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2010-003462

Klamath County, Oregon



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03/18/2010 11:19:15 AM

Fee: \$67.00

AFTER RECORDING, RETURN TO:

E. Ronald Isakson
3815 S. 6th Street, Suite 105
Klamath Falls OR 97603

WELL AGREEMENT AND EASEMENT

BETWEEN:

H & H Cattle Feeders, Inc.
Post Office Box 60
Merrill OR 97633
Telephone:
Email:
Fax:

"Hickey"

and

McFarland Ranches, LLC
Dan McFarland, Member
Post Office Box 5263
Klamath Falls OR 97601
Telephone:
Email:
Fax:

"McFarland"

RECITALS:

A. Hickey owns certain real property in Klamath County, Oregon described in the deed recorded in the records of the Clerk of Klamath County as M-03 page 75266, a legal description of which is set forth on Exhibit "A" attached hereto and incorporated herein by this reference.

B. McFarland intends to purchase the real property described in a the deed recorded in the records of the Clerk of Klamath County as M-04 page 88488 a legal description of which is set forth on Exhibit "B" attached hereto and incorporated herein by this reference. Said real property adjoins the land owned by Hickey described on Exhibit "A."

C. Located on the land owned by Hickey near the boundary line with the land that McFarland intends to purchase is a well, which has been used to provide livestock water to livestock raised on the land owned by Hickey and at times on the land that McFarland intends to purchase.

D. The well was at times used by the parties' predecessors in interest pursuant to certain rights and responsibilities set out in the Partition Deed and Easement Agreement

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recorded in Volume 338 at Page 307, pages 2 and 3, of the Deed Records of Klamath County, Oregon. However, such Easement Agreement has not been used in accordance with its terms and has lapsed as a result of non-use by McFarland's predecessors in interest.

E. By this Agreement, the parties desire to cancel, replace and supersede any and all of the terms and provisions relating to the well and its use set out in the said Partition Deed and Easement Agreement as set forth herein.

AGREEMENT

For valuable consideration, the parties mutually and severally covenant and agree as follows:

1. This Agreement shall become effective upon the closing of the purchase of the real property described on Exhibit "B" by McFarland and recording of a deed vesting the title in said property in McFarland. At that time, this Agreement shall be recorded in the office of the Clerk of Klamath County, Oregon, and the provisions of this Agreement shall control the use of said well by the parties as set forth in this Agreement.
2. McFarland agrees that immediately upon the effective date of this Agreement and before withdrawing waters from the well, he will install dual water meters on the pipes which convey water from said well to the land owned by each of the Parties to measure the amount of water provided by said well to Hickey and the amount of water provided by said well to McFarland. Said meter(s) shall be installed at McFarland's sole cost.
3. The parties shall direct PacifiCorp to forward the monthly statement detailing the cost of the power used to provide water from said well to Hickey. Hickey shall pay said monthly billing prior to the time it becomes delinquent, and he shall provide a copy of the billing, together with meter readings detailing the amount of water each party used, to McFarland. Within ten days thereafter, McFarland shall pay to Hickey that portion of the monthly electrical charge in proportion to the amount of water used by each of the parties during the billing period.
4. The parties agree to cooperate with each other in good faith to maintain the well, pump of existing size, and other equipment in good operating order so as to provide an uninterrupted supply of water to each party. Either party may undertake to make any repairs required to maintain the well and improvements upon not less than 48 hours prior notice to the other party. Provided, however, that in the event of a failure of the well and equipment to provide water, either party may repair the problem after first attempting to contact the other party personally, by telephone, or email.
5. The costs of operating and maintaining the well shall be apportioned to each party based on that parties' proportionate use of water from the well during the prior twelve-month period. Expenses for the operation and maintenance of the well incurred during the first twelve months of this Agreement shall be apportioned to the parties with

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each party paying the proportionate share of cost of use as determined pursuant to the foregoing paragraph 3 from the effective date of this agreement through the date of the necessary operation or maintenance expense item.

6. In the event that McFarland desires to drill a new well for purposes of providing stock water on McFarland's land, Hickey, on behalf of itself, its officers, directors, employees, and agents, agrees that it shall not protest or otherwise take any action to contest the issuance of a Permit to McFarland to drill and construct the said stock water well. In the event McFarland constructs a stock water well on his property, then after completion of the stock water well and receipt of any Permits or other regulatory assurances allowing use of the well to provide stock water for his own use, McFarland shall promptly make, sign, and deliver to Hickey a recordable Quitclaim Deed or other instrument releasing all of his right, title, and interest under this Agreement and under the Partition Deed and Easement Agreement described above.

7. The parties acknowledge that, historically and currently, the well has been used for the purposes of providing water for domestic and livestock use, uses exempt from registration and permitting under the laws of the state of Oregon. The parties agree that said well shall continue to be used for those purposes and those purposes only, and neither party shall use the well in any manner that may jeopardize the parties' right to use the well or which would require that the parties apply for a Permit or other regulatory approval to use the well.

8. Each party covenants and agrees that it shall indemnify and hold the other party harmless from any and all claims arising or relating to that party's use and operation of the well and the delivery of water from the well.

9. In the event that either party initiates any legal action or suit to enforce the terms of this Agreement, including a suit for damages resulting from the breach of this Agreement, then the prevailing party shall be entitled to a Judgment against the losing party for the prevailing party's reasonable costs and attorney's fees incurred in such suit or action as may be determined by the trial court or by an appellate court on appeal.

10. Hickey represents and warrants to McFarland that it has the legal ability to enter into this Agreement, and that this Agreement has been duly approved and ratified by its Board of Directors or other corporate officers, as may be required by its Bylaws and other governing instruments.

11. The parties represent and warrant that this Agreement represents the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified in this Agreement. Any amendment to this Agreement must be made in writing and shall not have any effect or be binding on any party until signed by the parties.

12. Time is of the essence of this Agreement. Each party shall perform the provisions hereof in good faith and without unnecessary delay.

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13. Except as may be otherwise expressly provided in this Agreement, any notice or communication between the parties hereto required to be given hereunder shall be given in writing, by personal delivery, facsimile, email, or mailing the same, postage prepaid to the other party, at the address or numbers set forth on page 1 of this Agreement or to such other addresses or numbers as either party may hereafter provide to the other in writing. Any communication or notice so addressed and mailed shall be deemed to have been given three days after mailing. Any communication or notice delivered personally, by telephone, email, or facsimile shall be deemed to have been given when receipt of transmission is generated by the transmitting machine or when personally delivered and received by the other party.

14. This Agreement shall be binding upon and inure to the benefit of Hickey and McFarland, and their respective successors and assigns.

IN WITNESS WHEREOF, the parties have hereunto executed this Agreement to be effective on the date set forth above.

H & H CATTLE FEEDERS, INC.
LLC

McFARLAND RANCHES,

By: Andrew J. Hickey

Andrew J. Hickey, President
~~Member/Manager~~

By: Dan McFarland

Dan McFarland, ~~member/manager~~

STATE OF OREGON, County of Klamath) ss.

This instrument was acknowledged before me on FEB. 02, 2010
by Andrew J. Hickey as President of H & H CATTLE FEEDERS,



Melody Smith

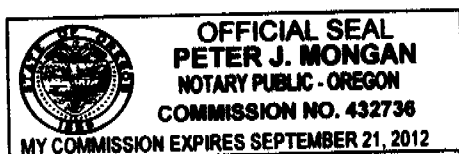
Notary Public for Oregon

My Commission Expires: 12-08-2011

STATE OF OREGON, County of Klamath) ss.

This instrument was acknowledged before me on 2-8-2010,
2010 by Dan McFarland, Member/Manager of McFarland Ranches, LLC..

Peter J. Mongan



Notary Public for Oregon

My Commission Expires: 9-21-2012

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EXHIBIT "A"

All that certain real property situate, lying and being in the County of Klamath, State of Oregon, described as follows:

Government Lots 3 and 4 together with the following described parcel lying and all being in Section 2 Township 41 South, Range 11 East, Willamette Meridian: Beginning at a point in the section line marking the Southwesterly corner of Government Lot 4; thence South along said section line 500 feet, more or less, to a point, which point is the Northwesterly corner of property conveyed to Lloyd Nicholson by Partition Deed recorded June 20, 1962, Vol. 338, page 307, Klamath County Deed of Records; thence South $89^{\circ}14'$ East 1057.7 feet; thence South $2^{\circ}09'$ East 356.6 feet; thence North $89^{\circ}27'$ West 114.0 feet; thence South $0^{\circ}36'$ West 210.8 feet; thence South $88^{\circ}44'$ East 243.5 feet; thence South $3^{\circ}45'$ East 30.6 feet, thence South $89^{\circ}01'$ East 384.6 feet; thence South $15^{\circ}45'$ East 134.1 feet; thence South $4^{\circ}05' 1/2'$ East 296.00 feet; thence South $8^{\circ}55' 1/2'$ West 239.1 feet; thence South $89^{\circ}32'$ East 61.9 feet; thence South $3^{\circ}15'$ East 37.1 feet; thence North $88^{\circ}23'$ East 95.8 feet, more or less, to a point on the centerline of a field drain, as the same is now located and constructed; thence South $1^{\circ}18'$ East along the centerline of said field drain 590 feet, more or less, to its intersection with the line marking the Northerly boundary of the right of way of "D" canal of the U.S. Bureau of Reclamation Klamath Project as the same is now located and constructed; thence Easterly along said right of way line 890 feet, more or less, to the centerline of said section; thence North along said centerline of said section to its intersection with the South line of Government Lot 3; thence Westerly along the South line of Government Lots 3 and 4 to the point of beginning.

SAVING AND EXCEPTION from the above described property a parcel of land situated in the SW1/4 NW1/4 of Section 2 Township 41 South, Range 11 East, Willamette Meridian, more particularly described as follows: Beginning at a point in the Easterly right of way fence of the existing county road along the West line of said Section 2 from which point the East quarter corner of Section 10 Township 41 South, Range 11 East, Willamette Meridian, bears North $89^{\circ}07'50''$ West 27.0 feet and South $0^{\circ}02'50''$ West 6,148.5 feet distant; thence North $0^{\circ}02'50''$ East along said Easterly right of way fence 439.88 feet to 5/8 inch iron pin; thence South $89^{\circ}57'10''$ East 194.20 feet to a 5/8 inch iron pin reference monument; thence South $89^{\circ}57'10''$ East 3.60 feet to a point; thence South $2^{\circ}15'20''$ West 442.96 feet to a 5/8 inch iron pin; thence North $89^{\circ}07'50''$ West 180.8 feet to the point of beginning.

EXHIBIT "B"
LEGAL DESCRIPTION

A piece or parcel of land situate in the S1/2 NW1/4 and N1/2 SW1/4 of Section 2, Township 41 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon, which is the same parcel conveyed to the Grantor under Instrument #70798, recorded at Volume 338, page 307, Deed Records of Klamath County, Oregon, and is more particularly described as follows:

Beginning at a point in the section line marking the Westerly boundary of the said Section 2, Township 41 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon, from which the Southwesterly corner of the said Section 2 bears South 0° 05' East 3490.6 feet distant, and running thence South 89° 14' East 1057.7 feet; thence South 2° 09' East 356.6 feet; thence North 89° 27' West 114.0 feet; thence South 0° 36' West 210.8 feet; thence South 88° 44' East 243.5 feet; thence South 3° 45' East 30.6 feet; thence South 89° 01' East 384.6 feet; thence South 15° 45' East 134.1 feet; thence South 4° 05' 1/2' East 296.0 feet; thence South 8° 55' 1/2' West 239.1 feet; thence South 89° 32' East, 61.9 feet; thence South 3° 15' East, 37.1 feet; thence North 88° 23' East 95.8 feet, more or less, to a point on the centerline of a field drain as the same is now located and constructed; thence South 1° 18' East along the centerline of the said field drain 590 feet, more or less, to its intersection with the line marking the Northerly boundary of the right of way of "D" Canal of the U.S. Bureau of Reclamation Klamath Project as the same is now located and constructed; thence Westerly along the said right of way line 1845 feet, more or less, to its intersection with the said section line marking the Westerly boundary of the said Section 2, thence North 0° 05' West along the said section line 1458 feet, more or less, to the said point of beginning; and also the perpetual easement, right and privilege which shall be appurtenant to and run with the above-granted property to drill, operate and maintain a six-inch well for stockwater purposes, together with the necessary water pipes and electrical wires; and also including ingress and egress over and across a tract of land situate in the SW1/4 of the NW1/4 of Section 2, Township 41 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon, and particularly described as follows:

Beginning at a point on the proposed boundary between the lands of Lloyd Nicholson and Stewart Nicholson from which the section corner at the Southwesterly corner of the said Section 2, Township 41 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon, bears South 18° 27' 1/2' West 3358.2 feet distant and running thence South 2° 09' East along the said boundary line 30.0 feet; thence leaving said boundary line North 87° 51' West 30.0 feet; thence North 2° 09' West and parallel with said boundary line 30.0 feet; thence South 87° 51' West, 30.0 feet, more or less, to the said point of beginning, and also the perpetual easement and right to the use of one-half the water from the present well which is located on the premises last above described.

EXHIBIT B

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