

When Recorded Return to:
R.O. ANDERSON ENGINEERING, INC.
P.O. Box 2229
Minden, NV 89423
APN 1219-14-002-61
APN 1219-14-002-62
#040701061

REQUESTED BY
Stewart Title of Douglas County
IN OFFICIAL RECORDS OF
DOUGLAS CO., NEVADA

2004 MAY 11 AM 10:54

WERNER CHRISTEN
RECORDER

\$19⁰⁰ PAID *KJ* DEPUTY

This document is recorded as an ACCOMMODATION ONLY and without liability for the consideration therefor, or as to the validity or sufficiency of said instrument, or for the effect of such recording on the title of the property involved.

AGREEMENT FOR WATER USE

THIS AGREEMENT for water use is made this 5th day of May, 2004, by Donald L. and Toni M. Rooker, husband and wife, hereinafter "Grantor" and Jessey C. Fenton, an unmarried man, hereinafter "Grantee".

P R E A M B L E

WHEREAS, Grantor is the owner of Douglas County Assessor's Parcel No. 1219-14-002-062, containing 37.27 acres, more or less, and

WHEREAS, the Grantor's property is benefited by waters originating in Barber Creek which waters were adjudicated by the District Court of the First Judicial District of the State of Nevada in and for the County of Douglas in what is locally referred to as the "Barber Creek Decree" and which was dated January 17, 1929, and

WHEREAS, the Grantor's property is also benefited by and therefore has filed with the Office of the State Engineer Proofs of Appropriation to support their claims of vested rights to Sheridan Creek for both irrigation and stock watering purposes. These claims have been assigned serial numbers 06357 and 06358, and

WHEREAS, Grantee is the owner of Douglas County Assessor's Parcel No. 1219-14-002-061, containing 1.63 acres, which parcel includes a relatively small unlined pond and, for the purpose of maintaining water levels within the pond, uses and relies on waters from either Barber or Sheridan Creek, and

WHEREAS, Grantee acquired its property from Grantor and prior to that acquisition Grantor owned, operated and managed the combined properties, now

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referred to as Douglas County Assessor's Parcel Nos. 1219-14-002-61 and 1219-14-002-62.as a single unit, and when operated and managed as such, to the extent practical, and allowing for losses attributable to either evaporation or percolation, but not use, historically maintained the pond in a full or nearly full condition.

NOW, THEREFORE, in consideration of the mutual covenants and considerations contained herein, and for good and valuable consideration, the parties do hereby agree as follows;

1. There are no water rights from either Barber or Sheridan Creek that are appurtenant to the Grantee's property.
2. The small pond on Grantee's property and the unlined, earthen stream that feeds the pond but traverses through a portion of Grantor's property, shall remain in their current location and the diversion of water from either Barber Creek or Sheridan Creek by Grantee as necessary to maintain the pond in a full or nearly full condition as necessary solely to overcome losses specifically associated with either evaporation or percolation, but no other consumptive use, are hereby allowed for the benefit of Grantee by irrevocable license.
3. This license from the Grantor is predicated upon and Grantee agrees not to enlarge or expand either the pond or the unlined, earthen stream that feeds the pond and further agrees not to construct any works that would result in a consumptive use of the waters from either the pond or the unlined, earthen stream.
4. Grantor reserves the right in its sole discretion and at its sole expense, including but not limited to any and all costs associated with restoring all areas disturbed during construction of the lining system, to install a lining in either the pond or the stream so as to reduce the potential losses due from either the pond or the unlined, earthen stream.
5. Grantor agrees not to diminish, impede or otherwise interfere with Grantee's diversion of water from either Barber or Sheridan Creek for the purposes expressed herein.

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6. Grantee agrees not to diminish, impede or otherwise interfere with Grantor's diversion and use of water from either Barber or Sheridan Creek for any purposes allowed by its existing and appurtenant water rights.
7. Grantor and Grantee agree that this Agreement and license as granted herein can only be modified, amended or revoked upon mutual agreement and approval of both the Grantor and the Grantee.
8. Grantor and Grantee mutually agree to cooperate together including granting permission to the other party the reciprocal right of access for the expressed and sole purpose of maintaining their respective facilities in good working order.
9. Grantor and Grantee mutually agree and acknowledge that waters from both Barber and Sheridan Creek are within the jurisdiction of the Nevada State Engineer by and through the Department of Conservation and Natural Resources, Division of Water Resources, and that that office has responsibility for and authority to administer all of the waters originating within or flowing through this area, and in that capacity can by official action restrict, modify, expand and make separate determinations with respect to the waters that are the subject of this Agreement. In the instance that the Office of the State Engineer issues an order that is contrary to or requires modifications to the provisions and terms of this Agreement and license, both Grantor and Grantee agree to be bound by such an order and further agree to fully cooperate together to affect whatever physical or administrative actions, including but not limited to filing formal applications to change the point of diversion, place of use or manner of use that might be necessary to formally implement the purposes and benefits of the license granted herein.
10. Grantee shall not use any chemicals or contaminants in or near the pond that, when discharged from the pond, would result in contamination of water flowing downstream to Grantor's property.
11. Assignment. This Agreement is non-assignable by Grantee, except to successors-in-interest to the subject property, without written consent and approval of the Grantor.

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12. Notice. Any notice, demand, request, consent, approval or communications that either party desires or is required to give the other party shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows;

a. To Grantor: Donald L. and Toni M. Rooker
P.O. Box 960
Minden, Nevada 89423

b. To Grantee: Jessey C. Fenton
420 Cuttin Loose Lane
Gardnerville, Nevada 89410

or such other address as either party may from time to time designate by written notice to the other party.

13. General Provisions:

a. Controlling Law: The interpretation and performance of this Agreement shall be governed by the laws of the State of Nevada.

b. Liberal Construction: Any general rule of construction to the contrary notwithstanding, this Agreement shall be liberally construed in favor of the grant to affect the purpose of the Agreement and the license granted herein. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Agreement that would render the provision valid shall be favored over any interpretation that would render it invalid.

c. Severability: If any provision of this Agreement, or its application to any person or circumstance, is found to be invalid, the remainder of the provisions of this Agreement, or the application of the provision to other persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

d. Entire Agreement: This instrument sets forth the entire agreement of the parties with respect to the use of water on the subject properties and supersedes all prior discussions, negotiations, understandings or agreements relating to this matter, all of which are merged herein.

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- e. Joint Obligation: The obligations imposed by this Agreement on both parties shall be joint and several.
- f. Successors: The covenants, terms, conditions, and restrictions of this Agreement shall be binding upon, and inure to the benefit of, the parties to the Agreement and their respective personal representatives, heirs, successors and assigns, and shall continue as a servitude running in perpetuity with the properties first identified above.
- g. Captions: The captions contained within this Agreement have been inserted solely for convenience of reference and are not a part of this instrument and shall have not effect upon construction or interpretation.
- h. Attorney's Fees: In the event of a dispute concerning the terms of this Agreement, the prevailing party shall be entitled to an award of attorney fees and costs.
- i. Recording: The parties agree to execute, file and/or record such further documents as may reasonably be necessary to carry out the terms of this Agreement.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Agreement on the day and year first written above.

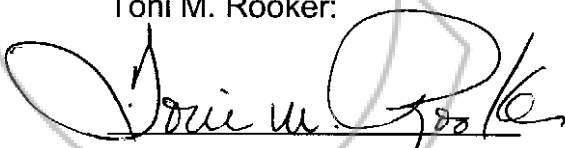
Grantors:

Donald L. Rooker



Donald L. Rooker

Toni M. Rooker:



Toni M. Rooker

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Grantee:

Jessey C. Fenton:

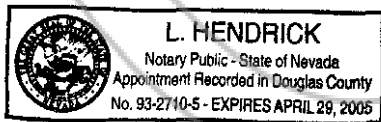
STATE OF NEVADA)
) SS
COUNTY OF DOUGLAS)

On this 6th day of May, 2004, personally appeared before me, a Notary Public, Donald L. Rooker and Toni M. Rooker, husband and wife, personally known to me to be the persons whose names are subscribed to the attached instrument.

Notary Public

COUNTY OF DOUGLAS)

On this 5th day of May, 2004, personally appeared before me, a Notary Public, Jessey C. Fenton, personally known to me to be the person whose name is subscribed to the attached instrument.

Notary Public

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