

ISWR
75-4394
75-4108

**Memorandum of Agreement
Between the Pope Ditch Company and Michael J. Tyacke**

Article 1: PARTIES

- 1) Michael J. Tyacke (hereinafter "Tyacke") is the owner of the Hyde Creek Ranch (hereinafter "HCR"), located in Salmon, Idaho.
- 2) Pope Ditch Company (hereinafter "Company") is a ditch company operating the Pope Ditch in Salmon, Idaho.

Article 2: PURPOSE

- 1) Tyacke and Company maintain opposing water right claims to water delivered from the Pope Ditch. Tyacke's claim is A75-4394; Company's claim is A75-4108
- 2) The purposes of this Memorandum of Agreement are:
 - a) To assure Tyacke/HCR of an adequate and fair share of water from the Pope Ditch, consistent with Tyacke's water right claim A75-4394, and
 - b) To acknowledge Company's water right claim A75-4108.
- 3) Tyacke asserts an historical claim and use for the HCR as follows:
 - a) The legal description of the water place of use on HCR is:

Township	Range	Section	1/4	of	1/4	Lot	Use	Acres
21N	22E	32	NW		NE		IRR	32.6
			SW		NE		IRR	21.7
			NE		NW		IRR	24.8
			SE		NW		IRR	39.9
			NE		SW		IRR	28.9
			SE		SW		IRR	3.3
			NW		SE		IRR	4.1

Section
Acres 155.3

Total Acres 155.3

- b) The description of diverting works is: **Pump & Pipe**

HCR Point of Diversion:

Township	Range	Section	1/4	of	1/4	Lot	County
21N	22E	32	NW		SW		LEMHI

- c) Water to be used for the following purpose:

Purpose	From	To	C.F.S
Irrigation	04/15	11/15	3.000

- d) Total quantity appropriated is: **3.000 C.F.S**
 e) Total consumptive use is: **362.5 Acre Feet Per Annum**

- 4) Tyacke, and his predecessors in interest, have historically relied upon access to, and delivery and utilization of the quantity of water outlined in Subsection 3, above, in his ranch development and maintenance. Further, Tyacke asserts that the value of his ranching endeavors, including the value of his property, is dependent upon his continued access to, and delivery and utilization of said water. It is upon these premises that Tyacke asserts his claim A75-4394.
- 5) Tyacke asserts that Company does not currently have a method of water allocation via the Pope Ditch that recognizes and assures Tyacke his historical use of water as described in Subsection 3 of this Article.
- 6) Company acknowledges that Company currently has a method of water allocation that could be easily modified to the detriment of Tyacke, depriving Tyacke of his historical use of water as described in Subsection 3 of this Article, and therefore,
- 7) Premises considered, Company and Tyacke wish to enter into this Memorandum of Agreement until Company is able to establish a method of distributing water that recognizes and assures Tyacke of his historical use as per Subsection 3.

Article 3: AGREEMENT

- 1) Company agrees to:
- a) Provide to Tyacke/HCR water via the Pope Ditch, as it has in the past, as follows:

Water to be used for the following purpose:

Purpose	From	To	C.F.S
Irrigation	04/15	11/15	3.000

Total quantity appropriated will continue to be: **3.000 C.F.S**

Total consumptive use will continue to be: **362.5 Acre Feet Per Annum**

Point of diversion will remain:

Township	Range	Section	1/4	of	1/4	Lot	County
21N	22E	32	NW		SW		LEMHI

- b) Company further agrees that any subsequent method of allocation it develops cannot change HCR's allocation per this Memorandum of Agreement without Tyacke's prior written agreement.
- c) Company agrees that it will do nothing to limit, re-route, alter, change, or abridge Tyacke's access to, point of diversion at, or delivery of water from the Pope Ditch without Tyacke's prior written agreement.
- 2) Tyacke agrees to:
- a) Drop water right claim A75-4394 and all objections to the Pope Ditch Company's water right claim A75-4108.

- b) Pay an appropriate utilization/maintenance fee for delivery of water and maintenance of the Pope Ditch. Such fee shall be determined by the same method/proportion as that used for determining the fee for all members/subscribers of Pope Ditch Company.

Article 4: DURARATION, TERMINATION, AND MODIFICATION OF THIS MEMORANDUM OF AGREEMENT

- 1) This Memorandum of Agreement commences on the date that both parties sign this agreement.
- 2) This Memorandum of Agreement shall remain in effect until such time as Company enacts a method of allocation that recognizes and assures Tyacke his historical use of water as described in Subsection 3 of this Article, and provided that Tyacke has agreed, in writing, to the method of allocation proposed by Company.
- 3) Termination of this Memorandum of Agreement is only allowed if both parties agree in writing to do so.
- 4) Modification of this Memorandum of Agreement is only allowed if both parties agree in writing to do so.

Article 5: TRANSFERABILITY, ASSIGNMENT OF THIS AGREEMENT

- 1) This Memorandum of Agreement is transferable and assignable to heirs, assigns, and subsequent purchasers of interest.

Article 6: RESOLUTION OF DISPUTES AND DAMAGES

- 1) Each party agrees to pay its own legal fees for issues, conflicts, and disputes arising under this Memorandum of Agreement.
- 2) Damages for breach of this Memorandum of Agreement may include crop and stock losses (present and future), loss of reasonable market value of land, other reasonable damages arising out of breach of this Memorandum of Agreement, and attorney's fees.

Article 7: CONTACT PERSONS

Michael J. Tyacke
PO Box 2156
Idaho Falls, Idaho 83403
(208)529-3227

Pope Ditch Company
Officer _____
Address _____

Telephone _____

Stacy H. Reynolds
Reynolds
Don

SIGNATURE:

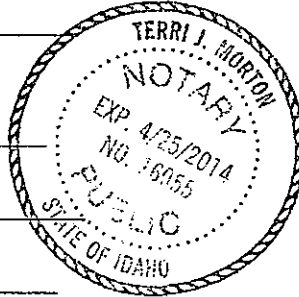
Authorized Signatory for Pope Ditch Company, Title

SUBSCRIBED AND SWORN before me on this 10th day of April, 2009

Terri J. Morton
Notary Public

Residing at Salmon, Idaho

Commission Expires 4-25-2014



SIGNATURE:

Michael Tyacke
Michael Tyacke, Owner, Hyde Creek Ranch

SUBSCRIBED AND SWORN before me on this 10th day of April, 2009

Terri J. Morton
Notary Public

Residing at Salmon

Commission Expires 4-25-2014

