

Donald J. Chisholm
Attorney at Law
223 East Main Street
P.O. Box 1118
Burley, Idaho 83318
Telephone (208) 678-9181
Fax: (208) 878-4998
Email: chisholm@pmt.org

RECEIVED
DEC 30 2009
DEPT. OF WATER RESOURCES
SOUTHERN REGION

December 29, 2009

Dallan Schenk
Schenk Land & Cattle, L.P.
1380 South 50 West
Oakley, Idaho 83346

Jeff Cooper
Idaho Department of Water Resources
1341 Fillmore Street, Suite 200
Twin Falls, Idaho 83301-3380

Dear Dallan and Jeff,

With each of your letters I am enclosing a copy of a Memorandum of Agreement Regarding Use of Property between Schenk Land & Cattle, L.P., and Lambert Produce, Inc., to address the issues we previously discussed regarding application of water in Section 31, Township 12 South, Range 23 East of the Boise Meridian, Cassia County, Idaho, which is covered by Schenk's water right, but the water is being applied to land not owned by Schenks.

The aerial photograph showed Double C Farms as the owner of the land Schenks are farming outside their boundary. When I checked the county assessor's office, I discovered that the land is deeded in the name of Lambert Produce, Inc. Double C Farms and Lambert Produce, Inc., are related enterprises. Lambert Produce, Inc., received the deed to the property from First Security Bank of Idaho. The deed was recorded April 15, 1985, as Instrument No. 168617, Cassia County records. The copy I received from the assessor's office is 17 pages long, and it would not copy very clearly. The land in Section 31, Township 12 South, Range 23 East of the Boise Meridian, is described as part of Parcel 15 in Section 31, Township 12 South, Range 23 East of the Boise Meridian on the exhibit to the deed. I understand Jeff has access to the property records, so he can confirm the information.

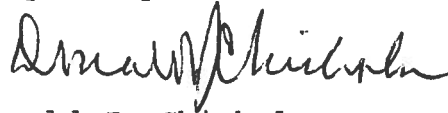
I was preparing a similar agreement to address the Keith and Jan

Farms issue in Section 36, Township 12 South, Range 22 East of the Boise Meridian (SW $\frac{1}{4}$ SW $\frac{1}{4}$). The property was deeded to Keith and Jan Farms Limited Partnership by a quitclaim deed recorded August 17, 1995 as Instrument No. 238163, Cassia County records. When I checked the Secretary of State website, I discovered that Keith and Jan Farms limited partnership was terminated by the Secretary of State for failure to file annual statements. Keith P. Critchfield and M. Janice "Jan" Critchfield filed the certificate of limited partnership in 1995. I don't know whether they will be able to get the limited partnership reinstated or what they may need to do to clear up the title to their property.

Dallan indicated Critchfields are doing business as K and D Farms. I can write an agreement for Schenk Land & Cattle, L.P. with Keith and Jan Farms, but I don't know who has authority to execute documents on behalf of Keith and Jan Farms now that their limited partnership has been terminated by the State. As soon as Dallan reports to me what he hears from Critchfields, I will prepare an agreement.

If either of you has any comments regarding the proposed agreement with Lambert Produce, please let me know before we finalize it and get it signed.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Donald J. Chisholm", written in a cursive style.

Donald J. Chisholm

nw

Ec: documents referred to above

DEC 30 2009

DEPT. OF WATER RESOURCES
SOUTHERN REGIONMEMORANDUM OF AGREEMENT REGARDING USE OF PROPERTY

This agreement entered the ____ day of January, 2010, by and between Schenk Land & Cattle, L.P., an Idaho limited partnership, of 1380 South 50 West, Oakley, Idaho 83346, hereinafter referred to as "Schenk", and Lambert Produce, Inc., an Idaho corporation, of P.O. Box 793, Blackfoot, Idaho 83221, hereinafter referred to as "Lambert",

WITNESSETH:

Whereas, Schenk and Lambert own adjoining lands in Section 31, Township 12 South, Range 23 East of the Boise Meridian, Cassia County, Idaho, on which they have installed pivot irrigation systems, and

Whereas, the surveyed boundaries of the respective parcels of property do not match the actual manner in which the properties are being farmed by the respective parties, and

Whereas, the Idaho Department of Water Resources has requested that Schenk provide written proof of authority to occupy the lands of Lambert which Schenk is farming with Schenk's water, and

Whereas, the parties do not wish to incur the cost of re-surveying their property in Section 31 to correct the discrepancy between the legal descriptions and the land occupied at the present,

IT IS HEREBY MUTUALLY AGREED AS FOLLOWS:

1. Attached hereto and incorporated by reference as Exhibit "A" is a colored aerial photograph which shows the boundary of the land in Section 31 which is owned by Lambert (Double C Farms) in green and shows the boundary of the areas being farmed by Schenk in Section 31 in yellow.

2. Lambert consents to allow Schenk to continue to farm the lands of Lambert on the attached exhibit without compensation.

3. Schenk agrees to allow Lambert to continue to farm and occupy the portion of Schenk's lands in said Section 31 as shown on Exhibit "A" without compensation.

4. Lambert acknowledges that the land area being farmed by Schenk in Section 31 as determined by the Idaho Department of Water Resources consists of .36 acres in Lot 2, 6.23 acres in Lot

3 and .25 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$, all in said Section 31, Township 12 South, Range 23 East of the Boise Meridian.

5. Either party may rescind this agreement on 12 months notice to the other party. In the event either party is required to conform its boundaries to the actual area being occupied to enable the party to sell or mortgage its property, the parties agree to share equally in the cost of the survey and to exchange deeds to correct their boundaries to conform to the area of actual usage as demonstrated by the attached exhibit. To the extent a difference in acreage exists, the party receiving the greater acreage in the exchange will pay the fair market value for the difference in acreage calculated at then-current prices for dry ground.

6. This agreement is executed on behalf of Schenk Land & Cattle, L.P., by Robert Schenk Feedlot, Inc., its general partner.

IN WITNESS WHEREOF the parties hereby set their hands the day and year first above written.

Schenk Land & Cattle, L.P.
Robert Schenk Feedlot, Inc.
General Partner

By: _____
Robert W. Schenk, President

Lambert Produce, Inc.

By: _____
Chris Drakos, President

STATE OF IDAHO)
) ss.
County of Cassia)

On this _____ day of January, in the year of 2010,
before me the undersigned notary public in and for said state,
personally appeared Robert W. Schenk, known or identified to me
to be the president of Robert Schenk Feedlot, Inc., 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 first above written.

(SEAL)

Notary Public
Residing at _____
My Commission expires _____

STATE OF IDAHO)
) ss.
County of Cassia)

On this _____ day of January, in the year of 2010,
before me the undersigned notary public in and for said state,
personally appeared Chris Drakos, known or identified to me to be
the president of Lambert Produce, Inc., 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 first above written.

(SEAL)

Notary Public
Residing at _____
My Commission expires _____

Donald J. Chisholm

Attorney at Law
223 East Main Street
P.O. Box 1118
Burley, Idaho 83318
Telephone (208) 678-9181
Fax: (208) 878-4998
Email: chisholm@pmt.org

RECEIVED
AUG 26 2008
DEPT. OF WATER RESOURCES
SOUTHERN REGION

August 25, 2008

Allen Merritt, PE
Southern Region Manager
Idaho Department of Water Resources
1341 Fillmore Street, Suite 200
Twin Falls, Idaho 83301-3380

Re: Schenk Land & Cattle, L.P.

Dear Allen,

Dallan Schenk of Schenk Land & Cattle, L.P. forwarded your letter of July 31, 2008 to me to respond and follow up on an assignment he had given me on March 25, 2008, to memorialize the informal arrangements by which water was being applied to land outside the deeded boundaries of the parcels for which the water right was claimed. The project was inadvertently put on the back burner, and I have not followed up.

It would be helpful for me to schedule a meeting with you to make sure I fully understand the legal descriptions and the relationship between the parcels of property and the water license numbers.

I will be out of the office tomorrow, but I will call on Wednesday to see if I can schedule a meeting with you. Please do not reject the Elquist to Schenk transfer application. I will give the project the priority it needs.

Very Truly Yours,


Donald J. Chisholm

nw
Cc: Dallan Schenk

Schenk Land & Cattle L.P.
1380 South 50 West
Oakley, Idaho 83346

August 20, 2008

Allen Merritt, PE
Idaho Department of Water Resources
1341 Fillmore Street, Suite 200
Twin Falls, Idaho 83301-3380

RECEIVED
AUG 21 2008
DEPT. OF WATER RESOURCES
SOUTHERN REGION

RE: Transfer No. 66569

Allen:

This is a follow-up to your letter of July 31, 2008 and our phone conversation of last week. I have been in contact with our attorney, Don Chisholm of Burley, and he informed me he should be able to draw up the agreements with our neighbors within the next week or so. When I have the agreements I will contact you to set up an appointment to finalize our transfer.

Sincerely,



Dallan Schenk