

SETTLEMENT AGREEMENT

This Settlement Agreement, ("Agreement") is dated as of January 27th, 2006 and is made by and among Robert L. and Robert C. Sheehy, Lloyd D. Reagan, Jack S. and Gloria D. Kleck nka Gloria D. Sheehy, Lyman F. Baker, Terry and Karen Mudd and Wright Hemp Hutchinson Ditch Improvement District (Protestants In the Matter of the Transfer Application T-8058 hereinafter Protestants and "the contest"), Michael A. Becker, and Oregon Water Trust (OWT). Protestants, Michael A. Becker, and OWT are herein sometimes referred to as the "Parties."

RECITALS

- A. OWT, on behalf of Becker, made an Application for Transfer of Water Right in August 1998. Protestants filed protests opposing the application. A contested case was held and on November 22, 2002 a Proposed Final Order was issued. Exceptions were filed by the Protestants and the Applicant filed responses to those exceptions.
- B. Protestants, Becker, and OWT wish to enter into a full and final settlement of all the issues raised in the contests and all the claims and allegations by Protestants contained therein.

NOW, THEREFORE, in consideration of their mutual promises as set forth in this Agreement, the receipt whereof is hereby acknowledged by the Parties, the Parties hereby agree as follows:

1. TERMS

- 1.0 As of the Effective Date, Protestants hereby voluntarily dismiss without prejudice their contests and exceptions to T-8058. Upon issuance by the Oregon Water Resources Department ("OWRD") of the final order approving Application T-8058 in the form attached hereto as Attachment 1, Proponents and Protestants agree not to challenge or appeal the final order or this Agreement.
- 1.1 The Effective Date of this Agreement shall be the date when the Final Order has been signed by the OWRD.
- 1.2 The Parties agree under T-8058 the rate protected for instream use shall be as follows:

Certificate 81172 (see Attachment 3):
13.63 acres transferred from irrigation to instream converted to a rate of .17 to be used from June 1 through September 28 which in total does not exceed 3.0 acre foot duty (per annum) per acre.

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Certificate 5811 (see Attachment 2):

9.7 acres transferred from irrigation to instream converted to a rate of .12 to be used each month from March 1 through October 31.

2. **NO ADDITIONAL TRANSFERS**

OWT and Becker agree to make no further applications to OWRD for transfer of Little Creek source waters or from its tributaries sooner than two years from the effective date of this Agreement.

3. **LIABILITY**

The Parties hereby release each other and each other's agents, witnesses, and affiants of any and all liability for actions, claims, statements and representations made related to the sale, purchase and transfer of the water rights and appurtenant property including but not limited to those statements made in the affidavits of cancellation, arising or accruing prior to the Effective Date of this Agreement.

4. **GENERAL PROVISIONS**

- 4.1 **Choice of Law:** This Agreement shall in all respects be interpreted, enforced, and governed by and construed in accordance with the laws of Oregon.
- 4.2 **Entire Agreement:** This Agreement will constitute the entire agreement among the parties with respect to the subject matter here as in all promises, representations, understandings, arrangements, and prior agreements relating to the subject matter are merged and superseded by this Agreement.
- 4.3 **Counterpart:** 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 of which together shall constitute one and the same Agreement. Delivery of an executed signature page to this Agreement by facsimile transmission shall be as effective as delivery of a manually signed counterpart of this Agreement.
- 4.4 **Attorney Fees:** Each party shall be responsible for his/her/its attorney fees and costs in these matters. In any action to enforce this Agreement, the prevailing party shall be awarded its attorney fees, costs, and expenses at trial or upon appeal.

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NOTARY PUBLIC FOR THE STATE OF ENGLAND
LONDON, ENGLAND
UNITED STATES OF AMERICA

I certify that on this 27th day of January 2006
personally appeared Robert L. Sheehy
who, upon producing satisfactory proof of
identification, acknowledged to me that the attached
instrument was executed freely and voluntarily.

Robert L. Sheehy

Robert L. Sheehy
Date: 27 JAN 2006

[Signature]

DOUGLASS R. BENNING
CONSUL
UNITED STATES OF AMERICA
LONDON, ENGLAND
COMMISSION INDEFINITE

Notary Public for the State of _____
My Commission Expires: _____

Dona G. Sheehy
Date: _____

Notary Public for the State of _____
My Commission Expires: _____

Lloyd D. Reagan
Date: _____

Notary Public for the State of _____
My Commission Expires: _____

Jack S. Kleck
Date: _____

Notary Public for the State of _____
My Commission Expires: _____

five
This document contains...pages,
Each initialed by the affiant/grantor

Robert L. Sheehy
Date: _____

Notary Public for the State of _____
My Commission Expires: _____

Dona G. Sheehy
Dona G. Sheehy
Date: 1-23-06

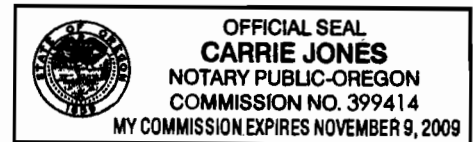
Carrie Jones
Notary Public for the State of Oregon
My Commission Expires: 11/9/2009

Lloyd D. Reagan
Lloyd D. Reagan
Date: 1-23-06

Keri S. Hagerman
Notary Public for the State of Oregon
My Commission Expires: 5/27/07

Jack S. Kleck
Jack S. Kleck
Date: 1/23/06

Carrie Jones
Notary Public for the State of Oregon
My Commission Expires: 11/09/2009

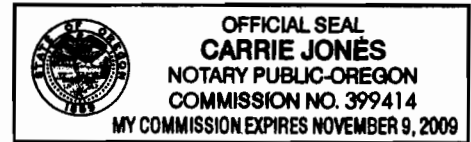


Gloria D. Kleck nka Gloria D. Sheehy
Date: 1-23-06



Carrie Jones
Notary Public for the State of Oregon
My Commission Expires: 11/9/2009

Lyman F. Baker
Date: 1-23-06



hB

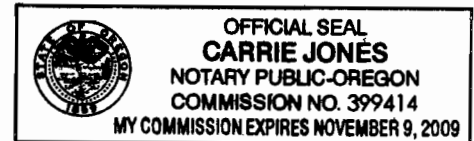
Carrie Jones
Notary Public for the State of Oregon
My Commission Expires: 11/09/2009

Terry L. Mudd
Terry Mudd
Date: 1-23-06



Carrie Jones
Notary Public for the State of Oregon
My Commission Expires: 11/9/2009

Karen Mudd
Karen Mudd
Date: 1-23-06



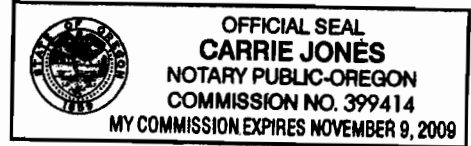
Carrie Jones
Notary Public for the State of Oregon
My Commission Expires: 11/9/2009

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W.B. Jenkins

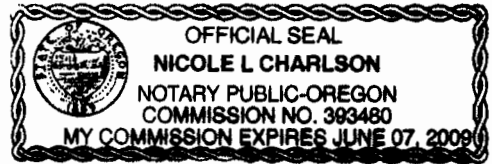
Representative for INITIAL WBJH
Wright Hemp Hutchinson Ditch Improvement District
Date: 1/23/06

Carrie Jones
Notary Public for the State of Oregon
My Commission Expires: 11/9/2009



William F Paulus
William F. Paulus for Oregon Water Trust
Date: 1/20/06

Nicole L. Charlson
Notary Public for the State of Oregon
My Commission Expires: 6/7/2009



Michael A. Becker
Michael A. Becker
Date: 1-23-06

Carrie Jones
Notary Public for the State of Oregon
My Commission Expires: 11/09/2009



BEFORE THE OREGON WATER RESOURCES DEPARTMENT

| | |
|---|----------------------------------|
| In the Matter of The Protest Against Transfer) | |
| Application T-8058) | |
|) | |
| Oregon Water Trust on behalf of Landowner,) | |
| Michael A. Becker, <i>Applicant</i>) | |
|) | |
| Robert L. and Robert C. Sheehy; Lloyd D.) | FINAL ORDER INCORPORATING |
| Reagan; Jack S. and Gloria D. Kleck; Lyman) | SETTLEMENT AGREEMENT AND |
| E. Baker; Terry and Karen Mudd; and Wright) | APPROVING TRANSFER |
| Hemp Hutchinson Ditch Improvement) | |
| District, <i>Protestants</i>) | |
|) | |

HISTORY OF THE CASE

On August 10, 1998, applicant Oregon Water Trust on behalf of landowner, Michael Becker, filed transfer application T-8058 with the Oregon Water Resources Department (OWRD or the Department), proposing to modify water rights evidenced by Certificate C-6236 and cancel supplementary rights evidenced by C-6236 and C-5811. The applicants subsequently filed amendments to the transfer application on May 24, 1999 and again on June 13, 2000. Protests to the application were timely filed by protestants Robert L. and Robert C. Sheehy (Robert C. Sheehy is now deceased and is succeeded in interest by Dona G. Sheehy); Lloyd D. Reagan; Jack S. and Gloria D. Kleck nka Gloria D. Sheehy; Lyman E. Baker; Robert L. Mudd (now deceased, succeeded in interest by Terry and Karen Mudd); and the Wright Hemp Hutchinson Ditch Improvement District (hereafter referred to collectively as “protestants”).

The Department initiated a contested case by its Notice of Hearing and Prehearing Conference dated October 3, 2000.

On April 24 and 25, 2002, a contested case hearing was held in this matter at the Union City Hall, Union, Oregon. The applicant Oregon Water Trust appeared through and with Attorney Douglas MacDougal. The Department appeared through and with Assistant Attorney General Shannon O’Fallon. Protestants appeared through and with attorney Laura A. Schroeder. Witnesses presented testimony through written direct

examination and rebuttal subject to cross-examination at hearing. Written closing arguments were submitted.

A proposed order was issued on November 22, 2002. Exceptions were filed by the Protestants and the Applicant filed responses to those exceptions.

Concurrent with these transfer proceedings, the parties stipulated to voluntary cancellation of portions of the rights subject to transfer. Pursuant to a stipulated agreement reached by the parties to the cancellation proceedings, The Oregon Water Trust amended its transfer application to reflect the voluntary reduction of the rights to be transferred instream.

Pursuant to ORS 183.415(5), the parties entered into a Settlement Agreement that resolves the protests to transfer application T 8058. Based on the Agreement, which is incorporated herein, and the record in this matter, the quantities to be transferred for the protection of instream flows are as follows:

| CERT. | PRIORITY DATE | ACRES | CFS | GPM | Volume (acre-foot) | SEASON | POINT OF DIVERSION |
|-------|---------------|--------------|-------------|------------|--------------------|------------|--------------------|
| 81172 | 1863 | 13.63 | .17 | 77 | 40.89 | 6/1 – 9/28 | Dobbins Ditch |
| 5811 | 1925 | 9.7 | .12 | 54 | 58.31 | 3/1– 10/31 | Taylor Green Ditch |
| | | Total | 0.29 | 131 | 99.2 | | |

Based on the record in this matter and the Settlement Agreement the proposed transfer as described above and in the Draft Certificates attached hereto is consistent with ORS 540.530 OAR 690-380-5000 and OAR 690-077-0065 to 690-077-0075.

ORDER

Therefore, pursuant to ORS 540.530 this transfer is approved and certificates consistent with the attached Draft Certificates shall issue.

DATED this _____ day of January, 2006.

Phillip C. Ward, Director
Oregon Water Resources Department

STATE OF OREGON

Attachment 2

COUNTY OF UNION

CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

STATE OF OREGON
WATER RESOURCES DEPARTMENT

Confirms the right to use the waters of Little Creek, tributary to Catherine Creek, for instream use for conservation, maintenance and enhancement of fish habitat.

This right was perfected under Permit S-6885. The date of priority is July 13, 1925. The amount of water to which this right is entitled is limited to an amount actually beneficially used, and shall not exceed 0.12 Cubic Foot per Second, or its equivalent in case of rotation, measured at the point of diversion, from March 1 through October 31.

The description of the stream reach in which flows are to be maintained is as follows:

From the location of the diversion authorized previously under Certificate 5811, located at:

| Twp | Rng | Mer | Sec | Q-Q | Survey Coordinates |
|-----|------|-----|-----|-------|---|
| 4 S | 39 E | WM | 13 | NE NW | Taylor Green Ditch – 1177 feet south and 50 feet west from the North ¼ corner of Section 13 |

To the mouth of Little Creek.

The instream right established by this transfer shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346

The right is subject to all other terms and conditions of Certificate 5811, and any related decree.

This certificate is issued to confirm a change in use and place of use approved by an order of the Water Resources Director recorded in Special Order Volume 67, Page ____ approving Transfer 8058, and along with Certificate _____ supersedes Certificate 5811, State Record of Water Right Certificates. This Certificate is being issued pursuant to Special Order Volume ____, Page ____.

WITNESS the signature of the Water Resources Director, affixed _____.

Phillip C. Ward, Director

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CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

STATE OF OREGON
WATER RESOURCES DEPARTMENT

Confirms the right to use the waters of Little Creek, tributary to Catherine Creek, for instream use for conservation, maintenance and enhancement of fish habitat.

This right was confirmed by decree of the Circuit Court of the State of Oregon for Union County. The decree is of record at Salem, in the Order Record of the Water Resources Department, in Volume 8, Page 1. The date of priority is 1863. The amount of water to which this right is entitled is limited to an amount actually beneficially used, and shall not exceed 0.17 Cubic Foot per Second, or its equivalent in case of rotation, measured at the point of diversion, from June 1 through September 28.

The description of the stream reach in which flows are to be maintained is as follows:

From the location of the diversion authorized previously under Certificate 81172, located at:

| Twp | Rng | Mer | Sec | Q-Q | Survey Coordinates |
|-----|------|-----|-----|-------|---|
| 4 S | 39 E | WM | 13 | SE NE | Dobbins Ditch – 1048 feet north and 39 feet west from the East ¼ corner of Section 13 |

To the mouth of Little Creek.

The instream right established by this transfer shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346

The right is subject to all other terms and conditions of Certificate 81172, and any related decree.

This certificate is issued to confirm a change in use and place of use approved by an order of the Water Resources Director recorded in Special Order Volume 67, Page _____, approving Transfer T-8058, and along with Certificate _____ supersedes Certificate 81172, State Record of Water Right Certificates. This Certificate is being issued pursuant to Special Order Volume _____, Page _____.

WITNESS the signature of the Water Resources Director, affixed _____.

Phillip C. Ward, Director

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