

19110 ret. to McDaniel  
P.O. Box 127  
Artes, ID 83801

524805

**WELL USERS AGREEMENT AND  
CONVEYANCE OF EASEMENTS**

THIS INSTRUMENT made and entered into this 29<sup>th</sup> day of May, 1998, by RUTH D. KENNEDY (hereinafter referred to as "KENNEDY") and EARL W.D. McDANIEL and ALEXA McDANIEL ( hereinafter referred to collectively as "McDANIEL") and is based upon the following:

A. KENNEDY is the owner of the following described parcel of real property located in the County of Bonner, State of Idaho:

SEE EXHIBIT "A", ATTACHED HERETO AND INCORPORATED HEREIN  
BY REFERENCE (hereinafter referred to as PARCEL A).

B. McDANIEL is the owner of the following described parcel of real property located in the County of Bonner, State of Idaho:

SEE EXHIBIT "B", ATTACHED HERETO AND INCORPORATED HEREIN  
BY REFERENCE (hereinafter referred to as PARCEL B).

C. There is water well located on PARCEL A that is owned by KENNEDY and is used for the production of water for domestic use (hereinafter referred to as the "water well").

D. It is necessary that this Agreement be made a matter of record to establish the rights, interest, and further responsibilities as it concerns the maintenance, repair, and use of the water well and water distribution lines.

**NOW, THEREFORE, IT IS HEREBY ESTABLISHED** as follows:

I. **CONVEYANCE OF A LICENSE TO WATER PRODUCED BY THE WATER WELL AND CONVEYANCE OF EASEMENTS:** For good and sufficient consideration in hand paid, KENNEDY hereby conveys to McDANIEL a terminable license to one third (1/3) of the water produced by water well located on PARCEL A. McDANIEL'S interest in said license shall be for the diversion and use of one third (1/3) of the water produced by the water well for the use upon PARCEL B. Any water diverted from the water well by McDANIEL shall be used exclusively for the use and benefit of PARCEL B.

1. WELL USERS AGREEMENT

- A. KENNEDY hereby reserves unto herself, her heirs and assigns, an undivided two thirds (2/3) interest in the water well located on PARCEL A. KENNEDY expressly reserves the right to convey all or part of her interest in the water well to any third party, subject however, to the restriction that there shall not be more than three (3) users of the water well. A "user" is more fully defined below.

II. **WELL AND WATER TRANSMISSION EASEMENT:** KENNEDY hereby bargains, sells and conveys to McDANIEL a perpetual nonexclusive easement one hundred (100) feet in diameter as measured from the center point of the pre-existing water well located on PARCEL A. Said easement shall be for the placement, maintenance and repair of the water well on PARCEL A.

- A. KENNEDY also hereby bargains, sells and conveys to McDANIEL a perpetual nonexclusive easement for the installation, maintenance and repair of a water transmission line over, across and under PARCEL A for the delivery of water from the water well to PARCEL B. Said easement is more fully described in Exhibit A.
- B. KENNEDY also hereby bargains, sells and conveys to McDANIEL a perpetual nonexclusive easement over and across PARCEL A to provide McDANIEL access to the water well and the water transmission lines and water production components for any necessary repairs, maintenance and inspection. Said easement is more fully described in Exhibit A.
- C. The easements conveyed in this Paragraph II shall be appurtenant to the ownership of PARCEL B.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

A.M.  
E.M.  
RDK

2. **WELL USERS AGREEMENT**

C:\LAW\KENNEDY\WATER 2EA

wells located on PARCEL A shall automatically terminate and shall revert back to  
 KENNEDY or KENNEDY'S heirs or assigns and this agreement shall be automatically  
 terminated.  
 The term "domestic purposes" shall be as defined by Idaho Code Section 42-1111  
 (b)(1).

RDK  
 RM  
 E

IV. **COSTS:** All costs for the re-construction, maintenance and repair of the water well and any shared water transmission lines, components or structures shall be the joint and equal responsibility of all of the users of the water well and water delivery system.

- A. "User" shall be defined as any party, person or entity who receives and/or diverts water from the water well for the supply of water to any permanent and/or temporary residence.
- B. Once a user begins to divert water from the water well, the responsibility for payment of costs by each individual user shall continue until said use is terminated for a period of six (6) continuous months or more.
- C. The use of any water produced by the water well by any individual user shall be limited to one (1) single family residence and accessory buildings. The term "accessory buildings" includes, but is not limited to, detached garages, shops, barns and other structures incident to the use and enjoyment of a single family residence.
  1. KENNEDY is currently diverting water from the water well for the supply of water to a single family residence and accessory buildings located on PARCEL A. Said use shall constitute one third (1/3) of the water well's output and shall be appurtenant to the ownership of PARCEL A.
  2. KENNEDY reserves the right to convey her remaining one third (1/3) interest in the water well to any person or entity for the purposes and uses provided for herein.
    - a. Until such time as KENNEDY conveys the remaining one third (1/3) interest in the water well to a third party and said third party

### 3. WELL USERS AGREEMENT

becomes a user as defined herein, KENNEDY and McDANIEL shall each equally bear the costs of operating and maintaining the water well as provided for herein.

- V. **ELECTRICITY:** All electricity for the well and water distribution line shall be shared evenly and the responsibility of all of the users.
- A. In the event that KENNEDY conveys her remaining one third (1/3) interest in the water well to a third party or either of the original parties to this agreement, KENNEDY and/or McDANIEL, voluntarily or involuntarily relinquishes title to said party's respective parcel of real property then in that event, upon said conveyance or relinquishment, the then current users of the water well shall install a separate dedicated electric line and electric meter to the water well's electric water pump. Each user shall bear equally the costs of installing said line and meter. Said separate electrical line shall connect the electrical components of the water well directly to the electrical power suppliers' transmission lines. Each user shall be responsible for their respective share of the electrical charges for the water supply system's electrical consumption. To facilitate this cost sharing, each user shall, at their own expense, install a water meter on that user's respective water supply transmission line. Each user then will be responsible for the electrical usage for that user's actual water consumption. The individual user's share of the electrical costs shall be calculated based upon the electrical costs for supplying one gallon of water.
- VI. **HOOKUP COSTS:** All costs to hook onto the system shall be borne by the individual users. Any costs for the continued maintenance and repair of an users' exclusive water transmission line shall be the responsibility of the individual user.
- VII. **USE:** Use of the water shall not be disproportionate to the other users. In the event there is any disproportionate use, water and electrical meters shall be installed to determine the amount of water usage pursuant to Paragraph V.A, above.
- VIII. **LIMITATIONS AS TO USE:** The water shall only be used for domestic use and not

#### 4. WELL USERS AGREEMENT

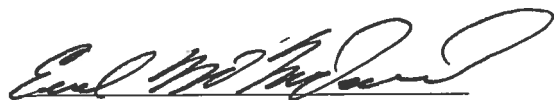
for any agricultural (small gardens excluded) and commercial livestock operations.

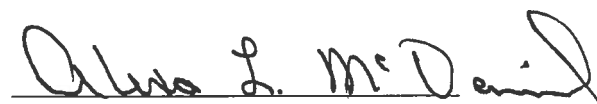
- IX. **DEFAULT:** In the event any user fails to pay their share of the costs for the repair and maintenance of the water well, then and in that event, their right to use the well can be terminated until such time as all costs and expenses have been reimbursed, plus interest at a rate of eighteen percent (18%) per annum to be calculated thirty (30) days after the first written demand for contribution has been made. Furthermore, in the event the nonpayment should continue, a lien on the delinquent users' parcel of real property is hereby established and the other users have the right to foreclose the lien on the lien parcel of property as a mechanic's lien under the laws of the State of Idaho. Any and all costs and attorney's fees incurred resulting from said default shall be paid by the defaulting party.
- X. **SEVERABILITY CLAUSE:** Should any provision of this agreement be declared invalid or in conflict with any applicable law, statute, regulation, or ordinance, the validity of all the other provisions of this agreement shall remain unaffected and in full force and effect.
- XI. **BINDING COVENANTS:** The terms and conditions of this agreement shall constitute covenants and encumbrances and shall run with the land and shall be perpetually binding upon the parties hereto, their heirs and assigns, and any party acquiring any right, title or interest in or to any portion of the real property described herein.
- XII. **ATTORNEY'S FEES:** In the event any legal action is necessitated for the enforcement of the terms of this Agreement, attorney's fees shall be allowed to the prevailing party.
- XIII. **MAJORITY RULE:** In the event any decision is necessary to determine if there is any necessary maintenance, repair and costs to be incurred by the water system, a majority of the users shall control.

IN WITNESS WHEREOF the parties hereto have executed this Instrument the day and year first above written.

  
RUTH D. KENNEDY

## 5. WELL USERS AGREEMENT

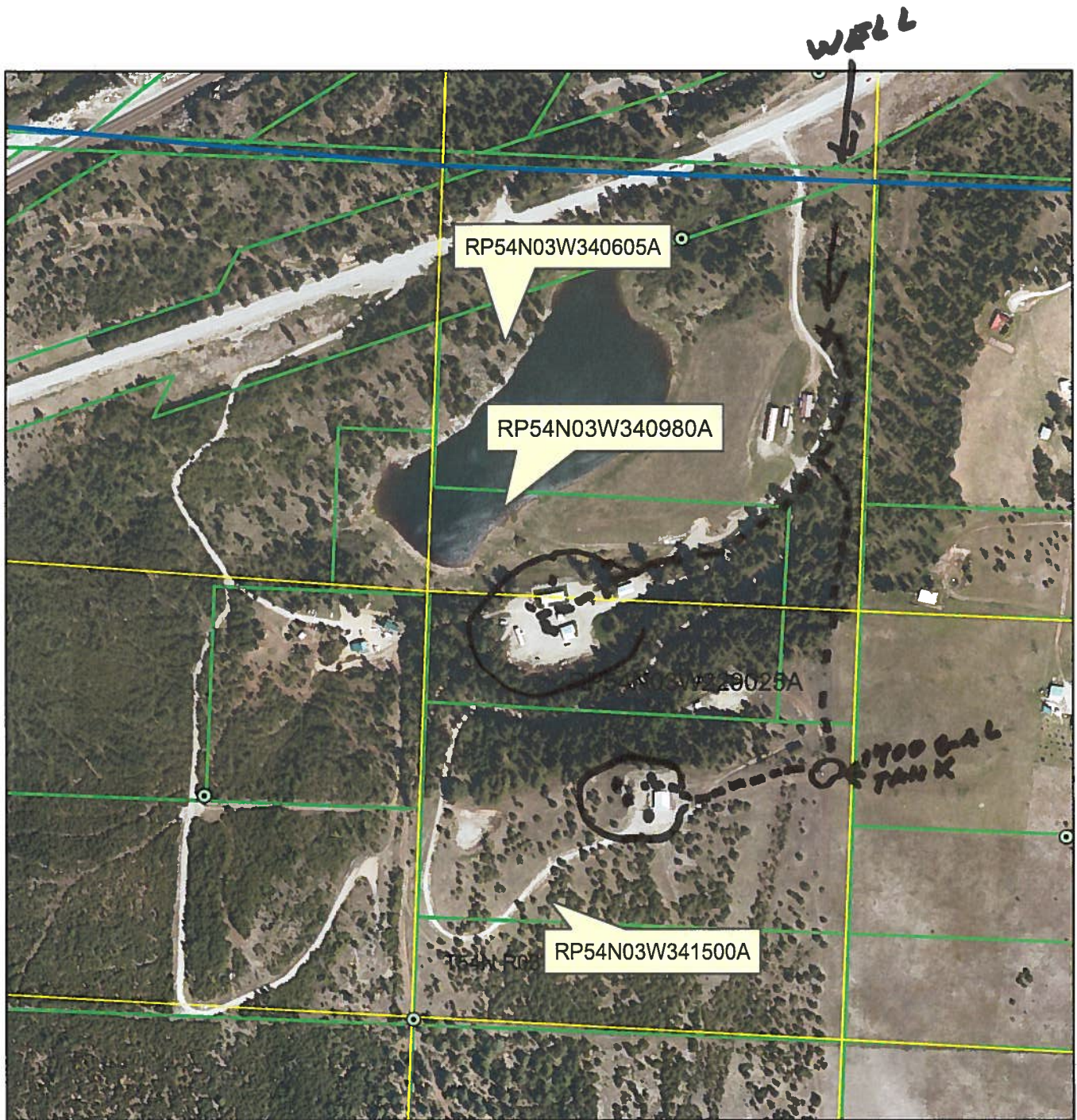
  
EARL W.D. McDANIEL

  
ALEXA L. McDANIEL

6. WELL USERS AGREEMENT

C:\LA\KENNEDY\WATER 2EA

# Mc DANIEL



8 FROST FREE HYDRANTS TOTAL

*Carl M. McDaniel*

