

Recording Requested By and
When Recorded Return to:

HAWLEY TROXELL ENNIS & HAWLEY LLP
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Boise, Idaho 83701

Instrument # 563254

HAILEY, BLAINE, IDAHO
12-3-2008 03:35:45 No. of Pages: 5
Recorded for : STATE OF IDAHO
JOLYNN DRAGE Fee: 0.00
Ex-Officio Recorder Deputy
Index to: COVENANTS & RESTRICTIONS

AB

(SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY)

DECLARATION OF RESTRICTIVE COVENANT

THIS DECLARATION OF RESTRICTIVE COVENANT (“**Declaration**”) is made and entered into this 12th day of November, 2008, by Jeffrey F. Nee, (“**Nee**”) and the State of Idaho acting by and through the Idaho Department of Lands (“**Idaho Department of Lands**”).

RECITALS

WHEREAS, Nee is the owner of that certain real property located in Blaine County, Idaho which is more particularly described in Exhibit “A” attached hereto (“**Nee Property**”); and

WHEREAS, adjoining the Nee Property is real property located in Blaine County, Idaho upon which are located a tailings pile owned by the Idaho Department of Lands; and

WHEREAS, Nee and the Idaho Department of Lands have executed contemporaneously herewith a Grant of Easement related to the existence of certain improvements benefiting the property owned by the Idaho Department of Lands located on the Nee Property; and

WHEREAS, the Idaho Department of Lands previously constructed four (4) ground water monitoring wells on the Nee Property and has agreed to remove those monitoring wells as set forth herein.

NOW, THEREFORE, in consideration of the premises, the covenants and conditions hereinafter set forth, it is agreed as follows:

1. Covenants of the Parties

1.1. Covenant of Idaho Department of Lands. The Idaho Department of Lands covenants to remove and cap the four (4) monitoring wells on the Nee Property by June 30, 2009, and release the Nee Property from any further testing obligations related to those monitoring wells.

1.2. Covenant of Nee. Nee hereby declares that as of the date of recording of this Declaration, the Nee Property is and shall be subject to the following conditions and restrictions: Any well drilled upon the Nee Property for domestic water purposes shall: (1) at a minimum be advanced to bedrock and cased or screened so as to avoid communication with the alluvial aquifer, which ranges from 40 to 60 feet below ground surface; and (2) water samples from any wells shall be submitted for laboratory analysis to verify that contaminants are at or below the following concentrations:

Manganese: 840 micrograms per liter
Arsenic: 10 micrograms per liter
Cadmium: 5 micrograms per liter
Lead: 10 micrograms per liter
Zinc: 5,000 micrograms per liter

These conditions and restrictions shall run with the Nee Property and shall be binding upon Nee's heirs, successors and assigns.

2. General Provisions

2.1. Covenants Run With the Land. This Covenant shall be a burden on Nee Property and shall run with the land and shall be binding upon the parties' successors and assigns.

2.2. Attorneys Fees. In the event either party initiates or defends any legal action or proceeding to enforce or interpret this Declaration, the prevailing party in any such action or proceeding shall be entitled to recover from the losing party in any such action or proceeding its reasonable costs and attorneys' fees (including its reasonable costs and attorneys' fees on any appeal) as determined by the court in the same or a separate proceeding.

2.3. No Waiver. The failure of a party to insist upon strict performance of any of the terms, covenants, conditions or agreements contained herein shall not be deemed a waiver of any rights or remedies that said person may have, and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the terms, covenants, conditions or agreements contained herein by the same or any other person.

2.4. Remedies. Each party shall have all other remedies provided by law or equity as applicable.

2.5. Modification and Termination. This Declaration may not be modified in any respect whatsoever or terminated, in whole or in part, except with the mutual consent of the parties, and then only by written instrument duly executed and acknowledged by the owners required herein to be a party thereto and recorded in the office of the recorder of Blaine County, Idaho.

2.6. Severability. If any term or provision of this Declaration or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Declaration or the application of such term or provision to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Declaration shall be valid and shall be enforced to the extent permitted by law.

2.7. Captions and Headings. The captions and headings in this Declaration are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreements contained herein.

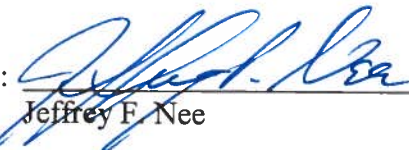
2.8. Joint and Several Obligations. In the event any party hereto is composed of more than one person, the obligations of said party shall be joint and several.

2.9. Counterparts. This Declaration may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single instrument, and shall be effective upon execution of one or more of such counterparts by each of the parties hereto.

2.10. Recordation. This Covenant shall be recorded in the office of the recorder of Blaine County, Idaho.

IN WITNESS WHEREOF, the Grantor and Grantees have executed, to be executed, on the dates indicated below.

GRANTOR, JEFFREY F. NEE

BY:  _____
Jeffrey F. Nee

Date: 10/29/08

GRANTEE, The State of Idaho, acting by and through the IDAHO DEPARTMENT OF LANDS

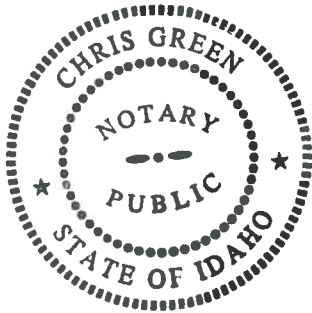
BY:  _____
George Bacon
Director

Date: 11-12-08

STATE OF IDAHO)
) ss.
County of Ada)

On this 29th day of October, 2008, before me, the undersigned Notary Public in and for said state, personally appeared Jeffrey F. Nee, known or identified to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same.

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

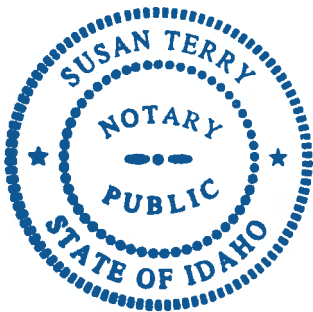


Chris Green
Notary Public for Idaho
Residing at Boise, ID
My commission expires 3/20/2012

STATE OF IDAHO)
) ss.
County of Ada)

On this 12th day of November, 2008, before me, the undersigned Notary Public in and for said State, personally appeared George Bacon, known or identified to me to be the Director of the Idaho Department of Lands of the State of Idaho, and acknowledged to me that the Idaho Department of Lands executed the same.

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



Susan Terry
Notary Public for Idaho
Residing at Hamper ID
My commission expires 8-30-2011

EXHIBIT A

DESCRIPTION OF THE NEE PROPERTY

That portion of the NW1/4, NW1/4, SEC 36 situated south of East Fork Road in accord with a Record of Survey recorded 6/07/1988 as Instrument No. 295484, Records of Blaine County.

A parcel of land within the NW1/4, NW1/4 of Section 36, Township 4 North, Range 18 East, Boise Meridian, Blaine County, Idaho and more particularly described as follows;

Commencing at the Northwest Corner of said Section 36;

Thence N89°48'05"E, 1323.06 feet along the north boundary of said Section 36 to the northeast corner of said NW1/4, NW1/4 and the True Point of Beginning;

Thence S00°43'16"E, 1305.61 feet along the east boundary of the NW1/4, NW1/4 to the southeast corner of said NW1/4, NW1/4;

Thence N89°52'19"W, 1322.52 feet along the south boundary of the NW1/4, NW1/4 to the southwest corner of said NW1/4, NW1/4;

Thence N00°44'57"W, 594.46 feet along the west boundary of said NW1/4, NW1/4 to the southerly boundary of East Fork Road;

Thence N43°32'17"E, 482.56 feet along the southerly boundary of East Fork Road;

Thence 504.75 feet along a curve to the right with a radius of 922.00 feet, a central angle of 31°22'00" and a long chord of 498.47 feet that bears N59°13'17"E;

Thence N74°54'17"E, 245.00 feet along the southerly boundary of East Fork Road;

Thence 121.45 feet along a curve to the left with a radius of 988.00 feet, a central angle of 07°02'35" and a long chord of 121.37 feet that bears N71°23'00"E to the north boundary of said Section 36;

Thence N89°48'05"E, 201.62 feet to the True Point of Beginning;

The above described parcel contains approximately 33.0 acres.



TT2013-MW1

North Star Gulch

SW-8
SW-2
SW-3

Unnamed Drainage

SW-4
SW-5

East Fork Road

TT2014-MW3D

TT2014-MW2S

Lower Tailings Pile

RP04N18036773A

SW-7

Legend:

- ▲ Surface Water Locations
- Monitoring Wells

