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**Also Licensed in Missouri & Kansas

January 10, 2005

RECEIVED
JAN 11 2005
Department of Water Resources
Eastern Region

Ernie Carlsen
Idaho Department of Water Resources
900 N. Skyline Dr., Ste. A
Idaho Falls, ID 83402

RE: Evidence of Priority for Water Right No. 21-12843

Dear Mr. Carlsen:

We have struggled with attempting to locate documentary or other evidence regarding the above referenced water right. As nearly as anyone can tell, the use of Myer's Creek commenced as early as the rest of the irrigation on the Sheridan Ranch. Unfortunately, we have been unable to find anyone whose memory goes back as far as we would like. We are enclosing with this letter an Affidavit of Charles H. (Bucky) Johnson and the easement worked out with the Forest Service a couple of years ago. Beyond this it appears it will be difficult for us to furnish anything additional.

Yours very truly,



Kent W. Foster

Enclosures

AFFIDAVIT OF CHARLES H. (BUCKY) JOHNSON

STATE OF MONTANA)
)ss
County of Beaverhead)

Charles H. (Bucky) Johnson being first duly sworn on his oath deposes and says:

1. Affiant was born on January 14, 1952, in Idaho Falls, Idaho, and was raised near the Sheridan Ranch where he spent much of his life working on and near it. From about 1978 through 1991, affiant managed the ranch for the Half Circle Cattle Company. During that time, affiant was responsible, among other things, for irrigation of all of the pasture or grasslands on the ranch and became very familiar with the location and operation of the ditches and diversions, including the Myers Creek ditch and diversion.
2. Affiant's earliest recollection of the specific ditch from Myers Creek would be from approximately the mid 1960's when affiant was a young teenager and spent a great deal of time on the ranch, especially during the summers. The ditch in question diverts water from Myers Creek approximately in the SWNE Section 3, T.13N., R. 41E. and runs in a generally westerly direction about 1/2 to 3/4 of a mile to a point where it discharges into a natural channel below the confluence of Schneider Creek, Spring Creek, Blind Creek and Myers Creek in approximately the NWSW of said section. The water then flows down the channel which becomes Willow Creek and is diverted with other water from Willow Creek for irrigation of lands in Sections 9 and 16 of the same Township and Range.
3. The ditch diverts approximately 200 miner's inches or 4.0 cfs of water during most of the irrigation season after the highwater recedes, most of which would otherwise be lost to seepage in the natural channel of Myers Creek downstream from the headgate for the ditch. From the time affiant first became aware of the existence of the ditch, it had the appearance of having been in place for a very long time, much the same as the other ditches and diversion facilities on the ranch. Although affiant cannot recall having ever received any specific information as to the priority of the water right from Myers Creek, the water was diverted through the ditch, into the channel described, and then re-diverted from Willow Creek and used during the time of affiant's experience as if it had the same priority as the other water rights from Willow Creek.

Charles H. "Bucky" Johnson
Charles H. (Bucky) Johnson

SUBSCRIBED AND SWORN TO before me this 31 day of December, 2004.

(seal)

Alice L Brown
Notary Public for Montana
Residing at: LIMA, MONTANA
My commission expires: MARCH 11, 2006



United States
Department of
Agriculture

Forest
Service

Intermountain Region

324 25th Street
Ogden, UT 84401
801-625-5605

File Code: 2720-3

Date: NOV 25 2002

Roger and Sybil Ferguson
c/o Mr. Kent Foster
Holden, Kidwell, Hahn & Crapo, P.L.L.C.
330 Shoup Avenue, Third Floor
P.O. Box 50130
Idaho Falls, ID 83405

RECEIVED DEC 02 2002

Dear Mr. Foster:

Enclosed is a recorded Agriculture Irrigation and Livestock Watering System easement for the Sheridan Golden Eagle Ranch water system on National Forest System lands in Township 13 North, Range 41 East, Section 3, Boise Meridian. The easement was recorded at the Fremont County Courthouse and the recording information is noted on the enclosed original easement.

As stated in the easement, the District Ranger, Island Park Ranger District, is the Forest Service representative for administering the Ditch Bill easement. Please have your client contact the District Ranger if they have questions.

Thank you for your help in the application process. Your assistance was instrumental in the issuance of the easement.

Sincerely,

JEANNE A. EVENDEN
Director, Lands



Authorization ID _____
Contact ID _____
Expiration Date: _____

FS-2700-9a (9/96)
OMB No. 0596-0082

U.S. DEPARTMENT OF AGRICULTURE
Forest Service
AGRICULTURE IRRIGATION AND LIVESTOCK WATERING SYSTEM EASEMENT
Act of October 21, 1976, Act of October 27, 1986
(Pub. L. 99-545), 36 CFR 251, Subpart B

THIS EASEMENT issued this 4th day of November, 2002, by the **UNITED STATES OF AMERICA**, acting by and through the Forest Service, Department of Agriculture, hereinafter called Grantor, to **Sheridan Golden Eagle Ranch**, a sole proprietorship of Roger and Sybil Ferguson, Individuals of the State of Idaho, hereinafter called the Holder.

WHEREAS, the Holder has applied for an easement under Section 501 of the Federal Land Policy and Management Act of October 21, 1976, as amended by P. L. 99-545 (90 Stat. 2743; 43 U.S.C. 1761), for agricultural irrigation or livestock watering system facilities located on lands owned by the United States on the Targhee National Forest, in the County of Fremont, State of Idaho.

WITNESSETH

WHEREAS, upon acceptance of this easement the Holder relinquishes all right, title, and interest in and to any easement issued for the same lands by the United States by any previous grant or permit.

NOW THEREFORE, the United States does hereby grant, subject to valid existing rights, an easement for occupancy with water conveyance system facilities located on the following described lands:

Principal Meridian, Boise, TOWNSHIP 13 NORTH, RANGE 41 EAST
Section 3

Said water conveyance facility consisting of the Myers Ditch, is shown on the map contained in **Exhibit A**, attached hereto and incorporated herein, as provided by the Holder and hereby accepted by the Authorized Officer.

This easement is issued subject to the following terms, provisions, and conditions applicable to the Holder, its permittees, contractors, assignees, and successors in interest.

1. **AUTHORIZED USE.** This easement authorizes only the right-of-way and water conveyance system facilities as constructed and operated on October 21, 1976, as specified herein.
2. **EXTENSIONS or ENLARGEMENTS.** This easement does not authorize extensions or enlargements of the water conveyance system.

Microfilm No. 477,441
At 7 Day 9:10 20 02 USA
At 16:30 O'Clock P M USA
ABBIE MACE
FREMONT CO RECORDER
Fee \$ 24 Deputy 324 25THS
Recorded at Request of U.S. Wells, Durrell 84401

3. FEES. This easement is issued free of charge.

4. TRANSFERABILITY. This easement is fully transferable provided the water conveyance system facilities are used for agricultural irrigation or livestock watering. Holder shall notify Grantor within sixty (60) days of any address change or change in ownership.

5. TENURE. This easement shall continue for as long as the above described lands and water conveyance system facilities are used, operated, and maintained in accordance with the terms and conditions herein described.

6. OPERATION and MAINTENANCE.

a. Holder agrees to operate and maintain the facilities and use the authorized easement in accordance with applicable Federal, State, and local laws, regulations, and standards.

b. Holder shall notify, consult with, and obtain concurrence of the Grantor for operation and maintenance of the authorized facilities.

c. Holder agrees to install and maintain an operable headgate at each diversion structure. Such headgate shall be capable of controlling the amount of water entering the system.

d. Holder will not use fire or herbicides on the authorized right-of-way except as permitted in writing by the Grantor.

e. Holder agrees to operate and maintain the facilities and use the authorized easement in accordance with the Operation and Maintenance Plans attached as **Exhibit B**.

f. Pursuant to the requirements of 36 CFR § 251.56(b)(1)(v), the terms and conditions for operation and maintenance set forth in this section, and any operations and maintenance plan incorporated in this Easement pursuant Paragraph (e) of this section, may be revised or modified by the Authorized Officer upon determination that: 1.) modification or revision of such terms and conditions is necessary to meet the requirements of 43 U.S.C. § 1765 or to comply with the requirements of any other applicable Federal law; or 2.) terms and conditions contained herein are no longer needed to protect National Forest System land or resources, or to meet the requirements of 43 U.S.C. § 1765 or any other applicable Federal law.

7. EMERGENCY REPAIRS.

a. Except for emergency repairs required to protect the environment, property of the United States, or public health and safety, the Holder may not use materials on National Forest System lands outside the easement prior to obtaining written authorization and paying for the materials to be used. Holder's use of material within the easement is limited to maintenance of the water conveyance system facility.

b. If the water conveyance system facilities authorized by this Easement are allowed to deteriorate to the point of threatening persons or property, and the Holder, after notification by the Grantor, refuses

to perform the repairs and maintenance required to remove the threat to persons or property, Grantor shall have the right to undertake such repair and maintenance and to assess the Holder for the costs of such repair and maintenance, regardless of whether Grantor had required the Holder to furnish a bond or other security.

8. INDEMNIFICATION. Holder shall indemnify the United States against liability for any and all injury, loss, or damage, including fire suppression costs, that the United States may suffer as a result of claims, demands, losses, or judgments caused by the Holder's use or occupancy under this easement.

9. LIABILITY. Holder is liable for and agrees to repair damage to National Forest System lands caused by Holder's negligence, intentional acts, or of failure to comply with the terms and conditions of this easement or of any law or regulation applicable to the National Forests.

10. SITE RESTORATION. Holder shall, upon termination of this easement, stabilize the site as required by the Grantor. If Holder does not stabilize the site, the Holder agrees to pay the costs of such stabilization if undertaken by the Grantor.

11. SPECIAL PROVISIONS. The foregoing notwithstanding, this easement is granted subject to the following reservations by Grantor, for itself, its permittees, contractors, and assigns.

A. NONEXCLUSIVE USE. The Grantor reserves the right to use or permit others to use the easement area, provided such use does not unreasonably interfere with the rights and privileges hereby authorized.

B. TERMINATION. This easement may be terminated with consent of Holder, or if Holder fails to exercise the rights and privileges authorized for any continuous period of five (5) years or more. This easement expires according to its terms if Holder uses the water conveyance system for any purpose other than agricultural irrigation or livestock watering. Grantor may take action to terminate this easement under 7 CFR 1.130 - 1.151, for noncompliance with applicable statutes and regulations, or the terms and conditions of this easement.

C. FOREST SERVICE REPRESENTATIVE. The District Ranger, Island Park Ranger District, is responsible for administering this easement. The holder should contact the District Ranger regarding any questions concerning the occupancy and use authorized and the provisions of this authorization.

D. WATER RIGHTS/ADJUDICATION. Should, subsequent to the issuance of this easement, an adjudication of the water right or water system authorized by this easement establish the fact that the Holders did not have a valid water right for the use of the water or a water system which meets the requirements of this act, then coincidental with the date of the decree, this easement shall expire on its own terms based upon the failure of the permit holder to meet the requirements of this Act. Upon expiration, all right, title, and interest in and to the subject area shall revert to the United States, or its successors or assigns.

ACCEPTANCE: On this 8 day of October, 2002, I, the undersigned Holder have read, understand, and accept the terms and conditions of this easement.

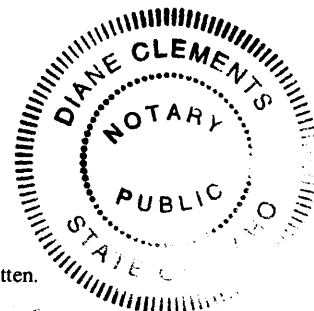
Roger Ferguson
Roger Ferguson

ACKNOWLEDGEMENT

STATE OF IDAHO)COUNTY OF Madison) ss.

The foregoing instrument was acknowledged before me this 8 day of Oct, 2002, by
Roger Ferguson

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



Diane Clements
Notary Public for the State of Idaho
Residing at Boise, ID
My commission expires 1/22/03

ACCEPTANCE: On this 8 day of October, 2002, I, the undersigned Holder have read, understand, and accept the terms and conditions of this easement.

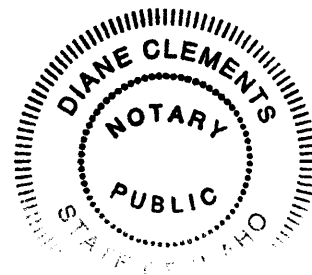
Sybil Ferguson
Sybil Ferguson

ACKNOWLEDGEMENT

STATE OF IDAHO)COUNTY OF Madison) ss.

The foregoing instrument was acknowledged before me this 8 day of October, 2002, by
Sybil Ferguson

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



Diane Clements
Notary Public for the State of Idaho
Residing at Boise, ID
My commission expires 1/22/03

IN WITNESS WHEREOF, the Secretary of Agriculture by the Regional Forester, Forest Service, has executed this Easement pursuant to delegations of authority specified in 7 CFR 2.60 and 36 CFR 251.52 on the day and year written above.

UNITED STATES OF AMERICA

Jack G. Troyer
JACK G. TROYER
 Regional Forester
 Intermountain Region
 Forest Service, Department of Agriculture

ACKNOWLEDGMENT

STATE OF Utah
 COUNTY OF Weber)ss

On this 4th day of November, 2002, before me, Lori Blickfeldt, a Notary Public in and for Weber County, personally appeared before me **JEANNE A. EVENDEN**, Director of Lands, Intermountain Region, Forest Service, U.S. Department of Agriculture, the signer of the within instrument, who acknowledged to me that she executed the foregoing instrument acting for and on behalf of **JACK G. TROYER**, Regional Forester, by duly delegated authority.



Lori Blickfeldt
 Notary Public for the State of Utah
 Residing in South Weber, UT
 My commission expires November 30, 2003

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0082.

This information is needed by the Forest Service to evaluate requests to use National Forest System lands and manage those lands to protect natural resources, administer the use, and ensure public health and safety. This information is required to obtain or retain a benefit. The authority for that requirement is provided by the Organic Act of 1897 and the Federal Land Policy and Management Act of 1976, which authorize the Secretary of Agriculture to promulgate rules and regulations for authorizing and managing National Forest System lands. These statutes, along with the Term Permit Act, National Forest Ski Area Permit Act, Granger-Thye Act, Mineral Leasing Act, Alaska Term Permit Act, Act of September 3, 1954, Wilderness Act, National Forest Roads and Trails Act, Act of November 16, 1973, Archeological Resources Protection Act, and Alaska National Interest Lands Conservation Act, authorize the Secretary of Agriculture to issue authorizations for the use and occupancy of National Forest System lands. The Secretary of Agriculture's regulations at 36 CFR Part 251, Subpart B, establish procedures for issuing those authorizations.

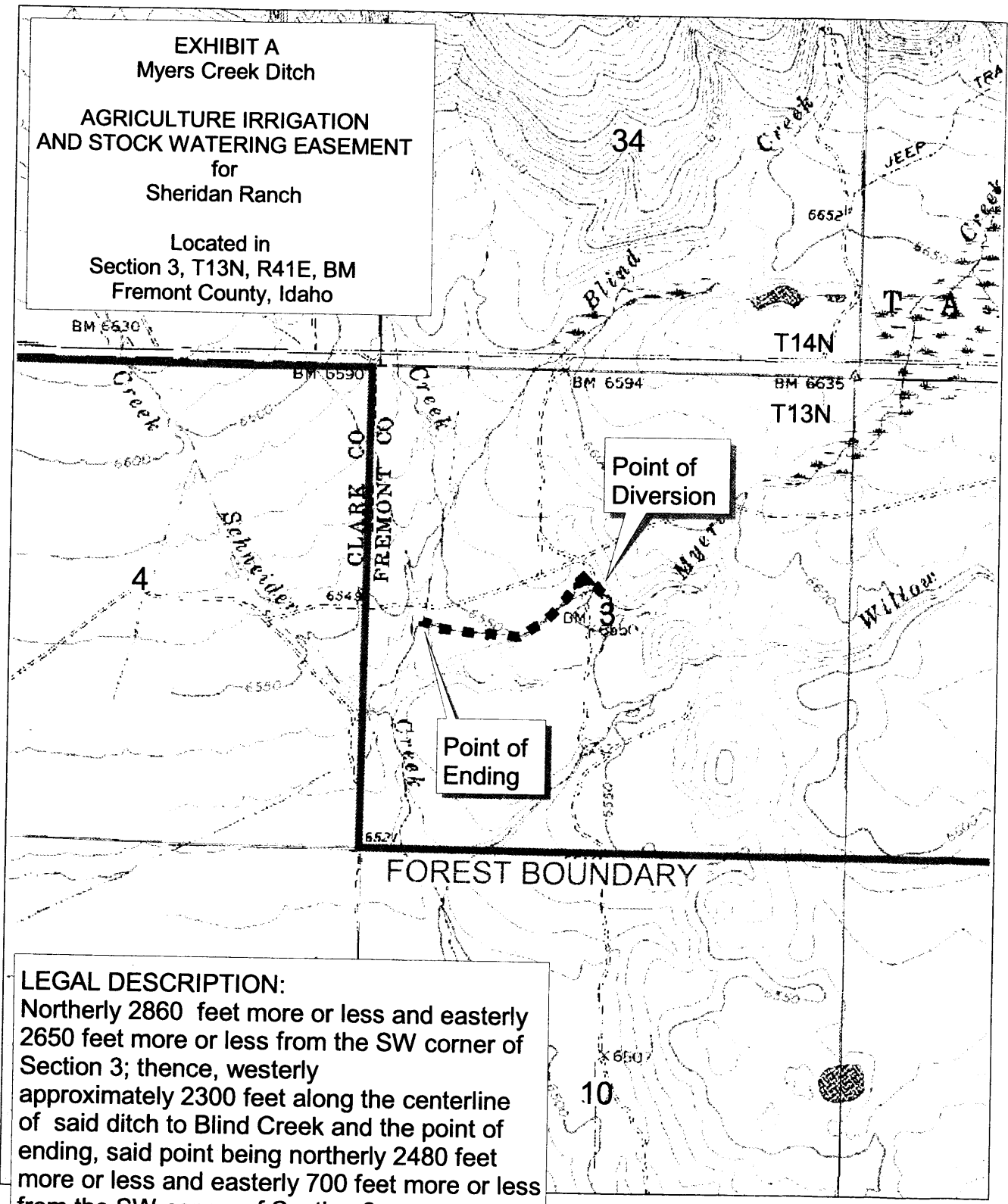
The Privacy Act of 1974 (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552) govern the confidentiality to be provided for information received by the Forest Service.

Public reporting burden for this collection of information, if requested, is estimated to average 1 hour per response for annual financial information; average 1 hour per response to prepare or update operation and/or maintenance plan; average 1 hour per response for inspection reports; logs, facility and user information, sublease information, and other similar miscellaneous information requests. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

EXHIBIT A
Myers Creek Ditch

**AGRICULTURE IRRIGATION
AND STOCK WATERING EASEMENT
for
Sheridan Ranch**

Located in
Section 3, T13N, R41E, BM
Fremont County, Idaho



LEGAL DESCRIPTION:
Northerly 2860 feet more or less and easterly 2650 feet more or less from the SW corner of Section 3; thence, westerly approximately 2300 feet along the centerline of said ditch to Blind Creek and the point of ending, said point being northerly 2480 feet more or less and easterly 700 feet more or less from the SW corner of Section 3.

The ditch right-of-way is 40 feet wide, 20 feet each side of centerline, and contains approximately 2.11 acres.



0 800 1600 2400 Feet

SOURCE: USGS 7.5 Minute Quadrangle
Icehouse Creek
PROJECTION: UTM Zone 12
DATUM: NAD 27

B.Klarich
8-10-2001

47441

EXHIBIT B

OPERATION AND MAINTENANCE PLAN

Water Conveyance Facility: Myers Creek Ditch

Easement Holder : Roger and Sybil Ferguson, aka Sheridan Goldern Eagle Ranch

The easement incorporates this Operation and Maintenance Plan (O & M Plan) and any attachments thereto; and the Holder agrees to operate and maintain the facilities and use the granted land in accordance with the following stipulations:

1. Regulate channel flows so that a freeboard is maintained above the water line.
2. Use only maintenance routes agreed to and to repair all damage resulting from said use.
3. The Holder shall be responsible for prevention and control of soil erosion and gullyng on land covered by the easement and the land adjacent thereto, resulting from operations and maintenance of granted use; maintain ditch or canal to prevent downcutting and bank failure; remove all obstructions from the ditch or canal or diversion structure; revegetate or otherwise stabilize all ground where the soil has been exposed; be responsible for control of and spread of noxious weeds, as indentified by the US Forest Service and the local County weed list. Work in natural channels other than minor or emergency work immediately at the diversion structure requires State and possibly Corp of Engineers advance approval.
4. The Holder shall inspect the facility prior to use each year and make necessary repairs. Work that is considered other than routine maintenance and/or minor repairs shall be discussed in advance with the Forest officer. All repairs shall be acceptable to and completed by the date agreed to by the Holder and the Forest officer.
5. The Holder will contact the Forest officer for approval before proceeding with work that is other than routine operations. Some of these situations are:
 - a. Bringing in and using heavy equipment.
 - b. Using other than approved maintenance routes for access.
 - c. Motorized use in a closed area in an emergency situation.
 - d. Removal of significant amounts of vegetation and silt and deposition of the same, if on National Forest System lands.
 - e. Burning, application of seed mixtures, chemical application or other means of vegetation control measures.
 - f. Reconstruction or re-routing of a portion of the ditch (the latter would also entail a new easement or special use permit).
6. If the Holder has any encounters with grizzly bears or wolves or if a wolf den site is discovered within ½ mile of the easement, it will be reported immediately to the Forest Officer.
7. No human, pet, or stock food of any kind or garbage- including grease, paper, cans, glass, plastics, fruit peals, cores, chemicals or any other related item or its container or wrapper of any kind may be stored, left, buried, or burned.

8. This O & M Plan will be reviewed annually by the Holder and may be amended by mutual agreement when signed and dated by the Holder and the District Ranger.

Regan Ferguson
Holder

8/13/02
Date

Julie Ferguson
Holder

8/15/02
Date

Adrienne K. Keller
District Ranger

8-19-02
Date