

SETTLEMENT AGREEMENT

This Settlement Agreement resolves the claims in Umatilla County Circuit Court case numbers 23CV27740, 23CV27892, and 24CV32021 (the “Consolidated Cases”). The Parties to these Consolidated Cases are the Petitioners, New Foothills Properties, L.L.C. and Lloyd Piercy; and the Respondent State Agencies, Oregon Water Resources Department and Water Resources Commission. The Parties have agreed to settle these Consolidated Cases for the consideration described in this Agreement.

RECITALS

- A. Rolland Holeman was the owner of real property located in Umatilla County, Oregon, and the holder of two groundwater rights for three wells on that property, described in now-cancelled Certificate 53080 and 53082. The three wells are UMAT 56538, which was the authorized point of appropriation for Certificate 53080; and UMAT 56579 and UMAT 56580, which are the authorized points of appropriation for Certificate 53082.
- B. On June 1, 1995, OWRD advised Holeman that he was required to terminate the use of his three wells for irrigation due to a call for water by the West Extension Irrigation District, which held a surface water right with a priority date senior to that of Holeman’s groundwater rights.
- C. On about June 13, 1995, Holeman filed a petition for judicial review against the State of Oregon, under Umatilla County Circuit Court case no. CV 95-0538, alleging that his three wells were not hydraulically connected to the Umatilla River or to McKay Creek, and that the order requiring him to cease his use of his wells was therefore erroneous.
- D. Holeman and OWRD litigated the matter and discussed potential settlement for several years. The experts employed by Holeman and OWRD were unable to agree on the degree of interference between the subject wells and the Umatilla River system, and they came to the conclusion that without additional data collection and analysis, reasonable scientific minds could

differ as to the degree of interference, and that it would be impossible for a judge, without the considerable training in hydraulics and hydrogeology at the disposal of the parties, to come to a rational conclusion regarding which scientific analysis is more nearly correct.

E. In 1999, Holeman and OWRD agreed to settle the matter. Under that settlement, when there was insufficient water for a senior Umatilla River water right, Holeman was required to thereafter continuously pump 60 percent of the water from the wells directly into the Umatilla River to preserve the river flow for the benefit of senior appropriators.

F. In 2002, Holeman sold his property and the appurtenant water rights to Lloyd and Lois Piercy.

G. In 2006, Lloyd and Lois Piercy sold a portion of the property and the appurtenant water rights to Flying B. Vineyard, LP which sold to Flying B. Umatilla, LLC in 2008.

H. In 2010, New Foothills Properties, LLC purchased their property from Flying B. Umatilla, LLC.

I. The two water rights described in the original settlement, Certificate 53080 and Certificate 53082, have since undergone several water right transfers, and are now six different rights: Certificate 93672, Certificate 93673, and inchoate Transfer T-12488, which originate from now-cancelled Certificate 53080; and Certificate 85740, Certificate 96206, and inchoate Transfer T-13830, which originate from now-cancelled Certificate 53082.

J. Those water rights maintain the same authorized points of appropriation as were identified in the originating certificates.

K. Beginning in 2021, the Parties began to dispute the terms of the original settlement. This eventually led to OWRD reevaluating its understanding of the settlement. Following that reevaluation, OWRD believed that the settlement could not be enforced by Petitioners, because the original settlement did not purport to carry over to the successors to the property interests. As

a result, in 2023, OWRD sought to again regulate Petitioners' groundwater rights due to the wells being hydraulically connected to the Umatilla River.

L. OWRD accordingly issued a regulation order to Petitioners on June 1, 2023. Following Watermaster Greg Silbernagel's determination that Petitioners had continued to use water despite the regulation order, OWRD later issued a notice of violation on June 9, 2023, under OWRD case number 2305002NOV.

M. In response, Petitioners filed their first two Consolidated Cases under Case numbers 23CV27740 and 23CV27892, which respectively challenged the issuance of the June 9, 2023 Notice of Violation, and the June 1, 2023, Regulation Order.

N. Because the Parties lacked a judicial decision during the 2024 irrigation season, OWRD again sought to regulate Petitioners' groundwater rights that year. OWRD accordingly issued a regulation order to Petitioners on June 10, 2024. Following Watermaster Greg Silbernagel's determination that Petitioners had continued to use water despite the regulation order, OWRD later issued a notice of violation on June 25, 2024, under OWRD case number 2405003NOV.

O. In response, Petitioners filed the third Consolidated Case under Case number 24CV32021, which challenged the issuance of both the June 10, 2024 Regulation Order and the June 25, 2024 Notice of Violation.

P. The Consolidated Cases are set for trial beginning on May 18, 2026.

Q. The Parties now wish to settle and resolve all claims in the Consolidated Cases.

TERMS OF AGREEMENT

1. **No admission of fault or future precedent:** The Parties agree that this Agreement is not to be construed as an admission or proof of any liability on the part of Petitioners or the State Agencies. This Agreement does not establish a precedent in the settlement of any current or future dispute among the Parties, and it shall not be admissible as evidence in any future

arbitration, administrative, or court proceeding except in a proceeding brought to enforce the terms of this Agreement.

2. **Agreement does not vest rights or privileges:** The Parties agree that this Agreement does not vest any rights or privileges that extend beyond the duration of the Agreement.

3. **Parties will bear their own fees and costs:** The Parties agree to pay their own attorney's fees and costs in the Consolidated Cases. Petitioners further agree to pay their own attorney's fees in Case No. 25CV37634, but the State Agencies will pay the filing costs in that matter, in accordance with ORS 183.484(4).

4. **Judgment of dismissal with prejudice:** The Parties agree to a dismissal of the pending Consolidated Cases with prejudice. Counsel for Petitioners shall file a stipulation of dismissal in accordance with ORCP 54 A(1) within seven days of execution of this agreement.

5. **Permanent withdrawal of related notices of violation:** OWRD agrees to permanently withdraw the 2023 Notice of Violation (2305002NOV) and the 2024 Notice of Violation (2405003NOV).

6. **Staying enforcement for transfer of blueberry acres:** To facilitate this Agreement, OWRD agrees to stay enforcement of Oregon water law against the approximately 4.0 acres of irrigated land in the "lowlands" to keep the blueberry crop alive during the time necessary for application for and processing of a temporary water-right transfer, but not to extend beyond the 2026 irrigation season.

7. **Holeman settlement superseded:** The Parties agree that the terms of this Agreement supersede the original settlement between Holeman and OWRD and agree to not seek any future enforcement of that original settlement.

8. **Duration of Agreement:** This Agreement expires 15 years from the date of execution of this Agreement. During that time, the State Agencies agree not to assert that the settlement is against public policy in any litigation related to enforcement of this Agreement.

9. **Omission of water rights originating from Certificate 53080:** The water rights originating from Certificate 53080 (Permit G-7367) are not included in this Agreement. The Parties accordingly agree that those water rights, so long as they continue to identify UMAT 56538 as the authorized point of appropriation, shall be subject to regulation consistent with other hydraulically connected wells near the Umatilla River. At the time of this Agreement, those water rights include Certificate 93672, Certificate 93673, and inchoate Transfer T-12488.

10. **Covered Water Rights and Covered Wells:** This Agreement affects regulation for only the following Covered Water Rights: Certificate 85740, Certificate 96206, and inchoate Transfer T-13830. The Agreement continues to apply to those water rights even if they are divided by a water-right transfer. However, the Agreement applies only to those Covered Water Rights so long as they continue to identify the Covered Wells as the authorized points of appropriation. The Covered Wells include only UMAT 56579 and UMAT 56580. If a well is destroyed but is properly re-established to the applicable standard, then it remains a Covered Well.

11. **Petitioners agree to reduce their maximum pump rate during water shortage:** On notification from OWRD that there is insufficient water for one or more senior surface water users on the Umatilla River, Petitioners will immediately limit their maximum pumping rate from the Covered Wells to 40 percent of the total rate authorized by the Covered Water Rights. This time period is the Reduced-Rate Period. The specific allocation of the 40 percent among the Covered Water Rights and between Petitioners is not covered by this Agreement.

12. **Reduced-Rate Period ends when water shortage ends:** If OWRD issues a notification that water supplies in the Umatilla River have become sufficient for the demands of senior surface-water users, then the Reduced-Rate Period ends, and Petitioners may return to pumping at the maximum rate authorized by the Covered Water Right.

13. **Petitioners not barred from water-right transfer:** Notwithstanding this Agreement, Petitioners may apply to transfer all or a portion of a Covered Water Right, including to use a

different point of appropriation. But if a transfer to change a point of appropriation is approved, the resulting water right will no longer be a Covered Water Right, and water use under the right will be governed by Oregon water law.

14. **Totalizing flowmeters to be installed and maintained:** A totalizing flowmeter shall be installed on the water-delivery system to accurately measure the rate and volume of water pumped from UMAT 56579, unless already installed, and UMAT 56580, if the well is re-established. The location, type of, and installation of flowmeters shall be subject to prior watermaster approval. Petitioners shall maintain flowmeters in operational and accurate condition. If a flowmeter fails to function properly, including by reporting inaccurate data, Petitioners shall cease pumping water from the relevant well as soon as the malfunction is discovered. Petitioners shall also inform the watermaster within 24 hours. Petitioners may resume pumping after an operational and accurate flowmeter is installed, with its location and installation approved by the watermaster within 5 business days.

15. **Reporting requirements:** Petitioners shall record flowmeter rates and volumes at the beginning and end of each irrigation season. Petitioners shall also record flowmeter rates and volumes at the start of the Reduced-Rate Period, and they shall report that data to the local OWRD watermaster's office within 10 business days of the start of the Reduced-Rate Period. During the Reduced-Rate Period, Petitioners shall record flowmeter rates and volumes at least once a week, and they shall make a reasonable effort to space readings out evenly within a given month. During the Reduced-Rate Period, Petitioners shall also submit a report containing the flowmeter rate and volume recordings for the month within 10 business days of the end of each month. At the end of the irrigation season, Petitioners shall record flowmeter rates and volumes and submit that data to the local watermaster's office within 10 business days. If OWRD issues a notification that water supplies have become sufficient for senior surface-water users, Petitioners

shall record flowmeter rates and volumes and submit that data to the local watermaster's office within 10 business days of the notification.

16. **Access to flowmeters:** OWRD, through its regional and watermasters' offices, shall have access to the flowmeters, including for unannounced regulatory visits.

17. **OWRD enforcement for violations relating to pumping, flowmeters, reporting, and access:** A violation of any of the terms of this Agreement relating to pumping, flowmeters, reporting, or access shall thereafter result in full curtailment and regulation of the Covered Water Rights in favor of senior surface water rights for the remainder of the irrigation season. If the watermaster has probable cause of a violation of water law, the watermaster retains regulatory discretion to take appropriate enforcement action.

18. **Petitioners' early termination:** After a period of 5 years after the date of execution of this Agreement, Petitioners may elect to terminate this agreement for the purposes of asserting that the covered wells (UMAT 56579 and UMAT 56580) do not have the potential for substantial interference with surface-water rights. If Petitioners so elect, the termination will take effect on the following irrigation season.

19. **Repeated violations as basis for State's early termination:** If OWRD has probable cause to believe that Petitioners have violated the terms of the Agreement, OWRD may elect to provide written notice to Petitioners of OWRD's allegation of violation. The notification may be in any written form, including but not limited to a notice of violation. If over a consecutive three-year period, OWRD has notified Petitioners of a violation of the Agreement a total of three times, OWRD may elect to notify Petitioners of the State Agencies' intent to terminate the agreement. The Agreement shall be terminated if OWRD proves by a preponderance of the evidence each of the three violations.

20. **Amendment must be in writing:** This Agreement may be amended only by written amendment. For the State Agencies' part, the written amendment is valid only if signed by the

OWRD director, a deputy director, or other official authorized by written delegation to do so on OWRD's behalf.

21. **No survival of terms:** Unless the Parties agree by written amendment, no term of this Agreement shall survive beyond the expiration date.

ENFORCEMENT OF AGREEMENT AND MISCELLANEOUS PROVISIONS

1. **Umatilla County Circuit Court to be venue for enforcement of Agreement:** If any Party believes that another Party is not in compliance with this Agreement, the Party alleging noncompliance may seek enforcement of the terms of the Agreement in the circuit court for Umatilla County. Should legal action be necessary to enforce the agreement, the Parties agree to jurisdiction and venue in the Umatilla County Circuit Court.

2. **Successors in interest:** This Agreement transfers to successors in interest for the Covered Water Rights. Prior to execution of an agreement to transfer an interest in a Covered Water Right, Petitioners agree that the current holder of the water right shall provide a copy of this Agreement to the potential transferee. Petitioners further agree that the current holder of the water right shall notify the local OWRD watermaster's office before executing the agreement to transfer.

3. **Entire agreement:** This Agreement contains and constitutes the entire agreement and understanding of the Parties.

4. **No waiver:** The failure by any of the Parties to enforce any term of this Agreement shall not be a waiver of that term.

5. **Invalidity:** This Agreement does not waive any right that may not legally be waived. If any provision contained in this Agreement shall for any reason be held to be invalid, illegal, void, or unenforceable in any respect, such provision shall be deemed modified so as to constitute a provision conforming as nearly as possible to such invalid, illegal, void, or

unenforceable provision while still remaining valid and enforceable, and the remaining terms or provisions of this Agreement shall not be affected.

6. **Agreement jointly drafted:** This Agreement was jointly drafted and approved by all Parties to this Agreement, who were all represented by counsel. Thus, the Parties agree that, in any future action to enforce this Agreement, the Parties have waived any rule that would require ambiguities in this Agreement to be interpreted against the drafter.

7. **Acknowledgment of the terms of the Agreement:** By the signatures below, the Parties acknowledge that they have each read and know the contents of this Agreement, that they each fully understand the Agreement's terms, and that they enter the Agreement voluntarily for the purpose of making a full compromise and settlement. Each of the Parties further represents it has consulted with legal counsel of their choice concerning the legal effect of this Agreement before signing it, and that each Party voluntarily executes this Agreement. Further, the persons executing and delivering the Agreement represent and warrant that they are fully authorized to do so, and that the execution of delivery of the Agreement is lawful and voluntary.

8. **Counterparts:** This Agreement may be executed in counterparts, including counterparts received by facsimile or electronic transmission, with each counterpart constituting an original. The executing Parties agree that a photocopy or other signed copy of this Agreement is as effective as the original.

IT IS SO AGREED TO BY THE PARTIES:

LLOYD PIERCY
Petitioner

DATED this 18th day of May, 2026.

JAY BALES, for
NEW FOOTHILLS PROPERTIES, LLC
Petitioner

DATED this 18th day of May, 2026.

IVAN GALL, DIRECTOR
Oregon Water Resources Department

DATED this 18th day of May, 2026.

APPROVED AS TO FORM:

LAURA A. SCHROEDER, OSB #873392
Attorney for Petitioners

DATED this 18th day of May, 2026.

YOUNGWO JOH, OSB #164105
Assistant Attorney General
Attorney for Respondent State of Oregon

DATED this 18th day of May, 2026.