



BOUNDARY TITLE

259890

Page: 1 of 4
08/16/2004 11:09 am
Ferry Co Wa

AFTER RECORDING MAIL TO:

Skok & Monasmith, P.S.
File No. 04-~~158~~ 277
140 S. Elm
P.O. Box 71
Colville, WA 99114

WELL AND WATER USE AGREEMENT

Assessor's Tax Parcel ID#: 7-37-05-43-00030-00

THIS AGREEMENT made and entered into this 4th day of ~~June~~ ^{August}, 2004, by and between MARY E. MERRITT, an unmarried person; and CLAY R. MERRITT and KIMBERLY MERRITT, husband and wife.

WHEREAS, MARY E. MERRITT, an unmarried person, is the owner of the following described real property:

PARCEL A: That portion of the SW 1/4 of the SE 1/4 of Section 5, Township 37 North, Range 37 East, W. M., in Ferry County, Washington, described as follows:
Beginning at the quarter corner between Sections 5 and 8, Township 37 North, Range 37 East, W.M.; thence East on the Section line, a distance of 170 feet, the true point of beginning; thence continuing East on said Section line a distance of 1110 feet; thence North 794.48 feet; thence West 1110 feet; thence South 794.48 feet to the true point of beginning.

PARCEL B: That portion of the SW 1/4 of the SE 1/4 of Section 5, Township 37 North, Range 37 East, W.M., in Ferry County, Washington, described as follows:
Commencing 1280 feet due East of the quarter section line between Section 5 and 8; thence due East 40 feet to the Southeast corner of the SW 1/4 of the SE 1/4; thence due North 660 feet thence due West 40 feet; thence due south 660 feet to the point of beginning.

PARCEL C: That portion of the S 1/2 of the SE 1/4 of Section 5, Township 37 North, Range 37 East, W.M., in Ferry County, Washington, described as follows:
Beginning at the quarter corner between Sections 5 and 8, Township 37 North, Range 37 East, W.M.; thence East on the Section line a distance of 170 feet; thence continuing East on said Section line a distance of 1110 feet; thence North 660 feet to the true point of beginning; thence East 660 feet; thence North 660 feet to the North line of the S 1/2 of the SE 1/4 of Section 5; thence West 1770 feet along said North line; thence South 525.52 feet; thence East 1110 feet; thence South 134.48 feet to the true point of beginning.

EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PARCEL:



BOUNDARY TITLE

259890

Page: 2 of 4
08/16/2004 11:09 am
Ferry Co Wa

That portion of the SE 1/4 of the SE 1/4 of Section 5, Township 37 North, Range 37 East, W. M., in Ferry County, Washington, described as follows:
Beginning at the quarter corner between Sections 5 and 8, Township 37 North, Range 37 East, W.M.; thence East on the Section line a distance of 170 feet; thence continuing East on said Section line a distance of 1,110 feet; thence North 660 feet to the true point of beginning; thence East 660 feet; thence North 660 feet to the North line of the S 1/2 of the SE 1/4 of Section 5; thence West 660 feet along said North line; thence South 660 feet to the true point of beginning.

WHEREAS, CLAY R. MERRITT and KIMBERLY MERRITT, husband and wife, are the owners of the following described real property:

That portion of the SE 1/4 of the SE 1/4 of Section 5, Township 37 North, Range 37 East, W. M., in Ferry County, Washington, described as follows:
Beginning at the quarter corner between Sections 5 and 8, Township 37 North, Range 37 East, W.M.; thence East on the Section line a distance of 170 feet; thence continuing East on said Section line a distance of 1,110 feet; thence North 660 feet to the true point of beginning; thence East 660 feet; thence North 660 feet to the North line of the S 1/2 of the SE 1/4 of Section 5; thence West 660 feet along said North line; thence South 660 feet to the true point of beginning.

WHEREAS, there is a well located on the property of BERNARD E. MERRITT and MARY E. MERRITT, husband and wife, which well is shared between the two described properties.

WHEREAS, the owners wish to set forth an agreement for the use, operation and maintenance of the well and water system;

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

1. Ownership of Water System: It is agreed that upon the sale of the lots herein, each respective lot owner shall be the owner of an undivided on-half (1/2) interest in the aforementioned well, water system and main distribution lines and that each party shall share equally in the cost of operation and maintenance of the well and water system, provided, however, each party shall be responsible for the maintenance of that portion of the water system which serve only the property of such party. Both lot owners shall be responsible for payment of one half of the water system placed in said well, including pumps, valves, controls, pressure tanks, electrical hookups and all water system requirements.

Should said water system improvements be made by the developer or a subsequent lot owner, the other lot owner shall have no rights to water from the well until that lot owner has paid to the party making the water system improvements one half of the actual costs of said water system improvements.

2. Use of Water System: It is agreed that each lot owner shall have the right to connect to the main water system with not more than one (1) distribution water line which shall be not more than 3/4 inches in diameter. The water used by each of the lot owners shall be limited to domestic household use, livestock watering, and lawn and garden irrigation for one (1) single family dwelling on the property of each lot owner as above described.

3. Maintenance: Each lot owner utilizing water from said well shall be equally responsible for all costs associated with the well operation. Each lot owner shall be independently responsible for all waterlines to their respective residences which are not common to both lot owners.



BOUNDARY TITLE

259890

Page: 3 of 4
08/16/2004 11:09 am
Ferry Co Wa

4. Government Regulations: Both lot owners shall comply with all County, State or other governmental regulations relating to the operation of the water system.

5. Non-contamination Covenant: The lot owners agree and covenant that said parties, their heirs, successors and assigns, will not construct, maintain, or suffer to be constructed or maintained upon the said land and within 100 feet of the well herein described so long as the same is operated to furnish water for public consumption, any potential source of contamination, such as cesspools, sewers, privies, septic tanks, drain fields, manure piles, garbage of any kind or description, barns, chicken houses, rabbit hutches, pigpens, or other enclosures or structures for the keeping or maintenance of fowls or animals, for storage of liquid or dry chemicals, herbicides or insecticides.

6. Easement: There shall be hereby granted a ten (10) foot easement over and along the course of water pipelines, and particularly from the property to the well, for maintenance of the water line(s) as necessary for the operation of the water system.

7. Default: In the event either lot owner shall fail to make any payment provided for herein, the other lot owner shall have a lien upon the property of the defaulting party as above described for the payment of such obligation.

8. Attorney's Fees: In the event either party is required to employ the services of an attorney to enforce the terms of this agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs incurred in connection therewith.


9. Binding Effect: This agreement shall be binding upon the parties hereto, their heirs, successors and assigns.

These covenants shall run with the land and shall be binding on all lot owners having or acquiring any right, title, or interest in the land described herein or any part thereof, and shall inure to the benefit of each owner thereof.

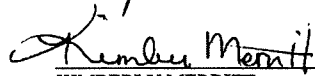
DATED this 4 day of ^{August}~~July~~, 2004.



MARY E. MERRITT



CLAY R. MERRITT



KIMBERLY MERRITT



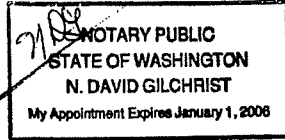
BOUNDARY TITLE

259890
Page: 4 of 4
08/16/2004 11:09 am
Ferry Co Wa

STATE OF WASHINGTON)
) ss.
COUNTY OF Stevens)

Aug I, the undersigned, a Notary Public in and for the State of Washington, do hereby certify that on this 4 day of ~~July~~, 2004, personally appeared before me MARY E. MERRITT to me known to be the individual described in and who executed the within instrument, and acknowledge that she signed the same as her free and voluntary act and deed for the uses and purposes herein mentioned.

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

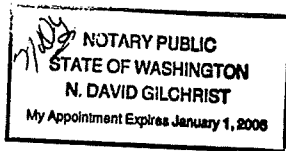


N. David Gilchrist
Notary Public in and for the State of
Washington, residing at Colville
My Commission expires: 1-1-2006

STATE OF WASHINGTON)
) ss.
COUNTY OF Stevens)

Aug I, the undersigned, a Notary Public in and for the State of Washington, do hereby certify that on this 4 day of ~~July~~, 2004, personally appeared before me CLAY R. MERRITT and KIMBERLY MERRITT, husband and wife, to me known to be the individuals described in and who executed the within instrument, and acknowledge that they signed the same as their free and voluntary act and deed for the uses and purposes herein mentioned.

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



N. David Gilchrist
Notary Public in and for the State of
Washington, residing Colville
My Commission expires: 1-1-2006

204007

Indexed ✓
Recorded ✓
Compared ✓
Paged Out ✓

STATE OF WASH. COUNTY OF FERRY, SS
FILED OR RECORDED
VOL. MF OF O. R. PAGE 204007
REQUEST OF Larry Kent
ON Apr 15 (11:00am) 19 87
DONOTHY M. FERGUSON
COUNTY AUDITOR
BY J.S.
DEPUTY
MAIL TO Larry Kent
RT 2 Box 278
Kettle Falls, Wa 99141

WATER USE AGREEMENT

THIS AGREEMENT is made this 1st day of April, 1987 between GEORGE KENT, DONNA M. KENT, as trustee for L. and M. Reid Trust, LARRY KENT and DONNA M. KENT, husband and wife, JAMES A. DECKER AND JACKIE W. DECKER, husband and wife, EARL W. CAMPY and MARGARET CAMPY, husband and wife, and WAYNE B. & RONDA S. MERRITT, husband and wife.

WHEREAS LARRY KENT, hereinafter referred to as "Kent", is owner of the following described parcel (Parcel A) consisting of a residence and approximately 14.2 acres:

A tract of land located within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ and within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 5, Township 37 North, Range 37 East, W.M., in Ferry County, Washington, more particularly described as follows: Beginning at the quarter corner of Section 5 and 8, Township 37 North, Range 37 East, W.M., thence east 170 feet; thence North 990 feet; thence west 462 feet; thence southwesterly 300 feet (58° southwesterly) to the Matson County Road as established and in use April 12, 1968; thence south 858 feet along said Matson County Road, to a point 252 feet west of the point of beginning; thence east to the point of beginning.

WHEREAS JAMES A. and JACKIE W. DECKER, hereinafter referred to as "Decker", are the owners of the following described parcel (Parcel B) consisting of a residence on approximately 5 acres:

From the NE corner of NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 8, Township 37 North, Range 37 East, W.M. in Ferry County, Washington, south 89°49'47" West 40 feet along north line of Section 8 to point of beginning. Thence south 0°34'52" east 662.47 feet. Thence south 89°52'45" west 328.77 feet. Thence north 0°34'52" west 662.18 feet. Thence north 89°49'47" east 328.77 feet, more or less, to the point of beginning.

WHEREAS EARL W. and MARGARET CAMPY, hereinafter referred to as "Campy", are purchasers of the following described property, (Parcel C) with the L. and M. Reid Trust as Seller, recorded June 23, 1986 under Auditor's File No. 201868, consisting of a residence and 4.3 acres:

Kent/Decker/Campy/Merritt
WATER USE AGREEMENT-1

Lot 7 of Matson Creek Subdivision, as per Plat Volume 2, page 47, records of Ferry County, Washington.

WHEREAS WAYNE B. & RONDA S. MERRITT, hereinafter referred to as "Merritt", husband and wife are the purchasers of the following described property, (Parcel D) with the L. & M. Reid Trust as Seller, recorded June 14, 1985 under Auditor's File No. 199248, consisting of approximately 23.62 acres:

That portion of the South one-half of the SE $\frac{1}{4}$ of Section 5, Township 37 North, Range 37 East, W.M. more particularly described as follows:

Beginning at the quarter corner between Section 5 and 8, Township 37 North, Range 37 East, W.M., thence East on the Section line a distance of 170 feet, thence continuing East on said Section line a distance of 1110 feet; thence North 660 feet to the true point of beginning; thence East 660 feet, thence North 660 feet to the North line of the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 5, thence West 1770 feet along said North line, thence South 525.52 feet, thence East 1110 feet, thence South 134.48 feet to the true point of beginning. All in Ferry County, Washington.

WHEREAS WAYNE B. AND RONDA S. MERRITT, are the purchasers of the following described property, (Parcel E) consisting of approximately 20.46 acres in Ferry County, Washington:

From marked $\frac{1}{4}$ corner stone between Sections 5 and 8, South 89°59'51" East 170 feet along section line to point of beginning. Thence N 0°28'36" East 800 feet. Thence N 89°59'30" East 1113.17 feet. Thence South 0°22'21" West 800.20 feet to section line between Sections 5 and 8. Thence North 89°59'51" West 1114.62 feet to point of beginning.

WHEREAS THE L. & M. REID TRUST, hereinafter referred to as "Reid Trust", is owner of the following described parcels on Matson Creek, Subdivision, Plat # 84-059 in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 8, Township 37 North, Range 37 East, W.M. in Ferry County, Washington:

| | |
|-------|----------------------------|
| Lot 1 | - approximately 4.17 acres |
| Lot 2 | - approximately 3.95 acres |
| Lot 3 | - approximately 3.12 acres |
| Lot 4 | - approximately 5.71 acres |
| Lot 5 | - approximately 4.39 acres |
| Lot 6 | - approximately 4.74 acres |

WHEREAS GEORGE H. KENT and DONNA KENT received a permit from the State of Washington, Department of Ecology, a copy of which is attached as Exhibit A, under permit #S3-26269P to appropriate 0.06 cubic feet per second, 6 acre feet per year, continuously, for group domestic supply of three (3) units. The location of

Kent/Decker/Campy/Merritt
WATER USE AGREEMENT-2

diversion/withdrawal is approximately 1100 feet south and 1800 feet west from the NE corner of Section 6.

WHEREAS it is the intent and desire that the following parties/properties divide said domestic water use as follows:

- .02 cubic feet per second to "Kent"-legal description above-Parcel A
- .02 cubic feet per second to "Decker"-legal description same as above-Parcel B
- .02 cubic feet per second to "Campy"-legal description same as above-Parcel C

WHEREAS DONNA KENT has received a certificate from the State of Washington, Department of Ecology, a copy of which is attached as Exhibit B, under certificate #520(w/Chg 202 & 1-3-282 to appropriate and use 0.41 cubic feet per second for seasonal irrigation as provided in Exhibit B.

WHEREAS the parties desire that said irrigation rights be divided among the following parcels:

- .02 cubic feet per second - Merritt (Parcel D)
- .02 cubic feet per second - Merritt (Parcel E)
- .02 cubic feet per second - Lot 1
- .02 cubic feet per second - Lot 2
- .02 cubic feet per second - Lot 3
- .02 cubic feet per second - Lot 4
- .02 cubic feet per second - Lot 5
- .02 cubic feet per second - Lot 6
- .25 cubic feet per second - Larry Kent (Parcel A)

WHEREAS the primary reason for .25 cubic feet per second being reserved to Larry Kent's property is for control and monitoring purposes, and not necessarily to receive that additional portion of water right.

WHEREAS the source of these water rights is Matson Creek and the point of diversion is described in Exhibit's A and B, and there is an easement from said point of diversion to said parties properties, as shown in the attached Exhibit C.

WHEREAS there are certain existing distribution pipelines from Matson Creek that currently service some of the parcels in place.

WHEREAS the parties recognize that use of irrigation water is dependant on availability of said water and that domestic use has first priority to said water.

WHEREAS it is understood and agreed that any water usage is subject to regulation and authority by the State of Washington. It is also understood and agreed that specifically in respect to the interest in the irrigation rights to be appurtenant to the 2 parcels being purchased by Merritt, that the State of Washington must approve the change of location for useage. Preliminary approval has been given but is still subject to final approval.

WHEREAS the parties desire to enter into an Agreement for the use, maintenance and control of water and water system.

THE PARTIES AGREE AS FOLLOWS:

1. The following parcels shall have a perpetual domestic water right, and said right shall be appurtenant to the respective parcels:

| | |
|--------|--|
| Kent | - Parcel A - .02 cubic feet per second |
| Decker | - Parcel B - .02 cubic feet per second |
| Campy | - Parcel C - .02 cubic feet per second |

as such is provided for in the certificate of water right and as may be limited thereby (i.e. 6 acre feet per year). It is further subject to any modifications or restrictions as may be imposed by the State of Washington.

2. The following parcels shall have a perpetual irrigation right, and said right shall be appurtenant to the respective parcels:

| | |
|--------------------|-----------------------------|
| Merritt - Parcel D | - .02 cubic feet per second |
| Merritt - Parcel E | - .02 cubic feet per second |
| Reid Trust - Lot 1 | - .02 cubic feet per second |
| Reid Trust - Lot 2 | - .02 cubic feet per second |
| Reid Trust - Lot 3 | - .02 cubic feet per second |
| Reid Trust - Lot 4 | - .02 cubic feet per second |
| Reid Trust - Lot 5 | - .02 cubic feet per second |
| Reid Trust - Lot 6 | - .02 cubic feet per second |
| Kent- Parcel A | - .25 cubic feet per second |

3. The parties agree to create a water association consisting of the property owners of said parcels, combining the parcels utilizing domestic and irrigation water with one vote per parcel.

| | | |
|----------|----------|--------|
| Parcel A | (Kent) | 1 vote |
| Parcel B | (Decker) | 1 vote |
| Parcel C | (Campy) | 1 vote |

| | | |
|----------|--------------|--------|
| Parcel D | (Merritt) | 1 vote |
| Parcel E | (Merritt) | 1 vote |
| Lot 1 | (Reid Trust) | 1 vote |
| Lot 2 | (Reid Trust) | 1 vote |
| Lot 3 | (Reid Trust) | 1 vote |
| Lot 4 | (Reid Trust) | 1 vote |
| Lot 5 | (Reid Trust) | 1 vote |
| Lot 6 | (Reid Trust) | 1 vote |
| Parcel A | (Kent) | 1 vote |

4. Said association shall be governed and operate according to the terms of the By-Laws, attached as Exhibit D. There will be 2 managing parties (Manager and Assistant Manager) which can be the same person if unanimously approved by the participating members.

George Kent is conveying his interest in the above water rights, however, he does not currently have any interest in any of the parcels of property to be benefited thereby, and he shall therefore have no responsibility nor liability in connection with any of the provisions of this Agreement.

5. The parties agree and acknowledge that the existing gravity flow system should require little maintenance.

The Water Association shall only be responsible for maintaining and repairing the "common" water lines and maintaining and improving that water supply or source. Each lot or parcel owner shall be responsible for any repairs or maintenance on their private lines from the point of hookup to the "common lines".

6. The parties agree to pay a monthly charge or assessment as so established for water use in order to build a reserve fund. Fees, terms of payment and late charges shall be established by the Water Association, provided however, the initial fees and payments shall be as follows:

a) Fees for Domestic use shall be \$3.00 per month, or \$36.00 per year. Total annual fees will be due at the beginning of each year and must be paid in full on or before February 15 and annually thereafter. The full and punctual payment of the proper water use assessment is a condition to the continued use of water by each property owner. Failure to pay any amount due or assessed shall

result in discontinuance of water supply and loss of voting rights in the Water Association until payment is made in full.

b) Irrigation fees will be rated at \$2.00 per month for the May to September (5 month) season or \$10.00 total. The entire period must be paid in full in advance prior to the beginning of said season; May 1. The full and punctual payment and all payments of the proper water use assessment is a condition to the continued use of water by each property owner. Failure to pay any amount due or assessed shall result in discontinuance of water supply and loss of voting rights in the Water Association until payment is made in full.

c) Any cost of maintenance and repair over and above reserves on hand shall be paid equally by the property owners, within fifteen (15) days of receiving notice of said amount due.

d) Any assessments unpaid shall constitute a lien against the property.

7. To maintain a water right the State of Washington requires useage of said water right or the right may be terminated. Therefore, each parcel entitled to irrigation rights shall be required to hook-up to the system and pay the required fees. Irrigation users shall only use said water during May-September, and water use will be subject to the terms and conditions of this Agreement and limitations as may be set by the Water Association.

8. Payment of all charges due, will be a condition of exercising rights and votes in the Water Association.

9. The parties agree to build a reserve fund until a balance of at least \$2,500.00 is reached. Said account shall be maintained in an interest bearing account except as may be necessary for any month to month expenses.

The Association shall have the authority to increase or decrease and/or terminate assessments within its discretion and dependent upon a sufficient reserve fund.

10. It is agreed that under the terms of this Agreement, however, each owner of a parcel entitled to domestic water supply, shall have priority for water supply. During any periods of water shortage, the Manager shall have the authority and duty to limit water availability.

The Manager shall, in times of limited water supply, develop a plan for the use of water. Such plan shall be developed with the intent of providing domestic users adequate water use for household purposes, and to the extent possible providing equal water availability above those needs for irrigation uses among all participants. Any objecting user shall have the right to have the Association review said Plan, and may seek a meeting of the Water Association members pursuant to the terms of the By-Laws.

11. The Association or each individual property owner shall have the right to enforce the terms and conditions of this Agreement in court if the Association or its agents neglect, refuse, or is unable to do so. In the event of any lawsuit between the parties to settle issues arising hereunder, the prevailing party shall recover judgment against the other party (ies) for costs and reasonable attorney's fee and venue shall be in Ferry County, Washington.

12. This agreement shall be binding upon the heirs, successors, or assigns of the parties and shall "run with the land."

DATED this 1st day of April, 1987.

George H. Kent
George H. Kent

Donna M. Kent, Trustee
Donna Kent as Trustee for
L. & M. Reid Trust

Larry J. Kent
Larry Kent

Donna M. Kent
Donna M. Kent

James A. Decker
James A. Decker

Jackie W. Decker
Jackie W. Decker

204007

Earl W. Campy
Earl W. Campy

Margaret Campy
Margaret Campy

Wayne B. Merritt
Wayne B. Merritt

Ronda S. Merritt
Ronda S. Merritt

Wayne B. Merritt
Wayne B. Merritt

Ronda S. Merritt
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204007