

MITIGATION PROJECT

(MP-28)

Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem Oregon 97310-1271
(503)986-0900
www.wrd.state.or.us

Application for Water Right

Transfer

Please type or print legibly in dark ink. If your application is found to be incomplete or inaccurate, we will return it to you. If any requested information does not apply to your application, insert "n/a." Please read and refer to the instructions when completing your application. Thank you.

APPLICATION FOR:

Please check one		
<input checked="" type="checkbox"/> Water Right Transfer	<input type="checkbox"/> Temporary Transfer (# of years _____)	<input type="checkbox"/> Drought Transfer
<input type="checkbox"/> Permit Amendment		<input type="checkbox"/> Government Action Point of Diversion

1. APPLICANT INFORMATION

Name Emmett Ranch, LLC
First Last

Address: PO Box 1830

Bend Or 97701
City State Zip

Phone 541-385-6005 541-322-9528
Home Work Other

*Fax 541-617-5292 *E-Mail address: shortsales@usa.com
**Optional information*

2. AGENT INFORMATION

(The agent listed is authorized to represent the applicant in all matters relating to this transfer application)

Name Creative Water Solutions, LLC (Tammy Sailors)
First Last

Address: 64154 Pioneer Loop

Bend, OR 97701
City State Zip

Phone 541-617-8936 (541) 815-0203
Home Work Other

*Fax (541) 617-8937 *E-Mail address: dandt@deschutes.net
**Optional information*

T-9829 MP-28

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3. TYPE OF CHANGE

- Use Place of Use Point of Diversion Point of Appropriation
- Historic Point of Diversion Substitution Surface Water to Ground Water

Reason for Change: To transfer water from irrigation to permanent in stream for MITIGATION CREDITS

4. AFFECTED DISTRICTS AND LOCAL GOVERNMENTS

Is the affected water right located within or served by an irrigation or other water district?

Yes No (The water right is on Low Line Ditch Company's Certificate, but not actually served by the district. A POD switch was done. See certificates 43547 (attached as exhibit A)

Will the affected water right be located within or served by an irrigation or other water district after the proposed transfer?

Yes No If yes for either, list the name and mailing address of each district:

Low Line Ditch Company is a small irrigation district consisting of 9 landowners and 1 canal. Originally all 9 landowners shared the canal. In 1976, 3 landowners switched POD by pumping directly from the river and vacated the canal easements. At that time, Low Line Ditch company ceased delivering water to these 3 landowners. Emmett Ranch is one of the landowners. There is no delivery system from Low Line Ditch company to this property. This POD switch is evidenced by certificates 43547 & 47267.

Attach the name and mailing address of all affected local governments (e.g., county, city, municipal corporation, tribal governments)

Permanent in stream transfer ; water rights currently in Crook County. Land Use form from Crook County attached as exhibit B.

Crook County Planning Department 300 NE 3rd Street, Room 11, Prineville, OR 97754

5. CURRENT WATER RIGHT INFORMATION

Name on Permit, Certificate, or Decree: Low Line Ditch Company, listed as landowner J. W. Livingston

Decree: Crooked River Decree

Not applicable]

Permit Number: N/A

Not applicable]

Certificate Number: 43547

Not applicable]

Claim of Beneficial Use – Date Submitted N/A

Permit Amendment Only -

Completion Date of Permit: N/A

Requesting the Department to determine if the requirement for proof has been met.]

Priority Date: 1903

Authorized Use: domestic & stock use and irrigation. The total quantity being limited to four acre feet per acre.

Source of Water Crooked River

County ; Crook County

Are there other sources listed on the water right? Yes No

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Location of Authorized Point of Diversion or Point(s) of Appropriation:

Coordinates (from recognized survey corner)	1/4 1/4 Section	Section	Township	Range
270' North and 190' West from SE corner , section 20	SESE	20	14 S	14 E

Location of Authorized Place of Use: (Only list portion of water right subject to transfer)

Township	Range	Section	Government Lot or DIC	1/4 1/4 Section	Tax Lot Number	Acres (if appropriate)
14S	14E	28	N/A	NW NW	201 (formerly tax lot 200)	16.71

Are there other lands described in the water right? Yes No

Are there other water rights or permits associated with this land? Yes No
(supplemental rights, etc.) If yes, include a copy of all rights or permits.

Description the current water delivery system (n/a Permit Amendment). The description must demonstrate that the applicant is ready, willing, and able to exercise the right. Include information on the capacity of any pumps, canals, and pipelines used to divert and convey the water to the authorized place of use.

Current water delivery system is 30 hp turbine pump. Pacific Power has provided a separate electrical service for this pump. The pump feeds buried main lines that feed motorized wheel lines. Pump capacity is 1.5 cfs

System capacity (in cfs): 1.5 cfs for entire system – other water rights being pumped from same pump.

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6. PROPOSED CHANGES TO THE WATER RIGHT

■ **Change in Character of Use:** (n/a Permit Amendment)

Proposed use: Permanent transfer in-stream- Deschutes River- For Mitigation Credits

□ **Change in Point of Diversion or Point of Appropriation:**

- | | | |
|--|---|---|
| <input type="checkbox"/> Change
Old point of diversion or point of appropriation will not be used for this portion of the water right. | <input type="checkbox"/> Additional
Both old and new points of diversion or points of appropriation will be used for this portion of the water right. | <input type="checkbox"/> Surface to Ground Water.
New POA will replace old POD. |
|--|---|---|

Location of Proposed Point of Diversion or Point of Appropriation

Coordinates (from recognized survey corner)	1/4 1/4 Section	Section	Township	Range
N/A				

■ **Change in Place of Use:**

Location of Proposed Place of Use

Township	Range	Section	Government Lot or DIC	1/4 1/4 Section	Tax Lot Number	Acres (if appropriate)
Permanent	In stream	transfer				

Shaping of Instream water right: Crooked River, tributary to the Deschutes River in the Deschutes Basin. Water right to be protected from the authorized POD to Lake Billy Chinook.

Total Volume in acre feet: 71.6 (not to exceed 4 acre feet per acre)

Rate (in cfs) 0.22 (1/80 of 1 cfs/acre)

The in stream flow will be allocated on a daily average basis up to the described rate from 5/21 through 10/31.

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Identification of the public use for which the instream right is desired pursuant to OAR 690-77-0077 (2)(b). Those public uses include:

- (1) recreation,
- (2) pollution abatement,
- (3) conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and any other ecological values.

Remarks:

MITIGATION PROJECT – Permanent transfer in-stream for mitigation credits.

Instream Lease # L-579 MP-26 to be cancelled concurrently with issuance of transfer final order.

MITIGATION CREDITS to be issued to Emmett Ranch, LLC.

Transfer order issuance to be concurrent with issuance of MITIGATION CREDITS

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7. LAND OWNERSHIP

Answer only if for change in **Character of Use** or **Place of Use.**

Use/Place of Use

Are there any lien holders identified in the Lot Book Report? Yes No

Title report & Warranty deed attached in lieu of Lot Book Report : exhibit C

If yes, list the name and address of lien holder for land water is appurtenant to: No lien holder - N/A

If yes, the applicant must provide written notification of the proposed transfer to each lien holder. N/A

Answer only if the applicant is **not** the landowner

Landowners

This section does not apply to water delivery entities authorized to act on behalf of their members, making permit amendment requests, or requests for changes in point of diversion or point of appropriation only.

Landowners: NA, applicant is landowner

(List all landowners shown on deed)

The application must include notarized statements granting permission for the transfer from each land landowner listed on the Lot Book Report. Attach extra sheets as necessary.

Answer only if the receiving landowner is **not** the original landowner or the applicant.

Receiving Landowner

Name: State of Oregon – Permanent In stream Transfer for Mitigation Credits. Credits to be issued to Emmett Ranch, LLC

Address: PO Box 1830

Bend Oregon 97709
City State Zip

- The Department's records should be changed to show this landowner is responsible for completion of the changes. This includes perfection of the changes after the final order is issued. All notices and correspondence should be sent to this landowner.
- The applicant will remain responsible for completion of changes. Notices and correspondence should continue to be sent to the agent.

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8. EXHIBITS

Application may be rejected if all appropriate exhibits are not enclosed.

Land Use Information Form:

- Enclosed – **Exhibit B**
- Not needed: (must meet the following four requirements)
 - In EFU zone or irrigation district,
 - Change in place of use only,
 - No structural changes needed, including diversion works, delivery facilities, other structures, and
 - Irrigation only.

Map: **Exhibit D**

- Water Right Transfer: *Must be prepared by a Certified Water Right Examiner.*
- All others: *Need not be prepared by a Certified Water Right Examiner.*

Lot Book Report: **Title report & Warranty deed attached in lieu of lot book report: Exhibit C**

- (n/a Permit Amendment)
- A lot book report for the land to which the water right is appurtenant prepared by a title company. If the applicant is not the land owner as shown by the lot book report, the applicant shall provide a notarized and signed statement from the land owner authorizing the change.

Evidence of use within last five years, or not subject to forfeiture:"

- (n/a Permit Amendment)
- Evidence that the water has been used over the past five years in accordance with the terms and conditions of the right or that the right is not subject to forfeiture under ORS 540.610. **Exhibit E**

Water Well Reports:


- If application is for a change in point of appropriation or change from surface water to ground water, attach copies of all water well reports. If reports are not available, describe construction details including well depth, static water level, and information necessary to establish the ground water body developed or proposed to be developed.

Fees:

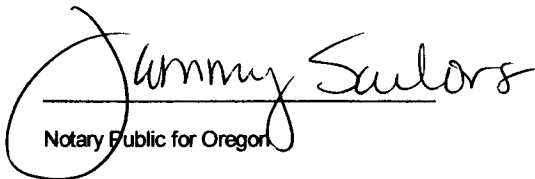
- Amount enclosed **\$ 350.00 ****
 ** Pursuant to OAR 690-380-3400
Waiver letter attached as exhibit F

9. SIGNATURE

I (we) swear that I (we) have read the above application and the statements made are true and accurate.


 Emmett Ranch, LLC By: John Short date 10-28-04

Subscribed and sworn to before me this 28th day of October 2004


 Notary Public for Oregon



My Commission Expires 8-29-2005

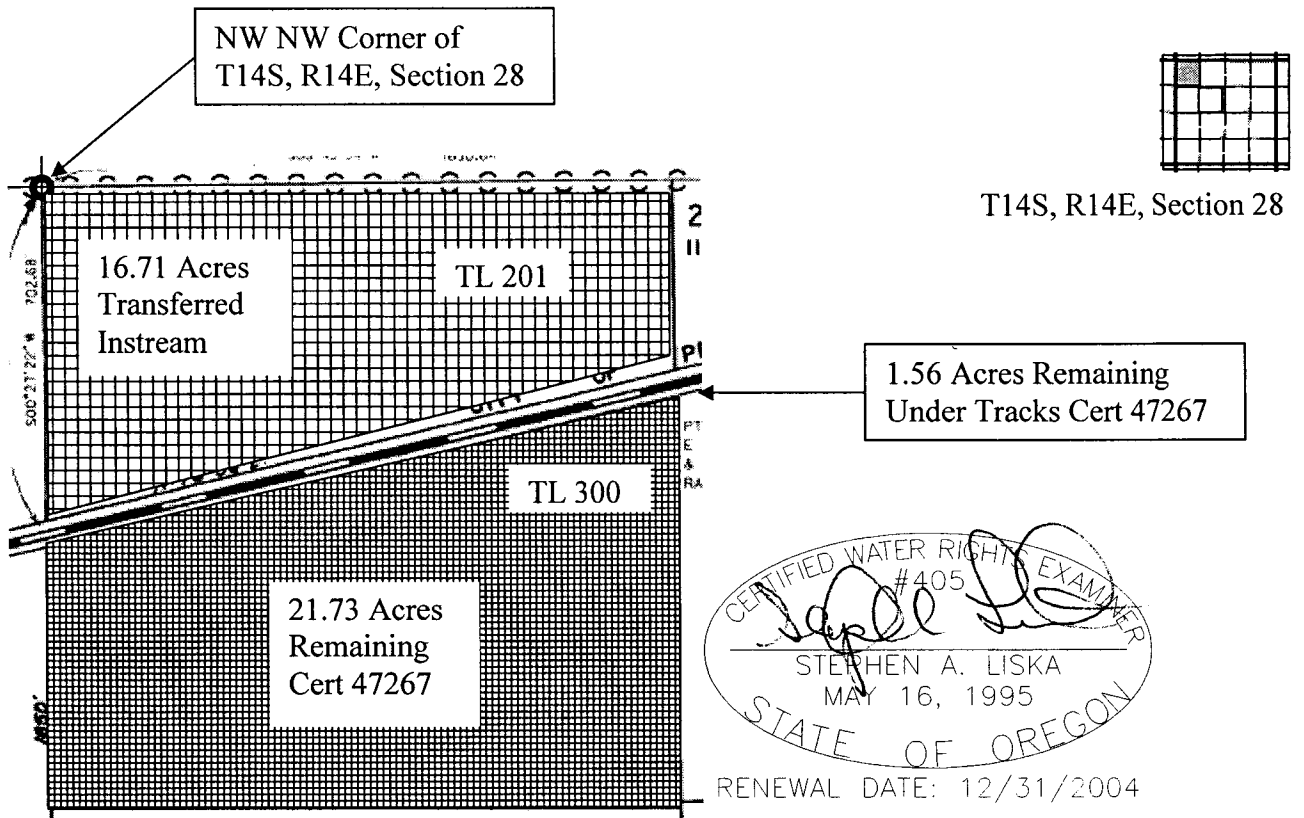
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Water Right Map
 For
 Emmett Ranch, LLC

Water Rights Transferred Instream Remaining Water Rights Approximate Marker Location

T14S R14E Section 28, NW 1/4, NW 1/4, Tax Lot 00300

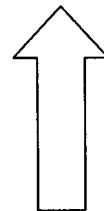
1 inch equals 400 feet

November 30, 2004

Deschutes Irrigation, LLC

P.O. Box 1830
 Bend, OR 97709
 541-389-2857
 waterrights@usa.com

NORTH

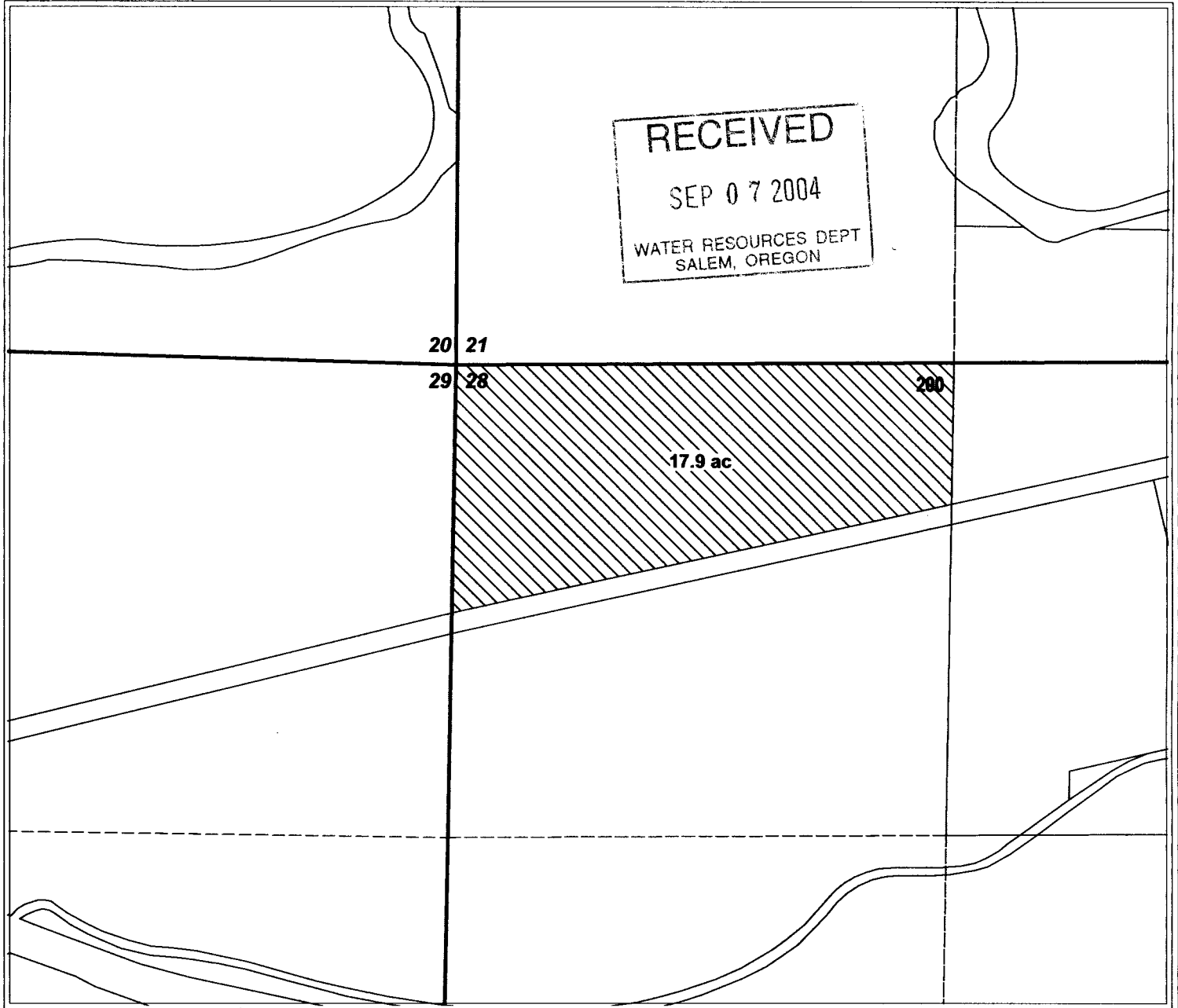
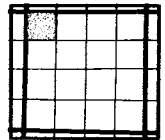


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
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INSTREAM WATER RIGHT TRANSFER MAP

T14S. R14E. SECTION 28



for Emmett Ranch
Tax Lot 200 - 17.9 acres

 Area to be transferred ----- Quarter-Quarter Lines

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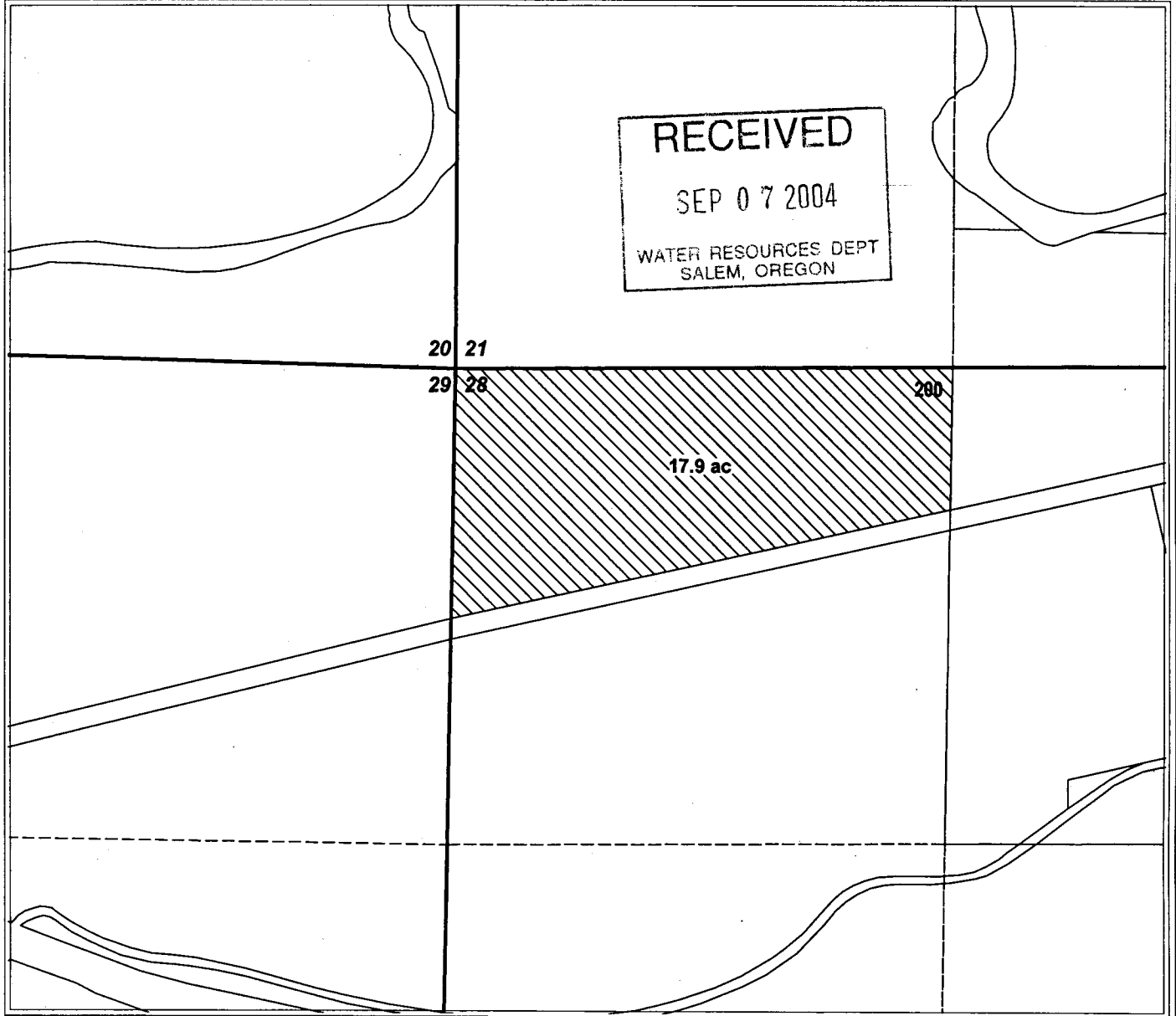
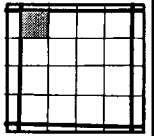


1 inch equals 400 feet

Date Created: May 24, 2004

INSTREAM WATER RIGHT TRANSFER MAP

T14S. R14E. SECTION 28



APPLICATION FOR INSTREAM LEASE for Emmett Ranch Tax Lot 200 - 17.9 acres



Area to be Leased



Quarter-Quarter Lines

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1 inch equals 400 feet

Date Created: May 24, 2004

(or umpire) can reasonably do so, the hearing shall be conducted within ninety (90) days after first written notice of a claim and intent to arbitrate is received from the party demanding arbitration, unless the arbitrator (or umpire) for good cause grants a continuance. The arbitrator's (or umpire's) award shall issue no later than thirty (30) days after close of the arbitration proceeding. The prevailing party (as that term is defined by Oregon statutes and the decisions of Oregon appellate courts) in any arbitration proceeding shall recover from the losing party reasonable costs of arbitration, including reasonable expert witness fees and reasonable attorneys' fees. Any award of the arbitrator (or umpire) may be reduced to judgment and filed as provided under ORS 36.300 through ORS 36.365. The arbitration hearing shall take place in Bend, Oregon. In the event either party commences an action of suit based on this Agreement, its terms or provisions, or upon the limited liability company relationship thereby, the foregoing arbitration clause shall constitute a bar or defense thereto. Should the arbitration clause be raised as a basis for dismissal of the action or suit, the prevailing party shall be entitled to costs and reasonable attorneys' fees incurred in litigating the merits of the alleged bar or defense. Such fees shall be set by the court.

12.13 Counsel's Representation. This Agreement was prepared by Lane D. Lyons, Bryant, Lovlien & Jarvis, PO Box 1151, Bend, Oregon 97709-1151, who has represented only VSN Properties, LLC, in this transaction, and acted solely in the interests of VSN Properties, LLC, in this transaction. Each other Member acknowledges that they have been advised of these facts and that each of them has declined the specific advice to seek their own counsel in this matter.

WHEREFORE, the undersigned Member(s) have caused this Operating Agreement to be executed and effective as of November 11, 2003.

INITIAL MEMBERS:

VSN PROPERTIES, LLC

BY: Brian Stevens
BRIAN STEVENS, MEMBER

Diana W. Short
DIANA W. SHORT

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contribution call made pursuant to this Section 3.2 shall be made available to all Members in proportion to their respective percentage ownership interests. In order to make a voluntary capital contribution call, the Managers shall give to each Member written notice of the amount of the call. Any Member who elects to make a voluntary additional capital contribution shall pay such amount to the Company within sixty (60) days after the notice of the call. If any Member elects not to make an additional capital contribution, the Managers shall give notice to the remaining Members, who shall have thirty (30) days in which to elect to contribute their pro rata shares of the additional capital contribution not made by such Member. In the event that one or more Members do not participate in any capital call pursuant to this section, the Units of the contributing Members shall be adjusted upwards proportionately to reflect their contributions.

3.3 Capital Accounts, Economic Rights and Unit Holders. A separate capital account will be maintained for each Unit in accordance with Treas. Reg. Section 1.704-1(b)(2)(iv) (and, where applicable, Treas. Reg. Section 1.704-3(d)(2)). Any successor to a Unit's rights to distributions under Articles 7, 9, and 10 (referred to herein as the Unit's "economic rights") shall succeed to the Unit's capital account, and the holder of the capital account at any time shall be referred to as the "Unit holder" for such Unit. A Member's contributions to capital shall be allocated, pro rata, among the Units as to which the Member is the Unit holder at the time of contribution. ORS 63.185(4) shall not apply to any admission of additional Members. However, the Members shall have the option of revaluing Company properties for capital account purposes in accordance with Treas. Reg. Section 1.704-1(b)(2)(iv)(f) under the circumstances specified therein (e.g., a capital contribution made in return for Units, or a distribution made in connection with the liquidation of some or all of a Unit holder's Units).

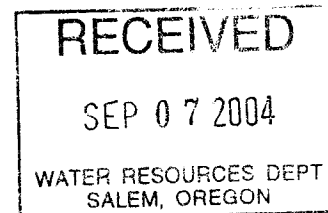
3.4 No Interest on Capital Contributions. No interest shall be paid on capital contributions.

3.5 Member Liability and Indemnification. Except as otherwise provided by law, the Articles, or this Agreement, a Member shall have no personal liability, merely as a Member, for any liabilities or losses of the Company beyond the Member's contributions and any Company debt guaranteed by the Member. The Company shall indemnify the Members for all costs, losses, liabilities, and damages paid or accrued by such Member in connection with the business of the Company or because the Member is a Member and shall advance expenses incurred by the Member in connection with the business of the Company or any legal action arising from action taken by the Member in connection with the business of the Company, all to the fullest extent provided or allowed by the laws of Oregon.

**ARTICLE 4
MANAGEMENT OF COMPANY BY MANAGERS.**

4.1 Number and Qualifications of Managers. The Company shall be managed by Managers. The number of Managers shall be the number elected by the Members from time to time, but shall not be less than two. Managers may be individuals or entities, and need not be Members of the Company. The initial Managers of the Company shall be Brian Stevens and John Short.

1-9829



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4.2 Election of Managers. Managers shall be elected and removed by a vote of Members holding a majority of the total Units of the Company at meetings of Members called for the purpose of electing Managers. The notice of any such meeting must state that the purpose, or one of the purposes, of the meeting is election of Managers. A Manager shall serve for a term ending when the Members next hold a meeting at which Managers are elected, or until the Manager's earlier death, resignation, or removal. A meeting of Members for the purpose of electing Managers may be called by any Manager or by Members owning not less than forty nine percent (49%) in ownership interest of Company.

4.3 Authority. Subject to restrictions that may be imposed from time to time by the Managers or Members, a Manager shall be an agent of the Company with authority to bind the Company in the ordinary course of its business. Notwithstanding the foregoing, any expenditure of Company funds in excess of \$2,500 must be agreed to, and any check thereof signed, by both managers. Notwithstanding ORS 63.150(3), Members shall only be entitled to vote on or consent to those matters submitted by the Managers to a vote or consent of the Members, which shall include (without limitation) taking or approving any action or transaction which is reserved to the Members by the Articles or this Agreement. Notwithstanding the foregoing, and other provisions herein to the contrary, the Managers shall have no authority to bind the Company as to the following matters without the prior approval of the Members holding a majority of Units:

4.3.1 Sale, lease, exchange, mortgage, pledge, or other transfer or disposition of assets of the Company;

4.3.2 Merger of the Company with another entity;

4.3.3 Amendment to the articles of organization or this Agreement;

4.3.4 Incurring indebtedness by the Company, however the Managers may negotiate the terms of indebtedness on behalf of the Company prior to submitting it to a vote of the Members;

4.3.5 A change in the nature of the business of the Company; or

4.3.6 Expending funds of the Company for anything other than development of the Property, or any expenditure in the ordinary course of business where such expenditure, or any course of such expenditures, will exceed \$ 5,000.00.

4.4 Other Activities. Managers may have other business interests and may engage in other activities in addition to those relating to the Company. This Section does not abrogate each Manager's duty to act in a manner that the Manager reasonably believes to be in the best interests of the Company.

4.5 Actions By Managers. The Managers shall exercise their rights and powers on a unanimous basis unless otherwise agreed by the Members. In the absence of an agreement among the Managers, the following shall apply:

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Before you submit your application be sure you have:

- Answered each question completely.
- Attached a legible map which includes township, range, section ,quarter/quarter and tax lot number.
- Included the necessary exhibits.
- Included a check payable to the Oregon Water Resources Department or the appropriate amount.

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For Local Government Use Only

The following section must be completed by a planning official from each county and city listed unless your project will be located entirely within the city limits. In this case, only the city planning agency must complete this form. Please request additional forms as needed or feel free to copy.

A. Allowed Use

Check the appropriate box below and provide requested information.

- Land uses to be served by proposed water uses (including proposed construction) are allowed outright or are not regulated by your comprehensive plan. Cite applicable ordinance section(s); 3.020. Go to section B "Approval" below
- Land uses to be served by proposed water uses (including proposed construction) involve discretionary land use approvals as listed in the table below.

Type of Land Use Approval Needed (e.g. plan amendments, rezones, conditional use permits, etc.)	Cite Most Significant, Applicable Plan Policies & Ordinance Section References	Check the item that applies: Land Use Approval:	
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being pursued <input type="checkbox"/> Not being pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being pursued <input type="checkbox"/> Not being pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being pursued <input type="checkbox"/> Not being pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being pursued <input type="checkbox"/> Not being pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being pursued <input type="checkbox"/> Not being pursued

Note: Please attach documentation of applicable local land use approvals which have already been obtained. (Record of Action plus accompanying findings is sufficient.)

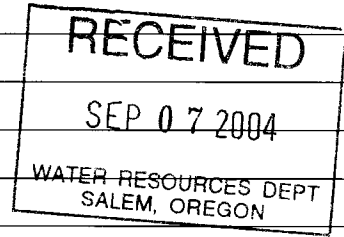
B. Approval

Please provide printed name and written signature.

Name: Gordon Moore Date: 8/11/04
 Title: Assistant Director Phone: 541-447-8156
 Signature: Gordon Moore

C. Additional Comments

Local governments are invited to express special land use concerns or make recommendations to the Department regarding this proposed use of water below, or on a separate sheet.



Note: If this form cannot be completed while the applicant waits, sign and detach the receipt stub as instructed below. You will have 30 days from the Water Resources Department's notice date to return the completed Land Use Information Form or WRD will presume the land use associated with the proposed water right is compatible with local comprehensive plans. (See attached letter.)

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Oregon Water Resources Department Land Use Information Form

This information is needed to determine compatibility with local comprehensive plans as required by ORS 147.800. The Water Resources Department will use this and other information to evaluate the water use application. DO NOT fill out this form if water is to be diverted, conveyed, or used only on federal lands.

To Be Completed By Applicant

The following section includes information about proposed water use. This section must be completed by the individual or group that is filing an application for a water right with the Water Resources Department.

A. Applicant

Name: Emmett Ranch, LLC - John Short Manager

Address: P.O. Box 1830

City: Bend State: OR Zip: 97709 Day Phone: 541-322-9528

B. Land and Location

Please provide information as requested below for all tax lots on or through which water will be diverted, conveyed, or used. Check "diverted" if water is diverted (taken) from its source on tax lot, "conveyed" if water is conveyed (transported) on tax lot, and "used" if water will be put to beneficial use on tax lot. More than one box may be checked. (Attach extra sheets as necessary.) Applicants for municipal use, or irrigation uses within irrigation districts, may substitute existing and proposed service area boundaries for the tax lot information requested below.

Tax Lot I.D.	Plan Designation (e.g. Rural Residential/RR-5)	Water to be: (check all that apply)		
<u>141428</u>	<u>TL 201 EFU-2</u>	<input checked="" type="checkbox"/> Diverted	<input type="checkbox"/> Conveyed	<input type="checkbox"/> Used
		<input type="checkbox"/> Diverted	<input type="checkbox"/> Conveyed	<input type="checkbox"/> Used
		<input type="checkbox"/> Diverted	<input type="checkbox"/> Conveyed	<input type="checkbox"/> Used

List counties and cities where water is proposed to be diverted, conveyed, or used. Crook

C. Description of Water Use

Indicate what the water will be used for. Include the beneficial use (found in the instruction booklet for your water right application) and use the space below to describe the key characteristics of the project.

Beneficial Use(s): Permanent instream transfer.

Briefly describe: Water rights on this tax lot are being permanently transferred back in to the Crooked River for mitigation credits.

D. Source

Indicate the source for the proposed water use:

Reservoir/Pond Ground Water Surface Water Crooked River
(source)

E. Quantity

Indicate the estimated quantity of water the use will require:

0, 21 CFS GPM Acre-Feet

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**OPERATING AGREEMENT
OF
EMMETT RANCH, LLC**

**ARTICLE 1
FORMATION OF COMPANY**

1.1 Name. The name of the limited liability company (the "Company") is **EMMETT RANCH, LLC.**

1.2 Formation. The Company was formed on November 10, 2003, pursuant to ORS Chapter 63 (the "Act") when its Articles of Organization ("Articles") were filed with the office of the Secretary of State.

1.3 Principal Place of Business. The Company's principal place of business is 855 SW Yates Drive, Ste 102, Bend, Oregon, 97702.

1.4 Registered Office and Registered Agent. The Company's registered agent in Oregon is Lane D. Lyons, 591 SW Mill View Way, Bend, Oregon 97702. The registered office and/or registered agent may be changed by the Members as provided in ORS 63.114(1).

1.5 Defects as to Formalities. A failure to observe any formalities or requirements of this Agreement, the Articles or the Act shall not be grounds for imposing personal liability on the Members for liabilities of the Company.

1.6 Rights of Creditors and Third Parties. Except as provided by statute, no creditor or third party shall have any rights or interest in the Company.

**ARTICLE 2
BUSINESS OF COMPANY**

2.1 Business. The business of the Company shall be to:

2.1.1 Acquire, develop, and sell the real property commonly known as 18400 NW O'Neil HWY, Redmond, Oregon, the "Property," and any other property selected and approved by the Managers; and

2.1.2 Carry on any other lawful business or activity which may be conducted by a limited liability company organized under the Act.

2.2 Title to Property. All property, both real and personal, owned or acquired by the Company shall be owned in the name of the Company, and not in the name(s) of any Member.

T-9829

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WATER RESOURCES DEPT
SALEM, OREGON

Exhibit A

STATE OF OREGON

COUNTY OF CROOK

CERTIFICATE OF WATER RIGHT

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WATER RESOURCES DEPT
SALEM, OREGON

This Is to Certify, That

LOW LINE DITCH COMPANY

of Prineville, State of Oregon, 97754, has
a right to the use of the waters of
Crooked River

a tributary of Deschutes River for the purpose of
irrigation of 181.8 acres, domestic and stock use

and that said right has been confirmed by decree of the Circuit Court of the State of Oregon for
Crook County, and the said decree entered of record at Salem, in the Order Record of
the WATER RESOURCES DIRECTOR, in Volume 1, at page 449; that the priority of the
right thereby confirmed dates from 1903;

that the amount of water to which such right is entitled, for the purposes aforesaid, is limited to an
amount actually beneficially used for said purposes, and shall not exceed a reasonable amount
for domestic and stock use, and 2.27 cubic feet per second for irrigation, the
total quantity being limited to four acre feet per acre during each year. The
use hereunder shall conform to any reasonable rotation system ordered by the
proper state officer.

The point of diversion is located in the SE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 24, T. 14 S., R. 14 E., W. M.

A description of the place of use under the right, and to which such right is appurtenant, is as
follows:

Name of User through Company's Works	Acres	Description of Lands
V. Butler	15.0	15 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 22, T. 14 S., R. 14 E., W. M.
J. W. Livingston	70.8	25 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$, 27.9 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$, 17.9 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 28, T. 14 S., R. 14 E., W. M.
T. F. McCallister	96.0	32 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$, 5 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$, 19 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$, 40 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 22, T. 14 S., R. 14 E., W. M.

An order of the Water Resources Director entered May 25, 1976 approved a change
in point of diversion for the irrigation of 34.2 acres. This certificate is
issued to confirm the remaining right not involved in the change and supersedes
the certificate heretofore issued to Low Line Ditch Company recorded at Page 36478,
Volume 28, State Record of Water Right Certificates.

And said right shall be subject to all other conditions and limitations contained in said decree.
The right to the use of the water for the purposes aforesaid is restricted to the lands or place of
use herein described, and is subject to the existing minimum flow policies established
by the Water Policy Review Board. WITNESS the signature of the Water Resources Director, affixed

this date August 30, 19 76.

James E. Saxon
Water Resources Director

Recorded in State Record of Water Right Certificates, Volume 35, page 43547

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Exhibit A

STATE OF OREGON

COUNTY OF CROOK

CERTIFICATE OF WATER RIGHT

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WATER RESOURCES DEPT SALEM, OREGON

This Is to Certify, That LGW LINE DITCH COMPANY

of Prineville, State of Oregon, 97754, has a right to the use of the waters of Crooked River

a tributary of Deschutes River for the purpose of irrigation of 34.2 acres,

and that said right has been confirmed by decree of the Circuit Court of the State of Oregon for Crook County, and the said decree entered of record at Salem, in the Order Record of the WATER RESOURCES DIRECTOR, in Volume 1, at page 449; that the priority of the right thereby confirmed dates from 1903

that the amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 0.43 cubic foot per second, the total quantity being limited to four acre feet per acre during each year. The use hereunder shall conform to any reasonable rotation system ordered by the proper state officer.

The point of diversion is located in the SE 1/4 SE 1/4, Section 20, T. 14 S., R. 14 E., W. M., 270 feet North and 190 feet West from the SE Corner, Section 20

A description of the place of use under the right, and to which such right is appurtenant, is as follows:

- 7.1 acres NE 1/4 NW 1/4
 - 22.1 acres NW 1/4 NW 1/4
 - 5.0 acres SW 1/4 NW 1/4
- Section 28
T. 14 S., R. 14 E., W. M.

This certificate is issued to confirm a change in point of diversion approved by an order of the Water Resources Director entered May 25, 1976 and together with certificate of water right recorded on page 43547, Volume 35, State Record of Water Right Certificates supersedes certificate of water right recorded on page 36478, Volume 28, State Record of Water Right Certificates.

The issuance of this superseding certificate does not confirm the status of the water right in reference to ORS 540.610.

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And said right shall be subject to all other conditions and limitations contained in said decree. The right to the use of the water for the purposes aforesaid is restricted to the lands or place of use herein described.

WITNESS the signature of the Water Resources Director, affixed

this date January 29, 1979.

[Signature] Water Resources Director

Recorded in State Record of Water Right Certificates, Volume 40, page 47267

T-9829



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WATER RESOURCES DEPT
SALEM, OREGON

WESTERN TITLE & ESCROW
153 SW 5TH
REDMOND, OR 97756

Attn: JUDY SWIFT

Date:
Escrow Number:
Escrow Officer:
Title Number:
Title Officer:
Your Reference:

November 21, 2003

0067034
HOPE BRIDGES

REPORT NO. 1

PRELIMINARY TITLE REPORT FOR:

Property Address:
UNKNOWN
PRINEVILLE OR 97754

Policy or Policies to be issued:
OWNER'S STANDARD COVERAGE

<u>Liability</u>	<u>Premium</u>
\$200,000.00	\$705.00

Proposed Insured: JOHN SHORT

We are prepared to issue First American Title Insurance Company of Oregon policies, in the form and amounts above, insuring the title to the land described as follows:

Located in CROOK COUNTY, OREGON:

See exhibit A hereto attached:

and dated as of November 4, 2003 at 8:00 A.M., title is vested in:

JERRY L. RANK

The estate or interest in the land described or referred to in this Commitment and covered herein is:

FEE SIMPLE

T-9829

Schedule B of the policy(ies) to be issued will contain the following general and special exceptions unless removed prior to issuance:

GENERAL EXCEPTIONS:

1. *Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records; proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.*
2. *Any facts, rights, interest, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.*
3. *Easements, encumbrances, or claims thereof, not shown by the public records, unpatented mining claims, reservations or exceptions in patents or in acts authorizing the issuance thereof, water rights, claims or title to water.*
4. *Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records.*
5. *Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose.*

SPECIAL EXCEPTIONS:

6. Unpaid taxes plus interest due Crook County for fiscal year 2003-2004:

<u>Code</u>	<u>Map No.</u>	<u>Tax Lot No.</u>	<u>Ref. No.</u>	<u>Amount Due</u>
26	14-14-28	200	476	\$923.35 (plus interest)
1	14-14-21	200	459	142.28 (plus interest)

7. Existing rights of way for roads, highways, irrigation ditches, canals, and pole lines.
8. As disclosed by the tax roll, the premises herein described have been zoned or classified for farm use. At any time that said land is disqualified for such use, the property will be subject to additional taxes or penalties and interest.
9. Reservations contained in Patents from the United States of America.
10. Any adverse claim based upon the assertion that:
 - a. Any rights of the Federal Government, the State of Oregon, and the general public in and to that part of Crooked River lying below the high water line.
 - b. Said land or any part thereof is now or at any time has been below the ordinary high water mark of the Crooked River.
 - c. Some portion of said land may have been created by artificial means or has accreted to such portion so created.
 - d. Some portion of said land may have been brought within the boundaries thereof by an avulsive movement of the Crooked River, or has been formed by accretion to any such portion.

11. An Easement created by instrument, subject to the terms and provisions thereof:
 Recorded: May 31, 1950
 Book/Page No.: Book 64 of Deeds at page 160 (Records of Crook County, Oregon)
 In Favor of: The Pacific Telephone and Telegraph Company, a California corporation
 (As to Tract II)
12. A Right of Way Easement created by instrument, subject to the terms and provisions thereof:
 Recorded: April 16, 1951
 Book/Page No.: Book 66 of Deeds at page 57 (Records of Crook County, Oregon)
 In Favor of: Pacific Power & Light Company, a corporation
 (As to Tract II)
13. An Easement created by instrument, subject to the terms and provisions thereof:
 Book/Page No.: Book 66 of Deeds at page 55 (Records of Crook County, Oregon)
 In Favor of: Pacific Power & Light Company
 (As to Tract I)
14. Terms and provisions of an easement for an underground irrigation water line and pump site over and across a strip of land ten feet in width as disclosed by instrument:
 Recorded: September 3, 1975
 Microfilm No.: 32351 (Records of Crook County, Oregon)
 And corrected by Easement:
 Recorded: January 1, 1976
 Microfilm No.: 33881 (Records of Crook County, Oregon)
 (As to Tracts I and II)
15. A Mortgage executed according to its terms:
 Dated: June 11, 1998
 Recorded: June 11, 1998
 Microfilm No.: 141470 (Records of Crook County, Oregon)
 Lender: Zions First National Bank
 Borrower: Jerry L. Rank
 Amount: \$380,000.00
 (As to Tracts I and II and Includes Additional Property)

TOGETHER WITH an Assignment of Note and Mortgage, subject to the terms and provisions thereof:

Dated: June 11, 1998
 Recorded: June 11, 1998
 Microfilm No.: 141471 (Records of Crook County, Oregon)
 Assignor: Zions First National Bank
 Assignee: U.S. Bank Trust, National Association

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T-9829 End of Exceptions

0067034


Page 3 of 6

NOTE: Before signing for or accepting the subject property, the person acquiring fee title to the property should check with the appropriate City or County Planning department to verify approved uses and to determine any limits concerning new construction.

NOTE: We found no judgments from our search on John Short.

This report is for the exclusive use of the parties herein shown and is preliminary to the issuance of a title insurance policy and shall become void unless a policy is issued and the full premium paid.

AmeriTitle



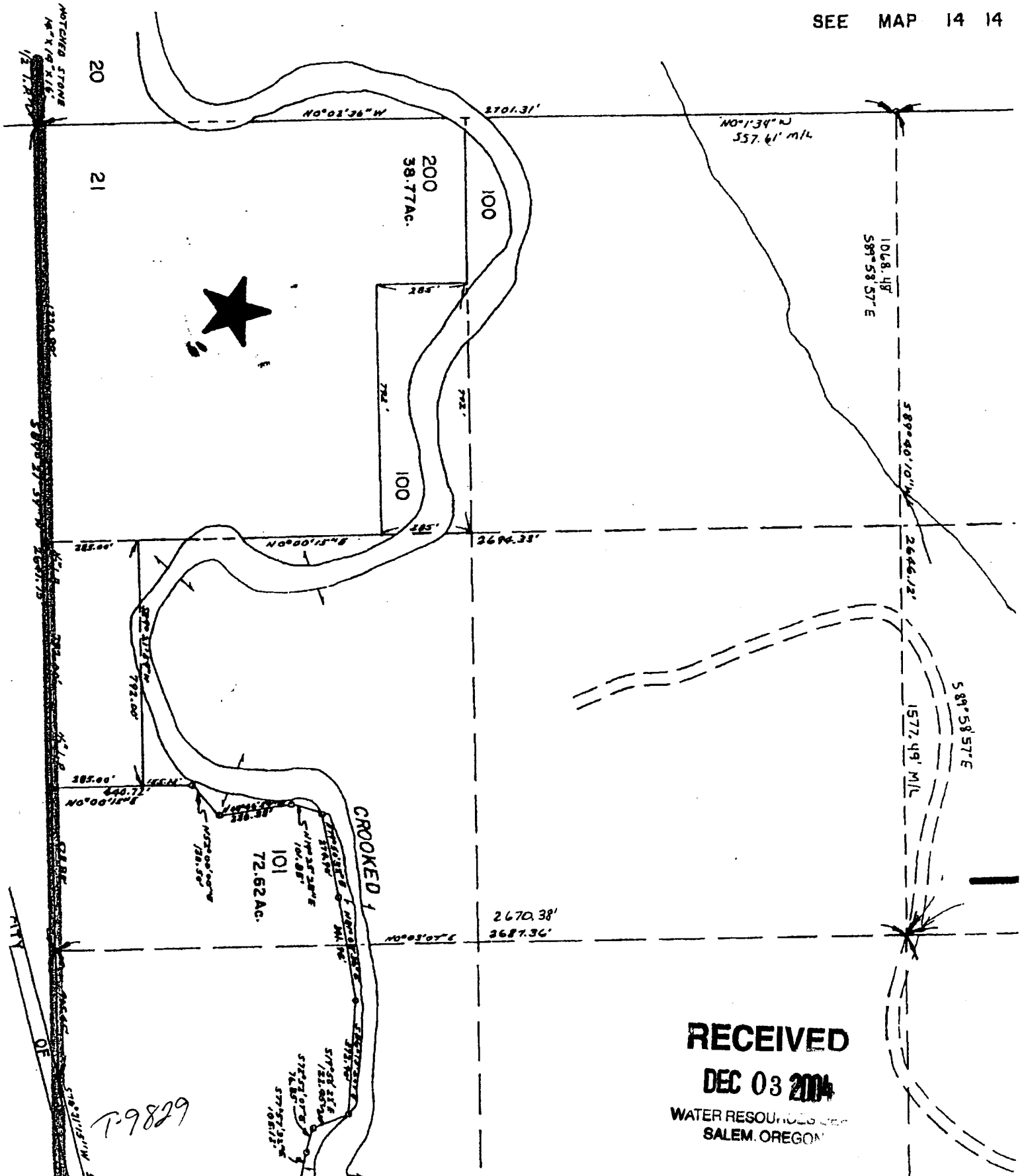
By: HOPE BRIDGES
Title Officer

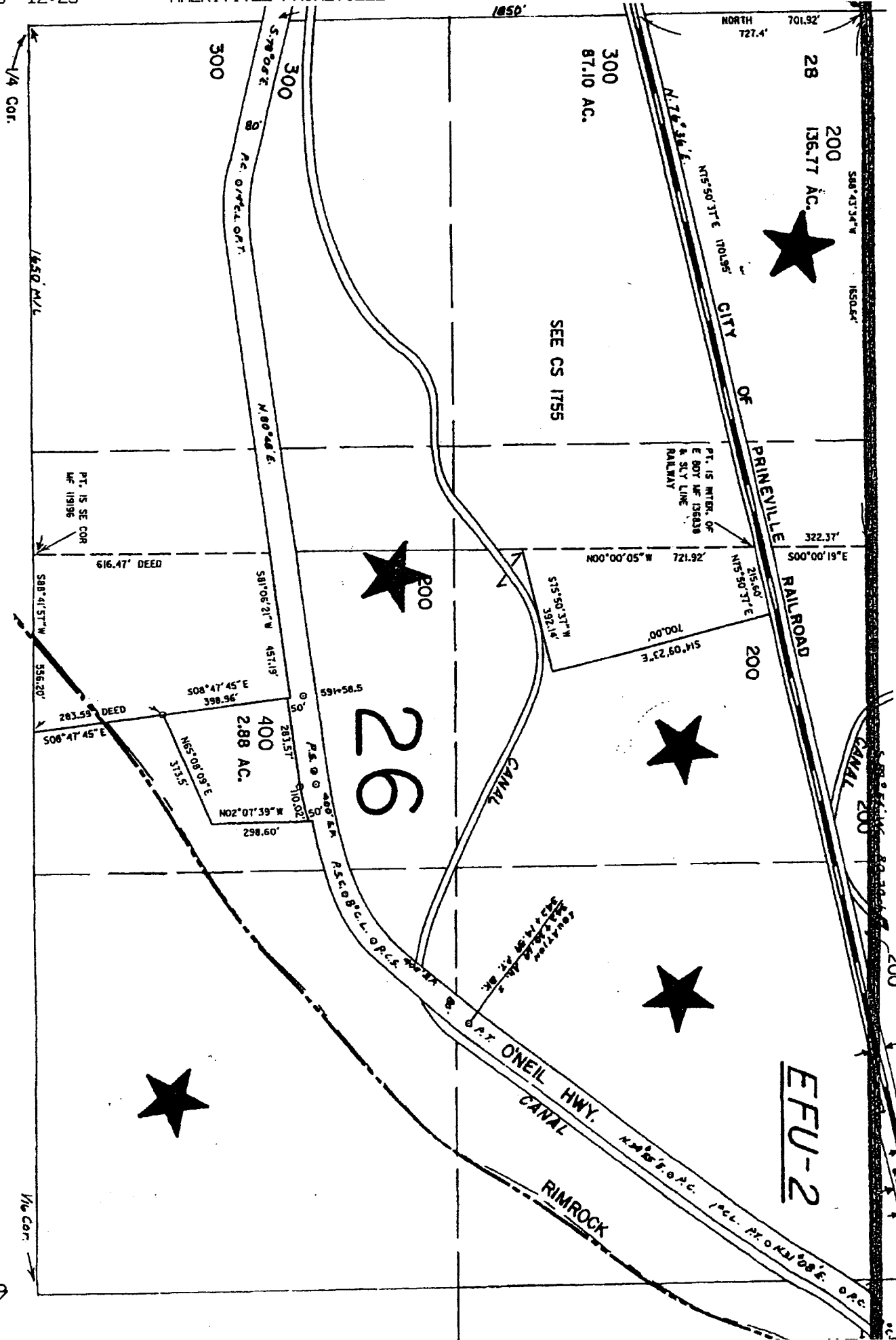
hb:lp

END

"Superior Service with Commitment and Respect for Customers and Employees"

SEE MAP 14 14





SEE MAP 14 14

T-9829

Exhibit "A"**TRACT I:**

In Township 14 South, Range 14 East of the Willamette Meridian:

- Section 21: SW $\frac{1}{4}$ SW $\frac{1}{4}$; EXCEPTING the following described tract: Beginning at the Northeast corner of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 21, thence South 285 feet, thence West 792 feet, thence North 285 feet, thence East 792 feet to the point of beginning.
- Section 21: Beginning at the Southwest corner of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 21, thence North 285 feet, thence East 792 feet, thence South 285 feet, thence West 792 feet to the point of beginning.
- Section 28: W $\frac{1}{2}$ NE $\frac{1}{4}$, and East 60 rods of the E $\frac{1}{2}$ NW $\frac{1}{4}$

EXCEPTING those tracts conveyed to the City of Prineville for Railway purposes, recorded in Book 40 of Deeds at page 12 and Book 40 of Deeds at page 17, Records of Crook County, Oregon.

ALSO EXCEPTING those tracts conveyed to the State of Oregon, by and through its State Highway Commission for highway purposes, as recorded in Book 52 of Deeds at page 241, Book 64 of Deeds at page 177, Records of Crook County, Oregon.

ALSO EXCEPTING the following tract of land located in the Northeast quarter of the Northwest quarter of Section 28, Township 14 South, Range 14 East of the Willamette Meridian, Crook County, Oregon, being more particularly described as follows: Beginning at a five eighths inch iron rod located at the intersection of the East boundary of that parcel described in MF# 119196 Deeds Records of Crook County, Oregon and the southerly right of way of the City of Prineville Railway; thence along said East boundary South 00°00'05" East 721.92 feet to a five eighths inch iron rod; thence leaving said East boundary North 75°50'37" East 392.14 feet to a five eighths inch iron rod; thence North 14°09'23" West 700.00 feet to a five eighths inch iron rod on said southern right of way; thence along said right of way South 75°50'37" West 215.60 feet to the point of beginning and terminus of this description.

ALSO EXCEPTING the following tract of land located in the Southeast quarter of the Northwest quarter of Section 28, Township 14 South, Range 14 East of the Willamette Meridian, Crook County, Oregon, being more particularly described as follows: Beginning at a one half inch iron pipe marking the Southeast corner of that parcel described in MF# 119196 Deeds Records of Crook County; thence along the East boundary of said parcel North 00°00'05" West 616.47 feet to a five eighths inch iron rod on the southerly right of way of the O'Neil State Highway; thence along said southerly right of way North 81°06'21" East 457.19 feet to a three quarter inch iron rod at the Northwest corner of that parcel described in Book 52 of Deeds at page 241, Records of Crook County, Oregon; thence along the westerly boundary of said parcel South 8°47'45" East 398.96 feet to a three quarter inch iron rod at the Southwest corner of said tract; thence South 8°47'45" East 283.59 feet to a five eighths inch iron rod on the East-West centerline of said Section 28; thence along said East-West centerline South 88°41'57" West 556.20 feet to the point of beginning and terminus of this description.

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SALEM, OREGON

Page 5 of 6

CONTINUED**TRACT II:**

A parcel of land located in the North half of the Northwest quarter of Section 28, Township 14 South, Range 14 East of the Willamette Meridian, Crook County, Oregon, being more particularly described as follows: Beginning at a two inch brass cap marking the Northwest corner of said Section 28; thence along the West boundary of said Section 28 South 701.92 feet to a five eighths inch iron rod on the northerly right of way of the City of Prineville Railway; thence along said northerly right of way North 75°50'37" West 1701.95 feet to a one half inch iron pipe on the westerly boundary of that parcel described in said MF# 136838 thence along said westerly boundary North 00°00'19" West 322.37 feet to a five eighths inch iron rod on the North boundary of said Section 28; thence along said North boundary South 88°43'34" West 1650.64 feet to the point of beginning and terminus of this description.

EXCEPTING:

A parcel of land lying in the NW ¼ of Section 28, Township 14 South, Range 14 East of the Willamette Meridian, Crook County, Oregon and being a portion of that property described in that deed to the State of Oregon, by and through its State Highway Commission, recorded March 3, 1941 in Book 52, Page 241 of Crook County Record of Deeds, the said parcel being that portion of said property lying Southerly of a line parallel with and 50 feet Southerly of the center line of the relocated O'Neil Highway as described in that deed to the State of Oregon by and through its State Highway Commission, recorded July 5, 1950 in Book 64, Page 177 of Crook County Record of Deeds.

T-982⁹

Exhibit C

Western Title & Escrow Company

153 SW 5th STREET/REDMOND, OR 97756
Phone: (541) 548-2911 Fax: (541) 548-8601

02/09/2004

JOHN SHORT
EMMETT RANCH, LLC
PO BOX 1830
BEND, OR 97709

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SALEM, OREGON

Buyer: EMMETT RANCH, LLC
Seller: JERRY L. RANK (EXCHANGER) and AMERICAN EXCHANGE SERVICES, INC. (SELLER)
ESCROW NO.: 12-0170503

PROPERTY: ADJUSTED PARCEL/ CROOK COUNTY
OR

Dear Mr. Short,

In reference to the above escrow, enclosed please find the following:

Original re-recorded warranty deed correcting the legal description for your records.

We appreciate the opportunity to be of service to you. If you have any questions concerning your escrow or if you have future title and/or escrow needs, please call us at the above listed number.

Sincerely,
WESTERN TITLE & ESCROW COMPANY

JS

JUDY SWIFT
Senior Certified Escrow Officer

JS/cs
ENCL

7-9829

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SALEM, OREGON

****This deed is being re-recorded to correct tax map number previously recorded in microfilm no: 186550 on December 22, 2003****

After recording return to:

EMMETT RANCH, LLC
PO BOX 1830
BEND, OR 97709

Until a change is requested all tax statements shall be sent to the following address:

EMMETT RANCH, LLC
PO BOX 1830
BEND, OR 97709

WARRANTY DEED -- STATUTORY FORM

JERRY L. RANK, Grantor,

conveys and warrants to

EMMETT RANCH, LLC, an Oregon Limited Liability Company. Grantee,

the following described real property, free of encumbrances except as specifically set forth herein, to wit:

SEE EXHIBIT A WHICH IS MADE A PART HEREOF BY THIS REFERENCE

Tax Account No(s): PORTION OF #476; PORTION OF #459
Map/Tax Lot No(s): PORTION OF 14-14-28 200; PORTION OF 14-~~11~~¹⁴-21 200

This property is free from encumbrances, EXCEPT: All those items of record, if any, as of the date of this deed, including any real property taxes due, but not yet payable.

The true consideration for this conveyance is \$190,800.00 pursuant to an IRC 1031 Tax Deferred Exchange on behalf of the Grantor.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

Dated this 18 day of December, 2003.

Jerry L. Rank
JERRY L. RANK

STATE OF OREGON, COUNTY OF DESCHUTES) ss.

This instrument was acknowledged before me on December 18, 2003 by JERRY L. RANK.

[Signature]
(Notary Public for Oregon)
My commission expires 12/9/2005

TITLE NO. 0067034
ESCROW NO. 12-0170503



Re-Rec 187472 (2pg)
186550

AMERITITLE 67034

(2 pg)

B.L.A. PARCEL - BANK TO SHORT C-LP(B) - 442 - 03

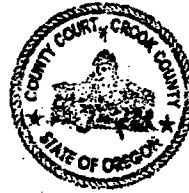
IN TOWNSHIP FOURTEEN (14) SOUTH, RANGE FOURTEEN (14) EAST, WILLAMETTE MERIDIAN, CROOK COUNTY, OREGON: SECTION TWENTY-ONE (21): THE SOUTHWEST ONE-QUARTER OF THE SOUTHWEST ONE-QUARTER (SW1/4 SW1/4), EXCEPTING THEREFROM THE FOLLOWING DESCRIBED TRACT: BEGINNING AT THE NORTHEAST CORNER OF THE SW1/4 SW1/4 OF SAID SECTION 21, THENCE SOUTH, 285 FEET; THENCE WEST, 792 FEET; THENCE NORTH, 285 FEET, THENCE EAST, 792 FEET TO THE POINT OF BEGINNING.

SECTION TWENTY-EIGHT (28): BEGINNING AT A 2-1/2 INCH BRASS CAP MARKING THE NORTHWEST CORNER OF SAID SECTION 28, THENCE SOUTH 60°27'22" WEST ALONG THE WEST LINE OF SAID SECTION 28 A DISTANCE OF 702.68 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF THE CITY OF PRINEVILLE RAILWAY; THENCE NORTH 76°17'51" EAST ALONG SAID LINE A DISTANCE OF 1363.16 FEET TO THE EAST LINE OF THE NORTHEAST ONE-QUARTER OF THE NORTHEAST ONE-QUARTER (NE1/4 NE1/4) OF SAID SECTION 28, MARKED BY A 5/8 INCH IRON ROD WITH YELLOW PLASTIC CAP MARKED "ARMSTONG S&E LS1026"; THENCE NORTH 00°19'05" EAST ALONG SAID LINE A DISTANCE OF 398.58 FEET TO THE NORTHEAST CORNER OF SAID NE1/4 NE1/4, MARKED BY A 5/8 INCH IRON ROD WITH YELLOW PLASTIC CAP MARKED "ARMSTONG S&E LS1026"; THENCE SOUTH 89°11'02" WEST ALONG THE NORTH LINE OF SAID SECTION 28 A DISTANCE OF 1321.11 FEET TO THE POINT OF BEGINNING.

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SALEM, OREGON



SCANNED



SCANNED

KEY PUNCHED

DEC 2 9 2003

RE-RECORDING
STATE OF OREGON } ss 187472
COUNTY OF CROOK }
I CERTIFY THAT THE WITHIN INSTRUMENT WAS
RECEIVED FOR RECORD ON THE 27th DAY OF
January, 2004, AT 3:00 P. M.
AND RECORDED IN Deeds
RECORDS OF SAID COUNTY MF NO. 187472
DEANNA E. BERMAN, CROOK COUNTY CLERK
By Debra Brummer DEPUTY

31e

STATE OF OREGON } ss 186550
COUNTY OF CROOK }
I CERTIFY THAT THE WITHIN INSTRUMENT WAS
RECEIVED FOR RECORD ON THE 22nd DAY OF
December, 2003, AT 3:10 P. M.
AND RECORDED IN Deeds
RECORDS OF SAID COUNTY MF NO. 186550
DEANNA E. BERMAN, CROOK COUNTY CLERK
By Debra Brummer DEPUTY

31e

T-9829

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SALEM, OREGON

**WATER RIGHT TRANSFER
AFFIDAVIT ATTESTING TO THE USE OF WATER DURING THE PREVIOUS FIVE YEARS**

State of Oregon)
County of Crook) ss

I John Short, in my capacity as member of Emmett Ranch, LLC - landowner
mailing address PO Box 1830 Bend, OR 97709
telephone number 541-322-9528, being first duly sworn depose and say:

- 1. I attest that water was used during the previous five years on the entire authorized place of use of the water right subject to transfer as described by the accompanying transfer application. My knowledge of the exercise of the water right is based on (check one):
 - Personal observation
 - Professional expertise

- 2. My knowledge is specific to the use of water at the following location(s):

NW 1/4 NW 1/4
 _____ 1/4 _____ 1/4
 _____ 1/4 _____ 1/4

Section _____
 Township 14 N Range 14 E W

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- 3. The water right was exercised for the authorized purposes and is described as follows:
used for irrigation

- 4. The water delivery system used to apply water as authorized by the water right is described as follows:
30 hp turbine pump. Pacific Power has provided a separate electrical service for this pump.
The pump feeds buried main line to motorized wheel line to reach all parts of the property to be irrigated

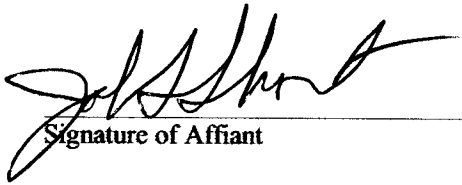
(continues on reverse side)

PLEASE PRINT LEGIBLY OR TYPE. PLEASE BE AS SPECIFIC AS POSSIBLE. ATTACH ADDITIONAL PAGES IF YOU NEED MORE SPACE. SUPPORTING DOCUMENTATION MUST BE ATTACHED.
June 2003

T-9829

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SALEM, OREGON

5. One or more of the following documentation supporting the above statements is attached:
- Copy of a water right certificate which has been issued within the last five years (not a remaining right certificate),
 - Copies of receipts from sales of irrigated crops or for expenditures relating to use of water,
 - Records such as Farm Service Agency crop reports, irrigation district records, an NRCS farm management plan, or records of other water suppliers,
 - Dated aerial photographs of the lands or other photographs containing sufficient detail to establish the location and date of the photograph,
 - Dedicated power usage records or receipts,
 - If the right has not been used during the past five years, documentation that the presumption of forfeiture would be rebutted under ORS 540.610(2), or
 - Other: 2004 Instream lease



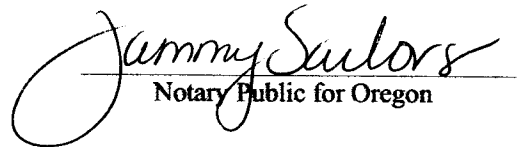
 Signature of Affiant

8-8-04

 Date

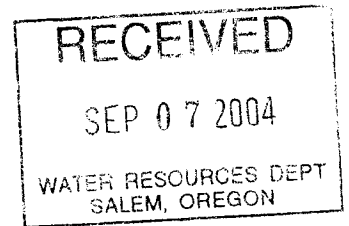
Subscribed and Sworn to Before Me this 8th day of August, 2004.





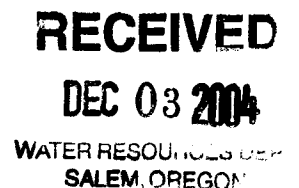
 Notary Public for Oregon

My Commission Expires 8-29-2005



PLEASE PRINT LEGIBLY OR TYPE. PLEASE BE AS SPECIFIC AS POSSIBLE. ATTACH ADDITIONAL PAGES IF YOU NEED MORE SPACE. SUPPORTING DOCUMENTATION MUST BE ATTACHED.
 June 2003

7-9829





State of Oregon
Water Resources Department
725 Summer Street NE, Suite "A"
Salem, Oregon 97301-1271
(503) 986-0900

Application for Short-Term Instream Lease

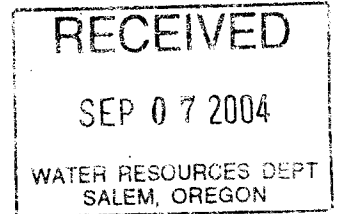
Pursuant to ORS 537.348(2) and OAR 690-077-0077

Optional Identification by Lessor/Lessee: MITIGATION PROJECT MP-26
Lease Agreement Number (assigned by WRD): L-579

This Lease Agreement is between:

Lessor #1:

(Name) Emmett Ranch, LLC
(Mailing address) P.O. Box 1830
(City, State, Zip Code) Bend, OR 97709
(Telephone number) 541-322-9528



Lessor #2, 3, etc.

The water right to be leased is located in Crook County.

Lessee (if different than Oregon Water Resources Department):

(Name) Deschutes Water Exchange
(Mailing address) P.O. Box 1560
(City, State, Zip Code) Bend, OR 97709
(Telephone number) 541-382-4077



WATER RESOURCES DEPT
SALEM, OREGON

Trustee:

Oregon Water Resources Department
725 Summer Street N.E., Suite "A"
Salem, OR 97301-1271
(503) 986-0900

~I~ Ownership and Water Right Information

- 1.1 Lessor #1 is the owner, or authorized agent for owner of property located at: Township 14 S, Range 14 E, Section 28 and Tax Lot number 200. If the water right appurtenant to these lands is also appurtenant to lands owned by others, then Attachment 1, (tax lot map of lessor's property) needs to be included.
- 1.2 Lessor #2 is the (Check one):
 - Not applicable
 - Official representative of _____, the irrigation district which conveys water to the subject water rights.
 - Another party with an interest in the subject water rights representing _____.

T-9829

1.3 For the lands being leased, list all water rights appurtenant to the lessor's property. Indicate if there are any supplemental or overlying rights.

Certificate No. 47267

1.4 Are some or all of the lands being leased part of a Conservation Reserve Enhancement Program. Yes No

1.5 **Subject water rights.** Lessor proposes to lease the water rights listed in 1.3. The right(s) to be leased are further described as follows:

Certificate No.: 47267

Priority date: 1903 Type of use: Irrigation

Legal Season of Use: February 1 to December 1

Is the entire water right certificate being leased? Yes No

If no, list the acres of the subject water right by legal description of township, range, section, and 1/4 1/4 which will be dried up as part of this lease, and include a map (Attachment 2) showing the lands which will not receive water.

Place of use: T 14 S, R 14 E, Section 28, NW1/4 NW1/4 - 17.90 acres to be leased
Enter additional places of use here, using format above:

Page NA (Identify page number of certificate, if certificate is greater than 10 pages.)

Number of acres being leased, if for irrigation: 17.9

Acre-feet of storage, if applicable: NA

Maximum rate associated with subject water rights (cfs): 0.22 (1/80 of 1 cfs/acre)
(Use additional lines if there is more than one rate associated with the water right.)

Maximum duty associated with subject water rights (ac-ft): 71.6 (Not to exceed 4 ac-ft/acre)

(Use additional lines if there is more than one duty associated with the water right.)

Conditions or other limitations, if any: NA

If you need to enter another leased right, please use the additional water rights form.

1.6 **Validity of rights.** Lessor(s) attests (mark one) that:

- the water has been used over the past five years according to the terms and conditions of the owner's water right certificate or as an instream water right or
- the water has not been used over the past five years according to the terms and conditions of the owner's water right certificate, however the water right is not subject to forfeiture under ORS 540.610(2)()(include necessary supporting documentation as Attachment 3).

~II~ Instream Water Right Information

2.1 **Public use.** This lease will increase streamflows which will benefit:

- Conservation, maintenance and enhancement of aquatic and fish life, wildlife, and fish and wildlife habitat

- Pollution abatement
- Recreation and scenic attraction

2.2 **Instream use created by lease.** The instream use to be created is described as follows:

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 SALEM, OREGON

Crooked River
 Tributary to Deschutes River in the Deschutes Basin.

Describe the point of diversion (POD) and any associated reach(es) of the instream use being created. If possible list the reach by river mile. If no reach is identified, and there is only one POD listed on the certificate, the lease may be processed to be protected at the POD. (If more than one POD is listed on the certificate, then the POD and any associated reach(es) must be identified): SE1/4 SE1/4, Section 20, T 14S, R 14E, W.M., 270 ft North and 190 ft West from the SE Corner, Section 20

Maximum volume in acre-feet: 71.6 (Not to exceed 4 ac-ft/acre)

Rate in cfs: 0.22 (1/80 of 1 cfs/acre)

(Use the section below to indicate a more restrictive period of use than allowed by the water right.)

Conditions to prevent injury, if any:

- None
- The instream flow will be allocated on a daily average basis up to the described rate from 5/21 through 10/31.
- Other (describe): _____

If you need to enter more instream uses, please use the additional water rights form.

2.3 **Term of lease.** This lease shall terminate on November 30, 2008.

2.4 **Flow protection.** The Trustee will regulate use of water from the source, subject to prior appropriation and the agency enforcement guidance, to assure the water is delivered to the point of diversion, and through the reach past junior downstream users, so long as flow is sufficient to meet the demand under priority date of the new instream use (see section 2.2). As part of regulation activities the watermaster or a designee has access to the point of diversion and place of use for the water rights involved in this lease. No party is required to continuously measure the flow of the waterway described in Section 2.2.

~III~ Other Information

3.1 **Accuracy.** The Undersigned Lessor/s, Lessee and Trustee declare that, to the best of their knowledge and belief, the information contained in this lease is true, correct and complete. If after the lease is signed, any information is determined to be false, the lease may be modified or terminated. This lease only exercises the water rights being leased; for the term of the lease; it shall not be construed to overcome any claim that the water right may otherwise be subject to forfeiture for nonuse pursuant to ORS 540.610 during the period of time prior to the execution of the lease.

3.2 **Lease.** All Lessors agree to lease the water rights listed in 1.4 for instream use for the term of this Agreement through Lessee to Trustee, the Oregon Water Resources Department, pursuant to the provisions of ORS 537.348(2) and OAR 690-077-0077.

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- 3.3 **Precedent.** If a right which has been leased is later proposed to be leased again or transferred to an instream use under ORS 537.348 and OAR 690-077- 0070 or OAR 690-077-0075 a new injury review shall be required, and a prior short term lease shall not set a precedent for the amount of water to be leased or transferred instream.
- 3.4 **Suspension of original use.** During the period of the lease, the owner agrees to suspend use of water allowed under the subject water rights and under any water right that is supplemental to the subject water rights. In the event that a supplemental water right is not part of this lease, it may be subject to forfeiture.
- 3.5 **Termination provision.**
 For multiyear leases, lessor *shall* have the option of terminating the lease each year, prior to the lease being exercised (February 1st), with 30 day written notice to the Department.
 For multiyear leases, lessor *shall not* have the option of terminating the lease each year, prior to the lease being exercised, with written notice to the Department.
- 3.6 **Modification to prevent injury.** Allocation of water to the instream use described in Section 2.2 during the term of this lease is not reasonably expected to cause injury to other rights to use water from the same source. If injury is found after this lease is signed, the lease may be modified or terminated to prevent injury.
- 3.7 **Fees.** Effective October 1, 2003, pursuant to ORS 536.050 (1)(v) (2003 SB 820), the following fee is included:
 \$200 for an application with four or more landowners or four or more water rights.
 \$100 for all other applications.

Lessor #1: 
 John A. Short, Emmett Ranch, LLC

Date: 6-15-04

For additional Lessors, type in space for signature and date

Lessee: 
 Bruce Aylward, Deschutes Water Exchange

Date: 6-15-04

Other Attachments as Needed:

- Attachment 1: Tax Lot Map of Lessor's Property (required if landowner is not the sole landowner to lands for which the subject water rights are appurtenant)
- Attachment 2: Detailed map illustrating lands under subject rights to be leased (required if only part of a right is being leased instream).
- Attachment 3: Supporting documentation indicating why a right is valid and not subject to forfeiture even though the right has not been exercised for five or more consecutive years (required if the second box in Section 1.5 is checked)
- Attachment 4: Split Season Instream Use Form

T. 9829

9. SIGNATURE

I (we) swear that I (we) have read the above application and the statements made are true and accurate and consent to the transfer

applicant signature

name (print)

date

Subscribed and sworn to before me this _____ day of _____ 2004

Notary Public for Oregon

My Commission Expires _____

Before you submit your application be sure you have:

- Answered each question completely.
- Attached a legible map which includes township, range, section ,quarter/quarter and tax lot number.
- Included the necessary exhibits.
- Included a check payable to the Oregon Water Resources Department or the appropriate amount.

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Creative Water Solutions, LLC

64154 Pioneer Loop

Bend, Or 97701

541-815-0203 or 541- 617-8936

e-mail: dandt@deschutes.net

Decl, 2004
October 27, 2004

Laura Snedaker
Oregon Water Resources Department
725 Summer St NE, Suite A
Salem, Oregon 97301-1271

Dear Laura,

Enclosed please find an application to transfer 16.71 acres permanently in stream for mitigation credits. This application was previously submitted and returned as application # 9788.

FEE: Please note that the fee enclosed is adjusted from the normal fee. On August 26, 2004, I sent a request to adjust the application fee in accordance with OAR 690-380-3400. The director shall waive \$100 or 50 percent of the application fee, whichever is greater. The adjusted fee should be \$350.00. I have enclosed a check for \$350.

Pursuant to your letter regarding the incomplete application.

Item # 1 is attached as exhibit C. A preliminary title report instead of a lot book report.

Item #2: CWRE Map attached as exhibit D

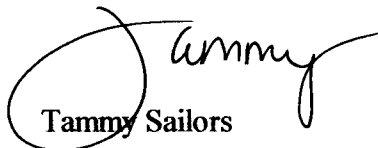
Item #3: all lines are filled in or contain "NA"

Item #4: Correction made

Item #5: Items addressed as appropriate

This should address all your issues and now be a complete application. If you find anything missing or have any questions, please call me at 541-617-8936 or my cell 541-815-0203.

Sincerely,


Tammy Sailors

Enclosures

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SALEM, OREGON

7-9829

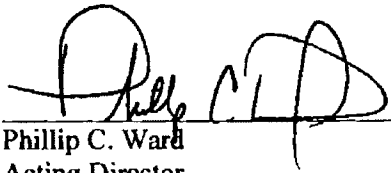
BEFORE THE WATER RESOURCES DEPARTMENT
OF THE
STATE OF OREGON

In the Matter of Transfer Application) MISFILED TRANSFER APPLICATION
T-9788, Crook County, Oregon) FINAL ORDER
)

Transfer Application 9788, in the name of Emmett Ranch, LLC, was filed September 7, 2004. The application has been determined to be incomplete and is being returned to the applicant.

Transfer 9788, in the name of Emmett Ranch, LLC, was misfiled and is of no further force of effect. All application fees will be refunded.

Dated at Salem, Oregon this 30th day of September, 2004.


Phillip C. Ward
Acting Director

This is a final order in other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-080 and OAR 690-01-005 you may either petition for judicial review or petition the Director for reconsideration of this order.

T-9829