

2006-020329

Klamath County, Oregon



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10/10/2006 12:37:10 PM

Fee: \$41.00

Return to:
Johnson
2022 Old Midland Rd
K. Falls, OR 97603

**PUMP SHARING AGREEMENT
and GRANT OF EASEMENT**

THIS AGREEMENT is made this ____ day of September, 2006, by and between Sam Henzel and Julie Henzel, husband and wife, herein collectively referred to as "Henzel," and Kenneth B. Johnson and Deborah A. Johnson, husband and wife, herein collectively referred to as "Johnson."

RECITALS

A. Johnson has purchased from Henzel a parcel of real property of 40+/- acres that is legally described as the NE ¼ NW ¼ Section 4, Township 40, Range 9 East of the Willamette Meridian. This parcel is herein referred to as the "Johnson Property."

B. To the south of the Johnson Property is located a parcel of real property of 40+/- acres owned by Henzel, and that is legally described as the SE ¼ NW ¼ Section 4, Township 40, Range 9 East of the Willamette Meridian. This parcel is herein referred to as the "Henzel Property."

C. There is located on the intersection of the United States Bureau of Reclamation lateral ditch C-4-J and the eastern edge of the Johnson Property an older irrigation pump, electrical panel, and pole.

D. There is located along the south edge of the Johnson Property, and along the north edge of the Henzel Property, a mainline that runs east to west and that is utilized to deliver irrigation water to both parcels.

E. The parties desire to share ownership, control, and responsibility of the pump, electrical panel, power pole, mainline, and any other component that comprises the irrigation water delivery system, which are herein together referred to as the "Personal Property."

PUMP SHARING AGREEMENT

NOW THEREFORE, as additional consideration for the sale of the Johnson Property, and in consideration of the mutual covenants contained herein, the parties agree as follows:

1. Ownership of the Personal Property shall be an undivided one-half interest (50%) as to Henzel and an undivided one-half interest (50%) as to Johnson.

2. The use of the Personal Property for irrigation is limited to the delivery of water to both the Johnson Property and the Henzel Property, and neither party may include additional property to be irrigated ~~with~~ without the written consent of all parties. DJ KS

3. The parties shall maintain the Personal Property in a good and workmanlike condition, and shall share in all expenses directly associated with the Personal Property based on each party's percentage of ownership. These expenses shall include electricity costs for pump operation, ordinary expenses incurred in maintenance, repair, and any necessary replacement of the Personal Property.

4. This agreement is appurtenant to the lands described as the Johnson Property and the Henzel Property and runs with these lands, binding heirs, successors, personal representatives, and assigns, and may not be transferred to another parcel without the written consent of all parties; however, either party may participate in any "water banking" program (wherein a landowner is paid by a third-party not to irrigate) without the consent of all the parties so long as the participating party pays to the non-participating party the normal share of expenses described in the preceding paragraph.

5. Neither party makes any representations on the volume or quality of water available for delivery at any time.

6. If suit or action is instituted to enforce any of the provisions of this agreement, the party prevailing therein shall be entitled to recover from the other such sum as the court may adjudge reasonable for attorney's fees and costs. This agreement was prepared at the direction of Henzel by Justin Throne, Attorney at Law, who only represents Henzel in this transaction. Johnson has been advised to obtain legal counsel or other advice prior to signing this agreement and has had opportunity to do so. This agreement shall not be interpreted for or against either party by reason of such representation and preparation of this agreement.

GRANT OF EASEMENT

As additional consideration for the agreement described in the preceding paragraphs, Johnson grants to Henzel an easement for ingress and egress, ^{only} for utilization of the Personal Property, to establish a separate and alternative pump facility, and to carry out the rights and responsibilities outlined in the aforementioned agreement, on the following terms and conditions: DJ KS

7. The easement for ingress and egress is described as 20 feet in width and runs along the entire eastern edge of the Johnson Property, and which necessarily encompasses the Personal Property at its present location and, if it is moved, at any new or altered location. Henzel has the option to establish a separate pumping facility in the future within the described boundaries of the easement. This option is continuous and runs with the land. The described boundaries of the easement shall not be minimized or in any way reduced should Henzel exercise this option. At exercise of the option, the

parties shall equitably divide the Personal Property, and thereafter each party's pumping facility is the property of that party.

8. The easement is perpetual, runs with the land, and is binding on heirs, successors, personal representatives, and assigns. If in the future Henzel chooses to establish a separate pumping facility, then that portion of the easement shall be exclusive. The remainder of the easement shall be non-exclusive.

9. The easement may be relocated only with the written consent of all parties.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the date first above written.

HENZEL:

Sam Henzel
Sam Henzel

Julie Henzel 10-9-06
Julie Henzel

JOHNSON:

Kenneth B. Johnson
Kenneth B. Johnson

Deborah A. Johnson
Deborah A. Johnson

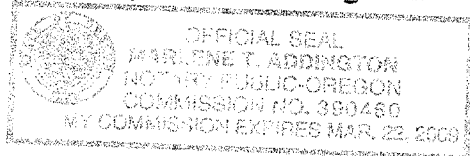
STATE OF OREGON

] ss.

County of Klamath

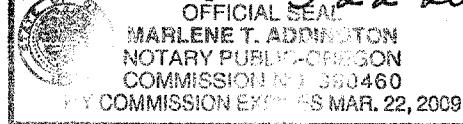
ma n.p. On October 10, 2006,

Personally appeared before me the above named SAM HENZEL and JULIE HENZEL, and acknowledged the above instrument to be their voluntary act and deed.



Marlene T. Addington
Notary Public for Oregon

My Commission expires: 3-22-2009



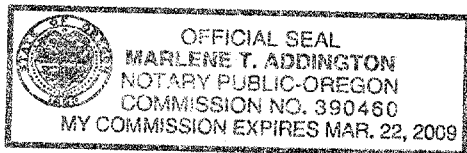
STATE OF OREGON

] ss.

County of Klamath

ma n.p. On October 5, 2006,

Personally appeared before me the above named KENNETH B. JOHNSON and DEBORAH A. JOHNSON, and acknowledged the above instrument to be his voluntary act and deed on behalf of such estate.

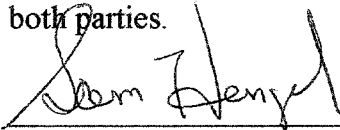


Marlene T. Addington
Notary Public for Oregon

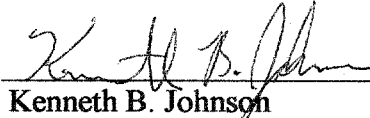
My Commission expires: 3-22-2009

MEMORANDUM OF UNDERSTANDING

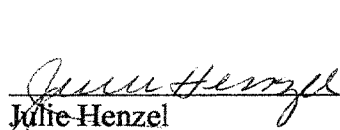
In regard to the easement over property described as Parcel 1 of Major Land Partition 4-84 and further described as the NE ¼ NW ¼ Section 4, Township 40, Range 9 East of the Willamette Meridian, between Sam and Julie Henzel and Kenneth B. and Deborah A. Johnson. It is understood by the parties that item number 8 of that Easement Agreement where reference is made to exclusive and nonexclusive easement, means that in the event Henzel or his heirs, successors, personal representatives or assigns establish a separate pumping facility, mainline or other irrigation equipments on the subject property, that separate personal property will be the exclusive property of Henzel or his heirs, successors, personal representatives, or assigns and not shared by Johnson. Any portion of the personal property not replaced as separate by Henzel may continue to be shared by both parties.


Sam Henzel

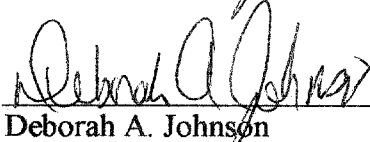
Date 10-9-06


Kenneth B. Johnson

Date 10-5-06


Julie Henzel

Date 10-9-06


Deborah A. Johnson

Date 10-5-06