

03 APR 14 PM 3:35

Aspen 56700

PARTY ONE'S NAME & ADDRESS:

Russell L. Hawkins
P.O. Box 1805
Klamath Falls, OR 97601

PARTY TWO'S NAME & ADDRESS:

Robert A. Radtke
5736 Valley View Lane
Klamath Falls, OR 97601

AFTER RECORDING, RETURN TO:

Neal G. Buchanan
Attorney at Law
435 Oak Avenue
Klamath Falls, OR 97601

UNTIL CHANGE IS REQUESTED, SEND

TAX STATEMENTS TO:

Unchanged

Vol M03 Page 23665
State of Oregon, County of Klamath
Recorded 04/14/2003 3:35 p.m.
Vol M03 Pg 23665-67
Linda Smith, County Clerk
Fee \$ 31 # of Pgs 3

WATER WAY EASEMENT
AND
WELL AGREEMENT

THIS AGREEMENT made by and between RUSSELL L. HAWKINS, hereinafter called "HAWKINS" and ROBERT A. RADTKE, hereinafter called "RADTKE";

R E C I T A L S

A. WHEREAS, HAWKINS was previously and is currently the owner 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 HAWKINS to RADTKE one of the said parcels of property has passed into the ownership of RADTKE; and

C. WHEREAS, HAWKINS and RADTKE desire to enter into an agreement to allow for the use and maintenance of the water, well, piping 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 HAWKINS to RADTKE, RADTKE has become the owner of certain real property located in the County of Klamath, State of Oregon, legally described as follows, to-wit:

Lot 12 , Block 9, Tract 1016, GREEN ACRES, according to the official plat thereof on file with the Clerk of Klamath County, Oregon

hereinafter referred to as "RADTKE PROPERTY"; and

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

Lot 13, Block 9, Tract 1016, GREEN ACRES, according to the official plat thereof on file with the Clerk of Klamath County, Oregon

hereinafter referred to as "HAWKINS PROPERTY".

W I T N E S S E T H:

The parties agree as follows:

1. That HAWKINS shall have an undivided one half interest and
18A/ - WATER WAY EASEMENT AND WELL AGREEMENT -1-

RADTKE shall have an undivided one half interest in that certain well, water, piping and casings of that certain well located on "RADTKE PROPERTY", which said well is generally described as being located at a point which is approximately 5 feet East of the West property line of "RADTKE PROPERTY", measured at a point which is approximately 33 feet from the Southwest corner thereof; which such 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, any pumphouse, 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 that parties' proportionate share (HAWKINS being responsible for 1/2 and RADTKE being responsible for 1/2) of all costs to maintain in the present condition the well, pipings and casings for "JOINT WELL". The parties agree that before any major expense is incurred, the parties shall endeavor to 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 each party shall be limited to one water well hookup for domestic and stock watering purposes (but excluding agricultural irrigation) unless this Agreement shall be modified by the mutual agreement of the parties. It is the present intention of the parties that each party shall install that party's independent pump and electrical service. For so long as each party continues to operate from off a separate meter servicing the individual pumps, each are responsible for their individually billed electrical service. Nothing contained in this agreement shall preclude the parties from subsequently modifying this Agreement to provide for the installation of a single pump serving both parties.

6. In the event that any party to 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. RADTKE further grants an easement 10 feet in width over and across "RADTKE PROPERTY" which said easement or easements shall run from "JOINT WELL" as hereinabove described in a generally Westerly direction to a point on the Westerly property line of RADTKE property, such point being approximately 33 feet North of the Southwest corner thereof.

8. The easement hereinabove granted allows HAWKINS and HAWKIN'S 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 HAWKINS. In the event that such repair or replacement of new piping is necessary, HAWKINS agrees to restore the surface of "RADTKE 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.



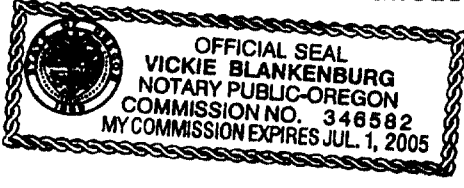
RUSSELL L. HAWKINS
Date: 4/11/03




ROBERT A. RADTKE
Date: 4/14/03

STATE OF OREGON, County of Klamath) ss.

PERSONALLY appeared before me on April 11, 2003, the above-named RUSSELL L. HAWKINS and acknowledged the foregoing instrument to be his voluntary act and deed.

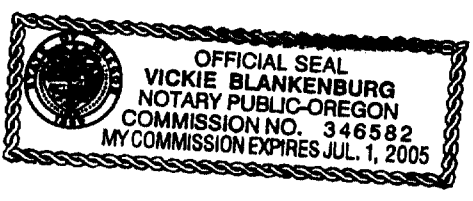





NOTARY PUBLIC FOR OREGON
My Commission Expires: 7/01/05

STATE OF OREGON, County of Klamath) ss.

PERSONALLY appeared before me on April 14, 2003, the above-named ROBERT A. RADTKE and acknowledged the foregoing instrument to be his voluntary act and deed.





NOTARY PUBLIC FOR OREGON
My Commission Expires: 7/01/05