BEFORE THE WATER RESOURCES DEPARTMENT
OF THE
STATE OF OREGON

In the Matter of Instream Transfer Application T-11375, Klamath County	)))))	FINAL ORDER APPROVING A CHANGE IN PLACE OF USE AND CHARACTER OF USE AND PARTIAL CANCELLATION OF A WATER RIGHT

Authority

ORS 540.505 to 540.580 establishes the process in which a water right holder may submit a request to transfer the point of diversion, place of use, or character of use authorized under an existing water right. OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications. OAR Chapter 690, Division 077 provides additional criteria for evaluating transfers to instream water rights.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

Applicant
JACOX RANCHES, OREG., LTD
1945 MORNING GROVE COURT
RENO, NV 89523

Agent
CHRYSTEN LAMBERT
KLAMATH BASIN RANGELAND TRUST (KBRT)
700 MAIN STREET, SUITE 201A
KLAMATH FALLS, OR 97601

Findings of Fact

Background

1. On March 19, 2012, JaCox Ranches filed an application to change the place of use and character of use under Certificates 10900, 10901, 42822, and 8679 to instream use. The Department assigned the application number T-11375. The application included the proposed cancellation of certain portions of Certificates 10900 and 42822.

2. The application identifies Chrysten Lambert, Klamath Basin Rangeland Trust (KBRT), as the agent for the applicant.

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

3. Notice of the application for transfer was published on March 27, 2012, pursuant to OAR 690-380-4000. On April 16, 2012, a request was received from Martha Pagel, attorney representing Roger Nicholson, for a copy of the Preliminary Determination, when issued by the Department. No additional comments were filed in response to the notice.

4. On January 14, 2013, the Department sent the applicant and the KBRT a deficiency letter identifying a number of items that needed to be addressed in order to complete and clarify the transfer application. Deficiencies included identification of remaining rights on certain application maps, clarification of the shaping of the place of use on certain application maps, identification of possible layered water rights not included in the transfer application, a description of the system capacity for Certificates 10901 and 8679, request for affidavits of cancellation for portions of those rights proposed to be cancelled, and clarification of evidence of use for Certificate 10900.

5. Revised application materials and information necessary to complete and clarify the transfer application were received on March 5, 2013.

6. Follow up correspondence (via e-mail) requesting additional information and modifications was sent to the KBRT on June 17 and 18, 2013.

7. One of the items identified by the Department was the need for clarification of whether the transfer included the domestic and stock portions of Certificates 10900, 10901 and 8679. The agent for the applicant clarified that the transfer application does include these uses as associated with the irrigation use during the irrigation season. This was affirmed in correspondence from the KBRT on June 19, 2013.

8. On June 27, 2013, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11375 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of July 27, 2013, for the applicant to respond. The cover letter also identified additional information, consistent with previous e-mail correspondence, as well as information necessary to demonstrate that the applicant is authorized to pursue the transfer. On July 2, 2013, the applicant provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.

9. Other information requested by the Department was received on July 3, 8 and 31, 2013, August 1, 2013, and August 12, 2013.

10. On July 15 and July 16, 2013, the Department requested additional information (via e-mail) to clarify certain portions of the application associated with Certificates 10900, 10901 and 8679, and the cancellation of Certificates 7641 and 45299.

11. During the review process, the Department identified several potentially layered rights associated with Certificate 10900, being Certificates 42754, 42755, 45299, and 7641, not included as part of the transfer application. Certificates 42754 and 42755 also appear to affect a portion of the footprint for Certificates 10901, 10900 and 8679. The agent (KBRT) for the applicant identified as part of revised application materials received on March 5, 2013, that the overlapping portions of 45299 and 7641 are to be cancelled. Affidavits of

Cancellation were received on March 5, 2013, and updated affidavits on July 31, 2013, and updated maps showing the portions to be cancelled and remaining under each right were received on August 1, 2013.

On June 19, 2013, the KBRT requested that the portion of Certificate 10900 that overlaps with Certificates 47254 and 42755 be removed from the transfer application. On July 3, 2013, the KBRT also requested that the affected portions of Certificates 10901 and 8679 also be removed from the transfer application. Final revised application maps for Certificates 10900, 10901, and 8679 were also received on August 1 and 12, 2013. Certificates 42754 and 42755 appear to overlap with 2.2 acres involved in the original transfer application request.

12. Based upon modifications made to the portions of Certificates 10900, 10901, 8679, and 42822 proposed for transfer to instream use, on July 3, 2013, the KBRT amended the description of the requested instream use to be created from each certificate.

13. One of the issues identified in correspondence to the KBRT was with the request to cancel portions of Certificates 10900 and 42822, including portions located within Nicholson Road, which runs along the southern section line of Section 18 (T33S, R7.5E) and Section 13 (T33S, R6E). An affidavit for cancellation of a portion of Certificate 10900 was received on March 5, 2013. An affidavit of cancellation was not received for Certificate 42822. However, the Department has identified that the applicant does not have sufficient authorization to pursue the cancellation of those portions located within the roadway. These portions also may not be included as part of the transfer application. To cancel or transfer the portions of these rights located within Nicholson Road, authorization is needed from the appropriate Klamath County Department.

    On August 1, 2013, the KBRT provided revised application maps for Certificates 10900 and 42822 that differentiate the portions within the roadway to be excluded from the transfer and that show the portions proposed for cancellation located on JaCox Ranch property. The legal description for the property involved in the transfer application excludes the county road and the Klamath County tax lot map identifies the area of the road as 60 feet wide. Given the location of the road in each of the affected quarter quarters, the location of the water right, the size of the road based on the County tax lot map, the Department has identified that the portions of Certificate 10900 and 42822 that do not appear to be available for transfer is greater than the acres shown on the revised applications maps. The revised maps identified a total of 5.7 acres under Certificate 10900 and 0.46 acre under Certificate 42822 as being located within Nicholson Road. Without additional information to determine otherwise, the portions located in the roadway, as identified by the Department, that may not be cancelled or transferred by the applicant appear to be as follows:

Certificate 10900

Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	13	SE SW	0.9
33 S	6 E	WM	13	SW SE	1.8
33 S	6 E	WM	13	SE SE	1.8
33 S	7.5 E	WM	18	SW SW	1.8

Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	7.5 E	WM	18	SE SW	1.6
				Total	**7.9**

Certificate 42822

Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	13	SE SW	0.9

14. On August 1 and 12, 2013, the KBRT, on behalf of the applicant, provided final revised application maps showing the portion of each right proposed for transfer, proposed to remain, and proposed to be cancelled. Revised application maps identify that the portion of Certificate 10900 proposed for transfer is 720.7 acres, Certificate 10901 is 161.6 acres, Certificate 42822 is 56.14 acres and Certificate 8679 is 94.3 acres. Based upon review of the revised application materials and Finding of Fact No. 13, the Department has determined that the number of acres available for transfer under Certificates 10900 and 42822 is less than the number of acres proposed for transfer. This is reflected in Findings of Fact No. 20 and No. 31.

15. On August 8, 2013, the Department mailed a copy of a revised draft Preliminary Determination proposing to approve Transfer Application T-11375 to the applicant. The revised draft Preliminary Determination cover letter set forth a deadline of September 6, 2013, for the applicant to respond. On August 14, 2013, the agent, on behalf of the applicant, requested that the Department issue the Preliminary Determination.

16. Shortly prior to issuance of this Preliminary Determination, an additional water right was identified appurtenant to a portion of the lands to be transferred under Certificates 10900 and 42822. This water right is described in the Wood River Decree and has a 1900 priority date. However, a certificate has not yet been issued for this right consistent with the Decree. On August 26, 2013, the Department received affidavits to cancel the portion of this decreed right that is layered with Certificate 10900. Original affidavits of cancellation were received on August 27, 2013.

17. On August 26, 2013, the Department issued a Preliminary Determination proposing to approve Transfer T-11375 and mailed a copy to the applicant, agent and Martha Pagel, on behalf of Roger Nicholson. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on August 27, 2013, and in the Herald and News newspaper on August 30 and September 6, 2013 pursuant to ORS 540.520 and OAR 690-380-4020. A protest was filed on October 7, 2013, by Martha Pagel, on behalf of Roger Nicholson and his related business entities of Productive Timberland LLC and NBCC LLC. The protest was accompanied by Proof of Service to both JaCox Ranch and the Klamath Basin Rangeland Trust.

18. On August 18, 28, and 29, 2014, to resolve the protest a Settlement Agreement was signed by JaCox Ranch, Roger Nicholson, the Klamath Basin Rangeland Trust and the Department. Based upon this Settlement Agreement, up to 1.0 cubic foot per second and 240.0 acre-feet of this instream transfer may be used as mitigation for a groundwater permit application filed by Roger Nicholson. The protest was withdrawn on August 29, 2014.

19. During the process of evaluating the protest, the Department identified a few errors in calculating the quantities that may be protected instream. Also, based upon continued evaluation, the Department also identified a scrivener's error in the description of the point of diversion for Certificate 10901. In addition, the Department also identified a discrepancy in the River Mile locations identified for return flows for Certificates 10900 and 8679. This Final Order clarifies the quantities that may be protected instream, the location of return flows, and the location of the point of diversion for Certificate 10901.

20. The portion of the first right to be transferred has been modified from the original transfer application and is as follows:

Certificate: 10900 in the name of JAMES T. DIXON (confirmed by Wood River (F) in the order record of the State Engineer in volume 12, at page 269)
Use: IRRIGATION of 718.45 acres and the associated portion of DOMESTIC and LIVESTOCK use during the irrigation season
Priority Date: 1891
Rate: 14.37 CUBIC FEET PER SECOND (CFS) prior to July 20
8.98 CFS thereafter
Limit/Duty: The amount of water to which such right is entitled, for the purposes of the aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 1/50th of one cubic foot per second per acre irrigated prior to July 20, and 1/80th of one cubic foot per second per acre irrigated thereafter, and shall not exceed 5.0 acre-feet per acre during the irrigation season.
Period of Use: April 1 to October 1
Source: SEVENMILE CREEK, tributary to Agency Lake
Authorized Point of Diversion: Not described on the Certificate
Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	13	SW NE	36.80
33 S	6 E	WM	13	SE NE	26.40
33 S	6 E	WM	13	SE NW	14.40
33 S	6 E	WM	13	NE SW	30.00
33 S	6 E	WM	13	SE SW	27.90
33 S	6 E	WM	13	NE SE	39.90
33 S	6 E	WM	13	NW SE	39.85
33 S	6 E	WM	13	SW SE	37.70
33 S	6 E	WM	13	SE SE	38.20
33 S	6 E	WM	24	NE NE	20.00
33 S	6 E	WM	24	NW NE	40.00
33 S	6 E	WM	24	SW NE	39.90
33 S	6 E	WM	24	SE NE	20.00
33 S	6 E	WM	24	NE NW	31.20
33 S	6 E	WM	24	NW NW	8.80
33 S	6 E	WM	24	SW NW	22.40
33 S	6 E	WM	24	SE NW	38.40
33 S	6 E	WM	24	NE SW	20.00
33 S	6 E	WM	24	NW SW	6.00

Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	24	NE SE	19.70
33 S	6 E	WM	24	NW SE	35.00
33 S	6 E	WM	24	SW SE	5.00
33 S	6 E	WM	24	SE SE	8.80
33 S	7.5 E	WM	18	NE SW	9.20
33 S	7.5 E	WM	18	NW SW	28.00
33 S	7.5 E	WM	18	SW SW	37.70
33 S	7.5 E	WM	18	SE SW	37.20
				Total Acres	**718.45**

21. Certificate 10900 does not describe the location of the Point of Diversion. The Wood River Decree describes the name of the ditch associated with this water right as the Upper Sevenmile or Upper Cox Ditch. Information provided with the transfer application, identifies that the Point of Diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
33 S	6 E	WM	11	SE SE	150 FEET NORTH AND 960 FEET WEST FROM THE SE CORNER OF SECTION 11

22. A total of 3592.25 acre-feet of water may be beneficially used annually under the existing right.

23. The applicant is also proposing to transfer the entirety of Certificates 10901 and 8679 to instream use. The Department has determined that a portion of the lands on which Certificates 10901 and 8679 (supplemental to Certificate 10901) are appurtenant are sub-irrigated from Sevenmile Creek during the irrigation season and may not be transferred to instream use as identified in Finding of Fact No. 43. Therefore, the portions of Certificates 10901 and 8679 that may be transferred have been reduced. This reduction is reflected in the findings below describing the portion of each right available for transfer.

24. The portion of the second right to be transferred has been modified based upon Findings of Fact No. 11, 23 and 43 and is as follows:

Certificate: 10901 in the name of JAMES T DIXON (confirmed by Wood River (F) in the order record of the State Engineer in volume 12, at page 269)
Use: IRRIGATION of 155.4 acres and the associated portion of DOMESTIC and LIVESTOCK use during the irrigation season
Priority Date: 1898
Rate: 3.11 CUBIC FEET PER SECOND (CFS) prior to July 20
1.94 CFS thereafter
Limit/Duty: The amount of water to which this right is entitled, for the purposes of the aforesaid, is limited to 1/50th of one cubic foot per second per acre irrigated prior to July 20, and 1/80th of one cubic foot per second per acre irrigated thereafter, and shall not exceed 5.0 acre-feet per acre during the irrigation season.
Period of Use: April 1 to October 1
Source: SEVENMILE CREEK, tributary to Agency Lake

Authorized Point of Diversion: Not described on the Certificate.
Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	24	SW NW	17.30
33 S	6 E	WM	24	NE SW	20.00
33 S	6 E	WM	24	NW SW	20.00
33 S	6 E	WM	24	SW SW	11.00
33 S	6 E	WM	24	SE SW	37.80
33 S	6 E	WM	24	NW SE	5.00
33 S	6 E	WM	24	SW SE	35.00
33 S	6 E	WM	24	SE SE	9.30
				Total Acres	**155.40**

25. Certificate 10901 does not describe the location of the Point of Diversion. The Wood River Decree describes the name of the ditch associated with this water right as the Melhase-Kingdon Ditch. Information provided with the transfer application, identifies that the Point of Diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
33 S	6 E	WM	24	SW NW	1875 FEET SOUTH AND 390 FEET EAST FROM THE NW CORNER OF SECTION 24

26. A total of 777.0 acre-feet of water may be beneficially used annually under the existing right.

27. The portion of the third right to be transferred has been modified based upon Findings of Fact No. 11, 23 and 43 and is as follows:

Certificate: 8679 in the name of JAS T. DIXON (perfected under Permit S-9371)
Use: IRRIGATION OF 88.1 ACRES
Priority Date: SEPTEMBER 25, 1928
Rate: 1.19 CUBIC FEET PER SECOND
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent in case of rotation.
Period of Use: May 11 to October 1
Source: BLUE SPRINGS, tributary to SEVENMILE CREEK
Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
33 S	6 E	WM	23	NE SE	NONE GIVEN
33 S	6 E	WM	24	NW SW	NONE GIVEN

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	24	SW SW	11.00
33 S	6 E	WM	24	SE SW	37.80
33 S	6 E	WM	24	SW SE	30.00

Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	24	SE SE	9.30
				Total Acres	**88.10**

28. Certificate 8679 does not provide measured distances for the location of the point of diversion. Rather the certificate, based upon review, identifies the general location of Blue Springs. Based upon information provided by the agent and the revised transfer application map, the POD is more accurately located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
33 S	6 E	WM	24	NW SW	1545 FEET NORTH AND 95 FEET EAST FROM THE SW CORNER OF SECTION 24

29. The Wood River Decree clarifies that Certificate 8679 is a supplemental irrigation use.

30. Certificate 8679 does not specify an annual duty per acre. The duty of other rights involved in this transfer, based on the Wood River Decree, is limited to 5.0 acre-feet per acre. However, the season of use associated with Certificate 8679 limits the maximum volume of water that could be diverted over the course of the season to 337.5 AF given a rate limit of up to 1.19 CFS. This is equivalent to 3.83 acre-feet per acre. Given that this is a supplemental use, it is a reasonable amount considering beneficial use without waste.

31. The portion of the fourth right to be transferred has been modified based upon Finding of Fact No. 13 and is as follows:

Certificate: 42822 in the name of ANDREW AND DOROTHY POPSON (perfected under Permit S-35790)
Use: IRRIGATION of 55.7 ACRES
Priority Date: SEPTEMBER 24, 1971
Rate: 0.98 CUBIC FOOT PER SECOND, with any deficiency in the available supply from drainage to be made up by appropriation from Sevenmile Creek.
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-FIFTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 5.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: DRAINAGE DITCH and Sevenmile Creek, tributary to Agency Lake
Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
33 S	6 E	WM	11	SE SE	Sevenmile Creek - 150 FEET NORTH AND 960 FEET WEST FROM SE CORNER OF SECTION 11
33 S	6 E	WM	13	SE NW NE SW SE SW	Drainage - DRAINAGE COLLECTED BETWEEN POINTS 3320 FEET NORTH AND 20 FEET NORTH BOTH FROM SOUTHWEST CORNER OF THE SE SW OF SECTION 13

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	13	SE NW	13.60
33 S	6 E	WM	13	NE SW	10.00
33 S	6 E	WM	13	SE SW	10.30
33 S	6 E	WM	24	NE NW	8.80
33 S	6 E	WM	24	NW NW	13.00
				Total Acres	**155.4**

32. A total of 278.5 acre-feet of water may be beneficially used annually under the existing right.

33. Certificate 42822 does not specify an irrigation season. However, the irrigation season, consistent with the Wood River Decree, is April 1 to October 1.

34. Transfer Application T-11375 proposes to change the character of use to instream use for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values.

35. Transfer Application T-11375 proposes to change the place of use of the right to create an instream reach from each of the authorized Points of Diversion, described above in Findings of Fact No. 21, 25, 28 and 31 to the mouth of Sevenmile Creek.

36. As modified by the KBRT on July 3, 2013, the applicant proposes the quantities water to be transferred instream be protected as follows:

Certificate	Period	Rate (cfs)	Volume (acre-feet)
10900	April 1 through July 19	10.54	3602.0
	July 20 through September 30	9.00	
10901	April 1 through July 19	2.37	817.5
	July 20 through September 30	2.07	
42822	May 11 through September 30	0.99	280.8
8679 (supplemental)	May 11 through September 30	1.32	374.4

37. The applicant has requested that any instream water right established as a result of this instream transfer be additive to existing instream water rights for the same reach established pursuant to ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process). The applicant has also requested that any instream water rights established as a result of this instream transfer replace a portion of any existing instream rights established pursuant to ORS 537.346 (minimum streamflow conversion) and ORS 537.341 (state agency instream application process), with a more senior priority date.

Instream Transfer Review Criteria (OAR 690-77-0075 and 690-380-4010)

38. Each of the rights proposed for transfer has been leased instream under IL-479. This instream lease began in 2005 and is scheduled to terminate on September 30, 2018. Therefore, water has been used within the last five years according to the terms and conditions of the right, and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.

39. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-11375.

40. The applicant has requested to protect water instream under Certificate 8679 from the POD on Blue Springs, through the natural channel for Blue Springs and into Sevenmile Creek to its mouth. An instream reach is generally from the point of diversion to the mouth of the source stream (Blue Springs) but may be protected further if measurable in the receiving stream (Sevenmile Creek) (OAR 690-077-0015 (8)). The quantity that may be transferred to instream use from Blue Springs is measurable into Sevenmile Creek and may be protected instream in Sevenmile Creek.

41. The applicant has also requested to protect water instream under Certificate 42822, which has an identified source of drainage collected in a ditch with deficiency in supply made up from Sevenmile Creek. The Department has identified that with irrigation discontinuing as a result of this transfer, there will not likely be any water in the drainage ditch. Therefore, the source of water for the instream use will be Sevenmile Creek with the instream use beginning at the Sevenmile Creek POD described in Finding of Fact No. 31. This is also consistent with the definition of an instream water right, which by definition does not require a diversion or any other means of physical control over the water. ORS 537.322(3)

42. The applicant has requested to protect water instream from the PODs as described in Findings of Fact No. 21, 25, 28 and 31 to the mouth of Sevenmile Creek. A portion of the water diverted under Certificates 10900, 10901, and 8679 returns to Sevenmile Creek within the proposed reach and is available to downstream water right holders. To prevent injury to downstream water right holders and enlargement, the quantity of water that may be protected instream requires modification to account for return flows.

    The place of use described below for Certificates 10900, 10901 and 8679 is located in close proximity to Sevenmile Creek and will have approximately 20.0% return flows along the creek.

    a) Certificate 10900

Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	24	SW NW	6.00
33 S	6 E	WM	24	NW SW	6.00
				Total Acres	**12.00**

Return flows associated with Certificate 10900 should be accounted for at approximately River Mile (RM) 15.52, where the lands intersect Sevenmile Creek in the SW NW of Section 24.

b) Certificate 10901

Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	24	SW NW	17.30
33 S	6 E	WM	24	NW SW	20.00
33 S	6 E	WM	24	SW SW	9.00
33 S	6 E	WM	24	SE SW	17.80
				Total Acres	**64.10**

Return flows associated with Certificate 10901 should be accounted for at the Melhase-Kingdon Ditch, located as described in Finding of Fact No. 25.

c) Certificate 8679

Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	24	SW SW	9.00
33 S	6 E	WM	24	SE SW	17.80
				Total Acres	**26.80**

Return flows associated with Certificate 8679 should be accounted for at approximately RM 14.62, where the lands intersect Sevenmile Creek in the SW SW of Section 24.

43. The applicant is also proposing to transfer the entirety Certificates 10901 and 8679 to instream use. The Department has determined that a portion of the lands on which Certificates 10901 and 8679 (supplemental to Certificate 10901) are appurtenant are sub-irrigated from Sevenmile Creek during the irrigation season. Use of water under the existing water rights is subject to beneficial use without waste in accordance with ORS 536.310. These lands are located in close proximity to Sevenmile Creek and will continue to be sub-irrigated from the creek upon completion of the transfer application. Sevenmile Creek is the primary source of water for the following 6.2 acres under Certificate 10901 that will continue to receive water from the same source:

Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	24	SW SW	4.00
33 S	6 E	WM	24	SE SW	2.20

Since use may not be suspended as a result of sub-irrigation from the same source, the above described portion of Certificate 10901 may not be transferred to instream use without enlargement of the right. Enlargement includes, by definition, failing to keep the original place of use form receiving water from the same source. OAR 690-380-0100 (2). Subsequently, the associated portion of supplemental Certificate 8679 may not be transferred to instream use as well.

44. The modified instream use, as described in Finding of Fact No. 36, requires additional modification to account for amendments to the application, amount of sub-irrigated acres not available for transfer under Certificates 10901 and 8679, and return flows.

45. Based on the above findings, modifications to the application affecting the portion of each right proposed for transfer and Finding of Fact No. 13, the Department has determined the quantities that may be transferred and protected instream are as follows:

Instream Use resulting from Transfer of Certificate 10900

Sevenmile Creek, tributary to Agency Lake

Instream Reach No. 1: From the POD (as described in Finding of Fact No. 21) to RM 15.52

Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
1891	10.50	2290.91	April 1 through July 19
	8.98	1300.24	July 20 through September 30
	Total Volume	**3591.15**	

Instream Reach No. 2: From RM 15.52 to the mouth of Sevenmile Creek

Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
1891	10.46	2283.25	April 1 through July 19
	8.95	1295.90	July 20 through September 30
	Total Volume	**3579.15**	

Instream Use resulting from Transfer of Certificate 10901

Sevenmile Creek, tributary to Agency Lake

Instream Reach No. 1: At the POD (as described in Finding of Fact No. 25)

Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
1898	2.27	496.10	April 1 through July 19
	1.94	280.90	July 20 through September 30
	Total Volume	**777.00**	

Instream Reach No. 2: From immediately below the POD to the mouth of Sevenmile Creek

Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
1898	2.08	455.17	April 1 through July 19
	1.78	257.73	July 20 through September 30
	Total Volume	**712.90**	

Instream Use resulting from Transfer of Certificate 8679 (Supplemental to Certificate 10901)

Blue Springs, tributary to Sevenmile Creek

Instream Reach No. 1: From the POD (as described in Finding of Fact No. 28) to the mouth of Blue Springs and into Sevenmile Creek to RM 14.62

Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
9/25/1928	1.19	337.50	May 11 through September 30

Instream Reach No. 2: From RM 14.62 to the mouth of Sevenmile Creek

Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
9/25/1928	1.12	317.08	May 11 through September 30

Certificate 8679 is supplemental to Certificate 10901. The portion of Certificate 8679 converted to instream use shall only be protected instream if the full rate and duty is not available under the primary instream use created as a result of the transfer of Certificate 10901.

Instream Use resulting from Transfer of Certificate 42822

Sevenmile Creek, tributary to Agency Lake

Instream Reach: From the POD on Sevenmile Creek (as described in Finding of Fact No. 31) to the mouth of Sevenmile Creek

Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
9/24/1971	0.98	278.5	May 11 through September 30

46. The proposed changes, as modified, would not result in enlargement of the rights.

47. The proposed changes, as modified, would not result in injury to other water rights.

48. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights.

49. The protection of flows within the proposed reach is appropriate, considering:

    a) The instream water rights begin at the recorded points of diversion;

    b) The location of confluences with other streams downstream of the points of diversion;

    c) There are no known areas of natural loss of streamflow to the river bed downstream from the points of diversion; and

    d) Return flows would re-enter the within the reach on Sevenmile Creek. Return flows associated with Certificates 10900, 10901 and 8679 have been accounted for as

described in Findings of Fact No. 42 and 45. Any return flows resulting from the exercise of Certificate 42822 would re-enter the river downstream of the reach of the instream water right.

50. Presently there are no existing certificated instream water rights on Blue Springs or Sevenmile Creek. There is an instream water right application, filed by the Oregon Department of Fish and Wildlife (ODFW), pending for Sevenmile Creek. This application is requesting the use of water for required stream flows for rainbow, brown and brook trout for migration, spawning, egg incubation, fry emergence and juvenile and adult rearing. This application, if approved, will have a priority date of October 26, 1990.

51. The flows requested for the pending instream water right application within the reach may be sufficient to protect the monthly quantities of water necessary for fish habitat but may not always be met due to existing senior consumptive uses on Sevenmile Creek.

52. By replacing a portion of any instream water right established by the application filed by ODFW, the instream rights created as a result of this transfer will provide protection for stream flows identified as necessary for fish habitat under earlier priority dates.

53. The applicant has also requested that any instream rights created as a result of this transfer be additive to other instream rights created as a result of instream transfers, instream leases and allocations of conserved water. By adding to other instream water rights for the same location, the instream rights will provide protection for additional stream flows necessary for fish and wildlife habitat.

54. The total monthly quantities of water to be protected under the existing and proposed instream rights in the reach will provide for a beneficial purpose and do not exceed the estimated average natural flow.

55. There is an instream lease, IL-479, currently in effect for the portions of the rights proposed for transfer to instream use. Renewal of this instream lease was approved by the Department on April 15, 2014, as evidenced by Special Order Volume 92, Page 125. The instream lease is scheduled to terminate on September 30, 2018, and includes a condition allowing for early termination of the lease order. This lease must be terminated before Transfer Transfer T-11375 may be approved. Also, the date on which this instream transfer may be approved may be affected by the date on which the existing instream lease is terminated to prevent injury and enlargement.

Partial Cancellation of a Water Right

56. ORS 537.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

57. On March 5, 2013, the applicant submitted an affidavit to voluntarily cancel a portion of Certificate 10900 contingent upon approval of Transfer Application T-11375. As identified in Finding of Fact No. 13, the Department has identified that a portion of the right proposed

for cancellation may not be cancelled by the applicant. Based upon evaluation of a revised application map and the original affidavit of cancellation, the applicant has abandoned any and all interest in the portion of water right Certificate 10900 described as follows:

Certificate: 10900 in the name of JAMES T. DIXON (confirmed by Wood River (F) in the order record of the State Engineer in volume 12, at page 269)
Use: Irrigation of 1.65 acres and the associated portion of DOMESTIC and LIVESTOCK use during the irrigation season
Priority Date: 1891
Limit/Duty: The amount of water to which such right is entitled, for the purposes of the aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 1/50th of one cubic foot per second per acre irrigated prior to July 20, and 1/80th of one cubic foot per second per acre irrigated thereafter, and shall not exceed 5.0 acre-feet per acre during the irrigation season.
Period of Use: April 1 to October 1
Source: SEVENMILE CREEK, tributary to Agency Lake
Authorized Point of Diversion: Not described on the Certificate
Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	13	NW SE	0.15
33 S	6 E	WM	13	SW SE	0.50
33 S	7.5 E	WM	18	SW SW	0.50
33 S	7.5 E	WM	18	SE SW	0.50

58. On March 5, 2013, the applicant submitted an affidavit to voluntarily cancel a portion of Certificate 7641 contingent upon approval of Transfer Application T-11375. A revised affidavit and map showing the portion to be cancelled was submitted on July 31 and August 1, 2013. The applicant has abandoned any and all interest in the portion of water right Certificate 7641 described as follows:

Certificate: 7641 in the name of JAMES T. DIXON (perfected under Permit S-8029)
Use: IRRIGATION of 27.2 ACRES
Priority Date: JUNE 25, 1927
Rate: 0.34 CFS
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent in case of rotation.
Source: ANNA CREEK (also known as Annie Creek), tributary to the WOOD RIVER
Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
32 S	7.5 E	WM	31	NE SW

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	7.5 E	WM	18	NE SW	9.20
33 S	7.5 E	WM	18	NW SW	4.00
33 S	7.5 E	WM	18	SE SW	14.00

59. On March 5, 2013, the applicant submitted an affidavit to voluntarily cancel a portion of Certificate 45299 contingent upon approval of Transfer Application T-11375. A revised affidavit and map showing the portion to be cancelled was submitted on July 31 and August 1, 2013. The applicant has abandoned any and all interest in the portion of water right Certificate 45299 described as follows:

Certificate: 45299 in the name of R. S. DIXON (perfected under Permit S-8028)
Use: IRRIGATION of 18.76 ACRES
Priority Date: JUNE 25, 1927
Rate: 0.23 CFS
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, and shall conform to such reasonable rotation system as bay be ordered by the proper state officer.
Source: ANNA CREEK (also known as ANNIE CREEK), tributary to the WOOD RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
32 S	7.5 E	WM	31	SW NW

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	13	SE NE	18.76

60. On August 27, 2013, the applicant submitted an affidavit to voluntarily cancel a portion of a water right described in the Wood River Decree, not yet certificated, contingent upon approval of Transfer Application T-11375. During the review process, the Department identified that there is a typo on the affidavit. The acreage identified in the NE NE of Section 13 is actually within the SE NE of Section 13. The applicant has abandoned any and all interest in the portion of this water right described as follows:

Water Right: Proof No. 11, page 45, of the State Engineer's Findings and Order of Determination in the name of James Dixon (Confirmed and clarified by Wood River (F) in the order record of the State Engineer in volume 12, at page 269)
Use: IRRIGATION of 45.96 ACRES
Priority Date: 1900
Source: ANNA CREEK (also known as ANNIE CREEK), tributary to the WOOD RIVER

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	13	SE NE	18.76
33 S	6 E	WM	13	SW NE	36.8
33 S	6 E	WM	13	SE NW	28.0
33 S	7.5 E	WM	18	NE SW	9.20
33 S	7.5 E	WM	18	NW SW	4.00
33 S	7.5 E	WM	18	SE SW	14.00

Conclusions of Law

The changes in character of use and place of use to instream use proposed in Transfer Application T-11375 are consistent with the requirements of ORS 540.505 to 540.580, ORS 537.348, OAR 690-380-5000, and OAR 690-077-0075 and the abandoned rights should be cancelled.

Now, therefore, it is ORDERED:

1. The changes in character of use and place of use to instream use proposed in Transfer Application T-11375 are approved. The portions of the rights that have been abandoned are cancelled.

2. Instream lease IL-479 shall be terminated in coordination with the issuance of a final order, contingent upon approval of this transfer, unless previously terminated by the parties to the lease or it terminates on its own on September 30, 2018.

3. Water right certificates 10900, 10901, 42822, and 8679 are cancelled. New certificates confirming the instream water rights shall be issued. New certificates will be issued, as needed, describing the portions of the rights not affected by this transfer and cancellation.

4. Water Right Certificates 45299 and 7641 and Proof No. 11, page 45, of the State Engineer's Findings and Order of Determination in the name of James Dixon (Confirmed and clarified by Wood River (F) in the order record of the State Engineer in volume 12, at page 269) are also cancelled. New certificates will be issued describing the portions of the rights not affected by this cancellation.

5. The instream water rights shall provide for the protection of stream flows as follows:

Instream Use resulting from Transfer of Certificate 10900

Sevenmile Creek, tributary to Agency Lake

Instream Reach No. 1: From the POD (as described in Finding of Fact No. 21) to RM 15.52

Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
1891	10.50	2290.91	April 1 through July 19
	8.98	1300.24	July 20 through September 30
	Total Volume	**3591.15**	

Instream Reach No. 2: From RM 15.52 to the mouth of Sevenmile Creek

Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
1891	10.46	2283.25	April 1 through July 19
	8.95	1295.90	July 20 through September 30
	Total Volume	**3579.15**	

Instream Use resulting from Transfer of Certificate 10901

Sevenmile Creek, tributary to Agency Lake

Instream Reach No. 1: At the POD (as described in Finding of Fact No. 25)

Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
1898	2.27	496.10	April 1 through July 19
	1.94	280.90	July 20 through September 30
	Total Volume	**777.00**	

Instream Reach No. 2: From immediately below the POD to the mouth of Sevenmile Creek

Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
1898	2.08	455.17	April 1 through July 19
	1.78	257.73	July 20 through September 30
	Total Volume	**712.90**	

Instream Use resulting from Transfer of Certificate 8679 (Supplemental to Certificate 10901)

Blue Springs, tributary to Sevenmile Creek

Instream Reach No. 1: From the POD (as described in Finding of Fact No. 28) to the mouth of Blue Springs and into Sevenmile Creek to RM 14.62

Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
9/25/1928	1.19	337.50	May 11 through September 30

Instream Reach No. 2: From RM 14.62 to the mouth of Sevenmile Creek

Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
9/25/1928	1.12	317.08	May 11 through September 30

Certificate 8679 is supplemental to Certificate 10901. The portion of Certificate 8679 converted to instream use shall only be protected instream if the full rate and duty is not available under the primary instream use created as a result of the transfer of Certificate 10901.

Instream Use resulting from Transfer of Certificate 42822

Sevenmile Creek, tributary to Agency Lake

Instream Reach: From the POD on Sevenmile Creek (as described in Finding of Fact No. 31) to the mouth of Sevenmile Creek

Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
9/24/1971	0.98	278.5	May 11 through September 30

6. Water rights upstream of the original points of diversion shall not be subject to regulation for flows in excess of the quantities to which this instream water right is entitled at the original points of diversion.

7. Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original points of diversion.

8. The instream right established by this transfer shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and be in addition to instream water rights established pursuant to ORS 537.348 or 537.470 unless otherwise specified by an order approving a new instream water right under these statutes.

9. The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificates 10900, 10901, 42822, and 8679 and any related decree.

10. The former place of use of the transferred water shall no longer receive water as part of these rights.

Dated at Salem, Oregon this 18 day of September, 2014.

Dwight French, Water Right Services Division Administrator, for
Director, Oregon Water Resources Department

Mailing date: SEP 19 2014

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

IN THE MATTER OF INSTREAM TRANSFER APPLICATION T-11375, KLAMATH COUNTY JACOX RANCHES, OREG., LTD. *Applicant* KLAMATH BASIN RANGELAND TRUST *Agent for Applicant* PRODUCTIVE TIMBERLAND LLC, NBCC LLC, and ROGER NICHOLSON *Protestant*	)	**SETTLEMENT AGREEMENT** OAH Ref. No.: WR-13-008 OWRD Case No.: T-11375

The Oregon Water Resources Department (Department), JaCox Ranches, Oreg., Ltd. (JaCox Ranches), Klamath Basin Rangeland Trust (KBRT), and Roger Nicholson individually and on behalf of Productive Timberland LLC and NBCC LLC (collectively, Nicholson) do hereby agree and stipulate as follows:

I. STIPULATED FACTS

1. On January 5, 2005, the Department issued a Final Order approving the Instream Lease (L-479) of portions of Certificates 10900 and 10901 and all of certificates 8679 and 42822. The KBRT filed the application on behalf of JaCox Ranches. Roger Nicholson initially objected to the application, but the parties were able to resolve their disagreement through a Stipulated Agreement, which was incorporated into the Final Order. The Instream Lease L-479 was renewed in 2009.

2. On March 19, 2012, the KBRT, on behalf of JaCox Ranches, filed an application to change the place of use and character of use under Certificates 10900, 10901, 42822, and 8679 to instream use. The Department assigned the application number T-11375. The KBRT sought to transfer water rights that had been subject to L-479.

3. On August 26, 2013, the Department issued a Preliminary Determination approving the transfer application, as amended through the review process.

4. On October 7, 2013, Nicholson filed a Protest and Request for Hearing, challenging the proposed transfer on several grounds.

5. On November 27, 2013, the Department referred the matter to the Office of Administrative Hearings (OAH) for a contested case hearing.

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II. TERMS OF AGREEMENT

1. The parties to this Agreement wish to resolve their dispute in a manner that is mutually agreeable and avoids further litigation on this matter.

2. The parties agree to waive any right to administrative or judicial review of either this Agreement or the Final Order on T-11375.

3. The parties agree that nothing in this Agreement or associated Final Orders shall be offered for or against a party as argument, admission, admission of wrongdoing, liability, or precedent regarding any issue of fact or law in any mediation, arbitration, litigation, or other administrative or legal proceeding, except that this Agreement may be used in any future proceeding to interpret or enforce the terms of this Agreement, consistent with applicable laws. This Agreement may also be used by any party in litigation by or against non-parties to implement or defend this Agreement. This section shall survive any termination of this Agreement.

4. The parties stipulate that this Agreement does not create any precedent for future mitigation calculations in the Klamath Basin.

5. The parties agree to resolve their dispute under the following terms:

a) Nicholson will submit an application for use of groundwater at the rate of 1.0 cfs, and with an annual duty of 3 acre-feet per acre and a total volume limit of 240 acre-feet from well id # KLAM57662, as supplemental irrigation to Nicholson's existing water rights. The application will indicate that mitigation for the proposed new groundwater use will be provided by up to 1 cfs and 240 acre-feet of instream flow approved under T-11375. The application submitted by Nicholson will be in substantially the same form as the draft application attached hereto as Exhibit A.

b) The Department agrees to expedite processing of Nicholson's groundwater application; however, the Department cannot, and does not, make any promises or representations regarding the ultimate outcome of the application. Based on its review of the draft application, the Department will issue an initial review indicating the groundwater application can be approved with mitigation as proposed. Subject to the Department's obligation to consider and address legal or factual issues identified as a result of the public comment process, or the discovery of new information that has a bearing on whether the application can be approved, the Department is prepared to issue a proposed final order recommending approval of the groundwater application with mitigation.

c) Nicholson and the Department share a good faith belief that the groundwater application with the proposed mitigation can be approved by the Department following completion of the required review process, public comment and protest opportunities; however, the parties stipulate and agree that this Agreement is not conditioned upon the ultimate approval of Nicholson's groundwater application.

on federal statutory easements for access and use of the point of diversion, the obligations of KBRT and Nicholson under this paragraph are deemed to be satisfied. Notwithstanding any other requirement of this paragraph, if the permits or other authorizations necessary to install, operate, and maintain a fish screen have not been obtained within five years of the date of this Agreement, KBRT's obligations under this paragraph are deemed satisfied, unless the failure to obtain such permits or other authorizations resulted from KBRT's breach of this Agreement.

6. Upon complete execution of this Agreement by all parties, Nicholson hereby withdraws his protest, with prejudice and agrees to allow T-11375 to proceed to Final Order. The parties understand that the Department will issue a Final Order on T-11375 based on this Agreement and prior to completion of the review of Mr. Nicholson's new groundwater application.

7. Upon complete execution of the Agreement by all parties and withdrawal of Nicholson's protest to the preliminary determination for T-11375, the Department will withdraw this matter from the OAH and issue a Final Order on T-11375 incorporating the terms of this Agreement, in the form attached as Exhibit B.

8. The parties agree that this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective heirs, executors, administrators, trustees, beneficiaries, predecessors, successors, affiliated and related entities, officers, directors, principals, agents, employees, assigns, representatives, and all persons, firms, associations, or corporations connected with them.

9. Each party to this Agreement represents, warrants, and agrees that the person who executed this Agreement on its behalf has the full right and authority to enter into this Agreement on behalf of that party and bind that party to the terms of the Agreement.

10. The terms, provisions, conditions, and covenants of this Agreement are not severable; however, if any term, provision, condition, or covenant of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the terms, provisions, conditions, and covenants shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

11. This Agreement comprises the entire agreement and no promise, inducement, or representation other than herein set forth has been made, offered, or agreed upon, and the terms of this Agreement are contractual and not merely a recital.

12. The parties agree to each bear their own costs and attorneys' fees.

13. This Agreement may be executed simultaneously or with separate signature pages and in more than one counterpart, each of which will be deemed an original, and all of which together shall constitute one and the same Agreement. This Agreement shall be effective as of the date of the last signature hereto.

d) The Department expects that Nicholson's proposed new groundwater use will interfere with scenic waterway flows and will require mitigation to surface flows as may be determined by the Department in review of the groundwater application. The Department anticipates that a permanent transfer of 240 acre-feet of water, at a rate of 1.0 cfs from a consumptive out-of-stream use to an instream use as provided under Transfer T-11375 would serve as sufficient mitigation for the proposed new groundwater use.

e) KBRT agrees to allow the use of up to 240 acre-feet at the rate of 1.0 cfs of the water transferred under T-11375 to mitigate for Mr. Nicholson's proposed new groundwater right as described in paragraph (a) above.

f) The Department's Final Order on T-11375 will recognize that up to 1.0 cfs and 240 acre-feet of KBRT's proposed transfer shall be used as mitigation for Mr. Nicholson's pending groundwater application.

g) The Final Order on T-11375 will not include a condition requiring installation of a regulatory device at the point of diversion for Certificate 10900; however, KBRT agrees to make a good faith effort to secure funding to install a new regulatory device at the authorized point of diversion for Certificate 10900, provided that Nicholson and the Department agree on a design for such device. KBRT's obligation under the preceding sentence is limited to the amount of funding KBRT can secure for such purpose using reasonable efforts within two years after Nicholson and the Department agree on a design for such device. If Nicholson and the Department do not agree on a design within two years from the date of this Agreement, KBRT's obligations under this paragraph are deemed satisfied.

h) The Final Order on T-11375 will not include a condition requiring installation of a fish screen at the point of diversion for Certificate 10900; however, if a fish screen becomes required, as a result of the exercise of other state or federal regulatory authority, in order to divert water under Certificate 10900 (and other certificates authorizing use of the Sevenmile Ditch point of diversion), KBRT will seek funding to provide, install, maintain, and pay all costs associated with such fish screen. Nicholson agrees (i) to cooperate in good faith with KBRT to obtain any permits or other authorizations necessary to install, operate, and maintain a fish screen, and (ii) that, to the extent allowed under applicable laws, KBRT will have control over the design, operation, and sources of funding for such fish screen, except that nothing in this sentence shall require Nicholson to forfeit any existing right he may have to rely on federal statutory easements for access to and use of the point of diversion. KBRT agrees to pursue a fish screen design that does not require relocating the authorized point of diversion for Certificate 10900, provided that the installation, maintenance, and costs associated with such design are economically feasible. A design is not economically feasible if the installation, maintenance, and costs associated with such design exceed the funding that can be secured by KBRT using reasonable efforts in the two years after a fish screen becomes required. If such design is not economically feasible, or if, in Nicholson's judgment the fish screen cannot be pursued without jeopardizing any rights Nicholson may have to rely

Jim Popson, JaCox Ranches	Date
Chrysten Lambert, KBRT	Date
Roger Nicholson, individually and on behalf of Productive Timberland LLC and NBCC LLC	Date
Tom Paul, acting Director Oregon Water Resources Dept	August 18, 2014 Date

Jim Popson, JaCox Ranches

Date 8/29/14

Chrysten Lambert, KBRT

Date

Roger Nicholson, individually and on behalf of
Productive Timberland LLC and NBCC LLC

Date

Tom Paul, acting Director
Oregon Water Resources Dept

Date August 18, 2014

Jim Popson, JaCox Ranches

Date

Chrysten Lambert, KBRT

August 28, 2014
Date

Roger Nicholson, individually and on behalf of Productive Timberland LLC and NBCC LLC

Date

Tom Paul, acting Director
Oregon Water Resources Dept

August 18, 2014
Date

Jim Popson, JaCox Ranches	Date
Chrysten Lambert, KBRT	Date
Roger Nicholson, individually and on behalf of Productive Timberland LLC and NBCC LLC	August 28, 2014 Date
Tom Paul, acting Director Oregon Water Resources Dept	August 18, 2014 Date