

**MITIGATION PROJECT**



Oregon Water Resources  
Department  
725 Summer Street NE, Suite A  
Salem, Oregon 97301-1271  
(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

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)

Address: 64154 Pioneer Loop

Bend, OR 97701  
City State Zip

Phone 541-617-8936 Cell # (541) 815-0203  
Other

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

\*Optional information

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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 in LaPine Cooperative Water Association Certificate 72196.

PO Box 97, LaPine, OR 9770

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:

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 Deschutes County. Land Use form from Deschutes County attached as exhibit F.

Deschutes County Planning Department 117 NW Lafayette Avenue, Bend, OR 97701

**5. CURRENT WATER RIGHT INFORMATION**

Name on Permit, Certificate, or Decree: La Pine Cooperative Water Association

Decree: Deschutes River Adjudication

Not applicable

Permit Number: N/A

Not applicable

Certificate Number: 72196

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: 1900

Authorized Use: Irrigation. The total quantity being limited to 1/40<sup>th</sup> of a cfs from May 23 to August 20 AND 1/80<sup>th</sup> of a cfs from April 1 to May 23 and from August 20 to November 1 and 4.0 acre feet per acre for each acre irrigated.

Source of Water: Little Deschutes River

County Deschutes 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
SW 1/4 SW 1/4 Section 34, Township 23 South, Range 9 East, W.M. 550 feet north and 1150 feet East from the SW Corner of Section 34	SW SW	34	23 S	9 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)
22 S	10 E	34	N/A	SW SW	4100	10.10
22 S	10 E	34	N/A	SE SW	4100	11.0
					TOTAL	21.10

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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 flood irrigation. Water is delivered by the irrigation district to a headgate then disbursed through a series of small ditches.

System capacity (in cfs): 0.53 cfs

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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"/> <b>Change</b><br>Old point of diversion or point of appropriation will not be used for this portion of the water right. | <input type="checkbox"/> <b>Additional</b><br>Both old and new points of diversion or points of appropriation will be used for this portion of the water right. | <input type="checkbox"/> <b>Surface to Ground Water.</b><br>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	Instream	transfer				21.10

**Remarks:**

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

**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 and Warranty deed attached : exhibit C**

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

- 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 F**
- Not needed: (must meet the following four requirements)
  - ① In EFU zone or irrigation district,
  - ② Change in place of use only,
  - ③ No structural changes needed, including diversion works, delivery facilities, other structures, and
  - ④ 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.*
- Non CWRE map & Waiver pursuant to OAR 690-380-3410 **Exhibit D**

**Lot Book Report: Title report attached : 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 G**

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**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 and consent to the transfer.

*John A. Short*      John A. Short      11-5-04  
applicant signature      name (print)      date  
Emmett Ranch

Subscribed and sworn to before me this 5<sup>th</sup> day of November 2004

*Tammy Sailors*  
Notary Public for Oregon



My Commission Expires 8-29-2005

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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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**Water Right Transfer Supplemental Form B  
INSTREAM WATER RIGHT TRANSFER**

1. Identify the Public Use for which the instream right is desired.

- Conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and any other ecological values.
  Recreation  
 Pollution Abatement
  Navigation  
 Other (describe) \_\_\_\_\_

2. List the periods and respective quantities of water to be allocated instream under the transfer.

Period	Rate (cfs)	Volume (ac-ft)*
APRIL 1 To MAY 23	0.26375	27.1557
MAY 23 To Aug 20	0.26375	46.478
Aug 20 To Sept. 8	0.26375	10.4445

Period	Rate (cfs)	Volume (ac-ft)*
<b>Total Volume</b>		84.0782

\* To calculate volume, multiply the rate x the number of days in the period x 1.98.

The quantity allocated during any period may not exceed the quantity that may be used under the existing right during that period. The total volume of water for the year may not exceed the total volume of water that may be used during the year under the existing right.

Additional Information: NONE

3. Identify the location of the proposed instream water right. If an instream water right reach is requested, identify the upstream and downstream extent of the reach.

P.O.D. to Lake Billy Chinook

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4. If there currently is an instream water right on the same reach(es) or lake, or on a portion thereof, is the proposed transfer intended to add to the amounts of the existing instream water rights or to replace a later priority instream right, or portion thereof, with an earlier priority right?  
 Add to existing instream right       Replace later priority instream right
5. If the proposed conversation would add to the amounts of an existing instream water right(s) established under ORS 537.336 or 537.346, provide documentation demonstrating why additional instream flows are necessary.

N/A

Supporting documentation should include information from the Department of Fish and Wildlife, Department of Environmental Quality, and/or Parks and Recreation Department.

6. Please provide any recommendations for conditions on the instream water right that would avoid taking away or impairing existing permitted, certificated or decreed rights. Such conditions may include, but are not limited to, adjustments in the instream flow levels in cubic feet per second (cfs) per month or total acre-feet (ac-ft), the effective reach(es) or lake levels of the instream flow, measuring locations and the strategy for monitoring the instream flow or lake levels:

No injury known

**Additional Attachments Required Pursuant to OAR Chapter 690, Division 077:**

- A copy of the current recorded deed,
- If any encumbrances exist against the property to which the existing water right is appurtenant, a notarized statement of no objection from each holder of an encumbrance, and
- A map delineating the present point of diversion, the lands subject to transfer, and any lands not subject to the transfer. The map need not be prepared by a CWRE if a waiver is granted pursuant to OAR 690-380-3410.

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**Creative Water Solutions, LLC**

**64154 Pioneer Loop**

**Bend, Or 97701**

**815-0203 or 617-8936**

**e-mail: dandt@deschutes.net**

December 14, 2004

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

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RE: Emmett Ranch II

Dear Laura,

Enclosed please find an application to transfer 21.10 permanently in stream for mitigation credits. There are a number of exceptions to the normal submission.

**FEE:** Please note that the fee enclosed is adjusted from the normal fee. 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.

**CWRE Map:** The map enclosed is not a CWRE map. Kyle agreed to sign the map waiver, but he is in Salem today and tomorrow. I will have him sign it on Thursday and immediately mail it to you.

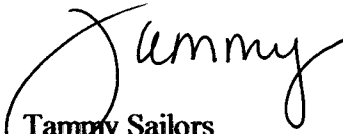
**Lot Book Report:** Instead of a lot book report, I have attached a copy of the preliminary title report and recorded warranty deed for the property.

This should 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.

As soon as you assign this transfer a number, please e-mail it to me.

Thanks for your help.

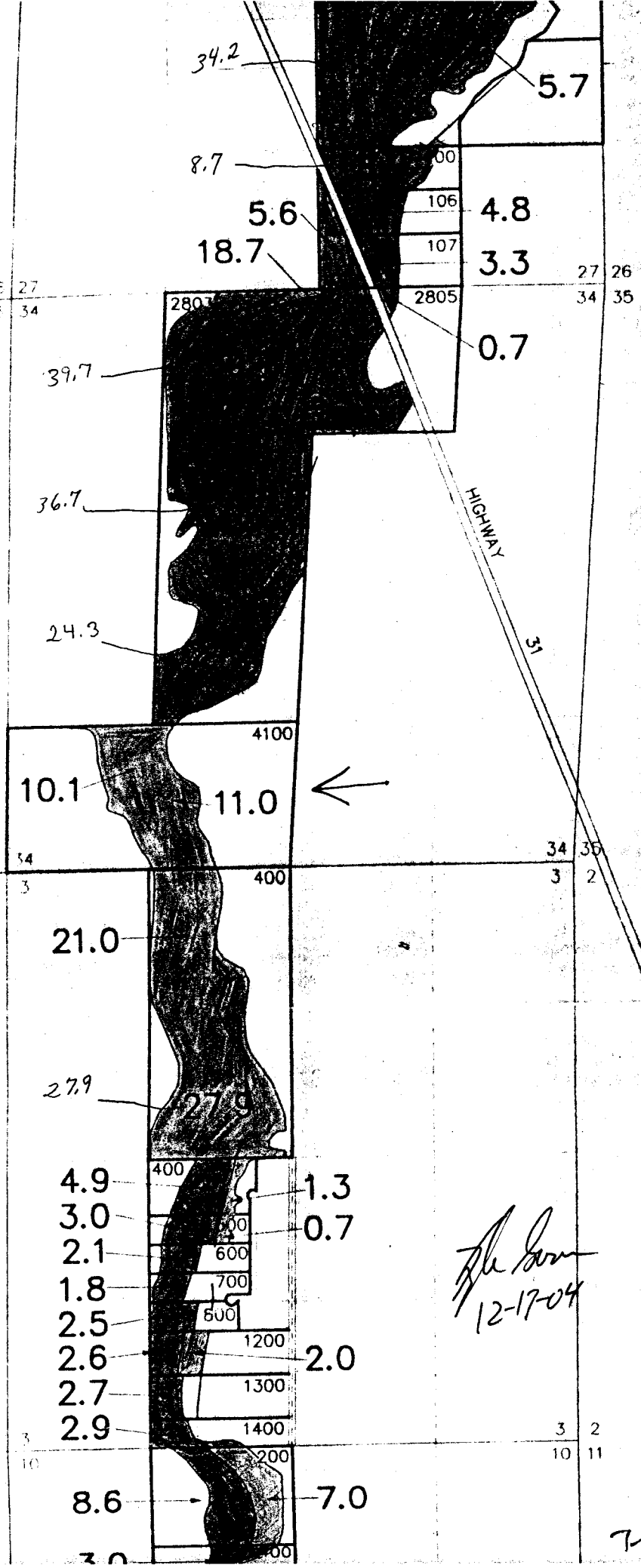
Sincerely,

  
Tammy Sailors

Enclosures

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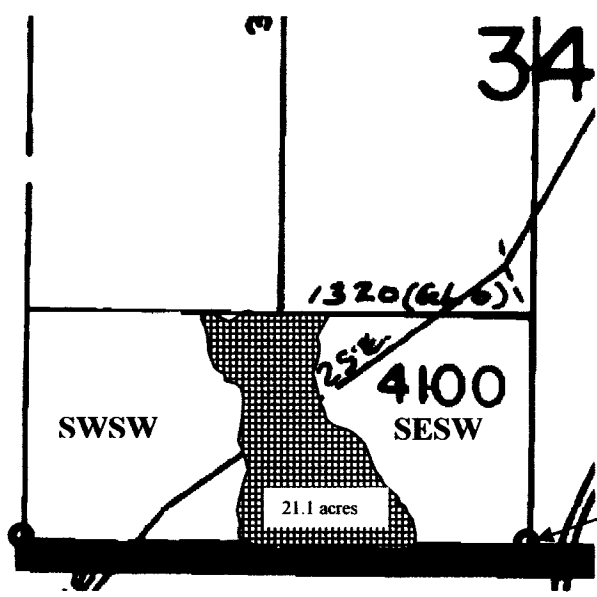
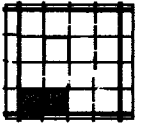
22S., R.10E.  
23S., R.10E.



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*Flu Jan*  
12-17-04

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SE SW ¼ of Section 34, T22S, R10E

SWSW 10.1 acres  
SESW 10.0 acres

South center marker of section 34, T22S, R10E

Surface Water Right Map  
For  
Emmett Ranch, LLC  
Certificate 72196, Priority 1900

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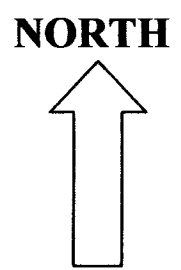
 Place of Use       Approximate Marker Location

T22S R10E Section 34, SE & SW¼, SW ¼, Tax Lot 4100

1 inch equals 1000 feet

November 2, 2004

**Deschutes Irrigation, LLC**  
P.O. Box 1830  
Bend, OR 97709  
541-322-9528  
shortsales@usa.com



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**OPERATING AGREEMENT  
OF  
EMMETT RANCH, LLC**

**ARTICLE I  
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.

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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.

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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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(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, MEMBER

  
 DIANA W. SHORT

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# WESTERN TITLE & ESCROW COMPANY

BEND OFFICE • 1345 NW Wall Street, Suite 200 • Bend, Oregon 97701 • (541) 389-5751 • FAX (541) 382-9182

DATE: September 13, 2004

WESTERN TITLE & ESCROW COMPANY  
ATTN: PATTY YANCEY  
153 SW 5TH STREET  
REDMOND, OR 97756

Report No: 12-0120304  
Your No: 12-0120304  
Seller: DIXIE SPEER  
Buyer: EMMETT RANCH LLC

## PRELIMINARY TITLE REPORT

STANDARD OWNER'S POLICY

\$200,000.00

### PREMIUMS:

STANDARD OWNER'S PREMIUM

\$710.00

We are prepared to issue a title insurance policy by a title insurance underwriter qualified in Oregon, in the form and amounts listed above. This report is preliminary to the issuance of a policy of title insurance and shall become null and void unless a policy is issued, and the full premium therefore paid. The land hereinafter described is situated in the County of Deschutes, State of Oregon, and is described as follows:

SEE ATTACHED EXHIBIT "A"

VESTED IN:

DIXIE SPEER

Dated as of September 3, 2004 at 5:00 p.m.

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Subject to the exceptions, exclusions and stipulations, which are part of said policy, and to the exceptions as shown herein:

- 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 record, 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, interests 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, or claims of easement, not shown by the public records, 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 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.

~~6.~~ Unpaid taxes for the year 2003-2004  
 Original Amount: \$113.38  
 Unpaid Balance: \$52.67 plus interest  
 Tax Lot No.: 22-10-00-00-04100  
 Account No.: 141383, CODE 1-081

7. 2004-2005 taxes, a lien in an amount to be determined, but not yet payable.

8. As disclosed by the assessment and tax roll, the premises herein have been specially assessed for farm use. If the land becomes disqualified for this special assessment under the statutes, an additional tax, plus interest and penalty, will be levied for the number of years in which this special assessment was in effect for the land.  
 Account No.: 114318 and 141383

~~9.~~ No liability is assumed if a financing statement is filed in the office of the County Clerk or Secretary of State covering crops and fixtures wherein the lands are described other than by metes and bounds, the rectangular survey system or by recorded lot and block.

10. The existence of roads, railroads, irrigation ditches and canals, telephone, telegraph and power transmission facilities.

11. Right of Way Agreement, including the terms and provisions thereof,  
 Dated: July 1, 1960  
 Recorded: September 6, 1960  
 Document No.: 125-657, Deed Records  
 Between: Dora Yager, a widow  
 And: Pacific Gas Transmission Company, a California corporation

Notice of Location, including the terms and provisions thereof,  
 Dated: September 25, 1961  
 Recorded: October 2, 1961  
 Document No.: 128-691, Deed Records

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Notice of Location Amending Description of Existing Right of Way, including the terms and provisions thereof,

Dated: November 30, 1978  
Recorded: January 16, 1979  
Document No.: 291-910, Deed Records

12. PGT-PG&E Pipeline Expansion Project Plant Restoration and Maintenance Agreement, including the terms and provisions thereof,

Dated: February 26, 1993  
Recorded: May 24, 1993  
Document No.: 299-1880, Official Records

13. Possible lack of access to and from said land. Our examination of the subject property does not disclose access to a public street or way. If an appurtenant easement over adjoining property is to be insured an additional charge will be made.

NOTE: Taxes paid in full for the year 2003-2004  
Original Amount: \$7.31  
Tax Lot No.: 22-10-00-00-04100  
Account No.: 114318, CODE 1-082

NOTE: We find no judgment liens or tax liens against EMMETT RANCH, LLC, AN OREGON LIMITED LIABILITY COMPANY.

NOTE: Copies of the Articles of Organization and of the Operating Agreement of EMMETT RANCH, LLC, any amendments thereto, and Assignments of Members' Interests should be furnished to us prior to closing. Any purchase or encumbrance must be executed by all the members unless otherwise provided for in the Articles of Organization.

**Western Title & Escrow Company**

*Chris Owen*  
for - By: CHRIS OWEN, Title Officer

Any questions concerning the closing of this transaction should be directed to PATTY YANCEY, your Escrow Officer at (541) 548-2911.

cc: CENTURY 21 GOLD COUNTRY REAL ESTATE  
2421 S. HWY 97  
REDMOND, OR 97756  
Attn: RON THOMAS  
Ph: (541) 548-2131 Fx: (541) 923-8318

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SALEM, OREGON**

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mp-2a*

cc: JOHN L. SCOTT REAL ESTATE CENTRAL OREGON  
510 NE THIRD STREET  
BEND, OR 97701  
Attn: DON DENNING  
Ph: (541) 317-0123 Fx: (541) 317-1009

**NOTE:** For copies of exceptions please call our Customer Service Department at (541) 330-1239 or email your request to [bend@westerntitle.com](mailto:bend@westerntitle.com)

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**EXHIBIT "A"**

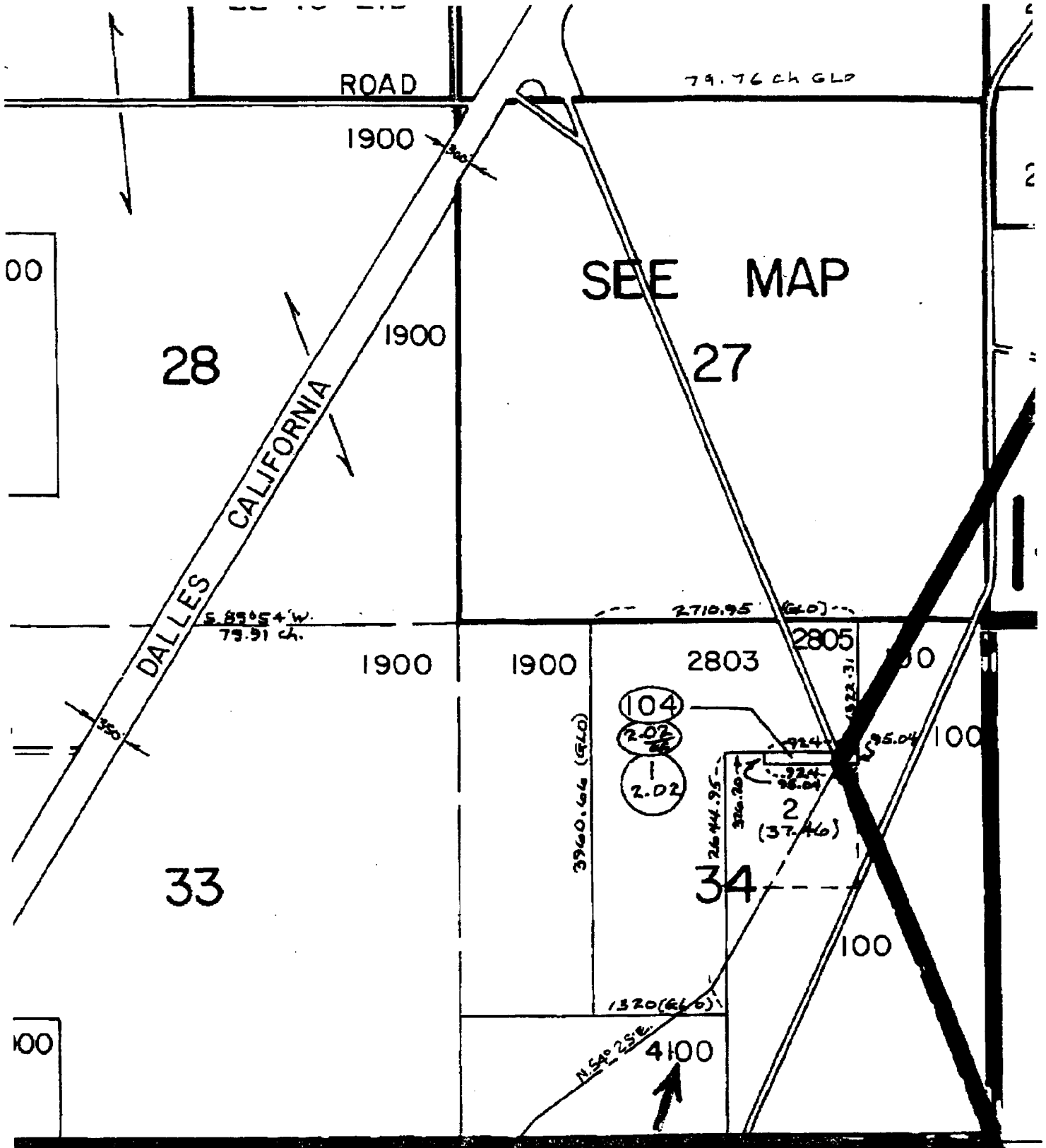
The South Half of the Southwest Quarter (S ½, SW ¼) of Section 34, Township 22 South, Range 10 East of the Willamette Meridian, Deschutes County, Oregon.

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KLAMATH COUNTY

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COMPLIMENTS OF  
WESTERN TITLE & ESCROW CO  
1100 N. W. 10TH ST. SALEM, OR 97301

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m29*

P. 6

541-617-5292

John Short

Oct 20 04 02:07p



\$31.00

09/15/2004 11:21:40 AM

D-D Cntal Strml BECKEY  
\$5.00 \$11.00 \$10.00 \$5.00

Until a change is requested all tax statements shall be sent to the following address:  
EMMETT RANCH LLC, AN OREGON LIMITED LIABILITY COMPANY  
JOHN A. SHORT  
PO BOX 1830  
BEND, OR 97709

WARRANTY DEED -- STATUTORY FORM

DIXIE SPEER, 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:

The South Half of the Southwest Quarter (S 1/2, SW 1/4) of Section 34, Township 22 South, Range 10 East of the Willamette Meridian, Deschutes County, Oregon.

Tax Account No(s): 14138  
Map/Tax Lot No(s): 22-10-00-00-04100 tax code 1-081 & 1-082

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.

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.

The true consideration for this conveyance is \$ 200,000.00 which is paid to an Accommodator as part of an IRC 1031 exchange.

Dated this 14<sup>th</sup> day of September, 2004.

*Dixie Speer*  
DIXIE SPEER

STATE OF OREGON, COUNTY OF DESCHUTES ) SS.

This instrument was acknowledged before me on September 14<sup>th</sup> 2004 by DIXIE SPEER.

*P. Yancey*  
(Notary Public for Oregon)  
My commission expires \_\_\_\_\_



After recording return to:  
Emmett Ranch LLC  
P O Box 1830  
Bend, OR 97709

TITLE NO. 12-0120304  
ESCROW NO. 12-0120304

RECORDED BY:  
WESTERN TITLE & ESCROW CO.

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**EXHIBIT D**

**MAP WAIVER**

**Kyle to sign and will be submitted by 12-17-04**

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**WATER RESOURCES DEPT  
SALEM, OREGON**

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Applicant: Emmett Ranch, LLC

Legal Description: T 22S, R 10E, Section 34, tax lot 4100, Deschutes County  
Certificate # 72196 La Pine Cooperative Water Association

Water Rights to be transferred Instream for Mitigation Credits: 21.10 acres

*The applicant is requesting that they be given assistance in preparing a map that meets the requirements. All of the water rights in both quarter quarter sections (SW SW and SE SW) are being removed. The existing water right map of record at the State shows that the only water rights in those quarter quarter sections are those water rights which are subject to this transfer.*

*The applicant is requesting waiver of the CWRE map requirement in exchange for acceptance of existing water right maps, not a waiver of the map entirely. The applicant is establishing an instream water right pursuant to ORS 537.348.*


The standards for this waiver are met pursuant to:

OAR 690-380-3410 (3) (a) To establish an instream water right pursuant to ORS 537.348.

(4) The assistance provided by the Department may include, but need not be limited to, development of an application map.

*OWRD has maps sufficient to document this transfer since all water rights in those quarter quarter sections are being removed in this transfer.*

*No T.C.*  
The LaPine Cooperative Water Association agrees to the transfer and to the map waiver:

  
\_\_\_\_\_  
La Pine Cooperative Water Association By Theresa Cliff, Board Chair

Date: Dec 6, 2004

*T-9635  
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WATER RESOURCES DEPT  
SALEM, OREGON

**Water Right Transfer Supplemental Form A  
AFFIDAVIT ATTESTING TO THE USE OF WATER**

State of Oregon )  
County of Deschutes ) ss

I, John Short, in my capacity as Manager, Emmett Ranch, LLC.  
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 proposed for transfer as described on the accompanying transfer application, or
- The water right is not subject to forfeiture and documentation that a presumption of forfeiture for non-use would be rebutted under ORS 540.610(2) is attached.

2. My knowledge of the exercise or status of the water right is based on (check one):

- Personal observation
- Professional expertise

3. My knowledge is specific to the use of water at the following locations:

Township		Range		Mer	Sec	¼ ¼ Section	Gov't Lot or DLC	Acres (if applicable)
22	S	10	E		34	SE SW	N/A	11.0
22	S	10	E		34	SW SW	N/A	10.10

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4. The water right was exercised for the authorized purpose described below (e.g., crops grown):  
pasture

---



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5. The water delivery system used to apply water as authorized by the right is described below:

The property was flood irrigated by  
using a series of ditches and canals

6. One or more of the following documentation supporting the above statements is attached:

- Copy of a water right certificate that was issued within the last five years (not a remaining right certificate),
- Copies of receipts from sales of irrigated crops or for expenditures relating to the 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,
- Other: \_\_\_\_\_

[Signature]  
Signature of Affiant

12-03-04  
Date

Signed and sworn to (or affirmed) before me this 3<sup>rd</sup> day of Dec, 2004.

[Signature]  
Notary Public for Oregon

My Commission Expires: 8-29-2005



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# Oregon Water Resources Department Land Use Information Form

Exhibit F

This information is needed to determine compatibility with local comprehensive plans as required by ORS 197.180. WRD will use this and other information to evaluate the water use application. THIS FORM IS NOT REQUIRED IF: 1) water is to be diverted, conveyed, and/or used only on federal lands; or 2) the application is for a water right transfer, allocation of conserved water, or exchange and all of the following apply: a) only the place of use is proposed for change, b) there are no structural changes, c) the use of water is for irrigation, and d) the use is located in an irrigation district or exclusive farm use zone.

This section must be completed by the individual or group that is filing an application with the Water Resources Department. Attach a copy of the map from the application to this form.

**A. Applicant**  
Name: Emmett Ranch, LLC  
Address: P.O. Box 1830  
City: Bend State: OR Zip: 97709 Day Phone: \_\_\_\_\_

**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)	Proposed Land Use
	<u>22-10-34 to 4100</u>	<input type="checkbox"/> Diverted <input type="checkbox"/> Conveyed <input type="checkbox"/> Used	
	<u>EFULLA</u>	<input type="checkbox"/> Diverted <input type="checkbox"/> Conveyed <input type="checkbox"/> Used	
	<u>FP</u>	<input type="checkbox"/> Diverted <input type="checkbox"/> Conveyed <input type="checkbox"/> Used	
	<u>WA</u>	<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. Deschutes County

**C. Description of Proposed Use**  
Indicate the type of application to be filed with the Water Resources Department.  
 Water Use Permit  Water Right Transfer  Allocation of Conserved Water  Exchange

Indicate the intended use of water and describe the key characteristics of the project.  
 Commercial  Industrial  Instream  Irrigation  
 Municipal  Quasi-municipal  Domestic (indicate number of households) \_\_\_\_\_  
 Other Mitigation

Briefly describe: Water rights to be transferred in-stream in exchange for mitigation credits

Indicate the source of the water to be used.  
 Reservoir/Pond  Ground Water  Surface Water \_\_\_\_\_

Indicate the estimated quantity of water the use will require: 0.53  CFS  GPM  Acre-Feet (source)

Last revised: 04/06/04

### Receipt for Request for Land Use Information

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

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## DEC 16 2004

WATER RESOURCES DEPT  
SALEM, OREGON

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The following section must be completed by a planning official from each county and city listed unless the 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): 18.16 Go to section B "Approval" below.  
*Deschutes County Ordinance*
- 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/Land use decision and accompanying findings are sufficient.)

**B. Approval**

Please provide printed name and written signature.

Name: CATHARINE white Date: 11/5/04  
 Title: Associate Planner Phone: (541) 383-6719  
 Signature: Catharine white

**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 may presume the land use associated with the proposed use of water is compatible with local comprehensive plans.

**Receipt for Request for Land Use Information**

Name of applicant: \_\_\_\_\_

This receipt must be signed by a local government representative and returned to the applicant at the time they present this form. This receipt must be included with the application filed with the Water Resources Department if the local government cannot provide the requested land use information while the applicant waits.

City or County: \_\_\_\_\_  
 Staff contact: \_\_\_\_\_ Phone: \_\_\_\_\_  
 Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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SALEM, OREGON**

Exhibit G

**David & Tammy**

**From:** "Laura K Snedaker" <Laura.K.SNEAKER@wrd.state.or.us>  
**To:** "David & Tammy" <dandt@my180.net>  
**Sent:** Wednesday, November 03, 2004 9:06 AM  
**Subject:** Re: Fee Waiver - Emmett Ranch II

Hi Tammy,

Thanks for the clarification on which water right was being transferred instream.

For the instream transfer of a maximum of 0.527 CFS (which is the peak rate for the first part of the irrigation season for 21.2 acres under certificate 72196) the transfer application fee would be \$700, provided that the transfer involves a change in place of use and character of use only. An instream transfer also qualifies for a fee waiver of \$100 or 50% of the application fee, whichever is greater. For this proposed instream transfer (involving only two changes), the transfer fee would then be \$350.00.

Thanks,

Laura Snedaker  
Senior Water Resources Coordinator

At 08:35 AM 11/3/04 -0800, you wrote:

Do you mean the certificate number for the water right ? That is 72196. The LaPine Cooperative Water Association. Tammy

----- Original Message -----  
From: Laura K Snedaker  
To: David & Tammy  
Sent: Wednesday, November 03, 2004 8:17 AM  
Subject: Re: Map Waiver - Emmett Ranch II

Tammy:  
  
What's the water right number?

Thanks, Laura

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11/03/2004

Waiver of Mapping Requirement

Signature Request Form

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WATER RESOURCES DEPT  
SALEM, OREGON

Applicant: Emmett Ranch, LLC

Legal Description: T 22S, R 10E, Section 34, tax lot 4100, Deschutes County  
Certificate # 72196 La Pine Cooperative Water Association

Water Rights to be transferred Instream for Mitigation Credits: 21.10 acres

I, Kyle Gorman, holding the field staff position of Region Manager, concur that the mapping requirement can be waived because the applicant satisfies the requirements of OAR 690-380-3410 to waive mapping requirements in OAR 690-380-3100 for a change of a water right subject to transfer under ORS 540.520 or 540.523. The applicant is establishing an instream water right pursuant to ORS 537.348.

*The applicant is requesting that they be given assistance in preparing a map that meets the requirements. All of the water rights in both quarter quarter sections ( SW SW and SE SW) are being removed. The existing water right map of record at the State shows that the only water rights in those quarter quarter sections are those water rights which are subject to this transfer.*

*The applicant is requesting waiver of the CWRE map requirement in exchange for acceptance of existing water right maps, not a waiver of the map entirely. The applicant is establishing an instream water right pursuant to ORS 537.348.*

The standards for this waiver are met pursuant to:

OAR 690-380-3410 (3) (a) To establish an instream water right pursuant to ORS 537.348.

(4) The assistance provided by the Department may include, but need not be limited to, development of an application map.

*OWRD has maps sufficient to document this transfer since all water rights in those quarter quarter sections are being removed in this transfer..*

Signature: \_\_\_\_\_



Date: \_\_\_\_\_

12-17-04

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DEC 22 2004

WATER RESOURCES DEPT  
SALEM, OREGON

Applicant: Emmett Ranch, LLC

Legal Description: T 22S, R 10E, Section 34, tax lot 4100, Deschutes County  
Certificate # 72196 La Pine Cooperative Water Association

Water Rights to be transferred Instream for Mitigation Credits: 21.10 acres

*The applicant is requesting that they be given assistance in preparing a map that meets the requirements. All of the water rights in both quarter quarter sections (SW SW and SE SW) are being removed. The existing water right map of record at the State shows that the only water rights in those quarter quarter sections are those water rights which are subject to this transfer.*

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(4) The assistance provided by the Department may include, but need not be limited to, development of an application map.

*OWRD has maps sufficient to document this transfer since all water rights in those quarter quarter sections are being removed in this transfer.*

No T.C.

The LaPine Cooperative Water Association agrees ~~to the transfer~~ and to the map waiver:

  
\_\_\_\_\_  
La Pine Cooperative Water Association By Theresa Cliff, Board Chair

Date: Dec 6, 2004

T-9835 MP-29