIVE

ARBITRATION

Decisions regarding the repair, maintenance, payment of expenses, allocation and source of water and operation of the Wells and Water System including, without limitation, pumps, tanks, water lines, and other property and equipment associated with the water system on the property shall be agreed to in advance by the owners of Parcels A, B. In the event the parties are not able to agree on the matters set forth in the proceeding sentence, the issues shall be submitted to binding arbitration. Each party shall select an arbitrator, the party selected arbitrators shall select a third, and the decision of the majority of the arbitrators shall be binding upon all parties and may be enforced by any court of competent jurisdiction. The expenses of the arbitrator chosen by each parcel owner shall be paid by that individual and the expenses of the third arbitrator shall be split between the parties. Except as set forth herein, the provisions of Idaho Code Section 7-901 et seq, shall apply to the arbitration proceedings.

SECTION SIX

MISCELLANEOUS PROVISIONS

6.1 Binding Effect. This Agreement shall be binding upon the heirs, successors, and assigns of each of the parties hereto. The rights and obligations of the parties under the terms of this Agreement are appurtenant to and shall run with the land.

6.2 Prior Agreements: This agreement modifies the covenants of the prior owners and are made for the express purpose of modifying the right to utilize and share in the water production of the wells and the use of the Wells and Water System.

6.2 Law Governing. This Agreement has been negotiated and made in the State of Idaho, and is to be governed and construed by the laws of the State of Idaho.

6.3 Modification. This Agreement may be modified or amended only by written agreement signed by the parties hereto.

6.4 Attorney Fees. In any action or suit brought to enforce any of the terms, conditions, or covenants of this Agreement, the prevailing party shall be entitled, as part of the judgment rendered, to all damages and expenses resulting from the breach, including all reasonable attorney fees and court costs, title insurance company charges, witness fees, and other legal expenses incurred by the prevailing party at trial or on appeal.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year hereinabove first written.


JIM DILLING


ELLA DILLING

RAYMOND D. QUILLEN

JULIE MARIE RIDGEWAY

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

On this 12 day of ~~August~~ ^{September}, 2003, before the undersigned, a Notary Public in and for said State, appeared **JIM DILLING AND ELLA DILLING**, husband and wife, known 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 on the day and year in this certificate first above written.



Kathryn N. VonBargen
Notary Public in and for the State of Idaho
residing at Lewiston therein.
My Commission Expires: 11-6-08

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

On this _____ day of August, 2003, before the undersigned, a Notary Public in and for said State, appeared **RAYMOND D. QUILLEN** a single man, known to me 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 on the day and year in this certificate first above written.

Notary Public in and for the State of Idaho
residing at _____ therein.
My Commission Expires: _____

STATE OF IDAHO

)

) ss:

County of Nez Perce

)

On this _____ day of August, 2003, before the undersigned, a Notary Public in and for said State, appeared **JULIE MARIE RIDGEWAY**, a single woman, known to me 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 on the day and year in this certificate first above written.

Notary Public in and for the State of Idaho
residing at _____ therein.
My Commission Expires: _____

EXHIBIT A

That part of Section 7, Township 36 North, Range 3 West of the Boise Meridian, Nez Perce County, Idaho, more particularly described as follows:

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EXHIBIT B

Parcel 1

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