

WELL IRRIGATION AGREEMENT

THIS AGREEMENT is made this 30th day of September, 2005, by and between Ver-Dawn Bywater and Mary A. Barnes, Cotrustees of the Barnes Loving Trust, udd _____, hereinafter "Barnes", and Christina Watkins, Joseph Watkins and Deann Watkins, hereinafter "Watkins".

WHEREAS, the parties have previously and into a Grant of Water Rights and Easements, dated November 28, 2001, and recorded in the official records of Klamath County, Oregon, in Volume M01, Page 64619. That agreement is incorporated herein by reference.

WHEREAS, the well is located on the Barnes' property. The agreement referenced above does not specify the amount of water reserved to Barnes for the Barnes' irrigation requirements. The purpose of this document is to reserve a specific amount of water for the Barnes' property for irrigation purposes.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants contained herein, the parties hereby agree as follows:

1. Barnes shall be entitled to 3 acre-feet per acre per irrigation season. The flow from the well during irrigation shall not be less than 40 gallons per minute. The Barnes' irrigation schedule shall run concurrent with, and in coordination with, the irrigation schedule of the other agricultural properties with which the well is shared.
2. Barnes shall be responsible for and pay for all expenses, fees, and costs incurred in the installation and for the repair and maintenance of the pipeline used for watering the Barnes' property.
3. Watkins shall be responsible for and pay all expenses, fees and costs incurred in the installation and for the repair and maintenance of the pipeline for and on the Watkins' property.
4. The party shall split the expenses, fees and costs for maintenance of the well, main pipe line, pump and electrical service maintenance for the pump, in proportion to their use, unless such maintenance or repairs are required because of the negligence of one of the parties in which case the negligent party shall bear the sole expense of the maintenance and repair. Either party shall have a lien upon the other party's real property if a repair or maintenance for which that party is responsible is not paid within thirty (30) days' of the date it is either made or incurred. If the party responsible for the cost of repair or maintenance or his portion thereof fails to pay the same within thirty (30) days' of the date it is incurred or due, then the other party may make said payment, give notice thereof to the party failing to make the payment and said party shall reimburse the party making the payment within fifteen (15) days thereafter or the

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payment shall become a lien on the property of the party failing to make the payment.

5. Each party shall give not less than twenty-four (24) hours' notice to the other party of any maintenance or repairs which that party intends to make regarding the well or pump, except in the case of an emergency or unless it is impracticable to do so.

6. The parties shall indemnify and defend each other from any loss, claim or liability to the other party arising in any manner out of each party's use of the well or their pipelines.

7. In the event either party shall take any action, judicial or otherwise, concerning this agreement or any of its terms, including any suit for rescission, the prevailing party shall be entitled to recover from the other party all expenses which it may reasonably incur in taking such action, including but not limited to costs incurred in searching records and taking and transcription of depositions, the cost of title reports, surveyors reports and foreclosure reports and attorney's fees, whether incurred in a suit or action or appeal from a judgment or decree therein or in connection with nonjudicial action, including the giving by the other party of any notice necessitated by any failure to comply with any terms of this contract. The parties hereby waive any right they may have to a trial by jury regarding this agreement and the easement referenced in the recitals above.

8. Any notice, whether required or not to be given under this agreement, shall be deemed given when actually delivered or when mailed to either party at their respective addresses given below if deposited in the U. S. Mails, Certified Mail, Return Receipt Requested.

Barnes:

40 Ver-Dawn Bywater
1444 Morrow Rd. Medford, OR 97504

Watkins:

P.O. Box 397, Merrill, OR 97633

9. Currently Watkins pays for the electricity to run the well pump. If electricity costs increased by more than 15% from the date of this agreement, the parties shall negotiate how to share the electricity costs, including installing a meter for the well.

10. This document is the entire, final and complete agreement of the parties and supersedes and replaces all written and/or oral agreements heretofore made or existing, if any, by and between the parties. This document may not be altered, amended, changed or modified unless done in writing and executed by the parties hereto. There are no representations, inducements, promises or agreements, oral or written, other than those set forth in this agreement and it is the intent of the parties that the terms of this agreement shall control over any conflicting provisions of any prior agreement. This agreement is binding on the parties' successors and assigns and shall run with the land set forth in the easement referenced in the recitals above.

IN WITNESS WHEREOF the parties have set their hands the day and year first above written.

Ver-Dawn Bywater
Ver-Dawn Bywater, Cotrustee of the
Barnes Loving Trust, udd

Mary A. Barnes
Mary A. Barnes, Cotrustee of the
Barnes Loving Trust, udd

Christina Watkins
Christina Watkins

Joseph Watkins
Joseph Watkins

Deann Watkins
Deann Watkins

STATE OF OREGON)
)ss.
County of Jackson)

Personally appeared Dawn Bywater and acknowledged the foregoing instrument to be her voluntary act and deed. Before me this 30 day of September, 2005.

Deborah K. Hooper
Notary Public for Oregon
My Commission Expires: 12/9/07

STATE OF OREGON)
)ss.
County of Klamath)



Personally appeared Mary A. Barnes and acknowledged the foregoing instrument to be her voluntary act and deed. Before me this 30 day of September, 2005.



Deborah K. Hooper
Notary Public for Oregon
My Commission Expires: 10/9/07

STATE OF OREGON)
)ss.
County of Klamath)

Personally appeared Christina Watkins, Joseph Watkins and Deann Watkins and acknowledged the foregoing instrument to be their voluntary act and deed. Before me this 12 day of September, 2005.

Brandy C. Phillipy
Notary Public for Oregon
My Commission Expires: 9/15/07

(clients/Bywater/well irrigation agreement)

