

4690

WATER WAY EASEMENT
AND
WELL AGREEMENT

Vol. 1795 Page 21999

ATC #01043565

THIS AGREEMENT made by and between CLARENCE WESLEY HEADRICK II and SANDRA JEAN HEADRICK, Husband and Wife, hereinafter called "HEADRICKS", and RICHARD A. MC INTYRE, KAREN M. GREENE and VERA L. GREENE, (it being the intention of the parties that the said individuals do not take the title in common but with the right of survivorship; that is, that the fee shall rest in the survivor of the said individuals), hereinafter called "MC INTYRES".

R E C I T A L S

A. WHEREAS, HEADRICKS, either individually or jointly, were previously and are the owners of certain parcels of real property, which said parcels of real property utilize water from a well, located on one specific parcel of property; and

B. WHEREAS, as a result of a sale by HEADRICKS to MC INTYRES, one of the said parcels of property has passed into the ownership of MC INTYRES;

C. WHEREAS, HEADRICKS and MC INTYRES desire to enter into an agreement to allow for the use and maintenance of the well, pump, pipes and casings, as well as to enter into an agreement to allow for the maintenance and use thereof; and

D. WHEREAS, as a result of the sale from HEADRICKS to MC INTYRES, MC INTYRES have become the owner of certain real property located in the County of Klamath, State of Oregon, legally described as follows, to-wit:

Lot 141, THIRD ADDITION TO SPORTSMAN'S PARK, in the County of Klamath, State of Oregon.

Code 78 Map 3606-3BD TL 6000

hereinafter referred to as "MC INTYRE PROPERTY"; and

WHEREAS, HEADRICKS have and continue to maintain ownership of certain real property located in the County of Klamath, State of Oregon, legally described as follows, to-wit:

Lots 136, 137, 138, and 142 THIRD ADDITION TO SPORTSMAN'S PARK, in the County of Klamath, State of Oregon.

TOGETHER WITH an undivided one-half interest in the well located on "MC INTYRE PROPERTY",

hereinafter referred to as "HEADRICK PROPERTY".

W I T N E S S E T H:

The parties agree as follows:

1. That HEADRICKS and MC INTYRES shall each have an undivided one-half interest in the water, pump, piping, and casings of that certain well located on "MC INTYRE PROPERTY", which said well shall be hereinafter referred to as "JOINT WELL", and

2. Each party grants to the other an easement to appropriate water from "JOINT WELL" hereinabove described.

3. Each party grants to the other the right of ingress and egress to use and maintain the well, pump, pipings and casings, as they are now situated, or may be hereafter replaced.

4. Each of the parties, and/or their successors in interest,

shall pay one-half of all costs to maintain in the present condition the well, pump, pipings and casings for "JOINT WELL". The parties agree that before any major expense is incurred, the parties shall jointly agree to the nature and amount of such expenditure, before work is commenced, and before any such expense is incurred.

5. Each of parties hereto agree that they shall share the water produced by the said well, and that MC INTYRES shall be limited to one domestic water well hookup, unless this Agreement shall be modified by the mutual agreement of the parties. It is recognized by the parties that at the present time, the pump is operated from off of the electric meter for "MC INTYRE PROPERTY". For so long as the pump continues to operate from off of the meter servicing "MC INTYRE PROPERTY", HEADRICKS shall be required to pay to MC INTYRES the sum of \$10.00 for each month that HEADRICKS shall utilize the pump (connected to MC INTYRES' electric meter) to withdraw water from the well. Nothing contained in this agreement shall preclude HEADRICKS from installing an additional pump and separate electrical service, in which event the responsibility for payment of any monthly sums to MC INTYRE as reimbursement for electrical service shall terminate.

6. In the event that any party of this Agreement fails to pay his or her proportionate share of costs upon demand, the other party may pay the same, and further may terminate the defaulting party's right to use the water during the period of default, and may file a lien upon the real property of the defaulting party by filing a "NOTICE OF LIEN" under this agreement with the County Clerk of Klamath County, Oregon. Any non-defaulting party may foreclose the lien as provided by ORS Chapter 88 and shall be entitled to attorney fees in such foreclosure, both at trial and on appeal of any such action.

7. MC INTYRES further grant an easement 10 feet in width over and across "MC INTYRE PROPERTY" which said easement or easements shall run from "JOINT WELL" as hereinabove described in a generally southerly direction to a point on the southerly property line of "MC INTYRE PROPERTY" and also from "JOINT WELL" in a generally westerly direction to a point on the westerly property line of "MC INTYRE PROPERTY".

8. The easement hereinabove granted allows HEADRICKS and their successors in interest the right to go upon said property for the purpose of repair, maintenance, and installation of replacement or new piping, if such replacement or repair should become necessary in order to allow the continued enjoyment of the water from the well by HEADRICKS. In the event that such repair or replacement of new piping is necessary, HEADRICKS agree to restore the surface of "MC INTYRE PROPERTY" as near as possible to the same condition as it was in before such installation was commenced.

9. Excepting only inasmuch as shall presently be in existence, there shall not be constructed or maintained within ten feet (10') radius of the said well, so long as the same is operated to furnish water for domestic consumption, any of the following: cesspools, sewers, privies, septic tanks, drain fields, manure piles, garbage of any kind or description, barns, chicken houses, rabbit hutches, pig pens or other enclosures or structures for the keeping or maintenance of fowls or animals, or storage of liquid or dry chemicals, herbicides or insecticides.

10. The rights created by this Agreement shall run with the land and in the event any party sells the land subject to the within Water Way Easement and Well Agreement, the purchaser shall be bound by this agreement.

11. This agreement shall bind and inure to the benefit of, as the circumstances may require, the parties hereto and their respective heirs, executors, administrators, successors and

assigns. In construing this instrument, and where the context so requires, the singular includes the plural and all grammatical changes shall be implied to make the provisions hereof apply equally to corporations and to individuals.

IN WITNESS WHEREOF the parties have set their hands and seals the day and year set forth hereinbelow.

Clarence Wesley Headrick II
CLARENCE WESLEY HEADRICK II
Date: 8-17-95

Sandra Jean Headrick
SANDRA JEAN HEADRICK
Date: 8-17-95

Richard A. Mc Intyre
RICHARD A. MC INTYRE
Date: 8/17/95

Karen M. Greene
KAREN M. GREENE
Date: 8/17/95

Vera L. Greene
VERA L. GREENE
Date: August 17, 1995

STATE OF OREGON, County of Klamath) ss.

PERSONALLY appeared before me on August 17, 1995, the above-named CLARENCE WESLEY HEADRICK II and SANDRA JEAN HEADRICK, husband and wife, and acknowledged the foregoing instrument to be their voluntary act and deed.

Barbara L. Addington
NOTARY PUBLIC FOR OREGON
My Commission Expires: 3-22-97

STATE OF OREGON, County of Klamath) ss.

PERSONALLY appeared before me on August 17, 1995, the above-named RICHARD A. MC INTYRE, KAREN M. GREENE and VERA L. GREENE and acknowledged the foregoing instrument to be their voluntary act and deed.

Barbara L. Addington
NOTARY PUBLIC FOR OREGON
My Commission Expires: 3-22-97

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Aspen Title & Escrow the 18th day of August A.D., 19 95 at 11:05 o'clock A M., and duly recorded in Vol. M95 of Deeds on Page 21999.

FEE \$40.00

Bernetha G. Letsch, County Clerk
By Annette Mueller