

JAMES R. BENNETTS

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RECEIVED
FEB - 9 2004
Department of Water Resources

February 6, 2004

IDAHO DEPT OF WATER RESOURCES
ATTN: ROXANNE BROWN
1301 N ORCHARD
BOISE ID 83706
PHONE: 208-327-7900

Re: Ziegler/White Water Split

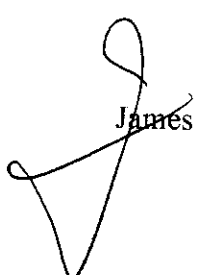
Dear Roxanne:

I have enclosed the signed Certificate and Authorization, attached to the Memorandum of Understanding, on the Ziegler/White matter. Sorry it took so long, but as I told you the other day on the phone, we came to the conclusion that this would probably never get done if we waited for the parties to go through their records and produce the signed originals.

I understand from Troy that Mary is in agreement with the breakdown you have developed. You may want to verify this with Mary as I have not talked with her directly. Troy mentioned that Mary was doing her calculations on total acres and not irrigated acres and once she understood that concept, she apparently was not as concerned as she had been. Again, however, you may want to touch base with her, although as far as I know, she still wants this to go ahead.

Thanks for your help.

Very truly yours,


James R. Bennetts

JRB:m

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING, Made and entered into this 10th day of April, 1991, by and between MARY D. WHITE, a widow, of the County of Lemhi, State of Idaho, hereinafter referred to as "White," and LEON J. ZIEGLER and ILA K. ZIEGLER, husband and wife, and TROY R. ZIEGLER and MAURENE S. ZIEGLER, husband and wife, of the County of Custer, State of Idaho, hereinafter referred to as "ZIEGLER;"

W I T N E S S E T H:

WHEREAS, the parties have entered into an agreement whereby Ziegler is purchasing certain lands from White, the same being described as follows:

The E $\frac{1}{2}$ SE $\frac{1}{4}$, Section 6; the N $\frac{1}{2}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$, Section 7; Lots 1, 2, 3, 4, Section 8; the NW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 17; the N $\frac{1}{2}$ NE $\frac{1}{4}$, Section 18, all in Township 14 North, Range 23 East, Boise Meridian, Lemhi County, Idaho; and

WHEREAS, White is to transfer all range permits or rights held by her to Ziegler along with such lands, including all rights held with adjacent lands, if any; and

WHEREAS, Ziegler shall also receive transfer from White a pro-rata portion (91.5%) of the water rights described under claims numbered A73-00051, A73-00053, A73-02008C, A73-00055, A73-02008B, A73-02008A, A73-02087, and A73-07058, as registered with the Department of Water Resources, State of Idaho, and

WHEREAS, Ziegler is to receive all of the water as represented by claims numbered A73-00207 and A73-10093, and

WHEREAS, it is understood that White is to keep all water held under claim No. A73-10095 but has agreed to grant Ziegler certain lease interests or use interests in portions of the water under that claim as set forth herein, and

WHEREAS, the parties wish to set forth these and other understandings within this Memorandum,

NOW, THEREFORE, in consideration of \$10.00 in hand paid each party to the other, and in further consideration of the understandings and agreements herein contained, it is understood and agreed as follows, to-wit:

1. That Ziegler shall, concurrently herewith, receive transfer of all range permits, preferences or rights held by White as an appurtenance to or used with the above described lands, or adjoining lands. Such transfer shall be finished in a reasonable time and as required by the Bureau of Land Management or Forest Service under their regulatory authority and/or guidelines. It is agreed that this transfer has been commenced and, therefore, further identification of the particular rights to be transferred is unnecessary.

2. That the parties will, concurrently herewith, apply to the Department of Water Resources, State of Idaho, to divide or split the water claimed under claims numbered A73-00051, A73-00053, A73-02008C, A73-00055, A73-02008B, A73-02008A, A73-02087, and A73-07058, pro-rata in regard to the irrigated lands transferred (91.5%), and the irrigated lands retained (8.5%). All of the water shall remain appurtenant to the lands as

appropriate.

3. That the water described in 2. above shall be divided as follows:

- a) White shall have the use of the full amount of the water and water rights for 2 days (48 hours) in every 14-day period, and Ziegler shall have the right to the use of the full right and all water for the remaining 12 days of each 14-day period. Unless otherwise agreed, the first time period each year shall commence as of April 01 of each year and the periods shall run consecutively thereafter with White being entitled to the first 2 days of each period, and Ziegler being entitled to the remaining 12 days. All days shall, for convenience, run from 8:00 a.m. of the day in question to 8:00 a.m. of the following day, unless otherwise agreed.
- b) That although the parties may hold these rights under the permit or claim upon a division of the waters on a continuously flowing basis, and although such use on an on and off basis may favor one party over the other, the above shall constitute the parties' agreement as to division and use until and unless mutually modified. It is acknowledged that during

certain periods the use of the full flow by one party is highly beneficial in contrast to each party using their portion full-time.

- c) That notwithstanding the above agreements, the waters transferred to Ziegler shall become appurtenant to the above lands and the water retained by White shall remain appurtenant to Lots 6 and 7, Section 5, Township 14 North, Range 23 East, Boise Meridian, Lemhi County, Idaho.
- d) That either party may supplement the record of the Department of Water Resources, State of Idaho, to reflect this use agreement.

4. That White will execute a Change of Ownership form with the Department of Water Resources, State of Idaho, to transfer claims numbered A73-00207 and A73-10093 to Ziegler.

5. That White will keep the stock water and domestic water represented by claim No. A73-10095 appurtenant to lands retained by her, to-wit: Lots 6 and 7, Section 5, Township 14 North, Range 23 East, Boise Meridian, Lemhi County, Idaho, however, White agrees that Ziegler may pick up the excess flow of Deer Spring immediately south of the White home and outbuildings on Lot 6, Section 5, Township 14 North, Range 23 East, Boise Meridian, Lemhi County, Idaho, and transport the same southerly across the approximate center of Lot 7, such Section 5, to the NW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 8, in a buried pipeline of approximately 1 $\frac{1}{2}$ inches in

diameter, all in accordance with a certain easement contained in a Warranty Deed of even date, executed by White to Ziegler wherein the lands in Section 8 described, and adjacent lands, were transferred to Ziegler. This agreement contemplates that Ziegler will have the right to install and maintain certain facilities to gather and transport such water for stock water purposes only. It is further agreed that:

- a) Nothing herein shall restrict the right of White to the full use and enjoyment of the domestic and stock water claimed.
- b) Ziegler will have the use and benefit of only surplus or excess water with no obligation on the part of White to furnish water in specific amounts.
- c) This agreement for use of water shall expire April 10, 2090, unless sooner extended, amended, forfeited, or terminated. It is further acknowledged that the pipeline easements contained in the deed described above were perpetual in nature but notwithstanding that fact, the termination of this agreement would or will create an abandonment of those easement rights.
- d) Ziegler agrees that they or their successors will not perfect any permanent water rights by use or by act of law or government agency without

the consent of White or her successors.

- e) It is agreed that a joinder of the title of the above Ziegler lands with Lots 6 and 7 of Section 5 as above set out will terminate the effect of this Memorandum.

6. The parties direct that this document be recorded and the same shall be in full force and effect until mutually amended or terminated.

7. It is further understood and agreed that the Memorandum of Understanding herein contained shall be binding upon and inure to the benefit of the heirs, executors, administrators and assigns of all parties hereto.

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

Mary D. White

Leon J. Ziegler

Ila K. Ziegler

Troy R. Ziegler

Maurene S. Ziegler

WHITE

ZIEGLER

STATE OF IDAHO)
 : ss.
County of)

On this _____ day of April, 1991, before me, the undersigned, a Notary Public in and for said State, personally appeared MARY D. WHITE, a widow, and LEON J. ZIEGLER and ILA K. ZIEGLER, husband and wife, and TROY R. ZIEGLER and MAURENE S. ZIEGLER, husband and wife, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they executed the same.

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

Notary Public for Idaho
Residing at:
My Comm. Expires:

CERTIFICATE AND AUTHENTICATION

The undersigned hereby certify that the attached Memorandum of Understanding dated the 10th day of April, 1991 by and between the undersigned parties was executed by the parties on or about such date by each and every party and further affirm, swear and verify that each and everyone of the undersigned parties considered and intended that the Agreement was binding at the time of execution and further affirm and verify that each and every party consider the Agreement to be binding today and at all future times.

Therefore, this Agreement may be accepted and treated in all respects as the binding original agreement of the parties and shall be a fully binding document and recorded, filed or otherwise processed as such.

DATE:

Jan. 9, 2004
1/16/2004
1/16/2004
2/5/04
2/5/04

SIGNATURE:

Mary D. White
Mary D. White
Leon J. Ziegler
Leon J. Ziegler
Ilia K. Ziegler
Ilia K. Ziegler
Troy R. Ziegler
Troy R. Ziegler
Maureen S. Ziegler
Maureen S. Ziegler

STATE OF IDAHO)

ss:

County of Custer)

On this 5th day of February, 2004, before me, a Notary Public in and for said State, personally appeared MARY D. WHITE, LEON J. ZIEGLER, ILA K. ZIEGLER, TROY R. ZIEGLER, and MAURENE S. ZIEGLER, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they executed the same.

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



Melodie L. Baker
Notary Public
My Commission Expires on: 10/23/06