

JESSE O'CALLAHAN
WATER USERS ASSOCIATION AGREEMENT

I
PARTIES

The parties to this Agreement, hereinafter called members,
shall be those persons who execute this Agreement and whose
names are found on the last page hereof. The effect of this
Agreement on the parties and their property shall be as set
forth in the following Agreement.

II

PROPERTY AFFECTED

The real property affected by this Agreement consists
of those portions of the South Half of Section 11 and the
North West Quarter of Section 14, Township 25 North, Range
32 West, lying easterly of Montana State Highway 200, and
the existing ditch, overflow tank, spring, spring box and
improvements to said facilities to be hereafter made, located
on United States Forest Service property in the East Half,
Northeast Quarter and the Southeast Quarter, Northeast Quarter

the Clerk and Recorder of Sanders County; and

WHEREAS thereafter there existed various agreements between the owners of lands in Section 11 and 14 of Township 25 North, Range 32 West, with respect to the distribution and use of water from the spring and ditch above described; and

WHEREAS, the present owners as hereinafter defined or of lands which have historically benefited from said spring and ditch or now benefit from spring and ditch are identified on the map and schedule of owners attached hereto as Exhibits "A" and "B", respectively, and by this reference made part hereof; and

WHEREAS it is the intent of the signators hereto to bind all signators to this Agreement but only if this document is signed by the contract purchasers (or owners in the event there are no contract purchasers) of .75 % of the lands which may potentially benefit from the spring and ditch as said benefited lands are identified by Exhibits "A" and "B";

NOW, THEREFORE, in consideration of mutual covenants and agreements hereafter contained, the members hereto agree for themselves and their successors in interest with respect to the affected lands as follows:

I. DEFINITIONS --

A. Association - The Water Users Association created by this Agreement shall be called the "O'CALLAHAN WATER USERS ASSOCIATION" and shall be referred to herein as "the Association."

B. Spring - shall refer to the spring on United States Forest property hereinabove described.

C. Water System - shall refer to both the Association water system and members' water systems hereinafter defined.

D. Association Water System - shall refer to the spring, the spring box, the overflow tank, the valve box, the

ditch and 5" waterline therein connecting the valve box to the spring as said facilities and improvements are shown on the map attached hereto as Exhibit "A". The term shall also refer to replacements and improvements of the facilities.

E. Members Water Systems - shall refer to the waterlines, storage tanks, ditches, pipes and other transmission devices providing for a supply of water from the valve box shown on Exhibit "A" to the point of use of water on each members property, all as shown on Exhibit "A". The term shall also refer to replacements, improvements and expansions of said systems made in conformity with this Agreement.

F. Owner - Owner shall refer to the record owner holding a fee simple title to any parcel of land eligible for inclusion within the association, but in the case of a person holding fee simple title who has sold the property on contract, then the contract purchaser and not the fee simple owner shall be deemed the owner for association membership purposes. Those parties holding an interest in the real property merely as security for the performance of an obligation, such as mortgages, trustees under Trust Indentures, shall not be considered owners.

Members - Owners of property who have elected to join the association as hereinafter described shall be described as members.

EXHIBITS - DESCRIPTION OF EXISTING WATER SYSTEM

The members acknowledge and agree that the following described exhibits and the contents of the exhibits will be considered an integral part of this Agreement:

EXHIBIT "A" - Map of ownership of properties eligible for

11 1973
membership including overlay of existing water system
with identification of size of lines, storage facilities,
etc.

EXHIBIT "B" - Schedule of current names and addresses
of owners eligible for membership.

EXHIBIT "C" - Percentage of total flow from Association
Water system spring which the members agree shall
remain potentially available to parcels of land identified
on schedule and for which application may be made
by the association or the owner without objection
by any other member of the association.

EXHIBIT "D" - Schedule of actual uses of water now
established and properties benefited.

IV

ACKNOWLEDGEMENT OF CURRENT LAW

(a) Historical Water Rights:

The members to this Agreement acknowledge that before
July 1, 1973, water rights appurtenant to benefited lands
could be established by beneficial appropriation alone, by
beneficial appropriation in connection with appropriate filings
of claims of appropriation, or by adjudication. The members
further acknowledge and agree that to the extent that water
from the spring has actually been put to beneficial use on
particular properties there may exist a historical water right
independent of those rights acknowledged or contemplated to
be by this Agreement.

(b) Water Right Appropriation after July 1, 1973:

The members further acknowledge and agree that since
1973 Montana Law has required that any new appropriation or
beneficial use of surface water from the spring be made only
with approval of the Department of Natural Resources and Conserv-
ation of the State of Montana in conjunction with the filing of proper

application for water and that new uses established after said date without a water use permit from said state agency are without legal affect to establish a water right.

(c) Purpose of formation of Association:

The members agree that a principal purpose of the formation of the Association is to create an entity which may pursue existing applications and make future applications to the Department of Natural Resources and Conservation for a Water Use permit ratifying those uses heretofore made by the members of the Association and complying with legal requirements for future appropriations in accordance with this Agreement.

CREATION OF THE ASSOCIATION

The Association shall be deemed created at such time as the owners of 75% of the lands eligible for inclusion within the Association, as shown on Exhibit "A" shall have executed a copy of this Agreement showing their intent to be members. If less than a requisite percentage of owners sign a copy of this Agreement it shall be of no force and effect but once the required percentage of owners have signed then the Association shall be deemed created and its members shall be bound by the terms of this Agreement. After the initial creation of the Association other owners may join the Association by execution of a copy of this Agreement within sixty (60) days of the first signature or by such other procedure as the Association may thereafter adopt. The Association once created shall operate as follows:

A. Powers of Association - The Association shall have the power and authority to install, improve, repair, replace, and maintain the water system as it now exists and as it may hereafter be constructed. The Association shall also have the power to assess members for the cost of past and future installation and maintenance of the Association's water system and to pay or give credit to those members whose contributions to the past and future maintenance and installation of the system may have exceeded the amount properly assessed to such members. The Association shall have the power to incorporate if it so

chooses, to purchase insurance, to adopt by-law and amend the same, not inconsistent with this Agreement, to claim a lien against land benefited for unpaid water assessments made by the Association and to foreclose said lien in the manner provided by law for the foreclosure of mechanic's liens in the State of Montana; and to do all other things reasonably necessary or convenient for the operation of a water maintenance and supply system.

B. ORGANIZATIONAL MEETING - Within a reasonable time after the creation of the Association any three members of the Association may call a meeting of the members of the Association on not less than thirty (30) days notice to be given personally or by Certified Mail, Return Receipt Requested, to the members of the Association. By majority vote of those attending the Association there shall be adopted by-laws prescribing as a minimum a general procedure for the future conduct of business and meetings, defining a quorum to do business, and creating offices and defining the powers and duties of the officers.

C. VOTING - At the organizational meeting and thereafter members shall be entitled to vote but for a vote to be effective it must be made with the concurrence of all owners as herein defined of each parcel of land included in the Association. Furthermore, the vote cast by the owners of each parcel of land shall be weighted pro-rata according to the flow of water to which said parcel of land is entitled pursuant to schedule "C" attached hereto. In the event that parcels of land initially described in Exhibit "C" shall be further divided then the weight given to the vote of the parcels divided shall be prorated so as to maintain a system of weighting votes in which the vote allowed on behalf of each property is commensurate with the water benefits received and the assessments imposed on the basis of such water use.

D. NOTICE - For the purpose of mailed notice of the organizational meeting and meetings thereafter, notice shall be deemed complete if mailed Certified Mail, First Class, Return Receipt Requested to any one owner of a parcel eligible for membership at the address shown for that owner on the tax assessment records at the Office of the Assessor in the Sanders County Courthouse, unless any member shall have provided the Secretary of the Association with another address or unless co-owner has specifically requested of the Secretary, separate notice to that co-owner.

VI

ACKNOWLEDGMENT OF CURRENT WATER USE

The members have acknowledged that the water distribution facilities described on Exhibit "A" are generally accurate in describing the existing water distribution system and the members agree that no modification of said distribution system shall be made without approval of the Association and the prior approval of the Water Rights Division of Montana State Department of Natural Resources.

The members further acknowledge and agree that each member shall be entitled to no more and no less than is shown for the benefit of that member's property on Schedule "C" attached hereto, regardless of whether more or less water shall have been historically used since the installation of the system as it now exists.

The members further agree with respect to distribution of water among the members each member shall be deemed to have an equal priority so that in the event that water is insufficient to provide the flow of water described at Exhibit "C" that each member shall be required to reduce pro-rata the consumption of water.

Any member of the Association shall be entitled to modify that member's water system with respect to the point of diversion, means of transmission and place and purpose of use so long as the other members of the Association are not adversely affected, provided however, that such modification requires prior approval of the Montana State Department of Natural Resources

and the project shall be subject to the approval of the Montana State Department of Natural Resources and the Montana State Department of Environmental Quality, which authority and regulatory requirements

Upon creation of the Association by this Agreement, each member agrees to participate and share in the cost of water to appropriate water for the applications and pending or potential made on behalf of the Association.

ART

ARTICLE 10 - WATER USE

The members acknowledge and agree that the application for Municipal Water Use Permit which has been filed on behalf of the Association and which is now pending distribution by the Department of Natural Resources and Environmental Quality has been

Page 10

modified by said Department to reflect a proposed allocation :

10 gallons per minute flow for each member residential unit.

The members agree that if a permit is granted on such basis that no member nor the Association shall object to improvements made by any individual member in the nature of expansion of storage facilities to increase the members ability to beneficially use the ten gallon per minute flow.

The members further agree, however, that any member may apply to increase that member's total water available from the Association Water system spring to the extent of that member's proportionate potential share of the water as set forth on Exhibit "C" and if any member shall so do then neither the Association nor any other member shall object to such expansion.

The parties intend by this provision that to the extent the water is available each member shall be entitled to develop or improve the member's system to fully take advantage of a proportionate share. If the increased use of water requires, however, an expansion or improvement of the Association Water System then the member requesting that improvement shall bear the sole expense of the improvement but shall be reimbursed from other members on a pro-rata basis if such other members shall thereafter expand their system to take advantage of the increased water flow made possible by the first expansion.

VIII

REDIVISION OF MEMBER'S PROPERTY

Upon redivision of any member's property the member may in any way that member desires allocate the water available to the member's property to the properties sold so long as such allocation is not contrary to statutes and regulations of the Department of Natural Resources of the State of Montana or the allocation set forth in Exhibit "C." The property so divided shall remain subject to the provisions of this agreement.

There shall be filed with the records of the Association a copy of any agreement with respect to division of such water allocations.

IX

APPROVAL BY DEPARTMENT OF NATURAL RESOURCES

Upon the creation of the Association by the execution of its members of this Agreement a copy thereof shall be filed with the Department of Natural Resources of the State of Montana and in the event that the department determines that any portion hereof is in conflict with the statutes and regulations governing the distribution of water in the State of Montana then the members agree to such modification of the Agreement as will be necessary to insure such compliance so long as their rights intended to be afforded by this Agreement are not substantially affected by such modification.

X

USE OF WATER FROM OTHER SOURCES

Nothing in this Agreement shall be construed as a prohibition against the use by any member of water from sources other than the spring.

XI

EASEMENTS AND INSPECTION

By execution of this Agreement each member agrees that the Association, its officers, employees and agents shall be deemed to have an easement over and across the members property as may be deemed necessary or convenient to maintain, repair and replace existing facilities of the Association's water system.

XII

EFFECT OF AGREEMENT ON SUCCESSORS IN INTEREST

The terms and conditions of the foregoing agreement shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of the signatory

this Agreement upon its becoming effective pursuant to Section 4 and said Agreement shall remain in full force and effect thereafter until it shall be modified or rescinded in accordance with terms or procedures duly adopted by the Association.

XIII

EXECUTION IN COUNTERPART

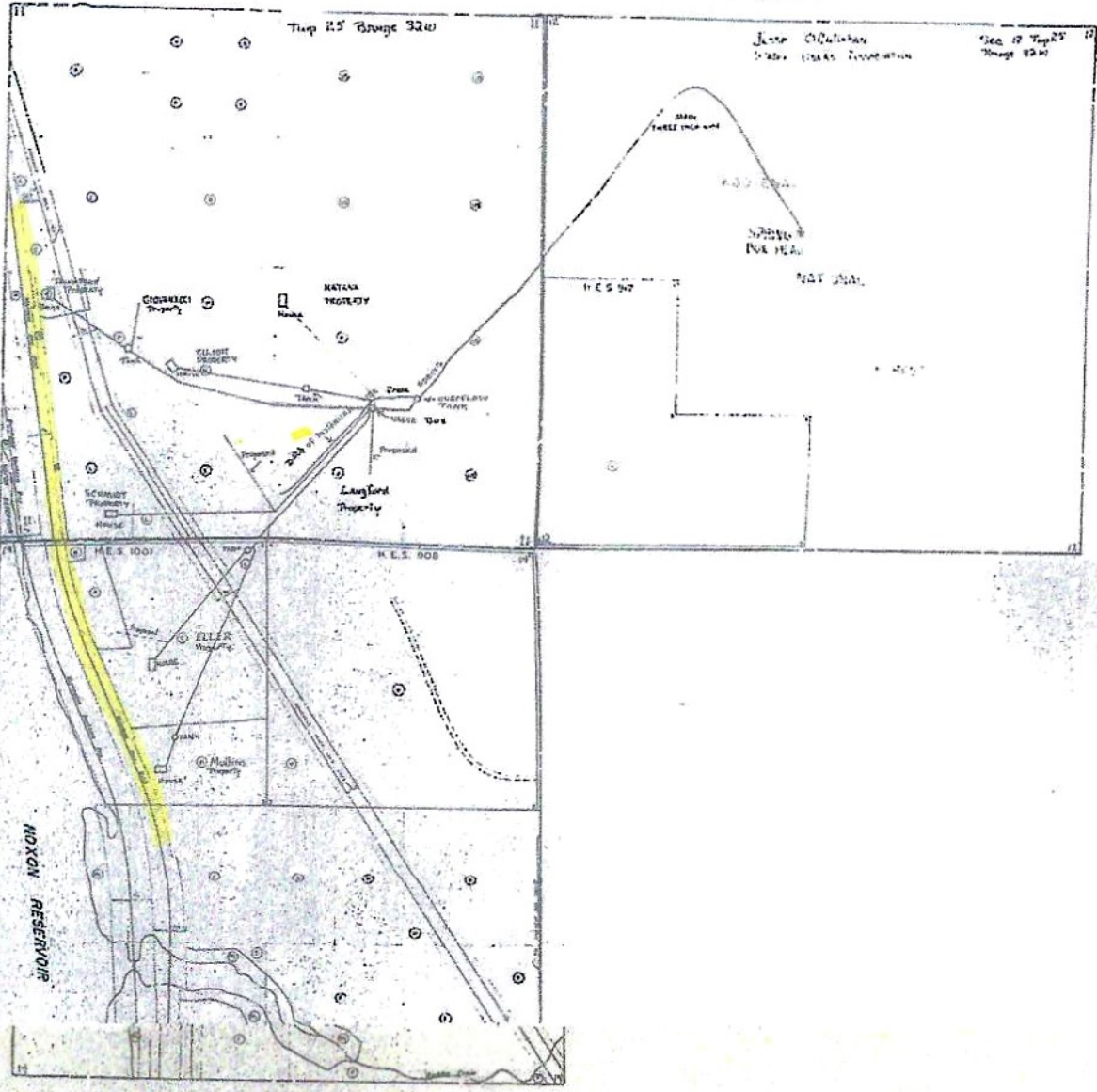
This Agreement may be executed in counterpart to the effect that several copies of the Agreement signed by parties thereto shall be construed as a single document for all purposes including the computation of whether the owners of eighty (80) percent of the lands eligible for benefit of the water system have executed this Agreement.

IN WITNESS WHEREOF, signators to this Agreement have executed the same on the year and date set opposite their respective signatures.

Date _____ Name _____

10 1010

EXHIBIT 'A' TO JESSE O'CALLAHAN WATER USERS ASSOCIATION
MAP OF PROPERTY OWNERSHIPS AND WATER SYSTEM LOCATION



spring

Nov 2, 1981

959
Frank Pastore

Dec 10, 1981

Frank Pastore

Jan 19, 1982

Frank Pastore

Jan 19, 1982

Frank Pastore

Jan 19, 1982

Frank Pastore

STATE OF MONTANA :ss.
County of Sanders

On this 19th day of January, 1982, before me, a Notary Public for the above-named State, personally appeared the above-named persons known to me to be the persons described in and who executed the foregoing instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.



Frank Pastore
Notary Public for the State of Montana
Residing at Thompson Falls, MT
My Commission expires 3/15/83

nd limited
o 2.5 acre
this

Filed for Record 1 day of Nov
at Thompson Falls recorded in Vol 11 of 1982 at 10:38
Page 946
Fee 38.00
by Debra Wright
County Recorder

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EXHIBIT "B"

TO JESSE O'CALLAHAN WATER USERS ASSOCIATION AGREEMENT
SCHEDULE OF OWNERS ELIGIBLE FOR MEMBERSHIP AND APPROXIMATE
ACREAGES OF OWNERSHIPS AT TIME OF CREATION OF ASSOCIATION

<u>Owners</u>	<u>Acreage</u>
John W. Townsend Fam. E. Townsend Mildred L. Townsend Route 2 Highway 200 Trout Creek, MT 59874	4.9
Joe Giovanacci Mary Giovanacci 413 Tunnell Santa Maria, CA 93454	44.1
Mary Ann Elliott Route 2 Highway 200 Trout Creek, MT 59874	20.
Nicholas A. Schmidt (aka Nick Schmidt) Jean I. Schmidt 645 Northwood Drive Whitefish, Mt. 59937	61.5
Rich Katana Raylene Katana Route 2 Highway 200 Trout Creek, Mt 59874	40.
Harold R. Langford Barbara A. Langford Thompson Falls, MT 59873	40.
Jerry Eller (includes Tract A) Yvonne Eller Route 2 Box 235 Trout Creek, MT 59874	62.6
Dennis S. Mullins Barbara D. Mullins Route 2 Box 234 Trout Creek, MT 59874	23.1

EXHIBIT "B"

TO JESSE O'CALLAHAN WATER USERS ASSOCIATION AGREEMENT
SCHEDULE OF OWNERS ELIGIBLE FOR MEMBERSHIP AND APPROXIMATE
ACREAGES OF OWNERSHIPS AT TIME OF CREATION OF ASSOCIATION

<u>Owners</u>	<u>Acreage</u>
John W. Townsend Pam E. Townsend Mildred L. Townsend Route 2 Highway 200 Trout Creek, MT 59874	4.9
Joe Giovanacci Mary Giovanacci 413 Tunnell Santa Maria, CA 93454	44.1
Mary Ann Elliott Route 2 Highway 200 Trout Creek, MT 59874	20.
Nicholas A. Schmidt (aka Nick Schmidt) Jean I. Schmidt 645 Northwood Drive Whitefish, Mt. 59937	61.5
Raylene Katana Raylene Katana Route 2 Highway 200 Trout Creek, MT 59874	40.
Harold R. Langford Harold R. Langford Thompson Falls, MT 59873	40.
Jerry Eller (includes Tract A) Yvonne Eller Route 2 Box 235 Trout Creek, MT 59874	62.6
Dennis S. Mullins Barbara L. Mullins Route 2 Box 234 Trout Creek, MT 59874	23.1

EXHIBIT "C"

PERCENTAGE OF TOTAL FLOW
OF JESSE O'CALLAHAN WATER USERS ASSOCIATION SPRING

Proportion of total flow from association water system's spring available to parcels owned by individual members.

<u>Owners</u>	<u>Shares</u>
John W. Townsend Pam E. Townsend Mildred L. Townsend	1/11
Joe Giovanacchi Mary Giovanacchi	1/11
Mary Ann Elliott	2/11
Nicholas A. Schmidt Jean I. Schmidt	3/11
Rick Katana Raylene Katana	1/11
Jerry Eller Yvonne Eller	2/11
Dennis P. Mallins Barbara L. Mallins	1/11

EXHIBIT "D"

TO JESSE O'CALLAHAN WATER USERS ASSOCIATION
SCHEDULE OF ACTUAL USES OF WATER

Townsend, John, Pam, Mildred
 Giovanacchi, Joe, Mary
 Elliott, Mary Ann
 Schmidt, Nicholas, Jean I.
 Katana, Rick, Raylene
 Eller, Jerry, Yvonne
 Mallins, Dennis, Barbara

Each of the foregoing owners is using water for domestic and limited irrigation use to the extent of 10 gallons per minute up to 2.5 acre feet per year as of the date of that party's execution of this

Owner's

SANDERS COUNTY

TRAC BOOK

PLAT	NET	TYPE	DATE	NAME OF OWNER	TRAC	BOOK	PAGE	REMARKS
40	40			WALTER R. BENTLEY			70	
40	40			WALTER R. BENTLEY			71	
30.0	30.0			WALTER R. BENTLEY			72	
0.00	0.00			WALTER R. BENTLEY			73	
10	10			WALTER R. BENTLEY			74	
10	10			WALTER R. BENTLEY			75	
10	10			WALTER R. BENTLEY			76	
10	10			WALTER R. BENTLEY			77	
10	10			WALTER R. BENTLEY			78	
10	10			WALTER R. BENTLEY			79	
10	10			WALTER R. BENTLEY			80	
40	40			WALTER R. BENTLEY			81	
20	20			WALTER R. BENTLEY			82	
35	35			WALTER R. BENTLEY			83	
20	20			WALTER R. BENTLEY			84	
20	20			WALTER R. BENTLEY			85	
20	20			WALTER R. BENTLEY			86	
20	20			WALTER R. BENTLEY			87	
20	20			WALTER R. BENTLEY			88	
20	20			WALTER R. BENTLEY			89	
20	20			WALTER R. BENTLEY			90	
20	20			WALTER R. BENTLEY			91	
20	20			WALTER R. BENTLEY			92	
20	20			WALTER R. BENTLEY			93	
20	20			WALTER R. BENTLEY			94	
20	20			WALTER R. BENTLEY			95	
20	20			WALTER R. BENTLEY			96	
20	20			WALTER R. BENTLEY			97	
20	20			WALTER R. BENTLEY			98	
20	20			WALTER R. BENTLEY			99	
20	20			WALTER R. BENTLEY			100	