

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
BENEFICIAL USE FIELD REPORT

A. GENERAL INFORMATION

Permit No: 85-15685
(need to re-number to basin 86)

Exam Date: 9/6/2012

1. Current Owner: JAMES R DILLING And/Or (deceased 10/2018)
ELLA DILLING
21349 ARROW RIM LN
JULIAETTA ID 83535
(208)843-2734

2. Accompanied by: James Dilling and Tod Geidl (atty)

Phone No: same as above

3. **SOURCE**

GROUND WATER

B. OVERLAP REVIEW

1. Other water rights with the same place of use: None
2. Other water rights with the same point of diversion: 86-11971-well in Lot 10 aka Quillens (Well #1)

C. DIVERSION AND DELIVERY SYSTEM

1. **LOCATION OF POINT(S) OF DIVERSION: In NEZ PERCE COUNTY**

GROUND WATER SE1/4NW1/4 Sec. 7, Twp 36N, Rge 03W, B.M. (46.481103, -116.761602)

GROUND WATER L10 NE1/4NW1/4 Sec. 7, Twp 36N, Rge 03W, B.M. (46.484003, -116.76118)

Method of Determination: GPS

2.

<u>PLACE OF USE:</u>			IRRIGATION, STOCKWATER AND DOMESTIC																
Twp	Rge	Sec	NE				NW				SW				SE				
			<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	<u>Totals</u>
36N	03W	7					4												4.0
							L 10												

Total Acres: 4

Method of Determination: Field visit, aerial imagery, and permit holder statement

3. ☒ Delivery System Diagram Attached (required). Indicate all major components and distances between components. Indicate weir size/pipe as applicable.
- ☐ Map Attached Showing Location(s) of point(s) of diversion and place(s) of use (required). Scale must be 1:24,000 or greater.
- ☒ Aerial Photo Attached (required for irrigation of 10+ acres).
- ☒ Photo of Diversion and System Attached

4.

<u>Well or Diversion ID No.*</u>	<u>Motor Make</u>	<u>Hp</u>	<u>Motor Serial No.</u>	<u>Pump Make</u>	<u>Pump Serial No. or Discharge Size</u>
A0017544—well located on Dilling's property (Well #2)	3 horsepower				<u>Serves irrigation purposes primarily according to Dilling</u>
A0017566—well located on Quillen's property (Well #1)	5 horsepower				<u>Serves domestic purposes primarily according to Dilling</u>

D. FLOW MEASUREMENTS

1.

MeasurementEquipmentTypeMakeModel No.Serial No.SizeCalib. Date

Pressure gage

2. Measurements:

I obtained a pressure measurement at the standpipe that is connected to the well located at Well #2 of 20 psi. I was not able to obtain a physical measurement because the storage tanks were already full during my visit, the system configuration is complicated and the permit holder was not positive of the location of incoming water at the time of the visit.

E. FLOW CALCULATIONS

____ Additional Computation Sheets Attached

Measured Method:

1). Stated diversion rate from the installer

Ed Shafer or TPM Water System, Inc. who has knowledge of the system (his dad installed the system) estimated the well capacities at 7-10 gpm for Well #1 and 20 gpm for Well #2. For both wells, Mr. Shafer states that the total capacity is ~30 gpm or 0.07 cfs.

2). Horsepower equation calculation:

Well #1

Horsepower = 5

Depth to water= per the well driller's report the perforations begin at 556'

Pressure = the water is open discharged at the top of the storage tank, the elevation change between the water well and the storage tank is 91'

$$8.8 \times 5 \times 0.7 / 556 + 91' = 30.8/647 = 0.047 \text{ cfs or } 0.05$$

Well #2

Horsepower = 3 hp

Depth to water = estimated at 490 per the well driller's report

Pressure = 20 psi was measured at Well #1. I found the elevation from the well and the storage tank is 22':

$$8.8 \times 3 \times 0.7 / 490 + 22 + (2.31 \times 20) = 18.48/558.2 = 0.03$$

The diversion rate for both wells is estimated at 0.08 cfs or 36 gpm

3). To confirm condition #8—calculations based on sprinklers and information about the irrigation system.

Irrigation of 4.5 acres total-including lawn (system is set up to irrigate 3 zones at different time at 1.5 acres each)

Observed 5/32 Rainbirds @ ~40psi but the system consist of other sized nozzles, sprinkler types and pressures so I'll estimate a conservative average of a 3 gpm output over the system. 12 sprinklers make up each zone, 12 x 3 = 36 gpm demand per zone.

Zone A

2500 gallons total (2500 gallons storage tank dedicated for irrigation purposes)

-4340 for irrigation (4320 gallons for 120 minutes plus 20 gallons total for drip line)

+2430 gallons (13.5 gpm from Well #2 over 180 min. {60 min. recovery + 120 min. sprinkler run time})

590 gallons in the storage tank when Zone B begins

Zone B

590 gallons to start with

-4320 gallons for irrigation (cycle runs for 120 minutes at 36 gpm)

+2835 gallons (13.5 gpm over 210 min. {90 min. recovery + 120 min. while sprinkler are running})

-895 gallon deficit in storage tank when Zone C begins

Zone C

-895 gallons to start with

-3240 gallons for irrigation (cycle runs for 90 minutes at 36 gpm)

Conclusion: Well #2 is incapable of keeping up with the irrigation schedule using the estimated diversion rate of 13.5 gpm input and an estimation of 36 gpm output to the irrigation system. Storage water from Well #1 must be contributing to the irrigation use when at least the last zone is running. Note however that the permit holder has not irrigated any of the 4 acres since the proof due submittal so it appears that they've come into compliance with this condition.

F. VOLUME CALCULATIONS

1. Volume Calculations for Irrigation:

$$V_{I.R.} = (\text{Acres Irrigated}) \times (\text{Irrigation Requirement}) = 4.0 \text{ acres} \times 4 \text{ af} = 16 \text{ afa}$$

$$V_{D.R.} = [\text{Diversion Rate (cfs)}] \times (\text{Days in Irrigation season}) \times 1.9835 = 0.08 \text{ cfs} \times 294 \times 1.9835 = 46.7 \text{ afa}$$

$$V = \text{Smaller of } V_{I.R.} \text{ and } V_{D.R.} = 16 \text{ AFA}$$

2. Volume Calculations for Other Uses: Domestic use for 2 homes = 2.4 AF (includes ½ acre irrig./home)

Stockwater-4 alpacas x 2 gpd = >0.1 af (round to minimum volume)

G. NARRATIVE/REMARKS/COMMENTS

When the permit holder developed the water system, the permit holder's daughter owned the house now owned by the Quillens. It appears that the water system was installed many years ago but did not come into question until the Quillens were experiencing problems with their water quality; when Well #1 was used for irrigation purposes by the permit holder, Quillens' domestic water became sulfuric. There is a water user's agreement between the two parties that states that both wells can be used by both parcels for domestic, agricultural, livestock, and irrigation purposes but also says that Dilling will use Well #2 for irrigation purposes and domestic purposes from Well #1. Quillens challenged the agreement in a lawsuit stating that the permit holder was not authorized to use water for irrigation purposes and the Dillings should not be able to use the well on their property (Well #1) for irrigation. The judge found that the agreement can be upheld based on the domestic exemption in 42-111. Now I wonder if the agreement is only enforceable if the irrigated area is at ½ acre at the most. Either way that is a civil matter. IDWR did place a condition on the permit saying Well #1 is for domestic purposes only, however.

pg. 5 of Summary Judgment

The permit holder developed the system for two homes using two wells and two storage tanks that are located near his house. Well #2 is set-up to discharge into a storage tank (known as the irrigation tank) and is primarily used for irrigation purposes. Water discharging from Well #2 can be routed directly to the permit holder's home if necessary.

Well #1 discharges into a storage tank (known as the domestic tank) for use in the permit holder's home. Note that the Quillens used to receive their domestic water from the domestic storage tank as well but had the system modified so they can bypass the storage tank and have their domestic water directly delivered to their home from Well #1. Note that Well #1 is still connected to the storage system on Dilling's property. Overflow from the domestic tank can be discharged into the irrigation tank via a one-way pipe.

The permit holder could not describe how the system exactly works and how it's operated other than a few tidbits in the above statements. An effort was made to contact the installer and he didn't have a lot to add. In summary, my findings are that Well #1 and Well #2 can physically be used for irrigation and

domestic purposes.

Note that the Quillens's home remained on this license even though the Quillens do not use any water from Well #2 but can use it as a back-up source.

Permit Timeline

9/12/2003: Water use and maintenance agreement was signed
 12/15/2005: Notice of violation letter sent to the permit holder
 7/5/2006: Department received notice of late claim for Quillens (86-11971)
 7/14/2006: Cease and desist letter sent to the permit holder from Dept to stop irrigating
 7/24/2006: Received well upgrade fees for both wells in addition to the application fee
 7/25/2006: Application for permit received at the Department
 5/25/2007: Permit issued w/ condition not allowing the use of Well #2 for irrigation purposes
 8/3/2007: Complaint filed by the Quillens against the permit holder
 9/28/2007: Decree issued for 86-11971 for 2 homes and 1 well
 4/28/2008: Proof of beneficial use filed
 7/12/2010: Plaintiffs motion for summary judgment is denied
 1/16/2011: Arbitration award (not specific to water distribution)
 3/1/2011: Order confirming arbitration and Order of dismissal based on stipulation
 9/6/2012: Field examination conducted
 11/28/2012: Application for amendment of permit received at the Department

Have conditions of permit approval been met? ☒ Yes ☐ No

The permit holder submitted an Amendment Application asking IDWR to remove condition #8 that states that Well #1 can only be used for domestic purposes. It is difficult to determine if this condition has been met during the development period. There have been no complaints made to IDWR from the Quillens other than the initial complaint. Further, the permit holder asserts that they haven't irrigated any of the 4 acres since the BU submittal because of their neighbors complaint. I recommend that the license be issued as below and IDWR approve the Application for Amendment asking IDWR to remove condition #8 since it is not a condition that is jurisdictional for IDWR and should be administered via the well agreement between Dillings and Quillens (new owner is Teare).

H. RECOMMENDATIONS

1. Recommended Amounts

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL VOLUME</u>
DOMESTIC	01/01 to 12/31	0.080 CFS	2.4 AFA
IRRIGATION	02/15 to 11/30	0.080 CFS	16.0 AFA
STOCKWATER	01/01 to 12/31	0.020 CFS	0.1 AFA
<u>Totals:</u>		0.080 CFS	18.50 AFA

2. Recommended Amendments

☒ Change P.D. as reflected above ☐ Other (remove/modify condition #8)

I. AUTHENTICATION

Field Examiner's Name Cheryl Palmer Date 12/18/12
 Reviewer _____ Date _____

Attachments:

Photos

Storage Tank System Diagram

Irrigation System Diagram

Statement from installer

Field Investigation – Photo Report



Picture 1

Site Identification/Details:
Well #1 (Quillens Property)

Date Taken: 9/6/12

GPS Location or other Location Information:
See Report

Comments:

This well feeds into the "domestic" storage tank
and also direct feeds into the Quillens.



Picture 2

Site Identification/Details:
Well #2 (Dilling property)

Date Taken: 9/6/2012

GPS Location or other Location Information:
See report.

Comments:

This well feeds directly to the Dilling property or
goes into the "irrigation" storage tank.



Picture 3

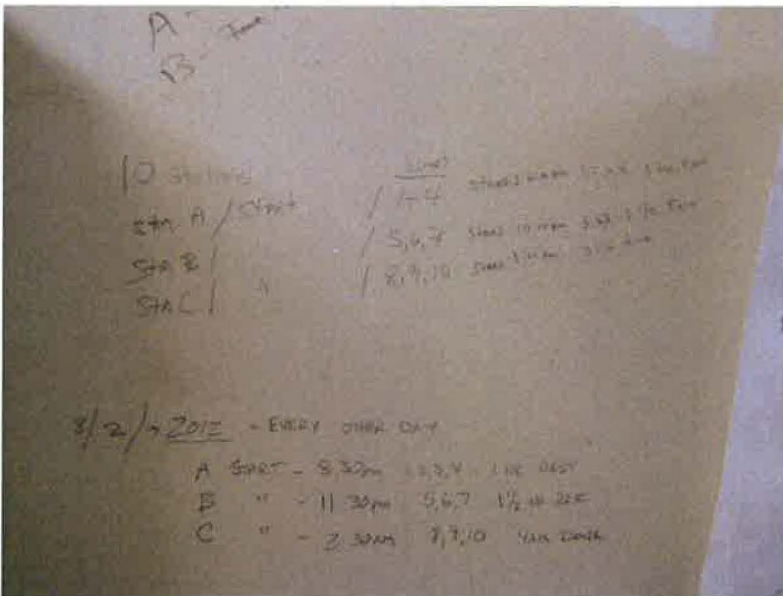
Site Identification/Details:
Inside the storage tank shed.

Date Taken: 9/6/2012

GPS Location or other Location Information:
Near the Dilling property.

Comments:

This photos shows the pipeline coming in from Well #1 into the storage tank. Also shown is the distribution line that goes to the Dillings and Quillens for domestic purposes.



Picture 4

Site Identification/Details:
Irrigation schedule

Date Taken: 9/6/2012

GPS Location or other Location Information:
Wall inside the storage tank shed.

Comments:



Picture 5

Site Identification/Details:
Irrigated area at the Dillings.

Date Taken: 9/6/2012

GPS Location or other Location Information:
Photo taken facing north with the home behind
and to the right.

Comments:
This is part of the lawn.



Picture 6

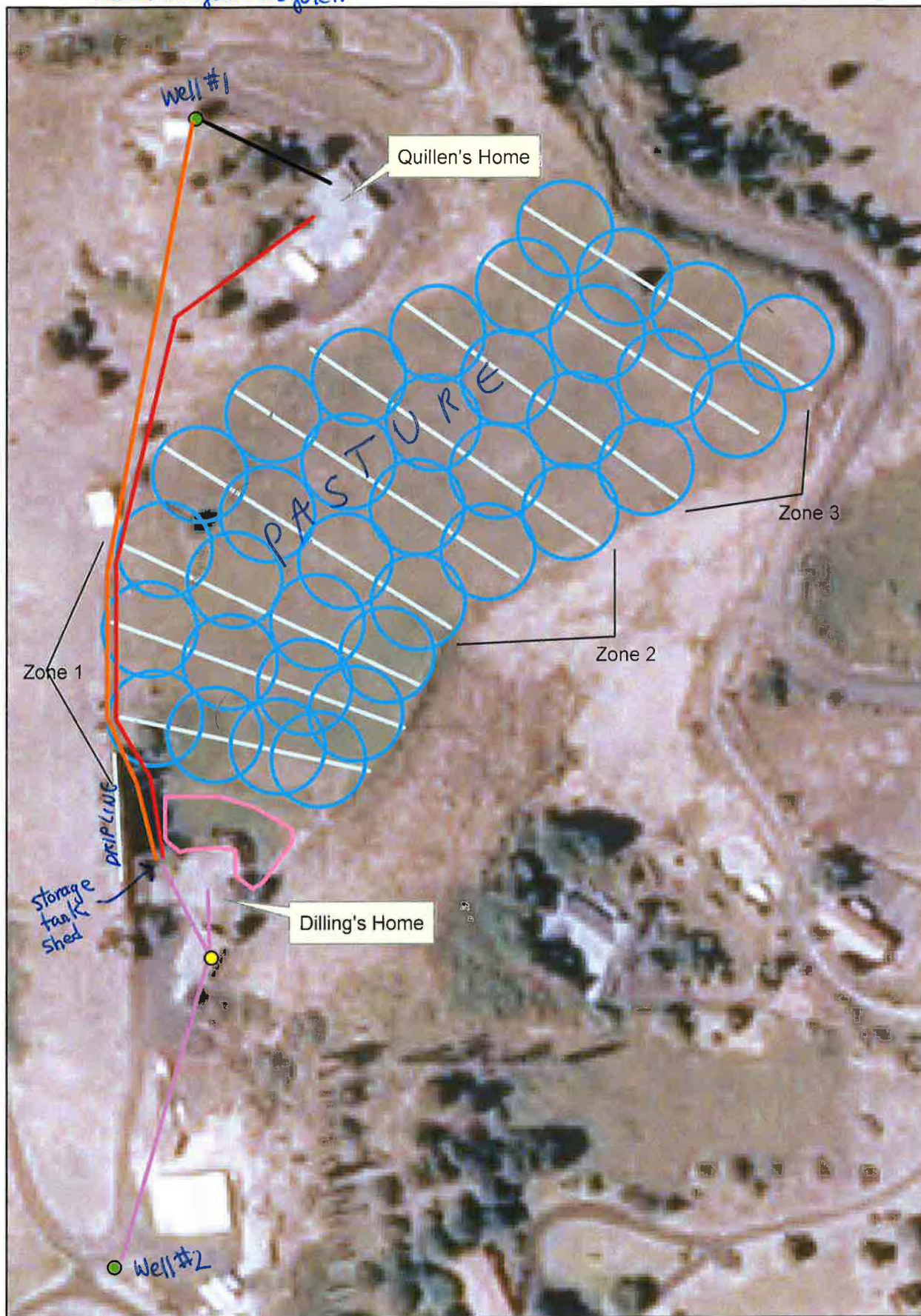
Site Identification/Details:
Photos shows fencing around the pasture for
animals and sprinkler.

Date Taken: 9/6/2012

GPS Location or other Location Information:
Photo taken looking SEasterly. At the most
eastern piece of Dillings property.

Comments:

Estimated irrigation system



Goes to
Guilens #1 or
Billings for
Domestic needs

1" pipe reduced to 3/4" grey pipe

TANK 1
**3000 Gallon
Storage
TANK** (limited to 2500)
Used for irrigation
and Domestic uses
Guilens well Discharges
into this tank

OVERFLOW
WATER
GOES FROM
TANK 1 to
TANK 2
BUT NOT THE OTHER WAY

TANK 2
**3000 Gallon
Storage
TANK** (limited to 2500)
Used for irrigation
Dripes
Guilens well Discharges
into this tank

IN FROM
well #2

1 1/2" RIG
LINE
GHP
PUMP

2" PVC pipe
to
underground

1" PVC PIPE

1 1/4" PVC pipe from storage
into tank

WELL #1

Disclaimer:
This system diagram
is based on the best
information available
at the time of the examination.

1 0 0 0 0 R 1



TPM Water Systems, Inc

1223 Burrell Avenue
Lewiston, ID 83501
208-746-0500 FAX: 208-746-5600
TPMWAS1944O9

Jim & Ella Dilling
21349 Arrow Rim Lane
Juliaetta, ID 83535

12/27/2012

Re: Well operation

#1 well is up near the house.

This well has a standard pressure tank and controls etc installed on it. It feeds outside hose bibs and can be turned to the house in an emergency (i.e. Well #2 becoming non-operational).

This well can be feed either manually into the reservoir tanks that are part of the #2 well system (which then is pumped into the house) or bypassing the reservoirs, feed directly into the house pressure line (in case the booster pump attached to the reservoir is not working).

When turned to go into the reservoirs, this line feeds into the top of the reservoir with ~8" air gap above high water level.

When fed thru the pressure line, there is a double check valve on both systems to prevent water from feeding 'backwards' to normal flow.

Ed Shafer
TPM Water Systems

Palmer, Cherie

From: Jeannine Bounds [jeannineb@cmd-law.com]
Sent: Thursday, January 10, 2013 4:51 PM
To: Palmer, Cherie
Subject: Dillings
Attachments: Stipulation to Confirm Arbitration Award.pdf

Dear Cherie:

Please let us know if you require anything else. The Arbitration Award is the same as the one attached to the Order Confirmation Arbitration Award Tod sent you previously.

Jeannine L. Bounds

Legal Assistant
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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W. Jeremy Carr
Idaho State Bar No. 6827
CLARK and FEENEY
Attorneys for Plaintiffs
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P. O. Drawer 285
Lewiston, Idaho 83501
Telephone: (208)743-9516

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

**STIPULATION TO CONFIRM
ARBITRATION AWARD**

COME NOW Raymond Quillen and Julie Quillen, by and through their attorney of record,
W. Jeremy Carr of the law firm of Clark and Feeney, and James Dilling and Ella Dilling, by and
through their attorney of record, Tod D. Geidl of the law firm of Creason, Moore, Dokken & Geidl,
and stipulate and agree for entry of an Order confirming the Arbitration Award issued by Arbitrator,
George Reinhardt, dated January 6, 2011, a true and correct copy of which is attached hereto as
Exhibit "A" and incorporated herein by reference.

DATED this 25th day of February, 2011.

CLARK and FEENEY

By W. Jeremy Carr
W. Jeremy Carr, a member of the firm.
Attorney for Plaintiffs

CREASON, MOORE, DOKKEN & GEIDL

By Tod D. Geidl
Tod D. Geidl
Attorney for Defendants.

**STIPULATION TO CONFIRM
ARBITRATION AWARD - 1**

LAW OFFICES OF
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(1904-1996)

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Email: cmd@cmd-law.com

*ADMITTED IN IDAHO AND WASHINGTON

November 26, 2012

RECEIVED

NOV 28 2012

DEPARTMENT OF
WATER RESOURCES

Cherie Palmer, Sr. Water Resource Agent
Idaho Dept of Water Resources
Water Allocation Bureau
P.O. BOX 83720
Boise, ID 83720-0098

Re: Permit 85-15685

Dear Ms. Palmer:

Enclosed please find the Application for Amendment of a Permit along with a check in the amount of \$100.00 for the associated fee.

Thank you for your assistance in this matter.

Very truly yours,

CREASON, MOORE, DOKKEN & GEIDL, PLLC



Tod D. Geidl

jlb

Enclosure

Cc: James and Ella Dilling

FILED

2010 JUL 12 PM 4 47

PATTY O. WEEKS
CLERK OF THE DISTRICT COURT

DEPUTY

RECEIVED
JUL 13 2010
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 Feeney. 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

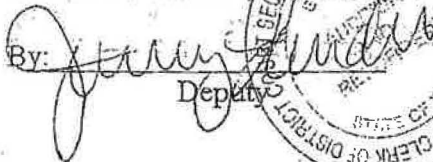
☒ hand delivered via court basket this 13th day of July, 2010, or

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

W. Jeremy Carr
Clark and Feehey
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



Ident. No. 85-15685

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

RECEIVED

JUL 25 2006

IDWR/North

1. Name of Applicant James R. Dilling & Ella Dilling Phone (208) 843-2734
Mailing address 21349 Arrow Rim Ln, Juliaetta, Idaho 83535

2. Source of water supply Ground water which is a tributary of n/a

3. Location of point of diversion is Township 36N Range 3W Sec. 7 in the NE 1/4,
NE 1/4, NW 1/4, Govt. Lot West 10, B.M., Naz Perce County;

additional points of diversion if any: X 2

4. Water will be used for the following purposes:

Amount 0.2 cfs for irrigation purposes from 2/15 to 11/30 (both dates inclusive)
(cfs or acre-feet per annum)

Amount 0.08 cfs for domestic purposes from 01-01 to 12-31 (both dates inclusive)
(cfs or acre-feet per annum)

Amount 0.07 cfs for stock watering purposes from 01-01 to 12-31 (both dates inclusive)
(cfs or acre-feet per annum)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)

5. Total quantity to be appropriated is (a) 40 0.30 and/or (b) _____
cubic feet per second acre feet per annum

6. Proposed diverting works:

a. Describe type and size of devices used to divert water from the source well w/electric pump.

b. Height of storage dam 1 feet; active reservoir capacity 1 acre-feet; total
reservoir capacity _____ acre-feet

c. Proposed well diameter is 6 inches; proposed depth of well is 596 feet

d. Is ground water with a temperature of greater than 85°F being sought? no.

e. If well is already drilled, when? 1989 1992 Drilling firm Uhlenkott Drilling
1978 1979 Detray Drilling

Well was drilled for (well owner) Applicant; Drilling Permit No. 746453 & 746146

7. Time required for completion of works and application of water to proposed beneficial use is complete.

8. Description of proposed uses (if irrigation only, go to item 9):

a. Hydropower; show total feet of head and proposed capacity in kW. _____

b. Stockwatering; list number and kind of livestock. 3-4 Alpacas

c. Municipal; show name of municipality. _____

d. Domestic; show number of households. 2 Households

e. Other; describe fully. _____

Per T.C. with
Edwin

Per T.C. with Edwin

Per T.C. with
Edwin

3. Description of place of use:

a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.

b. If water is used for other purposes, place a symbol of the use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

For T.C. With Edwin

TWP	RGE	SEC	NE				NW				SW				SE				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
36N	3W	7					D												
36N	3W	7					A		2										10
							S		S										

Total number of acres to be irrigated 10

10. Describe any other water rights used for the same purposes as described above. None.

11. a. Who owns the property at the point of diversion? Dilling, Quillen & Ridgeway

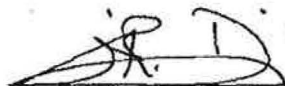
b. Who owns the land to be irrigated or place of use? Dilling, Quillen & Ridgeway

c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing:

12. Remarks: See attached Water Use & Maintenance Agreement

13. MAP OF PROPOSED PROJECT REQUIRED - Attach an 8 1/2"x11" map clearly identifying the proposed point of diversion, place of use, section #, township & range. (A photocopy of a USGS 7.5 minute topographic quadrangle map is preferred.)

BE IT KNOWN that the undersigned hereby makes this application for permit to appropriate the public waters of the State of Idaho as herein set forth.



Signature of Applicant (and title, if applicable)

Received by db Date 7/25/06 Time 1:15p Preliminary check by db
 Fee \$ 250.00 Receipted by db # N017717 Date 7/25/06
 Publication prepared by db Date 11/29/06 Published in August 1906 Date 12/14/06
 Publication approved db Date 12/15/06

2000303/16

695751
FILED FOR RECORD
27th REG. BY ALLIANCE TITLE
2003 SEP 12 P 4:01
PATTY O. WEEKS
RECORDER, NEZ PERCE CO ID
BY CONNOR DEPUTY

Return Address:

David R. Risley
Ranwell, 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,

WATER USE AND MAINTENANCE AGREEMENT

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.

695751

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

WATER USE AND MAINTENANCE AGREEMENT

3

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 preceding 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.

WATER USE AND MAINTENANCE AGREEMENT

SECTION SIXMISCELLANEOUS 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.

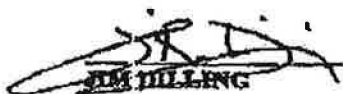
6.2 Prior Agreements. This agreement modifies the covenants of the prior owners and are made for the express purpose of modifying the right to utilize and share in the water production of the wells and the use of the Wells and Water System.

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 hereinaabove first written.


ELLA DILLING


ELLA DILLING


RAYMOND D. QUILLEN


JULIE MARIE RIDGEWAY

WATER USE AND MAINTENANCE AGREEMENT

5

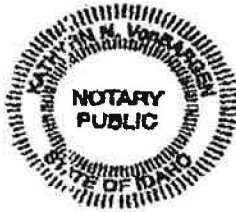
695751

STATE OF IDAHO)

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

STATE OF IDAHO)

County of Nez Perce)

On this 12 th day of August, 2003, before the undersigned, a Notary Public in and for said State, appeared RAYMOND D. QUELLEN 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.



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

WATER USE AND MAINTENANCE AGREEMENT

6

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

695751

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:

Commencing at the Southwest corner of the Northwest Quarter of said Section 7; thence North 89°17' 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 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°55' West, 86.62 feet to the PLACE OF BEGINNING.

EXHIBIT B

Parcel 1

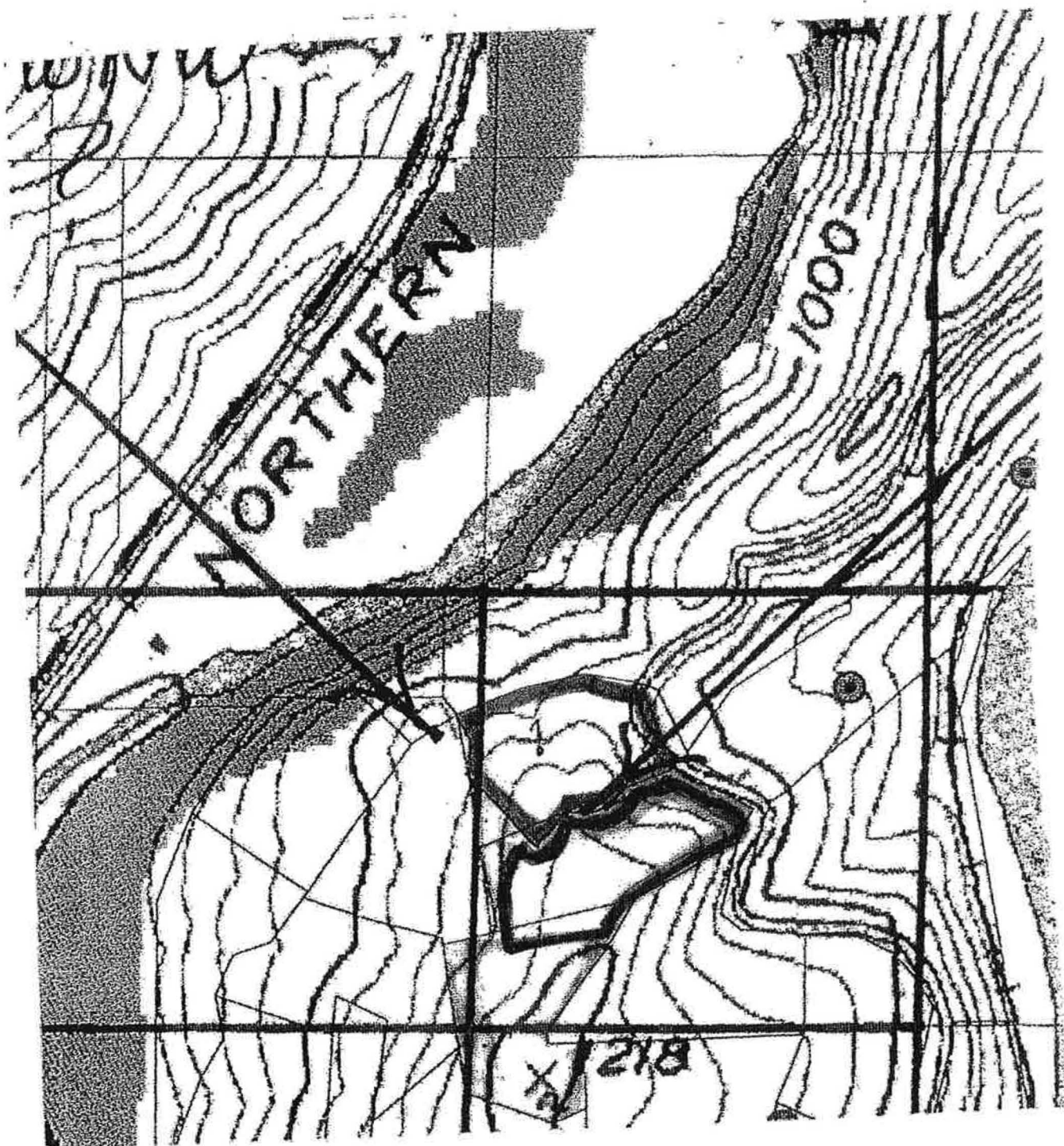
That part of Section 7 of Township 36 North, Range 3 West, B.M., Nez Perce County, Idaho, more particularly described as follows: Commencing at the Southwest corner of the NW¼ of said Section 7; thence N. 89°57'E. along the South line of the North one-half of said Section 7 a distance of 2911.60 feet 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°5' 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 112.93 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.



#1 Well Site
#2 Well Site

Blue Quillen
Yellow Dilling
Pink area, irrigated by Dilling

NO. 85-15685

Maximum Diversion Rate: 0.30 CFS

has applied for a permit to appropriate water from:

and a permit is APPROVED for development of water as follows:

LOCATION OF POINT OF DIVERSION:

GROUND WATER L10 (SW¼ NE¼ NW¼) Sec. 7, Twp 36N, Rge 03W, B.M. NEZ PERCE County

[illegible][illegible]

PLACE OF USE: STOCKWATER

[illegible]

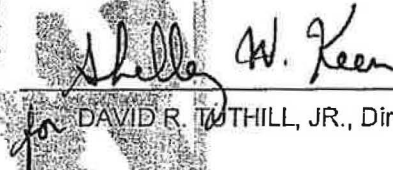
State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 85-15685

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **May 01, 2008**.
2. Subject to all prior water rights.
3. Domestic use is for 2 homes. Irrigation of lawn, garden and landscaping associated with the home is authorized under the irrigation component of this right.
4. Stockwater use is for 3-4 Alpacas.
5. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
6. After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to determine the amount of water diverted from power records and shall annually report the information to the Department.
7. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the lands above.
8. Water diverted from the point of diversion located in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 7, T36N, R3W, shall be limited to domestic use.
9. This right does not grant any right-of-way or easement across the land of another.
10. The diversion and use of water described in this right may be subject to additional limitations agreed to by another party and the right holder under separate agreement to which the Department is not a party and which may be enforceable by a court of law.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this 25th day of May, 2007.


for DAVID R. WATHILL, JR., Director

Palmer, Cherie

From: Palmer, Cherie
Sent: Monday, November 05, 2012 9:19 AM
To: 'Jeannine Bounds'
Subject: RE: Dillings Water Permit Amendment

Jeannine,

I was just reviewing permit 85-15685 and noticed that one of the permitted point of diversion locations is incorrect. The amendment for permit can include both requests that the Dillings are required to change; the change of condition #8 and the change in point of diversion location.

The permit includes two points of diversion in the NE¼NW¼.

However, my findings indicate that there is only one point of diversion in the NE¼NW¼ of Section 7 and the other point of diversion is located within the NW¼SE¼NW¼ of Section 7. Please confirm my findings and include this change on the amendment form.

Please let me know if you have any questions and have a great day.

*Cherie Palmer, Sr. Water Resource Agent
Idaho Dept of Water Resources
Water Allocation Bureau*

322 E. Front Street (Front St. & Broadway Ave)

Mail: PO BOX 83720

Boise, ID 83720-0098

email: cherie.palmer@idwr.idaho.gov

phone: (208) 287-4944

fax: (208) 287-6700

From: Jeannine Bounds [<mailto:jeannineb@cmd-law.com>]
Sent: Thursday, November 01, 2012 1:20 PM
To: Palmer, Cherie
Cc: Tod Geidl
Subject: Dillings Water Permit Amendment

Dear Cherie:

Would it be possible for you to send us a copy of the original application filed by the Dillings? We are working on the Application for Amendment of a Permit and will email it to you for review before we file it. We are also working on obtaining the documentation regarding the storage tanks. Thank you for your assistance in this matter.

Jeannine L. Bounds

Legal Assistant

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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Palmer, Cherie

From: Tod Geidl [TodG@cmd-law.com]
Sent: Tuesday, September 25, 2012 1:38 PM
To: Palmer, Cherie
Cc: Jeannine Bounds
Subject: Jim & Ella Dilling Water Permit Amendment

Hi Cherie,

Thank you for speaking with me today. I will meet with Dillings next week to find out if they want to file an amendment to the original water permit to remove the restriction on irrigation from the new well. If you could put things on hold in the meantime, I would appreciate it.

In answer to your question from today, it is my understanding the two storage tanks are connected. Assuming Dillings want to file for an amendment to the permit, I will get you the schematics showing that. Thank you for your assistance.

--

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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