

Mitchell Lenz - Nettleton agreement

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AGREEMENT

Department of Water Resources
Western Regional Office

Between

H. E. NETTLETON, as

First Party

and

LESTER J. MITCHELL and
RAYMOND LENZ, as

Second Parties

THIS AGREEMENT Made and entered into this 3rd day of ^{March} ~~January~~, 1969, by and between H. E. NETTLETON, hereinafter referred to as First Party, and LESTER J. MITCHELL and RAYMOND LENZ, hereinafter referred to as Second Parties,

W I T N E S S E T H :

WHEREAS, On the 9th day of March, 1953, H. E. Nettleton as a partner of Joyce Livestock Company, a partnership of Murphy, Idaho, as party of the first part, entered into an agreement with Ernesto Montini and Zaccaris Montini, as parties of the second part, the purpose of said agreement being to specify and settle the rights and liabilities of the respective parties with respect to the use of the waters of Sinker Creek in Owyhee County, Idaho; and,

(A)

WHEREAS, Lester J. Mitchell and Raymond Lenz have succeeded to the right, title and interest of Ernesto Montini and Zaccaris Montini in and to the Montini property described in said agreement dated March 9, 1953, including the water rights appurtenant thereto; and,

WHEREAS, Prior to the 28th day of December, 1964, Pacific Land Company entered into a contract to purchase the Montini land described in the said agreement dated the 9th day of March, 1953, and entered into possession of said land; and,

WHEREAS, By agreement between H. E. Nettleton and Helen A. Nettleton, husband and wife, as first parties and Pacific Land Company, as second party, made and entered into on the 28th day of December, 1964, said H. E. Nettleton and Helen A. Nettleton were relieved of all responsibility and liability under said agreement made and entered into the 9th day of March, 1953; and,

WHEREAS, It is the mutual desire of the parties hereto that the respective rights and liabilities of the parties hereto shall be determined by the terms and conditions hereof and that upon the execution of this agreement by the respective parties hereto the agreement dated the 9th day of March, 1953, by and between Joyce Livestock Company as party of the first part and Ernesto Montini and Zoccaris Montini as parties of the second part and the agreement dated the 28th day of December, 1964, between H. E. Nettleton and Helen A. Nettleton, husband and wife, as first parties and Pacific Land Company, as second party, shall become null and void and of no further force or effect.

NOW, THEREFORE, It is hereby agreed between the parties hereto as follows:

B) From and After the execution of this agreement by the respective parties hereto, all of the rights and liabilities of the respective parties hereto, as between such parties, shall be determined and governed by the terms and conditions hereof and said agreements hereinbefore mentioned dated March 9, 1953, and December 28, 1964, shall be of no further force or effect.

Subject to the conditions hereinafter specified, all of the water and water rights now owned or held by H. E. Nettleton

and/or Joyce Livestock Company may, as between the parties hereto, be transferred and/or used on such lands and for such periods of time as H. E. Nettleton or Joyce Livestock Company or their heirs, successors, assigns or tenants may from time to time designate. It is understood and agreed that any or all of such water may be transferred and/or used in such rotation and upon such lands, including lands owned by other parties, and regardless of where such lands are located, as the owners of such water and water rights or those having the right to use same shall from time to time designate.

During such times, however, but only during such times as any portion of such water is being diverted through the Murphy Mutual Canal and is being used for the irrigation of lands other than lands in the Sinker Creek drainage, (being all of the lands irrigated with water which flows through the Murphy Mutual Canal beyond the NE $\frac{1}{4}$ of Section 25, Township 3 South, Range 2 West, B.M.) the party or parties using said water to irrigate such land not in the Sinker Creek drainage shall be required to cause to flow down Sinker Creek a minimum flow of 160 miner's inches of water to be measured just below a spring rising in Sinker Creek which is at or near the head of the canyon and below all of the points where water is or shall be diverted for irrigation of the lands commonly known and referred to as the Bennett Ranch. If the location of such point of measurement cannot be agreed upon by the interested parties, the point for such measurement shall be determined by such representative of the Idaho Department of Reclamation as may from time to time be responsible for such department's supervision and control of water matters in the Sinker Creek area.

It is recognized by the parties hereto that it is virtually impossible to maintain a weir or other measuring

device at the point of measurement of the 180 miner's inches to be measured at the time and at the point hereinbefore specified.

(C) At any times the parties hereto are unable to reach an agreement with respect to the amount of such flow without the ~~benefit of a suitable measuring device or devices~~ second parties and/or their successors may at their expense provide such measuring device as may be necessary to enable a water master or official from the State of Idaho Department of Reclamation to accurately measure such flow. If it is established by use of such measuring device and with like stream flow that the second parties were receiving less water than had been estimated, second parties shall be entitled to reimbursement for one-half of the cost of such measuring device. In the event the parties are unable to agree on a reasonable cost of such measuring device, such cost shall be determined by arbitration. First party shall appoint an arbitrator and second parties shall appoint an arbitrator and such two arbitrators shall appoint a third arbitrator and the decision of any two of such arbitrators so appointed shall be final and conclusive.

(D) The respective parties hereto agree that they will make every effort to comply with the terms and conditions of this agreement to the end that it will not be necessary to employ a water master but if any party feels that his or its rights under this agreement are not being complied with such party shall have the right to demand that a water master, to be appointed and approved as provided by law, be put in charge of regulating the water in Sinker Creek in accordance with the

priorities of the parties and in accordance with the terms and conditions of this agreement. The costs of such water master *Cost of water master* shall be paid by the respective parties in direct proportion to the amount of water each party receives during the time such water master supervises the distribution of such water. It is understood and agreed, however, that the users of the Nettleton and Joyce Livestock Company water shall not be required to pay any part of the cost of such water master for the periods of time that none of the Nettleton or Joyce Livestock Company water is being diverted and used outside the Sinker Creek drainage and during the times that the Nettleton and Joyce Livestock Company water being used in the Sinker Creek drainage does not exceed the amount of the decreed priority to which such parties shall be entitled to use. If second parties or their successors desire to keep a water master on duty during the times that none of the Nettleton or Joyce Livestock Company water is being diverted out of the Sinker Creek drainage and during the times that the flow of water in Sinker Creek does not exceed the priority rights of Nettleton and Joyce Livestock Company, the cost of such water master shall be paid entirely by second parties or their successors.

The respective parties hereto do hereby release and forever discharge the other of and from all actions, causes of action, debts, claims, promises and demands which the parties hereto have ever had or now have against the other growing out of any claimed breach of any agreement relating to the use or right to use the waters of Sinker Creek in Owyhee County, Idaho.

A copy of this agreement shall be filed with the State of Idaho Reclamation Engineer and the rights and liabilities of

the parties hereto shall hereafter be determined by the terms and conditions hereof.

The provisions hereof shall be construed to be covenants running with the lands to which the respective water rights are appurtenant or to which same may become appurtenant and shall be binding upon the respective successors of the parties hereto in the ownership and/or operation of such lands, it being the intent of the parties hereto that the Nettleton and Joyce Livestock Company waters may, as between the parties hereto, be used on such lands and at such times and in such rotation as the users of such water shall determine subject to the limitation that during such times as any part of such decreed water is being diverted and used outside the Sinker Creek drainage such users shall be required to keep a minimum flow of 180 miner's inches at the point of measurement hereinbefore specified.

Zaccaris Montini and the respective wives of the parties hereto join and concur in the execution hereof and Joseph H. Nettleton to whom certain water rights have been transferred also joins and concurs in the execution hereof and acknowledges the rights of second parties and his obligation to such parties during the times he may be using any water from Sinker Creek on lands not in the Sinker Creek drainage.

IN WITNESS WHEREOF, The parties hereto, their respective wives, Zaccaris Montini and Joseph A. Nettleton have

executed this agreement as of the day and year first above written.

H. E. Nettleton
H. E. Nettleton, First Party

Helen A. Nettleton
Helen A. Nettleton, Wife of First Party

Lester J. Mitchell
Lester J. Mitchell, Second Party

Delos G. Mitchell
Delos G. Mitchell, Wife of Second Party

Raymond Lenz
Raymond Lenz, Second Party

Joan L. Lenz
Joan L. Lenz, Wife of Second Party

Zaccaris Montini
Zaccaris Montini

Joseph H. Nettleton
Joseph H. Nettleton

STATE OF IDAHO,)
)
COUNTY OF Blaine,) ss.

On this 13th day of March, 1969, before me, the undersigned, a Notary Public in and for said State, personally appeared H. E. NETTLETON and HELEN A. NETTLETON, husband and wife, and JOSEPH H. NETTLETON, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they 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.

[Signature]
Notary Public for Idaho
Residing at

(SEAL)

STATE OF IDAHO,)
)
COUNTY OF Blaine,) ss.

On this 3rd day of March, 1969, before me, the undersigned, a Notary Public in and for said State, personally appeared LESTER J. MITCHELL and DELOS G. MITCHELL, husband and wife, RAYMOND LENZ and JOAN L. LENZ, husband and wife, and ZACCARIS MONTINI, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they 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.

[Signature]
Notary Public for Idaho
Residing at

(SEAL)