

LAW OFFICES
GARY D. FAIRMAN
A PROFESSIONAL CORPORATION
482 FIFTH STREET - P. O. BOX 8
ELY, NEVADA 89301
(775) 289-4422

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WATER USE AGREEMENT

THIS WATER USE AGREEMENT made and entered into this
18 day of February, 2003, by and between FRANK JOSEPH
DELMUE and ROSE MARIE DELMUE, husband and wife, as joint tenants,
hereinafter referred to as "Frank and Rose Marie", and ALBERT PETE
DELMUE and MARLENE DELMUE, husband and wife, as joint tenants,
hereinafter referred to as "Pete and Marlene".

RECITALS:

WHEREAS, Frank and Rose Marie and Pete and Marlene,
concurrent with the execution of this Agreement are executing Deeds
dividing real property commonly known as the Burnt Canyon Property
pursuant to Property Transfer Agreement; and

WHEREAS, a stream that sometimes runs intermittently,
called the Burnt Canyon Ditch traverses most of the parcels divided
between the parties; and

WHEREAS, the parties to this Agreement desire to provide
for a joint use of the water in the Burnt Canyon Ditch;

NOW, THEREFORE, the parties hereby agree as follows:

ARTICLE I

USE OF BURNT CANYON DITCH WATER

SECTION 1.01. Use of Burnt Canyon Ditch Water. Frank
and Rose Marie and Pete and Marlene shall have the right to equal
quantities of the water in Burnt Canyon Ditch, subject to the
following:

(A) Frank and Rose Marie shall be allowed to use a
sufficient quantity of said water to irrigate 13.35 +/- acres of

1 alfalfa and/or meadow grass located on the SW1/4 NE1/4, Section 24,
2 Township 5 North, Range 69 East, M.D.M.

3 (B) Subject to the provisions of Paragraph (A) above,
4 Frank and Rose Marie and Pete and Marlene shall use, and enjoy,
5 equal amounts of water in the Burnt Canyon Ditch. After the water
6 and ditch reaches the ^{MD RD. SE 1/4} NE 1/4 SW 1/4, Section 24, Township 5 North,
7 Range 69 East, M.D.M., Pete and Marlene shall be able to use the
8 remaining water to irrigate alfalfa and/or meadow grass. In the
9 event of low water and the spring water is all that this is running
10 and being utilized after the dam ceases to overflow, the only dams
11 allowed will be to keep the water on the North side of the valley.
12 Every effort will be made to keep the water on the north side of
13 the valley and flowing as far as possible.

14 SECTION 1.02. Division of Water in the event Parties do
15 not equally use Burnt Canyon Ditch Water. In the event that there
16 is an unequal use of the Burnt Canyon Ditch Water, in the opinion
17 of either party, the parties to this Agreement agree that the
18 waters of Burnt Canyon Ditch shall be equally divided at the
19 Northwest corner point of the SE1/4 NE1/4, Section 24, Township 5
20 North, Range 69 East, M.D.M., with each party taking fifty percent
21 (50%) of the water at that point, after sufficient waters from
22 Burnt Canyon have been taken by Frank and Rose Marie, to irrigate
23 the 13.35 +/- acres as set forth in Section 1.01 above.

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ARTICLE II

MAINTENANCE OF DITCH

SECTION 2.01. Maintenance of Ditch. Each of the parties to this Agreement shall have the right to maintain the ditch line to keep it free of noxious weeds and other debris. Each of the parties to this Agreement shall have the right of ingress and egress across the following described real property for the purpose of maintaining said ditch:

- (A) SW1/4 NE1/4 and SE1/4 NE1/4, Section 24, Township 5 North, Range 69 East, M.D.M.; and Gov't Lot 2; SE1/4 NW1/4 and NE1/4 SW 1/4, Section 19, Township 5 North, Range 70 East, M.D.M.

In maintaining said ditch, each of the parties shall take reasonable and prudent care so that there is a minimal amount of intrusion on to one another's real property for the purpose of maintaining said ditch line. Further, the ditch shall remain reasonable in size and shall not be made deep or invasive. The culverts will stay at ground level through the new or old road where it crosses the SW1/4 NE1/4, Section 24.

SECTION 2.02. Restriction on Damming of Ditch. Subject to the terms of this Agreement, no dam shall be erected above ditch level, unless to control erosion as agreed to by both parties. This provision shall not be applicable in the event the parties divide the water pursuant to Section 1.02.

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1 SECTION 2.03. Payment for Costs Incurred in Connection
 2 with Ditch Maintenance. The parties hereto shall each pay for the
 3 costs incurred by them for the maintenance of the ditch across
 4 their respective properties. Said ditch shall be maintained and
 5 cleaned by either party when deemed necessary. In the event that
 6 the ditch becomes obstructed, at any time, the parties shall
 7 immediately remove the obstruction from the ditch so that the ditch
 8 flows freely across all property subject to this Agreement.

9 ARTICLE III

10 MISCELLANEOUS

11 SECTION 3.01. Entire Agreement. It is hereby expressly
 12 understood and agreed that the entire Agreement of the parties is
 13 contained herein and that this Agreement supersedes all oral
 14 agreements and negotiations between the parties related to be
 15 subject matter hereof.

16 SECTION 3.02. Venue. At the option of either party,
 17 venue regarding this transaction and any litigation may be
 18 established in Lincoln County, State of Nevada.

19 SECTION 3.03. Choice of Law. This Agreement shall be
 20 governed pursuant to the laws of the State of Nevada.

21 SECTION 3.04. Notice. Any notice required hereunder
 22 shall be sufficiently given if mailed by certified or registered
 23 mail, return receipt requested, to the following address:

24 Frank Joseph Delmue and Rose Marie Delmue
 25 HC 74, Box 415
 26 Pioche, Nevada 89043

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Albert Pete Delmue and Marlene Delmue
P.O. Box 457
Pioche, Nevada 89043

SECTION 3.05. Binding Effect. This Agreement shall inure to the benefit of and be binding on the heirs, executors, administrators, assigns, devisees, and legatees of the parties.

SECTION 3.06. Recordation of Agreement. This Agreement shall run with the land. The parties hereby agree that this Agreement shall be recorded in the Office of the Lincoln County Recorder, State of Nevada.

DATED this 18 day of February, 2003.

Frank Joseph Delmue
FRANK JOSEPH DELMUE

Rose Marie Delmue
ROSE MARIE DELMUE

DATED this 18 day of February, 2003.

Albert Pete Delmue
ALBERT PETE DELMUE

Marlene Delmue
MARLENE DELMUE

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STATE OF NEVADA)
COUNTY OF Lincoln) ss.

On February 18th, 2003, personally appeared before me, a Notary Public, FRANK JOSEPH DELMUE and ROSE MARIE

1 DELMUE, personally known or proved to me to be the persons whose
2 names are subscribed to the above instrument who acknowledged that
3 they executed the instrument.



Trista Fogliani Boyce
NOTARY PUBLIC

7 STATE OF NEVADA)
8) ss.
9 COUNTY OF Lincoln)

10 On February 18th, 2003, personally appeared
11 before me, a Notary Public, ALBERT PETE DELMUE and MARLENE DELMUE,
12 personally known or proved to me to be the persons whose names are
13 subscribed to the above instrument who acknowledged that they
14 executed the instrument.



Trista Fogliani Boyce
NOTARY PUBLIC

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FILED FOR RECORDING
AT THE REQUEST OF
Marlene Delmue
2003 APR 28 AM 9 17
LINCOLN COUNTY RECORDER
FEE \$900
LESLIE BOUCHER
DEPTMS

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