

Application for Water Right Transfer

Part 1 of 4 – Minimum Requirements Checklist



Oregon Water Resources Department
 725 Summer Street NE, Suite A
 Salem, Oregon 97301-1266
 (503) 986-0900
 www.wrd.state.or.us

This transfer application will be returned if Parts 1 through 4 and all required attachments are not completed and included.

For questions, please call (503) 986-0900, and ask for Transfer Section.

FOR ALL TRANSFER APPLICATIONS

Check all items included with this application. (N/A = Not Applicable)

- Part 1 – Completed Minimum Requirements Checklist.
- Part 2 – Completed Transfer Application Map Checklist.
- Part 3 – Completed Transfer Application – Applicant Information and Signature.
- Part 4 – Completed Transfer Application – Water Right Information. Please include a separate Part 4 for each water right. List all water right certificates to be transferred here: _____.

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Attachments:

- Completed Transfer Application Map.
- Completed Evidence of Use Affidavit and supporting documentation.
- Fees – Amount enclosed: \$ **1800**.
 See the Department's Fee Schedule at www.wrd.state.or.us or call (503) 986-0883.
- N/A Affidavit(s) of Consent.
- N/A Supplemental Form D – For water rights served by or issued in the name of an irrigation district. Complete when the transfer applicant is not the irrigation district.
- N/A Land Use Information Form with approval and signature (or signed land use form receipt stub). Not required if water is to be diverted, conveyed, and/or used only on federal lands or if **all** of the following apply: a) a change in place of use only, b) no structural changes, c) the use of water is for irrigation only, and d) the use is located within an irrigation district or an exclusive farm use zone.
- N/A For changes in point(s) of appropriation (well(s)) or additional point(s) of appropriation, Water Well Report/Well Log.
- N/A For Temporary Transfer (one to five years) Begin Year _____ End Year _____.
- N/A For Temporary Transfer only – Current recorded deed for the land **from** which the authorized place of use is being moved.

(For Staff Use Only)

WE ARE RETURNING YOUR APPLICATION FOR THE FOLLOWING REASON(S):

| | |
|--|---|
| <input type="checkbox"/> Application fee not enclosed/insufficient | <input type="checkbox"/> Map not included or incomplete |
| <input type="checkbox"/> Land Use Form not enclosed or incomplete | |
| <input type="checkbox"/> Additional signature(s) required | <input type="checkbox"/> Part _____ is incomplete |
| Other/Explanation _____ | |
| Staff: _____ 503-986-0_____ | Date: ____/____/____ |

Part 2 of 4 – Transfer Application Map Checklist

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Your transfer application will be returned if any of the map requirements listed below are not met.

Please be sure that the transfer application map you submit includes all the required items and matches the existing water right map. Check all boxes that apply.

- N/A Certified Water Right Examiner (CWRE) Stamp and Original Signature. For list of CWREs see http://www1.wrd.state.or.us/pdfs/cwre_listing.pdf. CWRE stamp and signature are not required for temporary changes, historic point of diversion changes, and substitutions.
- N/A If **more than three** water rights are involved, separate maps are needed for each water right.
- Permanent quality printed with dark ink on white or clear paper or film.
- The size of the map can be 8½ x 11 inches, 8½ x 14 inches, or up to 30 x 30 inches. For 30 x 30 inch maps, three (3) paper copies and an electronic copy in a .pdf, .tiff or .jpg format are required.
- A north arrow, a legend, and scale.
- The scale of the map must be: 1 inch = 400 feet, 1 inch = 1,320 feet, the scale of the Final Proof/Claim of Beneficial Use Map (the map used when the permit was certificated), the scale of the county assessor map if the scale is not smaller than 1 inch = 1,320 feet, or a scale that has been pre-approved by the Department.
- Township, Range, Section, ¼ ¼, DLC, Government Lot, and other recognized public land survey lines.
- Tax lot boundaries (property lines) are required. Tax lot numbers are recommended.
- Major physical features including rivers and creeks showing direction of flow, lakes and reservoirs, roads, and railroads.
- Major water delivery system features from the point(s) of diversion/appropriation such as main pipelines, canals, and ditches.
- Existing place of use that includes separate hachuring for each water right, priority date, and use including number of acres in each quarter-quarter section, government lot, or in each quarter-quarter section as projected within government lots, donation land claims, or other recognized public land survey subdivisions. If less than the entirety of the water right is being changed, a separate hachuring is needed for lands left unchanged.
- N/A Proposed place of use that includes separate hachuring for each water right, priority date, and use including number of acres in each quarter-quarter section, government lot, or in each quarter-quarter section as projected within government lots, donation land claims, or other recognized public land survey subdivisions.
- Existing point(s) of diversion or well(s) with distance and bearing or coordinates from a recognized survey corner. This information can be found in your water right certificate or permit.
- N/A If you are proposing a change in point(s) of diversion or well(s), show the proposed location and label it clearly with distance and bearing or coordinates. If GPS coordinates are used, latitude-longitude coordinates may be expressed as either degrees-minutes-seconds with at least one digit after the decimal (example – 42°32'15.5") or degrees-decimal with five or more digits after the decimal (example – 42.53764°).

Part 3 of 4 – Applicant Information and Signature

Applicant Information

| | | | |
|--|--------------------|----------------------------------|------------------------|
| APPLICANT/BUSINESS NAME Ann Ingham | | PHONE NO. 541-595-2183 | ADDITIONAL CONTACT NO. |
| ADDRESS 26248 Metolius Meadows Drive | | | FAX NO. |
| CITY Camp Sherman | STATE OR | ZIP 97759 | E-MAIL |

Agent Information – The agent is authorized to represent the applicant in all matters relating to this application.

| | | | |
|---|--------------------|----------------------------------|--|
| AGENT/BUSINESS NAME Fred Ast & Associates | | PHONE NO. 541-549-7851 | ADDITIONAL CONTACT NO. |
| ADDRESS P.O. Box 751 | | | FAX NO. |
| CITY Sisters | STATE OR | ZIP 97759 | E-MAIL michele@outlawnet.com |

If an agent is listed above, please check **one** of the following:

- Please send all correspondence to Agent. Send copies of correspondence to Applicant; **OR**
- Please send all correspondence to Applicant. Send copies of correspondence to Agent.
- Check this box if this project is fully or partially funded by the American Recovery and Reinvestment Act. (Federal stimulus dollars)

Is the applicant the sole owner of the land on which the water right, or portion thereof, proposed for transfer is located? Yes No

If NO, include signatures of all landowners (and mailing address if different than the applicant's) or attach affidavits of consent (and mailing addresses) from all landowners or individuals/entities to which the water right(s) has been conveyed.

Permanent Transfers Only (check one box)

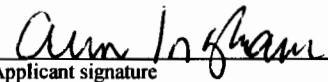
- By signing this application, I understand that, upon receipt of the draft preliminary determination and prior to Department approval of the transfer, I will be required to provide landownership information and evidence that I am authorized to pursue the transfer as identified in OAR 690-380-4010(5); **OR**
- I affirm the applicant is a municipality as defined in ORS 540.510(3)(b) and that the right is in the name of the municipality or a predecessor; **OR**
- I affirm that the applicant is an entity with the authority to condemn property and is acquiring by condemnation the property to which the water right proposed for transfer is appurtenant and have supporting documentation.

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I (we) affirm that the information contained in this application is true and accurate.


Applicant signature

Ann Ingham
Name (and title if applicable) (print)

5-10-10
Date

Applicant signature

Name (and title if applicable) (print)

Date

In your own words tell us what change(s) you want made and the reason for the change(s): **The Metolius Meadows Homeowner's Association is installing a headgate, piping a ditch, and lining a pond that delivers a portion of Cert. 81669. The transfer of a portion of the right to pond maintenance will allow the pond to be kept filled for stock watering in winter months. The diversion that has served the ditch for years has never been of record, so we are applying for a Historic POD change.**

Check the following boxes that apply:

- The applicant is responsible for completion of change(s). Notices and correspondence should continue to be sent to the applicant.
- The receiving landowner will be responsible for completing the proposed change(s) after the final order is issued. Copies of notices and correspondence should be sent to this landowner.
- The receiving landowner and applicant will be responsible for completion of change(s). Copies of notices and correspondence should be sent to this landowner and the applicant.

At this time, are the lands in this transfer application in the process of being sold? Yes No

If YES, and you know who the new landowner will be, please complete the receiving landowner information table below. If you do not know who the new landowner will be, then a request for assignment will have to be filed for at a later date.

If a property sells, the certificated water right(s) located on the land belong to the new owner, unless a sale agreement or other document states otherwise. (To learn about sale agreements please visit our web site at: <http://www1.wrd.state.or.us/pdfs/Transfer-PropertyTransactions.pdf>)

| | | | | |
|--------------------------|-------|-----|-----------|------------------------|
| RECEIVING LANDOWNER NAME | | | PHONE NO. | ADDITIONAL CONTACT NO. |
| ADDRESS | | | | FAX NO. |
| CITY | STATE | ZIP | E-MAIL | |

Describe any special ownership circumstances here: _____

- Check here if any of the water rights proposed for transfer are or will be located within or served by an irrigation or other water district. (Tip: Complete and attach Supplemental Form D.)

| | | |
|--------------------------|---------|-----|
| IRRIGATION DISTRICT NAME | ADDRESS | |
| CITY | STATE | ZIP |

- Check here if water for any of the rights supplied under a water service agreement or other contract for stored water with a federal agency or other entity.

| | | |
|-------------|---------|-----|
| ENTITY NAME | ADDRESS | |
| CITY | STATE | ZIP |



To meet State Land Use Consistency Requirements, you must list all local governments (each county, city, municipal corporation, or tribal government) within whose jurisdiction water will be diverted, conveyed or used.

| | | |
|--|----------------------------------|---------------------|
| ENTITY NAME Jefferson County | ADDRESS 85 SE D Street | |
| CITY Madras | STATE OR | ZIP 97741 |

| | | |
|-------------|---------|---------------------|
| ENTITY NAME | ADDRESS | |
| CITY | STATE | ZIP RECEIVED |

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Part 4 of 4 – Water Right Information

Please use a separate Part 4 for each water right being changed. See instructions at <http://www.wrd.state.or.us/OWRD/PUBS/forms.shtml>.

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CERTIFICATE # 81669

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Description of Water Delivery System

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System capacity: 0.05 cubic feet per second (cfs) OR
_____ gallons per minute (gpm)

Describe the current water delivery system or the system that was in place at some time within the last five years. Include information on the pumps, canals, pipelines and sprinklers used to divert, convey and apply the water at the authorized place of use. **Water is diverted from Lake Creek at headgate into pipeline, from which it flows into a pond. From the pond, it flows into a ditch and into a watering trough for livestock. Pumps along the ditch distribute water to individual lots.**

Table 1. Location of Authorized and Proposed Point(s) of Diversion (POD) or Appropriation (POA)
(Note: If the POD/POA name is not specified on the certificate, assign it a name or number here.)

| POD/POA Name or Number | Is this POD/POA Authorized on the Certificate or is it Proposed? | If POA, OWRD Well Log ID# (or Well ID Tag # L-___) | Twp | Rng | Sec | ¼ ¼ | Tax Lot, DLC or Gov't Lot | Measured Distances (from a recognized survey corner) |
|------------------------|---|--|------|-----|-----|-------|---------------------------|--|
| POD 1 | <input checked="" type="checkbox"/> Authorized <input type="checkbox"/> Proposed | | 13 S | 9 E | 15 | NW NW | | 270' South and 700' East from NW Corner Sec. 15 |
| POD 2 | <input checked="" type="checkbox"/> Authorized <input type="checkbox"/> Proposed | | 13 S | 9 E | 16 | SE NE | | 2320' South and 1120' West from NE Corner Sec. 16 |
| POD 3 | <input type="checkbox"/> Authorized <input checked="" type="checkbox"/> Proposed | | 13 S | 9 E | 16 | NW SE | 200 | |
| | <input type="checkbox"/> Authorized <input type="checkbox"/> Proposed | | | | | | | |

Check all type(s) of change(s) proposed below (change "CODES" are provided in parentheses):

- | | |
|--|---|
| <input type="checkbox"/> Place of Use (POU) | <input type="checkbox"/> Supplemental Use to Primary Use (S to P) |
| <input checked="" type="checkbox"/> Character of Use (USE) | <input type="checkbox"/> Point of Appropriation/Well (POA) |
| <input type="checkbox"/> Point of Diversion (POD) | <input type="checkbox"/> Additional Point of Appropriation (APOA) |
| <input type="checkbox"/> Additional Point of Diversion (APOD) | <input type="checkbox"/> Substitution (SUB) |
| <input checked="" type="checkbox"/> Historic POD (HPOD) | <input type="checkbox"/> Government Action POD (GOV) |
| <input type="checkbox"/> Surface Water POD to Ground Water POA (SW/GW) | |

Will all of the proposed changes affect the entire water right?

- Yes Complete only the Proposed ("to" lands) section of Table 2 on the next page. Use the "CODES" listed above to describe the proposed changes.
- No Complete all of Table 2 to describe the portion of the water right to be changed.

T 11076

Please use additional pages of Table 2 as needed

Table 2. Description of Changes to Water Right Certificate # 81669

List only the part of the right that will be changed. For the acreage in each 1/4 1/4, list the change proposed. If more than one change, specify the acreage associated with each change. If more than one POD/POA, specify the acreage associated with each POD/POA.

| Authorized ("from" lands) as they appear BEFORE THE CHANGES | | | | | | | Proposed ("to" lands) AFTER THE CHANGES | | | | | | | | | | | | | | | |
|---|-----|-----|-----|-----|---------|----------------|---|-----------------------------------|--|---|-------------|-----|-----|-----|-----|---------|----------------|-----------------------|-----------------|--|--|--|
| Twp | Rng | Sec | 1/4 | 1/4 | Tax Lot | Gvt Lot or DLC | Acres (if applicable) | Type of USE listed on Certificate | POD(s) or POA(s) (name or number from Table 1) | Proposed Changes (see "CODES" from previous page) | Twp | Rng | Sec | 1/4 | 1/4 | Tax Lot | Gvt Lot or DLC | Acres (if applicable) | New Type of USE | POD(s)/ POA(s) to be used (from Table 1) | | |
| 13 S | 9 E | 16 | NE | SE | 200 | | 0.14 | irrigation | POD 1 | POD | 13 S | 9 E | 16 | NE | SE | 200 | | 0.14 | pond | POD 3 | | |
| | | | | | 1400 | | 0.28 | " | " | " | | | | | | 1400 | | 0.28 | | " | | |
| | | | | | 1300 | | 0.37 | " | " | " | | | | | | 1300 | | 0.37 | | " | | |
| | | | | | 1200 | | 0.35 | " | " | " | | | | | | 1200 | | 0.35 | | " | | |
| | | | | | 1100 | | 0.30 | " | " | " | | | | | | 1100 | | 0.30 | | " | | |
| | | | | | 1000 | | 0.02 | " | " | " | | | | | | 1000 | | 0.02 | | " | | |
| | | | | | 900 | | 0.30 | " | " | " | | | | | | 900 | | 0.30 | | " | | |
| | | | | | 800 | | 0.35 | " | " | " | | | | | | 800 | | 0.35 | | " | | |
| | | | | | 700 | | 0.33 | " | " | " | | | | | | 700 | | 0.33 | | " | | |
| | | | | | 600 | | 0.30 | " | " | " | | | | | | 600 | | 0.30 | | " | | |
| TOTAL ACRES | | | | | | | | | | | TOTAL ACRES | | | | | | | | | | | |

Additional remarks: See page 2 of Table 2 for total acreage.

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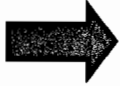
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For Place of Use or Character of Use Changes

Are there other water right certificates, water use permits or ground water registrations associated with the “from” or the “to” lands? Yes No

If YES, list the certificate, water use permit, or ground water registration numbers: _____.



Pursuant to ORS 540.510, any “layered” water use such as an irrigation right that is supplemental to a primary right proposed for transfer must be included in the transfer or be cancelled. Any change to a ground water registration must be filed separately in a ground water registration modification application.

For Substitution (ground water supplemental irrigation will be substituted for surface water primary irrigation)

Ground water supplemental Permit or Certificate # _____;

Surface water primary Certificate # _____.

For a change from Supplemental Irrigation Use to Primary Irrigation Use

Identify the primary certificate to be cancelled. Certificate # _____

For a change in point(s) of appropriation (well(s)) or additional point(s) of appropriation:

Well log(s) are attached for each authorized and proposed well(s) that are clearly labeled and associated with the corresponding well(s) in Table 1 above and on the accompanying application map. (Tip: You may search for well logs on the Department’s web page at: http://apps2.wrd.state.or.us/apps/gw/well_log/Default.aspx)

OR

Describe the construction of the authorized and proposed well(s) in Table 3 for any wells that do not have a well log.

Table 3. Construction of Point(s) of Appropriation

Any well(s) in this listing must be clearly tied to corresponding well(s) described in Table 1 and shown on the accompanying application map. Failure to provide adequate information is likely to delay the processing of your transfer application. For proposed wells, we recommend that you consult a licensed well driller, geologist, or certified water right examiner for the proper information needed to complete the table.

| Proposed or Authorized POA Name or Number | Is well already built? (Yes or No) | If an existing well, OWRD Well ID Tag No. L-___ | Total well depth | Casing Diameter | Casing Intervals (feet) | Seal depth(s) (intervals) | Perforated or screened intervals (in feet) | Static water level of completed well (in feet) | Source aquifer (sand, gravel, basalt, etc.) | Well - specific rate (cfs or gpm). If less than full rate of water right |
|---|------------------------------------|---|------------------|-----------------|-------------------------|---------------------------|--|--|---|--|
| | | | | | | | | | | |
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Sarah Henderson

From: Jeremy Giffin
Sent: Tuesday, May 18, 2010 4:35 PM
To: Sarah Henderson
Subject: RE: Historic POD WM Statement

Sarah, I have been regulating flows on this reach of Lake Creek for over twelve years and have never had a regulation complaint or claim of injury regarding this point of diversion.

Jeremy Giffin
Deschutes Basin Watermaster

From: Sarah Henderson
Sent: Tuesday, May 18, 2010 7:30 AM
To: Jeremy Giffin
Subject: Historic POD WM Statement

Hi Jeremy,

I received a water right transfer application that you might be aware of. I have accepted it as T-11076.

What I need from you is a statement letting me know that there has been no claim of injury prior to the request for the change in historic point of diversion. No complaint of injury has been made due to the use of water at the actual, current point of diversion.

An email to me with the statement from you, will work just fine.

Thank you.

Sarah

T 11076

5/19/2010

Ann Ingham

26248 SW Metolius Meadows Drive
Camp Sherman, OR 97730
541-595-2183

April 21, 2010

To: Oregon Water Resources
Re: Request for Water Right Transfer

Dear Water Resources,

I am writing this letter to you in order to explain why my neighbors and I are requesting a transfer of surface irrigation water rights into pond maintenance water rights. These rights, dating back to 1888, were adjudicated in 1926. At that time, the sitting judge decided that we had so much water in the Metolius River valley we did not need any extra or "carrying" water allocated to convey our water rights through the diversion. Therefore, the only water we have is that which is allocated to the ten of us, with a very small amount for stock watering rights.

In 1991, the Metolius Meadows Development in which we live had to reallocate all of our water rights. The water master at the time could not have foreseen the current salmon restoration project and the impact it would have on our water rights. He assured me that we would always be allowed to have water running through our diversion year round. Therefore, he did not advise me to transfer any Metolius Meadows surface water rights into maintenance water rights for the pond you see in the photos. If I had known about pond maintenance water rights, I would have requested the transfer at that time. We also were not required to install a headgate on our diversion as the unused water flows back into Lake Creek. These decisions have now become a major issue with the salmon restoration project under way.

I have included several photographs to show you that we have diligently used this pond not only for irrigating our properties, but also as the only source of water (from the in-ground trough) for the horses, and as a wildlife area for all the birds, waterfowl, and native wildlife in the area to use freely. The Great Blue Heron visits frequently, as do the otters. The Canada Geese nest nearby and bring their goslings to swim and feed in the pond every spring. We also have four mated pairs of Wood Ducks every spring, along with Hooded Mergansers, Mallards, and Barrow's Goldeneye ducks. Deer have given birth to fawns close to the pond in the willows. We have frequent visits from raccoons, an occasional river mink, muskrat, and beaver.

Last fall we closed off the diversion at Lake Creek and began dredging the pond in preparation for lining it. The diversion has sat empty all winter. As you can see in the photos, some water remained in the pond over the winter. This water is an accumulation of groundwater, rain, and snowmelt over the winter. It appears that we have a water table that is several inches above the bottom of the pond, but not enough to keep the pond filled to the point of flowing through the culvert and down the rest of the canal. It is also not enough water to fill the horse trough, but enough to pose a danger as a muddy pit for the neighbors to walk by in the wintertime.

We have obtained a written approval from our homeowners' board to make the transfer of water for pond maintenance. I have had many conversations with our local Water Master Jeremy Giffin, Mathias Perle of Upper Deschutes Watershed Council, Ted Wise of Oregon Department of Fish and Wildlife, and Michelle Sims, our surveyor. Everyone has been very helpful and supportive of what we are attempting to do. It is everyone's hope that we will be able to keep our diversion full of flowing water year-round. It would be most unfortunate to have to close it off for nine months of the year.

Sincerely,

Ann Ingham

Ann Ingham

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METOLIUS MEADOWS
Property Owners Association, Inc.
 13300 SW Forest Service Road 1419
 Post Office Box 120
 Camp Sherman, OR 97730
 541-595-2101 Fax: 541-595-2101

December 16, 2008

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 SALEM, OREGON**

Ann Ingham
 26248 SW Metolius Meadows Drive
 Camp Sherman, OR 97730

Dear Ann:

This letter is to confirm the Board of Directors approval at the meeting December 12, 2008 to aid you, and the homeowners you were representing, with our cooperation in your efforts to protect your personal water rights diverted from Lake Creek. The Board agrees to grant you the necessary easement to install the piping for your whole diversion from Lake Creek to the lower pond. We also grant permission for you to fill in the upper pond and line the lower pond.

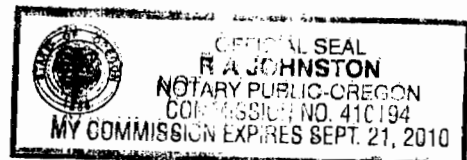
When the final and exact location of your piping is determined the Board is recommending a formal easement agreement be drawn up with the proposed easement location, and the benefiting homeowners and lots involved named. With the aid of your surveyor for the legal descriptions, and hopefully an attorney to draw up the agreement you will be responsible for the creation of the document. When the agreement is completed, the Board will review it, and if satisfactory, sign it and have it recorded in Jefferson County. This will not only clarify for the Association where the easement is, but be recorded for your protection in perpetuity with your land. If any of you ever transfer the ownership of your properties this will be a valuable and necessary document for the new owners.

Please call me with any questions, and continue to keep me and the board apprised of your progress.

Best regards,

Donna Kennedy

Donna Kennedy
 President of the Board of Directors
 Metolius Meadows Property Owners Association



*appeared before me
 in Jefferson County, Oregon,
 R.A. Johnston*



METOLIUS MEADOWS
Property Owners Association, Inc.
 13300 SW Forest Service Road 1419
 Post Office Box 120
 Camp Sherman, OR 97730
 541-595-2101 Fax: 541-595-2101

Date: June 26, 2009

To: Water Rights Holders on Diversion 13,

From: Donna Kennedy, MMPOA President

Donna Kennedy

Subject: Transfer of water rights for pond maintenance

I am writing to inform you that the MMPOA Board approved on June 12, 2009 the transfer of surface water rights in the amount of 1 acre/foot to the pond on MMPOA Commons property adjacent to pastures 3 and 4 for the purpose of pond maintenance. The MMPOA intends to continue to use the pond as a source of water for stock watering. It also intends to continue to allow the pond to be part of Diversion 13.

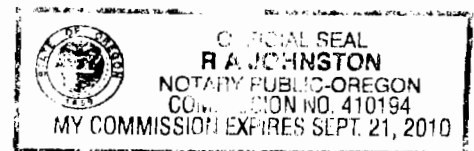
The Board agreed to this transfer subject to the understanding that the private water rights holders on the diversion would bear the cost of the transfer.

Donna Kennedy

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*Appeared before me
 in Jefferson County, Oreg.
 R.A. Johnston*

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**Cooperative Agreement
for Watershed Enhancement Project**

Between

**George and Ann Ingham
Bob and Penney Mannheimer
Jon and Judy Jackson
Ray and Florence Scanlon
Mike and Judy Sims
Bill and Jean Moragne
Phil Ricker and Marion Shimoda
Holly Magowan and Rosemary Weise**

And

Upper Deschutes Watershed Council

THIS AGREEMENT, by and between Ann and George Ingham, Bob and Penney Mannheimer, Jon and Judy Jackson, Ray and Florence Scanlon, Mike and Judy Sims, Bill and Jean Moragne, Phil Ricker and Marion Shimoda and Holly Magowan and Rosemary Weise hereinafter called "the Water Users," for themselves, executors, administrators, successors, and assigns; and the Upper Deschutes Watershed Council, an Oregon nonprofit corporation, hereafter called "UDWC" in cooperation with participating agencies.

This Agreement is in association with the diversion retrofit project on Lake Creek, hereinafter called "the Project" at the diversion on Lake Creek in Camp Sherman, hereinafter called "the Diversion." The Project includes the design, construction, installation and maintenance of a new diversion structure at the Diversion, including a fish screen, fish passage and headgate.

WHEREAS, the Water Users are interested in maintaining the infrastructure necessary to divert their allotted water rights at the Diversion while simultaneously providing fish passage and fish screening, and keeping operation and maintenance costs to an absolute minimum.

WHEREAS, the UDWC, in support for the Oregon Plan for Salmon and Watersheds and in collaboration with the Oregon Watershed Enhancement Board, wishes to cooperate with the Water Users to provide fish passage, fish screening and a new headgate at the Diversion.

NOW THEREFORE, in consideration of the above premises, the parties agree as follows:

I. PURPOSE OF AGREEMENT. The agreement is to facilitate a partnership effort between the parties in the Project and define specific obligations of the Water Users and the UDWC in the completion of the Project.

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SALEM, OREGON**

II. PROJECT GOAL. The goal of the Project is to design, construct, install and maintain a new diversion structure at the Diversion that provides fish screening, fish passage and an operational headgate. Specific objectives include:

- A. Complete an engineering design for a new headgate and fish screen at the Diversion;
- B. Complete an engineering design for a replacement of the existing in-stream push up dam that will allow permanent, year-round upstream and downstream fish passage while simultaneously supporting continued function of the Diversion.
- C. Construct the new headgate, screen and push up dam replacement during the Oregon Department of Fish and Wildlife (ODFW) 2010 in-water work period.
- D. Permanently maintain the Project to ensure proper function of the new fish screen, headgate and push-up dam replacement.

III. TERM OF THE AGREEMENT. This Agreement shall commence on the date of last signature and expire on December 31, 2010.

IV. SPECIFIC OBLIGATIONS OF THE PARTIES.

A. The Water Users agree to:

- 1. Work collaboratively with the UDWC throughout the design and construction of the Project;
- 2. Grant permission to the UDWC staff, its consultants, funders and agency partners to visit the Diversion and implement the Project at mutually agreed-upon times;
- 3. Upon successful construction of the headgate, fish screen and push-up dam replacement, adopt sole responsibility to perform long-term maintenance of the Project;
- 4. Adopt sole responsibility, financial and otherwise, to complete any needed improvements to the irrigation distribution system located on the landward side of the new headgate;
- 5. Not intentionally dismantle, remove, disturb or cause to be non-functional the headgate, fish screen and push-up dam replacement for a minimum period of 10 years following project completion.
- 6. Designate Ann Ingham as a representative of the Water Users for all Project-related communications with the UDWC; and
- 7. Acknowledge that the Project is being developed and implemented as a partnership between the Water Users and the UDWC in all communications regarding the Project, including communications with the media, funders, public and other parties.

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- D. This agreement may be terminated if the UDWC and Water Users are unable to obtain the necessary local, state or federal grant funds to implement the Project. If adequate funding is not secured, the Landowner will not be responsible for funding the implementation of the Project.

VI. LIABILITY

- A. Each party agrees that it will be responsible for its own acts and the result thereof and will not be responsible for the acts of the other party and results thereof.
- B. The Water Users shall defend, save, hold harmless and indemnify the UDWC, its officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever, including, but not limited to attorneys fees, court and arbitration costs, resulting from, arising out of, or relating to the activities arising from this agreement.
- C. The UDWC shall defend, save, hold harmless and indemnify the Water Users, its officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever, including, but not limited to attorneys fees, court and arbitration costs, resulting from, arising out of, or relating to the activities arising from this agreement.
- D. Each party acknowledges that it is not acting as the other's agent or partner, nor are the parties acting in a joint venture. As such, neither shall be liable for the debts or obligations of the other.

IN WITNESS THEREOF, the parties have executed this Agreement on the day, month, and year last indicated:

Water User: Ann Ingham, Geo K Ingham Date: 11/26/09
 George and Ann Ingham

Water User: _____ Date: _____
 Bob and Penney Mannheimer

Water User: _____ Date: _____
 Jon and Judy Jackson

Water User: Ray and Florence Scanlon Date: 11-28-09
 Scanlon Family Trust
 Trustee

Water User: Mike and Judy Sims Date: 11/25/09
 Michael AS, Judith L. Sims

Water User: _____ Date: _____
 T 11076 Bill and Jean Moragne

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WATER RESOURCES DEPT
 SALEM, OREGON

Water User: _____ **Date:** _____
Phil Ricker and Marion Shimoda

Water User: _____ **Date:** 11/29/09
Holly Magowan and Rosemary Weise

UDWC: _____ **Date:** _____
Ryan Houston
Executive Director
Upper Deschutes Watershed Council

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