

DONEY, CROWLEY, BLOOMQUIST & UDA, P.C.

Attorneys at Law
Diamond Block Building, Suite 200
44 West 6th Avenue
P.O. Box 1185
Helena, MT 59624-1185
(406) 443-2211 Fax: (406) 449-8443

108 South Washington
P.O. Box 1418
Dillon, MT 59725
(406) 683-8795
Fax: (406) 683-8796

File in 31-2274

FACSIMILE TRANSMISSION

Please deliver to named recipient.

TO: IDWR - Attn: Al Rueberry

FROM: Patti L. Rowland

SUBJECT: Singleton/Hagenbarth Agreement 31-11440

DATE: 9/17/02

PAGES: 6

FAX NO: (208) 525-7177

CLIENT NO: 377.2 Operator: plr

MESSAGE: Hello Al. John Marshall asked if I would send you a copy of the signed Agreement mentioned above. We hope to get it recorded sometime this week. If you need anything else, let me know. Patti

The information contained herein is CONFIDENTIAL, may be subject to the attorney-client privilege and is intended only for the use of the recipient named above. This transmission does not constitute a waiver of privilege. If you have received this transmittal in error, please immediately notify the sender by telephone and return this transmittal to the sender, by U.S. Postal Service at the above address.

When Recorded Return to:
John M. Marshall
Givens Pursley LLP
277 N. 6th Street, Suite 200
P.O. Box 2720
Boise, ID 83701-2720

WATER RIGHTS SETTLEMENT AND SUBORDINATION AGREEMENT

THIS WATER RIGHTS SETTLEMENT AND SUBORDINATION AGREEMENT ("Agreement") is entered into effective the 16th day of September, 2002, by and between James F. Hagenbarth, David J Hagenbarth, and Margaret Hagenbarth ("Hagenbarth") and Larry D. Singleton and Robine Singleton ("Singleton").

RECITALS

- a. Hagenbarth either claims or holds water right nos. 31-2274, 31-2275, 31-10245, and 31-10740 (collectively the "Hagenbarth Rights") in the Snake River Basin Adjudication ("SRBA"). The Hagenbarth Rights are stockwater and irrigation water rights from Dry Creek in Clark County, Idaho, for irrigation and stockwater use at the place of use owned by Hagenbarth described in Exhibit A hereto.
- b. Singleton has claimed water right 31-11440 in the SRBA for stockwater use from Dry Creek in Clark County, Idaho, on a place of use owned by Singleton and described in Exhibit B hereto.
- c. Hagenbarth filed an objection in the SRBA to the Idaho Department of Water Resources recommendation for water right 31-11440. Hagenbarth and Singleton have entered into this Agreement to settle the objection and allow a decree in the SRBA for water right 31-11440 on conditions stated herein.

NOW THEREFORE, in consideration of the above recitals and the warranties, covenants, agreements, terms and conditions set forth below, Hagenbarth and Singleton agree as follows:

1. The parties each represent and warrant to the other that they have the respective legal power, right and authority to enter into this Agreement and to perform the obligations hereunder.

2. The right to divert water under water right 31-11440 shall be, and is hereby, subordinated to the Hagenbarth Rights, however they may be decreed by the court in the SRBA. Additional details of subordination are as follows:

- a. the priority for the water right 31-11440 may not be asserted or relied upon, and shall be ineffective, against the priority of any of the Hagenbarth Rights for any purpose, including the purpose of effecting a delivery call or curtailment or other administration to deliver water to supply any diversion under water right 31-11440; and
- b. no delivery call to serve any diversion under right 31-11440 shall be made, honored, or enforced if it would cause or require, either directly or indirectly, curtailment of, or mitigation from, any of the Hagenbarth Water Rights;
- c. this subordination also shall apply to any use to which any such subordinated portion of the water right 31-11440 may be transferred or changed.
- d. this subordination shall be effective at all times that Dry Creek water ceases to flow beyond a point where Dry Creek's course currently passes under the road in the S½SE of Section 3, Township 12 North, Range 39 East, said road being commonly known as the "A2" County Road and shown on the map attached hereto as Exhibit C.
- e. this subordination does not limit Singleton's ability or right to divert water pursuant to water right 31-11440, with its associated priority date, if water is available at the point of diversion for this right regardless of the effect such diversion has on the Hagenbarth Rights.

3. The recitals, terms, conditions and covenants contained herein shall run with the land described in Exhibit A and Exhibit B hereto, and shall run with the Hagenbarth Rights and water right 31-11440 and shall be binding upon any person claiming, having or acquiring any right, title or interest in the Hagenbarth Rights, water right 31-11440, the land described in Exhibit A and Exhibit B attached hereto, or in any lot, parcel, portion or subdivision thereof, and upon their successors and assigns.

4. The partial decree for water right 31-11440 shall include a remark in the section entitled "Other Provisions Necessary for Definition or Administration of this Water Right" as follows:

This water right is subject to the terms and conditions of a subordination agreement recorded on _____ as Instrument No. _____ in the records of Clark County, Idaho.

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DONEY LAW FIRM

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5. In consideration of this Agreement and the covenants, conditions and terms set forth herein, Hagenbarth agrees to withdraw their objection in the SRBA to the recommendation for water right 31-11440.

6. This Agreement is binding upon and enforceable by the parties hereto and their respective successors and assigns.

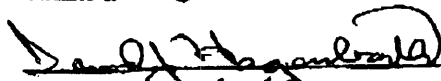
7. Neither party's failure to assert, or to seek enforcement of, any of the covenants, terms or conditions of this Agreement shall constitute a waiver by such party of the breach or default of any such covenant, term or condition unless otherwise expressly agreed to by such non-asserting party in writing.

8. If either party commences litigation for the enforcement, interpretation or rescission of this Agreement, the prevailing party shall be entitled to its reasonable attorney fees and costs.

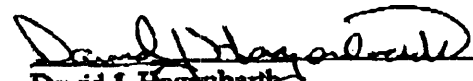
IN WITNESS WHEREOF, this Agreement has been executed by the parties, in the State of Idaho, as of the effective date set forth above.

HAGENBARTH

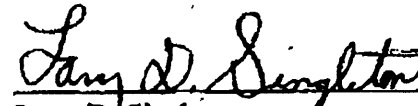

James F. Hagenbarth

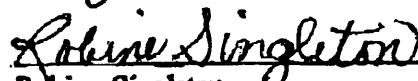

David J. Hagenbarth


James F. Hagenbarth
Co-Personal Representative for the Estate
of Margaret Hagenbarth


David J. Hagenbarth
Co-Personal Representative for the Estate
of Margaret Hagenbarth

SINGLETON


Larry D. Singleton


Robine Singleton

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State of Montana)
) ss.
County of)

On this 16th day of September in the year of 2002, before me, a Notary Public in and for said State, personally appeared James F. Hagenbarth, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

Patricia Rowland
Notary Public for Montana
Residing at Pillon, Montana
My Commission expires 11/04

On this 16th day of September in the year of 2002, before me, a Notary Public in and for said State, personally appeared David J. Hagenbarth, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

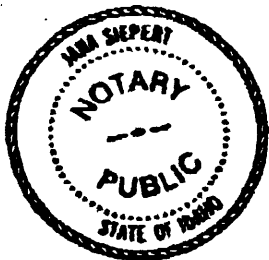
Patricia Rowland
Notary Public for Montana
Residing at Pillon, Montana
My Commission expires 11/04

On this 16th day of September in the year of 2002, before me, a Notary Public in and for said State, personally appeared James F. Hagenbarth and David J. Hagenbarth as personal representatives of the Estate of Margaret Hagenbarth, known or identified to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

Patricia Rowland
Notary Public for Montana
Residing at Pillon, Montana
My Commission expires 11/04

State of Idaho)
) ss.
 County of madison)

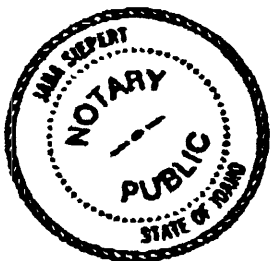
On this 10 day of September, in the year of 2002, before me, a Notary Public in and for said State, personally appeared Larry D. Singleton, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.



Dana Siepert
 Notary Public for Idaho
 Residing at Rexburg, ID
 My Commission expires 3-15-2007

State of Idaho)
) ss.
 County of madison)

On this 10 day of September, in the year of 2002, before me, a Notary Public in and for said State, personally appeared Robine Singleton, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.



Dana Siepert
 Notary Public for Idaho
 Residing at Rexburg, ID
 My Commission expires 3-15-2007