

Lynette Miller

Recorded - Dec 18-1227 P.M.

No - 1169579

AGREEMENT

This Agreement made and entered this 14 day of November, 1989, between SHERMAN SCHROCK and VICKEY SCHROCK, husband and wife, hereinafter "Schrock;" JAMES DONALD and ELIZABETH DONALD, husband and wife, hereinafter "Donald;" and ANDREW FARMER and NANCY FARMER, husband and wife, hereinafter "Farmer."

WHEREAS, all the parties to this Agreement are parties to Kootenai County Civil Case No. 73149 and are desirous of resolving the issues raised therein;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and the incorporation of this Agreement in an order of dismissal of Civil Case 73149, and other good and valuable consideration, the parties hereto agree as follows:

1. The parties agree that the Idaho Department of Water Resources will be dismissed from Civil Case No. 73149 prior to the entry of the order of dismissal herein contemplated.

2. At the time of execution hereof, Donald and Farmer shall quitclaim all of their right, title and interest in and to a certain well (as reflected by license of water right number 95-07798 and 95-07546 and by reservation in that certain Warranty Deed from James W. Donald and Elizabeth Donald to Vaughn P. Donald and Pamela Donald dated October 21, 1978, and shown as document number 785906 records of Kootenai County, Idaho) any water therefrom, and any rights-of-way or easements therefrom located on the property of Schrock, to Schrock. Donald and Farmer shall have no responsibility for past or future costs or obligations concerning said well and Schrock shall hold Donald and Farmer harmless in regard to any claims concerning said well.

3. The parties to this Agreement have water rights to a certain springs, collection facilities and pipelines located on the property of Donald. The springs serving the parcels of the three parties (as hereinafter described below) are in the NW1/4 SW1/4, S. 9, T. 50 N., R. 4 W.B.M., Kootenai County, Idaho. The respective ownerships and rights are as follows:

<u>OWNER</u>	<u>PLACE OF USE</u>	<u>PRIORITY DATE</u>	<u>QTY</u>	<u>PURPOSE</u>
James & Elizabeth Donald Rt. # 1 Box 77 Coeur d' Alene ID 83814 (Claim No. 95-04387)	E1/2 of E. 313 ft., Govt. Lot 8, Sec. 9, T. 50N., R. 4 W.B.M. Kootenai Cty., ID	06/22/65	.04 cfs	Domestic for one household
Sherman & Vickey Schrock N. 2430 Foothill Dr. Coeur d'Alene ID 83814 (Claim No. 95-04386)	Portion of W1/2 of E. 313 ft., Govt. Lot 8, Sec. 9, T. 50N., R. 4 W.B.M. Kootenai Cty., ID	06/01/69	.04 cfs	Domestic for one household
James & Elizabeth Donald Rt. # 1 Box 77 Coeur d' Alene ID 83814 (for Andrew and Nancy Farmer) (Application for a Permit No. 95-08609)	E1/2 of E. 313 ft., Govt. Lot 8, Sec. 9, T. 50N., R. 4 W.B.M. Kootenai Cty., ID	11/23/88	.02 cfs	Domestic for one household

4. The parties hereto acknowledge that even though each has a paper right to two miner's inches of water on a continuous flow basis (one inch continuous flow for a year would develop 14.48 acre feet annually), the average daily production from the common spring source on the Donald property is approximately 900 gallons per day, or 328,500 gallons per year, or approximately one acre foot annually. The parties hereto agree that regardless of their respective water right priorities, the parties hereto shall share the flow from the springs one-third (1/3) each when the daily yield is 600 gallons or more. All water overflowing the reservoir shall be also divided one-third (1/3) each, provided that the other parties hereto shall have the right to use said overflow one-half (1/2) each if one party does not then wish to use such overflow water, or one party may use all the overflow water if the other two parties do not wish to use such overflow water. At yields below 600 gallons per day, Donald and Schrock shall share 50 - 50 and Farmer shall receive no water pursuant to right, but Donald may then make part or all of Donald's entitlement available to Farmer or Farmer's successor at Donald's discretion. At flows below 300 gallons per day total, the parties will again share one-third (1/3), one-third (1/3), one-third (1/3), it being recognized that such flows would be required for culinary and drinking purposes.

The parties further acknowledge that if average daily yields are below 600 gallons per day, that water will not be

used for any purposes other than domestic within the three dwellings, or their replacements.

5. Donald shall own the collection facilities and improvements including the pipeline used in common, from the springs to the "T," and have responsibility for repair and maintenance of the system from the springs to the "T." Each party shall own and maintain their private facilities from the "T" (junction) in the pipe, it being understood Donald and Farmer shall share 50 - 50 below the "T." Schrock and Farmer are herein granted an easement for the conveyance of their water in the common facilities. Schrock is herein granted an easement for his pipeline from the "T" to Schrock's boundary, as well as a secondary easement ten feet in width (five feet on each side of his pipeline) from his boundary to the "T" for access, operation and maintenance purposes. Schrock and Farmer are herein granted a secondary easement ten feet in width (five feet on each side of the pipeline) for access from the "T" to the spring along the existing pipeline (or as the same may be then located) for use by Schrock or Farmer for operation and maintenance purposes as outlined in Paragraph 6 hereof in the event Donald is absent or unable to perform the repairs. Such easement shall be as shown on Exhibit "A".

6. The parties hereto agree that the responsibility for costs of repair, maintenance or replacement of the spring collection network and the pipeline located on Donald's property, but used in common by the parties, shall be one-third (1/3) each. Prior to undertaking repair and maintenance of the system from the springs to the "T," if maintenance costs are contemplated, Donald shall give the parties hereto thirty (30) days mailed notice containing an estimate of the cost of repairs (based on a contractor's estimate if the work is to be accomplished by other than Donald). In the event any maintenance is actually conducted by any party hereto, the cost shall be limited to out of pocket costs, with no reimbursement for personal labor. In the event of an emergency, and in the absence of Donald, after an attempt has been made to alert the other party hereto, any party may do what is necessary to restore the system to working order or to prevent damage to the system. Bills for repairs shall be paid within thirty (30) days after submitted by mail. Parties who have not paid within said thirty (30) days shall not be entitled to water until said bill is paid.

7. If at any time the system has fallen in disrepair, and for that reason only the water available to the parties falls below a total of 600 gallons per day, and after written demand to Donald or his successor the system is not thereafter repaired within thirty (30) days, Schrock or Farmer or their successors may proceed to make said repairs, the cost thereof to be shared as set out in Paragraph 6 above.

8. The parties acknowledge that installing devices to measure daily volumes would be expensive. Such will not be required unless unanimously agreed.

9. The parties agree to take all reasonable measures to keep any person from hereafter appropriating or diverting water from the common spring source, unless all agree.

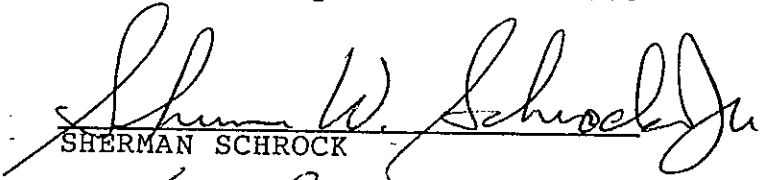
10. So long as the financial obligations for the operation of the system are current, the rights to water hereunder shall not be terminable, and each party shall be deemed the owner of a covenant running with the land in the system for the benefit of his respective parcel.

11. Any decision to hereafter further develop the spring area or convert to a subterranean water source in the area of the springs can only be made by a unanimous consensus of the parties hereto.

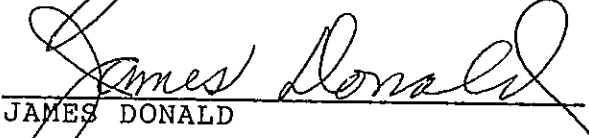
12. Donald covenants that in any subsequent sale of the property where the spring or part of the common system is located, that the parties hereto will be protected to the extent of their rights set out herein.

13. This Agreement and the covenants herein contained shall be binding upon and inure to the heirs, successors, assigns and personal representatives of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective the day and year first above written.


SHERMAN SCHROCK


VICKIE SCHROCK


JAMES DONALD


ELIZABETH DONALD

Andrew Farmer
ANDREW FARMER

Nancy Farmer
NANCY FARMER

As the successors to the interests of Schrock, the undersigned approve and agree to be bound by the provisions of this Agreement.

James R. Neff
JAMES R. NEFF

Gloria Neff
GLORIA NEFF

STATE OF IDAHO)
County of KOOTENAI) ss.

On this 14 day of NOVEMBER, 1989, before me, a Notary Public, in and for said County and State, personally appeared SHERMAN SCHROCK, known or identified to me to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

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

Paul R. Kroeger
NOTARY PUBLIC FOR IDAHO
Residing at: POST FALLS, ID
My commission expires: 1/2/93

STATE OF IDAHO)
County of KOOTENAI) ss.

On this 14 day of NOVEMBER, 1989, before me, a Notary Public, in and for said County and State, personally appeared VICKY SCHROCK, known or identified to me to be the individual whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

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

Allen D.
NOTARY PUBLIC FOR IDAHO
Residing at: Coeur d'Alene
My commission expires: 7-19-91

STATE OF IDAHO)
County of Kootenai) ss.

On this 16th day of October, 1989, before me, a Notary Public, in and for said County and State, personally appeared JAMES DONALD, known or identified to me to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

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

Dorene L. Liss
NOTARY PUBLIC FOR IDAHO
Residing at: Coeur d'Alene, Id.
My commission expires: 4-4-91

STATE OF IDAHO)
County of Kootenai) ss.

On this 16th day of October, 1989, before me, a Notary Public, in and for said County and State, personally appeared ELIZABETH DONALD, known or identified to me to be the individual whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

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

Dorene Liss
NOTARY PUBLIC FOR IDAHO
Residing at: Coeur d'Alene, Id.
My commission expires: 4-4-91

STATE OF IDAHO)
County of Kootenai) ss.

On this 16th day of October, 1989, before me, a Notary Public, in and for said County and State, personally appeared ANDREW FARMER, known or identified to me to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

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

Dorene Vissie
NOTARY PUBLIC FOR IDAHO
Residing at: Coeur d'Alene, Id.
My commission expires: 4-4-91

STATE OF IDAHO)
County of Kootenai) ss.

On this 16th day of October, 1989, before me, a Notary Public, in and for said County and State, personally appeared NANCY FARMER, known or identified to me to be the individual whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

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

Dorene Vissie
NOTARY PUBLIC FOR IDAHO
Residing at: _____
My commission expires: _____

STATE OF IDAHO)
County of Kootenai) ss.

On this 20th day of October, 1989, before me, a Notary Public, in and for said County and State, personally appeared Eugene R. NEFF, known or identified to me to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

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

Stephen M. Jones
NOTARY PUBLIC FOR IDAHO
Residing at: Coeur d'Alene
My commission expires: 12-28-94

STATE OF IDAHO)
) ss.
County of Kootenai)

On this 21st day of October, 1989, before me, a Notary Public, in and for said County and State, personally appeared Glenn NEFF, known or identified to me to be the individual whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

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

Stephen M. Jones
NOTARY PUBLIC FOR IDAHO
Residing at: Coeur d'Alene
My commission expires: 12-28-94

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EXHIBIT "A"

